

The Hegemony of Neo-Zionism and the Nationalizing State in Israel – The Meaning and Implications of the Nation-State Law

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Israel has been undergoing major changes in the last few decades. One of these major changes is the rise of a very conservative and even messianic ultra-nationalistic political block that is dominating center stage in the political system, and turning its ideology into the official policy of the state. This development, which started decades ago and reached a hegemonic position in the last few years, reflects a process according to which Israel has moved into a Neo-Zionist era, characterized by an intensive “nationalizing” process, manifested in the legal, judicial, and cultural fields.¹ The process of nationalizing, as described by Rogers Brubaker, “is the tendency to see the state as an ‘unrealised’ nation-state, as a state destined to be a nation-state, the state of and for a particular nation, but not yet in fact a nation-state (at least not to a significant degree); and the concomitant disposition to remedy this perceived defect, to make the state what it is properly and legitimately destined to be, by promoting the language, culture, demographic position, economic flourishing, or political hegemony of the nominally state-bearing nation.”² Since this process of nationalizing is rather too complex to be reflected upon in one short paper, the following pages address it at the legislative level,

¹ Uri Ram, *Israeli Nationalism: Social Conflicts and the Politics of Knowledge* (London: Routledge, 2010).

² Rogers Brubaker, “Nationalizing States in the Old ‘New Europe’ – and the New,” *Ethnic and Racial Studies*, 19, no. 2 (1996): 412–37.

focusing on the Jewish nation-state bill. Examining the promotion of this bill can form a window through which one is able to delve into the deeper causes of the nationalizing process and reflect upon the hidden agenda of the hegemonic Neo-Zionist block.

THE EMERGENCE OF THE NEO-ZIONIST HEGEMONY

It is hard to dispute Anthony Smith's claim that every nationalism contains civic and ethnic elements in varying degrees and different forms.³ Nonetheless, it is also hard to escape the coming to power of a deeply exclusive and hegemonic ethnic nationalistic block in Israel that praises and justifies inequality based on citizens' national or cultural affiliation. This trend speaks out against a common and shared civic public good in Israel. It insists that "general well-being" and "public interest" in Israel have to be exclusively determined and should be maintained in the hands of not only the Jewish majority, but actually the entire Jewish people. The hegemonic power of this ideological block makes it difficult to speak about the Rousseauian concept of "civic religion" or the Habermasian concept of "constitutional patriotism" as a minimal characteristic common to all Israeli citizens.⁴ It stands for an ethnic sovereignty that transcends citizenry and worships the bond between people, land, and state.

One may argue, as the sociologist Sammy Smooha has, that this trend isn't new, and that the Israeli regime is defined by ethnic nationalism.⁵ Notwithstanding Smooha's argument, the current Neo-Zionist era is characterized by the abandonment of central veiling mechanisms, such as the liberal academic and judicial discourses that assisted in framing Israel as an open, vibrant democratic

3 Anthony Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell, 1986).

4 See Jean-Jacques Rousseau, *The Social Contract* (many editions), and Jürgen Habermas, *Struggles for Recognition in the Democratic Constitutional State* (Princeton, NJ: Princeton University Press, 1994).

5 Sammy Smooha, *Arabs and Jews in Israel*. Volume I, *Conflicting and Shared Attitudes in a Divided Society* (Boulder and London: Westview Press, 1989).

system, despite institutionalized discrimination by the state against non-Jews. What is being argued here is that the Neo-Zionist block is today much more blunt and daring in its discourse and policies. The hegemonic ultra-nationalistic block is willing to trample whichever central traditional institutions, such as academic institutions and the High Court of Justice, that seek to protect liberal values and decent democratic procedures. The hegemonic ultra-nationalistic block utilizes ethno-majoritarianism as a despotic “democratic” mechanism in order to promote its worldviews and turn them into practical policies. The demographic weight of the conservative segments of the Jewish majority is exploited, and those segments are mobilized to establish the institutional and material privileges of Jewish citizens through majoritarian decision. This policy, which is not completely new, is reaching new peaks in the Neo-Zionist age, as more than forty bills and several laws enacted by the Knesset in the last decade demonstrate.⁶

The manifestations of the abovementioned trends are various and can be found in the political system, in civil society, and in the intersection between them.⁷ The following pages demonstrate how the cooperation between what has been called in the literature “bad civil society”⁸ and the political system nourishes Neo-Zionist trends, which gradually erode civil values and democratic procedures. Many nationalist civil society organizations are deeply involved in lobbying for more radical legislation that aims to either criminalize or delegitimize liberal civil activism and target the funding sources of liberal civil society organizations.⁹ A unique manifestation of this dangerous trend is embodied by one of the most influential civic organizations identified with Neo-Zionist thought; namely “The

6 See Adalah’s website for the list of bills: <https://www.adalah.org/en/content/view/7771>.

7 Amal Jamal, “The Rise of ‘Bad Civil Society’ in Israel,” in *Stiftung Wissenschaft und Politik* (Berlin: German Institute for International and Security Affairs, 2018), https://www.swp-berlin.org/fileadmin/contents/products/comments/2018Co2_jamal.pdf.

