`Israel is an Apartheid State': An Examination of Israeli Policies in Comparison with South Africa and International Law

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‘Israel is an Apartheid State’:
An Examination of Israeli Policies in Comparison with South Africa and International Law

A Thesis

Presented to

the Faculty of the Josef Korbel School of International Studies

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of the Requirements for the Degree

Master of Arts

by

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ABSTRACT

The situation in which the Palestinians are living, both within Israel and the
Occupied Palestinian Territories continues to worsen with little end in sight. The exact
status of the Palestinians, however, has been the subject of much debate with terms such
as `disputed territories,' `occupied territories,' and even a state of apartheid being used.
This study seeks to examine whether the concept of apartheid applies to Israel/Palestine.
Two methods were used to define apartheid, a South Africa case study and its definition
under international law. Israel's laws, policies, and practices, both in its own territory and
the West Bank, Gaza, and East Jerusalem are compared with these definitions of
apartheid in an attempt to ascertain to what extent the claim of apartheid is applicable to
these situations.
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CHAPTER ONE: INTRODUCTION

The term apartheid is a powerful word that, for many, conjures up images of the oppression of the Black population in South Africa at the hands of the White ruling minority. Phrases such as Bantustans, separate spaces, pass laws, boycott, divestment and sanctions also come to mind. More directly, apartheid represents the South African political system and the struggle against it, tying the word to the fight against a legal institution of racism. However, for some the word lives on beyond its historical conception and has taken root elsewhere in the world. One such place is in relationship to the way Israel has and continues to treat the Palestinians who live within Israel and within the Occupied Palestinian Territories (OPT). While the phrase has been gaining in popularity in the last few years, especially among the so-called ‘pro-Palestine’ contingent that opposes Israel’s actions in the West Bank and Gaza, use of the term apartheid with respect to Israel has a long history. In 1967, David Ben-Gurion, Israel’s first Prime Minister, made the claim that Israel would become an apartheid state if it did not get rid of its Arab population. Uri Davis, an Israeli academic has written two books on the topic of apartheid and Israel, the earliest being published in 1987. In 2002 South African Archbishop and leader in the anti-apartheid movement “accused Israel of practising

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apartheid in its policies towards the Palestinians."³ Perhaps the most famous use of the comparison is former United States President Jimmy Carter’s 2006 book titled *Palestine: Peace not Apartheid⁴*. In 2010, former Israeli Prime Minister Ehud Barak made the claim that so long as Israel is the only political entity between the Mediterranean and the Jordan River, the state will either be bi-national or an apartheid state.⁵

More recently, two comparisons between Israel and South Africa have been made. The distinguished Israeli scholar Zeev Sternhell, writing in *Haaretz* on April 18, 2014, observed: “The road to South Africa has been paved and will not be blocked until the Western world presents Israel with an unequivocal choice: Stop the annexation and dismantle most of the colonies and the settler state, or be an outcast.”⁶ While apartheid is not mentioned by name, the allusion to South Africa is easily understood. Secondly, the most powerful comparison between Israel and apartheid has been made by US Secretary of State John Kerry. He warned that Israel could become an apartheid state if the current peace talks fail.⁷ While the academic literature and the claims of apartheid have picked up in the last decade, the application of apartheid to the Israel-Palestine conflict has a long history that predates the end of apartheid in South Africa.


While much has been written concerning the Israel-Apartheid comparison, one thing that is often overlooked is the bias of the authors producing it. As will be seen in the literature review, arguments have been made on both sides of the issue, those who think the term applies and those who do not. These arguments lack an air of objectivity. Instead of writing articles that seek to prove or disprove the claim ‘Israel is an apartheid state,’ it is better to examine the facts on the ground. The object here is not to prove that Israel is an apartheid state, but rather to question the conventional wisdom of some pro-Palestine solidarity groups. The goal of this thesis is to move away from the politicized style of rhetoric that defines the ‘debate’ around this issue and instead to present the empirical facts on the ground and then to draw conclusions from them. The author recognizes that the evidence presented here may lead to multiple conclusions: one may see clear evidence of apartheid policies and an apartheid state, another may see the application of the term apartheid as falling short or being inadequate. Consequently, this paper is meant to present evidence and draw conclusions from it, while leaving open the possibility of other interpretations.

To accomplish this, the thesis will be structured as follows. Chapter two is a literature review of the scholarship on the subject of Israel and apartheid. An equal number of articles will be presented from both those who support the claim and those who oppose it, as well as a couple articles that do not fall explicitly in either category. Chapter three will define apartheid in two ways: first using the historical comparison with South Africa, and second looking at apartheid as defined by international law. These definitions will provide the framework necessary to analyze the situations in Israel and the OPT. The South Africa case study will be mostly focused on the role law has played
in constructing the apartheid regime, and will also allow for a basis of comparison with Israel. Chapter four will be an analysis of Israel and the OPT in relation to the South African framework. Israeli law will be the basis of the analysis. Israeli military orders and reports from international bodies and nongovernmental organizations (NGOs) will provide the context for the discussion of the West Bank and Gaza. Chapter five will focus being on apartheid as defined under international law. Finally, chapter six will draw conclusions from the evidence presented, addressing some potential critiques and presenting a few relevant political consequences from this analysis.
CHAPTER TWO: LITERATURE REVIEW

The word apartheid, in its modern understanding dates back the year 1929 in South Africa. Here it meant that “Africans had to be uplifted ‘on their own terrain, separate and apart.’” Nearly twenty years later this ideology would become the basis for South African state policy. Since its inception, apartheid has been used in a variety of different situations outside of the South African context. The phrase ‘gender apartheid,’ which refers inequality between the sexes, has been used to refer to the situation of segregation at universities in the United Kingdom, the experience of female nurses in the United States, and the situation for women in places such as Iran, Afghanistan, and Saudi Arabia. ‘Nuclear Apartheid’ has applied to United State’s desire to have nuclear supremacy following World War II. Probably the most well known usage of apartheid, and the focus of this study, is that of the comparison with Israel and its policies in the Occupied Palestinian Territories. While apartheid continues to be used to denote

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† Shane J. Maddock,, *Nuclear Apartheid: The Quest for American Atomic Supremacy from World War II to the Present* (Chapel Hill: University of North Carolina Press, 2010).
situations of extreme racial segregation, its usage has expanded to include other situations where gross and intentional inequalities exist.

The application of the term apartheid to the situation in Israel has sparked a lot of controversy. People who see Israel and its control over the West Bank, Gaza, and East Jerusalem as illegal and unjust use apartheid to frame the situation as racist and immoral, and consequently assert it has no right to exist in its present form. Conversely, those who support Israel and its right to exist, argue that use of the term apartheid with reference to Israel is slanderous and is an attempt to delegitimize the Jewish State. While there is a large body of literature that has been written about the situation in Israel/Palestine, only a very narrow subset of that has taken up the claim of apartheid in a scholarly manner. As a result of this representative three articles have been selected from each side of this debate and their key arguments will be presented. An additional two articles have been included in latter part of this section that, while they both oppose the use of the term apartheid, do not easily fit into the established binary. Given that one of the counter-Apartheid articles is a direct response to an article in support of the claim, the case for the use of the term apartheid shall be presented first.

**The Claims for Apartheid in Israel and Palestine**

There are two important starting points for the claim that a system of apartheid exists in Israel/Palestine: namely the comparison with South African apartheid, and definitions of apartheid as defined in international law. John Dugard, Professor of International Law and former UN Special Rapporteur on the Occupied Territories, and John Reynolds, EJ Phelan Fellow in International Law at National University of Ireland,
in their article “Apartheid, International Law, and the Occupied Territory” use both techniques, beginning with what they consider to be the three pillars of apartheid in South Africa: discrimination, territorial fragmentation, and political repression. Under discrimination they cite South African laws such as the Population Registration Act of 1950, which classified people as White, Colored, or Black based on skin color and descent. Additionally, the Reservation of Separate Amenities Act of 1953, which segregated parks, restaurants, and transportation among many other things, was used to provide a context of the South African system of apartheid. Territorial fragmentation was used to describe the system of separation that the forced Blacks to live in reservation-like mini-states called Bantustans. The last pillar, political repression, covers “Draconian laws which gave wide powers to the security forces and largely removed the review powers of the courts.” These were used to limit freedom of speech and the press, political assembly, and the restriction of movement of political agitators, to name a few.

As for international law, Dugard and Reynolds cite many different sources relating not only to apartheid, but also to racial discrimination in general. Such sources include the 1965 International Convention for the Elimination of All Forms of Racial

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10 Ibid.

11 Ibid., 874.

12 Ibid.

13 Ibid.
Discrimination (ICERD), which was the first document to expressly prohibit apartheid,\(^\text{14}\) and the 1976 International Convention for the Suppression and Elimination of the Crime of Apartheid (Apartheid Convention).\(^\text{15}\) Additionally, sources such as the Universal Declaration of Human Rights, the Rome Statute of the International Criminal Court, and the Charter of the United Nations provide various definitions, and prohibitions against all forms of discrimination, if not apartheid by name.

John Quigley also cites the ICERD as well as the International Covenant on Civil and Political Rights as his basis for the definition and prohibition of apartheid and racial discrimination.\(^\text{16}\) However, he notes that “While it is clear that apartheid is unlawful, defining it is complicated, because apartheid involves a series of policies.” In his statement, Quigley gets to the heart of the difficulty in defining apartheid and applying it to cases outside of South Africa. In its essence apartheid is a system built on policies that discriminate against a specific racial or ethnic group. How specific policies are interpreted and applied toward a specific group can make all the difference in determining whether the concept applies to particular state or not.

To apply the case of apartheid, John Dugard and John Reynolds compare Israeli laws and policies to the provisions set forth in article 2c of the Apartheid Convention. One such law is the Internment of Unlawful Combatants Law which was “enacted originally to intern Lebanese as potential ‘bargaining chips’ for the exchange of Israeli

\(^\text{14}\) Dugard and Reynolds, 876

\(^\text{15}\) Ibid., 877.

prisoners of war ... has been primarily used to detain Palestinians from the Gaza strip without trial."\textsuperscript{17} According to Dugard and Reynolds, this law violates article 2(a) of the Apartheid Convention which covers the denial of the right to life or liberty to members of the oppressed group. Another policy that is in place, while unofficial, is what they have termed ‘road apartheid’, which describes the system of Jewish-only roads throughout the West Bank that link Israeli settlements to each other, and to ‘Israel proper.’\textsuperscript{18} Dugard and Reynolds note that this is unlike anything seen under apartheid in South Africa and is therefore unique to Israel’s control over the West Bank.

In addition to laws and policies that affect Palestinians in the West Bank and Gaza, John Dugard and John Reynolds also look at laws that affect every day life of Palestinians living within Israel. Such laws include the 1950 Law of Return, 1951 State Property Law, and the 1952 Nationality Law. The first law defines who is a Jew, and allows all such people to immigrate to Israel, whereupon they shall be granted immediate citizenship in accordance with the last law.\textsuperscript{19} The result is that there is a discrepancy between who is a ‘national’ and who is a ‘citizen’, with only Jews being nationals.\textsuperscript{20} The 1951 State Property Law defines Israel as anywhere in which the “law of the state of Israel applies,” which means that anywhere in the West Bank where Israeli law applies is no longer Palestinian land, but rather Israeli.\textsuperscript{21} According to Dugard and Reynolds, the

\textsuperscript{17} Dugard and Reynolds, 895.
\textsuperscript{18} Ibid., 897.
\textsuperscript{19} Ibid., 905.
\textsuperscript{20} Ibid., 904.
\textsuperscript{21} Ibid., 906.
State Property Law has an added effect in that the 93 percent of land in Israel that is public domain, “either property of the state, the Jewish National Fund or the Development Authority, ... cannot be leased or bought by non-Jews, even non-Jewish citizens of Israel.”22 The result of these laws is the creation of a tiered system of citizenship within Israel the preferences Jews over non-Jews by allowing people of Jewish heritage living outside of Israel whom immigrate to be granted immediate citizenship, while denying the same privilege to Palestinian refugees. At the same time, since the vast majority of land in Israel is public domain, the Palestinians who are citizens of Israel, are barred from buying or leasing houses on that land, effectively limiting where they can live.

The effects that these laws have on Palestinians have also been noted by John Quigley, Professor of Law at Ohio State University, in his article “Apartheid Outside Africa: The Case of Israel.”23 He notes that from the very beginning Israel has been defined as ‘the state of the Jewish People.’24 For him, “A state’s self-definition as a state of a single racial group impliedly excludes others, and where another substantial racial group is present, it is impliedly excluded.”25 This is then a system of apartheid as it gives legislative domination of one racial group over another. For Quigley, this definition of Israel serves as the basis for the rest of the policies it has pursued over the years, including the aforementioned Law of Return and Nationality Law.

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22 Ibid.
23 Quigley.
24 Ibid., 226.
25 Ibid., 228.
When it comes to the policies Israel has concerning land, Quigley goes more in depth than other authors by talking about the role of the Jewish National Fund (JNF) in the acquisition of land. The JNF was originally created by the World Zionist Organization (WZO) in 1901 to “acquire land in Palestine.”\(^{26}\) Then in 1953 it became an Israeli corporation with the mission of continuing its previous activities, while incorporating the land it holds into the state land that is not allowed to be leased or sold to non-Jews.\(^{27}\) Quigley goes on to note that this system of land control is similar to that of the South African Native Land Act of 1913 which “set aside 7 percent of the territory for Africans and prohibited them from acquiring land in the other 93 percent.”\(^{28}\) The amount of land given to the Black majority was increased to 13 percent as a result of the 1936 Native Trust and Land Act which also protected this land as indigenous. While there is a resemblance between the South African and Israeli cases concerning land distribution and access, Quigley does note that the 1936 law in South Africa protected the land for the Blacks, where as “Israeli legislation excludes the indigenous population from the settlers’ land but does not exclude the settlers from indigenous land.”\(^{29}\) It would seem that the South African apartheid government was content to let the Blacks have their Bantustans, but in Israel the drive is to take as much Palestinian land as possible. Another aspect of land policy that Quigley notes is a 1967 law outlawing the subleasing of state lands.\(^{30}\)

\(^{26}\) Quigley, 233.

\(^{27}\) Ibid., 234.

\(^{28}\) Ibid., 235.

\(^{29}\) Ibid., 235-236.

\(^{30}\) Ibid., 237.
This prevented Arab citizens of Israel from subleasing public lands from Jews. As noted earlier, by Quigley as well as Dugard and Reynolds, Jews are the only people who have access to 93 percent of the land in Israel, and the advent of the 1967 law closed a loophole that allowed access to other people through subleasing.

One aspect of the Israeli law and policy that is seemingly benign is the use of ‘veteran’ status as a means of applicability for certain services. According to John Quigley, a “‘veteran’ is defined in the regulations as a person who holds a military identification number.” 31 This does not necessarily mean that the person served, instead, anyone who entered the military is entitled to such benefits, and even their immediate family can claim them as well. The ethical issue that arises is that the Ministry of Defense exempts most Arab Israelis from the mandatory military service, resulting in few Arabs claiming ‘veteran’ status. 32 Quigley notes that this subtle form of discrimination affects which loans are available to the general public from the Ministry of Housing, and it gives more favorable terms to ‘veterans.’ 33 Likewise, there are additional benefits for students with ‘veteran’ status who attend an institution of higher education, such as a grant covering half the tuition costs, or access to specific scholarships. 34 A third example is that family of soldiers can receive extra child support payments for having more children under the 1970 Regulations on Grants for Soldiers and Their Families that are similar in

31 Quigley, 245.
32 Ibid., 246.
33 Ibid., 245-246.
34 Ibid., 247.
amount to the support paid by the National Insurance Law. All of these policies are available to all citizens of Israel. However, since they have the restriction of connection to military service, Arabs, who for the most part do not participate in the military, are excluded from accessing these services. This, John Quigley sees as a form of institutionalized racism in its execution, if not its written intent.

The last argument that supports the analogy between South Africa and Israel is Leila Farsakh’s, Assistant Professor at the University of Massachusetts, article “Independence, Cantons, or Bantustans: Whither the Palestinian State?” which looks at the effect of the Oslo accords on a future Palestinian State. To begin, Farsakh notes that there are major historical differences between South Africa and Israel, the most important being their divergent economic development paths: South Africa created a state that heavily relied on cheap labor provided by the Black majority, while Israel sought to rely on its own citizens, using Palestinian labor only when necessary. As a result, the best way to understand the differences between the two cases is to look at territorial separation in both countries. In South Africa, the apartheid regime was predicated on the creation of homelands for the Black population to live in that were independent and had their own self-government, which allowed them to “define their own economic policies, and to

35 Ibid., 248.
36 Leila Farsakh, "Independence, Cantons, or Bantustans: Whither the Palestinian State?," Middle East Journal 59, no. 2 (2005).
37 Ibid., 3-4.
38 Ibid., 4.
run their civilian and functional affairs.”39 However, with regard to security matters, the Bantustan governments had to cooperate with the White government of South Africa, and as well they “did not have direct independent relations with foreign countries.”40 The South African government was more than willing to give independence to the Bantustans, and some even achieved it, but this was far from allowing Blacks to exercise their right to self-determination.

The colonial regimes of South Africa and Israel differed in how they viewed the indigenous population living on the land they coveted. For South Africa this meant a large source of cheap labor. Conversely, the Zionists wanted ‘a land without people’ on which to establish the Jewish State.41 However, in the case of Israel, the Zionists found that the land they wanted was in fact populated and that the people living there preferred to stay. For Farsakh, how these two states dealt with the existing indigenous populations is the key similarity between Israel and South Africa, and that the policies Israel implemented after the 1967 war constituted effectively was apartheid in nature, even if it was unintentional.42

The Oslo accords have been subject of much debate regarding the Israel-Palestine peace process and the possibility of a finding just and lasting solution to this conflict. Farsakh sees the results of these talks not as progressing towards a real solution, but rather bringing Israel closer to the apartheid regime of South Africa through the

39 Ibid., 5.
40 Ibid.
41 Farsakh, 5.
42 Ibid., 6.
‘Bantustanization’ of the West Bank and the Gaza Strip, which she says has happened in three ways: authority, land, and movement.\(^{43}\) One of the key features of the Bantustans in South Africa was that they were to have an autonomous government that was in charge of the civilians running the territory. The signing of the Oslo accords established political freedom for the Palestinians in the West Bank and Gaza by allowing them to elect their own government, the Palestinian Authority, which would then be responsible for running the daily operations of the Palestinian territories. However this political freedom did not lead to the end of Israel’s military occupation, nor to the creation of a Palestinian State.\(^{44}\) Additionally, the Palestinian Authority and police force were required to coordinate with Israeli governing bodies over the running of the territories on everything from water and land usage to security concerns. For Farsakh, “This type of security cooperation was also called for in South Africa’s Bantustans.”\(^{45}\)

The designation of the land in the West Bank and Gaza into three sections, Areas A, B and C, under the Oslo accords also adds weight to the Bantustan analogy. While in theory the Palestinian Authority was to control most of the territories, “the reality was that it had only territorial and civilian jurisdiction over less than 19% of the West Bank by July 2000 (Area A) ... and excluded from 59% of the West Bank (excluding East Jerusalem) and 30% of the Gaza Strip (Area C).”\(^{46}\) The situation has obviously changed since 2000 with the 2005 disengagement from Gaza, but the West Bank continues to be

\(^{43}\) Ibid., 9.

\(^{44}\) Ibid.

\(^{45}\) Farsakh, 10.

\(^{46}\) Ibid., 11.
divided into these areas as stipulated in the Oslo accords. In addition, the Israeli settlements, which are exclusively under Israel control, Area C, divide the West Bank into three segments. Each of these are divided by a bypass road system that interconnect the settlements and Israel, what Dugard and Reynolds called ‘road apartheid.’ The effect is that the settlements and roads divide and concentrate the Palestinian into smaller regions that begin to look like the Bantustans of South Africa.

Farsakh’s last point concerning the Oslo accords and the ‘Bantustanization’ of Palestine concerns the freedom of movement of the Palestinians. In October of 2000, the Israeli military had established more than 770 checkpoints throughout the West Bank and Gaza with which it can, and has, shut down movement throughout the territories. In addition to the checkpoints, the Oslo accords also instituted a “permits system as the regulatory mechanism for controlling Palestinian population movement ... and Oslo II clearly stated that Israel alone had the right to close its crossing points [and] prohibit or limit the entry of persons into its areas.” While the pass system in South Africa and permits in Israel have different origins and intentions, regulating the flow of labor and security reasons respectively, they have converged as a means of controlling population movement generally. The system of permits and checkpoints, combined with the creation of the Palestinian Authority and fragmentation of the West Bank, have led Farsakh to draw the analogy between Israel’s control of the Palestinian territories and the Bantustans of apartheid in South Africa.

In summary, the case supporting the claim of apartheid against Israel is based on many different facets of the situation. Dugard and Reynolds compared Israeli laws and

\[47\] Farsakh, 12.
policies concerning citizenship, access to land, and administrative detention with the prohibitions described in article two of the Apartheid Convention to make the comparison. Quigley echoed much of what Dugard and Reynolds had said while going deeper into the issue of land access as well as exploring how the use of ‘veteran’ status has been used to discriminate against Palestinians. Lastly, Leila Farsakh looked at the effects of the Oslo accords on the creation of Palestinian civil governance, land delineations, and movement restrictions as compared with the Bantustans of South African apartheid.

**The Claims Against Apartheid in Israel and Palestine**

Surprising little scholarly work has been written defending Israel from the charge of apartheid. Much has been written on what has been called the ‘campaign to delegitimize Israel’ which includes the Palestinian Academic and Cultural Boycott of Israel (PACBI), the Boycott, Divestment, and Sanctions campaign (BDS). The result is that most of the articles dismiss the claim of apartheid with a cursory remark, usually claiming that anyone who looks at the evidence will see that it is baseless, and move on to the next point. Few have taken the time to deconstruct or counter the apartheid charge in any systematic way.

One such person, Yaffa Zilbershats, Professor of Law and Deputy President of Ba-Ilan University, took up this topic in the form of a response titled “Apartheid, International Law, and the Occupied Palestinian Territory: A Response to John Dugard
and John Reynolds.\textsuperscript{48} The article challenges the conclusions of Dugard and Reynolds, saying that their argument

is based on gross errors ... namely, the failure to differentiate between the norms governing occupied and sovereign territory, and the authors’ failure to address Israel’s policies in the context of an armed conflict characterized by the Palestinians’ use of terror.\textsuperscript{49}

Like the original authors, Zilbershats appeals to international law to make her case.

