

## FORUM

# The Making of an Underclass

## • • • *The Palestinian Citizens in Israel*

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I argue here that Israel's 'basic structure' (i.e., the main economic, social, and political institutions), to use John Rawls's phrase, subjects the Palestinian citizens to a process of ghettoization that relegates them to a separate and unequal status. This basic structure is particularly unjust, as it does not provide these citizens with the minimal conditions of a decent life. The state not only fails to rectify this injustice but is actively implicated in producing it. This process within Israel intersects with a process of separation and annexation in the Occupied Territories. Together, these processes are eroding the citizenship status of the Palestinian citizens in Israel.

### **A Process of Ghettoization?**

'Lawlessness' is the word that comes to mind. According to the police, in 2011, 67 percent of the suspects in murder cases and 70 percent of the suspects in attempted murders were Palestinian citizens of Israel (Lappin 2012). Although these citizens make up less than 19 percent of the population, they made up half of the criminal prisoners in 2009. The recent upsurge in crime in general—and in organized crime and domestic violence in particular—is no surprise to those who have followed developments within the Palestinian minority (Haj Yahia 2010; Oren 2011). This rise is influenced by the general social, economic, and political conditions. Governmental policies and laws relentlessly shape these conditions that are aptly described as a process of ghettoization. This process has included five key and interrelated elements: labor segmentation, land appropriation, de-development, deficient education, and the production of poverty.

### *Labor Segmentation*

Since the establishment of the state, Palestinian citizens have been incorporated in a segmented labor market that has relegated them to an inferior economic status. This segmentation on a national basis has been achieved through the state's regulation of Palestinian labor's access to the market and by preventing the emergence of an autonomous Palestinian economic infrastructure. The state imposed a military government only on its Arab citizens (1948–1966) and deprived them of their basic rights, including the right to movement, which was regulated by a pass-permit system. The policy of economic subordination was part and parcel of Zionist state-building and was aimed at controlling the minority (Lustick 1980; Rosenhek 2003).

### *Land Appropriation*

The segmented incorporation in the labor market accompanied the transformation of these citizens from landholders to unskilled and relatively unprotected cheap labor. Through an elaborate legislative and judicial project, the state appropriated the large majority of Palestinian citizens' lands for the benefit of an emerging ethnocentric settler regime (Holzman-Gazit 2007; Kedar 2003; Mehozay 2012). At the same time, the Palestinian-Israeli population grew from 156,000 in 1948 to 1.4 million in 2012. Their villages became overcrowded as their land reserves steadily decreased. The lands were transferred from Palestinian private hands to state control. This process transformed the minority's economy from one that was largely agriculture-based to one based on income from cheap manual labor in the emerging Jewish cities. These cities benefited additionally from differential distribution of the state budget that disadvantaged the Palestinian communities.

### *De-development*

The state's planning and zoning bodies contributed to these processes by preventing the industrialization of Palestinian communities under different pretexts, such as environmentalism and tourism (Wesley 2006). This is a process of 'de-development', to borrow Sarah Roy's (1999) phrase in the context of the Occupied Territories. Palestinian villages and towns suffer from the lack of adequate zoning plans and have only a few industrial areas. Some communities are unrecognized by planning authorities, even though they existed before the establishment of the state. The government rarely designates Palestinian communities as National Priority Areas, which would allow them to qualify for tax benefits and subsidies

and would attract foreign investment. These conditions undermine the availability of employment opportunities.

Employment rates for Palestinian women are lower than those of Jewish women in Israel. But they are also lower than Arab women's employment rates elsewhere in the region. Mauritania, Morocco, and even Oman and Saudi Arabia have higher employment rates of Arab and Muslim women than in Israel (Zu'bi 2009). The primary reasons are obviously socio-economic, not cultural. The lack of sufficient employment opportunities in Palestinian towns, the inadequacy of the public transportation system serving Palestinian communities, the extremely low number of state-funded day care institutions in Palestinian towns compared with Jewish towns, and an ailing education system are all contributing factors (Zu'bi 2009).

