

IDENTITY ANNEXATION: ISRAEL'S NON-TERRITORIAL AND PSYCHIC  
ANNEXATION OF THE WEST BANK SAMARITANS IN THE OCCUPIED  
PALESTINIAN TERRITORIES

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**Abstract.** While the traditional occupation of Palestinian land has various oppressive effects on the indigenous inhabitants' economic, social, and political lives, this article explores "identity annexation," de facto, non-territorial annexation that extends beyond land to selfhood and identity, and argues this is an outcome of Israel's settler-colonial approach to state-building. 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. Drawing on critical political philosophies of multiculturalism and indigenous critiques of settler colonialism, this article argues that Israel's recognition of the Samaritans through the Law of Return is in fact a misrecognition of their collective identity which created a moment of opportunity for Israel to advance the civic rights of an otherwise vulnerable segment of Palestinian society, but also to further solidify its grip on the psychic lives of Palestinian subjects. As Israel continues to utilize the controversial Law of Return to suppress its minorities and entrench Israel's Zionist body politic, exploring the identity annexation of the Samaritans provides a valuable case study on the vulnerability and contradictions of such practices and their real potential for psychic damage. The Samaritans' negotiation of their legal status under Israeli law provides an avenue for analyzing these politics of misrecognition: in 1993, the group successfully petitioned the nation's supreme court to strengthen their status through "self-affirmation."

INTRODUCTION ..... 74  
I. WHO ARE THE SAMARITANS: MAKING SENSE OF A COMPLEX HISTORY AND  
IDENTITY ..... 79

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A. The Unique History of the Samaritan Community: Neither Jews nor Palestinians nor Israelis ..... 79

B. The Identity of Palestine’s Samaritan Community: A “Troubling Question” ..... 82

II. FRAMING IDENTITY ANNEXATION: OF INDIGENOUS (MIS-)RECOGNITION IN ISRAEL AND BEYOND ..... 89

A. Before Identity Annexation: Samaritans’ Indigeneity and (Mis)Recognition ..... 90

B. The “Costs of Misrecognition”: The Samaritans’ Identity Annexation and Beyond .. 92

C. The Israeli Framework of Laws and Policies Enabling Identity Annexation..... 96

    1. “Judaizing” by Inflation: The Example of the 2018 “Nation-State” Basic Law 97

    2. “Judaizing” by Densification: Legalized Approaches to Land Annexation ..... 100

III. REALIZING IDENTITY ANNEXATION: THE LEGAL ANNEXATION AND NARRATIVIZATION OF SAMARITAN IDENTITY ..... 103

A. Israel’s Divide and Conquer Strategy: Fragmenting Palestinian Land and Selfhood and “Judaizing” Samaritans ..... 104

B. Samaritans as a Case Study of the Struggle with Selfhood: From Indigenous to the Exceptional Other ..... 107

C. Israeli Laws of Unmaking: The New Samaritan Jew ..... 109

D. The Samaritan Identity: Lost in Narrativization through Identity Annexation..... 111

IV. THE SAMARITANS SPEAK: RE-NARRATIVIZING THEIR IDENTITY IN THE COURTROOM..... 113

A. 1993: The Samaritans’ Strategy of Self-Affirmation before the Supreme Court ..... 115

B. 2021: The Courtroom Negotiations of Jewish Identity Continue ..... 117

V. CONCLUSION ..... 118

INTRODUCTION

Since its establishment in 1948, the Israeli state has used the law to divide and conquer<sup>1</sup> the original inhabitants of annexed lands by creating and selectively exalting various subcategories of Palestinian identity while expanding Israeli-Jewish control of their territories.<sup>2</sup> The concept of “annexation” is an internationally recognized violation of forcible land acquisition.<sup>3</sup> In the case of the

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<sup>1</sup> See JOHN QUIGLEY, 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 B’Tselem—The Israeli Info. Ctr. for Hum. Rts. in the Occupied Territories, *Conquer and Divide: The Shattering of Palestinian Space by Israel*, <https://conquer-and-divide.btselem.org/map-en.html> [https://perma.cc/8E5M-247G] (last visited Sept. 29, 2022).

<sup>2</sup> See Lana Tatour, *Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel*, 27 ARAB STUD. J., 1, 8–10 (2019).

<sup>3</sup> Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 49, Aug. 12, 1949, 75

Palestinian Samaritans in the Occupied Palestinian Territories<sup>4</sup>, the law alone fails to capture the full spectrum of harm sustained by this annexation. Ongoing human rights violations represent a failure of the law, but so too does the articulated lack of agency of the subjugated. This article analyzes the dual psychic-territorial annexation, or what this article calls “identity annexation,” of the Samaritans as form of non-territorial annexation that extends, de facto, beyond land into the less obvious yet equally devastating areas of selfhood, belonging, and identity.

Drawing on critical political philosophies of multiculturalism and indigenous critiques of settler colonialism, this article examines Israel’s decision to grant *Oleh*-immigrant status to Samaritans based on the controversial Law of Return.<sup>5</sup> By granting Samaritans, a non-Jewish Palestinian minority, citizenship and associated rights normally reserved for Jews, the Israeli state effectively annexes the identity of this minority through the redefinition of its collective historical self-conception.<sup>6</sup> 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 to entrench the incremental “creeping” annexation of Palestinian lands and subjects.<sup>7</sup>

To be legally and socio-politically “annexed” by the Israeli state is to be subsumed into the identity of the Jewish community.<sup>8</sup> Though one would imagine such annexation would entail access to the privileges of Israeli Jews, the Samaritans are an instructive exception to this expectation. 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.<sup>9</sup> The state of Israel takes pride in propagating its reputation as “the only democracy in the Middle East.”<sup>10</sup> When the state regularly passes and codifies discriminatory legislation against minority groups such as Bedouin communities in the Negev<sup>11</sup> and Palestinian citizens of Israel<sup>12</sup> in housing, education, and asylum; when it consistently flouts International Humanitarian Law (IHL) and International

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U.N.T.S. 287.

<sup>4</sup> 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 the occupied territory of Nablus on Mount Gerizim. The Samaritan Loc. Civ. Registry (2020) (unpublished registry, administered by Samir Sarawi) (on file with author).

<sup>5</sup> Passed on July 5, 1950 and published in the Official Gazette, *Sefer Ha-Chukkim*, the Law of Return reads: “Every Jew has the right to come to this country as an *oleh* [immigrant].” § 1, Law of Return, No. 5710-1950, SH 4 1, 114 (Isr.).

<sup>6</sup> See generally FRANZ FANON, *BLACK SKIN, WHITE MASKS* (1952).

<sup>7</sup> 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> [https://perma.cc/BS8W-VXPY].

<sup>8</sup> See discussion *infra* Part II.C.

<sup>9</sup> See discussion *infra* Part III.A.

<sup>10</sup> 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 12:01 PM), <https://www.washingtonpost.com/news/post-politics/wp/2015/03/03/full-text-netanyahus-address-to-congress/> [https://perma.cc/7N45-W7S7].

<sup>11</sup> Tatour, *supra* note 2, at 32.

<sup>12</sup> Na’eem Jeenah, *Introduction to PRETENDING DEMOCRACY: ISRAEL, AN ETHNOCRATIC STATE* 3, 3–27 (Na’eem Jeenah ed., 2012).

Human Rights Law (IHRL) in its military occupation of the West Bank,<sup>13</sup> as well as the siege, bombardment, and blockade of the Gaza Strip and its annexation of East Jerusalem and the Golan Heights;<sup>14</sup> the Samaritans' collective identity as Israeli citizens becomes imbued with Zionist and religious underpinnings.

Israel's recognition of the Samaritans through the Law of Return is in fact a misrecognition of their collective identity, which attempts to "Judaize" the group to further establish the state's Zionist body politic.<sup>15</sup> The Samaritans' engagement with and negotiation of their unstable legal status over generations has complicated Israel's politics of misrecognition,<sup>16</sup> but twice now have the Samaritans taken legal action to strengthen their status through self-affirmation. In the face of such mistreatment, the group took to the courtroom to reclaim their narrative from the Israeli state and successfully petitioned to "speak back" to the law nearly 50 years after it took effect.<sup>17</sup> This articulation of subterranean agency forced the dominant power to relinquish an advantageously constructed narrative in the face of one articulated by the subjects themselves.<sup>18</sup>

The identity annexation of the Samaritans provides a valuable case study on the vulnerability and contradictions of legal recognition, and it illuminates the capacity to do psychic damage rather than exclusively create benefits. 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. Contrary to the widespread assumption that legally recognized members to a dominant Jewish group are protected—regardless of the extent to which such membership was voluntary—Israel continues to utilize the law to suppress its minorities.<sup>19</sup> This ongoing discrimination challenges the notion that equality before the law immediately affects community and collective self-conception. The Samaritan case therefore provides an illustration of the vested state's manipulation of both marginalized populations and their narratives of belonging, which only provides a superficial recognition—indeed a

<sup>13</sup> Even the street signs between settlements occupying the West Bank are the Israeli reference to the geographical space, "Judea and Samaria."

<sup>14</sup> See 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/> [<https://perma.cc/LV4D-6ZHW>].

<sup>15</sup> The Arabic verb *Tahweed* provides for the act or the process of the making into a Jew and is translated "Judaizing." Because the act of making of a Jew to serve nation-state politics has a political connotation, this term is distinct from the more common term "Zionizing." For more on the Judaization and the Zionization, see MAHMOOD MAMDANI, NEITHER SETTLER NOR NATIVE: THE MAKING AND UNMAKING OF PERMANENT MINORITIES 250-326, 277-80 (2020) (arguing Zionization as a matter of law and the Judaization of a nation requires not only defining who is a Jew, but also both eliminating non-Jews and defining the unacceptable forms of Jewishness).

<sup>16</sup> See discussion *infra* Part I.B.

<sup>17</sup> *Petition No. 4200/93 to the High Court of Justice Achieves Settlement Between State Attorney's Office and Samaritans*, A.B. SAMARITAN NEWS, (Eds. Benyamim Tsedaka & Yefet B. Ratson Tsedaka) Apr. 1, 1994, at 48-49 (citing HCJ 4200/93 Comm. of the Samaritan Community in *Holon v. State Attorney's Office, Israel*) [hereinafter 17*Attorney and Samaritans*]; see generally Marc Galanter, *Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law*, 19 J. LEGAL PLURALISM 1 (1981).

<sup>18</sup> See Jeremy W. Crampton, *Cartographic Calculations of Territory*, 35 PROGRESS IN HUM. GEOGRAPHY 96 (2010); see also Ian Slesinger, *A Cartography of the Unknowable: Technology, Territory and Subterranean Agencies in Israel's Management of the Gaza Tunnels*, 25 GEOPOLITICS 18-19 (2020) (discussing the power of enemy militants' tunnels to undermine the "territorial sovereignty" of Israel).

<sup>19</sup> See Nadim N. Rouhana, "Jewish and Democratic"? *The Price of a National Self-Deception*, 35:2 J. PALESTINE STUD. 64 (2006) (explaining the denial of equal citizenship to an entire national group).

misrecognition—of said group, and lack of protection of their legal fundamental rights.<sup>20</sup>

Academic analyses of Israeli legal discrimination traditionally focus on the preferential treatment of one group at the expense of others in the Israeli system,<sup>21</sup> and generally posits “Jewishness” as an identity defined by Israeli law.<sup>22</sup> As a collateral result of these analyses, those who are legally classified as Jewish nationals are affirmed as constituting a dominant, privileged group, while populations that are not included in the legal definition of “Jewishness”—namely non-Jews, such as Arab Christians, Druze, Bedouins, and others—face discrimination and potentially face various forms of annexation.<sup>23</sup> This article 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 the impact of its identity annexation.

Identity annexation is, in its social meaning, an outcome of Israel’s settler-colonial approach to state-building.<sup>24</sup> This article does not seek to engage with identity studies per se; rather, it is concerned with the Samaritans’ 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. Not only does the article mobilize seminal literature on recognition, it adopts a combination of legal case analysis tools and community-based qualitative research (CBQR) methodology.<sup>25</sup> From 2016 to 2021, I conducted firsthand interviews with key members of the Samaritan community, including the High Priest of the Samaritan community, Cohen Abdallah Wassef; the attorney who represented the Samaritans in the Israeli Supreme Court, Advocate Michael Corinaldi;<sup>26</sup> and an advocate who mobilized the Samaritan community to file said case, Mr. Benyamin Tsedaka. This article deals only with the

<sup>20</sup> See Richard T. Ford, *Beyond “Difference”: A Reluctant Critique of Legal Identity Politics*, in *LEFT LEGALISM / LEFT CRITIQUE* 38, 53 (Wendy Brown & Janet Halley eds., 2002).

<sup>21</sup> See, e.g. Yoav Peled, *Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State*, 86:2 AM. POL. SCI. R. 432 (1992); As’ad Ghanem, Nadim Rouhana & Oren Yiftachel, *Questioning “Ethnic Democracy”: A Response to Sammy Smooha*, 3:2 ISR. STUD. 253 (1998).

<sup>22</sup> See 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, 205 (Nadim N. Rouhana & Sahar S. Huneidi eds., 2017).

<sup>23</sup> See generally SHOURIDEH C. MOLAVI, *STATELESS CITIZENSHIP: THE PALESTINIAN-ARAB CITIZENS OF ISRAEL* (2013) (examining the mechanisms of exclusion of Palestinian citizens in the Zionist incorporation regime).

<sup>24</sup> See Tatour *supra* note 2, at 8.

<sup>25</sup> The author gathered firsthand interviews over multiples trips to the occupied Palestinian territories between 2016 and 2020, according to CBQR. These were 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.

<sup>26</sup> 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.

