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The Palestinian human right to full Israeli citizenship: Between settler colonialism and a hard place

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This article examines the significance of a legal analysis supporting the recognition of a Palestinian human right to Israeli citizenship for the advancement of equality in Israel-Palestine. It does so by assessing the workings of Israeli citizenship in accordance with the theoretical frameworks of the nation-state and settler colonialism and in light of the one-state reality. The article demonstrates the importance of treating the two frameworks as complementary, rather than mutually exclusive, in analyses involving Palestinian rights. It argues that the struggle for Palestinian equality is not only a legal one but also a moral one, the success of which depends upon a nuanced understanding of the functioning of law in settler colonialism.

KEYWORDS

settler colonialism, nation-state, citizenship, liberalism, rule of law, democracy, international law

Introduction

Does Israel have an obligation to provide the Palestinians it brought under its yoke with full Israeli citizenship? Should Palestinians living in territories controlled by Israel endeavor to secure Israeli citizenship? The reality of a single state (Israel) in which one social group (Jewish Israelis) dominates a competing group (Palestinians) and controls its historic territory (Palestine), and the fact that the latter's capacity to protect themselves from the former's abuse of power is significantly enhanced by the acquisition of Israeli citizenship, necessitate grappling with these complex questions. The discussion that follows examines the juridical instrument of citizenship in Israel-Palestine in light of the one-state reality (OSR) from the perspectives of the two leading theoretical frameworks through which the nature of Palestinian rights is understood and analyzed in scholarly discourse: the nation-state and settler colonialism.[1] It demonstrates the limitations of legal analyses that utilize either theory in isolation from the other and argues that the employment of both frameworks together is the only way to produce the most complete and insightful conclusions.

1 "Israel-Palestine," presented in alphabetical order, refers to the entirety of the territories of Mandatory Palestine (1923–1948) that came under either direct or indirect control of Israel, including Jerusalem, the West Bank, and the Gaza Strip.

The discussion begins with a brief overview of the allocation of Israeli citizenship to Palestinians and its implications for their individual rights. It then presents the argument that Palestinians may have a human right to Israeli citizenship and discusses its significance under both frameworks before proceeding to assess the historical and contemporary workings of citizenship in Israel. As no comprehensive theoretical articulation of the functioning of law in settler colonialism exists, the article will employ the theory's "socially contextualized, comparative approach" to expand our understanding of how law functions in settler colonialism generally, and of the operation of citizenship therein specifically (Russell, 2006, p. 8; Nettelbeck et al., 2016, p. 12; Veracini, 2017, p. 4).

Palestinians' human right to Israeli citizenship

Palestinians living under Israeli rule enjoy fewer legal rights and protections than those enjoyed by Jewish Israelis (Kretzmer, 1990, p. 115–129; Shafir, 2018, p. 2–3). This statement is true regardless of where Palestinians reside in Israel-Palestine or whether they hold Israeli citizenship (Jiryis, 1976, p. 82–96). As of 2022, only one-quarter of the ∼6.8 million Palestinians living under Israeli rule had been granted Israeli citizenship (Molavi, 2013; Berger, 2018; Lustick, 2019, p. 123; United Nations, 2019, p. 1–2). Although within the 1949 Armistice Lines (Kershner, 2011) nearly all Palestinians have been granted Israeli citizenship and thus formal equality before the law, in practice they have endured institutionalized discrimination in every aspect of their daily lives (Lustick, 1980, p. 116).[2] Beyond the Armistice Lines Palestinians fair much worse. In Jerusalem, where Palestinians constitute about 40% of the total population of the city and where Israeli law fully applies, over 90% of Palestinian residents have not been granted Israeli citizenship (Ramon, 2018, p. 12). Instead, they have been provided with residency permits that furnish fewer rights to their holders. For example, although residents enjoy freedom of movement, are permitted to work in Israel, and are granted social security benefits, they are barred from voting in elections for the Knesset and can be stripped of their residency permits and deported from the country far more easily than Palestinian citizens.[3]

In the West Bank and the besieged Gaza Strip, where neither citizenship nor residency permits have been offered by the state, Palestinians enjoy only the "bare minimum" of rights and protections (Barak-Erez and Gross, 2008, p. 212–214). Although Israeli law applies almost in its entirety to Jewish settlers and settlements in the West Bank, the Palestinian community there is governed under the international law of belligerent occupation, which, due to the manner of its interpretation and application by Israel, entitles Palestinians only to their most basic "humanitarian" prescriptions (International Court of Justice, 2004, p. 41; Hajjar, 2005, p. 56). Therefore, while the acquisition of Israeli citizenship by Palestinians does not result in equality before the law, it nevertheless ensures a greater degree of rights and protections. Indeed, as Howard Adelman and Elazar Barkan noted, "[n]ot having the protection of citizenship … is an indication of an absence of rights; [n]ot having adequate protection as a citizen is an indicator of potential discrimination and a lack of protection, not of rights" (Adelman and Barkan, 2011, p. 224).

The argument that Palestinians living under Israeli rule may be *entitled* to Israeli citizenship was first introduced by Ariel Zemach in 2020 and was based on an analysis of Israel's international law obligations and an interpretation of the Advisory Opinion Concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory that was issued by the International Court of Justice (ICJ) in 2004. Zemach argued that the ICJ opinion ought to be interpreted as giving rise to criteria under which Israel may be found to have de facto annexed the West Bank, which, if met, would obligate Israel to grant Israeli citizenship to the Palestinian inhabitants of the territory (334–335). For Zemach, Israel's decision to apply its law, jurisdiction, and administration to an Occupied Territory amounts to de facto annexation even in the absence of a formal declaration of annexation by the state (314–315).[4]

Specifically, Zemach contended that Israel's obligation to provide Palestinians in the West Bank with citizenship would stem from (1) international treaties to which Israel is a party and in which it committed itself to ensuring equality for all of the state's inhabitants; (2) the emerging human right to citizenship in customary (and thus obligatory) International Human Rights Law (IHRL); (3) the notion that the ongoing inequality endured by the Palestinian inhabitants of the West Bank "is the result of the denial of Israeli citizenship" to them, making the provision of citizenship necessary; and, (4) the satisfaction of his proposed "display of sovereignty test" (DST) for identifying de facto annexation, which evaluates whether a territory formally regarded as occupied (meaning that the occupying state enjoys no sovereign rights over the territory

2 As (Shachar, 1999, p. 270–271) noted: "Israel's Arab citizens are guaranteed full civic and political rights but have no access to the "common good" foundations of the Jewish state. … This should serve as a constant reminder that while Palestinian Arab Israelis are full members in the state, they are not fully included in the nation".

3 Since 1967, the year Israel took East Jerusalem from Jordan, more than 14,595 Palestinians were stripped of their residency permits, enabling the state's decades-long "quiet deportation" policy (B'Tselem and HaMoked, 1997, p. 41; Human Rights Watch, 2017; Ronen, 2017).

4 No agreed-upon criteria for what constitutes de facto annexation of a territory by a state currently exists in international law (Kouskouvelis and Chainoglou, 2016, p. 86; Dajani, 2017, p. 52).

as a matter of international law) is in fact treated as annexed territory, as exemplified by the state's efforts to colonize it, encourage its own citizenry to relocate to the territory, apply its laws there, exploit its natural resources, etc. (338–339).

What Zemach sought to accomplish with his proposed DST is to address a significant lacuna of international law that arises under the conditions of prolonged military occupation. As international law prohibits states from enlarging their territories through war and conquest, the rules pertaining to military occupations are based on the assumptions that they will be short in duration and that the occupied territory will be returned to the state from which it was taken (Ben-Naftali et al., 2005, p. 578). As a result, the law of occupation is geared toward protecting the occupied population, mitigating the devastation of war, and preserving the social conditions that existed prior to the occupation in anticipation of the relinquishment of the territory. However, when a temporary occupation becomes de facto annexation, "the law [of] occupations could be so used as to have the effect of leaving a whole population in legal and political limbo: neither entitled to citizenship of the occupying state, nor able to exercise any other political rights except of the most rudimentary character" (Roberts, 1990, p. 52; Kretzmer, 2012, p. 208, 236).

