

JEWISH AND DEMOCRATIC:
An Exploration of Israel's Jewish and Democratic Character, Its Implications on Israel's Arab
Minority, and Considerations for the Future

In 1992, Israel's Knesset passed Basic Law: Humanity Dignity and Liberty. Its first clause states that its purpose is to protect dignity and liberty, to “establish in a Basic Law the values of the State of Israel as a Jewish and democratic state”.¹ Israel had, since its inception, been widely understood and governed as both a Jewish and a democratic state, but this status had yet to be codified in law. While 1992 marked an important moment in officially recognizing the definition of Israel as Jewish and democratic, it was understood from the creation of the state that those two elements would form the foundations of its character.

This paper will explore Israel's Jewish and democratic nature and argue that both are necessary to its survival. It will also explore the problems that arise from this definition that make it difficult. It will do so by delving into Israel's history, the implications of this definition on Israel's political reality, the problems that arise from this definition for Israel's Arab minority, and solutions that various scholars have proposed. This paper concludes that although defining Israel as Jewish and democratic has complicated its progression and has created difficulties for its Arab minority, both factors are integral to what the country is in essence. Thus, balancing both elements by implementing certain changes should be made to ensure a fair and efficient state for all its citizens moving forward.

The History of Defining Israel as Jewish and Democratic

Israel's Declaration of Independence is seen by many as the founding document of the Jewish and democratic nature of the state.² Israel's essential nature as a Jewish and democratic state is embedded in this foundational document. It presents multiple layers of meaning and references to Israel's dual character. While it does not mention the words “democratic” or

¹ "Basic Law: Human Dignity and Liberty." Knesset.gov.il.
https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.

² "The Proclamation of Independence." Knesset.gov.il.

“democracy” directly, its references to “freedom, justice and peace”, “complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex”, “freedom of religion, conscience, language, education and culture” and its promise to “full and equal citizenship and due representation” to the Arab inhabitants of the state, are seen by many as the original promise to and foundation for Israel as a democracy.³

The Declaration mentions the phrase “Jewish State” five times throughout, explicitly referencing its Jewish character. It states that Israel will be “open for Jewish immigration” and that it will be based on “freedom, justice and peace as envisaged by the prophets of Israel”.⁴ This is evidence of the duality of the definition of “Jewish”. Referring to the Jewish character of Israel with little reference to religion at all, the Declaration describes it as the birthplace of the Jewish *people*, where they “created *cultural* values of *national*” character, and of Jews’ right to be “masters of their own fate, like all other *nations*”.⁵ Its emphasis is on the Jewish nation more than Judaism as a religion. In this phrasing is the idea of Judaism as a guiding national principle, a largely secular concept. The reference in the Declaration to the “Rock of Israel” represents a compromise between religious and secular Jews, alluding to God (for religious Jews) and the heritage of the Jewish people in the land of Israel (for secular Jews).⁶ This compromise characterized the Jewish nature of the state as a balance between cultural and religious, one that is ongoing today. The conceptualization of Judaism plays a significant role in Israel’s definition as Jewish state, and while not the focus of this paper, has significantly complicated it.

In 1992, Israel officially put into law the phrase “Jewish and democratic”, codified in Basic Law: Human Dignity and Liberty. The first clause of the law reads “the purpose of this

³ "The Proclamation of Independence." Knesset.gov.il.

⁴ Ibid.

⁵ Ibid.

⁶ Meir, Golda. *My Life*. New York: G.P. Putnam's Sons, 1975. 223.

Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel *as a Jewish and democratic state*”.⁷ Since Basic Laws are in effect Israel’s constitution, one could classify democracy and Jewishness as official pillars of the state, more than just unified understandings, after the passing of this law. While the political reality afterwards may have changed little, if at all, the implication of codifying the official status of both democracy and the Jewish nature of the state in law is nonetheless important. While some, like Professor Bendor, argue that this changed Israel’s political reality by officially stating that laws must be consonant with both Jewish and democratic values, in principle, this was always the unofficial practice, as these values were rooted in the Declaration and thus the very fabric of society. They were already the basis for legal decisions and law making, if not officially.⁸

What Does It Mean to be Jewish and Democratic?