The first error, sovereign versus occupied territory, is an important distinction when discussing the crime of apartheid. For Zilbershats, one extremely important part of the characterization of apartheid that Dugard and Reynolds ignore is that “Apartheid ... is characterized by the institutionalized racism of a government against the citizens and residents under its sovereign regime.”\textsuperscript{50} Under this definition, Israel’s treatment of the Palestinians in the West Bank and Gaza cannot be considered apartheid, because it does not claim sovereignty over those areas and those living there are therefore neither citizens nor residents. Instead, the situation is one of belligerent occupation, which has its own set of rules according to international law. Additionally the status of the ‘Occupied Palestinian Territories’ has been overlooked as it further determines its relationship with Israel, and the applicability of international law. According to Zilbershats, East Jerusalem was brought under Israeli law in 1967, giving residency and offering citizenship status to the Palestinians living there, and is thus no longer occupied.\textsuperscript{51} Following Israel’s


\textsuperscript{49} Ibid., 916.

\textsuperscript{50} Zilbershats, 916.

\textsuperscript{51} Ibid., 917-918.
'disengagement' in 2005, Gaza became its own entity with its own government, making it too is no longer occupied, and as a result the military response to Hamas rocket and mortar attacks is subject to armed conflict law.\textsuperscript{52} Finally, the West Bank was conquered in 1967 and has been held in belligerent occupation since.\textsuperscript{53} Thus, she argues, the only truly occupied part of Palestine is the West Bank, which is not under Israeli sovereignty and therefore cannot be considered as a case of apartheid.

In responding to Dugard and Reynolds’ examination of the Apartheid Convention, Zilbershats discusses the role of political rights, freedom of movement, and settlements according to belligerent occupation. She notes that under occupation, a temporary status, political rights suffer including “classical political rights such as the right to protest, the right to assemble, and the right to representation.”\textsuperscript{54} Israel is not legally obligated to guarantee political rights to the occupied, and charging Israel with apartheid for its failure to do so is a baseless accusation.

As for freedom of movement, according to humanitarian law, an occupation is designated a closed military zone which means that anyone wishing to leave must first acquire permission to do so. While traditionally Palestinians have been relatively unrestricted in their movement, as attacks by Palestinians increased, this freedom has been restricted on the basis of security concerns. The claim that restricting movement between the territories and Israel is a violation of Palestinian rights again ignores the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{52} Ibid., 918.
\item \textsuperscript{53} Ibid., 919.
\item \textsuperscript{54} Zilbershats, 920.
\end{itemize}
\end{footnotesize}
difference between occupied land and sovereign territory: traveling from the West Bank to Israel is akin to entering a foreign nation.\textsuperscript{55}

Lastly, Zilbershats argues that the issue of Israeli settlements is a highly contentious one, with many advocates of the apartheid claim using the fact that settlers are governed by Israeli civil law while Palestinians are under Israeli military law to demonstrate discrimination. However, the real issue that is relevant, she contends, is that the Palestinians living under occupation are not citizens and thus civil law does not apply, and for the Palestinians living within Israel, the law is applied equally to all, regardless of race of religion. Additionally, if Israel were to extend civil law to all residents of the occupied territory it would be seen as de facto annexation. At the same time, the military regime applies administrative detention to all living in the West Bank, Israeli or Palestinian.\textsuperscript{56} The main problem, she argues, with considering ‘Israel an apartheid state’ is that the policies it implements are not on its sovereign soil, but rather occupied land.

According to Zilbershats, the second error that Dugard and Reynolds make is that they ignore the context of Palestinian violence and terrorism in which Israel finds itself. Another important characteristic of apartheid is that it is “systematic oppression and domination by one racial group over another racial group or groups ... committed with the intention of maintaining that regime.”\textsuperscript{57} For Zilbershats, the reason behind Israel’s actions in the Palestinian territories is not to hold dominion over another group of people, but rather out of genuine security concerns. A few of the more criticized security

\textsuperscript{55} Ibid., 920-921.

\textsuperscript{56} Zilbershats, 921-922.

\textsuperscript{57} Ibid., 923. [emphasis original]
measures that Zilbershats addresses, include the use of targeted killings, the security fence, and administrative detention.

Targeting killings are often brought up in the case of apartheid because they go beyond what the White regime in South Africa did. Yaffa Zilbershats sees these as two completely different cases because “South Africa never faced an armed conflict; thus it acted as a sovereign nation confronting an uprising. In such cases ... it has an obligation to use its police and not its armed forces.”58 Again, since the Israel-Palestine conflict is part of an occupation not just an internal dispute, targeted killing is allowed of terror suspects, though they should be apprehended if at all possible.59

The security fence has also been widely criticized as a means to steal Palestinian land rather than purely a security measure. This again is a false claim, according to Zilbershats, as the Israeli Supreme Court has examined the fence and it’s route in detail, altering its path to preserve human rights when security was not seen as the major concern.60 In addition to the security fence, the road system in the West Bank never had race as a motivation, but again was designed to provide safe, secure passage for Israeli citizens of all religions. As mentioned earlier, administrative detention has only been applied to those who engage in acts of terror, and since Palestinians have employed widespread use of terror against Israel, it is unsurprising that they are more often

58 Ibid., 924.
59 Ibid., 925.
60 Zilbershats, 925.
detained. Critics of Israel like to claim that racial profiling is the motive behind many of its policies in the Occupied Territory, however this claim is baseless as Israel is motivated by the security of its citizens.

Along with Yaffa Zilbershats, Robbie Sabel, Professor of Law at the Hebrew University of Jerusalem, challenges the charge of apartheid with respect to Israel. In his article, “The Campaign to Delegitimize Israel with the False Charge of Apartheid,” he gives a couple of different definitions of apartheid to contextualize his arguments. One such definition is that apartheid is “a social and political policy of racial segregation and discrimination enforced by white minority governments in South Africa from 1948 to 1994.” Apart from specifically naming South Africa in relation to apartheid, it is important to note that it was a minority government in power. This is not the case in Israel. Within its border the Jewish population is within the majority, and in the occupied territories, it is a border dispute, not a matter of sovereignty.

Beside the definition of apartheid as minority rule, there are other aspects of Israeli society that for Sabel, do not match up with the South African case. One such difference is that unlike Blacks in South Africa, Arabs living in Israel are treated as full citizens, which includes the right to vote. This acceptance has led to the election of Arab parliamentarians as well as deputy speakers of the Knesset. Other prominent positions held include Supreme Court justices, cabinet ministers, heads of hospital departments,

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61 Ibid., 925-926.


63 Ibid., 13.
university professors, diplomats and army and police officers. Additionally, Arabs are not bound by the compulsory military service like their Jewish counterparts and as a result they do not receive the same benefits. The application of such benefits may seem unequal given the proportions, but when understood in context, the provision of military benefits is not an example of racial discrimination within Israel, Sabel contends.

Sabel also addresses the claim that the security fence in the West Bank is an ‘apartheid wall.’ He notes that the reason for the fence is entirely based on security, not race: “Between Israel and the areas of the Palestinian Authority there is no border or natural obstacles, which, to date, enables the almost unhindered entry of terrorists into Israel.” Given the existential threat that Israel faces from the Palestinian population, it is necessary to provide some form of man-made protection where none exists naturally, and only three percent is actually a concrete wall thirty feet high. Other states have built similar barriers without the charge of apartheid being thrown around. Likewise, the International Court of Justice “criticized the route of the “wall” as being beyond the 1949 “Green” Armistice line [but] was careful not to deny Israel’s right in principle to build such a security fence.” Sabel also reiterates that the Israeli-only road system through the West Bank is based on security, and not race, as Arab Israelis are allowed to drive on such roads as well.

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64 Ibid., 7.
65 Ibid., 11.
66 Ibid.
67 Ibid., 12.
Apartheid is generally understood a form of systematic discrimination of one group over another, usually entrenched in law. However, Sabel notes that this cannot be the situation in the Palestinian territories because the 1993 Oslo accords created the Palestinian Authority. The result is that “the vast majority of Palestinians in the West Bank and Gaza are hence subject neither to Israeli military administration nor to regular Israeli law. Their laws, courts, police, prisons, taxes etc., are Palestinian and Israel has no jurisdiction over them.” If Palestinians have self-governance, he claims, then they cannot possible be under an apartheid system imposed by the Israelis. Israel cannot be held responsible for the lack of rights that Palestinians experience.

Sabel’s final point is the claim of apartheid ignores the world context of human rights abuses. For him “The Apartheid campaign against Israel has another revealing feature. It rarely deals with the massive abuse of human rights or cases of real Apartheid elsewhere in the world. In other words, it singles out Israel with a false accusation.” Thus, the claim is not only inaccurate, but it fails to address real world issues while singling out Israel with unfair attacks against its sovereignty and right to exist.

John L. Rosove, vice president of the Association of Reform Zionists of America , provides the final argument against the claim of apartheid by looking at the case of laws in South Africa in his article “The International Delegitimization Campaign against Israel and the Urgent Need of a Comprehensive, Two-State, End-of-Conflict peace

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68 Sabel, 12.
69 Ibid., 13.
Agreement.” While this article covers many different aspects of the delegitimization campaign, the author does dedicate a section to dismissing the claim saying that “Even a cursory comparison between the old South African apartheid regime and the democratic State of Israel negates the equivalence.” This sentiment does much to explain the lack of writing by supporters of Israel to counter the claim of apartheid, as it is in their eyes an obvious and trivial matter. Yet Rosove continues by citing Warren Goldstein’s, Chair of the History Department at the University of Hartford, comparison of South African and Israeli laws.

The first South African laws that Goldstein mentions are the Population Registration Act, and Group Areas Act. The former law defined what the race of a person based on skin color, descent and tribal affiliation. This was used as the basis for many other such laws as it allowed open discrimination against certain races and ethnicities. The Group Areas Act determined where people where allowed to live based on ethnicities, as defined by the Population Registration Act, which allowed the White government to physically separate races by residential area. There are no laws in Israel that have the same effect of separating out races and deciding where they can live. Additionally in South Africa, the Mixed Marriages Act and Immorality Act forbade any sort of mixed couples, essentially keeping the white population in some sense ‘pure.’ The White government, which saw itself as better than the indigenous Blacks, wanted to

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71 Ibid., 93.

72 Ibid.
prevent any mixing of races because it would prove to be legally problematic. Again, there are no such laws in Israel, argues Rosove, which prohibit mixed marriages between Jews and non-Jews.

Another law of apartheid in South Africa was the Separate Representation of Voters Act, which prevented Blacks and others from voting in the general election for the federal government. As has been stated previously, Israel is a democratic state in which all of its citizens, regardless of race or religion are able to vote. This includes many Arabs, which has lead to Arab cabinet members, parliamentarians, judges and other prestigious positions. No person could look at Israel’s democratic system and see an apartheid state. Likewise, Arab citizens have the freedom to travel around the country using public transportation, access parks, pools, and other public amenities. This makes it unlike South Africa in two ways. First there is nothing comparable to the Separate Amenities Act which separated public spaces, transportation, and other such things between the White population and others, in what has been termed ‘petty apartheid.’ Second, Israel has no pass laws that dictate when and where certain people can go and for how long. Such laws clearly demonstrate the degree of racial discrimination present within apartheid South Africa. That Israel has no similar laws only serves to strengthen its position as a vibrant democracy.

Rosove concludes by addressing the situation in the occupied territories. He, like the other writers, notes that “Palestinian Arabs living in the West Bank ... are not Israeli

73 Rosove, 93.

74 Ibid.

75 Ibid.
citizens as are those living on Israel’s side of the Green Line ... and they do not enjoy the same protections as those living in Israel.” As others have stated, there is a difference between the Palestinians who live in Israel and those who don’t. As Zilbershats argues, Israel has no claim of sovereignty over the Palestinian Territory and thus it is unfair to claim apartheid for the treatment of Palestinians living there. Israel cannot be expected to extend its civil law to noncitizens, and thus the situation outside its borders is problematic, but it is not apartheid.

In summary, the case against the charge of apartheid in Israel has used a variety of examples to deflect and reject the charge of apartheid. Zilbershats responded to Dugard and Reynolds by stating that there is a difference between sovereign and occupied land, and that the laws that govern occupation, while restricting political rights, do not constitute apartheid. Sabel examined different aspects of Israeli society like universal suffrage and veteran benefits to show the vibrancy and diversity of Israel culture, that includes an Arab minority. At the same time, he uses the example of the Palestinian Authority to show that the Arabs living outside of Israel have their own government and are not subject to Israeli jurisdiction. Finally Rosove uses the example of racist laws under White South African governments to show that Israel has no such discriminatory laws to oppress its Arab citizens.

Apartheid Israel: Other Perspectives

The controversy over the situation in Israel/Palestine is usually portrayed by two diametrically opposed sides: Those who support Israel and those who support Palestine.

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76 Rosove, 94.
However, like most issues, there are variations within each side and sometimes positions that escape the binary system. A review of written work and perspectives would not be complete without including those that do not neatly fit with the other writers on the subject.

The first author who has a different perspective is Bernard Regan, a postgraduate research student at St. Mary’s University College. In his article, “The State of Israel and the Apartheid Regime of South Africa in Comparative Perspective,” Regan follows the same path as John L. Rosove in that he examines many of the laws under the system of apartheid in South Africa, including the Population Registration Act, Group Areas Act, Separate Representation of Votes Act and others, but broadens his purview by looking at other laws as well. One such law is the 1951 Bantu Building Workers Act which allowed Blacks to work certain trades within the construction industry, but it also limited what jobs they could hold as well. This allowed for the Whites to make use of the cheap Black labor that was abundant within South Africa at the time. To augment this situation the Bantu Education Act of 1953 “imposed a curriculum designed to prepare black students for employment in fields deemed appropriate for Black workers such as manual work or work as servants.” It was not sufficient to restrict the employment opportunities of Blacks in South Africa, but the education system was tailored for ‘suitable’ work, but not anything more. Regan notes that the government reinforced this paradigm with the

78 Ibid., 205.
79 Ibid.
Extension of University Education Act in 1959, which ended Black attendance of White universities.\textsuperscript{80}

Since Regan is making a comparison between Israel and South Africa, rather than trying to prove or disprove the apartheid claim, he looks also for similarities to make his analysis. In South Africa, the right to inhabit the land and the exact location of the Bantustans was never a bone of contention. In the case of Israel/Palestine who has the right to the land is one of the central components of this conflict, and the delineation of citizenship is Regan’s point of comparison. In examining Israeli citizenship the author uses various Israeli laws, similar to Dugard and Reynolds, such as the 1950 Law of Return and Absentees’ Property Law. The Law of Return has different criteria to obtain citizenship depending on application. For Jews, as long as they are neither a security nor a health threat, they will be granted a visa as well as a number of other benefits including travel from their current country, health care, education, Hebrew lessons and other benefits.\textsuperscript{81} For Palestinians at the same time, to get citizenship they had to be a resident of Israel and registered with the Population Register by April 14, 1952, to be eligible. Thus Palestinians not only had to be within Israel, but also registered as such in order to be a citizen, while any Jew in the world can immigrate and be granted citizenship.

In addition to the Law of Return, the Absentees’ Property Law declared any Palestinian outside of Israel, or not living in their ‘ordinary’ place of residence an ‘absentee.’ Regan notes that “This law not only defined the overwhelming majority of Palestinians who had fled from the area covered by the state of Israel to be ineligible for

\textsuperscript{80} Regan, 206.

\textsuperscript{81} Ibid.
citizenship of Israel but in addition legitimized the confiscation of their properties.\textsuperscript{82}

This created the situation in which Palestinian refugees were prevented from becoming Israeli citizens and at the same time lost their land to the Israeli state. The law is framed in such a way that it could be interpreted to include all Palestinians within historic Palestine and without. Regan argues that “

\begin{quote}
the objective of the legislation was to take the land but not the people. The objective of the apartheid system was to take the land and the people but to confine the indigenous black citizens to a tightly constrained geographical and political space within the country.\textsuperscript{83}
\end{quote}

The similarities and differences between Population Registration Act, and the Law of Return and Absentees’ Property Law are visible in the intentions of the two regimes.

Regan also looks at the status of the Bantustans in South Africa and the prospects of a Palestinian State. Palestinians are required to carry Identification Documents when passing through any Israeli checkpoint that designates place of origin: Gaza, East Jerusalem, or the West Bank.\textsuperscript{84} Furthermore, the implementation of the Oslo Accords would create a Palestinian territory, surrounded on all sides by Israel, with no right to independent foreign relations, dependent upon the Israeli economy, and in which the residents had no collective rights, much like the Bantustans of South Africa. At the same time, Israel would still be responsible for external security. The result would not be an independent sovereign Palestinian State.\textsuperscript{85}

\textsuperscript{82} Regan, 207.

\textsuperscript{83} Ibid., 207-208.

\textsuperscript{84} Ibid., 208.

\textsuperscript{85} Ibid., 209.
The case presented in Regan’s paper shows a number of similarities and differences between the Israeli and South African cases. The population laws in South Africa were meant to restrict Black movement and education while still allowing for exploitation of Black labor. The Whites wanted ‘the land and the people.’ In Israel the laws were meant to facilitate easier Jewish immigration while excluding the Palestinian refugees: ‘the land without the people.’ Likewise, the prospects for a state under Oslo were practically nonexistent, rather a Bantustan like situation was more likely. For all of this Regan states that “Whilst there are similarities between the approach adopted in the creation of the Apartheid system in South Africa there are also differences which are sufficiently distinct as to render the description of the state of Israel as an Apartheid state inappropriate.” Had this statement agreed with the charge of apartheid, it would firmly be included with the likes of Dugard and Reynolds, Quigley, and Farsakh. However, since Regan clearly states the prejudicial, if not racist, nature of Israeli citizenship, and the likely ‘Bastustanization’ of Palestine, he cannot be included with the likes of Zilbershats, Rosove, and Sabel. Thus he is included in the category of other perspectives for his willingness to bridge both sides and present his own conclusion.

The second, and final, author in this section is Lev Luis Grinberg, Associate Professor at Ben-Gurion University, whose article “Speechlessness: In Search of Language to Resist the Israeli ‘Thing Without a Name’” contemplates the vocabulary used in the Israel/Palestine debate. The author’s main point is that

86 Regan, 209.

Critical language needs to be able to assign meaning, determine responsibility, and rectify injustice. However, every subversive word that exposes and condemns ... Israel’s actions in the Palestinian context is sterilized ... and stripped of its true meaning the moment it emerges.\textsuperscript{88}

Thus it is not the comparison between Israel and South Africa that is problematic, but rather use of the apartheid lacks the nuance of its historical roots and it is evoked out of context. The vocabulary employed disguises the realities of the Israeli project in Palestine, but it also fails to prescribe clear methods of resistance to that project.\textsuperscript{89}

Words such as apartheid and occupation, while widespread, Grinberg sees them as inadequate to fully describe the relationship between Israel and the Palestinians. The term apartheid is problematic because, for him, it is a system “in which one particular group is marked, separated, and stripped of its collective rights.”\textsuperscript{90} However, Israel views Palestinians differently depending on their location, and their aspirations are also varied as a result: those living within Israel are generally citizens wanting full equality, those in the West Bank want an end to the military occupation, Gazans wish to control their borders, and the refugees want the right of return. These divisions prevent a unified Palestinian resistance.\textsuperscript{91} According to Grinberg, the situation is not a case of occupation because if it were then “the international community would be obligated to put the Israeli government leadership on trial, as most of its actions are prohibited under

\textsuperscript{88} Grinberg, 106.

\textsuperscript{89} Ibid., 107.

\textsuperscript{90} Ibid.

\textsuperscript{91} Ibid.
international law.”\textsuperscript{92} Likewise, were Israel occupying the Palestinian territories, then the Palestinian acts of resistance would have be viewed as legitimate instead of acts of terrorism. Furthermore, another issue with respect to the use of the term occupation is that it assumes the existence of a border, something Israel has yet to officially define.\textsuperscript{93}

Colonialism, colonization, and Zionism are also terms that Grinberg argues fail to accurately portray the reality of the Israel-Palestin Conflict. It is not colonialism because Israel is not trying to ‘civilize’ the Palestinian population in the hopes of making them good citizens. Nor is there any investment in Palestinian infrastructure or economy. Instead, Israel destroys such things. Also, colonization does not fit because there is neither population displacement, decimation, nor incorporation into the existing system. Likewise, Zionism is inappropriate because the current system is unlike anything the early Zionist leaders could have imagined, making contemporary usage of these terms out of context.

Grinberg would likely find many critics among the other authors surveyed here. Each of the authors in favor of the use of the term apartheid would challenge the inapplicability of occupation to describe the situation on the ground today. Even Ziblershats and Rosove who are against using the term apartheid, still acknowledge that there is an occupation of the West Bank. Yet Grinberg is right when he says “Words have power. They mobilize people and create reality, emotions and identification.”\textsuperscript{94}

\textsuperscript{92} Grinberg, 107.

\textsuperscript{93} Ibid., 109.

\textsuperscript{94} Ibid., 108.
Robbie Sabel states that “If Israel’s detractors can associate the Jewish movement for self-determination with the Apartheid South African regime, they will have done lasting and maybe irreparable damage.”95 Grinberg’s ultimate point is not that the comparison with South Africa is baseless and wrong, but rather that the term apartheid is not an exact match, with much of the nuance being lost when taken out of context.

Regan and Grinberg provide two views on the claim that Israel is an apartheid state that do not quite fit into either category of support or refutation. Regan does a close analysis of the situation, seeing a parallels between Israel and South Africa, yet finds that the situation is not close enough to warrant the use of the term apartheid. Grinberg acknowledges that the Israelis are oppressing the Palestinians and have goals beyond ‘occupation,’ yet he takes issue with the use of vocabulary rather than with the interpretation of the situation. These authors show that outside of the traditional binary debate on whether the charge of apartheid applies to Israel, there are other perspectives can provide some new insights into this topic.

95 Sabel, 3.
CHAPTER THREE: APARTHEID DEFINED

The term apartheid when used outside of the context of South Africa must be clarified and defined for it to have any meaning. As stated above, the use of the term apartheid has been used in a number of different ways including parallels with the system of discrimination in South Africa from which the term comes, as well as its legal definition under international law. The definition used in this thesis will then follow both of these interpretations using a case study of apartheid in South Africa as well as its legal definition as stipulated in various international conventions and treaties.

