



Menachem Begin on Democracy and Constitutional Values

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Introduction

“Nationalist” and “liberal”— a contradiction in terms?

Does a deep commitment to democracy and liberalism conflict with nationalism and a commitment to the security of the state? Must a nationalistic and security-oriented political viewpoint come at the expense of a commitment to civil liberty and the principles of liberal democracy?

In this article, we seek to counter two misconceptions prevalent in Israel today. The first conception sees a contradiction between a nationalistic worldview and a liberal-democratic worldview. According to this view, the more nationalistic people are, the less committed they are to democracy; conversely, the more committed people are to the principles of democracy and liberalism, the less they uphold nationalistic values.

The second conception, which derives from the first, sees a contradiction between concern for national security and support for human rights. According to this view, the more people see themselves as "security hawks," the more willing they are to forgo human rights when those rights conflict with security needs, and vice versa.

In order to disprove these claims, we have chosen to highlight the philosophy and actions of the late Prime Minister Menachem Begin, citing his speeches and writings directly. No one can dispute Begin's nationalistic worldview, nor can anyone question his commitment to Israel's security. Nonetheless, in this article, we will attempt to establish that Menachem Begin was a democrat and liberal *par excellence*, one who consistently upheld human rights even when he felt that they conflicted with national security.

Menachem Begin may serve as a model for us today, as we reflect on the legislative initiatives currently on the Knesset's agenda, including a number of bills that sacrifice civil liberties in the name of nationalism and security.

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Is There a Contradiction between a Liberal-Democratic Worldview and a Nationalist Worldview?

Which comes first—the state or the individual?

Menachem Begin had a liberal-democratic worldview. For him, democracy was both deep and rich. It was deep because he believed people are born with intrinsic rights, rather than given rights by the state. In his view, individuals come before the state, rather than the other way around:

We do not accept the semi-official view expressed during the Third Knesset's term, wherein the state grants rights and is entitled to rescind them. **We believe that there are human rights that precede the human form of life called a state.**

— Menachem Begin, in an address entitled "Fundamental Problems in Our Existence as a Nation," marking the inauguration of the Fourth Cabinet, December 16, 1959.

Begin's view of democracy was also rich, meaning that it extended well beyond the basic principle of majority rule. For instance, he considered a vital opposition to be essential to sound democratic procedure:

Democracy = majority rule?

We are convinced—as we have witnessed throughout the world—that without an opposition, there can be no democracy; without it, the essence of human liberty is in danger.

— M. Begin, "Fundamental Problems."

Begin took pains to protect the supervisory role of the Knesset in addition to its legislative function. For this reason, he criticized the proposed definition of the Knesset as "the legislature of the State of Israel" (a definition that was

subsequently accepted). The alternative that he suggested sought to define the Knesset as “the bearer of national sovereignty, which gives the state [its] laws and supervises the government and its activity” (Knesset address, July 9, 1956).

Begin well understood the pitfalls of majority rule, which can be tyrannical, repressive, and discriminating toward minorities (especially permanent minorities). This led him to formulate the principle of the rule of the people, which is constrained by the power of self-limitation:

We have learned that an elected parliamentary majority can be an instrument in the hands of a group of rulers and act as *camouflage* for their tyranny. Therefore, the nation must, if it chooses freedom, determine its rights also with regard to the House of Representatives in order that the majority thereof, that serves the regime more than it oversees it, should not negate these rights.

— *M. Begin (1952). Basic Outlines of Our Life-Worldview and Our National Outlook. Tel Aviv: B'Saar – Betar Executive in Israel [Hebrew]; English translation by Yonatan Silverman, Ilana Brown, and Yisrael Medad, (Jerusalem: Menachem Begin Heritage Center, 2007), p. 27.*

Begin was well aware of the gap between the rhetoric calling for separation of power and reality. The principle of separation of powers conceals the decisive power of the executive branch, which controls the legislative branch and the government by means of its majority in parliament. Thus, in reality, there are no true checks and balances in relations between the cabinet and the Knesset, and the Knesset effectively serves as an instrument for implementing government policy:

Formally speaking, while the government is dependent on the House of Representatives, a majority of its members can force it to be replaced by another government. But, *in fact*, the relation of dependence is reversed.

