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On: 03 December 2012, At: 10:39

Publisher: Routledge

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Terrorism and Political Violence

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/ftpv20>

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Version of record first published: 21 Dec 2007.

To cite this article: Raphael Cohen-Almagor (1997): Combating right-wing political extremism in Israel: Critical appraisal, *Terrorism and Political Violence*, 9:4, 82-105

To link to this article: <http://dx.doi.org/10.1080/09546559708427431>

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Combating Right-Wing Political Extremism in Israel: Critical Appraisal

RAPHAEL COHEN-ALMAGOR

The aim of this essay is to examine the decision to outlaw the 'Kach' and 'Kahane Is Alive' movements and to analyze some other measures the Israeli government has utilized in its struggle against political extremism. I argue that while the decision to outlaw the 'Kach' and 'Kahane Is Alive' movements was justified, resorting to administrative detentions at times which do not constitute real emergency is an utterly unethical and unjustified means in a democratic society. I further assert that Israel should make an exception to its Law of Return to the effect of excluding non-Israeli members of these two movements from society by denying them the right of obtaining citizenship. Israel would be justified in applying content-based reasoning to its decision of whether or not to grant citizenship to extreme elements who wish to settle on its soil.

Introduction

The aim of this article is to discuss some of the recent developments in combating political extremism in Israel. My main concern is with combating right-wing political extremism. Since the signing of the Oslo Accords between Israel and the Palestinian Liberation Organization (PLO) on 13 September 1993, Israel has witnessed high-profile activity on the part of the extreme right that tries to reverse the trend leading to peace. The extreme right fears the government of Israel intends to give up large parts of Judea and Samaria (the 'West Bank') and would evacuate settlers. Claims are being made that the government is playing into the hands of Yasser Arafat, and that it is paving the way for a Palestinian state. For security as well as religious reasons, some members of right-wing parties and organizations feel that Israel should not evacuate any more land in return for peace. They insist on propagating the slogan 'Peace for Peace' to substitute and override the 'Land for Peace' slogan.

The most extreme factions in the Israeli right are those associated with the late Rabbi Meir Kahane. Indeed, in the last decade or so political

A shorter version of this essay appeared in *Pouvoirs* 72 (Jan. 1995, in French). I thank former Attorney General Michael Ben-Yair, his Senior Assistant Amir Zolty, B'TSELEM, and the IDF Military Advocate General's Office for their advice and for helping me in the gathering of material. I am also grateful to Mordechai Kremnitzer and Geoffrey Marshall for their comments.

extremism in Israel is closely associated with the Kahanist phenomenon. The term 'Kahanism' describes the ideology and political programme of Rabbi Kahane. Kahane founded the Jewish Defence League (JDL) in 1968 in Brooklyn, New York. In 1971 he immigrated to Israel after the FBI took active measures to restrict his activities.¹ In Israel Kahane established the 'Kach' movement and tried to be elected to the Israeli parliament, the Knesset. In 1984, after three failures in election campaigns, Kahane succeeded in entering parliament. During his four years in the Knesset, Kahane actively induced the Palestinian citizenry to leave the country and propagated his ideas of transferring them to other countries (using Orwellian terms such as 'immigration for peace'), of the superiority of the Jew over the Arab and of the precedence of the Jewish law, the *halacha*, over the law of the state.² Kahane tried to table statutes that carried these notions on the Knesset agenda but his attempts were blocked by the then Knesset Speaker, Shlomo Hillel. Extraordinary measures were taken against Kahane's party ('Kach') by the political system as well as by the media and the educational system. These measures included attempts to de-legitimize 'Kach' and to obstruct its activities. To this end, members of the Knesset (with the exception of some members of ultra-Orthodox parties) united together and abandoned the plenum whenever Kahane rose to speak. Organizations were established with the aim of fighting Kahanism. Parties, groups and individuals refrained from meeting and debating with Kahane, thinking that any such act might help to legitimize him. In Kahane's case, the willingness to confer such legitimacy on him was quite limited.³

In 1988 'Kach' was banned from participating in the elections and two years later Kahane was assassinated in New York. 'Kach' and a splinter from 'Kach' named 'Kahane Is Alive' movement continued to be active in the political scene, notoriously known for their fierce activities against Arabs. 'Kahane Is Alive' was founded by Meir Kahane's son, Benjamin Zeev, who resigned from 'Kach' after failing to become the successor of his father in the leadership position. A small group of like-minded fanatics gathered around him in his home area, Kfar Tapuach, in the West Bank. There Benjamin Zeev Kahane instituted the Yeshiva of Jewish Idea – Kfar Tapuach, which serves as the ideological base and center of studies of Meir Kahane's teachings.⁴ It seems that, to a large extent, Kfar Tapuach is an extra-territorial area in Israel. The law is not being adhered to when the zealots of Tapuach feel that it comes into conflict with *halacha*. Law enforcement forces are quite complacent with regard to disobedient and violent activities committed by the villagers of Tapuach. From Kfar Tapuach Kahane's pupils launched attacks on the neighboring Palestinian villages. As the peace process gained momentum, violent activities escalated and much blood was shed in both the Israeli and the Palestinian

camps. The Israeli government, which for many years provided settlers with weapons and with the infra-structure organization to guard settlements and secure movement of individuals in the occupied territories, increasingly found itself in opposition to the settlers. The means supplied by the government were now employed to obstruct governments' policies. Until the time these lines are being written settlers exhibited forbearance in using weapons against Israeli soldiers. They clash with them, trying to thwart their activities, demonstrate and vocally denounce the peace process and what is conceived as an act of betrayal. Settlers, however, refrained from overstepping the fine line that demarcates these activities from a civil war.

'Kach' and 'Kahane Is Alive' activists do not exhibit the same degree of restraint when Palestinians are concerned. They believe that terrorism is a two-way street and on many occasions retaliate for acts of terror conducted by Hamas, Islamic Jihad and other Palestinian factions that resist the Oslo Accords. Since the outbreak of the *intifada*, members of these two extreme organizations offered to assist the security forces in their attempts of restoring order by entering Palestinian villages and towns, maliciously damaging property and – on occasion – shooting to maim and kill.⁵ Another extremist organization called 'The Sword of David', a name that may serve as a cover up for activities of 'Kach' and/or 'Kahane Is Alive' members,⁶ took responsibility for the killing of three Palestinians of the Patpata family in the village of Tarkumiya late in 1993 and for the murder of Ode Abu-Sanina, a Palestinian from the village of Siloan in East-Jerusalem. Abu-Sanina was murdered in July 1994, on the day Yasser Arafat arrived in Gaza.⁷

The most vehement attack took place on 25 February 1994 when Dr. Baruch Goldstein, a Jewish settler and a close associate of the late Meir Kahane, entered the Cave of Machpellah (the burial place of the Patriarchs and their wives) in Hebron and massacred some 29 Palestinians praying in the mosque inside the Cave. Following this murderous attack, the government decided to outlaw both 'Kach' and 'Kahane Is Alive' movements.