8 S. Chambers and J. Kopstein, “Bad Civil Society,” *Political Theory* 29, no. 6 (2001): 837–65.

9 Jamal, “The Rise of ‘Bad Civil Society’ in Israel,” *ibid.*

Institute for Zionist Strategies.” In one of the Institute’s 2009 publications, Dubi Helman and Adi Arbel best expressed the principle of exclusivity as a legitimate characteristic of the state and asserted the exclusive relationship between the Jewishness of the State of Israel and the principle of equality. They claimed:

In the past, the State’s status as National Home for the Jewish People was never questioned: it was obvious to the public and to the authorities, including the Judiciary. Practical manifestation of the Jewish status of the state can be seen in the very name of the State and from a multitude of laws such as the Flag, Symbol and Anthem Law 1949–5709; the Independence Law 1949–5709; the Law of Return 1950–5710 (which grants each Jew with the right to immigrate to Israel); the Work and Rest Hours Law 1951–5711 (which adopts the Sabbath and Jewish Holidays as days of rest); laws that institutionalise the cooperation between the State of Israel and the National Institutions of the Jewish People, and many more. Additionally, the State of Israel initiated programs and invested resources for the welfare of the Jewish people in the Diaspora, including: the promoting of *aliya* to the land of Israel, programmes to bring Jews to the Galilee, assisting in the *aliya* of Ethiopian Jewry, supporting Jewish Zionist education, memorialising the Holocaust, and others.¹⁰

Helman and Arbel complain that the principle of equality has become central in Israeli judicial discourse and has been posed as a legitimate demand by non-Jewish citizens of the State of Israel. They demonstrate that the principle of equality has become an internal danger which must be cured by legislation. In their view, equality contradicts the fundamental right of the Jewish people to have exclusive privileges in its own state, despite the fact that 20 percent of the population is not Jewish.

¹⁰ Dubi Helman and Adi Arbel, “The State of Israel as the National Home of the Jewish People,” The Institute for Zionist Strategies,” <http://izs.org.il/2015/12/jewish-national-home/>.

In recent years, a back-peddling trend has developed, which weakens the position of the State of Israel as the National Home of the Jewish People. The State of Israel, which was established as a Jewish state with a democratic form of government, would be turned into a liberal-democratic country with Jewish characteristics only to the extent that these characteristics do not contradict the principle of absolute equality among all groups. This radical liberal approach regards strict and absolute adherence to rigid and ubiquitous equality as the exclusive supreme value in a democratic society.¹¹

According to Helman and Arbel, adopting the principle of equality as a “supreme value in Israel would deny the Jewish people its right to self-determination, seriously distorts democratic principles, violates the intention of the founders, and thwarts legitimate majority rule.” Based on this internal danger – and in order to face it – they make clear that “it is imperative that Israel enact a Basic Law setting forth clearly that Israel is a Jewish state and the National Homeland of the Jewish people, and defining explicitly its Jewish character and mission.”¹²

Such clear statements would not be of practical value and importance if not for the fact that a Basic Law proposal, similar to the one proposed by Helman and Arbel, was introduced to the Knesset by Avraham Dichter, who is currently a member of Knesset, was a minister in the Israeli government, and led the Israeli internal intelligence service (known as the Shin Bet, or Shabak) a few years earlier. Furthermore, the position of Helman and Arbel would have remained private if not for the clear process taking place in Israel in the last decade, when new laws were promoted which aimed to anchor Jewish hegemony and its privileges in the constitutional structure and in culture. One of the best examples of this trend is the 2003 amendment to the Citizenship and Entry into Israel Law, which made it almost impossible for Palestinian citizens of Israel to obtain permits for their Palestinian spouses and children from

¹¹ Ibid.

¹² Ibid.

the occupied Palestinian territories to enter and reside in Israel for purposes of family unification.¹³ In 2007, the law was amended again to prohibit spouses from “enemy states” – Syria, Lebanon, Iran, and Iraq – to enter Israel as part of family unification, in order to avoid charges that the law was racist, being formerly directed solely and specifically against Palestinians.¹⁴ These racist amendments, which were declared by the Israeli High Court as constitutional, complement the Israeli Law of Return of the early 1950s – viewed by Ben-Gurion as a foundational law of Israel – which provides automatic and rapid Israeli citizenship to any person of Jewish descent.

Another example which illustrates this point is the recent Nakba law, which allows the finance minister to withhold funds from official organizations which decide to commemorate the Palestinian Nakba of 1948.¹⁵ This law is part and parcel of the grand policy of epistemic violence against Palestinian history, memory, and consciousness, as manifested in school books, literary and art policies, and even gastronomy.¹⁶

The immediate meaning of the discriminatory nationalistic legislation promoted by the Neo-Zionist camp is that it enjoys a convenient automatic majority to support its views, especially when these are combined with the protection of the rights of the entire Jewish people and the reiteration of its right for a sovereign state in its contested historical land. The bond between the State of Israel and the entire Jewish people is elevated into the major principle of the Neo-Zionist ideology, redefining the territory of the nation and membership in it. Neo-Zionists omit the difference between Israel and the occupied Palestinian territories from 1967, and view these as one entity, emphasising the right of the Jewish people over its entire

13 D. Barak-Erez, “Israel: Citizenship and Immigration Law in the Vise of Security, Nationality, and Human Rights,” *I • CON* 6, no. 1 (2008): 184–92.

14 Amos Schocken, “Citizenship Law Makes Israel an Apartheid State,” June 27, 2008, <http://www.haaretz.com/citizenship-law-makes-israel-an-apartheid-state-1.248635>.

15 A. Jamal, “Constitutionalizing Sophisticated Racism: Israel’s Proposed Nationality Law,” *Journal of Palestine Studies* 45, no. 2 (2016): 40–51.

16 D. Bar-Tal and Y. Teichman, *Stereotypes and Prejudice in Conflict: Representatives of Arabs in Israeli-Jewish Society* (Cambridge, UK: Cambridge University Press, 2005).

homeland. When speaking about the state they make clear that the sovereign agent to determine the future of the state is not the citizens of the state, but rather the entire Jewish people. Accordingly, the State of Israel expresses the aspirations of all Jews, including those living in the US, Canada, Australia, Russia, the UK, etc., emptying civic sovereignty from any meaning and replacing it with ethno-nationalistic sovereignty that goes beyond the state. This trans-ethnic sovereignty depletes citizenship of any substantial meaning and replaces it with kinship as the main logic of sovereign power.

