The Israeli Nation-State
Political, Constitutional, and Cultural Challenges
ISRAEL: SOCIETY, CULTURE, AND HISTORY

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The Israeli Nation-State
Political, Constitutional, and Cultural Challenges

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Contents

Contributors ix
Acknowledgments xiii
Introductory Remarks 1
Fania Oz-Salzberger and Yedidia Z. Stern

I. Revisiting the Basics

1. The State of Israel and National Identity 8
   Yedidia Z. Stern
2. What is Zionism? 39
   Gadi Taub

II. Historical and Philosophical Contexts

3. Democratic First, Jewish Second: A Rationale 66
   Fania Oz-Salzberger
4. Cosmopolitanism versus Normative Difference:
   From Habermas to Levinas—Is Israel an Exception? 78
   Shira Wolosky
5. The Holocaust as the Zionist and Anti-Zionist
   Narrative of the State of Israel 106
   Anita Shapira

III. State and Nation

6. The Constitutional Significance of the Jewishness of Israel 118
   Ariel L. Bendor
7. Reflections on the Meaning and Justification of “Jewish”
   in the Expression “A Jewish and Democratic State” 135
   Ruth Gavison
8. Israel as a Nation-State in Supreme Court Rulings
   Aviad Bakshi and Gideon Sapir
   164

9. A Jewish Majority as the Leading Criterion for Shaping Immigration Policy to Israel
   Yaffa Zilbershats
   191

IV. State and Religions

    Avi Sagi
    210

11. The Right to the Land: From Moral Justifications to Religious Justifications and Back Again
    Daniel Statman
    243

12. The Liberal/Multicultural Nature of the Religious Accommodations for the Palestinian-Arab Minority in Israel: A Curse or a Blessing?
    Michael M. Karayanni
    265

V. Society, Culture, and Demography

13. Is Israeli Society Disintegrating? Doomsday Prophecies and Facts on the Ground
    Alexander Yakobson
    292

14. The Palestinian Israelis’ Attempt to Challenge the Jewish State in Education: A Citizenship Act or a Radical Shift?
    Ayman K. Agbaria
    317

15. The Future of Nationhood in Israel
    David Passig
    342

Index

364
In November 1947, the General Assembly of the United Nations debated the report of the commission that had been formed to address the question of Palestine–Eretz Yisrael, and recommended that two states should be founded in the territory between the Mediterranean Sea and the Jordan River: a Jewish state and an Arab state. The lines of partition were set mainly on the basis of demographic concentrations. The resolution stated that both states would be democratic and that both of them would not infringe the civil or political rights of those members of the other group, who should remain in their respective territories. The partition resolution was based on the recognition of the rights to self-determination of the Palestinian-Arab and Jewish collectives and also on the fact that at that time, the two collectives were incapable of living together peacefully or of reaching an agreement on essential subjects, such as immigration, security, or foreign policy.

The Jewish leadership accepted the partition resolution, and the night of the UN vote was a night of celebration in the Yishuv. The Arab and Palestinian leadership rejected the resolution, claiming that it infringed
the right of Arabs and Palestinians to self-determination in the whole of
the territory. But the Arab refusal led to the Jewish state being founded
in 1948, while the territory allotted for the establishment of an Arab-
Palestinian state was divided, at first, between Israel, Jordan, and Egypt,
and then in 1967 was occupied in its entirety by Israel. About two-thirds
of the Palestinian residents of what became the State of Israel in 1948 left
and became refugees. Those who remained in Israel enjoy civil and polit-
cal rights. Within the areas that fell under the control of Arab states, not
one Jew remained.

The Declaration of Independence of May 1948 stresses the duality
of the state’s commitment to being the nation-state of the Jews, on the
one hand, and its democratic character and commitment to the human
rights of all its inhabitants, without distinction of ethnicity or religion, on
the other. This duality received an explicit constitutional grounding in a
series of laws, culminating in the Basic Laws of 1992. Israel is defined in
these laws as a “Jewish and democratic state,” and a vast majority in the
country would like to continue that way. Moreover, this majority believes
that there is no contradiction between Israel’s character as the nation-state
of the Jewish people and its commitment to democracy and to the defense
of the human rights of all its residents.

In the past I have made the case that it is possible to justify Israel’s
existence as a state that is both Jewish and democratic.¹ In this essay I
would like to flesh out those arguments.

In the first part of the chapter, I clarify my point of departure: namely,
that the Jewish collective is entitled to state-level self-determination
in (part of) Eretz Yisrael. In the second part, I argue that common
claims according to which Jewishness and democracy are incompat-
ible, or arguments against the justification of Israel as a Jewish state,
should be rejected. In the third part, I elaborate on the statement that
the state’s Jewishness cannot justify the violation of basic rights. From
there I proceed to a concise discussion on a few particular, central issues
concerning which the Jewish character of the state and the justified
desire to preserve it may have implications for political, legal, and social
arrangements in Israel.
A BASIC JUSTIFICATION FOR A JEWISH NATION-STATE IN (PART OF) ERETZ YISRAEL

The case for justifying a Jewish nation-state in (part of) Eretz Yisrael is based on the universal right to national self-determination, which is recognized in international law and international human rights law. The right to self-determination is not necessarily a right to a state. In a complex world such as ours, most ethnic groups will not be entitled to state-level self-determination, since state-level self-determination for one group would always burden the members of other ethnic groups living in the same state. An ethnic nation-state (as opposed to a civic state) is not neutral vis-à-vis the choice of symbols, narrative, or culture. Thus, a special justification is required to support a demand that one group’s self-determination be implemented through the state.

Supporting a right for state-level self-determination requires us to recall the reasons that lie at the foundation of the right for self-determination, and to determine if it is possible to secure effective self-rule for the group in question without granting them control of state institutions. The right to self-determination is the quintessential collective right, and is not reducible to individual rights. ² It is intended to guarantee for significant groups (or “all-encompassing groups”) the possibility of sustaining themselves by ensuring the physical and cultural security of their members, as well as the possibility of passing their culture onto subsequent generations.

