

The Curious Case of Jewish Democracy

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The question of Israel's character as a Jewish and democratic state is as old as the state itself. Since David Ben-Gurion announced "the establishment of a Jewish state in the Land of Israel,"¹ the matter of its democratic character has been the subject of countless legal disputes, political feuds, scholarly works, and public debates—and we are no closer to a resolution today than we were 62 years ago. Indeed, with the growing demands of anti-Zionists abroad—and post-Zionists at home—that Israel shed its particularistic Jewish identity; with the insistence on the Palestinian recognition of Israel as a Jewish state becoming a major point of contention in the Israeli-Arab conflict; and with the perpetual struggle within Israeli society itself to determine what exactly "Jewish and democratic" means, the problems surrounding the state's dual character seem only to be intensifying with time.

In light of these mounting attacks on Israel's foundational identity, as well as the widespread belief that "Jewish" and "democratic" can never be

reconciled, it behooves us to revisit the issue and examine it in the broadest possible context. We must consider how this identity was created, how it is anchored in the state's constitutional and political institutions, and the validity of the charges currently being brought against it. Accordingly, this essay will present a brief survey of some of the main arguments against the viability of Israel's dual nature, such as the claims that the state's national symbols reflect its Jewish majority, thereby ignoring minority cultures; that the continued occupation of the West Bank undermines Israel's democratic character; that the discrimination against the Arab community contradicts the principle of equality; and that religious legislation is incompatible with the democratic principle of freedom.

Although the objections to Israel's twofold identity are many and varied, they do nevertheless have one thing in common: They all presuppose that the state is Jewish in the religious sense of the word. As I will seek to demonstrate, however, if we were to define Israel's Jewishness as essentially national or cultural rather than religious—thus returning to Herzl's original Zionist vision—we would discover that many (if not all) of these objections are rendered null and void, and that, in the final analysis, a Jewish state is not at all at odds with the liberal-democratic ideal.

In order to understand how Israel acquired its “Jewish and democratic” characterization, we must begin at the beginning. The Jewish state was born with two international birth certificates, both of which proclaim a home for the Jewish people: The League of Nations avowed its commitment to a Jewish national home in 1922, and the United Nations reaffirmed this position with the Partition Plan of 1947.²

The latter now seems like ancient history. Indeed, it is rarely referred to in the context of the Israeli-Arab conflict. This lack of interest, however, should not detract from the importance of the document. If we refresh our memory regarding its contents, we might in truth find it quite enlightening.

In the UN Partition Plan, the international community recommended that British Mandate Palestine be divided into two independent entities: a Jewish state and an Arab state. Yet while the Jews constituted only one-third of the Mandate's population—a mere 600,000 out of approximately 1.5 million people—they were allotted over 50 percent of the land. At first blush, this seems rather unfair; based on numbers alone, the Jews should have received only one-third of the available territory. But the prevailing consideration underlying the allocation of land was not sheer numbers. The United Nations Special Committee of Palestine (UNSCOP), which endorsed the plan, made it clear that the new state should serve as a national home not only for the Jewish inhabitants of Palestine, but for the *entire* Jewish people.³

Consequently, when Prime Minister Ben-Gurion and the state's founders drafted the Declaration of Independence some six months later, they, too, described Israel as a "Jewish state, which would open the gates of the homeland wide to every Jew."⁴ The precise wording here is crucial: It is not Israel that is to become a Jewish state, but a Jewish state that is to be called Israel.

At the same time, although the Partition Plan explicitly called for the two states to adopt a democratic constitution, the Declaration of Independence made no mention of the term "democratic" (although it did pledge to "ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex," and to "guarantee freedom of religion, conscience, language, education, and culture"⁵). How, then, has Israel, established simply as a "Jewish state," come to be defined as "Jewish *and* democratic"?

Surprisingly, the answer lies in events that took place just two decades ago. From 1947 to 1992, the Knesset avoided the issue of crafting a constitution for Israel.⁶ Initial attempts to institutionalize a written constitution were met with the staunch opposition of both Ben-Gurion, who believed that constitutional restraints would imperil the interests of the nascent state,

and the religious parties, who objected to any secular constraints on their political power.

