

# Israeli Arabs: Between the Nation and the State

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*The article addresses the case of Israeli Arabs as a touchstone case for national minorities who live in constitutional democracies. The author argues that Israeli Arabs may not identify themselves as Palestinians but rather as Israelis, for being Palestinian is a matter of citizenship, while*

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*Israeli Arabs are citizens only of the state of Israel. However, acknowledging the hybrid identity of Israeli Arabs, namely, being part of the Arab nation as well as legal citizens of the state of Israel, the author structures a conceptual distinction between nationhood and statehood. It is the author's view that while nationhood reflects the notion of family-hood, statehood reflects the mere existence of a political entity. Following the logical theory underlying the above-mentioned distinction, the author inquires into its practicalities. He contends that while nationhood requires patriotism, statehood demands loyalty. It is his view that the national identity of Israeli Arabs does not and must not undermine their citizenship identity as Israelis.*

*Furthermore, the author asserts that Israeli Arabs, as a national minority, should be entitled to collective group-based rights, which enable them to preserve their national identity. On the one hand, he acknowledges the inherent correlation between rights and duties, thus asserting that Israeli Arabs must express their loyalty through inter alia military service and symbols of the state. On the other hand, the author calls on the state of Israel to adapt its official symbols, such as the flag and the anthem, in a manner that expresses the Israeli features of the state rather than its Jewish characteristics.*

## **I PROLOGUE**

The case of Israeli Arabs raises the issue of the meaning of citizenship. Israeli Arabs have been living in constant vicious circular dilemmas for approximately 60 years. Israeli Arabs are in a dilemma as to their national and citizenship identities; they are in a dilemma as to their patriotism to their Arab nation and the constantly demanded loyalty to their Israeli citizenship. Israeli Arabs live with an ongoing dilemma as to the true meaning of democracy in a state that manifestly identifies itself as a Jewish state, namely, a state of one segment of the population. Israeli Arabs are in a dilemma as to their constitutional rights as individuals against their constitutional rights as a collective national minority. Israeli Arabs are in a dilemma both as to the nature of their citizenship, and as to their duties towards the state of Israel, as well as the ambit and the extent of these duties. Finally, Israeli Arabs are torn between the ideology and the inescapable reality; they are torn between principles and practicalities.

Before proceeding further, I shall first clarify the perplexing nexus between the case of Israeli Arabs and the subject matter of this conference on Indigenous people. As I shall discuss later in this article, the starting point for every discussion on Israeli Arabs, by Israeli Arabs themselves, is that

they are an Indigenous national minority, and therefore they are entitled to a different set of rights, namely, collective rights. Arguing so, they rely to a great extent on the extensive Canadian scholarship in this field. In this context, Will Kymlicka's writings on Indigenous people are particularly relevant. That is, Kymlicka distinguishes between national and immigrant minorities, arguing that national minorities enjoy collective rights in addition to their right to preserve their national identity. Indigenous national minorities are different from immigrant minorities, for they did not choose the state but rather the state chose them.<sup>1</sup>

Being a legal scholar but not a historian, I decline to determine whether Israeli Arabs constitute an Indigenous minority or not. However, the issues discussed in this article are nonetheless relevant to Indigenous peoples and the Indigenous legal discourse. This article shows that, even if a national minority is not clearly identified as an Indigenous one, it is still possible for such a minority, on the one hand, to seek to preserve its national identity through pursuing collective rights and, on the other hand, to integrate within the state without undermining its national identity.

I shall address each of the dilemmas that Israeli Arabs struggle with. It is my view that it does not really matter whether they are an Indigenous minority or not. What matters is that they are a national minority and that they are legal citizens of the state of Israel. This article calls for a process of integration of the Israeli Arab minority within the state of Israel, along with allowing for the preservation of their national characteristics. However, it should be noted that the arguments I express in this article represent only my views; I even doubt their popularity among other Arabs in general, and Israeli Arabs in particular. But, I shall let my arguments be open as they are to judgment, regardless of their popularity. No political position should be inferred from this article, in which I am politically neutral and unidentified.

## II INTRODUCTION

The title of this article suggests three main questions: (1) Who are Israeli Arabs? (2) Are "state" and "nation" synonymous? And, (3) are "statehood" and "nationhood" contradictory concepts? I shall address each of these questions in turn.

