

Article

Who Moved Our Rights? The Impact of Palestinian Statehood on the Group Rights of Palestinian Citizens of Israel

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ABSTRACT

The international community recently officially recognized Palestinian statehood through a U.N. General Assembly resolution.¹ The implications of self-determination for the people living in the Palestinian state-to-be are self-evident. Indeed, self-determination of Palestinians is one of the most widely discussed issues in international affairs. But there is little to no discussion on the impact of Palestinian Statehood on one group of Palestinians – namely the 1.6 million Palestinian citizens of the State of Israel. The leadership of this group of Palestinians campaigns not just to end discrimination against its individual members, but also for collective rights. They have a declared vision of turning Israel into a “state of all its nationalities.”² This article argues that Israel has a duty to recognize the collective rights, including rights of cultural preservation for the Palestinian citizens of Israel, as long as Israel prevents the establishment of a Palestinian State. However, when the recognized State of Palestine becomes a reality, it will fulfill some of these collective rights for the benefit of Palestinians outside Palestine as well, thus diminishing the justification for recognition of some collective

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1. G.A. Res. 67/19, art. 2, U.N. Doc. A/RES/67/19 (Dec. 4, 2012), available at <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/19862d03c564fa2c85257acb004ee69b?OpenDocument>.

2. M.K. Ahmed Tibi, *A State of All Its Nationalities*, OCCUPATION MAGAZINE (Jan. 5, 2005), http://www.kibush.co.il/show_file.asp?num=2928.

rights by Israel. This has implications for other arenas where one minority group demands its claimed collective rights while the same nationality enjoys statist self-determination somewhere else.

I. INTRODUCTION

The U.N. General Assembly adopted Resolution 67/19 sixty-five years, to the date, after the assembly adopted Resolution 181 that recommended the partition of the Land of Israel/Palestine into a Jewish state and an Arab state.³ Article 2 of the resolution states that the Assembly “[d]ecides to accord to Palestine non-member observer State status in the United Nations.”⁴ The decision was adopted by an overwhelming majority, with 138 states voting in favor, 41 abstaining, and 9 against (including Israel and the United States).⁵ Mahmoud Abbas, President of the Palestinian Authority, in his speech to the Assembly, described the decision as “[a] birth certificate to the reality of the state of Palestine.”⁶ Following the vote, a Palestinian flag was unfolded on the floor of the General Assembly to celebrate the occasion.⁷

While it is still debated whether “Palestine” is now actually a state,⁸ the resolution is at least a major step towards

3. G.A. Res. 181 (II), U.N. Doc. A/RES/181(II) (Nov. 29, 1947), *available at* <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d77f0af2bd897689b785256c330061d253?OpenDocument>.

4. G.A. Res. 67/19, art. 2, U.N. Doc. A/RES/67/19 (Dec. 4, 2012), *available at* <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d719862d03c564fa2c85257acb004ee69b?OpenDocument>.

5. Press Release, General Assembly, General Assembly Votes Overwhelmingly to Accord Palestine ‘Non-Member Observer State’ Status in United Nations, U.N. Doc. GA/11317 (Nov. 29, 2012), *available at* <http://www.un.org/News/Press/docs/2012/ga11317.doc.htm>.

6. U.N. GAOR, 67th Sess., 44th plen. mtg. at 5, U.N. Doc. A/67/PV.44 (Nov. 29, 2012), *available at* <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7c05528251ea6b4bd85257ae5005271b0?OpenDocument>.

7. *65 Years After Approving Partition Plan, UN General Assembly Upgrades Palestine’ to Nonmember Observer State*, THE TIMES OF ISRAEL (Nov. 30, 2012, 12:51 AM), <http://www.timesofisrael.com/65-years-after-approving-partition-plan-un-votes-to-recognize-palestinian-state/>.

8. *See, e.g.*, WALID ABDUL HAI, AL JAZEERA CTR. FOR STUDIES, THE PALESTINIAN STATE: BETWEEN SYMBOLISM AND SUBSTANCE (2013), *available at* <http://studies.aljazeera.net/en/reports/2013/01/2013115104944924689.htm>; Emmanuel Navon, Op-Ed., *So Is There a Palestinian State?*, ISRAEL NATIONAL NEWS, Dec. 5, 2012, <http://www.israelnationalnews.com/Articles/Article.aspx/12533#.U1LoCSQe2A>; Pamela Falk, *Is Palestine Now a State?*,

statehood for the Palestinians. Very little has changed on the ground for Palestinians living in the Palestinian Occupied Territories. However, it is clear what their aspirations for normal statehood include, and how their lives would change if the Occupied Palestinian Territories were liberated from Israeli occupation and able to regain control of their own destiny. There is no news here. The Palestinians living in the Palestinian State would be entitled, according to international law, to “freely pursue their economic, social and cultural development . . . [and] freely dispose of their natural wealth and resources.”⁹ One expects that independence would also bestow on citizens of the new recognized Palestinian State basic political rights enshrined in the major international conventions, such as freedom of speech, movement, and association, as well as basic social and economic rights.

For one Palestinian group, however, the implications of Palestinian Statehood are much less obvious. These are the 1.6 million Palestinian citizens of the State of Israel, which constitute one-fifth of Israel’s population and one-sixth of the total Palestinian population.¹⁰ The relationship of this group with both Israel and the Palestine Liberation Organization,

CBS NEWS, (Nov. 30, 2012, 7:51 AM), http://www.cbsnews.com/8301-202_162-57556382/is-palestine-now-a-state; Jeffery Goldberg, *Palestine May Win a Vote, But Won't Be a State*, BLOOMBERG, (Sept. 17, 2011, 7:00 PM), <http://www.bloomberg.com/news/2011-09-18/palestine-may-win-a-vote-but-won-t-be-a-state-jeffrey-goldberg.html>; Thomas J.R. Stadnik, *Palestinian Statehood Under International Law*, LEXISNEXIS LEGAL NEWSROOM (Jan. 3, 2013, 9:33 PM), <http://www.lexisnexis.com/legalnewsroom/international-law/b/international-law-blog/archive/2013/01/03/palestinian-statehood-under-international-law.aspx>.

9. International Covenant on Civil and Political Rights art. 1, Dec. 19, 1966, 999 U.N.T.S. 171.

10. According to the Israeli Central Bureau of Statistics, 1.623 million Arabs live in Israel (20.6% of the population). Press Release, State of Israel Central Bureau of Statistics, On the Eve of Israel’s 64th Independence Day – Approximately 7.881 Million Residents (Apr. 25, 2012), *available at* http://cbs.gov.il/reader/newhodaot/hodaa_template_eng.html?hodaa=201211106. It is more difficult to estimate the number of Palestinians around the globe. My calculation above relies on statistics from the Palestinian Central Bureau of Statistics which estimates the total population in the OPT at 4.293 Million. PALESTINIAN CENTRAL BUREAU OF STATISTICS, <http://www.pcbs.gov.ps/site/881/default.aspx#Population> (last visited Oct. 22, 2013). It also relies on data from the United Nations Relief and Works Agency that estimates the number of refugees in 58 refugee camps at 5.11 Million. *Infrastructure & Camp Improvement*, UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST, <http://www.unrwa.org/etemplate.php?id=253> (last visited Oct. 22, 2013). These numbers do not account for non-refugee diaspora Palestinians.

which is recognized by the U.N. as “the representative of the Palestinian People,”¹¹ is extremely complex. The Palestinian citizens of Israel suffer discrimination in budget allocations, land allocation for their municipalities, and many other fields.¹² Discrimination is largely unofficial, and runs contrary to the declared (yet unimplemented) policy of most of Israel’s governments.¹³ At the same time, the Palestinian citizens of Israel enjoy a thriving civil society, with their own NGOs, media, and political parties. These groups campaign rigorously for equal rights for the Palestinians in Israel through public, legal and political activism. Many of the Israeli Palestinian action groups have, in recent years, gone beyond claiming equal individual civil rights. They now argue for cultural and national rights equal to those of the dominant Jewish majority. This is all happening in a state that defines its *raison d’être* as being a Jewish nation state.¹⁴ These claims for collective rights were best articulated in four different documents produced by Israeli-Palestinian NGOs in 2006 and 2007, collectively known in Israel as “the Vision Documents” after the title of one document and their shared goal – to draw a new vision for the State of Israel.¹⁵ This paper argues that Palestinian Statehood has direct implications on these claims.

11. G.A. Res. 3210 (XXIX), U.N. Doc. A/RES/3210(XXIX) (Oct. 14, 1974).

12. See *Discrimination Against Palestinian Citizens of Israel*, INST. FOR MIDDLE EAST UNDERSTANDING (Sept. 28, 2011), <http://imeu.net/news/article0021536.shtml>.

13. See, e.g., *Government Policy*, PRIME MINISTER’S OFFICE, <http://www.pmo.gov.il/English/IsraelGov/Pages/GovernmentPolicy.aspx> (last visited Oct. 22, 2013).

14. See *The DECLARATION OF THE ESTABLISHMENT OF THE STATE OF ISRAEL* (Isr. 1948).

15. Collectively known as “The Vision Documents,” the four are: ADALAH: THE LEGAL CTR. FOR ARAB MINORITIES IN ISR., *THE DEMOCRATIC CONSTITUTION* (2007), available at http://adalah.org/Public/files/democratic_constitution-english.pdf [hereinafter *DEMOCRATIC CONSTITUTION*]; YOUSEF T. JABAREEN, MOSSAWA CENT., *AN EQUAL CONSTITUTION FOR ALL? ON A CONSTITUTION AND COLLECTIVE RIGHTS FOR ARAB CITIZENS IN ISRAEL* (Roaa Translation & Publ’g trans., 2007), available at http://www.mossawacenter.org/my_documents/publication2/2007%20An%20Equal%20Constitution%20For%20All.pdf [hereinafter *AN EQUAL CONSTITUTION*]; MADA AL-CARMEL: THE ARAB CTR. FOR APPLIED SOC. RESEARCH, *THE HAIFA DECLARATION* (2007), available at <http://mada-research.org/en/files/2007/09/haifaenglish.pdf> [hereinafter *HAIFA DECLARATION*]; THE NAT’L COMM. FOR THE HEADS OF THE ARAB LOCAL AUTHORITIES IN ISR., *THE FUTURE VISION OF THE PALESTINIAN ARABS IN ISRAEL* (Ghaida Rinawie-Zoabi Ed., Abed Al Rachman Kelani trans., 2006), available at <http://adalah.org/newsletter/eng/dec06/tasawor-mostaqbali.pdf> [hereinafter *THE FUTURE VISION*].

Cultural and collective rights are fundamentally different than political, civil, social, or economic rights. They are not rights that any particular citizen can raise or make his government duty-bound to respect. Rather, they are raised by a collective, through its representatives and on its behalf. As I will argue, the collective rights may be realized for the benefit of the collective as a whole when one government respects them. In this case, it should be the responsibility of the Palestinian government to secure the cultural and collective rights of the Palestinian people once it is reasonably able to do so, and relieve the Israeli government of such claims to responsibility. However, if a Palestinian State does not materialize and Israel remains in control of more Palestinians within its borders and in the occupied territories than any other State in the world, Israel will be obliged to respect the cultural and collective rights of the Palestinian people.

Section Two will briefly present the growing demand among Palestinian citizens in Israel for recognition of collective rights and will discuss the theoretical justifications for such demand, its impact on the rights of the Jewish majority, and the different types of collective rights described in the theoretical literature. This typology serves to understand the nature of specific group rights and their own justifications. Section Three will discuss the role national self-determination plays in the preservation of culture in general and in the Palestinian-Israeli context in particular. Section Four details the different specific collective rights claimed by the leadership of Israel's Palestinian citizens, namely the rights for cultural self-administration, language, representation in state symbols, education, internal right of return, and equality in immigration and naturalization.

II. PALESTINIANS IN ISRAEL AND THEIR CLAIM FOR COLLECTIVE RIGHTS

Some 1.6 million Palestinians live in the State of Israel within the pre-1967 borders.¹⁶ As a result of the 1949 armistice line (following what the Israelis term the “war of independence” and what the Palestinians call the “Nakba,” meaning the destruction, they reluctantly became Israeli citizens. Despite

16. Press Release, State of Israel Central Bureau of Statistics, 65th Independence Day – More than 8 Million Residents in the State of Israel (Apr. 14, 2013), *available at* http://cbs.gov.il/www/hodaot2013n/11_13_097e.pdf.

the declared policy of the young State that these citizens would be integrated “on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions,”¹⁷ the legal status and rights of these citizens remain in constant dispute. Since its foundation, most Israeli governments have had a declared policy of narrowing the gaps between the State’s Arab and Jewish citizens,¹⁸ even though their commitment to such a policy can be debated. However, no government or major political faction has accepted the notion of granting equal national or collective rights to the Palestinian minority. Mainstream Israeli political factions unanimously view Israel as a Jewish state, which may legitimately give preference to the Jewish cultural institutions and national aspirations of the Jewish people. In recent years leaders of the Palestinian minority have strongly challenged this preference.

