

## MIDDLE EAST AND NORTH AFRICA

### *A STATE FOR ALL ITS CITIZENS? THE NATION-STATE LAW AND ISRAEL'S CONSTITUTIONAL TRANSFORMATION TO A NATION-STATE OF THE JEWISH PEOPLE*

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#### **Abstract**

The article examines the 2018 'Basic Law: Israel as the Nation-State of the Jewish People' on the grounds of Israel's state identity and the its definition of nationality. It argues, that the law, while carrying real ramifications for minority groups, is a symbolic document reemphasizing the Jewish character of the state and has to be understood as being part of a transformational process within the Israeli constitutional narrative.

#### **Introduction**

In the wake of the 2019 Israeli elections and Prime Minister Benjamin Netanyahu might acceding into his fifth term in office, questions on the present and future identity of Israel have gained more and more attention in international discourse. Not only the state's relation towards the Palestinian population of the West Bank and Gaza Strip but also towards Israeli non-Jewish citizens has been a point of fervent discussions. Benjamin Netanyahu made his position on that topic clear during the election campaign of 2019 stating during a cabinet meeting:

"I would like to clarify a point that, apparently, is not clear to slightly confused people in the Israeli public. Israel is a Jewish, democratic state. What this means is that it is the nation-state of the Jewish people alone [...] of course it respects the individual rights of all its citizens – Jews and non-Jews alike. But it is the nation-state, not of all its citizens, but only of the Jewish people. [...] The national representation of the Jewish people is in the State of Israel. Israel is the nation-state of the Jewish people and of it alone." (Wootliff, 2019)

Those remarks were a reaction to an earlier discussion between the Prime Minister and actress Rotem Sela on social media, in which Sela initially posted on Instagram:

"[...] When the hell will someone in this government convey to the public that Israel is a state of all its citizens and that all people were created equal, and that even the Arabs and the Druze and the LGBTs and — shock — the leftists are human"

To the surprise of the Israeli public Benjamin Netanyahu himself responded to Sela's post:

"Dear Rotem, an important correction: Israel is not a state of all its citizens. According to the nation-state law we passed, Israel is the nation-state of the Jewish people — and not anyone else." (Staff, 2019)

The argument between Sela and Netanyahu shows which recent event lies at the very core of the controversial issue of state's identity in Israeli public discourse: The Nation-State Law.



Drawing from a cultural science approach this article tries to provide an analysis of the Nation-State Law focusing mainly on questions of state identity. Via this approach the article tries to explore Israel's current understanding of nationality, and its self-perception as a Jewish and democratic state. By this, it tries to contribute to a broader understanding of the global phenomenon of the modern renaissance of the nation-state.

### **The Law and its notions of Jewish identity**

The 'Basic Law: Israel as the Nation State of the Jewish People'<sup>7</sup>, commonly known as 'Nation-State Law', consists out of 11 articles subdivided into several sub-clauses, whereby the 11<sup>th</sup> article does not deal with a contentual, but legalistic issue, ensuring, that it can only be modified by another Basic Law. The law primarily addresses issues connected to the identity of a state, which have (a) a predominantly symbolic character, i.e. the [historical] self-perception of the state (article 1), the resulting implications for Israel's relationship towards the world's Jewry (article 6) and state symbols (article 2) as well as (b) a more tangible effect on daily life, i.e. the state capital (article 3), its official language (article 4), Jewish immigration (article 5) and settlement policy (article 7), the official calendar (article 8), memorial days (article 9) and days of rest (article 10).

The most obvious indicators for the state's identity are its symbols defined in article 2. All of those, i.e. the state's name, flag, emblem and anthem, carry exclusively Jewish-Zionist connotations, whereby no symbol alluding to any other cultural source of identity is mentioned, be it religious or secular.

Though (b) may touches organizational matters of everyday life, all of its articles convey a distinct notion of identity. Obviously calendrical questions do not merely regulate a society's perception of time, but, through its chosen mode of temporal order, display the governing cultural principle, by which communal life will be defined. Articles 8 – 10 construct a synthesis of traditional Jewish (the Sabbath, Jewish calendar) and nationalist-Zionist concepts (Independence Day and Memorial Days). The special emphasis on Independence Day within article 9 is probably due to the inner-Israeli debate on the true nature of the date, as Arab citizens used to commemorate it as a day of mourning.

