

Can Israel be both Jewish and democratic?

Ruth Gavison, published in *Moment Magazine*, (December 2000, Number 6, Volume 25)

In 1947, the UN decided that there will be two states in Palestine, one Jewish and one Arab, and that both will be constitutional democracies, securing full civil and political rights to all their citizens. Naturally, all supporters of the plan assumed that, in principle, the Jewish state (and the Arab one) could be democratic. It is thus surprising that the declaration in Israel's 1992 Basic Laws that Israel defined itself as a 'Jewish and democratic' state raised such intense challenges.

My argument in this essay is that Israel can be both Jewish and democratic, and that in important senses it is just such a state. Moreover, I shall argue that it is justifiable that Israel continues to combine its democratic nature with a distinct Jewish nature, and that this combination may justify some modifications of the liberal, neutral conception of democracy advocated in many Western democracies. While there are important tensions between democracy and the particularistic nature of the Jewish state, the Jewish nature of Israel is also a natural consequence of democracy, since it is a strong preference of most members of the Jewish majority. Finally, many of the arrangements in present-day Israel cannot be justified by invoking the Jewish nature of the state, and should be modified (even if the modification is not required by democracy.)

1. Conceptual compatibility

The challenge of conceptual impossibility stems from two main sources. One claims that Israel cannot be a democracy because it is a theocracy. The other denies that it can be a democracy because a Jewish state cannot give its non-Jewish citizens, especially the Arabs among them, the kind of full civil equality which is required by democracy.

Put in this way, both challenges are easy to refute. A Jewish theocracy is indeed incompatible with democracy. In such a state, the ultimate source of binding authority is God. This is incompatible with the notion that the ultimate source of political authority is the will or the consent of the governed. But this challenge would imply the incompatibility of a Jewish state with democracy only if this had been the only available sense of a 'Jewish state'. In fact, the small number of those who advocate that Israel should be a Jewish theocracy complain that it is very far from being such a state. There is an alternative sense of a Jewish state. This is the conception that animated Zionism and that inspired the UN resolution: The Jewishness of Israel is, first and foremost, the recognition of the fact that Israel is the state in which the Jewish people exercise its right to national self-determination .

Some scholars argue that the religious monopoly over matters of personal status, which Israel took over from the Ottoman Millet system, creates a conceptual incompatibility with democracy, since no democracy can give over a part of its jurisdiction to religious courts. I will return to these issues of state and religion and religious pluralism below. At this point suffice it to say that this is not a tension between Jewishness and democracy, since the religious monopoly applies to all religious groups in the same way.

Many of the world's democracies, old and new, are in fact nation-states. These states celebrate their distinct histories, languages, identities and emblems. In many of them, we can find national groups whose members do not belong to the group whose nation-state they live in. So long as their rights are not denied, and they can participate fully in the political and civil life of their societies, we do not deny the democratic nature of the state. Living as a minority in a state does indeed make one less than fully equal. Minority groups are more vulnerable both physically and culturally than the majority is. The burden of proving why Israel is a conceptual exception is on those who challenge that it can be both Jewish in this sense and democratic. There would have been a conceptual tension, or even an incompatibility, if Jews had created a Jewish nation-state over a territory in which they were a minority, against the wishes of the majority of the population. *Herrenvolk* democracy, what South Africa had before the new Constitution, is indeed an oxymoron. It is no democracy at all. But within Israel proper, Jews are an 80% majority.

When we look at the details of the challenge made, we can see that the uniqueness of Israel as the Jewish nation-state is not conceptual. Rather, it is historical and political. I will return to these issues below. At this stage I want to conclude that, in principle, if Jews are a majority within a territory, their state can be both Jewish and democratic. This conclusion is strengthened by the fact that Israel is, by most accounts, a country that is in fact both Jewish and democratic in important respects. The empirical reality means that there is no conceptual impossibility involved .

2. Political reality

There is no need to elaborate on the many ways in which Israel is a Jewish state. Jews can be naturalized in it under the Law of Return. Millions of them have in fact immigrated to Israel after 1948. Its language is Hebrew, its anthem is Hatikva, its flag has the Magen David in it, its holidays are Jewish. The Jewish national bodies have an official status in Israel, and play a major role in settlements and development. Hundreds of Jewish settlements of all sorts have been built. All top positions in the political and economic systems are held by Jews, and there is a systemic under-representation of Arabs in all high echelons of the administration. Arab parties have never been partners in Israel's government. Against this background, Israel's claims to being democratic, and its ability to grant equality to all its citizens, Jews and non-Jews alike do require support .