### *Deficient Education*

The state education system in the Palestinian community relegates Palestinian children to second-class status (Coursen-Neff 2004; Human Rights Watch 2001). The state discriminates against the Arab state education system in virtually every respect. The percentage of Palestinian pupils who graduate with matriculation certificates that would qualify them for higher education opportunities has fallen during the past several years—31.94 percent in 2008 compared with 42.2 percent in 2003 (Zelikovich 2009). Although the percentage of those who qualified for higher education supposedly increased in 2011 (to 38.3 percent), it continues to be significantly lower than in the Jewish sector, where it reached 64.6 percent in 2011 (see Kashti 2007, 2011). Moreover, the apparent increase is deceiving because it is accompanied with a 4 percent drop in the number of Palestinian students who finish high school (20 percent did not finish high school in 2011) and a decrease in the number of students who register for the exams (Nesher 2012). Admission policies of the universities typically disadvantage students coming from the periphery, as the heads of universities recognized when they decided in 2003 to change the admission criteria in order to admit more poor Jewish students (Sa'ar 2003). The increase in Palestinian students that followed this change alarmed the education establishment, which decided to revert to the previous policies (*ibid.*). Additionally, medical schools introduced different requirements that effectively lowered the number of Palestinian students who were admitted (Stern and Traubmann 2006; Traubmann 2007).

Furthermore, the state's resources are dedicated to using the Arab education system as an important tool for control (Al-Haj 1995). The long-standing involvement of the General Security Service (Shabak) in appointing educators based on political considerations exemplifies this stratagem (Ettinger

2004; Sultany 2004). Controlling the education system is but one facet of the security establishment's policy of general surveillance and political control of the minority, which has continued after the formal dismantlement of Israel's military government in 1966 (Cohen 2010). The state declared in 2005 its intention to cancel the position of a security service representative in the Arab education system after Adalah—The Legal Center for Arab Minority Rights petitioned the Supreme Court. It remains to be seen, however, whether the security apparatus's interference will discontinue.

### *Production of Poverty*

The loss of land and the lack of decent employment and education opportunities are major causes of the high poverty rates among Palestinian citizens. These rates have significantly increased over time among families and children. While 34.5 percent of the Palestinian families were under the poverty line in 1990, 53.5 percent of them were poor in 2009 (compared to 15.2 percent of Jewish families) (National Insurance Institute 2011). While 56.8 percent of the Palestinian children were poor in 2002, 65.8 percent of them were poor in 2010 (compared to 24.1 percent of the Jewish children) (National Council for the Child 2011). The state can intervene in such cases to rescue many citizens from poverty through welfare payments. The state's policies, however, save more Jewish than Palestinian citizens from poverty cycles because of differential policies of welfare distribution. In 2008, the state reduced poverty in the Jewish population by 46.2 percent compared to 13.5 percent in the Palestinian population (Adalah 2011: 25).

Completing a vicious circle, poverty reproduces the limited access to higher education and high-earning jobs. In turn, the lack of the latter reproduces poverty in overcrowded communities. Concentrated poverty in racially segregated neighborhoods, as has been observed in the context of the African-American community in the United States, contributes to transforming these communities into areas of high crime, poor schools, high mortality rates, and welfare-dependent residents (Massey and Denton 1993). In other words, such a community becomes a ghetto.

### **Segregation—*de Facto* and *de Jure***

The ghetto, sociologist Loïc Wacquant (2000) says, is a 'social prison', whereas the prison is a 'juridical ghetto'. Individuals attempting to escape the fate of the ghetto confront the reality of extremely limited social mobility. Stereotypes and racist attitudes toward Palestinian citizens are prevalent among the Jewish majority and contribute to this limited mobility.

Nurtured by the state education system, these attitudes are fueled by the militarization of Israeli society, by outspoken religious figures, and by a sensationalist media (Bar-Tal and Teichman 2005; Peled-Elhanan 2012), effectively decreasing the possibility that Jewish citizens would rent or sell apartments to Palestinian citizens.

However, the main factors for low social and spatial mobility are legal and institutional. Segregation in education is manifested in the institutional separation of the state education system into Arab and Jewish systems (with the latter being internally divided into secular and religious systems). The Arab education's separate and unequal status is perpetuated by the decentralized structure of local government law. As Yishai Blank (2006) argues, the segregation in the education system is not a result of the free choices of Jewish and Palestinian citizens; rather, it is an outcome of the background rules created by local government law. Segregation in education is resilient because it is structural.

