

# The Knesset Divided Against Itself

**I**n the wake of the Israeli elections this past May, there has been much talk to the effect that lists such as the Sephardi-religious Shas party and Avigdor Lieberman's Russian-oriented Yisra'el Beitenu ("Israel Is Our Home")—whose success was based on a radical critique of the country's courts and police force—constitute a grave threat to Israel's democratic fabric. The real problem, however, lies not in the success of the smaller parties, but in the failure of the larger ones; not in the fact that Shas captured 17 out of the Knesset's 120 seats, but that Prime Minister Ehud Barak's victorious One Israel list (heir to the Labor party) could muster no more than 26 seats. The demise of Labor, and the parallel collapse of the Likud party to just 19 seats, may augur the end of the two-party system in Israel.

Israel no longer has large political parties. It has three medium-sized parties, One Israel, Likud and Shas, each with 17 to 26 seats; seven smallish parties of 5 to 10 seats; and five minuscule parties of just 2 to 4 seats each. While Labor and Likud still act as though they are the only serious contenders for leading the country—talking of national leadership, hosting enormous party conventions, fielding prime ministerial candidates—their behavior no longer corresponds with the actual size of their respective Knesset factions, which only a decade ago boasted about 40 mandates each, and sooner or later they will have to come to terms with the new reality: That the Israeli parliament has become a place where success is based on representing sectoral interests—those of Sephardim, Haredim, Russians, Arabs, the religious, the secular—rather than national ones.

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I srael's method of electing its leaders is unique in the world, the product of the combined efforts of academics, activists and politicians. In 1992, lobby groups such as the Constitution for Israel movement and political figures such as Yitzhak Rabin and Benjamin Netanyahu teamed up to replace the old proportional-representation electoral system with a mixed regime that looks more like the product of caprice than of any cohesive theory of government, and from the outset was guaranteed to transform the Knesset into a splintered and ineffectual body.

Under the old system, Israeli voters cast their ballots for a political party; the size of parliamentary factions was proportionately determined according to the number of votes each party received; the largest faction was given the chance to form a ruling coalition. Given only one vote, most voters preferred to use it to express their preference as to who should lead the country—for the last three decades, either Labor or Likud—rather than to give voice to the parochial interests represented by most of the small parties. As a result, the Knesset was always dominated by the two parties claiming that they could lead the Jewish state, with each presenting a (supposedly) comprehensive set of proposals for how Israel—the whole country, not just part of it—should be governed.

Under the new system, voters cast two ballots on election day, one for a prime ministerial candidate who will have the chance to form a governing coalition, and the other for one Knesset list or another. As in the past, each party earns a number of seats in parliament proportional to the number of votes it receives—but the link between a party's success at the ballot box and its right to form a government has been severed. The result has been a dramatic decline in the electoral success of parties selling themselves as governing parties, for the simple reason that the Knesset ballot has almost no bearing on who actually gets to govern. Having already voiced their national concerns through the prime ministerial ballot, voters who previously supported Labor or Likud now feel free to choose a party in accordance with their particular interests, be they religious, ethnic or petty-ideological (a party demanding

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legalization of marijuana came close to passing the cutoff threshold and receiving two seats in the Knesset).

The results have been swift and calamitous. In 1992, the last election held under the old system, the largest party in the Knesset, Labor, won 44 seats, while the Likud earned 40. Two elections later, in 1999, One Israel won just 26 seats, while the Likud shrank to 19; the 45 seats earned by the two “large” parties *combined* is only one seat more than Labor alone won just seven years earlier. At the same time, a sectoral party such as Shas, which has never pretended to have a political program in areas such as defense, foreign policy or the economy, was able to muster only two mandates fewer than did the Likud.

The result has been no less than a disintegration of national Israeli politics as it was once represented in the Knesset. Now, the process of building a governing coalition has stopped bearing even the pretense of mutual compromise in the national interest, and has taken on the character of one man—the elected prime minister—wheeling and dealing with a multitude of enfeebled factions, coalescing with the lowest bidders.

