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ISRAEL'S NATION-STATE LAW

INSTITUTIONALIZING DISCRIMINATION

HASSAN JABAREEN & SUHAD BISHARA
NADIA BEN-YOUSSEF & SANDRA SAMAAN TAMARI

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COVER PHOTO
Palestinian citizens of Israel protest the Nation State Law in Tel Aviv on August 11, 2018.
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INTRODUCTION

ON 19 JULY 2018, the Israeli Knesset passed the "Basic Law: Israel – The Nation-State of the Jewish People," the most recent in a series of such laws that effectively make up the constitution of the State of Israel. After seven years of discussion in which numerous versions of the text were considered, the law passed by sixty-two votes in favor, fifty-five against, and two abstentions. The Jewish Nation-State Law, as it is widely known, is viewed as an absolute triumph by the ultranationalist right-wing Israeli establishment. It is regarded with deep consternation by others, including self-avowed Zionists, both inside and outside Israel.

Consecrating the nature of Israel as a Jewish state in constitutional terms, the law confers the right of self-determination exclusively on Israeli Jews and all Jewish immigrants to Israel. In doing so, it turns Israel's Palestinian citizens, who account for over 20 percent of the population, into de jure second-class citizens. Overriding the principles of equality and nondiscrimination that are at the core of democratic constitutional regimes, the law also proclaims settlement of Jews a "national value," further blurring the distinction between the State of Israel, within its 1949 boundaries, and other areas of Palestine that have been under de facto Israeli control for more than half a century.

In this latest publication in the *Current Issues in Depth* series, the Institute for Palestine Studies presents two analytical commentaries on this law by legal scholars and practitioners based in Israel and the United States. The first is by Hassan Jabareen and Suhad Bishara, lawyers working with Adalah, the Legal Center for Arab Minority Rights in Israel, which is headquartered in Haifa. Jabareen is the cofounder and director of Adalah and, arguably, Israel's foremost Palestinian constitutional attorney; Bishara, the head of Adalah's land and planning unit, has litigated numerous constitutional cases before the Israeli Supreme Court on the land rights of both Palestinian citizens of Israel and Palestinians living under occupation. The second essay is by Nadia Ben-Youssef and Sandra Tamari, co-founders of the US-based Adalah Justice Project, affiliated with Adalah in Haifa. Tamari is director of the Justice Project, and Ben-Youssef, a former Adalah lawyer, is the current advocacy director for the Center for Constitutional Rights in New York.

In their essay entitled "The Jewish Nation-State Law: Antecedents and Constitutional Implications," Jabareen and Bishara lay out the far-reaching constitutional implications of the Jewish Nation-State Law. They dispute the facile notion that the Basic Law changes nothing and that it simply confirms decades-long discriminatory practice. Instead, they underline the dangers of constitutionally enshrining policies that amount to apartheid: separate rights and privileges for one section of the population. They also caution against the elimination of a constitutional distinction between areas inside the 1949 Green Line—that delimited Israel's de facto borders and the Palestinian territories occupied in 1967, which results from the law's application "without distinction to all areas under Israeli control that encompass Jewish residents." In other words, this law constitutes

a legal prelude to full annexation of the occupied territories.

In the second essay, entitled "Enshrining Discrimination: Israel's Nation-State Law," Ben-Youssef and Tamari reflect on the passage of this law within a broader history of settler colonialism. The essay highlights three of the law's central premises: the entrenched supremacy of Jewish settlers; the erasure of indigenous Palestinians; and, with reference to borders, the effective annexation of those parts of historic Palestine that were occupied in 1967. Both essays, moreover, emphasize that the Jewish Nation-State Law's elimination of the distinction between Israel and the occupied territories effectively affirms that the only people with the right to self-determination in the entirety of Palestine are the Jewish people, extinguishing that right for the Palestinian people.

The text of the Jewish Nation-State Law can be found here: https://www.adalah.org/uploads/uploads/Basic_Law_Israel_as_the_Nation_State_of_the_Jewish_People_ENG_TRANSLATION_25072018.pdf.

Readers may be interested in the introduction to the petition for an *order nisi*, which Adalah presented to the Israeli Supreme Court sitting as the High Court of Justice on 7 August 2018 (HCJ 5866/18, *The High Follow-up Committee for Arab Citizens in Israel, et al. v. The Knesset* [case pending]). Alongside Adalah, the petitioners are the High Follow-up Committee for Arab Citizens in Israel, the National Committee of Arab Mayors, and the Joint List in the Knesset, which together constitute the core of Palestinian political leadership inside Israel. The petition argues that by enacting this legislation, the Knesset, "as a constituent authority, exceeded its powers in the most extreme manner" and requests the court to "order the annulment of the Basic Law." The link to the full text of the petition in English and Hebrew can be found here: https://www.adalah.org/en/content/view/9569.

THE JEWISH NATION-STATE LAW: ANTECEDENTS AND CONSTITUTIONAL IMPLICATIONS

Hassan Jabareen & Suhad Bishara

THIS ANALYSIS EXPLORES the origins and constitutional implications of Basic Law: Israel – The Nation State of the Jewish People (hereafter the Jewish Nation-State Law), enacted by the Israeli Knesset in July 2018. It examines the antecedents of the legislation in Israeli jurisprudence and argues that most of the law's provisions are the product of precedents established by Israel's Supreme Court, specifically the court's rulings delivered post-Oslo. The authors contend that the "two states for two peoples" vision of so-called liberal Zionists paved the way for Israel's right-wing politicians to introduce this law. Their analysis holds that the law is radical in nature: far from being a mere continuation of the status quo, it confers unprecedented constitutional status on ordinary policies and destabilizes the prevailing legal distinction between the area within the Green Line and the 1967 occupied territories.

"The Jewish Nation-State Law: Antecedents and Constitutional Implications", originally written in Arabic, was translated for IPS by Katie Hesketh.

THE JEWISH NATION-STATE LAW:
ANTECEDENTS AND CONSTITUTIONAL IMPLICATIONS

From Security Paradigm to Jewish Nation-State

UNTIL NOW, the State of Israel has not needed legislation to proclaim its Jewish ethnic character or to institutionalize Jewish-Zionist supremacy. With the exception of the Law of Return and the Absentees' Property Law, both enacted in 1950, the language of Israel's laws has remained largely neutral—a fact that can be attributed primarily to the promulgation of international human rights instruments in the aftermath of World War II, first and foremost among them the 1948 Universal Declaration of Human Rights. Out of that war arose the absolute condemnation of ethno-national states, a number of which, Germany being the starkest example, had carried out mass expulsions and perpetrated crimes against minorities. It is in that context that the State of Israel has always emphasized its democratic identity in the international arena, while playing down its ethnic identity. Accordingly, in the post-war period, it promoted the Law of Return and the Absentees' Property Law as legislation in full conformity with international human rights conventions. The stated purpose of the Law of Return was to resolve the Jewish refugee crisis created by the Holocaust, while the Absentees' Property Law ostensibly sought to safeguard the property of Palestinian refugees until such time as the refugee problem was solved. However, the enactment of both laws was clearly motivated by something else entirely. Together, they comprise the foundation of the Jewish ethno-national state that is based on the assimilation of all Jews, regardless of their nationality. The two laws are the source of discrimination in citizenship, the denial of the Palestinian refugees' right of return, and the looting of Palestinian refugees' property.

Other legislation passed in the name of defending state security was and continues to be used to uphold and consecrate Jewish-Zionist supremacy. The British Mandate-era Emergency Regulations (1945), which were incorporated into Israeli law, formed the basis of military rule imposed on Palestinians living within the Green Line from 1948 until 1966. It was in the name of safeguarding state security and the public interest that Palestinians who remained in former Mandate Palestine and became citizens of the newly declared state were displaced and had their private land expropriated.[1] While such laws, and the policies associated with them, maintained a semblance of neutrality that masked their discriminatory nature, in practice, the concepts of "state security" and the "public interest" were exclusively used in service of Israeli Jewish society.

The legislative origin of the conceptual content of the Jewish Nation-State Law

1. The most significant law in this regard is the Land Acquisition Law (Actions and Compensation) – 1953, pursuant to which 1.2 million dunams of land were confiscated, mostly in the depopulated villages. The land belonging almost entirely to Palestinian citizens of the state—was expropriated to prevent their return to their villages.

actually goes back to the 1980s, following the rise of Kahanism. In 1985, Meir Kahane was elected to the Knesset on a racist platform in which he advocated for the expulsion of Palestinian citizens of Israel (PCIs). Mainstream Zionist political parties attempted to ban Kahane's movement from the Knesset. It was then that the Likud-led government ushered in Article 7A of Basic Law: The Knesset, an amendment that barred any political party from running in the Knesset elections if it denied that Israel was the "state of the Jewish people" or if such a party incited racism. The majority of legislators, or Members of the Knesset (MKs), understood that the insertion of the term "state of the Jewish people" was a declarative move—that is, a proclamation not meant for implementation. Statements by then-minister of justice Moshe Nissim support this understanding: "Why did we bring these bills before the Knesset?" he asked. "Because of the phenomenon of Kahanism."[2] Then-MK Mohammed Miari demurred, stating that rather than fighting racism, the amendment would actually perpetuate it. Defining Israel as the state of the Jewish people may have been intended to counter racists, he argued, but it would ultimately be directed "against Arabs."[3] MK Tawfik Toubi, for his part, proposed replacing the term "state of the Jewish people" with the words, "The State of Israel is the . . . home and homeland of all of its citizens, Jewish and Arab"—a formulation that was rejected.[4]

