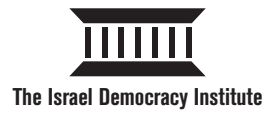


**Reinventing Israeli Democracy:  
Thoughts on Modernizing Israel's Political System**  
Arye Carmon





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# **Reinventing Israeli Democracy**

**Thoughts on Modernizing  
Israel's Political System**

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Established in 1991, The Israel Democracy Institute (IDI) is an independent, nonpartisan, nonprofit think tank located on the seam between academia and government. Comprising a select cadre of Israel's leading thinkers, the Institute is the premier nongovernmental agent of change in the Israeli body politic. IDI drives the process of Israel's transition from formal to substantive democracy.

We recognize that Israel, for all its considerable achievements, is a young state still in formation in a hostile environment. We believe that Israel's ability to survive and flourish ultimately depends on the soundness of the Israeli political system and the fortitude of Israeli society.

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Throughout the preparation of this manuscript, I turned for assistance to numerous IDI researchers to whom I would like to express my deepest gratitude. Special thanks to Nir Atmor, Amir Fuchs, and Meir Kraus, who provided background research, gathered material, and helped to formulate the recommendations that I present in this pamphlet. I was also aided by the insights of Dr. Chen Friedberg, Yuval Rachlevsky, and Moti Shapira, who proposed a series of recommendations to improve legislative oversight by the Knesset and to enhance the efficacy of Israel's public sector. I am grateful to each and every one of them. Thanks also to my IDI colleagues, who read this document and offered useful and valuable comments: Professors Asher Arian, Tamar Hermann, Mordechai Kremnitzer, and Yedidia Stern. My deepest thanks to Carmit Gai, Prof. Eli Shaltiel, and Anat Bernstein,

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Again, I would like to emphasize that responsibility for the proposals and content of this booklet is mine alone.

Arye Carmon  
September 2009

## Abstract

Israel's political system is in a state of deep crisis. The symptoms of this crisis are all too evident: ongoing political instability; uncertainty regarding government policy on issues of existential importance; attacks on the very legitimacy of the parliamentary system; and, above all, a groundswell of anti-political sentiment among broad sectors of the public, who display less and less trust in democratic institutions. A number of factors now combine to form a tangible threat to Israel's democratic system, which include the disintegration of the larger political parties, the malfunction of the three branches of government and the dysfunctional interaction between them, excessive personalization of politics, and the recent disruption of the delicate balance between the need to preserve the integrity of the law and the imperative of effective government.

The harsh reality in which our parliamentary democracy has become mired testifies to a growing incompatibility between an Israeli society, whose profile and needs are changing, and its democratic institutions, which are charged with encompassing and addressing these changes and needs, but that have, nevertheless, remained rigid. Enlightened and developed democracies adapt their structures and modes of operation to the changing needs of their societies; Israel has not. It has become urgent to enact a series of changes in order to regain the balance between political representation and governmental effectiveness.

Many of Israel's political problems stem from the weakness of Israel's legislature. Due to the fact that only about 90 of its 120 members – which decreased to a record low of 80 following

the last elections – are available to perform parliamentary work at any given moment, the Knesset lacks the resources and the independence necessary to enact quality legislation.<sup>1</sup> As a result, the Knesset no longer functions as the primary arena for molding the normative foundations of Israeli society that it is meant to represent. Nor does it fulfill its critical function of oversight. Unlike the legislatures of the OECD parliamentary democracies, Israel's Knesset does not serve as the government's "watchdog"; we have, instead, an anomalous situation in which the government serves as the watchdog of the parliament.

The operational failures of the executive branch are rooted in longstanding structural features of the Israeli governmental system. The most prominent feature is over-centralization, which is eroding the efficiency of the executive branch and its agencies that are already overburdened by accumulating demands. A related factor is the failure to assimilate the values of transparency and accountability. The symptoms of malfunction that characterize our executive branch include stagnation, rigidity and, at times, an utter inability to implement government decisions.

The lack of transparency and accountability so characteristic of a centralized system are fertile ground for corruption and for the improper exploitation of status and power. Unfortunately, those responsible for upholding the integrity of the law treat the

1 In the Israeli parliamentary system, Knesset members often serve concurrently as ministers and deputy ministers. As a result, over one quarter of the 120 members of the legislature serve in the executive branch. This not only severely limits the time they can devote to parliamentary matters, but it also blurs the separation of power that is essential for a healthy democracy.

symptoms, but not the causes. The so-called “gatekeepers” of Israeli democracy – in particular, the Attorney General and the State Comptroller, but also the Supreme Court and, in a different capacity, the media – have imposed more and more restraints, creating a patchwork of rules, regulation, and legislation that stifle initiative and creativity. These gatekeepers make unorthodox use of the powers placed in their hands, becoming “veto players” who tighten the leash and impair executive efficiency.

The primary casualty is governance. The current system ties the hands of any government elected to carry out its declared policies. When one adds defective governance to political instability, and when the consequences of the structural flaws that are intrinsic to the executive branch are combined with the failures of oversight that characterize the legislative branch, the temptation to resort to a quick fix – e.g., switching to a presidential system – becomes irresistible. However, the artificial transplant of a centralized system, such as the presidential model, especially without a federal component, is exactly the opposite of what is required for a system suffering from over-centralization in the public sector, and the disintegration of the party infrastructure in the political arena. A presidential regime would reinforce the power and responsibility of individuals instead of separating powers and decentralizing authority.

In order to strengthen representation in the legislative branch and improve governmental effectiveness, and in order to ensure a proper and effective balance between the three branches of government, rehabilitation must begin with an array of reforms, the most prominent of which are structural adjustments to the legislative branch.

Three principles constitute the common thread that runs through the various proposals presented in this essay:

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- The need to reinforce the existence of large political parties as the primary mediators of representative government in a parliamentary democracy.
- The need to decentralize administrative power.
- The need to expand civilian participation in political processes and decision making.

Another key assumption implicit in the proposals contained herein is that sooner or later, they must be integrated into the comprehensive framework of a constitution for Israel. Only the consensual adoption of a modern constitution, including a full bill of rights and an integral depiction of the mechanism of government, can ensure that these changes, as well as additional revisions of a similar nature that may be proposed by others, will prove to be lasting contributions toward a better political system.

With regard to the legislative branch, the requisite changes may be divided into two categories: first, electoral reform aimed at restoring large parties in the political arena and strengthening the bond between voters and their elected officials. Second, structural and regulatory changes geared to improve the legislature's functional capacity. Among other things, I propose to:

- Raise the qualifying threshold for gaining seats in the Knesset.
- Introduce regional representation into the electoral system.
- Institute the "priority right" for the position of Prime Minister according to which the leader of the faction that receives more votes than any other leader is designated Prime Minister on election night.

The reforms envisioned for the executive branch seek to decentralize authority and hasten the adoption of accountability

and transparency as the guiding values for policy implementation in the public sector. According to this view, the government should not involve itself in implementation; rather, its role should be to formulate policy, set standards for implementation, allocate resources, provide oversight, and measure and evaluate implementation. As is the case in the developed OECD democracies, executive agencies should be created to put these principles into practice. In addition, I argue that the status of local government should be redefined so as to enable substantial devolution of responsibility to municipal authorities.

Finally, in order to restore the desired balance between the need to fight corruption and the necessity of effective administration, I argue that it is necessary to modify the roles of the gatekeepers in the legislative and executive branches, and to adjust the scope of justiciability within the court system.

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## Foreword

The ongoing political instability that afflicts Israeli government, the vulnerability of the parliamentary system, and the upsurge of “anti-political sentiment” in the Israeli public – all these infirmities impelled me to compose an urgent appeal for change. One of the primary reasons for this sense of urgency is my fear of quick fixes that will do more harm than good. For me, this is no mere theoretical concern. I devoted seven years of my life to an arduous struggle to eradicate the system of direct elections for Prime Minister, which had been introduced through a simple vote by the Knesset in 1992.<sup>2</sup> The eventual repeal of this ill-fated system in 2003 was a bittersweet victory at best. The restoration of the old system curbed the deterioration of Israel’s political system to some degree. However, many of the distortions created by the innovation remain, while new ones have since risen to the fore, creating a serious threat to the future of democracy in Israel. The most striking is the disintegration of Israel’s large parties, which show no signs of recovery. However, other worrying phenomena are evident as well: the

2 In 1992, the Knesset passed an ill-considered measure to replace the single-ballot system in place since the establishment of the State with a two-ballot electoral system that was a hybrid of parliamentary and presidential elections. As a result, each citizen gained the right to vote separately for the prime ministerial candidate and the party of his or her choice. Ostensibly designed to strengthen the executive branch while enhancing representation, it ended up achieving precisely the opposite. IDI led a coalition against this amendment, an effort that bore fruit with the repeal of the reform in 2003.

impaired functioning of the three branches of government and the increasingly dysfunctional interaction between them; the continuous unabated personalization of politics; and the severe disruption of the balance between preventing corruption and enabling effective government. Under these circumstances, I fear that the current instability will lead once again to half-baked proposals for change that will inflict serious damage on Israel's political system, as it did in the early 1990s. This time, instead of waging a battle against the changes, after the fact, I felt duty bound to seize the initiative and share with the Israeli public some constructive thoughts in anticipation of the debate that is sure to ensue.

The content of the present document is loosely based on a wide range of studies produced at the Israel Democracy Institute by a number of scholars over the course of eighteen years. It should be noted, however, that the present synthesis reflects my own opinions. None of those who aided me in the process of drafting this appeal, and in particular none of my colleagues at IDI, bears responsibility for the material presented herein.