Obviously, language is one of the most important identity carriers in itself, though within the Israeli context the issue of language carries a more complex dimension. Heretofore as a continuation of pre-Israeli British law, official state documents were also published in Arabic (IATaskforce 2018), the Nation-State law is the first document of its kind clearly elevating the status of Hebrew as Israel's official language to that of Arabic, which carries a non-defined "special status". Though, proponents of the law argue, that it is the first law to describe the role of Arabic within Israel, article 4 clearly generates a hierarchy within the Israeli cultural sphere and denotes Hebrew, i.e. Jewish culture as the primary source of state identity.

Interestingly, within the Israeli context, issues on the state's capital (article 3), its immigration (article 5) and settlement policy (article 7) can be understood as serving to define the state as primarily 'Jewish' in light of article 1 "Basic Principles". The first article stipulates, that the state of Israel has been established in "the Land of Israel", which is "the historical homeland of the Jewish People" (sub clause a), thereby

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<sup>7</sup> This article will mainly draw from several English translations of the original Hebrew text, which are the translation of Dr. Susan Hattis Rolef, issued online by the Knesset (Knesset, 2019), as well as the Knesset Press Release from July 19<sup>th</sup> 2018, preserved via the Webarchive, (Knesset, 2018), the translation used by the interagency task force on Israeli Arab issues (IATaskforce 2018) and the translation by its proposer MK Avi Dichter (Dichter, 2018). For the Hebrew original see (Ministry of Justice Israel, 2018).

establishing the state as the “national home of the Jewish people, in which it [the Jewish people] fulfills its [...] historical right to self-determination” (sub clause b), whilst “the right to exercise national self-determination in the State of Israel is unique to the Jewish people” (sub clause c). By defining the very *raison d’être* of the state as being an inherently Jewish state by and for the Jewish people, whilst exclusively granting only the Jewish people a right to self-determination in it, Israel draws a differentiation between citizenship and nationality (Lintl, Wolfrum 2018). Thereby it is possible to be a part of the Israeli Nation without being an Israeli citizen, whilst obtaining citizenship does not include nationality, which explains article 6’s focus on Israel’s relationship towards the world Jewry.<sup>8</sup> Accordingly, Article 6, as a direct reference to the Declaration of the Establishment of the State of Israel (Provisional Government of Israel, 1948), sets the exclusive openness to Jewish Immigration as a central characteristic of the state.

The Nation-State Law differentiates between the ‘State of Israel’ and the ‘Land of Israel’, whereby the former has been established within the boundaries of the latter, though does not entail the whole of it. This explains why article 7 defines “the development of Jewish settlement as a national value”. By encouraging Jewish settlement activities, the boundaries of the ‘State of Israel’ and the ‘Land of Israel’ might align in the future, which includes the full incorporation of a ‘complete and united’ Jerusalem as Israel’s capital (article 3), while the status of the city is internationally disputed (UN, 1997). The distinction between the Land and the State of Israel is a distinction already made in the very first official document of the Israel: The Declaration of the Establishment of the State of Israel, which also distinguishes between ‘Eretz-Israel’ and ‘the Jewish State’ (Provisional Government of Israel, 1948). During its revision process from the preliminary Knesset reading in May 2017, the first Knesset reading in April 2018 to its final version, the Nation-State law lost several references to Proclamation of the State, most probably due to the fact, that the latter is an open document, offering minorities the right to ‘full and equal citizenship’ (Jamal, 2019). Additionally, it appears that the adopted version of the law omitted several articles, which would protect certain minority rights, e.g. the right to preserve unique ethnic or religious identity, the guarantee of protected religious sites, or offering public services for Arabic speakers (IATaskforce).