A. THE PALESTINIAN CLAIM FOR COLLECTIVE RIGHTS AND ITS IMPLICATION ON THE COLLECTIVE RIGHTS OF THE JEWISH MAJORITY

The claim for recognition of collective cultural and national rights of Palestinians in Israel is a relatively new development. It was best articulated in 2006 and 2007 when four different civil society initiatives produced four documents challenging the current state of affairs and making an argument for turning Israel into a “state of all its nationalities.”¹⁹ Interestingly, the documents hardly mention the Israeli-Palestinian conflict.²⁰ They do not discuss the possible

17. THE DECLARATION OF THE ESTABLISHMENT OF THE STATE OF ISRAEL (Isr. 1948).

18. See, e.g., *Basic Guidelines of the 31st Government of Israel*, ISRAEL MINISTRY OF FOREIGN AFF. (May 4, 2006), <http://www.mfa.gov.il/MFA/Government/Previous+governments/Basic+Guidelines+of+the+31st+Government+of+Israel.htm> (promising that the 31st government of Israel will “ensure absolute social and political equal rights without regard to religion, race and sex, and will respect the civil rights of minority citizens in all fields of its work and plans”); *Government Policy*, *supra* note 13 (declaring the intent of the 32nd government of Israel to “honor the religions and traditions of members of other religions in the country”).

19. See DEMOCRATIC CONSTITUTION, *supra* note 15; AN EQUAL CONSTITUTION, *supra* note 15; HAIFA DECLARATION, *supra* note 15; THE FUTURE VISION, *supra* note 15.

20. The Haifa Declaration calls for “ending the Occupation and removing the settlements from all Arab territory occupied since 1967, recognizing the right of the Palestinian people to self-determination and to an independent and sovereign state,” HAIFA DECLARATION, *supra* note 15, at 15, and calls for a

implication of a solution of that conflict to the relationship between Palestinian citizens of Israel and their state. Clearly, they make an effort to separate the two issues, limiting discussion of their collective rights to the exclusion of any external influences and focusing their demands on the Israeli government alone.

If a Palestinian State is indeed in the cards, it is difficult to argue that such an occurrence would have anything short of far reaching repercussions on the Middle East as a whole. For the first time in the history of the Palestinian people, there would exist a country, a nation among nations, with Palestinian symbols and elected establishments able to determine the fate of the Palestinian people. There would be a political platform for the realization of the desires and potential of the Palestinians, both as individuals and as a society. To see how such a platform would affect collective rights of Palestinians in Israel, a discussion on the nature of such rights is required.

B. THE THEORETICAL BASIS FOR THE PALESTINIAN DEMAND FOR COLLECTIVE RIGHTS

“X has a right’ if . . . an aspect of X’s well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty.”²¹ Joseph Raz’s definition of a right thus requires a justifiable duty imposed on someone. Raz supplements this definition with two additional conditions to identify a *collective* right: (1) “the interests in question are the interests of individuals as members of a group in a public good;” and (2) “the interest of no single member of that group in that public good is sufficient by itself to justify holding another person to be subject to a duty.”²² Raz says that Yassir Arafat, the late leader of the Palestine Liberation Organization, did not have a right to Palestinian self-determination.²³ Satisfying such

“democratic plan to build a society based on social solidarity among all its members,” *Id.* at 11, without deliberating on the connection between these two demands. The Democratic constitution does not relate at all to the possibility establishing a Palestinian state, but emphasizes that the borders of the state to which it relates are the borders of June 5th, 1967, AN EQUAL CONSTITUTION, *supra* note 15, at 6. The author apparently assumes that a Palestinian state is not a part of the discussion, and is thus not their concern.

21. JOSEPH RAZ, *THE MORALITY OF FREEDOM* 166 (1986).

22. *Id.* at 208.

23. *Id.* at 207.

a right requires imposing heavy duties on many others. Arafat's strong personal interest on its own could not justify this.²⁴ But the Palestinian people have a right to self-determination, because it serves the interests of the members of this group in a way that justifies imposing heavy duties. In this case, the duty is on Israel to withdraw from a territory in which this right can be fulfilled and on the international community to recognize a Palestinian State.²⁵ Resolution 67/19 was a major step for the international community in meeting its duty.

This is not to say that the right of the Palestinian *people* to self-determination is not the right of any particular Palestinian. On the contrary, it is the right of every Palestinian, as a member of the Palestinian people. The individual and his welfare precede the group, and in liberal thought the group itself exists solely to support needs of the individual. Group rights are not granted to the individual, but to a member of a group, out of recognition of the importance of being part of the group to his welfare. For instance, a U.S. citizen demanding that the State fund an education system in which his children would be educated in Chinese, perhaps out of interest in their future ability to do business with China, would not be recognized as having a rights-based claim from his State. On the other hand, a citizen who had migrated to the U.S. from China, who is living in a community of Chinese immigrants that is large enough to justify founding a school, might enjoy support for such a rights-based claim.²⁶

Due to the vital role cultural groups play in our lives, the imposition of duties is justified to allow an individual to be a member of the group and allow the group to exist and prosper.²⁷

24. *Id.*

25. Avishai Margalit and Moshe Halbertal offer a modification to Raz's definition. They distinguish between "Rights" and "Effective rights." They claim that even the last of the Mohicans is entitled a right to enjoy his Mohican culture, based on the essentiality of such right for the fulfillment of his personal freedom. However, his right cannot constitute a just cause for imposing an obligation upon the state to nourish his culture. Therefore it is not an *effective* right. Avishai Margalit & Moshe Halbertal, *Liberalism and the Right to Culture* 61 SOC. RES. 491, 500–01 (1994). For the purpose of my discussion in this paper I focus only on those rights which Margalit and Halbertal would characterize as effective.

26. See WILL KYMLICKA, MULTICULTURAL CITIZENSHIP 111–12 (1995).

27. See *id.* ("For meaningful individual choice to be possible, individuals need . . . access to a societal culture. Group-differentiated measures that secure and promote this access may, therefore, have a legitimate role to play

It is not just *any* group an individual needs to join in order to enjoy the advantages of group membership. It is *one's* own cultural group. Will Kymlicka focuses on the importance of group membership to liberty, since it is the group that presents meaningful opportunities and choices.²⁸ Avishai Margalit and Moshe Halbertal add a claim that only the belongingness of a person to his cultural group gives a deep and broad life meaning, as opposed to mere liberty.²⁹ Only self-expression in the language used by the culture, and only the relation to the natural and human environment in the context of the cultural connection into which a person is born, can instill the depth required in a person's life, alongside liberty.³⁰

1. Typology of Collective and Cultural Rights

Kymlicka distinguishes between three kinds of group rights: (1) *The rights for self-governance*: consisting of the ability of a group to maintain a measure of control upon its interests for the benefit of its members; (2) *Polyethnic rights*: unique arrangements which were designed to integrate members of a certain group into the general group without being obligated to forfeit the characteristics of their membership in the group important to them; and (3) *Special representation rights*: ensuring a reasonable representation of the group's members in the ranks of policy makers and people of influence within society.³¹ On top of these three categories, Chaim Gans adds a fourth category, *rights for future preservation*.³² The objective of rights for future preservation is to allow a continued existence of the group for generations to come.³³ For instance, the right for cultural preservation" is aimed at ensuring that the cultural group an individual belongs to will continue to thrive in the future and provide a continuous and stable environment for the individual's cultural activities.³⁴ An individual belonging to a cultural group in

in a liberal theory of justice.”).

28. *Id.* at 83.

29. Margalit & Halbertal, *supra* note 25, at 505–06.

30. *See id.*

31. KYMLICKA, *supra* note 26, at 27–33.

32. Chaim Gans, *Individuals' Interest in Preservation of Their Culture: Its Meaning, Justifications, and Implications*, 1 J.L. & ETHICS HUM. RTS. 6, 10 (2007).

33. *Id.*

34. *See* Amy Gutmann, *Introduction*, in MULTICULTURALISM: EXAMINING

decline lives in constant threat to his identity. Assimilation to a larger group can rarely, if at all, substitute for what he would lose at the demise of his own cultural group. In contrast, a member of a thriving and blooming culture, even if modified and reshaped by the changing times, enjoys the security that his creation today in all spheres of life will remain meaningful to his offspring and his people in generations to come. This interest is of the individual type. Still, the main holder of the right is the group, as an individual on his own does not have the ability to make any substantial step towards exercising this right.

There is a substantial distinction between Kimlicka's three types of collective rights (self-administration, polyethnic rights and self-representation) and Gans' right to future preservation. While the first three are granted to individuals as members of a group, the fourth is granted directly to the group.³⁵ This could be exemplified by thinking of different aspects of the collective right to language.³⁶ Members of a minority group with a substantial enough number may have a strong claim that the State is duty bound to recognize their right to their language and provide them, for instance, with official State publications translated to their language. Each member of the group is given this right when he comes to deal with official State entities. This is a polyethnic aspect of the collective right. It is meant to allow members of the minority to continue using their own language when communicating with the majority or its officials. Another aspect of language rights is the right to preserve a group's language. This requires fostering the development of the language without connecting its use to any particular person. It may require funding university courses that teach the language, academic institutions that research and develop the language, or even putting up signposts in the language, regardless of the need of pedestrians or drivers for the signs, as a means to preserve its presence in the public sphere.

This distinction is crucial. The first three types of rights are granted to individuals and therefore are necessarily dependent upon the location of the people who are supposed to enjoy them. These rights are provided to group members and

THE POLITICS OF RECOGNITION 3, 5 (Amy Gutmann ed., 1994).

35. See Gans, *supra* note 32, at 11.

36. See generally *id.* at 10 (discussing language rights as an example of a cultural preservation right).

not to the group in general. Self-administration, polyethnic, and representation rights do not apply in every location in which the group members reside in a substantial enough number. A million French citizens who are Sikh believers will not be encouraged by the fact that Britain allows its Sikh population to wear their traditional head cover, if that same right is not granted to them in France. Likewise, the French-speaking residents of British Columbia will likely not be satisfied with French being recognized as an official language if it were such in Quebec alone.³⁷

The interest in future preservation is different. If the Albanian culture is preserved in Albania, this serves all Albanians in the world, regardless of their location.³⁸ If Jewish institutions in Jerusalem develop the Hebrew language and preserve Jewish traditions, this serves Jews in Brooklyn as well.³⁹ If the geographical center of one's culture remains strong, then participants of that culture located around the world can take their cultural cues from that geographical center. There is a greater sense of legitimacy that comes with culture emanating from its natural source, as does Albanian culture come from Albania.

III. SELF DETERMINATION AND PRESERVATION OF PALESTINIAN AND JEWISH CULTURES

Some form of self-determination is a *sine qua non* for the realization of a people's right to future cultural preservation. One people may theoretically make an effort to preserve the

37. See generally CHARLES TAYLOR, *RECONCILING THE SOLITUDE* 4–22 (1993) (providing background on the French Canadian minorities struggle for collective rights).

38. See CHAIM GANS, *THE LIMITS OF NATIONALISM* 39 (2003) (discussing generally the common interest of cultural group members in preserving and adhering to their culture).

39. See *id.* It should be noted that it is assumed here that the cultures are indeed the same. If they had become substantially different, then there might be separate rights of preservation for the separate cultures. This is the case in regard to the Palestinian citizens of Israel, who on numerous occasions emphasize their belonging to the Palestinian people and the Arab nation. See *DEMOCRATIC CONSTITUTION*, *supra* note 15, at 4 (stating that “[The Palestinian Arab citizens of the State of Israel] [. . .] are active contributors to human history and culture as part of the Arab nation and the Islamic culture and as an inseparable part of the Palestinian people.”); *THE FUTURE VISION*, *supra* note 15 at 15.

culture of another.⁴⁰ Such a scenario seems highly unlikely but in the extreme case where one people control another *indefinitely*, the controlling people have a duty to preserve the other culture. This is one of the reasons why the right of nations for self-determination is a recognized right in international law.⁴¹ One of its justifications stems from the importance of the national group to the welfare of the individual.⁴² But while the right for self-determination itself is broadly supported amongst liberal philosophers, there exists a disagreement regarding both the justification and its meanings.⁴³

Charles Taylor presents several arguments in favor of the national interpretation for self-determination.⁴⁴ His claims go beyond the arguments for self-governance, which can also be achieved within frames of internal affairs of the State. He emphasizes the importance of fulfillment of the national group in all aspects of life.⁴⁵ The desire to ensure prosperity of the language and culture requires their implementation in science, arts, technology, economics, and to be made dominant in all fields of life and society that are of national nature.⁴⁶ The national framework is also most suitable for protecting the culture from outside influence.⁴⁷ Gans rejects the idea of a necessarily *statist* form of self-determination.⁴⁸ He argues that it is “more appropriate to interpret self-determination as a sub- and inter- statist right.”⁴⁹ Yet he agrees for various reasons that in the context of the Israeli-Arab conflict, a circumstantial justification for a statist version of Jewish self-determination

40. Margalit & Halbertal, *supra* note 25, at 491.

41. International Covenant on Economic, Social and Cultural Rights, art. 1, Dec. 6, 1966, 993 U.N.T.S. 3.

42. See Margalit & Halbertal, *supra* note 25 at 492 (discussing States' duty to facilitate the preservation of non-dominant cultures).

43. See Gans, *supra* note 32, at 2 (discussing various perspectives on self-preservation).

44. TAYLOR, *supra* note 37, at 50 (discussing national communities and their need for self-realization).

45. *Id.* (explaining the significance of self-realization in making achievements in various areas of society).

