



EDITORIAL

The Israeli High Court's Descent Into Primitive Tribalism

The Israeli High Court issued a ruling on 16 May, 2006 effectively banning ‘family reunification’ for Palestinians with Israeli citizenship or East Jerusalem residency that are married to spouses or have children from the West Bank and Gaza. The decision, made by six judges, with another five including Chief Justice Barak dissenting, was in response to a petition filed by Adalah, the Legal Centre for Arab Minority Rights in Israel, and six other civil rights groups. The petition demanded the annulment of the 2003 Nationality and Entry into Israel Law, a ‘temporary’ amendment to the Citizenship Law that prohibits Palestinians from the West Bank and Gaza (excluding East Jerusalem) who marry an Israeli citizen or permanent resident of Israel from residing with their spouse, and also bars their children from the right of citizenship or permanent residence in Israel.

As might be expected, the High Court judges used the rubric of security to defend their position. ‘Security’ here is demographic security—that is the obsession among Israeli policy makers, and a large segment of the

Israel's High Court Building.
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Jewish public—that Arab fertility rates are threatening the Jewish character of the state. The explicit explanation of the court, however, used the term ‘security’ in a more conventional, logistical sense. In Adalah’s analysis:

According to [author of the majority position Judge Michael] Cheshin, the right to human dignity does not include any constitutional obligation on the state to allow foreigners married to Israeli citizens to enter the state. Cheshin added that, in his opinion, the state of war against the Palestinian Authority justifies the law, which aims to prevent the entry of elements hostile to the security of the state into Israel (Adalah, 14 May, 2006).

Two issues stand out in this decision. First, Palestinians’ spouses and children, who are not Israeli citizens, are identified as *foreigners*. (Presumably Russian Christian followers of Mr. Lieberman, putative Hebrews from Ethiopia, and American Jews who arrived yesterday from Brooklyn are all members of the tribe, or have been admitted into the tribe through matrimonial bonds). Their right to live and move in their own country has been circumscribed by a court that sees itself above international law.

Second, the judge uses “the state of war against the Palestinian Authority” to justify a blanket ruling that effectively denies all Palestinian residents of the occupied territories from joining their spouses in Israel or, for that matter, Palestinian East Jerusalem. Another judge offered the cynical suggestion that these families move to live in the occupied territories instead. In this case, it should be pointed out that military checkpoints systematically deny Israeli Arabs from entry to West Bank townships, and does not recognize their right to live in territories administered by the Palestinian Authority.

The ‘state of war’, of course, is a reference to the deterioration of relations between Israel and the Palestinian Authority since the beginning of the second Intifada. The assumption here is that if no ‘state of war’ existed then Israeli would treat these applications for residency with the same largesse that other ‘foreigners’ are habitually proffered, and granted residency rights and citizenship rights by virtue of either being members of the tribe, or spouses of members of the tribe. This is true of the many Russians and other East Europeans who have immigrated to Israel in recent years. Thousands of these new immigrants have settled in the occupied territories, including in annexed suburbs of Arab Jerusalem, Gilo, Har Homa, Giv’at Zeev—that is, on the lands of those Palestinian residents who are now being denied family reunification.

This use of the ‘state of war’ is absurd. Israeli administrative regulations, and now Israeli law, have systematically denied family reunification to Palestinians for the last 40 years, regardless of the political atmosphere. A few cases were allowed in the 1970s and 80s, but these exceptions are now all but history. Arab Jerusalem residents have had a particularly difficult time in bringing their spouses and children to join them in

the city. Since the year 2000, it has become nearly impossible for these families to live together in Jerusalem. And these prohibitions are extended to Palestinian individuals who live abroad and want to join their families in the West Bank and Gaza. Neither they nor their families want to settle in Israel. But Justice Cheshin's ruling extends itself by implication to deny family reunification for all Palestinians regardless of citizenship and regardless of their destination in the country.

To their credit, Justice Aharon Barak and four of his colleagues disagreed. Barak argued that "the law [in question] violates the right to equality and family life". He also suggested (with Justice Edmond Levy) that "individual checking...can achieve the same results as a blank prohibition", meaning that family reunification requests should be filtered administratively for 'undesirables' rather than be blocked altogether. None of the 11 judges, however, objected to the terminology designating Palestinians as 'foreigners', or suggested, God forbid, that they should have the same rights of family reunification as Jews who have not yet been made Israelis.

The Oslo Accords, lest we forget, stipulated that 'displaced persons' (a euphemism for Palestinians who lost their residency as a result of the 1967 War) shall be allowed to reside in the country. This basic component of the agreement was never implemented. Even the threshold of 2,000 cases a year approved by the Rabin government was never fulfilled. All successive Israeli governments since 1967 with no exceptions have treated the whole of historic Palestine as one unit when it came to demography. Now the High Court has joined them.

As such, Israeli law has been fully mobilized to make sure that the 'Jewish character' of the state is maintained. Exceptions made in the past for individual family reunifications will no longer be tolerated. But if this Jewish character of the state is now being extended to include all of the occupied territories (the 'convergence plan' notwithstanding), then all the talk about 'foreigners' and 'security' in reference to the lives of ordinary Palestinian families will be exposed as a façade for a much more basic instinct in the Israeli body politic—primitive tribalism.