

CAN ISRAEL BE BOTH JEWISH
AND DEMOCRATIC?

by

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In this chapter I wish to defend the thesis that the idea(l) of a state both Jewish and democratic, is – under some conceptions – both coherent and feasible. Furthermore, such a state can be morally justified.

Some may wonder why I choose to devote the first chapter of my book to a question the affirmative answer to which enjoys such a broad consensus among Jews in Israel. The breadth of this consensus was reflected in the fact that Israel was defined as a ‘Jewish and Democratic state’ in the 1992 basic laws, which are seen by many as parts of Israel’s constitution. This description of Israel is taken for granted by most of Israel’s Jewish political leaders. It was presupposed by the UN Resolution of 29th November 1947, to the effect that Palestine should be divided into two states, both democratic, one Jewish and one Arab. It forms part of the most basic political intuitions of most citizens of Israel, Jews and non-Jews alike, including those whose commitment to democracy is questionable.

However, broad consensus often hides serious internal tensions and even incompatibilities. In Israel, it does lead to our reluctance to take seriously attitudes, from all sides of the political spectrum, that challenge these assumptions. These voices claim that the two features – Jewishness and democracy – are not compatible in principle. They advocate bold recognition of this fact. Practically, they advocate that, at least when the two features contradict each other, Israel should openly declare its commitment to one of them, and give up on the second.

I believe this reluctance is both unwise and dangerous. This is why I set out, at the beginning, to put the idea of Israel as a state both Jewish and democratic on grounds that are more solid than mere repression or denial of the difficulties.

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It is not surprising that the tensions between the Jewishness of the state and its democratic commitments have been subdued in Israel's Declaration of Independence. This is a celebratory document, drafted by the leaders of the Jewish community. The drafters and signers intentionally cooperated in masking the fierce intra-Jewish debate on whether Jewishness is a national or religious identity.¹ Less intentionally, they all cooperated with the very low visibility of the tension between the Jewish state and the rights of its non-Jewish population.²

The asymmetry in visibility between the two tensions becomes very clear in the records of the debate over the constitution in 1950. The Declaration specified transitory governmental arrangements until a constituent assembly produces a constitution, and a legislature is elected under it. The 1948 war that erupted immediately after the state was founded meant that the constituent assembly was only elected in 1949, and it was immediately granted full legislative powers and named the first *Knesset*. Once the urgent need to produce a constitution was gone, the government decided it did not want to go ahead with its enactment. The question was debated at great length in 1950. It is interesting to compare the way the two rifts are treated in that debate.

All speakers addressed the danger of a 'cultural war' between those who see Jewishness exclusively in terms of the Jewish religion, and those who see their Jewish identity as a matter of national and cultural affiliation. Some wanted to use the moment of constitution-making to decide the issue, once and for all, against the religious conception of the Jewishness of the state. They wanted to entrench some form of separation between state and religion in the constitution. Others, including most of the religious representatives, presented the controversy as a good reason against making a constitution. To some of them, Israel did not need a constitution because its eternal constitution should be the Torah. Yet this heated controversy only emphasized the fact that all members of the *Knesset* joined in emphatically distancing themselves from the statement made by Eri Jabotinsky, son of Zeev Jabotinsky, who served as a *Herut* MK. Jabotinsky argued that we needed to address in the constitution the question of the status of the Arabs in the Jewish state; and that the resolution of this question was not simple.

¹ There is no explicit reference in the Declaration to God. The relationships between the Jewish people and their homeland are based on history, the Zionist return, and the UN resolution. At the end, there is reference to 'The rock of Israel' (*Tsur Yisrael*), which may be interpreted as God, but also as the bedrock of the Jewish people. The choice of this ambiguous term was a deliberate compromise between religious and non-religious Jewish leaders.

² The Declaration opens up with an affirmation of the Jewish state. It then goes on to declare that the state will respect the rights of all to freedom, language and welfare, irrespective of national origin or religion. The declaration calls on Arabs to participate in the effort to found the state, and enjoy 'appropriate representation' in its institutions. The democratic institutions of the two states were a requirement of the UN resolution.

For a variety of reasons, the *Knesset* decided in 1950 not to enact a constitution.³ In the first years of the state, devoted to war, mass immigration and consolidation of the state, there was not much political visibility to tensions between the particularistic Jewish character and the implications of universal values. Efforts were all devoted to building the Jewish state. The internal Jewish debates, on the other hand, were quite visible, but generally contained by the combination of the real needs of nation-building.⁴

What may be quite understandable in the first years of statehood, however, is very surprising today. Israel is now a relatively secure, developed country. Moreover, the challenge that Israel cannot be both Jewish and democratic at the same time is now heard explicitly and vocally from all sides of the political spectrum, in Israel and around the world. Ignoring these challenges seems both unwise and dangerous. Such an attitude may make Israeli youngsters more vulnerable than they should be to allegations that the whole idea of a Jewish state is, in principle, unjustifiable. On the other hand, dismissing such challenges as mere anti-Israeliness may obscure important features of internal tensions within Israeli public life.

A telling example of this tendency to over-simplify the problem can be found in the way the then President of Israel's Supreme Court, Meir Shamgar, responded to the claim of Meir Kahane that his party should not be banned under the law specifying that anti-democratic parties should be banned, because the same law also specifies that Israel is a Jewish state, and the two are inconsistent. All his party did, he argued, was to articulate the implications of the Jewishness of Israel. Shamgar dismissed Kahane's claim by saying that Israel's Jewishness should not interfere with its democratic nature any more than France's Frenchness interferes with its democratic nature.⁵ On one level, this may sound a very persuasive answer. But this appearance of analogy weakens considerably when we recall that French citizenship is open to all, irrespective of religion or ethnic origin. Clearly, this cannot be said for Jewishness. True, the particularity of Frenchness is not merely civic. There is an obvious cultural distinctness to it. And recent developments in France, and in all developed countries, suggest that the bonds of citizenship may not be enough to assimilate one into the culture of the host country. In France, too, there may be tensions between French citizenship and

³ For a detailed discussion of the history and the debate, see E. Gutmann, "Israel: Democracy Without a Constitution", in V. Bogdanor (ed.), *Constitutions in Democratic Politics* (London: Gower, 1988), 290-308, and R. Gavison, "Constitutions and Political Reconstruction? Israel's Quest for a Constitution", *International Sociology* 18/1 (2003), 55-73.

⁴ See, for example, the first commission of inquiry, headed by Frumkin, to look into the deep controversy over the education of the children of new immigrants.

⁵ See The Neiman case, 1988.

membership in the French cultural community. Indeed, in many European countries, the acquisition of citizenship now requires a measure of integration into the language and the culture of the host country. These measures are quite controversial, in ways that remind some of the debates about aspects of Israeli reality. While Shamgar's analogy is not totally wrong, a lot of its appeal is lost when we recall that the different non-Jewish groups within Israel are not small groups of immigrants, who may be expected to assimilate into French culture while maintaining some 'privatized' communal features like religion. Non-Jews in Israel are large native populations, most of whose members lived here before massive Jewish immigration, and before the foundation of the state. These communities have their own ethnic, cultural and religious affiliations, and they have no intention or wish to assimilate into Jewish culture. Moreover, Jews and Arabs in Israel are still involved in a persistent conflict, with many violent spells, whose end is not in sight. The conflict is fuelled by serious allegations of violence, dispossession, persecution and oppression, made by Arabs in Israel against Jews and the Jewish state. Israel is in the midst of a region with a huge Arab majority. In addition, since 1967 Israel controls the area between the sea and the river Jordan, which originally was to be divided into a Jewish and an Arab state. Jews are still a small majority in this region, but it is expected that Arabs will become a majority in it within one generation. Against this background, it is hard to accept that the Jewishness of Israel, especially Greater Israel, is as simple as the Frenchness of France.

The tendency of many Jews to hide and distance these tensions between the Jewish particularity of the state and its commitment to civic equality has serious theoretical and practical implications. These in turn facilitate some faulty conclusions. These implications are the reasons I have decided to take the conceptual and political challenges presented to the idea of a Jewish and democratic state more seriously than others. I end up rejecting the challenges. Moreover, I conclude that the Jewish character of Israel cannot only be justified despite its tensions with democracy. In large part, it is based on the very democratic nature of the state. Nonetheless, my analysis shows that there are practices which are sometimes justified by the Jewishness of the state which are indeed inconsistent with democracy. And there are some ideals of supporters of liberal democracy that are indeed incompatible with the idea of a Jewish state. This analysis will thus highlight the costs that the state imposes on its population to maintain its double-identity as both Jewish and democratic; will help us decide if we can and want to pay them; and will identify what needs to be done to help Israel survive as a just state which is both Jewish and democratic.

The challengers to the consensus that Israel can be both Jewish and democratic share the belief that the combination is incoherent, conceptually and morally. They all reject the practical possibility that a democratic country, especially one with a large non-Jewish local population, can maintain a solid affiliation with Judaism

and the Jewish people, and serve as the nation-state of Jews. They all conclude that Israel must choose between these elements of its identity. The polar difference between these two groups of challenges lies in their choice of the preferred element of identity. Kahane and his followers think Israel should be, first and foremost, a Jewish state. Among members of the critical left, Israeli Arabs and radical supporters of Western liberalism many advocate the priority of democracy. The assessment of these challenges requires an examination of the concepts of 'democracy', and 'a Jewish state'. There are senses of 'a Jewish state' that all concede are incompatible with democracy, just as revolutionary Islamic Iran cannot be a democracy. When political decisions are made by religious leaders, according to religious law, what we have is theocracy. Theocracy is inconsistent with the most basic tenet of democracy: the consent of the ruled gives the government its legitimacy.⁶ But there are senses of 'a Jewish state' which may well be compatible with democracy. After all, the US Supreme Court, while affirming the First Amendment with its separation between church and state, described the US as 'a Christian country'. Most European countries are still seen as the 'nation states' of their particular peoples. This fact does not make them, by definition, not democratic.

