

STATES AND LAWS, JEWS AND PALESTINIANS:
YADGAR'S TRADITIONIST ALTERNATIVE.
A REFLECTION ON YADGAR, *ISRAEL'S JEWISH
IDENTITY CRISIS* (Cambridge, 2020)

JAMES J. FRIEDBERG*

In *Moby Dick*, Herman Melville debates, for pages, whether a whale is a fish.¹ (Not the fastest-moving part of his narrative.) Of course, a fish has fins and a tail and swims in the sea. It lacks arms and legs and cannot walk on land. Its body tends to take the form of an elongated oval—well, fish-shaped. So, Melville concludes that a whale is probably a fish.² He got it wrong. He didn't focus on the fact that a whale nurses its young. Or that it breathed through lungs and had no gills (or scales for that matter). Or that it was quite smart—a theme central to the rest of Melville's tale.

But to his credit Melville admitted being not quite sure. He was writing in the middle of the 19th century, prior to much definitive zoological classification; and while he was a very good writer, he was not a scientist. Though in his attempt to categorize the whale, he mused in the best tradition of Aristotle and Talmudists. They sometimes got it wrong, too.

A Jew is like a fish. Or maybe a whale. Hard to define and not just one thing or the other. Not merely an adherent to a faith. Not merely a member of a nation. Sometimes both, sometimes one or the other, but almost always *other things as well*. A few fish even breathe through lungs, but because of *other things* they still are fish.

* Posten Professor of Law, West Virginia University College of Law. J.D., Harvard Law School, 1975; B.A., Temple University, 1972. The author thanks his research assistants Isabella Anderson and Samantha Schaal for their research and editing help. He gratefully acknowledges the support of the WVU College of Law and its Posten Fund.

¹ HERMAN MELVILLE, *MOBY DICK* (1851, Chartwell Books 2021)

² *See id.*

Yaacov Yadgar recognizes that Israel has a whale of a problem.³ What is a Jew and how can she get along with an Arab? Yadgar writes as post-secular traditionist epistemologue.⁴ He dissents from a Western way of *knowing* the world and more particularly with the perspective of Israel's founding secular Labor Zionists.⁵ Yadgar proposes that Israel's view of itself is misconceived—that the founding Zionists purported to create a secular liberal, but ethnic (*national*) state.⁶ A Jewish democracy.⁷ But, that very concept of Jewish democracy deconstructs itself. The book aims to fill a “lacuna” in scholarly and political analysis where such analysis has failed to examine the connection between the claim by founding Zionists to a secular Jewishness and the crucial and unacknowledged relationship to Palestinians of that claim.⁸

This essay reviews *Israel's Jewish Identity Crisis: State and Politics in the Middle East*, published last year by Yaacov Yadgar (Stanley Lewis Professor of Israel Studies at the University of Oxford School of Global and Area Studies).⁹ His book connects Israel's sometimes arcane internal identity debates to core issues in the Israel/Palestine conflict, a connection largely unexamined prior to this book.

Yadgar's Argument

Yadgar's argument goes like this: Israel has a Jewish identity crisis.¹⁰ The identity crisis profoundly connects to the conflict with the Palestinians. The 2018 Basic Law proclaiming “Israel the Nation-State of the Jewish People” (Nation-State Law) has brought the issue

³ See generally YAACOV YADGAR, *ISRAEL'S JEWISH IDENTITY CRISIS* (Cambridge Univ. Press, 2020).

⁴ The word “epistemology” (the study of how we *know* the world) and its variants appear in his text at least 21 times. See *id.*

⁵ See *id.*

⁶ *Id.* at 20.

⁷ *Id.*; see DECLARATION OF ESTABLISHMENT OF STATE OF ISRAEL (May 14, 1948), <https://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Declaration%20of%20Establishment%20of%20State%20of%20Israel.aspx>.

⁸ YADGAR, *supra* note 3, at xiii.

⁹ *Id.*; see Yaacov Yadgar, U. OXFORD, <https://www.politics.ox.ac.uk/academic-staff/yaacov-yadgar.html> (last visited June 13, 2021).

¹⁰ YADGAR, *supra* note 3, at xiii.

of Jewish identity into the spotlight.¹¹ The Nation-State Law *explicitly* makes Arabs “the other” in a binary logic of Jew-or-Arab.¹² If Israel is, indeed, a state of the Jewish people, then Jews would need to maintain a numerical majority to guarantee its continued existence as such.¹³

However, this binary is not new with the 2018 law. Since 1948, Israeli leaders *implicitly* followed this demographic logic of Jew-or-Arab.¹⁴ Secular Zionist founders and leaders (the Ben Gurion generation of dominant Labor Zionists) saw Jews as a *nation* (in the Old-World sense, like the Serb or Polish or German nation), not as a religion.¹⁵ So, they were obliged to define *Jewishness* to determine membership in the nation but could not (recall the Moby Dick dilemma). They turned to Orthodox rabbis to provide the definition of Jewishness, making these rabbis gatekeepers of nationality.¹⁶ Ironically, and perhaps cynically, those committedly secular founders turned to *religious law* to define membership in the secular new state.

The definition of Jew in Orthodox law is a person born to a Jewish mother or legally converted by a rabbi.¹⁷ Concurrent with adopting this definition, the secular Labor Zionist founders ceded to Orthodox rabbis a monopoly on all religious matters regarding Jews—birth, marriage, divorce, death, Sabbath observance.¹⁸ The deal was done, Yadgar asserts, primarily to promote the secular founders’ racial

¹¹ Basic Law: Israel-The Nation State of the Jewish People (5778-2018) (Isr.) [hereinafter Nation-State Law].

¹² Yadgar cites Bruno Latour and Zygmunt Bauman in supporting what will become a significant critical theme in Yadgar’s book, namely, the fallacy of binary classifications—Arab versus Jew, religious versus secular, religion versus nation, etc. Yadgar sees all these as doomed to oversimplify reality, in his view, tradition, dynamic and complex, better captures what is real. YADGAR, *supra* note 3, at 56; see Nation-State Law, *supra* note 11.

¹³ YADGAR, *supra* note 3, at 56.

¹⁴ *Id.* at xi-xii.

¹⁵ *Id.* at 133–34; see *infra* note 17.

¹⁶ YADGAR, *supra* note 3, at 41; when I capitalize *Orthodox*, that refers to the branch of Judaism. Where orthodox is not capitalized, it is just an adjective.

¹⁷ *Who is a Jew?*, ECONOMIST (Jan. 11, 2014), <https://www.economist.com/international/2014/01/11/who-is-a-jew> [hereinafter *Who is a Jew?*]

¹⁸ *Id.*

notion of Jewishness, rather than primarily to foster a broader political base with Orthodox support, as commonly has been argued.¹⁹

Yadgar argues that the presence of half a million Israeli citizens from the former Soviet Union (FSU) spotlights and aggravates the identity crisis.²⁰ A “time-bomb,” in the words Yadgar adopts from the *Economist*.²¹ Such presence challenges the conceptual binary of Jew-or-Arab (the Russians and their offspring are not Jews by Orthodox law).²² Furthermore, most non-Jewish Russians find the Orthodox procedures for conversion too onerous to bother with.²³ If Russian immigrants cannot be counted as Jews, the Jewish numerical majority for a nation state diminishes—as well as the epistemological stance that, with statistically minor exceptions, any non-Arab in Israel is a Jew.

