

A Nation-State in the 21st Century



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Text Editor (Hebrew): Lilach Tchlenov
Series & Cover Design: AlfaBees Studio
Typesetting: Ronit Gilad
Printed by Graphos Print, Jerusalem

Cover photo: Shutterstock

ISBN: 978-965-519-385-5

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Printed in Israel

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Preface: A Nation-State in the 21st Century

Yedidia Z. Stern | Shuki Friedman | Jesse Ferris

Ethnic nation-states, in which national identity is distinguished from citizenship, are not unusual. The State of Israel is the product of the 19th-century “Spring of Nations” and of the shaping of the world map by nation-states over the past 150 years. But the unique conditions of the Jewish nation-state make it a laboratory for studying the challenges facing the modern nation-state and the questions that hover over the phenomenon of nationalism as a whole. Is nationalism new or old? Zionism is both: it is the national renewal of an ancient people. How does

* Translition: Deborah Stern

a democratic nation-state resolve the tension between particular and universal values? The Jewish-democratic formula is a groundbreaking innovation. How does a nation-state that has a sizable ethnic majority cope with a significant minority living within it? Jewish-Arab relations in Israel are an instructive test case. How can a modern nation-state deal with the challenge of immigration? Israel's Law of Return and Family Reunification Law offer a unique model. In addition, the state has to contend with problems of religion and nationality, nationalism in conflict situations, and more.

For a fleeting moment, in the late 20th century, it seemed as though nationalism's time had passed. Faced with the juggernaut of globalization, which promised to blur boundaries and flatten the world, the appeal of nationalism diminished, and many liberal thinkers turned against it. But the first decades of the 21st century have proven that nationalism is here to stay. In the United States, Europe, parts of Asia, and South America, the nationalist tiger has awakened. In some instances it has given rise to political movements that privilege national identity over liberal values, and in a few cases nationalism has turned pathological. There are those who celebrate the return of nationalism and those who reject it, continuing to strive for a globalized world with weak particularistic identities. Still others, including staunch advocates of liberal values, do not object to nationalism, but seek to contain it and balance it against other values.

Israel is emphatically a nation-state, but at the same time it is a democracy that has advocated liberal values since its inception. Its constitutive document, the Proclamation of Independence, reflects this duality, emphasizing the national roots and particularistic features with which its founders wished to imbue it, alongside the universal values and rights that they wanted it to express. But the very existence of modern Israel owes ultimately to its Jewish identity. Without its Jewishness, the "State

of Israel,” as the modern embodiment of a national home for the Jewish people, would, in practice, cease to exist.

As a Jewish nation-state, Israel is unique not only compared to civic nation-states, but also compared to Western nation-states of the ethnic variety. In ethnic nation-states, the uniqueness of the nation is due to a combination of shared origins and culture, whereas in the Jewish nation-state it is the special character of Judaism—a complex combination not only of lineage and culture but also of a specific religion. Consequently, Israel does not separate religion and state; religion (with its various disputed interpretations) is part of the Jewish character of the Israeli public space. This uniqueness is particularly significant because the Jewish religion developed for the most part outside an organized political framework throughout the long years of exile, meaning that there are no precedents to draw on when considering the ideal profile of a Jewish state from an intra-religious perspective.

In any case, ever since the establishment of the state, Israel’s particularistic national character has been accepted by the vast majority of Zionist Israelis, including those who strongly support Western liberal values. Unlike in Europe and the United States, where liberals have tried to attenuate national characteristics and even eliminate them from the public space—at times with some success—in Israel there has been no such attempt except among marginal groups, including some local academics. Most Israelis regard Israel as the nation-state of the Jewish people. Some believe that the national feeling is the broadest common denominator among Israeli Jews—no less, and even more, than the Jewish religion. Of course, a fifth of Israeli citizens are not Jewish and therefore do not share this common denominator, and this has extremely important consequences in theory and practice.

Israel has always existed with the normative duality of identity on which it was established, a duality that in the early 1990s was framed in the constitutional formulation “a Jewish and democratic state.” Out of sincere loyalty to both of these elements, many Israelis have devoted their best years and creative forces to resolving the inherent contradictions of a democratic nation-state that stands for liberal values, but at the same time has a unique Jewish character. Academics, popular writers, and philosophers sensitive to the contradictions inherent in the concept of a Jewish and democratic state have tried to devise appropriate intellectual underpinnings to contend with these tensions.