Samaritan minority of Nablus due to their relative accessibility and local prominence.<sup>27</sup>

The case of Israel's partial inclusion of the Samaritan community within its legal framework sheds light on the unseen yet devastating consequences of territorial annexation on the collective identity of a minority population. By making a West Bank Palestinian ethnoreligious minority part of the Israeli body-politic, the Israeli state is emboldened to tout inclusivity. Identity annexation entrenches 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'être*. As a right-wing Israeli government stands on the verge of annexing additional parts of the occupied West Bank in 2021, this article draws critical attention to the legal mechanisms through which annexation occurs and might be challenged. Further, it would affect international perceptions of human rights law as a tool for minority groups, particularly those who appear but are in fact not part of the benefited majority.<sup>28</sup>

This article proceeds in four parts. Part I presents the complex history and identity of the Samaritans, explores 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. Part II provides the analytical framework of the concept of identity annexation, noting key scholarly contributions both elucidating the multilayered implications of this annexation and critiquing the liberal politics of recognition. Part II further explores the web of exclusionary laws and policies that secure the Israeli state's annexation of minority populations. The following sections study of the concept of "Jewishness" as a strategic concept in Israel's annexation of the occupied territories.<sup>29</sup> Using four case studies of modern Samaritan community members, Part III refines and explores the concept of identity annexation by examining Samaritan selfhood after the implementation of the Law of Return. Part IV considers the Samaritans' strongly worded petition to the Israeli Supreme Court—a successful reclamation of the law in a rare but instructive negotiation of an otherwise oppressive legal system—and discusses how Palestinian society in general and Samaritans in particular have negotiated Israel's pursuit of identity annexation, primarily through the unique instrumentalization of law. The article culminates with a bottom-up approach to examining the degree to which this identity annexation has succeeded in restructuring the psychic landscape of the Samaritan people.

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<sup>27</sup> 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 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 'arab 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.

<sup>28</sup> Moussa Abou Ramadan, *Judicial Activism of the Shari'ah Appeals Court in Israel (1994-2001): Rise and Crisis*, 27 *FORDHAM INT'L L.J.* 254, 254 (2003).

<sup>29</sup> MAMDANI, *supra* note 15, at 252.

## I. WHO ARE THE SAMARITANS: MAKING SENSE OF A COMPLEX HISTORY AND IDENTITY

The image of Samaritan identity in its social meaning is complex, if not inherently fractured, even before Israeli law used this tenuousness to its gain. This section delves into the Samaritans' creed, history, and defining characteristics. It then discusses the politicization of Samaritans' identity. As the Samaritans they are they neither Jewish nor returnees, the section juxtaposes their relationship to Judaism and the Israeli-Jewish brand of Zionism with the group's relationship to Palestinian identity and the Samaritans' participation in the Palestinian struggle against Israeli settler-colonialism.

*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<sup>30</sup>

The Palestinian Samaritans are one of the smallest and oldest ethnoreligious minorities in the Middle East and perhaps the world.<sup>31</sup> They have for centuries lived in the historical land of Palestine<sup>32</sup> and are currently split between two residential centers: one atop Nablus' Mount Gerizim<sup>33</sup> in the occupied territories and the other on the outskirts of Holon, to the south of Tel Aviv.<sup>34</sup> The community is intimately connected to Nablus, which has been its home for centuries, since the Masoretic Exodus.<sup>35</sup> Samaritans' unique religious identity is rooted in the Abrahamic lineage, but it is not subsumable under Judaism, Christianity, or Islam.<sup>36</sup> Importantly, the Nablus Samaritans reject being classified as Jews of either Palestinian or of Israeli origin and distance themselves from Rabbinic Orthodoxy.<sup>37</sup> Instead, they

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<sup>30</sup> Luke 10:25-37.

<sup>31</sup> Nathan Schur, *The Modern Period (from 1516 A.D.)*, in THE SAMARITANS 113, 114–15 (Alan D. Crown ed., 1989); see also Laura Overmeyer, *Samaritans in Nablus: The Other "People of Israel,"* QANTARA.DE (Sept. 15, 2014), <https://en.qantara.de/content/samaritans-in-nablus-the-other-people-of-israel> [<https://perma.cc/4LEG-H8CT>]; Reuben Lewis, *The Last Samaritans, Israel's Smallest Religious Minority*, CULTURE TRIP (May 2, 2018), <https://theculturetrip.com/middle-east/israel/articles/an-introduction-to-the-samaritans-israels-smallest-religious-minority/> [<https://perma.cc/6HX2-BBNW>].

<sup>32</sup> 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).

<sup>33</sup> The biblical name of Mount Gerizim is Har Bracha, meaning the Mount of Blessing. The Arabic name is *Jabal Al-Tūr* and the Hebrew name is *Har Gerizim*.

<sup>34</sup> Monika Schreiber, *The Samaritans*, in ROUTLEDGE HANDBOOK OF MINORITIES IN THE MIDDLE EAST 225, 225 (Paul S. Rowe ed., 2019) [hereinafter Schreiber, *The Samaritans*].

<sup>35</sup> A COMPANION TO SAMARITAN STUDIES 164 (Alan David Crown et al. eds., 1993).

<sup>36</sup> Louis H. Feldman, *Josephus' Attitude Toward the Samaritans: A Study in Ambivalence*, in JEWISH SECTS, RELIGIOUS MOVEMENTS, AND POLITICAL PARTIES 23–26 (Menachem Mor ed., 1992).

<sup>37</sup> Overmeyer, *supra* note 31.

claim to be the “true Israelites”—a politically useful albeit thorny identity testifying to their indigeneity on the land.<sup>38</sup>

In general, 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.<sup>39</sup> 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.<sup>40</sup> Samaritans consider themselves to be situated “in the heart of the problem, trying to find ways to exist with both,” according to Benyamin Tsedaka, a Samaritan historian and community leader.<sup>41</sup> Indeed, Tsedaka asserts that “[the Samaritans] get along with Palestinians and Jews,” and they have even sought to “propose Mount Gerizim as an international peace centre.”<sup>42</sup> Cohen Hosny Wassef, a Samaritan historian and founder of the Samaritan Museum, corroborated Tsedaka’s account, emphasizing that “Samaritans are neither Jews, Muslims or Christians” but “a bridge for peace between the two sides of the conflict.”<sup>43</sup> 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.<sup>44</sup>

Samaritans believe themselves to be the last and the only true ancient Israelites still in existence<sup>45</sup> and claim a traceable lineage to three of the twelve Israelite tribes: Menasseh, Ephraim, and Levi.<sup>46</sup> According to the ancient historian Josephus<sup>47</sup>, the name “Samaritans” was used in the first century AD to refer to the “specific community of worshipers on Mount Gerizim.”<sup>48</sup> Today, Samaritans

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<sup>38</sup> 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> [<https://perma.cc/C2Z7-PFYW>].

<sup>39</sup> Jürgen K. Zangenberg, *The Samaritans*, BIBLE ODYSSEY, <https://www.bibleodyssey.org/en/people/related-articles/samaritans> [<https://perma.cc/33BX-P4GT>] (July 17, 2019; last visited Sept. 26, 2022) (interviewing Cohen Hosny Wassef, Founder, Samaritan Museum, in Nablus, Isr.).

<sup>40</sup> 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, yet he is determined to stay in the country, having stated: “We will not leave. This is our home.” Dana Rosenblatt, *Amid Conflict, Samaritans Keep Unique Identity*, CNN (Oct. 14, 2002, 5:38 PM), <http://edition.cnn.com/2002/WORLD/meast/10/08/samaritans/> [<https://perma.cc/D57N-8GUZ>].

<sup>41</sup> *Id.*

<sup>42</sup> Judith Fein, *The Last of the Good Samaritans*, BBC (Aug. 29, 2018), <https://www.bbc.com/travel/article/20180828-the-last-of-the-good-samaritans> [<https://perma.cc/HN3L-8NDZ>].

<sup>43</sup> Interview with Cohen Hosny Wassef, Founder, Samaritan Museum, in Nablus, Isr. (July 17, 2019).

<sup>44</sup> Anadolu Agency, *‘Beni Israel’: The Samaritans of Palestine’s Mt. Gerizim* (Dec. 18, 2015) [<https://perma.cc/J6DT-7J3D>].

<sup>45</sup> *Id.*

<sup>46</sup> Wayne A. Brindle, *The Origin and History of the Samaritans*, 5.1 GRACE THEOLOGICAL J. 47, 50 (1984).

<sup>47</sup> 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 ASS’N FOR JEWISH STUD. 41, 41–42 (1982).

<sup>48</sup> MONIKA SCHREIBER, THE COMFORT OF KIN: SAMARITAN COMMUNITY, KINSHIP, AND MARRIAGE 24 (2014)



prefer the Aramaic term *Shomronim*, meaning “keepers of the covenant,”<sup>49</sup> believing it best expresses their identity as the “keepers of the truth”<sup>50</sup> and “observers of Torah law.”<sup>51</sup>

According to the Samaritans, the source of Samaritanism resides in their Israelite Samaritan Torah, thus leading them to reject the rest of the Hebrew scriptures. The Samaritans frequently assert that there are “approximately six thousand differentiations”<sup>52</sup> between the Samaritan Pentateuch, their version of the Torah, and the Masoretic text, which is widely accepted as “the most authoritative Hebrew version of the Torah.”<sup>53</sup> The Pentateuch recounts how the Samaritans, who are called Israelites in the text, were enslaved in Egypt for 215 years before escaping to the desert around 1412 BC.<sup>54</sup> After walking through the desert for forty years, the Samaritans established themselves on Mount Gerizim in the northern biblical kingdom of Israel and in Samaria in the land of Canaan.<sup>55</sup> Unlike mainstream and Zionist Jews, Samaritans ascribe no religious significance to Jerusalem<sup>56</sup> and challenge Israel’s claim to King Solomon’s temple. The only sacred place of Samaritan worship is Mount Gerizim, *Har Bracha*, or the Mount of Blessing in the city of Nablus.<sup>57</sup>

A critical feature of the Samaritans’ collective identity is its long-established roots to the biblical Holy Land, which consists of a lineage of 127 consecutive generations.<sup>58</sup> The scriptural claim to being the “original Israelites” 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 falsify the Samaritan history that forms the cornerstone of the group’s identity and seek creative ways to subjugate and redefine the Samaritan population.

The tenuous nature of this forced co-existence is not new. Although the Samaritans and Jews share Semitic roots,<sup>59</sup> tensions between the Judeans, the Israelite ancestors of Jews, and the Samaritans

[hereinafter SCHREIBER, COMFORT OF KIN].

<sup>49</sup> Zangenberg, *supra* note 39.

<sup>50</sup> MOSES GASTER, *THE SAMARITANS: THEIR HISTORY, DOCTRINES, AND LITERATURE*, 46 (1925).

<sup>51</sup> Yairah Amit, *The Samaritans – Biblical Positions in the Service of Modern Politics*, in *SAMARITANS: PAST AND PRESENT* 247, 263 (2010) (quoting scholar Shemaryahu Talmon in his 1994 report to the Ministry of the Interior).

<sup>52</sup> BENYAMIN TSEDAKA & SHARON SULLIVAN, *THE ISRAELITE SAMARITAN VERSION OF THE TORAH: FIRST ENGLISH TRANSLATION COMPARED WITH THE MASORETIC VERSION* at xxi (2013); *see also* Samaritan Pentateuch, British Library, <https://www.bl.uk/collection-items/samaritan-pentateuch#> [<https://perma.cc/Y8FT-EVCD>].

<sup>53</sup> Chavie Lieber, *The Other Torah*, *TABLET* (May 14, 2013), <https://www.tabletmag.com/sections/belief/articles/the-other-torah> [<https://perma.cc/2JMW-R7Y2>].

<sup>54</sup> TSEDAKA & SULLIVAN, *supra* note 52, 160-63.

<sup>55</sup> *Id.* at 392; REINHARD PUMMER, *THE SAMARITANS: A PROFILE* 289 (2016).

<sup>56</sup> PUMMER, *supra* note 55, at 17 (describing Samaritans’ view that “those who worship in Jerusalem have gone astray” of the true religion).

<sup>57</sup> *Id.* at 289.

<sup>58</sup> *See* Benyamim Tsedaka, *The Keepers [Shamerem]-A Tiny Special People and Advocate of Peace*, *THE SAMARITAN UPDATE* (Mar. 2014), <http://thesamaritanupdate.com/> [<https://perma.cc/HT5Z-53M6>].

<sup>59</sup> Menachem Mor, *Samaritan History: The Persian, Hellenistic and Hasmonaean Period*, in *THE SAMARITANS* (Alan D. Crown ed., 1989) (“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.”). For more information about the history of the Samaritans, *see generally* PUMMER, *supra* note 55 (describing the

go very far back.<sup>60</sup> Still, 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 concerning Samaritans’ status as gentiles.<sup>61</sup> After the codification of the Babylonian Talmud in the sixth century CE, some accounts synthesize the Samaritan’s gentility into their identity as so-called “lion converts,”<sup>62</sup> who not only practice a syncretic religion<sup>63</sup> but are also fraudulent in their claims of being indigenous to Samaria.<sup>64</sup> 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.<sup>65</sup>

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 eighth century. Nowadays, the prevailing halakhic position toward the Samaritans is based on the mid-1980s judicial decision of the Israeli Chief Rabbinate and the Rabbinate Courts, which clarified that “the Samaritans are to be treated as Gentiles.”<sup>66</sup>

### B. *The Identity of Palestine’s Samaritan Community: A “Troubling Question”*<sup>67</sup>

Despite their very small number, the peculiarities of Samaritan identity on the collective and individual level are manifold. Geopolitical interests on both sides have inspired the Israelis and the Samaritans to seek religious similarities and downplay the numerous theological differences between

history and religious practices of the Samaritans); Reinhard Pummer, *Religion, Samaritan*, in *THE ENCYCLOPEDIA OF ANCIENT HISTORY* (2019) (comparing the beliefs, practices, and scriptural bases between Samaritanism and Judaism); Menachem Mor et al., *SAMARITANS: PAST AND PRESENT: CURRENT STUDIES* (2010); Ingrid Hjelm, *What Do Samaritans and Jews Have in Common? Recent Trends in Samaritan Studies*, 3.1 CURRENTS IN BIBLICAL RSCH. 9 (2004); Brindle, *supra* note 46, at 48–50.

