Part 1 Judocracy Talshir

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**Introduction: The Quest for Lasting Power**

The Knesset seeks to legislate us through, and the court deviates to roles beyond its duty: the conduct of some of our authorities threatens more and more our liberties and the governability of our elected ones. We have to return quickly the train of governability to their right track – as emanating from the definition of Israel as Jewish and Democratic (Ayelet Shaked, Minister of Justice, Oct. 2016).

Benjamin Netanyahu is the longest serving and surviving Prime Minister of Israel. Surviving in power is perhaps the feature most identified with Bibi. Nevertheless, both adherents of the Right and adversaries of the Left would be hard to put what does Netanyahu’s regime actually stand for. The myth – and power – of the Netanyahu Regime, dominating Israeli politics for the last two decades and transforming beyond recognition Israeli democracy, is yet to be unraveled. Brute force; opportunism; will to power; tyranny of the majority – these are the kind of explanations that are given by the media, rival politicians and scholars to the driving force of Netanyahu’s government. Even the president of Israel, Rivlin, in his speech at the Knesset’s autumn 2017 opening session, referred to the Netanyahu government as generating an ‘all is political’ revolution:

Majority rule – is the only ruler… a reality where ‘everything is political’ is developing. The Media – political, the democratic institutions – all of them – from the professional bureaucracy to the state comptroller, political, the supreme court – political, the security forces – political, is even the IDF, our defense force, political? All the country and its institutions – political. This revolution apparently attempts to tear, at last, the hypocrisy mask from the gatekeepers. In this revolution, the ruler is also the victim. ‘We shall show you what it is’ this is the voice of this revolution, there is no more statehood, after us comes the flood (Rivlin, 2017).

The sentiment identified by the president – once upon a time a flesh-and-blood of the rightwing camp – is the right sentiment. But every struggle for power is also a struggle about meanings, struggle about ideas, about worldviews. Underneath the will to power, the wish of pure, unrestrained rule, develops an ideology, a different vision of ruling in the Jewish state. This ideology, turned into legislation and policies, is not just playing differently by the rules of the game, it changes the rules of the game, and with it the game itself.

This book offers a first ideological exposition of the make-up of the Rightwing Governments in Israel – disclosing the profound transformation of the once-shared worldview about Israel as equally Jewish and Democratic. The Netanyahu regime took Israeli society from a representative democracy, an egalitarian state with universal welfare and public education based on a collective identity of Israelis, to a neoliberal Jewish state, perhaps a start-up nation but with the highest levels of child poverty and a fragmented, ethnically-divided society. It made the founding blocks of Israeli democracy – the judicial system, the civil service, the attorney general, the state comptroller, the workers’ organizations, the public Media and the universities – into the people’s enemies.

Two key concepts in understanding this transformation are *people* and *governability*. The ideal of an Israeli democracy transforms into the majoritarian notion of the Jewish people. The system of a democratic regime with checks and balances is replaced by government-centered notion of power and turned into preoccupation with governability and ‘obliterating the obstacles’ – meaning the judicial system, regulation, the public service, civil rights organizations, public communication and other critics of the regime. This government is at once lean on interference in the market – thus encouraging private market to take over state functions, and thick on Judaism as collective identity: the classic neoliberal/neoconservative contradictions of the new right (King, 1987). The main question put forward, is whether the Netanyahu regime merely offers an alternative, albeit legitimate, vision of Israeli democracy, or whether it undermines the very democraticness of the sole democracy in the Middle-East.

**The Structure of the Book**

The book is organized around three parts. The first part analyzes the constitutional changes which shifted dramatically Israeli democracy. The first chapter takes the case of the illegal immigrants to Israel – called by Netanyahu’s ministers ‘illegal infiltrators’ with double negation, as a case in point. Being the opening chapter, I demonstrate all three levels of analysis on this case – the concept of Netanyahu’s rule, encapsulated in the term governability; the emerging image of the people – the Jewish people who has to be protected from the infiltration of the non-Zionist, non-Jewish immigrants, the ultimate others and the vision of the people of which they are not a part; and the ideological tension between neoliberalism and neoconservatism – which is demonstrated in the policy battle within the PM’s office regarding the illegal immigrants between an economic approach and the neoconservative approach, which defines Netanyahu’s government – the Likud party and his ‘natural partners’ – the religious and ultrareligious parties - as a radical rightwing coalition. With the populist neoconservative approach of the government, a realignment of the party system is in place, as Shas, Yahadut HaTorah and Beit Yehudi, which before were thought of as pivot parties that can go with either left or right coalition and remain neutral – close ranks with the deep right which is the building block of Netanyahu’s success in remaining in power.

The second chapter centers on the new basic law, the law-of-all-laws as the shared committee which drafted the bill often referred to it. The basic law: ‘Israel as the Nation State of the Jewish People’ does much more than just stating a historic fact. It involved a vehement struggle over the definition of the state and its characteristics, embedded particularly in the battle, which the coalition won, to abstain from adding an equality clause to mark Israel as the nation state of the Jewish people and a democracy with equal rights to all its citizens. Likewise, a fierce debate took place in the committee over stating in the law, or at least in the introduction of the law, the fact that Israel is both Jewish and democratic – like is mentioned in the Human Dignity basic law of 1992. It transformed the constitutional design of the state in a way that actually threatens it democratiness: a state in which collective rights are equal – or superior – to individual rights, may not, on final account, count as a democracy. The third chapter exposes this constitutional revolution to be an anti-court revolt against the supreme court in Israel. The actors behind this revolution are seldom in the spotlight: the Think Tank of the settlers’ camp. The chapter follows the fundamental role of the Institute for Zionist Strategies and Forum Kohelet, in initiating leading and pushing through the national revolution. Crucially, far from being merely a legalistic revolution, we take the case of the transformation of civic education in Israel to demonstrate the pervasive power on the socialization of the future citizens of Israel, and the overtaking of power positions and a radical philosophy of Zionist nationalism.

The second part is taking the idea of the people a step further, to study the concept of governability and the transforming image of democracy, politics and the relations between the executive, legislative and judicial arena in Netanyahu’s regime. The fourth chapter analyzes the two faces of loyalty looking at citizenship laws and the cultural reconstruction of the Jewish narrative under Bibi’s most loyal minister – Miri Regev. It then extends the analysis of governability into what Levin and Shaked, the ideological spear in Netanyahu’s government, call ‘the councilors rule’: the attack on the old elites, the judicial system and the civil service. The attempt of the coalition to put in place the overcoming clause and to curtail the power of the courts to rule against unconstitutional laws made by the government and approved by the Knesset, is the prime example for that. The realignment of the party system around different ideas of Jewish and democracy is undertaken by analyzing the 2015 electoral scene as a case in point. The cementing of the neoconservative right, with its ideas of governability and the rule of the (Jewish) people, is thus comes into being.

The third part explores the internal tensions within the right between two sister-ideologies – neoliberalism and neoconservatism. One chapter analyzes the case of the Arabs – the incitement against the Arab Israelis as a way of delegitimizing the left in Israel, side by side with the enactment of the most radical economic program to the Arab society. The final chapter analyzes Netanyahu’s relation to the public Media. Taking the case of the Israeli Public Broadcast authority – and its abolition by the government – we trace the neoliberal wibe as well as the quest for power. The analysis shows the preoccupation of the PM with public Media, as reflected in the three charges on which he is finally brough to trial. The concluding discussion analyzes the structural changes and the ideological realignment as tools for assessing Netanyahu’s legacy and its influence on Israeli identity and democracy.

**PART I**

**Jewish and/or Democratic?**

**Changing the Constitutional Design**

**Chapter 1**

**Infiltra(i)tors: Enemies of the Jewish People**

“This is an important day today” announced PM Netanyahu in an unusual and urgent press release he has called for on Passover 2/4/2018 together with his minister of interior, the head of the national security committee, the head of the immigration and population department and the future authority of rehabilitating south Tel Aviv. He declared: “Only 8 years ago our border with Africa was completely breached. Within one decade we would have had 1.000.000 people. Against this grave danger I decided to build a fence”. He goes on to report this decision was his, against great objections, and that now, that the fence is erected, only 60.000 people compared with one million have come to Israel, 20.000 or so of whom were already deported so there are about 35.000 people left in Israel. His big breakthrough, the PM revealed, was to reach an agreement with a third country to deport them even without their consent out of Israel. When the third country – Ruanda, as it was later known – submitted to international pressure and declined from agreeing to take the Africans from Israel, the PM has ordered a swift negotiation with the UN authority of refugees, UNHCR, which he brings today to the table. Netanyahu concludes: “I understand the expectation was, as was also mine, that we could deport all of them to the third country. Once this is not possible, we do the best thing possible yet: an unprecedented agreement, also with a great budgetary and organizational effort, to get the people out, to scatter those who stay and to rehabilitate south Tel-Aviv”.[[1]](#footnote-1) In effect – 16.250 people would be taken out of the country by the UN to democratic countries in the West, and the same number would retain a status of temporary residency in Israel for 5 years.

However, within a few hours, this great achievement, the unprecedented agreement, which was proudly presented by Netanyahu as his own policy and heralded by all professional authorities dealing with the asylum seekers in Israel as a superb agreement, was overturned by the PM himself. Immediately after the press conference, furious reactions against the PM’s new policy were gathered from three main sources. Apparently, none of his ministers apart from the minister of the interior (who is not from his party) knew of the new policy, despite the fact this is a major policy issue of the Netanyahu government, concerning the defense, police, welfare, justice and other ministries. Regev, the Culture and Sports minister and Katz, the Transportation minister, both from his own party, the Likud, and Cachlon – the centrist curser of the Netanyahu’s government and the minister of economy, have openly criticized his policy.[[2]](#footnote-2) Vehement was the reaction of the PM’s electoral base – the reactions to Netanyahu’s Facebook post, about the new agreement, attacked it with fierce and unprecedented resentment even by his closest followers, writing that this was a disgrace to the PM and the Likud and that the ‘base’ would vote against Netanyahu for he abandoned the south Tel Aviv poor neighborhoods and submitted to the supreme court and international pressure.[[3]](#footnote-3) The self-appointed representatives of south Tel Aviv, those three neighborhoods in which most of the asylum seekers live and work, accused Netanyahu of betrayal – no less, as well as submission to international pressure and the courts. But fierce of all were two of his political rivals – Bennet, minister of education and the head of the Bayit Yehudi party, the closest party to the Likud, so its main rival on the national vote in elections, and Saar, former minister of interior and contender over the leadership of Netanyahu in his Likud party. Their basic argument was against the residence status that the PM agreed to give 16,250 Africans. They both argued that Netanyahu thus signaled to the 4-5 million of job seekers in Africa that penetrating Israel illegally is a win-win situation for them – either they would be granted a work permit in Israel or would be transferred to a Western country. Israel as a Jewish state, they argued, is doomed. Netanyahu has caved in: Bennet has demanded to abolish the plan. Netanyahu has suspended it 7 hours after he had announced the agreement and withdrew altogether the next morning. The national policy was cancelled despite the known fact there is no other solution – and not just the 16,250 people that the UN has agreed to resettle in other states would remain in Israel, but almost double the amount will have no other solution but to stay – without work permissions and without a third country to be deported to – in Israel.

“The greatest fiasco in the history of Netanyahu’s governments testifies that he is not qualified to be a PM” commentated a major journalist on the flipflop of Bibi.[[4]](#footnote-4) What were the deep roots of this fiasco? How did the PM explain his change of policy, or rather, an annihilation of the only plan or policy towards asylum seekers that 6 months later Israel is still without an immigration policy, and of course none of the asylum seekers – not 6000 as the UN plan hoped to deport in 18 months and not 60 – were taken off the streets of Tel Aviv, thus putting the burden on the neighborhoods people.” Israel has no policy – the only viable policy is the UN agreement which I hope will one day be implemented”, said Mor-Yosef, head of immigration department at the government.[[5]](#footnote-5) Why did the African asylum seekers – a marginal phenomenon concerning 35.000 people in an 8 million people state – became so crucial so the PM has withdrawn from his best policy achievement yet? As this chapter unfolds, five layers of interpretation, around which this book is structured, will be uncovered.

First, governability: what is the concept of governing that Netanyahu projected with the UN plan and what image of governing was he trying to portray while abolishing it? How does Netanyahu perceive – and projects – himself as a leader, and what is his policy-making concept? Second, creating a populous – notice that in the presentation of the UN plan, Bibi has refrained from naming those in question. He did not use ‘asylum seekers’, ‘refugees’, ‘foreign workers’ or ‘infiltrators’. Yet once his policy was cancelled, he has continuously referred to them as ‘illegal infiltrators’ – thus assigning a double-negation to them. What is the collective identity behind the scene: who are the ‘we’ and who are the ‘others’ in this case? Who are the groups which formulate Netanyahu’s self-identity as a collective, their identity so strong that it caused the PM to replace good policy with no policy? What is the idea of the (Jewish) people which emerges, given that the African illegal immigrants are the ultimate ‘others’ for a rightwing government? And who is in enemy from within – who is joining, in the PM’s analysis, the asylum seekers and hence form ‘the unloyal’ the anti-national and betrayal ‘others’? Third, what is the policy framework from which the immigrants are viewed? Is it the economic perspective, as seems to be the case from the first policy declaration, or is it the detention centers before deportation, emanating from the ethno-cultural idea of a neoconservative concern with the purity of the nation? How does the tension between neoliberalism and neoconservatism play out in the infiltrators’ case? Finally, why and how did the immigration policy become a game-changer in terms of the rules of the Israeli democratic game? And is this a structural change that challenges Israeli democracy as such?

1. **Governability**

“In a surprising way on all counts, Netanyahu acted yesterday afternoon at the press conference as a leader. He could have dropped the case on the supreme court already at the beginning, but he chose to say the truth to the public – even when it was unpleasant for his own electorate. There is no other option saved the agreement with the UN. In many respects, the leadership move that he made at 16:30 was much more surprising then the flipflop of 22:45”.[[6]](#footnote-6) What did this leadership move consist of, and what is the concept of governability it entails? How does it project on the idea of democracy from the PM’s perspective? And his idea of ruling the people? And what, in turn, is his idea of governability, rule of the people and democracy in cancelling the agreement and leaving Israel with no viable immigration policy and plan of dealing with the 35.000 Africans who are asylum seekers who got illegally into the state?

Consider the press conference. The setting is a clear indication of the perception which the PM wants to project: a leader with his chosen team: the minister of the interior who does not threaten Netanyahu’s base in the next elections, the head of the committee for national security – appointed and controlled directly by the PM and not answering to the ministries of defense or internal security and other officials who were hand-picked by Netanyahu to be his loyal executers. Closed, secret, strategic team that worked away from the Media, the government, and the other officials to produce a policy solution to the problem.

Next, Netanyahu’s speech. It is structured around the PM as a leader, most strongly vocalizing ‘I’ sentences to emphasize the key role – the determining role – of the PM. After explaining the attraction of Israel as a land bridge from Africa to the developed world and the threat of one million Africans flooding Israel (which is apparently a gross exaggeration as most estimations talk about around 100.000)[[7]](#footnote-7) he states: “Against this grave danger **I** have ordered to build a fence. **I** **myself** supervised its erection**. I** used to go down every 3-4 months to oversee its progress” and after describing the diverse objections to building the wall he announces: “**I** didn’t accept these explanations and the barricade was established”.[[8]](#footnote-8) It is he, single-handedly so to speak, that reduced the threat of one million infiltrators into 60.000 more than 20.000 of whom were already deported. His personal touch and involvement do not stop with building the wall. In regard to the poor neighborhoods that suffer mostly from the asylum seekers he says: “**I** went to the neighborhoods, **I** saw the suffering of the people, **I** spoke to the people and **I** came to visit at night”. So that his personal concern for the inhabitants of these areas – his classic electorate – would feel the personal contact with the PM. He then goes on to describe the idea of deportation to a third country as his own breakthrough. But the blame for its demise is on the third country itself – Ruanda – that succumbed, in Bibi’s description, to international pressure. “We didn’t give up again” says the PM and stresses that it was his command to the head of the national security commitment to get to an agreement with the UN refugees authority. Netanyahu is also proud of the ‘mutuality’ achievement – echoing his famous demand from the Palestinians – ‘will give, will get’, this time the principle is played against the UN – on every asylum seeker who is deported by the UN Israel will give a temporary residency permit for 5 years to one individual. Again, the PM’s personal fingerprints on each and every turn of the policy road. “We are doing the best thing we can… this is an important day, a day of good news” he concludes: the PM acts for the national interest, the common good. He is aware of the problems – therefore he promises to scatter the Africans away from Tel Aviv and to rehabilitate those areas – but the policy is directed to the greater good.

Taking the event of the agreement with the UNHCR as a case in point, the governability perception that emerges is one that centers around a leader of his people. The leader is the major policy-initiator, the rationale is protecting his people and putting the public interest first. The mode of action is establishing a discrete and highly loyal team of professionals which does a strategic work with international and national agencies, reports solely to the PM and produces an immigration policy within the map of opportunities and legal restrictions with an implementation plan. Notice that the institutional bodies that are mediating policy in a democracy – the ministers and their professional staff, the government itself – are kept completely at dark. So are the players on the ground: the police, the Tel Aviv mayor, the agencies that deal with the asylum seekers and the legal division at the justice department. Indeed, one of the major criticisms around the agreement was that there was no political work with the major forces that play in this arena – the representatives of the poor neighborhoods, the agencies on the ground, the local leaders – which, with the right preparation, could have brought a public consent to the agreement.

Yet this whole – surprising – episode, was the exception to the rule – the rule of politics which manifested itself shortly after the press conference and caused the PM first to suspend the plan – and in the next morning, even before his hastily summoned meeting with the local activists and party representatives – to completely overturn his policy. But what was his idea of governability – and democracy – as he reversed his plan, his own act of leadership, and why did the forces weigh against it so forcefully?

What has changed between Netanyahu’s press conference at 16.00, his suspension of the plan at 22.45 and his cancellation of the plan and policy altogether the next morning? Certainly, after the afternoon press conference he has received an unwavering support of the professional community, the civil service involved in the immigration policy, the international arena and a vast support of the liberal-democratic politicians and citizens – an endorsement of the center, center-left and center-right for the national-interest driven policy by the PM. However, he has also received furious reactions on his Facebook, particularly damaging – those of his admirers. One such response reads: “Bibi every day I have blessed you on Facebook with the Cohanim’s blessing. Your despised decision regarding the infiltrators is throwing mud at the faces of the residents of south Tel Aviv… As far as I am concerned you can go home today. You try to appease the Left and our crap media. It is time to go for election. The Likud will get it hard because of your despised decision today”.[[9]](#footnote-9) This and other – few dozens – angered reactions joined an all-out condemnation from pro-deportation south Tel Aviv organizations. Also, several politicians and ministers from the PM’s party – Regev, Katz and some others, reacted in dismay – maybe more to the fact they were left out and not part of the new decision. But most damaging from the PM’s perspective were two of his rivals: Bennet and Saar.

Bennet, the main contender to the national camp electorate from Netanyahu’s perspective, devised the situation as catch 22: he called from the first minute to a full abolition of the agreement with the UN. Should Netanyahu stick to the agreement – Bennet could argue he is submitting to the Left, the much-hated UN pressure and the courts; should Bibi cave in and cancel the agreement – it was Bennet who has forced him to do the right thing from a national perspective. Bennet twitted right after the press conference that the Israeli government had so far, a clear policy: approved refugees would be protected and remain in Israel (out of6500 applications that were processed out 15.000 that were submitted, only 11 individual applications were approved by the courts by the beginning of 2018).[[10]](#footnote-10) All other unapproved asylum seekers and foreign workers will be deported. Thus, Bennet twitted:” signing the agreement we send a clear message to the whole world: he who infiltrates illegally into Israel is winning a prize of residency either here or in a Western country. This is a call to millions of potential work immigrants to come to Israel.”[[11]](#footnote-11) He called for an immediate cancellation of the agreement, not less. Reinforcing this attitude was Gideon Saar, the former interior minister that was warming on the lines, awaiting Netanyahu’s defeat or cession as a leader of the Likud. Saar deported 10.000 asylum seekers from Israel in his two years as a minister. He was interviewed the same evening on channel 20 – the rightwing national channel that Netanyahu’s government has established and declared: “it is a long struggle over the character of the state. 4-5 million displaced people are in Africa. the only way to stop them is to go back to deportation to a third country, including Eritrea”.[[12]](#footnote-12) The struggle is over the character of Israel and Netanyahu, Bennet and Saar stated, is threatening the Jewishness of the state by signaling to millions of Africans they could work in Israel or be transferred into a western democracy from it. In an election year, with crucial investigations against the PM and a battle over every vote to the national camp is issuing, Netanyahu could not stick to his guns. The national-interest based policy had to give in to tribal politics.

The last straw in this political battle was the full endorsement of the new agreement by the professional community, the civil servants, the civil rights organizations and the Left parties, as well as the international community: all those political players which were part of a fierce incitement by key ministers in Netanyahu’s government and his advisers themselves. The leader has conceded. In a last gasp he suspended the agreement in the evening and put a post where he explains ‘the facts’ but in the morning, he called a meeting with the representatives of the south Tel Aviv neighborhoods, the Likud local activists and press in which he announced the full abolition of the UN plan.

What concept of governability emerges from the swift overturn of the PM’s position? Interestingly, the characteristic of the leadership genre is immanent in Bibi’s discourse on both sides of the flipflop. Thus, he says in his rare visit to South Tel Aviv that on 31.7.17: “We are dealing with illegal infiltrators. Not refugees. The right of the state of Israel is to protect its borders and to distance the illegal infiltrators. In order to do that **I** came to hear, **I** heard – **I** heard Sofia and **I** heard Ayala (naming 10 activists and tenants of the neighborhoods he met) and now what **I** hear is pain and horrible distress”.[[13]](#footnote-13) So it is all about the leader – coming down to the people – and hearing them out. Yet, of course, it is only ‘his’ people that he has heard: there were no asylum seekers, other south Tel Aviv tenants who have other opinions, Tel Aviv municipalities or other activists – only the PM’s close followers, activists of the pro-deportation organizations and party functionaries were allowed to the otherwise sterilized ground around the PM.[[14]](#footnote-14) Governability is about the leader at the center. But Netanyahu’s emphasis is on himself as attentive to the people. There is a clear change of object of the people – in the first instance it is the national interest of the people, the rational policy of the leader; in the second instance the people are merely his narrow electoral base: the local activists, the party functionaries, the self-perception of the national camp. But between the leader and the people, where are the mediating bodies? The formal institutions? The ministers? In his Tel Aviv visit on 31.9.2017 he mentions but three ministers – Erdan, Regev and Akunis with whom together Netanyahu proposes to deal with better law enforcement.[[15]](#footnote-15) While Erdan is minister of internal security, Regev is the minister of culture and Akunis – of science. How would Regev and Akunis help in enforcement? They obviously won’t. The governability principle remains: building on small teams of people who are personally loyal to Netanyahu. Those three are of his most loyal ministers, and have a stronghold with the base, and this is why they are mentioned. In this visit Netanyahu promises to establish a ministers’ committee named: “ministers committee to deal with the infiltrators”. He also promises the residents of south Tel Aviv – his local base – to be invited to this committee. While he envisions a committee that meets on a regular base every month, this committee sat once, on 7/9/2017, and the ministers of interior – Derei, justice – Shaked, Science – Akunis, economy – Cohen and deputy to minister of finance – Cohen were present, together with representatives of south Tel Aviv. In opening the meeting, the PM said: “we are here in order to ease the suffering of south Tel Aviv because of the illegal infiltrators. Our first purpose and central one is to get out of the state of Israel as many of them. They don’t have a right to be here they should not be here and with our joined effort they will not be here”.[[16]](#footnote-16) There are hundred thousand illegal immigrants in Israel, the majority of whom come from Eastern Europe. Why should the special committee invite only rightwing representatives of south Tel Aviv and be aiming at dealing only with the suffering of these three neighborhoods? And is its collaborative governance to be inviting local activists to partake in this meeting? Since the committee, that was designed by the PM to meeting every several weeks met in fact only once, these questions remain unanswered. It was, in short, a declarative committee rather than policy-oriented one. It was expressively designed to give an impression of political action while in fact the forum is inefficient to make decisions and supervise processes on the ground. It is identity politics rather than immigration policy committee. The work was done by the small team around the PM – and the supreme court that sent the policy makers back and forth to design policy within the boundaries of liberal democracy, as we shall analyze later. In terms of governability, we are left with a dominant leader but leader of the people who embody a tiny part of the population – local activists, Facebook followers and loyal politicians. Thus, once Netanyahu suspended his UN agreement, he got even harsher reactions. But when, the next morning, he complied and submitted, overturning his policy of the night before, he got the blessings of his ministers. Only they demanded a vote in the government (not in the Knesset): they did not get it. Till today there is no policy.

