

# *The Link*

*Published by Americans for  
Middle East Understanding, Inc.*

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Volume 51, Issue 2

*Link Archives:* [www.ameu.org](http://www.ameu.org)

April-May 2018

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Israel is 80% Jewish  
and 20% Palestinian, right?

**Yes**

And both are Israeli citizens  
with the right to vote, right?

**Yes**

So Israel is a democracy,  
like the United States, right?

**No**

## **Apartheid**

## **Israel**

By

**Jonathan Cook**

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**Apartheid Israel**

By  
 Jonathan Cook

North from Nazareth's city limits, a mile or so as the crow flies, is an agricultural community by the name of Tzipori – Hebrew for "bird." It is a place I visit regularly, often alongside groups of activists wanting to learn more about the political situation of the Palestinian minority living in Israel.

Tzipori helps to shed light on the core historic, legal and administrative principles underpinning a Jewish state, ones that reveal it to be firmly in a tradition of non-democratic political systems that can best be described as apartheid in nature.

More than a decade ago, former U.S. president Jimmy Carter incurred the wrath of Israel's partisans in America by suggesting that Israeli rule over Palestinians in the occupied territories was comparable to apartheid. While his bestseller book "Palestine: Peace Not Apartheid" broke a taboo, in many ways it added to the confusion surrounding discussions of Israel. Since then, others, including John Kerry, when U.S. secretary of state, and former Israeli prime ministers Ehud Olmert and Ehud Barak, have warned that Israeli rule in the occupied territories is in danger of metamorphosing into "apartheid" – though the moment of transformation, in their eyes, never quite seems to arrive.

**About This Issue:** *The Link* is doing a series of issues on how the concept of apartheid in international law applies to the different situations in which Palestinians find themselves: citizens of Israel, occupied West Bankers, imprisoned Gazans, and residents of Jerusalem. This issue examines the status of Palestinian citizens of Israel. Our writer is Jonathan Cook, a freelance journalist who lives with his family in Nazareth, Israel.

— John F. Mahoney, Executive Director



Jonathan Cook

It has been left to knowledgeable observers, such as South Africa's Archbishop Desmond Tutu, to point out that the situation for Palestinians under occupation is, in fact, worse than that suffered by blacks in the former South Africa. In Tutu's view, Palestinians under occupation suffer from something more extreme than apartheid – what we might term “apartheid-plus.”

There is a notable difference between the two cases that hints at the nature of that “plus.” Even at the height of apartheid, South Africa's white population understood that it needed, and depended on, the labor of the black majority population. Israel, on the other hand, has a far more antagonistic relationship to Palestinians in the occupied territories. They are viewed as an unwelcome, surplus population that serves as a demographic obstacle to the political realization of a Greater Israel. The severe economic and military pressures Israel imposes on these Palestinians are designed to engineer their incremental displacement, a slow-motion ethnic cleansing.

Not surprisingly, Israel's supporters have been keen to restrict the use of the term “apartheid” to South Africa, as though a political system allocating key resources on a strictly racial or ethnic basis has only ever occurred in one place and at one time. It is often forgotten that the crime of apartheid is defined in international law, as part of the 2002 Rome Statute that created the International Criminal Court at The Hague. An apartheid system, the statute says, is “an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.” In short, apartheid is a political system, or structure, that assigns rights and privileges based on racial criteria.

This definition, it will be argued in this essay, describes the political regime not only in the occupied territories – where things are actually even worse – but in Israel itself, where Jewish citizens enjoy institutional privileges over the 1.8 million Palestinians who have formal Israeli citizenship. These Palestinians are the remnants of the Palestinian people who were mostly dispersed by the 1948 war that established a Jewish state on the ruins of their homeland. These Palestinian citizens comprise about a fifth of

Israel's population.

Although it is generally understood that they suffer discrimination, the assumption even of many scholars is that their treatment in no way undermines Israel's status as a western-style liberal democracy. Most minorities in the west – for example, blacks and Hispanics in the U.S., Asians in the U.K., Turks in Germany, and Africans in France – face widespread prejudice and discrimination. Israel's treatment of its Palestinian minority, it is claimed, is no different.

This is to profoundly misunderstand the kind of state Israel is, and how it relates to all Palestinians, whether they are under occupation or Israeli citizens. The discrimination faced by Palestinians in Israel is not illegal, informal, unofficial, or improvised. It is systematic, institutional, structural and extensively codified, satisfying very precisely the definition of apartheid in international law and echoing the key features of South African apartheid.

It was for this reason that the United Nations' Economic Social Commission for Western Asia (ESCWA) published a report in 2017 concluding that Israel had “established an apartheid regime that dominates the Palestinian people as a whole,” including its Palestinian citizens. Under severe pressure from Israel and the U.S., however, that report was quickly retracted, but the reality of apartheid in Israeli law and practice persists.

This argument is far more controversial than the one made by President Carter. His position suggests that Israel developed a discrete system of apartheid after the occupation began in 1967 – a kind of “add-on” apartheid to democratic Israel. On this view, were Israel to end the occupation, the apartheid regime in the territories could be amputated like a gangrenous limb. But if Israel's treatment of its own Palestinian citizens fits the definition of apartheid, then it implies something far more problematic. It suggests that Jewish privilege is inherent in the Israeli polity established by the Zionist movement in 1948, that a Jewish state is apartheid-like by its nature, and that dismantling the occupation would do nothing to end Israel's status as an apartheid state.

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### **Citizenship Inequality**

Tzipori was founded by Romanian and Bulgarian Jews in 1949 as a moshav, a socialist agricultural collective similar to the kibbutz. It specialized in dairy production, though most of its 1,000 inhabitants long ago abandoned socialism, as well as farming; today they work in offices in nearby cities such as Haifa, Tiberias and Afula.