In 1992, however, this author had the honor of presenting to the Knesset two human rights-related Basic Laws, the first concerning the preservation of human dignity and liberty,⁷ and the second guaranteeing freedom of occupation.⁸ As Basic Laws, they enjoy constitutional status and override ordinary legislation. And it is here that the phrase “Jewish and democratic” first makes its appearance.⁹

When proposed, these laws were hotly contested. Prime Minister Yitzhak Shamir, under pressure from his ultra-Orthodox coalition partners, attempted to veto them. The religious parties in question were concerned that Israel’s activist Supreme Court would tamper with the Law of Return, which grants special privileges to Jews who settle in Israel.¹⁰ To prevent such an eventuality, they insisted on the inclusion of the word “Jewish” in the laws’ language. In the meantime, the left was content with the designation “democratic” to describe the values of the secular state. Thus was the phrase “Jewish and democratic” born.¹¹

Though Israel’s dual identity came into being through progressive legislation, the definition “Jewish and democratic” is often criticized, by radicals and liberals alike, as a contradiction in terms. A Jewish state, they argue, cannot possibly be democratic, and a democratic state cannot possibly be Jewish. This position rests on a variety of arguments, which, more often than not, are based on a limited and flawed perspective.

One common—and extremely popular—argument maintains that Israel’s national symbols, such as its anthem, are exclusive representations of its Jewish majority’s tradition and values. By disregarding its minority cultures, the state allegedly undermines the pluralistic ethos so critical for a democracy. Yet this is a marginal issue: A national anthem, however important, is not a serious obstacle to true civic equality. Moreover, the example of Canada shows that an anthem may have distinct versions

to accommodate the state's different populations.¹² Likewise, while the Israeli national anthem, *Hatikva*, speaks only of the Jewish people and its yearning for Zion, it can be revised to include a reference to the country's Arab minority and *its* national aspirations. The same can be said of other national emblems.

The argument holds true for Israel's national holidays, as well. Countries generally adopt the holidays of the majority culture or religion. Even in Republican France, which is as *laïque*, or secular, as a country can be, the national holidays are Catholic, and Sunday is the official day of rest. In Israel, the day of rest—although officially Saturday—is rather liberally determined: non-Jews may observe their own day of rest, and employers are legally bound to honor their choice. Israel also has a tradition of respecting Christian and Muslim holidays. For example, as minister of communications, I had occasion to issue stamps commemorating Christmas and Eid ul-Fitr (the former showed the Church of the Nativity, while the latter featured a famous mosque located in Acre). This gesture was approved without so much as a murmur of dissent by Knesset members. The Israeli public, I am therefore certain, would not object to such minor changes in its national symbols. Should there one day be peace, these will prove no obstacle.

Another, more substantial argument contends that in occupying the West Bank, and denying its Palestinian population equal rights, Israel has lost its claim to being a democracy. To become truly democratic, the state must therefore end its occupation of the territories. This argument has, over the past two decades, gained momentum within the Israeli public, and may explain the growing support for a two-state solution (recently endorsed by Prime Minister Binyamin Netanyahu, despite his past opposition to the idea). Indeed, it is my own belief that in the long run, if Israel is to preserve its Jewish and liberal-democratic character, this kind of arrangement is absolutely unavoidable.

Another point of criticism centers on the Arab citizens of Israel. Israeli Arabs, who make up 22 percent of the population, are, so the argument goes, discriminated against and do not have the same opportunities as Jewish

citizens. There is, it must be admitted, much truth to this claim. In areas of policy that are regulated by legislation, Arabs enjoy the same benefits as Jews: When it comes to health insurance, child allowances, and social security, Jew and Arab are treated equally. In areas where administrative discretionary powers are at play, however, the situation is different. Take the example of budgetary allocations: For years, government support for Arab communities has been lower than that given to the Jewish sector. The education system is another example. Arab schools are more crowded than their Jewish counterparts, and their achievements significantly lower. The fact that Arabs are underrepresented in the Ministry of Finance, and in government institutions in general, merely perpetuates the problem.

