

Constitutionalizing Ethnic Identity in Modern Democracy:

The Case of the Israeli Nation-State Law



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Zachary Harris

First Reader: Professor Nina Tannenwald

Second Reader: Professor Nathaniel Berman

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Providence, Rhode Island

Abstract

In the early hours of Thursday, July 19th, 2018, the Israeli Knesset narrowly passed “Basic Law: Israel – The National State of the Jewish People” (hereafter: The Nation-State Law). The Law encompasses eleven short articles delineating the meaning and value of Israel’s Jewish identity. As the latest statement on Israel’s Jewish identity, the Law provides an invaluable opportunity to reflect on the past, present, and future of Israeli politics. Furthermore, its connections to international debates over the role of ethnic identity in modern democracy suggest that the Law might provide a useful point of comparison for these critical global issues. The Law’s domestic and international significance inspires this thesis’s central research questions: Why did the Nation-State Law come about? What are its implications for Israeli democracy? I argue that while the Law is best understood as the result of a complex multi-causal process, right-wing frustrations toward the High Court’s perceived liberal bias and interventionist tendencies can be identified as a particularly salient motivating factor. Concerns over the domestic and international delegitimization of Israel’s Jewish identity were an important secondary motivation. I also argue that the Law has been mostly ineffectual in both the legal and sociopolitical realms. The High Court has interpreted the Law as mostly declarative and thus inapplicable to most tangible policy questions. While the Law inspired substantial domestic and international condemnation, it failed to catalyze meaningful shifts in political behaviors or attitudes.

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A Note on Translations and Terminology

Translations

Translations of the Nation-State Law follow Dr. Susan Hattis Rolef's "unofficial" translation posted on the Knesset website. My commentary is marked with footnotes. The Law's complete text, in English and Hebrew, is included in the appendix. Translations of the Law's early drafts, when available, are taken from *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018). All other translations, unless marked otherwise, are my own.

Terminology

The inevitable controversy surrounding Israeli and Palestinian issues tends to imbue every linguistic choice with undue meaning. To pre-empt any misunderstandings, the following key terms are clarified below.

1. **Palestinian citizens of Israel:** Palestinians living within the Green Line are also known as "1948 Palestinians" or "Arab-Israelis." This thesis mostly uses "Palestinian citizens of Israel" or simply "Palestinian citizens." Palestinians living in the West Bank, Gaza, or the diaspora are marked accordingly.
2. **Israel's Jewish Identity:** When discussing Israel's political identity, this thesis intentionally uses the term "Israel's Jewish identity" or "Israel's Jewish character" rather than simply "Judaism." These terms are meant to cover a broader range of national and cultural, rather than only religious, characteristics.
3. **Placenames:** I typically use the most commonly known English placenames. For example, "Jerusalem" rather than *Yerushalim* (Hebrew) or *Al-Quds* (Arabic). Hebrew and Arabic translations are often noted in parentheses.

“And here is the place to state a shocking confession. Other ones will come after it. I think that the nation-state is a tool, an instrument, that is necessary for a return to Zion, but I am not enamored of this instrument.”

– Amos Oz, *In the Land of Israel*

Chapter 1: Introduction

1. The Israeli Nation-State Law

In the early hours of Thursday, July 19th, 2018, the Israeli Knesset narrowly passed “Basic Law: Israel – The National State of the Jewish People” (hereafter: The Nation-State Law).¹ The Law encompasses eleven short articles delineating the meaning and value of Israel’s Jewish identity. Some provisions repeat existing legislation while others codify new, or previously only *de-facto* precepts. Article 1 declares Israel to be “the nation-state of the Jewish people” and limits the “right to self-determination” to Jews alone. Article 2 reiterates the state’s name, flag, emblem, and national anthem. Article 3 recodifies Jerusalem’s capital status. Article 4 declares Hebrew as Israel’s “state language” while relegating Arabic to a “special status.” Article 5 reiterates the value of Jewish immigration. Article 6 codifies the state’s responsibilities towards the Jewish diaspora. Article 7 establishes “Jewish settlement” as a “national value.” Article 8 reiterates the official status of the Hebrew calendar. Article 9 recodifies Independence, Memorial, and Holocaust Remembrance Day. Article 10 recodifies Shabbat (Saturday) as the national day-of-rest while also granting non-Jews the right to their respective rest days. Article 11 clarifies that the Law can only be amended through another Basic Law passed with a majority of Knesset members.²

The Nation-State Law sparked heated controversy. According to its proponents, the Law represents the triumphant culmination of the struggle for Jewish self-determination in their historic homeland. Prime Minister Benjamin Netanyahu praised the bill’s passage as “a pivotal

¹ In English, the Nation-State Law is also referred to as the “Nationality Law” – a translation that more accurately reflects its colloquial Arabic name: *Qanun el-Qawmia* قانون القومية.

² The Law’s full text, in English and Hebrew, is included in the appendix.

movement in the annals of Zionism and the State of Israel.” Member of Knesset (MK) Amir Ohana (Likud) exclaimed,

“This moment will be remembered in the history of the Jewish nation. We are laying down one of the cornerstones of our existence... After 2,000 years of exile, we have a home.”³

Yet, where supporters saw historic justice, opponents saw a dark omen for Israeli democracy. Opposition leader Isaac Herzog (Zionist Union) worried “I hope that we will not find that the delicate balance between Judaism and democracy will be damaged.” MKs Ahmad Tibi and Aida Touma-Sliman (Joint List) decried, “The passage of the apartheid law, a racist law.”⁴ Rabbi Rick Jacobs, the President of the Union for Reform Judaism, the largest North American Jewish denomination, called the Law’s passage “a sad and unnecessary day for Israeli democracy.”⁵ In weeks following its ratification, thousands of Jewish, Druze, and Palestinian citizens of Israel protested against the Law in Tel Aviv’s Rabin Square.⁶

These dueling commendations and criticisms reflect deep tensions between Israel’s Jewish and democratic identities. For supporters, the Nation-State Law represents the long-overdue codification of the state’s *Jewish* character. For critics, the Law undermines Israel’s *democratic* identity. Importantly, this dialectic is not restricted to the Nation-State Law debate.

³ “Knesset Passes Jewish Nation-State Bill into Law,” Knesset.gov.il, July 19, 2018, https://main.knesset.gov.il:443/EN/News/PressReleases/Pages/Pr13979_pg.aspx.

⁴ Yonatan Lis and Noa Landau, “At the End of a Long Night-Time Discussion: The Knesset Approves the Nation-State Law [Heb.],” *Haaretz*, July 18, 2019, <http://www.haaretz.co.il/news/politi/1.6290439>.

⁵ Rick Jacobs, “URJ President Rabbi Rick Jacobs Statement on Israel’s Nation-State Law,” Union for Reform Judaism, accessed December 13, 2021, <https://urj.org/press-room/urj-president-rabbi-rick-jacobs-statement-israels-nation-state-law>.

⁶ Anshel Pfeffer, “Druze Rally Against Israel’s Nation-state Law: ‘We’re Here to Tell Jews It’s Patriotic to Protest,’” *Haaretz*, August 5, 2018, <http://www.haaretz.com/israel-news/.premium-druze-rally-in-israel-we-re-here-to-tell-jews-it-s-patriotic-to-prot-1.6341636>; Haia Dakar, “Israel’s Arab Minority Rallies against New Nation-State Law,” *Reuters*, August 11, 2018, <https://www.reuters.com/article/us-israel-politics-law-protests-idUSKBN1KW0KP>.

Rather, the Law continues and exacerbates a long-running and extremely contentious debate over Israel's meaning and purpose.

Israel's 1948 Declaration of Independence unambiguously declares "the establishment of a Jewish State in the Land of Israel." However, this document also proclaims, "the complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex."⁷ Accordingly, Israel's identity was split from birth. On one hand, the Declaration of Independence declares a unique relationship between the state and a specific ethnoreligious group. On the other hand, its overtures to "equality" codify a central liberal democratic norm. Importantly, the division between the state's Jewish and democratic character is not a complete dialectic. For many Jewish-Israelis, these two identities are intrinsically connected. According to this perspective, the state's self-proclaimed commitment to equality, human rights, and electoral democracy is premised not merely on universalist values but also on specifically Jewish traditions.⁸ However, despite these *theoretical* congruences, Israeli politics exhibits stark *empirical* dissonances between the state's Jewish and democratic identities. Under its vibrant electoral system, Palestinian citizens of Israel, who constitute approximately 20% of the country's population, vote alongside their Jewish-Israeli peers. Yet the state concurrently prioritizes Jewish interests in immigration and land development. Critically, since 1967, Israel exercises a military occupation over the West Bank leaving approximately 2.5 million West Bank Palestinians under varying degrees of Israeli control but without the right to vote in Israeli

⁷ "Israeli Declaration of Independence," May 14, 1948, <https://www.mfa.gov.il/MFA/Peace+process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm>.

⁸ For example, see: "Special Joint Committee of the Knesset Committee and the Constitution, Law, and Justice Committee for the Debate the Basic Law Proposal: Israel – The Nation-State of Jewish People (hereafter: Joint Committee) Minutes #1 [Heb], July 26, 2017, Knesset Center for Information and Research, 24.

elections.⁹ When viewed against this complicated democratic backdrop, the Law's significance becomes clear. By proclaiming and defining Israel's Jewish identity while ignoring its real or claimed democratic characteristics, the Law serves as the latest statement on the state's delicate Jewish-democratic balance. It thus provides an invaluable opportunity to reflect on the past, present, and future of Israeli politics.

2. International and Domestic Significance

The Nation-State Law posits a specific conception of Israel's Jewish identity. This vision can be defined according to three categories: Jewish nationalism, Jewish symbolism, and Jewish policy. First, Article 1 codifies chauvinistic religious-political nationalism as the state's guiding ideology. Like most nationalisms, this vision is intimately tied to a specific territory. In this case, Article 1a proclaims "the Land of Israel" as "the historical homeland of the Jewish People." Furthermore, this is a religious-political ideology. Article 1b proclaims the Jewish "religious" right to "self-determination." Finally, this is a chauvinistic vision that pursues Jewish self-determination at the expense of competing national liberation movements. Article 1c states, "The exercise of the right to national self-determination in the State of Israel is *unique* to the Jewish People" (emphasis my own).

Second, Articles 2, 4, 8, 9, and 10 codify a nationalistic symbolism that centers Jewish traditions at the expense of minority motifs. For example, Article 2 recodifies the Israeli flag whose two blue strips recall a *tallit* (Jewish prayer shawl) while its six-pointed star represents the *Magen David* (Star of David) – an ancient Jewish symbol popularized by the modern Zionist movement. The Muslim crescent, Christian cross, or Druze five-pointed star are excluded.

⁹ Kali Robinson, "What to Know About the Arab Citizens of Israel," Council on Foreign Relations, June 14, 2021, <https://www.cfr.org/backgrounder/what-know-about-arab-citizens-israel>.

Third, Articles 5, 6, and 7 delineate a secular-nationalist Jewish policy. Article 5 recodifies the right to Jewish, but not Palestinian, immigration. Article 6 establishes a state duty to protect non-citizen Jewish diaspora communities. Article 7 declares the “national value” of “Jewish settlement.” Importantly, while Law’s nationalism is framed in religious terms, its policy stipulations are noticeably secular. Besides Article 6c’s injunction to preserve the Diaspora’s “religious heritage,” there are no explicitly religious directives. Critically, the Law doesn’t mandate *halacha* (Jewish law).

By ratifying the Nation-State Law, 62 acceding MK’s defined Israel according to a specific vision of religious-political nationalism, Jewish symbolism, and secular-nationalist policy. However, their model was never predetermined. Rather, the Nation-State Law represents the victory of one vision of Israel’s Jewish identity over competing ideologies.

Before 1948, Zionist thinkers imagined numerous cultural, political, and religious identities for their envisioned state (or sub-state).¹⁰ Theodore Herzl proposed chartering a Jewish colony under the protection of a European monarch.¹¹ Ahad HaAm (Asher Ginsberg) advocated minimal Jewish immigration to establish a Jewish “spiritual center” in Palestine based on secular-Hebrew culture.¹² Vladimir Jabotinsky and the Revisionist Zionists championed a capitalist, militaristic, secular nation-state.¹³ The Brit Shalom movement proposed a bi-

¹⁰ Dmitry Shumsky, *Beyond the Nation-State: The Zionist Political Imagination from Pinsker to Ben-Gurion*. Yale University Press, 2018.

¹¹ Anita Shapira, *Israel: A History*, The Schusterman Series in Israel Studies (Waltham, Mass: Brandeis University Press, 2012), 18; Simon Rabinovitch touches on the Law’s conflict with Herzl-ian Zionism in his interview with Jason Lustig. See: Simon Rabinovitch and Jason Lustig, “What Does It Mean for Israel to Be a ‘Jewish’ State? Defining Israel with Simon Rabinovitch,” *Jewish History Matters*, May 12, 2019, <https://www.jewishhistory.fm/defining-israel-with-simon-rabinovitch/>.

¹² Anita Shapira, *Israel: A History*, The Schusterman Series in Israel Studies (Waltham, Mass: Brandeis University Press, 2012), 21.

¹³ Shapira, 124–25.

nationalist Jewish-Palestinian state.¹⁴ Marxist-Zionism movements such as *Ha'shomer Ha'tzair* (the Young Guard), envisioned a Socialist Jewish society.¹⁵

While Israel's 1948 establishment precluded certain past visions (such as *Brit Shalom's* bi-nationalist approach) core questions over the state's Jewish identity remained undetermined. The Israeli Declaration of Independence unambiguously proclaims, "the establishment of a Jewish State in the Land of Israel to be known as the State of Israel."¹⁶ Yet besides enshrining the right of Jewish immigration, this document left the meaning of Jewish statehood undefined. Should Israel be governed by Jewish law? Provide a haven for Jews fleeing anti-Semitism but remain secular and multi-national internally? Promote secular Jewish culture alongside liberal democracy? This ambiguity was only exacerbated by Israel's subsequent constitutional crisis. The Declaration of Independence commissioned a temporary legislature, known as the Constituent Assembly, to draft and ratify a constitution. However, this body failed to complete its only task. Rather, under the so-called Harari Compromise, the Constituent Assembly declared itself to be the First Knesset and agreed to build the Israeli constitution piece-by-piece in the form of "Basic Laws (*chokei yesod*)"¹⁷ Yet until the Nation-State Law, these statutes mostly dealt with procedural issues or civil rights. Until 2018, no Basic Law directly addressed Israel's Jewish identity.¹⁸

While the Basic Law system failed to define the state's Jewish identity, Israel has certainly constructed one. The state's flag, emblem, and anthem are all starkly Jewish. Israel

¹⁴ Shapira, 82.

¹⁵ Shapira, 137–42; Anita Shapira, *Land and Power: The Zionist Resort to Force, 1881 - 1948*, Stanford Studies in Jewish History and Culture (Stanford, Calif: Stanford University Press, 2008).

¹⁶ "Israeli Declaration of Independence."

¹⁷ The mainstream English translation, "Basic Laws" (*chokei yesod*), is misleading. *Yesod* means "basic" in the sense of "foundational" rather than "simple."

¹⁸ Gideon Sapir, *The Israeli Constitution: From Evolution to Revolution* (New York: Oxford University Press, 2018), 11–17; Gary Jeffrey Jacobsohn and Yaniv Roznai, *Constitutional Revolution* (Yale University Press, 2020), 188–92.

explicitly preferences Jewish interests in immigration and land development. Hebrew is the language of government and industry. Yet key aspects of the state's Jewish identity remain vigorously contested. Many Orthodox Jewish-Israelis demand an increased role for *halacha* in public life. Secular Jewish-Israelis typically oppose these encroachments.¹⁹ Many Palestinian citizens protest the country's ethnoreligious identity and demand "a state of all citizens."²⁰ The Nation-State Law declares the primacy of a specific Jewish identity defined by religious-political nationalism, Jewish symbolism, and secular-nationalist policy. However, this framework is only one option among many past and present alternatives. How and why did the Nation-State Law "win over" its ideological opponents?

As a Basic Law, the Nation-State Law is not merely a *normative* claim, but also a *legal* statement on Israel's Jewish and democratic identities. The symbolic provisions' legal repercussions are clear (Articles 2, 3, 8, 9, 10). Recodifying the state's flag, emblem, anthem, holidays, and official calendar merely reinforces the status quo. However, the ideological and policy-oriented provisions' implications remain ambiguous (Articles 1, 4, 5, 6, 7). Practically, what does it mean to restrict the "right to national self-determination in the State of Israel" to the Jewish People? (Article 1c). How should Israel "encourage and promote" Jewish settlement"? (Article 7).

Two interpretative options are immediately apparent. On one hand, the Law could be construed as merely declarative. According to this reading, the Law "declares" Israel's Jewish character but doesn't legitimize or invalidate specific policies. Subsequently, it can't degrade the constitutional authority of equality and human rights. On the other hand, the Law might be

¹⁹ Yedidia Stern, "Religion, State, and the Jewish Identity Crisis in Israel" (Washington DC: Center for Middle East Policy at the Brookings Institute, 2017), https://www.brookings.edu/wp-content/uploads/2017/03/cmep_20170331_jewish-identity-crisis.pdf.

²⁰ Sammy Smooha, "Ethnic Democracy: Israel as an Archetype," *Israel Studies* 2, no. 2 (1997): 209–33.

legally operable. According to this interpretation, the Law not only declares Israel's Jewish identity but also forms the basis for tangible state duties. Subsequently, it could mandate specific policies to further erode Palestinian rights and elevate Jewish ethnonationalist interests. For example, Article 7's codification of the "value of Jewish settlement" might justify the establishment of Jewish-only towns. Understanding whether the Law is declarative, operable, or somewhere in between is essential for evaluating its impact on Israeli democracy. Nearly four years after the Law's passage, it is now an excellent time to evaluate these legal dilemmas.

While it emerges from and most directly impacts Israeli society, the Law is also internationally significant. Israel's struggle to balance liberal democracy and ethnonational identity reflects deep theoretical and empirical conflicts. The International Covenant on Civil and Political Rights (ICCPR) declares that all "peoples have the right of self-determination."²¹ Since the post-colonial era, most "peoples" have sought self-determination by establishing independent nation-states. However, this model inevitably contradicts the core liberal democratic principle of equality. To realize national self-determination, nation-states typically establish official holidays, flags, and languages representing their dominant nationality's cultural, religious, and linguistic heritage. However, such nationalistic symbolism axiomatically excludes their minorities from a full sense of ownership over the state's identity. In a blatantly unequal move, the nation-state has thus elevated the majority's interests at the expense of its minorities – all in the name of "self-determination." Examining the Nation-State Law might therefore provide a useful opportunity to explore these contradictions between liberal democracy and self-determination.

Furthermore, the Law's passage reflects worrying empirical trends. Much like the Nation-State Law, rising populist-nationalist movements, such as Narendra Modi's BJP in India

²¹ "International Covenant on Civil and Political Rights" (Office of the High Commissioner for Human Rights, 1976), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Part 1, Article 1.

or Victor Orbán's Fidesz party in Hungary, explicitly promote their state's dominant ethnic-religious identity at the expense of minority rights and liberal democratic norms. Exploring the Law might thus provide useful points of comparison for understanding this disturbing international trend.

3. Research Question

The Nation-State Law's domestic and international significance inspires this thesis's central research questions: Why did the Nation-State Law come about? What are its implications for Israeli democracy? Chapter Three analyzes the Law's ideation, development, and passage between 2004 and 2018. It argues that the Law is most accurately understood as the result of a complex multi-causal process. However, among numerous motivations, the influence of right-wing resentment towards the Israeli High Court's perceived interventionist tendencies and liberal biases was particularly salient. According to this view, in response to the Court's expanding power since the "Constitutional Revolution" of the 1990s, the Israeli Right legislated the Law to upgrade the constitutional status of state's Jewish identity vis-à-vis its democratic character. Chapter Three also highlights concerns over domestic and international attacks against the legitimacy of Israel's Jewish character as an important secondary motivation. Chapter Four assesses the Law's legal and socio-political implications. It argues that the Law has been mostly ineffectual on both accounts. Drawing on an analysis of three key 2021 Israeli court cases, this chapter finds that the judiciary has interpreted the Law as mostly declarative (in Hebrew, literally: *declarativi*). According to their perspective, while it declares the meaning and value of Israel's Jewish identity, it remains inapplicable to most tangible policy questions. Similarly, Chapter Four evaluates the Law's reception among three key demographics: Palestinian citizens of Israel, the Israeli-Druze, and the international community. It finds that while the Law inspired

substantial backlash from each group, it mostly failed to catalyze meaningful shifts in political attitudes and behavior.

4. Research Design

This thesis's methodology is primarily historical and legal. Chapter Three assesses the Law's causal factors through three types of historical sources. First, it examines the Law's many preliminary drafts, along with their accompanying "explanatory notes," to chart its development between 2004 and 2015. Second, it assesses the minutes of the Knesset's so-called "Joint Committee" which revised the Law between 2017 and 2018. Finally, it uses Israeli news articles to explicate the processes outlined in the aforementioned documents. In addition, this chapter also draws on secondary-source literature to contextualize the Law's development within Israel's long-term rightward political shift.

Chapter Four investigates the Law's legal and socio-political implications. To evaluate its jurisprudential effects, it analyzes three key 2021 court decisions: *The State of Israel v. Plonit*, *Ploni v. Karmiel Municipality*, and *Akram Hasson v. The Knesset*.²² To analyze the Law's social-political ramifications, this chapter focuses on the Law's reception by Palestinian citizens of Israel, the Israeli Druze, and the international community. Specifically, it draws on news articles and polling data to assess each group's response.

5. Chapter Summary

This chapter has explained the Nation-State Law's domestic and international significance as well as this thesis's research questions and methodology. The remaining chapters will examine two key questions. First, why did the Nation-State Law come about? Second, what

²² *Ploni* (male) or *Plonit* (female) refers to an anonymous litigant, much like the American John/Jane Doe.

are the Law's implications for Israeli democracy? Chapter Two contextualizes the Nation-State Law debate within wider discussions over the role of national identity in Israeli and global democracy. First, it summarizes existing scholarship on Israeli democracy. Second, it compares the Law with Israeli and global democratic norms. Third, it juxtaposes the Law against domestic and international democratic backsliding. Fourth, it summarizes existing hypotheses for the Law's origin. Fifth, it summarizes scholarly predictions of the Law's legal and socio-political implications. Chapter Three describes the Law's ideation, development, and passage between 2004 and 2018. First, it uses preliminary drafts and Israeli news articles to chart the Law's evolution between 2004 and 2015. Second, it examines the Law's development under the Joint Committee between 2017 and 2018. Third, it contextualizes the Law's evolution within broader Israeli political-historical trends. Chapter Four describes the Law's impact on Israeli politics, society, and law since 2018. First, it examines three key court cases addressing the Law's jurisprudential meaning. Second, it draws on news articles and polling data to evaluate the Law's reception among Palestinian citizens of Israel, the Israeli Druze, and the international community. Chapter Five summarizes the previous analyses and reflects on the Law's broader repercussions – both domestically and globally.

Chapter 2: International and Domestic Context

Introduction

The Israeli Nation-State Law engages three key discourses in global democratic politics. First, the Law is closely tied to debates over Israel's claimed democratic identity. By declaring Israel's Jewish character without mentioning democracy or equality, the Law appears to elevate the former aspect of Israel's dual identity over the latter. However, this analysis is untenable without a critical evaluation of Israeli democracy. Scholars have offered a wide range of definitions for Israeli politics from fully formed liberal democracy, to quasi-democratic "ethnic democracy," to non-democratic "ethnocracy" or even apartheid. These definitions bear heavily on an honest evaluation of the Law's effects. Does the Law exacerbate undemocratic elements of a true democracy, a partially democratic system, or merely continue the existing tendencies of an undemocratic state? Second, the Law underscores the complex and often contradictory role of national identity in multi-ethnic democracies. Is its codification of a specific ethnoreligious identity typical or atypical among global democracies? Third, by elevating Israel's Jewish identity over its democratic character, the Nation-State Law recalls international and domestic democratic backsliding. To what extent does the Law reflect or contradict these trends?

Sections One through Three of this chapter assess the Nation-State Law within these critical debates. Section One summarizes core conflicts in Israeli democratic theory. Specifically, it juxtaposes Sammy Smooha's "ethnic democracy" model and Oren Yiftachel's "ethnocracy" model. This comparison emphasizes both authors' recognition, albeit to different degrees, of Israel's dual democratic and undemocratic characteristics. Furthermore, it highlights the

particular saliency of Israel's *unequal citizenship regime* that elevates the interests and identities of Jewish over non-Jewish citizens.

This nuanced understanding of Israeli democracy enables Section Two's comparison of the Nation-State Law with Israeli legal trends and global democratic practices. This analysis generates three main conclusions. First, the Law continues Israel's uneven citizenship regime by recodifying existing legislation that promotes Jewish interests over those of the general citizenry. Second, while some elements of the Law are comparable with global democratic practice, others are almost completely unique. Third, Article 1's declaration of the state's ethnic identity without acknowledging its democratic character breaks both Israeli and international precedent.

Finally, Section Three compares the Law with global trends of "democratic backsliding." This analysis finds both similarities and differences. On one hand, the Law aligns with rising Israeli and global illiberalism. Similarly, its constitutional amendment status, implicit critique of Israel's liberal economic-cultural elite, and ethnonationalist content reflect international populist-authoritarian tactics. However, the Law distinguishes itself from democratic backsliding by mostly focusing on symbolism, identity, and values rather than explicit limitations on electoral democracy.

Following the contextualization of the Law within these critical debates, Sections Four and Five summarize existing literature on this thesis's specific research question: What are the causes and implications of the Nation-State Law? Section Four identifies three core hypotheses for the Law's origins. First, the Law naturally extends decades-long anti-democratic trends. Second, the Law is a nationalist backlash to domestic and international challenges to Israel's legitimacy. Third, the Law reflects right-wing frustrations over the Israeli High Court's perceived interventionist tendencies and liberal bias. Importantly, these three arguments are not

mutually exclusive. Finally, Section Five examines scholarly predictions of the Law's legal and socio-political effects. It identifies three possible jurisprudential implications. The first interpretation is that the Law is mostly declarative and does not legitimize discrimination. The second interpretation is that the Law is legally operable and will justify the further marginalization of non-Jewish Israelis. Finally, the third jurisprudential interpretation is that, while the Law is theoretically operable, the courts are likely to interpret it in a manner that avoids discriminatory rulings. On balance, scholars who examine the Law's sociopolitical impact generally agree that it exacerbates the fracturing of Israeli society.

1. Israeli Democracy

Discussions of the Nation-State Law are intimately connected to debates over Israel's democratic character. Supporters frequently claim that the Law aligns with a robust Israeli liberal tradition.¹ In contrast, critics often argue that the Law either exacerbates undemocratic elements of a mostly democratic system or reflects Israel's fundamentally undemocratic character.² Assessing the Law's political, social, and legal impact thus raises the question: Is Israel democratic, undemocratic, or somewhere in between? This section analyzes this critical debate in three steps. First, it outlines three contradictory characteristics of Israeli democracy: an adamantly claimed democratic identity, robust electoral institutions, and fundamentally unequal citizenship categories. Second, it summarizes major scholarly arguments defining Israeli democracy. Third, it focuses on the juxtaposition between Sammy Smooha's "ethnic democracy" model and Oren Yiftachel's "ethnocracy" model. This comparison emphasizes both authors'

¹ Eugene Kontorovich, "A Comparative Constitutional Perspective on Israel's Nation-State Law," *Israel Studies* 25, no. 3 (2020): 137, <https://doi.org/10.2979/israelstudies.25.3.13>.

² Dov Waxman and Illan Peleg, "The Nation-State Law and the Weakening of Israeli Democracy," *Israel Studies* 25, no. 3 (2020): 185, <https://doi.org/10.2979/israelstudies.25.3.16>; Nadia Ben-Youssef and Sandra Samaan Tamari, "Enshrining Discrimination: Israel's Nation-State Law," *Journal of Palestine Studies* 48, no. 1 (November 1, 2018): 73–87, <https://doi.org/10.1525/jps.2018.48.1.73>.

agreement, albeit to different degrees, that Israel contains both democratic and undemocratic elements. Furthermore, it highlights Israel's unequal citizenship regime that extends greater *de-facto* and *de-jure* rights to Jews over non-Jews.

A. Contradictory Components

Israeli politics is simultaneously characterized by insistent proclamations of Israel's democratic character, strong electoral institutions, and uneven citizenship categories. The country's democratic rhetoric is well-known. Israeli leaders frequently tout their country as the "only democracy in the Middle East."³ *Basic Law: Human Dignity and Liberty* (1992) unambiguously declares that it protects "the values of the State of Israel as a Jewish and *Democratic* State (emphasis my own)."⁴ Israeli electoral processes remain competitive. The country's voter turnout typically ranks about eighth among developed countries.⁵ In 2021, long-standing Israeli Prime Minister Benjamin Netanyahu was replaced by a broad coalition government including an Islamist party.⁶ However, Israel's democratic rhetoric and strong electoral tradition are contravened by its uneven citizenship regime. The country's basic ethos as a "Jewish" state marginalizes the identity of its almost 2 million non-Jewish citizens. While Palestinian citizens of Israel supposedly possess equal civil and political rights, they face extensive *de-facto* discrimination in employment and education. The majority of East Jerusalem Palestinians and Golan Druze possess "permanent residency" status, which provides most

³ Anders Perrson, "Can Bennett and Lapid Really Rebrand Israel as a Liberal Democracy?" *Haaretz*, September 9, 2021, <http://www.haaretz.com/israel-news/.premium-can-bennett-and-lapid-really-rebrand-israel-as-a-liberal-democracy-1.10100551>.

⁴ "Basic Law: Human Dignity and Liberty" (1992), https://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1992/3/Basic+Law-+Human+Dignity+and+Liberty-.htm. Article 1a.

⁵ Drew Desilver, "In Past Elections, U.S. Trained Most Developed Countries in Voter Turnout," *Pew Research Center*, November 3, 2020, <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trained-most-developed-countries-in-voter-turnout/>.

⁶ Isabel Kershner, "New Government Would Need the Support of an Arab Party - The New York Times," June 2, 2021, <https://www.nytimes.com/2021/06/02/world/middleeast/arab-party-raam-coalition.html>.

benefits of Israeli citizenship except voting rights. While both groups can technically apply for citizenship, East Jerusalem Palestinians face substantial barriers and Golan Druze typically refuse citizenship for political reasons – though an increasing minority are applying. Palestinians in the Occupied West Bank are subjected to varying degrees of Israeli civil and military control but denied Israeli citizenship entirely.⁷ In short, Israel’s democracy includes control over approximately 2.5 million Palestinians who lack voting rights, a crucial feature of democracy.⁸

B. Scholarly Definitions

Israel’s complex nexus of democratic and undemocratic elements generates extensive scholarship. Sammy Smooha defines Israel as an “ethnic democracy.” He construes this model as a true democracy that nevertheless grants significant advantages to its dominant ethnic group. Yoav Peled echoes Smooha’s definition and emphasizes that the confluence of republicanism, ethnonationalism, and liberalism under ethnic democracy offer Palestinians extensive civil and political rights. However, in Peled’s view, the state’s ethnic character still limits non-Jews’ ability to contribute as full citizens to “the common good.”⁹ In contrast to Smooha and Peled, Oren Yiftachel defines Israel as an “ethnocracy.” He describes this model as a fundamentally undemocratic state with a democratic façade. Yiftachel argues that the ethnocratic state contravenes the liberal principle of the “community of equal resident citizens” and instead centers the interests and identities of a specific ethnic group unbounded by formal citizenship.¹⁰ As’ad Ghanem similarly defines Israel as a non-democratic “ethnic state regime” that denies

⁷ Robinson, “What to Know About the Arab Citizens of Israel.”

⁸ Nir Hasson, “How Many Palestinians Actually Live in the West Bank?,” *HaAretz*, June 30, 2013, <http://www.haaretz.com/.premium-how-many-palestinians-are-there-1.5288567>.

⁹ Yoav Peled, “Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State,” *The American Political Science Review* 86, no. 2 (1992): 432–43, <https://doi.org/10.2307/1964231>.

¹⁰ Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (Philadelphia: University of Pennsylvania Press, 2006), 16.

equal citizenship to non-Jews.¹¹ Yoav Peled and Doron Navot trace Smootha and Yiftachel's models across Israeli political history. Specifically, they argue that Israel has evolved from a non-democratic ethnocracy, through ethnic democracy, and toward non-democratic ethnic majoritarianism.¹² The remainder of this section further investigates Israeli democracy by focusing on the similarities and differences between Smootha and Yiftachel's models.

C. Ethnic Democracy

Sammy Smootha defines Israel as an “ethnic democracy” – a true democracy albeit with extensive advantages for its Jewish majority. He begins his argument by contrasting Israel with liberal, consociational, and *herrenvolk* democracies. Liberal democracies, such as the United States, combine an ethnically neutral national culture with personal cultural autonomy. Consociational democracies assign educational control and official representation to recognized ethnic groups. For example, Flemish and Walloon autonomy in Belgium. *Herrenvolk* democracies possess robust democratic institutions but limit participation to their dominant ethnicity. For example, Apartheid South Africa held free and fair elections but only allowed white citizens to vote. Smootha claims that Israel contradicts all of these systems. National-ethnic-religious identity in Israel is too politically significant to allow full liberal democracy. The state's obvious preference for Jewish interests also disqualifies the ethnically balanced consociational approach. Finally, Palestinian citizenship (within the Green Line) excludes *herrenvolk* democracy. In light of these incongruences, Smootha defines Israel as an “ethnic democracy.” He describes this model according to three principles. First, ethnic democracies guarantee individual civil and political rights to all citizens. Second, they allocate certain

¹¹ As'ad Ghanem, “The Expanding Ethnocracy: Judaization of the Public Sphere,” *Israel Studies Review* 26, no. 1 (2011): 21–27.

¹² Yoav Peled and Doron Navot, “Ethnic Democracy Revisited: On the State of Democracy in the Jewish State,” *Israel Studies Forum* 20, no. 1 (2005): 3–27.

collective minority rights. Third, ethnic democracies promote the dominant ethnicity's interests above the general citizenry. Smootha argues that the "democratic" aspects of Israel's "ethnic democracy" are found in its strong democratic procedures such as fair elections, a free press, and civilian control over the military. Its "ethnic" component is found in the allocation of "personal status" issues (primarily birth, marriage, and death) to religious communities and the state's explicit advocacy for Jewish national interests in immigration and land development.¹³

While Smootha considers this model to be genuinely democratic, he nevertheless believes that its "ethnic" component engenders five challenges by Israel's Palestinian minority. First, Palestinian citizens of Israel demand the "de-ethnicization of the state." They accept Israel's territorial integrity but reject or at least express reservations about its Jewish-Zionist character. Second, Palestinian citizens demand the "legitimization of Palestinian nationalism." While they want to retain their Israeli citizenship and advance their status within Israeli society, they also feel intrinsically tied to the broader Palestinian national movement. Third, Palestinian citizens strive for "equal individual rights" by fighting against *de-facto* and *de-jure* discrimination. Fourth, Palestinian citizens advocate for "national collective rights." While they generally refrain from calling for explicit territorial autonomy, Palestinian citizens have long organized independent educational and cultural institutions. Fifth, Palestinian citizens of Israel actively participate in politics through elections, demonstrations, and strikes.¹⁴ Nevertheless, Smootha believes that these Palestinian grievances can still be resolved within the framework of Israeli ethnic democracy. Specifically, he argues that granting Palestinians increased collective rights within the Green Line while concurrently establishing an independent Palestinian state in the West Bank/Gaza will minimize these five challenges and preserve Israeli ethnic democracy.

¹³ Smootha, "Ethnic Democracy," 199–206.

¹⁴ Smootha, 209–27.

Furthermore, Smootha cites polling data to argue that his model of “improved ethnic democracy” retains the most support among both Israeli and Palestinians.¹⁵

Interestingly, Smootha also defines Northern Ireland (1921-1972), Canada (1867-1960s), Poland (1918-1935), and Malaysia (1970s) as ethnic democracies. Nevertheless, from this set, only Malaysia remains committed to Israeli-style ethnic democracy. Northern Ireland and Canada have since developed fully-fledged liberal democracies while Poland became communist after the 1940s. Without extensively elaborating, Smootha attributes the stability of Malaysian ethnic democracy to the “immigrant” status of its minority Indian and Chinese population.¹⁶ This characteristic is particularly difficult to analogize to Israeli “ethnic democracy.” Smootha’s analysis suggests that he believes that as immigrants, Malaysian minorities are more willing to acquiesce to their secondary status. However, Israel’s minority Palestinian population is indigenous rather than immigrant. This discrepancy suggests that Palestinian citizens of Israel are far less likely to accept their secondary status thus challenging Smootha’s prediction of the long-term viability of Israeli ethnic democracy.

D. Ethnocracy

While Smootha argues that Israel is a legitimate democracy with significant “ethnic” components, Oren Yiftachel posits that Israel’s democratic elements are a mere façade covering a fundamentally unequal “ethnocracy.” He claims that democracy is premised on the equality of the “demos” – the community of all resident citizens. However, ethnocracy disrupts this axiom by prioritizing the interests of dominant over subordinate ethnicities.¹⁷ Yiftachel demonstrates

¹⁵ Smootha, 227-33; While Two-State Solution’s overall popularity has decreased since Smootha’s paper, it still retains more support than any alternative framework. See: Khalil Shikaki and Dahlia Scheindlin, “Role of Public Opinion in the Resilience/Resolution of the Palestinian-Israeli Conflict,” *Palestine - Israel Journal of Politics, Economics, and Culture* 24, no. 1 (2019): 15.

¹⁶ Smootha, “Ethnic Democracy,” 200–204.

¹⁷ Yiftachel, *Ethnocracy*, 16.

how Israeli ethnocracy “ruptures the demos” across six categories: demography, land and settlement, armed forces, capital flow, the law, and public culture. First, Israel fortifies its Jewish majority through the *Law of Return* (1950) – which allows any Jewish person to immigrate to Israel and obtain Israeli citizenship – and its refusal to re-admit Palestinian refugees. Second, Israeli policy on both sides of the Green Line systematically expands Jewish settlement while restricting Palestinian development. Third, Jews dominate the ranks of the Israeli Defense Forces (IDF) and Israeli police. Fourth, taxation and economic development policies disproportionately benefit Jews.¹⁸ Fifth, Israeli law explicitly promotes Jewish settlement and immigration. Importantly, Yiftachel qualifies this last point by acknowledging that since the constitutional revolution of the 1990s, the High Court has increasingly promoted individual rights, sometimes at the expense of Jewish national interests. Sixth, Israel’s state symbols are all Jewish.¹⁹

In contrast to Smootha’s belief in the viability of an improved Israeli ethnic democracy, Yiftachel assesses Israeli ethnocracy as fundamentally unstable. His argument is partially based on the failure of ethnocratic governance in Sri Lanka, colonial Australia, and post-Soviet Estonia. Yiftachel notes that after gaining independence in 1948, Sri Lanka developed an ethnocratic regime that codified the state’s Sinhalese and Buddhist character, disenfranchised many ethnic Tamils, and promoted the Sinhalese colonization of majority Tamil regions. The resulting Tamil frustrations sparked a decades-long bloody civil war that only ended in 2011. Colonial Australia was initially characterized by aboriginal segregation and European settler-colonialism. However, since the 1990s, Australia has reconceptualized itself as a multicultural

¹⁸ This claim is complicated by increased funding for Arab communities under Netanyahu. See: Netta Ahituv, “Could Netanyahu Actually Be Good for Israel’s Arabs?,” Haaretz, October 31, 2019, <http://www.haaretz.com/israel-news/.premium.MAGAZINE-could-netanyahu-actually-be-good-for-israel-s-arabs-1.8062200>.