Tzipori's Hebrew name alludes to a much older Roman city called Sephoris, the remains of which are included in a national park that abuts the moshav. Separating the moshav from ancient Sephoris is a large pine forest, concealing yet more rubble, in some places barely distinguishable from the archeological debris of the national park. But these ruins are much more recent. They are the remnants of a Palestinian community of some 5,000 souls known as Saffuriya. The village was wiped out in 1948 during the Nakba, the Arabic word for "catastrophe" – how Palestinians describe the loss of their homeland and its replacement with a Jewish state.

The Palestinians of Saffuriya – an Arabized version of "Sephoris" – were expelled by Israel and their homes razed. The destruction of Saffuriya was far from an isolated incident. More than 500 Palestinian villages were ethnically cleansed in a similar fashion during the Nakba, and the ruins of the homes invariably covered with trees. Today, all Saffuriya's former residents live in exile – most outside Israel's borders, in camps in Lebanon. But a proportion live close by in Nazareth, the only Palestinian city in what became Israel to survive the Nakba. In fact, according to some estimates, as much as 40 percent of Nazareth's current population is descended from Saffuriya's refugees, living in its own neighborhood of Nazareth called Safafri.

Nowadays, when observers refer to Palestinians, they usually think of those living in the territories Israel occupied in 1967: the West Bank, Gaza and East Jerusalem. Increasingly, observers (and peace processes) overlook two other significant groups. The first are the Palestinian refugees who ended up beyond the borders of partitioned Palestine; the second are the 20 percent of Palestinians, some 150,000, who managed to remain on their land. This figure

was far higher than intended by Israel's founders.

It included 30,000 in Nazareth – both the original inhabitants and refugees like those from Saffuriya who sought sanctuary in the city during the Nakba – who avoided being expelled. They did so only because of a mistake. The commander who led the attack on Nazareth, a Canadian Jew called Ben Dunkelman, disobeyed an order to empty the city of its inhabitants. One can guess why: given the high profile of Nazareth as a center of Christianity, and coming in the immediate wake of the war crimes trials of Nazis at Nuremberg, Dunkelman presumably feared that one day he might end up in the dock too.

There were other, unforeseen reasons why Palestinians either remained inside or were brought into the new state of Israel. Under pressure from the Vatican, a significant number of Palestinian Christians – maybe 10,000 – were allowed to return after the fighting finished. A further 35,000 Palestinians were administratively moved into Israel in 1949, after the Nakba had ended, when Israel struck a deal with Jordan to redraw the ceasefire lines – to Israel's territorial, but not demographic, advantage. And finally, in a far less technologically sophisticated age, many refugees who had been expelled outside Israel's borders managed to slip back hoping to return to villages like Saffuriya. When they found their homes destroyed, they "blended" into surviving Palestinian communities like Nazareth, effectively disappearing from the Israeli authorities' view.

In fact, it was this last trend that initiated a process that belatedly led to citizenship for the Palestinians still in Israel. The priority for Israeli officials was to prevent any return for the 750,000 Palestinians they had ethnically cleansed so successfully. That was the only way to ensure the preservation of a permanent and incontrovertible Jewish majority. And to that end, Palestinians in surviving communities like Nazareth needed to be marked out – "branded," to use a cattle-ranching metaphor. That way, any "infiltrators," as Israel termed refugees who tried to return home, could be immediately identified and expelled again. This "branding" exercise began with the issuing of residency permits to Palestinians in communities like Nazareth. But as Israel sought greater international legitimacy, it belatedly agreed to convert this residency into citizenship.

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It did so through the Citizenship Law of 1952, four years after Israel's creation. Citizenship for Palestinians in Israel was a concession made extremely reluctantly and only because it served Israel's larger demographic purposes. Certainly, it was not proof, as is often assumed, of Israel's democratic credentials. The Citizenship Law is better understood as an anti-citizenship law: its primary goal was to strip any Palestinians outside the new borders – the vast majority after the ethnic cleansing of 1948 – of a right ever to return to their homeland.

Two years before the Citizenship Law, Israel passed the more famous Law of Return. This effectively opened the door to all Jews around the world to immigrate to Israel, automatically entitling them to citizenship.

Anyone familiar with modern U.S. history will have heard of the Supreme Court decision of 1954 in the famous civil rights case *Brown v. Board of Education*. The judges ruled that the creation of separate public schools for white and black pupils was unconstitutional, on the grounds that "separate is inherently unequal." It was an important legal principle that would strike a decisive blow against Jim Crow, the Deep South's version of apartheid.

If separate is inherently unequal, Israel's segregated structure of citizenship is the most profound form of inequality imaginable. Citizenship is sometimes referred to as the "foundational right" offered by states because so many other basic rights typically depend on it: from suffrage to residency and welfare. By separating citizenship rights on an ethnic basis, creating entitlement to citizenship for Jews with one law and denying most Palestinians citizenship with another, Israel institutionalized legal apartheid at the bedrock level. Adalah, a legal rights group for Palestinians in Israel, has compiled an online database listing Israeli laws that explicitly discriminate based on ethnicity. The Law of Return and the Citizenship Law are the most significant, but there are nearly 70 more of them.

### **Marriage Inequality**

Ben Gurion was prepared to award the remnants of the Palestinians in Israel this degraded version of citizenship because he assumed this population

would pose no threat to his new Jewish state. He expected these Palestinian citizens – or what Israel prefers to term generically "Israeli Arabs" – to be swamped by the arrival of waves of Jewish immigrants like those that settled Tzipori. Ben Gurion badly miscalculated. The far higher birth rate of Palestinian citizens meant they continue to comprise a fifth of Israel's population.

Palestinian citizens have maintained this numerical proportion, despite Israel's strenuous efforts to gerrymander its population. The Law of Return encourages – with free flights, financial gifts, interest-free loans and grants – any Jew in the world to come to Israel and instantly receive citizenship. More than three million Jews have taken up the offer.

The Citizenship Law, on the other hand, effectively closed the door after 1952 on the ability of Palestinians to gain citizenship. In fact, since then there has been only one way for a non-Jew to naturalize and that is by marrying an Israeli citizen, either a Jew or Palestinian. This exception is allowed only because a few dozen non-Jews qualify each year, posing no threat to Israel's Jewish majority.

