

# The struggle over the Jewishness of Israel

**T**HE High Court of Justice ruling four weeks ago which determined that El Al must offer equal benefits to homosexual and heterosexual live-in partners has resulted in a field day of controversy over the court's role.

The ruling antagonized not only the haredim, who have never accepted the authority of the Supreme Court, but also many members of the religious-Zionist community. MK Hanan Porat warned that the ruling on homosexuals could lead to a total rupture between the religious Zionists and the court.

According to Prof. Ariel Rosen-Zvi, a religious Zionist who is dean of the Tel Aviv University law faculty, there are two reasons for the religious community's increasingly vocal attacks on the court.

"One thing that has changed in recent years is the rhetoric of the court, not only in Israel, but throughout the world," Rosen-Zvi said. "We are no longer hiding behind formalistic arguments, but are ready to tell the truth, that judges do deal with values, that making decisions means to balance values and assess them by giving each one a specific weight according to its importance in society."

According to Rosen-Zvi, this

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The secular-religious battleground has moved to the Supreme Court, says law school dean Ariel Rosen-Zvi. Dan Izenberg reports

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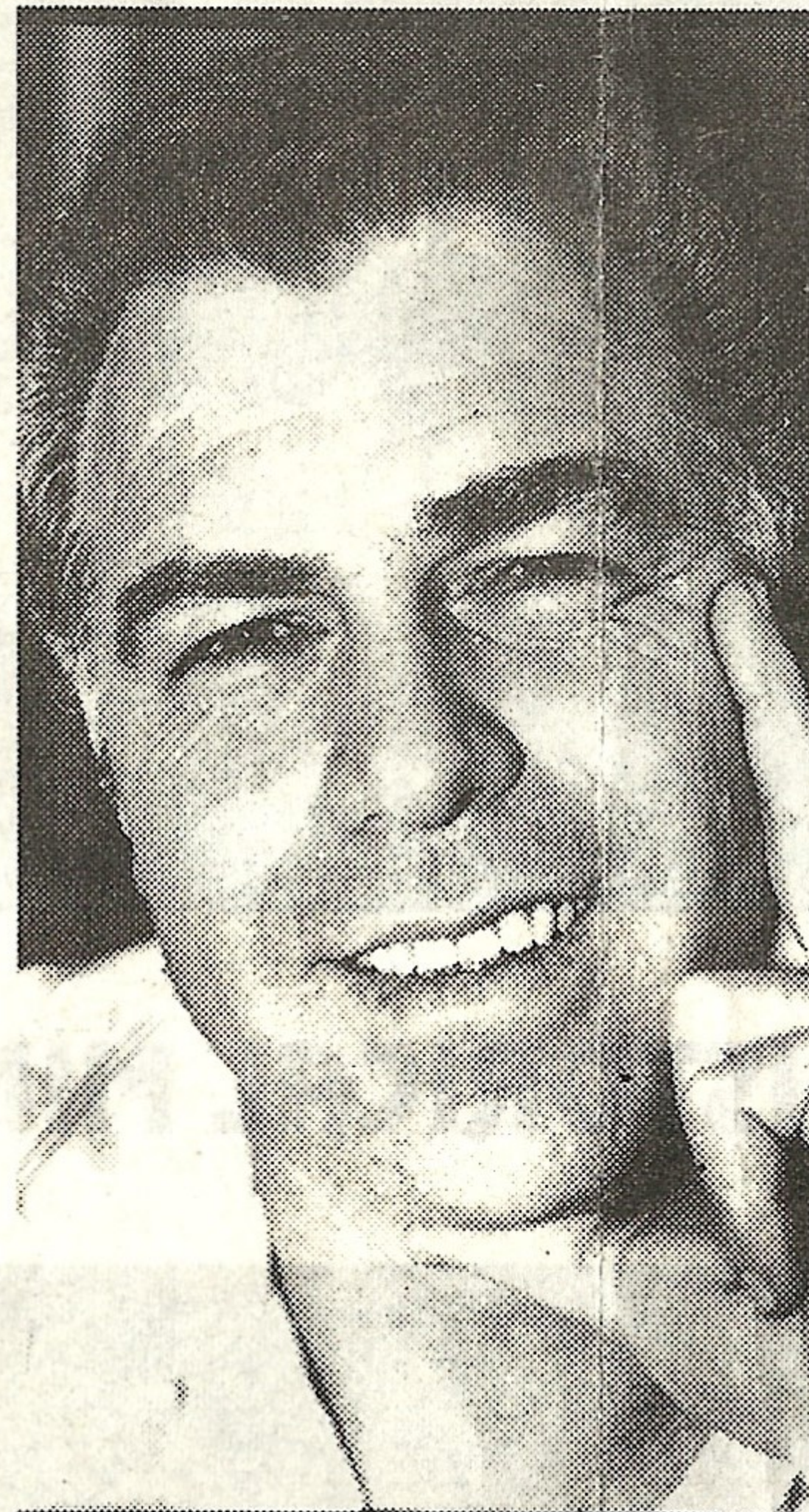
rhetoric frightens religious leaders and makes it impossible for them to continue ignoring the court's liberal decisions.