46. *Id.* (describing the importance cultural communities contributing to these sectors).

47. See *id.* (discussing self-realization as a means to protect a community from foreign pressure or to ensure self-respect).

48. CHAIM GANS, A JUST ZIONISM 53 (2008) (reviewing various forms of self-government and self-determination including sub-statist territorial and non-territorial forms).

49. *Id.* at 62.

exists, albeit limited in scope.⁵⁰ Resolution 67/19 reaffirms “the right of the Palestinian people to self-determination and to independence in their State of Palestine.”⁵¹ Similarly, it is widely argued that the State of Israel serves the fulfillment of the right of the Jewish people to self-determination.⁵² A State being the fulfillment of one nation’s right to self-determination does not negate fulfillment of the collective rights of its minorities.⁵³ Indeed, States are required by a series of international treaties and other international law instruments, not to mention justice, to respect the collective rights of minorities.⁵⁴

All of these requirements, however, pertain to the three categories of collective rights identified by Kymlicka.⁵⁵ Things become more complicated when we discuss preservation of the culture. Some rights claimed by the leadership of the Palestinian citizens of Israel have little to do with the rights of individuals and more to do with the right of Palestinians as a *people* within Israel. This is most clearly stated by the demand for “complete equality in the State on a collective-national basis.”⁵⁶ It is hard to understand this demand as requiring anything other than a fundamental change in the character of the State into a bi-national State.

A bi-national State, can still fulfill a people’s right to self-determination while serving the same purpose for another

50. *Id.* at 56 (explaining that even if certain reasons justify a statist interpretation that those reasons are ultimately unprincipled).

51. G.A. Res. 67/19, ¶ 8, U.N. Doc. A/RES/67/19 (Dec. 4, 2012).

52. *See generally* G.A. Res. 181 (II), U.N. Doc. A/RES/181 (II) (Nov. 29, 1947) (referencing the Jewish nation state, which would be the fulfillment of a Jewish right to self-determination, in its recommendations on establishing a Palestinian State).

53. *See generally* Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, Annex, U.N. GAOR 47th Sess. Supp. No. 49 (Vol. I), U.N. Doc. A/47/49 (Vol. 1) (Dec. 18, 1992) (dictating state responsibilities in providing collective rights for minorities); International Covenant on Economic, Social and Cultural Rights, *supra* note 41 (providing a framework for protecting the collective rights of minorities).

54. *See generally* Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, *supra* note 53; International Covenant on Economic, Social and Cultural Rights, *supra* note 41.

55. *See generally* KYMLICKA, *supra* note 26, at 26–33 (explaining the basic tenants of the three categories of collective rights).

56. THE FUTURE VISION, *supra* note 15, at 15.

people.⁵⁷ In other words, there is not necessarily a contradiction between the State of Israel being both a Jewish state and a Palestinian state at the same time.⁵⁸ This can be true, but only partially so. A State often uses its resources to promote its dominant culture,⁵⁹ but it may also allocate its resources to promote the minority's culture.⁶⁰ To a certain extent some resources *must* be allocated to promote the minority's culture, as long as the promotion serves a need of those minority members who are citizens of the State.⁶¹ However, when the needs of a group of citizens that live in one State are best served by an alternative State, the State in which they live may rightfully favor the needs of its other citizens, including its majority group. This, I will argue, would be the case once a viable Palestinian State is recognized.

A State also has symbolic resources.⁶² These are more difficult to distribute between the different national groups⁶³ because symbols can be nation-neutral.⁶⁴ But it may be that when symbols represent a certain cultural group and are termed neutral, the collective rights of that cultural group, especially its rights for self-determination as embodied in the symbols of its State, are compromised (arguably including its right for collective self-expression).⁶⁵ In other aspects, the idea of bi-nationality stands in direct contradiction to preserving the

57. See KYMLICKA, *supra* note 26, at 11 (discussing multination states and polyethnic states).

58. See *id.*

59. See *id.* at 31 (arguing that funding has traditionally favored European cultural practices over ethnic minority cultural practices).

60. See *id.* (discussing the funding of minority cultural practices).

61. See generally Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, *supra* note 53 (dictating state responsibilities in providing collective rights for minorities); The International Covenant on Economic, Social and Cultural Rights, *supra* note 41 (providing a framework for protecting the collective rights of minorities).

62. Ilan Saban, *Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel*, 36 N.Y.U. J. Int'l L. & Pol. 885, 911 (2004) (describing the difficulty of allocating symbolic resources, such as societal symbols); Margalit & Halbertal, *supra* note 25, at 491.

63. Saban, *supra* note 62.

64. See *id.* at 911 (explaining the possibility of using new symbols that are not associated with a particular cultural group).

65. See generally Margalit & Halbertal, *supra* note 25, at 495–96 (discussing the national anthem as a symbol and how it can lose its meaning).

dominant group.⁶⁶ The control over immigration to a State grants the dominant nation the confidence that its descendants will be able to preserve the national majority, an imperative condition for preserving and utilizing State resources for the benefit of the group's preservation.⁶⁷

National self-determination granted to one national group, may diminish the basis for claims for collective future-preservation rights made by members of that national group vis-à-vis other states of which they are citizens. Nevertheless, such a state may still be required to fulfill these rights.⁶⁸ To determine whether this is the case in a given situation, there is need to balance the harm caused to the minority group in that other state by rejection of its claims for future-preservation rights with the advantage gained by the dominant group.⁶⁹ In terms of our discussion, the harm may to Palestinian citizens of Israel may be of lesser significance when they are assured of the preservation of their culture through the actions of a Palestinians state. This harm should be balanced with the gain to the collective rights of Israeli Jews, for example by allocation of greater funds to their own cultural institutions.

Exclusive national self-determination for the dominant nationality is unjustifiable if it causes harm to the right of future preservation of the minority group in a way which cannot be fixed otherwise.⁷⁰ Although a loss of the hegemonic status quo would somewhat hurt the majority group, the damage would be much smaller than the concern that the minority group's culture would diminish entirely over time.⁷¹ The majority group's culture would continue to exist even without its national symbols being displayed on the U.N. floor and without its funds being directed towards researching the national legacy.⁷² Its hegemony constitutes a fair guarantee for

66. See Saban, *supra* note 62, at 996–97 (discussing the Jewish Right's classification of a bi-national Israel as a concession providing the Palestinians with self-government which the Jewish Right argues will be used to eliminate the Jewish state entirely).

67. See Gans, *supra* note 32, at 5 (discussing Israel's policy in the Law of Return, which Gans argues is a valid form of cultural preservation).

68. See KYMLICKA, *supra* note 26, at 109 (discussing that while certain rights granted to minorities may impinge on the majority, it may nonetheless be the proper policy).

69. See *id.* (comparing the balancing of collective rights and the harm caused by the recognition or lack of recognition of such rights).

70. See *id.*; Gans, *supra* note 38, at 84–85.

71. See KYMLICKA, *supra* note 26, at 109.

72. See Margalit & Halbertal, *supra* note 25, at 510 (stating the

the future continuity of the culture, even considering a certain amount of atrophy or harm for its potential development and prosperity. When there are concerns for the minority group's assimilation, decline, or utter degeneration of its culture, the interests of the hegemonic group should retreat.⁷³ Even if the damage caused to the minority group does not reach a point close to the annihilation of its culture or its severe degeneration, it is hard to justify giving preference to the majority group by itself.

In order to reach a desirable balance, one should examine whether an inequality exists between the majority and the minority in the scope of cultural preservation, and the magnitude of danger for both the minority and majority cultures. In case we are convinced that the minority's culture is not in danger, it could be easier to justify a cultural hegemony of the majority in its nation-state. One of the unique characteristics of some collective rights, namely those related to the preservation of the collective and its culture, is that group members in one State can enjoy the fruits of its fulfillment in another State.⁷⁴ If this is the case, equality should be pursued on a global, or at least regional, level. The danger for the minority culture should be examined in the broader context of the minority group's global spread. I argue that if another group of the same minority lives in a modest concentration away from the State, it is likely that the recognition of the minority's rights in such otherState do not suffice to inspire the group in the State in question. However, if a geographically nearby nation-state represents the same culture, it greatly reduces the concern for a dwindling of the minority's culture.⁷⁵ A similar examination should be conducted regarding the stability and future of the majority group.

The State of Israel is a realization and fulfillment of the Jewish people's right for self-determination. It was established after fifty years of struggle by the Zionist movement, after multitudes of Jewish people gathered in the only country which could attract them together, and after a third of that people were murdered in the Holocaust.⁷⁶ Were it not that the

proposition that "if . . . left to the forces of the market, the majority culture would soon take over the entire public space.").

73. *See id.*

74. *See id.* at 81.

75. *See Saban, supra* note 62, at 914–15.

76. *See* EFRAIM KARSH, *THE ARAB-ISRAELI CONFLICT: THE PALESTINE*

fulfillment of the Jews right to self-determination involved harm for the rights of other nations, it would have been hard to describe a more solid case for the fulfillment of that right. The State of Israel is the sole state of the Jewish people, and is also the only State in the world consisting of a significant percentage of Jews (next in line is the United States, where Jews are less than 2% of the population).⁷⁷ The Jewish religion has survived for hundreds of years even without the existence of a Jewish nation-state, but in a secular world and an international arena based on nation-states, it is hard to see an existence for the Jewish culture, least of all an unorthodox one, without the existence of the State of Israel.

At the same time, the Palestinian culture, especially those aspects uncharacteristic to the rest of Arab culture, is under real peril. The cultural and higher education institutions serving the majority of the Palestinian people living in Occupied Territories cannot function in an orderly manner.⁷⁸ In Palestinian refugee camps in Arab countries, the conditions do not favor the preservation of the Palestinian culture.⁷⁹ The

WAR OF 1948, at 13–20 (Sally Rawlings ed. 2002); *Jewish Population of Europe in 1933: Population Data by Country*, U.S. HOLOCAUST MEMORIAL MUSEUM (last visited Oct. 18, 2013), <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005161> (estimating the world Jewish Population in 1933 to be 15.3 million); *Responses to Common Holocaust-Denial Claims*, ANTI-DEFAMATION LEAGUE (last visited Oct. 18, 2013), <http://archive.adl.org/holocaust/response.asp> (listing six million as the common estimate of Jewish people killed during the Holocaust).

77. *World Jewish Population, 2008*, AM. JEWISH Y.B., 2008, at 569, 616.

78. For more information on the hardships suffered by Palestinian Higher Education and Cultural Institutions see Gabi Baramki, *Building Palestinian Universities Under Occupation*, 17 J. PALESTINE STUD., Autumn 1987, at 12. An interesting test case for the implications of Israeli occupation on Palestinian cultural preservation is that of the struggle over archaeological excavations in the OPT. See Albert Glock, *Archaeology as Cultural Survival: The Future of the Palestinian Past*, 23 J. PALESTINE STUD., Spring 1994, at 70; Raphael Greenberg & Adi Keinan, *The Present Past of the Israeli-Palestinian Conflict: Israeli Archaeology in the West Bank and East Jerusalem Since 1967* (The S. Daniel Abraham Ctr. for Int'l & Reg'l Stud., Research Paper No. 1, 2007), available at http://www.tau.ac.il/humanities/abraham/publications/israeli_archaeology.pdf.

79. This is a result both of the financial hardships shared with the Palestinians in the OPT and the physical geographical detachment from the landscapes of the Palestinian homeland. For the obstacles facing Palestinian NGOs working in the social, cultural, and political arena in Lebanon see Jaber Suleiman, *Palestinians in Lebanon and the Role of Non-Governmental Organizations*, 10 J. REFUGEE STUD. 397, 408 (1997). Cultural preservation is a difficult task even under more comfortable socio-economic conditions. See Jeremy Cox & John Connell, *Place, Exile and Identity: The Contemporary*

Palestinian right to cultural preservation is unjustifiably breached. Ironically, the best conditions for strengthening and preserving the Palestinian culture exist within the State of Israel. The Palestinian culture has no other resources to compete for or draw from. Thus, in the current state of affairs, depriving the Palestinians of the right for future preservation in Israel means severe harm to the culture and an extreme inequality between the Palestinian and the Jewish culture. As long as Israel controls both the borders of its own territory and Palestinian territories, an elevated Palestinian demand exists for fulfillment of future preservation rights within the borders of Israel. Israel's obligation towards the Palestinians under this condition is unlike the duties of any other State to different cultures that inhibit it.

There are two unique supporting arguments for the Palestinians' claims. The first is an historic reference; the destruction of the Palestinian society in 1948 was an outcome of the establishment of the State of Israel. Without diving into the historical dispute over the extent and causes for the destruction, it was at least partially an outcome of decisions of Jewish leaders, those of military commanders of lower ranks, and partially accounted for by poor decision making on behalf of the Arab leadership.⁸⁰ One way or the other, Israel shares some degree of responsibility for the Palestinian destruction both physically and culturally. It is not unrealistic to assume that a peace agreement between Israel and the Palestinians would include a certain amount of compensation for physical destruction. The same logic can apply to the obligation of Israel to aid in rebuilding the Palestinian culture.