# Chapter One

## Observations on the Current State of Israeli Democracy

For some time now, Israel's democratic system of government has been in need of an overhaul. We have now reached the point where further delay could spell disaster, and it is imperative that we adapt Israel's antiquated institutions to the dynamic realities of 21<sup>st</sup> century Israeli society. The structures currently charged with managing Israel's overloaded national agenda are in serious danger of collapse. Meanwhile, the strong moral foundations that once supported Israel's beleaguered democracy and contributed to a strong sense of national solidarity and purpose are under attack from multiple directions. The danger signs are everywhere, including:

- Chronic political instability leading to perpetual uncertainty concerning government policy in all spheres.
- Growing alienation between the public and its elected officials as reflected in a steady decline in public trust in all democratic institutions.
- Deepening tensions between the branches of government – between the courts and the cabinet, between the legislature and the judiciary, between the Knesset and the cabinet, and between central and local government.
- Excessive centralization of the public sector, leading to institutional paralysis, widespread disorder, and declining levels of service.
- Normative anarchy and governmental paralysis stemming

from the combination of rampant corruption within the executive branch, and reactive hyper-interventionism by supervisory bodies of the legislative and executive branches.

This deplorable situation opens the door to all sorts of political quacks who offer trendy panaceas to “fix the system.” Most of these proposals are not carefully thought out, and hardly any are based on rigorous comparative research. In essence, simplistic solutions based on a frantic call to “change the regime” are actually secondary symptoms of the disease, not its cure.

This gloomy reality is the product of a widening gap between the profile of Israeli society, whose dimensions and needs are changing rapidly, and the democratic institutions, whose task should be to accommodate these changes and address these needs, but whose rigidity unfortunately prevents them from doing so. While the more enlightened and highly developed democracies adapt their structures and modes of functioning to their societies’ changing needs, Israel does not.

To be sure, Israel’s young democracy has impressive achievements to its credit. Democratic institutions in Israel have successfully guided citizens through fateful wars; coped with complex and obstacle-ridden peace negotiations; absorbed massive waves of immigrants that have doubled, tripled, and quadrupled the population of the State; and led a remarkable process of economic development. Perhaps most significantly, throughout the years, the Supreme Court has built up an impressive record of respect for human rights without a constitution, while in a state of near constant siege. Nevertheless, the combination of grave existential threats and severe internal pressures has placed a tremendous burden on the national agenda, and has prevented

the Israeli political system from adapting to the dramatic changes that Israeli society has undergone over the last sixty years.

Israeli society of 2008 was profoundly different from that of 1948, 1968, and 1988. For example, in 1948, Israel had a population of just over 800,000. By 1988, the country's population had grown to 4.5 million (a 560% increase since the founding of the State); and by 2008, the population had increased by another 50% to 7.3 million, which represents an overall increase of more than 900%. Yet the number of its representatives has remained the same: 120 Knesset members. In 1948, the ratio of Knesset members to eligible voters was 1:5,800; by 1988, that ratio had risen to 1:24,100; today it is nearly 1:43,000. This is more than double the ratio in Sweden, which has a population of comparable size, but a parliament of 349 members.

Between 1977 and 1996, the average term of a given Knesset was three and a half years. Today, on average, Israelis are called upon to vote once every two and a third years. In 1988, thirteen parties were represented in the Knesset and the two largest, the Likud and the Labor Alignment, accounted for two-thirds of its seats; in the 2009 elections, the two largest parties combined garnered less than half of the seats in the Knesset. The number of private bills submitted to the 12<sup>th</sup> Knesset (1988-1992) was 1,491; the number of private bills submitted to the 17<sup>th</sup> Knesset (2006-2009) was nearly triple that number: 3,815.

In 1988, the Israeli mass media consisted of one television station, three political party-owned newspapers in Hebrew (*Davar*, *Hatzofeh*, and *Yated Ne'eman*) and four private newspapers (*Yediot Aharonot*, *Ma'ariv*, *Ha'aretz*, and *Hadashot*). Today there are four television stations in addition to cable, only private newspapers, and abundant forms of rapidly developing Internet media.

A key obstacle to change is the rudimentariness of Jewish political tradition. Despite sixty years of outstanding achievement, the Israeli political system is still evolving. This situation has nothing to do with any particular leadership or constellation of events. It spans the entire period from Ben-Gurion to Olmert, from the mass immigration of the 1950s to the Russian immigration of the 1990s, from the mission-driven collectivity of the State's early years to today's drifting and divided society. Having been exiled from our land, we had not experienced territorial sovereignty for seventy generations, until the Zionist movement emerged during the late 19<sup>th</sup> century and wrought a profound change in our collective Diaspora mind-set. Not only does our nation face the difficult mission of reestablishing our political-territorial sovereignty, but we have to do so in the shadow of continuing threats to our physical existence.

Israel is still a formal democracy and not a substantive one. We have yet to internalize a sense of belonging to the family of mature parliamentary democracies. We have many elements of a democratic regime, such as an elected parliament, coalition governments, political parties, and free elections, but these elements rest on a shaky normative infrastructure. We do not have a constitution or a bill of rights, neither does our political culture place sufficient emphasis on human rights. Without a constitution that is universally regarded as authoritative and binding, and lacking a tradition of political responsibility, democracy in Israel is marred by inherent instability. Developing the structures and norms of political responsibility is essential for our continued existence as a sovereign political entity. Moreover, democratic stability requires that a balance be struck between the universalistic and the particularistic values of the collectivity –

in other words, between the democratic values that emphasize the rights of the diverse individuals and groups that comprise it, and the features of culture, heritage, language, beliefs, and opinions that are shared by the Jewish majority. Israel has a long way to go before achieving the desired balance between these two elements.

This is strongly reflected in the ongoing debate about the relative weight of the Jewish and democratic components of our national identity. At one extreme, there are those who claim that a Jewish democracy is a contradiction in terms, and that Israel, therefore, should abandon its Jewish character and establish a multi-cultural democracy on the ruins of the Jewish State. At the other extreme, there are those who assert that democracy is an alien import from Europe, which is incompatible with Jewish tradition and, thus, must give way to theocracy. The national-religious, the traditionalists, the national-secularists, the Arab minority, and an array of other sectors are found along the spectrum between these two extremes. This heated debate has created a profound rift within the Jewish people that threatens the cohesiveness of Israeli society. Unfortunately, the prolongation of the status quo between religion and state imposed by Ben Gurion in 1948 threatens our ability to put the proper structures in place – in particular, a constitution and a bill of rights – that will ensure Israel's future as a Jewish and democratic state.

These bitter disputes over the identity of the State and the character of its democratic system are taking place in the absence of recourse to a long political tradition, and within a highly charged environment dominated by frequent emergencies, often military, and now economic as well. Israel's public and political agenda is overburdened, particularly since the 1990s – a watershed decade in the country's history in which the dispute over our borders

intensified, one million immigrants were absorbed, and a Jewish extremist assassinated our Prime Minister.

The absence of a strong democratic tradition combined with a rapidly changing society and frequent national emergencies has made the process of political change extremely difficult to manage. To make matters worse, the State's outdated political structures absorbed a number of debilitating blows over the last two decades. The first shock was an ultimately unsuccessful attempt to change the electoral system. In 1992, the Israeli parliament virtually committed an act of institutional suicide when a simple majority passed a bill to replace the single-ballot system that had prevailed since the establishment of the State with a two-ballot electoral system that was a hybrid of parliamentary and presidential elections. As a result, each citizen was granted the right to vote separately for a prime ministerial candidate and for a party. Although this ill-considered bill was supposed to strengthen the executive branch while enhancing representation, the result was precisely the opposite. Israel's young and tenuous democratic system was subjected to an experiment never tried anywhere else in the world: the attempt to incorporate two incompatible systems of government in a single state (a majoritarian system and a proportionate consensual system). Many citizens undoubtedly enjoyed the privilege of splitting their votes, and by relieving them of the necessity to choose, the two-ballot system freed them to vote for small sectarian parties. As a result, the major parties, which formed the backbone of Israeli politics, simply disintegrated. Coalition governments became difficult to form – and nearly impossible to sustain – and Israel spiraled into a decade of deep political instability. How could this occur so easily? The answer lies in the fact that without a constitution, Israel lacks

a clear and definitive procedure for amending its constitutional structures and processes. Israel has no rules or procedures to govern the necessary growth and evolution of its political system. Not only would a constitution more permanently define the nature of Israel's political regime, it would prevent capricious "reforms" that lack the special majorities required to effect constitutional amendments.

The direct election system dealt a mortal blow to Israel's parliamentary infrastructure. The damage wrought was extensive, and despite the new system's eventual abolition, the experience left our democracy scarred. The institution of the party suffered most. The essential condition for the existence of a representative parliamentary democracy is a robust party system. The party is a crucial element of the political process, an indispensable point of contact along the chain of communication between the citizens – the members of the civil-political collective – and the decision making and implementing echelons. The party provides the stage on which the beliefs and opinions of those with common perspectives are elucidated; it is the arena in which these beliefs and opinions coalesce in the form of a policy platform and a plan of action; and it is what provides the leadership with the tools necessary for the realization of its platform. The collapse of the large parties has severely impaired the ability to form stable coalitions and is, thus, the primary cause of political instability. The collapse of Israel's large parties is also the main reason why political discourse has become so shallow, which has engendered an aversion to politics among large segments of the Israeli public.

