I met Bernie in the late 1980s, shortly after I started teaching at Bar-Ilan University. We lived nearby in Jerusalem and I joined the carpool with Bernie, Larry Zalcman z"l, and, on Sundays, Hillel Furstenberg. In addition to the rich divrei torah on wheels, as well as mathematics seminars on their latest works (which were largely over my head), I contributed with political commentary.

Over the years, Bernie became and remains a friend and source of advice, for which I remain grateful. His many contributions to the Jewish people and Israel serve as an outstanding model.

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“The Poor in Your Own City Shall Have Precedence”: A Neo-Zionist Critique of the Katzir-Qaadam Decision[[1]](#footnote-1)

Gerald M. Steinberg

Post-Zionism in the Supreme Court?

As events that accompanied the establishment of the State of Israel receded into the history books, the extraordinary accomplishments of the Zionist movement also began to fade. For many Israelis growing up after 1948, Zionism became a negative term, satirized and trivialized, and the details of its achievements were rarely taught in the Israeli schools.

Only a half-century after the seemingly inaccessible goal of statehood was realized, a small group of intellectuals have turned this unique triumph inside-out. Focusing on allegations of systematic discrimination, self-styled “post-Zionists” place primary emphasis on individual equality and rights, calling for the transformation of Israel from a particularist Jewish state into a “state of all of its citizens.” Many adopt the terminology of post-modernism and deconstructionism, and the more radical among them equate Zionism with intolerant chauvinist nationalism, echoing the traditional Arab position that the Jewish state was born in sin, at the expense of the rights of the Palestinians.1

In response, critics argue that post-Zionists and “new historians” are alienated from Israeli society2 and reflect the exhaustion of decades of conflict, the desire for individual attention, and other psychological factors. (These factors were illustrated in the recent case of a graduate student at Haifa University, who admitted that his thesis claiming to document a massacre during the 1948 War of Independence had been fabricated.3) In many ways, post-Zionism shares many of the characteristics of the intellectual and political waves of secular messianism that swept the Diaspora during the turmoil of modernization and emancipation. Like the disproportionate and self-destructive support for Bolshevism in Russia and Eastern Europe of the nineteenth and early twentieth centuries, today’s post-Zionists reflect a profound desire for assimilation.4

Following the decimation of European Jewry and the disappearance of the largest remaining diaspora communities through assimilation, efforts to dismantle the achievements of Zionism from within are tantamount to collective suicide.5 Without the political base provided by the State of Israel, the institutional and cultural foundations of the Jewish people are unlikely to survive more than a generation or two. Reflecting this bleak forecast, even a number of liberal secular Israelis such as the former MK Amnon Rubinstein and now Dean of Reichman University have distanced themselves from the self-destruction of post-Zionism, reemphasizing the importance of the Jewish state.

In the context of this debate, the decisions of the High Court of Justice take on particular importance. Under Chief Justice Aharon Barak, the court was willing and often eager to play an active role in attempting to adjudicate the most central and conflictual aspects of Israeli society. Judge Barak’s controversial opinions on issues such as the interaction between religion and state, equality and individual rights, and the balance between the principles of Western liberal democracy and the values of Jewish tradition have transformed the judiciary into a highly visible and very active player in the Israeli political process. In this process, Judge Barak applied many precedents from European and Anglo-Saxon jurisprudence, while generally diminishing the importance of Jewish law and norms. In this and other contexts, there are some disturbing similarities in approach between the opinions issued by the High Court and the post-Zionist framework.

*Qaadan vs. Katzir* ‒ Reactions to the Opinion

These similarities, as well as some important differences, were visible in the March 2000 decision in the case of *Qaadan vs. the Katzir Cooperative Settlement*. Based on the challenge posed by an Arab family (Qaadan) on the question of land allocation for small Jewish outposts in the Nahal Irun (Wadi Ara) region, the case encompasses many of the key elements in the social and cultural divide, including the tension between individual and group rights, the definition of such group (national and religious) rights, and the yearning for “normalcy.” The issues extend far beyond the substance of the case and the tentative and carefully structured arguments in the majority (4-1) opinion, written by the court’s president, Justice Aharon Barak.