In Part III, seeking to clarify the terminology regarding the identity of the Arabs who are both citizens and residents of the state of Israel, I argue that they may not identify themselves as Palestinians but rather as Israelis. It

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1. See, for instance, Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995).

is my view that being Palestinian is a matter of citizenship. Israeli Arabs may not define themselves as Palestinians, for they are citizens only of the state of Israel and not of the current Palestinian Authority. However, acknowledging the hybrid identity of Israeli Arabs, namely, being part of the Arab nation as well as legal citizens of the state of Israel, in Part IV, I delineate a conceptual distinction between nationhood and statehood. My view is that while nationhood reflects the notion of family-hood, statehood reflects the mere existence of a political entity.

In Part V, I inquire into the practicalities of the conceptual distinction between nationhood and statehood. I contend that while nationhood requires patriotism, statehood demands loyalty. It is my view that despite the constant hostility between Israel and other states of the Arab nation, the national identity of Israeli Arabs does not and must not undermine their citizenship identity as Israelis.

Finally, in Part VI, I discuss the sociopolitical nature of Israeli Arabs' identity within the state of Israel. I recognize Israeli Arabs as a national minority in Israel. However, I avoid inquiring into the question of whether Israeli Arabs are Indigenous people, for the answer to this question would depend on a historical-political analysis, which goes beyond the scope of this article. As a national minority, I argue that Israeli Arabs should be entitled to collective group-based rights, which will enable them to preserve their national identity, including language and culture. I end Part VI by acknowledging the inherent correlation between rights and duties, thus asserting that Israeli Arabs, as legal citizens of the state of Israel, must express their loyalty to the state in an explicit manner. Among other things, I recognize military service and symbols of the state as possible means of expressing loyalty to the state. Having said that, I call on the state of Israel to adapt its official symbols, such as the flag and the anthem, in a manner that expresses the Israeli features of the state rather than its Jewish characteristics. My hope is that this article can attract jade by laying bricks.

### III THE INDEFINABLE IDENTITY OF ISRAELI ARABS

The following is a famous discourse between the two intellectuals, Anton Shammas<sup>2</sup> and A. B. Yehoshua:<sup>3</sup>

Shammas: "Buli [Yehoshua's nickname], the minute a man like you does not understand the basic difference between the Pakistani who comes to England

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2. Anton Shammas identifies himself as a Palestinian Israeli.

3. A.B. Yehoshua is an Israeli Jew.

and the Galilean who has been in Fasuta [a village in Galilee] for untold generations, then what do you want us to talk about?"

Yehoshua: "I don't understand you. If there hadn't been anti-Semitism in Europe, you wouldn't even know how to write the word 'Israel.'"<sup>4</sup>

The state of Israel embraces two major nations; these are the Hebrew and the Arab nations.<sup>5</sup> The discourse between Shammass and Yehoshua faithfully reflects the nature of the ongoing discussion in Israel regarding the recognition of Israeli Arabs as Indigenous people.<sup>6</sup> The argument goes like this: "We are Indigenous people. It was the state of Israel that came to us, and therefore it is our right not only to remain where we are but also to preserve our national identity. The state of Israel has a duty to treat us as a collective rather than as individuals, as a national and not a political minority and as Indigenous people rather than as immigrants."<sup>7</sup> This argument begs the question concerning the identity of Israeli Arabs.

On the eve of establishing the state of Israel, no such state called Palestine had ever existed. Mandatory Palestine was governed by the British mandate which superseded the Ottoman Empire. The establishment of the state of Israel led to the division of Mandatory Palestine. In the course of establishing the political and legal boundaries of Israel, many Arab families were expelled or deported, many fled, and others decided to leave either because of the coercive circumstances or by free will. Unlike the Druze who lived in the Golan Heights, who refused to move out of their houses but at the same time rejected the idea of becoming Israeli citizens, other Arabs, mainly Muslims and Christians from the Galilee and the Triangle Area, as well as the Bedouins from the south side of Israel, agreed, though I doubt with great pleasure, to become Israeli citizens.<sup>8</sup> This has created a possibly