This article examines this decision and analyzes the recent measures the Israeli government has resorted to in its struggle against Kahanism. I argue that the decision to outlaw 'Kach' and 'Kahane Is Alive' movements, in accordance with the Prevention of Terrorism Ordinance, was justified. As a matter of principle terrorist organizations have no place in democratic societies. On the other hand, and on the same level of principle, I assert that the mechanism of administrative detention that was utilized against some extreme activists is unacceptable in democracies. The only exception might be a time of grave emergency to the nation's security which justifies resorting to the means of administrative detentions. In this context a

distinction needs to be made between *latent emergency* and *real emergency*. Thus I argue that administrative detentions have a place only during periods of serious threat to state security or to its existence, provided that this measure is urgently needed and is implemented against *designated* individuals after *careful* review of the evidence gathered against them by different sources. In other times, criminal proceedings should be opened against persons involved in seditious and/or violent activities. The Penal law defines 'sedition' as, *inter alia*, raising discontent or resentment amongst inhabitants of Israel or promoting feelings of ill-will and enmity between different sections of the population.⁸ I am not too happy with the language of this law, which provides broad grounds to restrict essential freedoms. I think the law should be reformulated in more restrictive terms. Nevertheless, I argue that, on some occasions concerning inciting utterances, it is better to use the law as it is than to convey a message of complacency to instigators that their inciting pronouncements may be voiced without any repercussions. Finally, I argue that Israel should make an exception to its Law of Return to the effect of excluding non-Israeli members of these two movements from society by denying them the right of citizenship. Democracy may prevent ideological groups from acquiring citizenship if their conceptions of the good essentially conflict with its underlying liberal norms. 'Conception of the good' means a conception that encompasses both personal values and societal circumstances. It consists of a more or less determinate scheme of ends that the doer aspires to carry out for his or her own sake, as well as of attachments to other individuals and loyalties to various groups and associations.

My basic argument is that considerations of context and intentions must be taken into account, and that they may require the introduction of constraints. Therefore Israel would be justified in applying content-based reasoning in its decision of whether or not admit extreme elements who wish to establish a home on its soil.

Outlawing 'Kach' and 'Kahane Is Alive'

Section 1 of the Prevention of Terrorism Ordinance (No. 33 of 1948) defines 'terrorist organization' as 'a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or to threats of such acts of violence'.⁹

The Ordinance specifies the penalties for activity and membership in such an organization. Section 2 holds, *inter alia*, that a person performing a function in the management or instruction of a terrorist organization or participating in the deliberations or the framing of the decisions of a terrorist organization or delivering a propaganda speech on behalf of such an

organization commits a criminal offence and is liable to maximum punishment of twenty years imprisonment. Mere membership in a terrorist organization is liable to imprisonment for a term not exceeding five years (Section 3). In addition, a person publishing praise, sympathy or encouragement for acts of violence calculated to cause death or injury, as well as a person assisting the organization in its activities, is subject to criminal proceedings and a maximum penalty of three years imprisonment (Section 4).

The outlawing of the 'Kach' and 'Kahane Is Alive' movements after the attack at the Cave of Machpellah is yet another extreme step Israel has exercised in its struggle against Kahanism. It exhibited the government's firm determination to foil further recurrence of murderous attacks on Arabs. The government seemed to have exhausted legal measures short of outlawing the 'Kach' and 'Kahane Is Alive' movements, but apparently these measures were not enough.¹⁰ The two movements continued their violent activities and the feeling was that Dr. Goldstein's onslaught might serve as a precedent to be followed. The Attorney General, Michael Ben-Yair, thought that the violent character of the two movements might lead to further killings, and thus recommended outlawing them. His recommendation was accepted.

The framework of analysis of this decision includes reflection on the 1992 reasoning of the High Court of Justice which confirmed the disqualification of 'Kach' and 'Kahane Is Alive' from participation in the election. The disqualification decision was made in accordance with amendment number 9 to Section 7A of Basic Law: The Knesset (1958). After Meir Kahane was elected to the Knesset in 1984, Israeli parliament introduced this amendment which holds that

A list of candidates shall not participate in Knesset elections if any of the following is expressed or implied in its purposes or deeds:

1. Denial of the existence of the State of Israel as the state of the Jewish people;
2. Denial of the democratic character of the State;
3. Incitement to racism.

The disqualification of the 'Kach' and 'Kahane Is Alive' movements was made in accordance with sub-sections (2) and (3) of the amendment to the Basic Law. The Court unanimously and conclusively said that the activities and declarations of members of these two political lists made it clear that the decisions of the Central Elections Committee (CEC) to ban 'Kach' and

'Kahane Is Alive' were justified. The Court affirmed the decisions and rejected the appeals of the two lists.¹¹

The disqualification of the 'Kach' and 'Kahane Is Alive' movements was designed to show that Israeli democracy had to introduce boundaries to liberty and tolerance. Measures of self-defence had to be introduced to block the activities of those two anti-democratic, racist and violent lists. Indeed, my contention is that it is neither morally obligatory nor morally coherent to allow lists – which are anti-democratic in nature and which advocate and employ violence to further their aims – participation in the elections. Violent parties which act to destroy democracy or the state should not be allowed to run for parliament.

The further step of outlawing the 'Kach' and 'Kahane Is Alive' movements was utilized after it became apparent that those organizations constituted a real danger to the Palestinian community and also posed a threat to public figures opposing the movements' views and to the security forces.¹² 'Kach' and 'Kahane Is Alive' never suggested that they ceased to promote and incite racial discrimination and hatred against Arabs. The attack at the Cave of Machpellah showed that all inhibitions on their activities were put aside. The legal authorities appeared to have felt that the criterion of clear and present danger was satisfied and that Israeli democracy could no longer afford the extent of tolerance it had shown until then.

My view of the outlawing decision is one of principle. As a matter of principle I feel that terrorist organizations should be outlawed *tout court*. It is contrary to logic to expect democracy *not* to react in the most decisive fashion to challenges which undermine the state's sovereignty and which aim to destroy law and order. This, provided that conclusive evidence indicates that the organization in question is, indeed, a terrorist organization. Democracy has to be on the defensive. It has the right to outlaw organizations that propagate and use violence against opposition. Democracy cannot afford to be tolerant toward the intolerant who wish to annul democracy. Tolerance should prevail but it also has to have its limits; otherwise democracy might supply its destroyers with the means to carry out their task more quickly and efficiently. We should therefore claim in the name of tolerance the right not to tolerate the intolerant.¹³ The moral ideal of toleration surely does not require that we put up with terrorism. For terrorism, by definition, denies the very spirit of democracy.

To reiterate: the argument I put forward is one of principle and it accentuates the rationale of mutuality. Acts of self-defence against those who undermine democracy by resorting to brutal means necessitate the posing of restrictions. Clearly terrorism denies the functioning of democracy. Similarly democracy should deny the working of terrorism.

These two terms, 'democracy' and 'terrorism', are mutually exclusive. They contradict one another by definition. Democracy has a moral and practical right to suppress terrorism by legal means (to be distinguished from terrorist means).

Now I wish to examine another set of arguments deriving from a different school, the consequentialist school. I believe that on matters of terrorism we should employ – as a matter of principle – all means to fight down its instigators. The consequentialist approach, however, is quite prevalent among liberals and therefore should be observed.¹⁴ Unlike principled reasoning it reflects on the pros and cons involved in the decision. Consequentialists endorse balancing, weighing one against another different considerations conceived pertinent to the decision. It is my feeling that with regard to the 'Kach' and 'Kahane is Alive' movements, consequentialists too would support the outlawing decision.

Consequentialists would bring forward arguments that go like this. On the one hand, against the outlawing decision they would assert two primary arguments: the first holds that this measure might not be very effective. The hard core will continue to exist. The organizers of the concerned organization will adopt a new name and a new emblem and continue their activities with some more caution. Second, consequentialists would contend that the fear of the slippery slope is tangible. The act of outlawing organizations might bring about, in the longer run, negative results. On the other hand, for the outlawing decision consequentialists would mention the positive corollary manifested in the blunt denial of legitimacy. By resorting to this measure, the government explicitly contends that the organization in question is beyond the acceptable; that by its violent behavior that organization distinguishes itself from the rest of society.

