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## WHY THE *JEWISH* STATE NOW?

RAEF ZREIK

*Israel's raison d'être was as a Jewish state, yet for almost four decades after the 1948 declaration of its establishment its Jewishness was not inscribed in any law. This essay, a structural-historical discourse analysis, seeks to explore what led up to today's insistent assertion of the state's Jewish identity. To this end, the author traces Israel's gradual evolution from its purely ethnic roots (the Zionist revolution) to a more civic concept of statehood involving greater inclusiveness (accompanied in recent decades by a rise in Jewish religious discourse). The author finds that while the state's Jewishness was for decades an assumption so basic as to be self-evident to the Jewish majority, the need to declare it became more urgent as the possibility of becoming "normalized" (i.e., a state for all its citizens) became an option, however distant. The essay ends with an analysis of Israel's demand for recognition as a Jewish state, arguing why the Palestinian negotiators would benefit from deconstructing it rather than simply disregarding it.*

DURING ITS PEACE NEGOTIATIONS WITH EGYPT AND JORDAN, Israel did not ask for recognition for itself as a Jewish state, and such recognition does not appear in the peace treaties with either state. With regard to negotiations with the PLO for the final status of the Palestinian territories, the demand for recognition of Israel as a Jewish state or as a state of the Jewish people (which are different concepts<sup>1</sup>) was not on the table at the 1991 Madrid conference, during the Oslo talks of 1992-93, or even at the failed Camp David summit of July 2000, or the subsequent negotiations at Taba in early 2001. This demand was put forward for the first time in a negotiation context at the 2007 Annapolis conference by the Olmert government in its last days in office. The current Israeli government, by contrast, has made recognition of the Jewishness of the state one of its principal negotiating demands, on occasion even presenting it as a precondition for the negotiations themselves.

Nor has the growing emphasis on the demand been restricted to the negotiating sphere. Projects aimed at affirming the Jewishness of the state through legislation<sup>2</sup> have increased in recent years: amendments to the citizenship law require persons seeking Israeli citizenship to swear allegiance to a Jewish and democratic Israel and limit family unification between Israeli Palestinians

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and their spouses from the West Bank and Gaza Strip.<sup>3</sup> Proposals for a population swap in the context of a final settlement are becoming increasingly legitimate in the public discourse,<sup>4</sup> while amendments to other legislation include restricting Palestinian citizens' commemoration of the Nakba<sup>5</sup> and de facto restrictions on the right of Palestinian citizens to purchase homes in (Jewish) communal settlements.<sup>6</sup>

So what is happening here? At the level of Israeli domestic politics, and with regard to the now-stalled negotiations with Palestinians, one could say that Prime Minister Benjamin Netanyahu has been keen to divert attention from divisive issues in Israeli society, such as settlements and Jerusalem, to nondivisive issues such as the Jewish state. Netanyahu knows well that negotiations may fail, but he would prefer that they fail by being dashed against the rock of the Jewish state, which enjoys absolute majority Jewish support, than because of the absence of a settlement freeze, which would have led to claims that had there been one, there might have been progress in the negotiations and possibly even a peace agreement. According to this line of reasoning, Netanyahu's demands for the recognition of the Jewishness of the state is a tactical, even a partisan maneuver—his way of torpedoing the negotiations over an issue that is not controversial in Israeli society so as to consolidate his position not only as the leader of the Israeli Right but also as the leader of Israeli society as a whole.

In my opinion, however, the above analysis does not fully explain the stridency of the Israeli discourse on the subject of the Jewish state. This essay is an attempt to offer a more penetrating analysis, one that examines the discourse on the Jewish state to reveal the internal dynamics and horizons of its evolution.

## FIRST WAS THE ETHNOS

Israel was born as a Jewish state, established *by* and *for* the Jews. The body that issued the proclamation of statehood, the National Council, was made up solely of Jewish bodies representing not the Jews of Palestine but the Jewish people everywhere. The Jewishness of the state was therefore part of its genetic makeup, the *raison d'être* of the whole project, the living spirit of the proclamation itself. It was not deemed necessary to codify it into formal law, because from the very outset it was taken for granted that Israel was the state of the Jewish people—a state not for the people living inside its borders but for a people most of whom lived outside.

In other words, the mandate of the new state was not to act as the guardian of its citizens, both Arab and Jewish, but to safeguard the interests of the Jewish people wherever they were. This fact, *a priori*, determined the moral and political duties of the state. Consequently, one could say that Israeli citizenship was deformed at birth, genetically flawed as it were, since Israeli citizenship *per se* was almost irrelevant. What determined the lives and fortunes of those residing in the country was not citizenship but ethnic-national affiliation.