At the same time, whatever discrimination may exist is diminishing fast. The gap between the financial support allocated to the Jewish and Arab sectors has of late been reduced dramatically.¹³ For example, the disparity in education subsidies has in recent years substantially decreased: When I was appointed minister of education in 1993, the subsidy ratio was 1.7 to 1; today, the ratio is 1.1 to 1. Recent years have also seen greater inclusion of Israeli Arabs in state affairs. There is currently an Arab judge on the Supreme Court and scores of Arab justices throughout the country (indeed, it is common for an Arab to sit in judgment in cases in which the two litigants are Jewish). Raleb Majadele, a Muslim Arab, served as minister of science, culture, and sport in the previous government. Needless to say, Arab citizens have full voting rights, and Arab parties and MKs—many of whom give voice to extreme anti-Israeli sentiments—have an active presence in the Knesset.

In addition, we must remember that discrepancies between the sectors are not always the result of discrimination. Perhaps the best evidence of this is the Christian Arab minority (comprising only 9 percent of the Israeli Arab population).¹⁴ Although they are identical in ethnicity, language, and nationality to Muslim Arabs, the Christians boast remarkable achievements: Their child mortality rate is comparable to that of Denmark, and the percentage of students accepted into university is higher than that of the Jewish

population.¹⁵ Hence, the state cannot be held entirely responsible for the privations of its Muslim Arab minority. Ideological differences and lifestyle choices must also be taken into account.

Furthermore, any difference between the Jewish and Arab communities must be viewed in the larger context of the Israeli-Arab conflict. Because of the ongoing war between the Jewish state and its neighbors, Israeli Arabs do not serve in the army. They therefore do not undergo the socioeconomic equalization effected by military service, and do not enjoy its many benefits, including the vocational and leadership training the IDF provides to its recruits. Should the Israeli-Arab conflict one day be resolved, full equality may become a more feasible goal.

Yet by far the harshest criticism leveled by anti-Zionist—and “post-Zionist”—detractors is that, by its professed identity as a Jewish state, Israel alienates its Arab citizens, and prevents them from feeling like equals. This accusation has nothing whatsoever to do with civil rights or democracy. Rather, it casts doubt on the very idea behind the UN’s decision in favor of two states in Palestine, each with its own national minority.

Minorities—especially native-born ones—often suffer from a feeling of inherent inequality. Indeed, one can understand why the Arab public would take offense at Israel’s definition as a “Jewish” state. Such a definition would admittedly have been more suitably placed in the preamble to the state constitution. However, in the absence of such a constitution, the only practical solution was to incorporate this description into a Basic Law.¹⁶ Of course, it is quite conceivable that different people living in the same country and under the same legal system will interpret constitutional provisions differently: Israeli Arabs would surely feel less like second-class citizens if they chose to emphasize the democratic aspect of the country’s dual character, leaving Israeli Jews to stress both the Jewish and democratic aspects. In any case, the inequality of the Arab populace may indeed be overcome, but only if majority *and* minority both do their part. The Jewish majority must do everything in its power to eliminate any vestige of discrimination, while the Arab minority must realize that any campaign aimed at turning Israel

into a binational state—thus denying the Jewish people their right to self-determination—will only marginalize its position in the public sphere.¹⁷

The final, and perhaps most compelling, claim against Israel's definition as a "Jewish and democratic" state concerns the problem of religion. Israel is a paradoxical country. It is, in many respects, extremely liberal, boasting progressive legislation on such issues as gay rights,¹⁸ support for single-parent families, and abortion. More importantly, Israel has no official state religion, and Judaism does not enjoy any legally privileged status (other than that which derives, as a matter of course, from its being the religion of the majority). Indeed, since Israel inherited the old Ottoman millet system, by which jurisdiction over family law, marriage, and divorce is given to the religious courts of the various communities, the Jewish state recognizes Muslim, Christian, and Druze courts (although only in matters of family, and not criminal, law). These minority groups are, by and large, homogeneous in terms of religious observance, and regard their beliefs and traditions as part of their national identity. They are therefore satisfied with the religious legal system on the whole, and would object to having it replaced by a civil one.

When it comes to the Jewish majority, however, the situation is quite different—and not for the better. Within the Jewish population, there is a large secular segment that, in the absence of civil marriages, is forced to marry in accordance with Orthodox law. Those secular couples who do not wish for their ceremony to be performed by an Orthodox rabbi, or who are halachically barred from marrying (such as in the case of a union between a Jew and a non-Jew), are obliged to hold a civil wedding abroad. There are other issues—such as the de facto limitation of Jewish public transport on the Sabbath and the law against the public display of bread on Passover—that impose halachic obligations on the secular public. And it is here that the conflict between "Jewish" and "democratic" reaches its peak.

