Fantasies of Liberalism and Liberal Jurisprudence:

State Law, Politics, and the Israeli-Arab-Palestinian Community

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I. Between Bergman (1969) and Kaadan (2000)

About thirty years after *Bergman* case[1], Israel constitutional structure and its legal culture are not responsive to minority needs, and more largely to social needs of deprived communities. The liberal language and judicial review over Knesset legislation that have been empowered by and followed *Bergman* have not reconciled this utterly problematic discrepancy between jurisprudence and social needs.

Bergman ruling has symbolized the outset of a new area in Israel jurisprudence, the area of liberalism, since it has empowered the notion of judicial counter majoritarianism as the center, however problematic, of democracy. It has been a modest ruling, and a careful one, dwelling only on procedural deficiencies as a cause of judicial abolition of parliamentary legislation. Later, after 1992, and propelled by the spirit of judicial activism, the Supreme Court has adopted a much more expanding judicial policy. It has asserted the need for much more active judicial review of the substance of Knesset legislation and even the possibility of its abolishment, as if within the provisions of the Basic Law: Human Dignity and Freedom and Basic Law: Freedom of Vocation. Bergman, unlike some later rulings, was a restrained decision. Yet, the sources of these rulings are to be found in the principle of the ability of the Court to cancel Knesset's legislation, as was established in principle in Bergman.

[1]HCJ 98/69 Bergman V. Minister of Finance P.D. 23 (1) 693.

My analysis of the Arab-Palestinians under Israeli law is focused on the expectations from, and criticism of liberal jurisprudence in Israel, which has been largely founded on the ethos of judicial activism as was established in Bergman. A few months ago, in March 2000, the Supreme Court ruled in the Kadaan affair and has partially upheld an appeal of an Arab-Palestinian family, which has asked to purchase a house in a Jewish communal municipality.[2] For many, Kadaan was a reflection of the liberal ethos, and accordingly the Court has demonstrated some commitment to a more egalitarian ethos than previously. The Court, in fact, has not upheld the entire appeal but has ruled that in principle no discrimination in land allocation to Jews and "non-Jews" citizens of Israel is legal.[3]

As in Bergman, adjudication and judicial activism have been justified due to the principle of equality in its liberal sense. In both these prominent legal cases the Court has presumed that equality may exist within the Jewish political regime. In Bergman ruling it was not elaborated since the appellant was Jewish.

In Kadaan ruling the ability to materialize equality between the majority and the minority was a major issue. The Court claimed that such a reconciliation between Jewishness, equality, and liberalism is possible. My study doubts it significantly. I focus not on the contradiction between Jewishness and democracy, which does exist.

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[2] HCJ 6698/95 Kadaan V. The Jewish Agency (March 8, 2000). My analysis is based on the original text of the ruling.

[3] Ibid.

But rather, I focus my analysis in this article on the limitations of liberalism to address a minority's predicament.

Liberalism as a doctrine of individual rights and state's neutrality is not only a problematic doctrine with internal conceptual inconsistencies, it has also diverted our attention from miseries of communities to a veil of illusions about redemption of individuals regardless of their communal affiliations. In the Israeli fragmented, segmentalized, polarized, and rifted inter communal setting such liberal illusions cause damage to our ability, however modest, to constitute and maintain social democratic justice.

While Bergman's ruling has dealt with political rights and equality at the political electoral dimension, community's needs of deprived groups postulate different philosophical, social, political, and legal challenges. I call for the evolvement of grass-rooted de-centralized jurisprudence, which should be much more sensitive than liberalism can be, to community contingencies. Such a concept and practices should come instead of institutionalized and vertical self-declared, self-propelled, and very possibly self-defeating "constitutional revolution".

This paper deals with the legal deprivation of the Arab-Palestinian minority in Israel despite assertions about liberalism. It looks at law and legal practices as a major constitutive and reflective component in political spheres. Following a brief analysis of state law concerning the Arab-Palestinian minority, I consider communal practices of the minority toward state law. In Israel, the latter has preferred the exclusion of a minority by framing and co-opting the minority as a religious population deserving

solely specific religious rights in the state, and outside the sphere where it may significantly affect the allocation of collective goods.

Hence, this is not a paper that sanctifies or celebrates legal pluralism. Instead, it presents a more critical commentary on the way state law stratifies a minority, renders it specific rights, while avoiding the recognition of other, important facets of that community. The boundaries between state and community are, however, fuzzy and multifarious. I shall explicate different identities of the same community and show its interactions with state law. For conceptualizing this, the common distinctions based on the binary epistemology of modern law vs. customary law are insufficient. My conclusions will offer some theoretical findings and observations on the ramifications of law and politics for state-minority relations in Israel, where more than thirty years after Bergman, discrimination of the minority prevails, whilst it is utterly questionable whether the Kadaan case will generate any progressive social change.

