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Benefits and Burdens:
National Service for Israeli Arabs

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NOTE:
RECIPROCITY OF RIGHTS AND DUTIES, BENEFITS AND BURDENS;
NATIONAL SERVICE FOR ISRAELI ARABS

*Daniel Statman**

Jews and Arabs in Israel often agree that there is a reciprocal relation between rights and duties, though they derive opposing conclusions from it. Jews infer that Arabs are not entitled to the same rights and privileges as Jews are, since they do not shoulder an equal share of the duties. Arabs, by contrast, argue that they are under no duty to share the burdens, particularly military or national service, since their rights are not fully respected. The Paper assesses these opposing claims and ends up rejecting both. It argues that the rights to which citizens are entitled do not depend on citizens carrying out all their social or legal duties, while the citizens' duty to contribute to the welfare of their countries by national service or other means is generally not contingent on the countries' fulfillment of its duties towards them. The Paper focuses on national service by Israeli Arabs and suggests that (a) that there is nothing wrong in making such service mandatory though there are practical considerations against doing so and (b) that making such service optional is an excellent alternative, one that should be encouraged as much as possible.

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INTRODUCTION

It is generally known that Israel belongs to a shrinking group of democratic states in which youth are still conscripted, en masse, into the army for a significant length of time—three years for men and two for women. This has been the case in Israel since its inception and became law already in 1949.¹ What is less known, at least outside Israel, is that in spite of this legal requirement, roughly only half of all young Israelis actually serve in the army.² First, wide exemption is granted to several well-defined categories: To almost all Arabs, almost all ultra-Orthodox (*charedi*) Jewish men,³ virtually all ultra-Orthodox Jewish women, and most modern-Orthodox women⁴. Second, a large number of candidates are considered unfit to serve for medical, psychological, criminal and other reasons.⁵ There is also an increasing number of candidates who dishonestly, or half-dishonestly, earn exemption by claiming that they fall under the second criteria.⁶

It is not surprising that the wholesale exemption of so many young Israelis from the burden and risk of military service has repeatedly triggered a call to impose some kind of alternative service on those who are freed from this onerous duty. For many years, this call was directed toward those in the ultra-Orthodox Jewish camp, so far with quite limited success. In the last decade or so, however, the call for an alternative form of service has been shifting away from ultra-Orthodox Jews and directed toward Israeli Arabs. In 2007, after years of public and political debate, the government decided to set up a special administrative unit for national service, charged with coordinating the activities of all the bodies involved in the national

¹ Defensive Service Law, 5708-1949, 25 SH No p. 271 (Isr.).

² See, e.g., Elad Benari, *IDF Data: Number of Israelis who Enlist Declining*, Nov. 17, 2011, ARUTZ SHEVA, <http://www.israelnationalnews.com/News/News.aspx/149869>.

³ As of May 2012, there were 48,452 ultra-Orthodox men who were exempted from the Israeli army for religious purposes in 2012. Orina Elmasi, Application of the Law Exempting Yeshiva Students from Army Service (Tal Law), Knesset Research Center, June 25, 2012, available at <http://www.knesset.gov.il/mmm/data/pdf/m03076.pdf>. In 2012, 13% of the 25% exempted were ultra-Orthodox men. See Amos Harel, *Major Drop Recorded in Number of Secular IDF Draft Dodgers*, HAARETZ, July 11, 2012, available at <http://www.haaretz.com/news/diplomacy-defense/major-drop-recorded-in-number-of-secular-idf-draft-dodgers-1.450280>.

⁴ Exemptions are defined in Defense Service Law of 1986, SH No 1107 p. 107 (Isr.), art. 36 (married women); art. 40 (religious women).

⁵ *Id.* art. 5 (c).