<sup>60</sup> Samaritan sources claim that the first schism with Judaism came during the return of the Judeans from the Babylonian exile (586–538 BC) when Judeans began to rebuild the Temple of Jerusalem. Schreiber, *The Samaritans*, *supra* note 34, at 230. Another Samaritan chronicler argues that a clear divide had existed between Judeans and Samaritans since the time of Cyrus, primarily over rebuilding Jerusalem and the Temple, and allegations that Ezra and the Judeans have “falsified their Script and the contents of the Talmud.” J.W. Jamieson, *The Samaritans*, 23 MANKIND Q. 141, 141 (1982) [hereinafter Jamieson, *The Samaritans*]. During the Hasmonaeon period, the Jews took over extensive parts of Samaria, and as a result, the relationships between both communities deteriorated even more. Emmanuel Friedheim, *Some Notes About the Samaritans and the Rabbinic Class at the Crossroads*, in *SAMARITANS: PAST AND PRESENT* 193, 193 (Menachem Mor & Friedrich V. Reiterer eds., 2010). Finally, in 128–127 BC, due to the Samaritans’ involvement in the recurrent upheavals, John Hyrcanus conquered Mount Gerizim and destroyed their temple. *supra*, Brindle, *supra* note 46, at 47. At 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. Friedheim, *supra* note 60, at 193–200.

<sup>61</sup> Schreiber, *The Samaritans*, *supra* note 34, at 227.

<sup>62</sup> Brindle *supra* note 46, at 58–59.

<sup>63</sup> See Jamieson, *The Samaritans* *supra* note 60 at 142; see also Brindle *supra* note 46 at 57–58 (discussing II Kings 17:25–28)

<sup>64</sup> Brindle *supra* note 46.

<sup>65</sup> See *id.*

<sup>66</sup> In 1985–1986, the Israeli Chief Rabbinate and Rabbinical Courts issued a decision ruling that Samaritans are to be treated as Gentiles. Michael Corinaldi, *The Personal Status of the Samaritans*, in *SAMARITAN RESEARCHES*, 5 MANDELBAUM STUDIES IN JUDAICA 2.87 (V. Morabito, A. D. Crown & L. Davey eds., 1996) (citing *Torah She-Be’al-Peh* 29 (1988) 59–67).

<sup>67</sup> Video interview with Jameel Dababat, Journalist, Palestinian News & Information Agency (WAFA) (July 18, 2021).

their faiths. Further, Samaritans use different languages depending on their context, thus making their multilingualism a key aspect of their collective identity.<sup>68</sup> The interviews cited in this article were conducted between 2016 and 2021 with Samaritans of various backgrounds and social strata, and these interviews testify to the complexity and diversity of perspective within the community.<sup>69</sup>

The key characteristic of Samaritans' language, politics, and approach to citizenship is flexibility.<sup>70</sup> Nablus Samaritans speak an accented form of Palestinian Arabic when engaging in day-to-day affairs and local publicity. This is likely to convey their historical connection to the land and belonging amongst its community. However, for certain business or political transactions and some forms of prayer, the Samaritans switch to modern or Biblical Hebrew; which could cement their ties to the Israeli and Jewish communities.<sup>71</sup>

Though Israeli citizenship allows the community daily protections, rights, and freedoms that are not available in Palestine—such as freedom of movement, access to an excellent health system, and better-paid job opportunities—when asked to detail their perspectives on the topic, Samaritans do not express fidelity to one citizenship or another.<sup>72</sup> Rather, most downplay the significance of their Israeli citizenship as compared to the Palestinian, and argue that the former merely provides access to conveniences not offered to them by the latter. Ihab Samri, for example, is a schoolteacher working for the Palestinian Ministry of Education in Nablus with dual citizenship.<sup>73</sup> He considers himself to be neither Israeli nor Palestinian but a “Samaritan citizen”:

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

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<sup>68</sup> This use of language is often seen in younger Samaritans' interaction with Israeli media, which they use to get most of their information despite having direct access to Palestinian academic and political institutions. Video Interview with Badawiyya Hosny Assamri (July 21, 2019), and Video interview with Khaled Zawawi, Director of Public Relations, Palestinian Ministry of Religious Aff. (July 25, 2021).

<sup>69</sup> My interviews were conducted in Arabic, which could have influenced interviewees' statements.

<sup>70</sup> Compare, TBN Israel, *Diversity in Israel: Samaritan Life Today*, YOUTUBE (July 15, 2021), <https://www.youtube.com/watch?v=TPSy7Hkjm> [<https://perma.cc/U3QD-2EBC>] (explaining, in part, Samaritans' positive relationship with Israel) with Int'l Middle Eastern Media Ctr. & Agencies, *Christian and Samaritan figures in Palestine denounce the siege, violations*, IMEMC (May 9, 2006), <https://imemc.org/article/18542/> [<https://perma.cc/86PC-Z7TD>] (describing Samaritans' support for Palestinians during Israel's “unjust siege”) [hereinafter IMEMC].

<sup>71</sup> For a detailed explanation of the Samaritan identity and the usage of the Arabic language with the old Palestinian Nablus accent, see Abood Cohen, *A Samaritan Speaks*, YOUTUBE (Jul. 22, 2021) [https://www.youtube.com/watch?v=OJkuRIwEp3k&ab\\_channel=Sulha](https://www.youtube.com/watch?v=OJkuRIwEp3k&ab_channel=Sulha) [<https://perma.cc/5LTV-9W2V>], at 16:25-35:00.

<sup>72</sup> See, e.g., *id.* at 22:00; but see TBN Israel, *supra* note 70 (describing Samaritan's identity with both their Palestinian and Israeli roots).

<sup>73</sup> Video interview with Ihab Samri, researcher and Palestinian civil servant living in Nablus (July 18, 2021).

Territories, I am a Palestinian.<sup>74</sup>

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.”<sup>75</sup> According to Ihab, the relationship of the Samaritan community with the governing regimes is one of convenience and determined solely by overlapping interests:<sup>76</sup>

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 [prosperous], 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.<sup>77</sup>

The “complex” nature of Samaritan identity<sup>78</sup> has an interesting history. After the signing the Oslo Peace Accords, the Palestinian Authority became a self-governing body,<sup>79</sup> and during the Israeli Civil Administration the Samaritans lost many privileges.<sup>80</sup> In 1994, the Samaritans sent an official delegation to meet with Yasser Arafat, the chairman of the Palestinian Authority. In this meeting, the Samaritans sought, among other such benefits, representation in future elections, and this advocacy stressed their Palestinian roots.<sup>81</sup> However, when the peace process began to deteriorate and Benjamin Netanyahu rose to prominence, the Samaritans shifted from a narrative emphasizing Palestinian roots

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Video interview with Khaled Zawawi, Director of Public Relations, Palestinian Ministry of Religious Aff. (July 25, 2021) (noting the unique intersection of religious, political, and geographical concerns all factor into the formation of Samaritan selfhood); *see also* Reuben Lewis *The Last Samaritans, Israel’s Smallest Religious Minority* THE CULTURE TRIP (May 2, 2018), <https://theculturetrip.com/middle-east/israel/articles/an-introduction-to-the-samaritans-israels-smallest-religious-minority/> [<https://perma.cc/47R8-6AVR>].

<sup>79</sup> *See* Declaration of Principles on Interim Self-Government Arrangements (“Oslo Accords”), Isr.-Palestine, Sept. 13, 1993, U.N. Doc. A/48/486 at 4. According to the Oslo Accords, the Government of the State of Israel, represented by Shimon Peres, and the Palestinian Liberation Organization (PLO) team, 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. *Id.* For a full list of the Israeli-Palestinian agreements since 1993, *see Peace Agreements Database (PA-X)*, UNIV. OF EDINBURGH, <https://www.peaceagreements.org/search> [<https://perma.cc/7MU8-VQ9Q>].

<sup>80</sup> Majallet Al Aswaq Al Ordnnye “Nablus Samaritans and Their Loss of Privileges with the Arrival of the Palestinian Authority and Their Living in Identity Crisis” (July 13, 1999) *reprinted in* ADNAN AYYASH, AL-TA’IFA AL-SAMIRIYA FI NABLUS. DIRASA FI MU’TAQIDATIHA WA TAQALIDIHA [THE SAMARITAN COMMUNITY IN NABLUS: A STUDY OF THEIR BELIEFS AND PRACTICES] 123 (1st ed. 2003) (discussing Samaritans’ loss of privileges after the Oslo Peace Accords).

<sup>81</sup> *See* AYYASH *supra* note 80, at 123

towards one in which their Israeli ties could benefit them.<sup>82</sup> As holders of both Palestinian and Israeli citizenships, Samaritan youth prioritize engagement with Israeli politics and vote in the Israeli settlement Har Bracha,<sup>83</sup> often for the far-right Likud Party.<sup>84</sup>

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, make clear their desire to belong on some level to the nation of Israel.<sup>85</sup> According to a local Samaritan, Afnan Al-Samri, who resides in Nablus, a lot of her community voted for Netanyahu during the Israeli general election with the belief that he will retain Israel's control over the Samaritan quarter. She noted in the interviews for this article that generally, the Samaritans "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.<sup>86</sup> Numerous interviews echoed Al-Samri's perspective that the community is generally adaptable in their professed political allegiances and tend to shift positions depending on the views of the person they are interacting with.<sup>87</sup>

Faced with a crippled economy and an unstable government, Samaritans have continued to seek employment opportunities in Israel while retaining their place of domicile in Nablus.<sup>88</sup> Jameel Dababat, a journalist and ethnographer focused on the Samaritan minority of Nablus, describes Samaritan identity in the same vein as "disturbed and turbulent" and overall, a "troubling question."<sup>89</sup> 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:<sup>90</sup>

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

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<sup>82</sup> *Id.* For example, the group petitioned to claim citizenship rights in opposition to the Palestinian Authority, arguing that Nablus Samaritans have unilaterally approached the Israeli side "without any prior coordination," contrary to the assumptions of most Palestinians of the day. *Id.*

<sup>83</sup> See, e.g., *A meeting of Samaritologists*, 687 A.B. SAMARITAN NEWS (Eds. Benyamim Tsedaka & Yefet B. Ratson Tsedaka) 1994, at 5; see also AYYASH, *supra* note 80 at 123.

<sup>84</sup> See AYYASH, *supra* note 80, at 122; see also Atef Daghlas, *Despite their non-participation in the political life.. Why do Samaritans participate in the Israeli Elections?*, ALJAZEERA (Mar. 17, 2021), <https://www.aljazeera.net/> [<https://perma.cc/A3VH-CCZH>].

<sup>85</sup> See SCHREIBER, COMFORT OF KIN, *supra* note 48, at 38. A.B. SAMARITAN NEWS, (Eds. Benyamim Tsedaka & Yefet B. Ratson Tsedaka) July 5, 1999, at 42; see also AYYASH, *supra* note 80, at 123.

<sup>86</sup> Video interview with Afnan Al-Samri (July 18, 2021).

<sup>87</sup> *Id.*; see also AYYASH *supra* note 80, at 38.

<sup>88</sup> See Patrick Kingsley & Gabby Sobelman, *The World's Last Samaritans, Straddling the Israeli-Palestinian Divide*, N.Y TIMES (Sept. 30, 2021), <https://www.nytimes.com/2021/08/22/world/middleeast/samaritans-israeli-palestinian.html> [<https://perma.cc/7VTG-GG3P>].

<sup>89</sup> Video Interview with Jameel Dababat, Journalist at the Palestinian News & Info. Agency (Wafa) (Jul. 18, 2021).

<sup>90</sup> *Id.*

used to attain rights, protection and services. But deep at the heart of their identity is the religious facet of it.<sup>91</sup>

However, on social media platforms or on other official platforms like the internal Samaritan newspaper, *A.B. The Samaritan News Periodical*, the discourse tends to include intolerance towards Palestinian critiques of the Israeli state.<sup>92</sup> As recently as May 2021, prominent Samaritan author Benjamin Tsedaka wrote in Hebrew in *A.B. News* as well on his social media, in praise of Israeli prime minister Benjamin Netanyahu's civilian attacks in the Gaza Strip.<sup>93</sup> This likely arises because of Samaritans' ongoing access to Israel's superior socioeconomic status.<sup>94</sup> The benefits of Samaritans' proximity to Israel were particularly visible during the COVID-19 pandemic,<sup>95</sup> which made the gap between Palestinian and Israeli health systems, governance, and social welfare unavoidably clear.<sup>96</sup>

Not all Samaritans feel or exhibit a strong affinity to Israel. The Samaritan owner of a Nablus clothing store named Rahel Aziz, for example,<sup>97</sup> 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."<sup>98</sup> 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 Liberation Organization (PLO), defines herself as a woman of Samaritan faith and Palestinian citizenship. She

<sup>91</sup> *Id.*

<sup>92</sup> In March 2020 during the COVID-19 pandemic, a public Facebook post by a Samaritan woman presented a casual if not 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," complaining that despite the extensive security, Palestinians are "ungrateful" and "blame Israel for not doing enough for the People of Gaza." Farah Aziz Cohen, FACEBOOK (Mar. 5, 2020), <https://www.facebook.com/farah.azizcohen/posts/pfbid0273o3qXEW1Mrq94DgxiiUx33YugQw4MEdGXRCcuquiRy6QsE8xGhWb2kUo4NyUL1ol> [<https://perma.cc/2YQU-AR3Z>]. (In Hebrew).

<sup>93</sup> Benjamin Sedaka, FACEBOOK (May 12, 2021) (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 nonArabic speaking audience.

<sup>94</sup> Video interview with Khaled Zawawi, Director of Public Relations, Palestinian Ministry of Religious Aff. (July 25, 2021).

<sup>95</sup> The Samaritans fared 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. Video Interview with Jameel Dababat, Journalist at the Palestinian News & Info Agency (WAFA) (Jul. 18, 2021). 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. *Id.*

<sup>96</sup> Video interview with Khaled Zawawi, Director of Public Relations, Palestinian Ministry of Religious Aff. (July 25, 2021).

<sup>97</sup> Interview with Rahel Aziz, in Nablus, Isr. (Aug. 6, 2019).