The founding of the State of Israel was a major milestone for the Zionist project, but its ultimate goal was in gathering the Jews of the diaspora into the new state as the solution to the “Jewish question.” In other words, its aim was not to solve the problem of the Jews in Palestine alone but to solve the problem of the Jews worldwide. And in the process of building the state, Zionism entertained a second mission, which was to effect a radical transformation of Jewish identity and the life of the Jewish people—to create the new Jew, the new soldier, the new farmer, the new sabra. Consequently, the establishment of Israel was merely a stage, albeit an important one, in the long-term Zionist project, in effect, a continuous revolution. The state as conceived was but an instrument in the service of the ongoing Zionist revolution, subservient to its logic.

But in order to function, a state needs *state institutions*, which by definition are for *all* citizens (barring a declaration of apartheid from the start). Prior to the establishment of the state, Zionism’s sole concern had been the ethno-national movement, but from then on it was charged with a statehood project that included non-Jews as citizens. Thus the National Council, which represented both the Yishuv (the prestate Jewish community in Palestine<sup>7</sup>) and the Jewish people as a whole, and was responsible solely to them, transferred its powers to the newly elected Knesset, a *state* institution and as such representing (at least formally) all the citizens of the state, including the Arabs. This move in effect marked the transition from a pure ethno-national logic to a civic logic, from the expansionist dynamic of the Zionist revolution to the normative, bounded constraints of the state—in short, the transition from *ethnos* to *demos*. But from the start there was a clear tension between *ethnos* and *demos*, as well as between the locus of the problem (i.e., the Jewish question, mainly in Europe) and the locus of the solution (Israeli statehood, in Palestine).

Paradoxically, the fact that 150,000 Palestinians remained inside what became Israel at the end of the 1948 war represented a sort of historical miracle for both sides. The Arabs who remained found their situation to be miraculous compared to the fate of their brethren, the some 750,000 Palestinians who had lost their homes, lands, and country and became refugees overnight; for them, it was enough that they were left standing in their homeland to feel that God had come to their aid. For the newly created Jewish majority, too, it was a miracle, considering that the number of Arabs within the borders of the Jewish state awarded by the UN Partition Plan might have reached 600,000 but instead was reduced to one-fourth that number by a war that simultaneously considerably enlarged the territory of the Jewish state. Such an achievement was thus to be celebrated, having far exceeded the wildest hopes of the state’s founders.

In this light, the granting of Israeli citizenship to the Palestinians who remained within the new state constituted a sort of truce, a (negative) compromise accepted by both sides, each for its own reasons: the Palestinians were content because citizenship at least guaranteed that they could remain

in their homeland, and the Jews were content because there were relatively few Palestinians to whom citizenship had to be granted. In fact, of course, neither side was really happy with this shotgun marriage. After all, the Palestinians had not wanted to be Israeli citizens in an Israeli state, and Israel had not wanted to have Palestinian citizens at all. Moreover, neither

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side took this citizenship seriously: the Palestinians did not consider the Israeli state to be theirs, and Israel did not see the Palestinians as real and genuine citizens.<sup>8</sup> Still, I believe that in those early days, when the Palestinians were living on the margins of the state without being part of it, both sides were comfortable with this formula.

Up until the late 1970s, the Palestinian presence did not represent a theoretical, legal, or conceptual challenge to Israel, or the kind of jarring anomaly that might have forced Israeli Jewish society to come to

terms with itself and the definition of the state. Palestinian society, having lost its cultural, intellectual, and legal elite, had been defeated from within and had implicitly accepted that the condition for remaining in their homeland was that they not disrupt the serenity of the new state project.

Like the Zionist project in general, Israel was more revolution than state in the early decades. It had no constitution or anything like a constitution. Its borders, which were little more than an embodiment of the military balance of power, were not recognized either internationally or by its neighbors on the grounds that they had been extended by force beyond those stipulated by the UN partition plan. The Jewish potential citizens that the state intended to in-gather were still outside, whereas the actual Arab citizens were not quite full citizens. In this sense, Israel was a state on hold.

As for the land, its acquisition and settlement in prestate days had been among the tools for winning sovereignty. That achieved, the real battle for the land began, since at the war's end most of it still belonged to the Palestinians, either refugees or citizens of the new state.<sup>9</sup> From then on, instead of land and settlement being an instrument for attaining sovereignty, sovereignty became the instrument through which land title could be obtained and the settlement project continued and expanded. The refugee land, the first target for transfer to Jewish hands, was expropriated under a series of laws that declared the refugees to be "absentees" (including those still within the borders of the state<sup>10</sup>). At the same time, the agricultural lands of the Palestinians who had stayed put in their villages were gradually confiscated. Thus the takeover of Palestinian land *inside* Israel went forward as internal colonization. In this sense, Israel in the early decades continued the Zionist project under the Mandate aimed at acquiring as much land and absorbing and settling as many Jewish immigrants as possible, with one difference: with the capture of the state apparatus, the Zionist movement was able to pursue these goals without the limits imposed on it from the outside by the

Mandate authorities. Nonetheless, as we shall see, this Zionist project ultimately became subject to the laws of the very state it had itself created.

