

Part II: The Jewish Nation-State Law in Israel

by Howard Adelman

In Israel, the Homogeneous Model for Jews and the Dominance Model with respect to all other minorities have been the predominant strategies that have been used for determining the norms of membership in Israeli society. The social and political integrationist model has been declining and recently witnessed a decisive downgrading by the passage of the Basic Law: The Nation-State of the Jewish People.

The Jewish Nation-State Law

The law, **Israel – The Nation-State of the Jewish People** - was [approved by the Knesset in a 62:55 vote with two abstentions](#) on 19 July 2018. There are three basic principles in the law.

- A. The land of Israel is the historical homeland of the Jewish people, *in which* (my italics) the State of Israel was established.

This is simply an incontrovertible fact, not a principle. However, it is one that can also go two different ways. First, by distinguishing between the land of Israel and the historical homeland of the Jewish people, there is no claim that all of the historical land of the Jewish people should belong to Israel. On the other hand, the phrasing invites the suggestion and implication that the land of Israel could become coterminous with the historical homeland of the Jewish people. Third, the phrasing is silent on whether it would be possible to have another national home for the Jewish people alongside Israel – such as Judea – where Jews can express their national right to self-determination. Perhaps this is because the state of Israel cannot make laws for another state, particularly one that does not exist. Or perhaps such a goal is regarded as both unrealistic and undesirable, not to mention almost unanimously unacceptable by the international community.

- B. The State of Israel is the national home of the Jewish people, in which it fulfills its natural, cultural, religious and historical right to self-determination.

Natural, perhaps. But why cultural and not political? Perhaps because self-determination also entailed the revival of the Hebrew language. But why religious? Traditionally, just as Reform Judaism did in pre-state Israel, the Orthodox largely opposed Zionism in its early years. Further, when Britain issued the 1917 Balfour Declaration, when the League of Nations recognized the national self-determination goals of Jews in Palestine, when the 1947 UN resolution on Palestine endorsed the Partition Plan, and with the 1948 Declaration of Independence of the State of Israel,

these were all recognitions of **secular**, not religious, national self-determination. Otherwise, this proposition is merely a restatement of the core of Zionist ideology and, ironically, is paralleled by the PLO Covenant that defines Palestine as an Arab entity. Theoretically, it is possible for two nations to co-exist in a country, but not for each to claim a right to self-determination in the whole territory. Francophones in Canada who do so are sovereigntists and usually separatists.

- C. The right to exercise national self-determination in the State of Israel is unique to the Jewish people.

*In other words, no other national group possesses a right to national self-determination within the State of Israel, but not, note, within the **land** of Israel. Within the state, self-determination is the exclusive provenance of Jews. This is both a realistic claim as well as a doctrinal one. Avi Dichter, the original sponsor of the bill, stated it most clearly and unequivocally when he addressed Arab Israelis, but also Druzim and Circassians: "The most you can do is to live among us as a national minority that enjoys equal individual rights, but not equality as a national minority." This, of course, raises a paradox. Druzim who give their lives in the defence of Israel are given no identification with the state for which they sacrifice their lives while Haredim, who generally do not demonstrate that type of dedication, enjoy that identity simply because they are Jews.*

The next section of clauses deals with the recognition of symbols.

- A. Israel as the name of the state

No one seems to have found this to be a contentious issue, but it is clear that the name of the state is directly tied to one group and one group exclusively, the Jewish people.

- B. The Star of David Flag

*There has been a little controversy over this issue, but more as a resonance of early debates over whether Israel was to be a national state for the Jewish people. Further, there has been no debate that I have read that notes that the blue stripes on the flag are Jewish **religious** symbols taken from the stripes on a tallit, the traditional Jewish prayer shawl. The flag has been identified with Zionism since its beginning, even though Theodore Herzl wanted a flag with more universal symbols (seven **golden** stars representing the ideal of seven hours for the working day). The flag is a direct connection with the Jewish religion and not just the Jews as a nation, even though former Sephardic Chief Rabbi, Ovadia Yosef, once proclaimed that hanging such a flag*

in a synagogue was a desecration and a “reminder of the acts of evil-doers.”

- C. The Menorah: The state emblem is a seven-branched menorah with olive leaves on both sides and the word “Israel” beneath it.