As if this were not enough, Israel's fragile parliamentary system was then subjected to a second blow in the course of the

1990s: the institution of primaries to select the parties' candidates for the Knesset. The combination of direct elections and primaries increased the excessive dependence of Israeli politicians on financial contributions. This growing dependence on money is one of the main causes of the recent rise in political corruption. One particularly noxious phenomenon that is associated with the new primary system is the emergence of "vote contractors," who either hire or herd groups of susceptible voters to vote en bloc for a particular candidate in the primaries.

Corruption, however, is not the worst effect of the Israeli primary system. The biggest problem with the system is that it aggravates the lack of proportional representation in the Knesset by granting a small minority of the population, most of which has little or no ideological connection to a party, the right to determine the composition of the legislature. As a result, Israel's parties have come to resemble gymnastics teams in which members compete primarily as individuals on the basis of personal traits rather than shared ideas or common political goals. The perceived quality of the team determines the election results. In the recent elections, none of the three parties offered an ideological platform, let alone a program of action; on the contrary, their campaigns, waged by paid and unaffiliated "strategic consultants," were superficial, noncommittal, and vague.

A study conducted several years ago at IDI examined the candidate selection methods of approximately 40 different parties in developed democracies, mostly in Europe.<sup>3</sup> All the selection

3 Aliza Bar, 1996. *Primaries and Other Methods of Candidate Selection*, Jerusalem and Tel Aviv: The Israel Democracy Institute and Hakibutz Hameuchad.

methods featured some variation of the following key stages in the process:

- Debate on party positions regarding all important issues.
- Clear formulation of these positions and their translation into a plan of action.
- Selection of candidates in conformity with the party platform.
- Enforcement of the commitment embodied in the platform by faction leadership in parliament.

In contrast, this process is not conducted in Israel's primary system, which is a local invention without parallel in any stable democracy. The Israeli primaries are a battering ram that strikes mercilessly at the central pillar of democratic politics – the political party.

The changes to the electoral system and the institution of primaries have led to a greater emphasis on the personal dimension in Israeli political discourse. The candidates' personal attributes have taken center stage, marginalizing debate over the positions that the candidates are supposed to represent. Particularly in the recent elections for the 18<sup>th</sup> Knesset, victory depended mainly on successful PR efforts, which were led by hired consultants who did their utmost to divert the public's attention from issues, ideas, and programs, and focused instead on the appearance and image of the candidates. Like the constricted space of an election billboard covered with the touched-up image of a candidate, the scope of campaign debate has been narrowed to an almost exclusive obsession with the desired traits of a future prime minister. The shallowness and trivialization of political discourse have contributed greatly to the public's aversion to politics, which is reflected in a decreasing interest in issues of public and political import. This growing lack of interest, along with the

increasing disparagement of political activity, in general, deters high caliber people from entering the public arena. Widespread disinterest in politics, clearly the most striking reflection of anti-political sentiment in Israel, threatens the very legitimacy of representative government.

The growing juridification of politics is closely related to the deterioration of party politics in Israel. The term “juridification of politics” describes a state of affairs in which those charged with safeguarding the normative framework governing action in the political arena have tightened their grip on the reins. The Attorney General, the State Comptroller, and even the Supreme Court, are involved in administrative and political processes to an unprecedented degree at both the rhetorical and the practical levels. The overriding impression among the public is that the balance between the judiciary and the Knesset has been upset, and that the rhetoric, not to mention the judicial rulings, emanating from the Supreme Court suggest a desire to wrest control of public debate and of normative decision making processes in Israeli society. Yet the fact of the matter is that the Supreme Court has not “wrested control” of the political arena or forced its way into it, but has been drawn into the vacuum created in this sphere by the improper conduct of the political echelon and, especially, the Knesset.

The vacuum created by the political echelon and the judiciary’s subsequent entry into it have had various and sundry manifestations. One of the more striking is the manner in which Israeli politicians enacted two Basic Laws: Human Dignity and Liberty, and Freedom of Occupation. Parenthetically, it should be noted that in 1949, the 1<sup>st</sup> Knesset decided to establish a constitution in the course of time through a process based on

the promulgation of “Basic Laws,” one by one. In reality, the first Basic Law: the Knesset was passed in 1958; by 1992, eight more Basic Laws had been enacted that addressed most, but not all, aspects of Israel’s political system. In 1992, two more Basic Laws were passed, which constituted the beginnings of an Israeli Bill of Rights. Since then, not one additional Basic Law has been enacted. The legislation enacted by the Knesset in 1992 affirmed, for the first time in history, Israel’s character as a Jewish and democratic State. However, the important constitutional amendment embodied in these two Basic Laws was authorized by a regular majority, with fewer than half of the Knesset members present. The Knesset, Israel’s main forum for the elucidation of normative issues, never undertook an exhaustive discussion of how to balance Jewish and democratic values, let alone any attempt to consider what might happen should these values come into conflict. The passage of the Basic Laws by a tiny majority set the stage for the emergence of a new kind of rhetoric within the judicial branch, which presumed the Court’s role in resolving the fundamental tension between the “Jewish” and “democratic” values of the State and, in the words of former Supreme Court President Aharon Barak, was based on “the perceptions of the enlightened Israeli public.” To this day, the Knesset has never legislated which branch of government has the right to annul its laws. However, according to a certain rhetoric that has gained currency within the Supreme Court, the passage of two laws pertaining to an Israeli Bill of Rights has generated a “constitutional revolution” in Israel for the first time since the founding of the State. It is this rhetoric that has created the impression that the power to annul Knesset legislation is in the hands of the Supreme Court.

During the decades since the founding of the State, the Supreme Court has anchored basic principles of human dignity, rights, and freedoms in intrepid and intelligent rulings in the absence of a written constitution. The importance of the Court's contribution to the development of healthy political norms must not be underestimated; there is no telling what may have occurred had such norms not been instituted. Indeed, since the founding of Israel, the legislature accorded the judiciary considerable respect, while the public's level of trust in the Court was consistently high. However, since the second half of the 1990s, the mutual esteem that characterized the relationship between the two branches – the judicial and the legislative – has eroded. The growing antagonism that has emerged on the part of the Knesset toward the Supreme Court is expressed in myriad ways, including problematic proposals to create a separate constitutional court, to change the composition and function of the Judicial Appointments Committee, and to pass “Supreme Court bypass” legislation.

In this context, it is not surprising that since the late 1990s, there has been a steady decline in the degree of trust accorded to the Court by the public. This is a dangerous phenomenon. A strong and independent Court is particularly vital for Israel's heterogeneous democracy in which the safeguarding of human and minority rights is of paramount concern. Here again, the importance of a constitution in determining the role of the branches of government and the mode of interaction between them cannot be overemphasized.

In parallel to the growing intervention of the Supreme Court, the other gatekeepers of good government (i.e., the Attorney General, the State Prosecutor, and the State Comptroller) have exhibited an increasing tendency to intervene in administrative

decision making. Instead of acting to ensure that the executive branch and the civil service function effectively, accountably, and transparently, the gatekeepers, abetted by intensely sensationalist media, have become obsessed with dragging ministers and bureaucrats before the courts. The gatekeepers are putting the power vested in them to unorthodox uses, becoming “veto players” and reining in chief executives to a point that impairs their effectiveness. The most blatant examples of this are the serial investigations conducted against the last four prime ministers while in office, without serving a single indictment (as of the time of this writing).

Rather than offering elected officials and public servants an incentive to act with integrity, the hyperactive gatekeeper have contributed to a perverse situation in which restrictions, regulations, and threats of legal action suppress the desire and capacity to act. In the face of a real problem of growing corruption among public officials and servants, the gatekeepers have resorted to fighting the symptoms rather than the causes of the problem. Instead of enabling effective government, they have helped render it impotent by imposing more and more restraints through a patchwork of rules, excessive regulation and, in some instances, legislation that stifles initiative.

One effect of this has been to fuel public aversion to politics and to politicians. In recent years, the Israeli public has become fixated on a distorted conception of “corruption” as the alleged root cause of everything that is wrong in the country. Let me be clear: some Israeli officials, like their counterparts in other states, have broken the law while in office. This phenomenon seems to have intensified in recent years, which indicates a fundamental lack of respect for basic norms of public conduct. A real problem

of corruption in the halls of power constitutes a legitimate incitement of the growing revulsion of society toward the civil service and the political leadership.

At the same time, “corruption” in the popular mind has taken on meanings that extend far beyond fraud, breach of trust, and bribery. It has, for example, become synonymous with any controversial conduct on the part of public officials. The extraordinary interest in this phenomenon has led to the abandonment of venerable standards of *sub-judice* by the media. As a result, the principle of “innocent until proven guilty” has virtually disappeared from public discourse in Israel. In the present climate, the charge of “corruption” has become a cheap and effective tool to destroy an official’s career regardless of the facts, and without assuming responsibility for the charge. “We’re sick of corruption” was the 1990s slogan that led to Israel’s direct election fiasco. “Everyone is corrupt,” the slogan that emerged from *The 2008 Democracy Index* compiled by the Israel Democracy Institute,<sup>4</sup> has taken on the dimensions of moral panic. The public’s growing preoccupation with corruption has in turn fostered a “purification” impulse. Those moved by the purification impulse want to use the democratic machine to eradicate corruption in politics when, in fact, they are removing the political element from corruption altogether. In other words, “cleaning the stables” of corruption may actually leave us with no stables at all. The current situation leaves no room for the

4 Asher Arian, Tamar Hermann, Nir Atmor, Yael Hadar, Yuval Lebel, and Hila Zaban, 2008. *The 2008 Israeli Democracy Index: Auditing Israeli Democracy Between the State and Civil Society*. Jerusalem: The Israel Democracy Institute.

fundamental task of spelling out the dos and don'ts of public service.

