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“WHO ARE THE LANDLORDS HERE?” - GROUP RIGHTS IN  
THE AGE OF POPULISM:

JEWISH OWNERSHIP OF SYMBOLIC AND GEOGRAPHIC  
SPACE IN ISRAEL

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ABSTRACT

*The world is witnessing the rise of far-right political parties. In Israel's recent national legislative election, Jewish Power (Otzma Yehudit), a far-right, anti-Arab political party, reached an unprecedented achievement. The party won six seats in the Knesset and its leader, Itamar Ben Gvir was appointed as the Minister of National Security. “Who are the Landlords Here?” was the party's election slogan; it signals that Jews should not only own the state but also its public space. This normative political statement aligns with the dominant attitude towards group rights for the Arab-Palestinian citizens of Israel. The dominant attitude perceives group rights in a space shared by Jews and Arab-Palestinians as controversial because they disrupt Jewish ownership of the public space in Israel.*

*This Article presents two main arguments. First, to explain the perceived threat of group rights, it divides such rights for the Arab-Palestinian minority into two categories: (1) group rights manifested in a space shared by Jews and Arab-Palestinians, and (2) group rights manifested in a space in which almost exclusively Arab-Palestinians reside. Employing this distinction, the Article argues that when group rights for the Arab-Palestinian minority are exercised in a space shared by Jews and Arab-Palestinians, Jews are more likely to resist the rights because they are usually perceived as threatening Israel's Jewish character. However, when group rights for the Arab-Palestinian minority are manifested in a space shared almost exclusively by*

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*Arab-Palestinians, group rights are much less controversial among the Jewish majority.*

*The Article's second argument draws a connection between Israeli Jews' common fear of group rights for the Arab-Palestinian minority when the groups share common spaces, and the geographic separation between Arab-Palestinians and Jews in the issue of housing and settlement. The fact that most Jews in Israel are reluctant to live in a common geographic space with Arab-Palestinians supports the Article's first argument, which suggests that Israeli Jews perceive group rights as controversial only when they threaten Jewish dominance over Israel's symbolic and geographic space. When Arab-Palestinians disrupt the traditional order by moving to mixed cities or communities mostly inhabited by Jews, they are considered threats to the Jewish character of the public space. The same is true for group rights. When group rights extend beyond the specific geographic realm designated for Arab-Palestinian citizens and penetrate the symbolic and geographic domains common to Israeli citizens, they are perceived as a threat to Jewish dominance in Israel and to Israel's Jewish character.*

*The Israeli case study suggests that space matters. Discussions of group rights should consider where the rights are manifested, since their proximity to the majority population adds a significant dimension to the analysis.*

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## I. INTRODUCTION

“Who are the Landlords Here?” was a catchy slogan in Israel’s 2022 legislative election.<sup>1</sup> The slogan was presented by Otzma Yehudit (“Jewish Power”), an extreme-right political party. Otzma Yehudit was led by then-Knesset member, Itamar Ben-Gvir, who was appointed to be Israel’s Minister of National Security position following his party’s success in the 2022 election.<sup>2</sup> The slogan signals the belief that Jews should reassert ownership of Israel by claiming ownership of its public space.<sup>3</sup> It assumes that Jewish ownership of public space needs to be reaffirmed because it is disrupted by Arab-Palestinians.<sup>4</sup> As I will argue in this Article, this populist political statement resonates with many Israeli Jews, especially in the context of group rights for Arab-Palestinian citizens of Israel. The dominant Israeli attitude views group rights for Arab-Palestinians in spaces shared by Jews and

<sup>1</sup> See, e.g., Patrick Kingsley, *Far Right’s Rise in Israel Driven by Anxiety and Fear*, N.Y. TIMES (Nov. 5, 2022), <https://www.nytimes.com/2022/11/05/world/middleeast/israel-election-far-right.html> [<https://perma.cc/XXJ7-LH5B>]; Nathan Vanderklippe, *Israel’s National Security Minister Itamar Ben-Gvir Brings Fury from the Right-Wing Fringes to Netanyahu’s Government*, GLOBE & MAIL, <https://www.theglobeandmail.com/world/article-israel-itamar-ben-gvir-netanyahu-government/> [<https://perma.cc/NU93-NSNL>] (Feb. 24, 2023).

<sup>2</sup> Shira Rubin, *Itamar Ben Gvir: How an Extremist Settler Became a Powerful Israeli Minister*, WASH. POST, <https://www.washingtonpost.com/world/2023/02/15/israel-ben-gvir-netanyahu-government/> [<https://perma.cc/WVX7-A9XH>] (Feb. 22, 2023, 8:42 PM).

<sup>3</sup> Bezael Smotrich: ‘Jews Are the Landlords of this Land’, JERUSALEM POST (Oct. 7, 2019, 2:03 AM), <https://www.jpost.com/israel-elections/bezael-smotrich-jews-are-the-landlords-of-this-land-603841> [<https://perma.cc/BJZ6-PT9P>].

<sup>4</sup> Dov Lieber & Aaron Boxerman, *Israel’s Far-Right Itamar Ben-Gvir Poised to Become Political Force*, WALL ST. J. (Oct. 23, 2022, 8:22 AM), <https://www.wsj.com/articles/israels-far-right-itamar-ben-gvir-poised-to-become-political-force-11666527734> [<https://perma.cc/M8JW-TMXJ>]; Josef Federman, *As Israel’s Netanyahu Nears Victory, Trouble May Lie Ahead*, SEATTLE TIMES, <https://www.seattletimes.com/nation-world/israels-netanyahu-appears-to-edge-toward-victory-after-vote/> [<https://perma.cc/ZE3Y-LDDP>] (Nov. 3, 2022, 1:39 AM); Ruth Margalit, *Itamar Ben-Gvir, Israel’s Minister of Chaos*, THE NEW YORKER (Feb. 20, 2023), <https://www.newyorker.com/magazine/2023/02/27/itamar-ben-gvir-israels-minister-of-chaos> [<https://perma.cc/ZE3Y-LDDP>].

Arab-Palestinians as contentious because they undermine Jewish ownership of public space in Israel.

The Arab-Palestinian minority constitutes the largest minority in Israel, comprising approximately 20.8% of the country's citizens.<sup>5</sup> These Arab-Palestinians are individuals who did not become refugees following the 1948 Arab-Israeli War; instead, they remained within the territory that later became the State of Israel.<sup>6</sup> From 1948 until 1966, Arab-Palestinians were subjected to a military government that authorized a military commander to proclaim certain areas closed. Arab-Palestinians could only enter or exit such areas with permits.<sup>7</sup> After 1966, they gradually acquired Israeli citizenship.<sup>8</sup> Israel's Arab-Palestinians are a quintessential minority group. On average, Israeli Arab-Palestinians earn lower incomes than Israeli Jews, reside in communities lacking infrastructure or public spaces, and face significant discrimination despite being legally equal to Israeli Jews.<sup>9</sup>

This Article focuses on group rights that seek to safeguard the cultural identity of Arab-Palestinians who hold Israeli citizenship. Before delving into the core arguments presented in this Article, two disclaimers need to be made. Firstly, the Article does not address the rights or status of Arab-Palestinians who are not citizens of the State of Israel, such as most of those living in Gaza or the Palestinian Authority territories. This Article analyzes Jewish Israeli social attitudes towards Arab-Palestinian cultural group rights in Israel.<sup>10</sup> The Article

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<sup>5</sup> Media Release, State of Israel Cent. Bureau of Stats., On the Eve of Israel's 69th Independence Day – 8.7 Million Residents in the State of Israel 1 (Apr. 27, 2017), <http://www.cbs.gov.il/www/hodaot2017n/11-17-113e.pdf> [<https://perma.cc/7FYNK2V7>].

<sup>6</sup> Alexandre Sandy Kedar, *Dignity Takings and Dispossession in Israel*, 41 L. & SOC. INQUIRY 866, 871 (2016).

<sup>7</sup> *Id.* at 873.

<sup>8</sup> Yoav Peled, *The Evolution of Israeli Citizenship: An Overview*, 12 CITIZENSHIP STUD. 335, 337 (2008).

<sup>9</sup> Yousef T. Jabareen, *The Arab-Palestinian Community in Israel: A Test Case for Collective Rights Under International Law*, 47 GEO. WASH. INT'L L. REV. 449, 452 (2015).

<sup>10</sup> The Arab-Palestinian citizens of Israel are not a monolithic group. They exhibit internal diversity based on factors such as religion, socio-economic class, and political beliefs. Like any other minority group, their cultural and national identities are multifaceted. However, the majority of Arab-Palestinian citizens in Israel are descendants of the Palestinian people who lost control of their homeland during the 1948 conflict. Amal Jamal, *The Contradictions of State-Minority Relations in Israel: The Search for Clarifications*, 16 CONSTELLATIONS 493, 494 (2009). Some identify themselves as "Israeli Arabs," while others prefer the terms "Palestinians" or "Palestinian Israeli citizens." The term "Arab-Palestinians who are Israeli citizens" aims

suggests that to comprehend these attitudes, it is helpful to differentiate between group rights for the Arab-Palestinian minority that primarily affect spaces exclusively inhabited by Arab-Palestinians, which tend to be less contentious among Israeli Jews, and group rights that impact spaces shared by Jews and Arab-Palestinians, which are more highly disputed.

Secondly, Arab-Palestinian group rights are often presented in a positive, multicultural context, and they aim to safeguard Arab-Palestinian cultural heritage within Israel. These group rights are typically categorized within the different contexts in which they are applied, such as language, education, religion, and political representation.<sup>11</sup> Furthermore, group rights are often viewed as a legal mechanism to address the unique position of Arab-Palestinians as a national and religious minority within a nation-state dominated by a Jewish majority.<sup>12</sup> They are seen as a form of “compensation” for this minority status.<sup>13</sup> This Article does not seek to contradict the value of Arab-Palestinian group rights within Israel. Instead, it focuses on the geographic and symbolic spaces in which these group rights operate, offering an explanation for their varying perceptions among Israeli Jews.

The Article categorizes group rights for the Arab-Palestinian minority into two distinct types: those manifested in spaces shared by Jews and Arab-Palestinians and those manifested in spaces predominantly inhabited by Arab-Palestinians. Comprehensive language rights are one such group right, which aim to safeguard the Arabic language by placing obligations on official institutions—such as municipalities, courts, and government entities—to communicate with

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to encompass both options, acknowledging the common combination of “Arab,” “Palestinian,” and “Israeli” identities. For further reading on this topic, see Honaida Ghanim, *Between Nakba and Naksa: Palestinian Intellectuals in Israel: Articulating Meanings of Homeland and Citizenship*, 8 MIT ELEC. J. MIDDLE E. STUD. 176, 176-77 (2008).

<sup>11</sup> See, e.g., 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, 888 (2004); Mohammed Saif-Alden Wattad, *Israeli Arabs: Between the Nation and the State*, 6 INDIGENOUS L.J. 179, 188 (2007); Zeev Segal, *Do Israeli Arabs Have Collective Rights?*, 12 J.L. SOC’Y 94, 95, 100-108 (2010); Yousef T. Jabareen, *The Politics of Equality: The Limits of Collective Rights Litigation and the Case of the Palestinian-Arab Minority in Israel*, 4 COLUM. J. RACE & L. 23, 26 (2013).

