The Israeli Human Rights Movement – Lessons from South Africa
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One of the principal questions that Stanley Cohen posed during the years he lived and worked in Israel was: Why do Israeli liberals not try to do more to change the political situation? In 1988, Stan delivered a lecture entitled “The psychology and politics of denial: the case of Israeli liberals,” to a group of Israeli and Palestinian psychologists and social workers, active in the cause of peace. He spoke about:

the educated, enlightened, western-oriented sectors of the middle class;
those supposedly receptive to messages of peace and co-existence;
those who are first to condemn racism and human rights violations in South Africa or Chile; those who are ‘like us’ in every respect but one: their reluctance to actively engage with the political situation. They might be wringing their hands, saying how terrible things are -- but not much else.3

Stan analysed this question while simultaneously trying to change the reality he was studying.4 He proposed various kinds of activism for opposing the occupation, participated in demonstrations, helped establish the Public Committee Against Torture, built bridges of cooperation with Palestinian activists and publically

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1 Many thanks to Hagar Mushonov, Irith Ballas and Alaa Mahajna for their help in research for this article, and for Janine Woolfson for translation.
2 For comments and suggestions please write to msdgolan@mssc.huji.ac.il
protested the fact that his Israeli academic colleagues at the Hebrew University, especially those in the Law Faculty, did not do enough to change the unjust reality in which they live.

He pushed the academic discussion in Israel to pose questions, that were universal and obvious in other parts of the world, but seemed threatening enough to marginalize him in the Israeli liberal university establishment. In 1990 Stan delivered a lecture in the memory of Michael Wade on “The Human Rights Movement in Israel and South Africa: Some Paradoxical Comparisons”. Perhaps this comparative perspective on Israel and South Africa that Stan proposed was most threatening. It angers and threatens Israelis in general, and liberal Israelis in particular, because it challenges the basic belief that the Israeli-Palestinian conflict was imposed upon Israel and that it is so unique that it cannot be compared with any other conflict in the world.

Here I return to the questions Stan posed at the time and ask them again in the current context, in which liberal Israelis are still doing little to bring about reconciliation and justice. I ask these questions in order to examine which of Stan’s perceptions are still relevant to Israeli reality at the start of the 21st century.

I begin with Stan’s comparison of South African and Israeli organisational activism, using three principal distinctions that he suggests and considering the relevance of each to the current situation. Only then do I return to the issue of why Israeli liberals do virtually nothing to try to change the injustice that surrounds them. My premise is that understanding the limitations of activism among those who are involved will provide insights into why the voting public remains so uninvolved.

5 Professor Michael Wade, who died in 1990, was an expert on South African literature and a friend of Stan from their student days at the University of Witwatersrand.
6 After four years reporting from Jerusalem and more than a decade reporting from Johannesburg, the Guardian’s award-winning Middle East Correspondent Chris McGreal published an assessment of the comparison between Israel and South Africa. McGreal’s fascinating articles were not translated or published in Israeli newspapers but Haaretz, the liberal Israeli paper, did publish a scathing response to McGreal by Benjamin Pogrund, who claimed that the comparison between Israeli and apartheid South Africa was unjustified. See, C. McGreal, “Worlds apart” The Guardian, 6 February, 2006. C. McGreal, “Brothers in arms- Israel’s secret pact with Pretoria” The Guardian, 7 February, 2006 and B. Pogrund, “Why depict Israel as a chamber of horrors like no other in the world?” ” The Guardian, 8 February, 2006. Also published at Ha’aretz.
Human Rights Organisations in Israel and South Africa – What has Changed Since 1990?

Stan presented three essential differences between the activism of the human rights organisations in South Africa and Israel: the use of the tools and discourse of civil rights in Israel as opposed to the human rights discourse in South Africa; the attempt to be apolitical in Israel versus the politics of human rights in South Africa, and the emphasis on individual rights in Israel versus the focus on collective rights in South Africa. Before using these three differences to examine the human rights movement in Israel today,7 I first situate Stan’s unpublished presentation in the political context in which it was given, at the Faculty Club of the Hebrew University on Mt. Scopus at the height of the First Intifada.

The year 1990 was an important milestone in South African history. This was the year that De Klerk announced the freeing of Nelson Mandela, the legalization of the African National Congress (ANC), the freeing of political prisoners, the beginning of negotiations between the government and the ANC. In Israel, the Intifada was raging, Palestinians were rising up against their oppression in the Occupied Territories, and the Israeli army, following directives from the Israeli government, was trying to quash the uprising. Yitzhak Rabin, who would in time become the champion of peace, instructed the soldiers to break the Palestinians’ bones. Thousands of Palestinians were arrested, many without trial. Though the Palestinians’ uprising mainly took the form of stone throwing, more and more regulations and laws were enacted to prevent the Palestinians from organizing, protesting, demanding their independence. Dozens of Israeli human rights organisations were founded to protect Palestinian rights. Important organisations – such as B’Tselem, the Israeli Information Center for Human Rights in the Occupied Territories (1989), the Public Committee Against Torture (1990) (of which Stan was a founder), and Physicians for

