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Jewish/Palestinian Self-Determination and Citizenship  
in Israel/Palestine

Chaim Gans



European University Institute  
**Robert Schuman Centre for Advanced Studies**  
Global Governance Programme

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## **Abstract**

The paper presents a distinction I worked out in great detail in my book *A Political Theory for the Jewish People: Three Zionist Narratives* (Hebrew, 2013, submitted for publication in English) among three versions of Zionism. Mainstream Jewish and Israeli politics are based on Zionism under two conceptions of this ideology. The first is proprietary. According to this conception, Zionism initiated the physical repossession of a land and of a political entity which the Jews had owned since antiquity. This ownership has allegedly not lapsed despite the physical separation between the Jews and their land.

The second mainstream conception of Zionism is hierarchical. It is based on a hegemonic interpretation of the universal right that peoples have to self-determination. According to this conception, the right to self-determination is a right to "a state whose institutions and official public culture are linked to a particular national group [and which...] puts those citizens who are not members of the preferred [group...] at a disadvantage." [Ruth Gavison, "the Jews' Right to Statehood: A Defense," *Azure* 15 (2003), 74-75.]

The paper explains the main arguments which the proponents of these two versions of Zionism invoke in order to support their interpretation of this ideology and explicate their implications regarding citizenship and self-determination in Israel/Palestine. It then proposes a third interpretation of Zionism, an egalitarian one. This version of Zionism, which I argued for in *A Just Zionism*, falls between the two mainstream conceptions mentioned above, and on the other hand, the post-Zionist critique of the notion of "a Jewish and democratic state".

## **Keywords**

Proprietary, Hierarchical, Egalitarian Zionism; self-determination; citizenship; Palestine; Israel





## Jewish/Palestinian Self-Determination and Citizenship in Israel/Palestine<sup>1</sup>

I will distinguish between three interpretations of Zionism or Jewish sovereignty and self-determination: Proprietary, Hierarchical and Egalitarian. I will explain their implications for self-determination and citizenship in Israel/Palestine. I will argue for the third interpretation mainly by criticizing the first two.

According to proprietary Zionism, the Jewish people has a right of ownership over the Land of Israel and its political institutions which is rooted in antiquity. This interpretation resonates in Israel's Declaration of Independence, the first section of which states that "The Land of Israel [is] the birthplace of the Jewish people. Here their spiritual, religious and political identity was shaped. Here they first attained to statehood, created cultural values of national and universal significance and gave to the world the eternal Book of Books."<sup>2</sup> To be sure, this section tells the (true) story of the primacy of the Land of Israel in Jewish history, emphasizing that it was from the Land of Israel that the Jews bequeathed the world with the Bible. However, Jewish Israelis adhering to mainstream Zionism and its politicians usually reverse what is stated in the first section of Israel's Declaration of Independence. Instead of emphasizing what it actually asserts, namely, the primacy of the Land of Israel in Jewish history and identity, they usually stress the primacy of the Jews in the history of the Land of Israel. And instead of noting that the Jews had bequeathed the Bible to the world when they resided in the Land of Israel, they speak of the Bible as bequeathing the Land of Israel to the Jews. This reversal serves to justify their proprietary claims to the Land of Israel. The second and third sections in the Declaration of Independence encourage this transposition.

"After being forcibly exiled from their land, the people kept faith with it throughout their Dispersion and never ceased to pray and hope for their return to it and for the restoration in it of their political freedom." "Impelled by this historic and traditional attachment, Jews strove in every successive generation to re-establish themselves in their ancient homeland."<sup>3</sup>

The current interpretation of Zionism, which is allegedly justified by the ancient Jewish rights over the Land of Israel functions not only as a justification for the return of the Jews to the Land Israel upon the inception of Zionism. It also justifies their ongoing superior status in it relative to the Arabs. If the Jewish people is the owner of the Land of Israel from time immemorial, and its ownership has not lapsed, then it follows from this interpretation of Zionism that the Arab nation is the usurper of the Land of Israel. It must be noted that this interpretation presupposes a collectivist moral ontology in which the basic subjects of political morality are nations and not individuals.

