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## THE LEGAL STATUS OF ISRAELI-ARABS/PALESTINIANS IN ISRAEL

-Raphael Cohen-Almagor\* and Mohammed S. Wattad\*\*

In memory of Yoseph Haim Cohen

### ABSTRACT

*The authors argue for accommodating the interests of the Israeli-Arabs/Palestinians. Israel should strive to safeguard equal rights and liberties for all citizens notwithstanding religion, race, ethnicity, colour, gender, class or sexual orientation, and insisting that citizens have also duties to fulfil. Israel needs to strive for equality in housing, in municipal budgets, in allocation of resources; fight against racism, bigotry and discrimination, and introduce changes to accommodate interests of Israeli-Arabs/Palestinians so that citizens would “feel at home” in their own country. It is argued that delegates of the Arab/Palestinian minority should be represented, in accordance with their size in society, in the parliament and in the government. Symbols of the state should be accommodated to give expression to all citizens of Israel. Since Israel is defined as a Jewish and democratic state, there is a responsibility to embrace all Israeli citizens. In doing so, Israel does not negate the essence of its being Jewish. Furthermore, studies of all religions that exist in Israel should be made available.*

### I. INTRODUCTION

Yoseph Haim Cohen was a strange bird: a maverick who completed high school at the age of 16, who was sent by the British mandate to study abroad and upon his return was recruited to serve in the mandate public administration. He was a religious-Orthodox Jew and a very active Freemason. At the time when the Ben-Gurion belief that “we should not become yet another Arab state” was commonplace, Yoseph Haim always said that the key for the success of the Zionist venture was integration into the Middle East; that Israel should become an integral part of its surroundings rather than an “European island” that does not belong in the Middle East and hence need to be uprooted, so Israel’s enemies claim.

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Yoseph Haim Cohen was Raphael Cohen-Almagor's grandfather. He was a tolerant Orthodox Jew who led by example. He studied Arabic and was able to converse with Arabs in their own language fluently. He said with pride that he was among those who founded the Jewish-Arab Freemason Lodge in Acre. His words were of peace, of tolerance, of justice. He strongly believed that Israel was mistaken in not teaching Arabic in each and every school in the country. He thought that the Arabs should be treated as equal citizens, that their habits should become familiar to the Jews and that the Jewish habits should become familiar to the Arabs. Yoseph Haim spoke about the need to create bridges, to celebrate diversity, to lead the world by example as a just nation. Israel's neighbours would never accept and trust us if we mistreat the Arab minority. The key to Israel's integration into the region is the integration of Arabs as equals in Israel.

In May 2018, the Israeli population was 8,842,000.<sup>1</sup> The Arab-Palestinians comprise some 20.9% of the Israeli population (1,849,000).<sup>2</sup> Many Israeli-Arabs/Palestinians<sup>3</sup> have family ties to Palestinians in the West Bank and the Gaza Strip. The majority of them, some 80 percent, are Muslims. The Christian, the Druze and the Bedouin are all small minorities within the Arab-Palestinian minority. Most of the Arabs reside in the Galilee in north Israel. Smaller numbers live in the so-called Triangle area at the centre of Israel, and in the Negev desert in the south (mostly Bedouins).

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<sup>1</sup> *Independence Day 2018: 11 times more than 1948*, YNET, <https://www.ynet.co.il/articles/0,7340,L-5231925,00.html#autoplay>. (last visited Aug. 16, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> The official recognition of the national aspirations of the Arab citizens of Mandatory Palestine was set forth in the Partition Plan. See "Request for the Admission of the State of Palestine to UNESCO as a Member State," submitted to the Executive Board of the United Nations Educational, Scientific and Cultural Organization, on May 23, 1989, at p. 3, where it is asserted that the Partition Plan provided, *inter alia*, for "the establishment of an independent (Palestinian) Arab State," available at [Citation: <http://unesdoc.unesco.org/images/0008/000827/082711eo.pdf>]. Note: In the Partition Plan the word "Palestinian" is used to describe the citizenship identity of both the Arab and the Jewish citizens of Mandatory Palestine. See United Nations General Assembly, "The Future Government of Palestine," at Sec. B, Part 1, Ch. B, art. 9, para. 2, which states: "Qualified voters for each State for this election shall be persons [...] who are: (a) Palestinian citizens [...]" See BARUCH KIMMERLING & JOEL S. MIGDAL, *THE PALESTINIAN PEOPLE: A HISTORY* 135 (Harvard University Press, 2003). In this article we use the term Israeli-Arabs/Palestinians because some identify themselves as Israeli-Arabs, some as Israeli-Palestinians, and some as Palestinian-Arabs who hold Israeli citizenship. For general reading, see ABDELAZIZ A. AYYAD, *ARAB NATIONALISM AND THE PALESTINIANS, 1850-1939* (The Palestinian Academic Society for the Study of International Affairs, 1999); RASHID KHALIDI, LISA ANDERSON, MUHAMMAD MUSLIH, AND REEVA S. SIMON, EDs., *THE ORIGINS OF ARAB NATIONALISM* (Columbia University Press, 1991); RASHID KHALIDI, *PALESTINIAN IDENTITY: THE CONSTRUCTION OF MODERN NATIONAL CONSCIOUSNESS* (Columbia University Press, 1997); YOUSSEF M. CHOUËIRI, *ARAB NATIONALISM—A HISTORY: NATION AND STATE IN THE ARAB WORLD* (Blackwell, 2001); MICHAEL PROVENCE, *THE GREAT SYRIAN REVOLT AND THE RISE OF ARAB NATIONALISM* (University of Texas Press, 2005); Manuel Hassassian, "Historical Dynamics Shaping Palestinian National Identity," 8 *PALESTINE-ISRAEL JOURNAL OF POLITICS, ECONOMICS AND CULTURE* 1,4 and 9 (2001-2002), <http://www.pij.org/details.php?id=793>; Muhammad Muslih, "Arab Politics and the Rise of Palestinian Nationalism," 16(4) *JOURNAL OF PALESTINE STUDIES* 77 (1987); E.G.H. Joffe, "Arab Nationalism and Palestine," 20 (2) *JOURNAL OF PEACE RESEARCH* 157 (1983).

The litmus test for measuring the extent of democratization of any given society is the legal status of minorities. The more egalitarian the society, the more democratic it is. In this respect, Israel is struggling. Egalitarianism is still in the making, something that Israel should aspire to achieve. Israel has navigated between liberalism, on the one hand, and promoting its religion and nationality as a Jewish state, on the other. Israeli leaders have given precedence to Judaism and Jewishness over liberalism. While sometimes their language uttered liberal values, Israeli leaders' actions were perfectionist in essence, preferring one religion and one nation over others.

The question of the legal status of Israel's Arab-Palestinian citizens has been challenging since Israel was established, and even prior to that. Already in Resolution 181(II) of the United Nations General Assembly (UNGA), which depicts the concept of establishing two independent democratic nation-based states in "Mandatory Palestine,"<sup>4</sup> *i.e.* Arab and Jewish states (Partition Plan),<sup>5</sup> it was anticipated that Israel will be established as a Jewish and Democratic state, in which an Arab-Palestinian minority will reside as full and equal citizens. Israel's 1948 Declaration of Independence<sup>6</sup> relies, *inter alia*, on the Partition Plan,<sup>7</sup> promising full and equal citizenship to the Arab-Palestinian residents of the State.<sup>8</sup>

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<sup>4</sup> The term "Mandatory Palestine" refers to the geographical area that was administered by the Mandate of the United Kingdom (hereinafter: *the British Mandate*), and was the area carved out of the Southern area of Great Syria under the Ottoman Empire, e.g. the territory of nowadays Jordan, Israel, as well as the West Bank and the Gaza Strip of the Palestinian Authority. See League of Nations, "Mandate for Palestine," July 24, 1922, United Nations Information System on the Question of Palestine Documents Collections, <https://web.archive.org/web/20131125014738/http://unispal.un.org/UNISPAL.NSF/0/2FCA2C68106F11AB05256BCF007BF3CB>.

See also ABD AL-WAHAB AL-KAYYALI, TAREEKH FALASTIN AL-HADEETH 37 (al-Mu'assasat al-Arabiyya, 1985), and see also THE AVALON PROJECT, [http://avalon.law.yale.edu/20th\\_century/palmanda.asp](http://avalon.law.yale.edu/20th_century/palmanda.asp) (last visited Aug. 8, 2018).

<sup>5</sup> United Nations General Assembly, Resolution 181, "Future Government of Palestine," November 29, 1947, United Nations Information System on the Question of Palestine Documents Collections, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253>.

<sup>6</sup> The Declaration adopts the same terminology and merit of the Partition Plan.

<sup>7</sup> The Declaration of Independence says: "On 29th November, 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish State in Eretz-Israel; the General Assembly required the inhabitants of Eretz-Israel to take such steps as were necessary on their part for the implementation of that resolution. This recognition by the United Nations of the right of the Jewish people to establish their State is irrevocable...Accordingly we, members of the People's Council, representatives of the Jewish Community of Eretz-Israel and of the Zionist Movement, are here assembled on the day of the termination of the British Mandate over Eretz-Israel and, by virtue of our natural and historic right and on the strength of the resolution of the United Nations General Assembly, hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel."

<sup>8</sup> The Declaration of Independence exclaims: "WE APPEAL - in the very midst of the onslaught launched against us now for months - to the Arab inhabitants of the State of Israel to preserve peace and participate in the up building of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions".

However, this pledge for equal citizenship has been argued to be impossible, following the enactment of the 1994 Basic Law: Freedom of Occupation<sup>9</sup> and the 1992 Basic Law: Human Dignity and Liberty,<sup>10</sup> amended in 1994, where Israel was defined as a Jewish and democratic state.<sup>11</sup> Moreover, the recent legislation of Israel's 14<sup>th</sup> Basic Law: Israel as the Nation-State of the Jewish People (the Nation State Law), in 2018, has only muddied the waters, as it expressly emphasizes Israel's religious and national characteristics but omits to protect democratic values and rights, including the right to equality.<sup>12</sup>

This paper explains the concepts of liberal democracy and liberal-substantive democracy. Next, it sketches Israel as it was anticipated to be. Then, it asks whether Israel is a liberal-substantive democracy, arguing that Israel cannot be described as a liberal democracy, certainly not after the enactment of the Nation State Law, and that it should aspire to be one. This paper argues for accommodating the interests of the Israeli-Arabs/Palestinians, and that Israel should strive to safeguard equal rights and liberties for all citizens – notwithstanding religion, race, ethnicity, colour, gender, class or sexual orientation – as well as the collective rights of its Arab-Palestinian minority, but also insisting that citizens have also duties to fulfill.

