

Democratic Norms, Diasporas, and Israel's Law of Return

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A Jewish and democratic [state]—there can be no such thing. Either it is “Jewish” or it is democratic. Otherwise this is just an attempt to evade the requirements of liberal democracy by using a worn-out gimmick: “Israel is a special case.” Israel can be a democratic state where most of its residents have some awareness and some connection to their Judaism, but any other interpretation serves to discriminate against the rights of the Arab minority.¹

Writing in his column in Jerusalem's local newspaper, *Kol Ha'ir*, the radical Israeli journalist Haim Baram thus summed up the central contemporary arguments against the democratic legitimacy of the definition of Israel as a Jewish state. Such a definition, Baram and others in Israel and beyond tell us, contradicts the “requirements of democratic liberalism”—a universal imperative that must not be violated, even on the grounds that the Israeli situation is unique.

But why does Baram claim that Jewish state contradicts the principles of liberal democracy? Do universal democratic principles require the denial of the right of the Jewish people to self-determination? What is democratic and universal about an approach that accords the Palestinian Arab people the right to an independent state of its own, but declares the Jews ineligible for the same right? How does such an outlook harmonize with the slogan, “two states for two peoples,” or with the fact that, after all, the United Nations' Partition Decision Resolution did give international normative approval to the creation of a “Jewish state?”

The delegitimization of Israel as a Jewish state is not confined to the activists of the radical left or representatives of the Arab minority in Israel. A significant group of Israeli academicians have adopted this outlook and express it in publications in Israel and overseas. Over the last few years, the theory that there is an irreconcilable and fundamental contradiction between democratic values and the definition of Israel as a Jewish state has enjoyed important expressions of support from representatives of different academic disciplines including sociology, political science, law, philosophy, geography, and history.

Israel's Law of Return, which welcomes Jews from all over the world to become citizens of Israel, is often cited by these critics as a glaring example of Israel's inadequate democracy. In fact, as I will demonstrate, Israel's laws of “kin repatriation” differ little, if at all, from those of many European states and do indeed comport with international democratic norms.

1. H. Baram, *Kol Ha'ir*, April 25, 2001.

Indeed, critics of the Law of Return and, more generally, those who question the fundamental soundness of Israeli democracy have interpreted the expression “the Jewish state” in far-reaching, highly negative ways. A caricature has been created, a “straw man,” so to speak. So, for example, Prof. Shlomo Zand, a professor of history at the University of Tel Aviv, writes in *Ha’aretz*:

The very definition of the state as a Jewish state is inherently an anti-egalitarian, alienating factor. It is doubtful that it can sustain a properly functional liberal democracy. Certainly, in the historical conditions prevailing in 1948, three years after the Holocaust, it is understandable why the Declaration of Independence was formulated as the declaration of the Jewish people. However, we must recognize that 52 years later the rigidly Jewish identity of the state has become an anachronistic, permanent and dangerous anomaly. According to this definition, the state belongs to an anti-Zionist rabbi in New York much more than to an Arab member of the Knesset, and even more than to the Druze soldier who died ... [in the battle at] Joseph’s Tomb.²

This last contention is identical to the objection raised to the concept of Israel as “the State of the Jewish People.” It argues that such a concept requires that the state belong to the Jews of the world, even if they are not its citizens, and does not belong to its citizens who are not Jewish. However, the weak point in these arguments is that there is neither need nor justification to interpret in this fashion a term whose only purpose is to point to Israel as the fulfillment of the right of the Jewish people to a state of their own.

The writers of the 1947 UNSCOP report, who recommended the partition of Mandatory Palestine and the creation of a Jewish state, determined that the Jewish state would be democratic and would guarantee equal rights to its Arab minority, and foresaw continued Jewish immigration to this state. They would then certainly be surprised by the argument that a “Jewish state” must be understood according to this antidemocratic definition.

While Zand justifies the creation of Israel as a Jewish state, he ascribes this to the unique historical circumstances of that period, particularly the Holocaust. It is true that some of those who spoke at the UN in 1947 in favor of partition saw in the Holocaust an important reason for the Jewish people to have a state of their own (even at the cost of partitioning the land against the wishes of a majority of its residents.) But the group that formulated the UNSCOP report did not base their recommendation on the Holocaust.

To them, the justification for the creation of a Jewish state (and an Arab state alongside it) was based upon the reality that two peoples of completely different national identities and contradictory national ambitions lived in mandatory Palestine. They felt that these two peoples could not cooperate in one binational state—first and foremost because of the question of continued Jewish immigration.

2. S. Zand, “To Whom Does the State Belong?” *Ha’aretz*, October 10, 2000.

The authors of the report mention the hardships of Holocaust survivors then held in displaced persons camps in Europe. They even recommended that a large number be allowed to immigrate to the Jewish state-in-formation, even before the creation of the Jewish state. However, they never limited Jewish immigration to the absorption of Holocaust survivors, and they saw continued immigration as a legitimate aspiration of the Jewish people in Israel.

According to Zand, it would have been appropriate at some point for Israel to replace its Jewish nationalism with an Israeli national identity “that could include all of the citizens who live within its borders.” According to this point of view, Israel should have become the national state of the new Israeli nationality and not of the Jewish people. This is a legitimate point of view—but the aspiration of Israeli Jews to preserve their Jewish identity and their close bond with diaspora Jewry was, and remains, no less legitimate.

The Nature of National Identity

According to modern democratic principles, national identity is self-legitimizing. Therefore, there is no democratic shortcoming in Israel continuing to be the nation-state of the people whose right to self-determination was the reason for its creation.

The formal description of Israel as “Jewish and democratic”—while implied—does not appear in the Declaration of Independence. This formulation was officially adopted only in the Basic Laws, which were enacted in 1992. Those who deny the democratic legitimacy of Israel as a Jewish state see this provision as standing in irresolvable and fundamental contradiction to the principles of liberal democracy. They see it not as an example of the tension between clearly legitimate values—in this case, Jewish and democratic—that commonly arises in democracies, but as something beyond the pale. But is it?

