CHAPTER II
conceptualization of the religious experience and traditions in terms of norms, ideas, and human needs, reconciled the present with the past. It also liberated the present and the future from the religious authority of the past.\textsuperscript{2}

Since Zionism drew heavily on religious symbols to organize support among world Jewry, its leaders found it difficult to start a \textit{kulturkampf}\textsuperscript{6} immediately. However, Zionism though led by a predominantly secular leadership could not effect a clean break from religion as anticipated by Arieli. As an intellectual enterprise and as a political vocation it had to harbor religion on a much more manifest and consequential plane. This chapter will first provide a review of the constitutional debate which defined the bounds of ideological discourse, an overview of the political system and the burgeoning institutions that it inherited from the pre-state period, and then analyze the interaction between religion and state. In the process it will chart the political activity of the religious parties; the ideological issues which clarified and governed Israeli and Jewish identity placing them in the context of the struggle for ideological and political dominance in the polity.

Israeli politics has been guided by the Zionist traditions in the Yishuv era. As elucidated previously political parties operated as providers of services engaged in political, economic, cultural, social and unionist functions. The new state's politics mirrored the factionalism of the Yishuv which was facilitated by the system of proportional representation (hereon PR). The World Zionist Organization (WZO) had to adopt a system of proportional representation due to its need to involve all factions in the movement so as not to detract from the final goal of establishing a Jewish state in Palestine.

Political fragmentation among immigrants meant that each grouping began to establish peer group settlements and build enclaves reflecting philosophical and materialist attitudes: "for doctrinaire socialists, \textit{kibbutzim} (agricultural collectives); for more moderate socialists, \textit{moshavim} (agricultural collectives), for middle-class parties, urban and private agricultural developments; for religious groups various types of religious and educational institutions, and so on. Each party zealously guarded its preserves, which generally

\textsuperscript{3} ibid, p.56.

\textsuperscript{3} A German word meaning "culture struggle" coined by Chancellor Bismarck in 1872 when he tried to deprive the German Catholic Church of certain privileges.
As has been observed in the preceding chapter, a coalescence of determinants paved the way for the critical role of religion in Israel's public life. Zionism as a reaction to the dilemmas posed by modernity and secularism tapped the deference to tradition, invoking and transforming religious symbols to forge a consensus in favor of their project of immigration to the 'Holy Land'. "Zionism represented an alternate way to integrate the decisive elements and formative forces of Jewish collective existence: its peoplehood expressed in its concrete historical past and its spiritual-religious inheritance and codified behavior pattern - the Halakah. Through its conception Zionism presented not only a new way to integrate the main elements of Jewish identity, but also a new way to join the past, present, and future."  

Historically, that process was facilitated by the total integration of all elements of social life through the Torah, a fundamental feature of Jewish society during the First and Second Commonwealths, which continued to receive sustained application during the Diaspora. Thus, the interpenetration between the sacred and the profane, between the mythical-symbolic ceremonial and the primary focus functions of life in all dimensions of social life was complete. Zionism, however, being a product of the 19th century political ideologies of nationalism, socialism and so on mirrored the assumptions of the Enlightenment project. That meant a repudiation of traditional authority, the exaltation of the individual and creating alternative sources of legitimacy like those of the nation, thereby causing a depreciation of religion's role in the 'public square' or the arena where a nation's moral and political battles are fought and decided. Paradoxically, Zionism's capacity and willingness to embrace its past enabled it to wrest free of the religious authority as it forged a new modern identity welding secularist, modern attitudes to a national heritage and a collective vision. "The historization of Jewish past as one's own national past; the reabsorption and taking possession of the great collective and individual creations of the religious mind as the expressions of the national mind; the

encompassed a wide range of services and institutions, usually including newspapers and publishing houses, youth, and women's auxiliaries, banks and insurance companies, urban and rural housing developments, and cultural, recreational, and educational activities.\footnote{Gary Schiff, \textit{Tradition and Politics: Religious Parties in Israel} (Detroit: Wayne State University Press, 1977), p. 25.}

Amid this, the central reality of political life in the new state was the position of dominance of Mapai, the leading labor Zionist party, which was led by the Prime Minister David Ben-Gurion. Mapai's influence was ensured because of its dominance of three subsystems. It maintained its majority position first, in the Histadrut, which became the largest social organization in Israel.\footnote{A voluntary organization which essentially began as a trade union Histadrut now has industrial enterprises and social welfare services. With more than 1.5 million members in the 1980s the Histadrut includes about 80 percent of the Israeli workforce. Labor Party, a descendant of the Mapai, continues to dominate this institution which is the largest civilian employer, lending credibility to the contention that Israeli politics is wholly symbolic and regime changes do not mean much amid the interpenetrative nature of the bureaucracy and the elite.} It also headed the executive of the Zionist organization (the Jewish Agency), which was empowered by law to act in the areas of settlement and absorption of immigrants and also executed a leading role in the municipal government which was previously controlled by the right.\footnote{Nathan Yanai, "Israel" in Frank Tachau ed., \textit{Political Parties of the Middle East and North Africa}, (Westport, Connecticut, 1994), p. 214.} Mapai took advantage of the organizational head start over the predominantly ideological Herut and subsequently created structures which perpetuated the hegemony along with the Orthodox Mizrahi, which closely resembled it in terms of institutional entrenchment, with its pre-independence network of the rabbinate, and independent schools etc.

The revisionists, on the other hand, under the leadership of Vladimir Jabotinsky and later Menachem Begin, though featuring prominently in Zionist activity, did not institutionally entrench themselves in the Yishuv which precluded their influence to Poland. The revisionist party at its peak gained 20 percent of the vote in the Zionist Congress and in the national institutions of the Yishuv. The revisionists paid the price of depending entirely on the appeal of charisma or direct action. Jabotinsky focused his
primary political activity on Central and Eastern Europe rather than Palestine, so little effort was made to develop strong organizational bases in the Yishuv. His decision to break away from the World Zionist Organisation to form his own New Zionist Organisation in 1935 enabled the labor Mapai to gain a dominant position in the executive of the WZO and thereafter the state. The Mapai leadership even survived the Altalena Affair which involved the drowning of shipment of people and arms orchestrated by the revisionists, which violated Labor’s compliance with a cease-fire. The fragmented state of the centrist General Zionists, as well as the secession of the Revisionist Party from the Zionist Federation, forestalled the emergence of a major party of the political right in the pre-state era providing a lot of leverage for Mapai.7

Surprisingly, political observers like Daniel Shimshoni have felt that the competitive political traditions precluded the capacity for dominance: "Independence neither accomplished a social upheaval nor a redistribution of political power within the indigenous Jewish community. It did not elevate a rising class or party to a position of dominance. It did not signify the victory of a political or social doctrine other than the Zionist ideal of Jewish nation in the ancestral homeland."8

There are good reasons to contend with Shimshoni since he seems to underestimate the influence of labor Zionism and the institutions it created. Notwithstanding, the emotive utility of Judaism, it was labor Zionism that lay the ground for Jewish existence and forging of a nation-state. For a nation of immigrants Mapai established dominance without acquiring an absolute majority in the legislature.9 Political theorists, taking cue form Maurice Duverger, who while discerning between political and ideological domination defined a dominant party as,

- a party larger than any other, which heads the list and clearly out-distances its rivals over a certain period of time...A Party is dominant when it is identified with an epoch; when its doctrines, ideas, methods, its style... coincide with those of the epoch... Domination is a

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7 ibid, p. 217.


question of influence rather than strength; it is also linked with belief. A dominant party is that which public believes to be dominant...Even the enemies of the dominant party, even citizens who refuse to give it their vote, acknowledge its superior status and its influence.10

Going by this canon, Mapai had a position of dominance as it was the ruling formation till 1977. It had a firm grip over the large bureaucracy which was manned by Mapai loyalists -a throwback to the Yishuv era, and the majority of the immigrants till 1952 looked to the ruling Mapai with Ben-Gurion's new philosophy of Statism11 which helped identify the ruling party with the state.12 Labor Zionism attained legitimacy through a combination of adoption of dominant values and shrewd organizational networking. They exemplified the virtues of chalutzut (Zionist pioneering), voluntarism, and egalitarianism. "They displayed sufficient flexibility to incorporate a multiplicity of viewpoints as the party co-opted more groups, while projecting a coherent vision of national goals and aspirations."13

Paradoxically, system of proportional representation enabled Mapai to clinch the early advantage, even though it hampered executive autonomy as time wore on. Out of the 61 deputies, or Member of the Knesset as they were later called, needed to form a government, the Mapai, thanks to PR, managed to achieve the average percentage that not only called for a coalition government, but also deprived other formations of staking a claim to form a government. In the elections to the First Knesset in 1951, it received 35.7 percent of the vote with 46 deputies. In the second Knesset elected in July 1951 it was represented by 45 deputies, dropping to 40 deputies in 1955; it raised its representation to 47 deputies for the Fourth Knesset in 1959 and fell to 42 deputies


11 Statism refers to the post independence nationalization of those services rendered by voluntary organizations like the Histadrut. Whether Ben-Gurion embarked on this policy in order to forge a speedy forging of a consensus or clinch the dominance of Mapai is beyond our scope here. But it displays amply the need to forge a vision of a nation from above.

12 In 1948, after the Holocaust the remnants of European Jewry immigrated but soon after the founding of the state, the bulk of the immigrants were from Asia and Africa. Between 1948 and 1951, 700,000 immigrants were added to the existing 650,000 Jews in Palestine. From some 650,000 in 1948, it reached 1,80,000 in 1958 and exceeded 2,900,000 in 1975 - an increase of some 400 percent within 25 years, largely due to the Law of Return which guaranteed citizenship to any Jewish individual in the world.

13 Aronoff, n. 9, p. 263.
in 1961.\textsuperscript{14}

Fragmentation may have jeopardized systemic stability had it not been for the Mapai, which was the cornerstone for any government formation until 1977. Israel had 17 governments in the first 25 years of the state. However, all these formations have hinged around the dominant Mapai, as there was no alternative for the first 29 years of the state's existence. Labor's domination is based not only on sheer size ranging from 32 to 46 percent of the vote and from 40 to 56 seats until 1973, "but also on the centrism of its ideological positions, which facilitates its accommodation with both socialist and non-socialist parties. Mapai's pragmatic socialism has been flexible enough to incorporate non-collectivist groups and interests."\textsuperscript{15}

It also has formed governments with Mafdal (the religious Zionist party, later known as the National Religious Party, a product of the merger between Mizrahi and HaPoel HaMizrachi in 1956), while trying to balance the rigid Marxism of Mapam and the liberal economics of General Zionists. Mapai has, with the exception of Herut and the communists, endeavored to forge a moderate consensus on ideological issues throughout the political system. Even on religious issues Mapai has evolved a position -which lay in the middle between the anti-clericalist Mapam and Ahdut Ha'Avodah and the clericalist Agudah Israel.\textsuperscript{16}

However, Mapai's electoral dominance did not enable it to impart its social charter on the state -thanks to PR which aided the accession of minority interests in the Knesset.\textsuperscript{17}


\textsuperscript{15} Schiff, n. 4, p. 28.

\textsuperscript{16} ibid, p. 30.

\textsuperscript{17} Theoretically sovereign and omnipotent, the unicameral 120 seat legislature, the Knesset, is elected by a pure proportional representation for a four year term, unless dissolved earlier. Any list of candidates which receives at least 1 percent of the vote in the single country-wide election district is entitled to share in the distribution of seats; slightly over 12,000 votes were needed for a seat in the election of 1973. PR is characterized by extreme rigidity of the list system wherein the voter has no choice of the candidate and instead votes for party list drawn up by party oligarchs. The party lists which one votes for and the order of candidates on these lists are drawn up by small party elites, both at the national or local level thus giving them great control over their members in the Knesset. As Israel does not have constituency system, in that the entire country becomes one constituency, it leaves little scope for voter contact with their representatives and also makes the campaign content more symbolic than substantive. Vernon Bogdanor, "The Electoral System, Government, and Democracy," in Ehud Sprinzak and Larry Diamond (eds.) \textit{Israeli Democracy
This system of election ensured party survival, strengthened organization and paved the way for centralization of the party structure and fostered dependence on the leadership. Proportional representation offered greater opportunities for political participation and representation, which corresponded to the constant search for unity and authority in the absence of sovereignty in the Yishuv, but exacerbated party differences in the new state. Its facility that each party list be represented according to its strength in the electorate thereby magnified the tendency to translate inchoate, social forces into major political actors. This made itself manifest by the leverage that the small religious parties enjoyed in the attempt to frame a constitution.

Constitutional Debate

Since Zionism was such a contentious idea forged by individuals from competing politico-cultural traditions, PR electorally speaking, with its predisposition to accommodate all, favored no worldview. Politics meant a wrangle for resources from the Zionist Agency and a clamor for the loyalty of the immigrants. Religious Zionist parties, by virtue of their long association with Zionist praxis, appropriated the right's agenda and as such were the only sobering influence on Mapai's desire to proselytize the nation on quasi liberal-traditional lines.

As seen in the preceding chapter, the religious parties, notably the Mizrahi and its Labor off-shoot HaPoel HaMizrahi, managed to extract concessions both from the Mandatory regime and the secular Zionists. The letter of Ben-Gurion to the Agudah Israel underlined both the power of proportional representation, the appeal of religious tradition,

(Boulder: Lynne Rienner Publishers, 1993), p. 84.

18 In relation to electoral laws Arian comments: "The voting act is conditioned by influences and pressures brought to bear on the citizen and by the political arrangements that characterize the system within which the vote takes place. Electoral laws have political consequences, hence many constitutional issues in the realm of elections - reapportionment, financing elections, type of ballot, use of voting machines, single-member district as opposed to prop. representation, rules of party and candidate eligibility, and formulas for distributing the left over vote - are matters that provoke the politician's serious concern and attention..." Asher Arian, Politics in Israel: The Second Generation. (Chatham: Chatham House Publishers, 1989), p.133

19The loyalty of the immigrants would have been relatively less complicated given a measure of ethnic uniformity. However, until 1948 the predominant majority of the Yishuv had consisted of persons of European origin; the post-1948 period saw the arrival of many Sephardic and Oriental Jews who had lived in Moslem lands. In the period from 1948 to 1962 the number of these immigrants was 54 percent compared to 46 percent from Europe and America. Abramov, n. 14, p. 147.
the formidable hold of the rabbis over the Jews of Eastern Europe, and the legal inroads that organized religion made in the Yishuv.