1. **We, and only we, the people**

Notice that at the UN agreement conference the PM has consistently avoided using any description of the Africans – as asylum seekers, work immigrants, infiltrators or other terms. This is in a stark contrast to his own repetitive characterization of these people as ‘illegal infiltrators’. This terminology is Netanyahu's standard usage especially when talking to his ‘base’ – Likud activists, neighborhood people, his government and his self-presentation in his Facebook. Where does the term ‘infiltrators’ come from and why does Netanyahu insist on double negation: infiltrators – those who entered the country without permission, and illegal – implicating them as potential criminals? Ans who, in contrast, are ‘the people’?

The law against infiltration was established in Israel in 1954, as the law of security and borders. Its aim was to secure Israeli borders against armed infiltrators who penetrate the country from enemy states in order to use violence, rob or break the peace.[[17]](#footnote-17) The law specifically denotes Egypt, Lebanon, Syria, Jordan, Iraq and Yemen as countries from where people who enter Israel are considered infiltrators – regardless of the reason for their entrance.[[18]](#footnote-18) In other words, fedayeen – terrorists – were infiltrating the state of Israel in attempt to harm innocent population. To adopt the same term – infiltrators – Mistanenim – 60 years later suggests passing on also the national memory, the anti-terrorist sentiment to the new ‘infiltrators’ and suggesting they are here to threaten the state, and harm the citizens. The double-negation – illegal infiltrators – used regularly by Netanyahu, exports their illegal entrance to the country to their criminal behavior while in it: suggestively associating them with breaking the law – through theft, robbery, rape and murder. The conceptual battle is of course at the center of defining two major issues: first, who is an Israeli citizen – and who is not; second, what is the reasoning – and hence the appropriate treatment – behind attempting to enter Israel illegally. The issue has become so divisive, that one can distinguish between the Left and the Right by the terms they use: while the latter would use, with the PM, the term ‘illegal infiltrators’ and demand deportation, the former would use ‘asylum seekers’ or ‘refugees’, and demand rights.[[19]](#footnote-19) Yet the conceptual battle, as well as the social reality, is more complicated. It is so essential because this is a struggle for ‘the character of this country’, as Saar defined it: the Africans, in many ways, are the ultimate ‘others’: they are non-Jewish, non-Zionists, non-Israelis, non-citizens, non-white, non-OECD, non-democratic and non-start-up-nation. By defining who is not a citizen, one defines who is; and how the state should treat its non-citizens.

Crucially, Israel was one of the initiators of the UN definition of refugees, whereby "Everyone has the right to seek and to enjoy in other countries asylum from persecution".[[20]](#footnote-20) Israel has signed the declaration back in 1954. Indeed, the Jewish people are the ultimate refugees’ nation as the Holocaust was the most extreme industrialized collective death of a people and the struggle for bringing the refugees into Palestine and establishing the sovereign Jewish State was fundamentally a battle over collective identity. While the civil rights’ organizations were counting on the history of the Jewish people to give rights to the refugees, the pro-deportation organizations titled them infiltrators, referring to another national memory of the young state of Israel.

Then again, social history is complicated. First of all, if the definition ‘infiltrators’ refers to those who have entered the state without permission, then the vast majority of the immigrants from Africa are indeed infiltrators. Second, they are not refugees up front. One may enter the country as asylum seeker, file for recognition and then be awarded a refugee status with all the attached rights, yet, asylum seekers are not refugees. There are two principle ways of getting refugee status – one by collective recognition in a group of asylum seekers who have immigrated directly from countries in which there is a threat to their life; another by individual recognition of one’s appeal to receive a refugee status by his or her own threat of persecution. Third, many of those fleeing east African countries are looking for a better life chances and better work opportunities. Many of them would actually hope to be foreign workers in OECD countries. Thus, these are three different questions: whether one has entered the country legally; whether one is a refugee; and whether one seeks to become part of the work force in the country. Crucially, these are not neither or concepts: it is likely that the majority of the Africans in Israel are all three: entered Israel illegally, seek asylum and hope to receive work permit and live their life in a developed country that can pay for their and their families’ living. The chosen definition – and the chosen narrative – are but manifestation of the compartmentalization of identity.

The government itself needs to formulate policy on all three questions, independently and in relation to one another. As we have already seen, from Bennet’s perspective there is a clear governmental line: infiltrators are to be immediately deported from the country; refugees (a handful of them) are given full rights; work immigrants are deported to a third country. Israel has so far recognized a collective right of the Darfur people as refugees, and approved 11 applications of other Africans out of 15.000 that were filed and 6.500 that were processed. In this reading, asylum seekers are not a status – you are either refugee (which 99% are not) or get to be deported. Those handful refugees are receiving rights because of the biblical connotation which ordered the people of Israel to behave with social compassion to immigrants who live among the Jews.

From Netanyahu’s perspective the first question was answered by building the fence and thus almost stopping the illegal immigration from African states. While he admits he aspires to ‘deporting all of them out of the country’[[21]](#footnote-21) he states that because of the legal restrictions the only viable solution was the deportation to a third state – which was stopped by the supreme court due to the issue of willingly living Israel to a third state. The next solution is the UN agreement that deports half of them and in effect gives residence and work permits to the other half. It is this more realistic, policy-oriented and economically-sensitive perception that the PM abandons in favor of the stronger narrative – that of deporting all illegal infiltrators – despite the fact it is clear that this way all 35.000 of them will remain in Israel: politics is more important than policy. Reality gives way to the best story. In the end of the day, Netanyahu’s government has made it choice: they are illegal infiltrators, and need to be deported, all of them save a handful approved refugees.

Yet not less interesting, is who is the people – the citizens of Israel. The next chapter would analyze this in depth but for now it is clear that all that those infiltrators are not – is what defines the Israeli citizens: Jewish, Zionists, Israelis. Notice that when Netanyahu talks at the press conference, he describes himself as acting in the name of national interest – devising the best possible policy on behalf of the people of Israel. When he describes his struggle to build the fence – he is the leader that defends his people – all the citizens of Israel. But once Bibi caves in to Bennet and Saar, and a few dozen talkbackists – the people change. The meeting the next morning, on 3.4.2018, representatives of the ‘people’ were invited: Likud party activists, south Tel Aviv poor neighborhood pro-deportation residents, and a few rightwing politicians.[[22]](#footnote-22) The ‘special ministers committee to deal with the infiltrators’ that Netanyahu established and met once on 7/9/2017 had at the center of its agenda one issue only: the distress of the people under the infiltrators. It was not a committee to assess the security at the borders; the economics of the immigration; the coordination of the economics, interior, welfare, health and education ministries. There was only one perspective – the life of those living in the three neighborhoods in Tel Aviv – not the 35.000 asylum seekers but the poor residents who suffer in their presence, and them alone: the electoral base of the national rightwing and their local, vocal representatives have become metonymic with the people of Israel.

However, the collective identity does not end here. Crucial for understanding the complexity of the case, are those who are implicated as working with the illegal infiltrators – and hence threaten ‘the character of the state of Israel’. In the discourse of the ‘people’ – the local activists, the politicians, the pro-deportationists – it is clear who they are: the civil rights organizations, the New Israel Fund, the supreme courts, the Left and the Media.[[23]](#footnote-23) They are designated as pro-refugees and hence enemies of the people. Thus, on the day Netanyahu has overturned his own agreement he wrote on his Facebook:

“A central agent that put European pressure on Ruanda’s government to withdraw from the agreement to take the infiltrators is the New Israel Fund. The New Fund is a foreign organization receiving funds from foreign governments and sources hostile to Israel like George Soros. The overall purpose of the fund is to erase the Jewish character of Israel and turning it into ‘all its citizens’ state, side by side to a national Palestinian state clean from Jews on the 67’ borders with Jerusalem as its capitol… I therefore asked the chairperson of the coalition Dudi Amsalem to lead a process to initiate public investigation parliamentary committee on the activity of the New Israel Fund that risks the security and the future of the state of Israel as the nation state of the Jewish people.”[[24]](#footnote-24)

On the day the PM actually led Israel to no effective immigration policy, and cancelled the only possible agreement with the UN – the most urgent thing for the PM is to establish a public parliamentary investigation committee against an NGO that specializes in empowering minorities and civil rights. The aim is clear: designating an enemy to move the fire to, one which the national rightwing could unify against and shoot. The deputy of the Ruanda foreign minister said in response that his government has never heard of the New Israel Fund.[[25]](#footnote-25)A week later, Baraz, one of Netanyahu’s ideologues, further explicates on *Meet the Press*: “there is no other institute so hostile and conspiratory that damages Israel like the NIF… I can characterize it in two ways: the fund doesn’t like anything that is connected to traditional Judaism or Jewish nationalism, but likes a lot Palestinian Nationalism, and second, they do not like Israeli democracy and prefer what Avineri has called BAGAZIZAZIA – supreme court-led rule… the conclusion is that the fund rejects Israel as Jewish and as democratic and therefore there is no better example of post- or anti-Zionism.”[[26]](#footnote-26) Baraz aids the PM in crystallizing the Schmittanian foe and friend ideology: the NIF, which supports plethora of self-empowering voices of minorities and among other help organizations that aid the Africans in Israel, is designated as the ultimate foe-friendly post-Zionist Left. Its central aid – is the supreme court. The ‘we’ and ‘them’ is now clear: the ultimate strangers are the asylum seekers who infiltrated the border illegally and attempt to change Israel’s character. Those who fight for their rights – the courts and NGOs – are attempting to make Israel a non-Jewish state and hence are enemies of the people. Crucially, this analysis appears on the official Facebook page of the PM, not only spoken by talkbackists and activists.

1. **The Ideological Tensions: between Neoliberalism and Neoconservatism**

The ideational components gathered so far – from both the conceptual analysis of governability and the identity core – disclose an interesting relationship between the leader, the people and his style of ruling. On both sides of the policy flip-flop Netanyahu maintains a strong perception of himself as a leader of his people – national interest in the UN agreement and ‘his’ people, his ‘base’ with its cancellation. The reduction of mediating institutions – parties, government, government offices, civil service, experts, political actors – to loyal teams of politicians and hand-picked functionaries, is also a feature of what emerges as the main ideology – populism. Three tenants characterize populism – people, anti-elitism and nativism. We saw already that the minute Netanyahu has turned away from the UN agreement, he pointed to the ‘old’ elites – the supreme court, the New Israel Fund, the Left and the Media – as designated enemies of the people. The third component – nativism – is perhaps the most striking in the ‘illegal infiltrators’ case – as they are the ultimate others, the non-natives *per se*. Populism is therefore well manifested in Netanyahu’s ideology towards immigration.

However, populism is often studied as thin-centered ideology.[[27]](#footnote-27) That is, it is an incomplete ideology that can be coupled with other ideological core concepts to create a fully-fledged political ideology. Hence, in order to discern the full ideological core in regard to the illegal immigrants the greater policy picture needs to be analyzed. What are the policy arguments for Netanyahu when presenting the UN agreement, and what are those for dismissing it? In what ideological family do they place his worldview? Neoliberalism, neoconservatism or plain populism after all?[[28]](#footnote-28)

Netanyahu presented the backgrounded to the UN agreement and the immigration of the Africans into Israel thus: “the reason for that is that Israel is a very developed country, and the only developed country to which one can walk on foot from Africa”.[[29]](#footnote-29) It is clearly the economic reasoning – work immigration – that in his analysis is at the center. Derei, the minister of the interior, explicates that complementing the deportation of those 16.250 people by the UN, the other 16.250 would be dealt with as follows: “we will make job plans (work policy) so that they would leave to other places where their work is needed”.[[30]](#footnote-30) So the overall rationale for their immigration, as well as to the policy plan proposed by the PM and his minister, is clearly economic: they immigrate due to work and they should be dispersed – i.e. taken out of south Tel Aviv to other places in Israel where their work force is needed. Also, the rehabilitation of south Tel Aviv would be funded by the funds that would be saved due to the UN funding and the closing down of the Holot detention camp that cost 250 million shekels. This money would enable rebuilding the infrastructures of south Tel Aviv. Thus, it is an economic-driven analysis which recognizes global immigration due to market economy and accommodates it through Israeli economic plan that needs foreign work.

Indeed, the analysis of illegal immigration in the democratic world is anchored in liberalism, with its two feet: economic analysis of demographic migrations, and rights for refugees.[[31]](#footnote-31) The attraction of the developed countries for the poor immigrants who want to improve their life chances, and the economic grievances of the disadvantaged populations in the receiving countries. Indeed, one of the major indicators of extreme right voting, or xenophobic right is the idea that the immigrants are taking the jobs away from the people. Here is where the link between economy and society twists – while the neoliberal argument perceives macroeconomics and rational individuals as its prime actors, from a rightwing perspective the illegal immigrants are perceived as an economic and a social threat.

Notice, therefore, that while Netanyahu uses both the economic rational to explain the immigration of the Africans into Israel, and his followers stress the job market arguments, the third economic level – the need of foreign workers and cheap labor – is suspiciously lacking from the PM’s discourse. This is because the economic reasoning creates a fundamental conflict which should be looked at from two perspectives. On the one hand, those immigrants residing in south Tel Aviv are looking for jobs. The jobs they are usually employed by are those who other Israelis refuse to do – as they work long hours and pay little money. It is clear from the police, low and order and criminal records, that once they are employed, the levels of disorder (drinking, theft etc.) go down. So, to complement the economic policy, it is evident that once they have immigrated into the country, it is economically better both for them and for the state that they should work. This is the classic neoliberal ethos.

However, on a macro scale, the levels of illegal immigration fluctuate in direct relation to the prospect of work: if there is an Israeli policy to employ them, the incentive rises up and numerous more Africans attempt to reach Israel. Once they are put away in a detention center or not allowed to work, the numbers of the immigration decline. The neoliberal ethos, of market-driven human behavior, thus produces the incentive to intensify the immigration, rather than contain and absorb those who have already settled in the country. This can be seen in the fluctuations of the number of immigrants before the fence was erected.[[32]](#footnote-32) If, therefore, neoliberalism is only a partial ideology, as the utilization of illegal workers into the job markets creates more waves of immigration, what is then the ideological core that complements it?

Far from being seen merely in economic eyes, illegal immigrants are perhaps the key social phenomena which turns extreme right xenophobic ideology to be adopted by the conservative moderate parties. It is the same ideological core we see on the rise with other rightwing governments facing illegal immigration: neoconservatism. It has two fundamental core concepts – securitism and criminalization. Take for example the immigration policy in Canada as a case in point: “the concept of criminalization not only refers to the imposition of penal sanctions, but also speaks to the development of a culture of suspicion towards asylum seekers, who are discursively tied to fraud, human trafficking, crime and terrorism; in short, they are portrayed as posing a threat to society”.[[33]](#footnote-33) These two tenants – securitism and criminalization – are also immanent in the Rightwing discourse in the Israeli case. Thus, Miri Regev, the minister of culture and sports under Netanyahu and a loyal foot soldier of the PM, defined the Sudanese immigrants “a cancer in our body – we will do anything to deport them back to where they came from.” She also attacked “the Leftists who petitioned the supreme court – they should be ashamed; they stopped the deportation. We will not let them climb on our back… ‘the poor of your city should come first’. With all due respect to the Left and Peace Now – they are the reason our state is in the state it is. Because of their petitions to the court we cannot deport the infiltrators into their country of origin”.[[34]](#footnote-34) The report of the USA department of State on Israel and human rights reports already in 2011 that “Government officials often negatively referred to asylum seekers as “infiltrators.” According to NGOs, officials periodically characterized asylum seekers as directly associated with rises in crime, disease, and terrorism. On December 8, in an interview with Army Radio, Minister of Interior Eli Yishai said, “I will safeguard the Jewish majority of the state, and I ensure that the last of the Sudanese, and the Eritreans, and all of the infiltrators, to the last of them, will return to their countries.”[[35]](#footnote-35) Crucially, it is not the extreme right but the most senior ministers in Netanyahu’s government. A political reporter analyzes the situation thus: “Netnayhau is the one that gives tailwind to his party members to use racial expressions against the foreign immigrants, so a political parallelism is created between Right and Left on the issue – for rights for refugees? Left, support the deportation of the infiltrators? Right.”[[36]](#footnote-36)

1. **Our Natural Partners – Realigning the Party System**

Netanyahu’s government attitude towards the illegal foreign workers is a demonstrative case for the dynamic of creating a revised rightwing ideology. While at an ideological level, the PM is torn between his neoliberal conceptions, and the economic analysis of the situation, it is the greater project of cementing what he calls ‘the natural alliance’ between the Likud and ‘its natural partners’ – the religious and ultra-religious parties – that is the greater political rationale which explains Netanyahu’s choices. In this analysis, the infiltrators are the ultimate ‘others’ which are not just complete foreigners – Africans, blacks, many of whom Muslims – but they are also a key feature in uniting the new right in its prime neoconservative mission: saving the Jewish people. While on issues like the annexation of the occupied territories, the dominant Left-Right axis in Israeli politics since the 1967 war, the ultraorthodox parties sit on the ideological fence, the ethno-religious approach towards the infiltrators and the mission of, in the words of the leader of Shas and the interior minister Yishai ‘save guarding the Jewish majority of the state of Israel’ becomes a top priority. The discourse against the infiltrators takes an extreme-rght ideology and makes it, once it becomes one with the mission of protecting the Jewish state – the prime idea of the right. It also serves as a demarcation of who is loyal and who is a traitor, who is in – and who is out, crystallizing the boundaries of the right vs. the left: the right includes the saviours of the jewish state – the Likud, the religious and ultrareligious parties; the Left are those who adopt individual rights universalistic discourse, protect the infiltrators and use the supreme court to put their rights before the national right of the Jews. As the ideologue of the National law said, and PM Netanyahu used his exact same words: “The situation in which, as it stands today, according to Israeli ruling, the right of an illegal infiltrator to roam the streets of Israel is a constitutional right, whereas the right of a Jew to make Aliya to Israel is not, is a complete disgrace and should be changed”.[[37]](#footnote-37) It is this structural changes – constitutional, ideological, political - that this book discloses.

**Chapter 2**

**State of which Nation? The Zionist Constitutional Revolution and the Nationalization of Law and Education**

Just before the April 2019 election, first of three elections in one year, Ayman Odeh, the head of the Arab Joint List told us, then off the record: "of course Israel is the nation state of the Jews. There, you have it. Now give us full civic and social rights. OK?"[[38]](#footnote-38) Note, that he used civic and social rights, not political rights – the basic democratic equality of fully participating in elections – perhaps because it is clear Arabs are voting in elections, and perhaps due to the fact that 'political rights' in the Israeli discourse may mean national rights, of the Palestinians, hence a divisive issue both between Arabs and Jews and among the Arab Israelis. Yet, if the head of the extreme Left Arab list is accepting Israel as the nation state of the Jews, how come the basic law: Israeli Nation State, the jewel in the crown of Netanyahu's governments, has become a divisive issue, one that changed constitutional, ideological and political structures? How did it evolve, from a consensus among the majority of the Israelis and certainly of the Knesset, to a law that passed barely on the votes of the coalition, which sparkled vast criticism, one which was central in the creation of Caholavan, the 2019 rival of the Likud and the largest party in the first two elections of 2019, which was publicly first supportive of the Druz rebellion against the Nation State Basic Law? And which 'nation' is the Israeli state about – that of all its citizens, or that of the Jewish people alone?

This chapter follows the debate concerning the nation state law and its transformative influence on the realignment of the ideological axes, the changes on the party system and the constitutional challenge – in particular the question whether Israel, post-national basic law, is still an embedded democracy. The reflection of the national basic law in the active revolution in civic and democratic education in Israel demonstrates the profound discursive, ideational and public consciousness which Netanyahu’s government have produced and the fundamental change to the public discourse: are you for or against Jewish democracy and if you have reservations – you are an enemy of the (Jewish) people.

1. **Ideological Realignment of Israeli politics: A Decade of 5 Historical Junctions**

In order to understand how fundamental is the transformation encapsulated in the debate over the Basic Law: Israel as the Nation-State of the Jewish People (the National law) it is crucial to recapture the way Israeli politics is comprehended – both by public media and scholars. The three main conventions are that the dominant ideological axis in Israel is the Arab-Israeli conflict; that the distance between the Left and Right is not far; and that political change would come from the center. Politics of identity, and its cornerstone – the National law – challenges all three conventions.

Representative democracies are best defined as party democracies.[[39]](#footnote-39) Party systems are analyzed on the Left-Right continuum. Or, in Thomassen’s words: “a basic condition for party democracy is that their party preferences are manifested and represented on one ideological axis״.[[40]](#footnote-40) This is the right-left axis that proved throughout the years resilient to the rise of new political issues and flexible enough to become relevant time and again .[[41]](#footnote-41) In most western democracies, the main ideological controversy is on the politics/economics axis – between neoliberalism and social democracy. The wide convention about Israeli politics is that the dominant Left-Right axis is security positions, and after the 1967 war, and in the aftermath of the power turn-over from Labor to Likud in 1977, the dominant Left-Right axis was encapsulated in regard to the Israeli-Palestinian conflict: for two-states solution or against it.[[42]](#footnote-42) While the socio-economic axis is negligible in its influence on Israeli party politics, the other ideological dimension crucial for understanding Israeli politics is religion/state relationships. The religious and ultraorthodox parties were careful not to align themselves on the conflict with the Palestinians. Rather, the religious parties focused on state-religion relations and as long as their demands on this axis were fulfilled – they could go with either left or right coalitions . Religious parties are hence portrayed as pivot parties – that could go with both Left and Right coalitions. It is my contention that these conventions have thoroughly changed under Netanyahu’s governments: that the defining ideological axis in Israeli politics is collective identity: Jewish vs. Democratic; that the religious parties have went through an ideologization process which places them at the extreme right, a process encapsulated by Bibi’s phrase ‘natural partners’; and that Netanyahu radicalized the position of the Right from being national and liberal to being neo-conservative and anti-liberal, hence changing the positions on the ideological axis of Israeli politics.

Five historical junctions typify the last decade and a half of politics of identity of the transforming Israeli party system, which materialized eventually in constituting the National law and polarizing the polity.

