Statelessness as the Crux of the Palestinian Issue

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I want to make an argument about the character of the Palestine issue. I’m not going to argue that it is a unique problem but I am going to argue that it is almost unique in contemporary affairs, and that there are some aspects of it that explain why it is so seemingly intractable. I’m going to start with an increasingly important field of study, citizenship studies. There are journals now devoted to it; it is become a big thing in academia. My colleague at the University of Michigan, Margaret Somers, wrote an important book on citizenship not so long ago. And as she points out, Chief Justice Warren Burger of the U.S. Supreme Court in 1958 wrote: “Citizenship is man’s basic right, for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person disgraced and degraded in the eyes of his countrymen.” Burger is drawing here implicitly on the work of Hannah Arendt but this is the key point that I want to make today. Citizenship is the right to have rights. People who lack citizenship in a state ipso facto have no right to have rights.

Citizen-ness, the quality of being a citizen, is of course not one data point, not one thing. And it exists as with all social phenomena on a spectrum. You know, it is like coolness. It can be more or less cool. Citizen-ness likewise is on a spectrum. Somers brings in a number of things that make for citizenship the intersection with the state: how strong is the state, how much recognition by the state is there of a particular group as citizens, the relationship to the market. I come from the Detroit area where there is a very large number of young people in Detroit who have no access to the market. They don’t live where there are jobs; they are not suited to the jobs that are in their neighborhoods, if there are any. They are disconnected to the market and Somers argues that that is also a problem of citizenship, of full citizenship. Another element of citizen-ness is civil society: non-governmental organizations of various sorts, how thick are they are the ground, how interactive are they with local people. Somers argues that what we discovered after the Katrina Hurricane was the very large numbers of people in New Orleans were not actually full citizens . They had low levels of citizen-ness in American terms, the state didn’t really do much for them, especially after the Katrina catastrophe and they weren’t connected to the market.

If we took the Palestinians, the Israelis, and the Jordanians as a test case and looked at their relationship to these three factors, the Israelis have a relatively strong state, and the Israeli citizens have a strong relationship to that state. Obviously the Palestinian-Israelis don’t have as much citizenship as Jewish Israelis, but they do have rights of citizenship. For instance, the Israelis set things up so that they only recognize municipalities if they have been incorporated in a certain way and they don’t give permission to a lot of the Palestinian Israeli villages to incorporate and without that permission then they can’t repair and get permits and so forth. In fact, there are some of them that the Likud party in the 1970s came to and said we’ll recognize you as proper Israeli municipalities only if you’ll vote for us. there is a reliable Likud vote to this day in some of these places. But on the whole and by and large, the Israelis have citizenship and they have a strong state. Obviously it is a country with a vigorous market and a strong relationship of people to that market, very active the non-governmental organization sector and I think across the board in this regard. The Israelis, they have one-third, one-third, one-third, that a normal distribution for citizenship according to Somers.

The Jordanians' state is weaker. The Palestinian Jordanians are not as connected to it as the East Bank Bedouin population and they have couple hundred thousand Iraqis and now ten percent of the country is Syrian refugees (the Iraqis and Syrians have citizenship in their country of origin, but cannot for the moment return there. They have passports and are not stateless, and are likely to re-achieve regular citizen status somewhere at some point-- in distinct contrast to the perpetually stateless Palestinians of the Occupied Territories). The Jordanian citizens do have citizenship. It not as robust as a citizenship category as in Israel but it is there. And then the market is complicated in Jordan because so much of it is a black market. But if you counted the black market, then people are pretty connected to it. And then there is a fairly lively NGO scene. what I would say is that the Jordanian chart is a little distorted from Somers’ point of view, with a weaker state, an irregular of market, and so forth but still all three categories are present.

But if we came to the Palestinians, their situation of citizenship is obviously deformed. There is no state in the sense of a robust bureaucracy with a regular tax base that can control the land, air and water of the territory. Rump Palestinian institutions such as the police are colonial appendages of the Israeli Occupation authority. Palestinians are lacking an entire section of the column. And then their market is not very robust and of course in Gaza there is no market to speak of (the Israelis have Gaza under siege). There is no airport, there is no harbor, and the Israelis don’t permit the Palestinians in Gaza to export most of what they make, with the minor exception of some strawberries and a few other commodities, off of which the Israelis take a cut. But mostly the export market doesn’t exist in Gaza. the market and the separation wall and the politics of the neighboring states are such that the Palestinians don’t have a strong relationship to the market, they don’t have a state at all. There are many NGOS, and so for the Palestinians, the NGO sector is the one place where there is a little glimmer maybe of some citizenship. But that weird. And that unexampled in the world. There is no other group of people that look like that. In the world, right now.

This problem of citizenship and the Palestinians of course goes back to the early 20th century. The Palestinians, the Iraqis, and the Syrians were recognized after World War I as Class-A Mandates, coming out of the old Ottoman Empire. The League of Nations had a paternalistic rhetoric that anthropomorphized nations and saw them as at various ages of development. The Syrians, Iraqis, and Palestinians were the equivalent of minors. The League of Nations actually talked about them as adolescents. The French and the British were designated to be their mentors, and they were supposed to grow them up to the point where they could stand on their own feet.