The reservoir of support which labor Zionism managed to command was bound to be eroded given the fact that its principles were not enshrined in a written constitution. A document to define the contours of a nation's politics like a constitution is pivotal both for evoking a common purpose and the elimination of undesirable ends. In its absence politics becomes a playing ground for evolving newer goals, which proved to be the case the religious parties. The religious parties' reasoning in the constitutional debates demonstrates that the struggle for ideological dominance was by no means conclusive.

The disagreement began even with the Declaration of Independence which states: "We hereby proclaim the establishment of the Jewish state in Palestine to be called Medinat Israel", which effectively stressed Jewishness more than independence. The deliberations involved in arriving at the wording of the Declaration reveal the ideological fissures in the community. The four religious parties: HaPoel HaMizrahi, Mizrahi, Poale Agudah Israel and Agudah Israel insisted that the final phrase contain a reference to the God of Israel. The non-observant Marxist, Mapam vigorously opposed it. David Ben-Gurion proposed a compromise phase: "With Trust in the Rock of the Israel we set on hand to this Declaration." He pointed out that the "Rock of Israel" could be interpreted as a reference to the God of Israel by the religious and as Israel's might by the secular. A nation whose political elite which could not agree on the wording of the Declaration of Independence could scarcely have agreed on the philosophy and nature of a constitution. Despite repeated attempts to work out a written constitution for the state the religious parties managed to successfully block its passage. Their claim has been that the Torah religious law) could be the only constitution of Israel. That is, in fact, the underlying assumption of rabbinical Judaism that a "dedicated investigation of the divinely revealed sources can determine the authoritative norm of Jewish behavior in any particular situation. This norm, which is described in Hebrew as the 'Halakah' or 'the way', is derived from argument, from

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scripture, tradition and judicial precedent; a consensus of expert opinion in favor of a reasoned decision leads to its general acceptance.\textsuperscript{21}

Historically, that process was facilitated by the total integration of all elements of social life through the Torah, a fundamental feature of Jewish society during the First and Second Commonwealths, which continued to receive sustained application during the Diaspora. Following the brutal crackdown of the Jewish revolts in 70 AD and 135 AD there was a profound change in the nature and scope of Jewish activities. Judaism ceased to be national religion. Jewry and Judaism was characterized with the study and observance of the Torah owing among other things to the cessation of the prophetic tradition. Paul Johnson writes that "it is difficult to fit Jewish history into any general taxonomy of national and religious development because it is a unique phenomenon. Indeed, the historian of the Jews is constantly faced with the problem of categorizing a process of which there is no other example anywhere." The transition from reforms of King Josiah to the Exile, the return from Exile, the work of Ezra, the triumph of the Maccabees, the rise of Pharasaism, the significance of the synagogue, the schools, the rabbis etc., cleared the way for a rigorist application of the Law through the agency of the rabbinate thereby consolidating the absolute dominance of the Torah.

Johnson encapsulates this inward journey of the Jewish spirit, a feature which was evident in most traditional Jewish communities right up to the twentieth century. "By mid-second century AD...it (the Jewish community) had ceased to write history, It no longer engaged in speculative philosophy of any kind. All its traditional forms - wisdom, poetry, psalmody, allegory, historical novellae, apocalyptic - had been abandoned. It was engaged, with passionate concentration and sincerity, on a single form of literary work: commentary on religious law."\textsuperscript{22}

Religious parties have concomitantly argued that if God and the Torah are not legitimate sources for the Israeli constitution, then natural law too cannot hold as it cannot justify itself. Moreover, Jewish religious tradition has had, as mentioned elsewhere, a


tenuous relationship with the State and its rulers, who, by virtue of the scope of their activities are governed by temporal demands.\textsuperscript{23}

Governments of any kind was suspicious and accepted only in the context of its capacity to harness evil instinct. The fact that this facility was created in the Torah suggests a significant ambivalence in Jewish religious thought. Inasmuch as the king appeared to be sovereign in his capacity to levy taxes, to enforce conscription his legal autonomy was impaired by the presence of the 'Great Court' which was empowered to deal authoritatively in religious matters, to enact decrees, forbid practices etc.\textsuperscript{24} "The reality of power was clearly in the king's hands through his control of the army and administration; and the Great Court's capacity to curb his actions depended on the extent of his acceptance of the authority of the Torah and, in the last resort, on the readiness of his subjects to revolt in support of his Sages. From the time of the Babylonian captivity to the Jewish revolt in the first Century which effectively ended any hopes of reestablishing a state structure, the responsibility moved to an Exilarch who combined both priestly and political functions in his person."\textsuperscript{25}

Accordingly, during the debates in the Parliamentary Committee for Constitution, Law and Jurisdiction, the religious groups contended that the Bible was the inviolable text which regulates not only relations between God and man, but all human affairs of a person, nation or state as the case may be. They reckoned that it is religion which produced the nation and not vice-versa and to present a secular constitution, which by nature operates as a vehicle for acculturation, would imply that the Bible had lost its validity and that would be detrimental to the Jews.

Agudah's Meir David Levinstein of the United Religious Front (alliance of Agudah

\textsuperscript{23}In fact, The Hebrew Bible clearly indicates the natural antagonism between faith and the state, outlining the competing demands of the two authority. God responds to an agonizing prophet Samuel that the people in asking for a king "have not rejected you but have rejected me as their king." (1 Samuel 8: 7). Samuel goes on to enumerate the various demands of the impending institution of the monarchy. (1 Samuel 8: 11-18) The seventeenth chapter of Deuteronomy provides guidelines for the King, advising him to be bound by the divine law. (Deut 17: 14-20). He was enjoined to be humble, austere, deferent to priestly counsel, whose main function was internal and external security.

\textsuperscript{24}Marmorstein, n. 21, pp. 15-16.

\textsuperscript{25}ibid, p. 22.
parties and the National Religious Party (NRP) in the first Government) put forth the inexorable logic during the parliamentary debate: "What is the moral authority of state, which constitutes only 7 percent of the nation and what is the authority of this Knesset, elected by 5 percent of our nation to legislate on a constitution for the fatherland and the entire nation." Rejecting a constitution under all circumstances he continued: "There is no need in Israel for a man-made constitution; if it contradicts the Torah of Israel; it is a revolt against the Almighty; if it is identical with the Torah, it is superfluous. A constitution will lead to an uncompromising fight . . . a Kulturkampf. The most definitive argument was rendered by another Agudah’s leader Rabbi I.M. Levin. He defined the issue as involving one’s view of the Torah:

Torah is eternal, even as its Giver is eternal. The Torah must not be adapted to life, it is rather for life to adapt itself to the Torah. This truth can only be attained through faith. The Torah will not change; it must not be changed . . . Any attempt at reform will result in failure.

He also issued a warning:

If you wish to impose upon us a constitution that will be contrary to the laws of the Torah, we shall not tolerate it . . . Do you think that what our enemies have failed to do, what blood and fire failed to do, you will be able to achieve by means of the power of the state?. . . It may be that the cup of suffering is not yet full, and that we still have to endure another period of Galut (Exile) - a Galut in the midst of the Jews, after the Galut we have known in the midst of the Gentiles. I must emphasize - this attempt will split the nation into two, and I do not think this will benefit the infant state. I am convinced that it will be a disaster for the state.

Prime Minister Ben-Gurion preferred the flexible British system of constitutional precedents that provides for the development of the law. He felt that a written constitutional system was best suited for a federal country which needed precision on the authority of central and local governments, and therefore, unsuitable for a small unitary state like Israel. It just shows how much he underestimated the fissures in World Jewry, and in his vain hope of Zionism’s transcending appeal. Implicitly accepting that the debate was not about whether

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26 Orr, n. 20, p.21.

27 Knesset Record, Quoted in Abramov, n. 14, p. 140.

28 ibid.
Israel would have a written or unwritten constitution, but on deciding the epistemic emphasis of the law. Ben-Gurion said: "It is also impossible to understand the resurrection of the Jewish state without the knowledge of the Jewish people, the history of the Jewish Diaspora, the idea of Messianism and its many manifestations throughout the generations." 

Ben-Gurion did, however, castigate the religious parties for reneging on their stance of seeking a theocratic regime. He asked whether there was a way of finding secular leaders in the legislature and judiciary if the Torah was the adopted constitution. He challenged the Orthodox notion of the irreconcilable opposition of divine law to the secular character of man-made law. "Since when is a man-made creation unsuitable for Israel?" he asked. The major activities of the state are by nature secular, be it public works, farming, housing, communication, road building etc., and laws relating to these activities have been instituted by people expressing their sovereignty. "Do you," Ben-Gurion asked, "respect the principle of the sovereignty of the people?" The religious parties did not take up the wager.

Ben-Gurion cited the Torah for confirmation of the relevance of secular legislation. He cited the Biblical instance of Jethro's advice to his son-in-law Moses, to recruit judges to ease the burden. (Exodus 18: 13) "Jethro was not a Jew, but Moses accepted the constitutional advice tendered to him, and set up a judicial administration, as he was advised to do by a person who had administrative experience, and although he was a Gentile, it was not considered to the law of Moses." This diatribe indicates the inconvenience caused by the ambiguity of the written word on these issues. He also in the course of the speech referred to God relenting with the people's desire to have a king as testifying the acceptability of secular legislation.

Ben-Gurion cleverly played on the discomfiture of the Orthodoxy in applying Halakhic principles to modern realities. Zalman Abramov details the vacuity of religious legislation:

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29Cited in Orr, n. 20, p. 21.

30Knesset Record Vol. 4: p. 814.

31Quoted from Abramov, n. 14, p. 142.
On basic issues confronting the organization of the state, the Halakah offered little guidance. Should a Jewish state be a monarchy or a republic? If a republic, should it be a presidential democracy, as in the United States, or a parliamentary democracy, as in England? Should it be based on the principle of separation of powers, or should it be an authoritarian state? . . . Who, in accordance with the Halakah, would be the legislative body - elected representatives or a group of rabbinic scholars? Or should the Jewish state be a theocracy, where all legislative and judicial powers would be vested in a body of Halakhic experts. On these and other questions of constitutional importance, the leaders of Orthodoxy offered no guidance. Not that it would be easy to do: . . . Halakah had, over a period of nearly two thousand years, evolved out of and in response to a reality based on the denial of political sovereignty to the Jewish people. . . . The rich rabbinic literature that developed over the centuries was focused on the relationship of the Jew to his Creator and to his fellow man but, with few exceptions, was not concerned with the relationship of the Jew to the body politic.32

The Ashkenazi Chief Rabbi Isaac Herzog too, wrote on the new state's need to adopt religious law as the basis of legislation, including personal and criminal law. Acknowledging the difficulties in disqualifying women and non-observant Jews from giving evidence in court, Herzog hoped that the Jewish State "within the framework of the Torah, and with due regard to reality, will not be entirely theocratic, nor entirely democratic in the modern sense."

Another influential leader of the Mizrahi, Rabbi Meir Berlin admitted the inadequacy of the Halakah to meet the demands of modern life, and suggested the enacting of rabbinical decrees (Takanoth) in various fields of law. Rabbi Judah Leib Maimon, one of the founders of the Mizrahi, and the first Minister for Religious Affairs, concurred with Berlin concerning the inadequacy of the Halakah. However, since "it is impossible for the Torah of Israel to exist fully without a State of Israel," integration of religion and state was a paramount need. It was incumbent on the rabbis to revive the ancient authoritative Halakhic institution, the Sanhedrin to evolve a corpus of law consistent with the needs of the state.33 To give effect to this project he summoned eminent Talmudic scholars for a

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32 ibid, p. 128. Yeshayahu Leibowitz writes that the philosophy of history on which it (Halakah) was based dealt with three possibilities only: "Jewish independence and sovereignty in an ideal past; exile and subservience in the real present; independence and sovereignty in an ideal future" and thus is incapable of evolving applicable law to contemporary Israel. Yeshayahu Leibowitz, "The Crisis of Religion in the State of Israel," in Judaism, Human Values and the Jewish State (Cambridge, Mass.: Harvard University Press, 1992), p. 167.

33Sanhedrin had functioned in the latter part of the Second Commonwealth. A Great Sanhedrin in Jerusalem had consisted of seventy-one members, and small Sanhedrins in each city or region had twenty-three members. The Great Sanhedrin was a legislative body as well as a court of appeal. After the destruction of
conference in Tiberias, the venue for the last Sanhedrin, but to no avail, for the rabbis demurred the idea of the creating new legislation.

Moshe Silberg, a Talmudic scholar, and later a member of the Supreme Court, argued that the prevalence of a rich Jewish legal tradition, it is inadmissible to adopt either the Palestine Law for it lacked organic unity or adopt alien codes like Mustapha Kamal did with the Swiss Code in Turkey. It is also improper to adopt religious law as it contain many non-Jews, and instead suggested the creation of an original Israeli law which would be essentially secular at the same time absorb the liberal sections of religious law. "This is a task for many years, perhaps for a whole generation, but the result would be a modern law that would at the same time retrieve the basic principles of the traditional law, and also constitute a historical continuity of the ancient legal tradition."34

None did take up the task and the Orthodoxy once again reconciled to a measure of secular legislation. The religious parties did not object to man-made laws enacted by the parliament of a Jewish state. Rabbi Levin, in fact pointed out: "We prefer there to be ordinary legislation, and I emphasize that those laws that are not permeated with the spirit of the Torah will be regarded by Orthodox Jewry as temporary: but in any case there are preferable to a constitution." The Orthodoxy was thus not opposed to Knesset legislation, nor did it provide a blue-print for a theocratic state. Being a religious community governed by a written word they were unwilling to accept the impending rabbinical approbation they would receive if they approved another written document as binding on Jews in Israel apart from the Torah. The religious parties accepted that it was not a ideal time for the Torah to be applied to all levels of state life. They sought co-existence with the secular Zionists on the basis of a minimum program which has pre-occupied their political life ever since.

Jewish independence in 70 CE, the term Sanhedrin was applied to assemblies of rabbinical scholars in Palestine who performed the function of a legislative institution in religious matters until the end of the fourth century when it ceased to function. In the sixteenth century an attempt was made in Safed to prepare the ground for renewing the Sanhedrin, but the project failed to materialize.

Rabbi Maimon recalls the experience: "It seems that my lecture was listened to with great attention, but when I ended, the rabbis were stricken by silence... and did not enter into deliberations on the subject... But I shall allow myself to state that there probably existed a different reason for this silence: cowardice. To our great regret, many of the rabbis fear not only God, but also mortals." On the attitudes of the rabbis to modern legislation see Abramov, n. 14, pp. 130-134.
Proponents of a written constitution reminded the Knesset that the UN Resolution of November 29, 1947 called for the partition of Palestine. They advocated the adopting of a constitutional instrument which inter alia would safeguard religious freedom and minority rights. A constitution was consistent with Israel's Declaration of Independence which announced that it would be adopted. It was urged that a separation of powers could only be ensured within a framework of a constitution.\textsuperscript{35} It was held that such a document had immense value for inculcating citizenship especially as it was creating a nation from diverse immigrants.