In such conditions, any talk about equality between Palestinians and Jews in Israel was meaningless. There was a winner and a loser: one people had lost a homeland and another had gained one; one people had ended their condition of exile, the other had begun theirs. What could equality possibly mean in the context of such a zero-sum struggle?

Thus, when in the early 1950s the Israeli government offered loans and tax incentives to encourage Israeli citizens to settle the border areas in order to prevent Palestinian “infiltrators” (i.e., refugees in bordering states) from returning to their deserted villages, what could possibly be offered to approximate equality? Or when the state offered incentives to encourage new settlers to move into the houses left by the Palestinian refugees, what could the Palestinians ask for that would mirror such benefits? Likewise for land expropriations, which were “explained” at the time by the “demographic surplus” and “shortage of land” for the arriving Jews and the opposite situation for the Palestinian citizens, with the result that the incoming immigrants needed housing and the suitable land just happened to be in Palestinian hands. In such circumstances, what does citizenship mean? And what kind of equal treatment could be envisaged to parallel the laws that provided loans and grants for anyone who had participated in the war effort to establish the State of Israel? Could the Palestinians, for example, ask for economic aid and fiscal benefits for those who had participated in the war effort *against* the establishment of the state?

In fact, given the absence of any common ground or any common denominator, the question of equality, or even of citizenship, seldom arose in the early decades of the state. All the more so in that there were no explicitly discriminatory laws at the time. There had been no need to spell out in legislation that Israel was a state for the Jews when this was the operating premise of the entire state apparatus, the project in whose service the entire state was organized. There is no need to assert what is taken for granted.

Indeed, discrimination was not in the text of the law but in the intent of the legislator. Discrimination both preceded and followed the drafting of the legal text and was present in its implementation. Scores of Israeli laws did not even mention the words “Arab” or “Jew” but granted privileges that applied either exclusively to Jews (e.g., Holocaust survivors, avocado farmers, residents of border regions or “development areas”) or largely to them (i.e., persons serving in the army). Since each of the groups singled out had specific characteristics, all these laws could be justified as having been passed not to benefit Jews per se but to address the needs of a particular group.

The net result was that Israel had no need for an apartheid system. Discrimination against a group is an indication of that group’s existence, and because a large part of the Palestinian population had already been expelled or had left out of fear during the war, there was no obvious Palestinian presence in the new state. Having been placed under martial law immediately after the

war, they lived within a separate legal order up until 1966 (when military rule ended) and were concentrated in limited geographic areas, their movement considerably restricted. Meanwhile, the State of Israel, essentially a continuation of the Yishuv (which under the British Mandate had operated as a state within a state), was heir to its (exclusively Jewish) institutions, which comprised the health system, the banking system, labor unions, and so on. In such conditions, there was no need to refer to separation between Jews and Arabs, because Jews and Arabs lived in geographic and economic realities so different that they might as well have been living in different countries.

For precisely the same reasons that apartheid or any formal separation had been unnecessary in Israeli legal texts, so had explicit mention of the Jewishness of the state been unnecessary. This remained the case for almost four decades, not because there was no Jewish state but because its existence was self-evident—a historical, geographic, and natural phenomenon.

### **TOWARD THE LOGIC OF STATEHOOD**

The first stirrings of Arab challenge to the Jewish nature of the state occurred in 1965. That was when an Arab political movement called Al-Ard (The Land), formed in the late 1950s, decided it wanted to participate in the Knesset elections. Suddenly the entire Israeli legal system was hit by the realization that no Israeli legal text granted any state body the authority to bar a political party from running for the Knesset, even if that party at least implicitly challenged the validity of the state's Jewishness. The Israeli High (Supreme) Court therefore had to resort to legal theories and arguments based on natural law, rather than positive law, to justify its decision to ban the party from participating in the elections and indeed to ban the party altogether.<sup>11</sup> The absence of a positive law granting the Election Committee authority of this nature shows that the need for such a law had not even occurred to anyone, testifying to the mindset of the architects of an Israeli legal system for whom such legislation would have been redundant, so deeply internalized was the absolute Jewishness of the state. Beyond that, what the incident plainly showed is that if ever a Palestinian citizen were to decide to take the promise of citizenship seriously, he or she would find the Jewish state fully mobilized to block the way.