The fears voiced by MK Miari were to be realized. In 1988, a five-justice panel of the Israeli Supreme Court heard an appeal in the *Ben-Shalom* case, in which the court was petitioned to disqualify the Progressive List for Peace, headed by Miari, from running in that year's parliamentary elections.[5] The claim raised was that Miari's party did not recognize Israel as the state of the Jewish people since it called for a state of *all* its citizens. In the name of impartiality, the Supreme Court had, until then, assiduously avoided the subject of ethnicity and Jewish supremacy.[6] The majority of the justices completely ignored the amendment to Basic Law: The Knesset, and ruled—as if the amendment did not exist—that there was no evidence that the party had denied the physical existence of the State of Israel. However, the minority decision (written by Justices Dov Levin and Menachem Elon) elaborated that the State of Israel was the state of the Jewish people—and not a state of all its citizens—which had been founded for the purpose of realizing the right to self-determination of the Jewish people in Eretz Israel (the Land of Israel). At one stroke, the minority opinion justices transformed the Palestinians into strangers in their own homeland. It was the first time that a Supreme Court ruling articulated the

2. From the full transcripts of proceedings of the 11th Knesset (9 July 1985). All transcripts are available (in Hebrew) on the Knesset website, https://m.knesset.gov.il/Activity/plenum/Pages/Sessions.aspx.
3. Transcript of Knesset session held on 2 July 1985, translated by the authors.
4. Transcript of Knesset session held on 31 July 1985, translated by the authors.
5. (Election Appeal) EA 2/88 Ben-Shalomv. Central Elections Committee for the Twelfth Knesset PD 43(4) 221 (1989).
6. See Justice Agrinat's decision in the *Al-Ard (Land) Movement* case of 1965. The petitioners in the case demanded the fulfillment of the UN-mandated refugees' right of return and pointed out that the definition of the state as a Jewish state constituted a precedent that had previously been considered an exception to the judicial tradition. EA 1/65 Yardor v. Central Elections Committee for the Sixth Knesset PD 19(3) 365, 385 (1965).

spirit of Article 1 of the Jewish Nation-State Law that would come into being thirty years later.[7]

These developments only gathered further momentum in the 1990s. In 1992, the Likud-led government ushered through two basic laws regarded as Israel's most important legislation in the field of human rights—the Basic Law: Human Dignity and Liberty and the Basic Law: Freedom of Occupation. The former provides that the rights to dignity, freedom, property, and privacy are fundamental rights, while the latter anchors freedom of employment. Neither law established equality as a constitutional right; however, the Supreme Court has interpreted the right to dignity as encompassing the right to equality. More significantly, Article 1 of the Basic Law: Human Dignity and Liberty, which sets forth the purpose of the legislation, affirms that its aim is to "establish in a Basic Law the values of the State of Israel as a Jewish and democratic state."[8] Here, for the first time, was the appearance of this specific wording in a law. In the deliberations that surrounded the drafting of the law, secular Zionists, including large swathes of the Likud, had been satisfied with the phrase "democratic state." It was the religious and religious-Zionist factions that insisted on the inclusion of the word "Jewish" in the phrase.

On the eve of the 2003 Knesset elections, Israel's attorney-general sought to ban Azmi Bishara and his National Democratic Assembly (Balad/Tajammu') party from running, on the pretext that their call for "a state of all of its citizens" negated the definition of Israel as a Jewish state. An expanded panel of eleven Supreme Court justices heard the case, and a seven-justice majority delivered the following ruling in 2002:

> *What "basic" features constitute the minimum foundation of the State of Israel's existence as a Jewish state? These features have a dimension related to both Zionism and to heritage . . . at their core lies the right of every Jew to immigrate to the State of Israel, and a Jewish majority within it; Hebrew is the state's main official language; the basis of its national holidays and symbols reflect The national rebirth of the Jewish people, and the heritage of Israel is a central element of its Religious and cultural heritage.*[9]

It was with this case that the Supreme Court came to decide the core determinants of the definition of the Jewish state, and how what had been the minority position in the *Ben-Shalom* case in 1988 transformed into an eminently legitimate majority position squarely within the judicial consensus. The majority opinion went on to establish that the principle of "a state of all its citizens" was indeed incompatible with the essence of a Jewish state, even though that state was also a "democratic" state that guaranteed every citizen freedom of expression and the rights to vote and to stand for election. Thus the decision required a balance to be struck between the "Jewish" and "democratic" principles. The majority opinion

7. See EA 2/88 Ben-Shalom v. Central Elections Committee for the Twelfth Knesset PD 43(4) 221 (1989).
8. The full text of the law, which passed the Knesset in 1992, is available on the Knesset website, "Basic Law: Human Dignity and Liberty," https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.
9. EA 11288/02 Central Elections Committee for the Sixteenth Knesset v.MK Ahmed Tibi PD57(4) 14, 21 (2003).

stipulated that MK Bishara did in fact pose an ideological challenge to the definition of Israel as a Jewish state, but found that evidence had not been provided by the attorney general to prove that MK Bishara and his political party were working against the values of the state as a Jewish state in a systematic, intensive manner. The minority position, penned by four justices, can be summarized as follows: the concept of a state of all its citizens inherently negates the very essence of the Jewish state, and there is consequently no need for further evidence. As a result, the court's decision conferred full legitimacy on Article 7A of Basic Law: The Knesset (understood as declarative in nature at the time of its enactment in 1985, as mentioned earlier) and turned it into a legal anti-Arab tool to be deployed in advance of every election cycle, in what has become a sort of ritual humiliation of Arab candidates before the Supreme Court.

"...anyone who took the 'Jewish and democratic' nature of the state seriously had to support the 'two states for two peoples' formulation, which is predicated on denying Palestinians their right of return and in rejecting the notion of a divided Jerusalem."

While the addition of the term "Jewish" to the Basic Laws was made under pressure from religious politicians, it was the liberal Zionists, and not the religious Right, who first lent serious weight to the values of the state as "Jewish and democratic." This occurred for three main reasons: First, Supreme Court decisions confirmed that emphasizing the "Jewishness" of the state did not undermine its democracy, and thus it was possible to maintain a liberal regime that guaranteed human rights, while simultaneously preserving the Jewish nature of the state. Second, the word "democratic" had been anchored in law for the first time; no previous law had clearly declared Israel to be a democratic state. From the liberal Zionist perspective, the addition of the word "democratic" bolstered individual freedoms against any attempt by right-wing and religious parties to consolidate the religious character of the state. The third and principal reason was that from the liberal Zionist perspective, the Oslo Accords reaffirmed the concept of the two-state solution consisting of a Jewish Israel and a Palestinian Palestine (in the West Bank and Gaza Strip). Thus, the emphasis on "Jewishness" fortified the position in support of the two-state solution, contra the Right; that is, the State of Israel could preserve its Jewishness *only* within the framework of two separate states and, in this view, it was the annexation project embraced by the Right that undermined the Zionist character of the state. In other words, anyone who took the "Jewish and democratic" nature of the state seriously had to support the "two states for two peoples" formulation, which is predicated on denying Palestinians their right of return and in rejecting the notion of a divided Jerusalem.

The Israeli Right did not stand idly by observing these developments. In the 2000s, right-wing MKs initiated legislation mandating loyalty to the values of the

state as "Jewish and democratic," with the aim of diminishing the status of the PCIs. For example, they enacted the Nakba Law,[10] which makes any organization or entity that receives state funding liable to financial penalties if it commemorates Israel's "Independence Day" as a day of mourning for Palestinians, or if it denies the values of the state as Jewish and democratic. A further example is the law banning the reunification of Palestinian families in Israel,[11] which aims to preserve a Jewish demographic majority in the state. The Jewish Nation-State Law is the latest in a series of such laws.

Thus, we argue, it was the liberal Zionists who paved the way for the Jewish Nation-State Law. Most of the law's provisions are compatible not only with the Supreme Court's interpretation of the Jewish nature of the state, but also with liberal-Zionist legal rhetoric. Today, the Right claims that objections to the law by liberal Zionists are disingenuous. The liberal Zionists retort that the legislation is redundant because the state is Jewish in origin and therefore the law contributes nothing new, but only serves to alienate PCIs. The Right's response rests on a fundamental principle cherished by liberal Zionists: the rule of law. A written law is preferable to ambiguity, they contend, and the clarity and immutability of a basic law is preferable to inconsistent rulings by the courts.

The Constitutional Implications of Embedding Jewish Supremacy in a Basic Law

The contention that the Jewish Nation-State Law does not usher in change but merely entrenches existing practice, including Supreme Court case law and ordinary legislation, is disingenuous. There is an enormous difference between an illegitimate practice that constitutes an ordinary policy and the grounding of such a practice in a constitutional principle. The constitutionalization process proves critical in almost all areas of life, from education and the conduct of the bureaucracy, to the use of institutional violence, the notion of loyalty, and judicial interpretations of laws, as well as the outer limits of the principle of equality. As mentioned above, Article 7A of Basic Law: The Knesset, regarding the Jewish nature of the state, was understood at the time of its enactment in 1985 to be purely declarative in nature. However, because the practice prior to its legalization already reflected the fact that Israel is conceived of by the majority as the exclusive state of the Jewish people, once the practice was constitutionalized, not surprisingly, it became a tool repeatedly wielded against PCIs in the run-up to each round of parliamentary elections. Article 7A was also the provision that laid the logical groundwork for Article 1 of the Jewish Nation-State Law.

Another instance of entrenching a practice into law is the downgrading of

10. Officially, the Budget Principles Law (Amendment No. 40), which stipulates a reduction of financial allocations or support due to activity against the principles of the state. The full text of the amendment is available in Hebrew and English on the Adalah website: "'Nakba Law' – Amendment No. 40 to the Budgets Foundations Law," Adalah, 2011, https://www.adalah.org/en/law/view/496.

11. "The Citizenship and Entry into Israel Law (temporary provision) 2003 (Unofficial Translation)," Knesset website, https://www.knesset.gov.il/laws/special/eng/citizenship_law.htm.

