Arab Voices in The Israeli Constitutional Debate

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ABSTRACT

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An ongoing constitutional debate that has been taking place in Israel since 2006, is an important but frequently overlooked political process. The current Israeli debate demonstrates interesting shifts in the dynamic of the Jewish–Arab relations in Israel, but more so it shows changes in the political trajectory of the Palestinian Arab Israeli community. This paper examines the dynamic of political and social relations between the Jews and the Arabs in Israel as it expresses itself through the Israeli constitutional debate. It will argue that contrary to the scholarly discourse, the way the Arab side articulates its vision and needs is not determined by the evolution of the Israeli political institutions, but is a result of development and solidification of the U.S. inspired liberal tradition influencing both political and social realms in Israel.
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Introduction

French anthropologist Bruno Latour once noted about science, that despite the perceived linearity of the scientific discovery, the process in actuality is messy and unpredictable. The same can be said about the constitutional process or the events preceding the enactment of a constitution. The erratic nature of an ongoing legislative process creates significant challenges for its analysis, as we are limited in our ability to assess the significance of political and societal changes and how they reflect on a constitution-making. In those situations, scholars are often compelled to employ a historical and descriptive approach, frequently overlooking institutional and structural aspects, as well as changes in the political and social culture that are defined by external and in some cases global processes.

An ongoing constitutional debate that has been taking place in Israel since 2006, serves as an excellent example of such complex, not always easily detectable, and yet important political process that experiences influences both from in and outside the society. The current Israeli debate demonstrates interesting shifts in the dynamic of the Jewish–Arab relations in Israel, but more so it shows changes in the political trajectory of the Palestinian Arab Israeli community. This paper will examine the dynamic between Jews and Arabs in Israel as it expresses itself through the Israeli constitutional debate. It will argue that contrary to the scholarly discourse, the way the Arab side articulates its vision and needs is not determined by the evolution of the Israeli political institutions (Haklai 2011), but is a result of development and solidification of the U.S. inspired liberal tradition influencing both political and social realms in Israel (Ram 2008; Liebes 2003). The "constitutional revolution" of Aharon Barak in the 1990s and enactment of two Basic Laws concerning human rights for the first time created opportunities for the Arab minority to start a public conversation about the institutionalization of
group rights. Since then the Arab community presented two constitutional proposals and became a vocal participant in the debate concerning Basic Laws and projects of the supreme law. The major point of the recent Arab constitutional proposals was a demand for the recognition of the indigenous status of the Arab minority in Israel (Jamal 2011). On top of that, the projects employ a secular framework implying the separation of church and state and emphasizing the ethnic character of the Arab identity. Those provisions don't only come into contradiction with the liberal tradition but also reflect its recent development (Kymlicka 1995). Finally, the paper will suggest that the indigeneity claim of the Arab community, if accepted, will create a model for multilayered citizenship aiding hypercommunitarianism under disguise of political and cultural autonomy of the Palestinian Arab Israeli community. This might also contribute to a greater fragmentation of Israeli society and a possible subjugation of human rights of all citizens of Israel to group politics and will intensify political and social divides in the country.

History: Arab Voices in the Israeli Constitutional Debate

Studying the processes surrounding the creation of the supreme law has significant advantages over studying political institutions, especially in the Israeli social and political contexts. The Palestinian Arab citizens of Israel1 (PAI) who today collectively constitute more than twenty percent of the Israeli population, throughout modern Israeli history, had different degrees of access to political and social institutions. The existing legislation today does not limit Arab political or social participation, but praxis does. As such, Palestinian Arab citizens of Israel do not serve in the army – an institution where Israelis acquire their most substantial social capital. PAI predominantly live in Arab-dominated municipalities and get an education in Arab

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1 I am using the term suggested by Oded Haklai.
significant socioeconomic gaps between Jews and Arabs represent another high barrier preventing PAI from playing important roles in Israeli society. Oded Haklai in his book *Palestinian Ethnonationalism in Israel* calls the Palestinian Arab Israeli Community an *ethnoclass* referring to the self-identification and alienation of the community that resulted from both socioeconomic reasons and the majority-minority dynamics in Israel.

In today's Israel, however, social and political reality transcends the divide between "the Jews" and "the Arabs," where the Jews are the majority, and the Arabs are the minority. The Arab community finds itself highly fragmented both along religious lines and within the official ethnic discourse: Druze, Bedouins and Arab Christians not only adopted different strategies of participation in the Israeli social institutions but requested the state to acknowledge their distinct ethnic identities. The Israeli government recognized Druze as a separate ethnic community already in 1957, and Arab Christians were granted the right to register as “Arameans” rather than “Arabs” from September 2014.

The social and cultural divergence between the Jewish and the Arab communities and the fragmentation of the latter significantly complicated the political discourse that still tends to see the conversation between Jews and Arabs as a conversation between the Zionists and "the other." Meanwhile, a growing number of ethnic identities suggests the trend towards the liberalization of Israeli politics where the conversation about group rights becomes increasingly important. In this

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2 "Various indicators of the income and living standard of Israeli Arabs provide additional evidence of the socioeconomic weakness of the sector. In 2004, more than 60% of Arab households were in the three lowest deciles in terms of disposable income. Approximately 50% of Arab households are below the poverty line (Belikoff 2008; Mana 2008b, 23). Almost 60% of Arab children live below the poverty line, as against 24% of Jewish children. The gross monthly income of Arab households in 2004 averaged NIS 7,755, as against NIS 11,776 for Jewish households (Mana 2008a, 122). The per capita product in the Arab sector is only about 40% of that of the average per capita GDP in Israel (Sadan and Halabi 2008).” The Van Leer Jerusalem Institute (2009)
situation, the constitutional debate is both meaningful and relevant, as it allows different groups
to articulate their claims and helps the attempts to ensure the protection of their rights. This is not
to say that ethnic fragmentation superseded the major cleavage in the Israeli society—tensions
between "the Jews" and "the Arabs"—but to stress the new developments in a debate between
the two sides.

