When Human Rights Go Wrong: The Limits of International Human Rights Law in Two Case Studies from the Arab Region

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Abstract

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This dissertation analyzes the limits of international human rights law (IHRL) in the Arab region. It examines two case studies representing opposing ends of the human rights spectrum. The first focuses on Tunisia, understood to be the only democratic and free country in the region, while the second pertains to the occupied Palestinian territories, which continues to endure the longest territorial occupation in modern history. These two cases illustrate circumstances under which extralegal strategies for diminishing human suffering become not only possible but necessary. In both contexts, arguments rooted in the normative logic of international human rights law have failed and its formal legal and procedural mechanisms have been exhausted. This dissertation seeks to examine precisely the extralegal and sometimes radical logics that have arisen in this new liminal space as alternatives to and complements of the formal structures of IHRL.

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To the ones who thought that I couldn’t, and to everyone who believed that I would.

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Introduction

The volatility and lax enforcement of human rights law have only been exacerbated by the global pandemic, which has highlighted the deadly consequences of structural disadvantage and social stratification for the global poor. In a world increasingly defined by anti-democratic movements and their authoritarian responses, the need for a new global pact to safeguard the restoration of human rights has never been more urgent. Nearly a century after the adoption of the United Nations Universal Declaration for Human Rights (UDHR)[1], humanity finds itself in dire condition. The UDHR emerged out of an international call-to-arms against the "barbarous acts which […] outraged the conscience of mankind" during the Second World War.[2] To ensure that those atrocities against human freedoms and liberties would never be repeated, the Declaration[3] enshrined the inherent dignity and inalienable rights of all members of humanity and promised protection from wanton harm. This dissertation explores the conditions under which the aspirations by the UDHR and international human rights law (IHRL) to protect every human being's basic rights have reached their effective limit, and the consequences of this reality. To do so, it uncovers the ways through which vulnerable people have responded unconventionally in the shadow of IHRL. It also shows how the limits of IHRL reveal alternatives. Finally, it argues that understanding the practical limits of IHRL and embracing alternatives are crucial to the vitality of human rights advocacy and practice. This J.S.D. research project is motivated by the larger purpose

[1] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
[2] The International Bill of Human Rights is composed of the UDHR 1948, the ICCPR 1966 and its two Optional Protocols, and the ICESCR 1966.
[3] *Supra* note 1.

of showing how the very dynamics that limit human rights law[4] can also enable alternative possibilities for advancing its goals.

Limitations of Human Rights Law:

The UN Charter famously begins by expressing the determination of "the peoples of the United Nations […] to save succeeding generations from the scourge of war."[5] Though its members have furthered this mission for many years, the rise of powerful,[6] information-driven globalized economies in the 21st century has isolated the UN from its most desperate constituents. The policy of reckless human exploitation which drives many corporations and governments has consequences mostly for vulnerable communities, particularly those outside the Western world.

In the particularly bleak context of the Arab world, only Tunisia can be said to enforce reasonable standards of human rights for its population.[7] The country's successes in the Arab Spring have rendered it an emblem of modernized functionality, in stark contrast to the other countries which make up the Arab region.[8] For the citizens of countries that did not experience a so-called "Arab Spring," like Qatar and to a lesser degree Morocco and Algeria, human rights remain elusive.[9] Meanwhile, human rights defenders in countries like Saudi Arabia and Egypt have

[4] Emilie Hafner Burton and Kiyoteru Tsutsui. *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110.5 AM. J. SOC. 1373-1411 (2005).
[5] *Supra* note 1.
[6] The Universal Declaration of Human Rights, proclaimed in 1948, acts as a global roadmap toward the safeguarding of human dignity and inalienable rights. It announced 30 universally recognized inalienable rights and has been translated into over 500 languages.
[7] According to the 2020 Global Freedom Status Report, issued by Freedom House, Tunisia is the only free country among the Arab countries. For more information see: Freedom Hou*se, Global Freedom Status,* Tunisia (2020), https://freedomhouse.org/explore-the-map?type=fiw&year=2021
[8] SAFWAN M. MASRI, *Tunisia: An Arab Anomaly*, Columbia University Press (2017).
[9] INTERNATIONAL CENTER FOR HUMAN RIGHTS, *Human Right Situation Is Worsen in The Middle East in 2020*, December 9, 2020, https://humanrightsintl.com/2020/12/09/human-right-situation-is-worsen-in-the-middle-east-in-2020/; AMNESTY INTERNATIONAL, *Human Rights in the Middle East and North Africa: Review of 2018*, 26 February 2019, https://www.amnesty.org/en/documents/MDE01/9433/2019/en/

gained international praise for their pro-democratic efforts but lack the concrete support required to meaningfully challenge their increasingly brazen authoritarian governments.[10]

Two widely publicized human rights violations—the Egyptian government's 2013 massacre of Rab'a al-'Adawiyya[11] and the Saudi confirmed assassination and dismemberment of journalist Jamal Khashoggi in 2018[12] —have gone unpunished by the signed adherents of the UN Charter. Scholars such as Costas Douzinas[13] and David Luban[14] have explained such failures of accountability as a result of the inherent limitations of human rights law, which cause it to fail to ensure the purportedly universal norms it seeks to promulgate[15]—even with respect to those norms that have gained widespread global "acceptance."[16] This dissertation engages with such scholarship by exposing the fault lines[17] between the rhetoric and reality of human rights law and framing them as the indicators of its failed accountability mechanisms.[18]

The inspiration for this dissertation is largely rooted in my upbringing and experiences as a Palestinian woman. I grew up in the city of Ramallah in the Occupied Palestinian territories (oPt) during the years of the first intifada (1987-1993), at a time when an elementary education was denied the vast majority of Palestinian children by the Israeli occupying powers. I attended a Christian Catholic school; at the time, we used to hide and study in secret in the basement of the monastery to escape the violence of the Israeli military. As a testament to the challenging times in

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[10] MICHELE DUNNE, *SUPPORT FOR HUMAN RIGHTS IN THE ARAB WORLD: A SHIFTING AND INCONSISTENT PICTURE, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE*, DECEMBER 28, 2018, HTTPS://CARNEGIEENDOWMENT.ORG/2018/12/28/SUPPORT-FOR-HUMAN-RIGHTS-IN-ARAB-WORLD-SHIFTING-AND-INCONSISTENT-PICTURE-PUB-78071

[11] HUMAN RIGHTS WATCH, *Egypt: Rab'a Killings Likely Crimes Against Humanity*, August 12, 2014, https://www.hrw.org/news/2014/08/12/egypt-raba-killings-likely-crimes-against-humanity

[12] SHANE HARRIS ET. AL, *CIA Concludes Saudi Crown Prince Ordered Jamal Khashoggi's Assassination*, The Washington Post, November 16, 2018, https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html

[13] COSTAS DOUZINAS, THE END OF HUMAN RIGHTS 374 (2000).

[14] DAVID LUBAN, THE WAR ON TERRORISM AND THE END OF HUMAN RIGHTS 9-14 (2002).

[15] James Raymond Vreeland, Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture, 62.1 INT'L ORG. 65 (2008).

[16] Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?* 49.6 J. CONF. RES. 925-953 (2005).

[17] BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 96 (2009).

[18] Daniel W. Hill, *Estimating the Effects of Human Rights Treaties on State Behavior*, 72.4 J. POL. 1161-1174 (2010).

which I grew up, one of my earliest memories of the classroom is my longing for a proper schoolbag – I always wanted one with the cartoon characters – since my parents used to wrap my schoolbooks in black garbage bags and pretend that they were throwing out the garbage instead of sending me in secret to the school. To this day, every time I see a kid with a schoolbag, I feel that familiar tinge of envy, excitement, and motivation that characterized much of my adolescence.

I remember vividly when illegal Israeli settlers attacked our house at night; no one would or could stop them. Like most Palestinians, we didn't have shelters, masks, or means to protect ourselves, and so we sealed our doors and windows with plastic sheets and duct tape. I remember the fear I felt on those nights as I asked my parents for an explanation I never received, for violence I now understand to be unexplainable. I grew up acutely aware of the sadness and helplessness felt by my parents, who did everything they could to protect and uplift me and my siblings in an impossibly difficult environment. In a place of darkness and distress, we were raised to look forward and pursue our goals and to care about all people in distress. I am still grateful for their efforts to imbue our lives with art, music, and opportunity in a place where such joys and prospects were so scarce.

These memories informed my understanding of international law and responsibility as I grew older and witnessed and experienced the rise of Palestinian hope for peace and stability. With the interim peace accords (the Oslo Accords) and the creation of the Palestinian Authority as a self-governing body, these hopes concretized into actionable aspirations for a durable solution to the violence I grew up around. Finally, bringing about a two-state solution based on dignity, human rights, and co-existence seemed to be closer than ever to being realized. My inspiration turned into frustration when the Second Intifada broke out shortly thereafter, though my hope for change

remained undeterred. Seeing the urgent need for international accountability and legal justice for my community, I made the decision to study law in Palestine.

There were of course obstacles to reaching this point in my education. While I was in law school, my mother—a strong and empowered woman advocating for social justice and the rights of Palestinian women—suffered a fatal stroke after being detained at a checkpoint for 12 hours. Her death confronted me with a violence I had never experienced. In her absence, I realized how much she had sheltered me and my siblings from socio-cultural, traditional, and religious realities of life in Palestine. This realization left me feeling even more vulnerable than I had during those nights our house shook from the bombs. With my eyes newly opened and my hopefulness more grounded in reality, I continued my education and work to achieve the life she worked so hard to give me.

Extra-legal Strategies for Securing Human Rights:

As a legal scholar today, I have spent the past seven years in my J.S.D. program seeking to identify what changes must be made to legal systems to restore the promise it holds for marginalized and vulnerable segments of society, like minority groups in Palestine. This dissertation represents the culmination of these years of research. The three articles of my dissertation analyze two case studies representing opposing ends of the human rights spectrum in the Arab region. The first focuses on Tunisia, understood to be the only democratic and free country in the Arab region, while the other two pertain to Palestine, which continues to endure the longest territorial occupation in modern history. These two cases illustrate circumstances under which extralegal strategies for diminishing human suffering become not only possible but necessary. In both contexts, arguments rooted in the normative logic of international human rights

law have failed and its formal legal and procedural mechanisms have been exhausted. This dissertation seeks to examine precisely the extralegal and sometimes radical logics that have arisen in this new liminal space as alternatives to and complements of the formal structures of international human rights law.

The three articles expose in different ways a severe constraint on law's power: its susceptibility to the socio-political, religious, cultural or geographical contexts in which it is applied.[19] In Palestine, as in much of the Arab region, such cultural and religious ideals are embedded in legal systems and can often serve as the main roadblocks to meaningful change.[20] The international regime of human rights was intended to mitigate, but now finds itself consumed by, these overriding contexts, with their varying degrees of commitment to substantive human rights. By examining two cases in opposing political and historical contexts, this dissertation provides a nuanced and actionable look at the manifestations of the exhaustion of human rights law, as well as extralegal strategies that could be adopted and codified in the service of the goals of human rights movements. The cases are described in three sections: The Power of the Body: Analyzing the Corporeal Logic of Law and Social Change in the Arab Spring;[21] Identity Annexation: Israel's Non-Territorial and Psychic Annexation of the West Bank Samaritans in the Occupied Palestinian Territories; and Plural Belonging: The Samaritans' Negotiation of Space in the Occupied Palestinian Territory.

My interest in minority groups and the law is directly linked to my upbringing and life experiences. I was raised in a large, educated family that emphasized a unifying sense of Arab nationalism without prioritizing the role of religion in this community. In contrast with the norms

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[19] Emilie Hafner Burton, *Justice Lost! The Failure of International Human Rights Law To Matter Where Needed Most*, 44 J. PEACE RES. 407-425 (2007).
[20] *Id.*
[21] Zeina Jallad, *The Power of the Body: Analyzing the Logic of Law and Social Change in the Arab Spring,* 6 Colum. J. Race & L. 139 (2016).

of Palestinian culture, my parents proudly identified as atheists and were active members of the communist party with a presence in the political struggle and quest for national empowerment. Although my dad was baptized as a Christian, my father's atheism was influenced by that of his own father, who was the chief of the Palestinian police during the British Mandate. My father was raised in an anomalous household much like my own, run by a powerful matriarch of Lebanese Jewish descent who became the first female Palestinian doctor. Being a part of this agnostic and engaged family within a largely patriarchal Muslim community, while attending Catholic school, imbued me with a deep awareness of my identity as a minority and highlighted the effect of this status on my life and identity as a Palestinian. It is in this sense of experiencing marginalization and struggling to unify my identity that my background influenced and inspires not only my approach to law but the present study of minority groups within the Palestinian and Tunisian legal systems. The first article, "The Power of the Body: Analyzing the Logic of Law and Social Change in the Arab Spring," focuses on the 2010 self-immolation of the young Tunisian fruit vendor Tarek Mohammad Bouazizi, widely understood to have sparked the unprecedented wave of protests in the region that became known as the Arab Spring. In the context of an inefficient international justice system and a repressive government, the individual and collective bodies in this case study emerge as the main loci of social change. This article therefore examines the corporeal logic of resorting to radical modes of resistance in the face of a failed legal system and in the absence of international accountability. This examination and its conclusions might be instructive to understanding and repairing the shortcomings of human rights and international law in the region more broadly. [22]

[22] Zeina Jallad, The Power of the Body: Analyzing the Logic of Law and Social Change in the Arab Spring. *Columbia Journal of Race and Law*, *6* (2), 139–168 (2016).

What also emerges from this research is an understanding of the body as not only a site of action, but an instrument replete with possibilities for addressing the inadequacies of legal systems. The specific corpus of Bouazizi and that of the Tunisian nation it represents provided an avenue for reform and resistance that no other legal or social structure was able to successfully offer. Through these arguments, still relevant nearly a decade later, this paper offers a novel take on the ways in which the dynamics that produce the limits of human rights law also enable alternative possibilities for working toward its goals.

The second and third articles of this dissertation focus on an entirely different context from that of Tunisia, in which extreme levels of violence, corruption, hostility, and insecurity continue to deprive most of the population access to their basic rights. Where the Tunisian case study illustrates the power of human action in response to the failures of law, the second and third articles demonstrate another reality experienced by an ethno-religious minority group of Palestinians. These articles represent revealing articulations of often reported failings of international checks and balances in the Israeli occupied territories, and therefore allow for a more granular approach to understanding the continued irrelevance of humanitarian law to the lives of Palestinians.

What emerges from these works are two narratives wherein individuals conceptualize and achieve change in novel and creative ways, both within and outside of the legal system. The case studies reveal human rights law as overly determined by its context and more than contingently determined by the behavior of local actors. These examples demonstrate people resorting to complex forms of self-help in response to the promise, but failed realization, of human rights. In these three cases, the forms of cultural power that act as limits to human rights law also serve as catalysts for forms of resistance and freedom, articulated within and beyond the formal jurisdiction of the law.

The second article, "Identity Annexation: Israel's Non-Territorial and Psychic Annexation of the West Bank Samaritans in the Occupied Palestinian Territories," examines how one minority group, the Samaritans, take advantage of the legal vacuum in Palestine to secure and advance their human rights. Ignored by the international community and repressed by their government and society, minorities in Palestine must endure even worse human rights violations than most Palestinians under Israeli occupation. Interestingly, Samaritans have used an extralegal avenue, namely their religious and cultural group identity, as a means to make themselves an exception to the rule of systemic minority oppression. The article explores how the Samaritans have narrativized their collective identity to appeal both to Israeli Zionist sentiment as well as Palestinian political interest with varying degrees of success. Drawing on critical political philosophy of multiculturalism and Indigenous critiques of settler colonialism, I develop a new concept of *identity annexation* to explain the motivations for and strategies of the Samaritan's narrative empowerment. It explores in more detail the concept of *identity annexation* as referring to the phenomenon experienced by Palestinian minorities of territorial annexation on a distinctly psychological level. Critically, the concept also refers to Israel's strategy of asserting not only physical but psychic dominance in the oPt and the consequences of that particular power on Palestinian minorities. By situating this phenomenon in the broader context of international human rights law, my research indicates the often-overlooked outcomes of continued international neglect of human rights violations on local populations, while confirming the ability of peoples to respond to these violations in effective but often dangerous ways.

This identity annexation is embodied in Israel's legal system and approach to its minority constituents. In particular, the article situates the apex of this annexation strategy as the passing and multiple amendments of the Law of Return by the Israeli Supreme Court in 1996 and beyond.

This law re-imagines the identity of Jewishness in ways that allow the Samaritans and other groups to become members of the Jewish diaspora, despite the Samaritans' distinctly non-Judaic creed and their entrenched history of living in modern day Israel. By allowing the Samaritans access to group Israeli citizenship and its socioeconomic benefits through this law, the Israeli state fulfills two of the fundamental ambitions of Zionism: Jewish population growth and narrativized territorial expansion. It also reinforces the state's providence as the Jewish homeland and appeases the international community, which often justifies its collective inaction in the face of Israeli human rights violations through this very narrative of belonging.

The article concludes that the Samaritans navigated oppressive and dehumanizing means of securing their human rights as a direct result of the failures of international and local human rights law. But from another perspective, like the Tunisians in the first article, the Samaritans empowered themselves as agents of change through extralegal channels of advancing their cause and protecting their basic rights and dignity.[23]

The third article picks up where the second leaves off by examining how the Samaritans articulate their newfound collective power within and outside of the scope of the law. In "Plural Belonging: The Samaritans' Negotiation of Space in the Occupied Palestinian Territories," I explore how legal pluralism operates in the occupied Palestinian territories and its consequences for minority communities in general and Samaritans in particular. The complex web of bureaucratic, juridical, and legal systems which constitute Palestine's extreme legal pluralism, referred to in the paper as *neo-colonial pluralism* for its similarities to the oppressive machinations of traditionally postcolonial pluralistic systems, is exposed in its design to disadvantage the

[23] The article has been accepted for publication in *the UCLA Journal of Islamic and Near Eastern Law (JINEL)* and the *University of Pittsburgh Law Review*.

majority and support the minority. The loopholes that make this limitation possible happen to render it ideal for the Samaritans to succeed outside the law by using the law's methods. I suggest that this is a rare case in which the "extreme pluralism" of the Palestinian legal and juridical systems has been used by a minority group in need of legal protection rather than a politically powerful group of elites. In this way, the article opens the space for conceptualizing extraordinary uses of vulnerable legal systems as avenues for reform which can benefit rather than harm vulnerable minorities. By looking at the ways in which the Samaritans skirt the system based on their unique socio-political status in both Israel and Palestine, the paper highlights the possibility for the system to serve all minorities through legal means—though it comes at a price. This is instructive for both international human rights law as well as other regional legal systems.[24]

In these three articles examining the limits of the law, a range of complementary research methodologies were used. In the first article, I adopted a psychoanalytical approach to the law with the aim of evidencing the precise time, structures, and systems that allowed the exhaustion of the studied legal systems.

The second and third articles shifted methodology to accommodate the culmination of 5 years of research and fieldwork which served as their main data source. The second article applies content analysis to sampled cases from the Palestinian courts, in addition to semi structured interviews and field notes. The third article, in addition to using community based semi-structured interviews, focus-groups, observations and field visits; it relies also on a sociological analysis of the tension between multiculturalism, law, history and politics.

Conclusion

[24] Zeina Jallad, Plural Belonging: The Samaritans' Negotiation of Space in the Occupied Palestinian Territories, Issue 3, Volume 37, *American University International Law R*eview, 2021.

These three articles show how, where the application of the law is troubled as it is in the Arab region, it can be necessary and even advantageous to use tools and methods that lie outside the law. The collected work evidences how such extralegal strategies and venues successfully provide a forum for understanding and exposing factors that contribute to the ineffectivity and limitations of the law in vulnerable socio-political contexts.

Drawing on my personal experience and upbringing as a Palestinian woman with multiple belongings and identities, I shed light on the reformative potential for legal change of underexplored and organic sites such as politically oppressed human bodies, the legal treatment of religious minorities, and the annexation of legal subjects' identity. The “success story” of Tunisia, and the complicated advances of the Palestinian Samaritans, allow one to be cautiously optimistic about local and international legal system’s usefulness and viability for human rights, even when they fail, thanks to the resilience and resourcefulness of the humans claiming those rights.

Article 1: The Power of the Body: Analyzing the Logic of Law and Social Change in the Arab Spring

Under conditions of extreme social and political injustice—when human rights are most threatened—rational arguments rooted in the language of human rights are often unlikely to spur reform or to ensure government adherence to citizens' rights. When those entrusted with securing human dignity, rights, and freedoms fail to do so, and when other actors—such as human rights activists, international institutions, and social movements—fail to engage the levers of power to eliminate injustice, then oppressed and even quotidian actors may resort to non-traditional tactics of resistance. One example of these radical modes is the use of the corporeal body as a means of protest. The use of the human body to make political argument may catalyze legal, social, and cultural change where rational arguments fail. This Article examines the power of the human body in spurring political and legal action. It analyzes the 2010 self-immolation of Tarek Mohammad Bouazizi in Tunisia, which sparked an unprecedented wave of protests across Arab countries, leading to what came to be known as the "Arab Spring." It suggests that when human rights-based arguments are exhausted, space is created for alternative strategies of resistance. Mobilized and deployed as tools of resistance, human bodies become the argument.

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I. INTRODUCTION

> *When life itself is negated in the struggle to challenge sovereignty, the power over life and death that the sovereign exercises becomes useless. The absolute weapons against bodies are neutralized by the voluntary and absolute negation of the body.*
>
> –Hardt and Negri

This Article examines the power of the human body in spurring political and legal action when the appeal to human rights reaches its limits. This Article analyzes the 2010 self-immolation of Tarek Mohammad Bouazizi in Tunisia, which sparked an unprecedented wave of protests across Arab countries, leading to what came to be known as the "Arab Spring." In light of the limitations of—or, perhaps, the complete absence of—other strategies to effectively challenge injustice, this Article uses Bouazizi as a case study to explore why and how otherwise invisible and oppressed "bodies-in-pain" are able to mobilize social, political, and legal change. This Article then proposes that prior to 2011, in contexts such as Tunisia, human rights–based legal norms had little persuasive or transformative power. Instead, the deployment of the human body proved to be more effective in igniting socio-political change than rational arguments based in law. Although Bouazizi's act occurred outside of any organized social movement, it cannot be understood in isolation from the social context. Bouazizi's self-immolation constituted an act of defiance that succeeded in sparking social change because it amplified a pre-existing dynamic of broader social frustration and rendered it material, visible, and visceral. What Bouazizi's self-immolation makes

clear is that the corporeal form, rather than law, can constitute an argument powerful enough to topple a tyrannical regime.[25]

The first section of this Article focuses on the limits of rational human rights–based legal norms in combating injustice. It argues that human rights law proves no match for certain conditions of authoritarianism. Under such circumstances, the law is an ineffective tool to protect fundamental rights and can even become a means of licensing injustice.

The second section analyzes the self-immolation of Tarek Mohammad Bouazizi in Tunisia, contending that when human rights–based arguments are exhausted, space is created for alternative forms of dissent. Mobilized and deployed as a tool of resistance, the human body itself becomes the argument for overdue political change. Much has been written about the use of self-immolation as a form of political protest; this section offers an original account of the political body as a body-in-pain, where the performance of pain becomes a catalyst of socio-political change.

In the third section, this Article offers an understanding of the body when it is positioned as the argument. The section explores the difficulty of communicating, expressing, and understanding pain. When pain cannot be denied or confined, the body expresses its own desperation and frustration, as well as that of others who have been rendered speechless. Through the powerful public spectacle of the body-in-pain, the very act of self-immolation transforms an individual corporeal act into a mass movement.

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[25] *See* Rashid Khalidi, *Reflections on the revolutions in Tunisia and Egypt*, FOREIGN POL'Y MAG., Feb. 24, 2011, http://foreignpolicy.com/2011/02/24/reflections-on-the-revolutions-in-tunisia-and-egypt/ (describing the revolution in Tunisia as "a moment of new possibilities in the Arab world, and indeed in the entire Middle East [as two] of the most formidable [regimes] among them—in Tunis and Cairo—[. . .] crumbled").

The final section explores how by returning to the law, the oppressed population challenges the impotence of rational argument, reshapes the geographies of marginalization, establishes a break with the past, and negotiates a new pact with the state. Through an analysis of the preamble of the post-revolution Tunisian constitution, this Article illustrates how the body-in-pain under certain conditions of subjugation and disenfranchisement can successfully convert the perception of bodily self-destruction from an individual act of frustration and defiance to an act of mass mobilization that possesses socially transformative power. This Article suggests that in the case of Tunisia, the very body-in-pain that revealed the limits of rational rights-based arguments succeeded through a dialectical process in transforming the legal corpus.

II. THE FUTILITY OF HUMAN RIGHTS LAW–BASED RATIONAL ARGUMENTS

A. International Human Rights Law

The principles of international human rights law emerged in the aftermath of World War II (WWII). The Universal Declaration of Human Rights ("UDHR") of 1948[26] affirmed the inherent rights enjoyed by all people:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.[27]

[26] Universal Declaration of Human Rights, G.A. Res. 217A(III), 3 U.N. GAOR, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].
[27] *Id*. at 2.

By signing the UDHR, world leaders aimed to put an end to atrocities such as those committed in WWII. Along with the addition of the International Covenant on Civil and Political Rights ("ICCPR")[28] and the International Covenant on Economic, Social and Cultural Rights ("ICESCR")[29] in 1966, the International Bill of Human Rights[30] detailed a conception of universal and inalienable human rights which have binding legal effects on all states.[31] The covenants set forth the entitlement of all mankind to interdependent and indivisible civil, political, economic, social, and cultural rights.[32] Over the course of time, this consensus and commitment to universal rights—in the form of treaties, customary international law, general principles, regional agreements, declarations, and domestic law—has become the body of international human rights law.[33] States have demonstrated their commitment to this body of law by ratifying international treaties, signaling their subscription and intent to adhere to this conception of international law and all it entails.

In principle, by ratifying the International Bill of Human Rights, governments assume various obligations and duties. They pledge to meet the minimum requirements of the universally agreed to human rights principles and to perform their obligations as part of their tacit social contract with their population to the best of their abilities. State governments commit to proactively engage in or refrain from specific acts, with the ultimate goal of promoting, fulfilling, and protecting universally recognized human rights.[34] Through ratifications, governments pledge to adopt the necessary measures, including implementing legislation, to ensure that their treaty

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[28] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[29] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3. (entered into force Jan. 3, 1976).
[30] The International Bill of Human Rights is composed of the UDHR 1948, the ICCPR 1966 and its two Optional Protocols, and the ICESCR 1966. *See infra* note 7.
[31] *International Human Rights Law*, OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx (last visited Nov. 23, 2015).
[32] G.A. Res. 421(V), subsec. (E), U.N. GAOR, 5th Sess., Supp. No. 20 (Dec. 4, 1950).
[33] *The Foundation of International Human Rights Law*, UNITED NATIONS, http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html (last visited Nov. 23, 2015).
[34] *Id*.

obligations are met. They are entrusted with ensuring the compatibility of their domestic laws and policies with the international treaties, aimed at protecting and advancing the status of human rights in their countries.[35] In addition to lawmaking, governments are supposed to take certain measures and deploy mechanisms to cement their obligations, preserve order, and enhance societal cohesion. States have the duty to put in place all measures to exercise their powers "of conferring a name on [their] people and a meaning on their social action."[36]

Human rights defenders and those entrusted with promoting the language of rights systematically refer to these internationally recognized human rights standards as part of the world's basic customs.[37] They generally use human rights-based law arguments as universally recognized tools to uphold fundamental rights and values, to foster human well-being and dignity, and to address the consequences of government violence and abuses of power. Accordingly, they perceive human rights discourse as an effective, universal, and rational form of argument.[38]

B. Instrumental Value of International Treaties

At present, all UN member states have ratified at least one of the nine core international human rights treaties, with eighty percent having ratified four or more instruments.[39] While this number provides a clear indication of widespread formal state support for international human rights law, the question remains as to whether states' ratification of international treaties contributes to the effective realization of human rights.

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[35] *Id*.
[36] CHIARA GIORGETTI, A PRINCIPLED APPROACH TO STATE FAILURE: INTERNATIONAL COMMUNITY ACTIONS IN EMERGENCY SITUATIONS 48 (2010).
[37] Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 *HUMAN RIGHTS Q. 400, 405 (1984)*.
[38] WILLIAM A. SCHABAS, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW 377 (3d ed. 2002).
[39] UNITED NATIONS, *supra* note 9.

Profoundly repressive regimes ratify international treaties and *officially* express their rhetorical commitment to internationally recognized laws and norms protecting human rights.[40] But an official endorsement of human rights norms does not guarantee state compliance with their international obligations.[41] State practices clearly indicate that ratification and public endorsement of human rights norms by political leaders are no guarantee that these norms will be respected domestically. In other words, even states that have ratified international human rights treaties might not respect the human rights of their citizens.[42] A state may subscribe to an international agreement merely as a symbolic gesture, or as a superficial expression of a presumed interest in combating injustice and promoting human rights. In reality, there is no reliable association between treaty ratification and respect for human rights.[43] The effectiveness of treaties is conditional on state compliance, which is in turn dependent on the effective functioning of democracy and civil society.[44] In their quantitative research, Hanfer-Bruton and Tsutsui provide evidence to show that:

> [H]uman rights laws are most effective in stable or consolidated democracies, or in states with strong civil society activism. If so, treaties may be failing to make a difference in those states most in need of reform—the world's worst abusers—even though they have been the targets of the human rights regime from the very beginning.[45]

According to Hanfer-Bruton and Tsutsui, international agreements may be effective in states that have strong civil societies.[46] In such contexts, civil society constantly lobbies for reform and monitors government compliance with international treaties.[47] In repressive states, civil society advocates can operate only within the margins of allocated space, utilizing various

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[40] Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law To Matter Where Needed Most*, 44 J. PEACE RES. 407, 408 (2007).
[41] Oona A. Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, 51 J. CONFLICT RESOL. 588, 590 (2007).
[42] Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1941–89 (2002).
[43] Oona A. Hathaway, *The Promise and Limits of the International Law of Torture*, *in* TORTURE: A COLLECTION 199, 199–215 (Sanford Levinson ed., 2004).
[44] Hanfer-Burton & Tsutsui, *supra* note 16, at 407.
[45] Hanfer-Burton & Tsutsui, *supra* note 16, at 407.
[46] Hanfer-Burton & Tsutsui, *supra* note 16, at 407.
[47] Hanfer-Burton & Tsutsui, *supra* note 16, at 407.

mechanisms to mobilize for reform and effect change.[48] However, most repressive states lack the two principal interdependent conditions for genuine implementation of human rights law: democratic mechanisms through which the promise of human rights norms can be effectuated, and civil society institutions capable of pressing for the implementation of those norms.[49] When neither condition is present, international human rights law is stripped of its tools and its potential.[50] As a result, not only does ratification of human rights treaties by repressive regimes fail to guarantee better respect for human rights, it also risks providing those regimes with a political fig leaf to conceal violations of human rights.[51]

While some human rights scholars have been optimistic about the effectiveness of human rights law and its contribution to the promotion of human rights in repressive societies,[52] others have offered evidence to the contrary,[53] demonstrating the conditional effectiveness of human rights law.[54] The latter tend to doubt states' actual compliance with international human rights law which, "if it takes place at all, may well happen sporadically and in fits and starts."[55] In this view, even if international law is actually implemented in repressive states, it will not produce results within a short period of time—certainly not at the time of ratification, nor during the first few years after ratification.[56] On the contrary, if actual compliance with international law takes place at all, it does so sporadically, it takes a long period of time to take effect, and it must generally converge with the interests of the state.[57]

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[48] Hanfer-Burton & Tsutsui, *supra* note 16, at 408.
[49] Hanfer-Burton & Tsutsui, *supra* note 16, at 408.
[50] SCHABAS, *supra* note 14.
[51] James Raymond Vreeland, *Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture*, 62 INT'L ORG. 65 (2008).
[52] Hanfer-Burton & Tsutsui, *supra* note 16.
[53] SCHABAS, *supra* note 14.
[54] Hanfer-Burton & Tsutsui, *supra* note 16.
[55] Hanfer-Burton & Tsutsui, *supra* note 16, at 409.
[56] Hanfer-Burton & Tsutsui, *supra* note 16, at 407–25 (The "Burton model" was designed to assess the effectiveness of international treaties. Burton looked at the extent of states' implementation of the ICCPR and Convention Against Torture to examine the effectiveness of international documents. The findings showed that after one year of ratification of an international treaty, states were no more likely to adopt legal reforms).
[57] Hanfer-Burton & Tsutsui, *supra* note 16, at 407–25.

The status of the Convention on the Elimination of All Forms of Discrimination Against Women 1979 ("CEDAW") in the countries that have ratified it offers a helpful example of the gulf between ratification and implementation.[58] To date, 189 of the 194 diverse UN member states have ratified CEDAW, which enshrines the basic political, civil, cultural, economic, and social human rights of women.[59] Among the ratifying countries are some of the world's most liberal democracies—such as Switzerland, Sweden, and France—as well as nations with regimes that are notoriously repressive of women's rights, such as Afghanistan, Pakistan, and Saudi Arabia.[60] Saudi Arabia ratified CEDAW in September 2000, expressing its commitment to protecting and promoting the rights of Saudi women while highlighting its reservations to several of the convention's articles.[61] Fourteen years later, women in Saudi Arabia still suffer from gross structural inequality and gender-based biases.[62] Domestic laws regulating citizenship rights, inheritance, and personal status continue to disadvantage Saudi women, who are still unable to enjoy the basic right of driving a vehicle based solely on their gender.[63] Like other international legal instruments, CEDAW is not self-executing; it provides a blueprint for states to follow in order to promote women's human rights. Moreover, the international community cannot hold states accountable for their failure to respect their obligations under the treaty, because CEDAW does not provide the necessary accountability mechanisms to do so.[64] As a result, ratification of CEDAW alone does not automatically bring about more equal rights for women. As is the case

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[58] *Saudi Arabia: End Driving Ban for Women*, HUMAN RIGHTS WATCH, Oct. 24, 2013, http://www.hrw.org/news/2013/10/24/saudi-arabia-end-driving-ban-women.

[59] Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) U.N. Doc. A/34/46, at 193 (entered into force Sept. 3, 1981).

[60] *See United Nations Treaty Collection Chapter IV Human Rights*, UNITED NATIONS, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Nov. 23, 2015) (listing all parties to CEDAW).

[61] *Id*.

[62] Christoph Wilcke, *Steps of the Devil: Denial of Women's and Girls' Rights to Sport in Saudi Arabia*, HUMAN RIGHTS WATCH, Feb. 15, 2012, https://www.hrw.org/report/2012/02/15/steps-devil/denial-womens-and-girls-rights-sport-saudi-arabia.

[63] *Saudi Arabia: End Driving Ban for Women*, *supra* note 34.

[64] Wilcke, *supra* note 38. *See also* UNITED NATIONS, *supra* note 36 (noting, however, that some would characterize the existence of the CEDAW Committee as an "accountability mechanism" because women can bring individual complaints against their state).

with other international human rights documents, there are often gaps between a state's ratification, and the actual enjoyment of the rights enshrined in the treaty by its subjects.

The Islamic Republic of Iran provides us with another example.[65] In 1968, on the twentieth anniversary of the Universal Declaration of Human Rights, Tehran hosted the first United Nations International Conference on Human Rights, which declared that the "members of the international community fulfill their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions."[66] It further emphasized that the primary aim of the United Nations in the sphere of human rights:

> [I]s the achievement by each individual of the maximum freedom and dignity. For the realization of this objective, the laws of every country should grant each individual, irrespective of race, language, religion or political belief, freedom of expression, of information, of conscience and of religion, as well as the right to participate in the political, economic, cultural and social life of his country.[67]

Contrary to the rhetorical value of this proclamation made four decades ago, Iran is one of the ten countries that practice the most state censorship.[68] The report published by the Committee to Protect Journalists claims that Iran maintains one of the toughest Internet censorship regimes in the world.[69] A review of the Reporters Without Borders 2015 World Press Freedom Index shows that Iran has continued to fall in the index since 2003.[70] It is currently ranked 173 out of 180 countries surveyed.[71] Human Rights Watch describes the status of human rights in Iran as dire.[72]

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[65] The Rule of Law in Armed Conflicts Project, GENEVA ACADEMY OF INT'L HUMANITARIAN LAW AND HUMAN RIGHTS, http://www.geneva-academy.ch/policy-studies/research-projects-and-policy-studies/the-rulac-war-report (last visited Nov. 23, 2015) (listing the treaties that the Islamic Republic of Iran has signed on as a party to).
[66] PROCLAMATION OF TEHERAN, FINAL ACT OF THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS, TEHERAN, 22 APRIL TO 13 MAY 1968 4, UNITED NATIONS PUBLICATION A/CONF. 32/41 (1968), *available at* http://legal.un.org/avl/pdf/ha/fatchr/Final_Act_of_TehranConf.pdf.
[67] *Id.*
[68] *The 2015 List of 10 Most Censored Countries*, COMMITTEE TO PROTECT JOURNALISTS, https://cpj.org/2015/04/10-most-censored-countries.php (last visited Nov. 23, 2015).
[69] *Id.*
[70] *2015 World Press Freedom Index*, REPORTERS WITHOUT BORDERS, https://rsf.org/en/ranking/2015# (last visited Nov. 23, 2015).
[71] *Id.*
[72] *World Report 2015: Iran*, HUMAN RIGHTS WATCH, https://www.hrw.org/world-report/2015/country-chapters/iran (last visited Nov. 23, 2015).

In 2014, Iran was considered one of the biggest jailers in the world of journalists, bloggers, and social media activists.[73] Notably, it inflicted the second highest number of executions in the world after China, including the execution of the largest number of juvenile offenders.[74] The discrepancy between treaty ratification and implementation is not limited to non-Western signatories. For example, out of 178 countries surveyed in 2012 and 2013 on press freedoms, for example, the United States was ranked 132nd.[75]

C. When The Language of Rights Runs Dry

In authoritarian societies characterized by strict censorship and restrictions of civil rights and liberties, international treaties cannot be expected to effectively challenge repression, or to minimize stifling bureaucracy, nepotism, bribery, or corruption. Legal channels for redress can be inadequate; they may prove ineffective in preventing state practices that discriminate against people on the basis of race, color, sex, religion, or national origin.[76]

In the most repressive regimes, widespread civic frustration is often overlooked, and calls for adherence to human rights tend to be ignored. Disadvantaged citizens continue to live on the margins and endure brutal forms of injustice.[77] Civil society is generally weak and confined to addressing certain discrete injustices or to tackling the absence of the rule of law.[78]

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[73] *Id*.
[74] *Id*. (reporting that between January and October 2014, the Iranian government had executed at least 200 prisoners, and that in 2014, the United States executed 33 people by lethal injections composed of experimental drugs).
[75] In 2015 the United States ranked in 49th place, behind Niger and Malta. *See 2015 World Press Freedom Index*, *supra* note 46.
[76] UDHR, *supra* note 2.
[77] *See 2009 Human Rights Report: Tunisia*, U.S. DEP'T OF STATE: BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LAB., Mar. 11, 2010, http://www.state.gov/j/drl/rls/hrrpt/2009/nea/136081.htm (stating that nongovernmental institutions and international organizations reported governmental violations of human rights, specifically those inflicted by the security forces, including torture, lengthy pretrial detention, forced interrogation, and sexual assault); *see also* BRIEG POWEL & LARBI SADIKI, EUROPE AND TUNISIA: DEMOCRATIZATION VIA ASSOCIATION 137 (2010).
[78] Christopher Alexander, *Back from the Democratic Brink: Authoritarianism and Civil Society in Tunisia*, 27 MIDDLE EAST REP. (1997), http://www.merip.org/mer/mer205/authoritarianism-civil-society-tunisia. *See also* Veronica Baker, Undergraduate Honors Thesis, *The Role of Civil Society in the Tunisian Democratic Transition*, CU SCHOLAR, U. OF COLO. 1, 24–35 (2015), http://scholar.colorado.edu/cgi/viewcontent.cgi?article=2212&context=honr_theses (providing further information about the history of the civil society in Tunisia. For example, the ruling regime greatly limited the freedom of association. While formally, the law guaranteed the freedom of expression and association Article 8 of the Constitution of Tunisia of 1959, in reality civil society was tightly controlled by the government).

In Tunisia, for example, prior to the 2010 Jasmine Revolution,[79] its constitution and accompanying domestic law contained language that projected the notion of a liberal, democratic, and modern legal system—legal language that theoretically enshrined political rights and freedoms of association and expression.[80]

When this aspirational legislation was actually applied by Zine El 'Abidine Ben Ali's regime, Tunisia appeared to be among the leading countries in the Middle East when it came to respecting civil and social rights.[81] It introduced progressive legislation that enshrined the rule of law and respect for human dignity. However, there remained a profound gap between legal rhetoric and practice.[82]

The trajectory of human rights in Tunisia during the twenty-three year-long dictatorship of President Ben Ali illustrates how a government that ratified more international treaties than any Middle Eastern country gradually subverted the language of law as part of a strategy to consolidate absolute power. A long list of treaties was ratified by the Ben Ali regime, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1988; the Convention on the Rights of the Child, 1992; the International Convention Against the Taking of Hostages, 1997; the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, 2000; the Convention on the Reduction of Statelessness, 2000; and the Optional Protocol to the Convention on the Elimination of

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[79] Eva Bellin, *Lessons from the Jasmine, and Nile Revolutions: Possibilities of Political Transformation in the Middle East?*, 50 MIDDLE EAST BRIEF 1, 5–7 (2011), http://www.brandeis.edu/crown/publications/meb/MEB50.pdf. One of the fundamental calls of the revolution was to halt corruption and restore the dignity of the people of Tunisia. The Jasmine Revolution is also known by Tunisians as *Thawrt Al-Karama* or "The Dignity Revolution."

[80] *See generally* Habib Ayeb, *Social and Political Geography of the Tunisian Revolution: The Alfa Grass Revolution*, 38 REV. OF AFR. POL. ECON. 467 (2011).

[81] *See* AMNESTY INT'L MEDIA BRIEFING, TUNISIA: ROUTINE MUZZLING OF DISSENT MARS UPCOMING PRESIDENTIAL ELECTIONS, 23RD OCTOBER 2009, https://www.amnesty.org/en/documents/MDE30/013/2009/en/.

[82] *See* U.S. DEP'T OF STATE, TUNISIA REPORT (2009), http://www.state.gov/documents/organization/160078.pdf.

Discrimination against Women, 2008.[83] All of these treaties were drafted with the aim of advancing the status and rights of women, children, refugees, and minorities.[84]

Even domestically, Ben Ali adopted the language of reform when he came to power in 1987.[85] He introduced a set of laws and policies that enshrined more liberties,[86] such as releasing most of the public figures who were arrested during Habib Bourguiba's reign, repatriating opposition members in exile, and increasing state funding to political parties and their publications.[87] Ben Ali also allowed radio and television stations to broadcast calls for prayers ("ezan"), which were banned during the Bourguiba era, and permitted the religious supreme council to publish a religious magazine, *Al-Hedaya*.[88]

However, after Ben Ali was elected for a second successive term, his interests shifted from what appeared to be promoting social and economic rights to building a centralized state regime.[89] Ben Ali gradually reshaped the state from a civil democracy to an autocratic dictatorship.[90] He enhanced the role of the ruling party, suppressed opposition, and directly supervised the function of brutal security apparatuses.[91] During the second term, citizens realized that the promises of alleviating poverty, combating unemployment, and ensuring the independence of the judiciary and separation of powers were merely re-election campaign slogans.[92] In return, focused only on one facet of the international community's calls for reform: he used their economic ranking reports to

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[83] *See generally Ratification of International Human Rights Treaties – Tunisia*, U. OF MINN. HUMAN RIGHTS LIBRARY, http://www1.umn.edu/humanrts/research/ratification-tunisia.html (last visited Nov. 23, 2014).
[84] HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1997: EVENTS OF 1996, 306–07 (1997).
[85] OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), REPORT OF THE OHCHR ASSESSMENT MISSION TO TUNISIA 26 JANUARY – 2 FEBRUARY 2011, http://www.ohchr.org/Documents/Countries/TN/OHCHR_Assessment_Mission_to_Tunisia.pdf [hereinafter OHCHR Report].
[86] Alejandro Sanchez, *Tunisia: Trading Freedom for Stability May Not Last–An International Security Perspective*, 9 DEFENCE STUD. 85 (2009), http://www.tandfonline.com/doi/abs/10.1080/14702430802666660.
[87] MOSHE DAYAN CENTER FOR MIDDLE EASTERN AND AFRICAN STUDIES, MIDDLE EAST CONTEMPORARY SURVEY XXIV 568–71 (Bruce Maddy-Weitzman ed., 2003).
[88] Nebahat Tanriverdi, *Background of the Tunisian Revolution*, 3 ALTERNATIVE POL. 557 (2011).
[89] OHCHR, *supra* note 61.
[90] OHCHR, *supra* note 61.
[91] ROUTLEDGE HANDBOOK OF THE ARAB SPRING: RETHINKING DEMOCRATIZATION 72 (Larbi Sadiki ed., 2014).
[92] *Tunisia Country Summary*, COUNTRIES AT THE CROSSROADS (Freedom House), 2007, https://freedomhouse.org/report/countries-crossroads/2007/tunisia.

reassure the public that the ruling regime was working to advance social welfare, all the while ignoring all other calls for reform, including ceasing torture and respecting human rights.[93]

Between 2000 and 2010, the gulf between the legal rhetoric of human rights and the reality of a legally authorized reign of terror in Tunisia continued to grow.[94] The Ben Ali regime continued to ignore repeated condemnations by the international community;[95] it used the language of law and human rights to justify its censorship, abuse, and repression of civic rights.[96] In the name of security and combating terrorist threats, Ben Ali had found an opportunity to squash domestic dissent and calls for a more democratic system.[97]

The Ben Ali government was among the most repressive countries in the world in terms of freedom of speech.[98] In 2008, Tunisia was ranked 175th out of 195 countries for protecting or permitting free speech in a survey conducted by Freedom House.[99] Clearly, the numerous international treaties adopted by the Tunisian government proved to be ineffective as tools to ensure freedom of expression for the Tunisian people. And even though the principle of freedom of expression had been enshrined in the Tunisian Constitution,[100] the country's Press Code of 1975 emptied those free speech provisions of their liberal meaning:[101] the Code required all publications to be vetted by the Ministry of Interior before distribution.[102] The Ministry had to approve each

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[93] *See* CORINNA MULLIN, *Tunisia's Revolution and the Domestic- International Nexus, in* ROUTLEDGE HANDBOOK OF THE ARAB SPRING: RETHINKING DEMOCRATIZATION 94–95 (2014) (assessing the Tunisian uprising from the international perspective).
[94] POLITICAL LIBERALIZATION AND DEMOCRATIZATION IN THE ARAB WORLD 242 (Rex Brynen, Bahgat Korany & Paul Noble, 1995).
[95] Public Statement, Amnesty Int'l, Tunisia: Abuses Continue Despite Official Denial, (July 2, 2008), https://www.amnesty.org/en/documents/mde30/010/2008/en/.
[96] *See* AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2008: THE STATE OF THE WORLD'S HUMAN RIGHTS 299 (2008), https://www.amnesty.org/en/documents/document/?indexNumber=pol10%2F001%2F2008&language=en.
[97] TUNISIA: UNDERSTANDING CONFLICT 2012 23 (P. Terrence Hopmann & I. William Zartman eds., 2012).
[98] *Tunisia Country Summary*, FREEDOM IN THE WORLD (Freedom House), 2008, https://freedomhouse.org/report/freedom-world/2008/tunisia.
[99] *Id.*
[100] Tunisia Const., art. 8 (1959).
[101] *See* The Press Code of 1975 (Code de la presse de 1975) and its amendments of 1988, 1993, 2001 and 2006, https://translate.google.com/translate?hl=en&sl=fr&u=http://www.droit-afrique.com/images/textes/Tunisie/Tunisie%2520-%2520Code%2520de%2520la%2520presse%25202010.pdf&prev=search.
[102] *See* The Press Code of 1975. The Tunisian government tightly controlled all means of disseminating news and information. For example, in 2007, the government blocked citizens' access to public video-sharing spaces such as YouTube and DailyMotion, simply because both sites contained materials regarding Tunisian political prisoners. As an alternative, activists succeeded in linking information and videos about fundamental rights and civil liberties to the image of the Tunisian presidential palace through Google Earth. *See* Ayeb, *supra* note 56.

publication and issue a receipt permitting publishers to release and disseminate the publication under consideration.[103] Generally, such receipts were not issued in accordance with specific criteria in a timely manner, but rather, were bureaucratically delayed and subjected to changing and nontransparent criteria.[104] Furthermore, the Press Code classified defamation against state institutions and "offending" the President of the Republic as criminal offences.[105] The law employed the deliberately broad term with no definition or interpretive guidance as to the kind of acts that could be deemed offensive.[106] Under such politically and socially repressive conditions, state control impeded the efforts of citizens and human rights advocates to express dissent. Constitutional law and human rights guarantees were ineffective tools for protecting citizens' civil liberties.[107]

Authoritarian regimes not only rule with an explicitly iron fist, but also preserve wealth and power through complex, less conspicuous tools of social discipline and control. Modern state power tends to be manifested and enacted through the creation of a culture of dependency whereby citizens are managed through fear, hunger, consumerism, and intimidation;[108] the exploitation of available natural and human resources; and—importantly—control of the language of the law. By strategic deployment and manipulation of power, states portray a "façade democracy"[109] and

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[103] The Ben Ali regime was committed to silencing voices of opposition. In 2004, soon after its establishment, the government blocked *Nawaat, a* collective blog, which strived to cast out collective frustration in Tunisia, and contributed to channeling the opposition to Ben Ali's regime. The blog remained blocked until 2011. *See* STATE POWER 2.0: AUTHORITARIAN ENTRENCHMENT AND POLITICAL ENGAGEMENT WORLD 50–52 (Muzammil M. Hussain & Philip N. Howard eds., 2013); *see also* LYOMBE S. EKO, NEW MEDIA, OLD REGIMES: CASE STUDIES IN COMPARATIVE COMMUNICATION LAW AND POLICY 149 (2012).

[104] *See* Alexander, *supra* note 54.

[105] *Tunisia Country Summary*, COUNTRIES AT THE CROSSROADS (Freedom House), 2012, http://www.hrw.org/sites/default/files/related_material/tunisia_2012.pdf.

[106] *Id.*

[107] *See* AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2013: THE STATE OF THE WORLD'S HUMAN RIGHTS 271-272 (2013), http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf (documenting human rights violations under the Ben Ali regime and demanding legal reform and adherence to international human rights standards for nearly a decade).

[108] Marwan M. Kraidy, *The Body As Medium in the Digital Age: Challenges and Opportunities*, 10 COMM. & CRITICAL/CULTURAL STUD. 285 (2013).

[109] Larbi Sadiki, *Political Liberalization in Bin Ali's Tunisia: Facade Democracy,* 9.4 DEMOCRATIZATION 122, 123–25 (2002).

utilize the law to justify government action,[110] thereby devaluing the power of law to effect transformative change. The language of human rights law—embodied in international agreements and even in domestic law—offers repressive states a powerful tool to legitimize repressive practices.[111]

The Ben Ali regime used the introduction of progressive laws and the ratification of international treaties as political propaganda, aimed at depicting the regime as a progressive, rights-respecting democracy.[112] This tactic was designed not only to placate the international community, but also to pacify the discontented Tunisian people.[113] However, it ensured the centralization of power in the hands of the presidency and his security apparatus.[114] It was subsequently used to repress Tunisian citizens.[115] The Ben Ali regime rejected in practice the legal principle of political diversity and the right of citizens to assemble or form political parties.[116] In 2003, for example, the Tunisian government passed counterterrorism legislation with the purported aim of enhancing security and combating terrorism, named *The Law of 2003 Concerning Supporting International Efforts to Combat Terrorism and Forbid Money Laundering*.[117] Between 2003 and 2010,[118] under the guise of combating terrorism, the Tunisian government arrested and tortured hundreds of citizens,[119] charging them with affiliation with terrorist organizations and

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[110] In 2002, a referendum revised the Tunisian Constitution, aiming to empower the President and ensure his permanence in power. The referendum removed the Constitution's three-term limit, allowing the President to run for an unlimited number of successive five-year terms. Additionally, it modified the upper age limit for the presidency, raising it from seventy to seventy-five. *See* POWEL & SADIKI, *supra* note 53.

[111] Laura Bazzicalupo, *Imagination, Imaginary and the Bioeconomic Turn of Cognitive Capitalism, in* THE POLITICS OF IMAGINATION 86, 86–91 (Chiara Bottici & Benoît Challand eds., 2011).

[112] THE STRUGGLE OVER DEMOCRACY IN THE MIDDLE EAST: REGIONAL POLITICS AND EXTERNAL POLICIES 32–33 (Nathan J. Brown & Emad El-din Shahin eds., 2010).

[113] Eric Goldstein, *Dismantling the Machinery of Oppression*, HUMAN RIGHTS WATCH, Feb. 16, 2011, https://www.hrw.org/news/2011/02/16/dismantling-machinery-oppression.

[114] STEPHEN J. KING, THE NEW AUTHORITARIANISM IN THE MIDDLE EAST AND NORTH AFRICA 171–74 (2009).

[115] *Id.*

[116] *Id.*

[117] *The Law of 2003 Concerning Supporting International Efforts to Combat Terrorism and Forbid Money Laundering* (Arabic), Law No. 75 of 2003, Official Gazette Issue No. 99, 3808 (2003), http://www.cnudst.rnrt.tn/jortsrc/2003/2003a/ja0992003.pdf.

[118] Human Rights Watch World Report 2009: Events of 2008, HUMAN RIGHTS WATCH 517, https://www.hrw.org/sites/default/files/reports/wr2009_web.pdf [hereinafter Human Rights Watch World Report].

[119] Alexis Arieff, *Tunisia: Recent Developments and Policy Issues*, 5.2 CONGRESSIONAL RESEARCH SERVICE 274 (2011), http://fpc.state.gov/documents/organization/155560.pdf.

incitement to terrorism.[120] Under the rubric of complementing the international community's efforts to combat terrorism, the law was used as a means to justify torture, illegal and/or secret detention, and to suppress any form of political dissent.[121]

The 2003 counterterrorism law opened the door for the judiciary and apparatus to accuse,[122] detain, interrogate, and try "terrorism" suspects,[123] and it did so through deliberately and ambiguously worded text to make the scope of potential "terrorist" offenses as broad as possible.[124] Tunisians were sentenced under the law classifying a myriad of individual acts as "offences of terror," such as growing a beard, dressing in a specific manner, or accessing prohibited websites.[125] The UN Human Rights Council documented 3,000 cases in which citizens were sentenced under the 2003 law for such "offences of terror."[126] The UN repeatedly expressed serious concerns regarding the 2003 law's incompatibility with international law, particularly the due process and freedoms of expression and belief provisions enshrined in the International Covenant on Civil and Political Rights (ICPPR),[127] which Tunisia ratified without reservation in 1969. The UN stressed that the counterterrorism law—primarily Article 4[128]—did not contain precise or explicit

[120] Public Statement, Amnesty Int'l, Tunisia: Abuses Continue Despite Official Denial (July 22, 2008).
[121] UN Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 10, U.N. Doc. A/HRC/20/14/Add.1; GAOR, 20th Sess. (Mar. 14, 2012), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-14-Add1_en.pdf.
[122] Human Rights Watch World Report, *supra* note 94, at 518.
[123]Tunisia: Counterterror Law Endangers Rights, HUMAN RIGHTS WATCH, Jul. 31, 2015, https://www.hrw.org/news/2015/07/31/tunisia-counterterror-law-endangers-rights.
[124] Jonathan G. Farley, *Tunisia: Forty Years on from Independence*, 270 CONTEMP. REV. 125–27 (1997).
[125] *Id.*
[126] *Supra* note 94.
[127] Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Mission to Tunisia*, Human Rights Council, U.N. Doc A/HRC/20/14/Add.1 (Mar. 12, 2012)(by Martin Scheinin).
[128] *Id*. At 5-6. Article 4 of the Law of 2003 Concerning Supporting International Efforts to Combat Terrorism and Forbid Money Laundering (Arabic) defines *terrorism* as "Every crime, regardless of its motives, connected to an individual or collective initiative (enterprise) aiming at terrorizing one person or a group of people and spreading fear among the population, for the purpose of, among other things, influencing State policies and compelling it to act in a particular way or preventing it from so acting; or disturbing public order or international peace and security, or attacking people or facilities, damaging buildings housing diplomatic missions, prejudicing the environment, so as to endangering the life of its inhabitants, their health or jeopardizing vital resources, infrastructures, means of transport and communications, computer systems or public services."

definitions of terrorism, terrorist groups, incitement to terrorism, and financing of terrorism. In effect, the 2003 law was used by the regime as a tool of oppression against Tunisian citizens.[129]

Civil society under Ben Ali's regime was strictly confined. Although more than 9,800 voluntary and national organizations were officially registered as of 2009, few of them were able to operate independently.[130] The Ministry of the Interior had *de jure* and *de facto* control over civil society organizations.[131] According to Freedom House: "Most associations were service-oriented and coopted by the regime, and did not foster the kind of horizontal membership that contributes to a civic culture."[132] The state "maintain[ed] a dominant and intrusive role in civil society, [and created] exceptionally restrictive conditions [. . . .]"[133] As a strategy to navigate the needs of the international community, the regime allocated a constrained, artificial space for the functioning of civil society. [134] By metaphorically attempting to cover the sun with a sieve, Ben Ali enabled the authoritarian regime to appear more democratic, thereby making it more resilient and resistant to calls for change.