Post-Zionists and Israelis on the left of the political spectrum greeted the outcome enthusiastically, seeing the ruling as evidence of the growing acceptance of their positions. *Ha’aretz*editorialists declared that “The court’s ruling strengthened the citizen’s entitlement to equality in his or her dealings with state institutions...The principle of equality has been affirmed, and without judicial wrangling over the Jewish character of the State of Israel.”6 Joseph Algazy wrote that “in denying the state the right ‘to allocate state lands...on the basis of discrimination between Jews and non-Jews,’ the High Court...smashed an old taboo that turns out to be essentially racist in nature.”7 In the *Jerusalem Post*, David Newman (from Ben-Gurion University) wrote that the court’s decision “struck at the very heart of the Zionist enterprise...[and] raised the major contradiction which is rooted in the definition of the State of Israel as a Jewish state and a democracy.” (With some imagination, Newman compared the situation with neighborhoods in the U.S. or UK, where minority groups have difficulty obtaining housing, and describes the ruling as a condemnation of the “blatant discrimination” that has informed Israeli housing policy.8)

For the same reasons, traditional (i.e., non-post-) Zionists of different orientations viewed this decision as a disaster. From this perspective, the court’s narrow focus on individual rights and equality, rather than on the collective historic rights of the Jewish people and the long-term security implications, was misplaced. They noted that in his long and detailed opinion, Justice Barak did not consider the central geographic, demographic, and political factors in the Nahal Irun region. Located between Afula and Hadera, the region currently has a population ratio of 5,000 Jews to 100,000 Arabs, many of whom live in towns such as Umm el-Fahm and Arara, from which Jews are excluded. The area is near the Jenin district in the Palestinian Authority, where 200,000 Palestinians live. There is no free market in land sales, and Arab landowners will not or cannot sell land to Jews without endangering their lives. In the wake of the radicalization of the Arab population, and identification with Palestinian and Islamic movements, the former head of the Jewish Agency, Sali Meridor, warned that this decision would increase the threat to Israel’s territorial integrity and security.9

For some, the outcome of the case provided further evidence of the dangers of Aharon Barak’s judicial activism.10 The decision reinforced the image of a judiciary that is out of touch, unaccountable, and infected by the virus of post-Zionism. *Ma’ariv* editorial writers argued that, “An honored place is reserved in Zionist history for the purchasers of Arab land to be used for the settlement of Jews. For years, this was the essence of Zionism. Yesterday, the last nail in the coffin of the holy mission...was nailed.”11 Similarly, Yair Sheleg (in *Ha’aretz*) declared that the ruling “undermines the basic Zionist principle of promoting a Jewish presence on the land (as distinct from the obligation to protect the rights of all citizens in their present place of residence).”12 Although Yoram Hazony's indictment of post-Zionism (*The Jewish State: The Struggle for Israel’s Soul*) was completed before the court’s decision, the book’s release and the debate that followed underlined the centrality of this erosion. In an op-ed column in the *New York Times*, Hazony cited the outcome as evidence of the inability of the Jewish state to preserve its own vital interests.13

The State’s Weak Case

However, a careful reading of the opinion shows that, within the limited terms of this case, the responses of celebration and anguish from the respective sides of the cultural divide were not entirely justified. As will be demonstrated, the arguments presented by the defendants, particularly the State of Israel (represented through the Ministry of Housing), were weak, technical, and avoided presenting the core issues and principles. To the degree that the outcome represented a victory for post-Zionism, it was won (and lost) by default, rather than through the presentation of a convincing case. The apparent inability of the state to defend traditional Zionist interests and objectives should cause more concern than the court’s ruling.

