

*The 'defending democracy':
from the 'militant'
to an 'immunised' route?*

THIS CHAPTER HAS three principal objectives. First, on the basis of the findings of the first four chapters, it will provide a synopsis of the Israeli response to Jewish extremism and political violence. This will extend from the early days of the State's existence until the beginning of the new millennium, with an emphasis on current developments. Such a historical perspective will enable us to assess the degree of success of the Israeli 'defending democracy' in moving from the 'militant' pole to the 'immunised' pole on the continuum of the policy of response. An attempt is made to find the 'golden path', that is, a middle way which reconciles between the state's duty of and right to self-protection in the face of its adversaries, on the one hand, and avoidance of a descent into counteractive strategies deviating from democratically legal and moral frameworks, on the other. Then, in the second part of the chapter, the Israeli response is viewed in a comparative perspective with policies of other democracies, specifically, the United States and Germany. Drawing a comparison with these countries will help clarify conclusions arising from previous chapters. It will also help answer the question: to what degree are these conclusions applicable to the response policies of other democracies? Finally, the theoretical issues deriving from this research are presented and several questions which remain unanswered and deserve further discussion are addressed.

The 'defending democracy' in Israel: developments and challenges

In the Introduction to this book, I described the frustration I experienced in the wake of the murder of Prime Minister Yitzhak Rabin. This feeling was evoked by the thought that in the final decade of the twentieth century, the State of Israel had been subject to defeat on two fronts. State authorities had failed both in their fight against political extremism and in their efforts to keep the struggle against extremists within the boundaries of the 'rule of law' in a democratic country.

Over the years, there have been many and varied threats to the country's democracy. However, it would seem that there has been a significant decrease in the intensity of the State's response to the manifestations of extremism (from political parties, extra-parliamentary and violent organisations, etc.), since its early days and up to the end of the twentieth century.

The foremost indication of the change in the State's policy of response can be seen in the new legal and judicial barriers stipulating delimited frames of democratic tolerance, and the growing emphasis on political liberties. These have replaced, in most cases, the administrative barriers the State used in its first decades. Their primary objective was the restraint and suppression of extremists without consideration of the cost of such actions.

Chapter 1 demonstrated the changes in the Israeli response to extremist parties and concluded with the optimistic assessment that, in terms of its governmental institutions, the State of Israel has indeed travelled a long and significant road. An extensive legal system has been created, intended to safeguard democracy from extremist political parties and, at the same time, impose numerous restrictions on authorities with the intention of ensuring the liberties and rights of those same political parties. In fact, the analysis of the characteristics of the response of the judicial and political systems in Israel toward extremist parties reveals a minimal enforcement of restraining laws originally adopted by the State. It demonstrates an earnest regard for the protection of democratic rights on behalf of the legislature but even more so on behalf of representatives of the judiciary's authority.

An extensive examination of the policies of the Central Elections Committee and the Supreme Court of Justice over the years provides ample grounds for the assertion that there is little danger of a substantive restriction of the boundaries of public discourse by the non-registration or disqualification of extremist parties of different shades and colours. Apparently, after opening up public discourse in Israel to a wide diversity of opinion, the authorities are now trying to contain this discourse within the acceptable limits of the law. For example, Justice Mishael Heshin, chairman of the Central Elections Committee for the sixteenth Knesset (scheduled for the year 2003), determined that an Arab list aspiring to change Israel into a state for all its citizens does not negate the existence of the State of Israel as a Jewish state.¹ Of course, one may dispute the judge's conclusions. However, they are still in fact an indication of the judiciary's inclination to preserve the broad boundaries of public discourse in Israel and its intent to ensure representation in the legislature for as many sectors of the population as possible. These developments undoubtedly contribute to the 'immunisation' of the Israeli democracy.

It would seem, then, that in its policy towards extremist parties, Israel is at a relatively stable juncture. The profile presented in chapter 2 reviewed the State's response to extra-parliamentary and violent manifestations of political

extremism. It stressed the dual nature of the State – torn between the inclination to anchor its response within the boundaries of the rule of law while maintaining the protection of its security even at the expense of harming democracy. As a result, steps taken by the State towards a more restrained policy of counteractivity have been hesitant and often marked by stops and starts. An example of the State's adherence to a legal democratic framework can be found in the substantial progress effected in the initiative to secure the *Shabak's* status in law. In the summer of 2001, the *Shabak* Bill was laid on the table of the Committee for Foreign and Security Affairs and the Knesset Constitution, Law and Justice Committee in preparation for a second and third reading, and thus its final passage into law. This law, even if flawed, has the potential to edge the State, even if only a few steps, in the direction of the 'immunised' pole by the very fact that, for the first time, the objective and powers of the *Shabak*, as well as the means of accounting for its actions, will now be more clearly defined.²

Another step in the same direction can be detected in the Ministry of Justice's repeated efforts to address state policy regarding the 'incitement to violence' offence and confine it to a legal framework, thus replacing the Ordinance for the Prevention of Terrorism and other widely used administrative measures. In the summer of 2001, the Government submitted a bill on its own behalf which stated that incitement to violence was a criminal offence. In the words of the law's proposal: 'An individual who publicly appeals for an act of violence or expresses support for such an act – whereupon the contents of the appeal or the circumstances in which it was made public are liable, with great likelihood, to bring about the implementation of such an act – will be sentenced to five years in prison.' The bill also mandates a sentence of one (unconditional) year of prison for an individual who has upon his or her person publication matter of a violent nature and who intends to distribute it. Although this draft law has provisions which may restrict the boundaries of freedom of expression in this country, it is still a noticeable improvement in relation to the current situation, in which the Ordinance for the Prevention of Terrorism is enforced as a principal measure in the prosecution of incitement offences. The new law will create a situation in which the prosecution of criminal incitement to violence will be a protracted procedure and subject to severe scrutiny by the judiciary. In such an event, there is greater probability that the courts of justice, where freedom of thought and action have proven in recent years to be guiding principles, will assign the law a narrow (more specific) interpretation and demand decisive proof regarding the actuality of the offence, as stipulated by the law, before declaring guilt. However, in order to invest this law with real authority, Kremnizer's approach, endorsed by Professor Ze'ev Segal, must be adopted. According to Kremnizer, concurrent with the passing of the said law, the 'offence of sedition' should be struck from the law books because it is too broad and sweeping, and is liable to lead to the unreasonable limitation of the freedom

of expression.³ Furthermore, if the State of Israel indeed seeks to anchor its response in a legal framework which relies on a genuine notion of the rule of law, then, in addition to the annulment of the sedition offence, the Ordinance for the Prevention of Terrorism should also be limited. This should also apply to a variety of administrative regulations at the State's disposal which have always empowered it to deal with extremist manifestations while significantly circumventing the criminal court system.

