

A Constitution for Israel

TO THE EDITORS:

Daniel Polisar is undoubtedly correct in his assessment of the serious defects that characterize Israel's present governmental structure and practice ("Israel's Constitutional Moment," *AZURE* 20, Spring 2005). An American observer may perhaps be pardoned for making that judgment, however, because many of the flaws he describes are characteristic of the United States as well. Written constitutions are not cure-alls; they can create perils and encourage corruptions of their own. The U.S. Constitution, and its Bill of Rights in particular, has proved over the past fifty years to be the means of a steady erosion of democratic self-government and of judicial imposition, without constitutional warrant, of an ideology of radical personal autonomy and hence of a culture well to the left of that desired by a majority of Americans. The struggle between legislatures and courts is, of course, a class struggle, one that goes by the name of "the culture war." The courts everywhere are on the side of the intelligentsia, what Israeli Supreme Court President Aharon Barak calls "the enlightened

community in Israel," while the legislature is, generally speaking, on the side of the general public.

This appears to be the inevitable consequence of undiluted judicial supremacy. For that reason, a few years ago, then-Justice William Rehnquist warned a British audience to think very carefully before adopting a written constitution. Recently, however, the British did just that by incorporating into their domestic law the European Convention for Protection of Human Rights and Fundamental Freedoms and the interpretations of the Convention by the European Court of Human Rights at Strasbourg. The early results are not promising—for democracy or for traditional British values. The experience of other Western democracies that have adopted written constitutions applied by independent judiciaries confirms that when unaccountable power is conferred, it will be abused.

This may not seem to pose a new danger for Israel, since its High Court is already the most activist in the world, even managing the implausible feat of creating a pervasive and intrusive constitutional law without having a constitution. The adoption

of a written constitution, however, can either confirm the court in its imperialism or go far to curb its excesses and confer democratic legitimacy upon its work.

Perhaps one reason for Israeli acceptance of an activist court is, as Polisar points out, the perceived inability of the Knesset to “steer the country’s course.” Yet in all Western democracies, activist courts are by far the most popular branch of government. Some of us in the U.S. have criticized government by a Supreme Court that is unelected, unrepresentative, and unaccountable—until it occurred to us that that is precisely the reason for the court’s prestige. Congress and the president are seen as politicians, which means that they are compromisers, practitioners of the expedient, and subservient to various constituencies, whereas robed judges are believed to act on principle, a perception encouraged by the judges in opinions that routinely insist that higher, though usually amorphous, considerations dictate their course.

The distinction between squabbling politicians and (apparently) principled judges is especially sharp in Israel because extreme proportional representation creates a government dependent on coalitions that must be placated with complicated deals. From an American perspective it

would appear an improvement to elect legislators from districts geographically defined under a rule of winner-take-all. That would eliminate many splinter parties and make it more likely that the resulting government had the support, or at least the acquiescence, of a majority of Israelis. The Knesset might then rise in prestige sufficiently to counter an overweening court. The American experience suggests that is not enough to preserve democratic rule, so that any constitution should explicitly cabin the High Court’s powers or make it possible for the Knesset to do so.

It is possible to list some of the reforms that ought to be undertaken, some of which Polisar has noted. The United States Constitution prohibits certain interventions by the state into areas of personal freedom. Action by the state, real or threatened, is required before the Constitution comes into play.

Israel’s High Court, however, has decided that state inaction amounts to state action, so that the individual’s freedom may be declared unconstitutional and the state required to act. Individual freedom thus exists at the sufferance of judges. The American court limits its own power by requiring that a complainant have suffered an injury in order to have standing

to sue. The Israeli court allows plaintiffs to litigate any question of policy without showing anything more than ideological disagreement. The consequence is a further expansion of judicial power at the expense of democracy. All of this is exacerbated, as Polisar observes, by a method of selecting judges that allows the High Court to choose its own membership.

Finally, though it is highly unpopular to say so, the drafters of a written constitution should be wary of adding any statement of rights. Such a statement will certainly be used, as it has been in the United States, as a warrant for judges to remake politics and culture in line with elite opinion and contrary to public sentiment. The Supreme Court has, among much else, created a right to abortion, whittled away capital punishment, created a right of homosexual sodomy (and is clearly headed to creating a right of homosexual marriage), sanctioned the most blatant pornography, removed almost all traces of religion from the public sphere, permitted discrimination against white males to benefit favored minorities and women, and made the criminal justice system extraordinarily slow and complex. Whatever one thinks of these decisions as matters of policy, not one of them is authorized by the

Constitution, and some are directly contrary to it.