This is another symbol that is both nationalistic and religious since the Menorah was part of the portable sanctuary that Moses set up in the wilderness even before the Israelites returned to Israel to found a state.

- D. The state anthem is “Hatikvah”

The anthem was adopted from a poem of “hope” by the Galicianer, Naftali Imber, expressing the dream of return, restoration and reclamation of the land of Israel as a sovereign nation of Jews. Initially sung in 1897 at the First Zionist Congress in Basel, Switzerland, the anthem is a decidedly nationalist Jewish anthem, even though the tune is adapted from a Romanian folk song.

In spite of this symbolism, the Basic Law does not define Judaism as the official religion of the state. Perhaps there are too many secular Jewish Israelis. However, that has not prevented a great deal of misunderstanding. For example, in a typical quote, Mahmoud Ali complained that Arabs have lost “what is left of our rights...They [Jewish Israelis] can do whatever they want, and nobody can stop them. Imagine if Jordan approved a law that made it an Islamic state? The whole world would turn upside down.” In fact, the official religion of Jordan is Islam. There are NO Jews in Jordan. Islam is the official religion of almost all Middle Eastern states and Christianity is the official religion of about one-third of European states. The Anglican denomination and the Christian religion are the official ones of England. Having an official state religion creates an identity problem, but most states with official religions guarantee equal rights to worship of all minorities. As does Israel.

The first two sections intermix nationalism and religion in the symbols and definition of the Jewish people and their collective rights. The third section defining Jerusalem as the complete and united capital of Israel is political as well and defies the original UN partition resolution sanctioning the creation of the state of Israel. Jerusalem was not to be part of the Jewish state. Nor of the Arab state. It was proclaimed to be an international city under UN auspices. At the time, and since, this UN proposition has been a non-starter.

Further, if Israel is defined as the national home of the *Jewish* people, the capital of that home should, by implication, be overwhelmingly Jewish. What about the rights of the Palestinian Arabs who are a very sizeable minority in Jerusalem and a very clear majority in East Jerusalem? Could not such an assertion in a basic law of Israel entitle

the state to expropriate property for Jews and even expel Arabs? Thus, even though a program was recently announced to improve conditions in Palestinian neighbourhoods of Jerusalem, Arab residents greeted the plan as just another way of cementing Israel's control over the eastern sector.

The fourth section on language declares Hebrew to be the official language of the state, downgrading Arabic from official to special status, while insisting that such a declaration "does not harm the status given to the Arabic language before this law came into effect." In other words, the new law draws a boundary around the use of the Arabic language in Israel. Unlike claims of the critics to this part of the legislation, I see no recognition of "hostility" towards Arab citizens nor even of access of Arabic speakers to services in their own language, but the limits placed on Arabic clearly reinforce and strengthen the principle of Jewish national and linguistic predominance.

The relationship between the Jewish majority in Israel and its national and religious minorities is not the only major inter-communitarian issue. Significantly, the relationship between Jews in Israel and those in the diaspora is also defined. Section 5 continues the Zionist claim that Jews living outside of Israel live in "exile," a consciousness foreign to the vast majority of Jews in the Americas and Western Europe.

Further, although clause 5 on the Ingathering of Exiles states that the state will be "open for Jewish immigration," an unassailable premise of Israel, it might imply that it is not open to individuals from other groups. Yet Israel received Indochinese refugees in 1980. However, when in August 2014, ISIS laid siege to Mount Sinjar slaughtering 10,000 Yazidis and kidnapping thousands of girls as sex slaves, when the persecuted Yazidis in Iraq asked to be resettled in Israel and even serve in the IDF, when Israeli civil society (Dream Doctors) which had offered help and training to the Yazidis and then supported their migration to Israel, Israeli politicians ignored the migration requests. Non-recognition of the needs of other communities abroad in distress is telling about the status of defending Jewish communal rights *exclusively* rather than simply predominantly.

