

instead on another deception: that the establishment of Israel allowed the Jews to normalise, to become “a nation like other nations”. But what exactly is the nation of Israel? In other countries, the answer is relatively simple: the French nation, for example, is the collection of people who hold French citizenship; it is, in other words, the sum of French citizens. But the Israeli nation is something different. According to Israel’s founding laws, the state belongs not just to the people who live in Israel, to its citizens (one in five of whom is ethnically Arab), but to the Jewish people wherever they live around the world and whatever other nationalities – American, French, British, Argentinian – they consider themselves to be. As the Israeli sociologist Baruch Kimmerling points out: “The state is not defined as belonging to its citizens, but to the entire Jewish people.”<sup>40</sup>

### SEPARATE NATIONALITIES, UNEQUAL CITIZENS

The murkiness of Israel’s self-definition is underscored by the privileged status various international Zionist organisations, including the Jewish Agency and the Jewish National Fund, enjoy in Israeli law. They have a semi-governmental status, including owning vast tracts of Israeli land, even though their charters require them to act exclusively in the interests of world Jewry.

As a consequence, Arab citizens’ exclusion from the Israeli and Jewish nation has very concrete effects both on their social position in Israel and the possibility of developing a civic identity. For example, there are some 137 possible nationalities that can be recorded on Israeli identity cards: from Jew, Georgian, Russian and Hebrew through to Arab, Druze, Abkhazi, Assyrian and Samaritan. Everything, in fact, apart from Israeli.<sup>41</sup> This is because the state refuses to acknowledge that the Israeli nation can be separated from the Jewish nation. The two are seen as identical, meaning that non-Jews in Israel, including the population of more than one million Palestinians, are effectively citizens without a nationality; they are more akin to permanent residents. The state’s approach suggests that it regards the nation of Israel as *including* potentially millions of Jews who do not live in Israel and do not have Israeli citizenship and as *excluding* the more than one million Palestinians who do live in Israel and do have Israeli citizenship.

The courts have consistently upheld this position. In 1971, for example, when an Israeli Jew petitioned the Supreme Court to have

his nationality changed from Jewish to Israeli in public records, Chief Justice Shimon Agranat rejected the application, arguing:

If there is in the country today – just 23 years after the establishment of the state – a bunch of people, or even more, who ask to separate themselves from the Jewish people and to achieve for themselves the status of a distinct Israeli nation, then such a separatist approach should not be seen as a legitimate approach.<sup>42</sup>

Agranat's ruling was confirmed by the courts again in early 2004.

The difficulty facing the Israeli legal system is that to recognise a common Israeli nationality – to recognise in effect a shared bond of citizenship between Jews and Arabs inside Israel – would negate the intentions of the country's founding fathers, who premised their state on the principle that it was a haven-in-waiting for the whole Jewish people, wherever they lived. In this sense the legal concept of Israeli nationality is unlike that found on the statute books anywhere else in the world. Jews and Arabs may share the same label of "Israeli" but they are different kinds of nationals and citizens: the former are included in the notion of a common national good, while the latter are excluded.

Consider just one example of the racist implications of this view of Israeli nationality, sanctioned by both the state and the courts. Although almost all land in Israel is nationalised, the state publicly admits that it does not hold it for the benefit of the country's citizens. It is held, in trust, on behalf of Jewish people around the world. The land of Israel is the property not of the Israeli people but of the Jewish nation, of Jews everywhere and for all time. As a result, Arab citizens have no rights to most of the country's territory, and legally can be excluded from the communities built on that territory. A Jew from Brooklyn and his or her children and unborn children enjoy absolute and eternal rights in Israel (even if they choose not to realise those rights), while a Palestinian citizen living in Nazareth or Haifa, whose family has lived on the land now called Israel for many generations, does not. In 2002 Prime Minister Ariel Sharon explained the difference during a Knesset debate when he observed that while Arab citizens enjoyed "rights *in* the land" – they had tenants' rights – "all rights *over* the Land of Israel are Jewish rights".<sup>43</sup> In short, the state considers the Jewish people as the landlords of Israel.