1. The People Demand Social Justice: The New Israelis

The first junction is the 2011 social protest which took to the streets hundreds of thousands of Israelis and constituted the first central wave of social protest that concurred with the 99% and Occupy Wall-Street struggle in the world. Cost of living, housing prices and cheese products captured the headlines and most experts analyzed the protest as responding to the deterioration of the welfare state.[[43]](#footnote-43) However, the social protest was instrumental in three other regards. First, its main demand from the government was for public policy. The contention of the leaders of the demonstrations was that Israeli politics is divisive, and the ones that get funding are those who have leverage over the coalition – the pivot parties. The government, argued the protestors, divides and rule: it caters for the demands of the religious sectors, the ultraorthodox, the settlers, the Russian immigrants – and fails from producing policy for the general public interest. It was therefore a plea to move away from politics of identity to politics for the common good, which a decade later would be translated into ‘Israel before all’ by Caholavan with its stress on MAMLACHTIOT – acting for the public interest. Second, the social protest produced a new language for Israeli politics. Itzik Shmuli, then a leader of the protest and later a leading politician for Labor, today the minister of welfare in Netanyahu-Gantz unity government, introduced the term ‘the New israelis’ and talked in the demonstrations of one Israel: “Good evening to you all. Good evening to the soldier from Afula, the student from Jerusalem, her parents from Deganiah, the policeman from Beer-Sheva, the teacher from Taybeh, the immigrant from Ariel, the elder from Natanya, the homeless from Holon. Good evening Israel! This struggle invokes many, too many, problems of Israeli society… the common pain undermines the high walls that emerged in Israeli society and overrides its glory. No more Jews against Arabs; secular against religious; leftists against right-wingers. The high costs of living hurts us all” (Shmuli, 2011a).[[44]](#footnote-44) Shmuli condemns the walls between Jews and Arabs, secular and religious, left and right and transcends them by creating one unitary Israeli identity. “The people demand social justice” was indeed the slogan of the protest, but who was this alleged ‘people’? In the ‘Million demonstration’ Shmuli said: “Mr. PM, look at us well: we are the new Israelis” (Shmuli, 2011b). This is an attempt to redefine the people – no longer the Jewish people but all Israeli citizens. A new subject has emerged. The “system” against which the protest demonstrated was the political system – the over-representativeness of the sectorial parties. The social protest avoided vehemently being identified as a partial sector – not even the middle-classes insisting on being ‘the new Israelis’ (Leaf, 2011e).[[45]](#footnote-45) As long as they spoke in the name of all Israelis, fought for a collective agenda anchored in the declaration of independence and used the symbols of sovereignty – the flag, hymn and the Knesset – the protest sought to redefine Israeliness in an inclusive and civic way. It was also a call for a different politics – politics of public interest, not in the name of an elite, sector or class. The second rising politician at the time was Lapid. As a publicist and a Media person, he stressed the concept of the Israelis, criticizing the government’s divide and rule strategy. Lapid said: “I believe in Israel and I believe in Israelis”.[[46]](#footnote-46) Out of the social protest, the concept of Israeliness has emerged. It was to recreate the ideological axis on which the parties compete in the next election and throughout the decade to follow. It was completely silent on the main axis which determined Israeli politics before it: the Israeli-Palestinian conflict and the two-states solution.

1. Israeli Vs. Jewish: Realigning Identities

The second junction outlining the rise of the struggle over collective identity as the key to understanding Israeli politics is the 2013 election. In this election for the first time Israeliness appears as a major issue challenging ‘tribal’ identities and parties. The identity axis moves from particular Jewish identity on the right to inclusive Israeliness on the center-left. While the newly formed Yesh Atid and the newcomers to Labor – Shafir and Shmuli, the leaders of the social protest – chose to put Israeliness as the key concept in their agenda, what was the strategy of the Likud? After all, coming from a national-liberal tradition, there was no problem for the ruling party to actually adopt the same discourse of Israeliness; however, this was not the route taken by Netanyahu. For the 2013 election Likud has joined with Israel Betenu to form Likud Betenu party, which chose not to produce a manifesto. It’s initial campaign slogan was: “Israel – Jewish and strong”. No more Jewish and democratic. The consensus among Jewish Israelis since the declaration of independence – that Israel is both Jewish and Democratic, was forsaken in this election on the right. Democracy was sacrificed on the alter of Judaism. The main electoral threat to achieving a Likud victory came from the right parties, not the left and therefore Netanyahu chose a completely Jewish campaign. The strength of Israel is in its Jewishness, which overrides its democraticness. Its ‘Jewish’ choice was prevalent in the media campaign: “Jewish values cannot be uprooted from the people of Israel as the people of Israel cannot be deported from the land of Israel. We are strong and resolved to maintain here a Jewish state now and forever” (Netanyahu, 2013). The Wailing Wall is at the background and Netanyahu concludes: ‘We are proud of the Jewish people. We are proud of the Jewish state. We are proud in our tradition”. He thus twists the Likud discourse from national-liberal discourse to Jewish-religious one. He also portraits himself as the leader of the Jewish people.

Netanyahu’s ‘natural partners’ are also his chief competitors for voters in 2013 and he therefore tunes the Likud Betenu campaign to focus on who is more Jewish (meaning better for religious institutions and settlements in the territories). Yet the price is portraying the Likud as religious more than national in its identity outlook. It was an ideological choice: the liberal-national wing of the Likud has completely disappeared in the primaries. The members of the party and the Merkaz (the chief Likud party organ) activists – in contradistinction to its real voters on elections day – are religious-national public and settlers holding increasing power over the party. The ruling party has chosen a Jewish-national route over a liberal-national one. Fascinating in this regard is the leader of Jewish leadership group in Likud, Feiglin who says: “The axis on which the debate is constituted upon is not left versus right, It is not territorial. It is identity-based axis: Jewish versus Israeli”. ‘Jewish over democratic’ was visible throughout the 2009-2013 government with the backbenchers of the Likud and Israel Betenu leading the anti-democratic legislation, with an agenda identified with the (Jewish) majority understanding of democracy. The Basic Law: Israeli Nation State (BLINS) is the best manifestation of that. It was drafted, as we shall shortly see, for MK Diskin – then still at Kadima – by the Institute for Zionist Strategy of the settlers. Apparently, it merely stated what is in the emblem of the declaration of independence but in fact presented it as a Basic Law with equal constitutional standing as human rights Basic Law. Diskin has defected from Kadima to Likud and brought BLINS with him as a dowry. The Jewish-before-democratic agenda became the ruling party’s ideology in the 2013 election and the law was adopted by the Jewish Home and Likud Betenu coalition agreement,[[47]](#footnote-47) to be brought by the PM to legislation. Israeli vs. Jewish became the dominant ideological axis on which the party system was realigning. BLINS was the symbol of the new polarization of the party system.

1. The 'Brothers' Alliance' – Jewish and National?

The 2013-5 government was one of the short-lived ones, even in low Israeli standards, at the center of which were the two brothers in arms, Lapid and Bennet. They both just reincarnated two parties with respectable histories – Shinuy and Mafdal respectively. Lapid's father headed the anti-Charedi, economically liberal party Shinuy. Bennet took over the dysfunctional Religious-National party of the historical orthodox Zionist camp. Influenced by the social protest, they both put a High-Tech gloss on their new parties, using social media and vibrant campaign to speak to the new middle classes that were infused and politicized since 2011. They both also took the discourse of Israeliness, and took the IDF to be the cornerstone of what Israeliness is about. Lapid, the Media presenter, built himself on the second wave of the protest which rose in 2012 in regard to the protest against the unequal draft law which exempted Ultraorthodox (and Muslims) with the demand that those who give more to the state – will get more; classic republican ethos. Bennet's party played a double game. Its campaign read 'what is a Jewish Home for you' and ‘what is Sabbath for you’ associating all Jewish Israelis (including those hwo go to watch football on Saturday) with the Sabbath and with religion – or tradition – thus both strengthening Jewish-cum-religious identity and distancing Israelis who are not Jewish from associating themselves with being Israelis. But they also stressed the IDF as the main thrust of shared Israeliness, so much so that they used photoshop to insert a yarmulke to a campaign sign of combative soldiers in battle. Bennet and his partner Shaked, the power couple of Israeli politics in the decade to come, and the ideological spearhead of Netanyahu's governments, established in 2012 together with Rabby Rontzki, a political platform organization called the Israelis (ISRAELIM). They both served under Netanyahu in his years as the head of the opposition and were both rejected by Bibi’s wife, hence could have not entered party politics via the Likud. They jumped on the Jewish Home party platform but in fact hoped to create a rightwing alternative broader than the religious camp. They took The Israelis program to be the election manifesto of Jewish Home in 2013 in which they called for no Palestinian state, reducing the power of the supreme court, infusing the judicial system with Halachic Hebrew rulings and other tenants of neo-conservatist thought which would become the essence of Netanyahu’s 4th government.

So how did the emblem of anti-religious Yesh Atid and orthodox ethnoreligious Jewish Home ended up in an alliance that vetoed the inclusion of the ultraorthodox parties and forced Netanyahu to create a coalition with them? They both founded themselves on the centerist parties outlook: sociologically, representing educated middle-classes, focusing on policy and leadership – with great stress on personalization – Lapid and Bennet as the rulers of their respective parties, and neoliberal conceptions of free market, crashing the trade unions etc. The most important element was the republican ethos: both parties emphasized the obligations/rights discourse and sought a wider definition of Jewishness. Bennet took to the ethnoreligious angle while Lapid’s party, with Rabby Pyron, Ruth Kalderon and others hoped to develop Judaism as a culture, wider than religion. The alliance also served their electoral purposes of positioning their parties as center-right, where they thought most of the floating votes are. This corresponds to the shared assumption that change in Israeli politics can only come from the center. It was true up to the 21st century in regard to religious pivot parties, and it was the sought niche for centrist parties which actually strove to be in the government – not to serve the people in the Knesset or in the opposition. It did work, initially, for the 3rd Netanyahu government but the alliance was soon to break apart, a major catalysator being the BLINS. Nationalism without equality was unacceptable for Yesh Atid and other center and Left parties. But this was precisely what the Jewish Home wanted in taking over the lead for constituting the basic law which was to give national rights to Jews only. Thus, BLINS which came from Kadima, centrist party, was now wholeheartedly adopted by the right, its original author. In 2014 MK Shaked from the Jewish home and MK Elkin from the Likud national-religious heartland, proposed two extreme versions of the basic law. Shaked – the future minister of justice in Netanyahu’s 4th government and at the forefront of the ideological spear of his government – added in the second article, a clause which states that ‘Israel will be established on the foundations of liberty, justice and peace according to the vision of the Jewish prophets and committed to the personal rights of all its citizens as described in any basic law’ . Shaked obviously sought to counter the critique that the National law was anti-democratic, but in her interpretation, the values of liberty, justice and peace are no longer universal values, but Jewish values of the prophets, and the rights accorded to all the citizens are ‘personal rights’ – not civic or political. In one of her famous speeches Shaked as the Justice minister would argue that:

In 2017 Israel, a state that its constitutional regime is composed of human rights, without any mention in her basic laws to her being the nation state of the Jewish people – Zionism has become the dead zone of its laws… Zionism should not continue – and I declare here, would not continue – to bow its head in front of the system of civic rights interpreted in a universal manner in a way that disconnects it from the protocols of the Knesset and the historical legislation we all know .

Namely, what Lapid feared, Shaked hoped for: Changing the balance between human rights and the Jewishness of the states in its constitutional design: Jewish first, human rights later. The inner battle within the 2013 coalition produced a strange compromise: the ministers pressured to pass the basic law in its more extremist version; Netanyahu offered a deal: the government would approve the more radical BLINS proposal forwarded by Elkin and Shaked, but once the PM’s office would forward a proposal of his own, they would support it. The legislation has passed the first vote on 19 November 2014. Netanyahu has failed to put forward a rival proposal until 2018. The more extreme version of BLINS remained the government’s approved decision till then and commitment to BLINS became not just a main issue for calling the 2015 early election, but the first tenant of the rightwing coalition that would result from it.

The more the animosity between Netanyahu and Lapid, his finance minister, grew, the more the disagreements regarding the anti-democratic legislation led by Likud and Jewish Home became unbridgeable. Constituting BLINS without a mention of Israeli democracy or political equality of all Israeli citizens, was a bold move against Israel Jewish and Democratic which existed among Jewish Israelis and was enshrined in the declaration of independence. It became a major reason for the falling apart of the brothers’ alliance, and the 3rd Netanyahu government. In less than two years Israel has found itself polarized on ‘Jewish and Democratic’ issues and on its way for another election.

1. Zionism, Anti-Zionism and the Delegitimation of the Left

The axis of the 2015 election which brought about Netanyahu’s third term, and the most crucial of them all, is collective identity. If the people that demand social justice, to recapture the slogan of the social protest and the camp politicizing in its aftermath, are the ‘new Israelis’, the rightwing block formed a united front as the ‘Jewish people’. Is it but a new manifestation of the 70 years old debate between state and religion? State/religion relations traditionally translates into party politics via the unique position of the religious parties as pivotal parties,[[48]](#footnote-48) and the debate over the status-quo regarding religious issues in the state – public transportation on the Sabbath, the role of the rabbinical courts, civil marriages etc. But now it came to embody the tension between Jewish as religious vs. national identity and its relation to Israeli democracy. As of 2013 the major debate in which religion/state is just a part of, is the debate over the common vision of Israel, on the nature of Israeli democracy: Jewish or Israeli, democracy or ethnocracy . While state/religion was a sectorial issue of the religious parties, the Jewish/democratic collective identity axis is an ideological axis which defines – and polarized – all the parties. In fact, it became the major battlefield of the 2015 elections . The crucial struggles were on two issues: who is a Zionist, and collective rights.[[49]](#footnote-49) The struggle over Zionism took place after many decades in which the term was used almost solely by the settlers’ movement. However, the question whether Judaism is religious or national went back straight to Israel’s Zionist roots. In many ways, Zionism – the national movement of the Jewish people of the late 19th century – was an anti-religious movement. It sought to transform Judaism from religion to nationalism by de-religiosing it as well as by interpreting its religious practices back to the original people of Israel as an ancient nation of the Land of Israel’ one of the oldest nation states in history. However, the Netanyahu camp, with the lead of the ethnoreligious Jewish Home, challenged this transformation and as a counterrevolution took Zionism back to the original religious roots, from which Socialist, Revisionist and Liberal Zionism distanced themselves. In any case, the purpose of Zionism was to bring the people back to its land – and therefore was fulfilled once the state of Israel was established. It was more relevant in the question of the Jews living in the diaspora. The term ‘Zionism’ was hardly part of contemporary political discourse in Israel over the last generation. It was appropriated by the settlers’ movement, which saw itself as the direct continuation of the Zionist movement – only its settlements were outside of the 1967 green-line and their ethos was religious messianic – annexing the holly land of the bible regardless of international laws and agreed borders. The Institute for Zionist Strategy was founded by the once head of the setllers’ movement – Israel Harel, the institute which was also responsible for drafting the National law. Zionism was long identified in the public discourse with the settlements, the religious-national parties and the hardcore ideological right which was against the two-states solution and for the annexation of the occupied territories.

The return of the Zionist question in 2015 was marked by the surprising decision of Labor, upon unification with Livni’s ‘HaTnua’, to call the unified list ‘The Zionist Camp’. The move was symbolically significant. Reclaiming Zionism had a crucial function which tied together the two ideological axes. Zipi Livni, a Likud princess of a revisionist home who departed her party and joined Sharon in Kadima was now creating a political alliance with the prince of MAPAI – the original socialist Zionists which turned into the Israeli workers’ party that rules the country for 30 years without a real rival. Boozi Herzog was also the son of president Herzog. The revisionst and the socialist established a political alliance because they shared a worldview of national-liberalism, reclaiming ‘the Zionist Camp’. On the Israeli-Palestinian front they saw that two-states solution is the only way to maintain Israel as the nation state of the Jewish people, since self-determination of people is universal and cannot be denied from the Palestinians, but even more instrumental for inner-Israeli debate, that annexing the 1967 territories would mean annexing 4.5 million Palestinians who would make Israel no longer a state with sound Jewish majority, or not a democracy at all. So, it was nationalism and liberalism which Livni and Herzog shared. On the collective identity axis, they reclaimed Zionism from the extreme right settlers’ movement of Judea and Samaria and hoped to reinstate Zionism as a sovereign state of Israel acting with international recognition. It was not a coincidence, as we shall later see, that it was Livni who dismantled the BLINS from being accepted by the center-left.

But once the title ‘the Zionist Camp’ was published, Netanyahu’s loyalists in the government put into action a campaign with the goal of portraying the Livni-Herzog camp as anti-Zionist. Thus, Miri Regev, minister of culture and righthand of Netanyahu said: “It is sad that a party tries to buy rule with money by activating Kol Echad association that drives V15 campaign. I have tabled a legislation that would oblige the civic associations to expose their funding sources, she who jeopardized the bill was no other than Zipi Livni. I wonder why?”[[50]](#footnote-50) V15 was an NGO that campaigned for replacing Netanyahu and worked not with one party or another, but its goal was to raise the turnout of the Anti-Bibi camp in 2015 election. Netanyahu and his ministers tried to delegitimize The Zionst Camp by associating it with V15 while portraying V15 as an NGO which is funded by ‘foreign state-like forces’ thus undermining Israeli sovereignty. Regev, Levin and others have drafted a bill demanding all civil rights associations working with the Knesset committees to expose their funding resources. The alleged reason was to increase transparency but only those NGOs funded by ‘political agents’ were ordered to expose their sources. Those NGOs funded by private donors – were exempt. It so happened that many of the civil rights organizations in Israel received funds from the EU, party foundations in Europe or the UN. Most of the rightwing associations, however, were funded by private neo-conservative donors from the USA. It was clear that the main idea of the law was silencing and shaming of civil rights organizations associated with the Left and criticizing the government.[[51]](#footnote-51) But it was more poignant than that. Netanyahu’s argument was that civil rights organizations, funded by foreign governments or parties, interfere with Israeli sovereignty and are therefore fifth column or enemies of Israel. The whole point was to delegitimate his political rivals – the center and Left parties, and mint them in his voters’ mind, and in public discourse, as anti-Zionists. Not only do civil rights organizations receive foreign money from other political entities, but they usually take the side of the Arabs and protect their rights against the Israeli government, the argument goes, and therefore the Left, endorsing the cause of civil rights organizations, is in fact pro-Arab, anti-patriotic and the enemy from within.[[52]](#footnote-52) So while the center-left was hoping to reclaim Zionism, the right was portraying them as anti-Zionists. The Associations’ law was part of anti-democratic legislation passed by Netanyahu’s government which made the linkage between democracy and anti-patriotism, drawing a wedge between ‘Jewish and Democratic’ as the Israeli consensus had it for 70 years. Democracy – identified with civil rights organizations and the Left – is working against the Jewish State, the argument of the right has been.

In accordance with this worldview, the 4th Netanyahu government had agreed, in its coalition agreement with the Jewish Home, its junior partner but the more ideologically-inclined partner, to establish a committee that would constitute the BLINS on which all coalition partners would be obliged to sign (article 34);[[53]](#footnote-53) to consider an overcoming clause which would reduce the ability of the supreme court to overrule unconstitutional legislation which conflict with human rights’ basic law (article 27); and to politicize the civil service – in fact to allow political appointment of the senior staff instead of the professional appointments which characterize the Israeli public sector (article 12) and to promote the Associations Law (article 83). It also agreed to allow Israelis who are not in Israel to vote in the Israeli election (article 28): the constitution of Judocracy was on its way. Judaism and governability were now the official program of Netanyahu and his ‘natural partners’ – the religious and ultra-religious parties. It was a pure rightwing government, now that Yesh Atid and Livni were out, the only partner more liberal than ethnoreligious was Kulanu party, that departed from the Likud and received 10 MKs in the 2015 elections. It was also the only coalition partner that was not obliged to vote for BLINS, but it voted for it anyways, in 2018. In accordance with this worldview, the 4th Netanyahu government had agreed, in its coalition agreement with the Jewish Home, its junior partner but the more ideologically-inclined partner, to establish a committee that would constitute the BLINS on which all coalition partners would be obliged to sign (article 34);[[54]](#footnote-54) to consider an overcoming clause which would reduce the ability of the supreme court to overrule unconstitutional legislation which conflict with human rights’ basic law (article 27); and to politicize the civil service – in fact to allow political appointment of the senior staff instead of the professional appointments which characterize the Israeli public sector (article 12) and to promote the Associations Law (article 83). It also agreed to allow Israelis who are not in Israel to vote in the Israeli election (article 28): the constitution of Judocracy was on its way. Judaism and governability were now the official program of Netanyahu and his ‘natural partners’ – the religious and ultra-religious parties. It was a pure rightwing government, now that Yesh Atid and Livni were out, the only partner more liberal than ethnoreligious was Kulanu party, that departed from the Likud and received 10 MKs in the 2015 elections. It was also the only coalition partner that was not obliged to vote for BLINS, but it voted for it anyways, in 2018.

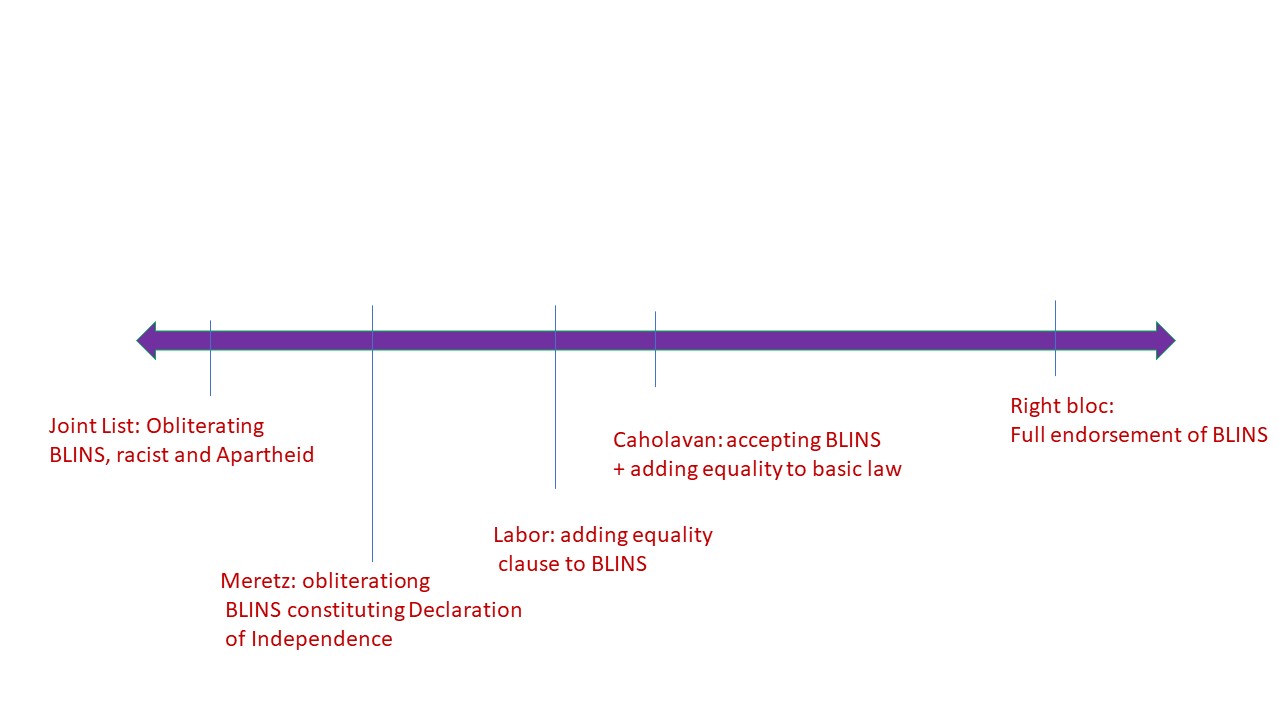
1. Israel before All? The National Law and the Realignment of the Party System

If the 2013 election saw the rise of Jewish vs. Israeli and 2015 Zionist vs. anti-Zionist, in 2019 the Jewish/democratic axis focused on the National law. The first public political declaration of the newly established leader of Strength to Israel (Hosen LeIsrael) Benny Ganz, after weeks of no public appearance, was his promise to change BLINS on account of the Druz protest against it: “we have alliance of blood but not less alliance of life… I will do everything to lead a change of the legislation on the Nation Law in a way that will express the deep and unbreakable connection not only in battle but in life”.[[55]](#footnote-55) While endorsing the Druz cause, Ganz and his partners did not support the Arab demonstrations, against the same National Law, one week later. Why was Ganz’s footmark on Israeli politics made on supporting the Druz protest against the National Law, and why did he abstain from extending this support to the Arabs?