Israel needs to strive for equality in housing, in municipal budgets, in allocation of resources; fight against racism, bigotry and discrimination, and introduce important changes to accommodate interests of Israeli-Arabs/Palestinians so that people would “feel at home” in their own country. It is argued that delegates of the Arab minority should be represented, in accordance with their size in society, in Israeli Parliament (the *Knesset*) and in the government. Studies of all religions that exist in Israel should be made available.

Israel, by its very definition as a Jewish state, follows a particular conception of the good. It prefers Judaism over other religions and often time its aspiration to be a Jewish-democracy faces inherent contradictions, where democracy withdraws under the duress of coercive Judaism. While we, as students of history, recognize the need for a home for the Jewish people, where Jews can decide their destiny and independently defend and promote their tradition and culture, and while we think Israel should be the home of the Jewish people, it is argued that Israel should retain its democratic character. Democracy is not merely a majority rule. Democracy

<sup>9</sup> THE KNESSET, [https://www.knesset.gov.il/laws/special/eng/basic4\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic4_eng.htm) (last visited Aug. 11, 2018).

<sup>10</sup> THE KNESSET, [https://www.knesset.gov.il/laws/special/eng/basic3\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm) (last visited Aug. 11, 2018).

<sup>11</sup> The Law stipulates: “The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state”.

<sup>12</sup> Raoul Wootliff, *Final text of Jewish nation-state law, approved by the Knesset early on July 19*, THE TIMES OF ISRAEL (July 19, 2018, 8:00 P.M.), <https://www.timesofisrael.com/final-text-of-jewish-nation-state-bill-set-to-become-law/>.

is about majority rule *while respecting the rights of minorities*. Both parts of this definition are necessary, and any part in itself is not sufficient. The second part of the definition is no less important than the first. Democracy should devise mechanisms to protect itself from any form of exploiting power; it should fight against and preempt the formation of any form of tyranny, majority and minority alike.<sup>13</sup> The right of the majority should not be considered as the rightness of the majority, as quantity alone does not make things right. Any tyranny should be opposed: tyranny of numbers, of opinion, of custom, and of government rule. Every tyranny denies individuals the ability to fulfill their capacities, to establish their autonomy. Tyranny *qua* tyranny is an evil. Israel should provide open forums for debate and for practicing alternative conceptions of the good. This can be done by adhering to the basic liberal principles of respect for others and not harming others.

## II. LIBERAL-SUBSTANTIVE DEMOCRACY

Liberal democracy is defined as a form of government in which political power belongs to the public as a whole and not merely to a single person or a particular group of people. The term 'democracy' has been used in conjunction with the terms 'monarchy' and 'aristocracy', and this trilogy has been employed to discern situations of monopoly, of oligopoly, and of polyarchy. A state is democratic, not 'if', but in so far as the great mass of the population can exercise an effective influence on the process of decision-making. Thus, democracy is a matter of degree and not a fixed concept. It is more useful to think in terms of a scale than to attempt to lay down conditions for democracy.

Liberalism was a product of the climate of opinion that emerged at the time of the Renaissance and the Reformation. As the political expression of the new individualism it was a political declaration of faith in the autonomy of human reason and the essential goodness of man. Both a mode of thought and a way of life, it reflected the political, social, religious, and economic aspirations of the rising commercial classes. Thus, in *The Rise of European Liberalism*, Laski argues that Liberalism has been, over the last four centuries, "the outstanding doctrine of Western Civilization".<sup>14</sup>

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<sup>13</sup> In *On Liberty* JS Mill argued that 'the tyranny of the majority' is among the "evils against which society requires to be on its guard". JOHN STUART MILL, *ON LIBERTY* 13 (Longman, Roberts and Green, 1869).

<sup>14</sup> H.J. LASKI, *THE RISE OF EUROPEAN LIBERALISM: AN ESSAY IN INTERPRETATION* 5 (Unwin Books, 1962); EDMUND FAWCETT, *LIBERALISM: THE LIFE OF AN IDEA* (Princeton University Press, 2018); DANIEL ZIBLATT, *CONSERVATIVE PARTIES AND THE BIRTH OF DEMOCRACY* (Cambridge University Press, 2017); and STEVEN VINCENT, *BENJAMIN CONSTANT AND THE BIRTH OF FRENCH LIBERALISM* (Palgrave, 2011).

The earlier Liberalism had to deal with authoritarian government in church and state. It had to vindicate the elements of personal, civil, and economic freedom; and in so doing it took its stand on the rights of the individual and on the supposed harmony of the natural order.<sup>15</sup> The preservation of individual rights, and the emancipation of the individual from public control mean that all enjoy the same equal rights. No group is preferred over others. Majority decides the identity of government but it should not undermine equal rights for all. Liberalism sets the individual on a legal equality in opposition to feudalism and challenged the right of the monarch to govern except in the interests of the citizens. Thus Macpherson wrote:

*Liberalism had always meant freeing the individual from the outdated restraints of old established institutions. By the time liberalism emerged as liberal democracy this became a claim to free all individuals equally and to free them to use and develop their human capacities fully.*<sup>16</sup>

It is from the concept of a person as an autonomous individual, whose actions are the product of choice and purpose, that the philosophy of a free society is constructed. The liberal society makes the common good available not to a privileged class but to all, so far as the capacity of each permits the individual to share it. The end of such a society, according to this view, is to increase the capacities by which the individual can contribute to the common good.

Many defenders of liberalism argue that governments cannot use as their justification for any action the fact that one person's plan of life is more or less worthy than another's. They endorse neutrality, arguing that liberal policies should refrain from identifying essential interests with a particular conception of the good life, and shrink from the possibility that the government, which could be associated with one or more fragments of society, might impose its values on others, either by propagation or by force.<sup>17</sup>

<sup>15</sup> L.T. HOBHOUSE, *LIBERALISM* 54 (Oxford University Press, 1945).

<sup>16</sup> C.B. MACPHERSON, *THE LIFE AND TIMES OF LIBERAL DEMOCRACY* 12 (Oxford University Press, 1977); This same argument appears also in F.A. Hayek's writing, where he says that libertarians start from the basic assumption that the comprehension of social reality, from a scientific *or* ethical point of view, necessitates an entirely individualistic orientation. See HAYEK, *THE COUNTER-REVOLUTION OF SCIENCE* 36-43 (Glencoe Free Press, 1955), [http://www.archive.org/stream/counterrevolutio030197mbp/counterrevolutio030197mbp\\_djvu.txt](http://www.archive.org/stream/counterrevolutio030197mbp/counterrevolutio030197mbp_djvu.txt)

<sup>17</sup> ROBERT NOZICK, *ANARCHY, STATE AND UTOPIA* 33, 48-51, 271-274 (Basic Books, 1974); BRUCE A. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* 11-12, 347-348 (Yale University Press, 1980); Ronald M. Dworkin, "Why Liberals Should Believe in Equality?", 30(1) *THE NEW YORK REVIEW OF BOOKS* 32, 32-34 (1983); *idem*, *A MATTER OF PRINCIPLE* 191-194, 205 (Clarendon Press, 1985); and *JUSTICE FOR HEDGEHOGS* (Belknap, 2011); WILL KYMLICKA, *LIBERALISM, COMMUNITY, AND CULTURE* 76-85, 95-96 (Clarendon Press, 1989), *idem* "Liberal Individualism and Liberal Neutrality", 99(4) *ETHICS* 883, 883-905 (1989); and Peter De Marneffe,

In a democracy irreconcilable and incommensurable conceptions of the good often occur. Having diverse ideals, in light of which people lead different ways of life, is the normal condition. Furthermore, this variety is conceived to be a good thing. It is rational for members of a democratic society to want their plans to be different. For human beings have talents and abilities the totality of which is unrealizable by any one person or group of persons. We not only benefit from the complementary nature of our developed inclinations, but we take pleasure in one another's activities. Hence, citizens should be allowed to follow their conceptions of the good as far as it is socially possible, rather than being obliged to live with convictions they do not uphold. Neutrality is prescribed to ensure standoff from support for what, *prima facie*, is conceived to be valuable and moral conceptions of the good. The qualification "so far as it is socially possible" implies a place for some restrictions on citizens and organizations to maintain the framework of society, but when introduced they require some justification. Racism, hate speech, political and ideological extremism, gun violence and terrorism continue to test the parameters and boundaries of liberalism.

Liberal states allow freedom to citizens to develop their conceptions of the good. Liberals postulate that governments cannot use as their justification for any action the fact that one person's plan of life is more or less worthy than another's. In order to ensure that every person will be able to pursue her conception of the good, neutrality does not endorse any disposition which defines human good and human perfection to the exclusion of any other. It refrains from identifying essential interests with a particular conception of the good life and shrinks from the possibility that the government, which could be associated with one or more segments of society, might impose its values and ideals on others, either by propagation or by force. The assumption is that should governments not be neutral regarding the plurality of convictions that prevail in society, then their bias could generate intolerance.<sup>18</sup>

Conceptually, one should note, the idea of neutrality is strongly connected with pluralism. Pluralism is commonly conceived to be an essential element of democracy, an indispensable feature for having the

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"*Liberalism, Liberty, and Neutrality*", 19(3) *PHILOSOPHY & PUBLIC AFFAIRS* 253, 253-274 (1990); C. EDWIN BAKER, *HUMAN LIBERTY AND FREEDOM OF SPEECH* (Oxford University Press, 1992); FLOYD ABRAMS, *THE SOUL OF THE FIRST AMENDMENT* (Yale University Press, 2017).