The combination of proprietary justice and collectivist moral ontology underlying the current version of Zionism provide possible explanations for two of the most important components of mainstream Zionism regarding the status of Arabs in Israel. On the one hand, this combination provides an explanation for the consensus existing among most Jewish political parties in Israel, according to which any *collective rights* should not be granted to the Arabs in the Jewish state, at least not rights of a political and territorial nature that express recognition of the Arab collectivity as a historical collectivity with respect to Palestine/the Land of Israel.<sup>4</sup> On the other hand, the combination

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<sup>1</sup> The paper combines arguments and excerpts from my books *The Limits of Nationalism* (Cambridge University Press, 2003); *A Just Zionism: On the Morality of the Jewish State* (Oxford University Press, 2008) and *A Political Theory for the Jewish People: Three Zionist Narratives* (Haifa University Press, 2013) [Hebrew].

<sup>2</sup> Declaration of the Establishment of the State of Israel, 1 LSI 7 (1948).

<sup>3</sup> Ibid. exerepts

<sup>4</sup> There are countless examples of Jewish refusal to grant collective rights to the Arabs in Israel. Let me mention two. First, in the words of the Vice President of the Supreme Court, Justice Mishael Cheshin: "A collective general right of the Arab population as minority group in order to foster and preserve its national and cultural identity by the support of the state has not been created and has not been acknowledged in Israel's law" (HJC Adalah, pp. 459). Second, the various

of proprietary justice and collectivist moral ontology can provide an explanation of the fierce disputes that often arise within hegemonic Zionism over issues concerning the *individual rights* of the Arabs in the Jewish state. On the one hand, since according to proprietary Zionism, the Arabs as a *historical collectivity* must be perceived as the plunderers of the country, it is totally unthinkable—from the perspective of this interpretation—that they should be granted collective rights there. For granting them such rights would be tantamount to granting a thief rights to objects he had stolen on the mere grounds that they had been stolen by him. On the other hand, the fact that the Arabs as a collective and not as individuals could be considered as usurpers of the land of the Jews provides an explanation for why the question as to whether they deserve individual rights, or which individual rights they deserve, is under dispute among the different sections of mainstream Zionism. The limiting right-wing response to this question would be that of the racist right-wing Zionism inspired by Rabbi Meir Kahana that calls to remove all Arab individuals from the Land of Israel. The limiting "left-wing" response of proprietary Zionism would be that of *Revisionist Zionism* inspired by Zeev Jabotinsky, the current main spokesman of which is Moshe Arens. It proposes the removal of the Arabs as a collective from the Land of Israel, while recognizing their status as individual citizens. This status grants them full civil and political rights. In addition, there are many other possibilities between these two poles. If members of the public at large and its politicians make proposals that express views to the left of Arens's position, they usually do so for tactical reasons or at most for pragmatic reasons, and not for principled ones. Examples are Ben-Gurion's acceptance of Peel Partition Plan in 1937, or the concession Netanyahu made to Obama in his 2009 Bar-Ilan speech by agreeing to the establishment of a Palestinian state in the western part of the Land of Israel.

Let me move now to the Hierarchical interpretation of Jewish sovereignty in Israel. According to Ruth Gavison, the state declared in the Declaration of Independence "[...] is the state in which the Jewish people realizes its right to self-determination, or in other words: Israel is the nation-state of the Jewish people."<sup>5</sup> She further notes that a nation-state is "[...] a state in which there is a connection between the state institutions and a particular national culture, [one that] grants important advantages to the nation with which the state is identified and places a great burden on citizens of the state who are not members of this nationality."<sup>6</sup>

Four arguments could be made and in fact are being made in Israel to support this hierarchical conception of Jewish self-determination and a principle of Jewish hegemony in Israel. The first argument is salient in the above quote from Gavison. It concerns the identification of the right to national self-determination with a right to a nation state. In the public discourse among Jewish Israelis,<sup>7</sup> it is virtually presupposed that self-determination means the right to sovereignty or hegemony of one ethno-cultural group in a state of its own.<sup>8</sup> The second argument frequently invoked to justify the hegemonic interpretation of the Jewish right to self-determination in Israel is that most or

(Contd.) \_\_\_\_\_

interpretations of the notion of a Jewish state canvassed in the Constitutional Committee of the 16th Knesset, chaired by MK Michael Eytan in the debate preceding the drafting of an Israeli Constitution, did not even address the presence of an indigenous Arab minority in Israel. See: Gavison, *The Constitutional Committee Report*.