<sup>12</sup> See, e.g., Saban, *supra* note 11; Wattad, *supra* note 11; Segal, *supra* note 11; Jabareen, *supra* note 11.

<sup>13</sup> See, e.g., Saban, *supra* note 11; Wattad, *supra* note 11; Segal, *supra* note 11; Jabareen, *supra* note 11.

the public in Arabic. These obligations include providing information in Arabic, adding Arabic captions to public signs, and ensuring the availability of officials capable of providing oral information in Arabic. This group right manifests in public spaces shared by Jews and Arab-Palestinians, since civil, criminal, and administrative courts exist in cities inhabited by both Jews and Arab-Palestinians. So do government offices that operate, for instance, under the Ministries of the Interior and Transportation, which also exist in shared spaces.

One example of group rights manifested in a space shared almost exclusively by Arab-Palestinians, which I have discussed elsewhere,<sup>14</sup> is the religious courts system, which serves to protect the rights of religious minorities by allowing their religious practices to exist within a predominantly Jewish state.<sup>15</sup> Each religious court has exclusive jurisdiction over matters of marriage and divorce within its respective religious community, including both religious and non-religious members.<sup>16</sup> Since these religious courts are typically located in towns predominantly inhabited by Arab-Palestinians and are utilized exclusively by Muslim and Christian populations, they exemplify a group right that is predominantly exercised in a space inhabited almost exclusively by Arab-Palestinians.

This Article illustrates that when group rights for the Arab-Palestinian minority are implemented in spaces shared by Jews and Arab-Palestinians, they receive greater resistance from Jewish individuals. Such group rights are often seen as threats to Israel's Jewish character and are consequently perceived as more controversial. When group rights are exercised in spaces that are predominantly inhabited by Arab-Palestinians, however, they tend to generate less controversy among Jews.

This Article also draws a parallel between the prevailing Israeli-Jewish attitude towards Arab-Palestinian group rights and the issue of geographic housing separation between Jews and Arab-Palestinians. Israeli Jewish reluctance to live in common geographic spaces

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<sup>14</sup> Meital Pinto, *The Absence of the Right to Culture of Minorities Within Minorities in Israel: A Tale of a Cultural Dissent Case*, 4 LAWS 579, 583, 589 (2015).

<sup>15</sup> Josh Goodman, *Divine Judgment: Judicial Review of Religious Legal Systems in India and Israel*, 32 HASTINGS INT'L & COMP. L. REV. 477, 489-94, 514-16 (2009).

<sup>16</sup> For a detailed account of the relationship between religious courts and Muslims, Christians, and Druze in Israel, see MICHAEL MOUSA KARAYANNI, A MULTICULTURAL ENTRAPMENT: RELIGION AND THE STATE AMONG THE PALESTINIAN-ARABS IN ISRAEL 86-92, 118-32 (2021).

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with Arab-Palestinians supports the argument that group rights are perceived as controversial by the Jewish public when they are seen as threats to Jewish dominance in Israel's symbolic and geographic space.

When Arab-Palestinians disrupt the traditional order by moving to mixed communities, they are considered a threat to the Jewish character of public space in Israel. The same perception applies to group rights. When group rights extend beyond the geographies designated for Arab-Palestinian citizens and encroach upon the geographic domain shared by all Israeli citizens, they are seen as threats to Jewish dominance in Israel and the country's Jewish character.

The Article concludes that group rights in the shared space for Jews and Arabs do not actually jeopardize the state. On the contrary, they have the potential to foster civic solidarity between Jews and Arab-Palestinians. Similarly, housing integration between Arab-Palestinians and Jews does not pose a risk to the Jewish character of Israel, nor does it compromise the distinct identity preservation of both communities.

The Article is structured as follows: Section II provides a definition of group rights as understood in the context of the Article. Section III introduces a distinction between group rights that are manifested in a space shared by Jews and Arab-Palestinians and those in spaces exclusively inhabited by Arab-Palestinians. It highlights that Israeli law, including case law and literature, tends to recognize group rights in exclusively Arab-Palestinian spaces while reluctantly recognizing group rights in shared spaces. This reluctance stems from the Jewish Israeli perception that group rights shared with Arab-Palestinians threaten the Jewish character of Israel. Section IV references socio-geographical research to illustrate the geographical separation between Jews and Palestinian-Arabs in Israeli towns and villages. This geographic separation supports the argument made in Section II by demonstrating that Israeli Jews are resistant to supporting group rights in shared spaces. The geographic separation reinforces the idea that many Jews consider themselves the "owners of the house," symbolizing the public sphere in Israel. Section V suggests that group rights in shared spaces are wrongly perceived as potential threats to the state's Jewish character. On the contrary, Section V details how these group rights have the potential to foster civic solidarity between Jews and Arab-Palestinians without compromising Israel's Jewish character. Similarly, it argues that housing integration between Arab-

Palestinians and Jews does not pose a risk to the Jewish character of Israel or compromise the distinct identities of both communities.

## II. WHAT ARE GROUP RIGHTS?

This Article distinguishes group rights in spaces shared by Jews and Arab-Palestinians from group rights in spaces inhabited almost exclusively by Arab-Palestinians. Under Israeli law, group rights are perceived as rights that safeguard individuals as members of a specific group, while individual rights are seen as protecting individuals as individuals, independent of group membership.<sup>17</sup>

Group rights are often understood as rights that protect cultures due to their personal significance to individuals,<sup>18</sup> and protect individuals' ability to make choices.<sup>19</sup> Group rights stem from the recognition that minority groups are vulnerable to assimilation into the dominant majority culture and thus seek to prevent destruction of minority group culture.<sup>20</sup> When overshadowed by a dominant culture, minority cultures may struggle to maintain distinct practices, languages, traditions, and values.<sup>21</sup> In contrast, the majority group typically does not need special cultural protection, as its numerical and societal dominance enables it to preserve and promote its cultural practices.<sup>22</sup>

Group rights, in addition to their focus on protecting minority cultures and the individual members of the minority, also encompass the notion of participatory goods and interests.<sup>23</sup> This notion distinguishes group rights from individual rights. Participatory goods are

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<sup>17</sup> Saban, *supra* note 11, at 888; Segal, *supra* note 11, at 96-97; Meital Pinto, *Taking Language Rights Seriously*, 25 KING'S L.J. 231, 242 (2014).

<sup>18</sup> See Charles Taylor, *The Politics of Recognition*, in MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION 25, 31-37 (Amy Gutmann ed., 1994); Gidon Sapir, *Religion and State—A Fresh Theoretical Start*, 75 NOTRE DAME L. REV. 579, 583, 623, 629-30, 641 (1999); Denise G. Réaume, *Beyond Personality: The Territorial and Personal Principles of Language Policy Reconsidered*, in LANGUAGE RIGHTS AND POLITICAL THEORY 271, 283 (Will Kymlicka & Alan Patten eds., 2003).

<sup>19</sup> See WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS 126 (1996) (explaining that “the context of individual choice is the range of options passed down to us by our culture. Deciding how to lead our lives is, in the first instance, a matter of exploring the possibilities made available by our culture.”).

<sup>20</sup> *Id.* at 108-15.

<sup>21</sup> *Id.*

<sup>22</sup> Réaume, *supra* note 18, at 286; Pinto, *supra* note 17, at 233.

<sup>23</sup> Denise Réaume, *Individuals, Groups, and Rights to Public Goods*, 38 U. TORONTO L.J. 1, 10 (1988).



the cultural products and benefits that arise through the collective participation of individuals within a minority group.<sup>24</sup> They recognize that a culture is not created or valued solely by one individual, but through the collaborative efforts and contributions of a group of individuals that actively engages in its creation, maintenance, and consumption.<sup>25</sup> Culture is dynamic; it evolves and adapts as the participating individuals undergo changes in their lives and experiences. Group rights reflect the interplay between collective actions, shared practices, and shared group meanings. Group rights are participatory and imply that a single individual alone cannot produce or fully benefit from the richness and value of a participatory good, such as a culture.<sup>26</sup>

There is no significant distinction between religious and non-religious cultural frameworks; both religious and non-religious cultural frameworks shape the social experiences and identity of individuals.<sup>27</sup> Thus, freedom of religion is viewed as a group right that is designed to protect and promote the cultural identity and practices associated with a particular religious or cultural framework.

From this perspective, group rights encompass the recognition and protection of collective cultural expressions, practices, and values that arise from shared cultural frameworks, including religion. They acknowledge the importance of these cultural frameworks in shaping the social identities and experiences of individuals in a group and seek to safeguard the group's freedom to preserve and express its cultural heritage.

### III. GROUP RIGHTS MANIFESTED IN A SPACE SHARED BY JEWS AND ARAB-PALESTINIANS VERSUS GROUP RIGHTS MANIFESTED IN A SPACE SHARED ALMOST EXCLUSIVELY BY ARAB-PALESTINIANS

#### A. *Group Rights and Space*

The discussion of group rights for the Arab minority in Israel often involves examining the specific subjects or areas to which these rights pertain. These subjects typically include education, language, religion, marriage and divorce, exemption from military service, and

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.* at 4-5, 10-11, 23-24; Pinto, *supra* note 17, at 241.

<sup>27</sup> Pinto, *supra* note 17, at 244-50.

representation in public institutions.<sup>28</sup> Each category represents a specific aspect of the Palestinian-Arab minority's cultural identity and its participation in society.<sup>29</sup>

Ideological associations with group rights demands are also significant factors in the discussion of group rights for the Palestinian-Arab minority in Israel. Some demands for group rights may align with liberal principles, which emphasize individual rights, equality, and non-discrimination.<sup>30</sup> Other demands for group rights, such as subsidizing religious offices while excluding women from these positions, or exempting children of religious minority members from the core curriculum, are more based in conservative or communitarian perspectives.<sup>31</sup>

This Article focuses on the space in which group rights for the Arab-Palestinian minority are realized. The term "space" encapsulates two kinds of spaces. The first is geographic space that can be demarcated by physical boundaries, such as towns, villages, and neighborhoods. Group rights in geographic spaces primarily involve the allocation of resources, services, and protections within specific territories. Examples could include provisions for education, infrastructure, public services, and religious institutions that are tied to physical boundaries.<sup>32</sup> The second kind of space is symbolic space, which extends beyond specific geographic locations and encompasses the shared institutions that represent the state as a whole.<sup>33</sup> Symbolic space pertains to the broader realm in which the state utilizes its power to convey ideological, political, and cultural messages.<sup>34</sup> Group rights

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<sup>28</sup> See, e.g., Ilan Saban, *Appropriate Representation of Minorities: Canada's Two Types Structure and the Arab-Palestinian Minority in Israel*, 24 PENN ST. INT'L L. REV. 587, 566-70 (2006); Jabareen, *supra* note 9, at 470-75.