Balancing these important considerations against each other would probably bring consequentialists to conclude that the act of outlawing 'Kach' and 'Kahane Is Alive' was justified. 'Kach' and 'Kahane Is Alive' might continue their violent and discriminatory activities in a different form and with, probably, more caution; but the forthright denial of legitimacy might hinder their recruitment efforts. By exercising the outlawing measure, Israel explicitly says that the two movements are beyond that which is acceptable and tolerable. It is necessary to say this at a time when both Palestinians and Israelis need to build a trust between them. Most important of all, a close examination of this issue of Israel's fight against organizations by means of banning or outlawing them in historical perspective may calm much of the anxieties regarding the slippery slope syndrome.

Canvassing the past reveals that in 50 years of independence, Israel utilized extreme measures such as banning or outlawing organizations only twice: the first time in 1964 when the 'El-Ard' group was banned; the

second time in 1992 when the two Kahanist movements were disqualified from participation in Knesset elections and two years later also outlawed. In the first instance an Arab association was refused registration on the grounds that it was founded in order to undermine the State of Israel. In the second instance the Prevention of Terrorism Ordinance was utilized to outlaw the 'Kach' and 'Kahane Is Alive' movements. Let me briefly review the 1964 decision that is germane to our discussion.

In 1964, the Haifa District Commissioner refused to register the 'El Ard' ('The Land' in Arabic) group as an association, noting that its objectives rejected the existence of Israel. The main objective of the group, as declared in its platform, was to find a just solution to the Palestinian problem – through its consideration as an indivisible unit – according to the will of the Palestinian people. The District Commissioner felt that that objective was incompatible with the existence of a Jewish state; hence 'El Ard' should be banned. Representatives of 'El Ard' appealed against the decision to the High Court of Justice which unanimously upheld the decision of the District Commissioner.¹⁵ Speaking for the Court, Justice Alfred Witkon admitted that the articles of the association did not explicitly deny the sovereignty of the state of Israel, but he claimed that this aim was implicit in them;¹⁶ for the goal of the group denied resolutely and absolutely the existence of the State of Israel in general and its present borders in particular. He maintained that the group's demand for self-determination for the Arab people in the entire land of Palestine did not leave any possibility for self-determination to the Jewish people. Justice Witkon concluded that history had shown that fascist and totalitarian movements had taken advantage of the freedoms of expression, press and association, granted to them by the democratic regimes, with the aim of destroying these regimes: 'Those who have witnessed this in the days of the Weimar Republic will never forget the lesson.'¹⁷

The same notion of urgency that accentuates the need to safeguard Israel's security was apparent also in Justice Moshe Landau's reasoning. In his concurring judgment, Justice Landau argued that enough evidence existed to suspect that the 'El Ard' group would become a fifth column, betraying the duty of loyalty that every citizen should grant to the state in which the citizen lived.¹⁸

Thirty years have passed and a similar notion of urgency persuaded the government to exercise the more extreme measure of outlawing organizations. This measure was deemed necessary to supplement the decision to deny the 'Kach' and 'Kahane Is Alive' movements participation in the 1992 elections. The sense of emergency emerged not because these two Kahanist splinters threatened the very existence of the State of Israel but because they threatened the security of the Palestinian inhabitants and

maybe other elements who opposed their ideology and political beliefs. Their security, of course, has a bearing on Israel's security. It is the nature of extremist deeds to nurture and fuel one another and violent activities on a large scale (such as the massacre at the Cave of Machpellah) are likely to trigger violence against Jews as an act of retaliation. The vicious circle of blood and terror would spin, attract more elements and increase its volume and intensity. If left uncontrolled, it could have reversed the trend toward finding a peaceful solution to the Israeli–Palestinian conflict and could have made the Oslo Accords void of real essence. It is impossible to speak of peace and, more importantly, to implement decisions on the road to peace in an atmosphere of violence and terror.

One final note concerns the employment of this extreme measure of outlawing organizations in the international arena. If we examine other democracies' legislation as well as international law, we find that this measure is not exceptional. In the United Kingdom, Section 1 of the Prevention of Terrorism Act 1989 (which applies on the British mainland) and Section 21 of the Northern Ireland (Emergency Provisions) Act 1978 empower government to ban organizations openly and avowedly dedicated to violent terrorist acts and to the overthrow of the civil authorities. In turn, Article 4 (b) of the Convention on the Elimination of All Forms of Racial Discrimination declares illegal and prohibits organizations and all other propaganda activities which promote and incite racial discrimination. It recognizes participation in such organizations or activities as an offence punishable by law.

After the outlawing of 'Kach' and 'Kahane Is Alive', tighter measures were taken to monitor the activities of members of those movements. In the following sections I canvass some of the measures and proposals that were put on the agenda in the struggle against political extremism. I examine whether these measures and proposals should have a place in a democratic society or whether they exceed the bounds of democracy.

Review of Some Further Measures of Democratic Self-Defence

One of the measures that was utilized against right-wing political extremism was the issuing of administrative detentions against prominent activists. Since February 1994, nine right-wing Jewish extremists were put under administrative detention.¹⁹ All (with the exception of Ben-Horin of the Golan Heights and Ben-Yoseph of Jerusalem) were detained under Chapter 1 of the Security Ordinance, 1970 and under Administrative Detention Order (Temporary Provision, Judea and Samaria, No. 1229), 1988.²⁰ Ben-Horin and Ben-Yoseph were detained in accordance with Section 2 of the Emergency Powers (Detention) Law, 5739-1979 which provides:

Where the Minister of Defence has reasonable cause to believe that reasons of state security or public security require that a particular person be detained, he may, by order under his hand, direct that such person be detained for a period, not exceeding six months, stated in the order.

Sections 2 (b) and 4 of this law supplement the above section to the effect of allowing extension of the detention period if the approval of the court is granted. The detention period of five of the extreme right-wing activists (Marsel, Federman, Gopstein, Ben-Yoseph and Ben-Yaakov) was extended for another three months. Baruch Marsel, Noam Federman (Spokesman of 'Kach') and the other detainees complained that they were not allowed to testify and to summon witnesses, and that they were not even familiar with the evidence which brought about their arrest. They rightly contended that non-disclosure of evidence to them seriously prejudiced their ability to defend themselves against the approval of the detention.