Aharon Barak was clearly aware of the implications of this case, using tentative language and making it difficult to draw any far-reaching conclusions. Although the court ruled that, in this specific case, the state was not entitled to provide land to the Jewish Agency for the purpose of building an exclusively Jewish community,14 it also did not order the Jewish Agency to provide the petitioners with housing in the settlement. Rather, in the lengthy and ambiguous opinion, issued reluctantly after four years of delay, the court’s majority directed the state to reconsider its decision denying the request by Adel and Iman Qaadan, and to “consider means by which the petitioners could acquire housing in the community of Katzir.”15

At the same time, in giving primacy to the issues of equality and other norms usually associated with liberal homogeneous democratic societies over the collective rights of the Jewish people to defend their vital national interests, the court’s ruling may very likely become an important precedent and represent, in Justice Barak’s words, “the first step in a long and sensitive road.”16 In the wake of this decision, other Arab couples asked the court to reverse decisions in which their applications for housing in Jewish communities in the Nahal Irun and Galilee areas were denied. In the *Qaadan/ Katzir* case, Barak indicated a general direction, but the eventual destination for the Zionist enterprise in these areas, and, by extension, the rest of the Jewish state, is by no means clear.

Individual Rights and Personal Equality vs. Group Rights

The core issue in *Qaadan v. Katzir* was the conflict between the principle of individual equality and the collective rights of groups to limit, and in some cases even violate, these norms on the basis of other overriding principles. In such situations, while traditional Zionism, like other national, religious, or other ethnic-based movements, emphasizes collective rights, post-Zionist ideology gives priority (or even exclusivity) to the first set of principles based on the centrality of the individual.

In their petition to the court, the lawyers for the Qaadan family (as summarized in Justice Barak’s opinion) highlighted the issue of individual rights and equality. They were careful to distance themselves from the most blatant post- or anti-Zionist claims, acknowledging “the Jewish foundations in the identity of the State of Israel, the history of settlement in Israel,”17 and the important contributions of the Jewish Agency in fulfilling Zionist goals.18 They argued that the Jewish foundation of the state is of primary importance only with respect to core issues, such as the Law of Return, and does not apply to allocation of land for settlement. In their view, the settlement phase of Zionism has been completed,19 and while not arguing for a reversal of earlier policies, they stressed the “forward-looking” nature of their petition in establishing the principles of equality in Israel’s democratic society.20

The numerous respondents (the Israel Land Authority, the Ministry of Housing, the local council of Tal Irun, the Jewish Agency, the Katzir settlement group, and the Israeli Farmers Organization) emphasized different issues, and in many cases their arguments – as described in the majority opinion – were weak and avoided direct presentation of the central demographic and political issues. The lawyers for the government and the Housing Ministry acknowledged the right of individual Arab families to live in the area of Nahal Irun. However, they also claimed that in the specific case of Katzir, the nature of this cooperative organization and its by-laws, restricting admission to Israelis who served in the IDF (in other words, excluding Arab citizens who are exempt from military service), were legitimate.

This proved an easy target for Aharon Barak, who noted that other than IDF service, the members of the Katzir cooperative settlement did not share any distinctive factor, and thus were not entitled to protection in accordance with the principle of equality under a form of affirmative action (see the detailed discussion of this point below). A second claim, focusing on the role of the Jewish Agency, “the arm of the Jewish people in the diaspora,” in managing the land provided by the state, was also weak and unconvincing. As Barak noted, beyond the technical issues regarding the transfer of responsibility to the Jewish Agency, the state did not provide special reasons to exempt this case from the general rules of equality.21 While citing the statutes governing allocation of state lands, the respondents apparently did not make the case that the particular (Zionist) goals embodied in these statutes justified violating the principle of equality.

