

The Contradictions of State-Minority Relations in Israel: The Search for Clarifications

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One of the best prisms to examine and evaluate the nature of the Israeli regime upon Israel's sixty years of independence is the relationship between the state and its indigenous Palestinian minority. This relationship is important because of its implications on the identity of the state and its stability in the future. State-minority relations have undergone major developments in the last decade. The October 2000 events, in which 13 Arab citizens were killed by the police forces, mark an important indicator as to the fragility of this relationship. Despite the publication of the Or Commission Report that investigated the events and reiterated that the Israeli police forces treated Israeli Arab citizens as enemies, the Attorney General decided not to put any of the policemen to trial because of "lack of evidence." Since October 2000, the Knesset passed several laws that have a deeply negative impact on the civil status and the political rights of the Arab minority. New official and unofficial initiatives sought to draft a constitution for the state of Israel, seeking to enshrine its character as an ethnic Jewish republic. These initiatives granted back winds to new policies of the Israeli General Security Service that declared that any challenge to the Jewish character of the state including by democratic means will be considered as a strategic threat that are deemed illegitimate. Simultaneously the Israeli Supreme Court has delivered several landmark rulings that protect basic individual liberal rights with clear collective implications for the Arab minority.

The Arab minority, on its part, has been mobilizing new political and civic resources and developing new strategies of contention to improve its status in the Israeli state. Political and recently also civil institutions began reiterating the inherent contradiction between the exclusive hegemony of the Jewish majority over state institutions and resources and the probability of establishing justice and promoting democracy. In this context, political and civic leaders of the new Arab elite published new visionary documents that challenge the Jewish hegemony and demand individual as well as collective rights for the minority. Whereas these documents were introduced in order to exert pressure on the state and invite its leadership into a dialogue over state-minority relations, the Jewish majority conceived them as yet another indicator of the radicalization of the Arab minority.

Understanding these developments in state-minority relations without falling into mere depiction of events could benefit from newly published theoretical and practical literature on policies of diversity regulation and conflict management. This literature draws attention to the various models of dealing with minority rights, pinpointing the advantages and limitations of each. On the other hand, examining state-minority relations in Israel may contribute to the debate regarding the advantages and limitations of various models of diversity regulation and shed light on some of their aspects that are overlooked.

Minority rights and status have become a central topic in the professional literature in major fields such as constitutional law and political philosophy. Recent literature has depicted two main grand strategies for regulating diversity. One is integration and the other is accommodation.¹ Whereas the first is usually applied in the case of national minorities, seeking to integrate its members into the majority society, the second is more appropriate for dealing with the basic rights of indigenous peoples. Commenting on the dominant models

and practical policies followed by the international community when dealing with minority rights, Will Kymlicka regards the dichotomous differentiation between integrative and accommodative philosophies as neither adequate nor sufficient to address the challenges that various countries meet today.² He claims that the needs and interests of various minority groups, especially homeland minorities, are and could not be met by either following integration or accommodation policies separately. He points out the failure of the international community to provide for models that successfully accommodate the rights of minorities when compared with the relative success when it comes to indigenous peoples.

The tendency of the international community and scholars to reduce the challenges raised by minorities to either of the models is problematic. Since many minorities in the world do not meet the exact definition of either national minorities or indigenous peoples, their rights cannot be addressed by either integration or accommodation separately. As Kymlicka claims, homeland minorities demonstrate that the either/or strategy is reductive. Homeland minorities share most of the characteristics of indigenous peoples on the one hand and those of national minorities on the other. Therefore, reductive models of diversity regulation are insufficient. A genuine combination of integrative and accommodative strategies seems to enable a better treatment of the rights of homeland minorities and ease the possible tension that could emerge as a result of ignoring them.

In the following pages, I intend to explore the case of state-minority relations in Israel as an avenue to shed light on the theoretical discussion on integrative and accommodative policies of diversity regulation and their applicability in the Israeli case. To achieve these goals, one has to take into consideration three important factors. The first is that most of the theoretical literature on diversity regulation is written based on the experience of North American and Western European countries. As a result, this literature takes as given the democratic and even liberal character of the state. Yet, Israel, based on its own self-definition, is an ethnic state. The procedural democratic system in Israel and the civic status of the Arab minority are subordinated to the supra-constitutional value of "Jewish sovereignty," according to which citizen and non-citizen Jews are affiliated with the state, own its resources and share power in it.³

The second factor to be taken into consideration is the multifaceted Arab identity in Israel. Depicting this minority with one rigid negative definition or manipulating its internal differentiations for the sake of a divide and conquer policy, as the state has been doing, is part of intimidating its rights and bypassing its legitimate demands. It is true that this minority is composed of a variety of subgroups that practice slightly different ways of life and have distinctive religious faiths. Nonetheless, it is part and parcel of the Palestinian people, which lost control of its homeland in the 1948 war that led to the establishment of the Jewish state on its ruins. Therefore, it is an indigenous population that became a national homeland minority in a state that was established against its will and interests. This multifaceted indigenous identity, which forms one of the major sources of insecurity among the Jewish majority, is exactly the reason why rigid models of either integration or accommodation cannot secure stability, establish justice or promote democracy.

The third factor is the fact that Israel, which has always been aware of the complexity of the Arab identity, has applied a manipulative model of rights that combined selectively integrative and accommodative strategies, seeking to create a façade of democracy while aiming to divide and conquer rather than meet the basic rights of the Arab community. The regime of rights established by the Israeli state vis-à-vis the Arab minority is selective, manipulative and, therefore, liminal.⁴ This liminality is depicted in the gap between the basic citizenship rights of the Jewish population, including the settlers in the Occupied Palestinian

Territories (OPTs) and those of the Arab citizens inside Israel, not to mention the Palestinians in the OPTs. The liminality of the Israeli regime is rooted in the fact that it has civic and democratic dimensions, on the one side, and clear apartheid characteristics, on the other. This wide spectrum engulfs many contradictions that are manifested in different forms and ways, depending on how we examine the regime. The spheres of normality guaranteed for the Jewish population, whether in Israel or in the OPTs, are segregated from the fragmented spheres of abnormality imposed on the Palestinian population, citizens and non-citizens.

