Israel as "Jewish and Democratic" — Revising the Sacred Formula

BY ILAN PELEG

One of the most significant tensions faced by contemporary Israel is between the commitment of most Israelis to the Jewishness of the state, on the one hand, and their commitment to the democratic principles of the country (as they understand these principles), on the other hand. The legal scholar David Kretzmer summed up this dilemma succinctly: "As a democratic state Israel must serve the needs of all its citizens; as the state of the Jewish people its function is to pursue particularistic goals."[1]

This tension is at the center of what could be described as a full-fledged *Kulturkampf*, a political struggle about the very essence of the state fought in Israel for the last three decades.[2] In some ways, this tension between loyalty to the demands of universalistic democracy and the tenets of a particularistic nationalism (that is, Zionism), has been present in the Zionist movement from its very beginning.

Universal and Particular

The contrast between "universalists" and "particularists" among early and late Zionists has been somewhat overemphasized by liberal interpreters of Israeli politics. Although this often was part of an effort to demonstrate that their camp was less nationalistic than it actually was, the distinction between the two approaches has at least some merit.

Thus, the dual commitment to the principles of democracy and to the Zionist agenda has been incorporated into official documents forming the Israeli state. The foundational Declaration of Independence of May 1948, for example, asserted that Eretz Yisrael was the birthplace of Jewish people, and declared a Jewish state in Palestine, promising that it would be open to the immigration of Jews from all countries of their dispersion. At the same time, this document promised the development of the country for the benefit of all its inhabitants, and committed the new state to the "full social and political equality of all its citizens." Several Israeli Basic Laws explicitly enshrined the notion that Israel is "Jewish and democratic,"as did a number of rulings by the Israeli High Court of Justice.

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There is hardly a question that the tension inherent in this dual commitment will continue to dominate Israeli politics for many years to come, and that it will affect the most important questions facing the state. These include the future of the West Bank and Gaza, the relations between Jews and Palestinians inside Israel, and the status of organized religion (particularly Orthodox Judaism) within the Israeli polity.

The Israeli Duality

The dual commitment inherent in the Israeli political reality has led Israel to adopt, since its establishment, both "Jewish" and "democratic" policies. Such policies, however, have often collided, and are likely to continue to collide even more severely in the future. Acting Jewishly, the state sponsored the immigration of millions of Jews under a controversial Law of Return (1950), acquired lands specifically in order to "Judaize" the country[3] and especially areas inhabited by Arabs (e.g., the Galilee), developed an educational system designed to inculcate Jewish values,[4] adopted Jewish myths and symbols,[5] and granted special status and recognition to Orthodox Judaism.

Acting democratically, the State of Israel established an elected legislature and conducted orderly elections at regular intervals, adopted most (although significantly not all) Western freedoms, enacted Basic Laws (although, significantly again, not a constitution or a bill of rights) to regulate important aspects of public life, recognized an independent judiciary, and allowed vibrant and open debate on most political issues.

Despite those significant democratic achievements, recognized by some of the most prominent political analysts,[6] Israel's democracy has been problematic in several areas, mostly because of its particularistic commitments. The largest minority within the state, Palestinian Arabs who are Israeli citizens (or "Israeli Arabs," as they are often known), have not been able to achieve full equality, either as individuals or as a group. Systematic discrimination has been noted in numerous areas, including education, employment, housing, land purchasing, immigration and citizenship.[7]

Civic Equality

Despite some improvements in the conditions of the Arabs,[8] it is hard to maintain that Israel is moving decisively toward civic equality. Although the Supreme Court recently decreed that road signs must also be in Arabic (an official language in Israel, along with Hebrew), and on occasion has taken even more meaningful positions, majority-minority relationships have deteriorated since the outbreak of the Al-Aqsa *intifadah* and the riots that resulted in October 2000.

Israel's dual commitment to Jewishness and democracy impacts not only on Arab-Jewish relations, but also on relations within the Jewish majority. Many so-called secular, non-religious or non-observant Jews deeply resent the continuous interference of the Orthodox establishment in their

lives, interference rooted in the so-called Status Quo Agreement of 1947 and enshrined in several pieces of Israeli law. In terms of Western standards and, increasingly, worldwide standards, religion is unusually intrusive in Israel. If freedom from religion, along with freedom of religion, is one of the fundamental values of modern democracy, Israel's democracy is flawed indeed.

Moreover, since the establishment of the state, some ultra-Orthodox groups have enjoyed special privileges in violation of democratic principles, particularly equality before the law (see below). Thus, not only have *yeshivot* received generous financial allocations of public funds, but in 2002 the Knesset approved, officially and legally, the exemption of their students from military service.