Mapai and Ben-Gurion had the last word. He noted that Israel's population was growing, and that time was needed for absorbing immigrants and putting an end to the threat of Arab invasion; constitutional issues therefore would only tax the Knesset's attention and energies when it had a surfeit of other problems to solve.\textsuperscript{36} On June 13, 1950, two years after the establishment of the state, three motions were put to vote. The motion of the religious parties which received 14 votes (out of 120 members) read: "The foundations of the government and the separation of powers shall be set out in basic laws." A motion supported by General Zionist, Herut and Mapam parties that would impose upon the Knesset Committee on Law, Justice and Constitution the task of preparing a draft constitution garnered thirty nine votes. The Mapai and Progressive parties sponsored a resolution that read:

\begin{quote}
The Knesset resolves to impose upon the Committee on Law, Justice, and Constitution the task of preparing a draft of a constitution for the state. The Constitution will be built up chapter by chapter in such a way that each chapter will by itself constitute a fundamental law. The chapters will be submitted to the Knesset to the extent to which the Committee completes the work, and the chapter will be incorporated in the constitution of the State.
\end{quote}

This motion received 50 votes, and was passed - in effect the issue received less approval than what it would take to form a government (61 votes). Thus, the Knesset decided not the pursue a comprehensive constitution but rather pass a series of Basic laws that would

\textsuperscript{11} Knesset Record, 4: 715 and p. 145.

eventually serve as parts of the constitution.37

The Knesset resolution to build a constitution by accretion left the ideological leanings of society undecided, potentially leaving that for politicians to decide and a Supreme Court to be the arbiter. Piquantly, the Supreme Court did not have a single document to act as a canonical text to guide, it for in its reckoning even the Declaration of Independence was not binding.38 This left the arena free for special interests to impinge their agenda on public life which is what happened with religious parties. The absence of a constitution also implied the absence of a clear delineation between matters of religion and state. The lack of a political will to redefine the relationship legally meant that the arrangements existing prior to 1948 were carried over to the new state.

**Law and Religion**

The circumstances in which Israel emerged catalyzed this process. With its physical and diplomatic status in some doubt, Israel sought to establish itself legally on all fronts. Five days after the proclamation of independence and before any legislative machinery had been set in motion, the Provisional Council of State promulgated its first Ordinance on Law and Administration. To avoid a legal interregnum between the ending of the British Mandate and enactment of laws by the State of Israel, the existing law courts were given authority to continue to function within their existing powers.39

Article 3 of the Proclamation by the Provisional Council of State, provided: "So long as no laws have been enacted by or on behalf of the Provisional Council of State, the law which existed in Palestine (on May 14, 1948), shall continue in force in the State of Israel." Section 17 of the first law enacted by the Provisional Council, the Law and Administration Ordinance of May 19, 1948 said: "So long as no new law concerning law courts has been enacted, the law courts existing in the territory of the state shall continue to function within the scope of the powers conferred on them by law."

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38 The Supreme Court pronounced in one of its rulings that "the Declaration of Independence gives expression to the vision of the people and its faith, but contains no element of constitutional law which determines the validity of various ordinances and laws." Abramov, n. 14, p. 177.

Israel thus inherited the ecclesiastical courts and the ecclesiastical law applied by them; it also inherited the official rabbinate and the religious services maintained by the taxpayer, as well as municipal by-laws regulating Sabbath observance. Subsequent legislation would only consolidate this hold of the religious community.

It was natural that the religious parties would play a pivotal role in this direction once it was decided that the Knesset would over a period of time create a corpus of law. Their traditional support group was the masses of East European Jews, at whose core "remained the tradition, with its uniformity of religious practice and its elastic community organization, its historic and eschatological myth of Exile and Redemption, and its well established channels of communication to all Jewry throughout the ages and in all parts of the globe, the Hebrew language and system of traditional Jewish education."

**Electoral Performance of Religious Parties**

The religious parties owe their success to three inter-related factors. Their electoral performance, the mechanics of coalition formation, and a measure of Orthodox self-consciousness. In 1949, the United Religious Front (URF), composed of Mizrahi, HaPoel HaMizrahi, Agudah Israel and Agudah Israel, the only united religious list to contest elections till date, received 12.2 percent of the vote and fourteen seats in the Knesset. From 1951 to 1969, Mafdal (the name of Mizrahi after its merger with the labor HaPoel HaMizrahi, also called the National Religious Party) contested six elections with an average representation of 11 seats in the Knesset. In the 1951 elections both the Agudah parties received 3.6 percent and five seats, as compared to 8.2 percent of the two Mizrahi parties. In the 1955 and 1959 elections, the two Agudah groups obtained 4.7 percent of the total with six seats. In 1961 and 1969, 5.6 percent realized four seats to Agudah and two seats to Poale Agudah while in 1973 they got five seats indicating over the years that mass immigration did not affect the strength of the Agudah. Mafdal derives its strength primarily from the immigrant element, from Oriental Jews and from poorer sections of the community. The

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* Mafdal's electoral break-up is: 10 seats in 1951 with 8.3 percent of the vote, 11 seats (9.1 percent) in 1955, 12 seats (9.9 percent) in 1959, 12 seats (9.8 percent) in 1961, 11 seats (8.9 percent) in 1965, 12 (9.7 percent) in 1969. Agudah got three seats in 1951, six seats in 1955, six in 1959, four apiece in 1961 1965 and 1969 accruing an average 3.51 percent of the vote. Yanai, n. 6, p. 255.
share of the Mafdal vote in the new cities dominated by the Oriental communities was 12.1 percent while it was 7.8 in the older towns. It has been observed that the Mafdal does well in poorer neighborhoods, giving rise to the perception that it may not do well in the future when Oriental communities after voters move up the social ladder, as the dependence on the patronage network reduces and their loyalty shifts to the urban parties such as the Agudah. However, Mafdal is a truly national party, and its representatives are to be found in every municipality. Agudah's largest concentrations are in Jerusalem and Bnei Barak; they are almost entirely Ashkenazi and mostly middle class.

In fact, the performance of the religious parties has surprised some theoretical notions concerning religion and modernization. Some political theorists have dismissed Israeli religious parties as a curiosity, a quirk destined to be ironed out by the inexorable modernization process. Such writers tend to view the passage from the "traditional" through the "transitional" to the "modern" i.e. western form of society and polity as inevitable and desirable. Gary Schiff suggests that this typology culled from the western experience can scarcely be applied to Israel's religious parties: "There is neither a native landed, aristocratic, traditional elite nor an indigenous traditional peasant mass, both of which are essential to the modernization scenario, for Israel is a highly urban and industrial state", with an modern political system (by way of the nature of political representation and its related institutions) which is influenced by traditional Judaism.

Orthodox Parties and Israeli Political Practice

The most significant feature in the interplay of Judaism and state is the manner in which the religious parties have expropriated the mechanics of coalition government. That was a result of the inability of the Mapai to get an outright majority in the elections. Since the Mapai obtained an average of 46.5 deputies until 1973, numerically Mafdal's electoral

\[\text{Abramov, n. 14, p. 165.}\]
\[\text{ibid, p. 157.}\]
\[\text{Schiff, n. 4, p. 18.}\]
performance has been ideal, so to speak, for Mapai since a minimum of 61 deputies are needed to form the government. The religious parties fully apprehended Mapai's reluctance to enter into any coalition with the Herut largest opposition party till the early 1960's. The General Zionists too proved to be a difficult partner as it endorsed a enhanced role for private industry while Mapai, with its socialist constituency, naturally disapproved of. They would demand the portfolios of Trade and Industry and Commerce which was unacceptable to Mapai. The likes of Ben-Gurion recognized that an alliance with the religious parties gave a free hand to the cabinet on matters of defense, foreign policy and economics.46 Hence, until 1977 with the exception of two years from 1952-54, Israel was ruled by a socialist-religious government.

The manner of coalition formation also left little options for Mapai for its constituents were primarily the ones who consciously built the settlement movement on secular lines. Unlike other countries where a coalition reflects a programmatic alliance between parties announced before the elections, coalition really means formation of a viable government after the announcement of the result in Israel. Cabinet formation often includes inter-party negotiations between the Prime Minister designate and the potential coalition partners and distilling the results of the negotiations in a document called the Basic Principles of the Government Program which is supposed to express the united stand of the proposed coalition.47

Ben-Gurion, summing up this practice wherein the voters were unaware in advance of what kind of government they were getting, said, "those who voted Mapai did not know in advance which other parties I might be forced to take into my coalition and what concessions I might be forced to make."48 Coalition making and the resultant Basic Principles agreement thus herald a significant dilution of ideological purpose. As Birnbaum states, 'politics of compromise' describes a situation where the official position of the government does not reflect the stand of one single party, but is an amalgam of views of the

46 Sachar, n. 36, p. 369.


48 Sachar, n. 36, p. 369.
various parties who together form the government.49

In the first coalition government formed in January 1949, the Religious Front (including Agudah Israel) was represented by three ministers. Following the withdrawal of Agudah from the government, Mafdal, a merger of Mizrahi and HaPoel Mizrahi, (a labor offshoot of Mizrahi) was represented by two cabinet ministers in the Second, Third and Fourth Knessets. Although Mafdal obtained comparatively few seats in 1961 (Fifth Knesset), they found themselves with three cabinet members since Mapai was weakened with 42 deputies. In the Sixth and Seventh Knessets, Mafdal retained its three seats in the Sixth and Seventh Knessets, although it had actually lost one seat.

Religious Legislation

The religious parties, aware of the Mapai vulnerability to any withdrawal from the cabinet and its incapacity to form one by itself, exerted pressure on it to enact various laws consolidating the hold of religion in the state. Judaism's primacy over personal and other areas was legally clinched through a prolonged struggle by the religious parties against the liberal social agenda of the secularists. As a rule, religious power expressed itself by fierce bargaining within the Knesset and especially within the cabinet.

The religious parties managed to enact two crucial ordinances even before the institution of the Knesset. In the midst of war conditions the Provisional Council found time to enact the "Days of Rest Ordinance" on June 3, 1948 which said: "The Sabbath and the Jewish festivals, namely, the two days of New Year, the Day of Atonement, the First Day of the Feast of Tabernacles, the Eight Day of Solemn Assembly, the First and Seventh Days of the Feast of Passover shall have prescribed Days of Rest in the State of Israel. Non-Jews shall have the right to observe their own Sabbaths and festival as Days of Rest."

The Knesset was to confirm this in the Hours of Work and Rest Law of 15 May 1951 reiterating that the Sabbath shall be the weekly day of rest. However, a general exemption permit, given upon the decision of the PM, Minister of Religious Affairs and the Minister of Labor, would be granted to "if it was established that the weekly day of rest is likely to prejudice the defense of the State or the security of persons or property, economy and

49 Birnbaum, n. 47, p. 30.
On November 25, 1948 the Provisional Council enacted the Kosher Food for Soldiers Ordinance which made it mandatory for the army to provide only kosher (food complying with Jewish dietary laws). The secularists agreed to this demand primarily because they needed the observant men for fighting the war and it was inconvenient to provide different kinds of diet for the observant and the non-observant.

On 10 August 1949, the Jewish Religious Services Budgets (Amendments) Law provided that the expenses of Jewish religious services "shall be borne by the Government, to the extent of one third, and by the local authority, to the extent of two-thirds". This law authorized the Minister of Religious Affairs (MRA) to establish local religious councils whose membership must not exceed that of the local community (municipal) council. It is to be appointed by three authorities; 45 percent by the MRA, 45 percent by the local authorities and 10 percent by the local Rabbinate. "In case of disagreement concerning appointments, the matter is referred to a Ministerial Committee consisting of the MRA, Justice and the interior. If they fail to agree, it is referred as a whole to the cabinet."

The Ministry of Religious Affairs was charged with the implementation of the law through the religious councils. The Compulsory Education Law, passed on 12 September 1949, declared as officially recognized, the General and the Labor as well as Mizrahi and Agudah Israel trends, thereby guaranteeing the religious institutions complete autonomy in the realm of education. The public religious education system is autonomous to the extent that it has the authority to hire and fire teachers on the basis of the perception of its hierarchy concerning their employees religiosity. In 1986, the Council for Religious Education ordered the cessation of work by a female teacher employed within the framework of state religious education after discovering that her husband publicly desecrates the Sabbath by not wearing a yarmulke and by turning on lights in their home on the Sabbath.

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50 ibid, p. 84.
51 ibid, p. 86.
52 ibid, p.83.
54 *Ha'aretz*, June 18, 1986, Cf. ibid, p. 215.
On 17 June 1952 the Knesset passed the Rabbinical Courts Validation of Appointments Law wherein the Rabbinical Courts operating in the country were declared duly constituted valid organs. This was a key area of religious control over society, one which would provoke crisis after crisis revolving around the nature and determinants of Jewish identity. On 26 August 1953, the Knesset also passed the Rabbinical Courts Jurisdiction Law, making matters of marriage, divorce and maintenance between Jews the exclusive purview of religious courts in compliance with the corpus of Jewish religious law. This effectively rules out civil marriages in Israel, which means that the religious-parties have a hold on determining the nature of Jewry in Israel. The implications of this law shall be studied later in this chapter.

The Dayanim law passed on 16 May 1953 declared the Dayan (a member of a Rabbinical Court), a paid official of the state, to be appointed by the President of the State for Life upon the recommendation of an Appointments committee under the aegis of the Ministry of Religious Affairs. The Chief Rabbis (CR) are the Presiding Dayanim of the Rabbinical Grand Court (court of appeal). Each Dayan before taking his seat, shall pledges allegiance to the State of Israel.  

The rabbinical courts jurisdiction law also provided for the appointment of Dayanim, judges of the rabbinical courts. It provided that the Dayanim "shall be appointed by the President of the State upon the recommendation of the Appointments Committee." The latter were to consist of 10 members: the two Chief Rabbis, two Dayanim elected by the body of government, two members of the Knesset elected by secret ballot and two members of the Bar Association. "Thus five of the ten places on the Committee were reserved from the outset for the Orthodox; in addition, one of the Knesset members was always representative of Mafdal, by prearrangement with Mapai and as part of the coalition agreement."  

The religious parties, therefore, not only managed to pass the requisite laws in the Knesset, but also empower the Minister of Religious Affairs to nominate members of the 186 religious councils all over the country which compete with municipal councils; to

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55 Birnbaum, n. 47, p. 85.

