41. Israel's Vision: Jewish and Democratic

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Background

Most comparative analyses of modern states classify Israel as a democracy from its inception in 1948.[1] In fact, on most dimensions of democracy, Israel scores higher on democratic indexes than it had in earlier periods of its existence.[2] It is usually ranked in the top 10% of democracies in the world, and its ranking is three times as strong as the average democratic index of the region of which it is a part.[3] Against this background, the persistence of the debate in these terms is intriguing.[4]

Is Israel a democracy? Probably, the debate is in part inspired by the wish to highlight the relationships between two components of the self-identity of Israel: its being a democracy and its being a Jewish state. The duality is anything but new. It is reflected in the history of Israel and in its constitutive Declaration of Independence. The state was in fact founded on the basis of a UN resolution to partition mandatory Palestine into two democratic states – a Jewish state and an Arab state – after efforts to end the mandate and give both peoples national self-determination in one state have failed. Nonetheless, some scholars and public activists point to a contradiction, or at least tensions, between these two dimensions of Israel's identity. For them, the Jewish dimension in Israel's identity means that Israel either cannot be a full democracy or that its democratic nature must be seriously flawed. To become a more robust democracy, they imply, Israel must give up, or at least mitigate, its Jewish distinction. Others vehemently deny all such challenges. They see Israel as a liberal democracy with some unique features, which is struggling with problems which are much greater than those faced by other democracies, and is doing very well under the circumstances.[5]

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1 Lijphart 1984, 38; see also www.democracyranking.org/wordpress/?page_id=14, accessed in 2013.
2 For example, according to "Freedom in the World Report" published by the Freedom House Organization, Israel's score rose since 1973 from grade 3 to 2 in Civil Liberties, and from grade 2 to 1 in Political Rights: freedomhouse.org/sites/default/files/FIW%202014%20Scores%20-%20Countries%20and%20Territories.pdf, accessed January 20, 2014.
3 For example, in 2012, according to the *Democracy Index Report* published by *The Economist*, Israel ranked 37, while Lebanon ranked 99, Egypt ranked 109, Jordan ranked 121 and Syria ranked 164. See www.freedomhouse.org/report-types/freedom-world#.U0P2MPl_tqU, accessed October 24, 2014.
4 I have addressed this debate 15 years ago in Gavison 1999a, 44. Now as then I find the framing problematic.
5 See references below.

There are two major divides that affect Israeli society: the one between the Jewish majority and the Palestinian-Arab minority, and the internal Jewish debate about whether the animus and the energy driving the collective that is struggling for self-determination in Israel is a matter of the ancient religious covenant between Jews and God or a matter of national self-determination for a people once defined by religion but now forming a modern people, not exclusively defined by religion. Both divides have implications to the strength and fullness of democracy in Israel. Critics stressing tensions between Jews and Arabs are the ones describing Israel as either an ethnic democracy,[6] or as an ethnocracy.[7] Critics stressing the ramifications of the struggle about the role of religion in Israel say that Israel fails in being a full democracy because it has (growing) theocratic elements. Some in fact suggest that Israel can hardly be a democracy at all, because of the combination of theocratic and ethnocratic elements, and suggest that the two are in fact either connected or even necessarily related. They claim Israel is, and possibly must be, discriminatory against non-Jews in ways inconsistent with democracy, and violates rights to freedom of and from religion, because it is governed or affected by religious Jewish law.[8]

My thesis is that while there are concerns in Israel on both the status of the Arab minority in the country and the role of religion in Israel's public life, which should be taken seriously and addressed, the relationships between the Jewish dimension and the democratic nature of the regime are complex. They are neither a contradiction nor a zero-sum game. In fact, the test of democracy in Israel is precisely in the way it facilitates addressing these concerns and negotiating these tensions. On this task, Israel's record is mixed. The status of the Arab citizens in Israel should be improved, and the role of religion in Israel should be revisited so that religious coercion is banned. Yet, it is imperative that these improvements be reached via Israel's dynamic democracy and not in other ways. True, the Jewish specificity of Israel means that the state cannot be a neutral civic state, privatizing all the non-civic dimensions of its population. But not all democracies must be such states. Democracy constrains, and should constrain, what Israel can do to promote its Jewishness. These constraints should be recognized and strengthened. Yet there is plenty that Israel may do, within democracy, to promote its Jewishness. The complexity of Israel's identity between Jewishness and democracy is not the primary challenge to its being democratic.