Segregation in education goes hand in hand with housing segregation (Denton 1996). State law and policies in land allocation and housing restrict the spatial mobility of young Palestinian couples. While the state has established hundreds of Jewish communities, it has not established any new Palestinian communities since 1948—except in the forced concentration of the Bedouin communities in poor towns that accompanied their dispossession from their ancestral lands and the demolition of their villages. Quasi-governmental Zionist bodies—the Jewish National Fund and the Jewish Agency—establish gated Jewish-only communities. The Supreme Court's ruling in the *Qa'adan* case in 2000 did not challenge this segregation. Although it prohibited discrimination in settlement and land allocation, the Court did not examine the decades-long discriminatory land policies, nor did it examine the role of admission committees in gated communities. The Knesset entrenched this loophole in March 2011 when it legalized the role of the admission committees and their ability to reject candidates on the grounds of 'social incompatibility'.

Despite the growing influence of globalization and neo-liberal ideology in Israel, the state maintains a strong presence through multi-layered cooperation with private actors in order to produce a spatial order that is congenial to Judaization. Even in the so-called mixed cities, planning authorities reproduce the *de facto* segregation between Jewish and Palestinian populations (Yacobi 2009). Separation walls exist not only in the West Bank but also inside Israel, between Jewish and Arab neighborhoods in the 'mixed cities' Lydda and Ramleh and between the adjacent communities of Caesarea and Jisr Al-Zarqa.

The separation between the communities is also an effect of personal law arrangements. Jewish-Arab marriages are extremely rare. This rarity

cannot be understood without the backdrop of the lack of civil marriage in Israeli law, on the one hand, and the preservation of the Ottoman Empire's legally sanctioned autonomous status of Jewish, Christian, and Islamic religious authorities over personal status, on the other hand. These legal and institutional arrangements effectively make the prospect of such mixed marriages even less likely.

Through such laws and practices, the state reproduces residential and educational segregation between Jewish and Palestinian citizens. If segregation were a *de facto* condition after 1948 and the dispossession of the Palestinian people, it has been maintained and reproduced since then by an elaborate legal and political system.

### The Role of the Legal System

There are eight primary ways in which the law contributes to the subordination of the Palestinian minority. I have already mentioned that the law has been the primary vehicle for land appropriation and that local government law perpetuates residential and educational segregation. I will briefly discuss below six additional factors.

1. *Two-tier citizenship.* The legal system creates two tracks for acquiring citizenship: the Citizenship Law and the Law of Return. It is only the latter that serves as Israel's nationality law. The law suspending the naturalization of spouses of Palestinian citizens (in effect since 2003) exemplifies the Palestinians' inferior citizenship status. It is directed exclusively against Palestinian citizens since it does not affect the naturalization of Jewish citizens' spouses through the Law of Return.

2. *Lack of formal equality.* The enactment of Israel's Basic Laws during the 1990s produced a partial list of rights that glaringly and consciously overlooked the principle of equality. As the failed attempts of Palestinian lawmakers to introduce the formal principle of equal protection into Israeli law demonstrated, the Knesset fears that formal equality might undermine the Jewishness of the state. The Supreme Court's jurisprudence has hitherto subordinated the principle of equality to the Jewishness of the state as the *Grundnorm* (basic law) and has failed to recognize a collective right of the Palestinian citizens to equality, although it has recognized equality in the case of women's rights.

3. *Color-blind jurisprudence.* The absence of formal equality is complemented by facially neutral discrimination. The criterion of military service has been used as a pretext to discriminate against Palestinian citizens, even though they are not legally required to serve. This criterion has influenced housing and employment, but other criteria have proliferated

over the years. The Supreme Court has allowed this facially neutral discrimination and legitimated it by deploying a color-blind jurisprudence that has failed to challenge the effect of discrimination (Benvenisti and Shaham 2004).

