INTERROGATING THE CITIZEN:
THE ISRAELI LOGIC OF EXCLUSION AND THE
INTERNATIONALIZATION OF CITIZENSHIP RESTRICTIONS

SHOURIDEH CHERIE MOLAVI

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Abstract

Working from the paradigm of 'stateless citizenship' as a looking glass, or a heuristic device, this study examines the particular logic of exclusion in the Israeli constitutional order. To this end, the Thesis is composed of two central analytical tracks. It begins by outlining the manner in which the State of Israel mobilizes structures and arrangements of citizenship in the actual exclusion. It is through the bestowal of Israeli citizenship that non-Jews are 'made' stateless; it is through inclusion within the Israeli citizenship regime that they are excluded. Using extensive documents and original materials from archives in Jerusalem, London and Geneva, the study holds that the modern paradigm of citizenship, traditionally a mechanism for inclusion, is transformed in Israel. The relation of exception in the classical liberal model of citizenship is placed on its head and inclusive exclusionary mechanisms are inverted. This is because the Israeli incorporation regime has displaced the central figure of the 'citizen' in the body politic, vesting it with features of the less stable and capricious 'immigrant'. Building on this, the study goes on to consider what these findings elucidate about broader transformations in citizenship restriction and revocation. It examines what the interrogation of the citizen within Israel can detect and reveal core and troubling directions in which the exclusionary policies embedded in Western liberal citizenship regimes are headed. Using citizenship in the Jewish State as a microcosm of broader developments around inclusion and exclusion, the study posits that questions as to who is a real or a desired citizen on the part of ostensibly liberal democratic nation-states have shifted their gaze of exclusion onto the figure of the citizen. With this shift, it is argued that we are witnessing a rising political trajectory where the citizen is assuming features closer to the more unstable figure of the 'immigrant.' Overall, in the discussions and assessments of the Thesis, the interrogation of the figure of the citizen in Israel is used to illuminate broader shifts in citizenship restrictions occurring today in Europe and North America.

For Parvin, in honor of Bibimah

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Preface

This study is a product of first-hand fieldwork and research I have conducted in historic Palestine for the past 12 years into the logic of exclusion that shapes the Israeli incorporation regime.

Working from my previous writing on the exclusionary dynamics of Palestinian-Arab existence in Israel, I was curious to determine how the analytical paradigm of 'stateless citizenship' that I had designed may illuminate broader transformations in citizenship occurring today. For me, the notion that stateless citizenship could be a kind of looking glass or lens through which to examine the closure of citizenship more broadly was intriguing. Meanwhile, the realization that practices in other liberal-democratic states was reminiscent of the Israeli logic of exclusion was terrifying.

My work in Palestine as a researcher and instructor has, over the years, taught me how to *see* power and how to *read* power. The settler-colonial and racialized organization of human life and death by the Israeli incorporation regime heightened my understanding of the violence that shapes the discourse of law and rights. I learned how to think from a political space where refugee camps act like cities, citizenship becomes statelessness, borders constantly appear and disappear, temporariness feels permanent, exclusion is delivered through inclusion, and where the reality of slow death pushes a celebration of life to the surface. Such a space and climate makes one question the basic units of politics.

Importantly, my analysis of the Israeli citizenship and nationality regime in this study has also been informed by the generous expressions of daily experiences, struggles, and insight of Palestinians, which have throughout the years been shared with me by members of the community. If this project is able to capture even part of the political spirit and intention of these friends and dear ones then it will have been worth the effort.

Gaza City, Palestine
April 7, 2018

Introduction | 'Stateless Citizenship' as a Looking Glass

1. States, citizenships and modes of incorporation

The past few decades have revealed the advancement of efforts by Western democratic states to delimit their national identities, moral frontiers and territorial borders against the 'unwanted' or 'undesirable'. These efforts include the broadening and intensification of various intra-national and trans-national techniques of restriction, expulsion, revocation and containment. This tightening and redrawing of the boundaries of inclusion by sovereign power has taken shape, insofar as it has succeeded, through the active application of the principles, tools and discourse of citizenship. While directed toward the presence and migration of unwanted, undesirable and unknown populations, these efforts by Western democracies have largely resulted in the fortification of citizenship restrictions. In other words, the multifaceted endeavor to reallocate and reconstitute political subjects to their preferred sovereigns has, in the process, re-incorporated the figure of the citizen into the body politic. *The gaze toward 'undesirable outsiders' has been widened to include 'undesirable insiders'.* Against this backdrop, I argue that the un-rooting of citizenship reveals the ways the relation of exclusion is being internalized; shifting the gaze of exclusion onto the figure of the citizen. Using the Israeli incorporation regime as an analytical and political paradigm, in this study I examine a broader political trajectory where the figure of the 'citizen' is being vested with features of the less stable and capricious 'immigrant' in the body politic.

The mode of incorporation, combining both formally written or legal principles and informal political practices, is defined by Yasemin Soysal as an *incorporation*

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regime.[1] The incorporation regime, Soysal writes, refers to "patterns of institutional practices and more or less explicit cultural norms that define the membership of individuals and/or groups in the society and differentially allocate entitlements, obligations and domination."[2] An incorporation regime is a regime of social, political, economic, and cultural institutions that stratify the assumed equal or universalist citizenship of the state through a differential dispensing of rights, benefits, and obligations to various communities. The dynamic of incorporation is neither limited to the actual interaction of civic subjects with the policies and practices of the nation-state nor to the extent of their integration. Instead, incorporation refers to the actual organizational arrangement of membership and the institutional modes within which the civic subject is placed. Thus, every host-state maintains specific juridico-political policy regulations according to which the condition and status of the civic subject is defined. Taken together, the degree of incorporation into a society depends not only on the socio-cultural attributes of an ethno-national community, a minority group, or an immigrant collective, but certainly also on the ideological foundations, and complex norms and practices (i.e. the incorporation regime) of the host society. It is the interaction between these two forces that constitutes the particular kind of incorporation – or exclusion – that is realized.

It is from this analytical position where my examination of the Israeli incorporation regime commences in the forthcoming excursus. Similar to other nation-states, the nature of the State of Israel translates into the character of its citizenship. As we will see, the ideological, conceptual and symbolic emphasis on its *Jewish* and *Zionist*

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1   Yasemin Soysal, *Limits of Citizenship, Migration and Post-National Citizenship in Europe* (Chicago: Chicago University Press, 1994), 36.
2   Ibid.

character shapes the kind of citizenship it provides to non-Jewish communities, along with how this citizenship is formulated, structured, and arranged. Importantly, this produces intense legal, political, socio-cultural and economic mechanisms of exclusion within the Israeli citizenship regime.[3] These multifaceted racialized frameworks that are embedded within what I will examine as the *Zionist incorporation regime* – relations and categories of inclusion and exclusion shaped by a Zionist ideology – work in conjunction, intersect, and fuel one another. Hence the treatment of these frameworks in isolation from one another is ineffective as the various relations of exclusion within minority citizenship in Israel is not solely the result of a single feature of state-citizen relations, but the product of all of these elements. The examination of Israel's formal and informal practices in the following chapters exposes the dynamics and structure of this Zionist incorporation regime. From here, the sophisticated policies of exclusion and their respective systems of control that underpin non-Jewish citizenship within this incorporation regime will begin to emerge. With this, we can delve into the two core considerations of this study: what the application and appropriation of liberal principles of citizenship in the Jewish State over half a century reveals about the figure of the 'citizen' within its constitutional order, and second, what this indicates about broader transformations in citizenship occurring today in the context of and migration and a perceived rise in transnational terrorism.

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3   See Shourideh C. Molavi, *Stateless Citizenship: The Palestinian-Arab Citizens of Israel* (Leiden: Brill, 2013), Chapter Two. In the section titled "A Multifaceted Discrimination" I outline the ways in which multifaceted discrimination against non-Jewish citizens pervades every corner of Israeli society: from the private to the public sphere, and at social, civil, legal and political levels. In this work I have analyzed, in great detail, the ways in which Israel's policy of Jewish dominance is channeled at the declarative level, the structural level, and the operational level. This book was the product of my M.A. thesis, completed in 2010.

2. 'Stateless citizenship' as the Israeli logic of exclusion

Today discrimination against Palestinian-Arab citizens penetrates to every corner of Israeli society, from the private to the public sphere, and at social, civil, legal and political levels. That non-Jewish citizens of Israel are not placed on an equal conceptual, ideological, political or even legal footing with their Jewish counterparts is no longer uncharted academic or political territory. In my previous writing on Palestinian-Arab citizenship in Israel, I have outlined at length the entrenched and multifaceted discrimination against non-Jewish citizens at the formal and declarative, structural and institutional, operational and budgetary, and legislative levels.[4] While legal and operational policies exist in Israel that aim at alleviating the depraved circumstances of marginalized groups and civic collectives within its society, existing multifaceted discrimination against Palestinian-Arabs indicate that these measures have largely been fruitless. At best, policies aimed at reducing marginalization are both insufficient and ineffective and, at worst, they are rendered inapplicable to the case of non-Jewish Arab citizens.

My previous study on the topic of Israeli citizenship outlined at length the intellectual arguments, historical absences and conceptual frameworks of liberal-Zionist writings on the political situation and claims of the Arab citizenry.[5] Yet, the approach I adopt to outline the salient aspects of the particular framework of exclusion within which Palestinian citizens of Israel are placed has differed significantly from that of the existing scholarship. My examinations worked from, and moved beyond what is *deficient* or *wanting* in their provided citizenship rights (beyond the *what* of citizenship) and focused

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4   Ibid.
5   Ibid.

more on *how* this Palestinian citizenship came to embody its existing exclusionary

dynamics. My concern had been to elucidate how deficient citizenship for non-Jewish

subjects is produced and maintained, along with the way in which its relations of

inclusion and exclusion are created. Throughout my analysis, it was emphasized that an

elemental feature of how Palestinian citizenship is formed and reproduced is that the

means, the actual medium, *through* which, *by* which, and *from* which peripheral and

limited Palestinian existence is maintained in Israel has been citizenship itself.

My examinations on this topic have shown that the mechanisms of control and

exclusion developing out of the Zionist incorporation regime are shaped by the changing

settler-colonial boundaries of the Israeli polity and, by extension, form its hierarchical

citizenship framework.[6] As expressed by Shafir,

> [c]itizenship has never been simple or unitary in form in Israel – a situation it
> shares with many other colonial and postcolonial societies. There has always
> been a multiplicity of hierarchically stacked citizenships …. The full complement
> of rights in Israel … [is] only available to those who were part of the colonization
> of Palestinian land.[7]

Contemporary colonial contradictions in Israeli society, democracy and, by extension, in

its citizenship regime therefore render genuine Palestinian-Arab inclusion an

impossibility. This is because the institutions and claim-making processes are

deliberately designed to exclude the non-Jewish community on the basis of their

inclusion into this regime. As a result, the legal ensconcing of Jewish dominance – and

the absence of constitutional equality – as part of the self-definition of the state compels

Israel constantly to (re)position itself in opposition to the Palestinian-Arab community.

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6   Ibid., 183.
7   Gershon Shafir, "Settler Citizenship in the Jewish Colonization of Palestine," in *Settler Colonialism in the Twentieth Century: Project, Practices, Legacies*, ed. Caroline Elkins and Susan Pedersen (New York: Routledge, 2005), 55.

To clarify and explain this unique relation of exclusion Israeli citizenship regime, I have proposed and extensively outlined the paradigm of *stateless citizenship*. With the analytical model of stateless citizenship, I show how the design of Israel's incorporation regime demarcates Arab access to citizenship rights and representation while repudiating their status as citizens of that state, thus rendering this community *stateless citizens*.

As I have explained in previous writing, the notion of a 'stateless' citizenship for Arabs in Israel does not superficially conceptualize their statelessness alongside that of other parts of the Palestinian nation. It is not an indistinguishable or interchangeable legal, political or socio-economic condition. Of course, students and observers familiar with the Israel-Palestine conflict understand that, at a very elementary level, the Palestinian nation as a whole – whether citizens or non-citizens of other states – are a stateless people. They do not have an established and independent state that agrees (or is able) to represent them, their needs, rights and aspirations, as a people.[8] At the same time, the statelessness of the Arab citizens of Israel differs both conceptually and substantively from the rest of the Palestinian nation.

In contrast to the *state of exception*, where those in the camp are excluded by not belonging to the state, as stateless citizens, Palestinian-Arabs are *excluded* in the Israeli regime by being *included*. Palestinian-Arabs are not denationalized; they are not stripped of their Israeli citizenship, they do not exist outside of the law, and there is no suspension of the validity of the juridico-political order. It is the reverse. Since they are recognized as Israeli citizens, international and domestic laws apply, and they have (limited) access

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8   Despite the UN General Assembly vote on November 29, 2012 to recognize the State of Palestine within the 1967 borders as a non-member state with observer status, Israel remains an occupying power. It holds complete military control and decision-making power over policies and practices concerning the environmental, economic and political development in the OPT, certainly in the West Bank and East Jerusalem, and to a great extent in the Gaza Strip.

to the institutions of the Israeli civic community. This makes their relation to the state that of *exclusive-inclusion*.[9] As it stands, these non-Jewish citizens of Israel do have a particular political and legal relationship with the Israeli regime that other Palestinians do not have. However limited, and the internal contradictions aside, there are benefits granted to the Palestinian-Arab citizenry through their inclusion in the discourse of rights as citizens of Israel. These privileges are denied to the rest of the Palestinian population, such as mobility rights and the right to vote, among others. What this indicates is that while all Arabs are excluded from the Israeli incorporation regime, the logic of the relation of exclusion faced by Palestinian citizens differs from that of non-citizen Palestinians. Essentially, the difference is between the *inclusive-exclusion* of the broader Palestinian nation and the *exclusive-inclusion* of non-Jewish Arab citizens.

The statelessness of these Arab citizens is characterized by the fact that though they possess a recognized and legally supported citizenship status in Israel, they are not represented by it at an ideological, existential, institutional and political level. The State of Israel is, by its self-definition, not *theirs*. This makes them stateless in that they have formal membership but, as non-Jews, are not a part of the self-definition of nor are they included in the body politic of the Israeli State. The granting of citizenship, the *actual inclusion* within the Israeli citizenship regime, produces the inherent contradictions and paradoxes in any Arab membership in the Israeli political and social regime. *It is through the bestowal of Israeli citizenship that Arabs are 'made' stateless; it is through inclusion within the Israeli citizenship regime that they are excluded.* Here the modern paradigm of citizenship, traditionally a mechanism for inclusion, is reversed. The relation of exception in the classical liberal model of citizenship is placed on its head and inclusive

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9 Molavi, *Stateless Citizenship*, Chapter Six.

exclusionary mechanisms are inverted. Far from a strict exclusion absent of a citizenship that places the Palestinian citizen outside and forever peripheral to the Israeli regime, it is their very *inclusion* within what is essentially an exclusionary political condition that generates their *exclusion* from state membership – thereby rendering them *stateless citizens*.

For this reason, and an important consideration that I have stressed, the only way in which non-Jewish citizen membership within a Zionist state (one that is built on the pre-existing rejection and exclusion of the Palestinian subject) is realized is through the logic of *stateless citizenship*. Worthy of emphasis, the exclusive-inclusion of non-Jewish subjects into its citizen regime is the only way whereby the racialized exclusions and settler-colonial frameworks of Israel examined in this study, can remain internally coherent and intact. Short of deconstructing itself, stateless citizenship is the only kind of relationship the Israeli incorporation regime can allow itself to have with its Palestinian-Arab constituents.

Building from my examinations of Israeli citizenship, the analytical focus of this project differs. My previous writing focused on the specific and multifaceted exclusions of Palestinian-Arab citizens in the Israeli incorporation regime, as a national non-immigrant indigenous community. To examine the particular logic of exclusive-inclusion to which this indigenous citizen population is faced, I developed the aforementioned paradigm of stateless citizenship. In this study, I work from the model of stateless citizenship that is provided to Palestinian-Arabs as non-Jews, to examine the figure of the 'citizen' in Israel more broadly. Specifically, my primary analytical concern pertains to

the particular legal and political placement of the figure of the citizen in relation to that of the 'immigrant' in the Israeli constitutional equation.

My second core consideration is whether this inversion placing the 'immigrant' at the center of the Israeli body politic is reminiscent of a rising logic of exclusion practiced in Western citizenship structures. To this end, the current study employs stateless citizenship as a 'looking glass' or lens through which to detect and analyze the closure or thinning down of citizenship more broadly. By this I mean that the paradigm of stateless citizenship is used as a heuristic device: as an analytical model to aid our understanding of liberal citizenship today. What I wish to stress is that our excursus does not claim a cause and effect vis-à-vis the citizenship exclusions in Western liberal-democracies and those that make up the Israeli incorporation regime. Nor am I arguing that the closure of citizenship in Israel is merely a replica of global citizenship structures, placing Israel alongside a family of liberal democratic nations.[10] Certainly, the forthcoming chapters outline a myriad of structural, legal, political and ideological practices and policies that together place Israel apart from Western liberal democratic societies; not least its racialized parameters for inclusion and its active settler-colonial constitutional order. Instead, Israel is used as an analytical paradigm to detect, extract the particular features of the relation exclusion that is taking place. As such, while Israeli stateless citizenship and the Western practices of citizenship revocation and restriction are practicing a shared interrogation of the figure of the citizen, these practices nevertheless remain a *different type* of interrogation.

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10 My previous writing has critiqued liberal-Zionist arguments that equate and seek to normalize Israeli practices of racialized exclusion with constitutional orders in Western democratic states. See my critique of Alexander Yakobson and Amnon Rubinstein's *Israel and the Family of Nations: The Jewish Nation-State and Human Rights* (New York: Routledge, 2009), in *Stateless Citizenship*, Chapter Four.

With this aim, and to reiterate, the model of stateless citizenship is the preliminary analysis upon which I will build two central analytical tracks in this study. Working from the relation of exclusive-inclusion and the use of citizenship structures and mechanisms to exclude by actually including the political subject, I first examine the function of the figure of the 'citizen' vis-à-vis that of the 'immigrant' within the Israeli incorporation regime. And building on this, the study goes on to consider how the interrogation of the citizen within Israel reveals core directions in which the exclusionary policies embedded in Western liberal citizenship regimes are headed.

3. Israeli inclusion: Inverting the 'citizen' with the 'immigrant'

The first and major contribution of this study is to work from the dynamics of non-Jewish citizenship in Israel, and examine what the parameters of *stateless citizenship* implies about the figure of the 'citizen' in the Israeli incorporation regime. With reference to extensive archival documentation gathered first-hand at the League of Nations Archives at the United Nations Office in Geneva, Switzerland, and the Israel State Archives and the Central Zionist Archives in Jerusalem, I examine the placement of the 'citizen' and the 'immigrant' in the Israeli constitutional order. The study begins by mapping out the colonial foundations of the Jewish citizenship and nationality regime, and how this historical matrix laid a legal, political and normative blueprint both the configuration and constitution of the Jewish State. In particular, I consider how these foundations laid the basis for the differential citizenship regime that today continues to exist to in Israel. Indeed, the bulk of this study aims to reveal that, since its inception, the Israeli incorporation regime has been structured in a manner that broadens the category of the 'Jewish immigrant', placing this figure on the top of the constitutional process. Close

analysis of the *Law of Return (1950)* shows how as a country primarily aimed at the ingathering of Jewish exiles, has taken steps to legally and politically place the immigrant placed at the center of the Israeli constitutional equation. What I argue, therefore, is that *the 'desired' citizen in Israel has become the figure of the Jewish immigrant*. This is the newcomer or 'guest' who having left their place of birth, residence and protection arrives to congregate in the Jewish State and thereby reproduces and maintains both its identity and existence as an automatic 'host'. These findings account for the relation of exclusive-inclusion that forms *stateless citizenship*. They indicate that the reason why Israel has been able to employ citizenship structures to exclude non-Jewish Arabs is because the matrix of inclusion in Israel is less geared toward the citizen, and more towards determining immigration in a manner that enables Jewish entry and settlement.

Within this core analytical track, the paradigm of *stateless citizenship* points our analytical gaze in the direction of two additional related political and theoretical notions informing the current study. These two points are important not only because they are features particular to the Israeli citizenship regime, but also because they are reminiscent of broader transformations in citizenship occurring today within Western liberal democracies.

The first point emerging out of the notion of *stateless citizenship* concerns the inherent exclusionary foundations of citizenship. In some ways, the exclusion of non-Jewish Arabs from Israeli citizenship is not only a problem of the Zionist-Palestinian conflict, but can be sourced in the reality that citizenship is in itself a *relation of exclusion*. Rather than focusing on the Other that resides *outside* or *on the margins of* the citizenship regime, the stateless citizenship of Palestinians in Israel reveals the dynamic

of Otherizing that occurs *within and through inclusion* in the citizenship regime. This paradigm examines the exclusionary frameworks and dynamics generated through actual inclusion and membership in a citizenship regime; as opposed to exclusion from a citizenship regime. Understanding modern liberal citizenship *as exclusion*, and focusing on the exclusions that exist within it, will enable us to make sense of the ways in which the figure of the citizen has been relegated to a marginal figure of politics. Through the Israeli case study, I will point to a rising political trajectory where the citizen is being stretched and inverted with what I describe as the more 'temporary', 'capricious', and 'fluid' figure of the 'immigrant'. Here I mean that state practices of exclusive-inclusion are shaking and undoing the framework of inclusion and protection in liberal citizenship. And so, building from the concept of stateless citizenship, the first theoretical consideration to which the present study on citizenship points is *whether citizenship is, or can be, genuinely inclusive, even of its own subjects.*

Developing from this question is a second concern regarding the relationship between the dynamics of exclusion in liberal theory and those in Zionism. Shown in the forthcoming chapters, the Judaization project that lies at the root of Zionism is, by definition, a project of colonial exclusion. It cannot genuinely coexist with the promise of classical liberal principles of equality, representation, common possession, democratic participation and inclusion. Of course, each of these liberal principles contain their own respective exclusionary frameworks. They are often fraught with problematic realizations in the form, among other divisive issues, of racially configured government policies, practices and nationalistic discourse around who 'belongs' to the common, who is the 'real' citizen, and what it means to be equal within increasingly multicultural societies.

For this reason, the stateless citizenship of non-Jews in Israel is also a problem of liberal citizenship itself, its exclusionary dynamics and relations which, when enmeshed in numbing and vague liberal terminology, can have violent realizations. However, these violent effects of and exclusions within liberal discourse and practices are stimulated when employed within the Israeli incorporation regime. The racialized parameters of modern Zionism that underpin contemporary Israeli society and policies are an enhanced or accentuated version of the existing relations of exclusion in liberal citizenship and discourse. For this reason, the Israeli citizenship regime becomes a particularly suitable lens for us to examine the existing dynamics embedded in modern liberal citizenship as the inherent exclusions and racialist configurations of citizenship are exaggerated in the case of Israel. Therefore, when we begin our analysis from the condition of Arabs *with* Israeli citizenship, we realize that the problem extends from the existing relations of exclusion in classical liberal citizenship to the ways in which they are applied, reversed and enhanced by the racialized tenets of Zionism that underpin the Israeli incorporation regime.

4. Israel as a looking glass for broader trends in citizenship

The second major track of my study considers how the historical and contemporary practices and dynamics of the colonial logic of Israeli democracy and citizenship informs current examinations of European and North American drives toward national and cultural homogeneity.[11] I look forward from the implications of stateless citizenship in

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11   Comparisons between the Jewish nationalist movement and Hindu nationalism can also be interesting in this regard. As close regional partners, India and Israel both have a history of British colonial rule, are strong American allies and regional military powers, and are understood broadly as 'liberal democracies'. The figure of the 'Hindu secular', namely a kind of secular nationalism that mobilizes a traditionally religious identity is comparable with that of the Jewish secular, or Zionist nationalist,

Israel, and make broader observations on the closure of citizenship in Western states in

the context of migration and a perceived rise in transnational terrorism. The global trends

of citizenship restrictions examined here are limited to those in Europe and North

America, broadly described and imagined as the geographic 'West' in this study, given

their particular historical relationship with the Middle East and North Africa. Explained

in detail in the proceeding chapters, in the case of Israel-Palestine, contemporary juridico-

political exclusions have been shaped and designed in the historical context of largely

European colonial territorial, economic and ideological expansion and subjection.

Reflecting on changes in France, Britain and Canada, with references to recent

developments around citizenship restriction in Denmark, Australia, the Netherlands and

Switzerland, my study points to the ways in which the structures, logics and discourses of

liberal citizenship are mobilized to exclude citizens *from within*. Continued inclusion in

the arrangements of citizenship has become increasingly conditional to the multi-formed

reaffirmation of state loyalty and national belonging. With this, the application of the

exclusive-inclusive Israeli logic of stateless citizenship to core directions of

transformations in Western citizenship begins to surface. This provides us with a useful

analytical lens for contextualizing and illustrating the troubling forms contemporary

restrictions in the structures, logics and discourse of citizenship can assume. In this way,

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who despite not being a religious or practicing Jew, will mobilize a traditionally religious identity. Interesting however are the large differences between the Hindu and Jewish nationalist movements, primarily that of the notion of 'the people'. Whereas in the Hindu case the 'people' is a more open concept where Muslims, Christian and other minorities are invited by nationalists to convert and join the 'Hindu people,' in the case of Israel, as we will learn in Chapters Three and Four below, 'the people' is a closed category that goes beyond the borders of the state to include the Jewish people *en genera,* even to the point of excluding Palestinian-Arab citizens of the state. For more on Hindu nationalism, see Thomas Blom Hansen, *The Saffron Wave Democracy and Hindu Nationalism in Modern India* (New Jersey, Princeton University Press, 1999), and Uday Chandra and Atreyee Majumder, "Introduction. Selves and Society in Postcolonial India," *South Asia Multidisciplinary Academic Journal*, 7 (2013): 1-14.

the current study both builds on and moves beyond the work I have already conducted on Israeli citizenship.

As we will see, contemporary processes of globalization and increased social interconnectedness and migration produce complex relationships between home societies (or homelands) and host societies. These developments problematize the classical notion of national citizenship and often result in a rise of recognized identities and practices upon which claims are made. With a weakened national hold on citizenship, citizen-subjects will often go beyond state institutions for claims to rights, representation and protection. Complications in the traditional role, location, and practice of citizenship as connecting a citizen-subject to a nation-state, coupled with the rise of acceptable identities and practices as a basis for claim-making, has done its part to fuel calls from European countries (and to a great extent from Canada and the United States) for increased national homogeneity. To counter calls for a re-definition of state institutions and discourses surrounding citizenship, and to refrain from recognizing new claims for rights and representation, modern nation-states in the West are struggling to attain and maintain culturally homogenous identities. These efforts are often revealed in a range of racist and nationalist legal and political agendas. Needless to say, such campaigns for homogeneity are working against the trends of increasingly socially, economically, culturally, technologically and politically interconnected global communities.

Reactionary and often xenophobic debates around cultural homogeneity along with its associated questions as to who is a 'real' or a 'desired' citizen can all be informed by events in Israel. *The concept of stateless citizenship points the present study towards recognizing that what has unfolded in Israel over half a century on the periphery*

provides a window on what may be developing in the core. Of course, practices of exclusion in the Israeli incorporation regime place it part from other Western liberal-democracies. Some of these are revealed in discussions among Zionist law and policy-makers outlined in this study around the configuration of the future Jewish State, policies and practices for the maintenance of a Jewish demographic majority, an exclusive 'Jewish' state identity, and of institutions ensuring Jewish dominance after the establishment of Israel. Of course, some Western states may replicate some of these practices. But no other Western liberal-democracies currently replicate all of these Israeli structures of exclusion, and more. This illustrates major differences in the type of interrogation in Israel so that the master signifiers of *state*, *nation* these are in the direct service of an exclusive *chosen people.* That said, examination of these Israeli practices nevertheless enables us to understand and infer the implications of trends in, and experiments with *stateless citizenship* occurring more broadly in liberal democratic countries in the West. Through their use of citizenship discourse and structures these developments at the 'core' are reminiscent of the inflamed racialist frameworks of the settler-colonial project developing today in Israel. And therein lies the trouble. With this Israel surfaces as a useful – though, as I explain below, troubling – context for understanding what may be considered the *internationalization of citizenship restrictions* in Europe and North America.

5. 'Core', 'center' and 'periphery'

While traditionally used to explain the flow of migration, development and economic activity, models and discourses of 'core' and 'periphery' are useful for mapping out the trajectory of political thought related to minority status within a liberal citizenship

regime. This model becomes particularly relevant in cases where the trajectory is mapped

out between two areas, here Western countries and Israel, that also have separate but

intimately related histories of (settler-)colonialism. The core-periphery model in the

context of colonial relationships would traditionally outline a one-way process and flow

of resources. Often with the partnership of the local elite, economic and natural resources

were extracted from the periphery to support the industrialization and development of the

core. While dating form colonial times, this uneven relationship is understood to continue

into contemporary times where both underdevelopment of the periphery and the surplus

value extracted from its cheaper resources and raw materials are needed by the Western

world.

The terms 'core' or 'centre' and 'periphery' often appear in discourse about the

urban fabric, where their application is usually constrained to their geographical position.

Every centre is defined towards its periphery, and commencing from this exact point, one

could say that the centre is defined by a periphery that includes or delimits it. Yet, much

post-colonial literature has explained that the common political, sociological and cultural

application of these binaries often implies a monolithic (mainly European) nation in the

centre that is opposed to outside developments, cultures and peoples.[12] According to this

neat distinction, the core and periphery are involved in an unequal relationship in which

the first term is privileged so that the colonizing centre is home to knowledge, order and

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12   See, for example, Chapters 3 and 10 on nation building and formation and post-colonialism in *The Cambridge Companion to Postcolonial Literary Studies*, ed. Neil Lazarus (Cambridge: Cambridge University Press, 2004); Dominic Richard David Thomas, *Nation-building, Propaganda, and Literature in Francophone Africa* (Bloomington: Indiana University Press, 2002); Linda Basch, Nina Glick Schiller, Christina Szanton Blanc, eds., *Nations Unbound: Transnational Projects, Postcolonial Predicaments and Deterritorialized Nation-States* (New York: Routledge, 1994); Shalini Puri, *The Caribbean Postcolonial: Social Equality, Post/Nationalism, and Cultural Hybridity* (New York: Palgrave Macmillan, 2004); and, relatedly, Janet L. Abu-Lughod, *Before European Hegemony: The World System A.D. 1250-1350* (New York: Oxford University Press, 1989).

modernity, while the colonized periphery harbours instability, chaos and backwardness while constantly facing the centre.

Of course, the divide between the core and the periphery is not only geographic, and post-colonial historians have outlined colonial contexts where the colonial settler culturally and politically belongs to the centre, while physically living in the colonial periphery. And similarly, where the colonized subject who travels to the colonizing centre for education or employment will remain on the periphery in terms of power and political status regardless of the extent to which she/he may acquire or internalize the metropolitan culture.[13] Further, numerous scholarly challenges have pointed out the contradictions in the binary logic of the core-periphery model, explaining that whatever the objective space may be, mapping the core and periphery is an immensely subjective and power-determined process. Much post-colonial literature has underscored the ways in which the centre is (and always has been) home to the supposed periphery as well, and how the boundaries of the two parts of this dichotomy are not at all evident.[14] Critical scholarship has also highlighted the significant role of the cultural identity of periphery inhabitants and their occasional strong influence on and interaction with the centre's cultural development.[15] Moreover, though positing that the core and periphery remain in a close relationship given their spatial context, concepts of *centralized periphery* and *marginalized core* have also been introduced. These notions detach and dislocate the two concepts from their rigid territorialized placement while emphasizing their fluid

13   For instance, Benedict Anderson (1991) discusses this movement of colonized individuals from the colonized margins to the colonizing centre and back again, and explains that this move is one to another section of the periphery.
14   See, for example, Bhabha (1990, 1994), Fanon (1961), Naipaul (2000), Eagleton et al (1990), Spivak (1987).
15   Edward Said (1978, 1993) has explained the binary of centre-periphery as a system that has organized the colonial and post-colonial world, and that this division was also constructed by those without colonial possessions or, in some cases, even pretensions.

theoretical parameters. Here, the concepts of a centralized periphery and a marginalized core indicates a (re)focus from the centre to the periphery so that, in the end, far from indicating a mere location, both notions instead point to a site of political discourse where sovereign power is practiced and displayed.

While pointing to the historical and etymological roots of citizenship, the city-state and liberal democratic social orders, my discussion will aim to refrain from (re)producing such orientalist and occidentalist images and characterizations. As we will see, and without reinforcing the invented civilizational tradition pointed to by Isin in Chapter One, references to these ancient societies can be useful for understanding the historical, social and political changes in the territorialization of citizenship. Citizenship *is*, for the most part, a modern notion. Major social and revolutionary movements in the West such as the American War of Independence and the French Revolution have shaped its inclusive and exclusive dynamics.[16] Theorizing the transition from 'ancient citizenship' to 'modern citizenship', Jean-Jacques Rousseau's social contract posits an "abstract, universal conception of the citizen as the author of sovereignty," pointing to a political shift, though not a complete break, from the past.[17] This 'break' was put into practice with the French Revolution as a key intervention to form a unique substantive and legal definition of national citizenship as a transition from subjecthood. A contribution of the Revolution was the construction and abolishment of various borders. As a national movement, it formed the 'nation-state' through the removal of boundaries and corporate divisions inside the 'nation', and prompted nationalist thinking and

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16   Bryan S. Turner, "Religion and Politics: The Elementary Forms of Citizenship," in *Handbook of Citizenship Studies*, eds. Engin F. Isin and Bryan S. Turner (London: Sage Publications, 2002), 271.
17   Peter Sahlins, *Unnaturally French: Foreign Citizens in the Old Regime and After* (London: Cornell University Press, 2004), 3.

organizing by inventing borders among other nations and nation-states. In the words of

Lucien Febvre, borders were generalized:

> The revolution makes a group of subject, vassals, and members of restricted
> communities into body of citizen of one and the same state. It abolishes internal
> barriers between them and welds them into one powerful group, which forms a
> coherent mass within clearly defined borders. Previously, people had walked
> straight across the boundary; aristocrats, men of letters, and merchants crossed it
> quite naturally. The *frontière* existed only for soldiers and princes, and only then
> in time of war. On the morrow of the Revolution not only did the demarcation
> line between France and the neighboring countries appear quite clearly, for better
> or for worse, but the line of the national boundaries became a sort of ditch
> between nationalities that were quite distinct from one another, and it was backed
> up by a second *moral frontier*.[18]

This 'moral frontier' was upheld through the narrative of the birth of the citizen and the

evolution of the modern social and political order in Western Europe. The transition is

posited by theorists and sociologists as a "movement from status to contract… from

hierarchy to equality, and from ascription to achievement."[19] Yet, as Peter Sahlins's study

on the naturalization of 'foreigners' in France reveals, the shift from the 'absolute citizen'

in the Old Regime to this post-revolutionary figure of the citizen was not as marked. In

Unnaturally French, Sahlins documents the pre-modern and pre-revolutionary legal

citizenship that surfaced in the middle of the eighteenth century through the rise of

practices following efforts by Louis XIV's in 1697 to impose 'universal' taxes, including

the taxing of all foreigners.[20] These practices formed the basis upon which the modern

figure of the abstract and universal citizen subject was later formed in France by

amending the personal and political relations between foreigners and citizens. Working

from the contention that the vocabulary of nationhood and the citizen existed in social

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18 Quoted in Obrad Savić, "Figures of the Stranger: Citizen as a Foreigner," *Parallax* Volume 11, Issue
    1 (2005): 72.
19 Sahlins, *Unnaturally French*, 4.
20 Ibid., 14.

and political discourse prior to 1789, Sahlins maps the transition of the foreign citizen

into the political citizen in the New Regime. In doing so, he is able to show that in

addition to legal breaks and political ruptures, the process of 'citizenship revolution' in

France that formed the ideological origins of modern citizenship also contained

continuities from the old social and political order.

Critical theoretical shifts from citizenship as *membership* or *status* to citizenship

as political *subjectivity* have also revealed various practices through which marginalized

social groups express cultural and political claims to address injustices. Isin explains:

> Over the last two decades, critical theories of citizenship have effectively
> disentangled nationality and citizenship by historically and geographically
> situating their contested and contestable institutions. In this way, it has also been
> effectively shown that the nationality–citizenship–state apparatus is undergirded
> by an orientalist assumption that citizenship is a European invention.[21]

Here transnational anti-colonial movements have precipitated the project of re-

configuring and re-imagining citizenship as political subjectivity, and thereby making it

difficult to maintain the orientalist assumption. Part of this project has been to change the

language or vocabulary of citizenship to "investigate citizenship as political subjectivity

after orientalism."[22] That said, as the key theoretical move is the emphasis on 'after,' it is

important to recognize that, in the context of the Jewish State, the settler-colonial project

is ongoing and contemporary. As such, there is a certain tension in the process of

uprooting citizenship from its imagined occidental tradition and the placement of

citizenship in a normative and spiritual context of post-colonialism.

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21 Engin F. Isin, "Citizenship After Orientalism: An Unfinished Project," in *Citizenship After
    Orientalism: An Unfinished Project*, ed Engin F. Isin (London: Routledge, 2014), 5.
22 Ibid.

As I reveal in Chapter Two, Israel has historically, politically, culturally and normatively been perceived and supported as an outpost or frontier of European civilization and its (settler-)colonial project. Its peripheral juridico-political institutions and discourse are today continuously (re)modelled after the 'European centre'; structured on the basis of examples drawn from the core and sometimes even simply copied from the Western context. While framed according to a different logic of social hierarchies and values, this modelling or copying of so-called core institutions and discourse in Israel has resulted in dysfunctional or unexpected modifications in their mode of operation when adjusted to Israel's peripheral context. At the same time, modifications and adjustments in the application of structures, norms and discourse of citizenship in the periphery can also reflect and reveal similar trends and broader developments around citizenship emerging in *core* European societies. With this (re)turn to the core, a certain dislocation and relocation of the functions of the *centre* and the *periphery* begins to surface. Indeed, Israel is a contemporary extension of the European (settler-)colonial project, but within the projected European centre and the Israeli periphery there are multiple and intertwining locations of cores and peripheries.

In this study, research concerning the emergence of Israel as a modern nation-state and the development of its juridico-political system vis-à-vis transformations in the citizenship regimes of other Western countries will be theoretically informed by a critical reading of the core-periphery paradigm. The theoretical model discussed in this study makes reference to an abstract perception of the *centre* and *periphery* to correspond not only to a spatial organization (from the global level of intercontinental relations between Israel and the West, mainly Europe, to the local level of the internal structure of the

Israeli regime as a territorial unit) but also to the historical interaction and existing mutual exchange at the normative and political level among their respective civic and legal cultures. Put differently, this project critically applies the core-periphery model to its analysis of transformations in the Western and Israeli citizenship regimes with an account of the political, cultural, social and normative dimensions of their relations. In doing so, by examining the ways cultural and political practice and diffusions flow out of the non-European sector, it will also attempt to dislodge and dislocate the otherwise fixed and distinct spheres and locations of the core and periphery put forward by the model.

6. Mapping interactions on citizenship

Placing analysis of the configurations of citizenship in Israel alongside those in the *core* will enable us to identify whether and how their socio-material and intellectual conditions of inception, logics, structures, social manifestations and effects are, practically speaking, interactive. "Nation states are," as David Theo Goldberg reminds, "particular products of modernity" as they are increasingly constituted and arranged through racial configuration.[23] Classical racisms and exclusions were shaped and designed in the historical context of European territorial, economic and ideological expansion and subjection. Founded on a self-proclaimed European superiority and fueled by the desire for natural resources, wealth and an enslaved labor supply, this racism developed into a global program with policies and practices of degradation, repression and death for the enslaved.[24] Goldberg explains:

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23   David Theo Goldberg, *The Threat of Race: Reflections on Racial Neoliberalism* (Oxford: Blackwell Publishing, 2009), 70.
24   Ibid., 69.

> The prevailing geographies of early modern racisms then – until at least the later eighteenth century – are projected as Europe's externality, the colonial outside, provincial extensions vested largely in the rural slaveries of plantation life. Here, the viciousness of the violent structures necessary to uphold the system were hidden just beneath the tranquil facade of settlement: wars, seizures, chains and whippings, death ships and disease, human auctions and forced intercourse. …. In these classic expressions of racism, race was seen always as a disruption, as the invader, as outsider otherness asserting itself over or inserting itself into local – which was to say, European – homogeneity. Race, as such, was to be kept, if ambivalently, enticingly, at bay.[25]

Yet with late nineteenth century abolition, industrialization and increased migration, a modernized racism revealed itself through the processes of urbanization, institutionalized control over urban space, order, limitations on entry, access and movement and constraints on identity, and moral acceptability. Both globally and domestically, race continues to delimit "where one can go, what one can do, how one is seen and treated, one's social, economic, political, legal, and cultural, in short, one's daily experience and prospects."[26] Goldberg continues:

> As there is greater heterogeneity and multiplicity, so segregation is refined; as visible openness and accessibility are enlarged, exclusionary totalization is extended; as interaction is increased, access is monitored, traversal policed, intercourse surveilled. As boundaries and borders become more permeable, they are re-fixed in the social imaginary, shifting from the visible to the virtual, from the formalized to the experiential, from the legal to the cultural at a time when the cultural, economically and socially, has become dominant.[27]

And so, reacting to demographic diversity and cultural hybridity, refined and reinvented calls for racial segregation and control of racial interactions and relations intensified and became increasingly entrenched in cities, which developed into "the principal sites of formalized segregating institutionalization."[28] With this, Goldberg asserts that "regionally

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25   Ibid. Emphasis added.
26   Ibid., 97.
27   Ibid.
28   Ibid, 70.

prompted, parametered and promoted racisms linked to their dominant state formations"

developed.[29] Positing a set of regional models or mappings, Goldberg outlines the ways

in which racist relations of exclusion circulate, interact, overlap and transform in regions

relative to their particular social manifestations, historical logics and intellectual

conditions. He maps out five dominant trends of racial expression broadly referred to as

"regionalizations;" some of which are regions (such as Europe and Latin America), while

others are nation-states (such as the United States and South Africa).[30] Within this set-up,

Israel-Palestine is placed, or rather, "caught between" the two territorial arrangements –

the European and Middle Eastern (specifically Palestinian) – in various ways.[31] Outlined

in Chapter Two, Israel's establishment within the historical context of European (settler-

)colonial projects means that discourses on its exclusionary citizenship and nationality

regime were also functioning as sites of production of European colonial power. And so,

using racialization as a kind of analytic category, Goldberg is able to move beyond the

territorial confines of states to examine dominant regional techniques and arrangements

of exclusion through race.

The notion of race, racialized representation, and racism is integral to any

discussion of modern Zionism and cannot be satisfied with considerations of the function

of ethnicity and religion in Israel alone. As I explain in Chapter Two, it is this quality that

sets the Israeli incorporation regime apart from the Ottoman and other pre-Mandate

juridico-political regimes. Far from an accidental or passing feature of Israeli society and

politics, racism and racial discrimination are inherent in the ideological construct of

modern Zionism and its basic motivation for Jewish settlement, colonization, and

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29   Ibid., 66.
30   Ibid., 67.
31   Ibid., 67-68.

statehood. Believing in the national oneness of all Jewish people regardless of any

political, social, legal, religious, or linguistic ties, Zionist literature and discourse make

repeated reference to "common ancestry" and the "national fulfillment" of Jewish people

everywhere. [32] Since taking shape as a national movement, "a dominant order of Zionism

articulated 'the Jewish race' as creating coherence, artificing initially discursive

homogeneity of and for 'the Jewish people' in the face of a scattered and diffuse

'nation'." [33] Within such a framework, the master signifiers of the *state*, *nation*, and a

chosen people that give shape to the Zionist incorporation regime render the continued

existence of an indigenous non-Jewish population, citizen or otherwise, in the coveted

territory essentially contradictory.

Though a largely different political project, the parameters and analytical lens of

Goldberg's oeuvre is particularly useful for my research study. Far from the arrangement

of ideal types, generalizations of legal and political practices of exclusion are made to

reveal the broader contours of racist citizenship structures and landscapes. When

examining these regional articulations, separate yet connected historical logics of

exclusion begin to surface. Part of the purpose of this study is to similarly map out these

manifestations with respect to citizenship in Israel and Western liberal democracies by

inverting the traditional colonial direction from the 'periphery' to the 'core'.

With Goldberg's intellectual approach and the Israeli logic of exclusion as a

looking glass, we see that the current troubling reality of a displaced 'citizen' in the

Jewish State reveals the logic of exclusion growing in the West and the

internationalization of citizenship reduction and revocation. As historically and

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32   See, for example, David Ben Gurion, *Rebirth and Destiny of Israel* (New York: Philosophical
      Library, 1954), 489.
33   Goldberg, *The Threat of Race*, 115.

ideologically related geopolitical regions with rooted, convoluted and tortured connections the prevailing modalities of the liberal variant of citizenship in these two regions need to be disentangled and identified. The global-political circulation and historical interactions of discourse on the content, structures and boundaries of citizenship are delineated in the case of Israel, Europe and North America. This shows their respective and dominant characteristics and style, while also attending to their shared coordinates of origination. I argue that unlocking the placement of the figure of the citizen in the Israeli constitutional order helps us understand the implications of a rising contemporary political trajectory where the citizen is being stretched and inverted with the more temporary and fluid figure of the 'immigrant'. The interrogated figure of the citizen is increasingly assuming features traditionally associated with the immigrant.

As the final chapter concludes, today there is a transition in the practice of exclusion in citizenship. We are in a historical-political context where Western liberal democracies are redefining their citizenship frameworks by producing varied layers of exclusive inclusion. From this, I contend that there is a rising logic of exclusive inclusion for the most included figure of the body politic, namely the *citizen*. Transitions that, as pointed to in the final chapter, work together with existing legal and political practices of exclusion of marginalized immigrant and minority citizen communities. As such, we are witnessing states playing and experimenting with logics, paths and models of exclusion, all of which says something about what is unfolding in citizenship. Taken together, we see that the existing incorporation regime in Israel is a key and troubling context for understanding the possibilities of a global upturn in citizenship restriction and revocation. A problematic condition is developing where liberal citizenship in the West is starting to

replicate exclusive-inclusions in the paradigm of *stateless citizenship*.

7. Outline of chapters

The forthcoming chapters will build on existing scholarship arguing that citizenship in Palestine was a key tool for the reproduction of state territory and membership. Its pre-state construction under the British Mandate as separate and unequal for Arabs and Jews was designed against the backdrop of rising international networks of recognition and control. The exclusions embedded within the historical matrix of Palestinian citizenship laid a blueprint for the differential citizenship regime that today exists in Israel. As I point to in this project, the citizenship and nationality regime in Israel since 1948 continues its interactions with global networks of restriction and control. The significance of the Israeli case, however, is that unlike liberal democratic states in the West, its major features of nation-statehood, including final territorial borders, notion of 'peoplehood', and sovereign rule largely remain incomplete and illegitimate. It is reflected in the kind of citizenship regime it maintains. What this implies is twofold. First, that despite declarations and perceptions of finalized parameters of territory and membership, all states require constant and active performance and reproduction of citizenship and national identity. And second, that because of its unresolved parameters, this process of constant redefinition and reconfiguration of Israeli statehood in done in a more explicit manner than other states. What this study explores is how the restrictions, redefinitions and dilution of citizenship in Israel today is reminiscent of what is happening to citizenship at the 'core'. Since its establishment, the regulation and constitution of exclusionary citizenship and nationality in Israel have actively interacted with global networks and processes of restriction and control. For this reason, the discourses,

practices and legislation of civil and national identity in Israel since statehood can be used as a looking glass for understanding the growing internationalization of citizenship restrictions.

Using the paradigm of stateless citizenship as a compass for this delineation, my current study maps out the trajectory of citizenship in modern Israel from the inter-war period until the present. As mentioned, as an institution and a practice, citizenship itself is an object of local restriction and closure. Starting from the position that liberal citizenship is part of the history of modern exclusion, I will look at how the discourse, content, structures and boundaries of liberal citizenship are changing in the contemporary context. Liberal debates and processes in Western societies associated with the design and provision of citizenship and nationality will be revealed as important sites of control and power. I point to the *un-rooting* of citizenship to reveal the ways the relation of exclusion is being internalized; shifting the gaze of exclusion onto the figure of the citizen. With this, a political trajectory surfaces where the figure of the 'citizen' is being vested with features of the less stable and capricious 'immigrant' in the body politic. These transformations are analyzed in detail in the prospective chapters in the case of Israel. As we will see, unlocking the ways in which the figure of the citizen is interrogated in Israel helps us comprehend the implications of broader changes in citizenship restrictions and revocation occurring today in Europe and North America in the context of migration and a perceived rise in transnational terrorism. Put differently, my present study departs from my previous writing on this topic by outlining the historical, ideological and political context and processes that have delineated a diluted and non-entrenched citizenship in Israel, and from there to posit this reality to the increasingly interrogated figure of the

citizen in the West.

To this end, *Chapter One* begins by surveying some of the relevant existing literature and theories on the transformations in the institution of citizenship, focusing on its liberal variant. Developments in the discourse on the content, structures and boundaries of modern liberal citizenship are outlined to reveal how this institution is increasingly becoming politically informal, un-rooted, de-territorialized and undetermined.

The first major analytical track of this study begins in *Chapter Two* and is examined further in *Chapter Three*. These sections stage our excursus into how citizenship in Israel came to embody its existing exclusionary dynamics, mechanisms, processes and features. Using both literary and historical texts, the former chapter locates discourses on citizenship and nationality in Mandate Palestine as sites of production of European colonial power. It demonstrates the colonial perceptions, experiences and discourses of Zionist thinkers and the framework of European hegemonic power within which the Jewish national movement burgeoned, and around which Arab and Jewish civil, political and social rights were initially framed. From here, Chapter Three outlines recent scholarship and cites in detail the archival documents that I have collected. These documents house the discussions among legal scholars and political figures in the Zionist leadership, the British government and the League of Nations until and immediately after statehood on the features of the liberal citizenship and nationality regime anticipated for the Jewish State.

The above analyses begin to culminate as a core analytical contribution in *Chapter Four*, which provides an account of how the mechanisms through which the

colonial logic of pre-1948 Zionism resurfaces in contemporary Israeli citizenship structures, at the legislative, declarative, structural, and operational levels. Focusing on the unique and important function of the notion of *return*, archival records are referenced extensively and placed in discussion with one another to outline how the *Law of Return (1950)* acts as a legal precursor that actually shapes the Jewish State. In doing so, the chapter connects the configuration of the Jewish State with its eventual constitution. It explains that the Israeli constitutional order is structured in a manner that broadens the category of the 'Jewish immigrant', placing this figure on the top of the constitutional process. Here the desired, preferred, and most qualified political subject is first and foremost the 'Jewish immigrant'. Importantly, the constitutional equation (whose elements the previous chapters outline) enables the dilution and interrogation of citizenship in Israel, therefore rendering the 'desired' citizen to the figure of the Jewish immigrant. In Chapter Four we are able to understand how the matrix of inclusion into citizenship in Israel is less geared toward the citizen, and more towards determining immigration in a manner that enables Jewish entry and settlement. The notion of 'return' thereby serves the function of reversing the standard practice in Western liberal democratic societies by rendering the 'Jewish immigrant' as the preeminent figure of Israeli politics. Taken together, the mechanisms through which Zionism forms a redefinition between the citizen and the immigrant becomes fully intelligible in this chapter when situated in the legal context of the inauguration of the *Law of Return.*

Having mapped the historical and political developments, ideological debates and constitutional processes and policies that shaped the contemporary Israeli citizenship regime, *Chapter Five* provides the second major analytical contribution of this study. It

examines how the parameters of the Israeli incorporation regime explicates the global

logic of exclusion and the internationalization of citizenship revocation. The problematic

parameters that maintain the inverted placement of the citizen of Israel vis-à-vis the

figure of the immigrant in the constitutional order are considered in relation to

comparable recent practices in Western states so as to reveal their meaning and troubling

juridico-political implications. I argue that the interrogation of the figure of the citizen in

Israel is part – though not a replica – of a rising political trajectory where the citizen is

being inverted with the more temporary and capricious figure of the immigrant.

Building on the first four sections that helped us understand the context and

processes enabling Israeli citizenship to embody its existing exclusionary dynamics, I

then place these events within global examples of citizenship restriction and revocation.

Recent trends and discussions on citizenship in France, Britain and Canada are briefly

outlined and juxtaposed as part of the above global trajectory of closure. This is a

trajectory of closure that has two related features. First, it works in conjunction with

existing political and legal practices of exclusion against immigrant and racialized

minority citizen communities, and second, it actively uses discourse and structures of

citizenship itself to exclude citizens from within. For this reason, I term this purported

trend a *desacralization of citizenship* in that it encompasses two developments. It uproots

citizenship from its classical protections, placing it in closer proximity to the more

temporary figure of the immigrant or resident. And given this closer proximity, the

structures and functions of citizenship have *themselves* become so involved in exclusion

of the legal subject from the inside that formal suspension and revocation is not even

necessary. Together, these global developments render the institution and status of

citizenship less solidified and untouchable, or desacralized.

Overall, the objective of the current project is to both build on and move beyond my previous work on Israeli citizenship. With stateless citizenship as the analytical blueprint, I end this study by considering how the Israeli logic of exclusion and the placement of the temporary and unstable figure of the 'immigrant' at the center of politics surfaces as a microcosm of rising civic exclusions in 'core' liberal democratic states. Using the Israeli logic of exclusion as a looking glass to aid our understanding of closures in liberal citizenship today, my study points to the forms through which the figure of the citizen is being interrogated. I argue that we are in the midst of a transition in Western citizenship, towards a more closely examined and restricted model of liberal citizenship placing it in closer proximity with Israel. The problem and concern with this closer proximity becomes clearer from our discussions in Chapters Two, Three and Four when we consider the racialized frameworks of exclusion and ongoing violent settler-colonial practices that founded, and which today make up the Israeli incorporation regime.

We are in a historical-political context where the proliferation of efforts we have been witnessing by Western liberal-democracies against 'undesirable' outsiders and minority communities have been broadened to include the figure of the citizen *en genera*. These experimentations with logics, paths and models of exclusion are all indicators of changes to a previously permanent, stable and distinct host-figure of citizenship. And these changes – what I describe as the 'thinning, 'dilution' and 'closure' of citizenship – are reminiscent of the purported guest-status of the Israeli citizen in the face of the dominant figure of the 'Jewish immigrant'. In the end, I analyze a troubling trajectory

where the changing practices of modern citizenship in 'core' liberal democratic states are slowly creating a condition where liberal citizenship in the West is starting to resemble exclusions in the paradigm of *stateless citizenship*.

Chapter One | Citizenship Models and Ambiguities

"The nature of citizenship, like that of the state, is a question which is often disputed: there is no general agreement on a single definition."

Aristotle, in *Politics* [384-322 BC] (2004)

"Beyond the conflict between citizenship and allegiance to an actual or transcendentally legitimate state, history still shows that this concept has no definition that is fixed for all time. It has always been at stake in struggles and the object of transformations."

Étienne Balibar, in "Propositions on Citizenship" (1988)

1. Introduction

There has been an explosion of interest in the concept of citizenship among political theorists. With this renewed interest in citizenship has been a rise in calls for a 'theory of citizenship' that addresses both the legal-constitutional question of what it is to be a citizen as well as consideration of what constitutes the 'good citizen'. In this chapter I survey some of the relevant existing literature and theory on the development of and transformations in the institution of citizenship, focusing on its liberal variant.[34] The development of discourse on the content, structures and boundaries of citizenship in its liberal variant is mapped out. To set the stage for my analysis, I examine the concept of citizenship with a focus on the kinds of relations that can be formed among political subjects with minority status within a liberal citizenship regime. In doing so, I extract the interrelated tensions and themes of citizenship, including, among others, individual and group identities, legal categorization, inclusion-exclusion, and deterritorialization.

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34   The literature and discussions the field of citizenship studies that are examined in this chapter heavily incorporate literature and arguments I have made previously in Chapter One of Stateless Citizenship (2013).

The dynamics of the liberal model of citizenship discussed in this chapter will inform our forthcoming two-part excursus: first into its application and appropriation in the Jewish State over the past half a century, and thereafter into what these findings reveal about broader transformations in Western citizenship restriction and revocation. With this chapter I set the stage for the discussions on the parameters of exclusion in Israeli citizenship in the prospective sections. The contemporary changes to the concept and practice of citizenship explained below are shown to resurface in various problematized forms when applied to the Israeli citizenship regime. From here, using citizenship in the Jewish State as a microcosm of broader developments around inclusion and exclusion, my study shows that questions as to *who* is a *real* or a *desired* citizen on the part of ostensibly liberal democratic nation-states have shifted the gaze of exclusion internally, onto the figure of the citizen. I show that liberal debates and processes in Western societies associated with the design and provision of citizenship and nationality are increasingly important sites of control and power. With this shift, the citizen is being stretched and inverted with the more fluid figure of the 'immigrant'. Illuminated in this study, the interrogation of the figure of the citizen in Israel serves as a looking glass for understanding the implications for broader transformations in liberal citizenship restrictions.