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6 Smooha introduced the archetype: Smooha 2002, 475. See also Peled 2013.
7 Yiftachel 2000, 725.
8 See, e.g., Levontin 1995, 521.

Basic concepts

Both the conceptual ambiguities and the opposing political agendas that perpetuate this debate are structural and immanent. They are part of the background of the discussion. However, the controversies are political and ideological; they are not about concepts or even about facts.[9] We should therefore prefer definitions that highlight and help frame the controversies over ones that make one's preferred position a matter of conceptual analysis. In this section I will clarify what sense of "democracy" and "Jewishness" I am using.[10]

Democracy

A rules-of-the-game, procedural conception

I use a primarily *procedural* conception of democracy. Democracy is based on the idea that the power to rule is vested in the *demos*, usually through its elected representatives. Citizens should be free to form opinions and create political associations (civil rights) and should have the right to vote and to be elected (political rights). These rights should be given to them equally. One person should have one vote.

Disagreements within democratic societies should be resolved by the authorized powers, under law. People and groups must have rights to protest and make their views known and felt so that they are taken into account in such decisions. Decisions may be constrained by an entrenched constitution and requirements of special procedures for laws that are constitutive or affect human rights. But representation is determined by majority voting, and majority voting is the typical principle of decision-making in democracy. This principle is in fact required by equality.[11] The power of the government must be limited, and officials as well as citizens should abide by the rule of law. An independent judiciary resolves controversies, including those between citizens and the government.

Democracy, liberalism as neutrality, and human rights

Some wish to make the definition of democracy thicker. One candidate for inclusion in the definition of democracy is liberal *human rights*. Others go further and include

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9 There are some disagreements about "brute facts" but they are small. Mostly real disagreements concern narratives and interpretations. Attitudes to the situation may be affected by false or misleading allegations of facts. This fact, too, is part of the background.
10 Naturally, I cannot fully defend my conceptual choices in this paper. I let the reader judge if they promote or hinder the clarity of the analysis. I have elaborated on these choices in Gavison 2011b.
11 Deviations from majority vote may at times be justified and may even be required, but they offend against the equal value of each vote, and give extra weight to minorities.

within the concept of democracy the requirement that states be neutral among the conceptions of the good of their citizens, and that this should be achieved by the privatization of all non-civic aspects of their identities.

I propose that we should reject both extensions. We should adopt the common distinction between democracy-related human rights (rights to vote and be elected and rights connected to exercising such rights effectively), whose protection is required for democracy to obtain, and other rights, which are an independent ideal.[12] The reason is that there may be significant tensions between human rights – whose protection is a desirable product of all political regimes – and democratic rules of the game. I also suggest that we should reject neutrality as a necessary (or even desirable and fully possible) ingredient of (liberal) democracy.

Human rights base their claim of validity and force on universal considerations. One of their main goals is to limit the power of majorities to violate human rights. Democracy, however, is rooted in a specific *demos* and its specific decision-making processes, affected by its history and culture.[13] There may be tensions between the arrangements adopted by a given political community and the interpretation of what is required by human rights given by philosophers, UN bodies or the international community. If human rights are not part of the definition of democracy, this common fact may be presented as a tension between the ideals of democracy and human rights. If human rights are a part of democracy, the debate is one within democracy itself. I prefer the first description. Under the second description, the "good guys" are for democracy and human rights. The others, even a large majority of the population, who may argue in terms of their own conception of the good life, which to them is consistent with both democracy and human rights, are presented not only as political adversaries but as enemies of democracy and human rights as well.[14] Such descriptions, I believe, in fact tend to weaken democracy rather than strengthen it.

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12 Jones 1994.

13 See Ackerman 1994, 516. Ackerman accepts that the constitutional project of "We the People" is judged by its own constitutional design, even if the products of the process may not be those required by one's theory of justice. One should fight for one's ideal, but not in the name of democracy. Democracy facilitates the struggle, but does not dictate the results.