In practice, Palestinians outside Israel have always been disqualified from using this route to citizenship, even if they marry a Palestinian citizen of Israel, as became increasingly common after Israel occupied the rest of historic Palestine in 1967. During the Oslo years, when Palestinians in Israel launched a legal challenge to force Israel to uphold the naturalization of their spouses from the occupied territories, the government hurriedly responded by passing in 2003 the Citizenship and Entry into Israel Law. It denied Palestinians the right to qualify for Israeli residency or citizenship under the marriage provision. In effect, it banned marriage across the Green Line formally separating Palestinians in Israel from Palestinians under occupation. The measure revealed that Israel was prepared to violate yet another fundamental right – to fall in love and marry the person of one's choice – to preserve its Jewishness.

### **Nationality Inequality**

Most citizens of the United States correctly assume that their citizenship and nationality are synonymous: "American" or "U.S."

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But the same is not true for Israelis. Israel classifies its citizens as holding different “nationalities.” This requires rejecting a common Israeli nationality and instead separating citizens into supposed ethnic or religious categories. Israel has recognized more than 130 nationalities to deal with anomalous cases, myself included. After I married my wife from Nazareth, I entered a lengthy, complex and hostile naturalization process. I am now an Israeli citizen, but my nationality is identified as “British.” The vast majority of Israeli citizens, on the other hand, hold one of two official nationalities: Jewish or Arab. The Israeli Supreme Court has twice upheld the idea that these nationalities are separate from – and superior to – citizenship.

This complex system of separate nationalities is not some arcane, eccentric practice: it is central to Israel’s version of apartheid. It is the means by which Israel can both institutionalize a separation in rights and obscure this state-sanctioned segregation from the view of outsiders. It allows Israel to offer different rights to different citizens depending on whether they are Jews or Palestinians, but in a way that avoids too obvious a comparison with apartheid South Africa. Here is how.

All citizens, whatever their ethnicity, enjoy “citizenship rights.” In this regard, Israel looks – at least superficially – much like a western liberal democracy. Examples of citizenship rights include health care, welfare payments, the domestic allocation of water, and education – although, as we shall see, the picture is usually far more complex than it first appears. In reality, Israel has managed covertly to subvert even these citizenship rights.

Consider medical care. Although all citizens are entitled to equal health provision, hospitals and major medical services are almost always located in Jewish communities, and difficult for Palestinian citizens to access given the lack of transport connections between Palestinian and Jewish communities. Palestinian citizens in remote communities are denied access to basic medical services. And recently it emerged that Israeli hospitals were secretly segregating Jewish and Palestinian women in maternity clinics. Dr. Hatim Kanaaneh, a Palestinian physician in Israel, documents these and many other problems with health care in his book “A Doctor in Galilee.”

More significantly, Israel also recognizes “national rights,” and reserves them almost exclusively for the Jewish population. National rights are treated as superior to citizenship rights. So if there is a conflict between a Jew’s national right and a Palestinian’s individual citizenship right, the national right must be given priority by officials and the courts. In this context, Israel’s rightwing justice minister, Ayelet Shaked, observed in February 2018 that Israel should ensure “equal rights to all citizens but not equal national rights.” She added: “Israel is a Jewish state. It isn’t a state of all its nations.”

The simplest illustration of how this hierarchy of rights works can be found in Israel’s citizenship laws. The Law of Return establishes a national right for all Jews to gain instant citizenship – as well as the many other rights that derive from citizenship. The Citizenship Law, on the other hand, creates only an individual citizenship right for non-Jews, not a national one. Palestinian citizens can pass their citizenship “downwards” to their offspring but cannot extend it “outwards,” as a Jew can, to members of their extended family – in their case, Palestinians who were made refugees in 1948. My wife has relatives who were exiled by the Nakba in Jordan. But with only an individual right to citizenship, she cannot bring any of them back to their homes now in Israel.

This distinction is equally vital in understanding how Israel allocates key material resources, such as water and land. Let us consider land. Israel has “nationalized” almost all of its territory – 93 percent. Palestinian communities in Israel have been able to hold on to less than 3 percent of their land – mostly the built-up areas of their towns and villages – after waves of confiscation by the state stripped them of at least 70 percent of their holdings.

It is not unprecedented in western democracies for the state to be a major land owner, even if Israel’s total holdings are far more extensive than other states. But Israel has successfully masked what this “nationalization” of land actually means. Given that there is no recognized Israeli nationality, Israel does not hold the land on behalf of its citizens – as would be the case elsewhere. It does not even manage the land on behalf of Jewish citizens of Israel. Instead the land is held in trust for the Jewish people around the globe, whether they are citizens or not, and whether

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they want to be part of Israel or not.

In practice, Jews who buy homes in Israel effectively get long-term leases on their property from a government body known as the Israel Lands Authority. The state regards them as protecting or guarding the land on behalf of Jews collectively around the world. Who are they guarding it from? From the original owners. Most of these lands, like those in Tzipori, have been either seized from Palestinian refugees or confiscated from Palestinian citizens.

### Legal Inequality

The political geographer Oren Yiftachel is among the growing number of Israeli scholars who reject the classification of Israel as a liberal democracy, or in fact any kind of democracy. He describes Israel as an “ethnocracy,” a hybrid state that creates a democratic façade, especially for the dominant ethnic group, to conceal its essential, non-democratic structure. In describing Israel’s ethnocracy, Yiftachel provides a complex hierarchy of citizenship in which non-Jews are at the very bottom.

It is notable that Israel lacks a constitution, instead creating 11 Basic Laws that approximate a constitution. The most liberal component of this legislation, passed in 1992 and titled Freedom and Human Dignity, is sometimes referred to as Israel’s Bill of Rights. However, it explicitly fails to enshrine in law a principle of equality. Instead, the law emphasizes Israel’s existence as a “Jewish and democratic state” – an oxymoron that is rarely examined by Israelis.