Administrative detention is one of the most anti-democratic procedures that exist in Israel. It is an exceptional measure of great severity to the persons concerned. Section 1 of the Emergency Powers (Detention) Law permits its use only during 'a state of emergency' under section 9 of the Law and Administration Ordinance, 5708-1948.²¹ However, it is debatable whether the year of 1994 can be described as a 'state of emergency'. To my mind, it may be considered as a period of *latent emergency*, not of *real emergency*. A state of real emergency refers to emergency that is actual or at least imminent. It involves a threat to the physical integrity of the population, to the territorial integrity or to the functioning of the organs of the state. Israeli government might argue that as long as the official state of war between Israel and its neighboring countries continues, it is justified to employ different measures, harsh measures of the kind of administrative detentions included. *But you have to distinguish between times of war and other times.* Israel may claim that it is justified to resort to extraordinary measures to defend itself during times of war. Israel, however, should reserve the employment of such measures to real states of emergency. If administrative detentions could be utilized at any time, this might undermine Israeli democracy. You cannot endorse the notions of equality before the law and of 'justice', and at the same time resort to such means. You cannot speak of liberty and tolerance as the basic values that underlie every democracy, Israeli democracy being no exception, and at the same time infringe basic rights and liberties from inhabitants and citizens without proper hearing and due process of law. Security considerations may necessitate the taking of some restrictive measures such as questioning, detentions for 48 hours, house arrests for limited periods and the initiation

of criminal proceedings, but it does not justify brute denial of rights in the form of administrative detention. My contention in this regard is simple: if the detainees conducted criminal offenses (sedition, incitement, violent or terrorist acts, etc.), they should stand trial and it is for the prosecution to show why they should be kept out of society. Let the prosecution prosecute, the defendants defend themselves, and the court of justice meet justice in accordance with material evidence. And if there is no sufficient evidence to prosecute, or the prosecution is unable to produce relevant material or to reveal its sources of information, the defendants should retain their freedom. No procedure should exist to override the making of justice and due process of law. I reiterate: in times other than that of *real* emergency, no room exists for administrative detentions in a democratic society.²²

Notwithstanding the utilization of administrative detention, it seems that the 'Kach' and 'Kahane Is Alive' movements still continued to enjoy some latitude in conducting their illegal affairs. The popular daily newspaper, *Yedioth Ahronoth*, reported in July 1994 that 'Kach' activists continued to scout East Jerusalem and Palestinian villages in the 'West Bank' in cars camouflaged as security vehicles, and to listen in to army communications so as to know when they could enter villages and when should they disappear. In the course of their visits, 'Kach' members harassed Palestinians and damaged Palestinian property in order 'to deter and increase friction between Jews and Arabs'.²³ Furthermore, Channel 1 of Israeli television showed a youth summer-camp that was organized by 'Kach'. It was said that in such summer camps 14- to 18-year-old boys received ideological and quasi-military training. They learnt belligerence drills, the use of guns and how to make incendiary bombs. They also learnt 'holy values' like 'revenge' and 'war', and also who Dr. Baruch Goldstein was, his character and views. A song entitled 'The Doctor's Song' has become their anthem. This song praises Dr. Goldstein for 'sedating' some 29 Arabs. The television report showed participants of such a summer camp entering a Palestinian village, using IDF guns for their defence, harassing Palestinians and throwing stones at their houses.²⁴ Attorney General Ben-Yair ordered an investigation regarding the organization of those summer camps. The Attorney General's Senior Advisor told me that the summer camp shown on television actually lasted only for one day during which the television crew was present. In effect, this was not a real summer camp but a staged press conference.²⁵

Legal measures, however, cannot serve as a substitute for explanation, exchange of ideas and education. They cannot change frameworks of mind, ideologies and beliefs. The government has to invest efforts to reduce hatred, ethnocentrism and racism prevalent in Israel in general and in the settlements in particular. One of the polls conducted at Kiryat-Arba revealed

that Baruch Goldstein had become somewhat of a folk idol in his town. Forty per cent of the respondents thought that Goldstein acted rightly at the Cave of Machpellah (as opposed to 51 per cent who thought he committed a wrongful act); 43 per cent conceived Goldstein as a hero (as opposed to 52 per cent who differed); and 63 per cent thought that Goldstein's widow should be recognized as a widow of a soldier who died in course of duty (27 per cent disagreed) so as to be entitled for compensation.²⁶ Attempts at uprooting these ideas require educational and propagandistic measures. This may sound naive to some who may argue that the educational battle is lost and that the settlers will not change their minds. The constant encounters with the Palestinians lead to hatred, to feelings of alienation and to mistrust on both sides. The years of *intifada* increased the hostility and deepened the tension between Palestinians and Jews, especially settlers. Thus it may be argued that education works on the cognitive abilities of persons but it is not very instrumental where emotions are intense and where means of persuasion are encountered by zestful contentions which rule out the will to compromise and the comprehensive notion of equality of being and belonging. The settlers do not believe that the basic conditions of a common life are available to all people. They contest liberal thinking, asserting that the Palestinians are not to be treated as equals, that is, as entitled to equal concern and respect.

Obviously the skeptics' view contains considerable force. Nevertheless, Israeli government as well as Israeli liberals should not waive triggering discussion and exchanging ideas at the outset. Acknowledging the positive correlation between education and tolerance we should strive to overcome the abovementioned views by increasing exposure to conflicting opinions.²⁷ Their popularity may be reduced if Israel would resort to educational means at all levels and encourage debates and counter-arguments between believers in the sanctity of the Land of Israel and those willing to give up land for peace. The settlements cannot be described as one cohesive entity. Within them there are moderate factions that may be willing to take part in an exchange of ideas and open disputations. Legal measures such as outlawing organizations, sanctioning certain activities and prosecuting individuals should supplement education and free interchange of opinions upon reaching the conclusion that they must be enforced. They might be necessary to denote boundaries to liberty and tolerance. These measures, however, cannot replace education and other peaceful measures liberal democracies employ to calm tensions and reduce conflicts. You can arrest individuals but you cannot arrest their minds. At most you can try to change their convictions and conceptions of the good. Democracies that excessively resort to legal measures and conceive them as substitutes to education and to verbal attempts at persuasion might find themselves in a constant need to

employ them time and again at the expense of abandoning the constitutive components of the first tier of democracies which enables their functioning and which underlie their reasoning: liberty and tolerance.

Let me now focus attention on a different issue which concerns the right of immigration. After the massacre at the Cave of Machpellah a discussion was sparked as to whether or not Israel should make an exception to its Law of Return which grants every Jew the right to immigrate and to automatically become an Israeli citizen. According to one proposal, the exception would concern members of the 'Kach' and 'Kahane Is Alive' movements who live abroad and would like to arrive in Israel and seek citizenship. The following scenario examines this issue, drawing upon the Rawlsian conception.²⁸

Denial of the Right of Citizenship

Suppose that a large group of 'Kahane Is Alive' activists were to organize in the United States and then intended to immigrate to Israel and acquire citizenship with the aim, known to the authorities, of leading their movement to new prosperity. One person may argue that a democracy cannot deny citizenship merely on the basis of beliefs and that the 'Kahane Is Alive' activists may lead their lives in Israel. If we deny them citizenship, we forgo the requirements of respecting others and respecting the ideas of others, and we defeat pluralism.

Another person (Sarah) does not agree. She argues that the movement's set of beliefs is incompatible with, and contradictory to, the basic norms and moral codes that establish a state as a democracy. Sarah contends that we ought to limit citizenship on the grounds of preserving human values and the rights of the community. Sarah further maintains that the very nature of the 'Kahane Is Alive' movement makes its members resort to violence. The use of and incitement to violence has an integral role in their activities, on which they base their political platform and ideology. Sarah may proceed by employing consequentialist reasoning, that the convictions of the intolerant group are so strong initially that the democratic forces making for stability cannot convert them to coincide with the basic notions of democracy, those of liberty and tolerance. Consequently, the government may refuse them citizenship on the grounds that they are morally incapable of being tolerant, since their ideology lacks a concept of tolerance and respect for others, and their ideas are hostile to the values of the state, as well as because they are likely to have a negative impact on the values regarding the society's common good. As John Rawls concedes, a limit exists to the extent that a liberal democracy can accommodate and allow all convictions and beliefs. Political liberalism supposes that there are many conflicting reasonable

comprehensive doctrines (as opposed to comprehensive doctrines that are unreasonable) with their conceptions of the good, each compatible with the full rationality of persons, so far as that can be ascertained with the resources of a political conception of justice. That means that liberalism has to set limits to pluralism. It does not allow indefinite plurality of conceptions of the good but rather *reasonable* pluralism (to be distinguished from pluralism as such). Rawls explains that the existence of doctrines that reject one or more democratic freedoms is itself a permanent fact of life. This, maintains Rawls, gives us the practical task of containing them – like war and disease – so that they do not overturn political justice. Reasonable pluralism is the long-run outcome of the work of human reason under enduring free institutions.²⁹