14 Egypt since 2011 is a powerful reminder about how democracy itself is used as a rhetorical and military tool against the actions and even the legitimacy of a freely elected ruler. These developments are an important reminder to the fact that rules-of-the-game democracy is a procedure seeking to reflect a critical principle of legitimacy: the mandate given by the majority of the population subject to the law.

Institutional implications

A critical aspect of democracy, especially a rifted and polarized democracy, is therefore the identity of the institutions and processes dealing with controversies and authorized within the system to interpret the implications of the rule of law, democracy and human rights. While all democracies give the prime of place, by definition, to the *demos* and their representatives (the political branches), some argue that all democracies must have constitutions, bills of rights, and judicial review of primary legislation. Others argue that regimes that have all of these are in fact potentially not democracies but juristocracies. I reject both claims. Democracies may have bills of rights and judicial review, but they do not have to have them. However, this debate does highlight the complex relationships between democracy and human rights.[15]

When a society is homogenous in attitudes and values, the institutional question of who decides and in what kind of process may be less important, since most decision-makers and processes are likely to generate similar results. This is of course not the case in divided societies. In such societies, the challenge for any regime, but particularly for democracies, is more complex. A balance needs to be drawn between civic patriotism, hopefully shared by all members of the *demos*, seeking to enhance the public good, on the one hand, and the natural wish to promote the interests and ideals of one's own sector or group. In such circumstances, a main question is what "the nation" is and especially who speaks for it.

In such cases, neutrality – the state as an arbiter between conceptions of the good, without giving priority to any specific attitude, and maintaining only the shared ideals – is at best problematic. In all states ideals and conceptions of the good are in part shared and in part specific to certain groups. In deeply divided societies the shared ideals may not be robust enough to maintain and support social and political life, with the measure of solidarity and commitment that they take. An effective state must therefore seek the arrangements that can provide, for it, the right, dynamic balance between representativeness and effectiveness, so that it avoids paralysis and maintains a government that is fair to all, especially minorities. Such government cannot respect only the elusive, possibly non-existent, neutral "shared public interest."

In such societies, neutrality cannot be seen as a realistic ideal for the political branches. They must make ideological and political decisions, and these should be evaluated as such rather than as legal or constitutional questions to be decided by impartial judges. Moreover, courts themselves should respect this distinction between questions of policy and questions of human rights, and not impose a duty of neutrality on the political branches.[16]

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15 I elaborate on these points in Gavison 1999b.

16 I believe full neutrality cannot be a value even for paradigmatic civic states like the US. Such states, however, do claim to have a civic identity that may be rich enough to sustain the required level of civic solidarity.

Jewishness

I take the Jewishness of Israel to reflect the fact that Israel is the one place in the world where Jews are a majority and can exercise political self-determination.[17] Other features of life in Israel are Jewish only because of this basic fact. Jews are entitled to state-level self-determination exactly so that they can develop and protect aspects of their physical and cultural welfare in ways not always open to minorities living within other societies.

The key to this characterization is the interests and rights of Jews who see their Jewishness as an important part of their identity, and who wish to maintain it and pass it on. My definition of "Jews" is inclusive: all those who see themselves as Jews.[18] The right to self-determination belongs both to peoples and to their individual members. It is in this case the right of Jews and of the Jewish people.[19]

The Jewishness of the state is not civic. There are Israelis who are not Jews. Not all Jews are Israelis. It is also not religious (the "Jewish state" is not analogous to a "Christian state" or a "Moslem state"; rather, it is analogous to an "Arab state" or a "German state"). More relevant to our purposes, the Jewishness of Israel is not exclusive. Israel is committed, in both declaration and constitutional and social reality, to civic equality for all, Jews and non-Jews alike.