The Israeli intellectual left (mostly secular, somewhat atheist) bemoans its loss of political power. The secularists (mostly, but not exclusively, leftist or liberal) resent perceived dictates from the Orthodox rabbinate limiting their preferred non-religious lifestyle. The mostly leftist intellectuals debate, on the Op-Ed pages of *Haaretz* (Israel’s dominant serious left-of-center newspaper), causes and solutions to left-wing loss of power and perceived religious coercion.²⁴ However, Yadgar argues that such dictates were not imposed on liberal society, but were sought by its leaders as part of the decision to copy the definition of Jewishness from Orthodox law.²⁵

Yadgar suggests that the fundamental problem for Jewish identity and for relations with the Palestinians has been the adoption of the *nation-state* as the governing structure for the Jewish homeland, which to him reflects Eurocentric epistemology—“the Enlightenment Project.”²⁶

According to Yadgar, understanding *tradition* could ameliorate Israel’s Jewish identity crisis and the Israel-Palestine Conflict.²⁷

¹⁹ YADGAR, *supra* note 3, at 41.

²⁰ *Id.* at 54.

²¹ *Id.*; see *Who is a Jew?*, *supra* note 17.

²² Russian-speaking immigrants to Israel. True Russian nationalists would not consider these folk Russian to the extent that they were Jewish.

²³ *Who is a Jew?*, *supra* note 17.

²⁴ YADGAR, *supra* note 3, at 4.

²⁵ *Id.* at 2.

²⁶ *Id.* at 3-4.

²⁷ *Id.* at 3.

His 2013 essay “Tradition” makes clear that, for him, tradition is not mere orthodoxy.²⁸ It is history and culture that wisely constrains the future, but does not fully dictate it.²⁹ Tradition would undercut the binary of nation-or-religion, enabling a truer picture of Jewishness. Rejection of a nation-state paradigm would soften the binary of Jew or Arab. Yadgar defers to future events to determine what an Israel-Palestine would look like if the proposed tradition-conscious dialogue among all stakeholders to take place. He offers tradition as a process tool, but not as a description of a tangible end.³⁰

Us and Them

Yadgar principally proposes that it has been impossible to define a Jew in secular terms (again remember the fish and the whale, but with the added complications of race, religion and politics), and, therefore, the secular Zionist founders of the state made a devil’s bargain partly with the Orthodox rabbinate, but mostly with themselves.³¹ *Let the rabbis define who is a Jew, and we’ll use that.* To decide who is “us” and who is “them.” Unfortunately, that deal has satisfied neither the founders’ desire for democracy nor for Jewishness. Yadgar argues that since secular Zionists offer no satisfactory secular definition of Jew, these historically anti-rabbinic Zionists have had to turn to Orthodox rabbis to be gatekeepers of nationality³²—a turning point, which was not a compromise forced on the founding secularists, but an “out” cynically chosen by them.³³

²⁸ Yaacov Yadgar, *Tradition*, 36 HUMAN STUD. 451 (2013) [hereinafter Yadgar, *Tradition*].

²⁹ *Id.* at 465–67.

³⁰ *Id.* at 457–62.

³¹ YADGAR, *supra* note 3, at 40–44.

³² *Id.* at 45; *see also Who is a Jew?*, *supra* note 17.

³³ Such a compromise included not merely ceding to the rabbis the definition of a Jew, but also jurisdiction in all things that American jurists would call family law: marriage, divorce, burial, etc. To the extent that Yadgar is making the broader claim that the entire compromise was cynical (rather than coalition-building as seems plausible) he may be overdrawing his conclusion. It seems entirely likely that the Labor Zionists did chiefly desire to bring the Orthodox into their big tent when the new nation seemed so threatened. *See Who is a Jew?*, *supra* note 17.

Chosen because they could not come up with a secular definition of their own.³⁴ *Chosen* because the notion of descent-through-blood comported with their notion of nationhood.³⁵ *Cynically*, because such a choice went against other core aspects of their espoused secular liberal socialist beliefs.³⁶ Although perhaps Yadgar ought to be more forgiving here to leaders of a remnant that had just survived a racist holocaust³⁷—in 1948 they could be excused for thinking that blood mattered when a few years earlier six million of them had been slaughtered largely on that basis (as scientifically frivolous as Nazi theory might have been—racists are not always good anthropologists).³⁸ So, maybe not cynical, maybe just ideologically discordant.

Profoundly, *Israel's Jewish Identity Crisis* proposes that “who is a Jew?” is more than mere talmudic navel-gazing for the Jewish community (however defined) in and out of Israel.³⁹ The question both affects and is affected by the Palestine/Israel Conflict. When the Liberal Zionist founders of Israel created a nation-state for the Jews—just as Germany was founded for the Germans and Italy for the Italians—the liberal Zionist founders locked themselves into an ethnic binary (bind). *If we are a democratic state, then the majority must rule. If we are a Jewish state,*⁴⁰ *that majority must be made up of Jews; and,*

³⁴ YADGAR, *supra* note 3, at 45.

³⁵ *Id.* at 41–44.

³⁶ *Id.*

³⁷ Michael Berenbaum, *Nazi Anti-Semitism and the Origins of the Holocaust*, BRITANNICA (Feb. 9, 2021) <https://www.britannica.com/event/Holocaust#ref215485>; see also, *Locating the Victims*, U.S. HOLOCAUST MEMORIAL MUSEUM, (Feb. 9, 2021), <https://encyclopedia.ushmm.org/content/en/article/locating-the-victims>.

³⁸ Furthermore, his revisionist attack on the traditional explanation for Labor Zionists in 1948 ceding jurisdiction over family law to the Orthodox rabbis is not fully convincing. That explanation—that Ben Gurion and company sought to build a broader Jewish base in the new state for the struggle against an Arab onslaught—remains convincing notwithstanding his tease “*why should the overwhelmingly dominant labor Zionists fear the dissatisfaction of a then-small minority of orthodox Israelis?*” see YADGAR, *supra* note 3, at 133–34.

³⁹ See generally YADGAR, *supra* note 3.

⁴⁰ Yadgar prefers “State of the Jews,” reflecting Israel’s ethnic majoritarianism, rather than Jewish values (whatever those might be) as would be implied in the term “Jewish State.” *Id.* at 26.

for decades after Herzl, in Palestine/Israel that pretty much meant anyone who was not an Arab.⁴¹

Yadgar describes at least two problems with this contract of convenience between the Orthodox rabbinate and secular Zionists who founded the state. First, it makes the distinction between Jew and Arab an existential obsession for Israeli Jews, constantly worrying about being demographically overwhelmed.⁴² Second, this rabbinical/secular compact for deciding the us/them question no longer works today.⁴³ The arrival of a million Russians,⁴⁴ mostly since the 1990s, has rendered the compact problematic.⁴⁵ Half of them do not meet the rabbinic law definition of a Jew.⁴⁶ Israel admitted virtually all of them based on the Law of Return⁴⁷ whose criteria for immigration to Israel are much looser than the rabbinate's rules for recognition as a Jew.⁴⁸ Yadgar echoes an apparently widely read *Economist* article from

⁴¹ *Id.* at 27–28.