7 Until the end of the 80s the Association for Civil Rights, established in 1972, was the only civil rights organisation in Israel. For the first 15 years of its existence, the association did not petition the High Court with regard to Palestinian rights in the Occupied Territories. See N. Gordon: “Human Rights and Social Space: The Strength of the Israeli Civil Rights Movement, Israeli Sociology 2005: 1, pp.23-44 and Na’ama Yishuvi, “Human Rights, That’s All: The Human Rights Association Interim Report”, Jerusalem, The Association for Human Rights, 2002.
Human Rights (1988)– were just starting out, and joining other organisations to protect Palestinian rights.8

At the time Stan gave his lecture, these organisations were small, young, angry, and Stan was the one of the few who thought they should be thought about, let alone researched, by academia. Not only were we in these organisations situated outside of the Israeli consensus, but also outside the Israeli campuses. At the time, Stan and I were researching torture of Palestinians in Israeli prisons, but our activism was not part of our academic work. In fact, our activism was opposed by academia, which held that academic freedom excluded the bringing of politics on campus. Stan, with courage, charm, and academic brilliance, brought us onto the campus, into the prestigious seminar room in the Faculty Club and placed our activities at the centre of his lecture, along with the South African human rights movement that was celebrating its victory. Stan optimistically encouraged the Israeli human rights movements to learn from its South African counterpart, asking “how [have] the different movements… resolved and expressed their shared commitment to the same values of legality and human rights?”

Civil Rights and Human Rights
Stan noted:

In the South African case, it was hardly possible to invoke the traditional discourse of civil liberties or civil rights. This discourse depends entirely on an existing structure of democratic citizenship. When such citizenship is denied to the bulk of the population, the question of justice must be framed within the stronger discourse of human rights, rather than the legalistic notion of civil liberties. In Israel, it was possible, certainly before 1967 (although perhaps the idea was compromised more than is generally acknowledged by the notion of a “Jewish state”), to invoke the narrower concept of civil liberties.

This tension between the language of civil rights and human rights is still relevant for the study of Israeli human rights organisations, even though so much has

changed in the use of the human rights discourse by both the state and by NGO’s. In 1991 Israel signed six major international treaties, including the treaty against torture. Thus, despite having added a caveat to the signature and failing to make the treaty part of Israeli legislation, Israel indicated to the international community that it was part of the family of nations that upholds human rights.

The legislation of Basic Law on human rights in 1992 heralded the beginning of a constitutional revolution, bringing about a transformation of the legal status of human rights in Israel. The new law granted the Court the authority to review Knesset legislation that violates rights protected by Basic Law. Israeli human rights organisations have thus been able to use the new Basic Law, together with the international language of human rights, which has grown stronger, especially with the establishment of the International Court at the Hague.

The number of human rights organisations in Israel, particularly the number of organisations dealing with Palestinians’ rights, has increased dramatically. In 1990, we were a small community of activists. Today, each organisation employs dozens of people and many new organisations have emerged. The successes of these organisations have been especially impressive.

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11 The last ten years have seen the establishment of new organisations dealing with two main issues: the rights of the Palestinian Israeli minority and social rights. With the widening economic gaps in the 1990s, due to the decline of the welfare state and the influx of approximately a million Russians and thousands of Ethiopians with simultaneous intensive growth of the high-tech industries, Israel became one of the countries with the most pronounced economic differences. There are dozens of human rights organisations that inform citizens of their rights, assist in the legislation of public housing, petition the courts on issues of principle in the field of human and social rights and private cases. These organisations are not active at the grass roots level but stress legal strategy. Most of them also lobby in the Knesset and have education and media departments.

12 48 employees work for the Association for Civil Rights in Israel. Some 80,000 – 60,000 people enter their website each month. B’Tselem - The Israeli Information Center for Human Rights in the Occupied Territories (established 1989) has 27 office employees and 8 field workers. About 2,000 people use their website daily. The Public Committee Against Torture employs 28 staff and 4 volunteers. Physicians for Human Rights (established 1988) has 19 employees and hundreds of volunteers, most of whom are medical doctors.
Nevertheless, with few exceptions, the human rights movement in Israel still uses civil rights tools or works within the Israeli legal system to repair it or to challenge it to improve itself, but does not question the system’s legitimacy. The operational space occupied by the human rights movements in Israel is much wider than it was in South Africa. They are active in a society that has more freedom of expression, largely for Jews, but also to some extent for Arab citizens. Many of the human rights activists believe that it is possible to change things from within, and oppose the intervention and pressure of the international community on Israel. There is not only a great resistance to the threat of British academics to enforce an academic boycott on Israel because of violations of human rights of Palestinians, but also the attempts to bring to trial in Europe or the US Israeli officers who committed war crimes, are much criticized in Israel.  

The focus of human rights activity on the legal system is part of the “legalization” of Israeli society. There are more lawyers per capita in Israel than in any other country in the world. Israel has no constitution and the High Court has become the main organ for deciding human rights issues. Thus, despite the fact that the Court has accepted state and military positions on almost every issue pertaining to the Occupied Territories, by approving expropriation of territories and house demolitions, deportation and prolonged arrests without trial to Palestinians, the Court still frequently seems the only possible avenue for some justice, and the number of appeals regarding Palestinians’ rights in the Territories has continued to grow steadily.