56 Abramov, n. 14, p. 196.
influence the appointment of rabbinical court judges who are sovereign in deciding matters of marriage and divorce, and appoint an elaborate bureaucracy to officiate the observance of dietary laws. Deprived of constitutional guarantees the religious parties attempted to contend for the recognition and safeguarding of traditional belief by expanding the electoral and economic strength of their communities and exploiting it as effectively as possible in maneuver and debate in the forum for the general struggle for power.

The Orthodox parties aspired to three main objectives in negotiating for the formation of a new government: to secure the most and the best of portfolios, to have as many party goals embodied in government program as possible, and to secure coalition agreements. Specifically, the bargaining has encompassed in the words of a political observer, "the assignment of Knesset Committee Chairmanships, the elections of Mayors in the larger cities and, within the government, changes in administrative jurisdiction of ministries and the allocation of Deputy Ministries in the parties." There have been many occasions when a Minister in charge of particular department was obstructed from having a free rein, because of the presence of a deputy ministers from a religious party.

The NRP has benefited most from its close association with the Mapai and has always held the Ministry of Religious Affairs except for the time it left the government in 1958 over the "Who is a Jew?" controversy. It used the extensive resources of the ministry to grant subsidies to Yeshivoth (religious seminaries) and for the construction of synagogues, to grant subsidies to Yeshivoth and other fields of religious infrastructure. Synagogues alone increased from 800 to over 4,000 during the State's first fifteen years.

Agudah has, in fact, criticized the Mafdal for making the Ministry of Religious Affairs its exclusive preserve and using its office to enhance the party's influence. The

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58 ibid. p. 95.

59 ibid. p. 94.

60 Israel Government Year Book, 1963-4, p. 123.
religious councils have become party cells, which are run as if they were party branches ... There are towns and villages with a majority of religious people who belong to another religious party, and there the Ministry by resorting to all kinds of stratagem, arranges for a Mafdal majority so that the latter might be enabled to dominate the religious councils. No rabbi, except a Mafdal rabbi, can secure any kind of appointment in the religious establishment. All this is being done in order to overcome another religious party."

The fact that Mafdal dominates the rabbinate for its purposes has been demonstrated often. The domination has been facilitated partly because the rabbinate is dependent on Mizrahi's fund raising capacities of the Ministry of Religious Affairs and because of the severe infighting between the Sephardi and Ashkenazi division within the rabbinate. This feud dates back to the Ottoman times when the Sephardic rabbi who was nominated as the Chief Rabbi was not recognized by the Ashkenazim. To resolve this deadlock, the British Mandatory authority convened an assembly of rabbis and laymen which elected a Rabbinical Council of eight members, four apiece for the Ashkenazim and Sephardim to elect a Chief Rabbi each. The Chief Rabbinical Council (CRC) created in 1921 is still the supreme religious authority for the numerous religious Zionists outside of the ultra-Orthodox groups.

Today the Rabbinical Council has ten rabbis elected under a complicated system involving District rabbis and local religious councils designed to ensure fair representation for both the ethnic communities. All members of the CRC hold office for five years as do the Chief Rabbis, but this has been rarely adhered to. Habitual disagreements have led to frequent, inadvertent term extensions. The precedent was set when the first Rabbinical Council, which was elected for three years in 1921, stayed on for twelve years because the religious groupings were unable to reach an agreement on the procedure for new elections for new Chief Rabbis.62

To resolve matters the Ministry of Religious Affairs in 1972 evolved a new method whereby it would be elected by an electoral college of 150 members. It consisted of 80 rabbis, nominees either of major ethnic communities or the Ministry. The other 70

61 Knesset Record, 54: May 13, 1969: 2486-87
62 Frankel, n. 39, p. 203.
electors would be either the country's mayors or the delegates of the twelve largest local authorities and lay representatives of the religious councils. Evidently, the provision of mayors and laymen of the religious councils who owe their posts to the client-patron network of the politicians meant that the Ministry managed to stack the election in such a fashion so as to ensure that pliant rabbis get elected to the Chief Rabbinate. This is pivotal for getting the kind of religious legitimation which a religious politician needs for popular acceptance.

The Minister acting as arbiter for the infighting in the rabbinate soon followed. In the 1970s, Chief Rabbi Shlomo Goren and his Sephardic equivalent Rabbi Ovadiah Yosef opposed each other on principle on every issue confronting them throwing the entire institution into disrepute. For instance, Yosef endorsed womb implants, Goren was against it; Goren wanted to convene an assembly of the world's Chief Rabbis, Yosef disapproved it; Goren sanctioned a new army prayer book, Yosef rejected it.63

To rectify the situation, the Knesset at the behest of the Minister of Religious Affairs, in 1980 passed a bill that decreed that both the Chief Rabbis serve alternately for a ten year term without the option of re-election. This was the palliative for the previous situation wherein both the rabbis served simultaneously as heads of the CRC and the Rabbinical Court of Appeal potentially the source of the friction. Functions would henceforth be divided - one will be the acting Chief Rabbi, and the other President of the Rabbinical Court of Appeal during the first half of their terms and will rotate the posts in the second half.64

As a result of these maneuvers and its historical advantage in handling institutions, Mafdal is one of the better organized parties in Israel.

Mafdal owns and controls a network of banks, economic enterprises, cooperatives, housing estates, publishing houses, and other properties. In addition to the state-supported religious schools, the party maintains and sponsors its own educational institutions at secondary and higher levels. It has promoted agricultural settlements, both kibbutzim and moshavim. Its youth movements, Bnei Akiva, is regarded as one of the finest, if not the finest, in Israel . . . Mafdal has derived considerable strength both from the


64 Ibid, p. 169.
civil service patronage wielded by ministries headed by Mafdal cabinet members and from the large rabbinical establishment. In many cases, synagogues serve as nuclei of Mafdal membership and as its organizational units.65

Since proportional representation persist at the municipal level, Mafdal's presence was ensured on local councils in addition to the religious council. This meant that the religious party's demand for the deputy mayor post was fulfilled in a majority of townships.

Mafdal has traditionally held two cabinet posts, and since 1959 it has consistently held three: Religious Affairs, Interior, and Social Welfare. The Interior portfolio is in charge of local governments; thus, in determining the amount of the grant-in-aid given by the central government to a local authority. This creates the option of granting financial favors to the religious council at the expense of the municipal council. The Ministry also administers the Population Registry Law which administers the Law of Return and monitors the Jewishness of the state. As the Halakah considers a person only if he is born of a Jewish mother or has been converted to Judaism, this ministry being controlled by religious parties meant that it acted as a verifier of the ethnic composition of the state thereby leading to the debate on Jewish identity in the 1960s.

The Ministry of Social Welfare, being in charge of tens of thousands of the underprivileged, has been of great political assistance to the party, which has derived considerable support from the poorer elements of the community. "The control of these three ministries has placed Mafdal in a position where it could both safeguard religious interests as such, and in addition dispense social benefits to a significant section of the Israeli electorate. The policy of recruiting the civil servants of those ministers has not differed from the practice among other parties in the coalition governments. All have used their power to strengthen their positions."66

Mafdal's bargaining power has varied proportionally to Mapai's fortunes, with the latter's weaknesses witnessing the grant of new demands. Following the 1969 elections which saw Mapai's stock plummet by 10 percent, the Mafdal demanded and got itself the appointment for a Deputy Minister of Education and Culture, an agreement to prohibit

65 Abramov, n. 14, p. 164.

66 ibid, p. 166.
television on Sabbath, in addition to the customary three cabinet ministries. (The Supreme Court was to invalidate Prime Minister Golda Meir's order to prohibit television on Friday evenings).

Intra-religious Conflicts

Much of the legislation sponsored by the religious parties was motivated by the need to legitimize themselves in the eyes of their more Orthodox peers. Avowedly both the Mafdal and the Agudah had evangelical programs. Their prime motivation was to see that the whole nation of Israel would one-day punctiliously observe the Torah so as to deserve a messianic visitation to end history. In reiterating the basic tenets of the dominant political Zionism, the Pressburg convention's resolutions outlined Mizrahi's purpose in the first decade of the century:

1. The Mizrahi is an organization of Zionists standing on the basis of the Basel program aiming for the survival of the Jewish people. The Mizrahi sees the possibility for the survival of the Jewish people in the observance of the Torah and the Commandments and in the return to the land of our father. 2. The Mizrahi stays within the Zionist Organization, fighting for its views within the organization, but it is creating a separate organization to attend to its religious and educational work. 3. The aim of the Mizrahi is to realize these aims by the employment of all legal means, to popularize its ideology among the thinking orthodox by the creation of a religion-national literature, and by the rearing of the young in that spirit. (emphasis added)

Mafdal's tendency to extract legal guarantees in exchange for supporting Mapai was spurred by pressure from the more orthodox Agudah. Agudah itself belatedly accepted the State of Israel by seeking to "establish the regime of Torah in the Land of Israel" in a declaration in 1952:

The world was created for the sake of Israel. It is the duty and the merit of Israel to maintain and fulfill the Torah. The place where Israel is destined to live and, therefore, to maintain the Torah, is the Land of Israel. This means that the raison d'être of the world is the establishment of the regime of the Torah in the land of Israel. The foundation of this ideal has been laid: there are now Jews living in their homeland and fulfilling the Torah. But completion has yet to be attained, for all Israel does not yet live in its land, not even the majority, and the greater part of the Promised Land is still in the enemy hands; finally, all Israel is not fulfilling the Torah . . . It is our duty to complete our mission . . . which must become our innermost concern.

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67 Cf. Schiff, n. 4, p. 37.

68 Quoted in Johnson, n. 22, p. 549.
Mafdal felt the need to legitimize itself among religious Jewry by concurring with the demands made by the extremist rabbis of Agudah. This was an effort to transcend the disrepute its Chief Rabbinate suffered because of the compromising rulings it made concerning secular Zionists. In comparison, the Agudah Council of Sages composed of eminent rabbis was a lot more credible since it determined the party's agenda and hold absolute sway over the politicians. In the case of Mafdal, it was noticed that the politicians who bargained with the secular parties in the Knesset and elsewhere, bearing in mind the huge network it had to maintain and was thus prone to comprise, exercised a measure of independence over the rabbinate whose appointments it controlled and was thus in a position to extract convenient rulings if *realpolitik* demanded.

The Agudah is itself prone to attacks of impropriety from extremist groups which are more conservative than it. Agudah itself while criticizing the Mafdal for actively cooperating with the Zionist and expropriating money for aggrandizing its interest was not averse to receiving funds from the state. In the 1950s, the number of students in *haredi* (ultra-Orthodox) institutions increased by at least 50 percent in the space of one year. During the 1950s it received 70-90 percent of its budget from Israeli taxes. In contrast, Naturei Karta and Eda Haredit are two extremist groups living in Jerusalem who display a venomous aversion to Zionists and all those who associate with them in any form.

Of the varied trends of the Orthodoxy, only Naturei Karta or Guardians of the City have scrupulously maintained ideological integrity in its attitude to the state of Israel. They reckon that the establishment of the State is a repudiation of God-ordained Exile and thus illegitimate. They criticize the religious parties for cooperating with Zionism and for their piece-meal attempts to conform the body-politic to the Torah. They believe that Torah need

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69 Agudah in Israel is visibly employing the strategy it used in Europe to ward off the threats of modernity. Emile Marmorstein writes: "In Eastern Europe... the Agudah became a mass movement with numerous branches which trained the faithful to exercise their electoral rights in favor of its nominees; and the development of a widely circulated religious press, the provision of reading rooms, the formation of women's societies, workers' associations, and youth groups and, most significantly, a network of institutions for the education of girls in a manner leaving little room for doubt as to the fervor of pupils, teachers, or management, all testified to the readiness of the Sages and their followers to adopt new methods to the fierce versions of the Enlightenment that surrounded them."

70 Marmorstein, *Heaven at Bay*, p. 75
be applied only when the world is spiritually transformed to accept the authority of the Torah. They wage a consistent rhetorical battle with both the religious parties and the State resenting its claim to be the Jewish state.

Abramov while profiling their way of life mentions that

(T)hey do not participate in its political life; they do not vote nor seek to be elected to public office - in fact, at election time they conduct vigorous propaganda against entering the polling booths; their sons and daughters do not serve in the army; they do not employ the Hebrew language in everyday life in order not to profane the holy tongue with secular matters; they do not observe the Day of Independence and treat it as a day of mourning. Their children do not attend state schools, or even state-supported schools, and they do not resort to the courts of law. They maintain their own facilities for ritual slaughtering (shehitah), for they do not recognize the state-supported rabbinate as entitled to supervise shehitah and other matters of dietary law.71

However, even though their number does not exceed a few thousand, they exercise a powerful influence on Orthodoxy in general and on the official rabbinate who are often found to be apologetic about their association with the state as a result of the Guardians' tirades. They are known to be militant regarding Sabbath observance and are reported to be stoning passers-by and cars on the holy day. They gained national notoriety for burning the national flag on the 1965 Day of Independence. Shmuel Eisenstadt comments that their attacks on the stances of Orthodox parties, grant them "full religious legitimation ... In the debate between tradition and modernization, tradition is in general becoming increasingly militant and intolerant ".72

Having seen this recurring pattern of religious coercion it is possible to detect a pattern wherein:

Naturei Karta inveighs against the Agudah's participation in the Knesset, and Agudah counteracts by attacking Mafdal's participation in the Cabinet. Naturei Karta starts an agitation on a religious issue ... Once this agitation has assumed larger proportions or even resulted in violence, the matter is taken up in the Knesset by the Agudah, with Mafdal the first victim of the parliamentary debate. Mafdal, on its part, when sensing a rising alarm, would bring pressure to bear on the government; if unsuccessful, it would resort to the only alternative left short of withdrawing from the government: abstaining from voting, with some embarrassment and loss of face.73

73 Abramov, n. 14, p. 162.
The first crisis that Agudah precipitated was concerning the issue of conscription of women for military service. However, the government had decided to draft girls into the army for a period of twelve months, so that they might perform various administrative and technical tasks and thus free considerable numbers of men for combat service. In order to placate the opposition from the religious groups, the September 15, 1949 law, as passed in its final form, exempted from service, married women, mothers, and pregnant women, as well as any girl "who has declared that reasons of conscience or religious conviction prevent from serving." In fact, this was one of the concessions made to the Agudah in return for recognition of the State and for admitting three Agudah members into the 37 member Provisional Council of State.

This issue placed the Mizrahi in a unusual dilemma. The Chief Rabbinate which was effectively in its control was opposed to the issue of religious women's conscription while Mizrahi itself being part of the Zionist movement called for the waiving claims for exemption and instead volunteer. The secularists outrage over the compromise was ineffective when weighed against the realities of coalition government. Mapai, thus promised a one-year moratorium on the recruitment of religious women while forming the 1951 government. The Agudah withdrew from the coalition and caused the collapse of the government when Mapai introduced the bill to conscript all women in September 1952 which was subsequently passed following fresh elections. The religious parties pointed out that in no Western country were women conscripted in peace-time, apart from expressing concern about the "immorality in the camps".