South Africa Case Study

When discussing the use of the term apartheid as it applies to different situations, it is natural to make the comparison with South Africa, as it is the genesis of the practice. Since the entire South African political and economic system was based on racial discrimination, it is difficult to pinpoint exactly which aspects of that system formed the core of apartheid. As a means of compromise between using too many indicators in which each one too narrowly defined to be useful and using too few to get an accurate representation of life under apartheid, this study will use eight categories, some of which

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Note: The following sections contain references to different ethnic groups of humans including Black, Native, Bantu, Colored, and others. While some of these terms are clearly racist in nature, their use is purely in relation to the historical context of South Africa, which separated the population into such groups with the Population Registration Act of 1950. Words in single quotes, for example ‘European,’ refer to the exact language of the law being referenced.
will be grouped by themes. The first category is that of the classification of individuals by race or ethnic group which served as the basis for the rest of the apartheid policies. The next categories, following the theme of participation in society, are lack of political rights, lack of economic rights, and the control over education. The theme of segregation includes separate spaces, and the creation of homelands or Bantustans. Lastly are the categories of control and unequal treatment by the judicial system.

One of the most iconic aspects of apartheid in South Africa was the classification of the population into different racial and ethnic groups. This was accomplished through the passing of the Population Registration Act of 1950.\textsuperscript{96} This act classified people based on their appearance as either ‘White’, ‘Colored’, or ‘Native’\textsuperscript{97} though article 11 did allow for people who felt they were unfairly classified to appeal the decision and be reconsidered by a review board.\textsuperscript{98} In addition to classifying the population, the act includes each individual in the country’s register with different criteria for what information was recorded based on race. For “non-natives” the classification, citizenship, voting district and photo were recorded, among other things. However for natives, citizenship and tribal group were recorded but voting district was not as they lacked suffrage. Unlike the other races, in addition to a photo natives were required to provide their fingerprints.\textsuperscript{99} These same differences appeared on the identity cards which were

\textsuperscript{96} Population Registration Act, 1950 No. 30 South Africa

\textsuperscript{97} Ibid. article no. 5.

\textsuperscript{98} Ibid. article no. 11.

\textsuperscript{99} Ibid. article no. 7.
also issued under this act. This act by itself did not disadvantage different groups, but it did serve as the basis on which many other racially based laws were enacted and enforced.

The participation by the Black population in the South African political system was severely limited. This was accomplished through a number of different acts, most notably by the Representation of Natives Act of 1936, the Separate Representation of Voters Act of 1951, and the South Africa Amendment Act of 1956. The Representation of Natives Act created a separate voting roll for natives in South Africa while also limiting their participation. The law created three separate electoral areas and gave each area the right to vote for one senator and one member of the House of Assembly. The fact that the Black population only got three representatives in two legislative bodies was a clear indication of the absence of democracy in South Africa which was only made more undemocratic by the restrictions placed on who could be elected. The Representation of Natives Act states that the those elected must conform to the regulations set forth in the South Africa Act of 1909 which stated that “He [not she because it is 1909] must ... be a British subject of European descent.” Though there were representative positions elected by the Black population, these offices were required to be filled by White men. It is doubtful that these positions truly advocated for the benefit of the native population, or if they did, that they had any meaningful power which to leverage. Thus, the Representation of Natives Act effectively removed the native

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100 South Africa 1950 no. 30, article no. 13.

101 Representation of Natives Act, 1936 No. 12 South Africa,

102 South Africa Act, 1909 No. 2 article 44(c) South Africa.
population from effective participation within the power structure of the South African political system.

The Separate Representation of Voters Act of 1951 effectively finished what the Representation of Natives Act began. This act created two new voting rolls, one for the Coloreds in South Africa and one for the Europeans. The Coloreds were then allocated one additional senator from previous laws, and an additional member of the House of Assembly in each electoral area. Additionally, just like the 1936 act restricting the voting rights of Natives, the restrictions on those who could be elected to the Senate and House of Assembly followed the exact same criteria, which is to say that only White men could be elected. Additionally the South Africa Act Amendment of 1956 gave the force of law to the Separate Representation of Voters Act. The result of these acts was to curtail the enfranchisement of the sections of the population that were non-European in descent. With representation removed, it was not difficult for the White minority to remain in power and to create a system of racial discrimination from which they greatly benefited, while all others were disadvantaged.

Another way in which Black participation in society was restricted was through economic rights. Laws such as the Native Labor Regulation Act of 1911, Native Building Workers Act of 1951, and the Native Labor Settlement of Disputes Act of 1953, all served to control which sectors of the economy Blacks could be employed in, and what rights they had as employees. The Native Labor Regulation Act stated that people looking to hire Blacks, particularly for work in the mines, were required to obtain a

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103 Separate Representation of Voters Act, 1951 No. 46 South Africa.

104 South Africa Act Amendment, 1956 No. 9 South Africa.
This license required an annual fee to hire employees, which can be economically prohibitive depending on the size of the business that is doing the hiring. The Native Building Workers Act defined where Black construction workers were allowed it work, and in what positions. Article 14 of this act dictated that in urban areas designated as either Colored or White areas, Black workers could be used to engage in skilled labor. It also stated that ‘European’ workers could only be employed in supervisory positions in situations where ‘native’ workers were also employed. Additionally, it stipulated that ‘non-natives’ could not engage in skilled labor within the ‘native’ areas. Theses laws, while probably designed to empower the local population, permitting only white skilled labor in white areas while prohibiting it in native areas, could be seen as giving the Black population an opportunity to engage in skilled labor. However given the income and wealth disparities between the two groups, it is much more likely that White skilled labor had more job opportunities given that more Whites were involved in the construction industry. Additionally, it was stipulated that Whites could only occupy supervisory positions while working with Blacks thus excluding any form of equality.

While the previous two acts restricted where Blacks could work and in what capacity, the Native Labor Settlement of Disputes Act restricted the rights of workers.

105 Native Labour Regulation Act, 1911 No. 15 South Africa.

106 Native Building Workers Act, 1951 No. 27 Article 14(1)(a) South Africa,

107 Ibid. article 14(1)(b).

108 Ibid. article 16.
Specifically, article 18 banned all strikes and employee lockouts.\textsuperscript{109} While the latter was seen as a measure to protect the workers from unfair labor practices, the former ban eliminated all semblance of protection. Removing the ability of workers to legally strike removed key points of leverage that they might have over their employers. By initiating strikes and walkouts, workers could nonviolently protest the conditions in which they work, should they have grievances. However, the removal of this tool necessarily forced the Black workers to accept their working conditions, no matter how unjust, unfavorable, or unsafe, under threat of punishment. Not only was engaging in a strike criminalized, but so too was lending any support or even expressing sympathy for a strike. The lack of choice of where to work and in what role limited the economic rights to the Black population, while the ban on strikes hindered their ability to change their situations.

Education was also used to restrict Black participation in the dominant, White society. This change took two different forms: the Bantu Education Act of 1953 and the Extension of University Education Act of 1959. The former act gave control over education for the Black population to the central government and removed it from the control of provincial governments.\textsuperscript{110} This meant a unification and uniformity in the education that was received. It also meant that the government had control over what was taught in those schools deciding what was and was not necessary or acceptable material to be taught.\textsuperscript{111} Thus, the control over education served as a tool to impoverish and subjugate the Black population.

\textsuperscript{109} Native Labour (Settlement of Disputes) Act, 1953 No. 48 Article 18 South Africa.

\textsuperscript{110} Bantu Education Act, 1953 No. 47 Article 2 South Africa.

\textsuperscript{111} Regan, 205.
The Extension of University Education Act furthered the divide in education among the various racial groups. It allowed the government to create universities solely for the use of ‘Bantu’ persons, and for the use of “non-white persons other than Bantu persons.”112 This separation, like the control over primary and secondary education, allowed for the quality between the ‘non-White’ and ‘White’ educational institutions to be different. Likewise, the control over public education impacted the number of Blacks who were eligible for college admission. This act also prohibited the enrollment of White students at the institutions for ‘non-Whites’ created by this law, while preventing non-White students from enrolling at certain universities.113 Thus, the higher education system of South Africa became completely segregated and the education of non-White students was under the control of the central government.

The third theme of apartheid in South Africa is that of creation of separate spaces for the different racial groups. This was accomplished in two major ways: the segregation of people and spaces within the urban areas of South Africa, including the restriction of movement of people, particularly the Black population, between different areas; and the creation of the famous homelands or Bantustans for different ethnic or tribal groups.

One of the major aspects of apartheid was racial segregation of the population concerning which areas the various racial groups were to occupy, with whom they were allowed to interact, and their access to land. One of the most famous laws that segregated spaces was the 1923 Native Urban Areas Act which set aside land in the urban areas

112 Extension of University Education Act, 1950 No. 45 articles 2, 3 South Africa.
113 Ibid. articles 17, 32.
reserved specifically for the ‘natives.’\textsuperscript{114} It was mandated that these areas be no closer than three miles from an urban area and that the ‘natives’ can reside only there and nowhere.\textsuperscript{115} This effectively cleansed the urban areas of the Black population. This is not to say that the ‘natives’ could not work or shop in the urban centers, but their houses and communities would be physically separated from that of the White population. Under Article 12 the Governor-General was able to designate specific, areas which were largely used for mining or industrial purposes, as a ‘proclaimed’ area.\textsuperscript{116} By doing so the local powers had the authority monitor and regulate who was allowed to be in that area by requiring all men arriving to report their arrival, carry documents declaring their place of employment, and to have documents declaring the end of their employment. If a male did not secure a new job within a certain amount of time of ending the previous one, he was then required to leave and go elsewhere.\textsuperscript{117} These restrictions meant that only those members of the Black population, who were employed, and their families were allowed to remain in the urban areas while all of the unemployed were forced to relocate to a rural area. The result of the Native Urban Areas Act was complete segregation of the Black population to the outskirts of the urban areas while regulating their movements and permitting only those with employment to remain.

The expansion of the segregation was continued with the passing of the Native (Urban Areas) Consolidation Act of 1945. This act had a number of different restrictions

\textsuperscript{114} Native Urban Areas Act, 1923 No. 21 Article 1 South Africa.

\textsuperscript{115} Ibid. articles 5,6.

\textsuperscript{116} Ibid., article 12.

\textsuperscript{117} Ibid.
on where the Black population could live and where they could go. To begin with, the act prohibited the acquisition of land held by a ‘non-native’ by a ‘native’ person or group, either in urban areas or in rural areas.\textsuperscript{118} Thus, the amount of land that was allocated to the ‘native’ population by the Native Trust and Land Act was the only land that was open to them. There was no room for expansion of villages in urban or rural areas through the purchase of nearby land. Likewise, the exchange of land from ‘natives’ to ‘non-natives’ was also prohibited.\textsuperscript{119} Article 9 strengthened the restriction of living areas by declaring it a criminal offense for a ‘native’ to live outside of the areas specifically designated for their use, further segregating the population along racial lines. In addition, this act expanded the areas to which movement and employment restrictions applied beyond those of mining and industrial areas, keeping the requirement that those who enter must be employed within certain time period or leave. Those who are unable to find work and did not leave were forcefully returned “to his home or last place of residence.”\textsuperscript{120} This law engages in explicit cleansing from the ‘native’ areas of unwanted people, namely the unemployed, and by extension the homeless who were most likely unemployed. Additionally, it assumed that those who move to an urban area and were unable to find work have a home to return to.

The segregation of spaces was expanded beyond the sectioning off of the ‘native’ population by the Group Areas Act of 1950. Like the Population Registration Act, this act

\begin{flushleft}
\textsuperscript{118} Native (Urban Areas) Consolidation Act, 1945 No. 25 Articles 6,7 South Africa.
\textsuperscript{119} Ibid. article 8.
\textsuperscript{120} Ibid. article 14(1).
\end{flushleft}
defined who fit into the categories of “White”, “Native”, and “Colored.”\textsuperscript{121} These classifications were then used to distinguish which group was allowed occupy land in certain areas. The law stipulated that members of one racial group were not allowed to inhabit or own and any land in the areas specifically set aside for a different group. Such ‘outsiders’ were considered ‘disqualified’ people, and thus the segregation between the races was made more complete. Additionally, different governing institutions were formed under article 6 which stated “The Minister may by notice of the \textit{Gazette}, establish for any group area (other than an area for the [White] group), a governing body to be constituted in accordance with regulation.”\textsuperscript{122} To truly be separate from other groups, it was necessary to also establish local governmental structures for the areas set aside for the non-White segments of the population.

The Urban Bantu Councils Act of 1961 created forms of self government within the areas created under the Native (Urban Areas) Consolidation Act. Article 2 allowed for the creation of ‘urban Bantu councils’ that would take over the governing functions of the areas that was previous assigned to the urban local authorities.\textsuperscript{123} This allowed for the locals to run their own affairs, but it was also another means to segregate the population. The duties of the ‘urban Bantu councils’ included the planning of land usage, allotting spaces for schools and churches, construction of buildings, maintenance of health and

\begin{footnotes}
\footnotetext[121]{\textsuperscript{121} Group Areas Act, 1950 No. 41 Article 2 South Africa.}
\footnotetext[122]{\textsuperscript{122} Ibid. article 6(1).}
\footnotetext[123]{\textsuperscript{123} Urban Bantu Councils Act, 1961 No. 79 Article 2 South Africa.}
\end{footnotes}
sanitary services, and even the removal of unlawful inhabitants. The last aspect meant that the councils were now responsible for adhering to the rules dictating that only employed persons and their families could remain in the areas.

Another well-known aspect of apartheid in South Africa is the so-called ‘petty’ apartheid, which separated public spaces along racial lines, created with the Reservation of Separate Amenities Act of 1953. This act allowed owners or those with control of public spaces to designate them for the use of one particular racial group, while criminalizing those who willfully entered areas reserved for races other than their own. This did not cover just open spaces such as parks and beaches, but also extended to park benches, counters, seats, places and even vehicles, such as taxis. Thus, any place which was accessible by the public could the reserved for a specific group. While much of this looks similar to what happened in southern part of the United States at the same time, there is one key difference: there was no call for ‘separate but equal’ spaces. Instead, the law allowed for some services to be available to specific racial groups without a comparable service being offered to the others, or even any service at all. There did not necessarily have to be two or three sets of public restrooms, park benches or anything else.

Along with physical separation, a major part of the apartheid system was the control over the movement of the Black population through the uses of passes and restrictions on who could be where, a la the Group Areas Act. The so called ‘pass laws’

124 South Africa 1961 no. 79, article 4.
125 Reservation of Separate Amenities Act, 1953 No. 49 Article 2South Africa.
126 Ibid. article 3.
of South Africa put restrictions on who had permission to be in certain areas. Passes were originally created under the Native Administration Act of 1927 which allowed for the creation of “pass areas within which Natives may be required to carry passes.” It also allowed for certain regulations to be prescribed that dictated that movement to, from or even within the pass areas, of any ‘Native’ person. Even from early on the Black population was denied freedom of movement within the country, allowing only those with the requisite documentation into or out of the ‘pass areas.’

When South Africa began assigning people specific races and handing out identification cards, the apparatus of movement control was upgraded beyond the pass laws. The Natives Abolition of Passes and Coordination Act of 1952 did not, as the name would suggest, do away with the passes laws that were previously in effect, at least not in practice. By article two all members of the Black population who were at least 16 years old were issued a reference book. The fingerprints of the reference book holder were recorded and contained within, except for those who could prove their education, by working either among other things by being a teacher or professor or working as doctor of some sort, they were required to provide a signature instead. Additionally, for those who were better educated, they received a different color reference book, effectively dividing the Black population along educational lines. Other things included were the identification card of the individual as well as employment records. The information contained in the reference books gave officers vast amounts of power over the Black

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127 Native Administration Act, 1921 No. 38 Article 28 South Africa.

128 Natives Abolition of Passes and Coordination Act, 1952 No. 67 Article 3(4) South Africa.
population who were required to show these books whenever requested.\textsuperscript{129} The difference in color of the cover for those who were educated could easily have created divisions within the Black population because education levels, as well as professions, could be inferred at a glance, allowing for preferential treatment. The reference books replaced the pass restrictions by allowing permits, employment histories, and other information to be contained within one, easily accessible place.

The regulations concerning where ‘natives’ could live and for how long, as in the Group Areas Act, were further strengthened through the passing of the Preventing Illegal Squatting Act and the Native Laws Amendment Act. The former law, passed in 1951, made it illegal for any person to unlawfully enter or reside in any place.\textsuperscript{130} This included people who were no longer allowed to be within urban areas after they lost employment or were unable to secure a job. This act also allowed for the forceful eviction of any person who has been found to be illegally residing at a particular place. Article 6 also allowed for the creation of emergency camps to accommodate homeless people in South Africa, presumably displaced by the enactment of this law.\textsuperscript{131} Thus, the law was not meant only to keep undesirable ‘natives’ out of urban areas, but to also remove the homeless populations of these areas. The exact time limit for which ‘natives’ could be within an urban area was set at 72 hours by the Native Laws Amendment Act of 1952.\textsuperscript{132} This also gave the conditions for which someone could reside within of these spaces as

\textsuperscript{129} South Africa 1952 no. 67, article 13.

\textsuperscript{130} Prevention of Illegal Squatting 1951 No. 52 Article 2 South Africa.

\textsuperscript{131} Ibid. article 6.

\textsuperscript{132} Native Laws Amendment Act, 1952 No. 54 Article 27 South Africa.
being either born or a permanent resident, or someone who has worked in the area continuously for at least 10 years, or the wife or unmarried daughter of the former two, or lastly if one gets permission. Permission was granted to those who were employed at the time of the 72 hours expiring, and extensions were given for periods of between 7 and 14 days during which the person could look for work. The use of the pass laws that dictated where people could go in conjunction with laws that determined how long effectively controlled the movement of the ‘Native’ population within urban centers in South Africa.

It was not enough under apartheid to physically separate the racial groups by designating who could live where, and what spaces were open to whom; there were also laws that prohibited romantic interactions between the various races. The Immorality Act of 1927, which was amended a number of times, and Prohibition of Mixed Marriages Act of 1949 sought to control people’s romantic partners. The original Immorality Act of 1927 prohibited ‘illicit carnal intercourse’ between Whites and ‘Natives’ for both sexes, unless they could provide proof of their marriage.

In 1950 the Immorality Act was amended to change all instances of the word ‘native’ to ‘non-European’ in the first three articles of the original law. Instead of sexual relations between Whites and Blacks being illegal, sex between Whites and non-Whites, which also included the ‘Colored’ racial group, was made illegal. These two laws were repealed with the passing of the Immorality Act of 1957 which included the changes

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133 South Africa 1952 no. 54.

134 Immorality Act, 1927 No. 5 Articles 1,2,5 South Africa.

135 Immorality Amendment Act, 1950 No. 21 Article 1 South Africa.
made previous and explicitly prohibited sexual intercourse between Whites and ‘Coloreds,’ which in this case meant ‘non-Whites’ including ‘natives.’ This law also included provisions banning brothels, rape, and sex with minors or the mentally ill. The Prohibition of Mixed Marriages Act of 1949 went a step further than just prohibiting intercourse between the White population and everyone else: it put a ban on interracial marriage involving a White spouse. Together these acts banned all forms of romance between the White and non-White populations, further segregating the races within South Africa.

The South African government not only had the ability to decided who could live in a particular area, but it also had the ability to change those decisions as it saw fit. The Natives Resettlement Act of 1954 created the Natives Resettlement Board, which was tasked to see to the resettlement of ‘Natives’ from one area to another. Thus, if the government needed or wanted a specific piece of land, it had the ability to remove those living there and move them elsewhere by expropriating the land. Under article 23, any ‘Natives’ effected by this law could within three months request with the ability to acquire ownership of other land, so long as the request is done in writing. Those who had their land expropriated did have a path of recourse and the ability to get new land, but this only applied to those who knew the law and were literate enough to request such an exchange. Given that the education system was under the control of the South African

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136 Immorality Act, 1957 No. 23 South Africa.

137 Prohibition of Mixed Marriages Act, 1949 No. 55 Article 1 South Africa.


139 Ibid. article 16.
government, the latter conditions may not have applied to many people who lost land under this law. To make matters worse, the 1956 Natives (Prohibition of Interdicts) Act made it so that there was no way legal way for a ‘Native’ who has been given orders to vacate or who had been evicted from any area to prevent that from happening. Article two states that “no interdict or other legal process shall issue for the stay or suspension of the execution of such order or the removal or the removal of the property of such native in pursuance of such order.”140 As a result, the South African government had the ability to remove ‘Natives’ from their land, either through expropriation or resettlement, and once the order to do so had been given, there was no way for those effected to prevent it from happening.

While racial segregation has occurred in a number of countries, South Africa is unique in its attempts to completely separate the White and ‘Native’ populations by creating homelands, also called Bantustans, for the latter, and trying to pass them off as sovereign nations. A number of different laws were enacted that ultimately shaped how the Bantustans developed. To begin with, the Native Land Act of 1913 set aside sections of land that were explicitly for the use of either ‘natives’ or ‘non-natives.’141 Out of the entirety of South Africa, only 7.3 percent of the land was made available for use by ‘natives’ with the rest was given to the White population.142 The Native Trust and Land Act of 1936 expanded that amount to 13 percent, which was still deeply biased given that

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140 Natives (Prohibition of Interdicts) Act, 1956 No. 64 Article 2 South Africa.

141 Native Land Act, 1913 No. 27 South Africa.

142 Quigley, 235.
the ‘native’ population constituted the vast majority of the population.\textsuperscript{143} These two acts gave a small amount of land to one population, while reserving the vast majority for use by the population in power.

One of the main ideas behind apartheid was the need to separate people and to allow them to develop on their own. The idea being that the ‘natives’ in their own homelands would develop at their own pace in their own cultural spaces, while the Whites would do so in their own space.\textsuperscript{144} This idea can be seen in the 1959 Bantu Investment Corporations Act. This act created the ‘Bantu Investment Corporation’ whose purpose was to help provide financial assistance, expertise and other resources “to promote and encourage the economic development of Bantu in the Bantu areas.”\textsuperscript{145} Ideas such as ‘economic thrift’ and ‘capital accumulation’ were part of the corporations mission as a means of increasing the industrial aspects of the Bantustans in order to make them self-sufficient, as a means of separate development.

The Bantu Authorities Act of 1951 expanded the idea of self-government for ‘Native’ areas from urban areas to all regions and communities in which ‘Natives’ lived. The act allowed for the creation of ‘tribal authorities,’ which presided over at least two tribes and/or communities, with a ‘regional authority’ overseeing at least two ‘tribal authorities’, and a ‘territorial authority’ overseeing at least two ‘regional authorities’.\textsuperscript{146} These various authorities intended to keep the ‘natives’ separated from the rest of society.