A former Supreme Court judge, Meir Shamgar, famously claimed that Israel – as the nation-state of the Jewish people – was no less democratic than France, as the nation-state of the French people. And yet, while it is clear how one might naturalize to become French, the only route to becoming Jewish is religious conversion. “Jewish” and “French” are clearly not similar conceptions of citizenship.

Netanyahu’s government has been trying to draft a 12<sup>th</sup> Basic Law. Its title is revealing: it declares Israel as “the Nation-State of the Jewish People.” Not the state of Israeli citizens, or even of Israeli Jews, but of all Jews around the world, including Jews who are not Israeli citizens and have no interest in becoming citizens. This is a reminder of the peculiar nature of a

Jewish state that breaks with the conception of a civic citizenship on which liberal democracies are premised. Israel’s ethnic idea of nationality is closely derived from the ugly ethnic or racial ideas of citizenship that dominated Europe a century ago. Those exclusive, aggressive conceptions of peoplehood led to two devastating wars, as well as providing the ideological justification for a wave of anti-semitism that swept Europe and culminated in the Holocaust.

Further, if all Jewish “nationals” in the world are treated as citizens of Israel – real or potential ones – what does that make Israel’s large minority of Palestinian citizens, including my wife and two children? It seems that Israel regards them effectively as guest

“There is a place to maintain a Jewish majority even at the price of violation of rights.”

– Israeli Justice Minister Ayelet Shaked

workers or resident aliens, tolerated so long as their presence does not threaten the state’s Jewishness. Ayelet Shaked, Israel’s justice minister, implicitly acknowledged this problem during a debate on the proposed Nation-State Basic Law in February. She said Israel could not afford to respect universal human rights: “There is a place to maintain a Jewish majority even at the price of violation of rights.”

The hierarchy of citizenship Yiftachel notes is helpful because it allows us to understand that Israeli citizenship is the exact opposite of the level playing field of formal rights one would expect to find in a liberal democracy. Another key piece of legislation, the Absentee Property Law of 1950, stripped all Palestinian refugees from the 1948 war of their right to any property they had owned before the Nakba. Everything was seized – land, crops, buildings, vehicles, farm implements, bank accounts – and became the property of Israel, passed on to Jewish institutions or Jewish citizens in violation of international law.

The Absentee Property Law applied equally to Palestinian citizens, such as those from Saffuriya who

ended up in Nazareth, as it did to Palestinian refugees outside Israel's recognized borders. In fact, as many as one in four Palestinian citizens are reckoned to have been internally displaced by the 1948 war. In the Orwellian terminology of the Absentee Property Law, these refugees are classified as "present absentees" – present in Israel, but absent from their former homes. Despite their citizenship, such Palestinians have no more rights to return home, or reclaim other property, than refugees in camps in Lebanon, Syria and Jordan.

### **Residential Segregation**

Although Tzipori was built on land confiscated from Palestinians – some of them Israeli citizens living close by in Nazareth – not one of its 300 or so homes, or its dozen farms, is owned by a Palestinian citizen. In fact, no Palestinian citizen of Israel has ever been allowed to live or even rent a home in Tzipori, seven decades after Israel's creation.

Tzipori is far from unique. There are some 700 similar rural communities, known in Israel as cooperative communities. Each is, and is intended to be, exclusively Jewish, denying Palestinian citizens of Israel the right to live in them. These rural communities control much of the 93 percent of land that has been "nationalized," effectively ensuring it remains off-limits to the fifth of Israel's population that is non-Jewish.

How is this system of ethnic residential segregation enforced? Most cooperative communities like Tzipori administer a vetting procedure through an "admissions committee," comprising officials from quasi-governmental entities such as the Jewish Agency, the Jewish National Fund and the World Zionist Organization, which are there to represent the interests of world Jewry, not Israeli citizens. These organizations, effectively interest groups that enjoy a special, protected status as agents of the Israeli state, are themselves a gross violation of the principles of a liberal democracy. The state, for example, has awarded the Jewish National Fund, whose charter obligates it to discriminate in favor of Jews, ownership of 13 percent of Israeli territory. A Jew from Brooklyn has more rights to land in Israel than a Palestinian citizen.

For most of Israel's history, there was little need to conceal what the admissions committees were doing. No one noticed. If a Palestinian from Nazareth had applied to live in Tzipori, the admissions committee would simply have rejected the applicant on the grounds that they were an "Arab." But this very effective mechanism for keeping Palestinian citizens off most of their historic homeland hit a crisis two decades ago when the case of the Kaadan family began working its way through Israel's court system.

Adel Kaadan lived in a very poor Palestinian community called Baqa al-Ghabiyya, south of Nazareth and quite literally a stone's throw from the West Bank. Kaadan had a good job as a senior nurse in nearby Hadera hospital, where he regularly treated Jewish patients and had on occasion, he told me when I interviewed him in the early 2000s, helped to save Israeli soldiers' lives. He assumed this should entitle him to live in a Jewish community. Kaadan struck me as stubborn as he was naïve – a combination of personality traits that had got him this far and ended up causing Israel a great deal of legal and reputational trouble.

Determined to give his three young daughters the best opportunities he could manage, Kaadan had built the family an impressive villa in Baqa al-Ghabiyya. While I sat having coffee with him, one of his daughters played the piano with a proficiency that suggested she had a private tutor. But Kaadan was deeply dissatisfied with his lot. His home was grand and beautiful, but Baqa was not. As soon as the family stepped outside their home, they had to wade into the reality of Palestinian life in Israel. Kaadan was proof that it was possible for some Palestinian citizens, if they were determined and lucky enough to surmount the many obstacles placed in their way, to enjoy personal success, but they could not so easily escape the collective poverty of their surroundings.

Like many other Palestinian citizens, Kaadan was trapped by yet another piece of legislation: the Planning and Building Law of 1965. It advanced a core aim of Zionism: "Judaizing" as much land as possible. It achieved this in two main ways. First, communities in Israel were only recognized by the state if they were listed in the Planning Law. Although nearly 200 Palestinian communities had survived the

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Nakba, the law recognized just 120 or them.