Witness, for example, the much-heralded “broad government” which Ehud Barak assembled during June and July. Knowing that he was starting with only 26 seats out of the 60 he needed to form a government, he proposed policy guidelines so vague as to allow almost any party to join. To maximize his leverage, Barak conducted serious coalition talks with nine different parties, representing no fewer than 76 out of the 94 remaining seats, and pieced together a coalition containing such bizarre bedfellows as Shas (representing Haredi and Sephardi interests), Meretz (opposed to Haredi interests and West Bank settlements), Yisra’el Ba’aliya (representing the interests of Russian immigrants, who generally oppose Haredi empowerment, but many of whom live in West Bank settlements), and the National Religious Party (the political patron of the West Bank settlement movement). Each of these parties showed a remarkable willingness to sacrifice dearly held principles in order to join the coalition—mainly because they knew that Barak had any number of alternatives in forming his government.

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Nor does this new government face any serious parliamentary opposition: The remainder of the Knesset is hopelessly fragmented, with many of its parties still interested in joining the government under the right conditions. It turns out that in the best case, the new electoral system empties the Knesset of its ideological underpinnings, turning it into a haggler's market; in the worst case, it may strip the Knesset of its democratic authority, transforming it into little more than a rubber stamp.

**M**uch of the blame for the collapse of Knesset politics rests with the new electoral system—but not all of it. When an electorate makes a point of rewarding those politicians and parties which keep the national interest in mind, and punishing those who do not, even an electoral system as badly designed as Israel's can still allow the democratic process to function more or less properly. The old system of strict proportional representation was no great triumph of political engineering either, and yet for Israel's first forty-eight years, the Israeli political system functioned rather well—under extremely difficult conditions—largely because of the public's strong sense of national interests. This facilitated the debate of issues on their merits and prevented the sectoralization of politics. Almost every party, large or small, addressed its rhetoric to the collective and not just to a specific group within society. Radical-Left parties such as Mapam and Ahdut Ha'avoda advocated more socialism in Israeli governance; Mapai proposed a more centrist political approach to governing the country; and Gahal and its successor, the Likud, offered a liberal-hawkish alternative to Mapai rule. Even religious parties made extensive use of the rhetoric of public-spiritedness in making their demands. And parties which failed to do so—the Sephardi Tami party of the 1980s is an obvious example—never really had a chance.

This system functioned reasonably well until the mid-1980s, mainly because the voters, time after time, came out clearly in favor of one large party, which in turn formed a governing coalition. In 1984 and 1988, however, national unity governments were formed after the proportional method failed

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to deliver a clear-cut winner, and the voters seemed to have no problem with this, rewarding the large parties' infidelity to principle with their continued electoral loyalty. Thus the willingness of the large parties to share power with one another—not in response to a national crisis as was the case during the 1967 war, but as the electorate's preferred outcome—meant that neither was to be taken seriously in its claims to leadership, and therefore signified the first substantive deterioration of the country's political consciousness.

The fundamental error of those who worked so hard to bring about electoral reform was their belief that it was the old system of proportional representation that was responsible for the stalemate which characterized Israeli politics from 1984 until 1992. But this is giving far too much credit to "the system," and neglecting the crucial factor of Israel's political culture. In Britain, for example, the district system has fostered stability, largely because that country has a deep tradition of public-mindedness; yet in Canada, which has a similar system, the country is in constant danger of being dismantled by a political culture which tolerates never-ending secessionist murmurings on the part of the Québécois, as well as the continual attacks on central government from politicians representing the western provinces. Similarly, proportional representation performed rather well for many years in Israel and a largely proportional method has provided stability for more than fifty years in Germany—while France and Belgium were never able to make the system work.

In today's Israel, however, the bankruptcy of the national political consciousness and the parties that are supposed to represent it has left a void in the center of the political arena—a void that, far from being filled by a cogent "centrist" ideology such as that which was offered by the Labor party of David Ben-Gurion during the 1950s and 1960s, is being filled by those who offer a divisive, corrosive political culture in its place. On the one hand, parties such as Shas, the United Tora Judaism party (UTJ), the radical worker's party Am Ehad ("One People"), and Sharansky's Yisra'el Ba'aliya—together holding thirty Knesset seats—are explicitly sectoral in nature, placing the interests of one group at the forefront of their campaigns. On the other hand, Shinui and Yisra'el Beitenu parties won 10 more seats on election campaigns

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dedicated to attacking one group or another (the Haredim, and the “elites,” respectively). To these we may add 10 seats of the Arab parties which reject Israel’s identity as a Jewish state. All told, no fewer than 50 members of the new Knesset have formally excluded themselves from shaping Israel as a united, national entity. Compare this to the 45 seats won by the parties headed by Barak and Netanyahu together.