\textsuperscript{143} Quigley, 235.


\textsuperscript{145} Bantu Investment Corporations Act, 1959 No. 34 Article 4 South Africa.

\textsuperscript{146} Bantu Authorities Act, 1951 No. 68 Article 2 South Africa.
by reducing their dependence on the traditional governmental structure. The ‘tribal authorities’ were tasked with administering the affairs of the tribe as well as assisting the South African government with things relating to the well being of the community.\textsuperscript{147} The regional authorities were tasked with the running of the education system, the maintenance of roads, bridges, and other municipal good, and the running of hospitals among other things.\textsuperscript{148} In effect, the control of the local government, as well as the local provision of public goods was handed over to the local populous. While still under the control of the South African government, these authorities gave the illusion that the ‘Native’ population had self-control, and furthered the separation of the different races and ethnic groups.

The idea of ‘Native’ self-sufficiency was taken even further with the Promotion of Bantu Self-Government Act of 1959. While previous laws such as the Population Registration Act generally split the population into three classifications, they also make reference to specific tribes or ethnicities within the ‘native’ population. The opening of the Promotion of Self-Government Act makes reference to this stating that “the Bantu peoples of Union of South Africa do not constitute a homogenous people, but form separate national units on the basis of language and culture.”\textsuperscript{149} Using this, the act then proceeded to create eight different national units combined into five groups each with their own commissioner-general.\textsuperscript{150} The appointee’s job was then to “furnish guidance

\textsuperscript{147} South Africa 1951 no. 68, article 4.

\textsuperscript{148} Ibid., article 5.

\textsuperscript{149} Promotion of Bantu Self-Government Act, 1959 No. 45 Preamble South Africa.

\textsuperscript{150} Ibid., article 2.
and advice in respect of all matters affecting administrative development and the social, educational, economic and general progress of the population.”

One of the mainstays of the concept for the ‘Bantustans’ was to create self-sufficient regions that were homogenous by tribal group, leaving the rest of the country for the White population, which required various measures to help set up local governments.

The creation of the pseudo-independent nation states based on tribal affiliation under apartheid would not be complete if the individuals living these areas were still citizens of South Africa. With the Bantu Homelands Citizenship Act of 1970 the South African government tried to assign the ‘Native’ population different citizenships according to the different ethnic and tribal delineations. Article 2 established citizenships for each territorial authority and assigned them each ‘Native’ person in South Africa. Article 3 defined citizenship of a particular territorial authority area as: a) each ‘Native’ born in that area, either before or after this law; b) those ‘Natives’ who were currently living there; c) any ‘Native’ who speaks the language of that area; d) any ‘Native’ who is in some way related to a citizen of that area or in some way identifies with, or is associated with the population there on a racial or culture basis. In effect every Black person in South Africa was arbitrarily given citizenship in a ‘homeland,’ regardless if they had ever been there or had any desire to go.

The last theme in this analysis of apartheid is that of control. In this case control is meant not as control of movement and residence as explained earlier, but rather as

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151 South Africa 1959 no. 45, article 3.
152 Bantu Homelands Citizenship Act, 1970 No. 26 Article 2 South Africa.
153 Ibid., article 3.
repressive control over in terms of arrest and censorship, among other things, as well as treatment by the court system. Within the repressive control there were a number of different aspects which the South African government used to suppress opposition to its policies: the ability to declare organizations illegal; the prohibition of various forms of protest; and other acts such as censorship on imports and the important use of administrative detention.

The ability to disband organizations is a very powerful tool when trying to neutralize opposition. Since the apartheid rule occurred during the Cold War, the fear of communism was used as a means to hinder opposition through the 1950 Suppression of Communism Act. This act explicitly stated that strikes and labor actions were not prohibited, though for the Black population this would change in 1953, but it did allow for any organization to be declared unlawful if was seen as promoting the spread of communism.154 When organizations were deemed unlawful it meant that it completely dissolved, and that no person could be a member. Additionally, no person could continue to do any activities that resembled those of an unlawful organization.155 The result was that if an organization which worked for the betterment of the Black population was banned under this law, then other groups which did similar work could also be banned. Other capacities of the government included the ability to compile a list of members of the group, prevention of those people from serving as legislators and even the censorship of some publications. The 1960 Unlawful Organizations Act was used to specifically target the Pan Africanist Congress and the African National Congress. Article 1 explicitly

154 Suppression of Communism Act, 1950 No. 44 Articles 1,2 South Africa.

155 Ibid article 3(1)(a)(iv).
banned these two organizations and included the right to ban any organizations that were seen as continuing their activities.\(^{156}\) Thus, the law was used to suppress organizations that opposed the South African government and its racist policies.

In addition to banning organizations, the South African government attempted to hinder the finances of certain organizations as well. The Affected Organizations Act of 1974 gave the ability for an organization to be declared ‘affected’ if it was engaging in politics under the influence of a foreign actor.\(^{157}\) The status of being ‘affected’ meant that organizations could not solicit or receive funds from foreign sources. In effect, organizations working against apartheid in South Africa could no longer be supported by the international community; a move that like the unlawful organizations was designed to hinder opposition.

One of the most visible ways for the public to show support or discontent is through the use of mass movements and protests. To combat this, a number of acts were passed that prohibited protests, other large demonstrations, and even gatherings; among these were the Criminal Law Amendment Act of 1953, the 1956 Riotous Assemblies Act, and the 1982 Internal Security Act. Like much of the repressive laws in South Africa, these different acts build upon each other with each new addition being stricter that the previous ones. The Criminal Law Amendment Act made it illegal to engage in any form of protest that was directed against any law, including calling for reform.\(^{158}\) Even acts that supported campaigns protesting laws were prohibited. In effect, this law made it

\(^{156}\) Unlawful Organizations Act, 1960 No. 34 Article 1 South Africa.

\(^{157}\) Affected Organizations Act, 1974 No. 21 South Africa.

\(^{158}\) Criminal Law Amendment Act, 1953 No. 8 Article 2 South Africa.
illegal for anyone to challenge the laws enacted by the South African parliament no matter how repressive or unjust they might be, including all of the laws discussed here.

The Riotous Assemblies Act of 1956 increased the power of the government to prohibit any demonstration or protest. Article two states that whenever a magistrate thought a particular gathering in any public place would endanger the ‘public peace’ he had the right to prohibit that gathering.\textsuperscript{159} Public peace in this instance is never defined, allowing for any reason to be used to justify the prohibition of a gathering, be it a protest, demonstration or form of assembly. Subsection three of the same article dictates that any gathering that would engender feelings of hostility “between the European inhabitants of the Union on the one hand and any other section of the inhabitants of the Union on the other hand.” was a legitimate reason for such a prohibition. Thus any action that might negatively impact the feelings of, or the feelings toward, the White populous would be prohibited, but not the feelings of the Blacks or Coloreds.\textsuperscript{160} The same conditions of hostility involving the White population, but not necessarily between Black and Colored, were used to ban publications, as well as prevent individuals from going certain places.\textsuperscript{161} The Riotous Assemblies Act served as a means to control Black oppositional activity by controlling where they could go and what information they could disseminate. The Internal Security Act of 1982 replaced a number of acts, with a law that was inclusive of many of the repressive measures that were previously enforced under apartheid. However it did keep the ban on gatherings under the justification of endangering public, or more

\textsuperscript{159} Riotous Assemblies Act, 1956 No. 17 Article 2 South Africa.

\textsuperscript{160} Ibid. article 2(3).

\textsuperscript{161} Ibid. article 3.
likely White, peace. Thus, until the fall of apartheid in the early 1990s the control of who could gather when, and for what reason, was controlled by various laws.

In addition deciding the existence and classifications of various groups, as well as the right to gather in public places, the South African government exercised a number of other methods of control over the population. One such tool was the declaration of a state of ‘emergency’ as a means to justify excessively repressive acts. With the passing of the Public Safety Act of 1953 the South African government had a means by which it defend practices that were normally legally tenuous because a state of emergency could now be made retroactively up to four days.162 This meant that police actions that were particularly brutal or unjustifiably violent could be given legal justification and mandate afterward through the declaration of a state of emergency.

While not as overtly direct in its impact as other laws, the Customs Act of 1955 had strong implications for the nature of South African society. Article 21 listed a number of good that were prohibited for general importation into the country. Included in this were goods that were deemed to be “indecent or obscene or on any grounds objectionable.”163 On the surface this law may not seem to be that repressive, but it meant that anything the South African government did not like, including foreign publications, or writings espousing certain ideologies or philosophies could be kept from entering the country. Information or books that may have inspired the Black communities struggle against apartheid, or international outrage at the racial discrimination were easily censored from the South African population.

162 Public Safety Act, 1953 No. 3 Article 2 South Africa.

163 Customs Act 1955, No. 55 Article 22(1)(f) South Africa.
One of the most powerful tools a regime has is the ability to arrest dissidents and imprison them, effectively removing them from the active opposition. The Terrorism Act of 1967 increased the ability for the South African police to hold people suspected of being terrorists, or acting with or aiding terrorists. Article two provides a very broad definition of what constitutes terrorism by stating that any person who acts “with intent to endanger the maintenance of law and order in the Republic ... shall be guilty of the offense of participation in terroristic activities.”\(^{164}\) This interpretation allowed anything that could be seen as harming the status quo in South Africa, at least for the White population, to be an act of terrorism. Under article six, a person detained under suspicion of terrorism could be held until that person “has satisfactorily replied to all questions ... or that no useful purpose will be served by his further detention, or until his release is ordered in terms of subsection (4).”\(^{165}\) The last condition referred to release as ordered by the Minister of Justice. In effect this meant that such prisoners could be detained for as long as was deemed necessary, even years, without a trial. Such practice is known as ‘administrative detention’\(^{166}\) and is used to subordinate opposition groups by imprisoning their leaders without possibility of release.

Under apartheid in South Africa, inequality in the justice system was not only found in the form of administrative detention, but also in who tried which crimes and how the different races were tried and sentenced within the same courts. The Native

\(^{164}\) Terrorism Act, 1967 No. 83 Article 2 South Africa.

\(^{165}\) Ibid., article 6(1).

Administration Act in 1927 laid the foundations for unequal laws. The law created the office of the native commissioner, which was the head of a new court system within South Africa.\footnote{Native Administration Act, 1927 No. 38 Article 2 South Africa.} This office was then given a number of different duties and responsibilities including the judicial right to hear all civil cases that occurred, so long as all parties were ‘Natives.’\footnote{Ibid. article 10.} This passed the court system out of the hands of the official court system to that of tribal law, as long as both parties were Black, but meant that any case that occurred between races was tried under a court using South African civil law. This judicial system also applied to some criminal matters by allowing native chieftains to try “offenses punishable under native law and custom.”\footnote{Ibid. article 20.} In effect, two systems of laws were created, one that applied only to the Black population, and another that applied to everyone else.

Beyond the creation of two legal systems, the South African civil law system also discriminated on the sentencing of certain crimes based on race. According to Albie Sachs, more Blacks were executed in 1967 than whites by a large margin: 81 out of a total of 97.\footnote{Albie Sachs, \textit{South Africa: the Violence of Apartheid} (London: Christian Action Publications Ltd., 1969), 1.} Additionally, in South Africa judges were giving the death sentence to Black defendants for crimes where such harsh punishments were unnecessary, increasing the number of crimes for which capital punishment was a possibility.\footnote{Ibid., 2.} While the statistics on executions is not necessarily a symptom of racism in the justice system,
when there is a difference in population size between racial groups the proportion of executions is more informative than absolute numbers. The notion that Blacks were getting such severe sentences for certain crimes, while Whites who committed those same acts were not, is, however, indicative in an unjust justice system.

A final point that does raise questions about the equality in South Africa is that of the Correctional Services Act of 1959, also known as the Prisons Act. Article 44 gives a list of offenses or which people can be convicted included publishing “any false information concerning the behavior or experience in prison of any prisoner or ex-prisoner or concerning the administration of any prison ... without taking reasonable steps to verify such information.” It was up to those accused with such an offense to prove that they had in fact verified the information published. Given that admission of wrongdoing in any prison system is likely to be disastrous for any regime, there was an incentive for those working in the prisons to lie about conditions, make such verification near impossible. This protected the prisons from any negative press about the conditions or treatment of the prisoners.

Under apartheid in South Africa one’s quality of life greatly depended on that person’s race. Those who were labeled as Native faced a repressive regime that created separate spaces for each racial group and controlled movement and residence with and between them through pass laws. It also disenfranchised anyone who was not White of all political and most economic power while severely punishing those who dared to

172 Correctional Services Act, 1959 No.8 Article 44(f) South Africa.

challenge the racist policies in place. However, those who were classified as White or European experienced full political and economic freedom with no restriction in movement or area of residence, so long as it was within White-only areas. Additionally, they experienced no disadvantage with the provision of education or public services. Whether life under apartheid was either that of a fully functioning democracy or a police state depended on nothing more than the color of one’s skin.

**Apartheid and International Law**

In international law, the use of the term apartheid is fairly limited. There are only four major agreements which use the term: the International Convention on the Elimination of All Forms of Racial Discrimination 1969 (ICERD); the International Convention on the Suppression and Punishment of the Crime of Apartheid 1973 (Apartheid Convention); the Rome Statute of the International Criminal Court 2002 (Rome Statute); and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (Additional Protocol 1). Of these, only the Apartheid Convention and the Rome Statute define the term apartheid in any sort of detail, though all four are useful in constructing and understand this term.

The ICERD is one of the documents that does not specifically define the term apartheid. However, since it is an international convention on racial discrimination, it serves as a precursor to most of the other documents. The first article states that racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.” that is used to prevent any group from
having equal access to human, political, and civil rights.\textsuperscript{174} The article continues to note that discrimination between citizens and non-citizens does not constitute racial discrimination, neither does preferential treatment for a group or groups that aims to ensure equality in society.\textsuperscript{175} Article one thus defines racial discrimination as treatment specific to one ethnic/racial group or groups that harms equality within the society. The other articles in the ICERD are agreements that the signing states agree to make either against discrimination or to ensure equality. Article two is a clear statement that the signatory states condemn all practices of racial discrimination and will review government policies, legislation, and other official practices that engage in discrimination.\textsuperscript{176} The third article is interesting because it goes beyond the scope of racial discrimination to include a condemnation of racial segregation as well as including apartheid by name.\textsuperscript{177} While the historical context will certainly place the use of the term apartheid as referring the practices of South Africa, there is no mention of the country anywhere in the article, freeing it of all ties to a specific time or place. Articles five and six talk about the access of disadvantaged groups to rights such as security, political and economic rights, access to tribunals that are fair and that deal with acts of discrimination,

\textsuperscript{174} UN General Assembly. \textit{International Convention on the Elimination of All Forms of Racial Discrimination}. 21 December 1965. article 1(1). [ICERD]

\textsuperscript{175} Ibid., articles 1(2), 1(4).

\textsuperscript{176} Ibid., article 2.

\textsuperscript{177} Ibid., article 3.
freedom of movement and others. The last article of the first part is an agreement by states

to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.

The ICERD not only proscribes the elimination of racial discrimination in practice from all from states who are party to the convention, but also that those states confront the ideologies that seek to justify such practices.

Out of the four documents, the Apartheid Convention is one that, by virtue of its name and intention, deals most with this topic. The opening of the document references a number of different international agreements including the charter of the United Nations as well as the Universal Declaration of Human Rights. Also included in these references is the ICERD and its prohibition of racial segregation and apartheid. Article one declares the practice of apartheid to be a crime against humanity and that it and similar acts are a violation of international law. The second article defines apartheid as

similar policies and practices of racial segregation and discrimination as practised in southern Africa, ... committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.

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178 ICERD, articles 5, 6.
179 Ibid., article 7.
181 Ibid., article 1.
182 Apartheid Convention, article 2.
Following this definition is a list of acts and policies that are included under the term including: denial of the right to life, which consists of murder, physical or mental harm why denies right to human dignity, and arbitrary imprisonment; deliberate imposition on living conditions to cause destruction of a racial group either wholly or partially; measure meant to prevent political, cultural, social and economic participation; division of population along racial lines through the use of ghettos, prohibition of mixed marriages, and expropriation of land; exploitation of labor; and persecution for opposing apartheid. Instead of listing specific acts, this description lists general policies that can be interpreted in a variety of different ways. This allows the term to be applied to areas other than just southern Africa, should such systems of racial discrimination and segregation arise.

The Rome Statute created the International Criminal Court which was given jurisdiction over four areas of crime: genocide, crimes against humanity, war crimes, and the crime of aggression. Article seven lists a number of different acts which are considered crimes against humanity including extermination, enslavement, forcible transfer, and even apartheid. Part two of that article defines apartheid as inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

183 Apartheid Convention.
185 Ibid., article 7.
This definition allows for the inclusion of many different crimes against humanity under the system of apartheid. The use of the word ‘similar’ creates a situation in which some of the other crime listed, but not all, may be classified as a part of apartheid while allowing other crimes to be included as well.

The last document, Additional Protocol 1 to the Geneva Accords, does not give a definition of apartheid, but furthers its position in international law as prohibited. Article 85, which deals with breaches of the protocol, subsection four mentions various acts that, when committed willfully, indicate a breach of the protocol, among which is the crime of apartheid. The article ends with the statement that any violation of the protocol and the Geneva Conventions will be considered a war crime. The Additional Protocol 1 defines apartheid as a war crime in addition to its designation as a crime against humanity.

These particular documents form the basis of international law on which the definition of apartheid rests. The Apartheid Convention and the Rome Statute give a specific framework from which to build the definition. The ICERD provides the solid background on which these conventions are based, as it outlines what racial discrimination is, and names apartheid as a particularly egregious form. By labeling apartheid as a war crime and a crime against humanity, there is a strong legal basis on which the policies which create and define apartheid should be opposed, wherever it

186 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). 8 June 1977, article 85. [Additional Protocol 1]

187 Ibid.
occurs within the world. As a result, the use of the term apartheid is incredibly potent as it is clearly illegal within the framework of international law.
CHAPTER FOUR: SOUTH AFRICA COMPARISON

The South African Framework Applied to Israel

This study of Israel will follow the same framework created for the South African case study above. This will allow for a useful comparison between the two highlighting where Israeli policy lines up, and where it falls short or varies significantly. To begin with, one of the staples of South African apartheid was the classification of the population based on a definition of race and who was defined in each category. Israel has no law that is comparable with the Population Registration Act which explicitly defined the various racial groups. It does have the Population Registry Law which lists all of its citizens and information about them, including race and nationality, in a database, but there is no mention of specific races, religions, or nationalities. However, race is still an incredibly important part of how Israel defines itself. In 2013, a group of 21 Israelis, most of whom were Jewish, petitioned to have their nationality in the registry be listed as Israeli instead of Jewish, or Arab as the case may be.\(^{188}\) This appeal was ultimately struck down under the reasoning that allowing Israeli as a nationality would detract from the Jewish nature of the state. Similarly, phrases such as ‘Jewish and democratic state’ are commonly used when talking about Israel, and it is even set down in law that “The State

of Israel regards itself as the creation of the entire Jewish people.”\textsuperscript{189} While there is no law that purports to define who belongs to which race, there appears to be a separation between those who identify as being Jewish and those who don’t, with the dominant ruling Jewish society preferring the former. However, just as in South Africa, this distinction does form the basis for many of the policies put forth by Israel.

When it comes to political rights, Israel and South Africa have very little in common. Article five of the Basic Law: The Knesset [the Israeli parliament] states that “Every Israel national of or over the age of eighteen years shall have the right to vote in elections to the Knesset unless a court has deprived him [sic] of that right by virtue of any law.”\textsuperscript{190} In its laws, Israel has confirmed that all adult citizens can vote. There are no other laws that restrict this right based on whether or not a citizen is an Arab, Jew, Christian, Muslim, or any other categorization. Thus, one of the major pillars of apartheid in South Africa, political disenfranchisement of the non-White population, is nowhere to be found.

Political rights are not just confined to the right to vote for parliament, but also include the ability to run for government offices and be represented. Article 6(a) of the Basic Law: The Knesset states “Every Israel national who on the day of the submission of a candidates list containing his [sic] name is twenty-one years of age or over shall have the right to be elected to the Knesset.”\textsuperscript{191} Originally this was true with a few minor exceptions that prevented people from holding multiple positions of power. However,

\textsuperscript{189} World Zionist Organization-Jewish Agency (Status) Law, 1952 Article 2 Israel.

\textsuperscript{190} Basic Law: The Knesset, 1958 article 5 Israel.

\textsuperscript{191} Ibid., article 6.
amendment nine instituted in 1985 of this law adds more restrictions to who can run for the Knesset adding Article 7A which states that a candidate shall not run if his/her actions fall into at least one of the following categories: “(1) negation of the existence of the State of Israel as a Jewish and democratic state; (2) incitement to racism; (3) support for armed struggle by a hostile state or a terrorist organization against the State of Israel.”

These added qualifications would seem to serve to protect Israel’s long-term stability. Yet, those candidates who are most likely to fall under these restrictions are Palestinian citizens who would be viewed as hostile to the State of Israel. The third distinction is vague and could even include financial aid to a relative living in the Occupied Territories who happens to be affiliated with an organization labeled as terrorist by Israel. Furthermore, amendment 39 forbids people from standing as candidates who have visited so called “enemy states” without express permission. Such states include Syria and Lebanon which have significant populations of Palestinian refugees. Thus, any Palestinian citizen of Israel who has traveled to Syria or Lebanon, without governmental permission, to visit relatives is disqualified from running for office.

Additionally, the Law of Political Parties puts restrictions on which organizations are allowed to run using similar restrictions such as denying the Jewish nature of Israel or supporting an enemy of the state. Beyond dictating who can and cannot run for office, a 2014 law has raised the minimum percentage of votes necessary for political parties to

192 Basic Law: The Knesset, article 7A.


194 Adalah: The Legal Center for Arab Minority Rights in Israel, "Law of Political Parties - Amendment No. 12."
have representation in the Knesset from 2 percent to 3.25 percent.\textsuperscript{195} Previously political parties needed to win a minimum of three seats, but the number is increased to four. Currently, two of the three political parties that claim to represent Arab views have four seats while the other party, Balad, has only three.\textsuperscript{196} With the new law, Balad would not be represented if it does not increase its percentage, and likewise the other two parties will have to make sure they maintain their presence for fear of losing their spot in the Knesset. (The Kadima party, a Jewish party which has only two seats and will also be affected.) The law will harm all political parties who receive small parts of the total votes, but since all of the Arab parties are disproportionately at risk, the law can be seen as an attempt to limit their voice and participation in the Knesset. While political rights are fairly free in Israel, there are restrictions that seem to inhibit who can run for office in Israel without explicitly preventing any identity group from doing so in its entirety.