⁶ Yet, in the last few years there has been a decline in draft dodgers. In 2005, 14.8 % of all eligible, non-religious 18 year old men were given exemptions, in 2006 16.3%, but in 2010 the number dropped to 12.1% after the IDF instituted a campaign to reduce the number of draft evaders. See Harel, *supra* note 3.

service program, with the aim of encouraging national service among those currently exempted from the army.⁷

The establishment of this unit provoked renewed debate on the topic of national service for Arabs. Much of the discussion is cast in terms very appropriate to the topic of this issue, namely, in terms of the reciprocal relations between rights and duties. In the view of many Jews, it is unfair that Arabs should receive rights without undertaking duties. Hence, given that they happily enjoy the rights granted to them by the state, they should be prepared to undertake some form of national service duty. In contrast, in the view of many Arabs, no further duties ought to be imposed upon them before their rights are fully respected, in particular, no national service obligations before the human and the civil rights of the Arabs are fully respected and enforced.

Both sides seem to assume the moral importance of *reciprocity*. They both agree that rights and duties are intimately connected. But while Arabs infer from this premise that as they are not granted full rights they cannot be asked to undertake duties of service to their home country; Jews infer from it that as Arab citizens are not prepared to take upon themselves the same duties that all Jewish citizens undertake, or compatible ones, they cannot claim title to the same rights that Jews enjoy.⁸

The purpose of this paper is to examine whether, and in what way, considerations of reciprocity and fairness are relevant to the question at hand. More specifically, I inquire whether the current initiative of the Israeli government to expand and strengthen national service in Israel is in any way unfair or morally objectionable. The paper is divided into two parts: Section I inquires whether imposing *mandatory* national service upon the Arab minority in Israel would be morally acceptable. Section II discusses the option of *voluntary* service for Arabs, which is the current arrangement in Israel.

I. MANDATORY SERVICE

As indicated above, mass conscription to the army for a significant period of time is the practice in only a few democratic countries. Although many democracies do

⁷ National Service Administration, the Hebrew website, *available at* <http://most.gov.il/ncs/Pages/defaultmust.aspx>.

⁸ I use the general term “Arabs” or “Jews” when I refer to the views of each collective just as a matter of convenience. Of course, neither all Jews nor all Arabs adhere to the views ascribed to them here.

impose a duty to serve the country, the required service is usually for a relatively short period, and it need not be military service. Many countries, such as Austria, Denmark, Finland, and Germany, enable their young to choose between military service and civil service, which is seen as an “alternative” or “substitute.”⁹

Historically, the idea of civil service grew out of military service, and was a response to the reality that (a) big armies were no longer needed, and (b) an increasing number of military candidates found it difficult to view themselves as soldiers. Faced with this reality, most countries chose to retain conscription but offer an alternative. The justification for this alternative—national—service was based on two main assumptions: First, that citizens have a duty of fairness to re-pay their country as it were, for the various goods they received from it. Second, that the practice of serving one’s country, either through military or through civil service, is an important educational tool. It encourages a sense of solidarity, commitment, responsibility, and gratitude among young citizens. Through the devotion of time and energy for the good of their society, young citizens become less egocentric and more attentive to the common good and to the welfare of others.

As far as I know, there is no opposition in Europe, or elsewhere, to this idea of mandatory service which is imposed upon all citizens, though some aspects of this arrangement remain topics for debate—e.g., whether the civil option should be offered only to those exempted from the army or to everyone; whether civil service should be longer than military service;¹⁰ and which ministry should be in charge. The apparent consensus on the above arrangement applies not only to members of the majority, but to members of minority groups as well, including groups who have been discriminated against and disadvantaged in various ways.

Against this background, what could be objectionable in an arrangement that exempts young Arabs from military service (to spare them from a conflict of loyalties between their country and their Arab brothers outside Israel), while imposing upon them a substitute civil service? Why should Israel be different from so many other countries in which such an arrangement has been instituted with hardly any opposition?

One possible answer lies in the idea of fairness. Those who enjoy the benefits produced by the state—i.e., its citizens—have a fairness-based duty to undertake their share in the burdens that are necessary for the production of such benefits.