The 2013-15 government was dissolved over the National Law,[[56]](#footnote-56) the coalition that followed it constituted the law with only the rightwing bloc voting for a basic law on the character of the Israeli state, and the 2019 April election were to be determined in regard to this symbolic law. The struggle over collective identity reached its climax. Crucially, the declaration of independence combined the historical emblem of the return of the Jewish people to its ancient land with civic, social and political equality to all citizens. Also, virtually all parties competing in the 2019 elections, except Jewish Power the extremist post-Cahanna party, accepted both equal civic rights for all citizens, and national rights to the Jews in Israel – Meretz and Jewish Home alike. Even the Arab parties sought “full equality, national and civic, to the Arab-Palestinian public in Israel”.[[57]](#footnote-57) If it wanted equality with the Jews, it means that they accept national rights for Jews (and Arabs) in Israel. Crucially, the majority of the Israeli citizens thought that equality should have been added to BLINS.[[58]](#footnote-58) There is therefore a wide consensus both for equality of civic rights to all citizens and national rights to the Jews. How come that this has become the most contentious issue in April 2019 election? There are two issues here: the question of legislating equality into a basic law, and the question of collective rights.

Equality was never constituted into the basic laws. Even in the Basic Law: Knesset the phrasing is “every Israeli citizen above 18 is entitled to vote”. The concept of “equality”, the principal principle of democracy, is not mentioned in any of the basic laws of the state of Israel. ‘Equality’ was at the heart of the debate on the Basic Law: Human Dignity and Freedom which has passed in 1992. However, due to the objection of the religious and ultra-orthodox parties, “equality” was not mentioned even in this basic law, which grounded the bill of rights into Israeli gradually-built constitution. The religious parties vetoed the principle of equality on three grounds: they feared that the supreme court would revoke the Law of Return; that equality before the law would abolish the exemption of the Chardi from the draft to the IDF; and that non-orthodox currents in Judaism would be recognized under the equality law, jeopardizing their monopoly over state/religion issues.[[59]](#footnote-59) In fact, the ultra-religious parties were not likely to vote for the national law. They traditionally objected of endorsing the cause of the state of Israel, motivated by their belief that the state of the Jews would be resurrected only after the Messiah would come. The way they were persuaded to support the law, was also the way that ideologically cemented them as part of the hardcore extreme right in Israel: they insisted that part of the national law would include ‘religious rights’ of the Jewish people for the land of Israel. Once religious rights were included, the Zionist revolution which transformed Judaism to Zionism, molded nationalism instead of religion, was overturned. The right bloc – the Likud and their natural partners – the religious and ultra-orthodox parties which came to act as a unanimous bloc throughout 2019 three electoral rounds – was cohesive in fully endorsing the National law and seeing religion and nationalism as co-extensive. An ethnoreligious ideology was now uniting all the rightwing – from Likud to Shas and Aguda, with the Jewish Home as the great winners, as they were always the carriers of the national-religious flag.

While on the ‘Jewish’ front there was unanimity, on the ‘Israeli’ side of the party system equality and the rejection of the National law provided the shared struggle. Ganz’s Caholavan electoral manifesto, its first ever and hence a constitutive document of the newly-formed party, and main rival of Likud as the largest party in Israel, stated: “the National law anchored Israel as being the nation state of the Jewish people, realizing uniquely its right for national self-determination. Yet, the principle of equality of personal rights is lacking from it, and we would therefore constitute it into basic law legislation, in the spirit of the declaration of independence.”[[60]](#footnote-60) Notice that Caholavan does not obligate itself for constituting equality into the national law itself. Should there be a basic law: Legislation or should equality be constituted into basic law Human Dignity and Freedom, it may also suffice. Much more adamant about legislating equality into the National law, was Labor. Its manifesto stated: “The National Law in its current format severely undermines the value of equality, which is a founding value in Zionism and in the moral basis of Israeli democracy. We are obligated to add equality into the National law in order to allow all citizens of Israel – Jews, Arabs, Druz and Cherquesi – to be citizens of equal rights in the nation state of the Jewish people.[[61]](#footnote-61) As for Meretz, this party commits itself to the altogether obliteration of the National law “for it is based on the assumption that the non-Jewish citizens of Israel cannot realize in it their national rights within the framework of the democratic toolkit. This is a false assumption which undermines the state of Israel’s commitment to democracy”.[[62]](#footnote-62) Instead, Meretz calls to legislate the declaration of independence into the constitution. As for the Arab List, the Manifesto of Hadash states: “complete obliteration of the National Law which is discriminating and racist and grounds concepts of Apartheid”[[63]](#footnote-63) The April 2019 party system, based on the reaction to BLINS, looks therefore as follows:



Graph 1: Party System April 2019 in Reaction to National law

The ‘Israeli’ bloc demanded that equality would be added to the basic laws which comprise the Israeli constitution. But why was Ganz supporting the Druz cause, and silent about the struggle of the Muslim Arabs against it? The reason was the changing political discourse. It is not just that collective identity and the character of Israel became the dominant ideological axis under Netanyahu’s governments, it is also that the foundations of the public discussion have changed. The discourse of Israel as ‘Jewish and Democratic’ was based on universal national and liberal ethos. The universal right of national self-determination, and the preservation of human and civic rights in democracies. That was the underlying ethos of the declaration of independence that constituted the Israeli set of values ever since. However, as we saw earlier 2013 brought into the political debate the alliance of the brothers – Lapid and Bennet, Yesh Atid and Jewish Home – that endorsed republican ethos of rights and obligations. It was adopted by the newcomers into Israeli party system but was first overtly used by Israel Betenu in 2009 and later adopted into Likud Betenu, when the Likud and Liberman’s parties merged in 2013. Liberman’s slogan was ‘no citizenship without loyalty’ and the translation was: rights in return for loyalty to the Jewish state. This rights and obligation discourse spoke to the majority of Israelis on the basis of the claim against the Charedi camp – that do not serve in the IDF and does not largely participate in the work force – while the majority of the Israelis did. This was also the reasom why Ganz has endorsed the cause of his Army officers of the Druz community – who served in the IDF but were exempt from the national Law, and refused to support publicly the Muslim demonstrations against the BLINS. Thus, republican ethos of rights-and-obligations, came from the extreme right with Liberman, was adopted by the Likud and became the trademark of Jewish Home, Yesh Atid and Cahollavan. The discourse of civil rights, which was intentionally delegitimized by Netanyahu in the 2015 elections and through the Associations law, facilitated the equation of rights’ discourse with the extreme Left and was deplored as non-patriotic. The struggle over values became also the key to understanding the constitutional battle over the Nation law: who is ‘the people’ in Israeli democracy rule of the people? Was it the Jewish people, as the right bloc had it, or all citizens of Israel, as the center-left insisted?

1. **Constitutional Change: The National Law and the Democratic Deficit**

The political-cum-ideological picture demonstrated the profound change of Israeli party system and the dominance of collective identity as how it turned into the determining factor over the last decade. Not only there was an ideological realignment, with the religious and ultra-religious parties departing from their position as the pivot parties and becoming hardcore rightwing ideological parties, based on ethnoreligious worldview enshrined in the National law, but the political discourse itself has changed, from rights-based presuppositions to rights-and-obligations as the dominant discourse extending from the extreme right to the left-of center Caholavan and Yesh Atid. Could we say that just as Liberman’s No Citizenship without Loyalty migrated from the deep right to the center left, we see the reverse movement regarding the National law? For it was first introduced into the public discourse by Dichter, of Kadima, enthusiastically adopted by a third of the MKs with Kadima and Labor lead, but then drifted away to be upheld by the extreme right so much so that the new basic law, the one that sets the vision for Israel, was passed by only the votes of Netanyahu’s natural partners with a wide public protest against it from the center and left? In order to understand the vision behind the National law, and the dramatic constitutional change it brought into the polity, the origins of the law have to be earthed and its triple constitutional journey in the Knesset – from the Kadima proposal, to the endorsement of the extreme right and the debates of the parties represented in the committee that constituted the basic law which changed the balance between personal and collective rights, have to be earthed. The dialogue is composed of three arena – first, the MKs in the Knesset, second, the intellectuals and NGOs behind the bill or against it, and third, the courts. The reflections of these dialogues are happening in the public for a and political Media. Political and intellectual discourse thus comprise the setting for the constitutional change. The driving forces behind the scene regarding the basic law are not less central therefore then the MKs that are at the front.

1. The Giving and Misgivings of the then Center-Left

Avi Dichter, former director of the Shin Bet and MK for Kadima, proposed in August 2011, with the backing of 39 other MKs, a private new bill called ‘Basic Law: Israel – the Nation State of the Jewish People’. Kadima was established by Ariel Sharon with MKs from Likud and Labor to break the partisan deadlock of Left and Right and enable the disengagement from Gaza. It became, under the leadership of Olmert, the largest party in Israel at the 2006 election and after Olmert’s resignation due to bribery charges, won again the largest number of seats in the Knesset in 2009 under Zipi Livni – who was not, however, able to form a coalition. In view of the approaching primaries in Kadima over the leadership, Dichter was looking for public coverage and proposed the National Law. The support for the private legislation, introduced by 3.8.2011 to the Knesset, was extensive and included many of Kadima party, the main rival of the Likud, and even some of Labor MKs as well as MKs from Likud, Jewish Home and Israel Betenu, parties representing together around 100MKs. However, in 14/11/11 Livni has forced Dichter to take the proposal off, after receiving a lot of criticism for trying to bring constitutional change by private law proposal.[[64]](#footnote-64) Dichter, nevertheless, prepared a new draft. In his declaration of running for the primaries against Livni, he already stated that he will negotiate entrance into Netanyahu’s government.[[65]](#footnote-65) He later resigned from the race for leadership of Kadima and joined the Likud party to become the chair of the security committee as a Likud member. His dowry for the Likud, was the National Law, constituted as a basic law in 2018.

The first clause in Dichter’s original proposal read ‘Israel is the national home of the Jewish people where it realizes his ambition for self-determination according to its cultural and historical tradition. The realization of national self-determination in the state of Israel is unique to the Jewish people. Any other legislation would be interpreted in accordance with this basic law.” The second clause stated: “Israel has a democratic rule”.[[66]](#footnote-66) On the face of it, the proposal does nothing but reiterating the declaration of independence. However, the state attorney of the Knesset referred to the proposal arguing that: “I think one cannot underestimate the importance of this proposal, due to the consequences and meaning it has on constitutional law in Israel and the interacted balances within it” he specifies in relation to Israel being Jewish and democratic: “No longer horizontal balance between the two parts of the formula but creating a hierarchical balance between them, so that after the legislation of the proposal at the top of the constitutional priority would be the principle that Israel is the nation state of the Jewish people, and only under it the principle of the democratic state”.[[67]](#footnote-67) The National law, proposed by Dichter and supported by Kadima and Labor MKs, supposedly echoes the declaration of independence but in fact creates a profound constitutional change in the balance between the Jewish and Democratic components. Notice that it is not only the hierarchy, but also the values and vocation of the state of Israel: they emanate from it being the Jewish state; democracy is but a procedural way of making decisions. Jewish values, democratic procedures. At the time, argued Prof. Yedida Stern, a constitutional law expert of Bar-Ilan: “the essence of the proposal is radical: changing the constitutional definition of the state, instead of “Jewish and democratic state” we have “a Jewish state that its regime is democratic”. This is not a language game but an earthquake. Today the two elements are of equal standing… If the proposal would be accepted, a hierarchy would be created where the Jewishness of the state would be positioned above its democratiness. Whereas the existing definition seeks complementariness between the two elements, the new bill proposal seeks to determine and place one above the other”.[[68]](#footnote-68)

1. Gavison and Constitutional Anchoring: Vision Law – yes, National Law – no

Once Livni, now the leader of HaTnuah party, was nominated minister of Justice, under Netanyahu’s government in 2013, she appointed prof. Ruth Gavizon, with support of all coalition partners, to prepare the basic National law as a governmental proposal.[[69]](#footnote-69) Seating in the coalition with Likud-Betenu, Jewish Home, Yesh Atid and HaTnuah, there was a potential of 70 MKs constituting Israel Jewish and Democratic basic law thus moving the project of the Israeli gradual constitution a substantial step forward. What was the attraction of the law to the center-left in 2011, why was it retracted and reborn in 2013? Why was Gavison appointed by Livni and why did she eventually recommend not proposing the National law at all?

In the mandate given by Livni to Gavison, she said that the mandate was: “to formulate a proposal of a constitutional provision dealing with the character of the state of Israel as a Jewish and democratic state in a manner that balances and integrates these values, both the Jewish and democratic”.[[70]](#footnote-70) In that, Livni sought to act in her long interest to complete an Israeli constitution which enshrines the declaration of Independence with its balance between Jewish and democratic. It also took into account that legislative procedures are already taken by the rightwing in Israel, and wanted to ensure the balance would be preserved and that equality would be constituted into the law so to restore the horizontal equal status. Once she acted on it from within the coalition, the critique that it is improper to change a basic law from the opposition also becomes redundant. Gavison, on her own part, sought to contribute her professional interest in matters of the character of Israel as Jewish and democratic: she was the founder of the civil rights organization established in 1972, in fact the oldest civil rights association in Israel; she was the initiator and co-writer of the Gavison-Medan covenant – redefining the status quo in terms of Jewishness between secular and religious Jews; she was also identified with a strong view for Israel as a national democracy of the Jewish people, and as a strong advocate against judicial activism. So much so, that when Livni proposed her nomination to the supreme court, she was not appointed because president Aharon Barak said ‘she had an agenda’.[[71]](#footnote-71) So, whereas Livni sought a balancing act between Jewish and democratic, Gavison herself said explicitly she thought she was appointed also because of her views against judicial activism and the role of the supreme court in Israel, a struggle which was developing with the former minister of justice – Daniel Freedman, and with adamant warriors in the coalition like Shaked from Jewish Home and Levin from the Likud.[[72]](#footnote-72)

The promise in the Livni-Gavison act was therefore to shape the constitutional future of Israel by providing a balancing act between the Jewish and democratic components, restoring the balance yet anchoring it the basic laws with a wide political and partisan agreement as possible. However, the prime recommendation of Gavison, after months of interviewing the political leaders, the intellectuals and the professional community – was “to refrain, at this stage, from additional constitutional anchoring of the core vision through legislation, in part or as a whole.” (P.6) Her arguments are of three types: the general function of constitution/basic laws; the likely effects of legislating the basic law; and the attempt ‘the constitutional revolution” of human rights and the courts’ role through the National Law.

Constitutions, argues Gavison, seek to provide a shared framework of the principles of the society, living conflicts regarding the specific arrangements aside. Such solidarity was indeed embedded in the declaration of independence, using concepts thinly defined thus allowing different particular communities to interpret them according to their understanding, while still generating an agreement on the three fundaments of the state of Israel: its Jewish character, its democratic character and human rights. Gavison argues that constitutionally anchoring these or some of these principles at this time, would cause disagreement, conflicts and strife rather than solidarity and agreement. In terms of constitutional anchoring, she explains “when states chose to anchor their vision, they did so by means of a declaratory preamble to a full constitution, as a part of explicit and deliberate constitutional politics, when the legislation enjoyed broad and cross-partisan support, and after all relevant sectors of the relevant society were invited to participate in the process of deliberation and drafting. Moreover, these vision statements always include strong particular commitments alongside civic, democratic and universal commitments. This is not the case in Israel today, and this is not true of many of the proposals pending in the Knesset (p.23).

There are three arguments here: first, that the constitutional anchoring should be of the whole vision – its three parts – Jewishness, democratiness and human rights; second, that it should be constituted as a preamble – or basic Law: Vision, and definitely not as a basic law: Jewish nation-state. Third, that it is inconceivable in a democratic constitutional legislation to include national commitments without civic, democratic and universal commitments to human rights and civic rights of the sovereign body – the citizens of the state. It is her judgement, that the proposals of the National basic law made by the coalition partners are used as an adversary tool, seeking not compromise and inclusion but the opposite: they indeed seek to legislate just the Jewish character, and they do not seek broad discussion and support, but use the power of rule of the current coalition to dictate their take on the character of Israel.

The unique aspect of the constitutional situation in Israel, which she analyzes in detail, is the ‘constitutional revolution’ put in place after the legislation of the 1992 Basic Laws and the supreme court’s interpretation that these basic laws, as any bill of right part in a democratic constitution, has a supremacy and therefore the supreme court can rule unconstitutional legislation that contradicts the human rights basic laws. It is her ‘agenda’ as the president of the supreme court, Barak said, the way she shared the critique over the activist role the supreme court has undertaken since 1992, that perhaps was to legitimize her recommendations in the eyes of the rightwing politicians. Gavison explicates:

A central justification for the need to enact a Jewish nation-state basic law stresses the urgent need to “undo” the imbalance in the vision created by the ‘constitutional revolution.’ The argument is that since the 1992 laws the old balance among components of the vision has been changed, and democracy and human rights have received greater weight. The supporters of legislation want the law to influence decision-makers, especially jurists and judges, to return to the tendency of giving equal weight to the component of the Jewish state. The advocates of the Jewish nation-state law are right in stating that there have been significant changes in the discourse about the vision of the state, based in part on the impact of the inclusion of the expression ‘Jewish and democratic’ in the 1992 laws... However, the truly serious impact of the 1992 laws is not at the level of public discourse and the endorsement of the vision, but in the power given the courts to review and invalidate Knesset legislation, and in the expansion of the human rights discourse and the grounds for judicial review. These broadened powers permitted and facilitated the transfer of decisions, that up to 1992 were within the almost exclusive power of the political system, to the judicial system.

Claims against this tendency should be seriously heard and debated. However, the proposed Jewish nation-state basic laws do not deal with this issue in any way. They do not seek to change the legal situation concerning the powers of the courts... It may in fact have the opposite effect: It is a well-established principle that courts have the power to interpret laws of 21 the Knesset and be their authoritative interpreters. Once the vision of the state becomes a fullfledged law, the power of the courts to interpret this law according to their inclinations and perceptions will in fact increase. P.20-1.

Thus, identifying with the critique of the rightwing politicians against the ‘constitutional revolution’ Gavison argues that the supreme court would become the authoritative actor to interpret the laws once vision questions would become legal questions. If you want to limit the role of the supreme court, the argument suggests, do not legislate any more basic laws which are the sole jurisdiction of the supreme court.

Here we get to the heart of the constitutional debate, and this is also why Gavison is wrong in understanding the overall scheme of Netanyahu’s government: the National Law is but one piece of the constitutional puzzle. There are three major parts to the agenda: giving National law an equal – or superior – standing vis-à-vis the human rights 1992 basic laws; changing the composition of the supreme court judges; and legislating limitation clause which is supposed to disarm the supreme court in its attempt to rule Knesset legislation, when conflicting with the human rights bills, unconstitutional. It is this greater plan which will be dealt with in the next chapter. Before turning to the rationale of Netanyahu’s ministers in proposing – and legislating the National law exactly in the format Gavison argued against: an imbalanced national legislation with a limitation clause that makes it superior to all other laws – lets dwell on the comparative aspect of the National basic law.

1. Does the National Law undermine Israel as a Democracy?

Gavison’s report recommends against constitutional anchoring of the character of Israel. Constitutional anchoring has to involve a wide public agreement, such agreement does exist in the public concerning the Jewish and democratic character of the state, she argues, but not in those who lead the constitutional change. Such anchoring, she says, would just give more power to the supreme court. If constitutionalizing at all, she recommends Basic Law: Vision which would include the Jewish, democratic and human rights elements thinly defined and open for agreements and differing interpretations in society. When Livni asks her, on the day of submitting her report, what if the motion to constitute the National law continues, Gavison answers that a basic law endorsing the declaration of independence may be best. In any case, at the minimum, national law should include equality of civic rights.[[73]](#footnote-73)

In constitutional eyes, Gavison’s argument could be transformed into a bigger question: since other democratic constitutions endorse the national elements to their preamble, vision part of the constitution, what are the consequences of giving the National Law a status of basic law? Or in harsher terms: can a state in which collective rights have the same or superior standing to human rights, still be a democracy? In comparative assessment, the National Law is exceptional from other national democracies that side by side with the public advancement of the national majority also secure equal rights for all its citizens. Gavison herself argues that the Israeli demos is composed of all citizens and the Arab minority in particular should have a place in the vision of the state. Yakobson argues that in a comparative analysis, in all national democracies there are equal rights for minorities enshrined in the national part of the constitution, and that after the National Law, even Pakistan has more enlightened constitution then Israel.[[74]](#footnote-74) In a thorough study he made with Amnon Rubintstein, the minister behind the proposals of the human dignity and freedom act of 1992, they demonstrate how in all national democracies, let alone civic democracies like the US and France, the national history is part of the preamble, and always includes also the political equality of all citizens.[[75]](#footnote-75) Israeli basic laws, without the equality clause, make Israel into the most extreme version of a democracy. Yacobson argues that the 1992 defends human rights and not civic rights. That the political rights of the citizens of Israel, the sovereign in a democracy, is not protected in the 1992 laws and is completely missing from the National law proposals in all the versions that were approved.[[76]](#footnote-76) He maintains that in the very minimum, Benny Begin’s proposal of the Likud, who wanted the basic law to determine that ‘Israel is the nation state of the Jewish people with equal rights to all its citizens’, should be accepted. Shani, the dean of the Law faculty at the Hebrew University, argues that it is not only civic rights, but collective minority rights that need to be legislated.[[77]](#footnote-77) The issue is the following: democracy is a form of government where the sovereign is the people. The people is the demos – all the citizens of the state. However, the National Law defines the people as the Jewish people, and makes no reference to the citizens of the state. Critically, given democracy under all definitions emanates from protecting the rights of the individual citizens of the state, is a state which places collective rights at a superior or even equal standing to individual rights, is still a democracy?