II. Law, State, Communities: An Epistemological Framework

Why should political scientists study sociopolitical communities in a legal context? Seemingly, the investigation of interactions between state and communities in the political sphere, and particularly in the legal sphere, is intellectually redundant. One may presume that democracies, at least Western democracies, have rendered a constitutional framework that imparts equality to individuals irrespective of their communal ties or collective histories (Kymlicka, 1995). The self-declared political triumph of the Western democracies reflects, to a large extent, a common outlook produced by Western conceptions of liberal modernity and liberal democracy. This is a state-centered and a state law approach, which measures the qualities of a legal

system and a political regime solely in terms of the extent that an individual may or may not fulfill her/his rights. Yet communities exist as practices and as constructs, locate themselves, and interact with and sometimes against the state. Even a purely individualistic conception of law and politics should not ignore the way in which communities shape identities, often through the legal narrative, which in turn affects the legal setting.

State law that focuses mainly on the power-holder may ignore communal practices and even suppress them, or, alternatively, may recognize and constitute communal identities. Conversely, different communities do not make the same choices concerning public policy. In a reasonably managed state, a community may ignore and evade a very specific facet of a state law, although it cannot reject the entire legal setting. Even deprived communities tend to obey the legal system because of perceived vulnerability (Jaros and Roper, 1980). Hence, communities have developed a variety of tactics vis-à-vis states. They not only demand that certain laws be altered; they mobilize law as an avenue for political struggle and change. At this point, law is not merely a structured entity of force or narrative. It is a language that frames what I call a terminological environment that may protect the community, and it is a means for political behavior that may help the minority to address issues. It also may become, however, a sword against the minority.

This ambivalence from the minority's vantage point raises the question: What are the relations in the domain of legal culture between state law and the minority? The former discriminates the minority,defines it as a separate sector, yet asserts egalitarianism and pluralism. The latter is enjoined to comply with state law, though

it does have some capacity to mobilize law as it conceives it. Hence, my research question is: Which legal culture—which set of practices—prevails in the relations between the sector of the Arab-Palestinian minority and the state? As will be clarified below, there is no one legal culture, and there is a difference between the legal culture endorsed by state law and the way in which the minority locates itself and reacts to state law. The term legal culture is, of course, only a way of connoting complexities of dispositions, attitudes, and actions involving issues of law, society, and politics.

At a deeper level various communal identities exist, and they articulate diverse dispositions and actions toward the state law. Sometimes, communities are characterized by practices that are uniquely contingent on nonstate social forces. Those practices may contravene the conceptions, images, and interests that are embedded in state law. Studies show that legal practices are more diverse if the community is characterized by a collectivist orientation as opposed to an individualistic one (Bierbrauer, 1994). The first type may establish independent forums of conflict resolution and resist state interference in religious and traditional dicta (Sierra, 1995). Moreover, if modern law tends to be individualistic (Wieacker, 1990; Friedman, 1994) whereas communal law is mainly customary, then we have identified at least one source of conflict between states and communities. Later, I shall reject such a post-Roman dichotomy between modern law and customary law or between state law and community law as reflecting incomplete understanding of the relations between states and communities.

Before suggesting a complementary explanation, some further theoretical remarks are in order. Law embodies concepts of time, and modern law tends to impose secular,

accumulative, and linear time (Greenhouse, 1989). Communities tend to emphasize the indeterminacy of time, and hence to develop alternative or complementary systems of law and justice (Sierra, 1995). Other studies have pointed to the diffuse legitimacy of groups. Minorities have been regarded as conferring lower levels of diffuse legitimacy than majority groups. Whereas majorities have often been identified as power-holders, minorities have held much fewer or no other resources, and therefore have manifested less confidence in the establishment (Zureik, Moughrabi, and Sacco, 1993; Rattner, 1994).

The validity of those distinctions notwithstanding, this paper suggests that we need to escape binary distinctions with respect to state and communities, and to explore the fuzzy boundaries between those entities in the politicolegal sphere. Most studies presume the existence of a defined community identified in positivist legal terms, which maintains concrete legal relations with the authorities. I assert, however, that communities are to a large extent the result and articulation of practices that are at once within, outside, complementary to, and against the state legal sphere. In other words, if we desire to understand the relations between communities and states, we should not reduce them to a binary distinction between modernity/religion, modernity/custom, and so on. I suggest, instead, a different intellectual approach. We need to look at the identities and practices that have been derived from and in opposition to specific legal configurations. As we shall see, communities are not homogeneous entities. A community may have many facets, which at once articulate different identities in various configurations of state and group relations. To erroneously assumebinary distinction between state and communities is to adopt a

state conception. This study adopts the other point of view: it explores the ways in which communities perceive, are located in relation to, and interact with state law.

