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## Ties of Separation: Analogy and Generational Segregation in North America, Australia, and Israel/Palestine

Hedi Viterbo

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# TIES OF SEPARATION: ANALOGY AND GENERATIONAL SEGREGATION IN NORTH AMERICA, AUSTRALIA, AND ISRAEL/PALESTINE

*Hedi Viterbo\**

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## INTRODUCTION

In the last quarter of the 19th century, . . . [the U.S.] government reached the conclusion that successful assimilation required removing Indian children from their reservations and reeducating them away from their families and environments. . . . For several years, Indian parents had to send their children to various off-reservation boarding schools . . . or to specially constructed boarding schools at the periphery of the reservations. . . . Once the children arrived at these schools, their teachers would force them to abandon their tribal customs and adopt white-American behaviors. . . . Many children's experience of the boarding school was traumatic . . . [and the] integrity of the Indian family—whose children had been removed—was severely compromised.

The forced removal of [Aboriginal] children from their families as part of their reeducation continued [in Australia] . . . even during the 20th century. . . . The Australian government's apology for these actions—even after the findings of an inquiry commission it itself had appointed in the 1990s—was weak and insufficient. . . .<sup>1</sup>

Taken from a textbook of the Israeli Open University on the genocide<sup>2</sup> of North America's Indigenous peoples, these excerpts seem to lend themselves to analogy. Indeed, as described in this article, this academic book systematically encourages its readers to think critically through analogies between different times and places.<sup>3</sup> As the book title broadly refers to "North America," such

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1. ARNON GUTFELD, GENOCIDE IN THE "LAND OF THE FREE": THE INDIANS OF NORTH AMERICA 1776–1890, at 19, 145–47 (Jeremy Forman trans., 2006).

2. The U.N. Genocide Convention lists "forcibly transferring children of the group to another group" as a genocidal act if "committed with intent to destroy, in whole or part, a national, ethnical, racial or religious group." G.A. Res. 260 (III) A, Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948). This is mentioned in the above Open University textbook. See GUTFELD, *supra* note 1, at 13. For an extensive discussion of this definition of genocide, see GENOCIDE AND SETTLER SOCIETY: FRONTIER VIOLENCE AND STOLEN INDIGENOUS CHILDREN IN AUSTRALIAN HISTORY (A. Dirk Moses ed., 2004).

3. See *infra* text accompanying notes 8–12.

analogy may encompass Canada, where a somewhat similar policy was pursued for over a century by placing an estimated 150,000 Indigenous children in so-called Indian Residential Schools.<sup>4</sup>

In the last two decades, both Canada and Australia have seen the publication of public inquiry reports on, and prime ministerial apologies for, the generational segregation<sup>5</sup> of their respective Indigenous peoples. There has also been litigation on the matter in both countries. This included a settlement agreement in Canada's largest ever class action lawsuit on behalf of living residential school survivors, in 2006, which led to a national Truth and Reconciliation Commission operating from 2008 through 2015.<sup>6</sup> In the United States, then-President Obama signed the Native American Apology Resolution into law in

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4. See WARD CHURCHILL, *KILL THE INDIAN, SAVE THE MAN: THE GENOCIDAL IMPACT OF AMERICAN INDIAN RESIDENTIAL SCHOOLS* (2004); JAMES R. MILLER, *SHINGWAUK'S VISION: A HISTORY OF NATIVE RESIDENTIAL SCHOOLS* (1996); JOHN S. MILLOY, *A NATIONAL CRIME: THE CANADIAN GOVERNMENT AND THE RESIDENTIAL SCHOOL SYSTEM, 1879 TO 1986* (1999).

5. On the reasons for using the phrase "generational segregation," see *infra* text accompanying notes 171–72.

6. For critiques of these developments, see *RECONCILING CANADA: CRITICAL PERSPECTIVES ON THE CULTURE OF REDRESS* (Jennifer Henderson & Pauline Wakeham eds., 2013); Leslie Thielen-Wilson, *White Terror, Canada's Indian Residential Schools and the Colonial Present: From Law Towards a Pedagogy of Recognition* (2012) (Ph.D. thesis, University of Toronto), <https://tspace.library.utoronto.ca/handle/1807/32328>; Tony Barta, *Sorry, and Not Sorry, in Australia: How the Apology to the Stolen Generations Buried a History of Genocide*, 10 *J. GENOCIDE RES.* 201 (2008); Denise Cuthbert & Marian Quartly, *Forced Child Removal and the Politics of National Apologies in Australia*, 37 *AM. INDIAN Q.* 178 (2013); Cindy Holder, *Reasoning Like a State: Integration and the Limits of Official Regret*, in *ON THE USES AND ABUSES OF POLITICAL APOLOGIES* 203 (Mihaela Mihai & Mathias Thaler eds., 2014); Damien Short, *When Sorry Isn't Good Enough: Official Remembrance and Reconciliation in Australia*, 5 *MEMORY STUD.* 293 (2012); Leslie Thielen-Wilson, *Troubling the Path to Decolonization: Indian Residential School Case Law, Genocide, and Settler Legitimacy*, 29 *CAN. J.L. & SOC.* 181 (2014); Pauline Wakeham, *Reconciling "Terror": Managing Indigenous Resistance in the Age of Apology*, 36 *AM. INDIAN Q.* 1 (2012). On the politics of official apologies for historical mass child abuse in out-of-home care generally, beyond the Indigenous child removal context, see *APOLOGIES AND THE LEGACY OF ABUSE OF CHILDREN IN 'CARE': INTERNATIONAL PERSPECTIVES* (Johanna Sköld & Shurlee Swain eds., 2015).

2009, but the event was closed to the public, and the laconic resolution, unlike the bill, made no mention of child removal.<sup>7</sup>

As shown in Part I of this article, the above textbook and the two subjects it addresses—generational segregation and analogies—have played a key role for Palestinians in Israeli prison. Until recently, this textbook was immensely popular among imprisoned Palestinians, many of whom were enrolled in courses provided by the Israeli Open University. Through this and other study materials, they engaged with potentially critical historical-geographical analogies, allowing them to ideationally traverse the prison walls. Further, not only could these Palestinians read about faraway generational segregation in this academic book, but they themselves have also been increasingly subjected to such segregation in Israeli prison as a result of changes to the laws applied to them. Moreover, the Israeli government recently banned their enrollment in such academic courses, thus denying them access to this book—with its analysis of generational segregation and its analogy-oriented critique.

Placing analogies, generational segregation, and their interrelation at its core, this article poses three questions. Part I of the article will address the first question: what critical insights can historical-geographical analogies offer, particularly regarding generational segregation? As if reviving Palestinian prisoners' encounter with analogy-filled studies, the article will advance an analogy between the removal of Indigenous children to boarding schools in the United States and Canada, Australia's Aboriginal "stolen generations," and the separation of Palestinian children and adults in Israeli custody. Through this analogy, important, but hitherto overlooked, parallels will be brought to light: the deleterious effects of allegedly benevolent generational segregation; the invocation of law and children's "best interests;" the severance of unwanted intergenerational influences; the targeting of children due to their presumed plasticity; the use of separation to govern adults; and links between generational segregation, "national security," and incarceration.

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7. On these and other shortcomings, see Kevin Bruyeel, *The American Liberal Colonial Tradition*, 3 *SETTLER COLONIAL STUD.* 311 (2013); Penny Edmonds, *Afterword: On Recognition, Apology and the 'Hidden History of the Americas'*, 1 *SETTLER COLONIAL STUD.* 182 (2011); Felicia S. Hodge, *No Meaningful Apology for American Indian Unethical Research Abuses*, 22 *ETHICS & BEHAV.* 431 (2012).

Having employed analogy as its mode of inquiry, the article will turn, in Part II, to using analogy as an object of inquiry. In so doing, the article will critically reflect, in a sense, on its own method. The article will thus tackle a second question, concerning analogy's discursive functions: what role have analogies—particularly those involving settler-Indigenous dynamics (as in the above textbook)—played in legal and political discourses surrounding North America, Israel/Palestine, and Australia? To address this issue, Part II will analyze a two-century long tapestry of analogies between these countries, discussing the various and often competing narratives and ideologies with which such analogies have aligned themselves. Among other things, this analysis will provide context to better understand Palestinian prisoners' engagement with analogy-filled studies, as well as Israeli authorities' crackdown on these studies.

Further inquiring into analogy, and in view of the multiple uses of analogies identified in this article, Part III will consider a third and final question: what are the possible pitfalls of analogies, including the analogies Palestinian prisoners studied and the analogy this article explores in relation to generational segregation in North America, Australia, and Israel/Palestine? How, while opening up certain horizons for thought, do analogies exclude or obscure others? In addressing this question, Part III will focus on three germane framings of analogies. The first is legalistic analogies, which portray the generational segregations in question as violations of, or deviations from, legal norms. This framing, the article will show, ignores crucial connections and parallels these supposedly exceptional segregations share with the broader field of child law and policy. A second problematic framing—often appearing in debates on analogies between North America, Australia, and Israel/Palestine—is rigid conceptualizations or demarcations of (settler) colonialism. This rigidity, the article will argue, represents over-simplistic and reductive understandings of (settler) colonialism. Finally, the third framing of analogies is the common tendency to reduce them to similarity. As the article will explain, this conception overlooks analogy's predication on difference, ignores analogy's influence on whether its supposedly preexisting referents are deemed alike in the first place, and risks making similarity a prerequisite for solidarity.

The Conclusion will bring together these three complementary readings. It will discuss their innovative linking of heretofore

separate bodies of scholarship, the holistic perspective this approach provides, and the unique implications for thinking about both analogy and generational segregation. As will be explained, methodologically, this holistic approach employs analogy both as a mode and an object of inquiry. In so doing, it highlights the need for self-reflexivity about one's method and about the inseparability of methods (such as analogy) from their field of analysis. Substantively, this perspective brings to center stage the political potential common to critical analogies and intergenerational knowledge transfer, and helps think critically about the role both analogy and generational segregation play in the social construction of childhood.

#### I. ANALOGY AND GENERATIONAL SEGREGATION

This Part of the article will open with a critical analysis of Israeli authorities' clampdown on two practices that carried the potential for imprisoned Palestinians to ideationally transcend their confinement. The first is Palestinian prisoners' engagement—through studies now banned by the Israeli government and courts—with historical-geographical analogies and the issue of Indigenous child removal in North America and Australia. The second practice is the transfer of political knowledge from one generation of Palestinian inmates to another, an activity that has faded away following the growing separation of Palestinian children from their adult counterparts in Israeli custody.

Akin to reviving Palestinian prisoners' encounter with critical analogies and texts, this Part will put forward an analogy between generational segregation in four contexts: the removal of Indigenous children to boarding schools in the United States and Canada, Australia's Aboriginal "stolen generations," and the separation of Palestinian children and adults in Israeli custody. This generational segregation analogy will bring to the fore previously unexamined parallels and connections, including as regards the justifications given for generational segregation, its detrimental impact on the segregated populations, and the broader sociopolitical context. Alongside cross-national links generational segregation involved at the time and its lasting legacies in North America and Australia, this analogy will demonstrate its contemporary reemergence in the form of analogous practices in Israel/Palestine.

*A. Transcending Prison Through Analogies*

The Israeli academic book repeatedly fosters critical thinking through analogies (albeit without explicitly using the term “analogy”). It analogizes “the current approach of the United States toward its Indigenous population” to those of “other states . . . [including] Canada . . . [and] Australia”<sup>8</sup> and also encourages students to consider lessons from (and thus think through analogies about) U.S. history.<sup>9</sup> The textbook further counts the United States—which it calls a “settler state”<sup>10</sup>—among the culprits for “‘colonial’ genocides” by “European settlers . . . [in] the Americas and Australia,” settlers who are said to have “supplanted, and directly or indirectly exterminated, America’s Indigenous people . . . [and] Australia’s Aborigines.”<sup>11</sup> The term “colonial” reappears in another Open University book,<sup>12</sup> this time in reference to Israel’s treatment of Palestinians, perhaps insinuating a cross-national commonality.

Until recently, among the readers of these analogy-invoking textbooks were many of the Palestinians in Israeli custody whom Israeli authorities classify as “security prisoners”—an elastic statutory category applied almost exclusively to Palestinians, predominantly noncitizens.<sup>13</sup> From 1994, such prisoners could enroll in Israeli Open University courses in the social sciences and humanities, subject to the prison authorities’ discretion.<sup>14</sup> With an average of around 250 security prisoners enrolled each year, mostly under the Palestinian Authority’s sponsorship,

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8. GUTFELD, *supra* note 1, at 21.

9. *See id.* at 8–9.

10. *Id.* at 24.

11. *Id.* at 19–20.

12. *See* Amal Jamal, *Racialized Time and the Foundations of Colonial Rule in the Israeli-Palestinian Context*, in *GENOCIDE: BETWEEN RACISM AND GENOCIDE IN THE MODERN ERA* 185 (Yair Aeron & Isaac Lubelsky eds., 2011).

13. Rima Ayoub, *Statistics on Detainees and Prisoners in Israeli Prisons*, ADALAH (2013), <http://www.adalah.org/Public/files/English/Newsletter/103-April2013/PalestinianPoliticalPrisoners-Statistics-April-2013.pdf>.

14. This provision, made after a hunger strike by some Palestinian prisoners in 1992, was granted in Commission Ordinance 04.48.00: Security Prisoners’ Open University Studies (Jan. 8, 2004, repealed June 2011) (Isr.); it was repealed in 2011. In contrast, non-security prisoners have been allowed to study since as early as 1978. *See* Petition in HCJ 204/13 Salah v. Israel Prison Serv. (2013) (Isr.) [hereinafter Petition in HCJ 204/13], <http://www.acri.org.il/he/wp-content/uploads/2012/12/hit204.pdf>.



these academic courses became hugely popular.<sup>15</sup> Most popular was a course on the topic of genocide,<sup>16</sup> which includes the foregoing textbooks.<sup>17</sup> As one of the course lecturers would later recount, “the Palestinian prisoners are particularly interested in [studying] . . . the annihilation of the Native Americans.”<sup>18</sup>

In 2011, however, the Israeli government announced a prohibition on these prisoners’ enrollment in Open University courses<sup>19</sup>—a decision that since has been upheld twice by the Israeli supreme court.<sup>20</sup> Being most popular among Palestinian

15. See Petition in HCJ 204/13; YANIV RONEN, KNESSET RESEARCH & INFO. CENT., SECURITY PRISONERS’ ACADEMIC STUDIES (Nov. 28, 2013) (Hebrew), <http://www.knesset.gov.il/mmm/data/pdf/m03319.pdf>.

16. See Eric Bender, *The Most Popular Course Among Terrorists: Genocide*, NRG (Dec. 5, 2013) (Hebrew), <http://www.nrg.co.il/online/1/ART2/528/384.html>.

17. For excerpts from these textbooks that deal with Indigenous child removal in the United States and Australia, see *supra* text accompanying note 1.

18. Yehonatan Alsheh, *Teaching Comparative Genocide Studies to Palestinian Prisoners in Israel*, GENOCIDE TALK (July 8, 2011), <http://genocidetalk.wordpress.com/2011/07/08/teaching-comparative-genocide-studies-to-palestinian-prisoners-in-israel/>.

19. Though the Israeli government presented the ban, in 2011, as a means to pressure the Palestinian Hamas into releasing Israeli soldier Gilad Shalit from captivity in Gaza, the Israeli prison authorities had already barred “security prisoners” from taking around thirty Open University courses four years before Shalit’s capture; access to these courses was resumed, at the time, only following the Palestinian prisoners’ petition on the matter. Petition (Nazareth) 761/02 John Doe v. Israel Prison Serv. (2002) (Isr.), <http://www.acri.org.il/pdf/petitions/hit761.pdf>; see also *Security Prisoners Barred from Taking Certain Courses*, ASS’N C.R. ISR. (Nov. 7, 2002) (Hebrew), <http://www.acri.org.il/he/529>. Additionally, the prison authorities had already introduced the blanket ban on Open University studies in 2010, a year before the government publicly announced it and linked it to Shalit’s release. See Avi Issacharoff & Amos Harel, *Palestinian Prisoners: Netanyahu’s Crackdown is Old News*, HAARETZ (June 28, 2011), <http://www.haaretz.com/print-edition/news/palestinian-prisoners-netanyahu-s-crackdown-is-old-news-1.369940>.

Despite Shalit’s release in exchange for Palestinian prisoners in 2011, the prohibition on Open University studies remains in place. See, e.g., Joshua Mitnick, *Behind Bars, a Famed Palestinian Leads His People in a Prison Hunger Strike*, L.A. TIMES (Apr. 18, 2017), <http://www.latimes.com/world/middleeast/la-fg-israel-palestinian-hunger-strike-20170418-story.html>.

20. See CA 2459/12 Salah v. Israel Prison Serv. (2012) (Isr.), <http://elyon1.court.gov.il/files/12/590/024/s07/12024590.s07.pdf>; HCJ (further

prisoners, the course on genocide, filled with potentially loaded analogies, figured prominently in the ensuing legal and political debate. In his response to Palestinian prisoners' petitions to lift the ban, the Israeli state attorney conflated learning about genocide with genocidal inclinations, by pointing to the popularity of this course as evidence, supposedly, of the prisoners' fanaticism.<sup>21</sup> Protesting against these "unseemly and outrageous" allegations, the president of the Open University remarked that the course actually "conveys a universal and moral message" and aims to "give students knowledge about the issue of genocide and the ability to analyze it as a historical phenomenon."<sup>22</sup> Yet, this criticism did not prevent the chair of the Israeli parliamentary Interior and Environmental Affairs Committee, who would later become a minister, from making similar claims:

The . . . prisoners' main studies are genocide studies—this is unbelievable. . . . [T]hey learn how to continue acting against the State of Israel. . . . The mentality of a prisoner studying genocide is clear. . . . [They] studied genocide . . . in order to perfect their ideas and capabilities toward their possible release from prison. . . . If they wish to rehabilitate themselves, they should study something else, not genocide.<sup>23</sup>

In fact, this academic course on genocide is not the only platform Palestinian prisoners have cultivated for potentially critical historical-geographical analogies. Nor is it the only such platform curtailed by the Israeli authorities. The prisoners' self-organized study groups have reportedly placed emphasis on examining parallels and differences between military and colonial re-

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hearing) 204/13 Salah v. Israel Prison Serv. (2015) (Isr.), <http://elyon1.court.gov.il/files/13/040/002/c25/13002040.c25.pdf>.

21. See Ofir Mintz-Manor, *Genocide, Year 1*, HAARETZ (Jan. 3, 2013) (Hebrew), <http://www.haaretz.co.il/opinions/1.1899899>.

22. Talila Neshet & Jackie Khoury, *Open University Lecturers Versus the Supreme Court: Grant Studies to Security Prisoners*, HAARETZ (Jan. 9, 2013) (Hebrew), <http://www.haaretz.co.il/news/law/1.1903654>.

23. Interior & Environmental Affairs Committee, 19th Knesset—Transcript 160, at 2, 18–19 (Dec. 23, 2013) (Hebrew), <http://www.knesset.gov.il/protocols/data/rtf/pnim/2013-12-23.rtf>.

gimes, as well as on studying the political experience of liberation movements outside Israel/Palestine.<sup>24</sup> The Israeli prison authorities, on their part, have clamped down on this analogy-oriented avenue as well, placing the prisoners' study activities under increasing restrictions.<sup>25</sup>

Without idealizing the emancipatory power of education, Palestinians' encounter with these analogies in Israeli prison seems to exemplify what anthropologist Esmail Nashif has described as these prisoners' "revolutionary pedagogy": their use of "reading/writing [as a] . . . praxis of resistance . . . not just in and by itself but, more importantly, as part of the community-building process . . . as a space between captives that transcend[s] the space of the prisons."<sup>26</sup> The power of such textual engagements to ideationally traverse the prison's confines becomes all the more pronounced when analogies such as the above are involved, analogies that further urge Palestinian prisoners to think across and in relation to times and places different from their own. By hindering Palestinian inmates' ability to imagine past the prison walls, Israel's repression of such studies and analogies operates as mental incarceration of sorts, and thus as an additional form of punishment, even if not formally presented as such.

### *B. Generational Segregation in Israeli Custody*

In addition to losing access to the course textbook that broaches the subject of generational segregation in North America and Australia, Palestinians in Israeli custody have themselves recently experienced increased generational segregation. In the spirit of the analogy-filled study materials these prisoners are prevented from reading, the question arises of whether their generational segregation can, in any sense, be considered analogous to that of Indigenous people in North America or Australia. In order to tackle this question, some background information is necessary.