<sup>29</sup> See, e.g., Saban, *supra* note 28; Jabareen, *supra* note 9, at 470-75.

<sup>30</sup> Saban, *supra* note 28, at 567.

<sup>31</sup> See, e.g., Gila Stopler, *Countenancing the Oppression of Women: How Liberals Tolerate Religious and Cultural Practices that Discriminate Against Women*, 12 COLUM. J. GENDER & L. 154, 162-63 (2003); Amnon Rubinstein, *Unashamed Liberalism: Liberal, Illiberal and Anti-Liberal Minorities*, 2 PUB. L. 270, 277-81 (2017).

<sup>32</sup> For an example of the relation between space and education for the Arab-Palestinian minority in Israel, see Manal Totry-Jubran, *Law, Space and Society: Legal Challenges of Middle-Class Ethnic Minority Flight*, 34 HARV. J. RACIAL & ETHNIC JUST. 57, 82-84 (2018). For an example of the relation between linguistic rights and geographic space in Finland, see Michael Tkacik, *Characteristics of Forms of Autonomy*, 15 INT'L J. MINORITY & GRP. RTS. 369, 377-80 (2008).

<sup>33</sup> For the characteristics of Israel's symbolic space, see HILLY MOODRICK-EVEN KHEN, NATIONAL IDENTITIES AND THE RIGHT TO SELF-DETERMINATION 125 (2016).

<sup>34</sup> *Id.*

that operate in a symbolic space transcend specific territories and encompass the broader national framework of the state. These rights concern the recognition and visibility of the Palestinian-Arab minority within national symbols, language usage, official institutions, and overall public representation. Group rights in the symbolic space encompass expression and preservation of cultural identity, language rights, political representation, and national acknowledgment of the minority's presence and contributions.<sup>35</sup>

Concentrating on the geographic space in which group rights for the Arab-Palestinian minority operate, this Article distinguishes between group rights in spaces shared by Arab-Palestinians and Jews, and those in spaces exclusively inhabited by Arab-Palestinians. Group rights in spaces shared by Arab-Palestinians and Jews involve the recognition and protection of the cultural identity, language, religious practices, and political representation of the Arab-Palestinian minority.<sup>36</sup> Although they are far from achieving their targets, these rights aim to ensure equal participation and inclusion of Arab-Palestinians in shared geographic spaces, such as municipalities, government institutions, public services, and educational settings.<sup>37</sup> Examples could include comprehensive language rights, affirmative action policies, and measures promoting cultural diversity and representation.

Group rights in predominantly Arab-Palestinian areas primarily address the unique needs, interests, and cultural preservation of a particular Arab-Palestinian community. They may include provisions for education, healthcare, infrastructure development, and religious institutions that cater specifically to the Arab-Palestinian population.

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<sup>35</sup> The language of public signage serves as a resource that operates in both physical and symbolic spaces simultaneously. In the physical or geographic space, public signage, such as street signs, may vary from one area, like a town or village, to another. It adapts to the specific characteristics and needs of each location. At the same time, public signage operates in the symbolic space by conveying political, cultural, and ideological messages on behalf of the state or authorities. Through the choice of language, design, and placement, public signage can reinforce a sense of identity, belonging, and shared values among the population. In summary, public signage serves a dual function, functioning both as a practical means of navigation in physical spaces and as a medium for communicating broader messages and meanings in the symbolic realm. See, e.g., Amit Pinchevski & Efraim Torgovnik, *Signifying Passages: The Signs of Change in Israeli Street Names*, 24 MEDIA, CULTURE & SOC'Y 365, 367-68 (2002).

<sup>36</sup> Amal Jamal, *Strategies of Minority Struggle for Equality in Ethnic States: Arab Politics in Israel*, 11 CITIZENSHIP STUD. 263, 269-77 (2007); MOODRICK-EVEN KHEN, *supra* note 33, at 108-09.

<sup>37</sup> Jamal, *supra* note 36; MOODRICK-EVEN KHEN, *supra* note 33, at 108-09.

The distinction between group rights in shared spaces and group rights in predominantly Arab-Palestinian spaces reflects the complexity of balancing collective rights in a multicultural society. Group rights in shared spaces may be perceived as controversial by some members of the Jewish majority, who believe that these group rights potentially challenge the national Jewish character.<sup>38</sup> On the other hand, group rights in spaces exclusively inhabited by Arab-Palestinians may be viewed as less controversial, as they are seen as preserving and supporting the minority's cultural identity and addressing their specific needs without threatening the Jewish majority.<sup>39</sup>

*B. Group Rights in Shared Spaces: Comprehensive Language Rights*

Language rights epitomize group rights in spaces shared by Jews and Arab-Palestinians, specifically in the context of Arabic language protection. Language rights aim to safeguard linguistic minorities and ensure the preservation and recognition of their languages within a diverse society.<sup>40</sup> In Israel, where Hebrew is the majority language, Arabic language rights play a significant role in protecting the linguistic rights and cultural identity of the Arab-Palestinian minority.<sup>41</sup> These rights encompass various aspects, such as the use of Arabic in public signage, official documents, educational institutions, government services, and communication with public officials. They also include access to Arabic-language media, literature, and cultural resources.<sup>42</sup>

Comprehensive language rights go beyond the passive freedom to speak a preferred language; they require the state to utilize a particular language in its official activities and public services.<sup>43</sup> Examples of such comprehensive language rights include the duty of the state to publish laws and legal documents in the minority language; include the minority language on street signs and other directional

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<sup>38</sup> Michael Mousa Karayanni, *Multiculture Me No More! On Multicultural Qualifications and the Palestinian-Arab Minority of Israel*, 54 *DIOGENES* 39, 48-50 (2007); Jamal, *supra* note 10, at 503.

<sup>39</sup> Karayanni, *supra* note 38, at 52.

<sup>40</sup> Pinto, *supra* note 17, at 233.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 250-52.

signs; and employ officials in government ministries, agencies, and public service sectors who are proficient in the minority language.<sup>44</sup>

Comprehensive language rights are often exercised in the common space of the majority and the minority groups, extending beyond the geographical confines of the minority group and imposing a burden on the majority group. Elsewhere, I call this a “cultural burden.”<sup>45</sup> For comprehensive language rights to be effectively realized, members of the majority group may need to learn and become proficient in the minority language.<sup>46</sup> This may involve providing language education, training programs, or resources to enable members of the majority group to communicate and interact in the minority language. It represents a form of cultural burden since it requires the majority group to adapt and make efforts to facilitate linguistic inclusivity.<sup>47</sup>

When comprehensive language rights are granted, they require that state authorities communicate in the minority language.<sup>48</sup> Every administrative authority should allocate and train personnel who can speak the minority language with citizens. In this way, the majority members are proficient in the minority culture, at least to some extent. By ensuring that the minority language is actively used in the public sphere, comprehensive language rights make the minority language a visible and integral part of the country’s public life. Exposure to the minority language in public spaces, institutions, and interactions can have a transformative effect on majority members, as they routinely engage with and acknowledge the minority culture and language.<sup>49</sup> The requirement that state authorities provide services and conduct official communications in the minority language means that members of the majority group, even if they initially have no personal interest or desire to learn the minority language, are exposed to it in the public space. They become a captive audience, encountering the minority language in their everyday interactions with government institutions, public signage, official documents, and public events. Comprehensive language rights therefore have an “eruptive” character, which penetrates the space of the majority members.<sup>50</sup>

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<sup>44</sup> *Id.* at 233-34.

<sup>45</sup> *Id.* at 250-52.

<sup>46</sup> Pinto, *supra* note 17, at 250-52.

<sup>47</sup> *Id.* at 250-54.

<sup>48</sup> *Id.* at 251.

<sup>49</sup> *Id.* at 250-52.

<sup>50</sup> *Id.*

So far, I broadly described comprehensive language rights for minority languages in shared minority-majority spaces. I will now focus on Arabic language rights in Israel. The tension surrounding the protection of Arabic through a comprehensive language rights framework highlights broader complexities of balancing group rights, cultural preservation, national identity, equality, and inclusivity in a multicultural society.<sup>51</sup> These complexities reflect the ongoing challenges faced by societies with diverse linguistic and cultural communities, where the recognition and protection of minority languages can be a contentious issue tied to questions of power, identity, and collective belonging.<sup>52</sup>

In the Israeli context, the protection of the Arabic language through comprehensive language rights carries a significant cultural burden for the Jewish majority. Rights-based protection of Arabic requires public institutions, government bodies, and officials to provide services, disseminate information, and engage with citizens in both Hebrew and Arabic.<sup>53</sup> This entails financial investments, training programs, and policy adjustments ensuring effective communication in both languages.<sup>54</sup> For the Jewish majority, this investment may be seen as an added burden that compromises the linguistic and cultural primacy of Hebrew.<sup>55</sup> Hebrew is defined as Israel's state language.<sup>56</sup> It holds a central role in shaping the Jewish national identity and is deeply intertwined with Jewish history and culture.<sup>57</sup> As a result, any measures that elevate the status of Arabic, the language of the Arab-Palestinian minority, may be perceived by some members of the

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<sup>51</sup> *Id.* at 241-44.

<sup>52</sup> Pinto, *supra* note 17, at 241-44.

<sup>53</sup> Meital Pinto, *The Impact of the Basic Law: Israel as the Nation State of the Jewish People on the Status of the Arabic Language in Israel*, 30 MINN. J. INT'L L. 1, 4-11 (2020).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 22-23

<sup>56</sup> *Id.* at 2.

<sup>57</sup> Hebrew is the original language of the Tanakh. But the ideology of Hebrew as the everyday language and identity of Jews in Israel emerged with the establishment of the Zionist movement that placed greater emphasis on the idea that Hebrew should be the primary language of Jews in Israel. The Zionist movement was influenced by the national movement in Europe that drew a connection between territory and language. JOHN MYHILL, *LANGUAGE IN JEWISH SOCIETY: TOWARDS A NEW UNDERSTANDING* 16, 23, 28, 70-82 (2004); RON KUZAR, *HEBREW AND ZIONISM: A DISCOURSE ANALYTIC CULTURAL STUDY* 60-65 (2012).

Jewish majority as potentially threatening the Jewish character of Israel and challenging Israel's status as a Jewish homeland.<sup>58</sup>

Israeli law encompasses various provisions concerning the use of languages spoken by linguistic minorities. Under the section titled "Official languages," Article 82 of the Palestine Order in Council requires that government orders, official notices, and official forms in areas designated by the government are published in both Hebrew and Arabic.<sup>59</sup>

Article 82 may create the misconception that the protection provided to the Arabic language in Israel creates a comprehensive language rights regime. However, the reality in Israel is far from such classification.<sup>60</sup> The current situation in Israel indicates that the Arabic language is not present in most public space shared by Jews and Arabs.<sup>61</sup> Arabic language is virtually absent from various institutions within the Israeli Academy; municipal symbols (even in areas with a significant Arab population); the healthcare system (including clinics, hospitals, and emergency and mental health services); courts; district planning and building committees; the Ministry of the Interior; publications by Israel's Government Advertising Agency; the post office; and the prison service.<sup>62</sup> Arabic language is noticeably lacking in these institutions, despite their intended purpose of serving the general public in Israel.