⁴² *Id.* at 54–58.

⁴³ *Id.* at 58–64.

⁴⁴ That is to say Russian speaking former citizens of the Soviet Union. *See id.* at 54. Many Russian nationalists would never consider Jews to be Russian. *See* Cnaan Liphshiz, *Why Some Jews in Russia Don't Think Putin's Comment About them was Anti-Semitic*, JEWISH TELEGRAPHIC AGENCY (Mar. 18, 2018), <https://www.jta.org/2018/03/12/global/why-some-jews-in-russia-dont-think-putins-comment-about-them-was-anti-semitic>.

⁴⁵ YADGAR, *supra* note 3, at 54; *see also* *Total Immigration to Israel From the former Soviet Union*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/total-immigration-to-israel-from-former-soviet-union> (last visited Feb. 6, 2021); *On Multiple Fronts, Russian Jews Reshape Israel*, NPR (Jan. 2, 2013), <https://www.npr.org/2013/01/02/168457444/on-multiple-fronts-russian-jews-reshape-israel>; Harriet Sherwood, *Israel's Former Soviet Immigrants Transform Adopted Country*, GUARDIAN (Aug. 17, 2011), <https://www.theguardian.com/world/2011/aug/17/israel-soviet-immigrants-transform-country>.

⁴⁶ A person born to a Jewish mother or a person converted by a rabbi. *See Who is a Jew?*, *supra* note 17; Rebecca Weiner, *Judaism: Who is a Jew*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/who-is-a-jew> (last visited Feb. 9, 2021).

⁴⁷ Law of Return, 5710-1950 (1950) (Isr.).

⁴⁸ YADGAR, *supra* note 3, at 56.

2014⁴⁹ making the following point.⁵⁰ With the immigration of a million Soviets, half of whom are not Jews by strict rabbinic definition, and who resist onerous orthodox conversion, a *demographic time-bomb* is ticking.⁵¹

One might guess that the author would also describe it as an *epistemological time-bomb* as well, since those Russians negate the binary logic that (for residents of Israel) if you're not a Jew you're an Arab. Jewish identity in Israel developed as a binary counterpoint to Arab identity.⁵² Lack of Jewish identity in secular Israelis is already felt by some as an existential threat regarding the arithmetic demographic versus Palestinians.⁵³ The definitional limbo of half-a-million Russian immigrants has heightened that perceived threat.

Statism

Yadgar accurately identifies the founding liberal socialist Zionists (the 1948 leaders) as statist.⁵⁴ They believed that Diaspora Jewish life had degenerated for lack of nationhood and that only by having a state of their own would Jews again thrive.⁵⁵ He identifies both European Enlightenment thought and Westphalian political organization as shaping this early Zionist attitude.⁵⁶ He believes that

⁴⁹ *Who is a Jew?*, *supra* note 17.

⁵⁰ The *Economist* credits Rabbi Itamar Tubul with first articulating this insight. See *Who is a Jew?*, *supra* note 17.

⁵¹ YADGAR, *supra* note 3, at 36. Tomer Persico disagrees with the Russian-Israeli time bomb theory. He believed that the non-converted Russian immigrants to Israel (and their children) have integrated pretty fully into Israeli society, that they identify with the Israeli nation, that they serve willingly in the armed forces and that they are for practical purposes part of the Jewish majority. Dr. Persico, an expert in Israeli political and religious affairs, expressed this opinion in an April 19, 2021 interview with me in Berkeley where he was a visiting professor at the University of California and a research scholar for the Hartman Institute.

⁵² *Id.* at xiii.

⁵³ *Id.*

⁵⁴ See Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19 (explaining how international law defines a state as an entity with a fixed territory, a permanent population, a government, and the ability to conduct foreign affairs with other states).

⁵⁵ YADGAR, *supra* note 3, at 100-01.

⁵⁶ *Id.* at 172, 189.

such *statism* is at the heart of both Israel's identity crisis and the conflict with the Palestinians.⁵⁷

Because Zionist political leaders insist on a *State of the Jews*—instead of a *Jewish State*⁵⁸—they have become obsessed with a perceived existential need to maintain a numerical majority over the Arabs, Yadgar observes.⁵⁹ Presumably, a *Jewish State* (one based on Jewish values rather than on a demographic majority) would not have a similar numerical imperative. However, while he argues somewhat convincingly that the State of the Jews will have an ongoing problem defining who is a Jew (toward counting that majority),⁶⁰ he ignores the alternative problem that a Jewish State would have in defining what are Jewish values. Nor does he indicate how a Jewish Values State could survive without a numerical majority. Maybe he wants no state—just a Jewish homeland as articulated by the Balfour Declaration,⁶¹ coexisting better both with Arabs and with the Diaspora. But how would Jews fair as a minority in a greater Palestinian territory? Would the territorial entity be like the European Union? Unlikely.⁶² Like Lebanon? Unwelcome.⁶³

Yadgar does not clarify whether he rejects the possibility of the state that does not depend on Orthodox law defining who is a Jew (and therefore part of the Jewish nation), or whether he just thinks that

⁵⁷ *Id.* at xv, 173.

⁵⁸ *Id.* at 26 (explaining the title of Theodore Herzl's manifesto for modern Zionism, *Judenstaat* could be translated from the original German as either). My German speaking friend and colleague, poet and law professor Michael Blumenthal, confirms this translation ambiguity.

⁵⁹ See *The Jewish Mission*, HAARETZ (Mar. 28, 2018), <https://www.haaretz.com/opinion/editorial/the-jewish-mission-1.5956180>.

⁶⁰ YADGAR, *supra* note 3, at 75.

⁶¹ See *Balfour Declaration*, BRITANNICA, <https://www.britannica.com/event/Balfour-Declaration> (last visited Feb. 16, 2021).

⁶² Given the lack of democratic infrastructure in the region. See Stephen Farrell, *Explainer-Why can't Israel keep a government together?*, REUTERS (Dec. 23, 202), <https://www.reuters.com/article/us-israel-election-explainer/explainer-why-cant-israel-keep-a-government-together-idUSKBN28X12F>; Steve Hendrix, *Netanyahu fails to form a governing coalition by deadline, putting his continued rule into question*, WASH. POST (May 4, 2021), https://www.washingtonpost.com/world/middle-east/netanyahu-failing-to-form-government/2021/05/04/f255876a-ac9f-11eb-82c1-896aca955bb9_story.html.

⁶³ Given the horrendous outcomes from attempts by nationalism in Lebanon.

the state is going about it the wrong way, or whether he does not think the state should exist (at least as a Jewish State or the State of the Jews), or perhaps something else.