The draft constitution prepared by the Israel Democracy Institute invites such judicial activism by enshrining equality as the primary value to be protected, naming also life, liberty, and human dignity. A judge can arrive at almost any result in the name of these grand but undefined aspirations. For most people in Western democracies, it is almost unthinkable that such ideals should not be protected by judges, but those people have not fully realized that these are warrants for remaking the society in which they live without their approval. For almost a century and a half, the American Bill of Rights was not enforced by courts, but the white populace was free and the major injustices—slavery and then racial discrimination—were eliminated primarily by legislation. To grant almost unlimited power to courts is not to enhance freedom but to place the power to diminish freedom in different and uncontrollable hands. A friend must wish that any Israeli constitution contain a mechanism to keep courts within their proper bounds.

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Globalization

TO THE EDITORS:

Assaf Sagiv's cheerleading piece, "Globalization: Just Do It" (AZURE 19, Winter 2005), misrepresents both the globalization process and the anti-globalization movement. On the one hand, he conflates today's corporate-led globalization with the achievements of modern technology and capitalism, and ignores the glaring contradictions between the ideology and practice of free trade. On the other hand, he judges the anti-globalization movement by its straw men instead of its ablest speakers. As a result, the essay distorts the debate and ends up reading like propaganda.

Sagiv conflates two meanings of the word "globalization": (i) The worldwide spread of ideas, democracy, and human rights, with which few activists quarrel; and (ii) the spread of power structures, institutions, corporations, and "free trade" ideologies, which have arguably brought about much harm. True, capital and goods move more freely than ever before, but labor is emphatically *not* free, and this fundamental fact creates massive inequality.

The "globalization" being protested looks something like this: "Free trade" floods poor countries with deliberately underpriced grain

from Western agro-petrochemical conglomerates like ADM, Cargill, and Monsanto. This drives small farmers out of business and causes a mass exodus from the countryside to the city, where a burgeoning, desperately poor population forms the world's new proletariat (who cannot, it should be noted, freely emigrate to rich countries). The few who manage to land jobs in sweatshops are treated terribly and could never significantly unionize, since production can so easily be moved elsewhere. Agricultural loans are given only for large-scale, capital-intensive monoculture for export, which is at constant risk of market fluctuations, and can rapidly exhaust soils. Finally, local subsistence is gone. Unfortunately, Sagiv ignores those who make these arguments most eloquently, like Walden Bello, Vandana Shiva, and Jerry Mander.

It is true, as Sagiv points out, that France, the United States, or Japan can stand up to such corporate forces in protecting their own peoples and industries. But smaller countries cannot—in Honduras, Nigeria, and elsewhere, interested corporations have even been linked to military juntas and their death squads. Even democratically elected governments that dare stand up to globalizing forces face Western-sponsored coup attempts, from Guatemala in 1954 to Venezuela in 2003.

The anti-globalization movement does not advocate North Korea-like genocidal isolation, nor does it harbor dreams of a benign totalitarian world government. Rather, it insists on checks and balances and believes that all the peoples and countries around the world should have a say in how globalization affects them. Environmental concerns, too, must have veto power against the overuse of scarce and non-renewable resources, and must have a far stronger voice in mediating our collective interaction with the biosphere on which we all depend. The essence is not any particular issue, then, but the reining in of the emerging superstructure of unaccountable corporate elites.

According to the majority of all Nobel Prize winners, who signed the “World Scientists’ Warning to Humanity,” the current path of globalization is a sure road to ecological disaster. “Free trade” has freed capitalism from almost all restraints. As an entrepreneur and consultant to several Fortune 500 companies, I myself have a certain degree of faith in capitalism, but I recognize it for what it is: A gamble, which sometimes enables great achievements—or great failures. We should not gamble what we cannot afford to lose.

Matthew Mausner
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TO THE EDITORS:

The title of Assaf Sagiv’s defense of globalization, “Just Do It,” is taken, of course, from Nike’s successful ad campaign. Yet from the standpoint of traditional Jewish ethics, Nike’s conduct points to a number of troubling moral issues related to globalization.