In this context, one institution has stood out as a beacon: the Supreme Court. Due to Israel’s unique constitutional structure and the role the Supreme Court has assumed in shaping Israeli society and its values, the justices have had to contend time and again with the meaning and practical significance of the normative duality of the Jewish and democratic state. Over the years, even before the Basic Laws: Human Dignity and Liberty and Freedom of Occupation were enacted and the constitutional phrase “Jewish and democratic” was coined, but increasingly afterwards, the Supreme Court has been charged with deciding numerous cases in which unique Jewish values, in their religious or national manifestations, have clashed with liberal democratic values. Due to the uniqueness of Jewish nationalism, several of the Court’s decisions over the generations have been courageous and pioneering. Naturally, given their importance for consolidating Israeli identity and shaping the public space, they have often been controversial.

The contemporary rise of nationalism worldwide has not skipped over Israel. Changes in Israeli society, which is moving away from the model of consensual democracy, have triggered forces seeking to strengthen the national elements of the State at the expense of its liberal-democratic values. Some see these changes as a real danger to Israel’s form of

government and its society. Nevertheless, despite frequent prophecies of doom about the future of Israeli democracy, it has thus far retained its resilience and vitality.

The Israel Democracy Institute (IDI) has worked since its inception to strengthen the foundations of Israel's identity as a Jewish and democratic state. At the start of the 21st century, the IDI spearheaded a pioneering effort to anchor these foundations in a complete constitution accompanied by a bill of rights. Although this effort has not yet borne fruit, the foundational work is ongoing, and there is no denying its importance. In recent years the Institute has continued working on research, disseminating ideas, and driving debate in the political and public arenas. One insight from this activity is that the big debates that rock the Israeli public sphere—for instance, the stormy debate that accompanied the enactment of the Nation-State Law over the past decade—are often shallow and lacking in historical and comparative perspective. Israel, as stated, is unique in many ways, but it is not the only nation-state in the world. This conclusion underscored the need to enhance public discourse on the meaning of a Jewish nation-state in the 21st century.

Against this backdrop, IDI hosted an interdisciplinary workshop from 2016 to 2018. Leading scholars from a variety of fields took part in the discussions, alongside politicians, public figures, and activists. Participants in the series discussed the intellectual roots of nationalism, different models of nationalism, critiques of nationalism, and arguments regarding the legitimacy of nation-states. A substantial portion of the discussions were devoted to the emergence of modern Jewish nationalism, its manifestations in Israel, and its impact on the nature and policy of the State of Israel. The discussions spanned 19 meetings and four major conferences. Nationalism, as a theoretical but very concrete phenomenon, was studied from all angles.

One of the conclusions from the workshop was that Israeli thinkers have established broad intellectual foundations over the years for dealing with the challenges of a Jewish nation-state that is also a liberal democracy. Workshop participants attempted to build on these foundations and clarify the state of the field. The present volume represents our attempt to present readers with several of the fruits of those discussions.

In the opening chapter, **Hedva Ben-Israel** offers a wide-ranging introduction to research on nationalism and the main approaches adopted by 20th-century scholars in the field. Ben-Israel takes a critical look at the modernistic take on nationalism as a new phenomenon originating in the last centuries of the second millennium, and explains the sources of the error as she sees it. She also presents other approaches to nationalism as a whole and Jewish nationalism in particular. Ben-Israel asks whether nationalism can still be relevant in the face of globalization, and responds in the affirmative.

Azer Gat writes about the return of nationalism to center stage in recent years, with the election of Donald Trump as President of the United States, the vote for Brexit in the UK, and growing opposition to immigration in North America and Europe. These events surprised post-modern elites, who had fallen under the sway of fashionable theories that depicted nationalism as something new and artificial (“imagined communities”), ignoring its age-old roots. Notwithstanding the justified criticism of certain negative side effects of nationalism, it would be a mistake to deny its power. Nationalism is a genuine historical phenomenon, rooted deeply in human nature and underlying the identity of most of the world’s nations. If we look deeply, Gat argues, we find that even the American republic, an immigrant country that separates church and state, is ultimately based on shared quasi-national cultural foundations, and not purely on citizenship. This is even truer of Israel, one of the oldest

nations in the world, whose national roots run extremely deep and combine ethnic, historical, religious, and cultural components.