Tension between values, in and of itself, is no indication that one of the competing values is illegitimate and ought to be given up. For example, democratic life in the modern world is conducted largely in that gray area where the value of equality clashes with the value of individual liberty. Every free society struggles with the conflict between individual liberty and the right of citizens to be secure in their bodies and property.

Educational systems struggle with the need to address the value of equality while at the same time wrestling with the challenge of providing for achievement and excellence. The tension between the need for economic development and protection of the environment is one of the important characteristics of modern societies. Between the value of multiculturalism and many of the values of modern democratic liberalism (for example, gender equality) there is often considerable tension.

In all of these cases there are tensions that create difficult dilemmas and legitimate arguments between people who stress different values. However, despite the

conflicting values, we do not hear that a person cannot believe both in liberty and in equality and that he or she must make an unequivocal choice between the two. In the same way, a modern citizen is not required to choose irrevocably between multiculturalism and liberal democracy, between equal access to education and educational excellence, between development and the protection of the environment. Rather, he or she is asked to try to combine the two values and to struggle with the dilemmas that result when society seeks to realize those values and must weave a path of compromise between them.

In the same way, the Jewish and democratic character of the state can create tensions and practical dilemmas. But this does not mean that we must choose one of these two values and reject the other one. Those who, in the name of democratic values, seek to delegitimize Israel as a Jewish state are in a weak position precisely in the realm of democratic theory.

They do not see in the right of the Jewish people to self-determination a value worthy of consideration alongside other values. They also do not respect the will of the democratic majority in the State of Israel. It is true that the rule of the majority must sometimes be limited in order to protect the rights of minorities. However, in this case we are not speaking of protection of minorities according to internationally recognized democratic norms, but of the denial of the right of the Jewish people to national independence. This denial, in and of itself, is a serious assault on the principle of equality (as well as on the principle of majority rule in a democracy).

The Law of Return and International Norms of Civil Equality

The Law of Return, a central component of the Jewish character of the State of Israel, is a focus of much of the controversy over the Jewish nature of the Jewish state.³ Its critics accuse it of being discriminatory and antidemocratic.

Thus, for example, a professor of sociology at the Hebrew University of Jerusalem, Dr. Baruch Kimmerling, describes the Law of Return not only as a direct blow to the principle of civil equality, but also as the central obstacle to the transformation of Israel into a properly functioning democracy:

The most substantial step toward normalization and democratization of the state, and toward granting equal civil liberties to all, will be the reform of the laws governing immigration. It is not possible to exaggerate the importance of such a step: hidden political and social inequality underlie the Law of Return.⁴

3. Technically, the critics focus on the Law of the Return and on certain sections of the law of citizenship that ensure Israeli citizenship to immigrants who enter the country through the Law of Return.

4. B. Kimmerling, *The End of the Rule of the Elite* (Jerusalem: Keter, 2001): 100-01 (Hebrew).

Dr. Kimmerling does not see any need to detail precisely how the Law of Return harms the principle of equality between the citizens of the state. It is evidently enough that this law grants certain rights to Jews as Jews for it to raise the specter of discrimination.

But the Law of Return does not discriminate between citizens within the country. It does not make the citizenship of non-Jews in any way inferior. Rather it is directed entirely outward, to the Jews of the world. Therefore, implicit in the condemnation of the Law of Return is the assertion that Israel is forbidden to privilege Jews in its laws of immigration and citizenship. However, there is no basis in international law for such a criticism.

In fact, as we shall see, it contradicts the practice of quite a large number of democratic states. In international law, a sovereign state has very broad scope for establishing and maintaining its policies of immigration and acquisition of citizenship by immigration. This principle is specifically anchored in the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations in 1965, which broadly forbids any discrimination based on race, ethnicity or religion. Section 1 (3) of the Convention establishes that “[n]othing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.”

Once we recognize Israel as the national home of the Jewish people and as the realization of its right to self-determination, we cannot deny it the right to open its gates to members of that people. The Law of Return is a law of repatriation (returning to a national homeland). Its legitimacy derives from the existence of the Jewish people as a typical diaspora people and the existence of the State of Israel as the nation-state of that people.⁵ It is the right of a nation-state to grant preferential treatment in matters of immigration and acquisition of citizenship to members of its own ethnicity who are citizens of other countries.

Europe’s “Constitutional Heritage”

This norm is common and well-recognized in democratic Europe. It is expressed in the October 2001 decision of the European Commission for Democracy through Law. Better known as the “Venice Commission,” this committee of legal experts was established to assist countries in adopting constitutional laws “that conform to the standards of Europe’s constitutional heritage.”⁶ The commission dealt with the question of the connection

5. See C. Klein, “The Right of Return in Israeli Law,” *Tel Aviv University Studies in Law* 13 (1997): 56.

6. See http://www.venice.coe.int/site/main/presentation_E.asp?MenuL=E.

between ethnic national groups in Europe and their “kin-states,” the countries to which they connect by virtue of ethnic and cultural ties.⁷

The catalyst for the discussion was a law passed by Hungary that conferred certain economic privileges on ethnic Hungarians who are citizens of neighboring states. Romania complained to the Venice Commission, asserting that this law infringed Romanian sovereignty since it conferred privileges on certain citizens of Romania without prior agreement by the Romanian state and created inequality between Romanian citizens.

The decision by the Venice Commission recognized the relationship between ethnic-cultural minorities and their kin-states as legitimate and even desirable. It noted favorably the growing tendency of kin-states to concern themselves with the protection of rights of the ethnic cultural groups with whom they share these ties (“kin-minorities”). The decision cites the agreements between Italy and Austria from 1969, signed with international support, that secured the rights of the German-speaking minority in Tyrol. The commission also cited the agreements signed in recent years between various Eastern European countries and between those countries and Germany.

Various all-European documents, including the Framework Convention for the Protection of National Minorities, encourage countries to negotiate arrangements regarding protection of the status of national minorities.⁸ We might add, as an additional example, the 1955 Bonn and Copenhagen agreement between Germany and Denmark that protects the cultural and language rights of Danes who live in northern Germany and of Germans who live southern Denmark. All of these international agreements are based on the assumption that nation-states may have a legitimate interest in the fate of those it sees as members of its own ethnic-cultural people who live outside its borders.