Relationships between Jewishness and democracy

We can now return to the Jewish-and-democratic definition.[20] We saw that allegations that Israel is not a democracy or has a flawed democracy stem mainly from its

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17 As in many charged debates, the terms have become very charged themselves. The description of the state closest to Jewish self-determination is "the nation-state of Jews." It is preferred by those who fear theocratic tendencies and think that "a Jewish state" has this connotation. However, the UN resolution talks of Jewish self-determination and of "a Jewish state." Some critics of theocracy prefer this term because "the nation-state of Jews" seems to exclude non-Jews from full citizenship.
18 This definition used to be sufficient even in the context of the Law of Return when it was either dangerous or undesirable to be seen as Jews. The fact that Israel has become a desirable destination means that today further elements reflecting an authentic affiliation with Judaism are needed to benefit from preference in immigration. However, not only Jews by Halakha should be eligible. See Gavison and Medan 2004, 31–40. See online in https://gavison-medan.co.il/.
19 Indeed, some claim that Jews are not a people and thus are not entitled to a state. But these are claims aimed at the very legitimacy of Israel and are not related to its alleged democratic flaws. For these claims, see Gavison 2011a.
20 The formulation, chosen in the 1992 Basic Laws protecting human rights, is not optimal. Attributing "Jewishness" to a state is not a simple matter. The Declaration of Independence manages to express the duality between Jewish specificity and democratic civic equality in more accurate and moving ways.

Jewishness. In this section I will discuss the vision of Israel as both Jewish and democratic, and argue that this vision is in fact more adequate than all other proposed alternatives for Israel. Moreover, this characterization is more democratic as well. First, it does reflect the wishes and preferences of the majority. More important, it appears as if many of the minority members prefer their life in Israel over other plausible alternatives, despite their criticism of Israel.

Israel as both Jewish and democratic

I contend, with the majority among Jews and the international community, that both democracy and the Jewish distinctness of the state are recognized and important values, and that both are part of the normative vision of the state. I concede that Palestinian Arabs, both within Israel and outside it, cannot be expected to fully endorse this vision.[21] Other things being equal, they would much rather live as a part of the majority in their country. But this is not the reality. They are citizens of Israel. They justly demand that their rights, individual as well as collective, be respected. Their preference to be members of the majority, however, is not enough to challenge the validity of the vision of Israel as a democratic nation-state of Jews, especially against the background of their actual conditions of life in Israel, and the plausible alternatives had Israel not existed for both Jews and themselves. They should thus concede that the vision of Israel as a democratic state in which Jews exercise national self-determination is not only a matter of the brute force of Jews, but also an arrangement that enjoys legitimacy within the international community and by international law and morality.

My claim, that both the democratic nature of Israel *and* its Jewish particularism are values, is not a mere assertion based on moral reasons supporting self-determination for communities.[22] Normatively, it is anchored in the recognition of the international community of the principle of self-determination of peoples, which is in fact incorporated as the opening statement in both the ICCPR and the ICSECR. Moreover, in the specific context of Israel it is reflected in a long and consistent series of international determinations.[23]

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21 I make statements in this paper about groups, such as Arabs and Jews and subgroups within them. These generalizations are always inaccurate. Democracy in fact tends to increase internal varieties among groups and this is one of its virtues. I do not want to make my comments cumbersome by always adding reminders of this danger, and this is a general caveat in this respect.
22 For a general justification of nationalism and an analysis of the justice of Zionism and a Jewish nation-state, see, e.g., Gans 2008.
23 The Declaration of Independence lists them in its opening paragraphs. Since then, affirming the principle of partition so that Jews and Palestinians enjoy self-determination in parts of their homeland is the consistent position of the international community. See Gavison 2011a.

These two values (as well as the independent value of human rights) do have different structures. Both values have internal tensions as well. Together, these tensions between and within the two values are the framework within which Israel has to negotiate its identity. For democracy, civic cohesion and equality is a key. Jewish self-determination in Israel requires deviation from this equality at the group level, and in the reality and history of Israel it is also translated into discrimination and gaps. However, discrimination and gaps – against individuals and groups – can be found in all democracies. One should struggle to minimize them. Israel offers many venues for such struggles. Jewish self-determination is supported by the fact that Jews are a substantial and stable majority within Israel.

Those who want Israel to become more democratic want more equality between Jews and Arabs and less religious coercion in Israel. This ideal can be achieved to a large extent within Israel as Jewish and democratic. Those who challenge this vision advocate, in terms of ideal types, either a liberal neutral state privatizing all the non-civic identities of their population, so that civic equality is the only official policy; or a state where there is separation of state and religion; or a binational multireligious state.