However, as past events have shown, when there is any type of policy shift towards more liberal forms of response to violent and extremist phenomena, often a change in security conditions, together with political considerations, can ultimately lead to the suspension of the reformation process and may in fact culminate in a reversal in policy. An example is the bill attempting to outlaw support for terrorist organisations, which was raised for debate in June 2001 on the basis of the continuing Palestinian uprising in Judea, Samaria and Gaza. A bill designed to restrict the freedom of expression of Arab Members of Parliament who condone guerilla and terror forces operating in southern Lebanon and in the areas of the Palestinian Authority similarly embodies a genuine potential for restricting the freedom of expression of extremist Jews who support movements defined as terror organisations, such as *Kach* or *Kahane Hai*. Despite governmental reservations regarding this bill, if it nevertheless does pass into law, it could push back freedom of expression for many years.⁴

The bill was hastily pushed before the Knesset in direct response to many of the Jewish public's gut reaction to Arab Members of Parliament who expressed their identification with the Palestinians' struggle. It gives an indication of the main hindrance impeding the movement of the Israeli 'defending democracy' in a more immunised direction, a weakness that has received attention throughout this book. This weakness is located the political-cultural infrastructure in Israel, which is still very far from the liberal democratic vision. A central assumption outlined in the Introduction was that for the 'defending democracy' to make the transition from the 'militant' to the 'immunised' route, it would take more than just a reduction in the intensity of the State's response to extremism. In order to arrive at the goal of 'immunisation', the scope of the response must also be extended and the principal expression of this must be the strengthening and fortifying of the democratic infrastructure of Israeli society. Until liberal democratic ideas are internalised by the majority of the different walks of life in Israeli society, the State will be goaded by its citizens and their representatives to strike as forcefully as possible at those perceived to be its 'enemies', whatever might be the price in terms of democracy.

However, this is neither the only nor the outstanding problem stemming from the non-liberal socio-cultural infrastructure. This type of infrastructure provides fertile ground for the germination and flourishing of extremist phenomena and their consolidation into political alternatives liable to constitute a

threat to the State. As noted above, when the State is subject to repeated threats by society, it is more liable to toughen its response policy and to reintroduce measures whose admissibility in democratically governed countries is in doubt. Only recently, we were witness to evidence of this phenomenon with the adoption of severe and undemocratic counteractive measures against representatives from the right-wing camp in the months following the assassination of Prime Minister Yitzhak Rabin.

The conclusion drawn from the analysis in chapters 3 and 4 submits that policy-makers in Israel, in the context of the struggle against extremism, seek to constrain the activities of state institutions and keep them within democratic boundaries which are as distinct as possible. They then attempt to refrain from using severe measures capable of undermining the polity's ethical foundations, but have not been successful so far in offering a preventative and 'immunised' treatment in terms of the social underpinnings of the phenomenon of extremism. In consequence, a situation fraught with paradox has evolved. In the past, the scope of the response was fairly circumspect, as state authorities concentrated their efforts on dealing only with the *symptoms* of the phenomenon while disregarding their perpetrators. More recently, there has indeed been significant moderation in the intensity of the response toward the symptoms, thus making it easier for the State to maintain its democratic character. However, at the same time, the State has not invested in the empowerment of the democratic foundations of its citizenry, so that there has not been an equally significant reduction in the intensity of the challenges faced by the State.

Research results displayed in previous chapters indicate that the adult Jewish population is far from presenting a sound democratic worldview. Still, the findings of the survey conducted among adolescent students from Israeli high schools show that among pupils who participated in civics lessons in their new format there are signs of a tendency towards democratic values, compared to their counterparts who did not take the course. This outcome implies that even the limited efforts invested by the State in the inculcation of democracy have yielded their first fruits. It can therefore be inferred that if the Kremnizer Report's recommendations are fully implemented, thus leading to the substantial reinforcement of democracy in the State of Israel, there will be an improvement in the prospects that the democratic foundations of the Israeli public will be significantly strengthened.

The fly in the ointment, however, concerns the non-liberal constraints on Israeli democracy involved in the processes of policy-making, which prevent movement in the 'immunised' direction. Evidence of this was apparent in early 2001 when Limor Livnat, a seasoned conservative politician, was appointed minister of education. One of Livnat's first formal statements on taking up her appointment was to the effect that she would permit independent religious

education systems to retain their pedagogical autonomy, that is, continue to teach religious subject matter rooted in a nationalist orientation in the absence of democratic checks and balances. In addition, she intended to adopt the Shinhar Report and launch a revolution of values in the state-run schools with the purpose of bolstering Jewish national identity among pupils. And, indeed, in May 2001, a broad reform of high school study curricula was initiated. In the context of this reform, the nationwide study programme was supplemented with a new field called 'The Heritage of Israel' which included, *inter alia*, the teaching of texts from the *Talmud* and the *Torah* and the introduction of pupils to significant personages in the history of Zionism. *Prima facie*, there is nothing wrong with this: democratic polities all over the world strive to inculcate their national traditions among their pupils. Still and all, according to Minister Livnat, the main goal of reform was 'to build a common basis for all pupils of Israel which will be grounded in Jewish, Zionist and nationalist values'.⁵ But what about the other aspect of the Israeli union of Judaism and democracy, that is, the delivery of instruction in democratic values? The minister's decision on this issue was unequivocal. Livnat declared that the recommendations of the Kremnizer Report were not to be implemented at that stage other than in a trial format and then only at a number of designated schools.⁶ In this fashion, the Ministry of Education ended up with neither one thing nor the other. First, it rejected the implementation of the Kremnizer Report and frustrated the reformation of citizenship education. Second, the Shinhar Report, which was intended to build up the inculcation of Israeli heritage in schools yet proposed to do this in the context of a humanistic and pluralistic approach, was interpreted by the Ministry's directors in such a way as to stress its ethno-nationalist particularistic aspects.⁷