A counter argument can be made that the ‘Kahane Is Alive’ activists might be willing to change their views through the socialization process. They might willingly relinquish their self-identification as ‘Kahane Is Alive’ activists. Even in such a case, Sarah would regard this effort with suspicion, because she does not believe that such ideological extremists really intend to change their moral views and set of beliefs regarding the Palestinians and the superiority of the Jews over non-Jews. At most they would be willing to make *tactical compromises*, without changing their aims and priorities. Tactical compromise means compromise that is not made out of a sincere effort to bridge the gap between rival groups. This form of compromise has to be distinguished from *principled compromise* which does make such an effort. Tactical compromise is a compromise which at least one side is forced to accept under given circumstances. That side would have no qualms about violating the common understanding and trying to gain a further advantage at the expense of the other should proper opportunities occur. It is made only because one party realizes that the end could not be achieved by one decisive move, and thus it should be realistically reached in stages. There is no genuine willingness to give up part of the interests involved but only to postpone the deadlines for their achievement. If any compromise endures here, then it is *within* one party, and not between different parties. The essential component of compromise, namely mutuality, is lacking.³⁰

A third person (Ben) may take the middle ground and be less suspicious to the point of conceding that, in such a case, if the ‘Kahane Is Alive’ activists are sincerely willing to give up their convictions, they may be allowed to acquire citizenship. Ben would say that the psychological effects of such an encounter would be beneficial for democracy, and that, given the ‘Kahane Is Alive’ activists’ willingness to give up their intolerant convictions and accept the prevailing norms, this is a risk worth taking. Even if the birth-pangs were to be painful, other members of the community

would be helped to strengthen their beliefs. This combination of reasons makes, in Ben's view, a strong case for tolerance. But if the 'Kahane Is Alive' activists intend to keep their ideas, then democracy has no reason to grant them citizenship: a tolerant society ought not to supply conditions for fascist values in a Jewish guise to prosper, allowing them to annihilate the liberal moral codes.

The above example is an extreme case, and its conclusions may be applied only to extremely radical groups. Democracy can deny citizenship to groups on the grounds of their holding a different set of basic beliefs only when their conception of the good is fundamentally different from the liberal-democratic values to the extent where discussion and communication between the two parties becomes impossible and the making of some common grounds implausible. Toleration is not derived from practical necessities or reasons of state. Hence, whatever interest individuals may have in group membership, it is subordinated to their interest in securing what Rawls calls 'the liberties of equal citizenship'.³¹ This reasoning applies to intolerant religious and ideological movements (like 'Kach' and 'Kahane Is Alive') which aim to coerce others to adopt their religion and which do not refrain from using terrorism to advance their cause. Moral and religious freedoms follow from the principle of equal liberty and, assuming the priority of this principle, the only grounds for denying equal liberties is to avoid an even greater injustice, an even greater loss of liberty. Individual liberty is valuable to such an extent that in order to secure an extensive system of overall liberties for everyone, we may restrict a basic liberty of some groups. The principles of respect for others and not harming others provide grounds for and set limits to liberty and tolerance.

To reiterate: We have a strong case for exclusion in the case of the 'Kahane Is Alive' activists because their ideas are incompatible with a commitment to human dignity and respect for others, and because their self-testimonials make us believe they are likely to resort to violence to achieve their political aims. This is an argument of principle. Consequentialists may also uphold this decision, arguing that coming in a large group, the power of these activists might be strong enough to pose a real threat to democracy and to the Palestinian minority. United as a group under the Jewish *Magen David* together with a clenched-fist emblem, they would not be lacking determination to fight for their convictions. Israel would be justified in denying citizenship to that group on the grounds that Jewish fascism is hostile to human rights and to the fundamental values that underlie the state. The business of government is to protect and foster the interests of the public, and allowing citizenship to this group does not coincide with these aims.

In this context I should note that after the assassination of Prime Minister Yitzhak Rabin on 4 November 1995, the then Minister of the Interior Ehud Barak issued orders preventing the entrance of nine American Jews who were affiliated to the Kahanist movements in the United States. This measure was taken out of fear that they might work to undermine law and order and might pose a threat to state security.

The example speaks of Israel but it can be referred to other democracies, such as United States, Canada or England. The United States would be justified in restricting entry of extreme political or religious activists who might wish to continue their violent activities in America. Members of the Islamic Jihad and of the 'Kach' and 'Kahane Is Alive' movements should not enjoy the right to acquire citizenship if they intend to pursue terrorism and political violence. The American Immigration and Nationality Act is relevant to my discussion. Section 212 of the Act refers to 'General Classes of Aliens ineligible to receive Visas and excluded from Admission ...'. An alien is inadmissible under the Act if the consular officer or the Attorney General knows or has reason to believe that she or he seeks permit to enter the United States in order to engage in activities which would be prejudicial to the public interest, or would endanger the welfare, safety or security of the United States. My contention is that the United States would be justified to prohibit entrance of Israeli 'Kahane Is Alive' members, even if they hold American citizenship in addition to their Israeli citizenship, in the event that they would wish to immigrate back to the United States, arguing that they feel persecuted since the outlawing of their movement.

As for England, if a large group of fascists (or neo-Nazis) were to organize somewhere in Europe and then intended to immigrate to England with the aim, known to the authorities, of leading the National Front to new prosperity, England would be justified not only in restricting their naturalization processes but even their entry into its soil. The United Kingdom Immigration Act of 1971 (Section 1 [4]) confers on the Home Secretary the broad power to make rules 'for regulating the entry into and stay in the United Kingdom of persons not having the right of abode'. In the exercise of that power the Home Secretary has designated various categories of persons who shall be refused leave to enter the Kingdom. Similar acts and laws exist also in non-European states such as Canada,³² Australia,³³ and New Zealand.³⁴ All perceive national security as a major consideration to be taken into account.³⁵ The underlying reasoning is that democracy ought to defend itself against threats, even if sometimes the measures include steps that exclude members of intolerant groups altogether from a democratic state.

The foregoing discussion considered 'Kahane Is Alive' activists, and members of neo-Nazi or fascist organizations. I have no qualms preaching

denying them the right of citizenship and even of immigration. However, being aware of the slippery slope danger I wish to add the following clarification which relates to less obvious cases. With regard to illiberal individuals (and not necessarily groups which were the concern of the discussion until now) wishing to immigrate to a liberal democracy and integrate in its society I think democracies should apply a two-tier system of acceptance: the first considers the right of immigration; the second the right to acquire citizenship. In the first instance, individuals should enjoy a *prima facie* right to immigrate. Their convictions should not be considered as justification to deny them this right.³⁶ After all, many of the immigrants coming to liberal democracies come from very illiberal environments and we should allow them the opportunity to absorb a different way of thinking and not deny them right of entry only because they are accustomed to authoritarian sets of beliefs. As Will Kymlicka pointed out to me in a personal communication, most immigrants to Canada in the early part of this century came with illiberal beliefs stemming from their countries of origin in central and eastern Europe. To preclude anyone who has strong illiberal views from entering a democracy is inappropriate given that many people throughout the world have never been exposed to liberal beliefs and practices. But gaining entry is not gaining citizenship. In this two-tier formulation, immigrants wishing to become citizens should develop a commitment to liberal institutions. There should be a certain trial period rather than a procedure of automatic citizenship. Of course, these illiberal immigrants might pose a threat to democracy before they become citizens, even though they do not enjoy the right to vote or hold office, if (for instance) they conjoin into groups and embark on violent activities. But then immigrants who commit violent acts before they acquire citizenship can be deported. So a state which employs this two-tier policy should be quite secure. It provides incentives for illiberal immigrants to adapt to liberal institutions or else they will not acquire citizenship and hence legitimate political influence. Those who refuse to adapt can be deported if their activities are believed to endanger democracy or state security.