After receiving the report from Gavison, Livni tried to pass the Declaration Law, which had no majority. She made explicit why she thought the rightwing insisted on passing the Jewish Nation-state basic law:

But the National Law really determines that Israel is the state of the Jewish people, which is nice and important, but it completely erases the other part of the declaration of independence – the equality for all. OK, I know, you might think that it is a mistake and now only porpose the National law and later we would add euqlaity. Absolutely not. We have tried, we put proposals that determine both, the state of the Jewish people and equality for all, even a proposal that takes the declaration of independence and attempts to legislate it into a basic law. This government refuses, objects, wants to annihilate equality from our shared life. You see, there is a constitutive move here. The National Law is really a preparing law for annexation. For the ideology of the Jewish Home is to annex Judea and Samaria and all the territories. They know Israel would not be able to be both Jewish and democratic should we annex those millions of Palestinians. In fact, Israel would be neither this nor that. But there are those who think that we would not sense it when Israel turns into something that I have years not used this word – that Israel is becoming an Apartheid state. Or Halachic state. Or both.[[78]](#footnote-78)

While Gavison gives the Netanyahu government the benefit of the doubt, Livni argues that equality was deliberately omitted from the National Law. And that the real purpose of the law is to annex the occupied territories without giving civic rights to the Palestinians. It is crucial for redetermining Israeli Left and Right: Livni, a revisionist and long-term Likudnik, moved to Kadima and developed an ideological position that from her perspective is the only viable way to materialize the rightwing true values of national and liberal creed. The only way is two-states solution that maintains the Jewish majority, and Israel as both Jewish and democratic – national and liberal. It is the Likud under Netanyahu, she argues, that took the vision of the right to be national on the expense of liberal. The 2013-5 coalition, failed because of the attempt to pass the National law despite the objection of Yesh Atid and Livni’s HaTnuah. It is to the position of the right that we now turn.

1. Jewish and/or democratic? The struggle within the Coalition

Who was behind the original proposal put forward by Dichter as early as 2011? For those who pulled the strings, proposed and then refined and pushed the constitutional anchoring of the National law, were acting behind the scene. “In late 2009” writes Israel Harel, the then chair of the Institute of Zionist Strategy and before that the founder and first chairperson of the Judea and Samaria Council “the team of the Institute for Zionist Strategy finished drafting the National Law. At the beginning of 2010 I met Livni, then the head of the opposition Kadima party, to propose to her to lead the bill. The presupposition was: the Likud, then in power, was sure to support it. So would the rest of the coalition. Should the principal opposition join, the bill would pass with a huge majority. The draft that I proposed to Livni was much more nationalistic then its current form".[[79]](#footnote-79) In the article Harel discloses that Livni agreed to the law on condition that Judea and Samaria would be returned to the Palestinians. But, argues Harel, it was Netanyahu who missed the historical moment of passing the law with a huge majority, probably due to his desire to use it for the election. So, the initiator and drafting agent of the National law was no other then the settlers’ leader Harel himself and the Institute for Zionist Strategy which he founded. The role of the institute in general was to portray the settlements in the occupied territories as the direct continuation of the Zionist national movement of the 19th century. Livni, resisting Harel’s suggestion to lead the National law, was clear about the fact that annexing the territories to Israel would create either a democracy which is no longer a Jewish state or a Jewish state which is no longer a democracy. The Institute, in its proposal, is indeed promoting a view that the holy land from the sea to the Jordan valley should be part of greater Israel and therefore it is key that equality is not mentioned as a principle. This emphasis was clearly the intention of Levin, the MK who was most active in creating the majority for the proposal in the Knesset. In Forom Kohelet’s convention in honor of the National law, Levin argued that the law is a turning point that overturns the post-Zionist process and that one of its clear operative results is to strengthen Jewish settlements in the different parts of Israel.[[80]](#footnote-80)

The original work that was written in the institute already in 2009 by Arbel and Helman, states the purposes of the proposal: “over the last years there is a process of reversal that undermines the status of Israel as the national home of the Jewish people. The state of Israel, that was established as the Jewish state and with a democratic rule, is becoming a liberal-democratic state with Jewish features, as long as those do not contradict the absolute equality principle”.[[81]](#footnote-81) The exact wording from Dichter’s National law proposal ‘with a democratic rule’ and no mention of ‘equality’ symbolize the goal behind the National law endeavor: anchoring Israel first and foremost as the Jewish state. The principle of equality is the pronounced enemy of this approach. Equality is denounced as the idea that dominates Israeli rulings by the courts and therefore the main goal is to put the preference order right: Israel is a Jewish state. By its values. It is democratic in its procedures. The hierarchy that Yinon, the state attorney talked about, is at the core of what the original authors of the National law wanted to establish, as is the struggle against equality which symbolizes for them ‘an extreme liberal position… equality as the sole principle is found only in pure Marxist theory and among extreme liberals in the state of Israel”.[[82]](#footnote-82) Equality is hence treated not as a democratic principle but as an extreme Leftist principle which rejects Israel as a Jewish state. Whereas Zionists are nationalists acting for the greater Israel, those acting for equality and the two states solution are post-Zionists. The right and left are hence identified according to the support of Israel as a Jewish state, erasing the equality principle, and endorsing the Jewish settlements’ cause.

The first proposal put by Dichter on 3/8/2011 had, as all proposals to follow, the first article stating Israel is uniquely the nation state of the Jewish people. The second article was minimalist and stated: “Israel is of a democratic rule’. This was the last proposal that people from the center or left in Israeli Knesset had signed.[[83]](#footnote-83) After Livni forced Dichter to withdraw this proposal, the only proposals coming from Kadima were those who endorsed the declaration of independence as a basic law. The National law proposals were now coming from the right. The Zionist Institute was also active in drafting and redrafting the versions of the National law that were put forward by Shaked, Levin and Elkin, once Livni coerced Dichter to withdraw his original proposal.[[84]](#footnote-84) The ‘National Home’ proposal as the Institute first proposed in this 2009 paper does include an article stating that ‘Israel is a democratic state thar respects human rights in the spirit of the principles of liberty, justice, honesty and peace in the Israeli tradition”.[[85]](#footnote-85) This article went into the Shaked-Levin proposal, submitted on 22/7/2013 and to Netanyahu’s 14 principles document concerning the National law accepted by the government on 23.11.2014. Note that equality is not mentioned and the universalistic principles are restricted to the religious heritage MORESHET ISRAEL. Thus, article 4 on the same page reads ‘the name of the state is Israel, as the name of Jacob our father, the father of the Israelite tribes and as the name of the unified Israelite kingdom from the biblical era.” Indeed, the religious interoperation of the National law would later be added by Slomianski of the Jewish Home to the law as was legislated by the Knesset, as we shall later see.[[86]](#footnote-86) The Shaked-Levin-Elkin proposal was considered more moderate then the Dichter one for it included both that Israel would be of democratic rule and that it is "based on the foundations of liberty justice and peace in light of the prophecy of the Israelite prophets and committed to the personal rights of all its citizens as detailed in all basic law”. Notice there is no mention of Israel being Jewish and democratic, of the declaration of independence or of equality. The commitment is only to personal rights – the words civic rights or political rights, let alone minority rights – are not mentioned. On the face of it, it is radically different therefore then the statement that Netanyahu gave on the day it was brought to the government discussion – 23/11/2014. Netanyahu declared:

In the state of Israel there is equal personal rights to each citizen, but national rights only the Jewish people has. Flag, hymen, the right of every Jew to immigrate to Israel – only our people are entitled to them in out sole state. There are those who want the democratic to overcome the Jewish and those who want the Jewish to overcome the democratic. In the principles of the law I propose these two values are equal and should be equally considered. The same principles are in the declaration of independence. I do not understand those who call for two states for two people solution and vehemently oppose the Jewish nation state.[[87]](#footnote-87)

Thus, Netanyahu in his speech argues Jewish and democratic are both values and both of equal worth – not for Jewish values and democratic procedures, not Jewish first and democratic second, like the authors of the National law of its different versions hold. Yet what his government approves in 2014 is the Levin-Shaked version, not Netanyahu’s principles. After failing to reach a consensus with Yesh Atid and HaTnua, the deal was that the government votes for the Shaked-Levin and Elkin more extreme versions, and Netanyahu would later put forward a more moderate version which all the coalition partners are commited to support. The Shaked-Levin proposal passed, with the objection of Lapid and Livni’s people, and under a clear objection of the attorney general who argued there are constitutional problems with the proposals and the government should not vote in favor. Netanyahu, on his part, has never put a moderate alternative on the government’s table. Words are one thing, deeds another.

However, he used the National law to call for elections, saying with the ultimatum of the opposition-within-the-coalition there is no way to run a government.[[88]](#footnote-88) Bennet also declared that after the no confidence vote in the National law there is no longer trust in the coalition and he would not support any law proposed by Livni or Lapid’s parties. The government’s days were short.[[89]](#footnote-89) Three days later, in the urgent Knesset discussion called by 40 MKs from the opposition, Netanyahu explained why the National law is needed, saying that since the 1992 legislation of the Human Dignity and Freedom basic law, an imbalance between the Jewish and democratic elements was created. He gave two examples for the way equality transcends the national character of Israel – the illegal infiltrators and family unification of Palestinians. In both cases, argued Bibi, Israel as a Jewish state should overcome human rights.[[90]](#footnote-90) The National Law, once with a potential of 100 MKs voting in favor, was now polarized between Left and center parties, including those center parties in the coalition, and Netanyahu’s right.

His words echoed in the facebook post of Shaked, whose National law proposal was passed by the government, who wrote, justifying the need for the basic law: “The state of Israel is a Jewish and democratic state, not a state of all its citizens and all its infiltrators with a Jewish life at its margins. This founding principle on which the state of Israel was established is being eroded rapidly through the rulings of the supreme court and therefore this post-Zionist process has to be blocked and Israel’s identity and its values have to be anchored in a basic law”.[[91]](#footnote-91) Whereas Netanyahu sees Israel as both the state of all its citizens and a Jewish state, Shaked connects ‘state of all its citizens and all its infiltrators’ together as a post-Zionist worldview which is becoming dominant due to the supreme court. It is this extremist way of thinking which would guide her and her partners – Levin and Ohana – in the 20th Knesset. In this next episode, they are no longer rightwing backbenchers: Shaked would be the minister of Justice, Levin the connecting minister between the Knesset and the government and Ohana the chair of the special committee for the National law and a Netanyahu loyalist. Together they would change the constitutional structure of Israel.

1. Liberals vs. Neo-Conservatives? The struggle within the Israeli Right

Netanyahu thus argued that there were those from the outside and those on the inside the country that try to act so that Israel would no longer be the Jewish nation state. It was to become his major election statement, on the day of the 2015 election, making the connection between Islamic fundamentalism raging outside Israel and the Palestinian minority within Israel supported by the Left. The fourth Netanyahu government would be the first all-right government ever in Israeli politics. If the struggles on the National law were first within the center-left, and then between the center and right, the 20th Knesset would see the internal struggle for the ideology of the right unfolding through the debate over the National law.

Article 34 in the 2015 coalition agreement stated that the PM would appoint a coalition member to chair a team that would prepare the basic law: ‘Israel the nation state of the Jewish people’ and all coalition partners are committed to vote for this law.[[92]](#footnote-92) However, the first proposal of the National law coming from the coalition was forwarded by MK Benny Begin, that was given a place at the Likud’s list by Netanyahu after a loyalist list was elected at the primaries with almost no liberals at all. For fear of the public image of the Likud, Netanyahu gave one of the seats reserved as the prerogative of the leader to Begin. Begin’s 29/6/2015 proposal took the wording of the Shaked-Levin proposal, and added to the prophets’ principles of liberty, justice and peace the apodosis ‘and maintaining equal rights to all its citizens’. These were the exact words of Netanyahu himself, upon introducing the law in 2014. Nevertheless, Begin’s proposal caused a turmoil in the coalition. What was the consensus across Israeli party system, and emanated directly from Netanyahu’s presentation of the National law a year before, was now unthinkable for his rightwing government. So much so, that the coalition agreement concerning the team for drafting the governmental National law proposal, was delayed for two years. The reason: Begin was a member in the committee that should be naturally entrusted with wording the proposal – law, constitution and judiciary – and thereby the representor the Likud. Netanyahu’s new government could not trust a liberal-nationalist like Begin with the task of sitting at the National law committee. To avoid this, a special committee was built with members from both the Constitution and the Knesset committees.[[93]](#footnote-93) The chair was supposed to be Kish, but being a liberal himself, Netanyahu decided finally to appoint Amir Ohana, his loyalist, to the mission.

“And here, the state of Israel is approaching its seventieth birthday, and ID it has not. The goal of this committee is to deal with this issue only and come up with a foundational document that determines what and who the state of Israel is, what is her character and kind, and according to it the authorities of the state and its institutions are to act.” Ohana introduced thus the first discussion at the new committee, which was to hold 29 Meetings. ”There is almost no one that does not crown this law ‘the most important law ever since the establishment of the state of Israel and certainly as of 1992”, he continues. “We are not legislating here just another law. We define here this great thing called the state of Israel to the coming generations. We do this for our children, grandchildren and their offsprings.[[94]](#footnote-94) Long after we’d be gone, this ID would accompany the state of Israel” he concludes. For Ohana, the PM and the government, it is most certainly ‘the law of all laws’ as they have often referred to the national law. It would become crucial on the constitutional level as one of the main debates would be whether, being the law of all laws that defines the character of the state, it needs to include an equality clause, and the phrase ‘Jewish and democratic’, or whether, being just one basic law among many, it needs only defining the national character of the state. Indeed, these three debates – over the equality clause, the Jewish and democratic character and the constitutional status of the National law – were the great dividing lines not between opposition and coalition, but between the liberal-national of the right and the neoconservative nationalists. The first would be represented by Likud’s Begin and Meridor, the Likud ex-justice minister who led ‘Human Dignity and His Freedeom’ basic law of 1992 into legislation, and Folkman from Kulanu; the latter by Ohana, Levin and Smutrich, the neo-conservatives of Netanyahu’s government.

Benny Begin, in his ironic way, opens his speech at the National law committee saying that ‘for the benefit of good order, I should say that I am not a member of the committee’ in response to comments from the opposition, he adds: “if you ask me, I could say that this (shared) committee is the second committee that the 20th Knesset established that one of its purposes was that I would not be included among its members”. He explains that instead of just opposing the 2011 basic law National bill, he proposed, as a government member, an alternative proposal which complemented the article determining that Israel is the nation state of the Jewish people, with the suffix “and maintains equal rights to all its citizens”. The coalition, he describes, “refused to accept my proposal or even table it as an additional proposal that may or may not be incorporated in the future”.[[95]](#footnote-95) Why was Begin’s proposal, as a government member and then as a coalition member, rejected outright by the rightwing government? One very active minister in the National law proposal, Begin discloses, told him that “the concept ‘equality’ should not be included in the proposal”. Begin was both surprised and disappointed. “Some of the friends may think that referring to ‘democratic’ together with ‘Jewish’ in one or another form in the proposal – we don’t yet know if the proposal put before us today is close to the final wording that the coalition would submit or not – that the word ‘democracy’ is covering us and is quite enough, without actually adding the expression ‘equality’.” Begin proposes not to make do with the word ‘democracy’ since not adding ‘equality’ is unthinkable. He concludes by untypically referring to his dad – Menachem Begin – who on the morning of signing the declaration of independence (he was not one of those who was asked to sign it) said that the state of Israel is a Jewish state “and within our state, justice would be the supreme ruler, ruler also over its rulers… and therefore chairperson, I could not support the proposal put here before us”. Little did Begin know, that not only ‘equality’ but the word ‘democracy’ itself, oe even ‘Jewish and Democratic’, would not be part of the law of all laws that his coalition partners would finally approve.

Thus, the bitter struggle over Menachem Begin and Jabotinski’s legacy unfolds as the internal war within the Israeli right under Netanyahu’s rule. Livni, lamenting about Begin being excluded from the joined committee for the National law, says to Dichter, the ‘author’ of the original proposal: “Jabotinski said I am willing to vow in our name and the name of our children – we are his children – that we will never break this equal rights… for this is our ‘I believe’… this is not the Likud of Jabotinski and Begin” she tells the committee. “equality is but a duty to democracy? I am not talking about democracy. Let’s talk about Judaism. Equality is first and foremost a Jewish value. Love your friend, thou shall love the foreigner. This is all from the bible. You want to deny us this too?” The internal struggle over the Likud’s legacy is between those who endorse ‘Jewish and democratic’ and with it the principle of equality, and those who don’t. Tali Polsokov, of Kulanu party, says in the discussion: “we in this house (the Knesset, G.T.) of all parties, are used to say the state of Israel is a Jewish and democratic state… but in the proposal it says that the right of self-determination is uniquely for the Jewish people alone, and the next article says that all other laws would be interpreted according to this law. So in all laws we are not to use the definition ‘Jewish and democratic’ but ‘Jewish’ only?” and she adds that in our country there are also citizens who are not Jewish, Arabs but also immigrants from the former Soviet Union who are not religiously Jewish. Kulanu party, she concludes, ”could not agree to the definition ‘Jewish state’, but would agree and be delighted to use the term Jewish and democratic state”.[[96]](#footnote-96) And her co-member of Kulanu, Roee Folkman, adds: “I want to see the definition of Israel as a Jewish state, and I will not give up on its democratic principles”. He therefore proposes a thorough discussion of the concept of equality.[[97]](#footnote-97)

But perhaps the most thorough of the Likud liberals, and the most desperate too, was Dan Meridor. He introduces himself as the minister of justice for the Likud that 25 years ago initiated and saw through, proudly, the basic law “Human Dignity and Freedom”. Meridor argues that it is unthinkable that equality is not part of the Israeli constitution. For equality is not just a principle, but it is the super-principle. There is no democracy without it. A constitution without equality is cripple because free speech has to be equal for all as any other principle.

I have to say that as a Jew it offends me, not just as a person living in a democracy. The Jews, with their historic experience of discrimination and suffering of pogroms; the Jews that led over the last 200-300 years all the civil rights movements to deserve equality; Zionism that says ‘we are not deserving because we are Jews but because we are humans like any other human and everything that others deserve we also deserve based on equality – we cannot pass equality because there is a resistance in the Knesset to equality: is man and woman equal? Can a woman divorce a man? Can a woman sit in the rabbinical court?

Thus, the reason why equality did not enter the Human dignity and freedom basic law, he discloses, was the religious resistance to equality. Meridor deplores the dichotomy between state of its citizens and the state of the Jewish people, and claims it is dangerous. The only reason we are a state of the Jewish people, he argues, is because there is a Jewish majority – and this is according to Jabotinsky. Once you have established a state, and secured a Jewish majority, you want to be humane, Jewish and democratic. You need to do everything so that the non-Jew would feel it is his home. According to Jabotinsky, he reiterates, it is not just equality but national equality as there are two people living on this land, one, a majority people and minority rights should be granted to the other people. Referring to Netanyahu’s expression, that the Arabs are going to vote in droves, in 2015 elections, he concludes: “It is not right to legislate this law in detachment, it is bad, we create a tendency which goes to day in the world with Hungary and Poland and Russia and Turkey, and I don’t want to mention Trump with the Mexican being unable to be --- this incitement against the Arabs ‘going in droves’ – they are all citizens but they cannot take part – this is a horrific thing which happens to us, we have to stop it”. The blame, he finishes, is not on the supreme court’s activism for interpreting ‘Jewish and democratic’ as emanating from equality, the problem is the passivity of the Knesset which is unable to enshrine equality as part of human dignity.

Little did Meridor know that living equality out of the basic law was precisely the mission of the Netanyahu’s loyalists and neoconservative ideologues of his government – Ohana, Levin and Shaked. Ohana made sure that the internal opposition within the right in Israel, will be heard in the committee, but the decisions were made elsewhere – in the close discussions of Levin and the Likud’s coalition partners.

On the face of it, there is no difference over values between the liberal-nationals and the neo-conservatives of the Israel right. Shaked, Netanyahu’s minister of Justice, says to the committee: “This law is historic, this committee is historic… what will be decided here will stay with us forever. Our state is a Jewish and democratic state. I believe these values are parallel. One does not overrides the other”. So where is the difference? Shaked continues: “our democratic values are already enshrined in a basic law. I think we have here a great opportunity to anchor our Jewish values. The democratic value, the mere existence of the state being a democratic state, does not contradict it being a Jewish state, and to these values I think there is a consensus in this house, should be parallel values, and could be”.[[98]](#footnote-98) Note the main contradiction: on the one hand, this is the law of all laws, a historic law. On the other hand, democratic values are already embedded in the 1992 basic laws, and therefore this law should only anchor the state as a Jewish state. Her way of maintaining this ‘parallel’ existence was to export ‘Jewish and democratic’ to the opening words of the proposal, but not include them in the final version upon which the coalition agreed.

What does Levin, the minister coordinating the coalition and the government, think about the principle of equality? About Jewish and Democratic? He exposes in the conference of Forum Kohelet, just after the National law was approved:

The most difficult struggle that I led was that in the law there will be no mention of equality, and of Jewish and democratic. I of course accept the personal equality principle, but it was overtly clear that were we to write it in, the interpretation of the supreme court would have nullified its meaning.[[99]](#footnote-99)

Thus, it is precisely against the activism of the supreme court that the neoconservatives sought to leave equality out of the National law. Ohana, in the same Kohelet conference, strengthen the argument: “There is no equality. The word ‘equality’ is missing from this law on purpose, because this is the National law. The state of Israel is not a multi-national state nor a binational state nor a bilingual state.”[[100]](#footnote-100) Thus, against Begin, and Livni, Meridor, Folkman and Poloskov – against the liberal nationals of the Begin-Jabotinski tradition, Shaked, Levin and Ohana devised the National law so that it would explicitly lack the concept of equality, and the phrase Jewish and democratic. The reason for that is best argued by the ‘experts’ who wrote the National law, and their critique of the supreme court. It is to the neoconservative expert view that we now move.

1. **Think-to-Do Tanks: The Anti-Constitutional Revolution Unveiled**

The political scene may often be misleading. The picture one gets from the formal protocols, if we take the National law as a case in point, is a discussion between opposition and coalition on equality and Jewish and Democratic in relation to the new national basic law. Yet, as this chapter unfolds, it is clear that the real discussions were among the coalition members. In this part we finally get to the protagonists of the national arena: the neoconservative think tank that initiated, drafted, gave the arguments and saw the whole process to its constitutional end. Crucially, their role was far beyond the dry letter of the law. Indeed, the plan of resocialization of the Jewish citizens of Israel was the big plan, and the work was done complementarily – on both the judicial and educational systems. Far from being ‘think’ tanks, organizations like Forum Kohelet, the Institute for Zionist Strategies and Im Tirzu, devised the ideological scene, worked closely with the politicians and changed the public discourse as well as the official socialization process of the Jews in Israel. The latter, In Tirzu, presided over Netanyahu’s personal campaign in 2019, as Erez Tadmor, who wrote the deep state argument in Israeli language – titling his book “Why do you vote for the right and get the Left in power” – became the head of the election campaign of Netanyahu. The three entwined levels – the constitutional, educational and discursive arena – demonstrate the breath of the influence of the neoconservative think tank as they become the prime actor in Israel’s re-ideologization and de-democratization.