2. (Up)rooting citizenship

Though it is not an institutionalized field, 'citizenship studies' has developed into an important area of study in the humanities and social sciences.[35] Emerging in the 1990s, academics and activists in this field sought to study transformations in Western politics in

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[35]   Isin and Turner, *Handbook of Citizenship Studies*, 1.

the form of new and rising claims to liberal citizenship recognition and the distribution of

rights. New acts and processes of citizenship made available to a broader range of

political actors and practitioners through the forces of globalization and post-modernist

forms of organization have expanded the way in which citizenship is manifested and

discussed. Regional integration efforts, such as the European Union and the Gulf

Cooperation Council to name a few, and the role of national governments and

supranational institutions have also encouraged a reconsideration of citizenship. With

regional integration and notions of 'supranational rights' member states in these unions

are pushed to (re)shape their understanding of sovereignty and broaden access to civil

privileges of freedom of movement, employment and residence that were previously

reserved for their own citizens.[36] The realization of these new conditions, in the form of

"the reconfiguration of classes, the emergence of new international government regimes,

new rationalities of government, new regimes of accumulation of different forms of

capital, as well as new social movements" has complicated traditional readings of the

practice and subject of citizenship by scholars in the field.[37] And so, the parameters of

what being a citizen involves, where citizenship is located, and the rights and protections

that are meant to accompany citizenship recognition are being redrawn and reconfigured.

The rise of interest in citizenship as a separate field of study can be sourced in

various trends developing within our contemporary socio-political and historical context.

These trends include, among others, the rise of global migration and statelessness, a

phenomenon with a long history that has acquired particular scholarly and frantic

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36   See Willem Maas, "Trade, Regional Integration, and Free Movement of People," *A New Atlantic
      Community: The European Union, the US and Latin America*, ed. Joaquín Roy (Miami: European
      Union Center of Excellence, University of Miami, 2015), 111-21.
37   Isin and Turner *Handbook of Citizenship Studies*, 1.

political attention as of late, the dilution of collective identity and solidarity with nation-states in the face of increasingly heterogeneous civic societies, and a strong liberal sensitivity in Western societies to the exclusion of particular collectives, particularly minorities, from the body politic. Awareness of the changing nature of nation-states as the exclusive site for the practice of citizenship, along with transformations in the organization and practice of collective identities and claims has fueled scholars in this field to examine the changing boundaries and interpretations of citizenship in the contemporary period.

In a powerful review of the study of citizenship, Engin F. Isin outlines how it is that citizenship is usually approached by scholars in the field. He points out that

> … routinized academic practices, where the origins of 'city', 'democracy' and 'citizenship' are etymologically traced to the 'Greek', 'Roman' and 'medieval' cities, and affinities between 'their' and 'our' practices [in contemporary Western liberal societies] are established, not only orient toward but also reproduce such images. After being 'reminded' that polis, politics and polity; civitas, citizenship and civility; and demos and democracy have 'common roots', we are provided with images of virtuous Greek citizens debating in the agora or the pnyx, austere Roman citizens deliberating in the republican senate, and 'European' citizens receiving their charters in front of the guildhall.[38]

Indeed, during the Greco-Roman period, citizenship was projected as a focal point of democratic governance and the primary means for individuals to serve the *polis*, or the city-state. Inspired by the idea of civic virtue and seeking to counter the militaristic culture of the Spartan system, Plato advanced a governing model to alleviate citizens of economic exchange and labor and proposed the idea of a representative council or body of experts selected by the citizen classes. While Plato was concerned with the design of the ideal city-state, Aristotle adopted a more practical objective of understanding the

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38   Isin, "Religion and Politics," 305.

actual, practical and everyday principles forming citizenship. He agreed that the ideal democratic society would combine popular rule with the governing and advice of experienced and wise elites. Here the privilege of citizenship becomes a natural condition for most human beings that does not include economic labor (this was delegated to slave workers) thus allowing men to commit themselves to the pursuit of citizenship and an engaged life in the city-state. However, struggling with the notions of civic virtue, political justice and governance, Aristotle also sought to outline the arrangements required to allow political subjects to co-exist in times of leisure, peace and war. To this end, he conceived of citizenship as a fundamentally 'human' state of mind. Explained below, for Aristotle, the distribution and design of rights and duties constitute the specific social and economic relations at the level of the individual within a political regime and thereby determine the 'types of humans' that are formed. As such, a generalizable definition of citizenship is for him not possible given that each citizenship regime is shaped by the particular political system within which it exists and its unique distribution of powers.

Also concerned with the principle of civic virtue (*virtus*), Roman thinkers were similarly keen on developing a legal definition and basis of citizenship. Considering the declining civic participation of upper classes, the Stoics and Cicero delineated civic responsibilities and asserted that emphasis on the private life is a violation of the social life and democratic duties thereby fixing the citizen subject strictly in the public sphere. This public sphere had both local and global dimensions. Citizens are at first obligated to the commonwealth of their polity but the Stoics further conceived of the citizen as also responsible for civic duties connected to a greater global commonwealth, thereby

developing the idea of cosmopolitan or universal citizenship. Taken together, during the Greco-Roman period the above dictates of citizenship were the primary features of democratic governance and served as the key means whereby individuals interacted in the city-state. The rise of Christianity introduced a religious element to civic duty that depicts individuals as subjects of God before that of the city-state, thereby redefining civic virtue as religious adherence and piety rather than with the public good. In the Middle Ages, the rise of the importance of the Church as an institution displaced the significance of citizenship and civic virtue to the periphery, except in the major city states of Bologna, Florence, Milan, Siena, Venice, and others that had republican forms of governance and still maintained functioning civic councils, senates and voting rights. Later, during the period of feudal states and absolute monarchies, citizenship was conceived as a way of enhancing sovereignty and the stability of the nation-state and thereby strongly associated with nationhood. Civic subjects were mainly seen as the subjects of the ruler and were provided limited rights as a way to connect political subjects firmly to the interests and needs of the nation-state.

Evidently, like other institutions of governance and identity, citizenship too has been repeatedly (re)shaped to account for changes in social and political power. Yet, as Isin noted, when the history of citizenship is recounted there is a tendency among scholars to package the multifaceted changes above into a one-dimensional – and *one-directional* – story. With this, imagined political and conceptual links are produced by citizenship scholars and provoked by etymological references between ancient forms of citizenship and that which exists in contemporary liberal societies under conditions of

modern capitalism and globalization. As Isin explains, emphasis on the affinities between

ancient and contemporary practices of citizenship in Western societies effectively:

> … mobilize and provoke an invented tradition: that we are somehow inheritors of
> an occidental tradition that is different from and superior to an oriental one. These
> images then invent not one, but two traditions.[39]

Important to emphasize is that such perspectives of citizenship also posit an inside and an

outside, with Europe as a given and permanent geographical center that innovates a

largely stagnated and permanent periphery. With this, discussions of liberal citizenship

become part of an invented occidental tradition that is structured in a manner where

cultural and political progress is sourced in and flows out of the European sector, toward

the passive non-European sector on the receiving end. In this study, I invert the

traditional colonial gaze from the 'periphery' to the 'core'. By employing the Israeli logic

of exclusion as looking glass for understanding current changes in Western liberal

democracies, our analytical starting point for examining mechanisms of citizenship

restriction is shifted. This recurring tendency among citizenship scholars and political

theorists ought to be acknowledged, and the imagined political and conceptual links

ought also to be made explicit and challenged. Otherwise our approach to the study of

citizenship would continue to fail to capture the specific textures and dynamics unique to

its modern realization in the twenty-first century.

3. Framing citizenship

Nation-states use the citizenship framework as the primary organizing relation between

the state and its constituents, or citizens. As a "collection of citizens," modern states

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39   Ibid.

configuring citizenship not only seek to determine "who or what ought to be called a citizen" but also "who has the power to grant or take away one's citizenship."[40] Traditional readings of citizenship depict it as the intersection of identity and law, where both a national belonging and a constitutionally recognized membership in a state are articulated. It is conventionally conceived of as a mechanism of civic incorporation within a state; a form of social membership used as a basis for claim-making with which comes access to rights, privileges, and freedoms allocated and protected by state institutions. As an institution, citizenship is comprised of the social community and implies that access to public goods and services, as well as participation in state institutions, exhibit the political, civil and social rights of this collective. Citizenship has emerged as an issue that is central, not only to practical political notions concerning access to health-care systems, educational institutions, public programs, and the welfare state, but also to concepts of legal jurisdiction and social membership. For the most part, the duties and obligations of citizenship are shaped by the parameters of membership, rights and participation. As illustrated by Audrey Macklin, "[i]f citizenship were a home appliance, it would be the only one you would ever need."[41]

In *Citizenship and Social Class, and Other Essays* (1950), T. H. Marshall outlines his classical postwar theory of citizenship where its associated rights are divided into three components: the *civil* in the eighteenth-, the *political* in the nineteenth-, and the *social* broadly assigned to the twentieth-century. The civil element involves the rights and liberties necessary for individual freedom (such as freedom of speech, opinion and

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40   Willem Maas, "Citizenship," *The Encyclopedia of Political Science* (Washington DC: CQ Press, 2011), 227.
41   Audrey Macklin, "Who Is the Citizen's Other? Considering the Heft of Citizenship," *Theoretical Inquiries in Law* 8, No. 2 (2007): 334.

thought, the right to own property, to have valid contracts, and the right to justice); the political element involves the right to participate in the exercise of political power; and the social element involves economic welfare, security and a right to a share in the social heritage of the community.[42] Though he holds that each of these components or parts of citizenship rights evolved in different directions and in various degrees since the seventeenth century, the trajectory of Marshall's theory of citizenship goes in the direction of the principles of the equality of all citizens as full members of society, common possession, rule of law, majority rule, democracy and parliamentary representation, and so forth. Seen in this manner, the institution of citizenship constitutes an overarching identity cloaking all other identities to produce 'equal' citizen subjects.

Absent from this classical model of social democratic citizenship is an account of ethnicity, culture, gender and sexuality, class, ability and religion as major sources of identity, claims and participation – all of which have complicated the existing problems of identity in increasingly globalized societies.[43] For the most part, citizenship in its contemporary realization in liberal democratic countries in Europe and North America strives to be universalistic in that it does not recognize or accept familial, tribal and kinship ties as legitimate sources of authority, claim-making, and participation in the public sphere. Broadly speaking, citizens in most Western liberal democratic societies are at least formally conceived as rights-bearing subjects who exercise their rights equally

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42   T.H. Marshall, *Citizenship and Social Class, and Other Essays*, (Cambridge: Cambridge University Press, 1950), 10-11.

43   For more, see Bryan S. Turner, "T.H. Marshall, social rights and English national identity," *Citizenship Studies* 13, no. 1 (2009): 65–73.

with other citizens, so that no individual or collective is legally privileged insofar as they are citizens.[44]

Most definitions of citizenship will outline a legal relation between an individual and a political society, the attributes and parameters of which reflect the self-definition of the particular state-order. We are often told that for the Greek democrats living in Athens under Pericles, the city-state was the only appropriate space for the fullest human development and flourishing. In what is considered by many to be one of the first treatises on citizenship, Aristotle stated:

> Hence it is evident that the state is a creation of nature, and that man is by nature a political animal. And he who by nature and not by mere accident is without a state, is either above humanity or below it; he is the 'Tribeless, lawless, hearthless one', whom Homer denounces—the outcast who is a lover of war; he may be compared to an unprotected piece in the game of draughts.[45]

Here there is no citizen-subject that exists prior to the city-state, and "anyone who cannot form a community with others, or who does not need to because he is self-sufficient, is no part of a city-state – he is either a beast or a god."[46] The idea that states are the principal locus of citizenship continues to remain prevalent among citizenship scholars,[47] but the dynamic at play is not one-sided. For instance, Aristotle's city-state does not simply create viable subjects. Instead, and especially as recent constructivist literature has

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44   Critical literature in the field of citizenship and state studies points increasingly to the racialized and gendered identities that are mobilized by liberal citizenship in Western states, along with its respective violences. See, for example, Ann Shola Orloff, "Gender and the Social Rights of Citizenship: The Comparative Analysis of Gender Relations and Welfare States," *American Sociological Review*, Vol. 58, No. 3 (June 1993), pp. 303-328; Jeff Spinner, *The Boundaries of Citizenship: Race, Ethnicity, and Nationality in the Liberal State* (Baltimore: Johns Hopkins University Press, 1994); and Randall Hansen, "Migration, citizenship and race in Europe: Between incorporation and exclusion," *European Journal of Political Research,* 35, (1999): 415–444.

45   Aristotle, *Politics*, ed. Benjamin Jowett, trans. H.W.C. Davis (New York: Cosimo Classics Inc., 2008), 1253a, 9-10.

46   Ibid., 1253a, 14-15.

47   Elaborated further in this project, many scholars argue that the project of the European Union has perhaps revealed the importance of the state more than it has pointed to a profound transformation of modern state sovereignty.

revealed, the citizen-subject and the city-state have a mutual relationship of creation, and

"each is a coterminous *effect* of the other."[48] As a set of processes for the provision of

privileges, protection and responsibilities, citizenship rights are typically the result of

multifaceted struggles between the citizen-subjects and identity-specific collectives and

the state at the social and political level. For the most part, such demands for recognition

and inclusion are often linked to the contributions of the claimant(s) to the social good

and the welfare of the state. Cultural, ethnic, religious and racial divisions within a

society are key ingredients in molding its model of citizenship and its particular set of

practices. And given that citizenship does not necessarily evolve to include all individuals

and collectives, the achievement and provision of group-based rights of citizenship can

thereby fuel existing social, political and cultural fragmentation.[49] With this, citizenship

often becomes divided and hierarchical. Guy Ben-Porat and Bryan S. Turner explain that:

> Where existing hierarchies and divisions are challenged, citizenship becomes a
> site of negotiation, contest and contention where, on the one hand, duties and
> obligations are defined and, on the other hand, demands for rights and
> entitlements are presented. Citizenship, therefore, often delineates a hierarchy
> between and within social groups in society and consequently structures the
> opportunities afforded by the state to different people who are included, excluded
> or marginalized by the very definition of citizenship.[50]

Contemporary nation-states have had to address the realities of their increasingly

multicultural, multinational and multireligious constituents. Far from their oft advertised

culturally homogenous makeup, nation-states have had to face and accept new calls for

recognition, rights and representation, often resulting in demands for a re-definition of

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48   Nöelle McAfee, *Habermas, Kristeva, and Citizenship* (London: Cornell University Press, 2000), 3.
49   Guy Ben-Porat and Bryan S. Turner, ed. *The Contradictions of Israeli Citizenship: Land, religion and state* (New York: Routledge, 2011), 7.
50   Ibid., 7-8

state institutions and discourses surrounding citizenship.[51] As we will see, the multicultural aftermath of increased and multifaceted globalization (and the resulting rise of demands by new immigrant minority groups) questions not only the "foundational assumptions of 'ethnic states' that provide a national home for a dominant ethnic group," but it also (re)shapes the contours of liberal democratic institutions and discourse.[52] Transformations of nation-based citizenship, civic representation, state sovereignty, and public and private institutions emerging from increased globalization, social and technological interconnectedness and mobility challenges the traditional contours that have framed citizenship. Thus, as a political construction and practice, citizenship increasingly appears to be less "tied to particular states but rather exist over, under, around and through them."[53] Marshall's classical model of social-democratic citizenship rights is increasingly complicated by scholars pointing to the declining function of states in a growing neo-liberal and globalized world. The privatization of major state institutions, dependence on a free-market economy, deregulation and market fundamentalism, along with the rise of transnational migration, international travel, global exchange, an international human rights regime infringing on the arena of individual civil and residency rights that include social rights previously within the domain of citizenship.[54] These all indicate that the boundaries of the rights traditionally limited to citizenship within a state-framework appear to be ever more redrawn. At the same time, in the arena of social and political rights, the response of some states to the

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51   Ibid., 8-9.
52   Ibid.
53   Willem Maas, "Varieties of Multilevel Citizenship," in *Varieties of Multilevel Citizenship* ed. Willem Maas (Pennsylvania: University of Pennsylvania Press, 2013), 3.
54   Maas, *Encyclopedia*, 227. For a detailed account of migration and citizenship in the context of globalization see Margaret R. Somers, "Citizenship, Statelessness and Market Fundamentalism: Arendtian Right to Have Rights," in *Migration, Citizenship, Ethnos*, ed. Y.M. Bodemann and G. Yurdakul (New York: Palgrave MacMillan, 2006), 35–62.

mentioned tenets of neo-liberal globalization has been policies of effective exclusion.

Both legal citizens and non-citizens have been denied automatic access to social services,

including standard education, housing, forms of health care and other social benefits.

With this surfaces a trend where even legal citizens begin to lose "some of their

perceived or promised rights associated with their state's definition of citizenship or the

international community's list of unalienable rights."[55] The erosion of the perceived rights

and protections of citizenship is part of a broader trend in Western liberal democracies,

one whose troubling legal and political direction and implications I posit are illuminated

with consideration of the Israeli incorporation regime.

Overall, shared among Marshall's definition of citizenship and its post-national

critiques is the depiction of citizenship as a collection of rights; an interpretation that is –

as I will show in prospective chapters – being increasingly "challenged by the unbundling

of rights accelerated by the processes of globalization."[56] Differing practices of

citizenship in countries have resulted in a variation of socio-political rights across

geographical boundaries along with the rise of dissonant normative principles at work in

configuring citizen rights. An inescapable aspect of rising globalization, post-national

critiques often point out that one no longer needs to be a citizen to have access to some

coveted social, cultural and even political rights. Citizenship is relational, a kind of

ongoing transaction between political actors that is historically contingent on socially

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55 Ibid., 228. Of course, there are discrepancies between the citizenships provided to individuals in more or less politically and economically advanced countries. This is evidenced with the uproar over the recent controversial passport scheme proposed in Malta for non-EU nationals, where applicants were made eligible for EU citizenship if they invest at least 1.57 million dollars in the country. Though eventually yielding to EU pressure and setting a one-year residency requirement for the acquirement of a passport for rich foreigners, the Maltese proposal illustrates the ways that citizenship is increasingly being viewed (and treated) as a valuable commodity to be traded and sold. See: "Malta tightens passport sale terms under EU pressure," *BBC News*, January 30, 2014, http://www.bbc.com/news/world-europe-25959458.

56 Maas, *Encyclopedia*, 228.

constructed categories, such as race, ethnicity, gender and nationality. This "disaggregation of rights" and the various dimensions of citizenship is argued to form what Seyla Benhabib calls "a trend toward 'lean citizenship'."[57] Explained further below, distinctions of citizen and foreigner, refugee, asylum seeker, temporary worker and resident become increasingly negotiable through repeated and multifaceted processes of political self-creation.

4. Theorizing liberal citizenship

The liberal reading of citizenship underscores individual adherence to the rule of law of the state as well as individual liberty from state interference. In the liberal vision, the rational individual pursues her/his own interests without causing injury to others while the state's role is seen only in minimalist terms to protect the freedom of citizens. The individual is implicitly viewed as emerging as a fully formed citizen who is, 'by nature' devoid of socio-cultural bonds and able to rationally pursue her/his own interests. Grounded in a guarantee of legal, social and political protections from other members of the commonwealth and arbitrary actions from a sovereign power, liberal citizenship is often understood as the passive and active membership of individuals in a nation-state with accompanying universalistic rights and responsibilities at a formally defined level of equality.[58] Some of these characterizations of liberal citizenship deserve attention. First, as *membership* in a nation-state, citizenship requires the identification of a certain

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57 Seyla Benhabib, "Disaggregation of Citizenship Rights," *Parallax*, Volume 11, Issue 1: Seeking Asylum (2005) 17.
58 Thomas Janoski and Brian Gran, "Political Citizenship: Foundations of Rights," in *Handbook of Citizenship Studies*, eds. Engin F. Isin and Bryan S. Turner (London: Sage Publications, 2002), 13-14. Here, Janoski is defining what he calls 'political citizenship', but though he is focusing on the theoretical range of citizenship rights and obligations (legal, political, social, and participation rights) the discourse and theoretical premises of his depiction and definition of citizenship are very much in tune with a liberal theory of citizenship.

personhood placed apart and in opposition to non-citizens, strangers and foreigners. Emerging with the modern state, liberal theories of citizenship were not designed or equipped to address questions of aliens. In assuming the context of a sovereign state liberal theories also assumed the right to exclude aliens, as well as marginalized sectors including women, members of the working class and minorities. Second, the distinction between *passive* rights of citizenhood and *active* abilities to contribute to and influence political and economic realities is important as both elements are necessary for genuine citizenship participation in a nation-state. Importantly, on this point, a liberal conception of citizenship that stresses the individual, universal, autonomous and equal character of a subject whose status and access to rights and privileges do not require an active or hands-on engagement with their citizenship differs most heavily from a republican one.

As a side note, part and parcel of republican citizenship is direct participation in and active engagement with citizenship practice and institutions. As Alexis De Tocqueville observed in his study of the United States in the 1830s, participation in public live is understood as not only a civic necessity and duty, but also something that provides its own personal benefits. Republicanism holds that democratic participation and engagement with citizenship in the form of a political and moral purpose, shared among all members, in reproducing, protecting and developing the common good of the society is required. It highlights not only the formal and legal dimension of citizenship, similar to liberalism, but also an ethical dimension where civic virtues are demanded of citizens so as to allow them to cultivate abilities making them better people in society.

The third feature is the *universalistic* character of liberal citizenship rights is understood as formally enacted in law and equally applicable and accessible to all

citizens. And this brings us to the fourth feature of such a reading of citizenship, namely,

that it is a statement of *equality* among its members in a manner where rights and

responsibilities are balanced within the social order. In classical liberalism there are no

citizens but rather distinct rights-bearing individuals who gather as political subjects to

form a social contract. Margaret R. Somers explains that, for classical liberals, "[t]o

attach citizenship to these autonomous rights-bearers is to graft a political membership-

centered identity onto a view of the person who originates in the prepolitical state of

nature."[59] Opposing the very notion that human identity is entrenched in any political

process, institution or governance, "the 'rights' in the couplet of citizenship rights are

therefore in many ways the mirror image of citizenship."[60] The final and central feature

of a liberal theory of citizenship is the emphasis on *individualism*. Emphasis on the

individual is a bedrock of liberal theory, and is present in its approach to all other social

arrangements. The primacy of the individual and her/his liberty is mainly realized as

"freedom from state interference with one's personal development and projects … [along

with] a deep suspicion of state power over individuals."[61] With this caveat, liberal models

of citizenship often reveal a certain tension when group or collective rights and

obligations are introduced into social aggregations in a manner that trumps or challenges

individual rights. Contemporary democracies are often shaped by tensions between the

rise of individual rights and the demands of membership, including collective duties and

obligations, within particular communities.[62]

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59   Margaret R. Somers, *Genealogies of Citizenship: Markets, statelessness and the right to have rights*, (Cambridge: Cambridge University Press, 2008), 28.
60   Ibid., 154.
61   Peter H. Schuck, "Liberal Citizenship," in *Handbook of Citizenship Studies*, eds. Engin F. Isin and Bryan S. Turner, (London: Sage Publications, 2002), 134.
62   Maas, *Encyclopedia*, 227.

As subjects of citizenship, collectives marked by religious, cultural, ethnic and national identities can influence the process, practices and other aspects of a liberal state, thereby also affecting the citizen and non-citizen Others in the social order.[63] Now despite this, liberal theories of citizenship depict a state that remains disinterested vis-à-vis these different groups, does not take sides, and maintains a certain neutrality. Of course, such normative neutrality has proved impossible for liberal states in the face of increasing identity-specific collectivities, resulting in the "entangl[ing of] the state, groups and individuals in ways that may threaten the autonomy and integrity of individuals and groups and hence endanger the liberal project itself."[64] In the end, discourses and debates around the function of the state with regards to individual and group claims and obligations continue to (re)draw the boundaries of liberal citizenship.

5. Citizenship beyond the state

Manifestations of liberal citizenship also posit a certain connection between a distinct geographical and territorial entity, or a sovereign nation-state, and the practice, rights and obligations of citizenship. In this the ownership of a passport serves as the main feature of citizenship, allowing individuals the right of mobility in and out of the geographical space with the formal sanction of the state.[65] But increasing globalization and post-modernist approaches to state-citizen relations have both redefined and (re)shaped the key axes of liberal citizenship.[66] Isin and Turner explain that

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63   Ibid., 135.
64   Ibid., 141.
65   Ben-Porat and Turner, *The Contradictions of Israeli Citizenship*, 5.
66   Isin and Turner, *Handbook of Citizenship Studies*, 2.

> ... various struggles based upon identity and difference ... have found new ways of articulating their claims as claims to citizenship understood not simply as a legal status but as political and social recognition and economic redistribution.[67]

As a result, modern political theories about citizenship, its processes, practices and consequences, in the form of liberal, republican and ethno-national citizenships are growing increasingly inadequate. Despite their respective differences, such typologies of citizenship mostly remain state-centric and dependent on that ground as the main source of legitimacy and authority. These models of citizenship may help us understand the nature and characteristics of various forms of rights, representation and responsibilities that exist across liberal democratic states, but they are unable to capture the inherent changes in the processes and practices of citizenship in the twenty-first century.[68] In other words, the dislodging of a geographically defined territory as the sole source and benefactor of the acts and practices of citizenship through forces of globalization and post-modernist forms of organization has expanded the way in which citizenship is discussed and realized. This expansion of citizenship acts and practices has yet to be sufficiently captured by liberal, republican and ethno-national models of citizenship.

The contemporary transformation of citizenship along with dominant trends of denationalization and deterritorialization of modern citizenship are ascribed to numerous processes *both inside and outside* of the state. While at present the state can be reasonably posited as an all-encompassing repository of citizenship, or as the locus of citizenship, it cannot be projected as the only one. Indeed, modern citizenship is composed of multiple elements many of which are associated with the state, but the increasing development of locations of citizenship outside of the state framework is due

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67   Ibid.
68   Ibid., 4.

to two main sets of transformations. The first set refers to changes inside the nation-state

such as "deregulation, economic privatization, … changes in the law of nationality

entailing a shift from purely formal to effective nationality, and legislation allowing

national courts to use international instruments."[69] The second set of transformations

refers to developments outside of the nation-state resulting mainly from globalization.

This includes the rise of multiple actors, groups and communities that have been partly

empowered by these developments in the state and are increasingly unwilling to

automatically identify with a national identity as shaped by the state. Here the

"organization of formal [citizenship] status, the protection of rights, citizenship practices

… [and] the experience of collective identities and solidarities" have conjointly removed

the nation-state as the exclusive site for the practice of citizenship.[70]

One's reading of citizenship as a tool for delimitation or suppression, and/or as a

tool for self-protection, resistance and emancipation of the political subject depends

partly on whether citizenship is understood as a territorialized and rigid legal status, or as

a multifaceted practice. Isin explains that a politically dynamic and historically relevant

conception of citizenship requires a reformulation of the question 'what is citizenship?' to

an inquiry into 'what is called citizenship?'[71] Such a refocus would provoke a

consideration of the various interests and elements that serve as a catalyst for the

interpretation of citizenship as either primarily a de jure or de facto relation. Though

different, interpretations of citizenship as a legal status and as a practice are related.

Scholarly readings of citizenship as formal status concentrate on the inclusive exclusive

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69 Saskia Sassen, "Towards Post-National and Denationalized Citizenship," in *Handbook of Citizenship Studies*, eds. Engin F. Isin and Bryan S. Turner, (London: Sage Publications, 2002), 277-278.
70 Ibid., 278.
71 Engin F. Isin, "Citizenship in flux: The figure of the activist citizen," *Subjectivity*, No. 29 (December 2009): 368-372.

dynamics and legally inscribed circumstances of residence, naturalization, deportation, (im)migration, detention, statelessness, and visa and passport acquirement.[72] This reading is premised on the acquisition of citizenship through one of the three means of *jus sanguinis* (inherited citizenship through a parent), *jus soli* (inherited citizenship through birth separately from parentage) or *jus domicili* (citizenship through naturalization in a host-society).[73] In contrast, interpretations of citizenship as a practice often posit social and political transitions such as integration, multiculturalism, coexistence, recognition, nationalism and trans-nationalism as a focus. Treating these as socially reproduced, politically driven and legally inscribed processes that develop slowly over time, readings of citizenship as a practice stress the diverse sites and acts of citizenship that permeate states undergoing such transitions. That said, and regardless of the particular interpretation of citizenship, most of the scholarship on citizenship: first, agrees that its de jure and de facto elements necessarily imply and dispute each other as important elements, and second, goes on to posit an essential connection to a national state.[74]

The rise of state-based forms of political organization rendered nationality a central ingredient in the formulation of an institutionalized citizenship. As a result, while the terms 'citizenship' and 'nationality' extend to different legal jurisdictions, as the former reflects a national sphere and the latter an international legal realm, both nevertheless denote a nation-state framework and bestow the individual with some form of state membership.[75] However, scholars in the field increasingly question the inherent

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72 Isin cites a range of scholarship interpreting citizenship as *status*. I would also add the writings of Soysal (1994) and Somers (1998) to both lists as they stress the dual importance and interrelatedness of citizenship as status and as practice.
73 Isin, "Citizenship in flux," 369.
74 Ibid.
75 Saskia Sassen, "The repositioning of citizenship and alienage: emergent subjects and spaces for politics," *Globalizations* 2, No. 1 (2005): 81-83.

connection between citizenship and the nation-state framework, or the territorialization of

citizenship. Obrad Savić explains that,

> The point of the hyphen in the term nation-state is to fuse people and politics, to create a homogenized identity between forms of life and political and state power. What distinguishes the nation-state originally is not only a claim to sovereignty over a fixed territory, but a sovereignty of a specific ethno-political group, a nation that happens to be territorially located: 'What distinguishes the territorial exclusivity of nationalism, in other words, is a form of republicanism, the 'wedding' of people and the state, the insertion of the one into the other with all the tight bounded unity of the signifier and the signified'.[76]

Admitting that such a tight coupling of civic identity and nation-state is only an

"approximate equation," Savić asserts that it is this very paucity of ethno-national and

political homogeneity within nation-centered states that drives campaigns for

"claustrophobic ethno-national identities."[77] What surfaces is the simultaneous

requirement of liberal democratic citizenship to both posit a heterogeneity while reducing

or dissolving heterogeneity. Through this process a tension between the fixed and rigid

political and legal boundaries of exclusive political membership, or citizenship, and the

dynamic and transient compulsions of people takes shape. This renders the homogeneity

of the nation a "principal fiction" that is seconded by borders, legal jurisdictions, and

sovereignty which "always give the lie to this national construct."[78]

One of the key studies of contemporary migration, Soysal's *Limits of Citizenship,*

Migration and Post-National Citizenship in Europe (1994) examines the substitution of

national civic personhood with universalized human rights and the formation of a new

incorporation regime. A defining part of this regime is the displacement and unfastening

of the nation-state and nationhood as a key feature of citizenship. As such, when

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76   Savić, "Figures of the Stranger," 71.
77   Ibid.
78   Ibid.

examining the incorporation regimes of states, various scholars have pointed out that there remains an emphasis on the local in the increasingly globalized context of citizenship. Peter Geschiere explains that primordial forms of belonging, and preoccupations with notions of autochthony have given rise to localist articulations of national and collective identity, all of which works against forces of globalization.[79] Along with this "global obsession with belonging" surfaces radical models and practices of exclusion that challenge notions of national citizenship and impair values of civic equality and national unity.[80] Geschiere holds that in these contexts, definitions of who is included in this belonging changes fiercely and unexpectedly creating various patterns of national and citizenship exclusions; or, as Soysal would term it, creating various incorporation regimes. On this discussion, Iris Marion Young emphasizes practices in contemporary liberal societies that reveal how the implicit normative ideal within the idea of universal citizenship has yet to be achieved. Young posits that although by the late twentieth century liberal understandings of citizenship included marginalized groups through the extension of equal political and civil rights, key groups remained excluded from participation in shaping the collective civic identity and denied social justice. The liberal notion of "differentiated citizenship" has surfaced as the ideal method for the inclusion and participation of all members, taking the place of a more egalitarian conception of full citizenship.[81] She writes, "the universality of citizenship, in the sense of the inclusion and participation of everyone, stands in tension with the other two meanings of universality embedded in modern political ideas: universality as generality,

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79 Peter Geschiere, "Autochthony, Citizenship, and Exclusion – Paradoxes in the Politics of Belonging in Africa and Europe," *Indiana Journal of Global Legal Studies*, Vol. 18, No. 1 (Winter 2011): 322.
80 Ibid., 323.
81 Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," *Ethics*, Vol. 99, No. 2. (January 1989): 251.

and universality as equal treatment."[82] But the issue is not the inability of fulfilling an

attractive normative vision. Instead, Young argues that appeal to the liberal vision of

universal citizenship itself is a problem in that "having a common life with and being

treated in the same way" as other citizens is privileged over a more profound acceptance

of difference.

Young's provocative intervention depicts an alternative reading of liberal

citizenship and national identity in modern globalized societies. Notions of "equal

treatment" are instead replaced with "articulation[s] of special rights that attend to group

differences."[83] This counter-vision posits liberal-egalitarian citizenship as a tool of

exclusion whose implementation of a general will and national identity imposes an

outdated form of homogeneity. Countering the work of theorists such as Benjamin

Barber, Young rebuffs understandings of the political life of citizens as "a moral body

whose existence depends on the common ordering of individual needs and wants into a

single vision of the future in which all can share."[84] Such liberal understandings of

citizenship fail to encompass the ways our individual experiences and needs are mediated

through group identities and belonging. And so, for Young, the notion of a unified

citizenship experience and national identity is, in the end, an impossible liberal promise.

Overall, Young's call for an alternative (and more inclusive) reading of liberal citizenship

complements Soysal's efforts to unfasten of the nation-state and nationhood as a key

feature of citizenship. Soysal supports the position that, for the most part, the concept of

citizenship is comprised of various articulations of membership and its accompanying

rights, each of which reflect an analysis of the various relations within that state. Indeed,

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82   Ibid.
83   Ibid.
84   Ibid., 256.

reading these two scholars along one another, we can distil that the trajectory of

citizenship within a state reveals how self-conceptions of nationhood and belonging are

culturally and historically inscribed. This also reflects the ways that citizenship is

intertwined with institutional and structural realities and political changes.

As I point to above, Soysal's important contribution on the codification and

expansion of rights beyond the national framework of citizenship has since generated

new models and understandings of (state) identity and membership.[85] Soysal writes:

> Historically, as the state has expanded and permeated new domains of social
> action, its responsibility has extended to different strata of society – workers,
> women, and children. The state has incorporated a larger and larger proportion of
> the population into its jurisdiction and into the public realm …. In this process,
> incorporation has affected the national citizenry through the establishment of
> citizenship rights and national institutions. However, in the postwar era, even
> foreign populations are incorporated into the institutions of the polity. In
> accordance with expanding notions of universalistic personhood, non-citizens, as
> much as citizens, are entitled (and authorized) as productive individuals wherever
> they reside.[86]

What arises is a kind of dilution of the model of citizenship as a form of elite social

membership used as a basis for claim-making. In outlining the conceptual and practical

contradictions surrounding readings of citizenship as anchored in a territorialized nation-

state, Soysal shows that the bestowing of universalistic rights of personhood moves

beyond these boundaries, rendering "national citizenship particularly less important."[87]

Soysal's discourse is based on an observation of shifts in the social, political, legal,

cultural and economic conditions that interrogate territorial readings of the concept of

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85   See Soysal (1994). Further, Isin (2009) explains that while these new forms include post-national,
     transnational, global or cosmopolitan models of citizenship, the literature on citizenship nevertheless
     is, for the most part, outlined within a state framework.
86   Soysal *Limits of Citizenship*, 31.
87   Ibid., 7-31.

citizenship. Discussed below, such a non-territorialized reading also has implications for the kinds of actors included in the mechanisms and processes of claim-making.

A similar analysis challenging the exclusionary model of citizenship as rooted in national sovereignty is provided by Saskia Sassen:

> [T]he destabilizing of national state-centered hierarchies of legitimate power and allegiance has enabled a multiplication of non-formalized or only partly formalized political dynamics and actors. These signal a deterritorializing of citizenship practices and identities, and of discourses about loyalty and allegiance.[88]

Rather than a static and detached institution, citizenship instead involves a range of related interactions, dynamics, and tensions between the individual and the state order at the legal, political, cultural, and psychological level. In her analysis of the denationalizing and post-national developments in modern citizenship, Sassen also points to the events leading to the nationalizing of citizenship. Here, Sassen highlights the "formation and development of the national state as the key political community and [as] crucial to the socialization of individuals into national citizenship."[89] The evolution of political subjecthood and participation in conjunction with state formation generated a regime in Western societies where nationality serves as a fundamental part of citizenship at a political, cultural and psychological level. Revealed in Chapter Four, this development of the national character along with the formation of the institution of citizenship accounts for differences between the various incorporation and citizenship regimes of nation-states in Europe and North America. Having explained the nationalizing features of citizenship, Sassen goes on to distinguish between denationalizing and post-national trajectories of citizenship. Though "not necessarily mutually exclusive," the former is concerned with

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88   Sassen, "The repositioning of citizenship," 80.
89   Sassen, "Towards Post-National," 279.

the "transformation of the national" while the latter involves "new forms that we have not even considered and might emerge out of the changed conditions in the world located outside the national."[90] Sassen's distinction between denationalization and post-nationalist tendencies in citizenship brings the discussion to the question of how these transformations in the conception of the 'national' (and their direct and indirect amendment of the particular features of the institution of citizenship) affect the kinds of actors of citizenship, or the citizen-subjects that arise.

6. 'Acting' citizenship

The above transformations compel many scholars of citizenship studies to lament the 'end of citizenship'. It has become commonplace in contemporary democracies to contend that increasing heterogeneity from processes of globalization and the rise of neo-liberalism creates a disenfranchised citizenship body, converting citizens into consumers and taxpayers. The parameters of citizenship in this context are not defined by individual rights and responsibilities but rather by the provision of choice within a capitalist mode of production. This shift into a more consumerist citizen culture renders financial security and wealth a caveat for the full engagement in the practice and process of liberal citizenship, enabling access to institutions of power and decision-making, superior healthcare, education and other practices of citizenship. The privatization and commodification of civic spaces and political activity and the simultaneous rise of experienced experts of democratic governance displaces civic activity from formerly public arenas, giving rise to complaints of the end of citizenship. Michael Schudson locates the first recorded instance of this concern in the writings of Rousseau who already

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90   Ibid., 286.

in 1750 observed that "[w]e have physicists, geometers, chemists, astronomers, poets, musicians and painters; we no longer have citizens."[91] Statements warning of the end of citizenship re-emerge in a range of writings by scholars of democracy and citizenship theory, and point to the ways the boundaries of citizenship is redrawn by socio-economic and political and environmental transformations.[92]

Importantly, the reshaping of the parameters of citizenship and civic action reveal that new actors in the arena of citizenship, including refugees, asylum seekers, courts, international courts, multinational organizations and other non-status and/or non-citizen agents surface as political subjects. These new actors reveal that far from the end of citizenship, global changes and juridico-political developments leading to changing definitions of the 'national' have instead reconfigured the traditional figures of citizenship. Historically located at the margins of nation-states, these 'in-betweens' or 'Others' of civic membership have served as exceptions to a nation-state system through sovereign practices of policing and border control. With transformations in the institution of citizenship expanding forms of civic membership and political activity, these formerly marginal figures no longer constitute the periphery and are increasingly able to access key spaces of citizenship.

These changes require us to similarly amend our treatment and study of citizenship. As political subjects, new and formerly marginalized actors carry demands and claims for inclusion, representation and justice into new fields that include a

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91 Rousseau (1750), as cited in Michael Schudson, *The Good Citizen: A History of American Civic Life* (Cambridge, MA: Harvard University Press, 1998), 365.

92 See discussions between Walter Lippman in *The Phantom Public* (1925) and John Dewey in *The Public and its Problems: An Essay in Political Inquiry* (1927) on the existence of the 'public' and political activity in democracy in modern societies. Relatedly, De Tocqueville writes "When a nation has arrived at this state it must either change its customs and its laws or perish: the source of public virtue is dry, and, though it may contain subjects, the race of citizens is extinct," in *Democracy in America*, trans. Henry Reeve, (reprint Pennsylvania: Pennsylvania State University 2002 [1840], 111).

multifaceted range of rights, privileges and responsibilities. At the same time, and as

Étienne Balibar warns, the inclusion of the "dangerous classes" into the realm of

citizenship has also been conditioned on their transformation into themselves into integral

parts of the body politic and thus also into "real or imaginary masters (*maîtres*) or, more

exactly, foremen (*contremaîtres*) of imperialist domination."[93] Put differently, through

the power of assimilation the inclusion of new actors in the arena of citizenship has also

implicated them in the arenas of state power and heritage, and therefore of domination.

Reflecting on this development, Isin contends:

> The rights (civil, political, social, sexual, ecological, cultural), sites (bodies, courts, streets, media, networks, borders), scales (urban, regional, national, transnational, international) and acts (voting, volunteering, blogging, protesting, resisting and organizing) through which subjects enact themselves (and others) as citizens need to be interpreted anew. …. We need a new vocabulary of citizenship.[94]

This 'new vocabulary' of citizenship compels an examination of the "acts of citizenship"

to sketch both "those deeds by which actors constitute themselves (and others) as subjects

of rights," and the manner in which new and non-traditional political subjects are

formed.[95] Here, as in his other works, Isin notes: first, that actors in the arena of

citizenship are not defined by their status as citizens and can include a range of legal or

quasi-legal individuals or collectives; second, that acts which produce political subjects

generate new areas of allegiance and struggle that are separate from conventional sites of

citizenship (i.e., voting, jury duty, military service, and more); and finally, that the acts of

citizenship move beyond political, legal and state jurisdictions, sometimes along urban,

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93   Étienne Balibar, "Propositions on Citizenship," *Ethics* 98, No.4, (1988): 726.
94   Isin, "Citizenship in flux," 368.
95   Ibid, 371.

regional and international lines.[96] Hence the status of the citizen can no longer be limited

to state membership, and the practice of citizenship can no longer be circumscribed

within the borders of the nation-state. What the focus on acts of citizenship reveals is that

our understanding of the concept of citizenship must be able to account for its malleable

and dynamic character.

The interaction among the agents, sites and acts of citizenship provides access to

rights depending on the medium through which citizenship rights are determined. This

can include some combination of birth, wealth, ethno-national identity, language,

religious affiliation, and political or legal status among other traits, and serve to

illuminate the mechanisms through which the rights of citizenship are (at least formally)

allocated. Here, the rights accompanying citizenship determine the actors in the arena of

citizenship, and the inclusive exclusive relations that emerge as a result of their exercise.

As a result, different rights of citizenship produce different political subjects. On the

question of citizenship rights, Somers has gone so far as to assert that the rights of legal

citizens in a nation-state (de jure citizens) are irrelevant in the absence of de facto

citizenship rights.[97] In many cases, Somers argues, de jure citizenship in its current form

of official citizenship status no longer determines rights within a nation-state. This

account is more in conjunction with Hannah Arendt's political philosophy insofar as it

highlights the importance of de facto rights and legal recognition. [98] Somers illuminates a

key feature of Arendt's understanding of citizenship, namely, that the de jure and de facto

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96 See, for example, Engin F. Isin, "Theorizing acts of citizenship," In *Acts of Citizenship*, eds. Engin F.
    Isin and G.M. Nielsen, (New York: Zed Books, 2008), 15–43. Sassen's claim that "citizenship is
    partly produced by the practices of the excluded" is also relevant. "The repositioning of citizenship,"
    84.
97 Somers, "Citizenship, Statelessness and Market Fundamentalism."
98 See Hannah Arendt's *The Origins of Totalitarianism*, (reprint, New York: Harcourt Brace, 1973
    [1951]); and "We Refugees," *Menorah Journal* 31, No. 1 (January 1943): 69-77.

elements of citizenship, or the status and practice of citizenship, are deeply intertwined.

And to determine the actual substance of citizenship, Somers employs the language of

rights. In theorizing about the constellation of rights that are foundational to an inclusive

citizenship regime, including civil and political freedoms, access to justice, equality and

political participation, Somers adopts an Arendtian reading of citizenship as "the right to

have rights."[99] Two factors are key to this formulation of citizenship: the first is the

presence of both de jure and de facto rights of political membership and subjectivity; and

the second element is a range of juridico-political rights that encompass social, political,

economic welfare, and security rights which, by extension, can include cultural, social

heritage, indigenous, and same-sex rights, among others.[100] Central to Somers's

formulation of citizenship is that these rights are to be widely recognized, accepted by a

sovereign power and socio-politically and legally enshrined. While political membership

and subjectivity act as a foundation for citizenship, and make de jure and de facto

inclusion, identification and recognition possible, the two features of citizenship are

inherently intertwined, and complete each other.

7. Citizenship as a 'zone of undecidability'

The term *citizen* is, for the most part, a modern socio-legal category. First employed in

the fourteenth century, the notion of citizenship only referred to an inhabitant of a polity,

and it was later in the sixteenth century when the concept was seriously affiliated with the

notion of a right of membership in a city.[101] Moreover, it was not until the eighteenth

century when it expressed a set of responsibilities and obligations, when the *citizen* was

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99   Ibid.
100 Somers, *Genealogies of Citizenship*, 5-9.
101 McAfee, *Habermas, Kristeva, and Citizenship,* 13.

first rooted in modern readings of an autonomous and individual subject: "a being unto

himself, separable from any community, the author of his own will and intentions."[102]

The modern conception of the citizen outlines a political subject capable of developing an

understanding of itself as a political subject through the exercise of decisive political

actions and interventions. As Nöelle McAfee explains, "[t]o this day, our notions of

citizenship rest upon our notions of subjectivity."[103]

A historical reading of the development of the concept of citizenship requires an

understanding of a universalizable political subject through which particular social,

cultural and tribal affinities begin to collapse. Such a transformation initially occurred

within the context of ancient and pre-modern cities, and later developed into state-based

forms of political organization where social collectives struggled over the use of, and

access to, social resources. Not an inevitable development within city-states, social rights

in the form of *citizenship rights* are a product of a series of conflicts and competitions

between different social groups, with different access to and investment in the state order.

By the same token, previously acquired sets of social rights can also be renounced as a

result of these social struggles. Therefore, with the development of citizenship within the

city-state context evolved notions of freedom, autonomy, civility, and at a broader level,

civilization.[104] Migration from the township, village or countryside to the city became

associated with the processes of civilization, acculturation and enlightenment, thus

distinguishing the *citizenized* individual from her/his non-advanced non-citizen

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102 Ibid.
103 This definition of the political subject is very similar to one posited by Alain Badiou. For a critical
    reading of Badiou's concept of the political subject, see Antonio Calcagno, "Alain Badiou: The event
    of becoming a political subject," *Philosophy and Social Criticism*, Volume 34, Issue 9, (November
    2008): 1051-1070. In this article, Calcagno points out the "de-politicizing, de-subjectivating [and]
    dehumanizing" effects of political actions. He also expands traditional readings of political actions to
    include "failed or non-interventions" within the realm of the political.
104 Bryan S. Turner, "Outline of a Theory of Citizenship," *Sociology* 24, No. 2 (May 1990): 203.

counterpart.[105] What surfaces from ancient, pre-modern and modern readings of citizenship is the necessary 'Otherizing' that lies at the root of the concept and process of citizenship: the creation and maintenance of an Other, a non-member or outsider excepted from the social arrangement.

Citizenship cannot only be understood as a venue for the enjoyment of representation, protections, and rights, but is also an object of local restriction and closure. Key to the argument I posit in this study is the contention that the modern concept of citizenship remains rooted in a *relation of exception*. While depicted in the language of universalism and inclusion, it has simultaneously and systematically excluded, and sometimes even criminalized, certain individuals and collectives. Despite its generalization, the conceptual parameters of citizenship entrench a gap between human and citizen, between broader humanity and the law of the nation-state, through which it is able to prohibit the foreign Other from the political community of its subjects.[106] Part of the history of modern exclusion, citizenship maintains the notion of a foreign Other by introducing a new kind of privilege enabled by the formalization of membership politics. This historical barrier is sustained by the institution of citizenship. It develops, acts, formulates, establishes, is reproduced by, and bestows praise, punishment, rights and representation against the figure of the Other; or through the process of Otherizing. The relation of exclusion key to the concept of citizenship continues to shape its vertical and horizontal peripheries where stateless persons, asylum seekers, refugees, foreigners, temporary workers, guests, aliens and other non-citizens subjects are located. It is in the margins of citizenship, in the gaps of the juridico-political order, where the

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105 Ibid.
106 Savić, "Figures of the Stranger," 74.

vulnerable and unwanted non-members of the nation-state reside. Yet, while the citizen and non-citizen, or the member and non-member, are characterized as juridico-political categories, they are not to be considered as assemblages or groups. As Jacques Rancière writes:

> Man [sic] and citizen do not designate collections of individuals. Man and citizen are political subjects. Political subjects are not definite collectivities. They are surplus names, names that set out a question or a dispute (litige) about who is included in their count.[107]

Where the line separating one life from another is drawn is key. To Rancière, "politics is about that border."[108] This emphasizes that far from a separation among political subjects delimited simply via national borders and state memberships, social and political divisions within and across imagined state boundaries often form links of identity, experience and representation among collectives. What is present, and nominally representable, is then structurally shaped by what is absent within and across national borders. These gaps, breaches and cracks in the juridico-political continuum of state-membership simultaneously serve as a blueprint for and affect citizenship, as both a status and a practice. For instance, citizenship rights belonging to the citizen are similar to (or, in some cases even identical to) those provided to the non-citizen, but they are not shared. *In other words, the sphere of inclusion for the citizen is separate and autonomous but not detached from that of the non-citizen.* Both figures are political subjects, within institutionalized parameters, and are co-created and Otherized by virtue of their political, legal, linguistic, social, economic and even psychological frameworks.

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107 Jacques Rancière, "Who Is the Subject of the Rights of Man?" *The South Atlantic Quarterly* 103, No. 2/3 (Spring/Summer 2004): 303.

108 Ibid.

That said, in framing a theory of citizenship it is important not to posit the citizen

and its Other as an 'either-or' position and instead point to the range of subjectivities,

produced through the interactions of the elements comprising legal and social

membership, which most individuals adopt. This would also mean that we do not to treat

citizenship as a container that is either full or empty of rights, protections responsibilities

and privileges.[109] Citizenship and statelessness ought not be seen as opposite and

exclusive categories. This is evident in Chapter Three where we examine the Otherizing

effect of citizenship in the case of Israel. Rather than focusing on the Other that resides

outside, or on the margins of, the citizenship regime, we will see how the dynamic of

Otherizing occurs both within and *through inclusion* in the citizenship regime. So, while

we can understand that the separate and autonomous sphere of inclusion for the citizen

nevertheless remains connected with the non-citizen, we must also consider the relations

of exclusion residing within citizenship itself. It is in this sense that statelessness, or the

condition of the alien, foreign or strange Other serves as our conceptual reference point

for a broader study of citizenship.

With this, the broader question of whether citizenship is, or can be, genuinely

inclusive – even of its own subjects – begins to surface. Useful is Giorgio Agamben's

writings on the paradigm of exception both as a concept and a tool to make intelligible a

broader collection of problems. He writes that a paradigm "does not move from the

particular to the universal, nor from the universal to the particular, but from the particular

to the particular."[110] This means that both conceptually and methodologically, a paradigm

involves a part with reference to a part, rather than a whole with respect to a part

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109 Ibid., 356.
110 Giorgio Agamben, "What is a Paradigm?" Lecture at European Graduate School, August 2002,
         retrieved from: http://www.egs.edu/faculty/giorgio-agamben/articles/what-is-a-paradigm/.

(deductive), or a part with respect to a whole (inductive).[111] Hence, to comprehend the

way a paradigm functions, classical theoretical oppositions of "universal and particular,

general and individual, and even also form and content" must be dislodged.[112] Similarly,

when examining the possibilities of genuine inclusion within citizenship we ought not

posit a rigid opposition between inclusion and exclusion, but rather adopt what Agamben

calls a "zone of undecidability" to account for the moments where citizenship is neither

totally open nor closed. The creation of a new context within citizenship emerges, one

that is delimited by a combination of national borders and social boundaries where

particular inclusions within certain zones are simultaneously combined with exclusions.

Put differently, the relation of exclusion within citizenship itself, the Otherizing that

occurs both within and *through inclusion* in the citizenship regime, can be understood as

a movement from the particular to the particular. As a relation of inclusion, the

citizenship regime is therefore perhaps better understood as what Agamben calls "depolar

and not dichotomic… [or] tensional and not oppositional" that together form a certain

undecidability that nullifies strict oppositions of inclusion and exclusion.[113]

8. Legal categorizations and the politics of recognition

Recognition has become prominent as a key component of citizenship. Scholars such as

Charles Taylor (1994) emphasize that recognition is a "vital human need" and point to

the damage, oppression and reduced forms of the self that can be produced by the non- or

mis-recognition of individuals and groups. Indeed, recognition points to the importance

of political subjects to develop as autonomous individuals with self-esteem and self-

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111 Ibid.
112 Ibid.
113 Ibid.

confidence, particularly in the context of multi-ethnic subjects with cultural differences among civic subjects. Working from the premise that recognition marks and produces identity, Taylor understands recognition as existing in two realms, one intimate where identity is in and expected and constant exchange and tension with others and the other public where a politics of equal recognition enters the consideration. Viewing identity as constructed through open social dialogue, the rising discourse of the politics of equal recognition demands the equal incorporation and status of cultures, ethnicities and genders.[114] Here we see that struggles based on identity and difference increasingly demand not only legal or formal status, but also comparable political and social recognition and economic access.

In an attempt to systematize areas of contention in the study of minority status and citizenship, Isin and Turner (2002) point to the elements of: *extent*, having to do with rules and practices relating to inclusion and exclusion; *content*, regarding civic rights and responsibilities; and *depth,* with respect to how the identities of members should be understood and accommodated. Looking at the broader context of multi-ethnic state systems, practices arise that appear to include and accommodate the political and social dominance of one group with the concept of democratic citizenship. Explained by Isin and Turner, "what is new is the economic, social and cultural conditions that make possible the articulation of new claims and the content and form of these claims as citizenship rights."[115] Depictions of these new frameworks for rights and obligations as "minority rights" are limited and misleading. This is because these calls for rights and

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114 Charles Taylor, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition*, Charles Taylor et al, ed. Amy Guttman (New Jersey: Princeton University Press: 1994), 27.
115 Isin and Turner, *Handbook of Citizenship Studies*, 1.

representation are not put forward by distinct collectives and cultures merely because of their statistical minority; rather, such claims for inclusion and recognition are the result of a series of changes in economic, social, political and cultural processes and structures.

An analysis of these processes also reveals the (often devastating) dynamics of the citizenship available to minority or marginalized communities within the state system. This illustrates the importance of the specific social and political milieu in determining the practice and relation of citizenship rights. With an examination of the kind of model of state-minority relations that is adopted by a society, certain complexities, inconsistencies, and ambiguities emerge around the formulation of the types of recognition and rights, for which groups, and in which contexts.[116] These models often depend heavily on the distinction between indigenous and minority communities and their associated rights, argues Kymlicka, pointing to the official international legal position "that indigenous peoples have a right to accommodation, whereas minorities have a right to integration."[117] An accommodationist approach to recognition involves questions of self-government, self-determination and institutional pluralism, whereas an integrationist approach focuses on questions of non-discrimination and socio-civil rights. Kymlicka explains the use of these approaches to understanding the differing rationales behind indigenous rights and minority rights in the development and interpretation of key international legal texts by the United Nations Working Group on Minorities and the United Nations Working Group on Indigenous Populations.[118] Three basic differences between minorities and indigenous peoples takes shape as a result of these initiatives: (i)

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116 Will Kymlicka, "The Internationalization of Minority Rights," *International Journal of Constitutional Law* 6, No. 1 (2008): 1–32.
117 Ibid., 3.
118 Ibid., 4.

minorities seek institutional integration while indigenous peoples seek a degree of institutional separateness, (ii) minorities seek to exercise individual rights while indigenous peoples seek to exercise collective rights, and (iii) minorities seek non-discrimination while indigenous peoples seek self-government.[119] Kymlicka points out, however, that these interpretations are not only stipulations in international legal texts but they also make claims about the aspirations of the two types of groups. For "if international norms accord different rights to minorities than to indigenous peoples, [then] this is because the two groups are presumed to want different kinds of rights."[120] He argues that while these groups appear to differ very little in 'objective' characteristics, the distinction to be made between indigenous peoples and minorities is that of the nature of their political demands, rooted in their mode of organization and political aims.

With this contention, the question of the types of 'minority' categorizations, their applicability and shortcomings arises. Important to keep in mind is that an analysis of power and the notion of oppression is limited in Kymlicka's account of minority categorizations. Throughout most of his scholarly work, he appears more interested in outlining the logics and structures of claims, obligations and inclusions provided to collectives placed in different legal categories; and in examining the possibility of whether liberal citizenship can coexist with or complement distinct rights and protections provided to 'minority' communities. With this focus, one of Kymlicka's key scholarly contributions to the study of citizenship and its relation to the individual and collectives has been "the liberal mainstreaming of minority rights" so that such claims can be

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119   Ibid.
120   Ibid., 5.

sourced in the "liberal principles on which existing institutions are built."[121] Overall, this rise in the discourse of minority rights is an interesting phenomenon but perhaps what is more interesting is that, as an institution, citizenship itself is changing.