Agudah managed to wrest a compromise, after fierce agitations all over the world, when Prime Minister Ben-Gurion assured Chief Rabbi Isaac Herzog and Rabbi I. M. Levin that conscription would not be imposed on religious women. Once again religious parities have agitated for those issues which potentially can alter the course of Israeli society. It has been noted that "Oriental parents in particular, often more conservative in domestic than in religious matters, were widely believed to take advantaged of the facility of exemption to free their daughters from the burden."74

Cumulative pressure on Mafdal as a result of ultra-Orthodox pressure has been

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74 Marmorstein, n. 21, p. 167.
prevalent on many issues, which has eventually enlarged the role of religion in public life. The controversy over the Sabbath is a case in point. The Orthodoxy has insisted that the secular population abide by Sabbath observance as well by calling for a close on all public activity, entertainment included. Traditional orthodox rulings on Sabbath,

confine activity to prayer, study of the Torah, eating, drinking, walking within urban limits, sleep, and social intercourse. For example, cooked dishes, and everything else requiring the use of fire, have to be prepared before the Sabbath, which begins roughly at sunset on Friday and continues until nightfall on Saturday, but may be kept warm provided that the flame was lit in advance and remains untended throughout. No one may one ride, write, smoke, play a musical instrument, use the telephone, turn on the light, wireless, or any other electrical appliance, touch money, or travel in a vehicle during the twenty five hours -except for the purpose of saving human life.75

As those demands interrupt many aspects crucial to modern life, a committee was formed in the 1950s to oversee the maintenance of essential services on Sabbath which included the Minister of Labor and Minister of Religions. By summer of 1961 over a hundred undertakings were reported to be availing themselves of the committee's permission; and press accounts of dismissals of Sabbath absentees - mainly involving Oriental immigrants in the developments - became more frequent. Moreover, an increase of Sabbath profanation by the state airline, railways, postal, services, etc. was widely alleged. The religious parties appealed to the secularists to observe the Sabbath by viewing it at least as a national institution.

What hampered the observance of the 1951 Sabbath law was the inability of the religious parties to enforce it as the guardian of work schedules was the Minister of Labor which was always in Mapai's hand. Even the local municipal councils often flouted their 'competitors'- the religious councils - demand for the observance of the holy day. The Sabbath Ordinance (1965) went some distance in rectifying this anomaly. It was meant to supersede local laws, whereby -outside the development zones - a measure of Sabbath observance was safeguarded, by defining what was to be forbidden on the Sabbath and leaving local authorities free to impose further restrictions - but not to grant relaxations. Without affecting the powers of the Minister of Labor's committee, it closed business, offices, workshops, and factories, private or co-operative, irrespective of whether hired

75 ibid, p. 156.
labor was employed, cinemas and theaters, but not restaurants, hotels, chemists and clinics. Owing to the ambivalence of the religious parties in Haifa, where Mizrahi was a part of the municipal council which ran buses on Sabbath, public transport was left out. The Sabbath still leaves a rift along religious-secular lines in Israel which may never be bridged. However, Sabbath restrictions are noticeably enforced only where the religionists are powerful and thus is selective. Thus, cafés in Tel Aviv are open but closed in the Jewish part of Jerusalem on Sabbath. Buses operate on a limited schedule in Haifa but not in the Jewish part of Jerusalem. The orthodox are opposed to mixed swimming pool as also to football games on the Sabbath.

Yeshayahu Leibowitz, an orthodox Jew himself, and Professor at the Hebrew University of Jerusalem, reflecting cynically on the contradictions of the orthodoxy, said:

The orthodoxy has knowingly given up the idea of a Sabbath for the state and people, in favor of a Sabbath for a section of Sabbath observers within a society of Sabbath violators who, by their work provide for the needs of the sect. Orthodox Jews do not deprive themselves of water or electricity on the Sabbath, provided that other Jews operate them. Orthodoxy is interested in the operation of a police force on the Sabbath provided it is other Jews who perform police duties. It is also interested in the existence of a Jewish merchant marine, provided others Jews serve as sailors. Orthodoxy has become reconciled to girls serving in the army, so long as religious girls are exempted.

The lack of uniformity of Sabbath observance has provoked persistence Agudah activism ostensibly as much due to Naturei Karta’s pressure as much as religious compulsion. The extremists of Naturei Karta have on numerous occasions been known to resort to violence to maintain the Sabbath. Aware of the difficulty of resolving the issue it appears that the Agudah’s principal motive was to embarrass the Mafdal. In the 1960s, it passed a motion criticizing the Minister of Labor granting more than necessary work permits on the Sabbath. Mafdal abstained on this Agudah motion which was intended to drive a wedge between it and the ruling Mapai by citing the principle of collective responsibility. Not for the first time had Mafdal chosen to remain in the Ministry to protect its extensive administrative interests rather than resign as the Agudah was wont to do.

76 See ibid, pp. 161-162.


78 Frankel, n. 39, p. 212.
Mafdal found itself in similar circumstances when Agudah moved that El-Al (Israel's national airline) stop flights on the Sabbath. Convinced of the competitive disadvantage arising out of such a move, Mafdal once again abstained, demonstrating its blend of righteous self-consciousness and self-interest. Mafdal's Jacob Greenberg explained:

It was with pain that we abstained...It was not because we underrate the gravity of these violations, or ignore their importance. The contrary is true. We regard this as a grave desecration of the Sabbath, which is now of the sublime and holy symbols of our entire nation. If we had known that by voting for the motion, we would assure its passage, we would not have hesitated to raise our hands and would have been prepared in that case to jeopardize our participation in the government. Unfortunately, voting for the motion would have been an empty demonstration and, to the best of our judgment, the loss would have exceeded the gain. Our record in the struggle for religious interests is well known; our achievements in this sphere are considerable. We shall continue our struggle for a comprehensive throughout Israel, and do not despair of success.79

Mafdal stand is interestingly self-explanatory. They would have voted for the motion had it a chance of winning, otherwise "the loss would have exceeded the gain." They instead chose to build on other achievements by staying in the government. They managed to make sure that hotels and restaurants needed a 'certificate of correctness' from the rabbinate. Under a law of 1962, pig-farming was banned except in Christian Arab areas of Nazareth or for scientific purposes. There were cabinet rows over autopsies and over burials in consecrated ground.

Education has raised immense complexities between the religious and secular. The competition between Agudah and Mafdal for the loyalty of the immigrants has initiated a dynamic political agenda. "Parties were interests as well as ideological entities." The schools and the immigrants were ideal ground for ensuring generational loyalty to the party. The manipulation of some of the immigrants section is mentioned here to illustrate the seriousness with which parties took ideological battles especially when it involved new recruits.

The struggle for immigrant loyalty went back to the inter-war period when land settlement was largely a party function. In the early 1930s there was an inter-party agreement for the division of scarce land so that parties can set up exclusive enclaves. Paul Johnson traces the origin of this competition as thus:

After independence there was really enough land for all with agricultural leanings, as the party officials toured the transit camps to get people. There were unofficial carve-ups on an ethnic-religious basis. The Rumanians, Bulgarians and Yugoslavs, for instance, went to the secular parties (chiefly Mapai), the North Africans to the religious group, Mizrahi. Thanks to the skill of Mapai's Yemeni agents, the party established a virtual monopoly over Yemeni immigrants, though after a Mizrahi protest its share was reduced to 60-65 percent. Mapai and Mizrahi also did a deal over 100,000 Moroccan immigrants, Mapai organizing the emigration from the South Atlas area, Mizrahi from the North Atlas. A revolt of some of the Moroccans, who resented being owned and indoctrinated, brought this arrangement into the open in 1955.80

He also states that the parties allegedly used to divide the immigrants on the basis of their ethnicity or religious affiliation with the Europeans Jews being the preserve of the Mapai and the North Africans the Mizrahi's.

The 1953 Unified Education Act conflated the four trend education system into two types: government-secular and government-religious schools. The Agudah, fearful that the state religious sector would be monopolized by the Mafdal, demanded that it be allowed to have its own independent school system which the ruling coalition agreed to. It withdrew from these schools from the system but ran the risk of losing state grants if it did not devote time to secular subjects. Secularists complained that Agudah schools devoted eighteen periods out of thirty two in a week to Bible, Talmud and Hebrew, at the expense of science, geography and history. Religious Jews pointed out that state schools gave only eight out of thirty two to religion which was being taught with secular assumptions of treating biblical history as myth or as early Zionist history.81 Two representative Orthodox reactions are reproduced here:

Indescribable damage has been caused by both to the immigrants and to the State by the anti-religious activities of Leftist instructors who have used the foulest means in order to 'educate' the immigrants in their own 'spirit'. In many cases, family life has been ruined and the moral foundations and spiritual values on which the lives of the immigrants had been based for many generations utterly destroyed without any replacement for them - even if they could be replaced. So far has the matter gone that the children have begun to rebel against the parents and have lost all feeling for spiritual concepts or moral tenets, with the result that, in the case of a considerable portion of the young people who follow the counsel of the instructors, even their national loyalty is questionable.82

80 Johnson, n. 22, p. 544.

81 Ibid, p. 552.

82 Quoted in Marmorstein, n. 21, p. 142.
One of the rabbis bitterly complained about the corrosive effects on their children's religiosity:

(They) raised the youth that was lacking in wisdom to the heights, and clothed them with pride, while casting in the dust the elders who had acquired wisdom. They taught the child at school that here - in the land of Israel - there was no need to observe the commandments of the Torah. When the boy came home from school and his parents told him to pray, he answered that the teacher said it was unnecessary or that the instructor had called it nonsense. When the rabbi came and told the boys to observe the Sabbath, they would not listen to him because the club was organizing a football match or the car was waiting to take them to the beach . . . if the Rabbi pleaded and wept, they laughed in his face, because that was what the instructor had ordered. . . . Sages of the Torah were thrust into a corner while boys rose to greatness because they held party cards.83

Marmorstein recalls the stridency of the religious parties in imposing their agenda on Israeli politics as thus:

In Israel's first four governments no less that five cabinet crises were provoked by religious issues: in 1949 over importing forbidden food, in February 1950 over the religious education of Yemeni groups in transit camps, in October 1951 and again in September 1952 on the conscription of girls from Orthodox homes, and in May 1953 over schools. This pattern continued for the first forty years of Israel's existence, religion proving a far greater source of coalition disharmony than difference over ideology, defense or foreign affairs.84

Itzhak Galnoor notes in this regard that a "perusal of newspapers of the first two years of statehood gives the impression that the armistice agreements with the Arab countries were secondary to these disputes. There were not, but there was also a very tangible danger that a Kulturkampf might erupt. Minor controversies quickly reached boiling point: for example, the question of what hour the movie houses in Jerusalem should open on Saturday nights led to violent scuffles in the streets and threatened to break up the coalition. The URF often opted for the most extreme position and provoked strong resentment among the non-orthodox leading early in 1951 to the establishment of a League for the Prevention of Religious Coercion that drew considerable support."85 The Agudah

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83 Cf. ibid, p. 144.
84 Johnson, n. 22, p. 550.
was ultimately granted the right to establish its own school system which received state subsidy.

Creating a regime of privilege has drawn much resentment from the secularist populace, not least the motivations that underlie the formation of governments in coalition negotiations. The Mizrahi does claim that they are judged by standards that are not applied to other parties. One might quote a prominent outburst by Knesset member Moshe Shapiro against the hatred of the party allegedly fomented by the secular press:

For example, they asked us not to put obstacles in the way of Mapam's joining the government and explained to us that the unity of the workers constituted a high ideal for them. When the whole 'ideal' exploded owing to the failure to reach agreement on budgetary demands and the distribution of portfolios, nobody opened his mouth. We began coalition negotiations, not with material demands like the others, but on spiritual and general matters affecting the welfare of the whole of Israel; in spite of that, they regard us as "blackmailers" and the others as concerned for the interest of the public. This is a distortion arising out of a malady of hatred which is spreading among us and which I consider a danger not only to our religious life but also to our very social existence.86

Mafdal also maintains that it is more prone to attacks by the liberal establishment owing to its greater visibility owing to its extensive involvement with Zionist institutions. One writer writing in a religious publication Iyyunim says:

One must remember that they hate us more than they hate the Agudah and the Guardians of the City - for several reasons: first, they encounter us and not them at every corner: secondly, when they grumble and complain about religious laws, we and not the others are responsible for those laws - it is from us, as it were, that they suffer, since we and not the Agudah and the like impose religious coercion: thirdly, there is a psychological factor - the encounter between a rebellious, undisciplined, immoral, or delinquent young man and a religious young man in the sphere of life and activity, whether in the farm or at the bench, in the office or the army, arouses jealousy, which is one step to hatred: and, fourthly, boorishness and ignorance are factors leading to estrangement and from estrangement to suspicion to and from suspicion to hatred - exactly the same relationship as that of the 'lout' to the Jewish boy in the exile. For all these reasons, they hate the party, and gradually, though anti-religious incitement, the hatred spreads from the religious party to the religious person and to religion.87

86 Marmorstein, n. 21, p. 130.
87 ibid.
Compromises over the 'Divide'

Occasionally, the interplay between religious and secular parties has been characterized by an attitude of 'give-and-take', with a periodic attempts to snub each other for being intolerant as and when the occasion afforded them. The secular parties too in their dealings did not always display the propriety that they expected of the religious, and instead produced the very populist initiatives which they denounced the religious for. They also attempted to loosen the hold of religious parties on Judaism that they enjoyed through the rabbinate and the schools. One such crisis concerning education took place on February 1, 1951 with the publication of the recommendations of the Ministerial Committee on Education which was approved by the cabinet but opposed by the religious bloc.

The recommendations included provisions for the immediate establishment of religious schools for children in all Yemeni camps and in all religious settlements where no religious schools existed. The Religious Bloc objected to this provision since it did not clearly designate the Mizrahi and Agudah schools as the sole religious educational institutions for the settlements. From preliminary discussions it emerged that the recently organized Histadrut were implicitly labelled as "religious."

The religious parties protested that neither the teachers nor the curriculum of the Histadrut schools were religious and that the religious subjects were introduced only as a camouflage. They claimed that Mapai was putting up a veneer of support for religious education, whereas in fact it had hastened to establish Histadrut "religious" schools in dozens of settlements in order to eliminate the possibility of creating authentic religious schools in these communities.88 The religious parties objected that since the families involved in settlements were not yet acclimatized to the new country they were still vulnerable to partisan pressures. The climax involved the threat of resignation from the cabinet of Rabbi Maimon, the Minister for Religious Affairs.