A significant presence of Arabic in Jewish-Arab shared public space is often perceived as a threat to the Jewish majority, as it may

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<sup>58</sup> Pinto, *supra* note 53, at 22-23.

<sup>59</sup> 3 LAWS OF PALESTINE 2569, 2588 (Robert Harry Drayton ed., 1934). Before the establishment of the State of Israel, during the British Mandatory period, there were three official languages in Palestine: English, Arabic, and Hebrew. Their legal status was set in Article 82 of the Palestinian Order in Council – 1922. Immediately after the establishment of the State, all legal orders that mandated the use of English were abolished by clause 15(b) of the Law and Administration Ordinance (1948). § 15(b), Law and Administration Ordinance, 5708–1948 (Isr.), <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/49-Emergency-Orders-derived-from-Law-and-Administration-Ordinance-1948.pdf> [<https://perma.cc/65LX-3JCW>]. Thus, it reaffirmed the status of Hebrew and Arabic as Israel's official languages. See Saban, *supra* note 11, at 925-26; Pinto, *supra* note 53, at 4-5).

<sup>60</sup> Ilan Saban & Muhammad Amara, *The Status of Arabic in Israel: Reflections on the Power of Law to Produce Social Change*, 36 ISR. L. REV. 5, 21 (2002); Pinto, *supra* note 53, at 6-7.

<sup>61</sup> Yousef T. Jabareen, *Linguistic Rights for Minorities and the Quest for Equality: The Case for Arab-Palestinians in Israel*, 25 U. PA. J.L. & SOC. CHANGE 259, 275-76 (2022).

<sup>62</sup> Pinto, *supra* note 53 at 6-7.

be interpreted as a “victory” of minority culture over majority culture.<sup>63</sup> The negative perception of the Arabic language among Jews is undoubtedly influenced by its label as the “language of the enemy,”<sup>64</sup> as well as its historical connection to Jews from Arab countries (referred to as “Mizrachim” in Hebrew), who were subjected to longstanding discrimination and considered inferior by Israeli Jews of European descent.<sup>65</sup>

There is, therefore, a strong tendency among the Jewish public to believe that comprehensive protection of the Arabic language undermines the Hebrew language and Israel’s Jewish image.<sup>66</sup> This trend is also apparent in judicial decisions, which prioritize the safeguarding of Arabic in the public space shared by Jews and Arabs only when it is determined that Arab citizens are not proficient enough in Hebrew.<sup>67</sup> The belief that safeguarding Arabic in Israeli public space poses a threat to the Jewish image of the country was evident in Justice Mishael Cheshin’s minority opinion in a ruling on bilingual signage in mixed cities issued by the Israeli High Court of Justice.<sup>68</sup> In this judgment, the Israeli High Court deliberated on a request made by Adalah, the legal center for the Arab minority rights in Israel, to mandate that municipalities with a mixed Jewish-Arab population—including Tel Aviv-Jaffa, Ramle, and Lod—include Arabic captions on all municipal signage.<sup>69</sup> In the majority opinion, written by President Aharon Barak, the court ruled in favor of the petitioners’ request, obliging the respondents to add Arabic captions to street signs.<sup>70</sup> Justice Cheshin’s minority opinion, on the other hand, argued for the dismissal of the

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<sup>63</sup> *Id.* at 22-23.

<sup>64</sup> See YONATAN MENDEL, THE CREATION OF ISRAELI ARABIC: SECURITY AND POLITICS IN ARABIC STUDIES IN ISRAEL 4-8 (2014); MUHAMMAD AMARA, ARABIC IN ISRAEL: LANGUAGE, IDENTITY AND CONFLICT 12, 16-17 (2017).

<sup>65</sup> YEHOUDA SHENHAV, BEYOND THE TWO-STATE SOLUTION: A JEWISH POLITICAL ESSAY 50-52 (Dimi Reider trans., 2012); MENDEL, *supra* note 64, at 7; ELLA SHOHAT, ON THE ARAB-JEW, PALESTINE, AND OTHER DISPLACEMENTS: SELECTED WRITINGS 118-19, 171 (2017); Nadeem Karkabi, *The Impossible Quest of Nasreen Qadri to Claim Colonial Privilege in Israel*, 44 ETHNIC & RACIAL STUD. 966, 971-73 (2021).

<sup>66</sup> Pinto, *supra* note 53, at 22-23.

<sup>67</sup> Mohammed S. Wattad, *The Nation State Law and the Arabic Language in Israel: Downgrading, Replicating or Upgrading?*, 54 ISR. L. REV. 263, 272 (2021).

<sup>68</sup> HCJ 4112/99 Adalah—The Legal Ctr. for Arab Minority Rts. in Isr. v. City of Tel Aviv-Jaffa, 56(5) PD 393, 442-72 (2002) (Isr.).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*



petition.<sup>71</sup> In this Article, I will focus on one of those arguments. In particular, Justice Cheshin contended that Article 82 should be narrowly interpreted, implying that the municipalities in question are not obligated to include an Arabic caption on municipal signage.<sup>72</sup> He emphasized that this matter carries significant political sensitivity, intertwined with the country's history, Jewish character, and domestic politics.<sup>73</sup>

President Barak and Justice Dalia Dorner (who concurred with the majority opinion) did not address Justice Cheshin's argument regarding the alleged political sensitivity in their ruling. Although the Court granted the petition, both Justices in the majority opinion explicitly stated that the Arabic language is not equal to the Hebrew language.<sup>74</sup> They affirmed that Hebrew is the "senior sister" of Arabic and emphasized that the Jewish character of the State of Israel necessitated Hebrew being the primary language.<sup>75</sup>

The perception that the Arabic language poses a threat to the Jewish public<sup>76</sup> can be seen as the driving force behind the Arabic language's new status in the Basic Law: Israel – The Nation-State of the Jewish People ("Nation-State Law"), which was approved by the Knesset on July 19, 2018.<sup>77</sup> The Nation-State Law designates the Arabic language as having a "special status," without explicitly specifying the nature of this status, except for granting the legislature the

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<sup>71</sup> *Id.* at 420-72 (Cheshin, J., dissenting).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 462; see also Meital Pinto, *Who Is Afraid of Language Rights in Israel?*, in *THE MULTICULTURAL CHALLENGE IN ISRAEL* 26, 29-31 (Avi Sagi & Ohad Nachomy eds., 2009).

<sup>74</sup> HCJ 4112/99 Adalah—The Legal Ctr. for Arab Minority Rts. in *Isr. v. City of Tel Aviv-Jaffa*, 56(5) PD 393, 418 (2002) (Isr.). (Barak, J.); *id.* at 476-77 (Dorner, J., concurring).

<sup>75</sup> *Id.* at 418; see also Jabareen, *supra* note 61, at 282-83.

<sup>76</sup> Amal Jamal, *The Hegemony of Neo-Zionism and the Nationalizing State in Israel – The Meaning and Implications of the Nation-State Law*, in *DEFINING ISRAEL: THE JEWISH STATE, DEMOCRACY, AND THE LAW* 159, 169 (Simon Rabinovitch ed., 2018) ("[T]he bill-drafters . . . view the official status of the Arabic language as a violation of the identity of the state as Jewish."); YAACOV YADGAR, *ISRAEL'S JEWISH IDENTITY CRISIS: STATE AND POLITICS IN THE MIDDLE EAST* 99-100 (2020); Jabareen, *supra* note 61, at 271.

<sup>77</sup> Basic-Law: Israel – The Nation State of the Jewish People (2018) (Isr.), <https://Main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf> [<https://perma.cc/7F4B-5QAF>]. For a detailed account of all the provisions in the Basic-Law: Israel – The Nation State of the Jewish People, see Wattad, *supra* note 67, at 264.

authority to regulate its use when dealing with state institutions.<sup>78</sup> Since the law maintains the pre-existing secondary status of the Arabic language, it may potentially discourage future attempts by courts and legislators to strengthen its position.<sup>79</sup>

Fourteen petitions challenging the constitutionality of the Nation-State Law were brought before the Israel High Court of Justice.<sup>80</sup> These petitions raised numerous issues related to the Nation-State Law,<sup>81</sup> such as the message of alienation it conveyed to non-Jews,<sup>82</sup> particularly highlighting the detrimental impact on the status of Arabic and the overall group rights of the Arab-Palestinian minority. The petitioners argued that the law failed to acknowledge any collective rights of the Arab-Palestinians, while simultaneously enshrining extensive exclusive collective rights for the Jewish majority.<sup>83</sup>

The majority opinion of the High Court of Justice rejected the petitions, stating that Article 4 of the Nation-State Law does not undermine the status of the Arabic language.<sup>84</sup> It argued that Article 4 neither prohibits the promotion of Arabic nor changes its official status

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<sup>78</sup> Pinto, *supra* note 53, at 11-14.

<sup>79</sup> *Id.*

<sup>80</sup> All petitions were discussed by the Israel High Court of Justice together. HCJ 5555/18, MK Hasson v. The Knesset (2021) (Isr.) (unpublished) (on file with author). For a detailed account of these problems, mainly concerning the right to equality and the right to self-determination of the Arab-Palestinian minority, see Tamar Hostovsky Brandes, *Basic Law: Israel as the Nation State of the Jewish People: Implications for Equality, Self-Determination and Social Solidarity*, 29 MINN. J. INT'L L. 65 (2020).

<sup>81</sup> See Hostovsky Brandes, *supra* note 80 (providing a detailed account of these problems, mainly concerning the right to equality and the right to self-determination of the Arab-Palestinian minority).

<sup>82</sup> The Nation Basic law defines the State of Israel as “the nation-state of the Jewish people, in which it exercises its natural, cultural, religious and historical right to self-determination.” § 1(b), Basic-Law: Israel – The Nation State of the Jewish People (2018) (Isr.), <https://Main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf> [https://perma.cc/7F4B-5QAF]. As Amal Jamal aptly puts it: “This formulation makes clear that no other cultural and historical tradition, namely that of the Palestinian citizens, can be translated into the identity of the state. The national home of the Jewish people cannot also be the national home of the citizens who are not of Jewish descent.” Jamal, *supra* note 76, at 167.

<sup>83</sup> Jabareen, *supra* note 61, at 272. As Marmor aptly puts it, by enacting the Nation-State Law, “[t]he Jews are saying, once again: this is *our* nation-state. You non-Jews may be eligible to enjoy some democratic privileges, but only once you have acknowledged the limits of your aspiration.” Michael Marmor, *Lightness in Times of Darkness*, in *DEFINING ISRAEL: THE JEWISH STATE, DEMOCRACY, AND THE LAW* 127, *supra* note 76, at 128.