The economic rights of minorities within Israel are heavily tied to the land rights, which will be discussed later. There are a couple of other restrictions that occur that exemplify how different groups are given economic advantages. One example is the Economic Efficiency Law of 2009, which covers the amount of money families receive for having children, is generally applied equally across all citizens, however one section stipulates that children who are not vaccinated will no longer be eligible for these stipends. The children who tend not to get vaccinated largely come from Palestinian


villages in the Negev Desert who do not have ready access to healthcare. Thus, what can be explained as an economic incentive for complying with recommended vaccinations can be seen as disproportionately affecting a particular, non-Jewish, subset of the population. Another example is that of the tax code and tax deductions. According to Amendment 191 of the Income Tax Ordinance, donations to organizations that promote ‘Zionist settlement’ are given a 35 percent tax exemption. This law is an example of how Israel crafts its policies so that they could apply equally to all citizens, but will most likely be used by only a certain subset. In this case, it is highly unlikely that any Arabs will donate to such organizations that seek to increase the inflow of, most likely Jewish, immigrants into the area, while refusing the same opportunities to Palestinians displaced since 1947. Such policies show how the state gives economic incentives to certain groups while effectively restricting them for others.

Education in Israel is similar to that of South Africa under apartheid. Primary and secondary education are under the control of the Israeli government per the State Education Law of 1953. Article two declares that “The object of State education is to base elementary education in the State on the values of Jewish Culture ... on love of the homeland and loyalty to the State and the Jewish People.” This was to be introduced into every education institution as the official education policy, meaning that the non-Jewish subset of the population is taught based on values which do not necessarily reflect

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197 Adalah: The Legal Center for Arab Minority Rights in Israel, "Child Vaccinations and Child Allowances - Economic Efficiency Law."
198 Adalah: The Legal Center for Arab Minority Rights in Israel, "Income Tax Ordinance - Amendment No. 191."
199 State Education Law, 1953 Article 2 Israel.
their own, and may even be in sharp contrast to their own views. Additionally, the history that accompanies this state education policy is likely to conflict with the one that Arab school children learn at home. The preferential treatment of one culture by making it the basis for the official state educational policy ignores the experiences of the other groups within the state.

Higher Education in Israel is accessible to most, if not all, of the citizens in Israel. However, there are laws that give incentives and benefits for the completion of military service. The benefits accorded under the Absorption of Discharged Soldiers Law include the first year’s tuition covered, a year of academic preparation, housing benefits, and others. However, Arab citizens of Israel are generally exempt from mandatory military service. As a result, the vast majority of Arab students are not eligible for these benefits and instead have to find their own sources of funding for higher education. The effect is that the Jewish youth who complete their service in the Israeli Defense Force (IDF) are given a huge educational benefit package while their Arab counterparts are left out. The Absorption of Discharged Soldiers Law does have any language which precludes certain groups from not taking advantage out it, however in conjunction with other policies it has the effect of disproportionately benefiting one group. Education in Israel is similar to South Africa in that there is top down control which espouses the narrative of the dominant group, but there is much more equitable access to education for all sections of the population, even if higher education is partially subsidized for most Jews.

200 Adalah: The Legal Center for Arab Minority Rights in Israel, "Absorption of Discharged Soldiers Law - Amendment No. 7: Benefits for Discharged Soldiers."

201 Adalah: The Legal Center for Arab Minority Rights in Israel, "Absorption of Discharged Soldiers Law - Amendment No. 12."
Another major staple of apartheid in South Africa was the creation of separate spaces for each racial group. Israel has not gone so far as to delineate specific areas that are for minority use only and restrict access to or from them, but it has come close. In 1960, Israel passed the Basic Law: Israel Lands which declared that “The ownership of Israel lands, being the lands in Israel of the State, the Development Authority or the Keren Kayemet Le-Israel [Jewish National Fund (JNF)], shall not be transferred either by sale or in any other manner.” Additionally, Israel also passed the Israel Land Authority Law in the same year which created Israel Land Administration, whose sole purpose was to administer the ‘Israel lands.’ According to the Israel Land Authority (ILA), an updated version of the Administration, 93 percent of the land in Israel is public domain, that is “either property of the state, the Jewish National Fund (JNF) or the Development Authority,” 13 percent by the JNF alone. The JNF was originally created as a financial organization that would be used to buy land for the creation of a Jewish State in Palestine. Today the organization is engaged in many different projects including the development of communities. What is not explicitly stated, but rather implied by its name, is that the work done is expressly done for the benefit of the Jewish population. The policy of the ILA is created by the Israel Land Council, a 22-member council, 10 seats of which are reserved for the JNF. Thus, the ILA administers 93 percent of the land in Israel, and its policy is decided by a council of which 45 percent of the members are

203 Israel Land Administration Law, 1960 Article 2 Israel.
acting explicitly for the benefit of the Jewish people, it is easy to see how this land would then become unavailable to the non-Jewish minorities in Israel, which number almost 25 percent.206 The result is that the Arab minority only has access to seven percent of the land, and cannot even lease land located on the other 93 percent.207 While not the same as the Group Areas Act, and looks more like the 1913 Natives Land Act, the effect of these policies is that the Arab population has access to a small portion of the land on which they can build homes or start businesses. With access to such a small amount of land, the economic rights of the Arabs are severely limited in their capacity to undertake economic endeavors.

While there is nothing that explicitly creates ‘group areas’ in Israel, this is in effect been accomplished through other means. The Law to Amend the Cooperative Societies Ordinance of 2011 created committees to decide who could be allowed to join a specific community. Article one notes that the communities in question could be no larger than 400 households.208 Since these were small groups it is understandable that they would want to control who was able to join. The amendment to Article six states that reasons for rejection of an application to a community include the candidate being a minor, lacking economic ability to establish a home, no interest in the community as a center of life, not suitable for social life in the community (which would be decided by an expert in making such decisions), or the candidate is incompatible with the socio-cultural


207 Basic Law: Israel Lands, 1960 Israel.

208 Law to Amend the Cooperative Societies Act (No. 8), 2011 Article 1 Israel.
fabric of the community. While the amended article 6(c)(c) does stipulate that people cannot be rejected based on “race, religion, gender, nationality, disability, personal status, age, parenthood, sexual orientation, country of origin, political-party opinion or affiliation" the conditions for rejection are reasonably vague as to allow for a reject of Arab applicants based on concerns about social life, or the socio-cultural fabric of the society. The result is that purely Jewish towns can be created with the means to deny any interested persons access whom do not fit their criteria. This does not exactly match the Group Areas Act in that there is no similar area for Arabs to live, but it rather creates communities that can isolate themselves from other people who they deem to be undesirable.

In South Africa, the separation of people took a number of different forms: from physical separation to denying the right to pursue romantic relationships with members of different races. Israel distinguishes between people in a number of ways that have parallels to the South African case. One of main ways is through the immigration policies and citizenship policies which are governed by the 1950 Law of Return and the 1952 Citizenship Law. Article one of the Law of Return states that “Every Jew has the right to come to this country as an oleh:” where an oleh is a Jew who is immigrating to Israel. This law in effect states that every Jew from outside of Israel may immigrate and receive special status for doing so. Likewise, Article two of the Citizenship Law states that

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209 Law to Amend the Cooperative Societies Act (No. 8), 2011, article 2.

210 Ibid.

211 Law of Return, 1950 article 1 Israel.
“Every 'oleh under the Law of Return, 5710-1950(1), shall become an Israel national.”

In combination, any Jew who wishes to immigrate to Israel may do so, and be granted national or citizen status upon entering the country. The Citizenship Law also provides other ways for immigrants to obtain citizenship, namely by residence, birth, and naturalization. Citizenship by residence applied to non-Jewish people living and residing in the territory that became the state of Israel who were registered inhabitants by March 1, 1952, who were inhabitants when the Citizenship Law came into effect, and who were in the territory when Israel became a state or entered legally. This requirement was problematic as many of the Arabs could not prove where they were during that time (May 14, 1948 to March 1, 1952), even if they had never left. Citizenship by birth applies to anyone whose mother or father are Israeli nationals.

Finally, naturalization applies to most everyone else as long as they meet a number of criteria, including length of residence and knowledge of the Hebrew language. These criteria were designed to facilitate the immigration of Jews into Israel while making it harder for non-Jews to immigrate, particularly in the years immediately following the creation of the state of Israel.

Another way Israel has used its immigration policy to control who enters the country is The Citizenship and Entry into Israel Law of 2003. Under this act the Minister of the Interior had the right to prohibit people from entering into Israel and from gaining

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212 Citizenship Law, 1952 article 2 Israel.

213 Ibid., article 3(a).
citizenship. It also allowed commanders of the IDF to deny people the right to enter into Israel, for the purpose of residing there, who are coming from the Occupied Palestinian Territories. The main effect of this law is to prevent families from being joined together for whom one spouse is an Israeli citizen and the other living in the OPT. This of course excludes a spouse who is living in an Israeli settlement, as all residents therein are Israeli citizens and have free access between their residence and ‘Israel proper.’

Israeli policy concerning marriage reflects an interesting combination of the Prohibition of Mixed Marriages Act and the various Immorality Acts of South Africa. There is no policy that deems sex between a Jew and a non-Jew to be illegal, nor any romantic relationship restrictions. Neither does Israel have a specific marriage policy. Instead such duties are left up to the religious leaders of the different communities. This allows each community to preserve its own marriage rites and practices. However since marriage is presided over by a religious authority, few if any marriages between Jews and non-Jews have taken place. As a result, people may pursue relationships as they see fit in accordance with their own customs, but not to the level of state recognition. Israel will recognize ‘mixed’ marriages performed outside of Israel, but will not allow those services to occur within its borders, even with converts to Judaism. Thus, Israel’s

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214 The Citizenship and Entry into Israel (Temporary Provision) Law, 2003 Article 2 Israel.

215 Ibid.


217 Ibid.
policy of trying to keep the Jewish population ‘pure’ reflects the goals of the Prohibition of Mixed Marriages Act without the restrictions of the Immorality Act.

Just as South Africa tried to differentiate within the Black population through the use of ethnicities and tribes, so too has Israel tried to classify the Arab population into different groups. A law passed in February of 2014 has recognized Christians as their own minority, distinguishing them from their Arab brethren who are Muslims. The move is seen as an attempt to create divisions within the Arab sector of Israeli society, weakening their political power and opposition to the dominant Jewish rule.

One of the major activities of Israel is its policy of land expropriation, which it has pursued since its foundation. A number of different laws have been enacted to this end, including the Defense Regulations (Times of Emergency) Regulation 125 from 1945, which was enacted under the British Mandate of Palestine. This regulation gives the power for a military commander to create a closed military zone in any area and to control who may enter and exit. This by itself does not constitute land expropriation until it is used in conjunction with other laws such as the Land Acquisition (Validation of Acts and Compensation) Law of 1953. This law stated that any land that was

was not in the possession of its owners; and ... that within the period between the [14th May, 1948] and the [1st April 1952] it was used or assigned for purposes of essential development, settlement or security ... and that it is still required for any of these purposes.


219 Defense Regulations (Times of Emergency), 1945 Regulation 125 Israel.

220 Land Acquisition (Validation of Acts and Compensation) Law, 1953 Article 2 Israel.
will become the property of the Development Authority. Used in conjunction the first law allowed for certain areas to be declared as closed military zones for security purposes while preventing the rightful owners access to that land. Then when the latter law came into effect, it saw those areas as being confiscated for security purposes, and those areas which were still required, which was mostly likely all of them, were then handed over to the control of the Development Authority. This effectively kicked Palestinians off of their land and then expropriated it for use by the Israeli government. As noted earlier, this land was then deemed unable to be sold or transferred and thus that land could no longer be returned to its Palestinian owners. These laws fit a common theme within Israeli law in that no single law by itself is particularly discriminatory, but it is rather when multiple laws are used together that discriminatory effects appear.

Another law from this same time period that was used to expropriate large swaths of previously Palestinian land was the Absentees’ Property Law of 1950 which declared that any person who between November 29, 1947 and May 19, 1948 owned land in what became Israel, and who was a citizen of another country in the Middle East, or was outside of Israel during that time, or who was a Palestinian who left his or her residence for some place outside of Israel or within but which was fighting its creation, was declared to be an ‘absentee.’221 The land held by ‘absentees’ was then given over to the control of the Custodianship Council for Absentees’ Property, effectively expropriating all land from any Palestinian who at any time had left their home in that roughly six-month period. Article 27 does set forth a provision to allow people to clear their name from the ‘absentee’ list if they are able to prove that the reason for their leaving was “for

221 Absentees’ Property Law, 1950 article 1 Israel.
fear that the enemies of Israel might cause him harm, or ... otherwise than by reason or for fear of military operations, the Custodian shall give that person, on his application, a written confirmation that he [sic] is not an absentee.”222 What is conspicuously missing from this law is that fear of military action on behalf of the forces establishing the state of Israel is not a valid excuse for leaving, meaning that the Palestinians who were ethnically cleansed from their homes were not able to get their land back. This law in conjunction with the 1945 Regulation 125 has also allowed Israel to expropriate large amounts of Palestinian land.

A number of other laws have allowed Israel to continue its practices of expropriation beyond the initial years of its existence. The 1981 Public Lands Law, through the 2005 amendment, allowed Israel to enact emergency orders calling for the evacuation of people from certain areas. This has been primarily used to evacuate the Bedouins in the Negev desert, who are Arabs but who are also citizens of Israel.223 Likewise the Land (Acquisition for Public Purposes) Ordinance allows land to be confiscated on the premise of ‘public purposes,’ which has been applied confiscate land in Israel owned by Palestinians. Amendment 10 allows the State not to use the land for it’s originally intended purposes while preventing it from being returned to the original owners if it is controlled by a third party, or if 25 years have passed since the original order.224 These laws allow Israel to evacuate areas and confiscate the land for ‘public

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222 Absentees’ Property Law, article 27(a).

223 Adalah: The Legal Center for Arab Minority Rights in Israel, "Public Lands Law (Eviction of Squatters)."

224 Adalah: The Legal Center for Arab Minority Rights in Israel, "Land (Acquisition for Public Purposes) Ordinance - Amendment No. 10"
purposes’ even if the land is never used for the original purposes, which is a clearly discriminatory policy when used disproportionately against Palestinian land.

In addition to expropriating land, Israel has also annexed land into its territory, a move that has not been recognized by the international community as legitimate. Under the 1980 Basic Law: Jerusalem, Capital of Israel, East Jerusalem was annexed into Israel and the city ‘complete and united’ was designated as the capital of the State.\(^{225}\) Additionally the Golan Heights Law of 1981 states that “The Law, jurisdiction and administration of the state shall apply to the Golan Heights.” effectively annexing Syrian territory into Israel and applying civil law over it.\(^{226}\) With these two laws Israel has added land to its territory that which is still considered under military occupation and thus cannot be annexed. The United Nation’s Security Council (UNSC) Resolution 478 of 1980 specifically addresses the annexation of East Jerusalem. Article 3 declared the Basic Law on Jerusalem to be “null and void and must be rescinded forthwith.”\(^{227}\) Likewise, UNSC Resolution 497 declared Israel’s annexation to be illegal.\(^{228}\) While Israel has tried to annex territory that is internationally recognized as occupied into its borders, these actions have been decried by the international community.

Most regimes that seek to control any portion of their populations do so through some measures of security and control; Israel and South Africa are no different. Israel controls its citizens through a number of different methods: two of the main ones include

\(^{225}\) Basic Law: Jerusalem, Capital of Israel, 1980 article 1 Israel.

\(^{226}\) Golan Heights Law, 1981 article 1 Israel.


the control over organizations and the use of detention. Israel’s control over organizations comes mainly from affecting funding and funding sources. A 2011 law concerning foreign funding stipulates that any recipients of monetary support from Foreign States have to disclose it on a quarterly basis. The information required includes: the identity of the donor; the amount of support; the goals of the support; and the condition of the support. This allows the state to know who is funding what organizations and in what capacity. However, article seven states that the World Zionist Organization, the Jewish Agency, the Jewish National Fund, and United Israel Appeal, as well as their subsidiaries, are exempt from disclosing their foreign donors. The major organizations working for the Jewish population in Israel and on Jewish immigration are excluded from this transparency while all other organizations, including all of those working for the benefit of the Palestinians are not.

The second way Israel affects funding is through the Budget Foundations Law (Amendment No. 40) of 2011. This amendment allows the Minister of Finance to reduce State funds to organizations that have spent money which has the essence of “rejecting the existence of the State of Israel as a Jewish and democratic state ... [or] incitement to racism, violence or terrorism ... [or] commemorating Independence Day or the day of the establishment of the state as a day of mourning,” among others. The last condition specifically targets the Palestinian population who associate the creation of the state of

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229 Law on Disclosure Requirements For Recipients of Support from a Foreign State Entity, 2011 article 2 Israel.

230 Ibid., article 7.

231 Budget Foundations Law (Amendment No. 40), 2011 article 1 Israel.
Israel with the ethnic cleansing of their people from the same land, in what they call “the Nakba” or Catastrophe. The law makes it so that any group that commemorates this event will receive less state funding for their organization, which is an economic tool to silence criticism of Israel while promoting the state’s official narrative.

The use of detention is one of Israel’s main tools to curb opposition to its policies and occupation of Palestine. The Emergency Powers (Detentions) Law of 1979 gives the Israeli state the legal right to detain people. Article 2(a) allows the Minister of Defense to hold people based on state security or public security reasons for a maximum of six months. The law continues, stating that if necessary there may be an extension “of the original detention order for a period not exceeding six months; and the extension order shall in all respects be treated like the original detention order.” It would seem that detention for security matters may last a total of a year, however the last clause which states that ‘the extension order shall in all respects be treated like the original detention order’, allows the extension process to be renewed indefinitely. As mentioned with South Africa, such treatment of prisoners of indefinite amounts of time, without trial is know as Administrative Detention, which is a staple of Israeli policy. The rest of the detention policies are based on this law.

A number of other laws have added additional aspects to the administrative detention set forth in the above law. The 2006 amendment to the Criminal Procedure Law increased the amount of time a security suspect could be held. This includes a waiting period of 96 hours, as opposed to the original 48, before the suspect is brought to a judge.

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232 Emergency Powers (Detention) Law, 1979 article 2(a) Israel.

233 Ibid. article 2(b).
and a person could be held for a period of 20 days, instead of 15, for indictment.\textsuperscript{234} The justification for this was that the investigation and human life might be at stake, warranting extra time to ensure completeness on the part of the investigators. However, the reality of these justifications is unknown and it may be an excuse to exercise further control over detainees. Likewise a 2008 law made it so that interrogations of security suspects were no longer required to be audio and video recorded.\textsuperscript{235} Without such evidence to verify how information was gathered from security detainees, any methods, including torture, could be used. The measure effectively removed the oversight from the treatment of security suspects, the majority of whom are Palestinians.\textsuperscript{236} This lack of oversight was marginally corrected in 2012 with another amendment that would have require such recordings for suspects charged with crimes that would have 10 year minimum sentence, however the exemption was extended until summer of 2015.\textsuperscript{237} Though changes have been attempted, little has been done to protect the rights of Palestinian security detainees.

The detainees’ right to legal counsel has also been hindered by Israeli legislature. Amendments 40 and 43 of the Israeli Prisons Ordinance limit the access to lawyers. The former act prohibits meetings between lawyers and security detainees if it is suspected

\textsuperscript{234} Criminal Procedure Law (Detainees Suspected of Security Offence (Temporary Measure), 2006 article 3,4 Israel.

\textsuperscript{235} Adalah: The Legal Center for Arab Minority Rights in Israel, "Criminal Procedure Law - Interrogating Suspects - Amendment No. 4."

\textsuperscript{236} Ibid.

\textsuperscript{237} Adalah: The Legal Center for Arab Minority Rights in Israel, "Criminal Procedure Law - Interrogating Suspects - Amendment No. 6."
that information about terrorist organizations will be passed.\textsuperscript{238} The latter law allows the number of lawyers able to visit an individual prisoner or group for a three-month period, with possible extensions.\textsuperscript{239} These laws serve to limit the access to legal counsel, and by extension knowledge of the laws and judicial procedures, of those charged with security offenses. All of these laws are intended to reduce the oversight and protection of security detainees in the Israeli Prison System, most of whom are Palestinian, as a measure of control over the Arab minority population.

It is not only the Israeli system of detention and control that is discriminatory towards Palestinians, but also the court system. In much the same way that the education system promotes a single ideology, the 1980 Foundations of Law Act declares Jewish tradition as the basis of the Law. Article one states that “Where the court, faced with a legal question requiring decision, finds no answer to it in statute law or case-law or by analogy, it shall decide it in the light of the principles of freedom, justice, equity and peace of Israel's heritage.”\textsuperscript{240} Thus, when there is no legal precedent, the courts are allowed to use Jewish heritage to decide cases, which in some cases forces others to live by values and traditions to which they do identify or agree, instead of reason or a common set of values that all Israelis agree upon.

Another form of discrimination in the court system is the so-called ‘Amnesty’ or ‘Pardon’ Law. This law allowed for the pardon of people who protested Israel’s

\textsuperscript{238} Adalah: The Legal Center for Arab Minority Rights in Israel, "Israeli Prisons Ordinance - Amendment No. 40 (Meetings with Lawyers)."

\textsuperscript{239} Adalah: The Legal Center for Arab Minority Rights in Israel, "Israeli Prisons Ordinance Amendment No. 43 - Prisoner-Attorney Meetings.

\textsuperscript{240} Foundations of Law Act, 1980 article 1 Israel.
withdrawal from Gaza, provided that there was no prison sentence. The effect of this law is that those who had reasons to protest Israel’s withdrawal for occupied Gaza were able to be pardoned, whereas people who face similar sentencing for other protests are not given the same treatment. Palestinians who protest Israel’s policies receive harassment from others are not pardoned for minor offenses, but Jewish citizens who violated the law in the exact same manner, albeit motivated by a different political ideology, were let off. This is often the case, as will be seen later, with offenses that occur in Occupied Territories.