The second cause, which is more relevant to our discussion, is that in current conditions, Israel is the only State in the world *able* to protect and nurture not only the Jewish-Hebrew culture, but also the Palestinian culture, regardless of the Israel's impact on Palestinian history. All other sizeable Palestinian communities that might be candidates for the task are under Israeli occupation or face humanitarian distress in refugee camps.⁸¹ Given that Israel is the only State where a

Experience of Palestinians in Sydney, 34 AUSTL. GEOGRAPHER, no. 3, 2010 at 329.

80. For discussion from both sides of the conflict, see generally WALID KHALIDI, ALL THAT REMAINS: THE PALESTINIAN VILLAGES OCCUPIED AND DEPOPULATED BY ISRAEL IN 1948 (1992); KARSH, *supra* note 76; THE FUTURE VISION, *supra* note 15, at 5–6, 30.

81. According to the Palestinian Central Bureau of Statistics, 44.2% of

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significant number of Palestinian people reside and that is able to prevent a decline of the Palestinian culture, similar to it being the only State able to prevent the decline of the Jewish culture, Israel has an increased duty to acknowledge the Palestinian peoples' demand.

The establishment of a Palestinian State could tip that weight of responsibility outside the borders of the State of Israel. The underlying assumption of a recognized Palestinian State is that such a State would live in peace beside Israel, with open borders for free or easy passage between them. The Palestinian State would no doubt embark on a large scale accelerated process of national development. It would create sovereign institutions and grant the Palestinian culture a national expression. Such would be enjoyed by the Palestinian citizens of Israel because of their proximity. Palestinian citizens of Israel could enjoy such benefits much more easily than the Jews of Brooklyn can enjoy Jewish preservation in the State of Israel, for example.

IV. THE SPECIFIC GROUP RIGHTS CLAIMED BY ISRAELI PALESTINIANS, AND THE IMPACT OF PALESTINIAN STATEHOOD

In the text below, I will present an overview of the main collective rights claimed by leaders of the Palestinian community in Israel. Each of these claims suggests duties imposed on the Israeli government, and in a way, on the Jewish majority. The justification of imposing such duties will be discussed in light of Palestinian Statehood.

A. THE RIGHT FOR CULTURAL SELF-ADMINISTRATION

Cultural rights are perhaps the most important of all collective rights. In its broader meaning, the culture entails almost every group characteristic – customs, way of life, political culture, and so on. Cultural rights also include the language in which the culture is expressed. The more that an affiliation with a national group constitutes a central part of

Palestinians living in Palestine and 45.7% of the world Palestinian population are refugees. See Press Release, Palestinian Cent. Bureau of Statistics, Special Statistical Bulletin on the 65th Anniversary of the Palestinian Nakba (May 14, 2013), available at http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_nakba65E.pdf.

person's identity, the more the sense of belonging to a group becomes a central component of his ability to "fram[e] the plan of [his] life."⁸² This is the basis for recognizing the right of a cultural group's independence to manage its cultural affairs, such as artistic expressions in literature, dramatic arts, plastic arts, and music, for example.

There are different facets to the right of cultural self-administration: the right to sustain the group's way of life without interruption, the right to broad social acknowledgment of the group's way of life, and the right to governmental support for its way of life so that it can prosper. I focus here on this third aspect, which relates to the positive duties cultural rights of minority groups cast on the State. To answer the question of what effect the recognition of Palestinian Statehood would have on group rights of Israeli-Palestinians to cultural self-administration, I will distinguish between two different roles that culture fills.

The first role that culture fills is as a service for the individual. A child taken to see a play of his national culture canon is educated in light of the culture. He takes pride in his culture, and the ideas drawn in his parents' home, in school, and in his social surroundings are given strength by this cultural experience. His sense of belonging to the group with which he shares this classical work becomes stronger. He adopts a cultural language that allows him to develop his identity within the community where he is used to expressing himself, and where his best chances for reaching fulfillment in his life lie. It can be stated that the enjoyment of his national culture serves his personal autonomy, his ability to, as defined by Raz, "tell a story of one's life."⁸³ These statements are true not only in relation to a consumer of culture, but also to a creator of culture..

The second function involves the role of culture in cultural preservation of a national group. Culture unites the people of a nation and strengthens the bonds between them. National culture competes for the attention of group members, especially the younger ones, with other temptations that attract members to other groups. It strengthens the bond between children and their parents, and helps parents keep their children within the frame of the cultural group. To succeed in its task, the culture

82. JOHN STUART MILL, ON LIBERTY 18 (1859).

83. Joseph Raz, *Authority and Consent*, 67 VA. L. REV. 103, 124–25 (1981).

must develop, adapt and remain up-to-date. It must be attractive to the younger generation and address the changing expectations of coming generations, whilst maintaining the connection between them and previous generations.

I argue, that the distinction between these two aspects would be vital in the reality of a recognized Palestinian State existing alongside the State of Israel. The first aspect, serving the individual, inherently must be fulfilled in a place where individuals reside. Therefore, in relation to the Palestinian communities in Israel, I argue that it is the State's duty to ensure that Palestinian citizens may enjoy their culture. No limit should be imposed on cultural expression, if for no other reason than for the sake of freedom of expression. This is not sufficient. The State recognizes the importance of culture for an individual. Therefore, it establishes institutions which subsidize artistic activities. The fulfillment of the right of Palestinian citizens of Israel to enjoy their culture requires inclusion of programs for the Palestinian public. The State should subsidize these acts and support Palestinian performers, as it supports Jewish artists. The right of self-administration in this context is not a problematic issue. It is only natural that Palestinians would set the criteria, funds distribution, and so forth for Palestinian cultural activities.

However, this regards only bureaucratic work and not substantial work, which is part of the second aspect. Palestinian Statehood would also bear an impact in the context of the second aspect of cultural self-administration. In relation to the preservation and development of the culture, the responsibility would be cast upon the Palestinian State. The development of the Palestinian culture would be one of the justifications for the existence of a Palestinian State. Official institutions for promoting and developing the Palestinian culture would exist in this State, assuming that it chooses to take this task upon itself. In the State of Israel there could be such institutions, but it would not be the State's duty to maintain them, and preference for institutions focusing on the development of the Jewish culture could be justified.

One of the calls in the Future Vision Document is for an establishment of "[a] higher board to follow up the Palestinian cultural affairs in Israel."⁸⁴ The establishment of such an institution could be of granted government support, as many

84. THE FUTURE VISION, *supra* note 15, at 34.

voluntary organizations are, according to fair criteria. Yet, it cannot be expected to have an official standing in the national fabric of the State. The basic principal behind its existence is the principle of freedom of association. The State would be responsible to act fairly towards this body, as with cultural institutions of other nationalities, but it would not be duty-bound to create such an official State institution. Such an institution, if created in Palestine, could ensure that the development of Palestinian culture would percolate to the Israeli-Palestinian population as well, thus ensuring its continuance. The interest of future preservation would be secured as a national interest, alongside private interests of the Palestinian citizens to consume their familiar culture at any point in time.

The existence of a Palestinian State alongside Israel, and mostly the conclusion of the Israeli-Palestinian conflict, would end an extended rift between the Israeli and Palestinian cultures and the larger Middle East. The Israeli-Palestinian population, consisting of a seventh of the overall Palestinian population,⁸⁵ would naturally take part in the Palestinian cultural discourse, a right that has been withheld from it by current circumstances. This means that with Palestine being a cultural and spiritual center for the entire Palestinian nation, academicians, artists, and the like would expectedly be actively engaged with Palestinian cultural institutions. As the body responsible for the development of the Palestinian culture, it would be the Palestinian State's duty to engage Palestinians anywhere in the cultural development. Once again, in my view it would be the duty of the Palestinian State and not of the State of Israel. It would be fitting that out of respect for the rights of Israeli-Palestinians and their desire to take part in this work, the State would also support the cultural ties between the local Palestinian population and Palestine through scholarships and other means according to its financial abilities and budgetary priorities.

The Ministry of Foreign Affairs funds travels of Israeli cultural groups abroad for the spread of Israeli culture.⁸⁶ Would

85. Palestinian Cent. Bureau of Statistics, *supra* note 81, at 1–2 (noting that the estimated world Palestinian population totaled 11.6 million in 2012, 1.7 million of whom live in the Gaza Strip).

86. *Division for Cultural and Scientific Affairs*, ISRAEL MINISTRY OF FOREIGN AFF., <http://www.mfa.gov.il/MFA/About+the+Ministry/Structure+and+departments/Division+for+Cultural+and+Scientific+Affairs.htm?DisplayMode=print> (last visited Oct. 25, 2013) (“The Performing Arts Unit

it have the duty to include in its funding Palestinian artistic groups? The answer is not simple. In all matters regarding the needs of the creators, the State would be obligated to full equality, and must address it by the funding of Palestinian dance groups going on a tour in Europe, similarly as Jewish folk-dance groups. The ministry supports groups of modern dance and rock singers, some that have little to do with Jewish culture. Certainly there is no preference for the marketing of a rock singer's appearance over that of a traditional or modern Palestinian artist. Both of these together consist of parts of Israeli creation. But the Ministry may be giving certain preference to works of art that symbolize traditional Zionist or Jewish culture. Such bodies are supported not only because of their proven artistic value, but also because they reflect local Jewish tradition and culture rather than universal characteristics. The foreign ministry should be allowed to grant a certain amount of preference to such bodies, either over Jewish rock stars or over any traditional or modern Palestinian artist, for reasons of the unique responsibility of the State of Israel for promoting and developing the Jewish culture.

Dr. Yousef T. Jabareen, in "An Equal Constitution for All? On a Constitution and Collective Rights for Arab Citizens in Israel," criticizes the Israel Broadcasting Authority's (a public agency consisting of Israel's public TV and radio stations) official role⁸⁷ in "[s]trengthening the bond with Jewish heritage and values, and enhancing the knowledge thereof,"⁸⁸ whereas its role towards the Arab population is reduced to "[m]aintaining Broadcasts in the Arabic language for the needs of the Arabic-speaking population."⁸⁹ Similar resolutions exist in the law of the Second Broadcasting Authority for Television and Radio (the state regulator of commercial TV and radio stations).⁹⁰ Despite the seeming inequality, if a recognized independent Palestinian State exists alongside Israel, the

promotes Israeli artists and groups in dance, theater, and popular, classical and choral music. The unit, together with Israel's cultural attachés, works on press and public relations for performances, the establishment of ties with foreign artists, and facilitates the participation of Israeli artists in international festivals and tours.").

87. AN EQUAL CONSTITUTION, *supra* note 15, at 42–44.

88. The Broadcasting Authority Law, 5725–1965, 19 LSI 103, art. 3(5) (1964–1965) (Isr.).

89. *See id.* at art. 3(11).

90. *See generally* Second Television and Radio Authority Law, 5750–1990, 45 LSI 60 (1989–1990) (Isr.).

aforementioned arrangements could be justified. The inequality is counterbalanced on a larger-scale regional view. In that case there would be a Palestinian broadcasting authority in the State of Palestine, whose role would be to strengthen the connection to the Palestinian legacy and its values and to deepen awareness of it. It will no doubt also serve the Palestinian population in Israel. As for the Israel Broadcasting Authority, it will continue to be the sole broadcasting body instructed to strengthen the connection with the Jewish legacy, in addition to serving the needs of the Israeli Palestinian population. Of course, in the context of free markets and freedom of corporation, Arab licensees could establish communication and broadcasting bodies that would deepen the connection to the Palestinian legacy in the State of Israel, as well on their own initiative without asking for public support.

The reduced obligations of the State towards preserving the Palestinian culture can be illustrated by an analogy to the Greek demand for the return to Athens of the Parthenon statues being displayed at the British museum in London.⁹¹ We can imagine a display of similar historic value to the Palestinians being preserved in London. Would the Palestinian minority in Israel have the right to appeal to the Israeli government to demand the British government of its return? My answer is no. With the existence of a Palestinian State, it would be the representative of the Palestinian people and therefore responsible for its cultural rejuvenation. In any case, this demand would not rest on the State of Israel, which will not be obligated to invest the materialistic or diplomatic resources required for such an effort. It can be expected that such a claim would actually provoke the Palestinian state, which would object to Israeli competition over the assets of the Palestinian legacy. The right of the Palestinian state should be viewed in this context as an exclusive right, which requires the State of Israel to avoid action that intervenes with the Palestinian cultural foundation. Similarly, its duties in this regard should be viewed as exclusive.

One of the justifications for the claim for protection of the minority culture arises from a perceived danger imposed by the majority culture. In the current situation, there exists a concern that the Palestinian culture in Israel, and the young

91. See *The Parthenon Sculptures*, THE BRITISH MUSEUM, <http://www.thebritishmuseum.ac.uk/gr/debate.html> (last visited Oct. 18, 2013).

Palestinians in it, will suffer from the temptations presented by Israeli culture and its western characteristics. Given that becoming integrated into the majority culture is the only way to reach beyond the walls surrounding the minority group, the minorities are forced, according to this claim, to distance themselves from their culture and to foster the majority's culture.⁹² Kymlicka uses this argument of the danger lurking for the minority culture, as the justification for hurting the privileges of the majority culture.⁹³ Margalit and Halbertal argue that a State can be neutral towards its dominant group, assuming it can take care of itself, but cannot behave towards minority cultures in this way "especially those in danger of dwindling or even disappearing."⁹⁴ The risk of assimilation of the Palestinian minority within the Jewish culture will greatly be reduced with the establishment of a Palestinian State. Living next to a prospering Palestinian culture, would greatly diminish concern over Palestinian mass communication and Palestinian artistic expression, as it would reduce the right for claims based on it, or at least greatly based on it.