<sup>84</sup> HJC 5555/18 Hasson (Isr.) (unpublished).

alongside Hebrew, as stipulated in Article 82 of the Palestine Order in Council.<sup>85</sup> The court refrained from clearly designating Arabic as an official language with special status, however.<sup>86</sup> This omission appears to be deliberate. By failing to recognize the importance of Arabic, the majority opinion also avoids recognizing Arab-Palestinian culture as an integral part of Israeli culture.<sup>87</sup>

Justice Karra, the sole Arab judge in the Israel Supreme Court, dissented. He highlighted that the Nation-State Law completely disregarded the Arab minority under a pretext of defining the national identity of the Jewish people.<sup>88</sup> He emphasized that while the law specifically addressed the issue of the Arabic language, it did so only to diminish the status of the Arabic language and convey a demeaning message to its speakers.<sup>89</sup>

### *C. Group Rights in Mainly Arab-Palestinian Communities*

This Article now shifts focus to Arab-Palestinian group rights that are granted in predominantly Arab-Palestinian spaces within Israel. The group rights addressed by this Section include access to the exclusive religious court system in Israel. The religious court system essentially adopted British mandatory law in Palestine, which was built on the Ottoman millet system that was separated between Jews, Muslims, and Christians, and provided every religious group with the autonomy to handle matters of personal status of their respective community members, such as marriage, divorce, and child custody.<sup>90</sup>

These rights are categorized as group rights in spaces predominantly inhabited by Arab-Palestinians, as the separate system of religious courts involves the establishment and preservation of distinct institutions for Arab-Palestinians. For instance, the Ministry of Education, predominantly staffed by Jews, oversees the Arab education

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Yael Efron & Mohammed S. Wattad, *Speaking Arabic in Israel: "He Whose Hand Is in the Water Is Not like Whose Hand Is in the Fire"*, 24 CARDOZO J. CONFLICT RESOL. 1, 19 (2022).

<sup>88</sup> HCJ 5555/18, MK Hasson v. The Knesset (2021) (Isr.) (unpublished) (on file with author).

<sup>89</sup> *Id.* at § 38 (Karra, J., dissenting).

<sup>90</sup> Daphna Hacker, *Religious Tribunals in Democratic States: Lessons from the Israeli Rabbinical Courts*, 27 J.L. & RELIGION 59, 61-64 (2012); Ido Shahaar & Karin Carmit Yefet, *Kadijustiz in the Ecclesiastical Courts: Naming, Blaming, Reclaiming*, 56 L. SOC'Y REV. 53, 58 (2022).

system, yet Jewish students do not attend Arab schools.<sup>91</sup> Similarly, the religious courts are supervised by the Ministry of Religions and the Ministry of Justice, but Jews do not engage with these courts.<sup>92</sup> In fact, it is highly likely that the vast majority of Jews in Israel have never set foot inside an Arab school or entered the premises of a religious tribunal serving the Arab-Palestinian population.

Arab-Palestinian group rights observed in spaces predominantly inhabited by Arab-Palestinians are not generally viewed as threats to Israel's Jewish character.<sup>93</sup> For instance, there is a consensus between policy makers that group rights which separate between religious jurisdictions are essential not only for protecting Arab-Palestinian culture, but also for perpetuating separation between Israel's different religious communities.<sup>94</sup> However, Jewish-Israeli acceptance of these group rights may not be intuitive, as they harm vulnerable minority members within minority groups, and therefore potentially challenge Israel's democratic structure. In Israel, group rights in the Arab-Palestinian space often incorporate what Will Kymlicka refers to as "internal restrictions."<sup>95</sup> Internal restrictions are powers granted from the majority to the minority group, enabling members of the minority group to limit the rights of more vulnerable minority members,<sup>96</sup> often referred to as "minorities within minorities."<sup>97</sup> These vulnerable groups include women, children, economically disadvantaged individuals, and members of the LGBTQ community.<sup>98</sup>

Many scholars who examine group rights in multicultural nations tend to oppose group rights that permit restrictions that majority members within the minority group impose on minority members within the minority group.<sup>99</sup> This is because rather than enhancing

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<sup>91</sup> Yariv Feniger, Yossi Shavit & Shir Caller, *The Israeli Education System*, in ROUTLEDGE HANDBOOK ON CONTEMPORARY ISRAEL 129, 131-35 (Guy Ben-Porat, Yariv Feniger, Dani Filc, Paula Kabalo & Julia Mirsky eds., 2022).

<sup>92</sup> 16KARAYANNI, *supra* note 16, at 1-12.

<sup>93</sup> *Id.* at 210.

<sup>94</sup> *Id.*

<sup>95</sup> KYMLICKA, *supra* note 19, at 44, 152.

<sup>96</sup> *Id.*

<sup>97</sup> See generally Avigail Eisenberg & Jeff Spinner-Halev, *Introduction*, in MINORITIES WITHIN MINORITIES: EQUALITY, RIGHTS AND DIVERSITY (Avigail Eisenberg & Jeff Spinner-Halev eds., 2005); Meital Pinto, *The Right to Culture, the Right to Dispute, and the Right to Exclude: A New Perspective on Minorities Within Minorities*, 28 RATIO JURIS 521 (2015).

<sup>98</sup> KYMLICKA, *supra* note 19, at 32.

<sup>99</sup> See Avishai Margalit & Moshe Halbertal, *Liberalism and the Right to Culture*, 71 SOC. RSCH.: INT'L Q. 491, 508 (2004); Joseph Raz, *Multiculturalism*, 11 RATIO

freedom and autonomy for all minority members, they enhance the freedom of the majority within minority groups and limit the freedom of minorities within minority groups.<sup>100</sup> Scholars who advocate for such group rights, such as Chandran Kukathas, also argue that restrictions should only be permitted when minorities within minorities can voluntarily “exit” the minority group and join the majority group.<sup>101</sup>

Group rights that are restricted to an area predominantly inhabited by Arabs pose significant challenges to Israeli democracy—for example, religious laws in Israel. Women within minority religious groups in Israel are often ill-treated by religious tribunals. They are often excluded from religious offices such as arbitrators in Sharia courts,<sup>102</sup> or face prejudicial attitude and discrimination by religious judges in ecclesiastical Christian tribunals, who favor male attorneys over female attorneys.<sup>103</sup>

Group rights that are restricted to an area predominantly inhabited by Arab-Palestinians are especially troublesome to Israeli democracy because there is no shared civic space in Israel that allows Arab-Palestinians to “exit” to the Jewish majority culture.<sup>104</sup> While the internal Jewish public discourse acknowledges the existence of internal restrictions on minority members within religious and ultra-Orthodox Jewish communities,<sup>105</sup> it lacks a similar discussion regarding internal restrictions imposed on minority members within the Arab minority.

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JURIS 193, 199 (1998); AYELET SHACHAR, MULTICULTURAL JURISDICTIONS: CULTURAL DIFFERENCES AND WOMEN’S RIGHTS 117-45 (2001); Pinto, *supra* note 97; KARAYANNI, *supra* note 16, at 144-45.

<sup>100</sup> KYMLICKA, *supra* note 19, at 152-54.

<sup>101</sup> Chandran Kukathas, *Are There Any Cultural Rights?*, 20 POL. THEORY 105, 128-34 (1992).

<sup>102</sup> Pinto, *supra* note 14, at 582-83.

<sup>103</sup> Shahar & Yefet, *supra* note 90, at 65-70.

<sup>104</sup> Michael Karayanni, *Multiculturalism as Covering: On the Accommodation of Minority Religions in Israel*, 66 AM. J. COMPAR. L. 831, 852 (2018).

<sup>105</sup> Frances Raday, *Claiming Equal Religious Personhood: Women of the Wall’s Constitutional Saga*, in RELIGION IN THE PUBLIC SPHERE: A COMPARATIVE ANALYSIS OF GERMAN, ISRAELI, AMERICAN AND INTERNATIONAL LAW 255-98 (Winfried Brugger & Michael Karayanni eds., 2007); Gila Stopler, *Religious Establishment, Pluralism and Equality in Israel—Can the Circle Be Squared?*, 2 OXFORD J.L. & RELIGION 150, 156-59 (2013); Zvi H. Triger, *The Self-Defeating Nature of “Modesty”—Based Gender Segregation*, 18 ISR. STUD. 19, 22-26 (2013); Raphael Cohen-Almagor, *Discrimination Against Jewish Women in Halacha (Jewish Law) and in Israel*, 45 BRIT. J. MIDDLE E. STUD. 290, 303-09 (2018); Yofi Tirosh, *Diminishing Constitutional Law: The First Three Decades of Women’s Exclusion Adjudication in Israel*, 18 INT’L J. CONST. L. 821, 831-37 (2020).

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In fact, group rights in Arab-Palestinian spaces are often overlooked by Jewish public discourse, to the extent that the exercise of these rights is infrequently granted by the official Israeli institutions.<sup>106</sup>

Section IV will discuss the issue of Arab-Palestinian housing and settlements in Israel. Housing and group rights share significant overlap as they both exist within a geographic and symbolic space, shaping and influencing the landscape of Israel. The housing issue can thus provide insight into the prevailing Jewish perspective regarding the presence of Arab-Palestinians within Israel's geographic and symbolic space. Section IV will discuss the semi-official state policy that promotes segregation in housing and settlements between Jews and Arab-Palestinians, as well as the general Israeli-Jewish resistance to share geographic space with Arab-Palestinians.

Israel's semi-official policy of housing segregation and the resistance of most Jews to share residential areas with Arab-Palestinians reinforces the argument that group rights are opposed by Israel's Jewish majority in spaces shared by Jews and Arab-Palestinians, but not in predominantly Arab-Palestinian communities. When Arab-Palestinians challenge the established segregated order by moving to mixed cities or predominantly Jewish towns and settlements, they are seen as threats to the Jewish character of Israeli public space. This is the same perception that applies to group rights—namely, when group rights extend beyond the designated geographic realm assigned to Arab-Palestinian citizens and encroach upon the symbolic and geographic domain shared by all Israeli citizens, they are viewed as challenges to Jewish dominance in Israel and the Jewish character of the nation.