III. Not Pluralism but Segmentation: A Portrayal of a Predicament (1948-2000)

Since Israel's formal independence in 1948, Israeli-Arab-Palestinians have constituted a religious, cultural, and national minority. With the conclusion of the 1948 war, Israel's Palestinian population of 1,100,000 people had declined to 160,000, following large-scale expulsions and emigration. Of these, the majority were Muslims (111,000), the rest Christians, Bedouins, and Druze. By the late 1990s, Israel's Arab-Palestinian minority numbered more than one million people, or about one-fifth of the total population.[4]

The minority has been located outside the Jewish and Zionist narratives, and as a result has constantly been regarded as a security threat (Barzilai, 1992; Reiter, 1996; Rouhana, 1998). This state-endorsed image has been reflected in the military and security restrictions imposed on the minority, and in the collective exemption from compulsory military service given to the minority since the 1950s. Although in the same period a collective exemption was also granted to the ultra-Orthodox Jewish population, the political aims of apparently similar legal mechanisms were different in essence. The exemption granted to the ultra-Orthodox has been aimed at enabling this population to legitimate the Zionist state, whereas the exemption given to the Arab-Palestinian minority has been aimed at delegitimating its existence as an equal public, and at symbolically underlining the state's Jewish character. The exemption granted

[4]Israel Statistical Yearbook, 1994, No. 45, Table 2.1, p. 43.

to the ultra-Orthodox may be regarded as a collective right, the exemption given to the Arab-Palestinian minority as a collective exclusion.

Israel's imposition of martial law on its minority (1948-1966) reflected the state's view of this minority as a fifth column. That perception constantly fostered the collective, indistinct criminalization of the minority (Koren, 1999). Despite the significant relaxation of collective restrictions on Arab-Palestinians during the 1970s, and later following the Oslo accords (1993), the state has continued to view them as a security and military threat (Lustick, 1985; Hofnung, 1991).

Since the formal establishment of the state, Israeli-Arab-Palestinians have been caught in a political trap, and have been forced to pay a significant price for playing a role in the Arab-Israeli conflict: for the Arab states they have been Israelis, for Israel they have been Arabs or Palestinians. Hence, because of their existential predicament the issue of identity has become essential to their relations with the state and, *inter alia,* with state law. As the Israeli-Arab-Palestinian activist Adal Mana put it, "the minority can be neither entirely Israeli nor entirely Palestinian."[5]

The *intifada*, the Palestinian insurrection in the West Bank and Gaza Strip (1987-1993), only made the lives of Israeli-Arab-Palestinians more difficult. The ethnic dispute, which at its center was a struggle between Palestinian nationalism and Jewish nationalism, intensified the minority's dilemma regarding its nationality and its relationship with the Jewish state. Since 1987, nationalism has taken deeper root among Israeli Arabs; they have come to define themselves more and more as

[5]Lecture in Givat Haviva, May 1996.

Palestinian Israelis, i.e., Palestinians living in Israel (Ganam, 1997). According to Israel state law, no such national identity exists. Moreover, until the Oslo accords, the political expression of identification with such an identity in Israel was formally constructed in Israeli law as "terrorism," and a severe criminal offense with sanctions of imprisonment and property confiscation.[6] Israeli courts, the Supreme Court included, have applied this norm without even trying to mitigate its severe infringement on the liberties of Israeli citizens.[7] In actuality, state law has not ignored endogenous Palestinian national sentiments; instead, it has been politically targeted to suppress Palestinian nationalism, a point I shall elaborate in the next section.

The Arab-Palestinian minority has always been Israel's most oppressed group, facing severe restrictions evident in many aspects of daily life. The majority of Israeli-ArabPalestinians have earned monthly incomes in the lower 30 percentiles of the Israeli economy,[8] with an average income one-half that of Israel's Jews. The percentage of academics among the minority has been less than one-third of the proportion among Jews: 7% vs. 19.6%.[9] The gaps between Arab-Palestinians and Jews in terms of the numbers enrolled in or having completed university-level study have been enormous: Arab-Palestinians have accounted for only 6.7% of first-degree graduates, 3.3% of second-degree, and 3.9% of third-degree.[10]

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[6]Prevention of Terrorism Act—1948.

[7]See: G. Barzilai, "Center Against Periphery: Prevention of Terrorism Laws as Politics" in Tel Aviv Journal of Criminal Law [Plilim] Vol. 8 (1999): 229-249.

[8]Israel Statistical Yearbook, 1995, Table 11.1, p. 324.

[9] Ibid., Table 22.3, p. 639.

[10]Ibid, Table 22.48, p.700.

This continued oppression of the Arab-Palestinian minority has been made possible, despite its antinomy to self-professed egalitarian principles, by Israel's constitutional status as the "state of the Jews." Formally, Arabs have been civil members of the state, but in practice they have suffered systematic discrimination. Peled (1992) has found that the minority has enjoyed liberal rights but has been deprived in its ability to shape public goods (the republican sphere). Yet, as I have shown in other publications, the minority has also been significantly deprived in its political rights (Barzilai, 1992; Barzilai and Keren, 1997; for a detailed analysis, see Kretzmer, 1990; for a different perspective, see Stendel, 1989).