The controversies concerning the tensions between Jewishness and democracy stem from both the ambiguities in the conceptual analysis of the terms, and from disagreement about the actual and the possible realities of present-day Israel. Let me start with the conceptual analysis.

A Jewish State

There are at least three clusters of meanings to the expression 'a Jewish state'.

The first, and weakest, concerns the identification of the state's population. Israel is a Jewish State, according to this sense, because a large and stable majority of its population, since its inception, is Jewish. This sense of the Jewishness of the state leaves out the complex relationships between Jews in Israel and outside it, as well as the deep questions of the relationships between national and religious aspects in Judaism. The factual truth of the statement applies irrespective of debates concerning 'Who is a Jew', and has been a constant feature of Israel in the

⁶ As we shall see, countries whose populations include strong religious groups may have a variety of attitudes to religious traditions and establishments. Many of them are quite consistent with democracy. Indeed, a total denial of the right to participate in the political life of the country to such religious groups may itself run counter to democratic principles. The matter depends, among other things, on the way particular religions treat the political rules of the game. Even in Iran we can see mechanisms which may suggest a development towards democratization within theocracy. I return to these matters in Chapters 2 and 3 of my *Israel as a Jewish and Democratic State* (*supra*, n.*).

last 53 years. It is worth mentioning that many thought that the Jewish majority will be smaller and may disappear even within the 1967 borders. This has not happened. In fact, the Jewish majority never went lower than 80% throughout Israel's existence, despite a much higher birth rate among the Arabs in Israel. This trend may not continue. Some scholars have argued that the numbers should be seen differently, and that we should look at them in the area under Israel's control, i.e. on Israel/Palestine from the sea to the river. Even in that area, Jews are still a slight majority in 2001. But, more important, so long as the notion of 'two states for two people' still seems the one preferred by most residents of the region, of both peoples, it makes sense to identify pre-67 Israel as the political entity described as 'the Jewish state'.

Some argue that the best way to signify this cluster of senses is not 'the Jewish state' but 'The state of the Jews'. Some of these further argue that this is precisely why Herzl called his vision by the latter name. According to this analysis, Herzl's vision was that the problem of the Jews in Europe was created by the fact they have been a minority everywhere, and the only way the problem could be solved is by establishing a political entity in which they would become the majority.⁷ Be this as it may, it should be clear that the mere fact that Jews are a stable majority in a country does not, in itself, suggest that the régime in this country cannot be fully democratic. Most Western democracies are nation states with a large ethnic majority, and in many of them there is a majority of one religious group, and these facts do not threaten, in principle, their democracies.⁸

In fact, democracy seems to suggest that the identity of the large majority of a country's population should legitimately affect its culture and nature. As we shall see below, democracy is based, in a central and significant way, on taking seriously the actual preferences of the population. In many instances, decisions in democracy are made by a majority-vote. When the majority in a country is Jewish, it is just natural that Jewish interests and concerns will be affirmed, defended and supported. In this sense, Herzl was right: a Jewish majority in Israel is, in itself, an effective guarantee against persecution or genocide of Jews as such by the state in which they live or with its permission or tacit encouragement. Yet we should remember that this ideal of the Jewish state is quite minimalistic, and it applies only to existential concerns shared indeed by all Jews in Israel. This is a very 'thin' sense of the Jewish state. A Jewish majority, for example, does not require a dominance or hegemony of Hebrew or of Hebrew culture, or of Israel's heritage, or

⁷ See on this point Yoram Hazony, "Did Herzl want a Jewish State?", *Azure* 9 (2000).

⁸ It may be claimed that Christianity is more conducive to democracy than other kinds of religion, and that Judaism and Islam, in particular, are inconsistent with democracy because of their totalistic visions of life. This is a controversial claim, and in any event it cannot support a principled inconsistency between a state being Jewish in the sense of having a Jewish majority, and its having a democratic régime.

of Jewish law. Indeed, this was the centre of Aḥad Ha'am's vicious critique of Herzl's book. Aḥad Ha'am pointed out that Herzl's vision does not guarantee that the state of the Jews will have any culture which will be distinctively Jewish, and that it may secure a solution to the problem of the Jews, but not a revival of Judaism.⁹

The relationship between the Jewishness of the state, even in this weak sense, and democracy, gets more complicated in as much as the Jewish majority is not only a description of a stable state of affairs at a given point in time, but rather a situation when the Jewishness of the state reflects a goal of ensuring, strengthening and maintaining that Jewish majority through deliberate policies. Today, even countries with stable and longstanding national majorities are facing serious debates over immigration. Israel is in a much more fragile situation. First, its Jewish majority may not last if Israel does not implement a strict immigration policy welcoming Jews and discouraging and even excluding non-Jews. Secondly, the creation of the Jewish majority in Israel was itself a controversial political process.

I will return to these issues below. At this stage, suffice it to say that the creation and the maintenance of the Jewish majority in Israel raise serious concerns about the interests of non-Jews living in the region.

The second cluster of meanings of 'a Jewish State' generates more complex issues. This cluster connects the Jewishness of Israel to the right of Jews to self-determination. Under this cluster of meanings, Israel is the state in which the Jewish people exercises its right to political state-level self-determination. In other words, Israel is the nation-state of the Jewish people. This is one of the important senses of the term in Zionist thought and in the Declaration of the Establishment of the State (often misnamed The Declaration of Independence). It seems this is the cluster evoked by President of the Supreme Court Shamgar when he said that the 'Jewishness' of Israel did not affect its democratic nature more than did the Frenchness of France. We saw, however, that Shamgar's statement relied on a central ambiguity in the term 'nation-state'. In one important sense of the term, a nation-state is merely the state of its body of citizens, since the nation is civic society itself, and 'nation building' is the process of strengthening the civic connection between citizens and their states. These citizens may be members of many ethnic, religious and cultural groups. This is the process we know in countries of great mass-immigration. Yet even in these countries, there is a

⁹ Aḥad Ha'am, "Altneuland" (a critique of Herzl's book), *Hashiloah* 10 (1903), reprinted in *Cross Roads: Selection of Articles* (1978). It should be noted that Aḥad Ha'am's insistence was an integral part of his own attitude of putting cultural Jewish revival first. His idea of a Jewish cultural centre in Israel was consistent with the idea of a Jewish state, but could have been created by a large autonomous Jewish centre within a non-Jewish state as well.

different sense of 'nation-state'. Under this sense, the nation-state is the result of a deliberate attempt to draw the state's borders so that they contain most and mainly members of the same ethnic-cultural-religious-national group. When this is the sense of a 'nation-state', issues of the relationships between the group whose national home the state is and members of different groups may arise. While France and the US may be regarded as paradigmatic cases of neutral nation-states for their civic bodies, it is important to recall that they have a strong cultural assimilationist tendency, reflected among other things in the requirement of one language. The 'American way of life' and 'Frenchness' are, despite everything, more than just the passport one keeps. Nonetheless, the difficulties that non-English speakers and non-French speakers encounter in the US and France respectively are much less serious than those encountered by ethnic groups living in countries defined as the national homes of a people different from them. When Israel is described as the nation-state of Jews, the implications to the status of its Arab citizens is very different from the issues raised for a Moslem French citizen. For one thing, the Moslem can be described as partaking in Frenchness by being a citizen. The Israeli Arab does not partake in the Jewishness of the state by virtue of his being an Israeli citizen. Shamgar's analogy would have had more force if he had discussed the 'Israeli' nation. But the scholars who do talk about the Israeli nation usually advocate that it will indeed include all Israeli citizens.¹⁰

Historically, as we saw, there is no doubt that Israel was indeed founded as a nation-state in the second, particularistic sense. It is significant to recall that this conception of Israel is not limited to the Zionist movement. This is the way Israel was conceived of by the 1947 UN resolution, and this is the way most people in the world see it to this very day. Clearly, Israel was not established to provide a political home for the population which in fact inhabited its territory in 1947-48. So the questions facing us are, taking into account the historical circumstances of the creation of Israel, can it be a democracy? And can it be justified in principle? Can it be just in fact, and has it succeeded in creating a justifiable state? I shall return to all these questions below. At this stage, all I want to do is identify the senses of 'a Jewish state'. The first sense I mentioned above, that of a state with a Jewish majority, is best described by the term 'The state of the Jews'. The second

¹⁰ For one attempt to argue along this line see Joseph Agassi, *Between Religion and Nation: Towards a National Israeli Identity* (1984). However, Agassi wishes to fight the clerical version of Jewishness. He concedes that Israeliness as a cultural identity is not neutral and merely civic. He thus does not give an adequate explanation of the way in which the legitimacy of ethnic Jewish feeling and revival can be squared with a civic nation-building that will tend to weaken this affiliation. A Palestinian analysis along these lines is given by Azmi Bishara, "The Arab in Israel: Reflections on a Rifted Political Discourse", in A. Bishara (ed.), *Between the Me and the Us: Structuring of Identities and Israeli Identity*, 1999 (Heb). However, Bishara describes himself as a Palestinian, not an Israeli, patriot. It is unclear how this can be squared with asking that Israel will give up its Jewish affiliations.

sense, that of a Jewish nation-state, is best captured by ‘The state of the Jewish people’.

A third cluster of meanings of the Jewishness of the state relates to its religious affiliation. In its strongest meaning, Israel as a Jewish religious state is a halakhic state. Some say that the term ‘a Jewish state’ fits this sense most naturally. The term ‘halakhic state’ is deeply controversial, and many even claim that it has no clear meaning. What I am using here as an ‘ideal type’ of a theocracy is thus a stipulative construct, not a real political ideal. In a halakhic state according to this characterization, all political questions are internal religious ones. In such a state, decisions are made according to Jewish law, as it is interpreted by the authoritative interpreters of Jewish law. Moreover, decisions are made by people who are authorized by religion itself, and religious norms are the ones invoked by the citizenry to evaluate the performance of the rulers. In other words, in a state like this, all public debate is truly religious. It is hard, if not impossible, to think how there is a debate within such a state about the nature of religious law itself, or about the nature of Judaism and whether or not it is exhausted by religion. A Jewish state in this strong sense is a theocracy.