¹⁹ Yiftachel, *Ethnocracy*, 105–6.

democracy that (imperfectly) commits to protecting indigenous land rights. Post-Soviet Estonia initially marginalized the Russian language in education and culture while denying many of its speakers citizenship. However, European Union pressure has gradually distanced Estonia from these ethnocratic politics and motivated it to move towards a more inclusive citizenship regime.²⁰ In short, these examples highlight an important duality. Long-term ethnocracies, such as Sri Lanka, generate sectarian tension and violence while full democratization, such as occurred in Australia, produces stability.²¹ If Yiftachel's diagnosis is correct, these comparisons stress the possibility for Israeli democratic improvement or degradation. Israel could pursue the Australian or Estonian model of equal citizenship and develop a true liberal democracy. However, it might also conversely imitate Sri Lankan ethnocracy and risk continued violence. The outbreak of Jewish-Palestinian street-fighting in Spring 2021 worryingly emphasizes the possibility of the latter outcome.²²

To many observers, Yiftachel's ethnocracy model may resemble claims of "Israeli apartheid." Indeed, although he does not elaborate, Yiftachel characterizes the "Judaization" of Israel-Palestine as "creeping apartheid."²³ Whether Yiftachel's "creeping" apartheid has become full apartheid in the aftermath of the Nation-State Law will be evaluated in Chapter Four.

How should we interpret the difference of views between Smootha and Yiftachel? To a large degree, their debate rests on emphasis. While Smootha stresses Israel's democratic components, Yiftachel highlights its ethnic nature. However, writing well before the Nation-State Law, both authors recognize Israel's dual democratic and undemocratic characteristics. For

²⁰ Yiftachel, 20–32.

²¹ Yiftachel, 39; Peter Beinart suggests a roughly analogous argument when comparing Israel-Palestine to Northern Ireland and South Africa. See: Peter Beinart, "Yavne: A Jewish Case for Equality in Israel-Palestine," *Jewish Currents*, July 7, 2020, <https://jewishcurrents.org/yavne-a-jewish-case-for-equality-in-israel-palestine>.

²² Isabel Kershner, "In Mixed Israel Cities Proud of Good Relations, a Sudden, Explosive Division," *The New York Times*, May 13, 2021, sec. World, <https://www.nytimes.com/2021/05/13/world/asia/israel-lod-arab-jewish.html>.

²³ Yiftachel, *Ethnocracy*, 276.

Smootha, Israel's democratic elements are sufficient to define the state as a democracy, albeit an "ethnic" one. In contrast, Yiftachel sees these democratic components as insufficient to mask the state's fundamentally undemocratic ethnocratic character. Furthermore, both authors agree on the unequal nature of Israeli citizenship. Again, for Smootha, Israeli citizenship is not yet unequal enough to disqualify the state's democratic identity. However, for Yiftachel, it is exactly this uneven regime that defines the state's ethnocratic nature. In sum, both Smootha and Yiftachel's arguments support that assertion while Israel's Jewish citizens are closely associated with the state's identity, its non-Jewish citizens are excluded from the Israeli/Zionist national project. Importantly, this statement should be qualified by the recognition that Israeli citizenship is not completely binary. Rather, different Jewish and non-Jewish groups are marginalized to varying degrees. For example, in return for their loyalty and IDF service, Circassians and Galilee Druze enjoy greater social services than Muslim and Christian Palestinians.²⁴ Nevertheless, as a basic principle, Israeli democracy might be best characterized by its *unequal* citizenship regime where Jews generally enjoy greater *de-facto* and *de-jure* rights than non-Jews.

2. Legal Comparison

The previous section emphasized Israel's combination of an adamantly claimed democratic identity, robust electoral institutions, and a fundamentally unequal citizenship regime. This qualified understanding of Israeli democracy highlights the often-contradictory nature of national identity in multi-ethnic democracies. Democracies, such as Israel, that claim a specific ethnic-religious-national character, risk infringing upon minority populations' right to equal citizenship. An analysis of Israel's Nation-State Law thus provides an excellent window into the broader question of how ethnic democracies succeed or fail to balance dueling ethnic

²⁴ Yiftachel divides Israeli ethnocracy into upper, middle, and lower echelons (Yiftachel, *Ethnocracy*, 127).

and democratic values. To address this debate, this section juxtaposes each of the Law's articles or cluster of articles grouped by topic with past trends in Israeli law and current international democratic norms. These comparisons are summarized in the table below. "Primary legislation" refers to "normal" (not Basic Law) statutes.

Figure 1: The Nation-State Law in a Domestic and International Legal Context

Topic (Article)	Meaning	Domestic Comparison	International Comparison
Basic Principles (1)	Israel is a state "of" the Jewish People to the exclusion of its non-Jewish citizens.	Contradicts the traditional pairing of Israel's Jewish and democratic identities.	While the declaration of a specific ethnic-religious identity is unremarkable, the parallel omission of equality, democracy, or minority rights is uniquely discriminatory.
State Symbols (2, 8, 9)	Codifies state symbols, national capital, official calendar, and holidays – all of which all have a distinctly Jewish character.	Reiterates existing primary legislation.	Many democratic countries prioritize a specific ethnonational narrative in their state symbolism.
Jerusalem (3)	Declares a "complete, united" Jerusalem as Israel's capital.	Reiterates verbatim <i>Basic Law: Jerusalem the Capital of Israel</i> (1980).	While Jerusalem's unique status is difficult to analogize, the Northern Cypriot Constitution similarly declares Nicosia as its capital without acknowledging dueling South Cypriot claims.
Language (4)	Establishes Hebrew's superior status over Arabic.	Reflects existing Israeli case law and legislative practice.	Many democratic constitutions distinguish between primary and secondary official languages.
Immigration (5)	Prioritizes Jewish immigration.	Reiterates existing primary legislation.	Explicit ethnic immigration schemes are rare among contemporary democracies. Comparable to democratic West Germany (1953-1993) and undemocratic present-day Armenia.
Diaspora (6)	Establishes preferential responsibilities towards the Jewish diaspora.	Reflects long-standing Israeli policy.	While many democratic states engage diaspora populations, <i>ethnic</i> diaspora involvement is generally inconsistent with modern democratic norms. Comparable to similar provisions in the Slovenian and Greek constitutions.
Jewish Settlement (7)	Establishes "Jewish settlement" as a national value.	Codifies long-standing discriminatory Israeli land development policies.	Inconsistent with democratic norms. Comparable to modern internal settler-colonialism in China and Brazil.
Days of Rest (10)	Establishes Shabbat as the national day of rest. Allows	Reiterates existing primary legislation.	Many democratic states codify weekly rest days according to local norms.

	non-Jews to rest on their respective holy days.		
Entrenchment (11)	Declares that the Law can only be amended by another Basic Law passed by a majority of Knesset members.	Inapplicable.	Inapplicable.

This table highlights three core trends. First, the Nation-State Law mostly codifies existing primary legislation and policies promoting Jewish identity and interests. In one case (Article 3), it verbatim reiterates an existing Basic Law. Second, many of the Law’s provisions, including weekly rest days and differentiated official languages, are congruent with international democratic norms, other aspects, including Jewish settlement and ethnic immigration, are comparatively rare. Finally, the Law’s codification of Israel’s Jewish character without acknowledging democracy or equality contradicts past Israeli legal trends and global democratic norms. I discuss each of these points below.

A. Basic Principles

Many constitutions delineate their country’s core character and values. To borrow the language of the American constitution, these are their national “We the People...” statements. These provisions clarify who the constitution “speaks for” and thus who can claim ownership of the state’s identity.²⁵ To mirror the language of the Nation-State Law, they state who is the country “of”? It is a state *of* all its citizens, *of* a specific ethnic-national-religious group, or *of* some combination of these categories? According to Article 1, Israel is unequivocally a state “*of* the Jewish People.”

Basic Principles: Article 1

²⁵ For an overview of international constitutional identity provisions see: “Constitutional Provisions on National and Religious Identity” (The Law Library of Congress Global Legal Research Center, December 2014), <https://tile.loc.gov/storage-services/service/ll/lglrd/2014504240/2014504240.pdf>.

- (a) The Land of Israel is the historical homeland of the Jewish People, in which the state of Israel was established.
- (b) The State of Israel is the nation state of the Jewish People, in which it realized its natural, cultural, religious, and historical right to self-determination.
- (c) The exercise of the right to national self-determination in the State of Israel is unique to the Jewish People.²⁶

Article 1 frames Jewish ownership over state identity in both historical and political terms.

Article 1(a) establishes the Jewish people's historical connection to Israel. Articles 1(b) sets a broad national, cultural, religious, and historical base for Jewish self-determination claims.

Article 1(c) states that only Jews possess the right to self-determination in Israel. According to Nadia Ben-Youssef and Sandra Samaan Tamari, Article 1 thus constitutes an exclusionary “We the People” statement that limits full cultural, social, and economic development to Jewish-Israelis.²⁷ Their observation echoes Yiftachel's claim that “it is membership in the Jewish people, not citizenship in Israel, that is the chief criterion for the claim of state ownership.”²⁸

This exclusionary state identity claim is only partially new. While Israel always defined itself as a Jewish state, these claims were traditionally paired with guarantees of the state's democratic identity. The Declaration of Independence unambiguously declares “the establishment of a *Jewish* state in Eretz-Yisrael (emphasis my own).” However, it also promises “complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex.”²⁹ The 1985 amendments to *Basic Law: The Knesset* (1958) disqualifies political parties

²⁶ “Basic Law: Israel – The Nation State of the Jewish People” (2018), <https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf>. Article 1.

²⁷ Ben-Youssef and Tamari, “Enshrining Discrimination,” 77.

²⁸ Yiftachel, *Ethnocracy*, 93.

²⁹ “Israeli Declaration of Independence.”

that “negate the State of Israel’s existence as the state of the Jewish People” *and* parties who “negate the democratic character of the state.”³⁰ *Basic Law: Human Dignity and Liberty* (1992) codifies the “values of the State of Israel as a Jewish and democratic state.”³¹ According to Alexander Yakobson a state may claim to be “of” a certain group in the sense that it actualizes their national self-determination without granting them sole ownership over its identity.³² Past declarations of Israel’s joint Jewish-democratic character fit this model. On one hand, by proclaiming Israel’s Jewish identity, these statements granted Jews a stronger connection to the state’s *ethnic/cultural* identity. On the other hand, by acknowledging Israel’s democratic character, they granted non-Jews a stake in the state’s *political* identity. Accordingly, non-Jews could at least theoretically see themselves as equal partners in the procedural, but not symbolic, aspects of Israeli democracy. However, Article 1 contradicts this model. By emphasizing the state’s Jewish character without acknowledging equality, human rights, or democracy, it completely precludes any sense of non-Jewish ownership over Israel’s political identity.

The Law’s defenders claim that this omission is immaterial since as part of Israel’s still-developing constitutional canon, it must be read alongside other Basic Laws referencing democracy. This argument’s legal merits will be re-visited in Chapter Four. However, from a symbolic perspective, such claims are clearly disingenuous. By assuming, *a priori*, that Israeli democracy is a constitutionally binding norm, the Law’s defenders implicitly accept that referencing democracy would not change the Law’s legal meaning. The omission must therefore be an intentional choice that attempts to deepen, at least symbolically, the exclusive relationship

³⁰ “Basic Law: The Knesset” (1958), <https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawTheKnesset.pdf>.

³¹ Basic Law: Human Dignity and Liberty.

³² Alex Yakobson, “Jewish Nation-State, Not This Law,” *Israel Studies* 25, no. 3 (2020): 176–77, <https://doi.org/10.2979/israelstudies.25.3.15>.

between Jewish peoplehood and Israeli state identity. To borrow Yiftachel's terminology, Article 1 further decouples "citizenship from geography" and exacerbates Israel's "ruptured demos."³³

While the Nation-State Law's codification of an explicit ethnic-religious-national identity is congruent with international norms, its parallel omission of democracy or equality marks it as uniquely discriminatory. Eugene Kontorovich argues that like Israel, many modern democratic constitutions tie state identity to a specific ethnic-religious-national group.³⁴ For example, the Latvian constitution declares the "unwavering will of the Latvian people to have its own State and its inalienable right of self-determination."³⁵ The Slovenian constitution similarly invokes the "inalienable right of the Slovenian nation to self-determination."³⁶ However, Alexander Yakobson points out an important fallacy in Kontorovich's argument. Yakobson agrees that Article 1's codification of Israel's Jewish identity *alone* is comparatively unexceptional. However, he further argues that its omission of democracy, equality, or minority rights is uniquely discriminatory among modern democratic constitutions.³⁷ For example, the Croatian constitution's declaration of national identity – "The republic of Croatia is hereby established as the nation-state of the Croatian nation" – is immediately followed by the contingency – "and the state of the members of its national minorities."³⁸ The Latvian constitution similarly defines the state as a "democratic, socially responsible, and national state" that "recognizes and protects fundamental human rights and respects national minorities."³⁹ The Slovenian constitution

³³ Yiftachel, *Ethnocracy*, 85.

³⁴ Kontorovich, "A Comparative Constitutional Perspective on Israel's Nation-State Law," 143; The Begin Center's 2017 report contains a similar argument. See: Chagai Vinizky and Shaul Sharf, "Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.]" (The Begin Center for Law and Zionism, May 2017).

³⁵ "Latvian Constitution," 2016, https://www.constituteproject.org/constitution/Latvia_2016.pdf?lang=en. Preamble.

³⁶ "Slovenian Constitution," 2013, https://www.constituteproject.org/constitution/Slovenia_2013.pdf. Article 3.

³⁷ Yakobson, "Jewish Nation-State, Not This Law," 182.

³⁸ "Croatian Constitution," 2010, https://www.constituteproject.org/constitution/Croatia_2010.pdf?lang=en. Preamble; Interestingly, the Croatian constitution explicitly enumerates Jews as a recognized national minority.

³⁹ "Latvian Constitution." Preamble.

explicitly declares the country to be a “state of all its citizens.”⁴⁰ As noted previously, Israel’s Nation-State Law abandons these references. Unlike most democratic constitutions, it declares the state’s ethnic-religious-national character without any corresponding acknowledgment of its democratic identity or supposed commitment to equality.

B. State Symbols

While scholarship typically focuses on the Nation-State Law’s most controversial sections – especially Articles 1 (basic principles), 4 (language), 5 (immigration), 6 (diaspora relations), and 7 (settlement) – the Law also deals with symbolic provisions such as the state’s official symbols (Article 2), calendar (Article 8) and holidays (Article 9).

State Symbols: Article 2

- (a) The name of the State is “Israel”
- (b) The State flag is white, with two light-blue stripes close to the edge, and a light-blue star of David in its center.
- (c) The State emblem is a seven-branched menorah with olive leaves on both sides, and the word “Israel” at its base.
- (d) the State anthem is “Hatikvah.”
- (e) Details regarding the State symbols shall be determined by law.⁴¹

Official Calendar: Article 8

The Hebrew calendar is an official calendar of the State, and the Gregorian calendar shall serve alongside it as an official calendar; the use of the Hebrew calendar and the Gregorian calendar shall be determined by law.⁴²

⁴⁰ “Slovenian Constitution.” Article 3.

⁴¹ Basic Law: Israel – The Nation State of the Jewish People. Article 2.

⁴² Basic Law: Israel – The Nation State of the Jewish People. Article 8.

Independence Day and Memorial Day: Article 9

- (a) Independence Day is the official national holiday of the State.
- (b) Memorial Day for the Fallen in Israel's Wars, and the Holocaust Martyrs' and Heroes' Remembrance Day, are official memorial days of the state.⁴³

These articles all reiterate past ordinary legislation. The 1948 Israeli Declaration of Independence unambiguously declares the state's name as "The State of Israel."⁴⁴ *The Flag and Symbol Law* (1949) codifies Israel's flag and state emblem.⁴⁵ After many decades as Israel's *de-facto* national anthem, *Hatikva*'s official status was added to the *Flag and Symbol Law* in 2004.⁴⁶ *The Law for the Use of the Hebrew Date* (1998) requires both the Gregorian and Hebrew date on all official government documents.⁴⁷ *Independence Day Law* (1949) codifies Israeli Independence Day.⁴⁸ *Law for the Memorial Day for the Fallen in the War of Independence and the Israeli Defense Forces* (1963) codifies Israeli Memorial Day.⁴⁹ Holocaust Remembrance Day was codified in 1951.⁵⁰

The Law's symbolic provisions all emphasize exclusive Jewish motifs. The Israeli flag is rich with Jewish meaning. Its two blue stripes on a white background recall the *tallit* (ritual prayer shawl). The six-pointed star (*Magen David*) is an ancient symbol adopted by the modern Zionist movement. The Hebrew and Gregorian, but not the Muslim calendar, are afforded

⁴³ Basic Law: Israel – The Nation State of the Jewish People. Article 9.

⁴⁴ "Israeli Declaration of Independence."

⁴⁵ "Flag and Symbol Law," Sefer HaChukim 8 § (1949), https://fs.knesset.gov.il/1/law/1_lsr_208225.PDF.

⁴⁶ "Flag and Symbol Law Amendment 4," Sefer HaChukim 1961 § (2004), Amendment.

⁴⁷ "Law for the Use of the Hebrew Date," Sefer HaChukim 1682 § (1998), https://fs.knesset.gov.il/14/law/14_lsr_211542.PDF.

⁴⁸ "Independence Day Law," Sefer HaChukim 5 § (1949), https://fs.knesset.gov.il/1/law/1_lsr_208424.PDF.

⁴⁹ "Law for the Memorial Day for the Fallen in the War of Independence and the Israeli Defense Forces," Sefer HaChukim 303 § (1963), https://fs.knesset.gov.il/5/law/5_lsr_210129.PDF.

⁵⁰ "27th of Nissan — Holocaust and Ghetto Rebellion Day [Heb.]," *Davar*, April 13, 1951, <https://www.nli.org.il/he/newspapers/dav/1951/04/13/01/article/8/?e=he-20-1-img-txIN%7ctxTI-1#>.

official status. The celebration of Israeli “Independence” day ignores its dual meaning as the Palestinian *nakba* (catastrophe). No Palestinian holiday is officially recognized.

Despite their discriminatory implications, the Law’s codification of a single ethnic-religious state symbolism is not unusual among modern democracies. Yakobson emphasizes that many democratic states fly flags with religious symbolism. For example, both the Greek and Norwegian flags include crosses.⁵¹ Even the United States, often considered the epitome of liberal democracy, promotes a state symbolism centered around a Western European historical-political narrative. For example, Catholic/Protestant Christmas is designated as a federal holiday but not Orthodox Christmas or any Jewish, Muslim, or Hindu holy day. Thanksgiving and Columbus Day, which celebrate European colonialism, are likewise afforded federal recognition. There is no corresponding federal holiday to mourn Native American genocide. While these examples don’t excuse Israeli symbolism’s discriminatory character, they emphasize that it is not unique. An ideal liberal democracy would likely codify motifs reflecting the entire citizenry’s identities. Clearly, this is not the Nation-State Law’s model. However, if the Law is seen as a threat to Israeli democracy, it is likely not because of its symbolic provisions alone. Israel’s flag, holidays, and calendar have long been distinctly Jewish. Furthermore, many states successfully meld ethnic-religious national symbolism with liberal democratic practice. It is when the Law’s symbolic provisions are read alongside Article 1’s proclamation that Israel is an exclusively Jewish state – without room for other communities’ national determination – that their discriminatory nature becomes most troubling.

C. Jerusalem/Al Quds

⁵¹ Yakobson, “Jewish Nation-State, Not This Law,” 180–81.

Article 3 repeats verbatim *Basic Law: Jerusalem the Capital of Israel* (1980). Both the former and latter legislation state: “Jerusalem, complete and united, is the capital of Israel.”⁵² The dual adjectives “complete and united” are key. The 1947 United Nations Special Commission on Palestine (UNSCOP) recommended placing the hotly contested city under international governance. Following the 1948 Arab-Israeli war, Israel gained control over the city’s Western half while Jordan claimed the Eastern side including the Temple Mount Complex (*Haram al-Sharif/Har Ha’bayit*), Western Wall (*Ha’kotel*), and the Church of the Holy Sepulchre. In 1967, Israel conquered East Jerusalem along with the rest of the West Bank. However, while Israel has never officially annexed any other part of the West Bank, it quickly incorporated East Jerusalem into the West Jerusalem municipality. Since 1967, Israel has also built extensive Jewish settlements and demolished Palestinian homes throughout annexed East Jerusalem. Since the mainstream Palestinian leadership claims East Jerusalem as the capital of their hoped-for state, most countries reject Israel’s claims over “complete” Jerusalem and keep their embassies in Tel Aviv.⁵³ The Law’s assertion that “Jerusalem, complete and united, is the capital of Israel” thus signals Israeli intent to retain control over the entire city in defiance of Palestinian demands and international expectations.

Jerusalem’s unique history and religious status restrict opportunities for international analogies to Article 3. While urban areas often serve as flashpoints for ethnic tensions, rarely is a capital city as contested as Jerusalem/Al Quds. Certainly no capital mirrors the conflux of religious tensions swirling around Jerusalem. The best comparison might be Nicosia/Lefkosia –

⁵² “Basic Law: Jerusalem the Capital of Israel” (1980), <https://m.knesset.gov.il/Activity/Legislation/Documents/yesod2.pdf>. Article 1; Basic Law: Israel – The Nation State of the Jewish People. Article 3.

⁵³ Jon Calame and Esther Ruth Charlesworth, *Divided Cities: Belfast, Beirut, Jerusalem, Mostar, and Nicosia, The City in the Twenty-First Century* (Philadelphia: University of Pennsylvania Press, 2009), 87–102.

the divided capital of both North and South Cyprus.⁵⁴ The city was divided into Greek and Turkish ethnic enclaves in 1963. Following the 1974 Turkish invasion, the city's northern half became the capital of the Turkish Republic of Northern Cyprus while its southern section remained the capital of the Republic of Cyprus. The Turkish Republic of Northern Cyprus's constitution contains a remarkably similar clause to Article 3 – “The capital of the Republic is Nicosia (Lefkosia).”⁵⁵ While this constitution refrains from claiming a “complete and united” Nicosia, the absence of the qualifier “North Nicosia” might similarly infer Northern Cypriot desire for complete control over the divided city. The Southern Cypriot constitution, which was written before the Island's partition, does not codify Nicosia's capital status.

D. Language

Article 4 addresses the status of Israel's two most spoken languages – Hebrew and Arabic. It declares that Hebrew is Israel's “state language” while Arabic has a “special status.” These designations are undefined excluding the confusing promise that “the status given to Arabic before this law came into force” remains unchanged.

Language: Article 4

- (a) Hebrew is the State language.
- (b) The Arabic language has a special status in the State; arrangements regarding the use of Arabic in state institutions or vis-à-vis them will be set by law.
- (c) Nothing in this article shall affect the status given to the Arabic language before this law came into force.⁵⁶

⁵⁴ Calame and Charlesworth, 125–41.

⁵⁵ “Constitution of the Turkish Republic of Northern Cyprus,” 1985, <http://www.cypnet.co.uk/ncyprus/main/polsyst/constitution/>. Article 1(4).

⁵⁶ Basic Law: Israel – The Nation State of the Jewish People. Article 4.

According to Mohammed Wattad, Article 4's differentiation between Hebrew's "state language" status (*safa ha'midinah*) and Arabic's "special" status (*ma'amad meyuchad*) reflects a long-standing hierarchy in Israeli legal interpretation and practice. He acknowledges that Section 82 of the 1922 *King's Order in Council*, British mandatory law incorporated by Israel in 1948, dually codifies Hebrew and Arabic as equal state languages.

"All Ordinances, official notices and official forms of the Government and all official notices by local authorities and municipalities in areas to be prescribed by order of the High Commissioner shall be published in both Hebrew and Arabic."⁵⁷

However, Wattad argues that while the courts have consistently interpreted Section 82 to justify Hebrew's "first official language" status, they've only recognized Arabic as a secondary "official" language. Importantly, while Wattad posits that Article 4 is continuous with Israeli precedent, he concurrently believes that it furthers Palestinian citizens' sense of civil exclusion.

⁵⁸ Salma Arraf-Baker similarly emphasizes that Israeli legislation has consistently elevated Hebrew above Arabic. For example, the *Nationality Law* (1952) requires Hebrew knowledge for naturalization but not Arabic. Further, the *Interpretation Law* (1981) mandates that statutes be interpreted according to their Hebrew text.⁵⁹

Article 4's differentiation between Hebrew and Arabic's official statuses is congruent with many democratic constitutions' language provisions. 156 constitutions entrench at least one official language.⁶⁰ Many of these states, including numerous democracies, grant a superior

⁵⁷ "The Palestine Order in Council 1922" (1922), <https://unispal.un.org/UNISPAL.NSF/0/C7AAE196F41AA055052565F50054E656>. Section 82.

⁵⁸ Mohammed S Wattad, "The Nation State Law and the Arabic Language in Israel: Downgrading, Replicating or Upgrading?" *Israel Law Review* 54, no. 2 (July 2021): 277–85, <https://doi.org/10.1017/S0021223721000078>.

⁵⁹ Salma Arraf-Baker, "The Nation-State Law and the Deprivation of the Arabic Language from Official Status in Israel," *Palestine - Israel Journal of Politics, Economics, and Culture* 24, no. 3/4 (2019): 183.

⁶⁰ Sujit Choudhry and Erin C Houlihan, *Official Language Designation: Constitution-Building Primer* 20, 2021, 18, <http://dx.doi.org/10.31752/idea.2021.40>.

status to their dominant national language while allocating a secondary status to minority languages. For example, the Slovenian constitution declares that:

“The official language in Slovenia is Slovene. In those municipalities where Italian or Hungarian national communities reside, Italian or Hungarian shall also be official languages.”⁶¹

The Croatian constitution similarly states:

“The Croatian language and the Latin script shall be in official use in the Republic of Croatia. In individual local units, another language and the Cyrillic or some other script may be introduced into official use along with the Croatian language and the Latin script under conditions specified by law.”⁶²

Much like Article 4 designates Hebrew as Israel’s “state language,” the two Balkan constitutions denote either Slovenian or Croatian as primary official languages. Similarly, much like Article 4 allocates a “special status” to Arabic, the Balkan constitutions codify a secondary status for minority languages. In Slovenia, Hungarian and Italian can “also” be official languages in minority regions. In Croatia, minority languages are allowed “alongside” Croatian in certain regions.

E. Immigration

Article 5 of the Nation-State Law restates the *Law of Return* (1950)’s right to Jewish immigration.⁶³ It proclaims: “The State shall be open for Jewish immigration and for the Ingathering of the Exiles.”⁶⁴ The *Law of Return*, written amidst a massive post World War Two

⁶¹ “Slovenian Constitution.” Article 11.

⁶² “Croatian Constitution.” Article 12.

⁶³ “The Law of Return,” Pub. L. No. Sefer Ha-Chukkim No. 586 (1950), <https://www.knesset.gov.il/laws/special/eng/return.htm>.

⁶⁴ Basic Law: Israel – The Nation State of the Jewish People. Article 5.

Jewish refugee crisis, carries enormous emotional significance in Israeli-Jewish society.

However, it also has darker political implications. Yiftachel cites this law alongside the denial of the Palestinian Right of Return as a key component of Israeli ethnocracy. These two measures fortify Israel's Jewish demographic majority and privilege diaspora Jewish interests over the domestic and international Palestinian community.⁶⁵

Relatively little scholarship, except Christian Joppke and Zeev Rosenhek's comparison of Israel and West Germany, studies ethnic immigration regimes in modern democracies.⁶⁶ These authors explain that much like the Israeli *Law of Return*, West Germany's *Federal Expellee and Refugee Law* (FERL) of 1953 extended preferential immigration rights to non-citizen ethnic Germans escaping persecution after World War Two. However, increased sympathy for non-German asylum seekers and concerns over the economic costs brought by ethnic German immigrants motivated the Bundestag to overturn the FERL in 1993.⁶⁷ Besides West Germany, Article 5 might also be analogized to non-democratic Armenia. Kontorovich notes that the Armenian constitution states that "individuals of Armenian origin shall acquire citizenship of the Republic of Armenia through a simplified procedure."⁶⁸ In general, ethnic immigration regimes appear to be rare among all countries and especially absent among democracies. Israel thus stands out in this regard.

F. Diaspora

Articles 6 addresses Israel's relationship with the Jewish diaspora. Article 6(a) directs the state to protect its citizens as well as non-citizen Jews facing danger abroad. Article 6(b) instructs

⁶⁵ Yiftachel, *Ethnocracy*, 105.

⁶⁶ Christian Joppke and Zeev Rosenhek, "Contesting Ethnic Immigration: Germany and Israel Compared," *European Journal of Sociology* 43, no. 3 (December 2002): 302, <https://doi.org/10.1017/S0003975602001121>.

⁶⁷ Joppke and Rosenhek, 314–27.

⁶⁸ "Armenian Constitution," 2015, https://www.constituteproject.org/constitution/Armenia_2015.pdf?lang=en. Article 14; Kontorovich, "A Comparative Constitutional Perspective on Israel's Nation-State Law," 145.

the state to promote stronger ties between Israel and the Jewish diaspora. Article 6(c) directs Israel to promote global Jewish heritage:

The Connection with the Jewish People: Article 6

(a) The State shall strive to ensure the safety of the members of the Jewish People and of its citizens who are in trouble and in captivity due to their Jewishness or due to their citizenship.⁶⁹

(b) The State shall act, in the Diaspora, to preserve the ties between the State and members of the Jewish People.

(c) The State shall act to preserve the cultural, historical, and religious heritage of the Jewish People among Jews in the Diaspora.⁷⁰

Article 6 reflects Israel's long-standing involvement in diaspora Jewish life. Since its founding, the state has advocated for and intervened on behalf of foreign Jewish communities, typically by facilitating immigration. For example, Israel organized mass airlifts of Jews endangered by persecution, war, and famine in Yemen (1949-1950) and Ethiopia (1980s-present). Israeli *shlichim* (emissaries) from the quasi-governmental Jewish Agency promote Jewish and Israeli culture in Jewish communities around the globe.⁷¹

Very little scholarship examines the role of diaspora relations in democratic constitutions. Kontorovich highlights a few Eastern and Southeastern European constitutions that similarly codify state duties towards their diasporas.⁷² The Slovenian constitution states that:

⁶⁹ Rolef's translation is awkward and somewhat inaccurate. "In trouble" (*b'tzarah*) might be better translated as "in distress." The complete phrase "in distress or in captivity" (*b'tzarah u'b'shiva*) is taken from the *Acheinu* prayer in the daily morning Jewish prayer service (*Shachrit*).

⁷⁰ Basic Law: Israel – The Nation State of the Jewish People. Article 6.

⁷¹ "Shlichim (Emissaries): Bridges to Israel," accessed November 23, 2021, <https://www.jewishagency.org/shlichim/>.

⁷² Kontorovich, "A Comparative Constitutional Perspective on Israel's Nation-State Law," 145–46.

“[Slovenia] shall maintain concern for the autochthonous Slovene national minorities in neighboring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland.”⁷³

The Greek Constitution similarly states that “The State must take care for emigrant Greeks and for the maintenance of their ties with the Fatherland.”⁷⁴ Notwithstanding the Slovenian and Greek analogies, the comparative rarity of diaspora clauses among contemporary democratic constitutions suggests their incongruency with modern democratic norms.

In contrast to the paucity of constitutional diaspora provisions, research suggests that many democratic states promote *policies* that seek to engage diaspora communities. Alan Gamlen, Michael Cummings, and Paul Vaaler evaluate the prevalence and causes of “diaspora institutions.” They define these organizations as “formal state offices dedicated to emigrants and their descendants.” Since 1980, these agencies have become increasingly popular. Over half of U.N. member-states currently possess a diaspora institution.⁷⁵ The authors attribute this popularity to three factors. First, these organizations enable sender states to “tap into” diaspora populations for economic and political gain. Second, embracing diasporas delineates origin-state political identity. These agencies offer “expressions of extra-territorial or trans-national citizenship” thus extending the state’s political identity beyond its physical borders. Finally, diaspora institutions allow sender states to “govern” international migration management. In response to calls by international institutions, such as the UN, to streamline the global migration regime, sender states are increasingly using diaspora institutions to take responsibility for their

⁷³ “Slovenia’s Constitution of 1991 with Amendments through 2013,” 2013, https://www.constituteproject.org/constitution/Slovenia_2013.pdf. Article 5.

⁷⁴ “Greece’s Constitution of 1975 with Amendments through 2008,” 2008, https://www.constituteproject.org/constitution/Greece_2008.pdf?lang=en. Article 108(1).

⁷⁵ Alan Gamlen, Michael E. Cummings, and Paul M. Vaaler, “Explaining the Rise of Diaspora Institutions,” *Journal of Ethnic and Migration Studies* 45, no. 4 (March 12, 2019): 493–94, <https://doi.org/10.1080/1369183X.2017.1409163>.

emigrant populations. Furthermore, the authors find that democratic states with right-leaning governments are more likely than their counterparts to possess diaspora institutions.⁷⁶

Article 6 both aligns with and contradicts the trends discussed by Gamlen, Cummings, and Vaaler. Israel has been widely recognized for successfully “tapping in” to Jewish diaspora communities for political advocacy. For example, the authors cite Filipino, Irish, Indian, and Mexican officials as being inspired by Israel’s successful campaigns to mobilize the global Jewish community to advocate on its behalf.⁷⁷ However, Article 6’s scope contradicts Gamlen, Cummings, and Vaaler’s basic model. The authors discuss institutions that target “emigrants and their descendants.” However, diaspora Jews, while holding close religious, cultural, and historical connections to Israel, have usually never lived there. Analogizing Article 6 to diaspora institutions’ prevalence among foreign democracies is thus a faulty comparison. Israeli diaspora policy focuses on cultivating Jewish identity and connection to Israel while blatantly ignoring Palestinian emigrants and refugees. Jews anywhere can become Israeli citizens. Palestinian refugees and their decedents are denied this right. To borrow Yiftachel’s language, Israel’s close relationship with the Jewish diaspora, as recodified by Article 6, might thus be viewed as yet another example of “decoupling citizenship rights and geography.”⁷⁸

G. Jewish Settlement

Article 7 is one of the Law’s most controversial and frequently discussed provisions. It declares: “The State views the development of Jewish settlements as a national value and shall act to encourage and promote its establishment and strengthening.”⁷⁹ Hassan Jabareen and Suhad

⁷⁶ Gamlen, Cummings, and Vaaler, 502–5.

⁷⁷ Gamlen, Cummings, and Vaaler, 501.

⁷⁸ Yiftachel, *Ethnocracy*, 85.

⁷⁹ Basic Law: Israel – The Nation State of the Jewish People. Article 7; A clarification of terms is worthwhile. The English word “settlement” usually refers to Jewish-Israeli communities in the Occupied West Bank. The Nation-

Bishara emphasize the necessity of reading Article 7 in conjunction with Article 1. Article 1(a) declares that “The Land of Israel is the historical homeland of the Jewish People.”⁸⁰ “The Land of Israel” (*Eretz Yisrael*) usually denotes the entire territory between the Jordan River and the Mediterranean Sea – including the Occupied Palestinian Territories. The authors thus claim that Articles 7’s promotion of “Jewish settlement,” attempts to buttress the constitutional legitimacy of Israel’s West Bank settlements.⁸¹

While Israeli legislation preceding the Nation-State Law never explicitly included the term “Jewish settlement,” Article 7 continues long-standing Israeli land development policies.⁸² Throughout the state’s early years, the *Absentee Property Law* (1950) was used to expropriate Palestinian refugees’ land and allocate them to Jewish settlement.⁸³ Between 1948 and 2006, Israel built over 700 new Jewish municipalities while constructing only 21 (all Bedouin) communities.⁸⁴

I could not find any scholarly work comparing Article 7 to similar provisions in democratic constitutions thereby suggesting its incongruence with modern democratic norms. Israeli-Jewish settlement expansion on both sides of the Green Line might be best analogized to modern “internal” settler-colonial movements such as China’s campaign to move ethnic Han citizens into Xinjiang/East Turkestan or infiltrations by Brazilian ranchers onto indigenous lands in the Amazon.

State Law uses the term *hityashvut* which can refer to Jewish communities on either side of the Green Line. *Hitnachlut* refers explicitly to Jewish settlements in the West Bank.

⁸⁰ Basic Law: Israel – The Nation State of the Jewish People. Article 1.

⁸¹ Hassan Jabareen and Suhad Bishara, “The Jewish Nation-State Law,” *Journal of Palestine Studies* 48, no. 2 (February 1, 2019): 50–51, <https://doi.org/10.1525/jps.2019.48.2.43>.

⁸² “The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value” (Adalah, March 2019), https://www.adalah.org/uploads/uploads/Position_Paper_on_Article_7_JNSL_28.03.19.pdf.

⁸³ Hillel Cohen, *Good Arabs: The Israeli Security Agencies and the Israeli Arabs, 1948 - 1967*, 1. paperback print (Berkeley, Calif.: University of California Press, 2011), 26–27.

⁸⁴ Yiftachel, *Ethnocracy*, 143.

H. Days of Rest

Article 10 establishes Shabbat (Saturday) and the Jewish holidays as official days of rest.

Non-Jews are allowed to claim rest days according to their religious customs.

Days of Rest and Statutory Holidays: Article 10

The Sabbath and the Jewish holidays are the established days of rest in the State; non-Jews have the right to observe the days of rest on their Sabbath and holidays; details regarding this manner shall be determined by law.⁸⁵

Shabbat's role in Israeli society is a controversial subject that exposes deep fractures between Orthodox and secular Jews. A full evaluation of this issue is beyond the scope of this thesis.⁸⁶ For the purposes of this research, it is sufficient to note that Article 10 is broadly congruent with Israeli and international legal trends. The provision mirrors the *Work Hours and Rest Law* (1951) which mandates a weekly rest day for all Israelis. This law prescribes Shabbat as the Jewish rest day while stating that non-Jews should receive their rest day on "Shabbat, or Sunday, or Friday, all according to what is accepted by him as his weekly rest day."⁸⁷ Most countries similarly mandate weekly rest days with specific times varying according to local customs.⁸⁸

3. Democratic Backsliding

Some, but not all of the Nation State-Law's provisions contradict international democratic norms. The Law's codification of Hebrew's dominant status (Article 4), Jewish state

⁸⁵ Basic Law: Israel – The Nation State of the Jewish People. Article 10.

⁸⁶ See: Stern, "Religion, State, and the Jewish Identity Crisis in Israel," 10–12.

⁸⁷ "Law of Hours of Work and Rest [Heb.]," Sefer HaChukim 76 § (1951), https://www.knesset.gov.il/review/data/heb/law/kns1_work.pdf. Article 7.