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4. David Grossman, *Sleeping on a Wire: Conversations with Palestinians in Israel*, trans. by Haim Watzman (Tel-Aviv: Farrar, Straus, and Giroux, 1993) at 254.
  5. Underlying the reference to the "Hebrew Nation" is my assumption that Jewish-ness is a religious identity but not a national one.
  6. See and compare: The Hon. Chief Justice (ret.) Aharon Barak in H CJ (The Supreme Court of Israel) 4112/99 *Adalah- The Legal Centre for the Rights of the Arab Minority in Israel v. Tel-Aviv-Jafa (Municipality of)*, 56(5) P.D. 393; Ilan Saban & Mohammad Amaea, "The Status of Arabic in Israeli: Reflections on the Power to Produce Social Change" (2002) 36 *Isr. L. Rev.* 5; Hassan Jabareen, "The Future of Arab Citizens in Israel: Jewish-Zionist in a Place with Palestinian Memory" (2001) 6 *Law and Government* 53 (Hebrew).
  7. The quote is mine. See also Jabareen, *ibid.*
  8. On the history of the establishment of the state of Israel, see and compare: Howard M. Sachar, *A History of Israel from the Rise of Zionism to Our Time* (New York: Alfred A. Knopf, 2002) at 195-353; Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict 1881-2001* (New York: Random House, 2001) at 161-258; Baruch Kimmerling & Joel Migdal, *The Palestinian People: A History* (Cambridge & London: Harvard University Press, 2003) at 102-166.

unpredictable situation; instead of being the conclusive home for the Hebrew nation, the state of Israel has become the home state for two nations, and it is with this hybrid identity that I shall deal henceforth. Namely, my focus is on those people who are legal citizens of the state of Israel and at the same time part of the Arab nation.<sup>9</sup>

It is worth noting that I am not willing to reach any decisive determination upon historical rights over the disputed land, nor am I seeking to solve the political, legal and social problems between the state of Israel and the Palestinian Authority. Rather, it is my aim to discuss the several facets of another problem, namely, that which concerns the relationship of the state of Israel to its Arab citizens. My concern is the possible dilemmas with which Israeli Arabs struggle on a daily basis.

#### IV NATIONHOOD VERSUS STATEHOOD<sup>10</sup>

Being an Israeli Arab involves the ongoing clash between the nation and the state. Nation is not a synonym for state; there must be a clear distinction between nationhood and statehood. Nationhood refers to ordinary people who may or may not share the same state; something stronger than a state binds the people together. A nation encompasses the factors that constitute each individual—the language, the history, the culture, and the bond between geography and self—and it is what people feel part of, rather than what they belong to. The nation acts in history, achieving greatness and committing crimes, for its glory as well as its shame.<sup>11</sup> This is the Shakespearian notion of brotherhood.<sup>12</sup> Unlike the nation, the state is what people belong to, but not necessarily what they feel part of. If the people are part of the nation, it follows that the nation comes first, and thus legitimizes the establishment of the state. The state is not about death and birth,<sup>13</sup> but about organization of power; it is a political entity.

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9. Consider: Sachar, *ibid.* at 615-739; Kimmerling & Migdal, *ibid.* at 240-273.

10. In another place I have addressed the conceptual distinction between “nationhood” and “statehood” in depth. See: Mohammed Saif-Alden Wattad, “Resurrecting ‘Romantics at War’: International Self-Defense in the Shadow of the Law of War—Where are the Borders?” (2006) 13 ILSA J. Int’l & Comp. L. 205 at Part II.

11. See George P. Fletcher, *Romantics at War: Glory and Guilt in the Age of Terrorism* (Princeton: Princeton University Press, 2002) at 139.

12. William Shakespeare, *The Life of Henry V* at Act 4, Sc. 3: “[W]e band of brothers; for he today that sheds his blood with me [s]hall be my brother.”

13. Fletcher, *supra* note 11 at 140.

## V TORN BETWEEN THE NATION AND THE STATE

Being an Israeli Arab requires distinguishing between patriotism and loyalty. In my view, while nationhood requires patriotism, statehood demands loyalty. Patriotism and loyalty differ in several respects. Patriotism expresses solidarity, which crosses all political, national and international boundaries. Unlike patriotism, loyalty embodies contractual relationships between the state and the citizens. While patriotism is about feelings, loyalty, considered by itself, does not tell us much. Loyalty has a conditional nature; it is the outcome of a mutual interaction between rights and duties between the state and its citizens.

The recent war between Israel and Lebanon<sup>14</sup> has prompted a discussion concerning the problematic hybrid identity of Israeli Arabs. During the war, on the one hand, Israeli Arabs publicly condemned the Israeli attacks on civilian-populated areas in Lebanon. On the other hand, they themselves were victims of Hezbollah rockets launched on the northern cities of Israel.