For the purpose of our discussion, three premises will be accepted as true. First, that Zemach's DST thesis is persuasive, meaning that Palestinians who reside in any Occupied Territory in Israel-Palestine that was de facto annexed by the state are entitled to Israeli citizenship. Second, that Israel's control of the Gaza Strip satisfies the DST criteria and thus represents, like the West Bank, West Jerusalem, East Jerusalem, and the Golan Heights, an occupied territory that was de facto annexed by Israel.[5] By so doing, therefore, we both affirm the existence of a one-state reality in Israel-Palestine and suppose an affirmative answer to one of the two questions posed earlier: Israel *is* legally obligated to provide all Palestinians living under its rule with Israeli citizenship. Third, that the appropriate scholarly and activist response to the existence of a one-state reality is a shift in focus to "analysis and action on specific opportunities to advance equality and lessen or end discrimination" among Israelis and Palestinians (Lustick, 2019, p. 148–149). The following discussion thus assesses, in light of the theoretical frameworks of the nation-state (NS) and settler colonialism (SC), whether the finding that Palestinians are entitled to Israeli citizenship as a matter of international law ought to be seen as promoting the OSR agenda.

5 Israel controls the Gaza Strip in a variety of ways, including access to the strip *via* sea and air; all land border crossings except those controlled by Egypt; all goods entering Gaza through the crossings it controls; and how much electricity will be sold to Gaza (Gisha, 2021).

Framing frameworks: Citizenship, inequality, and the nation-state

Zemach's thesis represents a legal analysis informed exclusively by the NS framework. The thesis is so depicted due to the assumptions, explicit and implicit, that shaped its overarching narrative and the argument that Palestinians living in territories that were de facto annexed by Israel may have a human right to Israeli citizenship. Foremost among them are assumptions pertaining to the functioning and significance of the instrument of citizenship in the Israeli nation-state. For Zemach, the acquisition of Israeli citizenship would end the "flagrant discrimination between the population of Israel and the Palestinian population of the West Bank" (338). It is thus assumed that Israeli citizenship contains the promise of equality regardless of one's identity or group affiliation (Van Doren, 1989, p. 1163; Blackman, 1998, p. 649). The indisputable reality of unequal treatment of the Palestinian citizenry in Israel is implicitly understood as stemming from social conditions common in multi-group societies where dominant groups are afforded greater privileges than non-dominant groups, despite the state's legal obligation to refrain from discriminating between its citizens (Smith, 1988, p. 216; Shafir, 2018, p. 2–3; Zemach, 2020, p. 283–284). It is therefore assumed that Israel does not deny that Palestinian citizens are entitled to equality before the law, making their struggle for *full* equality similar to those experienced by other non-dominant citizen groups elsewhere in the world (Blumer, 1958, p. 4; Bobo, 1999, p. 448–449). Hence, the discrimination experienced by Palestinian citizens is understood as one that can be effectively mitigated or thoroughly remedied through litigation, advocacy, and social mobilization (Beitz, 2009, p. 40–41).

In the aggregate, then, Zemach's thesis presupposes that the Israeli nation-state is a liberal rule of law democracy, a state whose respect for individual rights and reverence of the law—Israeli and international, substantive and procedural—would ultimately lead to the realization of the promise of full equality among all its citizens (Tamanaha, 2004, p. 115; Nollkaemper, 2011, p. 301–302). This means that Israeli citizenship is presumed to function in a manner reflecting "liberalism's understanding of the relationship between individuals and the state as a [voluntary] contract in which both sides have rights and obligations" (Bloemraad et al., 2008, p. 156). The state's promise of equality embodied in the liberal conceptualization of citizenship is therefore conditioned on the citizens' fulfillment of their obligations to the state.

The nature of these obligations differs from one state to another and within states over time, but the one that has persisted historically is the general obligation of loyalty to the state (Sheffer, 1997, p. 137–138; Rubenstein, 2012, p. 173). The ways in which citizens may satisfy this obligation have taken different forms: some states demand that their citizens hold no

additional citizenship, others require conscription, and others insist on adherence to core societal values (Vogel, 2003, p. 20–23). In other words, loyalty is a fluid concept whose content is shaped by citizens' sense of the moral obligation that they owe the state and their contemporary preference for how that loyalty may be demonstrated (Sheffer, 1997, p. 133; Baron, 2009, p. 1027–1028). Therefore, from an OSR standpoint, the utility of an analysis arguing in favor of the recognition of a Palestinian human right to Israeli citizenship depends on the existence of an obligation of loyalty that Palestinians would or should be willing and able to satisfy, as presently the ideal of IHRL-based "cosmopolitan citizenship" devoid of the obligation of loyalty is "yet unrealizable in an international global universe still driven by nation-states" adamant on maintaining it (Somers, 2008, p. 132).

Manifold critiques can be made toward such a portrayal of Israel's legal and political systems and the functioning of citizenship therein, which may challenge the notions that Israel is a liberal rule of law democracy. These may include the arguments that one must first distinguish between the distinctly illiberal regime the state maintains outside the Armistice Lines and the one within them (Peled, 2007, p. 607); that the state's provision of some fundamental rights only to its Jewish citizens and the imposition of obligations that only non-Jewish citizens must meet are incompatible with liberalism (Guha, 1997, p. 66–68; Baer, 2015, p. 56); that in Israel, in the main, when liberalism conflicts with the objectives of political Zionism the latter prevails (Amara, 2015, p. 165); that the Knesset's consistent reliance on majoritarianism, rather than consensus, defies the principles of inclusivity, participation, and consent that the liberal understanding of democracy entails (Flinders, 2010, p. 75; Jamal, 2016, p. 42); that such a portrayal does not address the indispensability of Jewish identity to experiencing a true "sense of belonging" in the Israeli citizenry (Shachar, 1999, p. 270–271; Bloemraad et al., 2008, p. 154; Rozin, 2016, p. 165); and, that the state's long track record of incompliance with its international law obligations, including the maintenance of an "apartheid" regime in the West Bank, exemplifies a perpetual rejection of the rule of law (Sultany, 2014, p. 320–321; Azarova, 2017, p. 17–18; Amnesty International, 2022, p. 18). Nonetheless, and as it will be explained in due course, what may prove to be a critical factor in the quest for Palestinian equality is that being perceived by other nations as representing a liberal democracy is "without a doubt the most important part of Israel's *hasbara*," the concerted campaign waged by civilian and military bodies to shape Israel's international image (Perrson, 2021).

Reframing frameworks: Settler colonialism and citizenship

What does settler colonialism have to offer by way of critique that differs from the aforementioned? Let us begin with a brief explanation of the theory's fundamentals and their relevance to analyses that focus on Palestinian rights, including the right to Israeli citizenship. Settler colonialism is defined as a "distinct form of colonization" premised on the "displacement and domination" of the Native population of a given territory by foreign settlers (Sayegh, 1965, p. 4; Cavanagh, 2013, p. 15–17; Veracini, 2015, p. 34, 52, 106). Unlike other forms of colonialism, in settler colonialism the settlers' primary objective is not the exploitation of the territory's natural resources or the labor of the colonized; rather, the taking of the territory itself, the removal of its original inhabitants therefrom, and the establishment of a new settler state thereon are the focal points of this colonial project (Wolfe, 1999, p. 29).

The various strategies of Native dispossession historically employed by settlers have been theorized as stemming from a "logic of elimination" (Wolfe, 2006, p. 388–390), an ingrained settler inclination to eliminate "[I]ndigenous alterities" (Veracini, 2010, p. 32–34) within the conquered territory, which consists of both "negative" and "positive" dimensions (Elkins and Pederson, 2005, p. 2; Hixson, 2013, p. 4–5). Negatively, the logic of elimination is manifested through crude violence that targets the Indigenes physically and that may include massacres, rapes, and expulsions; positively it is manifested through a wide range of interconnected executive, legislative, and judicial measures that seek to retroactively absolve the settlers' violent dispossession of the Natives, complete their usurpation, and cement the subjugation of the Indigenes who survived the initial onslaught (Masri, 2017, p. 389–390; Erakat, 2019, p. 54–60; Samuel, 2022, p. 158). The settlers' legal systems thus play a crucial role in legalizing and legitimizing the perpetual violence upon which the conquest, occupation, and domination of the Natives and their land depends (Miller et al., 2010, p. 100; Klose, 2013, p. 234).