Now, Kymlicka makes a distinction between *old* or *homeland* minorities and *new* minorities. The former was settled on their territory prior to it becoming part of a larger, independent country. They have been settled within a particular part of that country for a long period of time, and, as a result of that historical settlement, have come to see that part of the country as their historical homeland. Conversely, the latter were admitted to a country as immigrants after it achieved legal sovereignty, and accorded a different legal status depending on the host society such as asylum seekers, temporary guest workers, illegal immigrants, and permanent immigrants.[122] For Kymlicka, an important distinction ought to be made within the category of old minorities between indigenous peoples and other historically settled homeland minorities, called *national* minorities. Yet, the distinction between recognition as indigenous peoples and national minorities is nevertheless diluted in relation to issues of minority rights as both types of old minorities are bestowed the right to accommodation.[123] He points out that both are granted various rights to self-government over traditional territory, along with linguistic and cultural rights in their respective public spaces. Therefore, international legal arguments for the recognition of the rights of indigenous peoples similarly apply to other vulnerable populations recognized as old minorities.

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121 Christian Joppke, "Multicultural Citizenship," in *Handbook of Citizenship Studies*, eds. Engin F. Isin and Bryan S. Turner (London: Sage Publications, 2002), 247.
122 Kymlicka, "The Internationalization of Minority Rights," 7-9.
123 Ibid., 10-12.

The potentially destructive capacity of minority categorizations and the problematic elements in the attempt to draw a sharp distinction between the categories of indigenous peoples and national minorities produce various difficulties. Discursive categories in international legal texts have the power to mold the historical and political understanding of the population in the consciousness of both the ruling establishment and the community itself. In doing so, minority categorizations create moral inconsistencies, conceptual ambiguities, and fragile political frameworks.[124] For Kymlicka, the real difficulty is not whether the subject is autonomy-seeking indigenous peoples or integration-seeking minorities, but rather the moral and political inconsistencies following from a sharp distinction in rights between the two types of groups. He argues that "whatever arguments exist for recognizing the rights of indigenous peoples to self-government also apply to the claims for self-government by other vulnerable and historically disadvantaged homeland groups."[125] Kymlicka contends that outside the core cases of European immigrant or colonial-settler states, the very distinction between indigenous peoples and other homeland minorities is problematic. "In a familiar sense," he argues, "no groups in Africa, Asia, or the Middle East fit the traditional profile of indigenous peoples," as all of the homeland minorities in these regions were merged into larger states dominated by neighboring populations rather than into European settler-states.[126] For Kymlicka, these groups are more in conjunction with the profile of European national minorities than with indigenous peoples in occupied lands. Alternatively, using a more critical conceptual lens that views group categorizations in the context of colonial rule, all homeland groups including the dominating majority group

124 Ibid., 10.
125 Ibid.
126 Ibid., 12.

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can be classified as indigenous in relation to the colonial rulers. From this perspective, the homeland groups and the dominant groups in post-colonial states are "indigenous" in a historical and political capacity. In the case of Israel, Kymlicka makes reference to the work of Arab political scientist Amal Jamal who argues that the Israeli national project should be considered and included as a European settler-colonial state.[127] With this inclusion, non-Jewish Arabs both inside and outside of Israel's imagined borders would meet the traditional definition of an indigenous people. Taken together, though these various legal categorizations are important, they are not so distinct so as to imply greater or lesser legitimacy in their claims to specific rights and obligations.

9. Summary and conclusions

Heightened interest in citizenship as a separate field of study has been a product of various political, historical, and social-cultural developments in our contemporary context. These developments include the rise of global migration and statelessness, changes in collective identities and allegiances with nation-states with the rise of heterogeneous civic societies, and rising liberal consciousness around the exclusion of minority communities from the body politic. Together, the changing nature of nation-states has led to transformations in the discourse on the content, structures and boundaries of liberal citizenship in the contemporary period. First, the parameters of what being a citizen involves, where citizenship is located, and the rights and protections that are meant to accompany citizenship recognition are being redrawn and reconfigured, thereby no longer making the nation-state the exclusive site for its practice. This awareness is

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127 See Amal Jamal, "On the Morality of Arab Collective Rights in Israel," *Adalah's Newsletter* 12 (April 2005), retrieved from: www.old-adalah.org/newsletter/eng/apr05/ar2.pdf.

making liberal citizenship increasingly uprooted and deterritorialized so that the state can no longer be posited as an all-encompassing repository of citizenship. Relatedly, this re-location outside of the state framework has also fueled post-colonial scholarly critiques of liberal citizenship as part of an occidental tradition that is structured in a manner where cultural and political progress flows out of the largely European sector, toward the passive non-European sector on the receiving end.

Second, the contemporary period is also witnessing a *re-framing* of citizenship in the face of an increasingly multicultural, multinational and multireligious reality. As the primary organizing relation between the state and its constituents, citizenship in contemporary nation-states has recognized new calls for recognition, rights and representation. These collective struggles often result in demands for a re-definition of state institutions and discourses surrounding citizenship, thereby challenging its traditional contours. This reshaping of the parameters of citizenship and civic action have led to a third and final transformation discussed above, revealing that *new actors* in the arena of citizenship, including refugees, asylum seekers, courts, international courts, multinational organizations and other non-status and/or non-citizen agents have surfaced as political subjects. Historically located at the margins of nation-states, these 'in-betweens' or 'Others' of civic membership have served as exceptions to a nation-state system through sovereign practices of policing and border control. With transformations in the institution of citizenship expanding forms of civic membership and political activity, these formerly marginal figures no longer constitute the periphery and are increasingly able to access key spaces of citizenship. And so, far from the 'end of

citizenship' these new actors reflect the reconfiguration, interrogation and relocation of the traditional figures of citizenship.

Overall, what surfaces from these related transformations is that liberal citizenship is a part of the history of modern exclusion. Its discourse, content, structures and boundaries are changing in the contemporary context because, as an institution and a practice, citizenship is an object of local restriction and closure. Central to the modern concept of citizenship that I examine is a *relation of exception* that maintains the notion of a foreign Other by introducing a new kind of privilege enabled by the formalization of membership politics. As mentioned, despite its generalization, the conceptual parameters of citizenship entrench a gap between human and citizen, between broader humanity and the law of the nation-state, through which it is able to prohibit the foreign Other from the political community of its subjects.[128] As my study contends, the *un-rooting* of citizenship have internalized this relation of exclusion onto the citizen. Questions as to *who* is a *real* or a *desired* citizen on the part of ostensibly liberal democratic nation-states have shifted the gaze of exclusion internally, onto the figure of the citizen. With this transition, we see a rising political trajectory where the citizen is being inverted with the more temporary figure of the 'immigrant'. These transformations are explored in the prospective chapters in the case of Israel.

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128 Savić, "Figures of the Stranger," 74.

Chapter Two | In the Image of Europe: The Colonial Foundations of the Jewish Citizenship and Nationality Regime

"The English do not like the Jews as a subject population. In fact, they do not know what to make of them... the Jews must be classified as natives, but they do not seem like natives. They are acquainted with western culture; many of them speak the English language and are familiar with English ways. What is more, these Jews do not act like natives. They are not submissive and obedient and grateful… on the contrary, they are independent and proud... [they are thus] regarded by the English… with the active dislike of a superior class for an inferior class which does not know and keep its place."

John Hayes Holmes (1929)[129]

"The four great powers are committed to Zionism. And Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land…."

Memorandum by Mr. Arthur J. Balfour (August 11, 1919). [130]

"England lost an important bond with the Arabs because of her piggling policy, because of her Balfour Declaration, because of her oppression in Palestine, because of the unjust treatment of her representative display toward the Palestinian, because she wants to offer this noble Palestinian populace a sacrifice on the Altar of Zionism… Furthermore, because England showed the Arab that she exists for their destruction only."

"Letter on Balfour and Palestine," by Arab Government Officials, March 30, 1925[131]

1. Introduction

The Jewish national movement employed the ideological and conceptual model of mainly

European colonialism. In doing so, it cooperated with the forces of European imperialism

in its justification of Jewish statehood and choice of Mandate Palestine as its target

territory. Indeed, the points of origin in the case of the Israeli incorporation regime lie

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129 In *Palestine To-day and To-morrow: A Gentile's Survey of Zionism*, (New York: Macmillan Company, 1929), cited from Assaf Likhovski, "In Our Image: Colonial Discourse and the Anglicization of the Law of Mandatory Palestine," *Israel Law Review*, Volume 29, Issue 3 (Summer 1995): 299-300.

130 E.L. Woodward, and Ronan Butler, eds. "Memorandum by Mr. Balfour (Paris) Respecting Syria, Palestine and Mesopotamia, 1919," Documents on British Foreign Policy, 1919-1939, in *From Haven to Conquest: Readings in Zionism and the Palestine Problem until 1948*, ed. Walid Khalidi, 201–211, (reprint Washington D.C.: Institute for Palestine Studies, 2005 [1971]), 208.

131 Arab Government Officials, "Letter on Balfour and Palestine," March 30, 1925, Dossier Concerning Protests against the British Mandate for Palestine, 1922, No. 1, Document 15385, Dossier No. 2413, League of Nations Archives at the United Nations Office at Geneva Archives.

within the colonial record of Europe. Taking on liberal citizenship in Israel to show its

colonial dimensions, this chapter outlines the colonial logic in interwar representations

and formulations by political and liberal Zionist (both Jewish and non-Jewish) thinkers,

writers and organizations on the configuration of the proposed Jewish State. I reveal how,

growing out of the historical context of European (settler-)colonial projects, the liberal

justifications for Jewish immigration, nationality and statehood in Mandate Palestine

included promises of intellectual progress, technological advancement, economic

prosperity, agricultural cultivation, and scientific development for humankind.

Repeatedly, the cosmopolitan figure of the 'European Jew' was actively propagated as a

civilizing influence in the interest of Western powers in an otherwise backward and

undeveloped 'Orient'. Given this historical condition, discourses on citizenship, inclusion

and nationality in Mandate Palestine ought also to be understood as sites of production of

European colonial power.

The discussions in this chapter use both literary and historical texts to lay the

grounds for examining the colonial context within which Arab and Jewish interactions

around civil, political and social rights were framed.[132] The combined and complemented

use of these texts helps reveal the importance of the literary imagination to the Jewish

national movement. The fictional structures of the literary texts I include, namely

Altneuland (1902) and *Palestine Parodies: The Holy Land in Verse and Worse* (1938),

reveal the extent to which the Jewish national movement employed the ideological model

of colonialism, and cooperated with European imperialism. These fictional texts illustrate

the juridico-political colonial blueprint passed on to the Zionist leadership by its imperial

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132 Some of the literature and discussions on the colonial foundations of Jewish nationalism that are
     outlined in this chapter incorporate material and arguments I have previously made in Chapter
     Two of *Stateless Citizenship* (2013).

supporters at the end of the Mandate period. Combining literary texts with historical sources, political documents, and key scholarship on Zionism as a colonial enterprise, this chapter details the colonial ideological foundations that gave shape to the civic exclusions and political configuration of the proposed Jewish State.

Together, the literary and historical texts I cite in this chapter enable us to both extract the colonial context within which Arab and Jewish rights were framed, as well as place events in Israel as part of an international trend. Having demonstrated the colonial perceptions, discussions among Zionist figures and the framework of European hegemonic power within which the Jewish national movement burgeoned, I then list the pillars forming the logic of exclusion in Israeli citizenship. As this study argues, the figure of the citizen in Israel is being inverted with the more fluid figure of the 'immigrant'. By placing the configuration of the Jewish State in the context of global forces of colonialism and European imperial power I seek to explain the ways in which modern Israeli citizenship can inform our understanding of broader trends toward citizenship restriction and revocation. Building on the arguments below, the next section, Chapter Three, closely examines archival documentation to explain how the colonial context outlined in this chapter later configured features of the differential liberal citizenship and nationality regime anticipated for the Jewish State.

2. Colonizing the land of milk and honey

Modern political Zionism is, in both thought and practice, a product of a colonial world order. The depiction of the Zionist movement as a settler colonial project is neither new,

nor was it a characterization that Zionist figures shied away from.[133] Even *Altneuland* ("Old-New Land"), a novel written by the father of political Zionism, Theodor Herzl, which aimed at propagating his utopian vision of a Jewish Palestine, openly adopts the language and logic of colonialism. While not a direct blueprint for Herzl's Jewish State, nor a manuscript that can be brought to the level of reality, *Altneuland* is one of the first and most comprehensive literary accounts of a Jewish society in Palestine. Unlike Herzl's more famous publication, *Der Judenstaat* ("The State of the Jews"), which served as the ideological bedrock and outlined the organizational structure of Zionism, *Altneuland* does depict an existing Arab population in Palestine. However, in its representation of Arabs in Palestine, it too places them within a hegemonic colonial order. A connection exists between the bedrock of modern Zionism (including its liberal-Zionist variant) and that of the colonial logic of the fictional text. Not only do they share Herzlian thought as a central tenet in their formation and development but also, more importantly, they both conjure the dream of integration, emancipation and coexistence.

Intended for a non-Zionist audience and aimed at securing non-Jewish support for the Zionist movement, Herzl uses the fictional structure of *Altneuland* to express "his

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133 On the topic of Zionism as a settler colonial project, see, among others, Nahla Abdo and Nira Yuval-Davis, "Palestine, Israel and the Zionist Settler Project," in *Unsettling Settler Societies: Articulations of Gender, Race, Ethnicity and Class*, ed. Daiva K. Stasiulis and Nira Yuval-Davis (London: SAGE, 1995); Lorenzo Veracini, *Israel and Settler Society* (London: Pluto, 2006); and Saree Makdisi, "Zionism Then and Now," in *Studies in Settler Colonialism: Politics, Identity and Culture*, ed. Fiona Bateman and Lionel Pilkington (Houndmills: Palgrave Macmillan, 2011), 237-256. One of the most lucid and thorough readings of the Zionist movement as a colonial project was written by Maxime Rodinson. Arguing that the Zionist movement to create the State of Israel effectively corresponds into the European-American project of colonialism, Rodinson concludes: "Wanting to create a purely Jewish, or predominantly Jewish, state in an Arab Palestine in the twentieth century could not help but lead to a colonial-type situation and to the development (completely normal, sociologically speaking) of a racist state of mind, and in the final analysis to a military confrontation between the two ethnic groups." *Israel: A Colonial Settler State?* (reprint, New York: Pathfinder Press, 2004 [1973]), 74. Important insights into studies of the Zionist colonization of Palestine can also be found in Gabriel Piterberg, *The Returns of Zionism: Myths, Politics and Scholarship in Israel* (New York: Verso Books, 2008).

own visions of Zionism in its purest, most uncompromising form."[134] Beginning in 1902,

the novel follows the main character, Friedrich Löwenberg, a twenty-three year old

Jewish Viennese lawyer, who, alienated by the decadence of Jewish-European

bourgeoisie, decides to join an Americanized Prussian philanthropist named Kingscourt

with a distaste for humankind to withdraw to a remote island. "Disgusted with life,"

Löwenberg agrees to a "life-long obligation" to Kingscourt, and decides to dissolve all of

his existing social, cultural and financial ties to the Jewish bourgeois circles in which he

had long sought inclusion.[135] The novel details their brief visit to Palestine during their

journey to the island in 1902 and their observations of the land two decades later during

what they had anticipated would be a brief return to civilization. Their second visit to the

land reveals that during their twenty year absence: the "empty and deserted" town of

Acre had undergone a "miracle;" Haifa had become a "magnificent city" with

"cosmopolitan traffic in the streets" that "seemed thoroughly European;" Tiberias had

become the "Garden of Eden … a new gem … [with] verdure and bloom everywhere;"

Mount Hermon overlooked "the smaller ranges and the rejuvenated land;" Jericho and the

Jordan Valley worked with "the newest and best agricultural machinery available" and

produced "abundant crops … which brought rich profits;" the Dead Sea had been stirred

to life; and Jerusalem, once a "picture of desolation" now had its sacred hills endowed

with "new, vigorous, joyous life [and] many splendid new structures," which transformed

the ancient city into a "twentieth century metropolis."[136] All in all, Palestine had

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134 Theodor Herzl, *Altneuland* (Old-New Land), trans. Lotta Levensohn, (reprint, New York: Markus Wiener Publishing and The Herzl Press, 1987 [1902.]), vi. This section incorporates material and arguments I have previously made in Chapter Two of *Stateless Citizenship*.

135 Ibid., 32.

136 Ibid., 58-59, 61, 161, 241, 247.

ascended from a "forsaken" land, "a state of extreme decay [with] poor Turks, dirty Arabs, [and] timid Jews … indolent, beggarly and hopeless," into a technologically advanced, agriculturally cultivated, intellectually progressive, economically prosperous "Promised Land."[137] A "truly modern commonwealth," the Palestine built by the Zionist colonialists had been "fructified into a garden and a home for people who had once been poor, weak, hopeless and homeless."[138]

The utopian vision of a Jewish commonwealth depicted in *Altneuland* develops according to a clear colonial logic: through the immigration of a population of superior human intellect and capacity, a settler-colonial state is established according to rational plans that effectively exclude a wretched and underdeveloped indigenous population from the discourse of rights. A hegemonic strategy is thereby played out so as to detach the native population from the historical record of the space, while simultaneously entrenching the identity and legitimate claim of the settler population over the colonized land. As outlined in *Altneuland*, immigrating "in the full light of day," the "Jewish settlers who streamed into the country had brought with them the experience of the whole civilized world."[139] Here surfaces one of the defining characteristics of the Zionist brand of colonialism. Instead of claiming to apply full or partial control over the territory of *another* population, settlement of the land is presented as a process of *reclamation by*, or *return to*, its rightful custodians. The settlers are posited as indigenous to the land. "We led our people back to the beloved soil of Palestine," says David Littwak, Löwenberg's

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137 Ibid., 42.
138 Ibid., 223, 244.
139 Ibid., 100, 127.

travel guide, "[and] milk and honey once more flowed in the ancient home of the Jews."[140]

Using the language of colonialism, *Altneuland* also expands on a familiar universal humanitarian argument posited by the European colonialists of the time: settling the land will result in the progress of humankind as a whole. Throughout the text, the founders of the Old-New-Land remark that its foundations were laid in Europe. Littwak notes, colonized Palestine "punish[es] only those crimes and misdemeanours which were penalized in enlightened European states."[141] Created in the image of Europe, the value of the achievements of the Jewish commonwealth in the areas of "education … land reform, charity organization, social welfare … the role of women … the progress of applied science," literature, and technology are strictly measured in comparison.[142] That the "Jewish peddler … [can carry] herself so modestly and yet with such dignity beside the great English lady" is proof that "Jews have risen to their 'proper place' among the 'great nations' and 'noble races'."[143] In Herzl's novel, and within the Zionist framework, the logic of colonialism propagates the Jew as a liberal cosmopolitan "colonizer for progress" and Palestine is reduced to an "experimental land for humanity."[144] Overall, what is revealed in the fictional structure of *Altneuland* is the extent to which the Jewish national movement and its pundits employed the ideological and conceptual model of colonialism, and cooperated with the forces of European imperialism, in their justification of Jewish statehood.

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140 Ibid., 151, 241.
141 Ibid., 98.
142 Ibid., 223.
143 Ibid., 258; Jeremy Stolow, "Utopia and Geopolitics in Theodor Herzl's Altneuland," *Utopian Studies* 8, No. 1 (1997): 60.
144 Stolow "Utopia and Geopolitics," 60-61; Herzl, *Altneuland*, 50.

Baruch Kimmerling points out that, since its inception, Zionism was adept at distancing itself from the colonial milieu within which it developed:

> Zionism emphasized the uniqueness of the 'Jewish problem': anti-Semitism, persecution, and, later, the Holocaust. It presented itself as the sole realistic and moral solution. Thus, the Jewish immigration movement was able to successfully present itself as a 'return to Zion', the correction of a cosmic injustice that had gone on for thousands of years, and as totally disconnected from other European immigration movements to other continents.[145]

Granted, the historical record shows that prior to the advent of Zionism as a national movement, Jewish migration to Palestine spanned a number of centuries and was mainly driven either by religious motivations, or as a result of the socio-political circumstances for Jews becoming unbearable in other places.[146] During these periods, however, and for almost thirteen centuries, the mainly peasant indigenous Arab population had remained on their native soil, and managed to survive the range of "natural catastrophes, epidemics, famines, devastating armies, foreign occupiers and tax collectors" that befell the land.[147] The discourse of Jewish immigration to Palestine radically transformed after World War I, whereby Zionism became intensively reformulated around European notions of statehood, colonialism and imperialism.[148] In this period, the formula put forth by some Zionist figures – and one contested by some of their British sponsors – was that

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145 Baruch Kimmerling, "Jurisdiction in an Immigrant-Settler Society: The 'Jewish and Democratic State'," *Comparative Political Studies* 35, No. 10 (December 2002a): 1122.

146 L.M.C. Van Der Hoeven Leonhard, "Shlomo and David, Palestine, 1907," in *From Haven to Conquest: Readings in Zionism and the Palestine Problem until 1948*, ed. Walid Khalidi (reprint Washington D.C.: Institute for Palestine Studies, 2005 [1971]), 115-116.

147 Ibid., 116.

148 Maxime Rodinson outlines the ideological and conceptual influences and parameters of Zionism, analyzing it in terms of its colonial character. In this text he explains that "the dominant outlook of European chauvinism" along with the "ethnocentric and racially exclusive ideology … [of] European bourgeois nationalist doctrines" were the main sources of influence and main spaces of organizing and support the Zionist colonists in Palestine. Rodinson writes, "Although very few Zionists had come from Great Britain, this country, in regard to Palestine, played the role of mother country for a colony that was being settled" (2004, 10, 11, 62-71). As such, what is called the Zionist 'rebellion' or 'insurgency' against British rule in Palestine during the 1940s was essentially a dispute between the colonizers and the colonial center fueled by their political and material interests.

"Palestine should become as Jewish as England is English."[149] Spearheading the political Zionist discourse, Herzl sought both Jewish and European support for his national project through "extortion, and stimulation of anti-Semitism."[150] Outlined by Walid Khalidi, Herzl's framework of analysis can be summarized as follows:

> [A]nti-Semitism, which was the root of the Jewish problem, was ineradicable, the Jews constituted a people in the sense of a nation, and the Jewish problem was consequently a national problem which could only be solved by the gathering into one state of all Jews who wished to retain their Jewish identity, and by the complete assimilation and effacement as Jews of the remnant still scattered among the nations.[151]

In other words, Herzl's arguments go as follows: the Jewish problem exists because anti-Semitism is both real and ingrained in Christian Europe, and because the Jews constitute a nation, the Jewish problem is therefore a national problem. Through the effective merging of *Jewish identity* with *Zionist identity*, not just as collectivities but also as a general mechanism of incorporation, Zionism has provided Israel's settler-colonial framework with a certain social and historical validity. Despite this, the current scholarship from critical Arab and Jewish historians, social scientists and political scientists – particularly those in Israel – indicates that at a socio-political and ideological level the Zionist project has had to constantly defend the legitimate existence of Israel as a Jewish State. At the same time, at a legal-juridical level, the Zionist movement has also repeatedly had to explain its choice of Palestine as its territory for settlement to the international community.[152]

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149 League of Nations, Permanent Mandates Commission, "Minutes of the Fifteenth Session held at Geneva from July 1st to 19th, 1929, Including the Report of the Commission to the Council, and Comments by Various Accredited Representatives of the Mandatory Powers," (5th Session, 9th Meeting: 63), League of Nations Archives at the United Nations Office at Geneva Archives.
150 Van Der Hoeven Leonhard, "Shlomo and David," 118.
151 Ibid.
152 Baruch Kimmerling, *Clash of Identities: Explorations in Israeli and Palestinian Societies* (New York:

On this, the theoretical framework of analysis adopted by Gershon Shafir in his account of Israeli colonialism is particularly radical, and crucial.[153] Shafir draws direct conceptual and historical links between post-1967 Israeli colonization in the West Bank and Gaza and pre-1948 Zionism.[154] While acknowledging that the mode of Jewish colonization and settlement in Mandate Palestine differed and tailored itself according to the political, legal and economic realities of its time, he contends that the essence and nature of the Zionist project stayed colonialist. Shafir writes:

> Where others see historical bastards, I find a streak of historical ancestry. I offer, therefore, a theoretical and conceptual perspective that highlights the continuous centrality of colonization in Zionism and at the same time gives appropriate weight to the changes that have taken place, under new circumstances, within the framework of settlement. European colonialism, after all, did not create just one model of overseas society, and it seems to me that we can understand the transformation of Israeli society since 1967 most fruitfully as a transition from one method of European colonization to another one.[155]

Shafir begins his comparative analysis by outlining the specific attributes of the Zionist means of colonization: unlike European hegemonic powers, the Jews had no organized polity until the beginning of the British Mandate; areas earmarked for settlement were selected ideologically by Zionists and not based on their economic potential; only a minor segment of the indigenous Palestinian population were nomadic when Zionist

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Columbia University Press, 2008), 182. Zionist arguments justifying Mandate Palestine as its target territory for settlement are also explained in Benny Morris, "Falsifying the record: A fresh look at Zionist documentation of 1948," *Journal of Palestine Studies* 24, No. 3 (Spring 1995): 44-62.

153 Gabriel Piterberg writes that "Shafir's work on the initial stage of Zionist colonization is one of the most fundamentally radical critiques of Zionism I am aware of, a fact masked by the work's arid register. …. It is also the most self-conscious attempt to reinterpret Israeli history within the framework of the comparative study of settler societies …. Shafir regards colonization not as a fleeting moment of formation but as a continually present and underlying structure" (*The Returns of Zionism*, 62-63).

154 See Gershon Shafir, *Land, Labor and the origins of the Israeli-Palestinian conflict 1882–1914* (Berkeley: University of California Press, 1996) and his "Zionism and colonialism: A comparative approach," in *The Israel/ Palestine Question*, ed. Ilan Pappé (New York: Routledge, 1999), 81–96. The latter text is a synopsis of the major contentions of Shafir's former text, with additional insights included by the author.

155 Shafir, "Zionism and colonialism," 83.

settlement was underway and most were in the process of expanding their areas of residence to coastal and inland areas; purchase was considered a means of territorial accumulation by Zionist settlers unlike their European counterparts who considered colonized land as *free*; Jewish farmers employed seasonal unskilled wage labor unlike the contract-based or slave workers in European colonies; and many of the Jewish colonizers were refugees and lacked independent resources.[156] These differences between the Zionist 'pure settlement' project and other frontiers of settlement do not indicate a non-colonial character of the Jewish national movement, explains Shafir. Instead, these differences existed to ensure the smooth colonization of Palestine given the particularly difficult state of the land and circumstances of the incoming settlers. To Shafir, colonialism is not a cursory or transient effect of Zionism, but rather serves as its congenital backbone.[157]

He distinguishes between two phases of Zionist settlement in Palestine, what is called the *First Aliyah* from 1882-1903 with about 20,000-30,000 Jewish immigrants and the *Second Aliyah* from 1904-1914 with about 35,000-40,000 Jewish immigrants, the latter during a time where approximately 425,000 Palestinian-Arabs lived in Palestine.[158] The former period developed into what he calls 'ethnic plantation colonies' fueled mainly by a large low-paid and seasonal Arab labor force and a smaller better-paid Jewish labor force. The contradiction between market-based colonialism and Jewish national aims resulting from the considerable use of Arab labor stimulated a change in the colonial

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156 Ibid., 84-85.
157 This point is deepened and expanded upon in the recent work of Gabriel Piterberg whose intricate and insightful account of the Zionist ideology and ethic explains how the Zionist movement was an unexceptional colonial project compared to those initiated by European hegemonic powers (see *The Returns of Zionism*, 2008).
158 Shafir, "Zionism and colonialism," 86.

direction during the second major phase of immigration.[159] This arrival of Jewish

immigrants during the *Second Aliyah* whose organized workers formed the ranks of the

Labor Movement generated a change in the colonial struggle from the 'conquest of land'

to the 'conquest of labor' as a central concern.[160] However, despite this shift, Shafir

contends that the ultimate aim of furthering Jewish colonialism and establishing a pure

settlement colony has remained unchanged.

This analysis is significant given the ripples it creates within some of the most

critical Israeli political circles. Depictions of Zionism as a colonial project is considered a

provocation and translated in Israeli political discourse to self-hatred and disloyalty to the

state.[161] That said, as Ilan Pappé notes, the comparative colonial discourse does appear

among a few critical Israeli scholars who tend to self-identify as the Zionist Left. But this

too is a limited analysis. Pappé explains:

> Critical Israeli academicians … tend to see the year 1967 as a watershed between
> a pre-1967 moral, contained and basically united Israel and a post-1967
> occupying, expansionist and divided Jewish state. Hence, they are willing to point
> to colonialist features in the Israeli conduct in the occupied territories and trace
> all the present social and political predicaments to the making of Greater Israel in
> 1967.[162]

Shafir's reformulation of Israeli history within the parameters of a colonial-settler scheme

refuses the above demarcation. It simultaneously acknowledges the particular features of

Zionist colonialism along with the key practices it shares with other 'pure' settler-colonial

projects. The colonial logic of pre-1948 Zionism was amended in its post-1967

realization, yet remained central to the Zionist project of nation-building. As the

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159 Ibid., 87.
160 Ibid., 88.
161 Ibid., 72.
162 Pappé's commentary in ibid., 81.

paradigm of stateless citizenship demonstrates, this colonial logic has been inscribed in the contemporary Israeli incorporation regime in both its nationality and citizenship legislation.

3. Behind the Balfour Declaration

The above logic of colonialism reduces Palestine to an "experimental land for humanity," – a blank slate on which human will and ingenuity could write what it wishes.[163] Relevant for this study, the historical record pointed to above shows that the beginnings of Jewish national thought and activity were shaped by liberal conceptions of progress within a colonial era, when Jewish migration was heavily intertwined with large-scale intercontinental population movements. On this, Edward Said reminds us to consider Jewish colonization in Palestine within the larger context in which it was carried out. "Zionism was a movement for acquiring land in the Orient," he writes, "during a period when in only one century (1815-1918) Europe's overseas territorial acquisitions increased from 35% to 85% of the earth's surface."[164] For Said, such territorial acquisitions cannot be dissociated from a specifically Eurocentric ideological constellation: "imperialism was the theory, colonialism the practice."[165] Indeed, placing the configuration of the Jewish State in the context of global forces of colonialism and European imperial power through the works of Kimmerling, Shafir, Pappe and Said explains the historical factors linking contemporary Israeli citizenship with global trends toward citizenship restriction and revocation.

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163 Herzl, *Altneuland*, 50.
164 Edward Said, "Zionism from the Standpoint of its Victims," *Social Text* 1 (Winter, 1979): 21.
165 Ibid., 28.

As mentioned, since its inception, Zionism was sophisticated enough to distance itself from the historical matrix within which it developed, namely, traditional global colonialism. Prior to the advent of Zionism as a national movement, Jewish migration to Palestine spanned a number of centuries and was mainly driven either by religious motivations, or when the socio-political circumstances for Jews became unbearable in other places.[166] During these periods, however, and for almost thirteen centuries, the largely peasant indigenous Arab population had remained rooted on their native soil, and managed to withstand the range of "natural catastrophes, epidemics, famines, devastating armies, foreign occupiers and tax collectors" that befell the land.[167] Depicting the Palestinian-Arab peasant as "intelligent, competent and hardworking," Dutch orientalist L.M.C Van Der Hoeven Leonhard points out that the land was heavily developed by the native population:

> The Jewish thinker Achad Ha'am reported after a journey through Palestine in 1891 that it was difficult to find any still uncultivated farmland there. Other 19th century sources report on the cultivation of various fruits. In the plains of Esdraelon in 1883, 'almost every acre was in the highest state of cultivation,' [and] this was still the case in 1914.[168]

The discourse of Jewish immigration to Palestine radically transformed after World War I, whereby Zionism became intensively reformulated around Western notions of statehood, colonialism and imperialism. Spearheading the political Zionist discourse, and seeking Jewish and European support for his national project through "extortion and stimulation of anti-Semitism," Herzl's framework of analysis can be summarized as follows: the Jewish problem exists because anti-Semitism is both real and ineradicable,

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166 Van Der Hoeven Leonhard, "Shlomo and David," 115-116.
167 Ibid., 116.
168 Ibid.

and because the Jews constitute a nation, the Jewish problem is therefore a national

problem.[169] Other measures for securing support for the Zionist national movement

included:

> ... the trading of Jewish influence in the Press and Finance, and of the Jews
> themselves as being ten million secret agents; the playing off of colonial
> ambitions against each other... alarm[ing] the Jews by representing anti-Semitism
> as ineradicable... instil[ling] into non-Jews fear of the Jews, of their power, and
> especially of their revolutionary mentality... [and] forc[ing] European statesmen
> into the dilemma: Zionism or Jew-formented revolution.[170]

Although suggesting in *Altneuland* that the native Arab population would have equal

rights, Herzl wrote in his *Tagebücher* ("Diaries") that the existing land property was to be

gently expropriated. This involved the prohibition of any subsequent resale to the original

owners, with all immovable lands remaining in exclusively Jewish hands.[171] In fact, at the

Fifth Zionist Congress in 1901, the Jewish National Fund was founded under Herzl's

leadership with the explicit mandate to "purchase and develop land as a national resource

of the Jewish people, by the Jewish people, and for the Jewish people."[172]

> ... Herzl tried in Constantinople to obtain a Charter for rights, duties and
> privileges of a Jüdisch-Ottomanische Land-Companie zur Besie-delung von
> Palastina und Syrien (Jewish-Ottoman Colonization Association for the
> Settlement of Palestine and Syria). In his archives the draft-Charter was preserved
> for exactly such an instrument for colonization. [...] Article III of Herzl's draft
> Charter gave the Jews the right to deport the native population.[173]

Further, the Zionist project also developed within the discourse of European imperialism.

In *Der Judenstaat,* seeking to persuade European imperial powers to legally acknowledge

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169 Ibid., 118.
170 Ibid.
171 Ibid.
172 Center on Housing Rights and Evictions (COHRE) and Badil Resource Center for Palestinian
       Residency and Refugee Rights, *Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli
       Seizure of Land and Housing in Palestine*, May 2005, retrieved:
       http://www.badil.org/en/documents/category/35-publications?download=102%3Aruling-palestine.
173 Van Der Hoeven Leonhard, "Shlomo and David," 119.

and politically endorse Zionism and its two-fold mandate of Jewish settlement and

statehood, Herzl argues:

> Palestine is our ever-memorable historic home. [...] We should there form a portion of a rampart of Europe against Asia, an outpost of civilization as opposed to barbarism. We should as a neutral State remain in contact with all Europe, which would have to guarantee our existence.[174]

Overall, as a national movement, Zionism employed the ideological and conceptual

model of colonialism, and cooperated with the forces of European imperialism, in its

justification of Jewish statehood.

This colonial mindset and imperial justifications for Jewish statehood are most

evident in the first and most referenced documentation supporting "the establishment in

Palestine of a national home for the Jewish people," namely, the Balfour Declaration.

Completed on November 2, 1917 and composed of a mere sixty-seven words, this

pronouncement is a letter signed by Lord Balfour to Baron Rothschild, a Jewish

community leader in Britain. An analysis paper by British journalist J.M.N. Jeffries in

1939 outlines the deep conceptual, legal, and political problems of this document. With

this, the colonial mindset of both the Zionist movement and its European supporters

surface. Pointing out that the "authorship of the text was not solitary but collective,"[175]

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174 Gianni Vattimo and Michael Marder eds., *Deconstructing Zionism: A Critique of Political Metaphysics* (New York: Bloomsbury Publishing, 2014), 69.

175 In fact, the authorship of the text was largely Zionist, and not by Balfour himself. Jeffries writes "It was given forth, of course, under the guise of an entirely British communication embodying an entirely British conception. Everyone concerned was made the victim of this false pretense. The British people were given to believe that it was an unadulterated product of their own Government. To the mass of Jews it was presented as a guarantee sprung of nothing but the conscience of the Cabinet – and thereby it served to allure them towards political Zionism. As for the Arabs, when it was proclaimed eventually upon their soil (which was not till much later), to them too a text in which Zionists of all nationalities had collaborated was announced as the voice of Britain. They were told that it was a pledge made to the Zionists: they were not told that the Zionists had written most of it." J.M.N. Jeffries, "Analysis of the Balfour Declaration," in *From Haven to Conquest: Readings in Zionism and the Palestine Problem until 1948*, ed. Walid Khalidi (reprint Washington D.C.: Institute for Palestine Studies, 2005 [1971]), 175.

and that before its public unveiling, the Declaration underwent intense examination "in

all its bearings and implications, and subjected to repeated change and amendment,"

Jeffries concludes that there is "no doubt" that:

> Whatever is to be found in the Balfour Declaration was put into it deliberately.
> There are no accidents in that text. If there is any vagueness in it this is an
> intentional vagueness.[176]

The colonial underpinnings of the Balfour Declaration surface in three central ways.

First, Jeffries points to a series of "unfathomable phrases" with a "culpable lack of

definition," which result in a certain vagueness of terminology.[177] Phrases from the

Declaration affirming support for "a national home for the Jewish people," a "sympathy

with Jewish Zionist aspirations," and pledging Britain's "best endeavours to facilitate the

achievement of this object" were masterfully (and intentionally) dubious.[178] "National

home" had no established political or legal meaning in 1917, and the claims of

"sympathy" and "best endeavours" were skillfully used in an unqualified and ambiguous

manner to allow the British government to remove itself from any explicit indebtedness if

necessary.[179] The second and third elements of colonial logic are both apparent in the

following, and final, clause of the Declaration:

> It being clearly understood that nothing shall be done which may prejudice the
> civil and religious rights of existing non-Jewish communities in Palestine or the
> rights and political status enjoyed by any Jews in any other country.[180]

Appearing as a desire to protect the rights of the indigenous population of Palestine, or an

implicit call for Zionist military and political restraint, the depiction of Palestinian-Arabs

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176 Ibid., 173-174.
177 Ibid., 177.
178 Ibid., 176-178.
179 Ibid.
180 Ibid., 179.

as the "existing non-Jewish communities in Palestine" effectively identifies the colonial

unit of measurement as "Jewish" and "non-Jewish." The native Arabs are translated into

the "non-Jews." The majority population becomes the non-minority population.[181] Not

only is the actual ratio of Arab and Jewish populations in Palestine skewed with this

skillful phraseology, but the very identity of the indigenous Arab is effaced and made

obscure. Jeffries also notes that the qualification "existing" gives the "impression [...] that

these Arabs have just managed to survive" after randomly ending up in the territory.[182]

Indeed, sentiments and promises similar to the final clause of the above Declaration

appear in an "Interim Report of the Civil Administration of Palestine" written by Herbert

Louis Samuel as High Commissioner of the Council of the League of Nations on July 30,

1921. Discussing how Palestine "animates the Jewries of the world," Samuel claims:

> This is not to say that Jewish immigration is to involve Arab emigration, that the
> greater prosperity of the country, through the development of the Jewish
> enterprises, is to be at the expense, and not to the benefit of the Arabs, that the
> use of Hebrew is to imply the disappearance of Arabic, that the establishment of
> the elected Councils in the Jewish Community for the control of its affairs is to be
> followed by the subjection of the Arabs to the rule of those Councils. In a word,
> the degree to which Jewish national aspirations can be fulfilled in Palestine is
> conditioned by the rights of the *present* inhabitants.[183]

It is worthwhile to push the significance of the above qualifications further and point to

the centrality of the Zionist idea of *transfer*.[184] Even the most progressive Zionist thinkers

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181 Jeffries notes: "At the time the Declaration was issued the population of Palestine was in the
      neighborhood of 670,000. Of these, the Jews numbered some 60,000. [...] Therefore we have
      Palestine with 91 per cent of its people Arab and 9 per cent Jew at the time of the Declaration. It was
      an Arab population with a dash of Jew. Half of the Jews were recent arrivals" ("Analysis of the
      Balfour Declaration," 179-180).
182 Ibid., 181.
183 Herbert Louis Samuel, "Interim Report of the Civil Administration of Palestine during the period of
      1st July, 1920-30th June, 1921," July 30, 1921, 8, Dossier Concerning Civil Administration of
      Palestine, 1921, No. 1, Document 15314, Dossier No. 15314, League of Nations Archives at the
      United Nations Office at Geneva Archives.
184 On the development of the Zionist concept and practice of expulsion and transfer, see Israel Shahak,
      "A History of the Concept of 'Transfer' in Zionism," *Journal of Palestine Studies*, Volume 18, No. 3

in the early twentieth century asserted that the colonization of Palestine has to go in two different directions. This involves both Jewish settlement in *Eretz* Israel (or greater Israel), and the simultaneous resettlement of the Arabs to neighboring Arab states.[185] As such, these early articulations by officers of the British Mandate of the indigenous Arab community as the 'existing' or 'present' populations hints at plans for their future displacement from their native soil.

Furthermore, Jeffries asserts that this passage of the Declaration also "falsifies the status of the Arabs" by distinguishing between the "civil" rights of indigenous Palestinians and the "political" status of Jewish settlers.[186] Here, reference to the "civil" rights of Arabs effectively replaces, and thereby negates, any historical rights or natural title they may have to the land. As a result, the political claims of the indigenous population are supplanted by an ambiguous and desolate legal category of "civil rights." At the same time, there is a distinction made between the "rights" of Arabs and the "status" of Jews in Palestine. Acting as a "definite guarantee" of the "character of the regime intended," the promise of Jewish political status effectively served as a "deceptive text by which Arabs were to be deprived of their citizenship."[187] The Declaration's colonial conceptualization of the non-presence of Arabs on their native soil thus renders impossible Arab access to political and legal spaces in any future commonwealth. This realization is significant for current examinations of the meaning and civil status of non-Jewish persons in the Israeli incorporation regime.

(Spring 1989): 22-37 and Nur Masalha, "A Critique of Benny Morris," *Journal of Palestine Studies*, Volume 21, No. 1 (Autumn 1991): 90-97.

185   The sentiment of Leo Motzkin, one of the Zionist movement's most liberal thinkers, in 1917, quoted in Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford: One World Publishers, 2006).

186   Ibid.

187   Jeffries, "Analysis of the Balfour Declaration," 184.

Discussed below, the Zionist drafters of the Balfour Declaration established a colonial logic that continues to persist in contemporary Israeli democracy. "A distinction... [is drawn] between Jewish rights and Arab claims... [so that] Palestine... is not a country unless the Jews occupy it."[188] As the units of political measurement, only *their* presence can make it one.[189] The logic of Jews as the central figure in the Israeli body politic lays the colonial grounds within which Arab and Jewish interactions around access to rights have been framed since its inception. Put differently, when placing the configuration of the Jewish State in the context of global forces of colonialism and European imperial power we can extract the historical factors that link modern Israeli citizenship with global trajectories toward citizenship restriction and revocation.

4. Alice goes to Blunderland

> Alice had not been in Palestine long. She had arrived with her sister by the 'Empress of Britain', having set off from England on one of those pleasant winter cruises which the inhabitants of northern countries patronize for the sole purpose of obtaining sunshine and excitement in a territory where Income Tax does not exist. … So she was considering in her own mind, as well as she could, […] whether the pleasure of visiting the Holy Land was really worth the trouble, when suddenly a White Rabbit with pink eyes ran into the lounge and jumped up on to the chair beside her.
>
> "Oh dear, oh dear" said the Rabbit, "I shall be too late; I shall be too late."
>
> "Why, where are you going?" said Alice, politely.
>
> "To a very important meeting," replied the Rabbit, looking at his watch.
>
> "A very important meeting," repeated Alice; "I wonder where that can be?"
>
> "Follow me and I'll show you," replied the Rabbit….[190]

This is the beginning of a 1938 book titled *Palestine Parodies: The Holy Land in Verse*

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188 Ibid., 185-186.
189 Ibid.
190 Mustard and Cress (P.E.F. Cressall), *Palestine Parodies Being the Holy Land in Verse and Worse*, (Jerusalem: Azriel Press, private edition, 1938), XX.

and Worse, made and printed for "private circulation" by the Azriel Press in Tel Aviv, Palestine. Written by P.E.F. Cressall, a British District Judge during the Mandate and published under a *nom de plume* Mustard and Cress, the text follows Alice and the Rabbit as they explore the various contradictions and realities in Mandate Palestine. A literary gem of political satire, this revealing book written by a British legal functionary brings to the fore the juridico-political colonial blueprint passed on to the Zionist leadership with the end of the Mandate period. In particular, it provides a bird's-eye into how British officials were unable to view Arabs and Jews as equals, often taking sides in the conflict between the two communities.[191] Similar to the classical story of *Alice in Wonderland*, the story of "Alice in Blunderland" (in the land of 'blunder', that is) recounts her visit to the Holy Land and represents the struggle of a child to survive in the confusing world of adults. In both Wonderland and Blunderland, Alice grows older during the story as she observes that adults need rules to live by and that most will abide by those rules blindly and without question, leading to arbitrary behavior and incomprehensible exchanges. Yet, within the colonial context of the British Mandate, Alice's observation of a way of living and reasoning that is quite different from her own takes on a different political tone.

For example, "Dedicated with respect to those who possess a laughing mind," the Preface of this candid, humourous and illustrative colonial text outlines its motives:

> One of the preliminary steps in the introduction of legislation is the publication of the proposed new measure in the form of a 'Bill'. This is usually accompanied by a concise memorandum stating the 'Objectives and Reasons' thereof. So, following precedent, we humbly state that the objectives and reasons of this little book is to attempt to create in Palestine an atmosphere in which everyone will see themselves as others see them. What we mean by this is that if people in this distressful country stopped walking around like undertakers, looking for a dead

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191 For an extended discussion of illustrations in this text by Cressall as they pertain to the formation of Jewish and Arab 'Otherness', see Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill, University of North Carolina Press, 2006), in particular pages 48-54.

body to bury, and remembered the old tag 'Laugh and the World Laughs with You,' the country would develop that essential adjunct to civilization – 'A Laughing Mind' – and be happier for it. [192]

An instance of the literary nonsense genre, the adult world in Palestine is a strange and obscure space to the reader. This is because of Alice's young age, but also due to the differences between the projected image of an enlightened and progressive England and a backward and undeveloped 'Orient'. Alice represents the experience of an English audience, encountering the colonized periphery and forced to cope with an unstable and 'non-ordered' socio-political order. Whether it is the chaotic streets, volatile and impolite cultural practices, lazy diplomats, bureaucratic absurdities or the rising social unrest in the country during these crucial years of the Mandate, Alice is repeatedly in awe and wonder of being "among the people who think upside down and write backwards."[193] Published during the period of the first major nationalist uprising by Palestinian-Arabs against British colonial rule, the text is a treasure chest of parodic Orientalist representations of key issues facing inhabitants of the Holy Land from the perspective of a British expatriate. For example, the Rabbit's introduction to Alice of the *souk*, an open-air marketplace in Middle Eastern and North African cities, is as follows:

> The Souk's a street of Monks and bones,
>
> And pavements flagged with murderous stones;
>
> Where Monks and Blokes and hideous Wenches,
>
> Produce the most unpleasant stenches:
>
> All well defined, as are the stinks,
>
> Pertaining to the sewers and sinks;
>
> So when you go to bed to-night

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192 Mustard and Cress, *Palestine Parodies*, ix.
193 Ibid., 2.

Repeat these words with all your might:

'O! City Fathers hear our prayer –

'Our supplication to the Mayor –

'If Ye remove the stones and stenches,

'We'll try to put up with the wenches.'[194]

While Alice guardedly questions this description by asking the Rabbit whether he is being "unfair to the local inhabitants," the polluted space and violent history of the land nevertheless become its foremost and introductory features. The Rabbit then guides Alice through a tunnel-like street that dips and descends into the middle of the earth, leading to a long hall at the end of which "several funny looking men were sitting, arrayed in what looked to her like night dresses, and wearing… inverted ink pots on their heads."[195] Described as discussing the affairs of the State, these men are defined in the story as "the A.S.S.". Thinking that the Rabbit must surely have made a mistake, Alice timidly inquires into the name and the Rabbit responds "The Arab Supreme State… and don't speak so loudly, or they'll spot you and hold a demonstration. … They demonstrate about anything." At this point, Alice is spotted by a government official and asked to follow the man to what he called "The Pool of Tears," namely, the government offices.[196] Headed by the inscription "Abandon hope all ye who enter here," the government offices were explained to Alice as "the place where we draft circulars, and write departmental minutes… [where] they invent taxes, and produce surplus balances." [197] This alludes nicely to the hardening of British attitudes toward the Mandate, including its economic and bureaucratic costs.

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194 Ibid., 3.
195 Ibid., 4.
196 Ibid., 7.
197 Ibid., XX.

Recounting to Alice the history of the Civil Service of Palestine, the government official explains:

> You must realize that Palestine has undergone various changes since the time of the Crusaders. Originally, it *was* the Holy Land; then came the War when it was *wholly* occupied by Army heroes, finally becoming, owing to the League of Nations, and other what nots, as you see it now; – a most un-wholly Land. Its present position, however is not due to anything we have done… for Palestine was unknown to the Colonial Office before, we, pioneers put it on the map. *We* turned an Ottoman Vilayet into an English El Dorado fit for heroes to live in, but most unfortunately our efforts came to nought….[198]

The sense of having failed in their efforts to secure self-governing institutions and a culture of self-management in Palestine becomes visible in the above account, and creates a sentiment of disillusionment and disinterest in the Mandate. For this reason, the story outlines that local Mayors are asleep and lazy, bureaucrats are terrified at the thought of locating new information to assist their work, promotion in office is seen as a form of punishment, political explanations take a long time and are "*never* satisfactory," and District Commissioners struggle to learn the Arabic and Hebrew "without tears."[199]

In addition to the story of "Alice in Blunderland," the book makes use of "Departmental Ditties," "Misreported Cases in the Uncommon Law," "Fabulous Fables" and "Potty Poems" to discuss a whole range of key issues facing the Mandate. These include: partition, religious tolerance, freedom of expression and criticism, the preservation of antiquities, border control and policing, the education system, the jurisdiction of courts, immigration policies (or, as it is written in the book, the "immigration quandrille"), passport control practices, policing, health care, the taxing system and urban and architectural development of the land, among others. One of the

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198 Ibid., 9. Emphasis added.
199 Ibid., 19-20, 32, 33, 39.

key issues in the mid-late 1930s that the story of "Alice in Blunderland" addresses is that

of partition. Appointed in 1936, the Palestine Royal Commission was a British Royal

Commission headed by Lord Peel. Also known as the Peel Commission, its mandate was

to investigate the causes of unrest following the first Arab general strike in Mandate

Palestine. As Chapter Three explains, this was a broad-based political action that led to a

three-year revolt by Palestinian-Arabs against both British colonial rule and increased

Jewish immigration, in support of national self-determination. Resulting from the Peel

Commission was a report in July 1937 that concluded, for the first time, that the Mandate

in Palestine had become unfeasible and partition of the country into separate Arab and

Jewish states was recommended. Near the end of the story, and having grown up a fair bit

by now, Alice meets a Cadet at the District Commissioner's Office. She asks him for an

explanation about the process of partition in Mandatory Palestine. The Cadet is an erratic

character who admits that, like the Arab and the Jew, he too does not "understand what

the word 'partition' means." Nevertheless, he goes on to recount a poem "worth listening

to," so as to clarify the situation to Alice:

> I passed by a vineyard and saw with one eye,
> How a Jew and an Arab were sharing a pie
> The Jew took some pie crust and gravy and meat
> While his friend had the dish as his share of the treat.
>
> When the pie was all finished the Jews as a boon
> Permitted the Arab to pocket the spoon
> Then some Englishmen came to join in the meal
> But they ate the orange: -- and left them the *peel*![200]

A number of issues are revealed between the lines of this humorous account of the

political process and intention of partition in Mandate Palestine. The first is its perception

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200 Ibid., 47.

that both groups are considered inferior by the British and in need of the direction and support of an advanced and civilized nation. Relatedly, the English audience of this tale is also well aware of the unequal power relations involved between the Arab and the Jew. Leaving only with the empty dish and the spoon, the indigenous and economically precarious Arab is, under British administration, denied a just share of the pie; a metaphor for the land. In this narrative, the negative representation of the Jew as 'greedy' and 'unfair' is also a critique of the Zionist desire at the time for massive development of the land to facilitate Jewish immigration in Palestine. This was at a time when numerous British colonial officials were instead politically and economically inclined to maintain the status quo and hinder the organized rise of the Jewish population in the country. Moreover, it alludes to frustrations felt by some colonial officers for the manner in which the civilizing mission the British established to promote a modern society on Western lines was also claimed by the Zionists. As noted by John Hayes Holmes, an American journalist traveling in Palestine in the late 1920s, "Arabs are natives in the real sense of the word… [and] behave as the English have found natives behaving in other parts of the earth," but as the governing authority of Palestine they "do not know what to make of [the Jews]" who do not act submissively and according to the traditional colonial authority.[201] The participation of the Englishmen, as supposed interlocutors and arbitrators between the two peoples of the land, only led to a further extraction of the content and resources of the space. When the contents of the orange are consumed by the Englishmen, the two parties are left with the *peel*. This is, a pun, of course, for the Peel Commission that recommended partition and British withdrawal from the Holy Land. All

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201 Retrieved from Ronen Shamir, *The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine* (New York: Cambridge University Press, 2000), 20. The remainder of this statement by Holmes is at the head of Chapter Two.

in all, the above passage nicely illustrates the uneven legal and political colonial

arrangement of the Mandate for dealing with the collective demands and needs of Arabs

and Jews, and alludes to its influence on the configuration of the modern Israeli

incorporation regime.

5. *The Holocaust and the foundations of Israeli civil policy*

> You know my friend how long since in this Land
> The Camel and the Ass walked hand in hand;
> Dost think it then so very strange a thing
> To find a city built on golden sand?[202]

Differences between the scholarly and fictional idea of Israel as part of the 'European

core' surfaced in the late 1940s, when the hundreds of thousands of European Jews who

survived the Holocaust arrived in Mandate Palestine. Grown out of the historical matrix

of European colonialism, Zionist proponents assumed Jewish, particularly Ashkenazi,

intellectual, physical and moral superiority vis-à-vis the indigenous Arab population.

Thus, the presence and collective experience of Jews with the death camps in Europe

conflicted with the Zionist ideological discourse in Palestine and its projected body

politic in numerous ways. As with today, mainstream Israeli historical and socio-political

discourse has an ambivalent relationship with Jewish life in the Nazi ghettos and camps

in Europe. On the one hand, the incoming Jews were projected as exhibiting the familiar

diasporic ailments of unclear identities, non-rootedness and weak disposition. The image

of the diasporic Jew as diseased, de-territorialized and physically and mentally decrepit

was contrasted with that of the strong, healthy and territorialized Hebrew, armed and

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202 Mustard and Cress, *Palestine Parodies*, 126.

actively pioneering the land.[203] This adequately accounted for the image of European

Jews held by Zionist Jews in Palestine as a passive mass easily led into slaughter. One of

the first major writers of Hebrew literature, David Frishman, recounted the moral and

social inferiority of the Holocaust survivors in relation to the Israeli Hebrew. He explains

how Holocaust survivors were labeled as "human dust," an identification "connoting a

people without spine, without personality, who were blown hither and thither by the

wind."[204] The characterization of Holocaust survivors as "human dust" attributed the

fragile spirits of these Jews more to the diasporic existence and less to the systematic

violence and unprecedented atrocities done by the Germans. This account of survivors

was adopted by Yishuv leaders and even by David Ben Gurion himself who exclaimed:

> A mixed multitude of human dust without a language, without education, without
> roots, and without any roots in the nation's tradition and vision…. Turning these
> people of dust into a cultured, independent nation with a vision will be no easy
> task.[205]

As Pappe notes, the Israeli leadership and national narrative seemed to have "coped better

with dead Holocaust Jews than with Holocaust survivors."[206] However, this narrative

changed momentarily with the 1943 Jewish ghetto uprising in Warsaw, where the

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203 Development of the national project of the Zionist movement also involved the destruction of the
Yiddish language. As a diasporic language, Yiddish represented the antithesis of the 'new' Zionist
philosophy of the late-nineteenth and early-twentieth centuries, whose supporters saw it as an
unwanted connection to European Jewish history, and an impediment to the formation of a modern
Jewish State in Palestine. See Benjamin Beit Hallahmi, Original Sins: Reflections on the History of
Zionism and Israel (Concord, MA: Pluto, 1992); David Katz, Words on Fire: The Unfinished Story of
Yiddish, (NY: Basic Books, 2004); and Geofferey Wheatcroft, The Controversy of Zion: Jewish
Nationalism, the Jewish State, and the Unresolved Jewish Dilemma (Reading, Mass: Addison-Wesley,
1996).
204 Oz Almog, *The Sabra: The Creation of the New Jew*, trans. Haim Watzman (Berkeley: University of
California Press, 2000), 86-87.
205 Ibid., 87. Here Almog elaborates that among the other labels applied to Holocaust survivors was
agadim which was Hebrew initials meaning "people of the mournful Diaspora," and *sabonim* which
meant soap bars and referred both to the white skin and softness of Jewish refugees and to the soaps
allegedly produced by the Nazis from the bodies of exterminated Jews.
206 Ilan Pappé, *The Idea of Israel and My Promised Land* (New York: Verso Books, 2014), 170.

'diaspora' and 'Hebrew' personalities became less distinct. Here, for the first time, the ghetto Jew was territorialized and cloaked in the mantle of Zionism as armed, proud, self-reliant, and imbued with a combat spirit actively resisting humiliation and violent death. Between 1941 and 1943, dozens of Jewish groups formed underground resistance movements, the most famous of which was the Warsaw ghetto uprising. With the Nazi dispatch of Jews in Poland in 1942, from Warsaw to the death camps in to Treblinka, the Jewish inhabitants of the Warsaw ghetto organized and issued a proclamation calling for Jews to resist going to the railroad cars. Using weapons smuggled into the ghetto, the rebels fired upon German soldiers as they sought to collect a group of ghetto inhabitants for deportation to the death camps. Though the trained and armed German troops eventually crushed the resistance, capturing, executing and deporting the remaining survivors to death camps, this uprising was an astonishing and unprecedented attempt to resist the Nazi program from within the camps by force.