Israeli legal history was among the major factors determining the strategies of Arab
participation in the Israeli constitutional debate. The political history, on the other hand, was
responsible for creating some opportunities and various limitations for the Arab voices to be
heard and considered. As such the early decision of the Israeli parliament, the Knesset, not to
enact a supreme law and to proceed with the Hahari proposal had a huge influence on the
development of Israeli political institutions and legal culture. The creation of Basic Laws, which
were collectively meant to comprise a written constitution, had significant consequences for the
Arab community.

The Harari solution resulted in the situation where for the first four decades Israel did not
have legislation addressing civil rights, since all Basic Laws enacted before 1992 dealt with the
state's institutional design ("the Knesset," "the Army," "the President," etc.). More importantly,
none of the Basic Laws related a foundational philosophy specified a source of sovereignty or
declared a political vision for the country. The closest to such document in spirit and letter to
reflecting these principles was the Israeli Proclamation of Independence that addressed both the
issue of civil rights and the character of the state, describing Israel as "Jewish and Democratic."

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3 "The constitution will be made up of chapters, each of which will constitute a separate Basic law. The
chapters will be brought to the Knesset, as the Committee completes its work, and all the chapters
together will constitute the constitution of the state."
Israel as a "Jewish and Democratic" state became a central idea that has been influencing and often dominating the political conversation since Israel's independence. The meaning of the expression "Jewish and Democratic" has continued to evolve. It got its present political and legal weight as a result of the 1965 Israel Supreme Court decision and the following amendment of the Basic Law in 1985. In 1965 after the newly formed first Arab party, Al-Arad, which stood for united a Palestinian state, was denied registration by the Elections Committee (Navot 2014), the leadership of the party filed an appeal to the Supreme Court. In the decision came to be known as “Yardor Case" the Supreme Court approved disqualification by the majority vote on the basis of the disagreement of the party's ideology with the founding principle of the state. The decision referred to the State of Israel as Jewish. Later in 1969, the decision was transformed into the Basic Law: The Elections, offering very loose guidelines for disqualification from electoral process. In 1985, the Basic Law was amended to include Article 7A that legitimized disqualification from elections based on the unwillingness of a candidate or a political party to recognize the State of Israel as Jewish and democratic. The article states:

A candidates' list shall not participate in elections to the Knesset, and a person shall not be a candidate for election to the Knesset, if the objects or actions of the list or the actions of the person, expressly or by implication, include one of the following:
1. Negation of the existence of the State of Israel as a Jewish and democratic state;
2. Incitement to racism;
3. Support of armed struggle, by a hostile state or a terrorist organization, against the State of Israel.

The significance of this amendment stretches beyond the electoral context. After the Second Intifada the idea of Israel as "Jewish and democratic" has been gradually expanding to other areas outside of legal and constitutional discussions. The question of whether the State of Israel can and should be Jewish and democratic started being discussed not only in the context of domestic law and policy but also within a framework of the two-state solution entering the Israeli
diplomatic discourse.

The core element of the “Jewish and democratic” idea, according to Israeli legal scholar and public intellectual Ruth Gavison, is an exclusive right of the Jewish people based on self-determination as a nation. While the Jewish people are “entitled to use the state as a means of exercising its right to national self-determination, the Arabs are entitled to their rights on an individual basis only, i.e., as citizens of the state, but not in any way as a collective entity” (Mautner 2011). Formally being refused the status of the national minority, in practice, Palestinian Arab Israelis to the day enjoy some limited collective rights. Israel recognizes Arabic as an official language, maintains a separate educational system with instruction in Arabic as well as validates Muslim personal status laws and the Muslim religious court system (Rekhess 2007). The above, however, does not negate the dominant position of the Jewish establishment in all important state institutions. The establishment’s ability and freedom to control Arab access to major political and social structures like the Army, Intelligence, various kinds of public service and education have been playing a critical role in the process of social and ethnic stratification indirectly while consistently keeping most of the Arab community at the low socio-economic level.

The first response of the Arab side to the idea of Israel as "Jewish and Democratic" came to be known as "State for All its Citizens." The idea implied equal rights for all citizens of the country and was first voiced in the discussion of the Basic Law of 1985. The concept of "state for all its citizens," by assuming the state's foundational democratic principle, implied civic equality for all citizens regardless of ethnicity, religion or origin. Advocates of the idea have frequently been citing the U.S. as an example of the "state for all its citizens" and have suggested following the American model. The idea historically belonged to the Arab-Israeli left, which
evolved out of the Communist party. Maki, the Israeli Communist Party, the oldest platform for Arab political mobilization, aimed to advance Arab economic and social rights, promoting the integrationist approach (Haklai 2011; Rekhes 2008). The project appealed to the Israeli far left, like Meretz, as well as some Arab MKs who support the idea until today.

