

New Nation-State Law in Israel

by: Rabbi Jeremy Rosen

As a follow-up to last week's discussion on nationalism, the controversial nation-state law just passed in Israel is typical of what I do not like about nationalism—the way it has been and continues to be a tool of politics.

The bill was passed by 66 to 55. Very far from unanimous and probably a fair reflection of the longstanding chasm within Israeli society. What does it say and what is wrong with it? In fact, I would not disagree with the bill on most issues, but that does not mean I support it. The translated text is below; my comments are in italics.

Basic Law: Israel as the Nation State of the Jewish People

Basic principles: The land of Israel is the historical homeland of the Jewish people, in which the State of Israel was established. The State of Israel is the national home of the Jewish people, in which it fulfills its natural, cultural, religious and historical right to self-determination. The right to exercise national self-determination in the State of Israel is unique to the Jewish people.

This is an old debate. Is Israel a Jewish state or a state for Jews or a totally secular, nondenominational state? We have been arguing this, as well as how we define a Jew, since 1948. This is one legitimate expression of what Jewish self-determination means. Undoubtedly it is a response to all those who wish to delegitimize Israel as a Jewish state.

The symbols of the state: The name of the state is "Israel."

It has been that way since 1948. This merely reiterates established usage.

The state flag is white with two blue stripes near the edges and a blue Star of David in the center.

Yes, of course it is. What else would anyone want it to be? Black with pink spots?

The state emblem is a seven-branched menorah with olive leaves on both sides and the word "Israel" beneath it.

Harmless enough. What would you rather, a tembel hat?

The state anthem is "Hatikvah."

I can understand people having reservations about an anthem. Most anthems are pretty banal and no one pays too much attention to them. And I could find fault with the wording of most, including the Hatikvah. The words do indeed make it difficult for a non-Jewish citizen, or even some Haredi Jews, to sing it with much enthusiasm or identification. Has anyone recently read the full

text of "God Save the Queen"? But when all is said and done, it does celebrate the idea of a Jewish people returning to its ancestral land. Nothing racial there. Or with:

Details regarding state symbols will be determined by the law.

The capital of the state: Jerusalem, complete and united, is the capital of Israel.

I agree in theory. But the wording of "complete and united" is controversial. It is a vague expression of hope and anyway subject to negotiation. It seems out of place in a law that is supposed to reflect reality and is clearly a response to opposition. I am much more concerned about judicial processes for populations under occupation, which this bill does not address comprehensively and which, likewise, can only be finally settled by negotiation.

Language: The state's language is Hebrew.

It is indeed. Does anyone prefer Swahili?

The Arabic language has a special status in the state; Regulating the use of Arabic in state institutions or by them will be set in law. This clause does not harm the status given to the Arabic language before this law came into effect.

That seems pretty fair to me. Most citizens speak it. But this bill does change the status of Arabic from primary to secondary. English is spoken by even more and once had special status. So did French once. There are lots of other languages that a significant number of citizens speak. Arabic has actually increased its presence and functionality in the State of Israel under Netanyahu. This is clearly intended as a petty rap on the knuckles to the increasing opposition inside sectors of the Arab community and the increase in pro-Palestine symbols within the Green Line.

Ingathering of the exiles: The state will be open for Jewish immigration and the ingathering of exiles.

That Basic Law of Return was one of the fundamentals of Israel since 1950. No one objected in Ben Gurion's day.

Connection to the Jewish people: The state will strive to ensure the safety of the members of the Jewish people in trouble or in captivity due to the fact of their Jewishness or their citizenship. The state shall act within the Diaspora to strengthen the affinity between the state and members of the Jewish people. The state shall act to preserve the cultural, historical and religious heritage of the Jewish people among Jews in the Diaspora.

As the largest Jewish community in the world, their concern is positive, even if sometimes overbearing, aggressive, and presumptuous. All the more so since on religious matters there is a massive disconnect between most nonreligious Diaspora Jews and Israel and Israel's Jewish life is much more intense, variegated and complex.

Jewish settlement: The state views the development of Jewish settlement as a national value and will act to encourage and promote its establishment and consolidation.

If this was referring to kibbutzim or settlement within established boundaries, I would not object. But it seems aimed at the West Bank, Judea, and Samaria—the “occupied territories”, which are still sub judice and waiting for a peaceful settlement, for which I pray every day. It is a poke in the eye to people whom one hopes one day to be at peace with. Why offend? Because it makes you feel better? Get over it.

On the other hand one wonders why if Israel is happy to have a large Arab minority, why wouldn't a Palestinian state accept having a Jewish minority? If there are some Jews who regard living in the West Bank, which is historically the Jewish homeland more than Tel Aviv, why not? So long as they accept the role reversal?

Official calendar: The Hebrew calendar is the official calendar of the state and alongside it the Gregorian calendar will be used as an official calendar. Use of the Hebrew calendar and the Gregorian calendar will be determined by law.

OK, why not? It has been this way since 1948. Does anyone want to reinstate the Julian Calendar?

Independence Day and memorial days: Independence Day is the official national holiday of the state. Memorial Day for the Fallen in Israel's Wars and Holocaust and Heroism Remembrance Day are official memorial days of the State.