Although there has been disagreement over exactly what it entails, there is agreement that Israel is a Jewish state. This is evident in official representations of the state. Israel’s emblem is a menorah surrounded by olive branches. The menorah is a historically Jewish symbol, used in ancient times in the Temple in Jerusalem to burn oil. It is a symbol that is still used to represent Jews today.⁹ The surrounding olive branches symbolize the olive oil burned in the menorah and may reference a vision of prophet Zechariah in which he saw a menorah with olive trees on either side.¹⁰ The flag of Israel is also Jewish in its nature. The Star of David prominently featured is a ubiquitously recognized symbol of Judaism. The design of the white centre and

⁷ "Basic Law: Human Dignity and Liberty." Knesset.gov.il.

https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.

⁸ Schiff, Ze'ev. *Israel's Lebanon War*. New York: Simon and Schuster, 1984. 283.

⁹ Morrison, Chanan, and Abraham Isaac Kook. *Gold from the Land of Israel: A New Light on the Weekly Torah Portion from the Writings of Rabbi Abraham Isaac HaKohen Kook*. Jerusalem: Urim Publications, 2006. 239.

¹⁰ Mishory, Alec. "Israel National Symbols: The State Emblem." Jewish Virtual Library. <https://www.jewishvirtuallibrary.org/jsource/History/emblem.html>.

blue stripes is said to have drawn inspiration from *tallit*, the Jewish prayer shawl.¹¹ The state's capital, Jerusalem, was the historic capital of the Israelite Kingdom of Judah and the place of the holy Jewish temples, housing thousands of years of Jewish history. The Jewish nature of Israel can be seen also in its celebration of the Jewish Shabbat, marked by a loud public siren, closure of businesses, and shutdown of most transit. The state's rest day is the Jewish rest day. The state calendar is based on the Jewish calendar and Jewish holidays are state holidays.

While the word "democracy" does not appear in the Declaration of Independence, Israel's priorities are understood to be key elements of any true democracy.¹² Israel's democratic character is rooted in its Jewish character and the two have worked in tandem from the beginning. The bargaining in government can be attributed to traditional Jewish political life, rooted in Jewish traditions of representation and democracy: Jewish communities were organized politically throughout the 19th century, electing leaders, levying taxes, and establishing welfare systems in a pluralistic system of self-governance.^{13 14}

An important factor in Israel's democracy is its checks and balances. While there are few checks within Knesset, there is a system of bargaining within the coalition, with outside organizations, and with lobby groups. As well, the Supreme Court holds the authority to exercise judicial review if it believes that a law is not in the interest of Israel or its democratic nature. This was established in the Israeli *Marbury v Madison*, or *Bank Mizrahi v Minister of Finance*, in which the court decided that Basic Laws have effectively constitutional status, setting precedent to review and negate laws should they disturb the democratic (or Jewish)

¹¹ David Wolfhonn, writing: "We have a flag—and it is blue and white. The talith (prayer shawl) with which we wrap ourselves when we pray: that is our symbol. Let us take this Talith from its bag and unroll it before the eyes of Israel and the eyes of all nations."

¹² Sasley, Brent E., and Harold M. Waller. *Politics in Israel: Governing a Complex Society*. New York: Oxford University Press, 2017. 268.

¹³ *Ibid.*, 22.

¹⁴ Dowty, Alan. *The Jewish State: A Century Later*. Berkeley: University of California Press, 1998. 204.

character of the state. This creates a check on an otherwise largely unchecked government, an important prerequisite of democracy. Another check on governmental power is the Knesset's rule of proportionality, entrenched in 1958 Basic Law. While proportionality of representation has greatly complicated politics, it allows voices with a small amount of support to gain representation in Knesset, a marker of democracy.

