Reflections on the Nation-State Debate

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Ruth Gavison reflects on the Defining Israel forum and the insights of Israel’s Declaration of Independence

There is something perplexing, intriguing and deeply troubling in the debate over Israel’s character and whether it should be enshrined in a constitutional enactment. It was reflected in the political debate which took place in Israel in 2013-2014, which generated my being commissioned by the then Minister of Justice Livni to address the question. It was also reflected in the very thought-provoking discussion which was developed in this forum. It is now questionable if the circumstances that made this issue a hot political one still obtain. This may in fact be a good time to look at the question and its presuppositions from a more detached, long-term perspective. As debates about identities and visions and constitutional entrenchments should always be.

Most of the participants in the forum, as well as most of the participants and pushers on the political debate, are Jewish. There is a broad consensus among Jews that descriptively Israel—in its history, self-understanding and social and political realities—has at present, and has always had, elements that are both distinctively Jewish and strongly democratic. More importantly, there is a broad agreement that this is as it should be. There are many debates about the meanings and implications of the key concepts, and about the existing, possible and desirable balance between such elements—both now and over time—but Jewish advocates for Israel as a fully neutral civic state, indifferent to numbers and cultures, or for a bi-national state in Israel, are rare and marginal. Not a single Jewish participant in the forum fully espouses such a
view. Moreover, the Declaration of Independence clearly entrenches this basic duality, reflecting both the Jewish consensus and the position of the international community at the time, in a powerful and evocative way. **None of the Jewish participants rejects this canonical and moving Declaration, which has definitely become a part of the constitution of Israel in the substantive sense**, even if it does not have formal legal force. It is extensively used in Israel’s public school system as the constitutive document of the state.

Moreover, while many Arab leaders object in principle to any Jewish distinction of the state or its nature—a position articulated by Yousef Jabareen in this forum—they too accept that in terms of the social and legal reality, Israel is both a Jewish state and a democracy, struggling to balance and negotiate between these parts of its vision. Moreover, many of them are even willing to concede that once we accept the idea of self-determination and the legitimacy of a Palestinian state—there is no good reason for rejecting the idea of a Jewish state. The debate should be one about the details of the arrangements in the state concerning rights of minority and state and religions rather than the very fact that Israel is where Jews exercise national self-determination.

Nonetheless, the development of the debate, and the fate of the Begin proposal, show that at the current moment this is not about the details of the proposed Israel as a nation-state legislation, some of which were indeed objectionable and very unwise (as noted by Alexander Yacobson). This fact is revealing. It reflects the fact that Israel today, although in many senses it is much more democratic and liberal and affirming civic equality and the rights of minorities than it had been in its inception, cannot re-affirm—legally and possibly ideologically—even the principles of the Declaration of Independence. This in itself is not so surprising when we recall that the Declaration was a document signed only by the leaders of the Jews in Israel, prior to the establishment of the state, in order to meet the requirements of the partition resolution and the need to declare the establishment of the Jewish state at the end of the British mandate. Moreover, the Declaration reflected creative constructive compromises among the signers on many of the deep controversies among Jews that were suspended, not abolished, by the need to present a fully unified front against external challengers of the young state. In present day Israel, Arabs are full-fledged citizens who vote on any such legislation, and Jews do not feel compelled by such historical reasons to suspend their disagreements; especially not in a binding constitutional declaration, with all its symbolic visibility.

Similarly, and despite claims by Israel Bartal and others that Israel has betrayed its commitments in the Declaration and has become less democratic and welcoming to non-Jews and to non-religious Jews, the present debate is NOT only or mainly about the internal Jewish debate about the relationships within Judaism of religion and
national-cultural identity. That this is the case is clarified by the fact that all proposals of the nation-state laws were more than willing to suspend references to this internal Jewish debate.

As far as I can see, the main difference between the present debate—the 2010s—and the moment of the Declaration is the unbelievable success of Zionism and Israel as the nation state of Jews. This success, hoped for but not assumed by the signers of the Declaration, explains the fact that while many Arab leaders, in Israel and outside it, are persistent in claiming that the issue is not 1967 or Arab minority rights and state and religion within Israel, but rather the Nakba and the very foundation of Israel as a Jewish nation-state, many Jews, within Israel and abroad, feel that the two challenges to Israel’s character—the internal Jewish debate and the Jewish-Arab one—need not be separated as they clearly had been in 1948.