⁹ For details about the policy of European countries vis-à-vis substitute service, see THE RIGHT TO CONSCIENTIOUS OBJECTION IN EUROPE: A REVIEW OF THE CURRENT SITUATION, table 4, XV, available at <http://www.qcea.org/wp-content/uploads/2011/07/rprt-cocoe1-main-en-apr-2005.pdf>.

¹⁰ See *id.* table 4; in most countries the civil service is longer—sometimes much longer—than the military one.

However, Arab citizens do not receive an equal share of the state's benefits. Hence, they cannot be expected to undertake an equal share of its burdens either.

This argument does not deny that even members of disadvantaged groups have duties toward the states in which they reside. They surely have a duty to refrain from actions which are *mala per se*—from stealing, killing, endangering other people's lives by negligent behavior, and so on. They also have a duty not to act in a way that *harms* the state. However, the argument contends, they are not duty-bound to undertake *positive* contributions to the state. A requirement to make such contribution would be valid only if the Arabs enjoyed the same benefits and privileges as Jews, which currently they do not.

However, this conclusion is too strong. The main positive duty of citizens toward their state is to pay taxes. Tax collection allows the state to produce the goods from which all citizens benefit. The tax burden is significant, but it is part and parcel of being citizens. Yet, nobody argues that, in the name of fairness, members of disadvantaged groups should be granted blanket exemption from paying taxes. At most, one might consider some accommodations, perhaps as compensation for past injustice, but definitely not a general exemption from taxpaying. If imposing a duty on all citizens to pay taxes is acceptable, I do not see why a duty of civil service would not be.

So far I rely mainly on intuitions without answering the question “*why* is it reasonable to impose a duty on members of disadvantaged groups to pay taxes that support countries which mistreated their ancestors or themselves?” I can think of three reasons: First, in most cases, although these members are deprived of some benefits, they do enjoy many others. Hence they have a fairness-based duty to fulfill their share of production. To illustrate in the Israeli context: like their Jewish counterparts, Israeli-Arabs enjoy a free and egalitarian medical system, a welfare system, a free educational system, and more. Refusing to contribute to the production of these goods would be a case of free-riding.

Second, members of disadvantaged groups are not the only citizens who believe that they have reason to refrain from supporting the state, or from supporting it less than others do. There are numerous individuals who, for various reasons, feel the same, namely that they were disadvantaged by the state (or by “the system”) and therefore “owe it nothing.” Still others oppose government policy in some area and refuse to contribute to it by military or by national service. Yet, quite obviously, states would not be able to function if their citizens made their undertaking of positive duties, such as taxpaying, conditional upon their satisfaction with the benefits granted to them or upon their identification with state policies.

Third, the undertaking of public burdens often reduces prejudice and enhances a sense of shared citizenship and solidarity. When citizens of all colors, religions, and ethnicities serve together in the military “shoulder to shoulder,” it

creates a spirit of equality which has positive ramifications for society generally. It also helps to counter the common stereotype of minority group members as parasites who take advantage of what society can offer without sharing the burden. By contrast, refusal to undertake civil duties leads to the opposite effect—an increase in negative attitudes toward the disadvantaged group and to even worse discrimination and prejudice.

The reasonableness of imposing positive duties on all citizens is expressed by the fact that, in most societies, citizens accept them with hardly any sense or expression of grievance. Consider the case of African-Americans, a minority which has suffered one of the worst histories of oppression and discrimination. It is telling that, as far as I know, this minority has never objected to paying taxes on the grounds that doing so would contribute to their own oppression, and its members have not refused to serve in the armed forces and risk the lives of its members for the sake of the United States, which has treated them and their forefathers so badly. In spite of all formal and informal discrimination against them, African-Americans have always viewed themselves as *Americans* and have never considered refusing to share the burdens imposed upon their fellow citizens as the correct way to fight for their rights.