Within Israeli historiography, the political elite *re*-presented the month-long resistance movement in the ghettos and camps as a phase in the "long Zionist history of struggle against those who wished to destroy the Jewish people."[207] Announced in the order of the day issued on the fifth anniversary of the Warsaw uprising to the Palmach's soldiers, "the victory in the ghetto the victory of the Jewish person, was to die with honor, weapon in hand, and not as sheep led to the slaughter."[208] The contrast between the humiliating death of passive and elderly diaspora Jews in Nazi concentration camps and the heroic death of the partisan was inculcated in Israel's national heroic mythology

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207 Pappé, *The Idea of Israel*, 165.
208 Almog, *The Sabra*, 85. Established on May 15, 1941, the *Palmach* is a Hebrew acronym for *Plugot Maḥatz* literally meaning "strike forces," and was an elite fighting force of the Haganah, an underground army of the Jewish community Yishuvs during the British Mandate.

as an exception. The leaders and fighters in the Warsaw ghetto were, in the process, seen as uniquely distinct from the other non-resisting Jewish masses.

The 'Zionization' and re-territorialization of the narrative of the ghetto uprisings in the collective Israeli memory was exposed by *post-Zionist* scholars in the 1980s and 1990s.[209] Identified with the political-left, post-Zionism is an intellectual current among a collective of Israeli historians, theorists and social scientists that revolutionized Israel Studies. These scholars critically examine and subject Israel's founding myths to historical and moral criticism. Calling for a revision of mainstream and mainly Labor Zionist understandings of Israeli history and identity, one of the key aims of post-Zionist scholars is to expose the discrepancies and untruths in, and to demolish the founding myths of Israel's self-understanding and rhetoric vis-à-vis its relations with indigenous Palestinians. On this front, post-Zionists use historical, political, social and cultural records to reveal the aims and intentions of the Zionist project to systematically expel Arab inhabitants from historic Palestine. Here, post-Zionist scholars expose how the settler-colonial foundations of the Zionist movement in Palestine, as well as its legal, political and territorial ambitions have produced a xenophobic, nationalistic and militaristic society in Israel that is impervious to liberal and humanistic values.[210]

Representations of the Warsaw uprisings by Zionist writers and leaders were revealed by post-Zionists as an example of the political and cultural production of a nationalist and militarist 'idea of Israel'. Post-Zionist scholars pointed to accounts of the Warsaw uprisings as an example of how national self-determination movements

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209 Pappé, *The Idea of Israel*, XX.
210 In addition to Pappé, other post-Zionist scholars include Yonathan Shapiro, Baruch Kimmerling and Gershon Shafir, among others. See the special issue *History and Memory*, Vol. 7, No. 1 (Spring-Summer, 1995) titled "Israeli Historiography Revisited" for critical texts written from this perspective on Zionist historiography and Jewish nationalism.

appropriate past events and identities in relation to current needs of nation-building and

the political interests of social cohesion.[211] A similar critique of depictions of the ghetto

uprisings was posited by Marek Edelman, one of the rebel leaders in the Warsaw ghetto.

Surviving the Holocaust and an outspoken critic of Israeli policies and practices against

Palestinians, Edelman later became one of the most prominent thinkers in Poland.

Insisting that the human and civil rights struggle remained in Europe, he was a strong

opponent of Zionism and contested the representation of the Warsaw rebellion. Pappe

writes,

> Edelman did not fit the image that the official cultural producers in Israel wished the leaders of the rebellion to have; worse, he actively contested it. …. He disliked the way he and his friends were portrayed visually and textually in Israeli scholarship – 'none of them had ever looked like this… they didn't have rifles, cartridge pouches or maps; besides, they were dark and dirty', hardly the ideal type of handsome, Aryan-like young Jews seen in the Israeli museums of the Holocaust and in the pictures decorating official texts. [212]

Here differences between the scholarly and fictional idea of Israel begin to surface.

Recent historical contributions also reveal that Holocaust survivors outside of the Ghetto

uprisings were far more emotionally steadfast and mentally and physically resilient than

Israeli national memory projects. Hanna Yablonka explains that Holocaust survivors

were more educated, younger, urban, individualistic and mercantile, a lifestyle that

conflicted with the more cooperative and secular forms of organization in the kibbutzim

and moshavim.[213] As such, while survivors were seen as effective in urban spaces, there

was great doubt among the Israeli mainstream and its leadership as to whether these

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211 Ibid.
212 Ibid., 166.
213 Hanna Yablonka, *Survivors of the Holocaust: Israel after the War*, trans Ora Cummings (New York: New York University Press, 1999).

immigrants would be able to transform abandoned Arab villages into functioning agricultural areas.[214]

Yet, perhaps most telling of the resilience of survivors surrounds their integration into the Israeli Defense Forces (IDF), an area of discussion that reveals the ideological understanding of the 'idea of Israel' held by the majority of *sabar*, or Israel-born Jews. From the perspective of mainly young Israelis, in whose eyes the respectable survivors were the partisans who exhibited the combat spirit they sought to foster in the IDF, their first interactions with survivors were either in the decrepit camps for displaced persons camps in Europe and Cyprus or on immigrant ships as they were arriving to Palestine. Immediately thrown in the IDF with the draft during the 1948-war, survivors were expected to fight alongside Israeli Jews. This transition was imposed without necessarily having their physical and psychological experiences in the Holocaust or their expectations communicated or addressed. However, though often portrayed in the Israeli national imaginary as weak and cowardly fighters through various cultural productions, Yablonka contends that Holocaust survivors were nevertheless able to successfully absorb into the IDF despite the aforementioned impediments.[215]

The recent historical work of Salman Abu Sitta and Terry Rempel outlines the participation of Holocaust survivors in the detention and forced-labor camps that were established for Palestinians by the young State of Israel.[216] Basing their work on International Committee of the Red Cross (ICRC) reports from the time and interviews with former prisoners, they explain that there were five 'recognized' and official

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214 Ibid.
215 Ibid., 147-148; 150-151.
216 See Salman Abu Sitta and Terry Rempel, "The ICRC and the Detention of Palestinian Civilians in Israel's 1948 POW/Labor Camps," *Journal of Palestine Studies*, Vol. 43 No. 4 (Summer 2014): 11-38.

detention camps and at least seventeen others that were unofficial and improvised where Red Cross officers were not allowed to visit. The first camp was Ijlil, which was about thirteen kilometers northeast of Jaffa and lay on the site of the destroyed Palestinian village Ijlil al-Qibiliyya, whose inhabitants were expelled in early April.[217] Composed mainly of tents housing hundreds of individuals considered prisoners of war by Israeli forces, this site was surrounded by barbed wire fences with watchtowers and a gate with armed guards.

While the placement of Palestinian civilians in Israeli prisoner of war camps is a largely under-researched event of the 1948-war, their internment was a much greater phenomenon compared with the detention of combatants. A majority of around 5,000 civilians placed in the official camps during the war were reduced to conditions "described by one ICRC official as 'slavery' and then expelled from the country at the end of the war."[218] The monthly reports sent to the Red Cross headquarters weeks after the start of the first Arab-Israeli war in 1948, outlined that the majority of the civilian prisoners of war were being utilized as slave labor to fuel Israel's economy during the war. The issue at hand was also that none of the treaties in the wake of World War II that determined the rules of conduct in wartime effectively addressed the problem of the treatment of civilian non-combatants in occupied territory. To address this, the ICRC appealed to the Jewish Agency and the Arab Higher Committee (AHC), the organizations representing the two sides in Palestine. They were asked "to act in obedience to the traditional rules of international law, and to apply… the principles embodied in the [two

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217 Ibid., 16.
218 Ibid., 11.

conventions] signed at Geneva on 27 July 1929."[219] This appeal included a specific call to both sides to respect the "security for all non-combatants, especially, women, children and the aged."[220] In April 1948 both bodies agreed to the ICRC's appeal. As Zionist forces pushed along their conquest of the lands allocated by the United Nations to an Arab state in their 1947 General Assembly Resolution 181 (the UN Partition Plan), the number of prisoners in these labor camps continued to rise. This, in turn, constituted a key supplement to Jewish labor.

Abu Sitta recounts that while the living and working conditions at the unmonitored camps were incomparably worse, those at the official sites were not necessarily preferable. The conditions in these camps deserve particular attention. By mid-May, less than two months into the war, the New York representative of the Arab Higher Committee sent a letter to the UN secretary-general complaining of the "maltreatment and humiliation of [Arab] prisoners" by Israel.[221] This humiliation involved, among other acts, "forcing civilians to dig trenches, carry water from Arab cisterns to supply Jewish neighborhoods, work as servants for Jewish families, and give blood for Jews wounded in the fighting."[222] According to testimonies collected by Abu Sitta and Rempel, other treatment included Arab prisoners being "lined up and ordered to strip naked as a punishment for the escape of two prisoners at night," with "[Jewish] adults and children [coming] from nearby kibbutz to watch [Arabs] line up naked and laugh."[223] Further, some prisoners recounted being denied food for several days while

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219 Ibid.,13.
220 Ibid.
221 Ibid., 23.
222 Ibid.
223 Ibid., 24.

only being provided dried bread, while others described extreme violence at the labor camps in the form of beating and random shooting.

For our purposes, what is particularly striking, and what speaks to the kinds of integration the Holocaust survivor immigrant population was exposed to in the Israeli national project, is the participation of German Jews in these wartime labor camps. In a separate article about this study published in the Lebanese daily newspaper *Al-Akhbar*, Abu Sitta describes that German Jews were allegedly among the guards at these labor camps.[224] His study effectively reveals the foundations and beginnings of Israeli political and legal policy towards Palestinian civilians; a policy that surfaces in the form of kidnapping, beatings, arrest, and detainment. The alleged participation of German Jews as prison guards at these camps places Israeli civil policy in the context of the crimes in Europe. It reveals one of the conceptual and historical ways the young Jewish State reproduced itself in the image of 'the core'. That a forced labor camp was opened in Palestine three years after camps were closed in Germany, and that they were allegedly run by former prisoners of these extermination camps links Israeli civil policy to that of twentieth century Europe in intimate political forms. This historical connection and political trajectory is significant in two major ways. First, though viewed by the Israeli sabar as morally and socially inferior, immigrant groups such as Holocaust survivors (as well as the so-called 'Mizrahi' or Arab-Jewish refugees who arrived in Israel in this period) were nevertheless immediately thrown into the militarism of the Israeli national project.[225] They were expected to perform despite their physical and psychological

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224 Yazan al-Saadi, "On Israel's little-known concentration and labor camps in 1948-1955," *al-akhbar English*, September 29, 2014, http://english.al-akhbar.com/node/21763.
225 Post-Zionist academics have written extensively on the systemic exclusions, daily violence and ethnic, cultural and socio-economic discrimination faced by so-called 'Mizrahi' or Eastern Jews (this is a

trauma. And second, the national project they found themselves contributing to in the young Jewish State was one whose methods were remarkably similar to those violent and exclusionary policies that had recently resulted in extreme human destruction in Europe.

6. Summary and conclusions

The Jewish national movement employed the ideological and conceptual model of mainly European colonialism. In doing so, it worked hand-in-hand with the tools and processes of European imperialism in its justification of Jewish statehood and choice of Mandate Palestine as its desired territory. This chapter has brought together literary and historical sources and outlined the key scholarship on Zionism as a colonial enterprise so as to extract the ideological foundations that gave shape to the civic exclusions and political configuration of the proposed Jewish State. With this I have shown that the colonial conceptualization of the non-presence of Arabs on the land enabled policies and practices to curtail their access to political and legal spaces in the future Jewish commonwealth. The literary and historical texts cited in this chapter lay the grounds for examining the colonial context within which Arab and Jewish confrontations on access to rights were

contested designation as it is sometimes used as an umbrella description for Middle-Eastern Jews who also identify themselves as Maghrebi and Sephardic). These scholars include, among others, Ella Shohat "Mizrahim in Israel: Zionism from the Standpoint of Its Jewish Victims," *Social Text*, Fall 1988, pp. 1-35; "Rupture and Return: A Mizrahi Perspective on the Zionist Discourse," *The MIT Electronic Journal of Middle East Studies*, May 2001, pp. 58-71; and "The Invention of the Mizrahim," *Journal of Palestine Studies*, Autumn, 1999, pp. 5-20. Also, Yehouda Shenhav, *The Arab Jews: A Postcolonial Reading of Nationalism, Religion, and Ethnicity* (Stanford: Stanford University Press, 2006); Shiko Behar, "Is the Mizrahi Question Relevant to the Future of the Entire Middle East?" *Kedma*, Jan. 1997; and Pnina Motzafi-Haller, *In the Cement Boxes: Mizrahi Women in the Israeli Periphery* (Jerusalem: The Hebrew University Magnes Press, 2012). Together, these and other scholars trace early colonial encounters between the Arab Jews and the European Zionist delegations before the establishment of the State of Israel and place, and radically critique the disparity between Ashkenazim and Mizrahim in Israel against the backdrop of Zionist nationalism. For more on this see Pappe, *The Idea of Israel*. See also, Abu, Ofir. "Citizenship, identity, and ethnic mobilization in Israel: The Mizrahi Democratic Rainbow – Between universalism and particularism," in *The Contradictions of Israeli Citizenship: Land, religion and state*, ed. Guy Ben-Porat and Bryan S. Turner, (New York: Routledge, 2011), 111–134.

framed. As the next chapter argues, while the modern Israeli incorporation regime has

been adept at distancing itself from the European colonial record within which it

developed, its nationality regulations and the codification of its citizenship are derived

from the above logics of exclusion. Understanding discourses on citizenship and

nationality in Mandate Palestine as sites of production of European colonial power also

aid us in placing modern interrogations of the figure of the citizen in Israel as part of a

political trajectory towards restriction and revocation of citizenhood. As such, placing the

configuration of the Jewish State in the context of inter-national forces of colonialism and

European imperial power explains the historical factors that link modern Israeli

citizenship with global trends in the West toward the stretching, dilution and redrawing of

the boundaries of citizenship.

Chapter Three | Configuring the Jewish State: Citizenship from the *Core* to the *Periphery*

At the application office for passports for the influx of incoming immigrants:

> The Walrus and the Carpenter
>
> were walking hand in hand,
>
> They'd come with tourist tickets
>
> to see the Holy Land
>
> And were discussing passport laws,
>
> But didn't think 'em grand. […]
>
>
> "Lets weep a bit," the Walrus said,
>
> > "and deeply sympathize"
>
> "With those who come from other lands,
>
> > "and tell so many lies;"
>
> And he held his pocket hankerchief
>
> > before his streaming eyes.
>
>
> "O, Walrus," said the Carpenter,
>
> > "cheer up, and don't be glum."
>
> "All immigration laws are bad,
>
> > but this one's really bum. …"[226]

1. Introduction

During the interwar period changes to the immigration and travel regulations of states were prevalent around the world. This led to a rising need for governments to (re)categorize their inhabitants as subjects or citizens and administer to them regular certified documentation appropriate to their identity and nationality. Using extensive

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226 Mustard and Cress, *Palestine Parodies*, 41.

archival material, this chapter outlines discussions among legal scholars and political

figures in the Zionist leadership, the British government and the League of Nations until

and immediately after statehood on the features of the liberal citizenship and nationality

regime anticipated for the Jewish State. I begin by examining scholarship on British

colonial policies and practices before 1948 that placed apart Jewish from Arab subjects in

their applications for Palestinian passports, residency and visas. The scholarship I survey

reveals that the British Mandate in Palestine (1922-1948) was key to the

internationalization of citizenship structures and exclusions. It united various ethno-

national groups living around the world as Palestinian citizens, along with a wide ethno-

national range of largely Jewish citizen subjects eligible for Palestinian citizenship.[227] By

examining the formation of policies and practices of citizenship in the Jewish State,

whether in the interwar period or in contemporary Israel, I show how this case study is

located in a unique colonial position in the broader British Empire. Significantly, I

conclude this chapter with an analysis of discussions among early Zionist policy-makers

configuring the nature and constitution of the nationality and citizenship laws of the

Jewish State in the first years after its establishment. With this I prepare the terrain of

discussion for Chapter Four to examine the mechanisms through which the Zionist logic

of exclusion continues from its pre-1948 forms and is constituted and manifested in

contemporary Israeli citizenship structures.

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227 Lauren Banko, "The 'invention' of Palestinian citizenship: Discourses and practices, 1918-1937,"
(PhD diss., SOAS, 2013), 151.

2. Palestinian citizenship and nationality in the 1920s and 1930s

2.1. British Mandate: Laying the basis for citizenship as exclusion

Lauren Banko's important study, *The Invention of Palestinian Citizenship, 1918-1937*,

examines the development of the interaction between Palestinian citizenship and civic

identity, placing this relationship within a colonial context. Initiated by the British, each

step in the creation of a citizenship regime in Palestine in the interwar period involved

key concerns and questions over the various legal status, civil rights and sovereignty of

recognized subjects, nationals and citizens in a mandated territory. While the British had

considerable experience with the management and classification of 'oriental races' in

their other colonies, the case of Palestine was unique in a number of ways. In a separate

publication, Banko explains that

> British notions of citizenship were imported into Palestine … and blended with
> existing Ottoman-era legislation, Palestinian municipal law and international laws
> of state succession and immigration. At the beginning of the mandate, British
> officials viewed the Palestinians as citizens in status only – without a defined set
> of citizenship rights – influenced by their empire's own citizenship legislation,
> their history of interactions in the 'Orient', the perception of Palestine as divided
> into three religious communities (rather than civic communities) and the Jewish
> national home policy combined with the 'sacred trust of civilisation' that the
> Mandate encompassed. In particular, the British came to Palestine with extensive
> experience in the governing of 'oriental races' in Egypt and India, which had
> shaped colonial officials' perception of subject races. [….] In Palestine, unlike
> Egypt and India, the issue of governing an 'oriental race' had to be merged with
> the obligations of the mandate in regard to the Jewish immigrants.[228]

The uniqueness of this Mandate as compared with other colonial administrations by the

British during this time is that a citizenship order was formed in Palestine specifically to

advance the Jewish national home policy. The directive followed by the British included

the Balfour Declaration of 1917 calling for the establishment of a Jewish national home

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228 Lauren Banko, "The creation of Palestinian citizenship under an international mandate: legislation,
       discourses and practices, 1918–1925," *Citizenship Studies* Vol. 16, No. 5–6 (August 2012): 641-642.

in Palestine through unhindered Jewish immigration and land sales. The Palestine

citizenship regime invited Jews already belonging to a multitude of ethnic, cultural and

national groups throughout the world to become Palestinian citizens.[229] The Mandate also

prescribed the creation of laws for the effective and prompt acquisition of Palestinian

nationality for the Jews.[230] Far from a localized or domestic focus, the British Mandate in

Palestine therefore necessarily included a gaze toward the international, involving the

nationality and immigration policies of other states. This is key to mapping the trajectory

of citizenship from the Israeli *periphery* to the *core*. For these reasons, the process of the

creation of citizenship in Mandate Palestine can also be understood as an important

contributor to the 'bureaucratization' and 'internationalization' of citizenship in general

during the interwar period.[231]

As explained in Chapter One, the process of legal categorization and

bureaucratization of citizenship is part of sovereign practices of policing identity and

territorial control. Categorization by legal administrators, particularly of minority and

indigenous groups have the power to mold the historical and political understanding of

the population in the consciousness of both the ruling establishment and the community

itself. In doing so, minority categorizations create moral inconsistencies, conceptual

ambiguities, and fragile political frameworks.[232] Similarly, colonial discourses and

practices of citizenship and nationality in the 1920s and 1930s ought to be understood as

attempts to re-produce and centralize European power through the privileging and

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229 Banko, "The 'invention' of Palestinian citizenship," 157; Ibid.,642.
230 Ibid.
231 Banko, "The 'invention' of Palestinian citizenship," 163-173.
232 Kymlicka, "The Internationalization of Minority Rights," 10.

exclusion of certain identities.[233] Similar to other colonized peoples, Palestine's Arab

inhabitants were confronted with new measures by the British to achieve recognition as

citizens and nationals; a process that sometimes involved transformations in social and

cultural identities and practices. Yet, in the case of Palestine these colonial designs and

exclusionary discourses of citizenship and nationality were amplified with the Jewish

national home policy.

      Throughout the period of the British Mandate in Palestine citizenship was shaped

by various Palestine Citizenship Orders and immigration was managed by the regulations

of the Immigration Ordinance.[234] It became clear early on that British objectives with the

Mandate and the liberal principles and parameters to which colonial officials must abide

conflicted, pulling in two separate directions. On the one hand the Mandate stipulates

through the Balfour Declaration that Jewish immigration and land sales ought to be

facilitated. This required civil legislation and immigration policy enabling the acquisition

of Palestinian nationality for the Jews, along with certain rights and responsibilities. At

the same time, and as I outlined in Chapter Two, the Mandate was charged by the Balfour

Declaration to implement the Jewish national home policy in a manner where "nothing

shall be done which may prejudice the civil and religious rights of existing non-Jewish

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233 This argument is made in Ann Laura Stoler's landmark study, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley: University of California Press, 2002). Stoler outlines the mechanisms through which legal categorizations by colonial administrators control and divide indigenous people from settler-immigrants. With this she elaborates on the relationship of power that exists between colonizer and colonized and relates this to the function of race in the construction and hierarchization of the categories of 'subject' and 'citizen' in colonized societies. Stoler repeatedly points to sets of social and cultural practices in the colonies ruled by the Dutch and French that indicate the enlightened, modern or European features of an individual, therefore enabling them to become citizens.

234 For an account of these various orders and the development of nationalism and citizenship in Palestine, see Mutaz M. Qafisheh, "Genesis of Citizenship in Palestine and Israel: Palestinian Nationality during the Period 1917-1925," *Journal of the History of International Law* 11 (2009): 1 36; and his *The International Law Foundations of Palestinian Nationality: An Examination of Nationality in Palestine Under Britain's Rule* (Leiden: Martinus Neijhoff, 2008).

communities in Palestine." As a result, British colonial administrators had to be extremely attentive, and design a colonial citizenship and nationality regime that provides a limited access to rights. Compared with the international mandates in the Arab world of the time, part of the significance of the formation of citizenship in Mandate Palestine was that the British commitment to the promotion of Jewish immigration required the promotion of a diluted and apolitical citizenship. Banko makes this point and recounts that

> In light of the mandate, the British feared giving explicit liberal citizenship rights and practices along with citizenship status, such as the formation of a legislative or executive body made up of representatives and proportional voting rights. Since Palestine's population was 93% Arab at the time the British arrived, these types of rights would essentially allow the Arabs to have control of Palestine and its government.[235]

Officially, the mandate system implemented by the League of Nations in the Arab world was considered a temporary international administration of property. It merged various legal obligations intended to enable a subsequent self-rule in the Arab provinces of the Ottoman Empire. To this end, democratic institutions such as municipal and legislative councils enabling civic participation in the formation of government and the implementation of law were promised. However, fostering greater autonomy and self-government among Arabs through such democratic measures would also have enabled institutional and legal avenues for civil resistance from the non-Jewish inhabitants to the said British policy of facilitating the creation of a Jewish national home in Palestine. Thus, the kind of citizenship regime designed by British colonial architects did not permit or empower "civil, political or social rights or practices which threatened the Balfour

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235 Banko, "The creation…1918–1925," 642.

Declaration as enshrined in the mandate."[236] Of course, British colonial policy in

Palestine, as well as its facilitation of Jewish immigration shifted during the almost three

decades of the Mandate. Mobilizations by Zionist organizations, collective campaigns

and resistance by Palestinian-Arabs to the policy of a Jewish national home in the Holy

Land, the economic conditions of the country, and re-organization of British imperial

interests in the region and abroad all contributed to the waxing and waning of Jewish

immigration in these years.[237] Despite these influences on British colonial policy, various

legal and political restrictions were consistently imposed against Arabs from accessing

both Palestinian nationality and democratic institutions that would empower their

resistance to the Balfour Declaration.[238]

2.2. Hierarchies of colonial citizenship

Starting in the mid-nineteenth century, privileged and educated classes in the Ottoman

Empire witnessed a rise of available writings from Western Europe with political ideas

and liberal notions of political subjectivity, civic identity, self-determination and

democratic decision-making. The intensity of this intellectual and political interaction is

revealed in the Ottoman reforms that followed this period:

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236 Ibid.
237 While the influx of Jewish immigrants was not consistent per year, a 1947 report by the United
     Nations Special Committee on Palestine outlined that the Jewish population rose from "12.91 percent
     in 1922 to 32.96 percent in 1946," to constitute "about one-third of the total settled population." In
     this period, "the Moslem proportion of the population (almost entirely Arab) has fallen from about 75
     percent of the total to 60 percent, and the Christian proportion (very largely Arab) from 11 percent to
     8 percent." See United Nations Special Committee on Palestine, *Report to the General Assembly:
     Volume 1,* No. 11, A/364 (Lake Success: New York: September 3, 1947),
     https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3.
238 Banko argues that the Arab emphasis of national identity was a response to the provisions of the
     various citizenship orders privileging Jewish immigrants. From "The 'invention' of Palestinian
     citizenship," 23-24.

New Ottoman reforms stressed equality before the law of all the Empire's subjects regardless of religion or ethnicity. The terminology of liberalism used in the western political discourse (especially as associated with the French Revolution) on identity and rights influenced the Ottoman reforms, known as the *Tanzimat*: edicts evoked equality, liberty, natural rights and the protection of life and property. The reformers strove to cultivate a single Ottoman identity among the respective subject population.[239]

This attempt to centralize and empower Ottoman identity around a core set of values was a defensive response to the rise of popular religious, cultural and territorial-based national movements. Yet it is not the case that ethnic and religious minority groups were denied collective identities as separate that from an Ottoman identity. *Jus sanguinis* and *jus soli* were both accepted by the Ottomans as legitimate means of procuring nationality. In the case of the Palestinian-Arab community, their nationality and sense of a shared 'Arab' identity was formally recognized by the Ottoman Empire in the nineteenth century, an identity and political self-understanding that continued with the commencement of British colonial rule in Palestine.[240] For this reason, Banko holds that liberal debates and processes associated with the design and provision of citizenship and nationality were also sites of control and power for the British Mandate. This was also the case for Zionist organizations, as it was faced with an existing blueprint for identity and national belonging.

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239 Ibid., 29-30.
240 See Samir I. Bitar, "Language, Identity, and Arab Nationalism: Case Study of Palestine," *Journal of Middle Eastern and Islamic Studies (in Asia)*, Vol. 5, No. 4 (2011): 48-64. Also, on the topic of Ottoman citizenship, Isin points out that "The European discourse on race began in the late eighteenth century and continued well into the 1940s, which was a crucial moment of transformation of the Ottoman Empire into the Turkish Republic. The discourse itself was not only implicated in various European projects of imperialism, colonialism and orientalism, but also provided direct justification for them. It is often argued that the Ottomans did not use race or nation as operative concepts with which to organize their practices of belonging, identity and difference […]. But when the Ottomans were faced with the new question of national identities in the nineteenth century, they were implicated in Western theories of race, identity and nation." See Engin F. Isin, "Citizenship after orientalism: Ottoman citizenship," in Emin Fuat Keyman and Ahmet Içduygu, eds. *Challenges to citizenship in a globalizing world: European questions and Turkish experiences* (London: Routledge, 2005), 43.

As mentioned above and in various studies on the Mandate, part and parcel of British policy in this period was the establishment of a Jewish national home in Palestine through immigration and land sale. A major component of this policy was the organization of Palestinian citizenship according to a hierarchy of racial background and political ideology. With this in mind, the British employed citizenship provision as "a bureaucratic technique to enforce the mandate policy—a policy that paid particular attention to Jewish immigration and naturalization."[241] This involves the formation of dual institutions for the administration of services that provided Arab and Jewish individuals distinct and unequal civil, social and political rights and protections. Cast in a broader colonial historical matrix, distinctions among various groups in citizenship and nationality legislation were used by states to reproduce their colonial powers and territorial control while policing identity. These policies and practices of control were designed to reinforce colonial understandings of the 'natural' disposition and dominance of white and settler identities in contrast with that of indigenous people.[242] In the case of Palestine, and as the previous chapter explains, the British actively mobilized the cosmopolitan figure of the 'European Jew' as a civilizing influence in the interest of Western powers in an otherwise backward and undeveloped 'Orient'. In doing so, the preferred and qualified candidates for the full rights of citizenship and nationality in such a racially hierarchized civil regime were those who could maintain and reproduce the projected image of enlightened and progressive England (or Europe). In the face of a 'backward' and 'chaotic' Orient, these individuals were mainly white, educated, cultured, industrious and professional immigrant Jews.

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241 Banko, "The 'invention' of Palestinian citizenship," 150.
242 See Stoler, *Carnal Knowledge*, pp.22-40.

Added to their conceived racial superiority, these 'white' Jewish immigrants

maintained a kind of social self-composition, cultural proficiency and enterprising

mindset placing them apart from the native Arabs in Palestine, whether Muslim, Christian

or even Jewish.[243] The Jewish immigrants from Europe served as a political and

ideological compass of the kind of civilized behavior and lifestyle the British had in mind

for the inhabitants in Palestine in a future Jewish State. The importance of the Jewish

national home policy to the British combined with the colonial conception of a racial

hierarchy enabled the mobilization of the liberal discourse of citizenship and nationality

of this period to entrench the separate and distinct treatment and access for Arabs and

Jews.

Political ideology and socio-economic outlook was also a major factor in access

to and inclusion in Palestinian citizenship. For example, in relation to the Legislative

Election Order of 1922, a directive that outlined distinct provisions for Jewish

immigrants and former Ottoman subjects for the acquirement of Palestinian nationality,

Banko explains that

> In the interim before the completion of the nationality law, members of the
> Foreign Office argued against the terms of provisional nationality …. They stated
> that a class of 'undesirable people' such as communists, prostitutes and fugitives
> could remain in Palestine as habitual residents who received provisional
> nationality through the order. These individuals would then acquire citizenship
> without a waiting period once the proper legislation was ratified. Since the short
> residency requirement for citizenship was meant to favour Jewish immigrants
> only, it led to intense debates that further delayed the final draft of the law.[244]

In the late 1920s and early 1930s, Jewish citizens of Palestine with ties to leftist, socialist

and Marxist political groups were viewed as a significant threat to the future state. The

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243 See footnote 225 for scholarship on the treatment and placement of 'Mizrahi', non-white or Eastern
     Jews within the Zionist incorporation regime.
244 Banko, "The 'invention' of Palestinian citizenship," 73.

fear of communist agitation was so fervent that discussions among policy-makers

included options for the revocation of their citizenship and nationality and the control of

mobility of this politically objectionable social group.[245]

Overall, along with the colonial conception of the civilizing capacities of

incoming European Jewish immigrants, maintaining the 'correct' political ideology was

another tool used by the British to control the 'types' of individuals who acquire

citizenship and reinforce their colonial power in the Mandate. The development of

Palestinian citizenship according to these factors enabled the exclusion of unwanted

portions in both Arab and Jewish society from Palestine, and the future Jewish State.

Taken together, this generated a dual administration and an institutionalized and unequal

hierarchy of rights among Arab and Jewish inhabitants. This conflicted with an accepted

and popular liberal account of citizenship in Western Europe where differences on the

basis of ethnicity religion, political affiliation and were meant to be indistinguishable or

blurred.

2.3. A blueprint for separate and unequal citizenships

Citizenship and nationality legislation in Palestine was carefully constructed by the

British to satisfy their policy of establishing a Jewish national home while adhering to the

changing international regulations. With the two-pronged directive of maintaining the

conditions of the Palestine Mandate as sanctioned by the League of Nations and their

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245 "Some colonial officials suggested withholding travel facilities so that 'indoctrinated' people could
not leave Palestine. A memo from the Dominions Office to Sir John Maffey, the Under-secretary of
State for the Colonies in 1934, offered support for the proposal to deprive Palestinian citizenship from
any Arab or Jew who went to the Soviet Union for what was referred to as a course in communist
propaganda." Ibid., 181. For an in-depth discussion of the strategic alliances, considerations and
confrontation between Zionism and Communism during the Mandate period, see also Jacob Hen-Tov,
Communism and Zionism in Palestine during the British Mandate, (New York: Routledge, 2017),
Chapters 3, 4, and 6.

perceptions of the nature of both Arab and Jewish 'natives' in Palestine, civil officers of the British Mandate "brought with them Western European concepts of law, administration and government that they molded in order to apply in the territory governed by the Ottoman Empire."[246] On this, Assaf Likhovski emphasizes that "analyzing the cultural prejudices and the colonial images which shaped the mind of British judges is … essential to understanding the process of anglicization of the law of mandatory Palestine."[247] He continues to point out that

> Many British judges shared the attitudes of their colleagues in the administration, and saw the natives in general, and native judges in particular, as inferior. The structure of the legal system tended to enforce that image. Because of the ethnic division of the country, the jury system was not used in Palestine. Native judges, both Arabs and Jews, were viewed at first as similar to English jurymen - local 'collaborators' whose only role was to help British judges understand local customs and local mentality.[248]

The process of creating a citizenship regime in Palestine was done during a period when, as an imperial state, Britain was transitioning. Political subjects of empire were transforming into the notion of citizens belonging to a nation-state. As such, ambiguities around the legal status, political participation, social and civil rights of Arabs and Jews in Mandate Palestine were not limited to this colonial context. Rather, they applied to questions British administrators and lawmakers were considering in this period in relation to their other colonial experiences. For this reason, conceptions nationality among British civil officers and policy-makers were "influenced by their empire's own citizenship legislation and history of colonialism in the 'Orient' (including India and Egypt)."[249] Through the language of identity and recognition formulated by British officials the

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246 Banko, "The 'invention' of Palestinian citizenship," 15.
247 Assaf Likhovski, "In Our Image: Colonial Discourse and the Anglicization of the Law of Mandatory Palestine," *Israel Law Review* 291 (Summer 1995): 297.
248 Ibid., 303.
249 Banko, "The 'invention' of Palestinian citizenship," 22.

established citizenship regime was thereby able (despite opposition by Arab inhabitants),

to formally distinguish Arab from Jewish-Palestinian citizenship in various ways.

British-imposed legislation separated Arab from Jewish citizenship through an

intricate institutional framework of exclusion and various mechanisms of control. This

framework of exclusion can be said to have laid a blueprint for the differential citizenship

that exists in contemporary Israel. Banko explains that although it was generally held that

Ottoman legislation would try to be maintained, British administrators actively refused to

maintain this practice on the issue of nationality:

> The main reason to discard Ottoman regulations for nationality was that the status quo would threaten the mandate's immigration policy and indeed the mandate charter itself since a law was necessary in order to grant Jewish immigrants the nationality of Palestine. The 1925 Citizenship Order, more than other legislation, meant that Great Britain could assume and keep direct control over Palestine's inhabitants through the grant or denial of their citizenship.[250]

Overall, citizenship legislation in Palestine reflected changes in British policy on Jewish

immigration and resulted in the provision and revocation of citizenship in various distinct

ways for Jews and Arabs. In a Memorandum submitted in June 1926 to the League of

Nations, The National Council of the Jews in Palestine (*Waad Leumi*) protested against

Clause 7. (3) of the 1925 Citizenship Order that authorizes the High Commissioner of the

Mandate to withhold citizenship at his discretion without any right of appeal.[251]

Concerned with the rights of Jewish inhabitants to Palestinian citizenship, and by

extension the land, the National Council contested the empowerment of Mandate officials

to "deprive anyone who criticizes his actions of the right of citizenship."[252] Realizing the

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250 Ibid., 18.
251 "Memorandum submitted to the Permanent Mandates Commission of the League of Nations by the
     Waad Leumi (National Council) of the Jews in Palestine," Jerusalem, June 1926, League of Nations
     Archives at the United Nations Office at Geneva Archives.
252 "Memorandum submitted to the Permanent Mandates Commission," 24.

potential use of this right by the High Commissioner to repeal citizenship of Jews against

the interests of the Zionist movement in Palestine, the National Council emphasized that

"the danger to the loss of citizenship mainly concerns the Jews," and asserted that

citizenship "should be treated not as an act of grace but of right." [253] For Palestinian-

Arabs, coupled with the denial of Ottoman nationality, the 1925 Citizenship Order was

able to effectively deny citizenship to their descendants residing outside of the territory.

Opting for the terminology of "born in the country" rather than "native of" to determine

eligibility for citizenship of individuals residing abroad, British colonial administrators

were able to ensure that automatic citizenship was not bestowed to children born abroad

to Palestinian nationals; a measure that conflicted with "international standards, British

nationality law, and the 1869 Ottoman law, all of which supported the acquisition of *jus

sanguinis* nationality."[254]

A curious effect of this measure was the asymmetrical legal distinction between

Palestinian citizenship and full nationality. Palestinians living under the Mandate were

provided with a local citizenship in the absence of British nationality. But when leaving

Palestine to live abroad, the Mandate law located these individuals who were citizens and

not always natives, in the category of British protected-persons.

> In an odd twist, they were recognised as citizens of the Palestine Mandate but in
> the absence of mandatory consulates, these inhabitants came under the same type
> of protection as did British colonial subjects. Citizenship in this sense was not
> equal to full nationality as far as international law was concerned since
> Palestinians became British-protected persons when outside of the mandated
> territory.[255]

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253 Ibid., 25.
254 Banko, "The 'invention' of Palestinian citizenship," 76.
255 Ibid., 77.

Taken together, through nationality regulations and the codification of citizenship requirements that did not correspond to regional and international practices of the same, British colonial administrators were able to create mechanisms of exclusion to both limit access to and revoke citizenship for Palestinian Arabs.

> In the early 1920s … Arabs were treated differently from Jewish 'provisional' citizens in the practical matters of travel, passports, diplomatic protection and voting regulations. …. By the early 1930s it was clear the legislation effectively created two separate bureaucracies for Jews and Arabs in the application, grant and removal of Palestinian citizenship.[256]

The arrangement and implementation of this logic of exclusion is key to the arguments put forth in this study. As I assert, it is this very logic that is being un-rooted and re-framed to internalize the gaze of exclusion toward the figure of the citizen. For obvious reasons, this legal and structural arrangement of exclusion was hotly resisted by the Palestinian-Arab population during the Mandate in the form of letter campaigns of protest, calls for boycott, general strikes, and nationalist conferences, not least for the evident inequalities it encapsulated.[257] The 1925 Order did not bestow Arab citizens meaningful citizenship as autonomous subjects with active decision-making power over education, health, cultural, taxation or government sectors. While Palestine is not the only case where British colonial practices provide exclusionary access to citizenship rights, privileges and protection, what stands out in this case is the extent to which this exclusion

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256 Ibid., 52.
257 The League of Nations Archives at the United Nations Office at Geneva Archives in Switzerland has an impressive collection of documents, telegrams, letters and other records of the anti-Zionist campaigns initiated by various clubs, congresses, village representatives, interfaith committees and village societies, and national and village workers, women, and peasant unions, delegations, organizations in the Palestinian nationalist movement during the British Mandate. See: Dossier Concerning Protests against British Mandate for Palestine, 1919-1920, No. 1, Document 15385, Dossier No. 2413, League of Nations Archives at the United Nations Office at Geneva Archives, and Dossier Concerning Protests against British Mandate for Palestine, 1922, No. 1, Document 15385, Dossier No. 2413, League of Nations Archives at the United Nations Office at Geneva Archives.

violated even British political policy at the time. Palestinian Arabs were effectively subjected to a British colonial administration that denied them, as citizens, political, civil and social rights – a clear violation of the parameters of the Balfour Declaration. Yet, the British colonial rulers could not abide by the principles of liberal citizenship and democratic rule by providing and empowering Arabs with equal rights and the ability to shape legislation. This would impede their ability to support the Zionist movement. And so, far from an "equal, rights-based citizenship" regime, every effort was made to hinder and impede the collective needs and demands of the Arab population on citizenship and nationality.[258]

The loss of Arab confidence in the intentions and institutions of the British led to the rise of Palestinian issue-based movements and civil society in this period, culminating in the major Arab uprisings of 1936-1939.[259] Using multifaceted tactics, the organized segments of Palestinian society initiated community meetings, general strikes, mass protests, civil campaigns of letter and petition writing, urban and rural guerilla warfare, and numerous direct actions and collaborations targeting oil pipelines from Iraq to Haifa and those belonging to the British-owned Anglo-Persian oil company (the product of another British imperial venture and what in 1954 grew into British Petroleum), telephone and telecommunication companies, roads, bridges, government offices and police stations, among other key sites of British colonial rule. In response, the British brought in tens of thousands of troops to quell the Arab resistance movement, declared

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258 Banko, "The 'invention' of Palestinian citizenship," 51.
259 See Zachary Lockman, *Comrades and Enemies: Arab and Jewish Workers in Palestine, 1906-1948*, (Berkeley, University of California Press, 1996); Ted Swedenburg, "The Role of the Palestinian Peasantry in the Great Revolt (1936-9)," in *The Israel/Palestine Question* ed. Ilan Pappe (London: Routledge, 1999), 114-146; Tom Bowden, "The politics of the Arab rebellion in Palestine 1936–39," *Middle Eastern Studies*, Volume 11, Issue 2 (1975): 147-174.

Martial Law and set up the Peel Commission to investigate the unrest, all of which

suppressed the Arab uprisings. By the end of the mass Arab uprisings in 1939, the Arab

population was deeply aware of the extent of British collusion with the Jewish national

movement, politically organized, and mobilized in the form of numerous women, student,

worker, peasant and religious grassroots organizations and committees. Resulting from

the anti-colonial revolt of the late 1930s was the growth of a dynamic and engaged civil

society among the Arab community that also reflected greater civic consciousness and

grasp among the general population of the rights and protections they require (and are

denied) as a national group and as citizens.[260]

When Banko argues that the Palestine Mandate is an important case in the

bureaucratization and internationalization of citizenship during the interwar period, she

also points to its role in entrenching the exclusions of certain 'undesired' populations

through the regulation of movement and identity documentation. Restrictions in

immigration regulations in Palestine in the early twentieth century functioned alongside

the rising perception by nation-states of domestic and international mobility as a source

of threat.[261] The British desire to tighten requirements for citizenship and immigration by

controlling Arab entry and exit into Palestine, redefining identity and belonging, and

legislating tools for their exclusion and political disempowerment coincided with similar

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[260] This is evidenced by Ghassan Kanafani's detailed analysis of *The 1936-39 Revolt in Palestine,* published in English by Committee for a Democratic Palestine, New York, 1972 and by Tricontinental Society, London, 1980. Kanafani details the socially and politically organized structures of Palestinian society, the rise of Zionism, and the mistakes of the organized segments in Palestine during the Mandate which, along with the machinations of British imperialism in the region, led to the failures of that uprising. Ghassan Kanafani, "The 1936-1939 Revolt in Palestine" (New York, Committees for a Democratic Palestine, 1972).

[261] On the modern realizations of state bureaucratization and administration of movement, see John Torpey, "Coming and Going: On the State Monopolization of the Legitimate 'Means of Movement'," *Sociological Theory* Vol. 16, No. 3 (1998): 239-259 and *The invention of the passport: surveillance, citizenship and the state* (Cambridge: Cambridge University Press, 2000).

restrictions to regulate legitimate movement in Europe and North America. This monopolization of the ability of nation-states to sanction and restrict movement of individuals and groups, whether civil, economic, or religious, in the form of passport and other legislated identity and documentary controls coincided with states monopolization of the legitimate use of violence.[262] Contributing to these global techniques for passport and population control was the rise of documentary restrictions for the Arabs (and in periods of social and political unrest, also Jews) that they did not wish to admit so as to fulfill their policy of establishing a Jewish national home.

The mechanisms whereby legislated identity and documentary controls (re)shape national belonging and institutionalize the civil exclusion of unwanted peoples in Palestine, both during the interwar period and after World War II, are relevant in our study of contemporary Israeli citizenship. Citizenship in Palestine was a key tool for the reproduction of state territory and membership, and its legislation during the British Mandate shaped a particular understanding of Palestinian citizenship. At a time when Palestinian Arabs were mobilizing their communal and legal identity as Arab nationals of the Ottoman Empire, the British structured a colonial citizenship that both failed to consult the local Arab population in determining its parameters and denied their access to social, civil or political rights as part of its policy in support of a Jewish national home. This pre-state construction of citizenship by the British as separate and unequal for Arabs and Jews was designed against the backdrop of rising international networks of recognition and control. These exclusions embedded within the historical matrix of Palestinian citizenship during the Mandate laid a blueprint for the differential citizenship regime that today exists in Israel. As I contend, the citizenship and nationality regime in

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262 Torpey, "Coming and Going," 240.

Israel since 1948 has continued its interactions with and reaction to global networks of restriction and control. The significance of the Israeli case, however, is that unlike liberal democratic states in the West, its major features of nation-statehood, including final territorial borders, understanding of peoplehood and demography, and sovereignty largely remain incomplete and unresolved. These unresolved parameters are reflected in the kind of exclusions the Israeli citizenship regime maintains.

3. After statehood: Constituting the Jewish State

3.1. Leo Kohn's Draft Constitution: Balancing modern formulations and Jewish traditions

The networks and discourses of restriction entrenched in the Israeli incorporation regime become apparent when we examine the country's turbulent relationship with constitution-building. Both the 1947 UN Partition Plan as well as Israel's 1948 *Declaration of the Establishment of the State of Israel*, its *Declaration of Independence*, prescribed the creation of a constitution for the established state by October 1, 1948. Appointed by the Executive of the Jewish Agency, Leo Kohn, was tasked with writing a proposed constitution for the Jewish State. He was a key functionary of the Jewish Agency in Jerusalem and later political advisor to both the Ministry of Foreign Affairs and Israel's first President, Chaim Weizmann.[263] Once tasked, Kohn drafted various proposals for a

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263 Jürgen Matthäus et al, *Jewish Responses to Persecution: Volume III, 1941–1942* (Maryland: AltaMira Press, 2013), 192. The choice of Kohn was an obvious one, explains Amihai Radzyner "Kohn, a religious Zionist, was born in Frankfurt and completed his PhD. dissertation in Law at the University of Heidelberg, in 1927. His work dealt with the constitution of Free-State Ireland, accepted in 1922. Kohn later left for Dublin, where he expanded his research into an extensive book published in 1932. Its preface noted that its importance and contribution to constitutional law is not limited to Ireland alone. Kohn continued his constitutional research in subsequent years. This and the fact that Kohn, a Jewish Agency employee, was the initiator of the writing of the proposal, made him a natural candidate […]." Amihai Radzyner, "The Irish Influence on the Israeli Constitution Proposal, 1948," in *The Constitution of Ireland: Perspectives and Prospects*, ed. Eoin Carolan (Dublin: Bloomsbury Professional, 2012), 71-72.

constitution, and did so under 'wartime' conditions and under a tight time-frame to meet the said deadline.[264] Examining the trajectory of thought and discussion that led to the various drafts Kohn produced is useful for this study as they indicate the influence of Western democratic systems and constitutional structures, as well as point to the features that place apart the Israeli constitutional order. The First Proposal for a constitution was made late 1947 to early 1948, and largely emulated the formulation of the UN Partition Plan so as to mainly satisfy British and international audiences and observers investing economic and financial energy into the Jewish national home policy. As such, this proposal affirmed both that a Jewish State will be formed on the date declared in the Resolution and that with its creation this Constitution will take effect. Further, in Section 9 of this first proposal Kohn held that "The seat of Government of the Jewish State is on Mount Carmel" as the Partition Plan did not include Jerusalem as part of a future Jewish State.[265] Kohn himself later admitted that the inspiration for the formulations he adopted in the various sections of the proposed constitution was the Partition Plan but also contended that he largely "followed the model of Western parliamentary democracy."[266] Segments from the constitutions and legislative and executive structures of the United States, France, England, China and the Weimar Republic were used by Kohn and

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264 Mazen Masri explains some of the structural and political limitations to adopting a formal constitution by the above deadline: "The Declaration of Independence stated that a Constituent Assembly would adopt a constitution by 1 October 1948. This constitution would determine the various arrangements for the state and its authorities. The Constituent Assembly was not elected until 1949, and before it was elected, the Temporary State Council – which was formed by the leaders of the Jewish *Yishuv* as an interim body to run the affairs of the state until elections were held - decided that its powers would be transferred to the elected Constituent Assembly which would act both as the constituent assembly and the legislator. With the conclusion of the 1949 elections, the Constituent Assembly was convened, and it enacted *The Transition Act-1949*. The Act changed the name of the Assembly to the First Knesset." *The Dynamics of Exclusionary Constitutionalism: Israel as a Jewish and Democratic State*, (Oxford: Hart Publishing, 2017), 162-163.
265 Amihai Radzyner, "A Constitution for Israel: The Design of the Leo Kohn Proposal, 1948," *Israel Studies* Vol. 15, No. 1 (Spring 2010): 5.
266 Ibid., 5-6.

combined with his own original and extensive legal writing and specialization in the Irish

Constitution. The Irish influence in the drafts produced by Kohn for the future Jewish

State is interesting because while both are in the context of British imperial policies, but

his draft for Israel is demonstrably different. As Amihai Radzyner explains,

> The Irish Constitution opens with the following religious sentence: 'In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred.' The religious influence on the Irish Constitution is significant…. [Yet, perhaps] as an antithesis to … the Irish Constitution, Kohn decrees in … the first proposal that: 'There shall be no state endowment of any religion.' In other sections concerning religious issues, such as days of rest and religious courts, there is no preference to Jewish institutions over those of other religions. Despite being a religious Jew and the fact that his proposal defines the State as the national home of the Jewish People … Kohn avoids religious declarations, apart from the thanks to the God of our forefathers with which he opens the Preamble.[267]

Felt by religious and Orthodox political leaders who read this first draft, the absence of

God and the Torah indicated a sharp liberal tone and character. A more simplistic

reproduction of Western parliamentary structures and parameters of statehood and

belonging would perhaps have incorporated a greater role for religion in state and civil

affairs. However, Kohn's method for drafting a constitution for Israel clearly proceeded

on a particular understanding of the unique political traditions and outlook of Judaism.

Put differently, Kohn's vision for the future state appeared as a secular and modern

Jewish one, similar to other enlightened states, with clear divides between religious

institutions and state structures in public law. Overall, despite the constitutional rubric of

other modern democratic states from which Kohn could build, little information about the

structures and features of the state to be established often forced him to get creative and

improvise. For example, in the first draft of the proposed constitution he called it the

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267 Ibid., 6-7.

"Jewish State" and then continued to list various possible names for this State, including "Yehuda, Zion, The Land of Israel, and The Western Land of Israel."[268]

After receiving suggestions and recommendations for amendments from legal scholars, practitioners and public and religious figures, some of which Kohn ignored or simply did not implement, a Second Proposal was submitted in July 1948. This draft heightened the prominence of the Jewish religious, spiritual and political tradition in the state. When explaining the protection of Fundamental Rights, Kohn held that "the Israeli constitution must rely in this matter on Jewish Law in addition to the principles of modern constitutions."[269] The only time an explicitly Jewish text is specifically cited is regarding the prohibition of capital punishment as it is also proscribed by Talmudic Law. Interestingly, Radzyner argued that this act was "merely symbolic, because the abolishment of capital punishment was present already in Kohn's first proposal without resorting to Jewish Law." [270] This indicates that Kohn's enhancement of the position of Jewish tradition was more likely a response to political pressure.

In the end, the third proposed Draft Constitution was submitted in October 1948. Though formally published with increased public and media visibility, the Third Proposal was, like the other preceding two proposals, not a binding document the Israeli government would be forced to adopt. Consisting of a Preamble and eight sections, this version opens with a series of general provisions regarding the fundamentals of the state and is followed by a Declaration of Fundamental Rights. In reading the Preamble of the Third Proposal separately it becomes clear that it can serve as a separate document commemorating Jewish history. The Preamble pays tribute to the tenacious endurance

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268 Ibid., 5.
269 Ibid., 8.
270 Ibid.

and heroic sacrifices of the generations of Jews in Exile who maintained their spiritual heritage. It also honors the "faithful remnants who maintained the continuity of Jewish settlement in Palestine" thereby inspiring Jewish pioneers to make efforts toward national revival.[271] Among the provisions of these opening sections of the Constitution are key ones that define the character, citizenship and official language of Israel. This includes complete civil and political equality among all individuals, Arabs and Jews alike, who live within the jurisdiction of the new state. The next three sections of this final Draft Constitution outline the parameters of the respective powers of the legislative, judiciary and executive, and the final sections outline provisions for amending the Constitution, reviewing the constitutionality of proposed and passed legislation and for the framework and structure of law in the newly established state.

A Press Release issued by the Israeli Ministry of Foreign Affairs on December 23, 1948 publicizing this Draft Constitution explains that Kohn "proceeded on the basis of the actual structure of political life in Israel" and designed the provisions in a manner "so that a more stable political life may be expected under the new Constitution than has been of late the fate of old established democracies in other countries."[272] The Ministry continues to praise the liberal character of the Constitution when it comes to the protection of the Fundamental Rights of the individual:

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271 "Draft Constitution for Israel," *The Palestine Post*, December 24, 1948, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem.

272 The Ministry of Foreign Affairs Press Release continues: "The era of Fascism has revealed that it was possible for determined men to attain power and destroy democracies without touching a single letter of the democratic Constitutions under which they assumed office. It is this consideration which explains several provisions embodied in the new Constitution designed to prevent the freedom guaranteed by democracy from being abused for its own undoing." Ministry of Foreign Affairs, Press and Information Division, "A Constitution for Israel," Press Release No.3, December 23, 1948, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem.

It goes considerably beyond the traditional formulations of the Declarations of the Rights of Man which it has become customary to embody in modern Constitutions. The inspiration of the Draft Constitution of Israel is liberal.[273]

Viewing Israel as a unique yet unfinished historical achievement in both liberal statehood and law-making, Kohn's Third Proposal was designed to address what he believed would be future constitutional struggles. Though dividing the government into judicial, executive and legislative bodies, Kohn vests greatest powers into the hands of the elected legislative or State Council. This was done on the grounds that the difficulties this new state will face will require prompt decisions and effective actions by legal practitioners. Modeled on the constitutional structures of the United States, Republic of China, and the aforementioned major European democracies, features of Kohn's third and final draft constitution are nevertheless catered to Israel as a *novel phenomenon*.[274] For example, understanding that Israel is uniquely built upon the concept of immigration – a topic we will revisit in more detail – required Kohn to make malleable the makeup of electoral districts so that they reflect changing population distributions.

Among other features, the Third Proposal sets up the blueprint for a social-welfare state (likely due to the importance of immigration in the new state), abolishes the death penalty and as one commentator put it "goes beyond any existing document – including the United States constitution – in setting forth basic human rights."[275] Moreover, it protects freedom of worship for all religious sects of recognized faiths, guarantees access to holy sites in Palestine and does not discriminate between inhabitants in the state on the grounds of race, religious, sex or language when it comes to their right

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273 Ibid.
274 Ruth Gruber, "Modelled on Western Democracies, New State's Draft Constitution," *The Palestine Post*, September 7, 1948, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem.
275 Fitzhugh Turner, "Israelis Frame Socialist State in Draft Charter," *The Palestine Post*, December 7, 1948, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem.

as citizens. In addition to providing citizenship to all Jews living in Israel (or "elsewhere in Palestine") it also provides a citizenship to non-Jewish residents of Israel who were citizens of Palestine when the British Mandate expired, "unless they elect not to accept it."[276] The introduction of a voluntary citizenship in the proposed Draft Constitution is significant as the non-Jewish inhabitants of Palestine who remained on their historical lands were automatically and involuntarily granted citizenship with the establishment of the State of Israel. Following this, non-Jewish Arabs were immediately placed under Military Government as citizens.

