

Israel, Palestine and the Question of Citizenship

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6th February 2004

Revised web version

When I decided to address the subject of Israel and the question of citizenship, Prime Minister Sharon had not yet raised the issue of a land swap. Some of you have probably heard about Sharon's idea to get rid of some Arab villages along the "green line" in the framework of a final status solution, actually to use the expedient of drawing the borders and having a final status solution to the Palestinian issue in order to get rid of the real problem of Israel, on which there is a consensus of left and right Zionists, the so-called demographic problem. Lately the right wing in Israel has adopted the fear of the Zionist left of Arab demographic increase as an argument for giving up densely populated Palestinian areas. Netanyahu has recently stretched the argument to include the Arab citizens of Israel as "the real demographic threat". The fact is that in 1948, 150,000 Arabs remained in Israel who now number about a million, that is 20% of the population. Now, why do I say this? Because, actually here one runs right up *against* the issue of citizenship, only in a highly condensed manner.

Israel is not going to give the Palestinian authority any hold in the areas within the green line. Of interest is only the fact that Israel is ready to negotiate away the citizenship of some of its citizens, to draw a question mark concerning their citizenship, using any opportunity to raise the issue, means that it deals with them as a problem. So the citizenship of a part of the citizens of the country is a problem. We begin from here: There is a deep problem with the concept and practice of citizenship in Israel. Supposedly, citizenship is the cornerstone of modern liberal

democracies. It wasn't always like this, but we have to engage with the latest version of modern liberal democracies, where citizenship, the rights associated with it, and derived from it as a status, are the cornerstone of a democracy that does not exhaust its meaning as the rule of the majority. We even use the words "universal citizenship", meaning that citizenship no longer depends on ethnic, religious, or cultural affiliations. The mere fact of democratic citizenship presupposes a rule that regulates the relationship between individual and state. Not tribe, not family, not sect but citizenship. Affiliation is direct; it is the affiliation of the individual to the state, unmediated through any other identity or affiliation.

One dimension of the problematic of the Israeli democracy can be detected in its exclusive self-definition; it is not to be a state of many citizens and to be a state of many non-citizens. I will start with this point.

Take for example an important speech in 1950, in the discussion of the law of return in a session of the parliament, the Knesset, in which I serve, by the man who established the state of Israel, and whom I think is one of the most important leaders of the twentieth century, his name is Ben-Gurion. The thought of Ben-Gurion is actually not very well known in the West, nor in the Arab world, for he is not widely read. I think he was not only a very talented politician but also an intellectual. He spoke of the Right of Return for Jews as the basis for the law of return: "This is not a law of the state", this is a law that constitutes the state, he says, actually asserting that the state cannot change it, because it is not created by the state. This law creates the state. In fact, Jews have this automatic, unconditional, unalienable right to become Israeli citizens. Israel is not, [like I claim or I am ready to accept today], an expression of the right of the Jewish majority in Israel for self-determination. He actually refutes this principle as the basis for the state. Israel does not express the Jewish majority in Israel. Israel expresses the existence of the

trans-historical, trans-geographical Jewish people around the world. This notion has nothing to do with modern citizenship. It is a medieval idea. It has also nothing to do with the fact that the majority of citizens are Jews. This reality according to this view is totally unimportant, actually accidental, or if you want, it is man made; a majority is produced to meet the needs of the principle that this country is the country of the Jewish people, including those who do not live in the country. Israel does not express the Jewish majority in the country. It expresses the Jewish people, *en genera*, and the Jewish people are not all in Israel. According to Ben Gurion nobody can take this right from them, because this right is essential to the definition of being Jewish. You cannot separate a Jew from his right to become an Israeli citizen. But what is a right for Jews is not a right for non-Jews in Israel whose citizenship can be separated from their individuality, or from their identity as affiliated with ethnicity, nationality or religion: the so-called “Arab Israelis” the “Israeli Arabs” “the minorities”. The fact is that Sharon can imagine that 20% of the population of Israel can be stripped of its citizenship within the framework of the negotiation process. The same person cannot imagine stripping Jews from their civil status. Therefore we remain with two kinds of citizenship: One is incidental citizenship, given to Arabs who happened to remain in Israel. The other is essential citizenship, given to Jews as Jews.

When the law of return passed in the Knesset it was meant not only to apply to Jews who immigrated to Israel, but also to those Jews who were born in Israel. From 1950 onwards, the Law says that every Jew, even those born in Palestine, is considered to have entered Israel by the Law of Return, that is the law was applied retroactively, which makes it an interesting law, an extremely ideological law. Every Jew, even if he or she was born in Israel, is considered to have come to Israel through practicing the right granted him or her by the Law of Return.