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24. See MAYA ROSENFELD, *CONFRONTING THE OCCUPATION: WORK, EDUCATION, AND POLITICAL ACTIVISM OF PALESTINIAN FAMILIES IN A REFUGEE CAMP* (2004); see also JOHN COLLINS, *OCCUPIED BY MEMORY: THE INTIFADA GENERATION AND THE PALESTINIAN STATE OF EMERGENCY* (2004).

25. See Commission Ordinance 03.02.00: Guidelines Regarding Security Prisoners art. 21 (Mar. 15, 2002, last amended July 10, 2014) (Isr.).

26. ESMAIL NASHIF, *PALESTINIAN POLITICAL PRISONERS: IDENTITY AND COMMUNITY* 73–74 (2008).

In the past, Israel held all Palestinian child prisoners, as well as child detainees aged sixteen and over, with Palestinian adults.<sup>27</sup> This inadvertently enabled Palestinian inmates to systematically transfer what they regarded as valuable political knowledge from one generation to another, primarily through their self-organized study activities, leading many Palestinians to view Israeli prison as an academy of political activism for young inmates.<sup>28</sup> Like the historical-geographical analogies with which they engaged, this intergenerational knowledge transfer held the potential for inmates to transcend their confinement—the potential for ideationally reconnecting them with the Palestinian society from which they had been removed, while also tying their past (their lives prior to prison) to the national future they were devising. None of this escaped the Israeli prison authorities, who, in their journal, described prison as “the national Palestinian academy,” adding: “For [these] prisoners . . . [Israeli] prison is a stage in . . . national development, personally and collectively. . . . [They] have delved into Israeli issues, mainly by reading books . . . [and] have had ideological debates on . . . the future character of the Palestinian state.”<sup>29</sup>

This intergenerational transfer of knowledge, however, has substantially declined, as a result of Israel’s growing separation of Palestinian child inmates from their adult counterparts. Since the early 2000s—a period in which Israel is estimated to have detained between 8,500<sup>30</sup> and 12,000<sup>31</sup> noncitizen Palestinian

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27. Hedi Viterbo, *Rights as a Divide-and-Rule Mechanism: Lessons from the Case of Palestinians in Israeli Custody*, LAW & SOC. INQUIRY (forthcoming 2018).

28. ROSENFELD, *supra* note 24, at 238–65; COLLINS, *supra* note 24, at 125–30; Lisa Taraki, *The Development of Political Consciousness Among Palestinians in the Occupied Territories, 1967–1987*, in INTIFADA: PALESTINE AT THE CROSSROADS 53, 68 (Jamal R. Nassar & Roger Heacock eds., 1990).

29. Ronny Shaked, *Security Prisoners in Israeli Prisons*, 23 SEEING SHABAS—J. IPS 26, 27 (2008) (Hebrew), <http://shabas.millennium.org.il/Items/04423/23.pdf>.

30. DEFENCE FOR CHILDREN INTERNATIONAL—PALESTINE, SHADOW REP. TO THE FOURTH PERIODIC REP. OF ISRAEL: SITUATION FACING PALESTINIAN CHILDREN DETAINED BY ISRAELI FORCES AND POLICE IN THE OCCUPIED WEST BANK, INCLUDING EAST JERUSALEM (Oct. 2014), [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_CSS\\_ISR\\_18219\\_E.docx](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18219_E.docx).

31. *Imprisonment of Children*, ADDAMEER (Feb. 2016), <http://www.addameer.org/the-prisoners/children>.

children<sup>32</sup>—a series of legal changes have nearly eliminated joint incarceration.<sup>33</sup> Further, in 2009, Israel established so-called “military youth courts,” which try Palestinian children separately from their adult counterparts<sup>34</sup> (though there has been no discernible change to either sentencing guidelines for these children or the actual sentences imposed).<sup>35</sup> In the early stages of this shift, the Israeli judiciary advocated separation as a means to sever intergenerational Palestinian influence.<sup>36</sup> In 2003, for example, the military court of appeals cautioned against the exposure of a twelve-year-old Palestinian convict “to . . . [older] prisoners’ ideologies” and therefore ordered his separation from those Palestinian “adults who wished to capture his soul,”<sup>37</sup> an image strikingly reminiscent of nineteenth-century child rescue discourse.

The increased generational segregation of Palestinians in Israeli custody has recently been examined in depth elsewhere,<sup>38</sup>

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32. These figures do not include East Jerusalem, where nearly eight hundred Palestinian children are estimated to have been detained in 2016. See *Joint Report Estimates that 6440 Palestinians Arrested in 2016*, ADDAMEER (Jan. 2, 2017), <http://www.addameer.org/news/joint-report-estimates-6440-palestinians-arrested-2016>.

33. On these legal changes, see Viterbo, *supra* note 27. Joint incarceration remains legally permissible in certain circumstances. In addition, at their request, Palestinian prisoners are currently allowed to elect a few adults to oversee child inmates during the day (while held separately at night). This limited intergenerational contact has been reported to have both beneficial and harmful consequences for Palestinian children: on the one hand, these adults provide them with valuable assistance and support; on the other hand, Israeli authorities have attempted to trick child suspects into confessing by detaining them with adult Palestinian informants posing as these elected supervisors. On all of these issues, see *id.* Israel’s use of informants is further discussed *infra* text accompanying notes 236–37.

34. Israeli military courts try thousands of Palestinians from the West Bank every year and assume jurisdiction even over territories formally under the Palestinian Authority’s control. Hedi Viterbo, *Military Courts*, in *THE ABC OF THE OPT: A LEGAL LEXICON OF THE ISRAELI CONTROL OVER THE OCCUPIED PALESTINIAN TERRITORY* (Orna Ben-Naftali, Michael Sfard & Hedi Viterbo authors, forthcoming in 2018).

35. See Viterbo, *supra* note 27.

36. See *id.*

37. Mil. Appeal 358/03 Military Court of Appeals (Judea & Samaria), *Al-Nasirat v. Military Prosecution* (2003), Nevo Legal Database (by subscription, in Hebrew) (Isr.).

38. See Viterbo, *supra* note 27.

and this article will therefore only touch upon its most relevant implications. Crucially, the Palestinian adults in question are not “criminals” in the common sense of the word and are incarcerated separately from those who are classified as such. Instead, they often self-identify as “political prisoners.” Further, contrary to the Israeli courts’ remarks, various sources, including testimonies of Palestinian child ex-detainees, suggest that when they were still jointly incarcerated, adult Palestinian inmates provided their juniors with valuable psychological, material, and educational support, in addition to representing their concerns to the Israeli authorities. Moreover, separation from adult inmates has left Palestinian children less protected against the abuse they frequently report suffering at the hands of the Israeli prison and security staff.<sup>39</sup>

Formally, these Palestinian children are separated not from their parents but from the older inmates—a major difference, ostensibly, to Indigenous child removal in Australia and North America. In practice, however, many if not most of these Palestinian children are also denied contact with their parents, usually on “security” grounds or as a result of being transferred to facilities inside Israel, and thus out of their families’ reach.<sup>40</sup> Like the growing restriction of Palestinians’ studies in Israeli prison, the frequent denial of parental contact operates as a form of psychological incarceration, and thus as extra punishment, even if not presented as such. For those children who are denied contact with their parents, adult Palestinian prisoners might be the closest available substitute for parental care.<sup>41</sup> A child formerly detained with adults indeed intimated this: “The [adult] detainees treated us [children] well. . . . I felt comfortable. . . . At

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39. See *id.*; see also Philip Veerman & Adir Waldman, *When Can Children and Adolescents Be Detained Separately from Adults?: The Case Of Palestinian Children Deprived of Their Liberty in Israeli Military Jails and Prisons*, 4 INT’L J. CHILD. RTS. 147 (1996).

40. See, e.g., NAAMA BAUMGARTEN-SHARON, NO MINOR MATTER: VIOLATION OF THE RIGHTS OF PALESTINIAN MINORS ARRESTED BY ISRAEL ON SUSPICION OF STONE-THROWING (July 2011), [http://www.btselem.org/download/201107\\_no\\_minor\\_matter\\_eng.pdf](http://www.btselem.org/download/201107_no_minor_matter_eng.pdf); DEFENCE FOR CHILDREN INTERNATIONAL—PALESTINE, NO WAY TO TREAT A CHILD: PALESTINIAN CHILDREN IN THE ISRAELI MILITARY DETENTION SYSTEM (Apr. 2016), [https://d3n8a8pro7vhmx.cloudfront.net/dcipalestine/pages/1527/attachments/original/1460665378/DCIP\\_NWTTACReport\\_Final\\_April\\_2016.pdf](https://d3n8a8pro7vhmx.cloudfront.net/dcipalestine/pages/1527/attachments/original/1460665378/DCIP_NWTTACReport_Final_April_2016.pdf).

41. See DEFENCE FOR CHILDREN INTERNATIONAL—PALESTINE, *supra* note 40.

first, I was afraid and cried sometimes, because my family was far away. . . . The adult detainees took care of me.”<sup>42</sup>

Following the growing generational segregation, the Israeli supreme court has relentlessly pressed for the prison authorities to exert counter-influence on Palestinian children in Israeli custody—or, in the court’s words, erect a “counter-barrier” of “rehabilitation,” “education and treatment.”<sup>43</sup> No longer was it enough to terminate potentially politicizing practices, such as studies and intergenerational interactions in prison. Active depoliticization, formulated as “rehabilitation” at Israeli hands, became the new frontier. Yet, from the standpoint of many Palestinians, children who violate Israeli military law, such as stone-throwers and demonstrators, are not juvenile delinquents in need of rehabilitation—all the more so when their so-called “rehabilitation” is placed in the hands of Israeli authorities, whose commitment to Palestinian interests is questionable. Further, in practice, most of the Israeli rulings extolling “rehabilitation” have neither avoided nor reduced Palestinian children’s prison sentences.<sup>44</sup> Unlike generational segregation, the judicial preoccupation with “rehabilitation” has yet to be translated into substantial changes in actual incarceration or trial arrangements—a matter the Israeli supreme court has censured on several occasions.<sup>45</sup>

### C. Analogizing Generational Segregation

As described thus far, while undergoing growing generational segregation, Palestinian prisoners have also been denied access to the study materials that deal with Indigenous child removal and historical-geographical analogies. A “what if” question thus arises: what if these Palestinians could continue encountering these analogies and information? Specifically, what insights and parallels could such analogies offer in relation to generational

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42. *Testimony: 12-year-old Beaten and Imprisoned with Adults*, Sept. '08, B'TSELEM (Sept. 11, 2008), [http://www.btselem.org/english/testimonies/20080911\\_muhammad\\_khawajah\\_age\\_12\\_detained\\_by\\_idf.asp](http://www.btselem.org/english/testimonies/20080911_muhammad_khawajah_age_12_detained_by_idf.asp).

43. CA 7515/08 State of Israel v. Gurin (2009) (Isr.) [hereinafter CA 7515/08], <http://elyon1.court.gov.il/files/08/150/075/t03/08075150.t03.pdf>.

44. See Viterbo, *supra* note 27.

45. See, e.g., CA 7515/08; CrimA 3702/14 John Doe v. State of Israel (2014) (Isr.), <http://elyon1.court.gov.il/files/14/020/037/i01/14037020.i01.pdf>; CrimA 8639/13 Taritari v. State of Israel (2014) (Isr.), <http://elyon1.court.gov.il/files/13/390/086/t05/13086390.t05.pdf>.

segregation, given the treatment of this issue in the Open University course book?

A possible starting point for exploring such parallels is the detrimental effects of generational segregation. These include, among other things, exposing the separated children to either adult or peer abuse. Rather than separating children from adults outright, generational segregation has resulted in their placement with potentially abusive adults: be they Israeli state agents<sup>46</sup> or, in North America and Australia, boarding school staff.<sup>47</sup> In addition, in North America and Australia alike, while generational segregation fostered a strong peer culture,<sup>48</sup> it also exposed some Indigenous children to peer abuse in boarding schools.<sup>49</sup> Interviews with former Palestinian child prisoners likewise suggest that Palestinian children might now be more likely to fight each other now because adult Palestinian inmates are not around to peacefully mediate their disputes.<sup>50</sup> Moreover, because most Palestinian child inmates come from poor families in which children and adults sleep in the same room, separation from older prisoners may cause additional punishment for these children.<sup>51</sup> This serves as a possible parallel to the relative age heterogeneity of Indigenous communities in North America and

46. See Viterbo, *supra* note 27; Veerman & Waldman, *supra* note 39.

47. See DAVID WALLACE ADAMS, EDUCATION FOR EXTINCTION: AMERICAN INDIANS AND THE BOARDING SCHOOL EXPERIENCE, 1875–1928 (1995); CHURCHILL, *supra* note 4; MARGARET D. JACOBS, WHITE MOTHER TO A DARK RACE: SETTLER COLONIALISM, MATERNALISM, AND THE REMOVAL OF INDIGENOUS CHILDREN IN THE AMERICAN WEST AND AUSTRALIA, 1880–1940 (2009); MILLOY, *supra* note 4; ANDREW WOOLFORD, THIS BENEVOLENT EXPERIMENT: INDIGENOUS BOARDING SCHOOLS, GENOCIDE, AND REDRESS IN CANADA AND THE UNITED STATES 184–91 (2015); Margaret D. Jacobs, *Indian Boarding Schools in Comparative Perspective*, in BOARDING SCHOOL BLUES: REVISITING AMERICAN INDIAN EDUCATIONAL EXPERIENCES 202 (Clifford E. Trafzer, Jean A. Keller & Lorene Sisquoc eds., 2006); Robert Manne, *Aboriginal Child Removal and the Question of Genocide, 1900–1940*, in GENOCIDE AND SETTLER SOCIETY: FRONTIER VIOLENCE AND STOLEN INDIGENOUS CHILDREN IN AUSTRALIAN HISTORY 217 (A. Dirk Moses ed., 2004).

48. See Jacobs, *supra* note 47, at 204.

49. See ANDREW ARMITAGE, COMPARING THE POLICY OF ABORIGINAL ASSIMILATION: AUSTRALIA, CANADA, AND NEW ZEALAND (1995); JACOBS, *supra* note 47; WOOLFORD, *supra* note 47, at 206; Jacobs, *supra* note 47.

50. See Veerman & Waldman, *supra* note 39, at 155.

51. See *id.*; see also Viterbo, *supra* note 27.



Australia prior to their generational segregation.<sup>52</sup> None of this suggests, however, that the experience of generational segregation is inevitably or entirely negative for each and every child concerned. For instance, the boarding school systems had certain unintended consequences that some Indigenous children and communities have characterized as positive or empowering.<sup>53</sup> Yet, these positive effects, if they were indeed that, do not diminish the harms of generational segregation.

Furthermore, across time and space, generational segregation has largely been couched in a language of legalism and benevolence. Israeli authorities have portrayed it as being both consistent with international law and in Palestinian children's "best interests."<sup>54</sup> Law, benevolence, rights, and humanism were similarly invoked to advocate the displacement and reeducation of Indigenous children in North America and Australia, and statutory authorities were developed and expanded to increasingly facilitate these measures.<sup>55</sup> In the late nineteenth-century United States, placement in off-reservation boarding schools was portrayed as "rescuing . . . [Indigenous] children and youth . . . from the awful doom that hangs over them" and also as granting them "an opportunity for the development of . . . [their] better nature"

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52. See JACOBS, *supra* note 47, at 240–42; Jacobs, *supra* note 47, at 208–09.

53. See Victoria Haskins & Margaret D. Jacobs, *Stolen Generations and Vanishing Indians: The Removal of Indigenous Children as a Weapon of War in the United States and Australia, 1870–1940*, in CHILDREN AND WAR: A HISTORICAL ANTHOLOGY 227 (James Marten ed., 2002).

54. See, e.g., *The Military Courts Unit (Judea and Samaria)*, MIL. CTS. UNIT (Apr. 2013), <http://www.militarycourtwatch.org/files/server/IDF%20Military%20Court%20Briefing%20Paper.pdf>.

55. See ADAMS, *supra* note 47; CHURCHILL, *supra* note 4; JACOBS, *supra* note 47; Jacobs, *supra* note 47, at 112–14; Manne, *supra* note 47, at 220–22, 235. See generally Claire Palmiste, *Forcible Removals: The Case of Australian Aboriginal and Native American Children*, 4 ALTERNATIVE 75 (2008); Shurlee Swain, *But the Children . . . Indigenous Child Removal Policies Compared*, in WRITING COLONIAL HISTORIES: COMPARATIVE PERSPECTIVES 133 (Tracey Banivanua Mar & Julie Evans eds., 2002) [hereinafter Swain, *But the Children*]; Shurlee Swain, *Enshrined in Law: Legislative Justifications for the Removal of Indigenous and Non-Indigenous Children in Colonial and Post-Colonial Australia*, 47 AUSTL. HIST. STUD. 191, 196–207 (2016) [hereinafter Swain, *Enshrined in Law*]; Robert Van Krieken, *The 'Stolen Generations' and Cultural Genocide: The Forced Removal of Australian Indigenous Children from Their Families and its Implications for the Sociology of Childhood*, 6 CHILDHOOD 297, 304–05 (1999).

by turning them into “honorable, useful, happy citizens of a great republic.”<sup>56</sup> “Without it,” it was claimed, they were “doomed either to destruction or to hopeless degradation.”<sup>57</sup> Accordingly, legislation at the time spoke of the need to “ensure the attendance of Indian children . . . at schools established . . . for their benefit.”<sup>58</sup> Over several decades, beginning in the 1880s, Australian officials likewise asserted that “half-caste” children “need protection and control, otherwise they become a menace to the white race.”<sup>59</sup> Generational segregation was hence presented as rescuing Australia’s Indigenous children “from danger to themselves, and from being a danger to the whole of the white population” and also as a means of turning them into “decent and useful members of the community,” whereas non-separation was described as, “to say the least . . . , cruel.”<sup>60</sup>

In order to achieve these goals, a more specific common rationale, in varying iterations, has been that separation would sever allegedly harmful intergenerational ties. While presenting rehabilitation at Israeli hands as a means to enable Palestinian children “to function in accordance with norms and productively”—an alleged benefit to “the public interest”<sup>61</sup>—Israeli courts have also recurrently warned that intergenerational Palestinian interactions in prison would undermine such rehabilitation.<sup>62</sup> Child removal on both sides of the Pacific was likewise largely targeted against unwanted intergenerational knowledge transfer and aimed to break Indigenous children’s habits,

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56. JACOBS, *supra* note 47, at 40–41.

57. *Id.*

58. CHURCHILL, *supra* note 4, at 16.

59. JACOBS, *supra* note 47, at 72.

60. *Id.*; Haskins & Jacobs, *supra* note 53, at 229, 231. Aside from sharing such similar justifications, generational segregation has also rested on a similar legal architecture: formally granting certain entitlements to the separated population but effectively denying these entitlements through various statutory loopholes. See Viterbo, *supra* note 27; JACOBS, *supra* note 47, at 166–67; see also ADAMS, *supra* note 47, at 65.

61. CrimA 10118/06 John Doe v. State of Israel (2007) (Isr.), <http://elyon1.court.gov.il/files/06/180/101/T02/06101180.t02.pdf>.

62. See, e.g., Mil. 1261/09 (Judea), Military Advocate General v. El-Farukh (2009), Nevo Legal Database (by subscription, in Hebrew) (Isr.); Mil. 4779/08 (Judea), Military Advocate General v. Makhoulf (2009), Nevo Legal Database (by subscription, in Hebrew) (Isr.).

thereby making them “useful” to white society.<sup>63</sup> In the 1860s, U.S. officials voiced concerns over Indigenous adults’ “deleterious influences” over their youngsters, resulting in the “infection” of the latter with “the filthy habits and loose morals of their parents.”<sup>64</sup> A Canadian federal report likewise declared, in 1880: “The Indian youth, to enable him to cope successfully with . . . white [society] . . . , must be dissociated from the prejudicial influences by which he is surrounded.”<sup>65</sup> Similarly, in the 1880s and 1890s, Canadian exponents of Indigenous child removal cautioned against leaving Indigenous children “under the guardianship of degraded parents,”<sup>66</sup> who were seen as setting a “terrible example” for their children and thereby destining them to become “as depraved as themselves notwithstanding all the instructions given them at a day school.”<sup>67</sup> In a similar vein, in 1937, one Australian state official claimed: “It is infinitely better to take a child from its mother, and put it in an institution . . . than to allow it to be brought up subject to the [Aboriginal] influence.”<sup>68</sup> Neither reeducation nor separation alone was thus seen as sufficient. On the one hand, without rigid separation from their elders, exposure to intergenerational influence would have undermined the children’s reeducation. On the other hand, without reeducation, unwelcome habits and customs could not be properly replaced with knowledge acceptable to the dominant white culture.<sup>69</sup>

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63. See CHURCHILL, *supra* note 4, at 12–24; JACOBS, *supra* note 47, at 42–48, 66–68, 71–74, 80–82, 240–42, 248–49, 260–62, 329–37; MILLOY, *supra* note 4, at 3, 6–7, 24–26, 33, 40–41; WOOLFORD, *supra* note 47, at 69–70, 198; Jacobs, *supra* note 47, at 203–11, 214, 222–25; Manne, *supra* note 47, at 229–30.