The aftermath of the Six Day War in 1967 significantly shifted the conversation between Arab and Jewish Israelis. Desolation of the border between Israel and the West Bank profoundly affected the identity of the Arab citizens of Israel (Rekhes 2008). During this period Israeli Arabs, realizing their affinity with Palestinian Arabs in the West Bank, East Jerusalem, and Gaza, started re-articulating their ethnic, cultural and political affiliation. The process led Israeli Arabs to define themselves as Palestinians declaring in this way their strong connection with the Palestinian Arabs in the occupied territories. At the same time, legally and politically, the gap between Arab citizens of Israel and Palestinian Arabs remained intact as the state continued drawing a sharp distinction between Arabs in "Israel proper" and Arabs "in the territories." In this historical circumstance, the legal concept of Israel as a "Jewish and democratic" state among other political tools served as an instrument for the de-legitimization of Arab attempts to reunification and creation of the one Palestinian state. Later, Ruth Gavison admitted that Israel as "Jewish and democratic" can only exist under the condition of the two-state solution or, in practice, a progression towards partition.

The next shift in the Palestinian political discourse came as a result of the Oslo Accords. With the hope for the establishment of an independent Palestinian state, Arabs with Israeli citizenship were compelled to redefine their identity as both Israeli citizens and Arabs (Rekhes 2008). This process resulted in the development of the ethnonational objectives of the Arab collective and the new strategy of articulating their rights as the group rights of an ethnic
minority (Haklai 2011). Oded Haklai points out that the failures of the communist integrationist approach and the rise of the Palestinian consciousness, actively promoted by Arab political and civil organizations, paved the way for the development of the idea of collective rights. This idea found an ultimate reflection in the Arab constitutional proposals.

Initial Arab participation in the Israeli constitutional debate can be seen as reactive and was triggered by the Israeli Democracy Institute (IDI) project “Constitution by Consensus”. The document created under the leadership of the President of the Supreme Court (Emeritus), Justice Meir Shamgar, was meant to represent a full draft of the Constitution of the State of Israel and was largely based on the idea of Israel as a Jewish and Democratic state. The underlying assumption of the IDI’s proposal was that Israeli society in 2004 reached consensus regarding the character of the state and presented results of a survey of the Israeli citizens (both Jewish and Arab) that the Institute had conducted for the purposes of the project. “Constitution by Consensus” assumed a legal power of the Proclamation of Independence. It included some important provisions such as incorporating the Law of Return\(^4\) that limited legal immigration to Israel for Jews and their families and suggested abolishing the section 7A of the Basic Law: The Knesset. The document offered the protection of individual and minority rights "alongside the democratic principle of majority rule."

The authors claimed that the “Constitution by Consensus” aimed to “mitigate the national, religious, social, governmental, and cultural tensions in Israel”. In reality, however, the draft faced sharp criticism from the Arab intellectual elites. In November 2004 (one year before the final draft of the “Constitution by Consensus” was published) Nadim N. Rouhana, Director of Mada al-Carmel – The Arab Center for Applied Social Research and Professor of Sociology,

\(^4\) Law of Return is currently not a Basic Law, but frequently is treated and interpreted as such (Rabinovich and Reinharz 2008)
Anthropology, and Psychology at Tel Aviv University published an opinion piece where he criticized the project of "Constitution by Consensus" for disregarding the Arab voices. He pointed out that the committee of authors did not include a single Arab and could not represent the Israeli society by virtue of not being an official body. Moreover, in his article, Rouhana wrote that IDI unrightfully claimed that Arab citizens of Israel accepted the definition of Israel as "Jewish and democratic." He also questioned the validity of the survey conducted by IDI saying that "Jewish and democratic" highlighting that the Institute asked their respondents general question without clarifying the meaning of the term. Rouhana presented the results of the survey conducted by Mada Center revealing a few significant complexities around the issue of "Jewish and democratic," primarily around the Law of Return. Rouhana’s, his biggest concern was the participation of Arabs in the constitutional debate. He wrote “Arabs have been made completely absent from the debate on the constitution, and from all constitutional efforts and exercises in Israel” substantiating his claim with the history of the Arab participation, or the lack of such, in the Knesset Constitution Law and Justice Committee.

Rouhana’s response to the “Constitution by Consensus” started the entire wave of Arab public intellectual activity in the Israeli constitutional debate. In 2007, Adalah Center – Legal Centre for Arab Minority Rights in Israel under the leadership of its Chairman Professor of Psychology Marwan Dwairy presented three documents. Those documents were: "The Future Vision for the Palestinian Arabs in Israel" (prepared on behalf of National Committee for Arab Mayors), "The Haifa Covenant" (developed by Mada al-Carmel – Arab Center For Applied Social Research) and finally, the constitutional proposal.

Adalah’s project was called “The Democratic Constitution” and imagined Israel as a democratic, bilingual and multicultural state. The document was the first precedent of a draft of a
constitution created by the Arab minority. The proposal did not only come into conversation with
the IDI's "Constitution by Consensus," rejecting its premise and main provisions but
demonstrated a profound disagreement with the political and cultural status quo in the state. It
called for redefining relations between Jewish and Arab citizens of Israel suggesting new
mechanisms for the Arab minority participation in the Knesset, acknowledgment the right of
return and the right to self-determination of the Palestinian people as well as their connection
with a worldwide Palestinian and Muslim community. Moreover, the document stood for
recognizing Palestinian Arabs as indigenous people, which also meant granting the Arab
minority special rights "based on the values of Distributive and Restorative justice."

The Adalah’s project did not show much influence on the Israeli political establishment,
but the Adalah Center ended up making an impression on foreign donors, which allowed the
organization to secure financial support from several large left-wing organizations and
foundations outside the country. Those organizations were: The New Israel Fund, Ford
Foundation, and the Open Society Institute of George Soros that was also known for being a
founder and a financial supporter of J Street – an NGO advocating for the two-state solution.