12 See for example the responses to the arrest warrant that awaited Major General (res) Doron Almog in Great Britain for his alleged crime the destruction of 59 civilian homes in Rafah refugee camp in the dropping of a one-tone bomb in Gaza City which killed 15 Palestinian civilians: Sima Kadmon, “Where is the border?” Yediot Ahronot, 16 September 2005, A. Fachter, “Universal Hypocrisy” NFC 18 September 2005. (both in Hebrew)  
15 In his book “The Occupation of Justice,” David Kretzmer studies the main rulings pertaining to the Palestinians in the territories which enabled the Israeli government to conduct deportations, house demolitions and establish Jewish settlements on lands declared state property. He concludes: “…in its decisions relating to the Occupied
The High Court never clearly acknowledged that the Occupied Territories are in fact occupied and, hence, that the Fourth Geneva Convention, which protects citizens living in occupied territories, applies. The High Court continues to disregard the opinion of the International Court at the Hague, which ruled that Jewish settlements in the Occupied Territories are illegal and the construction of a separating wall in the territories is against international law.

In rare cases, however, the Court allows the human rights organisations and lawyers representing Palestinians a few victories, which indicate that it is still possible to effect change from within. For example, about a week after the International Court’s ruling on the illegality of the wall and settlements in the Territories was made public, the High Court ruled that the site of the wall should be changed in the Beit Sourik area.\(^\text{16}\) Even so, this verdict, like a similar one delivered in the Alfei Menashe High Court case,\(^\text{17}\) was very different from the International Court’s ruling in that it did not state explicitly that the wall is illegal or that Jewish settlements in the Territories are a violation of international law. The verdict indicates, however, that the High Court is not totally oblivious to the human rights organisations and to their civil rights language, particularly when legal authorities in the world support them publically.\(^\text{18}\)

As Stan himself showed, in some cases these languages of civil and human rights are the same. For example, the struggle against torture is the same absolute struggle for which many tools of civil and human rights were used, and the most striking victory of the human rights organisations was the Court’s ruling against torture on September 6, 1999.

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\(^{17}\) HCJ 7957/04 Maraaba vs. The Government of Israel

\(^{18}\) To obtain the ruling ordering that the wall be moved and free five Palestinian villages from the threat of being surrounded and cut off from all their sources of income, Attorney Mohammed Dahala of Adalah “recruited” a group of retired Israeli military figures who live in the Israeli town of Mevasseret Zion near the wall. They presented their professional-military opinions regarding why the proposed location of the wall was not in Israel’s security interests. They made use of surveyors who built a model of the proposed wall and displayed it before the court. (Mohammed Dahala: lecture delivered to my students, 2005).
In 1991, we published the first B’Tselem report on torture against Palestinian detainees. This report and the public response to it, encouraged Stan to research denial. As he writes in the introduction to his book States of Denial:

Our evidence of the routine use of violent and illegal methods of interrogation was to be confirmed by numerous other sources. But we were immediately thrown into politics of denial. The official and mainstream response was venomous: outright denial (it doesn't happen); discrediting (the organization was biased, manipulated or gullible); renaming (yes, something does happen, but it is not torture); and justification (anyway 'it' was morally justified). Liberals were uneasy and concerned. Yet there was no outrage. Soon a tone of acceptance began to be heard. Abuses were intrinsic to the situation; there was nothing to be done till a political solution was found; something like torture might even be necessary sometimes; anyway, we don't want to keep being told about his all the time.

We then published a follow-up report that showed how the critique had led to significant changes but asserted that, as long as Israel continued to permit “moderate physical pressure,” it would in fact be facilitating legal torture.

Since 1991, Israeli lawyers have submitted hundreds of appeals, asking the High Court to permit them to meet with their Palestinian clients and to order the General Security Service (GSS) or the army to stop torturing them. There were two

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main objectives in petitioning the High Court. The first was to provide legal representation to help individual detainees. The second was to pressure the Israeli High Court of Justice into outlawing the use of torture and other cruel and inhuman treatment which were legally approved and termed “‘moderate physical pressure.” “Flooding the court” with appeals aimed to remind the Justices that torture was a routine practice in Israel and to suggest that by permitting the GSS to torture prisoners, the Court was in fact legitimizing these actions. After rejecting hundreds of appeals, the Court decided to review seven appeals simultaneously and discuss the theoretical question of whether the GSS’s interrogation techniques were legal. It took five years for the High Court Justices to reach their decision; five years in which torture continued, while the Justices took their time deliberating.

Finally, in September 1999, the President of the High Court, Justice Aharon Barak read the verdict, signed by all nine High Court Justices, which stated that the interrogation methods used by the GSS were illegal. The sought after court victory had been achieved after years of struggle engaged in by dozens of individuals and organisations in Israel and Palestine. It was achieved after international judges and human rights organisations had criticized Israeli policy and made court appearances to indicate to the High Court justices that their verdict would have a significant effect on the standing of Israel in the international community and the judges’ own standing in the legal world. The verdict itself was highly apologetic:

Deciding these applications weighed heavy on this Court. True, from the legal perspective, the road before us is smooth. We are, however, part of Israeli society. Its problems are known to us and we live its history. We are not isolated in an ivory tower. We live the life of this country. We are aware of the harsh reality of terrorism in which we are, at times, immersed. Our apprehension that this decision will hamper the ability to properly deal with terrorists and terrorism, disturbs us. We are, however, justices. Our brethren require us to act according to the law. This is equally the standard that we set for

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ourselves. When we sit to justice, we are being judged. Therefore, we must act according to our purest conscience when we decide the law.  