Another important question emerges when the state links citizenship to ethnic affiliation. In the case of Judaism, it overlaps with religious affiliation, and a question emerges. Who is a Jew? For purposes of defining civil status a theological question has to be posed and answered. Now, other countries have immigration laws. In some cases, people who are born in that country get citizenship even if the parents are not citizens. In other cases, there is an immigration process, a naturalisation process, call it whatever you like, but there is a process, a manual of how to become a citizen. In the case of Israel, you have to decide who is a Jew. So, who is a Jew? Contrary to what some people think, the law defines it. The Jew is a Jew according to the Jewish *halakah*,¹ or the Jewish *sharia*.² Someone who is born to a Jewish mother, or is related, in ways defined in law, to somebody who was born to a Jewish mother, on condition that he or she were not Jews who changed their religion freely or willingly. If you happen to have changed your religion voluntarily, freely, you stop being a Jew and you do not have the right for citizenship.

This too is very interesting, since while conversion to Judaism entitles people to Israeli citizenship (Some of course would ask what is the logic, why, is it that if an American becomes a Jew, he suddenly acquires the right to become an Israeli citizen? Anyway, this is a main component of political theology of citizenship in Israel) the converse is also true: A Jew, who decides to abandon his religion, loses his right to become a citizen. He/She could claim as much as he/she likes that he/she feels as a Jew, he/she wants to remain a Jew, but he just changed his/her religious faith. There were people who appealed to the Supreme Court to claim just this, as in a very famous case, called the Osborne Case, where the plaintiff went to the Supreme Court in 1958 saying: 'I'm nationally a Jew, I love the state of Israel, and I want to immigrate to Israel. But I changed my religion; I was influenced by Christian people who saved me in the Holocaust,

et cetera. I was hidden in a monastery, and there I was convinced to become a Christian'. The Supreme Court, the bulwark of Israeli Liberalism inside the green line, said "No". You can't remain a Jew after you change your religious faith from Judaism to something else. So the question is actually sealed from all sides. The overlap between national and religious affiliation is total. You are a Jew only if you are religiously a Jew. You become a Jew if you convert, and you stop being a Jew if you leave your faith. So the overlap is complete, and this is the only case where the overlap between nationality and religion is total.

Liberal Zionists usually throw the ready argument about Armenia, Greek Orthodoxy and the role of the Catholic Church in Poland. They all give privileges to so-called compatriots in the process of acquiring citizenship, but they all do not represent a total overlap between religion and nationality. This is the only nationality actually, that you convert to. There is no other way; there is no other entrance ticket, to this nationality, if one is not Jewish by religion. Apart from converting, there is no other way.

Israel did not, and does not want to establish, and does not claim to have established a nation of citizens. As you know, when I go to a hotel here in Oxford after the lecture, I have to fill the registration form, what can I write under the item nationality, what should I write? If I write Israeli, Israel does not recognise the existence of Israeli nationality. There is no Israeli nationality in Israel, only outsiders use it to describe Israeli citizens. If you are outside Israel, you have an Israeli nationality. Why? Because your passport is Israeli, because normal nation-states consider citizenship to be nationality. That is why the famous organization is called the United Nations, not the United States. They actually mean the United States (In the given circumstances concerning the American empire you may think I'm joking!!) but they call it the United Nations. Nationality for matters of international relations is state affiliation. For modern

states, in a modern nation state, even when a person belongs to an ethnic minority, his nationality is determined through state affiliation. Israel does not recognise the existence of an Israeli nationality, but emphasizes a Jewish nationality. Where does that leave the Arab citizens of Israel? Non-Jews. They are non-Jews. You know, **Spinoza's "omnis determinatio est negatio"**, every definition is a negation. So we are non-Jews. This is our definition. Sometimes I call my colleagues the non-Arab members of the Knesset. Then it sounds provocative. Anyway, Arab citizens are non-Jews because the hegemonic ideology does not recognise an Israeli nationality or the Arabs as a separate nationality. Arabs, in this sense, are members of a group of religions. They are Christians, Jews, Muslims, et cetera. They are still confined in a pre-national phase of development. And if you claim to be an Arab, you are a nationalist. If you want to take it a step further, and say we are not simply pre-nationals, religions and tribes, there is a higher degree of organisation of society called nation, nationality, and we are Arabs, then you become, especially in the eyes of left-Zionists, you become a nationalist. Because to be a left-Zionist is not nationalism, to be a Zionist is no problem. But to be an Arab is the problem. You can't be a democrat and an Arab if you are a nationalist. This is the selfsame logic adopted by US ideology in Iraq. Moreover, as the Arabs are required to acknowledge the Jewishness of Israel, there they are asked to give up the Arabness of Iraq. But that is another story.