⁸⁸ R Jolkkonnen and N Ghoshen, "Rest Periods: Definitions and Dimensions" (International Labor Organization, n.d.), https://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—travail/documents/publication/wcms_491374.pdf; See also: Ruth Gavison and Nahshon Perez, "Days of Rest in Multicultural Societies: Private, Public, Separate?," in *Law and Religion in Theoretical and Historical Context*, ed. Peter Cane, Carolyn Evans, and Zoe Robinson (Cambridge: Cambridge University Press, 2008), 186–213.

symbolism (Articles 2, 8, and 9), and rest days (Article 10) mirror constitutional provisions and policies found in many democratic states. However, other elements are incompatible with mainstream democratic criteria. The Law's elevation of Jewish interests in immigration (Article 5), diaspora relations (Article 6), and settlement (Article 7) undermine the liberal principle of the equality of all citizens. Critically, Article 1's codification of Israel's Jewish character without acknowledging democracy, equality, or minority rights is uniquely discriminatory among contemporary democracies. In most cases, the Law's illiberal elements continue long-standing Israeli legal trends. However, the fact that the Nation-State law codifies Israel's Jewish identity without acknowledging its claimed democratic character takes ethnic discrimination to a new level. In this regard, it must count as democratic backsliding. How does Israel compare with this worrying international trend? Existing literature suggests that the Nation-State Law is both influenced by, but also distinct from, these broader patterns. On one hand, the Law developed and passed parallel to obvious Israeli and international democratic erosion. Similarly, the Law's constitutional amendment status, its implicit critique of elite Israeli liberalism, and its ethnonationalist content mirror global populist-authoritarian tactics. However, the Law's focus on Jewish symbolism and values differentiates it from the degradation of procedural democratic institutions that usually characterize democratic backsliding.

Numerous authors identify a recent increase in "global democratic backsliding." Anna Luhrmann et al. define democratic backsliding as a combination of increasing attacks on civil society, freedom of expression, the media, and electoral integrity.⁸⁹ In contrast to the violent coups that once characterized authoritarian usurpation, democratic erosion is now often executed

⁸⁹ Anna Luhrmann et al., "Autocratization Surges – Resistance Grows: Democracy Report 2020" (Gothenburg Sweden: V-Dem Institute Department of Political Science University of Gothenburg, March 2020), 9, https://www.v-dem.net/media/filer_public/de/39/de39af54-0bc5-4421-89ae-fb20dcc53dba/democracy_report.pdf.

under the guise of legality. For example, Aziz Huq and Tom Ginsberg highlight the increasing risk of “constitutional retrogression.” They define this pattern as the “subtle, incremental erosion” of “competitive elections, rights of political speech and association, and the administrative and adjudicative rule of law.”⁹⁰ Ozan Varol similarly theorizes the increasing prevalence of “stealth authoritarianism” where dictatorial leaders rely on legal or quasi-legal means to consolidate power and repress dissent.⁹¹ David Landau specifically highlights populist leaders’ increasing use of constitutional revision. He emphasizes that these leaders amend constitutions to deconstruct old institutional orders, critique previous regimes as corrupt and elite, and consolidate power through the erosion of democratic procedures.⁹²

Four elements of Israel’s Nation-State Law reflect global democratic backsliding. First, it passed amid a widely recognized trend of Israeli democratic erosion. Mordechai Kremnitzer and Yuval Shany argue that over the past decade, a succession of right-leaning Israeli governments led by Prime Minister Benjamin Netanyahu emulated Polish and Hungarian authoritarian tactics such as attacking judicial independence, restricting civil society, and limiting public dissent.⁹³ The Nation-State Law passed following a string of similarly illiberal legislation including the 2011 “Nakba Law,” which limits funding for public institutions that commemorate the 1948 expulsion of Palestinians, and the 2017 “Entry Law,” which prohibits the entry of activists who advocate for an international boycott of Israel or the Occupied Territories.⁹⁴ The V-Dem Liberal

⁹⁰ Aziz Huq and Tom Ginsburg, “How to Lose a Constitutional Democracy,” *UCLA Law Review* 65, no. 1 (2018), https://chicagounbound.uchicago.edu/journal_articles/9765/.

⁹¹ Ozan O. Varol, “Stealth Authoritarianism,” *Iowa Law Review* 100, no. 4 (May 2015): 1673–1742.

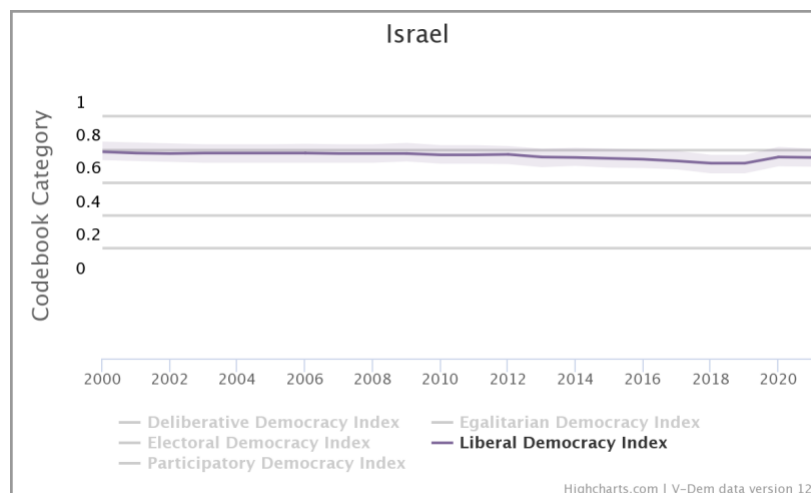
⁹² David Landau, “Populist Constitutions,” *The University of Chicago Law Review* 85, no. 2 (2018): 521–44.

⁹³ Mordechai Kremnitzer and Yuval Shany, “Illiberal Measures in Backsliding Democracies: Differences and Similarities between Recent Developments in Israel, Hungary, and Poland,” *Law & Ethics of Human Rights* 14, no. 1 (May 26, 2020): 125–52, <https://doi.org/10.1515/lehr-2020-2010>.

⁹⁴ Waxman and Peleg, “The Nation-State Law and the Weakening of Israeli Democracy,” 193; See also: Alon Harel, “Basic Law: Israel as the Nation State of the Jewish People,” *Nationalities Papers* 49, no. 2 (March 2021): 265, <https://doi.org/10.1017/nps.2019.127>.

Democracy Index similarly shows a trend of democratic erosion between approximately 2012 and 2018.

Figure 2: *V-Dem Israeli Democratic Erosion*⁹⁵



Second, the Law's Basic Law status is analogous to the constitutional amendment procedures that Landau identifies as a key tool for populist leaders.⁹⁶ Third, the Law reflects populist-authoritarian movements' obsession with anti-elitism. For example, Dov Waxman and Ilan Peleg identify the Law as a nationalist challenge to the universalist beliefs of Israel's Tel Aviv-based and overwhelmingly Ashkenazi economic-cultural elite.⁹⁷ Kremnitzer and Shany similarly classify the Law as a component of the Israeli Right's campaign to challenge the perceived liberal bias of the Israeli High Court.⁹⁸ These attacks excellently mirror Landau's observation that constitutional revision by populist leaders is closely tied to their "identification of the existing institutional order with the corrupt elite."⁹⁹ Fourth, the Law's explicit

⁹⁵ Michael Coppedge, John Gerring, and Carl Henrik Knutsen, *V-Dem [Country-Year/Country-Date] Dataset v12* "Varieties of Democracy (V-Dem) Project (2022). <https://doi.org/10.23696/vdemds22>.

⁹⁶ Landau, "Populist Constitutions."

⁹⁷ Waxman and Peleg, "The Nation-State Law and the Weakening of Israeli Democracy," 193.

⁹⁸ Kremnitzer and Shany, "Illiberal Measures in Backsliding Democracies," 139.

⁹⁹ Landau, "Populist Constitutions," 526.

prioritization of Jewish symbolism and policy over Palestinian interests reflects populist-authoritarian leaders' frequent reliance on ethnonationalist tropes.

Despite these congruences, the Law's focus on Jewish symbolism and values differentiates it from democratic backsliding theory. Lurhmann et. al., Huq and Ginsberg, Varol, and Landau theorize democratic backsliding primarily as a procedural shift. They describe how authoritarian leaders degrade electoral integrity, limit free speech, and restrict the judiciary. In contrast, the Nation-State Law mostly focuses on symbolism, identity, and values. It codifies the uniquely Jewish nature of Israeli state symbols, identity, and language. Its connections with procedural democratic rights and mostly indirect. For example, the Law's recodification of the right to Jewish immigration (Article 5), but not Palestinian immigration, dilutes Palestinian citizens' electoral power. If Article 7 (Jewish settlement) is interpreted as applying beyond the Green Line, then it *de-facto* expands Israeli sovereignty without extending voting rights to West Bank Palestinians. However, while important, these are merely second-order effects. The Law lacks the explicit attacks on voting rights, free speech, and separation of powers that characterizes other prime examples of democratic backsliding around the globe.

4. Why was the Nation-State Law Adopted?

Existing scholarship hypothesizes three core causes of Israel's Nation-State Law. First, some authors see the Law as simply extending decades-long anti-democratic trends. Second, other writers view the Law as a response to domestic and international challenges to Israel's Jewish nation-state legitimacy. Third, some scholars ascribe the Law the Israeli Rights' frustrations toward the perceived interventionist tendencies and liberal bias of the Israeli High Court. Importantly, these hypotheses are not mutually exclusive and scholars often simultaneously endorse more than one.

The first hypothesis connects the Law to long-standing anti-democratic patterns. Waxman and Peleg cite both Smootha and Yiftachel to argue that Israel has never developed a fully Western-style liberal democracy with complete civil equality. They additionally posit that over the past few decades, Israel's democratic identity has been further eroded while its ethnocratic character strengthened. Their perspective thus identifies the Law as the natural extension of long-standing and ever-deepening anti-democratic majoritarian trends.¹⁰⁰ Ben-Youssef and Tamari argue that Israel's democratic claims are mere liberal "window dressing." According to their perspective, the Law reveals the fundamental racism at the heart of Israeli statehood.¹⁰¹ Arraf-Baker claims that Article 4 continues the long-standing marginalization of Arabic in Israeli law and society.¹⁰²

A second hypothesis ties the Nation-State Law to domestic and international challenges to the legitimacy of Israel's Jewish character. As previously mentioned, Smootha highlights Palestinian challenges to Israeli ethnic democracy. In particular, he emphasizes Palestinian citizens' demands for the "de-ethnicization of the state," "equal individual liberties," and "national collective rights."¹⁰³ Amal Jamal identifies the Nation-State Law as a response to these demands. He highlights three mid-2000s declarations by Palestinian civil society groups challenging Jewish hegemony and demanding full democratization. Similarly, he emphasizes the increasing strength of global solidarity movements that unilaterally recognize Palestinian statehood. Jamal thus identifies the Law as a nationalist backlash reasserting the legitimacy of Israel's Jewish character in response to these domestic and international challenges.¹⁰⁴ Nida

¹⁰⁰ Waxman and Peleg, "The Nation-State Law and the Weakening of Israeli Democracy," 192–93.

¹⁰¹ Ben-Youssef and Tamari, "Enshrining Discrimination," 74.

¹⁰² Arraf-Baker, "The Nation-State Law and the Deprivation of the Arabic Language from Official Status in Israel," 188.

¹⁰³ Smootha, "Ethnic Democracy," 212–27.

¹⁰⁴ Amal Jamal, "Constitutionalizing Sophisticated Racism: Israel's Proposed Nationality Law," *Journal of Palestine Studies* 45, no. 3 (179) (2016): 44–47.

Shoughry highlights comments by right-wing Israeli politicians framing the Law as a response to Palestinian demands to transform Israel into a binational state or a “state of all its citizens.”¹⁰⁵

David Myers similarly identifies the Law as a response to the international Boycott, Divestment, and Sanction Movement (BDS).¹⁰⁶

Finally, a third hypothesis attributes the Law to right-wing resentment over the High Court’s perceived liberal bias and judicial overreach. Understanding this motivation requires a brief overview of Israeli constitutional history. The 1948 Declaration of Independence mandated the election of a “Constituent Assembly” to draft and pass a national constitution. Only after this constitution’s passage, and according to its guidelines, would elections be held for the first Knesset. However, tensions over the content of, and even the very requirement for a constitution prevented the assembly from crafting a consensus document. Accordingly, the Constituent Assembly disregarded its duty and declared itself as the first Knesset. Rather than pass a complete constitution, the first Knesset agreed to the so-called “Harari compromise.” Under this arrangement, the Knesset agreed to craft Israel’s constitution piece-by-piece in the form of “Basic Laws” (*chokei yesod*). However, this *ad-hoc* arrangement contained two key deficiencies. First, the Harari compromise failed to clarify whether Basic Laws held “primacy” over ordinary legislation and therefore could be cited as a basis for judicial review. Second, early Basic Laws dealt exclusively with procedural democracy (elections, parliamentary functions, etc.). The role of individual rights in Israeli constitutionalism was left distressingly unclear.¹⁰⁷

¹⁰⁵ Nida Shoughry, “Reinstating Apartheid or Stating the Obvious? 1948 Palestinians and Israel’s New Nation-State Law,” in *Israel-Palestine: Lands and Peoples*, ed. Omer Bartov (New York: Berghahn, 2021), 337–40.

¹⁰⁶ David Myers, “The Triumph of Majoritarianism and the Decline of Democracy,” in *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018), 185.

¹⁰⁷ Gideon Sapir, *The Israeli Constitution: From Evolution to Revolution* (New York: Oxford University Press, 2018), 11–17; Gary Jeffrey Jacobsohn and Yaniv Roznai, *Constitutional Revolution* (Yale University Press, 2020), 188–92.

Over the following decades, the High Court resolved both questions. Three key High Court cases gradually afforded legal primacy to all Basic Laws and thus codified the right to judicial review.¹⁰⁸ First, in *Bergman v. Minister of Finance and State Comptroller* (1969), the Court ruled that all “formally entrenched” Basic Law sections (those explicitly requiring a certain Knesset threshold for amendment) possessed primacy.¹⁰⁹ Since most Basic Law sections are not formally entrenched, *Bergman* was not especially impactful. Second, in *Bank Mizrahi v. Migdal Cooperative Village* (1995), the Court ruled that all “substantively entrenched” Basic Law sections (those including a “limitation clause” clarifying when they would yield to ordinary legislation) possessed primacy.¹¹⁰ Finally, in *Herut – The National Movement v. Justice Mishael Cheshin* (2003), the Court ruled that all Basic Laws, including those lacking formal or substantive entrenchment, possessed primacy.¹¹¹ With this move, the Court affirmed – *Marbury v. Madison* style – its ability to cite any Basic Law as grounds to overrule ordinary legislation. Importantly, even as Basic Laws grew more powerful, they remained incredibly easy to pass and amend. Both before and after these decisions, a mere simple majority sufficed to pass a new Basic Law. Most Basic Laws lack explicit entrenchment and can thus be amended by another Basic Law passed with a simple majority. Even substantively entrenched Basic Laws typically only require 61 votes for amendment.¹¹²

¹⁰⁸ Jacobsohn and Roznai, *Constitutional Revolution*, 191–209.

¹⁰⁹ HJC 98/69 *Bergman v. Minister of Finance and State Comptroller* (1969) (Isr.). <https://versa.cardozo.yu.edu/opinions/united-mizrahi-bank-v-migdal-cooperative-village>.

¹¹⁰ CA 6821/93 *United Mizrahi Bank Ltd v. Migdal Cooperative Village* (1995) (Isr.). <https://versa.cardozo.yu.edu/opinions/united-mizrahi-bank-v-migdal-cooperative-village>.

¹¹¹ HJC 212/03 *Herut – The National Jewish Movement v. Justice Mishael Cheshin*, Chairman of the Central Elections Committee for the Sixteenth Knesset (2003) (Isr.). <https://versa.cardozo.yu.edu/opinions/herut-national-jewish-movement-v-cheshin>.

¹¹² A significant exception is Article 44 of *Basic Law: The Knesset* which requires 80 votes to amend. The provision prohibits Emergency Regulations from amending or suspending *Basic Law: The Knesset*.

While it lacked an explicit constitutional mandate, the High Court still found creative interpretative avenues to promote human rights before the 1990s. For example, they derived certain human rights from the state's democratic character and thus interpreted all statutes with an "assumption" that they likewise aimed to promote human rights. Nevertheless, when Knesset legislation clearly contradicted human rights, the Court always refrained from judicial review.¹¹³ However, two key 1992 Basic Laws radically altered this framework. *Basic Law: Freedom of Occupation* secured the right to freely choose one's work. *Basic Law: Human Dignity and Liberty* instituted protections for life, property, movement, dignity, and privacy. Importantly, the right to "equality" is not explicitly enumerated in *Basic Law: Human Dignity and Liberty*. However, over time, the Court has "read in" this value by determining that civil, and to a lesser extent socioeconomic, equality is a prerequisite for "human dignity."¹¹⁴

When read together, the two 1992 Basic Laws and the expansion of judicial review represent a momentous shift in Israeli jurisprudence. They drastically expanded the High Court's power while upgrading human rights' constitutional status. With no degree of hyperbole, these developments are rightfully known as the Israeli "Constitutional Revolution" (*ha'maapecha ha'chukatit*).¹¹⁵ However, this transformation subsequently sparked a political backlash of equal intensity to its legal significance. Critics argue that the High Court carried out the Constitutional Revolution without an explicit statutory mandate. Their antagonism is further exacerbated by important socio-political divides. Despite the recent entry of more right-wing Justices, the High Court is still often perceived as dominated by Israel's liberal-Ashkenazi legal elite.¹¹⁶ In contrast,

¹¹³ Jacobsohn and Roznai, *Constitutional Revolution*, 193–94; Sapir, *The Israeli Constitution*, 27.

¹¹⁴ Sapir, *The Israeli Constitution*, 65–68.w

¹¹⁵ Ruth Gavison, *The Constitutional Revolution: A Description of Reality or a Self-Fulfilling Prophecy* [Heb.] (Jerusalem: The Israeli Institute for Democracy, 1998).

¹¹⁶ Sapir, *The Israeli Constitution*, 83; Jacobsohn and Roznai, *Constitutional Revolution*, 216.

the Knesset is dominated by right-wing majoritarian parties, the largest of which, Likud, draws their strength from the Mizrachi-middle class periphery.¹¹⁷

One High Court case especially irks the modern Israeli right. In 1995, the Ka'adans, a Palestinian-Israeli family, applied to live in the Jewish community settlement of Katzir. At the time, Katzir only admitted former IDF soldiers and their families. After the town rejected their application, the family appealed to the judicial system. In *Ka'adan v. Israel Land Administration* (2000) – a case often compared to *Brown v. Board of Education* – the High Court ruled that Katzir's military service requirement *de-facto* excluded Palestinians. Writing for the majority, Chief Justice Aharon Barak determined that this prohibition illegally violated the right to equality derived from Israel's democratic character.¹¹⁸ For right-wing critics, *Ka'adan* epitomizes their frustrations with the High Court. They accuse the decision of unjustly prioritizing Israel's democratic identity (as represented by its overtures to “equality”) over the state's Jewish character (as represented by Katzir's *de-facto* Jewish-only policy).

Numerous authors attribute the Nation-State Law to the deep frustrations produced by the Constitutional Revolution, *Ka'adan*, and similar rulings pitting the state's Jewish character against its democratic identity. Their arguments tend to frame the Nation-State Law as a constitutional “corrective” to the Court's perceived expansionism and liberal activism. Orit Kamir characterizes the Law as a “backlash” by conservative Knesset factions against the High Court's interpretation of *Basic Law: Human Dignity and Liberty*.¹¹⁹ Abraham Bell argues that right-wing parties supported the Law to force the Court to acknowledge their ability to define the

¹¹⁷ Aluf Benn, “Tell Me How Rich You Are, I'll Tell You if You'll Vote Netanyahu,” *Haaretz*, January 19, 2020, <http://www.haaretz.com/israel-news/elections/.premium.MAGAZINE-tell-me-how-rich-you-are-i-ll-tell-you-if-you-ll-vote-netanyahu-1.8412952>.

¹¹⁸ HJC 6698/95 Ka'adan v. Israel Land Administration (2000) (Isr.). <https://versa.cardozo.yu.edu/opinions/ka%E2%80%99adan-v-israel-land-administration>. 15-16.

¹¹⁹ Kamir, “Basic Law: Israel as Nation-State—National Honor Defies Human Dignity and Universal Human Rights,” *Israel Studies* 25, no. 3 (2020): 224, <https://doi.org/10.2979/israelstudies.25.3.18>.

state's core identity.¹²⁰ Amal Jamal interprets the Law as a “new constitutional formula” that attempts to impose conservative views on the liberal Court.¹²¹ Roznai and Jacobsohn claim that the Law “targets the state's national and constitutional identity, seeking to shift the balance between the state's Jewish and Democratic commitments in favor of the former.”¹²²

Chapter Three expands on this literature by conducting its own analysis of the Nation-State Law's development. Specifically, it examines core documents accompanying the Law's ideation, evolution, and passage between 2004 and 2018. Through this analysis, Chapter Three concludes that the Law's development is best understood as a complex multicausal process. However, among numerous factors, I argue for the particular saliency of the Israeli Right's resentment towards the High Court's perceived interventionist tendencies and liberal bias. Concerns over the domestic and international legitimacy of Israel's Jewish character also played an important secondary role.

5. Implications of the Israeli Nation-State Law

So far, I have sought to characterize key features of Israel's Nation-State law in light of the practice of other democracies, and also to introduce key explanations. Now I turn to the Law's ramifications. Existing scholarship discusses both the Law's legal and socio-political effects. Three clusters of arguments address its legal implications. First, some authors claim that when read in conjunction with existing Basic Laws codifying equality and democracy, the Nation-State Law is essentially declarative. It codifies core symbols and values but has no practicable policy implications. Second, other authors argue that the Law's constitutional

¹²⁰ Bell, “The Counter-Revolutionary Nation-State Law,” *Israel Studies* 25, no. 3 (2020): 251, <https://doi.org/10.2979/israelstudies.25.3.21>.

¹²¹ Jamal, “Constitutionalizing Sophisticated Racism,” 45–46.

¹²² Jacobsohn and Roznai, *Constitutional Revolution*, 218.

entrenchment of previous Israeli legal trends is legally operable and thus dangerously discriminatory. Third, Waxman and Peleg strike a middle ground by arguing that while the Law theoretically legitimizes discrimination, the current High Court will likely reject such interpretations. Beyond its legal status, most authors who examine the Law's socio-political effects agree that it exacerbates intergroup tensions in Israeli society.

One cluster of authors, including Ronit Levine-Schnur and Adam Shinar, Bell, Kontorovich, Wattad, and Yakobson, argue that the Nation-State Law does not substantially alter Israeli constitutionalism. According to their claims, the Law is mostly declarative. It defines the value and meaning of Israel's Jewish identity but cannot meaningfully affect citizens' everyday lives. These scholars further claim that the right to equality remains binding and does not contradict the Nation-State Law. Yakobson offers the most rigorous outline of this theory. While he bemoans its discriminatory symbolism, he nevertheless argues that the Law does not legalize discrimination. He admits that Article 1 is "jarring" but claims that legally it does no more than refute bi-nationalist demands. He further argues that Article 1's limitation of "self-determination" to Jews does not preclude collective Arab language and cultural rights. Similarly, the Law's provisions on Jerusalem, state symbols, immigration, and the Jewish diaspora merely reiterate existing legislation and thus offer no legal innovation. Article 4 recreates Arabic's existing status as a "second official language." Article 7, which codifies the value of Jewish settlement poses the greatest difficulty for Yakobson. Unable to analogize it to any existing statute, he relies on Attorney General Avichai Mandelblit, who claimed that discriminatory Article 7 interpretations would be rejected in court.¹²³ Levine-Schnur and Adam similarly argue

¹²³ Yakobson, "Jewish Nation-State, Not This Law," 168–72.

that Article 7, when juxtaposed against the right to equality, cannot justify discrimination.¹²⁴

Wattad focuses specifically on Arabic's legal status before and after the Law. As explained in Section Two, he determines that since Arabic was always subservient to Hebrew, the Law offers no major legal innovation.¹²⁵

In contrast to these arguments, other authors claim that the Law is legally operable and will thus have discriminatory legal ramifications. Jabareen and Bishara identify operable jurisprudential implications for Articles 4 and 7. Like Wattad, they recognize Hebrew's preexisting superior status vis-à-vis Arabic. However, they highlight that before the Nation-State Law, Arabic speakers could appeal for linguistic equality based on Section 82 of the King's Order. However, Article 4 overrides Section 82 and its latent possibility for linguistic parity. Jabareen and Bishara determine that Article 7 imposes a new "binding" obligation on the state to promote Jewish settlement.¹²⁶ Ronen predicts that the High Court will struggle to harmonize the Law's discriminatory implications with international law.¹²⁷

Waxman and Peleg occupy a middle ground between the two previous arguments. Much like Jabareen and Bishara, they worry that the Law could legitimize discrimination. However, they qualify their assertion by maintaining that the current High Court is unlikely to accept such interpretations.¹²⁸

Beyond its legal ramifications, scholars who analyze the Law's socio-political impact generally agree that it exacerbates intergroup tension. Rami Zeedan examines the Law's early reception by Israel's Druze community. He claims that its passage refutes this minority's

¹²⁴ Ronit Levine-Schnur and Adam Shinar, "Section 7 of the Basic Law: Nation State: Can the Controversy be Settled? [Heb.]," *Democratic Culture*, no. 20 (September 13, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3691826.

¹²⁵ Wattad, "The Nation State Law and the Arabic Language in Israel."

¹²⁶ Jabareen and Bishara, "The Jewish Nation-State Law," 50–51.

¹²⁷ Ronen, "Basic law: Israel the Nation-State of the Jewish People in an International Law Perspective [Heb.]."

¹²⁸ Waxman and Peleg, "The Nation-State Law and the Weakening of Israeli Democracy," 189.

longstanding belief that they are ensured equal rights in return for their patriotism and IDF service.¹²⁹ Moti Gigi and Yuval Gozniski survey Hebrew and Arabic media coverage during the three years preceding the Law's passage. They conclude that the discourse surrounding the Law damaged efforts to fortify democracy and build cooperation between different sectors of Israeli society.¹³⁰ Fady Khoury argues that the Law "otherizes" Palestinian citizens of Israel and further socializes Jewish-Israelis to treat them with suspicion and fear.¹³¹ Nir Kedar posits that the Law's elevation of the state's Jewish character over democracy exacerbates tensions between Leftist and right-wing Israelis.¹³² Shoughry attributes a drop in Palestinian voter turnout in April 2019 to a sense of alienation stemming from the Law's passage.¹³³

Chapter Four expands upon this literature by conducting its own analysis of the Law's effects since 2018. It first assesses three key 2021 Israeli court cases addressing the Law's legal interpretation: *The State of Israel v. Plonit*, *Ploni v. Karmiel Municipality*, and *Akram Hasson v. The Knesset*. These cases mostly support Waxman and Peleg's hypothesis. The lower court rulings in *The State of Israel v. Plonit* and *Ploni v. Karmiel Municipality* rested on operable and discriminatory interpretations of Articles 6a and 7 respectively. However, both reasonings were overturned by higher courts. In *Hasson v. The Knesset*, the High Court affirmed the Law's constitutionality but reconstructed it as almost completely declarative. In summary, these cases affirm a mostly inoperable interpretation of the Nation-State Law that precludes its ability to

¹²⁹ Rami Zeedan, "Reconsidering the Druze Narrative in the Wake of the Basic Law: Israel as the Nation-State of the Jewish People," *Israel Studies* 25, no. 3 (2020): 153, <https://doi.org/10.2979/israelstudies.25.3.14>.

¹³⁰ Moti Gigi and Yuval Gozniski, "Journalistic Summary of the Nation-State Law and Its Consequences for Democracy and Cooperation Education in Israel [Heb.]," 2018, <http://lautmaneduforum.org.il/wp-content/uploads/2018/12/nationlaw.pdf>.

¹³¹ Fady Khoury, "Reinforcing Ethnic Hegemony: The Social and Expressive Harms of the Jewish Nation-State Basic Law," *Palestine - Israel Journal of Politics, Economics, and Culture* 23, no. 4 (2018): 62–69.

¹³² Nir Kedar, "On the Dangers of Enshrining National Characteristics in the Law," in *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018), 233–40.

¹³³ Shoughry, "Reinstating Apartheid or Stating the Obvious? 1948 Palestinians and Israel's New Nation-State Law," 346.

justify discriminatory policies. Chapter Four then examines the Law's socio-political effects by analyzing its reception among Palestinian citizens of Israel, the Israeli-Druze, and the international community. This section concludes that while the Law inspired robust backlash in each sector, it failed to substantially alter political attitudes and behaviors.

Conclusion

In this chapter, I discussed the key discourses surrounding the Israeli Nation-State Law. First, I summarized the core debates over the nature of Israeli democracy. Specifically, I juxtaposed Smooha's "ethnic democracy" model with Yiftachel's "ethnocracy" model. This comparison emphasized the existence of both democratic and undemocratic elements in Israeli politics. However, it also highlighted the fundamentally unequal nature of Israeli citizenship. This analysis enabled Section Two's in-depth comparison of the Nation-State Law with past Israeli and international democratic norms. These analogies generated three main conclusions. First, the Nation-State Law's preference for Jewish values and symbols generally continues Israel's long-standing unequal citizenship regime. Second, some of the Law's components align with international democratic norms while others are comparatively rare. Third, by codifying Israel's Jewish identity without acknowledging democracy or equality, Article 1 contravenes Israeli legal precedent and global democratic standards. Recognizing the Law's extensive undemocratic elements enabled Section Three's comparison with global democratic backsliding trends. This analogy found four main parallels and one important divergence. On one hand, the Law chronologically aligns with Israeli and global democratic erosion. In addition, its constitutional amendment character, implicit critique of elite Israeli liberalism, and ethnonationalist ethos reflect international populist-authoritarian techniques. However, by focusing on Jewish symbolism and values rather than explicitly degrading democratic

institutions, the Law diverges from mainstream democratic backsliding theory. Sections Four and Five summarized scholarly hypotheses for the Law's cause and effects. Section Four outlines three main causative theories. First, the Law naturally extends decades-long anti-Palestinian marginalization. Second, the Law is a hyper-nationalistic response to domestic and international challenges to the legitimacy of Israel's Jewish identity. Third, the Law articulates right-wing frustrations towards the High Court's perceived interventionist tendencies and liberal bias. Section Five summarized predictions of the Law's socio-political and legal effects. It identifies three possible legal ramifications. One cluster of authors argues that the Law is mostly declarative and thus will have no meaningful effect on citizens' everyday lives. In contrast, other authors maintain that the Law is legally operable and could thus justify discriminatory policies. Striking a middle ground, Waxman and Peleg claim that while the Law could theoretically justify discrimination, the current High Court will likely reject such interpretations. Regarding its socio-political impacts, Section Five found that scholars generally agree that the Law exacerbates Israeli inter-group tension.

The remainder of this thesis evaluates the hypotheses summarized in Sections Four and Five. Chapter Three analyzes core documents describing the Law's development between 2004 and 2018. These sources highlight the centrality of right-wing anxieties over the High Court's increasing power since the Constitutional Revolutions. It argues that these factions legislated the Nation-State Law to buttress the state's Jewish identity vis-a-vis the High Court's perceived preference for the state's democratic character. This chapter also highlights concerns over attacks on the legitimacy of Israel's Jewish character as an important secondary motivation. Chapter Four analyzes the Law's effects since 2018. Through its examination of three key Israeli court cases, it finds that the judiciary has reconstructed the Law as a mostly declarative statute.

Furthermore, by examining the Law's reception among Palestinian citizens of Israel, the Israeli Druze, and the international community, this chapter finds that while the Law inspired a considerable backlash, it mostly failed to substantially alter political attitudes and behaviors.

Chapter 3: The Causes of the Nation-State Law

Introduction

Section Four of the previous chapter summarized existing scholarly hypotheses on the Nation-State Law's origin. This survey revealed three main causative theories. First, the Law naturally extends decades of anti-democratic trends. Second, the Law responds to domestic and international challenges to the legitimacy of Israel's Jewish identity. Third, the Law reflects right-wing antagonism toward the High Court's perceived interventionist tendencies and liberal bias.

This chapter expands upon the existing literature by conducting its own analysis of the Law's evolution and passage. In sum, it concludes that the Law is best understood as the result of a multi-causal process encompassing shifting and sometimes hidden motivations. However, among numerous factors, this chapter argues for the particular saliency of the Israeli Right's resentment towards the High Court. It also points to concerns over domestic and international challenges to Israel's Jewish nation-state legitimacy as an important secondary concern. Of course, it's impossible to completely disqualify Chapter Two's suggestion that the Law might be viewed as an extension of decades-long anti-democratic trends. Certain ethnonationalist and majoritarian political currents might be so pervasive that they imperceptibly contributed to the Law's development. However, this chapter shows that it's difficult to describe the Law as an *inevitable* next step. Rather, its ideation, revision, and passage depended on fluid political patterns and numerous actors' conscious efforts. Finally, this chapter emphasizes that between 2004 and 2018, the Law underwent substantial revisions – sometimes becoming more extreme and sometimes becoming more moderate. Specifically, during the 2017-2018 Joint Committee

process, pressure from actors inside and outside the Coalition removed or moderated two of the Law's most controversial articles.

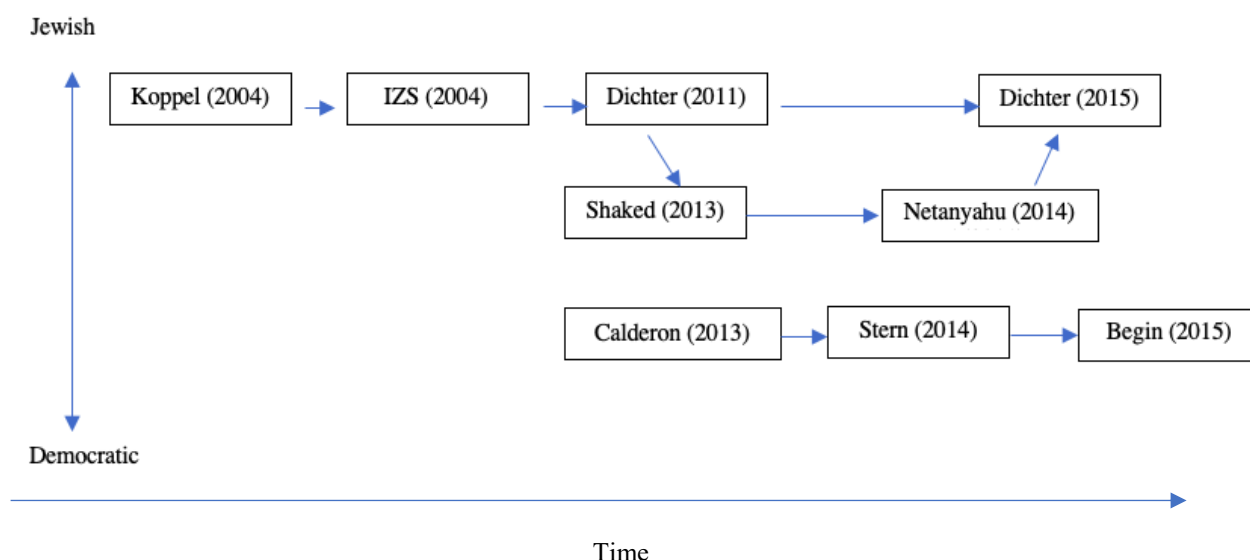
The chapter is divided into three sections. Section One traces the Law's evolution from Professor Moshe Koppel's 2004 proposal to MK Avi Dichter's 2015 proposal. Section Two describes the Law's development under the 2017-2018 Joint Committee. Section Three juxtaposes the Law's evolution against long-term Israeli political trends. Specifically, it finds strong connections between the Law's development and the rise of the modern Israeli Right. Finally, this chapter concludes by arguing for the ultimate saliency of High Court resentment as the Law's leading motivating factor.

1. Legislative Ideation and Development (2004-2015)

This section analyzes the Nation-State Law's development from 2004 to 2015.¹ Two key proposals bookmark this period. First, in 2004, Professor Moshe Koppel drafted the first Nation-State Law-like bill for the Knesset's Constitution, Law, and Justice Committee. Second, in 2015, MK Avi Dichter submitted a near-final Nation-State Law proposal. Between Koppel and Dichter's drafts, right-wing and centrist MKs proposed numerous intermediate bills. Through these drafts, a complex legislative development process emerges. Over eleven years, articles were added, subtracted, and exchanged. To outline this process, I suggest the following schematic:

Figure 3: Legislative Development (2004-2015)

¹ This section is particularly indebted to Simon Rabinovitch's elucidation of the Law's development in the introduction to his book *Defining Israel: The Jewish State, Democracy, and the Law* (Cincinnati: Hebrew Union College Press, 2018).



The y-axis categorizes proposals according to their emphasis on Israel's Jewish identity over its democratic character. The x-axis marks time. In sum, three somewhat overlapping paths emerge. The uppermost track (Koppel -> IZS -> Dichter 2011 -> Dichter 2015) contains the most ethnonationalist drafts. These proposals emphasize the state's Jewish identity while downplaying its democratic character. They also include especially discriminatory provisions such as the mandate to interpret all legislation according to Israel's Jewish character (the so-called "interpretation clause"), the elevation of Hebrew over Arabic, and the right to segregated settlements. The middle track bills (Shaked -> Netanyahu) generally prioritize Israel's Jewish character over its democratic identity. However, they also reference the comparatively liberal Declaration of Independence and omit the top track's most discriminatory articles. The top and middle tracks' intersection marks Dichter's 2015 incorporation of Shaked/Netanyahu's reference to the Israeli Declaration of Independence (a provision later dropped by the Joint Committee). The bottom track (Calderon -> Stern -> Begin) encompasses alternative bills proposed by centrist MKs. In contrast to the top and middle paths, these proposals seek an equal balance

between Israel's Jewish and democratic values. Since this track's ideas were mostly excluded from the final Law, its proposals will be noted for their historical context but not thoroughly analyzed.

A. The Koppel Proposal (2004)

In 2003, the 16th Knesset's Constitution, Law, and Justice Committee renewed efforts to draft a complete Israeli constitution. As part of this process, committee chairman, Michael Eitan (Likud) asked Professor Moshe Koppel to draft a Basic Law defining Israel's Jewish character.² Koppel was born in New York City, earned a Ph.D. in mathematics from New York University, and spent a year at Princeton's Institute for Advanced Studies before moving to Israel to teach and research computer science at Bar Ilan University. Besides his academic work, Koppel moonlights as a leading activist in Israel's conservative political and legal scene.³ In response to MK Eitan's request, in January 2004, Koppel submitted *Basic Law Proposal: The State of Israel as the State of the Jewish People*. While substantial elements would change over the next 14 years, the final Law's basic structure and tone were already apparent in this early draft. Since it received scant attention in the Israeli or foreign media, it is difficult to definitively ascertain Koppel's motives. Nevertheless, related documents and historical context highlight two likely causal factors. First, key Knesset subcommittee minutes suggest that contemporary observers understood Article 4a as a backlash to *Ka'adan v. Israel Land Administration* – the 2000 High Court case prohibiting housing discrimination based on religion or nationality.⁴ Second, Koppel may have been influenced by Prime Minister Ariel Sharon's introduction of the nation-state demand into Israeli-Palestinian negotiations.