<sup>5</sup> R. Gavison, *Israel as a Jewish and Democratic State: Tensions and Possibilities* (Jerusalem: Van Leer Institute and Hakibbutz Hameuchad, 1999), 26 [Hebrew].

<sup>6</sup> R. Gavison, "The Jewish State: The Principle Justification in Principle and The Desirable Character," *Tekhelet* 13 (2002), 50, 54.

<sup>7</sup> Israel's population consists of a Jewish majority and an Arab minority, the members of which are also Israeli citizens (vs. Arabs living in the Occupied Territories, who are not citizens of Israel).

<sup>8</sup> See, for example, the opinion expressed by Justice Levine in EA 2/88 *Ben Shalom v. The Central Elections Committee for the Twelfth Knesset*, P.D. 43(4), 221 (Hebrew). In her defense of Israel as a Jewish nation state, Ruth Gavison uses the following definition: "... a nation state – a state whose institutions and official public culture are linked to a particular national group – offers special benefits to the people with whom the state is identified. At the same time, it puts those citizens who are not members of the preferred national community at a disadvantage." Ruth Gavison, "The Jews' Right to Statehood: A Defense", *Azure* 15 (2003), 70-108, in pp. 74-75.

at least many states view themselves in this manner.<sup>9</sup> A third argument appeals to the long history of persecution suffered by Jews, which occurred largely with the support of the governments of the states in which they lived.<sup>10</sup> Finally, these three arguments are supplemented by a fourth one that relies on the long and bloody conflict between Jews and Arabs in Palestine/Israel.

I will first explain why the right which ethno-cultural groups have to self-determination should not be interpreted as the right of such groups to hegemony in the countries in which they exercise self-determination. Rather, it should be perceived under a far more modest conception. I will then argue that the hegemonic interpretation of Jewish self-determination nevertheless became justified in the wake of the Nazi ascent to power and the Arab revolt. This is mainly due to the history of Jewish persecution and the Jewish-Arab conflict respectively and, to a lesser extent, because of the hegemonic practices of many nation states. However, I will claim that even if these three arguments do justify the implementation of the hegemonic conception in Israel, they are of limited force both in terms of the kind of justification that they provide and in terms of their substantive scope. That is, they are circumstantial rather than principled, and they only apply to the domains of demography and security. Moreover, though some of the circumstances giving rise to these arguments--namely, the spread of anti-Semitism, the Arab-Jewish conflict and the hegemonic policies of numerous nation states--may not altogether disappear in the foreseeable future, morality requires that one strive to abolish them.

Let me begin with the argument based on the identification of the right to self-determination with hegemonic statehood. This identification neither follows from the concept of self-determination nor can it be justified normatively. If self-determination means self-rule, then this can be implemented by granting the members of ethno-cultural groups sub statist autonomy. If self-determination means secession, this doesn't imply that groups entitled to secede from existing states have a right to hegemony and sovereignty over the state they establish. As to the justifiability of a hegemonic conception of self-determination: there are several considerations that inveigh against it. The first and most important of these relates to the intra-state injustice caused by the realization of this version of self-determination. In the geo-demographic conditions of most parts of the world, the realization of the statist conception in effect creates two classes of citizens: Citizens to whom the state can be said to belong, and citizens who are the state's subtenants, as it were. This inherent inequality has always figured prominently in the Israeli discourse regarding the Jewishness of the State (and also in the discourse about Zionism since its early days).

A second important consideration for rejecting the hegemonic interpretation of the right to self-determination relates to the injustice it causes on the global level. Because of the geo-demographic conditions of the world, the implementation of this conception means that not all nations can have a state of their own or the special international status which is currently granted only to states.