Approximately at the same time as “The Democratic Constitution” Dr. Yousef Jabareen,
now the Knesset member from the Joint List party and a Head of the Dirasat Arab Centre for
Law and Policy, published a position paper titled “An Equal Constitution for All? On a
Constitution and Collective Rights for Arab Citizens in Israel”. The document, sponsored by the
Mossawa Center, dealt specifically with the growing significance of constitutional initiatives for
the Palestinian Arab citizens of Israel. Jabareen expressed firm believes that Arab Israelis need a
written constitution to secure their rights, specifically recognition of the minority status and
indigenous rights. The document outlined provisions necessary for protecting those rights and
claimed to be a result of a roundtable organized by the Mossawa Center that included Palestinian scholars, representatives of Arab NGOs and Arab members of the Knesset.

Unlike the authors of "The Democratic Constitution," Mossawa Center and Jabareen chose not to wait for the public debate. The paper was presented at the Knesset's Constitution, Law and Justice Committee in the presence of the Justice Minister as demand from the organized Arab-Israeli community to include provisions granting equal rights for Arab citizens into all official constitutional agreements and initiatives.

Atalia Omer in her book *When Peace Is Not Enough How the Israeli Peace Camp Thinks about Religion, Nationalism, and Justice* (Omer 2013) writes that the document demonstrated an intention of Arab community to seek an open dialogue and fundamental disagreement with the "Jewish and democratic" concept of the future of Israel. The Jewish Israeli political establishment, however, showed a lot of resentment towards the vision documents and constitutional proposals, in some cases reading it as radicalization of Israel's Arab citizens. In 2013 Avi Dichter, a member of the Knesset from the Kadima party introduced the bill “Basic Law proposal: Israel as the Nation-State of the Jewish People”. The bill suggested enacting the Basic law according to which Jewish people would have a unique right to collective self-determination. The bill proposed including the Law of Return to the list of Basic Laws' provisions and recognizing the Jewish Law (Mishpat Ivri – a collection of Rabbinic rulings) as a source of inspiration. The most important and contentious clause of the bill became the Section 4 that dealt with the status of Hebrew and Arabic languages. The proposal suggested recognizing Hebrew as the official language and giving Arabic a special status. Though the Knesset ended up rejecting the bill, the proposal represented a serious attempt by the Jewish establishment to push
back on the free main Arab demands: the right of self-determination, recognition of indigeneity and language rights.

**Self-determination and Indigeneity**

The historical significance of the Arab constitutional proposals hard to estimate just yet. Nevertheless, changes in the Arab political mobilization and evolution of the political strategy present an interesting material helping to understand the dynamics of the majority-minority relations in Israel. This way, formal and public request of the Palestinian Arab Israeli leadership to recognize the right of the Arab minority to self-determination reflects a fundamental disagreement and a call for renegotiation of the Jewish – Arab relations in Israel.

The indigeneity claim is particularly interesting in this regard as it references wider global trend in the evolution of the post-colonial conversation and the development of the relations between modern nation states and selected ethnic communities predating those states. The request of the Arab community that was explicitly stated in the both Arab constitutional proposals finds high grounds in the international legislation and practice. The significance of the indigeneity claim lays in its tight connection with the concept of multilevel citizenship suggesting rights to cultural and political autonomy. In the Israeli context, for the Palestinian Arab Israelis indigeneity implies a right to self-determination and much greater access to power and state and social institutions, where the language rights become critical (Kymlicka 2001).

The legal concept of indigeneity is a relatively new phenomenon and grew out of the settler colonial discourse. Since post-colonial approach counter a principle on which the state of Israel was built, the Zionist camp strongly opposes indigeneity claim as contradicting with the Israeli statehood. The majority in the Israeli political establishment and the Jewish Diaspora were
not and aren't ready to interpret the Israeli case as an example of settler-colonialism as it would undermine the premise of return of the Jewish people to their homeland. Such resistance became a reason behind the reading of the indigeneity claim as radical and continues leading to its rejection before making an attempt to understand its meaning in the current circumstances.

Meanwhile, the practice of the recognition of the group rights of dwellers whose residency and connection to a land predated the establishment of the nation-state is very wide. Sheryl Lightfoot (2013) notes that recognition of rights of indigenous people is a historical reality and is reflected in hundreds of treaties between such states as France, Britain, the U.S., Norway, the New Zealand and Canada and their peoples. She stresses, however, that most of the forms of recognition of indigenous rights including the "exemplary" cases of the U.S. and Canada are "imperfect, ambiguous and sometimes problematic." Nevertheless, this way of creation of multilevel citizenship helps to address some of the features of the historical development of the nation-states and alleviate past injustices.

The legal concept of indigeneity formed relatively recently and is framed by the two pieces of international legislation: International Labor Organization’s Convention Number 169 (also known as Indigenous and Tribal Peoples Convention or ILO 169) that passed in 1989 and the United Nations’ Declaration of the Rights of Indigenous Peoples (UNDRIP), which passed in UN General Assembly in September 2007.

The first document, International Labor Organization's Convention Number 169, addresses social stratification and its origins as it pertains to indigenous peoples. The document is significant because it puts an emphasis on the strong connection between ethnic boundaries and economic disparities among "natives" and attempted to provide a solution to the social problems that lead to ethnic stratification. It was meant to help to increase indigenous peoples'
access to economic resources and create opportunities for improvement of the socio-economic conditions along with ensuring full rights of indigenous people as citizens. The Convention responded to the common experience of indigenous populations. Sheryl Lightfoot writes that integration of indigenous peoples into societies follows the same pattern in most of the cases: at first, they are denied the citizenship, then a sovereign nation-state begins treating them as dependents and only after a while indigenous people receive the status of citizens with all the respective rights (Lightfoot 2013).

