

Submission to The Jewish People Policy Institute on Israel's Identity as a Jewish and democratic State, and its implications

List of recommendations

Recommendation 1: *The Basic Law: Human Dignity and Liberty* (1992) should be amended so as to provide expressly that the fundamental rights and protections mandated by it, and by other laws in which the rights of Israelis as citizens are recognised or conferred, extend to every citizen of Israel regardless of ethnic background, religious affiliation (or absence of religious affiliation), gender or sexual preference.

Recommendation 2: Religion should continue to play a role in Israel's public life, especially in autonomous public education for religious communities, as long as the various arrangements in place suit the preferences of most members of Israel's Jewish and non-Jewish religious communities.

Recommendation 3: The religious monopoly over matters of personal status in marriage, divorce, conversion and accommodation of non-Orthodox streams of Judaism should be reviewed with the aim of providing equity among all Jewish streams and civil rights in these matters for all Israel's citizens, but without resorting to strict separation between state and religion and without the organs of the State imposing decisions about internal religious questions.

Recommendation 4: A non-definitive statement of "Jewish values", which affirms that individual human life, dignity and freedom are sacred and inviolable, and which embraces the broad, social vision of the Prophetic tradition, should be enshrined in a Basic Law.

Recommendation 5: The bond between Israel and Diaspora communities should be given symbolic expression in Israeli law and also a more formal expression through the establishment of a mechanism for consultation between Israel and Diaspora Jewry.

Recommendation 6: The mechanism should be developed by Israel in consultation with the World Jewish Congress, World Zionist Organisation and the Jewish Agency and formalised in an Accord between the State of Israel and those organisations.

Recommendation 7: The establishment and operation of the consultation mechanism will be without prejudice to (i) the prerogative of the elected government of Israel to make decisions it believes to be in Israel's interests as a sovereign state; and (ii) the prerogative of the representative organisations of each Diaspora community to make decisions they believe to be in that community's best interests.

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Executive Council
of Australian Jewry Inc.



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1. **What constitutes world Jewry's vision of a "Jewish and democratic" state? In what way should the state reconcile its wish to clearly express its "Jewishness" with what might seem to be the contradictory aspiration to be a state that bestows equal rights for all its citizens? In this question we refer to both commonly held beliefs and views and to expert opinions.**

Peoplehood, nationhood and the right of national self-determination

The identity of Israel as a Jewish and democratic State is grounded in the right of national self-determination. Although there is no universal agreement as to the content of that right, it is widely acknowledged that at a minimum, it entails the entitlement of peoples to have control over their collective destiny and to be free to pursue their economic, social and cultural development.

The right to self-determination is expressed in article 1 of the [International Covenant on Civil and Political Rights](#) and article 1 of the [International Covenant on Economic, Social and Cultural Rights](#).

It is generally understood that the right to self-determination accrues to 'peoples'. (See for example the Preamble to the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States In Accordance With the Charter of the United Nations annexed to [UN General Assembly Resolution 2625 of 24.10.1970](#)).

The concept of a 'people' in international law is not clearly defined. In contemporary usage, *a group is identifiable as a people if it is a segment of the population distinguished from others by a well-developed combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not drawn from what in biological terms is a common racial stock. It is that combination which gives the group an historically determined social identity. In their own eyes and in the eyes of those outside the group, they have a distinct social identity based not simply on group cohesion and solidarity but also on their shared belief as to their common historical antecedents.*

A 'nation' is a much more impersonal, abstract, and overtly political concept than a people. It is a cultural-political community that has become conscious of its coherence, unity, and particular interests.

It is a common fallacy to define the Jewish people exclusively as a faith community. The distinct peoplehood, as well as the nationhood, of the Jewish people over more than 3,000 years is attested to by an abundance of historical evidence, from Jewish sources and also from the written and other records of neighbouring civilisations.¹

Even during the centuries of dispersion, Jews continued to function as much like a nation as possible, maintaining their own community government, laws, calendar, language and philosophical, poetic, religious and cosmological literature, as well as international connections between the dispersed communities.

The moral right of the Jewish people to national self-determination in Israel has received widespread international legitimacy, not only through the British Mandate for Palestine, but also at the United Nations and in formal recognition of Israel by the overwhelming majority of the world's nations (see further below).

Recognition of Israel as the political embodiment of Jewish peoplehood does not of itself negate the rights of the Palestinians or any other people, as has been claimed.² Still less does it preclude resolution of the claims of Palestinian Arab refugees who fled the country in 1947-8, including the claims for compensation of these refugees or their descendants for lost private property. On the contrary, there can be no resolution of such claims *except* by a sovereign State acting in the name of the people against whom the claims are made.

