

Israel's proposed Nation-State law: FAQ
Moshe Koppel

The Nation-State bill now being discussed in the Knesset has generated a great deal of public debate, much of it misinformed. I'll briefly clarify what it's all about.

What is in the bill?

There are several versions currently in circulation, but the common elements include a declaration that Israel is the nation-state of the Jewish people and a list of specific matters in which Israel's Jewish character is reflected, including its flag, anthem, calendar, days of rest and connection to the Jewish diaspora. In addition, all current versions include a declaration that Israel is a democracy and that every resident has the right to preserve and advance his or her own culture and language. There is nothing in any version of the bill that suggests that the state's democratic character will be subordinated to its Jewish character. There is also nothing in this bill that encourages religious coercion in any form.

Isn't Israel's character already reflected in its Declaration of Independence? Why is it necessary to enshrine it in law?

Israel's Declaration of Independence has no legal standing. That's why the rights enumerated in the Basic Law: Human Dignity and Freedom, which are also found in the Declaration of Independence, were nevertheless enshrined in law. Only laws can be used by the courts to adjudicate cases.

Won't this bill alienate Israel's non-Jewish citizens?

All Israelis, regardless of nationality or religion, deserve all the personal rights customarily accorded to citizens of free countries. This law will do nothing to diminish those rights in any way. But a country has one flag, one anthem, one calendar, and one primary language. The bill anchors in a basic law the situation that already exists on the ground: that all these will reflect the preferences of Israel's Jewish majority. This is no different than the situation that obtains in free countries all over the world. It particularly behooves those who support the creation of a Palestinian nation-state to understand the legitimacy and necessity of a Jewish nation-state.

Israel managed all this time without anchoring its Jewish character in law. Why is such a law now necessary?

Since 1993, Israel's Supreme Court has used the Basic Law: Human Dignity and Freedom to rule on the constitutionality of a variety of statutes and government policies involving Israel's Jewish character, including laws regarding allocation of JNF land, the primacy of Hebrew as Israel's language, rights to residency and citizenship, draft deferments and stipends of yeshiva students, and commerce on Shabbat. In principle, these cases called for delicate balance between Israel's democratic character and its Jewish character, but in fact no such balance was achieved, precisely because Israel's Jewish character, unlike its democratic character, is not anchored in any basic law. The proposed law is intended to address this asymmetry and to encourage a more sophisticated legal discourse regarding the tension between universal and national considerations.

In the end this law will be interpreted by judges who will manipulate it according to their inclinations. Doesn't another law just add to the Court's arsenal?

For those wary of the Supreme Court's unilateral expansion of its own authority (and I include myself among them), this is a genuine concern. That is why the law is carefully written so as not to strengthen the Court's hand in imposing further limitations on the legislature. Nevertheless, since changes will be made as the process continues, there is a real danger that language that can be abused by the Court might be added at some stage.

Isn't the bill being pushed now for purely partisan reasons having nothing to do with the substantive issues mentioned above?

Partisanship is the heart of politics, so this is a rather lame charge. Nevertheless, a bit of historical background might put the matter in broader perspective. This bill has been in the works for a long

time, beginning well before this administration. The first version of the bill was a draft chapter for the constitutional discussions in the Constitution and Law Committee of the Knesset in 2004. This chapter was expanded and incorporated into two subsequent private constitutional proposals, here (2006) and here (2011). The relevant sections of these proposals were reworked into a proposed Basic Law by a committee at the Institute for Zionist Strategies. This proposal was adapted and put on the Knesset's table in August 2011 by Avi Dichter, then one of the heads of the centrist Kadima party in the 18th Knesset. It was co-sponsored by 40 MKs, including two thirds of Kadima, as well as members of the Labor party. After the Knesset elections in January 2013, Likud and Bayit Yehudi included passage of this bill in the coalition agreement. In negotiations with Yesh Atid, which was then in a strategic partnership with Bayit Yehudi, the original version of the bill was watered down to eliminate the issue of language and that of Jewish settlement. In addition, commitments to personal rights of all citizens and a reference to the Declaration of Independence were added. This version was put forward in the Knesset by MKs Shaked, Levin and Ilatov in July 2013. A version prepared last week (Nov 2014) by the Prime Minister's office slightly softens this version. Astonishingly, MKs who were co-sponsors of Dichter's original undiluted law are now arguing that the watered-down version is too harsh. So it might be more precise to say that the bill is being *opposed* for narrow partisan reasons.