I am not sure there is in the modern world a pure theocracy in this sense.¹¹ But a state may have religious affiliations, which are weaker and nonetheless substantial. These may take the form of incorporating into the legal system some parts of religious law, or of giving limited powers to religious decision-makers. As we shall see, this situation does exist in Israel, based on democratic decisions of the political system itself. Notably, Israel’s laws give religious courts a monopoly over matters of marriage and divorce.¹² In other matters, such as Kosher food certification and burial, laws give official powers to specific religious establishments.¹³

I mentioned above that some people stress alleged differences between ‘a Jewish state’, ‘the state of the Jews’ and the ‘state of the Jewish people’. In other contexts, the three expressions are often used as if they are co-extensive, and people move from one to the other without paying attention to these possible

¹¹ Iran after the revolution may be the closest, but even in Iran there is a constitutional debate about the proper role of Islam and Moslem decision-making in public life.

¹² This arrangement is in fact a remnant of the Ottoman millet system, which was retained by the British authorities at the request of the non-Jewish communities. Israel has not changed the laws granting authority to non-Jewish religious authorities over all matters of personal status. For the Jewish community, a 1953 law gives rabbinical courts exclusive jurisdiction over marriage and divorce of Jews in Israel, and concurrent jurisdiction on other matters of personal status.

¹³ I discuss some of these arrangements in chapter 2 of my *Israel as a Jewish and Democratic State* (*supra*, n.*). All Western democracies recognizing freedom of religion allow religious authorities to exercise such powers if members of the religious community want these religious services. The difference is that in Israel these authorities have monopolies over some areas of life, and that they are themselves part of the government, and financed by it.

differences.¹⁴ Now that these terms are in the law, it is important to leave the ambiguity, and to clarify issues as they arise. This ambiguity has important political functions, and it will be a pity to give them up by enforcing one authoritative interpretation. Similarly, the ambiguity may permit broad agreement on the idea of Israel as a Jewish state in some sense, despite serious disagreements as to the legitimacy of some aspects of this complex idea. For our purposes, however, it is important to emphasize the distinctions between the various clusters of meanings, and the complex relationships between them. Thus, there may be agreement between the advocates of a Jewish nation-state and those who want a Jewish theocracy, that efforts should be made to maintain and strengthen the Jewish majority in Israel. At the same time, they may disagree vehemently about who should be considered 'Jewish' for this purpose, what the public sphere in Israel should look like, and what are the implications for political questions such as the borders of Israel or the continued settlement in the areas occupied in the 1967 war. Arabs may agree that Israel is and may remain a Jewish state in terms of its cultural identity, but object to seeing it as a nation-state with a claim to a monopoly over all the public and symbolic spheres in the state. It is therefore important to see that the mere support of, or the objection to, the idea of a Jewish state, may not say much about the positions of the parties. We need to see, in each case, what specific positions and arrangements the parties support or reject.

Democracy

As we saw regarding the notion of the Jewish state, the characterization of democracy is also very controversial. Unlike the first case, however, the controversy may be described as a movement on a hierarchical spectrum of meanings, starting from a 'thin' conception of democracy and moving up to ever 'richer' ones. Consequently, we should not talk about 'democracy' as an 'all or nothing' matter. While some societies are clearly below the mark of democracy, and some are clearly democratic, in many cases it is more fruitful to talk about societies as being 'more democratic' or 'less democratic' than others. It is also possible and interesting to examine the measure of democracy in a given society over time. Democracy is an 'ideal type' of a political régime with rich variation over time and place. The primary question in stipulating a conception of

¹⁴ The history of legislation is itself ambiguous on this question. The Declaration of Independence used 'a Jewish state', presumably in the nation-state meaning of the term. In 1988, the election law banned a party which 'denies that Israel is the state of the Jewish people', in order to avoid the interpretation that Jewish here meant religious. Yet the Basic laws of 1992, and The Parties Act of the same year use 'Jewish state'. It was said that this change was not meant as a change of meaning, but that the latter term (i.e. 'Jewish state') would be less alienating to the non-Jewish citizens of the state, because the expression does not suggest that the state does not belong to its non-Jewish citizens.

democracy is which questions – theoretical as well as practical – should be discussed in terms of the democratic nature of the state, and which should better be discussed in other terms.

The thinnest conception of democracy, agreed to by all scholars, is the basic principle that *the legitimacy of the government is conferred by the consent of the people*. Many institutional and structural questions are left open by this characterization. Who is included in ‘the people’? Is democracy direct or is it representative? How are representatives elected? How frequently are elections held? Britain, the mother of all democracies, gave the right to vote to women only at the beginning of the 20th century, while Switzerland gave them the right to vote only at the end of the century. The fact that women did not vote was a serious flaw in the democracy of these nations. Happily, it was put right. Nonetheless, it does not mandate the conclusion that they only became democracies when this right was granted. The legitimacy of government, even before women were given the vote, was based on the consent of the governed. Often, this conception of democracy is labeled a ‘*formal*’ democracy, or a democracy of the rules-of-the-game. The crux of democracy under this conception is the set of rules that determine the basic organs of government and the basic mechanisms of decision-making that guarantee the consent of the governed.

Many scholars tend to argue that formal democracies do not deserve the name ‘democracy’. They are willing to describe a régime as a ‘democracy’ only if it includes additional elements, such as a written constitution, a constitutional protection of human rights, a basic commitment to equality and to social justice, liberalism, or a commitment to deliberation as the source of public decision-making. Indeed, the addition of some or all of these elements will yield a richer characterization of democracy than the one I have suggested above. The argument supporting this broader characterization of democracy usually rests on the claim that the formal conception of democracy is too thin; and that such a régime may often produce arrangements and decisions which may be blatantly immoral. The critics mention that ‘democracy’ in our world is not a mere descriptive tool of régime taxonomy. It has a very strong emotive and justificatory ring to it. Consequently, they argue, the characterization of democracy should reflect this fact. It should identify a régime that is justifiable, not a formal type of régime that is neutral.

I concede, of course, that ‘democracy’ has a strong emotive ring to it. Furthermore, I believe the characterization of democracy will be deficient if it does not give an account of this emotive ring. Nonetheless, I reject strongly the alleged implication that the characterization of democracy should *define* it as a just régime, or that it must broaden the characterization of democracy to include ‘non-formal’ elements.

This is because I believe the formal element of basing the legitimacy of a régime on the consent of those ruled by it is an extremely important element, with both theoretical and practical significance. It is important to have a term that will centre on this aspect of régimes. This was the consideration that led Plato and Aristotle to use the term ‘democracy’ to describe government by the demos – by the people. True, democracies may generate, and have generated, very bad policies. But so have ‘thick’ democracies. Besides, we can identify additional elements, which may make democracies more valuable and less prone to injustice. In many cases, these elements will *limit* the democratic nature (in the formal sense) of the régimes. It is better, therefore, to identify these elements in a way other than including them within the very definition of democracy itself.

An additional advantage of the formal, ‘thin’ characterization of democracy is that it is inclusive – it covers all the régimes that have a claim to be called democracies. Any additional element may exclude some of these régimes. Britain does not have a written constitution, and its constitutional protection of human rights is incomplete and recent. India, the largest democracy in the world, is not very liberal. And the US does not have a firm commitment to social justice. Israel, too, is still struggling with the questions of a constitution and a bill of rights. If we include these elements in a definition of democracy – all these countries may be excluded from the family of democracies. I believe this implication of the broad characterization of democracy should lead us to reject it.

But most important is the fact that the formal element of requiring the consent of the people to legitimate their government is very far from a neutral, incidental feature of democracies, which cannot justify the strong emotive significance of the term. The requirement of consent as the basis of political power indicates that democracy is committed, first and foremost, to *humanism*. It takes seriously the *actual* preferences and wishes of the public. It gives individuals the *positive liberty* and the legal power to participate in the decisions affecting their lives and to choose their leaders. This principle, and its moral significance, is far from being self-evident or trivial. Often, political leaders who lose elections argue that the results are anti-democratic. Often they mean that the public was wrong. It may have been. But democracy is, at least in part, about respecting what the public in fact wants, not what it should have wanted. There is in a democracy a structured deference to the actual wishes of the electorate, giving them priority over the preferences and choices of its philosopher-kings, rich people, priests or noblemen.¹⁵ This deference is a very meaningful choice, and it has never been free

¹⁵ The preferences of the electorate are given priority even over those of its elected representatives, since the public has the right and the power to change them at will. Between elections, however, the relationships between preferences of the people and their representatives is more complex. This relationship is a virtue of what the federalists and Mill saw as the republican element of representative democracy, which they clearly preferred to its more populist versions.

of controversy. True, many democracies contain structured elements, which are designed to limit the impact of the populist preferences of the public on specific issues. But such limits, important as they are, should not obscure the basic commitment in a democracy to let the people themselves decide.