The High Court ruling did not put a decisive end to torture, but it did stop some of the horrific practices that were routinely employed, indicating clearly to interrogators that the use of torture is not legal. This was a significant verdict, for which Stan worked by simultaneously criticizing the limitations of the liberal discourse and utilizing it in the struggle against torture.

Human Rights and Politics
The second difference that Stan found between Israeli and South African organisations was that: “While it would be literally inconceivable for human rights organisations in South Africa not to be against apartheid, it is possible to find human rights organisations in Israel which are not openly against the Occupation.” In order to comprehend this principal difference, Stan suggested the wider context of different perceptions of law and human rights in Israel and South Africa. “In South Africa”, he said, “the struggle for legality and basic civil rights was inseparable from the overall political struggle.” In Israel, however, “the apparent intactness of the rule of the law has allowed the liberal, consensual image to be sustained with some conviction.” He was referring not only to “the normative ideal” (what is desirable and valued) but to “what people think is actually happening.”

23 HCJ 5100/94 Public Committee Against Torture v. Israel
24 There is no statistical data on the use of torture in Israel at this time. The most recent report (not yet published) of the Public Committee Against torture in Israel (PCATI) covers the years 2004-2005. In 2004-2005, PCATI handled approximately 1360 cases. About 1100 of these involved detainees or prisoners who approached PCATI with complaints regarding torture and ill treatment during arrest, interrogation and detention. The other 260 cases primarily involved the killing of civilians during military activities in the Occupied Territories.
“In the Occupied Territories after 1967,” he said, “the picture is entirely different.” Here, the model of liberal legalism cannot be applied by any stretch of the imagination. “Law” operates through a baroque framework of military orders which are explicitly designed to serve the interests of the occupier and to regulate, govern and control the lives of the occupied. Only in the most rhetorical or analogical sense does this system fit the criteria of justice demanded by domestic Israeli law or international law.

Trying to understand how Israeli liberals, particularly in the legal community, can possibly resolve this major anomaly, Stan refers to a technique, which he called “geographical magic.” He explains, “In Israel itself, they claim, everything is okay, but ‘over there’, across the Green Line, there is a military government, there is no rule of law, and there are no civil or human rights. Everyone understands this – and nothing can be done about it until there is a political solution.”

Stan criticizes the Israeli liberal legal community not only for ignoring the fact that the Israeli legal system is itself deeply implicated in maintaining the Occupation, but for lending the Occupation its veneer of legality. “The illusion that there is a boundary that marks the Occupation as a separate social territory,” he writes, “prevents full comprehension of how the norms of legality applied ‘over there’ spreads into, penetrates and contaminates every element of the legal system in Israel itself -- lawyers, courts, military police, ordinary police, the prisons, judges, academics.”

More than 16 years later and after further bloodshed, fear and hate and pain, there is still widespread conviction among liberal Israelis that if we separate here from there everything will be alright. Today, however, the imaginary lines are reinforced with real walls and checkpoints.

The Israeli human rights organisations work within this broader context, careful not to be seen as political, because the political solution in Israel does not correspond well with the language of human rights. In South Africa, work on behalf of human rights was part of the political struggle for a democratic South Africa. In Israel the political solution is perceived as a demarcation of boundaries – a political

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26 This is reminiscent of a notion that prevailed among South African liberals. There too, for years, white liberals described their country as consisting of two circles, the democratic one that whites lived in and the one where blacks had no rights.
act that does not fall within the human rights frame of reference. The human rights organisations have therefore never addressed the question of where the border between the states would be and what the peace agreement would look like. Instead, they focus on how they can, in the present setting, improve the human rights situation in the Territories and how they can ensure that protection of human rights will be taken into consideration if peace agreements are signed.27

In recent years, the new Basic Laws have empowered the courts to review Knesset Laws, resulting in a growing number of appeals to the High Court concerning human rights. The emphasis on legalisation has exacerbated the tendency among human rights organisations towards professionalization. If the founding generation was made up of radical Israelis, who saw the liberal language of human rights as a way of working against the Occupation, a means of connecting with the global human rights movements and a source of new tools for activism, now the organisations have gradually become more and more professional and increasingly wary of taking a political stand. Because the public being targeted by the human rights organisations are policy makers and liberal Israelis and because the prevailing view is “if they only knew, they would do more,” and because threats to the consensus in Israel are perceived as political, most of the Israeli human rights movements avoid broaching the issues which are defined by Israeli academics as political.

For example, B’Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, the largest, most important and most reliable source of information on human rights violations in the Territories, has issued many publications on particular infringements of human rights – freedom of movement of Palestinians, administrative detentions, torture, house demolition, the wall – but not a single comprehensive publication on the human rights situation of Palestinians in the Territories or recommendation on how to put an end to the Occupation28.

As a further example, when staff members of B’Tselem proposed a study on the Palestinian right of return, the Board of Directors, consisting of Israeli academics,28

27 It is worth noting that although the human rights organisation made an important contribution to exposing the horrors of the Occupation and holding up a mirror to Israeli society so that it would have to address the evil it was perpetuating, they were not invited either by the Israeli or Palestinians to the many peace talks, all of which failed.

