



Enshrining Discrimination: Israel's Nation-State Law

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In July 2018, the Israeli Knesset passed Basic Law: Israel – The Nation-State of the Jewish People (the Nation-State Law). This article 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.

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.

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 legislation³ 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 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 misconception, 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 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 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

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 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.

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 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 legislation¹⁷ 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.

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 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 *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 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.

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 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 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 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 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.

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ENDNOTES

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