There is no denying the cardinal importance of Jewish tradition for the identity of Israeli Jews. There is also no denying that in Judaism, nationality, culture, and religion are inextricably intertwined. Yet it is precisely for

this reason that the definition “Jewish” should be interpreted more carefully than it has been in the past. The status quo is in dire need of reform. Nothing demonstrates this more clearly than the Law of Return.

In many ways, the Law of Return is the most pertinent expression of the state’s Jewish character.¹⁹ Based on the perception of Israel as the homeland of world Jewry, this piece of legislation (enacted in 1950) grants all Jews the right to settle in Israel and receive automatic Israeli citizenship. Because of its obvious privileging of a particular national group, the law has stood at the heart of an ongoing controversy between those who argue that, as a Jewish state, Israel has the right to encourage the return of Jews to its midst, and those who maintain that, as a liberal democracy, Israel must treat all immigrants equally.²⁰ For its part, the Supreme Court has taken a very clear position on the issue: Former Chief Justice Aharon Barak stated that the Law of Return does not negate the state’s democratic values, but rather is a vital expression of the Jewish people’s right to self-determination.²¹ The state, after all, was established as a safe haven for Jews everywhere. At the same time, Barak emphasized, *within* Israel there must be total equality.

In essence, the Law of Return is a repatriation law, and as such falls within the right of nations to bring home their expatriates.²² According to the Venice Commission (an advisory body to the Council of Europe), a state cannot, under European law, provide direct financial assistance to expatriates, yet it can encourage the immigration and naturalization of members of a kin community.²³ Hungary’s so-called Magyar Laws, for instance, which confer special status upon Hungarians living abroad, were deemed acceptable by the commission so far as immigration and naturalization were concerned. In this respect, the Law of Return is no different. Indeed, Israel’s immigration policy is consistent with international law, including the Convention on the Elimination of All Forms of Racial Discrimination—of which Israel is a member—which allows for preferential treatment of some immigrant groups, provided there is no discrimination *against* a specific

group.²⁴ Accordingly, the former U.S. laws directed against Chinese immigration, for example, would now be considered contrary to international law; Israel's Law of Return would not.

Yet there is another, far more challenging charge leveled at the Law of Return. The law's dominant religious aspect, by which a Jew is defined as someone who either was born to a Jewish mother or has converted to Judaism, seems entirely incompatible with the state's democratic obligations. Here a review of the history of the law may prove instructive. When the law was passed, it included no definition of who is a Jew; it thus became the source of heated public debate, and several lengthy battles between the Supreme Court and the government. In the famous case of "Brother Daniel," a Holocaust survivor petitioned the court for the right to be registered as a Jew on his identity card, even though he had converted to Catholicism and was serving as a priest in a Carmelite monastery. While Justice Haim Cohen was inclined to accept the petition, asserting that "A Jew is someone who believes *bona fide* that he is a Jew," the majority disagreed with this subjective criterion, and rejected the application.²⁵ In another case, however, the court ruled that the children of a non-Jewish mother *could* be registered as Jews.²⁶ The religious parties summarily protested, threatening to leave the government unless the Law of Return was amended. The Knesset capitulated, and in 1970 the abovementioned halachic definition of who is a Jew was inserted into the law.

But here the rule of unintended consequences took hold: The reformulation of the law resulted in an even bigger crisis. To appease the secular parties, yet another article was included in the law, one that, at the time, was thought to have no practical consequences. According to this second amendment, a member of a Jewish family—though not himself Jewish—could also enjoy the benefits of the Law of Return. At the time, this was believed to be a mere theoretical issue. After all, who would want to immigrate to a poor, endangered country, other than perhaps Soviet Jewry, which was in any case still locked behind the Iron Curtain? The religious parties accepted the compromise; in time, they would come to regret it.

In an attempt to determine who would benefit from the new clause, a group of jurists from Tel Aviv University (of which I was a member) met with government ministers, arguing that the racial criterion used by the Nuremberg Laws should serve as the basis of Israel's Law of Return; a Jew must be defined as anyone who has even one Jewish grandparent. This would be Israel's answer to the racist doctrines of Nazi Germany. And indeed, the law was revised to apply to all spouses, children, and grandchildren of a Jew, including those who are not halachically Jewish.