I can return now to a point I made above: many of the elements, which are advocated as necessary requirements of democracies, such as liberalism or the protection of human rights, are not mere additions to democracy, making it richer and broader. Often, these elements are a well-designed *limitation* on the free play of the democratic principle. Many such limitations are in fact justified and necessary. But it will help us keep our thought clear if we see them as independent elements of the régimes in question rather than as a part of the definition of democracy itself.¹⁶

In Israel, and in other divided countries, there is an additional reason for adopting the thin, formal characterization of democracy. The commitment to democracy is supposed to unite all segments of society. It should be a part of the shared rules of the game. This will be made much more difficult if we add to the definition of democracy notions such as liberalism, which may be alienating to important parts of the population who do not share this world view. We saw that Israel has serious and complex rifts between parts of the population. These rifts mean that there are structured conflicts of interests and preferences between these groups. In such societies it is of special importance that the adoption of rules of the game will stress a distinction between a shared framework within which political power is controlled and divided, and between the political decisions generated by this political structure – which will often be very controversial. Democracy is one of the central elements of the shared framework, since it emphasizes the equal right of members of the public to participate in the decisions concerning them and their lives. However, if we enrich the characterization of democracy to include questions of values and preferences, we may turn many of the controversies in societies to debates about whether or not it is a democracy. This does not help the commitment to democracy to be a unifying force. An enriched democracy may lose its claim to the allegiance of all segments of the population. As a result, some groups within society may find the idea of democracy itself as excluding and oppressive. Under such circumstances, democracy cannot establish a decision-making framework which will legitimate the government.

It must be stressed that advocating the adoption of the narrow conception of democracy as rules-of-the-game – as a part of the shared framework for thought, discussion and political activity – is very different from the attempt to grant formal

¹⁶ Some human rights are required if even a thin democracy is to flourish, such as the right to vote and to be elected, and freedom of speech and association. The relationship of other rights, such as freedom of religion or equality, to formal democracy is more complex and contingent.

democracy the halo of a necessary, definitional moral justification. The argument does not ignore the fact that respecting the actual preferences of the population may in fact yield terrible, even atrocious results. A society following only formal democracy may very well dominate, oppress or even exterminate its minorities, all in the name of the wishes and preferences and interests of the majority. In other words, saying that a society has effective formal democracy does not say that its policies and practices are just. Ironically, many criticize the initial move – the adoption of the narrow sense of democracy as a part of the shared political commitment – which stress the distinction between the rules of the game and the justness of their products - precisely because of its alleged contribution to the legitimization of régimes which only have a formal democracy.

This is a complex matter. A similar move has often been made against positivistic theories of law, arguing that they generate a tendency for people to obey laws even if these laws are patently unjust. The conclusion of the critics was that it is better to adopt characterizations of law that will make it a definitional matter that all laws are justified, or that, in other words, immoral ‘laws’ are not really laws at all. People do have an obligation to obey the law, claim the critics, but this obligation is only justified if the laws are just. Hence, to buttress the tendency to obey the law, we need to define it in such a way that all laws will indeed be norms that ought to be obeyed.

I cannot enter this fascinating debate here, although it is relevant to our concerns, and I return to it elsewhere.¹⁷ Here I shall only say that I accept the fact that formal democracies may generate laws and practices which are blatantly unjust. My preference for adopting the narrow conception of democracy as the shared political framework is in fact strengthened by this awareness. As far as I can see, the misleading and dangerous tendency to think that democracies can do no wrong is encouraged by the rich characterization of democracy, precisely because such democracies claim that they have built-in mechanisms which guarantee against immoral laws and practices. The belief in these mechanisms may thus enhance the tendency to think that such régimes can in fact confer on their actions the moral legitimacy which makes obedience justified. The narrow, formal conception of democracy explicitly leaves the question of the morality of its products open. It presents the question of the morality of the régime’s actions, and hence of the duty to obey them, as a primary moral and political question. It does not confuse us by presenting these matters as necessary implications of a conceptual analysis of our basic concepts. The morality of our institutions does not

¹⁷ Chapter 3 my *Israel as a Jewish and Democratic State* (*supra*, n.*). For a discussion of this point, and an explanation of the power of the non-justificatory characterization of law see Ruth Gavison, “Natural Law, Positivism and the Limits of Jurisprudence – A Modern Round”, *Yale L.J.* 91 (1982), 1250.

usually benefit when we present it as a conceptual matter. Thus no major institution of society, be it the form of régime or law, should be characterized, *a priori*, in a way that presents them as worthy of our obedience and respect.

At the same time, it is also important to note that formal democracy, despite its 'thinness', is not completely value-neutral. It has significant moral and institutional implications, in addition to the fact that it reflects humanism and a commitment to the 'positive liberty' of individuals. First, there are basic human rights that are required by democracy in its narrow sense: notably, they include the rights to vote and to be elected, as well as rights to freedom of expression, access to relevant information, and freedom of association to promote political goals. Secondly, democracy involves a structural commitment to equality, at least in the form of the principle that each person has one vote. Without these elements we do not have democracy in its narrowest conception. In other words, even in this conception of democracy there is a structural protection of some human rights. Hence, even in this conception, there may be internal tensions between elements of democracy. Can democracy limit the freedom of expression of anti-democratic forces? Can it ban anti-democratic bodies from participation in its elections? Nonetheless, the narrow conception of democracy does distinguish between tensions which are immanent to the notion of democracy itself, and between tensions and even conflicts between elements of democracy and other things that we cherish and value. The latter may include values such as the wish to protect human rights, or conceptions of the good life such as liberalism, nationality, religion or socialism. In this it is different from richer conceptions of democracy, which present these tensions as if they, too, are internal and immanent to democracy itself. I see this difference as an advantage of the theoretical exposition which I advocate. I prefer to talk about tensions and conflicts between elements of democracy and other values rather than the conflation of all these various values under the emotively charged term 'democracy'.¹⁸

Against the background of the discussion of this subject in Israel, I want to mention three elements, which are *not* a part of the conception of democracy which I am advocating. The first is a commitment to human rights, other than those required by the narrow conception of democracy itself. The second is that conception of the neutral liberal democracy which is advocated by some of the

¹⁸ Human rights, too, may conflict. We do not see this possibility of conflict as a reason against endorsing the ideal. But liberalism and socialism, for example, may be inconsistent. Conflating both of them under 'democracy', or even arguing that just one of them is a part of 'democracy', may turn all serious political debate into a debate about the meaning and scope of democracy. I join the many scholars, like Bobbio and Parekh, who invite us to resist this result. The danger has increased substantially once the notion of rights was extended to rights of groups, so that the tensions and conflicts between rights, and between them and the preferences of majorities, have become even more pronounced and central.

Western scholars. The third element is the presence of an entrenched constitution, including a Bill of Rights, and judicial review.

According to my analysis, democracies may include an institutional protection of human rights, constitutional or otherwise, and they will tend to include such effective protection more than non-democratic régimes. Indeed, most modern democracies do have constitutions with Bills of Rights. Nonetheless, the absence of such explicit protection should not exclude formal democracies from the family of democracies. Similarly, democracies may well be liberal, and they may even tend to be liberal if they are stable democracies. Nonetheless, a country which exhibits the features of a formal democracy, and has generated, at times, illiberal policies, should not be excluded for that reason from the realm of democracies.

Two important points should be made on the relationships between democracy and human rights. I have already mentioned that even formal democracy requires the effective protection of some human rights, including the rights to vote and be elected, freedom of expression and freedom of political association. For these rights, democracy and human rights are indeed one and the same. Secondly, the incorporation of human rights as a part of the definition of democracy may in fact weaken their force. Typically, we believe that human rights are binding on all régimes, democracies and non-democracies alike. In fact, their power to defeat the preferences of majorities stems precisely from the fact that their validity is *not* derived from the preferences or votes of social majorities. Basic human rights, like the right to human dignity and freedom, equality before the law, due process, freedom of religion and conscience, all derive from moral principles that we deem universal. The Universal Declaration of Human Rights was not intended to apply only to democracies. In fact, it is quite clear that protection of human rights is more needed in non-democratic régimes, where the powers of public scrutiny and free press are more limited. This alleged universality of human rights should be an argument against making it a definitional element of just one form of political régime.

Critics may concede that human rights *should* be binding on all régimes, but argue that it is nonetheless a defining mark of democracies that they make this commitment a part of their chosen political régime. Indeed, the question whether human rights issues should be seen as internal or external to democracy is primarily a theoretical one. It relates to issues such as clarity of thought and the usefulness of conceptual frameworks and not to the issues of practical political morality themselves. The impact of the choice on practical politics is indirect and indeterminate. I have explained above why I prefer to see human rights as external constraints on democracy and not as internal elements of it. My preference is strengthened by observing the dynamics of human rights struggles in contemporary societies. Often, groups within societies with competing visions of the good life enlist human rights rhetoric for their political struggles. In many such societies,

part of the public controversy concerns the very nature of the good life and the purposes of the state, as well as the limits and implications of democracy. In such divided societies, it is important that human rights are not presented as a part of the (contested) vision of democracy, but that they are given the status of a constraint on democracy itself. This presentation of human rights as demands that must be protected within both non-democratic and non-liberal orders may strengthen their appeal within groups which resist some conceptions of democracy or liberalism.

The claim of human rights to universality is one of their sources of strength. At the same time, the alleged universality of human rights also means that they must be very 'thin', and not be dependent on political, social and cultural contingencies. A commitment to human rights must be shared by all societies and régimes, and by all groups within societies. Human rights must therefore be an element unifying society, and not a divisive one within it. The claim of human rights to universality is of course normative and not empirical. The very fact that some segments in society do not recognize these entitlements does not, in itself, detract from their claim to being universally binding. Nonetheless, the very claim of universality itself must be widely shared, lest human rights rhetoric be seen by some groups as mere tools in the hands of their opponents.