<sup>98</sup> *Id.*

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.”<sup>99</sup> Hosny described her relations at her Palestinian workplace in a similar vein, noting that she has “never encountered an instance in [her] life where [she has] been discriminated against because of [her] religion or Samaritan identity” and has “14 Palestinian colleagues; they are like family to [her].”<sup>100</sup> 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 resources, she believes it will help her become a civil servant and eventually a director in the Palestinian Authority or even a parliamentarian.<sup>101</sup>

Local members of the community exemplify fidelity to Palestinian identity by engaging at various levels with local government. Cohen Hosny Wassef, the Director 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.<sup>102</sup> 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 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.<sup>103</sup>

As explained, Samaritans may also adopt a seemingly counter narrative that emphasizes the Samaritan belonging to Israeli society and people. For example, Tomer Cohen, a Palestinian lawyer and legal advisor of the Palestinian Basketball Association responded: “If I’m in Tel Aviv, I feel Tel Avivi . . . But if I’m in Ramallah, I feel Ramallawi.”<sup>104</sup>

Although the Samaritans have benefited physically from this strained relationship with the Palestinian community, prominent Samaritan figures have recognized how this flexibility can result in a distancing from their neighbors, which has been problematized for its negative impact on the collective identity.<sup>105</sup> Khaled Zawawi’s research into Samaritan history is notable for drawing attention

<sup>99</sup> Video Interview with Badawiyya Hosny Assamri (July 21, 2019).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> IMEMC, *supra* note 70. Wassef has recently participated in a documentary program in which he described the Samaritan presence in Nablus as a testament to Israel’s diversity. In his interviews with Arabic or Palestinian media agency, he reaffirms the belonging of the Samaritan community to the Palestinian people.

<sup>103</sup> 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, in Nablus, Isr. (Sept. 15, 2019). The term “Kuthim” refers to the ancient city of Kutha, located in present-day Iraq.

<sup>104</sup> Kingsley & Sobelman *supra* note 88.

<sup>105</sup> *See, e.g.,* AYYASH *supra* note 79 at 125. Jameel Dababat and Adnan Ayyash are 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.

to the inherently problematic position that the Palestinian-Arab identity holds in Samaritan self-conception.<sup>106</sup> In a testament to the tenuous nature of Palestinian identity for Samaritans, Zawawi's research revealed that Tsedaka—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.<sup>107</sup>

Tsedaka'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.<sup>108</sup> 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.<sup>109</sup> Tsedaka'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.<sup>110</sup> 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 be returned to "the People of Israel."<sup>111</sup> The start of Israeli encroachment into the territories during this period was in fact welcomed by the Samaritans, whose disfavor of the Jordanian administration resulted in the division of their community between Holon and Nablus.<sup>112</sup>

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, and belonging to a fourth religion that is not recognized by either of the two governing systems, many young Samaritans are floundering.<sup>113</sup> 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, she noted, an entire generation of Samaritans have been born in Israeli hospitals and educated in the Palestinian school system.<sup>114</sup> Badawiyya remains hopeful that this will teach them to integrate with and be accepting of both sides without compromising their own distinct identity as Samaritans. As she described: "I teach my children

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<sup>106</sup> Video interview with Khaled Zawawi, Director of Public Relations, Palestinian Ministry of Religious Aff. (July 25, 2021). Accessing the diaries of Abraham Tsedaka, the son of the Samaritan high priest Jaaqob ben Azi be Jaaqob (Ya'coub b. 'Uzzi) and known to be the first Samaritan to meet and befriend future Israeli president Ben Zvi, Zawawi's research shows how Abraham's efforts to shape the Zionize Samaritan identity played an important part in eventually granting the community access to Israeli citizenship. *Supra*.

<sup>107</sup> Video interview with Khaled Zawawi, Director of Public Relations, Palestinian Ministry of Religious Aff. (July 25, 2021).

<sup>108</sup> See Haseeb Shehadeh, *A Case of Palestinian Arab Justice Between Minority and Majority*, *STUDIA ORIENTALIA* 101, 359-365 (2007).

<sup>109</sup> JIM RIDOLFO, *DIGITAL SAMARITANS: RHETORICAL DELIVERY AND ENGAGEMENT IN THE DIGITAL HUMANITIES* 43-44 (2015).

<sup>110</sup> *Id.* at 47.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*



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.”<sup>115</sup> As future sections detailing continued Israeli efforts to annex Samaritan identity will show, the extent to which this will be possible remains to be seen.

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

The following section will illustrate the concept of identity annexation within the context of the Israeli state’s strategy of annexation for state building. “Identity annexation” conveys the complexity of annexation that is both territorial and psychic. The concept builds upon a specific and historically-situated understanding of the Israeli-Palestine conflict and seeks to explicate Israel’s treatment of the Samaritans. 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.<sup>116</sup> As such, Israel has historically related to its constituencies differently depending on their level of congruence with the state’s goals.<sup>117</sup> The Samaritans are perhaps the only minority that has leveraged Palestine’s unique legal pluralism to its advantage.

As inhabitants of Israeli annexed land, the Samaritans have 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, and their significant geographical location all make them a nonthreatening and useful new addition to the Israeli citizenry. However, they remain part of the historical Palestinian polity. In this section, I argue that Israel has leveraged a framework of laws and policies to utilize these features of Samaritan identity in the state’s favor, thus executing a distinctly nonterritorial annexation of the West Bank Samaritans. As a result, the Samaritans’ sense of self has been legally reformulated to be both instrumental and *indigenous* to the Zionist project, which legitimizes Israel’s continued territorial annexation.

Despite the power differential between the minuscule Samaritan community in occupied Palestine and the settler state of Israel, the singular relationship between these groups has allowed the Samaritan community to preserve and protect its livelihood in ways other minorities in the occupied Palestinian territories have not. While the Samaritans’ Oleh-immigrant status grants them lived benefits, this status does not easily fit with key aspects of their identity. The state of Israel is the ultimate beneficiary of their inclusion in the Oleh community because it affirms its national narrative of inclusivity and Jewish belonging.

Shedding light on Israel’s identity annexation of the Samaritans is valuable not only for exposing the underexamined aspects and implications of Zionist legal strategy, but also for elucidating the foundational tensions in the liberal politics of recognition of settler colonial states. 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 and while situating the Samaritans’ indigeneity, this first section will briefly summarize the main features of the politics of recognition in

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<sup>115</sup> *Id.*

<sup>116</sup> See David Lloyd, *Settler Colonialism and the State of Exception: The Example of Palestine/Israel*, 2 SETTLER COLONIAL STUD. 59–80 (2012).

<sup>117</sup> See Lana Tatour, *supra* note 2, at 9–10.

postcolonial contexts and relate them to the concept of identity annexation. The second section 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,<sup>118</sup> the findings of the first and second sections will then be used to analyze the Samaritan legal response to their misrecognition by the Israeli liberal state. The third and final section will review the specifics of the Israeli legal and political strategies of identity annexation in reference to such postcolonial concepts as Mamdani's notion of "Judaizing" as it relates to the Samaritans.

#### *A. Before Identity Annexation: Samaritans' Indigeneity and (Mis)Recognition*

In an attempt to negotiate evolutions in the academic perception of Israeli-Palestinian identity and conflict,<sup>119</sup> identity annexation describes the mechanics of the politics of recognition by assessing the impact of identity-focused state building on a minority community. The present analysis of identity annexation pushes beyond the traditional limits of the settler colonialism-indigeneity paradigm 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.

As with indigenous peoples across the spectrum of settler colonialism or postcolonialism,<sup>120</sup> marking Samaritans as indigenous carries more political weight than the relatively innocuous "minority" label.<sup>121</sup> It is well known that under international law, the existence of a people and the existence of a

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<sup>118</sup> See GLEN SEAN COULTHARD, *RED SKIN, WHITE MASKS: REJECTING THE COLONIAL POLITICS OF RECOGNITION* 15–17 (2014).

<sup>119</sup> Political and historical scholars have increasingly criticized Israel's state building strategy as settler-colonial in nature and ambition. See generally Jamil Hilal, *Rethinking Palestine: Settler-colonialism, Neo-liberalism and the Individualism in the West Bank and Gaza Strip*, 8 CONTEMP. ARAB AFF. 351, 353 (2015); Nadia Abu El-Haj, *Reflections on Archaeology and Israeli Settler Nationhood*, 86 RADICAL HIST. REV. 149, 158 (2003); Edward Cavanagh & Lorenzo Veracini, *Editors Statement*, 3 SETTLER COLONIAL STUD. 1 (2013). See also Rachel Busbridge, *Israel-Palestine and the Settler Colonial 'Turn': From Interpretation to Decolonization*, 35 THEORY, CULTURE & SOC'Y 91, 92–93 (2018). This characterization of Israel as settler-colonial originate in Fayez Sayegh's 1965 seminal paper on "Zionist Colonialism in Palestine," which was among the first to argue about the racism inherent to Israel's state building project and the indigeneity of the Palestinian populations subjected to it. Ahmad Amara & Yara Hawadi, *Using Indigeneity in the Struggle for Palestinian Liberation*, AL SHABAKA, (Aug. 18, 2019), <https://al-shabaka.org/commentaries/using-indigeneity-in-the-struggle-for-palestinian-liberation/> [<http://perma.cc/W4FV-Z52T>]. Scholastic understanding of this conflict diversified in the 1990s with the signing of the Oslo Agreements. Fayez Sayegh, *Zionist Colonialism in Palestine*, 2 SETTLER COLONIAL STUD. 206, 214–217 (2012). The signing inaugurated the popularity of the two-state solution and neutralized the more problematic aspects of Israel's national narrative. See HANI A. FARIS, *THE FAILURE OF THE TWO-STATE SOLUTION: THE PROSPECTS OF ONE STATE IN THE ISRAEL-PALESTINIAN CONFLICT*, 5 (2013). In the decades since, the two-state paradigm has replaced the settler-colonial one to describe the logic of legal recognition. 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. See Gabriel Piterberg, *Deconstructing the Zionist Settler Narrative and Constructing an Alternative*, in *THE FAILURE OF THE TWO-STATE SOLUTION, in THE FAILURE OF THE TWO-STATE SOLUTION: THE PROSPECTS OF ONE STATE IN THE ISRAEL-PALESTINIAN CONFLICT* 113 (Hani A. Faris ed., 2013).

<sup>120</sup> Nadim N. Rouhana, *Religious Claims and Nationalism in Zionism: Obscuring Settler Colonialism*, in *WHEN POL. ARE SACRALIZED* 54–87 (May 2021).

<sup>121</sup> Ulrike Barten, *What's In a Name? Peoples, Minorities, Indigenous Peoples, Tribal Groups and Nations*, 14 J. ON ETHNOPOLITICS AND MINORITY ISSUES IN EUR., 1, 11 (2008).

territory constitute two of the four elements required to establish statehood.<sup>122</sup> A group of people that is autochthonous to a specific territory threatens and even contravenes the settler colonial state's territory paradigm.<sup>123</sup> The issue of indigeneity is central 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 its 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;<sup>124</sup> the Samaritans' 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 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.

Within the state paradigm, the politics of collective identity are shaped by state-based legal recognition, which translates said identity into certain actionable claims or statuses, such as those of indigenous or native grouping.<sup>125</sup> In Richard T. Ford's words, identity "depends on a social interaction in which the understanding and esteem of others plays a crucial role."<sup>126</sup> This is even more pronounced when the Hegelian "master" or Other is the state; shedding light on state recognitions of specific stakes, Ford critiques scholastic overemphasis on theoretical issues of non-recognition over the examination of the concrete effects of misrecognition for minority communities.<sup>127</sup> Misrecognition, according to Ford, describes a state "speaking for others," "conscripting," or "compelling to perform" those vulnerable groups who requested specific support through claims for legal recognition and subjecting them to further vulnerability.<sup>128</sup>

Scholarly analyses of indigenous selfhood and identity under colonial rule 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.<sup>129</sup>

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<sup>122</sup> See JAMES R. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 45–46 (2006).

<sup>123</sup> See Erica-Irene A. Daes, *Standard-Setting Activities: Evolution of Standards Concerning the Rights of Indigenous Peoples*, ¶ 68, U.N. Doc. E/CN.4/Sub.2/ AC.4/1996/2 (June 10, 1996). See also U.N. Secretariat of the Permanent Forum on Indigenous Issues, *The Concept of Indigenous Peoples*, ¶ 2, U.N. Doc. PFII/2004/WS.1/3 (Jan. 19–21, 2004) (describing indigenous communities' resistance to colonial control).

<sup>124</sup> See generally, Reinhard Pummer, *Exploring Samaritanism—New Insights and Fresh Approaches*, 12 RELIGIONS 769 (2021) (discussing contrasting interpretations of Samaritan history).

<sup>125</sup> 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, the master and the slave's respective identities are co-constituted and dependent on one another for their existence. Coulthard, *supra* note 118, at 27–28.

<sup>126</sup> Ford, *Beyond "Difference?"* *supra* note 20 at 53.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* There is a growing body of literature on recognition that analyzes the social and political significance of identity construction in varying post-colonial contexts and offers perspectives on relevant colonial powers on the way in which Western legal systems, identities, and culture may be used to enforce social change. In his seminal contribution to this corpus, Foucault stresses the contestation of the Self as both being and consciousness, in name and in voice. See Peter Dews, *Power and Subjectivity*

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*.<sup>130</sup> In that context, religious and ethnic multiculturalism reinforce the inequalities perpetuated by imperialist and colonial regimes.<sup>131</sup> There, multicultural ideals fail not by subsuming the identity of the indigenous, but by prescribing the boundaries of authenticity.<sup>132</sup> 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.<sup>133</sup> 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 reach of the settler contractual state and is justified by the narrative of acceptance that underpins the settler state's claims to liberalism.<sup>134</sup> In the Australian case, the creation of the state forced indigenous groups to redefine themselves accordingly to have a claim to their land.<sup>135</sup>

This argument resonates with the experience of the Samaritans, whose inclusion in the Law of Return forced them to redefine themselves individually and collectively. As discussed 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 entry into 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 and allows them to engage with both when needed. Before turning to the specific legal framework that allowed for the Samaritans' misrecognition by Israel in this way, this article must examine the political, symbolic, and psychological costs and benefits accrued through this process by both entities.

#### *B. The "Costs of Misrecognition": 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.<sup>136</sup> Butler reflects that "recognition sometimes comes at a cost, and sometimes at too

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*in Foucault*, 144 *New Left Review* 72 (1984). Building on these early notions, recent scholars including Sally Engle Merry, Wendy Brown, and Elizabeth Povinelli have examined the impact of colonialism on the Self of subjugated groups on the individual and collective levels. See generally SALLY ENGLE MERRY *COLONIZING HAWAII: THE CULTURAL POWER OF LAW* (Sherry B. Ortner et al. eds., 2000) (tracing the effects of American colonization on Hawaii's indigenous population, specifically the displacement of indigenous Hawaiian law by Anglo-American law); WENDY BROWN, *STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY* (1995) (discussing how identity politics and the harms of subordination through the language of "rights" perpetuate the suffering of subjects of state violence and legitimize state power); ELIZABETH A. POVINELLI, *THE CUNNING OF RECOGNITION* (George Steinmetz & Julie Adams eds., 2002) (arguing the legacy of colonialism promotes unequal systems of power by demanding that colonized subjects identify with authentic traditional culture).