#### IV. HOUSING SEGREGATION AS SUPPORTING EVIDENCE FOR THE RELUCTANCE AMONG JEWS TO SHARE THEIR PUBLIC SPACE WITH ARAB-PALESTINIANS

The land regime in Israel has been centralized and nationalized since its inception. Approximately 93% of the land in Israel is owned and managed by the Israel Land Administration, which is controlled

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<sup>106</sup> Michael Karayanni highlights, for example, the absence of a law that outlines a proper mechanism for appointing judges to ecclesiastical courts. Karayanni, *supra* note 104, at 845-46. As a result, the process of selecting judges for these courts lacks a clear and formal structure. *Id.* Furthermore, Karayanni points out that a considerable number of senior judges in these ecclesiastical courts are not local residents and do not possess fluency in the Arabic language. *Id.*

by the Israeli government and the Jewish National Fund.<sup>107</sup> Legally, the regulation of the land managed by the Israel Land Administration is governed by two laws: the Jewish Agency Law of 1952 and the Jewish National Fund Law of 1953.<sup>108</sup> These laws establish an agreement between the state, the Jewish Agency, and the Jewish National Fund, granting special status to the governing organizations in land distribution matters, including the authority to establish new residential areas.<sup>109</sup> The land regime in Israel therefore “allows Israel to enjoy the best of two worlds: a state meant to be impartial vis-à-vis all of its citizens, while working with semiprivate organizations to prioritize the interests of the worldwide ‘Jewish people.’”<sup>110</sup>

The majority of Arab-Palestinian Israeli citizens reside in the following areas of Israel: the Galilee region, the Triangle region, and the Negev.<sup>111</sup> Approximately 80% of Israel’s Arab-Palestinian citizens reside in towns and villages exclusively populated by Arabs, resulting segregation from Jewish society.<sup>112</sup> The remaining Arab-Palestinian citizens reside in several mixed Arab-Jewish cities, primarily Haifa, Acre, Nof-Hagalil, al-Led, Ramleh, and Tel Aviv-Jaffa.<sup>113</sup> The majority of Arab towns and villages are geographically isolated from Israeli centers of economic power. These areas often face overcrowding; inadequate infrastructure, such as roads; limited public transportation

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<sup>107</sup> Kedar, *supra* note 6, at 871-72; YIFAT HOLZMAN-GAZIT, LAND EXPROPRIATION IN ISRAEL: LAW, CULTURE AND SOCIETY 57-88 (2016). The Jewish National Fund (“JNF”) was established in 1901 with the objective of acquiring land in Palestine to facilitate Jewish settlement. It was incorporated as a private company in London. The primary purpose of the JNF was to buy land and make it available exclusively for Jewish settlements in Palestine. Once the JNF purchased land, it became the collective property of the Jewish people. The land could not be sold outright; instead, it was leased to Jewish individuals or organizations for development and use. This approach was intended to ensure that the land remained in Jewish hands and contributed to the establishment and growth of Jewish communities in Palestine. See Gershon Shafir, *From Overt to Veiled Segregation: Israel’s Palestinian Arab Citizens in The Galilee*, 50 INT’L J. MIDDLE E. STUD. 1, 5-6 (2018); Suhad Bishara, *The Jewish National Fund*, in THE PALESTINIANS IN ISRAEL: READINGS IN HISTORY, POLITICS AND SOCIETY 60, 60-61 (Nadim N. Rouhana & Areej Sabbagh-Khoury eds., 2018); Yousef Jabareen, *National Planning Policy in Israel*, in THE PALESTINIANS IN ISRAEL: READINGS IN HISTORY, POLITICS AND SOCIETY 73, 76-77.

<sup>108</sup> Jabareen, *supra* note 9, at 455.

<sup>109</sup> *Id.*

<sup>110</sup> Shafir, *supra* note 107, at 6.

<sup>111</sup> Jabareen, *supra* note 9, at 451-52.

<sup>112</sup> Shafir, *supra* note 107, at 5.

<sup>113</sup> Jabareen, *supra* note 9, at 452; Totry-Jubran, *supra* note 32, at 65.

options; insufficient access to housing; and lower healthcare and educational standards.<sup>114</sup>

Indeed, the limited development options of Arab-Palestinian localities contribute to their poor housing conditions. The jurisdictions of Arab-Palestinian localities are often constrained to their existing built-up areas, which hampers their ability to expand and construct new residential neighborhoods.<sup>115</sup> In contrast, Jewish localities often have greater jurisdictional areas, allowing them greater flexibility to develop new residential and industrial areas.<sup>116</sup> This disparity in development opportunities contributes to the disparities in housing conditions between Arab-Palestinian and Jewish communities.<sup>117</sup> In addition, the lack of updated and adequate planning schemes in many Arab-Palestinian localities further exacerbates their housing challenges.<sup>118</sup> Without proper planning schemes that accommodate their needs for new housing units and without the development of industrial and commercial areas, these localities struggle to create economic opportunities and meet the demands of their growing populations.<sup>119</sup> These constraints thus lead to overcrowding, inadequate infrastructure, and limited access to essential services and amenities.<sup>120</sup>

In the last three decades, middle-class Arab-Palestinian citizens in Israel have increasingly sought improved living conditions, economic opportunities, and access to better educational facilities for themselves and their families.<sup>121</sup> As a result, some individuals and families have chosen to move from Arab-only towns and villages to neighboring Jewish localities, which often offer more spacious housing options, better infrastructure, and a wider range of services.<sup>122</sup>

The *Ka'adan* case is the most famous example that demonstrates the aspirations of Israeli Arab-Palestinian citizens to improve their living conditions by moving out of Arab-only towns and villages. In the *Ka'adan* case, an Arab-Palestinian family whose surname was

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<sup>114</sup> Nimer Sultany, *The Making of an Underclass: The Palestinian Citizens in Israel*, 27 ISR. STUD. REV. 190, 192-94 (2012); Totry-Jubran, *supra* note 32, at 65-67.

<sup>115</sup> Totry-Jubran, *supra* note 32, at 66.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 66-67.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Totry-Jubran, *supra* note 32, at 67.

<sup>122</sup> Shafir, *supra* note 107, at 2; Totry-Jubran, *supra* note 32, at 68; Ahmed Baker Diab, Ilan Shdema, & Izhak Schnell, *Arab Integration in New and Established Mixed Cities in Israel*, 59 URB. STUD. 1800, 1804 (2022).



Ka'adan sought to move from Baqa al-Gharbiyya—an Arab-only village with poor roads, underfunded schools, and a neglected sewage system—to Katzir, where they would purchase a home in a cooperative community settlement, administered by the Jewish Agency and the Israel Land Administration.<sup>123</sup> Katzir is a Jewish-only settlement located in the Triangle area near the Green Line between Israel and the West Bank. The Ka'adan family petitioned the High Court of Justice after the Jewish Agency refused its land purchase in Katzir.<sup>124</sup> The High Court of Justice ruled that a community settlement cannot discriminate against potential residents based on their nationality, and that such screening constitutes discrimination.<sup>125</sup>

Since 1967, community settlements were established in the Galilee, in north Israel, and the Negev area, in south Israel, where Arab-Palestinians constituted the majority. Establishment of those settlements was part of a nation-building project, also including increased border defense and land control.<sup>126</sup>

Community settlements utilize admission committees to select residents.<sup>127</sup> These committees have been criticized for potentially discriminating against certain individuals or groups.<sup>128</sup> Criteria that may disqualify an applicant may include being Arab-Palestinian, Mizrahi Jewish,<sup>129</sup> a single-parent family, or an LGBTQ family.

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<sup>123</sup> HCJ 6698/95 Ka'adan v. Israel Land Administration, 54(1) PD 258 (2000) (Isr.).

<sup>124</sup> Steven V. Mazie, *Importing Liberalism: Brown v. Board of Education in the Israeli Context*, 36 POLITY 389, 394-95 (2004).

<sup>125</sup> *Id.* at 395-96.

<sup>126</sup> Erez Tzfadia, *Abusing Multiculturalism: The Politics of Recognition and Land Allocation in Israel*, 26 ENV'T & PLAN. D: SOC'Y & SPACE 1115, 1119 (2008).

<sup>127</sup> Totry-Jubran, *supra* note 32, at 70-71.

<sup>128</sup> Ayelet Harel-Shalev & Ilan Peleg, *Hybridity and Israel's Democratic Order: The End of an Imperfect Balance?*, 1 CONTEMP. REV. MIDDLE E. 75, 84-85 n.12 (2014).

<sup>129</sup> Mizrahi Jews are Jews who immigrated to Israel from Arab and Muslim countries, as well as their descendants. They form a significant portion of Israel's population and have contributed to the cultural and social diversity of the country. However, there have been concerns and discussions about the relatively low status of Mizrahi Jews in Israeli society. Yifat Bitton, for instance, sharply observes they have faced discrimination and marginalization based on the perception of "sameness" rather than "difference." See Yifat Bitton, *Discrimination Based on "Sameness," Not "Difference": Re-Defining the Limits of Equality Through an Israeli Case for Discrimination*, 12 J. HATE STUD. 177 (2014). This means that Mizrahi Jews have often been seen as part of the broader Israeli Jewish population, and their unique cultural historical backgrounds have not always been fully acknowledged or valued. *Id.* at 189.

Discrimination against Arab-Palestinians and other minority groups in Israel was possible, because, until 2000, admission committees in Jewish settlements in the Galilee and the Negev practically governed internal admission practices.<sup>130</sup> These practices were set up by each private settlement association, and they were not limited by guidance from the Israel Land Administration (“ILA”) or other governmental entities.<sup>131</sup> The *Ka’adan* ruling marked a significant shift in policy, however, as it aimed to prevent exclusion of Arab-Palestinian citizens from Jewish communal settlements.<sup>132</sup>

The *Ka’adan* ruling is criticized by scholars and parliament members who maintain that, because Jews are a minority in the Middle East, the Jewish State must protect its own ethnonational interests, even if those interests contradict the right to equality for Arab-Palestinians.<sup>133</sup> Unfortunately, Jewish residents have on some occasions refused to comply with the *Ka’adan* ruling.<sup>134</sup> Such refusals to admit Arab-Palestinians into community settlements or allow them to reside in certain cities clearly violate the principles of equality and non-discrimination.

An example of this refusal to comply with the *Ka’adan* ruling occurred in 2004, when the Israel Land Administration issued a public tender marketing forty-three units for self-construction in the Givat Makosh neighborhood of Karmiel in the Galilee.<sup>135</sup> Six Arab-Palestinian families won the tender, which upset Jewish buyers who had already purchased units in the neighborhood.<sup>136</sup> These Jewish buyers were longtime residents of Karmiel and they saw the new neighborhood as an opportunity to improve their standard of living.<sup>137</sup> They expressed concerns about sharing their residency with Arab-Palestinians.<sup>138</sup> At the time, the Mayor of Karmiel claimed that the presence

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<sup>130</sup> Amnon Lehavi, *Residential Communities in a Heterogeneous Society: The Case of Israel*, in PRIVATE COMMUNITIES AND URBAN GOVERNANCE: THEORETICAL AND COMPARATIVE PERSPECTIVES 95, 110 (Amnon Lehavi ed., 2016).

<sup>131</sup> *Id.*

<sup>132</sup> See Alexandre (Sandy) Kedar, “A First Step in a Difficult and Sensitive Road”: Preliminary Observations on *Qaadan v. Katzir*, 16 ISR. STUD. BULL. 3 (2000); Totry-Jubran, *supra* note 32, at 65 n. 53.

<sup>133</sup> Mazie, *supra* note 124, at 400-01.

<sup>134</sup> Tzfadia, *supra* note 126, at 1121-27.

