



Jewish and Democratic? A Rejoinder to the "Ethnic Democracy" Debate

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Abstract (Summary)

A note about terminology before I start. [Sammy Smootha] and his critics talk about Israel as an "ethnic state." I prefer to talk of a "Jewish state." While the Jewish state has clear ethnic features, the choice of "ethnic" as an exclusive descriptive label obscures at least two elements that I think should be emphasized: the deep religious element in Judaism, reflected in the inter-Jewish debate, and the ambiguity between ethnicity and nationhood. The ethnic-national ambiguity exists for the identity of Palestine and Palestinians as well. And clearly a Palestinian state will have to cope with tensions and connections with the religion(s) of its citizens, as so many of the countries in the region have to do. "A Jewish state" encapsulates all of these tensions, and thus permits a better framework of discussion of the complex reality than either the ethnic or the theocratic perspectives. On the face of it, "Jewish," with its emphasis on a unique combination, puts a stop to comparative analysis, and stresses the sui generis nature of Israel. I oppose the tendency to think that Israel is so unique that no comparative analysis can be helpful and illuminating. The relevance of analogies, however, depends on our awareness of the complexities, and one of them is precisely the relationship between ethnicity, religion, and nationhood.(18)

(5). [Baruch Kimmerling], "The New Israelis" note 107. Unlike Smootha and his critics, who concentrate on the Jewish-Arab rift, Kimmerling sees also as inconsistent with democracy the arrangement by which matters of personal status are relegated to religious courts that judge by religious laws. See also Baruch Kimmerling, "Religion, Nationalism, and Democracy in Israel," *Zmanim*, 50-51 (1994-) 116-31 [Hebrew]; Oren Yiftachel, "The Ethnic Democracy Model and Its Applicability to the Case of Israel," *Ethnic and Racial Studies*, 15(1) (1992) 125-36; [Nadim Rouhana], "Accentuated Identity. in a Protracted Conflict: The Collective Identity of the Palestinian Citizens in Israel" *Asian and African Studies*, 27 (1993) 97-127; As'ad [Ghanem], "State and Minority, in Israel: the Case of Ethnic State and the Predicament of its Minority," *Ethnic and Racial Studies*, 21(3) (1998) 428-48; Nadim Rouhana, *Palestinian Citizens in an Ethnic Jewish State: Identities in Conflict* (New Haven, CT, 1997); Oren Yiftachel, "Israeli Society and Jewish-Palestinian Reconciliation: 'Ethnocracy' and Its Territorial Contradictions," *Middle East Journal*, 51 (4) (1997) 505-19.

(19). "Israel/Palestine" is a term I have borrowed from [Meron Benvenisti]. I prefer it to the labels "Israel" and the "Occupied Territories," which do not indicate the presence in the region of another people seeing it as its homeland. For obvious reasons, I do not want to call the whole area either Israel (as Smootha's critics suggest?) or Palestine. Or to call the Palestinian parts by their Jewish names, indicating they are regions rather than a potential political unit.

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INTRODUCTION

GROWING AWARENESS OF TENSIONS BETWEEN Jewish and democratic elements in Israel's regime abounds in the scholarship of Israeli society of the last two decades. This may be surprising, since the tensions were not created recently. They have accompanied the Zionist movement and its idea of a Jewish state from the very beginning. In fact, all agree that Israel is in many ways more democratic today than it was when it was founded. Nonetheless, the debate about the possible and actual relationships between the Jewish and the democratic strands in the identity of Israel is becoming more intense. In part this is the result of the inclusion of

the description of Israel as a Jewish and Democratic state in the 1992 Basic Laws, and the ideological, legal and judicial debate that ensued.⁽¹⁾ But more important is the fact that the complex processes and mechanisms that had helped to manage and obscure these tensions in the first years of Israel's existence have been weakened significantly.

There are at least three different sources, independent but inter-related, of these tensions. One is the fact that Israel, a state defined and structured as the locus of Jewish self-determination, has a 17 percent Palestinian minority within its borders. The second is the inter-Jewish debate about the meaning of the Jewishness of the state, with a fierce competition between religious and secular-cultural-historical conceptions of Jewish identity. The third is the deep political debate in Israel concerning its borders and its nature: while most Jewish Israelis want Israel to remain a Jewish state in some sense, positions on what are, or should constitute, Israel's border move between the 1967 lines and the whole region of Israel/Palestine.

In the years prior to 1967, all these sources of potential tension were subdued. While Israel's borders were never legislated, Jews struggled to consolidate their control, and to gain international recognition, of the 1949 borders. It was accepted that the Jewish State would not extend to the whole of Eretz-Yisrael.

The inter-Jewish debate was highly visible. Initially, the talk was not about Jewish versus democratic, but about democratic versus theocratic. The mechanisms used to resolve these differences were based on negotiation and agreement, exhibiting clear signs of non-majoritarian democracy, of power-sharing and seeking consensus between representatives of these two major conceptions of Israel. While religion received a place in public life and most religious needs were financed by the public, the orthodox in general accepted that laws in Israel were made by the Knesset, not by priests or rabbis following religious law. The negotiated status quo gave religious courts a monopoly over matters of marriage and divorce.

The Jewish-Arab rift, on the other hand, was initially never seriously acknowledged. The arrangements concerning the Arabs in Israel were adopted by exclusive Jewish decision-making mechanisms. Military government was imposed on most of the Arab population. There was a massive transfer of titles in land to the Jewish state, which ended up owning more than 90 percent of Israel's land. Even the decision to grant the Arabs linguistic autonomy and not to assimilate them into the Jewish culture was made by Jews, and primarily for Jewish interests. While Arab citizens did get the right to vote from the start, the regime was majoritarian in the clearest way.

All these background conditions changed. The 1967 war reopened the debate over Israel's borders, and has extended the time frame of the Jewish-Palestinian struggle for control over territory.⁽²⁾ The hold of the secular elites on political power has weakened, and orthodox Jews are no longer willing to trade autonomy and public finance for support. The demographics of the Jewish population also meant that the Jewish secular majority is now replaced with a more complex division between a religious minority of about 22 percent, a secular group of equal size, which constitutes most of the economic, scientific and cultural elites of the country, and a large "traditional" population, which does not fully observe, but does not see itself as secular.⁽³⁾ Finally, the Palestinian citizens of Israel have developed an intellectual and political leadership, and have been empowered by renewed contact with their brethren after 1967. Their political claims have become more vocal and visible: they have started using their political power more effectively, and their status within Israel has improved. The re-opening of the questions of borders, together with the long occupation, has legitimated the re-opening of the original challenge of the very idea of a Jewish state and its legitimacy. The occupation and Jewish expansionism, as well as the inevitable measures needed to control a population that has become increasingly hostile and rebellious, are now conducted under the supervision of an international community. 50 years removed from the Holocaust and the 1948 War, and under a much thicker web of international norms of human rights and justice than those existing before 1948.

Despite the many connections between all the processes noted above, political treatment of the inter-Jewish and the two sources of Jewish-Arab tensions is still very different. Within Israel, and among many Jews outside Israel, the only questions worth debating, and the only issues on which compromise needs to be found, are those relating to inter-Jewish tensions and disagreements and to peace with the Palestinians outside Israel.⁽⁴⁾ Even Israeli Jews who are concerned with the discrimination against, and exclusion of, Arab citizens in Israel usually debate the justice of the arrangement as a purely Jewish matter, not combining it with a suggestion about systemic participation of Arabs in the decision-making processes themselves so that the resulting arrangement might be based on active participation of the Arabs citizens of Israel and not on the benevolent or prudential concessions of Jews.

Not surprisingly, these changes are reflected in all cultural forms in Israel, including academic scholarship. Not surprisingly, the effects on scholarship are greatest in those areas devoted to the analysis and evaluation of Israeli society, its nature and its prospects. Yet, up to the present time, scholars have stayed away from direct discussion of the large, systemic normative questions: Is Israel justified? Is it justified for it to continue to be a

Jewish state? Mostly, sociologists and political scientists have provided descriptions and analyses of reality. From the tenor of these descriptions one can guess a set of normative presuppositions, but these have rarely been made explicit or defended. Most Jewish scholarship has presupposed the justification of Zionism and of at least some of the measures required to strengthen the Jewish state, while most Arab scholarship had denied both of these. At the same time, a growing number of Jewish scholars, and all Arab scholars, have become very critical of at least some of the arrangements in Israel – in all three main areas of tension – that are usually justified by invoking the Jewishness of the state.