This liminality has been behind the growing alienation of the Arab community from the Israeli democratic system, which has treated Arab political players as prisoners of majoritarian decision making that enables Jewish parties to maintain an absolute majority while using Arab participation as a very important source of legitimation for the democratic façade of the system aimed at promoting exclusive Jewish ethnic hegemony. As a result, we witness the rise of a new Arab political discourse that introduces new strategies to cope with its minority status and demands structural transformation of the Israeli state and its policies.

Based on these three points, this paper claims that only a genuine combination of an integrative as well as accommodative regime of rights according to which individual and collective Arab rights are balanced with Jewish rights can secure stability in the future, establish justice and promote civic democracy. Exclusive Jewish hegemony over the state does not enable such a regime of rights. On the other hand, post-national cosmopolitan solutions do not meet the needs, will and demands of either Jews or Arabs in Israel. Therefore, only in a combined model in which the individual rights of all citizens and the collective rights of all national and cultural groups in the state are constitutionally guaranteed could a political regime in which all citizens are sovereign be formed that secures stability, establishes justice and promotes democracy.

In order to clarify the claim of this paper, I start with a historical elaboration of state-minority relations. In the second part, I concentrate on recent developments in the integrative and accommodative policies of the state towards the Arab minority and the manipulation that these developments entail. In the third part, I focus on recent developments in Arab political participation in the Israeli political system. I conclude with shedding light on the implications of the integrative and accommodative policies of the Israeli state, demonstrating the need for a major change if we are to improve majority-minority relations in Israel in the future. Such an improvement is especially important since it has implications on the entire Israeli-Palestinian conflict. Continuing the current discriminatory regime of rights harms the legitimacy of the state, on the one hand, and feeds the rising alienation between the minority and the state, on the other. It leads to further pounding the already weak Israeli democratic system and, at the same time, close the gaps between Palestinian citizens and non-citizens as a result of hollowing out Arab citizenship from any substantial meaning. Since such a process is declaratively not wished for from an Israeli point of view and since this process has been feeding voices that view a binational state as the only solution to state-minority relations, alternative formulas of state-minority relations and diversity regulation have to be introduced.

Phony Integrative and Accommodative Policies of the Israeli State

Recent literature on minority rights seeks strategies to constructively deal with diversity. One could generalize by saying that the treatment of this topic stems from the ethical view that the rights of minorities should and ought to be respected if social conflict is to be eased or even eliminated. Constitutional thinkers and political philosophers differ on the best strategy

to follow in order to deal with diversity. None of them view control, domination, hegemony or securitization as the appropriate and ethical policy to deal with minority rights.

In a recent paper on conflict regulation, John McGarry, Brendan O'Leary and Richard Simeon claim that "[t]wo prevalent sets of public policies are available to democratic states willing or obliged to manage national, ethnic, and communal diversity. The orthodox wisdom drives under the banner of integration while the other flies under the flag of accommodation."⁵ Integrationists view the equality of individual citizens before the law and within public institutions as the main purpose behind their policy. Kymlicka sums up integrative philosophy in three major policy outlines: institutional integration in the political field, individual rights and ethics of nondiscrimination.

The main framework of integration policies in Israel has been Jewishness for Jews and Israeliness for Arabs. Israeliness has been manipulatively presented as a neutral common civic identity that can incorporate the Arab citizens inside the state despite its Jewish character. In the first three decades of state history a strong republican integrationist philosophy was followed in the Jewish community coupled with a liberal integrationist philosophy for the Arab community. Education, common language, religion and military service were viewed as major components of the integration of the Jewish republic. Arab citizens did not share any of these fields with the Jewish community. Therefore, a liberal integrationist philosophy was followed when it came to Arab political participation. The liberal integrationist philosophy has been given an enthusiastic push through the rise of liberal political philosophy in Israeli political culture manifested in the discourse of the Israeli Supreme Court and the liberalization of the Israeli economy since the mid-1980s. The liberal institutional integrationist philosophy, which opened the door for Arab participation in the Israeli electoral system was utilized to conceal the discriminatory policies that followed in the realm of individual civic rights and discrimination in the allocation of public resources. Arab politicians in the Knesset were utilized as the best proof for the powerful and good status of the Arab community in Israel, on the one hand, and were invoked as those responsible for discriminating against the Arab community for not being united and not devoting their attention and energies for its well being, on the other.

Arab citizens of Palestinian origin were to become Israelis or at least Arab-Israelis, whose political identity is more civil than national.⁶ Palestinians citizens of Israel were educated as Israeli Arabs, whose history starts in 1948 and whose rights stem from their Israeliness.⁷ This policy was not adopted in the Jewish society, where partially republican integrationist and partially assimilative policies were adopted.⁸ The liberal integrationist policies towards Arabs were selectively applied in order to ensure maintaining the contradictory formula of Jewish and democratic state.

Since our space is limited, suffice it to demonstrate the manipulative Israeli integrative policies by shedding light on the field of political participation. The Israeli state has presented the political participation of Arab citizens in the Israeli electoral system as a clear indication of integration. Accordingly, their individual citizenship rights were translated into institutional integration in the political field, which was supposed to demonstrate that they are not discriminated against. Although one could claim that under martial law and military government, which were imposed on Arab citizens between 1948–1966, Arab political participation was empty of any meaning, the state emphasized the fact that Arab citizens were given the right to vote and form parties as a decisive proof of its respect of liberal equality.⁹ Arab citizens have indeed participated in the elections since their inception in 1949. Arab members of Knesset were elected as representatives of the Arab community since then. Arab political participation in the electoral system was presented as a "virtue" reflecting the

democratic nature of the Israeli regime. Therefore, attempts to disqualify Arab parties or MKs raised outcry among leading liberal figures in the Israeli political, legal and judicial systems, since such a step could harm Israel's democratic appeal along with clashing with democratic values. As a result – except for one case in 1965 – attempts made by Jewish nationalist parties to disqualify Arab parties or politicians were mostly blocked by the Israeli Supreme Court, especially when they manage to get the blessing of the elections' committee.