In contrast, the Jewish Agency’s response was far more substantive, acknowledging the direct clash between individual and group rights in questions of land distribution. The Agency’s arguments were anchored in the historical and national dimensions, emphasizing the continuing importance of settlement, in general, and in peripheral areas where the Jewish presence is thin, in particular. Supporters of the Agency argued that these goals are entirely consistent with the Jewish and democratic foundations of the state, as well as the accomplishment of Zionist objectives.22 In addition, they warned that acceptance of the Qaadans’ petition would mean the end of the settlement program that the Jewish Agency began at the beginning of the century.23 These respondents also cited the security aspect of this settlement in the chain of Jewish outposts in Nahal Irun and other areas, whose purpose is “to protect the Land of Israel in the name of the Jewish people” (as written in the charter of the community settlement).

The Opinion: Walking the Tightrope

In his opinion, Barak focused primarily on individual equality, concluding that while full equality is not an absolute right in every case, when there is a clash, this principle has primacy. Particular exceptions are acceptable only when implementation of individual equality would harm the general welfare. In this case, he ruled that there was no contradiction between the general interests of society and the specific welfare of the Qaadan family.

The ruling did not come to grips with many of the arguments raised by the respondents, and dodged questions on general principles governing land allocation and security. The court determined that the respondents did not present arguments that would justify granting the settlement of Katzir a distinct status that would override the general principle of individual equality. Barak noted that the respondents did not reject the right of Arabs to live in other settlements in the Nahal Irun region, which includes mixed communities, but no case was made for keeping this community, located two kilometers from the others, exclusively Jewish and thereby violating the principle of equality.24

At the same time, Barak distanced himself from the more radical version of post-Zionism by linking the emphasis on individual equality in Israeli law to the Jewish as well as democratic nature of the state, and citing the Declaration of Independence. The review of precedents included an opinion written by Justice Menachem Elon (one of Barak’s major critics) rejecting discrimination in a decision overturning the exclusion of women in religious councils.25 Justice Barak also cited an opinion written by Justice Berenzon which paraphrased an ancient prayer – “When we were exiled from our land, and we were removed from our land, we became victims of the nations where we dwelled.” Berenzon concluded that on the basis of this experience, the Jewish nation, as represented by the State of Israel, must not tolerate inequality, except in cases of affirmative action or “when special conditions obtain.”26

Dismissing assertions that the values of democracy and Jewish heritage are incompatible, Justice Barak cited the elements of Jewish tradition focusing on individual equality that are incorporated in the Basic Law: Human Dignity and Freedom: “We reject the claim of a clash between the nature of Israel as a Jewish state and a democratic state based on equality, or that a Jewish state justifies discrimination on the basis of religion or nationality.” According to Barak, the Jewishness of the state is expressed in the use of Hebrew as the national language, the calendar based on Jewish “national experience,” and the centrality of the Jewish tradition in religious and cultural dimensions.27

Furthermore, Barak acknowledged the legitimacy of restrictive land-use policies in response to security requirements and in preventing transfer of land to “undesirable elements.”28 He explicitly acknowledged the legitimacy of exclusive settlements for Jews (or for other groups, including Arabs, Druze, etc.) under specific conditions, but demanded accountability from the government in such cases. The opinion also notes the distinctive circumstances of this case, and excludes the use of this judgment as a precedent with respect to distinct communities, such as kibbutzim, or settlements related to state security.29

This appears to be a strong hint that the outcome might have been different had the respondents emphasized the security-related issues more strongly, and if they had demonstrated why a single Jewish outpost amid mixed-population and exclusively Arab communities had important security and settlement implications. Similarly, if the members of the Katzir group shared more specific characteristics, such as religious practice, ideology, etc., the court might have accepted its legitimacy.

In his dissent, Justice Kedmi emphasized the need to balance equality with other values, including security requirements, which “insure the existence of Israel as a Jewish and democratic state.” While the need for exceptions to the principle of equality has diminished since 1948, such security-based considerations are still necessary in some cases. In this context, and in sharp contrast to Barak, he emphasized the specific location, and the purpose of designating this site for Jewish settlement. Kedmi noted that the decision taken 18 years ago to restrict settlement in Katzir to IDF veterans was justified at the time, and there was no basis for changing this retroactively. In addition, in contrast to Barak, Kedmi argued that the existence of mixed urban settlements in the area, created after Katzir, did not negate the justification for restricted residency in this settlement.