Israel as a democracy

In its 1992 Basic Laws, Israel explicitly defines itself as a 'Jewish and democratic' state. This identity, and Israel's aspiration to operate according to the highest Jewish ethical values, was given eloquent expression in its Declaration of Independence in 1948:

"The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience,

¹ The first known reference in extra-Jewish sources to a 'nation' called 'Israel' is to be found in the Merenptah Stele of ancient Egypt dating to approximately 1205 BCE. Subsequently, the records of the Babylonian, Persian, Greek and Roman empires identified the Jewish people as an independent, self-governing nation with its spiritual and political capital in Jerusalem.

In the Christian scriptures, which are believed to date to the first century CE, there are 43 references to the central province around Jerusalem as "Judaea" (eg Mark 13:14, Luke 1:65, Acts 1:8) as well as references to the whole of the Holy Land as "the Land of Israel" (eg Matt. 2:20, 2:21) and "the Commonwealth of Israel" (Ephesians 2:12). In the Muslim holy book, the Quran, dating to the seventh century CE, one finds the following passages among others: "And when Moses said to his people (i.e the Children of Israel)...Oh my People, enter the Holy Land which God has assigned unto you" (Quran, Sura 5 – "The Sura of the Table", Verse 21), and "We made the Children of Israel the inheritors (of the land)" (Quran, Sura 26 – "The Sura of the Poets", Verse 59).

² See for example Asharq Al-Awsat Monday, 20 January 2014: <http://www.aawsat.net/2014/01/article55327533>

language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.”

Israel has been remarkably successful in realising the vision of its founders although, as is true for every other nation, Israel has not always acted in a way that conforms to its values and ideals. What is of ultimate importance, however, is that in the face of unremitting rejectionism, violence and belligerence, Israel remains officially committed to those values and ideals, and strives to live up to them.

Jewish values emanate from the Jewish religion. Whilst Judaism acknowledges the sovereignty of God over all creation, it avoids the theocratic fallacy of equating the sovereignty of God with the dictatorship of clerics. In human affairs on this Earth the people are sovereign, and free to make their own choices in matters of government without limitation. Even though a complete separation between religion and State is a concept alien to Judaism, from ancient times the functions of ruler and religious leader have almost always been kept separate and distinct from one another.³

Contemporary Israel has a parliamentary system of government, in which the legislature is elected every four years by secret ballot under universal (that is, Jewish and non-Jewish) adult franchise; the executive is chosen from, and subject to, the legislature; and the judiciary is rigorously independent. Any citizen has the right to stand for election and Arab representatives have been elected to the Israeli parliament since the establishment of the State. In sharp contrast to its Arab neighbours, Israel imposes no religious test for the offices of Head of State or Head of Government. There is no serious challenge to this basic framework within Israel, and no attempt has ever been made to replace it with a non-democratic alternative.

Like the UK, Israel has no formal written constitution. Eleven Basic Laws of the Knesset presently operate and take precedence over other laws. The express purpose of the *Basic Law: Human Dignity and Liberty* (1992) is “*to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.*” It prohibits the violation of the life, body or dignity of any person, protects private property and affirms the right of the individual to protection of his or her life, body, dignity, liberty and privacy. In our view, Israel’s express commitment to democracy is appropriate and should not be changed.

These fundamental rights and protections extend to every citizen of Israel regardless of ethnic background, religious affiliation (or absence of religious affiliation), gender or sexual preference. In our view, it would be desirable for this universality to be stated expressly.

Recommendation 1: The *Basic Law: Human Dignity and Liberty* (1992) should be amended so as to provide expressly that the fundamental rights and protections mandated by it, and by other laws in which the rights of Israelis as citizens are recognised or conferred, extend to every citizen of Israel regardless of ethnic background, religious affiliation (or absence of religious affiliation), gender or sexual preference.

³ The fusion of those functions during the Hasmonean period is regarded as an aberration. Jewish tradition holds that the claiming of kingship by the later Hasmoneans led to their eventual downfall.

The role of religion in public life

Non-discrimination, however, does not require blindness to national or religious differences. Israel is certainly not alone among States in conferring special status to the religious faith of the majority.