I argue that implementation of all these alternatives will generate a worse reality for all, Jews and Arabs alike. Moreover, these alternatives are in an important sense less democratic than the uneasy balance that Israel has adopted as its complex vision. We should seek to strengthen both components of the vision rather than seek to abolish or seriously mitigate either of them.

Israel cannot be a "state of all its citizens"

A fully privatized neutral democracy indeed cannot be defined officially as a Jewish (or Moslem, or Arab) state. However, not all democracies must choose this route, and many Western democracies have not. Israel is the culmination of Zionism, a movement of Jewish national self-determination. The UN recognized it as such. What is the basis of the expectation that once established it will make itself into a neutral state? Moreover, many democracies maintain to this day special official affiliations with national or religious traditions, and this in itself does not affect their democratic credentials so long as the legal and social realities within them do not discriminate on the basis of ethnic or religious identity.[24]

So the claim of conceptual contradiction must fail. Yet, as I have argued above, the neutral theory of liberal democracy is in fact an inadequate theory of society

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24 See the comparative review in Yakobson and Rubinstein 2008.

and of democracy, at least in societies in which individuals value their group affiliations. Such societies need to enforce civic equality across the groups, but at the same time to enlist the energies and the commitments of solidarity which are encouraged and developed within the different identity groups. Such societies build on having a core community which does have a very strong sense of natural solidarity, which can then be extended to include other groups within the civic nation.

In Israel, this group is clearly the Jewish Zionist majority, the group that has fought for national self-determination for Jews in their ancient homeland.[25] Its material and spiritual resources are required to make the state work. If it had tried to be a neutral state of all its citizens it would not have been established; many of its citizens would have left; and a lot of the energies on which it is built, for the benefit of all its citizens, would have been absent. This group is there because Israel is a Jewish state and the group makes it a Jewish state. It also is the group that makes it a democratic state.

Yes, there are important tensions between the nature of Israel as the locus of Jewish self-determination and democracy. But they definitely do not generate a zero-sum game.

More important and telling is the fact that the representatives of the Arab minority do not seek a neutral state that regards them as individuals only.[26] They, just as Jews, see their non-civic identity as more important than their civic one. They do not want to live in a state that privatizes their national and religious identities.

Therefore, the vision of Israel as a "state of all its citizens" is endorsed neither by most of the Jewish majority nor by most of the Arab minority. An attempt to move Israel in this direction is thus bound to fail. Furthermore, for our purposes we must stress that it cannot be advocated in the name of democracy itself. Democracy does not require that Israel becomes a neutral civic state, privatizing the non-civic identities of all its citizens.

Israel need not adopt US-style separation of state and religion

Israel has a state-religion arrangement that is unique among Western democracies. It includes a very visible role for religions in public life, including religious education that is publicly financed as well as publicly recognized and financed religious services, including a religious monopoly over matters of personal status for all the population. Most of these elements were inherited by Israel from the Ottoman *millet* system, which had been adopted by the British mandatory authorities at the request

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25 Historically, Zionism was a non-religious movement, parts of which were explicitly anti-clerical. Even today, a majority of Zionist Jews are not observers. Ultra-Orthodox Jews, a group of growing size and importance in Israel, are usually non-Zionists, with an anti-Zionist minority.
26 Agbaria and Mustafa 2012, 718–736.

of the local population. So this reality was not even created as part of the establishment of the Jewish state at all.[27]

The struggle to abolish the public, official, Orthodox monopoly over marriage and divorce and the resulting state-determination of who is a Jew, as well as debates about the definition of a "Jew" and the scope of immigration privileges under the Law of Return, is primarily conducted by Jews, in Israel and abroad. Many of them see this struggle as a matter of both Jewishness and democracy. They want Jewish society in Israel to remain distinctively Jewish,[28] but resent the demands made by the Orthodox establishment.[29]

I believe the personal status Orthodox religious monopoly is bad for a variety of reasons.[30] It violates human rights to freedom of religion and from religion, and has implications for gender equality. I similarly object to the fact that the definition of a "Jew" in the Law of Return is almost fully halakhic,[31] and that the state does not recognize fully the pluralism in Jewish identities, both religious and cultural. However, I do not accept that this situation is antidemocratic. Rather, I prefer to say that this legal situation is unjustified, and there seems to be a majority against it, but that it is the democratic process itself that prevents changing it (although the social reality is much freer and more nuanced). Democracies at times exhibit an inability to make desired choices because of political constraints. This does not mean that the entrenched arrangements, which cannot be changed, are antidemocratic.[32]