This dual nature of human rights may be clear in principle and hard to apply in practice. The Universal Declaration of Human Rights contains, mainly, rights that have indeed gained universal acceptance. Nonetheless, there are many debates about the concrete arrangements which are required by a commitment to these rights. In part, these debates are based on the fact that almost none of these rights is absolute, and that perfect protection of one right can only be achieved at the cost of denying another. It is not hard to find individuals and groups committed to human rights who debate bitterly on issues of how to resolve conflicts between these rights. It follows that the requirements of human rights should be interpreted in a minimal way, letting the institutions and processes of each society find the concrete arrangements suiting their situation. If every public debate becomes a controversy about protecting rights and infringing them, we leave no space for legitimate debate in which neither of the sides is the 'enemy' of human rights, and in which both are seeking to find an arrangement that meets both their value preferences and human rights constraints. The expansion of human rights discourse obscures the distinction between the things I believe in and want to fight to promote, but on which I accept that a different democratic decision is legitimate and binding, and those situations in which I feel the power to reach an opposite decision either does not or at least should not exist at all. If all my preferences are required by the commitment to human rights, none of the preferences of my opponents are legitimate. This framing of human rights discourse may, in the long run, be bad for my preferences and for the power of human rights discourse itself.

It follows that we should explicitly acknowledge that a rules-of-the-game democracy may well generate different arrangements in areas such as social justice, welfare rights, enforcement of morals, and state and religion(s) relations. Different societies may reach a variety of arrangements on the status of women or the scope of the autonomy of important sub-cultures. Such a conception of democracy is called 'formal' because it contains very few constraints on the content of the arrangements adopted by its institutions. Its guarantees are mainly structural, not substantive and material.

Most Western democracies are liberal. Many define liberalism as a broad protection of human rights, and identify this element as the one giving liberal democracy its justification. This is a huge subject, and I cannot enter it here. For my purposes, suffice it to say that the meaning of liberalism and its rationale and desirability are both the subject of great debates. I will characterize liberalism as that political morality which gives individuals and their autonomy a place of pride. In this sense, one of the basic justifications of democracy, in all its senses, is indeed liberal. However, many scholars and advocates of liberalism have developed a theory that liberalism requires state 'neutrality' vis-à-vis the conceptions of the good of their citizens. The idea is that liberal democracy gives primacy to the 'right', which is the framework dealing equally with all citizens, while abstaining from evaluating the 'good', which can be interpreted differently by individuals and groups. We can say that 'neutral' conceptions of liberal democracy largely 'privatize' the conceptions of the good and the non-civic affiliations of their citizens. This privatization permits the liberal state to disregard the 'private' and particularistic visions and aspirations of their citizens, or at least to be indifferent to them in its deliberations. The state may choose between two possible attitudes to these 'privatized', non-civic affiliations and preferences. It may create a 'wall of separation' between the state and these activities and preferences, prohibiting the state's involvement or financing of them in any way. Or it may adopt a more moderate attitude, under which it treats all private preferences of the citizens with 'equal concern and respect'. Neutrality under this weaker conception does not prohibit support or financing, but it requires that such support itself be neutral, not involving the preference or the hegemony of any private preference over another.¹⁹

One of the great contemporary debates within liberalism concerns the question whether neutrality is either possible or desirable, and whether it should be seen as a

¹⁹ The USA tried to take the first approach towards the establishment of religion, whereas many European countries have adopted the latter one. But the strong anti-establishment attitude of the American Supreme court (a wall of separation) has been eroded as religious groups succeeded in persuading legislatures on both the state and federal level that total separation was in fact discrimination against religion. Consequently, there has been a tendency to uphold public financing of non-religious services given by religious schools or institutions.

defining feature of liberalism. I tend to the view that liberalism does not require neutrality, and that neutrality, even if possible (which I doubt) is not necessarily desirable. But for my purposes here, I do not need to take a stand in this debate. The mere fact that the debate exists suggests that it will be a mistake to *define* democracy in terms of the neutral conception of liberalism. Liberalism is an important theory of political morality. I am a liberal who is happy that liberalism exerts such a powerful influence on contemporary societies. However, as a particular theory of political morality it cannot be a defining feature of democracy, which is a type of régime. While democracy may be more likely and stable in liberal societies, it is quite possible and desirable to have democracies in non-liberal societies as well.

I return to this issue below, as I discuss the question whether a particularistic nation-state may be justified in principle.

A Jewish and Democratic State?

I can now use the conceptual clarifications provided above to return to my main question: can a state be both Jewish and democratic? Is the combination conceptually possible? And can such a state be justified in principle?

I mentioned above that the claim that it is impossible for Israel to be both Jewish and democratic comes from voices within the intra-Jewish divide and from advocates of the Arab side in the Arab-Jewish divide. In fact, two types of claims are often grouped under this heading. The first is that the combination is conceptually impossible: no state may be democratic and at the same time be affiliated exclusively with one particular religion or nation. The second is that it is politically impossible that Israel, with its special historical features, be such a country. I will treat the two challenges together, but it is important to see that the claims are different. The first is much stronger than the second, but it is invoked since the strength of conceptual impossibility is much easier to show than that of a contingent, political one.

Let me start with the internal Jewish challenge. Meir Kahane and some of the ultra religious streams, as well as some radical secular Jewish critics, claim that democracy and Jewishness contradict each other and are therefore incompatible. All challengers take 'Jewishness' here as signifying religion and religiosity of a particular kind. They debate whether Israel should prefer the Jewish element, or whether it should accept the primacy of the requirements of democracy. It is quite clear that this challenge is justified if we interpret 'Jewish State' as a Torah state in the strong and full sense of this term. A state whose decision-making is made by religious authorities and according to religious laws is a theocracy, and its presuppositions are indeed incompatible with those of any democracy. Yet we saw

that, even if we accept that part of the Jewishness of the state is a special connection between it and the Jewish *religion*, it does not follow that Israel must be a theocracy. Some even claim that the Jewish religion itself, in its eternal wisdom, has developed models under which a Jewish sovereign society should be, or at least may be, democratic. A decision by the majority to undertake arrangements which may give public stature to religious symbols and rituals, or the willingness of the majority to give legitimacy and public sanction, in some areas, to religious institutions, are not necessarily anti-democratic. It may well be argued that an obstinate refusal to do so may itself be inconsistent with the commitment of the state to freedom of religion.²⁰ Such arrangements are based on the consent of the governed, in decisions made by their elected representatives, and not on the religious beliefs of part of the population. Democracy may indeed define the state as secular, as was done in Turkey and France. Under such circumstances, religious parties may indeed be unconstitutional in many countries. Nonetheless, as the examples of both Turkey and Algeria attest, the banning of religious parties in deeply religious states may itself raise serious issues of democracy. Anyway, many Western democracies have not chosen to do so, and their governments often include parties which are explicitly Christian.

The conceptual challenge interpreting Jewishness as theocracy, therefore, is either too powerful or not powerful enough. Even Iran, self-defined as an Islamic country, with religious authorities in most positions of power, has democratic features. And most Western democracies define themselves, at least culturally, in religious terms. To assess the challenge we need to go beyond conceptual analysis and look at Israel's concrete arrangements. Israel does have religious education which is financed by the public; it has a religious monopoly over matters of personal status; and the definition of 'a Jew' in the Law of Return is now religiously based. I will discuss all these arrangements below. While all of these arrangements are debated, and some are deeply flawed, I fail to see how they undermine the democratic nature of the Israeli régime. Kahane invoked the normative and conceptual claim of non-compatibility, and was rejected, precisely because all the élites in Israel, including religious ones, concede that Israel at present is *not* a theocracy. Furthermore, he has made his claim precisely in order to challenge this view, and to impress on the Israeli public the inconsistency of the view of their leadership. Some praise the present situation, and want to strengthen non-religious features of the state and its public sphere, others lament the situation and seek to change it in the other direction. The political struggle in Israel

²⁰ These subjects, of course, are not unique to Israel. Even under the First Amendment there is a fierce debate about the relations between freedom of religion and the non-establishment principle. The USA legal system has accepted the legitimacy of various types of 'accommodation' of religions, which is in effect a willingness to give religious authorities public space. And it has official financing and grants a role to religious officers in all parts of public life, including the army.

presupposes that these arrangements will be made by the people, including many non-Jews and non-orthodox Jews. At present, the Jewish nature of the state does not make Israel a theocracy.

The challenge, however, does not stop here. We can now turn to the Jewish-Arab divide. Arabs usually do not challenge the legitimacy of connections between states and religion. Even non-theocratic Arab régimes, who are struggling against Islamic fundamentalism, usually affirm a strong affiliation between the state and Islam. Their challenge therefore concerns the consistency of Jewish particularism with democracy, when Jewishness is not necessarily only religious. Indeed, we saw that there are at least two further, and related, senses to the Jewishness of Israel: a state with a Jewish majority, and the state where the Jewish people exercises its political self-determination.

Again, in conceptual terms it is hard to see why these senses of Jewishness should conflict, in principle, with democracy. Most of the European countries were founded as nation-states, with a deliberate effort to fit political borders with ethnic concentrations. Full citizenship was not only a matter of a legal-civic affiliation, but included aspects of history, religion, language and culture, all of which were particularistic. Cultural and ethnic minorities within these states were recognized as vulnerable groups, and various mechanisms for their protection were developed. Moreover, all this is not a mere matter of obsolete history. In fact, it is the centre of public debate in many different societies all over the world. After the disintegration of the Soviet Union, many central and Eastern European countries are struggling anew with these issues. In some parts of Europe, as in the former Yugoslavia, these issues have generated long and bloody conflicts. Furthermore, globalization and intensive waves of immigration mean that almost every country, especially in the developed world, is now facing the task of squaring democracy with new multi-ethnic and multi-cultural realities. In many places, ethnic groups are considering and favouring a quest for political self-determination, often in separate states. This takes place even in states which have a long tradition of dealing with ethnic and cultural differences within one political framework, such as Canada, Belgium and the former Czechoslovakia. The wish to exercise national self determination, often in a separate state, is not an idea foreign to the 20th century, and will probably follow us into the third millennium.