THE JEWISH NATION-STATE LAW AS SYMPTOM OF A NEO-ZIONIST HEGEMONIAL PROJECT

The nation-state law is of utmost importance for a number of reasons, the most important of which can be summarized as follows: (1) it reveals the aggressive racist proclivities of Israeli institutions; (2) it aims to entrench the national and religious Jewish ideology of the state; (3) it limits the ability of political and legal institutions to support democratic and civic interpretations of its constitutional precepts; and (4) it dispenses with non-Jewish citizens as a politically significant class.¹⁷

Since 2011 the nation-state bill has gone through many versions, but three basic iterations. Avraham Dichter, as a member of the Kadima Party at the time, proposed the first formulation of the bill in August 2011, based on a proposal by the aforementioned Institute for Zionist Strategies.¹⁸ The second formulation was put forward by Ayelet Shaked of the Jewish Home Party and Yariv Levin of the Likud Party during the 19th Knesset in 2013.¹⁹ Despite superficial

17 Tova Zimoki, "Akharey shana: Se'arat khok ha-le'om she-ba la-Kneset," October 21, 2015, <https://www.ynet.co.il/articles/0,7340,L-4714531,00.html>.

18 "Constitution of the State of Israel," Institute for Zionist Strategies, <http://www.izs.org.il/userfiles/izs/file/Constitution.pdf>.

19 Ayelet Shaked was appointed as minister of justice in Prime Minister Netanyahu's fourth government after the March 2015 elections. She recently proposed a new bill according to which representatives of human rights organizations would have to

differences, both proposals emphasize Israel as the state of the Jewish people in which self-determination belongs solely to Jews and where the Jewish character of the state overrules the democratic arrangement.

The proposed bill was presented to the Ministerial Committee for Legislation in November 2014.²⁰ The then-head of the committee, Tzipi Livni, who was also justice minister at the time, had raised political and ideological objections to the proposal all along, arguing that it contradicted the Declaration of Independence. Livni's objections led Netanyahu to propose a revised version of the bill in order to surmount Livni's objections. The proposal that eventually won the approval of the Cabinet did not make it through the legislative process as a result of the collapse of the ruling coalition in autumn 2014, which precipitated early elections.²¹ Netanyahu's proposed compromise included fourteen principles, which were translated into the bill proposed by Dichter and brought to legislation as the third venture in the 20th Knesset after the 2015 elections. Since then the negotiations between the coalition parties led to many changes in the draft bill, but a proposal that maintained the basic principles from the earlier bills passed its first reading in the Knesset on May 1, 2018 by sixty-four votes to fifty, and was approved by the Knesset on July 19, 2018 with the support of 62 members of Knesset, 55 opposed, and 3 abstentions.

The first part of the law, which was approved by the Knesset on July 19, 2018 with the support of 62 MKs, 55 opposed and 3 absten-

wear a tag with a statement that their organization received funding from a foreign country. See Jonathan Lis, "Justice Ministry to Introduce Bill Demanding Foreign Funded NGOs to Wear Special Tag in Knesset," *Haaretz*, November 1, 2015, <https://www.haaretz.com/israel-news/.premium-new-bill-calls-for-left-wing-ngos-to-wear-special-tag-in-knesset-1.5415863>.

20 Hazki Ezra, "Khok ha-le'om osher ba-memshala," November 23, 2014, <http://www.inn.co.il/News/News.aspx/287869>.

21 "Basic Law Proposal: Israel as the Nation-State of the Jewish People," Inter-Agency Task Force on Israeli Arab Issues, Legislative Update (November 2014), http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/nationality_law_summary.pdf. See also Barak Ravid, Jonathan Lis, and Jack Khoury, "Netanyahu Pushing Basic Law Defining Israel as Jewish State," *Haaretz*, May 1, 2014, <http://www.haaretz.com/israel-news/1.588478>.

tions (2018, P/20/1989), includes three basic principles. The first states that “The land of Israel is the historic homeland of the Jewish people, in which the State of Israel was established.” The two most important points to be noted in this formulation are first, the clear attempt to establish a continuous historical bond between the Jewish people and the land of Israel, and second, that the State of Israel has been established in part of the historical land, not in all of it. The second principle defines the State of Israel as “the nation-state of the Jewish people, in which it exercises its natural, cultural, religious and historical right to self-determination.” This formulation makes clear that no other cultural and historical tradition, namely that of the Palestinian citizens, can be translated into the identity of the state. The national home of the Jewish people cannot also be the national home of the citizens who are not of Jewish descent. The third basic principle of the bill determines that the “right to exercise national self-determination in the State of Israel is uniquely that of the Jewish people.” It is important to note that none of these principles define the borders of either the land of Israel or the State of Israel, which is the expression of the right for self-determination.²² If this last principle maintains that the right to self-determination is *exclusive* to the Jewish people, it means that no other people(s) may argue for self-determination within the territory of the state. And since that territory is not clearly defined, it could include everything within the Green Line (so-called Israel proper) as well as the Palestinian territories occupied in 1967. The policy of applying the Israeli law in Palestinian areas occupied in 1967 means that the other side of the coin of the exclusive principle of self-determination is the blocking of the right of any other people for self-determination in areas considered by the government to be part of the State of Israel, but also the criminalizing of any demand to compromise the sovereignty of the Jewish people over the land of Israel. This stipulation effectively means that civic sovereignty is not possible, since any demand to transform Israel into a state of all its citizens,

²² Israel’s official boundaries have not been delineated since the 1949 armistice agreement that ended the 1948 war when the state was established.

all of whom would be considered sovereign and could express their right to self-determination, is not only declared illegal, but is also substantially impossible.