### **The Law within the Israeli constitutional narrative**

Though Israel’s Declaration of Independence called for the adoption of a formal constitution until 1<sup>st</sup> of October 1948 by an elected constituent assembly (Provisional Government of Israel, 1948), no document as such has been adopted so far. Since the first Knesset failed to find a consensus on the constitutional issue MK Yitzhar Harari made a proposal on June 13 1950 to the assembly which states that “the First Knesset assigns to the Constitution, Law and Justice Committee the preparation of a proposed constitution for the state. The constitution will be made up of chapters, each of which will constitute a separate basic law. The chapters will be brought to the Knesset, as the Committee completes its work, and all the chapters together will constitute the constitution of the state.” (Knesset, 2007). Since the adoption of the ‘Harari Proposal’ the



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<sup>8</sup> Though, it has to be noted, that the law states in article 6, sub clause a, that “the state shall strive to ensure [...] the safety of its citizens, who are in trouble or in captivity, [...] due to their citizenship” and not exclusively Jewishness.

Constitution, Law and Justice Committee, one of the several permanent Knesset committees, has the ability to propose Basic Laws, which, after adoption by the Knesset, will be of constitutional character.

On July 19<sup>th</sup> 2018 the Knesset passed the Nation-State Law as the 13<sup>th</sup> basic law of the Israeli state with a slight majority of 62:55 and two abstentions. The first draft of the law has been proposed as early as 1999 by then Kadima MK Avi Dichter (Mustafa, 2018) and has underwent several changes until July 2018 (IA Taskforce, 2018). On first sight the law seems to be of a mere symbolic nature, though it carries drastic ramifications for minority groups and the Israeli society as a whole. Proponents arguing that the law merely reaffirms current realities do not consider the lack of reference made to the democratic character of the state, equality among Israeli citizens and the Proclamation of independence which precisely invokes those principles.

It seems that the law puts a reemphasis on the Jewish character of Israel after the adoption of the 'Basic Law: Human Dignity and Liberty' (Knesset, 1992) in the early 90s lead the Supreme Court (Oster, 2018) to focus on democratic and not exclusively Jewish principles dealing with issues that touch the identity of the state such as questions on Jewish settlement (Hostovsky 2018). Still today, in reaction to the Nation-State Law, people argue, that the supreme court shouldn't have influence on defining the state's identity (Bassok, 2019). In addition, with the stagnation of the Israeli-Palestinian peace process, the preservation of Israel's Jewish character became the new essential social goal for the majority population, especially with post-Zionists and minorities determined to define Israel as a primarily democratic state and delegitimizing efforts by other states and institutions (Lintl, Wolfrum 2018). As a reaction to all of these developments one could observe a series of legislative measures introduced by more conservative and religious forces (Benvenisti, 2018) which tried to initiate a transformation of the constitutional narrative (Loevy, 2018) in order to identify Israeli nationality as Jewishness and the state's identity as primarily Jewish. The Nation-State Law of 2018 seems to be the culmination of the process of counterweighing the emphasis on the democratic character of the state (Israel Democracy Institute, 2018). Currently the law is in the process of being reviewed and perhaps disqualified by the Supreme Court on the grounds of it possibly contradicting the 'Basic Law: Human Dignity and Liberty', which enjoys a certain status of immunity from emergency regulations and a degree of superlegality to disqualify subsequently passed Basic Laws. (Knesset, 1992) Therefore the law could either be disqualified by the Supreme Court or overruled by another Basic Law, which would require a majority of 61 votes to pass in the Knesset. (IA Taskforce, 2018)

## **Conclusion**

Though the Nation-State Law has clear ramifications for minority rights, it is also a symbolic document that originated from a rather abstract discourse on Israeli nationality, identity and the manifestation of those within the constitutional narrative of the state. It is at the very core of the discussion on the influence of the Supreme Court on Israeli identity, Israel's relationship towards minorities and whether Israel is a state of, for and by all its citizens or primarily the Jewish majority. It is a law which touches the very nature of Israeli democracy itself. By dealing with such a wide range of issues, the document should not only be an object of studies in law, but also, obviously, for political studies, political philosophy as well as cultural studies. Especially in light of the electoral developments of 2019 and the uncertain future for Benjamin Netanyahu and his government, the fate of the Nation-State law within the transformative process of the constitutional narrative as well as public discourse will play a vital role in the years to come.

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