

CRITICAL ENCOUNTERS
Legislating Settler
Colonialism Today

Introduction

Legislating Settler Colonialism Today

THE EDITORS

ABSTRACT This is a roundtable discussion about the Basic Law: Israel—The Nation State of the Jewish People, 2018. The contributions by Honaida Ghanim and Lana Tatour situate this law in the longer legal and political history of Israeli settler colonialism in Palestine. The third contribution by Rahul Rao offers a comparative account of the Indian Citizenship (Amendment) Act (CAA), 2019, which is similarly marked by racism and exclusion and resonates strongly with the politics of Zionism.

KEYWORDS settler colonialism, Zionism, Palestine, India, citizenship

In 2018, a new law was written into Israel’s lawbooks. Titled “Israel—The Nation State of the Jewish People,” this basic law enshrines Jewish-Israeli supremacy over Palestinians in their land. By declaring the “Land of Israel”—that is, the land of historic Palestine—to be the “historical homeland of the Jewish people,” and by absencing Palestinians from the law’s purview, the new Nation-State Law secures in legal writing what has been impossible for Israel to attain militarily, politically, and legally—the erasure of Palestine and the disappearance of all Palestinians. Or such is its aspiration. The law enshrines the borderless state as an expansionist settler-colonial project that can extend, however it pleases, into the historic land of Palestine. “Jewish settlement,” as the law calls it, is a “national value,” and the state will “encourage [it] and promote its establishment and strengthening.”¹ This codification of settler expansion as the purpose of the Israeli state reenacts its settler-colonial foundations. However, the law also wishes its own destructive colonizing powers away by presenting the land as empty of Palestinians and therefore available for the Jewish state to expand or settle into. This production of emptiness is a typical colonial power operation; the more the law refuses to recognize Palestinians, the more its colonizing operations are evident. Finally, it is not the land alone

that is emptied of Palestinians. The state, too, is presented as exclusively Jewish: “The State of Israel is the nation state of the Jewish people, in which it realizes its natural, cultural, religious, and historical right to self-determination.”² The ‘48 Palestinians (known as the Palestinian citizens of Israel) are nowhere to be found in the legal text.

This legal nonexistence not only facilitates further Zionist settlement in Palestine’s land and further destruction of Palestinian life but also prefigures possible futures of physical expulsion from the state and the land. The law anticipates a future disaster patterned after the catastrophe of 1948, or the *Nakba* that resulted in the expulsion of the majority of Palestinians. Following the 1948 war, Israeli law recast Palestinian refugees as “absentees” so as to enable the expropriation of their land and their transfer to the “Custodian of Absentees’ Property.” Among those refugees, there were also Palestinians who did not leave the newly formed state but became internally displaced. They would become “present absentees,” that is, Palestinians who were present, but the law regarded them as “absent” in order to facilitate the takeover of their land. Such was the magic that the Absentees’ Property Law (1950) set in motion.³ The magic of this Nation-State Law is similar but also distinct. While it treats present Palestinians as nonexistent, it does not classify them as “absent.” Instead, their absencing is left unremarked. The act of effacement is itself effaced; there is no trace of their existence, not even as “absent.” This evacuation allows the state to realize itself as exclusively Jewish. And yet, this evacuation is still a project, not an accomplished reality. Palestinians remain and continue to struggle against the colonial settlement project. The legal text cannot will them away; it can only aspire to do so.

To what extent does the Nation-State Law represent a rupture in Israeli settler-colonial legal history? What explains this legislation at this particular historical conjuncture? What were the transformations, political and legal, that resulted in this legislation? And is this legislation unique in the world, or does it intersect with other legal regimes that exercise colonial, racist powers? The three contributions to this roundtable attend to these questions. Honaida Ghanim and Lana Tatour situate the Nation-State Law in the longer legal and political history of Israeli settler colonialism in Palestine. Rahul Rao offers a comparative account of the Indian Citizenship (Amendment) Act (CAA), 2019, which is similarly marked by racism and exclusion and resonates strongly with the politics of Zionism.

Notes

1. Knesset, “Basic Law: Israel—The Nation-State of the Jewish People.”
2. Knesset, “Basic Law: Israel—The Nation-State of the Jewish People.”
3. The Absentees’ Property Law of 1950 replaced the Emergency Regulations on Absentees’ Property of 1948 and established the legal regime of expropriating refugee property. Under

the law, any Arab who left his or her place of residence during the war was an absentee, even if he or she did not leave the newly formed state. In this way, the law enabled the expropriation of the land of Palestinians who were present and were citizens of the state but were legally classified as absent.

Work Cited

Knesset. “Basic Law: Israel—The Nation-State of the Jewish People.” 2018. main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf.