

# Israel's Jewish Nation-State Proposal Still Looms

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By Peter Berkowitz

RCP Contributor

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TEL AVIV -- The controversy that flared up in November over the introduction in the Knesset of a proposal to enshrine in Basic Law -- enactments possessing constitutional status -- the proposition that Israel is the nation-state of the Jewish people has swiftly come and gone.

Only a month-and-a-half ago, proponents insisted the legislation was urgently necessary to preserve the country's Jewish character. Critics -- at home and abroad -- vehemently condemned it as a racist measure designed to deny the rights of the country's Arab minority and prepare the absorption into Israel of Palestinians living in the West Bank while denying them the rights of citizenship.

In early December, Israeli Prime Minister Benjamin Netanyahu dismantled his ruling coalition by firing Finance Minister Yair Lapid and Justice Minister Tzipi Livni and called for new elections. Since then the question of the Jewish nation-state law appears to have vanished without a trace.

As the varied political parties gear up for the campaign, Israelis across the political spectrum assert that the draft Jewish nation-state law is not relevant. Even if Netanyahu used his coalition partners' opposition to it as a pretext to bring down Israel's 19th Knesset and send voters, against their wishes, to the voting booth two years ahead of schedule, the coming elections apparently will not hinge on opinions about whether Israel should anchor, or re-anchor, its Jewish character in law.

That's true about the near term. But the long-term significance of the Jewish nation-state law should not be dismissed.

As the election campaign intensifies, voters will have other issues on their minds: West Bank settlement policy, the economy, and Israel's relation with the United States and its standing internationally. The current uneasy quiet on the security front, moreover, could easily be broken by any number of events. Scenarios include more trouble from Gaza, where Hamas is rebuilding its terror tunnels and restocking its rockets and missiles; a terrorist attack emanating from the West Bank; Jordanian instability owing to the influx, according to estimates, of somewhere between 640,000 and twice that many Syrian refugees; spillover from al-Qaeda in Syria redoubts visible from Israel's border; or a reckless move by Hezbollah in Lebanon on Israel's northern border. And in the last two weeks, scandals afflicting two

parties capable of teaming with both left and right and making and breaking coalitions -- the religious party Shas and foreign minister Avigdor Lieberman's Yisrael Beiteinu party -- have scrambled election calculations.

What is off the table for the election, however, is not therefore irrelevant to the country. Embedded within the controversy over the Jewish nation-state law are two critical issues, one concerning external security and the other internal stability.

To understand the connection to national security, it is necessary to recall that a bill proclaiming Israel the nation-state of the Jewish people was first proposed in 2011 by Knesset member Avi Dichter, a former director of the Israel Security Agency. Most fellow members of his centrist party, Kadima, as well as much of the center-left Labor party backed Dichter's initiative. One reason was to advance the peace process.

By more securely anchoring the state's Jewish identity in law, proponents of the bill sought to fortify Israel's international standing as the nation-state of the Jewish people. Their hope was to promote a peace agreement between Israel and the Palestinians.

The problem was that Palestinian Authority President Mahmoud Abbas rejected Netanyahu's demand that the PA recognize Israel as the nation-state of the Jewish people. To do otherwise would compromise Abbas's other deal-breaking position. He maintained that more than 5 million Palestinians, who by an aberration of international law are regarded as refugees (most have never lived in Israel and, in many cases, their parents didn't either) possess a right to return to Israel. Exercise of this supposed right by even a minority of Palestinians who claim refugee status would turn Israel into a majority Arab and Islamic state.

The Jewish nation-state law sought to mollify Netanyahu without requiring Abbas to explicitly make painful concessions. If Israel's Jewish identity were grounded in Israeli law, then perhaps the PA's formal recognition of Israel would, without ever mentioning the matter, implicitly affirm Israel as the nation-state of the Jewish people. And despite Palestinian silence about Israel's Jewish character, such recognition could be seen as effectively waiving a right of return.

This wishful thinking was never tested. The legislation was abandoned, peace talks broke down, and Abbas still refuses to recognize Israel as the nation-state of the Jewish people while publicly clinging to a Palestinian right of return.