Around early January 2007, I met several Canadian judges at Massey College in Canada.<sup>15</sup> In introducing myself I said, "My name is Mohammed, an Israeli Arab." One of the gentlemen there put his question clearly and in a straightforward manner, asking, "Is it not contradictory to be both 'Mohammed' and 'from Israel?'" Perhaps seeming naïve, I replied, "No Sir, for in Israel there are Jewish, Muslim, Christian and other religions." However, naïve I am not; I had no doubt that the gentleman knew well that there are citizens who are not Jews in Israel. Eventually, what crossed the gentleman's mind, in asking his question, was the absence of the word "Palestinian" in my answer, since most Israeli Arabs, like Anton Shammas, describe themselves as Israeli Palestinians.<sup>16</sup> The question becomes then: Is it possible to be an Israeli Arab in a world where one's country of citizenship is in constant hostility with one's nation?

Allow me to make this clear: It is my view that being Palestinian is a matter of citizenship. Israeli Arabs are not citizens of the current Palestinian Authority, and therefore they must not identify themselves as Palestinians. It is indeed possible that one day, upon the establishment of the state of Palestine, bilateral treaties will allow for dual-citizenship, to the same extent that it is possible to be Israeli and American or Israeli and Canadian. Israeli Arabs are citizens of the state of Israel, and as such they are Israelis *per se*; this is their statehood identity. However, Israeli Arabs are part of the Arab nation. Their national identity crosses all international boundaries; they share with the Arab nation their history, culture, customs and language.

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14. The war between Israel and Lebanon took place in the summer of 2006.

15. The author was a Junior Fellow at Massey College in the academic year 2006/2007.

16. See Grossman, *supra* note 4.

Given the constant hostility between the state of Israel and other states of the Arab nation, on its face, again, it seems that being an Israeli Arab is an impossible situation. However, this is not necessarily the case. As I have argued, statehood is about the organization of power,<sup>17</sup> which implies a conflict of interests between different states, whether they are part of the same nation or not. Egyptians, Iraqis, Jordanians, Lebanese and Libyans are all part of the Arab nation. Nevertheless, each state has its own political and sociopolitical interests. As such, though they belong to the same nation, these states of the Arab nation are likely to hold opposite positions regarding various issues, and they do; not only the economy but also politics leads them to take different and very often contrary paths. Some of them have even been at war against each other, thus raising arms against members of their own nation.<sup>18</sup> In the case for Israeli Arabs, their nationality as Arabs does not (and must not) undermine their citizenship as Israelis. Plausibly one may ask, “How does that work?” Allow me to answer this question on two levels.

On the first level, I shall examine the competing identities of Israeli Arabs in times of war between the state of Israel and other states of the Arab nation. On the second level, I shall analyze the rights that Israeli Arabs are entitled to as a national minority in Israel, and the duties that they must fulfil as legal citizens of the state of Israel.

## VI THE PRACTICALITIES OF THE DISTINCTION BETWEEN PATRIOTISM AND LOYALTY

Israeli Arabs are part of the Arab nation but citizens of Israel. As a Jewish state, Israel is the homeland for the Hebrew nation; as a democracy, it is committed to protecting all citizens equally.<sup>19</sup> In times of war or armed conflict between Israel and the Arab nation, the likelihood of conflict between the national identity and the citizenship identity of Israeli Arabs becomes a crucial question. It is my view that Israeli Arabs do not have to be patriotic to Israel, nor do they have to be Zionists, but still they may not

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17. See Part IV, above.

18. See, for instance, Iraq and Kuwait, as well as Syria and Lebanon. This is in addition to other civil wars, *e.g.* in Lebanon, Iraq and the Palestinian Authority. Note: It is not clear that the armed conflict in Iraq is a civil war in nature; rather, it reflects an armed conflict between militias. However, this is a subject for another article.

19. See the *Declaration of the Establishment of the State of Israel* (14 May 1948), which provides: “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 permanent institutions.”

betray the state of Israel; they owe their loyalty to their citizenship. Israeli Arabs may support their nation, but yet may not undermine the security of their state of citizenship. And finally, Israeli Arabs may invoke all legal, political and social means available within their state to protect their nation, but yet they may not “raise an arm in the face of their state.” The security of the state should be of significant importance to all citizens alike.