64. CHURCHILL, *supra* note 4, at 21.

65. Swain, *But the Children*, *supra* note 55, at 139.

66. SHURLEE SWAIN & MARGOT HILLEL, CHILD, NATION, RACE AND EMPIRE: CHILD RESCUE DISCOURSE, ENGLAND, CANADA AND AUSTRALIA, 1850–1915, at 92 (2010).

67. MILLOY, *supra* note 4, at 26.

68. JACOBS, *supra* note 47, at 43–44.

69. See ADAMS, *supra* note 47; ARMITAGE, *supra* note 49; Jacobs, *supra* note 47; MILLOY, *supra* note 4; Clifford E. Trafzer, Jean A. Keller & Lorene Sisquoc, *Introduction: Origin and Development of the American Indian Boarding School System*, in BOARDING SCHOOL BLUES: REVISITING AMERICAN INDIAN EDUCATIONAL EXPERIENCES 202 (Clifford E. Trafzer, Jean A. Keller & Lorene Sisquoc eds., 2006); WOOLFORD, *supra* note 47; Swain, *But the Children*, *supra* note 55.

Underpinning this rationale has been the targeting of children due to their presumed plasticity, being children, in contrast to the supposed irredeemability of their elders. The Israeli supreme court has emphatically espoused the “treatment of security prisoners who are minors or young adults,”<sup>70</sup> “whose rehabilitation chances are better” than those of their older counterparts.<sup>71</sup> Further, the court recently remarked: “Where [‘security prisoners’ who are] minors are concerned, an educational effort is needed,” adding that even with a “young adult there may be room for hope.”<sup>72</sup> In a rather analogous manner, as early as the 1820s and 1830s, Canadian administrators declared that Indigenous “[c]hildren—the rising Generation, hold out a field for exertion,”<sup>73</sup> and that since “little perhaps can be expected from the grown up Indians, . . . [successful civilization] will chiefly depend upon . . . influence . . . over the young.”<sup>74</sup> Later proponents of generational segregation for Canada’s Indigenous children continued placing their hopes in “the plastic young nature.”<sup>75</sup>

These children, it was believed, needed to be “caught young to be saved from . . . the degenerating influence of their home environment,”<sup>76</sup> which meant that “it is to the young that we must look for the complete change of condition.”<sup>77</sup> Indigenous adults, in contrast, were generally referred to as the “old unimprovable people” and deemed “physically, mentally and morally . . . unfit[] to bear such a complete metamorphosis.”<sup>78</sup> In the late 1870s, a prominent Canadian official maintained that “[i]f anything is to be done with the Indian we must catch him very young,”<sup>79</sup> adding that U.S. authorities, too, “have not much hope in regard to

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70. CrimA 8639/13 Taritari v. State of Israel (2014) (Isr.), <http://elyon1.court.gov.il/files/13/390/086/t05/13086390.t05.pdf>.

71. CA 7515/08 State of Israel v. Gurin (2009) (Isr.) [hereinafter CA 7515/08], <http://elyon1.court.gov.il/files/08/150/075/t03/08075150.t03.pdf>.

72. CA 3572/16 John Doe v. State of Israel (2017) (Isr.), <http://elyon1.court.gov.il/files/16/720/035/t04/16035720.t04.pdf>.

73. Swain, *But the Children*, *supra* note 55, at 136–37.

74. MILLOY, *supra* note 4, at 15.

75. SWAIN & HILLEL, *supra* note 66, at 92.

76. WOOLFORD, *supra* note 47, at 198.

77. MILLOY, *supra* note 4, at 27.

78. *Id.* at 25–26.

79. Sarah de Leeuw, *If Anything is to be Done with the Indian, We Must Catch Him Very Young: Colonial Constructions of Aboriginal Children and the*

adult Indians, but sanguine anticipations are cherished respecting the children.”<sup>80</sup> Officials in the United States opined that the “main hope lies with the youthful generations who are still measurably plastic,” whereas “little can be hoped from them after growth.” One official declared in 1879: “It is a mere waste of time to attempt to teach the average adult Indian the ways of the white man.” Another emphasized seven years later: “It is rather the little children that must be taken in hand.”<sup>81</sup> South Australia’s Protector of Aborigines argued in 1909, somewhat similarly, that “the children of half-castes are as a rule much lighter than their parents, and no doubt the process will continue until the blacks will altogether disappear.”<sup>82</sup>

Though ostensibly child-focused, generational segregation targets adults as much as children. It aims to sever adults’ bonds with their future, a future embodied in the separated children, and consequently shatters the Indigenous or ethnic minority collective. Additionally, it is concerned with the dominant group’s adults, for whom it endeavors to create a new future. And, beyond all of these functions, generational segregation has also served to govern adults no less than their separated juniors. For Israeli authorities, the presumed incorrigibility of the now-segregated Palestinian adult inmates has furnished justification for eroding their rights, such as Open University studies. A core argument of Palestinian prisoners’ court petitions on the matter was that these studies aided their rehabilitation,<sup>83</sup> a claim reiterated by Open University lecturers who joined the litigation as

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*Geographies of Indian Residential Schooling in British Columbia, Canada*, 7 CHILD. GEOGRAPHIES 123, 129 (2009).

80. HELEN MAY, BALJIT KAUR & LARRY PROCHNER, *EMPIRE, EDUCATION, AND INDIGENOUS CHILDHOODS: NINETEENTH CENTURY MISSIONARY INFANT SCHOOLS IN THREE BRITISH COLONIES* 180 (2014).

81. ADAMS, *supra* note 47, at 18–19.

82. Jacobs, *supra* note 47, at 214. On similar remarks in the Australian press, see Shirleene Robinson & Jessica Paten, *The Question of Genocide and Indigenous Child Removal: The Colonial Australian Context*, 10 J. GENOCIDE RES. 501, 502, 505–07 (2008).

83. See Petition in CA (Naz) 16209-09-11 Sultany v. Israel Prison Serv. (2011) (Isr.), [https://www.adalah.org/uploads/old-files/Up/Main/File/Rawi%20sultani%20-%20Academic\\_Education\\_Petition\\_-\\_Final\\_7.9.11.pdf](https://www.adalah.org/uploads/old-files/Up/Main/File/Rawi%20sultani%20-%20Academic_Education_Petition_-_Final_7.9.11.pdf).

amicus curiae.<sup>84</sup> One lecturer added elsewhere that the university's "comparative genocide studies" placed the Jewish Holocaust "within a comparative context and as part of the general phenomenon of genocide," resulting in this historical event "no longer [being] dismissed by Palestinians as Zionist propaganda."<sup>85</sup> The Israeli prison authorities, however, responded that these prisoners could not be meaningfully rehabilitated,<sup>86</sup> and the supreme court subsequently rejected the petitions.<sup>87</sup> Since their increased separation, these adults have also been denied other entitlements,<sup>88</sup> including visits for precharge adult detainees and access to books from the outside.<sup>89</sup>

With Indigenous adults in nineteenth-century North America, a key function of generational segregation was as a counterinsurgency measure.<sup>90</sup> During his tenure overseeing Indigenous war prisoners, Richard Henry Pratt—a key figure in the history of Indigenous child removal and reeducation—dealt with the adults' requests to reunite with their children and women. It was then that he realized that generational segregation could serve to pacify Indigenous adults.<sup>91</sup> At a time when education had already become an integral part of an aggressive policy of pacification,<sup>92</sup> others in the United States came to share Pratt's view. One government official wrote to Pratt that "placing Indian chil-

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84. HCJ (further hearing) 204/13 Salah v. Israel Prison Serv. (2015), Nevo Legal Database (by subscription, in Hebrew) (Isr.).

85. Alsheh, *supra* note 18.

86. See AdminC (Naz) 27387-09-11 Salah v. Israel Police (2012), Nevo Legal Database (by subscription, in Hebrew) (Isr.).

87. See CA 2459/12 Salah v. Israel Prison Serv. (2012) (Isr.), <http://elyon1.court.gov.il/files/12/590/024/s07/12024590.s07.pdf>; HCJ (further hearing) 204/13 Salah v. Israel Prison Serv. (2015) (Isr.), <http://elyon1.court.gov.il/files/13/040/002/c25/13002040.c25.pdf>.

88. See Viterbo, *supra* note 27.

89. See *id.*

90. In addition, despite the tendency to dismiss Native American adults as incorrigible, some proponents of child removal nonetheless placed hope in children sharing their knowledge with adults upon return to the reservation. ADAMS, *supra* note 47; Jacobs, *supra* note 47, at 211–12; Trafzer et al., *supra* note 69.

91. See Jacobs, *supra* note 47, at 213.

92. See JACQUELINE FEAR-SEGAL, *WHITE MAN'S CLUB: SCHOOLS, RACE, AND THE STRUGGLE OF INDIAN ACCULTURATION* (2007); Haskins & Jacobs, *supra* note 53.

dren in school” would make their “parents . . . much easier managed . . . and never dare, or desire, to commit a serious wrong.” Another official specifically ordered Pratt to obtain children from two hostile reservations to be used as “hostages for tribal good behavior.”<sup>93</sup>

Canadian prime minister John MacDonalD’s interest in the possibility of reeducating Indigenous children, in the 1870s, was similarly inspired by his concern over Indigenous unrest.<sup>94</sup> State officials and clergymen in Canada expressly spoke of residential schools as imperative tools for preventing Indigenous “rebellion” and enabling the peaceful occupation of the West. A key figure in Canada’s Department of Indian Affairs thus opined, in 1886: “It is unlikely that any Tribe or tribes would give trouble of a serious nature to the Government whose members had children completely under Government control.”<sup>95</sup> Similar arguments supporting child removal as a necessary means to break Indigenous resistance were also made in Australia in the 1850s and 1860s.<sup>96</sup>

While Israel classifies the separated Palestinian children as “security offenders,” the attempt to use generational segregation to break Indigenous insurgency and resistance in North America and Australia illustrates a broader common interrelation—by no means exclusive to Israel/Palestine—between generational segregation, incarceration, and “national security.” The Open University course book that Palestinian prisoners are no longer allowed to read aptly describes Pratt as a “military officer with great experience in fighting Indians.”<sup>97</sup> Indeed, it was while experimenting in “rehabilitating” Indigenous prisoners of war through reeducation, work, and military discipline that Pratt, the war veteran, developed his ideas about reforming Indigenous

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93. Haskins & Jacobs, *supra* note 53, at 230; Daniel E. Witte & Paul T. Mero, *Removing Classroom from the Battlefield: Liberty, Paternalism, and the Redemptive Promise of Educational Choice*, 2008 B.Y.U. L. REV. 377, 392–93 (2008).

94. See WOOLFORD, *supra* note 47, at 68, 319–20.

95. MILLOY, *supra* note 4, at 32.

96. See Robinson & Paten, *supra* note 82, at 507, 510.

97. GUTFELD, *supra* note 1, at 145.

children. Pratt's fusion of the "battlefield and classroom"<sup>98</sup> continued when he later established the first, highly influential, government-supported off-reservation boarding school for Indigenous children at an unused military base donated by the U.S. War Department.<sup>99</sup> Following suit, a number of other schools were established in military barracks, and even schools not thus placed were nevertheless patterned after military compounds.<sup>100</sup> There were initially dozens of children among the Indigenous prisoners, but most of them were eventually separated from the rest and placed in boarding schools. This was done even though the prison authorities recognized that such "separation . . . is what [these prisoners] . . . constantly dread."<sup>101</sup>

Due to their military-like drills and order, along with other reasons, many child inmates analogized boarding schools such as Pratt's to prisons, an analogy reiterated by numerous writers at the time.<sup>102</sup> Some Australian Indigenous children, too, depicted the institutions to which they were removed in similar

98. RICHARD HENRY PRATT, *BATTLEFIELD AND CLASSROOM: FOUR DECADES WITH THE AMERICAN INDIAN, 1867–1904* (Robert M. Utley ed., 1964).

99. ADAMS, *supra* note 47; CHURCHILL, *supra* note 4; FEAR-SEGAL, *supra* note 92; JACOBS, *supra* note 47; WOOLFORD, *supra* note 47; Haskins & Jacobs, *supra* note 53, at 228; Trafzer et al., *supra* note 69; Witte & Mero, *supra* note 93. Incidentally, the same borough where Pratt's school once stood is home to the U.S. Army War College—the alma mater of another prominent military officer: Israel's incumbent chief of staff, Gadi Eizenkot. See Noam Amir, *Ya'alon and Netanyahu Agree: Gadi Eizenkot to be Appointed the IDF's 21st Chief of Staff*, MAARIV, Nov. 28, 2014, (Hebrew), <http://www.maariv.co.il/%D7%97%D7%93%D7%A9%D7%95%D7%AA/%D7%A6%D7%91%D7%90%D7%95%D7%91%D7%99%D7%98%D7%97%D7%95%D7%9F/%D7%A9%D7%A8%D7%94%D7%91%D7%99%D7%98%D7%97%D7%95%D7%9F-%D7%99%D7%9E%D7%9C%D7%99%D7%A5-%D7%A2%D7%9C-%D7%92%D7%93%D7%99%D7%90%D7%99%D7%99%D7%96%D7%A0%D7%A7%D7%95%D7%98%D7%9C%D7%AA%D7%A4%D7%A7%D7%99%D7%93-%D7%94%D7%A8%D7%9E%D7%98%D7%9B%D7%9C-%D7%94-21%D7%A9%D7%9C-%D7%A6%D7%94%D7%9C-455267>.

100. CHURCHILL, *supra* note 4; Witte & Mero, *supra* note 93, at 396.

101. Jacobs, *supra* note 47, at 212; see also ADAMS, *supra* note 47; FEAR-SEGAL, *supra* note 92; EVELYN NAKANO GLENN, *FORCED TO CARE: COERCION AND CAREGIVING IN AMERICA* 50 (2010); Andrew Woolford & James Gacek, *Genocidal Carcerality and Indian Residential Schools in Canada*, 18 *PUNISHMENT & SOC'Y* 400 (2016).

102. ADAMS, *supra* note 47; JACOBS, *supra* note 47; Haskins & Jacobs, *supra* note 53, at 228–29; Jacobs, *supra* note 47; Trafzer et al., *supra* note 69.



terms.<sup>103</sup> For Native American children, prison was more than a metaphor, since a standard form of punishment was to actually place them in a school “jail.”<sup>104</sup> One U.S. state official also linked education, criminality, and armed conflict differently when warning in 1896 that Indigenous children, if left in their communities, would “listen only to stories of war, rapine, [and] bloodshed” and consequently would become “a perpetual menace to our western civilization . . . that will . . . threaten [national] peace.”<sup>105</sup>

Against this backdrop, it becomes clear that the two institutional sites of generational segregation—incarceration (for Palestinian “security prisoners”) and schools (for Indigenous people in North America and Australia)—have much in common.<sup>106</sup> Further, the continued hyperincarceration of Indigenous children<sup>107</sup> can be seen both as a legacy of Indigenous child removal and as its continuation by other means. Formulating this observation as an analogy, one Canadian defense attorney has described prison as “a ‘school’ for those [many Indigenous children] compelled to attend,” and criticized its “astonishing” parallels with so-called Indian Residential Schools—both being instruments of mass removal, cultural assimilation through restrictions on Indigenous practices, and rampant abuse.<sup>108</sup>

Indeed, a growing number of scholars have shown how the experiences, effects, and policies of Indigenous child removal intersect with and inform contemporary discourses and practices in North America and Australia. In this and other regards, Indigenous child removal can be seen not as a past event but rather, to an extent, as an ongoing process. The legacies of Indigenous

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103. Jacobs, *supra* note 47, at 218.

104. ADAMS, *supra* note 47, at 123.

105. JACOBS, *supra* note 47, at 43, 48.

106. See also Woolford & Gacek, *supra* note 101.

107. See, e.g., Raymond R. Corrado, Sarah Kuehn & Irina Margaritescu, *Policy Issues Regarding the Overrepresentation of Incarcerated Aboriginal Young Offenders in a Canadian Context*, 14 YOUTH JUST. 40 (2014); Addie Rolnick, *Locked Up: Fear, Racism, Prison Economics, and the Incarceration of Native Youth*, 40 AM. INDIAN CULTURE & RES. J. 55 (2016); Rob White, *Indigenous Young People and Hyperincarceration in Australia*, 15 YOUTH JUST. 256 (2015).

108. Paula Mallea, *When Prison is a School—Today’s Residential Schools*, in VOICE OF THE DRUM: INDIGENOUS EDUCATION AND CULTURE 23 (2000), <http://files.eric.ed.gov/fulltext/ED469143.pdf#page=35>.

child removal, it has been shown, are evidenced by hyperincarceration<sup>109</sup> and other criminal justice issues<sup>110</sup>—as well as in the child welfare system<sup>111</sup> and other areas of law and policy.<sup>112</sup> The generational segregation analogy provided here expands and adds layers to this critical conversation by highlighting how Indigenous child removal has transcended not only the times but also the countries where it occurred; how it has transmigrated and, in a sense, reemerged in the form of analogous practices beyond North America and Australia, such as the generational segregation of Palestinians in Israeli custody. Moreover, this recent development in Israel/Palestine has not received the scrutiny it deserves, possibly due to its invocation of taken-for-granted social and legal norms about childhood and children’s “best interests.” Analogizing the Israeli-Palestinian situation to Indigenous child removal therefore helps problematize a contemporary development that has hitherto largely escaped critical notice.

## II. ALREADY ANALOGIZED

Three engagements with analogies, some more direct than others, have emerged thus far. First, Palestinians’ encounters with analogies in prison, including analogies concerning settler-Indigenous conflicts and, specifically, Indigenous child removal in

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109. See Corrado, *supra* note 107; Rolnick, *supra* note 107; White, *supra* note 107.

110. See, e.g., Kerry Carrington, *Punitiveness and the Criminalisation of the Other: State Wards, Unlawful Non-Citizens and Indigenous Youth*, 1 SOMATECHNICS 30 (2011); David McCallum, *Criminal Neglect: Tracing the Category of the Aboriginal ‘Neglected Child’*, 20 SOC. IDENTITIES 379 (2015); Ryan Seelau, *Regaining Control over the Children: Reversing the Legacy of Assimilative Policies in Education, Child Welfare, and Juvenile Justice that Targeted Native American Youth*, 37 AM. INDIAN L. REV. 63 (2012–13).

111. See, e.g., MARGARET D. JACOBS, *A GENERATION REMOVED: THE FOSTERING AND ADOPTION OF INDIGENOUS CHILDREN IN THE POSTWAR WORLD* (2014); Sarah de Leeuw, *State of care: The Ontologies of Child Welfare in British Columbia*, 21 CULTURAL GEOGRAPHIES 59 (2014); Heather Douglas & Tamara Walsh, *Continuing the Stolen Generations: Child Protection Interventions and Indigenous People*, 21 INT’L J. CHILD.’S RTS. 59 (2013); Ann Murray Haag, *The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services*, 43 TULSA L. REV. 149 (2007).

112. On inter-country parallels and differences in this regard, see, e.g., JACOBS, *supra* note 111, at 263–72; TERRI LIBESMAN, *DECOLONISING INDIGENOUS CHILD WELFARE: COMPARATIVE PERSPECTIVES* 9–16, 18–19, 54–77 (2014).

North America and Australia. Second, Israeli authorities' crack-down on the studies that brought together these prisoners and analogies. Finally, this article's attempt to revive and explore, through the generational segregation analogy, the critical potential of Palestinian prisoners' interaction with analogies.