There are four states whose very name contains a religious reference, namely the Islamic Republic of Afghanistan, the Islamic Republic of Iran, the Islamic Republic of Pakistan, and the Islamic Republic of Mauritania. Indeed, in every Muslim-majority country the constitution asserts a special role for Islam. The Jordanian constitution says “*Islam is the religion of the State*” and “*No person shall ascend the Throne unless he is a Moslem...of Moslem parent,*” (a provision which excludes even Muslim converts). At least five percent of Jordanians are Christians.

Egypt is about ten or even fifteen percent Christian (Copts), but its current provisional constitution states that “*Islam is the religion of the state....Principles of Islamic law (Shari’a) are the principal source of legislation.*”

The constitution of Malaysia states that “*Islam is the religion of the Federation,*” even though the country is only about sixty percent Muslim⁴ It is roughly twenty percent Buddhist, ten percent Christian, and six percent Hindu, among other religions.

The religion of the state is Islam in Oman, Qatar, and Kuwait (where an estimated fifteen percent of the population is non-Muslim). In Afghanistan, the constitution holds that “*The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan*” and “*No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.*” The president must be a Muslim. The Saudis proclaim: “*The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God’s Book and the Sunnah of His Prophet, God’s prayers and peace be upon him, are its constitution....*”

It is worth adding that Muslim states are not alone in their religious ties. The constitution of Denmark, for example, states that “*The Evangelical Lutheran Church shall be the Established Church of Denmark, and, as such, it shall be supported by the State,*” and “*The King shall be a member of the Evangelical Lutheran Church.*” In Norway, “*The Evangelical-Lutheran religion shall remain the official religion of the State*” and “*The King shall at all times profess the Evangelical-Lutheran religion.*” Finally, the Queen of England is “*Defender of the Faith,*” and the faith is Anglican Christianity. These and other western States observe the Christian day of rest, Sunday, and the Christian religious holidays of Christmas and Easter as public holidays.

It is appropriate that religion continue to play a role in Israel’s public life as long as the arrangements in place suit the preferences of most members of Israel’s Jewish and non-Jewish religious communities.

For example, the separation of Jews and Arabs in the public education system up to the level of high schools does contribute to a substantial disparity in allocations and in achievement levels between Jewish and Arab schools. But it seems that both communities are content to maintain the separation while seeking to redress the inequalities. Among Jews and Arabs, many believe that they have a right to study in a school supportive of their community’s distinctive cultural tradition.

⁴ And only about 60% are ethnic Malays. Some 22% are ethnic Chinese and 7% ethnic Indians.

The religious monopoly over matters of personal status is less easy to defend as it arguably violates the rights of citizens to freedom from religion. In addition, the monopoly of religious law in marriage and divorce has had a range of adverse consequences especially for women. The monopoly of the orthodox establishment over matters of conversion, and interference with the rights of non-orthodox Jews in Israel to live their lives according to their customs, adversely affect the unity of the Jewish people in Israel and world-wide. We believe that these aspects of religious influence in public life should be reviewed, but without resorting to strict separation between state and religion.

It is extremely important that the organs of the State do not seek to impose decisions about internal religious questions. Religious and legal questions should be separated to the extent feasible. Religious groups should continue to be allowed to have autonomous public education, which receive some public finance, but with proper public control over teaching and education standards and the non-religious aspects of the curriculum. There are a number of models of public financing and regulation of religious and other private schools, including from Australia, that might well be adapted to Israel's needs.

In general, we agree with Professor Ruth Gavison when she concludes:

Israel should strive to thicken the shared civic identity of all its citizens, and to strengthen the feeling of all citizens that it cares to promote the welfare of all. At the same time, it should allow the distinct groups within it develop their different identities. Both attitudes are compatible with Israel's remaining a nation-state of the Jewish people, so long as it has a Jewish majority and protects the human rights of all.⁵

Recommendation 2: Religion should continue to play a role in Israel's public life, especially in autonomous public education for religious communities, as long as the various arrangements in place suit the preferences of most members of Israel's Jewish and non-Jewish religious communities.

Recommendation 3: The religious monopoly over matters of personal status in marriage, divorce, conversion and accommodation of non-Orthodox streams of Judaism should be reviewed with the aim of providing equity among all Jewish streams and civil rights in these matters for all Israel's citizens, but without resorting to strict separation between state and religion and without the organs of the State imposing decisions about internal religious questions.

Israel as the State of the Jewish people, with Jewish values

Israel is Jewish in the sense that it has a Jewish majority to maintain Jewish political self-determination; that the Law of Return enables all Jews to find refuge there; that Its language and culture is Hebrew; that its anthem is Hatikvah, that the State feels an obligation to protect Jews worldwide, and that the State's public symbols and days of rest derive from Jewish tradition.