Gershon Gontovnik analyzes the implications of the state's dual identity for fulfilling the sometimes-conflicting missions of Judaism and democracy in a polarized society. He offers a novel view of the tension between the faith-based conception that places God in the center ("Jerusalem") and the humanistic conception that places the rational human being at the center ("Athens") as productive and enriching. On this basis, Gontovnik calls on the state to interpret its Jewish mission broadly. It must take responsibility not only for the physical security of the Jewish people, but also for its unity and its pursuit of spiritual prosperity. In order to reach a broad consensus in a divided society, preference must be given to pragmatic constitutional arrangements over uniform, coherent solutions, or as he puts it, a "constitutionality of peace (*shalom*)" in place of a "constitutionality of perfection (*shlemut*)."¹ One implication of this is the need to adopt a cautious, sensitive judicial approach that respects the collective autonomy of the tribes that make up the Israeli mosaic.

Alexander Yakobson analyzes the constitutional options for resolving the tension between the Jewish identity of the state and its democratic character through a critical examination of the Basic Law: Israel—the Nation-State of the Jewish People (commonly known as the "Nation-State Law").² After surveying the constitutions of other democratic nation-states, Yakobson comes to the conclusion that this law has no counterpart in the enlightened world. The Israeli legislators' deliberate omission of the right to equality in general, and their disregard of the status of the Arab minority in the Jewish state in particular, are unparalleled and lack substantive justification. Yakobson presents a comprehensive picture of the various ways in which other countries have chosen to balance their particularistic identity with their commitment to universal values. In so doing he shows how a special status can be given to a particular

religion or nationality without abandoning an inclusive conception of citizenship. It turns out that the Israeli case is not as much of an outlier as people tend to think, and if there is a will, there is a way to find an appropriate formula for balancing the Jewish character of the state with its democratic character, while anchoring its commitment to the value of equality.

The challenge of equality also lies at the heart of **Mordechai Kremnitzer's** article. Kremnitzer turns the spotlight on the greatest difficulty facing the Jewish and democratic nation-state: its attitude toward the Arab minority living within it. He surveys the main milestones in relations between the Jewish state and its Arab citizens, from the military administration in the 1950s and 1960s, through the occupation of Judea, Samaria, and the Gaza Strip in the Six-Day War, to the Nation-State Law. Based on this historical overview, Kremnitzer comes to the bleak conclusion that without a revolutionary change in the state's attitude toward the minority living within it—a change that would infuse real content into the idea of shared citizenship—there is no future to the Jewish-democratic formula underlying its identity.

Yedidia Stern also writes about the challenge of realizing the value of equality in the Jewish and democratic nation-state, one-fifth of whose citizens are not Jews. Despite the inherent tension between the state's Jewish character and its democratic commitments, Stern urges us not to give up on equality, and even proposes a useful formula for reducing this tension. The road to a solution begins with the recognition that equality, like all other values, is not an absolute value. In Stern's opinion it is necessary to distinguish between several levels of rights, with a different degree of equality on each level. On the individual level, the right of Arab citizens to civic equality is absolute. But on the public-group level, there is room for some infringement of Israeli Arabs' collective right to equality, insofar as it clashes with other important values. On that same public

level, Stern also proposes critical distinctions among equality for Arab individuals as part of a collective, equality for the group in terms of the rights it seeks for itself, and equality for the group in terms of the claims it makes on the public sphere as a whole.