Concluding Remarks

The purpose of the discussion was to suggest that democracy should fight terrorism by legal means and that it may prevent certain groups from integrating into society not only because enough reasons exist to believe that their strength is intimidating to the extent of confronting democracy with a substantial danger (as John Rawls argues),³⁷ but, more fundamentally, because the conception that they regard as a conception of the good and its resulting activities essentially conflict with basic liberal democratic norms.

While every idea possesses a claim to equal validity within a democratic society, considerations of context and intentions must be taken into account, and they may require the introduction of constraints. Sometimes the policy of equality of treatment has to clear the way for more crucial considerations, such as securing the safety and well being of individuals and groups. As Rawls contends, intolerance of an intolerant person who wishes to coerce others does not supply grounds for that person to complain, because the intolerant person wanted to deny the principle of equal liberty. Rawls concludes, '[J]ustice does not require that men must stand idly by while others destroy the basis of their existence.'³⁸

The discussion dealt primarily with the 'Kach' and 'Kahane Is Alive' activists. Now I wish to call attention to another group called 'Existing and Alive' (*Chai v'Kayam*). This group is elitist and small. Its members, mainly concentrated at Bat-Ain settlement in Gush Etzion, are influenced by the writings and teachings of Rabbi Yitzhak Ginsberg who heads the *Od Yoseph Chai* Yeshiva in Shchem (Nablus). The group is headed by Yehuda Etzion who was the ideologist of the Jewish terrorist group which was active during 1980–1984. That group was composed of some 27 people. Its participants seriously injured two of the leaders of the Palestinian National Guidance Committee and launched an attack on the Islamic College in Hebron during which three Palestinians were killed and some thirty others were wounded. The group also intended to blow up the Dome of the Rock and booby-trap five Arab buses in Jerusalem, 'to show the Arabs that terrorism was a two-way street'.³⁹ The Jewish terrorists were arrested just after sabotaging the buses and before the buses exploded.

Yehuda Etzion was principally preoccupied with the idea of the destruction of the Dome of the Rock. He believed this was necessary for drawing near the arrival of the Messiah and, *ipso facto*, the redemption of the Jewish people. His plan did not materialize because it was not approved by the rabbinical authorities consulted with prior to each terrorist activity. Etzion never expressed repentance for the actions of his group. In the past he was asked whether he respected the legitimacy of the government and his answer was that he recognized its legitimacy as the sovereign. But he did not acknowledge the legitimacy of every law: 'Every law has to be analyzed separately, whether or not it coincides with the ultimate yardstick of the law of the *Torah*, as we understand it.'⁴⁰ Etzion believes now as in the past that the prohibition against the abandonment of lands and the need to settle in every place in Eretz Israel are more than ordinary commands. These acts amounted to *kidush ha'Shem* (sanctification of the Holy Name).

Members of the 'Existing and Alive' group declare it is purely an ideological group. It is not involved in any violent operations. Some activists were willing to pay a price for adhering to their views. Thus, for

instance, Captain (res.) Moti Karpel refused to serve in the army as a manifestation of disapproval of the government and was put in jail a few times as a result.

As long as this group is not involved in violent activities it is generally entitled to preach its ideas and open them to public debate. Individuals are also entitled to refuse obeying the law on ideological, religious or conscientious grounds if they are willing to be penalized for their refusal, as Captain Karpel was willing. However, some pronouncements should be excluded from competing in the so-called 'free marketplace of ideas' because of their seditious nature.

In September 1994 Rabbi Yitzhak Ginsberg published a pamphlet entitled 'Baruch the Man: Five General Commandments (*Mitzvot*) that are Intrinsic Perspectives in the Act of Saint Rabbi Baruch Goldstein' in which he brought forward *halachic* and ideological justifications for the murder in the Cave of Machpellah. The five *mitzvot* which were the impetus for Dr. Goldstein's act, according to Rabbi Ginsberg, were revenge, removal of evil, *kidush ha'Shem*, deliverance of souls and war. As far as I know, the Chief Rabbinical authorities never condemned this and similar postulates. Their silence was alarming. It called into question whether Judaism was compatible with humanism. In any event, the legal and judicial authorities should not have remained silent. It was for the Attorney General to examine whether this praise constituted sedition in accordance with the Penal Law. In my view Rabbi Ginsberg's pamphlet raised discontent and resentment amongst Palestinians and Israelis and it prompted feelings of ill-will and enmity between different sections of the population. He should have stood trial for sedition.

Some More Personal Words

For the past twelve years I have been studying political extremism in Israel, especially the Kahanist phenomenon which – as stated previously – is the most extreme religious ideology the country has known since its establishment in 1948. In my book I tried to formulate a theory that prescribes boundaries to liberty and tolerance and then I closely examined the Kahanist ideology and the fighting of Israeli establishment against that phenomenon. I chose to conclude the book by the following sentences:

In November 1990 Kahane was murdered in New York City. I was deeply shocked and disturbed by this. No matter what we may think about the man, his ideas and his political platform, I was disgusted by the way his life came to an end. I also felt deep sorrow, sorrow about the murder and for the likely consequences that were (and still are) to

follow. Since the day of Israel's independence no assassinations of political leaders have occurred in Israel, and I hope this murder will not open a new phase in the political discourse between extremist movements and individuals. However, I am certain that the last word has not been uttered by Kahane's followers.⁴¹

These sentences were written with the hope that the two mitigating factors – the fact that Kahane was assassinated by a Muslim Arab, and that the murder was carried out in New York, not in Israel – would have their effect and thus murder as a means to solve political disagreements would not be imported to Israel. Nevertheless I suspected that once Kahane's blood was shed, an important barrier had collapsed. For Kahane's followers the shedding of his blood granted them legitimacy to shed blood of opponents. To my mind Kahane's assassination constituted a new phase in Israeli political affairs: political assassinations were no longer an unthinkable idea.

Almost exactly five years passed since Kahane's assassination and on 4 November 1995 an assassin approached Prime Minister Yitzhak Rabin after he appeared before tens of thousands of people in a very happy gathering whose message was 'NO TO VIOLENCE, YES TO PEACE' and shot the prime minister twice from a close range. Shortly afterwards Prime Minister Rabin died in hospital. Israel entered into a state of shock and mourning. There were warnings that someone might exploit such an occasion to harm Rabin. However, the security forces' misconception was that murderous attempts would most probably be committed by a Palestinian. There was reluctance to assume that a Jew was capable of killing the Prime Minister.