The second round of debate over a Jewish nation-state law, the one that took place in November, involves Israel's internal stability and deals with Israel's deepest commitments. It revolves around the challenge, as old as the state itself, of harmonizing the country's Jewish, democratic, and liberal character.

Many on the Israeli right contend that two decades of Israeli Supreme Court judicial activism have upset the delicate balance among the state's foundational principles, elevating individual freedom and democratic equality above the state's Jewish character. By incorporating into law an unambiguous affirmation of Israel's Jewishness, they aim to restore the balance. Some versions of the law even appear to give Israel's Jewish character priority.

A compact and penetrating report by Ruth Gavison, professor emeritus of the Hebrew University School of Law, shows why the right's hopes for the law are wrongheaded.

"Constitutional Anchoring of Israel's Vision: Recommendations Submitted to the Minister of Justice" was produced in close cooperation with then-Justice Minister Tzipi Livni, who commissioned it in 2013, with input from Netanyahu. It is informed by the author's sympathetic and sophisticated appreciation of the complex mix of principles that inspired Israel's founding and which is embedded in the 1948 Declaration of Independence.

Gavison observes that broad agreement prevails among Israel's Jewish majority that at its core the country is and ought to be Jewish, democratic, and liberal even as sharp disagreement persists about the interpretation of each element and the practical implications of giving them their due. Forcing the vision into law, Gavison maintains, would hand over to the Supreme Court responsibility for making difficult decisions about delicate matters that are better worked out through the messy give-and-take of politics. Moreover, although the Israeli right's aim is to constrain the Supreme Court, a Jewish nation-state law, Gavison carefully argues, will in practice expand the court's jurisdiction by enlarging its authorization to rule on the state's Jewish character.

One can go further. Presented with the necessity of determining whether Knesset legislation is consistent with Jewishness, it is quite possible that the largely progressive and secular court would seize the opportunity to give Jewishness a largely progressive and secular interpretation. The court might very well hold that the core of Judaism consists in the message of the Hebrew prophets and interpret the essence of the prophets' message as one of freedom, equality and universal benevolence. Such a Supreme Court decision would widen the rift between secular and religious Jews in Israel.

There is a better way, Gavison counsels, to harmonize the Jewish, democratic, and liberal elements that constitute Israel. She recommends that Israel "act in a variety of ways -- both on the cultural and educational plane and the legislative and judicial plane -- to strengthen the broad endorsement of the core vision of the state." The work on the legislative and judicial plane should aim to create the maximum space in civil society for Israel's diverse sectors -- Jewish, Arab, and more -- to work out through political debate and mutual accommodation appropriate cultural initiatives and school curricula.

If one were to distill lessons from “The Federalist” and Tocqueville to apply to Israel's distinctive circumstances, one would reach roughly similar conclusions. Meanwhile, in the near term, the polls indicate a close election on March 17. If the result is a fourth term for Netanyahu, his right-wing coalition will press him to relaunch Knesset consideration of the Jewish nation-state law. The danger is that its real significance will be lost in the hubbub of angry parliamentary debate, overheated punditry, and ignorant knee-jerk reaction from abroad.

If Labor leader Yitzhak “Buji” Herzog becomes Israel's next prime minister, he will, with the backing of his center-left coalition, block reconsideration of the proposal. The danger is that the challenges to which it is addressed will be shrouded in silence.

The worthiest goals pursued through the Jewish nation-state law are better achieved without it. To preserve the delicate balance between its Jewish, liberal and democratic character, the Jewish state must -- preferably with, and if necessary without, the cooperation of Abbas -- take bold steps to disentangle itself from West Bank Palestinians. And Israel must redouble its efforts to build a sturdy political framework within which citizens can democratically debate how the state can best give expression to its Jewish character while respecting the rights of all.

*Peter Berkowitz is the Tad and Dianne Taube senior fellow at the Hoover Institution, Stanford University. His writings are posted at [PeterBerkowitz.com](http://PeterBerkowitz.com) and he can be followed on Twitter @BerkowitzPeter.*