Another side effect of the witch hunt against corruption has been to engender administrative paralysis. However, the root causes of the deterioration of governance go much deeper than the new patchwork of rules, restrictions, and regulations imposed by the gatekeepers. The decline in governance may be attributed to the highly centralized structure of the government. Over-centralization erodes the efficiency and effectiveness of Israel's executive authorities, which are already buckling under the strain of ever-increasing workloads, and keeps them from assimilating values of transparency and accountability. The lack of transparency and accountability that is so characteristic of a centralized system is fertile ground for corruption and for the exploitation of official status; but the attempt to treat the disease by attacking its symptoms only hampers the ability of the bureaucracy to perform its two major functions: the efficient implementation of government decisions and the provision of quality service to the citizens.

Egregious symptoms of the inadequacy of our bureaucratic organs include the rigidity that they display in implementing government decisions, and the concomitant lack of incentives for Israeli public servants to display initiative or creative thinking. According to a number of criteria, the apparatus of governance in Israel is falling behind its counterparts in the advanced democracies. There is a growing discrepancy between the rising quality of management in the business world (where Israeli companies perform competitively in the international market) and the low levels of motivation, initiative, and service that characterize the Israeli public sector. On the whole, the quality of

the civil servants in Israel's ministries, as well as in most State-owned companies, municipalities, and other public organizations, including the police and the military, leaves much to be desired. As a result, the hands of any government that is elected to implement certain declared policies are effectively tied.

The concurrent failures of governance described above, the decline of ideological politics, and the rise of political instability all feed off one another. There is, thus, a danger that the defects of governance will reinforce other phenomena and will strengthen the voice of those calling impatiently for radical, ill-conceived change, such as a "magic bullet" in the form of a strong president. However, when the problem at hand boils down to over-centralization in the public sector and the erosion of the party infrastructure within the political arena, a centralized presidential system, which strengthens the authority of individuals rather than delegating and decentralizing authority, is precisely the opposite of what is required. In other words, Israel does not need a new regime; the challenge we face is one of effecting significant changes to decentralize our existing system of government.

Israel is the young country of an ancient people. On 15 May 1948, in one revolutionary moment, the Jewish collectivity in Palestine underwent a transition from a "state-in-the-making" to a full-fledged state. However, sixty years later, we still find ourselves straddling the same historical watershed between the exilic experience of the Diaspora and the achievement of complete sovereignty. As we approach the end of the first decade of the 21<sup>st</sup> century, Israelis are ever in the midst of an evolutionary process from sovereignty-in-the-making to full sovereignty. The watershed is narrow and hazardous. Crossing it is a mission that history has

entrusted to the first generations of Israeli statehood – to us. Yet Israel today lacks vision, direction, and a clear path. Articulating a vision of the future and blazing the path to its realization constitute IDI's *raison d'être*.

The plan sketched in the next chapter sets forth practical steps toward the stabilization of Israel's parliamentary system and the creation of a framework for the development of a substantive democracy in Israel. There are a number of issues that are crucial concomitants to this transformation, which I do not address here, but which we continue to grapple with elsewhere at IDI, such as resolving the tensions between religion and state, reducing inequality, and reaching a durable social contract with the Arab minority.

Before moving on to the prescriptive section of this essay, I would like to single out one issue that is not directly related to political reform, but is, nevertheless, critical for Israel's democratic future: the imperative of reaching a decision on the eastern boundaries of the State. One of the biggest questions that hangs over the future of Israeli democracy is the lack of defined borders. In addition to the grave geostrategic implications of this situation, the uncertainty over Judea and Samaria (the West Bank) exacerbates existing tensions between religion and state in Israel and renders progress on other fronts, such as culture, education, and the economy, all the more difficult. The policy of "land for peace" is the subject of particularly impassioned debate within Israeli society. Both the assassination of Prime Minister Yitzhak Rabin in 1995 and the apparent imminence of civil war during the disengagement from Gaza in 2005 highlight the potential for a violent breakdown of the rule of law and the profound challenges posed by the peace process for Israel's democratic system. The silent acquiescence of successive governments in Judea and

Samaria's descent into lawlessness permits a dangerous liaison between religion and nationalism to flourish, and continued indecision on the part of our leadership could well prove fatal for democracy in Israel. The indifference exhibited by the public at large, the silence of the media, and the inaction of our elected and appointed institutions make all of us passive conspirators in the continued existence of this serious threat to the future of democracy in Israel. Despite all the obvious difficulties inherent in reaching a peaceful resolution with the Palestinians, the status quo is no longer tenable. I am not advocating any specific route; from the perspective of the wellbeing of Israeli democracy, it is mandatory to reach a decision: annex the territories or implement the two-state solution, but reach a decision.

My broad objective in the pages that follow is to present concrete recommendations for a transition from "State A" – the current situation – to "State B" – the vision. These recommendations reflect a deep awareness of the complexity of life in Israel and of the difficult challenges posed by this complexity. In the face of the enormous challenges inherent in the status quo, many resort to denial or cynicism. However, it must be acknowledged that democracy is, by its very nature, a narrative of hope and of willingness to take responsibility; both of these are salient characteristics of the vision set forth in the pages that follow. As we go about diagnosing ills and proposing remedies, we must never forget that Israel's young democracy is a remarkable success story. Six decades of survival and adaptation in the face of exceptional challenges prove that Israel's potential for recovery and improvement is boundless.

## Chapter Two

# A Blueprint for the Future of Democracy in Israel

I envision Israel, twenty or thirty years from now, as a thriving democracy guided by a constitution and a bill of rights; a stable polity characterized by effective government, strong rule of law, transparency and accountability, clear separation of powers, diffusion of authority within the civil service, meaningful regional representation, high levels of civic participation, and low levels of corruption. While this may sound like every democrat's wish list, I believe that this can be achieved. For this dream to become a reality, Israel must acquire the constitutional, electoral, and governmental infrastructure necessary for the emergence of inspiring leaders, first-rate civil servants, and citizens whose faith in the democratic system and process is restored. In the pages that follow, I provide a broad overview of some of the more important changes that are required for this to occur.

### **A. Constitution by Consensus**

Several decades from now, Israel will be a constitutional democracy. The Knesset will complete the process of instituting a constitution by consensus, which will culminate in a referendum. The culmination of the constitutional process will be historically significant, almost tantamount to the reestablishment of the State. The constitution will describe Israel's political structures, delineate their interrelationships, and prescribe the mechanisms for governing future change. It will also define the character of the

State. Perhaps most importantly, the constitution will lay out a comprehensive bill of rights. The establishment of a constitution will also reinforce the reform measures proposed later in this chapter, thereby helping to arrest the deterioration of Israel's political institutions.

In order to present the advantages and the anticipated impact of the adoption of a constitution, I can do no better than to quote at length the justifications provided by the former President of Israel's Supreme Court, Justice Meir Shamgar:<sup>5</sup>

The question of why Israel needs a constitution arises time and again. The response to this question could be rendered superfluous by directing one's attention to the fact that all the nations of the world have established a constitution for themselves, be it of an elevated and protected status, or (in a minority of cases) without a formal elevated and protected status. The question, therefore, should have been why Israel is different from all other states in that it, in particular, should not have a constitution to articulate the normative principles and values which bind its state authorities and residents. Nevertheless, we should not shirk from the substantive treatment of this question and shall provide an organized and detailed response, as follows.

**(1) Supreme Value Norms:** The constitution allows the determination of binding norms, especially significant in the sphere of basic human rights and liberties, which guide all the branches of government and the residents of the state.

5 Meir Shamgar, 2005. "I Believe' of the Authors," in *Constitution by Consensus: A Proposal by the Israel Democracy Institute*, Under the Direction of Justice Meir Shamgar, Jerusalem: The Israel Democracy Institute, pp. 23-30.

The binding force of these norms is ensured by endowing the constitution with a special and elevated status. At the base of this determination is the triangulated division among the constitution, ordinary law, which may not contravene the principles of the constitution, and secondary legislation, which may not contravene the provisions of the authorizing law, in which the authority to promulgate such secondary legislation is set forth.

The constitution establishes value-based super-principles in every sphere, including with respect to basic rights and the system of government, which obligate every branch of government, including the legislature. Thus, the constitution forges a fundamental perspective which ensures the rule of law, as such is delineated in its text which applies to all, including supremacy of the fundamental constitutional norms, according to which state actions are conducted.

It should be remembered that no entity, including the various levels of the court system, currently has the authority to declare a law as infringing upon a fundamental liberty, such as freedom of speech; this holds true for the other liberties as well, with the exception of those included in the two Basic Laws of 1992. In contrast, freedom of speech is protected and safeguarded by the constitutions of the United States (the First Amendment was ratified in 1791), Canada and France, as well as by all the other democratic states, that is, the Czech Republic, Hungary, Belgium, Italy, among others, and now, finally even Britain, following passage of the Human Rights Act of 1998. However, in Israel, freedom of speech still does not enjoy protected status.

The import of this fact is that, though the courts are currently authorized, for example, to nullify a minister's order or regulation,

such as the Minister of the Interior's order which was the subject of the 1953 *Kol Ha'am* case, there is no entity authorized to review the constitutionality of primary legislation of the Knesset which abridges freedom of speech.

