

Commentary on Gavison's Days of Rest as a Test of Multiculturalism

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In her paper Gavison states that her aim is, and I quote, “to look at the cultural dimensions of different traditions concerning the weekly cycle. I want to ask what a society that wishes to respect the traditions and cultures of its population, but also maintain a cohesive national and civic economy and society, should do concerning days of rest in its various communities”.

Gavison's discussion of this issue is accompanied by a very informative account concerning ‘the weekly cycles and their significance in Judaism,’ Christianity and Islam – the religions most relevant to Israel's social and political reality.

Now the question concerning society's obligation concerning the respective days of rest presents two different multicultural challenges to Israel's political arrangements. Put differently, the challenge emerges from two different perspectives or from two different social groups – non-Jews (Moslems and Christians) and non-observant Jews. Gavison places these two challenges under a general challenge facing society, facing Israel or facing liberal democracies. The conflation with respect to the relevant political entity is itself an issue, as we will shortly see.

Anyhow, Gavison sees the challenge presented by days of rest as follows: “days of rest (like language) present a special challenge to multiculturalism.” Why? “If these

days of rest have different cultural significance for different cultural groups in either the identity of the day or its meaning, and if the relevant cultures want to maintain and transmit their cultures, they tend to create barriers among the communities.”

This practice, we must recognize, is promoted also by the state on behalf of the dominant culture. In that case the state discriminates against minority groups – the shared public spaces will draw on the culture and tradition of the dominant group. But, as Gavison continues to argue, it is far from clear that this discrimination, albeit regrettable, can be avoided or should be declared unjust.

What is exactly the nature of this discrimination? Well, Gavison writes that “[t]he dominant culture will tend to be hegemonic in the shared public spaces. Minority culture – meaning Moslem and Christian minorities in Israel- will have to privatize its own culture, or to live in enclaves in which it can be the public culture at the cost of segregation and limited integration within the general society”. Put differently, the dilemma for minority groups is to integrate while facing the possibility of assimilation or to segregate while preventing themselves from the advantages offered in the larger society.

Now, being a divided society, Israel, Gavison adds, is not unique in the way it chooses to deal with the issue of the days of rest. She states, and I quote, “Courts in all Western democracies have rejected challenges against the legal prohibition on work and opening commercial businesses on the traditional day of rest/day of worship. Mostly, courts say that the religious element of the day is not the dominant one, and that it is permissible for a society to enforce a shared day of rest for all its population”. End of quote.

But the prerogative of the state to impose a shared day of rest for all its population does not stop, Gavison wishes to claim, at the religious divide; it extends as to include non-observant Jews. That is, there are good arguments, she argues, why the enforcement of the official rest of day – the Sabbath – on non-observant Jews is justified. She cites three main arguments in defense of this position. First, she presupposes the existing of cultural needs such the transmission of distinct culture to future generations and the cultivation of solidarity. These needs justify the enforcement of the Sabbath even if non-observant Jews do not seem to care about them. “Many non-observant Jews in Israel”, she writes, “seem not to be aware of these cultural needs, risking a weakened public culture and a weakened ability to transmit to younger generations the distinctive cultural elements of Judaism. In a way, these secular Jews may be contributing to the prediction/warning by many religious Jews that only those Jews who remain religious will be able to remain Jews in future generations. Religious Jews will remain Jewish because religion will keep them Jewish. Non religious Jews may become 'Hebrew speaking Gentiles'. This considerations, she believes justify then the enforcement of the Sabbath as a day of rest on Jews.

Furthermore, advancing this argument, Gavison believes that it can supply the rationale justifying the priority given to the majority group at the expense of minority groups. She writes: “[t]he rationale justifying making individuals within the hegemonic community accept limitations of their freedom to maintain the public culture also justifies imposing such inconveniences on members of other cultures, as long as the other cultures have contexts and places in which they can be publicly maintained as

hegemonic, and as long as the human rights constraints on such policies are maintained.”
End of quote.

As stated, Gavison advances another two arguments in support of this practice. We may describe them as economic-justice-promoting arguments. The first argument concerns the welfare/wellbeing of the employees who would have to provide services on the days of rest. The employees, she argues, are discriminated against, since that are typically forced to work on general the days of rest, thus deprived of the privilege to enjoy the general day of rest.

The second argument is that widespread violation of the days of rest discriminates against religious merchants and business people who cannot fairly compete with non-observant merchants and business people on the Sabbath. (I have to state that I find these two arguments much more persuasive than the first).