Problems Arising from the Definition of Israel as Jewish and Democratic

The Arab minority living within Israel is the population least benefitting from the Jewish character of the state. In a 2015 survey, while 88 percent of Jews felt a part of the State of Israel and its problems, only 32 percent of Arabs felt the same way.¹⁵ This survey oversimplifies a complex issue, but the frustration expressed is worth considering. At roughly 20 percent of the population, Arabs make up Israel's largest minority. They have often been viewed through the prism of the Arab-Israeli and later the Israeli-Palestinian conflicts. Although officially there has always been equality, the differing treatment from Israel's early years has persisted. Government spending on housing, social welfare, and employment for the Arab community lags far behind that of their spending on the Jewish community. For example, of 337 000 units of public housing built between 1975 and 2000, less than 1000 were in Arab communities.¹⁶ The JNF, which currently owns roughly 13 percent of Israel's land, specifies in its charter that "rights to the land it owns should not be awarded to those who are not Jewish".¹⁷ The Israel Land

¹⁵ Hermann, Tamar, Ella Heller, Chanan Cohen, and Dana Bubli. "Israel Democracy Index 2015." *Israel Democracy Institute*, 2015. http://en.idi.org.il/media/4256544/democracy_index_2015_eng.pdf.

¹⁶ "Israeli Arabs: Expectations and Realities, by Gerald B. Bubis." *Israeli Arabs: Expectations and Realities*, by Gerald B. Bubis. <http://www.jcpa.org/jl/vp478.htm>.

¹⁷ Pfeffer, Anshel, and Yoav Stern. "High Court Delays Ruling on JNF Land Sales to Non-Jews." *Haaretz.com*. 2007. <http://www.haaretz.com/news/high-court-delays-ruling-on-jnf-land-sales-to-non-jews-1.229946>.

Administration, which controls 93 percent of Israel's land, will not lease to non-Jewish foreigners, including non-citizens Arabs who live in Israel (i.e. in East Jerusalem).¹⁸

The representation of Arabs in Israel also faces obstacles. The political norm dictates that Arab parties exist on the fringes of Knesset. Division between Arab and Jewish parties means they will likely never be included in a governing coalition, preventing them from accruing any real power within an executive-dominated system. That said, Arab citizens of Israel have politicized and have had members in Knesset since the first elections in 1949, in cabinet positions and on Israel's Supreme Court, as well as Arab ambassadors. Currently, there are 17 Arab members of Knesset and those in non-Arab parties have access to inner circles of the government. With their representation, there exist ways for them to have the voices of their community heard.

One of the greatest threats to improving conditions for Arabs in Israel is the nature of their relationship to the state. As a zero-sum game, anything done to emphasize Israel's Jewish character will appeal to religious Jews and encroach on Arabs, and vice versa.¹⁹ The nature of this lends Israeli-ness as an identity a sort of exclusiveness that makes belonging difficult for Arabs. Ethnic relations specialist Sammy Smooha argues that while all citizens have rights, the dominant group, defined per ethnicity, has more, as in any country with an official language, established church, or religious symbol on its flag.²⁰ Thus, one's ethnicity (as well as religious and cultural identity) determine one's belonging. By defining national identity by tying it to

¹⁸ Hasson, Nir. "Most Arabs Can't Buy Most Homes in West Jerusalem." Haaretz.com. 2009. <http://www.haaretz.com/most-arabs-can-t-buy-most-homes-in-west-jerusalem-1.280392>.

¹⁹ Mautner, Menachem. *Law and the Culture of Israel*. Oxford: Oxford University Press, 2011. 44.

²⁰ Smooha, Sammy. "The Model of Ethnic Democracy: Israel as a Jewish and Democratic State." *Nations and Nationalism* 8, no. 4 (2002).

Judaism, non-Jews are excluded and struggle to find their place as an Israeli.²¹ This underlies many of the problems that Arabs face in Israel today.