The odds that this education policy – which once again weakens the prospects of instilling democratic values in Israeli society – will be significantly contested by organisations of the 'pro-democratic civil society' are not promising, despite the accelerated growth of these institutions in recent decades and the considerable efforts of their members to advance their goals. A number of obstacles remain in place, making it difficult to pursue these aims: the number of organisations nationwide engaged in the provision of instruction in democratic values is still limited, the resources at their disposal are in short supply and their access to the education system is restricted. Therefore, it seems that, at least for the near future, Israeli pupils and students are destined to undergo an exhaustive and persistent socialisation in ethno-nationalistic values and at the same time will receive only a partial and diluted socialisation in democratic and humanistic principles.

From the above, it may be deduced that the State of Israel today is at a crossroads. While its policy of response to symptoms of political extremism and violence has renounced the 'militant' pole of the continuum and instead is making

its way towards the 'immunised' pole, as regards the social underpinnings of extremism the movement along the continuum is much slower, and at times may even seem to be in the opposite direction. This predicament has raised doubts over the continuation of the State's restrained response to the agents of extremism and, consequently, also over the system's stability and the extent to which it can nevertheless continue to exist as a democratic polity.

In this case, we find the Israeli 'defending democracy' faced with two principal options. The first will be to return to 'militant' types of response. This path will perhaps make it feasible for government elites to preserve governmental stability in a state of increasing social pressure, but it will also place the status of Israel as a democracy in serious doubt. The second option is to move in the direction of the 'immunised' route. However, that alternative will be able to hold its own only if the State and the 'pro-democratic civil society' are successful in establishing a democratic political culture and are able to reduce the extremist threats facing the State, thus minimising the incentives for exercising harsh measures against expressions of extremism and violence.

I have to confess that any attempt, no matter how cautious, to forecast the future of the 'defending democracy' in Israel leaves me in two minds. While my heart is with the second alternative, that is, the 'immunisation' of the Israeli democracy, a glance at social and political reality in the country reveals the not unlikely prospect of movement in the direction of the 'militant' pole.

This evaluation is based first and foremost on ill winds which have been blowing for many years now among different sectors of Israeli society. Some of its main manifestations are hostility towards various groups, disdain for liberal values and the rule of law, and a tendency to regard democracy as secondary to nationalist and occasionally religious convictions. Over the course of time, and in the absence of a proper substructure of checks and balances taught by the education system, there has been a diffusion of these attitudes and they have become a central aspect of Israeli political culture.

Assuming that things will not unexpectedly change, and taking account of the fact that the paradoxes inherent to the Jewish democratic State do not seem to be near solution, it is not easy to envisage the Israeli governmental system and its various affiliates reaching an all-embracing decision to upset the status quo and inculcate democratic values in the education system while paying tribute to liberal ideas. Support for this prognosis comes from the fact that, in spite of Israel's encounter with Rabbi Kahane and his ideology, and notwithstanding the assassination of Prime Minister Yitzhak Rabin, the Ministry of Education has still not undertaken any revolutionary policy changes towards the assimilation of democratic values.

A feasible, albeit partial, resolution of the tension between the State's aspiration to preserve its Jewish national foundations and the need to empower its democratic character is embedded in the ability of the State's leadership to shrug

off, once and for all, the perception of these two elements as a zero-sum game. In other words, Jewish national and democratic values should not be viewed as clashing and competing principles inevitably leading to the complete subordination of the democratic quality to the Jewish element. The other side of the coin is that these principles may be treated as complementary and in fact presented side by side. Of course, this is not a flawless solution, for there are undoubtedly several substantial points of conflict in the juxtaposition of Jewish principles in their prevailing orthodox interpretation in Israel with the conventional tenets of democracy. Yet, instead of the ostrich-like policy adopted by the leaders of the education system over the years, which supports the view that pupils should not be presented with issues that are controversial or a threat to the national consensus, the future citizens of this country should in fact become acquainted with the entire complex of circumstances pertaining to the existence of the State of Israel as a Jewish and democratic state, including both complementary and conflicting topics in respect of the dissent among religious beliefs, ethno-nationalist ideas and the principles of democratic thought. The advantage of this proposed solution over the current state of affairs is that it opens up the possibility of Israeli pupils grasping the complicated reality in which they live and in fact of developing the discriminating tools needed to deal with this situation.

However, a change in the nature of the Israeli pupil's familiarity with political and social reality in the country is not the only aspect which may help steer the 'defending democracy' in the direction of the 'immunised' route. As noted in chapter 4, the 'pro-democratic civil society' is a non-state-affiliated actor with significant potential for strengthening the 'defending democracy': yet, in order to capitalise on this latent potential, the 'pro-democratic civil society' in Israel must be autonomous and free to act. At this point, we once again encounter the non-liberal character of the Israeli democracy; however, this time, the obstacles facing the centralist custodian State, which elsewhere was colourfully described as embracing society in a 'bear hug', are not so formidable. As demonstrated in many other spheres, and in particular the economic sphere, the State of Israel has gradually eased its iron grip on many economic sectors and allowed other forces to take its place. Therefore, with regard to the 'civil society', it seems that the State should continue the process of its liberation from the 'statehood' mentality and expand even further the range of social organisation activities. Although, at first, the chances are that a number of organisations closely affiliated to the State will undergo difficulties, especially of a financial kind, as the survey reported here shows, those not dependent on state economic support would be able to find other sources of finance. At the same time, the autonomy they enjoy enables them to fill an important role as a critic of the State, and that may be of some benefit in moving the 'defending democracy' in the direction of 'immunisation'.