Critical Questions

The frequent, ongoing collision between the state's commitment to democracy and the Jewishness of the majority — defined religiously, ethnically or ideologically — raises several critical questions as to the relationships between the two:

• Is the dual commitment itself oxymoronic in the sense that Israel cannot possibly be truly democratic while its majority is loyal to its Jewish agenda, especially in view of the existence of a large non-Jewish minority?

• If we reject the proposition that Israel cannot be both democratic and Jewish, the question is, how can it achieve both goals? If we assume that not every mix of "Jewish and democratic" meets the minimal requirements of democracy, we need to identify an acceptable balance between these two value systems.

• Is the real choice for Israel between being a fully democratic Western state, where religion and ethnicity are privatized and all citizens are treated equally (both as individuals and as groups) and being an ethnonational polity or, under the best of circumstances, "ethnic democracy"?[9]

• If religion is not privatized, as it is in democracies that have not established state-religion separation, how can it be "contained" in a manner that guarantees equality to those citizens who do not belong to the majority?

Political and Scholarly Camps

Insofar as the Israeli public is concerned, three major camps are discernable in relation to the "Jewish and democratic formula." The first camp, on the particularistic end of the spectrum, believes that Israel ought to be committed primarily or even exclusively to its Jewishness. While it generally recognizes democracy as a desirable common good, it views it as secondary.[10]

This position is common among nationalists, and especially in religious circles. The position of the particularists can be summed up by two propositions: a) the requirements of democracy and the interests of the Jewish people are sometimes incompatible; b) if and when such incompatibility occurs, the interests of the Jewish people and their state (Israel) should prevail.

While the State of Israel has never formally accepted this position — in fact, it denied it by consistently maintaining its equal commitment to both Jewishness and democracy — most Israeli governments to date have arguably adopted this position, most of the time. Steps toward a more balanced approach have been hesitant at best, although the Supreme Court's March 2000 ruling on the equal rights of land-purchasing by Arabs in Israel constitutes a significant move toward a more balanced approach.

Either/Or?

The second camp among Israelis argues that Israel must decisively and openly choose democracy over Jewishness. While people who belong to this camp agree with their right-wing opponents that democracy and Jewishness constitute often incompatible value systems, they prefer democracy to Jewishness on the grounds of universalism.

Within the second camp, we find, in fact, two political solutions to the Jewishness-democracy tension. Some analysts support the transformation of the "Jewish and democratic" state into "a state of all its citizens," a formula that would presumably turn Israel into a typical Western liberal democracy, with equality of all citizens as individuals and state neutrality toward all of its ethnic and religious groups. Other analysts within the second camp would support full equality of individuals ("liberalism") but insist that, in addition, the state must become an Arab-Jewish binational entity, where power is shared by the two national groups. This camp includes Arab intellectuals such as Azmi Bishara, Asad Ghanem, and Nadim Rouhana, but also Jewish analysts such as Baruch Kimmerling, Ilan Pappe, Yoav Peled, and Oren Yiftachel.[11]

The largest camp in Israel endorses the definition of the state as "Jewish and democratic" on the basis of three main arguments: a) Israel's commitments to Jewishness and democracy are fundamentally compatible; b) Israel has, in fact, kept both of its commitments; c) the "formula" is a reasonable compromise between two competing forces.[12]

Necessary Conditions

My thesis is that while historically Israel's democratic record has not been particularly good,[13] especially in regard to the broad and substantive requirements of modern, Western, liberal democracy (see below), in principle, "Jewishness" and democracy might be compatible — but only if the ethnonational nature of the Israeli state is significantly curtailed, and the democratic requirements are maximized and enhanced even more fundamentally.

My inclination is to endorse a solution by which the old formula of the Israeli state — often called "ethnic democracy" — is completely discarded and replaced by a new formula based on symbolic attachment to the state's Jewishness, but with the elimination of all material manifestations of ethnic discrimination. Put differently, only substantive equality of all citizens as

individuals and groups can guarantee Israel's future as a genuine democracy, a condition that has not been achieved to date.

I believe that my proposal for change is required in view of the fact that the old formula has demonstrably failed, and that it is even less likely to maintain stability and enhance justice in the future. The violent clashes between Arabs and Jews in October 2000 are, possibly, a sign of things to come. Moreover, intellectual and liberal circles in Israel (including the state's Supreme Court in its Katzir decision of March 2000 and other rulings) have now come to recognize that new ideas for strengthening Israel's democracy are needed.