## VII RIGHTS VERSUS DUTIES

Since its establishment, Israel has defined itself as a Jewish and a democratic state. This has been clearly incorporated into the Israeli *Basic Law: Human Dignity and Liberty* in 1992<sup>20</sup>—a statute to which the Supreme Court of Israel has granted constitutional status, and thus has become the charter of human rights for the state of Israel.<sup>21</sup> The slogan, “Jewish and democratic state” has been the subject of an extensive amount of scholarly writing, for it is not self-evident what the phrase “Jewish state” means, nor is it obvious what democratic values are. Defining Israel as a democratic state and at the same time as a Jewish state seems contradictory, for a democracy presupposes the equal treatment of all citizens, thus granting no privileges to any particular nation or religion.

The existence of Israeli Arabs raises the question of the nature of Israel as a Jewish and a democratic state. It is my view, not only that Israel is a Jewish and a democratic state, but also that its Jewish-ness is as important as its democracy. As a Jewish state it is the only homeland for the Hebrew nation, and as a democracy it is obliged to treat every citizen equally,

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20. See *Basic Law: Human Dignity and Liberty* of 1992, art. 1.

21. I previously addressed this issue in another article, writing that the decision concerns the constitutional status of two Basic Laws, both of which were enacted in 1992: *Basic Law: Human Dignity and Liberty* and *Basic-Law: Freedom of Occupation*. Mohammed Saif-Alden Wattad, “Did God Say, ‘You Shall Not Eat of Any Tree of the Garden’? Rethinking the ‘Fruits of the Poisonous Tree’ in Israeli Constitutional Law” (2005) Oxford University Comparative Law Forum 5, online: <<http://ouclf.iuscomp.org/articles/wattad.shtml>> (see Part III). The historical compromise upon the failure to establish a constitution for Israel is considered to be the congressional resolution named the *Harray Decision*, according to which a constitution would be established chapter by chapter, through the enactment of the so-called Basic Laws: *Ibid.* However, until 1992, all enacted Basic Laws did not receive such constitutional status. The change occurred with the enactment of the *Basic Law: Human Dignity and Liberty*, which protects human rights from infringement by any of the three governmental branches: *Ibid.* On civil appeal, the Supreme Court of Israel held that until the enactment of the actual written constitution, the Basic Law must be considered as a constitutional norm, thus being superior to other ordinary acts with which it may come into conflict: *Ibid.*; CA 6821/93 *United Mizrahi Bank Ltd. v. Migdal Cooperative Village*, [1995] IsrSC 49(4) 221 (Isr.), reprinted in part in Omi, “Cases: Leading Decisions of the Supreme Court of Israel and Extracts of the Judgments” (1997) 31 Isr. L.R. 764-802.

regardless of his or her religion, ethnicity or nationality. Israeli Arabs constitute a national minority within the state of Israel, whether as Indigenous people or not. As legal citizens of Israel, they must enjoy all rights equally. And as a national minority, they are entitled to be recognized as a national collective, and to preserve, among other things, their culture and language.<sup>22</sup>

Israel is a Jewish state, and was established as such. This is not what I seek to challenge. It is also true that Israel is a democracy, and has quickly become a constitutional democracy, embracing the values of reason, fairness and justice.<sup>23</sup> The fact that Israel is a Jewish state, and therefore Jewish people have a right to return to Israel,<sup>24</sup> must not, by any means, undermine Israel's commitment to democracy, and the values of dignity and equality; every legal citizen in Israel, including immigrants and those belonging to a national minority, has a right to be treated equally by the state. Within the state, no single citizen should have any privilege over any other. For this end to be achieved, two duties must be imposed: (1) the duty of society as a whole, especially the majority, to respect the rights of the minority, and (2) the duty of the citizens, including minorities, to be loyal to the state. These mechanisms are vitally required, particularly in diverse states like Israel.

### **Patching Up the Gaps: Constitutional Democracy**

In diverse states, governmental power is required in order for reconciliation to be achieved. First and foremost, freedom of expression must be granted to those whose voice is less likely to be heard by official representatives of the majority.<sup>25</sup> Allowing free speech, even if one does not agree with its content, does not mean expanding the gap between the majority and the minority. Rather, free speech constitutes an apparatus of education that promotes

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22. See Meital Pinto, "Language Rights, Immigration and Minorities in Israel" (2006) 10:1 Law and Government 223 (Hebrew); Meital Pinto, "On the Intrinsic Value of Arabic in Israel—Challenging Kymlicka on Language Rights" (2007) 20:1 Can J. L. & Jur. [forthcoming].