Land, Conflict, and National Rights of Survival

As Barak noted in his opinion, many of the points made by the respondents avoided the key issue ‒ the continuing conflict over the control of land. Questions of borders, security, war, and the survival of Israel as a Jewish (Zionist) state were given short shrift in this case.

The silence of the defendants on these issues, and the readiness with which the judges in the majority avoided them, were, in themselves, reflections of the creeping influence of post-Zionist ideology. Perhaps because for many years the settlement rights of Jews in a Jewish (i.e., Zionist) state have been taken for granted, the representatives of Zionist institutions are no longer capable of making or defending this position.

Land is and has always been at the core of political Zionism and the Arab-Israeli dispute. In this context, ownership and control of land is not and has never been an issue restricted to property rights and questions of individual equality.

The successes of the Zionist movement were made possible by the purchase and development of land, beginning at the end of the nineteenth century. The land that the Jewish people occupied and controlled, whether as individuals or collectively, determined the pace of immigration and formed the boundaries for the Jewish state.

By the same token, the Arab war against Zionism was manifested in violence designed to terrorize residents of isolated settlements, and in efforts to prevent Jewish ownership of land. During the 1948 war, Israeli forces were able to gain and maintain control in Wadi Ara (Nahal Irun), thereby insuring territorial contiguity. Most of Israel’s Arab citizens reside in this region, and despite policies based on paternalistic co-optation and force,30 the influence of nationalist and rejectionist movements has increased in parallel with Palestinian gains.31

As recent events have demonstrated, these movements continue to pose a threat to the security and territorial viability of the State of Israel. At the end of September 2000 (during the Jewish High Holidays), the violent clashes, road-closures, and attacks against police and Jewish Israeli vehicles in support of the Palestinians and opposing Israeli policy demonstrated this potential. Situated adjacent to the Palestinian-controlled areas, the Arab population of these areas of Israel could, at some point, seek to secede and join a Palestinian state.

In the effort to prevent such developments, the Israeli government, the Jewish Agency, and other institutions have sought to increase the level of Jewish settlement and control over land in this highly sensitive area. In addition to major urban settlement in areas such as Upper Nazareth and Carmiel, small hilltop settlements (*mitzpim*, or outpost communities) have been created. This is the vital but largely unstated context of the Katzir decision.

As noted, the State of Israel and the court avoided dealing directly with these key issues in this case, and the more obvious expressions of violence came a few months after this ruling (discussed below). However, the conflict over land, and the means used to pursue this conflict, remain primary, and will undoubtedly arise in future cases.32

The Illusion of Normalcy

In making the case for the priority of individual equality, Justice Barak cited a number of international documents, including the 1948 Universal Declaration of Human Rights and the European Convention on Human Rights. He noted that guarantees of equality and protection from discrimination based on race, religion, and nationality are incorporated in most modern constitutions.33 In Barak’s view, Israel, as a member of the club of democratic states, is also expected to prohibit discrimination and ensure equality.

Throughout his tenure on the court, Justice Barak made extensive use of foreign precedents and opinions imported from the U.S., Canada, and Western Europe.34 In this case, the opinion includes extensive quotes from the classic 1954 decision in *Brown vs. Board of Education*, in which the U.S. Supreme Court rejected the “separate but equal” argument on the basis that such arrangements are inherently unequal.35 Based in part on this ruling, Barak rejected a “separate but equal” formula for Jewish and Arab communities.

The extensive effort to transfer the norms and experiences of the U.S. and other liberal democratic societies to the Israeli context provides a direct and important link between Barak’s judicial philosophy and post-Zionist ideology.36 From both perspectives, Israel is, or should be, a “normal” liberal and universally egalitarian state. In the post-Zionist lexicon, “normalcy” is a synonym for the idealized American condition, in which equality under the law is the state’s raison d’etre.