This, then, is the bleak picture of Israeli democracy at the dawn of the country’s second half-century: A fragmented political culture, expressing itself through the dissolution of its two-party system, and the dramatic success of sectoral parties; an eviscerated Knesset, rendered increasingly irrelevant in the face of an overempowered executive and a revolutionary Supreme Court; and an uninspired national leadership, whose ideas, such as they are, have failed in the most embarrassing way to capture the loyalty of the public.

To breathe new life into the Jewish state, a combined effort will be needed: An effort of the political mind, which alone can bring the restoration of national ideals to the center of political discourse; and an effort of the political body, meaning the abandonment of our present electoral system for one which restores both honor and authority to the seat of Israeli democracy, the Knesset.

Ofir Haivry, for the Editors

August 1, 1999

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## What Do You Mean, “He’s Innocent”?

Over the past few years, the pages of *AZURE* have given voice to a broad critique of Israel’s Supreme Court. Under the stewardship of President Aharon Barak, the court has strayed far beyond its proper bounds in a democracy, imposing its own worldview on the country’s laws in the name of “enlightenment,” and in so doing usurping the authority reserved for the elected representatives of the people.

But there is a world of difference between objecting to the court’s new career as the Jewish state’s ultimate authority in all matters that come before the Knesset and the government, and arguing that Israel’s courts are also in error when they serve as the country’s judiciary. After all, *someone* has to try criminals and, if necessary, put them behind bars. To challenge the authority of the courts to be the final arbiter in this area of government is to invite anarchy. Yet in recent months, this is precisely what some of the Supreme Court’s critics—virtually all of them identified with the Shas party—have done.

On March 16, 1999, Shas chairman Aryeh Der’i was convicted on five counts of bribetaking, fraud and breach of trust by a Jerusalem District Court. He was subsequently sentenced to four years in prison. Until the Der’i conviction, Shas had been at the forefront of criticism of the Supreme Court’s activist line, and while the statements of its leaders at times left the realm of the tasteful, the content of their protest remained well within the bounds of legitimate democratic argument. But something changed with Der’i’s conviction, and in the months that followed some of Shas’ leading figures for the first time embarked on a public campaign whose meaning—if

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we are to take it seriously—was nothing less than the rejection of the authority of Israel's courts to uphold the criminal legal code.

When Aryeh Der'i was convicted, Shas leaders gave voice to their faith that he had in fact committed no crimes, and that the court's conviction had been in error; similarly, they expressed the hope that his conviction would be overturned on appeal. So far, all of this is reasonable and in a certain sense even admirable, being above all an expression of loyalty to the man who had masterminded the most dramatic success of an ethnic party in Israeli history.

However, the party leadership did not remain satisfied with expressions of loyalty. It went on to deny that the Der'i verdict had any significance in terms of the role that Der'i, now a convicted felon, should play in Israeli public life. As far as Shas leaders were concerned, Der'i would continue to run the party, continue to chart the course of what would likely be a major player in the next Israeli government—even from a jail cell, if necessary. The court's ruling would simply not be recognized by Shas as being of any formal, much less moral, significance.

As the election campaign shifted into high gear towards the end of April, Shas went further, taking direct aim at the public's faith in the courts. The opening television advertisement of Shas' campaign was dedicated almost exclusively to defaming the court that had convicted Der'i. The following day, Shas activists began handing out a video tape—in hundreds of thousands of copies, paid for out of party funds—in which Der'i tried to convince viewers of his innocence.