B. THE RIGHT FOR LANGUAGE

Language is undoubtedly one of the main expressions of culture.⁹⁵ There can be no meaning for cultural protection without protecting a culture's native tongue.⁹⁶ For example, with the extinction of the Yiddish language as a common tongue in Eastern Europe in the second half of the second millennium, it is believed that a unique sub-culture characteristic of Jewish communities has largely disappeared.⁹⁷ Thus, it is unsurprising that a claim for Hebrew-Arabic bilingualism in Israel appears as a major concern in the Vision Documents.⁹⁸

92. KYMLICKA, *supra* note 26, at 121–22.

93. *Id.*

94. Margalit & Halbertal, *supra* note 25, at 492.

95. *See id.* at 505.

96. *Id.* (describing the importance of language protection to minority cultures).

97. *See* William Safran, *Language and Nation-Building in Israel: Hebrew and Its Rivals*, 11 *NATIONS & NATIONALISM* 43, 48–57 (2005) (describing the political struggle between Hebrew and Yiddish and its implications).

98. DEMOCRATIC CONSTITUTION, *supra* note 15, at 8 ("Hebrew and Arabic are the official languages of the State of Israel and enjoy equal status in all of the functions and activities of the legislative and executive branches."); AN

Minority communities naturally fear that their members will adopt the language of the majority as a tool to integrate into larger society, thus abandoning their own languages.⁹⁹ If and when a Palestinian State is officially recognized, Arabic would be its official language; establishments, press, and educational institutions would all use Arabic, reducing the concern that Arabic would be abandoned.¹⁰⁰ The possibility of going about everyday life in Arabic would also be greater, not only in the Palestinian State, but for the Palestinian citizens of Israel, assuming they have continuous interaction with their people in the Palestinian State.¹⁰¹ This new state of affairs would not absolve Israel of its commitment to the language rights of the Palestinian citizens of Israel but would justify a more detailed discussion of the essence of that right.¹⁰²

The status of Arabic in Israel was discussed in the Israeli Supreme Court's ruling in the *Adalah* case.¹⁰³ The petition asked the Supreme Court to order four municipalities, where Palestinians constituted 6-22% of the population, to add Arabic captions to road signs, even in areas where no Palestinians resided.¹⁰⁴ The Supreme Court granted the order.¹⁰⁵ What sort of right was claimed by the petitioners? It seems unquestionable that the right to language is not solely an individual right but a group right.¹⁰⁶ Indeed, this was the basis for the dissent's

EQUAL CONSTITUTION, *supra* note 15, at 72 ("True bilingualism requires equality between Hebrew and the status of Arabic as an official language in all areas of the public sector including, but not limited to governmental documents and forms, educational material, naming of road signs and buildings, recognition of cultural icons, etc."); THE FUTURE VISION, *supra* note 15, at 15 ("Guaranteeing dual language system of both Arabic and Hebrew.").

99. Saban, *supra* note 62, at 906 (discussing the economic, political, and cultural motivations which might lead to the abandonment of a minority language).

100. Yoav Stern, *The 'b'seder' Arabs*, HAARETZ (Apr. 30, 2008, 12:00 AM), <http://www.haaretz.com/print-edition/features/the-b-seder-arabs-1.244919> (discussing the "Israelization" of the Palestinian language and the potential that a Palestinian state might halt this process).

101. PALESTINIAN BASIC LAW [CONSTITUTION] May 29, 2002, arts. 4.3, 106 (stating that the official language of the Palestinian Authority is Arabic and that these laws will apply to any future Palestinian state).

102. Margalit & Halbertal, *supra* note 25, at 506-07 (discussing the Israeli state's obligation to help preserve Arabic).

103. HCJ 4112/99 *Adalah v. Tel-Aviv Municipality* 56(5) PD 393 [2002] (Isr.), English summary available at <http://adalah.org/features/landlangrep/4112decision-eng.pdf>.

104. *Id.*

105. *Id.*

106. See generally Saban, *supra* note 62 (discussing language as a group

objection in *Adalah*.¹⁰⁷ Nevertheless, the meaning of the aforementioned group right deserves a more in-depth investigation.

Chief Justice Barak's opinion in *Adalah* explicitly states that the right to the Arabic language for the Palestinian citizens of Israel is a collective right based on their status as a native minority; unlike, for instance, another group of similar size, the immigrants from the former USSR.¹⁰⁸ The minority opinion argues that if a pressing individual need for Arabic signage had existed, that individual need would have gained sympathy, but the *Adalah* petition was a collective one, detached from any individual need.¹⁰⁹ Although the right to language may be viewed as a personal right,¹¹⁰ I determine that Justice Cheshin's dissent was correct that the petition's claim was in fact "for the judicial right of the Arab minority – alongside the government's duty – to preserve and promote its native tongue."¹¹¹

It must be assured that the citizens of Israel can manage all relevant aspects of their lives in Arabic. That does not mean that no preference may be given to Hebrew as part of the Zionist project of "National Development."¹¹² However, recognition of a Palestinian State would be the ultimate expression of the Palestinian "National Development" process, and thus it would be natural to promote the Palestinian dialect of the Arab language in the Palestinian State the same way the State of Israel promotes Hebrew.

The Equal Constitution Document criticizes the support given by Israeli law to the languages of Ladino (also known as Judaeo-Spanish) and Yiddish with no similar support given to the Arabic language.¹¹³ Yiddish and Ladino were once the main speaking languages for major Jewish communities in Eastern Europe and Spain respectively; today they are both in danger of

right and group rights in general).

107. *Adalah*, 56(5) PD at 461 (Chesin, J., dissenting).

108. See KYMLICKA, *supra* note 26, at 95–96; Saban, *supra* note 62, at 936.

109. *Adalah*, 56(5) PD at 471.

110. Saban, *supra* note 62, at 906 (noting the personal right to manage one's life with the language one is born into and educated by).

111. *Adalah*, 56(5) PD at 455–56; Saban, *supra* note 62, at 936–37.

112. Saban, *supra* note 62, at 997 (arguing that a bi-national solution for Israel and Palestine would allow Israel to better promote its Jewish national character).

113. AN EQUAL CONSTITUTION, *supra* note 15, at 50–51.

extinction.¹¹⁴ In its early years Israel banned cultural activities in these languages to assure the supremacy of Hebrew.¹¹⁵ Practically, there is no need to discuss at length the supremacy of the Arabic language over Yiddish and Ladino. It is obvious that no demand of an Israeli Jew to accept State services in the Yiddish language would be heeded.¹¹⁶ On a normative level, I argue that the State of Israel has a shared responsibility for the extinction of Yiddish and Ladino and the historical dissolution of the cultures they represented. Unless the State of Israel takes it upon itself to preserve Yiddish and Ladino they may not be as successfully preserved by other nations.¹¹⁷ On the other hand, Israel need not promote and support Arabic to the same extent as these languages. I argue that the decision of the state to promote these languages, that the State of Israel has a shared responsibility in their extinction and historical dissolution of the cultures they represented, does not require similar support to the Arabic language. Arabic, inclusive of the Palestinian dialect, would be preserved, promoted, and developed in a recognized Palestinian State.

Constitutional or legal protection for a minority language limited to areas with concentrated populations of that minority group is not rare in countries regarded as western and democratic. In Spain the Castilian dialect is recognized as the official language of the State,¹¹⁸ but minority languages are official in local communities through local legislation.¹¹⁹ The Spanish Constitution recognizes that “the wealth of the different linguistic forms of Spain is a cultural heritage which shall be especially respected and protected.”¹²⁰ Macedonian is

114. UNESCO ATLAS OF THE WORLD LANGUAGES IN DANGER 25 (Christopher Moseley ed., 2010) (describing Yiddish as endangered and Ladino as critically endangered).

115. Safran, *supra* note 97, at 56.

116. *Id.* at 54–56 (describing the conflict between Yiddish and Hebrew within Israeli society and how Yiddish was gradually removed from Israeli political and social spheres by Hebrew); *See also* Saban, *supra* note 62, at 925–26 (discussing the creation of Israel and its official languages, which include only Hebrew and Arabic and not Yiddish or Ladino).

117. *See* Safran, *supra* note 97, at 56. *But see* Asya Pereltsvaig, *Preserving Endangered Jewish Languages*, GEOCURRENTS (Oct. 2, 2013, 8:55pm), <http://geocurrents.info/cultural-geography/linguistic-geography/preserving-endangered-jewish-languages> (discussing international efforts to preserve Yiddish and Ladino).

118. CONSTITUCIÓN ESPAÑOLA [C.E.], B.O.E. n. 3.1, De. 29, 1978 (Spain).

119. *Id.* at n. 3.2.

120. *Id.* at n. 3.3.

the official language of Macedonia, but other minority languages are officially recognized in the areas predominantly populated by those minorities.¹²¹ Romansh is not recognized as an official language in Switzerland, but in the Cantons, where a concentrated group of Romansh speakers lives, Romansh is an official language.¹²²

The Israeli Knesset passed a bill establishing an academy for the Arabic tongue.¹²³ I do not object to such a bill if the legislature determines that State resources and priorities allow for such an establishment, and it would be valuable to a large segment of the public. . All I argue is that Israel's first priority should be the development and preservation of Hebrew. Such prioritization could be justified because by the existence of neighboring Palestinian State would fulfill the same duty to protect the Palestinian dialect of the Arab language. This would not mean compromising the rights of Palestinians in Israel to manage their lives or state affairs in Arabic, but it would weaken the justness of discrimination claims when Hebrew enjoys institutional promotion and nourishment.

C. REPRESENTATION IN STATE SYMBOLS

The issue of symbolic representation presents one of the most sensitive issues in the relations between Jews and Arabs in Israel.¹²⁴ The debate over symbols has roots in the rights of both sides for self-determination.¹²⁵ More than other aspects of sovereignty and independence (either national or sub-national),

121. MACEDONIAN CONSTITUTION Nov. 20, 1991, art. 7 (Maced.).

122. BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 70 (Switz.).

123. High Institute for the Arabic Language Act, 5767–2007, SH No. 2092 p. 286 (Isr.).

124. THE FUTURE VISION, *supra* note 15, at 18. Furthermore, the report argues that “equal participation in all public resources including the political, material and symbolic resources would be the cornerstone of building an equal and just” society, *id.* at 14. *See also* AN EQUAL CONSTITUTION, *supra* note 15, at 34–38, 76–77 (calling for adopting an array of symbols that would represent equality between Jews and Arabs). Interestingly, there is no voice demanding a change to the name of the country, although Israel is identifiably a Jewish name. It is possible that Palestinian demands fell short of changing the name so as to not seem nihilist.

125. *See* Avishai Margalit & Joseph Raz, *National Self-Determination*, 87 J. PHIL. 439, 442–47 (1990) (stating that the use of symbolic objects for group identification is one of six characteristics that, when considered together, form a case for a group's right to self-determination).

symbols can segregate and distinguish one national group from another, and thereby strengthen the sense of belonging of its members.¹²⁶ Margalit and Raz justify the right for national self-determination, arguing that the feeling of being “at home” among group members is an essential value.¹²⁷ Both Jewish and Palestinians citizens of Israel deserve to feel at home in Israel.¹²⁸

Israel remains the only country in the world outside the Palestinian state with a substantial non-refugee Palestinian citizenry.¹²⁹ One can argue that nowhere in the world do Palestinians stand a better chance of enjoying the symbolic benefits of self-determination. Given that Palestinians cannot exercise their right for national Palestinian self-determination, Palestinian claims for an interest in symbolic representation¹³⁰ seem reasonable, especially in light of Israel’s ongoing control of the majority of the Palestinian people.¹³¹

126. See generally Margalit & Halbertal, *supra* note 25, at 491 (“[T]hese shared values and symbols are meant to serve as the focus for citizens’ identification with the state, as well as the source of their willingness to defend it even at the risk of their lives.”); Margalit & Raz *supra* note 125, at 447 (“[G]iven the importance of mutual recognition to members of these groups, they tend to develop conventional means of identification, such as the use of symbolic objects . . . to help quickly to identify who is ‘one of us’ and who is not.”).

127. Margalit & Raz, *supra* note 125, at 454 (“To a considerable extent, what matters is how well people feel in their environment: Do they feel at home in it or are they alienated from it?”).

128. See *supra* notes 48–54 and accompanying text for a discussion of Israeli Jews’ right to self-determination tempered by Israeli Palestinians’ collective right as minorities; See also discussion *infra* note 134.

129. See Glock, *supra* note 78, at 71 (introducing briefly the historical, religious, and political forces that contributed to Palestinians’ minority status in their formal homeland); See also Israel Central Bureau of Statistics, *supra* note 16 (showing the size of the Palestinian population in Israel as compared to the total world-wide); AN EQUAL CONSTITUTION, *supra* note 15, at 18 (“The Arab minority is not just another weakened minority in Israeli society. This is the indigenous, original Arab-Palestinian population, living in its homeland even before the State was established, when it was the majority group together with the rest of its people.”).