Despite this growing criticism, most students of Israeli society, both within Israel and abroad, Jews of all persuasions as well as Arabs, have been content to discuss tensions created by these arrangements for democracy and to identify weaknesses in Israeli democracy stemming from them. Until now, the scholarly literature has not included an explicit and systemic academic dispute about the utility and validity of treating Israel as a state belonging to the family of democracies.

No more. In a series of different works,⁽⁵⁾ culminating in a joint express invitation by As'ad Ghanem, Nadim Rouhana, and Oren Yiftachel in the previous issue of this Journal,⁽⁶⁾ a group of scholars now explicitly invites scholars studying Israeli society to reject its classification as a democracy, and specifically its proposed description by Sammy Smooha as an "ethnic democracy,"⁽⁷⁾

I find Smooha's data very illuminating and his analysis very persuasive and compelling on many points. I have sympathy with many of the insights and comments made by his critics. For reasons I will explain in part below, if I must take a stand between them, I side with Smooha: Israel is a democracy with serious flaws and internal tensions, which require urgent care and reform if Israel is to thrive. However, my more basic problem is that I find the whole debate misleading and unhelpful, because it presents issues that to me are primarily political and normative as matters of theory and conceptual analysis. I am therefore left unmoved by the joint invitation of Smooha and of his critics that all students of Israeli society take a position in their controversy over classification and labeling. I believe the debate is animated by normative and political rather than theoretical controversies. These are indeed the more important questions. Rather than conduct an illusory conceptual debate, we should concede the primacy of the normative and the political questions.

Since I do not want to fall into what I see as a trap, I shall not structure my comment on the question of classification directly. Rather, I shall reformulate the dispute so as to extract from it what I see as the real controversies underlying the conceptual and theoretical claims, provide a sketch of my answers to them, and invite scholars to see how the conceptual and classificatory debate obscures the very questions that should be at the center of our attention.

REFORMULATION OF THE DISPUTE

On the face of it, Smooha and his critics are giving different answers to the same question: Should Israel be classified as a democracy?

On the face of it, what we need to do is give a definition of democracy and a description of features of Israel, with the answer following from the application of the definition to the case. Different answers to the question could thus follow from either the adoption of different definitions of democracy, or different descriptions of reality in Israel, or both. Here the puzzle begins: Smooha and his critics agree on most of the facts of Israeli reality, including that it should be defined as an ethnic state (institutionalization of a majority's control of the state). They also seem to agree about the nature of the enterprise: a non-normative, scholarly attempt to make sense of the complex reality of Israeli society, with special reference to relations between Jews and Arabs within it. They agree that ideal-types like democracy (and ethnic states?) are not all-or-nothing concepts, and that not many societies are perfect democracies. In most cases, therefore, it is more fruitful to discuss deviations from the type, rather than ask the question whether a given complex reality is just above or just below the separating line. They further agree on many of the components of democracy, that Israel has become more democratic than it was in the 1950s, and that democracy is not a neutral term: other things being equal, the more democratic a regime is, the better it is. They also agree that democracy includes a deep commitment to civil equality. Smooha even concedes that, at certain points, the line should be crossed: a herrenfolk society, like pre-1994 South Africa, despite having democracy for the ruling class, is not a democracy, because it offends too seriously against the basic principle of universal suffrage.⁽⁸⁾

Against so much agreement, on both facts and the nature of the enterprise, the intensity of the debate seems strange. What is at stake? All concede that Israel does have strong procedural elements of democracy: All its citizens have civil and political rights. It has regular and free elections. It has an independent judiciary. It has impressive freedom of speech and association. There is in it a real possibility of change of government, exemplified in 1977, 1992, 1996, and most recently in the December 1998 Knesset vote to dissolve the

government and hold early elections in May 1999. Denying Israel the label "democracy" obscures these elements. Furthermore, Israel's democratic elements are important in explaining political developments within it. The distinction Ghanem et al. suggest between democratic features (which Israel has) and democratic structures (which it lacks, and therefore cannot be called a democracy) struck me as novel and not very persuasive.

Once we concede there is serious theoretical loss if we deny that Israel is a democracy, Smoocha's suggestion that Israel should be classified as a democracy acquires strong presumptive force. Israel does not offend against democratic principles in the clear way that pre-1994 South Africa did. Denying it the label requires either the adoption of a thicker conception of democracy, under which it cannot be classified a democracy despite these strong democratic features, drawing attention to features that change the reality classified, or arguing that, in adopting a conceptual scheme, one should take into account not only theoretical but political considerations as well. Smoocha's critics do, in more or less explicit forms, all of the above.(9)

They do not develop in a systematic way a proposed definition of democracy, or justify why a thicker characterization should be adopted. Since I do not think this definition is indeed a central element here, I will do the same.(10)

Much more central is the question of the adequate description of Israeli reality and its moral and political evaluation. Here Smoocha's critics are moving between two perspectives. While they argue that, even in pre-1967 Israel, the arrangements are not democratic, they also claim that "Israel proper," which is Smoocha's unit of analysis, is non-existent, and that we should look into the reality of the political regime and struggle going on within Israel/Palestine as a whole. They add the fact that most religious parties support the Jewish state over the whole of Israel solution, and the systemic inequality of Arabs both within and outside Israel, leading to their effective dis-empowerment. They also claim that this situation is not (and should not be) stable. They enrich their conception of democracy by making it require that minorities actually consent to their unequal status, so that it will not be unilaterally imposed on them by the majority.(11) They imply that such consent was never given, should not, and is unlikely to, be given in the special circumstances of Israel. On the basis of these considerations they conclude that the reality in Israel does not meet basic democratic criteria.

Neither party raises explicitly the methodological question of whether, in the choice of conceptions, and especially of the application of conceptions to complex realities by way of classification, the possible political (as distinct from scholarly) effects of the choice should be taken into consideration. This reluctance is understandable, because conceding an affirmative answer involves the scholars both in predictions of the consequences of such choices and in their normative evaluation. I believe the political consequences of most such choices are not easy to predict, and that, in fact, they often may operate in opposing ways. Moreover, these political consequences may be justified in some circumstances and be very dangerous in others. So I believe it is legitimate for scholars to decide that their conceptual choices will not be governed by such considerations.(12)

If the context is an extremely charged political struggle, however, this may not be a credible choice. When the terms are regarded by all as honorific (or pejorative), the simple decision to use them may well seem a political stand. This in fact seems a central element in the critique of Ghanem et al.(13) There are heavy theoretical costs to this attitude: we thereby lose the ability to use terms such as democracy without making a normative judgement. But it may well be that it is impossible to claim conceptual detachment when an acute conflict is taking place.(14) Once we concede the inevitable need to be politically sensitive in the choice of conceptions, however, the discussion cannot be presented as purely conceptual or theoretical. The presuppositions of the judgement about the political consequences and their evaluations must also be explicated. Normative considerations are reasons to adopt (or refrain from using) a concept only if we can identify the consequence of such adoptions, and if they are shown to be desirable (or undesirable). The consequences of calling Israel a democracy, say the critics, are that it obscures its undemocratic elements, and, more importantly, that it may contribute to a tendency to accept present arrangements. This is a reason against using the honorific term only if the legitimization is indeed unjustified. This is clearly presupposed by Smoocha's critics, but may be less acceptable to others. This is precisely why it is dangerous to let the choice of conceptions, which we should all use, be dictated or influenced by judgements that are themselves deeply contested.

I see the affirmation of the need to look at these normative questions directly as one of the main contributions of this debate. There are a number of such questions: Can it be justified, in principle, for there to be a Jewish state? in Israel? Are the present arrangements in Israel (the status quo) justifiable? Do those who live under Israeli laws have a moral obligation to obey them?

One does not have to know a lot about Israel to know that the answers to the normative questions and that of stability (and ultimately the answer to the conceptual question) may be affected by the chosen perspective. Both the justification and the stability of a Jewish state are very different within pre-1967 Israel and over the whole of Israel/Palestine. I accept that one should maintain a distinction between pre-1967 Israel and Israel/Palestine. but

believe that taking just the one or the other as exclusive points of reference is misleading. Both should be on the theoretical (and the political) agenda. I will therefore answer all the above-mentioned questions for both alternatives.