28 I have full respect and admiration for B’Tselem as well as other human rights organisations struggling against injustice. I was the founding research director and remember Stan telling me that we have a moral duty of witnessing. See my “Compassion and the Language of Human Rights” in Next Year in Jerusalem
held a fierce debate and vetoed the proposed research by a large margin. Their principal justification was that Palestinian refugees’ right of return is a political issue and not a human rights issue. The study was never conducted.

The right of return is an issue that is deeply threatening to Israeli society, not only to liberals, but also to many Israelis who are active against the Occupation. The fear of even beginning to discuss the Palestinian right of return is so great that the very mention of the topic engenders panic in many Israelis. They react by claiming that there is nothing to talk about because we don’t want four million Palestinians to come back and make us a Jewish minority in the State of Israel. The Palestinian refugees are the main taboo, their existence denied, their dreams neglected. They are pushed out of the human rights discourse in Israel, as are other issues, which challenge the feasibility of Israel maintaining its status as both a Jewish and democratic state.

This brings us to the third difference that Stan referred to in his comparison between Israel and South Africa.

Individual Versus Collective Rights

In the two cases we are comparing, we see that precisely the problem of the relation between the individual and the collective conceptions has rendered these human rights movements so different. In both cases, the heart of the conflict lies in the demands for group rights: control over natural resources, land, culture, nationality. In the South African case, however, the dominance of the demand for the collective rights of the majority black population is too obvious to even require comment.

However, in Israel, Stan said

…the collective concept poses too many anomalies. To fully concede the Palestinian case (historically or today) would be to call into question too many normative assumptions about the nature of Israeli democracy or (until recently, at least) the very existence of the state. This was never so in South Africa, where it has not ever been possible to sustain even the pretense of democracy. The paradox here is precisely because Israeli “democracy” has seemed so intact (to Israeli Jews, at least), liberals hesitate to be drawn into a collectivist, political
tradition - a tradition that is, which concedes that human rights have no separate existence from the idea of people’s rights, collective rights.

This distinction still holds today, despite significant changes that have taken place over the years. I will present three important court rulings which attest to the tension between collective rights and individual rights and the process of change through which the discourse of collective rights has begun to form in Israel.

In 1995, the Association for Civil Rights petitioned the High Court on behalf of the Qa’adans, a Palestinian couple, Israeli citizens, who wished to build a house in Katzir. They were denied permission because they were Arabs and Katzir was built for Jews only. The Court accepted the application in a decision, which was perceived by the Israeli public as a groundbreaking case, since it allowed an Arab family to be included and integrated in the town of Katzir despite its having been explicitly intended to serve as a settlement for Jews.

This application was on behalf of an individual, not for the collective rights of Palestinian citizens as a national group residing in its homeland. The applicants in the Q’aadan case did not raise historic demands or question the legitimacy of the activity of the Jewish Agency who founded the settlement. They accepted the ideological values of the State of Israel as a Jewish State.

The president of the High Court, Aharon Barak, cites the petitioners: “the proxy for the petitioners does not question the important role of the Jewish Agency in the history of the State of Israel, nor does he criticize the policy that has been in place for many years regarding the establishment of Jewish settlements throughout the land.” ACRI’s petition did not seek recognition of the historical wrong that was done to Palestinians in Israel as a people as a result of a consistent policy of land confiscation, nor did they seek acknowledgement of their collective memory.

In 1996 a group of Palestinian-Israeli lawyers (some of whom worked for ACRI) formed Adalah: The Legal Center for the Arab Minority in Israel. They employ strategies much more reminiscent of those used in South Africa. They see the legal struggle as part of the political struggle for full human rights in Israel and emphasize the collective rights of Palestinian Arabs and their historical connection

29 H.C. 6698/95, Qa’dan v. Israel Lands Administration, et. al, P.D. 54(1) 258.
30 H.C. 6698/95, Qa’dan, paragraph 37
31 10 years later the Qa’adans petitioned the High Court again as they still cannot live on their land.
with the land. *Adalah* has petitioned the High Court many times on behalf of collective rights in the areas of education, burial, land ownership and services. One of the most important of these cases pertained to the use of the Arabic language as the language of the Palestinian Israeli minority.

In the *Re’em Engineers* case the applicant wanted to place an advertisement in Arabic on the bulletin board of the municipality of Natzrat Illit, a Jewish town built on lands of Arabic Nazareth and the nearby Palestinian villages. The city rejected his request. The President of the High Court, Justice Barak articulated the situation as a confrontation between two values: freedom of speech and expression, on the one hand, and the public interest in the Hebrew language on the other hand. Justice Barak, by way of a balancing act, concluded that the ad could be published, since its publication would not harm the dominance of the Hebrew language. Justice Dov Levin joined Justice Barak, saying that “freedom of expression in a foreign language is at the center of our discussion, and not necessarily the freedom to use the Arabic language.” In this manner the Court avoided a discussion of the important issue of the status of Arabic as an official language of Israel.

In both the *Qa’adan* and *Re’em* cases the High Court accepted that the policy preventing an individual from realizing his or her personal freedom is discriminatory, yet, in both cases, collective rights were replaced by individual rights. Only the Jews are presented as a people, while the Arabs in Israel are presented as an ethnic minority.