From the moment of Israel's founding, the invisibility of the Jewish state in the legal texts went hand in hand with the invisibility of the Palestinians in the land. Only when this situation changed would that which had been taken for granted—the Jewishness of the state—need to be asserted. A series of developments, mostly involving the weakening of the logic of the Zionist “revolution” in favor of the logic of statehood as governed by civic institutions, laid the ground for both the emergence of a civic discourse of citizenship and for the mounting challenges to the Jewishness of the state, which ultimately led Israel to define itself as a Jewish state in legal texts. I briefly review those developments below.

**First:** The 1967 war resulted in Israel's occupation of the West Bank and the Gaza Strip, reuniting what had been Palestine in a single geopolitical unit. The occupation created a duality between two important concepts: the Land of Israel on the one hand and the State of Israel on the other, for although the *State* of Israel is located within the *Land* of Israel, the two are not synonymous. The 1967 war expanded Israel's military borders, even while it gave political meaning to the 1948 borders for the first time. Thenceforth, instead of merely tracing the 1948 armistice lines (by definition temporary), what was later known as the "Green Line" became the internationally accepted political border of a recognized state. In a sense, Israel was normalized (legitimized) within the 1967 borders through displacement of the site of contestation to the occupied territories.

Thus, as a result of the 1967 war, Nazareth, conquered in 1948, and al-Khalil (Hebron), conquered in 1967, became part of the same physical political unity, both subject to Israeli control. It was precisely this new "unification," however, that allowed the difference between the "here" (Israel) and the "there" (the occupied territories) to appear, and that difference was citizenship: here (in Israel) there are citizens, both Palestinians and Jews (however unequal), and there (in the occupied territories), there are noncitizens only. This distinction between the Palestinians in Israel and those in the territories made the concept of Israeli citizenship visible, and in this sense, the meaning of citizenship in Israel was constructed from outside.<sup>12</sup> By the same token, whereas previously the significant boundary within Israel had been between Jews and Arabs, the 1967 war added a new boundary: between Israeli (Arab and Jew) and non-Israeli (Palestinians in the territories).<sup>13</sup> It was thus that 1967 and its consequences made the discourse about the concepts of "Israeli" and "citizenship" possible.

**Second:** The 1977 Knesset elections brought the victory of the Likud party over Mapai (Labor), which had ruled Israel without interruption since the establishment of the state. Most of those who voted for Likud were oriental Jews who had emigrated from the Arab countries in the 1950s, after Israel was established. Thus, for the first time, the state could no longer be seen as an extension of the Yishuv and its political, social, and economic institutions. With Labor ousted, the seemingly organic link between the state and the deeply entrenched (Ashkenazi) Labor founding fathers was broken, and it was henceforth the Israeli people as a whole—essentially a new polity—who would control and lead the state organs. This crucial juncture marked the triumph of the state (and its institutions) over the revolution that had given birth to it. In other words, the offspring—the state—having reached maturity and gained the confidence to manage on its own, rebelled against its fathers/founders.

**Third:** The privatization and emergence of a free economy relatively independent of state control was achieved by separating the state from the market as well as from the quasi-state conglomerates, such as the Histadrut (which besides its function as Israel's labor federation also owned numerous

companies and factories, for a time making it the country's largest employer), Eged (transport), Tnuva (food industries), and Kuppat Holim (health insurance), all dominant in their fields. These virtual monopolies, controlled by Labor, not only played a major economic role but also offered their members numerous benefits and acted as social organizations and solidarity groups (imbued with a certain ideology). Labor's control of these powerful bodies, combined with its previous hold on the government and military, bespeaks the high level of congruence between the groups that held political, military, social, and economic power.

Ironically, it was the economic liberalization led by the Likud, albeit inspired by the international neo-liberalism of the mid-1980s, that made possible the development of an Arab economic elite in Israel. This in turn fostered the emergence of a middle-class Palestinian intelligentsia, increasingly imbued with a national consciousness that would increasingly challenge Israel's status as a Jewish state.

**Fourth:** While political liberalism and economic liberalization are not intrinsically linked, in the Israeli case they marched together during the 1980s and 1990s.<sup>14</sup> The 1973 war—several years before the Likud victory—had sundered the Zionist national consensus, forcibly rousing it from the intoxication of the 1967 war, and critical voices inside Israeli society increased. This was the beginning of a certain separation between Israeli Jewish society and the Israeli state, hitherto virtually synonymous, and this likewise contributed to the emergence of a civic discourse.