<sup>18</sup> R. COHEN-ALMAGOR, *THE BOUNDARIES OF LIBERTY AND TOLERANCE* (University Press of Florida, 1994), and *THE SCOPE OF TOLERANCE: STUDIES ON THE COSTS OF FREE EXPRESSION AND FREEDOM OF THE PRESS* (Routledge, 2006).



potential for good life. Methodologically, the idea of neutrality is placed within the broader concept of anti-perfectionism. The implementation and promotion of conceptions of the good, though worthy in themselves, are not regarded as a legitimate matter for governmental action.<sup>19</sup> Governments ought to acknowledge that each person has her own interest in acting according to her own convictions; that each person must enjoy autonomy and must have the freedom to hold her ideals.

*Two underpinning liberal foundations: Respect for Others, and Not Harming Others*

In every democracy, certain norms and moral codes must be shared by all people despite their cultural differences; hence the range of norms that society can respect has limitations. The most basic norms democracy has to secure are, in our opinion, respecting others as human beings (under the Kantian Respect for Others Argument), and not to inflicting harm upon others (under the Millian Harm Principle). Having explained these two principles elsewhere, we present them here without much elaboration.<sup>20</sup>

The Respect for Others Argument is founded on the assertions that we ought to respect others as autonomous human beings who exercise self-determination to live according to their own life plans, and that we respect people as self-developing beings who are able to develop their inherent faculties as they choose (that is, to develop capabilities people wish to develop, not every capability that they are blessed with). At the same time, we insist on the requirement of mutuality. We ought to show respect for those who respect others.

The boundaries of tolerance are determined by the qualification of not harming others, which is added to the Respect for Others Argument. Under the Harm Principle, restrictions on liberty may be prescribed when there are clear threats of immediate violence against some individuals or groups.<sup>21</sup> The same idea was

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<sup>19</sup> JOSEPH RAZ, *THE MORALITY OF FREEDOM* 110 (Clarendon Press, 1986); For an elaborated discussion, see R. Cohen-Almagor, *Between Neutrality and Perfectionism*, 7(2) *THE CANADIAN JOURNAL OF LAW AND JURISPRUDENCE* 217, 217-236 (1994).

<sup>20</sup> The Harm Principle is explained in R. Cohen-Almagor, *Harm Principle, Offence Principle, and the Skokie Affair*, 41(3) *POLITICAL STUDIES* 453, 453-470 (1993); and in “*JS Mill’s Boundaries of Freedom of Expression: A Critique*”, 92(362) *PHILOSOPHY* 565, 565-596 (2017): 565-596. For a discussion of the Respect for Others Argument, see R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance*, chaps. 3, 7, 8 and *Confronting the Internet’s Dark Side: Moral and Social Responsibility on the Free Highway* (Cambridge University Press and Woodrow Wilson Center Press, 2015).

<sup>21</sup> To quote Mill, the end for which “mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection”. Power can be rightfully exercised over any member of society, against her will, is to prevent harm to others. Cf. J.S. MILL, *ON LIBERTY, IN UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT* 72-73, 114, 138 (J.M. Dent, 1948); and R. Cohen-Almagor, *Between Autonomy and State Regulation: J.S. Mill’s Elastic Paternalism*, 87(4) *PHILOSOPHY* 557, 557-582 (2012).

pronounced in a different phrase by a Jewish sage, Rabbi Hillel, who said: "What is hateful to you do not do unto your fellow people".<sup>22</sup>

The upholding of the Respect for Others Argument and the Harm Principle safeguards the rights of those who might find themselves in a disadvantageous position in society, such as women; ethnic, religious, national and cultural minorities; homosexuals, and others. While Kant spoke of unqualified, imperative moral duties, Mill's philosophy is consequentialist in nature. Together the Kantian and Millian arguments make a forceful plea for moral, responsible conduct: Always perceive others as ends in themselves rather than means to something, show respect for others, and avoid harming others. Ronald Dworkin suggests that the concept of dignity needs to be associated with the responsibilities each person must take for her own life. Dignity requires owning up to what one has done.<sup>23</sup> Liberal democracies accept these notions of respecting people, not harming others, and the dignity of the person as the foundations of governance. On the other hand, theocracy denies the background rights and moral values of liberal democracy. Theocracy also has a conception of justice but the understanding of justice is very different from the liberal concept of justice.

#### *Formal and Substantive Democracies*

Within the concept of liberal democracy, it is possible to distinguish between formal and substantive democracies. Formal democracy is only interested in the opinion of the majority and seeks to enforce the majority's decisions, whether they are good or bad; whereas substantive democracy respects the opinion of the majority, yet simultaneously guarantees that minorities (weakened groups) are protected, particularly in circumstances where the majority misuses its power to abuse these minorities. Formal democracy acts in accordance with the rule of the legislature, no matter how right, decent, just, and fair the legislature might be; whenever the legislature says "the law is..." it becomes a binding law. We perceive this as a bad dogma where abuse of power is visible. We view substantive democracy as scrutinizing the legislature's actions for their compatibility with the fundamental principles of fairness, reason, justice, and good. This is a healthy and desirable democracy, where political power is always limited, supervised, and scrutinized.

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<sup>22</sup> Babylonian Talmud, Sabbath 31a.

<sup>23</sup> Dworkin asserts that people who blame others or society at large for their own mistakes, or who absolve themselves of any responsibility for their conduct by blaming genetic determinism lack dignity. "The buck stops here," says Dworkin, is an important piece of ethical wisdom, See RONALD DWORIN, JUSTICE FOR HEDGEHOGS 210-211 (Belknap, 2011).

The distinction between formal and substantive democracy is represented by meaning of the Rule of Law, which is binding not because it has been enacted in a proper formal procedure by a duly elected legislature, but because it is just and proper (*Recht* in German, *droit* in French, and *derecho* in Spanish).<sup>24</sup> In this context, the rule of law deals with the aspiration for governmental actions to comply with certain fundamental requirements, which are intended to guarantee the internal morality of the law.

This was exactly what captured Plato's mind in offering *The Republic*,<sup>25</sup> i.e. the challenge of providing a true definition of justice; for him, democracy is the rule of Law, namely, the rule of good and justice.

### III. ISRAEL: VISION

The Partition Plan is a significant official international document that recognizes Jewishness as a national identity, distinct from the concept of Judaism as a religious identity. It reflects what was envisioned by the 1917 "Balfour Declaration" as the establishment of "a national home for the Jewish people."<sup>26</sup> Such recognition is a prerequisite to granting the right to self-determination to any nation.<sup>27</sup>

The idea of establishing a nation-based state is already anchored in the constitutive document that legally justifies the establishment of Israel as a Jewish state. But what is the meaning of a "Jewish state"? This is not an easy question, as Israel's Jewish national identity might be confused with the concept of Judaism as a religious identity.

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<sup>24</sup> LOUIS HENKIN, *THE AGE OF RIGHTS* (Columbia University Press, 1990). We do not refer to the concept of law in its narrow sense, i.e., *Gesetz* in German, *loi* in French, and *ley* in Spanish.

<sup>25</sup> PLATO, *THE REPUBLIC*, trans. Sir Henry Desmond Lee (Penguin Classics, 2003).

<sup>26</sup> ISRAEL MINISTRY OF FOREIGN AFFAIRS,

<http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20balfour%20declaration.aspx>. (last visited August 8, 2018). This is a letter issued by the Foreign Secretary of the United Kingdom, Arthur James Balfour, to the leader of the British Jewish community, Baron Walter Rothschild, for transmission to the Federation of Great Britain and Ireland.

See the Montevideo Convention on the Rights and Duties of States, December 26, 1933, art. 1, which provides: "[T]he state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government; : *WWII*), this principle has been accepted by the international community as the principle of self-determination. See the UN Charter, Cha. 1, art. 1, para. 2. For criticism on these criteria, see JEFFREY L. DUNOFF, STEVEN R. RATNER, AND DAVID WIPPMAN, *INTERNATIONAL LAW: NORMS, ACTORS, PROCESS: A POLICY-ORIENTED APPROACH* 109-111 (Law and Business, 2002).

As far as a democratic regime is concerned, the Partition Plan stipulates that a nation-based state must apply a substantive democratic regime<sup>28</sup> to provide legal protections for a very wide range of rights – civil, political, social, and economic rights<sup>29</sup> – as well as collective rights. The Partition Plan acknowledges thus the conceptual distinction between formal and substantive democracies and adopts the latter one.

While arguing against formal democracy, Plato reasoned that those who belong to the majority are concerned only with their own immediate pleasure and gratification, and therefore a democracy that relies on the rule of the majority cannot produce good human beings.<sup>30</sup> This idea was incorporated into the Partition Plan, with respect to the remaining Arab minority in the new emerging Jewish state, thus including a special chapter that guarantees not only the equal constitutional protection of their individual rights, but in particular their collective rights, including linguistic, educational, and religious rights as a national indigenous minority.<sup>31</sup>

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<sup>28</sup> United Nations General Assembly, “Future Government of Palestine,” Sec. C, Ch. 2, art. 6.

<sup>29</sup> Note: Israel has not succeeded to adopt a full written constitution as mandated by the Partition Plan. *Ibid.*, Sec. B, Part 1, Ch. B, art. 9, para. 1. Eventually, by means of a political compromise, Israel has adopted a series of incomplete Basic Laws intended, once enacted, to compose the constitution for Israel. Whereas the *Knesset* has never decided when such a project will be completed, thus establishing the full and final constitution, the contemporary Basic Laws that deal with human rights, severely fail to include a straightforward constitutional protection for very basic human rights, otherwise included in the Partition Plan, e.g. freedom of expression and the right to equality. On the normative constitutional status of the basic laws, see Suzie Navot, *The Constitution of Israel: A Contextual Analysis* (Oxford: Hart Publishing, 2014), 4-12; Mohammed S. Wattad, “Israel’s Laws on Referendum—A Tale of Unconstitutional Legal Structure”, *FLORIDA JOURNAL OF INTERNATIONAL LAW* 27, no. 2 (2015): 213, 221-226. See also Civil Appeal 6821/93 *United Mizrahi Bank Ltd. et al. v. Migdal Cooperative Village et al.*, 49(4) P.D. 221 (decided on November 11, 1995), [http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/United%20Mizrachi%20Bank%20v.%20Migdal%20Cooperative%20Village\\_0.pdf](http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/United%20Mizrachi%20Bank%20v.%20Migdal%20Cooperative%20Village_0.pdf) [This is deemed as a touchstone case in the constitutional legal history of Israel, where the normative status of Israel’s basic laws was discussed, as well as the Court’s power on judicial review].