Defining Democracy

All arguments about the compatibility of Israel's Jewishness and its democracy depend, to a large extent, on what precisely one means by "democracy." As "an essentially contested concept,"[14] "democracy" is open to numerous definitions. A particular problem in regard to Israel's democracy is that many analysts do not define precisely what they mean by democracy. The discussion on how democratic Israel can be despite its Jewish commitment is not very fruitful unless we are clearer as to the requirements of democracy and apply those requirements rigorously to the Israeli case.

First, it is important to view democracy not as an absolute (that is, a polity either has it or not), but as a continuum. The question is, how much democracy does a polity have? Secondly, we should adopt a broader position on what constitutes democracy. Thus, I am uncomfortable with approaches that identify democracy with a set of "liberties" that are guaranteed through formal procedures and institutions, despite the fact that this is the essence of the position taken by some prominent analysts.[15] Third, my approach to democracy is hierarchical: it identifies the requirements for democracy by going from lower (that is, less demanding) requirements to higher (more demanding) levels. Such an approach allows one to deal not merely with the issue of whether a country is or is not democratic, but to what extent it is democratic. It thus facilitates a discussion of the quality of a country's democracy.

This three-pronged approach leads me to offer this definition of democracy: A fully-fledged democracy must meet the following progressively tougher requirements:

a. Conduct regular, fair and free elections in order to establish the rule of the majority (a minimalist requirement);

b. Legally protect the fundamental freedoms of all citizens, including speech and assembly, as well as freedom of and from religion (a mid-range requirement);

c. Guarantee equality of all individual citizens and social groups before the law, as well as in practice (a maximalist requirement).

Mixed Record

In the case of Israel, the record has been rather mixed. Moreover, most of

the problems in terms of the quality of Israel's democracy stem directly from the country's adherence to its "Jewishness." In terms of the first requirement, since its establishment, Israel has conducted, on the whole, regular elections freely and fairly. Nevertheless, the tension between Jewishness and democracy has been manifested when parties judged to be running against the Jewish or democratic nature of the state were banned by the Supreme Court, by the Knesset, or by the Central Election Committee. A recent decision by the Supreme Court allowing two Arab parties to run in the 2003 elections despite allegations that they have challenged Israel's "Jewishness" suggests that Israel might be liberalizing in regard to the first requirement of democracy.

In regard to the second requirement of democracy, the Israeli record is significantly weaker. First, the various freedoms and liberties given to Israeli citizens are yet to be codified in a constitution, a bill of rights, or any other such comprehensive and protected document. Secondly, while the state has progressed enormously since 1948 in terms of certain freedoms (e.g., freedom of speech, enshrined in the Supreme Court decision known as *Kol Ha'am*), in regard to freedoms related to the state's Jewishness, as perceived by Israel's Founding Fathers and ever since, the democratic record has not been satisfactory. Thus, the State of Israel is today extraordinarily intrusive in regard to issues defined by it as "religious" but viewed in most other countries as matters belonging to a citizen's "private sphere." The requirement for Orthodox marriage under the supervision of the state-supported rabbinate, for example, violates the worldwide acceptance today of civil marriage.

Seeking Full Equality

The most difficult situation, however, arises in regard to the third requirement of democracy, equality of all citizens before the law and in practice. In terms of equality, particularly between national groups and their members (that is, between Arabs and Jews), the Israeli democracy has proven to be flawed indeed. The main forms of legal discrimination are to be found in regard to the acquisition of citizenship (where Jews are given an advantage through the Law of Return) and the acquisition of land, where non-Jews are prevented from purchasing land held by the state, roughly 93 percent of the total area.[16] The lack of full collective rights to minority groups impacts negatively on the individual rights of their members,[17] as shown in detail in several books.[18] Chief Justice Aharon Barak has called publicly for full equality for Arabs, stating that there can be no true democracy in Israel without it.[19]

The lack of equality stemming from the state commitment to "Jewishness" is, however, not limited to Arab-Jewish issues. Thus, the imposition of Orthodox halakhic law in Israel leads also to the discrimination of women as a group and as individuals, and the state has systematically privileged the Orthodox population, a discriminatory prac-

tice toward the secular population (e.g., special exemption from military service, autonomous educational system, generous allocations to *yeshivot*, etc.).

Moving Toward Democratic Inclusion

If, in its best interests, and in order to enhance long-term stability and democratic justice, Israel must change, how could this change be achieved? Can the traditionally sacred formula "Jewish and democratic" be salvaged, or does it have to be completely discarded as inevitably undemocratic?