“Article 7 provides constitutional backing to the further entrenchment of Judaization policies both inside the Green Line and in the 1967 occupied territories.”

Arabic by the Jewish Nation-State Law. Arabic and Hebrew were enumerated as official languages under Article 82 of the 1922 Palestine Order-in-Council (subsequently incorporated into Israeli law) at a time when Jews made up just 11 percent of the population of Palestine. The Supreme Court of Israel has never given equal weight to the two languages, often examining cases brought before it as matters of freedom of speech rather than of language rights, and treating Hebrew as the sole official language, in keeping with the court’s understanding of Israel as a Jewish state. As a result, Arab petitioners have appealed to the court for equality in language on the basis of Article 82 in an attempt to challenge existing practice based on the rule of law. The possibility of such a challenge is no longer available thanks to the enactment of the Jewish Nation-State Law, which has constitutionally enshrined the inferior status of the Arabic language; Hebrew is now the sole official language of Israel.

The status of the settlements in the West Bank provides a further example. The Supreme Court has maintained a policy of ambiguity regarding the status of Jewish settlements in occupied territory, regarding them as a political issue to be resolved within the framework of a final resolution to the Israeli-Palestinian issue. No judicial decision has ever found that the settlers had a *right* to engage in settlement construction or expansion. When a broad panel of Supreme Court justices approved the evacuation of the settlements in the Gaza Strip in 2005, they did so on the grounds that the settlers did not have the “acquired right” to live there, although in the minority opinion, Justice Edmund Levy ruled that the settlers could not be evacuated since Gaza was a part of Eretz Israel, the homeland of the Jewish people. Levy’s minority position has now attained constitutional standing thanks to Article 1 of the Jewish Nation-State Law, which allows settlers to argue that their presence in the West Bank falls within the exercise of their “national right” to self-determination and that the expansion of their settlements is an “acquired right.”[12]

12. In this context, see the principal position of the Israeli Government as set forth in its response to petitions challenging a law that legalizes settlements in the West Bank (HCJ 1308/17, The Municipality of Silwad v. The Knesset [pending]), where it stated that Jewish settlement in the West Bank fulfilled the values of Zionism, and that it was the “natural right” of Jewish Israelis to live in this area as a part of the Land of Israel (Eretz Israel). The government’s position now assumes a constitutional dimension, in accordance with Articles 1 and 7 of the Jewish Nation-State Law. It is in this context that Eyal Benvenisti and Doreen Lustig wrote: “For the proponents of this Basic Law it offers a legitimating principle for the subordination of another people with which they hope the majority of the Jewish voters would identify. The new law is therefore also part of a series of statutes that have extended the authority of the Knesset to the 1967 Occupied Territories (as exemplified by the ‘Settlements Regularization Law’) and thereby attempts to ‘regulate’ the formally temporary and exceptional military rule over the occupied West Bank.” See Eyal Benvenisti and Doreen Lustig, “‘We the Jewish People’—A Deep Look into Israel’s New Law,” *Just Security*, 24 July 2018, https://www.justsecurity.org/59632/israel-nationality-jewish-state-law/.

Articles 1 and 7 of the 2018 Jewish Nation-State Law must be read together. Article 1 establishes that "the Land of Israel is the historical homeland of the Jewish people"[13] and Article 7 stipulates that, "the state views the development of Jewish settlement as a national value, and shall act to encourage, and promote its establishment."[14] As such, Article 7 provides constitutional backing to the further entrenchment of Judaization policies both inside the Green Line and in the 1967 occupied territories. While the term "Jewish settlement" has not appeared in prior legislation, state authorities have systematically pursued land development and planning policies that are based on confiscation, discrimination, and racism against Palestinians, maximizing exclusive use of the land by Jewish citizens and Judaizing various areas in the state. With the enactment of the Jewish Nation-State Law, "Jewish settlement" has been transformed into a constitutional value that is *binding* on state authorities. Until now, it was possible to challenge these discriminatory practices on the basis of the rule of law and the principle of equality, as was done by the Ka'adans, an Arab family who sought to purchase a plot of land in the Jewish town of Katzir in Wadi 'Ara. While the Ka'adans' request was rejected on the grounds that the town had been founded in partnership with the Jewish Agency—an organization with a mandate to encourage Jewish settlement—the Israeli Supreme Court accepted the family's petition on the basis of the principle of equality.[15] Under the new law, however, discrimination in the name of promoting Jewish settlement has arguably become a constitutional obligation. Although unstated, it is evident from the formulation of Article 7 whom the law considers to be other or "different." The PCIs and Palestinian residents of the occupied Palestinian territory are implicitly regarded as a spatial and demographic threat that imperils the national and constitutional value of "Judaization."

The relationship between the Jewish Nation-State Law and the Nakba is also significant. The immediate consequences of the Nakba, primarily the Palestinians' loss of their homeland and the devastation of their society, were caused by the practices and actions of the state authorities. The Jewish Nation-State Law clearly and explicitly seeks to perpetuate these practices—above all, the denial of the Palestinian people's right to self-determination in its homeland. Stating that "the right to national self-determination in the State of Israel is unique to the Jewish people," the law excludes the 20 percent of Israel's population that is made up of PCIs.

As other historical constitutional experiences demonstrate, the definition of national identity in a constitution affects all aspects of constitutional protections. For example, the phrase "We the People" is key to interpreting the United States Constitution. In the nineteenth century, the U.S. Supreme Court interpreted that phrase as applying exclusively to the country's white population. It was on the basis of this interpretation that one of the most shameful judicial decisions in history was

13. See Article 1 of Basic Law: Israel – The Nation State of the Jewish People, published alongside this analysis.
14. See Article 7 of Basic Law: Israel – The Nation State of the Jewish People, published alongside this analysis.
15. HCJ 6698/95, Ka'adan v. The Israel Land Administration, PD 54(1) 258 (2000).

handed down: that black people were not part of the nation and did not therefore enjoy the full protections of the constitution, and thus that slavery could be permitted to continue.[16] Native Americans (the indigenous population), whom the U.S. Supreme Court did not deem to fall within the category of "We the People," shared a similar fate, and were turned into aliens in their own homeland. They were denied constitutional protections, and their land was confiscated in order to advance white settlement.[17]

The principle of exclusion was extended to the populations of those territories that were occupied or annexed in the late nineteenth century following the Spanish-American War, including Puerto Rico, Guam, and the Philippines. In one case, the U.S. Supreme Court deliberated on the status of Puerto Rico for the purpose of deciding on the issue of raising taxes on imports and exports to and from these territories.[18] Due to a separate question concerning the problem of the immediate application of the U.S. Constitution to territories newly under U.S. control, however, it was determined that Puerto Rico had the status of a territory that belonged to the United States, but was not a part thereof. Accordingly, the territory is subject to U.S. control, but the local population enjoys no U.S. constitutional rights. The aforementioned court decisions, which granted constitutional rights to white Americans while withholding them from the local populations of these territories, further underscore the significance of the application of the Jewish Nation-State Law to the West Bank, including East Jerusalem.

A similar situation transpired in Europe following the rise of ethnic states between World Wars I and II. The European colonial model that had been adopted in Africa was replicated in some European states that transformed from nation-states (in which citizens are equal regardless of their ethnicity) into ethnic states. As a result, Jews and others deemed to fall outside the dominant ethnic group became strangers in their own homelands. The principle of difference assumed new political significance and became a matter of ethnic categorization for the purpose of exclusion, whereby members of certain ethnic-national groups were separated from others who were consequently stripped of civil status. It was a case of internal colonialism practiced against all groups that had been cast outside the defined dominant group.[19]

A further example is that of South Africa. In 1983, the new constitution of

16. Scott v. Sandford, 60 U.S. 393, 15 L. Ed. 691 (1857), *superseded* (1868).

17. For the use of "We the People" as grounds for not applying constitutional protections to blacks, Native Americans, and immigrants, and to the land that was annexed or occupied by the United States, see Sarah H. Cleveland, "Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power over Foreign Affairs," *Texas Law Review* 81, no. 1 (2002): pp. 1–284. For more on the dispossession of Mexican landowners following the war between the United States and Mexico, and on the annexation of the territory and inhabitants of Texas and other states through the biased application of legal doctrines by the courts based on racial considerations, see Guadalupe T. Luna, "Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a 'Naked Knife,'" *Michigan Journal of Race and Law* 4, no. 1 (1998): pp 39– 144, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1230&context=mjrl.

18. Downes v. Bidwell, 182 U.S. 244 (1901).

19. Hannah Arendt, *The Origins of Totalitarianism* (San Diego, CA: Harcourt, 1994), pp. 267–302.

South Africa mandated respect for human equality and dignity. It named the state's official languages as English and Afrikaans and adopted the various tribal languages as additional official languages in black territories (so-called homelands). However, it also stipulated that the political community was restricted to whites, "Coloured persons," and Asians.[20] In response, the UN Security Council issued Resolution 554 on 17 August 1984, which criticized the document as racist and unlawful for excluding the indigenous black population from its definition of the political community.

It is clear from the foregoing that the decision to limit the right to self-determination solely to Jews in the Jewish Nation-State Law means that as a group, Jews are entitled to the collective right to rule and exercise control over the area and its inhabitants, to decide on the allocation and apportionment of rights to all non-Jewish inhabitants, and to determine how to implement the constitution throughout historical Palestine. It also means that the Palestinians as a people may not enjoy the right to self-determination in their homeland. While this sort of exclusivism has roots in earlier rulings by Israel's Supreme Court, it represents an altogether new constitutional approach within Israeli law. With clear parallels to the U.S. cases discussed above, this latest Israeli constitutional move does not distinguish between the Green Line and the 1967 occupied territories since it applies without distinction to all areas under Israeli control that encompass Jewish residents and within which the law discriminates on the basis of ethnic belonging in terms of the rights it grants.