<sup>130</sup> See generally POVINELLI, *supra* note 129.

<sup>131</sup> *Id.* at 6.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 39.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 38–39.

<sup>136</sup> Judith Butler, *Recognition and Survival, or Surviving Recognition*, *DISPOSSESSION: THE PERFORMATIVE IN THE POLITICAL*, 75, 80 (Judith Butler and Athena Athanasiou, 2013).

high a cost,” though its absence would be worse.<sup>137</sup> 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.<sup>138</sup> Despite not technically being 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 through the codification of the colonial rule.<sup>139</sup> The legal sphere also acts as a venue for this rule to be challenged by indigenous populations through misrecognition.<sup>140</sup>

The strategic choice by the Samaritans to comply with an identity posture that benefits the Jewish state applies to Brown’s analysis of the variability of religious narrativization. The Samaritan articulation of resistance takes place in a context where religion is meticulously, if not intentionally, deployed by the state to both bolster and oppress certain constituents.<sup>141</sup> For the Samaritans, general religious consciousness serves as the manifestation rather than basis of political constraints upon individual freedom and equality; at the same time, religious consciousness is used by a minority to fight for those very rights.

The Israeli side of the equation may be understood through Marx’s reflections 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.<sup>142</sup> This phenomenon is illustrated in Israel’s strategy of identity annexation to include Samaritans in their national narrative; Israel will likely recognize 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. Brown explores the repercussions of an

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<sup>137</sup> *Id.* at 90.

<sup>138</sup> *Id.* at 90.

<sup>139</sup> POVINELLI, *supra* note 129, at 3.

<sup>140</sup> See generally MERRY, *supra* note 129. As Merry demonstrates in *Colonizing Hawaii*, 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, indigenous Hawaiians chose to refrain from actively resisting the secularization of their longstanding legal system to achieve their larger goal of postponing the total annexation of their land. MERRY, *supra* note 129, at 141–42. 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. MERRY, *supra* note 129, at 141–44. 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. MERRY, *supra* note 129, at 141–44. Wendy Brown’s *States of Injury* also draws on various conceptions of resistance and empowerment in colonial contexts that are useful for understanding Samaritan identity annexation. BROWN, *supra* note 129. 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 of its resistance. BROWN, *supra* note 129.

<sup>141</sup> See Rouhana “*Jewish and Democratic?*” *The Price of a National Self-Deception*, *supra* note 19 at 60–61.

<sup>142</sup> See Brown *supra* note 129 at 103–09 (presenting a study of religiously-foregrounded state oppression in the context of Marx’s “The Jewish Question”).

oppressed community successfully deploying their religious identity for political regulation.<sup>143</sup> 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.<sup>144</sup> These perspectives 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.<sup>145</sup> The role of religion in a capitalist nation-state, Brown summarizes, serves ultimately not as a provider of freedom but its "enforcer,"<sup>146</sup> thus challenging or complicating the very notion of democratic freedom itself.<sup>147</sup>

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"<sup>148</sup> 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 ethnoreligious 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 are 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 a non-violent, but arguably essential tool for liberal society to exert control to any Western or liberal society.<sup>149</sup> The Israeli state as one such liberal regime practices multiculturalism with the similar goals of bolstering its national imagery and imagination, rather than legally empowering the minority cultures in question. 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

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<sup>143</sup> See Karl Marx, *On the Jewish question*, DEUTSCH-FRANZÖSISCHE JAHRBÜCHER 1 (1844).

<sup>144</sup> BROWN, *supra* note 129.

<sup>145</sup> *Id.*, at 14–19.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 52–76.

<sup>149</sup> See POVINELLI, *supra* note 129 (examining the multicultural legacy of colonialism in Australia to show how liberal forms of recognition often perpetuate the unequal systems of power that they are attempting to dismantle and impact indigenous peoples' claims on land).

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.<sup>150</sup> 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.<sup>151</sup>

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*.<sup>152</sup> 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."<sup>153</sup> His reasoning draws heavily on Fanon's reflections on the role of force in 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 what Coulthard calls "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,"<sup>154</sup> such as identity re-narrativization and community isolation.

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<sup>150</sup> See discussion *infra* Part I.B.

<sup>151</sup> MERRY, *supra* note 129.

<sup>152</sup> COULTHARD, *supra* note 118.

<sup>153</sup> *Id.* at 3–4.

<sup>154</sup> *Id.* at 16–17.

The Samaritans' tenuous social position following their identity annexation and the derivative psychological and territorial fissures they experience are together 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.”<sup>155</sup> 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.<sup>156</sup>

Coulthard instructively goes on to speak of “self-affirmation” of the colonial subjects, which is the process by which they are “recognizing themselves as free, dignified, and distinct contributors to humanity”<sup>157</sup> or making themselves known, as Fanon famously lamented.<sup>158</sup> In the modern Canadian context, Coulthard advocates, on the basis of the work of Mohawk political 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.”<sup>159</sup>

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 Part 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 that underpin and facilitate this strategy by Israel and elucidate not just the theoretical but also concrete implications for the Samaritan population.

The present section discusses Israel’s historical lawmaking to achieve exclusion while maintaining a façade of inclusivity beyond the Samaritan case,<sup>160</sup> and how this gives rise to what

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<sup>155</sup> *Id.* at 26.

<sup>156</sup> *Id.* at 33–34.

<sup>157</sup> *Id.* at 141–143.

<sup>158</sup> See FANON, *supra* note 6, at xiii–xiv.

<sup>159</sup> Drawing on the recent indigenous Idle No More grassroots 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. Coulthard *supra* note 118 at 154, 165–79.

<sup>160</sup> In line with previous sections’ recognition-based analysis, scholar Shourideh Molavi has argued that these laws are structured to bolster Israel’s legitimacy as the Jewish homeland without appearing to exclude the Samaritans, who are seen as a Jewish-adjacent minority. MOLAVI, *supra* note 23, at 3, 54–55, 155.



Mahmoud Mamdani has termed “Judaizing” or “Minorizing”<sup>161</sup> of Palestinian Arabs. Two forms of Judaizing can be identified to explain Israel’s identity annexation of the Samaritans: first, a Judaizing by inflation, where Israel uses law to expand the definition of “Jewishness”; second, a Judaizing 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 Judaizing will be seen to account for the territorial and physical repercussions of identity annexation on the Samaritans.

### 1. “Judaizing” by Inflation: The Example of the 2018 “Nation-State” Basic Law

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 (*exrabut*) and of nationality (*le’om*).<sup>162</sup> In so doing, it proclaims to be the nation-state not of all its inhabitants but “only of the Jewish people”<sup>163</sup> and thereby the “national home for the Jewish people.”<sup>164</sup> This preferential treatment of one group of people by the state is contrary to those of an inclusive democracy, and the consequences are most clearly revealed through Israel’s Basic Laws addressing citizenship.<sup>165</sup>

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 population.<sup>166</sup> 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.<sup>167</sup> 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,<sup>168</sup> which was

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<sup>161</sup> MAHMOUD MAMDANI, NEITHER SETTLER NOR NATIVE: THE MAKING AND UNMAKING OF PERMANENT MINORITIES 257 (2020).

<sup>162</sup> Compare § 1, World Zionist Organisation – Jewish Agency (Status) Law, 5713-1952, No. 1 (Nov. 24, 1952), as amended (Isr.) (describing the vision for the State of Israel specifically for Jewish people) with 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) (describing the history, policy, and differential effects of the “National Home” policy for Jewish people).

<sup>163</sup> 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> [<https://perma.cc/BY3S-P6PR>] Here, the Israeli Prime Minister Benjamin Netanyahu declares 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.”

<sup>164</sup> See Brian Bennett & Joseph Hincks, *Read the Transcript of TIME’s Interview With Benjamin Netanyahu*, TIME (July 13, 2019 7:00 AM), <https://www.aljazeera.com/news/2019/3/11/benjamin-netanyahu-israel-is-a-state-only-of-the-jewish-people> [<https://perma.cc/Ryc8-XGj8>] (exhibiting former Israeli Prime Minister Benjamin Netanyahu’s statements, which purport to include all Jews in the Israeli State). Frankenstein, *supra* note 162, at 27.

<sup>165</sup> Arts. 1(b)–(c), 5, Basic Law: Israel – The Nation State of The Jewish People (July 19, 2018) (Isr.). See also Frankenstein, *supra* note 162, at 39–40.

<sup>166</sup> MAZEN MASRI, THE DYNAMICS OF EXCLUSIONARY CONSTITUTIONALISM: ISRAEL AS A JEWISH AND DEMOCRATIC STATE 5–6 (2020).

<sup>167</sup> See generally Tatour, *supra* note 2.

<sup>168</sup> 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

once widely unpopular idea advocated only by the most extreme rightwing revisionist Zionists.<sup>169</sup> Since the late 1970s, Israeli political discourse has come to embrace these fringes in its legal treatment of Jewish identity despite international consensus on the illegality of the military occupation in the Palestinian territories. Benjamin Netanyahu has worked since early 2019 to legitimize and solidify an extreme or maximalist Zionism<sup>170</sup> that seeks maximum expansion of Israeli territory and control with government impunity, and continues to call on “Jewish sovereignty”<sup>171</sup> in the occupied West Bank.<sup>172</sup> 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<sup>173</sup> as the Jewish state, or the land of “Judea and Samaria.”<sup>174</sup>

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,<sup>175</sup> 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.”<sup>176</sup> 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 Declaration of Independence,<sup>177</sup>

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times. Zionism and Israel Information Center. *Eretz Yisrael Definition*, ZIONISM AND ISRAEL – ENCYCLOPEDIA DICTIONARY (2005), [https://zionism-israel.com/dic/Eretz\\_Yisrael.htm](https://zionism-israel.com/dic/Eretz_Yisrael.htm) [<https://perma.cc/7CR4-MT2V>].

<sup>169</sup> See Ilan Pappé, *Zionism as Colonialism: A Comparative View of Diluted Colonialism in Asia and Africa*, 107 611-613 (2008). See also NUR MASALHA, *IMPERIAL ISRAEL AND THE PALESTINIANS: THE POLITICS OF EXPANSION* (2000).

<sup>170</sup> MASALHA, *supra* note 169, at 46.

<sup>171</sup> 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> [<https://perma.cc/K5BG-JAFB>]. See also Hagar Shezaf, *Israel Approves Thousands More Homes in West Bank Settlement*, HAARETZ (Oct. 15, 2020), <https://www.haaretz.com/israelnews/.premium-israel-approves-thousands-more-homes-in-west-bank-settlement-1.9238068> [<https://perma.cc/C2LQ-L88C>].

<sup>172</sup> 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> [<https://perma.cc/VBU9-88WD>].

<sup>173</sup> Part of this movement calls for the “Greater Israel” maximalist expansion plan to conquer well beyond these borders. See MASALHA, *supra* note 169, at 50–52.

<sup>174</sup> 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> [<https://perma.cc/FXM8-KPXB>].

<sup>175</sup> § 1(b) Basic Law: Israel - The Nation State of The Jewish People (2018) (Isr.).

<sup>176</sup> 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/> [<https://perma.cc/E3XF-Z5VS>]. 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> [<https://perma.cc/4FRC-54YV>]; 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/> [<https://perma.cc/G624-PVPN>]; 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-courtpetition/2018/08/07/054fe9b2-99bd-11e8-a8d8-9b4c13286d6b\\_story](https://www.washingtonpost.com/world/middle_east/deluge-of-opposition-to-israels-nation-state-bill-builds-with-new-courtpetition/2018/08/07/054fe9b2-99bd-11e8-a8d8-9b4c13286d6b_story) [<https://perma.cc/NQR6-8J7J>].

<sup>177</sup> Jonathan Lis & Noa Landau, *Israel Passes Controversial Jewish Nation-state Bill After Stormy Debate*, HAARETZ (July 19,

which aspires for the “complete equality of social and political rights” for “all its inhabitants” regardless of their religion, race or sex.<sup>178</sup>

A largely symbolic formulation of longstanding bipartisan state policy,<sup>179</sup> the Basic Law affirms the historical right of self-determination in Israel as belonging exclusively to the Jewish People.<sup>180</sup> Most tellingly, the Basic Law enshrines self-determination within the State of Israel as a right that is “unique to the Jewish people”<sup>181</sup> and denies other groups such as indigenous Arab Palestinians, who constitute 20% of Israel’s population today,<sup>182</sup> the equal rights from this inalienable universal foundation. Moreover, the legislation downgrades the status of Arabic from one of the two official languages to a language of “special status;”<sup>183</sup> 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.<sup>184</sup>

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. Therefore, it may be argued 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 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, and the welcomeness of *all* Jews to their rightful “homeland.”<sup>185</sup>

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. For example, Arab Knesset member Ahmad Tibi considered the “not [only] unnecessary, but defective”<sup>186</sup> Israeli Nation-State Law as “the end of democracy”<sup>187</sup> in

2018), <https://www.haaretz.com/israel-news/israel-passes-controversial-nation-state-bill-1.6291048> [<https://perma.cc/4FRC-54YV>]

<sup>178</sup> Art. 1(c), Basic Law: Israel - The Nation State of The Jewish People (July 19, 2018) (Isr.); Declaration of Independence, 5708–1948, 14.5 (Isr.), <https://m.knesset.gov.il/en/about/pages/declaration.aspx> [[https://perma.cc/Q2B\]-EFUM](https://perma.cc/Q2B]-EFUM)].

<sup>179</sup> Hassan Jabareen & Suhad Bishara, *The Jewish Nation-State Law*, 48 J. PALESTINE STUD. 43–57 (2019).

<sup>180</sup> Art. 5, Basic Law: Israel - The Nation State of The Jewish People (July 19, 2018) (Isr.) (reinforcing the importance of the “ingathering of exiles,” *keibbutz galuyyot*).