While such solutions are not perfect, it is my view that if and when the State elects to adopt them, its prospects of moving slowly but surely toward the goal of 'immunisation' will, in due course, improve instead of possibly drifting back to the 'militant' pole of the spectrum.

The 'defending democracy' in comparative perspective

One of the major difficulties facing the social scientist in his/her attempt to confirm an analytic model by means of a case study resides in the model's singularity and the complications which may ensue when trying to draw conclusions regarding the validity of certain assumptions without putting them to the test of additional cases. Therefore, in the following paragraphs, the same model of analysis of the 'defending democracy' will be used to compare the Israeli case to other democracies subject to internal threats, specifically, the American and German democracies. Of course, we are speaking of a very condensed attempt to conduct a comparison employing this analytic framework; however, the product of this effort may afford insight as to the model's inherent potential.

The choice of the United States and Germany democracies with which to compare the Israeli case study is not random. Although these are countries with profound historical, cultural and political distinctiveness, a comparison among them will serve the purpose because these countries have all experienced the varied phenomena of extremism and political violence in past decades and all were compelled to contend with the 'paradox of the defending democracy'. Nevertheless, it is important to be aware of an important structural difference whose impact is central in regard to the methods of operation utilised by 'defending democracies'. Unlike the United States and Germany, Israel has never adopted a constitution. The absence of constitutional specifications, as elaborated in chapters 1 and 2, has had a decisive impact as reflected in the many changes and improvisations in the Israeli policy of response toward both political parties and extra-parliamentary extremist organisations.

There are essential differences between the American and German conceptions of the polity's protection. While the American constitution puts forward the freedoms of the individual, the German constitution, while recognising the importance of such liberties, emphasises the importance of a stable democratic system of governance and thus provides authorities with more 'space' in their attempts to defend the state. In effect, German concern that history might repeat itself is so great that, according to clause 79 (3) of the constitution (the 'perpetuity clause'), clauses 1 (civil rights) and 20 (the democratic nature of the country) may not be amended under any circumstances.⁸ Furthermore, the German constitution refers to domestic emergency situations and grants authorities permission to deal with them in a more decisive manner than other constitutions allow.⁹

In order to make the most of the comparison between the three cases, I will examine them from the perspective of the same two levels of analysis on which this book is based. The first level is *institutional*, implying the respective countries' institutional responses to political parties, extremist organisations and incidents of violence and terror. The second level concerns the *social sphere* or, more explicitly, the State's attempt to establish democratic foundations in society and the status of the 'pro-democratic civil society'.

Political parties

From the institutional level of analysis, I look first at the paths chosen by the different states in response to extremist parties. However, before discussing the administrative and legal barriers imposed by democracies on extremist parties, another latent structural barrier, i.e. the electoral system – discussed in chapter 1 – should be clarified. The electoral system was not intended to block extremist parties from gaining representation. However, different electoral systems or the levels of their threshold of representation may become crucial variables in explaining the success or failure of these parties.¹⁰ Therefore, when considering electoral and party system variables, it should be noted that the United States, with its strong two-party system, and Germany, with its 5 per cent representation threshold, enjoy considerable structural protection from extremist elements in their parliaments. Israel, as mentioned earlier, with its low representation threshold (1.5 per cent), enjoys no such protection.

Despite the almost insuperable barriers facing small parties in the United States, a National Socialist Party (NSPA) was established and succeeded in reaching the forefront of public debate in April 1977 while attempting to stage a march in Skokie, Illinois. The Skokie affair has major importance in this discussion since it signified the United States' judiciary's attitude as to the type of restriction that should be imposed on extremist parties. Following extended judicial discussion, in January 1978 the Illinois Supreme Court, in a – decision, ruled in favour of the Nazi march:

The main argument was the content neutrality rule, according to which, political speech shall not be abridged because of its content, even if that content is verbally abusive. Speech can be restricted only when it interferes in a physical way with other legitimate activities; when it is thrust upon a captive audience, or when it directly incites to immediate harmful conduct. Otherwise, no matter what the content of the speech, the intention of the speaker, and the impact of the speech on non-captive listeners, the speech is protected under the First Amendment to the United States Constitution.¹¹

With this ruling, the Court reinforced the United States' constitutional commitment to a most extended liberal approach. This ruling was extremely important

in the light of the far less liberal approach of American authorities in the 1940s and 1950s, especially towards the Communist Party.

The liberal United States' approach toward the NSPA might be explained by two variables. The first, socio-historical explanation is the American tradition of sanctifying the freedom of the individual. The other variable is more practical – the fact that, due to structural barriers, the NSPA stood no real chance of becoming an influential political actor. Yet other far-right organisations did in fact make their way into the legislature and gained access to policy-making procedures, mainly through the Republican Party.¹² Despite the limited success of David Duke and other extremist leaders of the right, American authorities have never had to confront the dramatic emergence of such forces and hence has not adopted any special measures to deal with the phenomenon.

Though structural and social conditions in Israel and Germany themselves are hardly similar, the two countries differ dramatically from the United States in two major senses. First, both countries have variants of the multi-party system, and, second, both have adopted legislation aimed at preventing the representation of extreme parties in their parliaments.