Jews lived for hundreds and thousands of years with no state. Nonetheless, they enjoyed various degrees of cultural self-determination in many diverse societies, and their separate existence was the product of both the choice of the Jews themselves and the preferences of the peoples with whom they dwelled. However, the fact that the Jews were a minority within other peoples led to great vulnerability, and over the course of time they suffered repeatedly from persecution, deportations, massacres, discrimination, exclusion, and pressures to convert, occasionally leading to forced conversion. With the beginning of the Enlightenment, and the accompanying processes of secularization in the different European societies, a new vulnerability was added to the former vulnerability of the
Jews: it was in fact the open society, which had granted the Jews civil and political equal rights, that subjected them to pressures to assimilate, but at the same time left them with the status of foreigners. Those Jews who desired integration (such as Herzl) experienced a bitter disappointment. The integration and achievements of Jews in all fields of life and creativity did not lead to their acceptance as equal and acknowledged citizens in the European societies in which they lived; there always remained the feeling that they were foreigners and objects of suspicion. Needless to say, this situation made it more difficult for the Jews to preserve their identity, since extremely strong incentives were created for Jews to convert or at least to obscure the Jewish features of their identity. In such a situation the ability to pass Jewish identity down from generation to generation is reduced, and the strength of the Jewish communities—which is a precondition for Jewish existence—is diminished.

Zionism developed in the context of the combination of these two types of Jewish vulnerability. It became clear that a group that is a small minority everywhere cannot hope to generate for itself either physical security or security of identity. Zionism was intended to do two things: to concentrate Jews in one location so that they would constitute a large portion, or even the majority, in that place, and—as a result of this demographic dominance—to enable the Jews to live a complete Jewish existence, in a place where they did not depend upon the goodwill of other peoples, who would always see them as different and foreign. The idea of Zionism was that only such self-determination would, in the long run, make possible the preservation of a strong Jewish community that is a prerequisite for the complete, secure, and stable Jewish existence of its members.

It was no coincidence that the United Nations resolution on the foundation of a Jewish state came so soon after the scope of the Holocaust became known, and after it had become clear how helpless the Jews had been in those countries, where the governments of the day either encouraged or did not punish those who persecuted and harmed the Jews. Similarly, the establishment of the state of Israel appeared necessary in light of the fact that the nations of the developed world had not hastened to take in those fleeing the menace of the Nazi regime and also had not
been overly eager to take in the displaced survivors in Europe, who could not (or did not wish to) return to the places from which they had been sent to be murdered. These circumstances of life and existence of Jews as permanent minorities in communities that considered them outsiders, constituted the first component of the justification of their claim to state-level self-determination.

The second element of the right to state-level self-determination for Jews in Eretz Yisrael pertains to the living conditions of Jews within Eretz Yisrael itself. If Jews had been able to immigrate freely to Eretz Yisrael and live there a complete and secure Jewish existence, it would have been possible to make do with sub-state self-determination for Jews in Eretz Yisrael, under the political rule of the Arab majority. This vision would have made it possible to avoid partition. Indeed, the vision of one state has accompanied the Zionist enterprise from its inception. The Arab residents of Palestine–Eretz Yisrael demanded it from the Mandate authorities and from the international community up until the partition resolution, and vehemently rejected propositions for partition such as that included in the Peel Commission report. The Jews, for their part, refused to give up their dream for a national home in the entirety of western Eretz Yisrael. The agreement of the Jewish leadership to the principle of partition did not stem from a concession on the ideological level. It stemmed from the realization that, in the demographic conditions that prevailed at the time, the Jews would not be able to be a stable majority in the whole of Eretz Yisrael, and that in order to establish a Jewish state they would have to agree to its establishment in those areas where there was such a majority and in those where it would be possible to stabilize one by means of immigration (aliyah).

Even in the UN special committee on the question of Palestine (UNSCOP), there was a minority recommendation that one state should be founded in Palestine–Eretz Yisrael on the basis of a federation of national communities. Fortunately for the Jews, the Arabs rejected the plan, and thus paved the way for the adoption of the partition resolution in 1947 (“fortunately” because the majority of the UN committee had determined that this solution did indeed address the needs of the Jews living in Eretz Yisrael at that time, but clearly would limit Jewish aliyah in the future). In
this situation, the establishment of one state would not have satisfied the will of those Jews who were not yet residents of Eretz Yisrael to live in a state in which Jews could exercise effective self-determination. According to this proposal, the demographic statistics would have caused the Jews, in the best case, to be a recognized national minority possessing some extent of autonomy in the Arab state of Palestine. A more likely outcome would have been that Jews would have become the subjects of the Arab state, dependent on its preferences and determinations with respect to the nature of the regime and the status of the Jews. The vision of Brit Shalom—the vision of a binational state—would have given way fairly quickly to the vision of Palestine as an Arab state with a sizable Jewish minority.

Indeed, those Palestinians who uphold the vision of one state do not speak of a binational state. They speak of “a state of all its citizens” or of “a democratic and secular state.” In both formulas the denial of Jewish national rights is clear. In both is implied the idea that while the state will appear neutral in terms of its official character, the vast Arab majority within it and in its surroundings would ensure its inclusion in the Arab world. The Jews might enjoy different degrees of autonomy with respect to their own affairs, but they would not enjoy political independence.

The vision of one state, in which Jews and Arabs live side by side and each group develops its own historical connections to the common homeland in its own way, is easier to justify than the idea of two states for two peoples. The Peel Commission recommended partition, more than seventy years ago, because it had reached the conclusion that this vision was not viable due to the significant cultural differences between the groups, and because of the enmity and emotionally charged history between them. Only British rule enabled some kind of coexistence between them. It was apparent that these groups could not administer a joint policy concerning internal and external security, immigration, settlement, or nation-building.

What was true in 1938 was also true in 1947, and unfortunately appears to be true today as well. Moreover, it is not clear if there is any process on both sides of accepting the necessity of coexistence within a
single political entity or any move towards a readiness, resulting from that acceptance, to build common institutions or to make fundamental decisions with regard to managing the affairs of the single state that would be established.4

Thus the present reality establishes the right of Jews to self-determination specifically on the state level, at least as long as the deep conflict over the future of the region continues.

A FEW PRELIMINARY ARGUMENTS AGAINST THE JUSTIFICATION OF A JEWISH STATE

The case made above is a simple argument based on accepted international norms. It might seem natural to proceed directly to the primary discussion—the implications of Israel’s existence as the nation-state of the Jewish people. However, Israel is unique among nations in that its very right to exist is persistently challenged. Moreover, in recent times it seems that these claims are arising anew in international forums, and even within Israel itself they are advocated with deep conviction by both Arabs and Jews alike. Against this background, I wish to briefly address the central claims made against the basic justification of the Jewish state, and to emphasize that the general argument made above does not evade or ignore them.