² Moshe Koppel, "Too Jewish?," in *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018), 293.

³ Sarah Rindner, "When Heidi Met Shimen," *Jewish Review of Books*, January 3, 2021, <https://jewishreviewofbooks.com/articles/9532/when-heidi-met-shimen/>.

*Basic Law Proposal: The State of Israel as the State of the Jewish People*⁴

1. The State of Israel is a Jewish and democratic state and is the state of the Jewish People.
2.
 - a. The State of Israel shall strive for the unity of the Jewish people and the well-being of the members of the Jewish people wherever they are located.
 - b. The State of Israel will act to preserve and to cultivate the heritage of Israel.
 - c. The education system in the State of Israel will give special emphasis to bequeathing Jewish culture.
3. The State of Israel will enable non-Jews to act to preserve their identity, heritage, and language as they see fit and in accordance with the laws of the state.
4.
 - a. The State of Israel will encourage the ingathering of exiles and Jewish settlement in the land.
 - b. Every Jew has the right to immigrate to Israel, unless the interior minister deems that there is a high likelihood that he or she will endanger the health or safety of the public.
 - c. Every Jew who immigrates to the land is entitled to Israeli citizenship, in accordance with the law.
 - d. This clause does not prevent others from obtaining citizenship in accordance with conditions set by law.
5.
 - a. Hebrew is the official language of the State of Israel.
 - b. Arabic will be granted special legal status.
6.
 - a. Designated days of rest in the State of Israel are the Sabbath and the holy days of Israel.
 - b. The public character of these days of rest will be regulated by law. Any law legislated on the basis of this article shall not be interpreted or abolished by other Basic Laws.

⁴ The English translation (albeit missing Article 8) is found in: Simon Rabinovitch, ed., *Defining Israel: The Jewish State, Democracy, and the Law* (Cincinnati: Hebrew Union College Press, 2018), 75–76. The original Hebrew version, including Article 8, can be found in: “Minutes of the Constitution, Law, and Justice Subcommittee for the Issue of the Law Proposal: Israel as the Nation-State of the Jewish People [Heb.],” July 11, 2004, Knesset Center for Information and Research, 2-4.

7. Kashrut [Jewish dietary law] will be observed in all public institutions that fulfill a legally mandated function.
8. a. The flag of the state is white with two blue stripes next to its ends and a blue Star of David in the middle.
- b. The symbol of the state is a seven-branched menorah, with olive leaves at its sides and the word “Israel” below.
- c. The anthem of the state is “Hatikva.”

Comments from the two Knesset subcommittee hearings that debated Koppel’s proposals link the bill to the *Ka’adan* case. During a January 2004 hearing, former Labor MK, Professor Shimon Shetreet, complained that in *Ka’adan*, Chief Justice Aharon Barak “forgot” Israel’s Jewish character by abandoning the value of Jewish settlement. He expressed hope that Article 4a – “The state will encourage the ingathering of exiles and Jewish settlement in the land” – would correct this error.⁵ At a July 2004 subcommittee hearing, the left-leaning Judicial Ministry representative Dalit Dror similarly identified Article 4a as a challenge to *Ka’adan*. However, unlike Shetreet, she was disturbed by its implications. Specifically, she emphasized her concern that it would “legitimize unlawful discrimination by development institutions, for example, of the Arab public.”⁶

Besides High Court resentment, Koppel’s bill may also have been influenced by the rising significance of the Jewish nation-state demand in the Israeli-Palestinian peace process. Since 1948, Israel always demanded international recognition of its Jewish status.⁷ However, during the Oslo negotiations (1993-1998), Camp David summit (2000), and Taba summit (2001),

⁵ “Minutes #2 of the Subcommittee – Constitution with Consensus [Heb],” January 1, 2004, Knesset Center for Information and Research, 15-16.

⁶ “Minutes of the Constitution, Law, and Justice Subcommittee for the Issue of the Law Proposal: Israel as the Nation-State of the Jewish People [Heb.],” July 11, 2004, Knesset Center for Information and Research 7.

⁷ Tal Becker, “The Claim for Recognition of Israel as a Jewish State” (The Washington Institute for Near East Policy, February 2011), 2–3.

Israeli negotiators didn't demand explicit Palestinian recognition of the state's Jewish character. Rather, the Israelis were satisfied by Palestinian Liberation Organization (PLO) statements indirectly acknowledging Israel's Jewish identity. For example, the 1988 Algiers Palestinian Declaration of Independence accepted UN General Assembly Resolution 181 (1947)'s partition of Palestine into "two states, one Arab, one Jewish."⁸ Similarly, the 1993 Interim Oslo Agreement affirmed the "mutual legitimate and political rights" of both Israelis and Palestinians.⁹ Likely, the Israeli negotiators hoped that these vague promises would eventually evolve into full recognition.

However, in the period surrounding the introduction of Koppel's bill, the Israeli position shifted. According to former Israeli negotiator Tal Becker, increased criticism of Israel's right to exist as a Jewish nation-state, both in the Arab world and in the West, prompted Israeli Prime Minister Ariel Sharon and later Ehud Olmert to center Jewish nation-state recognition as a key component of their foreign policy generally and vis-à-vis the Palestinians specifically.¹⁰ The collapse of the Oslo process, the outbreak of the Second Intifada in 2000, and the resulting Israeli pessimism over Palestinian commitment to a negotiated solution may also contributed to this new bargaining strategy.

This new Israeli position became evident only a few months before Koppel introduced his bill. In April 2004, the Bush administration released a new framework to revive Israeli-Palestinian negotiations.¹¹ Sharon's cabinet accepted the plan but attached 14 reservations, including the demand that "...declared references must be made to Israel's right to exist as a

⁸ Becker, 8.

⁹ United Nations General Assembly, "Oslo Accords," October 11, 1993, 4, https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_930913_DeclarationPrinciplesnterimSelf-Government%28Oslo%20Accords%29.pdf.

¹⁰ Becker, "The Claim for Recognition of Israel as a Jewish State," 3.

¹¹ "The Road Map," *Journal of Palestine Studies* 32, no. 4 (2003): 88–94, <https://doi.org/10.1525/jps.2003.32.4.83>.

Jewish state and to the waiver of any right of return for Palestinian refugees to the State of Israel.”¹² Newly appointed Palestinian President Mahmoud Abbas accepted Bush’s framework but rejected Sharon’s reservations. I could find no documentation explicitly connecting Koppel’s proposal and Sharon’s stipulation. However, their chronological alignment suggests linkage. Perhaps Koppel was inspired by Sharon’s reservation or sought to fortify this nationalistic position for future negotiations. Alternatively, Koppel and his allies may have been motivated by the same legitimacy concerns that Becker claims drove Sharon’s demands for Jewish nation-state recognition from the Palestinians.

B. The IZS Constitution (2006)

Based on the Knesset record, it appears that Koppel’s bill was never taken seriously. It received only two subcommittee hearings (only one of which Koppel actually attended) and was never formally sponsored by any members of Knesset. Nevertheless, the bill’s ideas lived on. In 2006, Koppel helped the Institute for Zionist Strategies (IZS), a recently established right-wing Israeli think tank, draft a complete constitutional proposal.¹³ As a full constitution, rather than just a Basic Law proposal, the IZS constitution addresses far more issues than Koppel’s bill. However, its sections on Israel’s Jewish identity link Koppel’s proposals with later Nation-State Law drafts. First, the IZS constitution restates five key components of Koppel’s bill: Israel’s Jewish and democratic identity (Articles 1-2), Hebrew (Article 22), Shabbat and Jewish holy days (Article 24), Jewish immigration (Article 27), the preservation of Jewish and non-Jewish

¹² “The Road Map,” 97–99.

¹³ Investigative reporting by the Israeli newspaper *Haaretz* and the left-wing NGO Peace Now reveals that most of the IZS’s funding between 2006 and 2013 came from the Hudson Institute, a right-wing American think-tank (Uri Blau, “Finding the Right Donors for Post-Zionism,” *Haaretz*, February 22, 2012, <http://www.haaretz.com/1.5189145>; Shizaf Illan, “Funding Sources and Their Transparency of Nine Foundations Identified with the Israeli Right [Heb.]” (Peace Now, December 2015), <http://peacenow.org.il/wp-content/uploads/2015/12/december15.pdf>.)

heritage (Articles 29 and 30). Second, Kashrut (Jewish dietary law) is omitted from the IZS constitution and would likewise be excluded from all future Nation-State Law proposals.

Furthermore, the IZS constitution incorporates five new elements into the Nation-State Law framework. First, it adds articles recodifying the official status of Jerusalem, the Hebrew calendar, and Israeli Independence Day (Articles 21, 23, 25). Second, like Koppel's proposal, the IZS constitution restates Shabbat's official status. However, it also allows non-Jews to rest on their respective holy days (Article 24). Third, like Koppel's proposal, the IZS constitution extends to "every community" the "right to preserve their culture, language, and heritage." However, it also includes permission to establish religious/nationally segregated communities. "The State may allow a distinct community, including one consisting of members of a particular religion to maintain separate communal settlements" (Article 30). Finally, the IZS constitution mandates that "Hebrew Law shall serve as a source of inspiration for legislation" (Article 29).¹⁴ In practical terms, this directive would require the courts to rely on Jewish legal principles to settle irresolvable jurisprudential questions.

"Should the court face a legal question requiring adjudication that is not resolved by reference to statute, case law, or compelling analogy, the court will decide the question based upon the principles of freedom, justice, integrity, and peace as enunciated in the Jewish heritage" (Article 73).

While *The Foundations of Law Act* (1980) contains identical language, it is merely primary legislation rather than a Basic Law. Accordingly, if Article 73 or similar provisions from later

¹⁴ The IZS constitution and all future Nation-State Law proposals use the ambiguous term "Hebrew Law" (*Mishpat Ivri*) rather than the traditional term: *halacha*. The latter explicitly connotes orthodox or conservative religious-legal doctrine. The exact meaning of "Hebrew Law" is unclear but might generally be interpreted as covering a much broader body of Jewish philosophical, religious, and legal thought besides only formal *halacha*.

Nation-State Law draft were enacted, they would substantially upgrade the normative status of “Jewish heritage” in Israeli constitutional law.¹⁵

C. The Dichter Bill (2011)

After three years of deliberations, the Constitution, Law, and Justice Committee’s efforts culminated in the publication of a 210-page document summarizing leading constitutional proposals.¹⁶ However, following the 2006 elections, the 17th Knesset abandoned its predecessor’s work, and the constitutional issue faded from public view. Interest in a Nation-State Law revived in 2009 when the IZS began working on a Basic Law proposal resembling Koppel’s bill.¹⁷ As a result of their efforts, in August 2011, MK Avi Dichter (then Kadima) introduced *Basic Law Proposal: Israel – the Nation-State of the Jewish People* (P/18/3541). After serving as the director of the Israeli General Security Services (*Shin Bet*) during the Second Intifada (2000-2005), Dichter was elected to the Knesset for the centrist Kadima party. He later joined the right-wing Likud party in 2013.¹⁸ Between 2011 and 2018, he would play a particularly important role in advancing and ultimately passing the Nation-State Law.

Dichter’s proposal added four new components to the Nation-State Law framework. First, it was the first bill to use the term “*nation-state* of the Jewish people” (emphasis my own). In contrast, Koppel’s proposal and the IZS constitution referred to Israel as the “National Home

¹⁵ Legal advisor Guy Bligh explained this difference to the Joint Committee. See: “Special Joint Committee of the Knesset Committee and the Constitution, Law and Justice Committee for the Discussion of the Basic Law Proposal: Israel — The Nation-State of the Jewish People (P/20/1989) (Hereafter: Joint Committee) Minutes #10,” [Heb.], January 3, 2018. Knesset Center for Information and Research. <https://m.knesset.gov.il/en/activity/pages/mmmabout.aspx>. 10.

¹⁶ Ruth Gavison, Sigal Kogut, and Eyal Zandberg, “An Explanatory Version of the Proposed Constitution” (Jerusalem: 16th Knesset Constitution, Law, and Justice Committee, January 2006), https://main.knesset.gov.il/Activity/Constitution/Documents/huka_for_print.pdf.

¹⁷ Moshe Koppel and Eugene Kontorovich, “Why All the Outrage over Israel’s Nation-State Law?,” *Mosaic Magazine*, October 8, 2018, <https://mosaicmagazine.com/essay/israel-zionism/2018/10/why-all-the-outrage-over-israels-nation-state-law/>.

¹⁸ “Knesset Member Avi Dichter,” Knesset, accessed March 28, 2022, <https://m.knesset.gov.il/mk/Apps/mk/mk-personal-details/771>.

of the Jewish People” and as a “Jewish state.” These two terms have a long international precedent. The 1917 Balfour Declaration and 1922 League of Nations Mandate for Palestine both declare their support for the establishment of a “national home for the Jewish people.”¹⁹ Similarly, the 1947 United Nations Special Commission on Palestine (UNSCOP) partition plan recommends the establishment of a “Jewish state” and an “Arab state.”²⁰ While Dichter’s bill also repeats these pedigreed labels, its title adds a new definition: “nation-state of the Jewish people” (*midinat ha’leum shel ha’am ha’yehudi*). Second, Dichter’s proposal substantially reformats Article 1. Like the IZS constitution, it defines Israel as the “National Home of the Jewish People, in which they realize their aspiration to self-determination in accordance with their cultural and historical heritage” (Article 1a). However, Dichter’s bill adds two new sub-articles limiting the right to self-determination to Jews alone and requiring all legislation to be interpreted according to Israel’s Jewish identity.

1b. The right to exercise national self-determination in the State of Israel is uniquely that of the Jewish people.

1c. The provisions of this Basic Law or any other legislation shall be interpreted in light of what is determined in this paragraph.

Finally, Dichter’s bill adds articles recodifying Israeli Memorial Day, Holocaust Remembrance Day (both Article 11b), and the protection of holy sites (Article 14).²¹

Comments by the bill’s supporters and historical context suggest three core contributing factors. First, Dichter’s bill likely sought to challenge the High Court’s repudiation of

¹⁹ Arthur Balfour, “Balfour Declaration,” November 2, 1917, https://avalon.law.yale.edu/20th_century/balfour.asp.

²⁰ “UN Special Committee on Palestine (UNSCOP) - Report” (United Nations General Assembly, 1947), <https://www.un.org/unispal/document/auto-insert-179435/>.

²¹ Avraham Dichter, Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.], P/18/3541 (2011); English translation from Rabinovitch, *Defining Israel*, 77–82.

nationally/religiously segregated settlements. As explained in Chapter Two, in *Ka'adan v. Israel Land Administration* (2000), the High Court ruled that the constitutional right to equality prohibited municipalities from excluding residents based on nationality or religion.²² For many right-wing critics, this decision epitomized the Court's bias for democracy and human rights over the state's Jewish character. In a direct response to *Ka'adan*, the Knesset passed *Law Amending the Cooperative Societies Ordinance (No. 8) 2011* – colloquially known as the *Admissions Committee Law*. To align itself with *Ka'adan*, the *Admissions Committee Law* forbids “community settlements” (certain small Jewish towns in the Galilee or Negev) from rejecting applicants based on “race, religion, gender, nationality, disability, personal status, age, parenthood, sexual orientation, country of origin, political-party opinion or affiliation.” However, as an overture to *Ka'adan*'s critics, the statute allows settlements to reject applicants who don't align with their “socio-cultural fabric.”²³

Immediately after its passage, numerous civil rights groups challenged the *Admissions Committee Law* in court. While the High Court would eventually uphold the statute's constitutionality, as of August 2011, its viability remained uncertain.²⁴ Given the High Court's ruling in *Ka'adan*, Dichter and his allies likely feared that the *Admissions Committee Law* would be similarly struck down as an affront to equality. Accordingly, Dichter's bill provides three tools to uphold this controversial legislation and even overturn *Ka'adan*. First, Article 6 states that “The state shall act to gather the exiles of Israel and to promote Jewish settlement on its territory and it shall allocate resources for these purposes.” Second, borrowing language from the

²² HJC 6698/95 *Ka'adan v. Israel Land Administration* (2000) (Isr.).
<https://versa.cardozo.yu.edu/opinions/ka%E2%80%99adan-v-israel-land-administration>. 30.

²³ “Law to Amend the Cooperative Societies Ordinance (No. 8), 5771-2011” (2011),
<https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/12-Admissions-Committees-Law-2011.pdf>.

²⁴ The *Admissions Committee Law* was upheld in HJC 2311/11 *Uri Sabach v. The Knesset* [Heb.] (2014) (Isr.).

IZS constitution, Article 9b states, “The state may allow a community that includes followers of a single religion or of a single nation to establish separate communal settlements.” Third, Article 1c (the so-called “interpretation clause”) requires all legislation to be interpreted according to Israel’s character as the “national home of the Jewish people” and their possession of the sole “right to exercise national self-determination in the Land of Israel.” Hypothetically, Articles 7 and 9b would permit a town to exclude non-Jewish residents under the justification of promoting “Jewish settlement” or establishing “separate communal settlements,” By raising the normative value of Israel’s Jewish identity over its democratic character, Article 1c would fortify the High Court’s ability to defend such a policy. Read together, these articles would thus insulate the *Admission Committee Law* from judicial review and even provide a basis for overturning *Ka’adan*. While Dichter and his allies never acknowledged this motivation directly, they dropped clues that their bill intended to challenge the Court’s perceived liberal bias. For example, co-signer MK Ze’ev Elkin (Likud) said, “The law is meant to give the courts a basis to support the state’s Jewish nationality in situations when the state’s Jewish identity conflicts with the principles of democracy.”²⁵

Second, statements by the bill’s supporters suggest that it sought to confront the perceived rising domestic and international delegitimization of Israel’s Jewish identity. Since 1948, many Palestinian activists and politicians have challenged Israel’s unilateral Jewish character and advocated for “a state of all citizens.” However, Israeli leaders became increasingly concerned with these demands during the 2000s.²⁶ In 2005, a wide coalition of Palestinian civil society organizations released a call for the boycott, divestment, and sanction

²⁵ Yonatan Lis, “New Law Proposal: Hebrew Is Not an Official Language [Heb.],” Haaretz, August 4, 2011, <https://www.haaretz.co.il/news/politics/1.1371440>.

²⁶ Becker, “The Claim for Recognition of Israel as a Jewish State,” 3.

(BDS) of the Israeli economy and cultural institutions. Their demand to “end occupation and colonization of *all Arab lands*” and recognize “the fundamental rights of the Arab-Palestinian citizens of Israel to *full* equality” (emphasis my own) was interpreted by many American pro-Israel advocates as a rejection of Israel’s right to exist as a Jewish state.²⁷ In 2007 the Palestinian legal advocacy group, Adalah, released a draft constitution that proposed redefining Israel as a “democratic state, based on the values of human dignity, liberty, and equality.”²⁸ The damning report issued by the 2009 Fact-Finding Mission on the Gaza Conflict (colloquially known as the “Goldstone Report”) as well as the international outcry that followed the 2010 Turkish flotilla raid further reinforced many Jewish-Israelis’ perceptions that their nation was under constant rhetorical attack.²⁹ Dichter’s explanatory note emphasizes these trends.

“The necessity of the Basic Law: Israel – The Nation-State of the Jewish People is particularly valid at a time when there are those who seek to abolish the right of the Jewish people to a national home in their land and the recognition of the State of Israel as the nation-state of the Jewish People.”³⁰

Elkin similarly claimed,

“In the face of the relentless attempts by anti-Zionist elements to deny all Jewish and Zionist signs, that were once obvious, and to try to overturn them through legal means, it

²⁷ “Palestinian Civil Society Call for BDS,” BDS Movement, July 9, 2005, <https://bdsmovement.net/call>; David M. Halbfinger, Michael Wines, and Steven Erlanger, “Is B.D.S. Anti-Semitic? A Closer Look at the Boycott Israel Campaign (Published 2019),” *The New York Times*, July 27, 2019, sec. World, <https://www.nytimes.com/2019/07/27/world/middleeast/bds-israel-boycott-antisemitic.html>.

²⁸ “The Democratic Constitution” (Adalah: The Legal Center for Arab Minority Rights in Israel, March 20, 2007), https://www.adalah.org/uploads/oldfiles/Public/files/democratic_constitution-english.pdf. Article 2.

²⁹ Isabel Kershner, “Deadly Israeli Raid Draws Condemnation,” *The New York Times*, May 31, 2010, sec. World, <https://www.nytimes.com/2010/06/01/world/middleeast/01flotilla.html>; Adam Horowitz, Lizzy Ratner, and Philip Weiss, eds., *The Goldstone Report: The Legacy of the Landmark Investigation of the Gaza Conflict* (New York: Nation Books, 2011).

³⁰ Avraham Dichter, Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.], P/18/3541 (2011); English translation in Rabinovitch, *Defining Israel*, 77–82.

is now the time to say in a clear voice – the state of Israel is the nation-state of the Jewish people.”³¹

Third, Dichter’s bill aligns with the rising significance of the nation-state demand in Israeli-Palestinian peace talks. Five years after Sharon offered his nation-state reservation to Bush’s 2002 framework, Prime Minister Ehud Olmert (2006-2009) similarly demanded that the Palestinians recognize Israel’s Jewish character as a precondition for 2007 peace talks.³² However, he eventually agreed to begin negotiations despite Palestinian noncompliance.³³ Following his 2009 election, Prime Minister Benjamin Netanyahu deepened Israeli obstinance on the nation-state demand.³⁴ For decades, Netanyahu had built his political career on opposition to Palestinian statehood.³⁵ However, under heavy American pressure, the new Prime Minister publicly endorsed the Two-State Solution in a famous post-election speech at Bar Ilan University. However, Netanyahu set two conditions on Palestinian sovereignty. First, he insisted on the demilitarization of any hypothetical Palestinian state. Second, Netanyahu demanded that the Palestinian leadership recognize Israel’s Jewish character. While Sharon and Olmert had raised similar demands, Netanyahu was the first to center the specific term: “nation-state of the Jewish people.”

“Therefore, a fundamental prerequisite for ending the conflict is a public, binding, and unequivocal Palestinian recognition of Israel as the nation-state of the Jewish People. To

³¹ Moran Azouli, “Dichter Proposes: Basic Law the Nation-State of the Jewish People [Heb.],” *Ynet*, August 2, 2011, <https://www.ynet.co.il/articles/0,7340,L-4103660,00.html>.

³² Gil Stern, “Erekat: PA Baffled over ‘Jewish Israel,’” *The Jerusalem Post*, October 16, 2007, <https://www.jpost.com/israel/erekat-pa-baffled-over-jewish-israel>.

³³ Ethan Bronner, “Olmert Memoir Cites Near Deal for Mideast Peace,” *The New York Times*, January 27, 2011, sec. World, <https://www.nytimes.com/2011/01/28/world/middleeast/28mideast.html>.

³⁴ Netanyahu previously served as prime minister from 1996 to 1997.

³⁵ Anshel Pfeffer, “Benjamin Netanyahu, the Undertaker of the Two-State Solution,” *Haaretz*, April 1, 2019, <http://www.haaretz.com/israel-news/israeli-palestinian-conflict-solutions/.premium-benjamin-netanyahu-the-undertaker-of-the-two-state-solution-1.7045749>.

vest this declaration with practical meaning, there must also be a clear understanding that the Palestinian refugee problem will be resolved outside Israel's borders. For it is clear that any demand for resettling Palestinian refugees within Israel undermines Israel's continued existence as the state of the Jewish people.”³⁶

Despite ardent Palestinian opposition to this demand, direct negotiations began in September 2010. However, only a few weeks later, the Palestinian Authority (PA) threatened to walk out unless Netanyahu extended a partial settlement freeze. In response, the Prime Minister offered to prolong the moratorium if the Palestinians recognized Israel's Jewish status. As expected, the PA refused and the talks collapsed.³⁷

Netanyahu's consistent opposition to the Two-State Solution suggests especially nefarious motives for his insistence on Jewish nation-state recognition. The Prime Minister likely never intended to honestly pursue Palestinian statehood. However, increased American pressure under the Obama administration compelled at least an ostensible good-faith effort. Within this political nexus, the nation-state demand proved especially useful. To America and its European allies, Jewish nation-state recognition appears like a reasonable negotiating position. However, the Palestinians see it as an impassable red line that subverts their national narrative.³⁸ To guarantee their opposition, Netanyahu paired his demand with an especially unreasonable request – “to vest this declaration with practical meaning, there must also be a clear understanding that the Palestinian refugee problem will be resolved outside Israel's borders.” Agreeing to Netanyahu's condition would thus surrender the “Right of Return” – an unthinkable proposition

³⁶ Benjamin Netanyahu, “Address by PM Netanyahu at Bar-Ilan University,” Israel Ministry of Foreign Affairs, June 14, 2009, https://mfa.gov.il/mfa/pressroom/2009/pages/address_pm_netanyahu_bar-ilan_university_14-jun-2009.aspx.

³⁷ “Netanyahu Offers Settlement Freeze in Return for Recognition as Jewish State, Palestinians Say No,” Haaretz, October 11, 2010, <https://www-haaretz-com.revproxy.brown.edu/1.5123960>.

³⁸ For example, see: Joseph Massad, “The Rights of Israel,” Al Jazeera, May 6, 2011, <https://www.aljazeera.com/opinions/2011/5/6/the-rights-of-israel>.

for the Palestinian national movement. In short, Netanyahu likely pursued the nation-state demand as a “poison pill” designed to undermine peace talks while making the Palestinians appear culpable.

No textual evidence explicitly connects Dichter’s 2011 proposal with Netanyahu’s nation-state demand. At the time, they were in the same coalition but different parties (Kadima and Likud respectively). Furthermore, Netanyahu refrained from explicitly endorsing Dichter’s bill. However, circumstantial connection suggests a reciprocal relationship. Specifically, Dichter and his allies may have sought to fortify Netanyahu’s bargaining position. By codifying Israel’s Jewish identity in a Basic Law, they would have granted extra weight to the Prime Minister’s demand and thus help derail future negotiations. Alternatively, Netanyahu’s position might point to the general popularity of the nation-state demand in right-wing Israeli politics. Perhaps Dichter and his allies sought to capitalize on this trend by proposing their own legislation.

Despite receiving over forty co-sponsorships, Kadima leader, Tzipi Livni, forced Dichter to withdraw his bill before it could come up for a vote.³⁹ While they were in the same party, Livni and Dichter held opposite views on the Nation-State Law. Livni grew up in a prominent Revisionist Zionist family and began her political career in Likud. However, unlike most of the Israeli Right, she became an impassioned supporter of the Two-State Solution. Eventually, Livni left Likud and founded the short-lived centrist Kadima party. While she stated that she supported the Nation-State Law’s recodification of Israel’s Jewish identity, Livni believed that it should be paired with acknowledgment of the state’s commitment to democracy, equality, and human

³⁹ Yonatan Lis, “Dichter Replaces ‘Jewish Identity’ Bill with Equally Contentious Draft Law,” *Haaretz*, November 15, 2011, <http://www.haaretz.com/1.5209690>.

rights. In particular, she emphasized that recognition of Israel's Jewish character should parallel the establishment of a Palestinian state.⁴⁰

D. The Shaked Bill (2013)

For the remainder of the 18th Knesset, the Nation-State Law debate retreated from the limelight. However, the issue regained traction following the election of the 19th Knesset in 2013. After months of deliberation, Likud (secular-right), Yisrael Beiteinu (secular-right), Jewish Home (religious-right), Yesh Atid (centrist), and Ha'tnuah (centrist) formed a center-right coalition government in March 2013.⁴¹ Importantly, the Likud/Yisrael Beiteinu/Jewish Home coalition agreement promised to advance Dichter's bill.⁴² However, before the parties could act, ascendant right-wing political superstar, MK Ayelet Shaked (Jewish Home), submitted a competing proposal in July 2013 (P/19/1550). According to a 2017 Haaretz profile, Shaked "is an anomaly in Israeli politics, espousing nationalist, ethnocentric views typical of a rump religious male politician from the settlements packaged in an educated secular woman from North Tel Aviv."⁴³ However, despite her impeccable conservative pedigree, Shaked's bill was overall more moderate than Dichter's proposal. It omitted the interpretation clause, the right to segregated settlements, and the elevation of Hebrew over Arabic. Furthermore, she added a "purpose" article connecting her bill to the comparatively liberal Declaration of Independence.

⁴⁰ For Livni's position see: Joint Committee Minutes #1 [Heb.], July 26, 2017, Knesset Center for Information and Research, 24-25; Joint Committee Minutes #2 [Heb.], September 18, 2017, Knesset Center for Information and Research, 11-12; Tzipi Livni and Simon Rabinovitch, "On the Meaning of Israel as a Jewish and Democratic State: A Conversation with Tzipi Livni," in *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018), 313–21.

⁴¹ Likud and Yisrael Beiteinu ran on a joint slate for the 2013 elections.

⁴² Yonatan Lis, "Likud and Jewish Home will advance the Rescinded 'Nation-State Law' [Heb.]," *Haaretz*, March 15, 2013, <http://www.haaretz.co.il/news/elections/1.1966424>.

⁴³ Allison Sommer, "Who's Afraid of Ayelet Shaked? Meet the Secular Jewish Nationalist Who Could Be Israel's Prime Minister," *Haaretz*, September 9, 2017, <http://www.haaretz.com/israel-news/.premium-meet-the-secular-jewish-nationalist-who-could-be-israels-prime-minister-1.5449167>. Cited in: Elisheva Goldberg, "The Long Reach of Restraint," *Jewish Currents*, November 22, 2021, <https://jewishcurrents.org/the-long-reach-of-restraint>

“The purpose of this Basic Law is to define the identity of the State of Israel as the nation-state of the Jewish people in order to anchor these values in a Basic Law in the spirit of the principles in the Declaration of the Establishment of the State of Israel.”⁴⁴

The bill’s content, comments by supporters, and political-historical context suggest two key causal factors. First, like Dichter’s proposal, Shaked’s bill was motivated by a desire to reassert Jewish nation-state legitimacy. The bill’s explanatory note repeats verbatim Dichter’s claim that the bill is needed to challenge those “who seek to abolish the right of the Jewish people to a national home in their land and the recognition of the State of Israel as the nation-state of the Jewish People.”⁴⁵ Shaked used similar language when presenting her proposal to the Israeli media.

“Internal and external forces are trying to damage the character of the state of Israel in the past years and to turn it into a ‘state of all its citizens.’ The State of Israel was established as a nation-state of the Jewish people and thus it will remain.”⁴⁶

Elements of the bill’s content might also reflect the centrality of legitimacy concerns. The bill retains Dichter’s claim that “The State of Israel is the national home of the Jewish people in which they realize their aspiration to self-determination.” However, by referencing the comparatively liberal Declaration of Independence and omitting the controversial interpretation clause and segregated settlement provision, Shaked’s proposal may have sought to make this claim more palatable for international audiences.

⁴⁴ Shaked, Ayelet. Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.], P/19/1550 (2013); English translation from Rabinovitch, *Defining Israel*, 83–87.

⁴⁵ Ayelet Shaked, Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.], P/19/1550 (2013); English translation from Rabinovitch, *Defining Israel*, 83–87.

⁴⁶ Yonatan Lis, “Likud and Jewish Home’s Nation-State Law: Eretz Yisrael Is the Homeland of the Jewish People Only [Heb.],” Haaretz, June 25, 2013, <https://www.haaretz.co.il/news/politi/1.2055462>.

Second, Shaked's bill aligns with the resumption of Israeli-Palestinian peace talks in 2013. Just as she was drafting her proposal, US Secretary of State John Kerry was urging Netanyahu and Abbas to resume direct negotiations.⁴⁷ Shaked explicitly tied her bill to this process. "We expect Netanyahu to support this bill like he demanded the Palestinians recognize Israel as the nation-state of the Jewish people."⁴⁸ While Netanyahu didn't publicly support or condemn Shaked's bill, his negotiators expectedly demanded Jewish nation-state recognition during 2013-2014 negotiations. Unsurprisingly, the Palestinians again refused, claiming that such recognition would hurt Palestinian rights within Israel and undermine their national narrative.⁴⁹ Kerry later blamed Netanyahu's insistence on Jewish nation-state recognition as a key contributor to the talks' derailment.⁵⁰ As with Dichter's bill, it is difficult to ascertain the precise connection between Shaked's bill and 2013-2014 negotiations. However, Shaked's comments emphasize that contemporary observers were aware of certain linkages. Perhaps Shaked saw her bill as an opportunity to reinforce an unattainable Israeli bargaining position and again derail peace talks. Alternatively, this proposal might again emphasize the Israeli Right's general obsession with Israel's global international legitimacy since the early 2000s.

Like most of her right-wing peers, Shaked often criticizes the High Court's perceived liberal bias.⁵¹ However, in comparison to Dichter's proposal, her bill was far less explicitly antagonistic towards the Israeli judiciary. Omitting the interpretation and settlement clauses removed the two most powerful challenges to the High Court's pro-democracy tilt generally and

⁴⁷ Amira Schiff, "The Kerry Peace Initiative in the Israeli-Palestinian Conflict: When Hope and Good Intentions Are Not Enough," *International Negotiation* 23, no. 1 (January 24, 2018): 14, <https://doi.org/10.1163/15718069-23011101>.

⁴⁸ Lis, "Likud and Jewish Home's Nation-State Law: Eretz Yisrael Is the Homeland of the Jewish People Only [Heb.]."

⁴⁹ Schiff, "The Kerry Peace Initiative in the Israeli-Palestinian Conflict," 16.

⁵⁰ Chemi Shalev, "Kerry Tries to Defuse 'Recognition as Jewish State' Time Bomb That Threatens Talks," *Haaretz*, March 15, 2014, <http://www.haaretz.com/.premium-kerry-tries-to-defuse-recognition-bomb-1.5334354>.

⁵¹ Sommer, "Who's Afraid of Ayelet Shaked?"

Ka'adan in particular. Rhetoric by the bill's supporters reflects this subdued tone. Whereas Dichter had emphasized the need to "support the state's Jewish nationality in situations when the state's Jewish identity conflicts with the principles of democracy," Shaked and her co-signer Yariv Levin (Likud) claimed that they merely wanted to "balance the Jewish and democratic values of the state, as was actualized by the principles in the Declaration of Independence."⁵² Importantly, their comments shouldn't be read as a complete repudiation of High Court antagonism. In a sense, to "balance" Jewish and democratic values may just be a more coded version of Dichter's obvious preference for the state's Jewish identity over its democratic character. Yet, reading Shaked and Levin's statement in combination with the omission of the interpretation clause and settlement article suggests that if judicial resentment played a role, it was at least a more hidden motivator.

E. The Calderon Proposal (2013)

Just as Shaked and her allies were drafting their bill, centrist coalition allies were crafting an alternative proposal. On July 22nd, 2013, MK Ruth Calderon (Yesh Atid) and eight other Yesh Atid and Ha'tnuah MKs submitted *Basic Law Proposal: The Declaration of Independence and the Jewish and Democratic State* (P/19/1539).⁵³ Calderon's bill was remarkably simple. To recodify the state's Jewish-democratic identity, it granted the force of law to the Declaration of Independence.

⁵² Lis, "New Law Proposal: Hebrew Is Not an Official Language [Heb.]" ; Lis, "Likud and Jewish Home's Nation-State Law: Eretz Yisrael Is the Homeland of the Jewish People Only [Heb.]"

⁵³ Calderon and Shaked had previously agreed on a consensus Nation-State Law bill. However, their cooperation collapsed after Shaked's ally, MK Yariv Levin (Likud), objected to their inclusion of the right to equality (Ruth Calderon and Simon Rabinovitch, "On the Declaration of Independence as a Basic Law and the Meaning of a Jewish Nation-State: A Conversation with Ruth Calderon," in *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018), 325–26).

“This Basic Law aims to secure and protect the values of the State of Israel as a Jewish and democratic state by giving the force of law to the basic principles as stated in the Declaration of Independence.”

The bill’s explanatory note further clarified that “the notion of a Jewish state does not refer to Judaism as a religion, but rather to the cultural character of the nation-state as the home of the Jewish people.” It similarly emphasized that Israel “is committed to ensuring complete equality of social and political rights to all its inhabitants irrespective of religion, race, or gender.”⁵⁴

Caught between her enmity towards Shaked’s bill and her responsibility to maintain the fragile coalition, Minister of Justice Tzipi Livni (now the leader of Ha’tnuah) refused to bring either Calderon or Shaked’s proposal to a cabinet vote. Instead, in August 2013, she asked famed Israeli legal scholar, Ruth Gavison, to write a report on the constitutional status of Israel’s Jewish and democratic identities.⁵⁵ Likely, Livni never intended Gavison’s report to generate a genuine Nation-State Law debate. Rather, she hoped that the scholarly investigation would provide time for this uncomfortable political issue to blow over.⁵⁶ Unfortunately for Livni, her strategy failed.

F. The Netanyahu Framework (2014)

In May 2014, before the completion of Gavison’s report and only a few weeks after Israeli-Palestinian negotiations collapsed once again, Netanyahu fulfilled the Likud/Yisrael Beiteinu/Jewish Home coalition promise and announced his intention to advance a Nation-State bill. In response, right-wing MKs rushed to revive past proposals. MK Elkin (Likud) re-submitted Dichter’s 2011 bill as P/19/2502 while MK Miri Regev (Likud) re-submitted Shaked’s

⁵⁴ Ruth Calderon, Basic Law Proposal: The Declaration of Independence and the Jewish and Democratic State [Heb.], P/19/1539 (2013); English translation from Rabinovitch, *Defining Israel*, 89–93.

⁵⁵ Simon Rabinovitch, “Introduction: Jewish and Democratic According to the Law,” in *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018), 9.

⁵⁶ Yonatan Lis, Interview with Yonatan Lis, Zoom, February 24, 2022.

bill as P/19/2530.⁵⁷ In November, Netanyahu proposed a set of principles that he hoped would form the basis of a final Nation-State Law. The cabinet approved Netanyahu's framework along almost exact party lines. 14 right-wing ministers (Likud, Yisrael Beiteinu, and Jewish Home) voted in favor while the six centrist ministers (Yesh Atid and Ha'tnuah) voted against the proposal. One Likud minister, MK Limor Livnat, abstained.⁵⁸ While framed as a set of "principles," Netanyahu's proposal resembled a Basic Law bill. Specifically, its content and tone mostly matched Shaked's language. Like its predecessor, Netanyahu omitted Dichter's interpretation clause, right to segregated settlements, and elevation of Hebrew over Arabic. Similarly, it included a purpose article based on Shaked's bill.⁵⁹

Netanyahu's coalition agreement required him to advance a Nation-State bill. However, his proposal's content, comments by its supporters, and political-historical context suggest three additional contributing factors. First, like his predecessors, Netanyahu justified his framework as a reassertion of Israel's Jewish legitimacy. He stated, "the Declaration of Independence establishes as the cornerstone of the life of the state the national Jewish identity of the State of Israel. Unfortunately, as we have once again seen, there are those who refuse to recognize this natural right."⁶⁰

Second, Netanyahu may have advanced his framework as a tactic to outflank emergent right-wing rivals. Since Menachem Begin's 1977 victory, the National-Religious/Religious

⁵⁷ Rabinovitch, "Introduction: Jewish and Democratic According to the Law," 10.