In contrast, from a Zionist perspective, Israel was established as a Jewish state, first and foremost; and in key areas, such as language, calendar, immigration, and control of land, the interests of the Jewish people have precedence. Many Israelis ‒ like others in the Middle East ‒ identify themselves according to ethno-national and religious membership rather than primarily as individuals. In this framework, most Israeli Jews are either Zionists themselves or descended from Zionists who chose to make their home in the Land of Israel, for both religious and national reasons, in the past three generations. When other options are available, the choice to live and raise children in this difficult environment makes little sense when stripped of the Zionist purpose.37

In this context, the Israeli situation is by no means unique. In many democratic societies‒ including Europe, Japan, South Korea, etc. ‒ the nationality that forms the core of the state’s existence enjoys primacy, in terms of language, calendar, legal system, and other cultural factors. Even in ostensibly multicultural societies, such as Canada, the U.S., and Australia, the cultural foundations are based on dominant (usually Protestant Anglo-Saxon) norms.

However, Israel is not a typical Western liberal democratic society, but rather is a Jewish state that attempts to integrate the Jewish and democratic traditions. In addition, the areas in which the Israeli situation is clearly abnormal – the absence of recognized borders, and the denial of legitimacy by neighboring states – were not even mentioned in Barak’s text.

This illusion of normalcy can, in part, be attributed to wishful thinking, particularly on the part of secular intellectuals who believe that they have more in common with their counterparts in liberal societies than they have with traditional (non-secular) Israelis. However, if the Israeli situation were normal or comparable to that of the U.S. or U.K., the difficulties that were raised in this case, and that prevented the judges from issuing a clear-cut statement, would not have existed. There would be no conflict between equality for Arab citizens seeking to join a particular community and the security interests of the state.

The reality, however, is very different. The growth of nationalist and Islamic ideologies among Israel’s Arab population was illustrated by orchestrated violence at Haifa University, disturbances in Shfaram including an attack on Druse leaders at the Israeli Independence Day reception, violence to mark “Naqba day,” the boycotting of the Israeli flag, flying of the Palestinian flag, and open identification with Hezbollah. These events occurred shortly after the court issued its decision. A few months later, as noted above, these areas erupted in attacks against Israeli institutions and individuals, and in other actions in support of Palestinian violence.

These expressions of Arab nationalism and hostility, particularly in the Galilee and Nahal Irun regions, have led to increased statements of concern, even from the Israeli left. Then MK Amnon Rubinstein warned of "flagrant political irredentism," and of Arab leaders who preach that "the Jews have no right to their own country." Rubinstein noted that "For those of us who climbed the rocky face of the mountain in our crusade on behalf of greater equality for Israel’s Arab citizens, the present period is an excruciatingly bitter disappointment...The goal of this upheaval is not the attainment of more rights for Israel’s Arab citizens, but rather to revolt against the very existence and substance of Israel as the state of the Jewish people.”38

Rubinstein also condemned the blatant abuse of the democratic process and of sensitivity to minority rights and individual equality in order to undermine the legitimacy of Israel. “Freedom of expression is not freedom to engage in incitement or to proclaim support for murderers or to show disrespect for the Israeli flag.” In language that seemed directed toward Aharon Barak, Rubinstein concluded that “You cannot expect equal rights from a state whose very legitimate right to exist is something that you deny. The state, after all, is the context in which you want to be an equal member, and only under the protection of its flag can you demand equal rights for all citizens of the state.”39 In other words, as at least Rubinstein realizes (if not explicitly), the Israeli situation is far from “normal,” and efforts to apply “normal” (liberal democratic) norms and values out of context have not been successful.