The first basic claim against the right to a Jewish nation-state is that there is no justification for ethnic nation-states in general. The second claim is that Jews do not satisfy the conditions that would justify recognition of their right to state-level self-determination, even in part of Eretz Yisrael. The third claim is that in actuality, Israel is not a nation-state but rather a theocracy and that religions do not have a right to self-determination. The final claim is that it is impossible to maintain Israel as a Jewish nation-state without an unacceptable violation of the individual and collective rights of the Palestinians living in it, and that this harm to the Palestinian citizens of Israel undermines Israel's justification as a nation-state. I will discuss the first three claims in this chapter; I will pursue the last claim elsewhere.
Justification for the Existence of Nation-States

There is a tendency in recent liberal scholarship to claim that the very idea of ethno-national nation-states, even if they grant full equality of civil rights to residents and citizens who do not belong to the ethnicity in question, is not justified. But it seems that, despite these claims, the strength of nationalism has not withered and in numerous regions throughout the world people are claiming for themselves national self-determination on a primordial, and not merely civic, basis. It appears to be too early to pronounce the nation-state dead. In many of the nation-states in Europe, there are local minorities who do not belong to the ethnicity whose culture and history “define” the state.

It is particularly difficult to understand, and certainly to accept, principled arguments against the Jewish nation-state when they are put forth by people who adamantly support the establishment of a Palestinian state. It is true that Palestine is a territory and that one could think that a Palestinian state was simply a state in the territory of Palestine, at the disposal of whoever dwells in that territory. However, both the Palestinian charter and the draft constitution of the Palestinian state refer to it not only as the group of people living in Palestine, but as a portion of the greater Arab people in terms of culture. If the right to state-level self-determination applies to the Arab residents of Palestine, then it would seem that special justifications would have to be found for why it does not apply to Jews.

The Justification for the Existence of a Jewish State in (Part of) Eretz Yisrael

Three arguments are often suggested for the denial of the Jewish right to self-determination in general and to a nation-state in particular. The first is that the Jews are not a people but rather a religious community. The second is that the precondition for political self-determination in a given territory is presence in the country and being a majority population in it; Jews were never a majority in the country at any point prior to the founding of their state. The third is that the precondition for self-determination is that its actualization does not inevitably violate the rights of others, and that the Jewish state does violate the individual and collective rights of the
Palestinian people to political self-determination in the entirety of their historical homeland. All these arguments were raised, in various forms, from the very beginning of the political struggle between Arabs and Jews concerning the future of Palestine.

There is a certain irony in that, with respect to the two peoples laying claim to self-determination in the territory between the Mediterranean Sea and the Jordan River, it is said that they are not in fact peoples. Just as there are many Arabs who argue that the Jews are a religious community, since they have never had—even after the establishment of the State of Israel—the typical characteristics of a people, such as a common land, language, or culture, there has been no shortage of those (Jews and Arabs alike) who have claimed that “there is no Palestinian people.” According to their argument, the Palestinians are an indistinguishable part of the greater Arab nation and, in any event, Palestine had never been a separate political entity: it became such only following the Balfour Declaration of 1917, which was actually made for the purpose of establishing the Jewish national home.\(^6\)

There is no need to expand much on these arguments here, since they are to some extent circular. Nationalism is a combination of an internal nationalist sentiment with the external features supporting it. The will to work towards national self-determination supplies the “subjective” portion of the asserted nationalism. It is abundant among both Jews and Palestinians. With both groups, there is also an abundance of “objective” features that give each group a significant particularity that goes beyond religious affiliation (in the case of the Jews), or language and Arab ethnicity (in the case of the Palestinians).\(^7\)

While—alongside the argument that denies Jews the status of a people—there is an analogous argument regarding the Palestinians, there is a distinct lack of symmetry between the Jews and the Palestinians with respect to the potency of the other two claims regarding the asserted right of the Jews to state-level self-determination in (part of) Eretz Yisrael. Indeed, at the beginning of the twentieth century, Arabs were the vast majority of the country’s inhabitants, and even on the eve of the state’s foundation they constituted approximately a two-thirds majority, after having failed partially in their efforts to forestall the Jewish immigration
that threatened to make them a minority in their own country. Statements that Palestine was a country “without a people” should therefore be dismissed. Thus, I will address only arguments establishing state-level self-determination for the Jews, and I will assume, for the purposes of this essay, a right of self-determination for the Palestinians.

In a nutshell, this argument from history fails. In fact, the argument for the legitimacy of a Jewish state in a part of the land of Israel has become gradually stronger since the beginning of the Zionist move to settle Jews in the Land of Israel.8

I shall intentionally begin from the end. There are today more than six million Jews living in the State of Israel (and in the Judea and Samaria territories). Most of them have no other country to which they can go; Israel is their only home. They enjoy here an independent Jewish-Hebrew cultural existence, such as they could not have in any other place in the world. These Jews are without a doubt a collective with a right of self-determination in the place of dwelling. Removing them from their homes, or even bringing about a situation in which they are subject to the mercy of people with whom they have a long history of mutual enmity and suspicion, would constitute a serious violation of their rights.

These facts do not necessarily justify Jewish control of all the territory from the Mediterranean to the Jordan River, wherein dwell millions of Palestinians who are not citizens of the state. However, the Jewish collective does have a right to self-determination and self-defense, which it realizes—and which it is entitled to continue realizing—in the framework of the State of Israel.

Was there anything in the circumstances of the founding of the State of Israel, in the period between November 1947 and the armistice in 1949, that denies the Jewish people the right to a state in which they can rule themselves? I do not believe so. In effect, the opposite is the case. When the United Nations debated partition in 1947, the Arabs’ arguments against it were voiced fully and eloquently. The General Assembly voted for partition, despite the fact that at that time Jews represented only a third of the country’s residents between the Mediterranean and the Jordan River, because it was clear that one state in that territory, even if it were democratic, would not guarantee adequate protection of the Jews’ right to
security and self-determination. This situation has not changed since then, and perhaps it has even gotten worse. Moreover: in 1947 the question was whether or not to establish the Jewish state; today the question is whether or not to dismantle an existing state against the will of the vast majority of its inhabitants. The UN resolution would not have saved the Jewish state if it had not withstood the test of war with the Arabs. The United Nations—without detracting from its importance—similarly cannot dismantle the Jewish state, which has one of the strongest armies in the world, against its will. The continued resistance of Arabs to the Jewish state, even in a part of Eretz Yisrael, is understandable. It is important, however, to distinguish between understanding and justification. Because this resistance is not justified, one should not tolerate the Arab refusal to accept what should be accepted: a Jewish state's right to existence.