⁵⁸ Procedurally, this decision was especially complicated. The government agreed to initially advance both Netanyahu and Shaked's proposals. However, after Shaked's bill passed a preliminary vote (*kriyah traumit*), the government would discard it in favor of Netanyahu's framework (Yonatan Lis, "Amidst a Story Debate: The Government Approves Elkin and Shaked's Nation-State Law [Heb.]," *Haaretz*, November 23, 2014, <http://www.haaretz.co.il/news/politi/.premium-1.2493257>).

⁵⁹ Simon Rabinovitch, ed., "Announcement of the Cabinet Secretary at the End of the Cabinet Meeting," in *Defining Israel: The Jewish State, Democracy, and the Law* (Cincinnati: Hebrew Union College Press, 2018), 95–99.

⁶⁰ Omri Nahmias, "Netanyahu: I Will Anchor in Basic Law Israel as a Jewish State [Heb.]," *Walla*, May 1, 2014, <https://news.walla.co.il/item/2742533>.

Zionist (*Dati Leumi*/*Ha'tziyonut Ha'datit*) bloc traditionally served as a reliable, yet weak coalition partner for Likud. Members of this community, which account for about 10% of Israel's population, combine fervent Zionism with a deep commitment to orthodox Judaism.⁶¹ For decades, this demographic was represented in the Knesset by the National Religion Party (NRP, Hebrew: *Mafdal*) which usually only won four to six seats. However, two developments in the late 2000s and early 2010s shifted the balance of power on the Israeli Right. First, the Jewish Home party (*Ha'bayit Ha'yehudi*) replaced the NRP as the Religious-National camp's standard-bearer. Second, in 2012, rising right-wing political star Naftali Bennet was elected as this new party's leader. Bennet's ardent pro-settlement and anti-Palestinian statehood policies were indistinguishable from his NRP predecessors. However, his *image* was decisively different. The NRP was traditionally dominated by disheveled-looking bearded settlers who struggled to gain traction beyond their hard-core National-Religious base. In contrast, Bennet's impeccable English, illustrious high-tech background, and clean-shaven face appealed to both secular and National-Religious voters.⁶² The unabashedly secular Ayelet Shaked's 2013 enlistment in the Jewish Home further expanded its reach. In large part thanks to Bennet's leadership, the Jewish Home yielded an astounding twelve seats in the 2013 elections – making it the second-largest coalition party and fourth-largest party overall.⁶³ The rising power of this hyper-nationalist party and its charismatic leader placed growing pressure on Netanyahu to reassert his conservative credentials and maintain control over an increasingly fractured Israeli Right. With

⁶¹ See generally: "Leap of Faith: National Religious and the Israeli- Palestinian Conflict" (Brussels: International Crisis Group, November 21, 2013).

⁶² Jodi Rudoren, "Dynamic Former Netanyahu Aide Shifts Israeli Campaign Rightward," *The New York Times*, December 26, 2012, sec. World, <https://www.nytimes.com/2012/12/27/world/middleeast/naftali-bennett-pushes-netanyahu-rightward.html>; Chaim Levinson, "Bennett Finds Secular Support With a Religious Campaign," *Haaretz*, January 22, 2013, <http://www.haaretz.com/.premium-brother-bennett-taps-unbelievers-too-1.5225806>.

⁶³ "Elections in Israel January 2013," Israel Ministry of Foreign Affairs, January 22, 2013, https://mfa.gov.il/mfa/aboutisrael/history/pages/elections_in_israel_january_2013.aspx.

representatives from his own party, not to mention the assurgent Jewish Home, supporting the Nation-State Law, it was politically conducive to join this growing movement.

Third, Netanyahu's framework might also be read in the context of Israeli-Palestinian peace talks. Since 2009, Netanyahu had centered the nation-state issue as a core bargaining demand vis-à-vis the Palestinians. While his proposal was released shortly after the 2013-2014 negotiations collapsed, it might still be identified as an attempt to fortify his destructive negotiating position for future talks.

Like Shaked, Dichter, and the rest of the Israeli right, Netanyahu frequently attacked the Israeli judiciary as interventionist and leftist. However, like Shaked's bill, his 2014 proposal eliminates the two most direct attacks against the High Court – the interpretation clause and settlement article. Again, it's impossible to completely discount High Court resentment as a motivator for Netanyahu. However, his framework's similarities to the Shaked bill suggest that it was at least a more hidden factor.

G. The Stern and Begin Bills (2014-2015)

Netanyahu's reignition of the Nation-State Law debate catalyzed two comparatively progressive counterproposals. On November 24th, 2014, Elazar Stern and four other Ha'tnuah MKs submitted *Basic Law Proposal: The State of Israel* (P/19/2883). Stern's bill included four short articles. Article 1a defined Israel as a Jewish and democratic state. Article 1b declared Israel to be the "nation-state of the Jewish people" but offered a remarkably progressive definition.

"Israel is the Nation-State of the Jewish People where it actualizes its right to self-determination: a democracy based on the principles of liberty, justice, and peace; and

sustains equality between all its citizens; all according to the Declaration of Independence.”

Article 2 reiterated the right to Jewish immigration. Article 3 recodified the state’s flag, anthem, and emblem. Article 4 required a Knesset majority for amendment.⁶⁴

Conflict over these dueling right-wing and centrist proposals increased tension among an already fraught governing coalition. Accordingly, in December 2014, Netanyahu dismissed his ministers and called for new elections.⁶⁵ Contrary to his hopes, the March elections failed to produce a robust Likud victory. However, following weeks of intense negotiations, Netanyahu eked out a narrow 61-seat right-wing coalition government with Yisrael Beiteinu (secular-right), Jewish Home (religious-right), Kulanu (centrist), United Torah Judaism (ultra-orthodox), and Shas (ultra-orthodox).⁶⁶ The coalition agreement required the government to pass a Nation-State Law but granted every party veto power over the process.⁶⁷

Shortly after the new government assumed office, MK Ze’ev Benyamin “Benny” Begin (Likud) submitted another progressive Nation-State Law alternative – *Basic Law Proposal: The State of Israel* (P/20/1587). Unlike most contemporary right-wing politicians, Benny Begin genuinely ascribes to the classic Jabotinsky-ian revisionist Zionism promoted by his father, the first Likud prime minister, Menachem Begin. In line with this ideology, the younger Begin concurrently advocates for both full Israeli sovereignty over the West Bank *and* Arab minority

⁶⁴ Elazar Stern, Basic Law Proposal: The State of Israel [Heb.], P/19/2883 (2014); English translation from Rabinovitch, *Defining Israel*, 101–2.

⁶⁵ Isabel Kershner, “Netanyahu Fires Ministers and Calls for Elections,” *The New York Times*, December 2, 2014, sec. World, <https://www.nytimes.com/2014/12/03/world/middleeast/israel-netanyahu-cabinet-elections.html>.

⁶⁶ Jodi Rudoren, “Netanyahu Forms an Israeli Government, With Minutes to Spare,” *The New York Times*, May 6, 2015, sec. World, <https://www.nytimes.com/2015/05/07/world/middleeast/netanyahu-israel-coalition-government.html>.

⁶⁷ Rabinovitch, “Introduction: Jewish and Democratic According to the Law,” 13.

rights/autonomy.⁶⁸ Begin's bill reflects these qualified liberal tendencies by mostly repeating Calderon and Stern's themes. Article 1 declares that Israel is,

“...the nation-state of the Jewish people, based on the foundations of freedom, justice, and peace as envisioned by the prophets of Israel, and upholding equal rights for all its citizens.”

Article 2 clarifies that “Israel is a democracy.” Article 3 re-codifies the state's flag, emblem, and anthem.⁶⁹

H. The Dichter Bill (2015)

In July 2015, only a month after the release of Begin's proposal, MK Dichter (now Likud) submitted an updated version of his 2011 bill (now P/20/1989). The revised proposal contained two important differences from its 2011 predecessor. First, it deleted Article 2 – “The State of Israel has a democratic regime” – and replaced it with a “purpose” article modeled after Shaked's proposal. Second, Dichter's 2015 bill added a provision, likely based on the IZS constitution, designating Jerusalem as the “capital of Israel” (Article 4). Importantly, Dichter's proposal retained three of its predecessor's most controversial components: the interpretation clause (Article 1c), the elevation of Hebrew over Arabic (now Article 5), and the right to segregated settlements (now Article 9b).

*Basic Law Proposal: Israel – The Nation-State of the Jewish People (P/20/1989)*⁷⁰

Basic Principles

⁶⁸ Ari Shavit, “Theater of the Absurd,” *Haaretz*, January 1, 2009, <http://www.haaretz.com/1.5057325>; Ze'ev Begin, “On the Essence of the State of Israel,” in *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018), 229–32.

⁶⁹ Ze'ev Begin, Basic Law Proposal: The State of Israel [Heb.], P/20/1587 (2015); English translation from Rabinovitch, *Defining Israel*, 103–4.

⁷⁰ Avraham Dichter, Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.], P/20/1989 (2015); English translation from Rabinovitch, *Defining Israel*, 105–10.

1. a. The State of Israel is the national home of the Jewish people, in which they realize their aspiration to self-determination in accordance with their cultural and historical heritage.
- b. The right to exercise national self-determination in the State of Israel is uniquely that of the Jewish people.
- c. The provisions of this Basic Law or any other legislation shall be interpreted in light of what is determined in this paragraph.

Purpose

2. This Basic Law's purpose is to protect the status of Israel as the nation-state of the Jewish people, in order to codify in Basic Law, the values of the State of Israel as a Jewish and democratic state in the spirit of the principles of the Declaration of Independence.

Anthem, Flag, and Symbol

3. a. The state's anthem is "HaTikva."
- b. The state's flag is white, with two light-blue stripes close to the edge, and a light blue Star of David at its center.
- c. The State emblem is a seven-branched menorah, with olive branches on both sides and the word "Israel" beneath it.

The Capital of the State

4. Jerusalem is the capital of Israel

Language

5. a. Hebrew is the state language.
- b. The Arabic language has a special status, and its speakers have the right of linguistic access to state services, in accordance with the law.

Immigration⁷¹

6. Every Jew has the right to immigrate to Israel and to acquire the citizenship of the State of Israel; in accordance with the law.

The Ingathering of Exiles

7. The state shall act to gather the exiles of Israel.

The Connection with the Jewish Diaspora

⁷¹ In Hebrew: *Shvut* – literally: "return." Modern Hebrew distinguishes between general immigration/emigration (*hagira*) and specifically Jewish immigration to Israel (*aliyah*, literally: going up).

8. a. The state will act to protect the cultural and historical heritage of the Jewish people in the Diaspora.
- b. The state will extend a hand to members of the Jewish people abroad who are in distress or in captivity because they are Jewish.

Protection of Heritage

9. a. All residents of Israel, regardless of religion or nationality, are entitled to work to preserve their culture, heritage, language, and identity.
- b. The state may allow a community that includes followers of a single religion or members of a single nation to establish separate communal settlements.

Official Calendar

10. The Hebrew calendar is the official state calendar.

Independence Day and Memorial Day

11. a. Independence Day is the national holiday of the state.
- b. Day of Remembrance for the Fallen Soldiers of Israel and Holocaust and Heroism Remembrance Day are official state memorial days.

Days of Rest

12. Designated days of rest in the State of Israel are the Sabbath and the holy days of Israel, on which no worker shall be employed exempt under conditions determined by law; members of communities recognized by law are entitled to rest during their holidays.⁷²

Hebrew Law

13. Should the court encounter a legal question that demands a ruling and be unable to find an answer through the body of legislation, legal precedent, or clear analogy, it shall be decided in light of the principles of freedom, justice, integrity, and peace associated with the heritage of Israel.⁷³

Protection of Holy Places

14. Holy places shall be protected from desecration and all other harm, and from anything else that may harm religious followers' free access to their sacred places or their feelings regarding these places.

⁷² "Israel" can refer either to the modern nation-state or the global Jewish community. "Holy days of Israel" in this context thus means the traditional Jewish holidays, not only Israeli holidays.

⁷³ Again, the "heritage of Israel" refers to the Jewish heritage broadly rather than only the modern state of Israel.

Primacy

15. This Basic Law shall not be amended, except by another Basic law enacted by a majority of Knesset members.

The bill's content, explanatory note, and historical context underscore three causal factors. First like its predecessor, this proposal likely aimed to challenge the High Court's perceived liberal bias. While the High Court upheld the *Admissions Committee Law* in 2014, later rulings continued to frustrate the Israeli Right.⁷⁴ For example, in *Adam v. Knesset* (2013) and *Eitan v. Government* (2014), the High Court ruled that legislation allowing the extended detention of African asylum seekers violated the constitutional right to liberty codified in *Basic Law: Human Dignity and Liberty*.⁷⁵ For the Right, these cases epitomized the Court's preference for Israel's democratic character over its Jewish identity. According to their perspective, African asylum seekers pose a significant demographic threat. Extended detention is thus warranted to deter future arrivals and preserve the state's Jewish majority. Limiting detention based on an expansive reading of the right to "liberty" infringes on the Knesset's legislative authority and degrades the state's Jewish character.⁷⁶ Similarly, the hated *Ka'adan* decision remained valid. To combat these perceived judicial errors, Dichter's 2015 bill retained its predecessor's two most revolutionary components – the interpretation clause and the legalization of segregated settlements. His explanatory note hints at their intent.

⁷⁴ HJC 2311/11 Uri Sabach v. The Knesset [Heb.] (2014) (Isr.).

⁷⁵ HJC 7146/12 Adam v. Knesset (2013) (Isr.). <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Adam%20v.%20Knesset.pdf>; HJC 7385/13 Eitan – Israeli Immigration Policy Center v. Government (2014) (Isr.). <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=54e607184>.

⁷⁶ For an example of this argument, see: Evelyn Gordon, "Disorder in the Court," Mosaic Magazine, December 5, 2016, <https://mosaicmagazine.com/essay/israel-zionism/2016/12/disorder-in-the-court/>.

“The purpose of this Basic Law is to establish, in Basic Law, the status of Israel as the state of the Jewish nation on equal standing to the protection that Israeli Basic Laws afford to human rights and the democratic character of the state.”

The note clarifies this claim with a false overture to human rights. It states that the interpretation clause (Article 1c)

“...does not intend to accord priority to this Basic Law in opposition to the Basic Laws dealing with human rights, but rather to ensure an equal status between this Basic Law and those Basic Laws.”⁷⁷

However, this statement contradicts the bill’s plain meaning. By requiring all legislation to be interpreted according to the Jewish identity codified in Articles 1a and 1b – but not democratic norms – the interpretation clause elevates the constitutional stature of Israel’s Jewish identity over its democratic character. This normative reordering would thus seriously challenge the High Court’s precedents in *Adam*, *Eitan*, *Ka’adan*, and similar cases.

Second, Dichter’s 2015 explanatory note frames his bill as a challenge to Jewish nation-state delegitimization. It repeats the claim that the bill is,

“...particularly valid at a time when there are those who seek to abolish the right of the Jewish people to a national home in their land and the recognition of the State of Israel as the nation-state of the Jewish People.”

It similarly states that “The State of Israel, which demands its adversaries recognize it as the State of the Jewish people, and asks its international supporters to back this demand, must be ready to declare as a supreme constitutional norm, that it itself proudly bears this identity.”⁷⁸

⁷⁷ Avraham Dichter, Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.], P/20/1989 (2015); English translation from Rabinovitch, *Defining Israel*, 105–10.

⁷⁸ Avraham Dichter, Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.], P/20/1989 (2015); English translation from Rabinovitch, *Defining Israel*, 105–10.

Third, Dichter's 2015 proposal responds to increasingly critical attitudes toward Israel among the Jewish Diaspora. For decades, the right-leaning American-Israel Public Affairs Committee (AIPAC) cultivated staunch unconditional support for Israel among mainstream American Jewry (the largest community outside of Israel).⁷⁹ However, this transnational political alliance began to crack in the late 2000s and early 2010s. Since 2007, the growth of J Street, a self-described "pro-Israel, pro-Palestine, pro-peace" political organization, challenged AIPAC's "support for Israel at all costs" strategy.⁸⁰ 2013 polling by the Pew Research Center found that while overall feelings of "attachment" toward Israel remained high, young American Jews were markedly less connected to Israel and more critical of its policies than their older peers.⁸¹ Similarly, Israeli war crimes during the 2014 Israel-Hamas War (Operation Protective Edge) catalyzed the establishment and growth of the Jewish anti-occupation protest movement If Not Now.⁸² Dichter was doubtlessly aware of these trends and centered them in his explanatory note.

"There are those who present a decrease in the feeling of the connection between Israel and the Jews of the diaspora, both amongst Israelis and amongst young diaspora Jews.

This Basic Law, that codifies the Zionist principles of Israel as the state of the entire Jewish People, will renew this historical covenant among global Jewry, will strengthen

⁷⁹ While estimates vary, as of 2021, there were approximately 6,9300,000 Jews in Israel and 6,000,000 in America. The next largest diaspora populations are France (446,000), Canada (393,5000), and the UK (292,000) ("World Jewish Population Rises to 15.2 Million," The Jewish Agency, September 5, 2021, <https://www.jewishagency.org/jewish-population-5782/>); A notable exception to AIPAC's blind support policy occurred during the Oslo process when Prime Minister Yitzchak Rabin (Labor) accused the group of undermining his negotiations with the Palestinians (Conde Bruck, "Friends of Israel," The New Yorker, August 25, 2014, <http://www.newyorker.com/magazine/2014/09/01/friends-israel>).

⁸⁰ Ben Samuels, "With Democrats in Control, J Street Pushes New Mideast Agenda in Washington," *Haaretz*, April 11, 2021, <http://www.haaretz.com/us-news/.premium.HIGHLIGHT-how-j-street-could-become-more-influential-than-ever-in-the-biden-era-1.9701713>.

⁸¹ Gregory Smith et al., "A Portrait of Jewish Americans" (Pew Research Center, October 1, 2013), <https://www.pewforum.org/2013/10/01/jewish-american-beliefs-attitudes-culture-survey/>.

⁸² "IfNotNowMovement," accessed January 31, 2022, <https://www.ifnotnowmovement.org/>.

the connection of diaspora Jewry to Israel, and the connection of Israelis with the Jewish diaspora.”⁸³

I. Interim Summary

So far, this chapter has surveyed the Nation-State Law’s development from 2004 to 2015. By analyzing the content, surrounding rhetoric, and historical context of five key proposals (Koppel 2004, Dichter 2011, Shaked 2013, Netanyahu 2014, and Dichter 2015), this section suggests five possible contributing factors. In summary, these are:

1. Right-wing resentment towards the High Court’s perceived interventionist tendencies and liberal bias.
2. Domestic and international challenges to the legitimacy of Israel’s Jewish character.
3. The emergence and rise of the nation-state demand in Israeli-Palestinian negotiations.
4. Decreasing attachment to Israel among young diaspora Jews.
5. Netanyahu specifically may have backed the bill to outflank Naftali Bennet and his assurgent Jewish Home party.

Given this thesis’s limited scope and complexity of the Law’s development, it is impossible to definitively establish its causes. However, a few qualified observations are still warranted. While every one of these factors likely carries some causal weight, it appears that between 2004 and 2015, High Court resentment and Jewish nation-state legitimacy were the most salient motivators. Two reasons support this conclusion. First, each of the five proposals can be tied to at least one, and frequently both, of these two motivations. Second, the Law’s supporters often explicitly cited these factors in their explanatory notes and public comments. In contrast, the

⁸³ Avraham Dichter, Basic Law Proposal: Israel – The Nation-State of the Jewish People [Heb.], P/20/1989 (2015); English translation from Rabinovitch, *Defining Israel*, 105–10.

other three motivations are only sometimes present and/or based on mostly circumstantial evidence. Specifically, while the Law's development parallels the rise of the nation-state demand in Israeli-Palestinian negotiations, besides a single comment by Shaked, there is little evidence illustrating an explicit causal connection. The influence of Israeli-Jewish diaspora relationships has concrete textual evidence but is only referenced by Dichter's 2015 explanatory note. The relationship between Netanyahu's 2014 framework and the rise of the Jewish Home is similarly mostly circumstantial.

2. The Joint Committee Process (2017-2018)

After narrowly approving Netanyahu's framework, the Israeli cabinet established a committee, led by coalition chairman Tzachi Ha'negbi (Likud), to draft a final bill. Likely, this committee was never seriously expected to produce a final law. Rather, the government's more moderate factions hoped that a few months of obscure committee meetings would allow this volatile issue to blow over. However, their hopes were dashed.⁸⁴ After two years of directionless deliberations, the cabinet bypassed Ha'negbi's committee and directly approved Dichter's 2015 bill on May 7th, 2017. Since the Coalition's lone centrist party, Kulanu, expressed concern over the bill's legalization of segregated settlements and its codification of Hebrew Law, Justice Minister Ayelet Shaked (Jewish Home) announced that the government would revise Dichter's proposal.⁸⁵ A few days later, the bill passed a preliminary reading in the Knesset 48-41.⁸⁶

For a few weeks, Likud and the Jewish Home squabbled over control of Shaked's promised revision process. Finally, in July 2017, the government established the *Special Joint*

⁸⁴ Lis, Interview with Yonatan Lis.

⁸⁵ Yonatan Lis, "Ministers Approve the Nation-State Law, But Within Two Months an Updated Version Will Be Presented [Heb.]," *Haaretz*, May 7, 2017, <https://www.haaretz.co.il/news/politi/1.4071187>.

⁸⁶ Moran Azouli, "The Nation-State Law Passes a Preliminary Knesset Reading, Zoabi and Zahalka are Expelled from the Plenum [Heb.]," *Ynet*, May 10, 2017, <https://www.ynet.co.il/articles/0,7340,L-4960163,00.html>.

Committee of the Knesset Committee and the Constitution, Law, and Justice Committee for the Debate of the Basic Law Proposal: Israel – The Nation-State of Jewish People (hereafter: the Joint Committee) under the leadership of rising Likud star, MK Amir Ohana.⁸⁷ Born into a conservative middle-class Mizrahi-Jewish family in Beersheba, Ohana rose steadily through Likud's ranks as a hard-core Netanyahu loyalist. Besides his unflinching support for the Prime Minister, Ohana, who is gay, is well-known for his LGBTQ advocacy. It appears that his dual gay and right-wing identities produced an especially complex position on the Nation-State Law. He strongly supported its codification of Israel's Jewish identity and held no qualms about possible infringements on Palestinian collective or individual rights. However, he concurrently worried that the Law's omission of equality and elevation of Hebrew Law could threaten LGBTQ freedoms.⁸⁸

Between July 2017 and July 2018, the Joint Committee gathered 25 times. Their meetings featured legal advisors, academics, and activists who defended, criticized, and suggested revisions to Dichter's bill. MKs from every party responded to these experts, offered their own opinions, and more often than not, lambasted their opponents. Periodically, the Committee approved or rejected amendments. Since the Coalition held a determinative majority, practically speaking, closed-door Coalition meetings made the first revisions, and then the Joint Committee "rubber-stamped" them. Nevertheless, the Committee's minutes still provide a fascinating window into the bill's final revision process. They reveal when changes were made, why, and with whose support.

⁸⁷ Cohen Shirit, "Kish Is Dismissed: Ohana Will Stand at the Head of the Committee for the Nation-State Law Issue [Heb.]," *Makor Rishon*, July 10, 2017, <https://www.makorrishon.co.il/nrg/online/1/ART2/885/927.html>.

⁸⁸ Besides his Nation-State Law advocacy, Ohana is also known for his attempts to extend hate-crime protections to transgender people and protect gay men's right to surrogacy services. See: Matti Friedman, "Amir Ohana Is Gay and Right-Wing. How Far Can He Go in Israel?," *The New York Times*, June 6, 2019, sec. Opinion, <https://www.nytimes.com/2019/06/06/opinion/amir-ohana-israel-gay.html>.

The Joint Committee's deliberations can be divided into two stages. In Stage One (July 2017-January 2018) the Committee's legal advisor, Guy Bligh, guided a discussion of both the bill in total and each article specifically. From January to March 2018, the Joint Committee suspended deliberations while the Coalition revised the bill in closed-door meetings. During Stage Two (March – July 2018), the Committee focused on the two most controversial components – language (Article 4) and segregated settlements (Article 7b). In the end, the Committee retained Article 4 and modified Article 7 to codify the value of “Jewish settlement” without explicitly legalizing segregated settlements. Finally, in the early hours of July 19th, 2018, the Knesset passed the Nation-State Law by a margin of 62-55-2.

Analyzing the Law's development during this period yields four main conclusions. First, the Joint Committee process reaffirms the centrality of High Court resentment. Second, MKs articulated Jewish nation-state legitimacy concerns less frequently during this period (although they were not entirely absent). Third, during the Joint Committee's deliberations, Opposition MKs connected the Law to right-wing plans for West Bank annexation. Finally, pressure from actors inside and outside the Coalition removed or moderated Articles 1c and 7. Below I look more closely at Stage One and Stage Two.

A. Stage 1: Initial Debate (July 2017 – January 2018)

Between July 2017 and January 2018, the Joint Committee held ten meetings. Between expert commentaries, MKs from every party stated their faction's position on the bill. Their comments reveal three key trends. First, unsurprisingly, the Coalition generally supported the Nation-State Law while the Opposition opposed it. Second, the degree of support substantially varied within the Coalition. The Jewish Home and Likud (exempting a few dissenting voices) generally backed the bill as it was. Kulanu and Yisrael Beiteinu supported the bill in principle

but demanded extensive edits to emphasize equality. The two ultra-orthodox parties, Shas and United Torah Judaism (UTJ) initially opposed the bill as a secular-nationalist deviation from their traditional conception of religiously based Jewish peoplehood. However, they eventually supported it for political expediency. Third, while the entire Opposition condemned Dichter's bill, their critiques' tone and content varied. On one hand, the Centrist/Leftist Zionist parties (Yesh Atid, Zionist Union, and Meretz) argued that the bill disrupted Israel's delicate Jewish-democratic balance. In contrast, the Joint List (*el-ka'imah el-mushtaraka/ha'rishima ha'meshutefet*), a combined slate of four Arab/Arab-Jewish parties claimed that Israel could never be both truly democratic and Jewish.⁸⁹ Unlike the Centrist/Leftist Zionist parties, they argued that the bill couldn't be salvaged by merely inserting equality or reinforcing its references to the Declaration of Independence. Rather, to be a truly democratic state, Israel needed to drop its Jewish identity and transform itself into a "state of all its citizens."

I. Coalition

Kulanu (*All of Us*), a centrist party mostly focused on economic issues, held 10 seats in the Twentieth Knesset. While the party generally supported the concept of a Nation-State Law, they demanded extensive revisions to Dichter's draft. After the cabinet approved Dichter's 2015 proposal, MK Tali Ploskov announced her opposition to Article 9b (separate settlements) and Article 13 (Hebrew Law).⁹⁰ During the Joint Committee's initial deliberations, Ploskov similarly expressed concern that Article 1c (the interpretation clause) would disrupt Israel's Jewish-democratic balance.⁹¹ MK Rachel Azaria worried that the combination of Article 9a (protection

⁸⁹ In 2017-2018, the Joint List included *Balad* (secular-nationalist), *Ta'al* (secular-nationalist), *Hadash* (communist), and *Ra'am* (Islamist). Hadash defines itself as a Jewish-Arab party even though most of its voters are Christian or Muslim Palestinians.

⁹⁰ Lis, "Ministers Approve the Nation-State Law, But Within Two Months an Updated Version Will Be Presented."

⁹¹ "Special Joint Committee of the Knesset Committee and the Constitution, Law, and Justice Committee for the Debate the Basic Law Proposal: Israel – The Nation-State of Jewish People (hereafter: Joint Committee) Minutes #1 [Heb], July 26, 2017, Knesset Center for Information and Research, 29.

of heritage), Article 13 (Hebrew law), and the omission of the right to equality would enable misogynistic, homophobic, and transphobic discrimination.⁹² MK Roy Folkman accused the bill's supporters of being driven by a misguided sense of "panic" over the High Court's perceived liberal bias.⁹³

Yisrael Beiteinu (*Israel Our Home*), a secular right-wing party that traditionally represents Jewish immigrants from the former Soviet Union, held six seats in the Twentieth Knesset. As an ultra-nationalist party, Yisrael Beiteinu supported the bill's codification of Israel's Jewish identity. However, as an intensely secular party, it expressed concerns over the bill's perceived religious tilt. In November 2017, amid the Joint Committee's initial discussions, Yisrael Beiteinu's leadership sent a letter to chairman Ohana, outlining their reservations. Specifically, they worried that the bill's references to Hebrew Law (Article 13), Shabbat (Article 12), and the Jewish calendar (Article 10) would transform Israel into a "halachic state." They also recommended eliminating Hebrew's elevation over Arabic (Article 5), adding the value of equality to Article 1, and aligning the bill's immigration language (Article 6) with the Declaration of Independence. The latter suggestion likely stemmed from a fear that the original version – "Every *Jew* may immigrate to the Land" (emphasis my own) – would exclude former Soviet Union immigrants recognized as Jewish under the *Law of Return* (1950) but not under orthodox *halacha*.⁹⁴ Similarly, during the Joint Committee's initial deliberations, MK Oded Forer repeated his party's demand to align Article 1 with the Declaration of Independence.⁹⁵

⁹² Joint Committee Minutes #3 [Heb.], September 26, 2017, Knesset Center for Information, 33.

⁹³ Joint Committee Minutes #9 [Heb.], December 11, 2017, Knesset Center for Information, 7.

⁹⁴ Yaki Admaker, "First Publication: The Demands of Yisrael Beiteinu to Support the Nation-State Law [Heb.]" Walla, November 13, 2017. <https://news.walla.co.il/item/3111066>; Orthodox *halacha*, defines a Jew as someone born to a Jewish mother or converted under a recognized orthodox rabbi. However, the *Law of Return*, as amended in 1970, recognizes any grandchild of a Jew. Accordingly, hundreds of thousands of Jewish immigrants, mostly from the former Soviet Union, are allowed to immigrate under the *Law of Return* even though they are not recognized as Jewish by Israel's official *rabbinate*.

⁹⁵ Joint Committee Minutes #9, December 11th, 2017, Knesset Center for Information and Research, 17.

Israel's approximately one million ultra-orthodox Jews, also known as *Haredim* (literally: the "feared" or "the awed"), were represented by two parties in the Twentieth Knesset – United Torah Judaism party (UTJ), an Ashkenazi party with six seats and Shas, a Sephardic party with seven seats.⁹⁶ Complicated ideological and political considerations led both parties to uneasily support Dichter's bill. In general, ultra-orthodox Judaism pairs an extremely pious lifestyle with the rejection of "modernity." Zionism, as an originally secular-nationalist movement, is therefore antithetical to their worldview. Thus, according to the ultra-orthodox perspective, the Law's declaration of Israel as "the nation-state of the Jewish People" undermines traditional Jewish learning and practice as the foundation of Jewish peoplehood. Furthermore, its failure to define who qualifies as a "Jew," led many ultra-orthodox to fear that the Law could justify new rights for Conservative, Reform, and Reconstructionist Judaism – such as legal recognition of their marriages and conversions.⁹⁷ However, while the ultra-orthodox reject Zionism *ideologically*, they are deeply dependent on the Israeli state *politically*. Impoverished Haredi families rely on government welfare to sustain large families and full-time *yeshiva/kollel* students.⁹⁸ Friendly coalition governments allow young Haredi men to skip their mandatory military service and study Torah full-time. Accordingly, while they were uncomfortable with the bill's ideological ramifications, both Shas and UTJ quietly supported the bill to preserve a coalition government that overall supported their core interests.⁹⁹ Later on, the parties' final approval would be secured by the coalition chairman, David Amsalem's, promise that the Law would not change the

⁹⁶ UTJ is a coalition of two smaller ultra-orthodox parties. *Agudat Israel* (Jewish Association) represents Chassidic Jews while *Degel HaTorah* (Flag of the Torah) represents Lithuanian/*Mitnagdim* Jews. As of 2019, there were approximately 1,125,000 ultra-orthodox Jews in Israel representing 12% of the country's population (Gilad Malach and Lee Cahaner, "2019 Statistical Report on Ultra-Orthodox Society in Israel: Highlights" (The Israel Democracy Institute, December 24, 2019), <https://en.idi.org.il/articles/29348>).

⁹⁷ Lis, Interview with Yonatan Lis.

⁹⁸ Institutions of traditional Jewish learning.

⁹⁹ Neuman Kalman, "Religion, Religious Ideologies, and the Nation-State Law," in *Defining Israel: The Jewish State, Democracy, and the Law*, ed. Simon Rabinovitch (Cincinnati: Hebrew Union College Press, 2018), 266–69.

“status-quo” between religion and state.¹⁰⁰ Nevertheless, both parties hinted at their displeasure during the Joint Committee’s initial meetings. MK Yoav Ben-Tzur (Shas) stated that his party had “a few more problems” with the bill and requested additional time for deliberation.¹⁰¹ MK Ya’akov Asher (UTJ) similarly said that “it is no secret that we don’t love the Nation-State Law.”¹⁰²

Jewish Home (*Ha’bayit Ha’yehudi*), a far-right orthodox party, held eight seats in the Twentieth Knesset. While it also attracts many secular and traditional voters, the party’s core constituency is the National-Religious/Religious-Zionist community (*Dati Leumi/Ha’tziyonut Ha’datit*) which constitutes about 10% of Israel’s citizenry.¹⁰³ Unlike the ultra-orthodox, this group is fervently Zionist and pairs traditional religious practice with modern social/economic integration. The National-Religious often attribute messianic significance to the modern Israeli state and believe in Jewish ownership over all of greater Palestine/Israel. Furthermore, they frequently criticize the perceived regression of Israel’s Jewish identity and the rise of liberal individualism.¹⁰⁴ The bill’s hyper-nationalist rhetoric thus excellently fits their worldview.

Throughout Stage One, Jewish Home representative, MK Nissan Slomiansky, frequently expressed his party’s admiration for the bill. At times, he framed the proposal as a response to the High Court’s perceived liberal interventionism.

“It is possible that today the High Court operates – maybe – based on [the idea] that the State of Israel is a state of all its citizens. And this law comes to say that this is not true,

¹⁰⁰ Ari Kalman, “With Haredi votes – the Nation-State Law passes [Heb.],” *Bchadrei Chadadrim*, July 19, 2018, <https://www.bhol.co.il/news/928968>.

¹⁰¹ Joint Committee Minutes #4 [Heb.], October 23, 2017, Knesset Center for Information and Research, 17.

¹⁰² Joint Committee Minutes #6 [Heb.], November 13, 2017, Knesset Center for Information and Research, 34.

¹⁰³ Neha Sahgal and Alan Cooperman, “Israel’s Religiously Divided Society” (Pew Research Center, March 8, 2016), <https://www.pewforum.org/2016/03/08/israels-religiously-divided-society/>.

¹⁰⁴ Kalman, “Religion, Religious Ideologies, and the Nation-State Law,” 270–73. On the National-Religious generally see: “Leap of Faith: National Religious and the Israeli- Palestinian Conflict.”

that the State of Israel is a Jewish State, that gives full equality to everyone. But it is a Jewish State.”¹⁰⁵

Nevertheless, Slomiansky still showed openness to certain revisions including codifying Arabic as a “second official language” rather than a language of “special status.”¹⁰⁶

Likud, Israel’s premier secular-right-wing party, held 30 seats in the Twentieth Knesset. While its representatives mostly supported the Nation-State Law, certain gradations emerged. Unsurprisingly, Dichter wholeheartedly supported his bill. He denied MK Folkman’s (Kulanu) claim that it was driven by “panic” over the High Court’s interventionism. Rather, he highlighted the Joint List’s opposition to Calderon, Stern, and Begin’s comparatively progressive alternative proposals as proof that Israel needed to reassert its legitimacy.¹⁰⁷ MK Sharren Haskel framed the bill as a needed response to the High Court’s unchecked liberal bias.

“We have disregarded the Jewish definition. Not completely, but there has been some disregard. Therefore, when one checks certain things in the High Court, that directly influence the state, the citizens, or in terms of how we want to see it [the state] in the future, in terms of a Jewish and democratic state, there is an imbalance. Therefore, the purpose of this legislation is to balance these concepts [Judaism and democracy], in terms of Basic Laws and in terms of the Court.”¹⁰⁸

While he supported the bill overall, Joint Committee chairman, Amir Ohana suggested substantial revisions. Specifically, he proposed subsuming Article 2 (democracy) into Article 1 so that the interpretation clause would apply equally to Israel’s Jewish and democratic

¹⁰⁵ Joint Committee Minutes #3 [Heb.], September 26, 2017, Knesset Center for Information and Research, 24.

¹⁰⁶ Joint Committee Minutes #7 [Heb.], November 17, 2017, Knesset Center for Information and Research, 58.

¹⁰⁷ Joint Committee Minutes #9 [Heb.], December 11, 2017, Knesset Center for Information and Research, 9-11.

¹⁰⁸ Joint Committee Minutes #1 [Heb.], July 26, 2017, Knesset Center for Information and Research, 31.

identities.¹⁰⁹ Similarly, he demanded the removal of Article 13 (Hebrew Law). While Ohana focused on Article 13's redundancy with the *Foundations of Law Act* (1980), he may also have been motivated by MK Azaria's (Kulanu) concerns that it would justify discrimination against LGBTQ+ Israelis.¹¹⁰ Unlike the rest of Likud and in line with his earlier proposal, MK Ze'ev Begin completely opposed Dichter's draft. Like the Center-Left Zionist bloc, he was especially troubled by the absence of the right to equality.¹¹¹

II. Opposition

The Center-Left Zionist bloc was represented by three parties in the 20th Knesset. The center-left Zionist Union (*Ha'machaneh Ha'tzioni*) a short-lived alliance between the Israeli Labor party and Tzipi Livni's Ha'tnuah party held 24 seats. Yair Lapid's centrist Yesh Atid party held 19 seats. The leftist Meretz party held five seats. These three factions offered especially patriotic criticism. They emphasized their support for the bill's symbolic elements and its recodification of Israel as "the nation-state of the Jewish people."¹¹² However, they maintained that this later claim must parallel acknowledgment of the state's duty to uphold democracy and human rights. Certain MKs even stated that they would support the bill if it included the right to equality.¹¹³ Similarly, Centrist and Leftist MKs frequently attacked the interpretation clause (Article 1c), legalization of segregated settlements (Article 9b), and the elevation of Hebrew over Arabic (Article 5) as racist, anti-democratic, and antithetical to the Declaration of

¹⁰⁹ Joint Committee Minutes #9 [Heb.], December 11, 2017, Knesset Center for Information and Research, 11-12.

¹¹⁰ Joint Committee Minutes #10 [Heb.], January 3, 2018, Knesset Center for Information and Research, 3.

¹¹¹ Joint Committee Minutes #2 [Heb.], September 18, 2017, Knesset Center for Information and Research, 26-27.

¹¹² Joint Committee Minutes #4 [Heb.], October 23, 2017, Knesset Center for Information and Research, 17.

¹¹³ Joint Committee Minutes #1 [Heb.], July 26, 2017, Knesset Center for Information and Research, 24-27.