<sup>30</sup> PLATO, *THE REPUBLIC*, trans. SIR HENRY DESMOND LEE (Penguin Classics, 2003); T.Z. LAVINE, *FROM SOCRATES TO SARTRE: THE PHILOSOPHY QUEST* 20 (Bantam Books, 1984).

<sup>31</sup> Underlying this recognition is another implicit acknowledgment, that which concerns deeming these minorities to be indigenous people of Mandatory Palestine—regardless of the question of who was first and who constituted a majority or a minority at different points of time. The idea is that indigenous citizens are more privileged in this regards, as compared with immigrant citizens. Whereas the latter decided to migrate from their homeland to another country, they are expected to accept the civil and national identity of the absorbing state; this is not the case for indigenous people. See and compare WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (Clarendon Press, 1995); WILL KYMLICKA AND RAPHAEL COHEN-ALMAGOR, “*Ethnocultural Minorities in Liberal Democracies*”, in MARIA BAGHRAMIAN AND ATTRACTA INGRAM (eds.), *PLURALISM: THE PHILOSOPHY AND POLITICS OF DIVERSITY* 228-250 (Routledge, 2000); Ilan Saban & Mohammad Amara, “*The Status of Arabic in Israel: Reflections on the Power to Produce Social Change*”, 36 *ISRAEL LAW REVIEW* 5, 5 (2002); Hassan Jabareen, “*Yesraeliyot ‘Ha-Tsofa Pni Ha-ateed’ shel Ha-Araveem Lefi Zman Yebudi-Tseyoni, Be-Merchav Bli Zman Falasteni*,” [The Future of Arab Citizens in Israel: Jewish-Zionist in a Place with Palestinian Memory] 6 *MISHPATE U-MEMSHAL [LAW AND GOVERNMENT]* 53, 53 (2001); Amal Jamal, “*On the Morality of Arab Collective Rights in Israel*,” 12 *ADALAH’S NEWSLETTER* 1, 1 (2005), <http://www.adalah.org/uploads/oldfiles/newsletter/eng/apr05/ar2.pdf>; opinion by Chief Justice Aharon Barak in *Adalah and Association for Civil Rights in Israel v. Tel Aviv Municipality and Others* Original Petition to the High Court of Justice, HCJ 4112/99; 56(5) PD 393 (2002), *International Human Rights Law*, <http://internationalhumanrightslaw.net/wp-content/uploads/2012/01/Adala-v-Tel-Aviv-2002-EXCERPT.pdf>.

This is how the Partition Plan envisioned welcoming Israel to the international community. First, it must be a nation-based state, namely, a Jewish state. Second, it has to be a constitutional democratic state. And third, a proper balance has to be established between Israel's Jewish identity and democracy, which reflects the particular circumstances of Mandatory Palestine and the expectations that its national indigenous minorities would become full legal citizens of the other nation state, *i.e.* an Arab minority in the Jewish state and a Jewish minority in the Arab state.<sup>32</sup>

The Partition Plan was never adopted by the United Nations Security Council; therefore, it remains an unbinding resolution of the UN General Assembly. The Resolution was accepted by the Jewish Agency for Palestine, delighted to receive an official international recognition of the right of the Jewish nation for self-determination. However, the Plan was rejected by the Arab states' leaders and governments.

After the Holocaust, the goal was to found a safe haven for Jews all over the world so as to avoid the possibility of another horrific experience of that nature. Indeed, the United Nations acknowledged this goal. This creation, however, based on a specific conception of the good, discriminates against the Israeli-Arabs/Palestinians. Israel acknowledges the problematic aspects involved in the introduction of this perfectionist element in its framework of ruling. To assure an equal status for the Arab minority, the Declaration of Independence holds that Israel will foster the development of the country for the benefit of all its inhabitants; that it will be based on the foundations of liberty, justice and peace; that it will uphold complete equality of social and political rights to all of its citizens irrespective of religion, race or sex, and that it will guarantee freedom of religion, conscience, language, education and culture.<sup>33</sup>

Israel's first Prime Minister, David Ben-Gurion, wrote to the French President, Charles de *Gaulle*, that "*the Arabs who reside in Eretz (Land of) Israel enjoy all the rights that residents in any democratic country enjoy, and a Jewish state is possible only as a democratic country*".<sup>34</sup> *Ben-Gurion quoted from Leviticus 19*: "If a stranger sojourn with thee

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<sup>32</sup> AL-KAYYALI, TAREEKH FALASTIN AL-HADEETH 284; BENNY MORRIS, 1948: A HISTORY OF THE FIRST ARAB-ISRAELI WAR 66-67, 72-73, 75 (Yale University Press, 2008); SAMI HADAWI, BITTER HARVEST: A MODERN HISTORY OF PALESTINE 76 (Olive Branch Press, 1989); UNITED NATIONS, "*The Plan of Partition and end of the British Mandate*," chap. 2 in THE QUESTION OF PALESTINE AND THE UNITED NATIONS, brochure DPI/2517/Rev. 1, <http://www.un.org/Depts/dpi/palestine/ch2.pdf>.

<sup>33</sup> ISRAEL'S MINISTRY OF FOREIGN AFFAIRS, <http://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx> (last visited August 15, 2018).

<sup>34</sup> David Ben-Gurion, *Letter to De Gaulle, December 6, 1967*, 2 THE RESTORED STATE OF ISRAEL 842 (Tel Aviv: Am Oved, 1975).

in your land, ye shall not do him wrong. The stranger that sojourneth with you shall be unto you as the home-born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt”.<sup>35</sup> Ben-Gurion pledged to President de Gaulle that the Jewish people is and will remain committed to the ideals of peace, human fraternity, justice and truth “as ordered by our preachers”.<sup>36</sup>

Ben-Gurion said it was the Arab natural and just right to settle in the land of their forefathers and to live their lives in it. He saw no contradiction between the Jewish return to Zion and the Arab presence in Israel; thus he regarded social-Zionism as a just movement. In 1928 Ben-Gurion declared: “In accordance with my moral belief we do not have the right to deprive a single Arab child, even if our reward resulting from this deprivation would be the fulfillment of all our wishes”.<sup>37</sup>

Ze'ev Jabotinsky, founder of the Betar (Brith Joseph Trumpeldor) movement and leader of revisionist Zionism that forebear the Likud party, argued in *The Iron Wall* that his attitude to Arabs was determined by two principles: “First of all, I consider it utterly impossible to eject the Arabs from Palestine. There will always be *two* nations in Palestine.”<sup>38</sup> And secondly, he believed in equality of rights for all nationalities living in the same State. Jabotinsky declared: “I am prepared to take an oath binding ourselves and our descendants that we shall never do anything contrary to the principle of equal rights, and that we shall never try to eject anyone. This seems to me a fairly peaceful credo.”<sup>39</sup>

The abovementioned Basic Law: Freedom of Occupation and Basic Law: Human Dignity and Liberty anchored the Declaration of establishment of the State of Israel as the document that sets forth the values of Israel. This has been aptly thought of as:

*[...] a dramatic change in the status of the Declaration of Independence: It is no longer a mere source of interpretation, but has become an independent source of human rights.*<sup>40</sup>

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<sup>35</sup> *Leviticus 19: 33-34.*

<sup>36</sup> *Supra note 35* at 851.

<sup>37</sup> Quoted in SHABTAI TEVETH, BEN GURION AND THE PALESTINIAN ARABS 258 (Schocken, 1985).

<sup>38</sup> Ze'ev (Vladimir) Jabotinsky, *The Iron Wall*, JEWISH VIRTUAL LIBRARY (November 4, 1923, 8:50 P.M.), <http://www.jewishvirtuallibrary.org/jsource/Zionism/ironwall.html>.

<sup>39</sup> *Id.* See also Arye Naor, *Minorities in Israel and the Liberal Utopia of Jabotinsky*, 3 IDENTITIES 146, 146-153 (2013).

<sup>40</sup> See dissenting opinion by Justice Shlomo Levin, in *Clal Insurance Co. Ltd. v. Minister of Finance*, HCJ 726/94, 48(5) PD 441 (1994), 465. However, note that the legal status of the Declaration of Independence has remained by majority voices of the Court's justices the document that expresses the credo of Israel as a Jewish and democratic state. In the absence of a complete

#### IV. FROM VISION TO REALITY? IS ISRAEL A LIBERAL-SUBSTANTIVE DEMOCRACY?

In *The Law of Peoples*, John Rawls drew a distinction between liberal and illiberal societies. Liberal societies are pluralistic and peaceful; they are governed by reasonable people who protect basic human rights. These rights include providing a certain minimum to means of subsistence, security, liberty, personal property as well as to formal equality and self-respect as expressed by the rules of natural justice.<sup>41</sup> Liberal peoples are reasonable and rational. Their conduct, laws and policies are guided by a sense of political justice.<sup>42</sup> In contrast, nonliberal societies fail to treat their people as truly free and equal. They adopt norms based on compulsion and coercion. Authoritarian societies aggressively fight to undermine political opponents while liberal societies encourage pluralism of ideas and provide avenues to empower opposition. Theocracy attempts to provide strict answers to all questions and concerns whereas liberal societies have no qualms to present questions with no definite answers, to challenge common truisms, to present competing ideas, to admit human infallibility and celebrate heresy.

Israel is defined as a “Jewish and Democratic State.” We believe that Israel should remain a Jewish and democratic state, as was originally anticipated by the international community, and as was promised in the Declaration of Independence as well as in Israel’s Basic Laws. It should be noted that the Declaration does not include the phrase “Jewish and democratic state” and that it also omits the word “democracy.” However, as correctly held by the Supreme Court of Israel, a plausible interpretation of the Declaration leaves no doubt as to the democratic nature of Israel.<sup>43</sup> Yet Israel must strike a proper balance between its Jewish identity and its democratic nature. This will be possible only if Israel acknowledges that democracy and Jewishness (and/or Judaism) are not values in themselves but rather means to achieve other idealistic values. Both can bring about destructive consequences if abused by a governmental power, and both can establish constructive hopes, if adhered to substantively.