Indeed, the international stance is clear and consistent: the international community embraces the solution of “two states for two peoples” in western Eretz Yisrael. By doing this it reaffirms its position that Jews are entitled to state-level self-determination in part of the territory.

**The State of Israel Is Not a Jewish Theocracy**

Those who acknowledge that Judaism is not just a religion, but rather a combination of religion and ethnicity, and therefore Jews can have a right to national self-determination, may deny the right of Jews to a state on the grounds that they have in fact (and perhaps as required by their religion) created a Jewish theocracy.

On the face of it, there is something infuriating in raising this objection specifically in a region in which not a few Arab countries declare themselves to be Muslim countries that impose *shari’a* law. We have not heard that as a result these collectives have forfeited their right to political self-determination.

Nonetheless, theocracy, including Jewish theocracy, is indeed incompatible with democracy. But those who claim that the State of Israel is not democratic, and that it cannot be democratic, for these reasons, need to prove that the State of Israel is in fact a theocracy. It is not sufficient to show that there are religious texts and even attitudes within Judaism that are inconsistent with democracy. It must be shown that such texts, or the
views expressed in them, govern as binding over central areas of life in Israel.

The strongest claim in this direction is that put forth consistently by Baruch Kimmerling, who argued that the religious monopoly over matters of personal status in Israel prevents Israel from being a democracy. Indeed, there is no Western democracy in which there is religious monopoly over matters of personal status (although one should remember that even in Western democracies such as Italy and Ireland, it is only recently that the Catholic prohibition against divorce has ceased to be in effect). Indeed, such a monopoly does violate basic rights such as freedom of religion, which includes freedom from religion. However, I do not think that the religious monopoly in Israel in this area disqualifies it as a democratic country. It certainly is not connected to the fact that it is a Jewish state, since this monopoly holds for all the residents of the country, Jews and non-Jews alike. In fact, when the Mandate government reviewed the Ottoman system for matters of personal status, the Jews requested that civil marriages be introduced into the country, but it was actually the Arabs who demanded a continuation and preservation of the Millet system, according to which these subjects fell under the religious jurisdiction of the different religious communities.

The State of Israel is considered Jewish because it is a nation-state of the Jewish people. The Israeli Declaration of Independence took great care to specify the non-religious meaning of the Jewishness of the state, and this is also the reality that prevails in it.

THE JEWISH STATE AND HUMAN RIGHTS

The final preliminary argument that I will address is the one that states that a Jewish state, by definition, cannot respect the human rights of all its residents, in particular those who are not Jewish. Accordingly, the argument goes, the State of Israel, even in the territory in which there is a Jewish majority, must give up its special Jewish features.

However, something must be wrong with this argument. As we have seen, the case for the Jewish nation-state itself invokes the same human rights discourse. The issue cannot be that human rights as such point
against the legitimacy of nation-states. Tensions between nation-states and human rights of citizens who do not belong to the dominant ethnic group are internal issues of balancing between two human rights. Both the aspects of the Jewishness of the state on the one hand, as well as challenges of its legitimacy on the other, are grounded in the human rights discourse.

There is almost no worthy goal that can be promoted fully without limiting the liberty or infringing on the full enjoyment of some alleged human right or other. There are almost no human rights that are absolute. When prospective policy proposals are considered, their consequences with respect to various rights and interests must be identified and balanced so that an informed decision can be made. The test cannot be that a policy that infringes on the enjoyment of a right is thereby prohibited, irrespective of the goals it seeks to promote (which may also include the protection of rights). A commitment to a goal thus means also a willingness to accept that promoting that goal might involve some “proportional” infringements of other rights. This is a familiar argument in all discussions of rights.

It will be easier to demonstrate the point through the discussion of a conflict between rights that is less “emotionally charged” than the conflict between rights claimed by two peoples struggling over the same strip of earth. For instance, individuals have a right to freedom of expression; they also have a right to privacy regarding personal information pertaining to them. Both rights are very important, yet at times these two rights are in conflict with each other. Anyone who argues that the right to privacy is valid only on the condition that it never justifies any limitation to freedom of expression in effect states that there is no right to privacy.

The human rights discourse serves, as we have said, on both sides of our discussion. Perhaps this in itself shows that its use cannot be, in and of itself, decisive. Human rights do in fact have a special status, and they operate as binding constraints on what governments may do to citizens and groups. No state is permitted to violate the human rights of its inhabitants (that is, to infringe on them in a manner that is not justified). This principle does not become less obligatory if the purpose of the infringement is the preservation of the Jewish character of the state.
However, not every policy that individuals or minorities dislike or object to amounts to a violation of their rights. The distinction between a policy that a group or individual deems harmful, undesirable, unfair, or even dangerous, and one that constitutes an unjustified infringement of human rights and is therefore prohibited is one of the most difficult questions of practical politics. Too many people believe that any reasonable claim that frames a complaint in terms of an infringement of the rights of an individual is sufficient to obligate the state to refrain from the challenged policy; many also believe that the state must do everything necessary to protect its residents’ rights to life and to security of persons. These beliefs are oversimplified. The human rights discourse does admit an extremely wide application. The practice of expanding it has been very noticeable in recent decades. However, to maintain the strength and credibility of the human rights discourse, as well as to maintain the legitimacy of both legislatures and courts, it is important to refrain from describing each political goal that is desired as one that is directly required by a commitment to human rights.\footnote{11}

Indeed, Israel must protect human rights. The Jewishness of the state does not justify violating them. However, not every hindrance to the interests of individuals or groups is also an infringement on their rights.\footnote{12}

If rights were deemed absolute, it would be implausible that a policy could infringe a right without violating it. To maintain both reasonable policy-making power and the status of rights, we would then need to append to every right an exhaustive list of its exceptions. Such drafting undermines the internal logic of bills of rights. One cannot determine at the outset all the exceptions to a right. This matter needs to be worked out dynamically through the examination of particular challenges and special circumstances. Accordingly, when a human right is invoked to justify a practice or a law (or when it is invoked to challenge them as inconsistent with it), we cannot avoid a careful examination of both the scope of the \textit{prima facie} right as well as its possible exceptions. Only if this examination indicates that there is indeed an unjustified infringement of the right, the claim will act as a “trump” to defeat conflicting reasons. This holds in the case of freedom of expression as well as in the case of the conflicting rights of Jews and Palestinians to self-determination in Palestine–Eretz.
Yisrael. It should be noted that all people living in the country, Jews and Palestinians alike, have common interests, such as security and stability. Working to fulfill these interests might also affect the extent to which the conflicting rights to self-determination may be recognized.