As noted above, one of the reasons the debate emerged only recently is the delayed result of the integration into scholarship of the aftermath of the 1967 War. Despite the fact that Israel's borders were never defined by statute, the unit people talked about until the 1970s was "Green Line Israel," with its particular demographic and geo-political features, notably a large Jewish majority within Israel and the absence of Jewish control over the area originally designed for the Palestinian state and the population residing in it. The patterns of Jewish settlement, the institutionalization of Jewish rule over Palestine, and the political rhetoric of many Israeli politicians, of both Likud and Labor, changed that situation. While the 1967 War gave Israel legitimacy, until then denied, to its 1949 borders, it re-opened the possibility of thinking of the whole area of Palestine as one political unit. This possibility attracts both Jews and Arabs, both those who want their group to control the whole territory, and those who are hoping for a neutral or a bi-national state within it. So the one-state people are of very different political persuasions. And many of the two-states people distrust those who advocate one bi-national state, fearing that this is a device to implement a state controlled by the other group.⁽¹⁵⁾

The same different political persuasions also motivate the two-states people: some want two equal and viable states, one for each of the contending nations, as the ideal solution. Some would prefer an equal one-state solution but fear it is impractical, so they opt for two equal nation-states as an interim solution that may well last for many years. Some (mostly Jews) argue for the two states vision, hoping that the present asymmetry of power will perpetuate Jewish control over most of the land and resources, which would – according to their concept of such a solution – contain as few of the Palestinian population as possible. Others (mostly Arab) argue that Israel, even within its 1967 borders, should stop being a Jewish state.

This range of possible normative approaches is made even more confusing when one has to take a stand on immediate and specific political decisions. Tactical considerations, and the obvious fact that one has to decide not only on ultimate goals, but on ways to get there – and these may be very controversial – may create strange alliances and unexpected enmities. Consequently, some who would agree to the two equal states vision oppose Oslo because they think it is likely to lead to perpetual and legitimated Jewish domination. They are joined by the rejectionists of Oslo from both national groups, who seek one unit controlled by their own groups. Supporters of equal rights for both people are thus in the company of those who deny the legitimacy of any claim by the other group.

Similar issues exist in the inter-Jewish rift: Some, mostly secular liberals, see strong separation of state and religion as the ideal solution.⁽¹⁶⁾ Some orthodox Jews (I am not at all sure that most of them) do want a full religious state. Others believe that some middle-way accommodation is the ideal solution. But many of the first two groups understand that their preferred solution is not realistic. They seem to converge and create a solid majority for the accommodation view. However, the middle way is seen by most as an instrumental necessity, to be overruled whenever the political situation allows a better deal. Such attitudes undermine the trust needed to support a stable framework for accommodation, so the immanent tension between the extreme positions cannot be managed.

The political alternatives thus have to be discussed against a very fluid political present and a very uncertain political future. Justifying them requires so much speculation and leaps of faith that it cannot be a work of pure scholarship. While individuals may well look for scholars to provide them with the kind of background needed for their thought, scholars are in a serious predicament. What scholarship can provide is at best very abstract formulations and guidelines. It is likely that a meaningful statement, relevant to the political issues of the day, will have to transcend scholarship – and definitely the kind of scholarship encouraged in our disciplinary academic world. But transcending scholarship leads one to make statements on which one does not have the relative advantage of scholarly expertise. Scholars are using their scholarly reputations to make statements that are at heart political. They confuse the related but very different vocations of scientists and political agents.

I think awareness to this fact led Smootha and his critics to present their enterprise as purely scholarly. My argument is, in effect, that this presentation is misleading. The real debate between Smootha and his critics is normative and political, not scholarly and theoretical. Let me make clear, then, that I do not regard this paper, and the arguments presented in it, as primarily the products of scholarship. Rather, they are an invitation to a debate in which all citizens should participate and to which scholars may make a limited contribution. I therefore take the liberty to assert many things that should be argued for, trusting that those who want to argue them will challenge my assertions.⁽¹⁷⁾

THE CENTRAL QUESTIONS: A REFORMULATION

A note about terminology before I start. Smootha and his critics talk about Israel as an "ethnic state." I prefer to talk of a "Jewish state." While the Jewish state has clear ethnic features, the choice of "ethnic" as an exclusive descriptive label obscures at least two elements that I think should be emphasized: the deep religious element in Judaism, reflected in the inter-Jewish debate, and the ambiguity between ethnicity and nationhood. The ethnic-national ambiguity exists for the identity of Palestine and Palestinians as well. And clearly a Palestinian state will have to cope with tensions and connections with the religion(s) of its citizens, as so many of the countries in the region have to do. "A Jewish state" encapsulates all of these tensions, and thus permits a better framework of discussion of the complex reality than either the ethnic or the theocratic perspectives. On the face of it, "Jewish," with its emphasis on a unique combination, puts a stop to comparative analysis, and stresses the sui generis nature of Israel. I oppose the tendency to think that Israel is so unique that no comparative analysis can be helpful and illuminating. The relevance of analogies, however, depends on our awareness of the complexities, and one of them is precisely the relationship between ethnicity, religion, and nationhood.(18)

Because of the charged nature of the debate, no label is simple. I have chosen the following labels because of, not despite, their political overtones: "Israel" for me will be "pre-1967 Israel," and the combination of Israel and the Palestinian territories it has occupied since 1967 I will call "Israel/Palestine,"(19)

THE NORMATIVE QUESTIONS

A JEWISH STATE?

A Jewish state is also a deeply contested concept. At least three different meanings may be identified: a state with a large Jewish majority, a nation-state in which the Jewish people exercises political self-determination, and a state inspired by Jewish religious law. A large Jewish majority in itself may give Jews security and a measure of self-government. It may, but does not have to, mean some cultural cohesiveness.(20) A Jewish nation state will see the establishment and maintenance of a Jewish majority as an important, indeed crucial, matter. Its policies toward members of other nations living in its territory may move along a continuum, with full civic equality on the one side and total absence of rights on the other. A Jewish religious state may also move on a continuum, between a full theocracy (in which decisions are made by religious leaders according to religious law) and a state that accommodates the fact that it has a large observant group within it. For a state to be Jewish, on the conceptual level, it needs to have either a Jewish majority or some form of Jewish particular identity.

Israel is clearly a Jewish state, on all these spectra. It has a large Jewish majority (about 80 percent). It is a nation-state that maintains strong control over the symbolic and material aspects of the state. Hebrew is its language; its holidays, religious as well as national, are those that belong to the Jewish calendar. Jewish religion is very present in public life, and matters of personal status are controlled by Orthodox religious law.

The claim of Jews for a state is a private case of the claims of peoples to political self-determination.(21) It presupposes that Jews are a nation, not just a religion. While this is debated by some, I will not seek to support the nationhood of Jews here. Despite the fact that Judaism is almost the only known religion that is not multi-national,(22) I take it that, with secularization, it is quite possible to suggest that what used to be a combination of a religion and a nation has now become a nation, whose nature and boundaries are only partly determined by religion.(23) Clearly, this is denied by many orthodox Jews, who claim that, even today, the borders of the collectivity should be exclusively defined by the Halakha [Jewish religious law]. Yet they, too, do not see Judaism as exclusively a religious faith.(24)

A harder hurdle is the fact that, at the turn of the century when political Zionism became active, Jews had no territorial base in which they formed a majority. Granting them political self-determination in any given territory, with the implied necessary dislocation and injury to the populations of that territory, thus required unique feats of justification not encountered by many other modern claims for political self-determination.(25)

It should be stressed that this hurdle is of great moral significance. It is true that the claim of Jews for political (rather than just cultural) self-determination is strengthened by the fact that their statelessness has clearly contributed to a long history of persecution by other nations and religions, culminating in the genocide of the holocaust. On the other hand, even the need to be effectively protected cannot justify the denial of the rights of individuals and groups to self-determination on their land, including the right to control immigration to their territory. Consequently, the case for Jewish self-determination depended, at the start, on the combination of two facts: the moral possibility of creating a Jewish state (or region, which would permit autonomy and control of defense) without dislocating or dispossessing others to a serious extent, and the success of Jews in creating a critical mass of Jews in some place, so that there was a territorial base justifying the political solution of creating a political unit whose *raison d'être* would serve as a center for the Jewish people.