The examples above show Israel is complicit in many of the same acts of apartheid as South Africa, though they might exist in different forms. There is, however, one area in which Israel greatly differs from South Africa in the laws that it has passed: laws promoting the heritage of the dominant ethnicity. This is done in a number of different ways; some of the laws cater to Jewish tradition, while others to organizations and ideology. One such law is the Law and Government Ordinance from 1948 which declared the official state holidays. Except for Israeli Independence Day, all of the holidays listed are Jewish holidays, there are no days set aside for either Christian or Muslim holy and sacred days. Similarly, the 1967 Protection of Holy Places Law states that “The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different

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241 Adalah: The Legal Center for Arab Minority Rights in Israel, "Termination of Proceedings and Deletion of Records in the Disengagement Plan Law."

242 Adalah: The Legal Center for Arab Minority Rights in Israel, "Law and Government Ordinance, Article 18A."
religions to the places sacred to them or their feelings with regard to those places.”

While this law is general in its coverage of sacred sites, in practice the only sites that have been labeled as ‘Holy’ are specifically Jewish, while places holy to Christians, Muslims, or Druze have not been given that distinction. Additionally, the Knesset Law from 1994 made it so that during the opening session of the Knesset passages from Israel’s founding document, the Declaration of the Establishment of the State of Israel, would be read to “emphasize the exclusive connection of the state to the Jewish people.” Finally, a minor point in comparison in this context, is the 1998 law that required the Hebrew date be used in all official communications. The commonality between these laws is that it sets up Israel as a State of the Jewish people. The use and preservation of Jewish holidays and holy sites affirm that the dominant culture is that of the Jewish people, and anyone who does not fit is not included and an outsider. This fact is emphasized by the blatant reminder at the opening session of the Knesset, which includes Arab members who would not necessarily find this introduction respectful of their views and historical experience.

Israeli law has promoted the work of organizations whose sole purpose is to benefit the Jewish people. Both the World Zionist Organization (WZO) and the Jewish National Fund (JNF) have both been given quasi-governmental status as organizations. The World Zionist Organization - Jewish Agency (Status) Law states that “The [WZO],

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244 Adalah: The Legal Center for Arab Minority Rights in Israel, "Protection of Holy Sites Law."

245 Adalah: The Legal Center for Arab Minority Rights in Israel, "Knesset Law."

246 Adalah: The Legal Center for Arab Minority Rights in Israel, "Use of Hebrew Date Law."
which is also the Jewish Agency, takes care as before of immigration and directs absorption and settlement projects in the State.”247 By this law the WZO, not the government, is responsible for immigration, which given the name of the organization means specifically the Jewish immigrants. The WZO’s mission statement declares that it is

committed to promoting the Zionist idea and the Zionist enterprise as vital and positive elements of contemporary Jewish life … [while] encouraging the return to Zion, fashioning an exemplary society in the Jewish state, expanding Zionist education including Hebrew language instruction, settling the land, and combating Anti-Semitism.248

From this statement it is clear that this organization has no intention to help the Palestinians, or any other non-Jewish citizen of Israel. Likewise, the Keren Kayemet Le-Israel (JNF) Law incorporates the JNF into Israel giving the new creation all of the powers of the original body.249 Its original function was “to purchase land for a Jewish State in Ottoman-controlled Palestine,”250 and if its function were to continue, then this would most likely entail acquiring as much land as possible for the Jewish people. As stated earlier, the JNF has 10 out of 22 seats on the Israel Land Council giving it access and control to land to be used for the Jewish State. With the passing of these laws both the JNF and WZO because part of the government apparatus, at least partially if not completely, and both work direct for the benefit of the Jewish people exclusively. There are no organizations with a similar status in Israel working for the betterment of peoples

247 World Zionist Organization-Jewish Agency (Status) Law, 1952 article 3 Israel.


249 Keren Kayemet Le-Israel Law, 1953 article 4 Israel.

excluded by WZO and JNF policies. While not problematic in their own right, the laws become discriminatory with the privileged position given two these organizations and not to any others.

Just as with the state controlled education, state controlled media has a specific narrative that is presents to the public. The Broadcasting Authority Law of 1965 set up the state run media which provided

educational, entertainment, and informational programs in the fields of policy, society, economy and industry, culture, science, and the arts, with the goal of ... strengthening the bond with Jewish heritage and values and enhancing the knowledge thereof, Reflecting the life of the Jews in the Diaspora communities; [and] advancing the goals of state education as described in the State Education Law, 5713-1953.251

Meanwhile it would maintain “Broadcasts in the Arabic language for the needs of the Arabic-speaking population,” but fails to define what those needs might be.252 This law provides programming about culture and heritage to the Jewish population while simultaneously providing Arabic programming to serve that population’s needs, but not necessarily anything culturally specific. Thus what was supplied to one segment of the populous was linguistically separate with the quality and quantity of programming likely being biased toward the Jewish sector. In 1990, a second state media company was established and, like the first, its goals were to “promote Israeli Hebrew creations ... [and express] the Jewish heritage and its values and the values of Zionism ... [while maintaining] broadcasts in the Arabic language for the needs of the Arabic-speaking

251 Broadcasting Authority Law, 1965 article 3 Israel.

252 Ibid.
population." Like the first company, this one provides programming on the Jewish values and culture, but says nothing about the culture of non-Jewish citizens. It is interesting to note that the references to programming in Arabic matches verbatim, keeping the ambiguity of exactly what the needs of the Arab population are. All of these laws are discriminatory in that they privilege the needs of the Jewish community while ignoring any similar needs of the other communities. It would seem that the services provided concerning observation of holidays, preservation of holy sites, and culturally relevant media are distinct, and wholly unequal, depending on whether or not one is part of the dominant culture or a minority citizen.

**South African Framework: Occupied Palestinian Territories**

Using the same framework for apartheid developed for South Africa, one can also look at the areas of the Gaza Strip, the West Bank, and East Jerusalem, commonly known as the Occupied Palestinian Territories (OPT). While some may disagree as to whether or not it is an occupation, after all Israel did annex East Jerusalem albeit without international consent, they will be designated as OPT for the use of shorthand as well as the terminology is less important the conditions therein. The way the West Bank is currently divided is important to understanding many of Israel’s policies. The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, also known as Oslo II, created three areas within the West Bank, and at the time Gaza, labeled A, B, and C. Area A is supposed to be under the full control of the Palestinian Authority, Area B under

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253 Second Authority for Television and Radio Law, 1990 article 5 Israel.
Palestinian civil control and Israeli military control, and Area C under complete Israeli control.254

The designation of these areas has served the benefit of the Israelis in a number of ways. Classification was important in South Africa to distinguish between the various racial groups designed by the government. When it comes to the Palestinian territories classification plays major role. Israel issues identification cards to all of its citizens and to people living in the OPT with different colored card holders depending on the location: all Israelis get blue holders, Palestinians in the West Bank or Gaza get green or orange ones.255 The designation of residence by color does not necessarily discriminate based on race, as Arab Israelis have blue holders, but Israelis living in the settlements are still considered Israeli citizens, and thus they have blue holders while the Palestinians living in the nearby villages have green or orange. The result is discrimination where Jews living in illegal settlements are given different cards than their Arab neighbors living in the OPT.

There are restrictions on political rights in the Palestinian territories. The Declaration of Principles on Interim Self-Government Arrangements, more commonly known as the Oslo Accords, and Oslo II, set parameters in which the residents of these areas were able to vote for their own civilian government, called the Palestinian Interim

254 Human Rights Council, Twenty-Second Session, Agenda Item 7. Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. [HRC]

Self-Government Authority (Palestinian Authority or PA). The effect of this is that the Palestinian people in the OPT, including those in East Jerusalem, were allowed to vote for a civilian elected government. This government would then replace the current military rule in Area A, and allow for civil control in Area B. As a result, for most Palestinians, there is an elected civil government. However, since the Israeli military still controls the area, there is a discrepancy between how offenses are prosecuted and punished. Additionally, since the Israeli military controls security, there is no Palestinian civilian oversight, meaning that their elected officials can in no way control the actions of the IDF. While the Palestinians are able to elect their own civilian government, this government has no authority or control over the Israeli military apparatus still in place.

Economic rights for Palestinians are another matter. For the most part, Palestinians living in the West Bank and Gaza lack most economic rights to land around them due to different factors, including securing building permits, access to water, access to natural resources and land, and the blockade of Gaza. One of the major problems that Palestinians face living in the OPT is the possibility that their home or building will be demolished by the Israeli military. Often the justification for this is that these structures were built illegally without the requisite permits. However, a 2012 report issued by the Office of the High Commissioner for Human Rights (OHCHR) notes that “in the last 20 years, 94 per cent of permit applications were denied.” In addition, article 331 of the military security provisions states that it is illegal to build over any structure that has been


257 HRC, 15.
seized and then demolished. The inability to get a permit to build, as well as restrictions on location, necessarily impact the ability for Palestinians to have economic security as a home, or even a new business, may be demolished.

In the Middle East, water is one of the most precious resources due to its scarcity. One major problem is the equality of the distribution of water. A 2009 report by the United Nations Conference on Trade and Development (UNCTAD) notes that “Out of a total annual water supply originating in the territory [the West Bank] of 800 million cubic metres, the Palestinian inhabitants were allowed the use of only 110 million cubic metres, despite rapid population growth.” This means that the Palestinians only get 13.75 percent of the water located within their own land. Likewise a 2011 report from Oxfam notes that one particular settlement of 9,400 people was using 45 million cubic meters (mcm) which “constitutes almost a third of the quantity of water allocated to the 2.5 million Palestinians living in the West Bank.” This means that the settlers get to use 4,787 mcm of water per person, while the Palestinians only get 54 mcm per person. From these numbers it is obvious that the water available is not the issue, but rather the grossly unequal distribution of this resource. Water, which is necessary for eating, bathing, cleaning, and caring for crops, has a huge impact on the quality of life. The OHCHR report notes that 30 wells in Palestinian villages have been taken over by settlers,


reducing the communities’ access to water.\textsuperscript{261} The report also states that since 2010, Israeli authorities have been responsible for the “Destruction of water infrastructure, including rainwater cisterns.”\textsuperscript{262} These two facts, combined with the difficulties to obtain a building permit, means that Palestinians are losing access to water through illegal expropriation and destruction of wells while not being allowed to build new infrastructure to combat these acts.

Another way in which the economic rights of Palestinians is impaired, is the ability to access natural resources of the land. The construction of the Security Fence/Separation Barrier (which will be referred to as the Barrier from here on) has huge implications. The path of the Barrier is such that is cuts off villagers from their land, be it fields or tree groves.\textsuperscript{263} The erection of a physical barrier between villagers and their land prevents them from working on their land and reaping its agricultural benefits. This impoverishes Palestinians and denies them access to a livelihood.

Additionally, a 2011 report from the Palestinian Ministry of National Economy notes that the Israeli government prevents Palestinians from exploiting many of the natural resources in the area.\textsuperscript{264} One example is the extraction of minerals from the Dead Sea. The area of the West Bank which borders the Dead Sea is labeled as ‘Area C,’ which is under Israeli control, and has been declared a closed military zone preventing the

\begin{footnotes}
\item[261] HRC, 17.
\item[262] Ibid., 18.
\item[263] Ibid.
\end{footnotes}
Palestinians from accessing it.\textsuperscript{265} Even if the Palestinians had access to the Dead Sea, the inability to get building permits would further impair the ability to make use of this resource. Likewise, most of the quarries in the West Bank are located within ‘Area C’ the rights to which are given over to Israeli companies, preventing Palestinians from exploiting these resources as well.\textsuperscript{266} The result of these policies is that the Palestinians are systematically separated from their land and the natural resources found there, be it agricultural or mineral, denying them economic rights.

Just as there is control over the economic activities in the West Bank, the situation in Gaza has many similar features. While the Israeli military does not control Gaza on the ground, its control of the borders has major negative effects on the people. Israel, with cooperation of Egypt, prevents most exports from leaving the area, preventing any sort of economic trade from occurring with the area.\textsuperscript{267} Additionally the blockade of Gaza limits the access of fishermen to within 3 nautical miles of the coast, preventing them accessing 70 percent of their recognized rights under international law.\textsuperscript{268} The lack of trade opportunities and access to the sea has led to the continued impoverishment of the Palestinians in Gaza to the point where Human Rights Watch reports that more than 70 percent are receiving humanitarian assistance.\textsuperscript{269} These policies as well as those in the

\textsuperscript{265} Economic Costs.

\textsuperscript{266} Ibid., 19.


\textsuperscript{268} Ibid.

\textsuperscript{269} HRW 2014
West Bank show how Israel has complete control over the economic activities of the Palestinian people.

The separation of people and spaces was a major part of the apartheid system in South Africa. This was accomplished through creating spaces for individual races, and controlling the movement of people. As stated above, the West Bank is separated into three areas, each with varying levels of Palestinian and Israeli control. In the OPT, a similar separation of spaces is accomplished through two means: the building of settlements, and the construction of the Barrier. According to the OHCHR, 60 percent of the West Bank is denoted as Area C. Settlements are communities that are built in the West Bank on expropriated land for use by the Israeli population. This act is illegal under article 49 of the Fourth Geneva Convention of 1949 which states that “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” However, this has not deterred Israel from doing so. In the West Bank only three percent of the land is taken up by settlements, but with buffer areas, and area allocated for expansion, 43 percent is designated to their use. The settlements are only for use by the Israeli population, and not the Palestinian population of the OPT. This effectively creates separate spaces, one for the Israelis, one for everyone else, and, given that 60 percent is Area C, this leaves 40 percent for the Palestinians. According to the

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270 HRC, 6.

271 Convention (IV) relative to the Protection of Civilian Persons in a Time of War, Geneva August 12, 1949, article 49 [Geneva Convention 4]

272 HRC, 9.
OHCHR report, there are roughly 320,000\textsuperscript{273} settlers living in the West Bank with a Palestinian population of roughly 2.5 million,\textsuperscript{274} effectively giving slightly over 10 percent of the population, the majority of the land for their use.

The Barrier serves a similar purpose to the settlements. Julie Peteet notes that the Hebrew word for separation is ‘hafrada’ and is often used in conjunction with the Barrier. By designating the Barrier as the separation Barrier, its purpose becomes quite clear. If its construction had been purely for security reasons, then one would expect that its path would follow the 1949 armistice line or “Green” line. Instead, 85 percent of the Barrier lies within this area, partitioning the Palestinian population.\textsuperscript{275} Human Rights Watch notes that those caught between the Barrier and the ‘Green’ Line are not allowed to enter into Israel, and therefore must cross the Barrier to access services located in the West Bank.\textsuperscript{276} As noted above, the Barrier also is used to cut of Palestinians from their land, and with the use of things like military order 125 used to declare land closed military zones, which is then declared ‘abandoned.’ The erection of the Barrier and the settlements can be seen as being used to push Palestinians into smaller spaces while increasing the area allotted to the Israeli population.

The movement of the Palestinian population is severely curtailed by the Israeli military through a series of checkpoints and physical obstructions, while roads are built to facilitate movement between the settlements and Israel. According to B’Tselem, the

\textsuperscript{273} HRC, 9.


\textsuperscript{275} HRW 2014, 2.

\textsuperscript{276} Ibid.
Israeli Information Center for Human Rights in the Occupied Territories, as of February 2014 there were 99 fixed checkpoints located within the West Bank, 59 of which were internal and the remaining located on the border.\textsuperscript{277} The fact that 60 percent of the fixed checkpoints were located within the West Bank indicates that the control of movement is not restricted to crossing from the OPT into Israel, but is also restricted from village to village within the territories. Additionally, in December there were 256 so-called ‘flying’ checkpoints, which were set up at the whim of the Israel military.\textsuperscript{278} Unlike the fixed checkpoints these are setup without warning, which can severely impact the movement of Palestinians who are not expecting to have delays or blockages only to find a new checkpoint exists. The ID cards play a major role in controlling movement by deciding who is allowed to pass where. Those with the blue Israeli cards have the freedom to go wherever they please, while the Palestinians living in the OPT are restricted to their own area, unless they have permits stating otherwise. This includes restricting access to places of worship, such as mosques and churches, through the use of closures of checkpoints and delays.\textsuperscript{279} The use of checkpoints is not just a means to weed out those who wish to do harm, but it also affects people who are trying to attend a religious service or any other activity which requires one to travel, even just within the West Bank and not into Israel.

While the Palestinian population of the OPT is subject to delays and closures, the Israeli population in the settlements gets ease of travel through the use of bypass roads.


\textsuperscript{278} Ibid.

\textsuperscript{279} HRC, 13.
These roads are accessible only to Israelis and cut through the West Bank, connecting settlements with Israel. According to B’Tselem there are 65.12 km of bypass roads in the West Bank, some of which Palestinians are not allow to cross with vehicles, forcing them to find alternate forms of transport once on the other side. These roads also hinder Palestinian movement by limiting which roads Palestinians can use or even cross, forcing them to find new transportation or alternate routes that may take longer to reach their destination. The result is that Jews, and Israelis in general, have more mobility rights in their ability to travel throughout Israel and the OPT, than the Palestinian populations living in the OPT, who are subject to checkpoints and delays in traveling between villages. Such movement restrictions also have economic effects as delays prevent good from arriving at market in a timely manner, but also health effects as delays affect the ability of ambulances to travel quickly in times of emergency.

A major part of the apartheid system in South Africa was the creation of ethnic homelands, or Bantustans, for the Black population. The idea was that the Black population would have its own pseudo-nation states, with their own semiautonomous governments. The idea the Israel would seek to recreate these states is not a foreign idea. Writing over a decade ago, Avi Primor made this exact argument with respect to, then Prime Minister, Ariel Sharon’s policy towards the OPT. Primor notes the “enclaves were surrounded by South African territory and run by collaborators totally subservient to

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280 Restriction of Movement – B’Tselem.


the authority of the larger ‘neighbor,’ South Africa.”283 If one replaces South Africa with Israel, then looks at a map of the Palestinian population vis-a-vis the settlements in the OPT, it seems clear that is exactly what is happening (see appendix A). The OHCHR reports that Israel’s settlements create enclaves in the West Bank, fragmenting the territory. Additionally, it notes that route of the Barrier “threatens to divide the West Bank into two separate areas and cut off East Jerusalem from the rest of the West Bank.”284 If this were to happen, the lack of any continuous Palestinian territory would make the creation of a Palestinian State nearly impossible.

A major part of the Bantustans was that each one had its own civilian government distinct from that of the White areas next door, while still being controlled by the South African military. As stated above, Israel’s illegal settlements in the West Bank are home to Israeli citizens who live under Israeli civil law. Likewise the Palestinians in the OPT live under the rule of the Palestinian Authority if they are within Areas A or B. The settlements in Area C are under Israeli control, A is Palestinian control, and B is Palestinian civil and Israeli military control. The result is two sets of laws for two different people: if you are Israeli, you get Israeli civil law, if you are not, you get Israeli military and Palestinian civil law.285 Subsection six of article one of Oslo II states that the Joint Civil Affairs Coordination and Cooperation Committee will be the liaison between the Palestinian Authority and Israel, meaning that the PA is not an autonomous entity but

283 Primor, Haaretz.

284 HRC, 8.

is still required to coordinate with Israel.\footnote{Oslo II, article 1(6).} Thus, the picture seems to be that the Palestinian areas of the West Bank are shrinking with the expansion of the surrounding Israeli settlements, while the Palestinians themselves live under a civilian government which must continue to report to and coordinate with the Israeli government. The effect of this seems to be the creation of a Bantustan-like situation for the Palestinians. Nor does Israel have any interest in annexing the entirety of the OPT and absorbing its population into its own as citizens, for it if did, it would compromise Jewish character of the Israel state. Rather, Israel’s goal is to keep the land, without the Palestinian population residing on it and thus forcing them into small semi-autonomous enclaves without having any responsibility for their welfare.

Control by the security forces was a major part of South Africa’s apartheid regime, and the same continues to be true in the Occupied Palestinian Territories at the hands of the Israeli military. The military courts are the main source of judicial process for the Palestinians. Military order 10 from the Order Regarding Security Provisions of 2009 states that “A military court is authorized to adjudicate any offense defined in security legislation and law.”\footnote{Military Order 2009, article 10.} The effect is that whenever a security offense is committed, which most offenses count as, the Israeli military has the authority to try those charges in its own courts. Additionally Order six under the Proclamation Regarding Implementation of the Interim Agreement (Proclamation No. 7) gives the military power over the settlements, Area C, “any matter relating to the external security of the region, the security and public order of the settlements, military sites and Israelis, [and] security
and public order in areas under the responsibility of Israeli security.” This proclamation is vague enough to allow it to be applied wherever in the OPT. Protests against settlements and the Barrier, which is likely defined as a military site, fall within this order allowing the Israeli military to arrest people even in Area A for supposed offenses. To ensure that there is no confusion or possible legal recourse, article eight of Order 130 of Orders Regarding Interpretation declares that “Security legislation takes precedence over any law, even if it does not explicitly cancel it.” This makes sure that security legislation overrides civilian law in cases where a discrepancy exists, forestalling any claims that the charges were brought to the wrong court.

Like South Africa, Israel has used administrative detention to hold security suspects for indefinite amounts of time. Military order 273 concerning security provisions is nearly verbatim from the 1979 Emergency Powers Law which allows the detention of security suspects for six months with a possible six month extension, in which the extension is treated like the original so as to allow for an indefinite number of extensions. According to the 2014 World Report from Human Rights Watch “As of September 30 [2013], Israel held 135 Palestinian administrative detainees without charge or trial, based on secret evidence.” This allows Israel to keep particularly active


290 Military Order 2009, article 273.

291 HRW 2014, 2.
Palestinians from organizing against Israel and the encroachment onto Palestinian land by holding them for indefinite periods and without disclosing the exact reasons why.

A vast number of offenses are listed under Israeli military order for which one can be arrested. Some of these offenses carry with them punishments that seem completely disproportionate when compared with others. One in particular is the punishment for throwing things. By order 212 of the security provisions

A person who throws an object, including a stone- (1) In a manner that harms or may harm traffic in a transportation lane shall be sentenced to ten years imprisonment; (2) At a person or property, with the intent to harm the person or property shall be sentenced to ten years imprisonment; (3) At a moving vehicle, with the intent to harm it or the person traveling in it shall be sentenced to twenty years imprisonment.292

Thus, the throwing of a stone, a common occurrence in the OPT, carries a sentencing of at least ten years based purely on intent regardless of whether the stone hit its intended target. Also, intent seems to be implied by this law, as it is unlikely that a person would throw a stone at something, without intent to hit it. To put this law in context, kidnapping carries a sentence of ten to twenty years imprisonment, unlawful imprisonment carries only three to five, and assaulting a soldier gets 10 years, threatening a soldier gets seven, and insulting a soldier gets one.293 Thus throwing a stone at something or someone carries a stronger punishment than insulting a soldier or falsely imprisoning someone.