The conclusion that follows regarding Israeli Arabs is that the various forms of discrimination against them do not suffice to grant them a general exemption from the (moral) duty to obey the law, nor a more narrow exemption from positive duties towards the state, such as taxpaying or national service. This conclusion applies all the more so given that the positive contribution via national service that is expected from the minority group can be carried out within the minority group itself. This is indeed the situation in Israel in which Arab-Israelis are offered the option of doing national service in their own schools, youth movements, NGOs etc., just as many Orthodox Jewish women fulfill their national service in kindergartens, schools, etc. within the Orthodox community. I do not suggest that, from the Arab viewpoint, this kind of national service is always to be preferred over serving the wider population. My point is just that insofar as contributing to one's own community is considered a legitimate form of national service, the claim that such service is nevertheless problematic because it supports an oppressing state loses its sting.

In spite of all this, I believe there is a powerful reason against making national service mandatory in the near future, a reason that has to do with the expected failure of its implementation. If such a law is passed, it will most probably provoke fierce opposition not only among the Arabs, but also among the ultra-Orthodox Jews, the second largest group in Israel that, by and large, avoids military or national service. I suspect that opposition will be so fervent that the government will be forced to abandon this initiative; hence, taking this route would be futile.

Proponents might respond that this is precisely when reciprocity should kick in. Namely, if Israeli-Arabs (or the ultra-Orthodox Jews) refuse to undertake

the duties shared by all other citizens, they should not be entitled to the rights these citizens enjoy either. However, in spite of its initial appeal, this response is not very convincing. With regard to *human* rights, they surely do not depend on a citizen's performance of his or her social or legal duties. For instance, criminals definitely do not carry out such duties, but nevertheless enjoy the right not to be killed, the right not to be tortured, and the right to have a fair trial. But even regarding *civil* rights, i.e., rights that people have as *qua* citizens of a certain state and not as *qua* human beings, very few of these rights depend on the citizens' implementation of their societal or state duties. The denial of the right to vote from prisoners in some countries¹¹ is an exception to this general rule. Thus, the statement "Arabs lose their rights because they don't discharge their duties" seems a non-starter.

To sum up. I reject the idea that Israel is morally amiss in obligating Arab-Israelis perform national service since they do not receive the same rights as Jewish-Israelis. I support the moral reasonableness of the expectation that citizens comply with positive duties even if they suffer various forms of discrimination and even if they strongly oppose their countries' policy. However, I suspect that a law to this effect would lead to fierce opposition and be impossible to implement. Therefore, the government would be well-advised not to advance it. This leaves open the possibility of optional national service to which I now turn.

II. OPTIONAL NATIONAL SERVICE

One could think of three reasons to reject the idea of optional national service by Arab citizens (along with its benefits package): First, there is reason for concern about the sort of benefits granted to those who volunteer to do national service, and which are denied, to those who do not. While it is perfectly legitimate for a country to grant special benefits to its soldiers, as well as to those who perform national service, both as a token of gratitude and as a way of encouraging its young citizens serve the country,¹² not all kinds of benefits would be legitimate. For example, it

¹¹ For instance, the United Kingdom denies prisoners the right to vote even following the European Human Rights Court ruling (*Hirst v. United Kingdom*, (No. 2) 38 Eur. Ct. H.R. at 40 (2004)) stating that denying prisoners the right to vote violates Article 3 of Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 amended by Protocols Nos. 3, 5, and 8 which entered into force on Sept. 21, 1970, Dec. 20, 1971 and Jan. 1, 1990 respectively. See Molly M. Hofsommer, *The UK Defies European Court of Human Rights by Denying All Prisoners the Right to Vote*, THE GUARDIAN (Apr. 23, 2011).

¹² In Israel, such service grants a reduction in income tax for two years after service, exemption from medical and national insurance fees for the years of service and other benefits. See Ministry of Social Affairs and Social Services website, <http://www.molsa.gov.il/Pages/HomePage.aspx>.

would be unreasonable if citizens who did military or national service were to be given priority in emergency rooms, or in all public job openings, or were to be allowed to jump the line and be served first when waiting for the assistance of some official. Why would such benefits be unreasonable? Because the legitimate interest in encouraging military and national service is not so important as to shape all state priorities and to override the initial presumption that all citizens should be treated equally—in the emergency room, in competing for jobs, and so on. All the more so when most of those who have not been in the military or national service belong to a minority group with a history of discrimination and oppression, which is precisely the case in Israel. In such a situation, whereas most members of the majority group would receive relevant benefits, members of the minority would not, which would confirm and further deepen the discrimination against the minority group.