As noted in Chapter 1, clause 21 of the German Basic Law, from 8 May 1949, sets very strict standards as to the kinds of political parties that are entitled to take part in elections to the legislature. For example, the law demands that the internal organisation of parties conforms to democratic principles. Moreover, political parties which, by reason of their aims or the behaviour of their adherents, seek to malign or abolish free democratic basic order or endanger the existence of the Federal Republic of Germany, shall be declared unconstitutional by the Federal Constitutional Court.¹³ Israel's section 7A of Basic Law: The Knesset (1958), discussed elsewhere in length, sets similar barriers for extremist parties.¹⁴

The test of reality reveals that although German and, especially, Israeli law invests the State with the authority to disqualify parties, in recent decades they have nevertheless both chosen to do so on rare occasions. In post-war Germany, only two parties have been banned according to clause 21: the Communist Party (KDP) and the Nazi Party's successor, the Socialist Reich Party (SRP) (both were disqualified in the 1950s). According to the Constitutional Court's ruling, the SRP was considered an unconstitutional party. It did not exhibit a commitment to civil rights, the rule of law, pluralism, and equality of opportunity for all political actors. Consequently, the court ruled that such a party had no place in the political arena and ordered it to be dismantled and stripped of all of its assets.¹⁵

In Israel, similarly, only two extreme right-wing parties have been disqualified, Kahane's *Kach* Party and its splinter party, Kahane Hai. Both were banned on grounds of being anti-democratic and racist.

Despite these exceptional disqualification procedures carried out by

Germany and Israel, the two countries have demonstrated a rather high commitment to liberal values. In the years following these disqualifications, extreme right-wing parties surfaced in both countries. In Germany there was the NPD (*Nationaldemokratisch Partei Deutschland*), established in 1964, the DVU (*Deutsche Volksunion*), established in 1971, and the REP (*Die Republikaner*), incepted in 1983. The authorities, on the one hand, and the political parties, on the other, committed themselves to several ground rules. While the State was not so quick in implementing disqualification, the parties were very careful with their language concerning issues such as liberal democracy and foreigners.¹⁶ It was only in the summer of 2000 that Germany finally decided to initiate a process of disqualification against the NPD in consequence to its plan to instigate a racist revolution. In contrast to Israel, the disqualification process for a political party in Germany takes a considerable time and involves executive, parliamentary and judicial authorities. This protracted process is more likely to guarantee that the constitutional rights of the party in question will not be undermined.¹⁷ However, although the formal procedure of disqualification in Israel takes less time, the Israeli Supreme Court, as mentioned earlier, has set highly detailed guidelines for the disqualification process, thus constituting a safeguard which helps ensure structural commitment to liberal values.

An interesting fact, one that puts the Israeli attitude towards extremist parties in a light perhaps even more liberal than that of Germany, involves the decision of the State of Israel to refrain from monitoring parties represented in the Knesset. In Germany, on the other hand, extremist parties, especially those of a far-right nature, although not disqualified, are not allowed to act freely. The *Republikaner*, for example, was defined by the BfVS (Federal Bureau for the Protection of the Constitution) as a radical party hostile to the constitution. In consequence, authorities limited the freedoms of the party and its members, although they were not *de facto* proscribed parties.¹⁸ The same thing happened in the case of the NPD, even prior to the initiation of the disqualification process. Announcement published on the NPD's website, the following complaint was issued:

Like his predecessor as NPD chairman, Gunter Deckert Voight is being hounded by the German government because of his political views. He is currently the subject of police investigation for alleged 'defamation of the state and its symbols', which is a criminal offence under the current German regime. Voight made a statement at the NPD party congress on May 1, 1996, where he compared German democracy with the Communist system in the former German Democratic Republic in its suppression of nationalist political activity across Germany: 'We live once again in a police state in which we have no right of freedom of speech . . . Those who criminalise people for voicing their opinions are themselves criminals'.¹⁹

As mentioned earlier, Israel's policy is to concede the liberties of questionable parties as long as they are not disqualified from participating in elections or

declared entirely illegal. However, once a party is banned or, as in the case of *Kach* and *Kahane Hai*, even declared a terrorist organisation, liberal considerations become almost irrelevant.

It may be concluded that United States' policy towards extremist parties also is almost irrelevant due to the structural barriers imposed upon small parties. Yet, even in cases where such parties were active, the authorities' attitude towards them tended to be very liberal and thus conformed to the 'immunised route'. In Germany and Israel, the need to defend the polity from subversive elements was considered urgent enough that in both countries extremist parties have been disqualified in accordance with constitutional and legal arrangements.²⁰ Over the years, the disqualification measure has been employed only rarely. Therefore, Israeli as well as German policies on extremist parties may be characterised as approaching the 'immunised' route.

Subversive organisations and violent movements

As in Israel, in comparison to their efforts to deal with political parties, the United States and Germany found it more difficult to keep their struggle against *extra*-parliamentary movements – including violent ones – within democratic boundaries. This is due to the simple fact that not all social movements aspire to parliamentary representation and are therefore not bound by the rules of the electoral game. Moreover, social movements which enjoy a lax organisational structure do not have to be officially registered; at the same time they are free to act within the social sphere and may also have the capacity to impress themselves upon the political arena.

The activity of such movements is a pivotal element of United States' political culture and is widely protected by the First Amendment to the Constitution. As mentioned in chapter 4, as early as the beginning of the nineteenth century, so prominent were these movements that Alexis de Tocqueville praised the high levels of decentralised communal organisation and freedom of association.²¹ From that time onwards, although such associations in their 'uncivil' form would present serious challenges to the authorities, their important role in American democracy made it almost impossible to restrict their actions.

These political and cultural contexts led American authorities to adhere to a narrow interpretation of 'the criminal justice model' in their response to violent political acts.²² Smith's description of the steps taken against several extremist movements in the 1980s confirms this view. These measures had proved effective in countering terrorism,²³ and at the same time did not cross liberal boundaries. Even the anti-terrorist legislation passed in the wake of the Oklahoma City bombing did not seem to exceed the limitations of the liberal version of the 'criminal justice model', especially following the appraisal of its

constitutionality by the Supreme Court.²⁴ The notion that United States' policy complies with the narrow 'criminal justice model' was reinforced, once again, by the words of the director of the FBI himself in the summary report for the years 1993–98: 'In the past five years, I have established core values for all FBI employees: Obedience to the constitution, respect for the dignity of all protected by the FBI, compassion, fairness, and total integrity.'²⁵ Even the reform adopted in late 1999, aimed at according the FBI wider authority in its response to terrorism, did not seem to effect a radical change in agency activities. According to Deputy Director Robert M. Bryant, the new policy will not change the FBI's long tradition of respect for civil rights.²⁶ The tragedy of the 11 September 2001 terrorist attacks on the World Trade Centre and the Pentagon may indeed lead to a change in United States' counter-terrorist policy. However, on the basis of President Bush's declaration as well as the reactions of the directors of the various security agencies, it seems that, despite their genuine intention to effectively eliminate terrorism, US policy-makers and security officials are generally reluctant to sacrifice basic democratic liberties in the course of this struggle, at least in the domestic arena.