The Enlightenment Project

Yadgar employs the word “project” in an insinuating manner. He writes repeatedly of the “Zionist project” and of the “Enlightenment project.” *His project* seems to be to demean the Enlightenment and Zionism as a somewhat devious phenomena.⁶⁴ The Enlightenment in his view appears as a tool of intellectual oppression against belief systems of the East.⁶⁵ Zionism appears as a tool of statist liberals and socialists seeking to create a monolithic Jewish nationalism.⁶⁶ Probably much truth resides in his critique of Zionism and in his critique of an arrogant Western epistemology. Probably much truth is to be found in his own intellectual regard for “tradition.” However, calling two significant, probably progressive (for their time)⁶⁷ movements “projects” comes off more as slurring than analytical.⁶⁸

⁶⁴ YADGAR, *supra* note 3, at 172.

⁶⁵ *Id.* at 6–8, 172, 189.

⁶⁶ *Id.* at 172.

⁶⁷ It is progressive in comparison to the 1500s, 1600s, and 1700s where the Enlightenment’s rejection of religious dogma managed by a clerical monopoly was the ultimate arbiter of all truth—spiritual and scientific. Certainly, Zionism’s assertion of a right for self-determination for Jews who have been oppressed in Europe (and to some significant degree in Muslim lands) for two millennia was progress. The fact that these or any other movements take on repressive characteristics after initial successes does not defeat their fundamental progressive natures nor render them mere “projects.”

⁶⁸ The first time I heard the term “project” used in this manner, a smart but annoying non-Jewish British neo-Marxist friend and colleague employed it at a seminar sometime in the 1980s at West Virginia University—while taking a shot (probably accurately) at some now-unrecalled abuse of capitalism and while attacking liberalism generally as “the Enlightenment project”. Another (Jewish) colleague and I pointed out to him that most Jews who thought about the matter had a soft spot in their hearts for the Enlightenment, since it enabled significant emancipation politically and intellectually for many of their ancestors in Europe.

Yadgar rejects a lot—binary logic, secularism, liberalism, the Enlightenment, the state, and the Peace of Westphalia.⁶⁹ One imagines he is heavily affected by his own roots. Coming from an Iranian Jewish family, he would not be in the ethnic mainstream of the Ashkenazi⁷⁰ intellectual elite in Israel. Like many third-world intellectuals, the domination of Eastern thinking by Western thinking represents one of the vestiges of European colonialism and an imposed false view of knowledge. He follows the tradition of Edward Said, whose *Orientalism* critiqued this phenomenon in a master work half a century ago.⁷¹ Said was probably the most publicly known of the many critical

⁶⁹ Of course, he would recognize that the latter set of treaties occurred, but he seemed displeased with the European system of nation-states it enabled, notwithstanding its check on Hapsburg imperial autocracy.

⁷⁰ Most Jews of non-Hispanic European origin. Rabbi Rachel M. Solomin, *Who are Ashkenazi Jews?*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/who-are-ashkenazi-jews/> (last visited Nov. 4, 2021). They represented the majority of early Zionists and now comprise a bit more than half of the Israeli population. Broadly speaking, they include large numbers of liberal Zionists and their secular children and grandchildren, many modern Orthodox and traditional Jews, politically conservative Jews from the former Soviet Union, and ultra-orthodox *Haredi*. Raysh Wiess, *Haredim (Charedim), or Ultra-Orthodox Jews*, MY JEWISH LEARNING <https://www.myjewishlearning.com/article/haredim-charedim/> (last visited Nov. 4, 2021). Yiddish (a medieval German derivative) was the language most brought with them from Europe. In contrast, the millions of Jews with North African and eastern Mediterranean background are broadly known as *Sephardi*, descendants of those exiled by the Spanish expulsion in 1492 and speakers of Ladino (a Spanish dialect). Rabbi Rachel M. Solomin, *Who are Sephardic Jews?*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/who-are-sephardic-jews/> (last visited Nov. 4, 2021). Additionally, hundreds of thousands of Israelis trace their background to Yemen, Iraq, and Iran (Yadgar among the latter) where Hebreo-Arabic and Hebreo-Persian and other Jewish tongues were spoken to a degree. Together all these non-European groups are sometimes referred to as *Mizrachi*, a term which is sometimes controversial. Rabbi Rachel M. Solomin, *Who are Mizrahi Jews?*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/who-are-mizrahi-jews/> (last visited Nov. 4, 2021). There are two separate chief rabbis in Israel: one for the Ashkenazi and one for the *Mizrachi*. See *Israeli Politics: Chief Rabbis of Israel*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/chief-rabbis-of-israel> (last visited Nov. 4, 2021); see also *Chief Rabbinate*, BRITANNICA, <https://www.britannica.com/topic/chief-rabbinate> (last visited Nov. 4, 2021). Both adhere to orthodox theology and share the legal monopoly on marriage, conversion and other domestic matters. *Who is a Jew?*, *supra* note 17; see also YADGAR, *supra* note 3, at 37-38.

⁷¹ See EDWARD SAID, *ORIENTALISM* (1978); see Richard Bernstein, *Edward W. Said, Literary Critic and Advocate for Palestinian Independence, Dies at Age 67*, N.Y.

theorists in whose steps Yadgar seems to walk.⁷² To this group of un-Western critics, intellectual domination went hand-in-hand with political domination.

But he reaches too far. *The Enlightenment was a good thing*. It diminished the power of absolute despots and of clerical dogma. It enabled modern science—medicine, increased food production and diminished hunger, global communication, etc.⁷³ Through the philosophy of Locke, Voltaire and the like, rights to speak, think, worship and choose government were proclaimed, and gradually—if imperfectly—achieved. Westphalian political reforms of 1648, ushering in the nation-state (codefendant with the Enlightenment in Yadgar's indictment) as the principal form of international organization represented a significant improvement over the imperialism of Hapsburg, Ottoman, Moscovite, Mogul, and Ming emperors. To defame the Enlightenment with the label *Project* is unfair. To the degree that Europeans in the modern age colonized, enslaved, slaughtered, and condescended, it was not because of the Enlightenment, but despite it. If early Enlightenment philosophers occasionally rejected *tradition*, it was not the dynamic *tradition* which Yadgar rightfully admires, but the *orthodoxy* that forced a confession from Galileo.⁷⁴ *Tradition* might be one word, but it does not signify only one thing.⁷⁵ Yadgar could legitimately attack the narrowmindedness of Western intellectuals who have failed

TIMES (Sept. 6, 2003), <https://www.nytimes.com/2003/09/26/arts/edward-w-said-literary-critic-advocate-for-palestinian-independence-dies-67.html?page-wanted=all&src=pm> (explaining how, interestingly, Said was a Palestinian-American active in Palestinian causes, including membership in the Palestine national congress).

⁷² See J. AL-E AHMAD, OCCIDENTOSIS: A PLAGUE FROM THE WEST (1984) (explaining how Said seems to have drawn heavily from *Occidentosis*, a seminal work by J. Al-e Ahmad).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ While much of Yadgar's critique might seem to come from the right—he lauds tradition, an unjust victim of secular liberalism—there is something of the left in his attitude, in his tone. He uses she/her as his preferred neutral pronoun. He makes no comment on this usage—he just does it. Much substance occupies this style. Yadgar is immersed in how we look at things—epistemology—how we understand the world. Opting for she/her must be something other than mere political correctness. He doesn't care about being politically correct, one guesses. He wants to disrupt our way of knowing things. See YADGAR *supra* note 3.

to realize the legitimacy of Eastern modes of thought, but he could have done it without slandering a movement that on the whole, did much greater good than harm. Edward Said may have spoken important truths, but so did John Locke three centuries earlier.