The most problematic communities, from Israel's point of view, were the dispersed Bedouin villages located among the remote, dusty hills of the semi-desert Negev, or Naqab, in Israel's south. The Negev was Israel's biggest land reserve, comprising 60 percent of the country's territory. Its vast, inaccessible spaces had made it the preferred location for secretive military bases and Israel's nuclear program. Israel wanted the Bedouin off their historic lands, and the Planning Law was the ideal way to evict them – by de-recognizing their villages.

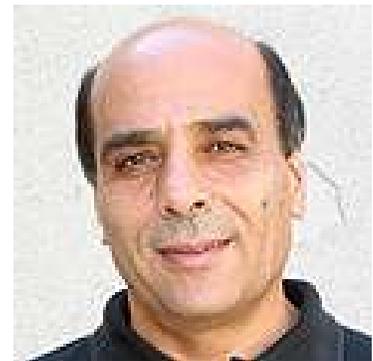
Today the inhabitants of dozens of “unrecognized villages” – home to nearly a tenth of the Palestinian population in Israel – are invisible to the state, except when it comes to the enforcement of planning regulations. The villagers live without state-provided electricity, water, roads and communications. Any homes they build instantly receive demolition orders, forcing many to live in tents or tin shacks. Israel's aim is to force the Bedouin to abandon their pastoral way of life and traditions, and relocate to overcrowded, state-built townships, which are the poorest communities in Israel by some margin.

In addition to creating the unrecognized villages, the Planning and Building Law of 1965 ensures ghetto-like conditions for recognized Palestinian communities too. It creates residential segregation by confining the vast majority of Palestinian citizens to the 120 Palestinian communities in Israel that are officially listed for them, and then tightly limits their room for growth and development. Even in the case of Palestinian citizens living in a handful of so-called “mixed cities” – Palestinian cities that were largely “Judaized” after the Nakba – they have been forced into their own discrete neighborhoods, on the margins of urban life.

The Planning Law also drew a series of blue lines around all the communities in Israel, determining their expansion area. Jewish communities were awarded significant land reserves, while the blue lines around Palestinian communities were invariably drawn close to the built-up area half a century ago. Although Israel's Palestinian population has grown seven or eight-fold since, its expansion space has barely changed, leading to massive overcrowd-

ing. This problem is exacerbated by Israel's failure to build a single new Palestinian community since 1948. Like the other 120 surviving Palestinian communities in Israel, Baqa had been starved of resources: land, infrastructure and services. There were no parks or green areas where the Kaadan children could play. Outside their villa, there were no sidewalks, and during heavy rains untreated sewage rose out of the inadequate drains to wash over their shoes. Israel had confiscated all Baqa's land for future development, so houses were crowded around them on all sides, often built without planning permits, which were in any case impossible to obtain. Illegal hook-ups for electricity blotted the view even further. With poor refuse collection services, the families often burnt their rubbish in nearby dumpsters.

Adel Kaadan had set his eyes on living somewhere better – and that meant moving to a Jewish community. When Israel began selling building plots in Katzir, a small Jewish cooperative community located on part on Baqa's confiscated land, Kaadan submitted his application. When it was rejected because he was an “Arab,” he turned to the courts.



Adel Kaadan

In 2000, the Kaadans' case arrived at the highest court in the land, the Supreme Court. Aharon Barak, the court's president who heard the petition, was the most liberal and respected judge in Israel's history. But the Kaadans' case was undoubtedly the most unwelcome he ever adjudicated. It placed an ardent Zionist like him in an impossible situation. On one hand, there was no practice in Israel more clearly apartheid-like than the ethnic-based residential exclusion enforced by the admissions committees. It was simply not something Barak could afford to be seen upholding. After all, he was a regular lecturer at Yale and Harvard law schools, where he was feted, and had often been cited by liberal counter-

parts on the U.S. Supreme Court as a major influence on their judicial activism.

But while he could not be seen ruling in favor of Katzir, at the same time he dared not rule in the Kaadans' favor either. Such a decision would undermine the core rationale of a Zionist Jewish state: the Judaization of as much territory as possible. It would create a legal precedent that would throw open the doors to other Palestinian citizens, allowing them also to move into these hundreds of Jewish-only communities.

Barak understood that much else hung on the principle of residential separation. Primary and secondary education are also segregated – and largely justified on the basis of residential separation. Jewish children go to Hebrew-language schools in Jewish areas; Palestinian children in Israel go to Arabic-language schools in Palestinian communities. (There are only a handful of private bilingual schools in Israel.)

This separation ensures that educational resources are prioritized for Jewish citizens. Arab schools are massively underfunded and their curriculum tightly controlled by the authorities, as exemplified by the 2011 Nakba Law. It threatens public funding for any school or institution that teaches about the key moment in modern Palestinian history. Additionally, teaching posts in Arab schools have historically been dictated by the Shin Bet, Israel's secret police, to create spies in classrooms and common-rooms.

A side-benefit for Israel of separation in residency and education is that Palestinian and Jewish citizens have almost no chances to meet until they reach adulthood, when their characters have been formed. It is easy to fear the Other when you have no experience of him. The success of this segregation may be measured in intermarriages between Jewish and Palestinian citizens. In the year 2011, when the Israeli authorities last issued statistics, there were only 19 such marriages, or 0.03 percent. Israeli Jews openly oppose such marriages as "miscegenation."

In fact, Israel is so opposed to intermarriages that it prohibits such marriages from being conducted inside Israel. Mixed couples are forced to travel abroad and marry there – typically in Cyprus – and apply for the marriages to be recognized on their

return. Notably, the 1973 United Nations Convention on Apartheid lists measures prohibiting mixed marriages as a crime of apartheid.

Residential separation has also allowed Israel to ensure Jewish communities are far wealthier and better provided with services than Palestinian ones. Although all citizens are taxed on their income, public-subsidized building programs are overwhelmingly directed at providing homes for Jewish families in Jewish areas. Over seven decades, hundreds of Jewish communities have been built by the state, with ready-made roads, sidewalks and public parks, with homes automatically connected to water, electricity and sewage grids. All these communities are built on "state land" – in most cases, lands taken from Palestinian refugees and Palestinian citizens.