For example, the policy of “chasing after the cheapest labor supply” does terrible injustice to the divine blessing to “be fruitful and multiply and fill the earth and subdue it,” known as *kibush* (Genesis 1:28). In the thinking of Rabbi Joseph B. Soloveitchik, *kibush* is a mandate calling for man’s self-actualization as a creative being. He fulfills this mandate by breaking away from a state of dependency and using the power and freedom thus obtained to discharge his responsibilities to both God and fellow man. *Kibush* is achieved by the fulfillment of ordinary activities undertaken in pursuit of a livelihood, accompanied by a sense of duty and responsibility to God and fellow man alike.

But if workers receive less than subsistence earnings and are abused in various ways, then the pursuit of a livelihood is accompanied by a deteriorating sense of responsibility toward one’s fellow man. This was the case with Nike, which moved its operations from the United States to Taiwan and then South Korea when its American workers organized to

demand reasonable wages. When democracy took hold in Taiwan and South Korea, however, Nike moved production again, this time to China, Indonesia, and Vietnam, where governments violently suppress workers' rights. Economic activity in this case is certainly devoid of any sense of duty and responsibility.

Furthermore, in some countries local labor laws, even on paper, do not measure up to the most minimal internationally agreed-upon standards. In Indonesia, Malaysia, and Thailand, for instance, several core labor conventions of the International Labor Organization have gone unratified, including the right to organize. Minimum wages in these countries are well below the poverty line. Not surprisingly, the *kibush* mandate gets its severest thrashing when the profit motive drives companies to relocate to these countries.

A case in point is the study by economist Linda Lim, whom Sagiv quotes. During her visit to Vietnam in 2002, she found that workers at the Nike factory there earned only \$670 a year. By Western standards, this is an appalling sum. But Sagiv urges us to consider that the minimum annual wage in Vietnam at the time was a mere \$134. In other words, Nike workers in Vietnam were earning *five times* the minimum wage.

I question very much Sagiv's sanguine interpretation of this data. If workers at Nike are really so much better off than their local counterparts, why aren't unskilled workers camping out outside Nike headquarters in the hope of getting hired? The answer is that unskilled workers in sweatshops suffer terrible abuses. Nike's own record is a case in point: The company voluntarily agreed to an industry-wide agreement known as the Workplace Code of Conduct and hired former UN ambassador Andrew Young to review its implementation. Young's conclusion was that it was his "sincere belief" that "Nike [was] doing a good job in the application of its Code of Conduct." Nevertheless, Young himself criticized the company for not having in place some kind of third-party monitoring. Criticism of the Young Report was widespread for its failure to pick up on such issues as poverty-level wages, excessive overtime, minimum-wage violations, corporal punishment, and a militaristic management style to control workers.

It is no doubt true that when companies such as Nike set up operations in places like Vietnam, they have a substantial impact on increased GDP in the host country. But what about the plight of the downtrodden, unskilled workers they hire? To be

sure, since 1992 Nike has voluntarily adopted “codes of conduct,” the key provisions of which include a maximum of sixty work hours per week; at least one day off in seven; minimum wages; zero-tolerance of corporal punishment and abuse; and a minimum worker’s age of fifteen. Yet these high-sounding principles can easily become a sham unless an independent audit system is in place to insure their enforcement. Only when adequate enforcement procedures are in place will Nike’s favorable impact on the aggregate level of the host country’s output combine with a meaningful effort to dignify the downtrodden workers it employs.

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ASSAF SAGIV RESPONDS:

Many thanks to Matthew Mausner and Aaron Levine for their considered comments. Mausner dismisses my essay as “propaganda” that distorts the globalization debate, and claims that I ignored certain facts that would shed a different light on the subject. He claims, for example, that global “free trade” is unfair to developing countries because it floods their markets with subsidized agricultural produce from the affluent West, which leads

to local farmers being excluded from the market. This results in the bankruptcy of the third world agricultural sector and the descent of the population traditionally engaged in farming into destitution.