It was expected that the vote in the Knesset would be a mere formality endorsing the recommendations as the secular parties composed of Mapai, Mapam, the strongest advocates, the General Zionists, Progressives and the women's party WIZO appeared in favor of reform. These recommendations were however rejected in the Knesset by 49 to 42

88 Birnbaum, n. 47, p. 127.
votes through a combined vote of the opposition and the Religious Bloc. Paradoxically, the extreme right Herut, Mapam, General Zionists supported the religious parties while WIZO abstained. Evidently, animosity towards the establishment Mapai came second to the principle of rescinding the monopoly of religious instruction.\textsuperscript{89} Prime Minister Ben-Gurion announced the resignation of the government after the adverse vote. The Orthodoxy managed to engineer the downfall of a government barely two years after the formation of the state. In the process, Ben-Gurion castigated the religious parties behavior:

A person is permitted to be a religious Jew without resorting to a visa from the Mizrahi or the Agudah. A religious Jew who does not want to be in the Mizrahi party does not cease to be a religious Jew. We did not and we shall not recognize, and no government can be forced to recognize the monopoly of a party that calls itself religious, over religious Jews. Similarly, we did not and we shall not recognize the monopoly of the Mizrahi and the Agudah over religion... Religious parties do not represent Judaism... And I do not believe that anyone represents basic and traditional Judaism only by belonging to the Religious Bloc.\textsuperscript{90}

This diatribe was to have political and legal consequences. A caretaker government is empowered in Israel to initiate legislation and hence Mapai, having been absolved of the coalition links with the Religious Bloc, presented an amendment to the Compulsory Service Law, requiring women who object to military service on religious grounds to serve the nation in immigrant, settlements, agricultural or governmental institutions for two years. This was passed by the Knesset over the united opposition of the Religious Bloc, the Herut and the General Zionists. The women's party, WIZO, hoping to benefit from the ongoing rift, introduced a Private Member's Bill designed to establish equality before the law between partners with regard to matters of personal status such as marriage, divorce, custody of children, property of inheritance and alimony, a status denied by the religious courts who had jurisdiction on these matters. By a vote of 51 to 13, the Knesset requested the cabinet to prepare an Equal Rights Bill which was passed on July 17, 1951.\textsuperscript{91}

\textsuperscript{89} ibid, p. 129.

\textsuperscript{90} ibid.

\textsuperscript{91} ibid, p. 102.
Apparently, the Herut too eyed the women's vote and did not vote with the religious parties unlike the amendment to Compulsory Service Law. Another controversial bill, the Hours of Rest Bill, opposed by the Religious Bloc, was passed by the Knesset, whose execution the religious parties wished to give to the Minister of Religious Affairs. Mapai, piqued over the issue of education gave these powers to the Minister of Labor.

This retaliatory politics continued. In 1958, the Mapai went on to appoint the non-party Rabbi Toledano to fill the position of Minister for Religious Affairs vacated by Mafdal after it resigned form the government over registration guidelines relating to the debate over Jewish identity. Furthermore it refused to remove Toledano when Mafdal returned to the coalition soon after.

This one-upmanship has been the feature of Israeli political conduct and has affected the Judiciary too. The Supreme Court sought to remind the rabbinate that it considers religious law as one of the components of the corpus of Israeli law and not as the defining one. It did it in the instance of the execution of the Dietary Law, which guaranteed the observance of Jewish dietary law in state institutions. However, the rabbinate wanted to impose Kashrut on private enterprises and sought to withdraw Kashrut certificates from establishments which violated other Halakhic norms. These efforts led the Supreme Court to assert that it had the authority to review the jurisdiction of the rabbinical council, that the councils were authorized to revoke laws, and that any other use of their statutory authority to supervise Kashrut, e.g. an insistence that the private establishments be closed for Sabbath - was ultra vires. The court thereby reasserted the primacy of the secular law of the state.92

Ironically enough, Mapai chose to truck up with the Religious Bloc once again rather than with the General Zionists and Mapam underlining the willingness to grant concessions to the Orthodoxy in return for control over economics and foreign policy. Over the sensitive issue of education, the Mapai totally capitulated to the religionists' demand. Under the State Education Law (1953), the Minister of Education was given the responsibility for both state secular and a state religious system. To avoid any altercation, the Deputy Minister responsible for the religious component of the state - who till 1977,

always has been a member of the Mafdal - enjoys considerable autonomy. The independent Agudah school network to which 10 percent of Jewish children attend was to receive 85 percent of its budget from the government even though it is doctrinally outside the purview of the Ministry. (Around 90% of the Jewish children attend a state school - 65 percent in the secular system, 25 percent in the religious). Beginning with instruction in Hebrew, the ministry has expanded the common, national component of both the systems. The 1955 coalition agreement provided the clearest statement of government policy on this issue:

In primary, secondary and higher education the government will endeavor to deepen the Jewish consciousness of Israel's youth, to enable it to become rooted in the past of the Jewish people and its historical heritage, to strengthen its moral attachment to Jewry through an appreciation of the common destiny and the historic continuity which has united the Jews the world over in all generations and all countries.\(^93\)

The religious parties maintained a consistently high tonality of rhetoric on issues involving principle to extort political advantage as and when opportunity presented itself. They managed to extract concessions only because the larger parties who hoped to form the government courted them regardless of principle. Only the smaller parties like Mapam and Ahdut HaAvodah dared to speak their mind concerning religious coercion.

The General Zionists, too, were prone to patronizing the religious parties. They were strong advocates of civil marriages and generally the opponents of religious aspirations. This did not, however, deter them from placing the Moshe Nissim, son of Sephardi Chief Rabbi Nissim, at seventh place in their Knesset list for the 1959 elections. This was done to attract the religious vote and simultaneously appeal to the Sephardi community.\(^94\)

The Mafdal and Agudah managed to safeguard this culture of privilege that they were accustomed to by resisting any Mapai attempt towards electoral reforms. In 1959 Mapai advocated for constituency elections to establish a majoritarian democracy. Mafdal was obviously opposed as it would effectively eliminate its chances of making it to the

\(^{93}\) ibid, p. 153.

\(^{94}\) Birnbaum, n. 47, p. 237.
cabinet. The NRP was also opposed to the Progressive Party's suggestion that there ought to be a law enabling the Prime Minister to dismiss a Minister with the consent of 60 percent of the cabinet.\textsuperscript{95}

The religious parties, on their part were also flexible when the occasion demanded. The sixth Knesset's coalition understanding involved the demand of the Labor Alignment (Maarakh) that the Chief Rabbinate should not have the final say in a dispute concerning dietary law and that an appellant should have the right to appeal to the High Court. The religious parties evidently agreed to such a provision. As far back as 1951, the Chief Rabbi Yitzhak Herzog agreed to the dissection of bodies on condition that they had been formally donated by their owners for scientific research; that there be no objection from next of kin, and that all parts of the body should be buried with traditional ceremony and respect. These conditions were incorporated into the Anatomy and Pathology in 1953.\textsuperscript{96} That the religious representatives overlooked irregularities in practice is another matter.

**The Furore Over Personal Law**

If there is one issue which lies at the heart of the religious-secular divide in Israel it is the fact that Orthodox rabbis have sovereign jurisdiction over personal matters of every Jew whether he is religious or irreligious. As mentioned before, the Knesset passed the Rabbinical Courts Jurisdiction Law in 1953, making matters of marriage, divorce and maintenance between Jews the exclusive purview of religious courts in compliance with the corpus of Jewish religious law. This effectively rules out civil marriages in the land of Israel, which means that the religious parties have hold on determining the nature of Jewry in Israel. Owing to the far reaching nature of the legislation the text of the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law is reproduced here:

1. Matters of marriage and divorce of Jews in Israel, being national or residents of the state, shall be under the exclusive jurisdiction of the rabbinical courts.
2. Marriages and divorces of Jews shall be performed in Israel in accordance with Jewish religious law.
3. Where a suit for divorce between Jewish has been filed in a rabbinical court, whether by the wife or by the husband, a rabbinical court shall have exclusive jurisdiction in any matter connected with such suit, including maintenance for the wife and for the children of the couple.

\textsuperscript{95} ibid, p. 226.

\textsuperscript{96} Sachar, n. 36, p. 601.
4. Where a Jewish wife sues her Jewish husband or his estate for maintenance in a rabbinical court, otherwise than in connection with divorce, the plea of the defendant that a rabbinical court has no jurisdiction in the matter shall not be heard.

5. Where a woman sues her deceased husband's brother for a halitzah (release from levirate obligation to marry her) in a rabbinical court, the R.C. shall have exclusive jurisdiction in the matter, also as regards maintenance for the woman until the day on which the halitzah is given.

6. Where a rabbinical court, by final judgment, has ordered that a husband be compelled to grant his wife a divorce or that a wife be compelled to accept a letter of divorce from her husband, a district court may, upon the expiration of six months from the day of the making of the order, on the application of the Attorney General, compel compliance with the order by imprisonment.

7. Where a rabbinical court, by final judgment, has ordered that a man be compelled to give his brother's widow a halitzah, a district court may, upon the expiration of three months from the day of the making of the order, on the application of the Attorney General, compel compliance with the order by imprisonment.

This is markedly different from the time of the Mandate when Jewish courts could only decide disputes about inheritance and bequests if both parties agreed - a restriction popularly attributed in orthodox circles to Zionist pressure on the British government from secularizing motives. Through this Law, religious judges were placed on equal footing with their secular counterparts in respect to the state enumeration; and, with regard to foreign nationals who accepted their jurisdiction, their verdicts in the above-mentioned matters were normally upheld.

Admittedly, the new rulers of Israel went further than their predecessors in meddling with the content of religious law - they forbade polygamy and decreed a minimum age for marriage for the whole population, Muslims and Jews alike. "Some Yemenite immigrants, indeed, were forced under the threat of imprisonment and fines to divorce wives previously married to them under previous traditions; and, subsequently, a few rabbis have been prosecuted for solemnizing marriages permitted by the Torah but prohibited by secular legislation." The Naturei Karta denounced this law indicating that this law impinges on their rabbinical injunction to marry by the time of puberty.

Article 2 did not specify what the "Jewish religious law" was to be, it was obvious

97 The autonomy of the Orthodoxy is manifest to the extent that in 1984-85, seventy-six requests were approved by the Rabbinical Tribunal in Israel to marry an additional wife. For the same period, in Jerusalem alone, eighteen such requests were granted. Huppert, n. 53, p. 167.

98 Marmorstein, n. 21, p. 174.
that it meant the Halakah as interpreted by the Orthodox. This understanding was never challenged, especially since the official rabbinate consisted of Orthodox rabbis mostly while Reform or Conservative rabbis do not get to serve. Thus the civil law left the interpretation and application of Halakah to the rabbinical courts, headed by the Rabbinical Courts of Appeal as the Chief Halakhic authority. In this way the Israeli legislature not only divested itself of its sovereign right to provide the substantive law in matters of family relations, and to amend and alter such law, but by delegating this right to the Orthodox rabbinate, created a situation where the law applicable to these matters could only be interpreted, and neither amended nor altered, for the Halakah, understood as divinely ordained, cannot legislate change. The immutability of the ancient law is at the root of a good deal of the tension between a large segment of the Jewish population of Israel and the civil as well as religious authorities.

Personal law sovereignty has afforded a great deal of leverage for the Rabbinate to investigate into the private lives of citizens especially when applications for marriages come up. Since the Torah is specific about certain forbidden unions, appraisal of the persons' familial antecedents is not uncommon and often considered humiliating. The most obvious case has been the ordeal of Bene Israel, the Jewish community from India one-fifth of which emigrated in 1952. Certain aspersions were cast on their Jewishness considering their proximity with Hindu customs by some sections of the Orthodox, raising the questions of propriety of inter-marrying with them by the rabbis of a number of immigrant towns to the Chief Rabbinate. Following a popular outrage, the Chief Rabbinate, once again in a spirit of compromise, ruled that "there is no room for doubt as to the Judaism of the Bene Israel", while making the proviso that "it is incumbent on the rabbis who act as marriage registrars to make proper investigation in every case according to the instructions of the Chief Rabbinate and, in case of doubt, the matter should be referred to the nearest District Rabbinical Court, as is customary in all cases of marriage registration."99

What is unique in the Israeli legal framework is that civil courts when dealing with a matter of family, or where personal status is incidental to litigation, are bound to apply the religious law of the person concerned. However, in such cases civil courts deviate from

99 For a review of the debate concerning the Jewishness of Indian Jews see Marmorstein, ibid, pp. 178-183. See Chapter "Personal Law" for controversies related to burials, and conversions.
religious law only in two instances: when principles of private international law are
involved, in which case these principles take precedence over Halakah, and in matters of
procedure and of the rules of evidence, when the courts have ignored the principles of
Halakah. A possibility for the application of the principles of private international law in
family relations arose because Article 2 of the Law provided that "marriages and divorces of
Jews shall be performed in Israel in accordance with Jewish religious law." When the
rabbinical courts attempted to apply the Halakah also in instances where such acts had
been performed abroad, the Supreme Court of Israel rejected this extension.

Some of the applications of religious law by the religious courts, in Israel though,
led to some unpopular decisions which culminated in the parliamentary debate on Jewish
identity. Apart from forbidding marriages between Jews and non-Jews, the Halakah forbids
unions between a Cohen and a divorcee or a convert to Judaism. On November 11, 1970,
the Supreme Court rendered a controversial judgment regarding the case of Eliezer
Kahane, a Cohen, who married and divorced a divorcee while refusing to pay alimony on
the ground that the marriage was illegitimate in the first place. The Supreme Court upheld
the rabbinical court's ruling saying that it was consistent with religious law. Said Justice
Sussman:

The result is that a woman who has been married for twenty-five years and has borne a
son . . . now has to leave with the mere sum of a hundred pounds. Such are the laws of
personal status in Israel, and no remedy can be afforded.100

Professor Amnon Rubinstein bitterly observed:

There is something ironic in the fact that in a country where a woman is head of the
government, it has been determined that a woman is a second-class citizen, and that in
many cases she is not only discriminated against, but is also deprived of all rights. The
responsibility for this situation, which, makes a mockery of the principle of woman's
equality, is that of the legislature and of the government, who have delivered the citizens
of Israel into the hands of the rabbinical establishment, which treats women as objects to
be cast away once they have been made use of.101

The inability of widows to re-marry without the consent of the deceased husband's
brother's permission as ordained by the Halakah has incensed the liberals and women alike.

