I want to thank both Moshe Halbertal and Ruth Gavison for reading my work and for commenting on it. I share Moshe’s and Ruth’s commitment to Israel’s liberalism, of course. The question is, what are the best means for protecting it, given its fragility? Moshe focused on one peripheral and extreme group, the ultra-Orthodox group. What I have in mind is rather the religious-Zionist group, which is far larger in terms of numbers, and far more important in terms of both its institutionalization and its involvement in Israel’s mainstream civil society and politics.

The ultra-Orthodox willingly utilize all of Western technology, but they utterly reject and deny any value to the West’s entire intellectual and spiritual heritage, including the political theories (and practices) of liberalism and democracy. Therefore, the principles of liberalism and democracy are incorporated in neither the convictions of the ultra-Orthodox nor, more generally, in their political conduct. Rather, the political theory of the ultra-Orthodox is theocracy, and they run their political institutions in a theocratic fashion, which means, among other things, that women are completely excluded from the political process (except for voting in Knesset elections).

That is not the case with regard to the religious-Zionist group. No doubt, since the 1970s, one may discern the rise of religious fundamentalism and its various manifestations in religious Zionism: the extension of the Halakhah to all spheres of life of the individual, of civil society, and of the state; the denigration of the normative, spiritual, and artistic heritage of the West (but not Western science or Western technology); and religious radicalization in individuals’ daily practice. This fundamentalist strand has therefore brought some significant subgroups in contemporary religious-Zionism closer to ultra-Orthodox in terms of both theology and practice.

In parallel, however, opposite developments are discernible in the religious Zionism of recent decades, as well. A subgroup in religious Zionism, composed mainly of religious academics and members of religious kibbutzim, has persistently and consciously emphasized its commitment to both the Jewish and Western heritage, including the

* Danielle Rubinstein Professor of Comparative Civil Law and Jurisprudence, Tel Aviv University. Email: mautner@post.tau.ac.il.
political theory of liberal democracy. This subgroup, often referred to as modern Orthodoxy, has even attempted to devise a synthesis of Jewish and Western elements in its comprehensive theologies and conduct of daily life.

One of the most far-reaching developments in religious Zionism in recent decades is the rise of a vibrant and highly influential religious feminism. Even though this development is identified mainly with modern Orthodoxy, it is affecting other religious groups as well, such as the religious-Zionist fundamentalists and the ultra-Orthodox groups. The feminist revolution in religious Zionism is channeling Western elements of democratization and equality into religious Zionism, bringing the group closer to the secular liberal group in terms of both worldview and practices. Another notable recent development in religious-Zionism is the open discussion of homosexuality within the group, made manifest by internet discussion groups and press articles in which rabbis have openly addressed the issue.

I have discussed two opposing subgroups within religious Zionism: religious fundamentalism and modern Orthodoxy. It is widely accepted, however, that the majority of religious Zionists in Israel adhere neither to religious fundamentalism nor to modern Orthodoxy, but rather belong to a third group, often referred to as “religious bourgeoisie” or as “the new middle class.” This group is composed mainly of professionals (lawyers, accountants, doctors, etc.) who incorporate into their lives cultural elements and practices borrowed from both the Halakhah and religious Jewish tradition, on the one hand, and from the Western heritage, on the other. These people send their children to universities; they read Israeli and world literature; they attend the theatre, cinema, and opera. Importantly, the religious-Zionist group, unlike the ultra-Orthodox group, runs its political institutions in a highly democratic fashion.

What all of this means is that it is not unfounded to expect that some significant subgroups within religious Zionism will object to Israel’s becoming a theocracy, and are likely to take action to preserve Israel’s liberal-democratic regime and political culture. It also means that in many ways the religious-Zionist group holds the key to Israel’s future cultural character. If a majority of members of the religious-Zionist group insists on preserving Israel’s current regime and political culture, Israel’s liberal democracy will continue to exist and may even flourish. However, if the religious-Zionist group endorses more and more ultra-Orthodox, fundamentalist cultural elements and practices, Israel’s liberal democracy is bound to find itself in great jeopardy.

The question I wish to address now is: what role has the Israeli Supreme Court played in making modern Orthodoxy and “religious bourgeoisie” part of the effort of preserving the liberal project of Israel? Sadly, I cannot but respond that over the past thirty years the Court has played a negative role in reinforcing these subgroups’ commitment to liberalism. Rather than embracing them, the Court alienated them and excluded them from taking part in the project of bolstering Israel’s liberalism. And exclusion, let me remind us all, is a highly important—negative—motivating force in the lives of both individuals and groups. Exclusion is an awfully insulting, and therefore destructive, feeling on a personal level. It is the worst and most blatant instance of discrimination for, in cases of exclusion, an individual is singled out because of what she or he is as a human being, as not worthy of being admitted to participate
in social practice. Exclusion is also a powerful historical force. Thus, for example, as the great Israeli historian Yaacov Talmon has pointed out, the exclusion of the elites of minority national groups from participation in the practices of national majorities has been an important ground for the rise of national movements among minority national groups—the rise of Zionism and of Quebec nationalism are just two possible examples. So if I am correct in claiming that, in the past generation, rather than embracing religious-Zionist subgroups supportive of liberal democracy and making them part of the liberal project in Israel, the Court alienated these subgroups from this project, then the Court, in fact, undermined the future of this project.