The ability of the military to control life is manifested in a number of different ways as well. The chapter governing ‘Administrative Powers’ of the security provisions orders give the Israeli military the power to impose curfews, declare military zones,

292 Military Order 2009, article 212.

293 Ibid., articles 213-215.
require the removal or covering of flags or symbols, require information concerning identification, and other security measures as a military commander deems necessary. Another power included is the ability to force shops and public services such as schools and hospitals to open or close at certain times as the military sees important. These are all ways in which the military controls every aspect of the lives of Palestinians. Additionally, article three of Order 101 Prohibition of Acts of Incitement prohibits any “procession, gathering or rally may be held without a permit issued by a military commander” where these congregations of people have a political nature. This makes any form of protest against the Barrier, settlements, or any other policy illegal without a permit, and if these permits are anything like those for buildings, the chance of obtaining one is incredibly low.

When it comes to security control, the court system is also important, especially how it treats settlers and Palestinians who commit similar crimes. An important law to note first is the 2012 amendment to the Civil Wrongs Law. This law creates obstacles for Palestinians living in the OPT to obtain redress for violence carried out by the Israeli military, effectively shielding the state from lawsuits brought against it for violations of law. This gives the IDF license to act with impunity in the OPT no matter the circumstances and justifications for the use of violence.

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294 Ibid., articles 316-332.


296 Adalah: The Legal Center for Arab Minority Rights in Israel, "Civil Wrongs Law - Amendment No. 8 (Liability of the State)."
When it comes to punishing crimes in the West Bank, who is punished and to what extent depends entirely on nationality. In the OPT, Israelis who commit crimes are subject to Israeli civil law and will receive lesser sentences than the Palestinians who are subject to Israeli military law. The Council for European Palestinian Relations (CEPR) notes that when settlers carry out violent attacks against Palestinians, these attacks are often done with the military present, and with little or no legal recourse for their actions.\textsuperscript{297} The OHCHR reports similar findings with “over 91 per cent of all concluded investigations into complaints of criminal offences against Palestinian persons and property in the OPT are closed without an indictment being served, mostly due to investigative failures” even when most of these attacks occur in broad daylight, and in the presence of Israeli security forces.\textsuperscript{298} Conversely, “Between 90 to 95 per cent of cases against Palestinians are investigated and go to court."\textsuperscript{299} If a settler attacks a Palestinian during the day, with witnesses, little if anything is likely to be done; an attack by a Palestinian will most likely result in an arrest and be brought to court. Even if the settler is brought to court, the systems of law are such that the punishments given will be wildly unequal.\textsuperscript{300}

The comparison between Israel and South Africa is not an uncommon one, and indeed there are some similarities. Using a framework that includes eight criteria, 


\textsuperscript{298} HRC, 10.

\textsuperscript{299} Ibid.

\textsuperscript{300} Ibid.
classification, political and economic rights, education, separate spaces, Bantustans, control, and the judicial system, the relationship of Israel and the Occupied Palestinian Territories to apartheid has been analyzed. Though there is much in common, Israel stands out from South Africa in the way it creates its laws. Instead of legislating restrictions on the minority citizen population, Israel passes laws that promote the well-being of its Jewish citizens. While some laws do this explicitly, such as those concerning broadcasting or education, others do so in the implementation, such as giving extra benefits to those who serve in the Israeli military. However, South Africa is not the only place where apartheid is defined. Due to its grievousness, the prohibition of apartheid has been instituted into international law.
CHAPTER FIVE: INTERNATIONAL LAW COMPARISON

Apartheid in International Law: Israel

In international law there are two major documents that define apartheid: The Rome Statute of 2002 and the Apartheid Convention adopted in 1973. The criteria set forth in these treaties have many things in common, though worded or categorized differently. Therefore, the guidelines for assessing Israel with respect to international law on apartheid will be based on the Apartheid Convention, as this topic is the focus of the document, with a couple criteria from the Rome Statute that seemed to be missing added in. Additionally, as this section is the second comparison with apartheid, the policies discussed within will be covered more briefly and reference their descriptions above.

The second article of the Apartheid convention lays out six categories of acts that, if committed in combination, constitute apartheid. The first is the denial “of the right to life and the liberty of person” which includes murder and killing, bodily or mental harm, or the infringement on human dignity, and arbitrary arrest and punishment.\textsuperscript{301} Within Israel there is no intentional, or at least large-scale systematic murder of Palestinian and other minority citizens of Israel. As stated above, there are cases of discrimination against them, but they are left to live out their lives as minorities.

The section on human dignity in the Apartheid Convention also includes cruel and unusual punishment, including torture. As discussed in chapter four, laws have been put

\textsuperscript{301} Apartheid Convention, article 2(a).
in place removing oversight of interrogation of security detainees who could be subjected to torture. According to Amnesty International, Palestinian prisoners have been subjected to various forms of torture including stress positions, sleep deprivation, verbal and physical abuse among other things.\textsuperscript{302} In addition to torture, the Rome Statute includes the category of ‘enforced sterilization’ which fits into the section of human dignity.\textsuperscript{303} Accordingly, there have been allegations that Israel had a policy mandating that Ethiopian women immigrants, most of whom are Jewish, be given birth control injections.\textsuperscript{304} If Israel is the homeland of the entire Jewish population worldwide, it is curious that Jewish immigrants would be forcibly sterilized upon entering the country. This policy seems counterintuitive unless, like South Africa, Israel is meant to be a bastion for \textit{White} Jews, while discriminating against its \textit{non-White} population. These acts of torture and sterilization, if true, are clear violations of human dignity engaged in not only against the Arab population, but the Ethiopian Jewish population as well.

The last item under article 2(a) on the right to life and liberty is that of arbitrary detention. As discussed above, the 1979 Emergency Powers Laws gives Israel the ability to hold suspects of security offenses in administrative detention. The ability to hold a person for an indefinite amount of time without trial is a violation of human dignity in that is gives one person or group the right to decide the fate of another without hearing justifications for such treatment.


\textsuperscript{303} Rome Statute, article 7(1)(g).

Article 2(b) is the category dealing with the imposition “of living conditions calculated to cause [the] physical destruction in whole or in part” of a specific racial group or groups.\textsuperscript{305} Israel has been complicit in such actions in a number of different ways, one of which is its policies of land expropriation. Law such as the 1945 Resolution 125, the 1950 Absentees’ Property Law, and the 1953 Land Acquisition Law were used to confiscate land from the Palestinians who were living there, claim it as ‘uninhabited’ or ‘abandoned’ then lease it out to Jewish immigrants. Similarly the Land Ordinance Amendment of 2010 allows Israel to expropriate land for ‘public purposes.’ As 93 percent of the land in Israel is controlled by the State or by the Jewish National Fund, and is exclusively for Jewish use, the land required for ‘public purposes’ must then come from the remaining seven percent, of which all Arab land is a part.

The expropriation of land is not the only way in which Israel attempts to diminish the Arab presence within its population, but is part of a larger ideology of population transfer.\textsuperscript{306} Transfer in this case would mean the relocation of the Palestinians to areas outside of Israel, either in a future Palestinian state, or even in surrounding countries such as Jordan, Syria, and Lebanon.\textsuperscript{307} Such policies and actions are considered apartheid under the Rome Statute.\textsuperscript{308} The idea of transfer is best explained through the adage ‘a

\textsuperscript{305} Apartheid Convention, article 2(b).


\textsuperscript{308} Rome Statute, article 7(d).
land without a people for a people without a land”\textsuperscript{309} or rather the idea that Jewish people needed an empty space on which they could establish their own state. However, seeing as the land of Palestine was not uninhabited, the idea of removing, or ‘transferring,’ the population was developed.\textsuperscript{310} Transfer in Israel is most easily seen today with respect to the Bedouin population who live in unrecognized villages in the Negev Desert. While the Bedouins themselves are Israeli citizens, they have no “basic services, such as running water, electricity, roads, proper education, health and welfare services” because of the nature of their communities.\textsuperscript{311} The buildings in these villages are also likely to be demolished because they have been built illegally.\textsuperscript{312} Additionally, a recent piece of Israeli legislation introduced on June 24, 2013, the Prawer-Begin Plan, could have had the effect of demolishing 35 unrecognized Bedouin villages, displacing an estimated 30,000 - 40,000 people.\textsuperscript{313} This bill was decried by the United Nations High Commissioner for Human Rights, Navi Pillay, in the summer of 2013, who said that it sought to “legitimize forcible displacement and dispossession of indigenous Bedouin communities in the Negev.”\textsuperscript{314} These acts certainly demonstrate an imposition of living


\textsuperscript{310} Ibid.


\textsuperscript{314} Ibid.
conditions to destroy part of the population. While this section of the Apartheid Convention may be interpreted as imposing famine or other hardships that cause death, Israel’s policies rather follow the idea of voluntary transfer, in which is the idea that by making conditions unbearable, the populations will leave on their own, which is nonviolent form of population destruction.315

The third part of article two of the Apartheid Convention covers policies and laws that are exclusionary based on race. This includes a number of different of things from political, economic, and cultural life, to prevention of nationality, and education among other things. As stated above, Israel guarantees many political rights, with all citizens having the right to vote. The only area in which there is not complete political equality is who can run for office, as there are restrictions in place which seem to affect Palestinians more so than Jewish Israelis, such as invalidating the candidacy of anyone who has visited and enemy state, which includes Syria and Lebanon, without permission. In addition, a recent law raised minimum number of seats required to sit in the Knesset that will affect all predominantly Arab political parties. However, this does not prevent Palestinians from running for, or holding office, it just limits who among them can and how many. Likewise, the major impairment of economic rights is that non-Jews are barred from using the 93 percent of the land controlled by the Israel Land Authority, limiting where they rent land to run businesses, factories, or other economic enterprises.

When it comes to exclusion from culture, Israel is more divisive. One area in which Israel differs from South Africa is its plethora of laws that promote the well being of, and give preference to the Jewish people. When there are laws that benefit the culture

315 Zureik, 624.
of the dominant ethno-religious group, anyone who does not share that identity is excluded from being a part of mainstream society. The laws that promote Jewish holidays, holy sites, the values of Judaism and Zionism through the media, and others do not provide any validation of acknowledgement of the cultures and beliefs of minorities, and do nothing to cater to them. Additionally, because Jewish identity is passed down matrilineally, short of conversion to Judaism, most minorities cannot assimilate in to the dominant culture, forever excluding them from being full participants in society.\footnote{Law of Return, 1948 Israel.}

Another reason for this is that there is no ‘Israeli’ nationality which is common to all citizens, instead there are only nationalities based upon ethno-religious affiliations.\footnote{Goldenberg, Tia. "Supreme Court rejects ‘Israeli’ nationality status." The Times of Israel, October 4, 2013. http://www.timesofisrael.com/supreme-court-rejects-israeli-nationality-status/.} This prevents a secular society which is defined by an inclusive, common nationality, and lets race and religion play a secondary role.

While Israeli education policy is not inclusive for the same reason that it promotes the dominant Jewish narrative, it also discriminates by giving preferential treatment to those who served the Israeli military. These laws do not prevent Arab students, who are usually exempt from the compulsory military service, from attending universities and completing tertiary education. They do however make it easier for Jews who have served to do so by subsidizing their tuition, housing costs, and other benefits. Such policies do not so much as discriminate against one racial group, but rather discriminate in favor of another such group.
Subsection D of the Apartheid Convention covers some of the most visible aspects of apartheid, specifically the separation of races through the creation of different areas, or the prevention of marriages between groups. The policies of the Israel Land Authority exemplify the first method of division in that it sets aside 93 percent of the land for use solely by Jews. This includes commercial as well as residential purposes. While Jews not confined to live in this area, Arabs and other minorities are prevented from doing so, which creates an effective separation by defining where the minorities can live and own businesses. In addition, the 2011 Cooperative Societies Act amendment made it so that small communities could decide which applicants to allow to become members of the individual communities. Though the law includes a clause prohibiting rejection of candidacy based on religion, race, nationality, or political views, it did allow for rejection over concerns of social life, and the town’s socio-cultural fabric, which could be used to create Jewish only towns in the remaining seven percent. These policies have created and allow for the creation of areas that are accessibly only to Jews, placing restrictions on minorities in Israel.

Unlike South Africa, Israel has no laws that explicitly prohibit people from different racial or ethnic groups from having sex or romantic relationships. However, since the oversight of marriage is left to religious leaders, this creates problems for ‘mixed’ couples. Marriages between Jews and non-Jews are therefore not prohibited by law, but are rather prohibited by practice, as no Rabbis will oversee such a marriage within Israel. This creates a separation between the Jewish and minority communities as it prevents them from mixing, allowing the minorities to assimilate.
The next part of the Apartheid Convention states that “exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour” is considered to be apartheid. Since minorities in Israel are free to find jobs in whichever sector they like and are able to pursue higher education, the exploitation of Palestinian labor is not a major aspect Israeli society. Additionally, if Israel wishes to stay a Jewish State, it cannot do so by exploiting large numbers of non-Jews as workers.

The last section of article two of the Apartheid Convention deals with those organizations and individuals whose fundamental rights and freedoms are denied because of their opposition to apartheid. This applies to the case of Israel in two different ways. First is the ‘amnesty’ or ‘pardon’ law which gave pardons to people who were charged with protesting in 2005 when Israel withdrew from Gaza. This means that people who opposed Israel’s policy of leaving Gaza were given pardons, while people, mainly Palestinians, who oppose Israel’s occupation of the West Bank and East Jerusalem are not granted the same leniency. Such policy effectively creates a disparity in punishment based on ideology in which those who oppose the occupation are punished more harshly than those who wish to see it continue. Likewise, the ‘Nakba’ law allows the government to remove state funding from organizations that commemorate the ethnic cleansing of Palestine on the same day as Israeli Independence Day. Again, those who see Israel’s creation as a sordid series of events that have deprived the indigenous Palestinian population of their basic human rights are persecuted while those who follow the dominant Israel narrative are not.

\[318\] Apartheid Convention, article 2(e).
Apartheid in International Law: The Occupied Palestinian Territories.

This study of international law focuses on the guidelines set forth in the Apartheid Convention as the basis of comparison between Israel and South Africa. The first section under article two deals with the right to life which includes killing of one group, violation of dignity, and arbitrary punishment. While Israel is not guilty of killing Palestinians as an explicit means of population destruction, there are sporadic instances that have had devastating effects. According to one report, between September 2000, the breakout of the second Intifada, and April 2013, over 1,500 children have been killed, which is roughly one child every three days.319 These killings are not intentional, and they partly took place during the second Palestinian Intifada, but it does not discount the fact that Israelis kill Palestinians on a regular basis, either by military force or as a result of settler violence. While Israel’s violence against Palestinians may not be widespread and systematic, it can be described as episodic, with Operation Cast Lead in 2008-2009 being one of the worst. A report by Amnesty International states that in a 23-day period, from December, 27 2008 and January 18, 2009 approximately 1,400 Palestinians were killed and 5,000 wounded.320 The number of fatalities included 300 children, 115 women, and 85 men over the age of 50, which accounts for over a third of all deaths.321 These numbers indicate that the number of civilian casualties resulting from Israel’s attack is very high, which suggests that either Israeli weapons are not completely accurate, or not

319 Middle East Monitor, "One Palestinian child has been killed by Israel every 3 days for the past 13 years." Last modified June 4, 2013. https://www.middleeastmonitor.com/news/middle-east/6185-one-palestinian-child-has-been-killed-by-israel-every-3-days-for-the-past-13-years.


321 Ibid.
all of the targets were defined within international law. While Israel does not currently carry out plans to systematically kill off the Palestinian population, killings are commonplace and often concentrated in specific attacks such as Operation Cast Lead.

Also included in the right to life is bodily or mental harm as well as the freedom of dignity. The infliction of bodily harm continues from the previous paragraph, while 1,500 children have been killed, a further 6,000 have been injured\textsuperscript{322}. Many of the attacks are perpetrated by Israeli settlers who damage Palestinian land and property as well as people.\textsuperscript{323} The result is that for Palestinians who live near settlements, the threat of violence is high, even without provocation. To make matters worse, there is virtually no punishment for those who carry out such attacks, and so they continue unimpeded.\textsuperscript{324}

Mental harm is committed in a number of different ways, though it would seem that the occupation as a whole is a form of mental injury. The prospect of having a house destroyed surely causes mental anguish, but knowing that one cannot get a permit to build a house, then having it destroyed, would be devastating. Facets of the occupation such as random closures or delays at checkpoints, the route of the Barrier and the land it cuts off from villagers, the destruction or seizure of water infrastructure by the Israeli military and authorities, the expropriation of land to build settlements, and more would seem to be acts that would cause mental harm to those who experience them on a daily basis, especially given that they are done arbitrarily, backed by a racist world view. On the subject of dignity, when it comes to checkpoints, the assumption is that every

\textsuperscript{322} Middle East Monitor 2013.


\textsuperscript{324} HRC, 10.
Palestinian is a security threat. Which, in addition to being racist, carries a feeling of collective punishment.\textsuperscript{325} The ideology of transfer which influences Israel’s attempts to drive the Palestinians from their land is a violation of human dignity as it fails to see other people as humans and treat them as such.

The last section under the right to life is that of arbitrary arrest and imprisonment. As the topic of administrative detention has been covered exhaustively before in the study, little need be stated here beyond the fact that Israel uses it against Palestinians living in the OPT as a means to assert their dominance and control.

When it comes to destruction of a population, Israel’s practices in the OPT are similar but more aggressive to those practiced within Israel itself. The ideology of transfer, which sees the removal of Palestinians from their land to make room for Jewish expansion, belies many Israeli policies. As the Historian Benny Morris has observed, the concept of “transfer was inevitable and inbuilt into Zionism.”\textsuperscript{326} The expropriation of land to build settlements, the route of the Barrier which cuts villages off from fields and groves and then prevents access to that land, the destruction of water infrastructure, the inability to access natural resources, and others are all policies that take economic opportunities away from Palestinians and force them into poverty. In doing so, the idea of transfer would suggest that these actions would induce Palestinians to vacate their land, as life becomes too unbearable. The ultimate goal is that the Palestinian people will leave the West Bank for Jordan or other countries, abandoning the land to the Jewish people, or


\textsuperscript{326} Benny Morris, The Birth of the Palestinian Refugee Problem Revisited, 2\textsuperscript{nd} edition (Cambridge: Cambridge University Press, 2004), 60.
if not possible, the creation of enclaves in which Palestinians have their own citizenship and are not a part of Israel: a situation similar to the Bantustans of South Africa. All of these policies are designed to ethnically cleanse the land the Palestinian population by inducing them to completely leave or put them in the smallest space possible.

Article 2(c) of the Apartheid Convention states that apartheid is any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups.\(^{327}\)

One can look at this passage from a semantic argument and ask from which country are the Israelis excluding the Palestinians. If it is Israel, then the argument makes no sense as the Palestinians are not Israeli citizens and therefore have no claim to be included. If it is Palestine, there is no specific country but rather the territories where the dominant culture is the Palestinian culture, and they cannot be said to be excluded from their own culture. However, the last part of the statement, ‘preventing the full development of such groups,’ is the most useful for this analysis. As has been shown, Israel partakes in many actions which seek to impoverish the Palestinian people. The Barrier divides people and land while the limits on water usage prevent people from effectively farming and tending to groves. The checkpoints inhibit both the movement of workers within the West Bank as well as to Israel, but also slow down the movement of goods from production to market. The designation of land as Area C along with the near impossibility to obtain a building permit prevent the Palestinians from exploiting natural resources in terms of mining and mineral extraction from the Dead Sea. In Gaza, Israel tightly controls what goods can be

\(^{327}\) Apartheid Convention, article 2(c).
imported and exported while denying them access to 70 percent of their maritime rights. These policies do not exclude Palestinians from participating in the economic life of their land, they prevent them from having any sort of meaningful economy or economic growth whatsoever.

The division of people along racial lines through the creation of separate spaces has been well documented in the Occupied Palestinian Territories. As has been discussed, Oslo II has created three different areas in the West Bank with different amounts of Palestinian and Israeli control over them. This combined with Israel’s building of illegal settlements has led to a situation in which the settlements in Area C are reserved only for Israeli citizens, most if not all of whom are Jewish, leaving the rest of the ever-shrinking area to the Palestinians. This section also mentions the separation of spaces in the context of the creation of reserves or ghettos for one racial group. As examined in comparison with the Bantustans of South Africa, the area left to the Palestinians is small and divided by strips of Israeli controlled land. The allocation of water, which leaves the Palestinians less than 15 percent of the total water supply for the West Bank while in comparison a small settlement uses a third of that amount for a tiny fraction of the population, is a method by which Israel impoverishes the Palestinian people. In effect, they are pushed into smaller areas, away from their land and all the while forced into poverty. The comparison to a ghetto is apt.

Not often talked about, the exploitation of Palestinian labor in the OPT is an important issue. According to a report by OXFAM in 2012, 9,500 Palestinians work on farms in Israeli settlements, though the number may be much higher, often working the
land expropriated from them.\textsuperscript{328} The wages earned are not representative of Israeli law which stipulates a $6.00 minimum wage, instead they earn $2.00-$4.80 per hour without the benefits guaranteed to Israeli workers.\textsuperscript{329} This discrepancy may not be huge, but the fact that Palestinians are forced to work in settlements for less than minimum wage is a form of labor exploitation.

Lastly the persecution of people and organizations that oppose apartheid, or in this case Israel’s policies, is very large. Between 1960 and 2010 over 100 if not 200 organizations have been declared ‘Unlawful Associations’ by the Israeli military. These groups include Fatah, the Palestinian Liberation Organization (PLO), Hezbollah, Hamas, Popular Democratic Front for the Liberation of Palestine, Islamic Jihad and many others.\textsuperscript{330} Included in the list are many organizations that are listed as charity organizations from different countries. It is possible that many of these groups were fronts used to fund terrorist groups in Palestine, but it may also be that they helped people and were effective at alleviating the living situation for Palestinians. Those who oppose Israeli policy are persecuted in other ways from being held in administrative detention, to declaring all forms of protest illegal without a permit. The Israelis know that the Palestinian population is going to resist any new policy, plan, or expansion of current land holdings and as a result the security apparatus of the occupation is built around containing and punishing this resistance.


\textsuperscript{329} Ibid.