One should note that, on June 6, 1950, over 55 years ago, upon concluding the disagreement regarding the very need for a constitution, the Knesset brokered a compromise, dubbed the Harari Decision after its sponsor, which stated:

The First Knesset instructs the Constitutional, Law and Justice Committee to prepare a draft constitution for the State. The constitution shall be assembled chapter by chapter, in such a way that each chapter will constitute an independent Basic Law. When the committee completes its work, the chapters shall be presented to the Knesset, and all the chapters shall be combined together to form the constitution of the State.

In other words, the Knesset desired a constitution, but, 55 years ago, postponed the effort by breaking the legislation up into stages, where ultimately all the legislated chapters would be unified into one complete constitution.

Namely, the Harari Decision of June 1950 also established that, upon completing all the chapters of the constitution, they would be compiled into one complete constitution. Currently, 55 years later, it is appropriate to go directly to the whole, and not to continue with the partial and incomplete. That is, in 1950, the Harari Decision initiated a step-by-step process, although in principle, it clearly established that the process was to culminate in the creation of one complete constitution. The time has come for integrating the current Basic Laws and finalizing

implementation of this comprehensive undertaking, that is, to legislate a complete constitution which will also include a chapter on basic human rights.

**(2) Equality:** The definition of rights in the constitution ensures their equal application to every human being; in other words, it places everyone on an equal footing. Moreover, the constitution does not deal with particular and partial instructions, for instance, the authority of the Minister of the Interior to close down a newspaper (the *Kol Ha'am* case) but rather, establishes a general right of free speech, encompassing the entire population.

At the end of the day, the constitution ensures the rule of law by defending the fundamental freedoms and the foundations of the legal system by endowing these norms with a guiding constitutional status. By virtue of the constitution, these norms are applied to the state's entire existence and every individual therein, forming a basis where each and every individual is afforded an equal opportunity to file for legal protection, against a violation of his or her rights.

The supremacy of the constitutional provisions precludes, in advance, undemocratic legislation which contravenes the constitution. The rights, defined in advance, govern that permitted and prohibited, including that permitted and prohibited by legislation, and create a protective wall behind which every person can find shelter.

**(3) Clarity:** The constitution defines the liberties and essence of the government. Their definition in the constitution ensures certainty and clarity through language which is clear to all; the constitution will lead to language which is complete, straightforward and transparent.

In other words, the normative constitutional principle is clear, defined simply, straightforward, and known, and all are bound to honor it. The existence of a written constitution heightens clarity, as the written version, transparent to all, allows for a clear presentation of the principles. Thus, it is possible to avert, in the main, disagreements and regrets, and to create, in advance, guidelines for each branch of government as well as for each individual.

**(4) Independence of the Three Branches:** The constitution allows us to study the distinctions and definitions of the powers of the branches of government diligently. The separation of powers which prevents a totalitarian, centralized government is the outcome, differing in its implementation in each system of government, beginning with the full and unlimited separation which exists in the United States, and culminating with the system prevailing in Britain, namely, that in which the parliamentary system diverges from full separation (the English Westminster system permits ministers to serve as members of Parliament or the Upper House).

The independence of the legislative and judicial branches is derived from the constitutionally defined domain of each branch. This independence creates government stability, thus preventing the infringement of one branch upon the domain of another, such as preventing an attempt by the executive powers to issue directives to the judicial branch. The last word is given to the legislature, which shapes the law in accordance with constitutional norms.

**(5) Minority Rights:** The constitution defines the rights of the individual and of minorities; protection of the rights of the minority, (any minority: whether ethnic, religious, or social) is,

alongside the democratic principle of majority rule, a fundamental component, without which there is no democratic system.

It should again be noted here that the principles which protect the minority can deflect a sudden change by a chance majority, changes which would strike at the general fundamental arrangements prescribed by the constitution. In other words, since the constitution is a codex whose principles must be honored, and which requires special procedures to be amended, every constitutional arrangement ensuring protection of minority rights enjoys greater stability and a greater binding force than any protection of rights in an ordinary law.

It should also be mentioned in this context, as an example, that when the Protection of Holy Places Law was enacted in 1967, we were asked by representatives of an esteemed religious community whether we would agree to include similar provisions when Israel would have a constitution. Obviously, we answered positively, thus calming their fears that the independence of the religious institutions and their right to religious rituals would be violated.

**(6) Written versus Oral Version:** As mentioned, the constitution reflects the power of the written word, in comparison with oral agreements or arrangements secured merely by ordinary legislation which may be amended by a simple majority. It is commonly accepted that the majority of us would rely on a written document to a greater degree, take, for instance, a written rental contract, than we would rely on an arrangement based solely on oral directives which are not governed by a written and binding document; the constitution is, to a great extent, a quasi-contract between the citizen and the government.

**(7) Limitations on Governmental Power:** The constitution limits the power of governmental authorities, thus strengthening the rights of the individual. The government has no power save that which it is granted by the constitution; a government entity, in the absence of such a grant of authority, is proscribed from acting. On the other hand, the individual person is permitted to do anything which is not prohibited under the constitution or law.

**(8) Concentration versus Dispersal:** The constitution allows for the concentration of constitutional norms, instead of having them scattered throughout various laws. Thus their status is strengthened, and incidental and unintentional amendments are averted. In other words, when amending the constitution, there is the assurance that the legislature will be fully cognizant that it is altering a constitutional principle.

**(9) Unifying Value:** In light of the trend towards attaining consensus by different sectors of the public for the purpose of adopting a constitution, establishing a consensual constitution includes a form of expressing identification and reliance upon the general public, reliance which generates greater social unity between the extremes. Currently, the State of Israel is, much to our dismay, a society filled with rifts and antagonisms, as is well-known. The Constitution by Consensus will foster links among the different sectors of the nation, since each of these main sectors will view the constitution, a document which applies to all, as a framework which obligates the entire public, which was approved by a decisive majority, and which also affords it protection.

**(10) Educational Value:** The written constitution has great educational value. As in other countries, the didactic power of the constitution, which educates the entire society regarding its values and perspectives, constitutes an educational foundation

which accompanies the resident, in particular our youth, from childhood. This power deepens trust in the stability of the system, the existence of liberties, and the ability to rely securely on governmental arrangements and fundamental freedoms.

Thus, the constitution assists in consolidating democratic public opinion, which is the primary assurance of the practical existence of that which is determined by the constitutional norms. It should be remembered that the constitution, in and of itself, is not an isolated legal tool whose essence can ensure a functioning democracy. Quite the contrary, only an alert and attentive public, educated in the spirit of the foundations of the constitution, and insisting upon its implementation, can guarantee that the constitution becomes a living, active, and activating tool. Therefore, we must fully identify with the values of the constitutional norms which unite us all, and this identification can be the result of education and recognition of the values of the constitution.

**(11) The International Aspect:** The democratic world currently pays great attention, and demonstrates great sensitivity, to the existence of human liberties. Through the legislation of a constitution we will be incorporated into the family of nations which already have constitutions, increase the stability of our system in the view of the world, and remove suspicions and concerns regarding the practical existence of human liberties here, fears which stem from the lack of a constitution.

Moreover, Y. L. Peretz entitled one of his stories, "If Not Higher." I would suggest adopting this title to emphasize the need for a constitution. Many years have passed since the State was established. Despite all its problems, crises, and tribulations, it has reached a maturity and readiness, and its population has stabilized.

Although a constitution is not all-encompassing, it is, nonetheless, an important tool for shaping the form, and strengthening the personality, of the State. We can no longer defer constitutional action in this regard. The Knesset currently enjoys all the powers of the Constitutive Assembly, as established back in 1950 by the above-mentioned Harari Decision, and subsequently by legislation – through the passage of 11 Basic Laws which have been approved by the Knesset to date. The time has come now to complete the labor. The spirit of President Agranat's language in the *Yardor* case guides me:

The issue of the continuity – and, even, it could be said, the 'eternity – of the State of Israel constitutes a fundamental constitutional given', which, Heaven forbid, any State authority whatsoever – whether an administrative, judicial, or quasi-judicial authority – should deny when exercising any of its powers.

The prescription of normative templates, which emphasize the supremacy of principles which apply to all, and the obligations which apply to public officers and servants, is a refreshing breeze clearing away the fog, establishing fundamentality, stability, and constancy and restoring our faith in ourselves.

Although we are no worse than others, we are also no better; however, we can attempt to transform ourselves, to a greater extent, into the bearers of positive values. With a goal of filling any lacunae, and consolidating educational perspectives and appropriate patterns of behavior, approving a constitution can lead to the adoption of principles whose educational influence will be profound and effective.

## **B. The Political System**

Every democracy is different. Factors that affect the specific character of a given democracy include culture, geopolitical environment, and historical circumstance. While democratic principles are universal, their expression in each case is particular. In Israel, the British Mandate was the precedent that most strongly influenced the subsequent democratic evolution of the country. However, there are several other reasons why a parliamentary system of government is particularly suited to Israel. First, Israeli society is extremely divided. Serious tensions abound between Jews and Arabs, secular and religious Jews, and Jews of Mizrahi and Ashkenazi descent. These tensions thwart the development of healthy human rights discourse similar to that which exists in most Western democracies. They also present an obstacle to the achievement of national consensus on key issues and provide fertile ground for extremism. Only a multi-party system with proportional electoral outcomes offers the possibility of providing adequate representation to Israel's various minorities and accommodating their differences. Second, the Land of Israel is too small to have the sort of federal system that is required to balance the concentration of executive power, which is characteristic of a presidential system. Third, Jewish democratic tradition is not sufficiently developed to ensure that the adoption of a presidential system will not end in dictatorship. The demographic composition of the State highlights the dearth of democratic heritage that characterizes much of the population, which means that Israel's democratic future cannot be taken for granted. Fourth, the Jewish State exists and will probably continue to exist for some time in a state of permanent tension with its immediate neighbors. This fact provides constant

justification for the erosion of human rights and the strengthening of executive power, which is arguably facilitated under a presidential system. The parliamentary framework most fully guarantees the consensual nature of change in a divided society. It creates a ceaseless impulse toward compromise, thereby facilitating peaceful coexistence within a collectivity that is rife with divergent interests and conflicting worldviews.

