

Nationalist Priorities and Restrictions in Immigration: The Case of Zionism and Israel

I very much liked Gans paper. It is part of his truly brilliant project of analyzing with philosophical tools many of Israel's major problems – which he does with no fear, no bias, and with so much penetrative intellect.

The paper's title is Nationalist Priorities and Restrictions in Immigration: The Case of Zionism and Israel. Gans develops here a theoretical move aimed at evaluating Israel's immigration policy. It is basically a two-part move.

First, he legitimizes possible priorities and restrictions in Immigration policy. Secondly, he makes a serious effort at demarcating the limits of this possible preferential policy. He does that by analyzing two examples/ two arrangements.

One which was proposed, and luckily blocked at the Knesset: a bill introduced by MP. Michael Kleiner. The bill proposed to provide a special payment to a citizen who wishes to immigrate to an Arab Country (on condition, of course, that the person will waive his citizenship).

The second arrangement, has already been mentioned, and will be further discussed by Yaacov and Moshe, later today. This is a statute enacted by the Knesset in 2003 – The Citizenship and Entrance to Israel (Temporary Provision), which bans the family unification in Israel of a citizen and her/his spouse, if the spouse is a resident of the occupied territories. [I will call it the family unification Law]

I will change the order of Gans' discussion, and start with his second move.

He outlines two major limits to a preferential immigration policy.

a. It cannot violate human rights; b. it cannot be derogative/ cannot be seriously offensive to citizens of the state.

Let's look at Kliner's Bill. On the one hand, it does not propose to force a person to leave Israel, it even does not provide "incentives" for leaving of the kind crystallized by the family unification law (which force a citizen to decide either to stick to her/his spouse and leave his/her country or to stick to his/her country and leave his/her spouse). Yet, Gans points at the seriousness of the offence that would have occurred had the bill became a Law.

I support Gans' position. We are not talking here of freedom of speech doctrine and the issue of offensive speech. It's an issue of an official/ state-speech. The state does not have the liberty that we possess when acting as individuals. The metaphor that may come to mind is the welcome-sign in the airport "welcoming" everyone upon entrance. Now it's written in Hebrew and English – not in Arabic. It's hard to imagine that this is accidental. But now think of the option that the state will add an addendum to the welcome greeting, saying: "Welcome everyone, except the Arabs and the Arab citizens (but we won't harm you)". No country is allowed to express such blunt disrespect towards its own citizens – and this is why indeed Kleiner's bill should not have been put on the legislative agenda of the Knesset.

However, Gans has to wrestle with the question of whether the preferential immigration policy that he permits does not broadcast a similar message of disrespect.

Part of his answer is a demand to change the Law of Return from an automatic/ binding/ giving-no-discretion kind of a right available to all Diaspora Jews, at all times, to a discretionary policy which takes into account the ramifications of Jewish immigration on all citizens of the state, including the Arabs, at the specific time of deliberation.

A second, major, limit on immigration policy and demographic considerations more generally is the prohibition on violating human rights of citizens.

Here Gans challenges Ruth Gavison's support for the family unification Law. She framed her argument in terms that go directly to the heart of the matter – the right to self-determination.

“...[The Law's] justification derives from the fact that it is part of the continued effort to preserve Israel as a state in which the Jewish people realizes its right to self-determination in view of the conditions and circumstances in this region at this time... Anyone supporting the idea of a stable solution of two states for the two peoples cannot also demand that the Palestinians' right to family unification within the State of Israel be recognized. As a matter of principle, Palestinian families should be unified within the framework of their state, and Jewish families should be unified in their own state.”

Gans rightly responds with the slippery slope argument and with something more:

In the spirit of Gavison's argument, one might maintain that both Palestinians and Jews should only give birth to children in their own respective states.

[moreover] I believe that the right to family life does entail a legal right to exercise it in the same place where a person's life is already firmly established. But above all, it is a moral right, equally binding as the right people have to give birth to children and to raise them in the same place where their lives are established, to acquire their

education in the same place, to work there in order to earn a living and to continue living there. These are basic human rights. They must be imposed as constraints on the demographic regulation measures adopted by states in order to promote the right to self-determination of ethno-cultural groups.

I fully share Gans' spirit, but one has to ask "why?"; What are the sources of the certainty with which we make Gans' assertion. Isn't it an occurrence of a conflict between one right (to family life) and another (the right to culture) which we usually solve with no all-or-nothing/trump card attitude? Is it because of the seriousness of the slippery slope possibility here? Is it because by giving birth we never directly impinge upon others' right to culture (as opposed to a typical clash of rights such as in the case of freedom of speech and defamation)?

But there's another question Gans has to answer and indeed tries to answer, and this is whether preferential immigration policy does not violate human rights of the Arab citizens. Does this policy concern only the interests or rights of the people knocking on our entrance door?

The ability to answer this question is contingent upon the justifications which we can offer for the preferential immigration policy.

In the first part of the paper Gans provides three such justifications. His position here is both complex and deep, however there are a few points which should be made clearer in my view. All three justifications for priorities in immigration are also justifications for the right of self-determination, which is indeed pivotal to our discussion.

The first justification for granting priorities in immigration to members of a national group desiring to immigrate to their homeland is the "right to one's own culture". The interest members of national groups have in adhering to their culture, flourishing within the framework of this culture and maintaining it for generations.

Another justification for self-determination as well as for having a priority in immigration is the interest that members of groups with a history of persecution have in the existence and prosperity of their culture for security reasons and as a source of self-respect.

The third justification which Gans develops does not derive from the direct interests that individual members of a national group may have in integrating themselves in the place where their group enjoys self-determination. Rather, it derives from the fact that such priorities serve to promote the continued existence of the group in a manner which allows all members of the

group, and not only the individual immigrants themselves, to maintain the framework of their culture and its self-rule. Thus, if the size of the group is liable to decrease to numbers insufficient to ensure its members' ability to flourish in the framework of their culture, then allowing Diaspora members to move to where the national group has realized its self-determination and to become citizens of this state could be a legitimate supporting action.

Now here a question presents itself. What are the conditions that are vital for preserving the culture? Do they legitimize an effort to preserve the "current demographic balance"? Or just the omni-presence, the numerical majority? And why are numbers vital to the issue of cultural survival, in the first place? Indeed, it seems that Gans' position is that the right to self-determination is not contingent upon being a majority or on controlling a state. Self-determination according to Gans can be realized in a sub-state structure, such as in the structure of a bi-national state.

However, this is not a general answer, which is true to all situations. Gans position is more complex than that. It claims that the sub-state form of self-determination needs certain conditions in order to become morally preferable, and that these conditions have not yet been realized in Israel/Palestine. Not in the 1930s-1940s when the control of a state that might be a (relative) safe-haven was so needed and so missing, and not 60 years later, when the Israeli-Palestinian conflict makes a viable bi-national option too fragile an option, and maybe even a dangerous fantasy.

Where does this bring us? I would assume that Gans conclusion should be that at present Israel may aspire to guard the Jewish majority, as opposed to the "current demographic ratios". [what are the legitimate means to this end is another matter that was partly discussed earlier].

Here comes the second point which needs a sharper articulation.

If the right to culture is so important, and it certainly avails itself to the indigenous national minority of Israel, why shouldn't we recognize this minority's need, maybe its right, to be a beneficiary of the immigration policy? His culture is eroded by the overwhelming power of Hebrew in the public sphere, the work-place, the higher education, etc., In other words, if so much emphasis is put on the cultural argument, why should the immigration policy totally exclude, of all society, this vulnerable minority?

Gans provides a kind of an answer, but one has "to work" to understand what it is.

Again the key is the right to self-determination.

Gans follows Kymlicka in saying that it is very hard for a state to be culturally neutral. The language issue is the obvious example. A country usually cannot accommodate more than one language, maximum two. Thus, tells us Gans, most times we have to look for justice on a global level only – to look for self-determination in another country where the people of the minority resides and achieves self-determination. This country would provide the cultural locus of this people, the safe-haven for its diasporas, this will be the state which will extend its preferential immigration policy to the members of this minority. In this case, tells us Gans, it will be inconsistent for the minority to object to the preferential treatment that its own country of citizenship is extending to the diasporas of the community which realizes its self-determination in this concrete state.

What is a bit missing here or maybe only un-articulated by Gans is the distinction one should make between national minorities whose people's right to self-determination is realized elsewhere, usually in the form of a kin-state (e.g., the Hungarian minorities in Slovakia or Romania; or the Albanic Minority in Macedonia), as opposed to national minorities who do not have a kin-state (the Québécois; the Basques; the indigenous peoples of the "new world", etc.,).

Minorities in this last category – one can assert – have a right to more comprehensive aspects of self-determination in their country of citizenship, including not being excluded from the preferential immigration policy (as is indeed the case with Canada/Quebec relations).

However, if this is the case, one has to move on and decide how the Arab-Palestinian minority should be classified.

Gans is aware of this. He asserts that: "There is no doubt that the principal injustice caused by Israel's Law of Return does not stem from the fact that it grants advantages in immigration on the basis of nationality. Rather, it stems from the fact that it grants the advantages to one ethno-cultural group within a state which also includes members of another ethno-cultural group whose homeland it controls, but who are denied the same advantages".

However, Gans cannot stop here, he should tell us what happens – normatively – in the so-long 'interim period' (which no one can tell when it will end) of 40, maybe 60, maybe more years, of Palestinian statelessness. When are the Arab citizens entitled to be considered a national minority which needs the special protection of preferential immigration to work for it as well – because it never had a kin state?

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The question is articulated as a rhetorical question. It is not. I even tend to think that second order considerations provide a negative answer to the suggestion to open the gates to

Palestinian immigration to Israel – outside the framework of family life unification discussed above. Why is it so?

The bitter fact of the Israeli-Palestinian reality is that ideas like the bi-national state, or the Palestinian "right of return", or even a claim for a serious change in the immigration policy of Israel which I myself alluded to just now, are all used in the Israeli political arena as "proofs" for the "stage-by-stage" strategy of the Arabs against the very existence of Israel, and simultaneously they are the banners of the "all or nothing" on the Palestinian side. They are used, mutually, as convenient excuses for staying in the stalemate situation/ doing nothing seriously to get out of the dead-end in which we are locked for so long – they fuel the self-righteous vicious circle of our life.

So should people who support these ideas or part of them refrain from raising them? I tend to say "yes". Our moral duty is to aim at the solution which promises the best combination of fairness with the minimum suffering of human beings in the pursuit of justice. On this premise, my view is that the idea of opening the entrance gates of Israel to Palestinian immigration is inadvisable.