Notwithstanding what has been presented so far, a deeper look at the efficacy of Arab participation in the Israeli political system demonstrates that Arab parties and MKs are more of an ornament demonstrating the democratic façade of the Israeli regime than a means to give Arab citizens real power in the political process. This reality instrumentalizes Arab presence in the Knesset to legitimate a sophisticated form of tyranny of the ethnic majority. Arab powerlessness is manifested in their marginal or even absent role when it comes to determining important national public policies. In such cases, the involvement of Arab parties is mostly considered an illegitimate obstacle that ought to be eliminated.¹⁰ In many cases, the excuse of defensive democracy was invoked to legitimate major steps to limit the space of maneuver for Arab MKs and politicians. In other cases, martial law was used to detain Arab political activists.¹¹

One peak of such attempts to limit the efficacy of Arab parties and narrow their space of political and legal maneuver was when Basic Law: The Knesset was amended in 1985. The new law was drafted, among other things, to constitutionalize the Jewish character of the state and ensure that the admission of this character was a precondition for participating in the elections. A recent development in the same direction was a July 2008 law proposal that aims to prevent politicians from running for a Knesset seat if they have visited an enemy state, namely most Arab states.¹² Another example is the law proposal regarding revoking citizenship in cases of betrayal, which was confirmed by the Knesset Committee for Interior Affairs on July 14th, 2008. These examples sum up the real meaning of integrationist policy towards the Arab minority in the political field, where the tyranny of the majority is manifested under the banner of defensive democracy. These steps demonstrate the limitations being piled on Arab political participation, emptying one of the major characteristics of integrative policies of any meaning.

Let us turn now to the accommodative dimension of the Israeli policy towards the Arab minority. According to McGarry, et al., accommodative policies are usually based on the basic recognition that more than one ethnic, linguistic, national or religious group lives in the state.¹³ They are also based on the recognition that such characteristics are resilient, durable and either cannot be or should not be integrated. Kymlicka summarizes accommodative policies in three different policy outlines, namely institutional separateness, collective rights and self-government.

Israel has not been very innovative in this regard either. A few years after establishing the state, its military and political classes have accepted the fact that a small Arab minority will remain in Israel. Since the Israeli state did not seek assimilative or full integrationist policies of the Arab community and since clear and apparent suppressive cultural, linguistic, or religious policies would have harmed the effort to present Israel as part of the democratic west, the state has followed a partial and manipulative accommodative philosophy as a continuation of the Othman Millet system. Accordingly the Arab minority was divided according to faith groups, which were granted group rights in personal affairs. Although these groups' rights have a positive democratic character, they simultaneously formed as a strong mechanism for a divide and conquer policy, on the one hand, and replicating the hegemony of religious establishment on personal status affairs in Jewish society in the case

of the Arab religious minorities, on the other.¹⁴ The immediate meaning of such policy has been not only submitting minority religious affairs to decisions taking place in the Jewish community, but also compromising liberal individual rights that have to do with freedom of, and from, religion. In the case of the largest Arab religious community, namely the Moslem, the group's rights were withheld and they were placed under direct control of the Israeli Ministry of Religion.¹⁵ All the Waqf properties that formed the main source of income for Islamic public and welfare institutions were placed under the direct control of the state where they remain until this very day.¹⁶

Simultaneously the state segregated Arab schools from Jewish schools and established a special department for Arab education in the education ministry. The fact that Arab pupils learn in separate schools in their own mother tongue with financial support of the state was presented as an important tribute to the collective and self-governing rights of the Arab community. The state also maintained the status of the Arabic language as a second official language in the state. For various reasons the state exempted Arab youth from army service and presented this decision as part of its accommodative policy. These policy outlines in the field of education, culture, and security were formulated in constructive terms and presented as part of the Israeli attempts to ethically accommodate Arab collective rights, institutional separateness and self-government.¹⁷

Over time, the Arab community discovered that the state policy of "accommodation" turned out to be a burden rather than a blessing. The exemption from Army service, for example, became a major justification for discriminating against Arabs in all fields of life, including a basic allocation of resources such as those for school children and welfare transfers. The separate Arab education system enabled turning it into a "ghetto" in which "carrot and stick" policies were applied in order to co-opt the educated Arab elite and enable the state to discriminate against Arab schools in allocating its resources.

A deeper examination of the Arab educational system in Israel demonstrates the manipulative motivations behind its separation. It won't be surprising to claim that it is separated for purposes of control and socialization policies dictated by the state more than for purposes of accommodating the collective rights of the Arab community. This system is utilized as an ideological apparatus, tightly supervised by the Israeli General Security Service (GSS) – the Shabak. Jews hold the senior positions in the Ministry of Education, particularly those that are concerned with determining the contents and dictating the didactic and pedagogic concepts of instruction policy in Arab schools. Only in recent years have a few Arabs been assigned major roles in the Arab education system, while still executing policies determined by a pedagogic forum dominated by Jewish professionals. The Arab education system, which is supposed to function under the banner of "separate but equal," suffers a severe shortage in resources, such as in school buildings and classrooms as well as budgets per pupil.¹⁸

Scholars of the Arab education system in Israel have demonstrated that the modifications made in recent years remain subjugated to a philosophical framework that strives to sustain an alternative Arab Israeli identity, alienated from its historical, cultural and national past.¹⁹ The emphasis put on the value of loyalty to the state, and the stress on the uniqueness of Israeli Arabs as a community separate from the rest of the Palestinian people, bear sufficient evidence to the ideological and political intentions of the Israeli Ministry of Education. The façade of educational autonomy is actually a tool by which the whole minority is manipulated by a powerful reward and punishment system, based on the quality of political behavior rather than the merit of Arab teachers.²⁰ Examinations of the contents of the Arab educational curriculum have found that they aim at creating a submissive Arab, who is

willing to accept his inferiority against the superiority of the Jews, consequently weakening and eradicating the Arab-Palestinian identity. Civic education aims at promoting Israeli patriotism and lacks a critique of the Israeli regime rather than nourishing civic consciousness and active citizenship.²¹ Arab pupils are indoctrinated based on the legitimate superiority of the Jewish majority in Israel, which is seen as not clashing with democratic values and basic civic rights of the Arab community. The educational philosophy dominant in the Arab system and determined by Jewish pedagogs, refers to discriminations against Arabs in Israel as a temporal or circumstantial flaw rather than as part of an institutionalized policy tied to the identity of the Arab children as Palestinians.