While bilateral agreements dealing with the status of “kin minorities” are a well-established European norm, the Venice Commission rules that when states confer benefits to their “kin” in a foreign country unilaterally, care should be taken not to infringe that country’s sovereignty and not to create economic inequalities among its citizens. Hence, while benefits in the field of education and culture are legitimate, benefits in other fields should be restricted to exceptional cases when the aim is genuinely to foster the bond between the state and its “kin minority” (rather than simply improving its material conditions).

Preference in immigration and naturalization, which has up to now not been challenged in European institutions, is mentioned briefly as an example of legitimate preference: “Indeed, the ethnic targeting is commonly done, for example, in laws on

7. The term “kin-state” is new. It is sometimes difficult to translate, since not every language has a term similar to “kin.” For example, the Venice Commission’s literature renders kin-state as “*etat de souche*” in French (which might be translated back to English as “stock”).

8. Venice Commission (European Commission for Democracy through Law), *Report on the Preferential Treatment of National Minorities by the Kin-State*, adopted by the Venice Commission at its 48th Plenary Meeting, Venice, 19-20 October 2001, pp.3-9; [http://venice.coe.int/docs/2001/CDL-INF\(2001\)019-e.html](http://venice.coe.int/docs/2001/CDL-INF(2001)019-e.html).

citizenship.” To illustrate, the Venice Commission referred to Article 116 of the German constitution.⁹

Germany, indeed, provides a well-known example. In the 1950s the Germans expanded the right to automatic citizenship to include not just refugees and displaced persons, as provided in their constitution, but also any person of German extraction from the USSR and the nations of Eastern Europe. This applied to a large population of ethnic Germans living in those areas for hundreds of years, without any civic or geographic connection with the modern German state.

Following the collapse of the Soviet Union, the law was revised so that the eligibility for citizenship was limited to emigrants of German extraction from the former Soviet Union. Germany’s current policy toward ethnic Germans in other Eastern European states is to encourage them to remain where they are and to assist them in preserving their German culture.

Those who criticize the Israeli Law of Return are usually aware of the German case. Sometimes they point to the “irony” of the similarity between the Jewish state and Germany on this matter. It is, of course, important to stress that the Federal Republic of Germany is a distinctively liberal democratic state. The attempt to find fault with the Law of Return because of its similarity to the repatriation laws of the Federal Republic, hinting at Germany’s dark past, is nothing but demagoguery.

Moreover, in all the decades since its enactment, a half century in which Germany’s laws of repatriation granted citizenship to millions of immigrants of ethnic German extraction (along with considerable financial benefits), the laws of repatriation have never been challenged in the European Court of Human Rights.

Privileged Access to Rights of Residence

The truth of the matter is that the German case is not special. There is no need to compare the Law of Return only with Germany. The fact is that privileged access to rights of residence and immigration for ethnic-cultural kin groups exists in varying ways and through various legal mechanisms, in many long-standing Western European democracies—Ireland, Finland, and Greece—as well as in a number of new European democracies, such as Poland, Hungary, Bulgaria, Slovakia, the Czech Republic, Slovenia, and Croatia.

9. See Article 116 of the German *Grundgesetz*, which provides: “Unless otherwise provided by Statute, a German within the meaning of this Constitution is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person. (2) Former German citizens who, between 30 January 1933 and 8 May 1945, were deprived of their citizenship on political, racial or religious grounds, and their descendants, are regranted German citizenship on application. They are considered as not having been deprived of their German citizenship where they have established their residence in Germany after 8 May 1945 and have not expressed a contrary intention.”

Among the republics of the former USSR, repatriation laws were enacted in Russia, Ukraine, and Armenia. In all of these countries, the legal arrangements are seen as an expression of the natural and legitimate connection between the nation-state and its diaspora, whether far away or living in neighboring countries (where they became foreign minorities when borders shifted).

The lengthy list of countries shows us that we are not just speaking about a unique product of German nationalism. Nor are we looking at “ethnic-democracy,” the term much used by many researchers of modern nationalism who tend to contrast the “ethnic-democracy” of the new democracies of Eastern Europe with the “civil democracies” of the long-standing democratic regimes of Western Europe.

Is Aliya Repatriation?

Another point of criticism has been that the term “repatriation” is not relevant, since it refers to an individual returning to the country from which he or she emigrated (or was exiled). Sometimes we use this term in relation to their children or grandchildren. This is generally not the case of repatriation through the Israeli Law of Return, under which any Jew is entitled to immigrate and acquire citizenship. As the law states: “1. Every Jew has the right to come to this country as an *oleh*.”¹⁰

However, when we look at the situation in Europe, we again see that often we are speaking of the repatriation of members of diaspora communities that have lived outside the borders of the homeland for generations. Indeed, in some cases, the diaspora community was already ancient when the modern state was created. Thus, in these cases, only ethnic and cultural connections tie members of the diaspora communities to the kin-state willing to define their immigration as repatriation.

So, for example, we find in section 6 of the Greek Law of Citizenship: “If a foreign citizen is not of Greek ethnic extraction, he must have resided in Greece for eight years” before he can apply for Greek citizenship. This is not a grant of an automatic right to citizenship. Rather, it privileges ethnic Greeks who immigrate to Greece by releasing them from the requirement of eight years of residence demanded of all other foreign citizens who seek to become Greek citizens.

In addition, sections 12 and 13 of the law convey automatic Greek citizenship upon ethnic overseas Greeks who volunteer for military service in the Greek armed forces. In practice, the various Greek governments have bestowed Greek citizenship on ethnic Greeks in what amounts to an automatic fashion. Since the collapse of the Soviet Union and the opening of its successor republics to emigration, almost 200,000 ethnic Greeks have arrived in Greece and received citizenship.

10. See www.knesset.gov.il. The Israeli parliament's Web site includes a translator's note: “*Aliyah* means immigration of Jews, and *oleh* (plural: *olim*) means a Jew immigrating, into Israel.”