There is a grain of truth in the picture he paints, but he is mistaken in concluding that my article ignored the problem. True, the protectionist agricultural policy of the economic powers—the United States and the European Union—may well be the antithesis of the spirit of fairness of free-trade economics. However, the protests of the Seattle demonstrators and their like are often misdirected. As I pointed out, the agency charged with controlling the global markets and the main target of their assaults, the World Trade Organization, does not condone this crass violation of the rules, and on various occasions has taken a stand against it. Only last September, for instance, in response to an appeal by Brazil and a number of African countries, the organization decided that the American policy of subsidizing its cotton sector, thus causing world markets to be flooded with cheap produce, was illegal. Its decision was finally ratified in March of this year, despite an appeal lodged by the United States. In similar circumstances, also mentioned in my essay, the WTO

opposed the European economic bloc by defending the economic interests of developing countries. Sadly, the anti-globalization movement ignores the positive role of the WTO in such cases, preferring to depict it as the bonded servant of the economic superpowers. This betrays a simplistic understanding of the organization's function that motivates many critics to portray the struggle against globalization in Manichean terms—a war of the children of light against the children of darkness—instead of tackling the complexity of the topics under discussion.

Mausner also criticizes my effort to allay current fears about the growing power of corporations. In my essay, I remarked that autonomous governments do have formidable powers to resist pressure from multinational corporations and have on occasion exercised them resolutely. Mausner, however, argues that the power to resist is a privilege of only larger and more established countries, whereas smaller countries, like Honduras and Nigeria, have been ground under the wheels of global capital. On this point, too, there is a grain of truth in what Mausner says, but once again he prefers to ignore several points that are inconsistent with his thesis. He forgets, for example, that the increasing involvement of multi-nationals

in developing countries not only “compels” these economies to open their doors to the forces of global capital, but also gradually exposes them to more advanced norms of work management as well as to political and moral control. It is worth remembering that the multi-nationals are in any case required to account to public opinion and other agencies in the West, and cannot—unlike local hegemonic powers operating in non-democratic countries—do everything they have a mind to. Accordingly, even if their influence on these countries and on their leaders is not always curbed as it is in the West, this does eventually have positive consequences, if only because corporations are for the most part required to abide by higher standards—economic, but also moral—than those of the developing economy.

Aaron Levine's letter describing the scandalous working conditions in the “sweatshops” of developing countries also ignores this essential point. As I pointed out, this is a real problem, and therefore “Western governments all have a role to play in preventing the worst abuses.” However, I also tried to indicate the positive aspects of sweatshops that make them a necessary feature of every developing economy. Levine takes exception to this line of defense, and in particular to the argument that the salaries

of unskilled workers in the factories of multi-nationals in Southeast Asia are higher in comparison with the minimal amounts they would be paid if they chose to work in locally owned factories. “If workers at Nike are really so much better off than their local counterparts,” he asks, “why aren’t unskilled workers camping out outside Nike headquarters in the hope of getting hired?”

But in a manner of speaking, they are. In an article published in January 2004, *New York Times* columnist Nicholas Kristof recounted that “Here in Cambodia, factory jobs are in such demand that the workers usually have to bribe factory insiders with a month’s salary just to get them to employ them.” It is no different in Vietnam, Bangladesh, Pakistan, and other poverty-stricken countries; for much of the local population, the choice is between grueling work in the sweatshops and wallowing in the filth of the streets.

Sadly, many Western observers do not understand this, and their self-righteous reactions have already caused untold damage. UNICEF, for example, reported that the international embargo on the Nepalese carpet industry in the mid-1990s led to factory closures and forced thousands of Nepalese girls to take up prostitution. In another example, a number of anti-globalization workers’ groups

joined forces in 1995 in a public protest against working conditions in factories sewing footballs in Pakistan. As a result, Nike and Reebok were forced to close their sweatshops there. What were the consequences? Tens of thousands of Pakistanis found themselves out of work, and the average family income in the country fell by close to 10 percent. No less serious was the damage caused by the moral indignation aroused in the West by the employment of children in the sweatshops of Bangladesh: The public storm caused a German clothing manufacturer to dismiss 50,000 children it had employed. A survey carried out by the British relief agency Oxfam discovered that thousands of the dismissed children later turned to prostitution or crime, or else simply died of hunger. We would do better, then, to state the truth bluntly: Sweatshops are not a workers’ paradise, but surely they save thousands of people from a living hell.