To sum up this part, one could draw two main complementary conclusions. First, that Israeli integrative and accommodative policies towards the Arab minority sought to ensure stability more than to meet the basic individual and collective rights of this minority. The integrative and accommodative policies of the Israeli state have been mostly fake and phony. Israel has followed a special model that combines integrative and accommodative policy outlines, aiming to exert control and serve the interests of the state as defined by the Jewish majority rather than to regulate diversity based on human rights ethics. Second, any separation between integrative and accommodative policies of diversity regulation in the case of homeland minorities is insufficient if a genuine search for establishing justice and promoting democracy is sought.

Constitutionalizing Majoritarian Despotism and Ethnic Hegemony

Israeli policy towards the Arab community has not been stagnant. Two major and sometimes even contradictory processes, which expose the liminality of the Israeli regime, have been taking place in the last two decades. The first process has been spearheaded by the Knesset, where the Jewish absolute majority in the house sought to constitutionalize the exclusive Jewish character of the state while downgrading the status of the Arab minority and hollowing out the substantial aspects of its citizenship. The second process has been spearheaded by the Supreme Court, where the liberal worldview dominant in the court sought to establish nondiscrimination as a central value in the judicial system in general, implicating the same values when it comes to cases related to the Arab minority.

It is not the place to delve deeply into these two processes. Suffice it to raise some of the major decisions made in them. The first major indication of the first process was amending article 7a of the Basic Law: The Knesset, as mentioned earlier. Accordingly, the majority in the Knesset fixed the Jewish identity of the state, setting limitations on political participation, which became dependent on accepting the identity of the as constitutional precondition.²² The actual meaning of this change was setting the Jewish character of the state as a supra-constitutional value above the basic right for political participation. The debate in the Knesset before the law was passed mirrored the fear of Arab representatives from the meaning and practical translation of this legal change.²³ Since then, several attempts were made to renounce the participation of Arab political parties in Israeli elections, a decision that was not confirmed by the Supreme Court.

This fixation of Israel's identity as a Jewish state was reinforced by immutable legislation in the form of the Basic Law: Human Dignity and Liberty and the Basic Law: Freedom of Occupation which, in their introductory paragraph on the objectives for this legislation, determined that: "This Constitutional Law is meant to protect human dignity and liberty (or freedom of occupation), in order to anchor in the Basic Law the values of the State of Israel as a Jewish and democratic state."

These principles give a clear normative priority to the Jewish essence of the state and to Jewish sovereignty over democratic aspects of its regime while defining some “Taboo Territories,” where democratic decision-making is invalidated.²⁴ The sum of the legislation, which has intensified with the rise of the right-wing government of Netanyahu and Liberman to power in February 2009, translates into the eviction of the Palestinian minority from effective democratic participation and fixing its inferior status in the conceptual normative order of the state. The Basic Laws have eliminated any option of the minority to appeal through the democratic process against the hegemonic definition of the state by the Jewish majority. The laws have determined that Israel is, “the state of the Jewish people, and the Jewish people only,” as claimed by Justice Menchem Elon, former Deputy President of Israel’s Supreme Court. Furthermore, this process has been behind claims made by the General Security Service that it is legitimate to block any attempts to challenge the Jewish identity of the state, even when this challenge is conducted in democratic means.²⁵

In 2002, the Jewish majority further exacerbated the legal restrictions imposed upon political players – mainly Arab – in the Israeli political system, and expanded the realm of the “Taboo Territories.” In May 2002 and during the first Sharon government, the Knesset passed amendments to all election laws in order to redefine the limits of the parliamentary field and the boundaries for freedom of expression. Since the parliamentary field constitutes a main arena in the Arab struggle for equality in Israel, the amendments of the law aimed at neutralizing the practical ability of Arab citizens to use democratic means for appealing against state characteristics that discriminate against them. Paragraph 7a of the Basic Law: The Knesset, was reformulated to set new restrictions and conditions that party lists and personal candidates are obliged to meet if they wish to participate in elections.²⁶ Paragraph 57 of the Law of Elections was also amended, exacerbating the meaning of the amendments made in the former law.

The Knesset did not settle for merely blocking access to the Knesset for political players who undermine the world-view of the Jewish majority regarding the character of the Israeli state. It also confined the maneuvering space of existing Knesset members who managed to bypass the obstacles of former laws by amending the Law of Immunity for Knesset Members, their Rights and Duties, of 1951. Amendment 29 of the law outlaws any expression or conduct by a Knesset member that “Negate[s] the existence of the State of Israel as the state of the Jewish people; negate[s] the democratic character of the state; instigate[s] racism due to one’s skin color or racial affiliation or national-ethnic origin; support[s] armed struggle of an enemy state or terror actions against the State of Israel or against Jews or Arabs or for one’s being Jewish or Arab, in Israel or abroad.”

Although these amendments in the law were formulated in general terms, and, in the last clause cited, even refer to the protection of Arab citizens, they were introduced mainly in order to obstruct any attempts – including those of democratic means – to challenge the definition of Israel as a state of the Jewish people, ranking the sovereignty of Jewish people over that of the “Israeli people.”

Recently a majority in the Knesset tightened the grip further on Arab citizens’ right to political participation and set greater limitations on Arab parties and political representatives. One major change ought to be mentioned in this context. On June 30, 2008, the Knesset passed a new amendment of the Basic Law: The Knesset where candidates that visited an enemy state in the seven years before they became candidates would be considered to have supported armed struggle against the state, unless proved otherwise. This amendment, which defines Arab states – such as Lebanon, Syria, Yemen, Saudi Arabia, Iraq – as enemy states establishes a theoretical connection between a mere visit and supporting

armed struggle. The practical meaning of this amendment, if turned into a law, is that the most current Arab Knesset members will not be able to run for office in the forthcoming elections.²⁷ Most Arab MKs viewed this change as racist and part of the political persecution they have suffered in the last few years. Several MKs from Zionist parties admitted that this law is formulated to empty the Knesset of Arab representatives.²⁸

This change in the law – along with several law proposals that are pending in the Knesset and have to do with political participation and allegiance to the Jewish state, such as the Nakba Law and the Allegiance Law – reflect the increased difficulties for Arab citizens to participate in the Israeli political system. Arab MKs have already stated that if the price of running for the Israeli parliament would mean renouncing any connection between the Arab minority and its Arab environment, they would prefer not to run for office.²⁹ These announcements come at a time when the Knesset has amended the citizenship law, blocking any family unification in cases where an Israeli citizen marries a person from an enemy state, as defined by Israel, including the Palestinian occupied territories.³⁰ Since the likelihood that Jews would marry Arabs from enemy states does not exist, it is clear that the law targets Arab citizens. Supporters of the law provided an official reasoning for the law and tied it to a calculation of security and an unofficial reasoning that has to do with demographic considerations of the Jewish state.