That said, the tendency of heightening the State's Jewish character and the role of Hebrew tradition in his proposals was heavily present in the introduction and explanatory notes of this Third and final Draft Constitution:

> The introduction to the second proposal concludes with the lessons to be learned in drafting the constitution of the State of Israel, from the successes and failures of constitutions in other democratic countries; [yet] the introduction to the third proposal… contains lengthy additional sentences in which Kohn explains that the constitution of a people must also be rooted in its unique political traditions, and, therefore, the Israeli constitution must be influenced by the Jewish political tradition and by the unique outlook of Judaism.[277]

Evidently, in the face of criticism and pressure, Kohn made strides to provide a Jewish character in this final version.[278] This was done regardless of the fact that the Western democratic and parliamentary history he was referencing did not employ the Jewish tradition as a major source in its constitutional structure. Importantly, Kohn did not make

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276 "Draft Constitution for Israel," Article 6 (1) (c), December 24, 1948.
277 In addition, Radzyner explains that "[T]he sections detailing the State's borders and with relations with the State's Arab citizens and the residents of Jerusalem have been omitted. Whereas Section 11 in the second proposal was based on [Resolution] 181 … and stated that the State would settle its disputes in peaceful ways and would refrain from using force to resolve them, the third proposal noted merely that the State 'shall seek to settle' its disputes in peaceful ways…." See "A Constitution for Israel," 9 and 11. See also Mark A. Raider, ed., *The Essential Hayim Greenberg: Essays and Addresses on Jewish Culture, Socialism and Zionism* (Tuscaloosa: University of Alabama Press, 2016).
278 Radzyner, "A Constitution for Israel," 13.

reference to "existing Jewish normative religious law," which would have provided somewhat clearer instructions and relevant passages.[279] Instead, the draft constitution makes reference to the notion of a Jewish religious jurisprudence, one that is more open to interpretation and the individual leanings of its practitioners.[280] The effort to please voices of criticism of the separation of this Draft Constitution from Jewish history and texts compelled Kohn, himself a religious man, to incorporate a foundational sentence on law-making in the Jewish State. In the third Draft Constitution, Article 77 in the third Draft Constitution, Kohn writes that

> Future legislation in Israel shall be guided by the basic principles of Jewish Law. Wherever the existing law does not provide adequate guidance, the Courts-of-Law shall have recourse to these basic principles.[281]

Yet there is more to Kohn's change in legal tone and normative focus than mere political pressure. Granted, his justification for such an extreme and sudden change in the foundational source of all future legislation in Israel reveals the types of contemporaries he was facing in this period. When explaining the need for the above formulation, Kohn accounted for this sentence by stressing the "uniqueness and advantages of Jewish Law, and the importance of replacing the civil code of the Mandate with a code based on the Jewish legal tradition."[282] However, the context is important and illuminates his reasons for resorting to Jewish traditions. Kohn was assigned to be the sole architect of a Draft Constitution to be written within a limited time frame and under conditions of war. Added to this, the constitution was meant for a future state whose spiritual and normative traditions were not sourced by the constitutional structures of existing democratic

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279 Raider, *The Essential Hayim Greenberg,* 315.
280 Ibid.
281 Ibid.
282 Radzyner, "A Constitution for Israel," 13.

countries. While it is natural for a legal practitioner and scholar like Kohn to reference the constitutional provisions of established liberal and largely Christian states, the state for which he was drafting a Draft Constitution was, in the end, meant to be a 'Jewish' one. The task therefore would be to find constitutional examples of states that were modern and secular and whose normative and spiritual sources were seeped in Jewish traditions, not merely religious but also cultural and spiritual traditions – a difficult task to say the least. The dilemma of the task at hand was to design an unprecedented constitutional structure: one that was seeped both in the Western (and largely Christian) tradition of modern and secular government, as well as in the basic principles of ancient Jewish law. In this context, in the absence of applicable historical examples from the Jewish tradition, Israel could be seen as a novel constitutional phenomenon. To some extent, the notion of a 'Jewish' State rendered the constitutional structures in existing democratic countries inapplicable.

For Kohn, the jump from the American Constitution of 1776 to the Israeli Draft Constitution in 1948 was not so wide. He argued that the architects of the modern and Enlightened ideas of human rights, freedoms and equality were influenced by the Bible.[283] As such, the use of constitutional examples from modern, largely Christian, Western liberal democracies could, in effect, be compared to using an additional source from what is essentially the Jewish tradition. As one high-ranking Israeli government official expressed:

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283 Ibid., 8. The mobilization of the Bible for state and nation-building was not uncommon among other prominent Zionist figures. Avraham Avi-Hai argues that for David Ben Gurion, the Bible was embraced and mobilized as "the Jews' unique document and claim to a separate existence… and a belief in the singularity of the prophetic heritage and Jewish historical experience." In *Ben Gurion, State-Builder: Principles and Pragmatism, 1948-1963* (Jerusalem: Keeter Publishing House, 1974), 93.

> The liberal spirit of the draft constitution reflects the sobering experience of the collapse of the democratic governments in Europe during the past decade and endeavours to draw lessons from that tragic experience. The draft constitution shows anxiety to prevent the pitfalls which undermined the democratic governments in Europe in our generations. It takes its mandate from the U.N. resolution of November 29, and its spirit from the liberalism and democracy of the constitution of the U.S. Its declaration of fundamental rights is modeled not only on modern constitutions, but on ancient Hebrew traditions. The Bible that inspired the first American constitution makers has inspired this draft constitution too.[284]

In essence, Kohn's Draft Constitution can be understood as an attempt to recreate and apply the liberal spirit and normative foundations of the American Constitution of 1776 to the political and historical context of Israel in 1948. Yet, as I outline below, while discussions in the First Knesset around the adoption of a constitution commenced immediately after the establishment of Israel, a kind of forced compromise was reached among Members to postpone the process. In effect, Kohn's proposed Constitution was relegated to a forgotten document. Nevertheless, the process adopted by Kohn and his various intellectual and considerations are illuminating for the purposes of this study due to two main reasons. Firstly, in all three proposals, the general direction of Kohn's amendments and tone was to heighten the explicit Jewish character and sources in his writing. The Zionist project of creating a state with an explicitly Jewish character was constitutionally unprecedented in the world, thereby making it difficult to solely rely on Western legal experiences and sources. In this sense, Kohn's experience appears similar to contemporary lawmakers in Israel. Namely, that the heightening of the Jewish character of the state also results in the simultaneous diluting of its liberal democratic character.

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284 Ruth Gruber, "Blueprint for Constitution: Israel's Bill of Rights," *The Palestine Post*, August 23, 1948, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem.

Second, and perhaps more central to my argument about the logic of exclusion unique to Israel, Kohn's experience in drafting these proposed constitutions reveals the limitations to Israel's appropriation of reproduction of Western parliamentary structures and parameters of statehood and belonging. To maintain the particular character of the State as 'Jewish', Israeli lawmakers re-read, re-formulate and re-use the principles and discourses of liberal citizenship and human rights from Western constitutional structures. With this, Israel practices a unique relation of exception when it comes to the discourse and formulation of its citizenship and nationality regime. Its *stateless citizenship* inverses the traditional relations of exclusion in classical liberal states. The specific use of the imported and adopted Western parliamentary structures and parameters of statehood and belonging by Israel has resulted in a unique liberal legal and political culture within the Jewish State. This in mind, examining how the appropriation and reformulation of classical liberal principles and frameworks of citizenship and nationality has unfolded in Israel over half a century provides a window to what is developing in the core Western democracies. I argue that Israel's particular use of liberal democratic discourse to configure citizenship in a manner that is hierarchical and maintains an exclusionary Jewish character – something Kohn was increasingly compelled to do with each progressive Proposal – informs our understanding of changes to citizenship regimes in the core. Outlined in Chapter Five, the practices and dynamics of the colonial logic of Israeli citizenship illuminates our examinations of Western democratic drives toward national and cultural homogeneity and citizenship restrictions; even among the increasingly multicultural and multi-religious makeup of their societies.

3.2 Debating the constitution: A splintered Knesset

In an address to the First Knesset, David Ben Gurion stated:

> On the fourteenth day of May 1948, a new state was not founded *ex nihilo*. Rather the crown was restored to its pristine splendor 1,813 years after the independence of Israel was destroyed, during the days of Bar Kochba and Rabbi Akiba [where Jews revolted against the Roman Empire]…The establishment of the Jewish state was not an event limited to the place and time of its emergence. Rather, it is a world event in the sense of time as well as place, an event summarizing a prolonged historical development. This event has introduced radical reforms and itself serves as a source for alterations and changes exceeding its temporal and spatial framework. [….] Just as it was clear that the renewal of the State of Israel is not a beginning, but a continuation from days of yore, so, too was it understood that this renewal is not an end and conclusion but another stage in the long path leading to the full redemption of Israel.[285]

To this day, this point remains a common argument among Zionist thinkers and policy-makers. Jewish indigeneity is affirmed based on their continued historical presence on the land, even extending to pre-Biblical times. Here, the State of Israel is projected as cementing the historical and communal link between Jewish life on the land from over five centuries before Christ, and Jewish membership in the state today. Evidently, among the key issues left outside of this kind of linear and one-dimensional historical analysis is that the constitutional inheritance of the newly established state included a rigid framework for hierarchical citizenship left behind by the British Mandate. Ben Gurion is thus correct in more than one way when asserting to the First Knesset that Israel was not created *ex nihilo*. This is because the exclusionary conceptual and legal regulations of its citizenship and nationality regime was in the process of being shaped during the interwar period. For instance, by the time the State of Israel was founded, the Palestinian

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285 David Ben Gurion, "Address to the Knesset on the Law of Return," from Proceedings of the Knesset on July 3, 1950, Debate on the Law of Return and Law of Citizenship, Jerusalem 1951, as cited from *A Jew in the Modern World: A Documentary History*, eds. Paul R. Mendes-Flohr and Jehuda Reinharz, trans. S. Weinstein (Oxford: Oxford University Press, 1980), 480. Found in the Central Zionist Archives.

citizenship provided by the British to the Arab population was a controversial category they were continuously amending and challenging.

> By that point, the Arabs had been constituted as political subjects and active citizens for over two decades: they did not simply exist in nationalist imaginings but were a legally-defined demographic entitled to passports, identity documents, measures of civil, political and social rights and an international recognition.[286]

For this reason, the debates I outline among Israeli policy and law-makers around whether to adopt a formal constitution ought to be understood in the context of a tumultuous period with extensive territorial, demographic, and governmental change and instability. In the end, various historical and political reasons supported the decision not to accept a formal constitution. As per the archival material I cite, this was nevertheless a discussion that had to occur. The hesitations and positions put forth in these debates illuminate the schisms in Israel's body politic along with the kinds of ideological, religious, historical and political factors that maintain the logic of exclusion in its citizenship and nationality regulations.

Expectedly, in the early days after the mass displacement and expulsion of the Arab population, coupled with the institution of Military Administration for the remaining Arabs in the country, there was limited independent Arab participation in Israeli institutions. That said, the pressing issues – not least of them the absence of a constitutionalized guarantee of equality – facing the Arab population in the newly established Jewish State were clear from the onset.[287] For example, on February 16, 1949, the first address by an Arab speaker in the Knesset with simultaneous Hebrew translation

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286 Banko, "The 'invention' of Palestinian citizenship," 11.
287 As I have explained at length in previous writing, the absence of a legal guarantee for equality continues to exist in modern Israel. Although a promise of full equality for all citizens is made Israel's *Declaration of Independence*, it remains absent in the form of actual legislation. See *Stateless Citizenship,* 60.

was made by a Nazareth democrat. In it he pointed to the contradictions of Arab political participation in Israeli institutions stating, "We would not have undertaken the difficult task of representing the Arabs in the assembly had we not been confident that the members of the Knesset would support us, encourage us and cooperate with us." The Arab Member then went on to remind members that all parties had formally subscribed to the principle that the young state ought to be based on social and political equality for all citizens, regardless of creed race or sex – a practice that was already showing signs of failure.[288]

The first Knesset, which at the time was the Constituent Assembly, debated on whether and when Israel shall have a Constitution on February 1, 1950, the content of which revealed the magnitude of the ideological and political cleavage in the Israeli body politic in this period. Nahum Nir, Chairman of the Constituent Assembly, believed in the need to have a constitution. He reminds the members at the beginning of this meeting that as the *Declaration of Independence* prescribes that it be drawn up by the Constituent Assembly no later than October 1948, the onus of explanation is thereby on those

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288 "First Arab speaks to [The Constituent] Assembly," *The Palestine Post*, February 16, 1949, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem. The issue of language in the Knesset during these early years is an interesting and often comical one. Hebrew was new for many of the political and civil officers in Israel, and misunderstanding of Hebrew terms sometimes led to confusions and intensification of what were already difficult political discussions. In a session discussing the return of internally displaced Palestinians in Nazareth to their villages in November 22, 1949, Tawfik Toubi, an Arab Communist Member of the Knesset apologized for having previously accused Ben Gurion of 'slander' explaining that he meant to use the word 'criticism'. He did not know that the precise meaning of the Hebrew word *hashmatza* was 'defamation'. In "Loyalty of Israel Arabs affirmed, return of refugees in Nazareth urged," *The Palestine Post*, November 22, 1949, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem. Even Ben Gurion himself had an issue with the Hebrew language in the first years of the young state. In a speech before the Knesset on July 6, 1950, he addressed an earlier claim that the *Law of Return* was a "charter" for the Jews of the world – a characterization that was heavily picked up on by news media and commentators – explaining that he could not find an adequate Hebrew word to express what he wanted to say. In the end, Ben Gurion resorted to English, calling it "a 'challenge' to the Jews of the world for whom Israel was no longer barred." In Moshe Brilliant, "Law of Return passed by House," *The Palestine Post*, July 6, 1950, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem.

members in the Knesset who oppose the drafting of a constitution.[289] Nir addressed the common arguments by the opposition, the first being that Great Britain's constitutional structure is suitable for Israel. Explaining that the liberal tradition is for states to have constitutions, he points out that the unwritten constitution of the British was more stringently and meticulously followed than the written constitution of other states. In addition to outlining the limits of governmental powers, Nir held that unlike the patchwork structure of the Basic Laws a constitution would also lay down the relationship between the citizen and the State, the legislature and the executive in a manner that would not leave legal gaps. He concludes that the difficulty is not the legal aspect of drafting a constitution but, rather, that such a document imbues "the spirit, character, the past and future and the vision of the State… [as] a 'Jewish' constitution."[290]

Opposing Nir, David Bar-Rav-Hai of the MAPAI Party (a leftist worker's party that dominated until its merging with the modern Labor Party) argued that the Zionist project had not yet solidified to the point of adopting a set constitution:

> …[O]ne does not create a constitution at the beginning of a revolution, but when it is completed. All constitutions are an attempt to 'freeze' certain principles, to preserve them, inasmuch as it is possible to preserve any particular thing in the life of a nation…. [All] those constitutions that were created apropos the revolutionary process were nullified, exchanged, or altered as the revolution progressed.[291]

He also stressed the need to have a constitution that reflects the 'Jewish experience', stating that

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289 "Debate begins on Constitution," *The Palestine Post*, February 2, 1950, J112/1027, Knesset 1950 1951, Central Zionist Archives, Jerusalem.

290 Ibid.

291 Itamar Rabinovich and Jehuda Reinharz, *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present* (New Hampshire: Brandeis University Press, 2008), 97.

The constitution is created for that population which was in existence within the borders of the state. Ours is a different situation. Our population is fluid. We are not at the end of a revolutionary progress but at its beginning. For our revolution is not the establishment of the state, that is only one of its stages. Our revolution is the ingathering of the exiles; it is the maximum concentration of Jewry within Eretz Israel. The question is, Can we, today, in these fluid circumstances, cast the decisive molds that will determine the permanent framework of the State of Israel?[292]

Bar-Rav-Hai rejects the notion that England has no constitution and, as an example for Israel, goes through the numerous laws that together serve as a *de facto* determination of the constitutional structure of England. To make the argument that the *Torah* as the basic Jewish law renders a constitution unnecessary and even harmful, Member of Knesset (MK) Zerah Warhaftig (National Religious Front) focused more on the nature or character of a constitution as a prescriptive text. Pointing to existing laws, including the *Law and Administration Ordinance*, the *Transitions Law*, and the *Knesset Elections Law*, he argued that a system of law that regulate matters of government and law in the state already exists in Israel.[293] Warhaftig expresses,

… [T]o me the work [of drafting a constitution] demands inspiration, and that the Spirit of God must guide those who engage in such a project. …. Gentlemen, what is a constitution? A constitution must have educational value for the youth and for the Jewry of the Diaspora. …. It must be a sort of calling card, an indicator of the character of this nation and of this state. …. We are known to the world as the People of the Bible. We have no need of a second calling card.[294]

Belonging to the pro-Constitution faction, Yisrael Bar-Yehudah of MAPAM (originally Marxist-Zionist party and predecessor of the today's Meretz party) responded to the above arguments with a straightforward retort:

The very opposing of the legislation of a basic constitution is a continuation of …
a constant legislative irresponsibility with all depending on the moment, the doer,

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292 Ibid., 97-98.
293 Ibid., 98.
294 Ibid., 99.

or the circumstance. We must legislate permanent and stable basic elements that will obligate all.[295]

Bar-Yehudah emphasized the need for directives on governing the citizen-resident and the rights of the citizen with regard to the government. He was also the only one who refocused the discussion on domestic relations among Israeli citizens, Arabs and Jews alike.

> Don't forget that here we are the majority people, and that at our side there is a minority people – this after a bitter war – and coexistence will not be achieved so easily. Perhaps in this matter we should not depend only on the freedom to use emergency measures and various ordinances; rather, basic rules should be formulated….[296]

He continues:

> We live in this country, in the peculiar circumstances of the ingathering of the exiles, of different communities, coming from the four corners of the earth, with different habits… having all sorts of strange unwritten constitutions that sometimes contradict and oppose one another. Our goal is to create one nation out of this mixed multitude. …. This period of our history in our country is certainly not the end of our national revolution; it is the middle of it, perhaps only its beginnings.[297]

Menachem Begin of the smaller right-wing Herut Party, part of a national Zionist movement, took the pro-Constitution argument a step further. Begin lambasted the MKs for opposing the adoption of a constitution so as to retain their dominant powers over the law and over the people.

> There is one thing you wish to prevent: the existence of a law of freedom, of justice, that will take precedence over all other laws and that you will not be able to nullify one fine morning by a mechanical majority. … When liberal thought flourished it was said of the state's authority to be limited to the role of 'night watchman.' …. Yet, we, here, seem to have found the final answer to the

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295 Ibid.
296 Ibid., 100.
297 Ibid.

question of the type of living regime we should establish in our state. Not only will we extend the authority of the government apparatus to all aspects of our life, but we will turn the state into a sort of 'night thief.' The citizen – surrounded by detectives, superintendents, policemen, clerks; the rule – suspicion; the exception to the rule – trust. The rule is that the citizen is a criminal; the exception to that rule is that he is law abiding.[298]

Begin goes on to paint a grim image of an Israel without a constitution as a police-state with an unchecked government:

That is your philosophy – that your majority is superior to the nation, and that is why you oppose the constitution. If the Constituent Assembly legislates a constitution, then the government will not be free to do as it likes…. Does the government want a particular law? Then, that law is adopted. Does it want to nullify a particular law? Then, that law is nullified. And so, you are really situated above the law. We [will] have a ruling sect, superior to the law, because there is no constitution to restrain it. …. Your first obligation is to enact a constitution. You do not have the authority to change your mandate.[299]

The above differences of opinion reveal the nature and ferocity of the schisms in Israel's body politic. They also show the kinds of ideological, religious, historical and political factors that any constitution of the Jewish State will need to address. Despite this, the opening of the debate on a constitution was largely transferred to lawyers. This could have been because the involved MKs believed the issues of and the spirit that shapes the discussion were mainly of a legal nature. Regardless, there was limited public involvement in the determination of these issues, no referendum was held on this question not was there any appreciable preparation of citizens to weigh in on these complex issues.[300] By June 13, 1950, the Knesset reached a compromise. Known as the *Harari Decision*, it charged the Constitution, Legislative and Justice Committee of the Knesset with the task of creating a draft constitution, consisting of various chapters, each

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298 Ibid.
299 Ibid., 101.
300 Gerda Luft, "Debate on Constitution Starts," *The Palestine Post*, February 18, 1950, J112/1027, Knesset 1950-1951, Central Zionist Archives, Jerusalem.

of which would constitute a basic law.[301] Once completed, each of these chapters that

form a separate basic law would be combined together to serve as the constitution of the

State of Israel.

3.3. Pulling the break: 'Israel needs laws, not a constitution'

As Prime Minister, Ben Gurion was unequivocally opposed to the drafting of a

Constitution. Despite the prescription in the Partition Plan and Israel's *Declaration of*

Independence that a constitution be adopted, Ben Gurion did not feel the Knesset was

obliged to implement such a legal document given the arguments presented by MKs.

Similar to the MAPAI speaker above, he held that Israel's revolution was not yet

completed, and "moved forward every time another boatload of Jews arrived or more

barren land was redeemed."[302] Agreeing that the legislation inherited from the Ottomans

and the British mandate ought to be changed, Ben Gurion contended that a constitution

would neither expedite this nor protect the democratic rights of citizens. Knesset law

needs to be supreme, he argued, and went on to cite Eastern European states as examples

of the lack of a guarantee of civic rights and freedoms even with the adoption of a

constitution.[303] Put differently, Ben Gurion argued that a constitution is not necessary to

create, educate people toward, or preserve citizenship. In a speech before the Knesset in

September 1950, Ben Gurion summarized the position against adopting a constitution:

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301 Rabinovich and Reinharz, *Israel in the Middle East,* 101-102. Masri also writes "Before it was
dissolved, the First Knesset passed legislation that provided that the Second Knesset, and subsequent
sessions of the Knesset, would have all the powers that the First Knesset had, which included
constituent power, the power to adopt a constitution. Thus, the *Harari Decision* and the *Transition Act*
preserved the Knesset's constituent power," *The Dynamics of Exclusionary Constitutionalism*, 163.
See also Moshe Brilliant, "House favours constitution but provides no time limit," *The Palestine Post*,
June 14, 1950, J112/1028, Knesset 1950-1951, Central Zionist Archives, Jerusalem.

302 Parliamentary Correspondent, "Israel has Bill of Rights and needs Bill of Duties – Ben Gurion," *The
Palestine Post*, February 21, 1950, J112/1027, Knesset 1950-1951, Central Zionist Archives,
Jerusalem.

303 Ibid.

The United States has a constitution, but the law imposes military censorship in times of emergency. Britain does not have a constitution, and in times of peace the law does not permit military censorship there. The Soviet Union certainly has a constitution on the strength of which the Soviet Union has censorship and it is not only military. As to the dismissal of the Knesset – it is the custom in Britain that Parliament may be dismissed, and the Prime Minister is authorized to do this at any time he may think fit. I have never heard that there is in this any affront to democracy or to the rights of the citizen.[304]

Democracy is enduring in England not due to the absence of a constitution, he contends, but because there is respect for the rule of law and faith in the judges. Here England is given as an example where the absence of a privileged constitution is understood as heightening democratic structures and the rule of law. Ben Gurion goes on to assert that rather than a constitution Israel needs strong laws. Perhaps to mobilize the existing Orthodox and religious voices of criticism against a constitution in his audience in the Knesset, he begins by citing the Torah as "Israel's First Constitution." He gives a series of examples from the holy book to illustrate how legislation accompanied with respect for the rule of law among the public can ensure that the will of 'the people' is met. Using the First Book of Samuel where there is a detailed debate between a secular authority and a theocratic one, Ben Gurion points out that Samuel was forced by the power of the people as sovereign to meet their needs and demands, despite the fact that their demands were both wholly secular and based on source borrowed from other nations.[305] From here, he argues that

The freedom of the individual and the freedom of the people do not spring from proclamations of freedom nor from a constitution, even though it were the best in the world: they have their source in one thing – the rule of law. …. Where the law does not rule there is no freedom, even if there is a constitution that incorporates the most ardent and progressive scrolls of freedom.[306]

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304 "Israel needs laws, not constitution," *The Palestine Post*, Excerpts from a Speech by Mr. David Ben Gurion, September 13, 1950, J112/1028, Knesset 1950-1951, Central Zionist Archives, Jerusalem.
305 Ibid.
306 Ibid.

But the issue for Ben Gurion is not only the need for the rule of law. As Prime Minister of the Jewish State during a period when its political structures, territorial boundaries, legal institutions, and ideological mindset around citizenship and nationality were still malleable and being determined, Ben Gurion's main interest was to prevent any impediments to lawmaking in the Knesset – which he headed. He was particularly troubled by the notion that a Supreme Court or any other collective may have the power or authority to nullify Knesset legislation on the grounds that it conflicted with the Constitution. For him, in a non-federal system like Israel, where provinces do not need protection from the whims and interference of a Federal Government, such an arrangement would be nonsensical and merely serve to slow down the passing of required and/or desired legislation.

> We are in need of laws in every field. …. These laws limit and define the rights and duties of the citizens, the representatives of the people, the government officials, the police, of a man and his wife, or parents and children, of companies and organizations. No constitution can fulfill this purpose. Only by laws can this be done, laws that can be changed and amended from time to time as the need arises…. Real freedom is assured only under such circumstances, and only then will the rights of every man be safe.[307]

The element of flexibility and efficiency in the passing and withdrawing of existing legislation is key for Ben Gurion. Of course, flexibility in lawmaking is not necessarily impeded by the adoption of a constitution. As I pointed to above, all of Kohn's proposals for a Draft Constitution vested the greatest powers into the hands of the elected legislative or State Council. This was done explicitly on the basis that the struggles the newly created Jewish State will face will require prompt decisions and effective actions by legal practitioners. And yet, Ben Gurion stressed that

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307 Ibid.

> In a country where the rule of law [exists,] the making of law is in the hands of the people and the control and defence of the law in that of the judges. The people must not be hampered in the making of laws…. A judge cannot make laws and he cannot ban laws, for like every other citizen he is himself subject to the law…. In a state ruled by law there is a complete separation between the legislative authority, which is entrusted to the representatives of the people, and the executive authority, which is handed over to a body of judges…[308]

To quell the concerns of his audience of the development of an uncontrolled and dominating Knesset, he assures Members that the absence of a constitution and the limitation of the means of the judiciary to check the legislation passed by elected representatives will not lead to a totalitarian state.

> Every totalitarian regime is deadly poison to the Jews and to the Jewish people, physically and spiritually. These governments destroy the existence of the Jews or the existence of Judaism, or of both together. Israel, too, would not be able to exist under such a regime…. Under totalitarian rule, even if there is no special hostility towards them, their existence as Jews is destroyed. The fate of the Jewish people is linked to the fate of democracy. [309]

Clearly concerned about limiting the powers of the Knesset according to a Constitution that is interpreted and enforced by the judiciary, he ends this historic speech by warning his audience of the dangers to come. Ben Gurion points to the existential threats faced by Israeli democracy from both non-Jewish minorities and an ethnically and culturally diverse and divided Jewish population in the new state:

> If Israeli democracy wishes to survive for any period of time it will have to be armed with means of defence and instruments of action and creation which will prevent minorities – and not only non-Jewish minorities – from obtaining ascendancy over it by force, from inside or from outside. It is difficult to be so simple as not to see that there are such minorities among us, even if they do not all reveal their intentions….[310]

He emphasizes the potential existential threat posed to Israeli democracy and the Jewish

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308 Ibid.
309 Ibid.
310 Ibid.

character of the state by both non-Jewish minorities, and those minorities within the Jewish population, *whether inside or outside*. With this, Ben Gurion effectively paints a picture to the attendees that the absence of an empowered Knesset will render them all vulnerable. For him, the adoption of any constitution of any form to which the Knesset and elected representatives of the people will have to abide can only be seen as an impediment to action. It limits options for the self-defence of the newly established and 'vulnerable' Jewish State. The final compromise on this question reached by the attending MKs was the aforementioned *Harari Decision*. A slower process, this arrangement entailed that draft constitution would be produced through the formation of various chapters, each of which would constitute a basic law and eventually be combined to form a constitution.

Pointing to a major feature of the Israeli logic of exclusion, Ben Gurion's intervention in the Knesset on this debate reveals that far from stabilizing the new state – clarifying its parameters of inclusion and entrenching the protection of its citizens and residents – a constitution was almost completely viewed by the first Prime Minister as a barrier to political decision-making. While this potential impediment to Knesset decisions was located by Ben Gurion in the judiciary's implementation of the constitution, another barrier he likely considered was that of international law and United Nation's resolutions. Indicated in the drafts produced by Kohn, a constitution for the Jewish State would also mean the implementation of basic parameters of international law and UN decisions, including the Partition Plan. Kohn had admitted that the inspiration for the formulations he adopted in the various sections of the proposed constitutions was largely the Partition Plan and the constitutional model of Western parliamentary democracy. For example,

Jerusalem was not included as part of a future Jewish State. In contrast, Ben Gurion's distaste of UN involvement in what he considered the internal affairs of the established Jewish State was made explicit on a number of occasions, not least around the issue of Jerusalem. In an address to the Knesset on December 6, 1949, Ben Gurion stressed the organic and inseparable place of "Jewish Jerusalem" in the State of Israel, arguing that "we cannot conceive that the United Nations will try to tear Jerusalem from Israel or to impair the sovereignty of Israel in its Eternal Capital."[311] Eight days later, after stating, "in our view the [UN] decision of November 29 about Jerusalem is null and void," Ben Gurion announced the beginning of the transfer of government offices to Jerusalem and the creation of needed conditions for the proclaimed capital.[312] Such poignant and divisive political, legal, ideological and territorial issues would likely require clarification in any adopted Israeli constitution. Of these, the central issue being the pressing problem of the rights of non-Jewish minorities (mainly Palestinian-Arabs) alongside Jewish inhabitants in a Jewish State committed to maintaining a Jewish character, traditions, majority and source of law. The associated risk being, of course, heightened opposition by the international community to the newly formed and unstable Jewish State.

4. Summary and conclusions

Recent scholarship has shown that British colonial policies and practices before 1948 placed apart Jewish from Arab subjects in their applications for Palestinian passports,

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311 "Jerusalem is the heart of the State of Israel," *The Palestine Post*, December 6, 1949, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem.

312 Moshe Brilliant, "Knesset and Prime Minister will move to Jerusalem now," *The Palestine Post*, December 14, 1949, J112/1026, Knesset 48-51, 1948-1949, Central Zionist Archives, Jerusalem. These discussions are interesting in the context of the formal announcement on December 6, 2017 by American President Donald Trump of the country's recognition of Jerusalem as the capital of Israel. Globally controversial and in violation of international law, this decision reversed nearly seven decades of American foreign policy.

residency and visas. Using Banko, we see that the British Mandate was key to the internationalization of citizenship in that it brought together various (largely Jewish) ethno-national groups as Palestinian citizens. The British Jewish home policy placed Mandate Palestine in a colonial position set apart from other colonies in the broader Empire. Discussions among legal scholars and political figures in the Zionist leadership, the British government and the League of Nations outlined in the above archival material reveals the multifaceted difficulties in configuring the future nationality and citizenship regulations for the Jewish State. The outline of the political and ideological trajectory that led to Israel's contemporary citizenship and nationality structures accounts both for the features placing apart the incorporation regime of the Jewish State, and the reasons for why it explicates the global logic of exclusion and the internationalization of citizenship revocation.

Clearly there was extensive European normative, legal and spiritual influence on Israel's projected nationality and citizenship regime. Leo Kohn's proposed constitution borrowed heavily from the legislative and executive structures of the United States, France, England, Ireland and the Weimar Republic. However, a strong 'Jewish character' was also desired; an incredible task given that Jewish traditions were not a major source in the referenced Western democratic and parliamentary structures. The constitution for a Jewish State was meant for a body politic whose spiritual and normative traditions were not sourced by the constitutional structures of existing democratic countries. Hence, what was desired by the drafters was the design of an unprecedented constitutional structure: one that was seeped both in the Western (and largely Christian) tradition of modern and secular government, as well as in the basic principles of ancient Jewish law. Added to

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this, the differences of opinion and interpretation of these principles of Jewish law also point to the schisms in Israel's body politic.

As my examinations reveal, Israel was formed through the historical matrix of European colonialism, serving as a site of Western power and influenced by European citizenship and nationality regulations. And yet, the constitutional structures in existing Western liberal democratic countries are unable to fully encompass the parameters of Israel's particular logic of exclusion. This accounts for the existence of exclusions that are particular to Israel's citizenship and nationality regime. Unlike liberal democratic states in the West, Israel's major features of nation-statehood, including territorial borders, demography, and sovereignty largely remain incomplete, unresolved and illegitimate, indicating the type of citizenship regime it maintains. Its ability to interrogate and dilute the figure of the citizen in such a unique manner is precisely because as a nation-state it is a novel constitutional phenomenon. This arrangement has enabled Israel to use citizenship structures to place citizens in a relation of exclusive-inclusion: namely, to exclude by actually including the political subject. In doing so, it has rendered the 'immigrant' as the primary figure making up the Israeli body politic. This core analytical contribution of the study culminates in the following chapter, where I outline the mechanisms through which the colonial logic of pre-1948 Zionism resurfaces in contemporary Israeli citizenship structures.

Chapter Four | Constituting the Jewish State: Inverting the Citizen with the Figure of the Immigrant

"The passport is the most noble part of the human being. It also does not come into existence in such a simple fashion as a human being does. A human being can come into the world anywhere, in the most careless way and for no good reason, but a passport never can. When it is good, the passport is also recognized for this quality, whereas a human being, no matter how good, can go unrecognized."

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Bertolt Brecht, *Refugee Conversations*
[*Flüchtlingsgespräche*] (1940; Berlin, 1961)

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"Our state is the most dynamic state in the world and is being reshaped daily. Every day, new Jewish people come into the country, and every day abandoned land is liberated. These dynamics cannot be submitted to a pre-defined frame or artificial bonds."

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David Ben Gurion arguing against an Israeli Constitution
January 1949, Knesset Debate[313]

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1. Introduction

The Israeli project of statehood commenced during a historical period where every major nation-state in the world, certainly in Europe and North America, were re-considering their nationality and citizenship laws. In the aftermath of World War II, states were faced with significant boundary changes, anti-colonial independence struggles and disagreements over territorial ownership and governance. Further, major population movements in the form of transfer, resettlement, forced migration and exile due to state policies and military conflict during the War prompted questions of legal status and the protection of non-state individuals and groups. In this chapter I explain how the colonial logic of pre-1948 Zionism resurfaces in contemporary Israeli citizenship structures at the legislative, declarative, structural, and operational levels. The matrix of European colonialism within which the Jewish national movement burgeoned and where notions of

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[313]   Quoted from Tamar Amar-Dahl, *Zionist Israel and the Question of Palestine: Jewish Statehood and the History of the Middle East Conflict* (Berlin: Walter de Gruyter GmbH, 2017), 64.

liberal citizenship first took root will be demonstrated as a key source of the multifaceted racial discrimination and exclusion faced by non-Jewish citizens and subjects today. Closely examined is the *Law of Return (1950)* and the *Citizenship Law (1952)*. The former guarantees the right of immigration to every Jewish person to Israel and is completed by the latter which, called the first genuinely 'indigenous law' of the State, provides automatic citizenship to any Jew upon immigration. Together, these two laws form the substructure upon which a whole arrangement of formal policies, informal practices and new legislation ensuring Jewish dominance within the State of Israel are based.

Of these laws, I focus on the function of the *Law of Return (1950).* It clothes the Jewish historical experience in legal form and acts as a legal precursor that actually constitutes the Jewish State. Our detailed analysis of the conceptual and legal role of the notion of *return* as an original method of acquiring Israeli nationality reveals that Zionist lawmakers did not view it as either attached to the legitimacy, legal backing or will of the State's constitutional order. Put differently, I hold that while the *Law of Return* may itself be repealed or amended by the constitutional structures of the State for its explicitly discriminatory and exclusionary premise around the rights of non-Jews to immigrate and settle as citizens, the *right of return* is not something that can be revoked. In effect, as all Jews are covered by virtue of the principle of return, this also paradoxically includes those Jews who are born in the country. This means that on the event of the creation of the State of Israel, even the Jewish inhabitants of Palestine in the country are conferred nationality through the concept of return. With this arrangement, I explain that the Israeli constitutional order is structured in a manner that broadens the category of the 'Jewish

immigrant', placing this figure on the top of the constitutional process. A country primarily aimed at ingathering Jewish exiles, the immigrant is here placed at the center of the Israeli constitutional equation. *The 'desired' citizen in Israel is the figure of the Jewish immigrant*. This is the newcomer or 'guest' who by arriving to congregate in the Jewish State thereby reproduces and maintains both its identity and existence.

Together, the analysis in the previous chapters lay the basis for the present examination of the Israeli nationality and citizenship regime. The scholarship on transformations in liberal citizenship I surveyed revealed that discourse on the content, structures and boundaries of civic institutions are today increasingly becoming politically informal, un-rooted, de-territorialized and undetermined. Having laid out this general trend in the institution of citizenship I then turned to the Israeli case study. Using both literary and historical texts, I was able to locate discourses on citizenship and nationality in Mandate Palestine as sites of production of European colonial power. With this I have shown that the Jewish national movement burgeoned around and framed asymmetric Arab and Jewish access to rights through the colonial perceptions, experiences and discourses of Zionist figures and through the support of European hegemonic power. This colonial logic of exclusion has been demonstrated, using archival documents and scholarship I collected and examined in Chapter Three, to have delimited the features of the liberal citizenship and nationality regime anticipated for the Jewish State. This section weeds together these discussions by examining in detail the precise mechanisms through which the Zionist logic of exclusion continues from its pre-1948 forms to be constituted and manifested in contemporary Israeli citizenship structures. In doing so, I show that citizenship structures in Israel are arranged in a manner where the figure of the citizen is

being stretched. This chapter outlines that the matrix of inclusion into citizenship in Israel is less geared toward the citizen, and more towards determining immigration in a manner that enables Jewish entry and settlement. It makes intelligible the mechanisms through which Zionism forms a redefinition between the citizen and the immigrant.

By examining the *Law of Return* and its associated constitutional arrangements I analyze how the Israeli incorporation regime inverts the image of the citizen with the figure of the immigrant or guest. Compared with what Chapter Five points to as repeated efforts and trends restricting Western immigration systems and nationality laws, the political survival of the State of Israel depends on open immigration and automatic citizenship for Jews. For Israel, the desired, preferred, and most qualified political subject is first and foremost the 'Jewish immigrant'. The notion of 'return' thereby serves the function of overturning the classical practice in Western liberal democratic societies by rendering the 'Jewish immigrant' as the preeminent figure of Israeli politics. Thus, placed at the center of the Israeli constitutional equation, the immigrant guest surfaces as the 'real' citizen in Israel.

Collectively, these chapters form a key analytical contribution of this study. The interrogation of the figure of the citizen in Israel examined below is shown in the next and final chapter to be reminiscent of rising political trajectory where the citizen is assuming features of the more capricious figure of the immigrant. What I aim to highlight in this study, is that these processes occur through the active use of citizenship structures themselves. Whether in Israel or in the Western countries cited in the next chapter, they create exclusions and restrictions beyond the existing marginalization faced by racialized minority citizen communities. I argue that we are in the midst of a transition in

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citizenship regimes, towards a more interrogated and restricted model of citizenship.

Using the Israeli logic of exclusion as a looking glass for understanding changes in

Western citizenship, my study points to the forms through which the figure of the citizen

is being thinned down. To this end, it explores how the restrictions, redefinitions and

controls on citizenship in Israel today can help elucidate the implications what is

happening to citizenship in 'core' liberal democratic states.

2. Israel's constitutional makeup today

After the mentioned Knesset compromise in June 1950, Israeli parliamentarians agreed to

adopt various chapters, each of which would constitute a separate basic law and together

serve as the constitution of the State. Failed efforts in the Knesset at adopting a bill of

rights in the 1980s meant that "until the early 1990s, the doctrine of parliamentary

sovereignty, reflecting the influence of the English system, reigned supreme" among

Israeli lawmakers.[314] This changed in 1992, when the first two basic laws, *Basic Law:

Freedom of Occupation* and *Basic Law: Human Dignity and Freedom* were adopted.

The adoption of these two basic laws can also be understood as another Knesset

compromise. Both were implemented after unsuccessful efforts to enact *Basic Law: Basic

Human Rights*, a proposed bill that would have provided and enforced a broader basic

law that "dealt explicitly with the right to equality."[315] With ambiguous and undefined

language in its purpose clause that included the words 'Jewish' and 'democratic' in its

definition, *Basic Law: Freedom of Occupation* was designed by its legal architects to

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314 Masri, *The Dynamics of Exclusionary Constitutionalism*, 164.
315 Ibid., 169. He continues: "When the attempt failed, individual members of the Knesset… tried to
     salvage whatever was possible from the failed bill, and included a number of rights that were not seen
     as controversial in two basic laws they proposed in a private bill. A number of rights such as equality
     and freedom of expression were intentionally excluded because they were seen as controversial"
     (165).

mend the divide in the Knesset. This is an ideological, religious and conceptual divide that also exists within the character of the state more broadly.[316] *Basic Law: Freedom of Occupation* was passed by twenty-three members with no opposition or abstentions, while *Basic Law: Human Dignity and Freedom* was narrowly passed by a majority of thirty-two, with twenty-one votes against and one abstention.[317] Limited public involvement in the determination of these issues as well as the lack of preparation of citizens to weigh in on these key issues reveal the near total monopolization of the Knesset as the representative and embodiment of the sovereignty of the people. As such, the two basic laws were critiqued by their detractors for the "absence of public deliberation during… [a] crucial legislative process that reframed the state's fundamental values."[318]

Overall, the passing of the two Basic Laws in this context and manner can be read as an attempt by law and policy-makers to allow for as little inclusion and protection of rights and freedoms as politically possible. Looking at the historical compromises of Israeli constitutionalism from this light, where, first, the option for a constitution enshrining rights and protections is rejected in favor of the gradual adoption of separate basic laws so as to prevent the possibility of nullifying problematic Knesset legislation; and second, where two Basic Laws are then first adopted over forty years later so as to prevent the passing of another proposed bill dealing with a broader set of rights, one can infer that these constitutional efforts are themselves political and legal compromises seeking to maintain as much exclusion as possible in the face of greater calls for set legal

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316 Hanna Lerner, *Making Constitutions in Deeply Divided Societies* (Cambridge: Cambridge University Press, 2011), 80.
317 Ibid.
318 Ibid.

protections. This conclusion is reinforced by the continued absence of a provision in Israeli law for the concept of constitutional equality.

Although a promise of full equality for all citizens is made in the *Declaration of Independence*, it is thoroughly absent in the form of actual legislation. Equality is not an enshrined constitutional right, and is absent from the above *Basic Law: Human Dignity and Freedom* which has, in the absence of a written constitution, served as Israel's constitutional bill since its inception. This means that while the law protects the equal rights of disadvantaged groups, no general statute relates to the right to equality or freedom from discrimination for all citizens.[319] The lack of an explicit guarantee and protection of the right to equality is rooted in the declared Jewish character of the state.[320] A character that, as we will learn, is being increasingly constitutionally entrenched to the point where it cannot be changed democratically.

The primacy of the Basic Laws as constitutional legislation over regular legislation was first recognized in 1995, when the Supreme Court decided that the prescriptions in these laws will impact the reading of prior, 'ordinary' legislation.[321] With this decision, the basic laws have been considered and administered as a kind of 'limited'

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319 Noted by Haifa-based civil society organization Adalah: The Legal Center for Arab Minority Rights, "While Supreme Court Justices have interpreted *The Basic Law: Human Dignity and Liberty* as comprising the principle of equality, this fundamental right is currently protected by judicial interpretation alone. …. The absence of an explicit guarantee of the right to equality in the *Basic Laws* or ordinary statute diminishes the power of this right and leaves the Palestinian minority in Israel vulnerable to direct and indirect discrimination. Sourced in Adalah: The Legal Center for Arab Minority Rights in Israel, "The Inequality Report: The Palestinian-Arab Minority in Israel," and retrieved from Molavi, *Stateless Citizenship*, 60-61.

320   As I have explained elsewhere, although the definition of the Israeli state is continually contested, movements within Israel to amend the wording of The Basic Laws since 1985 so that the State of Israel is "the state of its citizens" or "the state of the Jewish people and its Arab citizens" have consistently been voted down by Israeli Knesset members. Sourced in Adalah, "The Inequality Report," and retrieved from Molavi, *Stateless Citizenship*, 61.

321 This was known as the *United Mizrahi Bank decision*, a key moment where the Knesset's constituent authority was both clarified and formalized. Lerner, *Making Constitutions,* 57.

constitution of sorts.[322] The features of these debates on Israel's constitutional makeup

resemble the political and structural dynamics pointed to that were present in the first

years of its establishment. Similar to the decision-making process in the first years of

statehood on the question of Israel's constitutional structures, these debates too were

conducted with little civic participation.

Relatedly, and perhaps more concerning, while basic laws have been enshrined

with a kind of constitutional merit and authority rendering them superior to other

'regular' and periodic legislation, the procedural mechanisms in place for implementing

and amending both sets of laws are the same. The Knesset does not require a "special

majority or special quorum" for changing or adopting a basic law, meaning that the

constitutional makeup of Israel as embodied in these declared superior laws can be

redrawn by a mere "handful of MKs."[323] In effect, while there are legal principles that

delimit the parameters of Knesset powers, it nonetheless remains a constituent body with

extensive and unmatched legal powers and authority to reformulate the arrangements and

character of the Israeli body politic. This structural arrangement echoes the grim image of

the Jewish State painted forty years prior by members of the First Knesset. An image of

the development of an uncontrolled and dominating representative body that can, for the

most part, implement major constituent changes with limited impediments, all with a

simple majority of ministers. The difference, however, is that while in the first years of

statehood the legislature engaged primarily in these constitutional disputes, the so-called

'Constitutional Revolution' of the 1990s was a debate between the institutions of the

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322 Masri, *The Dynamics of Exclusionary Constitutionalism*, 162. See also, Israeli Ministry of Foreign
     Affairs, "Basic Laws," accessed February 27, 2018, retrieved from:
     http://www.mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/Basic%20Laws%20of%20the%20State%2
     0of%20Israel.aspx.
323 Masri, *The Dynamics of Exclusionary Constitutionalism*, 175.

Supreme Court and the Knesset.

Within five years of this revolution, by March 1997, eleven Basic Laws were already approved by the Knesset, and designed to serve as the starting point for a 'constitution'. Praising what he considered the inclusion of the Jewish State into the historical matrix of liberal democratic Western nations, former President of the Israeli Supreme Court Aharon Barak proclaimed:

> [W]e became a constitutional democracy. We joined the democratic, enlightened nations in which human rights are awarded a constitutional force, above the regular statutes. Similar to the United States, Canada, France, Germany, Italy, Japan and other western countries, we now have a constitutional defence for Human Rights. We too have the central chapter in any written constitution, the subject matter of which is Human Rights; we too have restrictions on the legislative power of the legislator; we too have judicial review of statutes which unlawfully infringe upon constitutionally protected human rights; we too have a written constitution, to which the Knesset in its capacity as legislator is subject and which it cannot alter.[324]

Though ambiguities around "who really holds constituent power in Israel" remain, currently the Knesset is empowered to exercise constituent power that is sourced in and legitimized by the sovereignty of the people.[325] Of course, limited restrictions to the constituent power of a legal apparatus where the authority of any given government can significantly reconfigure all aspects of Israeli life raises numerous critical questions concerning democratic representation and rule. The moments where striking and prominent restrictions by the judiciary to the Knesset's constitutional ability to amend and enact law have been issued are those pertaining to Israel's definition as a Jewish and

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324 Aharon Barak, "The Constitutionalization of the Israeli Legal System as a Result of the Basic Laws and its Effect on Procedural and Substantive Criminal Law," *Israel Law Review* Volume 31, Issue 1-3 (Winter-Summer 1997): 3.

325 Masri, *The Dynamics of Exclusionary Constitutionalism*, 173. The question that follows is "Who is the People?" – one that Masri examines in great detail.

democratic state.[326] The legislative authority of the Knesset is repeatedly instructed by

the Supreme Court that it is not within its constitutional mandate to question or negate

Israel's character as both Jewish and democratic. Outside the parameters of Knesset

powers, the democratic character of the state as well as its Jewish character are thereby

both entrenched as part of the fundamental and unchangeable principles of its

constitutional system. The former may be expected given the historical, normative and

spiritual legal links the Jewish State has formed with liberal democracies in North

America and Europe. But the implications of the latter are key as it significantly trims the

democratic rights and protections of Israel's non-Jewish subjects.

> [T]his position means that the Jewish definition, which cannot be changed
> democratically, in essence trumps the democratic character. The Jewish character
> is not a matter of democratic agreement, but an axiomatic given that even
> democracy… cannot change or question. A scenario where the Knesset decides to
> change the definition of the state and change the Jewish character is of course an
> almost impossible scenario… [b]ut the fact that this almost impossible scenario is
> presented as an unconstitutional constitutional amendment gives a strong
> indication about how deeply entrenched and all-encompassing the Jewish
> definition is to the constitutional order.[327]

Mazen Masri continues to explain what this rigid constitutional arrangement reveals

about the makeup of the people holding sovereign power in Israel:

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326 Ibid., 176. For a critical discussion on the contradictions between the Jewish and democratic character
of the State of Israel, see also Jonathan Cook, *Blood and Religion: The Unmasking of the Jewish and
Democratic State* (London: Pluto Press, 2006); Uri Davis, *Israel: An Apartheid State* (New York: Zed
Books, 1987); Usama Halabi, "The Impact of the Jewishness of the State of Israel and the Status and
Rights of the Arab Citizens in Israel," in *Is Israel the State of All Its Citizens and 'Absentees'?* ed. Nur
Masalha (Haifa: Galilee Center for Social Research, 1993), 7-33; Baruch Kimmerling, "Religion,
nationalism and democracy in Israel," *Constellations* 6, No. 3 (September 1999): 339–363, and *The
Invention and Decline of Israeliness: State, Society, and the Military* (Berkeley: University of
California Press, 2001); Ian Lustick, *Arabs in the Jewish State: Israel's Control of a National
Minority* (Austin: University of Texas Press, 1980); Ilan Pappé, *The Forgotten Palestinians: A
History of the Palestinians in Israel* (New Haven: Yale University Press, 2011); Nadim Rouhana,
Palestinian Citizens in an Ethnic Jewish State: Identities in Conflict (New Haven: Yale University
Press, 1997); among others.
327 Masri, *The Dynamics of Exclusionary Constitutionalism*, 177.

> In this case, the People, or whoever is acting on its behalf, is not only bound by democracy, but also by a commitment to uphold the Jewish nature of the state that trumps democracy. The ultimate locus of sovereignty in this case, therefore, is not the People seen as the citizenry, but a different collective that believes in the Jewish definition and its minimum requirements.[328]

Despite this inflexible and unalterable structural and ideological definition, in November 2014 a bill for a new basic law called *Basic Law: Israel and the Nation State of the Jewish People* was approved and passed on by the Netanyahu-led Knesset to be debated at a higher governmental level. Introduced on August 3, 2011 by Avi Dichter of the Kadima-party, the proposed basic law was filed along with another thirty-nine Knesset members belonging both to ruling coalition and the opposition parties. Seeking to interpret the terms "Jewish and democratic" as they appear in the existing basic laws *Basic Law: Freedom of Occupation* and *Basic Law: Human Dignity and Liberty*, the proposal defines the State of Israel as the nation state of the Jewish people. It grants the right to self-determination in Israel exclusively to the Jewish people. Among other features, the proposed basic law unequivocally anchors the state's symbols, holidays, calendar and heritage as Jewish, stipulates Hebrew as the only official language giving Arabic only a 'special status', entrenches the maintenance of a Jewish demographic majority, and sources Jewish religious law as inspiration for the Israeli court system.[329] In other words, systematic discrimination in Israel is explicitly codified in racist legislation that unequivocally denies its non-Jewish citizenry, over twenty percent of the citizen population, any national rights and the right of self-determination in the state. Moreover, as Hassan Jabareen, Director of *Adalah*, points out,

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328 Ibid.
329 See Israeli Ministry of Justice, "Basic Law: Israel as the Nation-State of the Jewish People," accessed February 27, 2018 from: http://index.justice.gov.il/StateIdentity/InformationInEnglish/Documents/Basic%20Law%20110911%20(1).pdf.

> For the first time, the Israeli political right is proposing a Basic Law (a law that is equivalent to a constitutional law in a country that does not have a Constitution) that distinguishes between the 'Land of Israel' (*Eretz Israel*) and the 'State of Israel' in regards to the fulfillment of self-determination. The Nation-State bill declares that 'the Land of Israel is the historical homeland of the Jewish people…' and that the State of Israel is the national home of the Jewish people, in which it fulfills its aspiration for self-determination'.[330]

The distinction between the State of Israel and the Land of Israel in relation to self-determination is important. The former refers to pre-1967 borders that are internationally recognized, as per the UN Partition Plan, to belong to the territory of the State of Israel, with the remaining lands under its military control considered occupied lands, including the Golan Heights. The latter, however, is a geographical extension of this area that for some Zionist figures includes all of 1948-Palestine. For others, it includes areas of the Southern Levant, including parts of Egypt, Lebanon, Jordan and Syria. While this is the first time the line dividing the two is being explicitly codified in law in relation to national rights, the distinction itself is nonetheless part of a hegemonic Zionist discourse and commonly referred to by Israeli public figures and policy-makers. In effect, the proposed Basic Law is reaffirming popular and long-held Zionist attitudes that the national rights of the Jewish people extend to lands beyond the recognized territory of the State of Israel (a political project evidenced with continued Jewish-only settlement building in Jerusalem and the West Bank), but also possibly even beyond the lands of 1948-Palestine.

The absence of constitutional equality is actively played upon as the proposed Basic Law – having passed its preliminary reading in the Knesset in May 2017, and currently awaiting three further parliamentary votes before becoming law – gives

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330 Hassan Jabareen, "The Real Debate Over Israel's 'Jewish Nation-State' Bill," *The Nation*, January 25, 2015, retrieved from: http://www.thenation.com/article/real-debate-over-israels-jewish-nation-state-bill/.

concrete expression to discrimination against non-Jewish minorities in Israel in numerous ways. Preference is given to Jews both inside Israel and abroad over the citizens of the state, the resources and efforts of the state will be overwhelmingly directed toward fostering of Jewish culture, development, and heritage in Israel and abroad (when it comes to the state's non-Jewish communities, mere permission is given in the bill "to strive for the preservation of [their] culture, heritage, language and identity"[331]), and Arabic will no longer maintain the status of an official language. Yet, importantly, the proposed bill is not a major change from the existing state of affairs in all areas of life in Israel. As we explore, discriminatory and racist legislation explicitly targeting the non-Jewish community in Israel has been proposed and adopted by Zionist lawmakers since its inception. Since 2009, with the rise of extreme right and Orthodox representation in the Knesset, we have seen a particularly sharp increase in discriminatory laws that specifically target Palestinian-Arab citizens of Israel and affect them disproportionately. Extending from the Israeli logic of exclusion, they also target Palestinians in Jerusalem, the West Bank and the Gaza Strip, and the Palestinian refugee population. These laws are pervasive. They target all areas of Arab life in Israel: land rights, economic, land and budgetary allocations, freedom of association and expression, the right to protest and challenge Zionist policies, and even the right to ask for equality in the law, among other areas.[332] Indeed, these legal amendments are not made in isolation but against the background of a hegemonic Zionist discourse, whose aim is to force concession to a dominant Zionist consensus on the Arab citizenry.[333] The contemporary legal and

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331 Israeli Ministry of Justice, "Basic Law: Israel as the Nation-State of the Jewish People."
332 Molavi, *Stateless Citizenship*, Chapter 2.
333 Nadim Rouhana and Nimer Sultany, "Redrawing the boundaries of citizenship: Israel's new hegemony," *Journal of Palestine Studies* 33, No. 1 (Fall 2003): 5–22.

political arrangement in Israel is already set up in such a manner that entrenches Jewish

dominance and privilege in all areas of life. As such, the proposed Basic Law is as

significant as it is actually constitutionally unnecessary for the maintenance of this racist

hierarchy.

Despite upholding expansionist and discriminatory Zionist attitudes regarding

non-Jewish inhabitants in the State, the proposed Basic Law also ironically makes

reference to a liberal tradition and democratic principles. Expressing commitment to the

"values of Israel as a Jewish democratic state," it explicitly instructs legal decision-

making to refer to liberal "principles of freedom, justice, equity, and peace [as] derived

from Jewish civil law."[334] This reveals the major underlying tensions among Israeli

policy-makers between the clear ideological and political campaign to maintain Jewish

exclusivity and dominance in all areas of life, while attempting to incorporate liberal

democratic principles of governance. Jabareen explains that

> … the new legislation seeks to challenge the longstanding 'Ben-Gurionist' tradition regarding the rule of law. This tradition asserts that, apart from a few exceptional laws… Israel should refrain from enacting ethnically based legislation—laws that are clearly written in discriminatory language—in order to present the state as democratic in the international arena. Under this tradition, the executive and judicial branches would carry out the discriminatory and repressive policies instead, without the existence of ethnic legislation.[335]

Put differently, the public debate around the proposed bill is not *whether* or not

discrimination against Israel's non-Jewish inhabitants ought to continue, but rather, *how*

to continue to maintain and empower this arrangement. The debate is "not about whether

discrimination should or should not be *stopped*" but whether it should be clearly

expressed and codified in racist legislation that would then detract from Israel's perceived

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334 Ministry of Justice, "Basic Law: Israel as the Nation-State of the Jewish People."
335 Jabareen, "The Real Debate."

liberal character. [336] In essence, the parameters of and debates on this proposed Basic

Law nicely encompass the existing exclusionary constitutional character and vision of the

State of Israel.

Existing racist and discriminatory legal and political practices are legislated so as

to empower the Knesset's authority as a constituent body with extensive legal powers to

formulate the arrangements and character of the Israeli body politic. While in this case

the definition of Israel as a Jewish State is a tenet accepted by all major Jewish political

parties and figures well across the political spectrum – and, unlike its democratic

character, a feature that remains unquestioned and supreme – the constitutional makeup

of Israel today is maintained by the Knesset as an unmatched representative body. This

means that it that can, for the most part, implement constituent changes with limited

impediments. This said, the ideological and political cleavages in the Israeli body politic

become more explicit when considering *why* in the face of an unalterable structural and

ideological definition of Israel as 'Jewish' such a bill is even considered. Why do Zionist

policy-makers even need such a Basic Law? On the one hand, if it survives in this form

and is finally adopted as a Basic Law, it will further empower the implementation of any

discriminatory policies and practices proposed by Israeli public figures. Granted, existing

structures and ideological arrangements in Israel already provide for the implementation

of such legislation. Yet this proposed law can be said to at least simplify and make

apparent the major aims of the Zionist political project in the state. On the other hand,

more than simplifying an existing practice of racial discrimination in law, the proposed

bill can also be understood as part of an effort to reaffirm Jewish ascendancy

domestically, in the hearts and minds of Israeli society itself. The governmental and legal

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336 Ibid.