The government that, by the nature of things, represents the political management of “its majority” inside the House of Representatives also uses that majority in order to impose its will on the House of Representatives. The government proposes laws and its “majority” passes them in the House of Representatives. If the opposition proposes laws its “majority” again takes pains to reject the proposals that are not appealing to the executive authority. . . . In other words, in a parliamentary regime the government, the executive authority, fulfills in great measure, and sometimes in a decisive measure, the function of a legislature.

— *M. Begin (1952). Basic Outlines of Our Life-Worldview and Our National Outlook, pp. 24–25.*

The above beliefs led Begin to the conclusion that a constitution is necessary to guarantee human rights. His fervent appeal to enact a constitution is as relevant today as when it was first issued, and perhaps even more so:

The day will come when a government elected by our people will fulfill the first promise made to the people on the establishment of the state, namely: To elect a founding assembly whose chief function—in any country on earth—is to provide the people with a constitution and issue legislative guarantees of civil liberties and national liberty... For the nation will then be free—above all, free of fear, free of hunger, free of the fear of starvation. That day will come. I can sense that it is coming soon.

— *M. Begin, Knesset address, July 9, 1956.*

Does supremacy of the law constitute “judicial tyrrany”?

Begin also understood that it is necessary to have a judicial authority that will protect human rights from majority rule and issue “legislative guarantees of civil liberties for the individual and the entire nation.” This informed his support for the “supremacy of law”:

The supremacy of the law will thereby be expressed in that a panel of independent judges will be granted . . . the power to decide, in the case of a complaint, whether the *laws* that are made by the house of representatives (that are made, as we have seen, through the pronounced or decisive influence of the government) abide by the *fundamental* law or contradict the rights of the citizen that are stated in the law. . . .

Why the supremacy of law we may be asked. In the name of “democracy,” of course. Is this the democratic way whereby five or seven or eleven people, who have not been elected by the nation, can abolish by their decision, which is called a “legal ruling,” a decision that was made in the form of law by the nation’s elected? This is a misleading question. The democracy that is represented by the person who asks this question is but a distortion of the concept of government by the people. It is possible to ask an opposing question: will this democracy of one person, or eleven or fifteen people called “ministers,” deprive the nation of its elementary rights and motivate “their majority” in the house of representatives to accept “a law” whereby every soldier and policeman, is allowed to arrest and jail any person that will be suspicious in his eyes, or to enter the house of a civilian and conduct a search in it or to open the citizen’s mail including his intimate family letters? Is this not counterfeit democracy whose real content is tyranny? Are such laws as these and others like them in substance, through the imposing of fear on the civilian public, not liable thereby to cause that the nation will no longer be qualified when the election day comes to freely choose between the heads of the government and those opposed to them?

Since we have closely observed the ways a government machine can operate, also that of non-totalitarian regimes and even a multi-party one, we have certainly learned to distinguish between the form and the content. We have learned that an elected parliamentary majority can be an instrument in the hands of a group of rulers and act as *camouflage* for their tyranny. Therefore, the nation must, if it chooses freedom, determine its rights also with regard to the House of Representatives in order that the majority thereof, that serves the regime more than it oversees it, should not negate these rights. **It is possible to achieve this only through “the supremacy of law,” which is to say fixing the civil freedoms as “the fundamental law” or “supreme law” and permitting the panel of judges to cancel the validity of law if, in opposition to the fundamental law, it contradicts civil freedoms.**

— *M. Begin (1952). Basic Outlines of Our Life-Worldview and Our National Outlook, pp. 26-28.*

Begin’s conception of the supremacy of law leads directly to his position on the autonomy of the judicial branch, regarding both the appointment of judges and judicial discretion. If the judicial branch is to carry out its duties optimally and protect the individual’s liberties from the ruling authorities, during the process of judicial appointment, judges must be entirely detached from political considerations or political commitment:

The nation should recognize and the law of the country should stipulate that the law and the judiciary must be completely autonomous. This obligatory independence is mutual, both on the part of the government toward the judge and on the part of the judge toward the government.