One of the central changes introduced in the 2018 version of the bill is the omission of the clause relating to the goal of the bill. In previous drafts this clause asserted the bill's purpose as "to define the identity of the State of Israel as the nation-state of the Jewish people and to anchor the values of the State of Israel as a Jewish and democratic state, in the spirit of the principles of the Declaration of the Establishment of the State of Israel." Based on this formulation, the revised bill – in what it omits – assumes two issues worth noting. The first is that there is a need to protect the identity and character of the state, as the state of the Jewish people. Presumably the spirit of the text introduced above – according to which establishing equality, as a basic principle in Israel, would turn the state into a state of all its citizens and thereby weaken the state's Jewish identity – would also weaken the text as an expression of the exclusive right of Jews for self-determination. The second is the absence of any encoding of the values of the State of Israel as a Jewish and democratic state in accordance with the principles of the Declaration of Independence in a Basic Law. The omission of this goal in the version confirmed in the first reading means that the balance between the Jewish and democratic character of the state, as institutionalized in previous basic laws, is not anymore valid. This step has been a clear indication that the ruling coalition is seeking to subordinate the democratic character of the state to its Jewish one. The democratic regime becomes therefore secondary to the Jewishness of the state, a step heavily criticized by leading constitutional experts in Israel, among whom are veteran justices of the High Court.

In comparing the citizenship rights of Jews and Palestinians in the approved law in relation to former versions we find that whereas Jews are granted collective and individual rights that complement each other, the civic status of Palestinian citizens is restricted and cannot contradict or challenge the exclusive priority of collective rights given to Jews. The fact that every Jew around the world has the individual right to immigrate to Israel and automatically receive cit-

izenship exemplifies how the state defines itself as exclusively Jewish. By establishing the superiority of the Jewish people in and over the state, the bill creates a despotic majoritarian regime under the guise of majoritarian democracy, but also blocks the way for civic equality, establishing thereby what could be called “essential apartheid.”

This interpretation of the law is supported by several clauses which are especially important for this context. The first important clause is the one concerning language. This clause establishes a new hierarchy between Hebrew, which is the “state language,” and Arabic, which is downgraded from an official language into a language of “special status in the state.” Despite the fact that the approved law declares that the clause relating to the Arabic language “does not harm the status given to the Arabic language before this law came into effect,” it still mirrors the real intentions of the bill-drafters, who view the official status of the Arabic language as a violation of the identity of the state as Jewish. The targeting of the constitutional status of the Arabic language, which on practical terms is not translated into a serious burden on the state, reflects the hostility towards what the language symbolizes, namely the historical and cultural roots of the Palestinian citizens, which contradict the exclusive Neo-Zionist narrative promoted by the law.

The other important clauses are those regarding the relationship between the state and the Jewish Diaspora. These clauses define the nature of the bond between Israel and the Jewish people living outside its borders. The first clause declares that “The state will strive to ensure the safety of the members of the Jewish people in trouble or in captivity due to the fact of their Jewishness or their citizenship.” The second clause states that “The state shall act within the Diaspora to strengthen the affinity between the state and members of the Jewish people.” Further to that, the third clause declares that “The state shall act to preserve the cultural, historical and religious heritage of the Jewish people among Jews in the Diaspora.” These clauses would not have drawn particular attention if not for the fact that they ignore that 20 percent of the state is made up of non-Jews, who also have relatives living outside the state. This differentiation establishes clear discrimination between different citizens of the

state, something that could be seen even more clearly in a clause that had been part of the bill, but which was omitted from the final draft. In the draft that preceded the approved version of the law, this clause stated that “Every resident of Israel, regardless of religion or nationality, is entitled to work to preserve their culture, heritage, language, and identity.” Thus the state has an active role vis-à-vis its Jewish citizens and the promotion of their culture, but a passive one toward its other citizens, whom it expects to take that responsibility upon themselves. According to this principle, the state is not committed to supporting and developing the culture, tradition, language, and identity of non-Jews, namely the Palestinian citizens of the state. Therefore, not only does the state discriminate against non-Jews in terms of its identity and symbols, but it is also entitled to exclude them from the allocation of public resources to develop and maintain their cultural identity. Even though this clause has not been included in the last version of the law, it reveals the actual policies of the state and reflects its malicious intentions and practical policies towards non-Jewish citizens. These policies declare the state’s commitment to protect Jews no matter where they live. They also express the state’s pledge to protect, develop, and provide education about Jewish historical and cultural traditions to Jews in the Diaspora.

The principle of the right to protect one’s tradition includes another clause that is worth noting. This clause declares that “The state views the development of Jewish settlement as a national value and will act to encourage and promote its establishment and consolidation.” This means that the state does not view the development of Arab settlements to meet the growing needs of the Palestinian citizens as a national value and will not act to promote their establishment and consolidation. Knowing that the former version of the law included a clause stating that “the state may allow a community composed of one religion or one nationality to maintain a separate residential community” reveals the real intention of the approved version of the clause. The former version of the clause has been omitted since it has been heavily criticized, for it establishes segregation as a constitutional principle and has clear racial impli-

cations. It intended to clearly and bluntly grant Jewish communal settlements the right to establish themselves on state land and to be supported by state funds and, simultaneously, the power to block Palestinian citizens from being able to build or buy houses in these areas, something that has, on several occasions, already occurred.²³ Changing the wording of the clause does not hide the real intentions behind it, despite the “sophisticated” discriminatory language used in the approved law.

Other principles of the law deal with the official calendar of the state and its symbols, which are fully and exclusively Jewish. One of the important clauses that adorned the former version of the law proposed Jewish jurisprudence as a source of inspiration for the Knesset when it creates laws. This idea, which mirrors the growing influence of religious ideology in state affairs and in Israel’s legal and judicial systems, has been omitted, as a result of intense debate within the ruling coalition. Notwithstanding the omission of this clause, one notes that religion has been added to the second basic principle of the law, which states that “The State of Israel is the nation-state of the Jewish people, in which it exercises its natural, cultural, *religious* and historical right to self-determination” (italics added).