<sup>135</sup> *Id.* at 1123.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

of Arab families in Givat Makosh could potentially harm Jewish-Arab relations in the region.<sup>139</sup>

Following the protest by the Jewish families in Givat Makosh, with the backing of Karmiel's mayor, the Israel Land Administration (ILA) froze the tender.<sup>140</sup> It argued that the land in question belonged to the Jewish National Fund ("JNF") and could only be leased to Jewish individuals.<sup>141</sup> Subsequently, the ILA issued a new tender for the same units in the neighborhood.<sup>142</sup> The revised tender explicitly stated that the land in the neighborhood was owned by the JNF,<sup>143</sup> and thus subject to the contractual agreement between the state and the JNF and effectively limiting the units' availability exclusively to Jews.<sup>144</sup> The Association for Civil Rights in Israel ("ACRI") and the Arab Alternative Planning Center ("AAPC") then filed a petition in District Court, urging that Arab citizens be permitted to participate in the ILA tender.<sup>145</sup> In response, the ILA canceled the entire tender and the District Court subsequently withdrew the petition.<sup>146</sup>

In response, the ACRI, the AAPC, and Adalah—a human rights organization advocating for Arab minority rights in Israel—jointly filed a petition with the High Court of Justice.<sup>147</sup> They argued that the cancellation of the tender by the ILA was a deliberate attempt to avoid examining the discriminatory nature of land allocation practices that favored Israeli Jews.<sup>148</sup> The petitioners contended that the JNF did not have the authority to discriminate against Arab citizens of the state.<sup>149</sup>

The case prompted a meeting involving the State's Attorney Office, the Israel Land Administration (ILA), and the JNF.<sup>150</sup> The meeting produced a solution that was devised to prevent legal precedent enabling Arab-Palestinians to purchase JNF-owned land.<sup>151</sup> The proposed solution involved temporarily suspending the leasing of JNF

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<sup>139</sup> *Id.*

<sup>140</sup> Tzfadia, *supra* note 126, at 1123.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Tzfadia, *supra* note 126, at 1123.

<sup>147</sup> *See id.* at 1123 n. 15.

<sup>148</sup> *Id.*

<sup>149</sup> Totry-Jubran, *supra* note 32, at 78.

<sup>150</sup> Tzfadia, *supra* note 126, at 1124.

<sup>151</sup> *Id.*

land in the Galilee and the North, particularly in areas where there was an increase in the departure of Arab residents.<sup>152</sup> The aim of this solution, as argued by Totry-Jubran, was to limit Arab migration to Jewish cities, thereby preserving the dominant Jewish identity of the region.<sup>153</sup>

Many Israeli Jews viewed the *Ka'adan* decision as an excessively activist ruling that contradicted the prevailing desires of the Jewish majority in Israel.<sup>154</sup> In 2011, this populist sentiment eventually resulted in the passage of the “Admission Committees Law amendment,”<sup>155</sup> which was intended to curtail the effects of the *Ka'adan* ruling.<sup>156</sup> Under this amendment, admission committees in community settlements and expansion neighborhoods in kibbutzim or moshavim located in the Galilee and Negev regions, consisting of up to 400 households, were granted the authority to evaluate candidates based on new criteria.<sup>157</sup> These criteria included a candidate’s “incongruity to the social-cultural texture of the [community]” or “incompatibility to social life in the community.”<sup>158</sup> The admission committee of each settlement is composed of five members, primarily consisting of representatives from the community settlement itself.<sup>159</sup> Tribunals are available for disputes or appeals, and their members are appointed by the Minister of Construction and Housing.<sup>160</sup>

Opponents of the new amendment argued that the majority of community settlements in the Galilee and Negev regions do not possess significant “thick” community characteristics that justify the exclusion of candidates based on vague and arbitrary criteria, such as

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<sup>152</sup> Totry-Jubran, *supra* note 32, at 79-80.

<sup>153</sup> *Id.* As Totry-Jubran indicates, after the JNF representatives introduced the agreement reached with the case, the Court erased the petition because the agreement resolved the issue brought before it.

<sup>154</sup> Mazie, *supra* note 124, at 400-05; see also Dana Alexander, *Rights Constitutionalism and the Challenge of Belonging: An Empirical Inquiry into the Israeli Case*, 7 L. & SOC. INQUIRY 1, 13 (2022).

<sup>155</sup> Law to Amend the Cooperative Societies Ordinance, 2011, SH 2286 683 (Isr.), [https://fs.knesset.gov.il/18/law/18\\_lsr\\_491139.pdf](https://fs.knesset.gov.il/18/law/18_lsr_491139.pdf) [<https://perma.cc/ZE97-HES9>].

<sup>156</sup> DANIEL FRIEDMANN, *THE PURSE AND THE SWORD: THE TRIALS OF ISRAEL'S LEGAL REVOLUTION* 339 (Haim Watzman trans., 2016); Alexander, *supra* note 154, at 12; Ofra Bloch & Barak Medina, *The Two Revolutions of Israel's National Identity*, *ISR. L. REV.* (forthcoming 2024) (manuscript at 12), <http://dx.doi.org/10.2139/ssrn.4585192> [[perma.cc/H7EU-MC2A](https://perma.cc/H7EU-MC2A)].

<sup>157</sup> Lehavi, *supra* note 130, at 110-11.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 111.

<sup>160</sup> *Id.*

“incompatibility to social life.”<sup>161</sup> Opponents also submitted petitions to the Israel High Court of Justice, contending that the amendment reinforces existing discrimination against Arab-Palestinians and other vulnerable groups within Israeli society.<sup>162</sup> Essentially, as noted by Nimer Sultany, the opponents argued that the amendment upholds and perpetuates “a spatial order that is congenial to Judaization.”<sup>163</sup>

The High Court of Justice dismissed the petitions against the amendment.<sup>164</sup> The majority opinion stated that the case was premature because the petitioners had not yet provided evidence of specific instances of discriminatory practices.<sup>165</sup> Conversely, the minority opinion argued that the amendment should be revoked due to the arbitrary nature of the admission committees’ processes and their underlying motivation to screen out “undesirable” candidates, especially Arabs.<sup>166</sup>

The amendment permitting admission committees in community settlements and the High Court decision dismissing the petition did not end the public discourse surrounding this issue. Many seek to further legitimize and increase the exclusion of Arab-Palestinians from Jews-only communities. In 2018, Jewish Knesset members who were influenced by the *Ka’adan* case and interested in broadening the legal grounds for excluding Arab-Palestinians from community settlements, also supported enactment of the Basic Law: Israel—The Nation-State of the Jewish People.<sup>167</sup> The Nation-State Law seeks to provide legal recognition to Jewish-only settlements through provision 7 of the Nation-State Law, which states that the “development of Jewish

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<sup>161</sup> *Id.* “Thick” community characteristics refer to cultural or religious characteristic that are distinct and different from the ones characterize the lifestyle of most citizens in Israel.

<sup>162</sup> *Id.*

<sup>163</sup> Nimer Sultany, *The Making of an Underclass: The Palestinian Citizens in Israel*, 27 *ISR. STUD. REV.* 190, 194 (2012).

<sup>164</sup> HCJ 2311/11 *Sabach v. Knesset* (2014) (Isr.) (unpublished) (Grunis, C.J.).

<sup>165</sup> EPHRAIM LAVIE, *INTEGRATING THE ARAB-PALESTINIAN MINORITY IN ISRAELI SOCIETY: TIME FOR A STRATEGIC CHANGE* 195 (2018).

<sup>166</sup> HCJ 2311/11 *Sabach* (Isr.) (unpublished) (Jubran, J. and Arabel, J., dissenting); see also LAVIE, *supra* note 165, at 196; Talya Steiner, *Proportionality Analysis by the Israeli Supreme Court*, in *PROPORTIONALITY IN ACTION: COMPARATIVE AND EMPIRICAL PERSPECTIVES ON THE JUDICIAL PRACTICE* 285, 321 (Mordechai Kremnitzer, Talya Steiner & Andrej Lang eds., 2020).

<sup>167</sup> Lana Tatour, *The Nation-State Law: Negotiating Liberal Settler Colonialism*, 4 *CRITICAL TIMES* 577, 581 (2021).

settlement” is deemed a “national value.”<sup>168</sup> It is not surprising that Arab Knesset members interpreted this provision as endorsing housing segregation between Arabs and Jews.<sup>169</sup>

The Israeli Supreme Court’s *Ka’adan* judgment remains highly controversial, especially among Israeli Jews who view it as an activist decision that contradicts the will of the Jewish majority in Israel to live in culturally homogenous communities.<sup>170</sup> As Dana Alexander aptly puts it, “Shared national, religious, or cultural identity and even homogeneity were portrayed as key to healthy and harmonious communal life.”<sup>171</sup> This sentiment has recently led to a bill proposal seeking to expand admissions committees in larger settlements.<sup>172</sup> The proposed bill allows settlements with up to one thousand homes to establish admissions committees and would grant the committees significant discretion in determining who is permitted to reside there.<sup>173</sup> The bill was introduced by far-right Knesset members, passed its preliminary reading in the Knesset, and received approval from the Ministerial Committee for Legislative Affairs.<sup>174</sup> Yariv Levin, Israel’s Justice Minister, also addressed the issue while justifying his attempts to grant the government political control over judicial appointments,<sup>175</sup> also known as the “judicial overhaul.” Levin argued that control over judicial appointments is necessary to ensure the appointment of Supreme Court justices who understand the reservations held by Jewish Israelis about living in mixed localities with Arabs.<sup>176</sup>

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<sup>168</sup> See Marmor, *supra* note 83, at 128; see also Doreen Lustig, “We The Majority . . .”: *The Israeli Nationality Basic Law*, 25 ISR. STUD. 256, 259 (2020); Tatour, *supra* note 167, at 577.

<sup>169</sup> Rami Zeedan, *Reconsidering the Druze Narrative in the Wake of the Basic Law: Israel as the Nation-State of the Jewish People*, 25 ISR. STUD. 153, 156 (2020).

<sup>170</sup> Alexander, *supra* note 154, at 13.

<sup>171</sup> *Id.* at 14.

<sup>172</sup> Charlie Summers, *Right-Wing MKs Spearhead Effort to Broaden Controversial ‘Admissions Committees’ Law*, TIMES OF ISR. (June 7, 2023, 3:03 PM), <https://www.timesofisrael.com/right-wing-mks-spearhead-effort-to-broaden-controversial-admissions-committees-law/> [<https://perma.cc/Q3YX-9FR6>].

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*; Michael Starr, *Israeli Bill Seeks to Prevent Arab Citizens from Living in Jewish Areas - NGOs*, JERUSALEM POST (June 7, 2023), <https://www.jpost.com/israel-news/article-745186> [<https://perma.cc/92QU-49TB>].

<sup>175</sup> Jonathan Shamir, *Top Court Judges Must Realize That ‘Jews Don’t Want to Live with Arabs,’ Israel’s Justice Minister Says*, HAARETZ (May 29, 2023), <https://www.haaretz.com/israel-news/2023-05-29/ty-article/.premium/israeli-justice-minister-says-new-judges-must-realize-jews-dont-want-to-live-with-arabs/00000188-6733-d698-af8c-77ff5db40000> [<https://perma.cc/XG55-WCRG>].