**Fifth:** The aforementioned transition from the ethno-national Jewish institutions to “state institutions” ostensibly representing all citizens had progressed in the years since the establishment of the High Court in 1948 and of the Knesset in 1949. As time went on, it had clearly no longer been possible to run the state on the logic of revolution: a victorious revolution inevitably ceases to be a revolution, transforming itself into state institutions. Thus, other state bodies followed the High Court and the Histadrut, including, among many others, the lower court system, the Attorney General's office, the state ombudsman's office, and the Interior Ministry (in charge of issuing IDs and passports). The Histadrut had begun gradually opening its doors to Arab labor as early as 1959. Bit by bit, a common roof—the state—was built, a site of commonality despite the communal differences.

**Sixth:** The final event that seemed to mark the end of the Zionist revolution, while giving some flesh to the civic discourse, was the signing of the Oslo accords by Israel and the PLO in 1993. The accords were initially seen as providing for two entities or states. This would have meant, among other things, setting limits and establishing agreed-upon permanent political borders for the State of Israel. Furthermore, Oslo, by putting Israel within reach of recognition by all its neighbors and the Muslim world, permitting it to normalize its presence in the region at last, also gave Israel the confidence to tolerate the wider range of discourse made possible by the other developments enumerated above.

## DISCOURSE AND COUNTER-DISCOURSE

Meanwhile, other important developments, which sometimes went unnoticed, were taking place in the legal domain, particularly at the High Court. By the 1980s, the state's formative period was drawing to a close: Israel's existence had been consolidated and the Jewish collective right to self-determination had been established. Against this background, the High Court apparently decided that it could now turn to matters relating to self-determination for the individual citizen. On this basis, the Court issued a number of rulings that granted political liberties to citizens, limited the state's power to intervene in their personal affairs, and placed curbs on military and political censorship. Important rulings of a technical nature had the effect of allowing any citizen to approach the Court and ask for a ruling on matters relating to the rule of law, the violation of rights, or bad governance. This had two important consequences. First, it opened the door to the proliferation of civic rights groups and nongovernmental organizations representing the interests of various groups and speaking on their behalf, thus laying the groundwork for the development of a relatively active civil society. Second, it led to a culture of legalization, where the Court became the main adjudicator in public (i.e., political) controversies or disputes.

The new culture of legalization, which by its very nature puts limits on politics and subjects the power of the majority to judicial review, reached its climax in the early 1990s with the enactment of two Basic Laws that were the centerpiece of what became known as the constitutional revolution. In a way, the rise of constitutionalism in Israel was meant to signal a shift from simple majoritarian politics dominated by the Jewish majority to a more liberal politics that subjects the judgment of the majority to certain restrictions.

Thus in the 1990s, Israel from a legal standpoint appeared to be on the verge of becoming merely a *state*, an abstract entity—abstracted from the revolution that created it, from the market, from society; a state that transcended its ethno-religious affiliations instead of being an extension of them. This trend toward the logic of the “statehood” qua statehood culminated in the 2000 High Court ruling in the case of Adel Qa’dan, an Arab citizen who had appealed to the Court after his request to live in a Jewish settlement on state land had been rejected. The Court ruled in Qa’dan’s favor, holding that discrimination between Jewish and Arab citizens in the use and allocation of state-controlled land was impermissible.<sup>15</sup> The trends within the court system undoubtedly influenced the public discourse, at least for a time. Moreover, the courts speak the language of rights, which is the language of citizenship.

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### *The Jewish and Democratic State Discourse*

The first mention in an Israeli legal text of Israel as a Jewish state (in its nationalist sense) occurred in a 1985 amendment to the Basic Law: The Knesset, which was originally passed in 1958. The amendment stipulated that any party that denied the existence of the State of Israel as the “state of the Jewish people” or that incited to racism would be barred from participating in elections for the Knesset. The drive behind this amendment was mixed, but the clause affirming Israel as a Jewish state was a response to a bid to run for the Knesset by the Progressive Movement,<sup>16</sup> a Palestinian political formation whose emphasis on Arab citizenship rights and full equality was seen as posing a challenge to the Jewish character of the state. The racism clause, on the other hand, was a response to the racist discourse manifested in the platform of the Kach party (led by Rabbi Meir Kahane): the 1985 amendment was the result of the Knesset’s attempt to find a compromise between two camps, Left and Right, by restricting both. In fact, the Progressive Movement was ultimately not found in violation of the law and was allowed to participate in the elections, whereas Kach was banned.<sup>17</sup>

Two Basic Laws passed in the early 1990s by the Knesset in its capacity as Constituent Assembly were the first laws to characterize Israel as a “Jewish and democratic state”; with these laws, the tension between the Jewish and democratic elements of the Israeli state not only was acknowledged but was elevated to a constitutional level. The two laws—Basic Law: Human Dignity and Liberty (1992, amended 1994) and Basic Law: Freedom of Occupation (1994)—were identical in their stated purpose as stipulated in their texts: “to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.”