Now, of course, one cannot speak about democratic citizenship really, if citizenship is "essentially" connected to a certain affiliation: ethnic, religious or national tribal. In the case of Israel, another dimension is added. Because you cannot separate between nationality and religion, you cannot also separate state and religion. Herzl did not even try to define what the Jewish State is. He called it the state of the Jews, he was a secular man. He did not try to configure what its "Jewish essence" could be, and what could a Jewish state mean? He spoke

about a state *for* the Jews under the title: *The state of the Jews, a modern solution to the Jewish Question*. So he wanted a state for the Jews, and Zionism found itself calling it a Jewish State. With time, it was actually proven, that without separating religion and nationality, you cannot separate religion from the state. So actually the state of the Jews is a Jewish state. A debate has been going on, over the last three decades, in the Supreme Court of Israel, to try to define what these words mean “the Jewish State”. What does it mean?

Does it mean only the national expression of sovereignty, of yearning for sovereignty of the Jews in the world? And how could this community be defined without a sacred dimension? Or does “Jewish” have more content than that? Should it have a thin or thick definition?

The Supreme Court under Barak is the most liberal court in the history of the country. When I say liberal, I mean liberal within the borders of the green line, in the framework of Zionism, of course. Judge Barak says, ‘No, it is not only the state of the Jews, it has to have other values, Jewish values’. For example, he says, one of our sources of legislation is the Jewish Halakah. It is one of the sources of legislation, as well as one of the sources of the interpretation of laws. When we disagree about how to interpret laws, we go to the Jewish Halakah, says Barak. The state has also to have Jewish symbols, express Jewish history, *et cetera*. He counts thirteen characteristics of this kind to fill the word “Jewish state” with content. It is not only that it is a refuge for Jews from anti-semitism, it is more than that. Of course, in the case of legislation the main victim of the thick definition is the Jewish woman. Personal status is the field where the religious establishment’s authority persists most. All the familial laws of Israel are still religious laws. There is no secular marriage and divorce in Israel.

So on the one hand you cannot have equal citizenship and universal citizenship, because per definition there are two kinds of citizenship. One, including Jews, which is “essential” to the

state, and to its Jewish citizen. The other is incidental and not equal to the other. What does the phrase, 'not equal' mean? It means that there is discrimination in Israel. On the other hand, you cannot separate religion from state, so this state can't really be described as liberal democratic. Israel is not a liberal democracy. It simply is not.

Israeli propaganda in the West relies on two crutches. One is the monopolisation of the role of the victim. You can't take that from it. It claims to represent all Jewish victims throughout history. It is the only representative, to the total exclusion of others. You know Arno Meyer's book about the Holocaust where he asks, 'Why did the heavens not darken?' The victims of the Holocaust did not go to the Crematorium in the name of Zionism, They were not Zionists. In addition Israel monopolizes the role of the victim in a context in which it is the victimizer. But this is of course not our topic today. Second, Israel is a part of the exclusive liberal democratic club in the world. Now, I did not speak about the first, and I don't intend to speak about it. Let's speak about the second. It is not a liberal democracy. It has liberal people among its elites, it has a pluralist party system, a representative parliamentary system, voting rights, freedom of expression (with consistently increasing limitations), but it is not a liberal democracy. It is a tribal, Jewish, ethnic democracy.

In 1985 the parliament issued an amendment to the Basic Law of the Knesset, (you know in Israel, also unlike what people think, there is a core of a constitution. The Arab claim that there is no constitution in Israel is not correct. The Basic Laws are the constitutional base of Israeli Legislation.). Paragraph 7A of the Basic Law of the parliament was amended in 1985 to ban any party from running the parliament if it does not recognise Israel as a Jewish state. Another amendment demanded its recognition as a democratic state. Both demands were united in one paragraph in 2002, just two years ago, to stipulate that a party cannot participate in the

Israeli parliamentary elections if it does not recognise Israel as a Jewish democratic state. In every Basic Law since then, it has to be repeated. The first paragraph states that 'Israel is a Jewish democratic state'.

Once and again, in concrete attempts to use the paragraph to prevent party lists from running, the Supreme Court was asked to interpret what this meant. For example, what could Britain as a British democratic state mean? It would be very strange if it were defined as evangelical and democratic. That would be a real problem. So, what would it mean? France as Catholic and democratic, what does that mean? It would also be difficult to demand the recognition of Britain as British, or France as French democratic, what would that mean? In France it would sound like this: France is a not a democratic state full stop, it is a French democracy. Why would a democratic parliament require this acknowledgment?