Law and Jews

Law often has dominated Jewish culture. For most of the two millennia of the Diaspora, leaders of the Jewish people have been *lawyers*—*rabbis* who through their intellectual monopoly created and *interpreted the rules* of Talmud and who governed the community accordingly.⁷⁶ Of course, the Talmud itself recorded early (1st to 6th centuries CE) dialectical interpretation of the laws of the Torah. The rabbis through their Talmudic exegesis had preferential access to the ultimate meaning of the Torah itself. A rabbi's authority as a ruler for the community was established by his (always *his*, not *her*) skill as a Talmudic lawyer, trained by years of study and debate with rabbis senior to him, and with his peers, and with his students.⁷⁷ In 2000 years of exile in Jewish communities large and small across the globe, rabbis used the law to maintain their authority and to keep those communities together.⁷⁸ Of course, other institutional structures contributed to survival. Traditions, so important to Yadgar, reinforced law and were reinforced by it. The typical household pretty much knew what it was supposed to do or not do on Sabbath, or on Passover, or upon a birth or a death or a marriage.⁷⁹ Tradition told them, but if they were uncertain about a particular behavior, they could seek a legal opinion from

⁷⁶ Occasionally during these two millennia there have been very significant rebellions against Talmudic legalism. The Karaites, probably beginning the eighth century in Persia, broke from mainstream rabbinic Judaism and rejected the Talmud and its complex compendium of legal interpretation. MARTIN GOODMAN, *A HISTORY OF JUDAISM* 301–310 (Princeton Univ. Press 2018). 1000 years later in Europe Hasidism rebelled against the formal legalism of dominant rabbinic practice in favor of a more spiritual, perhaps mystical approach to Judaism. SAID, *supra* note 71, at 413–425.

⁷⁷ GOODMAN, *supra* note 76, at 311.

⁷⁸ *Exilarch*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/exilarch> (last visited Nov 4, 2021).

⁷⁹ *Who is a Jew?*, *supra* note 17.

the rabbi. The word *law* often may not have been used, but the institution was there in the background.

Well prior to the founding of Israel, millions of Jews left ghetto culture and thousands became lawyers, not debating Talmud but debating constitutions, statutes, judicial precedent, etc. Jewish cultures that for centuries had honored lawyer-like dialectic skills would produce attorneys who could exercise such fungible mental prowess in a secular venue. *Secular* here, in the context of Europe and North America, has meant something different than *secular* in Israel. In Israel, as described by Yadgar, binary logic and practice separates the secular and religious.⁸⁰ That is not necessarily the case in Europe and America. The traditional Jew, one who neither embraces orthodoxy nor atheism, has dominated American Jewish life for most of the last century. Typically, she either affiliates with the Reform or Conservative or Reconstructionist branch of the faith, usually celebrates the holidays, perhaps sends her kids to Jewish summer camp and participates in Jewish culture. Such an American Jewish majority have never had their lives dictated in any way by Orthodox rabbis and therefore have seen no need to resent a domination that does exist. Not so in Israel.

That secular law crashes against sacred law in the debate which Yadgar describes should not surprise us. These are Jews arguing with Jews about who is a Jew. And about what rights or obligations the answers to this argument would entail. Cases from the Israel Supreme Court, statutes from the Knesset, Talmud-guided opinions of Orthodox rabbis all compete here.

In *Ka'Adan v. Israel Land Administration*, the Israeli Supreme Court clarified the constitutional status of the Basic Law on Human Dignity and Liberty.⁸¹ In its jurisprudence, the court has interpreted this to mean that the human rights statute trumps contrary ordinary legislation.⁸² For example, if a law discriminates against a particular group, denying them rights enjoyed by another group, that law would be invalid. Such a conclusion necessarily implies a further principle

⁸⁰ YADGAR, *supra* note 3, at 54.

⁸¹ HCJ 6698/95 Ka'adan v. Isr. Land Admin., 54(1) PD 258 (2000) (Isr.).

⁸² *Basic Laws*, Knesset, <https://m.knesset.gov.il/en/activity/pages/basiclaws.aspx> (last visited May 13, 2021).

related to this constitutionalization of basic human rights law,⁸³ namely that the court has the power of *judicial review* of ordinary legislation to determine its constitutionality—that is, consistency with the Basic Law.

Israel has failed to draft a written constitution, notwithstanding a stated intention to do so at the time of its founding.⁸⁴ One might ask whether such failure reflected the founding Zionists' discomfort at en-sconcing rights that could be relied upon by the Arab citizenry of the new state. In any event, a sequential promulgation over the decades of various Basic Laws partially have substituted for a full-blown constitution. Basic Laws trump ordinary legislation and are more difficult to pass or repeal.⁸⁵ The Basic Law regarding human rights passed in 1992, and the Basic Law on the Jewish character of the state passed in 2018 raise the most interesting questions and tensions for our analysis here.⁸⁶

⁸³ See Aharon Barak, *The Constitutionalization of the Israeli Legal System as a Result of The Basic Laws and Its Effect on Procedural and Substantive Criminal Law*, 31 ISR. L. REV. 3 (1997).

⁸⁴ DECLARATION OF ESTABLISHMENT OF STATE OF ISRAEL (May 14, 1948), <https://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Declaration%20of%20Establishment%20of%20State%20of%20Israel.aspx>; see also *Constitution for Israel*, KNESSET, https://knesset.gov.il/constitution/ConstIntro_eng.htm (last visited Feb. 8, 2021); ANITA SHAPIRA, *ISRAEL: A HISTORY* 182 (2012).

⁸⁵ See Barak, *supra* note 83. The Knesset does appear to recognize that, regarding the question of the superiority of the basic laws over other laws, differences of opinion do still exist. *Basic Laws*, *supra* note 82. However, the Israeli Supreme Court has held that ordinary laws are invalid where they contradict a basic law. See e.g., HCJ 6055/95 Tzemach v. Minister of Defense, 53(5) (1999) (Isr.) (finding article 237a(a) of the Military Judgement Law, which enabled a military policeman to detain a soldier for four days without first bringing him before a judge, contradicted the Basic Law: Human Dignity and Liberty and was therefore null and void). According to Israeli constitutional law expert and professor, Roy Peled (Berkeley California interview with author April 21, 2021), uncertainty exists regarding the requirements for repeal of a Basic Law, for instance whether a simple or absolute majority is necessary in the Knesset.

⁸⁶ See Basic Law: Human Dignity and Liberty (1992) (Isr.); Basic Law: Israel - the Nation-State of the Jewish People (2018) (Isr.) [hereinafter Basic Law: Israel as the Nation-State of the Jewish People].