Days of rest and Sabbath: The Sabbath and the festivals of Israel are the established days of rest in the state; Non-Jews have a right to maintain days of rest on their Sabbaths and festivals; Details of this issue will be determined by law.

I can't see any legitimate objection to these, any more than objecting to the queen's birthday, American Independence Day, or May Day!

And finally:

Immutability: This Basic Law shall not be amended, unless by another Basic Law passed by a majority of Knesset members.

Just a formality, and indeed it leaves the possibility of democratic change open-ended.

The question is, why is this so controversial? Israel (like Britain) does not have a constitution. In its Declaration of Independence, it guarantees equal rights to citizens. It relies on its courts to enforce this. But, as we know from the American and other constitutions, such fine principles are rarely adhered to in practice. (Just look up the Dred Scott case in the USA.) That is why most democratic countries have institutions such as the Supreme Court—to uphold the values of democracies. Balance between the different

institutions. The system is not perfect. No human system is. No religious system is perfect, either.

We know that supreme courts that mediate such issues, whether in Israel or the USA, often reflect the political and philosophical biases of the judges. We hope for balance, but there is always a battle over new appointments. Israel is a complex, divided country with conflicting interests that fight like mad. There is no chance of unanimity. At this moment the right wing is trying its best to emasculate its opponents, just as the left used to when it was in power. But this kind of struggle is endemic in democracies. Up to now the Supreme Court in Israel has always strongly upheld the Basic Law on Human Rights (within Israel, if not always on disputed territory) as against rightist and fundamentalist positions. It has always veered towards the left.

Israel also has what are called Basic Laws, to govern the electoral system, civil rights, and human rights. To protect human dignity and liberty, in order to anchor the values of the State of Israel as a Jewish and democratic state. Most countries have such laws that enshrine specific religious or cultural characteristics. Muslim states often consign non-Muslims to Dhimmi status as second class citizens. Which Israel never has done to non-Jews.

Israel has always had Basic Laws. The Knesset in 1950 passed the Law of Return, guaranteeing that anyone persecuted or disenfranchised for being a Jew can claim citizenship, so as to ensure that no Jew would ever again have nowhere to flee to for sanctuary and protection. The Knesset also passed a law that made military service optional for non-Jewish citizens. Yet as we know, some Druze, Bedouin, Christian, and Arab citizens do serve. A Basic Law passed in March 1992 reiterates and protects the democratic civil rights of all citizens, regardless of culture, religion, opinion, or gender, as mentioned in the Declaration of Independence.

Israel also has other binding agreements. The Status Quo, which Ben Gurion wrote to meet a precondition from the UN for the establishment of the Jewish state, guaranteeing freedom of thought, speech, and religious practice for all its citizens. He expanded it to guarantee that the state's festive and rest days are those of Judaism. Kitchens in the Jewish state's official institutions have to keep kosher, while privately each individual would be free to choose. A single judicial system covers marriage and divorce, conducted by religious courts for Jews and other religious authorities of whatever faiths. This meant that any marriage has to be religious (not necessarily Jewish). There are no civil marriages in Israel, but those who marry civilly abroad are recognized by law. It also guarantees the independence of different Jewish and non-Jewish religions and denominations, to preserve their individual religions and cultures.

I actually prefer the complete separation of state and Religion. I hate religious compulsion. In the USA where the two are at arms length even the strictest forms of Judaism seem to flourish nevertheless. Even so it would only prove prejudice to accuse Israel of crimes against humanity for having such religious laws.

But the crux of the issue is whether the Supreme Court or the Knesset decides. Should the Supreme Court have the right to overturn these laws and agreements? Lawyers and philosophers continue to argue about the nature of law and the best way of executing it. Just as in the US there is a tussle over "life" or "choice". There is no perfect system.

At a primitive level I understand it. The more people threaten, hate, or want to destroy Israel, as the only Jewish state, the more they tell lies about it and ignore the good, the more the right wing (along with all populist tribes and governments elsewhere) want to tell them to piss off and give them the finger. I often feel like doing it myself. Yet poll after poll shows that most Israelis want to live in peace with their neighbors, regardless of religion, ideology, or race, and do indeed want a democratic state. If it reflects Jewish insecurity, then just think what it does to the insecurity of non-Jewish minorities in Israel.

This bill is an example of political interests holding a coalition together, trumping common sense. There is a lot of concern that the right-wing government is pulling the country too far towards their aggressive approach, towards dissent and corruption, and muffling opposition. Which is certainly cause for concern and certainly grounds for protest. Meanwhile, past presidents have been sent to jail and the present prime minister and his wife face corruption charges. Doesn't sound like a right-wing dictatorship just yet!

Israelis have never been very good at sensitivity. Internally as much as towards non-Jewish minorities. They pride themselves on their prickly pear, Sabra, nickname. One can sympathize, given that they have been under constant attack, from within and without, existentially and ideologically for so long.

Israel is an amazing phenomenon. An unbelievable miracle. I am proud of it. But this current mood of tit for tat, trading insult for insult, blow for blow, is not the way to progress. We are not supposed to follow the worst examples of other nations. I don't have a solution. But I do know that there must be honest debate and soul-searching, rather than name-calling. And the old cliché—eternal vigilance.