Against this background, it is not surprising that Zionists often talked about "a land without a people to the people

without a land." This belief that Palestine was empty and waiting for the returning Jews was an important part of the legitimization of Zionism. Clearly, this belief was false: Palestine was not an empty territory. On the other hand, The Jewish settlement in Palestine was not just another colonialist enterprise of people seeking lands to colonize and settle, as some would argue. Jews came to Palestine because it was going home for them, even if one does not think history gave them historical or religious rights to the country. My conclusion is that, in 1900, Jews did not have a right to establish a Jewish state in Zion, but they did have the right to try and create the conditions that might in turn support such a right. And they did exercise this right successfully.

The Palestinians had the correlative right to try and prevent Jews from settling in their midst. They could foresee what the Jews wanted and that success would possibly lead to their own dispossession, and it was more than legitimate on their part to organize a movement against selling land to Jews, or seek British legislation that would limit Jewish immigration to the country. While Palestine was not empty, the tragedy of Palestinians is that they did not have full control over immigration to their country, so that they could not effectively prevent Zionist settlement in the area.

The UN decision in 1947 was of great moral and political significance to the Zionist enterprise: it reflected the judgement of the international community that the reality created in Palestine and in the world justified recognizing the right of the Jewish people to political self-determination in a part of Palestine, alongside a Palestinian state, and on the condition that the equal rights of non-Jews in the Jewish State be protected.(26)

Since then, the case for the justifiability of a Jewish state has only strengthened: Massive Jewish immigration has strengthened its Jewish majority. Most of Israel's Jewish citizens were born in it and have no other home. Having a Jewish state has indeed facilitated an important revival in Jewish culture. While the contribution of Israel to the safety of Jews around the world is not clear, Israel succeeded in changing the baseline: The question now is not the justice in establishing the Jewish state, but the justice in dismantling it, against the wishes of most of its citizens. I have not seen a serious argument for this position.(27)

My conclusion that a Jewish state can in principle be justified is weak in at least two senses. It does not state that a Jewish state is the most just political arrangement available in the region, or that the costs of a certain set of arrangements existing in the Jewish state may be such that it is not justified. I now turn to these questions.

A JEWISH STATE OR A BI-NATIONAL STATE?

There are voices calling for the adoption of a bi-national state in the region under both the one-state(28) and the two-states(29) conceptions. While the challenge is real in both contexts, I think it is important to distinguish between the two scenarios. A bi-national state with equal power-sharing is a moral and political necessity if there is one state, while it is a possibility to be considered, but one that may be morally rejected, under the two-states scenario.

If the unit we are talking about is Israel/Palestine (or Israel and the Occupied Territories), there is no way that this unit can be justified (or be democratic even in the thinnest of senses) without being bi-national. The reason for that is simply that, within that territory, Jews and Arabs are populations of an almost equal size (and with the different birth rates and predicted Jewish immigration, Arabs may well become a majority within Israel/Palestine in a short time). Within such a state, constitutional arrangements made by the parties may grant each of them autonomy, which in part may be territorial. But there is no possible justification for granting any one of the groups control, or a privileged possession, over the land and the population as a whole. Such hegemony will not be supported by free elections in which all those subject to the state can participate. If Israel/ Palestine is to be a Jewish state, it will have to deny the non-Jews the right of effective political participation. There is no way a Jewish hegemony can be maintained in such a state without dis-enfranchising all or a large part of the local Palestinian population.

It must be clarified that this state need not be neutral toward the non-civic affiliations of its citizens.(30) In fact, it is likely that this one state would not be a liberal country in which all ethnic and religious affiliations are privatized, because a large majority of all people living in the region do not want it to be like that. Even the Western liberal Jews who talk about a liberal state as an ideal mostly want to privatize religion and dis-establish the orthodox leadership, but do not want to privatize Israel's national-cultural identity. The fact that a neutral liberal state is unlikely does not make it unjustified, of course. It also does not mean that we should not strive to strengthen the liberal components of the state. We should.(31) But it is odd, and even dangerous, to preach that the only justified regime for a given society is one that none of the parties is interested in. So this one state does not have to privatize non-civic affiliations. It must only treat them equally.

Against the background of the debate between Smoocha and his critics, it is important to stress that this conclusion is not mainly a matter of conceptual necessity, or a derivation from a definition of democracy. It is

mandated by actual realities. A Jewish state over the whole of Palestine is patently unjustified. It cannot be based on free elections in which all or most of those subject to it participate. It therefore will not be democratic. And experience shows it would not be stable either.

This conclusion seems to me self-evident. It is therefore important to stress that it is not universally accepted by all members of the contending parties on both sides. Most of the supporters of "Greater Israel" among Jews crave a Jewish state over all of Israel/Palestine. Abstract national dreams are legitimate, and may be important parts of nation-building narratives. But many Jews act on this dream politically and continue to push for a reality that might consolidate Jewish control over as much of the territory as possible. When faced with the question of the fate of Palestinians under such a scheme, many of them become vague or equivocate. Palestinians are now primarily busy with building their own political institutions and with preventing continued Jewish expansion. This is a relatively easy struggle to explain and justify. But the objection to Oslo and to Arafat is based in part on active political ideologies that deny any legitimacy to a solution other than a Moslem Palestinian state over Israel/Palestine as a whole. And many Jews report with concern the fact that Arafat himself legitimates such goals. Palestinians of these views, too, become very vague when asked about the fate of Jews in this state.(32)

The moral and political picture is very different if one operates within the two-states scenario. It is true, as Ghanem et al. point out, that the present reality is complex, and that the 1967 borders are in many senses virtual. On the other hand, despite the fact that the occupation is now longer than the life of pre-1967 Israel, I do not think it is clear that the unification of these parts of the country is indeed irreversible. In fact, the moral and the political necessity that one state in Israel/Palestine will be a binational state in this very strong sense is one of the main reasons so many Jews, and many Arabs, prefer the "Two states for Two peoples" solution.

In other words, I do not think Smoocha's working hypothesis – that Israel will remain the relevant political unit – is unrealistic. To say that is to presuppose the defeat of the peace camp in Israel. While this camp has not won, it has not lost either. It is impossible, at this stage, to know what the outcome of the long and non-linear political struggle is going to be.(33)

Within an Israel conceived in this way, the case for a bi-national state is not an obvious winner simply because of the large discrepancy in numbers between the groups, the possible justification for permitting Jews political self-determination, and the probable impracticality of making Jews and Arabs give up symbols and controls connected with sovereignty. This last factor is of special force when we recall that this reluctance is not exclusively symbolic, and may have valid reasons related to security and economy.

In fact, part of the attractiveness of the bi-national solution within Israel is its ambiguity: Does it require only recognition of some group rights to Israeli Arabs, in addition to their individual rights, so that equal citizenship becomes richer and stronger? Or does it involve the voluntary agreement by Jews that the state will stop being the place where they exercise their right to national and cultural self-determination? A Jewish state with recognition of Palestinians as a nation may well maintain a principle of Return, some control over resources and development (with fair and proportional allocations to Arabs), the flag, the anthem, the hegemony of Hebrew, and the right to determine public holidays. A serious binational state, even if Arabs only get proportional representation, can retain none of the above. Many of these elements are ones that are indeed suggested by even the weakest sense of a Jewish nation-state, which is – as I argued above – justifiable. The fact that so many people in the region support a one-state solution all theirs suggests that the physical security of members of the groups and their possessions may require that each group controls its own security. It is thus not clear in the name of what principle this set of features of a Jewish state can be rejected on moral grounds.

ARE ISRAEL'S PRESENT ARRANGEMENTS JUSTIFIED?