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constitution, the Declaration is relevant “as a document that can bridge the divides in Israeli society.” See Navot, *The Constitution of Israel*, at 17; Clal Insurance Co. Ltd. v. Minister of Finance (the majority opinion). This was also the Court’s position prior to the enactment of the above-mentioned basic laws and the inclusion of the Declaration and the values of Israel in the provisions of these basic laws. See Ziv v. Gubernick, HCJ 10/48, 1 PD 85 (1948), 89; Rogozinsky v. State of Israel, CA 450/70, 26(1) PD 129 (1971); Navot, *The Constitution of Israel*, 13. (Citation: ISRAEL CONST. art. 13).

<sup>41</sup> JOHN RAWLS, *THE LAW OF PEOPLES* Chapter 2 (Harvard University Press, 2002). For further discussion, see Richard Rorty, *Justice as a Larger Loyalty*, 4 *ETHICAL PERSPECTIVES* 139, 139-151 (1997).

<sup>42</sup> JOHN RAWLS, *THE LAW OF PEOPLES* 25 (Harvard University Press, 2002).

<sup>43</sup> Kol Ha’am Co., Ltd. v. Minister of the Interior, HCJ 73/53 and HCJ 87/53; 7(2) PD 871 (1953), 876-878.

We believe that Israel should express its Jewishness through the right to return,<sup>44</sup> the observance of official Jewish holidays, and sanctioning Hebrew as the official state language.<sup>45</sup> The right of return for Jews, being part of the Jewish nation as such, is the golden key granted to them in order to enter the Israeli home. As a Jewish state, Israel is the homeland of the Jewish nation, thus entitling all its members a special key to enter the house. However, within that house, every legal citizen, whether a Jew or not, must be treated fairly and equitably.<sup>46</sup>

We believe that Israel should promote principles of substantive democracy by lending itself to liberal values. Recalling the distinction between formal and substantive democracies, it is notable that especially during recent years, there have been several governmental official voices that perceive democracy as nothing but a means to fulfill the needs and the wishes of the electoral majority, notwithstanding how immoral they might be. This is a wrong and dangerous approach. Unlike its politicians, the Israeli judiciary, represented by the Supreme Court, has played an important role in advancing and protecting the values of a substantive democracy, and in protecting the rights and liberties of minorities against any possible abuse of power by the democratically elected majority.<sup>47</sup>

Israel is a Jewish-ethnic democracy.<sup>48</sup> The framework of governance is democratic, but its underpinning concepts give precedence to Judaism over the Respect for Others Principle, and the Harm Principle. Consequently, Israel adopts illiberal policies and practices that are discriminatory in nature, preferring Jews over others.

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<sup>44</sup>ISRAEL MINISTRY OF FOREIGN AFFAIRS, <http://mfa.gov.il/MFA/MFA-Archive/2001/Pages/The%20Law%20of%20Return-%201950.aspx> (last visited, Aug 8, 2018).

<sup>45</sup> On the legal status of both the Arab and the Hebrew languages in Israel, see Article 82 of “The Palestine Order in Council,” United Nations Information System on the Question of Palestine Documents Collections, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/C7AAE196F41AA055052565F50054E656>. See also Meital Pinto, *On the Intrinsic Value of Arabic in Israel - Challenging Kymlicka on Language Rights*, 20(1) CANADIAN JOURNAL OF LAW & JURISPRUDENCE 143, 143-172 (2007), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=99550](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=99550); opinion by Chief Justice Aharon Barak, in *Adalah and Association for Civil Rights in Israel v. Tel Aviv Municipality and Others*.

<sup>46</sup> Consider Opinion by Chief Justice Aharon Barak, in *Qa’adan et al. v. Israel Lands Administration et al.*, HCJ 6698/05, 54(1) PD 258 (2000), at the end of para. 31.

<sup>47</sup> Consider JOHN H. ELY, *DEMOCRACY AND DISTRUST* (Harvard University Press, 1980). See also opposing opinions of Chief Justice Aharon Barak and Justice Asher Grunis, in *The Movement for Quality Government in Israel et al. v. The Knesset et al.*, HCJ 6427/02, 61(1) PD 619 (2006).

<sup>48</sup> Sammy Smooha, “*The Model of Ethnic Democracy: Israel as a Jewish and Democratic State*”, 8(4) NATIONS AND NATIONALISM 475, 475-503 (2002), *idem*, “*Types of Democracy and Modes of Conflict-management in Ethnically Divided Societies*”, 8(4) NATIONS AND NATIONALISM 423, 423-431 (2002), and “*Israel70 The Global Enigma*”, FATHOM (July 2018), <http://fathomjournal.org/israel70-the-global-enigma/>



## V. SYMBOLS

Symbols are important in the life of a nation. As the only Jewish country in the world, we can expect Israel's symbols to be Jewish. At the same time, significant Arab/Palestinian minority resides and therefore some accommodation needs to be made with regard to them so that they would feel part of the country. As said, democracy is majority rule while safeguarding the rights of minorities. Therefore, a compromise is in place. Here is a proposal that we hope will provoke and promote debate. Through means of deliberative democracy, we hope that a suitable compromise will be found. Thus, this proposal should be perceived as a starting point, not as an ironclad proposal.

A few words on deliberative democracy - This mechanism directly involves citizens in the decision-making processes on matters of public concern. It requires the setting of public reason institutions by which knowledge is exchanged and ideas crystallized via mechanisms of deliberation and critical reflections. People present their cases in persuasive ways, trying to bring others to accept their proposals. Processes of deliberation take place through an exchange of information among parties who introduce and critically test proposals. Deliberations are free of any coercion and all parties are substantially and formally equal, enjoying equal standing, equal ability, and equal opportunity to table proposals, offer compromises, suggest solutions, support some motions and criticize others. Each participant has an equal voice in the process and tries to find reasons that are persuasive to all so as to promote the common good.<sup>49</sup>

*Our proposal:*

**The national emblem** of the State of Israel includes a Menorah, flanked by two olive branches. In antiquity, the most commonly used symbol of Judaism was the menorah, the seven-branched candelabrum that stood in the Holy Temple in Jerusalem before it was destroyed by the Romans in 70 C.E. The Menorah was adopted as the emblem of Israel by the decision of The Provisional Council of State on 11 Shevat 5709 in the Hebrew calendar (February 10, 1949). This emblem will remain intact.

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<sup>49</sup> JOSHUA COHEN, "DELIBERATION AND DEMOCRATIC LEGITIMACY," in ALAN HAMLIN AND PHILIP PETTIT (eds.), *THE GOOD POLITY* 22-23 (Blackwell, 1989); JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS* 304-308 (Polity, 1998). See also ANDRÉ BÄCHTIGER AND JOHN S. DRYZEK *et al* (eds.), *THE OXFORD HANDBOOK OF DELIBERATIVE DEMOCRACY* (Oxford University Press, 2018).

**The Israeli flag** is composed of blue stripes and a Star of David (Magen David). The blue stripes are intended to symbolize the stripes on a tallit, the traditional Jewish prayer shawl. The Magen David is a widely acknowledged symbol of the Jewish people and of Judaism. One of the earliest uses of the Star of David as a symbol of Jewish identity was in 1354, when Charles IV King of Bohemia granted the Jews of Prague the right to bear a red flag depicting the Star of David and Solomon's Seal (a Star of David within a circle). After Jews were emancipated following the French Revolution, many of their communities selected the Star of David as their emblem.<sup>50</sup> *It should be noted that the six-pointed star is not uniquely a Jewish symbol. It was a common symbol in Islamic and Western occultism.*<sup>51</sup> *Muslims know the hexagram as the Seal of Solomon— both Solomon and David were prophets, and both are mentioned in the Quran. The hexagram appears in Islamic artifacts and decorations on mosques and other buildings worldwide.* The Seal of Solomon was used by Muslims from India to Spain to adorn and decorate the bottom of drinking vessels and coins issued by various dynasties.<sup>52</sup> The flag will also remain intact.

We suggest amending **the anthem**. Israel's Arab-Palestinian citizens have been criticized for refusing to sing the words of the Israeli anthem. The argument has been that they must do so because they are citizens of the state of Israel. But then the anthem should relate to them and be meaningful to them. However, the anthem speaks of "the Jewish spirit yearning deep in the heart".<sup>53</sup> Presently, the Israeli anthem appeals solely to the Hebrew hearts. It explicitly ignores the multicultural and multinational character of the state. We should learn from the lessons of other democracies that were bold enough to change their respective anthems in order to represent all factions of their populations (most notably South Africa, the "rainbow" nation, after 1994). Israel need not necessarily adopt a different anthem. It may simply change a few words, mentioned above: instead of "Zion" to speak of "Israel" or "our land"; instead of a "Jew" to speak of a "person" or "citizen". Such accommodations are steps in the right direction towards a more democratic society.

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<sup>50</sup> Ronen Shnidman, "The Star of David: More Than Just a Symbol of the Jewish People or Nazi Persecution", HAARETZ (August 17, 2018, 8:07 P.M.), <https://www.haaretz.com/world-news/europe/the-star-of-david-isn-t-just-jewish-1.5323219>.

<sup>51</sup> DHWTY, "The Significance of the Sacred Seal of Solomon and its Symbols", ANCIENT ORIGINS (August 23, 2018, 6:30 P.M.), <https://www.ancient-origins.net/artifacts-other-artifacts/significance-sacred-seal-solomon-and-its-symbols-005401>.

<sup>52</sup> Khalid, "Symbolism: Star of David or Solomon's Seal", BAHEYELDIN DYNASTY (August 22, 2018, 5:40 P.M.), <https://baheyeldin.com/culture/star-of-david-solomons-seal.html>.

<sup>53</sup> Quoted from the Israeli anthem "Hatikva" ("The Hope").