The second change was the promulgation in 1992 of the Basic Law: Freedom of Occupation and Basic Law: Human Dignity and Freedom. Rosen-Zvi believes that many MKs did not realize the constitutional significance of what the Knesset was doing in passing the laws.

"Some of them are having second thoughts," he said. "They are beginning to realize that these laws were enacted with a minimum of public debate."

The shouting of MKs Yigal Bibi (NRP) and Shlomo Benizri (Shas) — who demanded that the court's prerogatives be curbed — and the discussion of Knesset-Supreme Court relations now under way in the Knesset Law Committee, are part of this belated debate.

But the religious community has a specific problem. If indeed the Supreme Court deals with values, "the religious parties feel their values are not represented on the Supreme Court and that



**Rosen-Zvi: 'There is an underrepresentation of the religious population on the Supreme Court, and some segments of the religious public feel a bit alienated.'** (Kfir Meir)

Jewish values do not get their fair weight against what are called democratic values," Rosen-Zvi

said. "For the first time, the constitution has become the arena of the struggle over the Jewishness of Israel."

ROSEN-ZVI is not happy over this development. He believes there is no contradiction between Jewish and democratic values, and the cultural struggle between secularists and traditionalists should take place outside the courts and outside parliament. Nevertheless, he is concerned about the current composition of the court.

"There is an underrepresentation of the religious population, and some segments of the religious public feel a bit alienated from the Supreme Court," he said. "It's a new phenomenon and constitutes a great danger, since the Supreme Court can act only if it has the confidence of all or at least the main sectors of the population."

Rosen-Zvi acknowledges there has been a growing polarization between religious and secular Jews over the past decades, and the increasing gap affects the court as it does all aspects of public and political life. But he says it

does not have to be this way.

"I myself think there is no contradiction between the Jewishness of Israel and its being a democracy," he said. "I think our traditional sources introduced the main concepts of human rights. You can find in our sources the roots of the dignity and autonomy of man and his freedom vis-à-vis others. There is a very famous notion that people are not slaves of other people. They are slaves of the Almighty and they all are creatures of the Almighty and therefore all of them, Jews and non-Jews, men and women, are equal before God."

"I am concerned that part of the religious population has become less democratic and part of the secular population has become less Jewish. So the distance between them has increased and the common cultural denominator of the past has weakened."

"I think the secular part of the population has to be more aware of its illiteracy on Jewish subjects and sensitivities, and this must be the focus of education and culture. The religious part of the population has to be engaged in finding bridges between Jewishness and democracy. Otherwise, the polarization between secular and religious will endanger the very delicate texture of Israeli society."