The settlers' insistence that their colonial project is both a legal *and* a moral enterprise accordingly requires the development of political theories, legal doctrines, and self-serving histories that can substantiate their claims (Williams, 1990, p. 6–8, 289, 325–326; Pagden, 1998, p. 128). Specifically, settlers have sought to transform their states from ones whose establishment was premised on the "denial of the rights of [Indigenous] political societies to sovereignty over the territories they inhabited" into ones whose erection is perceived, domestically and internationally, as having been based on the settlers' preexisting legal and moral rights to possess the Natives' territory (Korman, 2003, p. 44, 305). Ultimately, these states proceeded not only to "disavow any foundational violence," but to portray themselves as "peace-loving, democratic, humanitarian, virtuous, [and] benevolent" societies that are indigenous to the conquered land (Anghie, 2004, p. 317; Veracini, 2015, p. 31). Consequently the two principal social groups of which SC nation-states consist—settlers and Natives—maintain two separate and irreconcilable narratives pertaining to the nature of the state and the source

from which their rights toward and within it originate (Johnston and Lawson, 2005, p. 369). As the settlers' conquest-enabling narratives are increasingly recognized as demonstrably false, and as the social cohesion of any nation-state largely depends on popular belief in such narratives, Native narratives come to signify a "logical anomaly in settler polities [and] an embarrassment to the sovereign settler state" (Ford, 2011, p. 190; Razack, 2015, p. 7; Park, 2020, p. 264–265).

This contentious state of affairs gives rise to several legal and political phenomena, exhibited particularly among SC nation-states that were established under British tutelage and that regard liberalism, democracy, the rule of law, and the common law as their defining features. These include Canada, Australia, New Zealand, the United States, (pre-1994) South Africa, and Israel (CANUSI) (Johnston and Lawson, 2005, p. 362; Russell, 2006, p. 8; Nielsen and Robyn, 2019, p. 9–10; Patzer, 2019, p. 214–215). On the most general level, CANUSI settlers' quest for legitimacy has focused on the insistence that settler-colonial states do not differ from other nation-states in terms of their moral and legal foundations and sovereignty (McHugh, 2004, p. 50; Russell, 2006, p. 32; Erakat, 2019, p. 54). As such, CANUSI have demanded that dispossessed Indigenous populations be viewed by the international community as nothing more than minority groups whose legal rights are to be determined by the state, while using their influence within international organizations to shape international law in a manner that would prevent or retard its recognition of Indigenous rights and protections (Ford, 2011, p. 208; McHugh, 2004, p. 22; Crawhall, 2011, p. 27; Klose, 2013, p. 233; Gordon, 2014, p. 336–337; Gover, 2015, p. 353–355; Drumbl, 2018, p. 622). Accordingly, these SC states have been perpetually torn between two conflicting interests: securing the conquest (by repudiating Indigenous rights and narratives) and promoting the state's perceived legitimacy (by projecting that Indigenous groups are entitled to the same rights as any other group, including settler groups) (Veracini, 2010, p. 76–77, 80; de Gaay Fortman, 2011, p. 302).

One of the key ways through which CANUSI have been able to reconcile the simultaneous embrace and rejection of Indigenous rights is through the substantive manipulation of juridical instruments commonly relied upon by nation-states.[6] Indeed, the instrument of citizenship in particular has been consistently utilized in furtherance of several SC objectives. First, its extension to Native populations facilitated the erasure of Indigenous alterities by transforming Indigenes into supposedly ordinary citizens of the SC state—Hawaiian, Alaskan, and North American Natives into Americans and Canadians; Māoris into New Zealanders; Palestinian Arabs into Israeli Arabs, etc. (Cooper, 2005, p. 175; Wolfe, 2006, p. 388, 402). Second, it allowed for the introduction of hierarchal citizenship structures—a liberal one for settler groups, accompanied by the promise of equality and full membership rights; and an illiberal one for Indigenous groups, devoid of such a promise and accompanied by significantly diminished rights (Chesterman and Galligan, 1997, p. 82; Benton, 2001, p. 168; Robertson, 2005, p. 73; Butenschon, 2006, p. 292–293). Third, by extending citizenship only to some of the Natives while denying it to others, settlers are able to divide and fragment Indigenous communities and thus facilitate their domination (Memmi, 2003, p. 57–61; Veracini, 2019, p. 572; Jamal, 2020, p. 16). Cumulatively, then, CANUSI have utilized their sovereignties domestically and internationally to shape law, legal institutions, and juridical instruments in a manner that has perpetuated the unequal treatment of Indigenous populations, legitimized the conquest of their land, and curtailed the law's capacity to provide them with redress (Lambertson, 1886, p. 193; Anghie, 2004, p. 2, 218–220; Pagden, 2008, p. 21–22). Stated differently, law has evidently been perceived by CANUSI settlers as having a single function in regard to the Natives and their territories: enabling settler colonialism.

As the preceding discussion indicates, settler colonialism's underlying stance is that neither citizenship nor the law is the source of settlers' rights to the territory and within the state. This is a crucial point. As settlers are aware that their relative might—their aptitude to militarily, diplomatically, and legally overpower Native populations—is the actual source of their rights, and since rights so acquired conflict with their states' alleged liberal identity, settlers continue to rely on the history-defying and conquest-enabling narratives they created to legitimize their conquests, both as the source of these rights and as the justification for the inequality and injustice suffered by the Indigenes (Fitzpatrick, 2001, p. 178–179; Halper, 2008, p. 71–73; Makdisi, 2011, p. 245; Dahl, 2016, p. 288). The interplay between SC state law designed to enable conquest, dispossession, and domination and settler narratives effectively functioning as *grundnorm* produces a "tightly closed national logic that ignores the presence of [Indigenous] national collectives existing within the same space and time" (Raz, 1974, p. 96; Jamal, 2004, p. 802; Kelsen, 2006, p. 126–128; Sultany, 2017, p. 205). Therefore, insofar as settlers extend their citizenship to Native populations, such citizenships are designed to create the *impression* of equality and inclusion but the *effect* of inequality and exclusion (Simons and Simons, 1969, p. 331, 498; Cooper, 2005, p. 175; Reynolds, 2017a, p. 38). This distinctly illiberal conceptualization of citizenship has accordingly been described as illusory, empty, and one-way in light of its deceptive nature (Chesterman and Galligan, 1997, p. 82; Molavi, 2013, p. 168; Shalhoub-Kevorkian, 2014, p. 284).

On the whole, then, settler-colonial theory embodies a sharp critique of legal analyses that utilize the framework of the nation-state exclusively in the assessment of the rights of Indigenous Peoples living under settler rule. Since such analyses do not

6 As (Yiftachel, 2006, p. 11) noted, although "ethnocratic regimes draw their legitimacy from a world order of nation-states, their structure and practices undermine this very order," just as settler-colonial regimes do.

challenge SC sovereignty, view Indigenous groups merely as NS minority groups, and ignore the fact that SC legal systems are designed to deny Indigenous rights, they inadvertently advance the settlers' objective of projecting the ordinary nature of their states. This critique, it should be emphasized, neither implies that the identification of CANUSI's international law obligations toward the Natives is valueless nor suggests that efforts to bring about state law's recognition of Indigenous rights are futile. Rather, SC theory points to the unique normative space that dispossessed Natives occupy in settler polities; to the insufficiency of law for the promotion of equality between settlers and Indigenes in light of the functioning of law in settler colonialism; and, to how conquest-enabling narratives consistently shape settler law to the detriment of Natives.