Israel is seen as a democracy because from its inception it granted all its citizens the right to vote and to be elected. Indeed, Arabs have been represented in the Knesset from the very start. Today, Arabs in Israel enjoy a substantial freedom to form parties and express their national aspirations. They use their parliamentary representation effectively and vocally. There have been major improvements in their levels of education (although the gap between them and Jews is stable and significant). Israel has a respected judicial system, which enjoys considerable independence. The right to equality is increasingly protected by statutes and the courts, and recently the benefits of this protection have systematically been broadened to cover Arabs .

It must be conceded that the status of Arabs in Israel is far from fully equal. But there is a slow and consistent move towards more equality. The move is indicated by the growing political power of Arabs in Israel, and by the growth of civil society and effective leadership in that community.

3. Is a Jewish nation-state justified?

Clearly, for Arabs in Israel it would be better if Israel had stopped being a distinctly Jewish state and had become 'the state of all its citizens'. Some Jews, too, may feel more comfortable with a state that has commitments only to universal human rights, and would treat the non-civic affiliations of all citizens as their private business. I suspect, however, that the latter simply take for granted the Jewishness of Israel. They believe it can afford to give up the declaration of its distinctness, but that its reality will be guaranteed by the Jewish majority .

Be this as it may, Jews may of course agree to give up their nation-state if they want to, but they cannot be required to do so by either democracy or justice. Jews wanted a state for a variety of reasons. They suffered systemic persecution in their various countries of residence, in part because they were a minority who could not take control of their own defense. On a different level, Jews discovered their cultural vulnerability in the places in which they were emancipated: the freedom to assimilate did not always give them security, but it did threaten their ability to survive as a culture and as a nation. Israel is in fact a place where Jews can live as a majority, where the public culture is theirs, so that being Jewish is the natural way to be. They can regulate immigration and control security, and thus effectively defend the security of the Jewish collective and its members .

So the standard rationales for national self-determination apply very strongly to the case of Jews. The only reason to doubt the right of the Jewish people to national self-determination in Israel is the fact that it inflicts an unjustified burden on another people – the Palestinians. Fortunately, the asymmetry under which Jews had self-determination in Israel while Palestinians had no state of their own will soon end. I believe the Palestinian state should be viable and coherent, and enjoy sovereignty within its borders. I expect it will have its own version of a Law of Return, and that it will celebrate its foundation and its victory over Zionism. I hope it will be democratic, and that it will guarantee the life

and welfare of those Jewish residents who are allowed to, and choose to, live in it. If there is a Palestinian state on a part of historical Palestine, why shouldn't there be a Jewish state alongside it? Clearly, we need to agree on the borders of the two states. Jewish control over the whole territory, without civil and political rights to the Palestinian population, is unjust, unstable and not democratic all at once. One can condemn this situation without concluding that a Jewish state, with a stable Jewish majority, cannot be justified.

It may be that, with time, Israel and Palestine will decide to join in a confederacy, or even create one bi-national state, or one secular-democratic state, over the whole territory. At this stage, it seems a majority of both communities prefers to live in their own nation-state .

I see no reason for depriving the people of the region of their preference.

This conclusion means that the type of democracy Israel can have so long as it maintains its Jewish distinctness is different from the neutral-liberal version, which some scholars see as the essence of democracy. Israel as the nation-state of Jews will not privatize the non-civic affiliations of its citizens, and will not treat them as fully equal. It will prefer Jewish culture and identity to others. However, this commitment is quite compatible with recognition and protection of the rights of non-Jews, both individual and collective, cultural and national .

Arab citizens of Israel often claim that, irrespective of what happens with the Palestinian state, their rights are violated by the fact that they are made to live in a state which is defined as the nation-state of another people. Unlike immigrant groups, who accept their state as minorities voluntarily, and move into the nation-state of others, they are natives of the state. They live on their own land. Most of them have been living on these lands much longer than most of the Jews. The state of Israel was founded on the disaster and the dispossession of their own people. They should not be made to feel second-class citizens in their own homeland, and this is why the Jewish nature of the state is a violation of their rights .

Granted, the foundation of the state of Israel as a Jewish state affected seriously the status of Palestinians. In part, the effect was the result of the UN resolution, which made the Arabs a minority in the Jewish state precisely in order to allow for Jewish self-determination. In part, the Arab predicament was created by the war that resulted from the refusal of the Palestinian leadership and the Arab states to accept that resolution. That refusal was based on the denial that Jews had a right to national self-determination on a part of Palestine. That denial was never accepted by anyone but the Arabs. I fail to see why it should gain credibility by the lapse of time. In fact, the right of Jews to national self-determination in Israel has strengthened considerably over the years, since it is now the home of many Jews who have no other home, and who have created in it a thriving society .