The second document, the United Nations' Declaration of the Rights of Indigenous Peoples (UNDRIP), focused on political rights recognizing the right to political autonomy and national self-determination for indigenous people. The document was indeed revolutionary. It represented a legislation allowing indigenous people both to create their political institution sustaining separate cultural identities (which included native language, traditions, and customs) and to receive full access to social and political institutions of the state would they want to participate in such (Lightfoot 2013). The UN 2007 declaration evoked a strong resistance from the four countries for which the indigeneity question remained particularly important. The U.S., Canada, New Zealand and Australia at first voted against the declaration, but later – after the flexibility of its implementation became more apparent - changed their position. UNDRIP made a significant impact on the way relations between nation-states negotiated since then.

Both documents pinpoint on the main challenges of indigenous communities all other the world. Such limitations as the pressure to assimilate into the majority culture while being “outsiders to the national polity”, lack of access to civil rights, social institutions and economic resources as well as alienation due to the experience of repression from the majority constitute the context of a conversation that up to this day takes place between the nation-states and
indigenous peoples. Articulation of a right to self-determination in this situation becomes a framework for the both request for cultural and political autonomy including and a right to engage in the social and political interactions on a free and equal basis. The development of the indigeneity framework lead to changes in the concept of self-determination toward an alternative understanding implying “diverse cultural identities and co-existing political and social orders” (Lightfoot 2013). More importantly, recognition of the rights of indigenous people assumes the model of multilevel citizenship that implies that the state builds relations with each group in a unique way that takes into consideration heritage of history and social and structural features of societies without undermining the principle of the equal human and civil rights.

**Liberalism and Group Rights in Israel**

In the case of Israel, an indigeneity claim of the Palestinian Arab minority is indubitably not without grounds. Like many groups that later received recognition as indigenous people, Palestinian Arabs underwent colonization of the land by Jews and almost a two-decade long military control that was imposed on the Palestinian Arab population with the subsequent granting citizenship and expansion of their individual rights while limiting group rights. Many aspects of this experience follow the pattern of the development of relations between states and their indigenous peoples.

Due to the fact, that recognition of the indigenous people's rights articulated itself as granting rights to a selected ethnic group or groups, the primary advocates of this practice have been thinkers working within the liberal tradition. This political and intellectual tradition lately

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5 This work does not equate "indigeneity" to "nativism." The paper treats "indigeneity" as a legal and socio-political concept.
not only embraces the idea of defining rights based on a group affiliation but also strongly
supports such forms of political membership as multilevel and multicultural citizenship. At least
some liberal thinkers believe that certain kinds of inequalities of civil rights are unavoidable, but
it is important to note that in those cases the concept of civil rights is not seen in a purely
legalistic manner, but rather from a socio-cultural point of few.

Tracing the development of the interpreting group rights Will Kymlicka in his book
*Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995) stresses that after the
Second World War liberal tradition saw the recognition of group right as temporary prioritizing
individual human rights. The tradition did, however, recognize some group rights. Addressing
such rights served an immediate need to reconcile an inferior status of selected ethnic and
national minorities that resulted from historical changes. Recognition of group rights was not
seen as a solution that should be reflected in a "permanent political identity, or constitutional
status" (Kymlicka 1995:4) and the protection of the human and individual rights had to be
divorced from group identities. The principle of giving preference to individual rights over group
rights that got rejuvenated after the Second World War, in fact, originated in processes of
secularization and separation of church and state, as the original group rights were the rights of
religious communities. Equating individuals in their rights was seen as a way to avoid a conflict
among denominations and a step towards societal modernization. The religious group rights
never regained legitimacy after Enlightenment. But ethnic group rights re-acquired their
significance for the liberal thinkers because of the new social and political challenges originated
from the connection of cultural identities with immigration, communication, education, and
political representation. "Minority rights cannot be subsumed under the category of human
Israeli legal and political process in the 80s and until the present day followed a logic of the development of liberal tradition despite the country's initial orientation towards social democracy (Ram 2008). In 1977 Menachem Begin became a Prime Minister of Israel defeating the left-oriented Mapai Party that held power since Israeli independence. The victory of his party, the Likud, signified the end of the domination of the left ideology and political liberalization with the subsequent Americanization of Israeli politics that reached its culmination in the 1990s (Ram 2008). By Americanization of the Israeli politics, an Israeli sociologist Uri Ram understands a shift towards diffusion of the ideological divisions and oscillation of the political culture around the center of the ideological spectrum (Ram 2008: 152). In other words, the Israeli political discourse and decision-making process changed from ideologically-defined to the issues-oriented. Politicians began focusing on clusters of problems, rather than all-encompassing political visions for the country. This process of reorienting Israeli political culture was in a significant way enabled by growing role of the media in public life (Liebes 2003), the decline of the public sphere (Ram 2008) and the development of local "ethnic" politics (Shaked 1999).

Begin's government launched massive liberalization reforms that included privatization are re-orientation of the national economy to a capitalist format as well as a withdrawal of the state from the public life. Liberalization and the growing autonomy of the public life from the state, together with the decline of the social significance of the institution that facilitated general consensus -Army and Kibbutz -lead to an expansion of the discourse around civil rights. The Supreme Court of Israel actively promoted that conversation and took upon itself a role of ensuring the protection of human rights, including the one from the violations committed by the state institutions like police and army on the territories. This position of the Supreme Court came
to be known as Judicial Activism. The 1990s following the enactment of two Basic Laws "Human Dignity and Liberty" and "Freedom of Occupation" in 1992 acquired a greater almost constitutional tool that enabled extensive Judicial Activism through which it ensured the protection of individual rights in Israel. Judicial activism at least during Aharon Barak's tenure rested on the principle of equal human rights for all independently of their citizenship, political or communal membership status which reflected in the Supreme Court's rulings on the cases from the West Bank, and applied to Jews and Arabs alike (Mautner 2011).

