THE JEWISH NATION-STATE LAW: ANTECEDENTS AND CONSTITUTIONAL IMPLICATIONS

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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.

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 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 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 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.

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 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]

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 Kaʿadans, an Arab family who sought to purchase a plot of land in the Jewish town of Katzir in Wadi ʿAra. While the Kaʿadans' 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 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 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.

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.

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ENDNOTES

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.

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-Shalom v. 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).

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 PD 57(4) 14, 21 (2003).

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.

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/.

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).

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.

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.

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