The second argument commonly cited in favor of the hegemonic conception of Jewish self-determination in Israel and hence for hierarchical Zionism is that there are many countries all over the world in which ethno-cultural hegemony has been institutionalized in a fashion similar to that of the Israeli case. Ruth Gavison, Michael Walzer and many other admit that Jewish ethno-cultural hegemony in Israel sentences the Arabs living in Israel to inequality and feelings of alienation, but claim that the phenomenon is almost universal. Amnon Rubinstein and Alex Yakobson have recently

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<sup>9</sup> Alexander Yakobson and Amnon Rubinstein repeat this argument many times in their book, *Israel and the Family of Nations: Jewish Nation-State and Human Rights* (Tel-Aviv: Schocken, 2003) (Hebrew). Utilizing numerous examples from other states, the book attempts to prove that Israel is not exceptional in its self-perception as a hegemonic nation-state. In this context one should also mention the comments of a former president of the Israeli Supreme Court, Meir Shamgar, according to whom "...the existence of the State of Israel as the State of the Jewish People does not negate its democratic nature, just as the Frenchness of France does not negate its democratic nature". (EA 1/88, *Neiman v. Chairman of the Central Elections Committee for the Twelfth Knesset*, P.D. 42(4), 177, at p. 189 (Hebrew)).

<sup>10</sup> An important example is A. B. Yehoshua's essay, "Between Right and Right: One Right and Another", in A. B. Yehoshua, *Between Right and Right*, trans. Arnold Schwartz (Garden City: Doubleday & co., 1981), 75-106.

published a 500 pages book attempting to support this argument with a rich array of examples. Though there is much to be criticized regarding the analogy they draw between Israel and the other cases they cite, I want here to question the general argument underlying their examples which is the “everybody does it” argument.

It is an apologetic argument usually invoked in order to justify something which is unjust. People do not invoke it in order to justify something which is just in its own right. The natural response to the question of why one does not give or take bribes would presumably be “because bribery is prohibited” and not “because most people don’t give or take bribes”. It is only people who occasionally indulge in bribery who might excuse themselves by arguing that “everybody takes bribes”. If my argument that self-determination should not be equated with statist hegemony is correct, it becomes clear why the prevalence of the phenomenon of hegemonic nation state is so frequently invoked by those attempting to justify Israel’s hegemonic interpretation of its right to self-determination. Since this interpretation is not justified on its own merit, its proponents are forced to argue that many other peoples also interpret their right to self-determination in a similar way.

However, justice does not necessarily require that Israel take the lead in changing this undesirable practice. At least in this case, in view of the history of Jewish persecution, and the history of the Jewish-Palestinian conflict over Palestine-the Land of Israel, Israel need not necessarily be “a light unto the nations.”

Let me now turn to these last two arguments. I believe they provide some reason for Jewish hegemony in Israel. This is so especially with regard to the last one. In view of the absence of trust between Jews and Palestinians in matters of existential importance for the Jews, and the fact that the Jews are a minority in the region, the Jews have good reason to believe that the Arabs in general and the Palestinians specifically would ultimately not respect the Jewish people’s interests in its survival as a distinct society. As long as the conflict remains unresolved and as long as there are no relationships of trust between the parties, the Jews must rely on their strength. In other words, they must continue to live within the framework of a state within which they enjoy hegemony and in which they have military power.

However, the fact that Jewish hegemony in Israel stems mainly from this argument and not from the principled right to self-determination and self-rule imposes important constraints on this hegemony. They apply to both the substance and the duration of the hegemony. Substantively, the hegemony in question pertains only to military power and the maintenance of a demographic majority. In terms of duration, the hegemony in question should be maintained in these areas until the relationship of trust crystallizes between the parties.

Jewish hegemony in a numerical sense and Jewish control over military power do not justify violating the principle of equality of opportunities and resources in all areas not directly connected to control of security. Numerical hegemony and security control certainly do not justify budgetary discrimination and allocation of power unrelated to the proportion in the population of the beneficiaries of the budgets or the power. They do not justify greater budgetary allocation *per capita* for the education of Jews than the education of Arabs and the provision of a higher level *per capita* of religious services for Jews relative to religious services for Arabs. Nor can they justify allocation of public offices in a manner that discriminates against Arabs.