The Greek government officially defines their immigration as a return to the homeland—repatriation. Whereas most of the Greek communities in Western countries are second- or third-generation descendants from emigrants from Greece, the Pontian Greek community (as the “returnees” from the former USSR are called) has no direct connection with the modern Greek state. Their ancestors did not emigrate from Greece, but rather from areas in Greek communities in Asia Minor—present-day Turkey. Even the Greek that they speak, a dialect combining modern and ancient Greek, is very different from the modern Greek spoken in Greece.

The key point is that the massive project of resettlement and absorption of these people in Greece is not considered in opposition to European norms. Indeed, it is financed in large measure by the European Union. Most of the Pontian Greeks were settled by the Greek government in Western Thrace, where the largest concentration of Greek citizens of the ethnically Turkish minority live; this fact did not deter the European Union from financially supporting settlement, even though certain aspects of Greek government policy toward the Turkish minority have incurred criticism in Europe.

Finland, too, defines as “repatriation” the process of immigration of ethnic Finns from the former USSR. In November 1997 the government of Finland presented the UN with a report on the way in which it was carrying out the International Convention on the Elimination of All Forms of Racial Discrimination. The report deals mainly with the securing of civil rights for immigrants in Finland. It has a chapter devoted to “Finnish repatriates” from Russia and Estonia, in which the document explains that they are “descendants of Finns who emigrated to Ingria and St. Petersburg in the seventeenth, eighteenth, and nineteenth centuries and customarily called ‘Ingrian Finns.’”

The Finnish government reported that in 1996 the “Foreigners Law” was changed to confer residency status on ethnic Finns who come to Finland from the former USSR.¹¹ This is not a large group. As of 1997, only about 15,000 Ingrian Finns were repatriated. Still, it is significant that Finland, in addition to being a long-standing Western democracy that bases its constitution on a typical “civil” and not an “ethnic” concept of democracy (e.g., Swedish speakers in the country are not considered a national minority; rather, the Finnish people is considered to have two components—those who speak Finnish and those who speak Swedish), nevertheless considers ethnic Finns who live in Russia and Estonia, descendants of seventeenth- and eighteenth-century emigrants, as a population toward whom modern Finland feels committed.¹² Finland assists the Ingrian Finns to preserve their ethnic-cultural identity in the foreign countries where they live and defines their immigration as a return to the homeland. The example of Finland shows

11. The law sets detailed criteria for the recognition of the immigrant as a Finn: “A permit for residency may be granted 1. if the applicant himself, one of his parents or at least two of his four grandparents are or have been registered as having Finnish origin, or 2. if there is another tie that shows the applicant’s affinity to Finland and Finnishness, but he has no documents to show that he meets the requirements mentioned in point 1.”

12. Anne de Tinguy, *Ethnic Migrations from and to the New Independent States following Political Changes in Eastern and Central Europe: “Repatriation” or Privileged Immigration?* May 20-22, 1999, p. 9, <http://www.demographie.de/ethnic/papers/tinguy.pdf>.

that a country holding firmly to a civil theory of national identity does not have to renounce an official link with a foreign ethnic-national diaspora.

As for Poland, Article 52 of the post-Soviet constitution declares: “Anyone whose Polish origin has been confirmed in accordance with statute may settle permanently in Poland.” The Polish diaspora numbers in the millions, the result both of emigration and exile, as well as the radical changes in the borders of the Polish state in the course of history. The government of the Polish republic cultivates its connections with the diaspora, which formal rhetoric defines as an integral part of the Polish people.

In January 2000 the Polish parliament enacted a “Repatriation Law” directed mainly at people of Polish origin living in the former USSR, some of them the children or grandchildren of Polish citizens who arrived, or were sent to distant regions in the course of the turbulent twentieth century. Some of them were descendants of Polish emigrants from earlier periods (before the existence of the modern Polish state). Both groups are entitled to citizenship on condition that they have preserved their Polish cultural identity. The law grants such “returnees” Polish citizenship and requires the government to assist them in their absorption into Polish society.

Section 16 of the Irish Law of Citizenship empowers the minister of the interior to grant an exemption from the ordinary requirements of citizenship for applicants of Irish descent.¹³ Even though the law leaves the awarding of citizenship to the judgment of the minister, Irish policy has been to confer citizenship upon applicants of Irish descent without delay.

In recent years, as the Irish economy improved, quite a few people have acquired citizenship through the provisions of this section of the law. Generally, these were descendants of Irish citizens who emigrated in the course of the twentieth century in response to harsh economic conditions. However, a “person of Irish descent” can also be the descendant of someone who left Ireland before the modern Irish state came into being in 1921, or someone who emigrated from Northern Ireland, which even today is not a part of the Republic. Therefore, someone “of Irish descent” who receives citizenship under privileged conditions may not necessarily be the descendant of Irish citizens; he or she is Irish by ethnic origin.

In Armenia we find a significant example of repatriation that is disconnected from prior citizenship. Section 14 of the Armenian Constitution determines that a “person of Armenian descent will obtain citizenship through a shortened procedure.”¹⁴ The Armenian diaspora numbers in the millions, more than the population of the Republic of Armenia. Most of them are not descendants of emigrants from the areas that now constitute the Republic. The connection between these people and Armenia is the same kind of ethnic-cultural and religious tie that connects Jews of the diaspora with the State

13. “Where the applicant is of Irish descent or Irish associations.”

14. Similarly, Section 25 of the Bulgarian Law of Citizenship provides that a “person of Bulgarian origin will receive citizenship through a facilitated procedure.”

of Israel. It is the policy of the Armenian Republic to award citizenship to any person of Armenian descent who requests it.

Today, there is not much demand for Armenian citizenship, other than among Armenian refugees from Nagorno-Karabakh. In the past, however, there was a wave of repatriation to Soviet Armenia. The government of the Soviet Union engaged in considerable public relations work over several decades in order to encourage overseas Armenians to immigrate to the Soviet Armenian Republic, which it declared to be the national home of the entire Armenian people. Some quarter of a million responded and settled there.

Repatriation laws are a component of a broader phenomenon. Whether in the new democracies of Eastern Europe or in the older democracies of Western Europe, nations that have an extensive chapter of exile and diaspora in their history generally maintain an official bond with their kinfolk who live beyond their borders. Privileged access to immigration and citizenship are merely one possible facet of that special relationship.