<sup>181</sup> *Id.* Art. 1(c) (“The exercise of the right to national self-determination in the State of Israel is unique to the Jewish People.”).

<sup>182</sup> Association for Civil Law in Israel, *Nation-State Law* (July 20, 2018) [<https://perma.cc/7D5X-ZGCA>].

<sup>183</sup> Art. 4(b), Basic Law: Israel - The Nation State of The Jewish People, 5778–2018, (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.”)

<sup>184</sup> *Id.* Art. 3 (“Jerusalem, complete and united, is the capital of Israel.”).

<sup>185</sup> *Id.* Art. 1(c).

<sup>186</sup> 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> [<https://perma.cc/5ZWS-BLNV>].

<sup>187</sup> David M. Halbfinger & Isabel Kershner, *Israeli Law Declares the Country the ‘Nation-State of the Jewish People’*, 228 N.Y. TIMES (July 19, 2018), <https://www.nytimes.com/2018/07/19/world/middleeast/israel-law-jews-arabic.html> [<https://>]

the country. This ignores the value of equality for every newborn, for every human being,<sup>188</sup> in contrast not only to the Zionist narrative.<sup>189</sup> Ayman Odeh, another Arab Knesset member, bluntly categorized the legislation as an “apartheid” practice,<sup>190</sup> while centrist politician Yael German similarly decried it as “a poison pill for democracy.”<sup>191</sup> 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.”<sup>192</sup>

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 falsity of a legal system and political machinery which enshrines the exact opposite.<sup>193</sup> This tension is perhaps best explored through the aggressive strategies of annexation upheld by Israel since its inception.

## 2. “Judaizing” by Densification: Legalized Approaches to Land Annexation

Israel has long used the legal system to ward 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<sup>194</sup> of semi-constitutional status, which enshrine the Jewish nature of the State of Israel and guarantee exclusive rights for the Jewish people based on their religious identity.<sup>195</sup> Such exclusionary laws fend off threats to the Zionist vision by reinforcing and legitimizing 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-determination in

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[perma.cc/296M-BR8HJ](https://perma.cc/296M-BR8HJ).

<sup>188</sup> See Bar-Yosef, *supra* note 186.

<sup>189</sup> Halbfinger & Kershner, *supra* note 187.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> 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/> [<https://perma.cc/93LR-HT28>].

<sup>193</sup> See, e.g., Fayeze Sayegh, *Zionist Colonialism in Palestine*, TAYLOR AND FRANCIS ONLINE 2:1, 206 (1965); Richard Falk & Virginia Tilley, *Israeli Practices Towards the Palestinian People and the Question of Apartheid*, SIUC 1, No. 1 (Spring 2017), 1–7, 33 (2017); see generally URI DAVIS, ISRAEL: AN APARTHEID STATE (1987); URI DAVIS, APARTHEID ISRAEL (2003) [hereinafter DAVIS, APARTHEID ISRAEL].

<sup>194</sup> 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.).

<sup>195</sup> The Knesset, *Constitution for Israel* (Isr.).

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.”<sup>196</sup> A more relevant and recent example is the Law of Return, which aims for, among other things, “the ingathering of the exiles”<sup>197</sup> of all Jewish people in the biblical totality of the Land of Palestine.<sup>198</sup> Finally, Article I of the Basic Law on Human Dignity and Liberty<sup>199</sup> 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 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.<sup>200</sup> 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, reinforce Israeli-Judaic presence in occupied territories, and further facilitate the “Judaization” of that land at the expense of its indigenous Palestinian Arab population.

The Land Acquisition Law (Actions and Compensation) of 1953<sup>201</sup> 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:<sup>202</sup> Palestinians living in Israel currently own 33.5% of the land, as compared to 48% in 1948.<sup>203</sup> More exemplary, however, of the multi-part appropriation effected by Israeli law may be the Absentees’ Property Law 5710 of 1950,<sup>204</sup> 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”.<sup>205</sup> Appointed by the

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<sup>196</sup> Ministry of Foreign Aff., *Declaration of the Establishment of the State of Israel* (May 14, 1948) (Isr.), <https://www.gov.il/en/Departments/General/declaration-of-establishment-state-of-israel>.

<sup>197</sup> Art. 5, Basic Law: Israel - The Nation State of The Jewish People (July 19, 2018) (Isr.). *See also Ingathering of the Exiles*, JEWISH VIRTUAL LIBRARY: A PROJECT OF AICE, <https://www.jewishvirtuallibrary.org/ingathering-of-the-exiles> [<https://perma.cc/U8YB-EN86>].

<sup>198</sup> *See generally* 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, (2002) [<https://perma.cc/2SUV-FYDZ>].

<sup>199</sup> 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 the 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.

<sup>200</sup> 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.”).

<sup>201</sup> 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> [<https://perma.cc/ZEK4-RJ9M>].

<sup>202</sup> DAVIS, APARTHEID ISRAEL, *supra* note 193, at 41–42, 192.

<sup>203</sup> 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> [<https://perma.cc/ZEK4-RJ9M>].

<sup>204</sup> 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).

<sup>205</sup> *Id.* § 1(b)–(c).

Minister of Finance under Section 2 of the Law, the legal “Custodian of the Absentees’ Property”<sup>206</sup> therefore has the power to claim possession of the property belonging to those who fled, moved temporarily to avoid active conflict (at times called “present-absentees”), were expelled, or left after the United Nations Partition Plan for Palestine was implemented on November 29, 1947.<sup>207</sup> 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 is 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.<sup>208</sup>

In addition to the de facto annexation of the Palestinian territories and the expulsion of Palestinians from their land Israel’s “Judaizing” 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*.<sup>209</sup> This was codified in 1980 by the Basic Law on Jerusalem, Capital of Israel,<sup>210</sup> which states that “The complete and united Jerusalem is the capital of Israel”<sup>211</sup> and that the holy places shall be protected.<sup>212</sup>

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.<sup>213</sup> 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.<sup>214</sup>

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<sup>206</sup> *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.”).

<sup>207</sup> *Id.* § 1(b).

<sup>208</sup> See Hazem Jamjoum, *Refugees: Israeli Apartheid’s Unseen Dimension*, AL SHABAKA (June 20, 2012), <https://al-shabaka.org/commentaries/refugees-israeli-apartheids-unseen-dimension/> [<https://perma.cc/9JEK-3PFP>].

<sup>209</sup> U.N. G.A. Res. 181 (II) at 6, (Nov. 29, 1947). (“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 faiths throughout the world . . . .”)

<sup>210</sup> 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.) *reprinted in* Hatz’a’ot Chok No. 1464 of 5740, 287 [<https://perma.cc/TEE8-WGYK>].

<sup>211</sup> *Id.* Art. 1 (“The complete and united Jerusalem is the capital of Israel.”).

<sup>212</sup> *Id.* Art. 3 (“The Holy Places shall be protected against desecration, and any other violation, and against anything that is liable to violate the freedom of access of members of the various religions to the places sacred to them, or to offend their feelings towards those places.”).

<sup>213</sup> *Id.* Art. 1 (“The complete and united Jerusalem is the capital of Israel.”).

<sup>214</sup> The Jerusalem municipal master plans are another major contributor to the ongoing struggles of the Palestinian residents of Jerusalem, because they explicitly aim to strip these Palestinian 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 Arafah, *W’bich Jerusalem? Israel’s Little-Known Master Plans*, AL SHABAKA (May 31, 2016), <https://al-shabaka.org/briefs/jerusalem-israels-little-known-master-plans/> [<https://perma.cc/86L2-U2E2>].

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.<sup>215</sup> The amendment unilaterally altered the city's municipal borders and 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."<sup>216</sup> 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,<sup>217</sup> 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.<sup>218</sup> Also worth mentioning are two 1952 laws: the Law on Citizenship, which regulates the acquisition and loss of nationality that will be examined in detail in the next section, and the Nationality and Entry into Israel Law,<sup>219</sup> which grants the Minister of Interior the power to revoke the residency status of Palestinians from Jerusalem. The latter law intervenes between the relationship to the land and compromises the agency in that relationship that is so foundational to the Palestinian identity.

In sum, identity annexation is a complex social, legal, and political phenomenon consubstantial with settler colonialism through politics of misrecognition. Through "Judaizing" 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 the land and therefore the strategic annexation and re-narrativization of their identity by the Israeli state.

### III. REALIZING IDENTITY ANNEXATION: THE LEGAL ANNEXATION AND NARRATIVIZATION OF SAMARITAN IDENTITY

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. The subsumption of the Samaritans into an Israeli-Jewish collective as a result of identity

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<sup>215</sup> 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.) *reprinted in* Hatz'a'ot Chok No. 1464 of 5740, 287 [<https://perma.cc/TEE8-WGYK>].

<sup>216</sup> 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." The Knesset, *Constitution for Israel, The State of Israel as a Jewish State* (2014), [https://knesset.gov.il/constitution/ConstM\]JewishState.htm](https://knesset.gov.il/constitution/ConstM]JewishState.htm) [<https://perma.cc/8Y5V-EZQ3>].

<sup>217</sup> The Citizenship and Entry into Israel Law (temporary provision), No. 5763-2003 (July 31, 2003), <https://www.jewishvirtuallibrary.org/the-citizenship-and-entry-into-israel-law> [<https://perma.cc/4MA4-F6NF>].

<sup>218</sup> *The Occupation and Annexation of Jerusalem through Israeli Bills and Laws*, AL-HAQ, (Mar. 5, 2018), <https://www.alhaq.org/advocacy/6263.html> [<https://perma.cc/9JHC-FXB9>].

<sup>219</sup> Art.11, Nationality and Entry into Israel Law No. 5712-1952, passed on August 26, 1952 and published in the Official Gazette, *Sefer Ha-Chukkim* No. 111, (Sept. 5, 1952) (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.").

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;<sup>220</sup> hostile appropriation and illegal acquisition of land,<sup>221</sup> culture,<sup>222</sup> and history;<sup>223</sup> and erasure of narrative and memory.<sup>224</sup>

This section 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 superimposed 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 "Judaizing"*

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<sup>220</sup> See, e.g., *Israel's Exploitation of Palestinian Resources is Human Rights Violation, Says UN Expert*, UNITED NATIONS OFF. OF THE HIGH COMM'R (OHCHR) (Mar. 18, 2019) [https://perma.cc/C9BK-J9NB]; *The Occupation of Water*, AMNESTY INT'L (Nov. 29, 2017) [https://perma.cc/XY5M-TY2Q]; *Israel/Occupied Palestinian Territories: Demand Dignity: Troubled Waters – Palestinians Denied Fair Access to Water*, AMNESTY INT'L (Oct. 27, 2009) [https://perma.cc/86XD-J69A]; *Water Resources of the Occupied Palestinian Territory*, UNITED NATIONS (UN) (Jan. 6, 1992) [https://perma.cc/VDB5-BY3A].

<sup>221</sup> 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* (1995), [https://perma.cc/UF6M-6YDH]; UNSCO, *Rule of Law Development in the West Bank and Gaza Strip: Survey and State of the Development Effort*, UNITED NATIONS (UN) (May 31, 1999), [https://perma.cc/F2JV-WSZN]; OFF. FOR THE COORDINATION OF HUM. AFFS. (OCHA), *THE HUMANITARIAN IMPACT ON PALESTINIANS OF ISRAELI SETTLEMENTS AND OTHER INFRASTRUCTURE IN THE WEST BANK* (2007) [https://perma.cc/4KCT-V65N]; HUM. RTS. WATCH, *SEPARATE AND UNEQUAL: ISRAEL'S DISCRIMINATORY TREATMENT OF PALESTINIANS IN THE OCCUPIED PALESTINIAN TERRITORIES* (2010) [https://perma.cc/5VPV-A97B]; BADIL RES. CTR. FOR PALESTINIAN RESIDENCY AND REFUGEE RTS., *FORCED POPULATION TRANSFER: THE CASE OF PALESTINE: LAND CONFISCATION AND DENIAL OF USE* (Lubnah Shomali & Amaya al-Orzza, eds. 2017), [https://perma.cc/PKL8-9DDZ]; *Israeli Annexation of Parts of the Palestinian West Bank Would Break International Law – UN Experts Call on the International Community to Ensure Accountability*, UNITED NATIONS OFF. OF THE HIGH COMM'R (OHCHR) (Jun. 16, 2020) [https://perma.cc/W6VJ-8KB5]; AMNESTY INT'L, *DESTINATION: OCCUPATION: DIGITAL TOURISM AND ISRAEL'S ILLEGAL SETTLEMENTS IN THE OCCUPIED PALESTINIAN TERRITORIES* 28-35 (2019).

<sup>222</sup> Tamara Tamimi, *Israeli Appropriation of Palestinian Cultural Heritage in Jerusalem*, THE PALESTINIAN INITIATIVE FOR THE PROMOTION OF GLOB. DIALOGUE & DEMOCRACY (MIFTAH) 2019); see generally Abdul-Aziz Abu-Hadba, *How Zionist Authorities Dealt with Palestinian Folklore*, in *FOLK HERITAGE OF PALESTINE* 55 (Sharif Kanaana ed., George K. Rishmawi et al. trans., Rsch. Ctr. for Arab Heritage 1994) (describing how the Zionist attempt to gut Palestinian folklore of its basic meaning represents a larger attempt to destroy Palestinian existence).

<sup>223</sup> Nadia Abu El-Haj, *Translating Truths: Nationalism, the Practice of Archeology, and the Remaking of Past and Present in Contemporary Jerusalem*, 25 AM. ENTHOLOGIST 166, 166–88 (1998).

<sup>224</sup> 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* (Jan. 2020) (Ph.D. dissertation, Bournemouth University); Christine Pirinoli, *Erasing Palestine to Build Israel: Landscape Transformation and the Rooting of National Identities*, 173-74 *ÉTUDES RURALES* 67, 67-85 (2005). See also Carol Bardenstein, *Trees, Forests, and the Shaping of Palestinian and Israeli Collective Memory*, in *ACTS OF MEMORY: CULTURAL RECALL IN THE PRESENT* 148, 148–70 (Mieke Bal, Jonathan Crewe, & Leo Spitzer eds., Univ. Press of New England 1999).