Many Jews, in Israel and abroad, reach the above conclusion with a sigh of relief. The relief is not justified. While I think there is a strong case for maintaining Israel in some senses a Jewish state, I believe many of the arrangements in present-day Israel, often justified by invoking this ideal, are not in fact justifiable. Among the arrangements which cannot be justified, and this is not meant to be a comprehensive list, are the orthodox monopoly over matters of personal status,(34) the present scope of the Law of Return, the complete exclusion of Israeli Arabs from centers of decision-making related to resources, budgets, and land, the systemic discrimination against Arabs in all areas of life, the absence of Arabs from the high positions of the Israeli civil service, and the complete asymmetry in the demand that Arabs learn Hebrew and Jewish history with no requirement that the Jewish school systems will teach Arabic and Arabic culture and history, facilitated and combined by the fact that Jews control Arab education.(35) I have also argued elsewhere that the reading of the election laws as prohibiting a party from calling for a peaceful change of the nature of the state so that it ceases to be defined as a Jewish state is unjustified, and that I doubt the wisdom of defining Israel as a Jewish and democratic states in the Basic Laws in a quasiconstitutional process that did not include a serious consultation and agreement with the Arab citizens of Israel (36)

OBLIGATION TO OBEY THE LAW?

I do not believe the non-citizen Palestinians have a moral reason to obey Israeli laws. As far as they are concerned, these are laws made by others and imposed on them, not laws designed by their legitimate rulers to advance their welfare.(37) They of course have prudential reasons to obey Israeli law, and they have strong moral reasons to obey the laws that seek to regulate most human affairs within their community and in their relations with others. In addition, they have clear obligations toward those who may be harmed by their actions. The injustice of the enduring Israeli occupation does not relieve them of these moral duties. Nonetheless, they are not morally bound by Israeli laws as such. They are justified, within these moral constraints, if they choose to rebel against Israeli occupation.

The situation is very different concerning the debate among Israeli citizens about its nature and its legal arrangements. Rebelling against the legitimate authorities of one's country is only justified if two considerations obtain: First, this government is unjust to an extent justifying the use of force to change it; Second, effective change cannot be achieved by peaceful means. Neither of these conditions obtains in present day Israel. Disobedience to particular laws or struggles to make changes falling short of a violent change of government are, of course, different matters. However, delegitimation of Israel's political institutions, as distinct from criticizing them for particular decisions they make or legitimate, is unjustified. Moral considerations, not only prudential ones, should make the Israeli Arabs, and any other group in Israel that seeks to protest its political arrangements, refrain from the use of terrorism, murder, or armed rebellion to achieve their political goals.

THE STABILITY OF A JEWISH STATE

There is a direct relationship between the stability of a state of affairs and the incentives of those affected by it and who can affect it to change it. These incentives, in turn, are a complex of factors, among which a sense of justice, or more usually, a sense of injustice, is a strong component. But mostly, individuals are not only motivated by their perception of the justice of the situation, even where they feel themselves the victims. If one has nothing to lose but one's chains and humiliation, one may well rebel. Once this is not the case, political mobilization becomes a more complicated matter. And without political mobilization, it is very hard to change the status quo, especially if the forces that benefit from it are strong.

It follows that both those who are interested in change and those who are interested in the status quo have strong prudential reasons for analyzing the structure of relevant incentives. To a large extent, the structure of incentives is a matter of social facts and can be studied independently of one's normative outlook. On the other hand, rational people will be more easily mobilized if they believe they have a chance to succeed. Those who want to change the status quo thus have a vested interest in persuading their audiences that the situation is unstable and that they have a good chance of changing it. Since people who feel a state-of-affairs is very unjust will want others to help them fight against it, one's normative outlook thus inevitably colors one's assessment of reality, providing many opportunities for "leaps of faith."

Is the status quo, defined in the two-states scenario as Israel, maintaining a distinctively Jewish character, stable? Smooha argues that it is, based on the analysis of the preferences of both Jews and Arabs. While the first preference of Arabs is a bi-national state in Israel, the most popular choice for both groups is an improved status quo. I find this analysis intuitive and persuasive. In fact, I believe an improved status quo between Jews and Arabs is more stable than the status quo in the inter-Jewish rift. If I am right, the Jewish-Arab status quo in Israel is stable despite the fact that it is, as I have suggested, unjustified in many ways. This finding becomes even more significant when contrasted with the fact that Jewish control over Greater Israel is not a stable situation. Awareness of this fact on the part of a growing number of people within the Jewish elites (and not the normative power of the conclusion that Jewish control over that land was unjustified) provided the push toward the move in the direction of a two-states solution in Oslo.

Thus, this set of predictions about stability, while extremely speculative, lends support to the partly independent normative conclusions of the previous section.

THE CONCEPTUAL QUESTIONS REVISITED

My analysis indicates that, on the conceptual level, two possible meanings or extensions of "a Jewish state" are indeed excluded even under the thinnest conception of democrat: one is a full-blooded theocracy, run by rabbis and priests; the other is a nation-state which disenfranchises non-Jews in it. Both are not democratic because they are governed by standards which do not require the consent, in whatever form, of all adult people subject to them. Accepting this conceptual implication leads me to say that the one-state scenario with Jewish control is not democratic, and not only unjustifiable.

Two possible types of democracy are also excluded by a notion of a Jewish state stronger than the existence of a Jewish majority and some inevitable cultural and political implications of such a majority: the liberal democracy of the neutral variety, in which all non-civic affiliations are privatized; and the strong bi-national politics, like Belgium, in which the state does not give preference, formally or informally, to one national ethos over the other.

However, as we saw, the idea of a Jewish state, does not have to include theocratic control or such denial of political rights to non-Jews. And the notion of democracy (even of liberal democracy) can encompass more than these two forms. It follows that there is no sweeping conceptual inconsistency between a state being Jewish and its being a democracy. I see nothing in the arguments of Ghanem et al. that suggests that we should adopt a conception of democracy such that only a state that either completely privatizes all non-civic traits, or treats them equally in every way, can be a democracy. No assimilative nation-state of the European models could be a democracy under this description.

This conceptual point is generalizable: while there is a minimum of political equality that is indeed crucial to democracy, democracy can exist despite the fact that not all groups feel that they "belong" in the same sense and intensity. In fact, in all societies there are distinctions between centers and peripheries, and those closer to the center feel more identified with the country than those further away. This, too, is one of the senses in which Israel is much more democratic today than it has ever been. Similarly, while a state cannot be a theocracy and a democracy at the same time, democracy can exist with a broad array of attitudes to religions and religious establishments, as is exemplified by the different arrangements enacted in various Western democracies.

Politically, too, I think the thesis of conceptual inconsistency between democracy and a Jewish state is counterproductive: The people most concerned with the moral issues raised by inequality and theocracy in Israel are those who are committed to democracy. Mostly, they will simply reject the invitation by Ghanem et al. Some may accept it and seek to make Israel more democratic and more equal. But many more, I expect, will see this invitation as yet another proof that Palestinians are unwilling to accept the right of Israel to exist as a Jewish state in the region.

I believe Ghanem et al. in fact concede this point. While they do say that an ethnic democracy is like hot ice, suggesting a strong conceptual inconsistency, they soon move on to weaker formulations of their critiques, centering around the special demographic and historical features of Israel and Israel/Palestine (see pp. 264, 255). (38)

So the real question left open is that of the classification of present-day Israel, with all its complex demographic, political, and historical characteristics. When there are such deep tensions between democratic and nondemocratic strands in a regime, the decision to stress just one of the sets by the choice of a label may always be attacked. As a matter of theory, I share Smootha's feeling that the strength of Israel's democratic elements creates a presumption in favor of seeing it as a democracy, and that this strong presumption has not been rebutted by his critics. I hope I have now explained why I doubt that it is good politics to insist that Israel is simply not a democracy. Clearly, those who want to describe Israel as a non-democracy are the ones who are most interested in changing its arrangements. Presumably, they want to change it so that it is a democracy (or a better democracy). But in a democracy, change must be made through persuasion. Effective persuasion is usually the product of a combination of claims of justice and of political power. The willingness of Israeli Jews to concede to the demands of the Arabs is strengthened by the fact that they see themselves as committed to democracy. I find it hard to believe that Jews will become more willing to negotiate with Arab citizens of the state if they learn that they are at present seen as a non-democracy. Somehow I also doubt if describing Israel as a non-democracy as the bottom line of intricate scholarly debates will make a big difference in the willingness of most Israeli Arabs to fight for their rights within Israel. Their sense of anger and injustice, their feeling of dispossession and discrimination, are much stronger motivations for action than abstract debates about whether or not Israel is a democracy. After all, this description of Israel, in itself, will not change anything in their daily reality. Why would it change their willingness to mobilize and fight for change?