The difference in the nature of the nationality enjoyed by Jews and Arabs is embodied at the most basic level in an early piece of

immigration legislation called the Law of Return. Passed in 1950, two years after the establishment of the state, the Law of Return was designed to ensure that the demographic ghost of the Palestinian homeland on which the Jewish state was built never return to haunt it. It gives a right to every Jew in the world to migrate to Israel and receive automatic citizenship while barring the return of Palestinians exiled by the 1948 war. The legislation skews the demographic realities in Israel so that Jewish numerical dominance can be maintained in perpetuity. It has eased the passage of some three million Jews to Israel, and disinherited the 750,000 Palestinians who were either expelled or terrorised out of the country under cover of war, and millions of their descendants. The consequence of the Law of Return – if not its purpose – has been to ensure that inside Israel the Jewish population maintains an unassailable numerical majority over what remains of the Palestinian population.

### THE JEWISH STATE DEFINED

The Jewish identity of the state, and the permanent marginalisation of the Palestinian citizens it was forced to inherit in 1948, was enshrined in the country's founding document, the Declaration of Independence, which mentions only the history, culture and collective memory of the Jewish people.<sup>44</sup> It speaks not on behalf of the country's citizens but on behalf of the representatives of the Jewish people, as well as the Zionist movements, including the Jewish Agency and the Jewish National Fund.<sup>45</sup> These organisations, which enjoy a legal right to discriminate in favour of Jews, control social, political and economic benefits for Jews only.

Despite a pledge in the Declaration of Independence to produce a constitution within six months of the establishment of the state, no document has yet been drawn up. One of the insuperable obstacles facing the drafters has been how to embody the ethnic and religious values of a Jewish state without resorting to clearly discriminatory language.<sup>46</sup> A flavour, however, of what values the courts think a "Jewish state" embodies have been provided by the current chief justice, Aharon Barak, considered one of the most progressive and secular voices in Israel:

[The] Jewish state is the state of the Jewish people ... it is a state in which every Jew has the right to return ... it is a state where the language is Hebrew and most of its holidays represent its national rebirth ... a Jewish state is

a state which developed a Jewish culture, Jewish education and a loving Jewish people ... a Jewish state derives its values from its religious heritage, the Bible is the basic of its books and Israel's prophets are the basis of its morality. A Jewish state is also a state where the Jewish Law fulfills a significant role ... a Jewish state is a state in which the values of Israel, Torah, Jewish heritage and the values of the Jewish *halacha* [religious law] are the bases of its values.<sup>47</sup>

Instead of a constitution, Israel has 11 Basic Laws, none of which guarantees freedom of speech, freedom of religion or, most importantly, equality. The Basic Law on Human Dignity and Liberty, passed in 1992 and the nearest thing Israel has to a Bill of Rights, fails to include equality among the rights it enumerates, instead emphasising the values of the state as "Jewish and democratic". As a result, state-organised discrimination cannot easily be challenged in the courts. Repeated attempts by Arab Knesset members to introduce an amendment to the Basic Law on Human Dignity and Liberty incorporating the principle of equality have been rejected by an overwhelming majority of Jewish MKs.<sup>48</sup> (In any case, since the 1948 war Israel has never revoked a state of emergency that allows gross violations of human rights inside Israel).<sup>49</sup>

### ISRAEL'S PACT BETWEEN THE RELIGIOUS AND SECULAR

The veiling of the religious and ethnic discrimination at the heart of Israel has been partly achieved through the seemingly unimportant decision of its founding fathers to remove the state from all matters of personal status. Each religious community has been left to regulate issues relating to its members' births, deaths and marriages. In these core matters in each citizen's life there are no civil institutions or courts to which he or she can turn. It is neither possible to register as an atheist or agnostic, nor formally to bring up one's children as secular citizens. Instead, the leaderships of each of the main religious communities – Jew, Muslim, Christian and Druze – have been given exclusive powers to deal with their own members. Anyone belonging to the Arab Christian community of the Greek Orthodox faith, for example, must seek a divorce in a Greek Orthodox religious court before a panel of clergy in proceedings possibly carried out in Greek, with translation for the Arab participants, and according to Byzantine laws dating back to the fourteenth century.<sup>50</sup> Similarly,

no civil marriage is possible in Israel, forcing citizens from different religious communities to marry abroad.