Enshrining Israeli Colonialism and Apartheid

The Jewish Nation-State Law contravenes the norms of the only two legal regimes considered legitimate in international law: the democratic legal system of the state, based on the principles of the rule of law and equality before the law; and international humanitarian law, which is applicable in the occupied Palestinian territories and prohibits the annexation of territory, as well as discrimination and the imposition of the occupying power's constitutional identity on the occupied population. In doing so, the law steps into the forbidden realm of colonialism. The colonial nature of the regime is evident in the imposition of a Jewish-Israeli constitutional identity on all Palestinians, in the severing of their relationship to their homeland, and in the consolidation of Jewish ethnic supremacy and domination. The law violates absolute prohibitions under international law, wherein practices of apartheid—including in legislation—are considered crimes against humanity. The policy of apartheid is evident in the fact that there is discrimination in citizenship rights, cultural and language rights, the rights to land and housing, and religious rights in every area of historical Palestine where both Jews and Palestinians live.

20. "Republic of South Africa Constitution Act 110 of 1983 ACT," website of the South African government, https://www.gov.za/documents/constitution/republic-south-africa-constitution-act-110-1983.

MK Tawfik Toubi's statement during the 1985 Knesset debate on Article 7A of Basic Law: The Knesset today sheds new light on how the Jewish Nation-State Law constructs the foundations of Israeli apartheid. In his address, Toubi said:

> *To determine today in the law that the State of Israel is the state of the Jewish people is to say that 16 percent of the state's citizens have no state at all, to determine that they are stateless, that the State of Israel is the state only of its Jewish inhabitants, and that the Arabs who reside in it live here only by grace, and without rights equal to those of its Jewish citizens. Do not the law's drafters realize that they are telling seven hundred thousand citizens of Israel that their citizenship is second-class? The Arab population living in Israel, citizens of the State of Israel, have no other homeland. This is their homeland; they are living in it. And in it they will struggle for equal rights and seek to live as equals among equals. They will not acquiesce to definitions that aim to deny them the right to equality, or to deny the fact that the State of Israel is also their state. Side by side with democratic Jewish forces, they will struggle to live here in dignity and equality. I wonder whether the authors of this draft understand that they are besmirching the State of Israel as an apartheid state, as a racist state?*[21]

The constitutional identity declared by the Jewish Nation-State Law establishes a regime with the characteristics of apartheid in all spheres to which it applies. The law specifies that the two groups, Jews and Arabs, living in areas subject to Israeli control are not constitutionally equal. As the experiences of other peoples have demonstrated, ethnically based, exclusionary constitutional identities of this kind produce a regime of segregation that trickles down into all aspects of life, since, in the absence of equality, no sphere is left untouched.

To date, the Palestinian legal debate has focused on the different Israeli regimes in force: within the Green Line, the discussion has centered on the issue of equality before the law, while in the 1967 occupied territories, the focus has been on international humanitarian law. Now, however, the Jewish Nation-State Law has changed the rules of the game: with the imposition of a Jewish-Zionist constitutional identity on all areas with a Jewish population, the law recognizes only ethnic belonging, irrespective of geography (which in the case at hand includes the West Bank).

Whether and how this change will shift the Palestinian discourse toward a debate on the Israeli regime is unclear, for the time being. Such a shift is obviously no simple matter and it raises numerous questions both for Palestinian human rights, specifically, and more broadly for the global human rights and social justice movement.

21. Transcript of Knesset session held on 13 July 1985, translated by the authors.

ENSHRINING DISCRIMINATION: ISRAEL'S NATION-STATE LAW

Nadia Ben-Youssef & Sandra Samaan Tamari

IN JULY 2018, the Israeli Knesset passed Basic Law: Israel – The Nation-State of the Jewish People (the Nation-State Law). This essay highlights three of the law's central premises: the entrenched supremacy of Jewish settlers; the erasure of indigenous Palestinians; and, with reference to borders, the effective annexation of those parts of historic Palestine that were occupied in 1967. The authors reflect on the passage of the law within a broader history of settler colonialism and in the current global context of growing authoritarianism and overt institutionalized racism. The passage of such a colonial piece of constitutional legislation in 2018 is a testament to the continued resistance of Palestinians and the growing movement for Palestinian rights. The authors argue that the alternative to the exclusionary Nation-State Law, a rights-based, people-centered framework, is a promising avenue to not only secure Palestinian rights, but also advance a universal struggle for equality and historical justice.

ENSHRINING DISCRIMINATION: ISRAEL'S NATION-STATE LAW

Not Even in the Frame

IN FEBRUARY 2018, the authors organized a convening of thirty human rights defenders and activists working for Palestinian, black, indigenous, immigrant, and gender rights in the United States. A community tied together through struggles for justice, we articulated a shared vision of solidarity and collective liberation. Toward the end of our gathering, Diné (Navajo) poet and scholar Orlando White spoke up with emotion to object to our use of the term "marginalized" to describe our intersecting communities. Orlando challenged us to recognize how indigenous peoples are not merely "on the margins" of public discourse, laws, or policies; indigenous communities, he explained, are not even in the frame.

Settler-colonial regimes, like those of the United States and Israel, are grounded, as Patrick Wolfe reminds us, in a "logic of elimination" of the Native.[1] The fundamental condition of indigenous erasure with all of its intended deadly consequences is reflected in founding declarations and constitutions that enshrine legal, political, and historical supremacy for the settler. Indeed, Native Americans were not even considered part of "mankind" when the United States declared its independence in 1776, nor included in its We the People proclamation in 1789. Surviving generations of genocide and ethnic cleansing, they were only conferred citizenship in 1924.

The State of Israel, which was established in historic Palestine in 1948 through war, ensured that the vast majority of indigenous Palestinians fled or were forced to flee their homeland and villages. As the political ideology animating the Jewish colonial takeover of historic Palestine, Zionism is predicated on erasing Palestinians; they are not meant to be in the frame. The fundamental design of the self-declared "Jewish state" was uniquely disrupted by those Palestinians who remained inside the newly established state. While explicitly mentioned in Israel's Declaration of Independence and made citizens in 1952, these Palestinians embody the crisis inherent in any form of settler colonialism: the ongoing presence of the Native. The disturbance was particularly acute in this twilight example of nineteenth century settler colonialism in light of the state's establishment at the very time that the gathering human rights and anticolonial movements were engaged in undoing the racist myths of a human hierarchy. Consequently, Zionist leaders were forced to embark on elaborate window dressing to create the perception of liberal democratic coherence: beginning with the Declaration of Independence, they asserted that a regime established to privilege the rights of the settlers could also protect the rights of all people under settler control. Israel could, they claimed, be both Jewish *and* democratic.

1. Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (December 2006): pp. 387–409.

Martin Luther King Jr. is credited for penning the uplifting maxim "A lie cannot live." Not infrequently, a lie is destroyed by the very individuals and institutions designed to protect it. Those benefiting from the myths of settler colonialism and supremacy become so firmly convinced of the virtue of inequality (and, of course, perturbed by the persistence of the Native) that they overexpose the lie and its mortal vulnerabilities. The passage of Basic Law: Israel – The Nation-State of the Jewish People (hereafter, the Nation-State Law)[2] in July 2018 after seven years of deliberation was an instance of such a phenomenon: when the Israeli Knesset adopted the law on 19 July, it enacted constitutional legislation that clarified Israel's fundamental racism as a settler-colonial state and its intolerance of indigenous survival. The law explicitly defines two levels of rights within the State of Israel: one applicable to all Jewish people—*anywhere in the world*—entitling them to full nationality and self-determination inside Israel; and one applicable to Palestinians or, indeed, any non-Jewish citizen or resident under Israel's rule. The term "Palestinian" appears nowhere in the text; the constitutional code simply erases Palestinians.

In this article, we offer a reading of the Nation-State Law that highlights three of its central premises: the supremacy of Jewish settlers; the erasure of indigenous Palestinians; and, with reference to borders, the effective annexation of those parts of historic Palestine that were occupied in 1967. The authors reflect on the passage of the Nation-State Law within a broader history of settler colonialism and in the current global context of growing authoritarianism and overt institutionalized racism. Not only is the passage of such a colonial piece of constitutional legislation in 2018 a testament to the strength of Palestinian resistance and the movement for Palestinian rights, the authors argue, it also offers an opportunity to advance a coherent, rights-based, people-centered framework for a decolonized vision of Palestine that is rooted in equality and historical justice.

The Nation-State Law: Racist Preamble of a Colonial Constitution

In 2011, amid popular uprisings throughout the region demanding freedom, justice, and equality, the Israeli Knesset was proposing and passing a wave of discriminatory legislation[3] to promote the rights of Jewish citizens (particularly white, Ashkenazi Jews) and to undermine or suspend the rights of Palestinians inside Israel. The Nation-State Law was first proposed in this context, receiving loud condemnation from the liberal Zionist left. The subject of intense debate over the next few years, the bill was a key reason for the December 2014 dissolution of the Israeli government, whose members were unable to reach consensus on the proposed legislation. According to an analysis for *The Nation* by Palestinian constitutional

2. Raoul Wootliff, "Final Text of the Jewish Nation-State Law, approved by the Knesset Early on July 19," Times of Israel, 18 July 2018, https://www.timesofisrael.com/final-text-of-jewish-nation-state-bill-set-to-become-law/.