23. Lorraine E. Weinrib, "The Supreme Court of Canada in the Age of Rights: Constitutional Democracy, the Rule of Law and Fundamental Rights Under Canada's Constitution" (2002) 80 Can. Bar Rev. 699; Aharon Barak, *The Judge in a Democracy* (Princeton & Oxford: Princeton University Press, 2006) at 57-58.

24. *The Law of Return of 1950*.

25. John E. Nowak & Ronald D. Rotunda, *Constitutional Law*, 6th ed. (St. Paul, Minn.: West Group, 2000) at 1055; *Palko v. Connecticut*, 302 U.S. 319 (1937) at 327 (Justice Cardozo); HCJ (Supreme Court of Israel) 73, 87/53 "*Kol Ha'am*" *Co. v. Minister of Interior*, 7(2) P.D. 871 at 876-878 (Justice Agranat); *RWDSU v. Dolphin Delivery*, [1986] 2 S.C.R. 573 at 584; *Irwin Toy v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 976; HCJ (The Supreme Court of Israel) 372/84 *Klopper-Nave v. Minister of Education and Culture*, 38(3) P.D. 233 at 238 (Chief Justice Shamgar); *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 at 1336; BVerfGE 7 at 198; BVerfGE 42 at 133; BVerfGE 50 at 234.

listening, attention and tolerance.<sup>26</sup> Minorities are not second class citizens, and their rights are not inferior to those of the majority. Patching up the gaps between the majority and the minority shall not be solely the concern of the minority. This must also be of the utmost concern of the majority, who must strike a balance between their own interests and the rights of the minority, and act with proportionality, reason and rationality. This is the right way to go for a democracy that purports to protect human rights.

Constitutional democracy enjoys some unique features. Constitutional democracy is not merely a representative system; it is not only the voice of the majority. Constitutional democracy is a balancing system; it is the voice of the majority but also the guard for minorities and their human rights. Constitutional democracy is not a melting-pot democracy, or a so-called defensive democracy; it is not a system of suppression, but a system of tolerance.

A constitutional democracy provides hope to Israeli Arabs. In the *Declaration of the Establishment of the State of Israel*, Israel appealed to its Arab citizens to preserve peace and participate in the building of the state on the basis of full and equal citizenship. The Supreme Court of Israel has granted minorities, especially the Arab minority, civil rights, including the right to vote, the right to establish political parties, freedom of expression, religious autonomy, and a separate educational system. In Israel, Arabic is an official language.<sup>27</sup> To a great extent, this is an official recognition of Israeli Arabs as a national minority, thus enjoying group rights, as well as preserving their national identity.

However, Israel is far from a utopian society. In Israel, Arabs are not merely differentiated. They are also discriminated against based on their national identity. Having said this, Israel is making progress. Within less than 60 years, Israel has adopted the Western concept of constitutionalism, thus embracing the principles of justice, fairness and human dignity. Step by step, the gaps are being patched up. But in order for these gaps to be fully patched up, a mutual interaction between the state and its Arab citizens is urgently required.

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26. Barak, *supra* note 23 at 64.

27. See *supra* note 6.

### Duties of All Citizens: A Concept of Statehood and Citizenship

The concept of an Israeli Arab raises the question of the meaning of citizenship. As Hohfeld puts it, rights and duties are correlative concepts.<sup>28</sup> That is, besides the rights sought by Israeli Arabs, there are duties that must be fulfilled. As I have already argued, citizenship demands loyalty. Loyalty must be expressed towards the state. This can be accomplished in a number of ways, two of which are (1) military draft and (2) symbols of the state.

I view military service as a vital instrument through which citizens must demonstrate their loyalty towards the state.<sup>29</sup> Israeli Arabs who argue against military draft for Arabs primarily contend that, as a national minority and given the constant circumstances of hostility between Israel and Arab states, it is not fair and is even immoral to require them to fight against their fellow Arabs. I do not agree with this argument. First, as indicated above, many Arab states have fought against each other, insofar as each state has fought to protect its own interests. Second, the argument against military draft seems to me unreasonable for it resembles an argument against arrest of an Arab murderer by an Arab policeman for reasons of shared nationality. And, third, the army is the power which is committed to protecting the security of the state, namely, the citizens of the state, both the majority and the minority; it does not belong to any nation.