None of these, however, have taken place in a social or historical vacuum. Their surrounding legal and political discourses are rife with analogies, tying contemporary Israel/Palestine to other times and places, including those discussed in this article. For example, a few years after the U.S. involvement in the Gulf War, Uri Shoham, Israel's former military advocate general at the time and currently an Israeli supreme court justice, published an article in the (U.S. journal) *Military Law Review*, opening with the following hypothetical analog to Israel's rule over the Palestinian territory:

[I]magine the United States being in control of an area of land a quarter its own size, located just scant miles away from major United States cities, and populated by no less than 120 million Iraqis. With a few minor adjustments, these are the circumstances Israel has had to face since [assuming control over the West Bank and Gaza Strip in] 1967.<sup>113</sup>

More recently, the Israeli military drew a similar hypothetical analogy to garner international support for its 2014 offensive on the Gaza Strip. It disseminated an image online depicting rockets heading toward the Statue of Liberty in New York, with a caption that read: "What would you do?"<sup>114</sup>

Israel's supreme court has likewise drawn analogies between Israeli and U.S. counterinsurgency laws as grounds, among others, for denying petitions against the detention of Palestinians without trial.<sup>115</sup> Over in the United States, in 2005, a Central Intelligence Agency attorney, seeking to garner legislative support for continued use of controversial interrogation methods,

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113. Uri Shoham, *The Principle of Legality and the Israeli Military Government in the Territories*, 153 MIL. L. REV. 245, 245–46 (1996).

114. See Neve Gordon & Nicola Perugini, *The Politics of Human Shielding: On the Resignification of Space and the Constitution of Civilians as Shields in Liberal Wars*, 34 ENVIRONMENT & PLANNING D: SOCIETY & SPACE 168 (2016).

115. See, e.g., HCJ 2320/98 El-Amla v. IDF Commander ¶ 2 (1998) (Isr.), <http://elyon1.court.gov.il/files/98/200/023/I07/98023200.i07.pdf>; HCJ 9441/07 Abu Matar v. IDF Commander ¶ 1 (2007) (Isr.), <http://elyon1.court.gov.il/files/07/410/094/T02/07094410.t02.pdf>.

analogized the public debate on the matter to the situation in Israel. As he described it, the Israeli supreme court had “ruled that several . . . [interrogation] techniques were possibly permissible, but require[d] . . . legislative sanction” and the Israeli government “ultimately got limited legislative authority for . . . specific techniques.”<sup>116</sup>

Analogies thus align themselves with both state and counter-state ideologies, thereby lending themselves to different and even competing uses in different hands. Because analogies can be imbued with varying effects, there is a need for a more nuanced understanding of how analogies—such as the generational segregation analogy developed in this article—operate, or can operate. Before theorizing this issue more broadly, the article will now analyze its concrete manifestations in one particularly relevant type of analogy, which also appears in the academic course books to which Israeli authorities have denied Palestinians access:<sup>117</sup> that concerning settler-Indigenous relations in North America, Australia, and Israel/Palestine.

Aside from the course books now out of Palestinian prisoners’ reach, such analogies have figured centrally in contemporary cross-national solidarity activities, among other sites. This global solidarity project serves as a context within which to place, and through which to better understand, the implications of the analogies at the heart of this article—among other reasons because Palestinian prisoners themselves have studied the experiences of anticolonial and liberation movements elsewhere.<sup>118</sup> Thus, in a recent statement in support of Indigenous sovereignty and rights in Canada, a Palestinian group pointed to “deep connections and similarities between our peoples.”<sup>119</sup> Recently, a

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116. SENATE SELECT COMMITTEE ON INTELLIGENCE, COMMITTEE STUDY OF THE CENTRAL INTELLIGENCE AGENCY’S DETENTION AND INTERROGATION PROGRAM 196–97 (Dec. 3, 2014), <http://i2.cdn.turner.com/cnn/2014/images/12/09/sscistudy1.pdf>. For further discussion of cross-references between U.S. and Israeli legal and political discourses in the “national security” context, see Hedi Viterbo, *Export of Knowledge*, in *THE ABC OF THE OPT: A LEGAL LEXICON OF THE ISRAELI CONTROL OVER THE OCCUPIED PALESTINIAN TERRITORY* (Orna Ben-Naftali, Michael Sfard & Hedi Viterbo authors, forthcoming in 2018).

117. See *supra* text accompanying notes 8–12.

118. See *supra* text accompanying note 24.

119. Dana M. Olwan, *On Assumptive Solidarity in Comparative Settler Colonialisms*, 4 *FERAL FEMINISMS* 89, 89 (2015).

Palestinian student from Gaza fleshed out this analogy in an open letter supporting Native American-led demonstrations:

When I read your history, I can see myself and my people reflected in yours . . . America's policy of occupation and displacement . . . and the gradual transfer of so many of your people to massive, impoverished reservations, hurts me deeply because it is so similar to the ethnic cleansing of my ancestors by the Israeli military occupation. . . . Like you, we don't control our natural resources.<sup>120</sup>

Drawing a reverse analogy, Canadian First Nations author Lee Maracle has called Palestinians the "Indians of the Middle East."<sup>121</sup> Similarly, after a visit to the West Bank, a member of a delegation of U.S. Indigenous and other nonwhite women depicted the situation there as "a high-speed and high-tech version of the colonization of our Indigenous homelands."<sup>122</sup> On another occasion, one of several Canadian activists recounted how they had raised the Palestinian and Mohawk flags on the same pole to show solidarity and drew the following analogy: "[W]e would . . . think, we are one, and the winds carry our colours together from Jerusalem to the Grand River. . . . Our struggles are one."<sup>123</sup> A group of Native American academics likewise publicly asserted: "Indigenous Peoples' experience parallels what has happened to the occupied Palestinians. . . . [Both] have suffered through the process of settlement, colonization, or militarization of their homelands."<sup>124</sup>

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120. Ben Norton, *Palestinians support indigenous Dakota pipeline protests: 'We stand with Standing Rock,'* SALON (Nov. 18, 2016), <http://www.salon.com/2016/11/18/palestinians-support-indigenous-nodapl-protests-we-stand-with-standing-rock/>.

121. Mike Krebs & Dana M. Olwan, *'From Jerusalem to the Grand River, Our Struggles are One': Challenging Canadian and Israeli Settler Colonialism*, 2 SETTLER COLONIAL STUD. 138, 142 (2012).

122. Waziyatawin, *Malice Enough in Their Hearts and Courage Enough in Ours: Reflections on US Indigenous and Palestinian Experiences Under Occupation*, 2 SETTLER COLONIAL STUD. 172, 172 (2012).

123. Krebs & Olwan, *supra* note 121, at 157.

124. Gale C. Toensing, *Indigenous Scholars Oppose Navajo President 'Becoming Partners' With Israel*, INDIAN COUNTRY (June 4, 2013), <http://indiancountrytodaymedianetwork.com/2013/04/06/indigenous-scholars-oppose-navajo-president-becoming-partners-israel-148645>.

This latter analogy is representative of a recent wave of scholarship analogizing Palestinians to North American or Australian Indigenous people, including: a critique of Israeli jurisprudence on Palestinian-Bedouin property rights through the legal framework of Australian native title jurisprudence,<sup>125</sup> a scholarly analogy between the legal regimes dispossessing Palestinians and Native Americans from national resources,<sup>126</sup> an analogy between Palestinian and Native American poetry,<sup>127</sup> and analogies between (primarily literary) discourses surrounding Palestinians and Native Americans.<sup>128</sup> Another Native American academic and activist pointed not only to parallels but also to chronological overlap in “our shared histories . . . with Palestinian people,” analogizing the Nakba—the mass displacement of Palestinians in 1948—to the “mass relocation of Native [American] people off of tribal lands . . . around the [same] time.”<sup>129</sup>

Yet, as with Israeli and U.S. legal discourses,<sup>130</sup> it is often state supporters and allies that resort to analogies of their own, overtly or implicitly countering such critical analogies. Certain North American Indigenous public figures have thus analogized their peoples not to Palestinians but to Israeli Jews.<sup>131</sup> Such analogies, however, have garnered criticism from other North American Indigenous people for complicity in what they term

125. John Sheehan, *Applying an Australian Native Title Framework to Bedouin Property*, in INDIGENOUS (IN)JUSTICE: HUMAN RIGHTS LAW AND BEDOUIN ARABS IN THE NAQAB/NEGEV 229 (Ahmad Amara, Ismael Abu-Saad & Oren Yiftachel eds., 2012).

126. Annalisa Jabaily, *Water Rites: A Comparative Study of the Dispossession of American Indians and Palestinians from National Resources*, 16 GEO. INT'L ENVTL. L. REV. 225 (2004).

127. Saddik M. Gohar, *Frontiers of Violence and Fear: A Study of Native American and Palestinian Intifada Poetry*, 2 NEBULA 34 (2005).

128. STEVEN SALAITA, *THE HOLY LAND IN TRANSIT: COLONIALISM AND THE QUEST FOR CANAAN* (2006).

129. Nick Estes, *A Native American Reflection on the Nakba*, NAKBA FILES (July 18, 2016), <http://nakbafiles.org/2016/07/18/a-native-american-reflection-on-the-nakba/>.

130. See *supra* text accompanying notes 113–16.

131. See, e.g., Krebs & Olwan, *supra* note 121, at 138–40; *Navajo President Ben Shelly Meets with Deputy Minister at Knesset, and Honors Survivors of Holocaust at Yad Vashem*, NAVAJO NATION (Dec. 13, 2012), [http://www.navajonnsn.gov/News%20Releases/OPVP/2012/Dec12/12712\\_PR\\_ShellyYadVashem.pdf](http://www.navajonnsn.gov/News%20Releases/OPVP/2012/Dec12/12712_PR_ShellyYadVashem.pdf).

“redwashing”—Israel’s attempt to fend off international censure by associating itself with Indigenous peoples.<sup>132</sup> A major bone of contention within this battlefield of analogies is thus the question of entitlement to claim Indigenous status in Israel/Palestine.<sup>133</sup>

Israeli state officials, lawyers, and soldiers, too, have explained or legitimized their actions by means of analogy, though the analogue to Israeli Jews has varied: white settlers in some cases, and Indigenous people in others. Former Israeli prime minister Ariel Sharon once told a U.S. official: “We have learned a lot from you Americans, how you moved West.”<sup>134</sup> Soldiers in the Israeli military’s Golani brigade have long referred to themselves not as settlers but as (American) “Indians.”<sup>135</sup> In 2016, a photograph was published of a soldier wearing a shirt with a picture of a Native American chief and the text: “When . . . the Indian [analogously, the Israeli soldier] hits, every Arab mother shall cry.”<sup>136</sup> A legal advisor to an Israeli municipality, invoking the infamous *terra nullius* doctrine while criticizing the marketing of a land for residential development, asserted that the current residents “are not [American] Indians. This is not an empty land.”<sup>137</sup> On another occasion, the Israeli supreme court made reference to U.S. federal legal protections for Indigenous burial

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132. Massoud Hayoun, *Palestinians, Israelis Occupy Navajo Consciousness*, ALJAZEERA AM. (Apr. 28, 2014), <http://america.aljazeera.com/articles/2014/4/28/palestine-israelnavajo.html>; Krebs & Olwan, *supra* note 121.

133. On the place this issue occupies in scholarly debates on Israel/Palestine, see, e.g., Oren Yiftachel et al., *Between rights and denials: Bedouin indigeneity in the Negev/Naqab*, 48 ENVIRONMENT & PLANNING A 2129 (2016).

134. Hadani Ditmars, *Palestinians and Canadian natives join hands to protest colonization*, HAARETZ (Jan. 29, 2013), <http://www.haaretz.com/news/features/palestinians-and-canadian-natives-join-hands-to-protest-colonization.premium-1.500057>.

135. See, e.g., AVIHAI BECKER, *INDIANS ON HILL 16: A COMPANY IN THE MOUNT HERMON BATTLE* (2003) (Hebrew).

136. Ayed Fadel, FACEBOOK (Nov. 28, 2016), <https://www.facebook.com/ayed.fadel/posts/10157744812125366>.

137. *Inquiry Commission into the Municipal Boundaries of Lod, Minutes of Meeting No. 9*, at 19 (Apr. 29, 2010) (Hebrew), [http://www.nevo.co.il/psika\\_html/arar-arzi/2010-03-29.pdf](http://www.nevo.co.il/psika_html/arar-arzi/2010-03-29.pdf).

sites, despite ultimately authorizing construction on Muslim cemetery grounds.<sup>138</sup>

Contextualized in this light, Palestinians' analogy-oriented studies in Israeli prison, and Israeli authorities' crackdown on these studies, can be understood as part of a broader battleground of analogies regarding Indigenous-settler relations. In this discursive terrain, it is the opponents of counter-official analogies themselves who continuously deploy analogies invoking settlers and Indigenous people. In fact, opposing sides sometimes utilize the exact same analogy. In a 2013 meeting of the Israeli parliamentary Interior and Environmental Affairs Committee, for instance, the committee chair dismissed allegations that a bill under discussion would continue the forced transfer and dispossession of Palestinian Bedouins and suggested that this would be no worse than "what the Americans did to the Indians," thus making light of Palestinians' and Native Americans' situations at the same time. A member of an opposition party responded reprovingly: "I very rarely agree with you, Madam Chairwoman. Precisely as they did to the Indians. Indeed. Israelis and Americans are in the same boat."<sup>139</sup> Also imbued with competing meanings has been an analogy to the American "Wild West." A former Deputy Speaker of the Israeli parliament, on the one hand, has applied this analogy to Israel's allegedly unruly Palestinian citizens.<sup>140</sup> On the other hand, other Israeli politicians have suggested that it is certain Jewish settlers in the West Bank who are the lawless analog.<sup>141</sup>

Despite transformation over time, such historical-geographical analogies are hardly new. Throughout the past two centuries, similar analogies have occupied an important place in discourses surrounding Israel/Palestine, North America, and Australia, providing a historical context for better understanding

138. H CJ 52/06 Jerusalem Islamic Waqf v. Simon Wiesenthal Center Museum Corp. (2008) (Isr.), <http://elyon1.court.gov.il/files/06/520/000/r51/06000520.r51.pdf>.

139. Interior & Environmental Affairs Committee, *19th Knesset-Transcript 148*, 27–28 (Dec. 9, 2013) (Hebrew), <http://www.knesset.gov.il/protocols/data/rtf/pnim/2013-12-09-01.rtf>.

140. Channel 7, *MP Danon: Take Over the Wild West Called the Arabs of Israel*, CHANNEL 7 WEBSITE (Nov. 15, 2011) (Hebrew), <http://www.inn.co.il/News/Flash.aspx/346375>.

141. See, e.g., Yossi Beilin, *Remarks on Hebron*, MERETZ (Jan. 1, 2007–Mar. 13, 2007) (Hebrew), <http://meretz.org.il/0010056/>.



the analogies examined and introduced by this article. Thus, while some prestatehood Zionists undertook to distance themselves from imperialism,<sup>142</sup> others, including prominent activists and thinkers, frequently and unapologetically analogized themselves to European settlers in North America or elsewhere. Speaking in the United States in 1915, David Ben-Gurion, later Israel's first prime minister, vowed that Jewish settlers in Palestine would "turn the wasteland and desolation into a flourishing . . . oasis, as did the English settlers in North America."<sup>143</sup> Harking back to the "history of American settlement," he extolled the "herculean . . . tasks of the colonists who came to find the new Homeland in the New World" and their "fierce . . . fights . . . with wild nature and wilder redskins, the sacrifices made before they unlocked the continent for mass influx and colonization."<sup>144</sup> Years later, as incumbent prime minister, he urged an audience of U.S. Jews in Israel to consider themselves "on the edge of colonization," in a mission even more difficult than the "conquest of the Wild West."<sup>145</sup>

In 1921, Israel's future first president, Chaim Weizmann, encouraged the members of the World Zionist Congress that, unlike the history of "British dominions," Jews were making remarkable achievements in Palestine, especially considering "the inevitable percentage of failures which occurs in all colonizing work."<sup>146</sup> Similar analogies appeared in *The Iron Wall*, the famous essay by revisionist Zionist leader Vladimir Jabotinsky:

That the Arabs of the Land of Israel should willingly come to an agreement with us is beyond all hopes. . . . [Those] "great explorers," the English, Scots and Dutch who were the first real

142. Yehouda Shenhav, *Introduction*, in *ZIONISM AND EMPIRES* 7, 7 (Yehouda Shenhav ed. 2015) (Hebrew).

143. DAVID BEN-GURION, *Parashat Drakhim* [Parting of Ways], MI-MAAMAD LE-AM 13–14 (FROM A CLASS TO A NATION) (1974) (1915) (Hebrew), [http://benyehuda.org/ben\\_gurion/class02.html](http://benyehuda.org/ben_gurion/class02.html).

144. Naseer H. Aruri, *Human Rights and the Israeli Occupation of Palestine*, in *THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE—2ND U.N. SEMINAR ON THE QUESTION OF PALESTINE* 200 (1980), <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7057B228AE31A9E9852574C9004EE90D>.

145. SHIRA ROBINSON, *CITIZEN STRANGERS: PALESTINIANS AND THE BIRTH OF ISRAEL'S LIBERAL SETTLER STATE* 54 (2013).

146. *Id.*

pioneers of North America . . . not only wished to leave the redskins at peace but could also pity a fly. . . . But the native resisted both barbarian and civilized settler with the same degree of cruelty. . . . [There] has never been an indigenous inhabitant anywhere or at any time who has ever accepted the settlement of others in his country. . . . And so it is for the Arabs. . . . They look upon Palestine with the same instinctive love and true fervor that any Aztec looked upon his Mexico or any Sioux looked upon his prairie.<sup>147</sup>

Conversely, in the United States, the Indigenous population has long been analogized to Palestine's Arabs. Nineteenth-century landscape paintings in the Southwest frequently featured Native Americans in clothing and scenery akin to those of Bedouin Arabs, and one of the era's travel authors expressed astonishment at how Palestine's "Arabs can hear and recognize each other's voices" using "distinctive cries, corresponding to the whoops of our Indians."<sup>148</sup> Twentieth-century U.S. tourist guides and travelogues romanticized Palestinians (particularly Bedouins) as omnipotent Native American chiefs, and one 1955 guide described a Bedouin encampment as "Israel's 'Red Indian Reserve'" and a Jewish Kibbutz as having "features of a Texan frontier post."<sup>149</sup>

Related analogies appeared outside the United States and Israel/Palestine as well. In 1937, Winston Churchill, the United Kingdom's would-be prime minister, publicly likened Palestinians to a dog in the manger, adding:

I do not agree that the dog in a manger has the final right to the manger even though he may have lain there for a long time. I do not admit that right. I do not admit, for instance, that a great wrong has been done to the Red Indians of America, or the black [i.e., Aboriginal] people of Australia . . . by the fact that . . . a higher grade race . . . has come in and taken their place.<sup>150</sup>

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147. VLADIMIR JABOTINSKY, *THE IRON WALL* (1923), <http://www.marxists.de/middleeast/ironwall/ironwall.htm>.

148. Alex Lubin, "We are all Israelis": *The Politics of Colonial Comparisons*, 107 S. ATLANTIC Q. 671, 675–77 (2008).

149. ROBINSON, *supra* note 145, at 54–55.

150. Anshuman Prasad & Pushkala Prasad, *The Postcolonial Imagination*, in *POSTCOLONIAL THEORY AND ORGANIZATIONAL ANALYSIS: A CRITICAL ENGAGEMENT* 283, 283 (Anshuman Prasad ed. 2003).

A few years later, British Labour Member of Parliament, Richard Crossman, drew a similar analogy. While serving on the government-appointed Anglo-American Committee of Inquiry into the Problems of European Jewry and Palestine, he analogized Zionism to the way “the American settler developed the West” and Palestine’s Arabs to “the aboriginal who must go down before the march of progress.”<sup>151</sup>

As this two-century long discursive tapestry indicates, analogies are already ubiquitous. Analogy is a key mode of acting, thinking, and communicating,<sup>152</sup> central to law<sup>153</sup> and politics.<sup>154</sup> Some, like essayist and poet Ralph Waldo Emerson and philosopher Friedrich Nietzsche, have gone as far as asserting, respectively, that “[a]ll thinking is analogising,”<sup>155</sup> and “[e]very concept arises from the equation of unequal things.”<sup>156</sup>

This near unavailability of analogies carries at least two implications. First, analogies such as those offered by this article, by the Israeli Open University course book, or by other scholarly sources cited in this article,<sup>157</sup> are best understood not as external observations removed from their object of inquiry, but as part and parcel of an already analogy-laden discourse. A second

151. WILLIAM R. LOUIS, *THE BRITISH EMPIRE IN THE MIDDLE EAST, 1945–1951: ARAB NATIONALISM, THE UNITED STATES, AND POSTWAR IMPERIALISM* 403 (1984).