International advocacy organizations such as Amnesty International repeatedly addressed the human rights violations perpetrated by the Tunisian government. [135] Many statements, reports, and studies were released detailing the litany of human rights abuses and calling for urgent state action to halt the abuses and promote respect for the rule of law.[136] The Ben Ali regime portrayed

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[129] *Tunisia: Amend Draft Counterterrorism Law*, HUMAN RIGHTS WATCH, July 7, 2014, https://www.hrw.org/news/2014/07/07/tunisia-amend-draft-counterterrorism-law.
[130] FOUND FOR THE FUTURE, STUDY ON CIVIL SOCIETY IN TUNISIA 8–11 (2013) (showing that by 2009, the exact number of civil society organizations was 9,843. 1.4% of the overall percentage of civil society organizations in Tunisia worked in the field of law and human rights).
[131] *Id*. at 16.
[132] *Tunisia Country Summary*, *supra* note 81, at 5.
[133] POWEL & SADIKI, *supra* note 53, at 6.
[134] AMNESTY INT'L, *supra* note 83.
[135] *See, e.g.*, AMNESTY INT'L, TUNISIA CONTINUING ABUSES IN THE NAME OF SECURITY (2009).
[136] AMNESTY INT'L, IN THE NAME OF SECURITY: ROUTINE ABUSES IN TUNISIA (2008) (documenting a number of cases where fundamental human rights abuses were carried out in the name of the fight against terrorism and restoring security, such as allowing torture, unlawful arrests, unfair trials, incommunicado detention, officials falsification of arrest documentation, enforced disappearance, as well as other practices). For a description of the human rights situation on the eve of the revolution, *see* THE MAKING OF THE TUNISIAN REVOLUTION: CONTEXTS, ARCHITECTS, PROSPECTS 5–8 (Nouri Gana ed., 2013).

Tunisia as a country where the rule of law prevailed,[137] but Amnesty International described a very different picture:

> The Tunisian authorities continue to carry out arbitrary arrests and detentions, allow torture and use unfair trials, all in the name of the fight against terrorism. This is the harsh reality behind the official rhetoric.[138]

An Amnesty International report released in June 2008 documented a pattern of human rights violations in Tunisia that included:

> Arbitrary arrests, incommunicado detention and enforced disappearances; torture and other ill-treatment; unfair trials, including before military courts; and abuses in prisons as well as abuses against Tunisian nationals forcibly returned from abroad.[139]

The Tunisian government rejected Amnesty International's report, arguing that the allegations had not been properly investigated and denying that "security officials are allowed to abuse the law with impunity."[140] Amnesty International issued several statements and reports in 2008, including *Tunisia: Abuses Continue Despite Official Denial*[141] and *In the Name of Security: Routine Abuses in Tunisia*,[142] and held a press conference in Paris calling on the Ben Ali regime to halt human rights abuses and to uphold the law.[143]

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[137] Press Release, General Assembly, Demanding Reforms, Speakers Say Outdated United Nations Structure Leaves Organization Ill-Equipped to Address Twenty-first Century Realities, U.N. Meetings Coverage GA/10865 (Sept. 28, 2009), http://www.un.org/press/en/2009/ga10865.doc.htm.
[138] *Tunisia continues human rights abuses in the name of security*, REFWORLD, http://www.refworld.org/docid/4a8d54af20.html (last visited Dec. 8, 2015) (quoting Malcolm Smart, Director of the Middle East and North Africa Programme, Amnesty International).
[139] AMNESTY INT'L, *supra* note 112, at 2.
[140] AMNESTY INT'L, *supra* note 112, at 2 (providing that: "The Tunisian government rejected Amnesty International's report, stating that it considered it "totally subjective and devoid of any credibility," and denied that allegations of torture are not investigated and that security officials are allowed to abuse the law with impunity. One year on, however, the Tunisian authorities have yet to provide any information indicating that detainees' torture allegations are adequately investigated or about any prosecutions of officials responsible for torture and other ill-treatment of detainees and prisoners, and such abuses continue to be alleged. Indeed, the pattern of human rights violations remains unchanged and none of the measures recommended by Amnesty International to address this grave situation have been implemented by the Tunisian government").
[141] Public Statement, Amnesty Int'l, Tunisia: Abuses Continue Despite Official Denial (July 22, 2008).
[142] AMNESTY INT'L, *supra* note 112.
[143] Prior to January 2011, a number of statements addressing human rights violations and calls for reform were issued to highlight serious concerns about the status of human rights in Tunisia. In 2010, Amnesty International alone released at least 20 statements in the English language addressing violations and calling on the government to halt its abuses. *See, e.g.*, AMNESTY INT'L, TUNISIA: ONGOING HUNGER STRIKES SPOTLIGHTS RIGHTS ABUSES IN TUNISIA (2010), https://www.amnesty.org/en/documents/mde30/020/2010/en/; AMNESTY INT'L, TUNISIA: JAILED TUNISIAN JOURNALIST'S HEALTH AT RISK (2010), https://www.amnesty.org/en/documents/mde30/019/2010/en/; Press Release, Amnesty Int'l, Tunisia: Government Must End Harassment of Former Political Prisoners (Mar. 15, 2010), https://www.amnesty.org/en/press-releases/2010/03/tunisia-government-must-end-harassment-former-political-prisoners-2010-03-1/.

In this context, we see how the language of law can run dry.[144] Autocratic regimes have the power to deconstruct the language of legal reform. By assaulting and restricting the language of law, repressive regimes unmake, destroy, and empty legal arguments of their transformative potential.

III. WHEN THE BODY YIELDS: SELF-IMMOLATION AS AN ALTERNATIVE FORM OF DISSENT

Self-immolation is an example of bodily self-destruction; a radical tool of last resort used to materialize and communicate pain whereby the distressed body reclaims power to reject its subjugation. The struggling body not only rejects its subordination by the state, but also becomes an agent that reclaims rights and liberties through its own death. Through the logic of corporeal emancipation, oppressed and even quotidian actors may contest the failure of the rational arguments rooted in the language of human rights, catalyze legal, social, and cultural change where rational arguments fail and render the voice of the voiceless legible.

The second part of this Article examines the power of the human body to spur political and legal action. It analyzes the 2010 self-immolation of Tarek Mohammad Bouazizi in Tunisia, which sparked an unprecedented wave of protests across Arab countries, leading to what came to be known as the "Arab Spring." It contends that when human rights-based arguments are exhausted, space is created for alternative strategies of resistance. Mobilized and deployed as a tool of resistance, human bodies become the "argument." It offers an understanding of the body—and its annihilation—as a form of argument. It explores the difficulty of communicating, expressing, and

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[144] Virginia Woolf, *On Being Ill*, *in* THE ESSAYS OF VIRGINIA WOOLF 194 (Andrew McNellie ed., 1994) ("Finally, to hinder the description of illness in literature, there is the poverty of the language. English, which can express the thoughts of Hamlet and the tragedy of Lear, has no words for the shiver and the headache. It has all grown one way. The merest schoolgirl, when she falls in love, has Shakespeare or Keats to speak her mind for her; but let a sufferer try to describe a pain in his head to a doctor and language at once runs dry. There is nothing ready made for him. He is forced to coin words himself, and, taking his pain in one hand, and a lump of pure sound in the other (as perhaps the people of Babel did in the beginning), so to crush them together that a brand-new word in the end drops out. Probably it will be something laughable.").

understanding pain. This part addresses the question: What distinguishes the failure of law's rationality from the body's surrender as a moral force to challenge state power? At what point does the collective inability to challenge state power through legal means make the use of the body-in-pain inevitable?

A. Tarek Mohammad Bouazizi

Tarek Mohammad Bouazizi was a twenty-six-year-old street vendor who sold fruit in Sidi Bouzaid, an impoverished city in Tunisia that lies 190 miles south of the capital Tunis. On December 17, 2010, he used paint thinner to set himself ablaze outside the Sidi Bouzaid municipal office[145] in protest of the crushing poverty and the unrelenting political harassment and oppression he had endured.[146]

Bouazizi's plight reflected that of a much larger population that exists on the margins of Tunisian society, enduring the injustices of the ruling regime. After leaving school to work as a street vendor at the age of ten, Bouazizi had been the primary breadwinner for his family.[147] Following the death of his father, Bouazizi worked several jobs to support his mother and siblings.[148] He was targeted over the course of many years by municipal police officers who constantly harassed him for bribes. When he refused, he was subjected to arbitrary fines, confiscation of his wares, and beating by officials.[149]

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[145] Bouazizi was not the only Tunisian who used his body to express his disenfranchisement. On December 22, 2010, in the town of Sidi Bouzid, 24-year-old Lahseen Naji was electrocuted after climbing a high-voltage electricity pole to cry out his "hunger and joblessness." Ramzi Al-Abboudi committed suicide because of his deteriorating financial situation and his inability to repay a business loan he took from the country's micro-credit solidarity program. *See* Sadiki Larbi, *Tunisia: The Battle of Sidi Bouzid*, AL JAZEERA ENGLISH, Dec. 27, 2010, http://www.aljazeera.com/indepth/opinion/2010/12/20101227142811755739.html.

[146] RANIA ABOUZEID, *BOUAZIZI: THE MAN WHO SET HIMSELF AND TUNISIA ON FIRE*, TIME MAGAZINE, JAN. 21, 2011, HTTP://CONTENT.TIME.COM/TIME/MAGAZINE/ARTICLE/0,9171,2044723,00.HTML.

[147] Peter Beaumont, *Mohammed Bouazizi: The Dutiful Son Whose Death Changed Tunisia's Fate*, THE GUARDIAN, Jan. 20, 2011, http://www.theguardian.com/world/2011/jan/20/tunisian-fruit-seller-mohammed-bouazizi.

[148] Kareem Fahim, *Slap to a Man's Pride Set Off Tumult in Tunisia*, N.Y. TIMES, Jan. 21, 2011, http://www.nytimes.com/2011/01/22/world/africa/22sidi.html.

[149] Hernando De Soto, *The Real Mohamed Bouazizi*, FOREIGN POLICY MAGAZINE, Dec. 11, 2011, http://foreignpolicy.com/2011/12/16/the-real-mohamed-bouazizi/.

On the day of his self-immolation, a policewoman in the public market allegedly slapped Bouazizi in the face,[150] and her two assistants had thrown away his cart and all of his belongings. His goods were confiscated, and he was fined for selling vegetables in the street without a permit. The fine was the equivalent of a full day's income.[151] Bouazizi, according to witness, cried and asked the policewoman, "[w]hy are you doing this to me? . . . I'm a simple person, and I just want to work."[152] In agony, he went to city hall and requested to speak to an official, but no clerk paid attention to his demand; they minimized the incident and asked him to "[g]o home [and] forget about it."[153] Bouazizi returned to the market and expressed his frustration to his fellow vendors; he told them that he would not remain mute and that he would "let the world know how unfairly they were being treated, how corrupt the system was."[154]

This humiliating public incident pushed him over the edge. It undoubtedly served to remind Bouazizi that as a cart vendor and as a citizen, he was unrecognized, subjugated, and marginalized. Even worse, he was not afforded sufficient autonomy to earn a living. Bouazizi succumbed to desperation by contemplating suicide;[155] he set himself on fire outside the city hall while crying out, "How do you expect me to make a living?"[156] His act generated an enormous wave of solidarity.[157] The spectacle of a body in flames prompted thousands of people already

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[150] Fedia Hamdi, *the Tunisian market inspector, was accused of slapping Mohammad Bouazizi*. Hamdi denied the charges, and in April 2011—after 111 days of incarceration—she was released from jail on grounds of lack of evidence. *See* Elizabeth Day, *Fedia Hamdi's Slap Which Sparked a Revolution 'Didn't Happen',* THE GUARDIAN, Apr. 23, 2011, HTTP://WWW.THEGUARDIAN.COM/WORLD/2011/APR/23/FEDIA-HAMDI-SLAP-REVOLUTION-TUNISIA.

[151] PRAETER, BUSINESS AND COMMUNALISM: A NEW PARADIGM? 60 (2013).

[152] Marc Fisher, *In Tunisia, Act of One Fruit Vendor Sparks Wave of Revolution Through Arab World*, THE WASH. POST, Mar. 26, 2011, https://www.washingtonpost.com/world/in-tunisia-act-of-one-fruit-vendor-sparks-wave-of-revolution-through-arab-world/2011/03/16/AFjfsueB_story.html.

[153] *Id.*

[154] *Id.*

[155] AMIN MAALOUF, DISORDERED WORLD XI (2012).

[156] Bob Simon, *How a Slap Sparked Tunisia's revolution,* CBS NEWS, Feb. 22, 2011, http://www.cbsnews.com/news/how-a-slap-sparked-tunisias-revolution-22-02-2011/.

[157] After Bouazizi was transferred to the hospital in Sfax, his fellow vendors and family members protested outside city hall; they threw stones at the building while shouting, "Mohammad was oppressed, he was upset and downtrodden, and you are people who did not help him." "Where is the woman who hit him?" "You just want to humiliate us. Why didn't you open your door to him?". Rania Abouzeid, *The Martyr's Mother: An Interview with Mannoubia Bouazizi*, TIME MAGAZINE, Dec. 14, 2011, http://content.time.com/time/specials/packages/article/0,28804,2101745_2102138_2102239,00.html.

disenchanted with the regime to shout in a united voice, *Ash-sha'b yurīd isqāṭ an-niẓām*:[158] "The people demand the overthrow of the regime!" Tens of thousands of marginalized, discontent, and enraged citizens—mostly young people, women, children, the elderly, and the unemployed—marched nonviolently through the streets of Tunisia chanting, "Dégage, dégage, dégage!" ("Get lost!"), expressing their outrage and calling on the government to step down.[159] Bouazizi's act ultimately sparked a movement for change, leading to revolutions that toppled dictatorships across the Arab world—a phenomenon that came to be known as the Arab Spring.[160] It sparked massive waves of bodies marching against injustice in Tunisia, Egypt, Bahrain, Yemen, and Syria.[161]

Why was Bouazizi's spontaneous act of desperation—the self-induced spectacle of a burning body—a more effective catalyst in challenging the power of repressive Arab governments than the language of human rights law that the international community had worked so committedly to ratify and implement globally?

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[158] ARAB SPRING: A RESEARCH & STUDY GUIDE, THE 'SPARK' THAT STARTED IT ALL, CORNELL UNIVERSITY, http://guides.library.cornell.edu/c.php?g=31688&p=200750.

[159] Andrea Khalil, *The Language of the Political Crowd in Tunisia*, AFR. FUTURES, Dec. 19, 2012, http://forums.ssrc.org/african-futures/2012/12/19/the-language-of-the-political-crowd-in-tunisia-2/.

[160] Following Bouazizi's death, a number of other self-immolation incidents took place in the Arab World, namely in Algeria when Mohsen Bouterfif set himself ablaze outside the mayor's office in January 2011. According to the BBC News, six months after Bouazizi's death, at least 107 Tunisians tried to commit suicide by setting themselves alight. *See, Tunisia One Year On: New Trend of Self-Immolations*, BBC NEWS, Jan. 12, 2012, http://www.bbc.com/news/world-africa-16526462.

[161] This Article does not in any way claim that the "Arab Spring" is a resounding success, however it recognizes that it has changed the dynamics between citizens and state and helped break the chains of fear that people had, which isn't a small thing. It is undeniable that the unprecedented act of self-immolation created a dynamic that helped people overcome their fear and demand human rights changes—it created a situation that didn't exist before.

B. Analyzing The Corporeal Logic of The Oppressed Body

Human beings need to be recognized. By being recognized, they exist. Life is theatrical performance. —Jeon Tae-il

The use of the corporeal body as a means of political protest represents an ancient form of resistance.[162] Throughout history, various groups and individuals have used their bodies as a mechanism of rebellion. Inflicting pain and suffering on one's own body, as in the hunger strike, has been a familiar mode of resistance against state power. In many countries and throughout history, revolutionaries have used their bodies to communicate rejection of injustice; self-immolation and hunger strikes are two modes of political resistance.[163] The Cuban poet Pedro Luis Boitel died on day fifty-three of his hunger strike in 1972; he was demanding humane treatment in prison. Perhaps the most impassioned hunger striker is Mahatma Gandhi, also known as the father of the Indian nation, who fasted seventeen times to protest British rule as he led India's freedom movement.[164] The mass suicide of Indian farmers who were facing crop failure in the midst of the highest levels of inflation and government crackdown illustrates how collective bodies mobilize to express their desperation and rejection of injustice.[165]

The use of self-immolation as a political act by Tibetan Buddhist monks has been well documented.[166] Thich Quang Duc of Vietnam burned himself to death in 1963 to protest against

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[162] Jonathan Rugman, *Sidi Bouzid: Roots of the Tunisia Revolution*, CHANNEL 4, Jan. 20, 2011, http://www.channel4.com/news/sidi-bouzid-roots-of-the-tunisia-revolution.

[163] An example of such resistance was seen in 1981, when the Irish Republican Army prisoners, Robert Gerard "Bobby Sands" (also a member of the British parliament) and Francis Hughes launched a hunger strike to demand that they be recognized as political prisoners rather than "mere" criminals; the Thatcher government refused to negotiate, and the two men starved to death, which sparked riots in many areas in Northern Ireland. *See The Search for Peace, Hunger Strike 1980-82*, BBC NEWS LONDON, http://news.bbc.co.uk/hi/english/static/northern_ireland/understanding/events/hunger_strike.stm.

[164] Pramod Kumar Srivastava, *Resistance And Repression in India: The Hunger Strike at the Andaman Cellular Jail in 1933*, 7.2 CRIME, HIST. & SOCIETIES 81 (2003).

[165] *1,500 Farmers Commit Mass Suicide In India*, THE INDEPENDENT, April 15, 2009, http://www.independent.co.uk/news/world/asia/1500-farmers-commit-mass-suicide-in-india-1669018.html (In 2009, over 1,500 farmers in India collectively committed a suicide as a result of their failure in paying off their debts).

[166] Michael Biggs, *Dying Without Killing: Self-Immolations 1963-2002*, *in* MAKING SENSE OF SUICIDE MISSIONS 173 (Diego Gambetta ed., 2005).

the prosecution of Buddhists by the South Vietnamese government; Polish accountant Ryszard Siwiec set a precedent in Polish history when he self-immolated in 1968 to protest the Warsaw Pact military alliances' invasion of Czechoslovakia;[167] Jeon Tae-il, the first self-immolator in the modern history of South Korea,[168] set himself alight in front of the market in Seoul to protest the dire working conditions in the garment industry in 1970.[169]

In the Arab world, self-immolation as a radical political strategy appears to have been unheard of until December 2010.[170] Criminal laws in Tunisia,[171] Syria,[172] Jordan,[173] and Palestine[174] punish anyone who assists others to commit suicide.[175] Islam—the majority religion in the Arab world—classifies killing the self or innocent others as a grave sin.[176]

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[167] M. MARK STOLARIK, THE PRAGUE SPRING AND THE WARSAW PACT INVASION OF CZECHOSLOVAKIA, 1968: FORTY YEARS LATER 25 (2010).

[168] Not every political self-immolation brings about change or spark a revolution. Recently in the United States of America, a number of incidents occurred without igniting a wave of uprisings. For example, in October 2013, John Constantino set himself ablaze on the Washington National Mall. *See John Constantino Identified as Man Who Set Himself on Fire at National Mall*, THE HUFFINGTON POST, Oct. 13, 2013, http://www.huffingtonpost.com/2013/10/04/john-constantino_n_4046947.html. On the day after, another man committed suicide outside the Capitol building in Washington, D.C., while holding a sign stating, "Tax The 1%." Neither incident ignited a revolution in the United States. *See, Man Who Shot Himself Dead on Steps of Capitol Was Carrying 'Tax The 1%' Sign,* THE DAILY MAIL, April 12, 2015, http://www.dailymail.co.uk/news/article-3035712/Man-shot-dead-steps-Capitol-carrying-Tax-1-sign.html.
An older example is the case of Bruce Mayrock, a twenty-year old student at the School of General Studies at Columbia University of set himself on fire outside the United Nations Head Quarters to protest against the war in Biafra. *See GS Student, 20, Immolates Himself in Front of U.N.*, COLUMBIA DAILY SPECTATOR, VOLUME CXIII, Number 118 (June 3, 1969), http://spectatorarchive.library.columbia.edu/cgi-bin/columbia?a=d&d=cs19690603-01.2.8&e=-------en-20--1--txt-txIN------#.

[169] *Jeon Tae-il's Burning Himself to Death*, KOREA DEMOCRACY FOUND. NO. 1, http://www.kdemocracy.or.kr/mail/newsletter/mail_article_200508_01.html (last visited on 18 July 2015).

[170] Mattias Gardell, *So Costly Sacrifice Upon The Alter Of Freedom: Human Bombs, Suicide Attacks, And Patriot Heroes,* 2 J. OF RELIGION AND VIOLENCE 168, 168–202 (2014). In the Arab world, the body has been used as a medium to bring about political change in other ways. Palestinian political prisoners in Israeli prisons for decades have been resorting to collective hunger strikes ("the Battle of Empty Intestines") to call attention to imprisonment conditions that violate international norms and to demand recognition as political detainees and face charges or be released, while realizing that the strategy they use carries with it the risk of death. According to Michael Biggs, there is no documentation to show that self-immolation was practiced in the Middle East and North Africa. Biggs' study mapped self-immolation between the years 1963 and 2002. *See* Biggs, *supra* note 141.

[171] The Penal Gazette of Tunisia No. 79 of 1913, Article 206 (stipulates five years' punishment for anyone who intentionally assists another to commit suicide).

[172] Article 539, Syrian Criminal Law No. 148 of 1949 (punishes anyone who assists in a suicide in any way—whether by giving instructions, providing emotional and psychological support, or facilitating the act itself. The law imposes a maximum of ten years' imprisonment if the suicide is successful. If the attempt is unsuccessful, the law stipulates a sentence of imprisonment between three months and two years).

[173] Article 339, Criminal Law of Jordan No. 16 of 1960 (punishes anyone who assists in a suicide by imprisonment for a term ranging from three to fifteen years).

[174] In Palestine, the relevant criminal law is the Jordanian Criminal Law No. 16 of 1960. The law applies the same stipulations as the Jordanian legislation.

[175] Penal laws in Tunisia, Jordan, Syria, and Palestine punish any act that assists, encourages, or inspires others to commit suicide. Article 206, Law No. 79 of 1913 (promulgating the Penal Code of Tunisia), stipulates five years' punishment for anyone who intentionally assists another to commit suicide. Article 339 of Law No. 16 of 1960 (promulgating the Criminal Code of Jordan) punishes anyone who assists a suicide by imprisonment for a term ranging from three to fifteen years. In Palestine, the relevant criminal law is the Jordanian Criminal Law No. 16 of 1960. The law applies the same stipulations as the Jordanian legislation. Article 539 of the Syrian Law No. 148 of 1949 (promulgating the Criminal Code of Syria) punishes anyone who assists a suicide in any way—whether by giving instructions, providing emotional and psychological support, or facilitating the act itself. The law imposes a maximum of ten years' imprisonment if the suicide was successful. If the attempt was unsuccessful, the law stipulates a sentence of imprisonment between three months and two years.

[176] *Bukhari Volume 2, Book 23, Number 445:* A saying attributed to the Prophet Mohammad *(Hadith),* narrated by Junab, "A man was inflicted with wounds, and he committed suicide, and so God said: My slave has caused death on himself hurriedly, so I forbid Paradise for him."

Islam honors the human body, reaffirming its sacredness and the religious duty to maintain its moral and physical well-being.[177] Various verses of the Qur'an[178] enshrine the sacredness of life[179] and the body.[180] Islam perceives the body as a gift from God; it is His offering and He alone can give it and take it.[181] In this view, human beings do not possess any authority to damage their bodies or terminate their lives.[182]

The sacredness of the body as envisioned in both Islamic[183] and Arab cultures renders Tarek Mohammad Bouazizi's self-immolation all the more powerful and underscores the radical desperation that it expressed.[184] Under tremendous pain, humiliation, and desperation, he resorted to disregarding powerful cultural and religious taboos.[185]

Bouazizi's self-immolation can be regarded not merely as an individual or private act, but rather as a physical expression of a broader social struggle; the ramifications of his act extended

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[177] Narration of the Prophet Muhammad (PBUH), as compiled by Sunan Abu Dawud, Sunan Ibn Majah & Musnad Ahmad: "Breaking the bone of a dead person is similar (in sin) to breaking the bone of a living person." The prominent Hanafi jurist and Hadith Imam, Abu Ja'far al-Tahawi explained that the bone of a dead person has the same sanctity and honor as the bone of living person. Mushkil al-Athar.

[178] QUR'AN *Surah* 6:151 ("Whether open or secret; take not life, which God hath made sacred, except by way of justice and law: thus, doth He command you, that yet may learn wisdom." Alongside Quranic verses, Hadiths from Prophet Mohammad clearly forbid suicide or the killing of others.).

[179] QUR'AN *Surah* 17:70 ("And verily we have honoured the children of Adam.").

[180] QUR'AN *Surah* 2:195 ("And do not throw yourselves in destruction.").

[181] QUR'AN *Surah* 2:28 ("How can you disbelieve? Seeing that you were dead, and He gave you life. Then He will give you death, then again will bring you to life (on the Day of Resurrection) and then unto Him you will return.").

[182] QUR'AN *Surah* 6:151 ("Come, I will rehearse what God hath (really) prohibited you from": Join not anything as equal with Him; be good to your parents; kill not your children on a plea of want: We provide sustenance for you and for them: come not nigh to shameful deeds. Whether open or secret: take not life, which God hath made sacred, except by way of justice and law: thus, doth He command you, that ye may learn wisdom. Qur'an).

[183] In Bouazizi's case, there is no significant evidence that he was triggered by religious motives to search for martyrdom or *shahada*. Bouazizi was not particularly religious, he was not a member of an organized movement, and he did not have any political affiliation. He immolated himself as a last refuge of frustration and desperation, without anticipating the greater impact of his action. Therefore, the religious factor does not provide a sufficiently descriptive framework, nor does it provide us with the answer of why use of the corporal body as a political act motivated a wave for change. (maybe a source needed/removal needed)

[184] The usage of the sacred human body in protest of injustice raised controversies among Islamic jurists (Foqaha'). Al-Azhar, the most respected religious institution in Sunni Islam, issued a statement stressing that Islam strictly forbids suicide for any given reason, further arguing that Shari'a Law outlaws' suicide as an expression of anger or protest. However, the Egyptian Islamic theologian Yusuf al-Qaradawi expressed sympathy with those who use their bodies as means to revolt against injustices and classified Bouazizi's act as one of desperation and frustration. He blamed the authoritarian regimes for oppressing their citizens and triggering them to commit suicide. Qaradawi considered the spectacular act of Bouazizi setting his body alight as a means of gaining freedom and a call for God to emancipate him and other marginalized Tunisians from the state's oppression. *See* Ahmad Muath Alkhateeb Al Husseini, *Between the Flaps of Bouazizi and the Flights of Qaradawi*, NEWS SOURCE NEEDED Aug. 24, 2011, http://www.qaradawi.net/articles/86-2009-12-12-10-35-10/5125-2011-08-24-09-07-14.html.

[185] Yusuf al-Qaradawi considered Bouazizi's act as a form of *Jihad Al Mathloom,* what could be considered as the weapon of the oppressed. This doctrine chiefly provides two circumstances within which Muslims are permitted to engage in this explicit form of *Jihad:* when Muslims know that injustice is being inflicted and that it is in conflict with Islamic *Shari'a* principles, and when there is a volitional intent to make a change, whether by proactively engaging in making (doing) change, or by verbally casting a rejection, or lastly by resisting discreetly (in their hearts). *See* Ahmad Muath Alkhateeb Al Husseini, *supra* note 160.

well beyond the boundaries of his own body. Bouazizi was one of many citizens who faced limited opportunities and constant harassment by the state. These vulnerable, powerless, and disadvantaged citizens enjoyed few, if any, political, economic, and civil rights, and liberties. In order to resist the injustices, he experienced, Bouazizi was acutely aware that no alternative means were available to him, certainly no legal means. Bouazizi was a victim "whose judgment and reason had been compromised by [his] experience."[186] Fully aware of the significance of the destruction of his body in Islamic theology, Bouazizi nonetheless utilized his corporeal body as a tool to give voice to his frustration.[187]

The fact that he set himself on fire in a public space and in front of a public building that stood for the state suggests that he wished to convey the message that his action was not an individualized, private act of suicide or self-emancipation. His act was resistance at the limit of the very idea of the human, thereby revealing the limits of the human as a rights-bearing subject in general. While Bouazizi probably did not anticipate that his act would ignite a wave of change across the Arab world, his self-immolation can be interpreted as a political act of "last resort," a rejection of state control and withdrawal from the broken social contract. His profound pain overcame idealized spiritual notions of the sacredness of the body and the sinfulness of the act.[188] Since the state breached its commitment to the social contract, Bouazizi in return manifested his suffering by breaking his "sacred" religious contract.

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[186] Liisa H. Malkki, *Refugees and Exile: From "Refugee Studies" to the National Order of Things*, 24 ANN. REV. OF ANTHROPOLOGY 495 (1995).
[187] In an interview with Bouazizi's mother, Mannoubia Bouazizi, she explained how they are a simple religious family whose devotion is expressed through prayer and praising God. She described her son as a martyr and said that "I always ask mercy for his soul and the souls of all the martyrs." *See* Abouzeid, *supra* note 122.
[188] Susan Raine, *Body, Emotion and Violence: Palestinian Suicide Bombing/Martyrdom (1993-2005)*, 17.2 MARBURG J. RELIGION 1, 1, 3 (2013).

IV. UNDERSTANDING WHEN BODIES-IN-PAIN BECOME THE ARGUMENT

A. The Difficulty of Communicating And Understanding Injustice

This section analyzes the corporeal logic and the role of bodies-in-pain as a medium of political expression. Bouazizi's actions may offer a window into how the body can act as a tool of defiance when the law "runs dry." Although one should not assert a causal relationship between an individual act of corporeal protest and the launch of a mass movement, it is useful to examine the vital role of the human body as a medium for enacting resistance when the law proves ineffective.

The injustice of a dictatorship is borne by the citizenry, both collectively and individually.[189] The daily struggle that results from marginalization, disempowerment, and powerlessness, combined with the constraints on expressing and challenging these same injustices, generate a sense of frustration. The society—as one body—metaphorically suffers from the pain of injustice. This pain begins as an internal phenomenon that is then manifested in various ways by the oppressed populace.[190]

This pain is imminent in the various trajectories of citizens' lives, particularly in their struggle to enjoy fundamental social, civil, political, or economic rights.[191] Under a dictatorial regime, citizens are prevented from engaging in political life or from expressing their opinions freely. Their access to employment, justice, health, and education is limited. State oppression—including the curtailing of rights and liberties, the control of resources, censorship, corruption, and nepotism—presents additional obstacles for citizens living under a tyrannical government. The lived reality of oppression, subjugation, and marginalization in various aspects of daily life

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[189] DEBORAH LUPTON, THE EMOTIONAL SELF: A SOCIOCULTURAL EXPLORATION 37 (1998).
[190] *Id.*
[191] *Id.*

produces a sense of profound frustration and desperation. As previously mentioned, Bouazizi's precarious existence on the margins of society without adequate legal or political representation, made him especially vulnerable to state interference and control.[192] Yet popular response to his act revealed that his suffering was endemic to the lives of most Tunisians.[193]

Democratic dialogue is eroded through repressive policies—the state's "language of communication" with its citizens.[194] Every practice that limits citizens' liberties and freedoms can be considered an assault on democratic dialogue.[195] The restrictive policies of repressive regimes limit communication among citizens and, as a result, silence dialogue between citizens and the ruling regime.[196] This process of limiting channels of communications leaves citizens frustrated and desperate.

As a collective body, a society under dictatorship experiences collective pain caused by governmental oppression.[197] Communicating the experience of injustice to fellow citizens and to those entrusted to restore justice is often difficult under such political conditions. Oppressive regimes operate from a site external to the social "body"—a site of power from which the regime dictates the rules and controls the language of civic communication.[198] At the same time, repressive regimes construct an illusory image of an idealized, well-functioning society.[199] In such a context, it is difficult for citizens and civil society to resist and cast out or challenge their experience of injustice.

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[192] Giorgio Agamben introduced the notion of "bare life" to refer to those who are politically damaged and denied both their political and legal representation. In his reference to the stateless refugees he argues: "Insofar as its inhabitants were stripped of every political status and wholly reduced to bare life, the camp was also the most absolute biopolitical space ever to have been realized, in which power confronts nothing but pure life, without any mediation." *See* GIORGIO AGAMBEN, HOMO SACER: SOVEREIGN POWER AND BARE LIFE 171 (1998).
[193] *See* POWEL & SADIKI, *supra* note 53.
[194] JÜRGEN HABERMAS, THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE 7 (1989).
[195] ELAINE SCARRY, THE BODY IN PAIN 4 (1985).
[196] *Id.*
[197] Mabel Berezin, *Secure States: Towards a Political Sociology of Emotion*, *in* EMOTIONS AND SOCIOLOGY 33 (Jack Barbalet ed., 2002).
[198] TALAL ASAD, ON SUICIDE BOMBING 32–36 (2007).
[199] *See* SCARRY, *supra* note 171, at 72.

The chasm between the state's portrayal of the government as a just and rights-respecting body and the violent and repressive reality of everyday life under a dictatorial regime can induce a sense of social dysphoria. Accordingly, the individual citizen's pain and the state's awareness of inflicting injustice become two distinct experiences, even two separate worlds.[200] The ruling elites exist in a place of control remote from the general population, and in that privileged space it is difficult for them to understand and relate to society's pain and struggle.

Experiencing one's own pain and understanding the pain of others are two wholly different sets of events.[201] Bodies-in-pain—those ruled by repressive regimes—perceive the experience of pain as an absolute, totalizing reality.[202] It is a non-negotiable, uncontested feeling of injustice "having certainty."[203] However, this reality remains incomprehensible to the regime that exists external to the sufferer's body. The ruling authorities understand their exercise of authoritarian powers as a manifestation of democratic legitimacy and are far removed from the concerns and struggles of ordinary citizens. As such, calls for reform stemming from domestic civil society or from the international community are unlikely to gain traction.

Even democratic regimes can have difficulty grasping the true sense of struggle experienced by certain members of society. Regardless of the amount of effort that states invest in comprehending social struggles, even with "the most heroic effort [pain] can't be grasped,"[204] since the experience of hearing about pain amounts to an "uncertain, shadowy kind of existence unless and until they are transformed, deprivatized and deindividualized, as it were, into a shape to fit them for public appearance."[205] According to Elaine Scarry, "hearing about pain" might

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[200] SCARRY, *supra* note 171, at 13.
[201] SCARRY, *supra* note 171, at 13.
[202] SCARRY, *supra* note 171, at 13.
[203] SCARRY, *supra* note 171, at 13.
[204] SCARRY, *supra* note 171, at 4.
[205] *Id.*

constitute a model of what it is "to have doubts."[206] Even if pain is expressed, only a faint and blurry picture of the lived experience can actually be ascertained by the listener. As such, state reforms, as serious as they may be, can only address a fraction of the struggle being communicated.

The Tunisian government—like other authoritarian regimes—repeatedly claimed to be mystified by protestors' demands. The regime constantly denied its human rights abuses and offered assurances that it was taking active steps to bring its laws into alignment with its international human rights obligations.[207] On several occasions, the government acknowledged the international community's criticism by introducing progressive-sounding legal reforms, which in theory guaranteed better domestic protections for human rights.[208] In practice, however, these legal reforms proved to be merely another example of hollow rhetoric.[209]

In a letter dated September 7, 2010, Human Rights Watch ("HRW") asked Mr. Lazhar Bououni, the Minister of Justice and Human Rights, and Mr. Rafik Belhaj Kacem, the Minister of Interior and Local Development, to explain a number of human rights violations, mainly with respect to freedom of expression and the right to unionize.[210] HRW expressed concern about the denials of labor union activities, government prosecution of unionists, restrictions on the right to strike, the suppression of attempts by journalists to unionize, the targeting of the general union of Tunisia, and the torture by police of union members, among other issues.[211] On October 6, 2010, the Tunisian Government replied: it emphasized the government's respect of human rights and citizens' dignity and reiterated the assurance of the Tunisians laws for the right to unionize.[212] The

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[206] SCARRY, *supra* note 171, at 13.
[207] Public Statement, Amnesty Int'l, Tunisia: Abuses Continue Despite Official Denial (July 2, 2008), https://www.amnesty.org/download/Documents/56000/mde300102008eng.pdf.
[208] AMNESTY INT'L, *supra* note 112, at 3.
[209] AMNESTY INT'L, *supra* note 112, at 3.
[210] HUMAN RIGHTS WATCH, THE PRICE OF INDEPENDENCE: SILENCING LABOR AND STUDENT UNIONS IN TUNISIA 6 (2010), https://www.hrw.org/sites/default/files/reports/tunisia1010w.pdf.
[211] *Id*.
[212] *Id*. at 51–53.

government expressed its lack of comprehension of HRW queries and further denied allegations of possible police brutality and harassment of Tunisian students, including the case of Mohamed Soudani, who was arrested on October 22, 2009.[213] The government repeatedly stated that such allegations were "false and completely baseless."[214]

When society as a collective body endures pain, this experience is internal; the feelings are private and contained within the body, it is an invisible process. While broader characteristics are collectively shared, individuals go through the process independently.[215] Only when this experience of pain and struggle finds a vent for its expression does it generate a collective sense of frustration.[216] However, the pain cannot be addressed without being repositioned from the inner sphere to the public and political domains. This process of shifting pain from the private sphere to the public domain is the first stage of rendering visible the sense of frustration and desperation.[217] This process explains why social struggles cannot be effectively comprehended and "taken up" by the rational narrative provided by human rights law.

Human rights law fails to provide a remedy for the collective pain; it becomes an ineffective tool to provide answers to the widespread collective feelings of frustration. Rather, more visible, direct, and robust means of manifestation that can communicate the feelings of pain and suffering are required; physical embodiment of the metaphorical is necessary to articulate that pain—the individual body.[218]

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[213] *Id*. at 57.
[214] *Id*.
[215] SCARRY, *supra* note 171, at 52–53.
[216] SCARRY, *supra* note 171, at 56.
[217] SCARRY, *supra* note 171, at 56.
[218] Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40 THEATRE JOURNAL 519, 521 (1988).

B. The Linkage Between Expressing and Diminishing Injustice

Expressing pain can be an important prerequisite for diminishing it.[219] The body that endures pain must find a way to express it, a cathartic medium whereby it can transfer its feelings of struggle from the inner, private space to the shared, external sphere. Once pain is manifested and communicated to the public domain, the public can collectively work on eliminating the struggle, diminishing the pain and easing the suffering;[220] "the act of verbally expressing pain is a necessary prelude to the collective task of diminishing it."[221] Under conditions of oppression and subjugation, how can individuals collectively—in other words, society—communicate pain?

As previously discussed, authoritarian sovereign powers subordinate and disempower their own citizens. Under such conditions, tyrannical regimes control the language of civic communication—the democratic dialogue that occurs between citizens and their government—and exercise their power to give language meaning in order to marginalize and subjugate their citizens. In a November 2011 report, HRW identified ten areas of repressive legal provisions that are "incompatible with a democratic and pluralistic society that respects its citizens' basic human rights."[222] The report detailed how these laws were utilized by Ben Ali's regime to "stifle civil society, diminish judicial independence, limit political participation, and shield the president from accountability for any legal trespass, no matter how grave."[223] It emphasized how during Ben Ali's era legal provisions were used to punish citizens for "expressing views critical of the government and for addressing other subjects deemed improper for public debate." While using the language

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[219] SIGMUND FREUD, PSYCHOANALYSIS: FREUDIAN SCHOOL, SE, XX 261 (1984).
[220] SCARRY, *supra* note 171, at 9.
[221] SCARRY, *supra* note 171, at 9.
[222] Repressive laws concerning freedom of expression, privacy and freedom of expression online, freedom of association, freedom to form political parties, freedom of assembly, freedom of movement, the right of citizens to run for public office and choose candidates, judicial independence, state abuses under the guise of fighting terrorism, presidential immunity of International Crimes. *See* HUMAN RIGHTS WATCH, TUNISIA'S REPRESSIVE LAWS 4, 4–8 (2011).
[223] *Id.*

of freedom and rights, and in the name of security and restoring public order, the language of the law limited the ability of Tunisians to "express and access dissenting viewpoints, form independent associations or political parties, compete meaningfully for political office, and assemble in order to protest against the government and its policies." As a result, the government constantly targeted human rights activists, lawyers, writers, journalists, and political opposition members. They were harassed and imprisoned for violating these repressive laws.[224]

State restriction of freedoms and civil liberties leads to a pain and frustration in the body politic. Some citizens are more vulnerable than others, and most submit to the ruling regime, surrendering their freedoms and liberties in exchange for being left alone, or at least to minimize threats of state violence. Calls for reform and resistance are sublimated and displaced in the name of survival.

While scholars such as Costas Douzinas have conceptualized human rights as arising from a universal recognition of one's suffering by others, the Tunisian example shows us that this is not necessarily the case; state repression was well-known, and global condemnation did not translate into respect for the human rights of Tunisian citizens.[225] In circumstances of extreme political repression, human rights are not capable of fulfilling this kind of recognition.[226] Rather, the imaginary justice of human rights must yield to the irrational, the material, and the literally embodied justice of the body-in-pain.[227] The Tunisian example demonstrates how the public manifestation of this pain may succeed in breaking collective acquiescence to tyranny when well-documented legal rights violations have little to no impact.

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[224] *Id*. at 8–24.
[225] Costas Douzinas, *The End(s) of Human Rights*, 26 MELB. U. L. REV. 445 (2002). *See also* John L. Morss, *Saving Human Rights From Its Friends: A Critique of the Imaginary Justice Of Costas Douzinas*, 27 MELB. U. L. REV. 889 (2003).
[226] SCARRY, *supra* note 171, at 8–24.
[227] SCARRY, *supra* note 171, at 8–24.

Under the pressure of eliminating pain and suffering, there are limited ways in which sufferers—or those who wish to speak on their behalf, such as lawyers and human rights activists—can verbalize and materialize pain. When suffering is persistent, verbal strategies are limited, inaccessible, and uncertain for those in the margins, such as Bouazizi. For example, "naming and shaming" strategies[228] may actually contribute to worsening the pain experienced by society.[229] Instead of bringing the pain to light, expressing and articulating pain may make it increasingly invisible.[230] Paradoxically, the result can be the creation of more restrictions on freedoms and liberties.

In this context, bodies-in-pain can operate as a last resort means of resistance.[231] The public spectacle of corporeal pain can take up where language, including the language of law, fails.[232] Public performances of bodily pain and negation, including self-immolation, can mobilize resistance to state-imposed suffering where language and law have run out of their productive capacities. As Warner argues, when "minoritized subjects had few strategies open to them,"[233] the destruction of the body can become one of the very few available tools to gain access to the public sphere to outwardly articulate inner pain to the external, political sphere. It can be the sole remaining avenue of rejecting political, social, and economic suppression.[234] It becomes the tool, with all its trappings of sin and *haram*, despite religious prohibitions against inflicting bodily harm, to recognize the suffering of victims of tyranny and to intervene in order to challenge injustice.

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[228] Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT'L ORG. 689, 690 (2008).
[229] James H. Lebovic & E. Voeten, *The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR*, 50 INT'L STUD. Q. 861, 872 (2006).
[230] International Human Rights Law, s*upra* note 7, at 13.
[231] TALAL ASAD, *supra* note 174, at 19.
[232] HABERMAS, *supra* note 170, at 9.
[233] Michael Warner, *Publics and Counterpublics*, 14 PUBLIC CULTURE 49 (2002).
[234] Jacob Uzzell, *Biopolitics of the Self-Immolation of Mohamed Bouazizi*, E-INTERNATIONAL RELATIONS, Nov. 7, 2012, http://www.e-ir.info/2012/11/07/biopolitics-of-the-self-immolation-of-mohamed-bouazizi/.

C. The Linkage Between Pain and Power

Through the politics of death, the corporeal body becomes a powerful political tool to challenge authoritarian sovereign powers.[235] It becomes an agent that exceeds human rights–based arguments and radically challenges the authority of the ruling powers. As Hardt and Negri expressed, "when life itself is negated in the struggle to challenge sovereignty, the power over life and death that the sovereign exercises becomes useless. The absolute weapons against bodies are neutralized by the voluntary and absolute negation of the body."[236]

Applying this analysis to Tunisia, Bouazizi's act of self-immolation became a vehicle for expressing collective pain. He communicated his pain to other bodies that, to a certain extent, shared that pain. By manifesting his pain physically, Bouazizi projected the limit of internal feelings of subjugation to the external sphere, thereby materializing previously inexpressible feelings in a tangible and highly visible way. When he set himself on fire outside city hall, the public "took up" his act of defiance. To borrow a notion from speech act theory, Bouazizi's immolation amounted to an utterance that had a perlocutionary, or persuasive, effect on its audience.[237] His shocking expression of pain, discontent, and powerlessness resonated with the ordinary Tunisian, whose own life experiences caused them to empathize with Bouazizi. By expressing his pain through this external manifestation, Bouazizi transferred his inner political struggle to the outer sphere, becoming an agent of communication for society's pain, thereby persuading them to act. The Tunisian public empathized with his act, probably seeing a reflection of their own pain in his burning body, and accordingly feeling a collective duty to make efforts to

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[235] *Id.*
[236] MICHAEL HARDT & ANTONIO NEGRI, MULTITUDE: WAR AND DEMOCRACY IN THE AGE OF EMPIRE 332 (2005).
[237] *See generally*, JOHN L. AUSTEN, HOW TO DO THINGS WITH WORDS (1975).

diminish it.[238] By reaching out to the pain of others, Bouazizi's extreme act forged a deep political connection that human rights law was unable to accomplish. It challenged the limits of the language of human rights with its "emancipatory language."[239] It compensated for the failure of human rights and the moral resonance, the uplifting character, and the universality that they promise but, at least in the case of Tunisia, did not deliver. While the enabling conditions for human rights law to do its work were absent in the Tunisian context, the conventions necessary to render Bouazizi's action as speech were in fact present, thus felicitously persuading the Tunisian people to rise up against the Ben Ali government.

This experience is limitless; it amounts to metaphorically entering the forbidden garden, where the use of corporeal bodies has the power to shatter boundaries and barriers of terror, fear, dependency, poverty, hunger, and injustice. When pain cannot be denied nor confined, the body, as an agent, expresses its own desperation and frustration, as well as that of speechless others.[240] Elaine Scarry articulates this idea in *The Body In Pain*: "Though there is no ordinary language for pain, under pressure of the desire to eliminate pain, an at least fragmentary means of verbalization is available both to those who are themselves in pain and to those who wish to speak on behalf of others."[241]

As such, the body can be perceived as an agent of change, and self-immolation as an act that rejects submission to an authoritarian regime. The body becomes the narrator of the long history of injustice.[242] As Judith Butler suggests, the body comes "in a manner of doing, dramatizing, and reproducing a historical situation."[243] Although generally an individual voice

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[238] Nathan Stormer, *Embodied Humanism: Performative Argument for Natural Rights in "the Solitude of Self"*, 36 ARGUMENTATION AND ADVOCACY 51 (1999).
[239] David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101, 111 (2002).
[240] JUDITH BUTLER, BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF "SEX" 63 (1993).
[241] *See* SCARRY, *supra* note 171, at 13.
[242] *Id*.
[243] *See* BUTLER, *supra* NOTE 216, at 68.

narrating a broad state of oppression may have little impact,[244] when amplified and communicated, a sole voice may feed into a broader movement.

The image of Bouazizi's flaming body was writhing in pain, yearning for freedom, and longing to be understood, possessing a kind of power that the rational arguments of law could not conjure in the Tunisian setting. This burning body materialized what Lacan might term *Das Ding*, the thing that represents or signifies the collectively sublimated sense of powerlessness and abjection.[245] Bouazizi's body became an icon for both the emptiness and pain that the regime had produced in the individual, and for resistance to that very state power; "[a] generic symbol of the resistance to injustice."[246] This spectacle of one body acting as an agent of change fueled mass mobilization set on transforming this individual act into a collective movement. Bouazizi's means of expressing resistance to oppression was violent, painful, and no doubt shocking to the public. It demanded a response. Observers could not stand immobile while witnessing the excruciating destruction of the spiritually and culturally sacred body. Bouazizi's action enabled a kind of collective catharsis. The struggle of the burning body, its manifestation of physical pain, and the shared sense of frustration all fueled the sense of solidarity and collective struggle; this enabled Bouazizi's body to have political ramifications in the wider social sphere.[247]

It can be argued that Bouazizi's act was a form of political protest in that its genesis and implications went beyond the individual act of suicide. His frustration was an individual case among millions of others; as such, a broader sense of frustration and desperation was projected onto, and out from, his actions. After Bouazizi's pained, oppressed body cried out the story of pain

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[244] OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 7 at 12.
[245] THE ETHICS OF PSYCHOANALYSIS 1959-1960: THE SEMINAR OF JACQUES LACAN BOOK VII 134, 150 (Jacques-Alain Miller ed., Dennis Porter trans., 1997).
[246] *See* De Soto, *supra* note 125.
[247] JUDITH BUTLER, *BODIES IN ALLIANCE AND THE POLITICS OF THE STREET*, EUROPEAN INST. FOR PROGRESSIVE CULTURAL POLICIES, SEPT. 2011, HTTP://WWW.EIPCP.NET/TRANSVERSAL/1011/BUTLER/EN.

and struggle, millions of other unheard, frustrated bodies merged with his. Through his unprecedented action in the Arab World, others acquired the impetus to relinquish their fear and to articulate their shared desperation. By using his corporeal body, Bouazizi succeeded in rendering injustice visible. He managed to give a clear, loud voice to the unheard, if only for a brief, yet staggering moment. At the moment the body is destroyed, it becomes the center of attention. Feeding into the frustration of unspoken voices, it transforms one individual's act into a provocative phenomenon, spurring broader social movements for change.[248]

His wounds communicated collective injury. As a result of the failed communication of the rational argument, which was systemically discredited by the ruling regime, Bouazizi's self-destruction was an act of last resort. When rational arguments exhaust their limits, wounds become "accepted as objective evidence, as more reliable sources of knowledge than the words of the people on whose bodies those wounds are found."[249]

V. THE RETURN TO THE LAW

When repressive regimes deny and eliminate the emancipatory potential of legal claims and rights arguments, citizens may turn to alternative modes of resistance including using the body as catalysts for change.[250] In this regard, we can see how under conditions of repression and injustice, the human body is transformed into an irrefutable argument for change when other avenues of legal argument have run out. This final section examines how corporeal acts of resistance can spur collective actions that disrupt existing legal regimes and yield legal change and transformation. That is, acts of bodily resistance emanating from outside the formal domains of

[248] B. C. Ben Park, *Sociopolitical Contexts of Self-Immolations in Vietnam and South Korea*, 8 ARCHIVES OF SUICIDE RES. 1, 81–97 (2004). *See also* JAMES A. BENN, BURNING FOR THE BUDDHA: SELF-IMMOLATION IN CHINESE BUDDHISM 79–81 (2007).
[249] *See* Malkki, *supra* note 162, at 387.
[250] *Id.*

law and legal argument can catalyze social movements key to achieving political and legal reform in repressive contexts. The individual body can work to reclaim law for the social body.

A. The Dialectic of The Body-In-Pain

In the case of revolutionary Tunisia, the individual body-in-pain reached out to vast, throbbing, and frantic waves of muffled and pulverized bodies.[251] It mobilized a massive wave of anonymous bodies— "anonymous corporeality"[252]—to march the streets of Tunisia. In an unprecedented theatrical scene, all the bodies-in-pain merged and became one anonymous body speaking for the collective.[253] They chanted the mantra of the Jasmine Revolution, *Ash-sha'b yurīd isqāṭ an-niẓām*,[254] expressing their repudiation of the authoritarian Ben Ali regime and their collective will to bring it down.

The Jasmine Revolution's collective action mobilized a new kind of politics, one that circumvented the failure of law's rationality and its empty promise of safeguarding citizens' rights. As such, the body-in-pain (the means that brought the collective together) was repositioned from a helpless disenfranchised body to a proxy of change. Remarkably, as an empowered body, it negotiated a new social contract and laid the basis for a new body of the law.

The act of self-destruction becomes a voice that demands justice. It communicates, not only an individual pain, but also a collective injury, a collective state of frustration. Through the ultimate mode of protest, the body-in-pain creates a moment of emancipation and opens a space for new possibilities. How should we understand the emancipatory and productive power of this

[251] *See* Malkki, *supra* note 162.
[252] *Id*.
[253] *See* Malkki, *supra* note 162, at 388.
[254] *See supra note 93,* Law No. 75 of 2003.

extraordinary act of bodily destruction? How does the negation of oneself become a validation of the existence of the whole?

The Tunisian Revolution and reform process provides an example of how solitary acts of bodily resistance can fuel the social mobilization needed to achieve regime change, constitutional reform, and legal transformation.[255] The emergence of this synthesis suggests a dialectical relationship between rational arguments of law and the irrational spectacle of the body-in-pain. The new Tunisian Constitution honors the body-in-pain as a witness,[256] and also serves as a reminder of the limits of law in dealing with certain forms of injustice. Accordingly, it is important to understand how the body-in-pain was reconfigured in the body of post-revolutionary law and was translated from the language of disenfranchisement and suffering back into a language of effective rights.

B. The Dialectic of The Body-In-Pain and A Virtuous Body In Law

In October 2011, following months of protest and the overthrow of Ben Ali's regime, the elected National Constituent Assembly ("NCA") was commissioned to draft a new constitution for post-revolutionary Tunisia.[257] Several blueprints were advanced[258] and drafts were prepared;

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[255] In the recent report of the Freedom House, Tunisia's level of freedom has improved since 2011; positive signs include a greater margin of academic freedom, the establishment of labor unions and the lifting restrictions on travel. Currently Tunisia is ranked as a partly free country; with a score of 48 out of 90, it is ranked the second in the Middle East. The report noted that among all the Arab Spring countries in the Middle East that strived to topple dictatorships, Tunisia stands solely in the corner as a rare case of hope. *Freedom in the World 2014: Middle East and North Africa*, FREEDOM HOUSE (2014), https://freedomhouse.org/sites/default/files/Middle%20East%20and%20North%20Africa%20Fact%20Sheet.pdf.

[256] دستور تونس [CONSTITUTION] of 2014 (Tunis.), *translated in* https://www.constituteproject.org/constitution/Tunisia_2014.pdf.

[257] *The Best and Worst of Tunisia's New Constitution*, AL-MONITOR, Jan. 29, 2014, http://www.al-monitor.com/pulse/politics/2014/01/tunisia-constitution-drafting-best-worst.html##ixzz3OkJKvBuE. In its legislative process, the National Constituent Committee faced different challenges to reach to consensus on an agreeable language for the constitution. It had also to overcome the tragic assassination of the general coordinator of the Popular Movement and member of the National Constituent Assembly, Mohammed Brahmi, on July 25, 2013. Not to mention the general political climate of all "Arab Spring" countries which seems to be stumbling toward an uncertain future.