In the context of Judicial Activism, the earlier discussed political project of the Arab community "Country for all its Citizens" became a way for the Palestinian Arab Israelis to appeal to the universal human rights and most importantly, come into conversation with the Jewish side in the framework of universal values.

It is critical to note that though the ethnic discourse was expanding in Israeli society since the 1980s (Smooha 1986), it did not include Palestinian Israeli Arabs, who remain somewhat outside the discussion. In Israeli political and public conversation, the framework of ethnicities for a long time was primarily applied to Jews from Northern Africa and the Middle East, which conceptualized Oriental Jews as "ethnic groups" within Israel/Jewish society and Arab citizens of Israel as "others."

The status of an outsider that was reserved for Palestinian Arab citizens of Israel prevented them from articulating their social and economic problems within the context of the "ethnic" conversation that has been developing between 1977 and mid-2000. While being granted citizenship, PAI's social membership rights remained limited. As such while discussing social and ethnic inequality among ethnic groups in Israel, Arabs are still more often than not
excluded from comparisons due to both public conversation and a scholarly tradition informed by Israeli government policy (Khazzoom 2003).

The process of the liberalization of the Israeli political culture and society had significant consequences for the Palestinian Arab Israeli community. Strengthening cultural autonomy of ethnic groups (Ram 2008) has been accompanied by the growing religiosity of Israeli society (Walzer 2015; IDI survey⁶) and the Islamization of the Israeli Arab civil society in particular. Remnants of the Ottoman Empire millet system in the form of religious institutions in the situation of the withdrawal of the state from the public life (Ram 2008) and decline of the public sphere (Ram 2008) gave greater power to religious authorities. It led to the increased influence of the community leadership on the lives of members of ethnic communities while preventing the state from intervening in communal affairs, including execution of the family laws.

Increasing the influence of the religious communities on the lives of its members almost inevitably leads to restricting the liberty of individuals, as the primary goal of a religious community is to prevent apostasy and proselytization (Kymlicka 1998). In fear of losing control over its members, community leadership – both religious and political– is compelled to advocate for maintaining cultural autonomy and prevent integration of its members into greater society.

In the context of the current Israeli political culture, cultural autonomy acquires an ability of the Arab community to receive some protections from the constant attempts by the Israeli right to impose openly discriminatory laws like the “Nationality Bill” of 2013.

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⁶ “A Portrait of Israeli Jews (2009): Based on a survey conducted by IDI’s Guttman Center for Surveys for the AVI CHAI Foundation in 2009, this report is a sequel to two earlier studies conducted in 1991 and 1999. Taken together, the three surveys present a unique continuum of Jewish religiosity and identity in Israel.”
On the other hand, an indigeneity claim, even though it is framed in secular terms, in current Israeli social conditions allows for the institution of even more significant restrictions on the individual liberties of PAI. As evident from the above, the concept of indigeneity revolves around a request of the cultural and political autonomy. The status of indigenous people undoubtedly also includes creation social and economic opportunities based on the principle of restorative justice. However, the claim might indirectly suggest restricting the individual rights of the Palestinian Israeli Arabs and limiting their opportunities to integrate into Israeli society. In other words, an indigeneity claim of Arab citizens of Israel is a request to enable a constitutionally recognized exemption from some of the laws of the society where the state does not grant protection of individual freedoms from the rules imposed by Arab communities.

This principle can also be formulated as following: "what they want is the power to restrict the religious freedom of their own members, and they want the exercise of this power to be exempted from the usual requirement to respect individual rights" (Kymlicka 1998: 86). That, for instance, can be exemplified not only by religious practices but also applied to culturally defined aspects of lifestyle. Israeli Arab Bedouin community is one of such groups that would benefit from this principle of cultural autonomy, as it will allow the community to maintain practices that contradict Israeli legislation: polygamy (Al-Krenawi 2006), unrecognized villages, unregulated agrarian activities (Aburabia 2006). Therefore, it does not come as a surprise that from all Israeli Arab groups Bedouins were the ones requesting the United Nations to recognize their status as indigenous people in 2005 (Abu-Saad 2013). Would indigenous rights of Arabs be acknowledged and granted in the constitution, the model of liberalism that will be implemented this way is the hypercommunitarian one where the power of the ethnic community over an individual is incredibly high, very restrictive and might have abusive tendencies towards
individual liberties. As such, the biggest disadvantage of indigeneity status, and hypercommunitarianism for that matter is a low level of protection of persons from a need to satisfy expectations of the group and a high cost of exit (Kymlicka 1998: 92).