I concede that there is reason for concern here, but this concern does not justify abandoning the arrangement under discussion. A simpler and more reasonable resolution would be an explicit legislation determining that only the Knesset has authority to grant special benefits—at least in public services—to veterans and to volunteers.¹³ Such legislation would limit the dangers of over-preference to veterans and of attempts to privilege one part of society (typically the Jews) over another (typically the Arabs) in the guise of showing tribute to those who served the country.

Respect for culture is a second ground for objecting to the above government initiative. If young Arabs participate in national service, they might lose—or at least significantly weaken—their distinct identity as Arabs (or, more specifically, as Palestinians). By performing national service, especially if conducted together with “Israelis” (i.e., *Jewish-Israelis*), Arab-Israelis risk assimilation into Jewish-Israeli society. According to this objection, liberal countries have a duty to respect the cultures of their minority groups therefore they ought not to take measures that might undermine these cultures.

I don’t find this objection convincing. Many Israeli-Arabs study with Jews at Israeli universities in a “Jewish” and a “Western” atmosphere, yet no complaints are raised against the potential threat of such an atmosphere to Arab culture. Moreover, unlike military service, national service is not a closed organization in which individuals are separated from their natural environment and subject to great influence from their peers and superiors. It is carried out in public hospitals, public

¹³ I leave open the question of whether it should be made illegal for private actors too to discriminate in favor of veterans and of volunteers. Several people told me that when faced with two more or less similar candidates for a job, they would hire the one who served in the army over the other who did not. My sense is that such implicit discrimination in favor of veterans is quite widespread, though I know of no research on this topic.

schools, and the like where participants return to their homes and communities daily or at weekends. Finally, the problem of “forced assimilation” wouldn’t exist at all if national service were to be carried out within Arab communities.

I should add that a similar claim is sometimes raised by ultra-Orthodox Jewish groups to justify the exemption of all *charedi* women and almost all *charedi* men from military or national service. Their claim notes that the exposure of *charedi* youth to the secular world would undermine *charedi* culture, thus making it difficult for it to retain its unique identity. I have rejected this claim elsewhere.¹⁴ Suffice to say that respect for *charedi* culture does not require granting full exemption from all kinds of service, which is more or less the current situation, but rather finding creative forms of national (or military) service to accommodate the specific needs and sensibilities of this group.¹⁵

Third, once this special administrative unit for national service is formed, Jews will expect that Arabs enlist en masse, while in reality only a small minority will. This will reconfirm, in the eyes of many Jews, the image of Arabs as free-riders who benefit from the goods produced by the state while refusing to contribute their share. This “confirmed” image will serve to justify, again in the eyes of the Jews, the continuation of formal and informal discrimination against Arab-Israelis. Paradoxically, the government initiative under discussion might, then, worsen the status of Arab-Israelis rather than improve it.

It is hard to assess how serious this danger is, and one can easily think of an opposing assessment: The dramatic increase in the number of Arabs who volunteer for national service¹⁶ will lead, in the long run, to a deep shift in the manner Jews perceive Arabs and consequently, to an improvement in their status. This latter assessment seems to me more realistic, but for the sake of the present argument it would be enough to accept that these two assessments “neutralize” each other

¹⁴ See Gideon Sapir & Daniel Statman, Religion and State in Israel: A Philosophical-Legal Study ch. 11 (unpublished manuscript) [in Hebrew].

¹⁵ The Israel Defense Force has made great progress in recent years in establishing special units that can accommodate the needs of *charedi* soldiers. See, for instance, <http://www.nahalharedi.org/index.php>.