Picking up the theme of the previous clause, Clause 6 defines Israel as having a lead role in helping Jews in trouble or captivity outside of Israel. Not all its citizens. Just Jews. More pointedly, Jewish non-citizens. Further, the Basic Law now defines Israel as having the *lead* role in both strengthening the links between Israel and diaspora Jews, and, even more importantly, serving "to preserve the cultural, historical and religious heritage of diaspora Jews." Not even France defines itself as responsible for the three hundred million French scattered across the world. Clause 6 is unique to Israel and makes explicit what has always been implicit.

The remaining clauses have direct political implications that will be analyzed in the next blog.

Part III: Political Elements of the Israeli Jewish Nation-State Law

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Clause 7 is of a more political character regarding Jewish settlement. The basic law enshrines right wing ideology as a basic law. "The state views the development of Jewish settlement as a national value and will act to encourage and promote its establishment and consolidation." This is not just a matter of form, but expresses a major claim of Jeev Jabotinsky, that words are critical as the forebears of deeds. Further, those deeds directly reject David Ben-Gurion's fear that the conquest of the West Bank in 1967 would sow the seeds of self-destruction of Israel as a democratic pluralist state.

This clause received perhaps the greatest attention and has been considerably revised from the original version which stressed promoting and establishing separate communities for different ethnic groups. The original version authorized maintaining and creating "a community composed of people having the same faith and nationality to maintain the exclusive character of that community."

The law that was passed not only favours the promotion of Jewish settlements in The West Bank, Samaria and Judea, even at the expense of Palestinians, as in the case Khan al-Ahmar expropriated for purposes of consolidation, but also within Israel in the traditional pattern of shifting demography to ensure Jewish dominance, as in the 1980s thrust to Judaize the Galilee. Within Israel, the Bedouin village of Umm al-Hiram in the Negev of seventy families was defined as an illegal settlement of squatters. In the interest of proper urban planning and consolidation, according to the official explanation, the Bedouin settlement will be razed and replaced by the Jewish town of Hiran.

Unfortunately, in the past and present, and, I suspect in the future, this clause will mean undermining the interests of Israeli Arabs, but especially Palestinians in the West Bank. To set up Jewish villages, Arab land has been confiscated by the state and Arab villages were separated by Jewish settlements. The intent of such a law is clear: to undermine any prospect of a movement for autonomy by Israeli Arabs and to ensure Jewish predominance in all parts of Israel. The emphasis on consolidation as well as settlement is important. The law explicitly states that Jewish predominance trumps minority rights, a propensity already in place that was greatly enhanced by the Second Intifada. The clear implication is that this effort will continue to be exercised in the West Bank.

However, the expansion of ethnic dominance does not entail the immediate destruction of Israel as a democratic state. It simply makes an ethnographically dominant state less democratic than the ideal of Western states defined by individual rights rather than the expression of the responsibilities of a state towards its ethnic majorities. In the 1960s and onwards, Western states increasingly went in the other direction in insisting that individual rights trump communal rights, though that propensity has been reversed in a number of states (Hungary, Poland) in the last few years, but has moved "forward" in other states such as Romania. Is Israel a throwback or a precursor and trend-setter?

Of less political importance, but of considerable symbolic importance, is the defining of the

Hebrew calendar as the “official” calendar of the state. The Gregorian calendar will also remain official. This simply establishes general practice. This is also true of the state holidays (Independence Day, Memorial Day and Holocaust and Heroism Remembrance Day) and religious holidays, including defining Shabat and Jewish festivals as holy days. Clause 10 does define a right for minority communities to maintain days of rest on their Sabbaths and festivals.

In sum, the Israeli Jewish Nation-State Law articulates, consolidates and expands a reality, that Israel is a state defined by law as having one dominant ethnic, cultural and religious community. It is certainly more extensive than similar laws in one-third of the states of Western Europe and is much more similar to the practices of Eastern states (China, Vietnam, Russia) and certainly of all Middle Eastern states which usually include far fewer protections for minority communities. Israel has increasingly opted, not to be undemocratic, but to be Jewish first and then democratic, with the by-product that the quality of Israeli democracy has declined. A similar direction is most noticeable in the USA under Donald Trump over the last eighteen months.