Zionist drive to explicitly entrench exclusive Jewish dominance, stand alongside drives by Western liberal democracies to implement legal exclusions to citizenship to maintain homogeneity and racialized structures of power. Although not a replica, both political projects clarify a violent rigid and exclusionary set-up and political tone that is already in place. The political motivations and legal effects of this ideological drive, as well as its liberal justifications, will be examined in the forthcoming chapters.

3. Constructing the Israeli body politic: Who is a Jew?

The 1948-war transitioned the Zionist movement from a pre-state to a post-state project. The widespread ideological commitments to the maintenance of the Jewish character of Israel are entrenched in a set of pre-state institutions that actively advocate Jewish independence in Palestine, mass Jewish immigration, increase of Jewish land ownership and other Zionist aims.[337] Together, these institutions – including the Jewish Agency, the Jewish National Fund (Keren Kayemeth Le-Israel, hereafter 'JNF'), the Histadrut (general union of workers), the Haganah (the underground army and later the Israeli Defense Forces), the Basic Fund, and the other political associations and their respective educational systems and kibbutz (agricultural commune) movements – formed a kind of proto-state before 1948, called *Yishuv*, at an institutional and practical level. After 1948, these very institutions, whose primary commitment to the Zionist ideology remained unscathed, continued to function but instead as quasi-state organizations.[338] The perspective of the Zionist movement therefore shifted to the logic of governance and

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337 Lustick, *Arabs in the Jewish State*, 89.
338 On the continuity of the pre-state ideological practices and policies, Gabriel Piterberg explains that "…the period between the War of Independence and the Six Day War witnessed attempts to replace the partially exclusivist institutional structures of Zionism with the formal universalism of the Israeli state. But the continued existence within Israeli society and politics of institutions that evolved with exclusivist intent during the *yishuv* did not bode well for such attempts." *The Returns of Zionism*, 91.

statehood. With this came the need to give shape to the Israeli body politic through engineered policies and practices of nationality and citizenship.

State-building initiatives began in a historical period where every major nation-state in the world, certainly in Europe and North America, were re-shaping their citizenship and nationality laws. In the aftermath of the World War II, states were faced with significant boundary changes, anti-colonial independence struggles and struggles over territorial ownership and governance. In addition to this, major population movements in the form of transfer, resettlement, forced migration and exile due to state policies and military conflict prompted questions of legal status and the protection of non-state individuals and groups. To address their displaced and dispersed populations, (and sometimes to create mechanisms to encourage a return or resettlement in the country, as was the case of post-war Germany) states were compelled to revisit and reform their nationality and citizenship laws to account for the new territorial realities and political power divisions. Israel was no exception to this post-war global process. As the projected Jewish State, it was at the center of the Western question of how to address the surviving Jewish populations and the historical record of human destruction that had just unfolded. However, the major difference in the case of Israel was that despite its newly acquired recognition as a state, the focus and objective of the Zionist movement was more about completing the project of the ingathering of exiles. In effect, statehood then was seen as an instrument, a *means* to an *end*. It is not the Zionist project that serves an overriding state project. Rather, it is the state that serves as an instrument for and is superseded by Zionism's continued settler-colonial project. An uneven relation appears where the master signifiers of *state* and *nation* are in the direct and explicit service of a

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chosen people. Key to exploring the Israeli logic of exclusion that gives shape and vigour

to its particular incorporation regime is understanding the processes through which the

projected 'people' in Israel – or the Jew as the figure making up the Israeli body politic –

are defined.

Raef Zreik points to the fact that the organizations and institutions declaring the

State of Israel were mandated to represent not only Jewish-Israelis in the *Yishuvs* of

Mandate Palestine, but Jews all over the world. By extension, this mandate, he explains,

reflects the broader mandate and purpose of the State of Israel itself. As we will further

explore, the *Declaration of Independence* itself specifies that the purpose of the state is to

be "open for Jewish immigration," foster "the ingathering of the exiles" and encourage

"the Jewish people throughout the Diaspora to rally round the Jews of Eretz-Israel in the

tasks of immigration and upbuilding."[339] Zreik explains that the mission of the state was

thus to draw in and integrate Jews from all other nation-states, including Arab ones,

making the creation of the state itself "only one stage in a long journey." He stresses that

this was (re)affirmed three years after the establishment of the state by David Ben Gurion

who, in a 1951 speech made to the American Zionist Movement, explained that the

creation of the state was not the culmination of the Zionist project:

> *Zionism is a dream while the state is a fact.* The state only speaks in the name of its citizens and its laws are only valid for its citizens within its sovereign borders. However, not all Jews can take part in this sovereignty, but rather only few of them …. As a citizen of Israel my relation to the people of Israel has priority over my relation to my state because the state is just a tool, and at this point in time the state has absorbed only a small part of the nation … *the state is a tool and an instrument, but it is not the only tool*.[340]

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339 Israeli Ministry of Foreign Affairs, "Declaration of the Establishment of the State of Israel," May 14, 1948, accessed February 27, 2018 from: http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20 of%20state%20of%20israel.aspx.
340 Emphasis added. Raef Zreik, "The persistence of the exception: Some remarks on the story of Israeli

If the aim of the Zionist movement is to return the Diaspora to the projected homeland then the question, therefore, is who is the desired or preferred exile to be included into the nation? How does one define the Israeli body politic? The notion of the 'people' as a whole and integral body politic represents the total state of the sovereign and integrated citizens. In Western politics, it is the basis of the constitutional order. It is the criteria for membership in the club of rights that oscillates between a model that restricts rights to preferred and dominant groups, and one granting rights to all who need protection and support. As a legal and political concept, the notion of the people is the dividing line between the included and the excluded.

In *Means without End: Notes on Politics* (2000), Agamben examines the question: "What is a people?" and begins by telling us that in modern European languages, the political meaning of the term 'people' "always indicates also the poor, the underprivileged, and the excluded."[341] Far from a total and integrated unit, the concept of a 'people' is "a dialectical oscillation between two opposite poles."[342] It includes both the qualified political subject, the body politic, and the excluded and marginalized classes, the bare life. The fracture or relation of exclusion configured within the 'people' arises because while it is a source of identity and meaning, it is also repeatedly compelled to turn to that which is outside, the excluded, for its self-definition. Part of a dialectic, the outside is always already a part of the concept. It is already included in the concept but it is nevertheless outside of it and cannot belong to it. Both poles of this concept are

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constitutionalism," in *Thinking Palestine*, ed. Ronit Lentin (New York: Zed Books, 2008), pp. 139-140.

341 Giorgio Agamben, "What is a People?" in *Means without End: Notes on Politics*, trans. Vincenzo Binetti and Cesare Casarino (Minneapolis: University of Minnesota Press, 2000), 28.

342 Ibid., 30.

indispensable and part of what he describes as "an incessant civil war that at once divides this concept more radically than any conflict and keeps it united and constitutes it more firmly than any identity."[343] For Agamben, this broad and recurring semantic tension within the concept of the 'people' reflects an inherent ambiguity in the role and character of this notion in Western politics. Historically, juridico-political attempts were made to fill the split that distinguishes the two branches of the 'people' by radically removing, erasing and dissolving the excluded and disenfranchised classes. Agamben contends that state-led biopolitical plans to form a simple 'people' without crevice remain futile. They will continue to ultimately fail as they do not foster a politics that is reconcilable with the oscillation and fracture inherent in the concept itself.[344]

The fracture embedded in the concept of the 'people' at work in the State of Israel differs from that which exists in liberal democratic states in the West. Determination of who is the desired or preferred exile to be included into the nation and provided the rights and benefits of recognition in Israel is mainly conducted through the above two foundational laws – both of which are examined in greater detail in the following sub-sections. Perhaps the most important legal expression of Israel's self-definition as a Jewish State, the *Law of Return (1950)*, guarantees this right of immigration to every Jewish person. Preference for Jewish persons – a category that is ethnic, religious and cultural – is legalized so that instead of a general civic immigration law, the *Law of Return* only applies to any Jew looking to immigrate to Israel, to her/his spouse, children, grandchildren, and their respective spouses. It applies to Jewish immigrants after the establishment of Israel and retroactively to Jews, without major preconditions, who had

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343 Ibid., 31.
344 Ibid., 32-34.

immigrated to Palestine or had been born there before the creation of the State. The exclusive parameters of this law become evident when Palestinian refugees who were expelled from their land and homes in 1948 are not granted the 'right of return' and not even entitled to residency or citizenship status. An extension of the Zionist project of enabling the return of the exiles as embedded in the *Law of Return* is *The Citizenship Law (1952)*.[345] This law defines the criteria under which non-Jewish persons can be granted citizenship in Israel and is meant to grant almost automatic access to Israeli citizenship for any Jew upon immigration "according to the Law of Return" without any length of residency, economic or language requirement. In essence, a nation-state with a hierarchical citizenship regime is established through this legal tenet encompassing all Jews, and only Jews, by virtue of their ethno-national or religious descent. This law solidifies the secondary citizenship status of Palestinian-Arabs, as there is no chance for a non-Jew to acquire automatic citizenship through the Ministry of Interior.[346] Together, the *Law of Return* and the *Citizenship Law* form the basis upon which a whole arrangement of formal policies, informal practices and new legislation ensuring Jewish dominance within the State of Israel are based.[347] Ultimately, these two laws are key in

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345 The Israeli *Citizenship Law* (ezrahut) is often mistranslated as 'Nationality Law'.

346 Indeed, even partners of Palestinian-Arab citizens of Israel can only gain citizenship or residency status through extensive legal procedures. Evidently, these same two laws, each of which is both ideologically and historically foundational to the State of Israel, privilege Jews by systematically excluding Palestinian-Arabs who were compelled to flee their villages and homes between 1947 1952, deny them their indigenous status, strip them of their right to their land and directly contradict the internationally-recognized Palestinian right of return as affirmed in UN Resolution 194.

347 On July 1, 2008, the Knesset voted to extend the validity of *The Citizenship and Entry into Israel Law (2003)* for another year to July 31, 2009. Although the law is defined as a "temporary order" it has been extended nine times to date. First enacted in July 2003, the law denies Palestinian citizens the right to acquire residency or citizenship status in Israel for their Palestinian spouses from the OPT entirely on the basis of their nationality. Since its inception, changes have been made to this legislation that add to its racialized structure. Amendments were introduced to the law in July 2005 which allowed family unification in very restricted and limited conditions, thus inflicting immense violations of rights protected by international law, mainly the rights to family life, privacy, dignity, marriage, and equality. In May 2006, the Israeli Supreme Court once again displayed its

managing the hierarchical design of the Israeli body politic.

In the case of Israel, defining the nation, or determining *who is a Jew*, is more than merely a prescription on who is allowed to enter but also determines rights and benefits of recognition.[348] The question of whether and how to define *who is a Jew* was prominent in a series of exchanges between Shabtai Rosenne, legal adviser to the Israeli Ministry of Foreign Affairs in the early years of the state, and Dr. Jacob Robinson, legal adviser to the Permanent Delegation of Israel to the United Nations. While the two agreed that they ought not provide a legal definition to the word 'Jew' in the implementative regulations of the citizenship legislation, Rosenne nevertheless pointed out that the absence of a clear definition creates clear administrative and public relations problems for the new State. A kind of constitutional placement of the cart before the horse. We are creating structures to include the 'desired' and qualified political subjects in mind for the Jewish body politic, but we do not even know how to determine whether someone actually qualifies as a 'desired' political subject in the first place. Rosenne remarks

> I must say that I am not so frightened of the consequences of a definition of Jew as you appear to be. As I understand it, the Rabbinic definition of a Jew is no more than an application of what we today would call *jus sanguinis*, descent being re-cloned through the mother and not through the father – a well known traditional reason for this – while proselytion is no more than a peculiar form of

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complicity in legitimating Israel's racialized and discriminatory legal system by upholding the constitutionality of a law that denies a person's basic rights to humanitarian connections (e.g. the right to family ties) on the grounds of her/his national belonging. See Adalah, "The Inequality Report." Further, in 2012, the Supreme Court rejected petitions against this law, confirming its constitutionality.

348   Masri writes that "The question of who is a Jew has an impact on many levels, not just on immigration, though immigration may be the most important. It affects the laws governing family law and inheritance, burial processes and, in some cases, the ability to purchase land or live in certain areas." *The Dynamics of Exclusionary Constitutionalism*, 108.

naturalization. The so-called "racialism" to which you refer in… your letter exists whenever nationality is transmitted *jus sanguinis*.[349]

Interesting here is the immediate recourse to religious practice and law for the definition of the national body of the State by a state official speaking from a largely secular and liberal legal tradition. Not shying away from the primordial underpinnings of Israeli nationality legislation, Rosenne's comment points to the racialist, historical and ideological matrix from which Israeli citizenship structures were born. This ideological matrix is largely Western given that the modern conceptions of citizenship Israeli law-makers considered when drafting its own civic regime were mainly from Western parliamentary states. In fact, a great number of Israeli lawyers engaged with law-making alongside Rosenne in these early years of the state had received their training in Germany. This includes Pinhas Rosen (originally Felix Rosenblüth) who was Israel's first Minister of Justice, and Uri Yadin who headed the legislative section of the Ministry of Justice.[350] Claude Klein points out that the *Law of Return* was adopted in June 1950, only fourteen months following the passing of the Basic Law in the German Federal Republic in May 1949. He continues to say that the German legal experience and practice is rather comparable with that of the Jewish State, as the question of 'who is a German' is "*mutatis mutandis*, with a discussion almost identical to the famous 'who is a Jew' question of Israeli law."[351]

Today, discussions on what it means to be a Jewish *and* democratic state, the balance and hierarchy between the two concepts, and the definition of who qualifies as a

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349 Letter from Shabtai Rosenne to Dr. Jacob Robinson, "Nationality Law, 1952," May 7, 1951, 1864/14-תצ, January 1, 1952- November 16, 1952, Israel State Archives, Jerusalem.
350 Claude Klein, "The Right of Return in Israeli Law," *Tel Aviv University Studies in Law* 53, Vol 13 (1997): 53.
351 Ibid., 54.

Jew within this incorporation regime remain prevalent among commentators and Israeli lawmakers. Key gaps exist between an inclusive democratic tradition vested in the principles of legal equality of recognized members despite their respective differences, political freedom and the rule of law, and the more obscure notion of a State that implies exclusive membership in the body politic and arrangements of privilege based on shared ethnic and/or religious identity. Similar to the apparently seamless recourse of liberal policy-makers to religious law, despite overtly secular legislation the common practice of determining *who is a Jew* (or, the *qualified political subject* of the Jewish State) nevertheless adheres to religious rules and stipulations:

> When *the Law of Return* was first enacted in 1950, it did not include a definition of who is a Jew despite the demands of religious members of the Knesset. In 1958, after consulting over 50 Jewish intellectuals worldwide, the Government decided to adopt a religious definition.[352]

In effect, despite being depicted as secular immigration legislation by a largely nationalist leadership, consideration of whether one qualifies as a Jew under the *Law of Return* is mainly reliant on religious evaluations and practice, rather than cultural ones. The definition of the body politic, the nation, or the qualified political subject therefore surfaces as a largely religious one. In practice, this also means that government ministries take direction from religious and spiritual leaders who play a key role in defining who belongs to the 'people' and thereby constitutes the nation in Israel.

> Membership in the People, it turns out, has a lot to do with religion. More striking is that it gives ample authority to individuals or bodies outside the state to make important decisions on who can immigrate, decisions that, as the

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352 Masri continues, "Even the "secular-liberal" test deals with religious issues. It comes as no surprise therefore that [Supreme Court] decisions rely heavily on religious Jewish law with lengthy quotes from Jewish religious texts. [….] The reality is that despite the attempt to present the definition and the tests as secular-liberal, they remain religious in their essence." *The Dynamics of Exclusionary Constitutionalism*, 107-108.

Supreme Court has acknowledged, are inherently related to sovereignty. The determination of whether an individual is Jewish is usually done using documentation provided by the head of the Jewish community where the potential immigrant lives, or the by the Rabbi of that community. Essentially, it is a delegation of power to that person who confirms the Jewish identity of the future immigrant. It is even more so when conversion outside Israel is involved. The most significant part of the decision who to admit to Israel as an immigrant and a citizen (and by extension who can join the People) is in the hands of a foreign individual/body. [353]

This matrix of privileged inclusion is further evidenced by the creation of an Israeli government committee established in May 2015. The committee was tasked with examining mechanisms to expand the breadth of the definition within the *Law of Return* of who is determined a Jew, and thereby entitled to immigrate. In its deliberations, the committee was to consider whether the definition of 'who is a Jew' should also be extended to groups with 'strong affinity to the Jewish people.'[354] The potential creation of a new category of 'Jewish' non-Jews, which includes an offer for extended stay in Israel, also involves undergoing conversion to Judaism upon arrival.[355] This re-reading of the definition of who is a Jew surfaced a few years earlier with the case of what are called 'lost tribes,' remote communities in Ethiopia, India, Latin America and other places claiming Jewish ancestry. In the case of the Bnei Menashe from India, although this trip was ruled by the chief Rabbinic authority in 2005 to have no proven Jewish ancestry and not to be a 'seed of Israel' according to its accepted *halakhic* definition, special government permission in October 2012 nevertheless enabled their immigration. In a context where largely numbers of Israeli citizens like the Bedouin are having their citizenship cancelled (an Israeli practice examined in the next section), this move to

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353 Ibid., 108.
354 Judy Maltz, "How a Former Netanyahu Aide Is Boosting Israel's Jewish Majority, One 'Lost Tribe' at a Time," *Haaretz*, February 19, 2015, retrieved from: https://www.haaretz.com/how-one-man-is-pumping-up-israel-s-jewish-majority-1.5308899.
355 Ibid.,

broaden the potential definition of 'who is a Jew' reveals itself as a response to a perceived erosion of the country's Jewish demographic profile. Although the parameters around who may constitute a Jew is what is being debated, the dominant and privileged figure of the desired 'immigrant' nevertheless remains unchanged and solely Jewish. Consistent with the notion of 'return' outlined below, what surfaces from the Israeli incorporation regime are juridico-political mechanisms that reverse the standard practice in Western liberal democracies by rendering the 'Jewish immigrant' as the primary figure of Israeli politics over that of the citizen.

In Israel, nationality reveals itself as a political problem. Nationality directly affects the continuity and preservation of Israeli statehood as such. Outlined below, today, Israel remains the only recognized state in the world whose citizens do not constitute its nationals. The Israeli body politic, the people belonging to its recognized nation are not a politically organized group of citizens, not do they reside under a single governmental authority. The constituents included in the Zionist national project are not limited to those within or even legally tied to Israel itself, whereas those who are actually within the state and legally bound to it are not viewed as its constituents. This point, (re)asserted by Ben Gurion above, dilutes and blurs the distinction between actual and potential citizenship, and goes on to delimit the state as an instrument for the broader project of Judaization in Palestine. The *Law of Return* ought not be understood as a law of the State of Israel, but rather as a legal precursor that constitutes the state. It is the Zionist project, and laws such as the *Law of Return*, that actually create the Jewish State, not vice versa. The absence of fixed and decided borders is also reflective of the intentions and mandate of the State of Israel and the Zionist incorporation regime. Its

body politic is not only not limited to those Jews inside Israel, but also does not actually include those non-Jewish citizens inside the state.

4. Regulating the citizen: Israel's first indigenous law

On April 1, 1952, nearly four years after the creation of the State of Israel, the Knesset adopts the *Citizenship Law*. In a preliminary version of a commentary on this law written in July 1951, Shabtai Rosenne expressed that

> In many respects this is the most important law yet enacted by the Israel[i] Parliament, for it fills a void which, having effects upon every person in the country, became more pressing with the passage of time. It is also probably the first law which is completely indigenous in the sense that it (a) regulates problems that are peculiarly the concern of the State, and (b) it does not aim simply at modifying earlier enactments of the mandatory Power in the light of the requirements of the new state, but at performing the more radical operation of substituting the citizenship of a territory under mandate the nationality of an independent State.[356]

The significance of this law is multifold. Despite being the first genuinely 'indigenous law' of the State, a critical feature given that Israel was born into a web of multifarious and intertwining legal systems, its architects had undergone an exhaustive examination of the nationality legislation of other countries. International precedents and modern trends in the practice and reading of legislation pertaining to citizenship and immigration were considered by the Zionist lawmakers. Their aim was to find similar arrangements elsewhere addressing the particular dilemmas posed by the overwhelming existence of dual nationality and statelessness in its body politic. With strong liberal underpinnings of individual rights and equality, substantial consideration was placed by these lawmakers

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356 Shabtai Rosenne, "The Nationality Law 5712-1952 and The Law of Return 5710-1950: A Brief Commentary," (Preliminary Draft, July 1951), 2236/22-ג, January 4, 1952- November 16, 1952, Israel State Archives, Jerusalem.

on the use of new conceptions and approaches to existing principles of nationality law. Rosenne recounts that

> … special attention has been paid to the position of the married woman who, has been placed on a footing of complete and individual equality with the man in the matter of nationality, even at the expense of impairing the unity of the nationality of the family. It has also been necessary to avoid unfair discrimination between different sections of the population while taking due account of their disparate circumstances and interests. [357]

Interpretation of 'political' rights was broadened to include an understanding of sociological factors, including social class, mobility, stratification, sex and lifestyle, among other arenas of human exchange and action affected by the interplay between individual agency and social structures of behavior. These prevalent conceptions in approaches to the nationality law of that period were considered by Zionist policy-makers in the primary context that the State of Israel was created as a Jewish State. The Israeli *Citizenship Law* can only be understood within the framework of basic Zionist philosophy, calling for the 'reunification' of the Jewish population with the land. And so, liberal principles were incorporated into this legislation insofar as they enabled (or at least did not impede) the transformation of the Jewish national home into the Jewish State. Central to this is the recognition that mass Jewish immigration forms an integral part of this mandate.

Working from the legal context of the Mandate for Palestine that was formally confirmed by the Council of the League of Nations on July 24, 1922, the UN Resolution 181, and the 1925 Palestine Citizenship Order along with other legislation, the main objective of *The Citizenship Law* was to express the "undoubted tie which exists between the actual Jewish population in the country and its potential Jewish population…

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357 Ibid.

scattered throughout the Diaspora."[358] Depicted by Rosenne as a "sociological and historical fact," the tie between the Jewish State and the Jewish nation *en genera* was an integral part of this law and entrenched in the idea of 'return'. Overall, the *Citizenship Law* listed, in order, key means of receiving Israeli citizenship: return, residence, birth and naturalization. For Jews only, the *Law of Return (1950)* was cited as providing automatic nationality to those born, resident in and immigrating to the country. Of course, a Jewish person who does not wish to avail her/himself of the rights granted under the *Law of Return* can also acquire citizenship through naturalization and residence. While for non-Jews, citizenship was mainly bestowed via various residency specifications. These requirements include being: a resident of Mandate Palestine and registered on March 1, 1952 as an inhabitant under the *Registration of Inhabitants Ordinance 1949*, an inhabitant of Israel on the day the law was implemented, and being in Israel, or "in an area which became Israel territory after the establishment of the State, from the day of the establishment of the State to the day of the coming into force of this Law, or entered Israel legally during that period."[359]

The *Citizenship Law* was also hailed by Dr. Jacob Robinson as "one of the most liberal pieces of immigration ever passed by any Government on the subject of immigration, citizenship and naturalization." Commenting on the law in a speech on May 29, 1952, Robinson expressed:

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358 Rosenne explains that another factor giving shape to *The Citizenship Law* was the Arab population in Israel. He held that given that Resolution 181 was not fully implemented and an Arab State has yet to be established, a simple ethnographical qualification is not required by Arabs to supplement a residency test enabling nationality. As such, for non-Jews the test of residence becomes the primary requirement for citizenship, including other external evidence of loyalty to the State of Israel (i.e. not having fought with the Arab armies during the 1948-war). Rosenne, "A Brief Commentary."

359 *The Citizenship Law*, sometimes translated as *The Nationality Law, 5712-1952* was passed by the Knesset on April 1, 1952.

No nation that I know of has ever written a nationality law which provided as many liberal provisions as does this bill. It has made the return of the Jews to their homeland as easy as possible while at the same time it has not discriminated against the local non-Jewish inhabitants.[360]

When pressed about the singling out of the Jewish people in a special section of the law and effects of conditioning citizenship on the legal residency within the country on the local Arab population, Robinson assured his audience that

The singling out of the Jews in this law is actually more of a symbolic than a practical differentiation. By no stretch of the imagination can it be construed that the law discriminated against the legitimate Arab residents of Israel. While the formulation of the conditions for the acquisition of Israel nationality by Arabs is somewhat different from that by Jews, the practical effect of mass naturalization is essentially the same. It does, rightfully, exclude from citizenship a small minority of Arabs who illegally entered the country after the establishment of the State. I know of no other State, including the United States, which extends such a privilege. Indeed Israel has exempted the Arab immigrants who may apply for naturalization from requirements which apply to other groups.[361]

In more ways than one, Robinson's statement is misleading and inaccurate. The separate and privileged treatment of Jews in *The Citizenship Law* is neither symbolic not accidental. As Rosenne candidly expressed, the existential function and task of Jewish statehood is to enable the exercise of the historic right to return to Palestine, a right limited to Jews only requiring immigration structures designed for its implementation. Thus the singling out of the Jewish people in a special section is fundamental to any Zionist citizenship and immigration legislation. Further, while the law appears to provide various mechanisms for the inclusion of non-Jews into citizenship, a closer look reveals efforts by lawmakers to allow for as little inclusion of non-Jews in the country as legally and politically possible. The largest group to be completely excluded from citizenship is

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360 Dr. Jacob Robinson, Legal Adviser to the Permanent Delegation of Israel to the United Nations. Speech on May 29, 1952, as outlined in "Israel's Nationality Law hailed as 'most liberal' in the world," 2236/22-ג, January 4, 1952- November 16, 1952, Israel State Archives, Jerusalem.
361 Ibid.

Palestinian refugees. Although there were around one million Palestinian-Arabs living in

Mandate Palestine in early December 1947, the mass displacement and series of

systematic exclusions, ethnic cleansing and rampant massacres by the Zionist forces

resulted in the creation of around 750,000 Palestinian refugees. As it stands, Palestinian

refugees and internally displaced persons (IDPs) and their descendants form the largest

and oldest unresolved case of refugees and displaced persons in the world: their numbers

continue to grow due to Israeli settler colonial policies and with the devastating armed

conflicts in Syria and Iraq, thousands of Palestinian refugees are subjected to forced

secondary displacement. When it comes to IDPs in the Israeli incorporation regime, the

settler colonial practices against Palestinians causing their ongoing mass displacement

and lack of access to citizenship rights since 1948 include, among other practices: land

confiscation; tens of thousands of administrative home demolitions; the establishment of

military 'security zones'; discriminatory housing and planning; imposed closures on the

movement of persons; the forced expulsion, transfer and relocation of entire

communities, as in the Bedouin populations in Jerusalem and the Naqab desert; major

Israeli military assaults and extreme warfare practices rendering impossible the

rebuilding of homes and civilian structures such as the 2006, 2009, 2012 and 2014 wars

in Gaza; the confiscation of identity cards and the revocation of residency rights in

Jerusalem, including those of children; discriminatory permit regimes; and the

displacement of over 30,000 Palestinians resulting from the illegal construction of the

Apartheid Wall in Jerusalem and the West Bank. Yet, despite this multiple and ongoing

displacement, today the majority of Palestinian refugees continue to live within 100

kilometers of the legal borders of Israel and the 1967 occupied Palestinian territories

where their places of origin and homes are located.[362]

During the Zionist ethnic cleansing campaigns, around 13,000 Palestinians were

killed and around 418 villages were destroyed and depopulated, leaving a mere 156,000

Palestinians remaining on their lands after the war.[363] For the remaining Palestinians in

the new State after 1948, the conditions imposed to prove residency were incredibly hard

to meet in practice. In a candid analysis paper written on October 14, 1958 on the Israeli

Citizenship Law from the *American Jewish Committee*, the difficulties facing non-Jewish

Arabs in Israel were outlined:

> Most non-Jewish residents had no proof of Palestine citizenship, which could be
> established only by possession of a Palestine Passport or identity card. Under the
> Mandate, only a small portion of Palestinians who travelled abroad had passports.
> Large numbers of Arabs who had identity cards either lost them or surrendered
> them to the Israeli Army during or immediately after the war. Many non-Jews
> were not included in the Registration of Inhabitants because careless registration
> teams by-passed many Arab villages. (The Minister of Interior promised to
> register some of them at a later date). Many Arabs had only temporary residence
> permits or military certificates of residence. Arabs had to prove that on the day
> the Law came into force they were Israeli residents, a term which had not been
> clearly defined and was, therefore, subject to the interpretation of the Minister of
> Interior....[364]

Consequently, "out of 175,000 Palestinian residents at the time the law entered into force,

only 143,000 were entitled to citizenship," with the over thirty thousand Arab residents

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362 Badil Resource Center for Palestinian Residency and Refugee Rights, *Survey on Palestinian Refugees and Internally Displaced Persons Vol VIII 2013-2015* (Bethlehem: Badil, 2009): 37.

363 Walid Khalidi, *All that Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Maryland: Institute for Palestine Studies, 1992), xix, xxxi, 581. Of the 418 villages reported by Khalidi, 292 villages were totally destroyed, 90 villages were largely destroyed with a small percentage of houses left standing, 8 villages had some houses destroyed, and 7 villages survived but were overrun by Jewish settlers.

364 Simon Segal, "A Brief Analysis of the Israeli Nationality Law," *American Jewish Committee, Analysis Paper*, October 14, 1958. Sent by Simon Segal, Director of the Foreign Affairs Department of the American Jewish Committee, to Shabtai Rosenne at the Israeli Ministry of Foreign Affairs on November 4, 1958. 1865/9-תצ, September 19, 1950- February 2, 1959, Israel State Archives, Jerusalem.

being forced to naturalize so as to gain citizenship.[365] The paper of the *American Jewish Committee* continues to remark that:

> While there is no doubt that theoretically there is discrimination [in this law] between Jews and non-Jews outside Israel, such discrimination is of very little practical consequence until that individual goes to Israel. However, even these practical consequences could be mitigated, and the Nationality Law aggravates them unnecessarily. This is contrary to the interests of the Jewish communities throughout the world, to a rational and sound Israeli immigration policy, and the interests of the State of Israel itself.[366]

For these reasons, Robinson's reference to the United States in justifying Israel's citizenship structure is unsatisfactory for two reasons. First, far from a small minority, the refugee population that is denied citizenship comprised over 80% of the total Palestinian-Arab population living in Israeli-controlled territories. And second, in contrast to a minority immigrant group requesting status in a host-society, Palestinian-Arab refugees and displaced persons are an indigenous group seeking return and recognition on their historical lands.[367] Overall, the classes and groups denied full inclusion and access to structures of citizenship are the various segments of the displaced Palestinian-Arab population that remained as residents, displaced persons and refugees in what became Israeli controlled lands. Given that the blueprint of *The Citizenship Law (1952)* is the transformation of the Jewish national home into the Jewish State, Palestinian-Arabs are not only not a priority for constitutional inclusion but, as non-Jews with historical, legal

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365 Masri, *The Dynamics of Exclusionary Constitutionalism*, 87.
366 Segal, "A Brief Analysis of the Israeli Nationality Law."
367 I have written extensively on the problematic use of the term 'minority' in relation to Palestinians inside the Israeli incorporation regime: "The liberal-Zionist account of the Palestinian-Arab population within Israel as a 'minority' community is completely lacking in both historicity and an analysis of power. The authors abruptly transition Palestinian-Arabs in Israel from a national non-immigrant collective who, while constituting a demographic minority in contemporary Israel, are nevertheless living in their historical homeland, to that of a national minority similar to other national collectives living in Israel. Defining Arabs as a national minority is a deliberate attempt to revise their historical presence on the land, thereby justifying state amendments to their political and legal claims. This redefinition and reconceptualization of Arabs in Israel is done without asking *why* Palestinian Arabs in Israel are a minority or *how* they came to be a minority." *Stateless Citizenship*, 136.

and political claims, they are an impediment to the fulfillment of the Zionist project. As such, the constitutional efforts to construct citizenship laws that follow liberal interpretations of nationality laws of the time are revealed as political and legal compromises seeking to maintain as much exclusion of non-Jews as possible. Put differently, the residency requirements of this law, one of the "most liberal pieces of legislation," were structured in a manner by Israeli law-makers to deny access to citizenship and reduce numbers and access to the land to the vast majority of the non-Jewish population living under Israeli control.

This is evidenced in contemporary form with the continued practice of sweeping citizenship revocation, or cancellations, of Bedouin citizens of Israel. In 2016, Israeli officials from the Ministry of Interior confirmed an ongoing policy since 2010 where, for Bedouin citizens, clerks are instructed to consult the population registry for records of their parents and grandparents between the years of 1948 and 1952. When Bedouin citizens would come to Interior Ministry offices in Beer Sheva/Beer al-Saba to deal with routine issues such as obtaining a birth certificate, registering the names of their children, or changing their address, the Population Authority of the Ministry would check not only their status, but also that of their parents and grandparents in the early days of Israeli statehood.[368] Importantly, in the years between the 1948 establishment of the Jewish State and the 1952 passage of *The Citizenship Law*, numerous Palestinian Arabs were unable to register with the Population Authority. This is partly due to the fact that their communities were governed by a Military Administration formed by Israel on the basis

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368 Jack Khoury, "Israel Revokes Citizenship of Hundreds of Negev Bedouin, Leaving Them Stateless," *Haaretz Online*, August 25, 2017, retrieved from: https://www.haaretz.com/israel-news/.premium-israel-revokes-citizenship-of-hundreds-of-bedouin-1.5445620.

of the *Emergency* Regulations set up during British rule.[369] In many cases, consulting the

records of an individual's grandparents meant examining their citizenship status during

the time of the British Mandate. A paradoxical practice, as this was a period when Israeli

citizenship *did not even exist*. This meant that Bedouin citizens would arrive *as citizens* at

the Ministry to deal with a bureaucratic issue or procedure, and effectively leave with a

new legal status. The Ministry clerk would inform them that their Israeli citizenship had

been given in error by the State, and in that moment, would change their status from

citizen to resident, issuing the new document. Having in that very moment become a non-

citizen resident whose presence in the country is now more precarious, these former

citizen Bedouin are instructed by the Ministry to submit a request and start the process of

obtaining citizenship from the beginning. As a result, they were reduced to the status of a

new (non-Jewish) immigrant coming to Israel. [370]

When it comes to interpreting general parameters and specific questions of *The*

Citizenship Law, considerable difficulty arises. Namely, the complicated task faced by

architects of the law to combine the liberal tradition of Western, mainly English, civil law

with Jewish religious law. Rich and varied, the literature of Jewish law relies heavily on

the centuries-long decisions, interpretations and regulations provided and passed on by

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369 Used by the newly established state to control, isolate and dispel the remaining Arab population, the
Military Administration enforced a rigid array of restrictions on the mobility of Palestinians living in
the Galilee, the Triangle, and the Naqab, maintained careful surveillance, supervised the flow of Arab
labor to Jewish cities, derailed attempts at organized political activity, and pre-empted efforts by
internally displaced Palestinians to return to their homes and lands. Philip Mattar, ed. *Encyclopedia of
the Palestinians*, Revised Edition (New York: Facts on Line Books, 2005), 377.

370 Khoury writes that "During an earlier meeting of the [Interior] committee in December 2015, the
committee's legal counsel, Gilad Keren, expressed doubts regarding the legality of this process: The
citizenship law refers to cases in which citizenship was obtained based on false details, namely under
more serious circumstances, not when the state has made a mistake. It refers to people giving false
information before obtaining their citizenship. The law allows the interior minister to revoke
citizenship only if less than three years have passed since it was granted. After that a court needs to
intervene in order to revoke it. I therefore don't understand how, when a person has been a citizen for
20 years and the state makes a mistake, that persons status is changed." In "Israel Revokes
Citizenship."

constitutive Rabbinic authorities. Absence of a useful receptacle for expressing legal

concepts that are not found in Rabbinic law and the lack of guidance from the Supreme

Court on how (and to what extent) to interpret words with preexisting meaning and

connotation in Rabbinic law left policy-makers with a weak legal compass. For former

Supreme Court Justice Cheshin, the two met "if it is established beyond all doubt that the

stipulations of the modern law and the prescriptions of the ancient law are comparable to

one another in the legal context under discussion." Yet, he nevertheless concedes that

Zionist legislators "borrowed" modern ideas from the ancient word thereby reintroducing

another ambiguity in interpretation.

Rosenne outlines the problem of interpretation in Israeli citizenship and

nationality laws in cases where a word appearing in modern law requiring interpretations

according to that tradition is taken as the Hebrew equivalent of an idea located in English

law. Pointing to the need to develop an interpretation of citizenship legislation that is

indigenous and appropriate to the unique and multifarious legal influences of the Jewish

State, Rosenne explains:

> In the first place, there is no objective reason for regarding the Nationality Law
> [*Citizenship Law*] as operating within a general English context. The Law itself is
> not intricately tied to the whole complex of the Israel legal system, and there is no
> reason for thinking that the legislature had in mind any particular foreign system
> of law when enacting the Nationality Law. In the second place, it is suggested
> that comparative study of nationality laws and judicial interpretations by the
> courts of various countries is of little assistance and less relevance in interpreting
> individual words and phrases appearing in any one nationality law. [I]n the
> absence of guidance from the secular courts it would be unwise, at this stage, to
> assume that they would prefer a possible interpretation at variance with the
> accepted one in Rabbinic law and, more particularly, that the nationality law will
> be interpreted in the light of any individual system of law.[371]

For Rosenne, the interpretation of Israeli nationality law needs to be indigenous. This is

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371   Rosenne, "A Brief Commentary."

so that they are not indiscriminately subjected to the same canons of interpretation as English and Mandatory law. Part of the assertion of independence and sovereignty of the newly established State also includes the need to engineer a uniquely 'Israeli' interpretation of imported Western legal concepts to match the specific aims and circumstances of the Zionist project. And here, the prominence of the concept of 'return' and its particular interpretation in Israeli citizenship legislation is clarified.

5. Law of Return (1950): Clothing historical experience in legal form

The notion of *return* symbolized the Zionist answer both to legal and political restrictions on the immigration of Jews to the territory and to the problem of statelessness that affects them in the modern state system. A crucial idea in Jewish history, Zionist literature and, subsequently, a cornerstone of Israeli constitutional structures, return is what Rosenne calls "an original mode of acquiring Israeli nationality."[372] Of course, Israel is not the first state in the world to employ the notion of return in a constitutional capacity. After World War I and in the interwar period, the notion of return was applied in the nationality laws of states that were newly formed and whose borders were redrawn. This was done to enable dispersed refugee populations to come back to their home societies. Moreover, after World War II in 1945-1946, the former Soviet Republic of Armenia adopted a law enabling the return of Armenian nationals to their homeland. However, by presenting the application of the concept of return more as a *restoration* or *reinstatement* of former political powers, the Israeli application of this pivotal concept differs.

The Old Testament Hebrew word for this foundational notion simultaneously implies a process of captivity (*shevut*) and of return (*shiv*). This meant that coming back

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372 Ibid.,

to the old Jewish polity centuries after the Destruction of the Temple and the end of the

Davidic monarchy was, in Jewish religious and spiritual thought, both to be a captive of

or returned to the land and, by extension, God. Relevant to modern international

structures of nationality, the Zionist application of the concept of return refers to the loss

of political power and independence in Biblical times, long before the modern nation-

state and international system even existed. Outside of a liberal democratic tradition of

modern nation-state and law-making, the argument for Jewish indigeneity justifying the

application of the concept of return is sourced in the Jewish people's "eternal, historic

right to the Land of Israel [as an] inalienable inheritance of its forefathers."[373] Rosenne

explains that

> … in the case of Israel the loss of political independence occurred in the too
> remote past for its consequences to be remedied by ending the effects of
> relatively modern antecedent treaties. For Israel, the conception of Return is a
> deep historical, philosophical and religious experience which the Law now tries
> to clothe in appropriate legal forms...[374]

Evidently, with the *Law of Return (1950)*, modern Zionist lawmakers were attempting to

render legally tangible a concept mostly present in centuries of religious and spiritual

yearning and Messianic writing. Additionally, the concept of *return* had, during the

Mandate Period, also come to imply the complete opening of Palestine's borders for

unhindered Jewish immigration. This was a political practice that Western states

mistrusted and opposed, given their obsession with the sovereign regulation of population

movement and territorial control. As explored in Chapter One, civic membership in a

nation-state requires the identification of a certain personhood that can be placed apart

and in opposition to non-citizens, strangers and foreigners. Modern nation-states need the

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373 Lustick, *Arabs in the Jewish State*, 92.
374 Rosenne, "A Brief Commentary."

category of "illegal immigration" along with constitutional structures that impose restrictions and levy penalties on such persons to clearly outline the margins of the body politic. In effect, the notion of unhindered return and open borders for Jews in Palestine had come to acquire a negative and adverse legal and political connotation among Western powers.[375] As the first undertaking of Zionist lawmakers in the new Jewish State, the *Law of Return* (1950) reversed this understanding of *return* into the form of a positive right obliging action for Jews to immigrate into the newly created State. This law served as an original immigration law. And, after a couple of years when it was combined with the *Citizenship Law* (1952) to determine access to Israeli citizenship, the notion of *return* effectively became translated into a modern legal concept. Entrenched as a legal principle and a constituent element of the State of Israel, the full legal implications of the concept of return are given shape with the *Citizenship Law* as the principal means of acquiring Israeli nationality.

6. Placing the 'Jewish immigrant' at the center of Israeli politics

Keeping the above in mind, however, the constitutional coding of *return* does not mean that Zionist lawmakers viewed the concept of return as either attached to the legitimacy, legal backing or will of the constitutional structures of the new State. In an address to the Knesset on July 3, 1950 debating the *Law of Return* and the *Citizenship Law*, Ben Gurion remarked that

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375 Beyond the case of Palestine, the notion of open and uncontrolled borders is, of course, one that is generally opposed by modern states. James C. Scott's work examines how, by their nature, states seek to render all things legible so as to better control their societies. To establish such control, states have to have an understanding of it and information about society and the territory they occupy, an objective that has launched various political projects including "the creation of permanent last names, the standardization of weights and measures, the establishment of cadastral surveys and population registers, the invention of freehold tenure, the standardization of language and legal discourse, the design of cities, and the organization of transportation." *Seeing Like a State* (New Haven: Yale University Press, 1999), 2.

> The Law of Return is one of the Basic Laws of the State of Israel. It comprises the central mission of our state, namely, ingathering of the exiles. This law determined that it is not the state that grants the Jew from abroad the right to settle in the state. Rather, this right is *inherent in him* by the very fact that he is a Jew, if only he desires to join in the settlement of the land.[376]

It is not accidental that Israel's *Declaration of Independence* outlines that the primary and elemental principle governing the central mission of the State of Israel is that, before anything else, it "will be open for Jewish immigration."[377] It states, in almost prophetic terms, that "impelled by [an] historic and traditional attachment, Jews strove in every successive generation to re-establish themselves in their ancient homeland."[378] But Ben Gurion's candid description (now common among Israeli policymakers) of the right of return as "*inherent in him* by the very fact that he is a Jew" carries various legal and conceptual implications and deserve particular attention. The *Law of Return* is a kind of constitutional coding of a physical and spiritual embodiment of a right return. One that is granted only because a person is Jewish and thus considered to be part of a single national unit. This means that, for Zionist policy-makers, the Jewish right of return to and settlement in the Land of Palestine is not something that can be un-legislated or repealed by modern structures in the state system. Yfaat Weiss explains that

> The semantic debate that took place in the committee between those who advocated the term 'return' and others who were in favor of calling the law the 'Ingathering of the Exiles Law' reflects different levels of awareness vis-à-vis the historical symbolism of the law. [I]t is this pervading sense of fulfilling a historical mission that became the bedrock for the wording of the Law of Return, and is responsible for the great weight attached to origin in the model of Israeli citizenship, that is, to Jewish ethnic affiliation, and less to territory, that is, the state.[379]

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376 Ben Gurion, "Address to the Knesset on the Law of Return," 480.
377 *Declaration of the Establishment of the State of Israel*.
378 Ibid.
379 Yfaat Weiss, "The Golem and its creator, or how the Jewish nation-state became multi-ethnic," in *Challenging Ethnic Citizenship: German and Israeli Perspectives on Immigration*, eds. Daniel Levy and Yfaat Weiss (New York: Berghahn Books, 2002), 82.

This builds on my point that, rather than state-building, the central and overriding objective Zionist project concerns Jewish immigration. Statehood is, as explained earlier, understood as an instrument, a *means* to an *end*, which is supported insofar as it enables and furthers the primary aim of ingathering the Jewish exiles. This basis of Zionist thought is therefore the fundamental guiding and existential principle of the State of Israel. Hence, the *Law of Return (1950)* may possibly (though, obviously highly unlikely) be repealed or amended by the constitutional structures of the State for its explicitly discriminatory and exclusionary premise around the rights of non-Jews to immigrate and settle as citizens. But the *right* of return for Jews is not something that can be revoked.

A bizarre effect of this arrangement is that all Jews are covered by virtue of the principle of return, including those Jews who are born in the country. Paradoxically, even the Jewish inhabitants of Palestine on the event of the creation of the State of Israel are conferred nationality through the concept of return. Rosenne nicely outlines this curious process:

> The *Law of Return 5710-1950* [states that] … 'every Jew who, before the entry into force of the Law, immigrated into the country, as well as every Jew born in the country after the coming into force of the Law, shall have the same status as a future Jewish immigrant.' By a peculiar inversion, the status of Jews already in or to be born into the country (whether themselves immigrants or not) is assimilated to that of the new immigrants, and not *vice versa*, as might have been anticipated. This provision is an interesting example of the awareness that Israel is *par excellence* a country of immigration.[380]

The category of the 'Jewish immigrant' is broadened and placed of the top of the constitutional process. Immigration surfaces as *the* key priority in the Israeli nation-

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380   Rosenne, "A Brief Commentary."

building project.[381] The assimilation of the Jew born in the country prior to its

establishment and the Jew born elsewhere and entering via migration is important. They

are not assimilated into the category of the 'original inhabitant' but instead into that of

the 'new immigrant'. This distinction is key to understanding how the concept of return

functions. In the Zionist lexicon, *return* involves both going somewhere you have never

been; and if you are already there, it involves being re-categorized as having returned. It

reverses the standard practice in Western liberal democratic societies, placing the 'Jewish

immigrant' at the center of Israeli politics. A country primarily aimed at ingathering

Jewish exiles, the immigrant is placed at the center of the Israeli constitutional equation.

Compared with what Chapter Five will reveal as consistent efforts and trends restricting

Western immigration systems and nationality laws, the political survival of the State of

Israel depends on open immigration and automatic citizenship for Jews. Taken together,

for Israel, the desired, preferred, and most qualified political subject is first and foremost

the 'Jewish immigrant'.

The method of acquisition of nationality by *return* reveals that in this sense the

acquisition of citizenship in Israel is based on the delicate integration of the principle of

jus sanguinis and the principle of *jus soli*. Here the method of automatic nationality (and,

by extension, citizenship) through return reflects a subtle amalgamation of these two

principles. The Israeli *Citizenship Law (1952)* bestows all Jewish children born in the

country Israeli citizenship at first sight, irrespective of the nationality of their parents. But

that the child is Jewish also implies that the parents are also Jewish and would also

qualify for *prima facie* nationality. The principle of *jus sanguinis* indicates that

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381 See Ayelet Shachar, "Whose republic: Citizenship and membership in the Israeli polity,"
     Georgetown Immigration Law Journal, 13 (1998): 233–272.

assessment for the original nationality of the new-born child is located in the nationality

of at least one parent irrespective of the place of birth. What occurs is a double

movement, where the Jewish-born child acquires membership both through *jus sanguinis*

and *jus soli.* In effect, the two foundational principles of nationality law are carefully

amalgamated. Rosenne remarks that,

> In this sense the principle of jus sanguinis, which might be better termed jus
> originis, operates to confer Israeli nationality upon children, any one of whose
> parents is an Israeli national, wherever such children are born…. The
> combination in this manner of these two principles is thus an important
> contribution to the reduction of cases of statelessness, and is in accordance with
> modern trends on this subject.[382]

An inevitable product of the emergence of strong nation states was the exclusion of

stateless persons from the community of citizens. State-produced statelessness increased

in the interwar period as European states sought to regulate their populations and

generated laws permitting the expatriation of 'unwanted' citizens. Of course, revocation

of civic rights and expatriation of various groups of residents and citizens was legal in

numerous European countries even prior to the broad legal exclusions implemented by

the National Socialists and other xenophobic and nationalist political parties in Europe.

However, the rise of new exclusionary legal categories of national identity and belonging

in Europe meant that, of the various refugee populations in the inter- and post-war period,

Jews were one of the major categories of stateless persons. Responding to this

extraordinary situation, and keen to enable easy and prompt immigration of Jews to the

new State, Zionist lawmakers thereby combined the above two principles regulating the

original nationality of an individual. The simultaneous application of *jus sanguinis* and

jus soli thus creates a kind of legal loop ensuring Jewish inclusion: if a Jewish immigrant

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382   Rosenne, "A Brief Commentary."

does not qualify for Israeli nationality through one legal method, she/he is automatic covered through the other. Weiss contends that "[i]t was not simply that legislators gave preference to Jewish migrants over other, non-Jewish migrants; they also made the civil status of Jews born in what was now the state of Israel equal to that of those who immigrated to the country on the basis of the Law of Return."[383] The provision blurring the division between the Jewish immigrant and those Jews both in the country was legally amended in 1980 before which the latter group was registered as having acquired 'citizenship via return'.[384] Significantly, while this change meant that Jews born in Israel were now registered as citizens by birth (rather than return), the section of the blurring in the *Law of Return* itself has not been amended and remains active. Despite not being legally referenced or requiring application, under this section of the existing law, those Jews who had been in the country before statehood nevertheless formally have the same status as a future Jewish immigrant. The implications on citizenship of this legal assimilation of the Jew born in the country and the Jew born elsewhere and entering via migration informs the first core track of this study.

7. Posthumous citizenship: Victims of the Holocaust as an 'immigrant population'

> Yad Vashem:
> To the martyrs of the destruction
> To the rebels of the ghettos
> To the uprooted communities of Israel
> To those who fought and fell on the fields of battle
> To those who offered themselves for their people[385]

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383 Weiss, "The Golem and its creator," 82-83.
384 Masri, *The Dynamics of Exclusionary Constitutionalism*, 105.
385 Yad Vashem Preamble, 1865/9-תצ, September 19, 1950- February 2, 1959, Israel State Archives, Jerusalem.

A similar constitutional structure was put into place in Israel for the millions of denationalized Jews who were exterminated during the Holocaust. A close examination of the 1953 *Yad Vashem Law* (officially translated in English as the Martyrs' and Heroes Remembrance Law), reveals the troubling political and economic interests of its legal architects. Chapter Two examined the specific placement of Holocaust survivors in the national imaginary of the new state, outlining the ways that this group revealed differences between the scholarly and fictional idea of Israel. When it came to the treatment of the Jews who perished from the Holocaust, they too were treated as an immigrant population. They were bestowed rights and privileges as other Jewish immigrant populations through a similar structure of automatic nationalization. The major difference being, of course, that this was both posthumous and involuntary nationalization. As such, it was outside of the normal principles and practices of the provision of nationality.

Originally named, *Law for the Return of Civil Rights to the Victims of Nazi Extermination*, what later became the *Yad Vashem Law (1953)* establishes itself as a memorial authority, It commemorates, among other things, the six million members of the Jewish people and their families and associates who died at the hands of the Nazis and their collaborators, the fortitude and heroism of Jewish servicemen and underground fighters, and the unceasing efforts of the besieged to reach Israel and non-Jewish persons who risked their lives to save Jews. The Yad Vashem Law authorizes the conferment of honorary Israeli citizenship to those non-Jews who risked their lives during the Holocaust to save Jews from extermination by the Nazis, deemed, 'Righteous Among the Nations', and commemorative Israeli citizenship if they have passed away. Significantly, it also

enabled the provision of commemorative citizenship to the millions of Jews murdered in the Holocaust, "as a token of their having been gathered to their people."[386]

As the principal architect and instigator of this law, Mordechai Shenhabi, an ardent Zionist and Kibbutz member, began lobbying for the formation of a national memorial authority in 1950. In addition to seeking to register the names of the Jewish victims of the Holocaust, Shenhabi surprised his contemporaries by also proposing the granting of honorary posthumous citizenship to all of these martyrs. To this end, Shenhabi engaged in various written exchanges with international lawyers, state functionaries, and Zionist organizers to examine the concept and practice of commemorative citizenship. Among others Shenhabi's corresponded with renowned legal practitioners and professors. This included Sir Hersch Lauterpacht who later became a member of the UN International Law Commission and a Judge of the International Court of Justice, René Samuel Cassin, who helped draft the Universal Declaration of Human Rights passed by the UN in 1948, and Franz Rudolf Bienenfeld, a key figure in the World Jewish Congress. These exchanges tackled two main issues. Whether nationality can be retrospectively and posthumously granted, and if so, what 'dangers' the legal precedents on reparations of lost property and state representation this *Yad Vashem Law* may set for Western countries in the international system. Some of the specific legal questions considered were as follows:

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> 3. In the absence of any precedent, would it be desirable to base this new law of nationality on the genocide convention, or perhaps on the Israeli Law of Return?

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386 Holocaust Martyrs' and Heroes' Remembrance Authority, "Martyrs' and Heroes Remembrance – Yad Vashem Law 5713-1s953," August 19, 1953, accessed February 27, 2018 from: https://www.yadvashem.org/yv/en/about/pdf/YV_law.pdf.

4. Is it likely that certain States where children of the deceased live, or whose nationals they are, would raise objections to this Law, as it might be detrimental to the interests of such States?

5. Apart from its moral and political significance, can this law also serve as a ground for the State of Israel putting forward claims to heirless or communal property?

6. Is this new Law likely to cause friction between Israel and other States, and, if so, how best to avoid such friction?

7. What are the chances of other States recognizing this Law in respect to heirless or communal property?

8. Could there be any objection on the part of any State to its national giving information or making declaration to the Government of Israel in the matter of granting Israel nationality to their deceased relatives?[387]

As to the question of posthumous awards, by the end of World War II, there was a standard practice among states to confer nationality to accomplished and decorated soldiers and other notables after death. Moreover, responding to the issue of legal precedence, Lauterpracht candidly expressed in a letter on April 29, 1952 that "it would be an extraordinary statute; but so is the occasion which would be the cause and the occasion of the proposed statute."[388] So the law was justified normatively as there is also no historical precedent for what the six million Jews being re-nationalized endured. This is unprecedented legislation responding to an unprecedented political project. Overall, the legal commentators took issue mainly with two elements of the proposed law. The first was fear that the *Yad Vashem Law* would politically shame European countries, particularly the post-war German state. In a letter on May 17, 1951, Cassin warned that when it comes to the personal status of the surviving members of dead families, "Israel was in need of the sympathy of the other States, and should, therefore, avoid conflicts

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387 "The main principal questions in connection with the plan put forward by Mordechai Shenhabi," 5421/26-ג, May 1950 - June 1952, Israel State Archives, Jerusalem.

388 Letter from Sir Hersch Lauterpacht to Mordechai Shenhabi, April 29, 1951, 5421/26-ג, May 1950-June 1952, Israel State Archives, Jerusalem.

with them on such matter."[389] The law, he stressed, should instead adopt the moral and

political tone of remembrance, solidarity with and homage to the victims of the

Holocaust. Bienenfeld echoed this sentiment in another letter also dated May 17, 1951,

stressing that he "would not be in favor with the honorary conferment of Israeli

nationality with any claim against Germany."[390] The second and perhaps most pressing

issue of legal and political controversy was the possibility that posthumous nationality

could enable Israeli claims to heirless and communal property of exterminated Jews in

Europe. There was a clear concern of linking reparations for Jewish families directly to

Israel. Indeed, an expected fear given efforts by Zionist figures at the time to monopolize

the 'Jewish experience' of persecution in Europe, and represent an answer to the 'Jewish

question'. In the same letter to Shenhabi on May 17, 1951, Bienenfeld agreed that the

fundamental and basic purpose of the law is to bestow Israeli citizenship "to the victims

as a symbol that they belonged to the Jewish people and died *because* they belonged to

the Jewish people."[391] For this reason, he stressed that:

> This posthumous conferment of nationality must, however, remain an act of
> honoring the dead and must not have any effect in the civil and political status of
> the deceased victim. Neither the status of the children of victims nor the laws of
> inheritance, property or other rights should be affected by the honorary
> conferment of Israeli nationality, and this should be clearly stated in the law so as
> to avoid any objections of the governments of which the victim was a national at
> the time of his death.[392]

Bienenfeld went on to suggest that the name should thus be changed from *Law for the*

Return of Civil Rights to the Victims of Nazi Extermination as suggested by Shenhabi, to

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389 Summary of the opinion expressed by Prof. [René Samuel Cassin] to Mordechai Shenhabi, May 17,
    1951, 5421/26-ג, May 1950 - June 1952, Israel State Archives, Jerusalem.
390 Letter from Franz Rudolf Bienenfeld to Mordechai Shenhabi, May 17, 1951, 5421/26-ג, May 1950-
    June 1952, Israel State Archives, Jerusalem.
391 Ibid. Emphasis added.
392 Ibid.

the *Law for Honorary Conferment of Israeli Nationality to Victims of Nazi Extermination*. This is meant to avoid its potential interpretation by European governments as a kind of political reproach. Thinking along the same lines, in an earlier exchange with Lauterpracht, Shenhabi had also established that the law seemed reasonable "so long as Israel does not claim for the right for herself – or anyone else – any legal rights against other States for their citizens."[393]

Receiving rather consistent responses from these renowned legal practitioners and theorists, Shenhabi had a clear sense of the features of the proposed law that may invite opposition from other states. In this time, the Israeli government decided to defer the decision on posthumous citizenship. Instead, it moved ahead with the formation of Yad Vashem as a memorial authority. However, the granting of posthumous citizenship to all six million Jewish victims of the Holocaust was later finalized in 1985 with Knesset approval. Significantly, throughout his exchanges with legal theorists in the first years of the state, Shenhabi was, as its chief proponent, largely candid about the intentions behind the *Yad Vashem Law (1953)*. Of course, the law would re-nationalize and honor the deceased Jewish victims of Nazi extermination. The mass, retroactive and posthumous granting of Israeli citizenship would be a historical response to the previous and heinous mass de-nationalization and extermination of this group. But the other pivotal objective of the law was also to enable Israel (as the projected Zionist representative of the Jewish experience) to claims for the return of at least a portion of the plundered Jewish property.