Institutionalized Connections to Kin

The decision by the Venice Commission indeed mentions a number of existing laws in European countries: an Austrian law from 1979 that deals with the rights of south Tyrolese (i.e., the German-speaking minority in northern Italy); Italian legislation from 2000 called the “Law on the Measures in Favor of the Italian Minority in Slovenia and Croatia”; as well as legislation from Russia, Slovakia, Romania, Bulgaria, Slovenia, and Greece.

The Commission’s decision also surveys benefits that these laws convey, including financial support for educational and cultural institutions, access to educational institutions in the kin-state, support for travel of minority members to the kin-state and within it, the right to work and to own property within the kin-state, matters of medical insurance, pension rights, special certification, preferential treatment in receiving visas, and rights of residence and acquisition of citizenship.¹⁵

In fact, even mere regions with a national/ethnic heritage have gone that way. The autonomous parliament of the Basque region is not authorized to deal with questions of immigration and citizenship, which are reserved for the national parliament of Spain. However, in 1994 the Basque parliament enacted special legislation regarding the connection between the autonomous region and the ethnic Basque communities and organizations outside the region. This included areas in Spain and France that Basque nationalists consider part and parcel of the Basque homeland, as well as regions to which

15. See the Venice Commission, *Report on the Preferential Treatment of National Minorities*, pp. 4-5, 9-10, and 13-15. The most extreme example of an official connection with a national diaspora is Croatia, which allocates seats in its parliament to represent foreign Croats (particularly Bosnian Croats who are entitled to Croatian citizenship without the need to immigrate to Croatia). This arrangement has been widely criticized, but continues to be the law of Croatia, even after the passing of the highly nationalistic regime of President Franjo Tudjman and its replacement with a more liberal government.

Basque emigrants have migrated.¹⁶ It is the government of the autonomous region that provides the funds for this cultural and educational work that takes place outside its borders. It raises the money by taxing residents of the region, including those who are not Basque.

The trend exists outside of Europe as well. China has maintained institutionalized connections with its diaspora for decades.¹⁷ So does South Korea. India recently began to develop its connection with the Indian diaspora, mainly in the sphere of economics. In January 2002 a High-Level Committee on the Indian Diaspora presented a formal report to the government in which it detailed recommendations to tighten the connections with the diaspora in a long list of fields.

Among other recommendations, it suggested that India allow foreign citizens of Indian descent living in certain countries to hold dual citizenship, i.e., to receive Indian citizenship alongside their present foreign nationality, and to create a standing committee in the Indian parliament charged with overseeing relations with the diaspora.¹⁸

In 1999, South Korea enacted a law that provides for the conferring of dual citizenship (without the right to vote) on members of Korean diaspora communities who remain where they are, including members of the large ethnic Korean community in Japan created during the lengthy period of Japanese rule.¹⁹

Turkey is in many ways a special case—both in terms of its geography and its regime. Since the days of Mustafa Kemal Atatürk, founder of the Turkish republic, it maintains a strict version of civic nationalism that stresses the complete congruence of citizenship and nationality. Every Turkish citizen, regardless of ethnic origin, is considered a member of the Turkish nationality. The state not only forbids manifestations of other national identities, but also strictly limits expressions of linguistic and cultural particularism; this policy has been most damaging to the large Kurdish minority, although recently there has been a certain liberalization as a result of Turkey's desire to join the European Union.

Nevertheless, Turkey has a long-standing history (from the nineteenth century) of providing sanctuary for refugees of Turkish origin. The "Settlement Law" of 1934 sets national-ethnic criteria for the acquisition of citizenship by immigrants. It confers upon refugees "of Turkish descent and Turkish cultural identity" the right (subject to governmental approval) to immigrate to Turkey, to settle there permanently and finally, to receive citizenship.

16. Law 8, of the 27th of May, 1994, "On Relations with Basque Communities and Centers outside the Autonomous Community of the Basque Country."

17. See P. J. Bolt, "Looking to the Diaspora: The Overseas Chinese and China's Economic Development 1978-1994," *Diaspora* 5: 3 (1996): 467.

18. Press Release, *Report of the High Level Committee on Indian Diaspora*, 8 January 2002, <http://www.hicomindlagos.com/Indian%Diaspora.htm>.

19. See <http://www.meijigakuinacjp/-kokusai/ascj/2002/200223.htm>.

In 1992 Turkey enacted a special law that allowed for immigration and the acquisition of citizenship by a group of ethnic Turks from the former Soviet Union who had been exiled by Stalin to Georgia and denied the right to return to their former homes.²⁰ This was not a case of refugees fleeing persecution. Rather, this was a response occasioned by the new conditions that prevailed in the 1990s. It expressed cultural-ethnic solidarity by the Turkish kin-state to a kin-community against whom the Soviets committed a historical injustice—even though they had no geographic or civil connection to the Turkish Republic and the homeland from which they had been driven lay elsewhere.²¹

It is clear that the connection between an ethnic community and its kin-state is legitimate in the eyes of modern democratic states. It is a widespread phenomenon that became even more common in the course of the 1990s. Major trends drive it. Among them is the growing recognition of the legitimacy of multiple identities and of the need of minorities to preserve their special identities.

Many countries also take note of the economic advantages that accrue to nations that stay in touch with their kin in foreign countries, especially in an era of general globalization. At base, the phenomenon of the kin-state flows from the fact that in many cases the borders of modern countries do not coincide with the borders of national ethnic and cultural groups. The connection of many democratic nation-states with their kin who live over the border is in great degree the other side of the coin of the related phenomenon that within the borders of most modern democracies live national minorities.

Israel and the Jews

For obvious historical reasons, the borders of the Jewish nation-state are not congruent with where the Jewish people resides. The contention that there is something anomalous and illegitimate about the official special interest of Israel in the Jews of the Jewish diaspora is totally without foundation. The nature of this connection and the degree of its intensiveness are a direct result of the history and culture of the Jewish people and of the desire of both sides to be connected.

As to the Israeli Law of Return, it is appropriate to recall the 1947 UN report that recommended partition. The report wrote of its specific expectation that the Jewish state would encourage massive Jewish immigration, and determined that the issue of Jewish immigration was one of the central reasons why it recommended the partition of the country between the two peoples. This was not the mere private opinion of the members of the commission.