Indeed, the interpretation of 'Jewishness' adopted by most of the Jewish élites in Israel, and which is reflected in the UN resolution 181 of 1947, and in Israel's constitutive Declaration of the Foundation of the State of 1948, is quite clear. Israel is a Jewish state in the sense that it has a Jewish majority, which will enable it to control immigration and security in a democratic state. Giving Jews their own state was seen as an implementation of the universally recognized principle of national self-determination. Israel committed itself to grant all Jews a right to return to their homeland, and saw this commitment as a central part of its *raison d'être*. At the

same time, Israel undertook to grant its non-Jewish citizens full and equal rights in the emerging state.

In principle, this conception of a Jewish and democratic state is not different from that of many other nation-states. Therefore, the challenge of the possibility of a state that is both Jewish and democratic must turn to specific, contingent facts about the history and the present reality of Israel. Elsewhere,²¹ I analyze some of these factors and indicate the complexity that they add to the picture, showing how the complex interrelationships between religious and ethnic identity do create tensions within the Israeli régime and democracy. In addition, internal rifts among Israeli citizens may create an inability to secure majorities for some of the contested elements of Israel's régime, both those related to Jewishness and those related to democracy.

Here we must address another semi-conceptual challenge raised against the compatibility of democracy and Jewishness, one that treats Jewish particularism together, irrespective of its religious or national or cultural origins. In a nutshell, the challenge is that a country dedicated to a particular tradition, and defined as the 'home of the Jewish people', cannot, by definition, give equal status and rights to its non-Jewish citizens, as is required by the idea of democracy. In a sense, it is claimed, non-Jews will be second class citizens in the Jewish state even if their civil and political rights are protected to the full (which they are not and unlikely to be). While this is allegedly true for all non-Jews, the main grievance is that of the Arab native population, which is 'excluded' out of its own homeland.

Responses to this challenge vary. Most of those who accept the major premise (non-Jews are by definition second-class citizens in a Jewish nation-state) seek either to justify this state-of-affairs, or to change it. Patterns of justification usually centre on the claim that denying Jews a state of their own will undermine their right to national self-determination. Many of those who seek changes, Jews and Arabs alike, advocate that Israel should become 'the state of all its *citizens*', thus stressing its commitment to democracy and civic equality of individual citizens, 'privatizing' their non-civic identity. Others concede that community structure is important, and seek to gain recognition for the fact that Israel should have a public commitment to the other *communities* in it, especially the Arab one. Radical writers of this persuasion talk about Israel becoming a bi-national state. For our purposes here we need to stress one point. These challengers argue that Israel can be a 'real' or a 'full' democracy only if it gives up its Jewish distinctness. To do that, it may become either a state in which all non-civic affiliations are privatized, or a state in which the state treats all ethnic and religious groups equally and neutrally. Clearly, this vision is unacceptable to a large majority of the Jewish citizens of Israel. Some of them do not care if Jewishness indeed undermines

²¹ In Chapters 2 and 3 of my book, *supra* n.*.

democracy, but many others argue that some Jewish distinctness is fully compatible with, indeed it may be required by, democracy.

To evaluate this challenge we need to look more closely at its substance. There are many variations to this challenge, but its crux is always the same. Citizenship is more than holding a country's passport and having political rights within it. Membership in a society has cultural, historical, economic and political aspects as well. One scholar distinguished between a 'liberal' citizenship, which consists only of individual civil and political rights, and 'republican' citizenship, which includes also membership in the collective ethos and its definition and development. A state actively devoted to the cause of Jewish self-determination leaves its non-Jewish citizens, especially the Arabs, excluded from the sense of participation in the larger national aspirations and debates. They are alienated from the country, they do not feel that they belong, and that the country is 'theirs'. In fact, they often feel as if they, Israeli citizens, are less central to the country's well-being than Jews who are citizens of other countries.

This feeling of alienation gets worse when one recalls the historical and political background. Before the Zionist immigration to Israel, at the end of the 19th century, Arabs were the majority in Palestine. Arabs consistently objected to the idea of establishing a Jewish state in any part of Palestine. They rejected the 1947 UN partition plan, and tried to conquer the whole of mandatory Palestine. When the Jews won the 1948 war, hundreds of thousands of Arabs left their homes within what would become Israel, thus creating the seeds of the problem of the Palestinian refugees. As of this day (beginning of 2002), Palestinians do not have a state of their own. Attempts to reach some kind of political agreement between Israel and the Palestinians failed, and collapsed into a long period of violence starting in October 2000. The Arab citizens of Israel need to negotiate their status against the background of the absence of political self-determination for Palestinians, while they are seen by many Jews as a fifth column and potential (if not actual) supporters of their enemy. Consequently, neither Arabs nor Jews were eager to have Arabs join Israel's security forces, and so Arabs are excluded from one of the main melting pots and generators of mobility of Israeli society – military service. It is not only that Arab citizens do not feel they 'belong' as equal citizens in Israel. In many ways, they feel that their Israeli citizenship was forced on them, and that 'their country' is in constant conflict with 'their people'. Moreover, their country is the power that dispossessed their communities, and that destroyed, or seriously weakened, their majority and their hold on the land.

It is important to draw this picture in some detail to show that the challenge here, despite appearances, is contingent and not conceptual. The intensity of the conflict and the alienation created by the Jewishness of Israel is not only the result of the incompatibility, in principle, of democratic citizenship and being an ethnic minority in a nation-state. It is primarily the result of the past and the present of the

conflict in the region. Two distinct questions are involved here. First, in the foreseeable future, is it likely that there will continue to be a major difference between the way Jews and Arabs feel about Israel and each other? Secondly, if the answer to the first question is 'yes', does that mean that Israel cannot be a democracy? Many who care deeply about the democratic nature of Israel wish to belittle or deny the significance of the affirmative answer which must be given to the first question. I will argue below that the persistent difference between Jews and Arabs, and the wish to deny it, are both important ingredients of the deep tensions between the Jewish nature of Israel and its commitment to democracy. Nonetheless, I do not believe that these facts prevent Israel from being a democracy.

A strong sense of equality and of membership in one civic society is a central and important ingredient of social cohesiveness and 'nation-building'. Its presence means that the prospects of stability of the society and its political structures are good. But these factors are not related only, or even mainly, to the character of the régime, so they are unlikely to affect, in themselves, the characterization of society as democratic. In many divided and plural societies, democracy is the régime found most suited to help in bridging deep gaps between groups within the political community. Under such circumstances, it is quite probable that some parts of the population may feel alienated from the country, and especially the government, when the latter upholds policies and values which are anathema to the views of the opposition. Such feelings do not necessarily indicate a weakness of democracy. On the contrary, they may indicate its strength and robustness. The crucial question here is not the nature of the régime, but the relationships between the various groups. In all countries, democratic and non-democratic alike, the situation of minorities may be vulnerable. This is especially true when we are looking at 'chronic' minorities, groups which remain weak minorities on most issues and at all times. Such groups, often ethnic or religious minorities, exist in many countries. Often, they do feel alienated from the state and the government. This is especially true if members of the group are discriminated against, and if they are excluded from the centres of power. So long as the members of minority groups have civil and political rights, and so long as their basic political rights are effectively protected, we cannot conclude from the very existence of minorities, even alienated minorities, that their state is not a democracy.

Jews (and Moslems) in the USA, for example, are a chronic minority. The large majority of Americans are Christian. Most Americans, even those who do not observe, see themselves as Christian, and the country itself defines itself as a Christian society despite the official constitutional separation between Church and State. Jews who actively maintain a Jewish identity may thus feel some alienation from the American public culture. Similar issues of membership and identity exist in all countries, and they should be addressed. In themselves, they do not shed a

doubt on the democratic nature of the country. We can see this point clearly when we compare the situation in the USA and in South Africa before and after blacks were granted civil and political rights. In both countries, the status of blacks once did raise serious doubts about the integrity of democracy. Blacks lived in the country. In South Africa they were the large majority in the country. But they did not count as citizens. Yet many blacks in the USA and South Africa today still feel deep alienation and discrimination. This is a very serious problem for both countries. It is not a good idea to suggest that it can be remedied by making the countries more 'democratic'. The problem goes deeper and higher than that.

In Israel, too, it is not only Arabs who feel alienated and excluded. Quite a lot of the cultural tensions within Jews stem from the fact that the Zionist settlers felt superior to new immigrants, especially those coming from Islamic countries. Similarly, Zionists, especially secular ones, used to feel superior to the a-zionist or anti-Zionist ultra religious. One of the most fascinating phenomena of contemporary Israeli life is that these feelings are now challenged from many quarters within Israeli society. As a result, different groups feel 'members' and 'alienated' at different times. Political struggle about these aspects of life in Israel is one of the dominant aspects of Israeli democracy. All this just proves that feelings of alienation, at least when they are temporary, do not indicate a flaw in the country's democracy. In fact, one part of the vulnerability of Israeli democracy is the very fact that the gaps and divisions are very deep, so that any change of government may make the losing half feel 'excluded' and 'alienated'. As a result, Israel tends to have quite a lot of attempts to de-legitimize the government, instead of constructive criticism aimed at changing it at the next elections.

But I do not want to belittle the complexity of the predicament of the Arab citizens of Israel. The facts described above do create a unique picture. The Arab citizens of Israel are a chronic and permanent minority. The background of the persistent conflict makes their feeling of alienation deeper and more structured than most of the other groups in Israel. They have never been a part of Israel's ruling coalition government (although during the Rabin/Peres government in 1992-1996 they were a part of the bloc on which the government was based). Nonetheless, the Arab citizens of Israel enjoy significant civil and political rights. They have vocal and able political representation. They also enjoy reasonable levels of welfare, education and security. I therefore do not think that their feelings of alienation, justified and understandable as they may be, support the conclusion that Israel is not a democracy.