[258] دستور تونس [DRAFT CONSTITUTION] of Aug. 14 2012 (Tunis.), *translated in* http://www.constitutionnet.org/vl/item/tunisia-draft-constitution-14-august-2012. دستور تونس [DRAFT CONSTITUTION] of Dec. 14 2012 (Tunis.), *translated in* http://www.constitutionnet.org/vl/item/tunisia-draft-constitution-14-dec-2012. Draft Constitution of 22 April 2013, http://constitutionaltransitions.org/wp-content/uploads/2013/05/Tunisia-third-draft-Constitution-22-April-2013.pdf.

the text was vigorously debated.[259] On January 26, 2014, a new constitution[260] was ratified to reflect and confirm the "victory over dictatorship."[261]

The post-revolution Constitution—in its opening lines—states that the people of Tunisia will rule their country and utilize the law to speak on their behalf.

> We, the representatives of the Tunisian people, members of the National Constituent Assembly, Taking pride in the struggle of our people to gain independence and to build the State, to eliminate autocracy and achieve its free will, as a realization of the objectives of the revolution of freedom and dignity, the revolution of 17 December 2010–14 January 2011, out of loyalty to the blood of our virtuous martyrs and the sacrifices of Tunisian men and women over the course of generations, and to break with injustice, inequity and corruption.[262]

The Preamble anchors the Constitution in the country's history. It looks backward to narrate the past and the struggle of the nation during the prior regime. It gives significance to the struggle and sacrifices of the Tunisians to liberate themselves from tyranny and inequality.

The Preamble explicitly emphasizes the role of the people in achieving change. Accordingly, it acknowledges the successful mobilization of the revolution, which the Tunisians launched in order "to achieve the objectives of the revolution for freedom and dignity, the revolution of December 17, 2010 through January 14, 2011."[263] It reaffirms the nation's commitment to the teachings of Islam even as it emphasizes the role of the people by enshrining the sacrifices made by the "*virtuous martyrs*" and constitutionalizes the tale of collective injury and corporeal suffering as the predicate for emancipation. It is a reminder of the power of the body when it performs pain to catalyze socio-political change. It offers a timeless commemoration

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[259] The author has compared the preamble of the aforementioned drafts with the promulgated constitution of 2014 and found very minor variations; on the discussion here draws on the promulgated constitution of 2014.
[260] *Tunisia signs new constitution into law*, AL-JAZEERA, Jan. 27, 2014, http://www.aljazeera.com/news/africa/2014/01/tunisia-assembly-approves-new-constitution-201412622480531861.html (last visited on Jan. 27, 2014).
[261] *Id.*
[262] 2014 Tunisia Const. pmbl. *translated in* https://www.constituteproject.org/constitution/Tunisia_2014.pdf.
[263] *Id.*

of all pained bodies and privileges their sacrifice and their drive to free themselves from tyranny regardless of their gender, age, background, or personal conditions. The Preamble invokes the specter of a body-in-pain and grants it a divine significance; it references "virtuous martyrs" who sacrificed their lives and resorted to radical strategies to break "with injustice, inequity, and corruption."[264]

Similar to the Constitution of 1959, the country's first since it gained independence from France in 1956, the new constitution announces the beginning of a new era where the free will of the people is the main guiding principle of the state ("bequeathing a secure life to future generations, realizing the will of the people to be the makers of their own history"), implying that Tunisia was never independent and the tyrant Ben Ali's regime was a continuity of the past "foreign domination."[265] Remarkably, both the 1959 and the 2014 constitutions used the same language to describe colonial domination; both referred to the past regimes as tyrannical.[266] The Constitution of 1959 defined Tunisia as a democracy founded on the sovereignty of the people and repeatedly invoked the importance of remaining faithful to universal human values—human dignity, justice, and liberty. It paid tribute to the will of the Tunisian people, who freed themselves from exploitation, regression and foreign domination thanks to their strong cohesion and their fight against tyranny.[267]

The 2014 Preamble also casts the radical acts of self-destruction as acts of martyrdom, despite the religious and cultural consequences of bodily desecration. The Constitution portrays the individual body-in-pain as pure, honorable, and immaculate, sacrificed to denounce injustice,

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[264] *Id.*
[265] *See* 1959 Tunisia Const. pmbl. ("We, the representatives of the Tunisian people, meeting as members of the Constituent National Assembly, proclaim the will of this people, who freed themselves from foreign domination thanks to their strong cohesion and their fight against tyranny, exploitation and regression") *translated in* http://confinder.richmond.edu/admin/docs/Tunisiaconstitution.pdf.)
[266] دستور تونس [CONSTITUTION] of 2014 (Tunis.), *translated in* https://www.constituteproject.org/constitution/Tunisia_2014.pdf, دستور تونس [CONSTITUTION] of 1959 (Tunis.), *translated in* http://confinder.richmond.edu/admin/docs/Tunisiaconstitution.pdf.
[267] *Id.*

in search of independence, freedom, and dignity.[268] This recognition is reflective of the great impact of the body-in-pain in its positive, emancipatory connotation to the post-revolutionary system. By evoking the communality and speaking in the name of the martyrs, the constitutional drafters aimed to legitimize both the new Constitution and those who sacrificed their lives to make it possible. The Preamble not only anchors the legitimacy of the new Constitution in a repudiated past littered with bodies in pain, but also articulates a moral obligation for the people of Tunisia to liberate others who are suffering from oppression.[269] The first paragraph of the Constitution gives agency to the anonymous corporality, all those who advanced their most precious possession, their lives, "*over the course of generations*" to achieve change and succeed in breaking with the past.[270]

The Constitution establishes a new relationship between the state and the people. It declares the "independence" of the state where the people of Tunisia draw their own roadmap for their country.

The Preamble articulates the aspirations of the Tunisians to have "a participatory, democratic, republican system, in the framework of a civil state founded on the law and on the sovereignty of the people, exercised through the peaceful alternation of power through free elections."[271] It outlines the main features of the post-revolutionary political system, which is "*founded on the principle of the separation and balance of powers, which guarantees the freedom of association in conformity with the principles of pluralism*," as well as an administrative system that is based on notions of impartiality, good governance, and a judicial system "that guarantees

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[268] *See* 1959 Tunisia Const. art. IV. (establishing the motto of the Tunisian Republic as "freedom, order and justice."). *See also* 2014 Tunisia Const. art. IV (modifying the phrase to "freedom, dignity justice, order.").
[269] *See* 2014 Tunisia Const. pmbl. ("[I]n cooperation with the peoples of the world; supporting the oppressed everywhere and the people's right to self-determination, and just liberation movements at the forefront of which is the Palestinian liberation movement; and standing against all forms of occupation and racism").
[270] *Id.*
[271] *Id.*

respect for human rights and freedoms, independence of the judiciary, equality of rights and duties between all citizens, male and female, and equality between all regions."

The new Constitution weaves the legacy of the body-in-pain into the body of law. To be sure, the promises of the new Constitution remain to be realized. Yet what took place in Tunisia before, during, and after the revolution was a truly remarkable form of a change that was dialectic in nature. The failures of law under the Ben Ali regime gave way to a revolutionary burning body that mobilized collective resistance to the state's tyranny in ways that supplanted the failures of law.

In synthetic fashion, the corporeal political body finally resolved itself in a constitution that reinstalled law as the primary vehicle through which politics would be channeled and articulated. Thus, we witness a dialectic: from law's failure emerged its opposite, a corporal form of political action, which in turn resolved synthetically into the rebirth of law.[272]

VI. CONCLUSION

Under certain conditions of state injustice, authoritarian powers become impervious to legal critiques of their abuse of power. When governments are unresponsive to calls for change and when citizens' rights and demands are persistently neglected or ignored altogether, the potential of human rights based legal norms to challenge governmental power is limited. Domestic, national, and international legal claims are rendered ineffective tools for reform, and an overall state of stasis, collective frustration and desperation prevails.

The failure of human rights-based arguments creates an opportunity for "political" action by unrecognized "bodies-in-pain." In such a context, extralegal acts prove more powerful than

[272] CHAMUNDEESWARI KUPPUSWAMY, THE INTERNATIONAL LEGAL GOVERNANCE OF THE HUMAN GENOME 111–15 (2009).

law in effecting change. The destruction of the body as a political act is one example of a radical, violent method of expressing oppression and struggle. The phenomenon of individual self-destruction narrates the story of thousands of pained bodies. It offers a platform for bodies-in-pain to communicate their struggle; it is a method by which they can transfer collective pain from internal, sublimated spaces to the public sphere and through which they shatter boundaries and reconstruct their worlds.

Bouazizi's act of self-immolation was unprecedented in the Arab world, and it was a shocking act of political resistance. Although the dramatic act of self-destruction was in theory both religiously and culturally unacceptable, it resonated with the experience of others and their yearning to express themselves, thereby stimulating thousands of other bodies to act as catalysts for change. Bouazizi's act was able to spur others to demand political change where other movements had been unable to do so for generations. Such corporeal actions can be characterized as individual acts of defiance that may not necessarily intend to spark social change, but may do so if they feed into, or manifest, an existing dynamic of widespread social frustration.

In the particular case of Tunisia, the corporeal logic of the body-in-pain manifested the limits of the normative human rights discourse—rooted in the language of human rights. By stepping outside the body of the law, the human body succeeded in challenging state power, created a momentum of emancipation, renegotiated its social contract, and engaged in the making of law. By returning to the language of the law, the body-in-pain was repositioned as an empowered body, which spoke the language of change on behalf of the collective. Through a dialectic process the body evolved from the geography of pain to the geography of law, through which the body of the law embodied the body-in-pain as a means to eliminate human suffering and fulfill the collective's aspirations.

Article 2: Identity Annexation: Israel's Non-Territorial and Psychic Annexation of the West Bank Samaritans in the Occupied Palestinian Territories

This article explores a form of non-territorial annexation of a minority population that extends beyond land to selfhood[273] and identity. It analyzes Israel's granting of citizenship and associated rights to the Samaritans, who number just under 420[274] and live in the Occupied territory of Nablus, based on the controversial Israeli Law of Return.[275] It argues that the granting of *Oleh*-immigrant status to people who are neither Jewish nor returnees created a moment of opportunity for Israel to advance the civic rights of the otherwise vulnerable segment of Palestinian society, and to further solidify its grip on the psychic lives of Palestinian subjects. This dual psychic-territorial de facto annexation, or what this article calls "identity annexation," is, in its social meaning, an outcome of Israel's settler-colonial approach to state-building. Drawing on critical political philosophies of multiculturalism and Indigenous critiques of settler colonialism, this paper argues that Israel's recognition of the Samaritans through the Law of Return is in fact a misrecognition of their collective identity. Moreover, said misrecognition will be seen to take place through their *"Jewishizing"*[276] by Israel to further establish the state's Zionist body politic. Yet, Israel's politics

[273] Fanon, *Black Skin, White Masks, 1952*. Published in English in 1967.
[274] The 824 people who comprise the present-day Samaritan community are divided between the city of Nablus in Palestine and Holon in Israel and together make up perhaps the only minority that has leveraged Palestine's unique legal pluralism to its advantage. Given that much has been written on the cultural, religious, and historical aspects of this community, this paper will explicitly deal with the less than 400 Samaritans living in Nablus on Mount Gerizim Arabic Jabal Al-Ṭūr, Hebrew Har Gerizim. The biblical name of Mount Gerizim is Har Habaracha, meaning the Mount of Blessing. Samaritan Local Civil Registry, administered by Samir Sarawi, Nablus (2020), supre note 5, [in Arabic].
[275] Art. 1, Law of Return No. 5710-1950, passed on July 5, 1950, and published in the Official Gazette, Sefer Ha-Chukkim No. 51, 159 (July 5, 1950) (Isr.) ("[E]very Jew has the right to come to this country as an oleh [immigrant]").
[276] Mahmood Mamdani in his book Neither Settler Nor Native: The Making and Unmaking of Permanent Minorities, in tracing the nation- state in The Israel/ Palestine Question, he discusses the implication of Zionization as a matter of law and the Juadization of a nation, which requires not only defining who is a Jew, but also eliminating non-Jews and defining the unacceptable forms of Jewishness, Chapter 5, Mamdani, 2020.

of misrecognition has been further complicated by the Samaritans' engagement with and negotiation of their unstable legal status under Israeli law over generations, until the group successfully petitioned the nation's supreme court to strengthen their status through "self-affirmation."[277] As Israel continues to utilize the law to suppress its minorities, the identity annexation of the Samaritans provides a valuable case study on the vulnerability and contradictions of such practices and their psychic damage rather than their benefits.

[277] Fanon, *Black Skin, White Masks, supra note 1*.

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Introduction[278]

The case of the Palestinian Samaritans illustrates another instance in which the law alone fails to capture the full spectrum of the ongoing human rights violations, as well as the articulated agency of the subjugated, in the Occupied Palestinian Territories. Such failures have spurred the need for a broader reading of the concept of "annexation" beyond that of the internationally recognized violation of forcible land acquisition,[279] and into the less obvious yet equally devastating notions of stolen selfhood, belonging, and identity. The resulting understanding may be encapsulated by a more nuanced term this article will refer to as *identity annexation*, conveying that this complex annexation is one of both territory and psyche of the annexed.

This article examines one such annexed community: the Samaritans of Nablus, a non-Jewish Palestinian minority whose identity has been legally and socio-politically "annexed" by the Israeli state into that of the Jewish community. Though one would imagine such an identity would entail access to the privileges of Israeli Jews, the Samaritans are an instructive exception to this rule. The subsumption of the Samaritans into an Israeli-Jewish collective as a result of identity annexation leads to a bifurcation of the group's collective identity, and segregation of them from their Palestinian neighbors. These discriminatory effects of Israel's policies testify to the ways in which Israel exercises violence beyond the internationally recognized control of resources;[280]

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[278] Sincere gratitude and appreciation are extended to my mentor and immediate supervisor, Professor Katherine Franke, the James L. Dohr Professor of Law, the Director of the Center for Gender and Sexuality Law and the Faculty Director of the Law, Rights, and Religion Project; Professor Kendall Thomas, Nash Professor of Law and Co-founder and Director of the Center for the Study of Law and Culture; and Professor Mark Barenberg, Isidor and Seville Sulzbacher Professor of Law and Co-Director of the Program of Labor Law and Policy; their continuous guidance, motivation and expertise are highly appreciated.

[279] Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

[280] See for example United Nations Office of the High Commissioner (OHCHR*), Israel's Exploitation Of Palestinian Resources Is Human Rights Violation, Says UN Expert*, Geneva (Mar. 2019), https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24349&LangID=E; Amnesty Int'l, The Occupation of Water (Nov. 2017), https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/; Amnesty Int'l, *Israel/Occupied Palestinian Territories: Demand Dignity: Troubled Waters – Palestinians Denied Fair Access To Water* (Oct. 2009), https://www.amnesty.org/en/documents/MDE15/027/2009/en/; United Nations (UN), *Water Resources Of The Occupied Palestinian Territory* (1992), https://www.un.org/unispal/document/auto-insert-197919/.

hostile appropriation and illegal acquisition of land,[281] culture,[282] and history;[283] and erasure of narrative and memory.[284] That Israel continues to discriminate in these ways against Palestinians as a whole and Samaritans in particular suggests that the current literature must reconsider several key assumptions regarding Jewish identity within the Israeli state. In particular, the notion of identity annexation challenges the widespread assumption that legally recognized members to a dominant "Jewish group are protected regardless of the extent to which such membership was voluntary, or its effects on their community and collective self-conception. Such reconsideration has urgent repercussions on international perceptions of human rights law as urgent for minority groups, particularly those who appear but are in fact not part of the benefited majority.[285]

Since its establishment in 1948, the Israeli state has used the law to divide and conquer[286] the original inhabitants of annexed lands by creating, and selectively exalting, various subcategories of Palestinian identity while expanding Israeli-Jewish control of their territories.[287]

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[281] *See* Amnesty Int'l, *Israel and the Occupied Territories Including the Areas Under the Jurisdiction of the Palestinian Authority: Human Rights: A Year of Shattered Hopes*, AI Index MDE 15/007/1995 (1995); UNSCO, *Rule of Law Development in the West Bank and Gaza Strip: Survey and State of the Development Effort*, UNSCO Rule of Law Survey (May 1999), https://www.un.org/unispal/document/auto-insert-206942/; OCHA, *The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank* (Jul. 2007), https://www.ochaopt.org/sites/default/files/ocharpt_update30july2007.pdf; Human Rights Watch, *Separate and Unequal*; BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine - Land Confiscation and Denial of Use (Oct. 2017),* https://www.ohchr.org/Documents/Issues/Housing/SubmissionsCFIhousingdiscrimin/BADIL-LandConfiscation.pdf; United Nations Office of the High Commissioner, *Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability, (Jun. 202), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25960;* Amnesty Int'l, *Destination: Occupation*, pp.24-28 (2019).

[282] Tamara Tamimi, *Israeli Appropriation of Palestinian Cultural Heritage in Jerusalem*, THE PALESTINIAN INITIATIVE FOR THE PROMOTION OF GLOBAL DIALOGUE AND DEMOCRACY (MIFTAH), (Jul. 2019); Abdel Aziz Abu Hadba, *How Zionist Authorities Dealt with Palestinian Folklore*, FOLK HERITAGE OF PALESTINE, *edited by Sharif Kanaana*, Birzeit: Research Center for Arab Heritage, *pp. 55–92 (1994)*.

[283] Nadia Abu El-Haj, *Translating Truths: Nationalism, the Practice of Archeology, and the Remaking of Past and Present in Contemporary Jerusalem*, AMERICAN ETHNOLOGIST 25:166–88 (1998).

[284] Emad S.Moussa, *Victimhood as a driving force in the intractability of the Israeli-Palestinian conflict: reflections on collective memory, conflict ethos, and collective emotional orientations*. Diss., Bournemouth University (2020); Pirinoli Christine, *Erasing Palestine to Build Israel: Landscape Transformation and the Rooting of National Identities*, ÉTUDES RURALES, pp. 67-85 (2005). *See also* Carol Bardenstein, *Cultivating Attachments: Discourses of Rootedness in Palestine/Israel*, STANFORD UNIVERSITY PRESS (2005); Carol Bardenstein, *Trees, Forests, and the Shaping of Palestinian and Israeli Collective Memory*, in ACTS OF MEMORY: CULTURAL RECALL IN THE PRESENT, edited by Mieke Bal, Jonathan Crewe, and Leo Spitzer, University Press of New England, pp.148–70 (1999).

[285] Moussa Abou Ramadan, Judicial Activism of the Shari'ah Appeals Court in Isreal (1994-2001): Rise and Crisis, *Fordham Int'l LJ* 27, at 254(2003).

[286] John Quigley, *Divide and Conquer: Arabs in Israel's Political System, in* THE CASE FOR PALESTINE 131 (2005). For more information on how Israel has used divide and conquer strategy to fragment Palestinian land and shatter lives, *See*: The Israeli Information Center for Human Rights in the Occupied Territories–B'Tselem, *Conquer and Divide: The Shattering of Palestinian Space by Israel, https://conquer-and-divide.btselem.org/*

[287] Lana Tatour, *Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel*, 27:2 Arab Stud. J. 8–27 (2019), https://doi.org/10.2139/SSRN.3533490.

By allowing for citizenship rights only permitted to Jews to the Samaritans, a non-Jewish community historically connected to the land of Palestine,[288] the Israeli state effectively annexes the identity of this minority through the redefinition of its collective historical self-conception. By making a West Bank Palestinian ethno-religious minority part of the Israeli body-politic, the state of Israel also has been *Jewishizing*[289] the Samaritans. Meanwhile, the group's collective identity as Israeli citizens becomes more imbued with Zionist and religious underpinnings, as the state becomes more emboldened to tout inclusivity despite continuing to violate international human rights law in its on-ground practices. In sum, this identity annexation emboldens and upholds the status quo of a proto-apartheid regime that has illegally acquired and retained territory by force without facing legal consequence, while expanding and protecting its *raison d'etre.*

While the state of Israel takes pride in propagating its reputation as "the only democracy in the Middle East,"[290] it regularly passes and codifies discriminatory legislation against minority groups, such as Bedouin communities in the Negev[291] and Palestinian citizens of Israel,[292] in housing, education, and asylum. It moreover consistently flouts International Humanitarian Law (IHL) and International Human Rights Law (IHRL) in its military occupation of the West Bank,[293] as well as the siege, bombardment, and blockade of the Gaza Strip and its annexation of East Jerusalem and the Golan Heights.[294] All these measures have the effects of violating fundamental

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[288] Israeli Supreme Court 4200/96, Unpublished Court Decision in the Official Gazette (1996) (Isr.). A copy is published in the A.B. Samaritan News, Issue of 1996.

[289] In Arabic the verb *Tahweed* provides for the act or the process of the making into a Jew. Jewishizing or Tahweed has a political connotation, the making of a Jew to serve nation-state politics, which makes it different than the act of Juadizing or Zionizing. For more on the Juadization and the Zionization, *See Mahmood Mamdani, Neither Settler Nor Native: The Making and Unmaking of Permanent Minorities (2020).*

[290] In his address to the American Congress, and in addition to the now commonplace reference to Israel as the "only democracy in the Middle East," Israeli Prime Minister Benjamin Netanyahu repeatedly deployed the biblical language of the "Land of Israel Eretz Yisrael," the "ancient home of the Jews," and the "Promised Land" to refer to today's modern democratic state of Israel. *The Complete Transcript of Netanyahu's Address to Congress*, WASH. TIMES (Mar. 3, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/03/03/full-text-netanyahus-address-to-congress/ (Israeli Prime Minister Benjamin Netanyahu speech at a joint session of Congress).

[291] Lana Tatour, *supra* note 14.

[292] NA'EEM JEENAH, PRETENDING DEMOCRACY: ISRAEL, AN ETHNOCRATIC STATE 3–27 (Afro-Middle East Centre 2012).

[293] Even the street signs between settlements occupying the West Bank are the Israeli reference to the geographical space, "Judea and Samaria."

[294] Eliav Lieblich, *The Golan Heights and the Perils of "Defensive Annexation"*, JUST SECURITY (Apr. 4, 2019), https://www.justsecurity.org/63491/the-golan-heights-and-the-perils-of-defensive-annexation/.

and inalienable rights of persons under the state's control, and profoundly damaging the basic human rights principle of equality before the law.[295] In its struggle to find a language that encompasses the dual aspirations of a Zionist secular democracy and an outwardly \Jewish state, Israel has adopted a challenging policy of distinguishing between the modern legal concepts of citizenship (*exrahut)* and of nationality (*le'om)*.[296] In so doing, it proclaims to be the nation-state not of all its inhabitants but "only of the Jewish people"[297] and thereby the "national home for the Jewish people."[298] This preferential treatment of one group of people by the state is contrary to those of an inclusive democracy, and are most clearly revealed through Israel's Basic Laws addressing citizenship.[299]

Academic analyses of Israeli legal discrimination discriminate traditionally focus on the preferential treatment of one group at the expense of others in the Israeli system.[300] In general terms, this literature posits "Jewishness" as it has been variably defined by Israeli law as the grounds for such discrimination.[301] This occurs in a way that those who are legally classified as "Jewish" nationals constitute the dominant, privileged group, while populations that are not included in this definition—namely non-Jews, such as Arab Christians, Druze, Bedouins, and

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[295] *See Readings on Citizenship and Nationality in Israel/Palestine: Structures of Identity, Difference and Democracy: A Curriculum from the Open University Project at Columbia University*, COLUMBIA L. SCH.: THE OPEN UNIV. PROJECT, https://web.law.columbia.edu/open-university-project/curricula/citizenshipnationalityisrael-palestine#_ftn33.

[296] § 1, World Zionist Organisation – Jewish Agency (Status) Law, 5713-1952, No. 1 (Nov. 24, 1952), as amended (Isr.). For more information, *see* Ernst Frankenstein, *The Meaning of the Term "National Home for the Jewish People"*, JEWISH Y.B. INT'L L. 27, 27–33, 39–41 (1948).

[297] On March 11, 2019, the Israeli Prime Minister, Benjamin Netanyahu declared that the state of Israel is "not a state of all its citizens," but that according to the basic nationality law, "Israel is the nation-state of the Jewish people – and only it." *See Benjamin Netanyahu: Israel Is a State 'Only of the Jewish People'*, AL JAZEERA (Mar. 11, 2019), https://www.aljazeera.com/news/2019/3/11/benjamin-netanyahu-israel-is-a-state-only-of-the-jewish-people.

[298] Brian Bennett & Joseph Hincks, *Read the Transcript of TIME's Interview With Benjamin Netanyahu*, TIME (July 13, 2019), https://time.com/5623021/benjamin-netanyahu-time-transcript/.

[299] Arts. 1(b)–(c), 5, Basic Law: Israel - The Nation State of The Jewish People (July 19, 2018) (Isr.). *See also* Frankenstein, *supra* note 296, at 36.

[300] Yoav Peled, *Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State*, 86:2 AM. POL. SCI. R. 432 (1992); Nadim N. Rouhana, *"Jewish and Democratic"? The Price of a National Self-Deception*, 35:2 J. PALESTINE STUD. 64 (2006); As'ad Ghanem, Nadim Rouhana & Oren Yiftachel, *Questioning "Ethnic Democracy": A Response to Sammy Smooha*, 3:2 ISR. STUD. 253 (1998).

[301] Nimer Sultany, *The Legal Structures of Subordination: The Palestinian Minority and Israeli Law*, *in* ISRAEL AND ITS PALESTINIAN CITIZENS: ETHNIC PRIVILEGES IN THE JEWISH STATE 191 (Nadim N. Rouhana & Sahar S. Huneidi eds., 2017).

others—are those who face discrimination through various forms of annexation.[302] This article engages with and expands upon this literature by framing these analyses within debates on liberal recognition in postcolonial and settler colonial contexts. It builds on key theoretical frameworks to emphasize the particularity of the Samaritan identity and impacts of its complex annexation. The Samaritan case will therefore be seen to provide another illustration of the vested state's manipulation of marginalized populations and their narratives of belonging, which only provides a superficial recognition – indeed a misrecognition – of said group, and lack of protection of their legal fundamental rights. Far from being an emancipatory tool, the law of inclusion emerges as a weapon instrumentalized to annex and exploit all aspects of this minority group's identity and livelihood.

The Samaritans are a West Bank Arabic-speaking ethnoreligious minority to whom the state of Israel has extended Israeli citizenship based on its controversial Law of Return.[303] While the traditional occupation of Palestinian land has various oppressive effects on the indigenous inhabitants' economic, social, and political lives, the psychic effects of that occupation are often more potent and difficult for its subjects to resist or understand. This study of the Samaritans articulates in specific terms the potency of that occupying power and identifies the ways in which the legal system encourages its entrenchment through such annexation. In this context, the Law of Return emerges as the manifestation of the Israeli state's effort to find various means of legally justifying the expansion, and the entrenching of its "creeping" annexation of Palestinian lands and

[302] SHOURIDEH C. MOLAVI, STATELESS CITIZENSHIP: THE PALESTINIAN-ARAB CITIZENS OF ISRAEL, 54 STUDIES IN CRITICAL SOCIAL SCIENCES (Brill 2013).
[303] Art. 1, Law of Return No. 5710-1950, passed on July 5, 1950, and published in the Official Gazette, Sefer Ha-Chukkim No. 51, 159 (July 5, 1950) (Isr.) (Article1: "[E]very Jew has the right to come to this country as an oleh [immigrant]").

subjects.[304] In exchange for relatively minor material gain in the form of civil citizenry rights, West Bank Samaritans find their identities more narrowly characterized and their collective history unwittingly redefined by the Israeli state. In the face of such mistreatment, the group took to the courtroom[305] to reclaim their narrative from the Israeli state and successfully petitioned to "speak back" to the law nearly 50 years after it took effect.[306]

This article does not seek to engage with identity studies *per se*; rather, it is concerned with the Samaritan's sense of identity both in its social meaning, as it is produced by the state of Israel, and by the Samaritans themselves through the colonial dialectics of legal recognition. Therefore, not only does the article mobilize the seminal literature on recognition and their critiques, but it draws on first-hand testimonies of Samaritans gathered through firsthand interviews from 2016 to 2020.[307] The interviewees include the High Priest of the Samaritan community Cohen Abdallah Wassef; Advocate Michael Corinaldi, the attorney who represented the Samaritans in the Israeli Supreme Court;[308] and Mr. Benyamin Tsadaka, an advocate who mobilized the Samaritan community to file said case. It also uses archival materials and official government

[304] Ben White, *Israel's 'Creeping Annexation' of West Bank Continues*, AL JAZEERA (Mar. 6, 2018), https://www.aljazeera.com/news/2018/3/6/israels-creeping-annexation-of-west-bank-continues.

[305] Marc Galanter, *Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law*, 19 J. LEGAL PLURALISM 1 (1981).

[306] Israeli Supreme Court 4200/96, Unpublished Court Decision in the Official Gazette (1996) (Isr.). An unofficial copy is published in the A.B. SAMARITAN NEWS, Issue of 1996.

[307] This article adopts a combination of legal case analysis tools and community-based qualitative research (CBQR) methodology, according to which multiples trips were taken to the occupied Palestinian territories between 2016 and 2020. The author, who is the sole researcher and producer of the article, conducted semi-structured qualitative interviews with a widely varied range of members of the Samaritan community in the West Bank. These interviews were conducted in Arabic and translated and edited by the author for this article. Commentaries on community beliefs and practices in the work are directly informed by observations, fieldnotes and informal discussions carried out across this four-year period. The fieldwork and all related interviews were carried out solely for academic purposes. Through the observations and informal engagement carried out during the fieldwork, the author gained an unmediated opportunity to understand the cultural, socio-economic, and political status of the Samaritan community in the city of Nablus from a first-person perspective.

[308] In June 2019, the author conducted an interview with the prominent Israeli lawyer and Professor Michael Corinaldi, a specialist in the field of Law and Jewish Law who teaches at the University of Haifa and Bar-Ilan University and represented the Samaritans in the Israeli supreme Court. In these formal and comprehensive conversations with Professor Corinaldi, the author was presented with a detailed account of the Supreme Court case from the perspective of the lawyer who requested and eventually succeeded in securing the Samaritan's inclusion under the rubric of the Law of Return. His informative representation of and observations upon the seminal trial were corroborated by legal documents and court decisions provided to the author by Professor Corinaldi for her review.

communications also never before seen to testify to the inconsistent and exclusionary nature of the Israeli legal system.

Part One presents the complex history and identity of the Samaritans. First, it delves into their creed, history, and defining characteristics and briefly examines their relationship to Judaism and the Israeli-Jewish brand of Zionism. This is then juxtaposed with the group's relationship to Palestinian identity and the Samaritans' participation in the Palestinian struggle against Israeli settler-colonialism. The resulting image of Samaritan identity in its social meaning is revealed to be complex, if not inherently fractured, even before Israeli law used this tenuousness to its gain. Part One also draws on field research to further explore the political identity of the Samaritan community and uncovers the most recent attitudes of its members on questions of identity and selfhood, as well as their nuanced views on issues of Israeli-Palestinian statehood and belonging. Finally, it draws on examples from social media platforms such as Facebook and YouTube to shed light on the politicization of Samaritans, often taking place through their multiple narratives of identity and self-positioning in the public sphere online and off.

Part Two provides the analytical framework of the concept of *identity annexation* by presenting it as the peculiar form of misrecognition experienced by the West Bank Samaritans in the settler colonial context of Israel. Such a presentation entails first situating the Samaritans' indigeneity within Israel and acknowledging the broader scope of postcolonial and indigenous critiques of recognition politics. Drawing on key scholarly contributions in the field such as those of Sally Engle Merry,[309] Wendy Brown,[310] and Elizabeth Povinelli,[311] this presentation focuses on

[309] Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law*, PRINCETON UNIVERSITY PRESS, 2000.
[310] Wendy Brown, *States of Injury: Power and Freedom in Late Modernity*, PRINCETON UNIVERSITY PRESS, 1995.
[311] Elizabeth A. Povinelli, *The Cunning of Recognition*, Duke University Press, 2002.

the multilayered implications of this annexation for both the annexing state and its potentially empowered population. Thus posited, said potential is thereafter questioned on the basis of Glen Sean Coulthard's seminal critique of the liberal politics of recognition as described by Frantz Fanon.[312] The concept is further elucidated through an exploration of how the Israeli state secures this annexation through the web of exclusionary laws and policies upon which it was built. Finally, the foundation is developed at the conclusion of this section for the following sections' study of the concept of "Jewishness"[313] as a strategic concept in Israeli law.

This and other identity-based concepts will be presented as strategies in Israel's overall divide and conquer approach to achieving complex annexation of the occupied territories, which will be detailed in Part Three. This part further refines and explores the concept of identity annexation by examining its manifestation in Samaritan selfhood in detail after the implementation of the Law of Return. This analysis exposes original fieldwork in Nablus carried out between 2016 and 2020 and is explored through four specific case studies of modern Samaritan community members.[314]

The article's Fourth and final part adopts a bottom-up approach to examining the degree to which this identity annexation has succeeded in restructuring the psychic landscape of the Samaritan people. This part analyzes the significance of the Samaritan response in court to an amendment in the Law of Return threatening their immigrant status and privileges. This response will be seen to have been a forceful articulation of subterranean agency, wherein the dominant power has been forced to relinquish an advantageously constructed narrative in the face of one

[312] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, UNIVERSITY OF MINNESOTA PRESS, 2014.
[313] Mahmood Mamdani, *supra* note 17.
[314] *Supra* notes 35 and 36.

articulated by the subjects themselves.[315] The Samaritans' strongly worded petition to the Israeli Supreme Court will be seen as an ultimately successful reclamation of the law in a rare but instructive negotiation of an otherwise oppressive legal system. Part Four concludes by bringing into view how Palestinian society in general and Samaritans in particular have adapted and pushed back on Israel's pursuit of identity annexation, primarily through the unique instrumentalization of law.

The case of Israel's strategically partial inclusion of the Samaritan community within its legal framework sheds light on the failure of traditional legal arguments in the case of the Samaritans. The group are not considered, nor do they consider themselves as Jews in the traditional sense, and as such do not fall within the rubric of Israel's Law of Return. Justices of the country's highest judicial and lawmaking authorities continue to permit such manipulations of Israeli ethnoreligious terminology and history in clear violation of international law. As a right-wing Israeli government stands on the verge of annexing additional parts of the occupied West Bank in 2021, this article sheds light on the unseen yet devastating consequences of territorial annexation on the collective identity of a minority population and draws critical attention to the legal mechanisms through which it occurs and is challenged.

[315] Jeremy W. Crampton, *Cartographic Calculations of Territory*, PROGRESS IN HUMAN GEOGRAPHY, vol. 35, no. 1, pp. 92–103 (Feb. 2011); *See also* Ian Slesinger, *A Cartography of The Unknowable: Technology, Territory And Subterranean Agencies in Israel's Management of The Gaza Tunnels*, GEOPOLITICS 25.1, pp.17-42 (2020).

II. Who are the Samaritans: Making Sense of a Complex History and Identity

a. The Unique History of the Samaritan Community: Neither Jews, nor Palestinians, nor Israelis

Not the Jew or the Levite, but the Good Samaritan, who happened to be a tax lawyer, saw him and aided him. He bandaged the wounds of the Jew, put him on his animal, and brought him to an inn, and paid for him. The Samaritan, despite religious differences, didn't accept injustice, he helped the "other" in times of suffering … and set up a system to help those in distress. In this response, Jesus gave a lesson of the second commandment to "love your neighbor as yourself." (*The Parable of the Good Samaritan, Luke 10:25-37)*

The Palestinian Samaritans are one of the smallest and oldest ethnoreligious minorities in the Middle East and perhaps the world.[316] They have for centuries lived in the historical land of Palestine[317] and currently consist of 824 members,[318] split between two residential centers: one atop Nablus' Mount Gerizim in the occupied territories and the other on the outskirts of Holon, to the south of Tel Aviv.[319] This article deals only with the Samaritan minority of Nablus due to their relative accessibility and local prominence.[320]

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[316] ALAN DAVID CROWN, THE SAMARITANS 114 (1989); [316] Laura Overmeyer, *The Other "People of Israel"*, QANTARA.DE *(2014)*, https://en.qantara.de/content/samaritans-in-nablus-the-other-people-of-israel. *See also* Reuben Lewis, *The Last Samaritans, Israel's Smallest Religious Minority*, CULTURE TRIP (2018), https://theculturetrip.com/middle-east/israel/articles/an-introduction-to-the-samaritans-israels-smallest-religious-minority/; See also, Muhannad Hamed, *Samaritans…Palestine Jews Constitute the Smallest Sect in the World, Al-Quds Al-Arabi* (April25, 2019), (in Arabic) السامريون.. يهود فلسطينيون يشكلون أصغر طائفة في العالم, https://www.alquds.co.uk/%d8%a7%d9%84%d8%b3%d8%a7%d9%85%d8%b1%d9%8a%d9%88%d9%86-%d9%8a%d9%87%d9%88%d8%af-%d9%81%d9%84%d8%b3%d8%b7%d9%8a%d9%86%d9%8a%d9%88%d9%86-%d9%8a%d8%b4%d9%83%d9%84%d9%88%d9%86-%d8%a3%d8%b5%d8%ba%d8%b1/

[317] For more information about the history of the Samaritans in Nablus, *see* BESHARA DOUMANI, REDISCOVERING PALESTINE: MERCHANTS AND PEASANTS IN JABAL NABLUS, 1700-1900 (1995).

[318] The Civil Status Registry of the Samaritan Community, Nablus (2020). As of January 2020, the total number of the Samaritan community is 824. 395 of whom live in Nablus and 429 in Holon.

[319] Monika Schreiber, *The Samaritans*, *in* Routledge Handbook of Minorities in the Middle East 225, 225 (2019) [hereinafter Schreiber, *The Samaritans*].

[320] Unfortunately, as a Palestinian academic resident of the West Bank, my mobility is extremely limited to the Palestinian territories of the West Bank. While I was able to conduct my fieldwork in Nablus and Ramallah, the Israeli authorities have denied my multiple requests to get a travel permission to access Holon and Jerusalem, despite formal invitations from the Chief Priest of the Samaritan community and Advocate Michael Corinalidi, who did not cease any effort to try to help me to conduct interviews with the Samaritan community and other key informants. Therefore, the research was done explicitly in the West Bank. Thanks to my practice as a lawyer in the West Bank, I developed close relationships with several members of the community, namely Mr. Ihab Lteif, Advocate Shadi Lteif, and Cohen Hosny Wassef, who granted me direct access to the

Samaritans are distinguished by their unique religious identity, which is rooted in the Abrahamic lineage though not subsumable under Judaism, Christianity, or Islam.[321] The community is also intimately connected to Nablus, which has been its home for centuries since the Masoretic Exodus.[322] Importantly, the Nablus Samaritans reject being classified as Jews of either Palestinian or of Israeli origin[323] and distance themselves from Rabbinic Orthodoxy. Instead, they claim to be the "true Israelites"[324]—a politically useful albeit thorny identity testifying to their indigeneity on the land.[325] In general, however, the Samaritans emphasize their position in the near-century long crisis as inherently apolitical, and the community's leadership actively works to avoid taking sides in the conflict.[326]

In times of increased Israeli violence and heightened levels of tension, this neutrality could be perceived as either a survival mechanism or a form of self-distancing from the vulnerability of Palestinians.[327] Samaritans consider themselves to be situated "in the heart of the problem, trying to find ways to exist with both,"[328] according to Benyamin Tsedaka, a Samaritan historian and community leader. Indeed, Tsedaka asserts that "[the Samaritans] get along with Palestinians and Jews"[329] to the extent that they have even sought to "propose Mount Gerizim as an international

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community, introduced me to their family members, hosted me and showered me with their warmth and generosity. During the Passover holiday, Saturday services and social gatherings, I was invited and privileged to be offered the Samaritan 'araq and argileh' (which I found identical to 'araq and argileh' in the rest of Palestine but were offered to me as somehow uniquely Samaritan). Journalist Badawiyya Hosny Assamri, Ms. Rahil Jalal Cohen, Cohen Aziz Yacoub Shafiq and other community members became friends with whom I maintain regular contact. Mr. Benyamin Tsedaka, a historian and editor of the A.B. Newspaper always welcomed me in his house in Nablus and offered me his time to discuss the Samaritan question, although I was almost never given precise answers.

[321] Louis H. Feldman, *Josephus' Attitude Toward the Samaritans: A Study in Ambivalence*, *in* Jewish Sects, Religious Movements, and Political Parties, 3 KLUTZNICK SYMPOSIUM IN JEWISH CIVILIZATION 23, 23–26 (1992).

[322] ALAN DAVID CROWN, REINHARD PUMMER & ABRAHAM TAL, A COMPANION TO SAMARITAN STUDIES (1993).

[323] *Id.*

[324] Jürgen K. Zangenberg, *The Samaritans*, BIBLE ODYSSEY, https://www.bibleodyssey.org/en/people/related-articles/samaritans.

[325] Reuters, *Samaritans Greet the Dawn Atop Their Holiest Mountain to Mark Shavuot Festival*, HAARETZ (June 28, 2020), https://www.haaretz.com/israel-news/samaritans-greet-the-dawn-atop-their-holiest-mountain-to-mark-shavuot-festival-1.8953156.

[326] Interview with Cohen Hosny, Nablus (July 17, 2019).

[327] According to one Samaritan, living in Nablus during the hostilities of the conflict is like living in a jungle. While expressing his love for the State of Israel, he pleaded for its "need to pay attention" to them. Asked if he would ever leave the mountain, Cohen remains adamant. "We will not leave. This is our home." Dana Rosenblatt (Special to CNN), *Amid Conflict, Samaritans Keep Unique Identity*, CNN (Oct. 14, 2002), http://edition.cnn.com/2002/WORLD/meast/10/08/samaritans/.

[328] *Id.*

[329] Judith Fein, *The Last of the Good Samaritans*, BBC (Aug. 29, 2018), http://www.bbc.com/travel/story/20180828-the-last-of-the-good-samaritans.

peace center."[330] Cohen Hosny Wassef, a Samaritan historian and founder of the Samaritan Museum, corroborates Tsedaka's account, emphasizing that "Samaritans are neither Jews, Muslims or Christians," but "a bridge for peace between the two sides of the conflict."[331] At the same time, other key figures of the Samaritan community in Nablus identify as Palestinians and members of the Arab nation, even though they hold Israeli citizenship and are full citizens of the modern Israeli state.[332]

Samaritans believe themselves to be the last and the only true ancient Israelites still in existence and[333] claim a traceable lineage to three of the 12 Israelite tribes: Menasseh, Ephraim, and Levi.[334] According to the ancient historian Josephus, the name "Samaritans" was used in the first century CE to refer to the "specific community of worshipers on Mount Gerizim."[335] Today, Samaritans prefer the Aramaic term *Shomronim*, meaning keepers of the covenant, believing it best expresses their identity as the "keepers of the truth"[336] and observers of Torah law.[337] It is a frequent assertion of the Samaritans that there are "6,000 instances of differences"[338] between the Samaritan Pentateuch,[339] which is their version of the Torah, and the Masoretic text, the latter of which being widely accepted as the most authoritative Hebrew version of the Torah.[340] According to the

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[330] *Id.*
[331] Interview with Cohen Hosny, Nablus (July 17, 2019).
[332] Anadolu Agency, *'Beni Israel': The Samaritans of Palestine's Mt. Gerizim* (Dec. 18, 2015), https://www.aa.com.tr/en/culture-and-art/-beni-israel-the-samaritans-of-palestine-s-mt-gerizim/492899.
[333] THE SAMARITAN UPDATE, AN INTERNET NEWSLETTER & ARCHIVE REGARDING THE SAMARITAN-ISRAELITES (last updated Jan. 14, 2021), http://thesamaritanupdate.com/.
[334] CROWN, *supra* note 316, at 114.
[335] MONIKA SCHREIBER, *supra note* 47.
[336] Feldman, *supra* note 321, at 23–26.
[337] Shemaryahu Talmon, *Expert Opinion in the Matter of the Samaritans to the Ministry of Interior*, Population Registry (Jan. 3, 1994).
[338] BENYAMIN TSEDAKA & SHARON SULLIVAN, THE ISRAELITE SAMARITAN VERSION OF THE TORAH: FIRST ENGLISH TRANSLATION COMPARED WITH THE MASORETIC VERSION 2 (2013).
[339] According to the British Library, based on the manuscript of the Samaritan Pentateuch of 1339, there are around 6,000 differences between it and the *masoretic* Jewish version. SAMARITAN PENTATEUCH, BRITISH LIBRARY, https://www.bl.uk/collection-items/samaritan-pentateuch#.
[340] Chavie Lieber, *The Other Torah*, TABLET (May 14, 2013), https://www.tabletmag.com/sections/belief/articles/the-other-torah.

Samaritans, the source of Samaritanism resides in their Israelite Samaritan Torah, thus leading them to reject the rest of the Hebrew Scriptures.[341]

The Pentateuch recounts how the Samaritans, who are called Israelis in the text, were enslaved in Egypt for 215 years before escaping to the desert around 1412 BC.[342] After walking through the desert for 40 years, the Samaritans established themselves on Mount Gerizim in the northern biblical kingdom of Israel, and in Samaria in the land of Canaan.[343] Unlike mainstream and Zionist Jews, Samaritans ascribe no religious significance to Jerusalem[344] and challenge Israel's claim to King Solomon's temple. The only sacred place of Samaritan worship is Mount Gerizim, *Har Barakha*, or the Mount of Blessing in the city of Nablus.[345] The group continues to take pride in its long-established roots to the biblical Holy Land that go back 127 consecutive generations,[346] and has made this lineage a critical feature of its collective identity. Samaritans' scriptural claim to being the "original Israelites," however, poses obvious challenges to the legitimacy of the identical claim made by the Zionist movement. Given that Israel justifies its existence by claiming to be the rightful homeland of the Jewish people, the Zionist project has strong motives to actively falsify the Samaritan history which forms the cornerstone of the group's identity. For this reason, it would seem almost inevitable that Israel would seek creative ways to subjugate and redefine the Samaritan population.[347]

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[341] Samaritan sources claim that the first schism with Judaism came during the return of the Judeans from the Babylonian exile (586-538) when Judeans began to rebuild the Temple of Jerusalem. Another Samaritan chronicle argues that a clear divide had existed between Judeans and Samaritans since the time of Cyrus, foremost over rebuilding Jerusalem and the Temple, and allegations that Ezra and the Judeans have "falsified their Script and the contents of the Talmud." During the Hasmonaean period, the Jews took over extensive parts of Samaria, as a result, the relationships between both communities continued to deteriorate even more. In 128-127, due to the Samaritans involvement in the recurrent upheavals, John Hyrcanus conquered Mount Gerizim and destroyed their temple. *See* Schreiber, *The Samaritans*, *supra* note 319, at 230; Emmanuel Friedheim, *Some Notes About the Samaritans and the Rabbinic Class at the Crossroads*, *in* SAMARITANS: PAST AND PRESENT: CURRENT STUDIES 193, 193–200 (Menachem Mor, Friedrich V. Reiterer & Waltraud Winkler eds., 2010); Wayne A. Brindle, *The Origin And History of the Samaritans*, 5.1 GRACE THEOLOGICAL J. 47 (1984), https://faculty.gordon.edu/hu/bi/ted_hildebrandt/ntesources/ntarticles/gtj-nt/brindle-samaritans-gtj.htm.

[342] REINHARD PUMMER, THE SAMARITANS: A PROFILE 289–95 (2016).

[343] *Id.* at 289.

[344] *Id.*

[345] *Id.*

[346] THE SAMARITAN UPDATE, *supra* note 333.

[347] *Id.*

The tenuous nature of this forced co-existence is not new; although the Samaritans and Jews share "Semitic" roots,[348] historically tensions have existed in the relationship between the Judeans, the Israelite ancestors of Jews, and the Samaritans.[349] Judaism has maintained an ambivalent relationship with the Samaritans for several centuries, due in large part to several contradictory positions in the Mishnah and the Talmud[350] concerning Samaritans' status as gentiles. After the codification of the Babylonian Talmud in the 6th century CE,[351] the Samaritan's gentility was synthesized into their identity as so-called "lion converts"[352] who, according to the *Halakhah*, not only practice a syncretic religion (II Kings 17:25–28)[353] but are also fraudulent in their claims of being indigenous to Samaria.[354] This aspect of the Jewish creed appears to sever all Samaritan links, be they psychic or physical, to authentic Israelites, Judaism, or the Tribes of Israel.[355] Instead, the incorrect impression largely remains among religious Jewry that Samaritans are a historically ambiguous coalition of Israelite and non-Israelite peoples brought to the land by the Assyrians in the 8th century.[356]

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[348] For more information about the history of the Samaritans, *see generally* PUMMER, *supra* note 342; Reinhard Pummer, *Religion, Samaritan*, *in* THE ENCYCLOPEDIA OF ANCIENT HISTORY (2019); MENAHEM MOR, FRIEDRICH V. REITERER & WALTRAUD WINKLER, SAMARITANS: PAST AND PRESENT: CURRENT STUDIES (2010); Ingrid Hjelm, *What Do Samaritans and Jews Have in Common? Recent Trends in Samaritan Studies*, 3 CURRENTS BIBLICAL RSCH. 9 (2004); Brindle, *supra* note 341, at 49.

[349] "The Assyrian exile of the ten tribes was not total, and significant numbers of the Israelite population were left behind. Simultaneously, the Assyrians brought a group of exiles to the regions of what had been the Israelite northern kingdom. These diverse populations living together side-by-side intermingled, forming a new people who were eventually called Cuthaeans or Samaritans." Menachem Mor, *Samaritan History: The Persian, Hellenistic and Hasmonaean Period, in* THE SAMARITANS (Alan D. Crown ed., 1989).

[350] Monika Schreiber, *The Samaritans*, *supra* note 47, at 230.

[351] According to the second half of the Josephus's Jewish Antiquities, one of the three strands of the Story of Alexander the Great and the Jews (AJ 11.302-47), is the story of Manasses, the brother of the high priest Jaddus who was expelled from Jerusalem because of his marriage to the daughter of Sanballat, the governor of Samaria. According to the story, Manasses fled Jerusalem to his father-in law Sanballat, who promised him to build a new temple for him and his Jewish followers. To fulfill his promise, Sanballat meant to seek the permission of Darius to build the temple, but when Alexander the Great triumphed, Sanballat changed his allegiance and obtained the permission of the victorious king to build the temple in Samaria. Shaye J.D. Cohen, *Alexander the Great and Jaddus the High Priest According to Josephus*, 7/8 AJS REV. 41 (1982), http://www.jstor.org/stable/1486406.

[352] Monika Schreiber, *The Samaritans*, *supra* note 47, at 230.

[353] J.W. Jamieson, *The Samaritans*, 23 MANKIND Q. 141, 142 (1982).

[354] Brindle, *supra* note 341.

[355] *Id.*

[356] Friedheim, *supra* note 341, at 193–200. During the beginning of the Hellenistic period, the enmity between the Judeans and the Samaritans worsened. Relationships among the two communities became even more fraught and fragmented, following the conquest of Persia by the victorious Macedonian king Alexander the Great in 331 BCE, when Sanballat, the satrap of Samaria, obtained the permission from the young king to build a temple in Samaria on mount Gerizim.

Nowadays, the modern prevailing halakhic position toward the Samaritans is based on the Israeli Chief Rabbinate and the Rabbinate Courts' decision in 1985–86 that "the Samaritans are to be treated as Gentiles."[357]

b. THE IDENTITY OF PALESTINE'S SAMARITAN COMMUNITY: A "TROUBLING QUESTION"[358]

Despite their very small number, the peculiarities of Samaritan identity on the collective and individual level are manifold. Khaled Zawawi,[359] a researcher focused on ethnoreligious minorities in Palestine and director at the Palestinian Ministry of Religious Affairs, has described Samaritan identity as a "complex" and noted that the unique intersection of religious, political, and geographical concerns all factor into the formation of Samaritan selfhood.[360] For example, geopolitical interests on both sides have inspired both the Israelis and the Samaritans to seek out religious similarities and downplay the numerous theological differences between their faiths. Not only has Israel extended citizenship to the Samaritans and actively welcomed them into their Jewish community, but Samaritans themselves have begun to self-identify as Israeli while living in the occupied territories. Taking on such monikers as the "true and original Israeli people" and "the only remaining descendants of the Kingdom of Samaria,"[361] the new generation of Samaritans make clear their desire to belong on some level to the nation of Israel.

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[357] In 1985-1986, the Israeli Chief Rabbinate and Rabbinical Courts issued a decision ruling that Samaritans are to be treated as Gentiles. The full text of the court decision was published in Torah She-Be'al-Peh 29 (1988) 59-67 (in Hebrew). For more information see, Michael Corinaldi, The Personal Status of the Samaritans in Israel, 2.87, The Israeli Center for Academic Studies (1996)
[358] Interview with Jameel Dababat, journalist at the Palestinian News & Info Agency (WAFA), videocall (Jul. 18, 2021).
[359] Interview Khaled Zawawi, Director of Public Relations at the Palestinian Ministry of Religious Affairs, video-call (July 25, 2021).
[360] *Id.*
[361] Monika Schreiber, *The Samaritans*, *supra* note 47, at 71.

The complex nature of Samaritan identity was also captured in the early '90s in an article on the group by a popular Jordanian newspaper. [362] The article addresses the Samaritan loss of privileges gained during the Israeli Civil Administration with the creation of the Palestinian Authority as a self-governing body after the signing of the Oslo Peace Accords,[363] a move that prompted the Samaritans in 1994 to send an official delegation to meet with Yasser Arafat, the chairman of the Palestinian Authority. In this meeting the Samaritans stressed their Palestinian roots and sought, among other such benefits, representation in future elections.[364] As the peace process began to deteriorate and Benjamin Netanyahu rose to prominence, the Samaritans shifted from this narrative towards one in which their Israeli ties could benefit them.[365] For example, the group petitioned to claim citizenry rights in opposition to the Palestinian Authority, arguing that Nablus Samaritans have unilaterally approached the Israeli side "without any prior coordination" contrary to assumptions of most Palestinians of the day.[366]

Faced with a crippled economy and unstable government, Samaritans have continued to seek employment opportunities in Israel while retaining their center of domicile in Nablus.[367] They often work as business intermediaries between Palestinians and Israelis or as employees for larger Israeli companies. As holders of both Palestinian and Israeli citizenships, Samaritan youth prioritize engagement with Israeli politics and vote in the Israeli settlement Har Habaracha,[368]

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[362] Al Aswaq Al Orrdnyye, Nablus Samaritans, and their loss of privileges with the Arrival of the Palestinian Authority and their living in Identity Crisis, Jul. 13, 1999

[363] Declaration of Principles on Interim Self-Government Arrangements ('Oslo Accords'), Isr.-Palestine, Sept. 13, 1993, U.N. Doc. A/48/486 (Oct. 11, 1993). According to which, the Government of the State of Israel, represented by Shimon Peres, and the Palestinian Liberation Organization (PLO) team (part of the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), represented by Mahmud Abbas signed an agreement to create a Palestinian Interim Self-Government Authority, to represent the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years. For a full list of the Israeli-Palestinian agreements since 1993, *see Declaration of Principles on Interim Self-Government Arrangements ('Oslo Accords')*, PEACE AGREEMENTS DATABASE (PA-X), UNIV. OF EDINBURGH, https://www.peaceagreements.org/view/357.

[364] Adnan Ayyash, The Samaritan Community in Nablus (2003) at 123. (In Arabic).

[365] *Id.*

[366] *Id* at 123.