In addition, Levine protests that sweatshop owners do not conform to standards set by the International Labor Organization and deny their workers basic rights, such as the right to organize. It is true that Cambodian and Vietnamese workers are in no hurry to present demands to their employers—indeed, they are thankful to have been given the opportunity to earn a living—yet it would be best not

to paint too somber a picture. Reports by the ILO indicate that the production activities of the multi-nationals, mainly in the clothing industry, are one of the most important factors in the gradual improvement of working conditions in the third world. In an interview he gave in May 2000 to the *Washington Post*, Zhou Litai, one of the leading Chinese attorneys in the area of labor law, stated that the demands of Western consumers constitute the principal driving force behind the improvement in the conditions of Chinese workers. "If Nike and Reebok leave..." he said apprehensively, "this pressure evaporates."

On this point, as on others, critics of globalization display a moralistic over-zealousness. They insist upon imposing an unrealistic standard of fair wages, work hours, and basic rights on sweatshops in developing countries, while in fact this only hurts the very people they are trying to protect. The relative advantage of many developing countries lies precisely in the cheap workforce they are able to provide. "Progressive" global legislation in the area of labor laws may well deprive them of this advantage and of the opportunity to escape from dire impotence. This is precisely the reason why the voices against globalization are especially thunderous on the university campuses of the affluent West, whereas the voices

strongest in its support are heard in India and Southeast Asia: The activists of Berkeley or the Sorbonne are mainly engaged in placating their pricking consciences; the Indian and Vietnamese workers are more concerned with filling their empty stomachs.

In the final analysis, the main defect of globalization's detractors is shortsightedness. In refusing to accept that sweatshops promote economic growth, which often leads to political, legal, and economic changes that introduce democracy into the system, they continue to demand far-reaching reforms in places where there is still no adequate infrastructure for such processes. They put the cart before the horse, condemning the whole buggy to sink in the mud. Better to allow market forces to work without undue interference, for this is the surest way to improve conditions for mankind.

Hope of Marseille

TO THE EDITORS:

One wonders why it took Claire Berlinksi twenty pages of a twenty-five-page essay to arrive at the only answer in her treatise that makes any sense ("The Hope of Marseille," *AZURE* 19, Winter 2005). She

finally explains that a contributing reason for the fact that anti-Semitism is under relative control in the city of Marseille is the incumbent mayor, Jean-Claude Gaudin, who is “notably one of the most philo-Semitic politicians in France and a committed Zionist.” The rest of her piece is pleasant reading, but in fact just a maze of contradictory arguments. Let us not hold our breath as to Berlinski’s other theories once Mayor Gaudin passes from the scene.

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Ecclesiastes

TO THE EDITORS:

In a letter to the editor (AZURE 20, Spring 2005) responding to my essay, “Ecclesiastes, Fleeting and Timeless” (AZURE 18, Autumn 2004), Miriam Pesach-Vutenberg points out that a correct reading of the compound phrase *hevel ure’ut ruah* is a must if we wish to find the truth about Ecclesiastes. Indeed, the two parts of this phrase must be complementary. The phrase has traditionally been rendered “vanity and pursuit of wind” (both expressions of futility), but I argued that it is best translated “vapor and foam” (both expressions of transience). In response, Pesach-Vutenberg wrote:

“Dor-Shav is so intent on reading *hevel* in the sense of ‘temporality’ and not of ‘senselessness’ that he distorts the essence of the shepherd’s work, claiming that the shepherd moves like the wind while he searches for herding grounds.”

But Pesach-Vutenberg’s claim that I distort the meaning of *re’ut* is suspect. Although the verb *ra’ah* is indeed related to shepherding, it cannot be interpreted as “chasing after the flock,” as she argues. God was not busy “chasing after” the Israelites for forty years in the desert (Numbers 14:33), nor did King David praise the Eternal for “chasing after him” in the valley of the shadow of death (Psalms 23:4). Likewise, no one chased after the seven cows, who stood alone in Pharaoh’s dream (Genesis 41:1-2), nor was there a pursuer following the lovely fawns in the Song of Songs (4:5). These verses, and many others that employ the verb *ra’ah*, show its meaning to be a meandering motion in—or in search of—pastureland. When Jacob tells Rachel’s fellow shepherds, “It is not time for the flock to be collected (*he’asef*); water the sheep, and go pasture (*re’u*)” (Genesis 29:7), the reflex of *ra’ah* stands as a direct opposite to gathering, or chasing after. Indeed, anyone driving down from Jerusalem toward the Dead Sea sees how spread out the Bedouin flocks are. As they pasture, they are hardly

collected. Understandably, biblical Hebrew does not convey the Saxon shepherd's need to constantly *herd in* his flock, and huddle them together in protection against the elements, on his lush hillsides.