The one MK in the committee that conceptualized the polarization within the right, between the liberals and the neoconservatives, is Folkman of Kulanu. Kulanu saw itself as the gatekeeper of democracy in the pure rightwing Netanyahu government. When Folkman receives his turn to speak, at the second meeting of the committee, he refers to the three experts that spoke before him, at length, and exemplifies: “I have to start with a procedural comment, chairperson. It is important to me to draw attention. I think highly of the experts that spoke before me, but they all have one thing in common which bothers me. It bothers me because I do deal with the balance between conservatism and liberalism, and the three speakers, one of whom was also my teacher, Prof. Diskin, Prof. Sapir and Prof. Kontorovits, are all staff in one organization called Forum Kohelet, which is a respectable organization, but one that represents, in political science analysis, a rightwing conservatism, republicanism, of a specific – totally legitimate – kind.” The choice to bring conservative experts witnesses as the first three speakers, together with Gavison who is herself conservative in terms of national democracy, is the chairperson prerogative – Ohana. Forum Kohelet, as well as The Institute for Zionist Strategies, initiated by Israel Harel the founder of the settlers’ council, and the Begin Institute were three instrumental rightwing think tanks that worked behind the scene to initiate the National law, to write the proposed bill, to provide the background papers to the committee, to lobby the MKs and to lead the basic law every step of the way. It is to this work behind the scene, so typical of their dominance in influencing the fourth Netanyahu government, and their arguments which we now turn.

1. The Neoconservative Experts: The Anti-Court Revolution

The constitutional revolution they had in mind is the real driving force behind the National law. While the MKs of the committee were debating nationalism and equality, they were thinking of the supreme court rulings. The way to overturn the constitutional revolution, was in their minds through the constitutional change of the basic laws. We take the second session of the shared committee of the National law, which was the main session which invited experts, as a case in point to analyze the ideological battleground against equality, seen from the constitutional perspective. Indeed, there were 10 experts giving their academic analysis at the second meeting. 8 of them were conservatives, strong supporters of the National law and resisting the supreme court’s “constitutional revolution” and its activism; two speakers, speaking late in the session and but a few sentences each, were from the Institute for Israeli democracy, representing a liberal perspective. This is despite the fact that the majority of the academic community supports the equality clause as part of the National law, and probably resists the whole change of balance introduced by prioritizing collective rights over individual citizens.

The clear bias towards neoconservatism was already reflected in the fact that the initiator of the National law was the settlers’ institute for Zionist Strategies, attempting not just to legitimize the settlements in the occupied territories but to make them the jewel in the contemporary Zionist crown. Making the way for annexing Judea and Samaria was the overtone of the position papers and the potential of a National law without an equality clause was fundamental for future annexation of the territories without giving equal rights to the Palestinians. It is therefore crucial that all the think tanks pushing the National law to its materialization were most often than not, of the religious Zionist kind, casted in a neoconservative ideology of ethno-religious brand. Putting Judaism before and above democracy, was at the forefront of their agenda. Likewise, the most influential positions papers put before the shared committee towards the third meeting, were written by those rightwing institutions and cited by the neoconservative ministers like Shaked and Levin.[[101]](#footnote-101) Thus, besides the Gavison report, there were three position papers the Institute of Zionist Strategies, all three written by Aviad Bakshi who by then became the head of the legal department of Forum Kohelet, the institute which also drove the National law and produced the big conference in which the top politicians who were involved in the actual legislation took part, one position paper by the Begin Institute, one by the Forum for Constitutional Law, and one by Way of Life, all arguing for the National Law without equality. The positions papers by the Institute for Israeli Democracy, the Civil Rights Organization and Avraham Fund, which supported the equality clause or rejected the National law altoghether, had almost no influence on the committee and no mentioning in the discussions.

MK Folkman certainly established the distinction between liberal and conservatives, or more accurate still, liberal nationalism and neoconservative nationalism. He thereby exposed what MK Benny Begin already implied before – that the construction of the committee, the subtle understandings that already existed within the coalition, and the experts used as the main academic voice in the discussion, are of the same cloth: neo-conservatism. The series of arguments put forward by these experts set the tone of the coalition members in the committee.

The meeting was opened by a presentation of Prof. Gavison. Gavison puts forward three arguments: first, the National law is the law of all laws, defining Israel outside and inside, and therefore should seek the broadest consensus – which it does not currently have. Second, it should be a declarative Basic Law: Vision. Third, if must be, and the committee decides to go along with the National law as a basic law, which she vows against, it should definitely include all three elements of Israel – democracy, civil rights and Israel as the Jewish nation state. All her recommendations were rejected in the final bill that was passed.

Second spoke Prof. Gideon Sapir of Bar Ilan law faculty and Forum Kohelet. He opens his comments thus: “25 years ago, a group of determined-minded MKs has sneaked two new basic laws into the agenda of the state of Israel. The supreme court has hurried to declare it is a constitutional revolution and since then it uses these basic laws and other basic laws to write a court’s homemade constitution.”[[102]](#footnote-102) Notice that he ignores the fact that the Likud, the dominant party, then and now, was the leading force of this group. The impression of the listener is that it was a radical left act of conspiring within the Knesset, not an alliance between the two major parties – Likud and Labor. He further argues that since there is no option to change the rules of the game, the Knesset needs to send the court a clear message of a change of values: away from the egalitarian democracy into a Jewish nation state. The new basic law would enforce the court to consider the national argument, Sapir claims. So, it is definitely a values revolution which he advocates, which should force the court to roll back the constitutional revolution which put equality as the overriding principle. Thus, it is purposefully ignoring the fact that Meridor as the Justice minister of the Likud led the 1992 laws, and that it should be the Knesset who legislates equality as the democratic value. On the contrary – Sapir wants to use the National law to make sure nationalism overrides equality and to force the courts to adopt this attitude. Sapir further argues that it is true there is no consensus on the National law. But, he reiterates, consensus of whom? The Arab citizens of Israel are not to be taken into consideration since “if there is a large majority of the Jewish people in Israel who wants to enshrine the Jewish character of the state, it should definitely in my opinion, suffice”. Thus, the Arab citizens do not count. 20% of the citizens are discounted as part of the discussion, let alone decision and it is only the Jews that need to confirm this legislation. Not only the whole idea behind the National law is to change the value priority order, but the Arab citizens should not even be counted in. All-Jewish consensus suffice. As it happened, all the recommendations of Sapir were fully adopted by the committee: only national elements in the National law, no mention of equality or democracy, and no non-Jew voted for the bill, as it passed barely with the votes of the rightwing coalition, with all the non-Jewish members of the coalition and Knesset voting against. The Zionist right (Begin and Orly Levi Abuksis) and center and Left voted *en masse* against this change of values enshrined in a constitutional change. Yet, the neoconservative right won the day.

Next of the expert witnesses is Prof. Diskin of Forum Kohelet. He argues that the National law will be a constitutional revolution in its own right as the law which is later legislated has priority over former laws and therefore the National law should override the Human dignity and Freedom law as it will be constituted later. He therefore thinks there is no need to mention that the National law would override other laws, as this will anyways be the case. Dr. Vinitsky, of the Begin Institute, speaking in the third meeting, strengthened this position: the later law has priority over the former basic laws. The constitutional re-revolution, for the rightwing expert part, was on its way.

Prof. Kontorovits, the next expert witness, argued that democracies constitute their nationality and religion and that this is the case with many European nations. The most striking example he chooses is Slovenia. “Slovenia says it is the state of all its citizens but that this is based on Slovenia materializing the national right of the Slovenians, not of all its citizens”. This is striking as Prof. Jacobson, speaking at length of Slovenia, took it as the key example for the fact that even the most nationalistic democracy constitution-wise, Slovenia, defines itself at the national part – not just at the bill of rights part of the constitution – as a state of all its citizens. Kontorovits thus uses the same example to stress there are national democracies, but he refuses to add an equality clause to the National law, or to confim – as the Slovenia constitution does – that it is a state of all its citizens. Indeed, Jacobson stresses that all national democracies, without an exception, legislate equality of all their citizens into the national part of the constitution. Israel, Jacobson maintains, would be worse than Iran should it adopt the National law without the equality of all its citizens. However, the committee accepted Kontorovits’ position and not Jacobson’s. The National law excluded equality clause thus Israel becomes the only national democracy which does not perceive itself as also being a democracy – a state of all its citizens. The reason for that is, as we already demonstrated, the constitutional revolution and the fear of the supreme court interpreting an equality clause as equal to the national clause.

The next two experts who speak very briefly are Kremnizer and Stern, the two deputies of the president of the Institute for Israeli democracy. Kremnizer argues quite simply: there is no democracy in the world which is not the state of all its citizens. The silence of the National law on the very existence of the non-Jewish minorities, says Kremnizer, as is the constitution of Israel as a state of anti-equality, is a disgrace and the National law should not be constituted. Stern follows by stating the National law is a revolution, the no-equality revolution. It strives under any international law norm and against the ethos of the Jews as a minority throughout the Jewish history. Both remarks were of course set aside by the committee and completely ignored, but the reasoning for introducing the no-equality revolution, and the silence on the non-Jewish minorities is justified by perhaps the most influential neoconservative thinker – Aviad Bakshi of Kohelet Forum – who speaks next.

In his opening remarks before the shared committee, Bakshi claims that until 1992 Israel had a material constitution and through it defended both human and national rights. However, “there was a constitutional revolution and it cannot be ignored. there is a constitution to Israel, human rights are protected. On the other side, the balance with the national consideration is lacking, like an airplane that departs with one wing of full load and the other empty. The chances for an accident in immanent”.[[103]](#footnote-103) Thus, dismissing (in fact, ignoring) Kremnizer and Stern’s concerns, he analyzes the situation as completely the opposite – not that equality of rights need to be protected, but they are the only rights that have constitutional protection and therefore should be balanced against with National rights. He further argues that the fact that the law of return is not constitutionally grounded is a disgrace that needs to be immediately fixed. Equality, he claims, is not on the agenda of the National law, as it is already enshrined in the constitution as a basic law, and creates imbalance. “The situation in which, as it stands today, according to Israeli ruling, the right of an illegal infiltrator to roam the streets of Israel is a constitutional right, whereas the right of a Jew to make Aliya to Israel is not, is a complete disgrace and should be changed”.[[104]](#footnote-104) Bakshi also justifies the clause of the superiority of the National law by saying it does not make it superior to other basic laws, only to other laws and equates its status with the other basic laws.

Dr. Vinitky of the Begin Institute, speaking after Bakshi, complements this claim arguing that the reason to rule against infiltrators should not be on security grounds, but on national grounds: “we all know that the story behind the story is Jewish majority, keeping the Jewish majority, but no one can say it. Why? Because it is not constitutionally grounded. Vinitsky further claims – and justice minister Shaked quotes in the meeting – that there are three parts of democratic constitutions – institutional, bill of rights and a national part. In the Israeli case, the first two are under way and therefore it is time to constitute the latter. Vinitsky sets the terms of the discussion as the claim there are three constitutive parts to a democratic constitution – institutional part, bill of rights, and a national part – is highly misleading. In the majority of the democratic constitutions either there is no ‘national’ part or ‘national’ means – all the citizens of the state comprise the demos. In those particular cases of national democracies, the ‘national’ part is usually the introduction to the constitution – like the preamble of the American constitution “we the people” – the national part does not have constitutional but declarative value. This was the main thrust of the Gavizon argument and her suggestion to create a basic law: vision as the declarative part of the Israeli constitution. As Jacobson demonstrated, even the most nationalistic constitutions, all have an equality clause, and usually a clause that protects not just human rights but (collective) minority rights, as part of the so-called ‘national’ part. The whole framework of the debate is acutely titled towards the ‘lack’ of a national part which is not necessarily the case from a comparative perspective. What is definitely the case, is that the shared committee decided to erase the equality clause, and even a mentioning of Israel as a Jewish and democratic state – for the main reason that the court may interpret equality as a constitutive principle whereas if equality is not part of either the human dignity basic laws or the National basic law, the courts’ hands will be tied and the national right would at least balance, if not overcome, the equal rights of all citizens. As Kremnizer put simply – there is no democracy without equal right to all its citizens.

The last speaker at the second session, and the final contextualization is made by Simcha Rothman the chair of the movement for governability and democracy, and a leading neoconservative advocate. He explicates that Azmi Bashara, the founder of the BALAD Arab party, ruined the term ‘state of all its citizens’ and that judge Aharon Barak, the president of the supreme court, ruined for us all the term equality (note the equation, a confined terrorist and the president of the supreme court in the same sentence). The problem is that the interpreter of the law is the supreme court and not the Knesset, said Rothman. He points to the overcoming clause, explaining that it is meant to curtail the power of the court to overrule as unconstitutional regular laws of the Knesset, as the main path to create a change. Indeed, the politicians Ohana and Levin most definitely saw the overcoming clause as part of the Netanyahu’s government anti-court revolution. Levin, becoming the chairperson of the Knesset, has also enlisted Rothman as part of his shortlist for the Knesset Attorney General.

1. The Anti-Court-yard Constitutionalist: Bakshi’s Pen as a Mighty Sword

In a paper titled “Zionist Constitutional Revolution” Dr. Aviad Bakshi argues: “the likely passage of the nation-state bill is the most important Zionist development to be inserted into Israel’s lawbook since the Law of Return was passed in 1950.”[[105]](#footnote-105) Note that there is no mention of the Human Dignity basic law: the two most important constitutional laws of the state of Israel for the right are the Law of Return and the National law. No mentioning of democracy either. His declarations and arguments, cited almost word for word by PM Netanyahu as he introduces the National bill which just passed. Who is Bakshi and why does the PM recite his arguments so closely?

Bakshi is the most adamant ideologue of this Neoconservative position, the only person that submitted three position papers to the shared committee for the National law, and drafted the original National bill when he was still in the Institute for Zionist Strategies, thereafter joining Forum Kohelet as the head of its constitutional department thus overseeing the changes through the Knesset. Writing his PhD at Bar Ilan university on ‘The Proper Constitutional Meaning of Israel as a Jewish Nation State” he made this his life project. Purposefully, he was also the academic adviser of the democracy studies textbook for high-school, a sister-revolution of its own right, as we shall see. His influence of the discourse and the law, is most immanent then all other experts speaking before the committee. This can be seen in the fact that all three points made by Bakshi in the committee’s discussion – the constitutional anchoring of the law of Return, the problem of unification of Palestinian families and the national grounds for delegitimizing the infiltration of illegal immigrants to Israel, were echoed in the PM’s speech.

Crucially, Netanyahu’s speech, justifying the National law just after its approval, the speech that Bibi chose to also post on his personal facebook page, quotes in almost the exact words Bakshi’s position. Netanyahu claims this is a historic moment as without the National law the state of Israel as the nation state of the Jewish people cannot be secured for the future, and he chooses three main achievements of the new basic law: the constitutional anchoring of the Law of Return, the prevention of unification of Palestinian families of national grounds and the prevention of the penetration of illegal immigrants to Israel.[[106]](#footnote-106) Netanyahu ends with the main achievement of the law – constitutional right of the Jewish people and only the Jewish people – the phrase ‘uniquely Jewish’ which was drafted by Bakshi in the first Dichter proposal and was approved also at the second and third calls. Note, it is not the right of the Jewish people as an equal right for self-determination of all peoples, it is uniquely the right of, and only of, the Jewish people. The underlying legal and judicial underpinning of the national right is thus fundamentally different then the declaration of independence and it is based on Bakshi’s argument of the unique claim of the Jewish people to its holy land, that we now explore.

In the first positioned paper put before the committee, the constitutional justification for the National basic law, Bakshi writes that once the two basic laws of 1992 have passed, the court began to overrule Knesset laws which were found at conflict with human rights. “This is how Israel had a constitutional revolution. It has two main manifestations: first, the new authority of the supreme court to overrule Knesset rule on the basis of contradicting basic values. It is something that the court did not see as its role in the common law stage. Second, is moving away from common law based on former judicial precedents, to a formal constitutional court based on basic laws seen by the court as formal constitutional articles”.[[107]](#footnote-107) Therefore, he maintains, it is only natural that ‘Israel as a Jewish state’ would also be anchored as a basic law. Among the Jews, Bakshi continues, there is a consensus that Israel should be defined as the Jewish state.[[108]](#footnote-108) Again, Jews only are part of the discussion of the National law; the non-Jews are excluded even from the discussion. Thus, just like his co-member of Kohelet forum, Kontorovits, it is quite acceptable for Bakshi that only the Jews see Israel as the Jewish state. Note that the comparative aspect – the fact that the national premise is part of the introduction to the constitutions – not at a status of a basic law – is concealed of the readers. The constitutional revolution, Bakshi contends, made the national values inferior to universal human rights. Bakshi argues that as of 1992, the courts completely ignore the national demographic element in its ruling.[[109]](#footnote-109) He therefore justifies the National law in adjusting the discrepancy between the constitutional balance before 1992 and after.

In short, Bakshi’s analysis – reflected also in Netanyahu’s view – perceives Israel first and foremost as the Jewish state, enshrined in the two constitutive laws – the Law of Return and the National basic law. For him, the courts have moved from a common-law constitution in which there was a balance between the individual and national wings, to a material constitution in which only human rights were given a status of a basic law – the original sin that needs to be undone by a Zionist constitutional revolution which sets the balance right – and restores the national value as the constitutive bedrock of Israel as the Jewish state while curtailing the power of the supreme court to be the sole interpreter by explicitly erasing the equality clause, and the mention of Israel as Jewish and Democratic – from the letters of the National bill. This and only this would overturn the fact that before the National law “the right of an illegal infiltrator to roam the streets of Israel is a constitutional right, whereas the right of a Jew to make Aliya to Israel is not.”[[110]](#footnote-110)

1. Communitarianing Liberalism into Ethno-Nationalism

Bakshi’s signature in the National basic law is the wording of the article that determines that ‘the right to national sovereignty is uniquely of the Jewish people’. Historically, the justification for the right of the Jewish people to self-determination is derived from the equality of the right of all peoples to self-determination. Bakshi’s phrasing insists only the Jewish people has this right. Having been written under the hospices of the Institute for Zionist Strategies, it also echoes the demand that the national claim of Israel is of all the biblical land and that there is no such a right, to part of this land, to any other people, namely – to the Palestinians. This ‘exclusive’ right of the Jews also reiterates the superiority of the Jewish people and the inequality of other people and religions. It transforms the constitutional arena and international law as far as democratic justifications go.

The philosophical underpinning of this position is exposed in his complementary paper on the liberal justification of the National law, which was submitted to the shared committee. It is also anchored in an academic paper that Bakshi wrote with Sapir, the two experts who dominated the shared committee on the National law, called “On the Right for National Right: the Lack of the National Factor in the court’s rulings on Citizenship Law and the Entrance into Israel’.[[111]](#footnote-111) The ‘liberal justification’ introduces the justification for the National law from a liberal perspective. Nevertheless, the strawman in this position paper is individualistic liberalism which is presented as outdated, imperialistic and an improper political philosophy for our age. There are two presuppositions of the paper – that nationalism is ethno-culturally defined and that individualistic liberalism rejects the right of culture, and with it the right of national self-determination. It thus rejects interpretations of Israel as a liberal democracy and a civic notion of citizenship as a viable option for Israelis. The structure of the paper is a brief presentation of individualistic liberalism and then a plethora of critics of this liberalism which in turn turns it into national communitarianism. It then discusses the justification, from the point of view of liberal communitarianism, to Israel as the nation state of the Jewish people to reach a conclusion that the National law is necessary in order to enshrine the ethno-cultural right of the Jews.

Curiously, the 3 pages on liberalism conclude that liberalism endorses the neutrality of the state and therefore objects to national democracy. In the last 45 pages or so, no liberal thinker is mentioned and only a discussion of communitarian critique of liberalism – from Kimlicka and Walzer to Ganz and McIntyre – takes place. In no philosophical context would that be an acceptable analysis of liberalism. Yet, just like there were a vast majority of conservative thinkers giving their expert view before the Knesset committee, so in Bakshi’s paper the liberals – the greatest thinkers of democratic theory in the 20th century, Rawls, Dworkin and Habermas – are but strawmen and the whole argument is conducted from a communitarian position. The main philosophical thrust of the paper is therefore the argument that the right of culture is an extended right of the autonomous individual, a standard view within liberal communitarianism, but in the wings of this argument is the presupposition that the right to a national state is the natural extension of this view. This is of course far from being the philosophical argument of the communitarians, who usually stand by a multicultural democracy in which the only people in the ‘rule of the people’ are the citizens, and cultural rights are given to cultural minorities.

It is here that the ‘unique’ case of the Jewish people becomes central in Bakshi’s position paper. Noting that many communitarians indeed vow for a multicultural state, he argues that Israel is distinct for two possible reasons. First, his own view, which is based on Gans’s theory that the definition of the right to culture is that a community has a right to fulfill shared significant dreams. From this argument Bakshi claims that since the Jewish tradition always sought a political order, the right for its unique culture is embedded in a right for a national sovereign state. The second justification Bakshi endorses is Malach’s view concerning the Jewish state. Malach argues that in the Jewish case, the Halachic view has an immanent dimension of sovereignty to it and therefore Jewish culture is uniquely about national sovereignty.[[112]](#footnote-112) They both of course share a vision of the biblical kingdom of Israel, legitimized by God’s promise to the Jews. They also argue that the state is immanent to the people of Israel, despite the fact that for thousands of years the Jews were religious diaspora in the world, and had it not been for the Zionist secular movement of the 19th century, the state of Israel would have probably not come into being. Yet, the prayer ‘next year in Jerusalem’ serves for both thinkers – Bakshi and Malach – as the main proof of the desire to sovereignty by the Jews. In fact, Malach vehemently attacks any theories and theoreticians that claim that nationalism is a modern phenomenon like in a lecture he gave in Forum Kohelet on the right of the national Jewish state.[[113]](#footnote-113) Yes indeed, Malach and Bakshi do not only share the view of the unique right of the Jews, and only the Jews, to the state of Israel based on the religious yearning for the holy land, they both thinkers in Forum Kohelet and they both led the national revolution of civic education in Israel. The annexation of the public discourse and the resocialization of democratic studies are perhaps the most pervasive social change of the national revolution to which we turn next. What is clear is that in terms of the philosophical underpinning of the right of the national right, Bakshi and Malach led the line that deserted the Zionist historic plea on behalf of the right of self-determination as an equal right of all nations, and advocate a view which argues that the Jews alone, due to their unique culture-cum-religion, have the right to national sovereignty in the land of Israel. This philosophical undertaking has a clear international poignancy: it dismisses the equal right of other people, like the Palestinians, to their own nation state in Palestine, and it contradicts the historical argument of Israel since the declaration of independence which is based on equal rights of all peoples. The ability of Bakshi, through the Institute for Zionist Strategies and Forun Kohelet, to radically change the public discourse, influence the rightwing politicians and lead the wording of the National basic law to read ‘the right to national sovereignty is uniquely of the Jewish people’, a phrase echoed in PM Netanyahu as he speaks of those outside and inside Israel who do not accept the right of the Jews for a nation state, is remarkable. Such a dramatic influence of intellectuals on the constitutional arena symbolizes those who pull the strings behind the anti-court Zionist constitutional revolution which is in the making in Netanyahu’s 4th government.