In 1985, an attempt was made in Israel to get rid of MK Meir Kahana by people who believed that due to his activities in the *Knesset*, Israel was tainted with racism. He brought to the Knesset laws that demanded the transfer of Arabs; laws to prevent mixed marriages of Arabs and Jews. The stuff he produced reminded many of the infamous laws of Nuremberg. MKs would hide their faces when he talked. He embodied every thing that was anti-Jewish in the history of Europe. The man was a racist, a fascist, and also an orthodox religious man, who regularly demanded the implementation of the *halakah* in the country. Many Zionists were genuinely opposed to this, they wanted to get rid of him, and they reinstated the law that prevents racists from running for the Knesset in the following way: The prohibition of an electoral list that does not recognise the democratic character of the state. And the question that then emerged: why only democratic? If the parliament emphasizes the democratic character of the state only, this may mean that Israel is only a democratic state and this may mean, god forbid, that it is the

state of all its citizens, a dangerous idea. Some Zionists consider this the most dangerous idea of all. For a democratic state cannot give citizenship to somebody according to religious rules of conversion, and cannot treat others, native citizens of the state, (indigenous people) as tolerated guests in a state which is not theirs. “Democratic” without “Jewish” could open a Pandora’s Box.

Lately, further developments have taken place, which I hope you have not missed. Israel began asking the countries of the world to recognise it as a Jewish state. Not only a party who is running for the Knesset, but any party who wants to make peace with Israel, which isn’t even a state, is now required to do that. In the opening of the negotiations with the Palestinians in Aqabah, Israel asked the Palestinian side, to recognise its Jewish character in the opening (which is the Israeli reservation number 12 to the road map. People who think that Israel accepted the road map did not read Israel’s 14 reservations to it), something in the form: “we recognise Israel as a Jewish democratic...’ a long sentence. This is a dictate not only to the Palestinian citizens of Israel, but to the Palestinians in general. It is like asking you, when you make peace with Egypt to recognise Egypt as a Muslim state, or an Arab state. Why should a state do that? States usually would recognise Egypt as a state, it is there. They do not tend to define its character in a peace treaty. It is a weird demand. But the Palestinians did not accept this condition, so who accepted the challenge? The United States. George W. Bush said the whole sentence in his opening speech. Then of course the Geneva Accords document followed suit.

Why did Israel insist, in an international context, that it is a Jewish state? No other state would care how others, especially enemies, define it. Israel insists on this in order to exclude the Right of Return for Palestinian refugees. So, the context is very political.

In internal relations, it means that the Palestinians in Israel are second class citizens, they should know their place, they are tolerated guests. They are not exactly equal citizens, they

are granted citizenship by the people who have citizenship and grant it. By the people who own the state, whose state it is. And they give citizenship to 20% of the population of the state, who should behave. For what is granted can also be taken away. And Ariel Sharon is threatening to do just that.

Externally, the state of the Jews, a Jewish state, means that it has the right to protect its Jewish majority, so the Palestinian Right of Return is *passé*. Actually, in that speech in Aqabah George Bush said ‘no’ to the Right of Return. The right that was drafted by the United Nations – do people remember that the Right of Return was drafted by the United States representative to the UN, in 1949 – the Right of Return is not a Palestinian right drafted by the Palestinians. It is an internationally recognized right. It was recognized even before the Palestinians right for self determination.

So, under the table, without discussing it, without having an international or public debate about it in the United States, or anywhere else, George Bush said no to the right of return. But what is the international legal basis of the Jewish state? Of course, Zionists would say the Balfour declaration; they consider it the international basis. They do not consider the Balfour declaration to be a colonial promise at all; they consider the Balfour declaration to be the first article in international law that gives the Jews the right of having a Jewish state. Now let’s say it is. Somebody who doesn’t own the country promised it to somebody who does not have legal entitlement. What I want to say is that in international law as we understand it today, it is the partition plan which provides the international legal basis. The partition plan of 1947 says clearly ‘A Jewish state’. But the partition plan also says the Jewish state with 45% Arabs. A Jewish state with 45% Arabs could be imagined at that time it seems; the partition plan did not say ‘deport these Arabs out of the Jewish state’. The partition plan took the demographic

structure of the country for granted and accepted it as it was. It just drew a line to say in these areas a Jewish state will emerge although it will include up to 45% Arabs', and here will be an Arab state with 10% Jews. The partition plan actually emphasizes that Arabs and Jews have to live together; the Arabs are about half the population in the Jewish state and a big majority in the Arab state. So, international law could imagine the refugees returning because from the outset, it created a Jewish state without imagining Arab refugees. So these people and their descendants can go back there. I can still imagine a Jewish and Arab state but living together somehow in a bi-national framework. This way of thinking is not totally new, to remind you, the partition plan spoke about two states sharing one economy. The two states were merely supposed to symbolize the sovereignty of two states. If you take a look at the partition plan you will discover a two states solution, so that two peoples have two political entities, but it left everything open for forms of cooperation in the future between them.