— *M. Begin (1952). Basic Outlines of Our Life-Worldview and Our National Outlook, p. 28.*

Equality in a Jewish state?

Begin's nationalistic outlook and his absolute commitment to the State of Israel as the nation-state of the Jewish People did not prevent him, as a true democrat, from adhering unequivocally to the principle of equality. His attitude toward equality, especially in the context of the Arab minority, is evident from a Knesset address in which he proposed to put an end to military rule over the Arabs of Israel:

Some say that it is impossible for us to provide full equal rights to Arab citizens of the state because they do not fulfill full equal obligations. But this is a strange claim. True, we decided not to obligate Arab residents, as distinguished from the Druze, to perform military service. But we decided this of our own free will and I believe that the moral reason for it is valid. Should war break out, we would not want one Arab citizen to face the harsh human test that our own people had experienced for generations. . . . **We believe that in the Jewish State, there must be and will be equal rights for all its citizens, irrespective of religion, nation, or origin.**

— *M. Begin, in a Knesset address explaining the reasons for proposing repeal of the Emergency Regulations, February 20, 1962.*

Begin knew that without powerful, virtually absolute protection of freedom of expression, there can be no true democracy. Allowing people to voice criticism and express their views, no matter how unpopular or unpleasant those views may be, is what differentiates a democracy from a totalitarian regime. This is why Begin proposed that freedom of expression be protected at a constitutional, meta-legislative level, in the spirit of the First Amendment to the US Constitution:

We would propose that the Knesset enact a law of its own free will, limiting its authority and stipulating that it will not tolerate any legislation that limits oral or written freedom of expression or association or other basic civil and human

rights to be enumerated before the Constitution, Law, and Justice Committee.

— *M. Begin, in a Knesset address, July 9, 1956.*

Begin set an outstanding personal example regarding freedom of demonstration, as revealed in an interview with retired Justice Yitzhak Zamir, who served as attorney general during Begin's term as prime minister. In a taped interview prepared by the Menachem Begin Heritage Center, Justice Zamir recounted that during the First Lebanon War people demonstrated 24 hours a day just a few meters away from Begin's home, and their protests included a daily update of the number of IDF soldiers killed in Lebanon. According to Zamir, although the demonstration troubled Begin and affected him very badly, Begin refused to have the demonstrators banished from his doorstep, despite security officials' recommendations to the contrary.

What about the rule of law?

Begin's deep commitment to democracy was also expressed in his belief that there is no democracy without the rule of law. In this matter as well, Justice Zamir attested that Begin served as an outstanding role model, who practiced what he preached. This was reflected, for example, in Begin's respect for the independence of the Prosecutor-General's Office and for the need to comply with judicial rulings, as evidenced by his saying "there are judges in Jerusalem." A memorable example is the case of a High Court ruling declaring the Elon Moreh settlement to be illegal. Justice Zamir recalled that at the tempestuous cabinet session that followed the ruling, several ministers demanded that the Court's decision be ignored. Begin, however, silenced them, declaring that "the courts in Israel have made their decision and the government is obligated to honor and carry out whatever they decided."

In another case, known as the Kawasme Affair, after the High Court of Justice determined that expulsion of several

West Bank mayors to Lebanon was illegal, Begin gave the ruling his full backing and demanded that military commanders be instructed to adhere to the law in letter and spirit. This was also his stance regarding the principle of equality before the law and concerning implementation of the recommendations of the commission of inquiry that examined the events that took place at the Sabra and Shatila refugee camps in Lebanon in 1982.

In both word and deed, Menachem Begin proved that even one who espouses overtly nationalistic views can be intensely committed to the deepest values of democracy, to constraints on majority rule, and to judicial supervision of the legislative and executive branches of government.

Is There a Contradiction between Concern for National Security and Commitment to Human Rights?

Menachem Begin was resolute regarding Israel's security and consistently accorded it top priority. One of his foremost values was to protect the territorial integrity of the land and the lives of its inhabitants. Nevertheless, contrary the common conception, he proved repeatedly, in his speeches and actions, that there is no contradiction between commitment to security and scrupulous protection of human rights, as befits a substantive liberal democracy.

How should the General Security Services interrogate suspects?