The second process started with turning the legal discourse of nondiscrimination in the Israeli Supreme Court with regard to the civic status of the Arab minority in Israel into a revolutionary sign for liberalization. Although we are not and could not speak of a fundamental change in the legal philosophy of the Israeli Supreme Court, one could not ignore the decisions made in regard to the commitment of the state not to discriminate against its citizens based on religion, race and gender. The Supreme Court under the presidency of Prof. Aharon Barak led to what has been coined as “judicial revolution” in Israel.³¹ The main change brought by the court is the liberal spirit, which made judicial review possible and promoted nondiscrimination and equality as two basic values of the system. The rulings of the court have exposed the Israeli public to the structural discrimination against Arab citizens and challenged state authorities that had for a long time implemented policies that violate the basic right to equality. The court supported a more liberal integrationist and accommodative policy than what has been the rule in Israel. However, the rulings of the court were not completely impartial as to citizenship rights and the identity of the Israeli state. The court’s rulings remained within what has been coined the “Zionist Paradigm.”³² In other words, the court supported a regime of rights that does not tolerate direct and declared discrimination. Other state authorities did not remain passive and new tactics were initiated by the legislator and the executive to bypass “inconvenient” court rulings.

In order to demonstrate the philosophy of the court, I will briefly recount three rulings, where integrationist as well as accommodative solutions were presented, despite the fact that they remained within narrow limits. The first ruling is what has been coined as the “Qa’adan case.” In March 2000, the Supreme Court issued its ruling in the case of an Arab family, citizens of Israel that sought to live in the Jewish Agency-established community of Katzir, which was built on “state land.”³³ The court claimed that the state is prohibited from allocating “state land” based on national affiliation or use “national institutions” such as the Jewish Agency to discriminate on its behalf. In other words, the court’s prohibition of Arabs from living in Jewish community towns – on the basis that the land on which the community lives is allocated to it by the Jewish Agency – is to be considered as discriminating against its citizens in the allocation of its resources.

This ruling has been considered revolutionary in some Israeli judicial and academic circles. However, a deeper look at the ruling shows that the court not only does not provide any solution to past discrimination, but actually legitimizes the planning and settlement policies of the state and the Jewish Agency in the past, despite the fact that a large amount of the lands on which Jewish settlements were established were confiscated from Arab citizens.³⁴ Moreover, in its ruling, the court established an individualistic liberal discourse according to which the rule applied to the Qa'adan family case does not establish a collective right for Arab citizens. The judicial principle on which the court ruling is established is nondiscrimination rather than the general value of equality among all citizens irrespective of their national, cultural or religious identity.

In July 2002, the Supreme Court released another important decision regarding the joint petition of Adalah and the Association for Civil Rights in Israel (ACRI), which was filed in June 1999 against the mixed Arab-Jewish cities of Tel Aviv-Jaffa, Ramle, Lod, Akka (Acre), and Natseret Illit, demanding that these municipalities add Arabic to all traffic, warning and other informational signs in their jurisdiction.³⁵ In a majority of two against one, the court decided that the respondent municipalities are required to provide dual-language signs throughout those cities. The President of the court established his decision based on several considerations, such as that the dual-language signs enable the Arab residents to orient themselves throughout the confines of the cities in which they live, and to equally benefit from the municipal services.

Despite the fact that the court accepted the petition, nevertheless it remained very shy of establishing a collective right that accommodates the basic rights of the Arab community as a national and cultural minority. President Barak declared that the inclusion of Arabic on signs combines features that do not necessarily exist in other languages in Israel, that Arabic is the language of the largest minority in Israel, which has always been living in the state, and that Arabic is an official language in Israel. Despite the positive language of President Barak, he emphasized that one of the justifications for his decision is that including Arabic on signs does not prejudice the special status of Hebrew as the principal language in Israel. In other words, not only did the court limit its position based on the right of freedom of expression of the individual rather than based on the official status of the Arabic language, it made clear that although Hebrew and Arabic are defined as official languages in Israeli law, that does not mean they have equal status. President Barak claimed clearly that the Hebrew language has a higher status.³⁶

In February 2006, the Supreme Court delivered another landmark decision which obliged the state to cancel the "National Priority Areas" (NPAs), which is a governmental decision that divides the country into areas "A" and "B."³⁷ Towns and villages included in the list of NPAs, 535 out of which are Jewish and only four are Arab villages, receive lucrative benefits in the field of education. This governmental policy is common sense in Israel, despite the fact that the socio-economic status of Arab towns and villages is far worse than Jewish ones.

The Supreme Court obliged the state to cancel the decision within twelve months of the day on which the ruling was delivered. In February 2007, after the one-year period had expired, the state asked the court to delay the implementation date for a period of six months, until September 1, 2007. Shortly before the hearing scheduled for examining the demand, the state announced its intention to delay implementation of the ruling in order to make it easier to implement it gradually over a five-year period. The Supreme Court refused the state's request. Nevertheless, and despite the fact that ten years have passed since the petition was submitted to the Supreme Court, the latter agreed to postpone the implementation date for another period of one year.

It goes without saying that in its decision, the court did not reference the impacts of the disadvantageous policy since it was initiated in the early 1990s. Thereby and despite its positive decision, the Court did not strive to close the gaps created historically between Jewish and Arab towns, but rather indirectly legitimated them by its mere disregard of the past. Although the court rejected the request of the state for five years to change its policy, the court gave the state another year of licensed discrimination.