However, there may be viable alternatives to military service such as non-combatant positions in the army, or serving one's own community as an equivalent to military draft, *i.e.*, civil service. By accepting one of these alternatives, Israeli Arabs could demonstrate their willingness to compromise and strike a balance between their nationhood and statehood identities, rather than inclining towards their nation.

As for the symbols of the state, I shall focus on the flag and the anthem. Symbols of the state must reflect the relationship between the citizens and the state. Both the Israeli flag and the anthem reflect the relationship between the state and the Hebrew nation: the flag depicts the Star of David, and the anthem speaks of "the Jewish spirit ... yearning deep in the heart."<sup>30</sup> On the one hand, I strongly believe that Israeli Arabs must wave the Israeli flag and sing the words of the anthem. On the other hand, I also urge the state to change both the flag and the anthem, and I support legitimate

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28. Wesley Newcomb Hohfeld, *Fundamental Legal Concepts as Applied in Judicial Reasoning and Other Legal Essays*, ed. by Walter Wheeler Cook (New Haven: Yale University Press, 1923) at 36, 67

29. Consider Ronald R. Krebs, *Fighting for Rights: Military Service and the Politics of Citizenship* (New York: Cornell Studies in Security Affairs, 2006); Muhammad Amara & Abd Al-Rahman Mar'i, *Language Education Policy: The Arab Minority in Israel* (Netherlands: Kluwer Academic Publishers, 2006) at 18.

30. Quoted from the Israeli anthem.

political, social, educational and legal proceedings to accomplish this goal. Obviously, I am not asking that the symbols befit the values of the Arab nation, nor do I argue for giving equal representation to the Arab national minority in this context. Rather, I strongly recommend that the symbols give expression to the “Israeli” features of the state of Israel. I am an Israeli Arab, I sing the words of the anthem, and I say “the Jewish spirit is yearning deep in the heart.” Nevertheless, I sing not of the Jewish spirit, but rather of my personal emotions towards my state, namely, Israel. I suggest changing the words to, “the Israeli spirit is yearning deep in the heart.” In order to truly conform to the principles of constitutional democracy, the anthem must speak of all Israeli spirits and not of the Jewish spirits only. This is true not only for the anthem, but also for the flag. Israel has been in existence for more than 50 years. The state of Israel has developed its own social life and political characteristics.<sup>31</sup> Israel has its own sociopolitical identity, and this is what the flag must express.

## VIII EPILOGUE

The German philosopher Wittgenstein once argued:

Man kann von *einem* Ding nicht aussagen, es sei 1 m lang, noch, es sei nicht 1 m lang, und das ist das Urmeter in Paris.<sup>32</sup>

[There is one thing of which one can say neither that it is one metre long, nor that it is not one metre long, and that is the standard metre in Paris.]

Many of the conventional criteria in any society are considered absolute, whereas in fact they are arbitrary. However, not all criteria are as arbitrary as the standard metre in Paris. There are issues where it is possible—and if possible, it is only right—to determine the just criteria.

Israel is a Jewish state. Like its Jewish-ness, its Israeli-ness must not be ignored. Israel is the only home for the Hebrew nation, but it is also the only home for Israeli Arabs. Whether you call it Mandatory Palestine or the Land of Israel, Israeli Arabs were still born there, and upon the establishment of the state of Israel they have become legal citizens. Israeli Arabs have no other home but the state of Israel.

Being an Israeli does not necessarily mean being a Jew. Israeli Arabs must identify themselves as Israelis but not as Palestinians; they must

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31. For interesting reading on the cultural developments in the state of Israel, see Amos Oz, *A Tale of Love and Darkness*, trans. by Nicholas de Lange (New York: Harcourt, 2005).

32. Ludwig Wittgenstein, *Philosophy: The German Text, with a Revised English Translation*, 3d ed., trans. by G.E.M. Anscombe (Malden, MA: Blackwell, 2001) at Pt. I, §50.

express their loyalty solely to the state of Israel. Having said that, Israeli Arabs still constitute a national minority of the Israeli state, and thus their rights must be respected.