

U.C.L.A. Law Review

Challenging the Rhetoric of Elimination: A Call for Recognition, Justice, and Shared Safety in the Wake of October 7

Zochrot

ABSTRACT

As Jewish Israelis, members of the Zochrot community, and people who have lost loved ones in the Hamas attack, our work insists that history did not begin on October 7, 2023. Despite Israeli authorities' attempts to frame October 7 as an isolated incident, we recognize the decades of direct, administrative, and legal violence that culminated in this moment and refuse to examine it in a vacuum. To build a future where all who dwell between the Jordan River and Mediterranean Sea share a land of freedom and mutual liberation, and a legal structure which respects the equality of everyone, we as Israeli Jews must not silence the memory of the past and must recognize the Nakba as part of our own history as well. Lawyers and scholars, in engaging with the challenging legal context of Palestine/Israel, similarly ought to reckon with this often-erased history. Despite Israel's narrative that often omits the massacres and displacement of Palestinians which underpin the modern state, this foundation is necessary to fully grasp the present.

The Essay highlights Zochrot's pre-transitional justice work, which seeks to use mnemonic interventions to spark legal and extralegal processes of social and political transition. These efforts illuminate the persistent impact of the Nakba, the foundational displacement of Palestinians in 1947–1948, on all who dwell in the land of Palestine/Israel. We deploy legal and social interventions in Israeli Jewish society that challenge Israeli Jews to embrace reparative frameworks, not only for self-preservation but because it is the morally right course of action. The Essay also highlights the role of lawyers in engaging with memory as a critical resource to grasp the legal reality in Palestine/Israel and work towards reparation and accountability.



AUTHOR

Founded in 2002, Zochrot (“remembering” in Hebrew) is an non-governmental organization working to promote acknowledgement and accountability for the ongoing injustices of the Nakba, the Palestinian catastrophe of 1948. Its membership is constituted primarily of Jewish Israelis in partnership with Palestinians. Tied directly to this effort is the promotion and reconceptualization of Return as the essential form of redress for the Nakba and a chance for a better life for all the land’s inhabitants.

AUTHOR

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INTRODUCTION

Zochrot, founded in 2002, is an organization dedicated to addressing Israeli Jewish society's erasure of the Nakba ("catastrophe"), the 1947–1948 dispossession of more than 750,000 Palestinians, which facilitated the creation of the Israeli state. Our work promotes truth and harnesses its power towards meaningful social and legal reconstruction, introducing the concept of pre-transitional justice—tools and strategies applied during ongoing conflict to promote a transition from denial and impunity to recognition, accountability, and redress. Pre-transitional justice is a novel concept, especially applied in settler-colonial contexts. It focuses on justice-oriented tools to encourage transitions away from violent regimes, in particular reckoning with ongoing realities of Israeli settler colonialism and the Nakba's enduring legacy. Where transitional justice primarily is oriented around the conclusion of conflict, our deployment of pre-transitional justice seeks to foster the conditions to transition away from Israel's legalized settler colonialism to a decolonized space, by promoting truth and acknowledgment within Israeli society as the broader context of settler colonialism persists.

Accordingly, Zochrot meticulously documents the Nakba, preserving records and testimonies of the expulsion and its impact on Palestinian life to foster a new memory in Israeli Jewish society. Through extensive archives and educational initiatives, the organization fosters a deeper understanding of this history among Israelis and the global community. The Nakba is foundational to both Palestinian and Jewish Israeli present realities, and Zochrot emphasizes the importance of acknowledging this history to address current injustices and emphasizes the importance of acknowledging this history to address current injustices.

By addressing these issues in a legal journal, Zochrot aims to promote a deeper understanding of the moral and legal imperatives to end the oppression of Palestinians, fostering a just and equitable society for all. The Essay highlights legal and social interventions made in Israeli Jewish society that challenge Israeli Jews to embrace reparative frameworks, not only for self-preservation but because it is the morally right course of action. We urge those engaging with this Essay, as legal scholars, consider pre-transitional justice as a possible means to deal with atrocities, specifically through mnemonic interventions. Ultimately, through promoting the principles of

recognition, justice, and shared safety—accomplished through cultivating a historical reckoning with the Nakba’s past and ongoing injustice—we at Zochrot believe we can construct a future rooted in mutual respect, dignity, and lasting peace.

I. WHERE WE BEGAN: HISTORY AND MEMORY BEFORE OCTOBER 7

As Jewish Israelis, members of the Zochrot community, and people who have lost loved ones in the Hamas attack, our work insists that history did not begin on October 7, 2023. Despite the eagerness of Israeli authorities to frame October 7 as an isolated incident,¹ we recognize the decades of direct and administrative, legal violence which culminated in this tragic moment and refuse to examine it in a vacuum. To build a future where all who dwell between the Jordan River and Mediterranean Sea share a land of freedom and mutual liberation, and a legal structure which respects the equality of everyone, we Israeli Jews must not silence the memory of the past.

Zochrot (זוכרות), which is the present tense form of the Hebrew verb “to remember,” was founded in 2002 in recognition of Israeli Jewish society’s erasure of the Nakba—the lack of collective awareness about the dispossession of more than 750,000 Palestinians between 1947–1948 which enabled the construction of our state.² Our programs are guided by a dedication to promoting truth, and harnessing the social power of such truth towards meaningful social and legal reconstruction. As the vocabularies and modalities of decolonial transitional justice operate more visibly in activist and academic circles, including as applied to Palestine and Israel, Zochrot proposes the concept of pre-transitional justice—“an array of tools and strategies applied while the occupation is ongoing to promote the transition from a culture of denial and impunity to one of recognition and accountability and redress of injustices.”³