The need to examine in each case the conflicting rights and the general context exists with respect to both individual and collective rights. Both kinds of rights are pervasive in the context of our current concern. The right to self-determination, as we have said, is the quintessential collective right. The right to equality is usually an individual right, although it has significant consequences for the status of the group to which the individuals customarily subject to discrimination belong.

Since one of the main purposes of rights is to constrain the legislature itself, it is usually accepted that the authorized interpreter of the scope of rights is the court, which enjoys independence from the political branches. This is a strong and convincing argument, but it ignores the fact, noted above, that the human rights discourse may be interpreted in such a broad way that every question of policy would become a question of the correct balancing of different rights. Under this interpretation, making the courts the arbiters of rights may reduce the ability of the government and the Knesset to make effective policy decisions.13

This is true for individual rights; it is even truer for the scope and implications of collective rights, which naturally deal with the political and social arrangements concerning the relationships between the different groups living in the same country. On such questions, distinct from those of individual rights, it is less clear that courts have the special competence that justifies their reviewing the policy decisions of the political branches, which are usually ones made after deliberations and compromises, once the minimal constraints are met.

A relevant example may clarify this point: if Israel had not granted its Arab citizens the right to vote because they are Arabs, Israel would not be a democracy. This is a matter of the core human rights of each member of the minority, and of the core meaning of democracy, and these rights should be protected by the courts. The question of whether the Arab minority has a right to a school system in its own language financed by the state is different. In Israel, this is indeed the reality, and most
Arab youngsters attend public elementary and high schools with Arabic as the main language of tuition. However, if the state had decided to prefer a unitary public education system taught in Hebrew, it is not at all clear that the Arab minority would have a right, enforceable by the courts, to demand the present reality. Or that it should have such a right.\textsuperscript{14}

In short, it is not true that the nation-state of Jews cannot, by definition, protect all the personal and group \textit{rights} of minorities living within it. True, an (ethnic) nation-state cannot give its minorities a full sense of membership and belonging, because part of the sense of membership is indeed connected to the history and the culture of the majority. However, if we conclude that this sense of partial difference from the majority is by definition a violation of rights, we will have to reject the possibility that any ethnic nation-state could be legitimate. We have argued above that this conclusion, in itself, does not reflect the reality of many states that are considered fully legitimate. Moreover, it by definition prohibits the fulfillment of the right of peoples to self-determination on a state-level.

The principled compatibility of an ethnic nation-state and the protection of the personal and group rights of minority citizens is not enough, however. It must be shown that the reality of the challenged state does not in fact consist of a flagrant violation of such rights. A detailed analysis of the actual situation of minority rights in Israel is beyond the scope of this chapter. The reality of legal and social arrangements in Israel is mixed and complex. Efforts should be made to integrate members of the Arab minority more fully. At the same time, it is fair to say that the status of the Arab minority in Israel is not worse, and in many respects is better, than the status of national minority groups in other democratic nations. This is especially the case if we recall that Israel still is in the midst of an ongoing conflict and debate concerning its very legitimacy and its right to exist, in which its neighbor-adversary is the very same people to whom the Arab minority in Israel belongs.\textsuperscript{15}

\textbf{CONSEQUENCES OF ISRAEL BEING A JEWISH NATION-STATE}

For many participants in the larger debate about Israel as a Jewish and democratic state, it is relatively easy to remain in the preemptory and
generalized part of the debate. It is precisely those who—like myself—seek Israel's continued existence as a Jewish state who cannot afford these luxuries. Nonetheless, in many states such questions of identity are so difficult that an effort is made to avoid them as much as possible. Thus, in Israel, at the beginning of the twenty-first century, there is no systematic, orderly, and informed discussion on these issues. In this brief chapter, I will not be able to address in a systematic and detailed way the important literature that has accumulated in the last few years. I will make do with a few comments on some of the main topics.

First, we should recall that all the justifications advanced here assume that Palestinians too enjoy effective national self-determination. This is inconsistent with Jewish control over the whole territory west of the Jordan. Clearly, a state over this land cannot be either Jewish and democratic or justified.

Moreover, as we have said, Israel's identity as a nation-state of the Jewish people does not justify the violation of the human rights of its non-Jewish citizens and residents. However, within these constraints, the Jewishness of the state is apt to justify the implementation of policies that are preferential to the interests of the majority group, when such policies are needed to defend the vital interests of the ethnic group—the same interests that justified the recognition of the right to self-determination in the first place.

Ranking first in this matter is the physical safety of the citizenry. It is not always easy to see this, since it is customary to emphasize these two requirements—human rights and physical safety—specifically with respect to minority groups who are in need of protection from the majority of the country in which they dwell. In not a few cases, however, including the case of Israel, the state-level right to self-determination of the majority group stems also from the need to defend the security of its members, security that could not be ensured without the establishment of the state.

Beyond these primary interests, which come up clearly when there is a situation of armed conflict between Israel and some of its neighbors, there are other important issues. I will deal in this essay only with issues of public culture, with a special emphasis on language. These concerns apply to Israeli policy and affect it in times of peace as well.
Culture

Ernest Gellner defines the principle of nationalism as the striving for unification between political power and cultural identity. He thus emphasizes the centrality of the cultural basis, with all its components, in defining groups as nations. An ethnic nation-state is different in this sense from a civic state, in which “the people” is the collective of citizens. When the United Nations decided to establish a Jewish state, it intended to create a political entity that would contain a Jewish majority not only so that the latter would be able to decide the issues of immigration and security, but also in order to establish the dominant culture. Control over the dominant culture is an important means for ensuring that the state will facilitate securing the group’s identity, and this is one of the bases for the justification for state-level self-determination. Israel’s Jewishness, in cultural terms, means that Israel does not aspire to be, and cannot be, a multicultural state in the neutral sense, in which there is no preference for a particular cluster of cultural identities. One of the consequences of the state’s Jewishness is that Israel is permitted to take actions that strengthen the cluster of Jewish cultures, and make Jewishness the dominant culture in Israel—again, so long as this action does not violate the rights (and not just the interests) of other individuals or groups. As we have said, special attention needs to be given to the rights of the local Arab population.