152. See, e.g., RONALD SCHLEIFER, *ANALOGICAL THINKING: POST-ENLIGHTENMENT UNDERSTANDING IN LANGUAGE, COLLABORATION, AND INTERPRETATION* (2000); John Agnew, *Making the Strange Familiar: Geographical Analogy in Global Geopolitics*, 99 *GEOGRAPHICAL REV.* 426 (2009); Eva T. Bannet, *Analogy as Translation: Wittgenstein, Derrida, and the Law of Language*, 28 *NEW LITERARY HIST.* 655 (1997); Keith J. Holyoak & Paul Thagard, *The Analogical Mind*, 52 *AM. PSYCHOLOGIST* 35 (1997); Stanley J. Tambiah, *Relations of analogy and identity: Toward Multiple Orientations to the World*, in *MODES OF THOUGHT: EXPLORATIONS IN CULTURE AND COGNITION* 34 (David R. Olson & Nancy Torrance eds., 1996).

153. See, e.g., Linda L. Berger, *Metaphor and Analogy: The Sun and Moon of Legal Persuasion*, 22 *J. L. & POL'Y* 147 (2013); Scott Brewer, *Exemplary Reasoning: Semantics, Pragmatics, and the Rational Force of Legal Argument by Analogy*, 109 *HARV. L. REV.* 923 (1996); Cass R. Sunstein, *On Analogical Reasoning*, 106 *HARV. L. REV.* 741 (1993).

154. See, e.g., YUEN FOONG KHONG, *ANALOGIES AT WAR: KOREA, MUNICH, DIEN BIEN PHU, AND THE VIETNAM DECISIONS OF 1965* (1992).

155. Tambiah, *supra* note 152, at 34.

156. FRIEDRICH W. NIETZSCHE, *ON TRUTH AND LIES IN A NONMORAL SENSE* 9 (2012).

157. See *supra* text accompanying notes 125–29.

implication is that a critical inquiry is needed not (only) into whether to utilize such analogies, but rather into how analogies operate, can operate, and are prevented from operating and what they facilitate or obstruct within specific settings and framings.

### III. ANALOGY'S FRAMEWORKS

Thus far, the article has put forward the generational segregation analogy (in Part I) and has then contextualized this analogy within analogies concerning settler-Indigenous relations (in Part II). This Part will investigate analogy at a broader conceptual level, in and beyond the generational segregation and settler-Indigenous contexts. At the center of inquiry will be the relationship between analogy and framing—a relationship that exists on at least two levels. First, debates about the value and aptness of any given historical-geographical analogy are framed in certain ways, resting on particular assumptions about the meaning and nature of the concept “analogy.” Second, such analogies themselves are conceptual, interpretive, and narrative frameworks, delimited and constrained by specific geographical and historical demarcations. As is the case with all frameworks,<sup>158</sup> each of these levels of framing simultaneously (albeit never fully) excludes and includes, opens up and hinders, entrenches and silences. Hereafter, this article will ruminate over these two levels of framing, thereby self-reflexively considering its own method—analogy. In so doing, this article seeks to think not only with but also beyond, or even against, historical-geographical analogies.

More specifically, the discussion that follows problematizes three pertinent framings of analogies: (a) legalistic analogies relating to generational segregation, in which the broader field of child law and policy remains uncontested; (b) rigid conceptualizations of (settler) colonialism in debates on analogies between North America, Australia, and Israel/Palestine; and (c) a tendency, widespread in debates on the (settler-)colonial analogy as well as on other historical-geographical analogies, to reduce analogy to similarity. This conceptual analysis aims to contribute to more nuanced and self-reflexive usage of, and thinking about, analogies such as those under examination.

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158. JUDITH BUTLER, *FRAMES OF WAR: WHEN IS LIFE GRIEVABLE?* 73, 75 (2009).

Moreover, by placing generational segregation within the specific contexts of child law and policy and (settler) colonialism, this Part will throw light on both its idiosyncrasies and its commonalities with each of these contexts. On the one hand, placing generational segregation within these contexts can bring out its connections and parallels with other child-related or settler-colonial practices. On the other hand, this can highlight the specificity of generational segregation—vis-à-vis settler-colonial practices less directly centered around child-adult relations and child-focused interventions less intertwined with settler colonialism.

#### *A. Legalistic Analogies Concerning Generational Segregation*

The generational segregation analogy advanced in this article can shed new light on past and present child-related discourses and practices. But, in singling out generational segregation in North America, Australia, and Israel/Palestine, this analogy might also be misunderstood to regard these as dark chapters in an otherwise benign history, or field, of child law and policy.<sup>159</sup> Exemplifying this pitfall are scholarly assertions that Indigenous child removal was “in violation of children’s rights as defined by . . . the United Nations . . . including . . . the Convention on the Rights of the Child.”<sup>160</sup>

Such criticism of generational segregation is formulated in the sort of legalistic or liberal rule-of-law<sup>161</sup> terms that dominate

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159. Cf. Shurlee Swain, *Child Rescue: The Emigration of an Idea*, in CHILD WELFARE AND SOCIAL ACTION IN THE NINETEENTH AND TWENTIETH CENTURIES: INTERNATIONAL PERSPECTIVES 101, 101–02 (Jon Lawrence & Pat Starkey eds., 2001); Swain, *But the Children*, *supra* note 55, at 136, 142–43.

160. Madeline H. Engel, Norma K. Phillips & Frances A. DellaCava, *Indigenous Children’s Rights: A Sociological Perspective on Boarding Schools and Transracial Adoption*, 20 INT’L J. CHILD.’S RTS. 279, 279, 296–97 (2012).

161. Legalism can be defined as, among other things, the “social ethos which gives rise to the political climate in which judicial and other legal institutions flourish” and also as “the operative outlook of the legal profession.” JUDITH N. SHKLAR, LEGALISM: LAW, MORALS, AND POLITICAL TRIALS 8 (2d ed. 1986). A “liberal rule-of-law ideology” treats law as relatively apolitical and autonomous, as significantly impartial and just (or at least as a lesser evil), and as the ultimate means for progressive social change. CHRIS HUTTON, LANGUAGE, MEANING AND THE LAW 13–15 (2009). For alternative conceptions of law, see, e.g., WALTER BENJAMIN, *Critique of Violence*, in SELECTED WRITINGS VOL. 1: 1913–1926, at 236 (Marcus Bullock & Michael W. Jennings eds., Lloyd Spencer et al.

child-centered jurisprudence.<sup>162</sup> In so doing, they might reproduce an insufficiently critical stance toward a sociolegal field deserving of much greater suspicion.

What such a legalistic approach overlooks is that generational segregation in North America, Australia, or Israel/Palestine— notwithstanding its undeniable specificities—typifies rather than deviates from child law and policy in multiple ways. In its modern form, this legal-political field developed, in part, as a means to remove poor and working-class children and civilize them away from their allegedly depraved or unfit parents, often in the name of national interests.<sup>163</sup> Separation was seen as necessary because, without it, parental influences would have undermined the children's moral instruction.<sup>164</sup> As a growing body of literature has explained, child-related interventions throughout modern times—whether iterated as “child saving,” “child welfare,” “children's rights,” or “juvenile justice”—have all too often worked to children's detriment.<sup>165</sup> To date, disadvantaged

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trans., 1996); PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* 33–56 (1998); David B. Wilkins, *Legal Realism for Lawyers*, 104 HARV. L. REV. 468 (1990).

162. On the legalism of this jurisprudence, see Annette Ruth Appell, *The Pre-Political Child of Child-Centered Jurisprudence*, 46 HOUS. L. REV. 703, 726 (2009).

163. See ERIC HOPKINS, *CHILDHOOD TRANSFORMED: WORKING-CLASS CHILDREN IN NINETEENTH-CENTURY ENGLAND* (1994); MAY ET AL., *supra* note 80, at 109–11; LYDIA MURDOCH, *IMAGINED ORPHANS: POOR FAMILIES, CHILD WELFARE, AND CONTESTED CITIZENSHIP IN LONDON* (2006); ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (2d ed. 1977); John Clarke, *The Three Rs—Repression, Rescue and Rehabilitation: Ideologies of Control for Working Class Youth*, in *YOUTH JUSTICE: CRITICAL READINGS* 123, 126–127 (John Muncie, Gordon Hughes & Eugene McLaughlin eds., 2002); Swain, *Enshrined in Law*, *supra* note 55, at 195.

164. MAY ET AL., *supra* note 80, at 107–08.

165. See, e.g., Ashleigh Barnes, *A Genealogy of the CRC*, 23 MINN. J. INT'L L. 101 (2014); Karl Hanson, *Separate Childhood Laws and the Future of Society*, 12 L., CULTURE & HUMAN. 195 (2016); Marlee Kline, *Child Welfare Law, “Best Interests of the Child” Ideology, and First Nations*, 30 OSGOODE HALL L. J. 375 (1992); Daniel Monk, *Childhood and the Law: In Whose ‘Best Interests’?*, in AN INTRODUCTION TO CHILDHOOD STUDIES 177 (Mary Jane Kehily ed., 2d ed. 2009); Wendy Stainton-Rogers, *Promoting Better Childhoods: Constructions of Child Concern*, in AN INTRODUCTION TO CHILDHOOD STUDIES 101 (Mary Jane Kehily ed., 3d ed. 2015); Zvi H. Triger, *The Child's Worst Interests: Socio-Legal Taboos on Same-Sex Parenting and Their Impact on Children's Well-Being*, 28 ISR.

socioeconomic, racial, and ethnic groups continue to be ill-served and disproportionately targeted.<sup>166</sup> Notwithstanding undeniable transformations, contemporary child law still enshrines principles akin to those invoked in justification of generational segregation,<sup>167</sup> such as separation, “best interests,” and “rehabilitation.”<sup>168</sup>

At a more fundamental level, the sociolegal category “child,” in its modern iterations, is premised on, and reinforces, the same essentialism undergirding generational separation: the assumption that all those classified as “children” are one and the same, sharing relatively similar traits (such as plasticity) and needs (such as special treatment). This notion tends to efface the culturally and historically contingent nature of the construct “childhood,” the infinite disparity among “children,” their weighty

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STUD. REV. 264 (2013); Ben White, *Children, Work and ‘Child Labour’: Changing Responses to the Employment of Children*, 25 DEV. & CHANGE 849 (1994). For a review of similar critiques, see Didier Reynaert, Maria Bouverne-de-Bie & Stijn Vandeveld, *A Review of Children’s Rights Literature Since the Adoption of the United Nations Convention on the Rights of the Child*, 16 CHILDHOOD 518, 527–28 (2009).

166. See, e.g., BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* (1999); OUR CHILDREN, THEIR CHILDREN: CONFRONTING RACIAL AND ETHNIC DIFFERENCES IN AMERICAN JUVENILE JUSTICE (Darnell Felix Hawkins & Kimberly Kempf Leonard eds., 2005); Barnes, *supra* note 165. Conflicting explanations have been offered on the disproportionality issue. See, e.g., Elizabeth Bartholet, *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 ARIZ. L. REV. 871 (2009); Alan J. Dettlaff et al., *Disentangling substantiation: The influence of race, income, and risk on the substantiation decision in child welfare*, 33 CHILD. & YOUTH SERVICES REV. 1630 (2011); Vandna Sinha, Stephen Ellenbogen & Nico Trocmé, *Substantiating neglect of first nations and non-aboriginal children*, 35 CHILD. & YOUTH SERVICES REV. 2080 (2013).

167. See *supra* text accompanying notes 54–75.

168. See, e.g., Convention on the Rights of the Child, G.A. Res. 44/25, arts. 3, 37(c) (Nov. 20, 1989); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), arts. 10.2(b), 10.3, 14(4) (Dec. 19, 1966); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”), G.A. Res. 40/33, arts. 1.1, 5.1, 13.4, 14.2, 17.1(d), 24.1, 26.3 (Nov. 29, 1985); U.N. Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”), G.A. Res. 45/113, Annex, 45 U.N. GAPR, Supp. No. 49A, U.N. Doc. A/45/49/Annex (1990), arts. 2, 27, 29, 32, Annex—arts. 1, 28 G.A. Res. 45/113, Annex, arts. 1, 28 (Dec. 14, 1990); U.N. Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), G.A. Res. 70/175, arts. 4, 11, 88, 91–94, 96, 98, 104, 112 (Dec. 17, 2015).

commonalities with “adults,” and the social forces invested in reproducing the seemingly natural child-adult divide. While exceeding the scope of this article, this essentialism has been criticized and deconstructed elsewhere,<sup>169</sup> even if legalistic writing largely overlooks these critical insights.<sup>170</sup> It is in order to call into question these supposedly self-evident and benevolent orderings and conceptions of childhood and adulthood—as well as to highlight the importance of generation as a social-political unit<sup>171</sup>—that this article employs the potentially explosive phrase “generational segregation.”<sup>172</sup>

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169. See, e.g., AN INTRODUCTION TO CHILDHOOD STUDIES 101 (Mary Jane Kehily ed., 3d ed. 2015) [hereinafter AN INTRODUCTION TO CHILDHOOD STUDIES]; ERICA BURMAN, DECONSTRUCTING DEVELOPMENTAL PSYCHOLOGY (2007); ALLISON JAMES, , CHRIS JENKS & ALAN PROUT, THEORIZING CHILDHOOD (1998); CHRIS JENKS, CHILDHOOD (2d ed. 2005); DAVID KENNEDY, THE WELL OF BEING: CHILDHOOD, SUBJECTIVITY, AND EDUCATION (2006); HEATHER MONTGOMERY, AN INTRODUCTION TO CHILDHOOD: ANTHROPOLOGICAL PERSPECTIVES ON CHILDREN’S LIVES (2009); Janet Ainsworth, *Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition*, 36 B.C. L. REV. 927 (1995); David M. Rosen, *Child Soldiers, International Humanitarian Law, and the Globalization of Childhood*, 109 AM. ANTHROPOLOGIST 296 (2007); Peter Kelly, *The Brain in the Jar: A Critique of Discourses of Adolescent Brain Development*, 15 J. YOUTH STUD. 944 (2012).

170. See, e.g., SONIA HARRIS-SHORT, ABORIGINAL CHILD WELFARE, SELF-GOVERNMENT AND THE RIGHTS OF INDIGENOUS CHILDREN: PROTECTING THE VULNERABLE UNDER INTERNATIONAL LAW 290 (2012) (extolling the U.N. Convention on the Rights of the Child for its “commitment to . . . universal standards” and arguing that, despite containing provisions regarded unfavorably by Indigenous communities, the Convention provides an “inclusive starting point” for protecting Indigenous children’s “fundamental rights and interests”).

171. On the concept of generation generally, see, e.g., SHMUEL N. EISENSTADT, FROM GENERATION TO GENERATION (3d ed. 2009); David I. Kertzer, *Generation as a Sociological Problem*, 9 ANNUAL REVIEW OF SOCIOLOGY 125 (1983); Karl Mannheim, *The Problem of Generations*, 57 PSYCHOANALYTIC REV. 378 (1990). On the relationship between generation and childhood, see, e.g., CHILDHOOD IN GENERATIONAL PERSPECTIVE (Berry Mayall & Helga Zeiher eds., 2003); Nicola Ansell, *‘Generationing’ Development*, 26 EUROPEAN JOURNAL OF DEVELOPMENT RESEARCH 283 (2014); Robert M. Vanderbeck, *Intergenerational Geographies: Age-Relations, Segregation and Re-engagements*, 1 GEOGRAPHY COMPASS 200 (2007). On the meaning and importance of generation in the Israeli-Palestinian context, see COLLINS, *supra* note 24, at 11–21.

172. For other uses of this or similar terminology, see HOWARD P. CHUDACOFF, HOW OLD ARE YOU: AGE CONSCIOUSNESS IN AMERICAN CULTURE (1989); Vanderbeck, *supra* note 171.



Given this, it should come as no surprise that the history of child law and policy is full of examples, beyond the four focused on in this article (concerning the United States, Canada, Australia, and Israel/Palestine), of both generational segregation and attempts at reeducating Indigenous or ethnic minority children.<sup>173</sup> Thus, over a period spanning half a century up to the mid-1970s, hundreds of children of Yenish origin in Switzerland (often described as “gypsies” or “gypsy-like”) were forcefully and systematically removed from their birth families. These children were placed with foster families or in institutions in an effort to assimilate them into dominant society.<sup>174</sup> In the 1950s, Danish authorities, assisted by international charities, took a group of Inuit children from their families in Greenland and placed them with foster families in Denmark to be reeducated as “little Danes”. Most of the children were later returned to Greenland but placed in a special children’s home, where they were discouraged from speaking their Inuit language.<sup>175</sup> During French colonial rule in Morocco, “mixed-race” children were likewise transferred from their purportedly unfit mothers to orphanages,<sup>176</sup> while in the Dutch East Indies (now Indonesia) child protection agencies endeavored “to remove [such children] . . . as early as possible from the influence of native . . . mothers.”<sup>177</sup> Between the fourteenth and seventeenth centuries, boys in the Ottoman Empire were taken from rural Christian families in the Balkans,

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173. Needless to say, the parallels and divergence across or within these and other policies and practices are endlessly complex, and so are the parallels and divergence between them and the four contexts discussed in Part I. On some of the former parallels and divergence, see ANDREA SMITH, *INDIGENOUS PEOPLES AND BOARDING SCHOOLS: A COMPARATIVE STUDY* (2009), [http://www.un.org/esa/socdev/unpfii/documents/E\\_C\\_19\\_2009\\_crp1.pdf](http://www.un.org/esa/socdev/unpfii/documents/E_C_19_2009_crp1.pdf); on some of the latter, see Jacobs, *supra* note 47. The aim here is not to delve into these parallels and divergence but to draw critical insights from this broader, and in some respects ongoing, (hi)story.

174. See, e.g., Thomas Meier, *The Fight Against the Swiss Yenish and the ‘Children of the Open Road’ Campaign*, 18 *ROMANI STUD.* 101 (2008).

175. Ellen Otzen, *The Children Taken from Home for a Social Experiment*, BBC NEWS (June 10, 2015), <http://www.bbc.co.uk/news/magazine-33060450>.

176. OWEN WHITE, *CHILDREN OF THE FRENCH EMPIRE: MISCEGENATION AND COLONIAL SOCIETY IN FRENCH WEST AFRICA 1895–1960*, 55–60 (1999).

177. ANN LAURA STOLER, *CARNAL KNOWLEDGE AND IMPERIAL POWER: RACE AND THE INTIMATE IN COLONIAL RULE* 121 (2002).

converted to Islam, and conscripted into military or civil service.<sup>178</sup>

In addition, laws and policies encouraging the assimilation or “civilization” of Indigenous or ethnic minority children through boarding schools were put in place across the globe: from Latin America in the nineteenth and twentieth centuries, through colonial Sierra Leone in the nineteenth century and New Zealand in its early days, to the Soviet Union in the 1920s and certain provinces in China from 1949 into the 1980s.<sup>179</sup> Generational segregation was also imposed on groups other than Indigenous peoples or ethnic minorities. For instance, thousands of Spanish parents who were deemed either politically dangerous or morally or economically deficient are believed to have had their babies taken away and placed with “approved” families for nearly half a century until the 1990s.<sup>180</sup>

Specifically, North America, Australia, and Israel/Palestine each have wider histories of generational segregation and subjugation through education. Among other things, in North Amer-

178. Gulay Yilmaz, *Becoming a Devşirme: The Training of Conscripted Children in the Ottoman Empire*, in *CHILDREN IN SLAVERY THROUGH THE AGES* 119 (Gwyn Campbell, Suzanne Miers & Joseph C. Miller eds., 2009).

179. SMITH, *supra* note 173. See also MICHAEL C. COLEMAN, *AMERICAN INDIANS, THE IRISH, AND GOVERNMENT SCHOOLING* (2009) (comparatively examining the assimilative schooling of Indigenous children in the United States and Irish children under British rule).