100 Leah Kahane v. Eliezer Kahane, 571/69, Supreme Court Judgments, 24 (pt.2): 549ff.

The ritual of *Halitzah* as the grant of the brother-in-law is called is especially in case of women whose deceased husband's brother is a minor. In these case the woman has to wait for the minor to grow up and renounce the right to marry her. In one curious instance, the rabbinate to circumvent this embarrassing provision in religious law performed the marriage between an erstwhile brother-in-law who happened to be deaf and dumb as well, in one room and immediately proceeded to grant a divorce in the next room.\(^{102}\)

The only civil libertarian gesture from the religious side to reconcile the differing groups over the issues arising over Orthodox sovereignty in personal matters came from Knesset member Moshe Unna, a leading figure in the Mafdal. In an article published in 1964, Unna proposed that limited civil marriages be provided in cases involving the marriages between a Cohen and a divorcée or a *Halitzah*-bound widow. His proposal was denounced as contrary to the Halakah. Apart from the Liberal Party none of the other members in the Knesset took interest in the proposal.\(^{103}\)

One of the main issues which has engaged the interests of politicians in the course of its resolution is that of the *mamzerim*, simply the offspring of an incestuous relationship. While there is no legal or ritual discrimination against a *mamzer*, his children who are treated as Mamzerim have difficulty in finding partners according to rabbinical law. The status of the mamzer (the term denotes illegitimacy) is regulated in accordance with the rule that "a mamzer shall not enter the congregation". When a mother of the individual concerned has not been divorced in strict accordance with the Halakah, the offspring of her subsequent marriage are treated as mamzer. The provision of "strict accordance with the Halakah" is a euphemism for Orthodox rituals, which in turn means the official rabbinate thereby disqualifying conversions by Reform or Conservative Judaism. This puts American Jews under close scrutiny as the majority of Jews affirm to the denomination of Reform.

The Mamzerim predicament came to light in Spring 1971 when Chanoch and Miriam Langer, a brother and sister duo, found their application to a rabbinical court for marriage was denied on grounds that their mother's divorce from her first husband was

\(^{102}\) ibid, p. 185.

\(^{103}\) ibid, p. 186.
improper. Chief Rabbi Unterman upholding the ruling stated that the feeling of compassion must not permit the citadel of Judaism to be shaken. Referring to the hardship of the two young soldiers he said: "I do not consider it to be a tragedy. One cannot say that these people are prevented from marrying. They can marry male or female proselytes. We do not lack proselytes; indeed there is quite a selection of them." It is a measure of the cynical use of religion and the acquiescence of the politicians that the Mapai nominee Chief Rabbi Shlomo Goren eventually ruled that the children were not Mamzerim. He ruled that since the father's conversion to Judaism itself was questionable, the marriage itself was void. Since the mother was a Jewess the children qualified as Jews according to the Halakah and hence able to marry as full Jews.

The public debate prior to the passage of the Rabbinical Court Jurisdiction (Marriage and Divorce) Law of 1953 provides a panoramic view of the issues and dilemmas facing Israel society as it affects the interaction between religion and state. Zerah Warhaftig, the Deputy Minister for Religious Affairs, state that the importance of the bill lay in the fact that it would assure the unity of the Jewish people, which was of special significance. "Were civil marriage to be introduced," he observed, "it would lead us to the creation of two separate nations." Certain liberals have pointed to the racialist import of such statements and that it once again violates the Declaration of Independence. It is a tragic irony that these rulings which decide on whether a person is fully Jewish is reminiscent of the Nuremberg Laws in 1935 when Hitler deemed that a person who is one-eighth Jewish or one who has a Jewish grandparent was considered worthy of discrimination and then slaughter. Critics of the religious parties say that Zionism was an endeavor to provide safety to those people who were perceived as Jews by the outside world and hence ought to be given full citizenship and exempt from narrow Orthodox rulings.

Dr. Warhaftig of the NRP admitted that there would be an element of coercion involved. But "there is no state which does not coerce. State laws amount to coercion . . . In the same way as a state may appoint government officials to register marriages, so it may authorize rabbis to be persons having exclusive power to adjudicate in matters of divorce. The state may vest this power in the rabbinical courts, and the latter, deriving their power

from the Knesset become in fact state courts." He also pointed out that the Knesset, by passing out a law to this effect abdicated its right to influence by legislation the kind of law that these courts would apply. In extolling the Halakah, Warhaftig said: "We have a legal system that has always sustained the people. It may contain within it some thorn that pricks a certain individual, but here we are not concerned with this or that individual, but with the totality of the people."

Moshe Unna, of Mafdal, sought to minimize the gravity of the charge that the proposed law was an infringement on freedom of conscience. "Every legal system," he said, "possesses a code regulating family relations. The State of Israel was called upon to adopt such a code, and in adopting one that is identical with the Halakhic code it would prejudice no basic right. The fact that a particular code happens to possess divine authority in the eyes of a religious person does not, of itself, interfere with the freedom of conscience."

Notwithstanding the confusion that would arise out of religious law's applications, i.e. halitzah, fate of women who have insane husbands, or those who refuse to give or abide by the get, (issue of divorce) the critics of the Halakah decided to give the religious parties support for this law, believing that the unity of the Jewish people would be threatened unless the Halakhic family code were established by law. Israel Yeshayahu, a prominent member of Mapai, said: "If Israeli marriages and divorces are not in accordance with the traditional laws, intermarriage will spread, and the national identity will be obliterated."

Abramov comments that Yeshayahu voted for the bill, as did most of the non-Orthodox members, "fearing that if civil marriage were introduced, a separate register would be kept for those marrying halakhically and those marrying civilly, with the offspring of the latter being precluded from marriage with the offspring of the former. All were haunted by the specter of a split in the House of Israel; for the sake of avoiding what seemed to them the danger of creating two nations within Israel, the secularist majority was prepared to yield to the minority and to subject themselves to a legal code, the sanctity of which they did not acknowledge and the application of which they frequently had occasion

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105 ibid, p. 193.

106 Knesset Record, 14: 1478.
to criticize.\textsuperscript{107}

Eliezer Peri of Mapam, the United Worker's Party with a Marxist leanings, maintained that the bill was enacted to appease the religious parties who had won only 12% of the vote, but whose position was crucial for the survival of the government. Peri, a non-believer emphasized that the bill would not in the final analysis lead to national unity. He told the Orthodox:

If you really wish to inculcate faith in, and respect for religion, your present methods will yield the opposite result. Will you, by coercion, lead to faith? True faith and coercion are mutually exclusive. You are only arousing indignation against yourselves; each single non-believer can tell you how indignant and humiliated he is when he present himself to the rabbi at his wedding. I can respect a rabbi as a human being, but I have no respect for him when he appears as the representative of a superior authority. I do not acknowledge his moral or superior authority, and this is the feeling of most people... If you coerce us to submit to this authority, you are cultivating not faith but hypocrisy; you are encouraging disrespect for rabbis;... you are humiliating religion itself.\textsuperscript{108}

Rubinstein analyses on subjecting people to religious strictures:

Here the individual is subjected to norms whose essential source and whose binding force is drawn from their adoption by the legislature. The operation of this law is not governed by the ordinary rules applicable to statutory enactments, neither from the point of view of its amendment nor from that of inquiry into its mode of operation. To subject persons to religious law and religious judges in matters of marriage and divorce is equivalent to forcing them to participate in religious rites.\textsuperscript{109}

Only the Orthodox interpretation of the Halakah was implicitly recognized. At the time there were no organized groups of Conservative and Reform movements to demand for their rabbis the right to perform marriages, or otherwise to be represented in the official rabbinate. During the long parliamentary debate, not a single speaker alluded to the fact that in the Diaspora the Conservative and Reform movements were regarded as legitimate expressions of Judaism, and in fact constituted the majority of the Jewish people outside Israel.

\textsuperscript{107} Abramov, n. 14, p. 194.

\textsuperscript{108} Knesset Record, 14: 72.

Who is a Jew? Debate

The high-profile role of the religious parties and the legal guarantees provided regarding personal matters provoked a few cabinet crises. Owing to the irregularities in registration of the many immigrants of mixed parentage arriving as part of the returnees from Eastern Europe, the Minister of the Interior, on March 10, 1958, gave instructions for a nationwide population registration. The directive stated: "If one of the parents is a non-Jew, and both parents openly declare that their child is a Jew and not of any other religion, the child is registered as a Jew." This posture is consistent with the Law of Return to every citizen. The administrative order was in accordance with the then Attorney General ruling that read as follows:

There are religious rulings which differ in content and nature from the secular; the fact that according to the "Law of Moses and of Israel" a man is considered non-Jewish does not prevent that man from being considered a Jew as regards the law and of the state and vice-versa; there is no contradiction between the two.

The Minister did not consider the contradictory nature of his ruling in relation to religious law since he perceived that the realm of religion and the realm of government are different. He reckoned that person can be halakhically tested when the rabbinate decides his application for marriage or divorce but for the purpose of citizenship in the State an individual can register his nationality as Jewish.

The intent of the religious parties to keep the demographic composition of the state as racially pristine as possible is evident by its keenness to take hold of the Ministry of the Interior which is in charge of the population registry. When Moshe Shapiro of the Religious Bloc was the Minister of the Interior in 1950, the Chief Rabbinate instructed all rabbis who perform marriages and execute divorces not to accept the identity cards issued previously the same ministry as sufficient evidence and to investigate it thoroughly before the solemnization of the marriage.

The new rulings provoked an uproar by the religious parties who claimed that it

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110 Quoted in Huppert, n. 53, p. 123.
111 Jerusalem Post, March 12, 1958.
112 Birnbaum, n. 47, p. 179.
disturbed the status quo. A ministerial committee appointed to revise the rulings endorsed the Minister's position. When a government spokesman was asked whether a child would be registered as Jewish if both its parents were Christians, he replied in the affirmative. Following this the National Religious Party resigned from the cabinet forcing the collapse of the government. Ben-Gurion in his remarks to the committee encapsulates the anxieties of the secularists. He stated that:

In the Declaration of Independence, however, we announced freedom of religion and conscience and we did not decide that the Jewish state should be governed by Religious Law, and that the rabbis should rule it. On the contrary, we proclaimed that it would not be a theocratic state. (In our country there is equality of rights for women together with men, which I believe is contrary to Religious Law). . . . The Government did not consider itself authorized to decide who is a religious Jew. The question it had to consider was: "Who is a Jew by nationality?" I know that there is such an opinion -which I am not at all disputing- that there is no such thing as a Jew without religion, but to our regret there are many Jews who are not religious, both in Israel and in the Diaspora . . . Many believe themselves to belong to the Jewish people, although they do not observe Religious Law. It has been stated that this country is governed by the Rule of Law and not by Religious Law, (but the law (of the state) does not interfere in religious matters with regard to those who strictly observe Religious Law).

. . . I see danger both in a war against religion and in a war for religion. In the Declaration of Independence and in the Basic Principles of all the various Governments (all of which included representatives of the religious parties) we promised freedom of conscience and religion. I assume that you do not believe that freedom of conscience and religion should be given to one party alone.

On 27 November 1958, shortly before Chief Rabbi Toledano's appointment was confirmed by the legislature, Ben-Gurion addressed the following letter to personalities prominent in the intellectual life of Jewry, secular and religious which is cited here to amplify the nuances of the issue:

I am applying to you in consequence of a decision taken by the government of Israel on July 15 according to which a committee consisting of the Prime Minister, the Minister of Justice, and the Minister of the Interior was appointed to examine the registration conditions for children of mixed marriages whose parents, both parents, both father and mother, wish to register their children as Jews. In the course of this decision, the government has imposed upon the Committee the task of hearing the views of wise men of Israel both at home and abroad and of formulating registration instructions that accord with the tradition accepted in all Jewish circles and with the special circumstances of Israel.

113 Ibid, p. 183.

114 Jerusalem Post, July 3, 1958.
as a sovereign state in which freedom of conscience and religion is assured, and as a center for the ingathering of the exiles.

Registration of residents has been in force in Israel from 1949 up to the present day. Among the particulars which the law requires to be registered in this registration are 'religion' and 'nation'. Implementation of the Law of Registration of Residents is entrusted to the Ministry of the Interior, and registration officials are legally authorized to demand and to receive from residents who are obliged to be registered, the proofs and information which they require so as to be able to confirm the facts before they register them.

Proposals have been noted from time to time for the abolition of this registration or for the omission from it of questions about religion or nationality; but security and other considerations have prevented us up to the present and will prevent us in the near future from accepting these proposals. In the light of our special position, since there is no practical possibility of exercising continuous and effective control over all frontiers of the State in the face of infiltrators from neighboring countries hostile to us, who constitute a source of grave and unceasing danger to the peace of the State and its inhabitants, it is necessary that a legal resident in Israel should be able to identify himself at any time by means of a document given him by an authorized department.

The laws of Israel prohibit discrimination on grounds of distinctions of race, color, nationality, religion, or sex. The only privilege confined to Jews is defined in the Law of Return. A non-Jew who desire to migrate to this country must obtain permission which the State can refuse him; and, if he settles in the country, he can become a citizen only through naturalization for which he can apply after two year's residence. On the other hand, a Jew is entitled to enter the country according to the Law of Return by virtue of being a Jew, and as soon as he arrives and expresses his desire to settle in it, he necessarily and immediately becomes a Israeli citizen.

The need to ascertain the religion of a resident in Israel is due to the fact that marriage and divorce are entrusted according to the laws of Israel to the authority of the religious courts - the Sharia courts for Muslims, the courts of the various Christian denominations for Christians and the rabbinical courts for Jews. Marriages and divorces are arranged in Israel according to the present law only in conformity with the ruling of the Torah.

The question has arisen as to how children of mixed marriages with a Jewish father and an unconverted mother, who both agree that their child should be registered as a Jew, are to be registered under 'religion' and 'nationality'. Some say that as registration is a civil matter and does not serve religious purposes, religious criteria are inapplicable for purposes of registration. Others say that since no distinction is to be drawn between religion and nationality and since religious affiliation is of its very nature a religious question, purely religious criteria apply with regard to the registration of both nationality and religion.

The government has decided that the religion and nationality of an adult shall be inscribed as Jewish if he declares that, to the best of his knowledge, he is a Jew and not of any other religion.

According to law of equal rights for women that is in force in Israel, both parents are joint guardians of their child. If one of them dies, the survivor is the guardian. In general, therefore, the declaration of the two parent is accepted in every cases where a declaration of a child who is under age is registered. Yet in the matter of registration in the register of residents of children of mixed parentage, the question arises in the case of an unconverted mother who nevertheless agrees with the father their child should be Jewish, whether he should be registered as a Jew on the basis of an expression of the will of the parents and of their statement that to the best of their knowledge the child is not of any other faith, or
whether, in addition to the consent and declaration of the parents, some further rite is required so that he may be registered as a Jew. On this question, the committee of three is required to make its recommendations to the government after having, as has been said, received the views of wise men of Israel.