While the approved law may be less extreme and directly hostile than the original version that was drafted in 2011, it still includes the same conceptual values and excludes the principle of equality. It also further demotes the democratic character of the state to the advantage of its Jewish identity. The amended proposal formally secures the divorce between the national rights of the Jewish people and the civil rights of the citizens of the state, practically resulting in ongoing duress and coercion in terms of the civil and national status of the Palestinian citizens of Israel. The law makes the Jewish people the sole custodians of the State of Israel. It does not only characterize Palestinian citizens as a group of individuals who are not guaranteed any national or collective expression, but also views

²³ See more on the topic on the website of the Association for Citizens Rights in Israel, <https://www.acri.org.il/he/97>.

any effort by them to call for such rights as a violation of the law. This reading is supported by the declaration made by the custodian of the law, Avi Dichter, on the eve of its approval, that “We are approving this important law today in order to prevent the slightest thought, let alone an attempt, to transform Israel into the state of all its citizens.”²⁴ Put simply, the law states that the entirety of the world’s Jews have sovereignty over the state, even those who do not reside in Israel and are citizens of other countries, while Palestinian citizens – natives of the land – are not included in Israel’s civil sovereignty. Such a law closes the door on Palestinian civil struggle for equality, criminalizing any efforts to grant a common civic horizon for a shared and tolerant plural society.

Given that the Declaration of Independence – which has special constitutional standing in the Israeli juridical tradition – defined Israel as a Jewish state ever since its establishment, questions must be raised about the justification for the nation-state law. Israel has fully exercised its Jewishness in all areas of politics. It has established a moral and material system that favors the Jewish historical narrative throughout the entirety of Israel’s jurisdiction, including the lands occupied in 1967. But it maintains a democratic veneer via institutions that are administered according to democratic principles. For example, Israel has a transfer of power by elections, a separation of powers, and a wide arena for freedom of expression in matters relating to the Jewish community’s social, economic, and cultural life. These practices allow the Jewish majority to exercise ethnically-oriented and blatantly discriminatory policies while simultaneously framing them as expressions of democratic majorities, and thereby to present Israel as a hallmark of modern democratic states.

The nation-state law, however, exposes the intentions of the Israeli political system, which no longer feels the need to justify its racist policies and exploits international opinion, and the situation of Arab states since the popular upheavals that started in 2011 (the so-called

24 Moran Azoulai, “The Nationality Law Approved: The Coalition Cheered, the Opposition Shouted Apartheid.” Ynet, July 29, 2017, <https://www.ynet.co.il/articles/0,7340,L-5312599,00.html>

Arab Spring), in order to enact policies in the name of “defensive democracy.”²⁵ These policies exploit the subordinate status of the Palestinian minority and fly in the face of democracy’s very essence. The bill proposals were drawn up against a background of major constitutional changes that had been taking place in Israel for over a decade, including the 2003 amendment to the citizenship act.²⁶

EXTERNAL AND INTERNAL FACTORS BEHIND THE NATION-STATE LAW

A number of external and internal factors account for the prominence of the Jewish nation-state law in the Israeli political arena. The first external factor relates to the Palestinians and the question of an agreement leading to Palestinian independence in accordance with international law and UN resolutions. Prime Minister Netanyahu has now made recognizing Israel as a Jewish state a demand in negotiations with the Palestinians. The Palestinian leadership emphatically objects to this request, stating that while they may be willing to concede the point that Israel is a sovereign state, they would not go into details about its identity.²⁷

Were Palestinians to recognize Israel as the state of the Jewish people, they would in fact be recognizing that the only people who have a “right of return” there are Jews. Such an acknowledgment on the part of the Palestinians would achieve two goals: first, it would

25 Naomi Heiman-Rish, “Demokratiya mitgonenet be-Yisrael,” The Israel Democracy Institute, September 2008, <https://www.idi.org.il/parliaments/5478/8552>.

26 “The Citizenship and Entry into Israel Law (temporary provision) 5763 – 2003,” The Knesset, last modified 2003, http://www.knesset.gov.il/laws/special/eng/citizenship_law.htm. See also Amal Jamal, “The Contradictions of State-Minority Relations: The Search for Clarification,” *Constellations* 16, no. 3 (2009): 493–508; and Guy Davidov, Jonathan Yuval, Ilan Saban, and Amnon Reichman, “Medina o mishpakha? Khok ha-ezrakhot ve-ha-knisa le-Yisrael (hora’at sha’a)” *Mishpat u-mimshal* 8 (2005): 643–99.

27 Daoud Kuttab, “Abbas Delivers Message of Peace to Israeli Students,” *Al-Monitor*, February 20, 2014, <http://www.daoudkuttat.com/articles/3478/>; “We Recognize Israel, They Should Recognize Palestine,” *Jerusalem Post*, June 30, 2011, <http://www.jpost.com/Diplomacy-and-Politics/We-recognize-Israel-they-should-recognize-Palestine>.

provide retroactive recognition legitimizing Israel's past treatment of the Palestinians and its establishment as a state of the Jewish people, even when its policies violated the basic rights of Palestinians in general and of the Palestinian citizens in particular. Second, it would prevent the return of any Palestinians to territories defined as Israeli, limiting the practice of the internationally-recognized Palestinian refugees' right of return to a future Palestinian state, if such a state were established.

In this regard, it is important to note that, as proposed by the Netanyahu Cabinet, the Jewish nation-state law would obstruct any solution of the Israeli-Palestinian conflict in the near future as it makes future Israeli concessions contingent upon the recognition of the state's exclusive identity. It is important to note that all members of Knesset who drafted the original bill clearly and explicitly object to any Israeli withdrawal from occupied Palestinian territories. Their proposal is part of a larger effort to compel moderate legislators into either supporting the bill, thereby promoting their right-wing agenda, or being exposed as traitors, given the narrowly-defined national character of the state.