Yadgar accurately observes that the Jewish Nation-State Law of 2018 makes Israeli Jews *sovereign* and Arab Israeli citizens not.⁸⁷ Under the widely accepted standards of the *Reference re Secession of Quebec* (“*Quebec Opinion*”) rendered by the Canadian Supreme Court in 1998,⁸⁸ self-determination, entitled by international law to all peoples, may be enjoyed *internally* within a larger state, but if denied to a people within that state, then they are entitled to *external* self-determination.⁸⁹ Unlike the Quebecois, which the Canadian court found to hold equal civic status with their Anglophone sisters and brothers as well as significant political power and governmental positions within the Canadian state and its provinces, Arab Israelis possess none of these, and the Jewish State Basic Law makes that official.⁹⁰ Unlike the official status of the French language within Canada, the Jewish State Basic Law has officially demoted Arabic to second-class status within Israel after decades of legal equality.⁹¹ And so on.

A “people” possess the “right to external self-determination ... where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development.”⁹² Under these standards, the Jewish State Basic Law denies Israeli Arabs internal self-determination and thus entitles them to independence

⁸⁷ YADGAR, *supra* note 3, at 85–90; *see also A State for Some of Its Citizens*, HAARETZ: EDITORIAL, (Mar. 11, 2019), <https://www.haaretz.com/opinion/editorial/a-state-for-some-of-its-citizens-1.7004500>.

⁸⁸ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 (Can.) [hereinafter *Quebec Opinion*]; *see also* International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, T.I.A.S. 92-902; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

⁸⁹ *Quebec Opinion*, *supra* note 88, para. 126–34.

⁹⁰ *Id.* para 136, 138.

⁹¹ Basic Law: Israel as the Nation State of the Jewish People, *supra* note 86. *See also* Moshe Arens, *Israel's Jewish Nation-state Bill Is Not Just Useless - It's Harmful*, HAARETZ: OPINION, <https://www.haaretz.com/opinion/.premium-israel-s-nation-state-bill-is-not-just-useless-its-harmful-1.5471909> (Apr. 24, 2018); *Basic Law: Apartheid in Israel*, HAARETZ: OPINION, (May 30, 2013), <https://www.haaretz.com/opinion/.premium-editorial-don-t-enact-law-against-arabs-1.5271031>; Shlomo Avineri, *New 'Jewish Identity' Bill Will Cause Chaos in Israel*, HAARETZ, (Nov. 21, 2011), <https://www.haaretz.com/1.5211668>.

⁹² *Quebec Opinion*, *supra* note 88, para. 138.

from the Israeli state.⁹³ Some Israeli Arabs might want this independence, but many—perhaps most—would not.⁹⁴ However, the legal standard articulated by the *Quebec Opinion* and accepted by International lawyers should shame Israel, particularly if it continues to claim the mantle of democracy. And it supports Yadgar’s observation that only Jews now officially enjoy sovereignty within the Israeli state of which both they and Arabs are citizens.⁹⁵

Inside Baseball, Inside Haaretz

In the latter part of his book, Yadgar reviews debates within the left-liberal Israeli intellectual elite regarding national identity and religious identity.⁹⁶ To some extent, this analysis comes across as inside baseball. Only those regularly attending the editorial pages of *Haaretz* are likely to recognize the players.⁹⁷ He notes this elite’s angst in no longer speaking for a majority of the Israeli public, as well as the secularists’ perception of and resentment of religious coercion.⁹⁸ One of the writers Yadgar discusses urges his leftist co-non-religionists to accept their diminution to the rank of one more minority “tribe” within the Israeli population, albeit a large and sometimes influential one.⁹⁹

Yadgar spends his last two chapters prior to his conclusion, about 50 pages, mostly on this *Haaretz* Op-Ed page debate among predominantly left-wing intellectuals concerning whether *Israeli* entails

⁹³ See Basic Law: Israel as the Nation-State of the Jewish People, *supra* note 86; see also Moshe Arens, *Israel's Jewish Nation-State Bill Is Not Just Useless - It's Harmful*, HAARETZ: OPINION, (Apr. 24, 2018) <https://www.haaretz.com/opinion/.premium-israel-s-nation-state-bill-is-not-just-useless-its-harmful-1.5471909>.

⁹⁴ This observation is based on my fieldwork in Israel and Palestine while a visiting scholar at Hebrew University. It is obviously impressionistic. The few Israeli Arabs with whom I spoke on this issue seemed to express the view (with varied nuances) that they would prefer to remain citizens of the state now called Israel, but with fully equal rights. They tended not to want to be citizens of a separate Palestine, if a two state solution were reached.

⁹⁵ YADGAR, *supra* note 3, at 90–97.

⁹⁶ *Id.* at 112–71.

⁹⁷ Israel’s principal center-left reputable newspaper. See generally HAARETZ, <https://www.haaretz.com> (last visited Jun. 12, 2021).

⁹⁸ YADGAR, *supra* note 3, at 118–24.

⁹⁹ *Id.* at 124–27.

Jewish or not, while noting that such debate often reflects fringe opinions and usually envisions highly unlikely outcomes.¹⁰⁰ Two important Israeli Supreme Court cases, *Tamrin v. State of Israel* and *Ornan v. Ministry of the Interior*, also figure in this discussion, as they both reject the notion of an *Israeli* (as opposed to Jewish or Arab) nationality.¹⁰¹ Yadgar grants that “the elitist discourse reviewed above is detached from the predominant understanding of Jewishness, Israeliness and Judaism broadcast by the state and practice by its subjects.”¹⁰² So, why does he spend over a quarter of his book on it? He appears to do this as part of his project to demonstrate the fruitlessness of analyzing Israel’s demographic and political problems from a viewpoint that starts with the nation-state as a given. But that point can be made with less ink, and in fact, he does so elsewhere in the text.¹⁰³ One might imagine Yadgar musing, “My God, I read all this stuff. It must be useful for something.”

Demographic Shift

Labor Zionist political and philosophical domination has waned over decades.¹⁰⁴ First, it diminished with the influx of Jews from North Africa and the Middle East during and after¹⁰⁵ the 1948 War of Independence,¹⁰⁶ accelerating (particularly from Egypt) with the 1956 Suez crisis and continuing with the 1967 Six-Day War and the 1973 Yom Kippur war. During and after each of these conflicts,

¹⁰⁰ *Id.* at 112-71.

¹⁰¹ CA 630/70 *Tamrin v. State of Israel* 26(1) IsrSC 197 (1972) (Isr.); CA 8573/08 *Ornan v. Ministry of the Interior*, 66(3) IsrSC 44 (2008) (Isr.)

¹⁰² YADGAR, *supra* note 3, at 150.

¹⁰³ *Id.* at 2, 26.

¹⁰⁴ YADGAR, *supra* note 3, at 126.

¹⁰⁵ Thousands of Yemeni Jews have been present in Palestine since the turn of the 20th century. See BAT-ZION ERAQI KLORMAN, TRADITIONAL SOCIETY IN TRANSITION: THE YEMENI JEWISH EXPERIENCE 87 (Vol. 39 2014). Iraqi Jews, once a plurality or near plurality in Baghdad, began joining the Yishuv prior to and during World War II when the Iraqi government grew close to Nazi Germany. *Palestine*, HISTORY, <https://www.history.com/topics/middle-east/palestine> (last visited Oct. 7, 2021).