180. Katya Adler, *Spain's Stolen Babies and the Families Who Lived a Lie*, BBC NEWS (Oct. 18, 2011), <http://www.bbc.co.uk/news/magazine-15335899>. Apartheid South Africa witnessed a triangle of incarceration, “rehabilitation,” and education—partly comparable to the situations in Israel/Palestine, North America, and Australia but with an important difference: the absence of generational segregation. Thus, before their release from detention, some black children were sent to so-called “rehabilitation camps” and “reeducation centers,” where they were reportedly abused by the security forces. AMNESTY INT’L, 1987 REPORT 101 (1987), <https://www.amnesty.org/download/Documents/POL1000021987ENGLISH.PDF>; G.A. Res. 43/134 (Dec. 8, 1988), <http://www.un.org/documents/ga/res/43/a43r134.htm>. On the non-separation of the thousands of children held under South Africa’s emergency regulations at the time, and on the poorly enforced separation of young black inmates otherwise, see, respectively, Enid Fourie, *The UN Convention on the Rights of the Child and the Crisis for Children in South Africa: Apartheid and Detention*, 12 HUM. RTS. Q. 106, 111 (1990); FIONA MCLACHLAN, *CHILDREN IN PRISON: SOUTH AFRICA* (1985), [http://psimg.jstor.org/fsi/img/pdf/t0/10.5555/al.sff.document.nuun1985\\_02\\_final.pdf](http://psimg.jstor.org/fsi/img/pdf/t0/10.5555/al.sff.document.nuun1985_02_final.pdf).

ica and Australia, there were other child removals, some preceding the ones on which this article focuses. Among them were removals of Indigenous children in the pre-boarding-school era and removals of children from poor or working-class families.<sup>181</sup> As a case in point, for nearly eight decades, up until 1929, legally authorized charities in the United States transferred an estimated 200,000 to 250,000 children (mostly from impoverished immigrant families who sometimes had to file lawsuits to reclaim the children) for indenture or adoption in faraway parts of the country.<sup>182</sup> Within North American studies, parallels have also been observed between boarding schools for Indigenous children, contemporaneous industrial and correctional schools for lower-class white children,<sup>183</sup> and earlier forms of assimilative schooling.<sup>184</sup>

In Palestine, English missionaries during Ottoman and British rule endeavored to convert local children to Christianity through removal and education.<sup>185</sup> In the 1940s and 1950s, international Jewish organizations operating in North Africa viewed local Jewish parents as incorrigibly degenerate, made efforts to separate them from their children, and arranged for some children to be put up for adoption.<sup>186</sup> In 1950s Israel, infants of non-European Jewish immigrants, primarily of Yemenite origin—whom earlier Zionists described as inferior “Arab hybrids”<sup>187</sup>—were reputedly abducted for adoption.<sup>188</sup> In

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181. Jacobs, *supra* note 47, at 206.

182. Rebecca S. Trammell, *Orphan Train Myths and Legal Reality*, 5 MOD. AM. 3 (2009).

183. MILLOY, *supra* note 4.

184. WOOLFORD, *supra* note 47.

185. NANCY L. STOCKDALE, COLONIAL ENCOUNTERS AMONG ENGLISH AND PALESTINIAN WOMEN, 1800–1948, at 115–19, 137–38, 149, 156–57 (2007).

186. Benny Nurieli, *The Children Must Be Saved: OSE and the Jews of North Africa*, in ZIONISM AND EMPIRES 269, 290 (Yehouda Shenhav ed., 2015) (Hebrew).

187. *Id.* at 273.

188. See SHOSHANA MADMONI-GERBER, ISRAELI MEDIA AND THE FRAMING OF INTERNAL CONFLICT: THE YEMENITE BABIES AFFAIR 1 (2009); Ruth Amir, *Transitional Justice Accountability and Memorialisation: The Yemeni Children Affair and the Indian Residential Schools*, 47 ISR. L. REV. 3, 7–12 (2014). For a comparative discussion of the Yemenite children affair and Canada’s Indian Residential Schools, see Amir, *supra*, at 4, 20, 24–26. The Israeli government recently ordered the declassification of some two hundred thousand files relating to the missing children. Yet, many other, potentially damning state records

addition, Palestinian citizen children in Israel, whose school system is separate from the Jewish one, are required to learn about Jewish values and culture, while their curriculum excludes expressions of Palestinian nationalism and other possible challenges to dominant Zionist narratives.<sup>189</sup>

Moreover, isolating the four referents of the generational segregation analogy (the United States, Canada, Australia, and Israel/Palestine) from this global context also overlooks the transnational nature of such segregation. Certain forms of generational segregation, such as large-scale child emigration, transnational adoption, and child evacuation schemes and initiatives, are transnational by definition. Examples abound here as well. For about a century, beginning in the late 1860s (a “shameful episode of history,” as British prime minister Gordon Brown would later describe it), government-funded charities dispatched tens of thousands of British children (between 80,000 and 150,000 according to different estimates) to Canada, Australia, New Zealand, and Southern Rhodesia (now Zimbabwe). Most of the children were from poor, primarily working-class households, and many of them have since spoken of the suffering caused by their removal and, in some cases, their subsequent abuse or neglect.<sup>190</sup>

Irish babies labelled as “illegitimate”, too, were sent by the thousands for adoption overseas between the early 1940s and mid-1960s, mostly to the United States, sometimes without their mothers’ consent.<sup>191</sup> From 1963 to 1982, French authorities in

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were burned or lost many years ago, and many other files remain out of public reach. Jonathan Cook, *Israel Urged to Apologise for Disappeared Babies*, AL JAZEERA (Jan. 2, 2017), <http://www.aljazeera.com/indepth/features/2017/01/israel-urged-apologise-disappeared-babies-170101134501812.html>; Haokets, *Israel Opens Files on Disappeared Yemenite Children. But is it Enough?*, +972 MAGAZINE (Jan. 2, 2017), <https://972mag.com/state-opens-files-on-disappeared-yemenite-children-but-is-it-enough/124088/>.

189. See e.g., Ismael Abu-Saad, *State Educational Policy and Curriculum: The Case of Palestinian Arabs in Israel*, 7 INT’L EDUC. J. 709 (2006); Hedi Viterbo, *Guarantees of Collectivity: Israeli Education Law and the Erasure of Palestinian History*, 7 TEL AVIV U. INTERDISC. J. 44 (2005) (Hebrew).

190. See, e.g., ELLEN BOUCHER, *EMPIRE’S CHILDREN: CHILD EMIGRATION, WELFARE, AND THE DECLINE OF THE BRITISH WORLD, 1869–1967*, at 3–4 (2014); ROGER KERSHAW & JANET SACKS, *NEW LIVES FOR OLD: THE STORY OF BRITAIN’S CHILD MIGRANTS* (2008).

191. See Moira J. Maguire, *Foreign Adoptions and the Evolution of Irish Adoption Policy, 1945–52*, 36 J. SOC. HIST. 387 (2002).

the Indian Ocean island of Réunion forcibly sent 1,615 children of poor and illiterate parents to France to work on farms or as servants to bourgeois families.<sup>192</sup> Like all of these, mass child evacuations in perceived welfare emergencies overseas have also drawn criticism. The largest evacuation, “Operation Babylift”—the airlifting of over 2,500 Vietnamese children to the United States and other countries in 1975—was criticized for “kidnapping” children who could have been better off remaining in their homeland.<sup>193</sup>

The transnational character of generational segregation also manifests itself in interconnections between the Indigenous child removal and reeducation policies of the United States, Canada, and Australia. In the late 1870s, Canadian prime minister John MacDonal commissioned Nicholas Davin, a journalist and future member of parliament, to examine the use of residential schools for Indigenous children in the United States. Following meetings with senior U.S. officials and visits to some of these schools, Davin’s highly influential report strongly recommended emulating the neighboring country’s model.<sup>194</sup> After continuous visits to the United States until the late 1970s, Canadian officials further suggested adopting key elements of the schooling of Indigenous children across the border. In addition, U.S. and Canadian officials occasionally exchanged ideas about, and teaching materials for, Indigenous boarding schools, and school staff also drew upon the other country’s schools when negotiating with government authorities.<sup>195</sup> In Australia, institutions for Indigenous children were managed by the same umbrella churches as in Canada.<sup>196</sup>

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192. Anne Penketh, *France Faces up to Scandal of Réunion’s Stolen Children*, *GUARDIAN* (Feb. 16, 2014), <http://www.theguardian.com/world/2014/feb/16/france-reunion-stolen-children>.

193. See Kathleen J. S. Bergquist, *Operation Babylift or Babyabduction?: Implications of the Hague Convention on the humanitarian evacuation and ‘rescue’ of children*, 52 *INT’L SOC. WORK* 621 (2009).

194. MILLOY, *supra* note 4; Woolford & Gacek, *supra* note 101.

195. WOOLFORD, *supra* note 47, at 71, 78, 90–91, 117–18.

196. MARY ELLEN TURPEL-LAFOND—REPRESENTATIVE FOR CHILDREN AND YOUTH PROVINCE OF BRITISH COLUMBIA, *ABORIGINAL CHILDREN: HUMAN RIGHTS AS A LENS TO BREAK THE INTERGENERATIONAL LEGACY OF RESIDENTIAL SCHOOLS* (July 2012), [https://www.rcybc.ca/sites/default/files/documents/pdf/reports\\_publications/20120701\\_truthandreconciliationsubmission.pdf](https://www.rcybc.ca/sites/default/files/documents/pdf/reports_publications/20120701_truthandreconciliationsubmission.pdf). Moreo-

More recently, former Canadian prime minister, Stephen Harper, remarked in his public apology that the Indian Residential School system “was infamously said ‘to kill the Indian in the child’”<sup>197</sup> (a saying also quoted in the Israeli Open University course book on genocide,<sup>198</sup> to which Palestinian prisoners have been denied access). While Canadian officials charged with “educating” the Indigenous population did indeed frequently voice this dictum,<sup>199</sup> it actually originated from the United States, where it had been coined by no other than the highly influential Richard Pratt.<sup>200</sup>

The practices and discourses surrounding Indigenous child removal also traversed further, beyond these national boundaries and historical epochs. In North America and Australia, Indigenous child removal largely had legal and philosophical origins traceable to eighteenth- and nineteenth-century Britain.<sup>201</sup> In Canada, it also drew inspiration from Swiss manual labor

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ver, inter-country influences and links extended beyond child removal and education. In 1886, future U.S. president and then-Civil Service Commissioner Theodore Roosevelt drew analogies to, and lessons from, Canada’s handling of its “Indian problem.” WOOLFORD, *supra* note 47, at 65. Australian officials also showed some awareness of policies toward Indigenous people on the other side of the Pacific: for instance, in 1929, the Minister of State for Home Affairs, when discussing a proposal to establish reservations for Aborigines, declared that “the Government would try to exercise control on the lines of the Indian Reservations in the United States and Canada.” JACOBS, *supra* note 47, at 51. There have also been cross-border links, collaborations, and influences between North American and Australian Indigenous groups. These include Indigenous child welfare organizations and activists, as well as references to overseas Indigenous peoples in past and present Indigenous constitutions and codes. On the former, see JACOBS, *supra* note 111; LIBESMAN, *supra* note 112. On the latter, see Kirsty Gover, *Inter-Indigenous Recognition and the Cultural Production of Indigeneity in the Western Settler States*, in *RECOGNITION VERSUS SELF-DETERMINATION: DILEMMAS OF EMANCIPATORY POLITICS* 201, at 207–10 (Avigail Eisenberg et al. eds., 2014).

197. De Leeuw, *supra* note 79, at 124.

198. GUTFELD, *supra* note 1, at 146.

199. CHURCHILL, *supra* note 4, at 14.

200. On Pratt’s influence on Indigenous child removal and reeducation, see *supra* text accompanying notes 91–102 and *infra* text accompanying notes 246–48.

201. ARMITAGE, *supra* note 49, at 5–6, 8; Robinson & Paten, *supra* note 82, at 502–03, 510; Swain, *supra* note 159; Swain, *But the Children*, *supra* note 55; Swain, *Enshrined in Law*, *supra* note 55, at 195, 197–99.

schools.<sup>202</sup> The use of “before” and “after” photographs to show children’s supposedly successful transformation, a practice honed by British child rescuers,<sup>203</sup> was later used in boarding schools for Indigenous children in North America,<sup>204</sup> as well as in Indigenous child removal in Australia.<sup>205</sup> At the same time, over in Britain, Native American children were being portrayed as inferior and pitiful, while the press and literature reported: “The American and Canadian governments are trying hard to make . . . wandering [Indian] men into good citizens”; “[t]hey can do little with the grown-up people, but the children they are trying to send to school.”<sup>206</sup>

While street children in Britain were analogized to both “Arabs” and uncivilized indigenes,<sup>207</sup> the British Mandate government in Palestine laid the legal foundations for Israel’s future generational segregation of Palestinians between the 1920s and 1940s. This included introducing the youth court system, various related laws,<sup>208</sup> and an array of emergency regulations, many of which currently remain in force.<sup>209</sup> In fact, more than

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202. MAY ET AL., *supra* note 80, at 177.

203. See, e.g., Susan Ash, *The Barnardo’s Babies: Performativity, Shame, and the Photograph*, 19 CONTINUUM 507 (2005).

204. ADAMS, *supra* note 47, at 47–49, 56; SWAIN & HILLEL, *supra* note 66, at 100; WOOLFORD, *supra* note 47, at 153; Eric Margolis, *Looking at Discipline, Looking at Labour: Photographic Representations of Indian Boarding Schools*, 19 VISUAL STUD. 8 (2004).

205. KATHERINE ELLINGHAUS, TAKING ASSIMILATION TO HEART: MARRIAGES OF WHITE WOMEN AND INDIGENOUS MEN IN THE UNITED STATES AND AUSTRALIA, 1887–1937, at xix (2006); AMY E. JACKETT, IMAGINED PORTRAITS: REVIVING FIGURES FROM AUSTRALIA’S PAST 173 (Doctoral Thesis, Uni. Tas., 2013), <http://eprints.utas.edu.au/17665/1/whole-Jackett-thesis.pdf.pdf>; JACOBS, *supra* note 111, at 217.

206. SWAIN & HILLEL, *supra* note 66, at 83–85.

207. *Id.* at 79–81, 98.

208. TAMMY RAZI, FORSAKEN CHILDREN: THE BACKYARD OF MANDATE TEL-AVIV 219–20 (2009) (Hebrew); Mimi Ajzenstadt, *Constructing Juvenile Delinquency: The Socio-Legal Control of Young Offenders in Israeli, 1920–1975*, in CONSTRUCTING SOCIAL WORK PRACTICES 193, 196–97 (Arja Jokinen, Kirsi Juhila & Tarja Pösö eds., 1999).

209. John Reynolds, *The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law* 37–38, 42–43 (Comp. Res. L. & Pol. Res. Paper Series, Res. Rep. No. 19/2010, <http://digital-commons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1086&context=clpe>); Yoav Mehozay, *The Fluid Jurisprudence of Israel’s Emergency Powers: Legal Patchwork as a Governing Norm*, 46 L. & SOC’Y REV. 137, 143–46 (2012).

sixty years before Israel established so-called “military youth courts” as part of the increased generational segregation,<sup>210</sup> the British emergency regulations in Palestine were amended to authorize military courts to act as juvenile courts.<sup>211</sup> It is also from British Mandate legislation<sup>212</sup> that Israeli law borrowed age categories that are still applied (exclusively) to Palestinian child defendants.<sup>213</sup>

Against this non-exhaustive backdrop, if analogies concerning generational segregation are to fulfill as much of their critical potential as possible, they must have child law and policy within their frame of critique, in plain view. This requires overcoming legalistic tendencies and the common depiction, explicitly or implicitly, of contexts like those on which this article centers as exceptions to an otherwise benign legal and political field. Recent scholarship on Indigenous child removal<sup>214</sup> represents an effort in this direction, and so do studies pointing to parallels and continuities between present-day law concerning migrant children and past policies pertaining to Native American children.<sup>215</sup> This conversion, however, is still in its infancy.

*B. Rigid Conceptualizations of (Settler) Colonialism in Debates About Analogies Between North America, Australia, and Israel/Palestine*

Also pertinent to the present context—along with legalistic analogies—are analogies that invoke “colonialism” generally or “settler colonialism” specifically. These concepts often appear in academic calls for analogies between the United States, Canada,

210. See *supra* text accompanying note 34.

211. Defense Regulations (Emergency) art. 33a (1945) (amended: 1947) (Isr.).

212. Juvenile Offenders Ordinance art. 2 (1937) (Isr.).

213. On these statutory categories and their application, see Hedi Viterbo, *The Age of Conflict: Rethinking Childhood, Law, and Age Through the Israeli-Palestinian Case*, in *LAW & CHILDHOOD STUDIES—CURRENT LEGAL ISSUES VOL. 14*, at 136–38, 147–49 (Michael Freeman ed., 2012), <https://repository.essex.ac.uk/17506/1/Viterbo%202012.pdf>.

214. Swain, *Enshrined in Law*, *supra* note 55.

215. Vinita B. Andrapalliyal, *History Repeats Itself: Parallels Between Current-Day Threats to Immigrant Parental Rights and Native American Parental Rights in the Twentieth Century*, 8 *U. MASS. L. REV.* 562, 581–86 (2013); Marcia Yablon-Zug, *Separation, Deportation, Termination*, 32 *B.C. J. L. & SOC. JUST.* 63, 105–07 (2012).



Australia, and Israel/Palestine,<sup>216</sup> as well as in three scholarly fields highly relevant to this article. First, scholars who develop analogies concerning settler-Indigenous dynamics often do so while directly or implicitly describing the countries they analogize as either settler<sup>217</sup> or settler-colonial.<sup>218</sup> Second, the Israeli Open University course book on genocide attaches the terms “settler” and “colonial” to, and invites related analogies between, the United States, Israel, and Australia.<sup>219</sup> Finally, cross-national studies of Indigenous child removal have likewise evoked these categories.<sup>220</sup> In addition, as this article has shown,<sup>221</sup> these terms have occupied a significant place outside academic circles as well, in discourses ranging from present-day inter-country solidarity campaigns to past political and cultural debates.

Despite inevitably being open to multiple definitions, interpretations, and applications, the terms “colonialism” and “settler colonialism” are often treated as self-explanatory, and their meaning for those debating them hence remains unarticulated, inexplicit, and unexplored. Two rigid conceptualizations of these categories—common in and beyond debates about analogies between Israel/Palestine, North America, and Australia—warrant critical attention here.

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216. See, e.g., ROBINSON, *supra* note 145; LORENZO VERACINI, ISRAEL AND SETTLER SOCIETY (2006); Amir, *supra* note 188; John Collins, *Beyond Conflict: Palestine and the Deep Structures of Global Colonization*, 48 *POLÍTICA Y SOCIEDAD* 139 (2011); Margaret D. Jacobs, *Parallel or intersecting tracks? The history of the US West and comparative settler colonialism*, 4 *SETTLER COLONIAL STUD.* 155 (2014); Baruch Kimmerling, *Academic History Caught in the Cross-Fire: The Case of Israeli-Jewish Historiography*, 7 *HIST. & MEMORY* 41 (1995); Mahmood Mamdani, *Settler Colonialism: Then and Now*, 41 *CRITICAL INQUIRY* 596 (2015); Gabriel Piterberg, *The Zionist Colonization of Palestine in the Context of Comparative Settler Colonialism*, in *PALESTINE AND THE PALESTINIANS IN THE 21ST CENTURY* 15 (Rochelle Davis & Mimi Kirk eds., 2013).

217. Jabaily, *supra* note 126.

218. SALAITA, *supra* note 128; Gohar, *supra* note 127; Sheehan, *supra* note 125.

219. See *supra* text accompanying notes 8–12.

220. See JACOBS, *supra* note 47, at 2–21; WOOLFORD, *supra* note 47, at 2–4, 42.

221. See *supra* text accompanying notes 118–24, 131–51.

First, despite nuanced writing on the subject,<sup>222</sup> some responses to such analogies frame the categories “colonialism” and “settler colonialism” as applying to rigid political “units,” or historical “epochs.”<sup>223</sup> Though these categories may indeed be of more analytical relevance to certain contexts than others, such rigid framing overlooks the traces colonialism—seldom fully obeying such geographical or temporal boundaries—is bound to leave elsewhere. Further, imagining there to be a distinct or separable colonial order neglects the prevalence, within liberal “normalcy,” of attributes some scholars<sup>224</sup> associate with colonialism, such as a normalized state of exception, legal indeterminacy, or institutionalized discrimination.<sup>225</sup> Indeed, generational segregation and related practices bear links and parallels across times and spaces that may not align themselves with some common framings of colonialism.<sup>226</sup> These include, for example, framings that place Switzerland (whose child policies are mentioned in this article)<sup>227</sup> outside colonialism due to its lack of former colonies, despite the country’s complicity in past colonialism

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222. See, e.g., Stuart Hall, *When Was ‘The Post-Colonial’? Thinking at the Limit*, in *THE POST-COLONIAL QUESTION: COMMON SKIES, DIVIDED HORIZONS* 242 (Iain Chambers & Lidia Curti eds., 1996); Anne McClintock, *The Angel of Progress: Pitfalls of the Term “Post-Colonialism,”* 31/32 *SOC. TEXT* 84 (1992).

223. See, e.g., Caroline Elkins & Susan Pedersen, *Settler Colonialism: A Concept and Its Uses*, in *SETTLER COLONIALISM IN THE TWENTIETH CENTURY: PROJECTS, PRACTICES, LEGACIES 1* (Caroline Elkins & Susan Pedersen eds., 2005); Piterberg, *supra* note 216.