[367] Patrick Kingsley and Gabby Sobelman, *The World's Last Samaritans, Straddling the Israeli-Palestinian Divide*, THE NEW YORK TIMES, (Aug. 22, 2021), https://www.nytimes.com/2021/08/22/world/middleeast/samaritans-israeli-palestinian.html

[368] A.B, The Samaritan News, Issue 687, page 5, 1999. *See also* Adnan Ayyash, *supra note 92* at 123. (In Arabic).

often for the far-right Likud Party.[369] According to a local Samaritan residing Nablus named Afnan Al Samri, a lot of her community voted for Netanyahu during the Israeli general election in the belief that he will retain Israel's control over the Samaritan quarter. She noted in interviews for this article that the Samaritans generally "do not hide their interest in remaining under Israeli control thanks to the benefits that they have gained and still enjoy to date" as a result of that arrangement.[370]

Numerous interviews with Samaritans conducted between 2016 and 2021 echoed al-Samri's perspective that the community is generally adaptable in their professed political allegiances,[371] and tend to shift positions depending on the views of the person they are interacting with.[372]

Samaritans also instrumentalize their use of language depending on their context and consider their multilingualism another key aspect of their collective identity. To convey their historical connection to the land and belonging amongst its community, Nablus Samaritans speak an accented form of Palestinian Arabic when engaging in day-to-day affairs and local publicity. However, for certain business or political transactions and some forms of prayer the Samaritans switch to modern or Biblical Hebrew to cement their ties to the Israeli and Jewish communities.[373] This use of language is often seen in younger Samaritans' interaction with Israeli media, which

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[369] Ayyash *supra note 92* at 122.
[370] A.B, The Samaritan News, Issue 745, page 42, Jul. 5, 1999. *See also* Adnan Ayyash, *supra note* at 123.
[371] Ayyash *supra note 92* at 38.
[372] For example, while Cohen Hosny the Director of the Samaritan Museum uses a patriotic Palestinian discourse in his communications with the Palestinians, he also uses a discourse of belonging to the Israeli people and being a full member of the State of Israel while addressing Israelis and non-Palestinian audience. For more information on the different discourses see for example: Diversity in Israel: Samaritan Life, TBN Israel, available on YouTube (July 15, 2021); IMEMC, *Christian and Samaritan figures in Palestine denounce the siege, violations* (May 9, 2020), https://imemc.org/article/18542/
[373] For a detailed explanation of the Samaritan identity and the usage of the Arabic language with the old Palestinian Nablus accent, watch Abood Cohen, *A Samaritan Speaks*, ONE PEACE PODCAST, available on YouTube, at mins 16:25-35:00 (Jul. 22. 201)

they use for most of their information despite having direct access with Palestinian academic and political institutions.[374]

The same flexibility towards language and politics may be seen in the approach to citizenship Samaritans expressed in these interviews. Though Israeli citizenship allows the community daily protections, rights and freedoms such as freedom of movement, access to excellent health system, and better paid job opportunities, none of which are available in Palestine, Samaritans do not express fidelity to one citizenship or another;[375] when asked to detail their perspectives on the topic, most downplay the significance of Israeli citizenship[376] as compared to the Palestinian, and argue that the former is merely a functional access to conveniences not offered to them by the latter.[377]

Local members of the community exemplify this stated fidelity to Palestinian identity by engaging at various levels with local government. Cohen Hosny Wassef, the head of the Samaritan Museum, presents himself as a lobbyist for the reinstatement of the Samaritan seat in the Palestinian Legislative Council (PLC) and overtly expresses aspirations to play a more proactive role in the Palestinian government and media for a pro-Palestinian audience.[378] Speaking as a Samaritan, Wassef emphasized the groups belonging to Palestine:

"We are an inseparable part of the Palestinian people, we are Palestinian… Samaritans, Christians and Muslims are together what constitute the Palestinian people…. The three religions have lived

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[374] Andrew Dalby, DICTIONARY OF LANGUAGES: THE DEFINITIVE REFERENCE TO MORE THAN 400 LANGUAGES (2015) at 32.
[375] The same feelings were also shared in the interview with Abood Cohen, *supra note 101* at min 22:00.
[376] Atef Daghlas, *Despite there non-participation in the political life.. Why do Samaritans participate in the Israeli Elections* (الحياة في إشراكهم عدم رغم السياسية..لماذا يشارك السامريون في الانتخابات الإسرائيلية؟), AL JAZEERA (March 2021), [in Arabic], https://www.aljazeera.net/news/politics/2021/3/17
[377] This is perhaps because the interviews were conducted in Arabic, as Samaritans have expressed different sentiments on the importance of Palestinian belonging on Israeli social media and outlets. See: Diversity in Israel: Samaritan Life, TBN Israel, available on YouTube (July 15, 2021).
[378] IMEMC, *Christian and Samaritan figures in Palestine denounce the siege, violations* (May 9, 2020), https://imemc.org/article/18542/

on this land for thousands of years, sharing the good and the bad. We are at adversity with the Jews, they disdain us, for them we are Kuthim. This is a major insult for us."[379]

When speaking to Israeli or Western media however, Wassef has adopted a different narrative, emphasizing the Samaritan belonging to Israeli society and people. [380] For example, he recently participated in a documentary program in which he described the Samaritan presence in Nablus as a testament to Israel's diversity.[381]

Meanwhile the Samaritan discussion of these benefits and issues within the West Bank shifts in tone when communicated on official platforms such as social media or their internal paper, *A.B. The Samaritan News Periodical*. For example, in March 2021 during the Covid-19 pandemic, a public Facebook post by a Samaritan woman presented a casual if mocking tone toward the deteriorated health situation in Gaza resulting from decades of Israeli blockades; in reference to the ongoing humanitarian and health crisis, she wrote in Hebrew that "Gaza is the safest place in the World … Thanks to Israel the borders have been closed for many years,"[382] complaining that despite the extensive security Palestinians are "ungrateful" and "blame Israel for not doing enough for the People of Gaza."[383] Such intolerance among Samaritans toward Palestinian critiques of the Israeli state likely arises because of their ongoing access to Israel's superior socioeconomic landscape.[384] As recently as May 2021, prominent Samaritan author Benyamin Tsadaka wrote in Hebrew in *A.B. News* as well on social media in praise of Israeli prime minister Benjamin Netanyahu's civilian attacks in the Gaza Strip.[385] The benefits of such a stance were particularly

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[379] Interview with Cohen Hosny Wassef, Founder of the Samaritan Museum and author of the Israeli Exodus in the Sinai Peninsula and member of the Palestinian Interfaith Council, Nablus (Sept. 15, 2019). Note: the term "*Kuthim*" refers to the ancient city of Kutha, located in present-day Iraq.
[380] Diversity in Israel: Samaritan Life, *supra* note 105.
[381] *Id.*
[382] Farah Aziz Cohen, Facebook post in Hebrew (Mar. 5, 2020), at 1:17PM.
[383] *Id.*
[384] Interview with Khaled Zawawi, Director Palestinian Ministry of Religious Affairs, video-call (July 25, 2021).
[385] Benyamin Tsadaka, Facebook post praising Benjamin Netanyahu for the killing of the Palestinian civilians and the destruction of their houses, wishing him strength in "bringing a good end to the confrontation." The post generated a lengthy thread of debates in disagreement from a non-Arabic speaking audience (May 12, 2021).

visible during the pandemic, which made the gap between Palestinian and Israeli health systems, governance, and social welfare unavoidably clear.[386] The Samaritans faired far better than other residents of Nablus and the occupied territories during the peak of the COVID-19 crisis due to their resourcefulness with the Israeli state.[387] For example, in negotiations between Israeli officials and Samaritan community leaders, an Israeli security checkpoint was installed at the entrance of their neighborhood to quell concerns about the spread of the virus. Rather than ask the Palestinian police for protection, the Samaritans took advantage of their access to Israeli resources and illegally barred Palestinians from entering a part of their own territory.[388]

Although the Samaritans have benefited physically from this strained relationship with Palestinian community, the distance they have taken from their neighbors has been problematized by prominent Samaritan figures for its negative impact on the collective identity.[389] Academic Khaled Zawawi is one of researchers[390] who have drawn attention to the inherently problematic position that the Palestinian-Arab identity holds in Samaritan self-conception.[391] Zawawi explored this difficulty in his research into Samaritan history, which lead him to access to the diaries of Abraham Tsadaka, the son of the Samaritan high priest Ya'coub b. 'Uzzi.[392] Abraham was known to be the first Samaritan to meet and befriend future Israeli president Ben Zvi,[393] and his efforts to shape and Zionize Samaritan identity played an important part in eventually granting the community access to Israeli citizenship. [394] In a testament to the tenuous nature of Palestinian

[386] Interview with Khaled Zawawi, *supra* note 112.
[387] Benyamin Tsadaka, Facebook post praising the State of Israel and the citizens of Israel for delivering the third shot of vaccine against COVID 19 to the citizens of Israel, posted in Hebrew on Nov. 9, 2021.
[388] Interview with Khaled Zawawi, *supra* note 112.
[389] *Id.*
[390] Jameel Dababat and Adnan Ayyash are also among the Palestinian researchers who share the same views on the problematic position of the Samaritan understanding and manifestation of their socio-cultural and political identity. See for example: Adnan Ayyash, The Samaritan Community in Nablus (2003) at 125. (In Arabic).
[391] Interview Khaled Zawawi, Director Palestinian Ministry of Religious Affairs, video-call (July 25, 2021).
[392] *Id.*
[393] Jim Ridolfo, *Between the Raindrops and Two fires: A Brief History of the Samaritans and Their Diaspora of Manuscripts*, Digital Samaritans: Rhetorical Delivery and Engagement in the Digital Humanities, pp. 23-50 (2015) at 43-44.
[394] Haseeb Shehadeh, A Case of Palestinian Arab Justice Between Minority and Majority, Studia Orientalia 101, 359-372 (2007).

identity for Samaritans Zawawi's research revealed that Tsadaka, a very prominent and influential figure in the Samaritan community, privately upheld a strong commitment to Zionist discourse while advertising an opposite allegiance to the Palestinian cause.[395]

Tsadaka's diaries also document the mainstream Samaritan perception of the Great Revolt of 1936, in which Palestinians and Arabs protested the increased levels of Jewish migration into Mandatory Palestine.[396] While mainstream Palestinians viewed the revolt as a nationalist uprising against the British administration of Mandate Palestine, the Samaritans appear to have considered the Revolt as a series of violent, anti-Jewish terrorist attacks against the British administration.[397] Tsadaka's writings testify to similarly derisive and fringe attitudes of Nablus Samaritans toward the 1967 War, in which Israel illegally occupied the rest of Palestine (including East Jerusalem), the Golan Heights, and the Sinai Peninsula.[398] Unlike the majority of Palestinians, the Samaritans considered this war as an emancipatory moment in which they were liberated from the Jordanian administration and the actualization of a biblical promise for the land to have returned to "the People of Israel."[399] The start of Israeli encroachment into the territories during this period was in fact welcomed by the Samaritans, whose disfavor with the Jordanian administration resulted in the division of their community between Holon and Nablus.[400]

Interviews with Samaritans of various backgrounds and social strata testify to the continued prominence of these early attitudes toward Palestinians. Ihab Samri,[401] a school teacher working for the Palestinian Ministry of Education in Nablus with dual citizenship, considers himself to be neither Israeli nor Palestinian but a "Samaritan citizen":

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[395] Khaled Zawawi, The Problem of the Samaritan Identity, unpublished. (In Arabic).
[396] Haseeb Shehadeh, A Case of Palestinian Arab Justice Between Minority and Majority, Studia Orientalia 101, 359-372 (2007).
[397] Jim Ridolfo, *supra* note 121 at 45.
[398] *Id* at 46.
[399] *Id* at 47.
[400] *Id.*
[401] Interview with Ihab Samri, researcher and Palestinian civil servant in Nablus, videocall (Jul. 18, 2021).

"I consider myself as belonging to this land, I am part of this land, where I live. My attachment is to my community, the Samaritan community. Today, since we [Samaritans] hold both the Palestinian and Israeli citizenships, enjoy rights and have benefits from both sides, we cannot belong to one or either side…. In the past, when Samaritans held only the Palestinian identity cards, we were considered as a Palestinian minority that belonged to an Israelite religion, but since 1996, our position and discourse has changed. Since we were granted the Israeli citizenship, we became part of both nations. In Israel, I am an Israeli, and in the Palestinian Territories, I am a Palestinian."[402]

Ihab elaborated with an anecdote about the transformation of Samaritan self-identification after their acquisition of Israeli citizenship in 1996: "I studied in Nablus public schools, I attended Al Najah University also in Nablus, I was a Palestinian citizen, but since 1996, I became both Palestinian and Israeli, I am no longer only a Palestinian citizen." He went on: "Today, because I am a citizen of both entities, my status has changed."[403] According to Ihab, the relationship of the Samaritan community with the governing regimes is one of convenience and determined solely by overlapping interests:[404]

Personally, although I emotionally feel strongly about the Palestinian issue and have my own opinions and political stance, but as a very small minority, living on this land, I believe that the tendency is to lean naturally closer to the more prosper, stable and safer side. That's to say that the members of the Samaritan community are pragmatic. They identify with the side that can give them more opportunities. The question of identity isn't a sentimental question, rather a practical and pragmatic one.[405]

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[402] *Id.*
[403] *Id.*
[404] *Id.*
[405] *Id.*

Jameel Dababat, a journalist and ethnographer focused on the Samaritan minority of Nablus, describes Samaritan identity in the same vein as "disturbed and turbulent"[406] and overall, a "troubling question."[407] He echoes Ihab's emphasis on the shift in self-perception among the minority catalyzed by the acquisition of Israeli citizenship while living in Nablus under Palestinian governance as Palestinian subjects. In Dababat's view:[408]

> Samaritans are opportunistic based on their interests and can transform and switch in one second between Palestinian and Israeli identities. The Samaritan discourse is tessellated, changeable, inconsistent, and unreliable. Because of their confusion and opportunism, today it is rather difficult to describe the Samaritan identity. Their relationship with the Palestinians is merely transactional and service oriented. They have no affinity or sense of attachment to the Palestinian people or the Palestinian national project. Identity for them has a very functional meaning, it is a tool that is used to attain rights, protection and services. But deep at the heart of their identity is the religious facet of it.[409]

However, not all Samaritans feel or exhibit a strong affinity to Israel. The Samaritan owner of a Nablus clothing store named Rahel Aziz, for example,[410] sees her daughters as Samaritans and has consciously raised them with values, culture, and traditions that are Palestinian rather than Israeli. Aziz has chosen to place her daughters in the Palestinian schooling system and immerse them in Nablus Arabic culture rather than trying to imitate what she describes as an "Israeli liberal style of living that is an anomaly and different to the Samaritan way of living."[411] Aziz is one of many Samaritan women who expressed such efforts at integrating the new generation of Samaritans with their local community rather than emphasizing their Israeli ties.

Likewise, Samaritan journalist Badawiyya Hosny Assamri of Palestinian News & Info Agency (WAFA), the formal news agency of the Palestinian authority and the Palestinian

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[406] Interview with Jameel Dababat, journalist at the Palestinian News & Info Agency (WAFA), videocall (Jul. 18, 2021).
[407] *Id.*
[408] *Id.*
[409] *Id.*
[410] Interview with Rahel Aziz, Nablus (Aug. 6, 2019).
[411] *Id.*

Liberation Organization (PLO), defines herself as a woman of Samaritan faith and Palestinian citizenship. She spoke passionately about her Palestinian allegiance, stating: "I feel myself to be a Palestinian; I grew up in Nablus, attended Palestinian schools, and studied at the prominent Palestinian National University [Al Najah]. I am an inseparable part of the Palestinian people and I am a proud Palestinian."[412]Hosny describes her relations at her Palestinian workplace in a similar vein, noting that she has "Never encountered an instance in my life where I have been discriminated against because of my religion or Samaritan identity" and has "14 Palestinian colleagues; they are like family to me."[413] As a female journalist working in Palestine, she sees her Samaritan identity as one of utility and a complement to her life as a Palestinian. Rather than using it to benefit from Israeli sources, she believes it will help her become a civil servant and eventually a director in the Palestinian Authority or even a parliamentarian.[414]

The difficulties of the Samaritans' contradictory identity have an impact on their daily lives, particularly for the younger generation. While living in a city under occupation and enjoying the socioeconomic benefits of the occupying power, holding two citizenships of two adverse parties in the conflict, belonging to a fourth religion that is not recognized by either of the two governing systems, many young Samaritans are floundering.[415] Badawiyya remarked on the effects of these polarities on Samaritan youth who have found themselves growing up between two increasingly irreconcilable worlds. Since the acquisition of Israeli citizenship in 1996,[416] she noted, an entire generation of Samaritans have been born in Israeli hospitals and educated in the Palestinian school system.[417] Badawiyya remains hopeful that this will teach them to integrate with

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[412] Interview with Badawiyya Hosny Assamri, videocall (July 21, 2019).
[413] *Id.*
[414] *Id.*
[415] *Id.*
[416] *Id.*
[417] Interview with Badawiyya Hosny Assamri, *supra note* 140.

and be accepting of both sides without compromising their own distinct identity as Samaritans. As she described: "I teach my children to love all and deal with all, without alienating themselves, I encourage them to play with Muslim kids, but to always be reminded that they are Samaritans, they have a Samaritan religion and a separate Samaritan identity."[418] To the extent that this will be possible remains to be seen as future sections detailing continued Israeli efforts to annex Samaritan identity will show.

III. FRAMING IDENTITY ANNEXATION: OF INDIGENOUS (MIS-)RECOGNITION IN ISRAEL AND BEYOND

The peculiarities of. Samaritan identity detailed thus far will be described in this section as precipitated by the singular relationship held between the community and the state of Israel since its inception. Despite the power differential between the minuscule community in occupied Palestine and the settler state of Israel, the relationship has allowed the Samaritan community to preserve and protect its livelihood in ways other minorities in the oPt have not. While the Samaritans' Oleh-immigrant status that grants them these lived benefits may fit uneasily with key aspects of their identity, Israel benefits from their inclusion in the Oleh community by affirming its national narrative of inclusivity and Jewish belonging.

As a modern settler colonial state, Israel approaches state-building in a hegemonic fashion that favors the territorial integration consubstantial to its Zionist politico-religious agenda.[419] Israel as such has historically related to its constituencies differently depending on their level of congruence with the state's goals.[420] As inhabitants of Israeli annexed land, the Samaritans have

[418] *Id.*
[419] David Lloyd, Settler Colonialism and the State of Exception, The Example of Palestine/ Israel, Settler Colonial Studies, 2:1, pp.59-80 (2012).
[420] Lana Tatour, *supra note 14*.

several unique features which make them particularly privileged constituents for Israel's state building strategy. The group's small size, their relative compatibility with Judaism compared to the Muslim segments of the Palestinian population, in addition to their significant geographical location, all make them a nonthreatening and useful new addition to the Israeli citizenry while remaining part of the historical Palestinian polity. Through a framework of laws and policies leveraged to utilize these features of Samaritan identity in the state's favor, Israel has carried out over the years a distinctly nonterritorial annexation of the West Bank Samaritans. It has done so through the legal reformulation of their sense of self as both instrumental and fundamentally *indigenous* to the Zionist project which, correlatedly, is further legitimized in its continued territorial annexation.

Shedding light on Israel's identity annexation of the Samaritans is valuable not only for exposing the understudied aspects and implications of Zionist legal strategy, but also for elucidating the foundational tensions in the liberal politics of recognition of settler colonial states long critiqued by scholars. To this end, the current section will frame this identity annexation in three stages. After recalling the origins and basic tenets of the settler colonial paradigm in the Israeli context, while situating the Samaritans' indigeneity, this first stage will briefly summarize the main features of the politics of recognition in postcolonial contexts and relate them to the concept of identity annexation. The second stage presents a critique of these politics of recognition by reviewing its consequences for the state and its misrecognized subjects in various instances outside of the Israeli and Samaritan case. Drawing on Fanonian critiques of liberalist governance by scholars like Glen Sean Coulthard,[421] the findings of the first and second stages will then be used to analyze the Samaritan legal response to their misrecognition by the Israeli liberal state.

[421] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, University of Minnesota Press (2014).

The third and final stage will therefore review the specifics of the Israeli legal and political strategies of identity annexation in reference to such postcolonial concepts as Mamdani's notion of "Jewishizing" as it relates to the Samaritans in particular.

A. BEFORE IDENTITY ANNEXATION: SAMARITANS' INDIGENEITY AND (MIS-)RECOGNITION

The concept of identity annexation which I develop in this article seeks to explicate Israel's treatment of the Samaritans. It builds upon previous understandings of the Israeli-Palestine conflict whose specificity and historicity must be acknowledged. In recent times the characterization of Israel's state building strategy has increasingly been criticized by political and historical scholars[422] as settler-colonial in nature and ambition.[423] This characterization has been said by Ahmad Amara and Yara Hawadi[424] to originate in Fayez Sayegh's 1965 seminal paper on "Zionist Colonialism in Palestine,"[425] which was among the first to argue for the racism inherent to Israel's state building project and the indigeneity of the Palestinian populations subjected to it.[426] Scholastic understanding of the conflict diversified in the 1990s with the signing of the Oslo Agreements. The signing which inaugurated the popularity of the two-state solution and neutralized the more problematic aspects of Israel's national narrative.[427] In the decades since, the two-state paradigm has replaced the settler colonial one to describe the logic of legal recognition,

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[422] *See* for example: Jamil Hilal, *Rethinking Palestine: Settler-colonialism, Neo-liberalism and the Individualism in the West Bank and Gaza Strip*, Contemporary Arab Affairs 8(3): pp. 351-362 (2015); Nadia Abu El-Haj, *Reflections on Archaeology and Israeli Settler Nationhood*, Radical History Review 86: pp. 149-163 (2003); Edward Cavanagh & Lorenzo Veracini, *Editors Statement*, Settler Colonial Studies, Volume 3, Issue 1 (2013).
[423] Rachel Busbridge, *Israel-Palestine and the Settler Colonial 'Turn': From Interpretation to Decolonization. Theory*, Culture & Society (2018).
[424] Ahmad Amara and Yara Hawadi, *Using Indigeneity in the Struggle for Palestinian* Liberation, Commentary, *Al Shabaka*, (Aug. 18, 2019). https://al-shabaka.org/commentaries/using-indigeneity-in-the-struggle-for-palestinian-liberation/
[425] Fayez Sayegh, Zionist Colonialism in Palestine (1965), Settler Colonial Studies, 2:1, pp.206-225 (2012).
[426] *Id.*
[427] *See* Hani Faris, ed., *The Failure of the Two-State Solution: The Prospects of One State in the Israel-Palestinian Conflict*, London: I.B. Tauris (2013).

and the language of human rights rather than political opposition largely reigns as the avenue to contest and address the consequences of the conflict thus framed.[428]

In an attempt to negotiate such evolutions in the academic perception of Israeli-Palestinian identity and conflict, identity annexation describes the intersecting mechanics of the politics of recognition by assessing the impact of identity-focused state building on a minority community. The following section will illustrate this concept within the context of the Israeli state's psychic and non-territorial strategy of annexation for state building. The present analysis of identity annexation pushes beyond the traditional limits of the settler colonialism-indigeneity paradigm[429] that has challenged its advocates by focusing on the Samaritans' agency instead of their subjugation. In particular, it highlights the ways in which local narrativization of community identity by the Samaritans combat the problematic politics of recognition of Israel in this complex case of annexation.

Like with indigenous peoples across the spectrum of settler colonialism or postcolonialism,[430] marking Samaritans as indigenous carries more political weight than the relatively innocuous "minority" label.[431] It is well-known that under international law, the existence of a people and the existence of a territory are two of the four elements required to establish statehood.[432]A group of people who is autochthonous to a specific territory threatens if not contravenes the settler colonial state's territory paradigm.[433] The issue of indigeneity is central

[428] Gabriel Piterberg, *Deconstructing the Zionist Settler Narrative and Constructing an Alternative*, in The Failure of the Two-State Solution, Chapter 7, *supra note* 155.
[429] *Id.*
[430] Nadim Rouhana, *Religious Claims and Nationalism in Zionism: Obscuring Settler Colonialism*, in When Politics are Sacralized, pp.54-87 (May 2021).
[431] Ulrike Barten, What's In a Name? Peoples, Minorities, Indigenous Peoples, Tribal Groups and Nations, Journal on Ethnopolitics and Minority Issues in Europe, Vol 14, No 1, 2015, 1-25,
http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2015/Barten.pdf
[432] Montevideo Convention (1933). James Crawford, *The Creation of States in International Law* (Oxford University Press), Part I.
[433] Working paper by the Chairperson-Rapporteur, Erica-Irene A. Daes, on the concept of "indigenous people" (E/CN.4/Sub.2/ AC.4/1996/2), para. 68. See also the background paper prepared by the Secretariat of the United Nations Permanent Forum on Indigenous Issues (PFII/2004/WS.1/3).

to the Israel-Palestine conflict and has been more or less convincingly claimed by both sides. Yet as the Samaritan case illustrates, the Palestinian population has increasingly become understood as thoroughly heterogeneous and therefore complex in their relationship to the indigenous marker in ways that the Jewish Israelis have not.

The Samaritans are a unique study for indigeneity because their claims of belonging are not tied to a nation-state but to a historical lineage;[434] the Samaritan's indigeneity is factually informed by their presence over 127 consecutive generations on Nablus' Mount Gerizim. The articulation of their collective identity as historically rooted does not however exempt them from the narratives advanced by communities imagined by Israeli and Palestinian statehood projects. The fact of their inclusion may be said to prove the significance of identity politics in legal statehood at its highest functional levels. For within the state paradigm, the politics of collective identity are shaped by the state-based legal recognition which translates said identity into certain actionable claims or statuses, such as those of indigenous or native grouping.

The "productivity" of identity has been understood in a number of ways according to its dialogical nature: as originally posited by Hegel in his seminal reflection on the master/slave dialectic, which constitutes one of the first iterations of the workings of recognition,[435] the master and the slave's respective identities are co-constituted and dependent on one another for their existence. In Richard T. Ford's words, identity "depends on a social interaction in which the understanding and esteem of others plays a crucial role,"[436] and even more so when the Hegelian 'master' or Other is the state. Shedding light on state recognitions of specific stakes, Ford critiques

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[434] Reinhard Pummer, *Exploring Samaritanism—New Insights and Fresh Approaches*, Religions 12: 769 (2021). *https://doi.org/10.3390/rel12090769*
[435] Coulthard, p. 27.
[436] Richard T. Ford, Beyond Difference, in Brown and Halley Left Legalism / Left Critique, p. 53 (2002).

scholastic overemphasis on theoretical issues of non-recognition over the examination of the concrete effects of mis-recognition for minority communities. When Ford's examples of "speaking for others," "conscribing," or "compelling to perform" take place, those vulnerable groups who requested specific support through claims for legal recognition are subjected to further vulnerabilization when mis-recognition is what they are left with.

Ford is one of many writers contributing to the growing body of literature on recognition, which analyzes the social and political significance of identity construction in varying post-colonial contexts.[437] Most centrally for this article, the literature offers the perspectives of relevant colonial powers on the way in which Western legal systems, identities, and culture may be used to enforce social change.[438] In his seminal contribution to this corpus, Foucault stresses the contestation of the Self as both being and consciousness, in name and in voice.[439] Building on these early notions, recent scholars including Sally Engle Merry,[440] Wendy Brown,[441] and Elizabeth Povinelli[442] have examined the impact of colonialism on the self of subjugated groups on the individual and collective levels. In analyzing the impacts of colonial rule on indigenous selfhood and identity, these authors expose the oppressive nature of many liberal, if post-colonial, systems of governance while highlighting the ways in which their subjects may use these shortcomings to establish a sense of collective identity and individual empowerment.

The state's use of law to wield power over identity groups is explored in detail in the Australian context in Povinelli's *The Cunning of Recognition*.[443] Povinelli studies the multicultural legacy of colonialism to show how liberal forms of recognition often perpetuate the unequal

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[437] *Id.*
[438] *Id.*
[439] Peter Dews, Power and subjectivity in Foucault, *New Left Review* 144.17, pp. 72-95 (1984).
[440] Sally Engle Merry, *supra* note 37.
[441] Wendy Brown, *supra* note 38.
[442] Elizabeth Povinelli, *supra* note 39.
[443] *Id.*

systems of power they are attempting to dismantle.[444] Religious and ethnic multiculturalism of the kind critiqued by Povinelli re-enforces the inequalities perpetuated by imperialist and colonial regimes;[445] these multicultural ideals fail in this way not by subsuming the identity of the indigenous for Povinelli but by prescribing its boundaries of authenticity.[446] Drawing on cultural theory and normative political philosophy, Povinelli explores the implications of state recognition of alterities as a textual performative field of power, in which the subaltern is discursively constituted in relations of misrecognition.[447]

Povinelli argues in this vein that multiculturalism puts pressure on minority and indigenous groups because the state requires them to identify with its narrative and adopt the identity that it has constructed for them. This is part of the "contractual reach" [448]of the settler state and is justified by the narrative of acceptance underpinning its claims to liberalism. In the Australian case examined by Povinelli, indigenous groups were forced through the creation of the state to redefine themselves accordingly to have a claim to their land.[449]

This argument in particular resonates with the Samaritan experience, whose inclusion in the Law of Return forced them to redefine themselves individually and collectively. As recalled above, the Samaritans continue to disassociate themselves from the collective Jewish people and project their self-image as the True Israelites and the Keepers of the Truth. Yet following their incursion in the courtroom in the 1990s, they have adopted a discourse more compatible with Israel's national project that positions them at the periphery of both Palestinian and Israeli societies while allowing them to engage when needed with both. Before turning to the specific legal

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[444] *Id.*
[445]*Id.*
[446] Elizabeth Povinelli, *supra* note 39.
[447] *Id.*
[448] *Id.*
[449] *Id.*

framework which allowed for the Samaritan's misrecognition by Israel in this way, the political, symbolic, and psychological costs and benefits accrued through this process by both entities must be examined.

B. THE "COSTS OF MISRECOGNITION"[450]: THE SAMARITANS' IDENTITY ANNEXATION AND BEYOND

In their recent influential reflections on recognition, social anthropologist Athena Athanasiou and political philosopher Judith Butler question whether one can in fact survive recognition given its nefarious effects; Butler reflected that "recognition sometimes comes at a cost, and sometimes at too high a cost" though its absence would be worse.[451] The case of the Samaritans is arguably one where the costs of nonrecognition manifestly outweigh those of misrecognition, particularly in the sociopolitical sense discussed by Butler and Athanasiou.[452] Despite not being technically a colonized population, the Samaritans like all Palestinians have experienced the physical and psychological effects of losing their land and their collective power by living in the occupied territories. These effects are often most felt in the legal sphere, which through the codification of the colonial rule also acts as a venue for this rule to be challenged by indigenous populations through misrecognition.[453]

As Merry demonstrates in *Colonizing Hawaii,*[454] Hawaiian natives, acting as engaged and productive agents of change, adopted various strategies to preserve their territory and heritage, ranging from confrontation and resistance to strategic acceptance of colonial rule. In fact,

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[450] Judith Butler, Recognition and Survival, or Surviving Recognition, in Judith Butler and Athena Athanasiou, Dispossession: The Performative in the Political, p. 90 (2013).
[451] *Id.*
[452] *Id.*
[453] Elizabeth Povinelli, *supra note* 39.
[454] Sally Engle Merry, *supra note* 37.

indigenous Hawaiians chose to refrain from actively resisting the secularization of their long-standing legal system to achieve their larger goal of postponing the total annexation of their land.[455] By presenting indigenous agency in this way Merry elucidates the power of oppressive laws to create and foster productive social change while also representing their crippling effects on local citizenry.[456] To this end, Merry's focus on the transformative capacities of the law as both a site of power and of subjugation provides a critical theoretical context for understanding the case of the Samaritans, for whom Israeli law has also served as a pathway for both upward mobility and psychic diminishment.[457]

Wendy Brown's *States of Injury,*[458] also draws on various conceptions of resistance and empowerment in colonial contexts useful for understanding Samaritan identity annexation. Brown notes the key and often problematic role played by religion as a marker of group identity when articulated as a challenge to state power, arguing that it provides a needed higher order reason for both the exercise of state dominion as well the frequent means its resistance.[459]

This foregrounds the Samaritan articulation of resistance in a context where religion is meticulously if not intentionally deployed by the state to both bolster and oppress certain of its constituents. The strategic choice of the Samaritans to comply with an identity posture benefiting the Jewish state applies to Brown's analysis of the variability of religious narrativization; this is a case in which a general religious consciousness serves as the manifestation rather than basis of political constraints upon individual freedom and equality while being used by a minority to fight for those very rights. The Israeli side of the equation may be understood through Marx's reflections

[455] *Id.*
[456] *Id.*
[457] *Id.*
[458] Wendy Brown, *supra note* 38.
[459] *Id.*

on religious counteraction and statehood upon which Brown partially based her own. A Marxian analysis of the Samaritan case to this end would be built on a critical understanding of politically religious consciousness as forcing the state to ignore the universal humanity of its subjects and the individual to essentialize herself in a way that prioritizes isolation over community. This phenomenon is illustrated in Israel's strategy of identity annexation to include Samaritans in their national narrative; it will be seen that they do so by recognizing Samaritans as returning members of the Jewish diaspora in accordance with the Law of Return, by which they are granted the pathway to Israeli citizenship as non-Palestinian Jews.

By granting citizenship to a small religious minority in the annexed territories while depriving other minorities in the area of the same benefits, Israel politicizes, otherizes, and weaponizes this population on the basis of their religious and cultural identity. This means of religiously foregrounded state oppression is presented by Brown in the context of Marx's "The Jewish Question,"[460] which explores the repercussions of an oppressed community successfully deploying their religious identity for political regulation. Marx's capitalist critique of localized resistance questions the extent to which such strategic identity deployment by an oppressed minority is freeing in a capitalist state; Foucault later builds on this to argue that capital is not the only problem, rather it is the inherently repressive nature of a juridically governed nation-state.[461] These perspectives as outlined and used by Brown are deeply relevant to understanding the Israeli state's strategy of identity annexation, in that the state is motivated in its existence and the means of its oppression by religion-based identity politics.[462] The role of religion in a capitalist nation-

[460] Karl Marx, *On the Jewish question,* Routledge, pp. 137-150 (1987).
[461] *Id.*
[462] Wendy Brown, *supra note* 38.

state, Brown summarizes, serves ultimately not as a provider of freedom but its "enforcer,"[463] thus challenging or complicating the very notion of democratic freedom itself.[464]

While broadening the understanding of misrecognition as costly for both affected subjects and affecting state, Brown details the benefits and setbacks of the "localized resistance"[465] strategy practiced by disenfranchised members of the resisting community, whose rights and protections are not guaranteed by the democratization of postcolonial power. This may be applied to the Samaritans to show that the group has used the intersection of the dominant laws and religion deftly to their advantage. In their very oriented form of resistance, Samaritans have exploited their ethno-religious advantage in the Israeli state to claim protections otherwise out of reach for the broader community in the occupied territories. That posited, an important difference in the case presented by Brown and the Samaritans is that the latter is not a case of an ethnoreligious minority using savvy knowledge of an oppressive system in order to navigate a limited circuit of rights. Instead, despite fundamental differences between themselves and Israeli Jews, as well as the absence of any recognition of their group as a religious minority, the Samaritans were successful in their localized resistance because of the inherent advantage to Israel's national narrative at their own psychic disadvantage.

Further, Israel's claims to modernity, multiculturalism, and democratic values be "tare fact" bolstered by the inclusion of the Samaritans as minorities of their citizenry. Multiculturalism also then emerges in this context as both discursive and psychic domination of the sort Povinelli critiques in post-colonial Australia, a concept that is non-violent but arguably essential tool for liberal society to exert control to any Western or liberal society. The Israeli state as one such liberal

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[463] *Id.*
[464] *Id.*
[465] *Id.*

regime practices multiculturalism with the similar goals of bolstering its national imagery and imagination, rather than legally empowering the minority cultures in question. Povinelli notes that these discriminatory practices toward indigenous minorities testify to the difficulties of developing a common societal knowledge that is truly shared rather than imposed by the dominant group.

Israel's judicial bestowal of an Oleh/immigrant status on indigenous people that neither immigrated nor returned without acknowledging them as members of the Jewish community is an illustration of the discriminatory nature of over valorized democratic multiculturalism. Here as in Povinelli's study the rationale behind state-sponsored arguments of belonging in partially recognizing a minority group is one concerned with justifying the existence of the state itself. By selectively legitimizing aspects of the Samaritan history and faith to amalgamate them at a distance into the Jewish collective, the state justifies its existence as a Jewish homeland and re-enforce its grip on the land via the Samaritan non-Jewish indigeneity. It has been noted that this annexation of Samaritan identity provides them with access to better health, welfare, employment, and infrastructural services, all of which are greatly unattainable for the rest of the Palestinian population. By benefiting from these privileges through compromising their identity, the Samaritans are actively participating in the subjugation of others who may also in the grand scheme be minorities in an important sense. While the legal system emerges as a site of power for local actors, in both the Hawaiian and Samaritan cases it is only a small and relatively advantaged segment of the population that has access to this power. Merry illustrates this phenomenon through the lens of decision makers in Hawaiian indigenous culture, who though acting in legal resistance are motivated by concerns beyond the scope of the majority of the population, which even when successful serve to divide rather than consolidate resisting subjects.

Despite its certain advantages, Israel's identity annexation of the Samaritans has by and large left the community in a tenuous social position within both the settler state and the occupied territories. By retaining a specific level of engagement with both the Palestinian and the Israeli systems, they have formed a type of opportunistic citizenry, one derived on the territorial and psychological fissures experienced as a result of their identity annexation. Such fissures have forced them to compromise both their unique religious identity as non-Jewish Samaritans and their political identity as Palestinians. It is in this sense that the misrecognition through identity annexation explored in this article may be best understood not as a narrative of cultural change but one of cultural production and appropriation. Such a conception is what ultimately accounts for the agency of local actors in forming their new social order and motivates the presentation of law, not as a regulating force but as an instrument of surveillance and an arena for protest. This raises the question of when legal recognition in a system becomes a tool of subjugation rather than a tool of emancipation, and casts doubt on whether the two can in fact co-exist in a contemporary settler state like Israel.

To explore these concerns, a closer look must be taken at the pitfalls of recognition politics in ostensibly settler colonial contexts. Building on the highly theoretical reflections and solutions of Foucault and Marx, Glen Sean Coulthard offers actionable analysis in his *Red Skins, White Masks: Rejecting the Politics of Recognition.* In criticizing the contemporary "hegemonization of the recognition paradigm" in modern liberal democracies like Canada, Coulthard argues that in its current articulation, the politics of recognition "reproduce[s] the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples' demands for recognition have historically sought to transcend."[466] His reasoning draws heavily on Fanon's reflections on the role of force in

[466] Glen Sean Coulthard, *supra note* 40, pp.3-4.

the colonial project, which in its nonviolent narrative form is reducible to what is now understood as a politics of misrecognition. Indeed, Fanon argues that it is through this misrecognition that governing bodies who have usurped and redefined the peoples of a nation create "specific modes of colonial thought, desire, and behavior that implicitly or explicitly commit the colonized to the types of practices and subject positions that are required for their continued domination,"[467] such as identity re-narrativization and community isolation.

The Samaritans' tenuous social position following their identity annexation and the derivative psychological and territorial fissures they experience are together therefore illustrative of the ontological incapacity of the settler colonial state to actually deliver on its liberal promises. At the same time, Coulthard cautions, the colonial subjects "tend to develop what [Fanon] called "psycho-affective" attachments to these master-sanctioned forms of recognition."[468] This means that achieving decolonial social change through the politics of recognition is not only impossible, it is actually antithetical to the very purpose of the process itself. Besides, Coulthard recalls Fanon's dual definition of coloniality: not only is it a subjective phenomenon to which recognition attends, but it is first and foremost an objective one of economic alienation against which subjective processes are irrelevant.[469]

Coulthard instructively goes on to speak of "self-affirmation" [470] of the colonial subjects, that is the process by which they are "recognizing themselves as free, dignified, and distinct contributors to humanity"[471] or to make themselves known, as Fanon famously lamented.[472] In the modern Canadian context, Coulthard advocates, on the basis of the work of Mohawk political

[467] *Id.* at16-17.
[468] *Id.* at 26.
[469] *Id.* at 33.
[470] *Id.* at 141.
[471] *Id.* at 43.
[472] *Id.* at 44-45.

scientist Taiaiake Alfred and Anishinaabe feminist Leanne Simpson, for indigenous resurgence as the "build[ing of] our national liberation efforts on the revitalization of 'traditional' political values and practices."[473]

As to the Samaritans, their petitioning to the Israeli Supreme Court in the 1990s could be recast as one such decolonial practice of self-affirmation. Before analyzing the viability and utility of this theory, the following section will briefly explore the concrete mechanics of identity annexation in practice. The Israeli framework of laws and policies enabling said colonial misrecognition of the Samaritans will be described before moving on to an analysis of the resulting overlapping forms of legal annexation and narrativization of Samaritan identity.

c. THE ISRAELI FRAMEWORK OF LAWS AND POLICIES ENABLING IDENTITY ANNEXATION

The preceding subsection examined certain key concepts in postcolonial scholarship and theory as they apply to the Samaritans. It looked at classic and contemporary studies of identity narrativization by state bodies to examine how this and other top-down strategies of settler colonial or liberally multicultural state building may be echoed in Israel's identity annexation of the Nablus Samaritans. This section will show the legal frameworks which underpin and facilitate this strategy by Israel and elucidate not just the theoretical but concrete implications for the Samaritan population. Israel will be seen to have historically adopted laws and policies to achieve exclusion while maintaining a façade of inclusivity beyond the Samaritan case. In line with previous sections' recognition-based analysis, scholar Shourideh Molavi has argued that these laws are

[473] *Id.* at 154. Drawing on the recent indigenous Idle No More grassroot movement, Coulthard further condenses indigenous resurgence into five theses: 1) the necessity of direct action; 2) doing away with capitalism; 3) the issue of dispossession and indigenous sovereignty in the city; 4) gender justice and decolonization; 5) moving beyond the nation-state (p. 165).

structured to bolster Israel's legitimacy as the Jewish homeland without appearing to exclude the Samaritans seen as a Jewish-adjacent minority.[474]

The present subsection looks at the specificity of Israeli law-making in that regard and as it gives rise to what Mahmood Mamdani has termed "Jewishizing" or "Minorizing" [475] of Palestinian Arabs. Two forms of Jewishizing can be identified to explain Israel's identity annexation of the Samaritans: first, a Jewishizing by inflation, where Israel uses law to expand the definition of "Jewishness"; second, a Jewishizing by densification, where Israel uses law to assert the Jewishness of its state and solidify its control over its institutions and territory. Both forms of "Jewishizing" will be seen to account for the territorial and physical repercussions of identity annexation on the Samaritans.

1) "JEWISHIZING" BY INFLATION: THE EXAMPLE OF THE 2018 "NATION-STATE" BASIC LAW

It has become clear to many that the existence of the state of Israel, which claims to be both a Jewish and democratic state, continues to be made possible by the government's controversial legal disenfranchisement of Palestinian populations.[476] Since the 2000s, its activities have been focused on expanding the definition of "Jewishness" at the core of Israel's national narrative while narrowing that of "Arab Palestinian," an identity which is arguably as critical for the national narrative as the former.[477] In the same spirit that it has taken in redefining Jewishness for the sake of *aliyah*, or Jewish immigrants, Israel has in recent years also expanded its claims to *Eretz Yisrael*, or the land of Israel,[478] a once widely unpopular idea advocated only by the most extreme right-

[474] MOLAVI, *supra* note 302.
[475] MAHMOUD MAMDANI, NEITHER SETTLER NOR NATIVE: THE MAKING AND UNMAKING OF PERMANENT MINORITIES, at 257 (2020).
[476] MAZEN MASRI, THE DYNAMICS OF EXCLUSIONARY CONSTITUTIONALISM: ISRAEL AS A JEWISH AND DEMOCRATIC STATE 7 (2017).
[477] Lana Tatour, *supra note 14*.
[478] The Hebrew phrase means the "land of Israel" based on a biblical reference; however, in modern definition, it is an expansive definition of an ambiguous geographical area, referring to the totality of the general area of Palestine in the Ottoman times. Zionism and Israel Information Center, *Eretz Yisrael Definition, Zionism and Israel – Encyclopedic Dictionary* (2005), https://zionism-israel.com/dic/Eretz_Yisrael.htm.

wing revisionist Zionists.[479] Since the late 1970s, Israeli political discourse has come to embrace these fringes in their legal treatment of Jewish identity despite international consensus on the illegality of the military occupation in the Palestinian territories. Israel's prime minister has worked since early 2019 to legitimize and solidify an extreme or maximalist Zionism[480] that seeks maximum expansion of Israeli territory and control with government impunity, and continues to call on "Jewish sovereignty"[481] in the occupied West Bank.[482] This shift to a more exclusionary policy of territorial *de facto* annexation in Israel's political milieu is in large part due to the growing influence of the settler movement, which utilizes biblical references to refer to the entirety of Mandatory Palestine[483] as the Jewish state, or the land of "Judea and Samaria."[484]

The most definitive and recent example of Israel's extreme rightward shift is the controversial "Nation-State" Law, passed by the Israeli Knesset in July 2018,[485] which defines Israel as "the nation-state of the Jewish People, in which it realizes its natural, cultural, religious and historical right to self-determination."[486] Widely criticized for its lack of integral equality, democracy, and human rights language, Israel's Basic Law may be seen as a betrayal of the Israeli

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[479] Ilan Pappé, *Zionism as Colonialism: A Comparative View of Diluted Colonialism in Asia and Africa*, 107:4 S. ATL. Q. 611, 613 (2008). *See also* NUR MASALHA, IMPERIAL ISRAEL AND THE PALESTINIANS: THE POLITICS OF EXPANSION (2000).

[480] MASALHA, *supra* note 479, at 46.

[481] Gideon Levy & Alex Levac, *Expanding the Limits of Jewish Sovereignty: A Brief History of Israeli Settlements*, HAARETZ (Jan. 11, 2019), https://www.haaretz.com/israel-news/.premium-expanding-the-limits-of-jewish-sovereignty-a-brief-history-of-israeli-settlements-1.6829158. *See also* Hagar Shezaf, *Israel Approves Thousands More Homes in West Bank Settlement*, HAARETZ (Oct. 15, 2020), https://www.haaretz.com/israel-news/.premium-israel-approves-thousands-more-homes-in-west-bank-settlement-1.9238068.

[482] Until the date when this article was written in April 2021, Benjamin Netanyahu has been serving as the longest serving Prime Minister of Israel. *See Benjamin Netanyahu: Who Is Israel's Longest-Serving Leader?*, AL JAZEERA (Mar. 22, 2021), https://www.aljazeera.com/news/2021/3/22/benjamin-netanyahu-who-is-israels-four-term-pm.

[483] Part of this movement calls for the "Greater Israel 'maximalist expansion plan to conquer well beyond these borders. *See* MASALHA, *supra* note 207, at 52.

[484] Noa Landau & Hagar Shezaf, *Netanyahu Assures Settler Leaders West Bank Annexation Won't Be Tied to Trump Plan*, HAARETZ (June 2, 2020), https://www.haaretz.com/israel-news/.premium-netanyahu-tells-settler-leaders-he-is-committed-to-negotiations-based-on-trump-plan-1.8890300.

[485] Art. 1(b), Basic Law: Israel - The Nation State of The Jewish People (July 19, 2018) (Isr.).

[486] Pnina Sharvit Baruch, *The Ramifications of the Nation State Law: Is Israeli Democracy at Risk?*, INSTITUTE FOR NAT'L SECURITY STUD. (Aug. 1, 2018), https://www.inss.org.il/publication/ramifications-nation-state-law-israeli-democracy-risk/. *See also* Jonathan Lis & Noa Landau, *Israel Passes Controversial Jewish Nation-state Bill After Stormy Debate*, HAARETZ (July 19, 2018), https://www.haaretz.com/israel-news/israel-passes-controversial-nation-state-bill-1.6291048; Isabel Kershner & David M. Halbfinger, *Israel Passes Controversial 'Nation-State' Law that Gives Special Status to Jews*, N.Y. TIMES (July 19, 2018, 4:34 PM), https://www.seattletimes.com/nation-world/israel-passes-controversial-nation-state-law-that-gives-special-status-to-jews/; Loveday Morris, *Deluge of Opposition to Israel's Nation-State Law Builds with New Court Petition*, WASH. POST (Aug. 7, 2018, 2:39 PM), https://www.washingtonpost.com/world/middle_east/deluge-of-opposition-to-israels-nation-state-bill-builds-with-new-court-petition/2018/08/07/054fe9b2-99bd-11e8-a8d8-9b4c13286d6b_story.html.

Declaration of Independence,[487] which aspires for the "complete equality of social and political rights" for "all its inhabitants" regardless of their religion, race or sex.[488]

A largely symbolic formulation of longstanding bipartisan state policy,[489] the Basic Law affirms the historical right of self-determination in Israel as belonging exclusively to the Jewish People[490]while reinforcing the importance of *aliyah* and the Ingathering of Exiles (*kibbutz galuyot).*[491] Most tellingly, the Basic Law enshrines self-determination within the State of Israel as a right that is "unique to the Jewish people"[492] and denies other groups, such as indigenous Arab Palestinians who today constitute 20% of Israel's population,[493] the equal rights from this inalienable universal foundation. The legislation moreover downgrades the status of Arabic from one of the two official languages to a language of "special status;"[494] adopts discriminatory language to promote the development of, provide aid to, and allocate land exclusively and favorably to Jewish communities; and commits to indefinite Israeli control of both West and occupied East Jerusalem.[495]

The aggrandizement represented by the Nation-State Basic Law coupled with a self-professed Israeli adherence to democratic norms challenge Israel's claim to be both a Jewish supremacist state and a Zionist pluralistic one. It may be argued therefore that the Basic Law did not represent a new direction in state policy but streamlined existing discriminatory policies that give preference to Jewish self-determination at the expense of minority groups. It also evidences

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[487] *Id.*
[488] Art. 1(c), Basic Law: Israel - The Nation State of The Jewish People (July 19, 2018) (Isr.).
[489] Hassan Jabareen & Suhad Bishara, *The Jewish Nation-State Law*, 48:2 J. PALESTINE STUD. 43–57 (2019).
[490] Art. 5, Basic Law: Israel - The Nation State of The Jewish People (July 19, 2018) (Isr.).
[491] *Id.*
[492] *Id.* Art. 1(c) ("The exercise of the right to national self-determination in the State of Israel is unique to the Jewish People.").
[493] Association for Civil Law in Israel, *Nation-State Law* (July 20, 2018), https://law.acri.org.il/en/2018/07/20/nation-state-law/.
[494] Art. 4(b), Basic Law: Israel - The Nation State of The Jewish People (July 19, 2018) (Isr.) ("The Arabic language has a special status in the State; arrangements regarding the use of Arabic in state institutions or vis-à-vis them will be set by law.").
[495] *Id.* Art. 3 ("Jerusalem, complete and united, is the capital of Israel.").

the apparent disingenuousness of two foundational Zionist themes which also happen to be the most threatened by Samaritan identity: the commitment to religious equality and freedom on the one hand, and the welcomeness of *all* Jews to their rightful "homeland."[496]

It is in this context that Arab parliamentarians, politicians, and scholars have protested the law as an assault on their identities and equal citizenry rights not only as members of non-Jewish groups but as an entire indigenous community. Arab Knesset member Ahmad Tibi, for example, considered the "not [only] unnecessary, but defective"[497] Israeli Nation-State Law as "the end of democracy"[498] in the country, noting that it "ignores the value of equality for every newborn, for every human being,"[499] in contrast not only to the Zionist narrative but widely accepted international norms and laws.[500] Ayman Odeh, another Arab Knesset member, bluntly categorized the legislation as an "apartheid" practice,[501] while centrist politician Yael German similarly decried it as "a poison pill for democracy."[502] Perhaps most striking is Tel Aviv-based lawyer and academic Raef Zreik's argument for the law's overlap with and support of the state's relentless and aggressive annexation of the territories: "the Israeli nation-state law and annexation are … two plans that feed on the same rationale, [which] is that between the river and the sea, there are two groups of people and the Jewish people are superior over the Palestinian people."[503]

At the core of these and other such critiques is a belief in the unspoken preference of Israeli law to Jewish self-determination and autonomy at the expense of Israel's minorities, and in the

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[496] *Id.* Art. 1(c).
[497] Avinoam Bar-Yosef, *Israel's Nation-State Law: Not Unnecessary but Defective*, Jerusalem Post (Aug. 11, 2018), https://www.jpost.com/opinion/israels-nation-state-law-not-unnecessary-but-defective-564625.
[498] *Id.*
[499] *Id.*
[500] David M. Halbfinger & Isabel Kershner, *Israeli Law Declares the Country the 'Nation-State of the Jewish People'*, N.Y. TIMES (July 19, 2018), https://www.nytimes.com/2018/07/19/world/middleeast/israel-law-jews-arabic.html.
[501] *Id.*
[502] *Id.*
[503] Dalia Hatuqa, *The Two-State Solution Is Dead. What Comes Next Is Worse*, FOREIGN POL'Y (June 30, 2020), https://foreignpolicy.com/2020/06/30/two-state-solution-dead-what-comes-next-worse-annexation-israel-palestine-netanyahu-trump-peace-plan/.

falsity of a legal system and political machinery which enshrines the exact opposite.[504] This tension is perhaps best explored through the aggressive strategies of annexation upheld by Israel since its inception.

2) "JEWISHIZING" BY DENSIFICATION: LEGALIZED APPROACHES TO LAND ANNEXATION

Israel has long strategically used law in a way that wards off any existential threats to the Zionist narrative including and especially those posed by minority groups like the Samaritans. Although the State of Israel does not have a formal Constitution to date, the Knesset has adopted various basic laws[505] of semi-constitutional status, which enshrine the Jewish nature of the State of Israel and guarantees exclusive rights for the Jewish people based on their religious identity.[506] Such exclusionary laws fend off threats to the Zionist vision by reinforcing and legitimatizing the possession and disbursement of annexed land and the codification and delimitation of Palestinian identity as a whole.

One striking and foundational example of this kind of law is the 1948 Declaration of the Establishment of the State of Israel, which explicitly grants the right to self-determination as a natural and inalienable right *exclusively* to the Jewish people rather than all citizens of the state of Israel. The declaration in its initial paragraphs enshrines the right of the "Jewish people to self-

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[504] This has been highlighted over decades by a growing body of analysis and activism, since the 1960s with Fayez Sayegh to Uri Davis in the 1980s and the UN reports more recently, which shows Israel as committing the crime of apartheid. *See, e.g.*, Fayez Sayegh, *Zionist Colonialism in Palestine (1965)*, 2:1 SETTLER COLONIAL STUD. 206 (2012); Richard Falk & Virginia Tilley, *Israeli Practices Towards the Palestinian People and the Question of Apartheid, Executive Summary*, 24:2 MIDDLE EAST POLICY 33 (2017); URI DAVIS, ISRAEL: AN APARTHEID STATE 145 (1987); URI DAVIS, APARTHEID ISRAEL: POSSIBILITIES FOR THE STRUGGLE WITHIN (2003) [hereinafter URI DAVIS, APARTHEID ISRAEL].

[505] Between 1948 and 1995, the Knesset passed 11 basic laws, which mainly regulated the powers of the governing bodies of the Knesset, and basic human rights. These are: The Knesset (1958); State Lands (1960); The President (1964); The Government (1968); The State Economy (1975); Israel Defense Forces (1976); Jerusalem (1980); The Judiciary (1984); The State Comptroller (1988); Human Dignity and Liberty (1992); and Freedom of Occupation (1992). *See* The Knesset, *Constitution for Israel* (Isr.), https://knesset.gov.il/constitution/ConstIntro_eng.htm#:~:text=Israel%20has%20no%20written%20constitution,which%20enjoy%20semi%2Dconstitutional%20status.

[506] The Knesset, *Constitution for Israel* (Isr.), https://knesset.gov.il/constitution/ConstIntro_eng.htm#:~:text=Israel%20has%20no%20written%20constitution,which%20enjoy%20semi%2Dconstitutional%20status.

determination in its sovereign state, [to] connect the historic Children of Israel to the modern ones, and [to] emphasize the historic, political, cultural, and religious ties of the Jewish people to the Land of Israel."[507] A more immediately relevant and recent example is the Law of Return,[508] which will be seen in this section to aim for, among other things, "the ingathering of the exiles"[509] of all Jewish people in the biblical totality of the Land of Palestine.[510] Article I of the Basic Law on Human Dignity and Liberty[511] offers yet another example of Israel's outward messaging of its national values: it seeks "[t]o protect human dignity and liberty, to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state." Further, the Basic Law on Freedom of Occupation[512] accentuates the Jewish nature and the democratic values of the State of Israel by specifically referring to the State of Israel's Declaration of Independence.[513]

The constellation of such semi-constitutional legislation that has emerged since the birth of the Israeli State evidences the use of laws as tools to impose facts on the ground, re-enforce Israeli-Judaic presence in occupied territories, and further facilitate the "Jewishization" of that land at the expense of its indigenous Palestinian Arab population.

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[507] Ministry of Foreign Affairs, *Declaration of the Establishment of the State of Israel* (May 14, 1948) (Isr.), https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx.