Being Israeli does not necessarily mean being a Jew. In 70 years, the state of Israel has successfully developed its own culture, social life and political characteristics.<sup>54</sup> Israel has its own sociopolitical identity, and as such this is what the Flag and the Anthem must express. Admittedly, we are not suggesting that the anthem should speak of the Palestinian spirit, but rather of the Israeli spirit. There is no reason why the Arab-Palestinian citizens of Israel should sing about the Jewish spirit. In reading the anthem's words, the spirit of every citizen must be yearning deep in the heart. Israeli anthem speaks of the Jewish "2,000-year-old hope of being a free nation on our land."<sup>55</sup> However, this hope has come true already, and if there should be any hope now, it should be that of peace, prosperity, and a true democracy. This shall be the hope (*Hatikva*) for the future generations of the Israeli state.

In this context let us mention that Canada, like Israel, struggles with national problems, for it embraces two nations; namely, the English and the French nations. Since French has become an official language, equal in status to English, the Canadian Anthem was officially translated into French, in the following manner:

*Ô Canada! Terre de nos aïeux, Ton front est ceint de fleurons glorieux! Car ton bras sait porter l'épée, Il sait porter la croix! Ton histoire est une épopée des plus brillants exploits. Et ta valeur, de foi trempée, Protégera nos foyers et nos droits; Protégera nos foyers et nos droits.*

[O Canada! Land of our forefathers Thy brow is wreathed with a glorious garland of flowers. As in thy arm ready to wield the sword, So also is it ready to carry the cross. Thy history is an epic of the most brilliant exploits. Thy valour steeped in faith Will protect our homes and our rights Will protect our homes and our rights.]

The Canadian anthem in the French version speaks of "So also is it ready to carry the cross."<sup>56</sup> Many Canadian Jews argue against the French version of the anthem. They contend that the anthem must

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<sup>54</sup> For interesting reading on the cultural developments in the state of Israel, see AMOS OZ, *A TALE OF LOVE AND DARKNESS* (Harcourt, 2005).

<sup>55</sup> Quoted from the Israeli anthem.

<sup>56</sup> The English version of the Canadian Anthem does not speak of the "cross": "O Canada! Our home and native land! True patriot love in all thy sons command. With glowing hearts we see thee rise, The True North strong and free! From far and wide, O Canada, we stand on guard for thee. God keep our land glorious and free! O Canada, we stand on guard for thee. O Canada, we stand on guard for thee."

express their Canadian citizenship. Similarly, Israeli-Palestinians may rightly object to an anthem that fails to embrace all Israeli citizens.

Israel has no official **national motto** and here is an opportunity to introduce something new that reflects Israel of today, a motto that celebrates the mosaic of Israeli cultures, that celebrates diversity and pluralism, and that would unite all citizens around one unifying slogan with which all could identify. The motto should preferably be selected from pertinent Arab proverbs, along the lines marked above regarding the beauty of pluralism and the need to create bridges and emphasize unity. United we stand. United is our strength. Any of the following values -- peace, tolerance, power, freedom, truth, justice, charity and righteousness -- may also be accentuated. For instance: "Do not turn away a poor man...even if all you can give is half a date. If you love the poor and bring them near you". Al-Tirmidhi, Hadith 1376.

## VI. DISCRIMINATION NOT APARTHEID

Israel has been accused to resemble the notorious South African apartheid regime. The resettlement of some Arab citizens from Jerusalem to the West Bank is deemed reminiscent of the Group Areas Act of the apartheid regime. The separate roads in the West Bank for Jews and others for Palestinians resemble aspects of the apartheid transport arrangements.<sup>57</sup>

Critics of Israel should clearly distinguish between the Israeli occupation of the West Bank, where Palestinians are plainly not equal to Israelis who reside there and where Palestinians are routinely subjected to oppressive regulations of the occupation,<sup>58</sup> and the rest of Israel. In our opinion, as far as the case of Israel's Arab-Palestinian citizens is concerned, the Apartheid Argument does not stand. The Israel Supreme Court has played a very significant role in giving substantive meaning to various rights granted to the Arab minority, including the right to vote, the right to establish political parties, freedom of expression, religious autonomy, and separate educational systems. This should not be understood as a trivial process, nor should it be perceived as self-evident.

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<sup>57</sup> Lord Steel of Aikwood, "*Israel: Arab Citizens*," 741 (84) HOUSE OF LORDS OFFICIAL REPORT, HANSARD 1208, 1208 (2012).

<sup>58</sup> R. Cohen-Almagor, "*Fifty Years of Israeli Occupation*", E-INTERNATIONAL RELATIONS (August 14, 2018, 5:30 P.M.), <http://www.e-ir.info/2017/10/14/fifty-years-of-israeli-occupation/>.

While we do not claim that Israeli-Palestinians always receive equal treatment and enjoy *de facto* the same rights and liberties as Israeli-Jews, Israeli-Palestinians do not live under anything that resembles the South-African apartheid. Discrimination is one thing and apartheid is another. The situation is problematic as is and there is no need to exaggerate its severity. Those who claim that Israel is an apartheid state know very little about Israel and South Africa. Israel is a multicultural country. Multiculturalism is challenging. It sometimes brings about schisms and leads to discrimination against minorities, also of the kinds based on age, gender,<sup>59</sup> and/or sexual orientation. However, various forms of discriminatory conduct have been scrutinized by the Supreme Court.<sup>60</sup> While discrimination still exists, and the government surely can and should do more in closing the gaps, acts of discrimination are not been legitimized. Those who bluntly practice policies of discrimination are penalized and reprimanded by the courts.

Israeli-Arabs/Palestinians enjoy progress and higher standard of living under Israeli sovereignty. Consider, for instance, health and education. Mortality rates among Israeli-Arabs/Palestinians have fallen by over two-thirds since the establishment of Israel, while life expectancy has increased 30 years, reaching 78.5 (women 80.7, men 76.3) in 2009. Infant-mortality rates have similarly been significantly reduced from 56 per 1,000 live births in 1950 to 6.5 in 2008. As for education, adult illiteracy rates among Israeli-Arabs/Palestinians dropped from 57.2% (79% among women) to 7.7% (11.7% among women). In 1961, less than half of Arab children attended school, with only 9% acquiring secondary or higher education. By 1999, 97% of Arab children attended schools. Fifty years ago, a mere 4% of Arab teachers held academic degrees; by 1999, the figure had vaulted to 47%.<sup>61</sup>

One of the Supreme Court justices is an Arab,<sup>62</sup> and there are many other Arabs in lower courts. Arab nationals hold distinguished governmental positions, including in the Prime Minister's Chambers.<sup>63</sup> Israeli-

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<sup>59</sup> R. Cohen-Almagor, "Discrimination against Jewish Women in Halacha (Jewish Law) and in Israel", 45 (2) BRITISH JOURNAL OF MIDDLE EASTERN STUDIES 290, 290-310 (2018).

<sup>60</sup> See for example: HCJ (High Court of Justice) 4541/04 *Miller v. Minister of Defense et al.*, 49 P.D. 94 (decided on November 8, 1995) [the Court held in favor of gender equality between men and women in the military context, in particular regarding aviation courses. The Court added that the budgetary and planning considerations did not justify a general policy of rejecting all women from aviation courses].

<sup>61</sup> Efraim Karsh, *Israel's Arabs: Deprived or Radicalized?*, ISRAEL AFFAIRS 1, 1-19 (2013), <http://www.meforum.org/3423/israel-arabs-deprived-radicalized>.

<sup>62</sup> Justice George Karra. Prior to him Justice Saleem Gubran served at the Court; there he was promoted, based on seniority, to the position of Deputy President of the Court.

<sup>63</sup> For instance, MK Majalli Whbee served as Deputy Minister in the Prime Minister's Office, Deputy Minister of Education, Culture, and Sport, and Deputy Minister of Foreign Affairs. Other Israeli Arabs held, and hold, other parliamentary positions in the Israeli Knesset, as well as sensitive governmental positions. For instance, MK Mjalli Whbee served as Deputy Speaker of the

Arabs/Palestinians have their own political parties; they have their own seats in Parliament; they have their own political newspapers;<sup>64</sup> they have their own voice. Israel has been implementing a policy of affirmative action towards the Arab population in the public service.<sup>65</sup>

The Supreme Court gave Mr. Mohammed Bakri, an Arab movie producer, the constitutional protection to screen his movie “Jenin Jenin,” which accuses Israeli soldiers of crimes against humanity during their military activity in the Palestinian city Jenin, following a bloody terrorist attack on Israeli civilians.<sup>66</sup> The Court entitled Mr. Adel Qaadan, an Israeli-Arab/Palestinian, to buy a piece of land in a Jewish communal settlement, deciding that a policy that calls for segregation is unconstitutional.<sup>67</sup> The Supreme Court has scrutinized the route of the security fence between Israel and the Palestinian Authority, at times ordering rerouting of the fence.<sup>68</sup> The Court also granted constitutional protection to Israeli-Arabs/Palestinians who aspired to become members of parliament, even when their political proposals voiced stern criticism of the state of Israel, including the expression of grave doubts regarding its basic legitimacy. All attempts by Jewish-Zionist political parties to deprive these Israeli-Arabs/Palestinians of their right to be elected to

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*Knesset*. He served as well, as Member of the Foreign Affairs & Defense Committee. MK Mohammad Barakeh served as Deputy Speaker of the Knesset. *Note*: MK stands for “Member of the Knesset.”

<sup>64</sup> Among other leading Arab newspapers in Israel, these are: *Al-Senarab*; *Kol El-Arab*; *Al-Etibad*; and *Panorama*.

<sup>65</sup> See article 15A of *Hokh Shirot Ha-Mdina (Minojeem)* (“The State Service (Appointments)”) of 1959. See also: HCJ (High Court of Justice) 6427/02. *The Movement for Quality Government in Israel et al. v. The Knesset et al.* (not published yet) (decided on May 11, 2006); HCJ (High Court of Justice) 11163/03 *The National Committee for the Heads of the Arab Local Authorities in Israel et al. v. The Prime Minister of the State of Israel* (not published yet) (decided on February 27, 2006); HCJ (High Court of Justice) 6924/98 *The Association for Civil Rights in Israel v. The Israeli Government*, 58(5) P.D. 15 (decided on July 9, 2001).