But is separation of state and religion (or religious establishments) the desirable arrangement for Israel? I do not think so. Separation of state and religion may be a response to religious pluralism, especially if it may be violent; or to a struggle between religious and secular forces within society; or to both. In Israel, all these dimensions are present. Here, too, we need to adapt the legal and political regime to

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27 In fact, Israel has gradually enacted comprehensive civil legislation in most matters of personal status, leaving the application of religious law as a matter of choice. A strong legal religious monopoly remains on the books, but not always in action, concerning matters of marriage, divorce and conversion. For an historical account of the legal arrangements in Israel, see Harris 2002, 21–55.
28 See, e.g., Westreich and Shifman 2013, in which two Orthodox Jewish scholars advocate abolishing the Orthodox monopoly over marriage and divorce because of a commitment to Israel as both Jewish and democratic.
29 The attitude of non-Jewish communities is more complex. See below.
30 See Gavison and Medan 2004, 42–54.
31 Ibid., 22–41. This is a very strong illustration of the institutional sensitivities. The halakhic definition of a "Jew" in the Law of Return is the backlash of the Knesset to a judicial decision that demanded that the children of a Jewish father and an agnostic Christian mother be registered as Jewish in their nationality.
32 This goes back to my preference to use "democracy" in a procedural sense, so that it does not include the protection of all human rights, see above.

the social reality. This is why democracy generates different arrangements in different societies.[33]

Israel cannot have a regime of separation between state and religion for at least two reasons. One is related to the Jewishness of the state. While a majority of Jews supports a cultural-national Jewish particularism, as self-determination for Jews, many of whom are not religious, the internal Jewish debate about the relations between religion and culture in Judaism is still raging. The relative growth of religious communities in Israel, including messianic ones, has obvious political implications for both the state-religion divide and the Jewish-Palestinian divide. In democracy, numbers matter. Members of religious Jewish communities see Judaism as either totally religious or as a combination of religion and peoplehood. Moreover, among their leadership, many of the Zionist religious voices stress Jewish peoplehood more than religion, accepting that it is critical to form Jewish solidarity across various attitudes to Jewish religious law.

The result of this struggle is mixed and dynamic. And it tends to different and opposing directions. Israeli Jewish cities are much freer on Saturdays than they had been. There are many social ways of avoiding the harshest practical implications of religious monopolies. Many of these mechanisms are vindicated by state authorities and the courts.[34] At the same time, ultra-religious norms, especially those of separation between men and women, become more visible in the shared public sphere as this community is growing and becoming more integrated into general Israeli society.[35]

Interestingly and importantly, most of those on the radical right who are considering not obeying a possible order to evacuate West Bank Jewish settlements support their positions by invoking beliefs about the interests of the state, the meaning of Zionism, and even the democratic deficit of such decisions, rather than the reasons of obedience to higher religious law.[36] So even for them, Jewish and democracy must go together. Separating Judaism and the state is thus not a matter of separating religion and state.

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[33] Most Christian democracies are either neutral or have old establishment arrangements that are primarily symbolical and expressive. Yet in terms of social and political reality, countries are different according to the relative strength in them of strong religious groups. For a discussion of Moslem countries and Israel, see, e.g., Hirschl 2011. The book does not do justice to the complex relations of national and religious elements in Judaism.

[34] Thus there is broad de-facto recognition of same sex couples, and a legal and judicial vindication of a civil union arrangement in many of its form. Nonetheless, a change in the law allowing same sex marriage or a judicial recognition of such marriage seems at present unlikely.

[35] Thus there is a tension between the secular and national religious drive to force the integration of ultra-Orthodox men into the military and the economy and the wish to maintain full gender equality and integration in the same places.

[36] Moses and Hellinger 2014, 14–18.