Israel's political culture has been both a reflection of this state law-endorsed deprivation and a source of its generation. The Arab-Palestinian minority has been marginalized during public debates over the country's future, and Arab political parties have not been included in government coalitions. In the Knesset, Zionist parties have tended to estrange the minority, especially during wars and other security crises such as guerrilla attacks. Popular nationalistic, including atavistic, perceptions of the minority as a fifth column have been pronounced during such times; Jews have viewed Israeli-Arab-Palestinians as enemies of the state and allies of the neighboring Arab countries and the Palestinians (Barzilai, 1992; Barzilai and Keren, 1997)

Despite being politically and socially oppressed, most minority members have aspired to be more intimately associated with the Jewish majority. For example, in a 1995 public opinion poll it was found that more Arabs than Jews were interested in community or personal Arab-Jewish relations: 90% among Arabs vs. 50% among

Jews.[11] The Arab-Palestinian political culture has reflected an ambivalent disposition: dissent from the state's Jewish characteristics, yet also loyalty (Amara, 1998). As I analyze below, attitudes toward state law have shown a similar duality.

Analyses of the Jewish majority's attitude toward the Arab-Palestinian minority show that intolerance and animosity have been dominant (Peres and Yuchtman-Yaar, 1998). The minority's deprived economic status, its economic dependence on Jews, land expropriation, and its political underrepresentation have rarely been debated in the national arena (Smooha, 1980, 1984; Lustick, 1985; Reches, 1989, 1993; Cohen, 1990; Benziman and Manzur, 1992; Peled, 1992; Yiftachel, 1993; Lewin-Epstein and Semyonov, 1993; Alhag, 1996; Shamir, 1996; Ganam, 1997; Kaufman, 1997; Kedar, 1998). The hegemonic Zionist political culture has not regarded the minority's problems as meriting public debate and a civil resolution. In other words, the minority has been systematically segmentalized, framed outside of the major power foci.

In the mid-1980s this reality fostered the rise of the Islamic movement, which has combined an Islamic fundamentalist outlook with Palestinian national aspirations. The low sociopolitical status of many Israeli-Arab-Palestinians, state-sponsored economic and social oppression, and heightened criticism among the minority of the relevance of the secular Rakach Party's political applto greater public acceptance of religious-messianic outlooks that assert political redemption, as espoused by the

[11]Survey of the Tami Steinmetz Peace Research Center, Tel Aviv University, March 1995.

Islamic movement. The Islamic movement has claimed that by means of return to the roots of Islam, especially the Koran and the Shariiya law, the Arab-Palestinian minority can gain the spiritual unity and political power that it so desperately needs (Meyir, 1989). Within an alternative sphere of religiosity and local (not national) protest and reconstruction, the Islamic movement has channeled sociopolitical grievances.

At least rhetorically, the Islamic movement has challenged the basic legitimacy of state law. It has asserted that all of Palestine is an Islamic land. Yet, in light of the political reality, its spokesmen have acknowledged that Israel is a fact, and that reconciliation with it is necessary.[12] In many ways the Islamic movement's efforts have been directed inward, to the community's severe problems with crime, youth delinquency, and poverty. It should be thought of not solely as a means to revitalize Arab Islamic religiosity but also as a community phenomenon. Such community religious attachments have contravened the aspiration of state law to control the evolution of the minority's political life.

IV. Law as a Dispenser in Egalitarian Disguise: The Liberal Regression

In order to be perceived and legitimated as "just" regimes that promote desirable virtues and allocate goods equitably, democracies are politically obligated to actualize the concept of the rule of law. Therefore, the "rule of law" cannot be seen as directly discriminating against minorities. Liberalism as a component of formal legal and political rhetoric, and as an element of daily life, sharpens this opposition between a state's particularistic identity and its formal commitment to neutrality and

[12]Sheikh Abdhala Darwish, at Tel Aviv University, 1996.

egalitarianism. Here we shall focus on this antinomical reality in the case of Israel's Arab-Palestinian minority.

State law has defined Arabs as a religious community. One of the first laws, The Order of Deserted Property-1948, empowered the government to impose laws on any territory occupied in the 1948 war, while preserving "religious and worship rights" so far as those "do not infringe on public security and order."[13] Since then, the Shariiya Islamic courts, Christian courts, and Druze courts have received state's recognition as having exclusive jurisdiction over the members of their communities, subject to appeals to the Supreme Court. The latter has only rarely intervened in their jurisdiction, often empowering it.[14] The state has inherited the Mandatory colonial recognition of religious communities or tribes, and has formally respected it so as not to be domestically and internationally delegitimated. Yet, by formalizing and legalizing the religious aspect of the minority, its other identities have been marginalized and the state has been enabled to control it.

The internal religious affairs of the minority have been budgeted by the Ministry of Religious Affairs. Claims made before the Supreme Court by minority lawyers that the minority has been deprived, and demanding the equitable distribution of budgets, were denied by the establishment as unfounded and dismissed by the Court as too general. The establishment has been unwilling to acknowledge discrimination, and the Court has chosen not to uphold the claims; within the narrow formalities of state law,

[13]Clause 2(b).

[14]See, e.g.: HCJ 409/72 Said Chatar V. Haifa Druze Court P.D 27 (1) 449.

no concrete damage has been exhibited to the Court.[15] Yet, although in the 1990s the minority has constituted around 19% of the population, its share of the Ministry's budget has been around 1%-2%. Hence, even the minority's ability to implement its religious autonomy has been severely constrained. The Supreme Court has espoused a rhetoric of equality, referring to the Arabs as a distinct segment of the population, yet has not granted the remedies of equality that have been sought.