An additional reason discourages us from reading *re'ut ruah* in Ecclesiastes as chasing after wind: Kohelet himself has other phrasings for this idea. He states that "No human controls his wind, to immure it; there is no ruling over the day of death" (8:8). In this verse, two different verbs—to control and to immure—refer to the idea of "collecting wind." In addition, Kohelet makes frequent use of the common biblical verb for chasing (*lirdof*), which could have been quite naturally employed to describe a futile pursuit of wind. But this is not at all what he is saying with the phrase *re'ut ruah*, where he is referring to a transient puff of wind.

The only evidence Pesach-Vutenberg offers against my reading of *ra'ah*—supported explicitly by Jeremiah 22:22 and the verses above—is a poetic parallel that appears in Hosea 12:2. Etymologically, however, parallels offer extremely weak arguments. Generally, just as in this case, they support a predetermined reading. For just as there can be a parallel of similar terms, there are endless parallels of opposites, as well as completing parallels, which fall in neither category.

Were we to apply Pesach-Vutenberg's approach to Psalms 104:4, for instance, which says that God "makes his angels winds, his ministers a flame of fire," we might conclude that wind and fire are one and the same. Similarly, from the verse "He who guards wind (*shomer ruah*) will not sow, and he who watches clouds (*ro'eh be'avim*) will not reap" (Ecclesiastes 11:4), we might conclude that "to guard" and "to watch" are the same. Ultimately, there is no reason we cannot read Hosea as saying, "Ephraim *steers* air, and chases the east wind," or even accept the King James rendering: "Ephraim feedeth on wind, and followeth after the east wind." In any case, *ra'ah* does not mean "to give chase."

Having said this, *re'ut ruah* is best rendered not as a movement of wind (though this is more than acceptable), but rather as a fleeting *foam* on the surface of waves. Contrary to Pesach-Vutenberg, it is not that I find the root r-ʿ-y to be similar to the Arabic r-gh-w. The whole argument is that they are *dissimilar*. I owe this discovery to Moshe Sharon of the Hebrew University and to Uri Horesh of the University of Pennsylvania. The current Hebrew letter "ayin" has come to replace two completely different consonants: technically speaking a proto-Semitic voiced pharyngeal and a voiced uvular fricative. Arabic retained this distinction, but Hebrew

did not. (Thus, for instance, the Hebrew term for Gaza is Aza, whereas Arabic has Ghaza.) In the time of Ecclesiastes, however, the distinction in Hebrew was likely alive and kicking. Thus, the letter “ayin” in Kohelet’s *re’ut ruah* would indicate the r-gh-w verb, which never had anything to do with shepherds or with the verse cognates mentioned above (all of which use the r-c-y verb). Since r-gh-w meant “foam,” *re’ut ruah* would then mean “wind foam”—a construct similar to the English “air bubbles.”

Thus the phrase of *hevel ure’ut ruah* is not at all redundant. It stands for “vapor and air-stirred foam.” The steam of exhaling one’s breath (*hevel*) is still a very different physical phenomenon than white, wave-capping foam (*re’ut ruah*). Both, however, are transient, and together they offer

an acute double metaphor of impermanence.

Of course Kohelet might very well be using the fact that in his day “foam” *sounded* similar to “shepherd.” His reference to fleeting foam reminds the reader of Abel’s career choice of material non-attachment, just as the reference to fleeting vapor reminds the listener of Abel’s very name. Both terms then implicitly affirm life’s meaning, though on the surface they convey the contrary sentiment. Indeed, as I point out in my article, the entire point of the book is to move the reader from the superficial reading that equates transience with worthlessness, to a deeper layer of understanding that accepts Abel’s transience as an inspiration.

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CORRECTION: *Jeremy Rabkin’s review of The Case for Democracy: The Power of Freedom to Overcome Tyranny and Terror in the Spring 2005 issue contained an error in the book’s byline. It should have read, “Natan Sharansky with Ron Dermer.”*

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