But in terms of democracy, the second reason why Israel will not have a separation between state and religion is related to all its population, Jewish and non-Jewish alike. Ironically, if there is a bill in the Knesset to abolish the religious monopoly over matters of personal status, it may well be defeated by a coalition of religious Jews and Arab MPs of all religious persuasions. Tensions among the Arab population between different religions, and between traditional religious forces and modern secular ones tend to be downplayed in the public sphere so as not to harm cohesiveness vis-à-vis the Jews and the Jewish state.[37] Moslem society is on the whole more traditional than the Jewish one, but the majorities of both communities in Israel are traditional, and want to maintain their distinctive identities. These identities are connected to religious tradition even for those who do not observe. They want to negotiate a public sphere in which there is a distinctive culture without religious coercion. Again, the struggle about the details of these arrangements should be conducted within the democratic framework. It is not a struggle about democracy itself.[38]

Israel should not be a binational state

Indeed, political leaders of both Jews and Arabs do not want Israel to be a state privatizing all the non-civic features of the population. Those who argue that Israel is an ethnocracy usually claim that Israel cannot be a full democracy unless Israel itself becomes a binational, multi-religious state.[39]

The claim that the correct arrangement for the region is one binational state in all of mandatory Palestine is outside the confines of this paper. Within Israel proper, however, I see no justification and no stability in advocating a binational state. This "solution" undermines the rationale of the partition which is the basis of the establishment of the state. That decision was based on conditions that related to both the rights of self-determination and practical political realities. Both reasons are as powerful now as they had been then.[40]

Yes, there should be more equality than there is now in individual rights, and the recognition of group rights to religion and culture and some autonomy should be strengthened. However, robust protection of minority rights as required by inter-

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37 Michael Karayanni points out the complex implications of this situation to the role of religion in the Arab minority in Karayanni 2007, 333.
38 See, e.g., Gavison and Medan 2004, 55–62 (arrangements on Sabbath); Gavison and Perez 2008.
39 In fact, some of the Arab vision statements suggest a regime that will protect only the national rights of the Arabs, leaving open the possibility that the state may become an Arab state in the future, since they do not include recognition of the national rights of Jews, and describe them as colonialists and imperialists. See note 26 above.
40 Gavison 2013.

national documents is fully compatible with Israel's description as a Jewish and democratic state.

Some illustrations

I have argued that democracy and Jewishness in Israel are not contradictory or zero-sum-game attributes, but a set of two separate ideals, one inclusive of the *demos* (but not universal as human rights) and one specific to Jews, with tensions and mutual reinforcement. Let me illustrate the general point by two specific cases that are often brought up as a cause for concern.

The future of the Occupied Territories

The Israeli occupation of the West Bank since 1967 is clearly one of the strongest causes of criticism of Israel and challenges to its legitimacy (and democracy).[41] Indeed, the fact that Palestinians live under Israeli control but do not enjoy civil and political rights and do not belong to the Israeli *demos* is critical. However, after 1993, Palestinians are allowed to hold their own elections, they are ruled by the Palestinian Authority, and efforts to end the occupation have been conducted all the time. In principle, the West Bank is not seen as part of Israel, and Palestinians are intentionally not seen as a part of the Israeli *demos*.

Is the fact that the occupation has not yet ended a flaw in Israel's democracy? Some say that what stops Israel from coming to an agreement with its neighbors that will end the occupation is the rise of messianic Jewish expansionism. For them, the continuation of the occupation, and especially the settlements, are a matter of the Jewishness of Israel. However, those among the Jews who argue for an agreement mostly invoke the need to keep Israel as both Jewish and democratic by guaranteeing a stable Jewish majority in it. And some anti-occupation activists, in Israel and abroad, come to this struggle from their interpretation of Jewish law and traditions. A majority among Israeli Jews supports the two-states-for-two-peoples arrangement. Thus, the fact that this has not been translated into an agreement is not necessarily a simple flaw of Israeli democracy.[42] It probably reflects the fact that Israel and the Palestinians simply cannot reach an agreement. Because they do not belong in one state, democracy does not give them a framework for reaching decisions without agreement. Some argue that the parties need to be "pressured" to

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41 Israel evacuated Gaza in 2005, and there is some debate whether it is still occupied territory.
42 See the fascinating discussion in Lustick 1993.

make an agreement if they are unable to do so unaided. But forcing an agreement (if possible at all) is clearly not a matter of democracy.