The Zionist Case for Reverse Discrimination and Affirmative Action

Since the establishment of the State of Israel as a Jewish state based on democratic norms, its leaders and citizens have struggled with the difficulty of reconciling these two characteristics. In the face of resurgent hostility, this process continues to be very difficult. For post-Zionists, there is no problem – they simply seek to erase the Jewish aspect of the state. However, for the rest of us, the question of how best to protect the rights of minorities (primarily the Arab population) while maintaining a Jewish majority and core Zionist objectives is a serious challenge. Although the record of other countries in the Middle East, such as Egypt, Syria, Saudi Arabia, etc., with respect to minorities is appalling, this scale is not appropriate for Israel.

In this context, the principle of “*aniyi ircha kodmim*”40 (translated roughly as “the poor of your own city have precedence”) is central. There are many liberal democratic states that are, ostensibly, and without checking the details too closely, “a state of all their citizens.” Israel is not one of them, but rather, as the only Jewish state, it has an important role to play in preserving and rebuilding the Jewish people, society, and culture.

The judiciary, and, in particular, the High Court of Justice under Aharon Barak, will continue to play a major role in this conflict. As demonstrated, the court’s decision in the Katzir/Qaadan case was not a strong endorsement of post-Zionism. However, it does constitute what may turn out, in the long term, to be an important step in this direction. In this sense, the court highlighted the centrality of individual identity, rather than collective identities. Once the framework of analysis is based on the individual, rather than group membership and identification, it is obvious that all citizens are equal under the law and in dealings with the state.

As in the U.S. and other countries where discrimination is acceptable only in extraordinary circumstances, such as affirmative action, Justice Barak acknowledged the possibility that in some cases involving cultural preservation, separate communities on state land would be acceptable, but these are exceptions and, in his view, do not apply in this case.41

However, it is possible to take a different view, in which affirmative action and reverse discrimination become the core issues. From a Zionist perspective, the Jews, having been excluded from their homeland in the Land of Israel for much of the past 2000 years, are entitled to the benefits of reverse discrimination and affirmative action in resettling the land. This argument is not mentioned in Justice Barak’s opinion, and was apparently not made directly by the respondents, but in terms of Zionist ideology, it rings true.

Indeed, when Zionism is considered as the legitimate expression of Jewish nationalism, and the threats to the existence and territorial integrity of Israel are recognized, the designation of some areas for exclusively Jewish settlement, in areas such as Nahal Irun, the Galilee, and the Negev, are entirely justifiable. As in other cases of affirmative action and reverse discrimination, which are clearly violations of the basic principles of individual rights, the accomplishment of Zionist goals requires some restrictions on equality. Despite the popularity of post-Zionism among some secular Israeli intellectuals, the logic of affirmative action ‒ in the spirit of “*aniyi ircha kodmim*” ‒ is compelling.