Furthermore, SC theory views CANUSI's conquest, dispossession, and domination of Indigenous Peoples and the various juridical strategies settlers employ to legitimize their violent usurpations not as incidental to the formation of settler regimes but as the preeminent constitutive elements that define their political nature (Wolfe, 1999, p. 163; Johnston and Lawson, 2005, p. 374). Considering that the Natives are principally excluded from CANUSI citizenries irrespective of their enfranchisement and that "the caste division between the settler[s] and the [I]ndigene[s] is usually built into the economy, the political system, and the law," CANUSI—insofar as their treatment of enfranchised Natives dictates regime classification—are nondemocratic, illiberal, and indifferent to the rule of law (Elkins and Pederson, 2005, p. 4, 12; McLaren, 2010, p. 84; Wolfe, 2018, p. 347–348). As CANUSI regimes are premised on the exclusive recognition of settler rights (save for legitimacy-promoting concessions), their workings best correspond to the (nondemocratic) "*Herrenvolk* democracy" model, representing a "quasi-democracy for [settlers] and a colonial tyranny for the [Natives]" (Van den Berghe, 1966, p. 410, 417; Pappé, 2008, p. 150–152; Mickey, 2015, p. 34–33; Dahl, 2018, p. 184; Yu, 2021, p. 406, 411).[7]

Settler-colonial theory thus accentuates the historical reality that CANUSI sovereignties were established through conquest and the violent dispossession of Indigenous Peoples. CANUSI were subsequently and effectively formed on occupied territories of Indigenous sovereigns whose rights to possess these lands were denied and obscured through state and international law (Robertson, 2005, p. 73; Russell, 2006, p. 32–33; Hilliard, 2012, p. 216–217). As U.S. Supreme Court judge John Marshall noted, for example, Native Americans' "right to complete sovereignty" over their lands was denied by the United States because the Natives' "character and religion … afforded an apology for considering them as a people over whom the superior genius of Europe might claim ascendency" (S. Ct, 1823, p. 572–574). Only then did he rule that the U.S. government was entitled to "ultimate dominion" over Indigenous lands on the basis of the international law doctrine of discovery.[8] Therefore, even as "Western law justified and legitimated [settler-colonial] conquest[s]," the regimes' immoral foundations could not be similarly obscured (Engle Merry, 1991, p. 890).[9]

In summation, SC theory provides a comparative framework of analysis that elucidates how settlers have consistently relied on law and the privileges of state sovereignty to enable and legitimize their conquests of Indigenous lands. Nevertheless, due to the power disparity between settlers and Indigenes, rectifying this unjust reality necessarily depends on continued engagement with the framework of the nation-state domestically and internationally in order to ameliorate international law, state law, and national narratives that continue to perpetuate settler domination. Critically, SC theory suggests that, for settler law to transform from an instrument of conquest into a vehicle for the promotion of Indigenous rights and equitable reconciliation agendas, it must represent a genuine evolution in settler society's understanding of its own history in and rights to the conquered territory.

Now that the key elements of the two frameworks and their treatment of the instrument of citizenship have been generally discussed, we can proceed to assess the specific workings of citizenship in Israel.

Israeli citizenship and Palestinian Natives

Between November 1951 and March 1952, the Knesset debated, revised, and enacted Israel's Citizenship Law. The fact that at that point in time, more than 3 years after statehood had been attained, Israel still did not have a citizenship law was, unsurprisingly, directly linked to the matter of Palestinian rights. Approximately 180,000 Palestinians still lived within the Armistice Lines (down from about one million) and David Ben-Gurion, Israel's powerful first prime minister and defense

7 As (Van den Berghe, 1987, p. 231) noted, "[t]he evidence for the view of Israel as a case of settler colonialism and an example of what, in the South African context, I have called a '*Herrenvolk* democracy,' … meaning a democracy limited to the ruling ethnic or racial group is considerable".

8 The doctrine of discovery in international law grants a European state exclusive title over Indigenous lands it ostensibly discovered. As Miller et al. (2010, p. 6) noted, "one might conclude that the legalistic international law Doctrine of Discovery was nothing more than an attempt to put a patina of legality on the armed confiscation of the assets of Indigenous peoples".

9 As Razack (2015, p. 12) noted, the "racial basis to the doctrine of discovery forever haunts law … The discoverer remains the subject with whom time began, while the discovered are the object that acquires definition only upon contact, possessing neither a history nor autonomous personhood. The moment of discovery is never named as violence, and law will insist henceforth that [Indigenous Peoples'] rights are contained within the story of settler sovereignty".

minister, understood that they, too, would be entitled to citizenship in light of the state's legal obligations under the 1947 United Nations Partition Plan for Palestine (People's Council, 1948; McCarthy, 1990, p. 35; Robinson, 2013, p. 111; Jabareen, 2018, p. 253; Albanese and Takkenberg, 2020, p. 159–161). Particularly, Ben-Gurion "warned against extending citizenship to Palestinians" because following its extension, he contended, the state would no longer be able to (continue to) expel them, leaving imprisonment as the only option (Bondy, 1990, p. 443; Masalha, 1997, p. 11–14; Peleg, 1998, p. 236; Ron, 2003, p. 127; Bäuml, 2007, p. 21).[10]

When the Citizenship Law was finally enacted it accordingly limited Palestinian eligibility while effectively prescribing that all Jews, both existing and future settlers, are eligible to become Israeli citizens (Law of Return, 1950; Citizenship Law, 1952: Articles 2(a), 3; Peretz, 1991, p. 97).[11] Restrictions on Palestinian eligibility for Israeli citizenship were coupled with the juridical and physical isolation of the Native community. These were carried out on the basis of the Defense (Emergency) Regulations, 1945 (DER), a British colonial law of the Palestine Mandate that was subsequently incorporated into the Israeli legal system. The DER enabled Israel to place Palestinians under a separate, despotic military government that "violated all their basic human rights and their rights of citizenship" (Cattan, 1969, p. 82–83, 135–138; Jiryis, 1976, p. 10–11, 20, 27, 131; Lustick, 1980, p. 124; Jamal, 2009, p. 29; Barda, 2020, p. 564–567). However, and in line with the foregoing discussion, the fact that "military rule could coexist with Palestinian voting rights served only to bolster the government's claim that the regime did not discriminate between Arabs and Jews" (Robinson, 2013, p. 49; Rouhana and Sabbagh-Khoury, 2016, p. 33).

On November 20, 1951 Reuven Shari of the Mapai governing party, to whom Shmuel Mikunis (of the communist Maki party) referred as "Ben-Gurion's big patriot" (meaning Ben-Gurion's mouthpiece) (Knesset Debates, 2009, p. 419), presented the government's views on the nature of Israeli citizenship and its relationship with the draft citizenship law that the Knesset began debating that day in the following manner, arguing particularly against a more formal conceptualization of and process for conferring citizenship:

> Israeli citizenship is not acquired by a formal act and through a piece of paper. There are many parasites in the black market who trade in our blood and they too would have a formal Israeli citizenship. But Israeli citizenship, the true citizenship, that no other [form of] citizenship may infringe upon – that [citizenship] is acquired with sweat and blood, by fertilizing the soil of this country, by [developing it], by becoming a full partner in its establishment. [Therefore,] it is not the formal moment [of conferral] that is the most important [aspect] of Israeli citizenship. The most important [aspect] is the arrival of the Jew in the country. His immigration to the country is the expression of his will to become a citizen of his nation-state, … which he would affirm through his deeds [and] by becoming a countryman, the [country's] builder, the redeemer of its soil, its defender. … Contrary to other countries in the world, our citizenship is acquired automatically. Israeli citizenship is given to any Jew as soon as his foot touches the homeland's soil. (Knesset Debates, 1951, p. 420)

As Shari's remarks clearly indicate, full and equal membership in Israel's citizenry does not derive from "a piece of paper," i.e., from a citizenship law. Rather, Israel's "true citizenship," the one whose essence cannot be captured by positive law, belongs to individuals who can satisfy two conditions: (1) being Jewish, and (2) immigrating to Israel, becoming the country's "builder, the redeemer of its soil, [and] its defender." Therefore, viewed through a SC lens, only Jews who are willing to demonstrate their loyalty to the state by taking an active part in the colonization of Palestine and by endorsing the conquest-enabling narrative affirming their right to do so are true citizens of the country. Indeed, even in his correspondence with Israel's chief rabbi, Ben-Gurion asserted that "the most important of all commandments is settling the Land—not praying for the Land to be settled" (Zameret and Tlamim, 1999, p. 71).