CHAPTER SIX: CONCLUSION

Analysis and Conclusion

The study has examined the application of Israeli law and policy towards non-Jews, primarily Palestinians, both within the state itself as well as within the Occupied Palestinian Territories. A comparison has been made with the architect of apartheid, South Africa, as well as with its designation in international law, namely the Apartheid Convention of 1973 and the Rome Statute of 2002. The purpose of this was to move beyond the established binary on the subject, which asks ‘Is Israel an apartheid state,’ and instead ask ‘To what extent does Israeli law and policy fit within the definitions of apartheid?’ Doing so provides a more nuanced understanding of the situation that is not captured in the ‘yes-no’ dichotomy that has, until now, dominated the debate on this topic. The following table outlines the principles of international law and then compares them with the state practice of South Africa and Israel (both within Israel and the OPT). It will be used as the basis for the following discussion.

Table 1. Apartheid Comparison

<table>
<thead>
<tr>
<th>International Law</th>
<th>South Africa</th>
<th>Israel</th>
<th>OPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Right to life (i) Murder</td>
<td>Some Murder, not systematic</td>
<td>Nothing intentional</td>
<td>1 Child every 3 days; operation cast lead (episodic violence)</td>
</tr>
<tr>
<td>(a) Right to life (ii) bodily harm, indignity</td>
<td>Some land seizure; treatment as second-class citizens; torture, unequal court system</td>
<td>Sterilization of Ethiopian Jews; torture</td>
<td>Settler violence, occupation, home demolition, collective punishment</td>
</tr>
<tr>
<td>(a) Right to life (iii) arbitrary arrest</td>
<td>Administrative Detention</td>
<td>Administrative Detention</td>
<td>Administrative Detention</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>--------------------------</td>
<td>--------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>(b) Destruction of population/Forcible transfer</td>
<td>Not so much, wanted separate spaces and Black labor</td>
<td>Negev villages, transfer</td>
<td>Transfer, destruction of water infrastructure, Settlements</td>
</tr>
<tr>
<td>(c) Exclusion from political, economic, cultural, etc, life</td>
<td>Restrictions on labor, strikes etc; no political enfranchisement; Control over education</td>
<td>Minorities can hold any job or career, restricted access to land; Minorities can vote, run for office with restrictions; Education based on Jewish/Zionist values</td>
<td>Not Israeli citizens, have their own culture, political system; Israeli policies severely limit economic enterprise</td>
</tr>
<tr>
<td>(d) legislative division of groups, no mixed marriages, land expropriation</td>
<td>Group areas, Urban areas, Separate Amenities, Bantustans, Expropriation of land; restriction on movement</td>
<td>Israel Land Authority, Cooperative societies; land expropriation</td>
<td>Settlements – Israel, Palestinian Villages – PA/Israeli military law; restriction of movement</td>
</tr>
<tr>
<td>(e) exploitation of labor</td>
<td>Used Blacks a sources of cheap labor</td>
<td>Minorities still citizens</td>
<td>Some Palestinians work in settlements for less than Israeli minimum wage, no benefits</td>
</tr>
<tr>
<td>(f) persecution of opposition</td>
<td>Persecuted PAC, ANC, unlawful orgs, affected orgs,</td>
<td>Protestors against withdrawal from Gaza pardoned, Commemorators of ethnic cleansing of Palestinians punished</td>
<td>Unlawful organizations</td>
</tr>
</tbody>
</table>

Israel defines itself by a single and exclusive ethno-religious group, calling itself a Jewish State and promoting a set of particular ideals, values, culture, and heritage for the benefit of its Jewish population. In Israel, all citizens have the right to vote and, with some restrictions, can also run for office. Minorities in Israel are restricted economically
in that they cannot rent or lease land that is held by the Israel Land Authority which controls 93 percent of the land in Israel, beyond that, however, Palestinians and others are able to hold most jobs from member of the Knesset to doctor or even a university professor. Israeli education promotes a Jewish narrative, but all students have access to school and higher education, though those who serve in the IDF are given special treatment. In Israel the early Zionist idea of ‘a land without a people for a people without a land’ dominates the political culture and the idea of transfer, especially on the political right, continues to push Jewish expropriation of Palestinian owned land within Israel. Moreover, Israel has created special privileges for the Jewish population over everyone else. Examples are the Right of Return and Citizenship laws which guarantee any Jew in the world the right to settle in Israel and be granted citizenship status upon entering the country. There are many benefits for those who serve in the military and are applied equally, however since most Palestinians are exempt from the compulsory military service these policies and their benefits apply disproportionately to the Jewish population.

Applying the Apartheid Convention’s definition and the South Africa case study shows that to a certain extent, some of Israeli’s policies does fit the claim of apartheid. Article 2 subsection “a” states that included in the definition of apartheid is the “denial to a member or members of a racial group or groups and liberty of person: (i) by murder of members of racial groups.”\textsuperscript{331} In both South African and Israel this was, and is, not a huge issue because though some have surely died due to repressive measures, there was no outright intention to kill Blacks or Israeli minorities. In the OPT the situation is different. There is much more violence, with the Palestinians receiving most of it.

\textsuperscript{331} Apartheid Convention, article 2(a)(i).
According to one study, a Palestinian child has been killed on average of every three days over a decade long period. That combined with operation Cast Lead, which killed 1,400 Palestinians including 300 children in the course of 23 days, can amount to nothing less than intentional killing.

Article 2(a)(ii) covers “serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or cruel, inhuman or degrading treatment or punishment.” The court system in South Africa was biased against Blacks, most of whom were sentenced, and were not able to speak about their time in prison for fear further arrest as a result of the Correctional Services Act. In Israel, laws have been enacted that strip protections, such as the requirement to make audio and video recordings of interrogations, away from suspects of security offenses, most of whom are Palestinian. This lack of oversight allows room for torture to be used. Additionally, recent claims of temporary sterilization through mandatory birth control injections of Ethiopian immigrant women, most of whom are Jewish, is a violation of human dignity. The potential for torture also applies within the OPT. Further, while settler violence does occur against Palestinians, the case could be made that the entire system of occupation, under which Palestinians live, causes mental harm. The inability to move freely, the ever-encroaching settlements, and the inaccessibility to farmland, all are certain to have effects on people’s mental state, especially when the conditions are imposed for no reason other than birth.

332 Middle East Monitor June 2013.

333 Apartheid Convention, article 2(a)(ii).
The last issue of right to life is ‘arbitrary arrest and illegal imprisonment.’ The best description of this policy is that of administrative detention, which has been applied in all three cases: in South Africa under the Terrorism Act of 1967; in Israel by the 1979 Emergency Powers Law; and in the OPT by Administrative Detention article 273.

The next aspect of apartheid, Article 2(b), includes the “deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part.” There are two ways to interpret this clause: either as the literal destruction of those in question, which would be considered genocide; or a more figurative approach in which people are not killed on a mass scale, but are instead removed, along with their culture and lifestyle, from the land in ethnic cleansing. In all three cases, the literal understanding as genocide does not fit; there was and is no systematic mass killing of Black or Palestinians. However, the ethnic cleansing aspect does fit. In South Africa, Blacks were given only a small amount of land, 13 percent, in which they could live. Their presence in the remainder of the land was destroyed except as workers. Similarly, Israel’s policies toward its Arab population, particularly the Bedouins who live in the Negev Desert, is one in which villages were unrecognized, preventing them from accessing basic necessities and utilities. Additionally, Israel seeks to remove them from their land as part of policy of voluntary transfer, or making conditions so harsh that people leave of their own accord. This policy also applies in the OPT where the continuing expansion of illegal Israeli settlements has confined 80 percent

334 Apartheid Convention, article 2(b).
of the people in the West Bank to 40 percent of the land, while receiving less than 15 percent of the available water\textsuperscript{335}.

According to the Apartheid Convention, the third facet of apartheid is the exclusion of a racial group or groups from the political, economic, social and cultural life of the country. In South Africa the Separate Representation of Voters Act of 1951 effectively disenfranchised the Black population by giving them 3 seats in parliament, but these representatives had to be White. Economic rights for non-Whites were restricted as to where they could work and in what position. Later, their right to strike was also taken away. As per the social and cultural aspects of society, the creation of group areas separated the Whites, Coloreds, and Blacks into their own communities preventing much intermingling from happening. Another exclusionary aspect was the Bantu Education Act of 1953 which allowed the South African government to control what was taught to the Black population.

In Israel some things are different. First, all citizens have the right to vote for government positions and while there are restrictions that seem to disproportionately target minorities as far as candidacy is concerned, such as rejection for ‘denying Israel as a Jewish and Democratic State’ or visiting an enemy Arab or Muslim country which includes Syria and Lebanon without governmental approval, they are thus not fully excluded from the process and there are Arabs currently serving in the Knesset. Additionally, a recent law that raises the minimum number of votes to sit the in Knesset disproportionately affects Arab political parties. Economic rights are mostly equal there

\textsuperscript{335} Oxfam 5.
are no restrictions on which fields minorities can work in, however where access to land is concerned, as only 7 percent is available for use by non-Jews.

Culture is another matter entirely. Since the dominant culture is defined as Jewish, which is defined both in religious and ethnic terms, with preference for the latter, Palestinians are ethnically excluded from being a part of this culture and, unless they convert to Judaism, there is no way for them to become a part of it. With the decision of the Supreme Court to deny the right to choose Israeli as a nationality, it seems that this paradigm will not change soon. Israeli education policy is based on Jewish values and loyalty to the Jewish state and people.

With regard to the OPT, since the dominant culture in question is that of the Palestinians and that the Israelis in this case are an outside, occupying force, the Palestinians are not being excluded from the dominant cultural, or political, or economic aspects of society. The Palestinians have some political rights in that they can vote in elections for the Palestinian Authority, but this has no effect on the presence of the Israeli military in the West Bank. On the subject of economics, Palestinians should not be seen as being excluded from the Israeli economic system on the account that they are not Israeli citizens though both economies are interconnected. Instead, Israel’s control over water, expropriation of land for settlements, construction of the Barrier which cuts famers off from their fields and groves, the inability to exploit natural mineral deposits, and the difficulty in securing building permits, prevents the Palestinians from having any sort of meaningful economy in the first place.
Next in the Apartheid Convention is the separation of spaces, prohibition of mixed marriages, expropriation of land. The separation of spaces is one the most well-known aspects of South African apartheid, and it took many forms from the separation of urban areas into racially defined zones to the creation of native homelands called Bantustans. The control of movement accompanied the segregation of the population. Blacks were required to carry passbooks and report to the officers in charge upon entering a new area. Sexual relations were prohibited between White and non-White members of society until mixed marriages were outright banned, then all forms of interracial romance was illicit. While most of the land distribution was settled by the Native Land and Trust Act of 1936, the 1954 Natives Resettlement Act did allow for expropriation of native land.

The division of space along ethno-religious lines does exist in Israel, though not as pronounced as South Africa, and is exemplified by the fact that the 93 percent of the land that is under the jurisdiction of the Israel Land Authority is allocated solely for Jewish use. Also, the ability of small communities to deny membership based on vague principles such as socio-cultural fabric, or concerns about the social life allow for denial of membership based on difference of race/religion/ethnicity, even though this is legally prohibited, allows for the creation of Jewish only communities. The expropriation of land is allowed so long as it is expropriated for ‘public purposes,’ even if it is never used to the stated purposes. This has mostly been used to confiscate the land of Palestinian citizens of Israel.
In the Occupied Palestinian Territories the separation of spaces is different than the situation in Israel. The land is separated not only along ethno-religious lines, Jews in the settlements and Palestinians in their villages, but also along national lines where the settlers are Israeli and the Arabs are stateless. In fact, most of the land is under Israeli control (area C), leaving the land under Palestinian control resembling an archipelago. Beyond the separation of spaces, there is also a separation of government. The Israeli settlers live under Israeli civil law, while the Palestinians live under Palestinian civil law and Israeli military law. Even then, the Palestinian Authority must coordinate with the Israeli government and is not allowed to have its own diplomatic relations with other countries. The movement between these islands of Palestinian land are controlled by the Israeli military which frequently sets up checkpoints to control the movement of the local population, between villages as well as to Israel. If Palestinians wish to travel outside their own village they must carry their ID card as well as have a permit to do so. Conversely the Israeli settlers have their own road system which connects the settlements to Israel and cannot be used by Palestinians. When it comes to the expropriation of land, Israel’s settlement enterprise is constantly expanding and confiscating land from the surrounding Palestinian villages.

The exploitation of labor is also included in the definition of apartheid. With the dominant racial group in South Africa in the minority, it was only natural that the Black population would be needed to help the country function economically. In conjunction with the control over education, the White government was able to dictate where Blacks could work and under what conditions. Two things prevent the section from applying to
Israel. First is that all citizens have equal economic opportunities in terms of which fields they can pursue careers, be it medicine, education, or even government. Second, the idea of transferring the Palestinian population off of their land and into either the occupied territories or neighboring countries, indicates that Israel would rather not have an Arab minority and thus does not need or want it for labor purposes. In the OPT some Palestinians are working in the settlements, often on land stolen from them, as there are no other job opportunities available. These workers are on average paid less than the Israeli minimum wage and do not receive the benefits afforded to Israeli workers.

The final category is persecution of those who oppose apartheid. South Africa pursued a number of policies to this end. Organizations were deemed unlawful which not only meant their disbandment, but also made it illegal for other groups to carry on the same work. The Pan Africanist Congress and the African National Congress were such organizations that were banned by name in the Unlawful Organizations Act of 1960. Israel engages in similar activities. The ‘Nakba Law’ states that groups who commemorate Israel’s Independence Day as a day of sorrow, in remembrance of Israel’s ethnic cleansing of the Palestinians in 1948, can have their state funding reduced. In contrast, the ‘Pardon Law’ gave amnesty to people who in 2005 demonstrated against Israel’s withdrawal from Gaza. Those who protest against Israeli policy because they prefer greater control over the Palestinians are given pardons, while those who protest Israel’s occupation are not, creating an ideological and legal divide of which political views are and are not acceptable. When it comes to persecution of those who resist Israel’s activities in the West Bank, most everything that Israel does beyond the control
of daily life via checkpoints and Israeli only roads, fits this description. The Israeli military has the ability to restrict all forms of protest, impose curfews, force services to open or close and many other powers that can be used to punish resistors.

Israeli policy and law fit many of the categories listed above, specifically the violation of human dignity, exclusion from cultural life, separation of spaces, and the persecution of opposition groups. When it comes to the destruction of the population, and exclusion of political rights Israel fits partially, and the exclusion for economic rights and the exploitation of labor are not applicable. Thus, the claim of apartheid with respect to Israel does not fit the South African model, however, in certain respects there are clear parallels. Getting away from the established yes/no binary it is clear that Israel falls somewhere in between, and, given the way it matches up with the Apartheid Convention, the state is closer to the apartheid end of the spectrum than to a liberal democracy.

The situation in the Occupied Palestinian Territories is very different from that of Israel. In the OPT the Palestinians live in territorially small island-like communities governed by their own slightly autonomous government, the Palestinian Authority, and hence are not Israeli citizens. Additionally, for matters of security, Israeli military code takes precedence of Palestinian civil law. Those living in the settlements are Israeli citizens and are governed by Israeli civil law. Movement for Palestinians is restricted through a series of the checkpoints and they are required to carry their ID card with them at all time. It is evident that the situation in the OPT is a mirror of the Bantustans envisioned in South Africa with some of Israel’s policies, namely the bypass roads and the construction of the Barrier going beyond their historical predecessor.
The analysis clearly shows that while the use of apartheid with respect to Israel is not a perfect match, there are many ways in which it is closer to an apartheid state than a liberal democracy. On the other hand, the situation in the OPT is one of apartheid, especially with respect to Bantustans. These outcomes should not be surprising as they were foreseen by Ben-Gurion nearly 40 years ago, and recently they have been forewarned by Secretary of State John Kerry.  

**Critiques**

A concern that is often brought up about the use of the Apartheid Convention as a means of measuring Israeli policy is the phrase from article two which states that “the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.” The inclusion of this phrase adds another dimension to the apartheid discourse: that of intent. It can be argued that no matter how Israel compares with the Apartheid Convention, if one can show that Israel’s intent is not continued oppression but that that situation is temporary, then the claim of apartheid falls apart.

It does not take much however to show that this is not a temporary measure. If Israel truly wishes to be a ‘State of the Jewish people,’ and not a state where all of its citizens are treated equally, then anyone who does not identify as Jewish is necessarily excluded from the dominant culture and as a result their rights are reduced as they are not

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336 Molavi, 99.

337 Apartheid Convention, article 2.
part of the preferred social group. The existence of the Israel Land Authority and its control of 93 percent of the land specifically for Jewish use, as well as the continued expropriation of land and transfer ideology clearly show that at present Israel has no intention of making all its citizens equal. However, even though Israel’s control and domination are intentional, the political and economic rights of minorities complicate the comparison enough to make the definition of apartheid under international law a partial comparison. Sammy Smooha’s argument that Israel is an ethnic democracy confirms the finding that Israel has apartheid-like policies and that they are intentional. He claims that an ethnic democracy “is a system that combines the extension of civil and political rights to individuals and some collective rights to minorities, with institutionalization of majority control over the state.”

He further explains this by saying

The state practices a policy of creating a homogenous nation-state, a state of and for a particular ethnic nation, and acts to promote the language, culture, numerical majority, economic well-being, and political interests of this group. Although enjoying citizenship and voting rights, the minorities are treated as second-class citizens, feared as a threat, excluded from the national power structure, and placed under some control. At the same time, the minorities are allowed to conduct a democratic and peaceful struggle that yields incremental improvement in their status.

Smooha’s conception of an ethnic ‘democracy,’ which is modeled after Israel, clearly violates the Apartheid Convention, and would do so no matter where it would be implemented.

The concern about intent also applies to the OPT, and maybe even more so considering the land is occupied and not officially part of Israel. In writing on the

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339 Ibid pg. 199-200
outcome of the 1967 War, Avi Shlaim notes that the territories were likened to a dowry and the Palestinians the bride, and though the government was not entirely sure what to do with the land, they wanted to keep the former without the latter.\textsuperscript{340} Many Zionists, however, saw the territories as new land on which to build settlements, with the first being built less than two months after the end of the war.\textsuperscript{341} Gershom Gorenberg notes that “by the time [Menachem] Begin came to power [1980] … the internal Israeli argument was over where to settle, not whether to.”\textsuperscript{342} With this mindset, the expansion of the settlements is intentional control over the land. When it comes to the subject of the Oslo Accords, it could be argued that the creation of the Palestinian Authority is evidence that Israel’s control is only temporary. However, Edward Said notes that “Oslo’s malign genius [was] that even Israel’s ‘concessions’ were so heavily encumbered with conditions and qualifications and entailments … that they could not be enjoyed by the Palestinians in any way resembling self-determination.”\textsuperscript{343} The famous, or now potentially infamous, peace talks can also be seen as further entrenching Israel’s domination of the OPT, thus further giving credence to the connection between Israel and apartheid.

Another counter argument to the claim of apartheid in the OPT has been put forth by Zilbershats who stated in the literature review that it is not as if Israel wishes to maintain a system of domination and control in the OPT, but rather it is out of security concerns that this is a temporary necessity. However, two facts complicate this argument.

\begin{itemize}
  \item \textsuperscript{342} Ibid., 69 (emphasis original).
\end{itemize}
First, if Israeli policy is truly concerned with security, then the Barrier should have been built along the ‘Green’ Line, not within the West Bank. One could argue that this diversion was necessary to protect the settlements. This then invokes the second point of contention. If one accepts the assumption that the Palestinians pose so great a security threat as to require military occupation and the erection of the Barrier, then it is completely illogical to move any segment of the Israeli Jewish civilian population closer to the supposed enemy. There is no situation in which moving families closer to those who wish to do harm makes any sort of sense from a security perspective. If Israel is really concerned about its security, the settlements would never have been built in their current location, if at all.

One last counterargument that is likely to arise is that a missed characteristic of South Africa was the rule of the White minority over the Black majority, while in Israel, Arabs are a minority and those in the OPT are not even citizens. First, the Israeli military rule in the OPT is one of minority rule as the settler population is outnumbered roughly 5:1, and any regime that preferences their views over that of the majority is clearly minority rule. Second, it is not morally significant whether Israel has a majority rule or minority rule over a given territory. This was never a stipulation in either the South African case or anywhere else under international law. Any regime that preferences one ethnic/religious/racial group over another is by definition engaging in discrimination and should be criticized for such practices. Israeli apartheid is not a function of minority rule, but is rather a reflection of the way it treats its citizens who are not Jewish.
Limitations of Research

There are two major limitations to the research presented here. First is the access to sources of law. This was less of an issue with the South African case study as most of the laws used up until 1951 were available through LLMC Digital and the rest were made available through interlibrary loan either electronically or through actual codices of South African law. The Israeli case however, was much more difficult. Except for the few laws which are translated into English and posted either on the Knesset website or the Israeli Ministry of Foreign Affairs website, access to actual texts was difficult. A few of the laws were accessed through the library and interlibrary loan, and some from Adalah, the legal enter for Arab minority rights in Israel. Those for which English versions could not be found, the summaries provided in the Adalah discriminatory law database were used instead. This was decided to be a trustworthy source because though not all laws are provided in English translation, they are all available in Hebrew. Given more time, the author would have liked to try to track down the necessary laws from Israeli government websites in Arabic and provide translations of the necessary passages.

The second major limitation was the sources available to supplement the legal framework. Sources from respected international bodies (such as the UN, Amnesty International, and Human Rights Watch) were used wherever possible, though other sources such as B’tselem were used when necessary. B’tselem in particular was used as it is an Israeli organization that works in the OPT and can easily gather first hand information about the situation there.
Future Research

There are a couple areas for future research. The first is the continuation and completion of the work done here, especially with respect to the lack of access to actual texts for many Israeli laws. This would likely be done through the use of Arabic texts and translating them into English to strengthen the arguments contained within this paper.

The second area for future research is furthering the comparison with South Africa by looking at political narratives, ideology, and mythology. One such source is Leonard Thompson’s book *The Political Mythology of Apartheid*. While the fact based approach between South African and Israeli policies allows for an easily comparison with international law, there is more to understanding apartheid than practice, namely the ideologies which shaped the creation of apartheid. This has been briefly discussed in the discussion of intent and noting differences, such as the Bantu Investment Corporation, however there is much more to explore in the realm of political mythology that could be part of a systematic and comprehensive comparison between Israel and the practice of apartheid.
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APPENDIX A

The solid purple line is the path of the Barrier. The shaded purple area is Area A, the yellow is Area B. Area C is not listed. For more detail see:
http://www.securityfence.mod.gov.il/pages/eng/seamzone_map_eng.htm