*Adalah* and other human rights organisations operate in an environment in which Palestinian demands for collective rights are perceived as a threat to Israel as a so-called Jewish and democratic state. However, as a result of the deep denial that characterizes Israeli society, there is no discussion of what exactly it is that those demands threaten. Instead, the Court, facing obvious discrimination, accepted some

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33 Another example is the petition to cancel the governmental decision, which excluded the vast majority of Arab towns and villages in Israel from the list of National Priority Areas, thus denying their access to substantial economic and social benefits. On 27 February 2006, an expanded seven-Justice panel of the Supreme Court of Israel unanimously accepted Adalah’s petition, originally submitted in 1998, and ruled to cancel a governmental decision establishing “National Priority Areas,” finding that it discriminates against Arab citizens of Israel on the basis of race and national origin. See www.adalah.org

demands on individual basis. These decisions of the High Court represent larger denial among Israeli liberals. For example, Professor Ruth Gavison, the President of the Association for Human Rights at the time it petitioned the High Court on behalf of the Qa’adans, included a footnote in dealing with land in general and the Qa’adan verdict in particular:

The establishment of the Jewish state, in the most minimal sense as one that has a large Jewish majority, damages the non-Jewish inhabitants of the State in an important way. It turns them into a minority in a state established on territory where they were once the majority. It is important to acknowledge this damage, and that it is ongoing and persistent. The Jewish state is also characterized by control over immigration and a systematic effort to increase the Jewish majority in the country. Moreover, the Jewish state “celebrates” its Judaism in symbolic and formative ways. This exacerbates the alienation of its Arab citizens, upon whose misfortune the state was founded. But all these notions, as important as they may be for understanding the deep difficulties with which relations between Arab and Jewish citizens of the state of Israel are fraught, do not constitute discrimination.35

The denial expressed in this footnote, which so powerfully summarizes the main difficulty of Israeli liberals, but claims that they all do not constitute discrimination—is essentially similar to that in the High Court verdict from May 2006 regarding the law of citizenship- the third High Court case I describe.

On 14 May 2006 the Israeli High Court of Justice decided to uphold the “Citizenship and Entry into Israel Law,” which bars family reunification for Israelis married to Palestinians from the Occupied Territories. It specifically targets Palestinian citizens of Israel, who make up a fifth of Israel’s population, and Palestinian Jerusalemites, who often marry Palestinians from the West Bank and Gaza Strip. Five of the 11 High Court judges, who ruled on this law, including the Court’s President, Justice Barak, voted against upholding it, recognizing that it infringes human rights and violates the right of Israeli Arabs to equality. The verdict is 263 pages long, opening with a detailed description of terror victims in Israel and the

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security threat faced by Israeli citizens and “inhabitants of the region” (this is what the
court prefers to call Israeli settlers in the occupied Palestinian territories) and why the
State of Israel, which is in danger, passed a law that tries to reduce the possibility of
Palestinians immigrating to Israel in order to commit acts of terror. The verdict
begins thus: 36

In September 2000 the second Intifada broke out. Terror landed a
fierce blow on Israel. Most of the attacks targeted civilians: men,
women, the old and the young. Whole families lost loved ones. The
attacks were meant to take lives. They were meant to sow fear and
panic. They were meant to ruin the lives of Israeli citizens. The
attacks take place inside Israel and in the region, at random venues.
They target passengers on public transport, people in shopping centers
and markets, cafes and inside homes and towns. The main targets of
the attacks are the urban centers in Israel, but Israeli localities in the
region and roads are also targeted. The terrorist organisations employ
a variety of means including suicide bombings, car bombs, planting of
explosive devices, Molotov cocktails and grenades, shootings, shells
and rockets. A number of attacks on strategic targets have failed.
From the beginning of these acts of terror to January 2006, over 1,500
attacks have been carried out in Israel. Over a thousand Israelis have
lost their lives inside Israel. Some 6,500 Israelis have been injured.
Many of these have been severely crippled. On the Palestinians side
too, the conflict has led to many dead and injured. Bereavement and
pain wash over us.

Barak went on to clarify:

The objective at the foundation of these directives is security related.
It is intended to prevent realization of the dangerous potential of a
spouse from the region, who has permission to live in Israel with an
Israeli spouse, helping hostile operatives, something that has occurred
in the past. There is no demographic objective or intention to limit the
growth of the Arab population in Israel underlying this law.

36 H.C. 7052.03 Adalah et al. v. Minister of Interior, et al. delivered on 14 May, 2006
If the law is not rooted in a demographic objective, why did the president of the court see fit to say so? Perhaps because Justice Procaccia wrote about it explicitly in her minority position. She wrote:

While it is true that the state, in presenting the law, indicated that security considerations were the only considerations, the Knesset discussions show that the demographic issue hovered over the legislative process throughout and was a central issue in both the house and the committee for internal affairs. There were members of Knesset from different parties who felt that the demographic dimension was the main justification for the legislative arrangement that was adopted. Some of them, such as Minister Gidon Ezra (Likud, government-Knesset liaison at that time) and Speaker Ruby Rivlin (Likud) warned that family reunification was a mechanism intended to constitute de facto realization of the right of return.