Then, in the late 1980s, the gates of the Soviet Union were unexpectedly thrown open, and hundreds of thousands of halachically non-Jewish individuals immigrated to Israel, enjoying the privileges accorded to them by the Law of Return. Naturally, the religious parties want to change the law once more, so as to exclude grandchildren from its ambit. But the train has already left the station: A sizable group of non-Jewish immigrants lives among us, thoroughly assimilated into Israeli society. Although they have a great deal in common with secular Jews, they are still viewed by many Orthodox and traditional Jews as strangers in our midst. Moreover, under religious law, they cannot marry other Jews. To be considered legally Jewish, they must undergo conversion. Yet many of them choose not to, as the conversion process, controlled by the ultra-Orthodox rabbinical courts, is stringent, and requires a commitment to observing numerous religious rites and ceremonies. And so they remain, a singular group of non-Jewish Jews in a Jewish state. Here, too, Judaism seems to fly in the face of democracy.

Yet the solution to these many problems is not, as is often claimed, the elimination of one side of the equation. Israel was founded as a Jewish and democratic state, and Jewish and democratic it must remain. Rather, we must wrest the term "Jewish" from its exclusive religious definition, and interpret it in a more inclusive, cultural sense. The Orthodox criterion for Jewish identity may be supported by an age-old tradition, but it does not

apply to thousands of Jewish communities in the diaspora. By contrast, a cultural understanding of what is meant by “Jewish” encompasses all the different denominations (as well as many would-be converts). It is thus far more consistent with not only the state’s democratic quality, but also with the original Zionist vision of establishing a homeland for the Jewish people at large.

This point bears further elaboration. Zionism, after all, appeared at a specific historical moment, in response to specific historical circumstances. For two millennia, the Jews longed to return to Zion. For two millennia, they suffered oppression and antisemitic persecution. Why, then, did Zionism emerge in Europe only in the latter half of the nineteenth century?

The answer lies in a critical plot twist that occurred in the historical narrative of the Jewish people. Until the end of the eighteenth century, Jews lived in secluded religious communities. The Emancipation changed all that: Jews suddenly found themselves allowed to leave the ghetto, to assimilate into greater society, to enjoy civil liberties and rights. Theodor Herzl, the founding father of Zionism, was a product of this transformation. A thoroughly emancipated Jew, he knew very little about his religious tradition. He only vaguely remembered his Budapest synagogue, could not recite the blessing when called up to the Torah, and did not circumcise his son (a rite today observed by even the most secular of Israelis). Herzl, in this sense, was not unlike hundreds of thousands of Jews living throughout Western Europe, happy to discard Judaism in favor of the European Enlightenment.

So when, after a brief period of optimism, fate turned against them, and antisemitism returned with a vengeance, the Jews were taken by surprise. This was not simply the recurrence of old hatreds, but a betrayal of the very ethos of the Enlightenment. The brutal pogroms that swept through southern Russia in 1881-1884 were supported by the Russian intelligentsia;²⁷ Karl Leuger was elected mayor of Vienna in 1897 on the basis of a blatantly anti-Jewish platform; progressive German students banned Jews from fencing fraternities; and the notorious Dreyfus affair took place in France,

supposedly the most liberal and open of European societies. In short, Emancipation began to look like a fool's dream.

Consequently, the Jews found themselves at a loss. They knew how to deal with traditional antisemitism: It was a religious battle, one God against another. Jews either clung fiercely to their beliefs, or converted to Christianity. Modern antisemitism, however, of the kind based on the pseudoscientific racial theories of the likes of Chamberlain, Gobineau, and Wagner, was something with which they could not contend. It allowed them no escape route.

And so Zionism emerged. More than an old answer to an old problem, it was a new answer to a new problem. Jews throughout the world rallied around Herzl with the slogan "We are one people." Yet just as the persecution of the Jews was no longer religion-based, neither was the Zionist solution. For the first time in history, Jews saw themselves as a people in the national, rather than religious, sense. World Jewry—intellectuals from Western Europe, rabbis from the Pale of Settlement, merchants from North Africa—all were united by a national-cultural bond.