For these reasons, I have focused on concrete proposals to strengthen Israel's existing system of government. Many of the proposals are bold; some are still politically inconceivable, but all are essentially conservative. All the suggested reforms seek to broaden participation in government; to foster political stability; to restore public trust in the institutions of representative government; and to achieve the proper balance between the principle of representation and the principle of effective government. The point is to achieve all this without sacrificing minority representation; without compromising on the principle of proportional electoral outcomes; and without relinquishing the concept of a simple voting process that is readily understandable to all participants. The OECD democracies, which are similar to Israel in size and possess unicameral parliaments, such as Holland and Denmark, often served as models in the development of the proposals presented below. Three principles underlie these proposals and bind them into a coherent system:

- The need to reinforce political parties as the primary mediators of representative government in a parliamentary democracy.
- The need to decentralize administrative power.
- The need to expand civilian participation in political processes and decision making.

## 1. The Legislature

**(a) Knesset structure and function.** Israel's leaders perhaps manage the most overloaded public agenda in the world. Unfortunately, this load falls on the narrow shoulders of the 90 Knesset members who are available for parliamentary activity at any given time; that is, the Knesset members who are not also serving as ministers or deputy ministers. To make matters worse, in Israeli political culture, membership in the Knesset is regarded as subordinate to membership in the cabinet. Therefore, a tiny number of demoralized legislators, who do not always represent the best and the brightest in Israel, are forced to deal with an enormous load of legislation and oversight.

**(b) Number of Knesset members.** In order to improve the Knesset's capacity to function, the first step is to increase the ratio of MKs to population to the acceptable level of the average OECD parliament. In this regard, Israel currently occupies the penultimate place among the 12 unicameral parliamentary democracies with populations of similar size to that of Israel. According to this model, the number of Knesset members should be increased by 50% to 181.

Increasing the size of the Knesset will achieve a number of important objectives:

- Improve parliamentary performance – every Knesset member will be able to focus on the activities of a single committee, rather than three or four, as is currently the case.<sup>6</sup>

<sup>6</sup> At present, committee membership depends on faction size and some factions are, therefore, ineligible for representation on any committee. As a result, those Knesset members whose factions are eligible for committee

- Enhance the status of legislators while creating a clear distinction between parliamentary service and service in the government.
- Alter the balance between private and governmental legislation – in OECD countries, the government initiates 90% of legislation; in Israel the ratio is reversed.
- Ensure effective supervision of the government in accordance with more developed parliamentary democracies in which the parliament functions as the “watchdog” of the government, and not vice versa.
- Restore the balance of power between the three branches of government.

**(c) No confidence measures.** In order to help ensure the stability of the elected governments through to the end of the term of office, it is essential to strengthen the mechanism of a constructive no confidence vote. First, a substantial number of Knesset member signatures (e.g., one fifth of the members of parliament) should be required for a no confidence vote. Second, limitations should be placed on the number of no confidence motions that a given faction may submit during an annual Knesset sitting.

**(d) Knesset committee procedures.** The following changes will enable the Knesset to more effectively assume its supervisory responsibilities:

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membership participate, on average, in three or four committees. The “back bench” Knesset members – those who belong to the ruling coalition but do not serve as ministers – serve on more committees than do their colleagues in the opposition, due to the need to maintain the coalition majority within the committees, as well as in the Knesset plenum.

- Restructure the committees so that each Knesset committee corresponds to a single government ministry.
- Limit the number of representatives on each permanent committee to 10-12 MKs.
- Introduce mandatory attendance rules for committee deliberations and decision making.
- Raise the salaries of the heads of permanent committees to equal those of ministers and deputy ministers.
- Increase the professional resources available to the committees, including legal and economic consultation, and allocate additional funds in the budget to hire experts.
- Tighten relations between the State Comptroller's Office and the Knesset committees (see below).
- Institute reforms in the budgetary process in conformity with those of the parliaments of OECD democracies. The legislature's ability to supervise the executive branch should be enhanced by strengthening the Knesset's status within the national budgetary process. Each Knesset committee should be involved in setting the priorities and budget for its designated ministry, while parliamentary supervision of budget management and implementation should be tightened.

(e) **The legislative process.** The following changes will boost the efficiency of the Knesset:

- Place limits on private legislation – a bill that is proposed by an individual MK should require the support of at least 6 Knesset members.
- Set quotas or time frames for the submission of private bills.
- Institute an attendance requirement of more than half the Knesset for second and third readings of private bills (a quorum).

- Abolish regular passage of the Economic Arrangements Law, a set of last-minute amendments to the budget that was originally intended for times of economic crisis, but has become an annual ritual.
- Enable any group of 50,000 voters to submit an external bill to the Knesset.

## 2. The Electoral System

The goals of the proposed changes to the existing electoral system are:

- To adapt Israel's outmoded electoral system to the needs of a rapidly changing society.
- To strengthen the parties as the cornerstone of representative government.
- To restore the predominance of a small number of large parties.
- To set a term of office as close to 4 years as possible.
- To enable maximal capacity to govern.

## 3. Proposed Electoral Reforms

(a) **Regional elections.** I propose to bolster proportional representation in the Knesset by having at least half of its members elected on an electoral district basis, with the remainder being elected on the basis of national party lists, similar to the system in place today. The easiest way to establish electoral districts would be to make them identical to the existing districts referred to by the Ministry of the Interior. In any event, district boundaries should be permanent. The number of elected representatives from each district will be determined in accordance with the

number of eligible voters within the district, which is known in Europe as "multi-member constituencies." Party candidates elected from the national list will serve as a national mandate base, compensating smaller parties and rectifying any distortions created by the district system.

Introducing a regional dimension will make it possible to:

- Foster accountability to an actual constituency.
- Boost representation by providing constituents with individual representatives in parliament, without impinging on proportionality.
- Strengthen the party branches on the ground, thereby revitalizing party politics and restoring the connection between voters and representatives.
- Strengthen the periphery by providing representation to all parts of the country to ensure representation for peripheral interests, and to provide further impetus for the decentralization of political power.
- Increase voter participation – the conviction that local political involvement has a direct impact at the national level is likely to increase the participation of periphery residents in elections.

**(b) “Primaries” on the day of general elections.** I propose abolishing the existing system of the so called “primary elections” and replacing it with a single-ballot system modeled on that of Denmark, Finland, or Belgium. (A few parties in Israel adopted a system whereby the entire registered membership in the party takes an active part in the selection of the candidates to the party’s national list. This, obviously, has no parallel in the American primary system). The idea is to empower the electorate as a whole to take part in shaping the party list by making primary

elections an integral part of national elections. The new ballot will be two-sided. On one side, the party symbol will appear with its national candidate list. The other side of the ballot will show the relevant list of district candidates. Party institutions will continue to determine which candidates will appear on both lists, but it will be left to the voter to select a legally established number of names from the list of his or her party choice. This will significantly broaden the circle of citizens who will determine the composition of the factions in the Knesset. It will eliminate vote contractors and fictitious party members. It will also reduce the dependence of politicians on financial contributions. Furthermore, **the status of the parties will be strengthened** inasmuch as a given candidate's personal success will depend on that of his or her party.

(c) **Raising the qualifying threshold.** Israel's current threshold is 2%. A moderate increase of the qualifying threshold to about 4%, for example, would eliminate small factions of fewer than five Knesset members and, thus, would strengthen the bigger parties.

(d) **“Priority Right” for the position of Prime Minister.** Currently, a major source of instability is the uncertainty surrounding the identity of the Prime Minister in the days and weeks following election night, which provides fertile ground for extortionist practices on the part of prospective coalition partners. To remedy this, I propose that the head of the party that receives the most votes be automatically designated Prime Minister. Only in instances where the head of the largest faction is unable to form a government will the president appoint another candidate to do so. The “Priority Right” model will enhance stability within the political system, strengthen the large parties, and deprive the small parties of their bargaining capacity.

## **C. Governance**

### **1. Guiding principles**

The changes proposed above for the Knesset relate to elected officials. The reforms that I propose for the executive branch pertain primarily to appointed officials and are intended to promote good governance. Strong reciprocal links exist between these two sets of reforms. Introducing changes in one branch while neglecting the other amounts to leaving the job half done. Only a joint effort on both fronts will suffice to restore public trust in democratic institutions and in the political process, and to bring Israel into closer conformity with the developed democracies in the OECD.

The complexity of the challenges facing Israel's bureaucratic government in the early 21<sup>st</sup> century is not expected to diminish. To meet these challenges, Israel must foster and maintain a highly educated, professional civil service motivated by an ethic of service, guided by advanced notions of transparency and accountability, and committed to the efficient implementation of government policy. Ideally, public sector agencies and the ministries to which they are subordinated will conduct themselves according to standards similar to those of successful private companies, with a strong emphasis on strategic planning and rapid response, and a focus on measurable results.