¹⁰⁶ Known as the “Nakba” to Palestinians, meaning catastrophe. See generally *Arab-Israeli Wars*, BRITANNICA, (May 18, 2021), <https://www.britannica.com/event/Arab-Israeli-wars>.

Arab states made it uncomfortable to varying degrees for their centuries-old Jewish populations to remain. Historians can argue whether the cause of such migration of hundreds of thousands of non-European Jews resulted from Arab governments forcing them out (as punishment for Israeli victories, or from those governments' truly fearing a fifth column during wartime) or from the Israeli government convincing these Jews to migrate for their safety and for national fulfillment. The new arrivals tended to be less liberal and less secular than the dominant Laborites, who welcomed the demographic addition to the non-Arab Jewish population, but the newcomers often faced cultural condescension and material frugality from the secular Ashkenazi Jewish community and the government it dominated.¹⁰⁷ These Mizrachim¹⁰⁸ would form a part of the center-right alliance that took over the Israeli government in the 1977 elections.¹⁰⁹ Yadgar perhaps might point out that these North African and West Asian Jews participated in the disempowering of Labor Zionism more as an expression of cultural tradition than of right wing politics.

Second, *within* the Ashkenazi (European) population (home to most secular Zionists), demographic change had begun with the ortho-

¹⁰⁷ SHAPIRA, *supra* note 84, at 242–44, 364–65.

¹⁰⁸ Mizrahi and Sephardi are sometimes used more or less as synonyms for the large group of Israeli Jews from North Africa, the Middle East, and Balkans. More precisely, Sephardi only refers to those Jews whose ancestors were originally exiled from Spain after their expulsion in 1492. Iraqis, Iranians, and Yemenis, therefore, technically would not be Sephardi. Sometimes these immigrants and their descendants are referred to as “traditional” Jews, to distinguish them from Ashkenazi Orthodox. Upon arrival in Israel in the late 1940s and 1950s, they were often housed in unappealing desert camps or dangerous parts of Jerusalem adjacent to the border with Jordan. Rabbi Rachel M. Solomin, *Sephardic, Ashkenazic, Mizrahi and Ethiopian Jews*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/sephardic-ashkenazic-mizrahi-jews-jewish-ethnic-diversity/> (last visited Nov. 2, 2021).

¹⁰⁹ *About the 1977 Elections*, ISRAEL DEMOCRACY INST., <https://en.idi.org.il/israeli-elections-and-parties/elections/1977/> (last visited Feb. 8, 2021).

dox and ultra-orthodox increasing their percentage in the population.¹¹⁰ Such groups tended to be more conservative than the Labor Zionists.¹¹¹

Third, the 1973 Yom Kippur War disheartened many followers of the Labor Party which had been in sole power since the 1948 war of independence. Although Israel militarily prevailed in the end,¹¹² Egyptian and Syrian successes in the early days of the conflict gave the Jewish population a sense of existential anxiety and of anger at the ill-preparedness of the government and military at the onset of the Syrian and Egyptian offenses.¹¹³ The Labor Party (Mapai) that had ruled Israel for its first two decades as a state has never recovered.¹¹⁴ By 1977, it was ushered out of power with the victory of Menachem Begin and his Likud Party,¹¹⁵ which has dominated Israeli politics since then with the help of the migration of one million mostly conservative Russians and frequent alliances with ultra-orthodox parties.¹¹⁶

In What Sense a “Crisis”? And the Fallacy of Necessity

What does the phrase “identity crisis” mean in this book’s title? Is the “crisis” that society has ceded to the rabbinate the power to decide who will hold full membership in society? If so, that is indeed a crisis. A democracy should not do that. A country respecting human rights should not do that. A country with multiple religions and ethnicities should not do that.

¹¹⁰ Michael Kress, *Orthodox Judaism: The State of Orthodox Judaism Today*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/the-state-of-orthodox-judaism-today> (last visited Feb. 17, 2021).

¹¹¹ To some degree, such groups tended to vote as blocs for political parties associated with traditional Sephardi or Ashkenazi.

¹¹² *Yom Kippur War*, BRITANNICA (Oct. 16, 2020), <https://www.britannica.com/event/Yom-Kippur-War>.

¹¹³ *Id.*

¹¹⁴ The Hebrew name of Israel’s Labor Party is *Mapai*. See *Mapai Political Party*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/mapai-political-party> (last visited Feb. 9 2021); *Mapai*, ISRAEL DEMOCRACY INST., <https://en.idi.org.il/israeli-elections-and-parties/parties/mapai/> (last visited Feb. 9, 2021); see also *Israel’s Political Kaleidoscope*, ECONOMIST (Apr. 9, 2019), <https://www.economist.com/graphic-detail/2019/04/09/israels-political-kaleidoscope>.

¹¹⁵ *About the 1977 Elections*, *supra* note 109.

¹¹⁶ See *Likud*, BRITANNICA (Jan. 13, 2021), <https://www.britannica.com/topic/Likud>.

However, if the “crisis” is the inability of the state to agree on a single definition of Jewishness, that’s not such a crisis. The fallacy in such a worry is that purportedly one must come up with a *necessary* criterion—for example, birth to a Jewish mother or Orthodox conversion. It is not a big deal that without rabbinical help secular Jews have not been able to come up with a unique criterion of what makes them and others Jewish. A laundry list of criteria—no one of which is absolutely necessary—should adequately serve as a reference for defining Jewishness. The list would include birth-to-mom or conversion by an Orthodox rabbi, the present rabbi-decreed standards.¹¹⁷ But it also might include birth-to-dad, conversion by a Conservative or Reform or Reconstructionist rabbi, self-identification, service in the IDF, evidence of cultural or social participation in the community, etc. Ticking off one box might not be sufficient, but ticking off two or three certainly could be. Yadgar does believe that Jewishness is indeed multifaceted.¹¹⁸ This seems to be part of what is entailed by his view of tradition. However, he does not seem to recognize that such complex identity characteristics could form part of a formula for Jewishness within a nation-state.

Consider the possibility of salutary ambiguity. The kind of beneficial hedging employed in the Good Friday Agreement for bringing peace to Northern Ireland in 1998.¹¹⁹ That document proclaimed that the residents of Northern Ireland could consider themselves Irish or British or both.¹²⁰ A brilliant finesse. In a similar spirit, for a different question of identity Israel could accept as Jewish persons that meets any, or some, of a variety of characteristics: Jewish parentage maternal or paternal, Jewish practice by rabbinic supervision or by personal adherence to traditions, self-identification as Jewish, service in the armed forces etc. Debate could ensue regarding which of these characteristics would be sufficient to qualify for Jewish nationality on

¹¹⁷ *Who is a Jew?*, *supra* note 17; see also *DNA Testing to 'Prove' Jewishness Is Spine-chilling*, HAARETZ: EDITORIAL, (Sept. 1, 2019), <https://www.haaretz.com/opinion/editorial/dna-testing-to-prove-jewishness-is-spine-chilling-1.7772897>.

¹¹⁸ YADGAR, *supra* note 3, at 194.