<sup>66</sup> See HCJ (High Court of Justice) 316/03 *Bakri et al. v. Israel Film Council et al.*, 58(1) P.D. 249 (decided on November 11, 2003) [After IDF (Israeli Defense Force) operations against the terror infrastructure in Jenin (a Palestinian city) in April 2002 (“Operation Defensive Wall”), Mohammed Bakri filmed the responses of local Palestinians and edited them into the film “Jenin, Jenin.” After advance screenings, both domestically and abroad, and in anticipation of the film’s domestic commercial screening, Bakri requested the approval of the Israel Film Council. The Council denied its approval. Bakri claimed that this decision violated fundamental constitutional rights and Israeli administrative law. The Court held that that freedom of speech constitutes one of the fundamental principles of a democratic society. The Court decided that, under the circumstances, the decision of the Israel Film Council unlawfully infringed the constitutional rights of the petitioners].

<sup>67</sup> See the *Qa’adan* case, mentioned above [The Court held that the state of Israel may not discriminate Israeli Arabs against Israeli Jews in allocating lands for settlement, even when these lands were initially allocated by the Jewish Agency].

<sup>68</sup> See for example: HCJ (High Court of Justice) 7957/04 *Zaharan, et al. v. The Prime Minister of Israel, et al.* (not published yet) (decided on September 15, 2005) [The Court accepted a petition by several Palestinians, who approached the Court contending the illegality of the security fence (or, the “separation fence”). The Court held that regarding the particular part of the fence, upon which the petition was submitted, the fence was constructed illegally, since the state of Israel did not adhere to the less coercive means available within the proportionality test. However, the Court did not accept the International Court of Justice decision on the illegality of the security fence as a matter of principle, holding that the state of Israel has a right to construct the fence on Israeli territory, thus protecting its security against the terrorist attacks with which it struggles in a daily basis]. See and compare: Advisory Opinion of the International Court of Justice at The Hague: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* (International Court of Justice, July 9, 2004), 43 IL M 1009 (2004). See also: HCJ (High Court of Justice) 2056/04 *Beit Sourik Village Council v. The Government of Israel*, 58(5) P.D. 807 (decided on June 30, 2004).

parliament were met with the Supreme Court's objection.<sup>69</sup> The State of Israel also established three Inquiry Commissions regarding the relationship between the State and Arab nationals, being citizens of Israel or of neighboring countries.<sup>70</sup>

However, the picture is not one of all roses; there are many gaps to bridge. In many cases, Israel discriminates against its Arab citizens. Around 50 percent of the Israeli-Arabs/Palestinians population lives in poverty. The poverty rate among Arab families has significantly increased since the 1990s, rising from 35 percent in 1990 to 45 percent in 2002.<sup>71</sup> Arabs have generally held the low-wage jobs in Israeli economy. On average, Arab men earn 60 percent of the national average wage, while Arab women earn 70 percent of the average wage.<sup>72</sup>

The Bedouins, who comprise 12% of the Palestinian-Arab citizens of Israel, are particularly discriminated. Between 1968 and 1989, half of the Bedouin population was transferred into townships in the north-east part of the Negev desert. The rest remained in unrecognized villages built by the Bedouins for their own welfare and needs, with no basic utilities, such as electricity or water. Now, more than half of the Bedouins, about 90,000 of 170,000 people, are deprived of their ancestral lands, living in what the Israeli government terms "illegally constructed villages", still without public utilities or basic services.<sup>73</sup> In 2011, the government approved the Praver Plan for the mass expulsion of the Bedouin community in the Negev. The plan speaks of force displacement of some 70,000 Bedouin citizens of Israel, and the destruction of 35 unrecognized, illegal villages.<sup>74</sup> More than 1,000 homes were demolished in 2011 and dozens more in 2012.<sup>75</sup> More recently, Israeli authorities designated the Umm al-Hiran village for demolition, expelling its community and build a Jewish settlement in its place.<sup>76</sup> In July 2018, protests broke out at the Bedouin

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<sup>69</sup> The Central Election Commission for the 16<sup>th</sup> Knesset v. MP Ahmad Tibi and MP Azmi Besharah, 57(4) P.D. 1

<sup>70</sup> (1) *Kaban Commission* of 1982 (investigating the alleged massacre committed against Arab Lebanese in times of war, by Israeli military forces, in the Lebanese villages of *Sabra* and *Sbatila*); (2) *Shamgar Commission* of 1995 (investigating the massacre committed by a Jewish Israeli terrorist against innocent Arab Muslims during their religious pray); and (3) *Or Commission* of 2000 (investigating the reasons for and the consequences of the death of 13 Israeli Arabs, allegedly killed by Israeli policemen, during a violent protest of Israeli Arabs against a prominent politician, Ariel Sharon, upon his provocative visit to the Temple Mount.

<sup>71</sup> ILAN PELEG AND DOV WAXMAN, *ISRAEL'S PALESTINIANS* 35 (Cambridge University Press, 2011).

<sup>72</sup> *Id.* at p. 36-37.

<sup>73</sup> Lord Bishop of Exeter right reverend Prelate, "*Israel: Arab Citizens*," 741(84) HOUSE OF LORDS OFFICIAL REPORT, HANSARD 1203, 1203 (2012).

<sup>74</sup> Baroness Uddin, "*Israel: Arab Citizens*," 741(84) HOUSE OF LORDS OFFICIAL REPORT, HANSARD 1222, 1222 (2012).

<sup>75</sup> *Ibid.*

<sup>76</sup> Kamel Hawwash, "*Bedouins' endless suffering in Israel*", THE ARAB WEEKLY (August 25, 2018, 7:54 P.M.), <https://thearabweekly.com/bedouins-endless-suffering-israel>.

village Khan al-Ahmar in the West Bank against Israeli plans to demolish the village. Khan al-Ahmar was built without Israeli permits, which Palestinians say are impossible to obtain.<sup>77</sup>

Arab citizens are discriminated in having access to land, in land planning, in rural and urban development, and in housing provisions. Arabs own only 2.5 percent of Israel's lands and they lack the ability of acquiring the majority of Israeli land. While over 1,000 Jewish settlements have been established since 1948, the Arab community has remained in almost standstill.<sup>78</sup> The lack of town plans and planning permissions for Palestinian towns is one of the main causes of inequality and of the failure of the Palestinian citizens to fulfill their economic potential.<sup>79</sup> As Israeli governments refused to issue building plans for Arab communities, Arabs took the initiative and established new villages that are not recognized by Israeli law. Some 36 Bedouin settlements in the Negev are unrecognized and consequently some 45,000 structures are at risk of demolition.<sup>80</sup> Arab municipalities are not allocated comparable funding granted to Jewish municipalities.<sup>81</sup>

Consequently, the majority of Israeli-Arabs/Palestinians do not feel that they are fully integrated into Israel because it is a Jewish state due to continued discrimination in many spheres of life. According to the 2012 Democracy Index, 27.7% of the Israeli-Arabs/Palestinians greatly feel a sense of belonging to the State of Israel, while 38.2% feel somewhat a sense of belonging and 33.5% hardly feel this way.<sup>82</sup> In 2015, only a third of respondents (32.4%) felt that they were part of the State and its problems.<sup>83</sup>

An important distinction has to be made between formal citizenship and full citizenship. Israeli Jews can be said to enjoy full citizenship: they enjoy equal respect as individuals, and they are entitled to equal treatment by law and in its administration. The situation is different with regard to the Israeli-Arabs/Palestinians, the

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<sup>77</sup> Ali Sawafta, "Protests erupt at Bedouin village Israel plans to demolish", REUTERS (August 4, 2018, 7:40 P.M.), <https://uk.reuters.com/article/uk-israel-palestinians-bedouin/protests-erupt-at-bedouin-village-israel-plans-to-demolish-idUKKBN1JU1RB>.

<sup>78</sup> KAIS NASSER, SEVERE HOUSING DISTRESS AND DESTRUCTION OF ARAB HOMES: OBSTACLES AND RECOMMENDATIONS FOR CHANGE 85-86 (Arab Center for Law and Policy, 2012).

<sup>79</sup> Baroness Warsi, *Israel: Arab Citizens*, 741(84) HOUSE OF LORDS OFFICIAL REPORT, HANSARD 1232, 1232 (2012).

<sup>80</sup> *Supra* note 79 at 84.

<sup>81</sup> Ilan Peleg and Dov Waxman, *Israel's Palestinians*, p. 43; R. Cohen-Almagor, *Israeli Democracy and the Rights of Its Palestinian Citizens*, 45 RAGION PRATICA 351, 351-368 (2015).

<sup>82</sup> TAMAR HERMANN ET AL., THE ISRAELI DEMOCRACY INDEX 2012 74 (The Israel Democracy Institute, 2012).

<sup>83</sup> TAMAR HERMANN ET AL., THE ISRAELI DEMOCRACY INDEX 2015 27 (The Israel Democracy Institute, 2015).



Bedouin and the Druze. Although they are formally considered to enjoy liberties equally with the Jewish community, in practice they do not share and enjoy the same rights and liberties.

## **VII. THE RIGHTS & DUTIES OF CITIZENSHIP**

Citizenship entails many benefits. Citizens enjoy political and social rights. They are entitled to basic social security and to basic health privileges. However, the existing state of affairs in which large sectors of the population do not fulfill their civic duties is unacceptable and unfair to those who share the burden. People should not only take from the state. They should also invest in it and contribute to it. Israel cannot afford having such exemption phenomenon. It cannot afford it when Arabs are concerned, and it cannot afford it when ultra-religious Jews are concerned. Both sectors are growing, and both pose challenges to the idea of full citizenship.