[508] Art. 1, Law of Return No. 5710-1950, passed on July 5, 1950, and published in the Official Gazette, Sefer Ha-Chukkim No. 51, 159 (July 5, 1950) (Isr.) (Article1: "[E]very Jew has the right to come to this country as an oleh [immigrant]").

[509] Article 1 of The Law of Return, granting every Jew in the world the right to settle in Israel, was passed by the Knesset on July 5, 1950, and published in Sefer HaChukkim (Book of Laws) No. 51, p. 159. Two amendments were later added onto the Law of Return—one passed on August 23, 1954, and the other passed on March 10, 1970. *Israel's Basic Laws: The Law of Return*, JEWISH VIRTUAL LIBRARY: A PROJECT OF AICE, https://www.jewishvirtuallibrary.org/israel-s-law-of-return.

[510] Mark J. Altschul, *Israel's Law of Return and the Debate of Altering, Repealing, or Maintaining Its Present Language*, 2002 U. Ill. L. Rev. 1345, 1531–32 (2002), http://www.illinoislawreview.org/wp-content/ilr-content/articles/2002/5/Altschul.pdf.

[511] Article I, Basic Law on Human Dignity and Liberty (1992) (Isr.). The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law tile value of the State of Israel as a Jewish and democratic state. In the amendment to the law of 1992 the following section was added: Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel. The Basic Law on Human Dignity and Liberty, passed by the Knesset in March 1992.

[512] Basic Law of Israel: Freedom of Occupation (1992) (Isr.).

[513] Article 1, Basic Law of Israel: Freedom of Occupation (1992) (Isr.): Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

The Land Acquisition Law (Actions and Compensation) of 1953[514] is a key piece of legislation that facilitated the acquisition of most of the Palestinian-owned land in Israel by the Jewish National Fund. The law was certainly effective:[515] Palestinians living in Israel currently own 3-3.5% of the land, as compared to 48% in 1948.[516] More exemplary, however, of the multi-part appropriation effected by Israeli law may be the Absentees' Property Law 5710 of 1950,[517] which defines as technically absentee all Palestinian citizens who are "legal owner[s] of any property situated in the area of Israel or enjoyed or held by it" and/or whom "left his ordinary place of residence in Palestine".[518] Appointed by the Minister of Finance under Section 2 of the Law, the legal "Custodian of the Absentees' Property"[519] therefore has the power to claim possession of the property belonging to those who fled, moved temporarily to avoid active conflict (the so-called "present-absentees"), were expelled, or left after the United Nations Partition Plan for Palestine was implemented on November 29, 1947.[520] Yet the Law of Return grants Jews—including the newly converted—all over the world the right to claim a "return" to the biblical land of Israel without ever having lived or even visited there. This despite the fact that residents of the Mandate territory of Palestine who were either internally displaced or forcibly expelled from their homes and properties have been systematically denied permission to return to their homes in this land, by these aforementioned and various other discriminatory Israeli laws.[521]

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[514] Land Acquisition Law (Actions and Compensation) (1953) (Isr.), unofficial translation is available at The Legal Center for Arab Minority Rights (Adalah), https://www.adalah.org/en/law/view/533.
[515] URI DAVIS, APARTHEID ISRAEL, *supra* note 504, at 192.
[516] Land Acquisition Law (Actions and Compensation) (1953) (Isr.), unofficial translation is available at The Legal Center for Arab Minority Rights (Adalah), https://www.adalah.org/en/law/view/533.
[517] Absentees' Property Law No. 5710-1950, passed on Mar. 14, 1950, and *reprinted in Laws of the State of Israel: Authorized Translation from the Hebrew, Volume 4* 68–82, Government Printer, Jerusalem, Israel (1948-1987), ISRAEL LAW RESOURCE CENTER (Feb. 2007).
[518] *Id.* § 1(b)–(c).
[519] *Id.* § 2(a) ("The Minister of Finance shall appoint, by order published in Reshumot, a Custodianship Council for Absentees' Property, and shall designate one of its members to be the chairman of the Council. The chairman of the Council shall be called the Custodian.").
[520] *Id.* § 1(b).
[521] Hazem Jamjoum, *Refugees: Israeli Apartheid's Unseen Dimension*, AL SHABAKA (June 20, 2012), https://al-shabaka.org/commentaries/refugees-israeli-apartheids-unseen-dimension/.

In addition to the *de facto* annexation of the Palestinian territories and the expulsion of Palestinians from their land Israel's "Jewishizing" further translated into the denial of access to Jerusalem and its religious sites to Arab Palestinian Christians and Muslims, despite the overwhelmingly adopted UN General Assembly resolution on the international status of Jerusalem as *corpus separatum*.[522] This was codified in 1980 by the Basic Law on Jerusalem, Capital of Israel,[523] which states that "Jerusalem, complete and united, is the capital of Israel''[524] and that the holy places shall be protected.[525] Aware that the general opacity of the law's terminology increases its potential for strategic misuse, the Knesset Committee turned its attention to the phrase "complete and united" and attempted to parse its constitutional significance[526]. Ultimately, however, the legalization of an imagined "complete and united" Jerusalem facilitates the exclusion of all non-Jewish minorities from the capital for the Israeli state to attain complete control of its holy sites. As members of one such minority population, Palestinian Arabs living in Jerusalem are considered mere residents and therefore denied fundamental representation rights, while being excluded from any prospect of sovereignty.[527]

The basic rights of Palestinians are further restricted in an amendment of the Basic Law in 2000 which reduces the already slim possibility of their concluding any future arrangements concerning Jerusalem. The amendment unilaterally altered the city's municipal borders and

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[522] "The City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations . . . to protect and to preserve the unique spiritual and religious interests located in the city of the three great monotheistic religions across the world." U.N. G.A. Res. 181 (II), U.N. Doc. A/RES/181, Part III (Nov. 29, 1947).
[523] Basic Law: Jerusalem, Capital of Israel No. 5740-1980, passed on July 30, 1980, and published in the Official Gazette, Sefer Ha-Chukkim No. 980, 186 (Aug. 5, 1980) (Isr.) (the Bill and an Explanatory Note were published in Hatza'ot Chok No. 1464 of 5740, 287).
[524] *Id.* Art. 1 ("Jerusalem, complete and united, is the capital of Israel.").
[525] *Id.* Art. 3 ("The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places.").
[526] *Id.*
[527] The Jerusalem municipal master plans are another major contributor to the ongoing struggles of the Palestinian residents of Jerusalem. They explicitly aim to strip these Jerusalemites of their Jerusalem residency rights. The three master plans are: Jerusalem 2020 Master Plan, the Marom Plan, and the "Jerusalem 5800" Plan, or the Jerusalem 2050. For an analysis of the impact of the Jerusalem Master Plans on the Palestinian Jerusalemites, *see* Nur Arafeh, *Which Jerusalem? Israel's Little-Known Master Plans*, AL SHABAKA (May 31, 2016), https://al-shabaka.org/briefs/jerusalem-israels-little-known-master-plans/.

specified that "responsibility for municipal functions and services cannot," as it had in the past, "be transferred into foreign hands with less than a 61 [Knesset member] majority."[528] The increased difficulty of passing legislation on Jerusalem disenfranchised Palestinians by successfully tightening Israel's grip on municipal functions while re-enforcing its control over institutional functions.

Further illustrations of Israel's weaponization of the legal system for apparent settler-colonial ambitions include the Citizenship and Entry into Israel Law of 2003,[529] classified as a temporary order and still active to date, which prohibits Palestinian citizens of the West Bank and Gaza who are married to Israelis from legally residing with their spouses in Jerusalem or Israel.[530] Also worth mentioning is the 1952 Law on Citizenship which regulates the acquisition and loss of nationality and which will be examined in detail in the next section. The Nationality and Entry into Israel Law (also adopted in 1952)[531] grants the Minister of Interior the power to revoke the residency status of Palestinians from Jerusalem, thus compromising the agency over and relationship to the land that is so foundational to the Palestinian identity.

Through "Jewishizing" law-making in particular, and Zionist policies of territorial expansion in general, Israel has historically canvassed the Palestinian land on which it stands in order to segregate all non-Jewish populations except the Samaritans. The Samaritans' quasi-Jewishness is key in this context because it underpins and justifies their indigenous relationship to

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[528] As expressed by the Israeli Knesset "Many Committee members criticized this amendment, expressing the view that it places strict limitations on possible future arrangements in Jerusalem." *See* The Knesset, *Constitution for Israel, The State of Israel as a Jewish State* (Isr.), https://knesset.gov.il/constitution/ConstMJewishState.htm.

[529] The Citizenship and Entry into Israel Law (temporary provision) No. 5763-2003 (July 31, 2003) (Isr.).

[530] Al-Haq, *The Occupation and Annexation of Jerusalem through Israeli Bills and Laws*, Advocacy (Mar 5, 2018), https://www.alhaq.org/advocacy/6263.html.

[531] Art. 11, Nationality and Entry into Israel Law No. 5712-1952, passed on July 31, 1985, and published in the Official Gazette, Sefer Ha-Chukkim No. 1156, 213 (Aug. 7, 1985) (Isr.) ("(a) The Minister of the Interior may at his discretion (1) cancel any visa granted under this Law, either before or on the arrival of the visa holder in Israel; (2) cancel any permit of residence granted under this Law.").

the land and therefore the strategic annexation and re-narrativization of their identity by the Israeli state.

IV. Realizing Identity Annexation: The Legal Annexation and Narrativization of Samaritan Identity

The previous section highlighted identity annexation as a complex social, legal, and political phenomenon consubstantial with settler colonialism through politics of misrecognition. This section draws on this understanding to argue that Israel's approach to the continuous acquisition of Palestinian territories amounts to a "divide and conquer" strategy of land acquisition, which is mirrored in the divided psyches of the occupied subjects. It will explore three additional themes evidencing Samaritan's identity annexation by Israel: it first expands on the notion of fissured identity as a manifestation of identity annexation by studying the way Israeli policies have legally Othered the Samaritans. It then exposes how, based on this status, Israel re-narrativized the Samaritans according to their proximity to the Jewish faith and distance from the Palestinian community. Finally, it looks into the tensions and contradictions between and within this super-imposed identity through a series of interviews with a range of Samaritans gathered over the course of four years.

A. Israel's "Divide and Conquer" Strategy: Fragmenting Palestinian Land and Selfhood and "Jewishizing" Samaritans

According to the legal scholar Omar Dajani, "the putative acquisition of territory is undertaken not in one fell swoop, but gradually through a pattern of oblique and sometimes informal measures,"[532] which may be understood as the division and conquering of territory and

[532] Omar M. Dajani, Israel's creeping annexation, AJIL *Unbound*, 111, pp.51-56 (2017).

people. This is precisely the strategy Israel used, for example, to claim title over the West Bank outside of Palestinian population centers. As a result of the Oslo II Accord, the West Bank has been territorially and politically fragmented into three administrative areas (A, B, and C),[533] each with distinct governance and administration status. Area A (about 18 % of the OPT) falls under the administration of the Palestinian Authority,[534] which manages most internal civilian affairs and internal security; Area B (22 %) is jointly administered by both the Palestinian Authority and Israel; and Area C, which comprises approximately 60 % of the West Bank territory and contains most of the Israeli settlements, is under exclusive Israeli administrative and military control.[535] Over and above these geographic areas, Palestinians in East Jerusalem, the H2 Zone in Hebron,[536] Bedouin communities, and refugee camps are constantly challenged by policies designed to limit their legal space and hinder their access to rights. In its annexation plans and embrace of Trump's so-called Deal of The Century, [537] the Israeli government has expressed explicit intends to annex approximately half of Area C.[538]

The Samaritan land of Mount Gerizim in Nablus is thoroughly enmeshed in the Israeli annexation plans by being divided into various pockets of land subject to different rules. The Samaritan residential area has been classified as falling in Area B (jointly administered by both the Palestinian Authority and Israel); the archaeological site, designated Area C, falls under the sole control of the Israeli administration, which has exclusively delegated the task to the externally based Israeli Ministry of Tourism. The Israeli interest in controlling an archaeological site is yet

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[533] U.N. SCOR & GAOR Annex, 51st Sess., *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II)*, Art. 6, U.N. Doc. A/51/889 (Sept. 28, 1995).
[534] *Id.*
[535] *Id.*
[536] Over 20 per cent of the City of Hebron falls under the direct administration of Israel, known as the H2 Zone. *See* U.N. Office for the Coordination of Humanitarian Affairs (OCHA), The Humanitarian Situation in the H2 Area of Hebron City: Findings of Needs Assessment (Apr. 2019), https://www.ochaopt.org/sites/default/files/h2_spotlight_april_2019.pdf.
[537] For detailed information on all legislation presented to the Knesset pertaining annexation of the West Bank, *see Annexation Legislation Database*, YESH DIN (Apr. 1, 2019), https://www.yesh-din.org/en/about-the-database/.
[538] Hatuqa, *supra note* 50330.

another tactic in which the state attempts to buttress itself and its presence in the imagination of those living in the occupied territories while exerting physical control over their resources.[539]

This reality is part of the complex fabric of laws which have given the Israeli state *de facto* control of all Palestinian territory.[540] And like other states that have used a similarly aggressive approach to annexing settled territory and re-enforcing national identity, Israel's division, uprooting, and disenfranchisement of the native population has been condemned internationally.[541] Inciting the kind of statecraft Edward Said has called "punishment by detail,"[542] Israel has utilized displacement as an additional form of minority repression. It has done so in particular by creating facts on the ground for what the International Court of Justice, in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, called "a fait accompli tantamount to *de facto* annexation."[543]

Earlier sections have detailed how Israel has since its inception used several legal bases to guarantee exclusive rights for Jews based on their religious identity. Among these legal bases, a handful of laws are distinguishable as being of critical importance to the case of the Samaritans: the 1950 Law of Return and the 1952 Law of Citizenship.[544] The latter's primary purpose is the regulation of the acquisition and loss of nationality[545] and the overall delimitation of Israel's constitutive population. It provides the civic-territorial doctrine that organizes how Jews and non-

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[539] *See* U.N. SCOR & GAOR Annex, 51st Sess., *Israeli-Palestinian Interim Agreement on the West Bank, and the Gaza Strip (Oslo II)*, Protocol Concerning Civil Affairs, U.N. Doc. A/51/889 (Sept. 28, 1995). *See also* U.N. Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory (OCHA OPT), West Bank Area C: Key Humanitarian Concerns (2016), https://www.ochaopt.org/sites/default/files/area_c_key_humanitarian_concerns.pdf.

[540] Arie Arnon and Jimmy Weinblatt, Sovereignty, and economic development: the case of Israel and Palestine, *The Economic Journal*, 111.472, pp.291-308 (2001).

[541] Victor Kattan, A State of Palestine: The Case for UN Recognition and Membership, *Policy Brief, Al-Shabaka, Ramallah, (May* 2011).

[542] EDWARD SAID, *Slow Death: Punishment by Detail, in* FROM OSLO TO IRAQ and the Road Map 94, 94–200 (2002).

[543] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 131, U.N. Doc. A/ES-10/273 (July 9, 2004), https://www.un.org/unispal/document/auto-insert-178825/.

[544] Preliminary Principles No. 5712-1952, passed on Apr. 1, 1952, and published in the Official Gazette, Sefer Ha-Chukkim No. 95, 146 (Apr. 8, 1952) (Isr.) (the Bill was published in Hatza'ot Chok No. 93 of the 22nd Cheshvan No. 5712, 22 (Nov. 21, 1951)).

[545] YOSSI HARPAZ & BEN HERZOG, ROBERT SCHUMAN CENTRE FOR ADVANCED STUD., REPORT ON CITIZENSHIP LAW: ISRAEL 1–3 (June 2018), https://cadmus.eui.eu/bitstream/handle/1814/56024/RSCAS_GLOBALCIT_CR_2018_02.pdf?sequence=1&isAllowed=y.

Jews can acquire Israeli citizenship and, in Parts II-VI,[546] identifies the ways in which Israeli nationality can be acquired: return, residence in Israel, birth, or naturalization. In sum, it is the legal framework through which Samaritans and individuals immigrating to Israel through the Law of Return subsequently articulate their legal rights to citizenship.

The Citizenship Law[547] has historically been as exclusionary as its counterpart, the Law of Return.[548] The majority of Arab Muslim and Christian Palestinians, along with the other indigenous residents of British Mandate Palestine who never left the land, were only able to access citizenship through the 1952 Citizenship Law if they improbably met one of three restrictive criteria.[549] Jewish residents of British Mandatory Palestine were included in the rubric of the Law of Return in part to separate Jews from any aspect of Palestinian identity and increase the number of the Jewish population. According to the law, residents of the newly created state of Israel could legitimize their status if they either previously held Palestinian nationality, were registered as residents of Israel since at least February 1949, or registered as residents in 1952 but had not left the country until the Law's passing that year. Despite their centuries of residing on Israeli controlled land, the Samaritans were never granted citizenship or naturalized through the Citizenship Law as either an Arab-Palestinian or Jewish minority.

The Samaritans were able to acquire such status not as a fact of their legitimate belonging but through the identity mandates of the 1950 Law of Return. This version of the Law guarantees to every Jew including in pre-Israel Palestine the right to residence and eventual citizenship in Israel as an *Oleh* per their religious birthright. The law is conceptually rooted in an ideology of "ethnic return" to one designated geographical territory implying a pre-ordained belonging of a

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[546] *Id.*
[547] Citizenship Law No. 5712-1952, published in the Official Gazette, Sefer Ha-Chukkim No. 32, 51 (1952) (Isr.).
[548] Law of Return (Amendment No. 2) No. 5730-1970 (1970) (Isr.).
[549] Art. 3, Citizenship Law, *supra* note 274.

certain population at the expense of the theoretical Other.[550] Insofar as it summarily utilizes the religious attachment of Jews to the land of Israel[551] and a range of Judaism's spiritual symbols for Israel's justification, the law codifies and furthers the most exclusionary aspects of the Zionist vision at the expense of its humanitarian narrativizations. That the Samaritans benefit from this has fostered the tensions previous sections have outlined amongst Palestinians and other disenfranchised minority communities.

B. Samaritans as a Case Study of the Struggle with Selfhood: From Indigenous to the Exceptional Other

The application of Israel's laws to the Samaritans betrays the system's exploitative aims and exacerbates its effectiveness in this regard. Israel has isolated parts of the Palestinian population based on their religion, which has in the case of the Samaritans been re-imagined and coopted by the state's ambitions to put these groups in untenable liminal positions. Meanwhile, the Palestinian identity from which Samaritans have been legally and psychically untethered has long been considered by Palestinian scholars and post-colonial thinkers as a fundamental duality, oscillating between resistance to the Zionist project on the one hand and adapting to it on the other.

Mainstream Palestinian identity is not constructed around ethnocultural traits. Instead, Palestinians have been challenging the imposition of a post-colonial collective identity as the antithesis of the Israeli-Jew, in lived and imagined reality. Though authors like Rashid Khalidi[552] have shown this to have been successful for those Palestinians engaged in such a challenge, the broader effects of oppressed subjectivity may be sketched out here to see their dismantling by the

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[550] Yaffa Zilbershats, *A Jewish Majority as the Leading Criterion for Shaping Immigration Policy to Israel*, *in* THE ISRAELI NATION-STATE 191 (Fania Oz-Salzberger & Yedidia Stern eds., 2014), https://doi.org/10.1515/9781618113900-012.
[551] Rashid Khalidi, Palestinian Identity: The Construction of Modern National Consciousness (1997).
[552] *Id.* at 1.

actions of the Samaritans. In his discussion of the infamous statement to the same effect made by Golda Meir that "[t]here were no such thing as Palestinians . . . They do not exist,"[553] Sheehi writes:

> *The creation of the State of Israel conjured Palestinian consciousness into being but also interlocked it with Zionist consciousness*. This understanding is quite contrary to affirming Golda Meir's infamous statement . . . [as] a confessional parapraxis that discloses the characterological disavowal and objectification of Palestinian presence as constituent of the Jewish Israeli self. It discloses that the disavowal can *take place because the Palestinian object has been ingested into the Zionist self for it to be expelled* in the service of creating the "new Jew."[554] (italics added).

When taken in this theoretical sense "divide and conquer" may be seen as Israel's legal strategy to "ingest," as Sheehi puts it, Palestinian identity, and selfhood "into the Zionist self" and collective Israeli-Jewish memory.[555]

Of course, the Samaritans are not the first minority to be utilized in this way by the Israeli state, though their extreme proximity to the Jewish faith and integration in Abrahamic tradition more clearly manifests Israel's antithetical approach to its society. The case of the preferential treatment of the Druze throughout Israeli history is a particularly instructive parallel to that experienced by the Samaritans. As early as the founding of the Israeli state, the pseudo-identity "Arab-Israeli" was coined to describe Palestinian Druze,[556] Christians, and Muslims as a means to arbitrarily divide and create tensions among what had otherwise long been a Palestinian community.[557] Evoking multiculturalism in this way forged a homogenization rather than unification of different indigenous groups while denying them equal treatment. For the state

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[553] Schindler, 153 (2013).
[554] Stephen Sheehi, *The Transnational Palestinian Self: Toward Decolonizing Psychoanalytic Thought*, 15:3 PSYCHOANALYTIC PERSPECTIVES 307, 311 (2018).
[555] *Id.*
[556] Magid Shihade, *Settler Colonialism and Conflict: The Israeli State and its Palestinian Subjects*, 2:1 SETTLER COLONIAL STUD. 108 (2012).
[557] Moussa Abou Ramadan, *Law and Druze Identity: The Role of Law in Shaping the Druze Identity*, 61 ISRAELI ISSUES 35 (2013) (originally in Hebrew, translated into Arabic).

deploying this strategy, benefits beyond narrative inclusivity includes implicitly in legal documentation and the power to discriminate against certain entities among these groups to their advantage. In this vein the Druze like the Samaritans received added economic support and, among other privileges and opportunities unique to Israeli citizens, had the capacity to enlist in the military subordinate to Israeli Jews.[558]

This observed parallel between Israel's approaches to the Palestinian Druze and the Samaritans is evidenced by law; Until the 1995 Israeli National Census, the state of Israel used to count Samaritans residing in Israel as members of the Druze population, along with Israeli Buddhists and Hindus.[559] As the state of Israel expanded and grew increasingly extremist in its ideological Zionism, Palestinian citizens of Israel continued to be classified and reclassified into various "national" categories under Israeli law. The definition of a population by an unelected and unrespected power has important implications for the lived realities of that population, to the extent that the population may choose to embrace or reject this definition by their collective aspirations.

A collective identity shifts and evolves around its top-down classification in undemocratic contexts where governments use these classifications to discriminate among their citizenry, unlike Democratic states whose leaders ostensibly hold minority and majority groups to the same rights and responsibilities. As parties of the former context, the Samaritans were legally separated from Druze nationals in 1995, thus beginning their collective self-imagination as the antithetical Other around an absence of rather than positive declaration of historical and religious identity. The budgetary guidelines for the Ministry of Interior went even further in this identity annexation and moved the Samaritans to the "non-Jewish" category, thus quite literally defining the group by what

[558] *Id.*
[559] Israeli Central Bureau of Statistics, *Demographic Features - Definitions and Explanations*, https://www.cbs.gov.il/he/Pages/default.aspx (Isr.).

it is not. Despite being a people whose collective identity centers on the religion they practice and its history, the Samaritans were categorized as having "no religious affiliation" by the Israeli state.

Meanwhile, a 2017 survey published by Israel's Ministry of Diaspora Affairs refers to the Samaritans as a "marginal community" [560] that has existed at the fringes of the Jewish People but has an affinity to it.[561] These and other testaments to the sudden top-down shift in Israel's approach to the Samaritan population caused their identity to shift in the public narrative from stability to autonomous variability, which implicitly disparages its members as fundamentally non-essential or fluctuating beings. The ultimate tool for state control, such flexibly defined persons are forced in the process of state-definition to possess relational selfhood, one that has no claim to an essential nature or to the historical roots and security of belonging which such a nature confers.[562]

To be clear, the Samaritans' deprivation of social power and autonomy through the *de facto* annexation of the West Bank allows for this fissure of Samaritan identity in Israeli law. This is one iteration of the identity annexation which this article argues is the result of Israel's particularly exclusionary practices, and insofar as it is a complex phenomenon, its articulation is not entirely linear. Israel cannot eliminate all sense of religiosity in its reformulation of Samaritan identity, or it risks losing the opportunity to advertise itself as open and fair to diaspora who seek its citizenship. With the proto-Jewish facet of their identity, their claim to uninterrupted lineage to the Tribes of Moses, and their continuous presence on the land since antiquity, the Samaritans presented a unique opportunity for Israeli nation building. Israel's joint objectives of marginalizing and oppressing a community according to its ethnoreligious identity, while touting the humane

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[560] MINISTRY OF DIASPORA AFFAIRS, REPORT OF THE PUBLIC ADVISORY COMMITTEE FOR EXAMINING ISRAEL'S APPROACH REGARDING WORLDWIDE COMMUNITIES WITH AFFINITY TO THE JEWISH PEOPLE 41 (Mar. 10, 2017).
[561] *Id.*
[562] For more on relational identity and its effects on the colonial subject, *see* CELIA BRITTON, EDOUARD GLISSANT AND POSTCOLONIAL THEORY: STRATEGIES OF LANGUAGE AND RESISTANCE (Univ. Press Va. 1999).

treatment of said population on that very same basis, further underlines the contradictory and unstable nature of the Israeli state itself and its need for the unstable "Other" to justify its national existence and imagination.[563]

Written with what appears to be an intent to verbally and materially alienate Samaritans from themselves and their community, the simultaneous integration and separation of Samaritans into Israeli and Palestinian subjectivities is a distinct articulation of the complex annexation at the heart of this study.

C. Israeli Laws of Unmaking: The New Samaritan Jew

Part I presented the argument that the language of Judaic belonging promulgated by Zionism and codified in the Law of Return is threatened by the Samaritan's steadfast separation of their religious tenets and cultural history from the Jewish faith. Their inclusion in the Law of Return as an *Olim* is perhaps the most obvious in a series of legal endeavors by the Israeli government to neutralize an ostensible Samaritan threat to the Zionist narrative. This article has pointed to one such attempt by way of the systematic rewriting of Samaritan history by Jewish orthodoxy to eliminate their geographical and cultural ties to Israeli land. The re-imagining of Samaritans as Jewish-adjacent Palestinians with the potential to be Israeli-Jews under the Law of Return is arguably the logical culmination of this centuries-long strategic refashioning of Samaritan identity.

As the narrative of Zionism and its political ambitions grew more exclusionary and less concerned with global reactions, the stance of Israel toward Samaritans and their Jewishness

[563] Sheehi, *supra* note 283, at 315.

shifted accordingly. Zionist leader Ben Zvi,[564] also an expert on Middle Eastern Jews, worked to authenticate the claim of the Samaritans for inclusion within the mandate of the Law of Return, advocating for the adoption of a more malleable and expanded definition of the Israelite nation. In his view, including Samaritans at some level in the Israeli Jewish community was a chance for the newly created state to demonstrate its connection to an ancient Israelite settlement.[565] This was clarified in his renowned letter addressed to Moshe Sharett,[566] then minister of foreign affairs, where Zvi[567] noted that "a number of *Shomronim* who live in Nablus and relate to themselves according to their tradition as descendants of Abraham, Isaac and Jacob . . . wish to return to [the] territory of Israel," and inquired about "the law concerning the Samaritans . . . within the borders of Israel."[568] Without depicting Samaritans as Jews or compromising the distinct characteristics of their identity as Samaritans, whom he strongly believed were the authentic Hebrews,[569] Zvi emphasized the shared Israelite origin and ancestral Abrahamic ties between Samaritans and Jews.

In response, the Minister of Foreign Affairs neither tackled the question of Samaritan Jewishness nor that of the territorial boundaries between the city of Nablus and the state of Israel,

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[564] Ben Zvi published extensively on the Samaritans. One of his key publications is The Book of the Samaritans (Sefer ha- Shomronim). *See generally* ITZHAK BEN-ZVI & SHEMARYAHU TALMON, THE BOOK OF THE SAMARITANS (Sefer ha-Shomronim השומרונים) (rev. ed. 1970) (1st ed., Tel Aviv: Shtibel 1935).

[565] SCHREIBER, THE COMFORT OF KIN, *supra* note 47, at 56.

[566] Letter from Ben Zvi to the Minister of Foreign Affairs (Sept. 12, 1949) (on file with author, obtained directly from Professor Michael Corinaldi who represented the Samaritans before the Supreme Court of Israel to regain access to the Israeli Citizenship) (also available in SCHREIBER, THE COMFORT OF KIN, *supra* note 335, at 57).

[567] In 1949, as a member of the first Israeli Knesset, Ben Zvi advocated for the inclusion of the Palestinian Samaritans in the Israeli Right of Return. He convinced the Israeli parliament to issue a decision to include Samaritans from *Nablus* who wished to *return to Israel*, in the Law of Return. Alongside this effort, he sought to secure Samaritans an appropriate and dignified place in the newly created Israeli state. Without depicting Samaritans as Jews or compromising the distinct characteristics of their identity as Samaritans, he argued for an expanded interpretation of Jewish identity. Unlike the traditional rabbinical interpretations, he aspired for a wider reading of *Klal Yisrael* to include a larger segment of members in the Israelite nation.

> Is it known to the government that a number of Shomronim who live in Nablus; and relate to themselves according to their tradition as descendants of Abraham, Issac and Jacob, and believe in their special version of The Torah of Moses; [and] a few of them wish to return to territory of Israel. What is the law concerning the Samaritans who wish to la-shuv within the borders of Israel?

In his response, the Minister of Foreign Affairs, did not tackle the question of the Jewishness of the Samaritan community in Nablus, which is a key eligibility criterion for seeking the right of return to the land of Israel:

> Answering the question regarding the Samaritans who reach the borders of Israel, I herewith urge you to declare that their law is equal to the law for all Jews of the world who come to Israel from one of the Arab countries, and therefore legally entitled to be recognized as Oleh for the purposes of the Law of Return.

[568] *Id.*

[569] SCHREIBER, THE COMFORT OF KIN, *supra* note 47, at 57 (Letter from Ben Zvi to the Minister of Foreign Affairs (Sept. 12, 1949)).

despite the contradictory language of "return" to refer to a population living, in Zvi's own words, "within the borders of Israel."[570] Nevertheless, the minister's acceptance of Samaritans as "Olim" or non-Israeli Jews catalyzed public doubts by Israel's Jewish orthodoxy concerning the applicability of this right to an increasingly self-defined Samaritan population.[571] In 1954, for example, the legal counsel for the Minister of Interior's letter to the Minister of Foreign Affairs was met with an affirmation of the Law, with the aforementioned minister declaring that indeed "[e]very Samaritan declaring his Jewishness in accordance to the Law of Return will be considered as a Jew in other aspects as well."[572]

For this conception of the Samaritan self to satisfy each of the growing divisions in the late 20th-century Zionist movement, the Israeli government needed to begin what continues to be a conflicted process of redefining what constitutes a "Jew" for immigration purposes.[573] Upon the passing of the Law of Return in 1950, a Jew was considered "a person who was born of a Jewish mother or who has become converted to Judaism and who is not a member of another religion."[574] It gradually became clear to the Israeli establishment that such a definition did not make explicit the concern of the state to present itself as opening and welcome to all kinds of Jews, including and especially the "quasi" or "proto" Jew embodied by the Samaritan. To further narrow categories of admittance based on the 1950 Law, the government passed a 1970 amendment to the law offering a more restrictive definition by stipulating that a person "shall not be registered as a Jew by ethnic affiliation or religion if a notification under this Law, or another entry in the Registry, or a public document, indicates that he is not a Jew."[575]

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[570] *Id.*
[571] *Id.*
[572] *Id.*
[573] Ian S. Lustick, Israel as a non-Arab state: the political implications of mass immigration of non-Jews, *The Middle East Journal* 417-433, (1999).
[574] Law of Return (Amendment No. 2) No. 5730-1970 (1970) (Isr.).
[575] *Id. See also* Population Registry Law No. 5725-1965, passed on July 22, 1965, and published in the Official Gazette, Sefer Ha-Chukkim No. 67 (1965) (Isr.) (A person shall not be registered as a Jew by ethnic affiliation or religion if a notification under this Law or another entry in the

In cases after 1950 when the right of return was extended to more marginal Jewish communities such as Ethiopian Jews, global minorities began striving to immigrate to and join Israeli society.[576] While the Law gives anyone meeting the definition of Jewishness in the diaspora the right to citizenship, the fact that the Supreme Court extended in 1994 the Basic Law to the Samaritans, a group with an ambiguous relationship to Judaism at best, raises questions about the Court's underlying rationale. Not only does Samaritanism stand in stark contrast with many basic tenets of Judaism and its narrative history but Nablus Samaritans clearly maintain tepid allegiance and loyalty to the state of Palestine, as seen for example in their refusal to serve in the Israeli army, maintain Palestinian citizenship and residence, and shift their loyalties according to their contexts.

In 1992, Minister of Internal Affairs and co co-founder of the ultra-orthodox religious political party Shas Aryeh Deri made public increasing concerns amongst Israelis about Samaritan "Jewishness" by criticizing the new definition offered by the 1970 amendment to the Law of Return.[577] Hoping to narrow the requirements for Jewish immigration to Israel, he argued that Samaritans are one group who "fail the elements of Jewish identity,"[578] and, being "born neither to Jewish mothers nor converts to Judaism," should remain classified as a separate non-Jewish faith community.[579] In a symbol of changing political tides, the Law of Return was reversed after thirty years and Samaritans were no longer able to ask for an immigration visa (*Oleh*) to Israel as *Olim Hashim*.[580] Though nothing changed in the Samaritan religious practice or its public representation, the decision of Deri was more about identity politics than nuanced state craft. It

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Registry or a public document indicates that he is not a Jew, so long as the said notification, entry or document has not been converted to the satisfaction of the Chief Registration Officer or so long as declaratory judgment of a competent court or tribunal has not otherwise determined.).

[576] Ahmed Karadawi, The smuggling of the Ethiopian Falasha to Israel through Sudan, *African Affairs* 90.358, pp.23-49 (1991).

[577] Haim Shapiro, *Samaritans: 'We Call Ourselves Israel'*, JERUSALEM POST (June 8, 1993), *reprinted in* A.B. SAMARITAN NEWS 37 (1993) [hereinafter Shapiro, *Samaritans*]..

[578] *Id*.

[579] *Id*.

[580] LEONARD JAY GREENSPOON, WHO IS A JEW?: REFLECTIONS ON HISTORY, RELIGION, AND CULTURE, STUDIES IN JEWISH CIVILIZATION 160–61 (2014).

explained neither how the 1970 amendment to the Law of Return would impact the status of the Samaritans nor why they should suddenly be considered inadequate for inclusion in the category of "Jewish" as prescribed by the Law of Return.[581]

For their part, the Samaritans perceived the ministry's sudden decision to be "ridiculous" and a "rude shock."[582] This strong reaction is notable for the fact that it seems to undercut their long made historical claims of distinction from the Judaic faith, even if only for immigration strategy. Samaritans vigorously lobbied to reclaim their inclusion in the Law of Return and thus their super-imposed identity as Jewish diaspora all the way up to Prime Minister Yitzhak Rabin, who passed the matter off to the Minister of Internal Affairs. As a last resort, Samaritans filed a petition for conditional order before the Supreme Court of Israel in 1993, seeking an answer on why the government ceased granting visas to members of the Samaritan community coming to Israel.[583]

Given the clear separation made between Samaritan and Jewish identity in Samaritan and Judaic historiography and religious tenets both they and the Israeli state seem to have been turning a blind eye to historical realities to advance their respective interests. As a result, Israel achieved total dominion over the annexed populations and the Samaritans survived annexation with some dignity. However, this precarious balance changed with the rightward shift of the Israeli body politics in the 1990s, which made the Zionist narrative of inclusivity and perception management on the global stage less a priority than the state's ruthless expansionism.

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[581] *Id.*
[582] Benyamin Tsedaka, *The Great Arab Families of Nablus*, 443–44 A.B. SAMARITAN NEWS 55–56 (Sept. 1987).
[583] Petition No. 4200/93 to the Israeli High Court of Justice, *reprinted in* 606 A.B. SAMARITAN NEWS 48 (Mar. 15, 1994) (Isr.).

D. The Samaritan Identity: Lost in Narrativization through Identity Annexation

Given their residence in the West Bank, the Samaritans as all Palestinians suffer near-inhuman living conditions which are likely the main motivating factor for their acceptance of Oleh immigrant status. They would be hard-pressed to reject the privileges like freedom of movement and basic social welfare they derive from their inclusion to the nation under the Right of Return Law even though accepting them requires a renouncement of critical aspects of their identity. Accepting a delegitimization of their identity also lends the Samaritans much sought-after venues for upward mobility within the Israeli system, like easier access to domestic and international trade channels and many more economic opportunities, all of which would otherwise be impossible to attain for anyone living in occupied Nablus under the auspices of the hamstrung Palestinian authorities.

That being said, it is worth questioning whether the benefits of such aid outweigh the ostensibly demeaning price. the very creation of such circumstances, which essentially force a minority population to not only depend on but to ingratiate themselves with the government that represses and exploits them, is made possible by select policies and laws of the contemporary Israeli government.[584] At least in one sense, then, the national legal system and its agents actively use the institutions designed to support its population in ways that wreak havoc on the psychology and well-being of said peoples. For despite the peripheral inclusion of the Samaritans among Israeli nationals, the majority of Samaritans belong to the Palestinian communities in which they live and with whom they often identify.

To be sure, the Israeli policy of including Samaritans as part of their citizenry is strategically beneficial to both Israel's national narrative and the Samaritans, to the extent that the

[584] Stephen Kaufman, Samaritan Political Identity 12 (1998) (M.A. thesis, Tel Aviv University).

respect of basic human rights can be considered a benefit. But it is also advantageous to Israel's agenda of aggressive identity annexation, for the Israeli state treats this population as neither fully Israeli nor Palestinian. The Samaritans' consequential fissured identity is defined by their non-belonging to the community on the one hand, and their ostensible betrayal of that community on the other.

In sum, Israel's legal approach to the Samaritans grants minimal material benefit and maximal psychic disadvantage for the Samaritans receiving the special treatment and only benefits the Israelis doling it out. It bears remembering that in their day-to-day lives, Samaritans are indistinguishable from other Palestinian Arab communities and live as effectively administered subjects in West Bank. Samaritan children attend the Palestinian public schools, where they follow the Palestinian national curriculum set by the Ministry of Education,[585] and the majority of them receive higher education in Palestinian universities. They are also broadly involved in Palestinian government and bureaucracy at several ranks and levels and can exert significant influence over the lives of non-Samaritan Palestinians as a result. For example, in 1996, the Samaritan and friend to Yasir Arafat Cohen Saloum was appointed as a representative in the first Palestinian Legislative Council.[586] More recently, in 2018, President Mahmoud Abbas appointed the High Priest of the Samaritan community, Abdallah Wassef, as a representative in the Palestinian National Council (PNC).[587]

These aspects of Samaritan life in Palestine were explained during interviews with residents of a Mount Gerizim Samaritan neighborhood between 2016 and 2020 that were excerpted

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[585] Interview with Cohen Abdallah Wassef, the High Priest of the Samaritan community, Nablus (Aug. 22, 2019).
[586]The Associated Press, *Samaritan High Priest Saloum Cohen Dies at 82* (Feb. 10, 2004), https://www.haaretz.com/1.4710850. During the first elections, the High Priest Saloum Cohen was the first Samaritan representative in the Palestinian Legislative Council. DAVID SCHENKER, PALESTINIAN DEMOCRACY AND GOVERNANCE: AN APPRAISAL OF THE LEGISLATIVE COUNCIL 11 (2000), https://www.washingtoninstitute.org/media/3571. *See also* Associated Press, *Samaritan High Priest Saloum Cohen Dies at 82*, HAARETZ (Feb. 10, 2004), https://www.haaretz.com/1.4710850.
[587] Interview with Cohen Hosny, Nablus (July 17, 2019).

in previous sections. Taken as a whole, the heterogeneity of the responses received regarding the community's conception of their identity for Palestine and Israel demonstrates the extent to which this identity has been enfranchised not only by the Israeli legal system but to a lesser extent also by the Palestinian political enterprise. One Samaritan, a general director in the Palestinian Ministry of Education and the self-professed subject of the Palestinian Liberation Movement, passionately insisted that he be considered as "a Nabulsi," stating "I am a Palestinian ... an Arab" before referring next to the late Yasir Arafat as "his father."[588]

He was not the only Samaritan to refer in glowing terms to Arafat, the founder and leader of the Fatah political party and later the chairman of the PA.[589] This is unsurprising because Arafat took several positive actions to integrate the Samaritans into Palestinian society and identity, even referring to them "Palestinian Jews."[590][591] Arafat's at times dismissive amalgamation of the Samaritans into the Palestinian cause was likely an attempt at projecting religious unity in the international community where he was highly visible as a Palestinian state's man. During the Camp David Summit of 2000,[592] for example, the PLO leader noted in a speech that the Samaritan holy site of "Temple [Mount] didn't exist in Jerusalem, it existed in Nablus"[593] and therefore belongs to Palestine. As their continued praise of Arafat shows, Samaritan continued engagement with Palestinian selfhood and identity despite their refusal to give up Israeli identity or even associate as Palestinian Jews is problematic to say the least.

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[588] *Id.*
[589] *Id.*
[590] Matt Beynon Rees, *The Samaritan's Secret: Part 2*, AGENCE FRANCE-PRESSE (May 30, 2010), https://www.pri.org/stories/2009-02-18/samaritans-secret-part-2.
[591] Laura Overmeyer, *Samaritans in Nablus: The other "People of Israel"*, QANTARA.DE (2014), https://en.qantara.de/content/samaritans-in-nablus-the-other-people-of-israel.
[592] Eric H. Cline, Jerusalem Besieged: From Ancient Canaan to Modern Israel 162 (2004).
[593] *Id.* at 162.

As members of a small minority caught between two sides of a conflict who claim dominion over them as a means to an end rather than an end itself, many Samaritans expressed their main concerns about the Palestinian-Israeli conflict as pertaining to "survival" and "collective existence." One elderly Samaritan exasperatedly summarized his attitude toward Israel's occupation of the territories as "Maybe ... if you can't beat them, join them."[594] In addition the responses of Samaritan leaders such as the High Priest or the head of the Samaritan Museum seen in the first section reflect Samaritan identity as a concept which transcends nationalism, while insisting on their sense of belonging with the Palestinians despite holding Israeli citizenship.[595]

The nuances within Samaritan collective imagination can be interpreted as an act of psychic resistance to their continued re-narrativization by the powers involved in a decades-long political and social crisis. Less charitably, the interviews suggest the lack of collective selfhood in the small group despite centuries of religious history and stability, undoubtedly a result of the superimposition of this selfhood according to a specific narrative for a specific party's gain. In general, however, one may conclude that the lived reality of contemporary Samaritans evokes the perilousness of claiming a singular condition or experience for any minority group which is not narrativized locally.

The particular position Samaritans take as subjects of an annexed land and identity offers a new articulation of Fanon's reflections on identity creation among the ostensibly oppressed. For the Samaritans, as Fanon explains in terms of universal colonial subject, selfhood appears to "not only [be] an individual question"[596] but a sociogenic one, determined by socio-geographic location and circumstances more than history and self-narrativization. The preceding sections surveyed the

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[594] Interview with Cohen Aziz, Nablus (Mar. 22, 2019).
[595] Interview with Abu Wasef Cohen, the High Priest, Nablus (Mar. 19, 2019). Cohen Hosny Wassef Samiri, *The Israeli Exodus in the Sinai Peninsula (al TeehAl Israe'ili fi Shibih Jazeerat Sinai)* (2012) (in Arabic).
[596] Sheehi, *supra* note 283, at 210.

lived experience of Samaritans and highlighted the fissure within their identity because of Israeli legal policies; they also detailed these policies while situating them within Israel's state-building project. The 1950 Law of Return was then seen to be the fundamental pillar of Israel's strategically exclusionary *modus operandi* in this project, combining the previously examined strategies of ethnoreligious identity manipulation and territorial division to annex the Samaritan identity. The last section of the article will examine the consequences of these findings by exploring the ways in which the Samaritan self-hood continues to evolve in response to Israel's policies of identity annexation.

V. The Samaritans Speak: Re-Narrativizing Their Identity in the Courtroom

The position of the Samaritans in the laws and policies of Israel has been established as ambiguous at best and subjugated at worst in a way not entirely distinct from global minorities and Palestinians in particular. This section departs from this top-down view of the Samaritans to a bottom-up approach that centers the Samaritans themselves to question the degree to which Israel's aim of psychic annexation have succeeded. Drawing on Coulthard's decolonial critique of recognition discussed in Part II, the Samaritans' response to their changed legal status will be presented here as an act of self-definition or affirmation which resists, their experience of identity annexation. The following subsections will use this as the context to offer an analysis of the 1993 Israeli Supreme Court petition on Jewish identity and examine recent judicial developments which, like the Samaritans' earlier "self-affirmation," could advance renewed destabilizations of Israeli identity.

The Samaritan community has endured decades of narrativization and manipulation at the hands of the Israeli government, and their response to Israel's redefinition of their identity in 1992 was appropriately forceful. Historian Benyamin Tsadaka was among several important figures in

the Samaritan community who expressed disappointment in the amendment to the Law of Return, noting "we never dreamed that the state we dreamed about for years would one day make it hard for us,"[597] and claiming he found it "absurd" "for Israel to make difficulties in entering the country for people who never left it."[598] Yitzhak Cohen, another high-ranking member of the Samaritan community, similarly observed that as long as the Interior Ministry is represented by Israel's ultra-Orthodox party the government will not support Samaritans but instead will actively try to strip away their rights.[599]

The Samaritans expressed their dissatisfaction to Aryeh Deri's decision in legal terms by advancing a petition before the Israeli Supreme Court in 1993[600] which contested the denial of their status as *Olim Hadashim.*[601] By actively articulating their collective identity in the face of its redefinition by Israeli lawmakers the Samaritans showed agency and cemented their distinct but historically significant place in the community. More theoretically, by inverting their redefinition by Israel in relation to what they "lack" into what they are in the petition, the Samaritans stake a claim to the language that has repressed them and articulate themselves independently. Beyond its symbolic value the actual content of the petition also emphasizes the unique identity of the Samaritans, and clarifies they aren't, nor do they want to be Jews or immigrants to the land. The positivist language of the petition moreover emphasizes the foreignness of the Israeli Jew above all concerning "the right of recent arrivals in Israel [i.e., Israeli Jews] to determine the identity of those who have never left it"[602] and declares the Samaritans to be "the true Israelites who are rooted

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[597] Shapiro, *Samaritans*, *supra* note 577, at 37.
[598] *Id*.
[599] *Id*. (citing Yitzhak Cohen, *Samaritans*).
[600] Evelyn Gordon, Samaritans Petition Court to Restore Immigrant Status, JERUSALEM POST (Feb. 8, 1993), *reprinted in* A.B. SAMARITAN NEWS 36 (1993).
[601] Benyamin Tsedaka, *Petition No. 4200/93 to the High Court of Justice Achieves Settlement Between State Attorney's Office and Samaritans*, A.B. SAMARITAN NEWS 49 (Aug. 6, 1993).
[602] *Id*.

in the land" and thereby distinct from the Israeli "others . . . the newcomers."[603] The petition goes on in the same vein by questioning whether "recent arrivals to the Land" have the right "to establish the identity of [those] who have never left the Land of Israel.[604] In so doing it directly engages with and challenges the Self-Other hierarchy which defines their relationship to the Israeli state and laws Indeed, Samaritans asserted that their undisputed attachment and belonging to Mount Gerizim and the Land of Israel "has no equivalent in any other tradition;"[605] this is tantamount to constructing a Samaritan self as a positive identity and defending it as untestable by "any person or entity in the State of Israel"[606] rather than simply being the non-Israeli and non-Jewish Other.

Such strong language marks a sharp public challenge to the legitimacy of the settler-colonial "self" and the colonized "Other" as conceived by Edward Said and threatens to invert the master-slave dialectic that such Othering is based upon.[607] To Other in this sense is to simultaneously construct the identity of one group against another from the mutual and necessarily unequal opposition that defines the relationship. Israel, as the dominant actor of the Hegelian master-slave dialectic from which the concept of Othering is inherited is in fact, and as elicited in the previous section, dependent on the Samaritans and Palestinians in order to define its Self.[608]

In Having been tied to the land, tradition, and faith for thousands of years, the Samaritan self that is evidenced by their petition need not, ultimately, be validated but merely recognized by the newcomers.[609] The remainder of this section will turn to analyzing the legal implementation of this shift in identity language and its mutually beneficial effects for Samaritans and Israelis before

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[603] *Id.*
[604] *The Primary Issue Behind the Petition Filed Against the Prime Minister and the Ministry of The Interior Is the Right of Recent Arrivals in Israel to Determine the Identity of Those Who Never Left it*, A.B. SAMARITAN NEWS [hereinafter *The Primary Issue*, A.B. SAMARITAN NEWS].
[605] *Id.*
[606] *Id.*
[607] For an overview of Simone de Beauvoir's conception of Other, *see* Karen Green. *The Other as Another Other*, 17:4 HYPATIA 1 (2002), www.jstor.org/stable/3810906. For an overview of Colonized Self and Other in Edward Said's writing, *see* Shehla Burney. *Orientalism: The Making of the Other*, 417 COUNTERPOINTS 23 (2012), www.jstor.org/stable/42981698.
[608] Sheehi, *supra* note 283, at 307–322.
[609] *The Primary Issue*, A.B. SAMARITAN NEWS, *supra* note 604.

reviewing a recent and topical landmark Supreme Court decision again redefining Jewishness for potential immigrants. While not directly applicable to the Samaritans, said decision broadens the scope of the present article as it offers renewed evidence of Israel's continuous and expanding policy of identity annexation to solidify its governing dominance.

A. 1993: The Samaritans' Strategy of Self-Affirmation before the Supreme Court

The previous section detailed how the Samaritan community's petition moved the legal debate over Jewishness and Samaritan identity away from the political sphere and into the courtroom. The Samaritans' lawyer Michael Corinaldi continued this shift by presenting the expert opinions of Professor Smaryahu Talmon[610] and Dr Menhem Mor[611] before the Supreme Court. He did so in order to reject the Israeli arguments that Samaritans belonged to a different religion and that the definition of a "Jew" for the purposes of the law was based on a secular modernist interpretation not in accordance with the rabbinic criteria. As part of his strategy, he noted that on the earliest Samaritan Identification cards the Ministry of Interior registered them as "Jews" or "Samaritan Jews" even though they were considered in the Israeli imaginary as immigrants originating from Jordan. In fact, Deri's contested amendment to the Law of Return attempted to distinguish between Samaritans in Holon who immigrated before 1992 and their immediate family members living in Nablus, where the former are considered as Jews and the latter are not. Corinaldi went on to criticize the Israeli Ministry's preferential treatment of other communities like the Karaites who also do not follow the rabbinic traditions but unlike the Samaritans remain included in the Law of Return despite the amendment.[612]

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[610] To support their position, during the 45-day period, two reputable experts were invited by the Samaritans to provide their opinions: Professor Shemaryahu Talmon, one of the world's leading Pentateuch scholars and Professor of Bible at the Hebrew University of Jerusalem, and Professor Menachem Mor, former Head of the Israeli History Department at Haifa University.
[611] Mor, *supra* note 349, at 2.
[612] Tsedaka, *supra* note 330, at 49.

Corinaldi's strategy proved successful when Supreme Court Justice Aharon Barak issued in August 1993 an order *nisi* against the Prime Minister of Israel,[613] the Minister of Interior, and the Director of the Population Administration. The order demanded that the politicians produce justifications for the decision of denying immigration visas to Samaritans who wished to immigrate from Nablus to Israel. In a show of impatience, the judge allotted them 45 days to produce evidence to persuade the court that Samaritans are not and should not be considered as Jewish for the purposes of immigration.[614]

Before the end of the 45-day deadline, and without responding to the contentious questions, a settlement agreement was signed between both parties: the petitioner, the Committee of the Samaritan community et al., represented by Michael Corinaldi, and the respondent, the Prime Minister of the State of Israel et al.,[615] represented by Ussi Fogelman, the Officer for High Court of Justice Matters at the State Attorney's office, under the auspices of the Israeli Supreme Court sitting as a High Court of Justice. According to the agreement the "Samaritans coming to settle in the State of Israel will be entitled to receive an immigrant visa per the Law of Return and will receive the same treatment as members of the Samaritan community who immigrated to Israel from the time of the establishment of the State up to 1992."[616] The petition and subsequent court case all serve to highlight the inconsistencies of Israel's policy of exclusion toward the Samaritans and draw attention to the apparent lack of grounds for its modification; these features ultimately led to the victory by the Samaritans in this agreement, which was validated by a court judgment and the irrevocable power of the law.[617]

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[613] *Id.*
[614] Haim Shapiro, *Samaritan Immigrants to Get Oleh Status*, JERUSALEM POST (Mar. 21, 1994), *reprinted in* A.B. SAMARITAN NEWS 7 (1994) [hereinafter Shapiro, *Samaritan Immigrants*].
[615] HCJ 4200/93 Unpublished Court Settlement (1993) (Isr.) (on file with author, a hard copy of the decision was obtained from Professor Michael Corinalidi).
[616] *Id.*
[617] Shapiro, *Samaritan Immigrants*, *supra* note 614, at 7.

The implication of the Supreme Court decision in concrete terms was to admit Samaritans as part of the Israeli population, granting them full citizenry rights, duties, and privileges similar to those of Jews immigrating from abroad[618] without the need to prove that they belong to the Jewish People.

This clever maneuver by the courts and the parties would come to serve future generations of Samaritans facing similar challenges by Israeli law. The 1994 decision was a milestone for the status of the ethnoreligious community which had, unlike in previous legal events, established itself in Nablus and made no show of intention to immigrate to Israel. While the case presented to the Supreme Court did center around a Samaritan seeking immigration, the basis of immigration appears to have been a strategic legal tool rather than a desire representative of the community. This is re-enforced by the fact that the majority of Nablus Samaritans have since remained integrated into the Palestinian society: speaking Arabic, serving in Palestinian public sector institutions, holding Palestinian IDs and travel documents, or *de facto* Palestinian citizenship, and by and large acting as Palestinians living in Nablus.

When the Supreme Court judges allowed for the recognition of the Samaritans' right of return the state of Israel extended its laws and jurisdiction to the Samaritan people in the West Bank. Samaritans became what is better expressed by the Arabic metaphor "Juha's nail," meaning that the state of Israel extended the citizenship to them in order to retain a permanent presence in the heart of the West Bank as an irritant to the Palestinian Authority and the peace accords. Through annexing its Samaritan subjects, Israel has technically and unilaterally reimagined

[618] The court ruling, which was issued in a form of agreement between the Ministry of Interiors and the representatives of the Samaritan community, reinstated the status that the Samaritans had enjoyed during the time of the second Israeli President Ben Zvi. Accordingly, they were regranted the Oleh status, as those arriving from Arab Countries. HCJ 4200/93 Unpublished Court Settlement (1993) (Isr.) (on file with author, a hard copy of the decision was obtained from Professor Michael Corinalidi).

territories and in the name of protecting its citizens has *de facto* imposed its laws as the ultimate authorities over Palestinian populations.

B. 2021: The Courtroom Negotiations of Jewish Identity Continue

While the judicial re-narrativization of the Samaritan identity took place in the mid-1990s, a recent ruling by the Supreme Court supports this article's contention that Israel practices identity annexation as a means of state building and power consolidation. Issued in March 2021, said ruling does not directly affect the Samaritans but deals with certain Jewish converts hereto denied Israeli citizenship.