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1. @giladerdan1, X (TWITTER) (Oct. 25, 2023, 10:08 AM), <https://x.com/giladerdan1/status/1717226560606892126> [<https://perma.cc/7HBG-NUEQ>].
 2. Ilan Pappé, *The 1948 Ethnic Cleansing of Palestine*, 36 J. PALESTINE STUD., Autumn 2006, at 17; *Quick Facts: The Palestinian Nakba (“Catastrophe”)*, INST. FOR MIDDLE E. UNDERSTANDING (Apr. 5, 2023), <https://imeu.org/article/quick-facts-the-palestinian-nakba> [<https://perma.cc/XL7T-5H5S>]; Ahmad H. Sa’di, *Reflections on Representations, History, and Moral Accountability*, in NAKBA: PALESTINE, 1948, AND THE CLAIMS OF MEMORY 285, 287 (Ahmad H. Sa’di & Lila Abu-Lughod eds., 2007).
 3. *Pre-Transitional Justice*, ZOCHROT, https://www.zochrot.org/sections/view/32/en?PreTransitional_Justice [<https://perma.cc/5MFZ-4LR9>]. For more on pre-transitional justice in the context of Israel-Palestine, see Yoav Kapshuk & Lisa Strömbom, *Israeli Pre-Transitional Justice and the Nakba Law*, 54 ISR. L. REV. 305 (2021).

Specifically, our organization works to preserve and disseminate records of the Nakba, the catastrophic expulsion of Palestinians foundational to the modern State of Israel.⁴ Through our extensive archives, we document the events of the Nakba, collect testimonies from survivors, and provide insights into Palestinian life before and after 1948.⁵ Our database meticulously catalogs destroyed and depopulated Palestinian localities, offering a comprehensive insight into the generational impacts of displacement and occupation on Palestinian communities.⁶ Additionally, we showcase the stories of Nakba survivors, as well as Israelis who participated in the occupation of these localities, through photos and videos.⁷

The cultivation and dissemination of these resources help Zochrot actualize our pre-transitional justice objectives. Grounding our advocacy in contextual analysis, we connect real time events to historical and mnemonic root causes. In doing so, our community of Palestinians and Israeli Jews relies on produced and reproduced knowledge to counter hegemonic narratives which often erase the Nakba or rationalize it as a necessary evil.

As such, we at Zochrot believe the Nakba is foundational to both the Palestinian and Jewish Israeli present and ongoing legal reality of Palestinian subordination and fragmentation. But in Israel, the narrative of the state's founding is highly distorted and elides total recognition of the massacres which produced the current landscape.⁸ Israeli national parks, villages, and cities sit atop the ruins of Palestinian life prior to 1948, without mention of the remnants of destruction which rest underneath.⁹ Though many amongst Israeli society call for a second Nakba now,¹⁰ thereby recognizing the violent

4. *Remember the Nakba - Sitemap*, ZOCHROT, https://www.zochrot.org/welcome/sitemap/6/en?Remember_the_Nakba [<https://perma.cc/TWM8-7U2Y>].

5. *See id.*

6. *See id.*

7. *See, e.g., Testimonies - Short Testimonies*, ZOCHROT, https://www.zochrot.org/testimonies/all/en?Testimonies_ [<https://perma.cc/2YXT-W7BB>].

8. ILAN PAPPÉ, *TEN MYTHS ABOUT ISRAEL* 54 (2017) (dispelling the myth that Palestinians voluntarily left their homeland in 1948); *see also* NOGA KADMAN, *ERASED FROM SPACE AND CONSCIOUSNESS: ISRAEL AND THE DEPOPULATED PALESTINIAN VILLAGES OF 1948* (2015).

9. *See generally* VILLAGE UNDER THE FOREST (Grey Matter Media, 2013) (documenting the hidden remains of the destroyed Palestinian village of Lubya under a purposefully developed national forest); IRUS BRAVERMAN, *SETTLING NATURE: THE CONSERVATION REGIME IN PALESTINE-ISRAEL* (2023) (describing the role of national park designation in Israeli erasure of Palestinian history); Meron Rappaport, *Gov't Contract Shows How Israel Enlists Forests to Grab Land From Bedouin Citizens*, +972 MAG. (Sept. 22, 2022), <https://www.972mag.com/jnf-forests-israel-land-naqab> [<https://perma.cc/W2TK-7523>].

10. Meron Rapoport, *The 'Second Nakba' Government Seizes Its Moment*, +972 MAG. (Jan. 2, 2024), <https://www.972mag.com/second-nakba-government-gaza> [<https://perma.cc/>].

expulsion of Palestinians in the past, much of Jewish Israeli society embraces the story of “the few against the many”¹¹ and “a land without a people for a people without a land.”¹²

On October 7 and in the following months, we have seen how the Nakba’s harms are reproduced today. As Palestinians warn, the Nakba is not an event, but rather embodies an ongoing process.¹³ This is evidenced by Israel adding hundreds of thousands to Gaza’s refugee population with the forced evacuation of most of the Gaza Strip.¹⁴ For many of Gaza’s Palestinians, this is not their first experience with refugeehood.¹⁵ Since October 7, Palestinian villages in the West Bank continue to face expulsion

YK92-JYN4]; Meron Rapoport & Ameer Fakhoury, *How Threats of a Second Nakba Went Mainstream*, +972 MAG. (June 23, 2022), <https://www.972mag.com/second-nakba-mainstream-israeli-right> [<https://perma.cc/8G8K-L7TA>].