Independence.¹¹⁴ Finally, this bloc repeatedly highlighted the sense of betrayal felt by the Druze community, who serve in the IDF and generally accept Israel's Jewish identity.¹¹⁵

The Joint List, a combined slate of four small Arab and Arab-Jewish parties, held 13 seats in the Twentieth Knesset. Like the rest of the Opposition, they attacked the bill as anti-democratic and racist. However, unlike their Center-Left peers, the Joint List argued that merely inserting "equality" could not salvage the bill. In their opinion, the balanced Jewish-democratic polity allegedly outlined in the Declaration of Independence was an "oxymoron."¹¹⁶ Rather, Jewish political identity and democracy are inevitably contradictory. They argued that since 1948, Israel's democratic identity has merely been a façade disguising a fundamentally unequal Jewish ethno-state. The bill's symbolism and policy only continued this trend. Accordingly, in line with the 2007 Adalah Constitution, the Joint List called for Israel to abandon its Jewish nation-state framework and transform into a fully democratic "state of all its citizens."¹¹⁷

A few Opposition MKs further elucidated the Law's causal factors. At times, they expounded on the Law's judicial roots. MK Revital Swid (Zionist Union) classified the bill as part of the Israeli Right's "war" against the judiciary.¹¹⁸ MK Yousef Jabreen (Joint List) argued that the legalization of segregated settlements aimed to undermine *Ka'adan*.¹¹⁹

¹¹⁴ Joint Committee Minutes #2 [Heb.], September 18, 2017, Knesset Center for Information and Research, 17-18; Joint Committee Minutes #9 [Heb.], December 11, 2017, Knesset Center for Information and Research, 15; Joint Committee Minutes #6 [Heb.], November 13, 2017, Knesset Center for Information and Research, 44.

¹¹⁵ Joint Committee Minutes #2 [Heb.], September 18, 2017, Knesset Center for Information and Research, 17-28; Joint Committee Minutes #3 [Heb.], September 26, 2017, Knesset Center for Information and Research, 20-21; See also Rami Zeedan. "Reconsidering the Druze Narrative in the Wake of the Basic Law: Israel as the Nation-State of the Jewish People." *Israel Studies* 25, no. 3 (2020): 158.

¹¹⁶ Joint Committee Minutes #4 [Heb.], October 23, 2017, Knesset Center for Information and Research, 21.

¹¹⁷ Joint Committee Minutes #2 [Heb.], September 18, 2017, Knesset Center for Information and Research, 41; Joint Committee Minutes #9 [Heb.], December 11, 2017, Knesset Center for Information and Research, 18-19; "The Democratic Constitution."

¹¹⁸ Joint Committee Minutes #2 [Heb.], September 18, 2017, Knesset Center for Information and Research, 17.

¹¹⁹ Joint Committee Minutes #2 [Heb.], 39.

Other Opposition comments suggest a connection with West Bank annexation. Since its founding, Israel's Jewish-democratic identity has relied on a delicate demographic balance.¹²⁰ Only a clear Jewish majority within the Green Line allows the state to maintain electoral democracy without sacrificing its Jewish character. Were Israel to formally annex the West Bank, it would face two choices. First, it could preserve electoral democracy, extend the franchise to West Bank Palestinians, and thus lose its clear Jewish parliamentary majority. Alternatively, it could give up its democratic identity, deny annexed Palestinians voting rights, and maintain the state's Jewish character. For a modern Israeli Right that wants both West Bank annexation and at least a democratic façade, these choices pose an ideological and political dilemma. Opposition MKs recognized this paradox and argued that the Right was promoting the Nation-State Law as a clever exit tactic.¹²¹ Theoretically, once the state's character was frozen in a substantively entrenched Basic Law, it would be more difficult for millions of annexed West Bank Palestinians to transform Israeli into a binational or even explicitly Palestinian state.

B. Stage 2: Revision (March – July 2018)

After three months of closed-door intra-Coalition negotiations, Ohana presented a revised bill to the Joint Committee on March 13th, 2018. In response to suggestions from their legal advisor, Guy Bligh, the Coalition aligned the Jewish calendar (now Article 8), Jewish holidays and Shabbat (now Article 10), and primacy (now Article 12) provisions with pre-existing legislation. To align the bill with *Basic Law: Jerusalem – Capital of Israel*, the Coalition added the adjectives “complete and united” to the Jerusalem provision (now Article 13). To avoid

¹²⁰ Israel's Jewish majority is in large part premised on the expulsion of over 700,000 Palestinians in 1947-48 (Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood*, 1st ed (Boston: Beacon Press, 2006), 1); A much smaller number of Jews were also expelled from the West Bank.

¹²¹ Joint Committee Minutes #1 [Heb.], July 26, 2017, Knesset Center for Information and Research, 17; Joint Committee Minutes #2 [Heb.], September 18, 2017, Knesset Center for Information and Research, 11.

redundancy with *Basic Law: Jerusalem – Capital of Israel*, the Coalition dropped the “protection of holy sites” provision (previously Article 14). The immigration article’s original language – “every Jew has the right to immigrate to Israel” (previously Article 6) was replaced by “The state will be open to Jewish immigration and the ingathering of exiles” (now Article 5). While Arabic retained its “special status,” a new sub-article clarified that “nothing in this article shall affect the status given to the Arabic language before this law came into force” (Article 4c).¹²² During the Coalition’s closed-door negotiations, Kulanu representatives repeated their party’s vehement opposition to the interpretation clause (previously Article 1c). Eventually, they agreed to a deal pairing the omission of the interpretation article with the elimination of the “purpose” article (Article 2).¹²³ Importantly, the right to segregated settlements (now Article 7b), remained.¹²⁴

Since the Coalition had already agreed on the revised draft, practically speaking, its introduction to the Joint Committee was a mere formality. Accordingly, after only two hours of debate, the Committee rubber-stamped the new version.¹²⁵ Two weeks later, the updated bill passed its first Knesset vote 64-50 and returned to the Joint Committee for further debate.¹²⁶ Over the next three months, the Committee focused on the bill’s two most controversial components: language (Article 4) and segregated settlements (Article 7b). Despite substantive intra-Coalition resistance to Article 4, the Joint Committee actually made this section slightly more discriminatory. Clues from their minutes suggest that pressure from Netanyahu likely drove this development. Following harsh criticism from leading political and legal figures inside

¹²² Joint Committee Minutes #11 [Heb.], March 13, 2018, Knesset Center for Information and Research, 4-5.

¹²³ Joint Committee Minutes #11 [Heb.], March 13, 2018, Knesset Center for Information and Research, 17.

¹²⁴ Joint Committee Minutes #11 [Heb.], March 13, 2018, Knesset Center for Information and Research, 4-5.

¹²⁵ Joint Committee Minutes #12 [Heb.], March 13, 2018, Knesset Center for Information and Research.

¹²⁶ Shachar Chai, “The Nation-State Law Passes its First Knesset Vote [Heb.],” *Ynet*, April 30, 2018, <https://www.ynet.co.il/articles/0,7340,L-5247049,00.html>.

and outside the Coalition, the Committee replaced Article 7b's legalization of segregated settlements with the amorphous "value of Jewish settlement."

I. Language

When the Joint Committee restarted deliberations on May 16th, 2018, Article 4 read as follows:

4. Language

- a. Hebrew is the State language.
- b. The Arabic language has a special status in the State; its speakers have the right of linguistic access to state services. Details for this issue will be determined by law.
- c. Nothing in this article shall affect the status given to the Arabic language before this law came into force.¹²⁷

The Coalition was split over Article 4. While MK Slomiansky (Jewish Home) had previously supported recognizing Arabic as a "second official language," his party's new Joint Committee representative, MK Bezalel Smotrich, opposed even a "special status." Rather, he thought that only Hebrew deserved official recognition.¹²⁸ MK Anat Berko (Likud) supported the article as it was.¹²⁹ MK Folkman (Kulanu) called Article 4 "a finger in the eye" of the Arab minority.¹³⁰ MK Uri Maklev (UTJ) expressed his support for codifying Arabic as an "official second language."¹³¹ Unsurprisingly, the Opposition universally condemned Article 4. MK Yael German (Yesh Atid) supported codifying Arabic as a "second official language."¹³² MK Jabreen (Joint List) argued that Article 4's sole purpose was to offend Arabs.¹³³

¹²⁷ Joint Committee Minutes #11 [Heb.], March 13, 2018, Knesset Center for Information and Research, 4.

¹²⁸ Joint Committee Minutes #12 [Heb.], March 13, 2018, Knesset Center for Information and Research, 3.

¹²⁹ Joint Committee Minutes #14 [Heb.], May 13, 2018, Knesset Center for Information and Research, 26.

¹³⁰ Joint Committee Minutes #14 [Heb.], May 13, 2018, Knesset Center for Information and Research, 48.

¹³¹ Joint Committee Minutes #19 [Heb.], July 16, 2018, Knesset Center for Information and Research, 96; Joint Committee Minutes #20 [Heb.], July 16, 2018, Knesset Center for Information and Research, 12.

¹³² Joint Committee Minutes #14 [Heb.], May 13, 2018, Knesset Center for Information and Research, 20.

¹³³ Joint Committee Minutes #21 [Heb.], July 17, 2018, Knesset Center for Information and Research, 6.

Despite disagreement even among the Coalition, the Joint Committee reduced rather than increased Arabic's stature. The Committee's legal advisor, Guy Bligh, warned that Article 4b's original language – "[Arabic] speakers have the right of linguistic access to state services" – could inadvertently establish a constitutional right to Arabic usage in government settings.¹³⁴ In response, the Coalition replaced this text with far less operable language – "arrangements regarding the use of Arabic in state institutions or vis-à-vis them will be set by law."¹³⁵ The offensive differentiation between Hebrew's "state language" status and Arabic's "special status" remained. Clues from the Joint Committee's minutes suggest that pressure from Prime Minister Netanyahu may have contributed to Article 4's endurance. For example, MK Folkman (Kulanu) lamented that,

"Within the coalition's compromises, there was someone for which this was important to him. There are also, if you want [to say], populist reasons for the law – this is one of those articles"¹³⁶

MK Ahmad Tibi (Joint List) similarly cited MK Levin (Likud) as saying that Netanyahu's support drove Article 4's preservation.¹³⁷

II. Protection of Heritage

When the Joint Committee resumed deliberations, the "Protection of Heritage" provision (now Article 7) remained unchanged from Dichter's 2015 draft. The article read,

7. Protection of Heritage

a. All residents of Israel, regardless of religion or nationality, are entitled to work to preserve their culture, heritage, language, and identity.

¹³⁴ Joint Committee Minutes #14 [Heb.], May 16, 2018, Knesset Center for Information and Research, 4.

¹³⁵ Joint Committee Minutes #15 [Heb.], 12:00 PM, July 17, 2018, Knesset Center for Information and Research, 13.

¹³⁶ Joint Committee Minutes #19 [Heb.], May 16, 2018, Knesset Center for Information and Research, 48.

¹³⁷ Joint Committee Minutes #21 [Heb.], July 17, 2018, Knesset Center for Information and Research, 5.

b. The state may allow a community that includes followers of a single religion or members of a single nation to establish separate communal settlements.¹³⁸

Sub-article 7b catalyzed fierce condemnation from leading political and legal figures. In an open letter to Netanyahu, Ohana, and Knesset chairman Yuli Edelstein (Likud), President Reuven Rivlin argued that Article 7b's legalization of segregated settlements contradicted Israel's delicate Jewish-democratic balance and urged the Joint Committee to drop the controversial clause.¹³⁹ Chief Knesset legal advisor, Eyal Yinon, similarly wrote an open letter questioning Article 7b's constitutionality. He acknowledged that the High Court had previously allowed segregated settlements for Jews in Jerusalem's Old City (*Burkan v. Treasury Minister*), ultra-orthodox Jews (*Am Chofshi v. Minister of Construction and Housing*), and Bedouins (*Avitan v. Israel Land Authority*).¹⁴⁰ However, Yinon emphasized that these exemptions covered minorities with "unique characteristics." Article 7b's legalization of discrimination based on nationality or religion was declared *prima facie* unconstitutional in *Ka'adan*.¹⁴¹ Accordingly he warned that the High Court might strike down Article 7b under the "Unconstitutional Amendment Doctrine."¹⁴² According to this theory, which had not yet been adopted in Israeli case law, courts can overturn constitutional amendments contradicting the "basic structure" of

¹³⁸ Joint Committee Minutes #11 [Heb.], March 13, 2018, Knesset Center for Information and Research, 5.

¹³⁹ Reuven Rivlin, "Letter to Netanyahu, Edelstein, Ohana, Committee Members, Knesset Members [Heb.]," July 8, 2018, <https://www.haaretz.co.il/news/politi/1.6263723>.

¹⁴⁰ See HJC 114/78 *Burkan v. Treasury Minister* [Heb.] (1978) (Isr.); HJC 4906/98 *Am Chofshi v. The Ministry of Construction and Housing* [Heb.] (2000) (Isr.); HJC 528/88 *Avitan v. Israel Land Authority* [Heb.] (1989) (Isr.).

¹⁴¹ HJC 6698/95 *Ka'adan v. Israel Land Administration* (2000) (Isr.).
<https://versa.cardozo.yu.edu/opinions/ka%E2%80%99adan-v-israel-land-administration>.

¹⁴² Eyal Yinon, "Letter to Ohana and the Joint Committee [Heb.]," July 10, 2018, <https://www.haaretz.co.il/news/politi/1.6263723>.

their country's constitutional system.¹⁴³ The relationship between the final Nation-State Law and the Unconstitutional Amendment Doctrine is covered in Chapter Four.

As with Article 4, the Coalition was split over Article 7b. Chairman Ohana felt “uncomfortable” with segregated settlements but also suggested that they might be necessary for the “Judaization” of the Galilee (far North) and Negev (far South) regions.¹⁴⁴ MK Folkman (Kulanu), called Article 7b “problematic.”¹⁴⁵ MK Forer (Yisrael Beiteinu) worried that Article 7b could exclude non-*halachically* recognized Jews from Jewish-only settlements.¹⁴⁶ While the ultra-orthodox parties never explicitly stated their position, MK Michael Malchiel (Shas) expressed support for Haredi-only communities – a position legitimized by *Am Chofshi*.¹⁴⁷ Unsurprisingly, Article 7b's most ardent support came from MK Smotrich (Jewish Home). In a clear reference to *Ka'adan*, he expressed his hope that the provision would “balance” the High Court's wide interpretation of equality and guarantee the “Judaization” of the Galilee and Negev.¹⁴⁸

While the Opposition universally condemned Article 7, certain divisions persisted. While the Centrist/Leftist Zionist parties criticized Article 7a as potentially legitimizing misogyny under the guise of “heritage protection,” the often socially conservative Joint List refrained from

¹⁴³ Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*, Oxford Constitutional Theory (Oxford: Oxford University Press, 2017), 39–70.

¹⁴⁴ Joint Committee Minutes #15 [Heb.], 10:00 AM, July 10, 2018, Knesset Center for Information and Research, 15.

¹⁴⁵ Joint Committee Minutes #11 [Heb.], March 13, 2018, Knesset Center for Information and Research, 17.

¹⁴⁶ Joint Committee Minutes #15 [Heb.], 10:00 AM, July 10, 2018, Knesset Center for Information and Research, 71.

¹⁴⁷ Joint Committee Minutes #15 [Heb.], 10:00 AM, July 10, 2018, Knesset Center for Information and Research, 75–78.

¹⁴⁸ Joint Committee Minutes #15 [Heb.], 12:00 PM, July 10, 2018, Knesset Center for Information and Research, 77–78.

this attack.¹⁴⁹ While representatives from across Opposition denounced Article 7b as “apartheid,” only the Zionist parties emphasized its incongruency with the Declaration of Independence.¹⁵⁰

After further intra-Coalition negotiations, Ohana announced Article 7’s final language on July 16th, 2018.¹⁵¹ The new text, suggested by Jewish Home leader Naftali Bennet, stated “The State views the development of Jewish settlement as a national value and shall act to encourage its establishment and strengthening.”¹⁵² The government’s junior legal advisor, Raz Nazri, assured the Joint Committee that the new version would not allow religious/national segregation and thus remained constitutional. Exempting certain Jewish Home MKs, the entire Coalition appears to have accepted this compromise.¹⁵³ However, the Opposition still condemned the new language. Centrist and Leftist Zionist MKs argued that while “Jewish settlement” may have been important during the state’s early years, its time had passed. Instead, they advocated equal investment in all communities.¹⁵⁴ The Joint List opposed past or present Jewish settlement as an inherently discriminatory concept.¹⁵⁵

III. Passage

Besides Articles 4 and 7, the Joint Committee made a few more final adjustments. In response to Ohana’s demand, the “Hebrew Law” provision (previously Article 11), was replaced with the addition of “religious heritage” to Article 1.¹⁵⁶ The diaspora clause (now Article 6) was

¹⁴⁹ Joint Committee Minutes #11 [Heb.], March 13, 2018, Knesset Center for Information and Research, 11-16.

¹⁵⁰ Joint Committee Minutes #11 [Heb.], March 13, 2018, Knesset Center for Information and Research, 11; Joint Committee Minutes #15 [Heb.], 10:00 AM, July 10, 2018, Knesset Center for Information and Research, 55.

¹⁵¹ Joint Committee Minutes #19 [Heb.], July 16, 2018, Knesset Center for Information and Research, 3.

¹⁵² Ze’ev Kam and Michael Shemesh, “Nation-State Law: Netanyahu and Bennet Read an Agreement on the Jewish Settlement Article [Heb.],” Kan, July 15, 2018, <https://www.kan.org.il/Item/?itemId=34650>.

¹⁵³ MK Smotrich (Jewish Home) harshly rejected Nazri’s interpretation (Joint Committee Minutes #19 [Heb.], July 16, 2018, Knesset Center for Information and Research, 54-64).

¹⁵⁴ Joint Committee Minutes #19 [Heb.], July 16, 2018, Knesset Center for Information and Research, 15; Joint Committee #19 [Heb.], 28.

¹⁵⁵ Joint Committee Minutes #19 [Heb.], 10.

¹⁵⁶ Joint Committee Minutes #19 [Heb.], July 16, 2018, Knesset Center for Information and Research, 84.

also slightly adjusted. Finally, on July 18th at 9:20 AM, the Joint Committee approved a final draft. After many hours of debate, the bill passed its second and third Knesset votes 62-55-2. Excepting four Coalition defections, it was ratified almost exactly along party lines. MK Benny Begin (Likud) and MK Orly Levy Abekasis (unaffiliated but elected to Yisrael Beiteinu) abstained. Two center-right Druze MKs, Hamad Amar (Yisrael Beiteinu) and Akram Hasson (Kulanu) voted against the Law.¹⁵⁷

C. Explanation: Reigning in the High Court

This analysis of the Nation-State Law's development between 2017 and 2018 suggests that High Court resentment remained a robust motivating factor. Throughout the Joint Committee's deliberations, the Law's most ardent defenders, especially from Likud and the Jewish Home, frequently discussed the need to "balance" the High Court's perceived preference for democracy over Israel's Jewish identity. However, this claim must be qualified by recognizing that Kulanu, and to a lesser extent Yisrael Beiteinu, opposed this motivation. Rather, they worked hard to remove or moderate the most directly anti-judicial articles – particularly the interpretation and segregation clauses. Furthermore, this section highlights Opposition comments connecting the Law to Right-wing desires to formally annex the West Bank.

The remaining factors highlighted in Section One of this chapter appear to be less salient during the Joint Committee period. Between 2017 and 2018, the Law's proponents frequently advocated codifying Israel's Jewish character as a reassertion of a self-evident fact. However, except for certain comments by Dichter, they didn't phrase these arguments in the language of "legitimacy" that characterized many claims made between 2004 and 2015. The dearth of

¹⁵⁷ "Basic Law: Israel – Nation State of the Jewish people – accepted on a third vote," Knesset, July 19, 2018, <https://main.knesset.gov.il:443/Activity/plenum/Votes/pages/vote.aspx?voteid=31013>.

meaningful peace process activity between 2017 and 2018 likewise discounts this factor's influence. Similarly, Dichter's 2015 emphasis on Israel-diaspora tensions is notably absent from the Joint Committee process.

Besides the continued influence of High Court resentment, this section also describes the Law's evolution. It reveals how pressure from actors inside and outside the Coalition eliminated or moderated some of the Law's most controversial components. Two key developments are worth highlighting. First, pressure from Kulanu was instrumental in removing the interpretation clause (Article 1c). Second, Rivlin and Yinon's public letter decrying Article 7b catalyzed its transformation into the amorphous "value of Jewish settlement" article.

3. Israel's Rightward Shift

So far, this chapter has examined the Nation-State Law's evolution between 2004 and 2018. Specifically, it examined five key preliminary proposals between 2004 and 2015 (Section One) and the Law's final revisions under the Joint Committee (Section Two). These analyses emphasized the Law's multi-causal development. In particular, they highlighted the particular saliency of right-wing antagonism towards the High Court's perceived interventionist tendencies and liberal bias. They also emphasized legitimacy concerns as an important secondary factor. However, the Law's development might also be tied to long-term Israeli political trends. Specifically, a macro-analysis of Israeli political history emphasizes the Law's alignment with the increasing power of the Israeli Right generally and Netanyahu in particular.

A. The Ascent of the Modern Israeli Right

The Nation-State Law is a clear product of the modern Israeli Right. For the past few decades, and especially since the 1990s Oslo process, the Right has supported settlement expansion, the repression of Palestinian rights inside and over the Green Line, the increasing

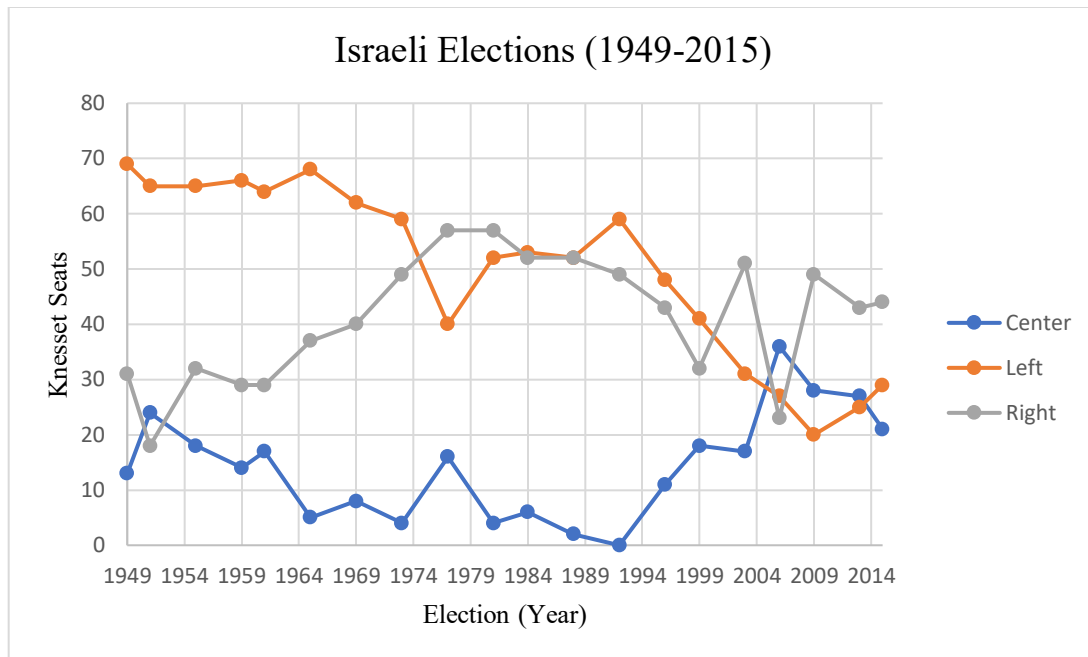
Judaization of the public sphere, formal West Bank annexation, and Knesset supremacy over the Judiciary. Prior to the Oslo Accords, the mainstream Israeli Left was likewise traditionally hardline on security issues. However, since the 1990s, this faction typically advocates for a Two-State Solution, Palestinian rights within Israel, judicial independence, and human rights.¹⁵⁸ In short, the Law's ethnonationalist and majoritarian tone is most congruent with the Right's contemporary political program. Furthermore, Law is also connected to the Right empirically. Every mainstream Nation-State Law proposal between 2004 and 2015 was drafted by right-wing politicians or activists. In contrast, the Israeli Left and Center produced alternative bills emphasizing equality and democracy rather than Jewish supremacy. Throughout the Joint Committee's 2017-2018 debates, the leading right-wing parties (Likud and the Jewish Home) ardently supported the Nation-State Law while the Centrist/Leftist/Palestinian Opposition was uniformly opposed.

Once the Nation-State Law is identified as a project of the modern Israeli Right, connections with long-term electoral trends become clear. For its first quarter-century, Israeli politics was dominated by Left-leaning Labor Zionist parties (Mapai and Alignment). However, following the fifth Knesset's election in 1961, and particularly since Menachem Begin's 1977 victory, Israeli politics has moved steadily rightward.

*Figure 4: Israeli Electoral Politics (1949-2015)*¹⁵⁹

¹⁵⁸ Micah Goodman and Eylon Levy, *Catch-67: The Left, the Right, and the Legacy of the Six-Day War* (New Haven: Yale University Press, 2018), 19–62.

¹⁵⁹ Data from: Knesset.gov.il. "Knesset Elections Results." Accessed January 24, 2022. https://knesset.gov.il/description/eng/eng_mimshal_res1.htm.



Faction	Parties*
Left	Mapai, Mapam, Maki, Ahdut Ha'avodah, Alignment, Rafi, Ha'olam Ha'zeh-Koach, Hadash, Rakah, Ratz, Moked, Hadash, Machaneh Sheli, Progressive List for Peace, Labor, Meretz, One Israel, Am Ahad, Labor-Meimad, New Movement-Meretz, Zionist Union, Israel's Left
Center	General Zionists, Progressive Party, WIZO, Liberal Party, Independent Liberals, State List, Democratic Movement for Change, Telem, Shinui, Yahoo, Israel Be'aliyah, Center Party, The Third Way, Kadima, Gil, Kadima, Yesh Atid, Ha'tnua, Kulanu
Right	United Religious Front, Herut, Fighter's List, Hapo'el Ha'mizrachi, National Religious Party, Gahal, Ha'merkaz Ha'hohifshi, Likud, Shlomzion, Tehiya, Tzomet, Tehiya-Tzomet, Kach, Ometz, Moledet, National Union, Yisrael Beiteinu, Jewish Home, Likud-Yisrael Beitenu

*Haredi, Palestinian, and early Sephardic (i.e., Yemenite Association) parties are excluded from this tally.

Broadly speaking, the Law's passage might be viewed as the climax of six decades of right-wing ascent. However, this graph also emphasizes that empirically, the Law could only have developed during the 2000s and 2010s. Only since 2000 has the Israeli Right sustained substantial majorities from election to election. Similarly, this period was dominated by Right-wing or Center-Right Prime Ministers – Ariel Sharon, Ehud Olmert, and Benjamin Netanyahu. Their consistently right-leaning coalitions likely provided a fertile ideological ecosystem to develop and ultimately pass the Nation-State Law.

B. Netanyahu

Besides Israel's general rightward shift, the Nation-State Law might also be tied to Netanyahu's political ascent. Netanyahu himself does not appear to have played an especially important role in the Law's development. The activists and politicians who led its early development, while mostly aligned with his agenda, generally remained outside his immediate circle. In fact, Netanyahu never formally supported the Law until 2014 – ten years after Koppel's draft and three years after Dichter's 2011 proposal. Nevertheless, the Law might still be connected to the *political culture* of the Netanyahu era. For twelve years, Benjamin Netanyahu derived his electoral strength from Likud's traditional base – middle and working-class Jewish-Israelis, especially those from Mizrahi/Sephardic backgrounds, who dominate the country's geographic periphery. This demographic possesses a classic Western middle-class political psyche. On one hand, they want to replace the leftist, Tel Aviv-based, Ashkenazi economic elite. On the other hand, they are afraid of falling to the level of Israel's Palestinian citizens – the country's most economically and socially marginalized sector. Netanyahu deftly appealed to his voters with an ingenious combination of fanatical anti-elitism and unmasked anti-Arab racism.¹⁶⁰ The Nation-State Law continued this strategy. First, its anti-judicial subtext challenges the liberal elite's last vestige of political supremacy. Second, its ethnonationalist tone blatantly marginalizes Palestinian citizens. At times, Joint Committee hearings referenced this populist angle. For example, Opposition MKs claimed that Likud promoted the Law as a populist tactic to prove that they were more right-wing than the Jewish Home.¹⁶¹ MK Sharren Haskel (Likud), called the Law “part of the will of our voters.”¹⁶²

¹⁶⁰ Zachary Harris, “Shrewd Likud,” *Brown Political Review*, May 29, 2020, <https://brownpoliticalreview.org/2020/05/shrewd-likud/>.

¹⁶¹ Joint Committee Minutes #11 [Heb.], March 13, 2017, Knesset Center for Information and Research, 11; Joint Committee Minutes #15 [Heb.], 10:00 AM, July 10, 2018, Knesset Center for Information and Research, 69.

¹⁶² Joint Committee Minutes #11 [Heb.], March 13, 2017, Knesset Center for Information and Research, 35.

Conclusion

This chapter has highlighted the numerous factors that contributed to the Nation-State Law's ideation, development, and eventual passage. Given the limited scope of this thesis, it is difficult to decisively claim what caused the Nation-State Law. Likely, the most accurate evaluation is that the Law results from a complex multi-causal process. However, from among these motivations, it appears that the Israeli Right's resentment towards the High Court's perceived interventionist tendencies and liberal bias was a particularly powerful determinant. Concerns over Israel's domestic and international legitimacy also played a significant role. However, these conclusions require two qualifications. First, the Law's supporters often expressed divergent motivations. To give just one example, while High Court resentment figured prominently in MK Nissan Slomiansky's (Jewish Home) Joint Committee testimony, his coalition partners from Kulanu never offered this critique. Second, individual actors were not always consistent. For example, while High Court resentment figured prominently in Dichter's 2011 and 2015 proposals, he explicitly denied this motivation during the Joint Committee hearings. Nevertheless, despite these methodological difficulties, on balance, it seems that resentment of the High Court's perceived liberal bias was ultimately the strongest motivator, or at least the most politically opportune reason, for right-wing supporters of the Nation-State Law. Many early bills' contents, surrounding rhetoric, and political contexts emphasize this motif. Similarly, Coalition MKs explicitly highlighted this theme during the Joint Committee process. Concerns over Israel's domestic and international legitimacy were also a strong motivation during the Law's early development (2004-2015). However, its relative absence during the Joint Committee process (2017-2018) discounts its importance vis-à-vis High Court resentment.

In short, the story of the Nation-State Law's ideation, development, and passage might be summarized as follows. During and after the Constitutional Revolution of the 1990s, the Israeli High Court expanded its right to judicial review and strengthened human rights' constitutional status. However, these moves prompted a backlash from Israeli conservatives who accused the Court of prioritizing Israel's democratic identity over its Jewish character. In parallel, throughout the 2000s and early 2010s, Jewish-Israelis became increasingly concerned by the perceived rise in domestic and international attacks against the state's ethnoreligious legitimacy. These factors motivated relatively peripheral conservative figures to draft the first Nation-State Law proposals in the 2000s and early 2010s. Initially, these bills do not appear to have been very especially politically significant. However, with time, and likely fostered by an increasingly conservative Israeli political ecosystem, the Nation-State Law idea gained popularity. Like a rolling snowball, the Law seemed to gather new motivations including the rise of the nation-state demand in Israeli-Palestinian negotiations, increasingly fractious diaspora-Israel relations, the Jewish Home's increasing popularity, and the Right's dreams of West Bank annexation. Ultimately, it appears that by the mid to late 2010s, the Law became a nationalistic litmus test demanding unconditional support from Israel's right-wing. This appeal to perceived populist sentiment might explain the Law's final form. In 2018, the Joint Committee discarded the two elements most directly aimed against the High Court's perceived liberal bias – the interpretation clause and the right to segregated settlements. Hard-core right-wing MKs (mostly Likud and Jewish Home) likely agreed to this compromise to please the more moderate Kulanu and Yisrael Beiteinu representatives. However, the Likud/Jewish Home alliance concurrently refused to include the right to equality – an addition that could have secured Centrist and even some Left-wing support. To meet the litmus test, the Israeli Right needed to pass *a* Nation-State Law,

regardless of whether the final version would even accomplish its original anti-Judiciary goals. However, it was also essential that the Law attract fierce criticism from the Left and Center so that the Right could claim a political victory. The resulting Law excellently met these conditions. It was offensive enough to spark broad condemnation from the Centrist, Leftist, and Palestinian parties. However, it was moderate enough to secure Kulanu and Yisrael Beiteinu's support.

If reigning in the High Court was the primary goal, several puzzles emerge. As noted in the analysis of the 2017-2018 debates, the Joint Committee removed the Law's two most direct attacks against the High Court – the interpretation clause and the right to segregated settlements. Without these measures, would the Law still accomplish its original goal of making the Court's decisions more favorable to the interests of Jewish nationalists? Second, this chapter shows that while not as important as High Court antagonism, concerns about bolstering the legitimacy of Israel's Jewish nation-state status were nonetheless a significant motivating factor for many Israeli legislators. Yet to accomplish this goal, the Law would need to gain widespread acceptance within and outside Israel. Has it achieved this level of legitimacy? What were its broader effects on Israeli society and politics? These questions are the focus of the following chapter.

Chapter 4: The Effects of the Nation-State Law

Introduction

Chapter Two summarized existing scholarship on the Law's implications. This survey revealed three possible legal ramifications. First, some scholars argue that the Law is mostly declarative. While it defines the value and meaning of Israel's Jewish character, it lacks operable directives that can substantially impact everyday life. Second, others claim that the Law is legally operable and will thus justify discriminatory policies. Third, Dov Waxman and Ilan Peleg argue that while the Law could theoretically undermine equality, the current High Court will likely reject such interpretations. Furthermore, Chapter Two noted that existing literature typically emphasizes the Law's divisive effect on Israeli politics and society. Nearly four years after the Law's passage, it is now possible to evaluate these hypotheses.

As noted in Chapter Three, the Israeli Right's resentment towards the High Court was a key motivating factor behind the Nation-State Law. However, the Joint Committee removed the two components most clearly directed against the judiciary – the interpretation clause and the right to segregated settlements. Accordingly, the bulk of this chapter evaluates the Law's legal implications in light of these seemingly contradicting intentions and revisions. Specifically, it examines the Law's role in three key 2021 Israeli court cases: *The State of Israel v. Plonit, Ploni v. Karmiel Municipality*, and *Akram Hasson v. The Knesset*. This analysis shows that while certain lower courts have read the Law as legally operable, the higher courts rejected this interpretation. Rather, they reconstructed the Law as a mostly declarative statute that defines Israel's Jewish character but remains generally inapplicable to tangible policy questions.

Chapter Three also argued that the Law responds to the perceived domestic and international delegitimization of Israel's Jewish character. Of course, this motivation was likely

partially inward facing. Right-wing politicians used the legitimacy argument to flaunt their nationalist credentials vis-à-vis their domestic base. However, if one takes their claims even somewhat seriously, an empirical question emerges: was the Law's reassertion of Israel's legitimacy accepted either domestically or internationally? Section Two tackles this question by analyzing the Law's reception among three key groups: Palestinian citizens of Israel, the Israeli-Druze, and the international community. Unsurprisingly, the Law ignited substantial condemnation from each sector. However, it concurrently failed to meaningfully alter their broader political attitudes and behaviors. Even after the Law's passage, most Palestinian citizens remained committed to participation in Israeli electoral processes. Four Arab countries normalized relations with Israel in 2020. While the Law appears to have caused rising disillusionment and noticeable electoral shifts among the Israeli Druze, this community's small size minimizes these developments' effects. Finally, this chapter concludes by broadly assessing the health of Israeli democracy in the aftermath of the Nation-State Law.

1. Legal Effects

As noted in Chapter One, excluding its recodification of key state symbols (anthem, flag, holidays, etc.) the Nation State Law's legal meaning is *prima facie* ambiguous. What does it mean to restrict the "right to national self-determination in the State of Israel" to the Jewish People (Article 1c)? How does a state "encourage and promote" Jewish settlement" (Article 7)? What is Arabic's "special status" (Article 4)? As discussed in Chapter Two, legal scholars have opined both operative and declarative interpretations. Some argue that the Law contains operable directives that justify discriminatory policies. However, others claim that the Law is mostly declarative. According to this reading, it is a principally symbolic statute that declares Israel's Jewish identity but cannot validate inequitable practices.

Chapter Three traced the Law's development from especially operable to more declarative versions. It emphasized that the Law's early supporters hoped that it would stop the High Court from supposedly preferencing liberal democracy and human rights over Israel's Jewish identity. As MK Ze'ev Elkin (Likud) stated in 2011, "The law is meant to give the courts a basis to support the state's Jewish nationality in situations when the state's Jewish identity conflicts with the principles of democracy."¹ In line with this operative sentiment, early Nation-State Law drafts threatened a seismic shift in Israeli constitutionalism. By requiring all legislation to be interpreted according to Israel's Jewish, but not its democratic, identity, Article 1c (the so-called "interpretation clause") endangered Israel's claimed Jewish-democratic balance. By legalizing religiously/nationally segregated settlements, Article 7b threatened to reverse the precedent set by *Ka'adan* and the *Admissions Committee Law*. However, following acute internal and external critique, the Joint Committee removed Article 1c (the interpretation clause) and revised Article 7b (segregated settlements). Without these transformative provisions, the Nation-State Law's operable potential was far less clear.

Despite these revisions, some of the Law's supporters still expected that it would influence Israeli policy. Shortly after its passage, MK Yariv Levin (Likud) argued that Article 7 could justify "incentives and benefits" to promote Jewish settlement. Similarly, he predicted that the Law's emphasis on Israel's Jewish character would provide a new legal basis to prevent Palestinian family reunification.²

Almost four years after the Law's passage, it is now possible to ascertain its legal impact. Three key 2021 Israeli court cases provide the basis for this analysis. In *The State of Israel v.*

¹ Lis, "New Law Proposal: Hebrew Is Not an Official Language [Heb.]."

² Yonatan Lis, "Levin to 'Haaretz' on the Nation-State Law: When the Judiciary Is Different, We'll Be Able to Get What We Want [Heb.]," Haaretz, August 6, 2018, <https://www.haaretz.co.il/news/politi/premium-1.6343171>.

Plonit, the High Court overturned a lower court's use of Article 6a to create an operable state responsibility to protect Jewish life. In *Ploni v. Karmiel Municipality*, the Haifa Municipal Court invalidated a lower court's use of Article 7 to justify the city of Karmiel's refusal to fund Palestinian students' transportation. In *Hasson v. The Knesset*, the High Court affirmed the Law's constitutionality but repudiated most of its operable potential. When viewed collectively, these cases establish a mostly declarative interpretation of the Nation-State Law that severely limits its applicability to tangible policy questions.