20. See <http://www.mga.gov.tr/grupa/percept/iii-4/baydar.htm>.

21. There is a large and important Turkish diaspora community in Germany. These are mostly Turkish citizens, although it is clear that most will stay in Germany. Despite the secular character of the state, Turkey maintains a government office dedicated to providing assistance to this Turkish minority through financial support of educational and religious institutions; and, of course, many Arab-Muslim countries provide key financial support for Muslim religious institutions in Europe. See *Economist* (10/8/2002): 21-26.

Whoever supports the creation of an independent state for a dispersed people—whose national movement is constituted primarily as a movement to bring its people back from their dispersion—must take into account that there will be a significant connection between the state and the diaspora, among other things, because of the issues of immigration and acquisition of citizenship.

Clearly, this is also true of the Palestinian case: Anyone who agrees to the creation of an independent state for the Palestinian people agrees to the Palestinian “right of return”—that is to say, the right of the members of the Palestinian people to immigrate to this state. The principle that any Palestinian, wherever he or she may be, is entitled to Palestinian citizenship (even without personal or family connection to the areas in which the Palestinian state is to arise) is enshrined in the draft constitution of the future Palestinian state, drawn up by a committee of the Palestinian parliament.

Some Palestinian spokespersons have declared from time to time that they would be prepared to have Jews live in their state, on condition that they be loyal citizens, recognize Palestinian legal authority, and abide by Palestinian law. Even if this comes to pass, it is clear that the Palestinian “Law of Repatriation” will apply specifically to Palestinians. It will not allow members of the Jewish minority to enjoy unlimited free immigration of their people to the Palestinian state, and this fact would not violate the principle of civic equality nor would it violate international democratic norms, and it will not be legitimate to argue that this would be a blow to the democratic right to equality as it is understood by the democratic nations of the world.

To sum up this issue: The accepted foundational principles of the democratic world forbid the state (any state) from discriminating against different groups of its citizens on the basis of ethnic or national origin. The national identity of the state and its character may not serve as an excuse for this kind of discrimination. However, democratic principles do not prevent the state from considering itself to be committed and connected to groups of citizens of other countries through ties of ethnicity, national identity, and culture.

This attachment and sense of closeness are quite common in the modern democratic world and enjoy widespread official recognition in various and varied forms—among them, according privileged status to members of the kin group in matters of immigration and acquisition of citizenship.

Another flawed argument against the Law of Return contends that it ensures the Orthodox rabbinical establishment a privileged position. More generally, the argument suggests that the definition of Israel as a Jewish state prevents Israel from becoming a truly “liberal state,” which would require that Israel separate religion and state.

The problem with this argument is twofold. First, the sweeping suggestion that a “liberal state” must unreservedly separate religion and state means that countries like Denmark and Norway are not liberal democracies, since they have established Lutheran

churches; Britain would not qualify since it has an established Anglican church. Moreover, the argument is based on the distortion of the term “Jewish state.” As used in the Declaration of Independence, it merely connotes the state in which the Jewish people realize their right to independence. In and of itself, it need not confer any official status upon any religious institution.

Some knowledge of the political realities of Israel at the time that the Law of Return was passed may be helpful in understanding just how specious this argument is. The Law of Return was passed in 1950 with the support of the anti-religious left-wing socialist Mapam Party as well as of the Communist Party. We may be certain that they had no intention of lending a hand to any law that would have established the Orthodox rabbinate as the official religion of the country (or that would have created discrimination against the Arab population).

We should note, before moving on, that many democratic countries that eschew an established church nevertheless involve religion in official activities of the state. Even India, a constitutionally self-declared secular republic, frames its laws of personal status (regarding marriage, divorce, etc.) around the religious communities to which most of its citizens belong.²²

The scope of the term “separation of religion and state” has very different interpretations in the countries that have adopted it. The very modest degree of direct or indirect reference to religion, such as that required in order to confer immigrant status on a convert to Judaism according to the Law of Return (an area in which, interestingly enough, the Orthodox rabbinate has largely failed to impose its normative definitions) certainly lies well within the scope of internationally accepted democratic behavior.

A Jewish State or a State of All its Citizens

Some voices in Israel question whether true multiculturalism is possible in a country that “defines itself as a Jewish state (in which Judaism is nationality and religion and the state is not defined as the state of its citizens).”²³ Again, this is based on the assumption that there is a contradiction between being a Jewish state and being a liberal democracy. Jewish history is marked by a profound connection between religion and nationality. But this does not necessarily mean that the modern nation-state of the Jewish people must confer any official status on the institutions of the Jewish religion. Indeed, this is one of the hottest debates in Israeli public life.

As explained above, the recognition of religious institutions does not necessarily contradict the principles that guide Western liberal democracies, so long as equal religious rights are guaranteed to all citizens of the state. Moreover, precisely in the most problematic area from the standpoint of civil rights as they relate to religion and state in

22. See J.T. Levy, “Three Modes of Incorporating Indigenous Law,” in W. Kymlicka and W. Norman, eds., *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000), pp.312-16.

23. B. Kimmerling, “The New Israelis: Multiple Cultures and not Multiculturalism,” *Alpayim* 16 (1998):16 (Hebrew).

Israel—namely, the monopoly of the Orthodox rabbinical courts in matters of personal status (an area in which the legal situation in Israel contradicts accepted democratic norms)—there is no special “privilege” accorded to the Jewish citizens of Israel. The system recognizes the institutions of all major religions for this purpose, so that a Muslim couple seeking a divorce must turn to a *sharia* court, a Catholic or Greek Orthodox Christian couple to an ecclesiastic court, etc.²⁴

Is it true that a Jewish state is, by definition, not “a state of all its citizens?”²⁵ The phrase itself, “a state of all its citizens,” does not appear in any definition of the State of Israel. This is also true of most of the democratic states of the world. Several of Israel’s Basic Laws define Israel as a “Jewish and democratic state.” What is a democratic state, if not the state of all of its citizens?