Comments and Criticism:

This so far was my very parsimonious and brief survey of the paper, which does not do justice to its scope and depth. Now I want make some critical points and present some questions: I see my comments an invitation to a debate:

Well, I think that the implicit analogy Gavison draws between Israel and Western democracies is problematic. I believe that the paper proceeds under the wrong impression, typical of many discussions concerning Israel’s basic political arrangements. The paper tends to mislead the readers, prompting them to believe that it deals with multicultural dilemmas encountered commonly by many liberal democracies. The question is not, as it is wrongly alluded to by the author, the following: how should liberal democracy deal with the claim made by minority groups that by giving priority -

either explicitly or implicitly - to the culture and way of life of the majority group, the cultural and economic interests of minority groups are systematically compromised? The question is not 'what can liberal democracy – heeding multicultural concerns – do in order to mitigate – if not eliminate – the harm ensued minority groups in divided societies from non-recognition of their cultures and traditions?'

Israel is not a liberal democracy and the challenge of multiculturalism it faces cannot be portrayed as a case facing liberal democracy. Now, to be a liberal democracy Israel need not endorse neutrality towards the many cultures and traditions existing in Israeli society. In order to disqualify Israel as a robust liberal democracy, one need not cite, for instance, Rawls' theory of justice. The problem is that Israel does not qualify a far a less restrictive model of liberal democracy: it is not a civic nation-state that promotes a conception of the good that, in principle, allows universal inclusion of all individuals and groups. Israel is an ethno-national state committed to the promotion of a particular conception of the good (i.e., Jewish National aspirations) that formally excludes non-Jews from society. We are dealing then, if I may say, with a thick form of communitarianism promoted by the state in a deeply divided society.

Therefore, the dilemma Gavison ascribes to Palestinians is not really the dilemma they face. That is, it is not the case that they either have to privatize its own culture, or to live in enclaves in which it can be the public culture at the cost of segregation and limited integration within the general society. That is, they cannot just privatize their culture and integrate in Israeli society. Israeli society does not provide them with much of an opportunity to integrate within it. Thus the main – but not the only - solutions should be located or worked out within segregated public spaces.

Now, I do not want to argue that the promotion of such a form of communitarianism is in principle morally illegitimate. But I do want to claim that under such circumstances, the challenges that multiculturalism, multi-religiosity or multi-nationalism assumes is much different than the challenges presented under less culturally-restrictive models of nation-states. This claim is reinforced, I believe, by the way Israeli Arabs view themselves. That is, they do not view themselves as minority group in a simple and non-problematic way. To use Kymlicka's terminology, we are talking about "a societal culture", that is, Arabs constitute an indigenous group characterized by a distinct national identity, language, history and heritage.

Thus for instance, Hassan Jabarin, from Adala (a Palestinian NGO committed to advance the cause of equal rights to Palestinians in Israel) argues that one cannot define the demands of Palestinians within the multicultural discourse. Such a discourse, he argues, is more fitting to the interaction between immigrant groups and the host society, since in such a case the multicultural discourse aims at assimilating these groups in society. Indigenous groups, on the other hand, he argues, do not want to assimilate in society but wish to preserve their unique and distinct culture and heritage. Jamal Dakwar, belonging to the same NGO, adds: "Arabs never demanded their integration in Jewish society."

What are the implications of this political state of affairs on the issue under discussion? Well, in my opinion, they ought to be handled as part and parcel of a larger political arrangement: Some may argue that the preferred arrangement is bi-nationalism while others claim that Palestinians should at least be granted the right to cultural autonomy. I have not worked out in details the consequences of either one of these

arrangements vis-à-vis days of rest, but I have the strong feeling that such arrangements would have significant implications in this regard.

On the face of it, the option Gavison her-self presents seems satisfactory, even under the above arrangements. That is, already now Moslems and Christians are allowed to determine the nature of their public spaces. As she argues, “the laws explicitly exempt non Jews and non-Jewish communities from the application of Sabbath laws. In Arab communities the local authorities usually close on Fridays. In some Moslem communities there is also a five days week, with Thursday and Friday as the days of rest. Schools vary in their closing days. Some Christian schools close Saturday and Sunday, some Moslem schools close Friday and Saturday and some mixed schools close Friday and Sunday, or just one of them. Commerce rarely stops completely in the Arab sector, and Saturday is a big commercial day especially where Jews come to shop on Saturdays.”

This is true, but bi-nationalism or cultural autonomy demands more than that. It may demand, first, that their culturally-based days of rest be upgraded and second that they will be able to enjoy public services on the Jewish day of rest – imagine the possibility that public offices serving Arabs continue to work on Sabbath (occupied by either Moslems or Christians who execute their duties as usual). That is, they may demand that the status of their day of rest be upgraded and that Jewish day of rest will hinder them as little as possible.

The second point touches on the claim of the majority against its dissidents who do not want to abide by the strictures of the official day of rest. Who is the majority? Why cannot the desire of a sizable number of people be counted and respected? That is, if a sizable portion of the Jewish population does not bestow the significance Gavison

bestows upon them, how could she justify the imposition of restrictions on their conduct on the Sabbath? As I stated previously, Gavison advances a thick form of communitarianism, to be promoted by the state in a deeply divided society. I find this view rather hard to justify from a liberal point of view, to which Gavison seemingly subscribes.