11. Yizhar Beer, *After 70 Years: Is There Reality in the Myth of the “Few Against the Many” in the War of Independence?*, HAARETZ (Apr. 11, 2018), <https://www.haaretz.co.il/blogs/israelimyths/2018-04-11/ty-article/0000017f-f8be-d460-afff-fbfea3af0000> [<https://perma.cc/L7TQ-4HNC>]; Yigal Eilam, *The Myth of the “Few Against the Many” in 1948*, PALESTINE-ISR. J. POL. ECON. & CULTURE (2002), <https://pij.org/articles/107/the-myth-of-the-few-against-the-many-in-1948> [<https://perma.cc/CHK5-RCHJ>].
12. See ANITA SHAPIRA, LAND AND POWER: THE ZIONIST RESORT TO FORCE, 1881–1948 42 (1992); EDWARD W. SAID, THE QUESTION OF PALESTINE 9 (1980).
13. Ahmad Qabaha & Bilal Hamamra, *The Nakba Continues: The Palestinian Crisis From the Past to the Present*, 1 JANUS UNBOUND: J. CRITICAL STUD., Fall 2021, at 30, 32 (“The Palestinian Nakba is a living presence that is communicated and enacted through the ongoing Israeli displacement and expulsion of Palestinians who share the scars of collective trauma.”); Himmat Zubi, *The Ongoing Nakba: Urban Palestinian Survival in Haifa*, in AN ORAL HISTORY OF THE PALESTINIAN NAKBA 182, 183 (Nahla Abdo & Nur Masalha eds. 2018); Rabea Eghbariah, *Toward Nakba as a Legal Concept*, 124 COLUM. L. REV. 887, 889 (2024).
14. See generally *Gaza: Nearly 800,000 Now Displaced From Rafah*, UNITED NATIONS NEWS (May 18, 2024), <https://news.un.org/en/story/2024/05/1149951> [<https://perma.cc/75BH-M4M4>] (“Roughly 800,000 people have been forced to flee Rafah since Israel launched a military operation in the area on 6 May . . .”); Bill Frelick, *No Exit in Gaza—Left With No Other Options, Residents Should Have a Right to Flee*, HUM. RTS. WATCH (Apr. 1, 2024, 10:30 AM), <https://www.hrw.org/news/2024/04/01/no-exit-gaza> [<https://perma.cc/K9RV-UD5E>].
15. *Who Are Palestinian Refugees?*, ANERA: OLIVE PRESS BLOG (Aug. 22, 2022), <https://www.anera.org/blog/who-are-palestinian-refugees> [<https://perma.cc/7UAT-M4DF>]; Editorial, *Gaza: The Latest Chapter in a Sixty-Year Nakba*, 39/40 AL-MAJDAL, Autumn 2008/Winter 2009, at 2, 4(double issue).

and outright elimination.¹⁶ Israel continues to massacre civilians across Gaza and pursue a policy of deliberate mass starvation.¹⁷

It is partially because of this incessant erasure that the horrific violence of October 7 produced a poignant state of shock across Israeli society. The Israeli people have been frozen; both in their pain but dangerously in their myopic view of history which invisibilizes the power dynamics that structure Palestinian existence. The Israeli government and Prime Minister Benjamin Netanyahu insist on directing attention solely to the events of October 7, and dismissing or justifying the extensive destruction witnessed in Gaza as the only necessary response to the tragic deaths of Israelis.¹⁸

As Israeli Jews, it is incumbent upon us to state clearly: the attack on October 7 was rooted in the systemic reality of a violent, militarist, and racist legal regime that holds two million people in Gaza captive, trapped in an illegally fenced compound of deliberate subordination and repetitive trauma.¹⁹ The violence visible since October, against both Jewish Israelis and Palestinians, partially reflects a horrific culmination of Israeli choices to eliminate social-democratic alternatives in Palestinian leadership, suppress

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16. See Gideon Levy & Alex Levac, *While War Rages in Gaza, the West Bank Has Undergone a Metamorphosis*, HAARETZ (Mar. 30, 2024), <https://www.haaretz.com/israel-news/twilight-zone/2024-03-30/ty-article-magazine/.highlight/while-war-rages-in-gaza-the-west-bank-has-undergone-a-metamorphosis/0000018e-8d23-d9a4-a7bf-cd7b2c270000> [https://perma.cc/9PCN-TQTG]; see also Mat Nashed, *How Israeli Settlements Are Taking Over the West Bank as Gaza War Rages*, ALJAZEERA (July 19, 2024), <https://www.aljazeera.com/features/2024/7/19/how-israeli-settlements-are-taking-over-the-west-bank-as-gaza-war-rages> [https://perma.cc/T56M-D7CC].
 17. *Israel: Starvation Used as a Weapon of War in Gaza*, HUM. RTS. WATCH (Dec. 18, 2023, 12:00 AM), <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza> [https://perma.cc/5M8J-A7LY]; Karim Khan, *Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine*, INT'L CRIM. COURT (May 20, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> [https://perma.cc/C5AR-624F]; Nina Lakhani, *Israel Is Deliberately Starving Palestinians*, UN RIGHTS EXPERT SAYS, THE GUARDIAN (Feb. 27, 2024, 4:30 AM) <https://www.theguardian.com/world/2024/feb/27/un-israel-food-starvation-palestinians-war-crime-genocide> [https://perma.cc/XJS4-TEAW] (“UN special rapporteur on the right to food Michael Fakhri says denial of food is war crime and constitutes ‘a situation of genocide’”).
 18. Lazer Berman, *Netanyahu: US Response to Attack Like Oct. 7 Would Be ‘at Least as Strong’ as Israel’s*, TIMES ISR. (Feb. 11, 2024, 7:35 PM), <https://www.timesofisrael.com/netanyahu-us-response-to-attack-like-oct-7-would-be-at-least-as-strong-as-israels> [https://perma.cc/5SAP-HHTU]; NBC News, *Full Netanyahu: Everyone in the World Is ‘Sitting on the Bleachers,’* YOUTUBE (Nov. 12, 2023), <https://www.youtube.com/watch?v=dRThvIOjkq0>.
 19. Haggai Matar, *Six Months After October 7, a Lament for the Paths Not Chosen*, +972 MAG. (Apr. 18, 2024), <https://www.972mag.com/lament-israelis-gaza-october-7> [https://perma.cc/J6LB-U7VV].

nonviolent resistance such as strikes, demonstrations, boycotts, divestments, and sanctions.²⁰

As Israelis, we also know that grappling with this context does not justify the violence inflicted on our communities. We do not engage with the past to excuse nor justify the killing of Israeli Jewish civilians, but rather to highlight its roots in structures of oppression. Unequivocally, those murdered on October 7 did not deserve their brutal fate. Reckoning with the painful and difficult histories of Israeli state violence does not negate our mourning or negate generational Jewish trauma. Rather, it fervently moves us to build a future where October 7 will not happen again, and where the legal and political infrastructure between the river and the sea secures shared freedom and safety for all peoples.