If democracy is the “rule of the people” and in this context “the people” means the entire citizen body of the state—that is, we understand the term “the people” to refer to all the citizens, whatever their national-ethnic origin, and to exclude noncitizens, then this is precisely the situation in Israel. Sovereignty rests with the citizens of the state, including the Arab minority, and is actualized through institutions elected by the people and only by the people. No Jews—or Arabs—who are not citizens are a part of this group.

However, free elections by themselves are not enough to allow us to gauge the quality of a democracy. The quality of a democracy depends upon a long list of other factors. The Israeli Supreme Court has noted: “Resources of the state, whether in land or money, or other, belong to all of its citizens, and all of its citizens have a right to them in accordance with the principle of equality, without discrimination based on religion, race, sex or any other improper consideration.” As to the phrase “a state of all of its citizens”, the court ruled that there is no contradiction between Israel being a Jewish state, and a state of its citizens—since “every democratic country is, in an important sense, a state of its citizens.”

The Israeli Supreme Court expressed the centrality of the principle of equality in modern Israeli law in the most uncompromising way:

The principle of equality ... is the soul of democracy. Not just one vote for each person during elections, but also equality for everyone all of the time. The true test of the principle of equality lies in the relationship with minorities: religious,

24. There is no doubt that the Jewish religious parties created the present situation with regard to personal status in Israel, but we should note that some of the Arab members consistently have objected to any changes in the laws of personal status for their own religious or perhaps nationalist reasons.

25. See, for example, Sammy Samoocha, “The Regime of the State of Israel: Civil Democracy, Non-Democracy or Ethno-Democracy?” *Israeli Sociology* 2: 2 (2000) 570: “Israel declares about herself, and she indeed is, the state of the Jewish people, and not the state of all of her citizens.”

national or other. If there is no equality for minorities, there is no democracy for the majority.²⁶

To some extent, every state that contains recognized national-ethnic minorities must (and does) differentiate between national-ethnic identity and citizenship. This differentiation becomes more pronounced when there is a national diaspora to which the state sees itself connected. Examples abound. Israeli sovereignty lies in the hands of all of its citizens, “the people who live in Israel”; while the state was created as an expression of the right to self-determination of the “people Israel” (i.e., the Jewish people), and sees itself connected to the Jewish diaspora the world over.

The state might just as well have been called “Judah” instead of “Israel,” as some suggested in 1948. Alternatively, the entire Jewish people might be referred to as “Israel,” which is, after all, one of its historical names and one commonly used in Jewish liturgy.²⁷ In this way, the name of the state, the name of the majority ethnicity, and the name of the ethnic diaspora would be identical, as is the case in similar situations around the world (e.g., Greeks and Greece). However, the heart of the matter would not change at all.

The Israeli instance is not different in any fundamental way from the other cases of states that maintain an official connection with members of their people who live outside of their borders. In any event, there is no contradiction between the term “state of all its citizens” and the existence of a democratic nation-state in which a national majority coexists alongside national minorities, and where the name of the state, its official language, and symbols reflect the national identity of the majority, and the state maintains an official connection with members of the majority ethnicity who live outside its borders. Arabs in Israel are a national minority, which is just another way of saying that Israel is a Jewish state. A constitutional structure like this meets contemporary European standards of democracy, human rights, and protection of minorities.

“The Jewish Israeli People” and the Right to Self-Determination

It is theoretically possible to deny the legitimacy of the definition of Israel as a Jewish state by arguing that there is no Jewish people in whom a right to self-determination could be vested. MK Azmi Bishara, representing the traditional Arab Nationalist perspective, argues this. To him, the Jews of the world are not a people; there was no Jewish national identity before the Zionist movement; the Jews were simply a collection of religious communities that had no national connection between them at all:

26. Israeli High Court of Justice, 6924/98, p.10.

27. The Israeli Declaration of Independence generally uses the term “the Jewish People,” but it mentions the “the fulfillment of the dream of generations—the redemption of Israel” and also “sovereign Hebrew people settled in its own land” (although this is translated with linguistic imprecision as the “Jewish” people in the translation of the declaration that appears on the Knesset Web site, http://www.knesset.gov.il/docs/eng/megilat_eng.htm).

I do not recognize the existence of one Jewish people around the world. I think that Judaism is a religion and not a nationality and that the Jewish public in the world does not have any national status. I do not think that this group has any right to self-determination. I also do not think that there was a Jewish nationality in Europe before the appearance of Zionism. Judaism of that time was not even a unitary Jewish community. It was a series of Jewish communities that Zionism sought to convert into a People through the creation of this state.²⁸

Bishara does recognize, however, the existence of the “Jewish Israeli People created here by Zionism”—a national and territorial entity “based upon the Hebrew language,” created in Mandatory Palestine by the Zionist enterprise; he acknowledges, to some extent, that this Jewish-Israeli people has a right to self-determination, and this right retroactively legitimizes the existence of the State of Israel, even though its creation was, in his view, a colonialist injustice. Having recognized a certain Jewish right to self-determination, Bishara empties it of content when he advocates the realization of a Palestinian right of return into the sovereign territory of Israel: “The right of self-determination is not absolute” and the Palestinian “Right of Return”—to Israel, and not to a Palestinian state, he stresses—overrides it. For that reason, as he puts it, at the end of the process “a bi-national framework” must be created in the entire territory between the Jordan River and the Mediterranean Sea.

Bishara’s interpretation of the history of the Jews is hardly an honest attempt to understand the culture and identity of the “other.” This arrogant attempt to determine their national identity for the Jewish Israelis and to delegitimize their connection with the Jews of the diaspora serves the interests of Arab nationalism in its struggle against Israel.

Moreover, the terminological framework that Bishara proposes does not succeed in delegitimizing the Jewish character of Israel. Let’s assume for the sake of argument that the Jews of Israel belong not to the Jewish people who have an ancient history and culture—as they believe—but rather to the Jewish-Israeli people created illegitimately by Zionism in the twentieth century. In any event, if there is such a people, if it has a right to self-determination, and if Israel is the expression of that right, this means that Israel is the Jewish-Israeli state, even if it is not, in Bishara’s scheme of things, the state of the “Jews as such.” Does it make sense to build this dubious theoretical-terminological edifice just to achieve such meager results?