130. AN EQUAL CONSTITUTION, *supra* note 15, at 69 (arguing for “claim rights” for Arab minorities in Israel, also known as social, economic and cultural rights) (citing International Covenant on Economic, Social and Cultural Rights, *supra* note 41); HAIFA DECLARATION, *supra* note 15, at 14–16 (demanding national and civil equality between Israeli Jews and Israeli Arabs in the form of two official languages, cultural autonomy, etc.); THE FUTURE VISION, *supra* note 15 (calling for national institutions in Israel to help the High Follow-Up Committee to increase).

131. See Israel Central Bureau of Statistics, *supra* note 10 (discussing Palestinian population size in Israel); AN EQUAL CONSTITUTION, *supra* note

Upon the establishment of a Palestinian State alongside Israel, Palestinian symbols would be recognized as a national expression of the State of Palestine by the international community.¹³² It would seem natural for the Palestinian citizens of Israel to identify with these formal Palestinian State symbols at some level, given the strong cohesion to the culture Palestinians in Israel retain.¹³³ Identifying with these symbols would fulfill one aspect of their right for self-determination.¹³⁴ Although some Palestinians would not live in the Palestinian State, its internationally recognized existence and symbols would give Palestinians worldwide a common point of reference. This is especially true for Palestinians in Israel who would likely come in contact with the Palestinian State every day.¹³⁵ State symbols would serve as a source of pride to them,

15, at 18–22 (arguing that, given the Arab minority’s situation as an “indigenous, original Arab-Palestinian population” living in what is now Israel before it became a State, it is “doubly valid” and justified that this indigenous population should be given recognition for their “national, linguistic, cultural and religious characteristics distinguishing it from the majority group . . .”).

132. See International Covenant on Economic, Social and Cultural Rights, *supra* note 41, art. I (stating that “[a]ll people have the right of self-determination,” which includes the right to freely pursue their cultural development). In this case, “self-determination” is used in its precise definition to mean self-government. AN EQUAL CONSTITUTION, *supra* note 15, at 34 (arguing that a Palestinian state might adopt cultural symbols for its state flag, emblem, and state seal, much the way the Israelis did in 1949); See also Margalit & Raz, *supra* note 125, at 440 (“The idea of national self-determination or the ideal of self-government . . . speaks of groups determining the character of their social and economic environment, their fortunes, the course of their development, and the fortunes of their members by their own actions.”).

133. HAIFA DECLARATION, *supra* note 15, at 8 (“[D]espite all the attempts made to keep us in ignorance of our Palestinian and Arab history . . . [and] despite attempts to splinter us into sectarian groups and to truncate our identity into a misshapen ‘Israeli Arab’ one, we have spared no effort to preserve our Palestinian identity and national dignity and to fortify it. [W]e reaffirm our attachment to our Palestinian homeland and people . . .”).

134. Self-determination in this context can be best defined as “nationalist self-determination,” which is satisfied only if a particular community identifies with its government. Guyora Binder, *The Case for Self-Determination*, 29 STAN. J. INT’L L. 223, 224 (1992-93). This must be distinguished from “universalist self-determination,” which is satisfied when a majoritarian government fully and fairly represents its diverse population. *Id.* The former is closer to what Margalit and Raz defined as “self-government.” See Margalit & Raz, *supra* note 125, at 440.

135. Such symbols would likely be chosen from identifying aspects of the “collective memory derived from” Palestinian as well as Arab history and civilizations. HAIFA DECLARATION, *supra* note 15, at 7. To a degree, the Palestinians diaspora would be able to identify with this new government, and possibly migrate to it in the same way Jews from around the world have been

as the Israeli flag does for many Jewish communities abroad. However, the establishment of a Palestinian State would not solve the disparity that Israeli State symbols create between Jews and Arabs and each group's sense of "being at home" in Israel.¹³⁶ While this impairment should not be dismissed¹³⁷ it should not be overestimated either, because it could be compensated for by a more substantial system of equality.¹³⁸

In order for Palestinian citizens to enjoy symbolic representation in the recognized Palestinian State, Israel must stop deterring the right of Palestinians in Israel to use symbols of belongingness to the Palestinian State.¹³⁹ While the Israeli flag would be displayed in national institutions, that should not prevent the display of the Palestinian flag alongside it, especially in places where the local population wishes.¹⁴⁰ This is the present policy for the Red-Yellow-Blue-Green flag of the

immigrating to Israel under the Law of Return, *infra* note 207.

136. See Saban, *supra* note 62, at 968 ("[T]here is no area in which the extent of the Arab minority's marginalization is more evident than that of national symbols . . . In fact, in Israel, not even a single official holiday is associated with the Arab minority."); See also THE FUTURE VISION, *supra* note 15, at 12 ("The Israeli legal system includes a number of core laws that produce and reinforce inequality between Arabs and Jews in Israel . . . This official bias is not restricted to symbols such as the Israeli flag, but also to deeper legal issues . . .").

137. An internationally recognized Palestinian state would not fulfill "universalist self-determination" for the Palestinians citizens of Israel. See Binder, *supra* note 134 (explaining distinction between universalist and nationalist self-determination).

138. All four "Vision Documents" expressed hopes for and belief in reconciliation. See, e.g., DEMOCRATIC CONSTITUTION, *supra* note 15, at 4 (citing the end of apartheid in South Africa as inspiration for proposed steps toward reconciliation therein); AN EQUAL CONSTITUTION, *supra* note 15, at 72–78 (identifying ten steps for ensuring collective rights for Palestinian minorities); HAIFA DECLARATION, *supra* note 15, at 17 ("We firmly believe that the fulfillment of all the conditions for a reconciliation between the two peoples . . . will create political circumstances that will enable the creation of confidence, cooperation, and mutual respect . . ."); THE FUTURE VISION, *supra* note 15 (offering practical steps toward national unity in Israel).

139. THE FUTURE VISION, *supra* note 15, at 5 ("Defining the Israeli State as a Jewish State and exploiting democracy in the service of its Jewishness excludes us, and creates tension between us and the natural and essence of the State.").

140. See REBECCA L. TORSTRICK, THE LIMITS OF COEXISTENCE: IDENTITY POLITICS IN ISRAEL 13 (2000) ("Expressing Palestinian identity by displaying the flag, singing nationalist songs, or reciting nationalist poetry was illegal in Israel until only very recently."); AN EQUAL CONSTITUTION, *supra* note 15, at 36 (stating that Israeli law forces the Arab minority to display the Jewish flag even on buildings of "local Arab authorities, actually serving only Arab residents.").

Druze minority in Northern Israel. The Druze flag is displayed with pride in Druze villages.¹⁴¹

Margalit and Raz claim that the right for self-determination should be conditioned upon its application in a manner that does not create a bigger problem than it is meant to solve.¹⁴² This is a quantitative examination, as they state that “numbers count in the end.”¹⁴³ I argue that the establishment of a Palestinian State would remove a significant portion of the Palestinian population from the control of Israeli symbols. First, by way of immigration into the new Palestine,¹⁴⁴ and for the remaining Palestinians in Israel, the Palestinian State would offer national Palestinian symbols they can relate to.¹⁴⁵ This could greatly reduce the harmful effects of symbolist discrimination in the State of Israel.¹⁴⁶ In contrast, the proposed solution of national symbols that would represent both Jewish and Palestinian nationalities in Israel could be much more damaging. The Palestinian population in the State of Palestine would have both the symbols of the State of Palestine, expressing their national identity, and the symbols of the State of Israel, expressing their civil identity.¹⁴⁷ However, Jewish citizens of Israel would only have symbols that expressed their civil identity and not their national identity.¹⁴⁸

141. *The Druze Faith and Community*, ISRAEL: COME FIND THE ISRAEL IN YOU (2011), http://www.goisrael.com/tourism_eng/tourist%20information/ethnic%20groups/druze/pages/the-druze-faith-and-community.aspx (“The Druze flag flies at all their holy sites and in their towns, frequently alongside the Israeli flag.”).

142. Margalit & Raz, *supra* note 125, at 458.

143. *Id.* at 450, 458 (arguing that the right to self-govern a particular territory does depend on whether there is a substantial majority of a certain population within that territory).

144. See discussion *supra* notes 133–135 and accompanying text.

145. See discussion *supra* notes 133–135 and accompanying text.

146. See Margalit & Raz, *supra* note 125, at 84–85 (basing this argument on the presumption that the population of minorities living in Israel would be much smaller); See also discussion *supra* note 134 and accompanying text (adding that Israeli Palestinians would likely achieve a degree of nationalist self-determination).

147. See Saban, *supra* note 62, at 902 (defining an ethnic nation-state as one that accords clear, institutionalized dominance to a particular “ethnonational” community, and a civic nation-state as one that is “binational” or “multinational,” and which “energetically seeks to dispel national, ethnic, and other divisions” in favor of a single overarching identity).

148. *Id.* at 986 (noting that Palestinian Israelis overwhelmingly do not want a civic nation-state in which the civil identity of Israeli replaces present national identities).

In conclusion, the recognition of a Palestinian State could greatly reduce the damage caused to the Palestinian citizens of Israel by the current situation in which they are bound to state symbols they cannot relate to.¹⁴⁹ One hopes that the end of hostility between the Palestinian people and Israel would reduce alienation about what the symbols represent, even if the symbols themselves do not awaken automatic identification. Additionally, Palestinian citizens in Israel would be able to relate with Palestinian symbols that would enjoy the higher prestige of worldwide recognition. In that case, demanding the Jewish nation to relinquish its symbolic expression would not be justified.

D. THE RIGHT FOR EDUCATION

The discussion over educational rights of Israeli Palestinians in a established Palestinian State should be separated, by their different cultural roles, into K-12 education (primary education) and then higher education (secondary education).¹⁵⁰

One of the early demands of the leadership of Israeli-Palestinians is for “self-steering (self-government) of the Arabic educational, cultural, and religious institutions . . .”¹⁵¹ It is claimed to be a “collective right.”¹⁵² This classification is not obvious. The right for education is, first of all, the right of every child to obtain the tools that allow him to become an autonomous person in adulthood, to pursue his dreams to the best of his ability, and to realize his self-abilities.¹⁵³ It is clear that the definition of this right as a collective right does not point to any random education, as high of standards as it may have, but to self-management over the educational system of

149. See discussion of the Vision Documents cited *supra* note 124.

150. Philip Hemmings, *Israeli Education Policy: How to Move Ahead in Reform* 6 (OECD Economics Department Working Papers, No. 781, 2010) (discussing Israel’s complicated history and diverse population that resulted in four main types of primary and secondary education), available at <http://dx.doi.org/10.1787/5kmd3khjff0-en>.

151. AN EQUAL CONSTITUTION, *supra* note 15, at 73.

152. *Id.* at 79 (“The collective rights outlined above are founded on the basic principle of full and equal participate of the Arab citizen in the State’s public resources . . .”).

153. See Binder, *supra* note 76, at 268 (arguing, albeit romantically, that true freedom is found in the “onerous but creative task of realizing one’s self through education and recognition from “worthy others”).

Israeli-Palestinian children.¹⁵⁴ This is to ensure that they receive an authentic “Palestinian” education – meaning an education in the Arabic language and stemming from Palestinian culture and legacy.¹⁵⁵ This right should be examined carefully as well.

It seems the right to be educated in the child’s mother-tongue, based on his legacy and culture, is an individual right as well (or at least partly an individual right, despite it also having extreme significance for the collective).¹⁵⁶ An education unfitting to the culture that the child grew up in makes it difficult for him to shape his adult life in an environment where he can most readily and naturally do so.¹⁵⁷ The words of Margalit and Halbertal regarding the right for culture are suitable in this context for education; it is also the right to guarantee one’s personal identity.¹⁵⁸

This leaves us with the question of self-governance. If the principles previously stated were agreed upon, then the practical meanings of this demand are reduced. It is hard to disagree that the most suited to design and manage an education system based on Palestinian culture and legacy are Palestinian educators.¹⁵⁹ Thus, the administration of a

154. AN EQUAL CONSTITUTION, *supra* note 15, at 73 (“Granting self-government rights to the minority group will assure comprehensive and unlimited development of the unique identity . . . of the members of the minority group, including in matters of education . . .”). See also H CJ 7052/03 Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Interior Affairs, 61(2) PD 202 [2006] (Isr.) (“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children . . .”) (citing International Covenant on Economic, Social and Cultural Rights, *supra* note 41, art. 10).

155. See Glock, *supra* note 78, at 77–83 (bemoaning foreign-educated Palestinian archeologists who do not have an intellectual connection with Palestinian history or Islamic traditions, and calling for an education system that produces authentic Palestinian archeologists).

156. See Saban, *supra* note 62, at 904 (arguing that an individual’s right to education is a mandatory right to claim imposed upon the state).

157. See Margalit & Raz, *supra* note 125, at 444 (noting that a group’s culture has profound and far-reaching influence on individuals who grow up in the group; socializing an individual to an environment that has a culture different from his own is a difficult process prone to failure).