The recent violence is also intricately tied to the Nakba and Israel's broad project of Palestinian dispossession, particularly in Gaza. Comprehending the events and preventing future violence requires recognition of this historical and political context. Understanding the relationship between Israel and Gaza necessitates an exploration of how the "Gaza Strip" came into existence and learning about the struggles of its inhabitants. Concealing and denying the layers of violence and loss are part of a comprehensive and deliberate strategy of erasing Palestinian existence and its history. In the process, the memory, decency, and compassion of millions of Israeli Jews are also erased, so that they fail to acknowledge their own—albeit in many, but not all cases unwilling—complicity in enabling this silenced reality.

Between Gaza's now-major cities of Beit Hanoun and Rafah, hundreds of thousands of Palestinians sought refuge during the Nakba.²¹ These families were forcibly displaced from the cities of Jaffa and al-Lydd, located in

20. B'TSELEM, UNWILLING AND UNABLE: ISRAEL'S WHITEWASHED INVESTIGATIONS OF THE GREAT MARCH OF RETURN PROTESTS 8 (2021), https://www.btselem.org/sites/default/files/publications/202112_unwilling_and_unable_eng.pdf [<https://perma.cc/U4QE-4JSX>] ("Over the course of the [March of Return] protests, the Israeli military implemented an open-fire policy of using live fire against unarmed protestors who posed no threat to the well-armed soldiers on the other side of the fence or to anyone else."); Caren Holmes, *The Campaign to "Kill" the BDS Movement Against Israel Extends Far and Wide*, JACOBIN (Oct. 6, 2020), <https://jacobin.com/2020/10/boycott-divestment-sanctions-movement-israel-palestine> [<https://perma.cc/ZLE8-PJBD>].

21. See, e.g., Beryl Cheal, *Refugees in the Gaza Strip, December 1948-May 1950*, 18 J. PALESTINE STUD., Autumn 1988, at 138; Ghada Ageel, *My Elderly Relatives First Fled for Their Lives in 1948. In Gaza Right Now They Are Walking the Nakba Again*, THE GUARDIAN (Dec. 14, 2023), <https://www.theguardian.com/commentisfree/2023/dec/14/a-second-nakba-in-gaza> [<https://perma.cc/33W8-DLEJ>].

modern Israel.²² Many were also removed from numerous villages, including Huj (on whose lands the Israeli town of Sderot now stands) and Hiribya (now Kibbutz Karmia).²³ The emergence of an extensive refugee camp in this part of Palestine was primarily owed to its strategic location and access to the sea. Nonetheless, this resource-poor area could never sustain an autonomous metropolis for decades. Accordingly, it soon faced a severe humanitarian crisis.

During and after the Nakba, Israel took measures to isolate the newly formed “strip” and its Palestinian refugees, encircling it with a belt of Israeli settlements.²⁴ These actions required the further displacement of Palestinians, with thousands more expelled from Majdal, a village that presently is the Israeli coastal city of Ashkelon.²⁵ Following these additional expulsions, Israel established rural settlements, towns, and cities on the lands surrounding Gaza.²⁶ In essentially constructing a barrier surrounding these new refugee enclaves, the Gaza Strip was created. Presently, more than 70 percent of Gaza’s population, approximately one and a half million people, are still considered refugees under international law and descend from those originally displaced.²⁷ To date, they are denied the ability to return to their original lands and homes.²⁸

Israel’s violence upon the people of Gaza continued through the next several decades. In November 1956, Israel occupied the Gaza Strip and

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22. ZOCHROT, REMEMBERING AL-LYDD (2022), <https://www.zochrot.org/writable/uploads/old/uploads/uploads/c2a987b7daa69324aae41fb33d71ea0d.pdf> [https://perma.cc/JQ62-4KGD]; *From Jaffa 1948 to Gaza 2024*, ZOCHROT (Jan. 18, 2024), <https://www.zochrot.org/videos/view/56651/en>.
 23. See, e.g., Robert Fisk, *The Suffering of Sderot: How Its True Inhabitants Were Wiped From Israel's Maps and Memories*, THE INDEPENDENT (Nov. 26, 2021, 9:00 AM), <https://www.independent.co.uk/voices/comment/the-suffering-of-sderot-how-its-true-inhabitants-were-wiped-from-israel-s-maps-and-memories-8348734.html> [https://perma.cc/8YGD-HUXQ].
 24. David B. Green, *The Origins of the Gaza Strip, and the Israeli Communities Across From It*, HAARETZ (Oct. 13, 2023), <https://www.haaretz.com/israel-news/2023-10-13/ty-article-magazine/.premium/the-origins-of-the-gaza-strip-and-the-israeli-communities-nestled-by-it/0000018b-23fe-d680-af9b-23fe94490000> [https://perma.cc/W3XB-HFMH].
 25. KADMAN, *supra* note 8, at 14. (“In 1950 the Palestinian population of the town of al-Majdal (Ashkelon of today) was expelled, mostly to the Gaza Strip, and residents of villages along the Jordanian border were driven east.”); ZOCHROT, REMEMBERING ISDUD AND MUJDAL (2003), https://www.zochrot.org/publication_articles/view/50848/en?Remembering_Isdud_and_Majdal [https://perma.cc/96FD-AWU2].
 26. See Green, *supra* note 24.
 27. *Where We Work*, UNITED NATIONS RELIEF & WORKS AGENCY (Aug. 2023), <https://www.unrwa.org/where-we-work/gaza-strip> [https://perma.cc/7FWS-9PNH].
 28. *From Jaffa 1948 to Gaza 2024*, *supra* note 22.