In principle, if the Jewish majority decides to create a more inclusive Israel, it can move in two distinct but practically linked directions. First, Israel can move in what might be called an integrative-liberal direction, dismantling all discriminatory policies toward the Arabs as individuals and establishing a genuine liberal democracy. Under this formula, Arab citizens would be able to buy land anywhere in the state, obtain jobs (including governmental positions) in accordance with their skills, and so forth. Moreover, discriminatory practices directed against Arabs, such as organized campaigns against selling them apartments, would be eliminated.

Second, Israel could move toward a more inclusive democracy by going in a "consociational direction," which would involve enhancing the recognition and the protection given to the Arab minority as a distinct national group. Consociational arrangements and public recognition already exist within the highly diverse Jewish majority and they could be expanded to the Arab minority.

Autonomy and Stability

Thus, Arabs could be given full-fledged personal autonomy,[20] granting them direct control over the most important aspects of their communal lives (e.g., education). In fact, in the interest of political stability in Israel, "functional autonomy . . . may be necessary to counter . . . support for territorial autonomy or total separation."[21] Arabs should also be given a proportional share of the national wealth; their more moderate parties could be invited to serve in the government; and their symbols might be incorporated into the country's civil religion, so as to create a common Israeli identity that is civic and overarching.

While liberal and consociational changes could ease the interethnic clash within Israel, they are unlikely to turn Israel into a binational project, a result that the Jewish majority would never accept. Such changes will merely recognize the already existing binational reality of contemporary Israel and incorporate it into the country's governmental structure, thus increasing congruence between society and polity for the benefit of long-term stability.

A decisive action of the type discussed here could possibly give Israeli Arabs a reason to identify with the state. The continuation of a policy of discrimination and exclusion would negate such a possibility. The role of the Israeli leadership in bringing about

such a change is crucial. To date, we have witnessed insufficient attention to this problem.

Prospects for Change

The definition of Israel as "Jewish and democratic," heavily used by Israel's political institutions and accepted by the majority, has not worked well over the first 56 years of the state. The term "Jewish" has been translated into exclusivist, hegemonic control of the majority in all areas. Short of declaring Israel a halakhic state, the term "Jewish" has been interpreted as broadly as possible. The term "democratic," on the other hand, has been applied rather narrowly: majority rule and fundamental liberal freedoms to all citizens, but pointedly not political equality for minorities in what has become, in effect, a "Jewish Republic." There is still no full recognition or protection of minorities, and lack of equality on either an individual or a group basis persists.

If the Israeli majority is determined to maintain an Israel that is both Jewish and democratic, the existing balance between those two components might have to change so as to increase decisively the weight of the state's democratic qualities, and proportionately decrease the state's "Jewishness," especially in areas where such an overtly particularistic definition is injurious to the democratic quality of the state. Such a transformation could be implemented in a balanced and measured manner, so as to maintain some, but by no means all, of the traditional formula's components.

The Material and the Symbolic

On the basis of what principle could such a transformation be effected? I would argue that a polity might define itself particularistically (as many polities indeed do) only insofar as such definition does not result in the substantive and material discrimination of members of the polity (that is, its citizens). Self-definition that results in systematic discrimination is, by definition, democratically unacceptable.

Inherent in my position is the argument that in the case of Israel, as in numerous other cases, we need to maintain a distinction between the symbolic level (where the majority's particularism may prevail without serious injury to democracy) and the material level, where particularist features of a regime result in real discrimination.

An Israel that eliminates all the particularist features that result in the discrimination of non-Jews would still be "Jewish" in several important ways. The Jewish majority would be sustained, the dominant language would remain Hebrew and the culture Hebraic and Jewish, and most of the symbols accepted within the Israeli society would continue to be rooted in the Jewish tradition.

Even the controversial Law of Return could survive the type of reconstruction suggested here, especially if a Palestinian state with its own law of return is established side-by-side with Israel. Not only could the Law of Return be defended as a historical, collective act of affirmative action taken

by the international system toward the Jewish people, but on the level of principle, one can defend discrimination in admitting people to the polity (a practice used by many nations). It is impossible, on the other hand, to defend discrimination against individuals or groups once they are already citizens: Such discrimination negates the most important principle of democracy.

The transformation of Israel into a genuine liberal democracy via the elimination of all forms of material discrimination could be achieved without endangering the overall Jewish character of the state. Numerous countries all over the world, after all, have an established dominant culture, side-by-side with minority cultures, but with no substantive (let alone formal) discrimination against minorities or their members. If the reform offered here is implemented, the sacred formula "Jewish and democratic" could survive, a reminder of an archaic, ethnically based discrimination that has been passed on Israel's way toward genuine democracy.

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