Therefore, as the Palestinian Natives were "those from whom the land [was] to be [further] redeemed," they could not become "true" Israeli citizens and were thus principally excluded from the state's citizenry (Shafir and Peled, 2002, p. 110–111). For Palestinians to become "true" Israeli citizens, to paraphrase (Jeffries, 1976, p. 706), they had to cease being Palestinians and be reincarnated as Zionist settlers.[12] Yet, despite the absurdity of the expectation that Palestinians demonstrate their loyalty to the state by consenting to and participating in their own

10 As (Olson, 1988, p. 628–629) demonstrated, "Israel believes that even if the [Fourth] Geneva Convention applies to the [occupied] territories it does not absolutely prohibit deportations" of Palestinians who do not hold Israeli citizenship.

11 Of those who survived and remained in the state, "about 60,000 Palestinians were granted immediate Israeli citizenship, and the rest were entitled to it if they met certain conditions stipulated in the [Citizenship] Law of 1952. These conditions prevented many Palestinians from becoming citizens until the [law] was amended in 1980" (Shafir and Peled, 2002, p. 110–111).

12 Conditioning full membership in settler citizenry on the renunciation of indigeneity represents a common positive manifestation of the logic of elimination in settler colonialism. As Thomas Jefferson noted in 1803, for Native Americans to become full and equal members of the United States' citizenry, they had to first accept "the termination of their history" (Simons and Simons, 1969, p. 331, 498; Chesterman and Galligan, 1997, p. 82;

dispossession, by renouncing their indigeneity and embracing political Zionism, by relinquishing their moral right to Palestine and submitting to settler law and settler narrative, it nonetheless remains the official price of admission to Israel's citizenry (Peretz, 1991, p. 84–85; Gavison, 1994, p. 152; Saban, 2004, p. 998). As Yaffa Zilbershats (2001, p. 718–719) contended, "[i]n the absence of loyalty on the part of the [Palestinian] residents to the fundamental principles of the State, the[ir] capacity to become citizens is also lacking."[13]

Although the general nature of Israel's conquest-enabling narrative is widely known (Israel Ministry for Foreign Affairs, 1958, p. 5–11, 14–15; Medding, 1990, p. 226; Shapira, 2012, p. 179–181), its legal aspects and its connection to settler colonialism should be briefly explained. Unlike other European settler movements, political Zionism asserted a historical right to possess the Natives' land, contending that "modern Jewry is the successor to the ancient Hebrews, who had been forced out of Palestine," and thus have a "natural and historic right" to establish a Jewish state therein (Declaration of the Establishment of the State of Israel, 1948; Quigley, 2005, p. 66).[14] The problem with such an assertion is that it is factually dubious and legally false. Factually, no definitive evidence linking biblical Hebrews and modern Jews exists and it is, at minimum, equally plausible—as Ben-Gurion himself argued—that a large portion of the *Palestinian* community originated from ancient peoples who inhabited the land, including the Hebrews and their predecessors (Cattan, 1969, p. 3–6; Sand, 2009, p. 143; Wolfe, 2016, p. 241–243).[15] Legally, international law does not recognize claims for ancient title to a territory because if "ancient title were recognized, the result would be perpetual war … [and the] dismemberment of many existing states" (Quigley, 2005, p. 69; Kozlowski, 2010, p. 99). While the cultural attachment of Jews to the Land of Israel is undeniable, "[t]he fact of psychological attachment to a territory does not yield territorial rights" (Quigley, 2005, p. 72).[16] Nevertheless, as the instrument of SC citizenship is designed to affirm settler rights on the basis of such narratives, the fact that the criteria for full and equal membership in the Israeli citizenry derives from "fiction and entail[s] myths and emotions" has been justified as contributing to the "preservation of the framework of the [Israeli] nation," despite its exclusion of the Palestinians citizenry (Zilbershats, 2001, p. 702). Therefore, the OSR imperative of advancing Palestinian equality through the acquisition of citizenship depends on diffusing that narrative and the limitations it imposes on the functioning of Israeli citizenship legally and extralegally.

Challenging such an entrenched narrative, however, is difficult precisely because it enjoys the backing of the law (Benjamin, 1978, p. 277–300; Cover, 1986, p. 1604; Jochnick and Normand, 1994, p. 50). Once the British Evangelical Restorationist efforts to "sponsor the emigration of masses of Jews to Palestine [to satisfy] a precondition for the Second Coming of Christ" effectively became the official policy of the British government (the Balfour Declaration), and, shortly thereafter, of the League of Nations (Mandate for Palestine), the corresponding Zionist narrative was granted international law's stamp of approval (Wright, 1930, p. 92; Shafir, 2017, p. 339). Yet again, then, a SC conquest-enabling narrative served

Cooper, 2005, p. 175; Robertson, 2005, p. 124; Miller, 2006, p. 92; Jamal and Massalha, 2012, p. 15–16; Tirres, 2013, p. 26–27).

13 As supreme court judge Neal Hendel (HCJ, 2017, p. 99, 120) stated, although there is "great complexity in defining the duty [of loyalty to Israel imposed upon] permanent residents [in the Entry into Israel Law, 1952] – certainly that which is expected from an 'Indigenous' population," Palestinians' right to reside in East Jerusalem depends exclusively on their capacity to meet the law's requirements. Nearly thirty years earlier, former chief justice of the supreme court Aharon Barak (HCJ, 1988, p. 430) similarly asserted that "it is difficult to accept [the Palestinian residents'] argument regarding [the existence of] 'quasi-citizenship' that grants [them] rights but no obligations [to the state]".

14 As (Pappé, 2016, p. 206) noted, "[w]hat secular and religious Zionists agreed on was that the Bible had a central place, not as a religious text, but rather as a historical document that reaffirms the right of ownership over the land".

15 As (Segev, 2019, p. 139–140) noted, Ben-Gurion's "fundamental assumption was that Palestine had not emptied of Jews following the destruction of the Second Temple by the Romans in A.D. 70. [Rather, he believed that they] had continued to live there, primarily in the Galilee, and most of them were farmers".

16 As Sand (2018) noted, the belief that Israeli Jews are entitled to possess Palestine as indigenous successors to the ancient Hebrews serves as Zionism's core "foundational myth" and remains a centerpiece of Israel's "political and pedagogical culture" today. Further, it continues to (mis)inform theoretical models developed to assess the political nature of the Israeli regime, particularly those that rely exclusively on the nation-state framework. For example, Sammy Smooha's Ethnic Democracy model views Israeli Jews' moral right to possess Palestine as stemming from their purported indigeneity, asserting: "The Jews lived in the Land of Israel till the year 70 A.D. and were then exiled from their homeland. As a result of the Jewish question in Europe, a Zionist movement emerged in the late nineteenth century, aiming to restore the Jewish homeland in the Land of Israel" (Smooha, 2005, p. 42). In contrast, models that acknowledge Jews' assertion of territorial control through colonization provide a more nuanced understanding of how the myth of indigenous succession impacts perceptions of rights. Such a recognition, for instance, was incorporated into Oren Yiftachel's Ethnocracy model, which describes Israeli Jews' self-perception as a "homeland group," a "subjective rather than factual" notion "tied to the real or mythical historical attachment of an ethnic group to the land on which it resides" (Yiftachel, 1992, p. 127; Yiftachel and Ghanem, 2004, p. 663–664). Hence, while both models rest on the framework of the nation-state, the greater weight that the latter gives to settler colonialism contributes to its more acute normative critique.

to bridge the gap between the real and the imagined, conjuring up a legal right to dispossess a Native population for the benefit of European settlers. The legal approbation of the idea that modern Jewry is the successor to the ancient Hebrews created a situation in which the British facilitators of Zionist settler colonialism treated Jewish settlers in Palestine as if they were "another category of native" (Shapira, 1999, p. 159).[17] The case of Israel thus represents a more resilient form of settler colonialism because its conquest-enabling narrative includes the claim that Israeli Jews are indigenous to Palestine—irrespective of that claim's veracity. Hence, Israeli settler colonialism combines a traditional, international law-sanctioned, might-derived legal right to colonize Palestine with a unique, pseudo-native, moral right to do so.