The assassin, Yigal Amir, was most probably a follower of Kahane. His statements resemble Kahane's preaching. For those not familiar with the Kahanist ideology Amir's declarations may sound new and peculiar. For me they constitute a further proof that the seeds of Kahane's ideology that were planted during the 1970s and the 1980s have found roots in Israeli society. During his trial Amir said that his way of making acquaintance with new girls was to ask: What do you think of what Dr. Goldstein did? The girl's answer would determine Amir's decision of whether or not he should invest more efforts in getting to know her. Amir's close friend, Margalit Har-Shefy, passed the test successfully and Amir apparently confided in her before Rabin's assassination.

The writing was on the wall for at least five years. I hope that the security forces, the SHABAC, lost their innocence and complacency. Ideological zealots should pay for their activities and their incitement speeches. Those who preach assassinations and killings should serve long periods behind bars. It should not have been the case that people could distribute stickers saying 'RABIN SHOULD BE KILLED' and only receive

lenient sentences.⁴² The Rabbinical leadership should explicitly condemn so-called rabbinical authorities who speak of 'traitors' and 'murderers', who declared that Rabin and Peres should be killed for giving up Eretz Israel. The two Chief Rabbis should step forward and say that those rabbis betray Judaism, betray humanism, betray what is good and valuable in Judaism. I hope we shall never again see pictures of state leaders dressed in Nazi uniforms in public demonstrations (there was a big demonstration of the Israeli right in October 1995; some Kach activists waved photomontages of Rabin dressed in S.S. black uniforms but the leader of the Likud Party, Benjamin Netanyahu, said nothing, despite witnessing such pictures in front of his face). Such instigating signs should no longer be ignored.

After Prime Minister Rabin's assassination the Minister of Justice, David Libai, and Attorney General Ben-Yair recommended that the Penal law dealing with seditious activities be refined and defined more clearly. Minister of the Interior, Ehud Barak, recommended that Israel should make an exception to its Law of Return to the effect of excluding Jewish zealots who are active in Kahanist organizations from society by denying them the right of citizenship. Barak used his authority to deny entrance to a few American followers of Kahane who wanted to visit Israel after Rabin's assassination. These measures are in line with my suggestions. On the other hand, Israeli authorities continue resorting to administrative detention to curb political extremism. I still think this is an unacceptable measure in a democratic society. It should not serve as substitute for surveillance, gathering of material and the opening of criminal procedures upon verifying that sufficient grounds exist to put people on trial. In contrast to the legal authorities my feeling is that no room exists for administrative detentions in a democratic society in times other than that of *real* emergency to its security and existence. In this regard, the easy way of solving problems by arresting people without trial is not the right way and, in the long run, it threatens to undermine democracy. We should insist on the far more demanding processes which reiterate the need for the making of justice and for due process of law.

We are living in a world of blood and terror. One of the things that distinguishes democracy is the potential to have direct relations and feedback between the people and the decision makers. Terrorism impedes this direct relationship. President Clinton had to block Pennsylvania Avenue as a security measure to fight terrorism. Prime Minister Netanyahu and his security guards think dozens of times before allowing him to shake hands with the public. President Mubarak and His Majesty King Hussein are under constant threats. The world is in urgent need to cooperate and find ways to fight and crush violent extremism.

In January 1995 President Clinton exercised his statutory authority to

block all property and to prohibit any transactions or dealing by US people in such property of twelve organizations (among them 'Kach' and 'Kahane Is Alive') that threaten to use violence to disrupt the Middle East peace process. Israeli authorities need to closely cooperate with the United States authorities to frustrate transactions of finance between the two countries, transactions made with the intention of building and strengthening the terrorist infra-structure designed to challenge democracy. This is only one step in the right direction. Governments are required to do much more in cooperation and collaboration. East and West, South and North, should unite in a common struggle. The United Nations may also be instrumental in the fight against terrorism.

NOTES

1. The period was of *détente* between the East and the West blocks and Kahane's violent activities against Russian diplomats and agencies were conceived, at some point, as a danger to the very delicate framework of relationships between the two super-powers. Cf. Cohen-Almagor, 'Vigilant Jewish Fundamentalism: From the JDL to Kach (or 'Shalom Jews, Shalom Dogs')', *Terrorism and Political Violence* (hereafter *TPV*) 4/1 (1992) pp.44-66.
2. I use the terms 'Palestinian' and 'Arab' as synonyms. Most Arabs living in Israel in its Green Line (pre-Six Day War of 1967) borders and in the occupied territories identify themselves as Palestinians.
3. For a discussion of some of these measures see Cohen-Almagor, 'Fighting Against Kahanism in Israel: Retrospect and Appraisal', *The Anglo-American Law Review* 22/4 (1993) pp.447-74.
4. In March 1992, the Company Registrar refused to register the Yeshiva of Jewish Idea at Kfar Tapuach (file no. 58-018-814). The decision was based on section 3 of the Company Law - 1980 which holds, *inter alia*, that a company will not be registered if its goals deny the democratic character of the State of Israel, or if reasonable basis exists to assume that the company would serve as a cover-up for illegal actions. Benjamin Zeev appealed against the decision to the District Court which reversed the Company Registrar's decision. The Company Registrar appealed in turn to the Supreme Court which partly accepted the appeal and partly reversed it. Cf. C.A. 1282/93. *The Company Registrar v. Benjamin Zeev Kahane and Others* (was not published).
5. In November 1990, a gunman shot an old Palestinian couple immediately after the news concerning Kahane's assassination were conveyed to his family and friends. In November 1992 four teenage members of the 'Kahane Is Alive' movement threw a hand-grenade in the Butcher Market in the Old City of Jerusalem to denote two years to Kahane's murder. As a result, Abd Al-Rasek Adkidak, a 72-year-old Palestinian merchant, was killed and seven others were wounded.
6. In addition to 'The Sword of David' a number of right-wing extremist organizations were involved in violent activities that probably had some kind of affiliation to either 'Kach' or 'Kahane Is Alive'. These were 'Dov' (short in Hebrew for Suppression of Traitors); 'Lechi (Worriers for the Liberty of Israel) 1994'; and 'Eyal' (short for Jewish Belligerent Organization). After Prime Minister Rabin's assassination it was discovered that Eyal was sponsored by the SHABAC, Israel Internal Security Forces. There were grounds to assume that some activists took part in more than one organization.
7. Cf. Zvi Zinger, 'The secret war against the extreme right', *Yedioth Ahronoth*, 9 Sept. 1994, p.3 (Political Supplement).