By contrast, not one new Arab community has been established in that time. And the 120 recognized Palestinian communities have been largely left to sink or swim on their own. After waves of confiscation by the state, they are on the remnants of private Palestinian land. Having helped to subsidize housing and building programs for millions of Jewish immigrants, Palestinian communities have mostly had to raise their own money to install basic infrastructure, including water and sewage systems.

Meanwhile, segregated zoning areas and separate planning committees allow Israel to enforce much tougher regulations on Palestinian communities, to deny building permits and to carry out demolition orders. Some 30,000 homes are reported to be illegally built in the Galilee, almost all of them in Palestinian communities.

Similarly, most of the state's budget for local authorities, as well as business investment, is channeled towards Jewish communities rather than Palestinian ones. This is where industrial areas and factories are built, to ensure greater employment opportunities for Jewish citizens and to top up Jewish communities' municipal coffers with business rates.

Meanwhile, a central government "balancing grant" – intended to help the poorest local authorities by redistributing income tax in their favor – is skewed too. Even though Palestinian communities are uniformly the poorest in Israel, they typically receive a

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third of the balancing grant received by Jewish communities.

Residential segregation has also allowed Israel to create hundreds of “national priority areas” (NPAs), which receive preferential government budgets, including extra funding to allow for long school days. Israeli officials have refused to divulge even to the courts what criteria are used to establish these priority areas, but it is clearly not based on socio-economic considerations. Of 557 NPAs receiving extra school funding, only four tiny Palestinian communities were among their number. The assumption is that they were included only to avoid accusations that the NPAs were designed solely to help Jews.

Israel has similarly used residential segregation to ensure that priority zoning for tourism chiefly benefits Jewish communities. That has required careful engineering, given that much of the tourism to Israel is Christian pilgrimage. In the north, the main pilgrimage site is Nazareth’s Basilica of the Annunciation, where the Angel Gabriel reputedly told Mary she was carrying the son of God. But Israel avoided making the city a center for tourism, fearing the income from the influx of pilgrims would make Nazareth financially independent, and a prolonged stay by tourists in the city would risk exposing them to the Palestinian narrative.

Instead the north’s tourism priority zone was established in nearby Tiberias, on the Sea of Galilee, a once-Palestinian city that was ethnically cleansed during the Nakba and is now a Jewish city. For decades investors have been encouraged to build hotels and tourist facilities in Tiberias, ensuring that most coachloads of pilgrims only pass through Nazareth, making a brief hour-long stop to visit the Basilica.

Although Nazareth was very belatedly awarded tourism priority status in the late 1990s – in time for the Pope’s visit for the millennium – little has changed in practice. The city is so starved of land that there is almost no room for hotels. Those that have been built are mostly located in the city’s outer limits, where pilgrims are unlikely to be exposed to Palestinian residents.

Public transport links have also privileged Jewish communities over Palestinian ones. The national bus

company Egged – the main provider of public transport in Israel – has established an elaborate network of bus connections between Jewish areas, ensuring that Jewish citizens are integrated into the economy. They can easily and cheaply reach the main cities, factories and industrial zones. Egged buses, however, rarely enter Palestinian communities, depriving their residents of employment opportunities. This, combined with the lack of daycare services for young children, explains why Palestinian women in Israel have long had one of the lowest employment rates in the Arab world, at below 20 percent.

Palestinian communities have felt discrimination in the provision of security and protection too. Last November the government admitted there was woefully inadequate provision of public shelters in Palestinian communities, even in schools, against missile attacks and earthquakes. Officials have apparently balked at the large expense of providing shelters, and the problem of freeing up land in Palestinian communities to establish them. Similarly, Israel has been loath to establish police stations in Palestinian communities, leading to an explosion of crime there. In December Palestinian legislator Yousef Jabareen pointed out that there had been 381 shootings in his hometown of Umm al-Fahm in 2017, but only one indictment. He said the town’s inhabitants had become “hostages in the hands of a small group of criminals.”

In all these different ways, Israel has ensured Palestinian communities remain substantially poorer than Jewish communities. A study in December 2017 found that the richest communities in Israel – all Jewish ones – received nearly four times more welfare spending from the government than the poorest communities – Palestinian ones. A month earlier, the Bank of Israel reported that Palestinian citizens had only 2 percent of all mortgages, in a sign of how difficult it is for them to secure loans, and they had to pay higher interest charges on the loans.

Among the 35 member states of the Organization for Economic Cooperation and Development (OECD), Israel has the highest poverty rate. This is largely because of poverty rates among Palestinian citizens, augmented by the self-inflicted poverty of Israel’s ultra-Orthodox community, most of whose men refuse to work, preferring religious studies. In evi-

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dence of how Israel has skewed welfare spending to benefit poor Jews like the ultra-Orthodox, rather than Palestinian citizens, only a fifth of Jewish children live below the poverty line compared to two-thirds of Palestinian children in Israel.

Back at the Supreme Court, Aharon Barak was still grappling with the conflicting burden of Zionist history and the expectations of American law schools. The judge understood he needed to fudge a ruling. He had to appear to be siding with the Kaadan family without actually ruling in their favor and thereby creating a legal precedent that would let other Palestinian families follow in their path. So he ordered Katzir to rethink its decision.

The Jewish community did so, but not in a way that helped Barak. Katzir responded that they were no longer rejecting the Kaadans because they were Arab, but because they were “socially unsuitable.” Barak knew that would not wash at Yale or Harvard – it too obviously sounded like code for “Arab.” He ordered Katzir to come back with a different decision regarding the Kaadans.

The case and a few others like it dragged on over the next several years, with the court reluctant to make a precedent-setting decision. Quietly, behind the scenes, Adel Kaadan finally received a plot of land from Katzir. Unnerved, cooperative communities across the Galilee started to pass local bylaws – insisting on a “social suitability” criterion for applicants – to pre-empt any decision by the Supreme Court in favor of the Palestinian families banging at their doors.