Adding to the disarray of perceived indigeneity is the fact that there is still no agreed-upon definition in international law for "Indigenous People," making the Zionist claim of nativity more difficult to refute. However, the widely accepted definition suggested by UN Special Rapporteur Martínez Cobo in his 1981 Study on the Problem of Discrimination against Indigenous Populations is instructive (Martínez Cobo, 1981). Martínez Cobo proposed that "Indigenous People" be defined as a social group that (1) established itself in a territory prior to its colonization by another group; (2) shares common ancestry with the original inhabitants of the territory; (3) maintains a distinct culture that differs from that of the colonizer; and (4) has remained attached to the territory (i.e., has continuously asserted its moral right to the colonized land) (Ahren, 2016, p. 143–144). Therefore, the question of who dispossessed whom is the key differentiator between Indigenes and settlers, not popular perceptions of nativity that through propitious circumstances came to enjoy the backing of international law.

The foregoing allows us to better understand how to assess arguments that conflate between legality, morality, and indigeneity in regard to the rights of Israeli Jews toward and within Israel-Palestine. (Troen and Troen, 2019, p. 19), for instance, argued that since Britain and other nations *believed* that modern Jewry is a "continuation of an ancient people that had the right to establish—actually re-establish—themselves in their ancient homeland" and then proceeded to codify their belief in international law, "Zionism won legitimacy." It follows, the (Troen and Troen, 2019, p. 21) contended, that asserting the Palestinians' moral right to possess Palestine (or not to be dispossessed from it) on the basis of their indigeneity is nothing more than the employment of an "insidious instrument to delegitimize the Zionist project." Such an argument accordingly conflates legality and morality, indigeneity and the perception of indigeneity, in effect thus demanding that the Zionist narrative alone dictate what is legal, moral, and indigenous—rather than the more objective criteria like those suggested by Martínez Cobo, which stress the conquest and dispossession of Indigenous Peoples.[18]

Complicating the SC analysis further is the fact that Israel's foundational violence (the 1947–1949 Nakba)—which included the killing of ∼13,000 Palestinians, the direct and indirect removal of about 750,000 more, and the destruction of some 418 Palestinian villages—was, astoundingly, less severe than that of other SC states, which has the effect of enhancing the perceived legitimacy of the Zionist conquest (Morris, 1986, p. 9–10; Shavit, 2004; Pappé, 2007, p. 245–246; Molavi, 2013, p. 7–9; Sayigh, 2018, p. 114–121; Schnitzer, 2017; Raz, 2020). As Lozowick (2012), Israel's former chief archivist, noted in his popular blog:

> I never cease to be surprised by Americans, Canadians, Australians or New Zealanders who feel they have a moral right to condemn the Jews for migrating to another land and pushing aside the natives. Surely the Jewish case for moving to the land of their history is vastly better than the case of Europeans moving to continents they had no history in. Over time, however, I've begun to notice that such critics of the Jews assume, perhaps subconsciously, that the behavior of the Jews must by necessity follow the patterns of their own forebears: total dismissal of their common humanity with the natives they're pushing aside, followed by near-total dispossession (Lozowick, 2003, p. 48).

What Lozowick alluded to was the catastrophic consequences of settler colonialism in these countries, entailing the death of 80%−90% of the Indigenous population as a result of the settlers' "colonization policies, abductions, diseases, homicides, executions, battles, massacres, institutionalized neglect … and the willful destruction of [I]ndigenous villages and their food stores" (Moses, 2004, p. 18; Hixson, 2013, p. 123, 189, 192; Pool, 2015, p. 14; Lindo et al., 2016, p. 2; Madley, 2016, p. 346, 354; Koch et al., 2019, p. 21–22).[19] The absence

17 As (Seikaly, 2016, p. 170) noted, "The British relationship to Jewish settlers was not one of colonizer and colonized. It is a simple point. But it gets lost in various analytical depictions. … The British colonial government and the Zionist settler enterprise were partners for most of the period that the British ruled Palestine. Settler institutions were independent of and fostered by British colonial rule".

18 Joffe's (2017) argument that Israeli Jews are the indigenous population of Palestine is unpersuasive for the same reason. Interestingly, and in the same vein, when (Dershowitz, 2003, p. 13–14) repudiated the colonial characteristics of Israel, he unwittingly affirmed its settler-colonial nature: "Unlike colonial settlers serving the expansionist commercial and military goals of imperial nations such as Great Britain, France, the Netherlands, and Spain, the Jewish refugees [meaning Zionist settlers] were escaping from the countries that had oppressed them for centuries. These Jewish refugees were far more comparable to the American colonists who had left England because of religious oppression … than they were to eighteenth- and nineteenth-century English imperialists who colonized India, the French settlers who colonized North Africa, and the Dutch expansionists who colonized Indonesia".

of such staggering Native death rates in Zionist/Israeli settler colonialism has thus contributed to the impression that it represents a "benign" conquest (Morris, 2001, p. 341; Robinson, 2013, p. 9–10; Khalidi, 2020, p. 12).

The transconfiguration of Israeli citizenship into a medium of equality and a guarantor of full membership in the Israeli citizenry therefore depends not only on disputing, discrediting, and dismantling Israel's conquest-enabling narrative. Political equality will also depend on whether non-Native citizens discard a false narrative of political Zionism's ethical treatment of Palestinians; a narrative that prevents the recognition of Palestinian rights and obscures Israeli Jews' moral obligations toward the Natives, thus impeding the emergence of an equitable reconciliation agenda.

Israel's narrative, Palestine's history

A benefit—indeed the only benefit—of Israel being "the last European settler colony to be established on Earth" is that it can learn from other SC states' ongoing experience of coming to terms with the fallacy of their conquest-enabling narratives; their attempts to negotiate a path forward toward a just and peaceful coexistence with dispossessed Indigenous populations (Wolfe, 2018, p. 357). A prerequisite for settler-indigene reconciliation efforts elsewhere has been that the settlers acknowledge the truth—the truth about their foundational violence, about the grave injustice their internationally recognized legal right to possess Indigenous lands signifies, and about the immeasurable loss and suffering their conquests have inflicted upon the Natives (Stanley, 2001, p. 540; Chong, 2018; Tupper and Mitchell, 2022, p. 350–351). As (Tutu, 1999, p. 240) noted, "[t]he truth can be, and often is, divisive. However, it is only on the basis of truth that true reconciliation can take place."[20] Be that as it may, and as noted, countering entrenched settler narratives with the truth is a formidable undertaking given that they have been reinforced by settler law, sustained by pervasive denialism, and played central roles in shaping the criteria for full membership in the citizenry and, most critically, in representing the sole moral basis upon which the dispossession of the Natives is justified (Crocker, 1953, p. 601; Armitage, 2000, p. 24; Moses, 2004, p. 4–5).