Describing Israel as a non-democracy may have some political effect, however. Stating that a country is non-democratic may well be seen as a legitimation of the use of force to remove the undemocratic regime and replace it with a regime more responsive to the citizens' wishes and needs. I explained above why I do not think this conclusion is justified in present-day Israel. People who preach the conclusion that Israel is a non-democracy should be aware of this danger, and clarify their position on it.

Less extreme than delegitimation and incitement, a serious and consistent political belief that Israel is not a democracy may lead to other possible outcomes. First is the call to Israeli Arabs not to participate in Israel's election so as to refrain from legitimizing it by giving their apparent consent to the conditions under which they are participating. Second is the Jewish demand that Arabs, or at least those Arabs who deny Israel's democratic nature, be denied their political rights. Third is the invitation that Arabs decide not to participate in a constitutional

nature, be denied their political rights. Third is the invitation that Arabs decide not to participate in a constitutional process seeking to define Israel, because it will likely end up in places where they will not want to be in.

I do not expect Palestinians and their leaders to become Zionists, or to stop being angry about their tragedy. I do not expect them to stop having a longing for the situation when they were the only national group populating Israel/Palestine. I see the articulation of these sentiments as an important part of Palestinian nation-building, just as stressing Jewish biblical ties to Zion is for Jews. But all of this is very different from forming political positions under the present circumstances. These circumstances include the presence within the region of a large Jewish population, enjoying political self-determination. A responsible political position should include not only nation-building narratives but an acceptable answer to the way the interests of Jews and Palestinians in the region should be accommodated.

FURTHER THOUGHTS ABOUT DEMOCRACY IN ISRAEL

I have rejected the sweeping condemnation of the idea of a Jewish state in Israel that is a possible reading of the presuppositions of Ghanem et al. I think this condemnation is unjustified, and likely to be counter-productive in the attempt to generate needed changes within Israel and in its policies toward the Occupied Territories. I also think that the critique of Smooha's model, as a theoretical move, is not justified.

My main point is, however, that what I see as their failure to support their own invitation should not lead us to disregard their insights, because they do raise very troubling issues about arrangements in Israel and about its policies toward Israel/Palestine. And many of their points raise issues about the nature of Israel's democracy, not only about the question whether it, or its arrangements, can be justified.

I want to live in a country that is just. I think democracy is the best regime for achieving justice and stability, especially in divided societies.⁽³⁹⁾ So I want to live in a state that will have a strong and robust democracy. A strong democracy is not a tension-free democracy. In Israel, strengthening democracy is not only the moral thing to do; it is something that is urgently needed precisely because of the tensions described above. The assassination of a democratically elected prime-minister in order to subvert his policies, and the limited success, at least in the short-run, of this assassination, are dramatic reminders of this fact.

Until now, Israel has handled the three sources of tensions between Jewishness and democracy (the inter-Jewish debate, the Arab minority in Israel, and the Palestinian state) separately and in different ways. This is a mistake. All should be seen as a part of the basic agreement that should constitute Israel's democracy. Tensions between "demos" and various "ethnos" groups, and between state and religion, exist in most democracies. Democracy requires that they are not allowed to harm the underlying sense of equal citizenship shared by all citizens. This equal citizenship need not be sameness. It does not even require an agreement on values or shared conceptions of the good (although convergence on these may help a lot). But it does require an agreement to a set of political institutions and decisionmaking procedures that will be seen by all citizens as legitimate and binding.

There are countries in which this set of institutions somehow emerges and gains legitimacy. In others, historical or structural constraints prevent this slow evolution of shared institutions. They need to be decided upon, not just agreed to. Israel until now has chosen the organic method, and its institutions reflect the political realities of pre-Israel Jewish population. It decided not to enact a constitution in 1950, but if it had enacted one, it would have had the same nature.

There is more talk about Israel's need for a constitution now. In fact, there are those who say that it already has one. If it does — its constitution is the creation of Jewish secular Western elites. While these elites may be more committed to democracy, and more experienced in it, than other parts of Israeli population, they do not and cannot reflect the perceptions and the interests — material, political, religious or national — of these other parts of Israeli society.

The present arrangements in Israel are not justified. Creating a constitution is an opportunity to change that. Israel needs a constitution more than other societies, because it needs a good distinction between shared framework principles and "regular politics," where fierce debates about different conceptions of the good take place. This distinction is what may support the development of equal citizenship in Israel despite the many differences that exist and are likely to remain between segments of Israeli population.

This is the way I would hope the change will look: Israel declares that, at 50, it has reached a stage of strength and affluence that permits the kind of constitutional process that seemed premature when the country was young and vulnerable. A special constitutional convention, with proportional representation of all citizens, is established. These representatives, like the original constituent assembly was supposed to be, are not regular legislators. Their task is one: to deliberate and come out with a constitutional agreement, which will then be ratified by both a special majority of the Knesset and a special majority of the people.

The details cannot be predicted. They will be decided by the parties, in full equality. While groups can have a veto over policies that undermine their rights, they cannot veto away the constitutional enterprise itself. But a few general guidelines may be suggested.

Since, under my assumptions, this society will have a strong Jewish majority, whose clear preference is to maintain Israel as a Jewish state, it is plausible that this will indeed be a part of the agreement. But Jews will have to make important concessions to the Arabs, because the constitution will not be ratified if they object to it. On the other hand, Arabs will have to accept some of the implications of the fact that they are a minority within a nation-state. Hebrew will continue to be the main official language. Some principle of Jewish Right of Return will be maintained. Many of the expressive aspects of the states will continue to be connected to the history of the Jewish people. But Arabs can probably get a structured part in decisionmaking, recognition of their national status and a significant measure of cultural and educational autonomy, and structured access to a proportional part of the state's resources. And they will have, under these assumptions, a state on part of their historic homeland in which their own people enjoys self-determination. In return, they will undertake allegiance to the state, participation in its civic life, appreciation of the levels of welfare, health, education, and security it provides them, and systemic democratic constraints. Orthodox Jews will accept educational autonomy and public support if and to the extent they accept a civics education element in their publicly-financed schools. Relations between state and religion will be defined in such a way that there will be both freedom of and freedom from religion. No state body exercising powers over individuals not choosing to submit themselves to it will be bound by religious laws.

This is not perfect justice to Palestinians, because it does not restore to them their exclusive right of self-determination in the whole of Palestine. It is not even second-best justice to them, because it means that they will continue to live as citizens in a state which in a sense is not fully theirs. And the arrangement is "imposed" on them, because of the fact that they happen to live in a political unit in which they are a minority, and the state is the indispensable tool for achieving legitimate goals of the majority.

This will not be the separation of state and religion that some liberals want, nor the kind of religious state some orthodox people think is necessary in the only state in the world which has a Jewish majority and self-determination. Ultra-orthodox Jews may well say that they fare worse in Israel than they do in countries such as the US, where they enjoy welfare without supervision, have private education, do not serve in the military, and are free to maintain their way of life. Secular liberals will have to be reminded that it is the religious origin that establishes the essential unity of the nation, that Israel has a very large orthodox political community, and that Judaism, unlike some forms of Protestantism, is a totalistic religion, which does not easily recognize the private-public distinction. Orthodox people will have to be reminded that Zionism was, and Israel still is, led by secular elites, who do not share their vision. What is possible in the large US, where Haredim are a minuscule part of the population with no effective power to burden the economy or to affect political decisions, is unacceptable in Israel. Especially when the Haredim vote predominantly in ways that push Israel to live permanently by its sword.

So the arrangements likely to emerge from such a process are not likely to redress all the grievances of the Arab citizens of Israel, or to solve once and for all the inter-Jewish tensions. But they are nonetheless a credible combination of democracy and Jewishness.

Even if a constitutional process of this sort is not undertaken, the political necessity exists. Israel is a deeply divided society. It has groups with very different visions of the past, the present, and the future. None of the main contenders is going to disappear. Israel will continue to have a strong and large Arab community, mostly Moslem, and a strong and large orthodox community. The majority of its population is not of Western origin. Israel's institutions, decision-making procedures, and political practices must reflect these basic facts.