The second external factor relates to the international legitimacy of Israel and the state's need to assert itself as the expression of the state envisaged by the 1947 UN Partition Plan and its subsequent recognition by the UN in 1949. This comes at a time when Israel's international standing is being steadily eroded as boycotts of the state are gradually taking root in a variety of cultural sectors in different parts of the world.²⁸ This change in public opinion overwhelmingly reflects growing recognition of the State of Palestine despite Israel's best efforts to block such a development (Israel, for its part, claims that such recognition sabotages direct peace negotiations between the two sides). It is these kinds of changes in the international climate that have led Israeli right-wing politicians, Netanyahu among them, to support the legislation of the nation-state law. In its attempt to

28 See Omar Barghouti, "Why Israel Fears the Boycott," *The New York Times*, January 31, 2014, <http://www.nytimes.com/2014/02/01/opinion/sunday/why-the-boycott-movement-scares-israel.html>.

strengthen Israel's legitimacy and to ground the Jewishness of the state in international law, the bill advocates the dominant Israeli interpretation of the Partition Plan's call for establishing two states in Palestine, one Jewish and one Arab.²⁹

The third external factor involves redefining the relationship between the Israeli state and Jewish communities abroad, especially as liberals from those communities have expressed increasing exasperation with official Israeli government policies in the last decade.³⁰ Thus, the law seeks to address younger generations of Jews across the world by re-characterizing Jewish identity politics as transcending the various civic affiliations of Diaspora Jews, with Israel at their center. The redefinition of Israel as the state of the Jewish people serves to remind the global Jewish community that not only is Israel their home, but that, even in the presence of ideological differences, the premise remains unshakeable. Thus, the law promotes a definition of the state that requires a clear commitment on the part of Jewish communities not only to accept the state as their own but also to defend it at any cost, since it is the embodiment of their identity and safety. This type of expression manifests a tribal aspect of Jewish nationality, according to which Jewish ethnic affiliation is an essential indication of political loyalty, regardless of one's residence or citizenship. Netanyahu's call for French Jews, after the January 2015 terrorist attacks in Paris, to "come home," for instance, falls within this perception of Israel as an organic entity and a safe haven for the entirety of the Jewish people worldwide.

The ideological viewpoint just described reflects Israel's concern to counter the effects of the Boycott, Divestment, and Sanctions (BDS) movement and its efforts to recruit Jewish communities everywhere to join in that effort. Netanyahu's June 2015 statement that, "attacks against Jews have always been preceded by the slander of

29 "UN General Assembly Resolution 181 (II). Future Government of Palestine," United Nations, November 29, 1947, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7FoAF2BD897689B785256C330061D253>.

30 See "Us and Them," *The Economist*, August 2, 2014, <http://www.economist.com/news/briefing/21610312-pummelling-gaza-has-cost-israel-sympathy-not-just-europe-also-among-americans>.

Jews,” attempts to equate BDS with Nazi and other anti-Semitic rhetoric and to preempt any discussion of BDS and its relationship to official government policies.³¹ In other words, the official discourse depicts BDS as aiming to delegitimize Israel as the state of the Jewish people rather than to liberate Palestinians from Israeli occupation. Accordingly, Israeli legislators expect Jewish communities in Europe, the United States, Australia, and beyond to commit to helping Israel, regardless of its conduct.

In addition to the above external factors, there are two major internal factors that inform the law. The first deals with the current institutional struggle within the Israeli political system between the legislative and the judicial authorities. The legislative authority, embodied in the Knesset, represents the “will of the people” and is responsible for passing laws. Today, most legislators are either nationalists, religious, or conservative, or a combination of the three political actors whose view of Israel tends to be messianic and absolutist. Most MKs of the ruling block view the moral and ideological values of the state in absolute terms, arguing that it is legislative authority that determines the character of the state and its policies.³² These legislators claim that the civil and liberal political figures that make up the judicial authority, represented by the High Court of Justice, consider Israel to be a state with a Jewish majority – without committing to national or cultural values.

This tension between the legislative and judicial authorities stems from what Menachem Mautner, a prominent scholar of Israeli constitutional law, identifies as the decline of formalism and the rise of values in the Israeli judicial system.³³ Right-wing legislators argue that judicial authority, which is constitutionally responsible for interpreting the law according to the spirit in which it was intended,

31 “Netanyahu on BDS: Attacks on Jews always preceded by slander of Jews,” *Yedioth Ahronoth*, June 15, 2015, <http://www.ynetnews.com/articles/0,7340,L-4668771,00.html>.

32 Shai Berimanis, Daphna Canetti-Nisim, and Ami Pedahzur, “Religious Fundamentalism and the Extreme Right-Wing Camp in Israel,” *Patterns of Prejudice* 38, no. 2 (2004): 159–76.

33 Menachem Mautner, *Law and the Culture of Israel* (Oxford: Oxford University Press, 2011). See especially chapter 4, “The Decline of Formalism and the Rise of Values.”

is encroaching on the authority of the legislator by promoting liberal interpretations of the law.³⁴ Thus, in their view, by positioning itself above the elected representatives of the people, who happen to be conservative nationalists, judicial authority is usurping its role.