Meanwhile, within the Arab community, there was a growing awareness that in order to win full citizenship and equality, it would be necessary to mount a more forceful challenge to the Jewish nature of the state. That challenge came to fruition in 1996, when the National Democratic Assembly<sup>18</sup> raised the slogan of Israel as “a state for all its citizens.” The slogan soon figured prominently in the agendas of all Arab political formations in the country, and while the Jewish majority was far from embracing the discourse, a certain debate was initiated (with several groups maintaining that Israel was both a Jewish state and a state for all its citizens). The maturation of civic discourse—especially about rights and the state—gave specific meaning to the discourse about citizenship, namely that the state could potentially become a legal and political entity above ideology and religious, ethnic, or national affiliations.

Thus, what happened in the 1990s, and particularly as of the middle of the decade with the relative success of the “state for all its citizens” slogan, was that the *idea* that there could be something other than a Jewish state was on the table for the first time. In the wake of the Oslo accords, and with the Jewish majority bolstered by the influx of about a million new immigrants from the former Soviet Union, Israel was sufficiently confident to allow the

discourse of rights and citizenship to take place and even, to a degree, to engage in a debate that centered on concepts such as “liberal civic state,” “citizens’ state,” and “neutral state.”

### *The Ethno-Religious Discourse*

In parallel to the emerging discourse about citizenship and rights, with its promise of greater inclusiveness, another discourse had also been developing. Particularly after the 1967 war, religious forces, which proffered theological interpretations of the occupation, reasserted themselves, and the religious underpinnings that had always existed in the Zionist discourse resurfaced with unprecedented intensity.<sup>19</sup> A messianic Jewish religious discourse emerged as a counterweight to the civil discourse. Political questions were now formulated as theological dilemmas. Withdrawal from Hebron, for example, was no longer to be decided by secular considerations such as the political balance of forces, but by theological considerations, such as the permissibility of evacuating sites sacred to the Jewish people. The most forceful expression of this discourse was within nationalist religious circles and within nationalist religious seminaries (*yeshivot*). Gush Emmunim was one of its clearest manifestations.

The religious discourse did not shrink from incitement, targeting those with opposing views, and its first major victim was Prime Minister Yitzhak Rabin, assassinated in 1995 by a young yeshiva student who justified his action by invoking the Oslo agreement, which Rabin had championed and which had passed in the Knesset only thanks to the support of its Arab members. For the assassin, Yigal Amir, and others of like ideas, the Oslo agreement was a sign that the Jewish people had lost their power of self-determination by delegating it in part to the Arabs. According to this logic, the Jewish people were no longer in control of the decision-making process and therefore were no longer the sole and uncontested masters of the country.

As long as the optimism of the peace process remained alive, the religious Right’s ethno-religious/national discourse was held in check, and civic discourse appeared to have the upper hand. Furthermore, developments such as the March 2000 High Court ruling in the Qa’dan case mentioned earlier seemed to place Israel on the brink of becoming a state qua state with its inevitable implications in terms of weakening the Jewish majority dominance.

Less than six months later, however, the Camp David peace negotiations collapsed and the second Palestinian intifada—seen as proof that there was no Palestinian “partner for peace”—broke out, fueling the already growing perceptions of threat to the Jewishness of the state. The Israeli Right regained its confidence, and the ethno-religious/national trend swept through Israeli society. From then on, the mere thought that Israel could be anything other than a Jewish state was anathema to the Jewish majority, but in contrast to earlier decades when it had been taken for granted, the challenge by the Palestinians made it necessary to aggressively assert it with unprecedented

force. The “state for all its citizens” slogan was buried, and the achievements of the 1990s in the direction of greater democracy, a more equal and plural society, and the rise of constitutionalism within Israeli legal and political discourse were subjected to a fierce and relentless assault. The relative ease with which the Israeli Right was able to restore the ethno-religious discourse of the Arab demographic threat is indicative of the fragility of the gains that had been made during the past decade. At the same time these gains, however modest and limited, had been sufficient to unleash powerful forces to restore an ethno-national-religious right-wing discourse demanding first and foremost loyalty to the Jewish state.