By 2011, it looked as if the Supreme Court was running out of options and would have to rule on the legality of the admissions committees. At that point, the government of Benjamin Netanyahu stepped in to help out the court. There was no statutory basis for the admissions committees; they were simply an administrative practice observed by all these hundreds of Jewish-only cooperative communities. The Netanyahu government, therefore, pushed through an Admissions Committee Law that year. It finally put the committees on a statutory footing, but also made them embarrassingly visible for the first time. As the parliament backed the legislation, reports in

the western media labeled it an “apartheid law” – conveniently ignoring the fact that this had been standard practice in Israel for more than six decades.

A petition from the legal group Adalah against the new law reached the Supreme Court in 2014. Barak had by this time retired. But in line with his aversion to issuing a ruling that might challenge the racist underpinnings of Israel as a Jewish state, the judges continued *not* to make a decision. They argued that the law was too new for the court to determine what effect the admissions committees would have in practice – or in the language of the judges, they declined to act because the law was not yet “ripe” for adjudication. The ripeness argument was hard to swallow given that the effect of the admissions committees in enforcing residential apartheid after so many decades was only too apparent.

Even so, the legal challenge launched by the Kaadans left many in the Israeli leadership worried. In February 2018, referring to the case, the justice minister Ayelet Shaked averred that in “the argument over whether it’s all right for a Jewish community to, by definition, be only Jewish, I want the answer to be, ‘Yes, it’s all right’.”

## Two Modes of Apartheid

It is time to address more specifically the nature of the apartheid regime Israel has created – and how it mirrors the essence of South Africa’s apartheid without precisely replicating it.

Close to the forest planted over the ruins of the Palestinian homes of Saffuriya is a two-storey stone structure, an Israeli flag fluttering atop its roof. It is the only Palestinian home not razed in 1948. Later, it was inhabited by Jewish immigrants, and today serves as a small guest house known as Tzipori Village. Its main customers are Israeli Jews from the crowded, urban center of the country looking for a weekend break in the countryside.

Scholars have distinguished between two modes of South African apartheid. The first was what they term “trivial” or “petty” apartheid, though “visible” apartheid conveys more precisely the kind of segregation in question. This was the sort of segregation

that was noticed by any visitor: separate park benches, buses, restaurants, toilets, and so on. Israel has been careful to avoid in so far as it can this visible kind of segregation, aware that this is what most people think of as “apartheid.” It has done so, even though, as we have seen, life in Israel is highly segregated for Jewish and Palestinian citizens. Residence is almost always segregated, as is primary and secondary education and much of the economy. But shopping malls, restaurants and toilets are not separate for Jewish and Palestinian citizens.

The same scholars refer to “grand” or “resource” apartheid, which they consider to have been far more integral to apartheid South Africa’s political project. This is segregation in relation to the state’s key material resources, such as land, water and mineral wealth. Israel has been similarly careful to segregate the main material resources to preserve them for the Jewish majority alone. It does this through the establishment of hundreds of exclusively Jewish communities like Tzipori. As noted previously, almost all of Israel’s territory has been locked up in these cooperative communities. And in line with its Zionist sloganeering about making the desert bloom, Israel has also restricted the commercial exploitation of water to agricultural communities like the kibbutz and moshav. It has provided subsidized water to these Jewish-only communities – and denied it to Palestinian communities – by treating the commercial use of water as a national right for Jews alone.

A thought experiment using Tzipori Village guest house neatly illustrates how Israel practices apartheid but in a way that only marginally differs from the South African variety. Had this bed and breakfast been located in a white community in South Africa, no black citizen would have been allowed to stay in it even for a night, and even if the owner himself had not been racist. South African law would have forbidden it. But in Israel any citizen can stay in Tzipori Village, Jew and Palestinian alike. Although the owner may be racist and reject Palestinian citizens, nothing in the law allows him to do so.

But – and this is crucial – Tzipori’s admissions committee would never allow a Palestinian citizen to buy the guest house or any home in the moshav, or even rent a home there. The right a Palestinian citizen has

to spend a night in Tzipori Village is “trivial” or “petty” when compared to Israel’s sweeping exclusion of all Palestinian citizens from almost all the country’s territory. That is the point the scholars of South African apartheid highlight in distinguishing between the two modes of apartheid. In this sense, Israel’s apartheid may not be identical to South Africa’s, but it is a close relative or cousin.

This difference is also apparent in Israel’s treatment of suffrage. The fact that all Israeli citizens – Jews and Palestinians – have the vote and elect their own representatives is often cited by Israel’s supporters as proof that Israel is a normal democratic country and cannot therefore be an apartheid state. There are, however, obvious problems with this claim.

We can make sense of the difference by again examining South Africa. The reason South African apartheid took the form it did was because a white minority determined to preserve its privileges faced off against a large black majority. It could not afford to give them the vote because any semblance of democracy would have turned power over to the black population and ended apartheid.

Israel, on the other hand, managed to radically alter its demographic fortunes by expelling the vast majority of Palestinians in 1948. This was the equivalent of gerrymandering the electoral constituency of the new Jewish state on a vast, national scale. The exclusion of most Palestinians from their homeland through the Citizenship Law, and the open door for Jews to come to Israel provided by the Law of Return, ensured Israel could tailor-make a “Jewish ethno-nocracy” in perpetuity.

The Israeli-Palestinian political scientist Asad Ghanem has described the Palestinian vote as “purely symbolic” – and one can understand why by considering Israel’s first two decades, when Palestinian citizens were living under a military government. Then, they faced greater restrictions on their movement than Palestinians in the West Bank today. It would be impossible even for Israel’s keenest supporters to describe Israel as a democracy for its Palestinian citizens during this period, when they were under martial law. And yet Palestinians in Israel were awarded the vote in time for Israel’s first

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general election in 1949 and voted throughout the military government period. In other words, the vote may be a necessary condition for a democratic system but it is far from a sufficient one.