It was therefore quite reasonable for the nascent Zionist movement to assume that the longed-for *Judenstaat*, the future home of the Jewish nation (described in detail in Herzl's novel *Altneuland*), would be a liberal state, where Judaism would be culturally, rather than religiously, determined. Unfortunately, the actual State of Israel has fallen short of realizing this vision.

The aim of Zionism has always been to turn the Jews into a normal people, "a nation like every other." Will Israel ever become a secular Jewish state? Herzl, Jabotinsky, and Ben-Gurion certainly hoped so, but the experience of Israel to date has proven otherwise. For one thing, the ongoing conflict with the Arabs affects the country's capacity to become democratic in a progressive, liberal sense. Yes, Israel is a flawed democracy. But then again, all democracies are flawed, each in its own way. If Israel is

to be compared to other states, it should be not to those countries living in peace and security, but to those that are afflicted by war and violence. By this standard, the Jewish state is doing remarkably well. Nonetheless, the need to perfect Israeli democracy remains. Indeed, the need to free secular-national Zionism from the shackles of the ultra-Orthodox view of Judaism has become a major issue. The Jewish tradition, formulated under circumstances of exile, persecution, and suffering, must be reinterpreted and adapted to the needs of a modern, pluralistic society.

This is no easy task. The Supreme Court has insisted that the two governing attributes “Jewish” and “democratic” must be comprehended in such a way as to make them compatible with each other. Under Basic Law: Human Dignity and Liberty, the court has power of judicial review over all Knesset legislation enacted subsequently to this law, but not over that which preceded it. Yet it is precisely the latter which is most problematic in the context of our discussion. For Israel to become fully democratic, radical changes must be made in legislation that is at present immune to judicial review. These must include the introduction of civil marriage and divorce; an immigration law that takes into consideration the rights of non-Jews; a conversion law that is not exclusively ultra-Orthodox; a law that recognizes all denominations of Judaism; and a Basic Law that protects the freedom of religion.

These are matters with which Israeli society and its politicians will have to grapple in the years to come. The prospects of such legal reforms taking place in the near future, in light of the growing influence of the ultra-Orthodox community, are dim. At the same time, however, Israel is seeing the rise of a more activist secular sector, reinforced by immigrants from the former Soviet Union. Despite legal definitions to the contrary, many non-Jewish immigrants are undergoing a sort of secular conversion: They are attending Jewish schools, serving in the army, and becoming practically indistinguishable from secular Israeli Jews. Whether this process will change the nature of Jewish identity or ultimately die out remains to be seen.

A national-cultural reinterpretation of Jewish identity, of the kind proposed here, will have one more added benefit: Not only will it disentangle some of the most difficult problems of Jewish society, it will also alleviate the tensions that characterize its relations with the Palestinian people and the Israeli Arab minority. A non-religious, non-messianic view of the Jewish state, coupled with an emphasis of its democratic aspects, will solidify support for—and facilitate the achievement of—a two-state arrangement. And it will certainly serve to improve the situation of Israeli Arabs, making them no different from any national minority living in a liberal democracy.

Let us, then, return to our opening question: Can Israel be both Jewish and democratic? The answer, as I hope this essay has shown, is far from simple. If we have the courage to try and establish some sort of honorable *modus vivendi* with our Arab neighbors; if we take upon ourselves the responsibility of reinterpreting the Jewish tradition in a liberal, tolerant manner; and, most importantly, if we have the foresight to elevate Jewish nationalism to a concept fully compatible with a true democratic ethos—then the answer, ultimately, is “yes.”

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Notes

The author wishes to thank his research assistant Assaf Weiss for his devoted assistance in writing this essay.