Germany, like Israel, provides a very different example of counter-extremist policies. Since the late 1960s Germany, like Israel, has presented its own version of the 'extended criminal justice model'²⁷ and, inevitably, has attracted much criticism as a result. Although, according to Finn, this model of response has always been constrained by the constitution and thus has been committed to civil rights,²⁸ Loewenstein argues that this policy was 'probably among the most repressive anti-terrorist legislation in existence in a liberal democracy'.²⁹ Such criticism was generated as a result of the emergency regulations of 1968 which gave the Federal Government extended authority to fight terrorism within the states of the German Republic. These regulations also gave extra powers to the Federal Criminal Police Office as well as the BfVS. Left-wing terrorist attacks, which beleaguered Germany in the years 1974–78, led to the adoption of even more rigid legislation against subversive and terrorist acts. These new regulations included the Penal Code 88a, according to which a crime against the constitution may result in three years' imprisonment. This law was subject to severe criticism and was thus made void in 1981. Further expansion of the 'criminal justice model' may be found in amendments 129 and 129a to the Penal Code, the purpose of which was to impose stricter limitations on attempts to form terrorist organisations. Moreover, the German Government adopted the 'Radicals' Decree' policy, which sanctioned restrictions on radical political activists. This regulation excluded many Germans from employment in the public sector and many others had to face unpleasant interrogations.³⁰ These policies, although legally better defined than those in Israel, reflect a similar tendency of the German State to give priority to security issues even at the price of undermining civil rights.

Over time, the extended model of response in Germany has undergone several liberal reforms³¹ in a process similar to the Israeli attempts to effect a departure from its 'extended criminal justice model'. Events of the 1980s and 1990s demonstrated that although Germany still had at its disposal various means to cope with politically motivated violence, it tended to avoid extensive use of them. For example, during the 1990s, only fifteen radical organisations were declared illegal, while the actual number of far-right movements in 1999 stood at 134.³² In recent years, German policy on violent right-wing bodies has become more resolute, yet, according to police officials as well as the BfVS, it is strictly bound by legal as well as liberal boundaries.³³ Indeed, contrary to Israeli security forces and especially the *Shabak*, the *modus operandi* of the German BfVS as well as the special police forces is more in conformance with liberal values. These forces are subject to strict parliamentary, judicial and public review and therefore try to deal with the problems of extremism and violence by employing less severe tactics. For example, the BfVS, which is in charge of gathering intelligence on extremist movements, is prohibited from acting against these elements. For that reason, besides gathering information, the organisation issues reports on extreme right-wing activities. These reports are then distributed both to decision-makers and to the general public. The aim of publishing such intelligence information is to raise public awareness about the risks originating from the far right and the expansion of its movements. Furthermore, special police forces – established for the purpose of contending with the neo-Nazi scene – are trained to use non-violent measures with violent crowds. In fact, one of the most important tasks of these forces is to educate, i.e. to try, by means of persuasion, to prevent radical youths from committing violent crimes.

To conclude: in the past, both Germany and Israel tended to put security considerations at the forefront of their counter-violent activities, and as a result were subject to criticism for violations of liberal rights. While in recent years both countries have attempted to limit their response to extremism to more democratically acceptable policies, it seems that Germany is more in accord with the 'immunised route' than Israel. The United States, on the other hand, has for a long time been inclined towards the narrow interpretation of the 'criminal justice model' and thus complies much more closely with the liberal conception.

Civics education

As for the *social* level of analysis, the role of civics education in these three democracies is compared, and then an attempt is made to assess the role of the 'pro-democratic civil society' in helping defend those democracies.

Most democracies acknowledge the need for socialising their future citizens in conformity with the rules of the democratic game. However, for many years, civics education in the United States and Germany has remained fairly

comparable to the Israeli programme (i.e. an emphasis mainly on the structures and functions of governmental institutions). Yet, in the last few decades, the curricula of civics education in many liberal democracies, including the United States and Germany, have expanded the role of civic studies and shifted the emphasis from structures and procedures to democratic and liberal values.³⁴ Moreover, ministries of education in many German states and especially in the former states of East Germany (GDR) are opening the doors of the education system to 'civil society' organisations which work to promote tolerance and democracy.³⁵

One of the most active institutions of the civil society in providing education in tolerance, particularly in East Germany, is the RAA (regional centres for inter-cultural understanding, education and schools). This was established in 1992 primarily in the wake of an increase in xenophobic incidents and early indications of a wave of violence against foreigners in the ex-Communist parts of the country. Under the patronage of the Federal Government, the RAA opened ten offices in the state of Brandenburg and provided assistance for similar initiatives in other states formerly part of East Germany.³⁶ Its principal goal is to promote inter-cultural understanding and to prevent, or at least reduce, xenophobia and violence aimed at foreigners. The main part of its operations focuses on designing study programmes on the subjects of democracy and tolerance and administering them in kindergartens, schools and youth clubs. Organisation members are also engaged in adult education and in fact have expanded their range of activities to providing assistance to refugees and immigrants. According to RAA representatives, the majority of schools in Brandenburg receive with open arms organisations of the 'pro-democratic civil society' and governmental involvement on this issue, while the demand for extra-curricular programmes in this vein are on the increase.³⁷

The rapid development of the field of civics education in the former East Germany corresponds with Frazer's assertion that in order to complete the democratisation of countries from the former Eastern *Bloc*, the new governments of these states have adopted study programmes designed to help young and senior citizens alike deal with a political system based on values previously unknown to them.