State law has protected all religious sites in Israel without distinctions.[16] Yet in regulations issued by the minister of religious affairs, only Jewish religious sites have been mentioned.[17] Although the state has formally exhibited equality, in fact it has discriminated against non-Jewish communities. Arab-Palestinian lawyers have correctly claimed that since there is no specific reference in regulations, the state has not been obligated to allfunds for the protection of non-Jewish sites (Adala, 1998). The state, indeed, fears that such sites may become centers of mobilization and resistance.

The limitations imposed on the minority have not been directed solely at religion but also at historical memories, education, and language. The state has been unwilling to contribute to the memorialization of the Arab-Palestinian past. It is felt that in the Jewish state the significant past should be Jewish, because "history" should legitimate

[15]HCJ 240/98 Adala V. The Ministry of Religion, Dinim 55, 162.

[16]The Protection of Holy Sites Law-1967.

[17]The Protection of Holy Sites Law-1981.

Zionism.[18] The state, not communities, has exercised full control over all antiquities. If the state wishes, it may declare a place to be a national park or reserve and expropriate it.[19] Manifestations of liberalism in Israel have not changed that situation. Liberalism has shown less interest in collective memories and sentiments, more in individual rights; hence, liberalism has not been able to accommodate the minority's collective past within the legal language of individualism. The minority's identification with the past through the observance of festivals has been restricted as well. State law has officially recognized no Arab festival. Such denial of minority collective memories has not only been reflected in law but has been framed by it—a point that should be further explored.

For the minority, the Arabic language has been a carrier of collective memories; it has been one of the main characteristics of the Arab-Palestinian population, with its diversity of religions, origins, and histories. Mandatory law defined English, Arabic,

[18]See, e.g.: HCJ 175/71 Music Festival in Abu-Gosh Vs. Minister of Education P.D. 25 (2) 821. The Court justified the Ministry's position of not financially supporting a festival of Christian religious music, claiming that freedom of religion does not include the state's obligation to support the dissemination of religion. The Court. however, ignored the fact that Jewish religious institutions are heavily supported by the state. It is interesting to note that the ruling was written by an Orthodox religious Jewish justice, Justice Kister.

[19]The Law of Administration of Antiquities- 1989; The Law of National Parks, Natural Reservations, and National Sites-1963.

and Hebrew as the formal languages;[20] state law has not altered that definition for the same reasons that religious communities have not been abolished. Yet, although formally the state has been committed to maintain Arabic as a formal language, in practical terms discrimination has occurred.

Many road signs in Israel appear in English and Hebrew but not in Arabic. Following an appeal, still pending in the Supreme Court, the state has consented to change this situation within five years. To withdraw recognition of the situation, formalized in law, in which a minority of around 19% read Arabic as a first language would have severely compromised the state's rhetorical commitment to equality. In practice, however, Arabic is not considered a language equal to Hebrew, and those who have opted to use it or have had to use it have suffered discrimination. The language of law has used other types of language to prevent Arab-Palestinians' return to Israel, to frame hegemonic culture, and to control collective memory.

Arabic has not been recognized as a formal language in the Israeli Bar exams, or in other public professional organizations. No formal state organ in Israel, including the Supreme Court, has adopted a policy of publishing material also in Arabic. State's documents have been published in Hebrew and often translated into English. In contradiction to formal law, the state has not only excluded the minority from participation in the formation of public goods, it has been unwilling to commit itself to be transparent and accountable to its Arab-Palestinian citizens.

[20] Article 82 of the Palestine Order in Council-1922.

The growing prominence of liberal values in jurisprudence should have given Arab-Palestinians greater latitude to culturally express themselves in Arabic. To the extent that this has occurred, it has involved a severe cost. This is exemplified by a Supreme Court legal case that is among the most fascinating yet is often neglected in academic debates.

In September 1993, the Supreme Court published its ruling in a conflict between the municipality of Upper Nazareth (a Jewish city in the Galilee) and Re 'em, an engineering company that built houses in an area that was mainly populated by Arab-Palestinians.[21] For obvious commercial r, the company wanted to advertise its housing projects in Arabic. In 1964, however, the municipality had already ruled that all public advertisements published within its jurisdiction must be in Hebrew or primarily in Hebrew, whereas no more than one-third of the advertisement could be in Arabic. In 1992, Re'em appealed to the Supreme Court on a district court ruling that favored the 1964 regulation and prohibited the company from advertising in Arabic. In a unanimous decision, written mainly by Justice Aharon Barak, the Supreme Court upheld the appeal and declared the 1964 regulation null and void. The three justices accepted the company's main argument, and directed the municipality not to prevent the publication of its advertisements in Arabic.

Such a ruling may appear, in the context of the peace process and of the 1992 Basic Law: Human Dignity and Freedom, to be a progressive achievement, a significant

[21] C.A. 105/92 Re'em Engineering Ltd. V. The Municipality of Natzrat-Yilit P.D. 47 (5) 189.

step in the protracted march toward equality even though equality is not mentioned in the ruling. A closer look, however, yields a more critical evaluation.