A major transformation is required to achieve this, which includes changes in the method of recruiting civil service employees; modification of the system of professional advancement based on excellence and achievement; adoption of executive management methods; development of tools for the retention of high quality personnel; and revision of the pay structure and status of public servants.

Decentralization of the public sector, in general, will necessitate comprehensive structural reform centered on the creation of executive agencies. Toward this end, I propose distinguishing between those government units that are responsible for regulation (e.g., the Antitrust Authority, the Patent Office, the Commissioner of Insurance, the Pharmaceutical Administration, the Food and Nutrition Services, and the Council for Higher Education) and those units involved in implementing government policy (e.g., the Chief Scientist, the Agricultural Research Administration, government hospitals, and the Professional Training Division). Regulatory bodies will have the status of governmental support units, with separate budgeting and accounting, and flexible hiring policies. Governmental executive agencies should be incorporated as nonprofit government companies, thereby making them independent of the Civil Service Commission, the Accountant General, and the Budget Division; and they should also be granted supervisory responsibilities mandated by law. The reorganization of regulatory and executive agencies along the lines charted by reforms in the more developed democracies of the OECD is crucial for the distribution of authority and responsibility in a manner conducive to effective governance.

All the proposed structural changes presume the need for a thorough revision of the norms of accountability, reporting, and transparency. All agencies within the public sector must inculcate the obligation to report their activities to the general public. Progress toward an ideal of integrity in public service begins with a positive definition of powers and responsibilities, rather than with an exclusively negative war on corruption.

## **2. Reform Council**

In order to facilitate the effective execution of reforms within the executive branch, the government should authorize the creation of a clearly mandated special reform task force within the Prime Minister's Office and under the direction of the Director General of the PMO. Its members should include the Director General of the Ministry of Finance, the Attorney General, the Civil Service Commissioner, and two representatives of the general public – an academic in the field of public administration and a former senior civil servant.

After the reforms have been fully implemented, the task force will be institutionalized so that the Prime Minister's Office may function as an umbrella ministry that oversees administrative processes in the government as a whole, without actually managing them. This will facilitate the emergence of a new managerial culture within the ministries that emphasizes planning, measurement, and evaluation while encouraging individual initiative and strict adherence to an ethical code of conduct, and is likely to lead to more extensive consultation during the annual budgetary process with the experts in ministries that are responsible for public expenditures.

## **3. Decentralizing Implementation**

Although the implementation of such sweeping reforms necessarily involves a certain degree of centralized control, the post-reform era will be characterized by a diminution of central control over the application of policy. Government ministries will plan and guide the implementing bodies, provide them with resources, supervise task performance, and evaluate implementation and outcomes. However, they will not engage in implementation

themselves (e.g., the Minister of Education will not hire or fire teachers). Moreover, the executive agencies will be autonomous in terms of budgetary and personnel management, as well as with regard to entering into contractual arrangements with external bodies. Additionally, implementation should be devolved to local government when possible. The proposed reforms can be expected to have a major impact on legislation, organizational procedures and structures, budgetary and resource allocation processes, and on the structure and operation of government as a whole.

#### 4. The Prime Minister's Office

The role of the Prime Minister's Office as an umbrella agency that is responsible for the guidance, coordination, and control of the various government ministries must be reflected in its organizational structure, which should include:

- **A national council on economics and society** that will be defined by statute and charged with formulating socioeconomic policy.
- **A policy planning division** that will assume overall responsibility for developing administrative doctrine, as well as for all processes related to the planning and initiation of national and inter-ministerial projects.
- **A national security council** that will be structured in accordance with the conclusions of the Winograd and Shahak Commissions.
- **A coordination, monitoring, and control division** that will assure continuous follow-up to government decisions.
- **A government secretariat** that will be responsible for coordinating government meetings and will serve as the inter-ministerial headquarters.

## 5. Ministries Responsible for Public Expenditures

Upon the completion of the reform process, each ministry headed by a minister with a portfolio (except for the Ministry of Finance, Ministry of Justice, and Prime Minister's Office) should assume full responsibility for government policy in a specific area of activity. The ministry will be expected to set policy, define standards, engage in planning, budgeting, supervision, control, and evaluation, but will not engage in implementation, as noted above. The following measures will ensure that the ministries responsible for public expenditures will enjoy the proper degree of autonomy:

- **Budget.** Each ministry will be free to transfer funds from item to item within the approved budget without interference from the Finance Ministry or the Knesset Finance Committee.
- **Human resources.** Each ministry will manage its own Human Resources Department.
- **Accounting.** Each ministry's accountant will answer to the ministry's Director General, and not to the Accountant General in the Finance Ministry.
- **Legal consultation.** Legal counsel will advise the administration in each ministry on the legal implications of its activities.

## 6. Central Administrative Units

The granting of autonomy to the ministries that are responsible for public expenditures in accordance with the principles of the proposed reforms will entail a parallel effort to decentralize the corresponding administrative agents in civil service. Under this model, the Civil Service Commission will no longer engage in the ongoing management of personnel in the ministries. It will, instead,

be responsible for making policy. Similarly, the Budget Division of the Ministry of Finance should guide the annual budgetary process, but limit its involvement in the ongoing management of the budget, which will have a significantly reduced number of items. Finally, as in most Western European countries, the Accountant General should refrain from involvement in the ongoing fiscal management of the ministries that are responsible for public expenditures.

## **7. The Budgetary Process**

Israel's budgetary process is highly centralized. Although centralization contributes to fiscal discipline, the exclusion of the ministries that are responsible for public expenditures from the decision making process impedes the efficient and transparent allocation of resources in accordance with national priorities. A number of comparative studies of the budgetary processes conducted at IDI that are customary in OECD democracies highlighted the need to:

- Preserve the strategic power of the Finance Minister and the Prime Minister in the preparatory stages of the budgetary process during which expenditures, taxes, and deficit are determined.
- Introduce flexibility into the second stage of the budgetary process by engaging experts from the ministries responsible for public expenditures.
- Begin the budgetary process on April 1<sup>st</sup> so as to ensure its timely completion.
- Dissolve the Knesset if it does not approve the State budget by the end of December.
- Strengthen the Knesset's supervisory role in the final stage of the budget approval process.

- Sharply reduce the number of items in the budget from several thousand to several hundred.

## **8. Recommended Reforms in Central-Local Government Relations**

One of the most important elements in any plan to decentralize the Israeli system of governance must be to restore the authority and independence of local government. IDI's *Constitution by Consensus* details the proposed constitutional infrastructure for local government in Israel, which will replace the outdated Mandatory Municipalities Ordinance with modern legislation. Its main points are:<sup>7</sup>

### **(a) Local government and municipal responsibilities**

- New legislation, which will ideally draw on the European Charter of Local Self-Government, will define the municipality's rights and duties vis-à-vis its residents, including the power to collect taxes and to administer municipal services.
- The municipal authority will be authorized to administer education, social services, immigrant absorption, tourism, and religious services within its area of jurisdiction.
- The local government's powers will be expanded in areas of infrastructure and transportation, and its dependence on the central government will decrease.

<sup>7</sup> For the full text of this proposal, see *Constitution by Consensus: A Proposal by the Israel Democracy Institute*, Under the Direction of Justice Meir Shamgar, Jerusalem: The Israel Democracy Institute, pp. 162-165.

- The local planning and construction board will be autonomous with respect to the district boards and the National Council. To foster local economic stability, the State will encourage cooperation between adjacent municipalities regarding land use.
- The legislative procedures involved in enacting bylaws will be made uniform, which will guarantee the independence of local government in this regard.
- Large municipalities with robust professional administrations and proven long-term results will be accorded greater freedom of action, and will be free of the intervention of the central authority.

**(b) Supervision, control, and enforcement**

- Strict, uniform, and transparent criteria for quality management of local governments and, particularly, of the budget will be established.
- The government will define mechanisms for supervising management quality. The Ministry of the Interior will supervise the management of the budget, while the implementing ministry will supervise the quality of local implementation in its respective area of activity.
- The government will formulate a general policy for dealing with municipalities that do not meet these criteria.
- A mayor's term in office will be cut short in the event of deviations from the budget beyond a predetermined threshold, employee pay delays, or other budgetary failures.

**9. Citizen Participation**

Broad participation in the decision making process is a desirable means to enrich the public's democratic experience, to deepen

its trust in the political system, and to enhance the legitimacy of government decisions. The decision to adopt a participatory approach is fundamentally a moral one that implies intentional activity on the part of the government to cultivate channels of access to decision making processes and to policy makers in order to enable them to express the views and interests of individuals and groups who seek to participate in these processes. Initially, the realization of such an approach entails more transparent decision making and implementation processes within public service. Making detailed information accessible to the public is a crucial first step toward putting this participatory approach into practice. In addition, the government will develop mechanisms for consulting the public as an integral phase of the policy planning processes in various fields. In developed democracies, more and more government agencies have begun to utilize the Internet to inform and engage the public in various government processes. Israel should also promote greater civil participation through e-government.

#### **D. The Law Enforcement System**

The law enforcement system is a pillar of any democracy, its formal embodiment, and an essential condition for its vitality and endurance. The various components of this system extend to all three branches of government: the legislative branch hosts the Office of the State Comptroller; the executive branch comprises the Attorney General, the State Prosecutor's Office, the Police, and other organs; and the judicial branch contains the courts. The primary goal of the following reforms is to achieve a balance between the effectiveness of law enforcement and the efficacy and stability of government. The struggle against corruption and the effort to ensure the integrity of the law must be vigorously

and yet carefully pursued in order not to unnecessarily disrupt the formulation and execution of policy. A second important goal is the restoration of public trust in the law enforcement system and in the institutions of representative government, in general. A third objective is to secure the independence of the courts and to restore them to their former status.