Yet, in order to better understand the growing emphasis on 'civics education' in established liberal democracies, it should be stressed that political apathy, low electoral turnouts and declining levels of social and political participation in recent decades and, at the same time, an increase in manifestations of racist, sectarian, authoritarian and anti-humanitarian values, have alarmed many countries in Western Europe and North America, thus sparking a renewed interest in civics education.³⁸

In the former East Germany, the liberal variant of civics education has become a central factor in processes of democratisation. The United States and

Germany also have instituted comprehensive civics education programmes with an emphasis on liberal and humanistic values aimed at encouraging the public to be a part of the political procedure. However, in the attempt to contend with phenomena stemming from political extremism and xenophobia, Israel has yet to devise a clear-cut policy on this matter.

As explained in chapter 3, the reason why civics education policy in Israel remains ambiguous is not so much that its social structure is sufficiently 'immunised' as to render education of this genre unnecessary as that the State's political and ideological structures make it difficult for leaders to choose a specific policy and then to pursue it.

Civil society

Regarding the 'pro-democratic civil society's' role in assisting the State move towards the 'immunised' model, as already noted, many civil society organisations are engaged in promoting tolerance and consequently have assumed a role in the 'immunisation' process of the Israeli society. These activities make it far harder for extremist political leaders and activists to mobilise wide support from the population. Moreover, an active 'pro-democratic civil society' may also help limit the State's response to democratically acceptable boundaries. In both the German and the United States' experience, examples may be found of dynamic civil activity in reaction to challenges of an extremist nature. Following the success of the DVU in the Sachsen-Anhalt elections in April 1998, the German post office workers' union asked the Federal Government to find ways to prevent the delivery of racist mail by the German postal system. This step was taken prior to the national elections of September 1998 and reflected concern that the DVU would enter the national Parliament. Prior to the 1998 elections, many parliamentary members were approached by the organisation of Christian churches in Germany and were asked to refrain from using xenophobic rhetoric during their election campaigning. Moreover, both the employers' (DGB) and the employees' (UVB) unions in Berlin urged their members not to vote for extreme right-wing parties. They also asked them to act openly to stem the rising tide of violence against foreigners.³⁹

Similarly, the American tradition of a strong civil society finds its expression in the struggle against racism and extremism. Such civil society activity comes in all shapes and sizes, beginning with grassroots activities in the local community and ending with the activities of established interest groups. For example, when in New Town, Pennsylvania, violent far-right activists broke a window only because a *Hanukkah Menorah* stood behind it, the local community stepped into action and a *Menorah* was placed in almost every house in the neighbourhood. A similar example may be found in the neo-Nazi graffiti attack in Washington, DC. When newspapers wrote that the city did not have enough

resources to deal with these defacements, local communities decided to take on the task and wiped clean all the wall writings themselves.⁴⁰ Similar events took place following the September 2001 terrorist attack. Due to the fear that American Muslims would be attacked by angry militants, local communities all over the country became engaged in projects aimed at promoting religious and ethnic tolerance.

Yet, in accordance with a longstanding tradition, the most active members in American civil society are the more institutionalised organisations, especially the interest groups. Among the most prominent groups acting against racism, xenophobia and hate crimes are the Anti-Defamation League, the American Jewish Committee, the Simon Wiesenthal Centre, and many others representing minorities. In such cases, the groups themselves attempt to strengthen the ties between society and the local state by initiating joint activities. In 1998, the ADL cooperated with the state of New Jersey in proposing prizes for those who exposed racist graffiti perpetrators. In 1999, the same organisation, this time in conjunction with the New York Police Department, published a handbook for designed to help members of the community respond to racist violence.⁴¹ These organisations do not restrict themselves to local activities, but also aim at the legislative level. The 'hate crimes' laws, adopted by many states in the US, are a direct consequence of the ADL's efforts to find a way to fight racist and xenophobic crimes within constitutional boundaries, followed by a concentrated effort of the organisation to establish lobbies to support such legislation.⁴²

As described at length in chapter 4, the 'pro-democratic civil society' in Israel is still in its developmental stage and its influence is significantly less pronounced as compared to organisations of the 'civil society' in the United States and Germany. Particularly in recent years, it seems that a political window of opportunity has gradually opened, enabling these associations to flourish and take their place as a significant factor in the protection of Israeli democracy. However, as noted before, the State must help create the conditions needed to facilitate their development; and, as Yishai states: 'Society itself needs to overcome its polarising trends as well as the tendencies of individuals to assemble together and work in small frameworks which serve individualistic interests instead of the interest of society as a whole.'⁴³

To conclude this comparative analysis: placing the three countries on the continuum leading from the 'militant' to the 'immunised route' will readily establish the United States as the country closest to the ideal type of the 'immunised defending democracy'. Although not a country entirely free of extremist phenomena and political violence, the political culture of the USA gives an impression of considerable commitment to liberal and democratic values. Furthermore, the 'pro-democratic civil society', which has proved to be a cornerstone of United States' political life, is largely successful in responding effectively to the challenges of extremism. A review of that country's response to

these challenges, whether in the form of political parties or other types of organisation, shows evidence of great restraint and commitment to the 'rule of the law' and liberal democratic values. Even after the events of September 2001, the odds are presumably low that American democracy will fall victim to the agents of political extremism or that its liberal democratic foundations will be undermined in the effort to defend itself in the face of those threats.

Germany also is positioned closer to the 'immunised' model than is Israel, although a distinction must be made between West Germany, where democracy has been able to take root in the decades following the Second World War, and its neighbouring countries, which were subject to Communist rule and are still engaged in the processes of democratisation. Quite unlike the American instance where democratic and liberal values have played a central part in the political culture, for many German citizens who had lived under Communist rule these are unfamiliar values. Therefore, both federal and local governments, together with the notable participation of 'civil society' organisations, are striving to fashion anew a democratic political culture by means of the processes of political socialisation. Furthermore, in the aftermath of the exceptional history of the German Republic, the Holocaust and related issues such as tolerance and pluralism have become central topics in its education system. From a young age, children in Germany learn the advantages of democracy, as well as the potentially disastrous consequences should the basis of democracy be challenged or ignored. In terms of Germany's institutional response to the challenges of extremism, there is now a marked inclination toward liberalisation in comparison to earlier decades. Despite the fact that today, especially in the eastern parts of the country, a significant threat consisting of right-wing extremism and skinhead street violence is making its presence felt, the security forces, which closely follow these events, still refrain, in most cases, from crossing conventional democratic boundaries in their response. In fact, the German constitution, which sanctifies the preservation of the polity's stability – even at the expense of the liberties of extremists – prevents the German State from a facile crossing of democratically accepted boundaries in its struggle against extremists. Proof of this is in the drawn out and obstacle-laden process through which state authorities have to go in order to disqualify a political party.