The question of the relationship between Jewish Israeli identity and the identity of the Jews of the diaspora is best left to the Jews in Israel and around the world. In that context, there is no doubt that the new national existence created in Israel—and before that, in the prestate *Yishuv*—went beyond the creation of just another Jewish community.

Rather, it represented a substantially new stage in Jewish history. The Israeli experience added the political elements of self-determination, territorial control, and sovereignty, and the new-old Hebrew language provided a central foundation for what

28. Dr. Azmi Bishara, in an interview with journalist Ari Shavit, *Ha’aretz Weekend Magazine*, May 29, 1998.

Theodor Herzl called an “*Altneuland*” (an old/new country). Little is left of the so-called “Canaanite” movement, which in the 1930s and 1940s sought to redefine the new “Hebrews” as a new nation, detached from diaspora Jewry.

It is clear that the great majority of the Hebrew-speaking Jewish population in Israel sees itself as a part of the Jewish people and does not see any contradiction between its Israeli identity and its connection to its people’s kin living in the diaspora. This is how the majority population sees itself—as Jews—and thus its identity is Jewish: and this ought to be respected.

Israel and Diaspora Jewry—A National or an Ethnic Connection?

Some argue that the connection between Israel and the Jewish diaspora around the world is harmful to the development of a “natural” national identity in the country, based on territory and language: One former Canaanite, Boaz Evron, suggests that the creation of a “modern state” requires a necessary “disconnection in principle from the Jewish Diaspora.” As he puts it, “There is no ‘normal’ European people that is also a kind of Vatican for a national diaspora (the Irish Republic does not demand the loyalty and identification of members of the Irish diaspora in the United States).”²⁹

However, as we have seen, Evron’s fundamental assumption is wrong. Many modern nation-states maintain warm connections with their national diasporas. Moreover, the trend in modern democratic-liberal thinking is to encourage and legitimize connections of this sort. Of course, no state, including Israel, can “demand” loyalty and identification from citizens of another country. But Jews around the world freely express broad affinity and support toward Israel. Jewish history and the culture of Jewish solidarity combine with the sense that Israel is in peril to give enormous strength to this bond.

So it is, indeed, with the Irish. The identification and support of the Irish American community played (and, in some ways, continue to play) a key role in political developments on the island of Eire. Other examples abound. Greek Americans, through the exercise of their legitimate democratic rights as American citizens, support the Greek position on Cyprus, including extensive lobbying in Congress on behalf of support for the position of the Greek Cypriots. Americans of Palestinian and Arab origin now act on behalf of the Palestinian side in the conflict with Israel.³⁰

The Greek-American example is particularly helpful here, because it illustrates that what host-states define as ethnic, kin-states regularly define as national, and the connection is widely recognized as legitimate. Israel is not unique in this. American discourse sees this identification in “ethnic” rather than national terms. Nevertheless, this

29. Boaz Evron, *The National Accounting* (Tel Aviv: Dvir, 1988): 324, 333 (Hebrew).

30. See Y. Shain, “Ethnic Diasporas and U.S. Foreign Policy, *Political Science Quarterly* 109 (1994): 811-41.

is considered a legitimate form of identification with a foreign nation-state or national movement.³¹

Moreover, the trend among researchers of modern diasporas is to see their self-identification with the kin-state as a form of “transnational” nationalism.³²

Victor Roudometov sees the Greek diaspora as a typical case of a “transnational national community.” He notes that it is made up of emigrants from modern Greece and their descendants, along with emigrants from ethnic Greek communities whose origins lie outside the modern Greek state, and their descendants.³³

Leaving aside the debate over definitions and the question of whether we may speak of one Greek (Hellenic) worldwide people, it seems that no one finds fault with the official relationship of the Greek state with these overseas Greek communities. As we noted, the Greek government works through a special “General Secretariat for the Greek (Hellenic) Diaspora,” in order to assist overseas Greeks. The secretariat offers overseas communities assistance in matters of Greek education, culture, and religion. It also supports Greek-language media around the world and convenes international conferences of the Greek diaspora.

In the other direction, it works to gain the assistance of overseas Greeks in support of Greek foreign policy on the questions of Cyprus and Macedonia. As we noted earlier, Greece also grants Greek citizenship under privileged conditions to ethnic Greeks from overseas diaspora communities. All of this is considered legitimate and natural.

Dispersions, Diasporas, and Jewish Self-Understanding

Certainly, no imposition of ethnic or national identity on members of a diaspora community by a kin-state would be legitimate. A good delineation of appropriate identification and commitment in relations between kin-states and diasporas is found in the case of Israel and the Jewish diaspora, where we recognize the clear desire of the Jews of Israel to see themselves as part of the Jewish people, and we let the Jews of the world define their identity and the nature of their relationship with the Jewish people.

Many of the Jews of the world will, in fact, define themselves as members of the Jewish people. This will not always mean that their identity will have a strong component of Jewish nationalism. Just as it is clear that no Israeli law can force Jewish national identity on those Jews living outside the country who are not interested in it, so it is clear that there is a deep sense of identification with Israel on the part of many Jews around the

31. Some suggest that the connection between the diaspora and the kin-state ought generally to be seen as ethnic rather than national. Compare D. Miller, “Nationality in Divided Societies” in A.G. Gagnon and J. Tully, eds., *Multinational Democracies* (Cambridge: Cambridge University Press, 2001) pp. 302-03.

32. See *ibid.*

33. V. Roudometov, “Transnationalism and Globalization: The Greek Orthodox Diaspora between Orthodox Universalism and Transnational Nationalism,” *Diaspora* 9:3, pp. 367-78. Roudometov points to the surprising fact that about one Greek in four lives outside the borders of the Greek nation-state.

world, without any precise dependence upon the way in which they define their Judaism (if they even choose to try to define it at all).

In any event, this connection of the Jewish national state of Israel with the diaspora is not just legitimate according to international norms: In light of the experience of so many other peoples who have known dispersions and diasporas, it seems fair to say that it is natural. The legitimacy of the Law of Return does not depend on the question of the precise definition of Jewish identity outside of Israel. Rather, it hinges on the recognition of the right of the Jewish people in Israel to a nation-state of their own.