2. ISRAEL AND THE FAMILY OF NATIONS: THE JEWISH NATION-STATE AND HUMAN RIGHTS

Alexander Yakobson and Amnon Rubenstein

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Reviewed by Nimer Sultany*

In the first half of the 1990s two important constitutional laws were enacted by the Israeli Knesset – Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation. The enactment of these laws meant that Israel had, for the first time, a partial bill of rights. Both laws included in their statement of purpose “the values of the State of Israel as a Jewish and democratic state.” For the first time, the phrase “Jewish and democratic” appeared in constitutional laws. Whereas the ethnic element was emphatically present, equality was deliberately absent because of the status of the Palestinian minority and relations between religious and secular Jews. Law professor Amnon Rubinstein, former member of the Knesset and minister, is considered to be one of the main minds and forces behind what came to be known, despite this glaring omission, as a “constitutional revolution.”

The second half of the 1990s witnessed the forceful introduction of the phrase “a state for all its citizens,” into the Israeli public debate, mainly by leaders and intellectuals of the Palestinian minority. Palestinian citizens of Israel challenged the Jewishness of the state and demanded democratization and equality. In reaction to these challenges, many Zionists formulated defenses of the “Jewish and democratic” state. Others attempted to enact laws and draft constitutions or consensus-formation documents that would entrench the Jewish character of the state.

This essay is a critical scrutiny of one recent prominent example of a defense aimed at normalizing Israel – Alexander Yakobson and Amnon Rubinstein’s book ISRAEL AND THE FAMILY OF NATIONS: THE JEWISH NATION-STATE AND HUMAN RIGHTS. My focus will be on the use of the comparative method in this book in the service of this project. As I argue and demonstrate below, this project is, first, an attempt to escape from the demanding aspects of liberal theory; second, a legitimation project; third, it uses functionalism as the comparative method to achieve the required result; fourth, it is selective in employing the comparative method in order to ensure the lowest common denominator; fifth, it often ignores

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The gap between form and practice; and sixth, it focuses on law-as-text to present legal and constitutional arrangements as free from ideological manipulation.

The Project

Alexander Yakobson and Amnon Rubinstein (hereinafter: the authors) clearly have a mission: to provide a systematic and comprehensive defense of Israel as a Jewish and democratic state. Not as an aberration among democracies, that is, a special kind of democracy (ethnic democracy), as some Zionists would argue (e.g. Sammy Smooha), but as a normal liberal democracy. In order to show that a Jewish state can also be democratic they do two things: water down Jewishness and water down democracy. For the first, they argue for a secular understanding of Jewishness. For the second, they attempt to demonstrate that Israel's constitutional structure does not contradict existing democratic arrangements in the world. Indeed, having lowered the bar to a minimum, they argue that Israel passes the muster and, at times, is even ahead of other democracies in its relationship with the Palestinian minority.

The authors explain right at the outset that they refuse to engage with liberal democratic theory. By focusing on the practice, rather than the ideal, they want to circumvent the demanding aspects of liberal theory. These demanding aspects are, for them, “an abstract, radical and rather utopian model of liberal democracy” (p. 4).

In order to show that Israel does not deviate from democratic practice in the world as we know it, the authors employ the comparative approach. Dozens of countries are mentioned time and again for the purpose of showing that the critiques against Israel are unjustified and that they amount to either anti-Zionist propaganda or ignorance (p. 198).

Novelty is not a central characteristic of this book. Indeed, neither the arguments made in the book nor the method deployed is original. Many Zionist writers have defended Israel on similar grounds, and other authors have suggested the comparative method. Yet, the systematic effort and the large number of comparisons make the book an interesting case study.

It also goes without saying that pointing out other cases that might resemble Israel’s case in its violation of principles held dearly by liberal democratic theory does

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2 The difference between Smooha and the authors of the book under review is that the former recognizes the contradiction between Jewishness and democracy while the latter deny it and maintain that it is merely a tension. Both, however, reach similar conclusions: Israel is a democracy (first-rate according to the authors; second-rate according to Smooha). Both also use the comparative method and both attitudes lead to the conclusion that either few reforms are needed in Israel or none.