This does mean that not only is the national self-determination of Arab Israelis rejected in law, but implicitly the demography of Israel’s Arab citizens is recognized as a threat. Other laws may apply to all citizens irrespective of race, religion, ethnicity or national affiliation, but the new basic law clearly trumps that requirement in a number of areas. However, as Emma Green wrote in *The Atlantic* (21 July 2018), “Israel’s new law is a consequential signal of Israel’s values, especially when it comes to Arab-Israeli minority rights. But its passage doesn’t necessarily represent the right-wing victory that critics claim.” Over the seven years of debate over the bill, most of the egregious clauses have been deleted or amended. It is mainly a symbolic victory and a signal on emphasis, important in itself, but one that only advances the nationalist ideology by a few degrees. That may be two or three degrees too much for many. Nevertheless, the bill does not mark the death of democracy in Israel. Far from it!

This claim is most evident in the most extremist critiques of the Bill. Recep Tayyip Erdoğan, President of Turkey, condemned the Bill as “fascist and racist.” Coming from a political thug who imprisons his own peoples by the tens of thousands and persecutes Kurds, this extremist rhetoric is not only repulsive, but the height ofchutzpah. The attitude has also been expressed by Israeli citizens. Ahmad Tibi, an established member of the Knesset, labeled the Bill as, “The official beginning of fascism and apartheid. A black day (another black day).” The Bill may give priority to Jews as a community, but that in itself does not make it fascist, racist or even anti-democratic, though it shifts the balance between individual rights and the collective rights of the majority towards the latter. At the same time, George Karra, a Christian Arab, can be one of the 15 Supreme Court justices. Israeli Arab citizens have the right to vote, to express themselves, to attend college and universities and to achieve enormous success in the high-tech world. They are, however, denied the right as a collectivity to insist on national rights that might possibly undermine Jewish ones. However, extremist criticism only backfires against such an aspiration.

That does not mean that the Bill is neutral with respect to its impact on individual rights. However, non-Jews, and Palestinians in particular, already suffer from infringements on their individual rights. Adalah, the Legal Center for Arab Minority Rights in Israel, in its “Discriminatory Laws Database” lists over 65 Israeli laws that “discriminate directly or indirectly against Palestinian citizens in Israel and/or Palestinian residents of the Occupied Palestinian

Territory (OPT) on the basis of their national belonging... These laws limit the rights of Palestinians in all areas of life, from citizenship rights to the right to political participation, land and housing rights, education rights, cultural and language rights, religious rights, and due process rights during detention."

However, Israeli Palestinian citizens, as distinct from Palestinians living in the Occupied Territories, generally enjoy equal individual rights with Jewish Israelis. In practice, those rights are often abused and there is no constitution in Israel or Bill of Rights that provides protection, although there is a Basic Law in Israel that does protect liberty and recognizes human dignity as a primary value. The 1992 Basic Law: Human Dignity and Liberty, stipulates that, "The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state... Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel."

The Declaration of Independence which protects individual rights, does not constitute a constitution or even a Basic Law. However, it does promise equality to all citizens, irrespective of their religion or color or race. "The State of Israel will foster the development of the country for all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations." In any case, the Jewish nation-state law legally endorses trumping such rights in areas where individual and Jewish communal rights are in conflict.

But is the Law not racist if it privileges Jews over other citizens, not simply through symbolic identification, but through facilitating institutionalized privilege and perhaps the allocation of resources in favour of Jewish communities? That has been a problem all along. The law could make the possibility worse. Or it could make it better by making nationalist Jews less paranoid about the status of the Jewish people in Israel. Time will tell. What the law does, however, is weaken further the identification of Israeli non-Jewish citizens with the state, Druzim as well as Arabs. Shakeeb Shnaan, a former Labour Knesset member and a leader in the Druze community whose two sons serving as police officers were killed a year ago, called the Bill "a mark of Cain."

If the law had been accompanied by a parallel Bill of Rights as a Basic Law, the message might be different, not only to Israel's minority citizens, not only to liberal Israeli Jews who would prefer a state that made individual rights the apex of all rights, but to Western countries where individual rights are foundational and to liberal Jews who live in that part of the diaspora for whom egalitarianism and pluralism are fundamental. In fact, for many Israelis, though clearly not a majority, it is the impact on relations with the non-Israeli Western world and its Jewish and non-Jewish citizens that may be the most important consequence, but the law mostly instantiates what has already become general practice.