A. State of Israel v. Plonit

On March 31st, 2006, Rafi and Helena Levi, a Jewish-Israeli couple, were driving from the Israeli town of Kfar Saba to their home in the West Bank settlement of Kedumim. Near the settlement of Karnei Shomron, they picked up three hitchhikers – two young Jewish-Israelis and a Palestinian terrorist disguised as an ultra-orthodox Jew. A few minutes later, the Palestinian hitchhiker detonated an explosive, killing himself and the four other passengers.³

Following the attack, the Levi couple's descendants initiated a civil suit seeking damages from the Palestinian Authority and associated political figures. As part of their case, the plaintiffs requested a "public service certificate" from the Israeli General Security Services (*Shin Bet*) clarifying whether the accused terrorists or their relatives received monetary compensation from the Palestinian Authority. After the Shin Bet responded that such information was confidential, the plaintiffs appealed to the Jerusalem Municipal Court. On January 16th, 2019, Judge Moshe Drori ruled in favor of the plaintiffs and ordered the Shin Bet to provide the requested information unless they produced a "confidentiality certificate."⁴

³ Ephrat Weiss and Vakad Eli, "Four Israelis are Killed After They Gave a Ride to a Terrorist [Heb.]," *Ynet*, March 30, 2006, <https://www.ynet.co.il/articles/0,7340,L-3234497,00.html>.

⁴ HJC 1604/19 The State of Israel v. Plonit [Heb]. (2021) (Isr.), 2.

Drori's ruling rests on an operable interpretation of Article 6a of the Nation-State Law.⁵

The provision reads,

“The State shall strive to ensure the safety of the members of the Jewish People and of its citizens who are in trouble and in captivity due to their Jewishness or due to their citizenship.”

Drori's interpretation followed three steps. First, he determined that Article 6a establishes a “duty upon the state to protect Jewish well-being.” Second, he argued that the Levi couple's murder represents a state failure to fulfill this key responsibility. Third, he determined that this shortcoming thus required the Shin Bet, as a state agent, to aid the Levi couple's descendants by providing the requested information.⁶

The state subsequently appealed Drori's ruling to the High Court. On January 20th, 2021, a three-judge panel unanimously upheld the lower court's holding but overturned its reasoning. Justice Yitzchak Amit wrote the Court's opinion. He leveled three accusations against Drori's Article 6a application. First, he argued that his argument was superfluous. According to Amit, Israeli jurisprudence avoids using “general and abstract” Basic Laws when more particular remedies are available. Specifically, Drori could have required the Shin Bet to provide the requested information by relying on the “right to life” established by Articles 2 and 4 of *Basic Law: Human Dignity and Liberty* rather than through his invented Article 6a “right to Jewish safety.” Second, Amit determined that the Nation-State Law could not directly justify the

⁵ Drori had twice before used Article 6a in similar cases. In *David Mashiach v. The Palestinian Authority* (2018), the judge determined that Article 6a justified punitive damages against Hamas for their involvement in a 2007 terrorist attack (DC 9135/07 David Mashiach v. The Palestinian Authority [Heb.] (2018) (Isr.)). In *The Estate of Sopher Chester (Deceased) v. Mahmoud Zeidan* (2018), Drori concluded that Article 6a authorized Israeli courts to hear a civil case brought by American-Jewish victims of the 1985 *Achille Auro* hostage crisis (DC 2287/00 The Estate of Sopher Chester (Deceased) v. Mahmoud Zeidan [Heb.] (2018) (Isr.)).

⁶ HJC 1604/19 The State of Israel v. Plonit [Heb]. (2021) (Isr.) 2-3.

plaintiffs' requested damages. In Israeli precedent, "classic legal rights," such as those created by *Basic Law: Human Dignity and Liberty*, don't create a direct source for private law damages against the public authority. *A fortiori* the Nation-State Law can't justify damages against the Palestinian Authority – a private actor. Third, Amit argued that Drori's precedent was procedurally irresponsible. He claimed that establishing such a broad responsibility for global Jewish safety would unreasonably increase diaspora claims towards the Israeli court system.⁷

While Amit refuted the lower court's reasoning, he upheld its holding. Specifically, he argued that even absent the Nation-State Law, ordinary legislation required the Shin Bet to provide the requested information unless they produced a confidentiality certificate.⁸ Since the plaintiffs expected the Shin Bet to release a confidentiality certificate and such certificates are judged by the High Court, both sides agreed to a settlement. They decided to first give the information to the Court which would in turn decide whether to release it. The Justices decided to keep the information confidential.⁹

The lower court's opinion appeared to fulfill critics' fear that the Law justifies discrimination. Article 6a protects two categories – "members of the Jewish people" and "[Israel's] citizens." Judge Drori could have argued that since the state failed to fulfill its duty to protect the Levi couple *as citizens*, it must release the requested information. However, by choosing to emphasize their Jewishness, rather than their Israeli citizenship, Drori appeared to create an operable duty towards the first but not latter identity. His reasoning implicitly suggests that a non-Jewish Israeli citizen killed or injured in the same terrorist attack would not be entitled to equal protection. In sum, Drori's Article 6a interpretation appeared to create a legal hierarchy

⁷ HJC 1604/19 The State of Israel v. Plonit [Heb]. (2021) (Isr.) 4-5.

⁸ HJC 1604/19 The State of Israel v. Plonit [Heb]. (2021) (Isr.) 5-13.

⁹ Daniel Dolev, "In a Decision that Passed Under the Radar, Justice Amit Neutralizes a Part of the Nation-State Law [Heb.]," Walla, January 29, 2021, <https://news.walla.co.il/item/3414629>.

where Jewish citizens are afforded greater protections than non-Jewish citizens in a blatant contravention of the constitutional right to equality.

However, the High Court rejected Drori's operable interpretation. By highlighting *Basic Law: Human Dignity and Liberty*'s right to life, Amit centered humanity, rather than Jewish identity, as the basis of the state's responsibility towards its citizens' safety. This refocus thus undermines Drori's implicit differentiation between the individual rights of Jewish and non-Jewish Israeli citizens and by extension preserves the constitutional right to equality. Once Amit invalidates Article 6a as an operable legal tool, it can only be read as declarative. His interpretation suggests that this provision defines the *value* of Jewish safety but cannot validate or invalidate specific *policies* in pursuit of this goal. However, this reading is merely suggestive. *The State of Israel v. Plonit* only refuted Article 6a's application to civil cases seeking damages for terrorist attacks. Whether or not it applies beyond this specific situation was left unresolved.

B. Ploni v. Karmiel Municipality

A similar case elucidates Article 7's jurisprudential implications. In *Ploni v. Karmiel Municipality*, a hyper-nationalistic judge used an operative Article 7 interpretation to justify the city of Karmiel's refusal to pay for Palestinian students' school transportation costs. However, the Haifa Municipal Court rejected his reasoning. Echoing *The State of Israel v. Plonit*, the Court argued that the Nation-State Law is an inexact and therefore inapplicable legal remedy.

Karmiel is a Northern Israeli city built on land expropriated from local Palestinian villages. Approximately six percent (2,760) of the city's population are Palestinian citizens of Israel.¹⁰ Since Karmiel lacks Arabic-language schools, most Palestinian students commute to the

¹⁰ Aaron Boxerman, "'Carmiel Is a Jewish City,' Court Tells Arab Students Seeking Transportation," *Times of Israel*, November 30, 2020, <https://www.timesofisrael.com/carmiel-is-a-jewish-city-court-tells-arab-students-seeking-transportation/>.

surrounding Palestinian villages. Specifically, in 2020, approximately 152 Palestinian students attended the local Jewish schools while 326 traveled to nearby villages. The city also provided a 16-seater bus for students from the Bedouin neighborhood of Ramiyah. However, out of the 326 independent commuters, merely 59 (18%) were compensated for their travel.¹¹ In response to Karmiel's longstanding failure to establish an Arabic school, provide transportation, or compensate commuters, local resident and lawyer, Nizar Bakri sued the municipality on behalf of his nephews, ages 6 and 10. He demanded 25,000 shekels (about 7,700 USD) as compensation for their daily commute to the nearby villages of Bi'ina and Rameh.

Ploni v. Karmiel Municipality was first heard in the Krayot Magistrate's Court by Judge Yaniv Luzon. On November 11th, 2020, Luzon dismissed the suit on five grounds. His first four reasons were mostly procedural. First, he argued that the plaintiffs should have brought an administrative petition rather than a financial claim. Second, he posited that there was no legislation requiring Karmiel to fund Palestinian students' transportation. Third, he claimed that the case did not fall within the "extreme circumstances" category demanding special attention from the Educational Ministry. Fourth, he noted that the petition should have addressed the Education Ministry rather than the Karmiel municipality.

Following his four procedural objections, Luzon used an operable Article 7 interpretation to justify the city's policy. The provision states, "The State views the development of Jewish settlements a national value and shall act to encourage and promote its establishment and strengthening." According to Luzon, since Karmiel is a "Jewish city," establishing an Arabic-language school or funding transportation would "change the demographic balance and harm the

¹¹ Noa Shpigel, "The city of Karmiel refuses to fund transportation for hundreds of Arab students who attend schools outside the city [Heb.]," *Haaretz*, March 11, 2020, <http://www.haaretz.co.il/news/education/.premium-1.8660500>.

city's [Jewish] character." Since these actions would contradict Article 7's "national value" of "Jewish settlement," the municipality's policy was justified.¹²

In response to Luzon's ruling, Bakri appealed to the Haifa Municipal Court. On February 3rd, 2021, Judge Ron Shapira upheld the lower court's holding but rejected its Article 7 reasoning. He specified two reasons for this reversal. First, Shapira noted that the defendants never based their claims on the Nation-State Law. Rather, Judge Luzon introduced this argument on his own volition. Shapira feared that Luzon's judicial interventionism would "damage the public's faith in the courts." Second, Shapira cited the High Court's ruling in *The State of Israel v. Plonit* to restate the Israeli precedent that abstract and declarative Basic Laws are improper legal remedies when more specific jurisprudential tools are available. In this case, ordinary education/transportation legislation sufficiently refuted Bakri's claims.¹³ Specifically, Shapira noted that the plaintiffs were entitled to "culturally appropriate [i.e. Arabic] education." Since Karmiel lacks Arabic schools, they were therefore permitted to attend any *recognized* school outside the city. However, Shapira argued that Israeli law only requires reimbursement for travel to *official* schools. Since the plaintiffs attended *unofficial recognized* schools, they were not entitled to compensation. Furthermore, Shapira argued that even if the plaintiffs had attended official schools, they would only be entitled to real-time compensation rather than retroactive damages.¹⁴

Ploni v. Karmiel Municipality repeated the pattern set by *The State of Israel v. Plonit*. Echoing the lower court decision in *The State of Israel v. Plonit*, Luzon suggested an operative Article 7 interpretation. He viewed "the national value" of "Jewish settlement" as a binding legal

¹² DC 49111/12/20 Ploni v. Karmiel Municipality [Heb.] (2021) (Isr.) 1-2.

¹³ DC 49111/12/20 Ploni v. Karmiel Municipality [Heb.] (2021) (Isr.) 6.

¹⁴ DC 49111/12/20 Ploni v. Karmiel Municipality [Heb.] (2021) (Isr.) 8-11.

norm that justifies discriminatory policies. While his ruling addressed education policies, its wider implications are clear. Luzon's claim that Article 7 justifies not only denying compensation but also Karmiel's refusal to build an Arabic school threatened to validate future efforts to intentionally underserve non-Jewish residents of majority Jewish cities.

However, the higher court rejected Luzon's operable interpretation. Judge Shapira determined that since specific ordinary legislation was more applicable to Bakri's suit, Article 7 remained moot. At least in terms of education-transportation policy, he thus devolved Article 7 of its operable potential and left it as only declarative.

When read together, *The State of Israel v. Plonit* and *Ploni v. Karmiel Municipality* suggest a mostly declarative interpretation of the Nation-State Law. First, *The State of Israel v. Plonit* precluded an Article 6a state duty to protect Jewish safety. Second, *Ploni v. Karmiel Municipality* rejected an Article 7 basis for discriminatory education-transportation policies. In both rulings, the higher courts emphasized that Israeli jurisprudence demands the most directed legal remedies possible. The Nation-State Law's lofty nationalistic language thus remains inapplicable to these specific legal questions. Or according to Justice Amit in *The State of Israel v. Plonit*,

“Secondly, and most importantly, *Basic Law: The Nation-State Law*, which is concerned with the identity characteristics of the state, is not meant to be used by Reuben in his quarrel with Simon [stereotypical placeholder names].”¹⁵

Logically, this principle could reject the Law's application to most, if not all, policy issues. However, neither case took this interpretive step. Rather, they limited their holdings to the

¹⁵ HJC 1604/19 *The State of Israel v. Plonit* [Heb]. (2021) (Isr.), 5.

specific situations and articles at hand. They left the Law's overarching legal meaning as an open question for the High Court to resolve.

C. Hasson v. The Knesset

Hassoun v. The Knesset finished the interpretative process begun by *The State of Israel v. Plonit* and *Ploni v. Karmiel Municipality*. The High Court refuted multiple claims alleging the Nation-State Law's unconstitutionality by arguing that it remains congruent with Israel's democratic identity. However, to achieve this alignment, the Court reinterpreted the Law as almost completely declarative.

Only a few days after the Law's passage, leading Druze politicians and organizations appealed its constitutionality to the High Court. They argued that the Law was inconsistent with Israel's democratic character, commitment to equality, and minority rights.¹⁶ Their case was soon joined by fourteen other parties – including many leading civil rights, Palestinian, and Mizrahi-Jewish groups. The fifteen total suits were eventually consolidated into *Akram Hasson v. The Knesset*. An eleven-justice panel heard the case on December 22nd, 2020. On July 8th, 2021, the Court dismissed the plaintiffs' case and upheld the Law's constitutionality by a margin of 10-1. Chief Justice Esther Hayut wrote the majority decision. Nine other justices each wrote a concurring opinion.¹⁷ George Kara, the Court's lone Palestinian judge, wrote the sole dissent.

Since each of *Hasson's* fifteen suits articulated a slightly different argument, it is difficult to reduce Hayut's opinion to a single overarching thesis. However, by focusing on the Chief Justice's juxtaposition of the Nation-State Law against the "Unconstitutional Constitutional Amendment Doctrine" a forceful declarative reinterpretation emerges. According to this

¹⁶ Yonatan Lis and Revital Hovel, "The three Druze Knesset members joined the first appeal to the High Court against the Nation-State Law [Heb.]," *Haaretz*, July 22, 2018, <http://www.haaretz.co.il/news/politi/1.6294749>.

¹⁷ The nine concurring justices were Yitzchak Amit, Uzi Fogelman, David Mintz, Neal Hendel, Noam Solberg, Daphne Barak-Erez, Menachem Mazuz, Chanan Meltzer, and Anat Baron.

doctrine, no legislature's amendment power is unbounded. Rather, explicit, implicit, or even supra-constitutional limits protect certain key constitutional provisions from revision. In *Hasson*, the plaintiffs claimed that since the Law nullifies Israel's democratic character, it should thus be considered an "unconstitutional constitutional amendment." However, Hayut refuted their argument in two steps. While she acknowledged the unamendability of Israel's democratic character, she determined that the Law can be interpreted as congruent with this key identity and thus remains constitutional. Importantly, to align the Law with democratic norms, Hayut reconstructed it as a mostly declarative statute.

I. The Unconstitutional Constitutional Amendment Doctrine

Understanding the Unconstitutional Constitutional Amendment Doctrine is essential for interpreting the plaintiffs' argument and Hayut's ruling. *Unconstitutional Constitutional Amendments* – written by Yaniv Roznai and heavily cited by Hayut – is especially instructive in this regard. According to Roznai, this doctrine posits three varieties of "unamendability" – explicit, supra-constitutional, and implicit. First, explicit constitutional unamendability covers definitive textual prohibitions on certain constitutional revisions. For example, Article 79(3) of the German Basic Law (1949) prohibits amendments infringing on human dignity, human rights, or the state's democratic/social-federal character.¹⁸

Second, implicit unamendability argues that even absent an explicit textual prohibition, no amendment can legally alter a constitution's basic identity. After circulating in international academic discourses for decades, this doctrine was first applied by the Indian Supreme Court. In 1975, the Allahabad High Court invalidated Prime Minister Indira Gandhi's 1971 election as fraudulent. In response, Parliament passed the Thirty-Eighth and Thirty-Ninth Amendments to

¹⁸ Roznai, *Unconstitutional Constitutional Amendments*, 15–38.

the Indian constitution. The Thirty-Eighth Amendment immunized laws passed during a state of emergency from judicial review. The Thirty-Ninth Amendment prohibited judicial interference in the election of the President, Vice-President, Parliament-Speaker, and Prime Minister. Soon thereafter, a five-justice Supreme Court panel unanimously ruled in *Indira Nehru Gandhi v. Raj Narain* (1975) that both the Thirty-Eighth and Thirty-Ninth amendments were unconstitutional per the “Basic Structure Doctrine.” According to this theory, infringing on key democratic institutions, such as the separation of powers, equality, and democratic elections, would contravene the Indian constitution’s “basic structure.” By unduly restricting the courts’ right to judicial review, the Thirty-Eighth and Thirty-Ninth amendments violated this “basic structure” and were thus unconstitutional. Importantly, the Indian constitution does not explicitly protect the right to judicial review. Rather, the Court determined that this was an *implicitly* unamendable principle. In response, Gandhi’s government passed the Forty-Second Amendment insulating all constitutional amendments from judicial review. Subsequently, the High Court ruled 4-1 in *Minerva Mills Ltd. v. Union of India* (1980) that this amendment likewise violated the Basic Structure Doctrine. Since *Mills*, courts around the world have applied the Indian Basic Structure Doctrine to codify core constitutional values as implicitly unamendable.¹⁹

Third, supra-constitutional unamendability posits that external legal norms such as international law or natural law protect certain constitutional provisions. Importantly, Roznai emphasizes that comparative legal analysis consistently shows that since domestic law usually triumphs over extranational law, supra-constitutional unamendability remains a mostly theoretical concept.²⁰

¹⁹ Roznai, 39–70.

²⁰ Roznai, 71–102.

Hasson centers around mostly implicit, and to a lesser extent supra-constitutional, unamendability. Some Israeli Basic Laws include procedural limits requiring the agreement of a majority of Knesset members for revision. However, no Basic Law includes an *explicitly* unamendable provision. Rather, echoing the Indian Basic Structure Doctrine, the plaintiffs argued that by negating Israel’s democratic character, the Law violated *implicitly* unamendable limits and should thus be declared unconstitutional.²¹ Supra-constitutional unamendability’s empirical deficiencies made it a weaker case. However, some of the plaintiffs still echoed this theory by claiming that the Law violated Israel’s international law obligations. These supra-constitutional arguments will be examined in subsection IV.

II. The Unamendability of Israel’s Jewish-Democratic Character

In response to the plaintiffs’ unconstitutional constitutional amendment claims, Hayut constructed her own model of Israeli unamendability. Her argument followed three broad steps. First, Hayut highlighted the theoretical dissonances between the Unconstitutional Constitutional Amendment Doctrine and Israel’s still incomplete constitutional system. Second, she determined that despite these challenges, Israeli constitutionalism retains one unamendable feature: the state’s Jewish-democratic identity. Third, Hayut specified that legislation must pass a high threshold to contravene this unamendable limit. Specifically, a Basic Law must enact a “fatal

²¹ The plaintiffs’ argument was not unprecedented. The Unconstitutional Constitutional Amendment Doctrine was raised before the High Court on three previous occasions – *Academic Center of Law and Business v. Minister of Finance* (2009), *Bar-On v. The Knesset* (2011), *Ben-Meir v. The Knesset* (2018). In each case, while the Court never adopted the Doctrine, it didn’t disregard its possible applicability. Rather, it determined that the challenged Basic Laws didn’t represent a severe enough departure from Israel’s “basic principles” to warrant judicial review (HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 13-14); For Adalah’s unamendability claims see “Jewish Nation-State Law Petition” (Adalah: The Legal Center for Arab Minority Rights in Israel, August 7, 2018), 37–48, https://www.adalah.org/uploads/uploads/Jewish_Nation_State_Law_Petition_English_Final_October_2018.pdf; For The Association for Civil Rights in Israel (ACRI)’s unamendability claims see: “Nation-State Law Petition [Heb.],” (The Association for Civil Rights in Israel, December 23, 2018), 39–53, http://docs.wixstatic.com/ugd/01368b_ae8ac629c66d421dad787d07c177eaf2.pdf.

injury” against the state’s dual identity to be considered unconstitutional. A merely “harsh injury” is insufficient.

Hayut’s argument is first grounded in a profound discomfort over the theoretical tension inherent in applying the Unconstitutional Constitutional Amendment Doctrine to Israel’s unfinished constitution. According to the justice, this doctrine assumes a clear distinction between the original constitution and later amendments.²² Roznai’s book is again especially instructive in this regard. He explains that a constitution, in both its textual and “basic structure” form, represents a “constituent authority.” In contrast, the legislature’s amendment power is merely a “constituted authority” that has been “delegated” from the “constituent authority.” By nature of this delegation, the amendment power is intrinsically limited by the primary constitution.²³ However, as Hayut emphasized, Israel’s incomplete Basic Law system lacks a clear distinction between an original constitution (constituent authority) and latter amendments (constituted authority). Rather, each Basic Law is a normatively equal component of a still-developing constitution. Accordingly, Hayut emphasized that it is theoretically problematic to derive a “basic structure” from existing Basic Laws to invalidate a new Basic Law.²⁴

Despite Hayut’s theoretical concerns, she nevertheless admitted one critical unamendable feature of Israeli constitutionalism: the state’s Jewish-democratic character. She derived this limit from four sources. First, multiple Basic Laws codify Israel’s Jewish and democratic identities. For example, *Basic Law: Human Dignity and Liberty* states that its purpose is to “defend human dignity and liberty, to codify in Basic Law the values of the state of Israel as a Jewish and *democratic* state (emphasis my own).” Second, the Israeli Declaration of

²² HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 13.

²³ Roznai, *Unconstitutional Constitutional Amendments*, 117–20.

²⁴ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 20.

Independence centers the state's Jewish and democratic character. Third, Israeli case law consistently recognizes the state's dual identity as a binding legal norm. Fourth, ordinary legislation frequently references the state's Jewish-democratic character.²⁵

While Hayut recognized the unamendability of Israel's Jewish-democratic identity, she established a high threshold for its infringement. She claimed that the Knesset is only prohibited from passing legislation, including Basic Laws, which enact a "fatal injury" against the state's core identities. An example would be a Basic Law disrupting Israel's connection with the Jewish people or a Basic Law negating the right to free elections. However, Hayut emphasized that a Basic Law posing merely a "harsh damage" to Israel's Jewish-democratic character remained legitimate. As long as a Basic Law does not "negate the minimum requirements" of Israel's Jewish-democratic identity, it remains constitutional.²⁶

III. The Nation-State Law and Israel's Democratic Identity

At this point, Hayut's model could be theoretically reconciled with the plaintiffs' arguments. The Justice might have argued that the Law enacts a "fatal injury" against Israel's democratic character and is thus unconstitutional. Had Hayut reached this conclusion, she would still face the then unresolved question of whether the Court can invalidate a Basic Law.²⁷ However, Hayut dodged this dilemma entirely. Using the Law's legislative history and "sustaining interpretation" (*parshanut mikayemet*), she reinterpreted the Law as congruent with Israel's democratic character. Through this reading, Hayut abrogated the Law's operative potential and left it as mostly declarative. This reconstruction thus affirmed the Law's

²⁵ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 16-20.

²⁶ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 22-24.

²⁷ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 24-26.

constitutionality and forestalled any need to determine the role of judicial review vis-à-vis Basic Laws.²⁸

Hayut's declarative reinterpretation centers on a selective rereading of the Law's legislative history. To refute the plaintiffs' claims that it "preferences the Jewish character of the state of Israel [over its democratic identity]" she cited Dichter's 2015 explanatory note.

"The purpose of this Basic Law is to protect in basic legislation Israel's status as the nation-state of the Jewish People in *equal status* to Israel's Basic Laws protecting human rights and the democratic character of the state" (Emphasis by Hayut).²⁹

Similarly, Hayut pointed to the Joint Committee's elimination of Article 1c (the interpretation clause) as evidence of the Law's non-discriminatory intent. After the original Articles 1a and 1b codified the unique Jewish right to self-determination in the Land of Israel, Article 1c stated, "The provisions of this Basic Law or any legislation shall be interpreted in light of what is determined in this paragraph."³⁰ By requiring all legislation to be interpreted according to the Jewish identity codified in Articles 1a and 1b – but not democratic norms – Article 1c blatantly elevated the legal stature of Israel's Jewish identity over its democratic character. Since the Joint Committee was warned about this implication before it omitted Article 1, Hayut determined that they abrogated any legislative intent to disrupt Israel's Jewish-democratic balance.³¹

After establishing the Law's supposed benign motives, Hayut applied the "sustaining interpretation" technique to its three most controversial components – Articles 1, 4, and 7.

According to this method, new Basic Laws must be interpreted, to the greatest extent possible, as

²⁸ The High Court partially resolved this issue in 2021 when it ruled that it had the authority to invalidate a Basic Law amendment extending the annual budget deadline (HJC 5969/20 MK Stav Shafir v. The Knesset [Heb.] (2021) (Isr.)).

²⁹ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 28; English translation from Rabinovitch, *Defining Israel*, 108.

³⁰ English translation from Rabinovitch, *Defining Israel*, 105.

³¹ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 27-30.

congruent with existing constitutional principles.³² In this case, Hayut reconciled each article's *prima facie* contradiction with the right to equality. All three provisions pose a unique challenge. By claiming that the “exercise of the right to national self-determination in the State of Israel is unique to the Jewish people,” Article 1 appears to establish a legal hierarchy between Jewish and non-Jewish citizens’ political rights. By relegating Arabic to a “special status,” Article 4 seems to validate unequal linguistic rights. By directing Israel to “act and encourage” Jewish settlement, Article 7 appears to establish a preferential state duty toward Jewish citizens.

Article 1 poses the first interpretative challenge. Even after the removal of the particularly offensive “interpretation clause,” the provision remains problematic.

1. Basic Principles

- (a) The Land of Israel is the historical homeland of the Jewish People, in which the State of Israel was established.
- (b) The State of Israel is the nation-state of the Jewish People, in which it realizes its natural, cultural, religious, and historical right to self-determination.
- (c) The exercise of the right to national self-determination in the State of Israel is unique to the Jewish People.

By emphasizing that only Jews enjoy the “exercise of the right to national self-determination in the State of Israel,” Article 1c appears to restrict a significant political right to Jewish citizens and likely even non-citizens. However, Hayut rejected this interpretation. She argues that the constitutional right to equality precludes any interpretation justifying the allocation or restriction of personal rights based on nationality or religion. Article 1c must thus refer to *collective* rather than *individual* rights. Hayut further clarified the scope of collective rights at play. According to

³² HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 38-39.

the Chief Justice, international legal theory recognizes a distinction between external and internal self-determination. External self-determination grants national groups the right to establish sovereign nation-states while internal self-determination safeguards autonomous cultural and linguistic development within existing nation-states. Hayut claimed that Article 1c deals only with the collective right to *external* self-determination. It reaffirms the Jewish people's right to the establishment and continuation of the state of Israel. However, Article 1c does not degrade non-Jews' *internal* self-determination right to cultural/linguistic autonomy within Israel or their individual rights. Accordingly, it remains congruent with the right to equality and Israel's democratic identity.³³

Following her Article 1 reinterpretation, Hayut addressed the plaintiffs' challenges against Article 4. The provision states,

4. Language

(a) Hebrew is the State Language.

(b) The Arabic language has a special status in the State; arrangements regarding the use of Arabic in state institutions or vis-à-vis them will be set by law.

(c) Nothing in this article shall affect the status given to the Arabic language before this law came into force.

According to the plaintiffs, Article 4 infringes on Arabic speakers' linguistic rights, right to equality, and right to dignity. Furthermore, they claimed that the provision contradicts existing Israeli law. According to Section 82 of the 1922 *King's Order in Council*, British mandatory law incorporated by Israel in 1948, both Hebrew and Arabic claim official status.

³³ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 39-44.

“All Ordinances, official notices and official forms of the Government and all official notices by local authorities and municipalities in areas to be prescribed by order of the High Commissioner shall be published in both Hebrew and Arabic.”

Again, Hayut rejected the plaintiffs’ interpretation. She argued that while Section 82 grants both languages official status, Israeli statutory and case law has consistently recognized Hebrew’s superiority. For example, Article 5(a) of the *Nationality Law of 1952*, requires those seeking Israeli citizenship to have at least some knowledge of Hebrew but does not require any knowledge of Arabic. Similarly, in *The Central Elections Committee for the Sixteenth Knesset v. Ahamd Tibi* (2003), Chief Justice Aharon Barak categorized Hebrew as “the central official language of the state.” Accordingly, Article 4’s differentiation between Hebrew’s “state language” status and Arabic’s “special status” merely reflects an existing legal hierarchy. Article 4c’s claim that “nothing in this article shall affect the status given to the Arabic language before this law came into force” reinforces this interpretation. Consequentially, Hayut determined that since it affects no substantial legal change, Article 4 cannot undermine Arabic’s current legal protections or prevent future expanded linguistic rights.³⁴

Finally, Hayut addressed the Nation-State Law’s most controversial component – Article 7. The provision states,

7. Jewish Settlement

“The State views the development of Jewish settlement as a national value and shall act to encourage and promote its establishment and strengthening.”

Article 7 was Hayut’s most difficult challenge. Unlike Articles 1 and 4, this provision appears to contain blatantly operable language. The imperative verb “shall act” (*t’phal*) seems to require the

³⁴ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 44-50.

state to further Jewish settlement at the expense of non-Jewish settlement. Practically speaking, this norm might legitimize Jewish-only communities, discriminatory land allocation, or Jewish-only settlement incentives. To refute these possibilities, Hayut turned to Law's legislative history. As described in Chapter Three, Article 7's original text stated,

(a) Every resident of Israel, regardless of religion or nationality, is entitled to work to preserve their culture, heritage, language, and identity.

(b) The state may allow a community that includes followers of a single religion or members of a single nation to establish separate communal settlements.³⁵

Hayut recalled that throughout numerous Joint Committee hearings, critics pointed out that this language could legitimize segregation based solely on religion or nationality – a blatant contradiction of the *Ka'adan* precedent and the *Admissions Committee Law*. Accordingly, the Joint Committee replaced the explicit right to “establish separate communal settlements” with the far more ambiguous directive to “act and encourage” “Jewish settlement.” Following this key revision, the Committee's legal advisor, Roz Nazri, affirmed that the new language would not legitimize Jewish-only settlements. For Hayut, Nazri's statement serves as incontrovertible proof that the Law cannot legalize *de-jure* segregation based on religion or nationality.³⁶

While Hayut easily disregarded the possibility that Article 7 justifies segregated settlements, she struggled with its application to Jewish-only settlement incentives (i.e., monetary compensation for Jews to relocate to Arab majority regions in Israel's far North or South). Her difficulty stemmed from the Joint Committee's contradictory record. During the

³⁵ Rabinovitch, *Defining Israel*, 111–17.

³⁶ Segregation based on “unique cultural characteristics” remains legal. See: HJC 114/78 Burkan v. Treasury Minister [Heb.] (1978) (Isr.), HJC 4906/98 Am Chofshi v. The Ministry of Construction and Housing [Heb.] (2000) (Isr.), HJC 528/88 Avitan v. Israel Land Authority [Heb.] (1989) (Isr.), and Law to Amend the Cooperative Society Ordinance (No. 8) 5771-2011 (2011).

Committee's nineteenth hearing, Nazri stated that the revised Article 7 both does and doesn't legitimize Jewish-only settlement incentives.³⁷ In response to this confusion, Hayut emphasized the continued validity of the right to equality in Israeli jurisprudence. Accordingly, she determined that while Article 7 might justify certain settlement incentives, these programs must be balanced against the constitutional value of equality. The inevitable contradictions will be judged on a case-by-case basis.

“Whenever primary legislation, secondary legislation, or another procedural action, whose purpose is to advance the constitutional value of Jewish settlement, leads to a damage in the constitutional right to equality or another constitutional right, the issues will be judged according to the limitation clause and the concrete circumstances of the case.”³⁸

IV. The Nation-State Law and Supra-constitutional Unamendability

While *Hasson* mostly deals with implicit unamendability issues, elements of the plaintiffs' arguments reflect supra-constitutional unamendability theory. Two claims stand out. First, the plaintiffs argued that Article 1c contravenes Palestinian citizens' right to self-determination and minority rights guaranteed by the Convention of the Elimination of All Forms of Racial Discrimination (ICERD) (1965), the International Covenant on Economic, Social, and Cultural Rights (ICESC) (1966), and the International Covenant on Civil and Political Rights (ICCPR) (1966). Second, the plaintiffs claimed that the Nation-State Law violated the international legal principle of territorial sovereignty. Specifically, they pointed to Article 1's use of the term “the Land of Israel” (*eretz yisrael*) rather than “the state of Israel” (*midinat yisrael*) as proof that the Law applied itself beyond the Green Line. They further claimed that Article

³⁷ Joint Committee Minutes #19 [Heb.], July 16, 2018, Knesset Center for Information and Research, 62-70.

³⁸ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 49-56.

6a's declaration of state responsibilities towards the Jewish diaspora (the majority of which are not Israeli citizens) likewise illegally applies itself beyond Israel's borders.

Hayut's ruling refuted both supra-constitutional claims. Regarding international law, she emphasized that in Israeli jurisprudence, operative international conventions are only binding after Knesset incorporation. Nevertheless, according to the "presumptive interpretative doctrine" (*chazkat ha'hatama ha'parshanit*) Israeli legislation will always be construed, to the greatest degree possible, as compatible with incorporated and unincorporated international law. Only in cases of clear friction will domestic law triumph. In this case, Hayut determined that since the Law does not affect Palestinian citizens' individual rights or internal self-determination rights, it remains reconcilable with Israel's incorporated and unincorporated international legal obligations.³⁹ Regarding territorial sovereignty, Hayut noted that supporters stated in Joint Committee hearing that they did not intend the Law to apply to the West Bank. Similarly, she cited *The State of Israel v. Plonit* to emphasize that Article 6 doesn't establish operable state duties towards the non-citizen Jewish diaspora.⁴⁰

V. Interpretation

It is critical to recognize that the High Court in *Hasson v. The Knesset* was operating under extreme challenges. In December 2020, just as the Justices were hearing oral arguments, MK Yariv Levin (Likud) warned Hayut that if the Court struck down the Nation-State Law, the Knesset would not "honor its decision."⁴¹ Netanyahu similarly hinted that an unfavorable ruling would reinforce his efforts to weaken the High Court's authority.

³⁹ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 35-36.

⁴⁰ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 36-37.

⁴¹ Goldberg, "The Long Reach of Restraint."

“The very debate that the High Court is undertaking today emphasizes the need for new regulation on the boundaries of the judiciary’s power – an initiative that Likud soon intends to lead through the Knesset via a series of appropriate Basic Laws.”⁴²

Invalidating the Law thus posed a host of challenges. If the Court found the Law constitutional, broad swaths of Israel’s political spectrum might explicitly disavow its ruling thus undermining the principle of separation of powers and triggering a constitutional crisis. Even if the Knesset respected the High Court’s decision, overturning the Law would only further prove the Right’s claims of uncontrolled judicial interventionism. Yet the High Court remained committed to preserving the right to equality and Israel’s Jewish-democratic balance. Accordingly, they sought a middle ground whereby they could abrogate the Law’s most dangerous ramifications without overturning it entirely. In practice, this strategy led them to affirm the Law’s constitutionality but reconstruct it as a mostly declarative statute, one that clarifies the meaning and content of Israel’s Jewish identity but does not validate or invalidate specific policies. Or as Hayut wrote,

“The Basic Law is written with declarative (*declarativi*) language and does not include operable directives that grant personal rights to individuals according to their specific national affiliation.”⁴³

However, it is important to note that Hayut’s declarative interpretation was not absolute. While she successfully precluded the possibility that Article 7 could justify religious/nationally segregated settlements, she could not totally dismiss its blatantly operative language (“the state shall act...”). Rather, she argued that while Article 7 might justify certain policies, these must always be balanced against the right to equality.

⁴² Natanel Bendel, “The High Court debates on a live stream the Nation-State Law: Knesset Chairman: Intervention by the Court will be invalid [Heb.].” *Haaretz*, December 22, 2020, <http://www.haaretz.co.il/news/law/.premium-1.9391472>.

⁴³ HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 33.

In Israel's mixed civil-common law system, the High Court's precedent is binding on lower and future courts.⁴⁴ Accordingly, unless it is overturned by a future court, *Hasson's* declarative reconstruction is the Nation-State Law's definitive interpretation. Nevertheless, at least in their public comments, the Law's right-wing supporters didn't explicitly bemoan this attack on the Law's applicability.⁴⁵ Likely, they recognized that no more favorable reading was even possible. The Law's two most operable components – the interpretation clause and the right to segregated settlements – were removed by the Joint Committee. The High Court's well-known commitment to the constitutional right to equality made it unlikely that it would issue any ruling that seriously threatened this core principle. In any case, even if the Law didn't achieve its desired legal effects, it still provided Shaked, Dichter, and their allies with a useful populist boost.

2. Social-Political Effects

Beyond its legal effects, what were the social and political effects of the Law, especially for non-Jewish citizens of Israel and observers outside Israel? This section evaluates the Law's impact on three key groups: Palestinian citizens of Israel, the Israeli Druze, and the international community. These case studies add important nuance to the Nation-State Law debate by encompassing groups both generally supportive and wary of Israel's Jewish identity claims. While Palestinian citizens of Israel have traditionally challenged the state's Jewish identity and demanded a "state of all its citizens," the Israeli Druze are known for their support of the state's Jewish character. However, despite their differing *a priori* stances toward Israel's Jewish

⁴⁴ Eliezer Rivlin, "Israel as a Mixed Jurisdiction," *McGill Law Journal* 57, no. 4 (June 2012): 781–90, <https://doi.org/10.7202/1013031ar>.

⁴⁵ Yair Alston, "The HJC Dismisses the Petitions against the Nation-State Law: 'No Place to Intervene in Its Commands' [Heb.]," *Israel Hayom*, July 8, 2021, <https://www.israelhayom.co.il/news/law/article/3213610>.

identity, both Palestinian and Druze citizens strongly condemned the Law. The international community likewise vocally opposed the Law's passage. Opposition from international organizations that are frequently critical of Israel, such as the EU, was unsurprising. However, even leading American Jewish institutions, long a bastion of pro-Israel support, criticized the Law as racist and anti-democratic. Yet despite these harsh condemnations, the Law does not appear to have caused significant socio-political shifts in the approximately four years since its passage. Palestinian citizens of Israel remain committed to participation in Israeli electoral democracy. Despite the Nation-State Law, four Arab countries normalized relations with Israel in 2020. Among the Druze, the Law appears to be tied to a rise in disillusionment towards Israel's Jewish character, a slight decrease in voter turnout, and inter-party shifts. However, this community's small size minimizes these developments' overall effects. Finally, it's worth noting that support for the Nation-State Law was shaky even among Jewish-Israelis. A 2018 survey by the Israel Democracy Institute (IDI) found that only 52% of Jewish Israelis believed that the Law was necessary. A clear majority (60%) supported adding the right to equality.⁴⁶

A. Palestinian Citizens of Israel

Unsurprisingly, the Nation-State Law ignited forceful condemnation from Israel's Palestinian citizens. In August 2018, only a few weeks after the Law's passage, the "High Follow-Up Committee for Arab citizens of Israel" (the community's *de-facto* representative body) organized a massive street protest in Tel Aviv. The event attracted between 20,000 to 30,000 demonstrators, including many Leftist and Centrist Jewish-Israelis.⁴⁷ Two of the four

⁴⁶ Hermann, Tamar, and Ephraim Yaar. "60% of Israelis Think the New Nation-State Law Should Have Included 'Equality'." Israel Democracy Institute, July 31, 2018. <https://en.idi.org.il/articles/24311>.