While this intent and objective ought not be the primary focus, nor be worded in a manner that raises suspicion of its second purpose among other countries, the proposed

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393 Letter from Mordechai Shenhabi to Sir Hersch Lauterpacht, May 2, 1951, 5421/26-ג, May 1950 - June 1952, Israel State Archives, Jerusalem.

law must nevertheless entrench the possibility of re-compensation and claims to heirless or communal property. Shenhabi was frank:

> My own impression was that, eventually and after the passage of this law and its taking effect, you would have no objection that this law should *contain the germ of a possibility to exploit the participation of the masses of our people* in the Diaspora and in Israel in this act of according Israeli citizenship to the martyrs also in the sphere of material re-compensation; it is clearly understood, that the *statute cannot and need not contain any hint towards such a possibility*. It is, however, also important that 'the door should be left ajar' for the opportune moment.[394]

The strategic wording of the *Yad Vashem Law (1953)* is explained by the historical and political context. Its formulation highlights the provision of retroactive citizenship to deceased Jewish victims, while softly legislating the possibility of Israeli claims to their lost property. Shenhabi was advocating this law during difficult years for the Zionist movement, and the new State of Israel; not to mention for Jewish communities around the world. In the postwar period and immediately after the 1948-war, Jewish communities were recovering from the trauma and displacement caused by the state-led mass extermination and denationalization in Europe. At this time, the State of Israel was managing and negotiating its new presence and self-identity in the international system vis-à-vis neighboring Arab states. It implemented multifaceted policies of forced displacement and military rule of the also newly displaced indigenous (and largely refugee) Palestinian-Arab population. Meanwhile, the Zionist movement itself was struggling to transform its political and normative project of enabling Jewish immigration and self-determination into the language of liberal democracy and state representation. Political instability, social fragmentation and legal ambiguity were proliferating with little clarity or end in sight. In such a moment, Shenhabi could not 'hint towards the

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394 Ibid. Emphasis added.

possibility' that Israel may be legally empowering itself to put forward claims to heirless

or communal property of deceased Jewish victims. Instead, what was at his disposal was

a citizenship and nationality regime in Israel whose constitutional structure enabled the

automatic nationalization of all Jews (regardless, as we said, of place of birth) as

'immigrants'.

Treating murdered Jews as a kind of 'immigrant' population, the existing

structure of automatic nationalization and citizenship for 'returning' Jews is here

employed to further exclusive Israeli State claims to their stolen property. The mass

posthumous re-nationalization of an exterminated collective is proposed and worded in a

manner to empower the Zionist movement. This further entrenches the State of Israel as

the singular authority of what it considers the legitimate demands, needs, priorities and

experiences of the Jewish people *en genera*. Mobilizing the memory of the Holocaust,

and counting on a future rising momentum of support and organization of Jews around

the world for the new State, the provision of automatic citizenship is used as a tool for

legal claims to formerly private assets.[395] Indeed, for legislators, the link between the

Holocaust and the formation of the Jewish State was clear. The 1948-war, or what Israel

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395 A more contemporary case involves the commodification of and legal claims made to the original
writings and primary drafts of already published works by German-Jewish novelist Franz Kafka. The
National Library of Israel argued that Kafka's writing belongs either to the 'public good' or otherwise
to the Jewish people as one of their cultural assets, stressing the need for the texts to be housed in
Jerusalem. As Judith Butler explains, claiming Kafka as a primarily Jewish writer means that "he
comes to belong primarily to the Jewish people, and his writing to the cultural assets of the Jewish
people." By extension, the argument put forth for the storing of Kafka's work in Israel would also
reinforce "the presumption that it is the state of Israel that represents the Jewish people," and their
experiences prior to its establishment. Interestingly, the The National Library's most prominent
adversary is the German Literature Archive in Marbach, arguing that it "already owns the largest
collection of Kafka manuscripts in the world," and that "Kafka belongs to German literature and,
specifically, to the German language." Butler points out that "though there is no attempt to say that he
belongs to Germany as one of its past or virtual citizens, it seems that Germanness here transcends the
history of citizenship and pivots on the question of linguistic competence and accomplishment." Of
course, both arguments effectively erase the roots of Czech and Yiddish culture that also gave shape
to Kafka's writing. See "Who Owns Kafka?," *London Review of Books*, Vol. 33 No. 5 (March 3,
2011): 3-8.

calls its War of Independence, was repackaged as an extension of the Jewish struggle for survival and recognition in Europe. With this, Zionist law-makers justified the provision of posthumous Israeli citizenship to those Jews in the Holocaust as they were now viewed as having given their lives for the State of Israel. Put differently, "once martyrs of the Holocaust are united with those who fought and died for the state, the War of Independence itself might be said to have begun not in 1947 but in 1939."[396] Taken together, what surfaces is both the general repugnancy and violence of citizenship and nationality structures, and its particular application through the Israeli logic of exclusion. The consistently exclusionary and repressive underpinnings of these structures assume different shapes. In so doing, they have enabled one state to de-nationalize a population so as to exterminate them *en masse*, and another state to re-nationalize that very same population posthumously – but only with *the germ of a possibility* for claims to their property.

8. Immigration as 'return'

The notion and practice of automatic citizenship upon entry remains politically and legally contested. Arguments for the exclusive Jewish right of return are grounded in the self-definition of Israel as a 'Jewish State'. Until today, this is a denotation whose alignment with the country's declared democratic definition, its understanding of who or what constitutes 'the people', remains unsettled and unresolved. The main argument of the need for a *Law of Return* is the need to maintain Jewish demographic majority in Israeli controlled areas. In addition to control over the land, demographic control is also a

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396 James E. Young, "Mandating the National Memory of Catastrophe, in *Law and Catastrophe*, eds. Austin Sarat, Lawrence Douglas, Martha Merrill Umphrey (Stanford: Stanford: University Press, 2007), 144.

cornerstone to the Zionist project. The Zionist settler-colonial paradigm dictates that the

'right' people – namely Jews – must settle the land and that this population must

constitute a majority of the total population of the state to maintain its Jewish character.

A recurring concern for Israeli national security officials, and a stimulant of periodic

geographic and topographic changes to the state, *demographobia*, or the pathological fear

of and concern around non-Jewish (i.e. Palestinian-Arab) births, has shaped Israel's

public debate.[397] Israeli economic, political, social and military considerations have

historically been sacrificed on the altar of Jewish demographic dominance. The politics

of a 'demographic competition' between Arabs and Jews is embedded in the cultural

code of Israeli society, fueling a national narrative of an outnumbered Jewish collective

in a hostile environment. With this narrative, Jewish demographic majority is reinforced,

not merely as a tool of political survival, but also as a moral and civic necessity.

Since its inception, the *Law of Return (1950)* has served two principal functions in

the Israeli constitutional system. First, it is the main immigration law of the State of

Israel. Masri writes

> In the years 1948-2011, more than three million people immigrated to Israel
> under the Law of Return, with the rate of immigration reaching as high as
> 199,516 in 1990. …. Since the overwhelming majority of migrants entered Israel
> under the Law of Return, and the majority of the population is essentially the
> offspring of migrants under this law, it is the main immigration law in Israel. The
> main question that determines eligibility under this law is being Jewish or a
> family member of a Jew. The main question for Israeli immigration law,
> therefore, is not "who is a citizen?", but "who is a Jew?".[398]

Evidently, Israeli citizenship has mainly been provided and given shape through the *Law

of Return.* A major pillar of its self-definition as Jewish and of existential importance to

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397 I have written about this at length. See "Israeli demographobia" in Chapter Four of *Stateless
     Citizenship*, 138-144.
398 Masri, *The Dynamics of Exclusionary Constitutionalism*, 106.

the State, this law is not only the key immigration policy of the state but significantly it is a "Jews-only immigration policy."[399] Second and relatedly, as part of the foundation of the Jewish State the *Law of Return (1950)* also serves as the main identifier of the citizen subject. If all Jews decided to emigrate from the country leaving only non-Jewish Israeli citizens and residents, the state would no longer exist as a 'Jewish State'. Hence, by regulating immigration and ensuring Jewish entry into the state, the *Law of Return* is also maintaining the identity and existence of the State itself.

An expression of Jewish identity and self-determination, the allegiance of the *Law of Return* is not to the citizens of Israel (which includes non-Jews), nor is it to the Jewish inhabitants within Israeli controlled areas. An integral part of this law and entrenched in the idea of 'return' is the link between the Jewish State and the Jewish nation as a whole and everywhere, past and present, dead or alive. Today, the rising securitization and militarization of this migration in Israeli controlled areas involves the continued social and political unease and fear over non-Jewish subjects, both present and the ones *to-come*. For this reason, the second major function of the *Law of Return* is to regulate membership in the Israeli body politic and in arrangements of privilege in the State. Jews are exclusively and automatically suitable to enter the 'club of rights' in the Israeli incorporation regime. *The 'desired' citizen in Israel is therefore the figure of the Jewish immigrant*. The Jewish newcomer or 'guest' who by arriving to congregate in the Jewish State, thereby reproduces and maintains both its identity and existence. *With the Law of Return and its associated constitutional arrangements the Israeli incorporation regime inverts the image of the citizen with the figure of the immigrant or guest*. The matrix of inclusion into citizenship in Israel is thus less geared toward the citizen, and more

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399 Ibid., 102 and on.

towards determining immigration in a manner that enables Jewish entry and settlement. Placed at the center of the Israeli constitutional equation, the immigrant guest surfaces as the 'real' citizen in Israel.

9. Merging the 'Jewish' with the 'Israeli'

Taken together, the constitutional reality in Israel today is one that does not simply express the Jewish majority in the country, but instead the Jewish people, *en genera*. As such, part of centering its political survival on immigration, rendering its desired citizen as the 'Jewish immigrant', is molding 'Israeli' identity to fit this arrangement.[400] Alluded to above, the 'Israeli people' are not limited to Israeli citizens, nor are they limited to the Jewish population within its territorial rule. Instead, the 'Israeli people', or the 'people of Israel' are merged with the Jewish nation. Scholars such as Kimmerling (2002b), Rouhana (1997) and Ghanem (2001) point to the central, and deeply controversial, feature of Israeli national identity, or Israeli nationality: its internal social contradictions and chasms. The dominance of Jewish-Israeli citizens and others granted the status of 'Jewish nationality' under Israeli law makes 'Israeli nationality' an impossibility. And this impossibility has, on numerous occasions, been upheld through Israeli court decisions.[401]

For instance, in 1970 when the registration of the children of a Jewish naval officer and his non-Jewish wife as 'Jews' was accepted by the Supreme Court – along with the recommendation that the classification of 'nationality' be completely withdrawn

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400 As Masri points out, "while legal fictions were used to demonstrate the unity and the rights of Jews only, no similar provision was introduced to highlight unity among Israeli citizens." Ibid., 106.

401 Some of the literature and discussions on the colonial foundations of Jewish nationalism that are outlined in this chapter incorporate material and arguments I have previously made in Chapter Five of *Stateless Citizenship*.

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from the Israeli identity card – a Knesset law fueled mainly by religious parties was

passed stipulating that both parents need to be Jewish in order to register the child as a

Jew.[402] On April 18 of the same year, and in response to the limitations and controls this

law imposes on personal status, Jewish-Israeli psychologist George Tamarin sought to

challenge the official designation of his nationality from 'Jewish' to 'Israeli'.[403] The

process for a change of registration requires public notice and, for this reason, Tamarin

even filed a petition at the District Court asking it "to affirm that he had appeared before

it and alleged in good faith his commitment to the Israeli nationality."[404] In considering

Tamarin's petition, the District Court Judge, Yitzhak Shilo, acknowledged the oppressive

character of laws that impose an unwanted designation and even agreed that nationality

ought to be determined by the individual. However, Justice Shilo concluded that the

existence of an Israeli nation as distinct from a Jewish nation seemed to be an

impossibility on account of his "living amongst [his] people," and stated that "a person

cannot create a new nationality just by saying it exists, and then say he belongs to it."[405]

The impossibility of a separation between the Israeli state and the Jewish nation was also

affirmed in Tamarin's appeal to the Supreme Court whose participation in the same

national consensus was revealed in the opinion of Justice Shimon Agranat, then President

of the Court. Ruling that "there is no Israeli nation separate from the Jewish nation …

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402 Michael Keren, *Zichroni v. State of Israel: The biography of a civil rights lawyer* (Lanham: Lexington Books, 2002), 105.

403 Ibid.

404 See *Tamarin v. State of Israel* (1970) Israeli Supreme Court, 26 P.D. I 197, quoted from United Nations Commission on Human Rights, Fifty-ninth session, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, on his visit to the occupied Palestinian territories, (E/CN.4/2003/5/Add.1), June 12, 2002, http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/36351ea8a4425f1cc1256c84003e0c84/$FILE/G0214506.pdf.

405 Keren, *Zichroni v. State of Israel*, 106-107; Moshe Gorali, "So this Jew, Arab, Georgian and Samaritan go to court… The state denies there is any such nationality as `Israeli'," *Haaretz,* December 28, 2003, http://www.haaretz.com/print-edition/features/so-this-jew-arab-georgian-and-samaritan-go-to-court-1.109982.

composed not only of those residing in Israel but also of Diaspora Jewry," Justice

Agranat went on to stress that recognizing a uniform Israeli nationality "would negate the

very foundation upon which the State of Israel was formed."[406] In his denunciation of the

petition, he continued:

> If a handful of people or more wish to separate themselves from the Jewish
> people – only twenty-three years after the establishment of the state – and acquire
> the status of a separate Israeli nation, this *separatist trend* should not be regarded
> as legitimate and should not be recognized.[407]

At first glance, the accusation of separatism appears to be extreme and unfounded.

Tamarin is an Israeli citizen who merely asks to be officially recognized as bearing the

nationality of his state. Nationality expresses the legal relationship of an individual to

her/his state, and given that Tamarin is not detracting from nor formulating an exclusive

identity within and apart from an Israeli identity, the accusation of separatism appears to

be misplaced. But if we take a closer look, we see that Tamarin's petition does advocate a

certain separation from the Zionist framework of identity and inclusion that serves as the

basis for the State of Israel. And here the Jewish ethnocentric and primordial foundations

of Israeli nationhood and citizenship begin to emerge. The Israeli government and its

Supreme Court cannot recognize an 'Israeli' nation separate from a 'Jewish' nation

because, from their ideological perspective, Israel *is* the state of the Jewish nation. To

officially recognize an Israeli nationality, and even to adopt the language of an 'Israeli'

nation as a category distinct from a 'Jewish' nation, would imply that, at some conceptual

level, the two are distinct. That one category includes a collective identity that the other

does not. However small, this conceptual separation between 'Israeli' and 'Jewish' would

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406 *Tamarin v. State of Israel*.
407 Gorali, "So this Jew, Arab, Georgian and Samaritan go to court." Emphasis added.

have juridico-political repercussions for the entrenchment of Jewish ascendancy within the state. Of course, this is because, in doing so, it could open a window of inclusion within the Israeli nation for non-Jewish citizens. It is the conceptual separation between 'Jewish' and 'Israeli' along with the potential practical implications of having to formally – and even equally – incorporate a non-Jewish collective within the self-definition and self-understanding of the state that renders Tamarin's petition a danger to the existing Zionist consensus. Though put forth by a Jewish citizen concerned with the State's hegemony over personal status, the petition simultaneously and acutely points to the absence of any meaningful Israeli citizenship for the non-Jewish population within the state. Understanding this, we come to learn that the accusation of 'separatism' by Justice Agranat is not inconsistent with the Zionist foundations of the State of Israel. This is because its language, constitutional framework and practices fuse Israel with the Jewish people; both within and outside of its 'formal' borders.

As it stands, Israel remains the only recognized state in the world whose citizens do not constitute its nationals. In fact, although the Interior Ministry includes 137 nationalities in its list of recognized designations for Israeli citizens, including Assyrian, Albanian, Burmese, Hong Konger, Samaritan, and even Hebrew, it denies its citizens an 'Israeli' nationality.[408] The Israeli government has even gone so far as to create nationalities that are not recognized outside of Israel including 'Arab', 'Druze' and 'Unknown' to evade the formation of an 'Israeli' nationality.[409] Tamarin's initiative has been reawakened in recent years. In December 2003, thirty-eight signatories mainly composed of Jewish-Israelis but also including some Arab citizens submitted a petition to

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408 Jonathan Cook, "Why There Are No 'Israelis' in the Jewish State," *Dissident Voice,* April 6, 2010, http://dissidentvoice.org/2010/04/why-there-are-no-israelis-in-the-jewish-state/.
409 Cook, *Blood and Religion*, 15-17.

the High Court of Justice asking it to "order the Ministry of the Interior to inscribe their nationality as Israeli in the population registry."[410] Though unsuccessful, the petition put forth by this group of academics, and social, cultural and political figures urged the formation of a more inclusive nationality that does not simply privilege Jewish members of Israeli society over their non-Jewish counterparts. This request again resurfaced in 2008 when a similar group of Arab and Jewish citizens, including former Members of Knesset, submitted a petition challenging the state's refusal to recognize an 'Israeli' nationality. They argued that an 'Israeli' nation was simultaneously created with the establishment of the Israeli state. Headed by retired professor Uzi Ornan, the petition argued that the *Declaration of Independence*, also distinguished between the 'Jewish nation' within Israel and the 'Jewish nation' abroad. The former collective was to "establish the state and become like all other nations standing in its own right in its sovereign state," while the latter were to first migrate to Israel to then contribute to building the state.[411] As a result, the petition held, the designation of "Jewish" is not merely limited to Jewish-Israeli citizens and therefore another national classification is necessary. This petition was predictably rejected by the Jerusalem District Court Judge Noam Sohlberg on the grounds that the matter was "not justiciable." Significantly, for Justice Sohlberg, the fact that the appeal included Jews, Arabs and Druze citizens, among others, rendered it un-justiciable. Unlike the Tamarin petition, which the Supreme Court had agreed to consider, the implications of Sohlberg's verdict would be to include non-Jews in the 'Israeli' nation. He writes:

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410 Avishai, Bernard, *The Hebrew Republic: How Secular Democracy and Global Enterprise Will Bring Israel Peace at Last* (Orlando: Harcourt Books, 2008), *54.*
411 Dan Izenberg, "Supreme Court to decide if there is an 'Israeli nation'," *The Jerusalem Post,* March 7, 2010, http://www.jpost.com/Israel/Article.aspx?id=170360.

> I don't think we can treat the two cases similarly …. In the present case, people of many different religions, cultures and nationalities, Jews, Arabs, Druze and others, have joined together. This was not true in the previous case, which involved only a Jew. It is not at all the same to recognize Israeli nationality for a Jew as it is for members of other nations.[412]

This may imply that Justice Sohlberg may have reached a different conclusion had all of the applicants been Jewish. However, the Zionist national consensus to which he subscribes prevents him from considering non-Jews as belonging to an 'Israeli' nation. The 'Jewish' and 'Israeli' are synthesized to such a degree in the Zionist framework that the acknowledgment of the latter by the court would be equivalent to it "creat[ing] something out of nothing."[413] In hearing the appeal of the petition in 2010, the Supreme Court fiercely rejected Justice Sohlberg's argument that the petition was "not justiciable," but it also strongly indicated that it was likely to refuse the appeal.

The degree to which the Israeli Knesset and courts can exercise their authority on the question of the relationship between a 'Jewish' and an 'Israeli' nationality was also pointed to by Barak. Bernard Avishai explains:

> In May 2006, Barak's court in effect answered the petition, with a ruling in an entirely different case. The suit in question challenged army deferrals for ultra-Orthodox students – a clear case of inequality. Barak declared, rather clumsily, that 'there is room for the idea that a law or Basic Law that denies Israel's character as Jewish or democratic state is unconstitutional'. Many experts interpreted this to mean that the High Court could abolish a law, or even a Basic Law, if it impairs Israel's Jewish character, even if equality is at stake. …. Indeed, to protect the Jewishness of Israel, the Knesset could do pretty much what it wanted.[414]

The refocus of the Israeli political and legal establishment on preserving the *Jewishness* of the state has recently been met with a similar international refocus on the same.

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412 Sohlberg quoted in ibid.
413 Ibid.
414 Avishai, *The Hebrew Republic,* 56-57.

Jonathan Cook explains that in May 2011, American President Barak Obama became the first US president to formally affirm Israel's self-definition as 'a Jewish State and the homeland for the Jewish people'.[415] In July of the same year the *New York Times* reported that the Obama Administration is "currently working behind the scenes to press key allies to adopt a formula that would call on Israel and the Palestinians to resume negotiations on the basis of the 1967-lines and — for the first time in Mideast peacemaking — spell out international expectations that the Palestinians recognize Israel as a Jewish State."[416] What comes to the fore is that an issue absent from both the 1993 Oslo Accords that set into motion the diplomatic process for a two-state settlement and the failed 2000 Camp David Summit, and which was first introduced only at the 2007 Annapolis Conference, has now risen to the level of other long-standing and internationally recognized final-status issues including illegal Jewish settlements, the return of refugees, recognized borders and the status of Jerusalem.[417] As Cook points out, rather unlike other nation-states, today's Israel is not asking its Palestinian counterparts to recognize its territorial borders, sovereignty or even its democratic identity. Instead, even its liberal commentators are strictly asking for formal recognition of its 'Jewish' character.

10. Summary and conclusions

This chapter makes the link that the matrix of European colonialism within which the Jewish national movement burgeoned and where notions of liberal citizenship first took root have set the stage for the multifaceted racial discrimination and exclusion faced by

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415 Jonathan Cook, "Israel's Jewishness: Precondition for Palestinian statehood," *Al-Akhbar English,* October 7, 2011, http://english.al-akhbar.com/content/israel%E2%80%99s-jewishness-precondition-palestinian-statehood.
416 Yonatan Touval, "Israel's identity crisis," *New York Times*, July 29, 2011, http://www.nytimes.com/2011/07/30/opinion/30iht-edtouval30.html.
417 Cook, "Israel's Jewishness."

non-Jewish citizens and subjects today. Our above examination of the *Law of Return (1950)* and the *Citizenship Law (1952)*, which together form the substructure upon which the Israeli logic of exclusion is based, reveals how the colonial logic of pre-1948 Zionism resurfaces in contemporary Israeli citizenship structures. As I have shown, these texts were designed and interpreted by law and policy-makers to be 'indigenous' in that they were not indiscriminately subjected to the same canons of interpretation as English and Mandatory law. Part of the assertion of independence and sovereignty of the newly established State was the need to engineer a uniquely 'Israeli' interpretation of imported Western legal concepts to match the specific aims and circumstances of the Zionist project. Using historical and archival material I have shown that, with this objective, the concept of 'return' gained particular prominence in Israeli citizenship and nationality regulations. Though Israel is certainly not the first state in the world to employ the notion of return in a constitutional capacity, as the first undertaking of Zionist lawmakers in the new Jewish State, the *Law of Return* (1950) reversed this understanding of *return* into the form of a positive right compelling Jews to immigrate. Serving as an original immigration law, and after a couple of years when combined with the *Citizenship Law* (1952) to determine access to Israeli citizenship, *return* has effectively transformed into a modern legal concept. Here largely secular and liberal Zionist law and policy-makers gave immediate recourse to religious practice and law for the definition of the State's body politic.

Importantly, the Israeli implementation and practice of return meant that all Jews – including those Jews who are born in the country – are included in the national body by virtue of the principle of return. This meant that even the Jewish inhabitants of Palestine

in the country on the event of the creation of the State of Israel are conferred nationality through the concept of *return*. In effect, the Israeli constitutional order is structured in a manner that broadens the category of the 'Jewish immigrant', placing this figure on the top of the constitutional process. A country primarily aimed at ingathering Jewish exiles, the immigrant has been placed at the center of the Israeli constitutional equation. The assimilation of the Jew born in the country prior to its establishment and the Jew born elsewhere and entering via migration (not into the category of the 'original inhabitant' but instead into that of the new 'immigrant') is key to understanding how the concept of return functions. The simultaneous application of *jus sanguinis* and *jus soli* creates a kind of legal circle guaranteeing sole Jewish inclusion: if a Jewish immigrant does not qualify for Israeli nationality through one legal method, she/he is automatic covered through the other. In effect, this is an inclusion that is denied to non-Jewish Arabs already living in the country, the region and abroad. With this analytical contribution, I contend that 'return' reverses the standard practice in Western liberal democratic societies, placing the 'Jewish immigrant' at the center of Israeli politics. Hence, set apart from legal efforts and political trends restricting Western immigration systems and nationality laws, the political survival of the State of Israel actually depends on open immigration given its existing structures enabling automatic citizenship and inclusion for Jews.

The core findings in this chapter outline the mechanisms that account for how the matrix of inclusion into citizenship in Israel is less geared toward the citizen, and more towards determining immigration in a manner that enables Jewish entry and settlement. Using the Israeli logic of exclusion as a looking glass, I hold that the current reality in the Jewish State elucidates the global logic of exclusion and the internationalization of

citizenship reduction and revocation. Unlocking the placement of the figure of the citizen in the Israeli constitutional order helps us understand the rising contemporary political trajectory in Western states where the citizen is being stretched and inverted with the more fluid figure of the 'immigrant'. *Stateless citizenship* in Israel and the placement of the temporary figure of the 'immigrant' at the center of politics surfaces as a microcosm of growing civic exclusions in 'core' liberal democratic states. With these observations, I argue that we are in the midst of a transition in Western citizenship, towards an interrogated and restricted model of stateless citizenship.

As in the case of Israel, these transitions in citizenship restriction are maintained and propelled by the discourses and structures of citizenship itself. Culminating in what the next and final chapter describes as the interrogation of the citizen in liberal democratic states and the purported internationalization of citizenship restrictions, I assert that we are in a historical-political context where the proliferation of efforts by Western against the inclusion of 'undesirable' outsiders have broadened to include the figure of the citizen. In other words, figure of the citizen is being interrogated in Western liberal democratic societies, assuming features traditionally associated with the immigrant. Overall, I hold that the existing incorporation regime in Israel forms a useful analytical context for understanding the upturn in Western citizenship restrictions. Put differently, a troubling legal and political condition is developing where liberal citizenship in the West is starting to resemble exclusions in the Israeli paradigm of *stateless citizenship*.

Chapter Five | Interrogating the Citizen: The Internationalization of Citizenship Restrictions

"[T]he Security State has an interest in having citizens – who it must assure the protection of – remain in uncertainty with regards to what threatens them, because uncertainty and terror walk hand in hand. … From the perspective of security, the enemy must – on the contrary – remain vague, so that anyone – at home, but also beyond – can be identified as such."

Giorgio Agamben, "De l'Etat de droit à l'Etat de sécurité," 2015

"I come to Europe to feel like a human being."

Aruba al-Rifai, 44-year old civil servant from Damascus, Syria[418]

"[B]anishment is the same as death with respect to the body politic."

Cesare Beccaria, eighteenth century Italian jurist[419]

1. Introduction

As we have seen, the pre-state construction of citizenship in Palestine as separate and

unequal for Arabs and Jews was designed against the backdrop of international networks

of restriction and control. Embedded within the historical matrix of Palestinian

citizenship, these exclusions laid a blueprint for the differential citizenship regime that

exists today in Israel. This study contends that the citizenship and nationality regime in

Israel since 1948 has continued its interactions with these global networks of restriction

and control. The significance of the Israeli case, however, is that unlike liberal

democratic states in the West, its key features of nation-statehood, including final

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418   Quoted from Patrick Kingsley, "Over a million migrants and refugees have reached Europe this year, says IOM," *The Guardian*, December 22, 2015, retrieved from: https://www.theguardian.com/world/2015/dec/22/one-million-migrants-and-refugees-have-reached-europe-this-year-iom.

419   Quoted from Cesare Beccaria *On Crimes and Punishments*, trans. Graeme R. Newman and Pietro Marongiu (New Jersey: Transaction Publishers, 2009), 63.

territorial borders, notion of 'peoplehood', and sovereignty largely remain incomplete and unresolved; all of which is revealed in the dynamics of its citizenship regime.

This study has examined how restrictions, redefinitions and controls of citizenship in Israel today serve as a looking glass for what is happening to citizenship globally. Together, the previous chapters have outlined historical and contemporary practices and dynamics of the colonial logic of Israeli democracy and liberal citizenship. Working from the analytical model of *stateless citizenship*, the preceding chapters have expressed that the contemporary Israeli constitutional arrangements that Otherize political subjects do so not through 'exclusion from', but instead within and through 'inclusion in' the citizenship regime. It is the granting of citizenship, the actual inclusion within the Israeli citizenship regime, which produces the inherent contradictions in any non-Jewish membership in the Israeli political and social regime. Explained above, the framework of stateless citizenship extends a model of the state of exception offered by Agamben. It points our analytical gaze to the condition that in Israel the modern paradigm of citizenship is actively reversed. Although all citizenship regimes are inherently exclusionary, they nevertheless remain traditionally a mechanism for inclusion in the rubric of state representation, accountability, protection and some form of social or national membership. As I have outlined, in the case of Israel, this logic of inclusion is placed on its head and its inclusive exclusionary mechanisms are inverted. It is non-Jewish (or Palestinian-Arab) inclusion within the Zionist citizenship regime that constitutes their multifaceted exclusion. This makes the condition of Palestinian-Arab citizens a reversal of the classical relation of exception in the Western model of citizenship.

The dynamics of this inversion became clear with my examination of the *Law of Return* in the previous chapter. The constitutional arrangement of *return* inverts the image of the citizen with the figure of the immigrant or guest. The simultaneous application of *jus sanguinis* and *jus soli* through this setup creates a kind of legal circle guaranteeing exclusive Jewish inclusion. If a Jewish immigrant does not qualify for Israeli nationality through one legal method, they are automatic covered through the other. Contrary to consistent efforts and trends restricting Western immigration systems and nationality laws, the political survival of the State of Israel depends on open immigration and automatic citizenship for Jews. For Israel, the desired, preferred, and most qualified political subject is first and foremost the 'Jewish immigrant'. Even those Jews born in the country were at one point granted civil status through return; equal to that of those who immigrating to the country on the basis of this law. As such, the notion of return serves the function of overturning the classical practice in Western liberal democratic societies by rendering the 'Jewish immigrant' as the preeminent figure of Israeli politics. Placed at the center of the Israeli constitutional equation, the immigrant guest arises as the 'real' citizen in Israel. Evidently, this specific use of the imported and adopted Western parliamentary structures and parameters of statehood and belonging by Israel has resulted in a unique liberal legal and political culture within the Jewish State.

Indeed, the various experiences in the drafting of a proposed constitution for Israel that I have outlined indicated that there are key limitations in its appropriation or reproduction of Western parliamentary structures and parameters of statehood and belonging. Israel has interacted with global networks and processes of restriction and control but its ability to interrogate the figure of the citizen in such a unique manner is

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precisely because as a nation-state it is a novel constitutional phenomenon. To maintain the particular character of the state as 'Jewish', Israeli lawmakers re-read, re-formulated and re-used the principles and discourses of liberal citizenship rights from Western constitutional structures. With this, Israel practices a unique relation of exception when it comes to the discourse and formulation of its citizenship and nationality regime.

This study has employed stateless citizenship as a theoretical starting point through which to consider and examine the closure or thinning down of citizenship more broadly. With discourses, practices and legislation of civil and national identity in Israel since statehood as a paradigm I examine what may be called the growing *internationalization of citizenship restriction*. Similar to the paradigm of stateless citizenship where civic subjects are excluded through their inclusion into Israeli citizenship structures, citizens in the West are also facing increasing exclusions via the very mechanisms of citizenship. The contemporary liberal debates and practices in Western societies associated with the design and restricted provision of citizenship are becoming increasingly important sites of control and power. Indeed, major trends within Western liberal citizenship has involved the development of new calls for citizenship inclusion, representation and protection. Processes of (dis)entanglement among interacting intellectual and political actors in the 'core' and 'periphery' become relevant. With these processes, ideas of critically entangled histories, exchange and continuities of logics of exclusion enable us to analyze the formation and dissolution of shared national, intellectual, cultural and juridico-political boundaries. As mentioned, generalizations of legal and political practices of exclusion can reveal the broader contours of exclusionary citizenship structures and landscapes. Having examined the Israeli articulation of

exclusion, we can then begin to piece out historical logics of exclusion and their contemporary manifestations with respect to citizenship in Europe and North America. Far from the claim that the closure of citizenship in Israel is simply a replica of global citizenship structures, I am not placing Israel alongside a family of liberal democratic nations. Rather, what I point to are global-political interactions on the content, structures and boundaries of citizenship. Having delineated the case of Israel, I look at Europe and North America to both reveal their respective and dominant characteristics and style, as well as attend to their shared coordinates of origination. In doing so, I redirect the traditional colonial gaze from the 'periphery' to the 'core'.

This chapter attempts to broadly point to troubling developments and trends in Western citizenship regimes. The inversion of the figure of the 'citizen' in the Israeli constitutional order with that of the 'immigrant' is employed to problematize growing contemporary political practices around civic inclusion employed by Western states. What the Israeli looking glass indicates is that, in the West, the citizen is being stretched closer to that of the non-citizen with and formerly solidified rights and protections diluted. The interrogated figure of the citizen is increasingly assuming features traditionally associated with the immigrant. These are key transformations that are conducted within the structural matrix of citizenship itself. Working from Israeli constitutional efforts against 'undesirable insiders', we are able to unpack a Western logic of exclusion where efforts against 'undesirable outsiders' have been broadened to include the figure of the citizen subject.

With the above aim, this chapter begins by discussing the current global thickening of borders and its effects in (re)drawing and (re)shaping the boundaries of the

spaces of citizenship. I outline various mechanisms and proposed solutions for exclusion

and restriction in European and North American states in the context of and migration

and a perceived rise in transnational terrorism. In particular, I look at efforts in the wake

of the 2014-2015 Middle East and North African refugee and migration crisis and

examine and the ways in which nationality and citizenship structures were mobilized and

interrogated. To this end, I juxtapose events in France, Britain and Canada, with

references to recent developments around citizenship restriction in Denmark, Australia,

the Netherlands and Switzerland, to outline the ways in which the structures, practices

and discourse of liberal citizenship have been employed to exclude citizens from within.

Together, considerations of France, Britain and Canada indicate similar connections

among juridico-political cultures, notions of foreign allegiance, concerns of terror-related

activity in home-societies, and the path towards the loss of citizenship. Denationalization

and the restriction and the widening borders for citizenship revocation appears to be

inflicted both as punishment for implied foreign allegiance but also as an attempt to

protect said nation-states. As per Christian Joppke's observation, "only a retributive or

punitive rationale is compatible with the constitutional importance of citizenship."[420]

Working in conjunction with practices of exclusion against minority citizen communities,

the changes cited in these juxtapositions indicate a thinning down of citizenship

structures. One that renders citizenship itself with more conditional and unstable

dynamics. With these comparisons, I aim to show that what has appeared as concerns

about foreign elements with allegiances abroad is, in practice and theory, discussions

about figure of the citizen.

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[420] Christian Joppke, "Terror and the loss of citizenship," *Citizenship Studies*, Volume 20, Issue 6-7 (2016): 729.

From there I posit that there is a process of a *desacralization of citizenship*. Citizenship arrangements and structures are diluted meaning that the substantive benefits accumulating from citizenship have been thinned down, prompting key transitions in citizenship. Part of this desacralization of citizenship has meant two separate yet related developments. First, citizenship itself is being uprooted from its classical protections and replanted in closer proximity to the more temporary figure of the immigrant, or resident. And second, given this closer proximity the structures and arrangements of citizenship have *themselves* been employed in the exclusion of the legal subject *from the inside* that formal suspension and revocation is not even necessary. With the second development, restrictions in citizenship structures and networks have been able to build on existing political and legal practices of exclusion against immigrant and racialized minority citizen communities. All in all, given an emphasis where the interrogated and restricted figure of the citizen is becoming more common, this chapter concludes that today the gaze of the liberal democratic state appears to be focused on enabling itself legally and politically to instead create *stateless citizens*.

2. The closing north

For the most part, debates in Europe since the 1990s around migration and national citizenship have largely been preoccupied with questions of the undermining effects of the former on the latter. Scholars such as Soysal (1994) have examined whether national citizenship is transforming into other kinds of belonging in the wake of increased migration, Castles and Davidson have questioned the practical necessity of civic membership in the form of national citizenship in the practice and access to socio-economic, cultural and political rights and protections, while others such as Kymlicka

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have considered transformations in national identity and belonging in the face of increased migration and heterogeneity of home-societies.[421] Since the start of the twenty-first century we have been, as Eleonore Kofman explains, witnessing the "reconfiguration of citizenship" where states are surfacing as managers of citizenship:

> [The] expansion and contraction of rights have occurred within a managerialist approach [by states] which, though recognizing the need for immigration, applies an economic and political calculus not only to labor migration but also to forms of migration more closely aligned to normative principles and human rights, such as family formation and reunification and asylum.[422]

With these political calculations, the boundaries of the spaces of citizenship have been (re)drawn, with states placing greater weight on the responsibilities and obligations of civic membership instead of its accompanying rights and protections. This has made citizenship arrangements today a contentious issue, as its structures play key functions in the determination of social policy, the proliferation of scales of governance, socio-economic restructuring, democratic political participation and cultural integration.

The past few decades have revealed the advancement of efforts by Western democratic states to delimit their national identities, moral frontiers and territorial borders against the 'unwanted' or 'undesirable' *both within and without citizenship*. Significant to our present study are the multifaceted delimitations faced by citizens themselves, those already included within the structures of belonging and representations. Initiatives

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421 See Stephen Castles and Alastair Davidson, *Citizenship and Migration: Globalization and the Politics of Belonging* (New York: Routledge, 2000) andWill Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1995). Other scholars of the past two decades in the field that have examined how citizenship has been affected and transformed in the wake of rising migration include Helga Leitner, "Reconfiguring the spatiality of power: the construction of a supranational migration framework for the European Union," *Political Geography* 16, 2 (1997): 123-143; Christian Joppke, ed., *Challenge to the Nation State: Immigration in Western Europe and the United States* (Oxford: Oxford University Press, 1998); L. Schuster and John Solomos, "Rights and wrongs across European borders: Migrants, minorities and citizenship," *Citizenship Studies* 6, 1 (2002): 37-54.

422 Eleonore Kofman, "Citizenship, Migration and the Reassertion of National Identity," *Citizenship Studies*, Vol. 9, No. 5 (November 2005): 453–467.

introduced by liberal democratic sovereigns, some of which we will examine below, have included the broadening and intensification of various intra-national and trans-national techniques of restriction, expulsion, revocation and containment. As I argue, this tightening and redrawing of the boundaries of inclusion by democratic states have taken shape, insofar as they have succeeded, through the active use of the principles, tools and discourse of citizenship. Continued inclusion in the arrangements of citizenship has become increasingly conditional to the multi-formed reaffirmation of state loyalty and national belonging. Working with and appropriating global economic networks, democratic decision-making processes and cultural values, efforts by sovereign states have largely resulted in the fortification of citizenship restrictions.[423] The multifaceted endeavor to reallocate and reconstitute political subjects to their preferred sovereigns has, in the process, changed the way the figure of the citizen is incorporated into the body politic. Given this reality, I argue that the ongoing *un-rooting* of citizenship reveals the ways the relation of exclusion is being internalized. This has shifted the gaze of exclusion onto the figure of the citizen.

In many Western liberal-democracies, the global thickening of borders played out most vividly in late 2014 and early 2015 with a rising number of refuges and migrants, mainly from the high-conflict areas of Syria, Afghanistan, Iraq, Eritrea and Sudan, among other places. Although most of these refugees and migrants have sought refuge in neighboring countries, including Iran, Jordan, Lebanon, Libya and Turkey, many traveled through extreme conditions to Western states, mainly the European Union (EU), to seek asylum. Popularly referred to as the 'European migration crisis' – though certainly more

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423 Liisa Malkki, "Refugees and exile: From 'refugee studies' to the national order of things," *Annual Review of Anthropology* 24 (1995): 495-523; and William Walters, "Deportation, expulsion and the international police of aliens," *Citizenship Studies* 6, 3 (2002): 265-292.

of a crisis in the said home societies devastated by over a decade of imperialist war, military occupation, socio-economic depravation, state failure and regional violence – millions of migrants traveled through Southeastern Europe and across the Mediterranean Sea for refuge. Taken together, the crisis witnessed the highest level of forcibly displaced people in Europe since World War II.

For our purposes, two key treaties are relevant for understanding possibilities of movement in the EU. The first is the Schengen Agreement, signed in 1985, that led to the elimination of border checks among twenty-six European countries. Instead checks and control regulations were limited to the external Schengen.[424] In this arrangement, individual states may, for reasons of public policy or national security, re-introduce internal border checks for a temporary period.[425] Next there is the Dublin Convention, or Regulation, formally put into force in 1997, that determines the individual member state of the EU that is responsible for an asylum application.[426] Designed to thwart the practice by both asylum applicants who request status in more than one EU member state (dubbed "asylum-shopping"), and that where EU member states refuse to take responsibility for an asylum seeker (called "asylum orbiting"), the Dublin Convention dictates that the first

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424 Willem Maas explains that "Schengen's key measure is the removal of checks at common borders, replacing them with external border checks." He also points out that "The development of Schengen came about not merely because of economic calculations – though the desire to reap the economic benefits of increased mobility no doubt played a role – but because of the political value to creating a borderless Europe in which European citizens can travel freely." See "Freedom of Movement Inside 'Fortress Europe'," *Global Surveillance and Policing: Borders, Security, Identity,* eds. Elia Zureik and Mark Salter (Portland: Willan, 2005), 237, 242.
425 European Union Parliament, "EU legal framework on asylum and irregular immigration 'on arrival' State of play," Briefing May 2015, retrieved from: http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551333/EPRS_BRI%282015%29551333_EN.pdf.
426 Council of the European Union, "Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Deposited with the Government of Ireland)," entry into force September 1, 1997, retrieved from: http://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=1990090.

member state that a refugee enters and within which they are fingerprinted is responsible for their application.[427] In the context of refugees in Europe today it has become exceedingly clear that the Dublin Regulations impose an uneven responsibility on peripheral EU member states. This is particularly the case for Greece, Italy, Spain and Hungary, as asylum seekers can be legally transferred back to the first member state they arrived should they continue to migrate.

The current political period of migration and statelessness and observations of the uneven division of the burden of responsibility for incoming asylum seekers has produced a familiar antagonistic and exclusionary logic of membership and belonging.[428] For the most part, and in the face of increasing migration and heterogeneity, Western nation-states struggled to attain and maintain culturally homogenous identities. This drive was often revealed in a range of racist and nationalist legal and political agendas. Largely working against the trends of increasingly interconnected global communities, these agendas for homogeneity have often been enabled through, justified and enmeshed with active reference to liberal principles and sensibilities.

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427 This is similar to the Safe Third Country Agreement between Canada and the United States that entered into force on December 29, 2004. Under this agreement, migrants seeking refugee status must make their formal claim for status in the first country in which they arrive, either the United States or Canada. What this means is that refugee claimants who are citizens of a country other than the United States that arrive from that country to the Canadian border may only pursue their refugee claims in Canada should they qualify for an exception under the Safe Third Country Agreement.

428 Interestingly, just weeks before the recent British referendum to withdraw from the European Union on June 23, 2016, with the final results of 52% to 48% voting to leave the EU, the African Union announced a new single African e-passport as a long-term plan for the continent. Similar to arguments in the European Economic Community prior to the formation of the European Union, proponents of the African Union passport hold that the reduction of travel and trade barriers will improve social, economic and cultural development by allowing people, projects, and capital flow more freely across the dividing borders. Anne Frugé, "The opposite of Brexit: African Union launches an all-Africa passport," *The Washington Post,* July 1, 2016, retrieved from: https://www.washingtonpost.com/ news/monkey-cage/ wp/2016/07/01/the-opposite-of-brexit-african-union-launches-an-all-africa-passport/.

3. Smugglers as travel agents, states as human traffic managers

Prior to examining the specific changes in Western citizenship structures reminiscent of Israeli stateless citizenship, we ought to look briefly at the political and social context of the currents of restriction and control that intensified with the said migration crisis. Uncoordinated efforts among liberal democratic states in the West led to the rising importance of nationality and citizenship in the wake of the recent migration flows. Particularly in Europe, but also North America and Australia, political calculations on the future travel of migrants have, in addition to cases of local initiatives and efforts to welcome and integrate incoming migrants,[429] also swung toward brutality with the erection of new fences, border restrictions and popular fear mongering. Regardless of the latter trends in new forms of exclusion, the heightened level of violence in their home societies continues to propel refugees and asylum seekers from Syria, Iraq, Afghanistan, North Africa, and other places to attempt to reach Europe. The policies of exclusion followed by most European states, the lack of effective refugee resettlement arrangements and access to humanitarian visas in the United States, Canada, and Australia, including Russia and the Gulf countries, effectively leave migrants with little choice but to risk their lives for a chance at asylum.

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429 Reported by *The Guardian* in January 2016, prominent academics from the universities of Oxford, Princeton, Harvard, Cornell and Copenhagen made a submission to the Nobel Committee to award the eminent Peace Prize to the inhabitants of the Greek islands of Lesbos, Kos, Chíos, Samos, Rhodes and Leros. Though yet to be finalized at the time of writing this chapter, it was reported that in their nomination letter the academic explained: "On remote Greek islands, grandmothers have sung terrified little babies to sleep, while teachers, pensioners and students have spent months offering food, shelter, clothing and comfort to refugees who have risked their lives to flee war and terror." Daniel Boffey, "Greek islanders to be nominated for Nobel peace prize," *The Guardian*, January 24, 2016, retrieved from: https://www.theguardian.com/world/2016/jan/24/greek-islanders-to-be-nominated-nobel-peace-prize.

This migration has largely been conducted by sea, with boats as a dangerous but also the most economical option. Boats transported more than a million refugees by 2015 helter-skelter to the European periphery, mainly in Greece and Italy, but also Spain, Malta and Cyprus. After travel by sea, movement on foot by land through extreme conditions via the Turkish-Bulgarian border has been the most accessible and affordable option for populations fleeing instability and conflict. In this context, and contrary to the borderless model of migration imagined for European member states, Western liberal democracies have begun to function as 'people-containers'. Key to managing the trafficking of people is the rising securitization and militarization of the refugee and migration crisis. Policymakers in Europe and the United States have employed the rise of migration and existing public fears of terror-related activity in Western societies to seek greater law-enforcement powers, including the use of military weaponry, the building of security barriers and mass surveillance of home populations.

In Europe, the militarization of the 2015 'migration crisis' took the form of closing various frontiers of movement and essentially cutting certain member states out of the fraternity.[430] A key stop for asylum seekers on the transit route to central and northern European states, Macedonia (itself not a member of the European Union) stationed its military troops carrying teargas and rubber-bullets to reinforce its southern frontier, standing alongside Slovene and Polish soldiers armed with water cannons and armored personnel.[431] A similar pattern formed, though unevenly, along the eastern

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430 Médecins Sans Frontières (MSF) reports that said Macedonia had commenced the construction of a physical obstacle along its southern border with Greece. Patrick Kingsley. "Aid groups say Balkan states blocking refugees based on nationality," *The Guardian,* November 19, 2015, retrieved from: https://www.theguardian.com/world/2015/nov/19/balkan-countries-block-refugees-nationality-aid-groups

431 Helena Smith, "Marooned in Idomeni: despair as refugees find their way blocked," *The Guardian*, March 2, 2016, retrieved from: https://www.theguardian.com/world/2016/mar/02/idomeni-greece-

periphery of Europe. While Serbia spoke openly at the time against building a barrier, Slovenia had begun preparing one so as to control the physical flow of refugees. Meanwhile, Hungary had completed work on a fence in mid-September 2015 thereby creating a logjam of refugees in Greece by re-directing the traffic of the refugee route westwards into Croatia. The precarious situation in Greece deserves particular mention here. The militarization and securitization of the refugee crisis, with member states acting as human traffic managers, ushered refugees into a country that was internally disorganized, politically unstable and transitioning, economically bankrupt, and facing dire housing and employment crises even in the absence of the current rise of asylum seekers. The creation of militarized barriers among member states in the southern and eastern peripheries of Europe not only intensified the existing instabilities within the state, but also transformed the crisis into a constant and stationary problem.[432] It formed a chaos that did not move as people were stuck, effectively turning entire regions into de facto refugee camps.[433]

Although the rest of Europe was not directly building physical barriers, measures were nonetheless taken to enable and support such developments indirectly by putting pressure on peripheral nations to limit the traffic of refugee movement into region. Since the rise of this 'crisis', NATO forces intervened by returning migrants trying to reach

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refugee-march-abruptly-cut-short.

[432] Interestingly, the Israeli daily newspaper *Haaretz* reported in this period that both Hungary and Bulgaria made inquiries to Israel about the design and construction of its border barrier with Egypt. Taking from the Israeli experience and expertise with barrier-construction in the occupied Palestinian territory, these two European countries looked into the possibility of erecting towering steel security fences along parts of their borders to stifle heightened refugee migration. Here too, Israel serves as an example for Europe on effectively preventing population movement. See Dan Williams, "Amid Migrant Crisis, Europeans Interested in Israeli Border Barriers," *Haaretz*, September 3, 2015, retrieved from: http://www.haaretz.com/world-news/1.674381.

[433] See Sergio Carrera, Steven Blockmans, Daniel Gros and Elspeth Guild, "The EU's Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities," *Centre for European Policy Studies Essay*, No. 20/16 (December 2015): 1-22.

Europe from Turkey in the Aegean Sea. Interception by NATO forces also included identifying smugglers taking migrants to Greece and transferring this information to Turkish officials to enable interception of these flows before reaching the southern shores of Europe. When it comes to strategies of interception by sea, Australia has, along with other peripheral countries pushed back boats full of migrants. In its 2015 Human Rights Report, Amnesty International cited Australia as one of at least thirty countries with a "turn-back policy" that illegally forces refugees to return to countries of conflict by sea where they would be in direct danger.[434] Of course, given the physical shape of most of these migrant boats they were more likely to sink in the journey back, making them better described as "floating coffins".[435] In the United States, the militarization of the migrant crisis took the form of the denunciation of particularly Syrian refugees by some government officials (and, of course, President Donald Trump) as a security threat. This was done despite the fact that the limited numbers granted asylum were already heavily vetted with an intensive two-year screening process. This is combined with various background checks, intense surveillance interviews and the collection of their biometric data.[436]

Coupled with heightened militarization and securitization of liberal democratic societies was the adoption of reactionary policies in response to the refugee crisis. Acting

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434 Amnesty International, "State of the World's Human Rights Report: Report 2015/2016," retrieved from: https://www.amnesty.org.nz/sites/default/files/air201516-english_2016-02-10_12-35-56.pdf.
435 Ben Doherty and Calla Wahlquist, "Australia among 30 countries illegally forcing return of refugees, Amnesty says," *The Guardian*, February 24, 2016, retrieved from: http://www.theguardian.com/law/2016/feb/24/australia-among-30-countries-illegally-forcing-return-of-refugees-amnesty-says.
436 The temptation to heighten mass surveillance also appeared in France and the United Kingdom in this period, both of whom inquired into new intelligence laws to reinforce powers of surveillance to accumulate mass data. For analysis on the German linking of the figure of the refugee or asylum seeker to a 'security threat', see Sean M. Holmes and Heide Castañeda, "Representing the 'European refugee crisis' in Germany and beyond: Deservingness and difference, life and death," *American Ethnologist*, 43 (2016): 12–24.

as a kind of human traffic manager of refugees, a key task among state officials was

finding acceptable ways to return fleeing nationals to their countries of origin. In early

2016, the Swedish Ministry of Interior had prepared to reject and forcibly deport up to

80,000 asylum applicants, arranging charter flights to expel refused claimants to their

home societies. Having received more than 160,000 asylum applications the year before,

the greatest number of claims in the EU as a proportion of the population, the Swedish

government began cooperating with countries such as Germany to expedite the

deportations.[437] Similarly, in that same year, hundreds of undocumented families in the

United States were announced as potentially being rounded up and immediately

deported.[438] Meanwhile, in the Welsh capital of Cardiff, reports came in that asylum

seekers, who were not legally permitted to work nor given any money, were issued

brightly colored wristbands they were forced to wear at all times. Dressed in what are

considered by many asylum seekers as the garments of an 'outcast', the arriving migrants

were housed in Clearsprings Ready Homes, a private firm contracted by the state, and

told that the wristbands were mandatory to receive their allotted three meals per day.[439]

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437 David Crouch, "Sweden sends sharp signal with plan to expel up to 80,000 asylum seekers," *The Guardian*, January 28, 2016, retrieved from: https://www.theguardian.com/world/2016/jan/28/sweden-to-expel-up-to-80000-rejected-asylum-seekers. For a comparative study on the Swedish response, see Nicole Ostrand, "The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States," *Journal on Migration and Human Security*, 255 (2015): 255-279.

438 Jerry Markon and David Nakamura, "U.S. plans raids to deport families who surged across border," *The Washington Post*, December 23, 2015, retrieved from: https://www.washingtonpost.com/politics/us-plans-raids-to-deport-families-who-surged-across-border/2015/12/23/034fc954-a9bd-11e5-8058-480b572b4aae_story.html. For more on new classes of 'criminality' or 'felonies' designed to target immigration and enable deportation in the United States, see Walter A. Ewing, Daniel Martinez and Rubén G. Rumbaut, "The Criminalization of Immigration in the United States," Washington, DC: American Immigration Council Special Report, July 2015, retrieved from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2631704. See also Chapters 3 and 5 of Tanya Maria Golash-Boza's *Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America* (New York: Paradigm Publishers, 2013).

439 Diane Taylor, "Asylum seekers made to wear coloured wristbands in Cardiff," *The Guardian*, January 24, 2016, retrieved from: https://www.theguardian.com/uk-news/2016/jan/24/asylum-seekers-made-to-wear-coloured-wristbands-cardiff.

Following similar moves in Switzerland and southern Germany, Denmark also

enabled border police to forcefully confiscate from migrants any non-essential items

worth more than around one thousand pounds and that have no sentimental value to their

owner. Though this legal policy was compared to the rules applied to Danish citizens on

welfare support, it is important to point out that the actual searching of a Danish citizen

was only legal if the municipality had a suspicion of fraud and required a court

permission. But no court permission is required for the forceful searching of refugees.

Denmark accepted about 20,000 asylum seekers in 2015, making around two percent of

the total figure to arrive in Europe that year. To deter further potential asylum seekers in

that period, Denmark's Ministry of Immigration, Integration and Housing imposed

greater border controls to force back refugees. The government even went so far as to

place Arabic and English advertisements in four Lebanese newspapers listing a range of

factors that would make Denmark an undesirable destination for potential refugees,

including the difficulties of being granted asylum and new restrictions to entry.[440] While

Switzerland too had adopted similar policies forcing migrants to hand over possessions to

help cover the costs for their support, it took the additional step of also claiming ten

percent of any wages earned by refugees for up to ten years, or until they are able to

repay 15,000 Swiss Francs in costs.[441]

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440 Adam Taylor, "Denmark puts ad in Lebanese newspapers: Dear refugees, don't come here," *The Washington Post,* September 7, 2015, retrieved from: https://www.washingtonpost.com/news/worldviews/wp/2015/09/07/denmark-places-an-advertisement-in-lebanese-newspapers-dear-refugees-dont-come-here/.

441 See Thomas Gammeltoft-Hansen, "Refugee policy as 'negative nation branding': the case of Denmark and the Nordics," *Danish Foreign Policy Yearbook*, Issue 10 (2017): 99-125. For background on the state practice of seizing assets from refugees and migrants, see Joseph Blocher and Mitu Gulati, "Competing for Refugees: A Market-Based Solution to a Humanitarian Crisis," *Columbia Human Rights Law Review,* 48, 1:1 (2016-2017): 53-111. See also Agencies, "Switzerland seizing assets from refugees to cover costs," *The Guardian,* January 15, 2016, retrieved from: https://www.theguardian.com/world/2016/jan/15/switzerland-joins-denmark-in-seizing-assets-from-

Overall, the rising importance of nationality and citizenship has created absurd logics and contemporary techniques of exclusion. This has particularly been the case in cases were Western border officials are dealing with asylum seekers that either have no recognized nationality, or multiple yet incomplete nationalities. For example, in the case of Syrian-born Palestinians, various European cities utilized different procedures. Some local migration officers registered Syrian-born Palestinians as Syrians, as was the case in Germany. Other European states detained Syrian-born Palestinians until their citizenship status was determined. Meanwhile, Macedonian border authorities adopted more regional-based form of exclusion by only allowing those from cities they considered to be 'affected by war' to cross the border from Greece. As such, those Syrians and Iraqis (and Syrian- and Iraqi-Palestinians) from cities such as Aleppo could enter while those from the capital Damascus or the Iraqi capital of Baghdad were being stopped.