One of the benefits of these processes is that serious participation in them, in itself, will change the present situation. It will force Jews to face up to the justified demands and complaints of Arab citizens of Israel. It will force Arabs to come up with real answers to real, not hypothetical, political questions. It will force secular Jews to accommodate religious Jews, and religious Jews to agree to acceptable arrangements providing freedom from religion to those interested in it, and linking their benefits and contribution to society. Democracy, after all, is a framework for people with competing conceptions of the good life to live together. When one lives in a divided society, no single group can hope that democracy will always generate just the kinds of arrangements one would want. Another reason to stress that democratic arrangements are not always just. But they are the best arrangements a given society, with all its tensions and conflicts, can reach.

NOTES

(1). See the whole issue of *Iyunei Mishpat* (the Tel-Aviv University Law Review, 19(9) (1995)) devoted to this subject. A previous legislative trigger of scholarly attention was the 1986 amendment to Basic Law: The Knesset

subject. A previous legislative trigger of scholarly attention was the 1968 amendment to Basic Law, the *Knesset*, which banned parties denying that Israel is the home of the Jewish people, or which were anti-democratic, or inciting to racism. See, e.g., Yoav Peled, "Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State" *American Political Science Review*, 86(2) (1992) 432-43.

(2). See Ian Lustick, *Unsettled States, Disputed Lands* (Ithaca, NY, 1993); Meron Benvenisti, *Intimate Enemies* (Berkeley, CA, 1995).

(3). The Jewish population is becoming less homogenous along many lines, many of which are relevant and significant to our present discussion. See Baruch Kimmerling, "The New Israelis: A Plethora of Cultures without Multiculturalism" *Alpayim*, 16 (1988) 264-308 [Hebrew]; Yoav Peled, "Towards a Redefinition of Jewish Nationalism in Israel? The Enigma of Shas," *Ethnic and Racial Studies*, 21 (1) (1998) 703-27. Clearly, in the confines of a short comment, I cannot go into the important implications of this fact.

(4). For example, the important debate between Chief Justice Aharon Barak and retired Justice Menahem Elon about the legal and judicial implications of the 1992 definition of Israel as Jewish and democratic deals only with the democracy-theocracy tension, and both assume the unproblematic implications of Jewishness to non-Jews in Israel. There are dozens of groups in which orthodox and secular people meet trying to draft a new "social contract" between the groups, and there are a number of suggestions on the table. There is quite a lot of activity, national and international, on the question of peace. There is hardly any joint Jewish-Arab effort to resolve the civic tension between Jews and Arabs in Israel.

(5). Kimmerling, "The New Israelis" note 107. Unlike Smootha and his critics, who concentrate on the Jewish-Arab rift, Kimmerling sees also as inconsistent with democracy the arrangement by which matters of personal status are relegated to religious courts that judge by religious laws. See also Baruch Kimmerling, "Religion, Nationalism, and Democracy in Israel," *Zmanim*, 50-51 (1994-) 116-31 [Hebrew]; Oren Yiftachel, "The Ethnic Democracy Model and Its Applicability to the Case of Israel," *Ethnic and Racial Studies*, 15(1) (1992) 125-36; Nadim Rouhana, "Accentuated Identity. in a Protracted Conflict: The Collective Identity of the Palestinian Citizens in Israel" *Asian and African Studies*, 27 (1993) 97-127; As'ad Ghanem, "State and Minority, in Israel: the Case of Ethnic State and the Predicament of its Minority," *Ethnic and Racial Studies*, 21(3) (1998) 428-48; Nadim Rouhana, *Palestinian Citizens in an Ethnic Jewish State: Identities in Conflict* (New Haven, CT, 1997); Oren Yiftachel, "Israeli Society and Jewish-Palestinian Reconciliation: 'Ethnocracy' and Its Territorial Contradictions," *Middle East Journal*, 51 (4) (1997) 505-19.

(6). See As'ad Ghanem, Nadim Rouhana and Oren Yiftachel, "Questioning 'Ethnic Democracy': A response to Sammy Smootha" *Israel Studies*, 3(2) (1998) 253-67).

(7). Sammy Smootha, "Ethnic Democracy: Israel as an Archetype," *Israel Studies*, 2(2) (1997) 198-241.

(8). This concession of Smootha's is very significant, because much of the literature talks about a "herrenfolk democracy." It suggests that he concedes that some democratic features or common usage cannot and should not decide the issue of classification. This is despite the fact that, arguably, the democratic features of South Africa were not unimportant, and that they contributed to the miracle of South Africa's more-or-less peaceful transition into being a full democracy. In other words, Smootha concedes that there are theoretical reasons for denying a regime with some democratic features the label of democracy. His insistence that Israel is a democracy is thus a substantive statement that it has enough of the important features to qualify as one.

(9). Ghanem et al. (see Note 6, above) move between different conceptions of democracy. Compare their definition of democracy on p. 255, which Israel could meet under most accounts, to their addition of new (important) factors on p. 263, and to the claim that the main feature denying Israel's democratic nature is the (important) fact that it never sought to generate the consent of the Arab minority to the establishment of the Jewish state (p. 255). They insist that the on-going processes of expansionism and Israel's control over the Occupied Territories will be added to the reality under discussion. They suggest that Smootha has adopted the model of ethnic democracy to legitimate the warped status quo (p. 265). See also p. 257, where they claim that the Arab minority will not accept its unequal status in the Jewish state. See also Note 13, below.

(10). I have argued that we should adopt a thin, procedural conception of democracy that will include rules of the game and not substantive arrangements other than those needed to guarantee the effective functioning of the rules of the game. I stand by this recommendation. It makes it easier for me to argue that Israel should be described as a democracy, and that this should not be taken as conferring a value on it. I think this choice is indeed an advantage in terms of the issues raised here, yet I expect that, even within such a thin conception, some critics may wish to argue that Israel is not a democracy. For reasons of space I therefore do not develop this argument here. See Ruth Gavison, "A Jewish and Democratic State – Political Identity, Ideology and Law," *Ivunei Mishpat*. 19(3) (1995) 631-82 [Hebrew]; and Gavison. *Israel as a Jewish and Democratic State: Tensions*

gender inequality, poverty, corruption, and terrorism, Israel as a Jewish and Democratic State: Tensions and Risks, published by The Van Leer Institute and HaKibbutz HaMeuhad (Jerusalem, 1999 forthcoming) [Hebrew].

(11). Despite the fact that this part of the argument belongs in the conceptual part, I prefer to discuss it as a part of the reality under consideration. Absence of dialogue and power-sharing is a weakness of democracy in divided societies, but I do not know of any scholarly suggestion to introduce the actual consent of any group into the definition of a democracy. There is a debate whether protection of the rights of minorities (other than rights of participation) should be a part of the definition of democracy, and even if it is, I do not think the actual consent to arrangements is required. The adequacy of protection is usually identified by means other than proof of consent.

(12). Much of my position here is inspired by my familiarity with years of a persistent debate about the definition of law, and about questions such as whether Nazi Germany had law. For a short discussion, see my review of Joseph Raz's book, *The Authority of Law and Finnis's Natural Law and Natural Rights*. (Gavison, "Natural Law, Positivism and the Limits of Jurisprudence – A Modern Round," *Yale Law Journal*, 91 (1982) 1250-85.)

(13). Smootha is very careful throughout not to make normative claims. But I take it that he would have written a different paper had he thought that the idea of a Jewish state is reprehensible. While Ghanem et al. (see Note 6, above) also claim that they are dealing only with conceptual, theoretical, and empirical challenges, the centrality of normative considerations emerges at various points. Thus, on p. 257 of their article, they say: "As shown in a wide body of literature, there is little theoretical rationale, moral justification, historical evidence, or political foresight in expecting that a national minority should accept unequal status within its own homeland, especially when its minority status within the homeland is based on its recent collective dispossession." Moral reasons and political realities may and often do pull in the same direction, but I thought the purpose of the debate was not to collapse them. A more serious (and less fair) lapse is the critics' accusation that Smootha's model was designed and developed in order to legitimate the "warped" status quo (p. 265).