In this decision, the Supreme Court recognized the non-Orthodox Reform and Conservative movements' conversions to Judaism in Israel to obtain citizenship under Israel's Law of Return.[619] The decision was handed down as a summation of a 16-year-old battle[620] after 12 non-Israeli petitioners, who had converted to Judaism in Israel outside the Orthodox authority, filed two petitions in 2005 and 2006 before the Supreme Court of Israel. The petitioners challenged the decision of the Ministry of Interior to deny them Israeli citizenship based on the Law of Return due to their non-Orthodox conversions to Judaism in Israel.[621]

While secular and left-wing groups have hailed the verdict as a historic victory which allows for "more than one way to become a Jew,"[622] right-wing religious politicians such as Aryeh Deri have slammed the decision as "a fatal blow to Israel's Jewish Character, and a destruction of the status quo in matter of religion and state that have existed for more than 70 years."[623] The

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[619] Jewish News Syndicate, High Court: Reform and Conservative conversions in Israel valid for 'Law of Return', 01 March 2021.
[620] The Zionist Organization of the Conservative Movement (MERCAZ), Landmark Israel Supreme Court Ruling Recognizes Masorti-Conservative and Reform Conversions for Aliyah, 02 March 2021.
[621] Josh Breiner et. al., *Israel's High Court Orders State to Recognize Non-Orthodox Conversions Under Law of Return*, HAARETZ (Mar. 1, 2021).
[622] Israel Kasnett, *Landmark Decision Recognizing Non-Orthodox Conversions Performed in Israel Sparks Fierce Debate*, JEWISH NEWS SYNDICATE (Mar. 2, 2021).
[623] *Id.*

Likud Party, another vocal critic of the ruling, similarly warned that the decision "endangers the Law of Return, which is a cornerstone of Israel as a Jewish and democratic state"[624] While both chief rabbis of Israel have also denounced the decision. According to the Sephardi Chief Rabbi Yitzhak Yosef, the decision is "regrettable,"[625] and the "conversion" of the Reform and Conservative is "nothing but a falsification of Judaism." He expressed alarm that it would "lead [to] thousands of gentiles among the people of Israel."[626] David Lau, the Ashkenazi Chief Rabbi, considered that "those who converted through Reform conversions and the like are not Jewish. No High Court decision will change that fact."[627]

By strategically modifying the Orthodox definition of Jewishness to their advantage yet again, the Court once more opened the door for thousands of persons traditionally considered as non-Jews by Halakhic Orthodoxy to claim Israeli citizenship. Indeed, more than 4,000,000 Russian immigrants to Israel are waiting to be recognized as "converts" to access Israeli citizenship under the rubric of the Law of Return.[628] While justly lauded as a human rights victory, this decision is also an important testament to Israel's selective use of identity politics and multicultural values to expand its civic and territorial and psychic grasp on populations for its gain. While engaging in such continued identity annexation in the courts of law, the state is ultimately encoding the denial of Palestinians their fundamental rights, including the right of "return" to a homeland they, like the Samaritans, never willingly left.

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[624] *Id*.
[625] *High Court: Reform and Conservative Conversions in Israel Valid for 'Law of Return'*, JEWISH NEWS SYNDICATE (Mar. 1, 2021).
[626] *Id*.
[627] *Id*.
[628] Kasnett, *supra* note 622.

VI. Conclusion

This article has presented the understudied case of the Samaritans, a small but historically significant religious minority living in the Palestinian occupied territories, as an instructive example of Israel's continued manipulation of the legal system. The psychic annexation resulting from or intrinsic to these manipulations has played out through the Samaritans' tumultuous history as both Israeli and Palestinian legal subjects.

While the inclusion of Samaritans in the Law of Return appears to be an act of recognizing religious minorities in modern democracies, a closer analysis has demonstrated how the law can become a tool to "divide and conquer" and fail to recognize its subjects. Israel continues to this day to use the legal system in various ways to erase the pluralities inherent in Palestinian identity and to expunge its historically Abrahamic roots and ties to the land. As particularly contentious subjects of the law, Samaritans found themselves alongside Palestinians in their reluctant welcome into their homeland as "settlers," headed for a lifetime of non-belonging in a place from which they have been excluded by an allegedly divine decree. In conclusion, the only true benefit that the Samaritans have gained from the Law of Return is one of their own makings: in an act of self-definition, the Samaritans' petition to the Israeli Supreme Court rejected this psychic annexation and marked a milestone in the continued decolonial Palestinian struggle for the reclamation of human dignity and political agency. As the state of Israel continues to use the law as a tool of identity fragmentation and subjugation, the Samaritans provide a valuable case study on how between the ebb and the flow of the imposition of exclusionary laws, tactical citizenry gains might be rendered possible.

It has been seen that through the Law of Return the Israeli government utilized the Samaritans as a mascot of their inclusivity and a means to settle the score with the international

community. This article has evidenced the fraudulent nature of such national self-imaginings by criticizing the means that the government has used to achieve that end, among which are the damaging legal and political revisions of Samaritan identity and history. Though the Samaritans are advantaged by the benefits they have received as this newly imagined community of legal "immigrants," these benefits have created rifts between Samaritan communities and the broader Palestinian society with whom they also identify. Finding themselves the victims of yet another shift in the definition of Jewishness by the Israeli state, the Samaritans resisted the articulation of their identity as the Self to Israel's Other and narrativized themselves according to their collective conception. This act of independence was prompted by a changed definition of "Jew" in an amendment to the Law of Return, which was eventually overturned as a result of the Samaritans' self-defining efforts. By directly engaging with the exclusionary language used to define them in Israeli law, the Samaritans inverted their definitional "lack" of Jewishness into an affirmative Samaritan identity. In so doing, they emboldened and rebuilt the psyche that Israel has so long sought to annex.

It may be said that the act of agency and self-definition by the Samaritans in their petition before the Supreme Court in 1993 is the true benefit the population has gained from the exclusionary laws of Israel, not the material ones of equality before the law to which all people are entitled. The Israeli state continues to manipulate claims by various minority groups rooted in their theological and historical affiliations to expand its power beyond the creeping territorial illegal acquisition of lands and into the psyches of these subjected populations. While Israel's specific form of settler colonial state building project continues in this way, the Samaritans' bold gesture is perhaps at last a productive fissure in the thick walls of this hegemonic fortress.

Article 3: Plural Belonging: The Samaritans' Negotiation of Space in the Occupied Palestinian Territories

This article focuses on the legal and civic rights of the Samaritan community, one of the world's smallest ethno-religious minorities residing in the West Bank city of Nablus in Palestinian Occupied Territories (oPt). Although their small size has rendered them even less eligible than other minorities in the oPt to international human rights law, the Samaritans enjoy a considerably greater degree of freedom and autonomy than their counterparts in the region. This paradox will be examined through six case studies, each of which testify to the Samaritans' advantageous position in the Palestinian and Israeli legal systems. It will be seen that the Samaritans' evasion of legal consequences for their prosecutable activities, both within the oPt and in Israel, has granted them an essentially *de facto* autonomous status across the two borders. This article argues that two intersecting factors are responsible for this privileged status: the extreme pluralism of the Palestinian judicial system, and the unique religio-historical identity of the Samaritan's. In this way, the present research testifies to the vulnerability of pluralistic legal systems to special interests, and points to the broader limits of international human rights law to meet the basic needs of all minorities, equally.

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I. Introduction: [629]

Created in 1993 in accordance with the Israeli-Palestinian Peace Accords,[630] the Palestinian Authority (PA) has grappled with the administration and maintenance of a vortex of highly fragmented legal and judicial systems. These fractured frameworks are the result of centuries-old colonial and military administrations that have exercised jurisdiction over the occupied Palestinian territory (oPt).[631] A self-governing entity whose sovereignty has been undermined since its inception, the PA idealizes a democratic *modus-operandi* for the nation's future, while actively participating in and benefiting from an overarching network of laws, court systems, and regulatory frameworks designed to discriminate against and abuse their subjects. Palestinian subjects as a whole struggle to gain access to the majority of their fundamental rights within these interweaving legal and judicial systems. Minority communities and vulnerable populations in particular have been harshly affected by these systems' shortcomings and castigate the PA for its reluctance to incite meaningful change.[632]

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[629] In memory of Professor Sally Engle Marry (1944–2020), who has generously supported this project since its early stages in 2016. This article and the research behind it would not have been possible without the incredible encouragement, patience, and inspiration of my mentor and supervisor, Katherine Franke, James L. Dohr Professor of Law, Director of the Center for Gender and Sexuality Law and the faculty director of the Law, Rights, and Religion Project. Professor Franke continuously supported me throughout this research project and provided me with exceptionally valuable feedback and comments. Sincere gratitude and appreciation are extended as well to Kendall Thomas, Nash Professor of Law, Co-founder and Director of the Center for the Study of Law and Culture, and Mark Barenberg, Isidor and Seville Sulzbacher Professor of Law and Co-Director of the Program of Labor Law and Policy. Their unyielding guidance, motivation, and expertise have been highly appreciated.

[630] Declaration of Principles on Interim Self-Government Arrangements ('Oslo Accords'), Isr.-Palestine, Sept. 13, 1993, U.N. Doc. A/48/486 (Oct. 11, 1993). According to which, the Government of the State of Israel, represented by Shimon Peres, and the Palestinian Liberation Organization (PLO) team (part of the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), represented by Mahmud Abbas signed an agreement to create a Palestinian Interim Self-Government Authority, to represent the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years. For a full list of the Israeli-Palestinian agreements since 1993, *see Declaration of Principles on Interim Self-Government Arrangements ('Oslo Accords')*, PEACE AGREEMENTS DATABASE (PA-X), UNIV. OF EDINBURGH, https://www.peaceagreements.org/view/357.

[631] Glenn E. Robinson, *The Politics of Legal Reform in Palestine*, 27:1 J. PALESTINE STUD. 51 (1997).

[632] U.S. DEP'T OF STATE, OFFICE OF INT'L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: ISRAEL, WEST BANK AND GAZA 9 (2019) [hereinafter 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM]*; see also* Human Rights Watch, *Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories* (Dec. 2010) [hereinafter Human Rights Watch, *Separate and Unequal*].

Although the Samaritans[633] are by definition a minority group[634], neither Israel[635] nor Palestine legally recognizes them as such.[636] As a result, Samaritans enjoy a certain amount of autonomy in their navigation of the two legal and judicial systems that official minorities do not.[637] Their advantageous position is further bolstered by their unique ethno-religious identity, which is proximate enough to both Hebrew and Arab culture for the Samaritans to be useful to Israeli and Palestinian political ambitions. These factors have concretely enhanced the Samaritan community in a number of ways, including pathways to Israeli citizenship and its various associated freedoms.[638]

The degree of cultural, civic, and economic autonomy given to the Samaritans, otherwise unheard of for minorities in the oPt and the region more broadly, essentially amounts to a *de facto* form of self-determination.[639] This is all the more remarkable in the context of Palestine's unique

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[633] According to the Samaritan Registry of Births and Mortality of 2020, administered by Samir Yousef Sarrawi, as of January 2020, Samaritans residing in Nablus counted 395 and in Holon the community is comprised of 429 members. The total number of Samaritans as of January 2020 is 824. Samaritan Local Civil Registry, Administered by Samir Sarawi, Nablus (2020), [in Arabic].

[634] United Nations Educational, Scientific and Cultural Organization (UNESCO), *Mount Gerizim and the Samaritans*, https://whc.unesco.org/en/tentativelists/5706/. *See also*, Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples*, Palestine Samaritans (2018), https://minorityrights.org/minorities/samaritans/

[635]The Rabbinical courts in Israel ruled in 1985-86 that Samaritans are Gentiles , therefore the Rabbinical system and courts do not apply to the Samaritans. Further Samaritans were never formally recognized as a religious community. For more information see Michael Corinaldi, The Personal Status of the Samaritans in Israel, 2.89, The Israeli Center for Academic Studies (1996)

[636] Articles 3 and 5 of The Councils of the Non-Muslim Communities, Law No. 2 of 1938, *in* OFFICIAL GAZETTE No. 594 of 1938 (Palestine) detail explicitly the officially recognized non-Muslim religious communities in Palestine. قانون رقم (2) لسنة 1938 (قانون يعدل ويوحد القانون المتعلق بمجالس الطوائف الدينية المنشور في العدد رقم 594 من الجريدة الرسمية الصادر بتاريخ 1938/4/2).. Samaritans are not among the list of the formally recognized relegious communities. They are operating on a *de facto* basis. Similarly, the State of Israel has retained the Ottoman Millet system in regulating the personal status affairs of relegious communities, according to which, it reserved the right only to the officially recognize religious to administer their communal personal status affairs such as marriage, divorce, custody and inheritance. While Samaritans are not considered as Jews or members of the Jewish people, Samaritans also do not appear either among the list of formally recognized religious communities. For more information on relegious communities in Israel *See:* Natan Lerner, Relegious Liberty in the State of Israel, Emory Int'l L. Rev. 21(2007) at 253-55; Yüksel Sezgin, *The Israeli Millet System: Examining Legal Pluralism Throuh Lenses of Nation-Building and Human Rights*, 43 Israel Law Review 631–654 (2010) . *See also* Article 51 and 83 of the Palestine Order in Council (1922); Lana Tatour, *Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel*, 27:2 ARAB STUD. J. 8–27 (2019), https://doi.org/10.2139/SSRN.3533490; Nimer Sultany, *The Legal Structures of Subordination: The Palestinian Minority and Israeli Law*, *in* ISRAEL AND ITS PALESTINIAN CITIZENS: ETHNIC PRIVILEGES IN THE JEWISH STATE 191 (Nadim N. Rouhana & Sahar S. Huneidi eds., 2017); Michael Corinaldi, The Personal Status of the Samaritans in Israel, supra note 7 at 2.89.

[637] The 824 people which comprise the present-day Samaritan community are divided between the city of Nablus in Palestine and Holon in Israel and together make up perhaps the only minority that has leveraged Palestine's unique legal pluralism to its advantage. Given that much has been written on the cultural, religious and historical aspects of this community, this paper will explicitly deal with the less than 400 Samaritans living in Nablus on Mount Gerizim Arabic Jabal Al-Ṭūr, Hebrew Har Gerizim. Samaritan Local Civil Registry, administered by Samir Sarawi, Nablus (2020), supre note 5, [in Arabic].

[638] MONIKA SCHREIBER, THE COMFORT OF KIN: SAMARITAN COMMUNITY, KINSHIP, AND MARRIAGE, 51 BRILL'S JEWISH STUDIES 69–72 (2014) [hereinafter SCHREIBER, THE COMFORT OF KIN].

[639] While the minority status of the Samaritans is both informed by their religious practice and their ethnic ancestry, I will compare their treatment by the PA and by the Israeli authorities to that of other minorities or vulnerable groups, whatever their identity marker (gender, sexual orientation, ethnicity or religion). This comparison *largo sensu* aims at shedding light on the contrasting, be they imposed and/or self-created, dynamics

legal and judicial pluralism, which presents numerous obstacles to even the most relatively advantaged members of society.[640] Although the Palestinian system is exceptional for a number of reasons that will be explored in the following sections, its pluralistic nature is not in fact distinctive. The coexistence of multiple normative legal and judicial systems in one socio-legal space has been studied and observed in a range of contexts since the early 20th century.[641] First coined by the legal sociologist Georges Gurvitch[642] in 1931,[643] legal pluralism was believed to be part of the "normative logic of statehood"[644] in a range of countries. Belgian legal scholar Jacques Vanderlinden was the first to present legal pluralism in an analytic rather than expository framework.[645] In his influential writings on the topic, Vanderlinden presents legal pluralism not as a mere feature of governance, but as an opportunity for the governed.[646] Within the context of an independent society, pluralism is presented as a liberating feature which allows its members to choose between more than one set of co-existing rules, rather than be governed by one overarching system.[647]

Nevertheless, pluralistic systems have also long existed in colonially occupied countries, such as Palestine.[648] In the colonial context, multiple systems are all but inevitable due to the

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existing between State powers and other *othered* small groups in the oPt, in particular given the uniqueness of the Samaritans. Thus, in no way does this comparison imply similarities of lived experiences among these groups.

[640] According to Feras Milhem and Jamil Salem, Palestinians perceive the existence of formal legal systems "as a form of domination, control and domination*", Building the Rule of Law in Palestine: Rule of Law Without Freedom*, in INTERNATIONAL LAW AND THE ISRAELI-PALESTINIAN CONFLICT: A RIGHTS-BASED APPROACH TO MIDDLE EAST PEACE (2010) at 262.

[641] *See* Sally Engle Merry, *Legal Pluralism*, 22 LAW & SOC'Y REV. 869 (1988); pp.869-896, at 869[hereinafter Merry, *Legal Pluralism*]; Sally Engle Merry, *Going to Court: Strategies of Dispute Management in an American Urban Neighborhood*, 13 LAW & SOC'Y REV. 891 (1979). John Griffiths, *What Is Legal Pluralism?*, 24 J. LEGAL PLURALISM & UNOFFICIAL L. 1 (1986); LEOPOLD J. POSPISIL, ANTHROPOLOGY OF LAW: A COMPARATIVE THEORY (1971).

[642] In 1931, in his Le temps présent et l'idée de droit social [Present Time and the Idea of Social Law], Georges Gurvitch introduced for the first time the concept of legal pluralism. *See* Michel Coutu, *Collective Autonomy and Legal Pluralism: Georges Gurvitch, Hugo Sinzheimer, and the Right to Work*, 90:2 DROIT ET SOCIÉTÉ 351 (2015).

[643] Coutu, Michel. "Collective Autonomy and Legal Pluralism: Georges Gurvitch, Hugo Sinzheimer, and the Right to Work", *Droit et société*, vol. 90, no. 2, 2015, pp. 351-372, at 352 [in French].

[644] Keebet von Benda-Beckmann & Bertram Turner, *Legal Pluralism, Social Theory, and the State*, 50:3 J. LEGAL PLURALISM & UNOFFICIAL L. 256 (2018).

[645] Franz von Benda-Beckmann & Keebet von Benda-Beckmann, *The Dynamics of Change and Continuity in Plural Legal Orders*, 38:53-54 J. LEGAL PLURALISM & UNOFFICIAL L. 1 (2006).

[646] *Id.*

[647] *Id.*

[648] Keebet von Benda-Beckmann & Bertram Turner, *Legal Pluralism, Social Theory, and the State*, 50:3 J. LEGAL PLURALISM & UNOFFICIAL L. 255 (2018).

constant presence of various foreign powers.[649] Historically, subjects under the jurisdiction of colonial administrations have always belonged to more than one legal system, depending on the preference of the occupying power and local rulers.[650] The constitutive elements of this type of pluralistic system, namely decentralized administrations and the precedence of colonial adjudication, cause inherent instability.[651]

The occupied Palestinian territory is arguably a case of "extreme legal pluralism" wherein laws of the Ottoman, British, Jordanian, and Egyptian governates, the Palestinian Authority, various religious sects, International Humanitarian Law (IHL) and International Human Rights Law (IHRL),[652] as well as more than 1,800 Israeli military orders,[653] continue an uneasy co-existence.[654] It is within this extreme legal context that the Samaritans' various advantages will be examined, as a means to shed light on not only the failings of legal pluralism in such 'neo-colonial' contexts but also its potential advantages, when used correctly.

The main avenue Samaritans have used to secure their legal and civic rights has been the favorable rulings in Israeli and Palestinian courts.[655] After years of navigating various liminal identities prescribed to them by the Israeli and oPt legal systems, the Samaritans filed a case before the Israeli Supreme Court in 1993.[656] Their claim was cast in legal language but ultimately relied

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[649] *Id.*
[650] *Id.*
[651] *Id.*
[652] For a comprehensive list of ratified treaties for the State of Palestine, *see U.N. Treaty Body Database: State of Palestine*, U.N. Human Rights Treaty Bodies, U.N. Human Rights Office of the High Commissioner, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=217&Lang=en.
[653] Military Court Watch, Military Orders (2021) http://www.militarycourtwatch.org/page.php?id=SNHdhRow9Pa30432AKJqGwVetO9. For more information on the Israeli military courts and its impact on the deprivation of Palestinians fundamental rights see, for example: *Lisa Hajjar*, Courting Conflict: The *Israeli Military Court System* in the. *Bank* and *Gaza*. *Berkeley*: *University* of *California Press* (2005); Human Rights Watch, Born Without Civil Rights (2019).
[654] Kathleen Cavanaugh, 'The Israeli Military Court System in the West Banka and Gaza' (2007) 12 J Conflict Security L (2007) 201.
[655] See subsequent sections Part 2 and Part 3.
[656] Petition No. 4200/93 to the Israeli High Court of Justice, The Samaritan Community in Israel v. The Prime Minister of Israel (unpublished), *reprinted in* 606 A.B. SAMARITAN NEWS 48 (Mar. 15, 1994) (Isr.). Editorial note regarding file number inconsistency; In Michael Corinaldi, The Personal Status of the Samaritans in Israel, 2.87, The Israeli Center for Academic Studies (1996), Professor Corinaldi the lawyer who filed the

on an "supra-legal" logic, that is, the presentation of their Jewish indigeneity as a historical fact.[657] These arguments allowed the Samaritans to secure their claim to Israeli citizenship through the application of the Law of Return.[658] This allowed them to move to Israel as immigrants and granted them a number of other benefits which will be discussed in the following sections.[659] The significance of the Samaritans' victory at the Israeli Supreme Court is broader than these outcomes: it points to the group's strategic use of their hybrid identity, at once "indigenous Palestinians"[660] and "proto-Jews,"[661] as a means of securing autonomy within the overlapping sites of governance.[662]

Based on archival court records obtained from the Palestinian Judicial Council, and multiple fieldwork visits in the West Bank between 2016 and 2020,[663] this paper will unpack important legal decisions that have affected the Samaritans. Part One spells out the historical and contemporary specificities of legal pluralism in the Palestinian context, including the shaping of the modern Palestinian legal system. Part Two examines the cultural, religious, and historical conditions that laid the groundwork for the hybridity of the Palestinian Samaritans' social,

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case on behalf of the Samaritan community, uses the reference number 4200/ 94 to the Samaritan Community case against the Prime Minster of Israel, while the Supreme court brief indicates the number 4200/94.

[657] Petition No. 4200/93 to the Israeli High Court of Justice, *reprinted in* 606 A.B. SAMARITAN NEWS 48 (Mar. 15, 1994) (Isr.).

[658] Petition No. 4200/93 to the Israeli High Court of Justice, *reprinted in* 606 A.B. SAMARITAN NEWS 48 (Mar. 15, 1994) (Isr.).

[659] See subsequent sections Part 2 and Part 3.

[660] See Initial report submitted by State of Palestine to the Human Rights Committee, under article 40 of the International *Covenant* on Civil and Political Rights, CCPR/C/PSE/1 (May 2021), at 72,73, 90, 92.

[661] The Rabbinical courts in Israel ruled in 1985-86 that Samaritans are Gentiles, see supra note 8. For more information see Michael Corinaldi, The Personal Status of the Samaritans in Israel, supra note 7 at 2.89-2.89. *See also*, JULIA DROEBER, THE DYNAMICS OF COEXISTENCE IN THE MIDDLE EAST: NEGOTIATING BOUNDARIES BETWEEN CHRISTIANS, MUSLIMS, JEWS AND SAMARITANS IN PALESTINE 129–35 (2014)*;* Adnan Ayyash, The Samaritan Community in Nablus (2003) at 125. (In Arabic).

[662] ATEF DAGHLAS, DESPITE THERE NON-PARTICIPATION IN THE POLITICAL LIFE.. WHY DO SAMARITANS PARTICIPATE IN THE ISRAELI ELECTIONS (الإسرائيلية؟ الانتخابات في السامريون يشارك لماذا .. السياسية الحياة في إشراكهم عدم رغم), AL JAZEERA (MARCH 2021), [IN ARABIC], HTTPS://WWW.ALJAZEERA.NET/NEWS/POLITICS/2021/3/17/%D8%A7%D9%84%D8%B3%D8%A7%D9%85%D8%B1%D9%8A%D9%88%D9%86-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D8%AD%D9%82-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%88%D9%86%D8%B7%D9%85%D8%AD

[663] Heartfelt appreciation to the former Chief Justice of Palestine Mr. Ali Muhanna, the Head of the Anti-Corruption Commission Dr. Ahmad Barak, the Minister of Religious Affairs Dr. Mahmoud Habbash, Journalist Jameel Dababat, Researcher Khaled Zawawi, and Chief Prosecutor Nasser Jarar for their support in providing me with an unprecedented access to the Sharia and ordinary court registries and archives. Researchers, judges, and civil servants in Palestine and Israel have proven to be invaluable, and tremendous gratitude is offered to members of the Samaritan community, whose willingness to be interviewed and to share their experiences made this article possible.

economic, and legal advantages over other Palestinian minorities and highlights their exceptionality in the Israeli context. Without the need for a nationalist framework or the desire to be validated by one side of the conflict, Nablus Samaritans became citizens and legal subjects of both Israel and Palestine despite both sides seeking to appropriate their distinct claims to a contested land. Finally, Part Three argues that the particular case of the Samaritans, existing at the border of Israeli and Palestinian jurisdictions, offers a novel perspective on the political and legal strategies of a minority group to secure rights in the occupied Palestinian territories. As a consequence, the Samaritans have become deeply immersed in multiple intersecting legal structures and institutions, including the judicial and legal systems of Palestine, Islamic *Sharia*, Israel, and Jordan.

II. Palestine: The Challenges of a Pluralistic Legal System

This part will chart a history of the Palestinian legal system to provide a deeper context of the Samaritans' place within it. The case will be made that Palestine's 'neo-colonial' pluralism is the byproduct of a disruption between its citizens and their capacity to exercise freedom, and the impacts of this disruption will be surveyed. Finally, the section analyzes the pluralistic system's effects on human rights.

A. Legal Pluralism in Palestine: An Unprotective State-Citizen Nexus

In contradistinction with the prevailing norms of social contract theory on the origins of the modern state,[664] state institutions in Palestine have never expressed the aspirations, interests,

[664] G.W.F. Hegel, SYSTEM OF ETHICAL LIFE AND FIRST PHILOSOPHY OF SPIRIT (H.S. Harris & T.M. Knox ed. & trans., State University of New York Press Albany 1979).

or needs of the people on whom they were imposed.[665] Such systems were established by a long list of occupying powers, each looking to safeguard their own respective national interests at the expense of their subjects.[666] Insofar as these regulatory frameworks were not intended to benefit or allow the participation of Palestinians, these social contracts were quickly reduced to an imbalanced regime of state sponsored subjugation.[667]

After centuries of colonial and political domination,[668] the signing of the Oslo Agreements in 1993 created the Palestinian Authority (PA) and its corresponding governmental institutions, which were set to inherent a wealth of fragmented legal and judicial systems[669] operating alongside its new state and civic regulations.[670] As is the case with other localized representatives of occupied or newly independent peoples, the PA remains fractured by attempts to appeal simultaneously to the rhetoric of liberal democracy while using an inherited colonial legal framework to its advantage.[671]

Since its inception in the early 90s, the PA's fate as a *de facto* state has been less realized than its *de jure* conceptualization.[672] Indeed, the PA's transition from a limited body of self-

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[665] *See* Hussein Abu Hunnoud, *Legislation and the Enactment of Law in the Palestinian National Authority: Analytical Study* 3, 18-19, THE PALESTINIAN INDEPENDENT COMMISSION FOR CITIZENS' RIGHTS (2008) (تحليلية دراسة - الفلسطينية الوطنية السلطة في سنها وآلية التشريعات حول تقرير). (in Arabic)

[666] Tobias Kelly, *Access to Justice: The Palestinian Legal System and the Fragmentation of Coercive Power* 6 (Crisis States Programme, London Sch. Econ., Working Paper No. 41, Mar. 2004).

[667] *See* Hussein Abu Hunnoud, *Legislation and the Enactment of Law in the Palestinian National Authority: Analytical Study* 3, 16–21, THE PALESTINIAN INDEPENDENT COMMISSION FOR CITIZENS' RIGHTS (2008) (تحليلية دراسة - الفلسطينية الوطنية السلطة في سنها وآلية التشريعات حول تقرير).

[668] For an overview of the historical evolution of laws and legal systems in Palestine, see a summary developed by the Institute of Law at Birzeit University: http://lawcenter.birzeit.edu/iol/en/index.php?action_id=210

[669] Jamil Salem & Ilona-Margarita Stettner, *Informal Justice in the Palestinian Legal System: Conflict or Coexistence Between Legal Orders?*, *in* KAS INTERNATIONAL REPORTS: TRADITION AND JUSTICE 49 (Gerhard Wahlers ed., 2013).

[670] Since the dissolution of the Palestinian Legislative Council (PLC) first initiated in 2007 and fully authorized by the Supreme Constitutional Court in 2018, the democratic legislative process has been ground to a halt. RICHARD ALBERT ET AL., 2019 GLOBAL REVIEW OF CONSTITUTIONAL LAW, I·CONNECT-CLOUGH CENTER 260 (2020). Indeed, Palestinian authorities in the West Bank and in Gaza have dramatically contributed to the proliferation of inconsistent and unharmonized laws and judicial systems. Under the rubric of emergency laws, the West Bank-based authority has "selectively" passed hundreds of presidential decrees and laws on an ad-hoc basis and acceded to dozens of international agreements without adopting any domestic laws which would ensure legislative harmony and consistency. Since Palestine became a non-member observer state of the United Nations in 2012, it has ratified and acceded to dozens of international treaties and instruments without any reservations. *See* Mutaz M. Qafisheh, *Legislative Process in Palestine*, INT'L JUD. MONITOR (International Judicial Academy, Washington, D.C. 2013). *See also* Victor Persson, Palestine's Ratification of International Treaties: A Back Door to Independence? (2016) (Master thesis, Lund University); *U.N. Treaty Body Database: State of Palestine*, *supra* note 652.

[671] Feras Milhem & Jamil Salem, *Building the Rule of Law in Palestine: Rule of Law Without Freedom*, *in* INTERNATIONAL LAW AND THE ISRAELI-PALESTINIAN CONFLICT: A RIGHTS-BASED APPROACH 253–75 (2011).

[672] While the Declaration of Principles on Interim Self-Government Arrangements ("Oslo Agreement") was internationally heralded as a historic milestone in ending the Israeli-Palestinian conflict, many leading Palestinian figures and intellectuals like Edward Said, Rashid Khalidi, and Hanan

government to a fully-fledged state has been severely hampered by the continued Israeli military occupation of the West Bank,[673] and the end of serious peace talks in 2000.[674] Around that time, in a professed pursuit of "national security," Israel imposed discriminatory bureaucratic systems on Palestinian Israeli citizens, East Jerusalem residents, and Palestinians within the territories[675] as a means to continue controlling and fragmenting the geopolitical existence of the Palestinian people.[676] This move and others along with it throughout the occupation have given the State of Israel control of all Palestinian territory and allowed for its continued belligerent occupation of the Palestinian territories.[677]

The occupied Palestinian territories have been territorially and politically fragmented since the Oslo II Accord in 1995, which stipulated three administrative areas (A, B, and C),[678] each with a distinct governance and administration status, for the ruling of the West Bank.[679] This deliberate land fragmentation has not only ruptured the Palestinian territories' contiguity,[680] but it has also created enormous everyday challenges for Palestinians who have found themselves living in disjointed Bantustans[681] with limited access to justice.[682] Area A (about 18 percent of the oPt) falls

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Ashrawi took a more skeptical perspective, viewing the negotiations as an attempt to appease the international community with no guarantees for a future Palestinian state. See, for instance, Rashid Khalidi, *A Palestinian View of the Accord with Israel*, 93 CURRENT HISTORY 62 (1994); Edward Said, *The Morning After*, 15 LONDON REV. BOOKS, Oct. 21, 1993.

[673] United Nations Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territories (OCHA), Global Humanitarian Overview 2021, occupied Palestinian territory (2021), https://gho.unocha.org/occupied-palestinian-territory. *See also*, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. GL 131 (July 9). For example, para. 55 *of the advisory opinion of the* International Court of Justice, regarding the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory provides, "The Court would observe that the obligations violated by Israel include certain obligations *erga omnes*… The obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law."

[674] Camille Mansour, *Toward a New Palestinian Negotiation Paradigm*, 40 J. PALESTINE STUD. 38, 47 (2011).

[675] Raja Shehadeh, *Multiple Legal Systems in the West Bank*, PALESTINE-ISRAEL JOURNAL OF POLITICS, ECONOMICS AND CULTURE, Vol. 21 No. 3 2016 at 6, https://pij.org/articles/1681/multiple-legal-systems-in-the-west-bank

[676] Nils A. Butenschøn, *State, Power, and Citizenship in the Middle East:* A Theoretical Introduction, *in* CITIZENSHIP AND THE STATE IN THE MIDDLE EAST: APPROACHES AND APPLICATIONS 3, 20–21 (Nils A. Butenschøn et al. eds., 1st ed. 2000).

[677] Benjamin Pogrund, *Legal Pluralism in the Wild West Bank*, PALESTINE-ISRAEL JOURNAL OF POLITICS, ECONOMICS AND CULTURE, Vol. 21 No. 3 2016 at 49, https://pij.org/articles/1686/legal-pluralism-in-the-wild-west-bank

[678] U.N. SCOR & GAOR Annex, 51st Sess., *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip* at 5, U.N. Doc. A/51/889 (Sept. 28, 1995) [hereinafter *Israeli-Palestinian Interim Agreement*].

[679] Mansour, *supra* note 674.

[680] Marya Farah, *Planning in Area C: Discrimination in Law and Practice*, PALESTINE-ISRAEL JOURNAL OF POLITICS, ECONOMICS AND CULTURE, Vol. 21 No. 3 2016 at 39, https://pij.org/articles/1685/planning-in-area-c-discrimination-in-law-and-practice

[681] Haidar Eid, *Edward Said and the Re-drawing of the (Post)Colonial Political Map of Palestine*, 6 DECOLONIZATION: INDIGENEITY, EDUC. & SOC'Y 64 (2017).

[682] *Israeli-Palestinian Interim Agreement*, *supra* note 678.

under the administration of the PA, which manages most internal civilian affairs and internal security; Area B (22 percent) is jointly administered by both the PA and Israel; and Area C, which comprises approximately 60 percent of the West Bank territory and contains the Israeli settlements, is under exclusive Israeli administrative and military control (although the PA is required to provide health and human services such as water, electricity, gas, sanitation, and health).[683] In addition, Palestinians in East Jerusalem, the H2 Zone in Hebron,[684] the Seam Zone,[685] Bedouin communities, and refugee camps are constantly challenged by the discriminatory entangled web of laws, military orders, policies, and practices that limit their legal space and hinder their access to rights.[686]

The deterioration of living conditions after the Oslo Accords was accompanied by a decline in the state of human rights in the West Bank.[687] The Israeli army and civil administration have shown a deliberate indifference towards the rule of law in the West Bank, and the limited ability of the PA to enforce law has contributed to a state of legal chaos.[688] Scholars,[689] nongovernmental organizations (NGOs),[690] international nongovernmental organizations (INGOs),[691] the

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[683] *Id.*

[684] Despite the enactment of the Hebron Protocol on January 17, 1997, between the Israeli government and the Palestinian leadership, Israel continues to have direct military control over 20 percent of the old city of Hebron in the West Bank, which is home to approximately 33,000 Palestinian inhabitants and 500 Israeli settlers. Palestinians residing in this area are subject to Israeli military law while Israeli settlers are governed under Israeli civil law. *See* OCHA, THE HUMANITARIAN SITUATION IN THE H2 AREA OF THE HEBRON CITY: FINDINGS OF NEEDS ASSESSMENT (Apr. 2019).

[685] The term *Seam Zone* refers to Palestinian occupied lands trapped between Israel's Separation Wall and the Green Line demarcating Israel's border. Considered a *de-facto* annexation, the area is a military zone where Palestinians are denied access. *See The Separation Barrier and the Seam Zone*, MACHSOMWATCH, https://machsomwatch.org/en/content/separation-barrier-and-seam-zone.

[686] UNDP, INFOCUS: BEDOUINS IN THE OCCUPIED PALESTINIAN TERRITORY 3–9 (2013).

[687] HANEEN NAAMNEH, REEM AL-BOTMEH & RAMI SALAMEH, PALESTINIAN EVERYDAY LIFE: LIVING WITHIN AND WITHOUT LEGALITY (2018).

[688] Leila Farsakh, *Independence, Cantons, or Bantustans: Whither the Palestinian State?*, 59 MIDDLE EAST J. 230 (2005).

[689] *See* RAJA SHEHADEH, FROM OCCUPATION TO INTERIM ACCORDS: ISRAEL AND THE PALESTINIAN TERRITORIES, 4 CENTRE OF ISLAMIC & MIDDLE EASTERN LAW SERIES 319 (1997); Michael Mason, Mark Zeitoun & Ziad Mimi, *Compounding Vulnerability: Impacts of Climate Change on Palestinians in Gaza and the West Bank*, 41 J. PALESTINIAN STUD. 38 (2012).

[690] *See* the NGOs Al Haq and Al Dameer in the West Bank, and Al Mizan and The Palestinian Center for Human Rights (PCHR) in the Gaza Strip.

[691] *See* Amnesty Int'l, *Israel and the Occupied Territories Including the Areas Under the Jurisdiction of the Palestinian Authority: Human Rights: A Year of Shattered Hopes*, AI Index MDE 15/007/1995 (1995); UNSCO, *Rule of Law Development in the West Bank and Gaza Strip: Survey and State of the Development Effort*, UNSCO Rule of Law Survey (May 1999), https://www.un.org/unispal/document/auto-insert-206942/; OCHA, *The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank* (July 2007), https://www.ochaopt.org/sites/default/files/ocharpt_update30july2007.pdf; Human Rights Watch, *Separate and Unequal*, *supra* note 632.

international community and even the International Court of Justice (ICJ)[692] have repeatedly raised concerns about the inapplicability of multiple regulatory frameworks for governance in Areas B and C[693] to no avail.[694]

This persistent and encroaching fragmentation does not, as a phenomenon, only unfold at the territorial level; it has also deeply affected the very state-citizen nexus that is at the root of state sovereignty and its exercise.[695] For example, citizenship status remains extremely complicated for the majority of the Palestinians residing in Palestine and in the diaspora.[696] Although the PA secured residency rights and limited mobility for Palestinians, no actual right to full-fledged citizenship exists, nor does there exist any unified legislation to regulate said matter.[697] Palestinian residents[698] in the West Bank and the Gaza Strip instead possess a travel document[699] for purposes of international travel as well as an identification card (ID) [*bitaqat hawiyyah Falastinia*], both of which are issued by the PA.[700] In addition to the Palestinian-issued IDs,[701] the Israeli Civil

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[692] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. GL 131 (July 9).
[693] *Israeli-Palestinian Interim Agreement*, *supra* note 678.
[694] EHUD TAGARI & YUDITH OPPENHEIMER, DISPLACED IN THEIR OWN CITY: THE IMPACT OF ISRAELI POLICY IN EAST JERUSALEM ON THE PALESTINIAN NEIGHBORHOODS OF THE CITY BEYOND THE SEPARATION BARRIER 38–42 (2015).
[695] RENÉ GROTENHUIS, NATION-BUILDING AS NECESSARY EFFORT IN FRAGILE STATES 59–72 (Amsterdam Univ. Press 2016)
[696] As of today, almost half of all Palestinians are refugees (about 5.6 million Palestinians are registered as refugees by UNRWA as of 2019) and approximately 12.37 million Palestinians live around the world. Furthermore, around 21 percent of Palestinians live within the borders of Israel, but as second-class citizens. Palestinian Central Bureau of Statistics, Palestinians in the Diaspora, THIS WEEK IN PALESTINE, https://thisweekinpalestine.com/wp-content/uploads/2016/09/Palestinians-in-the-Diaspora.pdf; Israel Population 2021, WORLD POPULATION REVIEW, http://worldpopulationreview.com/countries/israel-population/ (last visited May 21, 2021).
[697] To this day, several laws and regulations are applied differently in the West Bank and the Gaza Strip. The PA did not harmonize all pieces of legislation in the West Bank and Gaza. It also failed to update or reform all applicable laws to correspond to the needs of Palestinian society. For example, the prevailing criminal law in the West Bank is the Jordanian Penal Law, which is different in content from the applicable law in Gaza which is the British Mandate Criminal Code Ordinance, No. 74 of 1936. See Mutaz M. Qafisheh, 'Who Has the Right to Become a Palestinian Citizen?: An International Law Analysis', Yearbook of Islamic and Middle Eastern Law, Brill/Nijhoff, The Hague and New York, Vol. 18, 2017, 112-152.
[698] Agreement on the Gaza Strip and Jericho Area, Annex II, Protocol Concerning Civil Affairs art. II Transfer of Powers and Responsibilities of the Civil Administration, Isr.-Palestine, May 4, 1994, U.N. A/49/180.
[699] *Id.* at ¶ 27(f) & (m) ("Population Registry and Documentation" sub-paragraph (f): "Exit abroad through the passages or through Israeli points of exit by residents of the Gaza Strip and the Jericho Area shall only be possible by means of an agreed passport/travel document."; sub-paragraph (m): "The format of the aforementioned identity card and passport/travel document as well as arrangements of the implementation of the provisions set forth in this Article are detailed in Appendix C attached to this Annex."). Appendix C is dedicated to arranging the Schedule Regarding Population Registry and Documentation, including format, text and size of pages.
[700] Palestinians living in the West Bank hold Palestinian ID cards and therefore have the right to reside in the West Bank in accordance with the Oslo Peace Accords. Yet, Palestinians living in Jerusalem since 1967 hold Israeli identification cards permitting them to reside in Jerusalem. Accordingly, legal status of Palestinians varies depending on their residential status. Due to this division, laws differ from one area to another. For more information see: Mutaz M. Qafisheh, 'Who Has the Right to Become a Palestinian Citizen?: An International Law Analysis', Yearbook of Islamic and Middle Eastern Law, Brill/Nijhoff, The Hague and New York, Vol. 18, 2017, 112-152; Helga Tawil-Souri, *Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel*, 29 SOCIAL TEXT 67 (2011);
[701] Helga Tawil-Souri, *Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel*, 29 SOCIAL TEXT 67 (2011).

Administration forces Palestinians to obtain biometric "smart" magnetic identification cards that insure the close surveillance of all Palestinians residing in "Judea and Samaria" as well as the Gaza Strip.[702] Holders of these documents do not have the right to independently exit their territory until approved by the Shin Bet, the Israeli intelligence agency, and the Israeli Civil Administration.[703] Upon approval, they must exit as a group "through the passages"[704] or through specific, variously placed Israeli points of exit.[705]

The fragile nature of the state-citizen nexus in Palestine has been its central characteristic for the past seventy years.[706] Despite its fragility, there have been concerted efforts to institute national Palestinian institutions, beginning with the codification of the Palestinian National Charter of 1964,[707] which reflected the aspirations of Pan-Arab nationalism to treat equally all those who had been living in Palestine since 1947, including Muslims, Christians, and Jews of Palestinian descent. According to the Charter, such minorities were considered Palestinian Arabs whose identity granted them rights to self-determination[708] and self-defense.[709] This vision of an empowered Palestinian co-existence was further codified by the seminal[710] 1988 Declaration of Independence,[711] which announced Palestine as "the land of the three monotheistic faiths,"[712]

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[702] Amira Hass, *The Yearnings for a Magnetic Card*, HAARETZ (May 9, 2007), https://www.haaretz.com/1.4819750.
[703] The Home Office of the UK Government, *Report of a Home Office Fact-Finding Mission Occupied Palestinian Territories: freedom of movement, security and human rights situation,* March 2020, at 38, https://www.ecoi.net/en/file/local/2026262/OPTs_-_FFM_report_PDF.pdf
[704] According to Annex III of the Oslo Agreement, Israel stipulated passage routes and military checkpoints for Palestinians traveling within the West Bank or between the West Bank and Gaza Strip. For detailed information *see* Alexandra Rijke & Claudio Minca, *Inside Checkpoint 300: Checkpoint Regimes as Spatial Political Technologies in the Occupied Palestinian Territories*, 51 ANTIPODE 966 (Mar. 2019), https://doi.org/10.1111/anti.12526.
[705] *Israeli-Palestinian Interim Agreement*, *supra* note 678. See also The Home Office of the UK Government, *Report of a Home Office Fact-Finding Mission Occupied Palestinian Territories: freedom of movement, security and human rights situation,* March 2020, pp.10-18, https://www.ecoi.net/en/file/local/2026262/OPTs_-_FFM_report_PDF.pdf
[706] NAAMNEH, AL-BOTMEH & SALAMEH, *supra* note 687, at 6.
[707] The Palestinian National Charter of 1964.
[708] The Palestinian Charter of 1964 (amended 1968) ("Article 6: The Palestinians are those Arab citizens who were living normally in Palestine up to 1947, whether they remained or were expelled. Every child who was born to a Palestinian parent after this date whether in Palestine or outside is a Palestinian; Article 7: Jews of Palestinian origin are considered Palestinians if they are willing to live peacefully and loyally in Palestine.").
[709] *Id.*
[710] Jerome Segal, *'Land of the Three Faiths:' The Little-known History of the Palestinian Declaration of Independence*, HAARETZ (Nov. 15, 2017), https://www.haaretz.com/middle-east-news/palestinians/the-1988-declaration-of-independence-1.5150321*; Palestinian Declaration of Independence November 15th, 1988*, MIDEASTWEB (2002), http://www.mideastweb.org/plc1988.htm.
[711] The Palestinian National Charter of 1964 with its amendments and the 1988 Declaration of Independence are principal legislations that enjoy the same constitutional power as the Basic Law.
[712] The Declaration of Independence, Preamble, Nov. 15, 1988 (Palestine).

while reasserting the diverse richness of Palestinian culture and religious heritage through the "temple, church and mosque."[713] These documents defined the body politic for a group of people displaced by the creation of the Jewish state of Israel and enabled them to come together as Palestinians regardless of differentiating characteristics, such as religion or ethnicity.

The creation of the PA was meant to embody this spirit of acceptance and represented to many the codification of the long theorized Palestinian identity in government and the crystallization of its values in their institutions.[714] Nonetheless, the legacy of colonialism and the novelty of this national movement for autonomy left the authority fatally challenged. Instead of being given effective sovereignty over citizenship, territory, borders, or natural resources,[715] international agreements limited it to governmental jurisdiction with certain civil administration and policing powers and responsibilities. Meanwhile critical systems like border control, natural resources, security, and population registry remained under Israeli control.[716] The following section will explore the results of this 'neo-colonial' system in the hands of an overwhelmed and frequently corrupt government,[717] by looking at responses at the local level. The rise of religious courts is a particularly powerful phenomenon which was designed to fill the gaps of an inaccessible justice system, but ultimately, they repeat their failures with regard to human rights and minority protections.[718]

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[713] *Id.*
[714] Camille Mansour, *The Palestinian-Israeli Peace Negotiations: An Overview and Assessment*, 22 J. PALESTINE STUD. 5 (Spring 1993).
[715] Edward Said, *The End of Oslo*, NATION (Oct. 12, 2000), https://www.thenation.com/article/end-oslo/ ("Oslo was designed to segregate the Palestinians in noncontiguous, economically unviable enclaves, surrounded by Israeli-controlled borders, with settlements and settlement roads punctuating and essentially violating the territories' integrity.").
[716] Hiba Husseini, *Legal Duality in the Occupied West Bank*, PALESTINE-ISRAEL JOURNAL OF POLITICS, ECONOMICS AND CULTURE, Vol. 21 No. 3 2016 at 22, https://pij.org/articles/1683/legal-duality-in-the-occupied-west-bank
[717] AMAN TRANSPARENCY PALESTINE, 12TH ANNUAL REPORT: THE STATE OF INTEGRITY AND COMBATING CORRUPTION IN PALESTINE 2019, (Oct. 2020), https://www.aman-palestine.org/cached_uploads/download/2020/10/06/12th-annual-report-final-1602000805.pdf. *See also* SAWSAN RAMAHI, CORRUPTION IN THE PALESTINIAN AUTHORITY, MIDDLE EAST MONITOR (Dec. 2013).
[718] NAAMNEH, AL-BOTMEH & SALAMEH, *supra* note 687, at 9.

B. The Inaccessibility of the Palestinian Justice System and the Outsized Role of Religious Courts

Palestinians must contend with the extremely entangled web of rights arising out of civil and religious law, as well as their respective individual court systems, as a result of what has been described as a neo-colonial pluralistic system. Countless reports, studies and scholarly works have been issued by researchers, institutions, local Non-Governmental Organizations (NGOs), and International Non-Governmental Organizations (INGOs), to address the adverse impact of this kind of legal pluralism on the everyday lives of Palestinians.[719] These studies pay particular attention to minority groups to highlight the various ways the system denies the realization of internationally recognized basic rights for minority groups.[720] This subsection will look at the impact of these failures in the Palestinian case by examining the rise of local justice in religious courts, and in particular, within the realm of family and personal status.[721]

Religious courts are responsible for governing personal status and family affairs of recognized ethno-religious groups.[722] Palestinian and Israeli military laws are also in effect—each with its own court system—in addition to customary law, known as tribal or "informal" justice systems.[723] As a result of such disjointed regimes and their overlapping bureaucratic procedures and requirements, the pluralism of the Palestinian legal system serves not as an advantage but as a

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[719] *See, e.g.*, JOINT PARALLEL REPORT submitted by Al-Haq, Addameer Prisoner Support and Human Rights Association, BADIL Resource Center for Palestinian Residency and Refugee Rights, Women's Centre for Legal Aid and Counselling to the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) on the Occasion of the Consideration of Israel's14th,15th and16th Periodic Reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination 80th Session, 13 February – 9 March, 2012 (Jan. 30, 2012), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_80_9184_E.pdf. See also Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 6/19, *Human Rights Situation in Palestine and other Occupied Arab Territories,* Office of the United Nations High Commissioner for Human Rights (OHCHR), *A/HRC/8/18 (*2008) at 12, https://www.un.org/unispal/document/auto-insert-189091/

[720] Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 6/19, *Human Rights Situation in Palestine and other Occupied Arab Territories, supra note 82 at 12.*

[721] Candace Graff, *Pockets of Lawlessness in the "Oasis of Justice*, 58 JERUSALEM QUARTERLY 13 (2014).

[722] Samer Fares, Feras Milhem & Dima Khalidi, *The Sulha System in Palestine: Between Justice and Social Order*, 28 PRACTICING ANTHROPOLOGY 21, 28 (2006).

[723] Asem Khalil, *Formal and Informal Justice in Palestine: Dealing with the Legacy of Tribal Law*, 184 ÉTUDES RURALES 169 (2009).

barrier for accessing and negotiating civil and social rights.[724] This type of proto-colonial pluralism also fosters various levels of civic lawlessness, as in the case of the Qufr Aqab neighborhood (a part of Area C)[725] or the city of Al Ram (divided between Area A and B), which will be revisited in the third Part.

Each recognized religious community maintains exclusive jurisdiction over the personal affairs of its members and retains the right to adjudicate family matters including marriage, divorce, custody, and alimony.[726] This system also allows religious communities to maintain their own family courts and laws, staff their own judges, regulate the ability to practice law before their religious courts, and apply their own religious and customary laws.[727] The maintenance of this complex system by minorities attempting to counteract the disempowering effects of pluralism significantly enhanced the role of the Islamic family courts and strengthened its institutionalization to the extent that the *Sharia* system became a parallel means to state-run civil jurisdiction.[728] As a result, the *Sharia* courts are allowed to lawfully discriminate and criminalize "non-officially" recognized religious minorities, like the Ahmadiyya Muslim Jama'at community,[729] and otherwise overrule the secular judiciary and legislative process with their own prerogatives, like in the case

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[724] *See, e.g.*, Committee on the Elimination of Racial Discrimination, Concluding observations on the combined initial and second periodic reports of the State of Palestine, U.N. Doc. CERD/C/PSE/CO/1-2 (Aug. 29, 2019), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PSE/CERD_C_PSE_CO_1-2_36938_E.pdf; Lynn Welchman, *The Bedouin Judge, the Mufti, and the Chief Islamic Justice: Competing Legal Regimes in the Occupied Palestinian Territories*, 38 J. PALESTINE STUD. 6 (2009); Raja Khalidi & Sahar Taghdisi-Rad, *The Economic Dimensions of Prolonged Occupation: Continuity and Change in Israeli Policy Towards the Palestinian Economy: A Special Report Commemorating Twenty-Five Years of UNCTAD's Programme of Assistance to the Palestinian People*, U.N. Doc. UNCTAD/GDS/2009/2 (2009).

[725] Graff, *supra* note 721.

[726] ZEINA JALLAD, PALESTINIAN WOMEN AND SECURITY: A LEGAL ANALYSIS, Geneva Centre for the Democratic Control of Armed Force (DCAF) 7–10 (2008).

[727] INSTITUTE OF L. BIRZEIT UNIV., THE SHARIA' COURTS OF PALESTINE: JUSTICE DELIVERED?: A STUDY OF THE PALESTINIAN SHARIA' LEGAL AND JUDICIAL SYSTEM FROM THE PERSPECTIVE OF WOMEN (2016).

[728] *Id.* Today, the Sharia judicial system comprises a distinct state-staffed Supreme Sharia Judicial Council, in addition to Sharia prosecution and Sharia Judicial Police, which operates fully independent from the civil Supreme Judicial Council.

[729] *Palestinian Court Declares Ahmadiyya Marriage Invalid*, RABWAH TIMES (July 1, 2016), https://www.rabwah.net/palestinian-court-declares-ahmadiyya-marriage-invalid/. Other «non-officially» recognized minorities such as millenarian Christian denomination Jehovah's Witnesses or the Bahai'i, are victims of such practices. *See* 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM, *supra* note 632, at 9.

of the failed implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) after its ratification *without reservations* by the PA.[730]

More broadly, the outsized influence of these courts testifies to the harmful effects of the polycentric legal and judicial regulatory framework maintained by the PA. Instead of modernizing laws to adhere to fundamental IHRL standards of equality before the law,[731] and in stark contradiction to the international legal instruments it has ratified,[732] the PA retains laws allowing religious court systems to regulate personal status affairs, inherited from previous eras resembling the "millet system."[733] Through its preservation of religious courts, the PA enforces and perpetuates a politics of selective tolerance rather than abiding by its rhetorical commitment to democratic governance.

The outsized role of religious courts not only weakens the rule of law in Palestine, through the enabling of exclusionary practices in matters of personal status law, but it also sheds light on how religion as an identity marker defines *de jure* and *de facto* minorities and their capacity to

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[730] In 2009, Palestinian president Mahmoud Abbas issued the Decree No. 19 of 2009 to ratify Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In April 2014, the State of Palestine acceded to the CEDAW, without submitting any reservations to its articles. For more information, *see* Zeina Jallad, *Gender Justice and the Law* 10,, UNDP (2018). Following said ratification, NGOs, international organizations, and human rights defenders have worked tirelessly to draft and push for the adoption of a Protection from Family Violence Bill (Family Protection Bill), which would provide protection to women and young girls and criminalize violence against women, including child marriages, femicide, domestic violence, and sexual violence. A technical committee to support the harmonization and the finalization of the draft bill was established in 2015 by the Council of Ministers. UNFPA, *Evaluation of UNFPA Support to the Prevention, Response to and Elimination of Gender-Based Violence, and Harmful Practices 2012-2017: Palestine Case Study* 5 (2017). The draft introduced new measures to ensure due diligence on the part of the PA to prevent and prosecute perpetrators of family violence and to protect potential victims. Despite such support, the bill has been attacked, mainly through social media (Facebook groups including Lawyers for Human Rights and Palestinian Human Rights Defenders) by a group of prominent Palestinian lawyers, judges and legal specialists who see it exclusively as yet another "Western imported legal [instrument]." The Palestinian Bar Association (PBA), The Palestinian Islamic Advisory (Dar Al Ifta'), and the Grand Mufti of Palestine (serving as the Palestinian president's advisor for legal affairs) have unanimously expressed opposition to the draft Family Protection Act; for more information, *see CEDAW Agreement: Debates About Women's Rights and Religious Legislation*, QUDS NEWS NETWORK, Dec. 18, 2019 (in Arabic). In street demonstrations and on social media, a group of senior and well-known female and male lawyers have attacked the law and any woman or man who advocates for it. They have publicly threatened to resort to the Sharia Court to sue for apostasy any lawyer speaking, writing or expressing support for the Family Protection Bill. Hassan Omran, *The Crisis of the Family Protection Bill in Palestine* (أزمة مشروع قانون حماية الأسرة في فلسطين: قراءة في عوامل القبول والرفض، وماذا بعد؟), Vision for Political Development, July 13, 2020.

[731] CEDAW, Committee on the Elimination of Discrimination against Women considers the report of the State of Palestine (July 11, 2018), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23377&LangID=E.

[732] The Presidential Decree No. (19) of 2009 Concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women demonstrates the unilateral expression of interest of the Palestinian Authority to adhere to the CEDAW. CEDAW was ratified in 2014 without reservations. The initial national report to CEDAW was due on 2 May 2015.

[733] INSTITUTE OF L. BIRZEIT UNIV., *supra* note 39.

navigate the complex web of legal systems overseen by the Palestinian state. This will prove important when understanding where the Samaritans, as a "successful" minority in Palestine, truly stand.

