

Justice, Justice: Threats to Democracy in Arkansas and Israel

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Rabbi Barry H. Block

Ronald Lauder is the President of the World Jewish Congress. A noted conservative, Lauder served as U.S. Ambassador to Austria under President Reagan and ran for office as a Republican. He is described as having “helped make Benjamin Netanyahu Prime Minister.”ⁱ

With that background, I introduce Lauder’s column in this Monday’s New York *Times*, which begins:

“For many Israelis, Jews and supporters of Israel, the last year has been a challenging one. In the summer of 2017, Israel’s government withdrew from an agreement that would have created an egalitarian prayer area at the Western Wall and proposed a strict conversion law that impinges on the rights of non-Orthodox Jews. This summer the Knesset passed a law that denies equal rights to same-sex couples. A day later came the nation-state law, which correctly reaffirms that Israel is a Jewish state, but also damages the sense of equality and belonging of Israel’s Druze, Christian and Muslim citizens.

“Last month, a Conservative rabbi was detained for the alleged crime of performing a non-Orthodox wedding ceremony in Israel. In several municipalities, attempts were made to disrupt secular life by closing convenience stores on the Sabbath.

“These events are creating the impression that the democratic and egalitarian dimensions of the Jewish democratic state are being tested. Israel is a miracle. The Jews of the diaspora look up to Israel, admire its astonishing achievements and view it as their second home. However, today some wonder if the nation they cherish is losing its way.”ⁱⁱ

Israeli democracy is established with these words in its Declaration of Independence: “The Jewish State ... will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice, and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture...”ⁱⁱⁱ

Israel's founders cite the prophets as their inspiration for establishing a democracy. We may well ask, though: Does the Torah really require that a nation offer equal rights to all of its inhabitants?

We just heard one of Torah's best-known injunctions, "Justice, Justice shall you pursue."^{iv} To our American ears, the commandment seems to require fairness at the courthouse. That's true, but if we look at the context, we find that Deuteronomy is addressing the administration of government more generally. After all, the portion begins, "You shall appoint magistrates and officials ... and they shall govern the people with due justice."^v "Justice," then, does not begin at the courthouse door. It's the standard for how a government ought to operate.

So why is the word "justice" repeated? We moderns are quick to respond that the redundancy is for emphasis, and we're not wrong. However, for our sages, that answer is insufficient. Whenever a word is repeated in Torah, the rabbis identify a separate meaning for each utterance. Ibn Ezra, a medieval commentator, writes, "The word appears twice: because one must pursue justice, whether it be to one's gain, or to one's loss."^{vi}

If we apply Ibn Ezra's commentary to government officials as intended in Deuteronomy, Judaism commands that leaders not only protect their own prerogatives and the rights of their supporters, but also the welfare of minorities who disagree with them. Presidents and Prime Ministers must "pursue justice," not only for their own causes, but for those of every inhabitant of the land.

Democracy does suggest governance by the majority of a nation's citizenry. Just as important, democracy depends upon individual rights. Our American founders would not ratify the Constitution until it included checks and balances; they would not seal the deal until they had agreed to a Bill of Rights as a bulwark against the tyranny of the majority. Israel does not have a Constitution, but its Declaration of Independence sets forth its founding principles as a Jewish, democratic state.

Ronald Lauder is correct.

Israel's nation-state law threatens democracy, because it upholds only the supremacy of Israel's majority, neglecting the rights of Israel's substantial Palestinian, Druze, Bedouin and other minorities.

Arresting a Conservative rabbi for conducting weddings not recognized by the state threatens democracy, for it slavishly serves the undemocratic power of

Israel's ultra-Orthodox rabbinical establishment and seeks to repress a majority composed of secular, Reform, Conservative, and egalitarian Orthodox Jews.

The discriminatory surrogacy law threatens democracy, because it pursues reproductive justice for the majority who are opposite-sex or even lesbian couples or single women, but denies that same justice to gay couples and single men.

Even as democracy is under assault in Israel, it is endangered in a different way much closer to home, right here in Arkansas. This November, a dangerous constitutional amendment, Issue 1, will appear on our ballots. Issue 1 would limit attorneys' compensation when they are representing clients who can only pay them on contingency – that is, by granting a portion of any settlement or judgment to the lawyer – effectively making the courthouse inaccessible to the poor. At the same time, the proposal would weaken constitutional separation of powers, granting the Legislature the power to set judicial rules.

Our own Justice Annabelle Imber Tuck has called Issue 1 “A solution looking for a problem.”^{vii} As Annabelle points out, “A recent survey by the U.S. Chamber of Commerce ranks Arkansas above Texas in terms of how fair and reasonable our state's courts are perceived by business. And, Texas has had caps on damages in medical malpractice cases for over 10 years.”^{viii} As a Texan at that time, who saw an awful lot of “Save Your Doctor” signs on Jaguars and the lawns multi-million-dollar homes, I can tell you that tort reform is not seeking equal justice for rich and poor alike.

The people and groups supporting Issue 1 are not pursuing justice when it is in their favor and when it is not, as Ibn Ezra reads our Torah's injunction. Instead, as Annabelle writes, “The amendment is backed by special interests who will have the support of millions of dollars in out-of-state ‘dark money.’ They will flood our televisions, our phones, and the internet with a poll-tested message that the proposed amendment will be beneficial for jobs and for doctors to practice medicine.”^{ix} We must disregard that campaign – and, perhaps equally, an opposition campaign funded by trial lawyers – as attempted bribery that seeks to “blind the eyes of the discerning and upset the plea of the just,” in the words of our Torah portion.^x

Democracy can only thrive when citizens safeguard it. Whether in Israel or in Arkansas, those who permit the tyranny of the majority to override the rights of the poor or minorities, however unpopular, are complicit in democracy's

demise. Let our voices ring out for justice, not just once but twice, not only here but across the ocean, whether justice costs us or brings a windfall. Then, we may all be worthy heirs of a tradition – an injunction of Torah, Israel’s founding declaration, and our American heritage – a tradition that demands: “Justice, justice shall you pursue.”^{xi}

Amen.

ⁱ Ben Sales, “Ronald Lauder Helped Make Benjamin Netanyahu Prime Minister, Now Opposes him,” *JTA*, August 14, 2018.

ⁱⁱ Ronald S. Lauder, “Israel, This Is Not Who We Are,” *The New York Times*, August 13, 2018.

ⁱⁱⁱ “The Declaration of the Establishment of the State of Israel,” 5 Iyar 5708 (May 14, 1948).

^{iv} Deuteronomy 16:20.

^v Deuteronomy 16:18.

^{vi} Ibn Ezra on Deuteronomy 16:20:1, as translated in *Sefaria*.

^{vii} Annabelle Imber Tuck, “Issue 1: A solution looking for a problem,” *Talk Business and Politics*, August 13, 2018.

^{viii} *Ibid.*

^{ix} *Ibid.*

^x Deuteronomy 16:19.

^{xi} Deuteronomy 16:20.