Constitutional identity and protection of minority rights

Some argue that the absence of constitutional protection of the rights of the minority is a flaw in Israeli democracy.[43] In principle, the relationship between an entrenched bill of rights with judicial review and the reality of minority protection is not simple. However, Israel does not have a full constitution for a variety of reasons, and the issue of minority rights is not the most central among them. The level of protection of human rights in Israel is considered more than acceptable, and it improved after the enactment of the 1992 laws. Human rights are well protected in other countries without a full bill of rights and judicial review, like Holland and Switzerland. Ironically, though, the parties that objected to attempts to complete Israel's constitution in recent years were two minorities: ultra-religious Jews and the Arabs! Religious Jews who fought against a constitution feared a more secularist definition of the state and a stronger court which might limit their power to negotiate within coalition agreements and may erode the religious status-quo. They also had an ideological objection to the Jewish state enacting a constitution while it had the most ancient one available – religious law. The Arabs, however, opposed any constitution, no matter how strong its protection of the rights of the minority, and how strong its commitment to democracy and judicial review, if it included in its preamble – as all drafts did – some affirmation of Israel as the locus of Jewish self-determination.

Conclusions

Improving Israeli democracy does not require giving up its unique connections to the Jewish people. Rather, it requires a careful analysis of the special features of Israeli society and its challenges, and an evaluation of the conditions which may promote the ability of the state to perform its tasks: provide all its citizens with security, freedom, dignity and human rights; guarantee the conditions required so that Jews can continue to exercise self-determination in Israel and beyond; and maintain robust and effective democratic institutions.

So, is Israel a democracy? I have explained why I share the view that the strength of Israel's democratic elements creates a presumption in favor of seeing it as a democracy, and that this strong presumption has not been rebutted by critics.

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43 Smooha 2002, 475.

There are additional reasons for an affirmative answer. Clearly, those who want to describe Israel as a non-democracy are the ones who are most interested in changing its arrangements. Presumably, they want to change it so that it is a democracy (or a stronger democracy). But in a democracy, change must be made through persuasion, via the democratic processes themselves. Democratic change is on the whole preferable to revolutions. Israeli Jews are more likely to concede to the demands of the Arabs, and religious establishments are more likely to allow liberalization of state-religion arrangements, if these changes enjoy strong democratic legitimacy. Using descriptions of Israel as a colonialist ethnocracy or a Jewish theocracy are likely to generate polarization and resistance rather than accommodation. The record of progress through democracy in Israel is much better than attempts at delegitimating it.

I repeat: democracy and Jewish self-determination are both of value. Democracy does constrain what Israel can do to promote Jewish self-determination, as do the values of human rights. Promoting the conditions required for Jewish self-determination does not justify discrimination or religious coercion. But Israel as the locus of Jewish self-determination requires neither discrimination nor a violation of freedom of religion and freedom from religion.

A framing recommendation is required here, however. Until now, Israel has handled the sources of tensions between Jewishness and democracy – Jewish-Arab and internal Jewish – separately and in different ways. This is a mistake. Both should be seen as a part of the basic "social covenant" that should constitute Israel's democracy. Tensions between *demos* and various *ethnos* groups, and between state and religion, exist in most democracies. Democracy requires that they are not allowed to harm the underlying sense of equal citizenship shared by all citizens. This equal citizenship need not be sameness. It does not even require an agreement on values or shared conceptions of the good (although convergence on these may help a lot). But it does require an agreement to a set of political institutions and decision-making procedures that will be seen by all citizens as legitimate and binding. The provision of this framework is in fact the essence of democracy. Under present and foreseeable conditions, it will generate Israel as a democratic nation-state of Jews.

Israel should maintain and strengthen its democratic institutions. It should actively seek to strengthen Israeli citizenship and the civic identity shared by all its citizens. At the same time it should continue to recognize and respect non-civic elements in the identities of these citizens. What Israel needs to do – and can do if it works wisely within democratic rules – is to reach an agreement on how to negotiate these disagreements so that the legal arrangements, and the social realities, do not exclude non-Jews, and do not privilege one conception of Judaism or one conception of Jewish life. Again, this is not democracy against Jewishness, but using democracy to allow social forces to strike dynamic balances without attempting to "decide," once and for all, the ideological issues involved.

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