158. See Margalit & Halbertal, *supra* note 25, at 501–02.

159. Yousef T. Jabareen, *Constitution Building and Equality in Deeply-Divided Societies: The Case of the Palestinian-Arab Minority in Israel*, 26 WIS. INT’L J. 345, 376 (2008–09) (arguing that an education system devised by the majority tends to favor the narrative and heritage of the majority, to the

Palestinian educational system ought to be determined by Palestinians. Currently, Israel does not acknowledge such a right and watches over Palestinian education closely.¹⁶⁰ With or without a recognized Palestinian State, it would be best to increase the level of independence of the Arab education in Israel.¹⁶¹

If Israel were the sole location where a funded and orderly Palestinian educational system could exist, this system would likely become the central element in preserving the national Palestinian legacy. Currently, while other Palestinian children are raised in refugee camps or under Israeli occupation, the Palestinian citizens of Israel are in a comparatively more relaxed position to study and immerse themselves in textbooks, advanced educational programs, and the Palestinian perspectives.¹⁶² The State of Israel should show greater tolerance toward the role of such a system, especially given its responsibility towards the future of the Palestinian people.¹⁶³ With the establishment of a Palestinian State, the importance of the Israeli-Palestinian education system for the general Palestinian nation would be reduced, but it would still provide important services for the Palestinian students in Israel.¹⁶⁴

detriment of the minority group). *But see* Hemmings, *supra* note 150, at 21 (noting that decentralizing primary and lower-secondary schooling to local authorities might magnify and enhance the socio-economic differences between communities).

160. Yulie Khromchenko, *Shin Bet Will No Longer Scrutinize Arab Educators*, HAARETZ (Jan. 6, 2005), <http://www.haaretz.com/print-edition/news/shin-bet-will-no-longer-scrutinize-arab-educators-1.146344>. Until recently the Shin Bet scrutinized appointment of Arab teachers in public schools. Following a petition that was filed by Adalah, Legal Centre for Arab Minority Rights in Israel, the Education Ministry announced that that will no longer be done. However, Arab educational institutions remain under the “supervised stream” of primary and secondary education, Hemmings, *supra* note 150, at 13.

161. This has its price too. It may make it more difficult for Palestinian youngsters to integrate into the Israeli society and market. This warrants a discussion on the availability of bi-lingual schools which is beyond the scope of this article. For discussion of this topic *See* Zvi Bekerman & Nader Shhadi, *Palestinian-Jewish Bilingual Education in Israel: Its Influence on Cultural Identity and Its Impact on Intergroup Conflict*, 24 J. MULTILINGUAL AND MULTICULTURAL DEV. 473 (2003); Saban, *supra* note 62, at 924.

162. *See* Baramki, *supra* note 78, at 13–15, 18 (contrasting academic institutions in Gaza and the West Bank, which receive no assistance from Israeli authorities and have little control over planning or implementing policies. They also suffer from “censorship of books and periodicals, discriminatory taxes and customs . . .”).

163. *See* discussion *supra* note 156.

164. Baramki, *supra* note 78, at 13–14 (arguing that without adequate

The role of universities is different. The university's role does not conclude with providing education for its students but has a broader public role and acts as an essential tool in the advancement and development of society.¹⁶⁵ They are the creators of new knowledge and offer a stage for discussions and debate concerning the focus issues of society.¹⁶⁶ They form part of the foundation of nations and also entail a much higher cost per student.¹⁶⁷

The Palestinian society under Israeli occupation is one of the most educated of all Arab societies and has one of the highest numbers of academic degree holders.¹⁶⁸ It seems likely that the universities already active in the occupied territories would flourish and more would be created with the progression and recognition of a Palestinian State.¹⁶⁹ One can also assume that Israeli Palestinian students would be able to freely attend Palestinian state Universities.

The demand for establishing a publicly funded Arab university in Israel is not by itself unjustified.¹⁷⁰ However, given the tremendous cost of funding such a university and the complexity of creating an academic circle with limited ability to participate in general Israeli academic work, claims can be made against a massive governmental investment in such an

local Arab universities, Palestinian students would have to pursue their education abroad).

165. COMMITTEE ON HIGHER EDUCATION, *HIGHER EDUCATION: REPORT OF THE COMMITTEE APPOINTED BY THE PRIME MINISTER UNDER THE CHAIRMANSHIP OF LORD ROBBINS*, 1963, Cm. 2154, at 7, 61–63 (U.K.) (stating that one of Universities' functions is the transmission of a common culture and standard of citizenship).

166. *Id.* at 6–7, 195 (arguing that universities are places for the advancement of knowledge).

167. *See generally id.* at 199–216 (discussing the expense of higher education and its importance as a form of national investment).

168. According to a UNESCO survey, in 1996 Palestinians were third out of 21 Arab countries for the percentage of people holding bachelor's degrees. This is remarkable considering the living conditions under occupation and the fact that many educated Palestinians were not even considered for the survey's purposes because they study outside the occupied territories. UNESCO, *WORLD SCIENCE REPORT 155* (1998); *see also* Cox & Connell, *supra* note 79, at 337 ("Together with Egyptians, Palestinians were the best-educated Arabic-speaking migrants in Australia.").

169. *See* Baramki, *supra* note 78, at 12 (stating that six Arab Universities have been created against all odds and despite the Israeli occupation; therefore, even more would flourish given a hospitable climate).

170. *See* DEMOCRATIC CONSTITUTION, *supra* note 15, at 8; EQUAL CONSTITUTION, *supra* note 15, at 72; THE FUTURE VISION, *supra* note 15, at 29.

establishment.¹⁷¹ And, in the case of a recognized Palestinian State, these claims become even more valid, because an Arab university in Israel would no longer be the sole free academic center for development of Palestinian society.¹⁷² It is likely that graduates of an Israeli Palestinian university would be able to integrate easily into a Palestinian State's academic sphere, making the case that Palestinian State presents the right location to establish higher-education institutions in the region.¹⁷³

Despite the complexity discussed above, given the demand from Palestinian students for higher education in their own language, establishing an Arabic university in Israel could still be justified.¹⁷⁴ However, considering the general principals of citizen-state relations, this demand would have to be balanced against the budgetary priorities of the State. And the university, in its role, could not allow significant weight toward preserving Palestinian culture or developing Palestinian studies..¹⁷⁵

E. INTERNAL RIGHT OF RETURN

Since the foundation of the State of Israel, Palestinians have made an ongoing demand to return to their villages, which were destroyed during the War of Independence (the "Nakba").¹⁷⁶ Citizens of Israel who were displaced but remained

171. See Chan Pundak, *Higher Education Plan for Israel's Arab Citizens Lacks Teeth*, AL-MONITOR (Isr.) (Jan. 1, 2013, 8:31 AM), <http://www.al-monitor.com/pulse/culture/2013/01/the-program-to-enhance-accessibi.html> (original Hebrew text available at <http://www.calcalist.co.il/local/articles/0%2C7340%2CL-3592567%2C00.html>).

172. See PALESTINIAN NAT'L AUTH., PALESTINE: ENDING THE OCCUPATION, ESTABLISHING THE STATE 10–11 (2009), available at http://miftah.org/Doc/Reports/2009/PNA_EndingTheOccupation.pdf (noting that a provision of high quality education that encourages cultural openness and protects national heritage is a high priority on the government's agenda.).

173. See *id.*

174. See Pundak, *supra* note 171.

175. See DEMOCRATIC CONSTITUTION, *supra* note 15, at 9 (stating that "the State of Israel will allocate a suitable budget to the representative body for operating the institutions to ensure their existence in good quality and at a level equal to that of the majority's institutions.").

176. See Nihad Boqa'i, *Palestinian Internally Displaced Persons Inside Israel: Challenging the Solid Structures*, 15/16 PALESTINE-ISR. J. OF POL., ECON. & CULTURE, at 32 (2003); see also Terry Rempel, *Housing and Property Restitution: The Palestinian Refugee Case*, in RETURNING HOME : HOUSING AND PROPERTY RESTITUTION RIGHTS OF REFUGEES AND DISPLACED PERSONS

within the State's territory are known as "present absentees."¹⁷⁷ They currently reside in other settlements within the State of Israel, mostly located in the Galilee region.¹⁷⁸ Their claimed right of return to the location of their original villages is referred to as the "right of internal return."¹⁷⁹ In public discourse this is often wrapped up by "the right of return," the general claim made by Palestinian refugees living in neighboring Arab countries to return.¹⁸⁰ Israeli objections to the "right of return" stem from the obvious implications on Israel's democratic conditions.¹⁸¹ However, I argue that a right of internal return would have no such effect.

In his article on historical rights, Avishai Margalit distinguishes between viewing historical rights as public goods and individual goods.¹⁸² Margalit states that if the Greeks could succeed in returning the statues of Acropolis to Athens, "the heart of every Greek would beat with joy."¹⁸³ The right of internal return can also be examined from both perspectives. Returning the Palestinian national self-respect and revival of the geographic and rural fabric in Palestine would be a public good. Alternatively, the return of property to a certain family uprooted from the village of Al-Lajjun in 1948 would represent a private good.¹⁸⁴

The public rights are shared by the Palestinian people as a whole, who are living under continuing bloodshed with Israel. During the time of bloodshed hundreds of Palestinian villages were destroyed, some in Israel's modern day territory and some in the Occupied Territories.¹⁸⁵ The relevant public is not just

(Scott Leckie ed., 2003).

177. See Absentees' Property Law, 5710-1950, 4 LSI 68-82 (1949-50) (Isr.); See generally DAVID GROSSMAN, *SLEEPING ON A WIRE: CONVERSATIONS WITH PALESTINIANS IN ISRAEL* (Haim Watzman trans., 1993) (the original title of the book in Hebrew is "Nokhakhim Nifkadim," which translated in English means "present absentees.").

178. Boqa'i, *supra* note 176.

179. See *id.*

180. John Quigley, *Displaced Palestinians and a Right of Return*, 39 HARV. INT'L L.J. 171, 172 (1998) (commenting on what displaced Palestinians should be legally entitled to with respect to their right of return).

181. *Id.* at 200 ("Israel's expressed concern was that since the Palestinians and the Arab states did not recognize Israel, a large-scale influx of Palestinians would threaten Israel's continued existence as a state.").

182. Avishai Margalit, זכויות היסטוריות [*Historical Rights*], 35 *Iyun* 252, 255 (1986).

183. *Id.*

184. *Id.*

185. See Palestinian Cent. Bureau of Statistics, *supra* note 81.

the Palestinian citizens of Israel, but the whole Palestinian nation. Thus, any agreement reached between the Israeli government and an official representative of the Palestinian people (PLO) that serves the general Palestinian interest and brings conclusion to Palestinian claims for groups rights in this context should be deemed to settle the issue.¹⁸⁶

In response to this viewpoint, it could be claimed that a renewed settlement of Palestinian villages throughout Israel would constitute a clear interest for the specific group of Israeli-Palestinians, which is different than the interest of the general Palestinian nation. This interest is to increase Palestinian presence in Israeli space and thus achieve a more dominant presence in the Palestinian public. While this claim could further Palestinian interests, it does not justify any right which imposes a governmental obligation. Settlement groups of Israeli-Palestinians do not have instilled rights to geographic dominance in the space of Israeli territory. These settlement groups were in the first stages of establishment at the time most of the villages were destroyed.¹⁸⁷ It should be noted that this claim gives rise to resettlement claims of any destroyed Palestinian villages settlements, not just to their original locations. This claim, as mentioned before, represents an interest, but is of no strong moral validity.¹⁸⁸

One could argue that the matters are different for individual claims of internal refugees. A family's demand for relocation back to its original residence should be granted to the extent possible so that the injustice caused to at least some families can be corrected. Reasonable considerations that account for the general public interest should still be made. The considerations include the number of original residents still alive and willing to migrate from their current home and return to their villages, the historical conditions for their departure (for instance, the deception that caused the departure of the villagers of Iqrit and Biram supports the government's obligation to address their claims now),¹⁸⁹ the

186. See *Seventh Arab League Summit Conference, Resolution on Palestine*, LE MONDE DIPLOMATIQUE, <http://www.monde-diplomatique.fr/cahier/proche-orient/rabat74-en> (last visited Oct. 17, 2013) (noting the establishment of the Palestinian Liberation Organization as the representative for the Palestinian people).

187. See Palestinian Cent. Bureau of Statistics, *supra* note 81.

188. See Margalit & Raz *supra* note 125, at 439.

189. HCJ 840/97 Sbeit v. Government of Israel, 57(4) PD 803, 803 [2003] (Isr.) (refusing intervention to allow internally displaced residents of two

physical conditions in the stated location, and the resources necessary for this procedure. I argue that such claims of land distribution or relocation should be discussed with fairness between the individuals and the government. Group representatives should engage in discussion to better coordinate their efforts at resettlement, because of the importance of village unity to their chances of success. Thus, their representation would be in a familial level, rather than taking on any nationalistic connotation.

In conclusion, any peace agreement between Palestine and Israel should include an understanding of the distribution of land, including a provision that does not restrict land use controlled by the opposing national group.¹⁹⁰ This can be achieved by establishing tourist and heritages sites.¹⁹¹ For example, access for the Jewish settlement in Hebron, Palestine and access for Palestinians to the village of Ayun Kara, Israel.¹⁹² The internal return of present absentees from the State of Israel should be part of negotiations that involve the civil and property rights of the inhabitants; negotiations should not arise from a national right of the Palestinian people residing in Israel to this matter.¹⁹³

F. EQUALITY IN IMMIGRATION AND NATURALIZATION

A homeland is a significant element of every nation.¹⁹⁴ The feeling of belongingness to a common physical location, landscape and sites, is one of the strongest bonds that ties the people of a nation together.¹⁹⁵ This is especially true for the Jewish and Palestinian people, whose cultures strictly emphasize belonging to the land and country.¹⁹⁶ Israel and

villages to return to their lands per the government's promise and instead ordering the state to monetarily compensate the villagers).