The brief overview of these two major processes – legislative and judicial – reflect the contradictions in state policies towards the Arab minority and demonstrate that the selective integrationist and accommodative model still dominates state-minority relations until this very day. This overview demonstrates that despite and maybe because of the fact that the state is aware of the powerful moral position of the Arab indigenous minority, it established a selective and manipulative regime of rights that combines integrationist and accommodative policies in order to balance between its exclusive Jewish character and its democratic appeal. In cases in which the state had to recognize Arab collective rights, these were clearly subordinated, strategically and tactically, to the superior constitutional status of the Jewish majority and its culture. The ethnic nationalist character of the state has always prevailed when dealing with the Arab indigenous minority.

Minority Mobilization and Strategies of Contention

The Arab minority has never been passive vis-à-vis Israeli strategies of control. Throughout its history and as a result of it being aware of its indigeneity, the Arab minority has always demanded integrationist and accommodative rights. Since the 1950s, Arab leaders have demanded recognition as a national minority as well as full equal citizenship rights.³⁸ Although these demands were framed in an integrationist language, political parties and public leaders have always emphasized the historical connection between the Arab minority and the land of Palestine, on the one hand, and between this minority and the Palestinian people, on the other.³⁹ The intimidation and suppressive policies of the Israeli government during the period of the military regime (1948–1966) and the 1970s have led to the ambiguous formulation of demands that are to become more coherently expressed in later stages.

The 1980s, especially as a result of the rise of a new Arab national party, marked the rise of a more coherent discourse in regard to demands for civic as well as national rights for the Arab minority. The Progressive List for Peace, led by a political leader descending from the Al-Ard movement, which was outlawed in the mid-1960s, has had a strong impact on shifting the entire Arab discourse from emphasizing integrationist rights into demanding accommodative rights.⁴⁰ The first sign of such a shift has been the demand for cultural autonomy formulated by two Arab intellectuals in 1989. Although this demand did not replace the integrationist discourse, it nevertheless reflected a clear trend in Arab political consciousness and behavior, which emphasized the demand for collective national rights and the transformation of state identity from exclusively ethnic into inclusively civic.

Political leaders and intellectuals have always criticized the dominant conception of equality, interpreted by the state as mere non-discrimination in the allocation of state resources and as equality before the law. Equality, not yet recognized as a constitutional value in Israel, which was conceived in Arab political discourse in negative terms, was replaced by a more positive conception; namely, the full right to participate in defining the main characteristics of the state, including its most fundamental symbols, and the right to power sharing, especially in crucial decision making beside the equal share of state resources. It gradually became common sense among Arab leaders and intellectuals that equality can only be reached if the

state recognizes the Arab minority as a legitimate national collective and relinquishes the exclusive Jewish hegemony on the state, as it is fed by its Zionist ideology.⁴¹ This can only be realized with a shared civility that is accountable to the national identities of all Arab and Jewish citizens. These positions, albeit formulated in different ways, became part of the political discourse of all Arab parties that win the support of the vast majority of the Arab community, as translated in the elections to the Israeli Knesset.

An increasing number of Arab intellectuals and leaders began demanding the activation of Arab citizenship in accordance with democratization trends taking place in different countries around the globe. They raised a cry against the attempts of official and unofficial Israeli institutions to draw up a constitution for Israel that reifies the status quo and tightens its grip on the rights of the Arab minority. These attempts have been criticized by the Arab population, 90% of which support the transformation of the state from its official definition as “Jewish and democratic” into a state of all its citizens.⁴²

This political trend within the Arab community, which demanded a combination of integrationist and accommodative rights, culminated in the publication of what has become coined as the Future Vision Documents published between December 2006 and May 2007.⁴³ These documents published by political, civic and intellectual leaders in several civil frameworks share several ideas that demonstrate the changes in Arab political strategies and positions regarding its status in the Israeli state. Although there are differences between the documents, they nonetheless provide a useful avenue for understanding the way the Arab minority views itself and what are its expectations when it comes to regulating its status vis-à-vis the Israeli state. Although the documents are diverse and very rich, it suffices to emphasize four major points for the purpose of this paper.

First, all three documents share the premise that the Palestinian minority in Israel is an indigenous people, national minority and homeland minority that deserves special regime of rights as a result of its status. Their point of departure is that the Arab minority in Israel preceded the establishment of the state, as part of the people of Palestine, and therefore its rights should be addressed not only as citizens of the Israeli state, but also as constituting the indigenous inhabitants of the land. As a result, the liberal discourse of citizenship rights is important for enabling some integration of Arabs into the Israeli state and economy, but it is not sufficient to accommodate their cultural and national rights. The documents seek recognition of the national, cultural and linguistic identity of the Arab community that should be translated into the identity of the state, its power structure and policies.

Second, all documents take the existence of the state of Israel – as a translation of the right for self-determination of its citizens including, and even in particular, the Jewish majority – for granted. Notwithstanding, all documents view the exclusive ethnic identity of the state as a source of disturbance in majority-minority relations and demand structural transformations of and in the state. In other words, the documents view discrimination against the Arab minority a result of the current identity and structure of the state rather than a result of bureaucratic miscalculations. In this context, the existing regime of rights is viewed as a regime of control and submission rather than a tool for empowering the minority. Therefore, the documents demand the transformation of the state and its rights regime from one that prioritizes Jews over Arabs into a genuine democratic one that accommodates the individual and collective rights of both communities in either a consociational or multicultural and bi-lingual liberal democratic regime. The transformation of state identity does not entail renouncing the right of self-determination for either Jewish or Arab communities. However, they reiterate that the right of self-determination does not have to mean an ethno-republican

state. These documents demand an inquiry into the adequate institutional formula that enables each community to feel secure and have the right to determine and protect its national culture.

Third, all documents demand a special combination of individual and collective rights if the basic rights of the Arab minority are to be genuinely met. In this regard, the documents demand a new regime of rights that bring together integrationist and accommodative solutions that reflect the complex relationship between Jews and Arabs in Israel as well as the diversity within each of these two communities. The consociational model and the multicultural and bi-lingual model proposed in two of the documents seek to provide solutions to the national, cultural, ethnic, religious and linguistic communities living side by side in Israel, where spheres of particularity exist parallel to a common sphere of universality. The documents demand protection of the right of culture as well as the right for exit.