<sup>176</sup> *Id.*

V. GROUP RIGHTS AND HOUSING INTEGRATION IN COMMON SPACES  
FOR JEWS AND ARAB-PALESTINIANS DO NOT ENDANGER ISRAEL'S  
JEWISH CHARACTER

Group rights in spaces shared by Jews and Arab-Palestinians provoke significant controversy among the Jewish public in Israel. They do not deserve such controversy, however. Israel is defined as a Jewish and democratic state. The popular view among Israeli Jews is that Israel is an “ethnic democracy”—that is, a state in which democracy and Judaism are inherently and institutionally intertwined and cannot be separated.<sup>177</sup> Many disagree over the meaning of the term “Jewish state,” however. Those who claim that Judaism is a national-cultural affiliation and not a religious affiliation agree that a Jewish state is a nation-state in which Jews exercise their right to self-determination.<sup>178</sup>

In the context of group rights manifested in space shared by Jews and Arab-Palestinians, and Arabic comprehensive language rights in particular, it is important to understand that the protection of such rights does not challenge the Jewish character of the State of Israel whatsoever. No one who supports strengthening the Arabic language in public space shared by Jews and Arabs argues that Arabic should replace Hebrew or reduce its visibility from the public space. Full realization of comprehensive language rights in the common space for Jews and Arabs ideally creates a bilingual Israeli society. Even if we proceed from the hypothetical assumption that the full exercise of comprehensive language rights will lead Israel to become a bilingual state, we cannot conclude that Israel will become a bi-national state.<sup>179</sup> A state's bilingual nature does not necessarily render it

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<sup>177</sup> See Sammy Smooha, *Ethnic Democracy: Israel as an Archetype*, 2 ISR. STUD. 198, 201-09 (1997); Amir Lupovici, *Ontological Dissonance, Clashing Identities, and Israel's Unilateral Steps Towards the Palestinians*, 38 REV. INT'L STUD. 809, 823 (2012).

<sup>178</sup> MAZEN MASRI, *THE DYNAMICS OF EXCLUSIONARY CONSTITUTIONALISM: ISRAEL AS A JEWISH AND DEMOCRATIC STATE* 29-28 (2017); see generally Ruth Gavison, *Jewish and Democratic? A Rejoinder to the “Ethnic Democracy” Debate*, 4 ISR. STUD. 44 (1999).

<sup>179</sup> MK Amir Ohana, from the Likud party, for instance, associated between bilingualism and binationalism. Immediately after passage of the Basic Law: Israel the Nation State of the Jewish People, which, as mentioned in Section III of this article, creates a hierarchy between Hebrew and Arabic, MK Ohana declared that “Israel is not a bi-national or bi-lingual or bi-capital state – it is the one nation state of the Jewish people and its language is Hebrew and its capital is Jerusalem.” Pinto, *supra* note 53, at 23.

bi-national or mean that it is a liberal neutral state without affiliation to any religion or culture.

Comprehensive language rights do not harm Israel's Jewish image. Instead, they have tremendous potential for creating civic solidarity between Arab-Palestinians and Jews. Common denominators between the two groups are limited and very shaky. As mentioned in the previous section, most Arab-Palestinian Israeli citizens live in municipalities where there are no Jews, study in a separate education system,<sup>180</sup> do not serve in the army,<sup>181</sup> and do not create families with Jewish partners.<sup>182</sup> Arab political representatives are consistently excluded from coalition negotiations and are not regarded as potential partners in the government formation process.<sup>183</sup> As Michael Karayanni notes, the common ground between Arabs and Jews in Israel is limited to fundamental citizenship aspects, such as possessing a passport and identity card, and voting in elections.<sup>184</sup> In contrast to minority groups in some other countries, the Arab-Palestinian minority in Israel does not need to struggle to preserve its distinct identity. Whether due to a deliberate government policy or a communal desire among Palestinian-Arabs to reinforce their national and cultural identity, the Arab-Palestinian identity in Israel remains strong.<sup>185</sup> As Tamar Hostovsky Brandes rightly observes, however, not only is there a lack of common ground between Jews and Arabs in Israel, but there is also a lack of fundamental civic solidarity.<sup>186</sup>

The implementation of comprehensive language rights that safeguard the Arabic language in Israeli spaces shared by Arab-Palestinians and Jews could build solidarity between these two groups. Should these rights be fully realized, it could result in a bilingual public space where both Jews and Arabs feel comfortable. Such an

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<sup>180</sup> Ayman K. Agbaria, *The 'Right' Education in Israel: Segregation, Religious Ethnonationalism, and Depoliticized Professionalism*, 59 CRITICAL STUD. EDUC. 18, 22 (2018).

<sup>181</sup> Randall S. Geller, *Defense Minister Pinhas Lavon and the Arab Draft that Never Was*, 19 ISR. STUD. 1, 4 (2014).

<sup>182</sup> Maha Sabbah-Karkabi, "Marriage Was Not an Option": Ethnoreligious Mixed Marriage in Israel, 45 ETHNIC & RACIAL STUD. 47, 54 (2022).

<sup>183</sup> Jabareen, *supra* note 9, at 453.

<sup>184</sup> Michael M. Karayanni, *Two Concepts of Group Rights for the Palestinian-Arab Minority Under Israel's Constitutional Definition as a "Jewish and Democratic" State*, 10 INT'L J. CONST. L. 304, 309-10 (2012); Karayanni, *supra* note 104, at 863; Michael Karayanni, *On the Concept of 'Ours': Multiculturalism with Respect to Arab-Jewish Relations in Israel*, 27 TEL AVIV U. L. REV. 71, 72 (2003) (Hebrew).

<sup>185</sup> See Karayanni, *supra* note 104, at 864.

<sup>186</sup> See Hostovsky Brandes, *supra* note 80, at 105.



outcome might strengthen the bond and solidarity between Jews and Arabs. This shared lingual space would, in effect, acknowledge Arab cultural identity and establish a multicultural framework for both communities in Israel, enabling Arab citizens to identify with the State and feel equal.

A public space with which all Israeli citizens can identify is also crucial for the collective public and national interests of both Jews and Arab-Palestinians. Fostering a sense of common solidarity toward the country that both groups call home is paramount. A public space where non-territorial comprehensive group rights are respected may foment solidarity between Jews and Arabs in Israel.

The same principle applies to the issue of housing and settlements. Integrating housing between Arab-Palestinians and Jews does not jeopardize Israel's Jewish character. As Alexander Yakobson points out, the Arab-Palestinian community in Israel does not seek assimilation into the Jewish majority.<sup>187</sup> This is entirely expected for a significant native minority.<sup>188</sup> In this context, Israeli Arab-Palestinians are more similar to German speakers in South Tyrol, Italy, or Hungarian minorities in Slovakia and Romania, rather than immigrant communities in Western countries that may seek to fully integrate into the majority culture.<sup>189</sup>

Israel's dominant group is the non-religious Jewish majority. This group enjoys numerical and national-cultural advantages. The State of Israel is not a neutral state. It is a Jewish state that identified with the Jewish nation and the Jewish religion, actively supporting them. There is no justification, therefore, for a settlement to determine its Jewish nature and exclude those who are not Jewish, unless in the context of a Jewish group with distinct and unique cultural or religious characteristics. Even if we imagine, hypothetically, large acceptance of Arabs into a settlement with a Jewish identity, and the Arab culture becomes "present" in it, the official holidays in that settlement will still be the Jewish national holidays of the state. In other words, Jews in that settlement will still have very strong cultural and national support from the State. Their religion, culture, and nationality will not be in danger of "extinction."

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<sup>187</sup> Alexander Yakobson, *Joining the Jewish People: Non-Jewish Immigrants from the Former USSR, Israeli Identity and Jewish Peoplehood*, 43 *ISR. L. REV.* 218, 230 n.25 (2010).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

In Israel, most Arab-Palestinians reside in communities where the majority of residents are Arabs and most Jews live in communities where the majority of residents are Jewish.<sup>190</sup> This situation probably does not contribute to a shared civic identity between Jews and Arabs. It probably hinders the development of a shared identity, as it means that Jews and Arabs will often not encounter one another until a much later age, such as when they acquire higher education or enter the job market.

Amnon Rubinstein, an influential law professor who also served as Israel's Education Minister, rightfully argues that it is essential to encourage the construction of cities that promote integration rather than deepening separation.<sup>191</sup> Rubinstein maintains the importance of integration despite the difficulties and contradictions that arise between the populations due to the prolonged conflict. From an analysis of already-integrated cities, Rubinstein concludes that it is possible for both populations to live side-by-side without either relinquishing their religious and national characteristics.<sup>192</sup> For instance, recent geopolitical research indicates that the integration of the Arab-Palestinian minority in the city of Haifa has been successful, particularly for Christian Arab-Palestinians, who enjoy high socio-economic status and establish meaningful friendships and business relationships with Jews in Haifa.<sup>193</sup> University students contribute to widening integration patterns in large cities as they often choose to live near universities rather than in ethnic enclaves.<sup>194</sup> This proximity to diverse communities provides these students with personal experiences of integrated living.<sup>195</sup> Consequently, the level of integration among Israeli-Palestinians varies across demographics; those who are

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<sup>190</sup> Totry-Jubran, *supra* note 32, at 64-65; Ilan Shdema, Deborah G. Martin & Kahled Abu-Asbeh, *Exposure to the Majority Social Space and Residential Place Identity Among Minorities: Evidence from Arabs in Israel*, 42 URB. GEOGRAPHY 507, 508 (2021). For segregation patterns between Arabs and Jews in Jerusalem, see MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 220-24 (2014).

<sup>191</sup> AMNON RUBINSTEIN, *TRIBES OF ISRAEL: TOGETHER AND APART: LIBERALISM AND MULTICULTURALISM IN THE JEWISH STATE* 358-59 (2017) (Hebrew).

<sup>192</sup> *Id.*

<sup>193</sup> Ahmed Baker Diab, Ilan Shdema & Izhak Schnell, *Arab Integration in New and Established Mixed Cities in Israel*, 59 URBAN STUD. 1800, 1811-12 (2022).

<sup>194</sup> Hiba Bawardi, Sigal Kaplan & Eran Feitelson, *The Role of Individualistic Versus Collectivist Values in Shaping the Residential Choice of Palestinian Knowledge-Workers*, 121 HABITAT INT'L 1, 3 (2022).

<sup>195</sup> *Id.*

integrated tend to be university-educated, higher income, and higher occupational status.<sup>196</sup>

## VI. CONCLUSION

Theories of group rights have not paid enough attention to the geographic and symbolic space in which groups rights are exercised. This Article encourages a reappraisal of group rights, not as one issue, but according to two different categories: group rights in a common public space, such as a space shared by Jews and Arab-Palestinians, and group rights in a space that includes only one group, such as Arab-Palestinians. A clear conclusion—under-emphasized in the literature—is required when combining discussion of these two categories with the academic discussion on the Jewish and democratic nature of the Israeli state. Namely, group rights in the common space for Jews and Arabs, which supposedly pose a threat to the Jewish character of the State of Israel, do not in reality endanger it. Not only are they harmless to the Jewish character of the State of Israel, but they may in fact contribute to civic solidarity between Jews and Arab-Palestinians.

While the Israeli case has some unique characteristics, majority and minority conflicts around group rights are prevalent worldwide. It may be a fruitful endeavor to examine how space intersects with the treatment of minority group rights in other international contexts.

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<sup>196</sup> *Id.*