A new chapter in Israel's "constitution": Israel as the Nation State of the Jewish People

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In the very last day of the Knesset's summer session, on July 19th 2018, almost without public debate and by a majority of 62-55 members, the Israeli Knesset passed a new Basic Law stating that Israel is the Nation State of the Jewish people.

For the readers outside Israel, here are a few facts concerning the Basic Laws: upon the establishment of the State, in 1948, Israel's Declaration of Independence determined that "the establishment of the elected, regular authorities of the State" would be "in accordance with the Constitution which shall be adopted by the Constituent Assembly". The Constituent Assembly, elected as both a constituent and legislative body, failed to adopt a constitution and decided that the Knesset, which holds both legislative and constituent powers, would enact Basic Laws in stages, and those would eventually comprise the Israeli constitution.

By 1992, almost all of the Basic Laws dealing with governmental institutions had been adopted, but the proposal to pass a Basic Law dealing with human rights provoked great controversy in the Knesset. Therefore a political compromise split the Basic Law: Human Rights into a number of separate basic laws and two basic laws dealing with human rights were enacted in 1992: "Basic Law: Human Dignity and Liberty"; and "Basic Law: Freedom of Occupation". These two Basic Laws provide that its purposes are to protect the rights, "in order to stipulate the values of the State of Israel as a Jewish and democratic state, in a Basic Law". They also provide substantive limits on the legislative powers of the Knesset by stipulating conditions for infringing protected constitutional rights. Three years later, in the pioneer judgment of United Mizrahi Bank v. Migdal Cooperative Village (1995), the Supreme Court held that the Basic Laws have constitutional status – superior to ordinary laws, and therefore the court has the power for judicial review and may invalidate unconstitutional legislation. Both Basic Laws on human rights and this Supreme Court decision were later known as the "constitutional revolution". So the Basic Laws form nowadays the "Israeli constitution", which is not a complete constitution, but rather a weak and restricted one.

This new Basic Law passed on July 2018 is, therefore, a new "chapter" in Israel's constitution. And perhaps even the most important one: the preamble of the constitution, or the chapter dealing with the fundamental principles of the State.

The Nation-State Basic Law anchors, for the first time in a Basic Law, that Israel is the "national home of the Jewish people." Among its 11 clauses, the Basic Law deals with state symbols like the flag and national anthem, the official language, national holidays, the Sabbath, Jerusalem as the capital, etc. This Basic Law may be altered or repealed by a future Knesset, by a majority of 61 members, as opposed to a regular majority of members present, as is the case for regular laws.

Supporters of this Basic Law claim that it is mainly symbolic and simply states the obvious. Israel was established as a refuge and a homeland for the Jewish people. The declaration of independence of Israel already states that "the Land of Israel was the birthplace of the Jewish people. Here their spiritual, religious and political identity was shaped". So there is no disagreement on the fundamental principle according to which the State of Israel is the nation-state of the Jewish people, in which the right to self-determination of the Jewish people, and only of the Jewish

people, is realized. This has been the practice of the State of Israel since its establishment.

But, even though the Basic Law states what seems to be a picture of reality, it is, still, very problematic. Not because of what is included within it, but mainly for what is missing from it: the idea of a democratic state and the principle of equality.

The State of Israel is a Jewish and democratic state. It was precisely this general formulation that allowed a proper living space for each of the two concepts. Since the establishment of the state, there has always been a very delicate balance between its two values. Since the enactment of this phrase: Jewish and democratic – in the Basic Laws on Human Rights, 26 years ago, the Supreme Court has tried to find the balance and unifying, harmonious, and common denominator between the two.

Therefore, the assumption was that a Basic Law dealing with the basic principles would include a provision according to which the State of Israel is a Jewish and democratic state in the spirit of the declaration of the establishment of the State.

After 70 years, Israel is ready for a Basic Law dealing with the basic principles of the state, its "identity card", its vision, its "credo". As is customary in the world, the opening of the constitution should be written in a particularly festive manner, telling the story and the vision of the state. It should be intended to unite rather than divide. It is supposed to provide stability – to serve as a basis for a common existence of all citizens of the state. Because of the need to guarantee minority rights, almost all nation-states in the world include an explicit commitment to the value of equality in their constitution or other core legislation. Israel's Declaration of Independence contains an explicit guarantee of this sort.