In Israel this challenge is even more pronounced, as the particular resilience of Israeli settler colonialism mentioned earlier extends to its enabling narrative. Like South Africa during the apartheid era, Israeli censorship laws have been consistently deployed to shield the narrative from the truth (Merrett, 1982, p. 4; Peterson, 1990, p. 234; Morris, 2008, p. 405–406; Anziska, 2019, p. 67). Consequently, the (non-Native) Israeli public's perception of the state's culpability for the Nakba "revolves around three cumulative stances: denial that it occurred, perceiving it as a threatening fabrication designed to delegitimize Israel, and denial of [Israel's] responsibility for it" (Cohen, 2001, p. 7–9; Jamal and Bsoul, 2014, p. 97). In July 2009, Knesset members Alex Miller, Faina Kirschenbaum, Hamad Amar, and David Rotem all of the right-wing Yisrael Beitenu party submitted the private bill that became Israel's so-called Nakba Law in March 2011 (Budget Foundation Law, 2011: Amendment 40; Rashed et al., 2014, p. 10, 13; Gutman and Tirosh, 2021, p. 709). The Nakba Law authorizes the minister of finance, among other things, to limit government funding to any organization that recognizes Israel's "Independence Day or its day of establishment as a day of mourning," thus functioning as a censorship law in service of Israel's conquest-enabling narrative (*Budget Foundation Law*, 2011: Amendment 40, Articles 1(b)(1) and 1(b)(4); Simon, 2015, p. 185–186; Bot, 2019, p. 423).[21] The Knesset debates involving the law's enactment provide us with an opportunity to ascertain some of the hurdles awaiting those who seek to challenge Israel's narrative domestically. The Nakba Law was debated extensively in the Knesset by members from across the entire political spectrum, as well as by civil society representatives and prominent academics who were provided with an opportunity to share their thoughts about the proposed bill. The following exchange occurred during the first of these debates, which took place on July 22, 2009, shortly after the initial submission of the bill (Knesset Debates, 2009, p. 254–271). It highlights the remarks made by four Knesset members: Alex Miller (Yisrael Beitenu, right), the bill's primary submitter; Haim Oron (Meretz, left), who previously served as the leader of Hakibbutz Haartzi, the largest association of kibbutzim in Israel; Ofir Akunis (Likud, right), who previously served as his party's speaker; and Ahmad Tibi (Raʿam-Taʿal, Native), a Palestinian gynecologist and graduate of the Hebrew University of Jerusalem, who previously served as political

19 Presently, the Native population in the United States represents 2.9% of the total population; 4.9% in Canada; 3.3% in Australia; and 16.5% in New Zealand (Australian Bureau of Statistics, 2018; Statistics Canada, 2018; Stats NZ Tatauranga Aotearoa, 2020; Indian Country Today, 2021).

20 (Emery and Will, 2014, p. 463) stated similarly that "[i]n order for both peoples to transcend ethno nationalism—the key to success in South Africa—it is crucial that they open themselves to the narrative of the Other. … [I]t is necessary to foster a shared civic identity that avoids 'locking citizens into ethnic categories.' Clearly the South African case suggests that Israelis and Palestinians might best pursue a single state that is culturally and ethnically inclusive, yet refuses to enshrine ethnicity (or religion) as a force for political differentiation. While the two-state and confederalist options might represent some progress, they may pose challenges to the concept of transcending ethno-nationalism".

21 Notably, when the bill was first submitted (Private Bill 1403/18, 2009), its censorship aims were far broader, as it sought to also defund any organizations that deny "the democratic nature of the state and the principles upon which [Israeli] democracy is based, among which the [state's compliance with] … the nucleus of human rights, including dignity and equality, separation of powers, the rule of law, and independent judiciary".

advisor to Yasser Arafat, the former Chairman of the Palestine Liberation Organization:

> [Miller (Yisrael Beitenu, right):] It is inconceivable that in a normal country, a democratic country, the state will fund … activities that deny Israel's existence as a state of the Jewish people. … It is inconceivable that while the state of Israel is in the midst of a military campaign defending its borders its [Palestinian] citizens arrange protests of tens of thousands of people against the [Israel Defense Forces] and identify with the enemy. … Instead of teaching [Palestinians] peace and reconciliation, their leadership, their extremist leadership, take them [to the protest site] to incite against a state in which they are citizens.
>
> [Oron (Meretz, left):] The establishment of Israel was a disaster for the Palestinian people. Whoever does not understand this basic fact will never understand or know how to end the conflict.
>
> [Akunis (Likud, right):] Shameful. Disgraceful.
>
> [Oron:] Akunis, every time you call me "disgraceful" I become even prouder [of my position].
>
> [Akunis:] [Do you consider Meretz] a Zionist party? [Your position indicates that] all the kibbutzim will need to relinquish their land [because it was taken from Palestinians].
>
> [Oron:] Precisely. The kibbutzim were built on Palestinian land. Exactly like Tel Aviv University.
>
> [Akunis:] True.
>
> [Oron:] And just like the Knesset [which was also built on Palestinian land]. That is why I want [CENSORED]. … Get angry as much as you want. … I do not present a minority opinion. Among the Israeli public there are large segments … who understand that the resolution of the conflict, including its territorial aspect, [necessitates] a compromise. That compromise is tied to the recognition that injustice was caused to the Palestinian people, and we must first recognize their catastrophe and [acknowledge] that it happened. … Your statements are so racist [referring to the above censored remarks] … When racism targets Jews it is called antisemitism but when it targets Arabs it is patriotism. … Now I understand [the bill's purpose]. According to this bill, oy vey, should a university professor … publish an article [supporting] the one-state solution, you will [surely] say let us [defund] that university. … I am not afraid of the commemoration of the Nakba. … I feel confident enough to have this dialogue with [the Palestinians]. You are scared. You are cowards. That is why you enact all these laws.
>
> [Tibi (Raʿam-Taʿal, Native):] I do not know what scares the cowards or what scares the racists. Are they scared of the fact that an individual remembers sad memories of the destruction of [his] life, family, community, people? What do you expect [from him? That he will] go out dancing in the streets about the expulsion and destruction of his family? Where is the humanity? … His home is gone, his family was killed, expelled, or [was forced to] flee. This is a catastrophe. This is a personal catastrophe. This is a familial catastrophe. This is a historical catastrophe. … The fact that this is being denied [by the state] does not mean that it did not happen, that the collective memory, the history, of a people can be erased. … Neither the [memory of the] Shoah nor the Nakba can be erased.
>
> [Akunis:] [CENSORED].
>
> [Yitzhak Vaknin, Acting Knesset Speaker:] Ofir Akunis, sit down. Sit down I said. I will remove you [from the room].
>
> [Akunis:] Are you listening to what [Ahmad Tibi] is saying? [Sure,] remove me. [CENSORED]. This is unacceptable. Unacceptable.
>
> [Tibi:] What are we to do? There are those who are Nakba deniers and there are those who are Holocaust deniers.

The Knesset concluded the debate shortly after Dr. Tibi made his incisive comment.

A great deal can be gleaned from the above debate, but for the sake of brevity only two points will be made here. First, we should note Miller's contention regarding the primary targets of the Nakba Law and how a censorship law targeting their freedom of speech is justified. It is the Palestinian Natives holding Israeli citizenship who are the law's primary aim and they are being targeted specifically because they are presumably precluded from "identify[ing] with the [Palestinian] enemy" by protesting the state's maltreatment of their non-citizen brethren. Once more we see that Palestinian citizens are expected to demonstrate their loyalty to the state by forsaking their Native identity and assuming that of a Zionist settler. Furthermore, the Nakba Law exemplifies the interconnection between the extralegal components that shape the Israeli citizenry's duty of loyalty to the state (as depicted by Reuven Shari in 1951), the settlers' drive to erase Indigenous alterities, and the instrumental function settler law has in legalizing and legitimizing eliminatory conduct.