224. See, e.g., NASSER HUSSAIN, *THE JURISPRUDENCE OF EMERGENCY: COLONIALISM AND THE RULE OF LAW* (2003); Elkins & Pedersen, *supra* note 223, at 4; Mehozay, *supra* note 209; Yehuda Shenhav & Yael Berda, *The Colonial Foundations of the State of Exception: Juxtaposing the Israeli Occupation of the Palestinian Territories with Colonial Bureaucratic History*, in *THE POWER OF INCLUSIVE EXCLUSION: ANATOMY OF ISRAELI RULE IN THE OCCUPIED PALESTINIAN TERRITORIES* 337 (Adi Ophir, Michal Givoni & Sari Hanafi eds., 2009).

225. NOMI CLAIRE LAZAR, *STATES OF EMERGENCY IN LIBERAL DEMOCRACIES* (2009); Allan C. Hutchinson & Patrick J. Monahan, *Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought*, 36 *STAN. L. REV.* 199, 208–13 (1984); Fleur Johns, *Guantánamo Bay and the Annihilation of the Exception*, 16 *EJIL* 613, 624, 629 (2005); Mark Neocleous, *The Problem with Normality: Taking Exception to “Permanent Emergency”* 31 *ALTERNATIVES* 191 (2006).

226. See *supra* text accompanying notes 173–213.

227. See *supra* text accompanying notes 174, 202.

and its contemporary colonial undertones.<sup>228</sup> Moreover, such rigid framings also oversimplify colonialism by downplaying its ever-mutating nature and, simultaneously, overstating its all-encompassing domination of “colonial” times and spaces.

A second rigid framing assesses the (settler) colonialism analogy on the basis of a set of supposed similarities to either other settler-colonial instances or some imagined prototype. One encounters this approach in definitional controversies, not explicitly over the meaning of (settler) colonialism itself, but over what characteristics a certain context must possess in order to qualify as either colonial or settler-colonial. For example, some consider settler migration from a single European country to be such a necessary characteristic and argue that, absent this element, prestatehood Zionism cannot be regarded as a colonial movement.<sup>229</sup> Others, in contrast, delimit colonialism as including various examples—Zionism being only one—of substantial settler populations that were not nationals of the metropolitan government.<sup>230</sup> Such debates, however, emanate from a particular,

228. See PATRICIA PURTSCHERT & HARALD FISCHER-TINÉ, *COLONIAL SWITZERLAND: RETHINKING COLONIALISM FROM THE MARGINS* (2015).

229. Oren Barak, *Between the Nation State Vision and a Multicultural Reality: A Comparative Look at Lebanon and the Land of Israel/Palestine*, 35 *TEORIA U'VIKORET [THEORY & CRITICISM]* 193, 197 (2009) (Hebrew); see also Elkins & Pedersen, *supra* note 223, at 4.

230. John Reynolds, *Anti-Colonial Legalties: Paradigms, Tactics & Strategy*, 18 *PALESTINE Y.B. INT'L L.* 8, 12 n. 11 (2015). In addition to definitions, another bone of contention in disputes on the applicability of “colonialism” is history. This is evidenced by former prime minister Stephen Harper’s 2009 assertion that Canada has “no history of colonialism.” Andrew Crosby & Jeffrey Monaghan, *Settler governmentality in Canada and the Algonquins of Barriere Lake*, 43 *SEC. DIALOGUE* 421, 421–22 (2012). Another example is the claim that Zionism was never colonial because it did not draw support from an imperial power, as argued by Shmuel Hirsch & Uri Cohen, *Remarks on Israeli Sociology in Light of From Yishuv to State*, in 10 *IYUNIM BI-TKUMAT ISRAEL [INQUIRIES IN ISRAEL’S REVIVAL]* 317, 341–42 (2000) (Hebrew). Other examples are the counter-arguments that Zionism developed “in the womb of British colonialism” and is heavily buttressed by “America’s *carte blanche* military, economic and political support.” See, respectively, John Strawson, *Reflections on Edward Said and the Legal Narratives of Palestine: Israeli Settlements and Palestinian Self-Determination*, 20 *PENN ST. INT’L L. REV.* 363, 377 (2002); Jonas F. Gjersø, *Israel—The Last of the Settler Colonies*, *CIVILISING MISSION* (Aug. 16, 2014), <http://thecivilisingmission.com/2014/08/16/israel-the-last-of-the-settler-colonies/>.

checklist-like reduction of (settler) colonialism to questions of similarity.

In contrast, other frameworks may open up alternative ways of engaging with these categories and the analogies that use them. Instead of rigid boundaries or similarities, settler colonialism can be conceptualized around a certain mode of operation. In his widely cited writing on the subject, Patrick Wolfe defined settler colonialism as hallmarked by a “logic of elimination.” By this he referred to the attempt to establish and perpetually sustain a colonial society in the expropriated territory by culturally, socially, or physically destroying the Indigenous population.<sup>231</sup> Wolfe conceptualized this settler-colonial mode of operation fairly flexibly, akin to a Wittgensteinian “family resemblance,”<sup>232</sup> by pointing out that it takes on different forms and strategies, varying and potentially evolving over time and space.<sup>233</sup> As he noted, these may include, but are not limited to, child removal and other forms of social fragmentation or cultural

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231. Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RES. 387, 387–89 (2006). Another key distinguishing characteristic that has been attributed to settler colonialism is a relatively large settler population that seeks to become the majority group. See, e.g., Gershon Shafir, *Zionism and colonialism: a comparative approach*, in THE ISRAEL/PALESTINE QUESTION: A READER 78, 80–81 (Ilan Pappé ed., 2d ed. 2007); Daiva Stasiulis & Nira Yuval-Davis, *Introduction: Beyond Dichotomies—Gender, Race, Ethnicity and Class in Settler Societies*, in UNSETTLING SETTLER SOCIETIES: ARTICULATIONS OF GENDER, RACE, ETHNICITY AND CLASS 1, 3 (1995). Scholars differ on whether settler colonialism should be structurally counterposed to, or placed on a continuum with, other colonial forms (specifically “exploitation colonialism”). See, respectively, LORENZO VERACINI, THE SETTLER COLONIAL PRESENT (2015); JACOBS, *supra* note 47, at 3. On “exploitation colonialism,” see Stasiulis & Yuval-Davis, *supra*, at 3.

232. Crudely defined, Wittgenstein’s oft-cited notion of “family resemblance” designates a category whose members share commonalities without there being any specific necessary feature for category membership. LUDWIG WITTEGENSTEIN, PHILOSOPHICAL INVESTIGATIONS (revised 4th ed. P.M.S. Hacker & Joachim Schulte eds., G.E.M. Anscombe et al. trans., 2009).

233. Wolfe, *supra* note 231, at 389, 402. In line with this conceptual flexibility, it may be useful to treat “Indigenous” and “settler” as relational and heterogeneous categories. See, e.g., AVRIL BELL, RELATING INDIGENOUS AND SETTLER IDENTITIES: BEYOND DOMINATION (2014); Jerome M. Levi & Biorn Maybury-Lewis, *Becoming Indigenous: Identity and Heterogeneity in a Global Movement*, in INDIGENOUS PEOPLES, POVERTY, AND DEVELOPMENT 73 (Gillette H. Hall & Harry A. Patrinos eds., 2012).

assimilation as well as displacement, mass killing, demographic control, and geographical renaming.<sup>234</sup>

Through this alternative conceptual framework, generational segregation can be better contextualized vis-à-vis the broader settler-colonial matrix from which it partly draws its effect and meaning. Like generational segregation, related legal and political mechanisms within this matrix target not necessarily an individual body or subject but the collective subjugated socio-political body. Some of these mechanisms, as noted by Wolfe, do so through a combination of segregation and fragmentation.<sup>235</sup> Examples include Israel's recruitment and use of Palestinian informants inside and outside prison, breeding distrust between Palestinians and thereby potentially weakening their collective resistance and solidarity.<sup>236</sup> This particular form of sociopolitical fragmentation has benefitted from the increased generational segregation of Palestinians in Israeli custody: children are denied contact with Palestinian adults—including the adult inmates but also the children's parents and prospective attorney—which makes it easier for the Israeli authorities to recruit these children as informants.<sup>237</sup> The separation of Palestinian citizens of Israel who are classified as "security prisoners" from their noncitizen Palestinian counterparts is another practice that amalgamates segregation and fragmentation with the "rehabilitation" discourse: as part of its persistent emphasis on the importance of such separation,<sup>238</sup> the Israeli supreme court, invoking yet again rehabilitation in the service of segregation, has

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234. Wolfe, *supra* note 231, at 388–89.

235. See *supra* text accompanying note 234.

236. See Tobias Kelly, *In a Treacherous State: The Fear of Collaboration Among West Bank Palestinians*, in *TRAITORS: SUSPICION, INTIMACY, AND THE ETHICS OF STATE-BUILDING* 169 (Sharika Thiranagama & Tobias Kelly eds., 2010). See generally ANDREW RIGBY, *LEGACY OF THE PAST: THE PROBLEM OF COLLABORATORS AND THE PALESTINIAN CASE* (1997).

237. See Viterbo, *supra* note 27.

238. See CrimA 6248/05 John Doe v. State of Israel (2005) (Isr.), <http://elyon1.court.gov.il/files/05/480/062/T01/05062480.t01.pdf>; CrimA 4682/11 John Doe v. State of Israel (2012) (Isr.), <http://elyon1.court.gov.il/files/11/820/046/t02/11046820.t02.pdf> [hereinafter CrimA 4682/11]; see also CrimA 5873/09 Bayumi v. State of Israel (2010) (Isr.), <http://elyon1.court.gov.il/files/09/730/058/t05/09058730.t05.pdf>.

warned that interaction between these two Palestinian populations would lead to “anti-rehabilitation.”<sup>239</sup> Moreover, the Israeli prison authorities have reportedly segregated Palestinian inmates into facilities, wards, and cells on the basis of their regions of residence,<sup>240</sup> while also isolating those whose influence is deemed especially perilous, such as hunger strikers.<sup>241</sup> All the while, outside prison, in line with what Israeli officials have publicly called Israel’s “separation policy,”<sup>242</sup> the Gaza Strip has been cut off from the West Bank,<sup>243</sup> while the latter has been steadily parcelled into enclaves.<sup>244</sup> The consequent restriction of physical movement takes place in tandem with Israel’s restriction of the movement of imagination—through denial of analogy-laden studies—between different times and places.

Social and territorial disintegration was the lot of North American Indigenous people too, in and beyond the contexts of child

239. CrimA 4682/11.

240. See ADDAMEER, VIOLATIONS AGAINST PALESTINIAN PRISONERS AND DETAINEES IN ISRAELI PRISONS AND DETENTION CENTERS 5–6 (2011), <http://www.addameer.org/files/Reports/EN%20Addameer%202010%20Violations%20Report.pdf>; Walid Daka, *Consciousness Molded or the Re-identification of Torture*, in THREAT: PALESTINIAN POLITICAL PRISONERS IN ISRAEL 234, 244–45 (Abeer Baker & Anat Matar eds., 2011).

241. See Commission Ordinance 04.16.00: Prisoners’ Hunger Strike art. 6a & app. A (May 1, 2001, last amended May 18, 2017) (Isr.).

242. See Gisha, *The Separation Policy: List of References Prepared by Gisha*, GISHA (July 2014), [http://gisha.org/UserFiles/File/publications/separation\\_policy\\_2014.pdf](http://gisha.org/UserFiles/File/publications/separation_policy_2014.pdf); Gisha, *What is the “Separation Policy”?*, GISHA (June 2012), <http://www.gisha.org/UserFiles/File/publications/Bidul/bidul-infosheet-ENG.pdf>; see also Ari Shavit, *Top PM Aide: Gaza Plan Aims to Freeze the Peace Process*, HAARETZ (Oct. 6, 2004), <http://www.haaretz.com/print-edition/news/top-pm-aide-gaza-plan-aims-to-freeze-the-peace-process-1.136686>.

243. See, e.g., GISHA, A COSTLY DIVIDE: ECONOMIC REPERCUSSIONS OF SEPARATING GAZA AND THE WEST BANK (Feb. 2015), [http://gisha.org/UserFiles/File/publications/a\\_costly\\_divide/a\\_costly\\_divide\\_en-web.pdf](http://gisha.org/UserFiles/File/publications/a_costly_divide/a_costly_divide_en-web.pdf); NAAMA BAUMGARTEN-SHARON, SO NEAR AND YET SO FAR: IMPLICATIONS OF ISRAELI-IMPOSED SECLUSION OF GAZA STRIP ON PALESTINIANS’ RIGHT TO FAMILY LIFE (Jan. 2014), [http://www.btselem.org/sites/default/files/201401\\_so\\_near\\_and\\_yet\\_so\\_far\\_eng.pdf](http://www.btselem.org/sites/default/files/201401_so_near_and_yet_so_far_eng.pdf).

244. See, e.g., Ariel Handel, *Where, Where to, and When in the Occupied Territories: An Introduction to Geography of Disaster*, in THE POWER OF INCLUSIVE EXCLUSION: ANATOMY OF ISRAELI RULE IN THE OCCUPIED PALESTINIAN TERRITORIES 179 (Adi Ophier, Michal Givoni & Sari Hanafi eds., 2009); Alina Korn, *The Ghettoization of the Palestinians*, in THINKING PALESTINE 116, 118–22 (Ronit Lentin ed., 2008).

removal and boarding schools. Thus, in 1888, a U.S. official described boarding schools as designed to imbue the Indigenous student “with the exalting egotism of American civilization, so that he will say ‘I’ instead of ‘We,’ and ‘This is mine,’ instead of ‘This is ours.’”<sup>245</sup> Richard Pratt set the Indigenous prisoners on whom he experimented with rehabilitation<sup>246</sup> against one another by having them guard, scout out, and punish each other.<sup>247</sup> Later, Pratt likewise had students in his boarding school punished severely by courts-martial made up of their peers.<sup>248</sup> The U.S. General Allotment Act of 1887 and subsequent amendments further fragmented Indigenous communities by breaking up their lands into small, individually owned parcels.<sup>249</sup> Similar measures were imposed on Canada’s Indigenous population, albeit without such legislative basis.<sup>250</sup>

Counterinsurgency and “national security”—themes discussed in this article in relation to generational segregation<sup>251</sup>—also often accompany settler colonialism<sup>252</sup> and can therefore be part of

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245. ADAMS, *supra* note 47, at 22–23.

246. See *supra* text accompanying note 98.

247. See Witte & Mero, *supra* note 93, at 388–89, 395. This is further testament to the ties between generational segregation, education, incarceration, and “national security,” as discussed *supra* text accompanying notes 97–108.

248. See Witte & Mero, *supra* note 93, at 388–89, 395.

249. See Ralph W. Johnson, *Fragile Gains: Two Centuries of Canadian and United States Policy Toward Indians*, 66 WASH. L. REV. 643 (1991). In Australia, the non-recognition of native title, the emphasis on biological absorption, and other factors made such practices unnecessary. See ELLINGHAUS, *supra* note 205; Patrick Wolfe, *Land, Labor, and Difference: Elementary Structures of Race*, 106 AM. HIST. REV. 866 (2001). Yet, Indigenous child removal peaked in tandem with the revocation of reserved Aboriginal lands. See Haskins & Jacobs, *supra* note 53, at 228, 231, 238.

250. See Johnson, *supra* note 249; ELLINGHAUS, *supra* note 205; Wolfe, *supra* note 249.

251. See *supra* text accompanying notes 97–105.

252. See, e.g., FORMATIONS OF UNITED STATES COLONIALISM 8–11, 24 (Alyosha Goldstein ed., 2014); AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 11 (2010); Joshua Inwood & Anne Bonds, *Confronting White Supremacy and a Militaristic Pedagogy in the U.S. Settler Colonial State*, 106 ANNALS AM. ASS'N GEOGRAPHERS 521 (2016).

the contextualization proposed here. Like the treatment of Palestinians by dominant Israeli Jewish society,<sup>253</sup> albeit to a different degree, Canada and the United States have time and again considered their Indigenous populations a “national security” threat. The U.S. Bureau of Indian Affairs—a federal agency in the Department of the Interior—was originally located within the War Department and was run with assistance from military commanders.<sup>254</sup> More recently, lawyers in the George W. Bush administration analogized nineteenth-century Native American tribes to present-day terrorists, and this analogy was later reiterated by the Obama administration and the U.S. Court of Military Commission Review.<sup>255</sup> In the late 1980s, Canada’s Senate Special Committee on Terrorism and Public Safety warned that Indigenous protests and demands for autonomy and compensation in North America would result in domestic terrorism.<sup>256</sup> Recent years have seen Canadian state agencies classifying Indigenous protests over lands and resources as an “extremist” threat to national security and placing protestors under heightened surveillance.<sup>257</sup>

Despite foregrounding such important phenomena, the alternative conceptualization of colonialism and settler colonialism proposed here cannot escape the potential exclusions and blind spots of these—and all other—categories. Indeed, similar exclusions are inherent to all interpretive frameworks, including, in the present context, the category “childhood” and the method of analogy. Therefore, while it is crucial to problematize the concepts “colonialism” and “settler colonialism,” singling them out

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253. See, e.g., BARUCH KIMMERLING, *THE INVENTION AND DECLINE OF ISRAELINESS: STATE, SOCIETY, AND THE MILITARY* (2001); JULIANA OCHS, *SECURITY AND SUSPICION: AN ETHNOGRAPHY OF EVERYDAY LIFE IN ISRAEL* (2010).

254. See WOOLFORD, *supra* note 47, at 336.

255. Matthew L. M. Fletcher & Peter S. Vicaire, *Indian Wars: Old & New*, 15 *J. GENDER RACE & JUST.* 201 (2012).

256. See Jennifer Adese, *Constructing the Aboriginal Terrorist: Depictions of Aboriginal Protestors, the Caledonia Reclamation, and Canadian Neoliberalization*, in *ENGAGING TERROR: A CRITICAL AND INTERDISCIPLINARY APPROACH* 275 (Marianne Vardalos et al. eds., 2009).

257. See Crosby & Monaghan, *supra* note 230; Tia Dafnos, *Pacification and Indigenous Struggles in Canada*, 9 *SOCIALIST STUD.* 57 (2013); Jeffrey Monaghan & Kevin Walby, *Making Up ‘Terror Identities’: Security Intelligence, Canada’s Integrated Threat Assessment Centre and Social Movement Suppression*, 22 *POLICING & SOC’Y* 133 (2012).



would be both analytically naïve and politically questionable. Moreover, like other modes of control,<sup>258</sup> (settler) colonialism often depends on denial.<sup>259</sup> This includes its objection to being named for what it is: (settler) colonialism. This may partly explain the anxieties these terms evoke in debates on analogies between Israel/Palestine, North America, and Australia. To maintain as much of their critical potential as possible, all categories and analogies must be deployed provisionally, with relentless suspicion toward their frames and their often-invisible exclusions, in order to prevent them, as much as possible, from unwittingly stifling critical thinking and action.

### C. *The Reduction of Analogy to Similarity*

The similarity-centered framing of the colonialism analogy<sup>260</sup> represents a broader tendency, characteristic of public and academic debates, to assess analogies primarily on the basis of whether their referents evince “sufficient similarity.” This prevalent reduction of analogy to similarity, however, can be called into question on at least three counts, each of which warrants an alternative discursive framework such as the one provided above<sup>261</sup>—an alternative framework that would evaluate analogies not (only) on the complicated grounds of similarity but in view of what can be gained or lost by deploying them.

First, though “analogy,” like all terms, offers itself to a variety of definitions (none of which is “truer” than others), believers in conceptual distinctions may nonetheless treat it as distinguishable from other, related concepts.<sup>262</sup> In this line of thinking, if “equation” can be crudely defined as suggesting sameness; “comparison” as either pointing to or assessing similarity; and “juxtaposition” as either highlighting contrasts or inviting compari-

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258. On the relationship between denial and state violence, see, e.g., STANLEY COHEN, *STATES OF DENIAL: KNOWING ABOUT ATROCITIES AND SUFFERING* (2001); Jared Del Rosso, *The Textual Mediation of Denial: Congress, Abu Ghraib, and the Construction of an Isolated Incident*, 58 SOC. PROBS. 165 (2011); Hedi Viterbo, *Seeing Torture Anew: A Transnational Reconceptualization of State Torture and Visual Evidence*, 50 STAN. J. INT'L L. 281 (2014).