While there are definite problems with the current functioning of Israel's democratic system and many of these problems do chip away at its democratic character, the bottom line is that Israel retains many of the core aspects of a democracy, and although at times displays certain worrying trends, is and will continue to be a democracy for all its citizens.

Solutions

While Israel's Jewish nature surely creates certain difficulties for its Arab population, in a 2015 survey, 56 percent of the Arab population surveyed answered "definitely yes" when asked whether it is possible for an Arab citizen of Israel who considers themselves integral to the Palestinian people to be a loyal citizen of the Israeli state and less than 19 percent answered any variation of "no".²²²³ That over three quarters of Arabs surveyed believed that they could be loyal to the state as well as to their heritage is a promising sign for the future.

Legal expert Ruth Gavison notes that while it is legitimate to maintain the Jewish majority in Israel, it does not justify discrimination in any form. As such, she concludes that Israel should "thicken the shared civic identity of all its citizens" and allow distinct groups to develop their identities while maintaining both the Jewish character of the state and human rights for all.²⁴ This idea of "thickening" a shared civic identity is shared by other thinkers. Law professor Menachem Mautner similarly argues that a remedy to the exclusionary nature of Israeli-ness would be to cultivate it as a more inclusive category. The element of his argument

²¹ Sasley and Waller. *Politics in Israel*. 273.

²² Israel Democracy Index 2015. 73.

²³ Ibid.

²⁴ Gavison, Ruth. "Can Israel Be Both Jewish and Democratic?" *Moment* 25, no. 6 (December 2000).

worth considering is the addition of “multicultural” to Israel’s character definition. Celebrating Israel’s multiculturalism would not only theoretically improve the standing of the Arab minority but would also recognize minorities and Israel as a place where Jews have ingathered from around the world. A middle ground must be found in opening the tent of Israeli-ness – one that protects the Jewish nature of the state and allows the Arab minority within it to have better access to Israeli life and identity. It seems that adding the word “multicultural” may be the place to start.

Unfortunately, these proposed solutions will be difficult to enact in Israel’s current political climate. It has been suggested that improving life and status for Arabs living within Israel will likely not happen before the creation of an independent Palestinian state. Israel’s focus has been, and will likely continue to be, mitigating and ending the Israeli-Palestinian conflict. Until then, it is simply unlikely that the state will expend resources working to improve things for its Arab population. As well, many Israelis continue to view Israel’s Arabs through a lens tainted by conflict, marked by a lack of peace agreement and creation of Palestinian state. They believe that in the event of this independent state, Arabs would leave. Although statistically untrue, many thus feel that Arabs are not a permanent fixture and their problems not urgent. As such, until a Palestinian state has been created, Arabs will in some sense be the enemy within Israel, not conducive to Israel improving their standard of living. It is very possible that improvements for Arabs are thus predicated on the success of a peace agreement and the creation of a Palestinian state, as only then will Israelis likely understand that Arabs are there to stay and feel safer assisting them in their improvements.

Conclusions

This paper has explored Israel as a Jewish and democratic state. It considered the roots of this characterization and the political reality of what it means, outlined how these characteristics are represented in Israel's political system, daily life, and the symbols of the state, concluding that although neither characteristic has been definitively defined, their presence is obvious in many elements of the state. Next, the paper considered Israel's Jewish character as a problem for its Arab citizens. It considered proposed solutions that focus on expanding the idea of belonging in Israel. This paper concluded that the most reasonable way to do so would be to extend the definition of Israeli-ness by adding the word "multicultural" to the phrase "Jewish and democratic", allowing for an understanding that Israeli identity is multi-faceted, both in that Jews of Israel come from around the world and that there exists in Israel sizable minority populations. Finally, this paper noted that there currently exists a barrier due to the lack of a peace agreement and of a Palestinian state. While inroads to improving the treatment and lives of Arabs in Israel are possible, it will be hard to make any major changes until a solution to the Israeli-Palestinian conflict has been achieved, likely with the creation of an independent Palestinian state.

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