In light of the intensification of this conflict between the two sides in recent years, the nation-state law is an attempt by legislators to impose a new constitutional formula that would in their view represent the will of the majority and its support for a conservative ideology as expressed at the ballot-box. This formula would thus limit the manoeuvring room of the High Court of Justice to defy the will of the people either by interpreting nationalistic laws liberally or by striking down legislation that does not meet what the judiciary considers to be the minimum threshold of rights. This institutional conflict has been reflected in right-wing promotion of certain types of legislation, and in allegations against the judiciary system in general, and against the High Court in particular, with the nationalist and religious right both threatening to and attempting to pass laws that limit the ability of the High Court to “exploit” legal ambiguities. Thus, the Jewish nation-state law seeks to settle the ambiguity that the Declaration of Independence allows, which Israel’s highest court has thus far considered the primary document determining the state’s liberal values, especially those of equality and freedom. By enforcing the Jewish identity of the state, the law would restore

34 Recently, a Knesset member from the Jewish Home (Bayit Yehudi) party, Motti Yogev, accused the High Court of Justice of betrayal for delaying a decision made by the army to demolish Palestinian houses in retaliation for the killing of four Israelis (Danny Gonen, Malaachi Rosenfeld, and the couple Naama and Eitam Hanken). Members of the families who own the houses are accused of the killing. See Sharon Folber, “Baga‘ts hakipi harisut batei kama mekhabelim ba-tsav arai,” *Haaretz*, October 22, 2015, <http://www.haaretz.co.il/news/law/1.2758489>. In response to the accusation, which reflects the tension between the dominant right-wing political forces in the Knesset and the judicial system, the Vice President of the Supreme Court, Elyakim Rubinstein, argued in a lecture that the accusation of the Supreme Court as betraying national loyalty is empty of meaning. His argument was based on the fact that the High Court has not prevented the demolition of Palestinian houses when the correct judicial procedures have been followed. For more details on this dispute, see Eitan Kalinski, “Ha-shofet Rubinstein ha-ya‘ad ha-ba shel Yogev?” *News1*, November 4, 2015, <http://www.news1.co.il/Archive/003-D-00-107124.html>.

authority to the legislature. This understanding is reiterated in the new Basic Law on Legislation introduced by Justice Minister Ayelet Shaked and Education Minister Naftali Bennett, which, according to them, comes to “restore the balance” between the legislator and the high court.³⁵ The proposed bill would actually allow the Knesset to circumvent the High Court of Justice and the Supreme Court in the event Justices disqualify Knesset legislation.

The second internal factor that led legislators to propose the nation-state law concerns Israel’s Palestinian citizens and their repeated challenges to the political and judiciary systems in recent decades. In its effort to establish “loyalty” and “allegiance” as determinant factors in Israeli political culture (and thereby define citizenship according to the fulfilment of certain duties such as army service or civic service), rather than through the exercise of equal civic rights, the law is part of a strategy to impose new rules of the political game on Israel’s Palestinian citizens. If successful, it would subject the community to absolute Jewish hegemony, hollowing their political struggle for collective rights of any substantive meaning.

In the early 1990s, the National Democratic Assembly (NDA or Balad), led by Azmi Bishara and Jamal Zahalka, proposed “a state of all its citizens” as an alternative constitutional formula. The proposal called on the state to respect basic democratic principles despite the demographic asymmetry between the Jewish majority and the Palestinian minority. This alternative challenged Israel’s hegemonic, exclusive, and antagonistic political model and introduced a more inclusive political vision that upheld genuine democratic values – especially equality, dignity, and freedom. Moreover, the NDA proposal demonstrated that the Jewish-and-democratic formula was incompatible with a genuine democratic polity that consists in openness, diversity, and magnanimity. The NDA’s proposal further demonstrated that the Jewish-and-democratic formula entails internal contradictions since the definition of the privileged national

35 Marissa Newman, “Shaked, Bennet Propose Constitutional Law to Circumvent Supreme Court,” *The Times of Israel*, September 15, 2017, <https://www.timesofisrael.com/shaked-bennett-propose-constitutional-law-to-circumvent-supreme-court/>.

group in exclusive ethnic terms renders meaningless any political aspiration to civility and equality between the minority and majority groups.³⁶ Finally, the NDA-proposed alternative formulation exposed legislators' purported democratic procedures as counteracting basic democratic principles.

More than a decade after the NDA presented its state-of-all-its-citizens vision, in three separate but related initiatives Palestinian intellectuals, academics, and activists in Israel issued another set of documents demanding total civil and national equality. Appearing in 2006–7, the three documents – Mada al-Carmel's Haifa Declaration; Future Vision, developed under the auspices of the Committee of Arab Mayors in Israel; and the Democratic Constitution, issued by Adalah – The Legal Center for Arab Minority Rights in Israel – challenged the Jewish hegemony of the state once again and demanded full democratization based on liberal and collective rights embedded in international law.³⁷ By calling for the transformation of Israel into a fully democratic state which would effectively establish a difference between Jewish citizens' right to self-determination and Israel as the state of the Jewish people everywhere, these initiatives dealt an additional blow to the Jewish-and-democratic constitutional equation. These documents make the point that Israel's existence as the expression of the Jewish right to self-determination does not necessarily entitle all Jews everywhere to immediate rights in the state or make them the only stake-holders in such a state, arguing that such a policy effectively degrades the status of the Palestinian citizens to second-class citizenship. In the eyes of many Israelis, the formulation of such demands was tantamount to a declaration of war against the Jewish state, and some have consequently regarded Arab citizens as enemies of the state.³⁸ The approval of the nation-state law has led Palestinian academics, as they face the possible ramifications of

36 Amal Jamal, *Arab Minority Nationalism in Israel: The Politics of Indigeneity* (London; New York: Routledge, 2011).

37 "The Haifa Declaration," Mada al-Carmel, published May 15, 2007, <http://mada-research.org/en/files/2007/09/haifaenglish.pdf>.