¹¹⁹ See The Northern Ireland Peace Agreement, Ir.-N. Ir.-U.K., Apr. 10, 1998, IE GB 980410. Unfortunately, Brexit seems to have roiled this ambiguous but peaceful solution. See James J. Friedberg, *Brexit, the Misrepresentation of Democracy, and the Rock of Gibraltar*, 5 U. BOLOGNA L. REV. 209 (2020).

¹²⁰ The Northern Ireland Peace Agreement, *supra* note 119.

an Israeli passport, which characteristics would require reinforcing from other criteria, or which could be defeated by other facts (adherence to another religion). Resolution of such debate is one of the things that legislatures do. The Knesset could do this, if politics allowed.

The problem of Jewish identity in Israel is not fuzzy-thinking or cynical liberals not being able to come up with a formula—the problem is wrestling this monopoly away from the Orthodox rabbinate. Nor should secularists be able to impose the mirror image of the coercion they presently perceive from the Orthodox. That is a political problem of votes, Knesset seats, and coalitions. It is not solely a problem of somehow-innate philosophical flaws in liberal Zionism or the nation-state system.

Tradition

Yadgar locates himself as a traditionist “standing outside of the secular-*conservative* dichotomy. . . . This is a loyal yet reflective stance of the individual and *her* community vis-à-vis their tradition(s).”¹²¹ Some linguistic irony operates here. First the word conservative is probably not the best choice for the dichotomy he identifies—*orthodox* would be better, particularly considering that in the Jewish denominational sense the *Conservative* movement is probably in some ways close to his idea of traditionist. Second, as mentioned above, he employs the pronoun *her* as the default gender to describe male or female—a usage that might be considered *non-traditional* by most readers.¹²² However, it seems consistent with Yadgar’s notion of tradition, as reflecting evolution, not stasis.¹²³ Tradition and convention are not the same. Convention (“him”) may be an element of tradition, but the historical dynamics of tradition might demand that a convention changes (“her”).

Yadgar recognizes that a binary choice in defining Judaism doesn’t work. Jews are not merely a religion nor merely a nation. They are people with aspects of both and with multiple other characteristics, some cultural, some linguistic, some social. Reconstructionism is a

¹²¹ YADGAR, *supra* note 3, at 190–91 (emphasis added).

¹²² See *supra* text accompanying note 75; see also YADGAR, *supra* note 3, at 10, 11, 15, 28, 43, 47, 49, 52, 53, 57, 191.

¹²³ See generally *id.* at 189–91.

fourth branch of western Judaism (situated predominantly in Europe and the Americas) that captures this phenomenon well. Mordecai Kaplan founded the movement in America in the mid 20th century, declaring Judaism neither simply a religion nor simply an ethnic group, but rather an evolving religious civilization, broad enough to encompass Heredi, modern Orthodox, Conservative/traditional, Reform Jews, Secular Jews, Zionists, Sephardi, Iraqi Jews, Persian Jews etc.—a civilization made up of multiple currents flowing within a larger fluid body.¹²⁴ It is a bit surprising that Yadgar does not reference this movement which seems compatible with his traditionist critique. I am a child of the Enlightenment but also a Jewish traditionist. I feel no contradiction in appreciating the constrained sovereignty (a word that for Yadgar seems to have negative connotations) that John Locke promises me, as well as the roots to my past through an evolving religious civilization.

Palestine

In the very first few paragraphs of his preface, Yadgar proclaims that a major intent of this book is to demonstrate that the purported Jewish identity crisis in Israel is intimately linked to the Israel Palestine conflict.¹²⁵ He makes this claim and provides the basic logic behind it. Namely that Israel's secular Zionist founders and politicians have based Israel's existence as a state on the maintenance of a numerical Jewish majority.¹²⁶ And without that majority the existence of the state and presumably the Jewish homeland is threatened.¹²⁷ However his argument goes, such founders and politicians have been unable to define clearly who is a Jew.¹²⁸ Leaving hundreds of thousands of citizens, mostly former Soviets, in limbo and potentially not able to be counted toward that numerical majority. Furthermore, the whole idea of a numerical majority is a majority against the Arab minority. Although this logic seems persuasive on its face, Yadgar doesn't fully explore its political implications; he spends more time exploring the

¹²⁴ YADGAR, *supra* note 3, at 15.

¹²⁵ *Id.* at 11-14.

¹²⁶ *Id.* at 14.

¹²⁷ *Id.* at 36.

¹²⁸ *Id.* at 12.

obscure rhetoric and analysis of the secular Jewish intellectuals who debate Israel's Jewish character or lack thereof. In future work it would be interesting to hear the author's take on precisely where the Palestinians fit in his analysis. Within one state? Within two states? Within a Semitic Union? Within a post statist utopia?

His solution? It's procedural, not substantive.¹²⁹ He rejects epistemology that sees the nation state as the only vehicle for a Jewish homeland.¹³⁰ Instead, parties engage in a dialogue that considers a wealth of sometimes competing Jewish traditions as informing what a Jewish home in Palestine might look like.¹³¹ His rejection of the nation-state of the Jews as an epistemological foundation allows us to leave behind arithmetic regarding Arab as a demographic enemy.¹³² However, he does not explain how this might work.

It really does not matter what Livni or Avneri or Avineri or Fruman conclude (or fail to conclude) in the Op-Ed pages of *Haaretz* concerning whether *Israeli* entails *Jewish* or not.¹³³ What matters is whether a flexible definition of Jewishness can be created for purposes of immigration and civic participation and solidarity, in a way that both facilitates intercommunal acceptance—among the orthodox the secular and the traditional—within Israel's Jewish population and fair peace with Palestinian neighbors inside and outside its 1948 borders (of course, as they say, “appropriately adjusted for some land swaps”). Yadgar doesn't like states. However, a two-state result guaranteeing both the survival of a *tradition-respecting* (and pluralist?) Jewish homeland and of Palestinian sovereignty seems the *least troubling* of any practical *possible* solution.

¹²⁹ See YADGAR, *supra* note at 194-95.

¹³⁰ See *id.* at 3, 6-8.

¹³¹ *Id.* at 191.

¹³² YADGAR, *supra* note 3, at 194.

¹³³ Livni, Avneri, Avineri and Fruman are prominent among the commentators participating in the Israeliness/Jewishness debate in *Haaretz*. See generally YADGAR, *supra* note 3, at 127-47; see also Rami Livni, *Three Reasons Israelis Stopped Being Secular*, HARETZ (Jan. 2, 2017); Shlomo Avineri, *New 'Jewish Identity' Bill Will Cause Chaos in Israel*, HAARETZ (Nov. 20, 2011).

Conclusion

Yadgar gives us a book that is important, novel, informed and anti-dogmatic. It links the fascinating question of Jewish identity in Israel with the crucial question of coexistence with the Palestinians. While it provides no concrete solution to the Palestine/Israel conflict, it does suggest a way of thinking that might get us closer to reconciliation. Trust, or more precisely the lack thereof, separates Israelis and Palestinians. His book attacks binary logic—the kind of attitude that insists, “you are of me, or you are the other” and “this is mine, so it can’t be yours.” It’s a step in the right direction, perhaps not sufficient, but probably necessary.