declared martial law, which remained an active policy until the Israeli military evacuated in March 1957.²⁹ During this period, many civilians were killed, with events such as the Massacre of Khan Younes and the Massacre of Rafah etched in Palestinian society's memory.³⁰ In 1967, Israel occupied the Gaza Strip once again, intensifying its policy to isolate the region geographically and hinder the possibility of refugee return.³¹ In July 1971, the Israeli military invaded the Shati and Jabalia refugee camps, located in northern Gaza, destroying thousands of residential buildings, and internally displacing around 10,000 people.³² In 1972, a clandestine operation resulted in the deportation of thousands from the Rafah Salient area, the northeastern corner of the Sinai Peninsula, to make way for Israeli settlements.³³ After enduring suppression in Gaza, it is noteworthy that the first large-scale popular Palestinian revolt since the State of Israel's establishment, the First Intifada (First Uprising) from 1987–1993, was launched in its streets.³⁴

Despite the evacuation of Jewish settlements from the heart of the Gaza Strip as part of the 2005 Disengagement Plan,³⁵ Israeli control over nearly all aspects of life in Gaza persisted.³⁶ Israel has maintained a strict blockade on

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29. Nur Masalha, *The 1956-57 Occupation of the Gaza Strip: Israeli Proposals to Resettle the Palestinian Refugees*, 23 BRITISH J. MIDDLE E. STUD. 55, 58–65 (1996).
 30. BENNY MORIS, ISRAEL'S BORDER WARS, 1949-1956: ARAB INFILTRATION, ISRAELI RETALIATION, AND THE COUNTDOWN TO THE SUEZ WAR 424 (1994); Amira Hass, *A Thin Black Line*, HAARETZ (Feb. 11, 2010), <https://www.haaretz.com/2010-02-11/ty-article/a-thin-black-line/0000017f-e101-d804-ad7f-f1fb52ff0000> [https://perma.cc/H76X-EWW9].
 31. KADMAN, *supra* note 8, at 29, 102.
 32. ILAN PAPPÉ, THE BIGGEST PRISON ON EARTH: THE HISTORY OF THE OCCUPIED TERRITORIES 130 (2017); FAMILIES TRANSFERRED FROM JABALIA REFUGEE CAMP (Israel Film Archive 1971), https://jfc.org.il/en/news_journal/59577-2/111462-2; *Israelis Resettle Some Gaza Arabs*, N.Y. TIMES, July 22, 1971, at L3, <https://www.nytimes.com/1971/07/22/archives/israelis-resettle-some-gaza-arabs.html> [https://perma.cc/RM6T-JG6L].
 33. Joan Mandell, *Gaza: Israel's Soweto*, MIDDLE E. REP. (Oct.–Dec. 1985), <https://merip.org/1985/10/gaza-israels-soweto> [https://perma.cc/TF2G-CQE2]; *Expulsion From Rafah Salient: The Declassified Report of the Commission of Inquiry*, AKEVOT, <https://www.akevot.org.il/en/article/rafah-salient-report> [https://perma.cc/Q4FQ-NCYC].
 34. Nadia Naser-Najjab, *Palestinian Leadership and the Contemporary Significance of the First Intifada*, 62 RACE & CLASS, Oct.–Dec. 2020, at 61; see also STORIES FROM THE INTIFADA (Maysara Films and Greyscale 2014), <https://remix.aljazeera.com/aje/PalestineRemix/stories-from-the-intifada.html#/23>.
 35. *The Israeli "Disengagement" Plan: Gaza Still Occupied*, UNITED NATIONS (Sept. 2025), <https://www.un.org/unispal/document/auto-insert-205755> [https://perma.cc/JG2W-F5SA].
 36. Khalid Manzoor Butt & Anam Abid Butt, *Blockade on Gaza Strip: A Living Hell on Earth*, 23 J. POL. STUD., No. 1, 2016, at 157; 50 Shades of Control, GISHA, <https://gisha.org/project/50shades-en/> [https://perma.cc/4HP2-SNSQ].

Gaza, controlling its borders, airspace, and maritime access.³⁷ This blockade has severely restricted the movement of people and goods into and out of Gaza, deliberately creating a dire humanitarian situation.³⁸ Frequent Israeli bombing campaigns have further exacerbated this crisis, including those in 2008,³⁹ 2012,⁴⁰ 2014,⁴¹ and 2021,⁴² causing extensive damage to Gaza's infrastructure, homes, and essential services. On July 19, 2024, the International Court of Justice deemed Israel an illegal occupier of the