This is a reason for celebration; for appreciation of both the achievements of Israel and the road that still needs to be taken to continue the struggle within it concerning the negotiation of democracy, human rights and Jewish self-determination. This is not a reason, and should not be seen as a reason, for forgetting the difference and the distinction between the two challenges facing Israel: the external challenge of those who think and argue that a nation state for Jews is in principle unjustified (with implications ranging from the legitimacy of seeking to fight it militarily and extinguish it as a political entity, to de-legitimating it economically and politically in the eyes of the international community and Jews themselves) vs. the internal debate, among Jews and Israelis, about the exact social, cultural and legal arrangements that should obtain in Israel.

It is natural (although not necessary and not inevitable, as shown by many polls taken in Israel) for Arabs to resist the new legislation, but also to resist any ideological and educational affirmation of the Jewish self-determination component of Israel’s vision. It is intriguing that some Jews are willing to conduct their struggle concerning the arrangements in Israel on these issues as one denying the possibility, reality or desirability of Israel being committed to Jewish self-determination as well as to democracy and human rights. Thus some Jews on the left claim that Israel cannot be both Jewish and democratic and must be democratic and secular only (a most powerful illustration is Gideon Levy’s New Year op-ed in Haaretz September 13, 2015, but there are hints in this direction among participants of the forum as well). Some Jews (mostly religious) on the right think that Israel must be Jewish-religious first and democratic, if at all, second; others believe that the struggle between Jews and Arabs has not been decided in the long term, and that Israel must insist on its Jewish national character vis-à-vis the international community and its own population, so as to make sure that the support among them for the legitimacy of
Jewish self-determination as a central component of Israel’s vision is not eroded further.

The difference between these three groups—advocates of Israel as a neutral liberal democracy; Israel as a Jewish theocracy or ethnocracy first; and Israel as committed to Jewish self-determination, democracy and human rights at the same time—is huge. It is the difference between struggling to maintain Israel as Jewish, democratic and committed to human rights on the one hand, and Israel as either only or mainly democratic and secular, or as only or mainly Jewish and halakhic.

Once this fault-line is clearly drawn again, as it had been in 1948 and the first decades of Israel’s life, we can easily distinguish the question of the vision itself from the question of additional legislation with constitutional import. Pushing for legislation is motivated mainly by fears that the line has become fuzzy, and the legitimacy of the Jewish state is eroded. Moreover, it is built on the fact that the rhetoric among Jewish elites in Israel, including some legal elites, especially after the basic laws of 1992 and the “constitutional revolution,” became more human-rights and democracy centered. Driving hard against legislation, claiming that a balanced nation-state law like the Begin proposal is the end of democracy (see here for the full text of Begin’s proposal), or that nothing distinctively Jewish is consistent with democracy and human rights (as some Arab leaders claim) in turn strengthens these fears considerably and lends them support.

One’s conclusion on constitutional entrenchment thus depends on what one wants and how one assesses the realities of the present situation. Against this background, my recommendations are clear. I want Israel to be a state with a vision. The vision is Jewish self-determination, democracy and human rights. All components are critical for the welfare and justice of the state and for its very survival. Negotiating the components should be done within the social, cultural, religious, political and legal frameworks established in the state. There are, and always will be, tensions within the components as well as among them. This is why a shared democratic political framework is so critical for the success of all pluralistic societies. It allows them to negotiate differences without bloodshed and violence. While the components of the vision are themselves not eternal— they do provide a context for differences that will not undermine society itself. The difference between the vision itself, narrowly interpreted, and the detailed arrangements, is thus critical for a stable, healthy state and society. Any attempt to challenge the very possibility to maintain the complex vision in an all-or-nothing broad interpretation of this or that component are likely to be destructive and counter-productive.

THE VISION IS JEWISH SELF-DETERMINATION, DEMOCRACY AND HUMAN RIGHTS
This was the insight of the founding fathers in the age of the Declaration. This is why they refused to give the Declaration a legal binding force. The Declaration served us well. If we can maintain its spirit without further constitutional legislation that will be very good. Refraining from legislation will defuse some superfluous debates about issues that cannot be legally determined and enforced anyway. However, if the challengers saying that the complex vision is inconsistent or impossible, trying to entrench their own version of a vision of the state that does not give due recognition to one or the other of the elements—Jewish self-determination, democracy, human rights—we may have to legislate the vision and move on with the never-ending task of negotiating the tensions within that constitutional framework.

In the meantime we should re-affirm the complex vision in other ways. This is an urgent task. Its urgency is made clearer by the various challenges against its possibility, coherence and desirability. Coming from all political and ideological camps. We can be proud of what we have achieved as we watch out for what is missing and fragile. May this coming year and future ones be good years for this never-ending, critical mission.