In fact, in Israel's highly tribal political system, Jews are encouraged to believe they must vote only for Jewish Zionist parties, ones that uphold the apartheid system we have just analyzed. That has left Palestinian citizens with no choice but to vote for contending Palestinian parties. The one major Jewish-Arab party, the Communists, was in Israel's earliest years a significant political force among Israeli Jews. Today, they comprise a tiny fraction of its supporters, with Palestinian citizens dominating the party.

With politics so tribal, it has been easy to prevent Palestinians from gaining even the most limited access to power. Israel's highly proportional electoral system has led to myriad small parties in the Israeli parliament, the Knesset. All the Jewish parties have at various times participated in government in what are effectively rainbow coalitions. But the Palestinian parties have never been invited into an Israeli government, or had any significant impact on the legislative process. Israel's political system may allow Palestinian citizens to vote, but they have zero political influence. This is why Israel can afford the generosity of allowing them to vote, knowing it will never disturb a tyrannical Jewish-majority rule.

Palestinian parliament member Ahmed Tibi has expressed it this way: "Israel is a democratic state for Jewish citizens, and a Jewish state for Arab citizens."

### 'Subversive' Call for Equality

But increasingly any Palestinian presence in the Knesset is seen as too much by Israel's Jewish parties. When the Oslo process was initiated in the late 1990s, the Israeli and Palestinian leaderships agreed that Israel's Palestinian citizens should remain part of Israel in any future two-state arrangement. In response, Palestinian citizens began to take their Is-

raeli citizenship seriously for the first time. A new party, Balad, was established by a philosophy professor, Azmi Bishara, who campaigned on a platform that Israel must stop being a Jewish state and become a "state of all its citizens" – a liberal democracy where all citizens would enjoy equal rights.

This campaign was soon picked up by all the Palestinian political parties, and led to a series of documents – including the most important, the Future Vision of the Palestinian Arabs in Israel – demanding major reforms that would turn Israel into either

"a state of its citizens" or a "consensual democracy."

The Israeli leadership was so discomfited by these campaigns that in 2006 the prime minister, Ehud Olmert, held a meeting with the Shin Bet. Unlike usual meet-

ings of the secret police, this discussion was widely publicized. The Israeli media reported that Shin Bet regarded the so-called Future Vision documents as "subversion" and warned that they would use any means, including non-democratic ones, to defeat any campaign for equal rights.

A year later, when Bishara – the figurehead of this movement – was out of the country on a lecture tour, it was announced that he would be put on trial for treason should he return. It was alleged that he had helped Hizbullah during Israel's 2006 war with Lebanon – a claim even the Israeli newspaper Haaretz dismissed as preposterous. Bishara stayed away. Effectively, the government and Shin Bet had declared war on demands to democratize Israel. As a result, most Palestinian politicians turned the volume down on their demands for political reform.

However, their continuing presence in the Knesset – especially as a succession of governments under Netanyahu has grown ever-more rightwing – has enraged more and more Jewish legislators. For years, the main Jewish parties have used their control of the Central Elections Committee to try to prevent leading Palestinian politicians from standing in

parliamentary elections. However, the Supreme Court has – by ever-narrower margins – repeatedly overturned the CEC’s decisions.

Avigdor Lieberman, the Soviet-born Israeli defense minister who has been leading the attack on Palestinian legislators, managed to push through a Threshold Law in 2014 that raised the electoral threshold to a level that would be impossible for any of the three major Palestinian parties to surmount. But in a major surprise, these very different parties – representing Communist, Islamic and democratic-nationalist streams – put aside their differences to create a Joint List. In a prime example of unintended consequences, the 2015 election resulted in the Joint List becoming the third largest party in the Knesset.

For a brief while, and to great consternation in Israel, it looked as if the List might become the official opposition, entitling Palestinian legislators both to gain access to security briefings and to head sensitive Knesset committees.

The pressure to get rid of the Palestinian parties has continued to intensify. In 2016 the Knesset passed another law – initially called the Zoabi Law, and later renamed the Expulsion Law – that allows a three-quarters parliamentary majority to expel any legislator, not because they committed a crime or misdeed but because the other legislators do not like their political views. The law’s original name indicated that the prime target for expulsion was Haneen Zoabi, who is now the most prominent member of Bishara’s Balad party.

According to commentators, it will be impossible to raise the three-quarters majority needed to approve such an expulsion. But in a time of war, or during one of the intermittent major attacks on Gaza, it seems probable that such a majority can be marshaled against outspoken critics of Israel – and supporters of a state of all its citizens – like Zoabi.

In fact, it only requires the expulsion of one member of the Joint List and the other members will be placed in an untenable position with their voters. They will be in the Knesset only because the Jewish Zionist legislators have chosen not to expel them – yet. This is why the Haaretz newspaper referred to

the Expulsion Law as the first step in the “ethnic cleansing of the Knesset.”

As Israeli officials seem increasingly determined to abolish even the last formal elements of democracy in Israel, the country’s Palestinian leaders are finding themselves with limited options. Their only hope is to bring wider attention to the substantial democratic deficit in the Israeli polity.

In February, responding to the government’s moves to legislate a Basic Law on “Israel as the Nation-State of the Jewish People,” Knesset member Yousef Jabareen submitted an alternative Basic Law. It was titled “Israel, a Democratic, Egalitarian, and Multi-cultural State.” In any western state, such a law would be axiomatic and redundant. In Israel, the measure stood no chance of gaining support in the Knesset except from Palestinian legislators.

Jabareen admitted in an interview that the bill would be unlikely to secure backing even from the five members of Meretz, by far the most leftwing Jewish party in the parliament. Optimistically, he observed: “I want to hope that Meretz will be among them [supporters]. I have shared with Meretz a draft of the bill, but I have not asked them at this stage to join, in order to give them time to mull things over.”

There could hardly be a more ringing indictment of Israeli society than the almost certainly futility of seeking a Jewish legislator in the Knesset willing to support legislation for tolerance and equality. □

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