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37. *See Israel: Unlawful Gaza Blockade Deadly for Children*, HUM. RTS. WATCH (Oct. 18, 2023), <https://www.hrw.org/news/2023/10/18/israel-unlawful-gaza-blockade-deadly-children> [<https://perma.cc/K29M-33CF>]; OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., UNITED NATIONS, GAZA STRIP: THE HUMANITARIAN IMPACT OF 15 YEARS OF THE BLOCKADE (2022), https://www.unicef.org/mena/media/18041/file/Factsheet_Gaza_Blockade_2022.pdf [<https://perma.cc/3WAA-WSNG>].
 38. *See Israel: Unlawful Gaza Blockade Deadly for Children*, *supra* note 37; OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., *supra* note 37.
 39. The Israeli campaign in Gaza in 2008 was known as Operation Cast Lead. It lasted three weeks, and resulted in the deaths of more than 1000 Palestinians and thirteen Israelis. More than 100,000 Gazans were displaced by the bombing campaign. *See* AMNESTY INT'L, MDE 15/015/2009, ISRAEL/GAZA, OPERATION 'CAST LEAD': 22 DAYS OF DEATH AND DESTRUCTION (2009), <https://www.amnesty.org/en/wp-content/uploads/2021/06/mde150152009en.pdf> [<https://perma.cc/T6CZ-R35L>]. In response to the wanton violence constitutive of Israel's operations, the United Nations commissioned the United Nations Fact Finding Mission on the Gaza Conflict led by South African jurist Richard Goldstone. In a highly publicized report, Goldstone found that both the Israeli military and members of Hamas committed war crimes and possible crimes against humanity. The government of Israel was accused of deliberately targeting civilians and dismissed the report's findings. *See* Human Rights Council, Rep. of the United Nations Fact-Finding Mission on the Gaza Conflict, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009).
 40. Operation Pillar of Defense, the eight-day Israeli campaign in Gaza in 2012, resulted in the killing of 167 Palestinians, including 32 children. *See* Yael Stein, B'TSELEM, HUMAN RIGHTS VIOLATIONS DURING OPERATION PILLAR OF DEFENSE 14-21 NOVEMBER 2012 (2013), https://www.btselem.org/download/201305_pillar_of_defense_operation_eng.pdf [<https://perma.cc/RAW7-2SHB>].
 41. During the 2014 offensive in Gaza, described as Operation Protective Edge by the Israeli government, the United Nations documented more than 6000 airstrikes, including 15 strikes on residential buildings in the Gaza Strip in which a total of 216 people were killed, including 115 children and 50 women. The UN also documented significant damage to infrastructure. *See* Rep. of the Independent Commission of Inquiry Established Pursuant to Human Rights Council Resolution S-21/1, at 32, U.N. Doc. A/HRC/29/52 (June 24, 2015).
 42. The most recent Israeli offensive in Gaza resulted in the killing of more than 250 Palestinians and the total destruction of 2000 housing units. The offensive also inflicted damage on "water and sanitation facilities and infrastructure, 58 education facilities, nine hospitals and 19 healthcare centers." OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., UNITED NATIONS, SITUATION REPORT 2, OCCUPIED PALESTINIAN TERRITORY (OPT): RESPONSE TO THE ESCALATION IN THE OPT 1 (2021), https://www.ochaopt.org/sites/default/files/sitrep_2_escalatoin_in_opt_3_june_2021.pdf [<https://perma.cc/JT4V-BA76>].

Gaza Strip due to its continuous exertion of power and authority of its population, despite the formal withdrawal of its settlers.⁴³

Given this reality, the United Nations predicted that the Gaza Strip would become unlivable.⁴⁴ The mass demonstrations near the Gaza fence in 2018–2019, titled the “Great Marches of Return,” served as a poignant reminder that the younger generation of Gazans, born into dire conditions with contaminated water, high mortality, and unemployment in Gaza, has not forgotten its history.⁴⁵ They demanded the realization of their right to return to the lands from which their parents were uprooted.⁴⁶ The March of Return, primarily non-violent, resembled an outdoor festival where entire families, women, and men of all ages commemorated the villages from which they were displaced, emphasizing their aim to return to their homeland.⁴⁷ Unfortunately, these marches were met with murderous violence directed at unarmed civilians, journalists, and medical teams. The refugee question remains an ongoing tragedy for the entire Palestinian people, particularly the people of Gaza.⁴⁸

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43. See Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, I.C.J. (July 19).
 44. Press Release, General Assembly, Débats houleux à la Troisième Commission lors de la présentation de plusieurs rapports de pays sur la situation des droits de l’homme [Gaza “Unlivable”, UN Special Rapporteur for the Situation of Human Rights in the OPT Tells Third Committee], U.N. Press Release AG/SHC/4242 (Oct. 24, 2018) <https://press.un.org/fr/2018/agshc4242.doc.htm> [<https://perma.cc/2L7S-9XX7>], (“[T]he United Nations has stated that Gaza may well be unlivable by 2020: safe drinking water has almost disappeared, the economy is cratering and ‘the state of unlive-ability is upon us,’ he said, urging the international community to insist that all parties bring an immediate end to this disaster.”) (translated from French).
 45. UNRWA, GAZA’S “GREAT MARCH OF RETURN”, ONE YEAR ON (2019), https://www.unrwa.org/sites/default/files/content/resources/gaza_gmr_one_year_on_report_eng_final.pdf [<https://perma.cc/7AWC-HLWG>].
 46. B’TSELEM, *supra* note 20; Bram Wispelwey & Yasser Abu Jamei, *The Great March of Return: Lessons From Gaza on Mass Resistance and Mental Health*, 22 HEALTH & HUM. RTS. J., June 2020, at 179; Ahmed Abu Artema, Opinion, *I Helped Start the Gaza Protests. I Don’t Regret It*, N.Y. TIMES (May 14, 2018), <https://www.nytimes.com/2018/05/14/opinion/gaza-protests-organizer-great-return-march.html> [<https://perma.cc/G8N4-ELVC>].
 47. Salman Abu Sitta, President, Palestine Land Soc’y, RETURN PLAN 2023, delivered at the Palestine Writes PalFest (Sept. 23, 2023), <https://www.plands.org/en/articles-speeches/speeches/2023/return-plan-2023> [<https://perma.cc/EKP9-AKJ9>]; *The Vision Document of the Return Council*, ZOCHROT (Nov. 29, 2018), https://www.zochrot.org/articles/view/286/en?target=8?Return_Vision_council [<https://perma.cc/8HU7-EK6H>] (addressing the Council’s position with regard to realizing the return of refugees, ways of implementing it, and its costs and benefits); Artema, *supra* note 46.
 48. B’TSELEM, *supra* note 20; Wispelwey & Jamei, *supra* note 46; Hilo Glazer, ‘42 Knees in One Day’: Israeli Snipers Open Up About Shooting Gaza Protesters, HAARETZ (Mar. 6, 2020), <https://www.haaretz.com/israel-news/2020-03-06/ty-article-magazine/.highlight/>