*Samaritans*

According to the legal scholar Omar Dajani, the division and conquering of territory and people “is undertaken not in one fell swoop, but gradually through a pattern of oblique and sometimes informal measures.”<sup>225</sup> This is precisely the strategy Israel used to claim title over the West Bank outside of Palestinian population centers. A complex fabric of laws give the Israeli state de facto control of all Palestinian territory,<sup>226</sup> and like other states that have used a similarly aggressive approach to annexing settled territory and re-enforcing national identity, Israel’s division and disenfranchisement of the native population has been condemned internationally.<sup>227</sup> Inciting the kind of statecraft Edward Said has called “punishment by detail,”<sup>228</sup> Israel has utilized displacement as an additional form of minority repression.<sup>229</sup>

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), each with distinct governance and administration status.<sup>230</sup> Area A (about 18 % of the occupied Palestinian territories) falls under the administration of the Palestinian Authority, 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 (approximately 60 % of the West Bank territory and contains most of the Israeli settlements) is under exclusive Israeli administrative and military control.<sup>231</sup> Over and above these geographic areas, Palestinians in East Jerusalem, the H2 Zone in Hebron, Bedouin communities, and refugee camps are constantly challenged by policies designed to limit their legal space and hinder their access to rights.<sup>232</sup> In its annexation plans and embrace of former President Donald Trump’s so-called “deal of the century,”<sup>233</sup> the Israeli government has expressed explicit intentions to annex approximately half of

<sup>225</sup> Omar M. Dajani, *Israel’s Creeping Annexation*, 111 *AJIL UNBOUND*, 51, 51-56 (2017).

<sup>226</sup> For a detailed overview of how various economic policies have presented Palestine’s economic development, see Arie Armon & Jimmy Weinblatt, *Sovereignty, and Economic Development: the Case of Israel and Palestine*, 111. 142 *THE ECON. J.* 291-308 (2001).

<sup>227</sup> Victor Kattan, *A State of Palestine: The Case for UN Recognition and Membership*, AL-SHABAKA, (May 27, 2011) <https://al-shabaka.org/briefs/state-palestine-case-un-recognition-and-membership/> [<https://perma.cc/579H-GFZF>].

<sup>228</sup> EDWARD SAID, *Slow Death: Punishment by Detail*, in *FROM OSLO TO IRAQ AND THE ROAD MAP* 194–200 (2002).

<sup>229</sup> For example, 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.” *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 *I.C.J.* 184, ¶ 121 (July 9).

<sup>230</sup> ANERA, *What are Area A, Area B, Area C in the West Bank*, <https://www.anera.org/what-are-area-a-area-b-and-area-c-in-the-west-bank/> [<https://perma.cc/Q3KZ-PVRC>].

<sup>231</sup> U.N. SCOR & GAOR Annex, 51st Sess., *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II)*, Art. XI, U.N. Doc. A/51/889 (Sept. 28, 1995).

<sup>232</sup> Over 20% 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 Aff. (OCHA), *The Humanitarian Situation in the H2 Area of Hebron City: Findings of Needs Assessment* (Apr. 2019).

<sup>233</sup> 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/> [<https://perma.cc/N9X5-7Q32>]. See also, Michael Crowley and David M. Halbfinger, “Trump Releases Mideast Peace Plan That Strongly Favors Israel”, *N.Y. TIMES* (Jan. 28, 2020), <https://www.nytimes.com/2020/01/28/world/middleeast/peace-plan.html> [<https://perma.cc/727A-E9CE>].

Area C.<sup>234</sup>

As a result of this division into various pockets of land, the Samaritan land of Mount Gerizim in Nablus is subject to different rules.<sup>235</sup> The Samaritan residential area has been classified as falling in Area B, which is jointly administered by both the Palestinian Authority and Israel; while the archaeological site is designated Area C. The latter falls under the sole control of the Israeli administration, which has exclusively delegated administration to the externally based Israeli Ministry of Tourism.<sup>236</sup> Israeli state control over this archaeological site imposes the state's presence in the imagination of those living in the occupied territories while also exerting physical control over their resources, resulting in the thorough enmeshment of Samaritan land in Israeli annexation plans.

Since its inception, Israel has used several legal bases to guarantee exclusive rights for Jews based on their religious identity. Among these legal bases, the interplay between two laws are critical to the case of the Samaritans, the 1950 Law of Return<sup>237</sup> and the 1952 Law of Citizenship.<sup>238</sup> The primary purpose of the Law of Citizenship is the regulation of the acquisition and loss of nationality and the overall delimitation of Israel's constitutive population.<sup>239</sup> This law provides the civic-territorial doctrine that organizes how Jews and non-Jews can acquire Israeli citizenship and, in Parts II-VI, identifies the ways in which Israeli nationality can be acquired: return, residence in Israel, birth, or naturalization.<sup>240</sup> 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 has historically been as exclusionary as its counterpart, the Law of Return.<sup>241</sup> 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.<sup>242</sup> Jewish residents of British Mandatory Palestine were likely included in the rubric of the Law of Return in part to separate Jews from any aspect of Palestinian identity and increase the size 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 passage that year.<sup>243</sup> 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

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<sup>234</sup> Hatuqa, *supra* note 192.

<sup>235</sup> U.N. SCOR & GAOR Annex, 51st Sess., *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II)*, Art. XI, U.N. Doc. A/51/889 (Sept. 28, 1995).

<sup>236</sup> See U.N. Off. for the Coordination of Humanitarian Aff. Occupied Palestinian Territory (OCHA OPT), *West Bank Area C: Key Humanitarian Concerns* (Dec. 21, 2017) [<https://perma.cc/DAJ5-PLGB>].

<sup>237</sup> Law of Return, No. 5710-1950, SH 4 1, 114 (Isr.).

<sup>238</sup> Entry into Israel Law, 5712-1952, SH 95, 146 (Isr.).

<sup>239</sup> See YOSSE HARPAPZ & BEN HERZOG, REPORT ON CITIZENSHIP LAW: ISRAEL at 1-3 (2018), [<https://perma.cc/2R52-BXBY>].

<sup>240</sup> *Id.*

<sup>241</sup> See *infra* section II.A.

<sup>242</sup> § 3, Citizenship Law, 5712-1952, SH 32, 51 (Isr.).

<sup>243</sup> See *id.*

through the identity mandates of the 1950 Law of Return.<sup>244</sup> This version of the Law guarantees to every Jew in pre-Israel Palestine the right to residence and eventual citizenship in Israel as an Oleh-immigrant per their religious birthright, and thus may be seen as conceptually rooted in an ideology of “ethnic return” to one designated geographical territory. The implication, then, is a pre-ordained belonging of a certain population at the expense of the theoretical Other.<sup>245</sup> Insofar as it summarily utilizes the religious attachment of Jews to the land of Israel 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.<sup>246</sup> The application of Israeli laws to the Samaritans in such an obviously tactical fashion betrays the system’s exploitative aims, which ultimately exacerbates its effectiveness in this regard.

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

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. But mainstream Palestinian identity is not constructed around ethnocultural traits. 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.<sup>247</sup> But one must sketch out the broader effects of oppressed subjectivity in order to see the ways Samaritans’ actions actually work to dismantle this effort. Reacting to the infamous statement made by Golda Meir, “[t]here were no such thing as Palestinians . . . They do not exist,”<sup>248</sup> Sheehi writes, “*The creation of the State of Israel conjured Palestinian consciousness into being but also interlocked it with Zionist consciousness. . . . [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.”*”<sup>249</sup> When taken in this theoretical sense, “divide and conquer” would be Israel’s legal strategy to “ingest,” as Sheehi puts it, Palestinian identity and selfhood “into the Zionist self” and into the collective Israeli-Jewish memory.<sup>250</sup>

The definition of a population by an oppressive state 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.<sup>251</sup> As the state of Israel expanded and grew increasingly

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<sup>244</sup> Law of Return Amendment No. 2, 5730-1970, (Isr.).

<sup>245</sup> 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).

<sup>246</sup> RASHID KHALIDI, *PALESTINIAN IDENTITY: THE CONSTRUCTION OF MODERN NATIONAL CONSCIOUSNESS* 23–24 (1997).

<sup>247</sup> Palestinians challenge the imposition of a post-colonial collective identity as the antithesis of the Israeli-Jew. *See, e.g., id.* at 19.

<sup>248</sup> Stephen Sheehi, *The Transnational Palestinian Self: Toward Decolonizing Psychoanalytic Thought*, 15 *PSYCHOANALYTIC PERSP.* 307, 309 (2018) (quoting Schindler, 153 (2013)).

<sup>249</sup> *Id.* (italics added).

<sup>250</sup> *Id.*

<sup>251</sup> Unlike Democratic states whose leaders ostensibly hold minority and majority groups to the same rights and

extremist in its ideological Zionism, Palestinian citizens of Israel continued to be classified and reclassified into various “national” categories under Israeli law. The Samaritans’ extreme proximity to the Jewish faith and integration in Abrahamic tradition clearly manifests Israel’s antithetical approach to its society, but they are not the first minority to be utilized by the Israeli state evoking multiculturalism.<sup>252</sup> 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, Christians, and Muslims as a means to arbitrarily divide and create tensions among what had otherwise long been a Palestinian community.<sup>253</sup> 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.<sup>254</sup> The Samaritans were legally separated from Druze nationals in 1995, thus beginning their collective self-imagination around an absence of historical and religious identity rather than positive declaration—making this collective identity “the antithetical Other.”

Testaments to the sudden top-down shift in Israel’s approach to the Samaritan population frame this community as one that existed at the fringes of the Jewish People but has an affinity to it.<sup>255</sup> This characterization implicitly disparages its members as fundamentally non-essential or fluctuating beings. Hence, 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. This is what makes the power to define the ultimate tool for state control.<sup>256</sup>

To be clear, it is the Samaritans’ deprivation of social power and autonomy through the de facto annexation of the West Bank that allows the Israeli state to fissure Samaritan identity. This aspect of identity annexation is the result of Israel’s particularly exclusionary practices, and insofar as it is a complex phenomenon, its articulation is not entirely linear. In other words, Israel cannot eliminate all sense of religiosity in its reformulation of Samaritan identity, because it would then risk its ability to advertise itself as a state that is open and fair to diaspora who seek its citizenship. However, the Samaritans’ proto-Jewish facet of their identity, their claim to uninterrupted lineage to the Tribes of

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responsibilities, in undemocratic contexts where governments use these classifications to discriminate among their citizenry, a collective identity shifts and evolves around its top-down classification.

<sup>252</sup> This parallel between Israel’s approaches to the Palestinian Druze and the Samaritans is evidenced by law. Moussa Abou Ramadan, *Law and Druze Identity: The Role of Law in Shaping the Druze Identity*, 61 ISRAELI ISSUES 36–38 (2013). 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. Israeli Central Bureau of Statistics, *Populations, Definitions and Explanations*, (Isr.), <https://www.cbs.gov.il/> [<http://perma.cc/23EQ-NCC9>]. In both of these cases, the Israeli state benefits beyond narrative inclusivity—implicitly homogenizing groups in legal documentation and exercising the power to discriminate against certain entities among these groups creates a plethora of advantage.

<sup>253</sup> Magid Shihade, *Settler Colonialism and Conflict: The Israeli State and its Palestinian Subjects*, 2 SETTLER COLONIAL STUD. 108, 108 (2012). Further, this forged a homogenization rather than unification of different indigenous groups while denying them equal treatment.

<sup>254</sup> *Id.*

<sup>255</sup> MINISTRY OF DIASPORA AFF., REPORT OF THE PUBLIC ADVISORY COMMITTEE FOR EXAMINING ISRAEL’S APPROACH REGARDING WORLDWIDE COMMUNITIES WITH AFFINITY TO THE JEWISH PEOPLE 41 (2017) (referring to the Samaritans as a “marginal community”).

<sup>256</sup> See generally CELIA BRITTON, EDOUARD GLISSANT AND POSTCOLONIAL THEORY: STRATEGIES OF LANGUAGE AND RESISTANCE (1999).

Moses, and their continuous presence on the land since antiquity all presented a unique opportunity for Israeli nation building.

Israel's joint objectives of marginalizing a community according to its ethnoreligious identity while touting the humane treatment of said population on that very same basis 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.<sup>257</sup> 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.<sup>258</sup>

Despite the contradictory language of "return" to refer to a population living "within the Borders of Israel,"<sup>259</sup> Moshe Sharett, then 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. 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.<sup>260</sup> For this conception of the Samaritan self to satisfy each of the growing divisions in the late 20<sup>th</sup> 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.<sup>261</sup>

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

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<sup>257</sup> Sheehi, *supra* note 248, at 315.

<sup>258</sup> 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 shifted accordingly. Zionist leader Ben Zvi, 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. SCHREIBER, COMFORT OF KIN, *supra* note 48, at 56.

<sup>259</sup> SCHREIBER, COMFORT OF KIN, *supra* note 48, at 57 (citing Letter from Ben Zvi to the Minister of Foreign Affairs (Sept. 12, 1949)).

<sup>260</sup> *Id.*

<sup>261</sup> See generally Ian S. Lustick, Israel as a non-Arab state: the political implications of mass immigration of non-Jews, *The Middle East Journal* (1999).

religion.”<sup>262</sup> 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.”<sup>263</sup>

In cases after 1950, the right of return was extended to more marginal Jewish communities such as Ethiopian Jews.<sup>264</sup> Global minorities began striving to immigrate to and join Israeli society.<sup>265</sup> While the Law gives anyone meeting the definition of Jewishness in the diaspora the right to citizenship, the fact that the Supreme Court in 1994 extended the Basic Law to the Samaritans, a group with an ambiguous relationship to Judaism at best, raises questions about the Court’s underlying rationale.<sup>266</sup>

In 1992, Minister of Internal Affairs and co-founder of the ultra-orthodox religious political party Shas Aryeh Deri publicized concerns amongst Israelis about Samaritan “Jewishness” by criticizing the definition offered by the 1970 amendment to the Law of Return.<sup>267</sup> Hoping to narrow the requirements for Jewish immigration to Israel, he argued that Samaritans should remain classified as a separate non-Jewish faith community.<sup>268</sup> 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*, or non-Israeli Jews.<sup>269</sup> Though nothing had changed in the Samaritan religious practice or its public representation, the decision of Deri was more about identity politics than nuanced state craft. It 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.<sup>270</sup>

It would be absurd for Israel to make difficulties in entering the country for people who never left it. This tension undercuts the Samaritans’ long made historical claims of distinction from the Judaic faith, even if only for immigration strategy. Samaritans vigorously lobbied to reclaim their inclusion in

<sup>262</sup> Law of Return (Amendment No. 2) No. 5730-1970 (1970) (Isr.).