It may be fairly said that this video was the centerpiece of Shas' election campaign, and it is worth dwelling upon. An impressive seventy-five minutes in length, it makes the case that (i) Aryeh Der'i is a great man, (ii) he was wrongfully convicted, (iii) the police and courts have willfully abandoned the cause of justice in order to make life miserable for Sephardi Jews, and therefore (iv) one should vote for Shas. The video offers staged reenactments of police investigations, staged rabbinical blessings, staged Der'i-is-innocent demonstrations, and even a staged scene of a little girl in a hospital bed



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thanking Der'i for his altruism through an oxygen mask (the voiceover reports that she died two weeks later). The only thing that seems authentic is a set of interviews with working-class Jews in the town of Or Yehuda, who repeatedly declare that the court was wrong, that Der'i did not get a fair trial, and that his conviction was meaningless—since, after all, “there are many innocent people who sit in jail for years.” Most of the video is taken up by arguments and appeals presented by Der'i himself, in which he asserts that the police and courts are, in the best case, incompetent, and, in the worst case, colluding in an effort to halt the rise of the Shas movement.

The purpose of the tape was, of course, to rally voters behind Shas and Der'i in time to rescue their electoral fortunes (it succeeded). But this purpose was advanced by the reckless strategy of delegitimizing the entire legal system in the eyes of the party's prospective voters. This the makers of the video achieved through two principal tactics, the first of which was to dismiss the verdict as part of a larger conspiracy to oppress Sephardi and religious Jews, a theme used throughout the campaign. The tape has one man-in-the-street declaring that “if they had wanted to give him a fair trial, they would have gotten three Sephardi judges . . . and not Ashkenazi elites.” (In fact, two of the three judges were Sephardi.) Der'i appears asserting that “there is a group in the State of Israel which feels that this country belongs to it. . . . [This group] decided to set up a secular state in which no one is allowed to mention Tora, Judaism or the Sabbath. They took our youth by the hundreds of thousands, cut them off from the rabbis and the family and took away their souls.” The point is driven home most forcefully by the tape's title: In big red letters, the words *Ani Ma'ashim* (“I Accuse”) appear across the tape box—the Hebrew title of “J'Accuse,” Emile Zola's famous essay on the Dreyfus trial. Alfred Dreyfus, it will be recalled, was a Jewish officer tried and unjustly convicted of treason by a French military court in 1894, as a result of an anti-Semitic conspiracy by the French army. Der'i, we are to believe, is another Dreyfus. And Israeli law, by implication, a sham.

Even more worrisome was the second tactic, the use of Jewish law as an alternative norm by which to judge Der'i. This was most evident in their

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choice of words on his behalf. Normally, when a public figure is convicted of a serious crime, his loyal supporters react with sorrow, faith and hope; they maintain their respect for the courts, and express their belief that the legal system will in the end prove his innocence. For Shas, however, Aryeh Der'i simply *was* innocent—literally. “He’s innocent,” went the song that was written by Shas’ loyal pop singer Benny Elbaz and performed by him repeatedly during the video and the campaign ads. “Innocent,” ruled the rabbis in successive public appearances. And all over Israel, posters appeared with a picture of Der'i and the one-word caption: “Innocent.”

How did they know he was not guilty? There was, after all, an investigation, a trial, a verdict. What gave Shas a clearer view of Der'i's probity than the court? Simple: In order to produce an alternative verdict, it produced an alternative court system. Rabbis associated with Shas, including R. Ovadia Yosef, did not assert a belief in his innocence. They *ruled* that he was innocent—relying, it turns out, on alternate juridical principles, rules of evidence and so forth—and this ruling was presented as effectively displacing the Jerusalem District Court's decision. In the “J'Accuse” video, an hour of quasi-legal argumentation reaches its climax with two declarations that sound an awful lot like they are meant to have the force of law: One is that of a prominent rabbinical figure associated with Shas, who proclaims that “The giants of Tora have ruled that he is innocent, therefore he is innocent!” The second is by R. Yitzhak Kaduri, the kabbalist who in recent years has become Shas’ patron alongside of R. Yosef, who declares that the government “brought false witnesses who were improperly examined, and they convicted Der'i. This touches the entire Sephardi community—you all have to vote Shas.”

**I**t is possible, of course, that the whole thing was a grotesque campaign stunt, unique to Der'i and the 1999 elections, the mistake of a young and inexperienced party afraid for its future. After all, Der'i is not the first Shas high-level figure to be convicted: MK Ya'ir Levi was sentenced to five years in

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Ma'asiahu Prison for embezzlement in 1993, and no rabbinic rulings were issued declaring that *he* was innocent. Moreover, Shas does not really look like it is about to set up an alternate court system which will be convened every time a prominent Sephardi Jew is convicted of a serious crime. Now that Der'i has been forced to step down as Shas leader—thanks to the firm stand taken by Prime Minister-elect Ehud Barak, who refused to include Shas in his coalition so long as Der'i was at its helm—it is tempting to move on and return to politics as usual.