Today, most of the countries in the developed world recognize that they contain communities whose culture is different than the majority culture, and that this requires an approach other than the standard policy of simple assimilation that has been practiced in the past. There is a growing debate, however, about just what this approach should be. Some advocate neutrality: a situation in which the state recognizes the equal worth of all subcultures (or at least the principal subcultures) and treats all of them equally. Such legal neutrality may in principle be possible concerning some non-civic affiliations. It is possible, for instance, to reach official neutrality regarding religions by means of a strong separation of religion and state and the complete privatization of all religions. However, even if we achieve legal or constitutional neutrality in this way, the social reality might be the hegemony of one religion. Thus, for instance, the
United States is neutral regarding religion in constitutional terms, but it is without a doubt a Christian society. Other aspects of public culture, like language, state symbols, or days of rest, cannot reflect all groups and cultures in an equal way, both because of practical necessity and in order not to undermine some civic cohesion. This means that a strong multiculturalism can only be incomplete in the best-case scenario. Moreover, some shared commitment to the constitutional arrangements and the welfare of the state, for instance, must be part of the civic identity that members of all subcultures should share.

In the case of Israel, the argument for multiculturalism usually comes from two sources: the Arab minority and Haredi Jews. In recent years, there have been those who argue that Israel should indeed adopt an egalitarian positive attitude towards all cultures within it, so that no important cultural group will be excluded or feel that it is a second-class group in the Israeli public space. This statement holds, in their opinion, for both non-Jewish cultures and the different Jewish subcultures.

This symmetry of attitude is attractive, but for the purposes of examining the possibility or the justification of preserving Israel as a Jewish state, we need to distinguish between these two kinds of cultural plurality. The issue raised by non-Jewish cultures is very different from the challenge of Jewish cultural pluralism.

The recognition of plurality in Jewish cultural life, combined with the recognition of the value and worth of the different cultural strands, and promoting the awareness to the fact that they are all instantiations of Jewish culture, is not only possible but is rather essential to the preservation of the cultural Jewishness of the State of Israel. After all, the wish to maintain and transmit cultural identity is at the basis of the argument for (state-level) self-determination. This right to self-determination is granted to the national collective and not to different groups of people with a historical link to a particular religion. It is a precondition to the Jewish right to national self-determination that Jews are a people. This claim of peoplehood must have an objective external component, and cannot rely only on the subjective feelings of belonging. It is precisely because Jews come from different cultural civilizations in which they lived for many years, and precisely because Judaism is undergoing a widespread process
of secularization, that the project of Jewish national restoration must be based on a cultural unity that goes beyond the observance of ritual law in one style or another. It follows that the Jewish Zionist groups have an existential interest in the development of a common Jewish culture. However, every Jew who wants Israel to be strong in general, and as a Jewish state in particular, also has such an interest.

Of course, Jewish groups also have a “right to culture” in the sense of protection from religious coercion and the freedom to develop their own style of Jewish culture together with the lifestyles that result from it. A state is permitted to assist in the development of such subcultures, and it must do so on an egalitarian basis. It is important to note these things, because at times it seems that in the Jewish communities, or at any rate among their political deal-makers, there are those who are willing to make electoral gains through emphasizing the differences between the different Jewish groups and through the presentation of the relations between them as a zero–sum game that must be won at all costs.

Relations among Jewish and Arab cultures are different. It is easy to see that there is an enormous difference. While there are also relations of cultural-national complementarity among the Jewish subcultures, the relations between Jewish and non-Jewish cultures are likely to reflect tension, or even conflict. Culture includes language, religion, and ways of life, as well as a historical narrative. In the relations between Jews and Arabs in Israel, there is in some of these components not only difference, but at times even direct collision and conflict, open or concealed.

These conflicts between the national cultures and narratives make many choices concerning the public sphere in Israel problematic. It is natural for Israel, a young state established after struggle and war as the nation-state of the Jews, to want Israel’s public culture to reflect Jewish aspirations and narratives. Thus it is not surprising that the flag and the anthem are Jewish; that Saturday is the official day of rest; that Holocaust Remembrance Day, the memorial day for fallen soldiers in Israel’s wars, and Israeli Independence Day are all national holidays. At the same time, under the historical circumstances of Israel and its relation to the Arab minority within it, especially against the background of the unresolved
conflict with the Palestinians, these arrangements are likely to exacerbate the feeling of alienation on the part of Arab citizens.

Yes, Israel and Israeli Jews should seek ways to mitigate this alienation. But does the Arab minority in Israel have a right that these symbols and holidays should be changed to accommodate them? I do not think so. This stems from the justification that I have given above for the existence of a Jewish nation-state in (part of) Eretz Yisrael. A nation-state cannot “privatize” its national identity or the events connected to its national history. Under the circumstances, Israel cannot be neutral with respect to the narrative of Independence Day versus that of the Nakba. There needs to be sensitivity to the difficulty that this causes Arab citizens; but there is a vast difference between such sensitivity and a renunciation on the part of the state of some of the essential characteristics that give expression to the fact that Israel is the realization of the Jewish dream national revival in its historic homeland.

The wish to maintain and transmit Jewish cultural identity has many implications on Israeli policies and the regulation of the Israeli public sphere, but the most important one relates to the structure and content of public education. It is impossible to overstate the importance of education in general and of the formal and public education in particular in the establishment of the state’s cultural identity and of the attitudes of its inhabitants. By means of the educational system, the state conveys to all those affiliated with it (students, teachers, and parents) its fundamental values and the basic obligations of social and political organization. The educational system passes on values and creates mechanisms for social integration, both on the level of teaching basic skills to find one’s way in the society as well as on the level of socialization mechanisms, which establish the normative framework in which the members of the group operate. In a homogenous society, the educational system will pass on skills and values that are acceptable to everyone, and thus will contribute to the continued societal stability and cohesiveness. In such a society there will be no gap or tension between education for the values of the community and education for citizenship and democracy. As we saw, this is not the reality in any state today, especially not in the developed world. Here, too, it is one thing to deal with differences and another to deal with
conflicting realities and narratives. Israel’s challenge here is to maintain an acceptable balance between transmitting to all the shared values of civic equality, human rights, and democracy, while at the same time respecting differences and conflicts.