190. See generally Declaration of Israel's Independence, 5708-1948 (Isr.), available at http://avalon.law.yale.edu/20th_century/israel.asp; The Palestinian National Charter: Resolutions of the Palestine National Council, July 1-17, 1968, available at http://avalon.law.yale.edu/20th_century/plocov.asp.

191. But see Palestinian Cent. Bureau of Statistics, *supra* note 81.

192. *Id.*

193. See Quigley, *supra* note 180.

194. See Ross Poole, NATION AND IDENTITY 15 (1999) ("The homeland is the ground in a near literal sense of national identity.").

195. *Id.*

196. See Declaration of Israel's Independence, *supra* note 189.

Palestine were both established and shaped by the peoples bond to the homeland.¹⁹⁷

Historically, the Jews and Palestinians have defined their lands' borders differently; however, today a decisive majority in each nation attributes its national homeland to the territory between Jordan and the Mediterranean Sea.¹⁹⁸ Since 1967, Israel has exclusively controlled this territory and reserves the right for entering the land.¹⁹⁹ Israel not only determines who is allowed to enter the State's territory and reside in it, but also who is allowed to enter into, reside, and move within the occupied territories.²⁰⁰ In light of the centric role of the homeland to both cultures, Israel's monopoly obviously constitutes a severe violation of the national rights of the Palestinian nation, and the rights of any individual Palestinian.²⁰¹ Any Palestinian, outside his homeland, is deprived of the right to fulfill his cultural desires, of which Palestine encompasses a central role.²⁰² The Palestinian nation is deprived of the possibility to unite its offspring in one single territory and is thus denied the interpersonal interaction that ensures cultural prosperity.²⁰³

I argue that the land of Israel is the sole location where the national revival of the Jewish people could be possible. It is true that in Zionist history, some Jews supported the idea of establishing a Jewish state in other locations, but those locations were disputed and temporary in nature.²⁰⁴ Arguably, no other location but the land of Israel would have the gravitational pull to allow the formation of a real national

197. *Id.*

198. See Palestinian Cent. Bureau of Statistics, *supra* note 81.

199. Entry into Israel Law, 5721–1952, SH No. 111 p. 354 (Isr.).

200. *Id.*

201. See Quigley, *supra* note 180, at 228 (explaining that the privilege for absent nationals is a human right).

202. See The Citizenship and Entry into Israel Law (temporary provision), 5763–2003 (Isr.) (unofficial translation), available at http://www.knesset.gov.il/laws/special/eng/citizenship_law.htm (granting the minister of interior full discretion in allowing non-citizens into the country, excluding residents of the OPT and Iran, Lebanon, Syria, and Iraq which are not allowed to enter into Israel). The Citizenship and Entry into Israel Law (temporary provision), 5763-2003 (Isr.) (unofficial translation); *Adalah*, 61(2) PD at 202; HCJ 466/07 MK Zahava Gal-on (Meretz-Yahad) v. Attorney General [2012] (Isr.).

203. See Entry into Israel Law, 5721–1952, SH No. 111 p. 354 (Isr.).

204. Anita Shapira, et al., *Artsah 'alinu: me'ah shenot 'aliyah Tsiyonit* [Session of the Zionist General Council: Jerusalem, May 7–15 1952], 2 BET HATEFUTSOT 'AL SHEM NAHUM GOLDMAN 1982 (1977) (Isr.) (discussing that the Jewish homeland could not be established in East Africa).

movement.²⁰⁵ Therefore, the return of the Jewish people to their historical homeland was a fundamental condition for the existence of the Jewish nation.²⁰⁶ However, the right of Jews to immigrate to the land of Israel is not an exclusive right.²⁰⁷ The right of national self-determination, the ability of the Jewish nation to conduct its affairs as a nation, is dependent upon ensuring a Jewish majority within its territory.²⁰⁸ Today, the rulers of the entire territory can orderly immigrate to their land, while the people of the other nations are prevented from immigrating, excluding the ones already in their land.²⁰⁹

Assuming a Palestinian law similar to Israel's enacted "Law of Return," which allows any Jew to immigrate to Israel, the recognition of a Palestinian State would fulfill the rights of Palestinians to immigrate to and gather in their homeland.²¹⁰ This would create equality between the Jewish and Palestinian nations.²¹¹ Both nations could gather together in their homelands, a vital component of their nationalities, in a way that sustained a unified national community for future generations.²¹² These conditions would fulfill the right of cultural future preservation. However, this right would not provide every individual with the ability to settle in any given location within the homeland.²¹³ This condition could be based on demands for "ownership" of the nation over the land and to fulfill a certain emotional need. However, the stability of the international community and its ability to address the needs of its members in aspects of their belongingness is not dependent upon it²¹⁴

205. *See generally id.*

206. *Id.*

207. *See* Law of Return, 5710–1950, SH No. 51 p. 159 (Isr.) (granting any Jew, his spouse, children and grandchildren and their spouses the right to enter Israel) (amended by 5730–1950, SH No. 586 p. 34 (Isr.)), *available at* <http://www.knesset.gov.il/laws/special/eng/return.htm>. *But see* The Citizenship and Entry into Israel Law (temporary provision), 5763–2003 (Isr.) (unofficial translation).

208. *Id.*

209. *Id.*

210. *Id.* ("Every Jew has the right to come to this country as an *oleh* [Jew immigrating]").

211. *See* Quigley, *supra* note 180, at 187 (explaining a right of return for displaced Palestinians would create peace between the two nations).

212. *Id.*

213. *Cf. id.* at 197, ("The African Charter on Human and Peoples' Rights states that 'every individual' is entitled 'to return to his country.'").

214. *Id.* at 193 (explaining that Palestinians should be entitled to self-determination to move back to the homeland).

Therefore, if Palestinians were given an opportunity to unite in their homeland, the demand for equal immigration of Jews and Palestinians to Israel could no longer be based on the equal rights of Palestinians to return to their homeland. This equality would have already been achieved.²¹⁵ The next equal rights issue would be the right of Israeli citizens to invite their relatives into the State.²¹⁶ However, this right does not exist for anyone, including Jews.²¹⁷ A Jewish citizen cannot demand that the State allow the immigration of a Greek citizen as his business partner or the immigration of a Belgian citizen with whom he had developed a strong friendship. Not even a Mexican citizen the Jewish citizen wishes to marry gains this right.²¹⁸ The right of Jews to enter the State of Israel does not arise from any right given to a Jewish citizen. Rather, it comes from a legislative resolution allowing entrance to the Jewish nation worldwide based on the historical and legal circumstances of its establishment.²¹⁹

It can be argued that the demand is not for equality between citizens, but a demand of the State to behave equally to different nationalities within it.²²⁰ This is a demand for a national right in its most refined form.²²¹ Of course it also has personal repercussions.²²² It can be reasonably claimed that the quality of life for Israeli-Palestinians would be improved if they were part of a group constituting forty percent of the population, instead of twenty percent.²²³ However, this doubtful hypothetical implies a given right of the minority, to cease being a minority, which is unrecognized.²²⁴ Moreover, it dismisses the grounds for some of the protections required by minority rights.²²⁵ As stated by Margalit and Halbertal, “in

215. *Id.*

216. *Contra* Law of Return, 5710–1950, SH No. 51 p. 159 (Isr.) (granting any Jew, his spouse, children and grandchildren and their spouses the right to enter Israel) (amended by 5730–1950, SH No. 586 p. 34 (Isr.)), available at <http://www.knesset.gov.il/laws/special/eng/return.htm>.

217. *Id.*

218. *See generally id.*

219. *See id.*

220. *See* Margalit & Halbertal, *supra* note 25, at 510 (arguing nation-states must be neutral to majority culture yet assist majority cultures).

221. *Id.*

222. *See generally id.* at 509 (explaining the cultural impact on a Right of Return for Israeli Palestinians).

223. *But see* Palestinian Cent. Bureau of Statistics, *supra* note 81.

224. *See* Margalit & Halbertal, *supra* note 25, at 509.

225. *Id.*

most cases the majority preserves its homogeneity by enacting immigration and citizenship laws for the State as a whole, which creates an unequal situation that needs to be balanced by granting privileges to the minority.”²²⁶ In this context, a claim for equal immigration represents a political desire to become a bi-national State.²²⁷ This is a legitimate desire, but it does not rely upon a human right or a civil right.²²⁸ The more it relies upon a national right, the more it should be examined whether it promotes equality between the nations.²²⁹ My argument is that the establishment of a Palestinian State, coupled with a demand for bi-nationalism in the Israeli state, inherently promotes inequality between the nations.²³⁰ The establishment demands that Palestinians be allowed the unrestricted right to migrate to the entire territory of their homeland, while restricting the immigration of Jews to the borders of the State of Israel alone.²³¹ This argument does not restrict immigration of Palestinians to Israel on the basis of family reunifications, humanitarian reasons, a free immigration policy, or any other basis.²³² However, the argument is that with the establishment of a Palestinian State, immigration should be based on individual rights or political negotiations.²³³ A demand for equal immigration of Jews and Palestinians could not be an acceptable solution if it involves separate control between the two nations over parts of the land.²³⁴

CONCLUSION

The discussion of group rights of Palestinian citizens of

226. *Id.*

227. *Id.* at 510.

228. *Id.* at 509.

229. *Id.* at 497 (explaining that the historical identity was changed from a religious right to a national right).

230. *Id.* at 509–10.

231. *Id.* at 509 (assuming the migration of Jews to the Palestinian State would not be freely allowed).

232. See Quigley, *supra* note 180, at 198 (analyzing the challenges of immigration from a humanitarian perspective).

233. *Id.* at 211 (explaining an immigration proposal should be “equal and non-discriminatory rights in civil, political, economic, and religious matters.”).

234. *Id.* (explaining that “[o]ne such right would have been that to nationality.”).

Israel is a complicated, delicate, and loaded subject.²³⁵ In recent years, positions from both sides have become increasingly extreme, making it difficult to hold thorough, honest discussions.²³⁶

In this paper, I have offered one logical and persistent analysis to recognize the rights of the Palestinian minority in Israel in the situation where a recognized Palestinian State exists alongside Israel.²³⁷ The claim that the resolution of the Israeli Palestinian conflict does not affect the inner-Israeli Jewish-Arab discussion is in my view implausible and unsupported. Some claims brought by Israeli Palestinian leadership rely on a significant national basis.²³⁸ Surely, resolution of the national conflict would have serious repercussions on the Jewish-Arab inner-Israeli discussion.

The solutions offered in this paper are not exclusive, but I argue they are reasonable solutions within a liberal society.²³⁹ At least for the coming decades, the existence of a State with a clear Jewish hegemony backed by government support is justified. At the same time, however, this justification cannot rationalize the injustice created by the Jewish hegemony today, both within the State and more severely in other territories under the State's control.²⁴⁰ If the Israeli occupation of the Palestinian territories comes to an end and with it the oppression of the Palestinian nation, the opportunity for a mutual recognition of group rights between both nations will emerge.²⁴¹ In such a case, the discussion must take into account the fulfillment of national rights in the whole region. Some claims from the "Visionary Documents" entail harm for the Jewish hegemony, which in my view serves the legitimate interests of the Jewish Israelis.²⁴² There is no justification for

235. See *supra* Introduction, text accompanying note 3 (describing the history of Palestinian rights over the past 65 years).

236. See, e.g., *supra* notes 5–6 and accompanying text.

237. See *supra* note 10 and accompanying text; see also Parts 4.A–4.F (detailing the various specific collective rights).

238. See *supra* note 15 and accompanying text.

239. See, e.g., TAYLOR, *supra* note 37.

240. See *supra* notes 73–74 and accompanying text.

241. *Contra* Law of Return, 5710–1950, SH No. 51 p. 159 (Isr.) (granting any Jew, his spouse, children and grandchildren and their spouses the right to enter Israel) (amended by 5730–1950, SH No. 586 p. 34 (Isr.)), available at <http://www.knesset.gov.il/laws/special/eng/return.htm> ("A Palestinian is deprived the right to unite with the Palestinian people in one single territory, and is denied cultural prosperity through interpersonal interaction.").

242. See *supra* note 15 and accompanying text.

making these claims beyond the extent required to promote Palestinian culture. An established Palestinian State would take the role of advancing and developing the Palestinian culture, greatly reducing this necessity.

In conclusion, I argue that the solutions offered in the latter part of this paper would not cause great harm to Israeli-Palestinian rights.²⁴³ The harm, if any, would be the requirement to relinquish claims involving the balance of power between the minority and the State.²⁴⁴ However, these claims would be unnecessary because the recognized Palestinian State would meet most national needs for the Palestinian people and would not require fulfillment in neighboring Israel.²⁴⁵ In contrast, the Jewish-Hebrew culture does not enjoy support or fulfillment of its group rights elsewhere and as such, the Jewish-Hebrew culture deserves continued special protection granted by the State of Israel.²⁴⁶

243. *See supra* Parts 4.A–4.F.

244. *See supra* text accompanying notes 227–228.

245. *See supra* text accompanying notes 232–234.

246. *See supra* notes 77–78 and accompanying text.