III. The Samaritans: A Community Thriving in Chaos

With the weakened juridical system and prominence of religious courts serving as context, this part will delve into the Samaritans' history, identity, and relations with Palestine and Israel that work in their advantage in the oPt's pluralistic system. The mapping of Samaritan advantages will highlight potential avenues for reform, so that the Palestinian legal system can be re-configured to become more beneficial for a larger number of minority communities.

Although the Samaritan community is characterized by a rigid and deeply religious identity, their political and cultural identities are more fluid.[734] For example, they reject being identified as Jewish but embrace the label of being part of a wider Israelite community in return for Israeli citizenship.[735] Moreover, while Samaritans mostly vote in the Israeli general elections for the far right political party,[736] they repeatedly state what appears to be genuine respect for and belief in the Palestinian Authority.[737] Some Samaritans even enlist in the Israeli army,[738] while yet others have reportedly launched attacks against the military.[739] These seemingly contradictory

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[734] SCHREIBER, THE COMFORT OF KIN, SUPRA NOTE 10 at 38.
[735] MABROOK ISHAQ, *A REAL-LIFE SAMARITAN LEADER EXPLAINS WHAT IT MEANS TO BE A GOOD SAMARITAN*, VICE MAGAZINE (2018), HTTPS://WWW.VICE.COM/EN/ARTICLE/594V55/A-REAL-LIFE-SAMARITAN-LEADER-EXPLAINS-WHAT-IT-MEANS-TO-BE-A-GOOD-SAMARITAN. SEE ALSO ISHAQ AL SAMIRI, AL NAJAH UNIV., *SAMARITANS IN SHECHEM, NABLUS AND MOUNT GERIZIM* (AL SAMYRION FI SHEKHEIM, NABLUS WA JABAL GERIZIM), 2 PALESTINIAN HIST. REPOSITORY 484, 484–87 (2012) (IN ARABIC).
[736] Interview with Benyamin Tsadaka, Samaritan historian, editor of the A.B. Newspaper, historian and author, Nablus (Aug. 20, 2019). *See also* SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 74–77; Adnan Ayyash, The Samaritan Community in Nablus, *supra note* 32 at 122-123. (in Arabic).
[737] Gabriele Barbati, *Israeli Election Preview: The Samaritans, Caught Between Two Votes*, INT'L BUS. TIMES (Jan. 21, 2013, 4:09 PM), https://www.ibtimes.com/israeli-election-preview-samaritans-caught-between-two-votes-1028684.
[738] ISRAELITE SAMARITAN INFORMATION INSTITUTE, https://www.israelite-samaritans.com/?s=military (search "military"). See also, Hillel Neuer and Dina Rovner, *Alternative Report of United Nations Watch to the 99th Session of the Committee on the Elimination of Racial Discrimination for its review of State of Palestine*, United Nations Watch, at 23 (2019), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PSE/INT_CERD_NGO_PSE_35518_E.pdf
[739] Usama Ayaseh, *The Tale of A Bad Samaritan*, AL AKHBAR (June 21, 2010) (in Arabic).

religious and socio-political positions work, when combined and maneuvered effectively, to enable a minuscule minority to play off their polarized representations in a way that empowers their legal and political status.

The Samaritans' minority status and their accommodation to heterogeneous cultural and political forces appear to be the only factors that differentiate their attempts at autonomy from those of other minorities. These features of Samaritan identity will therefore be examined in more detail with the aim of shedding light on the importance of their hybridized cultural identity and on how Samaritans have used the oPt's legal pluralism for their advantage. The present Part will do so in three subsections: the first will recount a brief history of the Samaritans' hybrid identity, while the second and third will focus on the ways in which the group used this identity to their gain in Palestine and in Israel.

A. The Curious Creation of a Hybrid Identity: Samaritan Faith and History

The Samaritans' identity is in various ways Israeli-Jewish and Arab-Palestinian due to its similarity to critical features of both communities.[740] The religious practices and beliefs of Samaritanism form the core of this mixed cultural identity.[741] While demographically nominal and plagued by fears of extinction since late antiquity, the Samaritans have had an outsized influence on the development of both rabbinical Judaism and early Christianity.[742] Samaritan creed places the group as the last and only true ancient Israelites in existence, in possession of a history which evidences their traceable lineage from three of the twelve Israelite tribes: Menasseh, Ephraim, and

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[740] *Laura Overmeyer, The Other "People of Israel"*, QANTARA.DE *(2014)*, https://en.qantara.de/content/samaritans-in-nablus-the-other-people-of-israel. See also Reuben Lewis, *The Last Samaritans, Israel's Smallest Religious Minority*, CULTURE TRIP *(2018)*, *https://theculturetrip.com/middle-east/israel/articles/an-introduction-to-the-samaritans-israels-smallest-religious-minority/*

[741] SCHREIBER, THE COMFORT OF KIN, SUPRA NOTE 10, at 9.

[742] Louis H. Feldman, *Josephus' Attitude Toward the Samaritans: A Study In Ambivalence*, *in* STUDIES IN JEWISH CIVILIZATION—3: JEWISH SECTS, RELIGIOUS MOVEMENTS, AND POLITICAL PARTIES 23, 23–26 (1992).

Levi.[743] Accordingly, their name is believed to be derived from the word *Shamarim*, which means the "keepers of the truth,"[744] though today members of the community prefer to use the Aramaic term "Shomronim."[745]

The relationship between Samaritanism and Judaism has for more than 1,500 years ranged from ambivalent to hostile.[746] With the closing of the Talmud in the 6th century CE, Samaritans were regarded as Gentiles, and laws on marriage prohibitions and conversion were applied to them.[747] The *Halakhah* contends that Samaritans are not indigenous to Samaria[748] and have no *a priori* connection with the Israelites, the Tribes of Israel, and thus by extension, Judaism.[749] Rather, it sees them as an amalgamation of different peoples who were brought by the Assyrians after their conquest of the region in the 8th century BCE.[750] Accordingly, the current position of the religious Jewry perceives Samaritans as Gentiles,[751] at most a mixture of Israelite people with non-Israelite.[752] Samaritans vigorously reject this interpretation, insisting they have remained continuously in Palestine since the Exodus from Egypt.[753]

The particular hostility evidenced in more contemporary dealings between the two Abrahamic faiths is a relatively more recent phenomenon, manifesting in frequent expressions of displeasure

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[743] Israel Sedaka, *Izhak Ben Zvi, David Ben-Gurion and the Samaritans*, *in* SAMARITANS: PAST AND PRESENT: CURRENT STUDIES 240–45 (Menachem Mor, Friedrich V. Reiterer & Waltraud Winkler eds., 2010). *See also* Monika Schreiber, *The Samaritans*, *in* ROUTLEDGE HANDBOOK OF MINORITIES IN THE MIDDLE EAST 225, 229 (2019) [hereinafter Schreiber, *The Samaritans*].
[744] J.W. Jamieson, *The Samaritans*, 23 THE MANKIND QUARTERLY 141, 142 (1982).
[745] Shemaryahu Talmon, Expert Opinion in the Matter of the Samaritans to the Ministry of Interior, Population Registry (Jan. 3, 1994).
[746] Jamieson, *supra* note 744, at 142.
[747] *Id.*
[748] "The Old Testament has many references to Samaria, but only one to the Samaritans. 2 Kings 17 records the fall of the northern kingdom of Israel to the king of Assyria. . . . Are the Samaritans of the New Testament the descendants of the Israelite survivors of the Assyrian invasion of 722 B.C. and the people who were imported from other lands?" Stephen Voorwinde, *Do Jews Have Dealings with Samaritans?*, VOX REFORMATA 27–28 (2011).
[749] *Id.*
[750] Jamieson, *supra* note 744, at 142.
[751] In 1985-1986, the Israeli Chief Rabbanite and Rabbanical Courts issued a decision ruling that Samaritans are to be treated as Gentiles. The full text of the court decision was published in Torah She-Be'al-Peh 29 (1988) 59-67 (in Hebrew). For more information see, Michael Corinaldi, The Personal Status of the Samaritans in Israel, 2.87, The Israeli Center for Academic Studies (1996)
[752] Yairah A. Amit, *The Samaritans—Biblical Positions in the Service of Modern Politics*, *in* SAMARITANS: PAST AND PRESENT: CURRENT STUDIES 247–50 (Menachem Mor, Friedrich V. Reiterer & Waltraud Winkler eds., 2010).
[753] There is a general consensus among researchers about the Semitic origin of the Samaritan people, but their exact origin remains unclear. For more information *see* Feldman, *supra* note 742, at 23–26.

by Jewish religious authorities on the status of Samaritanism, the inter-marriages of Jews and Samaritans, and the general establishment of Samaritan settlements outside Nablus.[754] Despite the promulgation of this hostile stance, a revival of the dwindling Samaritan community began in the late 19th century.[755] With the growing influence of secular Zionism after the establishment of the state of Israel in the early 20th century, Jewish attitudes toward the Samaritans changed notably.[756] Much like current Israeli politicians, secular Ashkenazi Jews of the time used Samaritan indigeneity as a way to link and authenticate a connection between Jewish identity and the land of Palestine.[757] To this day it is clear that secular Zionist settlers played a major role in revitalizing the endangered minority, enabling its survival and improving its socioeconomic status.[758]

Perhaps the most prominent Zionist to come into contact with the Samaritans was Yitzak Ben-Zvi, the second and longest-serving President of Israel (1952–1963).[759] Zvi's efforts to include the Samaritans under the 1950 Law of Return helped to construct their legal identity in the newly established state of Israel and represented a turning point in their status as hybridized legal subjects.[760] According to this law, Palestinian Samaritan residents in Nablus who wished to settle

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[754] JULIA DROEBER, THE DYNAMICS OF COEXISTENCE IN THE MIDDLE EAST: NEGOTIATING BOUNDARIES BETWEEN CHRISTIANS, MUSLIMS, JEWS AND SAMARITANS IN PALESTINE 129–35 (2014).

[755] The Crisis of 1841 revealed new ambivalence from Jewish authorities, and an understanding of the ways Samaritans negotiate their space, despite respective theological and ideological differences. See, Reinhard Pummer, *The Samaritans: A Profile* (2016) at 163. See also, Jim Ridolfo, Digital Samaritans (2015), at 20. See also, Judith Fein, *The Last of the Good Samaritans*, BBC TRAVEL (2018), https://www.bbc.com/travel/article/20180828-the-last-of-the-good-samaritans

[756] SCHREIBER, THE COMFORT OF KIN, SUPRA NOTE 10, at 52.

[757] Schreiber, *The Samaritans*, *supra* note 743, at 229.

[758] Urien-Lefranc F. From Religious to Cultural and Back Again: Tourism Development, Heritage Revitalization, and Religious Transnationalizations among the Samaritans. *Religions*11(2):86. (2020).

[759] With the Samaritans, Ben-Zvi saw an opportunity to provide evidence of ancient Israelite settlement and hence serve the interest of the Zionist movement in authenticating and advancing their claims of Jews' and Samaritans' shared history, destiny, and faith as the Children of Israel in the Land of Israel. In his 1935 *Book of the Samaritans* (*Sefer ha-Shomronim*), Ben-Zvi deconstructed traditional rabbinical arguments on the relationship between Judaism and Samaritanism and argued for their place in the New Yishuv of the British Mandate. ITZHAK BEN-ZVI & SHEMARYAHU TALMON, THE BOOK OF THE SAMARITANS (SEFER HA-SHOMRONIM) (1970) (Isr.).

[760] Despite the lack of Samaritan participation in Zionist organizations and the Israeli military at this time, they left Nablus in search of better socio-economic and civil rights and political stability. In 1951, a Samaritan community was established in Holon, south of Tel Aviv; as of January 2020, it had a population of 429 (According to the Internal Registry of Birth and Mortality of the Samaritan Community, administered by Samir Yousef Sarawi, Nablus, 2020.).

in Israel were granted the Right of Return to Israel as *Olim* Jews[761] arriving from Arab countries.[762] They were also granted full-fledged civil status as Jewish immigrants arriving from Arab countries.[763] This was the first time that the state of Israel included a non-Jewish ethnic minority in the rubric of the Law of Return without requiring them to convert to Judaism to immigrate to the state.[764] The applicability of the Law of Return to the Samaritans, however, was never made explicit in any written documents.[765] This is because the state of Israel never issued a legally binding law defining the civil and religious status of the Samaritans; it only issued declarations and statements permitting Samaritans to be considered as *Olim* depending on the political and religious agenda of those in the Zionist political institutions.[766]

The two most prominent contradictions in this application of the Law of Return are that the Samaritans never emigrated from another territory, and that Samaritans do not consider themselves Jewish. Being proto-Jewish does not mean, for the Samaritans, being Jews,[767] and the group has insisted on preserving their distinct religious identity by being referred to solely as the Samaritans or the "true" Israelites.[768] Their commitment to keeping an independent sense of identity is also reflected in the Samaritans' lived reality: they rarely mix with Muslims, Christians, and Jews, and traditionally uphold a strict prohibition on intermarriage.[769] Samaritans in Nablus speak Arabic as

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[761] According to the Israeli Law of Return of Law No. 5710-1950 on the right of "aliya," every Jew has the right to come to this country as an "Oleh." "Oleh" (plural "Olim") means a Jew immigrating to Israel. For more information see, Michael Corinaldi, supra note 7 at 2.90.
[762] In 1949, several Samaritan families claimed their right of return as *Olim*, Jewish immigrants from the city of Nablus to the newly created state of Israel. According to the Population Registry of Israel, Samaritans who were granted the right of return from Nablus to Israel were the first and the only Jordanian Jews ever registered in the national registries. *See* SCHREIBER, THE COMFORT OF KIN, *supra* note10 at 58–71.
[763] SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 71.
[764] *Id.*
[765] *Id.*
[766] *Id.* at 60–63. See also Michael Corinaldi, supra note 7 at 2.91.
[767] They reject being labeled as Jews or Palestinian Jews by the authority of the Orthodox Rabbinate: they claim to be the descendants of the original people who never left the Land of Israel. Schreiber, *The Samaritans*, *supra* note 743, at 225. They further differentiate themselves from Jewish tradition by pointing to the "6,000 differences" between their Torah and the Hebrew Torah. Chavie Lieber, *The Other Torah*, TABLET (May 14, 2013), https://www.tabletmag.com/sections/belief/articles/the-other-torah.
[768] SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 71
[769] SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 52–53 (citing ITZHAK BEN-ZVI & SHEMARYAHU TALMON, THE BOOK OF THE SAMARITANS (Sefer ha-Shomronim השומרונים) (rev. ed. 1970) (1st ed., Tel Aviv: Shtibel 1935)).

their first language, use Aramaic and ancient Hebrew with its Samaritan variations in religious services,[770] and use modern Hebrew for their interactions with Israeli society.[771] For all intents and purposes, Samaritans in Nablus share social values, language, education, and aspects of history with their Palestinian community in a way that renders them all but indistinguishable from Arabs.[772] Even Samaritans in Holon, who speak Hebrew as their first language and have assimilated in various ways into Israeli society, retain an inseparable bond with the center of their religious life and community in Nablus.[773] These ties have allowed members of the Samaritan community across Palestine to integrate aspects of Arabic cultural and social heritage into their identity.[774]

B. Samaritan Identity and Palestine: A Politics of Ambivalence

Samaritans attempt to demonstrate a political ambivalence similar to their cultural ambiguity, though not always with the same degree of success. Throughout the recent history of the region, Nablus Samaritans have claimed to be apolitical and neutral with regard to Israeli and Palestinian nationalisms.[775] According to Cohen Hosny Wassef, the director of the Samaritan Museum and the author of the *Israelite Exodus in Sinai Peninsula*,[776] the *Shomronim* are a bridge for peace between Palestinians and Israelis:

> We take no part to the conflict. We were known by the tale of the Good Samaritans, and we always want to retain that reputation."[777] This is aptly demonstrated by our

[770] Andrew Dalby, DICTIONARY OF LANGUAGES: THE DEFINITIVE REFERENCE TO MORE THAN 400 LANGUAGES (2015) at 32.
[771] Samaritans have a special newspaper called Aleph Beit, or A.B. A.B. was created in 1969 by Benyamin and Yefet Tsedaka, the grandchildren of the founder of the Holon community, Yefet Tsadaka. It is published in English, Arabic and in Hebrew. It has been a strong voice for the community and a means of communication and connection between both Samaritan communities in the West Bank and Holon.
[772] SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 1.
[773] SCHREIBER, THE COMFORT OF KIN, *supra* note 10 at 5.
[774] Schreiber, *The Samaritans*, *supra* note 743, at 225.
[775] *Laura Overmeyer, The Other "People of Israel"*, QANTARA.DE *(2014)*, supra note 103.
[776] Cohen Hosny Wassef Samiri, *The Israeli Exodus in the Sinai Peninsula (al TeehAl Israe'ili fi Shibih Jazeerat Sinai)* (2012) (in Arabic).
[777] Interview with Cohen Hosny Wassef, Founder of the Samaritan Museum and author of the Israeli Exodus in the Sinai Peninsula and member of the Palestinian Interfaith Council, Nablus (Sept. 15, 2019).

participation and employment in both the Israeli civil administration in the West Bank and the Palestinian Authority.[778]

The Palestinian perspective on Samaritan-Arab identity and their political capital are mixed. While some Palestinians regard Samaritans as Palestinian Jews,[779] others think of them simply as Palestinian Arabs with a minority religion.[780] Palestinians in the public and private eye have admittedly questioned the Samaritan allegiance to the nationalist cause, motivated by concerns about their seemingly inherent ties to Israel.[781] The ancient connection between the two religions is only reinforced by the privileges Israel bestows upon them,[782] which are themselves due to the group's proximity to the Jewish faith.[783] At the same time, many prominent Palestinian politicians and nationals view the Samaritans as a crucial part of their social fabric and a testament to its diversity.[784] Many in the PLO and the PA, including Yasser Arafat, Nabil Sha'th, Saeb Erekat, and Ikrima Sabri, the Grand Mufti of Jerusalem and Palestine, have referred to Samaritans as "Palestinian Jews"[785] as a way of countering Israel's claim as the home of the Jewish people and

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[778] A number of Samaritans in Nablus serve as civil servants in the Palestinian Authority, namely in the education and local governance sectors. In the Israeli system, thanks to their bilingual fluency in Arabic and Hebrew, Samaritans serve in the Israeli civil administration. Interview with Cohen Aziz, who previously served as a bank manager in Israel and later as a deputy head of the Palestinian Monetary Fund (central bank), Nablus (Aug. 6, 2019). *See also* SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 72–73.

[779] See for example a document prepared by a prominent Palestinian association, the Welfare Association referring to the Samaritans as a "Jewish tribe with similarities to Judaism), at 31. Meanwhile, on page 38 of the same document, the Welfare association refers to the Jewish cemetery of Nablus as the (Samaritan). The Welfare Association, Nablus Enduring Heritage and Continuing Civilization (2011) at 31 and 38, https://www.s-pass.org/SPASSDATA/attachments/2016_04/15/5f7f3fb56053d-d33835.pdf. See also, Muhannad Hamed, Samaritans…Palestine Jews Constitute the Smallest Sect in the World, Al-Quds Al-Arabi (April25, 2019), (in Arabic) العالم في طائفة أصغر يشكلون فلسطينيون يهود ..السامريون, https://www.alquds.co.uk/%d8%a7%d9%84%d8%b3%d8%a7%d9%85%d8%b1%d9%8a%d9%88%d9%86-%d9%8a%d9%87%d9%88%d8%af-%d9%81%d9%84%d8%b3%d8%b7%d9%8a%d9%86%d9%8a%d9%88%d9%86-%d9%8a%d8%b4%d9%83%d9%84%d9%88%d9%86-%d8%a3%d8%b5%d8%ba%d8%b1/

[780] Davide Lerner and Esra Whitehouse, *Not Muslim, Not Jewish: Ancient Community in the West Bank Feels Increasingly Israeli, Haaretz (2018), https://www.haaretz.com/israel-news/.premium.MAGAZINE-for-ancient-samaritan-community-a-new-test-of-loyalty-1.6075509?v=1628261590898*

[781] *Id.*

[782] Adnan Ayyash, supra note 32, at 124.

[783] DROEBER, *supra* note 754, at 103.

[784] See Initial report submitted by State of Palestine to the Human Rights Committee, supra note 27, at 92.

[785] Or *yahood falasteen*. Pinhas Inbari, *Who Are the Palestinians?*, 17:21 INSTITUTE FOR CONTEMPORARY AFFAIRS, Jerusalem Center for Public Affairs (Aug. 7, 2017), https://jcpa.org/article/who-are-the-palestinians/. During the Camp David Summit of 2000, Chairman Arafat polemicized the Samaritan's religious objections to the Jewish Temple in Jerusalem and suggested that "the Temple didn't exist in Jerusalem, it existed in Nablus." ERIC H. CLINE, JERUSALEM BESIEGED: FROM ANCIENT CANAAN TO MODERN ISRAEL 333 (2004). *See also* Adnan Ayyash, supra note 32, at 172.

bringing the group closer to the fray of community action.[786] Although the Samaritans never liked the designation, it is noteworthy that neither they nor the Chief Priest explicitly objected to it.[787]

The PA's positive stereotyping of the Samaritans influenced its chairman, Yasser Arafat, to modify the Electoral Law in 1995[788] to include a Samaritan quota seat in the Legislative Council for the Palestinian Samaritans of Nablus.[789] Despite the very small number of eligible Samaritan voters, Arafat was widely understood to have positively discriminated in favor of the community[790] as a way to counter Israel's inclusion of Samaritans as Israeli citizens.[791] While Palestinians at large welcomed this decision,[792] the reaction within the Samaritan community was mixed.[793] In 2005, the Palestinian presidency decided to annul all quota representations—women, Christian, and Samaritan—in the Palestinian Legislative Council to achieve what was promoted as "a more inclusive electoral model."[794] After subsequent lobbying, quota seats for women and Christians were re-allocated, but not to Samaritans.[795] Their ambivalence to play a role in the PA's political

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[786] *Id.*

[787] Interview with Cohen Aziz, who previously served as a bank manager in Israel and later as a deputy head of the Palestinian Monetary Fund (central bank), Nablus (Aug. 6, 2019).

[788] Elhanan Miller, *Clinging to Ancient Traditions, the last Samaritans Keep the Faith*, TIMES ISRAEL (Apr. 26, 2013), https://www.timesofisrael.com/clinging-to-ancient-traditions-the-last-samaritans-keep-the-faith/. *See also* IFES, IRI & NDI, PALESTINIAN ELECTIONS: A PRE-ELECTION ASSESSMENT MISSION REPORT 44 (2002) https://www.ifes.org/sites/default/files/08_02_palestinian_elections_0.pdf; Article 5/2, Election Law No. 15 of 1995, Nativity 14 Ragab 1416 of the Hijri: The Electoral Constituencies (Dec. 7, 1995) (Gaza). The regulations implementing this Law shall establish the number of seats of the Council allocated to each district, which shall be proportional to the number of their inhabitants, subject to a minimum of one for each constituency, and shall also establish which districts shall have some seats specially reserved for Christians and the number of these seats, in addition to one seat for the Palestinian Samaritans in the constituency of Nablus.

[789] Art. 5/2, Election Law No. 15 of 1995, Nativity 14 Ragab 1416 of the Hijri: The Electoral Constituencies (Dec. 7, 1995) (Gaza).

[790] NAT'L DEMOCRATIC INSTITUTE FOR INT'L AFFAIRS & THE CARTER CENTER, THE JANUARY 20, 1996 PALESTINIAN ELECTIONS 32–33 & 80 (1997), https://www.cartercenter.org/documents/electionreports/democracy/FinalReportPalestine1996.pdf. During the first elections, the High Priest Salloum Cohen was the first Samaritan representative in the Palestinian Legislative Council. DAVID SCHENKER, PALESTINIAN DEMOCRACY AND GOVERNANCE: AN APPRAISAL OF THE LEGISLATIVE COUNCIL 11 (2000), https://www.washingtoninstitute.org/media/3571. *See also* Associated Press, *Samaritan High Priest Saloum Cohen Dies at 82*, HAARETZ (Feb. 10, 2004), https://www.haaretz.com/1.4710850.

[791] Miller, *supra* note 788.

[792] Bassam Yousef Ibrahim Banat, *Samaritans Caste: A History of Thousands of Years*, 4:6 INT'L J. HUMANITIES & SOC. SCIENCE 175, 179 (Apr. 2014).

[793] Three out of the five Samaritan families (total 100 eligible voters in the community) fought over candidacy in hopes that they would retain a position of power. Eventually, it was decided that only Saloum Cohen who had a close relation to Chairman Arafat could be the official candidate for the community. Interview with Cohen Aziz, who previously served as a bank manager in Israel and later as a deputy head of the Palestinian Monetary Fund (central bank), Nablus (Aug. 6, 2019).

[794] Article 5/2, Election Law No. 15 of 1995, Nativity 14 Ragab 1416 of the Hijri: The Electoral Constituencies (Dec. 7, 1995) (Gaza). The regulations implementing this Law shall establish the number of seats of the Council allocated to each district, which shall be proportional to the number of their inhabitants, subject to a minimum of one for each constituency, and shall also establish which districts shall have some seats specially reserved for Christians and the number of these seats, in addition to one seat for the Palestinian Samaritans in the constituency of Nablus.

[795] Palestine Election Law No. 9 of 2005 was adopted to expand the legislature from 88 to 132 seats. Decree of September 2 on Election Law (2007) (Palestine); Local Elections Law No. 10 (2005) (Palestine). It disregarded the Samaritan Quota. A law issued by decree number (1) of 2007, relative to the general elections: Article (4): Electing the Council Members; Article (5): Through a decree a number of the Council seats shall be allocated to Christian Citizens. *See generally* Article (5) on Women's Quota Representation Presidential decree of 2010 on the allocation of Christian seats

institutions[796] is based on a perceived opinion that the Palestinian state is too weak[797] to bring about a modern and prosperous national state building project.[798] Instead, fearing backlash or ostracization inside Israel, the Samaritans disengaged and retained their official image as apolitical.[799]

The deeply enmeshed nature of faith and national political agendas in the region makes the avoidance of any political stance nearly impossible for a minority community as ideally situated as the Samaritans. While the group maintained cordial relations with all parties in the early days of Israel's statehood, tensions peaked between the Samaritans and their respective allegiances at the outbreak of the second *intifada* in September 2000.[800] Their unwitting involvement in politics became explicit when the Samaritan's expressed concern that their ties to the Palestinian community might compromise their relationship with Israel and the advantages which come with it.[801] Ultimately, the Samaritans sent an official delegation to the Palestinian President and requested annulling the Samaritan quota, in a move generally perceived as a self-interested rejection of their association with the Palestinian community.[802]

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in the local councils (2010), http://www.elections.ps/Portals/30/pdf/PresidentialDecree_LE_ChristiansQuota.pdf; Presidential decree of 2016 on the allocation of Christian seats in the local councils (2016), http://www.elections.ps/Portals/30/pdf/LE2016/PDecree.pdf; Presidential decree of 2017 on the allocation of Christian seats in the local councils (2017), http://www.elections.ps/Portals/30/pdf/LE2017/LE2017-PrsDecree-ChristianQuotes.pdf.

[796] Notwithstanding the fact that the Samaritan quota representation has been annulled since 2005, yet the Palestinian government in its first ever report submitted to the Human Rights Committee in its fulfillment to its international obligations under article 40 of the International *Covenant* on Civil and Political Rights. For more information see Initial report submitted by State of Palestine to the Human Rights Committee, CCPR/C/PSE/1 (May 2021), at 90.

[797] SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 80–83.

[798] Interview with Benyamin Tsadaka, Nablus (Apr. 15, 2018).

[799] According to Benyamin Tsadaka, a Samaritan historian, author, head of the Israelite Samaritan Information Center and a leading figure in the Holon community, the engagement of the Samaritan community in the Palestinian political life is unnecessary and brings about tension in their relationship with Israeli political institutions. In his opinion, there is more to lose on the Israeli side, rather than the gains that they might obtain from the Palestinians. Accordingly, Samaritans retain their role as a bridge for peace between Israelis and Palestinians and should refrain from any involvement in the Palestinian political life as it is counterproductive for them. Interview with Benyamin Tsadaka, Nablus (Apr. 15, 2018). *See also* Adnan Ayyash, The Samaritan Community in Nablus, supra note 32, at 123. (in Arabic).

[800] The Second Intifada, also known as the Al-Aqṣā Intifada, broke out in September 2000. For more information see Jeremy Pressman, The Second Intifada: Background and Causes of the Israeli-Palestinian Conflict, 23:2 J. Conflict Stud. 114 (2003).

[801] Interview with Benyamin Tsadaka, Samaritan elder, editor of the A.B. Newspaper, historian and author, Nablus (Aug. 20, 2019).

[802] Interview with Cohen Hosny Wassef, Founder of the Samaritan Museum and author of the Israeli Exodus in the Sinai Peninsula and member of the Palestinian Interfaith Council, Nablus (Sept. 15, 2019).

Samaritan presence in the Israeli civil administration proved a further sticking point during the tumultuous days of the first *intifada*.[803] In response to Israel's attacks on their community, Palestinian civil society led a boycott of Israeli institutions.[804] Nonetheless, rather than participate in solidarity with the oPt citizenry, Samaritans living in Nablus actively distanced themselves from the resistance movement and continued to work for the Israeli administration while receiving their benefits.[805] A small minority did however begin participating in protests and donated money to the *Intifada* Fund, which further testifies to the mixed nature of the relationship between the Samaritans and their broader ethno-religious communities.[806]

At the leadership and institutional level of the community though, their fealty to Israel as the granter of civic and political rights and employment opportunities has largely guided their politics during various conflicts in the region.[807] Though some expressed fidelity to the Palestinian cause, they did so being protected, untargeted, and enjoying a margin of freedom of movement and access to basic needs.[808] The *intifada* and subsequent conflicts therefore brought new opportunities to further polarize public opinion about the Samaritans, leaving the community misunderstood and maligned by both sides.[809] This experience distinctively displays the intricacies of the Nablus Samaritans' identity within Palestinian culture: on most occasions they can pass as Arabs, but

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[803] SCHREIBER, THE COMFORT OF KIN, *supra* note10, at 78–81.
[804] Salim Tamari, *The Uprising's Dilemma: Limited Rebellion and Civil Society*, Middle East Report 164-165 (1990). Initially published by the Institute of Palestine Studies, MAJALLAT AL-DIRASAT AL-FILASTINIYYA ISSUE 3, 12-27 (1990) (الرتابة مخاطر: والمجتمع المحدود العصيان، المدني مجلة الفلسطينية الدراسات). (in Arabic)
[805] Hussein Ahmad Yousef & Iyad Barghouti, *Minority Under Occupation: The Sociopolitics of the Samaritans in the Palestinian Occupied Territories*, 10:3 AL NAJAH UNIV. J. RSCH. 34, 42–43 (1996).
[806] *Id.*
[807] SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 75–82.
[808] However, this unique treatment led some Palestinians to express anger at the Samaritans. Some Palestinians even considered Samaritans to be an arm of the Israeli occupying regime, or labeled them as settlers, collaborators, or traitors. *Id.*
[809] Yousef & Barghouti, *supra* note 805, at 43. Those who actually feared for their safety and security and traditionally lived in the old city of Nablus in the Yasmin Quarter moved to their holy sanctuary, Mount Gerizim, and took up permanent residence there. Since then, Mount Gerizim has been the main neighborhood occupied only by Samaritans.

during moments of heightened political tension, their allegiance is called into question given their privileged access to rights as holders of Israeli citizenship.[810]

Key figures[811] of the Samaritan community in Nablus still insist they are Palestinians and part of the Arab nation despite their ties to Israel. For example, the General Director of the Palestinian Ministry of Education,[812] who is Samaritan, summarized his identity as follows:

Do you have a phone with a recorder? Can you record what I am about to share with you? [in a loud voice, he shouted] I am a Nabulsi, I am a Palestinian, I am an Arab. The Palestinian Liberation Organization is my official representative, Fateh is my party, and Yasser Arafat, the late Palestinian president, may God rest his soul, was my leader and father [metaphorically, to reassert his allegiance].[813]

Cohen Hosny Wassef, the Museum director mentioned above, also sees the fate of the Samaritans as forcibly tied to the Palestinians.[814] This tie was further strengthened in 1995, when the PA issued them Palestinian *de facto* citizenship documents (identification card and passport),[815] following the Samaritans' inclusion via a quota seat at the Legislative Council.[816]

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[810] *Id.*

[811] The High Priest Adballah Wassef Al Samri, the head of the Samaritan community, gave a pre-nationalistic answer to the question of identity and belonging: *"The question of national identity is very simple for me. We have been here for thousands of years, we are not only Nabulsi, but we are an inextricable part of the Palestinian people. Although we have our own religion and traditions, we are not Jews, indeed we have thousands of differences between Samaritanism and Judaism."* Interview with Cohen Adballah Wassef Al Samri, High Priest, Nablus (Mar. 19, 2019).

[812] Interview with Ishaq Radwan Al Samiri, General Director at the Palestinian Ministry of Education, Nablus (Mar. 19, 2019).

[813] At the time of the interview, Mr. Ishaq Radwan Al Samiri was a General Director at the Palestinian Ministry of Education. In March 2021, he has been appointed as a diplomat serving at the Palestinian Ministry of Foreign Affairs.

[814] He said: *"We are an inseparable part of the Palestinian people, we are Palestinian. Samaritans, Christians and Muslims are together what constitute the Palestinian people. The three religions have lived on this land for thousands of years, sharing the good and the bad. We are at adversity with the Jews, they disdain us, for them we are Kuthim. This is a major insult for us."* Interview with Cohen Hosny Wassef, Founder of the Samaritan Museum and author of the Israeli Exodus in the Sinai Peninsula and member of the Palestinian Interfaith Council, Nablus (Sept. 15, 2019). Wassef the Samaritan, Director of the Samaritan Museum, Head of the Samaritan Library, Nablus (Mar. 19, 2019). Note: the term "*Kuthim*" refers to the ancient city of Kutha, located in present-day Iraq.

[815] Legally speaking, and in accordance with the Oslo peace agreement, there is no Palestinian citizenship. Up to today there is no Palestinian citizenship law. All Palestinians who reside in the West Bank or Gaza can access a Palestinian passport and identification card. Before 1995, Palestinian inhabitants of the West Bank were issued IDs by the Israeli Civil Administration. See See Mutaz M. Qafisheh, 'Who Has the Right to Become a Palestinian Citizen?: An International Law Analysis', supra note 60.

[816] As a matter of fact, the Samaritan seat-quota saga has very recently been rekindled. According to Cohen Hosny, in 2019, a delegation from the Samaritan community in Nablus met with Palestinian president Mahmoud Abbas. Attempting to demonstrate their sense of belonging to the Palestinian people, the delegation asked to be regranted a quota in the next PLC election, even though the PLC has been frozen and the legislative process has been at a halt ever since the 2006 PLC election of the Islamic party Hamas. Interview with Cohen Hosny Wassef, Founder of the

Notwithstanding such figures and the Basic Law of Palestine—which establishes rights to *all Palestinians* (including freedom of religion)[817] without discrimination based on race, sex, color, religion, political views, or disability[818]—the Samaritans' Palestinian legal status remains rather ambivalent. The list of recognized non-Muslim Palestinian communities explicitly spells out twelve recognized Christian communities and Jews of Palestinian descent,[819] without any mention made of the Samaritan people or the Samaritan community.[820] This means that, contrary to *recognized* non-Muslim ethno-religious communities who have access to their respective special Personal Status Courts as mentioned in the previous Part,[821] Samaritans are left with only access to the state-run judicial system or the *Sharia* courts,[822] thereby contributing once again to their hybridized social and political identity.[823]

In sum, the ambiguous place of the Samaritans within both Israeli and Palestinian societies and legal systems is a product of their unique status as a religious minority that belongs to the Abrahamic tradition but does not adhere to any of its three major faith groups. This ambiguous status has allowed for their continued inclusion in Zionist political institutions, largely against the

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Samaritan Museum and author of the Israeli Exodus in the Sinai Peninsula and member of the Palestinian Interfaith Council, Nablus (Sept. 15, 2019). Indeed, the Palestinian National Council acts as a link between the PA and the PLO and makes policy decisions when the Palestinian National Council (PNC) is in recess. The PLC has been in recess due to the divide between the two main political parties in Palestine, Hamas and Fatah, since the second PLC election in 2006. Therefore, it is most likely that, due to the intransigence of Palestinian internal rivalries, and the unlikelihood of new PLC elections, the Palestinian president decided to directly appoint the Samaritan High Priest as a member in the Palestinian Central Council (PCC).

[817] Article 18, Amended Basic Law of the Palestinian National Authority, CDL(2009)008 (2003) (Palestine) ("Freedom of belief, worship and the performance of religious functions are guaranteed, provided public order or public morals are not violated.").

[818] Article 9, Amended Basic Law of the Palestinian National Authority, CDL(2009)008 (2003) (Palestine) ("Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability.")

[819] The Councils of the Non-Muslim Communities, Law No. 2 of 1938, *in* OFFICIAL GAZETTE No. 594 of 1938 (Palestine).

[820] *Id.*

[821] Articles 2 & 3, The Councils of the Non-Muslim Communities, Law No. 2 of 1938, *in* OFFICIAL GAZETTE No. 594 of 1938 (Palestine).

[822] *But see* U.N. CERD, Initial and second periodic reports submitted by the State of Palestine under article 9 of the Convention, due in 2017, U.N. Doc. CERD/C/PSE/1-2, ¶ 25(a) (Oct. 16, 2018), https://www.un.org/unispal/wp-content/uploads/2019/10/CERD.C.PSE_.Q.1-2.pdf (mentioning that the Samaritans follow the Samaritan law relating to marriage, divorce, inheritance and food). Besides, the Samaritans understandingly tend to selectively resort to Sharia courts only when there is a vested interest. Hussein Ahmad Yousef & Iyad Barghouti, *The Samaritans in Nablus After 1967*, Al Najah Univ. (Jan. 24, 2005), http://www.zajel.org/article_view.asp?newsID=4427&cat=18.

[823] While on paper, there is a Priestly Council that has the power to administer the internal affairs of the community, such as marriages, divorce, and inheritance, in practice it is inactive. Samaritans in Nablus resort to Sharia courts for matters related to inheritance, and mental incapacitation, for example. See for example Court of Appeals Decision No. 223 of 2010, Personal Status, 18 Oct. 2010. Nablus [in Arabic].

wishes of long-standing rabbinical opinions,[824] as well as in Palestinian political movements.[825] Their engaged presence in Holon and the oPt and their particular religious status have allowed the Samaritans' legal possibilities to expand, while other minorities continue to regress, in the eyes of the law. The following sub-section will explore this inverse relationship in more detail and highlight how Palestine's pluralistic legal and juridical systems enable it.[826]

C. "Good Samaritans": The Preferential Treatment of Samaritans within Palestinian Institutions

The previous section highlighted the Samaritans' ambiguous position in Palestinian and Israeli politics and their respective ethno-religious narratives when placed in different social and political environments. This section will show how this unique positionality is adapted by the Samaritans in various ways to take advantage of Palestine's 'neo-colonial' pluralism and its failings under the PA.

Previous sections have mentioned that the Samaritans are not an officially recognized religion in Israel or Palestine.[827] The Palestinian Civil Status Registry is required to include the religion of each citizen on official certificates, including birth, death, and marriage

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[824] Since the emergence of rabbinical Judaism, Jewish communities have traditionally treated Samaritans with derision for their rejection of the full rabbinical texts, their disbelief in the significance of Jerusalem as the holy sanctuary, and their status as Kutim,[Kuthim] non-Israelite descendants who were brought to the "Land of Israel" by the Assyrians. SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 38–39. See also Lawrence H. Schiffman, *The Samaritans in Amoraic Halakhah*, in *Shoshannat Yaakov*, JEWISH AND IRANIAN STUDIES IN HONOR OF YAAKOV ELMAN (2012) at 372, https://doi.org/10.1163/9789004235458_019; See also Adnan Ayyash, supra note 107 at125. (in Arabic).

[825]Nader Tsadaka, who was on the frontlines of the resistance movement (the Palestinian Popular Front in Nablus), was accused of attacking an Israeli checkpoint and planning to kill two Israeli soldiers. He was sentenced by the Israeli Military Court to six life sentences and 45 years of imprisonment. His family believed he was given such a harsh sentence as a lesson to teach Samaritans as well as Palestinians to never resist or get involved politically. Hussein Ahmad Yousef and Iyad Barghouti, Minority Under Occupation The Socio-politics of the Samaritans in the Palestinian Occupied Territories, Al Najah University Journal of Research, Vol.10, No. 3, 1996, pp.34-54. at p. 43. See also Usama Ayaseh, *The Tale of A Bad Samaritan*, SUPRA NOTE 102.

[826] For an example on the ways through which Samaritans have been sought after by both the Palestinian authority and the State of Israel is during the time when both administrations geared efforts to investigate an incident of stolen Torah manuscripts, presumed to be perhaps the oldest versions of the Torah stolen from the Abrahamic Holy Land, from the Samaritan synagogue in Nablus in 1995. For more information see, Daniel Estrin, Who Stole The Torahs? National Public Radio-NPR (2018), https://www.npr.org/2018/04/29/602836507/who-stole-the-torahs

[827] See page 12.

certificates.[828] The PA, however, denies official recognition of Islamic sects such as Sufi, Isma'ili, Ahmadi, and Ja'afari, as well as Jehovah's Witnesses and the Baha'i,[829] but selectively shows tolerance and positively discriminates in favor of the Samaritans, who do not belong to any of the recognized faiths, and allows them full religious freedom. When asked about this type of favoritism towards the Samaritans and their conspicuous absence from government registries, Palestinian Deputy Minister of Interior Hassan Alawi[830] focused on the need to consider them Palestinians:

> Whether Samaritans are Jews belonging to a monotheistic religion, or members of a separate religion that is unrecognized in Palestine is a very troubling question. This is an intriguing case that we haven't thought much about it. This can stir tension and divide the Palestinian people. For us, this is a complicated political issue where it is better not to look into the legal questions around it. They are Palestinians and have always lived in Nablus. Our duty is to protect them.[831]

Such evasive responses from officials are common when faced with concerns over Samaritan positionality in Palestinian society. For example, the Legal Advisor for the Interior Ministry, Ahmad Thabalih,[832] replied to similar concerns by noting that the Palestinian registry system is replicated from Israel's and is based on legally binding statutes from the Oslo Accords. Thabalih argued that because Palestinians cannot change this system, it has remained static in its treatment of certain minority groups:

> [We] Palestinians have never prepared our own civil registry and records. The system was transmitted to us from the Israeli Civil Administration in accordance with the Oslo Accords. We are obliged in accordance with the Peace Agreement to coordinate and share our system with the Israelis. Our system doesn't deliberately include or exclude any group. We enter the data in accordance with the system that they have provided us with. In the system we have a field for religion that we must fill in, and we have 14

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[828] Article 5 & 16–35, Civil Affairs Law No. 2 of 1999, *in* OFFICIAL GAZETTE No. 2 of 1999 (Palestine).
[829] Jehovah's Witnesses, *Personal Status Rights at Issue for Jehovah's Witnesses in Palestinian Territories* (Mar. 2, 2016), https://www.jw.org/en/news/legal/by-region/palestinian-territories/personal-rights-jehovahs-witnesses/. *See also* 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM, *supra* note 632, at 9.
[830] Interview with Mr. Hassan Alawi, Palestinian Deputy Minister of Interiors, Ramallah (Sept. 10, 2019).
[831] *Id.*
[832] Interview with Mr. Ahmad Thabalih, Legal Advisor, Palestinian Ministry of Interiors, Ramallah (Sept. 8, 2019). In June 2021, Mr. Thabalih was appointed as a Deputy Minister for the Palestinian Ministry of Justice.

> groups that are based on the Israeli data base. We have Druze as a category although there are no Druze in the West Bank or Gaza. We technically follow templates and an already built system for us.[833]

Though this sentiment points to the aforementioned constraints of a 'neo-colonial' pluralism on effective governance, it fails to acknowledge any desire on the part of government officials to change these decrees even if they did have the ability to do so. Such ambivalence demonstrates the PA's explicit favoritism of Samaritans even outside or despite the law. A prominent example is the official recognition given to the Samaritan Chief Priest, who enjoys the privileges as an ordained religious head of a minority community, despite not having any legal grounding for such a *de facto* title.[834] Through the PA, he receives benefits including health insurance, a car, and a salary to protect and administer the affairs of his community, like his Christian and Muslim counterparts, without having the authority to do so.[835]

In addition to the official recognition of the Samaritan Chief Priest, leading a non-recognized minority religion, is the appointment of a Samaritan *mokhtar* (community leader)[836] by the Minister of Local Governance, Saeb Erekat, who according to the prevailing laws does not have the jurisdiction to exercise such powers.[837] The appointment of a community leader by the PA for such a small minority religious group that already follows the leadership of its High Priest reflects the PA's contradictory approach to the Samaritans, who are alternatively understood as members of a minority religion, a tribal community similar to the Bedouins, and an ethno-racial

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[833] *Id.*

[834] Since Samaritans as a community is not recognized as an official religious community in Palestine, consequently legally and formally speaking the head of the community, known as the chief priest, doesn't enjoy an official status, however the chief priest enjoys de facto powers such as administering the internal civil affairs of the community, including officiating marriage contracts. See page 12.

[835] Interview with Cohen Aziz, who previously served as a bank manager in Israel and later as a deputy head of the Palestinian Monetary Fund (central bank), Nablus (Aug. 6, 2019).

[836] In Turkey and some Arab countries, a *mokhtar* is the head of local government of a town or village.

[837] According to the Palestinian law, the Governor has the capacity to appoint leaders (Mokhtar) and not the Minister of Local Governance. See article 4, Law No. 52 of 1958 on Appointing the Mokhtars (قانون رقم 52 لسنة 1958 قانون ضمن المخاتير حدود المناطق البلدية والمجالس المحلية)

minority.[838] Samaritans are tightly linked to their heritage and by the Chief Priest, who is the head of the community based on his lineage from the priestly family.[839] Therefore, the decision to appoint a *mokhtar* stirred contempt and spurred internal power clashes within the community.[840] A main point of contention centered on who had the ultimate authority over the community: the *mokhtar* or the High Priest.[841] Most Samaritans, due to their deep religiosity and the centrality of the High Priest in their community, felt that the minister was attempting to supersede the role of the High Priest.[842] As a result, they attribute appointment of the mukhtar to vested interests between him and the Minister and regard him with contempt.[843]

The PA's peculiar treatment of the Samaritans and its selective tolerance for their community's practices raises existential questions as to why and how the PA reads the Samaritans as legal subjects.[844] For political reasons, the PA has instrumentalized a discourse referring to the Samaritans as the "Jews of Palestine," as explained in the previous subsection. Yet historically, legally, and theologically speaking, Samaritans are *not* the Jews of Palestine who resided on the Land of Palestine before 1948.[845] Given that Samaritans do not regard themselves as Jews and the Jewish orthodoxy excludes them from Judaism, it remains unclear why the PA continues to avoid granting them official recognition as a religious group.[846]

The PA's relationship to the Samaritans also raises concerns about discrimination and denial of rights to other social and religious minorities. There is no consistent institutional logic in

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[838] Interview Khaled Zawawi, Director of Public Relations at the Palestinian Ministry of Religious Affairs, Ramallah (July 25, 2019).
[839] Interview with Cohen Aziz, *supra note* 187.(Aug. 6, 2019).
[840] *Id.*
[841] Adnan Ayyash, The Samaritan Community in Nablus, supra note 32 at 169..
[842] Interview with Cohen Hosny Wassef, supra note 133 (Sept. 15, 2019).
[843] *Id.*
[844] Interview Khaled Zawawi, *supra note* 207, (July 25, 2019).
[845] Based on the Population Statistics of the Late Ottoman Period and the Mandate (1990), before 1917, the number of Arab Jews who lived and held the Ottoman citizenship in historical Palestine was 39,000 in comparison to over 700,000 Ottomans, including Muslims and Christians living in historical Palestine. For more information see, Palestinian Journeys, Timeline, Demography and the Palestine Question (I), Institute for Palestine Studies, paljourneys.org
[846] Interview Khaled Zawawi, *supra note* 207, (July 25, 2019).

allowing the Samaritans access to legal recourse and rights, while intolerance remains writ large for the Ahmadi, Jehovah's Witnesses, those who desire to belong to a secular identity, or other groups, like women and the LGBTQ community. Instead of an underlying institutional logic, the PA's treatment of the Samaritans is simply the byproduct of political instrumentalization. When considered by the PA as "Palestinian Jews," in addition to being such a small and unthreatening group, the Samaritans conveniently showcase the PA's alleged tolerance in contrast with Israel's treatment of the Palestinians.[847] Such an interpretation would be consistent with Arafat's expressed interest at countering Israel's inclusion of Samaritans as Israeli citizens, when granting them a quota seat at the Legislative Council.[848] All in all, not only are the Samaritans benefitting from their hybrid identity and institutional location,[849] but both the PA and Israel use them to profit in their relationship to one another, as will be seen in the following section.

D. Samaritans as Legal Subjects: The Position of Samaritans in Israeli Institutions

Having established the Samaritans' unique position in the Palestinian system and their preferential treatment by its governing class, this section will explore how Israeli policies have also influenced their current position. To do so, it will focus on the role of Samaritans in the Israeli national narrative and their status within the country's institutions, before looking at case studies showing which advantages these dual imaginations bring the community.

Over the past several decades, Israel has adopted laws that expand the definition of Jewishness[850] to secure higher levels of Jewish immigration, despite the opposition of the Rabbinic

[847] *Id.*
[848] *Id.*
[849] Fanny Urien-Lefranc, *From Religious to Cultural and Back Again: Tourism Development, Heritage Revitalization, and Religious Transnationalizations among the Samaritans*, RELIGIONS 11, 86 (2020).
[850] Michael Corinaldi, supra note 7 at 2.89.

establishment.[851] Concurrently, while expanding the legal definition of a Jew and adopting policies to increase its Jewish majority, it has used all possible means and policies to exclude non-Jewish minorities.[852] The Samaritans have unwittingly been cast into consequential debates surrounding the definition of Jewishness due to their inclusion in the Law of Return.[853] Defining Jewishness has been central for expanding the state's territory and citizenry, as well as their promulgation of a positive and inclusive national image on the global scene.[854] When taken in this context, the Samaritans can be seen to have played a significant role in Israel's attempt to authenticate its history with the land and, as a result, fragment the Palestinian people.[855]

The Samaritans since 1949 held a *de facto* Jewish Status under the Law of Return (cemented by a ruling in 1954) until 1992 when their right to be Israeli citizens under said law was questioned.[856] Ultra-Orthodox factions in the Israeli government worked to exclude them from the scope of the Law of Return, led by Aryeh Deri, the co-founder of the ultra-orthodox religious political party Shas and then Minister of Internal Affairs.[857] Deri denied a Nablus Samaritan the request to "emigrate" from Nablus to Israel, "on the grounds that they fail the elements of the Jewish identity."[858] Deri further argued that, based on the amendment of the Law of Return of 1970, Samaritans are considered non-Jews belonging to a different religion and therefore not

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[851] MINISTRY OF DIASPORA AFFAIRS, REPORT OF THE PUBLIC ADVISORY COMMITTEE FOR EXAMINING ISRAEL'S APPROACH REGARDING WORLDWIDE COMMUNITIES WITH AFFINITY TO THE JEWISH PEOPLE 17 (Mar. 10, 2017).
[852] Lana Tatour, *Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel*, 27:2 ARAB STUD. J. 8–27 (2019), https://doi.org/10.2139/SSRN.3533490.
[853] Fanny Urien-Lefranc, *supra note 218*, at 2.
[854] For a detailed analysis of such a process as part of Israel's *settler-colonial approach to state building*, *see* Zeina Jallad, *Identity Annexation: Israel's Non-Territorial and Psychic Annexation of the West Bank Samaritans in the Occupied Palestinian Territories* (forthcoming 2021) [hereinafter Jallad, *Identity Annexation*]. In the present paper, my analysis is limited to providing the factual and legal context to the Samaritans' re-inclusion within the scope of the Law of Return.
[855] ATEF DAGHLAS, DESPITE THERE NON-PARTICIPATION IN THE POLITICAL LIFE.. WHY DO SAMARITANS PARTICIPATE IN THE ISRAELI ELECTIONS (الإسرائيلية؟ الانتخابات في السامريون يشارك لماذا .. السياسية الحياة في إشراكهم عدم رغم), AL JAZEERA (MARCH 2021), [IN ARABIC], HTTPS://WWW.ALJAZEERA.NET/NEWS/POLITICS/2021/3/17/%D8%A7%D9%84%D8%B3%D8%A7%D9%85%D8%B1%D9%8A%D9%88%D9%86-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D8%AD%D9%82-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%88%D9%86%D8%B7%D9%85%D8%AD
[856] Michael Corinaldi, The Personal Status of the Samaritans in Israel, *supra note* 7, at 2.90. See also, Haim Shapiro, *Samaritans: 'We Call Ourselves Israel'*, JERUSALEM POST (June 8, 1993), *reprinted in* A.B. SAMARITAN NEWS 37 (1993).
[857] SCHREIBER, THE COMFORT OF KIN, SUPRA NOTE 10 at 59.
[858] MICHAEL CORINALDI, IMPOSSIBLE MISSION 2.90.

within the scope of the law.[859] Deri successfully barred Samaritans from seeking immigration visas (*Oleh*) to Israel as *Olim Hadashim*.[860] Almost overnight, their legal status was lost, seemingly arbitrarily and without substantive justification.[861]

The Samaritans vigorously lobbied to reclaim their immigration status and filed a petition for conditional order before the Supreme Court of Israel in 1993.[862] In their petition,[863] instead of resorting to legal arguments, the Samaritans used historical arguments asserting the specific nature of their religious identity and its proximity to the Israeli national narrative to re-gain their position within the scope of the Law.[864] These arguments resulted in an agreement between the Samaritans and the Ministry of Interior in March 1994, when the Israeli court re-affirmed the right of Samaritans to receive immigration visas and to be treated as *Olim Hadashim*, like all other Jewish immigrants coming to Israel.[865] The Samaritans were therefore successful in forcing the government to re-instate its 1949 policy to treat all Samaritans as Jews traversing from Arab countries and grant them access to Israeli citizenship and all associated rights.[866]

Although the decision clearly showed the extent of Samaritan influence in the Israeli court system, the 1994 ruling to reinstate their immigration status differed in important aspects from earlier inclusions of the Samaritans in the Right of Return.[867] Nablus Samaritans have largely never stated any possibility of leaving their homes in the West Bank and abandoning their

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[859] SCHREIBER, THE COMFORT OF KIN, SUPRA NOTE 10, at 59.
[860] SCHREIBER, THE COMFORT OF KIN, SUPRA NOTE 10, at 59.
[861] LEONARD JAY GREENSPOON, WHO IS A JEW?: REFLECTIONS ON HISTORY, RELIGION, AND CULTURE, STUDIES IN JEWISH CIVILIZATION 160–61 (2014).
[862] Shapiro, *supra* note 856, at 37.
[863] Petition No. 4200/93 to the Israeli High Court of Justice, *reprinted in* 606 A.B. SAMARITAN NEWS 48 (Mar. 15, 1994) (Isr.).
[864] Based on the expert opinions of Professor Smaryahu Talmon and Dr. Menhem Mor, Michael Corinaldi, the Samaritans' lawyer before the Supreme Court, raised two arguments pertaining to their denial of *Olim Hadashim* legal status. Corinaldi asked the state what kind of changes might have occurred between 1949, when the Samaritans were granted the Right of Return, and 1992 to justify the change to precedent by the Minister of Internal Affairs. He also forcefully rejected the argument that Samaritans belonged to a different religion, arguing that the definition of "Jew" for the purposes of the law was based on a secular modernist interpretation, not in accordance with Rabbinic criteria. CORINALDI, *supra* note7, at 2.91
[865] Petition No. 4200/93 to the Israeli High Court of Justice, *reprinted in* 606 A.B. SAMARITAN NEWS 48 (Mar. 15, 1994) (Isr.).
[866] *Id.*
[867] SCHREIBER, THE COMFORT OF KIN, *supra* note 10, at 69–72.

aforementioned socio-cultural ties to the Arab-Palestinian community.[868] Given the reality of the Samaritans' disinterest in practical immigration, it would appear that Israel's reversal of its decision is, above all, in the interest of expanding their own citizenry and enhancing their image on the global stage. This would also explain the significance of the Samaritan identity for their success at changing Israeli law. In this context, the opened-arms stance to the Samaritans may be seen more concretely as an attempt by the state at Judaizing a distinctly non-Jewish community that has rejected any such subsummation for centuries.[869]

The feigned nature of the Samaritans' proximity to Israeli identity becomes more apparent in light of the arbitrary classification of community members under official state census statistics after the 1994 law passed. Until the 1995 Israeli National Census, Samaritans were counted as members of the Druze population,[870] a minority category which encompassed a range of religions including Muslims and Hindus.[871] From that census to the present day, the Samaritans stand separate from the traditionally "minority" Druze category and belong instead to the category of "no religious affiliation."[872] This ambivalent status echoes their similar position in Palestinian law. The Samaritans ultimately are not acknowledged as having their own faith in the Israeli legal system but are instead defined simply as non-Jewish.