**Language**

Language is of course a part of culture, but its enormous importance justifies a separate treatment. It is difficult to overstate the importance of the medium through which we think, speak, read, and write (and at times dream and fantasize) to our spiritual and cultural universe. With regard to language, it is normal to distinguish between two levels: the symbolic-cultural level, which creates a profound connection between individuals and the members of their linguistic and cultural community and the unique cultural tradition of the community; and the instrumental level of the effective communicative ability of individuals with their environment and their ability to integrate into the social, economic, political, and cultural world around them. Both are important, and together they determine the acceptable arrangements for language in those states in which there is a plurality of linguistic groups.

Every country in which there is more than one linguistic group needs to deal with the question of language policy. It is very rare that the majorities in such countries become bilingual or multilingual. Usually in each country there is one dominant language, and the minorities living there adopt it while they either preserve or abandon their own language. In some of the countries, the dominance of a national language is a matter of convenience, but in many of them language unity is a central ideological tenet, it is a component of national identity, and it is often mentioned as such in the state’s constitution.

Language is one of the most basic components of a separate and unique culture. It therefore is unreasonable and wrong to demand that a local population give up its language. In Israel, the Declaration of Independence includes an explicit commitment to grant the country’s inhabitants freedom of language. In fact, however, the status of Arabic in Israel is much stronger than that. During the British Mandate period, there were
three official languages in the country: English, Arabic, and Hebrew. When Israel was established upon the termination of the Mandate, it refrained from a new regulation of the issue. Instead, the English language was taken out of the list of official languages, leaving only Arabic and Hebrew (in this order) on the list.

The law, however, never reflected the reality. The establishment of the state therefore represented a most significant change—Hebrew became the *de facto* language of the state, and Arabic became the minority language. Because large portions of the Arab population worked in the Jewish sector, the study of Hebrew, however basic, became a necessity. In Israel, knowledge of Hebrew is normally essential for integration into the work force, for academic study, and for effective communication in the Israeli public. At the same time, Israel offers to the Arab minority public education at the elementary and high school level, in which Arabic is the language of tuition.

The State of Israel grants full protection of *freedom of language* for Arabs. It also appropriately grants the Arabic language a special and unique status. In Arab communities, it is very easy to get by even if one only knows Arabic, and it is very difficult if one does not know Arabic. Nonetheless, Israel *is not a bilingual country*. In practice, the language of the state is Hebrew. Official government publications do not usually appear in both languages. The level of Hebrew study in Arab schools is much higher than the level of Arabic study in Jewish schools. The assumption is that all residents know Hebrew. There is no assumption that all the country’s inhabitants know Arabic.

I believe that Israel should not be a bilingual country, but rather a country where the language is Hebrew, and that respects the right of the Arab minority to their own language, recognizes the special status of Arabic, does its best to supply Arabs services in Arabic, and demands and encourages high-level Arabic studies in all its schools. There is no question that the language of the future Palestinian state will be Arabic. If Jews live in Palestine, this will not, and should not, affect the language of the state. At best, Jews will be allowed to have Hebrew schools. The revival of Hebrew as a cultural characteristic of Jews is of huge significance to the
The ability of Jews to maintain and transmit their culture. The dominance of Hebrew in Israel is the direct and necessary result of the fact that Israel is a country in which the Jewish people realizes its right to self-determination and in which there is a significant Jewish majority.

Of course, Israel’s language policy must respect the rights of Arabs, as individuals and as a native group. Such rights do have implications for language policy. For example, the right to freedom of language prohibits a policy of a Hebrew monopoly in the public sphere. In fact, there is no principle in Israel’s present language policy that violates the language rights of Arabs.

The political and cultural importance of this issue is reflected both in the fact that the vision statements of the Arab minority in Israel explicitly demand a bilingual definition of the state; and by the fact that the issue of language was the first one mentioned when a recent bill to anchor Israel’s identity as the nation-state of Jews in a Basic Law was presented to the Knesset in August 2011. 17

**CONCLUSION**

I present here a vision of a Jewish state that does not deny or conceal the fact that it is a state in which the Jewish people realizes its right to self-determination and its will to act in order to maintain this situation. This is the sense of a “Jewish” state that I affirm. That same Jewish state wishes to be part of the family of nations, and has complete and full commitment to the values of democracy and human rights. In many of the subjects that I address here, we must develop an informed policy. The policies implemented up until now have frequently been marked by an unacceptable discrimination. Such discrimination must stop. At the same time, Israeli policy has at times ignored the legitimate need to preserve the basis for the Jewish state’s survival. Political correctness must not undermine policies designed to improve the chances for a viable Jewish self-determination in (part of) Eretz Yisrael.

If a majority, or even a sizable minority of Israel’s citizens, will believe that there is no reason to preserve the special Jewish character of
the state, and that it might well be a neutral liberal democracy with no particular commitment to the fate of the Jewish people, Israel will probably gradually cast off its Jewish characteristics.

But at the moment this is not the case. The large majority of the Israeli public not only wishes for the continued existence of the State of Israel, but also for its continued attachment to the realization of the self-determination of the Jewish people. In this case, democracy requires that the will of the majority be respected, subject to the obligation to protect the rights of the minority. Thus, the state's Jewishness at the moment is not a component in conflict with democracy, but rather a characteristic required by it. At the same time, democracy makes the Jewish character of the state contingent on the preferences of the majority, and requires that the state should grant the minority actual freedom to convince the majority to change its opinion.

This conclusion does not necessarily imply that the state should be defined, in law or in constitution, as a Jewish state, or that explicit declarations will be made about the implications of the state's Jewishness. In fact, it seems to me preferable that such definitions not be included in law or constitution. These questions are not a legal matter, and frequently declarations are unnecessarily alienating when the reality of the situation is sufficient. Additionally, the inclusion of declarations such as these in laws transfers the power to decide such issues to the courts invoking the human rights discourse or constitutional interpretation. Ideally, these questions should not be resolved by courts in this manner. Ironically, declarations like these may seem needed precisely as a legislative response to judicial interpretation that should have been avoided in the first place. Alas, it may well be that since Israel has already been defined as “Jewish and democratic” in the 1992 Basic Laws there is now no choice but to continue on this path, despite its disadvantages.