What the next section examines is how intense and self-reinforcing trends in techniques of closure and exclusion have since formed and intensified links between various types of rights violations. As Western liberal democracies violate the rights of non-citizens in addressing refugees or terror-related insecurities at home, their ability to uphold the broader set of civic rights is similarly compromised. This study holds that the range of measures taken against incoming migrants, some of which are further examined below, have revealed that debates in the West about refugees and asylum seekers are in both practice and theory also a discussion on citizenship. *The gaze toward 'undesirable outsiders' has been widened to include 'undesirable insiders'.* With Israeli stateless citizenship as an analytical paradigm, we consider below how rising logics of exclusion in the existing juridico-political arrangements in the West that apply to refugees and

refugees-to-cover-costs.

migrants have formed a changing and interrogated figure of the citizen. The moral frontiers, territorial boundaries and societal values affected by migration trends are becoming increasingly concerned with citizenship structures alongside conventions around refugee intake. Even in the wake of heightened asylum claims, many Western states appeared less concerned with changing existing legal and political arrangements for refugees – as they were already designed to effectively exclude stateless persons – than they were transforming established citizenship regimes. As apparent in the examples given below, the response to notable and increased flows of migration and asylum has largely transitioned to liberal democratic states mobilizing citizenship structures to instead give themselves greater powers to restrict access to and enable the revocation of citizenship. Overall, rising migration and an influx of asylum seekers has today shifted the gaze of liberal democratic states onto the figure of the citizen, resulting in tightened, revoked and thinned down citizenship arrangements. This is where Israel becomes a particularly useful lens through which to make sense of practices that exclude citizens *through* citizenship structures. Surfacing as the 'new guest', the citizen has been projected as the 'Other' in contemporary liberal democratic regimes now needing to be *internally excluded*.

4. Interrogations of liberal citizenship: France, Britain, and Canada

The concept of citizenship is comprised of different articulations of membership and its accompanying rights, each of which reflect an analysis of the various relations within that state. For this reason, changing notions of citizenship becomes a valuable prism through which to analyze transitions in the conceptions of statehood. Broadly understood, a citizen is one that enjoys the full panoply of civil, economic, and political rights. Randall

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Hansen explains, "as a horizontal status, citizenship [also] requires limits," and "for most people and in most cases, the limits of the borders are the limits of citizenship."[442] However, and relatedly, what we are witnessing is that the vertical parameters of citizenship are also changing. Changes in citizenship rights and experiments made with citizenship structures become clear when we begin to examine recent efforts by Western liberal democratic states. They seek to both formally restrict access to citizenship and enable the total revocation of acquired citizenship by amending the spectrum of their civic incorporation laws.

Ben Herzog clarifies the terminology of citizenship revocation, explaining that the practice of its termination includes terms such as "… 'expatriation,' 'denationalization,' 'denaturalization,' 'renunciation,' and 'revocation' of citizenship."[443] Here, *expatriation* is usually considered the voluntary decision and act of leaving one state for another, as is the *relinquishment* or *renunciation* of citizenship which are often voluntary acts to end the mutually recognized relationship with a state, usually pursued for political-ideological reasons or out of economic interests.[444] In contrast, *denationalization* and the *revocation* of citizenship form different politics of implementation and logics of exclusion. Herzog explains that the practice of revoking citizenship was mainly introduced to eliminate dual citizenship, as multiple state loyalties and national ties were understood as challenging the idea of a comprehensive national logic.[445] Citizenship was, he explains, expected to

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442 Randall Hansen, "State Controls: Borders, Refugees, and Citizenship," *The Oxford Handbook of Refugee and Forced Migration Studies Online* (June 2014), retrieved from: http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-032?print=pdf.
443 Ben Herzog, *Revoking Citizenship: Expatriation in America from the Colonial Era to the War on Terror* (New York, New York University Press, 2015), 23.
444 Herzog, *Revoking Citizenship,* 24.
445 Ibid., 4; 14.

be singular.[446] As we will see, the contemporary tendency to resort to policies of citizenship restriction and revocation reflects a developing hegemonic national logic among liberal democratic states. Thus, the absence of full and exclusive loyalty to the nation-state – a loyalty that requires constant and changing forms of expression and declaration – generates a need to take away citizenship.[447]

In this study, processes of (dis)entanglement are relevant. Notions of critically entangled histories, exchange and the continuity of logics of exclusion enable us to analyze the formation and dissolution of shared national, intellectual and political boundaries. Importantly, when examining these boundaries, we see that far from the arrangement of ideal types, generalizations of legal and political practices of exclusion help reveal the broader contours of emerging restrictive citizenship structures and landscapes. The effect of this climate is the process of a *desacralization of citizenship*. Explained earlier, this process involves the weakening of arrangements and structures of citizenship, with substantive benefits accumulating from citizenship being increasingly thinned down. When considering the mechanisms and proposed solutions for exclusion and restriction to manage rising migration, what quickly becomes apparent is that along with a global refugee crisis has surfaced broader transitions in citizenship. In this chapter, I situate some of these broader shifts in citizenship structures by employing the analytical model of *stateless citizenship*. I argue that the Israeli logic of exclusion is a looking glass through which we can further detect and problematize the increasing Western thinning out of citizenship. To this end, I seek to place Israeli practices in nationality and citizenship restriction in juxtaposition with the transformations in the liberal democratic

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446 Ibid., 35.
447 Ibid., 14.

examples given below, so as to reveal the troubling forms these growing contemporary restrictions can assume.

4.1 France: Excluding the citizen from within

The proliferation of anti-terror legislation in France, catalyzed by two terrorist attacks in Paris in January and November 2015, reflects the image of a state increasingly obsessed with security, shifting its gaze onto the figure of the citizen. In examining the recent past of French anti-terror legislation, the word 'proliferation' proves not to be an exaggeration. In 2015, the denationalization procedure[448] had been used against five bi-national citizens who had been condemned for terrorism,[449] and in the aftermath of the extensive terrorist attacks on November 13, the executive branch of government had at the time proposed widening the ambit of this existing denationalization procedure to French-born bi-national citizens.[450] Joppke observes that

> [So] deeply held was the idea, enshrined in Article 1 of the French Constitution, of 'the equality before the law of all its citizens regardless of origin, race, or religion,' that the final text of the citizenship stripping bill, passed by the National Assembly in early February 2016, omitted the reference to dual nationals, even though everybody knew that only *they* could be affected by it.[451]

As the French Parliament and Senate could not later agree on a joint text, President François Hollande withdrew this highly debated proposal for constitutional amendment in late March 2016. Broadening the logic of exclusion to include all dual-nationality citizens

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448 France, Civil Code, Article 25, September 1, 1998, and Article 25-1, January 24, 2006.
449 Associated Foreign Press, "Cazeneuve annonce la déchéance de nationalité de 5 personnes condamnées pour terrorisme," *Le Monde*, October 6, 2015, retrieved from: http://www.lemonde.fr/police-justice/article/2015/10/06/cazeneuve-demande-la-decheance-de-nationalite-de-cinq-personnes-condamnees-pour-terrorisme_4783668_1653578.html.
450 François Hollande, "Discours du président de la République devant le Parlement réuni en Congrès," Présidence de la République, *France Diplomatie*, November 16, 2015, retrieved from: https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/defense-et-securite/attentatsparis-serie-d-attaques-terroristes-a-paris-novembre-2015/article/discours-du-president-de-la-republique-devant-le-parlement-reuni-en-congres-16.
451 Joppke, "Terror and the loss of citizenship," 745. Original emphasis.

should they be convicted of terrorism (including those born in France) would have further entrenched the existing denationalization procedure. Broadly, it is an indication of the punitive character of citizenship revocation, particularly as it applies to racialized minority communities.

Moreover, earlier that year, another law tremendously increasing the powers and resources of intelligence and surveillance services in the collection of private data of the French public was passed, also partly due to the terrorist attacks of January.[452] Useful for our excursus and explained below, on November 13th 2014, exactly one year before the 2015 attacks in Paris, a procedure for a prohibition on leaving the French territory was implemented.[453] Employed by French policy-makers as a privileged channel for the suppression of terrorist threats, the efficiency of such regulations were questioned by several scholars and political analysts. They argued that these practices erode fundamental rights and liberties, such as the freedoms of movement, association, demonstration, and the right to privacy. As a preferable solution, critical observers have instead called for more social integration in the socio-economically deprived and ghettoized *banlieues*. Rather than discussing their cost-efficiency and bringing a definitive answer on whether these measures are an appropriate response to transnational terrorism, what matters for my purposes is that through these laws transpires the state's obsession with the citizen. A constant presumption of the citizen's guilt is revealed and a recurring perception of the citizen inside as a potential enemy in need of interrogation. As

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452 Government of France, Law No. 2015-912, "Relative au renseignement," July 24, 2015, retrieved from: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030931899&categorie Lien=id.

453 Government of France, Law No. 2014-1353, "Renforçant les dispositions relatives à la lutte contre le terrorisme," November 14, 2014, retrieved from:https://www.legifrance.gouv.fr/affichTexte.do?cid Texte=JORFTEXT000029754374&categorieLien=id.

I explain, these amendments are tools for total control by the French sovereign of the citizen as the central figure of the body politic. This not only undermines the principle of a presumption of innocence, but it also intensifies and transitions the process and tools of sanction as ones exercised *through the very structures of citizenship*.[454] Key to the argument of my study, such developments indicate a softening of the distinction between the citizen-national and foreign-Other in the eyes of the state. In essence, the transition in citizenship to which we are witness is resulting in the increasingly interrogated figure of the citizen in Western states.

The application of an Israeli logic of 'exclusive inclusion' for the French citizen, traditionally the most included figure of the body politic, appears with the above provisions concerning the prohibition on leaving its national territory. As mentioned, Law 2014-1353 formed a new section in the French code regarding internal security (*code de la sécurité intérieure*). The added Article L224-1 of this code enables the prevention of any French citizen from leaving the French territory should there be "serious reasons" to think that this individual may take part in terrorist activities abroad, or upon return on the territory.[455] Evidently, such a law is a serious limitation on the freedom of movement and of leaving one's country, recognized in several international treaties to which France is a party. For instance, the Universal Declaration of Human Rights (UDHR) provides that "Everyone has the right to leave any country, including his

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454 Though beyond the confines of this project, there is a history of this practice across liberal democratic states in the form of internment camps in Canada and the United States during World War II. See, for example: Brian Masaru Hayashi, *Democratizing the Enemy: The Japanese American Internment* (Princeton: Princeton University Press, 2004); Elena Tajima Creef, *Imaging Japanese America: The Visual Construction of Citizenship, Nation, and the Body* (New York: New York University Press, 2004); and Patricia E. Roy, *The Triumph of Citizenship: The Japanese and Chinese in Canada, 1941 67* (Vancouver: UBC Press, 2007).

455 Government of France, "Code de la sécurité intérieure," Article L224-1, November 15, 2014, retrieved from:https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT0000255 03132&idArticle=LEGIARTI000029755321.

own."[456] Moreover, the Fourth Protocol to the European Convention on Human Rights (ECHR) gives an almost identical provision, asserting that "Everyone shall be free to leave any country, including his own."[457] The limited effect of these covenants on the provision of fundamental liberties in Western democratic is outlined in John Torpey's account of the state monopolization of the legitimate means of movement:

> The right to leave and return to one's country is a prerogative that has come to be widely accepted in international human rights law. […] The very enunciation of such rights, it should be noted, indicated the extent to which states and the state system have expropriated and monopolized the legitimate means of movement.[458]

Indeed, even the ECHR acknowledges the non-binding features of these provisions for nation states, accepting that some restrictions may legitimately be placed on the exercise of the right to movement should it be "in accordance with law and … necessary in a democratic society in the interests of national security."[459] A related provision also found in Article L224-1 is that the political subject prohibited from leaving the territory is also legally obliged to return all travel documents (passport and/or national identity card) that enables movement within the Schengen area to the French authorities. In exchange, citizens exposed to these provisions are provided a receipt proving their identity in the country. With this, a jail sentence is included as a possible recourse for the state should the individual fail to comply with the obligation to 'return' said documents to the state.[460]

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456 United Nations General Assembly, *Universal Declaration of Human Rights*, Articles 13-2, Paris, 1948, retrieved from: http://www.un.org/en/universal-declaration-human-rights/.
457 European Union, "Protocol n°4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto," Article 2-2, Strasbourg, 1963, retrieved from: http://www.echr.coe.int/Documents/Library_Collection_P4postP11_ETS046E_ENG.pdf.
458 Torpey, "Coming and Going," 249-250. For more, see also *The Invention of the Passport*.
459 European Union, "Protocol No. 4 to the *Convention for the Protection of Human Rights*," Article 2-3.
460 France, "Code de la sécurité intérieure."

For all intents and purposes, the proposed Law 2014-1353 can be said to constitute a sanction inasmuch as it is a temporary adjournment of a fundamental right. This is similar to the sanction of imprisonment as the suspension of the freedom to movement, and the sanction of illegibility as the cancellation of the right to be elected. However, such verdicts are usually assigned at the end of a process of judgment, resulting from the commission of illegal action. Clearly, this is not the case for the proposed French prohibition on leaving the territory. Instead, it enables the enactment of a sanction once "there are serious reasons to think that [the individual] is planning" to take part in terrorist activities either abroad or upon return in the French territory.[461]

The implied purpose of the law is to anticipate, as much as possible, terror-related 'radicalization' abroad and ultimately terror attacks in home-societies. But the wording of the law as "serious reasons" for such suspicion is vague and left undefined, leaving unclear the minimal level of reliability of information justifying to the decision.[462] That said, the key implications of this law is its contribution to the global upturn in citizenship restriction and revocation. This is relevant to my observation of the contemporary evolution of citizenship and the transition to a desacralization of its arrangements. In other words, Law 2014-1353 renders the dilution of citizenship a key part of the sanction itself.

With this law, the citizen is legally limited by the state to the territory (and not simply deported) through and by virtue of their citizenship. Israeli stateless citizenship becomes useful as a looking glass because here too the inclusive mechanisms and

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461 Ibid.
462 Jacqueline Domenach, "Entretien avec Mme Christine Lazerges, Présidente de la Commission Nationale Consultative des droits de l'homme (CNCDH) et M. Hervé Henrion-Stoffel, magistrat, conseiller juridique à la CNCDH," *La Revue des droits de l'homme*, Volume 6 (2014): 2.

protective logic of citizenship are inversed. Citizenship structures become the actual

mechanisms *for* exclusion of the citizen. This is particularly relevant as, by now,

denationalization is a legal (and since enacted) recourse of action for the French state in

the effort to address unwanted political and cultural changes in their home-society.

Reminiscent of the exclusive-inclusion of the Israeli incorporation regime, and even

without denationalization, the legal and political transitions in French citizenship render

an interrogated citizen through the very arrangements of the citizenship regime.

Citizenship structures themselves become mobilized to limit and exclude the citizen. In

this process, the citizen becomes stretched and inverted with the more unstable figure of

the immigrant.

Further, as explained above, since terrorist infractions are supposed to take place

abroad, or after the return on the French territory, these acts can only be pre-supposed.

The notion of preparatory acts itself becomes blurred here, as there is no certitude that the

acts are indeed preparatory of a potential terrorist undertaking. For Christine Lazerges,

Head of the French National Advisory Commission for Human Rights, this arrangement

effectively becomes a "preparation of the preparation" stage for the said illegal

infraction.[463] Extending this argument, we see that the prohibition on leaving the territory

for French citizens is also a kind of *preparation of the preparation* to transform the

citizen into the foreign-Other, prior to the actual transition. In effect, actual

denationalization is rendered superfluous; it is both avoidable and unnecessary. Instead,

because of their citizenship, this central figure of the body politic is placed in a condition

where they are excluded through their very inclusion. This is similar to the logic of

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463 My own translation. The original sentence in French reads "Dans un tel cas de figure, l'intégralité des actes réprimés est située au stade de la simple «préparation de la préparation» de l'infraction." See Ibid.

stateless citizenship as civic structures are used to dilute and restrict their rights and protections. The citizen is exposed to a logic of exclusion classically reserved for a non-citizen, a temporary figure or foreigner without (or prior to) actually becoming one.

The rationale of the law is that, since the individual subject to terrorist ideology and training abroad has, as a citizen, the right and ability to return to the territory where they may be a potential threat, it is necessary to anticipate and to prevent the departure of the individual in the very first place. As opposed to the migrant coming from the outside and prevented from entering, the citizen coming from the inside is prevented from leaving. This reverse in the logic of civic inclusion, one that rather strongly corresponds to the paradigm of stateless citizenship in Israel, makes Law 2014-1353 a central contribution to broadening of the category of undesirable outsiders. Or, rather, undesirable *insiders*. In both cases, juridico-political exclusion comes not in the form of deportation or denationalization, but rather a prohibition on exit from the sovereign territory through the affirmation of said membership. Rather than enabling freedoms and protections, civic affiliation with the state is explicitly cited to ensure restriction and exclusion. The risk of the foreign-Other, traditionally associated with the fluid figure of the 'immigrant' is also conferred onto select citizen subjects. And far from being managed at the actual border – what Hansen has called "the limits of citizenship" – the 'risk' is instead dealt with inside the territory with the mobilization of citizenship. With this, the right and access to the nation-state is rendered a key part of the practice of punishment and exclusion. Overall, using the metaphor of the state as a body, the aim becomes no longer to merely prevent infection from foreign agents, from dangerous and outside Others, but rather to detect and neutralize dangerous cells inside the body politic.

For this reason, Law 2014-1353 and the prohibition on leaving the French territory lies at the crossing point between state control on mobility and the generalized suspicion between sovereign and subject. Within this juxtaposition, it renders an interrogated figure of the citizen by inscribing it features usually associated with the migrant.

4.2 Britain: Diminishing the proximity between citizen and stateless

The rise of techniques and mechanisms of citizenship deprivation in Britain has been particularly applied to those suspected or at risk of being involved in what is considered extremist activity or terrorist training overseas. As it stands, British nationality law provides for six various categories of British nationality and citizenship status, of which 'British citizen' is the most common. Juridico-political amendments enabling sovereign power of deprivation of citizenship applies to all of these types. The citizenship revocation conventions in the British Nationality Act 1981 (BNA) were amended in 2002, 2006 and in 2014. Prior to the first amendment in 2002, British law enabled the revocation of citizenship acquired through "fraud or misrepresentation; where a naturalized citizen was convicted and sentenced to at least a year's imprisonment within five years of naturalization; or where the citizen had demonstrated disloyalty, disaffection or assistance to the enemy in wartime."[464] Far from automatic, the revocation of citizenship in this time placed the onus on the Secretary of State for the Home Department (also referred to as the Home Secretary) to attest that the continued provision of citizenship worked against the interests of the public good. With the 2002 amendments to the BNA, implemented in April 2003, the boundaries of citizenship revocation were

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464 Audrey Macklin, "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien," *Queen's LJ* 40:1 (December 2014): 15.

broadened to include birthright citizens, replacing existing grounds for deprivation with behavior "seriously prejudicial to the vital interests" of the United Kingdom.[465] After the September 2001 terrorist attacks in the United States, and the launch of the 2001 Afghanistan and 2003 Iraq Wars, a 2006 amendment to the BNA was enacted further widening the parameters for citizenship revocation.[466] It enabled the deprivation of British citizenship through the mere subjective belief of the Home Secretary that such a measure would be "conducive to the public good."[467] With this amendment, the prior onus of thoroughly attesting that the continued provision of citizenship is detrimental was removed. This measure was a key step in the desacralization of civic structures and the interrogation and restriction of the figure of the citizen.

Contemporary changes affecting the depth of citizenship rights and the scale of citizenship structures forming its aforementioned vertical parameters become clear when we examine a 2014 reform to the BNA. With this amendment, the dividing line between the citizen-national and foreign-Other is blurred, conferring onto the former the unstable and fluid features traditionally associated with the latter. In a 2013 Supreme Court Decision in Secretary of State for the Home Department v. Al-Jedda, it was ruled that the revocation of citizenship in the absence another nationality breaches the international prohibition on creating statelessness, and rendering persons stateless.[468] The Convention on the Reduction of Statelessness 1961, to which Britain is a signatory, addresses the

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465 Sandra Mantu, *Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives* (Leiden: Brill, 2015), 341.
466 Catalyzed by the case of David Hicks, an Australian national captured by the American forces in Afghanistan and held at Guantanamo Bay who managed to successfully acquire British citizenship through his mother, only to have it immediately withdrawn by the UK government, this amendment further thinned down existing citizenship arrangements. See Matthew J. Gibney, "The Deprivation of Citizenship in the United Kingdom: A Brief History," *Bloomsbury Professional,* Volume 28, 4 (2014): 333.
467 Mantu, *Contingent Citizenship,* 191 and 193, note 78.
468 Macklin, "Citizenship Revocation," 16.

implications of denationalizations for mono-nationals.[469] Key Articles in this convention

prohibit any denationalization of individuals that generates statelessness. However, this

injunction is adjusted and excepted in Article 8 (3) enabling citizenship revocation in

cases of fraud, and in cases where the individual's conduct "seriously prejudicial to the

vital interests of the state".[470] Relevant for our purposes, this adjustment to the general

principle of this law preventing the creation of statelessness therefore enables (and

invites) democratic nation-states to create additional laws. Ones that outline the

parameters of both 'vital state interests' and 'citizen-like' behavior. Audrey Macklin

notes that Britain, upon entering this Convention, expressly retained its existing right

under its domestic law to produce statelessness through these grounds.[471]

     As an Iraqi-born naturalized UK citizen, Hilal al-Jedda had his British citizenship

revoked in 2007 while out of the country with the claim that he was also an Iraqi citizen.

However, as dual citizenship was not allowed in Iraqi nationality law under former

President Saddam Hussein, al-Jedda had renounced his Iraqi citizenship upon having

obtained UK nationality. With the 2006 amendments to Iraqi law under US-occupation

enabling the reclamation of citizenship for those who had lost their status under Saddam

Hussein, the British Home Secretary asserted that al-Jedda was, as a naturalized UK-

citizen, able to legitimately reclaim his previous Iraqi citizenship.[472] The British

government went so far as to argue that the failure or unwillingness of al-Jedda to claim

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469 Ibid., 13.

470 United Nations Office of the High Commissioner, "Convention on the Reduction of Statelessness,"
     adopted August 30, 1961, entered into force December 13, 1975, retrieved from:
     http://www.ohchr.org/EN/ProfessionalInterest/Pages/Statelessness.aspx.

471 "Between 1949 and 1973," she explains, "the Home Secretary deprived ten British and Colonial
     citizens of citizenship, and none thereafter until 2002." Macklin, "Citizenship Revocation," 15.

472 Ibid., 45.

his lost Iraqi nationality rendered him the source of his own statelessness.[473] With the intervention of the UK Supreme Court, overturning the Home Secretary's decision and reinstating his revoked British citizenship, the citizenship status of al-Jedda was nevertheless revoked once again by the Home Secretary.[474] The al-Jedda case compelled the British government to once again change the BNA in 2014, giving itself the legal power through the Home Secretary to *create stateless persons* even outside of the cases of fraud. This means that a person acquiring British citizenship through naturalization is vulnerable to its revocation even with the result of statelessness. Such a measure is justified if it is conducive to the public good to deprive them of their status given participation in conduct "seriously prejudicial" to the UK's vital interests. Revocation is also accepted if the Home Secretary has reasonable grounds to believe that they could acquire another nationality. In this context, 'conducive to the public good' is considered behavior against the public interest in the form of involvement in terrorism, serious organized crime, espionage, war crimes or unacceptable conduct. With this amendment, the Home Secretary also has the power to issue, seize and refuse to issue these individuals with British passports.[475]

In May 2014, Minister of Immigration and Security James Brokenshire provided figures for the number of deprivation orders issued since 2006. He argued that the figures reflect an "extremely sparing" use of the broadened powers of the Home Secretary to revoke citizenship even with the result of having created statelessness. Brokenshire continued to note that twenty-seven citizenship revocations were implemented on the

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473 Mantu, *Contingent Citizenship,* 213.
474 Gibney, "The Deprivation of Citizenship in the United Kingdom," 334.
475 Importantly, and speaking to the rising absence of citizen participation and their elected political representatives, the power to withdraw and refuse to issue passports is provided to the Home Secretary under a Royal Prerogative, which is an Executive power not requiring legislation.

grounds of violating the pubic good, while twenty-six deprivations were enabled for reasons of fraud, false representations or concealment of material fact grounds.[476] Let us put aside the troubling fact that almost as many British citizens were denationalized for reasons of fraud as there were citizens denationalized because of the subjective belief of the Home Secretary that their exclusion contributes to the public good. What is concerning is the manner in which the British government has implemented its legal power to denationalize and create statelessness.

In the vast majority of cases, the Home Secretary implements her powers of citizenship revocation while the individual is abroad. An exclusion order is then issued to ban the ex-citizen from re-entering Britain so as to potentially appeal the decision. Indeed, this practice is an indication of the thinning down of citizenship structures and the inversion of the figure of the citizen with that of the immigrant. With borders acting as the horizontal limits of citizenship, once outside of the territory of the nation-state, the state is neither obliged nor has jurisdiction to protect or represent the ex-citizen, now foreign-Other. Absolving democratic states of any obligation to protest if its former national is exposed to state violence from another country, or even killed, denationalization appears to surface as a closer proximity to violent death. The direct link between the transition from citizenship to statelessness as a political presage to death is elucidated in cases where British nationals stripped of their citizenship while abroad are subsequently executed by American drone strikes. Former British citizens Bilal al-Berjawi, a British-Lebanese citizen who came to the UK as a child and was raised in

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476 British Government, Parliamentary Debate, May 7, 2014, retrieved from: https://publications.parliament.uk/pa/cm201314/cmhansrd/cm140507/debtext/140507-0002.htm. On this the numbers vary slightly. Gibney contends that by May 2014, "Cameron's government had some 23 people stripped of citizenship on 'not conducive' grounds in the last three years." In "The Deprivation of Citizenship in the United Kingdom," 333.

London, and British-born Mohamed Sakr, who also held Egyptian nationality, were

denaturalized while traveling to Somalia in 2009.[477] Subjects of extensive surveillance by

British intelligence, the revocation of their British nationality rendered them legitimate

targets in an American military operation, leaving both Berjawi and Sakr killed through

two separate US-led drone strikes.[478] With this arrangement, legislation enabling the

British government to subjectively determine whether an individual qualifies for

denationalization is essentially legislation enabling the government to determine who gets

to live.[479]

Bizarrely, even in circumstances where the British government has not

denationalized their citizens prior to their targeted killing through remotely piloted

aircrafts, the thinning and desacralization of citizenship through subjective revocation

nevertheless enables its legal justification. On August 21, 2015, an unprecedented

government authorized targeted airstrike in al-Raqqa, Syria killed two Britons fighting

with Islamic State. The Hellfire missile fired from the Reaper drone executing the two

nationals was operated by a pilot some three-thousand miles away at the Royal Air

Force's base in Lincolnshire, England, and while the target of the attack was 21-year old

British national Reyaad Khan, 26-year old Ruhul Amin from Aberdeen simply happened

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477 Chris Woods, *Sudden Justice: America's Secret Drone Wars* (Oxford: Oxford University Press, 2015), 124-125.

478 Defence Committee Document HC 772, "Written evidence from the Bureau of Investigative Journalism" March 24, 2014, retrieved from: https://publications.parliament.uk/pa/cm201314/cmselect/cmdfence/772/772vw08.htm. Original at Bureau of Investigative Journalism, "Former British citizens killed by drone strikes after passports revoked," February 27, 2013, retrieved from: https://www.thebureauinvestigates.com/2013/02/27/former-british-citizens-killed-by-drone-strikes-after-passports-revoked/.

479 Michel Foucault's work examines how citizenship as biopolitics relies on the classification of persons in society as either of value or detriment to the body politic. In this sense, *citizenship is biopolitics*, or a response to it, because it decides who gets to live and who gets to die. Effectively, citizenship makes life 'calculable' by the state. See 'Governmentality' in *The Foucault Effect: Studies in Governmentality*, eds. G. Burchell, C. Gordon and P. Miller (Chicago: University of Chicago Press [1978/1991]), 84-104.

to be in the vehicle at the time. Three days after this unprecedented airstrike, another

British national, Junaid Hussain, was killed in a US-led drone strike.[480] Despite not

having denationalized these individuals prior to their killing, former British Prime

Minister David Cameron responded with the contention that the killings were "entirely

lawful, necessary and proportionate," reflecting Britain's "inherent right to self-

protection" on grounds of national security.[481] Similar arguments were made by the

British government months later when on November 12, 2015, Mohammed Emwazi

(known as 'Jihadi John') was killed. A British national and allegedly the person seen in

several videos produced by the Islamic militant group ISIS showing the beheadings of a

number of captives, Emwazi was hit by two targeted US drone attacks along with a

British drone also in in al-Raqqa. Responding to this targeted killing, Cameron claimed

that the attack was "an act of self-defence," requiring military action.[482] The logic of

exclusion holds that given said threat to British citizens, the state is not obliged to uphold

the social contract in relation to these killed individuals, nor does it have jurisdiction to

arrest them in foreign battlefields. And given that these persons are unlikely to

voluntarily return to the United Kingdom, there is "no other means to stop" these

nationals, other than targeted killing abroad.[483]

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480 Although the US has been implementing drone attacks against its own citizens for at least a decade, sanctioned assassinations of British nationals is a novel development. See Nicholas Watt, Patrick Wintour and Vikram Dodd, "David Cameron faces scrutiny over drone strikes against Britons in Syria," *The Guardian*, September 8, 2015, retrieved from: https://www.theguardian.com/world/2015/sep/07/david-cameron-justifies-drone-strikes-in-syria-against-britons-fighting-for-isis.

481 Ibid.

482 Patrick Wintour, "Cameron says airstrike on Mohammed Emwazi was act of self-defence," *The Guardian*, November 13, 2015, retrieved from: https://www.theguardian.com/world/2015/nov/13/cameron-says-airstrike-on-mohammed-emwazi-was-act-of-self-defence.

483 William James and Kylie Maclellan, "Cameron says UK drone strike killed British IS fighters in Syria," *Reuters Online*, September 7, 2016, retrieved from: http://www.reuters.com/article/us-mideast-crisis-britain-syria-idUSKCN0R71PF20150907.

Taken together, citizenship revocation becomes a political presage to death, enabling the (apparently likely) violent killing of these individuals abroad as they are no longer citizens of that state. Working from Agamben's Roman figure of *Homo Sacer*, whose inclusion into the sovereign violence of the law is maintained through exclusion from its protections and representation, Macklin explains that "a citizen stripped of nationality and banished from the territory is, for all intents and purposes, dead to the state. […] Killing them is not murder."[484] But in cases where citizenship has not yet been revoked, the state's deliberate execution of these citizens abroad is still not a violation of the social contract. Nor does it appear to violate that one-to-one mutually recognized relationship among states and autonomous legal subjects. Significant for our purposes is that even in situations where denationalization has not taken place (or rather, has yet to occur), citizenship structures in democratic states have transitioned to a place where the deliberate killing of citizens is nevertheless justified.

Using Israeli stateless citizenship as an analytical paradigm, this arrangement reveals itself as an indicator of a closer proximity between the traditionally oppositional categories of inside and outside, citizen and stateless. *Citizenship structures and arrangements are themselves used in this exclusion of the civic subject from the inside so that formal revocation is not even required.* This reconfiguration of the British citizenship regime works in conjunction with and accelerates existing political and legal practices of exclusion against immigrant and targeted minority citizen communities. In doing so, the broadening of these logics of exclusion enable the active use of discourses and structures of citizenship itself to exclude citizens from within. In the case of Britain,

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484 Macklin, "Citizenship Revocation," 8. Also see Giorgio Agamben's *Homo Sacer: Sovereign Power and Bare Life,* trans. Daniel Heller-Roazen, (Stanford: Stanford University Press, 1998).

this is a result of the adoption of an Israeli logic of exclusive-inclusion. Where previously liberal democratic states were concerned with the creation of citizens, today the gaze of the state appears to be focused on enabling itself legally and politically to instead create stateless citizens. Contemporary arrangements for the central figure of the body politic, the citizen, have been diluted, thinned down and restricted to such an extent that formal denationalization – despite widening powers to actually create statelessness – appears no longer to be a necessary precursor to targeted killing by their state representative. Key to what is theorized here as a broader transition to a desacralization of citizenship is that the citizen is exposed to a logic of exclusion classically reserved for a non-citizen, a temporary figure or foreigner, without (or prior to) actually becoming one.

4.3 Canada: Transitioning from citizen to stranger

The suggestion that citizenship arrangements have themselves become mobilized in the exclusion of the civic subject from the inside that formal suspension and revocation is not even necessary becomes clearer in the case of Canada's *Citizenship Act* (1947). Amendments proposed and sanctioned by the Conservative government in June 2014 through Bill C-24 and later repealed through Bill C-6 by the Liberal government in May 2017, reveal the ways in which governments increasingly formulate citizenship in a manner that is more conditional and temporary. Applied in the period between the two governments, Bill C-24 guaranteed that citizenship will not be revoked if it would render an individual stateless. Despite this, it employed citizenship revocation as an openly punitive action. When introducing this amendment to Canadian citizenship law, former Minister of Citizenship and Immigration Chris Alexander declared that "it would remind

individuals that citizenship is not a right, it's a privilege," given its expansion of

executive powers to denationalize birthright and naturalized citizens.[485] While making it

more difficult to attain citizenship, what is relevant for our purposes are rather those

provisions in this law that desacralize citizenship. The citizen becomes exposed to a logic

of exclusion classically reserved for a non-citizen and the structures of citizenship

themselves become part of that sanction.

First, Bill C-24 excluded the targeted citizen from the existing structures of

citizenship by reducing the forms of procedural participation by the individual whose

status is in question. Citizens facing possible citizenship revocation were not provided

protection by citizenship arrangements. Similar to the British case cited above, prior to

the actual completion of the denationalization process, the Bill already excluded the

targeted individual from avenues of citizen participation. Moreover, the amendment

introduced by Bill C-24 brought in the lack of intent to reside permanently in Canada for

naturalized citizens as a factor for denationalization. It included additional caveats

requiring that the individual "intends, if granted citizenship, to continue to reside in

Canada," and that this intention ought to be continuous from the date of application until

taking the oath of citizenship.[486] On this proposed change, Macklin explains that

> This provision not only authorizes an officer to reject an applicant where the
> officer believes that the applicant lacks the requisite *future intent*, it also
> empowers the Minister to revoke citizenship on the basis of *past
> misrepresentation of future intent*. […] Where the Minister identifies a
> naturalized citizen who appears to reside outside Canada, the Minister can allege

485 Government of Canada, "Speaking notes for Chris Alexander, Canada's Citizenship and Immigration
  Minister at a News Conference to Announce the Tabling of Bill C-24: The Strengthening Canadian
  Citizenship Act," February 6, 2014, Fort York, Toronto, Ontario, retrieved from:
  https://www.canada.ca/en/news/archive/2014/02/speaking-notes-chris-alexander-canada-citizenship-
  immigration-minister-news-conference-announce-tabling-bill-c-24-strengthening-canadian-
  citizenship-act.html.
486 Wintour, "Cameron says airstrike on Mohammed Emwazi was act of self-defence."

that the citizen's post-citizenship departure evinces a pre-citizenship lack of intention to continue residing in Canada once citizenship was granted.[487]

The absence of an 'intent to reside' in Canada can be seen as misrepresentation or concealment of key facts in their citizenship application. This means that, presumably, future decisions to live outside of Canada in a country where one is not a citizen for whatever employment or personal reasons could have been retroactively constituted as reasons for citizenship revocation under the heading of misrepresentation, concealment and fraud. Overall, once sanctioned by the Conservative government, Bill C-24 worked through existing citizenship structures to actually remove the classical protections associated with citizenship status. It re-drew and reduced the boundaries between the figure of the citizen and that of the 'immigrant'. Macklin points out that "access to judicial review for citizenship revocation is subject to the same uniquely restrictive terms that apply to immigration decisions."[488] This implied that citizenship revocation "warrants no greater judicial attention or accountability than loss of immigration status."[489] Thus, at the time, the Canadian adoption of Bill C-24 revealed the ways in which the broader trend towards the interrogation of citizenship structures had instilled onto the citizen features of the temporary figure of the 'immigrant' or 'resident'. With such a formulation, citizenship revocation in Canada would naturally pivot into direct exclusion and expulsion from state structures and, indeed, the territory itself. Once denationalized under this Bill, the former citizen would become a 'foreign national' now vulnerable to expulsion by the discretion of the Minister. As Macklin expresses, this

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487 Macklin, "Citizenship Revocation," 24. Emphasis added.
488 Ibid., 27.
489 Ibid.

"cement[s] its historical link to banishment as punishment."[490]

As mentioned, Bill C-24 was later repealed through legislative changes adopted

by the Liberal Government with amendments through Bill C-6 which received Royal

Assent on June 19, 2017. Among other items, this amendment repealed the revocation of

citizenship from dual citizens convicted of treason, spying and terrorism-related offences,

as well as the provision requiring applicants to intend to continue to live in Canada if and

once granted citizenship.[491] While this indicates that the thinning down of citizenship is,

in such cases, also contested, what is significant for the purposes of this study is the

broader context of citizenship revocations. The paradigm of stateless citizenship

emphasizes in the Canadian experience the mobilization of citizenship structures by the

state to exclude the citizen. In its temporary application by the Conservative government,

the provisions of Bill C-24 illustrated the weakening of citizenship through the very

structures of citizenship itself. Although repealed, experimentation with such

amendments to citizenship law, coupled with the possibility of banishment from the state

once complete, reaffirm my earlier characterization of modern liberal citizenship as

exclusion. What these observations and transitions in liberal democratic citizenship

regimes bring to the fore are considerations of whether citizenship is, or can be,

genuinely inclusive, even of its own subjects. By focusing our analytical gaze on the

exclusions that exist within and through citizenship, the Israeli looking glass points to the

ways in which the figure of the citizen is increasingly being relegated from the center to a

marginal figure of politics.

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490 Ibid.
491 Government of Canada, "Bill C-6 Receives Royal Assent," June 19, 2017, retrieved from:
     https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/06/bill_c6_receives
     royalassent0.html.

5. Citizenship as an enhanced conditional status

Together, the juxtaposition of France, Britain and Canada indicate similar connections among citizenship laws, notions of foreign allegiance, concerns of terror-related activity in home-societies, and the path towards the loss of citizenship. The proposed, passed and amended parameters of citizenship that we have examined all result in greater restrictions in, access to, and possibility of a revocation of citizenship. What has appeared as discussions and concerns about foreign elements with allegiances abroad and with the intention to harm home-societies are, in practice and theory, apprehensions and interrogations of the figure of the citizen.

Of course, this excursus is not claiming a cause and effect vis-à-vis the exclusions outlined in the previous chapters that make up the Israeli incorporation regime. Nor am I arguing that the closure of citizenship in Israel is simply a replica of global citizenship structures, placing Israel alongside a family of liberal democratic nations. Instead, using Israel as an analytical lens we can detect and juxtapose the ways in which the figure of the citizen has been relegated to a marginal figure of politics in the above cases. Having unlocked the placement of the figure of the citizen in the Israeli constitutional order in the previous chapters, we can therefore extract the implications of a rising contemporary political trajectory where the citizen is being inverted with the more unstable figure of the 'immigrant'. What is apparent across the cited examples is that discourse about the foreign threat of migration and/or terrorist activity has altered the gaze of liberal democratic states onto structures and arrangements concerning the citizen. And this has effectively resulted in experimentations with tightened and thinned down citizenship regimes.

Numerous other Western liberal democracies are also contributing to these rising

global networks of restriction and control, producing the mentioned proliferation of

citizenship revocation. We are repeatedly witnessing precedent-setting decisions around

nationality revocation by Western states, where existing laws around said citizenship

restriction are now being actively broadened. In July 2015, Denmark revoked the

citizenship of fifty-five year old Danish-Moroccan Sam Mansoor, convicted for

terrorism-related charges. The sentence included expulsion from the country with no

possibility of return. This revocation is historic for Denmark as it is the first time the state

has severed its links with any Danish national for illegal activity.[492] In November 2015,

the ruling government coalition in Australia agreed to changes proposed by a multiparty

parliamentary committee to support legislation to strip dual nationals of their Australian

citizenship if involved in and convicted on terror-related offences. In the Netherlands, the

Senate approved in March 2016 a legislative proposal broadening the grounds for the

revocation of Dutch citizenship under its Nationality Act. It expanded the powers of the

Minister of Security and Justice to revoke the citizenship of anyone with a criminal

conviction for aiding the commission or preparation of a terrorist act. In the case of

Switzerland, its citizenship law allows the revocation of nationality for dual citizens if

their actions have a significantly detrimental effect on the interests or reputation of the

country. Yet, it was only in May 2016 – the first time since the over sixty-year existence

of the law – that the State Secretariat for Migration sought to revoke the citizenship of a

nineteen year old Swiss-Italian alleged to have joined the Islamic State terror group in

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492 Library of Congress, "Denmark: Court Strips Terrorist of Danish Citizenship," June 13, 2016,
     retrieved from: http://www.loc.gov/law/foreign-news/article/denmark-court-strips-terrorist-of-danish-
     citizenship/.

Syria.[493] Since 2014, at least twenty-two countries in Europe alone have denationalized

their citizens for terrorism or other activity contrary to the public interest, including

Belgium, Germany, Greece and Spain.[494]

Far from a new trend, the contemporary evolution of citizenship in the direction

of restricted structures and the transition to a desacralization of its arrangements appear

more expressly to us as an acceleration of processes already in place. Together, various

processes cited surrounding citizenship in the above states signal an inversion in the

classical logic of inclusion in citizenship – thereby reflecting the contemporary Israeli

practice of stateless citizenship. The above observations point out what is at stake in these

juridico-political decisions and amendments. They relocate liberal democratic citizenship

regimes in Western states in closer proximity to those present and currently functioning

in the Israeli incorporation regime. The implications of these transitions in Western

citizenship towards a more interrogated and restricted model of citizenhood indicate a

disturbing trend. They point to a possibility where liberal democratic citizenship in

Europe and North America adopts a logic of exclusion that reflects the more conditional

and unstable arrangements present in Israeli stateless citizenship.

6. Summary and conclusions

This chapter has outlined legal and political trends within Western nation-states that have

(re)shaped and (re)drawn the parameters of citizenship inclusion, representation and

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493 "Suspected terrorist could lose Swiss passport," *Swiss* Info, May 11, 2016, retrieved from: http://www.swissinfo.ch/eng/politics/dual-national-question_suspected-terrorist-could-lose-swiss-passport/42146890.

494 When placed along these liberal democratic countries, amendments to American citizenship granting widening powers of citizenship revocation also deserves mention. See Herzog, *Revoking Citizenship*. For an account of 'terror-related' denationalization in other Western states, including Britain, Canada and France, see Joppke, "Terror and the loss of citizenship."

protection. Pointing to uncoordinated efforts among Western states to deal with recent migration flows and terror-related activity, we have shown how the intense and self-reinforcing trends in techniques of closure and exclusion have created links between various forms of rights violations. Played largely on the bodies of marginalized immigrant, refugee and racialized minority citizen communities, these changes have also transformed the structures of citizenship itself, widening the possibilities for a broader application of restrictions. Despite their citizenship – indeed, through it – the central figure of the body politic is placed in a juridico-political condition where they are excluded through their very inclusion. Elucidated through the model of stateless citizenship, the above cases reveal a similar thinning down and restriction of citizenship rights and protections. Part of a global transition to a desacralization of citizenship, the citizen appears today to be exposed to a logic of exclusion that was classically reserved for a non-citizen or foreigner, without actually becoming one.

As the Conclusion of this study summarizes, where previously liberal democratic states were concerned with the creation of citizens, today the gaze of the state appears to be focused on creating not only stateless persons, but also *stateless citizens*. For this reason, and putting together the above observations, this study is able to place the existing incorporation regime in Israel as a lens for understanding the global upturn in citizenship restriction and revocation. We are witnessing key transitions in citizenship whereby the citizen is being interrogated and restricted through the actual arrangements and structures of citizenship. These transitions, including their potential dangers, are detectable through a logic of exclusion that continues to shape Israel's constitutional order. Not least, they are creating a problematic legal and political condition where the

mechanisms of liberal citizenship in the West is starting to resemble exclusions present in the Israeli paradigm of stateless citizenship.

Conclusion | Israel as a Model of Citizenship Closure

1. Global-political circulation of citizenship restriction

As the Israeli logic of exclusion, stateless citizenship shows how the design of Israel's incorporation regime demarcates non-Jewish Arab access to citizenship rights and representation. This is done while repudiating their status as citizens of that state, thus rendering this community *stateless citizens*. My previous work on this topic has outlined that in contrast to the *state of exception*, where those in the camp are excluded by not belonging to the state, as stateless citizens, non-Jewish citizens are *excluded* in the Israeli regime by being *included*. Palestinian-Arabs are not denationalized; they are not stripped of their Israeli citizenship, they do not exist outside of the law, and there is no suspension of the validity of the juridico-political order. It is the reverse. As I have explained, since they are recognized as Israeli citizens, international and domestic laws apply, and they have (limited) access to the institutions of the Israeli civic community, thereby making their relation to the state that of *exclusive-inclusion*. The statelessness of Arab citizens is characterized by the fact that though they possess a recognized and legally supported citizenship status in Israel, they are not represented by it at an ideological, existential, institutional and political level. The State of Israel is, by its self-definition, not *theirs*. This makes them stateless in that they have formal membership but, as non-Jews, are not a part of the self-definition of nor are they embodied by the Israeli State. As such, it is the granting of citizenship, the *actual inclusion* within the Israeli citizenship regime, which produces the inherent contradictions and paradoxes in any non-Jewish Arab membership in the Israeli political and social regime.

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The model of stateless citizenship is the preliminary analysis upon which I have built the two central analytical tracks in this study. In Chapters Two, Three and Four, I outline the manner in which Israel mobilizes structures and arrangements of citizenship in the actual exclusion. *It is through the bestowal of Israeli citizenship that non-Jews are 'made' stateless; it is through inclusion within the Israeli citizenship regime that they are excluded.* As I point out, the modern paradigm of citizenship, traditionally a mechanism for inclusion, is transformed. The relation of exception in the classical liberal model of citizenship is placed on its head and inclusive exclusionary mechanisms are inverted. This is because the Israeli incorporation regime has displaced the central figure of the 'citizen' in the body politic, vesting it with features of the less stable and capricious 'immigrant'. Building on this, Chapter Five goes on to consider what these findings elucidate about broader transformations in citizenship restriction and revocation. I consider how the interrogation of the citizen within Israel can detect and reveal core and troubling directions in which the exclusionary policies embedded in Western liberal citizenship regimes are headed. Using citizenship in the Jewish State as a microcosm of broader developments around inclusion and exclusion, I posit that questions as to *who* is a *real* or a *desired* citizen on the part of ostensibly liberal democratic nation-states have shifted their gaze of exclusion onto the figure of the citizen. With this shift, I argue that we are witnessing a rising political trajectory where the citizen is assuming features closer to the more unstable figure of the 'immigrant.' In the discussions and assessments of the previous chapters, the interrogation of the figure of the citizen in Israel has helped illuminate broader transformations in citizenship restrictions occurring today in Europe and North America. Placing Israeli practices in nationality and citizenship restriction in

context with transformations in liberal democratic societies in the West enables us to look at whether overall transformations in liberal citizenship more broadly are afoot.

Part of the contribution of this study has been that, far from the arrangement of ideal types, generalizations of legal and political practices of exclusion can be made to reveal the broader functions and changing proximities of citizenship landscapes. When examining regional articulations in Europe, North America and the Middle East, separate yet connected historical logics of exclusion begin to surface. As historically and ideologically related geopolitical areas with rooted, convoluted and tortured connections, I have attempted to disentangle and identify the prevailing modalities of the liberal variant of citizenship in these regions. And with this, the process of (dis)entanglement among interacting intellectual and political actors in the 'core' and 'periphery' begin to surface. Notions of critically entangled histories, exchange and continuities of logics of exclusion have enabled us in this study to analyze the formation and dissolution of shared national, intellectual, cultural and juridico-political boundaries.

As I have stressed, restrictions in Israeli citizenship and nationality structures are not replicated in their precise form in the cited European and North American cases. Although Israeli stateless citizenship and the practices of citizenship revocation and restriction in Western states are a shared interrogation, they nonetheless remain a *different type* of interrogation. This is largely due to the particular ways in which racialized frameworks of inclusion work alongside Zionist settler-colonial practices to maintain the contemporary Israeli incorporation regime. Nonetheless, makes Israeli stateless citizenship an effective looking glass for understanding current changes in Western liberal democracies is that it emphasizes the varied forms of *exclusive inclusion*

that is being implemented. This outline of the respective and dominant mechanisms for citizenship restrictions in these regions both attends to their shared coordinates of origination and inverts the traditional colonial gaze from the 'periphery' to the 'core'. Elaborated below, this study points out that Western states are playing with logics, paths and models of exclusion similar to existing practices in Israel. They are increasingly interrogating civic subjects through the restructuring of liberal democratic citizenship arrangements. Effectively, and worthy of concern, what is unfolding in liberal citizenship are restrictions that replicate exclusive-inclusions in the paradigm of stateless citizenship.

2. 'Undesirable insiders'

As this study points out, the exclusions embedded within Palestinian citizenship during the British Mandate laid a blueprint for the differential citizenship regime that today exists in Israel. Since 1948, the citizenship and nationality regime in Israel has continued its interactions with global networks of restriction and control. The significance of the Israeli case, however, has been that unlike liberal democratic states in the West, its major features of nation-statehood, including territorial borders, demography, and sovereignty largely are incomplete and unresolved; all of which is reflected in the kind of citizenship regime it supports. Part of what this study has explored is that restrictions in Israeli citizenship today are reminiscent of what is happening to citizenship at the 'core'.

As the previous chapters have shown, there was extensive European normative and legal influence on Israel's projected nationality and citizenship regime. At the same time, when designing its citizenship arrangements a strong 'Jewish character' was also desired; an incredible task given that Jewish traditions were not a major source in the

referenced Western democratic and parliamentary structures. Produced for Israel's contemporary body politic was an unprecedented constitutional structure: one that was seeped both in the Western (and largely Christian) tradition of modern and secular government, as well as in the basic principles of religious Jewish law. This has rendered Israel a novel constitutional phenomenon. As a result, despite being formed through the historical matrix of European colonialism and power, and influenced by their citizenship and nationality regulations, the constitutional parameters of Israel's particular logic of exclusion are unable to be fully replicated in existing Western liberal democratic states. This accounts for the existence of exclusions that are unique to Israel's citizenship and nationality regime.

To dissect this unique constitutional structure, my study has examined the *Law of Return (1950)* and the *Citizenship Law (1952)*. Together, these two laws form the substructure upon which a whole arrangement of formal policies, informal practices and new legislation engineering Jewish dominance within the State of Israel, are based. Focusing on the particular function of the *Law of Return (1950)* to both clothe the Jewish historical experience in legal form and act as a legal precursor that actually constitutes the Jewish State, I have shown the ways in which Israel has (re)shaped and (re)drawn the proximity between the figure of the citizen and the immigrant.

My analysis of the conceptual and legal role of the notion of *return* reveals it as an original method of acquiring Israeli nationality. It holds that because all Jews are covered by virtue of the principle of return, this also paradoxically includes those Jews who are born in the country. This means that even the Jewish inhabitants of Palestine in the country on the event of the creation of the State of Israel are conferred nationality

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through the concept of *return*. With this arrangement, I have explained that the Israeli

constitutional order is structured in a manner that broadens the category of the 'Jewish

immigrant', placing this figure on the top of the constitutional process. My study shows

that, as a country primarily aimed at ingathering Jewish exiles, the 'immigrant' or

'resident' in the Jewish State is placed at the center of the Israeli constitutional equation.

Simply put, and a product of the paradigm of stateless citizenship, the 'desired' citizen in

Israel is therefore the figure of the Jewish immigrant, the newcomer or 'guest'.

Working from this exploration of the *Law of Return* and its associated

constitutional arrangements, I hold that citizenship structures in the country are arranged

in a manner where the figure of the citizen is being inverted. The matrix of inclusion into

citizenship in Israel is less geared toward the citizen, and more towards determining

immigration in a manner that enables Jewish entry and settlement. The Israeli

incorporation regime inverts the image of the citizen with the figure of the immigrant or

guest meaning that, for Israel, the central political subject is the Jewish immigrant. The

notion of return thereby serves the function of reversing the practice in Western liberal

democratic societies by rendering the 'Jewish immigrant' as the primary figure of Israeli

politics. Overall, it is through the mechanisms of this Israeli incorporation regime that the

proximity between the citizen and the immigrant is redefined.

3. The creation of 'stateless citizens'

The context of stateless citizenship in Israel and the placement of the unstable figure of

the 'immigrant' at the center of politics pushes us to problematize similar forms of civic

exclusion in major liberal democratic states. My study has outlined various practices and

experiments with exclusion and citizenship restriction in European and North American states, particularly in the wake of the rising migration and asylum crises. The preceding chapters have pointed to a process of a desacralization of citizenship where arrangements and structures are diluted and the substantive benefits accumulating from citizenship have been thinned down. In doing so, I have employed the Israeli logic of exclusion to examine how the proliferation of efforts we have been witnessing in Western states against 'undesirable outsiders' have been broadened to include the figure of the citizen. Culminating from this study, we can make three separate yet related observations on the trajectory of citizenship, globally:

First, as Western liberal democracies violate the rights of non-citizens in addressing refugees or terror-related insecurities at home, their ability to maintain a broader and existing set of rights and protections for citizens has also become compromised. This means that the range of measures taken against incoming migrants to which I have gestured in previous chapters were both conceptually and practically also a discussion on citizenship. Discourse about a 'foreign threat' has shifted the gaze of liberal democratic states onto structures and arrangements concerning the citizen. Put differently, *the gaze toward 'undesirable outsiders' has been widened to include 'undesirable insiders'*.

Secondly, resulting from the state practices and processes of closure that have followed, established citizenship regimes are being transformed. These changes are going in the direction of increasingly tightened and thinned down citizenship structures. With these political calculations, citizenship itself is being uprooted from its classical

protections and replanted in closer proximity to the more temporary and unstable figure of the immigrant.

And finally, building from the above two observations, this study has shown that, given this closer proximity between the traditionally oppositional categories of inside and outside, citizen and stateless, citizenship structures and arrangements have *themselves* been mobilized in this exclusion. The legal subject is restricted from the inside so that formal suspension is not even necessary. Contemporary arrangements for the central figure of the body politic, the citizen, have been thinned down to such an extent that actual revocation – despite widening state powers to actually create statelessness – appears no longer to be a necessary precursor to targeted exclusion, banishment, and even killing by their state representative. What this indicates is that global citizenship structures and arrangements are increasingly consenting to the stretching and thinning down of citizenship. The exclusion of the legal subject *from the inside* and *within* the arrangements of citizenship itself is part and parcel of the mentioned global transition to a desacralization of citizenship.

The conclusions of this project illustrate practices of exclusive-inclusion in Western liberal citizenship that have formed a more interrogated and restricted model of citizenship. This transition has given rise to an Israeli logic of exclusive-inclusion. Where previously liberal democratic states were concerned with the creation of citizens, today the gaze of the state appears to be focused on enabling itself legally and politically to create not only stateless persons, but also *stateless citizens*. What is becoming apparent is that we are currently witnessing a transition in citizenship whereby the interrogation and

restriction figure of the citizen *within* the actual arrangements and structures of citizenship are becoming increasingly emphasized. This emphasis, including its multifaceted dangers, becomes clear to us when we employ Israel as a juridico-political looking glass through which we can understand how exclusion is entrenched in and practiced through citizenship. The proliferation of efforts by Western states to secure their societies and territorial borders against 'undesirable outsiders' outlined here are shown to have been broadened to include the figure of the citizen – the 'undesirable insider' – through citizenship arrangements themselves. A logic that is problematic in its similarities with that of exclusive-inclusion in Israel.

In the end, these global trends are together creating a condition where liberal citizenship in the West is starting to resemble constitutional exclusions present in the Israeli paradigm of stateless citizenship. And in doing so, the effect of these juridico-political practices and amendments is the dangerous (re)location of liberal democratic citizenship regimes in Western states in closer proximity to the unstable arrangements present in Israeli stateless citizenship. *Stateless citizenship surfaces as a paradigm of the direction of future citizenship regimes.* It signals the rise of an exclusive-inclusion, a reversal of the classical logic of belonging, representation and protection in liberal democracies. In this sense, and as posited in this study, the relocation of liberal citizenship in closer proximity to Israeli stateless citizenship also signals the rise of sophisticated policies of racialized inclusion in the West, and their respective systems of settler-colonial control – all of which is needed to maintain such an incorporation regime.

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