Israel's policy towards Gaza since October 7, but also predating it, sits outside of this context and historical memory. This strategy criminalizes referring to any recounting of the hegemonic realities which produced the violent attack on Israelis,⁴⁹ contributing to a prevalent discourse in Israel that draws comparisons between the stateless population of Gaza and Nazi Germany.⁵⁰ In practice, its rhetoric is deeply colonial; Israel is fighting for the survival of Western civilization against "savages."⁵¹ For readers unfamiliar with this perspective, it's essential to recognize that colonial rhetoric often masks oppressive power dynamics and perpetuates harmful stereotypes. By unpacking the colonial undertones of Israel's discourse towards Gaza, we can better understand the complexities of the occupation and the assumptions entrenched in our society's logical framework.

II. WHERE WE CAN GO: A NEW HISTORICAL MEMORY FOR ISRAELI JEWS AND JUST SOCIOLEGAL REALITY FOR ALL

To understand the problem and think collectively about its solution, we Israelis, speaking to a global audience as well as our neighbors and communities, must take these historical facts into account and reject ahistorical explanations of October 7. Concealing and denying the layers of

42-knees-in-one-day-israeli-snipers-open-up-about-shooting-gaza-protesters/0000017f-f2da-d497-a1ff-f2dab2520000 [https://perma.cc/EL2G-KC9G].

49. Brett Wilkins, *Israel Accused of 'Thought Policing' as Legislation Criminalizes Viewing Pro-Palestinian Media*, COMMON DREAMS (Nov. 9, 2023), <https://www.commondreams.org/news/israel-counterterrorism-law> [https://perma.cc/PZB7-FPB8]; *Israeli Parliament Bill Criminalises 'Consumption of Terrorist Materials'*, AL JAZEERA (Nov. 8, 2023), <https://www.aljazeera.com/news/2023/11/8/knesset-introduces-consumption-of-terrorist-publication-as-offense> [https://perma.cc/5VF4-TB6].
50. Zoé Samudzi, *"We Are Fighting Nazis": Genocidal Fashionings of Gaza(ns) After 7 October*, 24 J. GENOCIDE RSCH. 1 (2024); *One-on-One Interview With Israeli PM Netanyahu*, CNN (Jan 27, 2024, 2:46 PM), <https://edition.cnn.com/2024/05/21/world/video/one-on-one-interview-with-israeli-pm-netanyahu>.
51. See, e.g., Dan Illouz, *Israel's War With Hamas Is a Battle to Save Human Civilization*, JERUSALEM POST (Oct. 26, 2023, 2:32 PM), <https://www.jpost.com/opinion/article-770269> [https://perma.cc/92BS-XVL4]; Claudia Chiappa & Anne McElvoy, *Israeli Envoy: Hamas 'Animals' Must Be Destroyed*, POLITICO (Oct. 12, 2023, 6:45 AM), <https://www.politico.eu/article/ron-prosor-israel-evoy-hamas-animals-must-be-destroyed> [https://perma.cc/44QR-5JAB]. Law for Palestine, a legal non-profit, has collected a database of dehumanizing language levied at Palestinians in Gaza. See Press Release, Law for Palestine Releases Database with 500+ Instances of Israeli Incitement to Genocide – Continuously Updated, Law for Palestine (Jan. 4, 2024), <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated> [https://perma.cc/7AUW-W4ZU].

violence and loss are part of a comprehensive and deliberate strategy of erasing Palestinian existence and history. In the process, the memory, decency, and compassion of millions of Israeli Jews are also erased, so we fail to acknowledge our own (albeit sometimes unwilling) complicity in enabling this reality. Immersing ourselves in this past, and facing its violence, is how we move towards existence in just peace and genuine safety. This, ultimately, is the work of pre-transitional justice. Entrenching ourselves, Israeli Jews, in decontextualized narratives and structures, and embracing the rhetoric of elimination, perpetuates the ongoing Nakba. Alternatively, by turning inward and imbuing ourselves in this difficult history—confronting our historical post-Holocaust grief and the ongoing mourning of Israeli society after October 7 in its full political and legal context—lays the social groundwork for a transition towards a more just reality. Put differently, by engaging deeply with the past and facing its violence, while holding our own complex pains, we as Israeli Jews take an essential step in pre-transitional justice—recognition towards reparation.

There is grave danger in turning away from the past and allowing for a decontextualized present. How can the Nakba be ignored where echoes of the original ethnic cleansing of Palestine are ever-present in these months of war and mass suffering? Just listen to the words of Israeli officials: “We are now rolling out the Gaza Nakba ... Gaza Nakba 2023. That’s how it’ll end” said Avi Dichter, Minister of Agriculture and former Director of the Israel Security Agency on November 12, 2023.⁵² Bezalel Smotrich, Israel’s Minister of Finance and head of the Religious Zionism-Jewish Force party, said on December 31, 2023:

We need to encourage immigration, not to let two million people who want to destroy the state of Israel stay. If the Gaza strip will have [only] 200,000 people, the whole discourse will be different. They want to leave; they’ve been held in a ghetto for 75 years in