At present, large sectors, mainly the ultra-orthodox, do not pay taxes, do not serve in the army, do not work; yet, they receive state support allowing them to study. Resources should be distributed equally to all sectors. Every citizen is expected to pay in accordance with his/her abilities. As long as the state deems it necessary to oblige its young citizens to serve in the army, all healthy people should take part and give a shoulder in carrying the security burden. This is true for all citizens without exception. Israel has exempted its Arab citizen from army service. This exemption, however, is a double-edge sword. It serves as a pretense for discrimination. The argument being made that Arabs do not serve in the army, do not carry the same duties and obligations as Jews; therefore, they should not enjoy the same rights and privileges. It is in Arab interest to silence this line of argumentation. Citizens who have a problem in serving the army for religious, moral or national reasons, and citizens who refuse to serve in order to avoid a situation by which they might confront their Palestinian brothers on the enemy side should commit themselves to do national (or civil) service for the required period of time (presently three years for men; a little under two years for women) in their own communities, or in other communities, working to better the conditions of their own group. Palestinian-Arabs should do national (civil) service if this is their wish in their own neighborhoods. They could volunteer to work in charity, welfare and relief organizations, the fire brigades, medical service, etc. Conscientious objectors could contribute to Israel in various ways other than serving in the army. All should take part in this important societal duty.

## CONCLUSION: LOOKING AHEAD

Presently, discrimination against Israeli-Arabs/Palestinians is prevalent in many spheres of life, including land allocation, housing, municipality budgets, employment, education, urban development and basic civil rights. There is unhealthy discrepancy between official statements which are not backed by deeds. The Declaration of Independence is a remarkable document but on the grounds we do not find equality between Jews and Palestinians, and the latter do not enjoy the same rights and liberties. The symbols of the Jewish state ignore its minorities.

Delegates of the Arab minority should be represented, in accordance with their size in society, in the *Knesset* and in the government.<sup>84</sup> To date, there has been only one Arab minister: Raleb Majadele who was appointed Minister without portfolio in 2007 and a few months later became Minister of Culture, Sport and Science. Majadele served in this role for two years until 2009. No other Palestinian ever served in the Israeli government. This should be corrected. At the same time, Israel would like to see from all its citizens, without exception, a real and strong commitment to the state, to peace, and to the struggle against terror.

At the time of writing (July 19, 2018), the *Knesset* passed the Nation State Law which, in effect, gives Jewish values supremacy over Israel's democratic commitments and jeopardizes Israel as a democratic state, as a Jewish state. This law degrades Israel's moral legitimacy. The Law anchors the state's menorah emblem, Jerusalem as Israel's capital, "Hatikvah" as the state anthem.<sup>85</sup> The Hebrew calendar is the official calendar of the state and alongside it is the Gregorian calendar to be used as the official calendar. The Sabbath and the festivals of Israel are the established days of rest in the state; Non-Jews have a right to maintain days of rest on their Sabbaths and festivals.<sup>86</sup> The controversial parts are the following:

### 1 — Basic principles

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<sup>84</sup> JS Mill wrote in his *Autobiography*: "Minorities, so long as they remain minorities, are, and ought to be outvoted; but under arrangements which enable any assemblage of voters, amounting to a certain number, to place in the legislature a representative of its own choice, minorities cannot be suppressed". <https://www.earlymoderntexts.com/assets/pdfs/mill1873e.pdf>.

<sup>85</sup> Raoul Wootliff, *Final text of Jewish nation-state law, approved by the Knesset early on July 19*, THE TIMES OF ISRAEL (August 19, 2018, 4:30 P.M.), <https://www.timesofisrael.com/final-text-of-jewish-nation-state-bill-set-to-become-law/>.

<sup>86</sup> *Id.*

C. The right to exercise national self-determination in the State of Israel is unique to the Jewish people.<sup>87</sup>

The word “unique” should be uniquely used, when it is of absolute necessity. This phrase ignores the non-Jewish minorities in Israel. Unfortunately, there is a need to repeat time and again: Democracy is about majority rule while respecting the rights of minorities.

### 3 — The capital of the state

Jerusalem, complete and united, is the capital of Israel.<sup>88</sup>

We would have no problem if the wording was: Jerusalem is the capital of Israel.

### 4 — Language

A. The state’s language is Hebrew.

B. The Arabic language has a special status in the state; Regulating the use of Arabic in state institutions or by them will be set in law.

C. This clause does not harm the status given to the Arabic language before this law came into effect.<sup>89</sup>

Of course it does. With this law, Arabic has been demoted in importance from official language to a “special status”.<sup>90</sup> Arabic should be taught at every primary and high school together with English. Language is a key factor in creating bridges between people – Israeli Jews and Israeli-Arabs/Palestinians, and between Jews and Arabs in general. Here we should also note that Judaic studies should be available in every primary and high school. They should be made compulsory for two or three years and then optional. Studies of other religions that exist in Israel should also be made available. Sign posts should be written in Hebrew and in Arabic. Key sign posts should be written also in English (as now is the case) for many millions of tourists who hopefully one day will make Israel a "must see" in their travels.

The Nation State Law also contains a clause that legally sanctions segregated communities in Israel, enabling discrimination against various groups, including non-Jews. Section 7 — Jewish settlement states:

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<sup>87</sup> *Supra* note 85.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Arguably contrary to Article 82 of *Dvar Ha-Melikh Be-Moa'tsato* (“King’s Order-in-Council”) (originally published in 1922, as the Palestinian Order-in-Council, upon establishing the British Mandate on Mandatory Palestine, on August 10, 1922), which declares Arabic as an official language in Israel. [https://en.wikisource.org/wiki/Palestine\\_Order-in-Council](https://en.wikisource.org/wiki/Palestine_Order-in-Council).

“A. The state views the development of Jewish settlement as a national value and will act to encourage and promote its establishment and consolidation”.<sup>91</sup> Development of Jewish settlements is fine. Development of Jewish settlements in the occupied territories is not.

The Nation State Law runs counter the spirit of Judaism, of Zionism, of socialism and of revisionism. It contradicts the Declaration of Independence as well as the 1994 Basic Law: Freedom of Occupation<sup>92</sup> and the 1992 Basic Law: Human Dignity and Liberty.<sup>93</sup> Israel should not opt to adopt blatantly racist laws such as this unsettling Law. The forefathers of Zionism: Herzl, Ben-Gurion, Weizmann, Jabotinsky and others are rolling in their graves.

Israeli leaders should decide whether they wish Israel to be “Utopia”<sup>94</sup> or “Dystopia.”<sup>95</sup> An *utopia* reflects a desire to create a community or society that possesses highly desirable or (nearly) perfect qualities for its citizens.<sup>96</sup> Dystopia represents the concept of “Not a Good Place,” a society that is undesirable or frightening where its citizens experience great suffering or injustice.<sup>97</sup> Israeli leaders seem to like asking: “Magic mirror on the wall, who is the fairest one of all in the Middle East?,”<sup>98</sup> to which their magic mirror always responds: “You are the fairest one in the Middle East.”<sup>99</sup> But a country that aspires to compete with Western enlightened democracies cannot afford being compared only with the Middle East,<sup>100</sup> and a country that perceives itself a “villa in the jungle”<sup>101</sup> must aspire to be compared with other “villas” in the world.

This paper is written from a Zionist and liberal viewpoint. We endorse the Zionist belief regarding the need for a home for the Jewish people in Israel. We endorse egalitarian democracy. Israel struggles to

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<sup>91</sup> *Supra* note 86.

<sup>92</sup> THE KNESSET, [https://www.knesset.gov.il/laws/special/eng/basic4\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic4_eng.htm) (last visited Aug. 11, 2018).

<sup>93</sup> THE KNESSET, [https://www.knesset.gov.il/laws/special/eng/basic3\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm) (last visited Aug. 11, 2018).

<sup>94</sup> The term and the concept are borrowed from THOMAS MORE, *UTOPIA*, trans. PAUL TURNER (Penguin Books, 1984).

<sup>95</sup> It is believed that one of the early uses of this word was made by John Stuart Mill in one of his parliamentary speeches. See JOHN S. MILL, *1 PUBLIC AND PARLIAMENTARY SPEECHES*, ed. JOHN M. ROBSON AND BRUCE L. KINZER (University of Toronto Press, 1988).

<sup>96</sup> OXFORD DICTIONARY, <https://en.oxforddictionaries.com/definition/utopia> (last visited Aug. 17, 2018).

<sup>97</sup> OXFORD DICTIONARY, <https://en.oxforddictionaries.com/definition/dystopia> (last visited Aug. 17, 2018).

<sup>98</sup> The quote is borrowed from the nineteenth century German fairy tale “Snow White,” published in 1812 by the Brothers Grimm. Citation: GRIMM BROTHERS, *SNOW WHITE* (1812).

<sup>99</sup> *Id.*

<sup>100</sup> Former Prime Minister Ehud Barak said that Israel is “a villa in the jungle.” See Uri Avnery, “Barak: Israel a Villa in the Jungle,” *ARAB NEWS* (August 17, 2018, 7:30 P.M.), <http://www.arabnews.com/node/222588>.

<sup>101</sup> *Id.*

maintain Jewish democracy, presently giving precedence to Judaism over democracy. We argue that the reverse should be the case. We acknowledge and protest against the discrimination of Arabs/Palestinians while we oppose the attempt to characterize Israel as an apartheid state. We think any form of tyranny, minority and majority alike, is repugnant. The decision of one to discriminate against the other due to her religion is awful. The decision of many to discriminate against the minority just because they can make the situation equally terrible, and cruder. This is bullying. We believe that Israel should develop and promote mechanisms for the self-realization of all individuals, notwithstanding their religion, race, ethnicity, colour, gender, class or sexual orientation. These mechanisms, which include compromise, open debate, mutual respect and democratic deliberation, should be aptly employed on all state levels: Symbolic, declarative, governmental and practical.

Israel should strive to become a better place for its minorities, a state where all citizens feel a sense of belonging, perceiving Israel as a home. Israel should keep and promote its democratic character, otherwise it will slide to be like any other theocracy. Let us recall the holy scripture, where The LORD said to Israel:

“I have a greater task for you, my servant.

Not only will you restore to greatness  
the people of Israel who have survived,

but I will also make you a light to the nations—

so that all the world may be saved.”<sup>102</sup>

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<sup>102</sup> ISAIAH 49, <https://www.biblegateway.com/passage/?search=Isaiah+49&version=GNT> (last visited August 8, 2018).