### **1. The Supreme Court**

The Supreme Court is the institution that is vested by the people with the responsibility of safeguarding the very foundations of democracy, human rights, and the rule of law.

For the Israeli Supreme Court to persist in faithfully bearing this heavy burden well into the future, two conditions are necessary: First, the function and status of the Court must be anchored in something higher than regular legislation, i.e. a constitution. The importance of a constitution for Israel's democratic future cannot be stressed enough. A constitution would vest the formal authority to shape the boundaries of Knesset legislation through the important vehicle of judicial criticism in the Court. Second, the judiciary should rid itself of all manifestations of dependence on the executive branch. In particular, statutory legislation should be passed to guarantee the administrative autonomy of the court system.<sup>8</sup>

Ideally, these changes will enable the Court to resume the old tradition of caution concerning the justiciability of political

<sup>8</sup> The Israel Democracy Institute will soon publish a full prescriptive plan to accord administrative autonomy to the Israeli court system under the leadership of the Supreme Court and its President.

matters as expressed by Supreme Court President Emeritus Meir Shamgar:

Recognizing the existence of a boundary to justiciability that may, in appropriate circumstances, lead the Court to refrain from willingness to deliberate on a political, economic, or other public issue, does not undermine the principle of judicial supervision and control but rather strengthens it – inasmuch as it sets a reasonable limit to it [...] Those who do not accept the thesis that all topics in the universe are justiciable, do not thereby grant credence to the reverse conclusion, namely, that the Court should, as it were, limit its spheres of supervision.<sup>9</sup>

It is appropriate for the Court to reject petitions of a predominantly political character that have no real bearing on human rights or issues of integrity. It should not have to hold numerous meetings or offer lengthy explanations; it should suffice to state that the Court does not interfere in such matters. Under no circumstance should legislation determine the limits of judicial authority. The adoption of the prudent approach espoused by Shamgar will preserve its authority to intervene in borderline areas in which human rights are at stake, and to fend off any attempts to exploit the justiciability doctrine as grounds for limiting the authority of the High Court of Justice.

<sup>9</sup> H CJ 910/86 *Ressler v. Minister of Defense* IsrSC 42(2) (1988).

## **2. The Attorney General**

Too often in recent years, the Attorney General has been at the eye of the Israeli political storm. Too often, his or her utterances, decisions, or refusal to decide have sealed the fate of political figures and processes. There is little doubt that the roles and functions of this office must be reconsidered with reference to its counterparts in most OECD democracies. There is no doubt that the functions of the Prosecutor General and the Attorney General must be divided. The continued maintenance of these two functions in a single office and by a single individual is untenable. Not only is each of the two functions a full-time position, but there are inherent conflicts of interests between them, stemming from the fact that the Attorney General advises the government and represents it in court, while the Prosecutor General is sometimes called upon to decide the fate of individual members of the government. The division of these two offices – gradually, if necessary – will resolve these conflicts and will enable the more effective performance of each of the two functions. It is important that the Attorney General retain autonomy even after the roles and powers are divided; he or she must always remain apolitical, nonpartisan and thoroughly professional.

## **3. The State Comptroller**

The State Comptroller is the Knesset's arm for exerting fiscal supervision over the government. As the Knesset's ultimate professional resource for the supervision of the executive branch, the State Comptroller's Office is meant to provide the legislature and the public with a framework for supervising the actions of the implementing agencies. Like its counterparts in most developed democracies, the Israeli State Comptroller's Office provides

the legislature with reliable and objective information on the government's activities. It thereby plays a crucial role in ensuring responsible government.

The essential condition for effective supervision of this kind is the institution's supervisory autonomy and independence. This is ensured by a number of constitutional provisions and supplementary laws, first and foremost, regarding the selection of the State Comptroller by the parliament.

The Knesset State Control Committee is responsible for all supervisory activity on the part of the legislature. As part of the effort to expand and improve legislative supervision of the executive branch, the Committee should assume responsibility for coordination and cooperation between the State Comptroller's Office and other Knesset committees. Additionally, it should be involved in determining the Office's budget and in evaluating the Office's performance.

In recent years, there has been some confusion about the role of the State Comptroller. The purpose of supervision by the State Comptroller is to ensure that elected and appointed government officials refrain from improper conduct by examining their actions after the fact; it is not, as is sometimes imagined, to monitor the efficient application of policy or to shape policy implementation in real time. Nor is the State Comptroller's Office an autonomous authority that possesses the power of enforcement; its decisions have the force of recommendations only. Finally, the State Comptroller is not authorized to engage in judicial supervision or inspection of any kind. The State Comptroller possesses neither the authority nor the resources to deal with criminal issues, and any suspicions of criminal activity should be passed on to the Attorney General for investigation, as mandated by law.

#### **4. Fraud and Breach of Trust**

In Israeli political culture, fraud and breach of trust are exceedingly vague concepts. The language of the existing law does not provide innocent public servants with guidelines to address borderline cases, and may either generate excessive inhibition or result in the conviction of individuals who acted in good faith. By contrast, public servants who are guilty of either offense are not deterred by the confusing law, which places unnecessary burdens on law enforcement authorities.

In 2008, IDI published a comprehensive study, under the direction of IDI Vice President, Prof. Mordechai Kremnitzer, which features a detailed and meticulously reasoned proposal for legislation on this critical issue.<sup>10</sup> The proposed legislation addresses a variety of issues, including conflict of interests in governmental activity, accepting forbidden benefits, public fraud, improper use of government information, and conduct that is contrary to the public interest. A clear and detailed definition of fraud and breach of trust, such as this study provides, will reduce uncertainty and will allow less leeway for interpretation on the part of both would-be offenders and judges.

#### **5. The "French Law"**

No investigation should be launched against a Prime Minister in office, even in the case of multiple terms of office. All investigations against a serving Prime Minister, with the exception of cases where

<sup>10</sup> Mordechai Kremnitzer, Doron Navot, Nava Ben-Or, Amir Fuchs, and Guy Wertheim, 2008. *Fraud and Breach of Trust: A Critical Overview and Recommendations for Improved Legislation*, Jerusalem: The Israel Democracy Institute.

the offense in question touches on state security or on the physical well-being of another person, should be postponed until the term of office has been completed. This restriction may be reconsidered after a legally determined number of terms of office.

### **E. "No" to Presidentialism**

I cannot conclude this essay without a few final words about the dangers of adopting a presidential system in Israel. Presidentialism, nowadays, is invoked as a fashionable panacea for the myriad of ailments afflicting Israel's political system, but it could, in fact, bring about the end of democracy in Israel. A presidential system would not only strengthen the unhealthy centralizing tendencies within the public sector; it would severely damage the representative character of Israeli democracy to the point of endangering social cohesion and the very legitimacy of government. Greater centralization would undercut the vitality of local government and stifle citizens' participation in politics. The presidential system would also promote the personalization of politics, while increasing the political echelon's dependence on financial contributions. More ominously, there would be a fear that in any crisis situation, the president would be tempted to tighten his grip on the reins of government. A presidential system would unravel the delicate web of restraint that keeps deep tensions from erupting violently, such as those arising in the debate over the future of our presence in Judea and Samaria and the sensitive relationship between religion and state. Only the consensual nature of parliamentary democracy keeps this web intact today. The folly of adopting a presidential system in Israel is magnified tenfold when one takes into account Israel's extremely heterogeneous society and the rudimentariness of Jewish democratic tradition.

Israel, which exists under severe internal and external pressures, cannot afford to centralize power in the hands of a president. In short, a presidential system in Israel would, at best, turn our democracy into a banana republic; at worst, it would degenerate into Putin style authoritarianism.

Like the direct elections system that presaged it, a presidential system would intensify the fragmentation of the party system along sectoral lines and would thereby undermine stability. Contrary to popular belief, presidentialism would not relieve the president of the burden of coalition building. Surrounded by numerous small parties, the President would have no allies. He or she would face a “confrontational” Knesset and, consequently, be forced to contrive ad-hoc coalitions to gain support for any major decision. In contrast to the parliamentary system in which coalition building is an open, transparent, and healthy process that occurs within the political sphere, in the presidential system, it would take place behind closed doors.

In Israel, the installation of a presidential system would force the combination of two mutually incompatible political approaches: the majority system to elect a president and the proportional system to elect a legislature. It would be unclear who precisely represents the public – the president elected by one method, or the legislators elected by the other. The inevitable outcome would be intensified public distrust of democratic institutions and the undermining of the legitimacy of government.

In the prevailing political climate in Israel, nearly three-fifths of the participants in a poll agreed that a strong leader would be more useful to the country than an entire system of laws and

discussions.<sup>11</sup> Therefore, it is not inconceivable that a charismatic president could acquire dictatorial powers with the support of a silent majority. Israel has no bill of rights and is deeply divided. A presidential system could well mean the end of consensual democracy and the beginning of majoritarian tyranny. The sole model that it is appropriate for Israel to emulate is provided by the majority of the democratic states in the OECD, which are all parliamentary democracies.

11 Asher Arian, Tamar Hermann, Nir Atmor, Yael Hadar, Yuval Lebel, and Hila Zaban, 2008. *The 2008 Israeli Democracy Index: Auditing Israeli Democracy Between the State and Civil Society*. Jerusalem: The Israel Democracy Institute, p. 119.

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