Notes

1. See *Post-Zionism and the Holocaust,* compiled and edited by Dan Michman, Research Aids Series, No. 8, Faculty of Jewish Studies, Bar-Ilan University, January 1997.
2. Nissim Kaldaron, *Pluralists Against Their Will: On the Multiculturalism of Israelis (Pluralistim B’al Korcham: Al Ribui Hatarbuyot shel Hayisraelim)*(Haifa: Haifa University and Zemora Beitan, 2000); see also Iris Milnir, “The Yellow Submarine of Post-Zionism,” *Ha’aretz* (Hebrew), 26 May 2000; Gadi Taub, “Post-Zionism as Nostalgia,” *Kivunim Hadashim; Journal of Zionism and Judaism*, (Hebrew) 1:1, December 1999.
3. See Assaf Bergerfreund, “Historian Teddy Katz to Apologize for ‘1948 Massacre’ Account,” *Ha’aretz,* 22 December 2000.
4. Meyrav Wurmser, “Can Israel Survive Post-Zionism?,” *Middle East Quarterly*, vol. vi, no. 1 (March 1999).
5. Isi Leibler, “Is the Dream Ending? Post-Zionism and its Discontents – A Threat to the Jewish Future,” Institute of the World Jewish Congress, Jerusalem, 2000.
6. *Ha’aretz*, 9 March 2000.
7. Joseph Algazy, “The Katzir Controversy,” *Ha’aretz*, 3 April 2000.
8. David Newman, “A Fairer Housing Policy,” *Jerusalem Post*, 15 March 2000.
9. Dan Izenberg, “Agency: Court Ruling Threatens Israel’s Hold on Galilee, Negev,” *Jerusalem Post*, 9 March 2000.
10. See Hillel Neuer, “Aharon Barak’s Revolution,” *Techelet* (Azure) 3 (Winter 1998/5758); and “Israel’s Imperial Judiciary,” *Commentary* (October 1999).
11. *Maariv*, 9 March 2000.
12. Yair Sheleg, *Ha’aretz*, 14 March 2000.
13. Yoram Hazony, “Israel’s Northern Exposure,” *New York Times*, 13 June 2000.
14. Bagatz 6698/95, *Qaadan vs. Israel Lands Authority, et al.,*para. 40a.
15. Bagatz 6698/95, 40b.
16. Bagatz 6698/95, 37.
17. Bagatz 6698/95, 7.
18. Bagatz 6698/95, 37.
19. *Ibid.*
20. Bagatz 6698/95, 7 and 37.
21. Bagatz 6698/95, 26.
22. Bagatz 6698/95, 10.
23. Bagatz 6698/95, 27.
24. Bagatz 6698/95, 28.
25. Bagatz 6698/95, 21, citing *Shakdiel vs. Ministry of Religious Affairs*.
26. Bagatz 6698/95, 23.
27. Bagatz 6698/95, 31. See also Aharon Barak, “The Role of the Supreme Court in a Democracy,” *Israel Studies* 3:2, based on a speech delivered at the Netanya College of Law, 21 November 1997.
28. Bagatz 6698/95, 19.
29. Bagatz 6698/95, 37.
30. Ian Lustick, *Arabs in the Jewish State: Israel’s Control of a National Minority* (Austin: University of Texas Press, 1980).
31. Hillel Frisch, “The Arab Vote: The Radicalization of Politicization?,” in *Israel at the Polls: 1996*, edited by Daniel J. Elazar and Shmuel Sandler (Frank Cass: London, 1998).
32. In August 2000, the High Court of Justice agreed to hear the petition of an Arab couple from Nazareth who applied to Kibbutz Sollelim for rights to acquire land in its new neighborhood of Nof Alonim. They charged that their application was denied due to their race or nationality, and claimed that the conditions for acceptance into the neighborhood ‒ army service and eligibility for membership in the World Zionist Organization (WZO) ‒ were discriminatory and intended to ensure that only Jews were accepted. Moshe Reinfeld, “Kibbutz Denies Racism in Conditions for Acceptance into the Neighborhood,” *Ha’aretz* (Hebrew), 24 August 2000.
33. Bagatz 6698/95, 23.
34. See Neuer, “Aharon Barak’s Revolution,” and “Israel’s Imperial Judiciary.”
35. Bagatz 6698/95, 30.
36. For a critique of this view, see Yehezkel Dror, “Foundations for Jewish Statesmanship,” in *Kivunim Hadashim; Journal of Zionism and Judaism* (Hebrew) 1:1, December 1999.
37. For the Haredi community, fulfillment of the commandments associated with the Land of Israel, rather than political Zionism, are central.
38. Amnon Rubinstein, “Who Benefits from Hadash’s Radicalism,” *Ha’aretz*, 16 May 2000.
39. *Ibid.*
40. Babylonian Talmud, Tractate Baba Metzia, 71:a (in the name of Rav Yosef).
41. Bagatz 6698/95, 30, based on an earlier case in which land was provided exclusively to the Bedouin community, and this example of affirmative action was upheld.

1. Jerusalem Letter / Viewpoints, *No. 445, 6 Tevet 5761 / 1 January 2001*. www.jcpa.org/jl/vp445.htm. [↑](#footnote-ref-1)