259. See, e.g., WALTER L. HIXSON, *AMERICAN SETTLER COLONIALISM: A HISTORY* 11-13 (2013).

260. On this framing of the colonialism analogy, see *supra* text accompanying notes 222–30.

261. See *supra* text accompanying notes 231–57.

262. Cf. SCHLEIFER, *supra* note 152; Bannet, *supra* note 152.

son; then what may set “analogy” apart is its presumption of difference between its referents. This is the difference analogy seeks to transcend, but not to deny, as it discerns sameness. In large part, then, it is this premise of analogy—the assumption that the parallels in question lie in otherwise dissimilar sites—which renders historical-geographical analogies as stimulating and contentious as they tend to be. Thus conceptualized, analogy is predicated on and designed to see beyond both difference and sameness: it presupposes difference, likens across this difference, but all the while acknowledges and leaves difference in place.

If this conceptual distinction is adopted—provisionally and strategically—then in denoting both similarity and difference, historical-geographical analogies can be seen as potentially serving two functions at once. On the one hand, by suggesting commonality between seemingly unparalleled social settings,<sup>263</sup> counter-dominant analogies can challenge a political entity’s self-image—be it a sense of national exceptionalism,<sup>264</sup> for example, or a country’s self-affiliation with certain political configurations and self-distancing from others.<sup>265</sup> On the other hand, by simultaneously acknowledging the inevitably infinite particularity of each of its referents, an analogy can destabilize simplistic characterizations of phenomena as either exemplary or exceptional. In this and other regards, analogical reasoning can already be specific, though it may seem to aspire to generalization.

Moreover, in the process of designating certain themes as similar, such analogies can also indicate their varying manifestations and uses, even where the aim is not to provide a systematic comparative analysis. As a case in point, the generational segregation analogy established in this article can point to significant variations, three of which have already become evident in some

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263. Cf. Ann Laura Stoler, *Tense and Tender Ties: The Politics of Comparison in North American History and (Post) Colonial Studies*, 88 *J. AM. HIST.* 829 (2001).

264. See COLEMAN, *supra* note 179, at 4, 6; JACOBS, *supra* note 47, at 11; VERACINI, *supra* note 231; Lubin, *supra* note 148; see also Eric Cheyfitz, *The Force of Exceptionalist Narratives in the Israeli–Palestinian Conflict*, 1 *NATIVE AM. & INDIGENOUS STUD.* 107 (2014) (arguing that U.S. exceptionalism reinforces Israeli exceptionalism).

265. See Olwan, *supra* note 119.

of the above quotes. First, Israeli advocates of generational segregation lack the assimilationist rhetoric of their North American and Australian counterparts.<sup>266</sup> This is notwithstanding the fact that in some other contexts the desire for ethnic purity has not been exclusive to Israel/Palestine,<sup>267</sup> and that a few exceptional examples of Zionist assimilationism can be found elsewhere.<sup>268</sup> Second, for the most part, Australia's focus was on "breeding out the color" of mixed-race children, whereas in the other three countries the primary concern has generally been with social rather than biological influences.<sup>269</sup> Third, the objectives of generational segregation concerning the adults from whom the children were removed in North America (preemptive

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266. Wolfe's conceptualization, discussed *supra* text accompanying notes 231–35, enables seeing elements such as assimilationism—which is absent in the generational segregation of Palestinians—as “one of a range of strategies of elimination that become favored in particular historical circumstances” rather than as “an invariable concomitant of settler colonialism.” *But see* Wolfe, *supra* note 231, at 400–01.

267. *See, e.g.*, HARRIS-SHORT, *supra* note 170, at 24–25; JACOBS, *supra* note 47, at 68–70.

268. Several prestatehood Zionist leaders proposed that Palestinian Arabs were descendants of Hebrew tribes and could even be Judaized. *See* ISRAEL BELKIND, *ARABS IN THE LAND OF ISRAEL* (1969) (Hebrew); BER BOROCHOV, 1 WRITINGS (1955) (Hebrew); David Ben-Gurion, *The Origin of the Fellahin, in THE LAND OF ISRAEL IN THE PAST AND PRESENT* 195 (1980) (Hebrew), [http://benyehuda.org/ben\\_gurion/anaxnu02.html](http://benyehuda.org/ben_gurion/anaxnu02.html); David Ratner, *The Skeletons in Grandpa's Closet—Part 1*, HAARETZ (Jan. 25, 2016) (Hebrew), <http://www.haaretz.co.il/blogs/davidratner/1.2829696>. Advocating the unification of Palestinians and Israelis into not only one state but a single nation, some Israeli Jewish settlers recently cited these earlier views. *See* TSVI MISINAI, *THE ENGAGEMENT: THE ROOTS AND SOLUTION TO THE PROBLEM IN THE HOLY LAND* (9th ed. 2009), [http://the-engagement.org/files/engagement\\_booklet\\_english\\_210709.pdf](http://the-engagement.org/files/engagement_booklet_english_210709.pdf); ELON YARDEN, *TRANSFORMATION: THE ONE STATE PLAN* (Jenny Grigg trans., 2009), [http://the-engagement.org/files/the\\_israeli\\_engagement\\_booklet.pdf](http://the-engagement.org/files/the_israeli_engagement_booklet.pdf); Amir Kitron, *The Arabs of Mount Hebron*, DAROMA 54 (2007).

269. ADAMS, *supra* note 47, at 52–53; Jacobs, *supra* note 47, at 204–05; James T. Carroll, *The Smell of the White Man Is Killing Us: Education and Assimilation Among Indigenous Peoples*, 27 U.S. CATH. HISTORIAN 21, 45–46 (2009); Manne, *supra* note 47, at 221–22, 228, 235; ELLINGHAUS, *supra* note 205. *But see* WOOLFORD, *supra* note 47, at 178, 253–56 (discussing attempts in the United States to sift out potential students who were already of diluted “Indian blood,” whose absorption into the dominant society, it was assumed, would happen naturally).

counterinsurgency) were different from those in Israel/Palestine (legitimizing the curtailment of rights).

The generational segregation analogy intimates a myriad of other differences. One of these is that the Israeli legal system, though preoccupied with the physical appearance of Palestinian child detainees in other circumstances,<sup>270</sup> has shown none of the interest of either North American or Australian authorities in the clothing and physicality of the separated children.<sup>271</sup> There is also an important disparity in the scope and length of generational segregation. Among other things, in Australia, such separation was generally meant to be permanent, while being temporary in the other countries; Australian authorities typically sought to prevent all contact between the segregated children and their families, whereas elsewhere such contact was normally allowed, albeit to considerably varying degrees;<sup>272</sup> and the Palestinian children in Israeli custody are usually older, and are separated for shorter periods,<sup>273</sup> than their North American—and even more so their Australian—counterparts.<sup>274</sup> In addition, in North America and Australia alike, the policies, practices, rationalizations, and scope of generational segregation varied from one region or state to another and changed over time.<sup>275</sup> The further the generational segregation analogy is pursued, the more such disparities may come to the fore.

A second challenge to the prevalent notion that “insufficiently similar” referents defy analogy has to do, more fundamentally, with the bilateral relationship between analogy and resemblance. Analogies do not simply identify preexisting parallels. Instead, they are among the conceptual frameworks that inform whether, and to what extent, phenomena are deemed alike in

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270. See Viterbo, *supra* note 213, at 144–47.

271. See ADAMS, *supra* note 47; Jacobs, *supra* note 47, at 215–17.

272. See ADAMS, *supra* note 47; Jacobs, *supra* note 47, at 215–17.

273. Palestinian children in Israeli custody are mostly sixteen or seventeen years of age, and their average prison sentence is about eight months, sometimes in addition to their detention period. See Viterbo, *supra* note 27. Under Israeli law, the age of criminal responsibility is twelve years. See Viterbo, *supra* note 213.

274. See Jacobs, *supra* note 47, at 221–22; WOOLFORD, *supra* note 47.

275. See ADAMS, *supra* note 47, at 56, 58; JACOBS, *supra* note 47, at 33–35, 237–39, 260–62, 277–79; WOOLFORD, *supra* note 47, at 2–3, 5–6, 8, 12, 17, 48, 75, 80–88, 94, 114–16, 142–43, 153.

the first place. To become visible, legible, and meaningful, similarity and dissimilarity partly depend on the analogies they are often assumed to precede.<sup>276</sup> For example, by tying separation to incarceration and “national security,”<sup>277</sup> the generational segregation analogy does not simply capture, but may actually alter, the extent to which Palestinian children’s separation in Israeli custody is perceived as similar to that of their Indigenous counterparts in North America and Australia. Accordingly, the more an analogy dominates a discursive field, the more it can make certain “parallels” or “differences” appear self-evident, while potentially obscuring or discounting alternative analogies—alternative structurings of similitude and disparity. If violence can be broadly defined as the preclusion of possibilities and potentialities,<sup>278</sup> then, in these and other respects, analogy and violence seem inextricable from one another. Deploying an analogy, as well as avoiding an analogy, potentially exclude certain ideational frameworks.

Finally, another risk—which political activism runs when similarity becomes its basis—is making commonality a prerequisite for compassion and action and thereby eroding interest in, or sympathy for, the plight of others that either seem unparalleled or possess less visible parallels.<sup>279</sup> This is an ever-present ethical challenge for solidarity campaigns that revolve around intergroup resemblance, such as those analyzed in this article.<sup>280</sup> The prevalent reduction of analogy to similarity thus ignores analogy’s predication on difference, overlooks analogy’s influence on whether its supposedly preexisting referents are deemed alike in the first place, and risks making similarity a prerequisite for solidarity.

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276. Cf. BUTLER, *supra* note 158, at 70–71, 83; Piterberg, *supra* note 216, at 16–17.

277. See *supra* text accompanying notes 97–108.

278. Michel Foucault, *The Subject and Power*, 8 CRITICAL INQUIRY 777, 789 (1982); Johan Galtung, *Violence, Peace, and Peace Research*, 6 J. PEACE RES. 167, 168 (1969).

279. For a similar argument, see JODI DEAN, *SOLIDARITY OF STRANGERS: FEMINISM AFTER IDENTITY POLITICS* (1996).

280. On these solidarity campaigns, see *supra* text accompanying notes 118–24.

## CONCLUSION

This article has provided three complementary readings of the relationship between analogy and generational segregation, sharing a common substantive and methodological point of departure: Palestinian prisoners' engagement, through studies now prohibited by the Israeli government and courts, with analogy-based critiques and the issue of Indigenous child removal.

First, using analogy, the article has shone a spotlight on heretofore unexamined parallels, connections, and continuities between the removal of Indigenous children to boarding schools in the United States and Canada, Australia's Aboriginal "stolen generations," and the separation of Palestinian children and adults in Israeli custody. Across these different contexts, generational segregation, while anchored in law and couched in a language of benevolence and legalism, has severed these children's intergenerational ties and exposed them to abuse. Its targets have been those on both sides of the generational divide: not only the children concerned, who have been deemed highly malleable and hence susceptible to intervention, but also their adult counterparts. In North America and Australia, generational segregation was advocated as a counterinsurgency measure against Indigenous adults, while Israeli authorities have invoked the presumed irredeemability of the separated Palestinian adults as grounds for retracting their entitlements (including the above studies). This is but part of broader connections between generational segregation, incarceration, education, and "national security." Alongside the cross-national links generational segregation involved at the time and its lasting legacies in North America and Australia, this analogy thus highlights its reemergence in the form of analogous practices in Israel/Palestine.

Second, to better contextualize the analogies Palestinian prisoners explored and the generational segregation analogy put forward here, this article has investigated the ubiquity and multiple roles of related analogies in relevant discourses surrounding North America, Israel/Palestine, and Australia. Under examination have been analogies that, like the analogies in the course books to which Palestinian prisoners have been denied access, invoke Indigenous-settler relations. Such analogies have figured prominently in a range of sites spanning two centuries: from contemporary scholarly debates to statements, past and recent, by political activists, state politicians, soldiers, judges, and lawyers. Across this discursive tapestry, opposing sides of the debate

have used historical-geographical analogies, occasionally using the very same analogy for conflicting objectives. This indicates that the generational segregation analogy is also inevitably open to competing interpretations and applications and should therefore be understood in a more nuanced light than might often be the case.

Third, further theorizing analogy, the article has provided a critical analysis of three relevant framings of analogies: (a) legalistic criticisms of generational segregation, which portray it as a breach of legal norms; (b) rigid conceptualizations of colonialism and settler colonialism in debates about analogies between North America, Australia, and Israel/Palestine; and (c) the tendency—common in and beyond the present context—to equate analogy with similarity. Starting with legalistic criticisms, this article has criticized them for portraying generational segregations, such as those under examination, as exceptions to an otherwise benign legal field of child law and policy, thus leaving this field and its norms uncontested. In so doing, this legalistic framing neglects not only the reliance of generational segregation on law<sup>281</sup> but also its resonance with broader characteristics of modern child law and policy. As discussed in this article, countless other child-focused interventions across the world have worked to children's detriment, further disempowering already disadvantaged groups, while also reproducing the same essentialism undergirding generational segregation—the conception of “children” as a distinct and fundamentally uniform group. More specifically, North America, Australia, and Israel/Palestine, as well as a host of other places, have witnessed additional generational segregation and attempts at mass reeducation. Moreover, in isolating specific generational segregations from this global backdrop, legalistic criticisms neglect the transnational nature of certain forms of such segregation, as well as the cross-national movement of related discourses and practices.

As for debates that rigidly conceptualize “colonialism” or “settler colonialism,”<sup>282</sup> this article has called into question two such rigid conceptualizations in particular. The first demarcates colonialism along strict historical, geographical, or political lines.

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281. On the centrality of law for generational segregation in the contexts discussed in Part I, see *supra* text accompanying notes 54–55.

282. The relevance of the terms “colonialism and “settler colonialism” stems from their prominence in various discourses and analogies discussed in this article, as detailed *supra* text accompanying notes 216–21.

Such conceptualization has several pitfalls: it neglects colonialism's traces outside these imagined boundaries, downplays the prevalence of supposedly colonial phenomena within liberal "normalcy," and overlooks colonialism's complex and ever-mutating nature. The second rigid conceptualization reductively assesses colonialism or settler colonialism through a checklist of similarities, be they similarities between different cases or between a given case and some presumed prototype. As an alternative to such conceptual rigidity, this article has suggested that a flexibly defined settler-colonial mode of operation sheds light on important political and legal forces that complement, parallel, and inform generational segregation. Specifically, like generational segregation, such practices fragment subjugated groups and position them as a national security threat.

Shifting the discussion to a wider conceptual level, this article has criticized the widespread tendency to equate analogy with similarity. This reductive framing has at least three perils: it neglects the possibility of seeing analogy as predicated on difference; disregards the bilateral dynamic whereby an analogy's referents partly depend on the analogy itself to be considered alike in the first place; and risks making commonality a prerequisite for empathy and political action.

Together, the three intertwined perspectives of this article bring into conversation bodies of scholarship that have so far remained largely disconnected, dealing with a wide range of topics: the use of analogy as both an interpretive and rhetorical device, in law<sup>283</sup> and in general,<sup>284</sup> Indigenous child removal in Australia,<sup>285</sup> Canada,<sup>286</sup> the United States,<sup>287</sup> and cross-national or comparative studies thereof;<sup>288</sup> discourses and practices concern-

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283. See, e.g., Berger, *supra* note 153; Brewer, *supra* note 153; Sunstein, *supra* note 153.

284. See, e.g., KHONG, *supra* note 154; SCHLEIFER, *supra* note 152; Agnew, *supra* note 152; Bannet, *supra* note 152.

285. See, e.g., GENOCIDE AND SETTLER SOCIETY, *supra* note 2.

286. See, e.g., MILLER, *supra* note 4; MILLOY, *supra* note 4.

287. See, e.g., ADAMS, *supra* note 47; FEAR-SEGAL, *supra* note 92; Trafzer et al., *supra* note 69.

288. See, e.g., CHURCHILL, *supra* note 4; JACOBS, *supra* note 47; WOOLFORD, *supra* note 47; Jacobs, *supra* note 47, at 203.



ing Palestinian children, and Palestinian intergenerational interactions, in Israeli custody;<sup>289</sup> the legal and social construction of childhood;<sup>290</sup> and, finally, colonialism,<sup>291</sup> particularly settler colonialism.<sup>292</sup> Rather than rehashing this literature by attempting to exhaust any of these subjects separately, this article has placed them within a single framework in order to canvass their interrelationship holistically.

This holistic analysis is of both methodological and substantive consequence.<sup>293</sup> Methodologically, it employs analogy both as a mode and an object of inquiry: Part I of this article used the method of analogy to shed new light on generational segregation, while Parts II and III put analogy itself on trial, examining its effects, potential, and pitfalls. This unique approach, or method, thus simultaneously brings to light and problematizes previously unexamined connections, parallels, and continuities. It foregrounds the political and cultural nature of analogies, and is also itself, no less importantly, a statement about method: a statement about the need to maintain a critical distance from, and self-reflexivity about, one's method, and also about how methods—such as analogy—are neither separate from nor external to their field of inquiry.

Substantively, this framing brings to the fore two significant links between analogy and generational segregation. First, analogy can offer Palestinian inmates a political space unenclosed by the physical and temporal boundaries of Israeli prison.<sup>294</sup> Intergenerational knowledge transfer potentially serves a similar

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289. See Veerman & Waldman, *supra* note 39; Viterbo, *supra* note 213; Viterbo, *supra* note 27.

290. See, e.g., CHUDACOFF, *supra* note 172; PLATT, *supra* note 163; Clarke, *supra* note 163; Barnes, *supra* note 165; Hanson, *supra* note 165; Kline, *supra* note 165; Monk, *supra* note 165; Stainton-Rogers, *supra* note 165; Triger, *supra* note 165; White, *supra* note 165; Reynaert et al., *supra* note 165; AN INTRODUCTION TO CHILDHOOD STUDIES, *supra* note 169; BURMAN, *supra* note 169; JAMES ET AL., *supra* note 169; JENKS, *supra* note 169; KENNEDY, *supra* note 169; MONTGOMERY, *supra* note 169; Ainsworth, *supra* note 169; Rosen, *supra* note 169; Kelly, *supra* note 169.

291. See, e.g., HUSSAIN, *supra* note 224; STOLER, *supra* note 177; Shafir, *supra* note 231.

292. See, e.g., VERACINI, *supra* note 216; VERACINI, *supra* note 231; Stasiulis & Yuval-Davis, *supra* note 231; Wolfe, *supra* note 231.

293. The crude distinction between methodology and substance is used here merely for analytical purposes.

294. See *supra* text accompanying note 26.

function for these Palestinians, as it has done for Indigenous people in North America and Australia. Israel's restriction of analogy-filled studies, and its growing separation of Palestinian child and adult inmates, must therefore be analyzed in conjunction with one another, as two mutually complementary developments. Second, both analogy and generational segregation are key cornerstones of childhood. Through analogy, the category "childhood" has been extended well beyond those who are legally classified as children. Not uncommonly, women, non-white groups,<sup>295</sup> the elderly,<sup>296</sup> the Global South,<sup>297</sup> and others who are formally adults but deemed short of adult faculties, have been infantilized—analyzed to children. These analogies instigate and mutually rely on institutional generational segregation as well as spatial transgression. In modern times, those classified as children (and to an extent those who are considered childlike) have been relegated away from the "normal" adult sphere, purportedly to shield them from it, or it from them. Spatial transgressions, such as an unaccompanied adult in the playground or the joint incarceration of children and adults, are seen as both distressing and requiring stricter separation. Given their major and interrelated roles with regard to childhood, critiquing each of these—analogy and generational segregation—is valuable for thinking critically about the other, as well as about childhood.

This article has thus sought to harness analogy to innovatively investigate the ongoing history of generational segregation, while also maintaining a critical distance from analogy, tracing analogy's political baggage and historical specters, and problematizing its potential exclusions and blind spots. By shedding new light on generational segregation through analogy while critiquing analogies in light of discourses and practices related to such segregation, a central aim of this article has thus been to fundamentally challenge and reinvent the terms and frameworks available for thinking about issues at the intersection of generational segregation and historical-geographical analogies.

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295. See, e.g., CORINNE T. FIELD, *THE STRUGGLE FOR EQUAL ADULTHOOD: GENDER, RACE, AGE, AND THE FIGHT FOR CITIZENSHIP IN ANTEBELLUM AMERICA* (2014).

296. See, e.g., Sonia M. Salari & Melinda Rich, *Social and Environmental Infantilization of Aged Persons: Observations in Two Adult Day Care Centers*, 52 INT'L J. AGING & HUM. DEV. 115 (2001).

297. See, e.g., Erica Burman, *Innocents Abroad: Western Fantasies of Childhood and the Iconography of Emergencies*, 18 DISASTERS 238 (1994).