The clearest and perhaps most significant example of this is that Menachem Begin seems to have been the only Israeli prime minister in history who instructed investigators of the General Security Services (GSS) to refrain from using torture or physical force of any kind in their interrogations. Begin, who had undergone severe interrogations in Soviet prisons himself, instructed the investigators to rely solely on their intellectual abilities. In 1962, Begin himself demanded that

a law be enacted to regulate the GSS's activities, to delineate its authority, functions, and the government officials who would oversee it, and even to stipulate the rights of its agents. The State of Israel had to wait some 40 years until a law similar to the one that Begin proposed was enacted in 2002.

Can preservation of human rights coexist with national security?

Insistent on preserving basic human rights and not easily persuaded to bend laws for security reasons, Begin sharply criticized the Emergency Defense Regulations of 1945 and the administrative detention provisions in particular—measures inherited from the British that were perceived by the pre-State Jewish community as draconian and befitting totalitarian regimes.

The existence of such regulations raises questions regarding the fundamental rights of every Israeli citizen. Borrowed freedom is not freedom. It has been said that perhaps the British did us a favor by bequeathing the 1945 Regulations to us when they left the country. That is a very strange claim. . . . If it is inappropriate for the State of Israel to enact such laws, why would it be appropriate to retain them?

— *M. Begin, in a Knesset address explaining the reasons for proposing repeal of the Emergency Regulations, February 20, 1962.*

Begin noted the flaw inherent in the term “emergency regulations,” which implied that the continued use of the measures in question was contingent on a continued state of emergency. Predicting the future, he warned of a situation in which the term “emergency” would be used to describe routine times and would justify the continued use of extreme measures over an extended period of time—a situation which prevails today:

If we accept the Committee members' definition of "emergency," then in all honesty, we would have to admit that it applies in the State of Israel . . . forever. . . . This is the outcome of what you have said. You are saying that we must reconcile ourselves—with all that "emergency" ostensibly implies—to the long-term presence of tyrannical, fascistic laws.

— *M. Begin, in a Knesset Constitution, Law, and Justice Committee discussion, June 11, 1951.*

Begin decried the cynical claim that the Emergency Regulations originally enacted by the British had become acceptable when practiced by the Jewish State. Based on the same reasoning, he strongly opposed administrative detention:

Does a bad law become a good one just because Jews apply it? I say that this law is bad from its very foundation and does not become good because it is practiced by Jews. . . . We oppose administrative detention in principle. There is no place for such detention.

— *M. Begin, in a Knesset Constitution, Law, and Justice Committee discussion, June 11, 1951.*

Minister Dan Meridor recalls a story he heard from Begin that attests to Begin's opposition to administrative detention: Begin told Meridor that Isser Harel, then GSS Chief while Ben Gurion was prime minister, had informed him of his intention to place writer and activist Uri Avnery under administrative detention because material he published could seriously damage Israel's security. Begin's response was that he would vehemently oppose this measure in every possible forum. In the end, Avnery was not arrested.

Conclusion

What conclusions may we draw from Menachem Begin's worldview, as reflected in the quotations cited above and in the character, philosophy, and activity they illustrate? We are not citing Begin in order to criticize the legislative policies of the current Knesset, some of which can be interpreted as sacrificing human rights on behalf of nationalist and security concerns; conclusions regarding specific bills should be drawn by the readers themselves. Our main point is that **vociferous opposition to legislation that may undermine the democratic rights of others need not entail the abandonment of hawkish or nationalist principles. Similarly, a strong commitment to minority rights and the affirmation of a broad conception of democracy do not preclude support for national security.**

It is populist and demagogic to describe illiberal legislation as "patriotic," "nationalistic" or "protective of state security." Liberal politicians in all parties—even those who express overtly "nationalistic" views—should oppose anti-liberal legislation without fearing that they will be labeled "unpatriotic" or "leftist." Some politicians affiliated with the national camp, such as Speaker of the Knesset Reuven Rivlin and a number of cabinet ministers from the Likud party, are to be commended for already having done so.

May our Knesset members take Menachem Begin's Jewish and democratic philosophy to heart as the guiding light of their parliamentary work.

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