(14). This problem is not unique to the Jewish-Arab conflict. Much feminist literature is dedicated to the claim that the choice of conceptual frames is a tool in the perpetuation of women's subordination through the suggestion that such subordination is necessary, inevitable, natural, or scientific. There is also an asymmetry here between those supporting the status quo and those opposing it, and between those who have more access to public fora and those with less such access. This may suggest that those who attack the status quo are those who will have the strongest interest in arguing that the debate is theoretical and not political.

(15). Jewish responses to the new advocacy of a one-state solution by Edward Said were recorded from "Bases of Co-Existence," on the Arab Liberation Forum website, 1998.

(16). Yeshayahu Leibowitz, in at least some stages of his life, advocated such separation for religious reasons. See, e.g., Leibowitz, *Judaism, The Jewish People and The State of Israel* (Tel-Aviv, 1979) [Hebrew].

(17). This may be easier for me to do, coming, as I do, from the law and not from the social sciences. Within the law (and political philosophy) we are more comfortable with normative discussions than are most social scientists. For this reason, we have developed ways to distinguish between professional statements and political statements, knowing that they are different but related.

(18). Emphasizing this may therefore be helpful to the validity of comparative discussions, not a hindrance to them. See the sensitive discussions, theoretical and historical, in Rogers Brubaker, *Nationalism Reframed* (Cambridge, UK, 1996).

(19). "Israel/Palestine" is a term I have borrowed from Benvenisti. I prefer it to the labels "Israel" and the "Occupied Territories," which do not indicate the presence in the region of another people seeing it as its homeland. For obvious reasons, I do not want to call the whole area either Israel (as Smootha's critics suggest?) or Palestine. Or to call the Palestinian parts by their Jewish names, indicating they are regions rather than a potential political unit.

(20). Many suggest that Herzl's dream had just this meaning – Israel as the state of the Jews. Herzl envisaged that immigrants would speak in their "old" languages, and the cultural life in the land of the Jews would become a version of cosmopolitan western tradition. Ahad Ha'Am criticized Herzl for the cultural thinness and neutrality of his vision.

(21). Much of the recent support for liberal nationalism (see, e.g., Will Kymlicka, *Liberalism, Community, and Culture* (Oxford, 1991) and Yael Tamir, *Liberal Nationalism* (Princeton, NJ, 1993)), may not be directly relevant to this claim, since they are talking about self-determination in general, not necessarily in the form of a nation-state. Clearly, however, these discussions are relevant to the importance and justification of self-determination, and they

may clarify, the case for political self-determination when the appropriate conditions obtain.

(22). Here one of the ambiguities between ethnicity, and nationality comes to the fore. I of course use "nationality" in the ethnic-cultural sense, not in the civic sense. Clearly, Jews can be of French or American "civic" nationality. This sounds natural because of the national-religious ambiguity of Judaism. Religion does not interfere with either civic or cultural nationalism. The possibility of a combined Jewish-American (or Jewish-French) national identity is another matter. The ambiguity, of the terms help disguise a persistent difficulty.

(23). The question of the non-religious content of Jewish identity is one of the most important elements of the inter-Jewish rift. For obvious reasons I shall not elaborate on it here, but the validity, of a non-religious Jewish national identity, is a crucial element in the justification of a Jewish state. This is another reason for preferring "Jewish" to "ethnic" in discussions about Israel.

(24). In the contemporary world, religious groups may well have some claims to some autonomy, but they do not have a legitimate claim to political self-determination. This does not, of course, prevent countries with a large majority of one religious affiliation to define themselves as religious states.

(25). For the relationship between claims of self-determination and demographic realities see Joseph Raz and Avishai Margalit, "National Self-Determination," *Journal of Philosophy*, 87(9) (1990) 432-61.

(26). One can sympathize with the claims of Palestinians that the UN decision was driven by the revelations and the aftermath of WWII, and that it was unfair to make them pay the price of European atrocities. However, that decision would not have been possible without the facts created by Jews in Palestine before the war. It should be recalled that the UN resolution was not the first time an international body recommended a two-state solution (e.g., recommendations of the Peel Committee after the riots of 1936-1939).

(27). This may suggest that there is no justification for a religious Jewish state. I cannot enter this complex question here. But once the Jewish people obtained a right to self-determination, the decision about the form this self-determination will take, within some constraints, became an internal matter.

(28). I count Ghanem and Edward Said as proponents of this idea. While Benvenisti clearly also thinks this is the ideal solution, he seems unclear about whether it is a likely or practical one at present.

(29). Yoav Peled is an advocate of this solution. See p. 21 in Peled, "Strangers in Utopia," *Teoria veBikoret*, 3 (1993) 21-35 [Hebrew]; Nadim Rouhana, *Palestinian Citizens in an Ethnic Jewish State: Identities in Conflict* (New Haven, CT, 1997).

(30). Therefore, it is misleading to describe it as "a state of all its citizens" stressing their individual civic affiliation as the exclusive relevant one.

(31). I do not want to open another conceptual front here, but there are some who suggest that liberalism is not necessarily committed to neutrality. Some liberals (like Joseph Raz, *The Morality of Freedom*) that neutrality is impossible and undesirable. Others, like Michael Walzer (see Walzer, "Comment," in Amy Gutmann (ed), *Multiculturalism and the Politics of Recognition*, (Princeton, 1992) 99-104), argue that one can distinguish between two kinds of legitimate liberalism – one neutral, the other appreciative of non-civic affiliations. The latter must only respect basic human rights to count as liberalism.

(32). Clearly, supporters of these views have in mind radical changes in the demography of the region. Not surprisingly, the presence of vocal support for these views in the other group, even though they are symmetric, does not help put the minds of members of the other group at ease.

(33). The intricacies of the situation and the deadlock created are documented in Lustick, *Unsettled States, Disputed Lands*. Yoav Peled and Gershon Shafir sounded an optimistic note. Even if one does not share their optimism, there is no good reason for prejudging the situation. Yoav Peled and Gershon Shafir, "The Roots of Peacemaking: The Dynamics of Citizenship in Israel, 1948-1993," *Journal of Middle East Studies*, 28 (1996) 391 - 413.

(34). I do not share Kimmerling's apparent position that a democracy requires that no judicial authority is delegated to religious bodies (Kimmerling, "The New Israelis"). Non recognition of the authority of religious bodies over those who choose to abide by their rulings may in fact offend against religious freedom. The problem with the present arrangement is the fact that the orthodox monopoly over marriage and divorce gives religious bodies authority over people who do not see themselves as bound by them. Since this arrangement was agreed to by the representatives of all the Jewish population, most of whom are not themselves observant, I think this monopoly raises an issue of human rights, not of democracy: it offends against the right of non-orthodox Jews to form marriages with people independent of their religion, and to enter into matrimony in a ritual of their choice.

The reasons why the non-observant majority agreed to this usurpation of their right to govern their personal lives by the orthodox establishment are complex and interesting. I am not sure labeling this agreement as anti-democratic is very illuminating.

(35). For a more detailed set of suggestions about arrangements that need to be changed, see Gavison, Israel as a Jewish and Democratic State

(36). Gavison, "A Jewish and Democratic State – Political Identity, Ideology and Law."

(37). The obligation to obey laws does not rest on the democratic nature of the regime. But effective consent and participation may serve to create the obligation of fairness and reciprocity, which may add to other moral reasons for obedience.

(38). In their weakest formulation, Ghanem et al. undermine their own critique of Smoocha's model (as distinct from its applicability to Israel). On p. 255, they say that the model may be suitable to stable majority-minority relations. They may have wished to suggest that such relations are never stable, but as they did not, then the model is saved, and the controversy is about Israel's classification. Since I think Smoocha is right that in Israel the Jewish-Arab rift is relatively stable, I take this concession to mean that Smoocha's model is of general utility and may be useful in the Israeli context as well. For a discussion of very fluid triadic relations between nationalizing states, national minorities, and external homelands, see Brubaker, Nationalism Refrained. Brubaker mentions that nationalizing states may vary in their treatment of citizens who are not members of the nation. He is not very concerned with the question of whether such regimes may be democratic, but most of these regimes do claim to be democracies, and Smoocha's claim that it is better if they try seems right.

(39). This is not at all a trivial statement. In complex situations, it is not clear that democracy is indeed the best route to either justice or stability. So this is a credo, not the conclusion of a needed argument. However, I do believe that in the long term, only democracy, can achieve both.

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