4. Nationality and Religion in Judaism

At this point the Jewish-Arab debate connects with the internal Jewish debate about the nature of Judaism and its effect on the characteristics of the Jewish state. All agree that the Jewish people maintained its distinctness over the years because of its religious commitments, and because of the tendency of Jews to an insulated way of life, which was dictated to a large extent by religious commands. Yet Zionism emerged as a political movement when Jews started being secularized and sought new ways to maintain Jewish identity in the face of modernity. The new challenges created both religious pluralism, and a stream of secular Judaism, which maintained Jewish distinctness in terms of national, historical and cultural identity .

This diversity of attitudes created many internal debates, such as 'who is a Jew', and who can marry and convert. It also created heated debates about the proper role for religion in general, and Jewish religion in particular, in Israel's public life. Finally, it created a debate about the foundation of the right of Jews to settle in Israel. While all Zionists believe that the historical roots of Jews in Zion are part of the reason justifying Jewish self-determination there, messianic religious Jews also believe that all of eretz Yisrael belongs to Jews because of His promise. Secular Jews, on the other hand, see the foundation of the right of Jews to self-determination in Zionism's success to create a critical mass of

Jews in Israel, and its success in settling it, developing it, defending it and securing international support for its recognition .

There is no full convergence between these rifts: not all orthodox people belong to the 'right', and there are right-wing people who are secularists. Nonetheless, the meeting of right-wingness and messianic orthodoxy does pose a special challenge to Israeli democracy. It is not an accident that Rabin was murdered by a right-wing orthodox man, who was invoking his interpretation of Jewish law to justify his deed .

However, the convergence that does exist has generated a dangerous confusion. It is often said that the secular left supports the 'democracy' side of the 'Jewish and democratic', while the religious right supports the 'Jewish' component. In fact, the viability of the combination requires that we reject this dichotomous division. Religious and secular, orthodox and non-orthodox, right and left, all have an acute interest in maintaining the delicate balance between Jewishness and democracy. Neither should be seen as the monopoly of one group, and Israel should not seek to have one of them won, once and for all, over the other. It is, and should be, a never-ending story of adaptations and creative accommodations .

5. A look at some particular arrangements

The argument justifying the continuation of a Jewish nation-state does not automatically justify all the arrangements which are currently justified by invoking the Jewishness of Israel. Let me take a quick look at some such arrangements, so that my general conclusions become clearer .

I believe a more limited principle of Jewish Return may be justified. Some aspects of the present arrangement are, however, unacceptable. It is legitimate that Israel seeks to maintain and strengthen the Jewish majority in Israel, and actively support and promote various forms of Jewish culture in Israel and abroad. This does not justify discrimination of non-Jews, or any other limitation of their rights. Non-discrimination, however, is not identical with blindness to national or religious differences. The complex reality of Israel may justify settlement or school policy which will not be 'nationality-blind'. Thus, the public education system in Israel now usually separate Jews and Arabs up to the level of high schools. This would probably be unthinkable in the U.S., holding that 'separate cannot be equal', but perfectly suits the preferences of most members of both communities in Israel. The separation does contribute to a substantial disparity in allocations and in achievement level between Jewish and Arab schools, but it seems that both communities are content to seek to redress this problem through 'separate but equal' arrangements. In fact, not only is it the case that a people do not think they have a right to an integrated school. Many believe that they have a right to study in a school supportive of one's distinctive cultural tradition .

The religious monopoly over matters of personal status violates the rights of freedom from religion of citizens. In addition, the monopoly of religious law contributes to discrimination against women, and prevents marriage in Israel of people from different religions. Finally, the monopoly of the orthodox establishment over these matters interferes with the rights of non-orthodox to live their life according to their customs. All of these reasons justify the establishment of civil marriage in Israel. The wish to keep Israel a nation-state of the Jewish people does not justify such a monopoly .

On the other hand, Israel should not adopt a US-type separation between state and religion. It is extremely important that Israel should not need to make judicial decisions about internal religious questions, so in this sense religious and legal questions should be separated. But religious groups should be allowed to have autonomous public education (with proper control over the civic aspect of such education), and there should be no objection to public financing of religious needs on an equal basis .

In general, Israel should strive to thicken the shared civic identity of all its citizens, and to strengthen the feeling of all citizens that it cares to promote the welfare of all. At the same time, it should allow the distinct groups within it develop their different identities. Both attitudes are compatible with Israel's remaining a nation-state of the Jewish people, so long as it has a Jewish majority and protects the human rights of all.