3. "Discriminatory Laws Database," Adalah – The Legal Center for Arab Minority Rights in Israel, 25 September 2017, https://www.adalah.org/en/content/view/7771.

lawyer and human rights defender Hassan Jabareen, the political rift was centered not on the substance of the law itself, but rather on the potential negative ramifications for Israel of enacting ethnically based legislation.[4] Jabareen recognized how explicitly discriminatory laws complicate national efforts to "present the state as democratic in the international arena." And while Israel has passed over sixty-five laws that directly or indirectly discriminate against Palestinian citizens of Israel (PCIs) with barely a tremor of condemnation from the international community, this Basic Law created chaos because its passage risked definitively exposing the racist colonial character of Israel.

A state without a written constitution, Israel has a series of laws elevated to constitutional status known as Basic Laws. These are the constitutional norms against which other Israeli legislation and policy are evaluated. The most relevant Basic Laws, in terms of articulating the fundamental rights of citizens and the responsibilities of the state were, until the passage of the Nation-State Law, Basic Law: Human Dignity and Freedom (1992) and Basic Law: Freedom of Occupation (1994). Justice Aharon Barak, former president of the Israeli Supreme Court who enjoys a reputation as a progressive, rights-protecting judge, described the passage of these two Basic Laws as a "constitutional revolution" that made "human rights in Israel . . . legal norms of preferred constitutional status."[5] Yet, these laws are explicitly and firmly anchored in the values of the State of Israel as a "Jewish and democratic state," a characterization which Barak went on to defend as a "completion, a complementing," rather than a contradiction.[6]

When the Israeli Supreme Court was asked in 2003 to unpack the ramifications of this characterization, the court found that maintaining Israel as a Jewish state required (1) upholding the 1952 Law of Return that guarantees Israeli citizenship to any Jewish person anywhere in the world, and (2) preserving a Jewish demographic majority.[7] Liberal analysts have long argued that such discriminatory and fundamentally racist features do not prevent Israel from protecting the equal rights of all citizens and residents. Former president of the Israeli Supreme Court Meir Shamgar once observed that "the existence of the State of Israel as the state of the Jewish people does not negate its democratic character, just as the French-ness of France does not negate its democratic character."[8] Shamgar's misconstruction, of course, is that the relevant analogy to the French-ness of France would be the "Israeli-ness" of Israel, and not its Jewishness. And in order to achieve such an identity, the state would have to consider all citizens equal under the law. While Israeli courts have read the principle of equality into Basic Law: Human Dignity and Freedom, the right is not explicitly enumerated. Enshrining equality in the

4. Hassan Jabareen, "The Real Debate over Israel's 'Jewish Nation-State' Bill," *The Nation*, 29 January 2015, https://www.thenation.com/article/real-debate-over-israels-jewish-nation-state-bill/.
5. Aharon Barak, "A Constitutional Revolution: Israel's Basic Laws," Faculty Scholarship Series, Yale Law School: Lillian Goldman Law Library, 1993, https://digitalcommons.law.yale.edu/fss_papers/3697.
6. Barak, "A Constitutional Revolution."
7. (Election Confirmation) EC 11280/02, The Central Elections Committee for the 16th Knesset v. MK Ahmad Tibi et al. PD 57 (4) 1 (decision delivered on 15 May 2003).
8. Quoted in Barak, "A Constitutional Revolution," *Constitutional Forum Constitutionnel* 4, no. 3 (1992): p. 84, http://dx.doi.org/10.21991/C92D47.

constitutional code of Israel would clearly prohibit institutional privileges for one ethnic group, but despite repeated calls by international human rights treaty bodies to incorporate the principle in Israeli law, the Knesset has refused to do so.[9]

Instead, by a vote of 62–55, the Knesset passed the Nation-State Law to codify the hierarchy between citizens. As Israel's thirteenth Basic Law, the legislation can be understood as the "preamble" of Israel's constitution given that it defines the identity of the state, as well as to whom the constitution applies—in other words, who comprises We the People. Here, We the People is explicitly limited to "Jewish people," despite the fact that roughly 50 percent of the people to whom the constitution directly applies (PCIs, as well as all the Palestinian and Arab residents of the Golan Heights and East Jerusalem, and at least three hundred thousand Palestinians living in Area C of the West Bank) are not Jewish. The law has been characterized by its defenders as largely declarative, the argument being that it simply reaffirms the Zionist ideology of Jewish settler supremacy embedded in Israel's very foundation, an ideology already accommodated within a so-called liberal definition of democracy. However, the law extends far beyond symbolism as both a constitutional and a colonial law.

Constitutionally speaking, racism has officially become the law of the land, binding citizens and residents, administrative authorities, the Knesset, and the courts. By enshrining inequality as an absolute legal value of the state, the Nation-State Law dramatically alters the Israeli legal regime and the ability of the courts to intervene against discrimination. As the preamble of Israel's constitutional code, the Nation-State Law guides how the Israeli Supreme Court must interpret all other Basic Laws. Indeed, one could now easily imagine a situation where the courts could find a government policy of equality (say, equitable budget allocation for transportation services to both Jewish and Palestinian villages in Israel) illegitimate because it does not adhere to the fundamental principle of supremacy and institutional preference guaranteed by the constitution to Jewish people and their communities. The scope of discrimination that the new law allows is sweeping and will be revealed in the courts.

As a tool of settler colonization, the Nation-State Law works to erase indigenous Palestinian connection to, and presence on, the land once and for all. The law makes no mention of Palestine or Palestinians and asserts that only Jewish people

9. Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Israel, UN Doc. CCPR/C/ISR/CO/4, ¶ 7 (21 November 2014); Committee on the Rights of the Child, Concluding Observations on the Second to Fourth Periodic Reports of Israel, UN Doc. CRC/C/ISR/CO/2-4, ¶ 22 (4 July 2013); Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, UN Doc. CCPR/C/ISR/CO/3, ¶ 6 (3 September 2010); Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, UN Doc. CERD/C/ISR/CO/14-16, ¶ 13 (9 March 2012); Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, UN Doc. CERD/C/ISR/CO/13, ¶¶ 16-17 (14 June 2007); Committee on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/ISR/ CO/5, ¶¶ 10-11 (4 February 2011); Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, UN Doc. E/C.12/1/Add.9, ¶¶ 16, 32 (6 December 1996).

have a natural and historical claim to the "Land of Israel" (an undefined expanse further discussed below). Moreover, in the State of Israel, Jewish people alone can access full national and human rights. Not only does the law make Palestinians invisible foreigners in their homeland, it denies the rights of any non-Jewish person by virtue of their ethnic belonging. With the passage of the Nation-State Law, Israel is the sole state in the world perceived as a democracy where constitutional identity is determined by ethno-religious affiliation.[10] The last constitution to determine the rights of citizens on the basis of ethnicity rather than the principle of equality of citizenship was in apartheid South Africa, which excluded black South Africans.[11]

"Constitutionally speaking, racism has officially become the law of the land, binding citizens and residents, administrative authorities, the Knesset, and the courts."

Supremacy founded in ethno-nationalism and settler exclusivity are the clear purview of settler colonies, and if the Native cannot be entirely eliminated in fact (this is always the case, to the dismay of the settler and to the credit of the indigenous people), the colonial legal regime must work to make the indigenous subject politically irrelevant. By omitting the Native from the definition of the polity, the settler state seeks to reduce indigenous persons from a political community to whom historical justice is due, to cultural artifacts from whom resources, labor, and legitimacy can be indefinitely extracted.

Reading the Nation-State Law

To apply James Baldwin's reflections on language to the realm of law, we accept that the law's "root function is to control the universe" by defining who belongs and who is excluded, whose rights are protected and whose rights are suspended.[12] The Israeli Knesset's twin objectives in passing the Nation-State Law were to enshrine Jewish supremacy as the absolute constitutional value of Israel's legal regime (belonging), and to eliminate the possibility of Palestinian self-determination anywhere between the Jordan River and the Mediterranean Sea (exclusion). Today, despite the existence of the indigenous Palestinian community and other non-Jewish citizens, residents, and migrants, and despite the robust body of international and human rights law insisting on the equal value of every human being, Israel has declared that there is only one people—the Jewish people—with the right to peoplehood, history, culture, language, and national sovereignty. Under

10. "Petition to the Israel Supreme Court against the Nation-State Law" [in Hebrew], Adalah, 7 August 2018, https://www.adalah.org/uploads/uploads/Jewish_Nation_State_Law_Petition_Final_07082018.pdf.
11. Republic of South Africa Constitution Act 110 of 1983, https://media.law.wisc.edu/s/c_8/d9zgq/cbsa2.pdf.
12. James Baldwin, "Stranger in the Village," in *James Baldwin: Collected Essays* (New York: Penguin Putnam, 1998), pp. 117–29.

the law, racism against non-Jewish citizens and residents moves from the realm of everyday practice into a constitutional mandate. What was once protected, like the status of the Arabic language, is no longer officially recognized. And in both text and application, the law entrenches "the legal scaffolding for the complete colonization of historic Palestine."[13] Native Palestinians are constitutionally excluded, and their national rights negated throughout their homeland, as the settler-state of Israel confidently expands its infinitely elastic frontiers.

"The Nation-State Law makes explicit and legally binding Israel's identity as a colonial state that enshrines the supremacy of the Jewish settler, and institutionally disregards the human rights of the colonized Palestinians."

Article 1 of the thirteenth Basic Law begins, "The Land of Israel is the historical homeland of the Jewish people, in which the State of Israel was established."[14] The article goes on to set forth the exclusionary We the People described above, and in subsection (c) specifies that *only* the Jewish people have the right to self-determination in the State of Israel. The law thus limits the realization of the human right to freely and collectively pursue economic, social, and cultural development to only one ethno-religious group. Such constitutionalization of ethno-religious supremacy is stunning in and of itself, though is even more problematic when considering the geographic scope of its application.