Forth, all documents shed light on the rising difficulty to reconcile the civic and national identity of the Arab community, as a result of the constitutionalization of the exclusive ethno-republican character of the state. Being aware that neither of the national communities – Jews and Arabs – is willing to give up its national identity and rights, the documents seek to strike a balance between civic identity and national affiliation. In this regard, the documents are optimistic regarding a possible combination between national affiliation and liberal-civic culture. They do not go far to relinquish national affiliation but call for renouncing ethnic, chauvinist and closed imperial nationalism. They reiterate what has been called in the literature “liberal nationalism” within a civic political entity that enables the various communities within the two nations to practice their rights and protect their identities in an atmosphere of tolerance and reconciliation.

Conclusion

This brief overview of state-minority relations in Israel demonstrates the complexity of the theoretical debate regarding diversity regulation. The historicity of diversity and the power structure in which it emerges are crucial factors to be considered in dealing with this complex topic. Kymlicka’s comments regarding the need for a special combination of integrationist and accommodative policies in the case of homeland minorities have proved to be central for diversity regulations. Nonetheless, Kymlicka’s important contribution remains short of addressing the structure of the state as a crucial factor when considering diversity regulation. The Israeli case has demonstrated that the problem of diversity regulation is not disconnected from power relations. Therefore, it is not only the case that neither the integration nor the accommodation strategy satisfies the complexity of homeland minorities, but it is also the case that the combination of both strategies is not sufficient if the identity of the state and its power structure is not transformed to meet universal equality of all citizens and groups in the state.

The indispensability of combining the integrationist and accommodative policies is related to the fact that homeland minorities that share the characteristics of both indigenous people and national minorities resided in their homeland before the state was established. Therefore, their efforts to protect various forms of their way of life, including culture and language, overlap with their need to be integrated into the job market and state institutions. The right for political participation in the case of such minorities goes beyond mere representation of their proportional share in society’s resources. It includes institutionalizing their power in order to guarantee sharing crucial decision-making that may have an impact on their way of life. This means that aggregative democratic systems cannot meet the rights of such minorities for sharing power. Collectivist models of power sharing are necessary.

These conclusions are particularly true in states with exclusivist ethnic character, albeit when they have a functional procedural democratic system. The Israeli case demonstrates that the Jewish hegemony over state institutions and resources block integrationist and accommodative policies that theoretically provide a solution for diversity but practically remain short of achieving their goal. This is especially true when the state is instrumentalized to protect the dominance of the ethnic majority leaving integrationist and accommodative solutions empty of substantial meaning. The eroding of the substantial meaning of Arab citizenship in Israel and its hollowing out beside the manipulative rulings of the liberal Israeli Supreme Court are important illustrations of the point made in this paper. In the last decade, Israeli citizenship, which formed a structural opportunity for Arab citizens who sought to improve their minority status through activating their citizenship, became instrumentalized as a control mechanism by the state. Israeliness has become a phony framework that does not provide the basic need for attachment in both Arab and Jewish citizens, pushing each to search for alternatives that mostly do not match.

In conclusion, one has to clarify that it seems as though only a balance between the rights of the minority for national, cultural and liberal rights and those of the majority could lead to constructive change in state-minority relations in Israel. The translation of the right of the Jewish majority for self-determination into an exclusive hegemony over the state contradicts the principle of democratic sovereignty, according to which the citizens share power equally. The Future Vision Documents introduced by the minority leadership may have led the majority to suspect the real intentions of the minority. However, maintaining the current manipulative rights regime and phony democracy is not the solution. The search for integrationist and accommodative solutions while promoting basic transformations of the dominant national identities from exclusively ethnic to liberal may open new opportunities for both communities, helping to bridge the gaps and differences between them. This change is a matter of choice that could be promoted without falling into the dangers of chauvinistic nationalism or religious fundamentalism that have been capturing center stage in both sides. A new rights regime that guarantees the basic national, cultural, linguistic and religious rights of all groups composing Israeli society is indispensable if we to overcome the deterioration in state-minority relations in Israel. New institutional forms of government have to be proposed in order to guarantee reconciliation between the two sides.

NOTES

1. John McGarry, Brendan O'Leary and Richard Simeon, "Integration or Accommodation? The Enduring Debate in Conflict Regulation," *Constitutional Design for Divided Societies: Integration or Accommodation*, ed. Sujit Choudhry (Oxford University Press, 2008), 41–88.

2. Will Kymlicka, "The Internationalization of Minority Rights," *International Journal of Constitutional Law* 6, no 1 (2008): 1–32.

3. Oren Yiftachel, *Ethnocracy, Land and Identity Politics in Israel/Palestine* (Philadelphia: University of Pennsylvania Press, 2006); Sammy Samooha, "The model of ethnic democracy: Israel as a Jewish and democratic state," *Nations and Nationalism* 8, no. 4(2002): 475–503.

4. See speech of Prime Minister Ehud Olmert held in the Haifa Conference on 10 July, 2008. <http://www.pmo.gov.il/PMOEng/Communication/PMSpeaks/speechhaifa100708.htm>, Accessed July 28, 2008, 5:30 pm.

5. McGarry, et.al., "Integration or Accommodation?" 1.

6. Dan Rabinowitz, "Oriental Nostalgia: How the Palestinians Became 'Israel's Arabs,'" *Theory and Criticism* 4 (1993): 141–152.

7. Sami Mari, *Arab Education in Israel* (New York: Syracuse University Press, 1978).

8. Yuval Dror, *'National Education' Through Mutually Supportive Device: A Case Study of Zionist Education* (New York: Peter Lang, 2007).