### BACK TO NEGOTIATIONS

In looking to the future, and assuming that negotiations between Israel and the PLO will eventually resume, it is interesting to consider the demand for recognition of the Jews as a nation from the standpoint of its having been pushed forward by the Likud, successor to the Herut party, which in turn was the offspring of Zionism’s Revisionist movement founded by Vladimir (Ze’ev) Jabotinsky. In his famous 1923 article “The Iron Wall,” Jabotinsky argued that there was no point in trying to win Palestinian or Arab acquiescence in the Zionist project because, like all indigenous peoples, they would not accept a Jewish national presence in Palestine or voluntarily give up their right to their homeland. Consequently, he continued, there was no choice but to use force against them, to erect an “iron wall” of bayonets between them and the Jewish state to be. To achieve that, he wrote, the Zionists would have to rely on the support of a major world power. What is most significant about the article is the absence of any hint that winning Arab recognition of Jewish rights might be needed or even desirable. In Hegelian terms, Jabotinsky’s position could be reduced to the conviction that to be the master does not require the recognition of the slave but only of other masters such as the great European powers and the United States—and let the slave be damned.

The question to be asked today is: Has there been any change in the role of the Palestinian slave in the thinking of Jabotinsky’s heirs within the Likud and the Israeli Right? Rather than respond with a yes or a no, I will simply note that the Israeli Right (and most of the Israeli body politic) is no longer content with the language of force and of the *fait accompli*; it also wants the language of recognition, that is, the language of rights. It wants the Palestinians to recognize the right of the Jews to self-determination in their own state (a state in which moreover Palestinians have a sizable presence). At the same time, Netanyahu insists that any settlement reached must be final, the end of claims, the closing of all files.

But herein lies the paradox of power. It was Israel, thanks to its overwhelming superiority in the balance of power, that imposed the terms of the negotiations, that dictated strict adherence to the issues of 1967, that excluded all but lip service to international law, the language of rights, any history prior

to 1967. Israel wanted (and wants) to reach a historic compromise without facing history, to get the Palestinians to give up their right of return without even recognizing that such a right exists, to reach a radical solution without going back to the roots of the conflict. Netanyahu's "addition" to the above, in the form of his insistence on the recognition of the Jewish state, is precisely his transition to the language of recognition and rights. But in this new language, and in raising the question of the rights of the Jews themselves, he is quite unintentionally returning the struggle to its beginnings. His emphasis on rights and recognition has inadvertently highlighted the fact that for any settlement to be final it will have to resolve, once and for all, not only the issues of 1967 but also—and perhaps especially—those of 1948. Netanyahu's problem is the same as that which has always faced the "masters": he wants to gain by force and power what can only be given freely. He wants to buy the settlement of the 1948 question with the currency of 1967.

There is yet another interesting aspect to Netanyahu's insistence that recognizing Israel as a Jewish state is an essential component of a final settlement. In so doing, perhaps without even being aware of it, he has made the rights of the Jews in Palestine *a subject for negotiations*. Not only that, in so doing, he is inviting the Arabs and the Palestinians to *intervene* in the question of the nature and the form of the Jewish state.

Netanyahu's intention in demanding recognition has no doubt been to torpedo the negotiations. Yet at the same time, the insistence on rights and on Palestinian recognition constitutes a tacit acknowledgment that securing the recognition of the master overseas is no longer enough for the Jewish state project to succeed in the long run, and that there is no substitute for recognition by the victim himself. Of course there is considerable difference between recognizing Israel as the state of the Jewish people and recognizing the collective national rights of the Jews in Palestine, and between presenting a concept (the Jewish state) as a natural right to be recognized *a priori* (and even made a precondition for negotiations) and presenting the same thing as a right that needs to be demonstrated and negotiated with the *possibility* of being agreed to as an outcome at the end of the negotiations. It is imperative that the Palestinian negotiators recognize these essential distinctions, and that they are very clear about what they are accepting or rejecting, and why.

When all is said and done, the fact that the language of recognition and rights is resurfacing should not frighten the Palestinians. It is clear that any historic solution with Israel (as opposed to a mere settlement) must clarify what Jewish rights are—and the rejection of the Jewish state as presented by Netanyahu need not be confused with a rejection of the collective rights of the Jews of Palestine. Thus, in my opinion, if and when negotiations resume, the Palestinian negotiator can accept Netanyahu's challenge and engage him without fear: "You, Netanyahu, want to discuss Jewish rights in Palestine. Be our guest. And the following are our conditions for recognizing your rights." However, this is not at all a simple task, because it requires the Palestinians to decide on their conditions for a historic reconciliation with Israel.