Jewish control of military power and the preservation of a Jewish majority also do not justify denial of collective rights to Arabs such as self-government in education, parliamentary representation, and representation and presence in the public sphere and the symbols of the state.

The argument of this talk supports a Jewish numerical hegemony in Israel. I must end with a caveat pertaining to the means for achieving and preserving such hegemony. The Presidency of the 15th Knesset disqualified M.K Kleiner’s bill, which purported to encourage emigration to Arab states. The 16th Knesset amended the Citizenship Law so that it now denies family reunification rights to

Palestinians who are residents in the Territories with their families who are Israeli citizens. And we have the Law of Return. The first two laws, and to a large extent the Law of Return too, are intended to promote the demographic component of Israel's Jewishness.<sup>11</sup> If the first bill was disqualified, why not disqualify the other two as well? If there are reasons for not disqualifying the other two, then why disqualify the first? In my opinion, the only legitimate means for demographic regulation is a certain version of the Law of the Return. The other laws cannot be justified.

This is especially the case with regard to the Citizenship Law which denies family reunification rights to Palestinians who are residents in the Territories with their families who are Israeli citizens.

The denial of the Israeli Palestinians' right to family unification directly abridges their choices for spousal relations and family life. It forces them to either avoid marital ties with Palestinian men or women who are not Israeli citizens, or to pay a heavy price for such marriages: living apart from their spouses or emigrating from their homes or residences in Israel.<sup>12</sup> This is contrary to section one of the UN International Convention on Elimination of All forms of Racial Discrimination, according to which racial discrimination applies to any "any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

Subsidizing emigration of Palestinians who are citizens of Israel, while less draconic than the denial of the right to families unification, is nonetheless illegitimate. Such subsidization broadcasts a blatant message from the State to part of its citizens to the effect that their ethno-cultural identity renders them undesirable in their places of birth or in the places in which they live their lives. However, on a practical level, it can be ignored.

Nationality-based priorities in immigration in a Law of Return style are different. They do not prevent Arabs who are already the citizens of a state from realizing major components of their life plans in their state.

I therefore think that though Israel has good reasons for sustaining its Jewish majority, or the demographic hegemony of the Jews within it, the means it may employ in order to achieve this goal must be constrained by human rights limitations along the lines just explained. Moreover, as I've

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<sup>11</sup> The issue of demographic regulation is not the only issue which justifies the Law of Return. Members of diaspora ethno-cultural groups have a legitimate interest in being able to live in a place in which their group enjoys self-determination. They also have a legitimate interest in the existence of a safe haven in case they are being persecuted. The protection of these interests may also have certain incidental demographic consequences. Nonetheless, we ought not confuse the justification they provide for the Law of Return with the direct justification provided by the issue of demographic regulation. I dealt with this at length in *The Limits of Nationalism*, Chapter 5

<sup>12</sup> Only pragmatic considerations can explain racists' support for the denial of rights to unification of Palestinian families while simultaneously rejecting Kleiner's proposal. Since Kleiner's bill leaves the choice of whether to leave Israel or not in the hands of Arabs, conceivably, it has no practical import because presumably there are not many Arabs who would exploit the subsidy offered by Kleiner. The amendment of the Citizenship law, on the other hand, is assured of having practical consequences. As a result of the law, where an Arab man/woman marries a non/Israeli Palestinian, not only is their marriage likely to be terminated without the addition of any Arab Israelis and their progeny; it is also likely to cause an overall reduction in the number of Israeli Arab citizens. As such, practical considerations might well induce the racist to disqualify Kleiner's Law, while simultaneously giving his support to the amendment of the Citizenship law.