The distinction between the Land of Israel and the State of Israel is relevant here. Upon its establishment on part of historic Palestine in 1948, the country formally adopted the name "State of Israel"—*Medinat Yisra'el* in Hebrew—an internationally recognized entity governing the territory west of the 1949 armistice line (or Green Line). The "Land of Israel" or Eretz Israel, however, is a term with messianic religious significance, and one without defined geographic boundaries. The expansionist Zionist vision of Eretz Israel is well documented and accounts for Israel's lack of officially declared borders. David Ben-Gurion and the founding leaders of Israel considered the initial partition in 1948 as only the beginning. In the early 1950s, then-Prime Minister Ben-Gurion wrote, "only now, after seventy years of pioneer striving, have we reached the beginning of independence in a *part* of our small country"[15] (emphasis added).

The full realization of Eretz Israel was to occur in stages, an ambition advanced by war in 1967, when the Israeli military acquired land by force through the

13. Nadia Ben-Youssef, "Jewish Nation-State Law Sets Legal Parameters for Complete Takeover of Historic Palestine," *Palestine Square*, 28 July 2018, https://palestinesquare.com/2018/07/28/jewish-nation-state-law-sets-legal-parameters-for-complete-takeover-of-historic-palestine/.
14. Wootliff, "Final Text of Jewish Nation-State Law."
15. David Ben-Gurion, "The Call of Spirit in Israel," in *State of Israel, Government Yearbook*, 5712 (1951/52), (Jerusalem: Central Office of Information, 1951–52), p. x.

occupation of the Golan Heights, the West Bank including East Jerusalem, and the Gaza Strip. Following the military conquest and the imposition of a military regime, the Israeli government declared that Israeli domestic law, jurisdiction, and administration would apply to East Jerusalem and the Golan Heights (rather than international humanitarian law), de facto annexing those areas to Israel. Over the next five decades, the construction of state-sponsored settlements and the transfer of Israeli civilians to occupied territory (illegal under international law) would create "facts on the ground" for an essentially irreversible colonial takeover. Today, one in every eleven Jewish Israelis is a settler in an illegal settlement in occupied Palestinian territory, including two justices of the Israeli Supreme Court.[16] While the Israeli Knesset has already proposed or passed over twenty pieces of legislation[17] to legitimize the confiscation of specific (and vast) tracts of private Palestinian land in occupied territory, the Nation-State Law constitutionally enshrines the State of Israel's right to the complete colonization of historic Palestine.

Article 3 declares "a greater, united Jerusalem" to be the capital of Israel, reaffirming the illegal annexation of East Jerusalem. Article 7 fully endorses "Judaization"— the development of Jewish-only settlement as a national value—mandating (with the word "will" rather than "may" or "should") that the state encourage and promote the establishment of villages and housing for one ethnic group only. Article 7 makes racism and the principle of "separate and unequal" the rule of law in every territory under Israeli control. Supporters of the law have rushed to interpret Article 7 as applying only to areas within the Green Line, although nothing within the law itself—and neither the policy of any Israeli government, nor the wave of annexation laws—would suggest any such limitation.[18] In fact, in response to a petition to the Israeli Supreme Court challenging the 2017 Settlement Regularization Law, which enables the confiscation of private Palestinian land and applies Israeli domestic law to Jewish settlements built illegally on that land, the government of Israel stated that "Jewish settlement in the West Bank fulfills the values of Zionism."[19] The Nation-State Law makes explicit and legally binding Israel's identity as a colonial state that enshrines the supremacy of the Jewish settler, and institutionally disregards the human rights of the colonized Palestinians.

16. Zena Tahhan, prod., "Israel's Settlements: 50 Years of Land Theft Explained," *Al Jazeera*, 21 November 2017, https://interactive.aljazeera.com/aje/2017/50-years-illegal-settlements/index.html. The two members of the Israeli Supreme Court who live in West Bank settlements are Noam Sohlberg and David Mintz. Also, see Nir Hasson, "Supreme Court Justice Attended Controversial Settlements Jubilee Ceremony," *Haaretz*, 3 October 2017, https://www.haaretz.com/israel-news/supreme-court-justice-attended-controversial-settlements-jubilee-ceremony-1.5455352; and Stuart Winer, "Supreme Court Justice Escapes Assault in West Bank," Times of Israel, 15 October 2018, https://www.timesofisrael.com/supreme-court-justice-escapes-assault-in-west-bank/.
17. Al-Haq has documented the several bills concerning annexation of land around Jerusalem making their way through the legislative process. See "The Occupation and Annexation of Jerusalem Through Israeli Bills and Laws," Al-Haq, 5 March 2018, http://www.alhaq.org/advocacy/topics/walland-jerusalem/1195-the-occupation-and-annexation-of-jerusalem-through-israeli-bills-and-laws.
18. Eugene Kontorovich, "Get Over It—Israel Is the Jewish State," *Wall Street Journal*, 19 July 2018, https://www.wsj.com/articles/get-over-itisrael-is-the-jewish-state-1532039000.
19. "Responses of the Israeli Government and Attorney-General in Settlements Regularization Law Case (January 2018)," Adalah, January 2018, https://www.adalah.org/en/content/view/9371.

State of All Its Citizens

This revealing constitutional moment in Israeli legal history must also be appreciated as a uniquely powerful political opportunity. The dramatic and dangerous overreach of the Israeli Knesset has come at a time when a growing constellation of authoritarian governments around the world is attacking democratic norms. Such institutionalized racism demands an equally explicit alternative vision of dignity and safety for all people. Now that Israel's colonization of historic Palestine and longstanding practice of discrimination against non-Jewish people has been constitutionalized, the door has opened for a renewed discourse on equality. "The Nation-State Law is an opportunity to bring together new allies against racism," Jabareen told attendees at a recent panel discussion in Washington.[20] Building on a legacy of legal and political advocacy for equality, particularly the work of PCIs, as well as an intersectional, transnational movement for historical justice, this moment is pregnant with the possibility of social transformation.

While the PCIs' struggle for equal rights crystallized after the signing of the 1993 Oslo Accords, the community has always exposed the impossibility of securing equality for all in a state that defines itself in exclusive ethno-nationalist terms. The mere existence of non-Jewish citizens in a "Jewish state," to say nothing of their demand to be treated fairly by the state's legal and political structures, makes clear the contradiction between "Jewish" and "democratic." Still, prior to the signing of the Oslo Accords, which established the two-state paradigm, and conferred international legitimacy on a "Jewish and democratic Israel," PCIs had focused on preserving their existence. Jabareen puts it this way: "In the past, the struggle of [the PCI] focused on how to survive, but in the 1990s it shifted to how to live."[21] In the era of survival, the traumatized Palestinian community that remained in Israel following the catastrophic events of 1948, and the subsequent eighteen years of martial law, presented themselves "as if they had no connection to their Nakba and no belonging to the Arab nation."[22] But when Oslo supplanted a rights-based, anticolonial Palestinian movement with an ultimate goal of statehood in a small part of historic Palestine, the PCIs began to collectively express their belonging to an indivisible Palestinian people, and intensify efforts to resolve their legal and political status in a state not designed or equipped to protect their rights.

Following another deadly reminder in October 2000, that in spite of their Israeli citizenship PCIs were perceived and treated not as citizens but as security threats with conditional rights,[23] Palestinian civil society in Israel began consultations to

20. Panel discussion on opportunities for advocating for Palestinian rights after the Jewish Nation-State Basic Law (Institute for Policy Studies, Washington, DC, 24 September 2018).

21. Hassan Jabareen, "Hobbesian Citizenship: How the Palestinians Became a Minority in Israel," in *Multiculturalism and Minority Rights in the Arab World*, ed. Will Kymlicka and Eva Pföstl (Oxford: Oxford University Press, 2014), p. 208. See https://www.academia.edu/29815214/Hobbesian_Citizenship_How_the_Palestinians_Became_a_Minority_in_Israel.

22. Jabareen, "Hobbesian Citizenship," p. 209.

23. The October 2000 events refer to the Israeli police killings of thirteen Palestinians (twelve of them PCIs) during popular protests at the start of the Second Intifada. Though an independent commission of inquiry (the Or Commission) found the killings unjustifiable, no police officer was held accountable.

articulate a future vision that would secure historical justice and enshrine equality for all. A group of intellectuals, academics, and activists gathered in 2002 in "an effort to draft a consensual statement of a collective vision that Palestinian citizens in Israel articulate about themselves."[24] Known as the Haifa Declaration, the final document issued in 2007 expressed the PCIs' demand that Israel engage in a historical reckoning with the Nakba and ensure the equality of all citizens:

> *Our citizenship and our relationship to the State of Israel are defined, to a great extent, by a formative event, the Nakba, which befell the Arab Palestinian people in 1948 as a result of the creation of the State of Israel. This was the event through which we—who remained from among the original inhabitants of our homeland—were made citizens without the genuine constituents of citizenship, especially equality. As we are a homeland minority whose people was driven out of their homeland, and who has suffered historical injustice, the principle of equality—the bedrock of democratic citizenship—must be based on justice and the righting of wrongs, and on the recognition of our narrative and our history in this homeland. This democratic citizenship that we seek is the only arrangement that guarantees individual and collective equality for the Palestinians in Israel.*[25]

The Haifa Declaration was the first expression among Palestinians of a willingness to share sovereignty with their colonizers in historic Palestine, with the requirement that this future exclude the Zionist ideology of domination and Jewish supremacy.[26] While the realities of the post-Oslo period limited the scope of this future vision to the internationally recognized 1967 borders of the State of Israel, the demand that Israel be a state for all its citizens—and the state's inability to accommodate a vision of equality—continues to highlight the racist foundation of the Israeli settler-colonial project in Palestine.