Finally, a third challenge to the conceptual compatibility of a Jewish state and democracy may come from those who *define* democracy as liberal and neutral. Under such a definition, Israel indeed cannot be Jewish in any sense (other than the factual existence of a Jewish majority, and the nature of public culture following naturally from this fact) and still be a democracy. A neutral liberal democracy, by

definition, privatizes all the non-civic affiliations of its citizens. A country dedicated to the self-determination of the Jewish people and to maintaining the ties between Jews the world over is not a democracy in this sense. However, this conception of democracy is not inevitable and necessary. In fact, the main challengers of Israel, the Arabs, do not seek to live in a neutral state. They lament the fact that they are forced to live in a state in which their preferred tradition and public culture is not hegemonic as it used to be. This is why I rejected, above, the liberal-as-neutral conception of democracy. The fact that this rejection creates a conceptual place for nation states, including the Jewish nation-state, seems to me an advantage of my analysis of democracy.²²

I can now conclude that the conceptual challenges to the compatibility of democracy and a Jewish distinctness must be rejected. This is so because there are significant senses, of both democracy and a Jewish state, which can co-exist. Yet the analysis did disclose senses of 'a Jewish State' and of 'democracy' that indeed are not compatible. Those who wish to advocate any of these senses will have to concede or argue that Israel cannot be both Jewish and democratic, and to justify their preference for one over the other. Israel can have a Jewish majority and a Jewish public culture, be a Jewish nation-state, and even have a special relationship to the Jewish diaspora and accord some legal status to Jewish religious establishments and still be a democracy. It cannot be both a democracy and a theocracy. On the other hand, Israel cannot do almost any of those things and maintain its democratic status under neutral-liberal conceptions of democracy.

My discussion from now on will be conducted, therefore, within the range of the senses of democracy and Jewishness which are indeed compatible.

Can a Combination Between Jewishness and Democracy be Justified?

Many Jews reach this stage of the analysis with a sigh of relief, and stop here. For them, the conclusion of the foregoing analysis permits them to disregard the challenge that Israel cannot be both Jewish and democratic. Their relief is premature. A state should be democratic. But democracy is not enough. Not all democracies can be justified. The interesting and important question is not whether Israel can be both Jewish and democratic, but if a state that seeks to be both can be justified in principle. Further, even if the answer to this question is in the affirmative, Israel must be judged by its ability, in practice, to live by political

²² In fact, it is not clear that there is a single state that is completely neutral, so that if liberalism means neutrality, no democracy is liberal. My analysis in fact widens the space in which democracies can be liberal. If any state-sanctioned contingent feature would bar a country from being liberal, all European states with an established religion, as well as all states with a commitment to a particular language or culture, would lose their status as liberal democracies. Under modern conditions, only strong multi-cultural societies could be seen as neutral.

arrangements which can be justified. The third chapter looks at this last question. Here I want to sketch an argument supporting my claim that the idea of a state with a distinct Jewish affiliation may be justified in principle.

It may be thought that, in principle, a nation-state may be a democracy, so there is no incompatibility in principle between democracy and an ethnic state. It may nonetheless be argued that, under the special historical and demographic circumstances of Israel, the injury to non-Jews, especially Arabs who lived in the country for generations and used to be a majority in it, is so harsh that Israel cannot be a justified enterprise. True, it is easier to justify a state that is neutral to the non-civic affiliations of its citizens than it is to do so for a state which inevitably and by definition treats different groups differently. There is in democracies a strong presumption in favour of civic equality, and anyone seeking to justify a deviation from such equality carries the burden of persuasion. A possible justification must refer to at least three components: the intensity and strength of the claim of the majority group to a preferred position; the nature of the arrangements granting members of that group such preference; and the nature and intensity of the burdens and costs imposed by these preferences on other groups.

The claim of Jews to a state in which they will be a majority, and enjoy the freedom to make arrangements based on this majority, is based on a combination of general and particular factors and considerations. The 20th century recognized, morally as well as through international law, the right of nations to self-determination. The implications of this right to self-determination are far from clear, but there is a growing consensus among political theorists that membership in groups and communities is an important aspect of the welfare of individuals, and that the right to hold public community life is a basic human interest.²³ Self-determination is not necessarily political. Clearly, not every national or ethnic group with a legitimate claim to some communal public life can or wants to have its own state. At the same time, the recognition of the importance of such claims is a strong component in the justification for a Jewish state.

The critics of Israel claim, among other things, that Judaism is not a national identity, but a religion. Religions may have some claim to a public life, but they do not have a claim to territorial or political self-determination. It is important to note that this claim about Judaism is not made only from the outside – some ultra orthodox Jews, and many of the Reform Jews in the 19th century and even the beginning of the 20th century, believed firmly in the exclusively religious nature of Judaism. That belief generated the legitimacy of assimilation in the period of the enlightenment, when Jewish leaders advocated that Jews should be French or German when they leave their private spheres, and Jews within their homes. They

²³ The right to self-determination appears in the UDHR of 1948 and in both human rights covenants of 1966.

described themselves as French or German of the Jewish (Mosaic) religion. However, throughout the ages, most Jews and most non-Jews rejected this perception of Judaism and Jewishness. I shall therefore simply join them here in assuming that there is a Jewish people, which is not totally co-extensive with those who believe in the Jewish faith. In fact, this assumption is one of the central elements of the persistent divide between orthodox and non-orthodox Jews concerning the nature of the Jewishness of Israel. Only the acceptance of the independence of the Jewish people from religion gives meaning to the national Jewish identity of Jews who are not observant or who are atheists.²⁴

The very fact that a Jewish people exists does not give it, in itself, a claim to political self-determination in any specific place. A state is an entity defined, first and foremost, by its territorial boundaries. A people may claim a right to self-determination in that territory in which it is, and has been for some time, a majority. Even under these circumstances, one people's right may be defeated by the interests and rights of members of other peoples living in that territory. One of the distinctive features of modern Zionism was that, at its inception, it did *not* have a justified claim to political self-determination in Palestine, simply because Jews did not form a majority or even a significant part of its population. In fact, one of the distinctive features of the Jewish people was that it was dispersed among five continents, its members speaking different languages and often viewing themselves as nationals of the countries where they lived. Some even gave this fact a theological justification. This is the background that permitted the serious consideration of the Uganda option. Since there was no place where Jews formed a majority or a significant part of the native population, it seemed reasonable to seek to establish a home for the Jews in the place judged most suitable by international and demographic conditions. A condition precedent for the establishment of a Jewish state was the creation of a massive Jewish community in some territory. A territorial basis was a necessity. The only question was where this base could be created. A territorial basis was also crucial for forms of self-determination weaker than states.

The insistence of Herzl and others (notably Jabotinsky and Ben-Gurion) on the idea of a Jewish *State*, rather than on weaker forms of self-determination, was based on their analysis of the Jewish problem: the fear of persecution and anti-

²⁴ Two points are worth making. First, there is a marked difference in the attitudes of various Jewish communities to this question of the relationship between Jewish religion and Jewish identity. In the West, most concede that the religious tie is basic and central. In the FSU, on the other hand, Jewishness tends to be in principle divorced from religion. Secondly, the Jews treated the Palestinian claim for self-determination with equal suspicion. For long years they argued that the Palestinians were Arabs, and were not entitled to distinct self-determination in Palestine. One does not need to evaluate this claim now, since even if it had some truth to it at the beginning of the 20th century, it clearly is not the case today.

semitism. They held that only Jewish control over the state mechanisms of security and its other resources would guarantee effective prevention of pogroms or of persecution by the state or by civil groups which states had neither the wish nor the ability to restrain. Ironically, this rationale for a state rather than other forms of self-determination applied in Palestine itself due to the Arab resistance to Jewish immigration and settlement.²⁵

It is reasonable to speculate that, had there not been a settlement basis of Jews in Palestine before the Second World War, a Jewish state could not have been established. One of the great achievements of Zionism is the fact that such a settlement basis was indeed created. It could thus serve as the basis of the decision – by international commissions as well as the UN in 1947 – that a partition of Palestine between a Jewish and an Arab state was the appropriate solution to both the problem of the Jews and the issue of Palestine. In a way, by 1947, Jews did have a right to self-determination in at least a part of Palestine. The growing number of Jews living in Israel since then has strengthened this claim.

These facts mean that, at this stage, one does not need to resolve the question of the morality of Jewish settlement in Palestine at the turn of the 20th century. Even if the Arabs are right that Israel was created in sin because the very Jewish settlement in the region was wrong, the reality that has been created since then has a force of its own. Today, the question is not whether a Jewish state should be established. Today, the question is whether it is justified to undermine the wish of Israeli Jews to live in a state in which they exercise their right of self-determination.

Nonetheless, some argue that the history of the creation of Israel still undermines the legitimacy of maintaining Israel as a state with a distinctive Jewish affiliation. A short look at the historical claims is therefore useful. The moral question about Jewish settlements arises because Palestine was not an empty country ‘waiting’ for the Jews returning from exile. The Zionist slogan that Israel was a state without a people waiting for the people without a state was simply not true. Not surprisingly, all Zionist thinkers have struggled with this fact, and with its implications. By definition, no Zionist thought that the very fact that the country was populated was, in itself, a reason against seeking to settle it and make it a home for the Jews. A notable example is Aḥad Ha’am, who points out that the Jewish settlers are not sufficiently attentive to the significance of the local population. In his famous ‘Truth from Eretz Yisrael’ he does not suggest that Jews refrain from ‘returning’ to Zion. He only insists that they should settle in those

²⁵ In the absence of such a resistance by force it is likely that the British and the UN would have concluded in favour of establishing an independent democratic state in Palestine, which would be controlled by the Arab majority. The Arabs objected to Brit Shalom’s idea of a bi-national state just as much as they objected to the Zionist dream of a Jewish state.

parts of the country not heavily populated by Arabs. Jabotinsky, too, is very aware of the local population. In fact, he rightly predicts that they will resist Jewish settlement with all their might. Both he and Buber base their advocacy of a Jewish return to Zion in terms of the principle of 'necessity': Jews have no other place which is for them safe and theirs. Their cultural links and heritage, the only place that was ever 'theirs', was Zion. Longings for Zion form a central aspect of the Jewish civilization. To deny the rights of Jews to seek to have a home in Zion is to doom them to a fate of homelessness. Both Buber and Jabotinsky do not advocate dispossessing the Arabs or discriminating against them. The main difference between them is that Buber argues that the Jews should seek to minimize the harm done to the local Arab population, and form a partnership with them in the form of a bi-national state with equal and extensive autonomy for both communities. Jabotinsky insists on Jewish majority and sovereignty (on the whole of mandatory Palestine), thinking that only in this way will the Arabs accept Jewish presence. Once the Jewish state is accepted, however, it should grant all its Arab citizens full equality of rights.