The other way, there we can see the how indigenous status would limit rights of Arab citizens of Israel associated with the legal and political representation of the Arab community as a homogeneous collective. First of all, the spirit of the indigenous claim in this regard again demonstrates its reactionary nature. Elie Rekhess in his article The Arab Minority in Israel: Reconsidering the “1948 Paradigm” (2014) draws attention to the Arab leadership’s criticism of the Jewish establishment for the intentionality of its attempts to disunite the Arab collective politically and socially. Less frequently political disintegration of the Arab community becomes a self-criticism (Wattad 2011). In either case, there is an acknowledgment of the high political fragmentation of PAI. It shows, for example, in the failure of the Arabs to consolidate Arab members of the Knesset in one party. In 2017, in the 20th Knesset, 17 Arab MKs are the members of the six political parties which are located along the entire ideological spectrum: from far right (Israel Beiteinu) to far left (Merez). One of these parties – the first united Arab political block came to being in 2015 incorporating four parties those political and ideological platforms remain fundamentally different (communists, feminists, Islamists). Voting patterns of PAI reflect a similar trend, as Arab citizens of Israel have always been voting for several parties. In the context of the analysis of the Arab constitutional claims, it becomes especially important, as it presents a vision for the Arab community as somewhat being united in its vision, and indigeneity claim, in particular, being placed at the center of political project that when implemented might appear more divisive both inside and outside the Arab community than its leadership was able to
foresee since the Arab leadership clearly has different views on the individual autonomy of the members of the Arab community.

**Arab Civil Society and Transformation of Public Sphere in Israel**

After the enactment of the Law of Association in 1980 that replaced the Ottoman Law of Associations that was in effect at that time, Palestinian Arab Israeli civil society experienced a proliferation of the Arab NGOs. By 2000 there has been 1,000 PAI NGOs within the Green Line (Israel Center for Third Sector Research, 2000), many of which has been supported by foreign donors (Payes 2003). The role of the growing Palestinian Arab Israeli civil society in shifting models of the Arab political mobilization is paramount (Payes 2003). As it was noted above both Arab constitutional proposals are coming out of Palestinian Israeli NGOs (PINGOs)\(^7\). The extent to which the development of the Arab civil society is responsible for the content of this proposals is much harder to grasp. Nevertheless, the structural change in the PAI civil society can be a source of critical insights regarding Arab participation in the Israeli constitutional debate.

Firstly, the nature of PINGOs and the character of their influence on the Arab political mobilization and participation in the Israeli constitutional debate, in particular, allows to make interesting observations regarding Uri Ram’s claim that the public sphere in Israel has been declining, and the main argument of this paper that liberalization and Americanization of Israeli society defined Arab participation in the Israeli constitutional debate. Here one step back is required, as there is a need to first elaborate on what is the public sphere and how it manifests itself in Israeli political and social context.

\(^7\) Here I am using terminology introduced by Shany Payes in “Palestinian NGOs in Israel: A Campaign For Civic Equality in a Non-Civic State” (2003)
The public sphere is a concept introduced by Jurgen Habermas in 1960s in his and implies a space where open public unrestricted dialogue takes place. It is “the space of communication of ideas and projects that emerge from society and are addressed to the decision makers in the institutions of society” (Castells 2008, 1). Public sphere lies between the state and society. In this framework, civil society and its institutions, namely NGOs, represent the organized expression of views and ideas articulated within public sphere (Castells 2008). Independent media, universities, salons and coffeehouses in earlier times, and according to some scholars, various digital outlets serve as examples of the public sphere as long they allow an unrestricted access of all citizens to them. “The public sphere is not just the media or the sociospacial sites of public interaction. It is the cultural/informational repository of the ideas and projects that feed public debate. It is in the public sphere that diverse forms of civil society enact this public debate, ultimately influencing the decisions of the state” (Stewart 2001).

In the Israeli context, one can find few strong trends that led to the transformation of the public sphere since the 1960s. Among those are the increased exclusion of women from the public life resulted from the structural changes within the Ultra-Orthodox community and the growth of the religious Zionist sector (Stern 2012). The phenomenon of kosher Internet and male-only online forums has been expanding in the Ultra-Orthodox community (Campbell and Golan 2011) only accelerates the change. As for the religious Zionist community Stern (2012) states that "Conversely, the exclusion that is practiced by some members of the national religious community is milder in terms of its content, but its aspirations are higher, as this community seeks to apply the exclusionary practices to the entire public sphere (an example of this can be found in the attempt to marginalize women in the army).” According to the recent study conducted by Orna Sasson-Levy, the Israeli Army in the recent years became an agent of
marginalization and exclusion of secular women in a greater extent than religious women (2017). Additionally, the Institute of the army in Israel fosters ethnic stratification, creating limitations for Mizrahi Jews' participation in the public sphere.

Jews from the North Africa and the Middle East have always found themselves in a disadvantaged position in the Israeli society (Khazzoom 2003), but the development of the IT sector that find itself tightly connected with the Army units to which access of Mizrahi Jews is strictly limited and Israeli-self branding as a Start-up nation on the one hand, and ideologically defined complete lack of access of Mizrahi Jews to Kibbutzim (Avieli 2016) together with their tendency to politically mobilize through the religious parties (Shas) and clustering inside labor and capital intensive sectors of Israeli economy restricted participation of Mizrahi Jews in the public sphere due to their inability to acquire sufficient social capital or access to sociospatial parts of the public sphere.

Another factor contributing to the transformation of the public sphere in Israel is an evolution of the media and changes in the Israeli political culture associated with the commercialization of television and other news outlets (Liebes 2003). Tamar Liebes points out that Americanization of Israeli media during the elections of 1996 created the material base for the selected internal Israeli processes to gain more attention detracting Israeli politics from comprehensive ideological, political projects. As such, Israeli media was effectively used by Hamas in its attempts to convey a terrorist threat, which led to the domination of the security discourse over the ideologically defined political conversation. At the same time, the process of segmentation of media into community-oriented reflected on the decline of the national media outlets. In other words, the structure of Israeli media became culturally, ethnically and
linguistically diverse contributing to the ethnic and religious fragmentation of the society and respective changes in the Israeli political culture.