1. National vs. Liberal Democracy: The Conservative Victory in the Battle over Civic Education

Nimrod Aloni, a public philosopher and educator, initiator of the humanist educational current and the head of the teachers’ college in Tel Aviv, described: "There is a feeling that there is a hostile takeover of Dr. Assaf Malach – the chairperson of civic education, and Dr. Aviad Bakshi – the academic adviser of the new civics textbook. They are functioning as the ideological taskforce of minister Bennet and the Jewish Home party, and have contrived a civic textbook that expels liberal democracy from its content and excludes humanist Israelis in general and the Arab national minority in particular.”[[114]](#footnote-114) It is not a coincidence: Bakshi and Malach, both writing their PhDs at national-Orthodox Bar Ilan university on theory of nationalism and the Jewish case, the former teaching there and working in Forum Kohelet, the latter heading the rightwing Policy College in the settlement of Kfar Kdumim, both religious Orthodox from the national-religious camp, represent best the profound change – overtake, as Aloni described it – over the narrative of civic education in Israel. Exposing his first encounter with Malach, Aloni says: “The talk of Dr. Asaf Malach, the chairperson of the committee on civic studies that was appointed by Naftali Bennet the education minister (after the previous chairperson of the committee, Prof. Asher Cohen, had to resign due to his participation in the primaries for Bennet’s Jewish Home party) left me and many others in a shock. The words of the man supposed to lead civic education in Israel were a vicious charge against the thinkers and activists fighting to embed liberal democracy in Israel, as if they were fool advocates and zealous followers of the religion of democracy, prisoned in narrow-minded liberal rituals. Almost a word wasn’t heard from him on the virtues of democracy in protecting human dignity, equality before the law, free press and defending the individual against tyranny and violence of the regime. It was a pure attack on those who aspire to democracy.”[[115]](#footnote-115)

The structural change led by Netanyahu’s government was a profound one. The constitutional transformation brought by the religious-national interpretation of the ‘unique’ Jewish claim to nationalism did not just change the rules of the democratic game in Israel, but was complemented by a penetrative overtake of democratic education, based on the exact same philosophy and the same Think Tanks and actors – represented here by Bakshi and Malach. The revolution in civic education was described by Pinson, an expert on democratic study for high school in Israel thus: “we can sum up the changes made to the content and message of the new civic textbook (ministry of education, 2016) as a change from a classic Zionist conception, that defines Israel as both Jewish and democratic, and sees this double-definition as both desirable and possible, to a neo-Zionist conception that prioritize Israel as a Jewish state over its democratiness while confining the democratic dimension to set of procedures and derives its justification from a particular religious interpretation of Jewish nationalism.”[[116]](#footnote-116)

This takeover by the religious-national camp had both organizational and ideological manifestations. In terms of power politics, the struggle over civic education between the liberal-secular and the religious-national camps has a long history. It became a contentious issue in the aftermath of the Rabin assassination in 1995. Rubinstein, of the Left Meretz party, and the initiator of the Human Dignity basic law which then passed as a governmental legislation forwarded by the minister of Justice Meridor of the Likud in 1992, appointed a committee for civic education headed by Prof. Kreminizer. The report suggested strengthening civic and democratic education, extending civics beyond the confinement of procedural democracy and initiating a new civics textbook.[[117]](#footnote-117) The textbook – Being Citizens in Israel – was published by 2010 and included a pluralistic democratic spirit which manifested the different currents to Israeli democracy. However, by the time the book was out civic education became one of the more divisive issues in Israeli governments. It was symbolized by the change of agenda between the two women who served as ministers of education – Livnat, of the revisionist Likud party 2001-6 and Tamir, of Labor, 2006-9. Livnat established a program of 100 concepts in Zionism, Judaism and Democracy in order to develop Jewish identity, belonging to the people and affinity to the land of Israel and the state of Israel;[[118]](#footnote-118) whereas Tamir fought to expand democratic education to two obligatory years in high schools and a program for middle schools. Gideon Saar of the Likud, that replaced Tamir in 2009, said that he will deepen the education for values, Zionism and Judaism. Yet the agents for this change, did not come from the Likud party, but from the national-religious Jewish Home. Saar appointed Prof. Asher Cohen, of Bar Ilan university, to chair the civic education professional committee and terminated the office of Stern, Navot and Adar Cohen, all liberal democrats. Asher Cohen explained his mission as the head of the civics committee by stressing that “civic education cannot be ‘from the UN’, supposedly neutral to the different approaches…Civic education should be committed to the three foundational principles – Zionism, Judaism and democracy – a commitment reflected in the public education law”.[[119]](#footnote-119) In his attitude it was clear that there is a moral choice: Israel is a Jewish state and therefore its values are Jewish. It has a democratic regime. The very distinction which was curved into the first draft of the National law by the Institute for Zionist Strategies. Asher Cohen was forced to leave his office with the establishment of the next government, in 2013, as he was a candidate at the primaries of the Jewish Home party. With the entrance of Bennet, the chairperson of the Jewish Home party, to be Netanyahu’s minister of education in 2015, the national-religious takeover was complete. The minister was the head of the religious party. He appointed Assaf Malach to replace Cohen – who now served, against the law – as a member of the committee. Malach himself was appointed against the law as the head of the committee is obliged by law to be a senior lecturer at a university – and Malach was the head of the Policy college in a settlement Kfar Kdumim – with no standing in the academic world. The chairperson of the higher pedagogical council was another member of the religious-national camp, Dr. Weinstock and, for the first time, Bennet appointed as the inspector general of the *secular* public education current in civics – a religious person. This is apart from the religious sector general inspector for civics who is of course a religious person. The civics committee, once proudly presenting the top political scientists from the four universities, was now headed by a college doctor, had two representatives of Bar Illan religious university, a member from Ariel, settlers’ university and its only secular liberal people were a lecturer from Oranim college and a teacher of civics. All the other members were rightwing religious people.

Yet the real revolution was in the ideological make up of the new civic education in Israel. The chief academic editor of the rewritten textbook in civics, was Dr. Aviad Bakshi. Into the book there were complete sections copied, without reference, from Malach’s doctorate. The two academic reports written at the request of the committee – one by Tamar Herman, president of the Open university, and another by Prof. Gavizon, of the Hebrew University – were silenced and were not incorporated into the book. [[120]](#footnote-120) But in order to understand this revolt, or revolution, it is necessary to go back to its point of origination – the Institute for Zionist Strategies, where Bakshi first drafter the National law. For the quest for a change begins with a document written for the institute by Geiger in 2009. It describes Kremnizer repport thus: “this report is emphasizing liberal-individualistic values and minimizes Zionist and collectivist values. Since its inception and until today this report is the blueprint for civic education and for the study of civics.”[[121]](#footnote-121) In accordance, it rules the original ‘Being Citizens in Israel’ textbook to be stressing liberal-individualstic values, ignoring collectivist values and belittling them. “Post modern and Post Zionist attitudes are pervasive in this book”.[[122]](#footnote-122) The report therefore recommends incorporating more Zionists, national, republican and communitarian attitudes into the book and “to incorporate into the institutions that shape civic education people who advocate these perspectives”.[[123]](#footnote-123) The report argues that the special security condition of Israel justifies patriotic education yet civic is centered on democratic education and the guides to the teachers is explained ‘solely in democratic terms’.[[124]](#footnote-124) Consequently, the matriculation exams that shape the teaching are centered on democracy and its materialization in Israel. In accordance with the Malach-Bakshi approach, the report complains that civics is being taught from a liberal-individualistic perspective (p.38). The report laments the fact that in all 16 study focus abstracts before the test, the subject of human rights and citizen rights appears. Geiger thus concludes that “the actuality and relevance expose civics to dangers of ideological bias and attempted indoctrination”.[[125]](#footnote-125) The bias of liberal, pluralistic democracy in civic education.

Well, a few years later all this has changed dramatically. When Malach enters his office as the chair of the civics committee, he is asked whether his approach to civic education would not produce ideological bias and indoctrination. He replies: “well, it is our turn now”. Interestingly enough, this expression is an exact quote of no other then his minister, Naftali Bennet. The context of Bennet’s expression is quite remarkable: Bennet is participating in the Cassearea conference, in 2014, introducing his plan for annexing the occupied territories and extending Israel’s law into the settlements. Bennet, like the founder of the Institute of Zionist Strategies Harel, is an ex-chairperson of the council of Judea and Samaria. Upon becoming a minister, he declares ‘the Left has failed. It is now our turn’.[[126]](#footnote-126) The national agenda for civic education, the constitutional project of collective rights and recognizing the Jews alone as ‘uniquely entitled’ to national state are intwined with the ideology of greater Israel – the full annexation of Judea and Samaria to Israel, with the national right reserved for Jews only. The takeover of the religious-national camp is not coincidental. The policy papers, with specific strategies how to overtake the key positions and influence the Knesset on the one hand and the key institutions in the ministry of education regarding national socialization, were prepared years in advance by the ideologues of the neoconservative right – the institute for Zionist Strategies, Forum Kohelet and the like. The philosophy at the basis finally drew together the national ethos and the sought power position. The two guides for teachers, published in 2019, were very different then their predecessors ‘biased’ in favor of liberal democracy that dominated civic education in the decades before.

The teachers’ guide for Rule of Law, published by the education ministry in 2019, states that “the rule of law is separated from the principle of human rights and conlict with it… Some emphasize in the rule of law another aspect (an essentialist aspect) that is the need of the laws to abide by justice and morality and human rights. Others think like we saw above that the principle of the rule of law is separated from the principle of human rights and therefore object this addendum.”[[127]](#footnote-127) For the Netanyahu’s government ministry of education, rule of law is not necessarily connected to human rights and justice. They object this addendum.

Not less striking, the 2019 teachers guide ‘the National basic law’. The goals of the unit are that the students would understand the law as part of the basic laws and the constitutional foundations of Israel and understand that the National law defines the characteristics of Israel as a Jewish state – not a word in the goals about democracy, equality or rights.[[128]](#footnote-128) The guide determines that in terms of values “the students will internalize that the vision of the state includes Israel as the Jewish people and understand how the National law justifies this status in Israel and in the diaspora. Again – not a word about democracy, minorities or rights. In order for the students to debate the National law, they provide for papers. The first paper – is Aviad Bakshi paper tilted ‘does the National law contradicts the right for equality’ and answers: in one word: no. The seconf paper in favor of the National law is by Gadi Taub and Nissim Soffer. But notice the paper criticizing the law – the petition to the supreme court by the committee of the Arabs in Israel, the Arab joint party, the union of the local Arab authorities and Addalla. For Israeli students, the context is clear: the Arabs (the enemies, in the patriotic reading of the Zionist civic textbook) are against the Jews and against the nation state and they seek help from the supreme court of Israel. Those who cooperate with this anti-patriotic plea, are the author of the other paper criticizing the National law – the Institute for Israeli Democracy. Without even getting into the arguments, the politicization and indoctrination is clear: Jews are for the National law, Arabs, the supreme court and civil rights leftist organizations – are against it.

1. Closure

Shaked writes on the supreme court: “In 2017 Israel, a state that its constitutional regime is composed of human rights, without any mention in her basic laws to her being the nation state of the Jewish people – Zionism has become the dead zone of its laws… Zionism should not continue – and I declare here, would not continue – to bow its head in front of the system of civic rights interpreted in a universal manner in a way that disconnects it from the protocols of the Knesset and the historical legislation we all know”.

Namely, what Gavison feared, Shaked hopes for: Changing the balance between human rights and the Jewishness of the states in its constitutional design: Jewish first, human rights later. From the politicians’ side of the game, this was mission accomplished. Yet the philosophical and systemic thinking about the National law, was only a partial piece of the Zionist revolution planned by those pulling the strings, the rightwing neoconservative NGOs, to which we now turn.

**Chapter 3**

**The Anti-Court-yard Constitutionalists: Think-to-Do Tanks and Zionising Law and Civic Education**

The political scene may often be misleading. The picture one gets from the formal protocols, if we take the National law as a case in point, is a discussion between opposition and coalition on equality and Jewish and Democratic in relation to the new national basic law. Yet, as this chapter unfolds, it is clear that the real discussions were among the coalition members. In this part we finally get to the protagonists of the national arena: the neoconservative think tank that initiated, drafted, gave the arguments and saw the whole process to its constitutional end. Crucially, their role was far beyond the dry letter of the law. Indeed, the plan of resocialization of the Jewish citizens of Israel was the big plan, and the work was done complementarily – on both the judicial and educational systems. Far from being ‘think’ tanks, organizations like Forum Kohelet, the Institute for Zionist Strategies and Im Tirzu, devised the ideological scene, worked closely with the politicians and changed the public discourse as well as the official socialization process of the Jews in Israel. The latter, In Tirzu, presided over Netanyahu’s personal campaign in 2019, as Erez Tadmor, who wrote the deep state argument in Israeli language – titling his book “Why do you vote for the right and get the Left in power” – became the head of the election campaign of Netanyahu. The three entwined levels – the constitutional, educational and discursive arena – demonstrate the breath of the influence of the neoconservative think tank as they become the prime actor in Israel’s re-ideologization and de-democratization.

The one MK in the committee that conceptualized the polarization within the right, between the liberals and the neoconservatives, is Folkman of Kulanu. Kulanu saw itself as the gatekeeper of democracy in the pure rightwing Netanyahu government. When Folkman receives his turn to speak, at the second meeting of the committee, he refers to the three experts that spoke before him, at length, and exemplifies: “I have to start with a procedural comment, chairperson. It is important to me to draw attention. I think highly of the experts that spoke before me, but they all have one thing in common which bothers me. It bothers me because I do deal with the balance between conservatism and liberalism, and the three speakers, one of whom was also my teacher, Prof. Diskin, Prof. Sapir and Prof. Kontorovits, are all staff in one organization called Forum Kohelet, which is a respectable organization, but one that represents, in political science analysis, a rightwing conservatism, republicanism, of a specific – totally legitimate – kind.” The choice to bring conservative experts witnesses as the first three speakers, together with Gavison who is herself conservative in terms of national democracy, is the chairperson prerogative – Ohana. Forum Kohelet, as well as The Institute for Zionist Strategies, initiated by Israel Harel the founder of the settlers’ council, and the Begin Institute were three instrumental rightwing think tanks that worked behind the scene to initiate the National law, to write the proposed bill, to provide the background papers to the committee, to lobby the MKs and to lead the basic law every step of the way. It is to this work behind the scene, so typical of their dominance in influencing the fourth Netanyahu government, and their arguments which we now turn.

1. **The Neoconservative Experts: The Anti-Court Revolution**

The constitutional revolution they had in mind is the real driving force behind the National law. While the MKs of the committee were debating nationalism and equality, they were thinking of the supreme court rulings. The way to overturn the constitutional revolution, was in their minds through the constitutional change of the basic laws. We take the second session of the shared committee of the National law, which was the main session which invited experts, as a case in point to analyze the ideological battleground against equality, seen from the constitutional perspective. Indeed, there were 10 experts giving their academic analysis at the second meeting. 8 of them were conservatives, strong supporters of the National law and resisting the supreme court’s “constitutional revolution” and its activism; two speakers, speaking late in the session and but a few sentences each, were from the Institute for Israeli democracy, representing a liberal perspective. This is despite the fact that the majority of the academic community supports the equality clause as part of the National law, and probably resists the whole change of balance introduced by prioritizing collective rights over individual citizens.

The clear bias towards neoconservatism was already reflected in the fact that the initiator of the National law was the settlers’ institute for Zionist Strategies, attempting not just to legitimize the settlements in the occupied territories but to make them the jewel in the contemporary Zionist crown. Making the way for annexing Judea and Samaria was the overtone of the position papers and the potential of a National law without an equality clause was fundamental for future annexation of the territories without giving equal rights to the Palestinians. It is therefore crucial that all the think tanks pushing the National law to its materialization were most often than not, of the religious Zionist kind, casted in a neoconservative ideology of ethno-religious brand. Putting Judaism before and above democracy, was at the forefront of their agenda. Likewise, the most influential positions papers put before the shared committee towards the third meeting, were written by those rightwing institutions and cited by the neoconservative ministers like Shaked and Levin.[[129]](#footnote-129) Thus, besides the Gavison report, there were three position papers the Institute of Zionist Strategies, all three written by Aviad Bakshi who by then became the head of the legal department of Forum Kohelet, the institute which also drove the National law and produced the big conference in which the top politicians who were involved in the actual legislation took part, one position paper by the Begin Institute, one by the Forum for Constitutional Law, and one by Way of Life, all arguing for the National Law without equality. The positions papers by the Institute for Israeli Democracy, the Civil Rights Organization and Avraham Fund, which supported the equality clause or rejected the National law altoghether, had almost no influence on the committee and no mentioning in the discussions.

MK Folkman certainly established the distinction between liberal and conservatives, or more accurate still, liberal nationalism and neoconservative nationalism. He thereby exposed what MK Benny Begin already implied before – that the construction of the committee, the subtle understandings that already existed within the coalition, and the experts used as the main academic voice in the discussion, are of the same cloth: neo-conservatism. The series of arguments put forward by these experts set the tone of the coalition members in the committee.

The meeting was opened by a presentation of Prof. Gavison. Gavison puts forward three arguments: first, the National law is the law of all laws, defining Israel outside and inside, and therefore should seek the broadest consensus – which it does not currently have. Second, it should be a declarative Basic Law: Vision. Third, if must be, and the committee decides to go along with the National law as a basic law, which she vows against, it should definitely include all three elements of Israel – democracy, civil rights and Israel as the Jewish nation state. All her recommendations were rejected in the final bill that was passed.

Second spoke Prof. Gideon Sapir of Bar Ilan law faculty and Forum Kohelet. He opens his comments thus: “25 years ago, a group of determined-minded MKs has sneaked two new basic laws into the agenda of the state of Israel. The supreme court has hurried to declare it is a constitutional revolution and since then it uses these basic laws and other basic laws to write a court’s homemade constitution.”[[130]](#footnote-130) Notice that he ignores the fact that the Likud, the dominant party, then and now, was the leading force of this group. The impression of the listener is that it was a radical left act of conspiring within the Knesset, not an alliance between the two major parties – Likud and Labor. He further argues that since there is no option to change the rules of the game, the Knesset needs to send the court a clear message of a change of values: away from the egalitarian democracy into a Jewish nation state. The new basic law would enforce the court to consider the national argument, Sapir claims. So, it is definitely a values revolution which he advocates, which should force the court to roll back the constitutional revolution which put equality as the overriding principle. Thus, it is purposefully ignoring the fact that Meridor as the Justice minister of the Likud led the 1992 laws, and that it should be the Knesset who legislates equality as the democratic value. On the contrary – Sapir wants to use the National law to make sure nationalism overrides equality and to force the courts to adopt this attitude. Sapir further argues that it is true there is no consensus on the National law. But, he reiterates, consensus of whom? The Arab citizens of Israel are not to be taken into consideration since “if there is a large majority of the Jewish people in Israel who wants to enshrine the Jewish character of the state, it should definitely in my opinion, suffice”. Thus, the Arab citizens do not count. 20% of the citizens are discounted as part of the discussion, let alone decision and it is only the Jews that need to confirm this legislation. Not only the whole idea behind the National law is to change the value priority order, but the Arab citizens should not even be counted in. All-Jewish consensus suffice. As it happened, all the recommendations of Sapir were fully adopted by the committee: only national elements in the National law, no mention of equality or democracy, and no non-Jew voted for the bill, as it passed barely with the votes of the rightwing coalition, with all the non-Jewish members of the coalition and Knesset voting against. The Zionist right (Begin and Orly Levi Abuksis) and center and Left voted *en masse* against this change of values enshrined in a constitutional change. Yet, the neoconservative right won the day.

Next of the expert witnesses is Prof. Diskin of Forum Kohelet. He argues that the National law will be a constitutional revolution in its own right as the law which is later legislated has priority over former laws and therefore the National law should override the Human dignity and Freedom law as it will be constituted later. He therefore thinks there is no need to mention that the National law would override other laws, as this will anyways be the case. Dr. Vinitsky, of the Begin Institute, speaking in the third meeting, strengthened this position: the later law has priority over the former basic laws. The constitutional re-revolution, for the rightwing expert part, was on its way.

Prof. Kontorovits, the next expert witness, argued that democracies constitute their nationality and religion and that this is the case with many European nations. The most striking example he chooses is Slovenia. “Slovenia says it is the state of all its citizens but that this is based on Slovenia materializing the national right of the Slovenians, not of all its citizens”. This is striking as Prof. Jacobson, speaking at length of Slovenia, took it as the key example for the fact that even the most nationalistic democracy constitution-wise, Slovenia, defines itself at the national part – not just at the bill of rights part of the constitution – as a state of all its citizens. Kontorovits thus uses the same example to stress there are national democracies, but he refuses to add an equality clause to the National law, or to confim – as the Slovenia constitution does – that it is a state of all its citizens. Indeed, Jacobson stresses that all national democracies, without an exception, legislate equality of all their citizens into the national part of the constitution. Israel, Jacobson maintains, would be worse than Iran should it adopt the National law without the equality of all its citizens. However, the committee accepted Kontorovits’ position and not Jacobson’s. The National law excluded equality clause thus Israel becomes the only national democracy which does not perceive itself as also being a democracy – a state of all its citizens. The reason for that is, as we already demonstrated, the constitutional revolution and the fear of the supreme court interpreting an equality clause as equal to the national clause.

The next two experts who speak very briefly are Kremnizer and Stern, the two deputies of the president of the Institute for Israeli democracy. Kremnizer argues quite simply: there is no democracy in the world which is not the state of all its citizens. The silence of the National law on the very existence of the non-Jewish minorities, says Kremnizer, as is the constitution of Israel as a state of anti-equality, is a disgrace and the National law should not be constituted. Stern follows by stating the National law is a revolution, the no-equality revolution. It strives under any international law norm and against the ethos of the Jews as a minority throughout the Jewish history. Both remarks were of course set aside by the committee and completely ignored, but the reasoning for introducing the no-equality revolution, and the silence on the non-Jewish minorities is justified by perhaps the most influential neoconservative thinker – Aviad Bakshi of Kohelet Forum – who speaks next.

In his opening remarks before the shared committee, Bakshi claims that until 1992 Israel had a material constitution and through it defended both human and national rights. However, “there was a constitutional revolution and it cannot be ignored. there is a constitution to Israel, human rights are protected. On the other side, the balance with the national consideration is lacking, like an airplane that departs with one wing of full load and the other empty. The chances for an accident in immanent”.[[131]](#footnote-131) Thus, dismissing (in fact, ignoring) Kremnizer and Stern’s concerns, he analyzes the situation as completely the opposite – not that equality of rights need to be protected, but they are the only rights that have constitutional protection and therefore should be balanced against with National rights. He further argues that the fact that the law of return is not constitutionally grounded is a disgrace that needs to be immediately fixed. Equality, he claims, is not on the agenda of the National law, as it is already enshrined in the constitution as a basic law, and creates imbalance. “The situation in which, as it stands today, according to Israeli ruling, the right of an illegal infiltrator to roam the streets of Israel is a constitutional right, whereas the right of a Jew to make Aliya to Israel is not, is a complete disgrace and should be changed”.[[132]](#footnote-132) Bakshi also justifies the clause of the superiority of the National law by saying it does not make it superior to other basic laws, only to other laws and equates its status with the other basic laws.

Dr. Vinitky of the Begin Institute, speaking after Bakshi, complements this claim arguing that the reason to rule against infiltrators should not be on security grounds, but on national grounds: “we all know that the story behind the story is Jewish majority, keeping the Jewish majority, but no one can say it. Why? Because it is not constitutionally grounded. Vinitsky further claims – and justice minister Shaked quotes in the meeting – that there are three parts of democratic constitutions – institutional, bill of rights and a national part. In the Israeli case, the first two are under way and therefore it is time to constitute the latter. Vinitsky sets the terms of the discussion as the claim there are three constitutive parts to a democratic constitution – institutional part, bill of rights, and a national part – is highly misleading. In the majority of the democratic constitutions either there is no ‘national’ part or ‘national’ means – all the citizens of the state comprise the demos. In those particular cases of national democracies, the ‘national’ part is usually the introduction to the constitution – like the preamble of the American constitution “we the people” – the national part does not have constitutional but declarative value. This was the main thrust of the Gavizon argument and her suggestion to create a basic law: vision as the declarative part of the Israeli constitution. As Jacobson demonstrated, even the most nationalistic constitutions, all have an equality clause, and usually a clause that protects not just human rights but (collective) minority rights, as part of the so-called ‘national’ part. The whole framework of the debate is acutely titled towards the ‘lack’ of a national part which is not necessarily the case from a comparative perspective. What is definitely the case, is that the shared committee decided to erase the equality clause, and even a mentioning of Israel as a Jewish and democratic state – for the main reason that the court may interpret equality as a constitutive principle whereas if equality is not part of either the human dignity basic laws or the National basic law, the courts’ hands will be tied and the national right would at least balance, if not overcome, the equal rights of all citizens. As Kremnizer put simply – there is no democracy without equal right to all its citizens.