In June 2018, anticipating passage of the Jewish Nation-State Law, Palestinian members of Knesset (MKs) Jamal Zahalka, Haneen Zoabi, and Joumah Azbarga of the Balad Party introduced a draft Basic Law that would formally declare Israel a state of all its citizens, rather than an exclusively Jewish state. The proposed law sought "to enshrine in constitutional law the principle of equality for every citizen, while recognizing the existence and rights of two national groups."[27] Addressing the possibility of self-determination for both Palestinians and Jews in a binational, multicultural state, Zahalka spoke of the drafted legislation as follows: "We don't say that the state is not for Jews. We say it is not only for them. It is a state for Jews

24. "Haifa Declaration," Mada Al-Carmel, 15 May 2017, p. 4, http://mada-research.org/en/files/2007/09/haifaenglish.pdf.
25. From the English translation of the "Haifa Declaration," p. 14.
26. Shourideh C. Molavi, *Stateless Citizenship: The Palestinian-Arab Citizens of Israel* (Leiden: Brill, 2013), p. 82.
27. Proposed bill "State of All Its Citizens" [in Hebrew], Adalah, 11 June 2016, https://www.adalah.org/uploads/uploads/Bill_State_of_all_citizens_Zahalka_11062018.pdf. Adalah has also published an English translation available at https://www.adalah.org/uploads/uploads/Proposed_Basic_Law_A_State_for_all_its_citizens _23092018.pdf.

and Arabs."[28] The presidium of the Israeli Knesset voted to disqualify the proposed law before it even reached the Knesset floor for deliberation. Knesset speaker Yuli Edelstein defended blocking debate on the legislation by asserting that a declaration that Israel be a state of all its citizens was "unrealistic" and that "every sane person" understands that it "must be stopped immediately." He claimed that the proposed law aimed to "erode the foundations upon which the State of Israel was built."[29]

A month later, welcoming the passage of the racist Nation-State Law, Avi Dichter, Likud Party MK and sponsor of the law, declared: "We are enshrining this important bill into a law today to prevent even the slightest thought, let alone attempt, to transform Israel [in]to a country of all its citizens."[30] The contrast between the discriminatory values and colonial ambitions of the Israeli regime and the equal rights-based future vision of the Palestinian community could not be starker. Palestinian political leadership in Israel and civil society are elevating the vision through legal and political channels; a hearing against the law will be held in January 2019 before the Israeli Supreme Court, and Palestinian MKs have been traveling to world capitals to seek international intervention against the racist law.[31] The efforts of Palestinians to secure their rights within the corridors of power gain strength from the long legacy of Palestinian popular struggle for social transformation. For decades, Palestinians have organized resistance against the ongoing Nakba, and in their demands for justice fundamentally reject the differentiation in the value of human life. These two extremes, one of ethno-national supremacy and the other of equal rights, represent a political choice, and an invitation to the international community and the larger movement for global justice to definitively choose a side.

Collective Resistance and Opportunities for Global Decolonization

On 1 October 2018, the Higher Follow-Up Committee for Arab Citizens of Israel, together with all Palestinian political parties in the occupied Palestinian territory (West Bank, including East Jerusalem, and Gaza) organized a general strike to protest the Nation-State Law, as well as the material support of Israel's violations of Palestinian human rights by international actors (namely, the United States). Those calling for the strike declared, "this collective General Strike is an opportunity to convey to the world that the Palestinian people are one people, and that together we

28. Yumna Patel, "'You Cannot Be a Democracy and Not a State of All Its Citizens': Jamal Zahalka on What the Rejection of the 'State of All Its Citizens' Bill Means for Israel," Mondoweiss, 13 July 2018, https://mondoweiss.net/2018/07/democracy-citizens-rejection/.

29. "Unprecedented: Bill Proposed by Arab MKs Disqualified by Knesset Presidium" [in Hebrew], *Arutz Sheva*, 4 June 2018, http://www.israelnationalnews.com/News/News.aspx/246927.

30. Charles Dunst, "Jewish? Democratic? Israel's Nation-State Law Raises Questions over the Country's Purpose," *Jewish Telegraphic Agency*, 25 July 2018, https://www.jta.org/2018/07/25/news-opinion/israel-middle-east/jewish-democratic-israels-nation-state-law-raises-questions-countrys-purpose.

31. "Arab Leadership Takes Action against Israel's New Jewish Nation-State Law," Adalah, 6 August 2018, https://www.adalah.org/en/content/view/9574.

are struggling for our rights, including the right to peoplehood."[32] The historic show of unity at the political level reflected a shifting street discourse and strategy, exemplified most notably by the Great March of Return, led by young Palestinians in Gaza. There, tens of thousands of Palestinians are risking their lives for historical justice and the realization of their human rights, while deliberately framing the struggle as collective. Significantly, the march began on Land Day (30 March 2018), marking the 1976 Israeli massacre of PCIs protesting land confiscations in the Galilee. When Palestinian activists in Haifa organized a solidarity protest on 21 May 2018, they, too, affirmed a holistic strategy vis-a-vis freedom: "If we know that Israeli crimes are united against all of us," they said, "why do we accept a fragmented resistance against them?"[33] The Nation-State Law makes clear that the Israeli regime is using every tool to facilitate the permanent subjugation of non-Jewish people in historic Palestine.

"The Nation-State Law makes clear that the Israeli regime is using every tool to facilitate the permanent subjugation of non-Jewish people in historic Palestine."

For non-Jewish and marginalized communities within Israel, especially those that have traditionally perceived themselves as belonging to the Israeli polity, the explicitly exclusive Nation-State Law raises fundamental questions. The Palestinian Druze community, for example, view the passage of the law as a betrayal of their loyalty to the Zionist state. Unlike other PCIs, the Druze community is subject to compulsory conscription into the Israeli army, part of a deal their leadership struck with the state in 1956 in exchange for protection as a minority. In this way, and in line with colonial tactics to divide and rule, the Druze community was successfully fragmented from other Palestinians. Yet, the Nation-State Law has left some in the Druze community feeling like mercenaries, and they were in fact the first to challenge the law in its entirety before the Israeli courts.[34] Likewise, the Mizrahi community in Israel—descendants of Arab Jews—has expressed dismay at the erasure of their native language within the constitutional code and the inherent racism that such erasure represents.[35] The Nation-State Law seems destined to not only create fissures in the walls between marginalized communities in Israel, but also to make irresistible the indigenous alternative of decolonization and the shared pursuit of sovereignty, and human dignity

32. "The High Follow-Up Committee of the Palestinian Community in Israel: Global General Strike of All Palestinians against Israel's Racist 'Nation State Law,' (October 1, 2018)," The Palestine Liberation Organization, Department of Public Diplomacy and Policy, 1 October 2018, http://www.dci.plo.ps/en/article/10540/The-High-Follow-Up-Committee-of-the-Palestinian-community-in-Israel-Global-General-Strike-of-All-Palestinians-against-Israel%E2%80%99s-Racist-%E2%80%98Nation-State-Law%E2%80%99-(October-1,-2018).
33. "Despite Police Brutality, the Demonstrations in Haifa Continue," *FreeHaifa* (blog), 31 May 2018, https://freehaifa.wordpress.com/2018/05/31/despite-police-brutality-the-demonstrations-in-haifa-continue/.
34. Isabel Kershner, "They're 'Blood Brothers' with Israel's Jews. But Druse Call New Law a Betrayal," *New York Times*, 31 July 2018, https://www.nytimes.com/2018/07/31/world/middleeast/israel-druse-nation-state-law.html.
35. Yuval Shani, "That's Not How We Build a Constitution" [in Hebrew], *Haaretz*, 9 August 2018, https://www.haaretz.co.il/opinions/1.6362355.

for all people.

Even in the United States, where Israel's colonial project has long received unquestioning bipartisan support, lawmakers are acknowledging the great divide in political vision. The Nation-State Law is so blatantly racist and anachronistic it leaves little room for decision makers to craft a legitimate argument in its defense. On the contrary, growing numbers are actively speaking out. On 29 September 2018, the U.S. Campaign for Palestinian Rights, a coalition of U.S. organizations working for justice in Palestine, invited Congresswoman Betty McCollum to speak at their national conference held in her home district in St. Paul, Minnesota. She was being honored for championing legislation to end Israeli military detention of Palestinian children. Her bill, the Promoting Human Rights by Ending Israeli Military Detention of Palestinian Children Act (H.R. 4391), would prevent the use of U.S. aid to Israel for the torture and imprisonment of Palestinian children.[36] Specifically addressing the Nation-State Law, Rep. McCollum declared from the podium, "The world has a name for the form of government that is codified in the Nation-State Law—it is called apartheid."[37] This marked the first time a sitting U.S. official had characterized the entirety of the Israeli regime, not just the occupation, as apartheid.

Several years of effective and strategic organizing on the part of Palestinian rights advocates led to this historic moment. And the Nation-State Law was the spark for tinder well laid. McCollum, learning about the law at a meeting with Palestinian MK Aida Touma-Suleiman weeks earlier, was compelled to publicly condemn Israel's explicit racism.[38] Similarly, Senator Bernie Sanders, after several meetings with Palestinian human rights defenders and political officials, rightfully characterized the law as one that "essentially codifies the second-class status of Israel's non-Jewish citizens."[39] Many U.S. liberals, particularly liberal Zionists, are expressing deep angst about this moment of clarity.[40] This is in part because, while the public condemnation of the law represents a shift in U.S. discourse toward Israel, it also demands recognition of the universal struggle for equality and freedom. The law pushes liberals to evaluate their fundamental complicity in any illiberal regime, and reconcile with or reject their acceptance of colonialism in light of their professed progressive values.

