

The Dynamics of Exclusionary Constitutionalism: Israel as a Jewish and Democratic State by Mazen Masri

In July 2018, the Israeli parliament approved *Basic Law: Israel as the Nation State of the Jewish People*. Dubbed the ‘nation state law’, it enshrines in legislation already existing practices that privilege the rights of the Jewish people on the ‘Land of Israel’ over those of its Palestinian citizens and inhabitants. Critics from both inside and outside Israel declared that the law represents the death of democracy in Israel, the infiltration of policies and tendencies from the occupied territory into Israel ‘proper’ and signals an important step towards the establishment of an apartheid system within Israel.

But how should we understand Israel’s constitutional order prior to this law? Was Israel a flawed democracy until the ‘nation state law’, and only now revealed its true nature as the critique implies? Mazen Masri’s book *The Dynamics of Exclusionary Constitutionalism: Israel as a Jewish and Democratic State* analyses the legally sanctioned privileged position of Israel’s Jewish citizens as the most basic manifestation of Zionism as a settler colonial project, aiming to settle Palestine with Jews, replacing and erasing its native Palestinian population. It is this settler colonial logic, he argued, which is enshrined in Israel’s constitutional order.

Building on the literature which deals with the inherent tensions in the Jewish and democratic components in Israel’s self-definition, Masri’s book offers a rigorous analysis of the intimate relationship between this definition, the state’s constitutional order and settler colonial dynamics. By so doing, it places both historical and contemporary practices and processes in the wider context of liberal settler states, from North America (US and Canada) to Australia and New Zealand. The book thus focuses Israel’s underlying legal structures, and the ways in which they are founded on, but also promote and advance the settler colonial logic of the Zionist project in Palestine. This is illuminating, particularly as Israel takes pride in its legal system, and its Supreme Court as preserving Israel’s democracy against opposing political agendas, and it uses it to entrench its legitimacy, both internally and internationally.

Masri rightly highlights the role of law and the state’s legal system, more broadly, as an integral part of maintaining hierarchical settler colonial social relations. Indeed, the legal system is one of the most powerful institutions at the hands of the state to construct its legitimacy, internal coherence and importantly, to build capacity for sustaining its power structures. The legal system is, crucially, also the outcome and the bearer of violence. While violence leads to the enactment of the new political order, once established, state law draws the line between permissible and impermissible violence. It is exactly on this nexus that Masri’s book offers its unique contribution: it explains how, in the aftermath of the war of 1948, the violent nature (and outcome) of the settler colonial project facilitated the writing of the law, and how, ever since, it guides its logic of operation. This is important since “the constitutional order [...] controls the creation, transformation and exercise of political power” (p. 193). It is an all-encompassing project which is grounded in the definition of ‘the people’ – which, in the Israeli state, is composed of the Jewish people only.

The book thus makes a valuable contribution to the literature dealing with the intersection of law and (settler) colonialism in Israel. The few studies that exist tend to focus on military law and court system (Hajjar, Bisharat, Geva), on the legal infrastructure of the

occupied Palestinian territory (most recently Ben Naftali et al), or on land issues (Bhandar), particularly Israel's treatment of its Bedouin population or on colonial features of particular legislation or policy. The settler colonial lens and the focus on the Israeli constitutional order offered by Masri allows taking into account longer term processes by which the law came into being: by which Jews became the majority in the state and by which they sustain their privileges in and over the land ever since. Masri grounds his analysis around three elements in Israel's constitutional order to demonstrate how they all reflect and serve the settler colonial logic of elimination: Firstly, Israel's *Declaration of Independence*, a political edict introduced upon the establishment of the state in 1948, that despite not having an official legal status, serves as an inspiration for legislation and court rulings. The declaration constitutes the idea of the Jews as 'the people' in the newly established Israeli polity, thereby excluding the Palestinians from the 'demos' in the Israeli (Jewish) democracy (chapter 3); Secondly, Israeli citizenship and immigration laws that provide automatic access to citizenship to Jews but deny it from Palestinians (chapters 4 and 5); Thirdly, limitations placed on political participation that constrain the capacity to drive systemic change in the constitutional structures of the state, that might overturn its Jewish nature (chapter 6). Interestingly, the book's last chapter (7) titled 'the constitution in action', discusses processes of constitution making and law making, and illustrates "the constitutional order operates in a manner that elevates the Jewish character of the state above democracy and precludes democratic attempts to challenge the definition" (p. 192).

Thinking about the nation state law in light of this analysis, it becomes evident it merely follows the same settler colonial logic of operation, now just bluntly subordinating the 'democratic' principle to the Jewish' one, a subordination that started long before now, and is the *raison d'être* of the Israeli state. The book thus provides a vital source for those interested in the study of the Israeli state; but also for those interested in the study of the settler colonial state, and in particular, its legal foundations. The book confines its analysis to the legal system within the Green Line borders, and thus opens the call for a comprehensive and integrated legal analysis of the Israeli system of control, that apply to the whole of the territory between the Jordan river and the Mediterranean, and the people living there, operating separately but in concert to sustain the Zionist settler colonial project in Palestine.

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