8. The Penal Law, Laws of the State of Israel, Chapter Eight, Article One, Section 136 (3) (4) of Special Vol: Penal Law, 5737-1977.
9. Cf. *The Official Gazette* 24 (29 Sept. 1948).
10. For discussion on the different measures Israel resorted to in its fight against Kahanism see Cohen-Almagor, *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism in Israel* (Gainesville, FL: University Press of Florida 1994), chaps. 9, 11–13. See also Robert I. Friedman, *The False Prophet* (London: Faber & Faber 1990).
11. E.A. 2805/92. 'Kach' v Chairperson of the CEC to the 13th Knesset (was not published), and E.A. 2858/92. 'Kahane Is Alive' Movement v. Chairperson of the CEC to the 13th Knesset. P.D. (*Piskei Din*, Judgments of the Supreme Court) 46 (iii) p.541.
12. Michael Ben-Yair's opinion letter of 10 March 1994 to Prime Minister Yitzhak Rabin.
13. Karl Popper urges that we should claim any movement preaching intolerance places itself outside the law, and that we should consider incitement to intolerance and persecution as criminal, in the same way as we should consider incitement to murder or to the revival of the slave trade as criminal. Cf. K.R. Popper, *The Open Society and Its Enemies* (London: Routledge & Kegan Paul 1957) Vol.I, p.265. See also Onora O'Neill, 'Lifeboat Earth', in Charles R. Beitz *et al* (eds), *International Ethics* (Princeton, NJ: Princeton University Press 1985) pp.262–81, esp. at 263.
14. The consequentialist approach is especially prevalent on matters of free speech. Some liberals, however, would extend its reasoning to cover actions as well as expressions. For illustrations of this approach see, for instance, John Rawls, *A Theory of Justice* (Oxford: OUP 1971); T.M. Scanlon, 'A Theory of Freedom of Expression', in R.M. Dworkin (ed.), *The Philosophy of Law* (Oxford: OUP 1977) pp.153–71; Anthony Skillen, 'Freedom of Speech', in Keith Graham (ed.), *Contemporary Political Philosophy* (Cambridge: CUP 1982) pp.139–59; Frederick Schauer, *Free Speech: A Philosophical Enquiry* (New York: Cambridge University Press 1982); Lee C. Bollinger, *The Tolerant Society* (Oxford: Clarendon Press 1986); and Norman Dorsen, 'Is There A Right to Stop Offensive Speech? The Case of the Nazis at Skokie', in Larry Gostin (ed.), *Civil Liberties in Conflict* (London: Routledge 1988) pp.122–35.
15. H.C. 253/64. *Sabri Jeryis v. Haifa District Commissioner*. P.D. 18 (iv) p.673.
16. *Ibid.*, p.679.
17. H.C. 253/64. *Sabri Jeryis v. Haifa District Commissioner*, p.679. For further discussion see E.A. 1/65. *Yeredor v. Chairperson of the Central Committee for the Elections to the Sixth Knesset*. P.D. 19 (iii) pp.365, 369–70, 385.
18. H.C. 253/64, at 681. Justice Zvi Berenson concurred, saying that he had nothing to add to his colleagues' judgments. For further discussion see Cohen-Almagor, 'Disqualification of Lists in Israel (1948–1984): Retrospect and Appraisal', *Law and Philosophy*. 13/1 (1994) pp.43–95.
19. These were Baruch Marsel, Noam Federman, Ben-Zion Gopstein, Baruch Ben-Yoseph, Eyal Noked, Shmuel Ben-Yishai, Shmuel Ben-Yaakov, Avraham Schaar, and Michael Ben-Horin.
20. In Gaza Strip it is called Administrative Detention Order (Temporary Provision, Gaza Area, No. 941), 1988.
21. 1 L.S.I. 7.
22. For a thorough discussion of this issue see Cohen-Almagor, 'Administrative Detention in Israel and its Employment as a Means of Combating Political Extremism', *New York International Law Review* 9/2 (1996) pp.1–25.
23. Doron Meiri, 'Kach police in action', *Yedioth Ahronoth*, 20 July 1994, p.13. Some of the details mentioned in the newspaper were manifested on Channel 1 of Israeli television in its Weekly Review of 29 July 1994.
24. Channel 1, Weekly Review of 29 July 1994. See also *Yedioth Ahronoth*, 29 July 1994, p.10.
25. Attorney Amir Zolty's letter, 23 Nov. 1994.
26. Cf. 'His Wife', *Yedioth Ahronoth*, 5 Sept. 1994, Rosh Ha'shana (New Year) Supplement, pp.14–22, at p.20.
27. Studies indicate a positive correlation between education and toleration. Cf. Samuel Stouffer, *Community, Conformity, and Civil Liberties* (New York: Doubleday 1955); James W. Prothro and Charles M. Grigg, 'Fundamental Principles of Democracy', *Journal of Politics* 22/2

- (1960) pp.275–94; David G. Lawrence, 'Procedural Norms and Tolerance: A Reassessment', *APSR* 70/1 (1976) pp.80–100; John L. Sullivan, James E. Piereson and George E. Marcus, 'A Reconceptualization of Political Tolerance', *APSR* 73/3 (1979) pp.781–94; and John L. Sullivan, James E. Piereson, George E. Marcus and Stanley Feldman, 'The Sources of Political Tolerance', *APSR* 75/1 (1981) pp.92–106.
28. This is a reformulation of an example given in chapter 4 of *The Boundaries of Liberty and Tolerance* (note 10). In the book I speak of denial of the right of immigration. Will Kymlicka convinced me that it is more appropriate to speak of denial of citizenship.
 29. Cf. John Rawls, *Political Liberalism* (New York: Columbia University Press 1993) pp.24, 64, 129, 144.
 30. For further discussion on the distinction between tactical and principled compromise see *The Boundaries of Liberty and Tolerance* (note 10) esp. ch.2.
 31. Rawls, *Political Liberalism* (note 29) pp.30, 62, 213, 217. See also Rawls's, *A Theory of Justice* (note 14) p.220.
 32. Section 19(1)(e) of the Canadian Immigration Act enables the country to refuse admission to people who are suspected to be engaged in acts of espionage or subversion against democratic governments, institutions or processes. See Brian Gorlick, 'The Exclusion of "Security Risks" as a Form of Immigration Control: Law and Process in Canada – Part II', *Immigration and Nationality Law & Practice* 5/4 (1991) pp.109–15.
 33. Section 16 of the Australian Migration Act 1958–1966 outlines the various classes of persons who will be treated as prohibited immigrants.
 34. Under section 5(1) of the New Zealand Undesirable Immigrants Exclusion Act (1919), the Attorney General has a broad statutory mandate to prohibit the landing of any person when she or he is satisfied that the person is not normally resident in New Zealand, and she or he is disloyal, or is likely by her or his presence to threaten the good of the country.
 35. Generally, laws of many democracies grounded four reasons on which foreigners are declared prohibited immigrants. Those are: national security, indigence, public health and criminality.
 36. I am not claiming that democracies must always open their borders for immigrants. Democracies can, and do, set quotas on immigration and may decide that for some reasons they are not willing to admit immigrants to their territory. I refer here to the right of democracies to limit immigration on the grounds of immigrants' beliefs. It is implied that only in very special cases which involve *groups* rather than individuals this should serve as grounds for restricting immigration. On different justifications that were set to limit immigration and means to control it, see Peter B. Maggs and Luke T. Lee, 'North African Migrants Under Western European Law', *Texas International Law Journal* 11 (1976) pp.225–50; Hugo Storey, 'The Right to Family Life and Immigration Case Law at Strasbourg', *International and Comparative Law Quarterly* 39 (1990) pp.328–44; and Nana Mallet, 'Deterring Asylum Seekers: German and Danish Law on Political Asylum – Part I', *Immigration and Nationality Law & Practices* 5/4 (1991) pp.115–22.
 37. Cf. Rawls, *A Theory of Justice* (note 14) pp.216–21, at p.219.
 38. *Ibid.*, p.218.
 39. Cf. Haggai Segal, *Dear Brothers* (New York: Beit-Shamai Publications 1988) p.181.
 40. Aviva Shabi, 'In Tel-Mond I established the redemption movement', *Yedioth Ahronoth*, 6 Jan. 1989, p.13 (Political Supplement).
 41. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (note 10) p.252.
 42. On 30 Oct. 1993 two political activists distributed stickers carrying that message in a place called Or Akiva. Judge Amiram Sharon's verdict was three months in jail; six months conditional sentences in jail, and a fine of 1,500 Shekels each. Cf. Criminal file 152/94 *State of Israel v. Gil Sharon and Ahuva Vaanunu*, Hadera Magistrate's Court.