The last speaker at the second session, and the final contextualization is made by Simcha Rothman the chair of the movement for governability and democracy, and a leading neoconservative advocate. He explicates that Azmi Bashara, the founder of the BALAD Arab party, ruined the term ‘state of all its citizens’ and that judge Aharon Barak, the president of the supreme court, ruined for us all the term equality (note the equation, a confined terrorist and the president of the supreme court in the same sentence). The problem is that the interpreter of the law is the supreme court and not the Knesset, said Rothman. He points to the overcoming clause, explaining that it is meant to curtail the power of the court to overrule as unconstitutional regular laws of the Knesset, as the main path to create a change. Indeed, the politicians Ohana and Levin most definitely saw the overcoming clause as part of the Netanyahu’s government anti-court revolution. Levin, becoming the chairperson of the Knesset, has also enlisted Rothman as part of his shortlist for the Knesset Attorney General.

1. **Bakshi’s Pen as a Mighty Sword**

In a paper titled “Zionist Constitutional Revolution” Dr. Aviad Bakshi argues: “the likely passage of the nation-state bill is the most important Zionist development to be inserted into Israel’s lawbook since the Law of Return was passed in 1950.”[[133]](#footnote-133) Note that there is no mention of the Human Dignity basic law: the two most important constitutional laws of the state of Israel for the right are the Law of Return and the National law. No mentioning of democracy either. His declarations and arguments, cited almost word for word by PM Netanyahu as he introduces the National bill which just passed. Who is Bakshi and why does the PM recite his arguments so closely?

Bakshi is the most adamant ideologue of this Neoconservative position, the only person that submitted three position papers to the shared committee for the National law, and drafted the original National bill when he was still in the Institute for Zionist Strategies, thereafter joining Forum Kohelet as the head of its constitutional department thus overseeing the changes through the Knesset. Writing his PhD at Bar Ilan university on ‘The Proper Constitutional Meaning of Israel as a Jewish Nation State” he made this his life project. Purposefully, he was also the academic adviser of the democracy studies textbook for high-school, a sister-revolution of its own right, as we shall see. His influence of the discourse and the law, is most immanent then all other experts speaking before the committee. This can be seen in the fact that all three points made by Bakshi in the committee’s discussion – the constitutional anchoring of the law of Return, the problem of unification of Palestinian families and the national grounds for delegitimizing the infiltration of illegal immigrants to Israel, were echoed in the PM’s speech.

Crucially, Netanyahu’s speech, justifying the National law just after its approval, the speech that Bibi chose to also post on his personal facebook page, quotes in almost the exact words Bakshi’s position. Netanyahu claims this is a historic moment as without the National law the state of Israel as the nation state of the Jewish people cannot be secured for the future, and he chooses three main achievements of the new basic law: the constitutional anchoring of the Law of Return, the prevention of unification of Palestinian families of national grounds and the prevention of the penetration of illegal immigrants to Israel.[[134]](#footnote-134) Netanyahu ends with the main achievement of the law – constitutional right of the Jewish people and only the Jewish people – the phrase ‘uniquely Jewish’ which was drafted by Bakshi in the first Dichter proposal and was approved also at the second and third calls. Note, it is not the right of the Jewish people as an equal right for self-determination of all peoples, it is uniquely the right of, and only of, the Jewish people. The underlying legal and judicial underpinning of the national right is thus fundamentally different then the declaration of independence and it is based on Bakshi’s argument of the unique claim of the Jewish people to its holy land, that we now explore.

In the first positioned paper put before the committee, the constitutional justification for the National basic law, Bakshi writes that once the two basic laws of 1992 have passed, the court began to overrule Knesset laws which were found at conflict with human rights. “This is how Israel had a constitutional revolution. It has two main manifestations: first, the new authority of the supreme court to overrule Knesset rule on the basis of contradicting basic values. It is something that the court did not see as its role in the common law stage. Second, is moving away from common law based on former judicial precedents, to a formal constitutional court based on basic laws seen by the court as formal constitutional articles”.[[135]](#footnote-135) Therefore, he maintains, it is only natural that ‘Israel as a Jewish state’ would also be anchored as a basic law. Among the Jews, Bakshi continues, there is a consensus that Israel should be defined as the Jewish state.[[136]](#footnote-136) Again, Jews only are part of the discussion of the National law; the non-Jews are excluded even from the discussion. Thus, just like his co-member of Kohelet forum, Kontorovits, it is quite acceptable for Bakshi that only the Jews see Israel as the Jewish state. Note that the comparative aspect – the fact that the national premise is part of the introduction to the constitutions – not at a status of a basic law – is concealed of the readers. The constitutional revolution, Bakshi contends, made the national values inferior to universal human rights. Bakshi argues that as of 1992, the courts completely ignore the national demographic element in its ruling.[[137]](#footnote-137) He therefore justifies the National law in adjusting the discrepancy between the constitutional balance before 1992 and after.

In short, Bakshi’s analysis – reflected also in Netanyahu’s view – perceives Israel first and foremost as the Jewish state, enshrined in the two constitutive laws – the Law of Return and the National basic law. For him, the courts have moved from a common-law constitution in which there was a balance between the individual and national wings, to a material constitution in which only human rights were given a status of a basic law – the original sin that needs to be undone by a Zionist constitutional revolution which sets the balance right – and restores the national value as the constitutive bedrock of Israel as the Jewish state while curtailing the power of the supreme court to be the sole interpreter by explicitly erasing the equality clause, and the mention of Israel as Jewish and Democratic – from the letters of the National bill. This and only this would overturn the fact that before the National law “the right of an illegal infiltrator to roam the streets of Israel is a constitutional right, whereas the right of a Jew to make Aliya to Israel is not.”[[138]](#footnote-138)

1. **Communitarianing Liberalism into Ethno-Nationalism**

Bakshi’s signature in the National basic law is the wording of the article that determines that ‘the right to national sovereignty is uniquely of the Jewish people’. Historically, the justification for the right of the Jewish people to self-determination is derived from the equality of the right of all peoples to self-determination. Bakshi’s phrasing insists only the Jewish people has this right. Having been written under the hospices of the Institute for Zionist Strategies, it also echoes the demand that the national claim of Israel is of all the biblical land and that there is no such a right, to part of this land, to any other people, namely – to the Palestinians. This ‘exclusive’ right of the Jews also reiterates the superiority of the Jewish people and the inequality of other people and religions. It transforms the constitutional arena and international law as far as democratic justifications go.

The philosophical underpinning of this position is exposed in his complementary paper on the liberal justification of the National law, which was submitted to the shared committee. It is also anchored in an academic paper that Bakshi wrote with Sapir, the two experts who dominated the shared committee on the National law, called “On the Right for National Right: the Lack of the National Factor in the court’s rulings on Citizenship Law and the Entrance into Israel’.[[139]](#footnote-139) The ‘liberal justification’ introduces the justification for the National law from a liberal perspective. Nevertheless, the strawman in this position paper is individualistic liberalism which is presented as outdated, imperialistic and an improper political philosophy for our age. There are two presuppositions of the paper – that nationalism is ethno-culturally defined and that individualistic liberalism rejects the right of culture, and with it the right of national self-determination. It thus rejects interpretations of Israel as a liberal democracy and a civic notion of citizenship as a viable option for Israelis. The structure of the paper is a brief presentation of individualistic liberalism and then a plethora of critics of this liberalism which in turn turns it into national communitarianism. It then discusses the justification, from the point of view of liberal communitarianism, to Israel as the nation state of the Jewish people to reach a conclusion that the National law is necessary in order to enshrine the ethno-cultural right of the Jews.

Curiously, the 3 pages on liberalism conclude that liberalism endorses the neutrality of the state and therefore objects to national democracy. In the last 45 pages or so, no liberal thinker is mentioned and only a discussion of communitarian critique of liberalism – from Kimlicka and Walzer to Ganz and McIntyre – takes place. In no philosophical context would that be an acceptable analysis of liberalism. Yet, just like there were a vast majority of conservative thinkers giving their expert view before the Knesset committee, so in Bakshi’s paper the liberals – the greatest thinkers of democratic theory in the 20th century, Rawls, Dworkin and Habermas – are but strawmen and the whole argument is conducted from a communitarian position. The main philosophical thrust of the paper is therefore the argument that the right of culture is an extended right of the autonomous individual, a standard view within liberal communitarianism, but in the wings of this argument is the presupposition that the right to a national state is the natural extension of this view. This is of course far from being the philosophical argument of the communitarians, who usually stand by a multicultural democracy in which the only people in the ‘rule of the people’ are the citizens, and cultural rights are given to cultural minorities.

It is here that the ‘unique’ case of the Jewish people becomes central in Bakshi’s position paper. Noting that many communitarians indeed vow for a multicultural state, he argues that Israel is distinct for two possible reasons. First, his own view, which is based on Gans’s theory that the definition of the right to culture is that a community has a right to fulfill shared significant dreams. From this argument Bakshi claims that since the Jewish tradition always sought a political order, the right for its unique culture is embedded in a right for a national sovereign state. The second justification Bakshi endorses is Malach’s view concerning the Jewish state. Malach argues that in the Jewish case, the Halachic view has an immanent dimension of sovereignty to it and therefore Jewish culture is uniquely about national sovereignty.[[140]](#footnote-140) They both of course share a vision of the biblical kingdom of Israel, legitimized by God’s promise to the Jews. They also argue that the state is immanent to the people of Israel, despite the fact that for thousands of years the Jews were religious diaspora in the world, and had it not been for the Zionist secular movement of the 19th century, the state of Israel would have probably not come into being. Yet, the prayer ‘next year in Jerusalem’ serves for both thinkers – Bakshi and Malach – as the main proof of the desire to sovereignty by the Jews. In fact, Malach vehemently attacks any theories and theoreticians that claim that nationalism is a modern phenomenon like in a lecture he gave in Forum Kohelet on the right of the national Jewish state.[[141]](#footnote-141) Yes indeed, Malach and Bakshi do not only share the view of the unique right of the Jews, and only the Jews, to the state of Israel based on the religious yearning for the holy land, they both thinkers in Forum Kohelet and they both led the national revolution of civic education in Israel. The annexation of the public discourse and the resocialization of democratic studies are perhaps the most pervasive social change of the national revolution to which we turn next. What is clear is that in terms of the philosophical underpinning of the right of the national right, Bakshi and Malach led the line that deserted the Zionist historic plea on behalf of the right of self-determination as an equal right of all nations, and advocate a view which argues that the Jews alone, due to their unique culture-cum-religion, have the right to national sovereignty in the land of Israel. This philosophical undertaking has a clear international poignancy: it dismisses the equal right of other people, like the Palestinians, to their own nation state in Palestine, and it contradicts the historical argument of Israel since the declaration of independence which is based on equal rights of all peoples. The ability of Bakshi, through the Institute for Zionist Strategies and Forun Kohelet, to radically change the public discourse, influence the rightwing politicians and lead the wording of the National basic law to read ‘the right to national sovereignty is uniquely of the Jewish people’, a phrase echoed in PM Netanyahu as he speaks of those outside and inside Israel who do not accept the right of the Jews for a nation state, is remarkable. Such a dramatic influence of intellectuals on the constitutional arena symbolizes those who pull the strings behind the anti-court Zionist constitutional revolution which is in the making in Netanyahu’s 4th government.

1. **National vs. Liberal Democracy: The Conservative Victory in the Battle over Civic Education**

Nimrod Aloni, a public philosopher and educator, initiator of the humanist educational current and the head of the teachers’ college in Tel Aviv, described: "There is a feeling that there is a hostile takeover of Dr. Assaf Malach – the chairperson of civic education, and Dr. Aviad Bakshi – the academic adviser of the new civics textbook. They are functioning as the ideological taskforce of minister Bennet and the Jewish Home party, and have contrived a civic textbook that expels liberal democracy from its content and excludes humanist Israelis in general and the Arab national minority in particular.”[[142]](#footnote-142) It is not a coincidence: Bakshi and Malach, both writing their PhDs at national-Orthodox Bar Ilan university on theory of nationalism and the Jewish case, the former teaching there and working in Forum Kohelet, the latter heading the rightwing Policy College in the settlement of Kfar Kdumim, both religious Orthodox from the national-religious camp, represent best the profound change – overtake, as Aloni described it – over the narrative of civic education in Israel. Exposing his first encounter with Malach, Aloni says: “The talk of Dr. Asaf Malach, the chairperson of the committee on civic studies that was appointed by Naftali Bennet the education minister (after the previous chairperson of the committee, Prof. Asher Cohen, had to resign due to his participation in the primaries for Bennet’s Jewish Home party) left me and many others in a shock. The words of the man supposed to lead civic education in Israel were a vicious charge against the thinkers and activists fighting to embed liberal democracy in Israel, as if they were fool advocates and zealous followers of the religion of democracy, prisoned in narrow-minded liberal rituals. Almost a word wasn’t heard from him on the virtues of democracy in protecting human dignity, equality before the law, free press and defending the individual against tyranny and violence of the regime. It was a pure attack on those who aspire to democracy.”[[143]](#footnote-143)

The structural change led by Netanyahu’s government was a profound one. The constitutional transformation brought by the religious-national interpretation of the ‘unique’ Jewish claim to nationalism did not just change the rules of the democratic game in Israel, but was complemented by a penetrative overtake of democratic education, based on the exact same philosophy and the same Think Tanks and actors – represented here by Bakshi and Malach. The revolution in civic education was described by Pinson, an expert on democratic study for high school in Israel thus: “we can sum up the changes made to the content and message of the new civic textbook (ministry of education, 2016) as a change from a classic Zionist conception, that defines Israel as both Jewish and democratic, and sees this double-definition as both desirable and possible, to a neo-Zionist conception that prioritize Israel as a Jewish state over its democratiness while confining the democratic dimension to set of procedures and derives its justification from a particular religious interpretation of Jewish nationalism.”[[144]](#footnote-144)

This takeover by the religious-national camp had both organizational and ideological manifestations. In terms of power politics, the struggle over civic education between the liberal-secular and the religious-national camps has a long history. It became a contentious issue in the aftermath of the Rabin assassination in 1995. Rubinstein, of the Left Meretz party, and the initiator of the Human Dignity basic law which then passed as a governmental legislation forwarded by the minister of Justice Meridor of the Likud in 1992, appointed a committee for civic education headed by Prof. Kreminizer. The report suggested strengthening civic and democratic education, extending civics beyond the confinement of procedural democracy and initiating a new civics textbook.[[145]](#footnote-145) The textbook – Being Citizens in Israel – was published by 2010 and included a pluralistic democratic spirit which manifested the different currents to Israeli democracy. However, by the time the book was out civic education became one of the more divisive issues in Israeli governments. It was symbolized by the change of agenda between the two women who served as ministers of education – Livnat, of the revisionist Likud party 2001-6 and Tamir, of Labor, 2006-9. Livnat established a program of 100 concepts in Zionism, Judaism and Democracy in order to develop Jewish identity, belonging to the people and affinity to the land of Israel and the state of Israel;[[146]](#footnote-146) whereas Tamir fought to expand democratic education to two obligatory years in high schools and a program for middle schools. Gideon Saar of the Likud, that replaced Tamir in 2009, said that he will deepen the education for values, Zionism and Judaism. Yet the agents for this change, did not come from the Likud party, but from the national-religious Jewish Home. Saar appointed Prof. Asher Cohen, of Bar Ilan university, to chair the civic education professional committee and terminated the office of Stern, Navot and Adar Cohen, all liberal democrats. Asher Cohen explained his mission as the head of the civics committee by stressing that “civic education cannot be ‘from the UN’, supposedly neutral to the different approaches…Civic education should be committed to the three foundational principles – Zionism, Judaism and democracy – a commitment reflected in the public education law”.[[147]](#footnote-147) In his attitude it was clear that there is a moral choice: Israel is a Jewish state and therefore its values are Jewish. It has a democratic regime. The very distinction which was curved into the first draft of the National law by the Institute for Zionist Strategies. Asher Cohen was forced to leave his office with the establishment of the next government, in 2013, as he was a candidate at the primaries of the Jewish Home party. With the entrance of Bennet, the chairperson of the Jewish Home party, to be Netanyahu’s minister of education in 2015, the national-religious takeover was complete. The minister was the head of the religious party. He appointed Assaf Malach to replace Cohen – who now served, against the law – as a member of the committee. Malach himself was appointed against the law as the head of the committee is obliged by law to be a senior lecturer at a university – and Malach was the head of the Policy college in a settlement Kfar Kdumim – with no standing in the academic world. The chairperson of the higher pedagogical council was another member of the religious-national camp, Dr. Weinstock and, for the first time, Bennet appointed as the inspector general of the *secular* public education current in civics – a religious person. This is apart from the religious sector general inspector for civics who is of course a religious person. The civics committee, once proudly presenting the top political scientists from the four universities, was now headed by a college doctor, had two representatives of Bar Illan religious university, a member from Ariel, settlers’ university and its only secular liberal people were a lecturer from Oranim college and a teacher of civics. All the other members were rightwing religious people.

Yet the real revolution was in the ideological make up of the new civic education in Israel. The chief academic editor of the rewritten textbook in civics, was Dr. Aviad Bakshi. Into the book there were complete sections copied, without reference, from Malach’s doctorate. The two academic reports written at the request of the committee – one by Tamar Herman, president of the Open university, and another by Prof. Gavizon, of the Hebrew University – were silenced and were not incorporated into the book. [[148]](#footnote-148) But in order to understand this revolt, or revolution, it is necessary to go back to its point of origination – the Institute for Zionist Strategies, where Bakshi first drafter the National law. For the quest for a change begins with a document written for the institute by Geiger in 2009. It describes Kremnizer repport thus: “this report is emphasizing liberal-individualistic values and minimizes Zionist and collectivist values. Since its inception and until today this report is the blueprint for civic education and for the study of civics.”[[149]](#footnote-149) In accordance, it rules the original ‘Being Citizens in Israel’ textbook to be stressing liberal-individualstic values, ignoring collectivist values and belittling them. “Post modern and Post Zionist attitudes are pervasive in this book”.[[150]](#footnote-150) The report therefore recommends incorporating more Zionists, national, republican and communitarian attitudes into the book and “to incorporate into the institutions that shape civic education people who advocate these perspectives”.[[151]](#footnote-151) The report argues that the special security condition of Israel justifies patriotic education yet civic is centered on democratic education and the guides to the teachers is explained ‘solely in democratic terms’.[[152]](#footnote-152) Consequently, the matriculation exams that shape the teaching are centered on democracy and its materialization in Israel. In accordance with the Malach-Bakshi approach, the report complains that civics is being taught from a liberal-individualistic perspective (p.38). The report laments the fact that in all 16 study focus abstracts before the test, the subject of human rights and citizen rights appears. Geiger thus concludes that “the actuality and relevance expose civics to dangers of ideological bias and attempted indoctrination”.[[153]](#footnote-153) The bias of liberal, pluralistic democracy in civic education.

Well, a few years later all this has changed dramatically. When Malach enters his office as the chair of the civics committee, he is asked whether his approach to civic education would not produce ideological bias and indoctrination. He replies: “well, it is our turn now”. Interestingly enough, this expression is an exact quote of no other then his minister, Naftali Bennet. The context of Bennet’s expression is quite remarkable: Bennet is participating in the Cassearea conference, in 2014, introducing his plan for annexing the occupied territories and extending Israel’s law into the settlements. Bennet, like the founder of the Institute of Zionist Strategies Harel, is an ex-chairperson of the council of Judea and Samaria. Upon becoming a minister, he declares ‘the Left has failed. It is now our turn’.[[154]](#footnote-154) The national agenda for civic education, the constitutional project of collective rights and recognizing the Jews alone as ‘uniquely entitled’ to national state are intwined with the ideology of greater Israel – the full annexation of Judea and Samaria to Israel, with the national right reserved for Jews only. The takeover of the religious-national camp is not coincidental. The policy papers, with specific strategies how to overtake the key positions and influence the Knesset on the one hand and the key institutions in the ministry of education regarding national socialization, were prepared years in advance by the ideologues of the neoconservative right – the institute for Zionist Strategies, Forum Kohelet and the like. The philosophy at the basis finally drew together the national ethos and the sought power position. The two guides for teachers, published in 2019, were very different then their predecessors ‘biased’ in favor of liberal democracy that dominated civic education in the decades before.

The teachers’ guide for Rule of Law, published by the education ministry in 2019, states that “the rule of law is separated from the principle of human rights and conlict with it… Some emphasize in the rule of law another aspect (an essentialist aspect) that is the need of the laws to abide by justice and morality and human rights. Others think like we saw above that the principle of the rule of law is separated from the principle of human rights and therefore object this addendum.”[[155]](#footnote-155) For the Netanyahu’s government ministry of education, rule of law is not necessarily connected to human rights and justice. They object this addendum.

Not less striking, the 2019 teachers guide ‘the National basic law’. The goals of the unit are that the students would understand the law as part of the basic laws and the constitutional foundations of Israel and understand that the National law defines the characteristics of Israel as a Jewish state – not a word in the goals about democracy, equality or rights.[[156]](#footnote-156) The guide determines that in terms of values “the students will internalize that the vision of the state includes Israel as the Jewish people and understand how the National law justifies this status in Israel and in the diaspora. Again – not a word about democracy, minorities or rights. In order for the students to debate the National law, they provide for papers. The first paper – is Aviad Bakshi paper tilted ‘does the National law contradicts the right for equality’ and answers: in one word: no. The seconf paper in favor of the National law is by Gadi Taub and Nissim Soffer. But notice the paper criticizing the law – the petition to the supreme court by the committee of the Arabs in Israel, the Arab joint party, the union of the local Arab authorities and Addalla. For Israeli students, the context is clear: the Arabs (the enemies, in the patriotic reading of the Zionist civic textbook) are against the Jews and against the nation state and they seek help from the supreme court of Israel. Those who cooperate with this anti-patriotic plea, are the author of the other paper criticizing the National law – the Institute for Israeli Democracy. Without even getting into the arguments, the politicization and indoctrination is clear: Jews are for the National law, Arabs, the supreme court and civil rights leftist organizations – are against it.

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102. 18/9/2017 Sapir open Knesset protocol. [↑](#footnote-ref-102)
103. Second meeting of the committee [↑](#footnote-ref-103)
104. <https://oknesset.org/meetings/2/0/2020568.html>

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105. <https://en.kohelet.org.il/publication/a-zionist-constitutional-revolution> [↑](#footnote-ref-105)
106. <https://www.facebook.com/Netanyahu/videos/10155759337537076> [↑](#footnote-ref-106)
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108. Ibid. p. 14. [↑](#footnote-ref-108)
109. P.39 [↑](#footnote-ref-109)
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