52. *Israeli Parliament Bill Criminalises ‘Consumption of Terrorist Materials, supra note 49; Michael Hauser Tov, ‘We’re Rolling Out Nakba 2023,’ Israeli Minister Says on Northern Gaza Strip Evacuation, HAARETZ (Nov. 12, 2023) <https://www.haaretz.com/israel-news/2023-11-12/ty-article/israeli-security-cabinet-member-calls-north-gaza-evacuation-nakba-2023/0000018b-c2be-dea2-a9bf-d2be7b670000> [https://perma.cc/6JSK-8L62]; We Are Now Rolling Out the Gaza Nakba... Gaza Nakba 2023. That’s How It’ll End, ZOCHROT (Nov. 28, 2023), https://www.zochrot.org/publication_articles/view/56537/en?pGaza_Nakba_ppANDquotWe_are_now_rolling_out_the_Gaza_NakbaANDhellip_Gaza_Nakba_ThatANDrsquos_how_itANDrsquoll_endANDquotp [https://perma.cc/E6UU-UJWH].*

poverty and misery and are being told that the solution is to destroy Israel. Let's look straight at the problem. This is humane.⁵³

This twisted language is based on the harmful premise of ahistorical, perpetual hatred to which the only possible solution is elimination. The discourse of Israeli leaders also negates the possibility of decolonial solutions that recognize Palestinian rights and belonging in historic Palestine, acknowledge the historical injustices levied against them, and seek a shared life of safety and dignity for all the inhabitants of the land. Instead of acting in accordance with the “logic of elimination” characteristic of settler-colonial regimes,⁵⁴ the atrocities committed on October 7 can awaken more Israelis, and the rest of the world, to a different understanding: the safety of Jewish Israelis and Palestinians are interrelated.

Further, legal professionals and scholars play a crucial role in shaping policies and discourse that can pave the way for reconciliation and justice. The law should evolve to protect the oppressed, on their terms, and for that to happen, legal professionals must understand historical and social contexts and frameworks of oppression. Gaining this understanding can be particularly difficult where the state orchestrates a concerted program of erasure. Thus, as Israeli Jews, it is our responsibility to offer legal professionals and the academic community a narrative that deconstructs and counters the dominant history promulgated by the state. As the language of law elides the struggle of Palestinians and the vocabulary of “Nakba,” it is incumbent on us to assert this history in spaces where legal knowledge is produced and disseminated.

Zochrot's archives are helping some Israeli Jews turn away from this logic and embrace a radical empathy which recognizes the ongoing Nakba. It also holds the potential to equip legal professionals and scholars with locally collected testimony and information. Our archival work serves as a powerful tool in pre-transitional justice by laying the groundwork for acknowledgment, truth-telling, and, ultimately, reconciliation. The archive disrupts the dominant narrative and encourages Israelis and others to engage with uncomfortable truths, fostering recognition and accountability. It not only preserves history but also serves as a bridge toward imagining a

53. *Smotrich: 1.8 Million Gazans Should Be Encouraged to Emigrate to Change Facts on the Ground After War*, TIMES OF ISR. (Dec. 31, 2023, 2:36 PM), https://www.timesofisrael.com/liveblog_entry/smotrich-1-8-million-gazans-should-be-encouraged-to-emigrate-to-change-facts-on-the-ground-after-war [https://perma.cc/8EPW-GJAH].

54. Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RSCH. 387 (2006).

future rooted in justice, shared existence, and the possibility of return for refugees. Through presenting this historical memory, we stress that Jewish Israelis cannot, and will not, achieve lives of just safety and human dignity while ignoring the regime of subjugation and displacement inflicted upon Palestinians.

Thus, the imperative for Jewish Israelis to acknowledge our history and seek to end the oppression of Palestinians is multifaceted. While self-preservation and long-term security are undoubtedly critical factors, it is equally important to recognize that the struggle against oppression transcends self-interest. Palestinians, as fellow human beings, deserve justice and equality, free from subjugation and suffering.

This moral imperative should compel Jewish Israelis to challenge our government and take action, not only for their own safety but because it is the right and ethical course of action. We believe that work towards pre-transitional justice are grounded in efforts which focus on acknowledgment, education, and creating pathways toward justice and reconciliation. Zochrot continually facilitates an uncovering of these truths, helping Israeli Jews confront their own personal history and see beyond the state-sponsored narrative. We tour the ruins of depopulated Palestinian villages, host workshops to encourage participants to confront settler colonialism and imagine frameworks for Palestinian right of return, and protest our government's project of historical erasure.

All of these measures are within Zochrot's semi-legal pre-transitional justice frame. They work towards eroding the epistemological pillars of the existing regime, to build popular movements that will create new structures for all peoples between the river and the sea. By standing against the fundamental injustice of the Nakba and advocating for the rights of Palestinians, Jewish Israelis can help build a future rooted in mutual respect, dignity, and lasting peace for all. We must stare honestly at the violence of history, and begin the important project of repair.

CONCLUSION

The ongoing ethnic cleansing and forced displacement of Gaza's population and ongoing Israeli military assaults are stark reminders that the Nakba's legacy endures. Recognizing the systemic violence and militarist, racist legal regime that subjugates millions in Gaza is essential for building a future where such tragedies do not recur. The violence and humanitarian crises experienced by Gazans reflect a continuous process of displacement

and oppression. The Israeli government's refusal to contextualize October 7 within this broader historical framework perpetuates a cycle of violence and denial with which our communities must reckon.

We bring this message to a legal journal to underscore the importance of historical memory in addressing the particular legal injustice in Palestine/Israel. We also contribute this Essay to share Zochrot's approach to the current moment, which sits outside traditional humanitarian law responses to atrocities. Nonetheless, our philosophy of pre-transitional justice has an inherent legal component: pre-transitional justice ultimately contemplates a series of legal and non-legal measures to deconstruct an immoral regime, establish a legal and historical record, and foster a new structural reality. Though Zochrot does not engage in traditional legal work, we understand that law both stewards accountability and facilitates repair. In carrying out this responsibility, the centrality of the Nakba is paramount.