Formally speaking, the Supreme Court could have grounded its ruling on the mere fact that Arabic has been recognized in formal law as a formal language in Israel. The Court, however, based its ruling on the value of freedom of expression. The company, in other words, had the right to publish in Arabic if it felt that Arabic better expressed its needs or interests. The point should be emphasized: the appeal was upheld not on the basis of the status of Arabic but on that of the right of each individual to use whatever language s/he chooses. Hence, in Re'em, Arabic has been deprived of its formal status.

State law is not, indeed, a coherent body. It is a set of formalities and practices with unrecognized localities of power. The Supreme Court has articulated liberties in a way that has particularized the minority and obscured its collective uniqueness. Arab citizens of Israel have been given the same status as tourists who may enjoy the freedom of expression to use any language they want. Through the liberal narrative, Arabic has become equal to all other languages on earth except Hebrew. The justices (all of them Jewish Zionists) were loyal to the symbolic supremacy of Hebrew in the state's Zionist ideology.

Language usage and culture, in general, have been monitored through the state's supervision of schools, as formalized in The State Education Law-1953 and its associated regulations. Arab schools have been made an integral part of the Jewish system. The law has asserted egalitarianism, as if the state provides a neutral

education without distinctions. It has defined “collective education” as an education provided by the state "without a linkage to a partisan body, ethnic body, or any other organization outside the government." Nevertheless, laws of education have recognized the autonomy of religious Zionist, and later of Jewish ultra-Orthodox, education.

Arab-Palestinians, however, have not been similarly acknowledged. The law has ignored their existence as a community and as a minority. Clause 4 of State Education Law-1953 only states that “in non-Jewish educational institutions the program of teaching shall be adapted to the unique circumstances.” The law has not recognized the possibility of an Arab or Arab-Palestinian curriculum; it only mentions Jewish national and Jewish religious programs. In practice, the law has been used for systematic supervision and discrimination against the minority (Alhag, 1996). In the context of liberal manifestations in the 1990s, some changes have occurred. The Regulations of State Education Law (An Advisory Council for Arab Education)- 1996 established a body that was supposed to improve Arab education within the framework of state education. For the first time, a formal law acknowledged the need to formulate a teaching program that took into account the unique culture and history of Israeli Arab-Palestinians. Yet, in fact, the advisory council has rarely convened, and so far its constitutive effect has been very limited (Aben-Asba, 1997). Moreover, the regulations in question reemphasized the state's supervision of the education of the minority, and excluded the possibility of autonomy in the communal sphere of education. In other words, in state law Arab-Palestinians have been defined a separate public segment and yet as dependent on the Jewish state.

V. Community Images of State Law and Other Identities

Studies of the Arab-Palestinian legal status and dispositions toward the legal setting have presumed a rather fixed identity. My own research verifies several of the main findings of those studies. First, Israeli-Arab-Palestinians have had less confidence in the judiciary than Israeli Jews. Second, the minority has not enjoyed the same level of diffuse legitimacy in the judiciary as the Jewish majority. Third, the minority has felt deprivation (Zureik et al., 1993; Rattner, 1994). I also share the finding (Zureik et al., 1993) that, if the Jewish state does not change its policy of discrimination toward the minority, there is a real possibility of collective disobedience on its part. I am, however, interested in another dimension of state, law, and community relations. A community's identity is neither fixed nor unidimensional; I argue, instead, that different types of identity of the same community in distinct sociopolitical configurations reveal multifarious interactions between state law and the community. Moreover, if one considers the matter from a communal perspective, it is clear that communal identities cannot be reduced to religion or customs, and that, *inter alia*, the state itself contributes to the construction of a community.

The following observations and analysis stem from a survey that I conducted in July 1998 among a representative sample of the Israeli-Arab-Palestinian minority. The questionnaire was based on stories in Arabic told to the respondents, about various events concerning law, politics, and society, from land expropriation to demonstrations to conflicts between Islamic courts and the Supreme Court. Through these personal interviews, conducted in Arabic, I learned more about the ways in which the community perceives and interacts with communal law and state law.

To begin with, Israeli-Arab-Palestinians have tended to feel a sense of collective deprivation, as reflected in Table 1. As we shall see, this general feeling applies to certain concrete aspects of life. [**Table 1 about here]** When asked about equality or discrimination in a very general way, 49% responded that there is no equality between Jewish and Arab citizens of Israel; 16.6% said that equality exists but only in certain domains. However, a large proportion, 34.4%, responded that such equality does exist.

The same picture emerges when the minority is asked about collective equality or discrimination in circuit court, district court, and the Supreme Court. [**Table 2 about here]** There is a strong sense of collective discrimination: 42.8%, 41.8%, and 40.4%, respectively. Larger percentages, however, responded that the minority has enjoyed equality in the courts: 45.8%, 46.4%, and 47.8%, respectively. Although comparable figures about the Jewish public have shown a much higher level of confidence in the Supreme Court (Barzilai, Yuchtman-Yaar, and Segal, 1994), the minority has not been alienated from the Jewish/Israeli judiciary. It seems that state law has become part of the community's legal culture, and that it has some sense of equality in the courts, though not in other spheres of life.