Their position within the two systems shows that Nablus Samaritans are legally annexed to the Jewish people,[873] institutionally non-Jewish, religiously Samaritan, selectively Palestinian, and culturally Arab. The following part will show how the Samaritans learned how to navigate these interlocking circumstances to their advantage through six case studies. The examples provide

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[868] *Id.*
[869] For detailed analysis of the significance of the inclusion of the Nablus Samaritan minority in the Israeli Law of Return, *see* Jallad, *Identity Annexation*, *supra* note 854.
[870] Israeli Central Bureau of Statistics, *Demographic Features - Definitions and Explanations*, https://www.cbs.gov.il/he/Pages/default.aspx (Isr.).
[871] *Id.*
[872] *Id.*
[873] Jallad, *supra* note 854.

detailed accounts of the shortcomings and opportunities presented by the "extreme legal pluralism" that characterizes Palestine.

IV. Six Examples of Samaritan Navigation of Legal Pluralism In The Occupied Palestinian Territories

This Part explores how the Samaritans use the multiplicity of their identity as a tool to negotiate their legal rights and offers concrete examples of strategies they have employed to do so. By using strategies of compliance, non-compliance, resistance, civic engagement, positive participation, and passive muted participation, Samaritans have remarkably expanded their duties, rights, and entitlements under both legal systems.

A. "If you cannot beat them, join them": Samaritans at the negotiation table during Oslo

The previous Part briefly evidenced the ways in which Samaritans engaged in politics despite their claims of disinterest and independence. The Oslo peace talks provide a further example of this tendency. For Samaritans, the prospect of a peace agreement in the 1990s between the Palestinian Liberation Organization and the Israeli government created a familiar sense of uncertainty and collective anxiety.[874] Samaritans were worried that any agreement might result in a division between the Samaritans in Nablus and Holon. Regardless of which sovereign was in control, their main priority was to ensure that the Samaritan people as a collective remained inseparable, and their access to their holy site continued to be uninhibited.[875]

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[874] *Political Permutation*, 597–98 A.B. SAMARITAN NEWS 87–88 (Oct. 28, 1993) [hereinafter *Political Permutation*].

[875] As the Samaritan Cohen Aziz expressed "We are such a small community, we do not care. We do as the Egyptian proverb says: 'the man who marries my mother, I call him uncle.' In other words, if Samaritans are powerless and cannot change their reality on the ground, at least they can cooperate and hopefully gain some advantages" (The Egyptian proverb اللي يجوز امي اقوله يا عمي (ilalee yajuwaz omee aquluhu ya 'amee) Literal translation: The man who marries my mother, I call him uncle.). Interview with Cohen Aziz, who previously served as a bank manager in Israel and later as a deputy head of the Palestinian Monetary Fund (central bank), Nablus (Aug. 6, 2019).

The group therefore deftly worked to remain current in discussions without requiring their absorption into the full agenda of any negotiating party.[876] They were able to do so in large part because, unlike other ethno-religious minority groups inside Israel or in the oPt, Samaritans became their own stewards through ethno-political mobilization.[877] The origins of this strategy can be seen in a 1993 excerpt from a local Samaritan newspaper, *AB News*, urging the community to mobilize to protect itself from the possibility of "Israeli transfer of areas to Palestinians":

> We cannot wait for events to shape our future. We must depend on no one but ourselves. Any scenario is now for the community's future. Everyone involved is declaring that the recently signed accord is an agreement in principle only and does not go into details. We must not, however, rely on declarations any longer. Facts are being established behind the scenes, and we may find ourselves faced with a *fait accompli*, which we have no possibility of changing.[878]

Inspired by this and similar sentiments from within the community, Samaritans in Nablus and Holon came together in order to develop and ultimately present their own political agenda on the local and global stage.[879] At the international level, they lobbied the United States and the United Kingdom for an improvement of the Samaritan situation in the West Bank, and the inclusion of Samaritan rights in the final peace agreements.[880] This lobbying included requests of reassurance for the future survival of the Samaritan community, the expansion of the Samaritans on Mount Gerizim, and guarantees of freedom of movement between the West Bank and Israel.[881] Domestically,[882] they lobbied the Palestinian and the Israeli negotiators to address their rights and settle the legal status of Mount Gerizim, while regionally they communicated with Egyptian and

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[876]Kaufman, Samaritan Political Identity Part II, M.A. thesis, Tel Aviv University, 16-18 (1998)
[877] MILTON ESMAN, ETHNIC POLITICS 27 (1994).
[878] *Political Permutation*, *supra* note 874.
[879] *The Samaritan Delegation to the United States and United Kingdom*, 6430644 A.B. SAMARITAN NEWS 75 (Sept. 1, 1995). For more details *see* Adnan Ayyash, supra note 32, 174-178.
[880] *Id.*
[881] *Id*. See also Stephen Kaufman, Samaritan Political Identity Part II (1998) (M.A. thesis, Tel Aviv University).
[882] *The Samaritan Delegation to the United States and United Kingdom*, supra note 247.

Jordanian officials to advocate for Samaritan religious, social, economic, and political rights.[883] Their various and multi-layered efforts successfully resulted in a draft treaty, presented by the Samaritans to their Palestinian and the Israeli counterparts to be included in the Final Conflict Resolution Negotiations.[884]

The main concern of the Samaritans in protecting their holy ties to Mount Gerizim surfaced in the Oslo II debates and culminated in the eventual interim agreement detailing a plan to divide the mountain into various jurisdictions.[885] The top of the mountain, an archeological site and an important sacred site for Samaritans, was classified as Area C (most historical sites in the West Bank are within Area C).[886] The main purpose of this classification was to allow the redeployment of the Israeli army, ultimately codifying support for Israeli expansion in the name of security.[887] As a result, the site remains effectively and fully under the direct control of the Israeli Department of Antiquities, despite its important place in the Samaritan imagination and history.[888] The following section explores the consequences of this negotiation on the lives of Samaritans and shows the group successfully using similar strategies to leverage their positions in a more local context.

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[883] Political Permutation, supra note 216.
[884] *Id.*
[885] Political Permutation, supra note 216, at 8-9.
[886] The city of Nablus itself is divided bizarrely: neighborhoods, the city's main road, and Mt. Gerizim are located in C, while schools and infrastructure are in B. In practical terms, that means that the Palestinian government is required to provide services where people live, work and go to school in areas A and B, but where money is generated (in zone C) the proceeds go directly to Israel. Please add citation.
[887] *See* Policy Briefing, Area C: More than 60 % of the Occupied West Bank Threatened by Israeli Annexation, European Parliament, 4-5 (2013).
[888] Fanny Urien-Lefranc, *supra note 218*, at 6-7.

B. Lawlessness and Privilege: Exceptionalism in Practice

The post-Oslo II division of the West Bank into three administrative units (Areas A, B, and C) has been one of the main drivers of legal pluralism and one of the biggest problems in the codification of law and deliverance of rights to Palestinians.[889] A comparison between the Samaritan neighborhood on Mount Gerizim and the town of Al Ram—both areas classified as B and C according to the Oslo Accords—will show the discrepancies in the application of legal pluralism and testify to the way in which the Samaritans used their position in this system to their advantage.[890]

Al Ram, once known as the Northern Gate of Jerusalem, was a bustling trade center connecting Jerusalem to other districts in the West Bank.[891] Following the Oslo agreement, the town was removed from the Jerusalem municipality.[892] It was divided into both Area B and Area C, a major checkpoint was established with military posts, and a military base and settlements began circulating the town, restricting the movement of its residents.[893] Accordingly, the PA is very limited in its ability to govern the town, and the Israeli civil administration is indifferent to Al Ram.[894] Thus, it became an essentially lawless zone:[895] a destination for criminals and peripheral communities seeking to escape Palestinian jurisdiction (and therefore the law) in Area A.[896] The construction of the separation barrier adds another layer of complexity to the lawlessness

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[889] Emilio Dabed, *Constitutional Making and Identity Construction in Occupied Palestine*, 86 CONFLUENCES MÉDITERRANÉE 115 (2013).
[890] NAAMNEH, AL-BOTMEH & SALAMEH, *supra* note 687.
[891] THE APPLIED RSCH. INSTITUTE – JERUSALEM, AR RAM TOWN PROFILE 4 (2012), http://vprofile.arij.org/jerusalem/pdfs/vprofile/Ar%20Ram_EN.pdf.
[892] The Applied Rsch. Institute – Jerusalem, *Ar Ram: A Palestinian Town Facing the Threat of the Segregation Wall* (Aug. 14, 2004), http://poica.org/2004/08/ar-ram-a-palestinian-town-facing-the-threat-of-the-segregation-wall/ [hereinafter The Applied Rsch. Institute, *Ar Ram: A Palestinian Town Facing the Threat of the Segregation Wall*].
[893] *Id.*
[894] Daoud Kuttab, *Will Separation Wall be New Israel-Palestine Border?* AL-MONITOR, NOV. 21, 2013), https://www.al-monitor.com/originals/2013/11/al-ram-west-bank-palestine-israel-separation-wall.html
[895] For an in-depth discussion of the consequences of the Oslo fragmentation of the Palestinian lands on creating a state of lawlessness in the West Bank, *See* Candace Graff, *Pockets of Lawlessness in the "Oasis of Justice"*, Jerusalem Quarterly 58 (2014), p. 18.
[896] Daoud Kuttab, *supra note* 262. *See also*, The Israeli Info. Center for Human Rights in the Occupied Territories – B'Tselem, *The Separation Barrier Surrounding A-Ram* (Jan. 1, 2016), https://www.btselem.org/separation_barrier/a-ram.

and isolation of Al Ram.[897] Infrastructure services, sewage, water, electricity, education, health, and landownership rights have been severely compromised, if available at all, due to the conflicted jurisdictions of the multiple regulatory frameworks.[898]

Despite falling within two disparate zones[899] and not retained under the control of the Samaritans or Palestinians, Mount Gerizim is better serviced than most if not all similar sites in the territories.[900] Samaritans on Mount Gerizim essentially live in a gated compound,[901] in stark contrast to members of the Al Ram community and others within the same zoning.[902] The community is adjacent to a major checkpoint with joint PA-Israeli armed patrol forces, who are deployed to ensure Samaritans' security and comfort as Israeli citizens.[903] They enjoy regular sanitation services, an ordered system of urban planning, well-serviced streets, and the adequate provision of infrastructure services and development.[904] The PA does not uniformly and consistently provide all Palestinians in Area C with education, power, sanitation, and sewage services,[905] yet those services are adequately available for Samaritans.[906] This in part stems probably from their political significance and subsequent concerns for their protection.[907] Despite

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[897] Daoud Kuttab, *supra* note 262.
[898] The Applied Rsch. Institute, *Ar Ram: A Palestinian Town Facing the Threat of the Segregation Wall*, *supra* note 892.
[899] Ahmad Melhem, *How One of the Smallest Religious Communities in the World Is Struggling to Sustain Its Community*, AL-MONITOR (Sept. 20, 2015), https://www.al-monitor.com/pulse/originals/2015/09/samaritans-smallest-community-west-bank-mount-gerizim.html#ixzz6WGI4p2h5.
[900] The State of Israel retains an active control over Mount Gerizim and the archeological site, *See* Chaim Levinson, Ancient Site Near Nablus 'Too Problematic' to Open, (Jul. 2, 2010), https://www.haaretz.com/1.5142887. Description provided by the author based on multiple in person visits to Mount Gerizim for the purposes of the research between 2016 and 2019.
[901] Palestine News Agency (WAFA), Problems Facing the Samaritans, https://info.wafa.ps/ar_page.aspx?id=4059 (in Arabic).
[902] Author's description based on in person visits to Mount Gerizim between 2016 and 2019.
[903] Author's description based on multiple first-hand visits to the occupied Palestinian territories, including the city of Nablus and Mount Gerizim for the purposes of the research between 2016 and 2019.See also, Mabrook Ishaq, *A Real-Life Samaritan Leader Explains What It Means to Be a Good Samaritan*, supra note 101. See also Adnan Ayyash, The Samaritan Community in Nablus (2003) at 124. (in Arabic).
[904] Mabrook Ishaq, *A Real-Life Samaritan Leader Explains What It Means to Be a Good Samaritan*, supra note 101.
[905] ORHAN NIKSIC, NUR NASSER EDDIN & MASSIMILIANO CALI, AREA C AND THE FUTURE OF THE PALESTINIAN ECONOMY, WBG 19 (2014).
[906] Palestine News Agency (WAFA), *supra note* 268.
[907] Wadah Eid, The Samaritan Community in Nablus is a Hostage of the Occupation's Checkpoints, Al-Jazeera (Apr. 12. 2006) (in Arabic) الطائفة الاحتلال حواجز رهينة نابلس في السامرية
https://www.aljazeera.net/news/reportsandinterviews/2006/12/5/%D8%A7%D9%84%D8%B7%D8%A7%D8%A6%D9%81%D8%A9-%D8%A7%D9%84%D8%B3%D8%A7%D9%85%D8%B1%D9%8A%D8%A9-%D9%81%D9%8A-%D9%86%D8%A7%D8%A8%D9%84%D8%B3-%D8%B1%D9%87%D9%8A%D9%86%D8%A9-%D8%AD%D9%88%D8%A7%D8%AC%D8%B2

nearly total Israeli control of Mount Gerizim,[908] in a rare and instructive gesture of united interests, PA and Israel forces patrol the mountain together in service of the Samaritan community.[909]

A recent Samaritan report claims that, fearing the spread of the virus COVID-19 in their extremely small and relatively vulnerable community, its members drew on their advantageous circumstances to convince the Israeli Civil Administration to restrict access to the mountain, by retaining a checkpoint that denies non-Samaritan Palestinians from entering that part of Palestinian territories.[910] Likely aware of their leverage via the Right of Return and their habitation in Area C, the Samaritans did not communicate their concerns or intentions to the PA or the Palestinian police.[911] Instead, they sought the protection of the Israeli occupying powers to deny their fellow Palestinians from accessing Palestinian land to protect their own community's health.[912]

C. Legal Practice in Palestine: Samaritans as Israeli citizens

Another instance of positive discrimination is the admittance of Samaritans to the Palestinian Bar Association (PBA). The PBA is the sole body regulating the legal profession in Palestine,[913] and its founding law clearly allows only Palestinians or Arab citizens who reside permanently in Palestine to become members of the PBA and register to officially practice before the Palestinian jurisdictions.[914] The organization explicitly imposes a prohibition on Israeli citizens or those admitted before the Israeli bar from joining the Palestinian legal profession as part of the Arab Union of Lawyers Boycott movement to pressure Israel for human rights abuses.[915]

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[908] *Id.*
[909] Interview with Majdi Shar'ab and Mohammad Mashni in Nablus (Aug. 1, 2019).
[910] Interview Khaled Zawawi, Director of Public Relations at the Palestinian Ministry of Religious Affairs, videocall (November 3, 2020).
[911] *Id.*
[912] *Id.*
[913] Article 12, Law Regulating the Legal Profession in Palestine, Law No. 3 of 1999 (Palestine).
[914] Article 3 & 4, Law Regulating the Legal Profession in Palestine, Law No. 3 of 1999 (Palestine).
[915] The PBA in line with the regulations of the Arab Lawyers Union boycotts any interactions or relations with the Israeli "Zionist establishment". See, Article 3 (b)/ 4 & 8, The Amended Basic Law of the Arab Lawyers Union of 2006 (based on the Syria conference).

Nevertheless, an exception was made in 2011 for two Samaritan lawyers who had recently graduated from the Al Najah Palestinian National University to join the bar association despite holding dual citizenship.[916] The Chairman of the Bar at the time, Ali Muhanna, based his unprecedented decision on the claim that the Samaritans' Israeli citizenship was merely opportunistic:

> Our brothers and sisters from the Samaritan community are a key component of the Palestinian society. They have lived for centuries in Nablus and have always been part of the Palestinian people. They enjoy Palestinian citizenship as any other Palestinian, and their access to Israeli citizenship was only a programmatic arrangement to facilitate their connectivity to their community in Holon.[917]

Following the Chairman's decision, the two Samaritans took the oath and were admitted to practice law in Palestine.[918] One of them, Radwan Al Kahen, who decided to change his name to the Hebraized Tomer Cohen; he hangs a banner of his law practice using his Hebrew name in one of the main streets in the West Bank city of Ramallah.[919] Tomer claims to have chosen to use his Hebrew name publicly in a Palestinian city as a way of marketing his capabilities to resolve Palestinians disputes with Israeli legal jurisdictions.[920] And instead of being vilified for his Hebrew name, his clients see it as an advantage, he claims.[921]

> Clients have more trust in my effectiveness in resolving their legal issues before the Israeli system, thanks to my Hebrew name. Do you think an Israeli judge would treat a lawyer named Mohammad the same way as a Cohen, Levi or Ziv? No Palestinian, Israeli,

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[916] Interview with Ali Muhanna, former Chairman of the Palestinian Bar Association, former Minister of Justice, former Chief Justice of Palestine and former legal advisor of the Palestinian President Mahmoud Abbas, Ramallah (Sept. 12, 2019).
[917] I*d.*
[918] Interview with Shadi Eltief, who also goes by a Hebrew name in Israek Ziv Altif, Nablus (Aug. 13, 2018).
[919] As observed by the author during field visit to Ramallah, in the occupied Palestinian territory in 2018.
[920] Interview with Tomer Cohen, Ramallah (Aug. 10, 2018).
[921] *Id.*

or Druze of Palestinian descent can have the dual access to both legal and judicial systems as me. Currently, I work exclusively as a middleman: I resolve tax, customs and import issues for Palestinian businessmen with the Israeli administration. My business is booming; I have clients from all over the West Bank, they look for me because of my Hebrew name.[922]

In summary, dual-citizen Samaritans like Tomer gain access to the Palestinian legal profession. Their dual legal status and the plurality of applicable laws uniquely position them to practice law in the West Bank, East Jerusalem, and inside Israel—access otherwise unattainable for both Palestinians and Israelis.

D. Evasion of Legal Consequences: Two Case Studies

The first case study examining the usage of the Samaritans of their multiple identities to their advantage depending on the context of different jurisdictions is based on a case before the Palestinian Anti-Corruption Court.[923] In 2008, the Palestinian Anti-Corruption Court indicted Ezzat Al Samri, deputy director of the Department of Transportation, for requesting and receiving bribes from individuals and corporations to forge vehicle-licensing transactions.[924] Al Samri was accused of professional misconduct, abuse of public office, and deliberate complacency in performing public duties.[925] In 2012, he was sentenced to ten years imprisonment with hard labor for intentional forgery of official documents, ten years imprisonment with hard labor for use of forged documents, three years and 200 Jordanian dinars for requesting and accepting bribes, and three months imprisonment for deliberate complacency in performing public duties.[926] In its

[922] *Id.*
[923] Izzat Sarawi Al Samri et al. v. the Public Prosecutor (2008) [in Arabic].
[924] *Id.*
[925] *Id.*
[926] *Id.*

final decision, the appeal circuit decided to inflict its harshest punishment *in absentia*, as the defendant was a fugitive from justice.[927]

The defendant, Al Samri,[928] happens to be a Samaritan who holds both Palestinian and Israeli citizenship.[929] Although the Anti-Corruption Court has jurisdiction over public servants and Palestinian citizens, its sentencing was rendered *in absentia* because Al Samri fled to Mount Gerizim, which is considered part of Area C and thus unreachable by PA law enforcement or the Palestinian judiciary.[930] Despite the defendant's location being well-identified and close to Area A, the PA has not been able to prosecute him.[931] Al Samri explained his good luck in an interview, stating that Palestinian police are not allowed to enter the Mount Gerizim area without prior coordination with Israeli authorities:

> As an Israeli, I am allowed to drive the direct road that connects Mount Gerizim to the Israeli settlements and the highway to the main cities, and in 40 minutes I'm in Tel Aviv. Those roads are inaccessible to Palestinians. From my house in Nablus to my work in Tel Aviv, Palestinians cannot have any access to me.[932]

By working in Israel and using settler roads outside the jurisdiction of the PA, Samaritans like Al Samri manipulate a fractured system to evade the PA in ways that other minorities cannot. This unique legal positionality has been castigated by Dr. Ahmad Barak, the head of the Anti-Corruption Court, who, like previously quoted government figures, blames institutional failures for the Samaritans' evasion of justice.[933] Barak notes that the fragmentation of the West Bank

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[927] *Id.*
[928] *Id.*
[929] *Id.*
[930] Interview with Majdi Shar'ab and Mohammad Mashni supra note 277.
[931] *Id.*
[932] Interview with Ezzat al Samiri (Aug. 20, 2018).
[933] Interview with Dr. Ahmad Barak, former Attorney General and the Head of the Palestinian Anti-Corruption Commission, Ramallah (Oct. 5, 2019).

makes it difficult to regularly administer indictments and sentencing for subjects who have Israeli citizenship and are outside the scope of Palestinian law in addition to being able to move in between various jurisdictions:

> Unfortunately, we have a serious issue in executing court decisions. We simply cannot prosecute Israeli citizens based on the Oslo Accords. In the case of the Samaritan, it was possible, because he holds Palestinian citizenship. However, we are unable to bring him to justice even though we know his exact address. Based on the Oslo Accords, our law enforcement personnel are forbidden to access Area C territories without security coordination with the Israeli authorities. The Israelis in the vast majority of the cases that concern Palestinian crimes and Palestinian criminals are reluctant to help. This is a well-known fact and there is no point in hiding it.[934]

Samaritan public servants not only benefit from the Palestinian employment system, but they are also able to exploit loopholes and evade local laws as a further result of their dual status and the general disorder in the West Bank.[935]

The second case study showing how Samaritans have been able to exploit the structural weakness of Palestinian criminal prosecution is that of *Public Prosecutor v. Najeh Adel Ghassal Al Samri and Ahmad Mohammad Jaber Ji'an*.[936] In April 2005, Najeh Adel Ghassal Al Samri, a Samaritan from Nablus, was caught with his friend Ahmad Mohammad Jaber Ji'an by the Palestinian Customs Police, smuggling undeclared valuable goods into the Palestinian territories.[937] While entering the West Bank city of Qalqilya in an Israeli plated vehicle, Al Samiri crossed the city's Israeli-controlled checkpoint with his friend following suit in a separate car. When the Palestinian Customs Police stopped and inspected the car at the city's entrance, they

[934] *Id.*
[935] *Id.*
[936] Public Prosecutor v. Najeh Adel Ghassal Al Samri and Ahmad Mohammad Jaber Ji'an (2006) [in Arabic].
[937] I*d.*

found in Al Samiri's possession twenty-eight parcels of illegally smuggled commercial goods, which they used to indict him on related charges in 2006.[938]

From his indictment until 2012, Al Samiri was a fugitive from justice who was able to successfully avoid Areas A and B by retaining his domicile in Mount Gerizim,[939] while continuing his activities inside Israel. Aware of the vulnerabilities of the system, Al Samri eventually argued in court that too much time had passed since the court's last legal proceeding in 2006 for any legal action to be initiated on his criminal offence. Invoking the statute of limitations, the court dismissed the case.[940]

The public prosecutor of Nablus, Majdi Shar'ab, and the head of the Nablus police, Mohammad Mashni, explained that the court had not taken previous action between 2006 and 2012 because of the complexity of executing court orders against Samaritans.[941] The two figures offer a familiar exposition of the advantages offered to the Samaritans by their unique status, noting that even though they are Palestinian citizens residing in the Palestinian Territories, Samaritans can appear before the Palestinian courts only voluntarily and only with their full consent because they are Israeli citizens.[942] According to Mashni, when a case involves an Israeli citizen, the Israeli army and police interfere to prevent the Palestinian police from arresting perpetrators or proceeding with an investigation.[943] In such cases, the Israeli police interfere to protect Samaritan defendants because they are Israeli citizens:[944]

> We cannot prosecute Samaritans, or any other Israeli citizen. We live under occupation and our situation is very complicated. If we try to prosecute any Israeli citizen, we take a huge risk—the Israeli army would invade the city to

[938] *Id.*
[939] Interview with Majdi Shar'ab and Mohammad Mashni supra note 277.
[940] *Id.*
[941] Id.
[942] Interview with Majdi Shar'ab and Mohammad Mashni supra note 277.
[943] Id.
[944] Majdi Shar'ab in an interview with Majdi Shar'ab and Mohammad Mashni supra note 277.

> interfere, and this would cause tension and possibly provoke clashes between the Palestinians and the army. Sometimes we have to make compromises and close our eyes on certain violations to protect the public good. We do not want to lose more Palestinian souls in clashes with the Israeli Forces.[945]

As Al Samri's example shows, the efforts of Palestinian police and public prosecution to enforce legal order and deliver justice are constantly challenged by the complex legal terrain in which they are forced to operate. This last case in particular exemplifies how, thanks to their access to the Israeli Civil Administration and their protection as Israeli citizens, a handful of Samaritans are uniquely able to manipulate the inefficient Palestinian criminal justice system to their advantage. The presence of such cases further demonstrates the extent to which certain members of the Samaritan community opportunistically disregard their affiliation with Palestinian social fabric and can bypass its laws depending on the circumstance. Such behavior, although not reflective of the entire Samaritan population, would suffice to argue that it has served to further fissure their ties from the Palestinian collective and reinforce their connection with the Israeli state. The following section will show how the Samaritans navigate the courts to their advantage on a smaller level, through family courts, whose proliferation was explained earlier.[946]

E. Samaritans and the Sharia Legal System

Religious courts are used extensively by various minority communities throughout the oPt, though the Muslim courts are of particular relevance for the present discussion of Samaritan exceptionalism.[947] This is because the Samaritans turn to the *Sharia* court to resolve issues of child custody, disability guardianship, and the division of inheritance, while still using the broader non-

[945] *Id.*
[946] See page 20.
[947] Zeina Ghandour, Religious Law in a Secular State: The Jurisdiction of the Sharī'a Courts of Palestine and Israel, Arab Law Quarterly , Vol. 5, No. 1 (Feb., 1990), pp. 25-48 at 28.

religious legal and juridical systems of the oPt and Israel for other purposes.[948] Even though they are neither Muslims nor they have a mandatory legal obligation to do so, Samaritans have approached the *Sharia* court in Nablus to seek particular advantage in the division of movable and immovable property in accordance to Islamic laws of distribution.[949] The Head of the *Sharia* Court in Nablus, Judge Abdallah Hroub, explained that the Samaritans' use of the *Sharia* law courts is long-standing and in full compliance with the law:[950]

> Samaritans are Palestinians, they are legal subjects before Palestinian laws. They are entitled to protection and equal treatment before the applicable laws in Palestine as any other members of Palestinian society. Islam is the official religion of Palestine, if a recognized religious minority opts to utilize the *Sharia* law, we accommodate their choice. Samaritans have had access to the Sharia court of Nablus since the Ottoman period, it is nothing new.[951]

The legal rationale used by Judge Hroub clearly shows how Samaritans use their ambivalent identity to their benefit within the context of a failing pluralistic legal system. It also highlights the exceptionalism of such benefits being given to minority communities. Neither Hroub nor his broader network of legal representatives mention the fact that unrecognized Muslim communities, such as Ahmadis, cannot use the Muslim courts in the way Samaritans can.[952] Instead, such minorities are treated as apostates (*murtadd*)[953] who must convert and repent before even having access to courtrooms abiding by *Sharia* law.[954]

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[948] During which, Judge Hroub provided the author with copies of court rulings on custody, mental incapacitation and distribution of inheritance involving Samaritan parties. Also, in a letter from the Chief of the Samaritan community, Cohen Abdallah Wassef, the Samaritan Priest confirmed the community's full adherence to the decisions of the Sharia courts and the principals of Islam in all matters regulating inheritance. Letter from Cohen Abdallah Wassef, Chief of the Samaritan community, to the Sharia Chief Justice, and the Head of the Supreme Judicial Council, Dr. Mahmoud Habbash (Nov. 18, 2020) (on file with author),
[949] Interview with Judge Abdallah Hroub, the Head of the Sharia Court in Nablus, Nablus (Aug. 6, 2019).
[950] Christians also use the sharia courts for certain inheritance matters, such as issuing an inheritance deed.
[951] Interview with Judge Abdallah Hroub, supra note 275, Nablus (Aug. 6, 2019).
[952] *Id.*
[953] The act of secession from the Muslim community by abandoning the religion or converting to another religion.
[954] See for example Nablus Sharia Court Decision No. 228 of 2010 (Jun. 6. 2010).

The Samaritans also exploit the application of law by religious local courts to selectively disadvantage women. Samaritan journalist Badawiyya Hosny Assamri notes that while female Samaritans like herself are well-treated within their community, it is not uncommon for families to access *Sharia* courts to lower the amount of money a woman may otherwise inherit, despite the lack of justification for such practices in the Samaritan faith.[955] According to some schools of Islamic law, women are entitled only to half the share of inheritance allotted to men, as Assamri explains: "Generally, women are not entitled to equal shares, and internally it's our tradition that women do not inherit immovable property. They are normally awarded from immediate male family members an amount of money, as a gift."[956]

That the Samaritans are able to use the Islamic courts to their advantage, despite not practicing Islam or having any outward familiarity with its complex legal system, illustrates the scope of the group's leverage over local law. The following section will look at the way in which this leverage is exercised outside the context of familial matters and in broader socio-economic scenarios.

F. Economic Privilege and Social Dumping: Samaritans, Israel and the PA

Alongside their various legal advantages, Samaritans have managed to gain socioeconomic benefits offered by both Israel and the Palestinian Authority.[957] For instance, many Samaritans in Palestine are civil servants.[958] If they want to retire, they ask for their benefits under the Palestinian pension scheme, which includes retirement lifetime allowance, financial plans, health care, and

[955] Interview with Badawiyya Hosny Assamri, a Samaritan journalist working for the Palestinian News and Press Agency (WAFA) (Oct. 4, 2019).
[956] *Id.*
[957] Adnan Ayyash, The Samaritan Community in Nablus, supra note at 125.
[958] Muhannad Hamed, Samaritans…Palestine Jews Constitute the Smallest Sect in the World, supra note 149.

social security benefits.[959] If that same Samaritan, who is also an Israeli ID holder, wants other social benefits like social security, child support allowance, or access to a more advanced health care system than the Palestinian system, he or she may then obtain those services in Israel.[960]

With regard to commerce, some Samaritans have profited from lower tax and fiscal regulations in Palestine, while also taking advantage of Israeli's strong marketplace by producing their goods in Palestine and selling them in Israel.[961] A high-profile instance is when a Palestinian Samaritan businessman Yacoub Cohen, who built a tahini factory on Mount Gerizim and, after having his products certified as Kosher, sold them exclusively outside the Palestinian market, targeting instead the Israeli and the international markets.[962] Cohen's "The Samaritans' Tahini" is promoted as an Israeli product[963] while being a Palestinian law-based production. Despite being labeled as kosher, the factory is registered as a Palestinian company and employs Palestinian workers, who are paid according to Palestinian labor standards.[964]

Because the factory is located in the Israeli-administered oPt of Area C, the Kashrut department and its monitors have rare unhindered access to it.[965] To ensure the continuation of the "kosher" certification, the factory owners decided to hire one Kashrut employee and pay the statutory fees.[966] As they were allowed to enter the Israeli market thanks to their owner's dual citizenship and reach a niche Jewish market thanks to this certification, the owners have been able

[959] Interview with Cohen Aziz, supra note 146), Nablus (Aug. 6, 2019).
[960] *Id.*
[961] *Id.*
[962] Interview with Jacob Cohen, Nablus (Oct. 7, 2019).
[963] *See* HAR BRACHA TAHINI, HTTPS://WWW.HARBRACHA-TAHINI.COM/ (last visited June 2, 2021).
[964] Interview with Yacoub Cohen, supra note 331.
[965] Eliyahu Kamisher & Adam Rasgon. *Common Ground: Palestinian Tehina Flows from Nablus to Tel Aviv*, JERUSALEM POST (June 25, 2017), https://www.jpost.com/opinion/common-ground-palestinian-tehina-flows-from-nablus-to-tel-aviv-497693
[966] *Id.*

to increase their profits based on cheaper labor costs in the West Bank and larger consumer buying power in Israel.[967]

Several non-Samaritan Palestinian businesses have tried to emulate this model with less success.[968] For example, Al Karawan Tahini factory, an establishment of tahini makers in Palestine, has its factory in the outskirts of Nablus, in Area A.[969] Contrary to Area C, this territory falls under the administrative authority of the Palestinian government and is theoretically inaccessible to the Kashrut supervisor.[970] After the *Intifada,* the company lost their previously held Kosher label and only recently regained it under strict conditions.[971] Al Karawan factory's production is monitored through cameras in the facility by a rabbi.[972] In yet other instances such as that of Abu Ayesh Tahini, the oldest Nablus producer whose factory is also located in Area A, special permits are delivered by the Israeli Defense Forces to allow rabbi's access to factory grounds for on-site monitoring.[973] In the Abu Ayesh case, as in many others, the monitoring rabbi declined to renew the Kosher label on the grounds of "lack of access."[974] According to Abu Ayesh's marketer, though, the rabbi's decision was a political one, given the relative paucity of such decisions for near identical factories run by Samaritan Palestinians.[975]

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[967] When interviewed about the way he manages his tax books, imports and exports, the owner responded: "You ask too many questions, this is the secret of our profession, but rest reassured, we have everything under control and well taken care of." Interview with Yacoub Cohen, supra note 287, Nablus (Oct. 7, 2019).
[968] Eliyahu Kamisher & Adam Rasgon. *supra note* 334; Kobi Nahshoni, *Nablus Tahini with Kosher Seal?*, YNETNEWS (Jan. 19, 2011), https://www.ynetnews.com/articles/0,7340,L-4008978,00.html; Ronit Veret, *Pleasure Hunting: Secrets, Past and Present*, HAARETZ (Jan. 28, 2010), https://www.haaretz.com/food/1.5091407. *See also* Gideon Levy, *Twilight Zone / The Tahini Trail,* HAARETZ (Nov. 22, 2007), HAARETZ, https://www.haaretz.com/1.4958855
[969] Eliyahu Kamisher & Adam Rasgon. *supra note* 334.
[970] *Id.*
[971] *Id.*
[972] *Id.*
[973] *Id.*
[974] *Id.*
[975] *Id.*

Juxtaposing the Nablus Samaritans' experience with that of other Palestinians helps shed light on the structural privileges enjoyed by the former and lack for the latter, as a result of their respective identities within the legal system. Legal maneuvering by the Samaritans of the type seen in these examples has nourished a type of group autonomy which emboldens its members to selectively adhere to the law without pushback from those administering it.

V. Conclusion

> "We are a piece of antiquity and a curious site for preservation, we are unique. Palestinians, Israeli and the entire world should strive to protect us. We are a World Heritage that should be preserved." Cohen Hosny [976]

A unique minority in the midst of a singularly complex web of legal regimes, the Samaritans powerfully testify to the limits of law and its susceptibility towards biased treatment, with the majority disempowered to the advantage of a privileged few. This paper has contextualized the lack of rights for average Palestinians within the context of the Samaritan community's tumultuous history and present struggle for autonomy. The lack of minority rights in the oPt must not be understood only in the realm of ever-increasing Israeli human rights violations. Rather, the inability of the PA to safeguard Palestinian citizen rights in the West Bank, Gaza Strip, and East Jerusalem and the rise of ethno-religious fundamentalism are serious factors that contribute to compromising their fundamental human rights. This paper has suggested that the combination of these unequal power differentials and contrasting values have led to the vast majority of Palestinians not having a right to self-determination at the most basic level. The 'neo-colonial' pluralistic system that Palestine inherited after various occupations is still maintained by

[976] Interview with Cohen Hosny Wassef, Founder of the Samaritan Museum, author of the Israeli Exodus in the Sinai Peninsula, and member of the Palestinian Interfaith Council, Nablus (Sept. 15, 2019).

the PA to serve their own interests while saving face and professing support for liberal democracy. The inherent failures of such extreme pluralism, corruption, geo-political strife, and generally compromised national agency all contribute to a larger and more critical failure that this paper has aimed to highlight: the inability of human rights law to protect the very minority populations which it was designed to defend.

The failures of this system are best highlighted by the exception of the Samaritan minority group, which can be instructive for future reform to the extent possible within such enormous constraints. This paper has ultimately argued that their exceptional status in the eyes of the PA, as well as to some extent in that of the Israeli governance, is the product of the Samaritans' decades-long efforts to instrumentalize their hybrid ethno-religious identity for their own benefit. Samaritan political organizing at the domestic, regional, and international levels allowed members of the community to use their unique identities to affirm the humanitarian and socio-political rights which have been denied to minorities in the oPt and throughout the region. Whether in Nablus or Holon, the Samaritans constitute a united bloc with hard-earned uncompromised citizenry rights in both Israel and a potential Palestinian state.[977] As a result of the communities' secured position in the two jurisdictions, both the occupiers and the occupied continue to cede to Samaritans' demands, at the local level and more broadly through their success at achieving a form of 'diplomatic immunity' in Oslo. Perhaps most startlingly, however, this paper has demonstrated that the Samaritans effectively secured the insecurities of a legal and juridical system to establish an essential and increasingly rare right: that of existing as a people untethered to national boundaries or their civic and legal codes.

[977] Stephen Kaufman, supra note 244.

Therefore, the Samaritan case calls for an examination of the successes and failures of international law with respect to marginalized communities, while also being instructive for the positive development of Palestinian pluralism at the local level. Despite their various constraints, the PA has the same opportunity that all political groups in these contexts do: to use a pluralistic legal framework to the benefit of its entire citizenry and extend some of the Samaritans' freedoms to other minority groups. Doing so would be a step in the right direction, towards a governing system that promotes justice and egalitarianism in virtue of its pluralism rather than despite it.

APPENDIX 1: MEMO ON COMMUNITY-BASED QUALITATIVE RESEARCH (CBQR) METHODOLOGY

This memo provides details on the research methodology adopted to collect the necessary data for the second and third articles of this dissertation. It describes the research strategies, tools and objectives of the project and its scope. Annexed to this memo is a list of interviews and their key observations and takeaways.

The articles are concerned with a small ethno-religious minority that lives in the occupied Palestinian territories (oPt) known as the Samaritans. While there is a plethora of writing on their socio-cultural, religious, historical, and traditional customs and practices, the authors observations from desk and literature review highlighted a scarcity of information about both their legal status and treatment in the Palestinian legal and judicial systems. Until this work, very little to no research has been done which documents the interaction of this community with the applicable laws and their pathways to accessing justice. In order to address this absence and gather accurate and up-to-date information explaining Samaritans' navigation of the Palestinian laws and legal systems, the author opted to conduct fieldwork over a four-year period in the oPt. The primary aim of this fieldwork was to gather first-hand information directly from the concerned community and its key stakeholders and observe these patterns over time. The data that was collected has informed and directed the research project in question, streamlined its scope, and aided in the informed review and collection of relevant materials such as court cases, regulations, laws, circulars and administrative decisions.

The research methodology adopts and adheres to the community-based qualitative research (CBQR) standard of practice, according to which multiples trips were taken to the oPt between 2016 and 2020. The author, who is the sole researcher and producer of the article, conducted semi-structured qualitative interviews with a widely varied range of members of the Samaritan community in the West Bank. These interviews were conducted in Arabic and translated and edited by the author for this article. Commentaries on community beliefs and practices in the work are directly informed by observations, fieldnotes and informal discussions carried out across this four-year period. The fieldwork and all related interviews were carried out solely for academic purposes.

To ensure meaningful and accurate access to information, the fieldwork was conducted in the three following stages:

Stage I: Familiarization Through Observation and Informal Engagement

During Stage I, the author completed several fieldtrips to Palestine to meet in person with members of the Samaritan community. The main objective was to build relationships within the Samaritan community and set the foundation for trusting and open dialogue with participants across a range of social-gender-age-class boundaries.

This relatively informal and organically sourced phase sought to familiarize the Samaritan community with the key objectives of the research and its purposes within and contributions to an academic context. Through the observations and informal engagement carried out during this stage, the author gained an unmediated opportunity to understand the cultural, socio-economic and political status of the Samaritan community in the city of Nablus from a first-person perspective. This stage therefore consisted of interactions intended and guided by the author to understand,

engage in trust-building and natural interaction with the Samaritan community in unassuming and comfortable settings for the participants. Fieldtrips varied in their nature and included but were not limited to: Trips to Mount Gerizim during the public holidays of the Samaritans, including Passover and the Samaritan New Year; A trip to the old city of Nablus to visit the old neighborhood of the Samaritans, the Yasmine (Jasmine) quarter, Samaritan synagogue and old residences; Three trips to the commercial center of Nablus during which the author visited Samaritans in their businesses, including retail shops and service centers; A visit to the Palestinian News Agency (WAFA) to meet with a Samaritan journalist and eventual key source; A visit to a Palestinian public school where Samaritan, Muslim and Christian students study and discuss current events ; A visit to the Palestinian Ministry of Education to meet with a Samaritan General Director and his team.

An introductory visit during Passover was initially conducted in 2016 during which the author witnessed and participated in Samaritan traditions and customs of religious celebration. This sunrise to sunset experience informed and shaped the article's presentation of the role of faith in Samaritan identity, community building and social rituals as described in existing research.

Thanks to the support of local facilitators and collaborators, the author was able to meet with the majority of the 300 or so members of Samaritan community who were willing and open to participate in the fieldwork. For example, Mr. Jameel Dababat, a reputable journalist and a close friend of the Samaritan community, arranged multiple visits for the author on the main Samaritan residence of Mount Gerizim, traditionally inaccessible to outsiders and/or academic and journalistic researchers. Through the more elite network of Mr. Dababat, informal visits and introductory meetings took place with community leaders who would become several key sources

for the research: 1) Journalist Badawyye Al Samiri, 2) Cohen Hosny- the founder of the Samaritan Museum, 3) Benyamion Tsadaka- the editor of A.B. Newspaper, 4) Yfet Tsadaka

Mr. Khaled Zawawi, a general director at the Ministry of Religious Affairs and specialist of Samaritan religion and theology, also facilitated a number of locally sourced meetings in Nablus,including but not limited to: 1) Cohen Aziz, his wife and daughter, 2) Ihab Samiri, 3) Radwan Cohen.

His Excellency Mr. Farid Jallad, who has occupied senior positions in the Palestinian judiciary such as the Chief Justice of Palestine, President of the Constitutional Court, Minister of Justice and is currently a prominent lawyer in Nablus, tremendously helped the author in obtaining the necessary access to foundational members of the Samaritan leadership community. Thanks to his close relationship with the Samaritan Chief Priest, the author was able to develop and establish an organically sourced and trusting relationship with: 1) the Chief Priest and his family, 2) the Cohen family, 3) Jacob Cohen, and 4) Ishaq Radwan.

As a result of her own years practicing as a Palestinian lawyer in the West Bank, the author also drew on her existing relationships with several other reputable members of the Samaritan community, namely Mr. Ihab Lteif, Advocate Shadi Lteif, Advocate Tomer Cohen. These sources encouraged and opened meetings with their family members in their homes, where the author gained further insight on Samaritan community life and local perspectives and beliefs on Samaritan identity and intergenerational self-hood.

Today, the author is proud to report that she has visited Samaritan communities across Nablus over 15 times. During the Passover holiday, Saturday services and social gatherings, the author was welcomed by Samaritans to observe celebrations and community building events in the most intimate settings, such as homes, workplaces, schools and worship houses. In their homes

she was welcomed and offered the Samaritan sweets, Araq (liquor) and Hooka (known also as Argeelih, Nargeelih, Sheesha), over which several more in-depth and personally oriented interviews took place. Journalist Badawyye Hosny, Ms. Effet Aziz, and Mr. Benjamin Tsadaka, a historian and editor of the A.B. Newspaper, remain trusted sources.

Stage II: Data Collection through Semi Structured Interviews

Stage II consisted of data collection through semi-structured interviews with significant and varied sources with whom the author developed relationships in Stage I. These more structured and directed interviews were conducted in the West Bank with key stakeholders, including leadership of the Samaritan community, prominent and respected community members, and active and former members of the Palestinian government. The aim of this Stage was the collection of locally sourced and subjectively informed data about the personal experience of Samaritans with their legal status in Palestine and gather objective data about the nature and history of said status to be corroborated by existing scholarship. To this end, the community-based and interpersonally sourced emphasis of the author's research method allowed her unique and unmediated access to the interactions of Samaritans with the Palestinian legal system and their precarious position within it. This insider-knowledge came to form an understanding of serious ambiguities within and across the laws pertaining Samaritans as a whole, with a particular exposure to family, civil, administrative, and criminal legal contexts.

During her fieldwork over the years in this community, the author worked to cultivate sources trusted and varied enough to imbue the research with a clear perspective on how exactly the law in Palestine deals with Samaritans. In addition to the aforementioned participants, she interviewed in this phase the head of the Samaritan community in Nablus, the director of the

Department of Religious Affairs at the Ministry of Religious Affairs, the Attorney General of Palestine, and the Legal Advisor of the President of Palestine.

Following the strict communication protocols of Palestinian governmental institutions, she sent official letters requesting access to various court records as well as made requests for follow-up meetings with relevant governmental officials. Letters of this nature were sent and often responded to by the Palestinian Ministry of Religious Affairs, the Palestinian Legislative Council (Parliament), the Palestinian Judicial Council, the Palestinian Islamic (Shari'a) Judicial Council, and the Palestinian Presidency. Based on the difficult to attain approvals of these and other government bodies, the author was granted rare permission to conduct semi-structured interviews and conversational meetings with key officials and civil servants with first-hand knowledge of Samaritan legal issues. This information, along with that gathered from her access to court archives and databases, provides the exclusive and uniquely informed look into the Palestinian legal system shared in this article. Moreover, while collecting this data she was able to corroborate the observed ambiguities and inconsistencies in the legal and judicial treatment of the Samaritans formed through interviews in the previous stage. These findings will be further elaborated upon in the following section (Stage III).

In the semi structured interviews of Stage II., open-ended and qualitative questions focusing on the status of the Samaritans in Palestine were posed to members of the Samaritan community, as well as to stakeholders in the Palestinian government. The interviewees were encouraged to share their knowledge, experiences and information in a way that was organic yet guided and structured by the authors questions and feedback. The nature and style of said authorial engagement was altered for and adapted to the profile level of engagement, and professional/social/official status of the interviewee in order to get the most accurate results.

Interviews ranged between 1-2 hours, with occasional follow up interviews of equal or further length to confirm and clarify relevant information.

The questions posed during this Stage of research included the following:

A. Guiding questions to members of the Samaritans community:

a. How do you define yourself? Who is XX (Name of interviewee)?

b. How do you perceive your identity and your community's identity?

c. What is the social, political and legal status of the Samaritan community in Palestinian society?

d. How do you believe Samaritans see their status in Palestinian laws? How do they perceive themselves as legal subjects?

e. How do Samaritans relate to and participate in Palestinian identity?

f. How Samaritans relate to and participate in the Palestinian State building project?

g. How do Samaritans see their role amid the prolonged Israeli-Palestinian conflict?

h. What privileges and setbacks are unique to Samaritan members of Palestinian society?

i. What setbacks and privileges are unique to Samaritans as members of Israeli society?

j. Why did the Samaritans ask for the Israeli Right of Return without identifying as Jews or ever leaving the historical land of Palestine?

k. What if any changes have occurred on a collective level in the way Samaritans relate to their ethno-religio-social identity since asking for Israeli citizenship?

l. How do you use your access to the multiple available legal systems applicable to Samaritans?

m. Under which conditions do you use your Palestinian status, and when and how do you invoke your Israeli citizenship?

B. Guiding questions to Palestinian officials and stakeholders:

a. How do you define the Samaritan minority?

b. What is their identity?

c. How do you describe their legal status?

d. How similar or different are they from non-minority members of Palestinian society?

e. What are the privileges and exceptions they enjoy and why?

f. What are the similarities and differences in their legal status with that of other minorities in Palestine?

g. How and to what extent do they use legal pluralism?

h. Under which conditions do Samaritans use their Palestinian status, and when and how do they invoke their Israeli citizenship?

i. Has there been acceptance of and tolerance for Samaritan exceptionalism and why? What are the reasons for their continued retention of both the Palestinian and the Israeli citizenships (if we can say)?

Stage III: Data Collection Through Archival Work

Thanks to the support and collaboration of the Minister of Religious Affairs Dr. Mahmoud Habbash, His Excellency Mr. Ali Muhanna who at the time of the research was the Chief Justice of Palestine, and Chief Prosecutor Nasser Jarar, the author was able to have unprecedented access to the Sharia and ordinary court registries and archives for this research. With their help, the author was able to conduct interviews with Sharia'a and civil judges in Nablus, as well as prosecutors and police officials otherwise unwilling to speak on record about Samaritan issues. She was also granted access to such valuable data as court petitions, rulings, and judgements before the Palestinian Shari'a and ordinary courts to which Samaritans were either plaintiffs or defendants. The author was further authorized to collect rulings from the Court of Anti-Corruption, the Criminal Court, the Shari'a Court of Nablus, and the Ordinary Court in its civil capacity in

Ramallah. The resulting article marks the first time these rulings have undergone academic review and analysis and been shared widely to an English audience through its publication.

With the help of His Excellency Dr. Jamal Al Khatib, the author was also given access to the minutes of the meeting sessions of the Palestinian Legislative Council (PLC) during this phase of research. She examined the minutes of the relevant PLC meetings to understand the level of engagement, precise role and general contributions made by the Samaritan representative to the PLC, Cohen Saloum, during his mandate.

In 2019, with the help of some Israeli colleagues, the author succeeded in getting access to legal documents and valuable data on the status of the Samaritans in the Israeli legal system. This data also exposed surprising and highly interesting similarities with the ambiguities faced by the Samaritans in their treatment by the Israeli legal and Rabbinical systems.

In June 2019, the author explored these similarities through first hand interviews with the prominent Israeli lawyer and professor Michael Corinaldi, a specialist in the field of Law and Jewish Law who teaches at the University of Haifa and Bar-Ilan University and represented the Samaritans in the Israeli supreme Court. In these formal and comprehensive conversations with professor Corinaldi, the author was presented with a detailed account of this Supreme Court case from the perspective of the lawyer who requested and eventually succeeded in securing the Samaritan's inclusion under the rubric of the Law of Return. His informative representation of and observations upon the seminal trial were corroborated by legal documents and court decisions provided to the author by professor Corinaldi for her review.

Key Challenges:

The Samaritan community in Palestine is very tight knit and has been historically closed off to outsiders in general and academic researchers in particular. Fearing for their security and safety, the small community has a warranted attitude of distrust towards non-Samaritan researchers, whom they often perceive as having ulterior or unclear motives for their investigations into their legal status especially. Over the course of the field work for this research, Samaritans often mentioned fear of any potential conflict arising with Palestinians and general community unease due to the fact that they concurrently hold and benefit from both the Palestinian and the Israeli citizenships. To this end, the author observed that even the most willing participants were very discreet about their legal or political status but remained open about the cultural facets of their identity and history. In order to gain the trust necessary to conduct productive and accurate research, the author diligently organized multiple visits to Nablus over the course of five years with the sole purpose of engaging and connecting with the city's Samaritan minority.

A further obstacle for this research came from the Palestinian government, whose officials either did not have or were not willing to provide answers to most of the author's questions about Samaritans. Throughout each stage of information collection, Palestinian officials expressed an unawareness of the exceptional treatment of the Samaritans in the Palestinian system and the laws concerning them. It was therefore a challenge to gather a confident and well-defined understanding of the different conflicting laws and procedures unique to the Samaritan minority in Palestine from an official government source.

As for the prosecutors and the police, while they were fully aware of Samaritan exceptionalism in the system and understood their usage of this status to be largely opportunistic, they expressed a helplessness surrounding the potential for change. Law enforcement and legal

officials alike shared in a sense that the Oslo Accord had crippled their power as effective arbiters and enforcers of the law and left them with unanswered questions about the strategy for and motivations behind official treatment of the Samaritan minority.

Another significant challenge was presented by the authors Palestinian citizenship, which prevented her from entering into or gathering key sources from Israeli government bodies and citizenry. All requests to obtain a permit to visit the Samaritan community in Holon, the Hebrew university library and to carry out interviews with Professor Corinaldi were repeatedly and emphatically denied. The author attempted creative solutions to gain access through her connections with varying degrees of success, as when she convinced the head of the Samaritan community in Holon to request a research permit for her visit which was denied by Israeli security forces. However, she was ultimately able to overcome this challenge by seeking the help of her Israeli former classmates from the LL.M. program at Columbia Law School (2007) to gather sources and information necessary for her research.

APPENDIX 2: LIST OF INTERVIEWS[978]

#	Date	Name of interviewee	Title	City	Location
1.	Apr. 15, 2018 & Aug. 20 2019	Benyamin Tsadaka/ Benjamin Tsadaka	Samaritan historian, editor of the A.B. Newspaper, historian, and author	Nablus	His house on Mount Gerizim
2.	Sept. 15, 2019	Cohen Hosny Wassef	Founder of the Samaritan Museum and author of the Israeli Exodus in the Sinai Peninsula and member of the Palestinian Interfaith Council	Nablus	The Samaritan Museum
3.	Aug. 6, 2019	Cohen Aziz, in the presence of his daughter Farah and his wife Rahel	Former bank manager, Bank Hapoalim in Israel and later as a deputy head of the Palestinian Monetary Fund (central bank)	Nablus	His house in Mount Gerizim
4.	Mar. 19, 2019	Cohen Adballah Wassef Al Samri,	High Priest	Nablus	His house on Mount Gerizim
5.	Mar. 19, 2019	Ishaq Radwan Al Samiri	General Director at the Palestinian Ministry of Education	Nablus	His house on Mount Gerizim
6.	Sept. 10, 2019	Hassan Alawi	Palestinian Deputy Minister of Interiors	Ramallah	Ministry of Interiors
7.	Sept. 8, 2019	Ahmad Thabalih,	Legal Advisor, Palestinian Ministry of Interiors	Ramallah	Ministry of Interiors
8.	July 25, 2019	Khaled Zawawi	Director of Public Relations at the Palestinian Ministry of Religious Affairs	Ramallah	Ministry of Religious Affairs

[978] Full transcript of interviews is in possession of the author.

9.	Aug. 1, 2019	Majdi Shar'ab and Mohammad Mashni	Prosecutors	Nablus	Nablus Prosecution Office
10.	Sept. 12, 2019	Ali Muhanna	Former Chairman of the Palestinian Bar Association, former Minister of Justice, former Chief Justice of Palestine and former legal advisor of the Palestinian President Mahmoud Abbas	Ramallah	The Office of the President of the State of Palestine
11.	Aug. 13, 2018	Shadi Eltief, (Ziv Altif)	Lawyer	Nablus	His house on Mount Gerizim
12.	Aug. 10, 2018	Tomer Cohen/ Radwan Cohen	Lawyer	Ramallah	Office
13.	Aug. 20, 2018	Ezzat al Samiri	Fugitive, former civil servant	Nablus	Requested not to be revealed for security purposes
14.	Oct. 5, 2019	Ahmad Barak	former Attorney General and the Head of the Palestinian Anti-Corruption Commission,	Ramallah	Office of the Palestinian Anti-Corruption Commission,
15.	Aug. 6, 2019	ɔdallah Hroub,	the Head of the Sharia Court in Nablus,	Nablus	Nablus Shari'a Court
16.	ɛt. 4, 2019	Badawiyya Hosny Assamri	Samaritan journalist working for the Palestinian News and Press Agency (WAFA)	Nablus	Her house on Mount Gerizim
17.	ɛt. 7, 2019	Jacob Cohen/ Yacoub Cohen	Head of the Samaritan Legend Association and CEO of HAR BRACHA TAHINI Factory	Nablus	HAR BRACHA TAHINI Factory