4. *Political ceiling.* The state not only entrenches in its Basic Laws the Jewish character of the state, it further prohibits the political attempt to change the rules of the game that are rigged for the benefit of the Jewish majority. The Basic Law: The Knesset may allow disqualification of political parties or individual candidates from participating in specific parliamentary elections if they explicitly or implicitly reject the Jewish character of the state by demanding democratization through equal status for all citizens. The Supreme Court has prevented several attempts in recent years to disqualify Palestinian parties, but that might change, given the growing right-wing influence in the Court.

5. *Judicial ethnocentrism.* In crucial challenges to citizenship status, the Court has failed to protect equal rights to citizenship. In 2006 and 2012, the Court upheld the law that prevents the naturalization of spouses of Palestinian citizens if they are from the West Bank, the Gaza Strip, or adjacent Arab countries. While the Court used national security arguments, it has in fact upheld the law's demographic rationale and thus legitimated the depiction of the Palestinian minority as a demographic threat.

6. *Criminalization.* Palestinian citizens who are suspected of violating criminal law are more likely than Jewish citizens in a similar position to be indicted, convicted, and sentenced to prison in lower courts (Rattner and Fishman 1998). This shows disparity in the application of criminal law and a harsher policy against Palestinian citizens. During the military government period, Palestinian citizens were criminalized for violating the pass-permits regime that regulated their movement and their access to the labor market (Koren 2004). Criminalization is also evident in cases involving political speech and popular protest. The mass arrests of Palestinian citizens in the October 2000 protests and the arrests following the protest against the onslaught on Gaza (December 2008–January 2009) are examples of this phenomenon (see, e.g., Baker and Asali 2009).

## **Ghettoization meets Bantustanization**

The policies of Israel's ruling right-wing coalition not only expose the oppressive practices in the Occupied Territories since 1967 but also accentuate the precarious status of the Palestinian citizens inside Israel. This status is the outcome of well-established and resilient legal, institutional, and structural factors that are deeply unjust and undemocratic. A radical

change is necessary in order to grant decent life conditions to Palestinian citizens as free and equal citizens.

However, the Israeli ruling elites do not betray any desire for such a change. Rather, they are deepening the process of ghettoization. This process parallels and resembles the process of 'bantustanization' in the West Bank and Gaza that Leila Farsakh (2003) describes. Both processes separate Palestinians from Jews and turn Palestinian communities into dependent populations with no viable and independent economic infrastructure. Palestinian citizens and non-citizens are highly controlled by security means. Both are relegated to a legal status that is inferior to that of Jewish citizens. Finally, Israeli law grants only individual rights to the members of both groups and does not recognize them as national groups with collective rights (see, e.g., Barzilai 2003: 97–146).

Both processes challenge the 'Israel as a well-meaning actor' narrative. In the Occupied Territories, Israel has been intensifying its hold on the population and territory, fragmenting it, and drastically increasing the settlers' population. With respect to the Palestinian citizens, the state has not 'closed the gaps' between Arabs and Jews; quite the contrary, it has continued its policy of institutionalized segregation and discrimination.

These similarities in the unfolding processes are better understood once the longest military occupation since World War II is conceptualized as a *de facto* annexation (Ben-Naftali et al. 2005). The prolonged nature of the occupation contravenes international law's assumptions about the temporary character of occupations. In fact, Israel's official legal position has never recognized the status of the West Bank and Gaza as occupied, and it has refused to apply the Fourth Geneva Convention to these territories (except for the so-called humanitarian provisions). This practical annexation is manifested also in private law. The Occupied Territories have been integrated into the legal and economic system, as demonstrated early on by the *Abu Afu* Supreme Court ruling regarding the value added tax. This fact can be seen as well in the increasing harmonization of labor laws, for example, in cases related to torts and employment contracts of Palestinian laborers in settlers' corporations (Karayanni 2009).

As these twin processes of the ghettoization of the Palestinian citizens and the bantustanization of the Palestinian non-citizens unfold, the legal line between the citizen and the non-citizen will continue to blur. The Palestinians in Israel are occupied citizens, and the residents of the Occupied Territories are unrecognized citizens. Whether or not the legal line survives may be immaterial, however, as the effect is likely to be the same—the continuing subordination of the Palestinians.

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