Rather than encouraging diversity, Israel has used the “subcontracting out” of personal status matters as a way to create a series of ethnic and communal partitions. There is no room for civil society to flourish when the state has abandoned its citizen to their religious ghettos, and the arbitrary decisions of their religious leaders. Instead individual citizens have been left to fight lonely battles to establish their rights in the most private areas of their lives, without the help or protection of civil institutions and laws. By refusing to offer an alternative, secular identity to its citizens in addition to that offered by the religious authorities, or to arbitrate in disputes between individuals and their confessional group, the state leaves citizens prey to anachronistic traditions and the whims of bigots. In Israel, the most lively public debates concentrate on arcane personal status issues, such as the battles to ease marriage restrictions, allow public venues to open on the Sabbath, and end the Jewish Orthodox’s iron grip on conversion. There is no room to adopt a more critical civil discourse, one that questions the huge budgetary requirements of Israel’s military or the economic policies that have opened up huge disparities in wealth and employment.

The authority wielded by the various religious leaderships, rather than equalising the status of the different religions before the law, has served to entrench an especially privileged place for Judaism in Israel, as the religion of the majority. The Hebrew calendar and the Jewish religious holidays are the only ones recognised; offices, banks, institutions and public transport shut down for the Jewish Sabbath only; restaurants, factories and public institutions are obligated to follow only the hygiene practices of Jews; only Jewish holy sites are recognised and protected by law; almost the entire budget of the Religious Affairs Ministry is reserved for Jewish places of worship, cemeteries, seminaries and religious institutions;<sup>51</sup> and Jewish religious schools receive resources far outstripping those given to state-run Jewish and Arab education.<sup>52</sup>

Conversion, which would at least offer a route, if a problematic one, to inter-confessional marriage inside Israel and lower the barriers between religious communities, has been made all but impossible in the case of Judaism. In an agreement forged in the earliest days of the Jewish state, control over personal status matters was passed exclusively to rabbis representing Orthodoxy, a fundamentalist stream of Judaism and the least progressive of its major movements.

As well as insisting on a purist definition of who is registered as a Jew (only those born to a Jewish mother), the Orthodox rabbinate in Israel approves only a handful of conversions to the Jewish faith each year, requiring that converts accept a fundamentalist interpretation of Judaism, including observance of *halacha* (Judaism's equivalent of sharia law). Conversions performed in Israel by rabbis belonging to other streams, such as the Conservative and Reform movements, are not recognised by the state.

This pact between the state and Orthodoxy has averted any threat, however improbable, of Palestinian citizens converting en masse to Judaism and thereby ending their exclusion from the centres of power. But it has also caused collateral damage, making life extremely difficult for Jews living in Israel who are not considered Jewish by the Orthodox rabbinate, including more than a quarter of a million immigrants who arrived in the last 15 years following the collapse of the Soviet Union.<sup>53</sup> Because they are the non-Jewish spouses of returning Jews, or the offspring of such marriages, they find themselves unable to wed in Israel,<sup>54</sup> to be buried in Jewish cemeteries, or to be registered as a Jew on their identity cards. Their children inherit this flaw.

Religious control over personal status matters has erected impenetrable barriers between Jews and Arabs in both the communal and the individual sphere. The policy has undermined any awareness of shared interests between Israel's different confessions; instead, communal groups must battle for resources that benefit their members alone rather than forging alliances that might unite groups on other bases. The arrangements put in place by the state have forced citizens to remain in a sectarian, tribal formation – as Jews, Muslims, Christians and Druze – vying for resources and privileges.

In this hierarchy of citizenship, given the state's definition as a Jewish state, the Jewish majority is always the winner by some considerable margin;<sup>55</sup> lagging a great distance behind are the Christian Arab denominations, which, because of their historic links to the global Churches, have enjoyed better opportunities for education and travel;<sup>56</sup> next comes the small Druze community, treated by the state as a national minority separate from the Arab population whose members are obligated in law to perform military service alongside Jews; and in last place is to be found the large Muslim population, comprising 80 per cent of the country's Palestinian minority, which has been entirely marginalised.