The Israeli case has already been discussed were in detail, and therefore only one conclusion, relevant to the present comparison with the other two cases, remains to be briefly outlined. In Israel, there is a disparity between its progress toward the 'immunised' pole in its response to extremist political parties (and also, to a certain degree, to violent movements), on the one hand, and the weakness of its democratic political culture, which includes the State's difficulty or perhaps reluctance to partake in the shaping of this political culture, on the other. In the first decades of its existence, Israel acted swiftly and decisively when faced with any factor perceived by its leadership as a threat to either the Jewish

or the democratic nature of the State. After undergoing processes of institutionalisation, and having become an established fact in the Middle East, the intensity of its response to the challenge of extremist Jewish elements has gradually decreased. The credit for this turn of policy goes to the increasing commitment to democratic values of ruling elites and their fear of forfeiting public legitimacy by responding with too heavy a hand to the representatives of one of the groups constituting the polarised Israeli society. However, this novel approach will founder unless there is significant change in the empowerment of the democratic underpinnings of Israeli society. The various chapters of this book present evidence of the significant incongruity that exists between the Israeli policy of response to extremist manifestations, such as political parties or violent movements, and its long-term policy of attempting to inculcate democratic values. This gap between the State's response to extremists and its teleological struggle with the phenomenon of extremism has been attributed, in the main, to the non-liberal character of Israeli democracy and, more specifically, to the tension between Jewish-nationalist and democratic features included in the formula of the Jewish and democratic State which find expression in the political system and in policy-making processes. Furthermore, the fact that Israel can still be called a centralist state in relation to other democracies prevents it from providing a wider range of action for those bodies in the social sphere whose goal is to strike at the sources of extremism. Therefore, in comparison to the United States – and to Germany – Israel is to be found more distanced from the 'immunised' point of the continuum, and perhaps it is possible to see the Israeli democracy as having the greatest potential to be affected by the phenomenon of political extremism or by its response to it.

Conclusions

What, therefore, are the theoretical conclusions to be drawn from this study? And which questions are still left unanswered?

At the beginning of the book, I discussed the terms, 'militant democracy' and 'defending democracy' as defined and used by both scholars and policy-makers. The upshot of this discussion was that these are terms of considerable ambiguity and ambivalence which ultimately rely on one basic assumption: to wit, a democracy has the right to defend itself from its adversaries. And, in the light of the events of the twentieth century, 'militant democracy' and 'defending democracy' are terms that apply, generally speaking in the context of anti-democratic political parties. Yet a closer look at the challenges facing democratic systems of governance at the beginning of the third millennium reveals a more intricate picture. This is primarily due to the fact that not only do certain political parties pose a danger to the stability of these systems but, today, radical or revolutionary extra-parliamentary movements and terrorist organisations con-

stitute a threat. Furthermore, the formal nature of the definitions of 'militant democracy' and 'defending democracy' principally stresses the judicial means at the disposal of state institutions in their struggle with anti-democratic challenges. This limits discourse to the paradoxes generated by the need of democratic polities to defend themselves and which, in their very efforts to do so, are liable to undermine the ethical foundations on which they are structured.

Accordingly, and in the attempt to address the complex of challenges facing the self-defending democratic polity, I proposed to expand the notion of the 'defending democracy' beyond the conventional definitions of the construct, mainly by supplementing the formal-institutional perspective with a social perspective. The rationale for this expansion was that simply investigating the measures employed by states in their efforts to deal with defiant elements seemed inadequate when those elements were already immanent. Alternatively, the 'defending democracy' should be perceived as a more comprehensive term which involves the complex of actions effected in the political and social spheres designed to reinforce the democratic bases of society and to reduce the mobilising potential of extremist parties and movements. Furthermore, including the social perspective in this analysis introduces the potential for a more penetrating scrutiny of the 'defending democracy paradox' and possible means for its resolution. For, as noted above, one of our fundamental assumptions is that as society enjoys a more stable democratic social sub-structure, the intensity of the extremist threat aimed at the state is reduced and, as a result, the inclination of state authorities to cross democratically acceptable boundaries in the context of their struggle against provocative elements is also weakened. In order to facilitate the use of the concept of the 'defending democracy' for analytical purposes, two ideal types were proposed – the 'militant' and the 'immunised' route. These concepts are structured on both institutional and social components and in effect form a continuum. Presenting these types imparts to the notion of the 'defending democracy' a dynamic aspect and enables the examination of the change in the nature of a certain country's confrontation with extremist phenomena over a period of time, and in fact provides the means for comparison among several countries.

In conclusion, the two principal goals achieved in this book are the expansion and elucidation of the characteristics of the 'defending democracy', and the devising of an analytic continuum which provides for the positioning of different countries' responses somewhere between the two ideal types. Yet, in order to pursue and develop the above model into a comprehensive theoretical framework, both research questions and fields of research should be developed further. In this fashion, for example, the study of the Israeli case has shown that the intensity of extremist threats is not the only determinant which shapes the nature of the state's response, but that other factors, including those related to its political culture, institutional structure, social issues and various political

considerations, have parts to play. A comprehensive comparative study can provide a more detailed answer and perhaps an interesting explanatory model for the various factors impacting on the features of the state's response and can additionally put to the test the assumption that the overriding factor in a state's counteractive policy is the extent and degree of the hostile threats it faces.

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