Second, the extraordinary clash between right-wing and left-wing settlers (Akunis and Oron, respectively) lays bare how Israel's conquest-enabling narrative is safeguarded from the truth through the deployment of state law. When Oron argued that Israel's establishment "was a disaster for the Palestinian people," Akunis first countered with "Shameful. Disgraceful," rather than by attempting to substantively refute Oron's claim. But when Oron persisted, insisting that Akunis' denialism only served to invigorate his resolve, Akunis sought to undermine Oron's objection to the bill by pointing to what the latter stood to lose should Israel's conquest-enabling narrative be discarded. Without it, Akunis contended, the kibbutzim Oron previously led would also need to return their land to the Palestinians from whom it was taken. To Akunis' dismay, however, Oron did not

back down, and instead unequivocally reaffirmed the truth of dispossession the narrative seeks to veil. Akunis, dumbfounded by Oron's categorical affirmation, simply replied "true," before proceeding to throw a tantrum. Nonetheless, due to the law's passing <2 years later, the ultimate outcome of the Knesset's debates on the Nakba Law was the penalization of the truth and the further diminution of the discourse on citizenship in the country.[22]

Conclusion and the road ahead

This article examined the significance of a legal analysis supporting the recognition of a Palestinian human right to Israeli citizenship for the OSR goal of advancing equality between Israelis and Palestinians by assessing the workings of Israeli citizenship in light of the theoretical frameworks of the nation-state and settler colonialism. It emphasized the importance of employing both frameworks when probing legal questions pertaining to settler-indigene relations in view of the distinctive nature of settler-colonial nation-states. It demonstrated that CANUSI settlers have consistently utilized state and international law to deny Indigenous rights and argued that the most efficacious path toward equality entails inculcating in non-Native Israeli citizens an appreciation of the fallacy of the state's conquest-enabling narrative, their responsibility for the injustices suffered by Palestinians, and their moral obligation to make amends. The support of Israeli academia in this educational struggle is critical (Yiftachel, 2002, p. 39; Amit, 2019, p. 19). In the absence of this moral and historical reckoning—in the absence of truth—formal equality and hollow citizenship will remain the most that Palestinian citizens are able to attain.

A comprehensive discussion of possible strategies for persuading Israeli Jews to forgo power is beyond the scope of this article. However, the above exchange between Akunis and Oron brought to the fore a necessary byproduct of Israel's efforts to deny Palestinian rights: the derogation of the individual rights to which Israeli Jews are entitled under state law. As Oron stated, although the Nakba Law was depicted as targeting the Palestinian citizenry, "should a [Jewish] university professor … publish an article [supporting] the one-state solution," the government would have the option to defund the institution employing that professor (Knesset Debates, 2009, p. 261–262). This oft-overlooked duality of harm has been a persistent concomitant of oppressive laws purportedly targeting Palestinians yet effectively curtailing the rights of Israeli Jews (Roadstrum Moffett, 1989, p. 17–18; Bondy, 1990, p. 443; Peleg, 1998, p. 236; Reynolds, 2017b, p. 277). As (Arendt, 1979, p. 128) astutely forewarned, for Israel to continue governing the Palestinian people through tyranny, it must sacrifice the "national institutions of its own people." The continuous decline in public trust in the Israeli legal system, with nearly half of the public indicating in 2022 a complete distrust in the state's police, prosecution, and judiciary, is telling (Anon, 2022).

Nevertheless, the long history of CANUSI settler colonialism teaches us that settler regimes and the juridical infrastructures they create to enable the dispossession and domination of Native populations are highly impervious to change from within (Russell, 2006, p. 32, 49–50; Veracini, 2011, p. 5–6; Wolfe, 2013, p. 270). As (Chanock, 2001, p. 23, 36) noted, one cannot understand South Africa's defiant legal culture during the prolonged struggle to end apartheid without understanding the state's (conquest-enabling) "colonial narratives" and their role in the reproduction of legislation enshrining settler domination (Ben-Dor, 2015, p. 87). Indeed, as Nelson Mandela reported, even after the National Party recognized that it could no longer hold on to power and was in the process of negotiating a transition to democratic rule, it continued to employ settler law for the enablement of conquest, seeking to secure a "white minority veto" under the new system while obscuring its aim within "intricate [legal] formula[e]" (Clark and Worger, 2011, p. 114–116). And when the National Party realized that "white supremacy could not be secured through further manipulation of the negotiating process," it quickly proceeded to transfer state assets to settlers, "assets that otherwise would come into the control of a black majority government" (Ibid.). In other words, when state law could no longer enable dispossession and domination, its utility, as far as the National Party was concerned, had ended.

An even more revealing stance regarding the place of law in regulating settler-indigene relations was exhibited by Canada, Australia, New Zealand, and the United States (CANZUS) when the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was under consideration. The non-binding UNDRIP resolution, adopted in 2007, recognized, among other things, Indigenous Peoples' right to self-determination in and ownership of the lands from which they were unjustly dispossessed (United Nations General Assembly, 2007: Articles 3, 25, 26). The United States, under the leadership of president George W. Bush, took "an aggressive stance to reject [the] UNDRIP and any effort to suggest that Indigenous Peoples' rights could be the subject of international law," working together with Canada, Australia, and New Zealand to water

22 As of October 2022, the Israeli government has yet to employ the Nakba Law. However, as El-Ad (2011), the former director of the Association for Civil Rights in Israel and current director of B'Tselem, noted shortly after the Nakba Law's enactment: "Academic bodies, educational and cultural institutions, local governments, and other [publicly] subsidized bodies find themselves wondering whether an event during which the very occurrence of the Nakba be mentioned might lead to their defunding [by the government], in accordance with the Nakba Law's prescriptions. This concern may result in self-censorship which severely harms freedom of expression and limits the democratic discourse [in the country], a harm recognized as a chilling effect [i.e., as deterring free speech], achieved by the enactment of the [Nakba] Law [and that occurs] even prior to its employment [by the government]".

down the declaration's language and attempt to prevent its passing (Crawhall, 2011, p. 26–27; Saito, 2014, p. 86). When the UNDRIP was finally brought to a vote before the General Assembly, CANZUS were the only four states that voted against it, vehemently rejecting the notion that the Indigenous Peoples they dispossessed are entitled to the rights specified therein (Patzer, 2019, p. 214).[23] As Rosemary Banks, New Zealand's permanent representative to the UN, noted when presenting her state's justification for its rejection of the declaration, "the entire country [is] potentially caught" within the scope of Article 26 (recognizing Indigenous ownership of lands from which Indigenes were dispossessed) without taking into consideration that the land is "now lawfully owned by other citizens" (United Nations Meetings Coverage and Press Releases, 2007). The UNDRIP was unacceptable, in other words, because it implied that regardless of how CANZUS have employed their laws to produce and grant titles to lands from which the Natives were dispossessed, the latter still maintain a morally superior claim to the territory, thus highlighting the illegitimacy of CANZUS sovereignties.

In the course of the 3 years that followed, however, CANZUS ostensibly reversed course and decided to formally announce their support for the declaration (Anaya and Rodrigues-Pinero, 2018, p. 60). This reversal, however, did not mark a substantive change in these states' position on the rights to which Indigenous Peoples living under their rule were entitled. Rather, it marked a strategic shift: from rejection to containment. As Gover (2015, p. 355) noted, "the tenor of the endorsements suggests that the intention of the CANZUS states [was] to 'read down' the UNDRIP to render it compatible with existing domestic [settler] law and policy." It is no wonder, then, that more than a decade after CANZUS declared its support for the UNDRIP the principal legal rights espoused by the declaration, Indigenous self-determination and ownership of dispossessed lands, remain unrealizable in all four settler regimes and "at the mercy of [their] domestic political will" (Churchill, 2011, p. 549; Round and Finkel, 2019, p. 66; Wilkins, 2021, p. 1241; Law Council of Australia, 2022, p. 6; Smale, 2022).

Thus, as the foregoing discussion suggests, the OSR struggle for Palestinian equality must be informed by the experiences of other Indigenous communities living in CANUSI. Foremost among these is the understanding that the decolonization of the Israeli legal system and the democratization of Israel-Palestine, including through enfranchisement, necessitates external intervention, guidance, and oversight. For as long as the realization of Palestinian rights depends on the good will of Israeli settlers, equality (let alone equitable reconciliation) will remain elusive. Finally, as for the question of whether Palestinians *should* endeavor to secure Israeli citizenship if it becomes available to them, that, as Sfard (2022) noted, has a simple answer: only they can decide[24].

23 South Africa voted in favor of the declaration; Israel was absent (United Nations Meetings Coverage and Press Releases, 2007). Adi Sheinman, of the Israeli Ministry of Foreign Affairs, noted that had Israel been present it would not have voted in favor of the resolution (Ein-Gil, 2007).

Data availability statement

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author.

Author contributions

The author confirms being the sole contributor of this work and has approved it for publication.

Conflict of interest

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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24 "Everyone has the same dream, upon a mountain, across a valley. Keep talking, talk about peace, but peace will not be achieved without justice" (Mooki, 2001).

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