The state, as part of its position, was willing to declare that although the security consideration was the only one behind the legislation, had the demographic consideration been at the foundation of the policy that led to this legislation, it would still be legitimate, in keeping with the values of the state of Israel as a Jewish and democratic country.

In other words, the State of Israel passed legislation that prevented Palestinians from living in Israel because it wanted to preserve the Jewish majority and feared that Palestinians immigration would mark the beginning of a “return.” The High Court gave legal backing to this law and, with the exception of one Justice, claimed that it was not about what the legislators explicitly said it was about – not a racist law intended to add another restriction to the many imposed on Arabs in Israel, but one born of security concerns. That ruling created another legal rubber stamp for the 40-year-old distinction between four categories of people, each with different levels of rights: inhabitants of the Occupied Territories who have no rights at all (the Court calls them “inhabitants of the region” so as not to indicate that they deserve

37 The justice refers to the minutes of meeting 276 of the 16th Knesset, Wednesday 27.7.2005, p.15 and the Internal Affairs Committee on 29.7.2003.

38 Paragraph 169 to the state's summation from 16/12/2003, as quoted in paragraph 14 to Procaccia's ruling in H.C 7052/03.
protection as citizens of Occupied Territory); residents of East Jerusalem who are permitted to enter Israel but have no civil rights; Palestinians Israeli citizens whose standing as citizens with unequal rights was reaffirmed by this and previous rulings; and Jewish Israelis with full rights and privileges.

The High Court of Justice was divided on the question of whether this was legal discrimination. The day after the ruling was issued, the President of the High Court wrote a detailed letter to a friend at Yale University in which he described the ruling, after having headed a minority of five against six:

As you can see, technically, my view lost, but in substance there is a very solid majority to my view that the Israeli member of a family has a constitutional right to family unification in Israel with a foreign spouse, and that the statute is discriminatory.39

Representatives of Adalah and other Palestinian organisations in Israel, such as Mossawa or the Arab Association for Human Rights, have to deal not only with the denial of Israeli liberals, who camouflage racist legislation as action against terror, but also with the support this denial receives from liberal legal practitioners in the western world, most of whom see the High Court Justices as representatives of a liberal enlightened institution.

The main difference between Israel and South Africa is that in the former, control of resources, anti-liberal legislation and discriminatory policy are made possible by legislation facilitated by the Jewish majority and not by a minority group as was the case in the latter. Because the decisions are taken by a numerical majority that controls the political system, Jewish society can claim that the political system is democratic. This democratic self-image of the state of Israel,40 is reinforced by the unconditional support of the USA, which has been reinforced recently by the struggle with the Moslem world, and the European states’ fear of criticizing Israel as a result of guilt following the horrors of the Holocaust.

The establishment of the Truth and Reconciliation commissions in South Africa attests to the realization that questions of memory, truth and past pain have to

be addressed in order to create a better future. In Israel the human rights movement deals with the present, but not with the past and not with the future, because we have no collective vision. This is because in Israel, the past and future are repressed issues that are not only beyond the consensus, but not even talked about. Denial of the past and future is nourished by Israeli liberals’ need to perceive the state of Israel as democratic. As long as the Jews are a majority, any discriminatory legislation and practice in the present is perceived as separate and not part of a historical continuum – legal because effected by the majority. The refusal to speak about the dispossession and expulsion of Palestinians in 1948 and the refusal to speak about the right of return, stem from the liberals’ fear of some day finding themselves in the minority position. As long as there is a Jewish majority in the state of Israel, Israeli liberals can continue to believe they are living in a Jewish democratic state. They can continue to believe that the “solution” to the Palestinian situation in the Territories is a political solution towards which the political leadership has striven for years, “reaching out a hand in peace,” but not finding a worthy Palestinian partner. “There is no one to talk to.” In 2006, when the Palestinians elected a Hamas government which took the same “there’s no one to talk to” position, the Israeli liberals could maintain their sense of being right. They could continue to believe in the disconnection between the temporary occupation of the Territories (which would be over if only there were a suitable Palestinian partner) and discrimination (which does not actually exist in Israel because the state is democratic and the majority rules via democratic process.) The liberal High Court affirms this position.

Why do Israeli liberals not do more?

Israeli liberals and human rights organisations operate within the political system and within a social context in which only 29% opposed the demand that a Jewish majority is required for decisions critical to the country’s future, and 62% support the demand that the government encourage Arab emigration from the country.41

Different groups in Israeli society hold different opinions on what needs to be done in order to reduce the number of Arabs in Israel: a large portion of the Israeli public believes in the religious obligation to “liberate” as much territory as possible from non-Jewish control. In the 2006 elections, some 10% supported a party that

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suggests transferring Arab Israeli citizens over the border. There are those who perceive themselves as liberals, who agree that Arab citizens of Israel deserve equal rights, within a Jewish-democratic country, but that all the Jews in the world must be allowed citizenship in Israel. Over a million people immigrated from the ex-Soviet Union to Israel in the last 15 years, and they make up almost a fifth of Israeli citizens. A similar number of Palestinians who are citizens of Israel. But while the new comers were given equal-rights citizenship, and many benefits to help them adapt in the new country, the doors were not open thus to the Arabs.