Israel's founding as the State of the Jewish people had international endorsement. In 1917, the Balfour Declaration, whose terms were subsequently adopted by the League of Nations in the British Mandate for Palestine, referred expressly to the establishment of a “national”

⁵ Ruth Gavison, ‘Can Israel be both Jewish and democratic?’ *Moment Magazine*
<http://www.gavison.com/a2611-can-israel-be-both-jewish-and-democratic>

home for “*the Jewish people*” in the geographic area then known as Palestine. The latter document gave international recognition “*to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country*”. These instruments made a crucial distinction between the collective rights of the Jewish people in Palestine and the individual civil and religious rights of the country's non-Jewish residents. All such rights, collective and individual, were and are to be honoured.

In 1947, the United Nations General Assembly passed a detailed resolution to partition the country into “*independent Arab and Jewish States*”. The partition resolution is replete with references that make it plain that the expression “Jewish State” is used in the sense of a State with a Jewish majority and an Arab minority, and that the expression “Arab State” is used in the sense of a State with an Arab majority and a Jewish minority. For example,

*"[Each]State shall ensure adequate primary and secondary education for the Arab and Jewish minority, respectively, in its own language and its cultural traditions."*⁶

Israel's identity as the State of the Jewish people is also a natural consequence of its democracy, since that identity is the strong preference of most members of the Jewish majority who comprise 80% of Israel's population.

Many of the world's States, old and new, are in fact nation-states. Like Israel, these states celebrate their distinct histories, languages, national holidays and emblems. Their citizens include minority national groups whose members do not belong to the group whose nation-state they live in. Unlike immigrant nations like Australia, Canada, the US and NZ, all of the States of Europe and many of the States of Asia and the Middle East are ethnically based.

Egypt and Syria, for example, characterise themselves as “Arab” republics. France protects the integrity of the French language and the interests of speakers of the French language. Ireland has a law that allows applicants of “Irish descent or Irish associations” to be exempted from ordinary naturalisation rules. Poland, Croatia and Japan have similar laws of return favouring members of their own respective ethnic majorities. Many other examples exist.

Nation-states, unlike immigrant nations, are each the political embodiment of the ethnic language, culture and identity of their majority population. There is nothing inherently anti-democratic about this. The test is how each State treats its ethnic and other minorities.

Members of these minority groups may rightly feel that the majority culture is not really theirs, and consequently may feel alienated and excluded from public and private expressions of that culture through art, literature, music and celebrations during national holidays.

For example, a German citizen of devout Muslim Turkish background might believe that God should be placed higher than country and would therefore find it difficult to sing the German national anthem, “*Deutschland, Deutschland über alles*” with conviction. An Arab or Druze citizen of Israel might similarly have difficulty singing *Hatikvah*, with its passionate tribute to the millennial yearnings of the Jewish soul.

Yet so long as the civil, religious and voting rights of members of minority groups are equal to members of the majority group, and they can participate fully in the political process and the economy of their societies, the democratic nature of the state cannot be impugned.

⁶ Resolution 181 (II), [A/RES/181\(II\) of 29 November 1947](#). See Annex Part 1, Section C, Chapter 2, paragraph 6.

Every country in the world discriminates against their minority communities to some degree. Israel's record on this score with regard to its Bedouin communities especially is certainly open to criticism, but in terms of voting and legal equality, standard of living, life expectancy, health, education and overall happiness, Israel's Arab minorities fare much better than, say, the African Muslims of France or the Turkish "guest workers" of Germany.

The fact that Israel is the state of the Jewish people and gives public expression to the unique history and tradition of the Jewish people therefore does not preclude it from being a democratic state of all its citizens in the sense of respecting the fundamental civil, religious and voting rights of all its citizens.

The fact that Israeli citizenship is available to Jews in any part of the world who migrate to Israel also does not preclude the right of citizenship from being available to members of non-Jewish minority groups who are permanently resident within the territory to which the laws, jurisdiction and civil administration of the State has effect. Israel's Nationality Law provides for this, except with regard to two such areas, namely the areas of Jerusalem and the Golan Heights which Israel captured during the 1967 war. Israel's extension of its jurisdiction to these two areas is not recognised internationally and arrangements regarding citizenship rights of non-Jews residing there must therefore await the conclusion of a final peace agreement which will resolve the question of the ownership of these territories. (In the meantime, non-Jewish residents of all parts of Jerusalem have the right to vote and stand as candidates in Jerusalem's Municipal elections).