38 Amal Jamal, "The Political Ethos of Palestinian Citizens of Israel: Critical Reading in the Future Vision Documents," *Israel Studies Forum* 23, no. 2 (2008): 3–28.

the new law, to call for a reformulation of the earlier visionary documents. This call is deeply related to the vision documents having been based on the two-state formula as the institutional solution to the Israeli-Palestinian conflict. Assuming that the new law blocks implementing this option in any future negotiations between the two sides, it is argued that there is a need to envision a new political and legal reality that challenges the law and grants equal status to all Palestinians, including those living in the West Bank and Gaza, as well as refugees in exile.

In his presentation of the Jewish nation-state bill in the Knesset on November 26, 2014, Netanyahu asserted, "Israel will always preserve full equal rights, both personal and civil, of all citizens of the State of Israel, Jews and non-Jews as one, in the Jewish and democratic state. . . . Indeed, in Israel, individual rights and civil rights are guaranteed to all – something which makes us unique in the Middle East and beyond it."³⁹ Thus, the Jewish nation-state law reiterates that Palestinians have to be satisfied with only individual rights in the Jewish state. Emphasizing individual and civil rights and comparing Israel with other Middle Eastern countries is a way of stressing that the Palestinian citizens of Israel have no better alternatives and should be content with their status; after all, citizens of Arab states do not even enjoy civil democratic rights. This argument maintains the traditional Israeli position that Israel is a so-called "democratic villa in the jungle," and that as the sole "moral" state in the region it is entitled to determine the measure and character of the rights accruing to its Palestinian citizens.⁴⁰ Those who do not like it or are unwilling to act accordingly will be either outlawed or crushed, as evinced in the recent declaration of the northern wing of the Islamic Movement as an "unauthorized assembly."⁴¹

39 Moran Azolai, "Netanyahu hatsig le-rishona: ele 'ikronot khok ha-le'om sheli," *Yedioth Ahronoth*, November 26, 2016, <http://www.ynet.co.il/articles/0,7340,L-4596506,00.html>.

40 Aluf Benn, "The Jewish Majority in Israel Still See their Country as 'a Villa in the Jungle,'" *The Guardian*, August 20, 2013, <http://www.theguardian.com/commentisfree/2013/aug/20/jewish-majority-israel-villa-in-the-jungle>.

41 Barak Ravid, "Israel Outlaws Islamic Movement's Northern Branch," *Haaretz*,

CONCLUSION

The results of the March 2015 Israeli elections and the Knesset majority that approved the nation-state law in 2018 leave open the possibility that the nation-state law, as well as other bills proposed by nationalist members of Knesset, will remain a fixture of the political agenda in Israel. While one of the central parties in the current coalition, Kulanu, has had reservations over certain clauses of the bill and managed to change parts of it, nationalist legislators continue to promote policies that differentiate between those who belong to the majority and accept their nationalistic values and those who do not. The ruling coalition managed to revitalize the legislation process on the nationality law on May 7, 2017, when the Ministerial Committee for Legislation decided to promote the legislation of a new version of the bill.⁴² This decision opened the door to a governmental bill that is agreed upon by all coalition members, something that guaranteed a supportive majority in the Knesset. That a majority of sixty-four Knesset members supported the first reading of the 2018 bill made possible the approval of the law with a majority of sixty-two MKs. That certain clauses of the bill were either amended or omitted reflects the differences between the various components of the ruling coalition. It also reflects the disagreement with the President of the High Court, Esther Hayut. Hayut opposed the bill for several reasons, central of which is the imbalance it engenders between the Jewish and democratic character of the state and the proposed law's ramifications on the liberal character of the Israeli constitutional tradition. The changes that took place in the final draft were intended to facilitate the approval of the High Court, something that we still have to wait for, since appeals against the law have been just filed. One of these appeals

November 17, 2015, <https://www.haaretz.com/israel-news/israel-outlaws-islamic-movement-s-northern-branch-1.5422760>.

42 Jonathan Lis, "Israeli Ministers Green-light Nation-state Bill: Arabic Isn't an Official State Language," *Haaretz*, May 7, 2017, <https://www.haaretz.com/israel-news/ministers-okay-nation-state-bill-arabic-not-an-official-language-1.5469065>.

has been introduced by three Druze Knesset members, who argue that the law has major ramifications on non-Jews, who mandatorily serve in the Israeli army. Defining the state as the state of the Jewish people means that serving in the Israeli army is serving in the army of the Jewish people, not the army of the Israeli state that guarantees equality to all citizens, as stated in the Declaration of Independence. According to this appeal and the public debate taking place among Druze citizens, the law turns Druze soldiers into mercenaries, whose life and loyalty is subordinated to the will of the Jewish people in exchange not for full citizenship, but rather for symbolic recognition and material privileges. The unwillingness of the prime minister to consider any change in the approved law, and in a meeting with leaders of the community his proposal to facilitate a development plan for the Druze villages, made the tension with the Druze community even worse. Many in the community interpreted the proposal made by the prime minister as an insulting attempt to buy its conscience and silence it with money.

Should the trend of radical right-wing politics continue to shape the state's constitutional and legal climate, the assumption that the Jewish-and-democratic equation is a tenable one may finally come undone. The legislative trend may finally expose one of the central veiling mechanisms enabling the state to promote exclusive ethnic and discriminatory policies while at the same time maintaining its image as democratic. Now that the Knesset has approved the law, the discrepancy between the reality of the Jewish state and its image will become glaring. The nationalizing process in the Neo-Zionist era put Israel in a new place, in which democratic values are abandoned and the gatekeepers of democracy are weakened. The dwindling power of liberal forces and the domination of the political system by conservative ultra-nationalist forces demand re-evaluation of Israeli political culture, especially its common classification in comparative political science literature as mostly democratic. The approval of the nationality law and the continuation of nationalizing legislative trends make Israel more vulnerable to critique and makes the life of those seeking to stigmatize the Jewish state as an apartheid state much easier.