Yet Shas' handling of the Der'i Affair can have consequences which go well beyond the elections. The voters to whom Shas sold the "He's Innocent" campaign have been exposed to the corrupting idea that Israel's courts lack legitimacy, and the fact that election day has passed will not undo that message. Even if Shas' leaders forswear the use of such rhetoric in the future (which they have not), their actions have created a momentum which they might not be able to control. When another opportunity arises to use an attack on the courts' legitimacy to secure political gains, it will be hard for Shas to resist, and its followers are liable to be swept into even greater contempt for the judiciary system that bears responsibility for upholding the rule of law in Israel.

In containing this danger, it is not the secularist Meretz and Shinui parties which bear primary responsibility, but those public figures who claim to be speaking in the name of Jewish tradition. It is the leaders of the United Tora Judaism party, the National Religious Party and Meimad—as well as rabbis affiliated with Shas—who should be taking seriously the implications of Shas' momentary flirtation with anarchy. As the saying of R. Hanina has it, a Jew must "Pray for the welfare of the government, for were it not for the fear of it, man would eat his brother alive." (Mishna Avot 3:2) The Talmud adds that both Jews and gentiles in all lands are morally obligated to establish an authoritative system of courts. (Sanhedrin 56b) And this principle was enshrined by Maimonides in his *Mishneh Tora* and by R. Joseph Karo in his *Shulhan Aruch*, who derive the authority of a state's laws from the citizens' recognition of the king as their governor—"for the citizens of that land have accepted him, and have seen him as their ruler." (*Mishneh Tora*, Laws of

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Theft and Loss 5:18; *Shulhan Aruch*, Hoshen Mishpat 269:2) R. Shlomo Luria, a renowned contemporary of Karo, similarly comments with regard to the law of the state, “Its law is binding, for if it were not so, the world could not stand, and would be destroyed.” (*Yam Shel Shlomo*, Bava Kama 6:14)

And this view has remained the normative Jewish opinion even in our own century. As R. Shlomo Zalman Auerbach, among the most authoritative rabbinic figures of the twentieth century, wrote:

Since it is obvious that every community seeks its own welfare when it chooses its leadership ... therefore it is also true that all the citizens of a state deeply want the kingdom and its laws to be revered, since this is for the good of the country ... for this reason, the law of the land is the law, even when the king is an idolator. (*Ma'adanei Eretz*, 20:13)

R. Moshe Feinstein, the leading American halachic authority of our century, similarly saw good citizenship as a fundamental duty incumbent upon every Jew. When asked whether Jewish law permitted students to cheat on their New York State Regents exams, or yeshivas to lie about the number of their students in order to bilk the public purse out of funding for Jewish education, his response was adamant:

We are certainly commanded by God in his holy Tora not to take more than the government has determined according to its rules—even if one can get more than has been allotted by currying the favor of bureaucrats. All the more so is it forbidden to lie about the number of students [in a yeshiva] and the like, which not only is theft, but also violates the far greater prohibitions of the telling of lies and falsehoods, and the misleading of others—as well as the desecration of the Name of God [*hilul hashem*] and the defamation of the Tora and its students, and there is no way on earth to permit this. (*Igrot Moshe*, Hoshen Mishpat vol. 2, p. 242)

Between Aryeh Der'i's conviction in March and the election two months later, Shas did everything in its power to cast doubt in voters' minds about the competence or even the right of the Israeli authorities to try and convict

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felons. At issue is not the Supreme Court's arrogation of the authority to overrule the Knesset and the executive branch whenever it considers these to violate its sense of "reasonableness" or "enlightenment." At issue is the prosecution of criminals, the most rudimentary function of government. It must be made clear to all that this is something which no individual or party may work to undermine. To do so is not merely a breach of democracy; it is a violation of the basic tenets of a Jewish politics.

David Hazony, for the Editors  
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