1. The Declaration of Independence, May 14, 1948.
2. League of Nations, Mandate for Palestine, July 24, 1922. For the United Nations Partition Plan, see United Nations General Assembly Resolution 181 (II): “Future government of Palestine,” November 29, 1949, at <http://unispal.un.org/UNISPAL.NSF/0/7F0AF2BD897689B785256C330061D253>.
3. United Nations Special Committee on Palestine, Report to the United Nations General Assembly, September 3, 1947. Available on the UN website, <http://unispal.un.org/UNISPAL.NSF/0/07175DE9FA2DE563852568D3006E10F3>.
4. Declaration of Independence.
5. Declaration of Independence.
6. Prior to 1992, the Knesset did pass nine Basic Laws dealing with such state organs as the Knesset, the government, and the judiciary. Most of these laws, however, were simply composed of clauses from ordinary legislation, and none of them dealt with human rights and the values that govern the state. See Suzie Navot, *Constitutional Law of Israel* (Alphen aan den Rijn, Netherlands: Kluwer Law, 2007), pp. 46-50.
7. Basic Law: Human Dignity and Liberty, available on the Knesset website, www.knesset.gov.il/laws/special/eng/basic3_eng.htm.
8. Basic Law: Freedom of Occupation, available on the Knesset website, www.knesset.gov.il/laws/special/eng/basic5_eng.htm.
9. On the history of these laws, see Amnon Rubinstein, “Israel’s Partial Constitution: The Basic Laws,” in Mitchell Bard and David Nachmias, eds., *Israel Studies: An Anthology* (2009). E-book available at www.jewishvirtuallibrary.org/jsource/isdf/text/anthologytoc.html; see also Aharon Barak, “Proportional Effect: The Israeli Experience,” *University of Toronto Law Journal* 57:2 (Spring 2007), pp. 369-382.
10. The Law of Return, 1950, available on the Knesset website, www.knesset.gov.il/laws/special/eng/return.htm.
11. To my mind, however, this was hardly a novel concept. Since 1967, the left has constantly evoked the phrase “Jewish and democratic” to argue against the occupation and annexation of Palestinian territories, claiming that if these territories—with their 2.5 million Palestinians—were to remain occupied, Israel could never be both Jewish and democratic. If it were to be truly democratic, and grant every person the right to vote, there would be an Arab majority in the Knesset, and the state

would no longer be Jewish; likewise, if to preserve its Jewish hegemony the state were to continue ruling over the Palestinians without giving them full civic rights, it would not be democratic. The only way to remain both Jewish and democratic, the left maintains, is to implement a two-state solution. The case is eloquently stated by the late historian Tony Judt:

Israel can continue to occupy “Samaria,” “Judea,”... whose Arab population—added to that of present-day Israel—will become the demographic majority within five to eight years: in which case Israel will be either a Jewish state (with an ever-larger majority of unenfranchised non-Jews) or it will be a democracy. But logically it cannot be both.

Regrettably, Professor Judt ignores the part the Palestinians have played in prolonging the occupation. See Tony Judt, “Israel: The Alternative,” *New York Review of Books*, October 23, 2003, www.nybooks.com/articles/archives/2003/oct/23/israel-the-alternative/.

12. The Canadian national anthem has one tune, but two different sets of lyrics, one in English and one in French (both versions are available on the Canadian Heritage website, www.pch.gc.ca/pgm/ccem-cced/symbml/anthem-eng.cfm#a0).

13. Amnon Rubinstein, *Israeli Arabs and Jews: Dispelling the Myths, Narrowing the Gaps* (New York: American Jewish Committee, 2003).

14. Israel Central Bureau of Statistics (ICBS), “Christmas 2007: Christians in Israel,” press release, December 24, 2006, www.cbs.gov.il/hodaot2006n/11_06_274e.pdf; ICBS, *Statistical Abstract of Israel 2009* 60 (Jerusalem: Central Bureau of Statistics, 2009), pp. 87-88.

15. For statistics on child mortality rates, see ICBS, *Statistical Abstract*, pp. 171-174; Israel Ministry of Health, *The State of Health of the Arab Population 2004*, July 2005 [Hebrew], www.health.gov.il/Download/pages/arab2004_291109.pdf. See also Amnon Rubinstein, “Despite Continued Discrimination,” *Haaretz*, June 4, 2003 [Hebrew], www.amnonrubinstein.org/index.php?option=com_content&task=view&id=515&Itemid=101; and the UNICEF website, www.unicef.org/infobycountry/denmark_statistics.html. For statistics regarding Christian Arabs in higher education, see ICBS, “Christians in Israel”; and Rubinstein, *Israeli Arabs*, p. 2. Due to the lack of research in this area, we cannot adequately account for this disparity within the Arab sector (though one possible explanation is the difference in the role of women: Among Christian Arabs, wives go out to work, and families are consequently smaller).