Conceivably, this is the real explanation for the fact that the Knesset affirmed the denial of the rights for family unification yet rejected Kleiner's law. It operated according to the dictum, "If you want to shoot, shoot. Don't talk!" (Or, in our case: "If you want to be racist do it for practical results and not just to anger others"). The rejection of Kleiner's law on the one hand and the acceptance of the Citizenship Law amendment on the other hand can also be explained on the basis of irrelevant considerations. Kleiner is a manifest racist, or at least he is perceived as such, making it exceedingly easy to impugn his proposal as racist and reject it, albeit for *ad hominem* reasons. Those who proposed denying Israel Arabs' the right to family unification, and their supporters too, are neither racists by their own admission nor classed as such. *Ad hominem* reasons therefore prevent the denial of the right to family unification being regarded as a racist act. Nonetheless, this is what it is.

already emphasized, the reasons Israel has for sustaining its Jewish demographic hegemony and the Jewish control over its security are of circumstantial and not of principled nature. They derive from circumstances of conflict which we all have a moral obligation to bring to an end.

The conception of Jewish self-determination and citizenship that emerges from the above discussion is egalitarian. Unlike the hierarchical conception, it does not conceive of the right to national self-determination as implying a hierarchy between homeland groups. The point of departure of the right to national self-determination is equality between homeland nations within the framework of the states that rule their homeland territories. Any digression from this equality can only be justified if there are reasons which themselves derive from the requirements of equality, for example, due to differences in the population size of each of the homeland groups in the state that rules over areas of this homeland, or due to special needs of group compared to other group/s.

This egalitarian conception of the right to self-determination of ethno-national groups, which is applied here to the case of the Jewish collective (and the Arab/Palestinian collective) in Israel/Palestine constitutes a major part in the egalitarian conception of Zionism which I mentioned at the outset. It distinguishes it from what I called there the hierarchical interpretation of Zionism. The other components of the egalitarian conception: its interpretation of the historical tie between the Jews and Israel/Palestine and its interpretation of the role of the persecution of the Jews in the justification of Zionism, distinguish it from the proprietary conception. Egalitarian Zionism, unlike proprietary Zionism, interprets the historical ties between the Jews and the Land of Israel in the way they are actually described in the Declaration of Independence—as pertaining to the primacy of Land of Israel in Jewish identity rather than to the primacy of the Jewish people in the history of the Land of Israel. The latter interpretation is the one commonly held among those supporting proprietary Zionism. Moreover, within the framework of egalitarian Zionism, *the historical ties constitute a basis just for determining the geographical site for the realization of the universal and a-historical right to self-determination. They do not constitute a basis for the Jews' proprietary rights over the whole Land of Israel.* As a basis for only determining the geographical site for the realization of the universal and a-historical right to self-determination they can be seen as part of an egalitarian global justice regarding the distribution of ethno-national groups worldwide.

As for the persecution of the Jews: they serve within egalitarian Zionism as the basis for the realization of Jewish self-determination in the Land of Israel despite the fact that Arabs were already living there. They are interpreted as a source for a necessity which justified or at least can serve as an excuse for the establishment of a Jewish colony in Palestine. As such, they set the limits to the price the Arabs have been forced to pay for the realization of Zionism, namely, giving up territories which they inhabited and over which they could have had an exclusive control. The necessity which these persecutions created is part of the justification for the realization of the Jewish right to self-determination in Palestine. This persecution, which the Jews suffered over the centuries, did not end despite their emancipation the 19<sup>th</sup> century, and culminated in the Holocaust. However, the urgent necessity that these persecutions created by the 1930s and 1940s, gradually diminished between the late 1940s with the establishment of the State of Israel, and June, 1967, when the state achieved a stunning victory in the Six-Day War. The expansion of Jewish settlement in the Land of Israel after that year, and beyond the borders determined between 1949 and 1967, cannot be justified in the absence of such extensive persecution of the Jews.

By perceiving the historical connection between the Jews and the Land of Israel as the basis only for determining the geographical site for the realization of the Jews' universal right to self-determination *within* the Land of Israel, and not as a basis for their proprietary rights over the Land of Israel *as a whole*, the egalitarian conception of Zionism avoids the potentially disastrous moral implications entailed by the proprietary conception of Zionism. By perceiving the persecution of the Jews as the basis for the realization of Jewish self-determination in the Land of Israel despite the fact that Arabs were already living there, egalitarian Zionism sets limits, as I have just explained, to the price the Arabs have been forced to pay, not only in territorial terms, but also in terms of their

citizenship rights: civil, political, economic and cultural/national rights both in Palestine generally and in its mainly-Jewish part particularly.

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