In the light of all that has been said, we should be most grateful if you would express your opinion as to how we should conduct the registration of children of mixed marriages whose parents, both the Jewish father and the non-Jewish mother, wish to register their children as Jews.115

The invitation was not enthusiastically accepted and hence did not achieve the unifying synthesis that was desired. The 43 replies "added little to what had already been said."116

Watching the attempt of the religious authorities to impinge the domain of the State the Jerusalem Post editorialized that the real location of authority in Israel: "The present dispute can ultimately be reduced to the question of whether the Government of Israel has the right to establish the rules to decide who is entitled to membership in the Jewish nation."117

Significantly religious activism in this issue undermines the legal linchpin of Zionism -the Law of Return which is an invitation to all Jews and in a way erodes the universality of the Zionist message in the Diaspora. Secular critics have also argued that the Law of Return too is an anomalous in International Law as it confers the right of citizenship to any Jew in the world. It stems from the Declaration of Independence defining the state of Israel as a state of the Jewish people. Evron Boas says that the statement is no more than a descriptive statement like "Britain is a country of the English people" signifying that it a place English people live. But neither in Britain nor in Italy do the "English" or the "Italian" have a legal status, since they exercise the option of becoming citizens of other countries.

The Law of Return, by its wording, enjoins the Jews across the world who are citizens of other countries to act in favor the Jewish state by immigrating and as such is prescriptive. "This is tantamount to an infringement of the sovereignty of any other country where Jews live and to a statement that the Jewish citizens of all countries owe political allegiance to an

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116 ibid, p. 193.

117 Jerusalem Post, July 4, 1958.
external sovereign body." 118

In the meanwhile, the NRP rejoined the cabinet and claimed the Ministry of the Interior. On the basis of scholarly opinion Haim Shapiro, the Interior Minister, issued new regulations in 1960. "A Jew could now be registered by nationality or religion only if he fulfilled the criteria of the Halakah; if he were born of a Jewish mother and did not belong to another religion; or if he had been converted to Judaism according to the Orthodox procedure." 119 The religionists had won another unequivocal triumph. Note how the directives now clearly mentioned "Orthodox procedure."

Not only did the legislature renounce its right to create sovereign laws disavowing religious values, but the Supreme Court sanctioned religious rulings concerning nationality confirming the dependence of Jewish nationality on historical Judaism. This was evident in two separate cases of Oswald Rufeisen and Binyamin and Ann Shalit which attracted national attention. Rufeisen also called Brother Daniel, was a Polish Jew, was incarcerated in Nazi prisons and decorated for saving numerous Jewish lives in the war. After becoming a Carmelite Catholic monk, Rufeisen decided to emigrate to Israel and demanded on arrival that he be granted the automatic right to immigration and citizenship granted by the Law of Return, stating that he was a Jew by nationality and Catholic by religion. Rufeisen petitioned the Supreme Court contesting that he is a Jew by religious law because of his Jewish mother and that the minister's refusal was arbitrary and deviated from the framework of the Law of Return. The five justices of the Supreme Court wrestled with this case for nine months in 1962 vexed with the following questions.

1. The court had no legal definition of the term 'Jew' as Israel's Parliament had consistently failed to provide one even in the Law of Return.
2. According to Jewish religious law, a Jew is one who is born of a Jewish mother even if he converts. "A Jew even if he sins is a Jew." 120
3. Importantly, "a court verdict that Rufeisen could not be considered a Jew because he converted would mean that Jewish nationality depended on religion and thereby enhanced as existential insecurity among the non-religious majority of Zionists. 121

118 Evron Boas, Jewish State or Israeli Nation? (Bloomington: Indiana University Press, 1995), p. 188.

119 Sachar, n. 36, p. 606.

120 Orr, n. 20, p. 73.

121 ibid, p. 69.
The Supreme Court comprising of Justices Silberg, Mani, Landau, Cohen and Berenson decided by a majority vote that Brother Daniel could not be considered a Jew by nationality and was hence a person without nationality. Justice Silberg who rejected the appeal contended that the Rabbinical Courts Jurisdiction Law prescribed a religious meaning for the term 'Jew', while the Law of Return presupposed a secular bent. As the Rabbinical Courts Law sought to extend the validity of Jewish religious Law over the non-religious the who is a Jew question ought to be resolved by religious law and the term 'Jew' for the Law of Return must be decided by popular parlance:

Since the Law of Return is an original Israeli Law and not a translation, it is reasonable that we ought to interpret the term "Jew" as we the Jews understand it...The issue then falls into place: what is the ordinary Jewish meaning of the term. Does it apply to a Jew who converts to Christianity? The answer to my mind is sharp and clear: A Jew who converts to Christianity is not called Jew. We do not detach ourselves from the historical heritage. Whether he (Jew) likes it or not he is umbilically linked to historical Judaism.122

Justice Landau appreciated the issue from a Diaspora's vantage point while rejecting the appellant appeal:

It is a fact that even today the religious affiliation continues, if only through loose observance of certain religious customs, to be the main link between the Diaspora Jews. For the Jew in the Diaspora conversion is the first step towards assimilation: it is the purpose of assimilation. The Law of Return was promulgated for Jews who immigrate to Israel from the Diaspora...123

Justice Berenson, upholding Brother Daniel's appeal wrote in his judgment, that the

learned representatives of both parties have agreed that the Law of Return is a national Law whose purpose is to fulfill the central purpose of the state, the ingathering of the dispersed of Israel and we must interpret the term "Jew", in that law, as having a national secular meaning and not a religious one.124

The verdict anyway revealed that secular Jewish nationalism which emerged as a rejection of religion was nevertheless dependent on religion. It was astonishing that the Supreme Court could reject his appeal of registration as a Jew given his impeccable credentials.

122 ibid, pp. 75-76.

123 ibid, p.84.

124 ibid, p. 86.
Rufeisen saved 150 Jews during World War II as he worked as an interpreter and secretary at a German police station, for which he was sentenced to death, escaped and joined Russian fighters who sentenced him to death once again on suspicion of being a German spy etc. Rufeisen was allowed to stay and become a citizen, but he did not get rights guaranteed automatically as per the Law of Return but according to Law pertaining to non-Jews.

Akiva Orr sums up the paradoxical situation of a secular court upholding a religious viewpoint as thus:

The verdict produced an inherently contradictory situation in which a non-religious court, for non-religious considerations, rules that a person’s religious belief is a criterion of his non-religious nationality, or the aspiration to provide a non-religious definition of the term “Jew” by a non-religious court which rejects the religious ruling on this case, ends up by invoking religion as a criterion of Jewish identity.125

The controversy underscored the fact that secular Zionism could not evolve a clear definition of Jewish identity and when its spokesmen attempted they ended up upholding religion as the defining element. This fact was apparently clear to labor Zionists before independence as well. Moshe Sharett, the Deputy Prime Minister to Ben-Gurion, appearing before United Nations Special Committee on Palestine (UNSCOP), was asked whom the Jewish Agency considered a Jew, He replied:

I would say technically and in terms of the Palestine legislation, religion is essential. It is essential that the person has not converted to another religion. He need not be an active, pious Jew. He is still considered a Jew. But if he converts to another religion he can no longer demand to be recognized as a Jew. The religious test is decisive.126

The next controversy in the vicissitudes of defining Jewish identity was the Binyamin Shalit case in 1970 Shalit, an navy commander, had two children by a Scottish wife, Ann, who did not convert to Judaism. The problem arose when the registration clerk denied registration to his children as ‘Jews’ by nationality when he saw the religion column in the application


126 ibid, p. 89.
marked 'none'. Shalit appealed to the Supreme Court which upheld his appeal by a majority vote of 5 to 4. The reckoning was that the Law of Registration of Inhabitants was a civil law meant for civil administration only, the term 'Jew' need not be interpreted in accordance with the Halakah.

The Supreme Court probably aware of its paradoxical verdict in the Brother Daniel case, sought to drive a wedge between nationality and religion in this case as if to amend matters. Justice Silberg dissenting with the verdict noted that "if Jewish religion is not required for the purpose of Jewish nationality, then Christian religious affiliation cannot be a hindrance", and cited that "even the reform (Judaism) community recognizes that no one can join the Jewish nation without accepting the Jewish religion." 127

The Supreme Court's verdict led to a massive outcry by the religionists. The NRP warned that it would leave the coalition government if the Knesset did not immediately pass a law to amend the effect of the court's verdict. Golda Meir's government soon submitted to the NRP's demand by passing the amendment. According to this new amendment in 1970 a person could be registered as Jew only if born to a Jewish mother, not adhering to any other religion, or converted to Judaism. Significantly, the National Unity coalition, including Herut, imposed party discipline and forbade a free vote according to one's conscience.128

Shalit's children were registered as Jewish but for the future, mixed marriage progeny were forbidden from listing their nationality as Jewish. As compensation for the secularists, the law of the Return was amended to grant automatic citizenship rights to gentile spouses, to the children of mixed marriages, even to the adult descendants of mixed marriages.

It also provided that a Jew by nationality should be defined not only as a person born of a Jewish mother but as one who had been converted to Judaism. Significantly, the manner of the conversion was not defined. This implied that the state would recognize the validity of conversions performed by non-orthodox rabbis abroad.129 The orthodox has

127 ibid, pp. 111-112.

128 ibid, p. 133.

129 Sachar, n. 36, p. 607.
been trying to legally specify Orthodox manner of conversion as opposed to Reform and conservative conversion, but has so far not succeeded. However, as it still controls matters of personal status it still does have the capacity to question the validity of conversions performed abroad.

Golda Meir’s comments during this crisis in the Knesset reinforce the ambivalence of the secularists to the role of religion in shaping Israeli future. On the issue of introducing civil marriages in Israel, Meir, an atheist, arguing against it said that it would raise the specter of the permanent division of Israeli Jews; religious and non-religious, while the goal of the state was unity.130 She said, “I have often said, and will no doubt continue to say, that I oppose civil marriage. But I and all religious people who do not blind themselves to reality - want the solutions coming from the rabbis and spiritual leaders”.131

During the 1970 Amendment debates she stated that one has to sacrifice one’s conscience for a higher cause; the continuity of the Jewish people, and went on to reason that Ann Shalit, who has sacrificed so much already for her children, should go one step further and undergo conversion.132 The following remarks encapsulate up her predisposition to this issue. "I am not a person observing the religious injunctions. But no one will uproot this from any heart and consciousness: for generations, but for religion we would have been like all other nations, which once existed and disappeared.”133

In retrospect, the religionists greatest victory, from their vantage point, has been the assurance that the attempts at ‘purity’ of the Jewish race are to a large extent being maintained. This conscious charting of the demographic profile suited the secularists need in view of the bogey of security. The secularists faulted the orthodoxy’s motivation but agreed with the consequence. The NRP especially achieved what it could through its self-conscious, turbulent relationship with Agudah sages who kept the NRP’s agenda on an activist plane. The secularists on the other hand, sought to regulate religion and managed to do so at practical levels but not on ideological principles. The secular challenge

130 Edelman, 76, p. 158.

131 ibid, p. 161.

132 Orr, n. 20, p. 179.

133 ibid, p.175.
foundered when it gave the impression that there is no basis for Jewish identity beyond religion. It is not that secular options were not available. For instance Professor Guido Tedeschi, the eminent Israeli jurist, and Supreme Court Justice Haim Cohen both concluded among others, that anyone declaring "honestly and in good faith" that he is a Jew should be accepted as such. They assert that even though the law cannot plumb the depths of the soul to prove the "good faith", it should be assumed that a person can pass objective, non-religious tests of sincerity related to citizenship and then accepted as an Israel citizen and not a part of the Jewish people. Such a test would also be consistent with reality that the state recognizes non-Jewish people as its citizens. Boas Evron reckons that once the secular politicians failed to do, owing to the security aspects, the issue ultimately became the preserve of the religious sphere. More importantly, it implicitly decided the issue of who was empowered to determine Jewish identity. The religious representatives won the entitlement to decide who is a Jew.

Significantly, the lasting legacy of the religious parties' activism has been the interpenetration of the political and religious elite causing concern about the effects on Israeli democracy. An analysis of the interaction between the two reveals the danger for both. Conceptually, political theory has concurred with the notion that democracy is better served when the elites are separate and relatively autonomous as it curbs state power and safeguards electoral procedure. This is particularly so because right from the election of Chief Rabbi to the judges of rabbinical courts, the second tier of local rabbi in municipalities, the heads and members of religious councils as also the financial patronage of the state through the religious parties. The Aguda too is prone to control by the establishment as it receives 85% of its budget from the state resources.

The acute interpenetration of religion and state has had an adverse effect on the appeal of religion. Professor Leibowitz who was the first Orthodox scholar to come out in favor of a separation of religion and state for the sake of safeguarding the integrity of faith


136 Ibid, pp. 481-482.
censured the pattern:

The demand for separation stems from the vital need of preventing religion from becoming the handmaid of political or social interests, from turning into a government department of a secular authority, a function of an administrative bureaucracy... From a religious point of view, there can be no greater abomination than a secular state which recognizes religious institutions as state institutions, maintains them, and imposes on the general public not religion, but certain religious functions, by an arbitrary selection determined by party-politics - and all this, while claiming that this is not a Halakhic state, but one where civil law prevails. And what about a rabbinate whose appointment, jurisdiction and salary are determined by the secular authority, whose status is thus comparable to that of the police force, the sanitary department, the post office? ... There can be no greater humiliation for a religion, nothing that detracts so much from its influence, than the establishment and maintenance of religious institutions by a secular state... All of this is a falsification of social and religious truth, and a source of spiritual and intellectual corruption.137

The fact remained that by their monopoly on registration guidelines which granted a dominant position in shaping Israeli demography, their hold on marriage, divorce, burials; demands concerning the Sabbath, the concerns over education, the religious parties managed to prepare the ground for creating a strong religious sub-consciousness and ultimately transform the ideological locus of Israeli politics.

The absence of the constitution was to perpetuate the cleavage between the religious and the secular. This made the Knesset, the originator of all laws. Since that body could be manipulated because of proportional representation, the legal accession of special interests was inevitable. The absence of an ideological referent, i.e. the constitution meant a diffusion of consensus about the society's basic values, the judiciary had no "highest norms" with which to be led, and there were no parameters on public policy as also a guideline. All of this meant an unsettled political culture, wherein a mosaic of sub-cultures interacted at the national level for power, with the most robust and aggressive shaping the agenda for the country's politics. A study of those issues will be dealt with in the next chapter.

137 Quoted in Abramov, n. 14, p. 197.