16. Taking the alleged clash between Israel’s “Jewish” and “democratic” character to its logical extreme, anti-Israel activists (like post-Zionist academics) insist that Israel must rid itself of its Jewishness altogether. Tony Judt, for instance, has called on Israel to relinquish “the perverse insistence on identifying a universal Jewishness

with one small piece of territory.... [This] is the single most important factor accounting for the failure to solve the Israel-Palestine imbroglio.” See Tony Judt, “Israel Must Unpick Its Ethnic Myth,” *Financial Times*, December 7, 2009. This is a strange statement, as it seems to deny the ability of any nation-state to achieve peace with its enemies. Moreover, if Israel were to renounce its Jewishness, it would not become a secular liberal state, as Judt assumes, but an Arab-Muslim one.

17. In 2006, the National Committee for the Heads of the Arab Local Authorities in Israel published a document entitled, “The Future Vision of the Palestinian Arabs in Israel.” Outlining the Arab sector’s demands on the state, the committee called on Israel to acknowledge its responsibility for the 1948 *Nakba* (“catastrophe”) and to compensate its alleged victims; to recognize Israeli Arabs as an indigenous national minority and grant it complete autonomy in matters of education, religion, and culture; to ground constitutionally the country’s status as a national homeland for Palestinians as well as Jews; to grant the Arab community equal proportional representation, the power of veto on all legislation relating to the community, and the right to self-administration; to refrain from adopting policies and schemes that favor the Jewish majority; and to concede the Arab minority’s right to maintain national ties with other Islamic countries (many of which are in a state of war with Israel). This document antagonized many Israelis, including many on the left, and created a certain backlash against the Arab leadership in Israel. See “The Future Vision of the Palestinian Arabs in Israel” (National Committee for the Heads of the Arab Local Authorities in Israel, 2006), www.mossawacenter.org/files/files/File/Reports/2006/Future%20Vision%20.

18. The gay community enjoys, in many respects, equal rights (but not the right of marriage). There is a law prohibiting any discrimination on the basis of sexual orientation, and, in a precedent-setting decision, the Supreme Court ruled that a gay partner is entitled to the same benefits as a spouse of the opposite sex (see HCJ 721/94 *El-Al Airlines v. Danielowitz*, P.D. 58(5) 749).

19. See *The Law of Return*, 1950.

20. Sociologist Baruch Kimmerling, for instance, declared that, “The most substantial step toward the normalization and democratization of the state, and toward granting equal civil liberties to all, will be the reform of the laws governing immigration. One cannot overestimate the importance of such a step: A basic political and social inequality is inherent in the Law of Return.” See Baruch Kimmerling, *The End of Ashkenazi Hegemony* (Jerusalem: Keter, 2001), pp. 100-101 [Hebrew].

21. HCJ 6698/95 *Adel Kaadan v. Israel Lands Authority et al.*, P.D. 51(4) (2000), para. 31; Yoram Dinstein and Fania Domb, eds., *Israel Yearbook on Human Rights* 34 (Tel Aviv: Tel Aviv University, 2004), p. 351.

22. See Alexander Yakobson and Amnon Rubinstein, *Israel and the Family of Nations: The Jewish Nation-State and Human Rights* (London: Routledge, 2009), pp. 125-135.

23. European Commission for Democracy through Law, *Report on the Preferential Treatment of National Minorities by their Kin States*, adopted by the Venice Commission at its 48th Plenary Meeting, Venice, October 19-20, 2001.

24. International Convention on the Elimination of All Forms of Racial Discrimination, Article 1(3), December 1965.

25. HCJ 72/62 *Rufeisen v. Minister of Interior* P.D. 16(4) 2428 (1962).

26. HCJ 58/68 *Binyamin Shalit v. Minister of Interior* P.D. 23(2) 477 (1970).

27. In an infamous proclamation, the progressive newspaper *Narodnaya Volya* ("People's Will") explained and justified the violence. See Avrahm Yarmolinsky, *Road to Revolution: A Century of Russian Radicalism* (London: Cassell & Co., 1957), ch. 15. Transcribed into hypertext by Andrew Chrucky, August 2004, www.ditext.com/yarmolinsky/yar15.html.