¹⁶ The numbers more than doubled from 2006 to 2008 (240 and 530, respectively), see Reuven Gal, The Perception of the Rights and Duties of the Arab Israeli Citizens in Light of the Idea of National Service, Policy Paper 23 (Tel-Aviv University May 2008) [in Hebrew]. According to one report, almost 4,000 Arabs (!) applied in 2007 to do national service through the Association for Social Equality and National Service in the Arab Sector in Israel,” see <http://www.worldvolunteerweb.org/news-views/news/doc/israeli-govt-allows-non-profit/print.html?type=98&cHash=d878bbe71e>. The director of the association, Aataf Alkarinawi, said that he hoped to see 11,000 Arab volunteers in the next few years. He added: “We are citizens of one state in which Jews and Arabs live, and our young people should contribute to society” *id.*

so that we have no firm objection to the thesis defended in this paper in favor of (optional) national service for all citizens, including Arabs.

Before concluding, let me add a final argument in support of national service for Arabs. The moral or legal duty to serve any given country applies only to its citizens. Hence being a candidate for draft to military or national service *is part of what defines an individual as a citizen* of a specific political entity. This means that ignoring this call undermines otherwise justified claims for an equal share in the benefits of living in the country, benefits which are granted only to citizens. When Israeli-Arabs demand civil rights and benefits, they do so not *qua* human beings, nor *qua* Arabs, but *qua Israeli citizens*. Therefore, they cannot at the same time exclude themselves from the only group to whom the draft is directed, i.e., Israeli citizens. It is in this case that the rhetoric presenting the Israeli Arabs as the “native inhabitants of Palestine,” is potentially damaging. The fundamental rights and benefits that the Arabs in Israel claim have nothing, or almost nothing¹⁷ to do with the fact that prior to the existence of the state they were the native inhabitants of the land. They derive from the fact that they are Israeli citizens.

III. CONCLUSION

It is time to conclude. For decades, Israeli-Arabs have been victims of numerous forms of discrimination and oppression. The situation is better today than it was forty, or even twenty years ago, but it is still far from satisfactory. Formal or state-inspired discrimination is not just what I have in mind, but also informal discrimination, prejudice, and hostility. The latter, I would guess, is often more disturbing to the individual than the former: the sense of being stared at when entering a store or a bus, of being a constant object of suspicion, or being refused a job just by virtue of being Arab.

In light of this situation, it is natural to develop an almost instinctive identification with all protests made by Arabs against the state. Yet, some such protests are actually misguided. The one against national service is such an example. *This* initiative happens to be a good one: It is fair and serves the long-term interest of Arab Israelis to become equal citizens and to be regarded as such by their fellow

¹⁷ The Arabs might have some claim for compensation for wrongs done to them in the past, but even if they do, such compensation would be pretty narrow and will not affect most rights and benefits to which they are entitled. The same is true for African-Americans: They might be entitled to some forms of compensation or affirmative action for decades of slavery, oppression and discrimination, but most of their claims vis-à-vis the U.S. would be based on their being *American citizens*, not on their being African. Moreover, even the claims for compensation, and especially for affirmative action, are made, to a large extent, from the standpoint of citizens; non-Israeli Arabs who were subject to the same wrongs as Israeli Arabs would stand a much smaller chance of receiving redress by the state.

citizens. This is probably the reason that consistent surveys over the last decade show that as much as 40%-50% of young Arabs in Israel actually *support* the idea of national service.¹⁸ Far from seeing it as a threat to their identity or as a disguised tool for further discrimination, they see it as a reasonable arrangement which carries some promise for more integration and solidarity.

Finally, although my focus here is on national service for Arab-Israelis, the analysis herein applies to other groups exempted from military service, mainly the ultra-Orthodox Jewish community. Given that most Israelis serve the country through military or national service and given that the fruits of this service are enjoyed by all citizens, it is only fair to expect that all (able) citizens contribute to this effort in a suitable manner. Refraining from doing so, however, should hardly, if at all, affect the rights and benefits which they are entitled to as human beings and as citizens. Insofar as the reciprocity thesis denies this conclusion, it must be rejected.

¹⁸ For references to these studies, see Gal, *supra* note 16, at 21-22.