9. Benyamin Neuberger, *Israeli Democracy* (Tel Aviv, Open University, 1998).
10. Amal Jamal, "Direct Democracy, Ethnic Democracy and the Limits of Influence: Referendum and the Palestinians in Israel," *Phantom in Politics: Referenda in Israel*, ed. Dana Arieli-Gorowitz (Jerusalem: Magnis, 2006): 165–191.
11. Dan Shifan, "The New Identity of the Arab Knesset Members," *Tchelet* 13 (Autumn 2002): 23–49.
12. <http://www.nrg.co.il/online/1/ART1/753/692.html>. Accessed 18/8/08
13. McGarry, et al., "Integration or Accommodation?" 12.
14. Michael Karayanni, "Living in a Group of One's Own: Normative Implications Related to the Private nature of the Religious Accommodations for the Palestinian-Arab Minority in Israel," *UCLA Journal of Islamic and Near Eastern Law* 6, no. 1 (2007): 1–45.
15. Winfried Brugger and Michael Karayanni, eds., *Religion in the Public Sphere: A Comparative Analysis of German, Israeli, American and International Law* (Muenchen: Springer, 2007).
16. Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford: Oneworld, 2006).
17. Ilan Saban, "Ha-Zkhoiot Hakibotsiot Shil Hamioot Ha-Aravi-Falastini: Ha-Yish Ha-Ain Vi-Tkhom Ha-Tabo" (Group rights of the Arab-Palestinian minority: present, absent and taboo), *Iyoni Ha-Mishpat* (Law Review) 26, no. 1 (2002): 241–319.
18. Majid Al-Haj, *Education, Empowerment and Control: The Case of the Arabs in Israel* (Albany, NY: State University of New York Press, 1995); V. Lavi, *Hivdilem Bimashabem Vi Bithisigem Bahinukh Haa'ravi Biyisrael* (Differences in Resources and Achievements in the Arab Education in Israel) (Jerusalem: The Floresheimer Institute for Policy Research, 1997).
19. Kahled Abu Asbeh, *Arab Education in Israel: Dilemmas of a National Minority* (Jerusalem, Floresheimer Institute for Policy Research, 2007).
20. *Ibid.*
21. Jamal, *Civic Lexicon for Arab Schools in Israel* (Jerusalem: Gilo Center, 2006).
22. For the meaning of the change see: Jamal, "Nationalizing States and the Constitution of Hollow Citizenship: Israel and its Palestinian Citizens," *Ethnopolitics* 6, no. 4 (November 2007): 471–493.
23. *The Knesset Chronicles*, 42, no. 30: 3951.
24. Saban, "Group Rights of the Arab-Palestinian Minority."
25. See the letter sent by the head of the General Security Service, Yuval Diskin to the Attorney General in which he claims that one of the major aims of the GSS is to act against subversive activities defining these activities to include "those activities that aim to change the basic values of the state that include its democratic or Jewish character, which mean subversive activity against democratic political order and institutions." <http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=861811&contrassID=2&subContrassID=21&sbSubContrassID=0>, accessed July 28, 2008, 8:15 am.
26. The new condition forbids implicit or explicit support of any candidate or party list for armed struggle by a state or a terrorist organization against the state of Israel. This formulation was designed to block Arab support of Palestinian struggle against Israeli occupation in the West Bank and Gaza Strip.
27. <http://www.ynet.co.il/articles/0,7340,L-3562266,00.html>, accessed July 22, 2008, 8:55 am.
28. <http://news.walla.co.il/?w=/1305938>, accessed July, 312008, 8:45 am.
29. *Ibid.*
30. On the changes in the citizenship law see: Yoav Peled, "Citizenship Betrayed: Israel's Emerging Immigration and Citizenship Regime," *Theoretical Inquiries in Law* 8, No. 2, Article 10 (2007).
31. The concept "judicial revolution" became familiar in the early 1990s when the president of the Supreme Court issued several decisions that were considered to mark a break with the judicial tradition in the past. For more details see: Ran Hirschl, "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Israel's Constitutional Revolution," *Comparative Politics* 33, no. 3 (Apr., 2001): 315–335.
32. Ilan Saban, "The Arab-Palestinian Minority and the Supreme Court: A Portrayal (and Prognosis) not in Black and White," *Mishpat U'Mimshal* 8 (2005): 23–47; Hassan Jabareen, (2002) "The future of Arab citizenship in Israel: Jewish-Zionist time in a place with no Palestinian memory," *Challenging Ethnic Citizenship*, eds. D. Evy and Y. Weiss (New York: Berghahn Books, 2002): 196–220.
33. H.C. 6698/95, Qa'dan v. Israel Lands Administration, et. Al.
34. Yiftachel, *Ethnocracy*.
35. H.C. 4112/99, Adalah, et. al. v. The Municipalities of Tel Aviv-Jaffa, et. al., decision delivered 25 July 2002.
36. Ayelet Harel-Shalev, "Arabic as a Minority Language in Israel: A Comparative Perspective," *Adalah's Newsletter* 14 (June 2005).

37. H.C. 2773/98 and H.C. 11163/03, *The High Follow-up Committee for the Arab Citizens in Israel, et. al. v. the Prime Minister of Israel*.

38. See the political discourse of the Al-Ard movement and the platform of the Communist Party in Asad Ghanem, *The Palestinian-Arab: Minority in Israel, 1948–2000* (New York: SUNY, 2001): 98–100; 65–92.

39. Amal Jamal, “The Ambiguities of Minority Patriotism: On Love for Homeland versus State among Palestinian Citizens of Israel,” *Nationalism and Ethnic Politics* 10, no. 3 (Autumn 2004): 433–471.

40. Jamal, “Arab Leadership in Israel: Ascendance and Fragmentation,” *Journal of Palestine Studies* Xxxv, no. 2 (Winter 2006): 1–17.

41. These demands appear on the platform of the three Arab parties represented in the Knesset (Hadash, National Democratic Assembly and United Arab List). For more details see the website of the Knesset: www.knesset.gov.il.

42. Sammy Smooha, *Index of Arab-Jewish Relations in Israel 2004* (Haifa: The Jewish-Arab Center, University of Haifa; Jerusalem: The Citizens’ Accord Forum between Jews and Arabs in Israel; Tel Aviv: Friedrich Ebert Stiftung. 2005), 89.

43. For a more detailed exploration of the Future Vision Documents, see Amal Jamal, “The Political Ethos of Palestinian Citizens of Israel: Critical Reading in the Future Vision Documents,” *Israel Studies Forum* 23, no. 2 (2008): 3–28.

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