Be that as it may, it is critical to repeat the policy implications: Israel has the liberty to act in ways that will promote it as the nation-state of Jews. Israel must not promote this legitimate cause in ways that violate the basic rights of its inhabitants and citizens, Jews and non-Jews alike, or in ways that violate the rights of those living under its effective rule.
Thus the desire to continue maintaining the Jewishness of the state does not justify discrimination against the non-Jewish citizens or residents of the state, especially the members of the native Palestinian people. It also does not justify a religious monopoly with regard to matters of personal status, or the privileging of the Orthodox establishment in respect to Jews.

The goals derived from this analysis are clear: Israel needs to undertake clearly and unambiguously those obligations that stem from democracy, human rights, and the principle of non-discrimination. Nonetheless, if a certain policy is needed in order to protect the Jewish state, and is compatible with these obligations, Israel may adopt it even if it does not pass the test of political correctness according to certain parties.\(^{19}\)

We need to think through such issues in seriousness and integrity, listening attentively to critics in Israel and abroad. We must reject the claim that international criticism should be dismissed because it is motivated by hatred toward us. Not every criticism of Israeli policy is antisemitism, and not every claim that Israel violates human rights is unfounded, or made cynically by the enemies of Israel. To be sure, there is certainly an element of politicization in some of the more vocal and sweeping claims against Israel, and there are among them many cases of double standards. There are indeed those who believe that Israel was born in sin, and that its continued existence is a perpetual threat to world peace, so that the only moral path open to it is to surrender its continued existence as a Jewish nation-state. This fact does not exempt us from doing what we must do. We must examine challenges to our policies on their merits. We should avoid two dangers: resorting to sweeping disqualifications of the validity of such challenges; or accepting sole responsibility for the woes of the region, moved by a sense of blame to unending apology for our existence. If we do wrong, we must correct it. However, no state is required to forgo its own existence as a punishment for its deeds, and there is no reason that the Jewish state should be asked to do so.

Israel should act, within the constraints of human rights and morality, to ensure that it will be a place, the one place in the world, where Jews exercise their right to self-determination. It may do this. And it must do this.
NOTES

3. Nonetheless, it would be a mistake to argue that Israel was established only because of the Holocaust. If there had not been at the time a critical mass of Jews in Israel who had succeeded in building a strong and vibrant community with a strong culture and economy, there would have been no basis for the claim of Jews to a state of their own.
4. This statement is bolstered by recent developments, from the rise of Hamas, with its blatant charter and its aspirations to eradicate the State of Israel, to the statements by the president of Iran (Mahmoud Ahmadinejad) and the clear positions of the Hezbollah organization vis-à-vis Israel. It is the case as of the current revision of this article—at the end of 2011. Despite the increasing popularity of the vision of one state in certain circles, its typical advocates among both the Jews and the Palestinians are concerned with the need to defend the self-determination of both national groups and not their mutual civilian identity in one state. It is possible that the vision of two states is no longer something easily realized, but the alternative of one state for two peoples appears to be unrealistic in the existing circumstances. This does not inspire much optimism with respect to the conflict's future, but it is possible that just such a situation with no apparent way out will lead to creative ideas.
6. The Balfour Declaration, and even the original Mandate document of the League of Nations, included in the Mandate even parts of Eastern Eretz Yisrael (that is, from the eastern side of the Jordan River). Only in 1922 was it decided to restrict the extent of “the national home” to Western Eretz Yisrael.
8. For a development of this argument, see my analysis in “The Jews' Right to Statehood.”
9. On this General Assembly vote, see the fascinating description by Yakobson and Rubinstein, Israel and the Family of Nations, chap. 1. Despite the UN’s inability to dismantle Israel, I do not share David Ben-Gurion’s dismissive attitude to the United Nations. [The UN is referred to in Hebrew with the acronym Um. Ben-Gurion derided the organization’s significance by rhyming it with a nonsense word: Um Shmum—trans.] This is a matter of both prudence and political morality. Israel must do its best to maintain international legitimacy, even if some UN institutions are
biased against it. Even if resolutions against Israel cannot be enforced, Israel should seek continued international recognition and endorsement.

Kimmerling’s claims: Baruch Kimmerling, “Religion, Nationalism and Democracy in Israel,” Constellations 6 (1999): 339; see also Baruch Kimmerling, Immigrants, Settlers and Natives: Israel Between Plurality of Cultures and Cultural Wars (Tel Aviv: Am Oved, 2003) [Hebrew]. On monopoly violating basic rights: I have indeed argued that Israel should change the state of its law on this matter. See Ruth Gavison and Rabbi Yaacov Medan, The Gavison–Medan Covenant: Main Points and Principles (Jerusalem: Avi Chai Foundation and the Israel Democracy Institute, 2004), chap. 2.


All individuals have a great interest in limiting the amount of taxes that they have to pay. It does not follow that every increase in tax rate is an infringement, much less a violation, of a right. In a matter closer to our concerns, minority groups have an interest, a very important interest, that they will be able to transmit their culture and language to younger generations. They do have the right to the state not burdening this capacity and not prohibiting the use of their language or transmission of their culture. They do not have the right, however, to the state financing their efforts to transmit their separate culture.


Indeed, the Supreme Court in Israel held, in a majority opinion, that local authorities with a sizable Arab minority had to add Arabic to all road signs, including those in purely Jewish neighborhoods. The idea that public signs should be in Arabic as well as in Hebrew is a laudable goal, but I think the dissenting judge was right in saying that this arrangement should not have been decided as a matter of rights.

The best sign that this is indeed the case is the fact that most Arabs reject the idea that within negotiations with the Palestinians, some of their villages would be transferred to Palestine.


Israel should not be deterred by the fact that there are those who will consequently charge it with racism. Unfortunately, a resolution that Zionism is a kind of racism was adopted by the General Assembly of the United Nations in 1975 and was only repealed in 1991. Many also spoke in this spirit at the world congress against racism in Durban, South Africa, in September 2001.