⁴⁷ Yoav Etanel, "To See through the Flags: The 'Israeli' Protest of Arabs against the Nation-State Law," Walla, August 11, 2018, <https://news.walla.co.il/item/3180256>.

major Arab parties incorporated demands to repeal the Law into their official platforms.⁴⁸ Joint List MKs lobbied European Union and Arab League leaders to likewise condemn the new law.⁴⁹ According to 2021 survey data from renowned Palestinian and Israeli pollsters, Dr. Khalil Shikaki and Dr. Dahlia Scheindlin, 72% of Israeli Arabs (including Druze citizens) supported repealing the Law while only 6% supported keeping it.⁵⁰

Despite the intensity of their protests, the Law didn't substantially impact Palestinian citizens' attitudes toward the state and its identity. According to survey data from the IDI, in both 2017 and 2019, only slightly more than half of Palestinian citizens felt mostly or completely "part of Israeli society." Similarly, in both years, slightly less than half of Palestinian citizens believed that "the Israeli regime is also a democracy for its Arab citizens." Nevertheless, despite relatively low trust in Israeli democracy, Palestinian citizens remained committed to electoral participation. In 2017, 81.3% supported "Arab parties joining the government including the appointment of ministers." In 2019, support declined only slightly to 77.5%.

*Figure 5: Palestinian Citizens of Israel Public Opinion (2017, 2019)*⁵¹

Question	Completely or somewhat agree/support (2017/2019)		Completely or somewhat disagree/oppose (2017/2019)		No Answer (2017/2019)	
<i>To what degree do you feel yourself to be part of Israeli society?</i>	52.7%	56.0%	47.3%	43.8%	0.2%	0.2%
<i>The Israeli regime is also a democracy for Arab citizens?</i>	43.4%	41.9%	55.5%	57.4%	1.1%	0.6%

⁴⁸ The two parties are Hadash (communist) and Balad (secular-nationalist). See: "Hadash Platform [Heb.]," Hadash, accessed March 26, 2022, <https://hadash.org.il/matzahadash/>; "Balad Platform [Heb.]," Balad, September 11, 2018, <http://www.altajamoa.org/מבט-בלד/2018/09/11/עברית>.

⁴⁹ Gil Hoffman, "Odeh to Mogherini: Europe Must Condemn Israel. At EU, Arab MKs Accuse Israel of Apartheid over Nation-State Law," *Jerusalem Post*, September 5, 2018, sec. News; Moran Azouli, "Against the Nation-State Law: Tibi and Zahalka at the Arab League [Heb.]," *Ynet*, September 11, 2018, <https://www.ynet.co.il/articles/0,7340,L-5347925,00.html>.

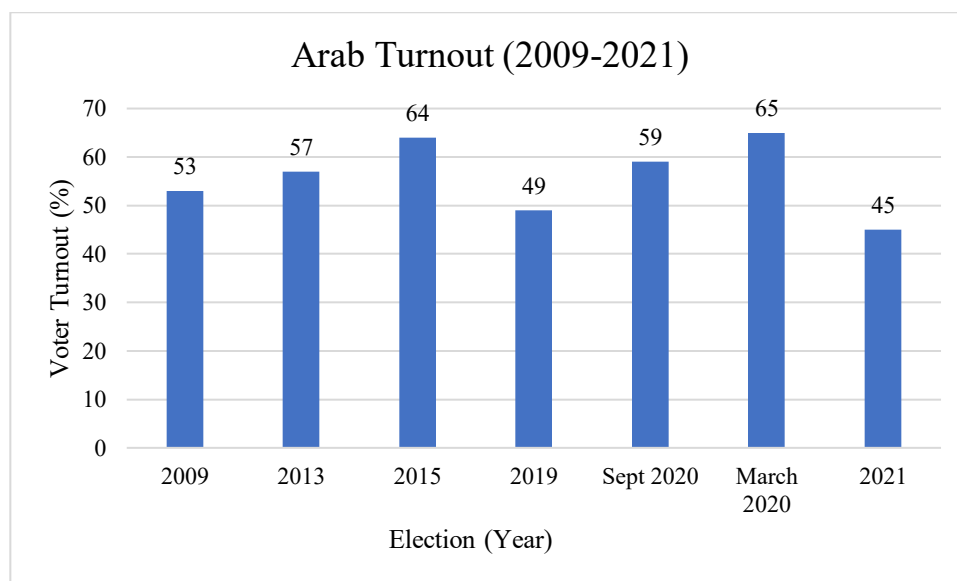
⁵⁰ Dalia Scheindlin and Khalil Shikaki, *B'Tselem Survey Data April 2021* (2021), B'Tselem, https://www.btselem.org/press_releases/2021413_new_all_population_israeli_palestinian_survey.

⁵¹ This data is provided courtesy of the Vertibi Center at the Israel Democracy Institute. See: Tamar Herman, *Partnerships with a limited warranty: Jews and Arabs* [Heb.] (2017), distributed by the Israel Democracy Institute, <https://dataisrael.idi.org.il/>; and Tamar Herman, *Partnerships with a limited warranty: Jews and Arabs* [Heb.] (2019), distributed by the Israel Democracy Institute, <https://dataisrael.idi.org.il/>.

<i>Do you support or oppose Arab parties joining the government, including the appointment of Arab ministers?</i>	81.3%	77.5%	15.3%	15.0%	3.4%	7.4%
<i>Does Israel have the right to be defined as the nation-state of the Jewish people?</i>	20.8%	19.9%	72.9%	78.6%	6.3%	1.5%

Subsequent political trends reflect Palestinian citizens' sustained commitment to democratic engagement. About a year after the Law's passage, Israeli politics entered a particularly unstable period with a record four elections between April 2019 and March 2021. While Arab turnout (including Druze) plunged in 2019 and 2021, it mirrored or even exceeded pre-Nation-State Law era levels in September 2020 and March 2020. Much as they did before the Law, Palestinian citizens continued to vote overwhelmingly for Arab parties.

Figure 6: Arab Turnout (2009-2021)⁵²



Importantly, the Law not only precipitated Palestinian citizens' continued electoral *participation* but also their political *success*. In the 2021 elections, Israel's Islamist party, The

⁵² Data from: Arik Rudnitzky, "The Arab Vote in the Elections for the 24th Knesset (March 2021)," Israel Democracy Institute, April 7, 2021, <https://en.idi.org.il/articles/34420>.

United Arab List (usually known by its Hebrew acronym, *Ra'am*), ran separately from the Joint List (Ta'al, Balad, and Hadash). After receiving four Knesset seats, Ra'am joined a diverse coalition of Leftist, Centrist, and Right-wing Jewish parties to unseat Prime Minister Benjamin Netanyahu. The resulting government thus became the first Israeli coalition with direct participation by an Arab party.⁵³ While Ra'am's choice to join the coalition was controversial even among many of its own voters, their decision remains instructive. Ra'am's entry into the 2021 coalition government shows that at least in the medium term, Palestinian citizens' frustrations with the Law didn't cause a wholesale or even partial abandonment of Israeli democracy. Rather, the Law's exclusionary and discriminatory language may have even ignited a backlash from Palestinian citizens demanding recognition and power through the ballot box.⁵⁴

B. Israeli-Druze

Much like their Muslim and Christian neighbors, the Israeli Druze robustly condemned the Nation-State Law. On July 22nd, 2018, three Druze MKs filed the first constitutionality suit at the Israeli High Court.⁵⁵ On August 4th, tens of thousands of Druze citizens and their allies protested in Tel Aviv's Rabin Square.⁵⁶ However, their unique attitude towards the Israeli state and its identity gave Druze protest a different tone. Unlike most other Arab citizens, the Druze are ferociously patriotic. They serve in the IDF, accept the state's Jewish character, rarely identify as Palestinian, and usually vote for Jewish-Zionist parties.⁵⁷ For decades, Druze loyalty

⁵³ Isabel Kershner, "The Arab Party Raam Makes History within Coalition.," *The New York Times*, June 2, 2021, sec. World, <https://www.nytimes.com/2021/06/02/world/middleeast/arab-party-raam-coalition.html>; In the 1990s, Arab parties supported Rabin's Labor government from outside but did not join directly.

⁵⁴ Lis, Interview with Yonatan Lis.

⁵⁵ Lis and Hovel, "The three Druze Knesset members joined the first appeal to the High Court against the Nation-State Law [Heb.]"

⁵⁶ Joshua Mitnick, "In Israel, Tiny Druze Minority Galvanizes Opposition to Nation-State Law," *The Christian Science Monitor*, August 6, 2018, sec. World, <http://www.proquest.com/news/docview/2083965658/citation/D34C3895FC044F97PQ/1>.

⁵⁷ An exception to this trend is the approximately 22,000 Golan Heights Druze who mostly remain loyal to Syria, don't join the IDF, and traditionally refuse Israeli citizenship. However, in recent years, a growing minority of

was based on a tacit understanding. In return for their military service and patriotism, they expected full equal rights. However, the Nation-State Law disrupted this relationship. By omitting the right to equality and democracy, the Law appeared to undermine Druze citizenship and belittle their military contributions. This community's protests reflected this nuance. Like Palestinian citizens, they criticized the Law's attacks on equality and minority rights. However, unlike their Christian and Muslim neighbors, they concurrently emphasized their acceptance of the state's Jewish character and loyal military service.⁵⁸

Polling data suggests that the Law affected Druze political attitudes and behaviors more than that of their Palestinian neighbors. According to a survey conducted by Statnet, an independent Israeli political consulting group, 73% of Druze respondents said that the Nation-State Law negatively affected their trust in the Israeli state and its government.⁵⁹ The small Druze subsample in the IDI dataset (only 55 individuals in 2017 and 64 individuals in 2019) complicates attempts to derive robust conclusions. However, the data might cautiously suggest that the Law caused a decline in Druze support for Israel's right to be defined as a Jewish nation-state.

Figure 7: Druze and the right to a Jewish Nation-State (2017, 2019) ⁶⁰

Question	Completely or somewhat agree/support (2017/2019)	Completely or somewhat disagree/oppose (2017/2019)	No Answer (2017/2019)
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Golan Druze have applied for and received Israeli citizenship in response to increasing Syrian instability (Ryan Zeitoun, "Old Loyalties, New Opportunities: The Battle for Identity among the Golan Druze," Wilson Center, December 22, 2021, <https://www.wilsoncenter.org/article/old-loyalties-new-opportunities-battle-identity-among-golani-druze>).

⁵⁸ Zeedan, "Reconsidering the Druze Narrative in the Wake of the Basic Law," 157–60.

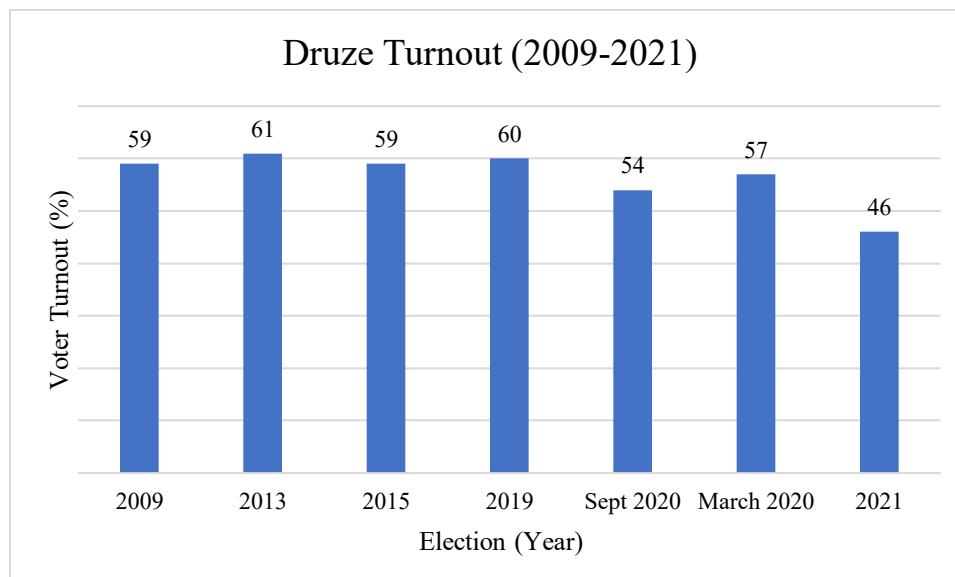
⁵⁹ Yoav Etanel, "Nation-State Law effect: The Druze are leaving the Right and joining Gantz," Walla, March 26, 2019, <https://elections.walla.co.il/item/3226854>.

⁶⁰ The data is provided courtesy of the Vertibi Center at the Israel Democracy Institute. See: Tamar Herman, *Partnerships With a Limited Warranty: Jews and Arabs* [Heb.] (2017), distributed by the Israel Democracy Institute, <https://dataisrael.idi.org.il/>; and Tamar Herman, *Partnerships With a Limited Warranty: Jews and Arabs* [Heb.] (2019), distributed by the Israel Democracy Institute, <https://dataisrael.idi.org.il/>.

Does Israel have the right to be defined as the nation-state of the Jewish people?	43.6%	31.3%	52.7%	68.8%	3.6%	0%
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Decreased belief in Jewish nation-state legitimacy and depressed trust in the Israeli government may have caused a slight, though noticeable, decline in Druze voter turnout.

Figure 8: Druze Turnout (2009-2021) ⁶¹



Importantly, during the four elections following the Law's passage, Druze voters moved from right-wing parties (especially Yisrael Beiteinu) to center and left-wing parties (especially Kachol Lavan). Likely this move reflects the community's frustrations with the Israeli Right's support for the Nation-State Law. However, the Right regained substantial numbers of Druze voters in 2021. Much of this growth was driven by returning Druze support to Yisrael Beiteinu, after its leader, Avigdor Lieberman, promised to repeal the Law.⁶²

⁶¹ Data from Mahmoud Shanan and Omri Eliat, "From a Community to a Society: Trends in Druze Voting Patterns in the Knesset Elections, 1996–2020," Moshe Dayan Center for Middle Eastern and African Studies, March 18, 2021, <https://dayan.org/content/community-society-trends-druze-voting-patterns-knesset-elections-1996-2020>; Rudnitzky, "The Arab Vote in the Elections for the 24th Knesset (March 2021)."

⁶² Barik Salim, "Druze Vote for Knesset Elections [Heb.]," Moshe Dayan Center for Middle Eastern and African Studies, November 27, 2021, <https://dayan.org/he/content/5431>; Rudnitzky, "The Arab Vote in the Elections for the 24th Knesset (March 2021) [Heb.];" Daniel Salama, "The Druze moved from Kachol Lavan to Yisrael Beiteinu [Heb.]," *Ynet*, March 24, 2021, <https://www.ynet.co.il/news/article/H1h24MFEO>.

C. International Response

As I noted in Chapter Three, a core motivation behind the Nation-State Law was the Right's desire to confront international challenges to Israel's legitimacy. In this respect, the Law failed miserably. It was rejected not only by Palestinian citizens of Israel but also by actors around the globe. Both the UN Committee on Economic, Social, and Cultural Rights (CESR) and the UN Committee on the Elimination of Racial Discrimination (CERD), in their 2019 reports on Israel, expressed concern about the Law's possible discriminatory implications and urged its repeal or amendment.⁶³ The European Union expressed similar concerns.⁶⁴ The Law also sparked condemnation from wide swaths of the American Jewish community including the leaderships of both the Conservative and Reform movements (representing 17% and 37% of American Jewry respectively), the President of the Jewish Federations of North America, the American Jewish Committee (AJC), and the Anti-Defamation League (ADL).⁶⁵ These attacks were especially ironic given MK Avi Dichter's 2015 promise that the Law would *improve* Diaspora-Israel relations.⁶⁶

Nevertheless, despite widespread international criticism, the Law does not appear to have substantially impacted Israel's geopolitical standing. In 2002, the Arab League, under the terms

⁶³ "Concluding Observations on the Fourth Periodic Report of Israel" (United Nations Economic and Social Council, November 12, 2019), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/ISR/CO/4&Lang=En; "Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel" (United Nations International Convention on the Elimination of All Forms of Racial Discrimination, January 27, 2020), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/019/68/PDF/G2001968.pdf?OpenElement>.

⁶⁴ Peter Beaumont, "EU Leads Criticism after Israel Passes Jewish 'nation State' Law," *The Guardian*, July 19, 2018, sec. World news, <https://www.theguardian.com/world/2018/jul/19/israel-adopts-controversial-jewish-nation-state-law>.

⁶⁵ Amir Tibon, "Head of Conservative Judaism Movement Compares Israel's Religious Authorities to Iran and Saudi Arabia," *Haaretz*, July 20, 2018, <https://www.haaretz.com/jewish/.premium-this-is-like-iran-jewish-groups-decry-rabbi-s-detention-in-israel-1.6292912>.

⁶⁶ Dichter's 2014 explanatory note stated:

"This Basic Law, that codifies the Zionist principles of Israel as the state of the entire Jewish People, will renew this historical covenant among global Jewry, will strengthen the connection of diaspora Jewry to Israel, and the connection of Israelis with the Jewish diaspora" (Rabinovitch, *Defining Israel*, 105–10).

of the so-called “Arab Peace initiative,” had agreed to condition diplomatic and economic normalization on an end to Israeli occupation and a resolution of the Palestinian refugee question. Nevertheless, despite no progress on either issue, in the summer of 2020, the United Arab Emirates normalized relations with Israel. Ostensibly, their move was designed to prevent Netanyahu from annexing the vast majority of the West Bank. However, increased access to American weapons sales, joint tensions with Iran, and Israel’s booming high-tech economy were likely the more salient motivations. Shortly thereafter, Bahrain, Sudan, and Morocco also normalized relations.⁶⁷ At least in the short-term, these four agreements emphasize the Law’s relative insignificance. Israel’s choice to define itself in especially ethnonationalist and discriminatory terms did not preclude Arab normalization. Rather, realist geo-strategic concerns, especially shared anxieties over Iran and Israel’s booming high-tech economy, proved to be the most impactful determinants of Israel’s international position.

Conclusion

On balance, the Nation-State Law’s legal, political and social effects were relatively weak. From a legal perspective, the Law failed to induce its Right-wing supporters’ desired “rebalancing” in Israeli constitutional law. While some lower courts offered operable interpretations, the higher courts overturned these precedents. Furthermore, the High Court’s landmark decision in *Hasson v. The Knesset* affirms a mostly declarative reading that precludes most operable potential. The Law has similarly been mostly ineffectual in the socio-political realm. Ultimately, it failed to increase domestic or international acceptance of Israel’s Jewish nation-state legitimacy. However, neither did it substantially impact internal Israeli politics or the

⁶⁷ Lara Jakes et al., “Morocco Joins List of Arab Nations to Begin Normalizing Relations With Israel,” *The New York Times*, December 10, 2020, sec. World, <https://www.nytimes.com/2020/12/10/world/middleeast/israel-morocco-trump.html>.

state's broader geopolitical standing. Even after the Law's passage, Palestinian citizens of Israel remain committed to democratic engagement. In fact, the Law precipitated the election of the first Israeli government with the direct participation of an Arab party. While the Law aligns with a decline in Druze acceptance of the state's Jewish character, voter turnout, and support for Right-wing parties, their community's small size minimizes the overall significance of these shifts. Finally, despite widespread international condemnation, the Law failed to prevent four Arab countries from normalizing relations with Israel in 2020.

In sum, nearly four years after its passage, it is now possible to broadly evaluate the health of Israel's democracy after the Nation-State Law. For some groups in Israel, the Law marks an important shift. In 2021, the Israeli human rights organization, B'tselem, cited the Law as a key reason for its decision to label Israeli policy on both sides of the Green Line as "apartheid." B'tselem claimed that the Law "signals to all state institutions that they not only can, but must, promote Jewish supremacy in the entire area under Israeli control." In their opinion, Israel operates as the *de-facto* sovereign between the Mediterranean Sea and the Jordan River. Within this single political unit, the state allocates full rights to Jews and second-class rights to Palestinians in an eerie, though by their own admission inexact, echo of apartheid South Africa.⁶⁸ The B'tselem report's accusation of differential rights between Jews and Palestinians is certainly accurate. However, its claim that the Law "signals to all state institutions that they not only can, but must, promote Jewish supremacy" is premature. The NGO issued its report on January 12th, 2021 – seven months before the High Court's decision in *Hasson v. The Knesset*. After *Hasson*, it is clear that the Court doesn't believe that the Law "signals" any tangible policies to "state institutions" let alone a directive to "promote Jewish supremacy." While the

⁶⁸ "A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid" (B'Tselem, January 12, 2021), 8, https://www.btselem.org/publications/fulltext/202101_this_is_apartheid.

High Court acknowledges that Article 7 might justify certain policies besides explicitly segregated settlements, it emphasized that even these hypothetical policies must be balanced against the right to equality.

However, these observations should not excuse the Nation-State Law. As Chapter Three emphasized, the Law was clearly enacted with discriminatory and anti-democratic intentions. Furthermore, Israel's most grievous injustices – West Bank occupation, *de-jure* and *de-facto* discrimination against Palestinian citizens, and a failure to seriously grapple with the legacy of 1948 – remain ongoing. However, as this chapter has documented, Israelis of all nationalities and religions have been spared the Law's most dangerous potential. Through the power of creative judicial interpretation, Israeli courts reconstructed the Law as mostly declarative and thus congruent with democratic mores.

When viewed more broadly, *Hasson's* declarative reinterpretation emphasizes the dangers posed by the Court's crisis of legitimacy. The Israeli Supreme Court's appointment process is especially undemocratic. Justices are appointed by the President and recommended by a nine-member committee comprising three current High Court justices, two cabinet ministers, two Knesset members, and two representatives from the Israeli Bar Association. The committee's recommendations must garner at least seven votes. Critically, the three current justices and two Israeli Bar Association representatives grant the stereotypically liberal legal profession a majority (though not a determinative one) on this committee. As a result, the High Court appointment process tends to reproduce similar cohorts of left-leaning justices. While this trend has weakened in recent years, particularly following the appointment of certain right-leaning justices (especially Noam Sohlberg, David Mintz, and Alex Stein), the Court is still widely perceived as controlled by a small liberal elite that reproduces its power to

undemocratically check the Knesset – the true sovereign.⁶⁹ The Court's decisions in *Ka'adan*, *Adam*, and *Eitan* further reinforce this perception. For now, *Hasson* doesn't appear to have ignited any further backlash. However, if a later Knesset revives some of the Law's earlier more discriminatory components, such as the right to segregated settlements, the Court will have a much harder time refuting them without seriously threatening its legitimacy

⁶⁹ Goldberg, "The Long Reach of Restraint."

Chapter 5: Conclusion

1. Constitutionalizing Ethnic Identity

This thesis began by recognizing the Nation-State Law's significance to Israeli and international politics. Over seventy years ago, the Declaration of Independence birthed a radically new type of polity claiming to be both Jewish *and* democratic. Yet Israeli political history has been characterized by conflict over the meaning of and balance between these two ideals. Within the context of these complicated debates, the Law declares a specific vision for Israel's identity – one based on Jewish nationalism, symbolism, and policy but noticeably bereft of equality or human rights. It thus provides an excellent opportunity to reflect on the past, present, and future of Israeli democracy.

Beyond its domestic importance, this thesis also recognizes the Nation-State Law's international significance. Like Israel, many other countries struggle to balance ethnic identity with liberal democracy. Rising tides of populist-nationalism, especially in Europe, the Americas, and India, further emphasize this conflicts' saliency. Analyzing the Law thus offers a useful point of comparison for these critical global issues.

The Law's domestic and international significance inspired this thesis's central research questions. First, how and why did the Law come about? Second, what are its implications for Israeli democracy? I argued that while the Law is best understood as the result of a complex multi-causal process, right-wing backlash towards the High Court's perceived liberal bias and interventionist tendencies was a particularly salient factor. Concerns over the domestic and international delegitimization of Israel's Jewish identity were also important. I further argue that the Law has been mostly ineffectual in both the legal and sociopolitical realms. The High Court interpreted the Law as principally declarative and thus inapplicable to most tangible policy

questions. While the Law inspired substantial domestic and international condemnation, it failed to catalyze meaningful shifts in political behaviors or attitudes. Importantly, it is imperative to recognize that these findings might yet change. A later High Court could reinterpret the Law as legally operable. Such a move might spark harsher reactions from Palestinian citizens and the international community.

2. Implications for Israeli Democracy

As previously noted, the Nation-State Law provides an invaluable opportunity to reflect on the past, present, and future of Israeli politics. After this thesis's analysis of the Law's development and ramifications, I now assess what lessons it may teach for each of these periods.

Juxtaposing the Nation-State Law against the Constitutional Revolution of the 1990s reveals two key structural flaws in Israeli constitutionalism. First, the Law highlights the unforeseen consequences of Israeli judicial activism. During the 1990s, the Court's expansionist moves likely seemed justifiable. For over forty years, the Knesset had successively failed to draft and ratify a complete constitution. Granting all Basic Laws primacy and entrenching individual liberties' constitutional status likely seemed to be the most efficient method of protecting Israeli democracy. However, the Court undermined these efforts by acting unilaterally.¹ It extended primacy to all Basic Laws without an explicit mandate from the Knesset. *Basic Law: Human Dignity and Liberty* and *Basic Law: Freedom of Occupation* passed in 1992 – three years before *Bank Mizrahi* declared that all “substantively entrenched” Basic Laws possess primacy and eleven years before *Herut* determined that even unentrenched Basic Laws possessed primacy. Accordingly, the Knesset could not have intended to imbue these Basic Laws with the power of

¹ Ruth Gavison, *The Constitutional Revolution: A Description of Reality or a Self-Fulfilling Prophecy* [Heb.] (Jerusalem: The Israeli Institute for Democracy, 1998), 15–22.

judicial review. Without a clear public mandate, the Constitutional Revolution thus exposed itself to criticism as an elite liberal project. In the long-term, these attacks ultimately catalyzed the Nation-State Law.

Second, the Law highlights the weakness of Basic Law ratification – Israel’s *de facto* constitutional amendment mechanism. Per the Harari compromise, The Knesset can pass a new Basic Law with a simple majority of all present Knesset members. Even “entrenched” Basic Laws can usually be amended with only 61 out of 120 Knesset votes. By extending primacy to all Basic Laws, the Constitutional Revolution thus allowed an incredibly small majority to enact broad constitutional changes. Yet this development carried unforeseen consequences. By passing with the incredibly meager margin of 62-55-2, the Nation-State Law showed how Israel’s weak amendment mechanism combined with universal Basic Law primacy exposes the Israeli constitution to unwarranted instability.²

Comparing the Law with contemporary Israeli politics highlights continued tension over the state’s Jewish identity. While the High Court precluded most operable interpretations, the Law’s chauvinistic definition of Jewish nationalism, symbolism, and policy is still the most authoritative legal declaration of Israel’s Jewish identity. However, when viewed from a broader sociopolitical lens, the Law’s claim that it decisively determines Israel’s Jewish identity becomes less persuasive. Throughout its development, and especially during the 2017-2018 Joint Committee hearings, the Law faced substantial opposition. While most of the Knesset’s right-wing parties fully supported the Law’s hyper-nationalist Jewish identity statements, the Centrist and Leftist Zionist parties emphasized that these declarations must be balanced by overtures to equality, human rights, and democracy. The Joint List opposed the Law entirely, arguing that

² See Justice George Kara’s Dissent in *Hasson v. The Knesset* (HJC 5555/18 MK Akram Hasson v. The Knesset [Heb.] (2021) (Isr.) 165-171.

Israel couldn't be both Jewish and democratic. Following these debates, the Law passed by an incredibly slim margin and failed to garner wide public support, even among Jewish-Israelis. The intensity of these disagreements emphasizes that at least in the medium-term, the debate over the meaning of, and even the right to, Israel's Jewish identity remains heavily contested.

Finally, the Law might forecast a troubling future for Israeli democracy. As Chapter Two emphasized, Israeli democracy is deeply flawed. According to some scholars, these defects might even disqualify it from being a democracy at all. Yet Israel has at least traditionally *claimed* to be a democracy. However, the Nation-State Law challenges this trend. As Chapter Two noted, Article 1's recodification of the state's Jewish identity without acknowledging democracy, equality, or human rights is incongruent with Israeli and international democratic norms. Yet when viewed within a larger sociopolitical context, this omission is distressingly unsurprising. As Chapters Two and Three noted, over the past few decades, Israel has undergone a noticeable right-wing and anti-democratic shift. The persistence of West Bank Occupation, now well past a half-century-long, further challenges the viability of Israel's democratic claims. While the High Court may have rendered the Law mostly inoperable, from a symbolic perspective it remains impactful. In the long conflict between Jewish identity and democracy, the Nation-State Law points to the increasing dominance of the former over the latter. However, the Law's story might also offer a sliver of hope. It passed amid voracious opposition and by an incredibly slim margin. The High Court's declarative reinterpretation precluded most discriminatory ramifications. In short, these developments emphasize that Israeli democratic erosion will not go unchallenged. Despite, and often because of the Nation-State Law, Israelis of many religions and nationalities continue to fight for equality and human rights.

3. Implications for Global Democracy

As Chapter One noted, the Nation-State Law offers a useful point of comparison for international conflicts between ethnic identity and democracy, especially in our current era of rising nationalist-populism. Among numerous lessons, the Law might serve as proof of the universal difficulty to reconcile national self-determination with liberal democracy. As Chapter Three highlighted, throughout the Joint Committee hearings, Joint List MKs repeatedly emphasized their opposition not only to the Law's blatantly discriminatory provisions (interpretation clause, segregated settlements, etc.) but also to its basic definition of Israel as a Jewish state. In their perspective, Jewish identity and democracy were fundamentally incompatible. Defining Israel as a Jewish state, with a Jewish flag, anthem, and emblem, inherently excludes Palestinian citizens and other national minorities from a full sense of ownership over the state's identity. Furthermore, the Joint List's position was not merely rhetorical. As Chapter Four highlighted, their stance is well reflected among the non-Druze Arab public. Both before and after the Law's passage, approximately three-fourths of Palestinian citizens completely or somewhat disagreed that Israel had the right to define itself as the nation-state of the Jewish people. These challenges to the Nation-State Law suggest that other countries' efforts to define themselves according to a specific national or religious identity might be similarly exclusionary.

4. Further Research

While this thesis elucidated many of the Law's central motivations and implications, there are still substantial opportunities for further research. Chapter Three's analysis of the Law's development could benefit from in-depth interviews with the Law's core supporters. These conversations might explain their motivations with greater nuance and depth. Chapter Four's

examination of the Law's legal ramifications could benefit from further contextualization within wider Israeli jurisprudence. Were the declarative reinterpretations in *The State of Israel v. Plonit*, *Ploni v. Karmiel Municipality*, and *Hasson v. the Knesset* aligned with Israeli legal norms?

Similarly, Chapter Four's analysis of the Law's sociopolitical implications could benefit from survey data that more directly investigates how the Nation-State Law impacted Jewish and non-Jewish Israelis' attitudes toward the state and its identity. Finally, research on the Nation-State Law could be generally improved by comparing it with similar constitutional amendment efforts by populist-nationalist movements around the globe.

5. Looking Forward

During the Joint Committee's stormy second hearing, MK Tzipi Livni (Zionist Union) stated,

"I hope that someday if this Law passes, someone will read the Knesset minutes and know that there were also those who fought for the Declaration of Independence and equality."³

In many ways, Livni's quote encapsulates this thesis's entire subtext. I hope that my analysis of the Nation-State Law isn't merely an interesting intellectual exercise. Rather, I sincerely believe that this Law teaches fundamental lessons about Israeli and global politics. It points to the difficulty, and perhaps even impossibility, of ever fully reconciling ethnic identity with liberal democracy. Yet at the same time, it reminds us of the many Israelis who fought against the Nation-State Law and for equality. I hope that we all learn to follow their examples.

Yet advocating for Israeli equality in the aftermath of the Nation-State Law is no easy task. As I've argued, this Law highlights the fundamental contradictions between ethnic identity

³ Joint Committee Minutes #2 [Heb.], September 18, 2017, Knesset Center for Information and Research, 11.

and liberal democracy. As long as Israel actualizes Jewish self-determination through the nation-state framework, it inevitably excludes non-Jews, and especially its Palestinian citizens, from a full and equal connection to the state's identity. Given the long history of international anti-Jewish persecution, certain constitutional protections for Israel's Jewish identity might be warranted. Safeguarding the right to Jewish immigration is likely especially worthwhile. However, Israel's Jewish identity must always be balanced by the principles of equality, human rights, and democracy. Most importantly, Jewish self-determination will always be inherently discriminatory as long as Palestinians are denied the same right. Only through the establishment of a separate Palestinian nation-state, a joint Jewish-Palestinian confederation, or a binational state can Israel's Jewish identity ever be justified. Yet if some sort of Jewish state remains in this hypothetical future, it must seriously re-envision itself. If Israel wants to be "the nation-state of the Jewish people," it must also secure the rights of all its citizens – Jewish and non-Jewish. In the end, this type of Jewish state may actually be the most Jewish of all. Or as Livni told the Joint Committee, "In the end, the good wins. Judaism wins. But the moderate Judaism. The accepting and true [Judaism] of 'love thy neighbor' and 'love the stranger.'"⁴

⁴ Joint Committee Minutes #15 [Heb.], July 10, 2018, 12:00 Knesset Center for Information and Research, 36. Quoting Deuteronomy 10:19 and Leviticus 19:18.

Appendix

Basic Law: Israel – The Nation State of the Jewish People

Unofficial Translation by Dr. Susan Hattis Rolef

Basic Principles

- 1(a) The Land of Israel is the historical homeland of the Jewish people, in which the State of Israel was established.
- (b) The State of Israel is the nation-state of the Jewish People, in which it realizes its natural, cultural, religious and historical right to self-determination.
- (c) The exercise of the right to national self-determination in the State of Israel is unique to the Jewish People.

State Symbols

- 2(a) The name of the State is "Israel."
- (b) The State flag is white, with two light-blue stripes close to the edge, and a light-blue Star of David in its center.
- (c) The State emblem is a seven-branched menorah with olive leaves on both sides, and the word "Israel" at its base.
- (d) The State anthem is "Hatikvah".
- (e) Details regarding the State symbols shall be determined by law.

State Capital

- 3. Jerusalem, complete and united, is the capital of Israel.

Language

- 4(a) Hebrew is the State language.
- (b) The Arabic language has a special status in the State; arrangements regarding the use of Arabic in state institutions or vis-à-vis them will be set by law.
- (c) Nothing in this article shall affect the status given to the Arabic language before this law came into force.

Ingathering of the Exiles

5. The State shall be open for Jewish immigration, and for the Ingathering of the Exiles.

The Connection with the Jewish People

6(a) The State shall strive to ensure the safety of members of the Jewish People and of its citizens, who are in trouble and in captivity, due to their Jewishness or due to their citizenship.

(b) The State shall act, in the Diaspora, to preserve the ties between the State and members of the Jewish People.

(c) The State shall act to preserve the cultural, historical and religious heritage of the Jewish People among Jews in the Diaspora.

Jewish Settlement

7. The State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and strengthening.

Official Calendar

8. The Hebrew calendar is an official calendar of the State, and the Gregorian calendar shall serve alongside it as an official calendar; the use of the Hebrew calendar and the Gregorian calendar shall be determined by law.

Independence Day and Memorial Days

9(a) Independence Day is the official national holiday of the State.

(b) Memorial Day for the Fallen in Israel's Wars, and the Holocaust Martyrs' and Heroes' Remembrance Day, are official memorial days of the state.

Days of Rest and Statutory Holidays

10. The Sabbath and the Jewish holidays are the established days of rest in the State; non-Jews have the right to observe the days of rest on their days of Sabbath and holidays; details regarding this matter shall be determined by law.

Entrenchment

11. This Basic law shall not be modified except by a Basic Law, passed by a majority of the members of the Knesset.

חוק-יסוד: ישראל – מדינת הלאום של העם היהודי

עקרונות יסוד

1. (א) ארץ ישראל היא מולדתו ההיסטורית של העם היהודי, שבה קמה מדינת ישראל.
- (ב) מדינת ישראל היא מדינת הלאום של העם היהודי, שבה הוא מממש את זכותו הטבעית, התרבותית, הדתית וההיסטורית להגדרה עצמית.
- (ג) מימוש הזכות להגדרה עצמית לאומית במדינת ישראל ייחודי לעם היהודי.

סמלי המדינה

2. (א) שם המדינה הוא "ישראל".
- (ב) דגל המדינה הוא לבן, שני פסי תכלת סמוך לשוליו, ומגן דוד תכול במרכזו.
- (ג) סמל המדינה הוא מנורת שבעת הקנים, עלי זית בשני צדדיה, והמילה "ישראל" למרגלותיה.
- (ד) המנון המדינה הוא "התקווה".
- (ה) פרטים לעניין סמלי המדינה ייקבעו בחוק.

בירת המדינה

3. ירושלים השלמה והמאוחדת היא בירת ישראל.

שפה

4. (א) עברית היא שפת המדינה.
- (ב) לשפה הערבית מעמד מיוחד במדינה; הסדרת השימוש בשפה הערבית במוסדות ממלכתיים או בפניהם תהיה בחוק.
- (ג) אין באמור בסעיף זה כדי לפגוע במעמד שניתן בפועל לשפה הערבית לפני תחילתו של חוק-יסוד זה.

קיבוץ גלויות

5. המדינה תהיה פתוחה לעלייה יהודית ולקיבוץ גלויות.

הקשר עם העם היהודי

6. (א) המדינה תשקוד על הבטחת שלומם של בני העם היהודי ושל אזרחיה הנתונים בצרה ובשביה בשל יהדותם או בשל אזרחותם.
- (ב) המדינה תפעל בתפוצות לשימור הזיקה בין המדינה ובין בני העם היהודי.

(ג) המדינה תפעל לשימור המורשת התרבותית, ההיסטורית והדתית של העם היהודי בקרב יהדות התפוצות.

התיישבות יהודית

7. המדינה רואה בפיתוח התיישבות יהודית ערך לאומי, ותפעל על מנת לעודד ולקדם הקמה וביסוס שלה.

לוח רשמי

8. הלוח העברי הוא לוח רשמי של המדינה ולצדו ישמש הלוח הלועזי כלוח רשמי; השימוש בלוח העברי ובלוח הלועזי ייקבע בחוק.

יום העצמאות וימי זיכרון

9. (א) יום העצמאות הוא יום החג הלאומי הרשמי של המדינה.

(ב) יום הזיכרון לחללי מערכות ישראל ויום הזיכרון לשואה ולגבורה הם ימי זיכרון רשמיים של המדינה.

ימי מנוחה ושבתון

10. שבת ומועדי ישראל הם ימי המנוחה הקבועים במדינה; למי שאינם יהודים זכות לקיים את ימי המנוחה בשבתם ובחגיהם; פרטים לעניין זה ייקבעו בחוק.

נוקשות

11. אין לשנות חוק-יסוד זה אלא בחוק-יסוד שהתקבל ברוב של חברי הכנסת.

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