Table 3 reflects the sense of collective equality or discrimination in several other spheres of life. [**Table 3 about here**] As we saw, when members of the community were asked about their general belief in equality or the procedural capacity to "have a day in court," the sense of collective discrimination was evident, although many members of the minority reported a sense of equality. Similarly, but to a greater degree, when asked about an important aspect of procedural justice, freedom of

expression, tgeneral feeling was of deprivation—56.4%, although 39.4% felt they were equally treated. Freedom of political expression, of course, not only involves procedures but also substantive democratic rights, concerning which the minority has felt more deprivation than with respect to the purely procedural issue of judicial accessibility.

When members of the minority were asked about property rights and social rights, the picture became significantly grimmer. When asked about equality in the granting of building permits, the destruction of "illegal homes," job opportunities, and land expropriation, the sense of collective deprivation was pronounced: 81.4%, 78.6%, and 83.4%, respectively. Here, in the spheres of property rights and social rights, the minority has a strong sense of discrimination, with only small percentages perceiving the situation conversely—12.4%, 20.6%, and 11.8%, respectively.

Overall, one major identity of the community has been grounded in the sense of collective deprivation. This communal mentality stems from a prolonged situation of discrimination. This identity has been constructed by the state, with the community framed in response to the state's prevailing discriminatory policies.

The Arab-Palestinian minority has had strong feelings of attachment to the land. Although the Jewish state has tended to control the land and to exclude Arab-Palestinians from settling it (Shamir, 1996; Kedar, 1998), the minority has regarded land ownership and building permits as a major component of its public and private life (see Table 3 above). Arab-Palestinians have not only felt deprived in this respect,

many of them have also desired to act against land expropriation, which has often been legalized by judicial rulings.

The subjects were asked to respond to the following sequence of events: “Lands were confiscated by the state. Subsequently, a mayor of one Arab municipality wanted to organize a demonstration, but the police refused to grant permission. An appeal by the mayor to the Supreme Court was dismissed. Should the mayor organize a demonstration despite the authorities’ refusal to grant permission?" Some 44.8% responded that the political interest of preventing land expropriation was more important than the law, including the Supreme Court ruling; they justified disobedience and the organization of an illegal demonstration against the establishment. Conversely, 55.2% asserted that state law should be respected and preserved. (See Graph 1.) [**Graph 1 about here]**

The less the respondent’s sense of equality concerning procedural justice and housing, the more s/he was inclined to disobey state law. Although the statistical correlations were not very strong, the contingencies (variances) of willingness to disobey state law were significantly associated with senses of equality or discrimination regarding housing permits and demolition of illegal buildings (pearson=.23, <.000, N=390), job opportunities (pearson=.12, <.024, N=377), freedom of political expression (pearson=.32, <.000, N=404), circuit court (pearson=.105, <.036, N=400), district court (pearson=.15, <.004, N=364), and Supreme Court (pearson=.13, <.01, N=369). The systematic segmentation of the minority by state law has not only resulted in a collective identity of deprivation. It has also produced a readiness among almost half

of the minority population to clearly assert a willingness to disobey state law and to resist the establishment if agrarian interests are at risk.

State law has ignored and suppressed the minority's rights as an agrarian community, while defining it as a religious one. Religion is, indeed, another strong element of Arab communal life in Israel. As Graph 1 shows, in cases of a direct conflict between a religious custom (law) and state law, a large proportion, 40.8%, declared its willingness to directly disobey state law, 8.8% declined to answer, and 50.4% said they would obey state law. The respondents were asked about a case where the Supreme Court upholds an appeal against a ruling of a Muslim Shariiya court, based on the argument that the ruling contradicts criteria of "modern law, state law." In Graph 1, we see that 37.2% asserted that the Shariiya court must disobey the Supreme Court ruling, whereas 43.8% felt that the Shariiya court must obey state law and accept the Supreme Court ruling. Another19% declined to answer or did not know what to answer.

Taking into account a minority's fear of revealing attitudes or modes of behavior that might be stigmatized as disloyalty, the survey found a strong proclivity to disobey state law if it contravenes or infringes on the community's religious autonomy. The statistical correlations with a willingness to resist the Supreme Court's intervention on a matter of religious autonomy were not particularly strong. Contingencies (variances), however, were significantly associated with senses of equality or discrimination concerning freedom of political expression (pearson=.23, <.000, N=334), circuit court (pearson=.17, <.001, N=338), district court (pearson=.27, <.000, N=304), and Supreme Court (pearson=.22, <.000, N=312). In all cases, the more a

respondent had a sense of collective discrimination the more s/he was inclined to disobey state law.

A similar finding emerged with respect to correlations with a dissent from state law that contradicts communal custom (law). Because the respondents were asked about an abstract situation of contradiction, without referring to any concrete case, the willingness to dissent was associated solely with a sense of collective deprivation concerning procedural justice: circuit court (pearson=.125, <.016, N=371), district court (pearson=.195, <.000, N=335), Supreme Court (pearson=.24, <.000, N=343).