In terms of the politics and international law of self-determination, Jews indeed did not have a right to self-determination in Palestine at the turn of the 20th century. But they did have the liberty to seek to establish a population-base that would give them the right, just as the local Arab population had the liberty to try to resist this settlement, predicting full well the implications of the enterprise for their life. In any event, the practical question now is very different. It is no longer the question of the right of Jews to try to establish a Jewish centre in Palestine. Rather, it is the question of the price that it is just and reasonable to demand of others – especially the Arabs of Palestine – to secure the right of the Jewish community that has been created here to live in security and enjoy self-determination.

It must be conceded that there was an element of 'imperialism' in the international recognition of the right of Jews to establish a state in part of Palestine. Palestine did not belong to the international community, and it was not theirs to give away. Moreover, part of the intensity of the wish to establish a Jewish state in Israel was the background of the genocide against Jews in the Second World War, and the history of persecution and anti-semitism in Europe.²⁶ But this does not mean that the Jews settling here were colonialists or imperialists themselves. Jews did not come here from their own homelands because this place was rich, convenient and easy to exploit. Those who came here felt they were not at home, the countries where they were born were in fact exile, and Zion was the only

²⁶ Similarly, the Balfour Declaration, and the resulting British mandate, made promises, which affected the fate of other people, without consulting them. However, at that time many countries and borders were established quite arbitrarily by European powers. Palestine is in this sense no great exception.

homeland they had and could have. Furthermore, the same history that inclined Western powers to support the Jewish state illustrated very clearly the vulnerability of Jews in places where they are a persecuted minority.

Moreover, once we concede, with Jabotinsky, that it is unreasonable to expect the Arabs to agree to the establishment of a Jewish state in their midst, the matters can be decided either by force or by some form of international arbitration, or by a combination of the two. This is especially true now, after a strong Jewish community has been created in the region.

Is the burden on the local Arab population so great that it defeats, in principle, the Jewish claim for a state where Jews are a majority? As indicated above, the answer to this question is time-dependent. The Arab claim was never conclusive. While Arabs were indeed a majority of the population in the region, the country never enjoyed political independence. The local population never controlled their own life in the political sense. Had they done so, they would have prohibited Jewish settlement, and the question would never have arisen. Jews relied on this fact, and managed to immigrate to Palestine in large numbers. But they came like Abraham, not like Joshua. They sought to buy land and settle it. They did not come to conquer, and they did not use force. Moreover, they never tried to conceal their purpose. Unlike the steady and small stream of Jewish religious immigration to *Eretz-Yisrael*, Zionism was a national movement, with a clear ideology of 'returning to the land' and working on it. The Arabs' opposition was understandable and legitimate, but the Jewish necessity was quite enough to balance it. Jews had the liberty to come and settle. Arabs had the liberty to use political means to oppose this trend. Ironically, it was the decision of Arabs to use force to prevent Jewish immigration that generated the need for Jews to have here a state, not just cultural self-determination.

It is easy to understand why Arabs resisted resolution 181 of 1947, under which Palestine was to be divided into a Jewish and an Arab state. They were the majority, and with all understanding for the plight of the Jews in the Second World War, they did not create it and it was not clear why they should be asked to pay for it. On the other hand, at that time there was already a large Jewish community in Palestine. It seemed that the Jewish community could not expect a life of dignity and security under Arab rule, and this is why the two-states decision was adopted. Arabs could have resented the fact that the Jewish community was created, but they could not expect that the Jews and others would just look from the side as they sought to undermine Jewish hopes for a life in their homes. So long as Arabs are committed to using force to expel the Jews, Jews are more than justified in using force to defend their life and welfare.

This is quite clear today, when there are five million Jews in Israel, most of them born here and having no other place in the world they can call home. Jews living here have rights to life and security, just like everyone else. They also have

rights to live a full communal Jewish life. A Jewish nation-state is thus a justifiable option. It is not the only option. A bi-national state on the area from the sea to the river is also an option. On paper, it even seems the more attractive one. However, under present circumstances, the need to give peoples in the region the power to control their territory and life outweighs the abstract attractions of neutral states caring equally for all their citizens.

One could stop at this juncture and rest here. However, the reality of our region, especially as it has been unfolding since the collapse of the Barak-Arafat-Clinton talks in the summer of 2000, makes this impossible. The 1947 resolution envisaged independence for both peoples of the region, each in their own state. While both peoples claimed rights to the whole land, each was to establish political sovereignty over a part only, while members of their group could live at peace wherever they chose. It was a Solomonic decision, supported by Jewish sources as well: if two parties claim the same object, each claiming it is all his, they should divide it among them.

In the spirit of Herzl's utopian novel *Altneuland*, the story could have gone very well: both states would have celebrated their independence from foreign rule on the same day. Economic cooperation and mutual respect would have created a momentum, which may have led to the foundation of a stable and developed Arab-Jewish federation in this part of the world.

However, this was not to be. The Arabs resisted the partition plan. As a result of the ensuing war, the Israeli army managed to gain control over a part of the area designated for the Arab state, the Jordanians captured the 'west bank', and Egypt controlled the Gaza strip. In addition, many Arabs left their homes, either fleeing the battles or being deported by the Israeli army, thus creating the Palestinian refugee problem. The Arabs refused to recognize Israel. Furthermore, in 1967 there was another joint Arab effort to oust the Jewish state. This one resulted in Jewish control over the whole of Palestine.

In other words, what we have now is not only a Jewish State within an Arab region, in a territory where Arabs used to be the majority for generations. We also have a situation under which most of the former Palestine is controlled by Israel, and where Palestinians do not enjoy any measure of self-determination. I argued above that a Jewish State can be justified. The present situation, however, of political self-determination for Jews and no self-determination for Palestinians, cannot be justified.

In the demographic givens of the region, only three political options seem possible: a bi-national Jewish-Arab state in Palestine; partition of the area between the sea and the Jordan river into two independent states, one Palestinian and one Jewish; and extension of the political borders of the agreement to include Jordan, which would negotiate its borders with Israel, with Palestinian self-determination within it. The radical Israeli right wing still wants a Great Israel between the sea

and the river, and now concedes quite explicitly that this will require a transfer of Palestinian population. Its arguments combine biblical right and security considerations. Some factions within the Palestinian national movement, both secular and Islamic, still advocate an ousting of the Jewish State from the region. Many radical intellectuals in both communities advocate the bi-national state. But within the constraints of the present political situation, it seems that the only feasible solution is partition.

It follows that those Jews who are interested in the continuation of a Jewish State, and are eager to maintain the benefits that Jews have derived from their long-won independence, must stop their attitude of indifference or agnosticism towards the idea of a Palestinian State. If their attitude is objection to such a State, they should revise it. The principled agreement to the establishment of a Palestinian nation-state alongside Israel is a critical component in the justification of the continuation of a Jewish nation-state in the region. All my arguments in support of the right of Jews to self-determination in their homeland apply with equal, if not greater force, to the claims of Palestinians to political self-determination in at least a part of their homeland.

States and nations need not agree to commit suicide. It is legitimate for Israel to seek guarantees and assurances, the best one can have, that a Palestinian state will not be allowed to continue to challenge Israel's right to exist in peace and within secure borders. This is the essence of UN Resolution 242. Palestine should be required to protect the civil and political rights of the Jews who seek to continue to live in it or to visit it and their holy places within it. Negotiating the arrangements may take time. But the principles of the acceptable outcome must be clear. And Israel should not seek to 'create facts on the ground', which may make the acceptable solution unlikely or even impossible.

More than that. I have argued that the price Palestinians have been made to pay, in principle, for the continuation of a Jewish homeland for its Jewish population, does not justify the abolition of Israel as a Jewish state. However, the fact that they are paying a price for it, and that the burdens imposed on them are continuous and will persist, does impose special obligations on those who wish to maintain Israel as the one state in the world where Jews have political self-determination. If these costs – in the past, present and future – are not conceded, and if systematic efforts are not made to mitigate them, the in-principle justification of the Jewish State may not be strong enough to justify the actual reality in Israel.²⁷ Here, I want to emphasize that in this book I am talking only about Israel in its 1967 borders (more or less). I am talking about the status of Arab citizens in Israel, and not about the relationships between Israel and Palestinians outside its borders. Some scholars challenge the legitimacy of this approach. They argue that the reality in the region

²⁷ This is one of the main subjects of Chapters 3 and 4 of my book. *supra*, n.*.

has been, for too long, one of Israeli control over all of Palestine. Of course, the issues of the status of Arabs in Israel and that of the Israeli-Palestinian conflict are closely related. Nonetheless, I think it is a mistake to pre-empt a discussion of the prospects of Israel as a state with a Jewish majority. This is especially true for those who advocate that Israel should do everything in its power to keep it this way.

I conclude that a state that is both Jewish in important respects and democratic is possible, conceptually and politically. It is also justifiable. I can now turn to the difficult questions opened up by this conceptual, political and moral space. Has Israel succeeded in establishing a state which is Jewish, democratic and justifiable? What needs to be done in order to facilitate this situation and stabilize it? Can Israel do it? Is it likely to do so?