Therefore this Basic Law should have been based on the broadest possible consensus in order to unite the Israeli society. But this Basic Law does exactly the opposite.

First, it was passed by a coalition majority of 62 (out of 120). It is formally legal, yes, but shouldn't the basic values of the state be enacted by a large majority, representing a wide consensus?

Second, it does not deal with the values of Israel. It deals only with one of them: the Jewish nation state. The Basic Law omits any mention of Israel's democratic character, dealing only with one of the values in the equation, therefore calling into question the existing "Jewish and democratic" formula that appears in the Basic Laws dealing with human rights from 1992.

Third, there is no mention in the Basic Law, of the term "equality". And a Basic Law seeking to define the character of the state but failing to anchor the principle of civic equality is deeply problematic for a democracy. Equality has been omitted from "Basic Law: Human Dignity and Liberty" and is not a formal part of Israel's constitution. Precisely because the state defines itself as Jewish, there might be an implicit exclusion of non-Jews and therefore – as a democracy – Israel has an obligation to recognize the minorities within it and the equality of all citizens, which it actually failed to do in this Basic Law.

And fourth, the festive wording of the Declaration of Independence is also missing. The Declaration of Independence speaks of Israel as a Jewish state, but unlike the new Basic Law, it included some balances: "The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; ... it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions". None of these ideas were incorporated in this Basic Law. Israel is the national home of the Jewish people – states the Basic Law; that is, the home of every Jew in the world. Not a word is said about being the home of the non-Jewish citizens living here. In contrast to the unified, optimistic Declaration of Independence, which understood the need to protect the rights of all residents of the state regardless of religion, race or sex, this Basic Law deliberately disregards the democratic and human rights aspects, which accounts for about a fifth of the citizens of the State of Israel, the Druze, Muslims and Christians.

The only reference to the Arabs in the Basic Law relates to the Arabic language turning the status of Arabic into a language with "special status". Hebrew is now Israel's sole official language. The Basic Law includes also a clause stating that Israel will act to "encourage and promote" Jewish settlement around the country. According to some interpretations, this could lead to discrimination on the basis of nationality in the allocation of land and resources.

In conclusion, this Basic Law is mainly of a declarative character. I doubt whether it will cause real changes in Israel's reality and every-day life. Nonetheless, its intention to exclude the minorities, to omit equality, to ignore democracy, to undermine the Declaration of Independence and the delicate balance between Jewish and Democratic, has provoked new rifts and strong debates in Israeli society.

The following is a full translation of the final version of "Basic Law: Israel as the Nation State of the Jewish People" passed by the Knesset on July 19, 2018:

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

1. Basic principles

A. The land of Israel is the historical homeland of the Jewish people, in which the State of Israel was established.

B. 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.

C. The right to exercise national self-determination in the State of Israel is unique to the Jewish people.

2 . The symbols of the state

A. The name of the state is "Israel."

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

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

D. The state anthem is "Hatikvah."

E. Details regarding state symbols will be determined by the law.

3 . The capital of the state

Jerusalem, complete and united, is the capital of Israel.

4. Language

A. The state's language is Hebrew.

B. 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.

C. This clause does not harm the status given to the Arabic language before this law came into effect.

5. Ingathering of the exiles

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

6 . Connection to the Jewish people

A. 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.

B. The state shall act within the Diaspora to strengthen the affinity between the state and members of the Jewish people.

C. The state shall act to preserve the cultural, historical and religious heritage of the Jewish people among Jews in the Diaspora.

7. Jewish settlement

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

8. 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.

9. Independence Day and memorial days

A. Independence Day is the official national holiday of the state.

B. Memorial Day for the Fallen in Israel's Wars and Holocaust and Heroism Remembrance Day are official memorial days of the State.

10 . 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.

11. Immutability (entrenchment S.N.)

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

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