A reckoning with the racist ideologies of settler colonies cannot be confined to

36. "Resources on HR4391, Promoting Human Rights by Ending Israeli Military Detention of Palestinian Children Act" can be accessed through Issues: Foreign Affairs, U.S. congresswoman Betty McCollum, accessed 1 November 2018, https://mccollum.house.gov/palestinianchildrensrights.
37. Video of Betty McCollum's remarks at the National Conference of the U.S. Campaign for Palestinian Rights was posted by Palestinian Rights (@US_Campaign), "Rep. Betty McCollum on Israel's Nation-State Law: 'The world has a name for the form of government that is codified in the Nation State Law— it is called apartheid.' #TogetherWeRise," Twitter, 29 September 2018, 8:08 P.M., https://twitter.com/US_Campaign/status/1046235277595987968?s=08.
38. Phil Weiss and Annie Robbins, "Israel Practices 'Apartheid'—Rep. Betty McCollum," Mondoweiss, 2 October 2018, https://mondoweiss.net/2018/10/practices-apartheid-mccollum/.
39. Bernie Sanders (@SenSanders), "It's hard to imagine that Israel's Netanyahu government would have passed the recent 'Nation State law,'" Twitter, 9 October 2018, 8:21 A.M., https://twitter.com/sensanders/status/1049681336506769408.
40. For example, see Eric Cortellessa, "Reform and AJC Leaders Bitterly Criticize Israel's Nation-State Bill," *Times of Israel*, 19 July 2018, https://www.timesofisrael.com/us-jewish-group-deeply-disappointed-with-nation-state-bill/.

Israel. All such regimes share the same basic mechanisms aimed at erasing indigenous presence and history, enshrining settler supremacy, and whitewashing these crimes with the rhetoric of democracy and inclusion. Israeli prime minister Benjamin Netanyahu appealed to the U.S. Congress in 2015 with reference to the common settler-colonial logic of Israel and the United States disguised as liberalism saying, "America and Israel, we share a common destiny, the destiny of *promised lands* that cherish freedom and offer hope"[41] (emphasis added). While the facade of "shared values" often leads to a discourse that paints both states as flawed democracies, political moments like the Nation-State Law make clear that exclusionary politics is built into the very foundations of the two states. And without a political solution to the historical injustice enacted upon the Native community of the land, settler colonies remain necessarily and continuously violent, unsustainable, and inherently undemocratic projects.

The parallel mechanisms employed by these regimes, and the shared experiences of the Native communities of Turtle Island (the term that Native communities use to refer to the land of North America) and Palestine, have long connected the indigenous movements for justice, sovereignty, and survival in both contexts. McCollum's statement naming Israel as an apartheid regime was also rooted in an analysis of the shared experience of all indigenous peoples. "Here in Minnesota," McCollum acknowledged in her speech, "this was not our land—it belonged to the Ojibwe people in the north and the Sioux people in the south. European settlers took this land from Native Americans, subjugated them, committed atrocities, and for more than a century the U.S. government imposed state-sponsored policies to extinguish their culture."[42] The explicit reference to U.S. settler colonialism at a national conference on Palestinian rights serves as an empowering example of the emancipatory potential of holding fast to shared principles of human rights and historical justice.

De-Exceptionalizing Palestine, Reframing the Struggle

This foregrounding of the universality of the Palestinian experience and struggle for justice girds the work of our organization, Adalah Justice Project. In pursuing the transformation of American discourse and policy on Palestine/Israel, we have developed and tested a theory of change we refer to as "de-exceptionalizing Palestine/Israel." This framing stands apart from a tendency to separate the Palestinian struggle from other movements for justice, or characterize Israel as a wholly unique historical experiment/entity. Such exceptions reflect an often deadly incoherence that comes from claiming that human rights only apply to certain people under certain circumstances. We regularly offer this refrain to U.S. audiences: "If you have an opinion on racial justice, you have an opinion on Palestine. If you believe in Native liberation, you believe in the decolonization of Palestine." Universalizing Palestine/Israel and embedding the issues into existing progressive discourse—such as equal rights for all or decolonization—not

41. "The Complete Transcript of Netanyahu's Address to Congress," *Washington Post*, 3 March 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/03/03/full-text-netanyahus-address-to-congress/.
42. Weiss and Robbins, "Israel Practices 'Apartheid.'"

only better protects Palestinian rights, but also serves the larger movement for global justice. De-exceptionalizing Palestine/Israel represents a commitment to joint struggle, to intersectional analysis, to personal and political accountability, to coeducation, and to the principled pursuit of collective liberation.[43]

In this spirit, Adalah Justice Project arranged a Palestinian delegation to visit the L'eau Est La Vie (Water Is Life) protest camp in the Atchafalaya Basin of southern Louisiana in April 2018. There, a small group of protesters led by indigenous women have been resisting the construction of the Bayou Bridge Pipeline, the terminal infrastructure of the Dakota Access Pipeline, an environmentally devastating (colonial) project that inspired a mass indigenous uprising in North Dakota in 2017. Cherri Foytlin, one of the leaders of the L'eau Est La Vie camp, is Diné, Cherokee, and Latinx.[44] In describing her fight to preserve Native lands, she wrote, "after generations upon generations of legal genocide and disenfranchisement on our own lands, the fact that we are still here is civil disobedience in and of itself."[45] Foytlin's words reflect the continuum of indigenous resistance from the moment of European arrival in North America to the present. Her courageous actions to protect the land from continued exploitation, and her people from ongoing displacement, resonated profoundly with the Palestinian delegates. When our colleague, Soheir Asaad, sang the song of longing, "al-Rozana," at the pipeline protest, our group of indigenous and Palestinian women cried and embraced each other. While these visceral moments of solidarity make clear the emotional power of merging struggles for justice, they also inspire the necessary, collective visioning of global decolonization.

Native peoples of the United States have long conceptualized a decolonized future, challenging notions of nationhood, sovereignty, and self-rule. Native scholars regularly consider whether these Westphalian concepts constitute effective liberatory mechanisms. Many argue that Western concepts of nation building represent a colonial framework that necessarily creates exclusionary power, legitimates violence, and is antithetical to the real needs and values of indigenous people.[46] What does liberation mean beyond statehood? For PCIs, such a question has both historical significance and present-day relevance. In response to the Nation-State Law, Zahalka expressed the need for Palestinians to move away from a fragmented demand of statehood and towards a collective demand of "peoplehood."[47]

The power and promise of a people-centered approach lies precisely in its inherent

43. See Steven Salaita, *Inter/Nationalism: Decolonizing Native America and Palestine* (Minneapolis: University of Minnesota Press, 2016), p. 166. Salaita calls for the solidarity of Palestinian rights supporters in the United States with Native Americans, describing this as "an ethical imperative" given that "important aspects of Palestine solidarity occur on land colonized by the United States and Canada."

44. Anya Kamenetz, "The Fight to Stop the Dakota Access Pipeline Continues—in the Bayous of Louisiana," *The Nation*, 6 September 2018, https://www.thenation.com/article/the-fight-to-stop-the-dakota-access-pipeline-continues-in-the-bayous-of-louisiana/.

45. Cherri Foytlin, "After generations upon generations of legal genocide and disenfranchisement on our own lands, the fact that we are still here is civil disobedience in and of itself," Facebook, 9 September 2018, https://www.facebook.com/foytlinfam/posts/10156876319874090.

46. Natalie Avalos Cisneros, "Indigenous Visions of Self-Determination: Healing and Historical Trauma in Native America," *Global Societies Journal* 2 (2014): pp. 1–14.

47. Jamal Zahalka, panel discussion (Institute for Policy Studies, Washington, DC, 24 September 2018).

integration of diverse movements for justice. Reclaiming (or reframing) politics and law as servants to the people, demands that all government institutions be judged solely on their ability to provide for and protect human rights. A political paradigm that does not account for historical injustice is fundamentally unworkable; a constitutional law that enshrines discrimination rather than equality is illegitimate. This framework applies to Palestine/Israel, the United States, Myanmar, and Iraq (as well as others); it protects indigenous peoples and mobilizes the global community against all systems of oppression, including anti-black racism, anti-Semitism, impoverishment, and gender-based violence. Rooting our social and political imaginary in the protection of human rights is to fully accept the words of black organizer, freedom fighter, and public intellectual Fannie Lou Hamer, "Nobody's free until everybody's free."

This is a political opportunity for collective overcoming. The Nation-State Law is but the latest reminder to our global community of the ever-present choice in situations of injustice: to align with the powerful and entrench inequality, or to restore balance by siding with those excluded from power. Securing Palestinian human rights depends not on the cancelling of the Nation-State Law, or enshrining liberal language into Israel's constitutional code: True freedom and justice for Palestine requires that every individual pursue equality, even and especially when that individual benefits from privilege. It requires that institutions guarantee freedom, even and especially when keeping the Other behind walls or in cages offers a comforting illusion of safety. It is a demand of justice, even and especially when justice requires that every exclusionary frame be dismantled. Such political coherence, rooted in universal values of human rights, will guide the emancipatory process of decolonization and the collective pursuit of historical justice and equality for all.

ISRAEL'S NATION-STATE LAW

INSTITUTIONALIZING DISCRIMINATION

HASSAN JABAREEN & SUHAD BISHARA

NADIA BEN-YOUSSEF & SANDRA SAMAAN TAMARI

THIS FOURTH INSTALLMENT of the Current Issues in Depth series covers the Israeli Basic Law: Israel as the Nation-State of the Jewish People that was enacted in July 2018. In two essays, "The Jewish Nation-State Law: Antecedents and Constitutional Implications" by Hassan Jabareen and Suhad Bishara; and "Enshrining Discrimination: Israel's Nation-State Law" by Nadia Ben-Youssef and Sandra Tamari, this installment explores the implications of Israel's latest Basic Law on Palestinians in, and outside of, Israel. The authors demonstrate how this new, de facto constitutional law seeks to erase Palestinians from inside Israel, while encouraging Jewish settlement in East Jerusalem and the West Bank.

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