Israeli liberals want to believe that they are part of Europe, not the Arab world in which we are geographically situated. The new law that bars spouses of Palestinians from living here, the different laws that bar Palestinians from entering Israel, the confiscation of the identity cards of Palestinians in Jerusalem, and all the internal discrimination of Palestinians in Israel, are all ways of denying the very reality that should be visible even to a child. There cannot be a Democratic-Jewish State, just as there cannot be an Muslim-Democratic state. What kind of a democracy would this be? There is an internal contradiction in this definition and, thus, in the possibility of such a democracy existing in reality.  

In his book States of Denial, in the section entitled “Israel: a special case,” Stan writes:

The Jewish public’s assent to official propaganda, myth and self-righteousness results from a willing identification - not fear of arbitrary imprisonment, commissars or secret police. Many topics are known and not-known at the same time.  

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42 To examine this denial, of the past, of the present reality that Israel is situated in the midst of an Arab world and does nothing to be part of the region in which it is, we have focused here on the dominant, legal, discourse. But this denial is also maintained of course by other groups in Israeli society. For example, none of the Israeli textbooks discusses the Naqba, the expulsion of the Palestinians in 1948, or the refugee question. The Israeli education system continues to deny the history that is most relevant to Israeli students. Not only are Arab students prevented from studying their history, literature, and culture, but the Jewish students do not, at any point during their 13 years of schooling, learn about the origins of the Israeli-Palestinian conflict. On this issue as well as on other ways in which Palestinian students are discriminated in Israel see my “Separate but Not Equal: Discrimination against Palestinian Arab Students in Israel” in American Behavioral Scientist, Vol. 49. No. 8, 2006 (1075-1084). and my book Inequality in Education (Tel Aviv; Babel, 2004, in Hebrew) as well as “Separate but not Equal” in my Next Year in Jerusalem.

45 Cohen, States of Denial: Knowing about Atrocities and Suffering, London; Polity, 2001 p.157
Conclusion

If there is anything I can add to Stan’s conclusions about why Israeli liberals do not do more, it is that they can do no more and still perceive themselves as liberals living in a democratic state. Unlike South African liberals, who were ostracized throughout the world, Israeli liberals, even those who do nothing politically, can pride themselves on a High Court that is considered enlightened and democratic, an organized legal system based on the Jewish majority that makes use of all democratic devices. Unlike in South Africa, a country that was banned from international sports, Israeli teams play in European leagues. Unlike the cultural boycott of South Africa by artists, thousands of artists are eager to perform in Israel. Israel competes in the Eurovision song contest each year as if it were part of Europe.

My first simple conclusion is that Israeli liberals do not do more because they can avoid doing and still be part of the western world. They do not do more because they do not want to be a part of the Arab world in which they live, and the US and Europe support them as a western force within the Arab world, as “the only democracy in the Middle East.” Israeli liberals do not do more because their dissonance is less pronounced than was that of South African liberals. They do not live in a country where a small minority oppresses a large majority, but in a country where the majority oppresses a minority.

They do not do more because legal language has taken over the public discourse in Israel. There is no talk of the future or the past – only argument over the present in legal terms. Are the territories occupied or “held”? Do the human rights conventions or humanitarian law apply in the territories or, because of complicated legal reasons, do they not? This legal language allows cloaking terrible deeds in ostensible justice. The High Court, which is perceived as uncompromisingly rooted in moral values, can rule that Arabs have no right to marry and live with their elected spouses in Israel and the day after the verdict is issued the president of the High Court can write that the decision was taken against his opinion but his failure to convince his colleagues not to discriminate between Jewish and Arab rights in Israel was only a technical failure.

They do not do more because they say, they “do not believe there is a solution to this conflict”, possibly meaning that they do not believe there is a solution that will preserve their privileges as Jews.
South Africa taught us that in order to move forward towards a better future we have to return to old wounds. Israeli liberals do not do more, because they do not want to go back and look at the past and acknowledge the wrongs they have perpetrated and continue to perpetrate against the Palestinians, who were evicted from their homes and are prevented from returning. They feel that these Palestinians, were they to return, would threaten the Jewish majority and thus also the democratic self-perception of Israel. They do not do more because most Palestinians, as well as many Arabs, do not acknowledge the historical connection of Jews to this piece of land (albeit partly imagined as Anderson suggests in “imagined communities”) and see them only as foreign conquerors.

In Israel, as in South Africa, it is not the liberals who will be the vanguard of change. Israeli liberals will join in if, and once, we do manage to consolidate a shared vision of how we see ourselves in the future, how Jews and Arabs will live here together, enjoying justice and reconciliation on the same piece of land, how we will atone for the pain of the past, how we will ask forgiveness. How will we as Jews live in the midst of an Arab region which has never accepted us, a region which we have done very little to be accepted by. I don’t know when we will begin to talk about these issues. In the meantime Israeli liberals enjoy the privileges which are shared mostly by Jews in Israel and at the same time regard themselves as liberals.

It has been painful for me to write this article. I have written with a sense of failure at having been active in the human rights movement for so many years while the reality deteriorate. Watching the current terrible and ugly war, already called the Second Lebanon War, that should have never been fought, a war that has devastated millions of people, makes me not only angry and sad and scared. It also makes me wonder how Israeli liberals could support this war and still call themselves and be seen in the world as liberals.
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