<sup>263</sup> Law of Return (Amendment No. 3) No. 5730-1970 (1970) (Isr.); *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 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”).

<sup>264</sup> Ahmed Karadawi, *The smuggling of the Ethiopian Falasha to Israel through Sudan*, AFRICAN AFFAIRS 90, 23–49 (1991).

<sup>265</sup> *Id.*

<sup>266</sup> Not only does Samaritanism stand in stark contrast with many basic tenets of Judaism and its narrative history, but Nablus Samaritans 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. *See infra* Part I.B.

<sup>267</sup> Haim Shapiro, *Samaritans: ‘We Call Ourselves Israel’*, JERUSALEM POST (June 8, 1993), *reprinted in* 37 A.B. SAMARITAN NEWS, (Eds. Benyamim Tsedaka & Yefet B. Ratson Tsedaka) 1993 [hereinafter Shapiro, *Samaritans*].

<sup>268</sup> *Id.*

<sup>269</sup> Menachem Mor, *Who is a Samaritan?* in WHO IS A JEW?: REFLECTIONS ON HISTORY, RELIGION, AND CULTURE, STUDIES IN JEWISH CIVILIZATION 160 (ed. Leonard Jay Greenspoon, 2014).

<sup>270</sup> *Id.*

the Law of Return and thus their superimposed 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.<sup>271</sup>

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.

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

Given their residence in the West Bank, the Samaritans suffer near-inhuman living conditions, which is certainly a motivating factor for their acceptance of Oleh immigrant status. Even though accepting them requires a renouncement of critical aspects of their identity, they would be hard-pressed to reject the privileges like freedom of movement and basic social welfare that they derive from their inclusion to the nation under the Right of Return Law. 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.<sup>272</sup> 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 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 only benefits the Israelis doling it out. This legal formulation of Samaritan collective identity grants minimal material benefit and maximal psychic disadvantage to the Samaritans receiving the special treatment.<sup>273</sup> It bears remembering that in their

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<sup>271</sup> *Settlement Announcement between State Attorney and Samaritans, supra* note 17.

<sup>272</sup> *See generally* Stephen Kaufman, Samaritan Political Identity 12 (1998) (M.A. thesis, Tel Aviv University).

<sup>273</sup> These aspects of Samaritan life in Palestine were explained during the interviews with residents of a Mount Gerizim

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, and the majority of them receive higher education in Palestinian universities.<sup>274</sup> 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.<sup>275</sup>

Taken as a whole, the heterogeneity of the responses received regarding the community's conception of its identity in relation to 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 by the Palestinian political enterprise as well. 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 to the late Yasir Arafat as “his father.”<sup>276</sup> 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 Palestinian Authority.<sup>277</sup> This is unsurprising because Arafat took several positive actions to integrate the Samaritans into Palestinian society and identity, even referring to them as “Palestinian Jews.”<sup>278</sup> 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 statesman.<sup>279</sup>

Samaritans insist on their sense of belonging with the Palestinians despite holding Israeli citizenship, and the responses of Samaritan leaders such as the High Priest or the head of the Samaritan Museum, as seen in the first section, reflect Samaritan identity as a concept that transcends nationalism.<sup>280</sup> But as their continued praise of Arafat shows, Samaritans have continued engagement with Palestinian selfhood and identity despite their refusal to give up Israeli identity (or even associate as Palestinian Jews), and this is problematic to say the least. As members of a small minority caught between two sides of a conflict—both of which claim dominion over them as a means to an end rather than an end in itself—many Samaritans expressed their main concerns about the Palestinian-Israeli

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Samaritan neighborhood between 2016 and 2020 that were excerpted in previous sections.

<sup>274</sup> Interview with Cohen Abdallah Wassef, the High Priest of the Samaritan community, in Nablus (Mar. 19, 2019).

<sup>275</sup> For example, in 1996, the Samaritan and friend to Yasir Arafat, Saloum Cohen was appointed as a representative in the first Palestinian Legislative Council. The Associated Press, *Samaritan High Priest Saloum Cohen Dies at 82*, HAARETZ, Feb. 10, 2004, <https://www.haaretz.com/1.4710850> [http://perma.cc/R9SU-ECGP]. 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> [https://perma.cc/CJN9-E9FC]. 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). Interview with Cohen Hosny, in Nablus (July 17, 2019).

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> Matt Beynon Rees, *The Samaritan's Secret: Part 2*, AGENCE FRANCE-PRESSE (May 30, 2010), <https://theworld.org/stories/2009-02-18/samaritans-secret-part-2> [https://perma.cc/G5L8-XP6F]; Overmeyer *supra* note 31.

<sup>279</sup> During the Camp David Summit of 2000, 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” and therefore belongs to Palestine. ERIC H. CLINE, JERUSALEM BESIEGED: FROM ANCIENT CANAAN TO MODERN ISRAEL 162 (University of Michigan Press, 2004).

<sup>280</sup> Interview with Aballah Wasef Cohen, the High Priest, in Nablus (Mar. 19, 2019).



conflict as being “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.”<sup>281</sup>

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 a lack of collective selfhood in the small group. Despite centuries of religious history and stability, this lack of collective selfhood is undoubtedly affected by legal reformulation of this selfhood for Israel’s national interest. Further, one may conclude that the complexity of contemporary Samaritan identity evokes the perils of claiming a singular experience for any minority group—especially one that is not narrativized locally.

As subjects of an annexed land and identity, the particular position that Samaritans take offers a new articulation of Fanon’s reflections on identity creation among the ostensibly oppressed.<sup>282</sup> For the Samaritans, selfhood appears to “not only [be] an individual question” but a sociogenic one, determined by socio-geographic location and circumstances more than history and self-narrativization.<sup>283</sup> The preceding sections surveyed the 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 Samaritan selfhood continues to evolve in response to Israel’s policies of identity annexation.

#### IV. 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 has succeeded. Drawing on Coulthard’s decolonial critique of recognition<sup>284</sup>, 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 sections 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 Tsedaka was among several important figures in the Samaritan community who expressed disappointment in the amendment to the Law of Return, noting

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<sup>281</sup> Interview with Cohen Aziz, in Nablus (Mar. 22, 2019).

<sup>282</sup> FANON, *supra* note 6 (explaining in terms of universal colonial subject).

<sup>283</sup> Sheehi, *supra* note 248, at 315.

<sup>284</sup> See *infra* Part II.

“we never dreamed that the state we dreamed about for years would one day make it hard for us,”<sup>285</sup> finding it “‘absurd’ for Israel to make difficulties in entering the country for people who never left it.”<sup>286</sup> 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.<sup>287</sup>

The Samaritans expressed their dissatisfaction with Aryeh Deri’s decision in legal terms by advancing a petition before the Israeli Supreme Court in 1993,<sup>288</sup> which contested the denial of their status as *Olim Hadashim*.<sup>289</sup> 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, referring to “the right of recent arrivals in Israel [i.e., Israeli Jews] to determine the identity of those who have never left it,”<sup>290</sup> and declares the Samaritans to be “the true Israelites who are rooted in the land” and thereby distinct from the Israeli “others . . . the newcomers.”<sup>291</sup> 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.”<sup>292</sup> 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;”<sup>293</sup> 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”<sup>294</sup> 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.<sup>295</sup> 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

<sup>285</sup> Shapiro, *Samaritans*, *supra* note 267, at 37 (quoting Benyamin Tsadaka).

<sup>286</sup> *Id.*

<sup>287</sup> *Id.* (citing Yitzhak Cohen, *Samaritans*).

<sup>288</sup> Evelyn Gordon, *Samaritans Petition Court to Restore Immigrant Status*, JERUSALEM POST (Aug. 2, 1993).

<sup>289</sup> *Settlement Announcement between State Attorney and Samaritans*, *supra* note 17.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *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].

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> For an overview of Simone de Beauvoir’s conception of Other, see Karen Green, *The Other as Another Other*, 17 HYPATIA 1 (2002), [www.jstor.org/stable/3810906](http://www.jstor.org/stable/3810906) [<https://perma.cc/7E44-X6FE>]. For an overview of Colonized Self and Other in Edward Said’s writing, see Shehla Burney, *Orientalism: The Making of the Other*, 417 COUNTERPOINTS 23-35 (2012).

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.<sup>296</sup>

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.<sup>297</sup> 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 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<sup>298</sup> and Dr Menhem Mor<sup>299</sup> 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.<sup>300</sup>

Corinaldi's strategy proved successful when Supreme Court Justice Aharon Barak issued in August 1993 an order *nisi* against the Prime Minister of Israel,<sup>301</sup> 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

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<sup>296</sup> Sheehi, *supra* note 248, at 307–322.

<sup>297</sup> *The Primary Issue*, A.B. SAMARITAN NEWS *supra* note 292.

<sup>298</sup> 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.

<sup>299</sup> Mor, *supra* note 59, at 2.

<sup>300</sup> Tsedaka, *supra* note 267, at 49.

<sup>301</sup> *Id.*

of immigration.<sup>302</sup>

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.,<sup>303</sup> 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."<sup>304</sup> 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.<sup>305</sup>

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 without the need to prove that they belong to the Jewish People.<sup>306</sup> 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 territories and in the name of protecting its citizens has *de facto* imposed its laws as the ultimate authorities over Palestinian populations.

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<sup>302</sup> Haim Shapiro, *Samaritan Immigrants to Get Oleh Status*, JERUSALEM POST (Mar. 21, 1994), reprinted in A.B. SAMARITAN NEWS 7 (1994) [hereinafter Shapiro, JERUSALEM POST].

<sup>303</sup> HCJ 4200/93 Comm. of the Samaritan Community in Holon v. State Attorney's Office, Israel (unpublished court settlement agreement) (1993) (Isr.) (on file with author) A hard copy of the decision was obtained from Professor Michael Corinaldi.

<sup>304</sup> *Settlement Announcement between State Attorney and Samaritans*, supra note 17.

<sup>305</sup> Shapiro, JERUSALEM POST, supra note 302, at 7.

<sup>306</sup> 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 Corinaldi).

*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.<sup>307</sup> The decision was handed down as a summation of a 16-year-old battle 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.<sup>308</sup> 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.<sup>309</sup>

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,"<sup>310</sup> 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."<sup>311</sup> The 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"<sup>312</sup> while both chief rabbis of Israel have also denounced the decision. According to the Sephardi Chief Rabbi Yitzhak Yosef, the decision is "regrettable,"<sup>313</sup> 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."<sup>314</sup> 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."<sup>315</sup>

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 400,000 Russian immigrants to

<sup>307</sup> See *High Court: Reform and Conservative Conversions in Israel valid for 'Law of Return'* JEWISH NEWS SYNDICATE (Mar. 1, 2021), <https://www.jns.org/israels-high-court-reform-conservative-conversions-in-israel-valid-for-law-of-return/> [<https://perma.cc/JWT5-HMVK>].

<sup>308</sup> The Masorti Found. for Conservative Judaism in Israel, *Landmark Israel Supreme Court Ruling Recognizes Masorti-Conservative and Reform Conversions for Aliyah*, MERCAZ: THE ZIONIST ORGANIZATION OF THE CONSERVATIVE MOVEMENT (Mar. 2 2021), <https://www.mercazusa.org/2021/03/highcourtmasorticonversions030221/> [<https://perma.cc/Q7LW-M42L>].

<sup>309</sup> See Josh Breiner et. al., *Israel's High Court Orders State to Recognize Non-Orthodox Conversions Under Law of Return*, HAARETZ (Mar. 1, 2021).

<sup>310</sup> Israel Kasnett, *Landmark Decision Recognizing Non-Orthodox Conversions Performed in Israel Sparks Fierce Debate*, JEWISH NEWS SYNDICATE (Mar. 2, 2021), <https://www.jns.org/landmark-decision-recognizing-non-orthodox-conversions-performed-in-israel-sparks-fierce-debate/> [<https://perma.cc/9H2K-G5Z4>].

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *High Court: Reform and Conservative Conversions in Israel Valid for 'Law of Return'* *supra* note 306.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

Israel are waiting to be recognized as “converts” to access Israeli citizenship under the rubric of the Law of Return.<sup>316</sup> 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.

## V. CONCLUSION

This article has examined 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. I argue that the psychic annexation of this group is the unfortunate result of—and in some cases, intrinsic to—these legal manipulations. This psychic annexation 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 demonstrates that the law can become a tool to “divide and conquer,” and also fail to recognize the full identities of its subjects. This failure extends beyond the Samaritans; to this day, the state of Israel continues 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. Samaritans are particularly contentious subjects of the law, as they found themselves 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 making: in an act of self-definition, the Samaritans’ petition to the Israeli Supreme Court rejected this psychic annexation, which marked a milestone in the continued struggle against colonization and for the reclamation of human dignity and political agency of Palestinians. 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.

I have traced how, through the Law of Return, the Israeli government utilized the Samaritans as a mascot of inclusivity as 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 have legal advantages as this newly imagined community of legal “immigrants,” these benefits create rifts between Samaritan communities and the broader Palestinian society with whom they also identify. Prompted by a changed definition of “Jew” in an amendment to the Law of Return, the Samaritans resisted the articulation of their identity as the Self to Israel’s Other, which eventually overturned the Israeli State’s definitional act. This act of independence narrativized themselves according to their collective conception. 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.

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<sup>316</sup> Kasnett, *supra* note 310.

What I call an act of agency and self-definition in the Samaritans' 1993 petition before the Supreme Court might also be characterized as the group exercising the privilege to challenge the state, evidencing a benefit the population has gained from the exclusionary laws of Israel. However, this "benefit" should be accessible to all those who are equal before the law. Beyond this successful legal challenge, the Israeli state continues to manipulate claims by various minority groups rooted in their theological and historical affiliations in order to expand its power beyond the creeping, territorial, illegal acquisition of lands. As the State continues this effort, they also creep into and impose onto the psyches of subjected populations. This is settler colonialism. As this specific form of Israel's settler colonial state-building project continues, the Samaritans' bold gesture is perhaps a productive fissure in the thick walls of this hegemonic fortress.