## ENDNOTES

1. The debate about the "state of the Jewish people" versus the "Jewish state" sheds light on the difference between the two concepts. The first focuses on the right of the Jewish people to a state of their own, which is Israel. Here the focus is on the national aspect, and the emphasis on the *right* implies exclusion of the Palestinians and denial of their equal rights in the same territory. These dimensions are best captured in "the state of the Jewish people." The "Jewish State," on the other hand, puts the focus on the *nature* of the state, and because there is no further qualification, the formulation leaves open the possibility that the state can have a religious character, and that religion and religious law can have an official public role. In this sense, the debate with regard to the Jewish state is more internal.

In my opinion, when Israel today demands that the Palestinians explicitly recognize it as a Jewish state, what it has in mind is the sense of the first formulation, with its implication of ownership and exclusivism. Thus the attempt by some Palestinian spokesmen (perhaps as a means of facilitating an agreement?) to portray the Jewish state issue as an internal Israeli matter for them to decide is both misleading and dangerous.

2. For a general review of these developments, see Adalah, "New Discriminatory Laws and Bills in Israel," <http://australiansforpalestine.com/33722>.

3. HCJ 7052/03 *Adalah et al. v. The Minister of the Interior* (2006).

4. Barak Ravid, "Lieberman Presents Plans for Population Exchange at UN," *Ha'Aretz*, 28 September 2010, <http://www.haaretz.com/news/diplomacy-defense/lieberman-presents-plans-for-population-exchange-at-un-1.316197>.

5. Clause 3b(a)(1) of the Budget Law (Amendment—Illegal Expenditure), 2009, Bill No. 1403/18.

6. Bill for the Amendment of the Communal Settlements Order (Amendment No. 8), 2010, Bill No. 1740/18.

7. The Yishuv included both the immigrants who had arrived since the 1880s and the tiny preexisting Jewish community.

8. While the Palestinian citizens were granted equal voting rights from the first

election and enjoyed, on the formal level, certain political and civil rights, the issue here is that the new state did not see the Palestinian citizens' needs, aspirations, and interests as essential state concerns.

9. For an excellent account of Israel's takeover of land from its Palestinian owners, see Alexander Kedar, "The Israeli Law and the Redemption of Arab Land, 1948-1969" (PhD diss., Harvard University, 1996).

10. Internal refugees are those Palestinians who were displaced from their home villages and towns in 1948 but remained within the State of Israel as Israeli citizens. Also known as "present absentees," they were not allowed to go back to their villages, and were unable to reclaim their lands. For further review, see Nur Masalha, ed., *Catastrophe Remembered: Palestine, Israel and the Internal Refugees* (London: Zed Books, 2005).

11. For the story of Al-Ard, see Ron Harris, "Jewish Democracy Arab Politics: Al-Ard Movement in the Supreme Court," *Plilim* (December 2001), pp. 107-55 [in Hebrew].

12. On the dialectics of the 1967 war, see Azmi Bishara, "On the Question of Palestinians in Israel," *Theory and Critique* 3 (1993), p. 7 [in Hebrew].

13. For the religious right, yet another politically significant distinction resulting from the 1967 war and the occupation was that between the *citizens* of Israel on the one hand and the *people* of Israel on the other.

14. In fact, it was the collapse of the so-called peace process after the failed Camp David negotiations in 2000 that signaled the separation of the two tracks. While the economic liberalization continued and even accelerated, political liberalism is on retreat and on the defensive.

15. See HCJ 6698/95, *Ka'adan v. Israel Land Administration* (1995), 44 (1) PD 264. In actual fact, the decision was not able to change the discriminatory practice, and even the petitioner himself never managed to build his house in the settlement.

16. The Progressive Movement is a political movement that arose at the beginning of the 1980s and put forward the principle of the citizen state

and spoke of a Palestinian identity. Muhammad Mi'ary and Many Bilo were among its leaders.

17. This amendment shows that the ideological map was expanding, but it also embodies the extremes of the spectrum on the state, with Kach's all-Jewish extreme on one end and the Progressive Movement's total democracy on the other.

18. The National Democratic Assembly is an Arab political party established in 1996 that contested the elections that year. Since then, it has had representatives in the Knesset. Its most prominent demand is turning Israel into a state for all its citizens and cultural

self-determination for the Palestinians in Israel.

19. The growing influence of the post-1967 religious forces is shown in a change of terminology used in legal texts, from "state of the Jewish people" (as formulated in the 1985 amendment to the Basic Law: Knesset) to the "Jewish state" formulation in the 1992 and 1994 Basic Laws. The change was motivated in part to appease the religious groups by hinting at a shift from the national dimension of the state (state of the Jewish people, expressing their right to self-determination) to a definition that might bear religious interpretation.



Extremist right-wing Israeli activists march through the Palestinian neighborhood of Jaffa in Tel Aviv, under police guard on 2 March 2011. (Uriel Sinai/Getty Images)