Of course, the main debate concerning citizenship in Israel remains an internal debate; it won't be decided in international relations. The main enemy, as it is seen today, I believe, in the Zionist establishment, in both the Likud and Labour parties, are people who think that Israel should become a normal country, a normal state of its citizens, with citizenship regulating the relationship between individual and state. It means actually de-Zionising the state. They think that this is the real danger. When, more than a decade ago, we threw the phrase "the state of all its citizens" into the political arena, we firmly believed that the political culture in which such a principle can be embedded would open the way for the Palestinians in the whole area that is ruled by Israel for equality: Citizenship as the basis for living together in equality.

At the beginning many Israeli liberals were embarrassed, but I was astonished how fast they came back with an offensive against people who dared to speak about the state of citizens.

(We just did not calculate that Arab states will accept the Zionist discourse). What should democrats in this case demand? They should demand equality, one citizenship for all, and they would demand the land to be the land of the citizens because they refuse to accept concepts like the “land of the nation” , when a considerable part of this nation according to its definition does not live in this land but in the United States, and other countries. This is the ideological basis for the laws that legalized the confiscation of the lands owned by Arabs in our country. This was the process of the nationalization, (read confiscation, dispossession, expropriation) of the Arab land from Palestinians who gave, you may be amazed, their land names. Every piece of land, and I’m speaking about small pieces and parcels of land, had been named. Not numbers not blocks, but names. A very personal relation of peasants to land was confiscated and names were replaced with numbers. They have lost their land to the nation which is not theirs, and in which they are not members. Land was not confiscated for the benefit of the public sector the way it is defined in modernity, where the nation is the expression of the interest of the public as a whole.

“The state of all its citizens” poses these questions concerning whose land is the land of the nation of the state.

It is not hard to enumerate other points where the issue of equal citizenship deconstructs the whole Zionist discourse. Zionist discourse cannot live with equal citizenship. This last concept poses one challenge after another and Zionism had to make one withdrawal after another. I even thought for a moment that philosophy can work in politics, after all. But of course, as you know, *real politik* won. Internationally, Israel was demanding the recognition of the state as a Jewish state, in return for a partial settlement. Not in return for a fair peaceful settlement, but a partial settlement. And of course internally, there was an offensive also to try to prevent the list with this liberal democratic platform from running for the Knesset. It was very

difficult for the Supreme Court because what is the charge against it? The charge is liberal democracy. The charge is a wish, a dream that the state becomes the state of the citizens'. Big deal! This wish can be considered mainstream in Britain, I mean, this would be considered a very conservative, mainstream demand by the left in this country. What is it yearning for? The state of the citizens? Separation of religion from state? Big deal. It is not enough, so the state will have to connect it to other, more evil sounding, charges. For example, the fact that the same people who believe in this "happen" to believe in the right of people to resist occupation. But the main issue is this discourse of citizenship, *equal* citizenship, in contradiction to the Zionist discourse.

This is the problem of the future facing Zionism as the ruling ideology of the state. Of course, there are other manifestations, other expressions, of this same contradiction. In order not to be misunderstood, I'm going to finish the lecture, by allowing some questions. I chose to speak only about this subject although it has other manifestations but I did not want to cover a lot of subjects. I know that this issue, and its manifestations, are not the main contradictions in the country. There is the colonial contradiction of Israeli democracy. I have not even tried to connect this subject with the colonial contradictions in the West Bank, and Gaza where there is no citizenship at all. How does this contradiction, with the Palestinians in the West Bank and Gaza, affect citizenship inside Israel? It is another story, a deeper and less visited contradiction that I have chosen not to address. If you want me to speak about the other dimension, you will have to ask! Thank you very much, thank you.

oleh (a Jew immigrating to Israel)

*Right of aliyah*** 1. Every Jew has the right to come to this country as an *oleh***.

¹ halakah or halacha [Heb.=law], in Judaism, the body of law regulating all aspects of life, including religious ritual, familial and personal status, civil relations, criminal law, and relations with non-Jews. Halakah is the term used to designate both a particular ordinance and the law in the abstract.

² **sharia** - the code of law derived from the Koran and from the teachings and example of Mohammed; "sharia is only applicable to Muslims"; "under Islamic law there is no separation of church and state"