In Habermasian terms, growing number of NGOs represents perhaps the biggest analytical challenge. On the one hand, it is tempting to interpret proliferation of NGOs as a sign of growing public sphere and an evolution of the democratic process. However, under the close examination, the situation looks more complex, if not different. Payes citing Paul Stubbs notes that the aspect of NGOs activity that became frequently overlooked is “The limitations of NGOs are tied to their tendency to promote technical rather than political solutions to problems, which reduces pressure on the state rather than challenging the roots of inequality”, as well as their lack of coordination, legitimacy and their dependency of external donors who dictate agenda as oppose to the groups these NGOs claim to represent (Payes 2003: 61). In Israeli case after 1980 the state relocated some of its functions on Jewish Israeli NGOs (like many third world countries did) and has been actively including them into a “state-building” (Payes 2003), while PINGOs were founded and acted in an atmosphere of active and passive exclusion and that resulted in them assuming the role of an entities that saw their role in challenging and negotiating the relationship between Jews and Arabs.

In line with a global trend, Israeli NGOs including PINGOs reoriented their activity to building political consciousness ultimately transforming their objectives towards institutional and structural reforms (Payes 2003; Korten 1987), the example of which was the participation of Arabs in the Israeli constitutional debate. As a result, the state made continuous attempts to push back on politicization of NGOs’ and influence of foreign actors on Israeli society. In the July 2016, Israeli legislators voted for the Bill that addresses both government’s concerns: it means to restrict foreign funding of the Israeli NGOs and increase government’s control over non-profits.
Amal Jamal in his book *Arab Public Sphere in Israel: Media Space and Cultural Resistance* (2009) claims that Arab public sphere is in fact rising, and it is doing so as a response to Jewish hegemony in Israel: He distinguishes Arab public sphere from the Israeli one, defining it as “minority public sphere as counterhegemonic space” and explains the origin of the Arab public sphere:

“[..]patterns of exclusion lead social leaders and economic entrepreneurs to search for public spheres that counteract state hegemony, enabling them to influence the process of opinion making and cultural production in their society as well as to benefit from the economic gains associated with mass media.”

Similarly, to Tamar Liebes Amal Jamal attributes shifts in political mobilization to the fragmentation of media and Americanization of the Israeli society which creates a structural opportunity for emerging of the new patterns of political culture. His analysis complicates Uri Ram’s claim as he looks on the ethnic dimension of the Israeli society, without necessarily negating it. Arab civil society is characterized by deep ethnic, religious and political divides, as well as the high dependence on external support which indicates transformation more than "rise" of the Arab public sphere.

Since the 1980s the Arab public sphere underwent significant transformations not only because of the media and the expansion of the civil society but also due to the "constitutional revolution" that was mentioned earlier. Israel represents a unique example of the state where each citizen is granted a right to petition to The Supreme Court (Mautner 2011). After the 1990s when the Supreme Court gained its full power and autonomy from the state (without jeopardizing its legitimacy), it de-facto became the closest entity to the public sphere where ideas from all parts of the Israeli society can circulate. In this situation, Arab attempts to present their political projects that potentially would be subjected to the Supreme Court’s expertise and
interpretation, it should not come as a surprise that PAI would like to appeal to this institution, and not only the state.

**Zionism, Nationalism and Group Rights in Israel**

Making an argument that Americanization and liberalization of the Israeli political culture should be credited for PAI’s “ethnonationalism” and the emergence of constitutional proposals with indigeneity claims in their core one needs to acknowledge certain limitations. Arab attempts to protect group rights and create opportunities for the community’s economic development citing American example are discussed above. Nevertheless, there are significant structural and philosophical differences there the evolution of a Palestinian Arab Israeli political project diverges from the logic of liberalization and Americanization.

The constitutional dialogue between the Jews and the Arabs in Israel exists in the context of majority culture reproducing itself through the means of Jewish ethnic nationalism - Zionism. This is perhaps the major feature of the evolution of the political process in Israel that is radically different from the many other similar cases.

Political theorists find multiple kinds of nationalism. Andrew Oldenquist identifies three: Unifying nationalism; ethnic separatist nationalism; and ongoing patriotic nationalism. PAI’s ethnonationalism in this context exposes its dialectical nature: it is both patriotic and ethnic separatist. According to Sammy Smooha’s studies, majority of PAI would like to retain their Israeli citizenship. At the same time, the way PAI construct their ethnic identity is very deliberate in its anti-Jewishness and historically determined which is reflected in the large body of Arab Israeli literature and Academic scholarship.
In that regard, one can interpret Arab participation in the Israeli constitutional debate as primarily symbolic, which was done without any expectation of immediate success. In this situation, the act itself might be treated as an attempt to cease a discursive opportunity to enter the political conversation where Arab position can potentially be treated as important in the future. In this situation, constitutional debate is being treated by Arabs as some analog of a public sphere where their life-world can finally come into conversation with the system that was set up by the Jewish establishment.

Conclusion

The decline of the Israeli public sphere, driven by liberalization and Americanization, led to the increase in symbolic unity of the Arab community, but also to the rise of ethno-nationalism, fragmentation of the community along religious, ethnic and political lines, and a more prominent role for Arab NGOs: grassroots, state-sponsored and externally-funded.

The constitutional debate in Israel was (is) important as a substitute for the declining public sphere, offering Jews and Arabs relatively equal access to public discussion of their shared interests. Despite unrealistic objectives and the dysfunctional majority-minority style of the dialogue, that both sides proposed inclusive, comprehensive political projects is grounds for cautious optimism.
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