Palestinian national identity does matter, and in the context of the minority, it has been articulated as another type of communal life. Around 20% of the Arab minority have distinctively defined themselves as Palestinians in Israel. As Graph 2 shows, this has affected the minority's inclination to disobey state law if those laws contravene its basic beliefs and interests. In my study, Palestinian nationalism was associated with disobedience in several facets of the minority's life; I shall demonstrate this in regard to one facet. [**Graph 2 about here**]

In the context of land expropriation, a majority of 53% of Israeli-Palestinians asserted that political interests were more important than obeying state law. In comparison, among those who described themselves as Israeli Arabs only 37.8% believed that political interests justify disobedience. The statistical association between nationality among the minority and disobedience with respect to land appropriation was significant (pearson=.20, <.000, N=394). The interaction between nationality and religious beliefs augmented the potential for dissent. When religious Israeli-

Palestinians were asked about their willingness to obey state law in the context of land expropriation, 61.1% preferred to disobey state law.

The hegemony of state law has resulted in a bounded victory. Although there is support among the minority for disobedience under specific conditions, a majority among the minority regards the legal system as the proper framework for dealing with their problems in daily life. As shown in Graph 3**,** when asked what was the best remedy for their predicament most Israeli-Arab-Palestinians endorsed the concept of greater equality of opportunity (54.6%). [**Graph 3 around here**] Others, 28.6%, responded that the best solution was the political nomination of an Arab minister in the national government or the nomination of an Arab judge to the Supreme Court. Only 16.8% favored a radical shift from the centrality of state law and preferred autonomy within Israel as the best remedy. Thus the minority, grounded in a multiplicity of identities, presents an ambivalent legal culture. It evinces willingness to disobey state law in cases where it directly contradicts communal interpretations of law, together with communal expectations that state law will fulfill its egalitarian assertions. This latter disposition is also reflected in Table 4. [**Table 4 about here]**

When asked what were the most efficient ways to realize their political aims, the minority members tended to favor parliamentary struggles (62%), appeals to the Supreme Court (60.6%), and legal demonstrations (59.2%). As Table 4 indicates, the minority has tended to perceive the basic rules of the democratic political game as useful for its collective purposes. Yet, as we have seen, there is also a readiness for collective disobedience. Previously, we considered the potential for disobedience under specific conditions of conflict. Table 4 deals with basic dispositions toward the

democratic political game. Obviously, when no direct conflict arises the propensity for disobedience is more limited. About 12.4%, however, entirely advocated illegal demonstrations, and 15.8% entirely expressed support for harming Jewish property or politicians. Taking into account that illegal violence does not require a mass mobilization in order to wreak serious harm, the trend is again heterogeneous.

VI. Conclusions

It would be superfluous to speak about one Arab or Palestinian community in Israel in the sense of a single identity and coherent legal culture. What this study has analyzed is a diversity of identities within the same community, with each identity framing how the community conceives law. In general, communal opposition to state law increases if the state does not recognize the existence of the community. So long as the state recognizes a communal fabric, the legal setting may enable a formal multiculturalism. The state has not tended to recognize those identities that contravene Zionist legitimacy by implying alternative types of political regimes.

The realization of the agrarian, Palestinian, and religious identities would indeed have necessitated a different political regime, one that would have instituted property rights and political rights from the time preceding the establishment of Israel. State responsiveness to those needs would have fostered wholly different constitutional arrangements, which have not been accommodated by state law. Pay attention that in Kadaan the Court has emphasized the Jewishness of the state as the precondition to

any allocation of rights to Arabs, citizens of Israel, as individuals and has ignored the communal nature of the Arab-Palestinian public.[22]

State law has constructed a different sociopolitical frame, one that has imagined Zionism as the only legitimate and modern political vision, and suppressed alternative collective memories, sentiments, and rights. The collision between these contradictory conceptions and practices of politics and law is inevitable unless an unlikely change in the basic concepts takes place.

Communities interact with state law in more than one mode. Law is not only what the state and its organs declare it to be. Law is a dynamic and circular process of interactions among identities, dispositions, actions, and institutions. State law has a very significant effect on our way of life, but its power is confined. The law of the community, whether or not it is recognized by the state, is part of the law of life. To ignore the complex ways in which communities relate to different constraints imposed by the state is to deny our inability to conceptualize law in one fixed, generic formula.

The case of the Israeli-Arab-Palestinians demonstrates that even direct governmental efforts to impose one system of law (state law) on a fixed communal identity constructed by the state (a religious community) are apt to fail. Yet, as this paper shows, the relations between state and communities are not necessarily confrontational. Non ruling communities, primarily minorities are weaker than the state, and they may conceive state law as a means to achieve their aims. The state may regard one identity as desirable for its interests and other identities as harmful.

[22]For example, op. Cit. P. 19.

That cycle of interactions, based on the weakness of segmented communities, and on inclusion by the state's policies for purposes of exclusion may help state law to enjoy obedience in the short run, and yet foster resistance in the longer run. But it also may persist for generations and generations, making segmentation and deprivations by, toward, and within state law an open-ended, tragic realm of politics and society.

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