Gershon Hachohen proposes a new, counterintuitive way for Israel to cope with the normative and institutional duality that characterizes it as both the nation-state of the Jewish people and “the state of its citizens.” Hachohen maintains that the standard modern Western conception, which seeks to organize reality in a coherent manner and shape government institutions and their working methods according to an entire framework of values, is not appropriate for the Jewish state. Drawing on David Ben-Gurion’s writings and views, as well as kabbalistic thought, he argues that the inherent tensions within the structures and values of the Jewish state are not only tolerable, but in fact provide the ideal basis for its existence and policies. This viewpoint has both normative and practical ramifications. Hachohen posits that the state must not resolve this tension but preserve it as part of its constant attempt to strike a balance between state institutions on the one hand and the Jewish national institutions and other non-governmental organizations on the other.

Yossi Beilin focuses on the Jewish side of the Jewish-democratic equation and explores the Jewish state’s commitment to the Jewish people. In view of demographic changes in recent generations, he proposes a reexamination of relations between the State of Israel and the Diaspora. Beilin’s starting point is the fact that in the 21st century 85% of all Jews live in the United States and Israel, the twin foci of what he calls “two-headed Zion.” This fact, he argues, mandates a change in the classical Zionist approach, which places Israel at the center and regards Jews living elsewhere as “the Diaspora.” The new demographic-political-economic-cultural reality necessitates a fundamental change in the

Israeli government's attitude toward American Jewry. Beilin surveys the history of relations between Zionism and American Jewry and concludes that alongside the historical national institutions, a new Israeli-American institution should be established; this institution would anchor the commitments of the world's two largest Jewish communities to their shared future and allow for consultation and joint decision-making on issues that affect the future of the Jewish people.

Shuki Friedman focuses on the attempt by the Jewish nation-state to delineate the boundaries of Jewish identity. The establishment of a Jewish state was supposed to resolve the question of Jewish identity in general, and especially the conditions for entry into Jewish nationhood. In particular, one might have assumed that the state would put an end to the fierce debate over conversion that began in the 18th century, with the emergence of the Haskalah and the rise in secularization and assimilation. But in practice Zionism failed miserably in its attempts to delineate the boundaries of Jewish identity through its institutions. The amendment to the Law of Return in 1970 put an end to the attempts of secular Zionists like David Ben-Gurion to sever the definition of Jewish identity from religion; a series of court decisions in the decades that followed stripped the Chief Rabbinate of Israel of its authority to define who is a Jew for purposes of the Law of Return and the Population Registry, and recognized conversions performed in private rabbinical courts in Israel and by non-Orthodox rabbis abroad. In practice, the power to decide the question of identity was handed back to the community, where it had been before the establishment of the state. This failure meant that the nation-state gave up its power to define national identity and lost control of a central dimension of immigration policy.

Gil Troy presents an argument for Jewish peoplehood in the form of a personal letter to a high-school senior standing on the verge of

conscription into the IDF. At the moment when their life experience is about to diverge dramatically from that of their brethren overseas, he calls on young Israelis to bridge the existential chasm separating them from their coreligionists in the Diaspora and bring them close. Our past, our present, and our future, Troy explains, are intertwined in a continuing multigenerational mission to preserve our identity. We must not break the chain.

The volume concludes with an article by the late **Ruth Gavison**. Gavison presents a possible way to reconcile the tension between the two foundations of the Jewish nation-state—Judaism and democracy—and proposes a moral justification for its existence based on these foundations. She discusses possible meanings of Israel's Jewish character and their implications for its democratic form of government. She singles out those interpretations that permit the (sometimes tense) coexistence of Jewishness and democracy. Finally, she recommends a set of fundamental principles without which such a combination is not morally feasible—first and foremost, granting primacy to the right to equality.

If we can draw one conclusion from this diverse collection of essays and from the discussions that preceded it, it is this: the ability of Israeli democracy to survive depends to a large extent on making the most of the extended infrastructure—legal, intellectual, and social—built here over the years, in order to respond to the challenges of modern Israel from a place of productive tension between the “Jewish” and the “democratic.” In the coming years the debate about the ideal character of Israel as a nation-state is expected to intensify from within, and perhaps also from without, along with an increase in the pressures on Israeli democracy, which continues for the moment to act in accordance with its unique Jewish-democratic formula. If we don't want extremists on all sides to decide these fundamental questions for us, we must persevere

in the intellectual effort to define the identity of the state, which goes to the very heart of Israeli existence. We hope the following chapters will provide useful insights for this important debate.