The other parts of the West Bank and the Gaza Strip are areas claimed by the Palestinians as territory that is included, or will be included, in a separate and independent State of Palestine. Israel has never purported to annex or extend its jurisdiction to these territories. Mere residency within these areas therefore may give rise to a moral or legal right of citizenship of the State of Palestine (if and when such a State is established) but does not give rise to any moral or legal rights of citizenship of the State of Israel, except to the extent that any parts of those territories may become incorporated into the territory of Israel under any future peace agreement with the Palestinians or in any other internationally lawful manner.

A civilised democracy acknowledges its imperfections, especially in the area of discrimination against its minority communities, and commits itself to remedying them. According to its founding vision, as expressed in the Declaration of Independence, Israel's Jewish character must be reflected not only in the identity of its people but also in its values, in its readiness to debate, articulate and ultimately seek to implement what the prophetic vision of a sovereign nation that lives in righteousness means in the present era.

Therefore, the gamut of public issues and challenges that arise, whether in domestic or foreign policy, must each be addressed from a broader perspective than the mere imperative of survival. This necessarily involves a higher moral reckoning, one that is not confined to threat analysis. Israel's Basic Laws refer to "Jewish values" without articulating them. It would be desirable in our view if a non-definitive statement of Jewish values were to be enshrined in a Basic Law, which would include an affirmation that individual human life, dignity and freedom are sacred and inviolable, and would embrace the broad, social vision of the Prophetic tradition.

Recommendation 4: A non-definitive statement of "Jewish values", which affirms that individual human life, dignity and freedom are sacred and inviolable, and which embraces the broad, social vision of the Prophetic tradition, should be enshrined in a Basic Law.

2. **As an integral part of Israel's Jewish character, should there be any codified expression in Israeli law regarding the special relationship between Israel and world Jewry? In this we refer to both symbolic expression, and to an actual framework that governs practical matters (such as a legal mechanism to examine impacts of Israeli decision-making throughout the Jewish world, or clearly enumerates some of the State of Israel's obligations to world Jewry).**

Israel's former Foreign Minister, the late Abba Eban, once wrote that Israel by itself "*is a small island of territory in an ocean of hostility. It lacks geopolitical weight. Israel plus the Jewish people is an eternal nation, striding across unlimited expanses of space and time*".⁷ Even allowing for Eban's oratorical gifts, those who seek Israel's destruction know perfectly well how vital the bond between Israel and the Jewish people continues to be. We do not have the luxury of forgetting what they so clearly understand.

The bond works for the benefit of both Israel and the Diaspora. Diaspora communities have an intimate knowledge of the formal politics of, and the range of values and opinions within, the States of which they are citizens. Diaspora Jews are thus ideally placed to act as public and private advocates for Israel and to enhance the effectiveness of Israeli diplomacy. Conversely, Israel is the political embodiment of Jewish peoplehood and provides the ultimate refuge for persecuted and distressed Jews worldwide, publicly exposing the mistreatment of Jews anywhere and thereby enhancing the sense of safety and security of Jews everywhere.

We believe it is appropriate for this bond to be given symbolic expression in Israeli law and also a more formal expression through the establishment of a mechanism for consultation between Israel and Diaspora Jewry. Through this mechanism, the impact of the actions and pronouncements of Israel and of the representative organisations of individual Diaspora communities, each on the other, can be assessed so that, if necessary, those actions and pronouncements can be reviewed and revised. The discussions in this regard must allow for the expression, *in camera*, of a broad range of views within the Jewish world, and for the issuing of joint communiques.

The establishment and operation of a consultation mechanism will be without prejudice to (i) the prerogative of the elected government of Israel to make decisions it believes to be in Israel's interests as a sovereign state; and (ii) the prerogative of the representative organisations of each Diaspora community to make decisions it believes to be in that community's best interests.

The consultation mechanism should reflect contemporary realities. The current formal structure through which Diaspora communities express their views to Israel, namely the Jewish Agency and the World Zionist Organisation, date from the pre-State era. Whilst these organisations still have a role to play and should be preserved, a more broadly-based mechanism is needed. The mechanism should be developed by Israel in consultation with the World Jewish Congress, World Zionist Organisation and the Jewish Agency and formalised in an Accord between the State of Israel and those organisations.

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⁷ Abba Eban, *Personal Witness*, (New York: Putnam, 1992), p.221.

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