Not all transitional states were a Class-A mandates. The League of Nations designated some former German colonial possessions, such as Tanganyika, the Cameroons, Ruanda-Urundi and parts of Togoland as class B mandates. What is now Namibia, along with Western Samoa and New Guinea, were class C mandates. The letter grade indicated how near the League thought these territories were to the capacity for self-governance. That is, the Syrians, the Iraqis, and the Palestinians were relatively well thought of by the Europeans in this regard. And so they thought, well there would be a short period of mandatory rule by the Europeans and then they would become independent. And that was the charge. Unlike previous forms of colonialism, which were just looting, the mandate system at lease maintained that it was a form of governance intended to benefit the colonized and allow them eventually to achieve independence. The initial East India Company colonization of India, in contrast, was a quest for mercantile advantage in which Indian welfare did not figure largely. In contrast, the League gave the mandatory authorities a responsibility to prepare these countries to become proper members of the League of Nations. This process was complicated in the case of Palestine because of the Balfour Declaration. In the course of World War I, this British cabinet member who thought Jews ruled the world wanted to make the Jews happy so that the British would win World War I and therefore promised them a homeland in Palestine without saying what a “homeland” was and promising at the same time that it wouldn’t “inconvenience” the Palestinians.

And so the mandatory documents about Palestine from the League of Nations are weird in the sense that all the other charters for the Mandatory states talk about this process of standing them up on their own feet and so forth, but in Palestine there is a lot of language about the Jews of which at that time there weren’t very many. The Italians and the French if you go back in correspondence to the League of Nations pressed the British on this. They said you can’t just disregard the rights of the local people.

The problem of stateless-ness in the early twentieth century was severe. Nations as a matter of course used statelessness as a ruthless political tool. And so when the White Russians lost the Rebellion against the new Soviet regime, the Soviets took away their citizenship in the millions. The Armenians were deprived of citizenship. The Hungarians were deprived of citizenship. The Spaniards on the Left who fought Franco, when they lost, they often were denaturalized. They were half a million Spanish without citizenship, I think Picasso was one of them and the French gave him citizenship. of course it was a policy of the Nazis when they came to power to start depriving people of citizenship. We tend to forget this now that millions of Europeans in the 1930s were deprived of their citizenship, they were denaturalized, they were left without the right to have rights.

Hannah Arendt points out that with regard to the Nazis this policy of denaturalizing people, or leaving them without citizenship rights, was a demonstration project. That is to say the Nazis began by thinking that Gypsies and Jews and other groups are flotsam and the scum of the earth and a kind of infection in the body politic, and by taking away their citizenship, they demonstrated that they are scum. Goebbels said that depriving the Jews of citizenship made the Jews the scum of the earth and he said, you know, let’s see – everybody’s criticizing us how we treat our Jews, but will they take them? Does America want them? Does Britain want them? And of course they didn’t once they were stateless. By marking them as non-German as taking away German Jews’ citizenship, the Nazis were then demonstrating the worthlessness of their Jews.

And so ironically enough Mandatory Palestine, Palestine under British rule, served this function of being a refuge for stateless Jews at this point and in fact, this was one of the arguments that proponents of Jewish immigration to Palestine made. For instance in 1938-1939 when you had a British McDonald White Paper after the 1936-39 Palestinian uprising, which argued that henceforward Jewish immigration in Palestine should be limited, there was an outcry among the Zionists in Europe at that time that in 1939, the Sudetenland in Czechoslovakia was taken over by the German Nazis and they denaturalized a hundred thousand Jews there. And people said, where will they go if you don’t let them go to Palestine? Palestine was a solution to the increasing statelessness of the European Jewry.

Let me stop at this juncture and consider some possible twists or objections on this theory of citizenship. It could be be objected that there are lots of people in the world who don’t have proper rights –- for instance undocumented immigrants. Undocumented immigrants don’t have rights of citizenship in the country where they are because they are undocumented and did not arrive there legally. But they still do have citizenship. The United States deports 400,000 of them a year back to their countries of origin, where they are citizens. When Palestinians are deported from the West Bank by the Israelis, where are they deported to? To places such as Jordan that is not their country. They are not really being deported at all. They are being expelled from their home to other places. They typically remain stateless. The situation of the Palestinians is not like that of undocumented workers because they are stateless and undocumented workers mostly are not stateless but they just don’t have citizenship in the place where they are working.

Another object is the issue of proto-nationalist movements-- the Basques and the Kurds and the Catalans. There is an essential difference between subnationalist aspiration for a new ethnic state and statelessness. The Turkish Kurds suffer some disabilities from being Kurdish in Turkey but they still are Turkish citizens. They vote. In fact, they have at points been influential in the elections and they have the ability to work and so forth. An aspiration for separatism is a different situation than statelessness. There are weak states. Being a citizen of Somalia, for many Somalis, does not afford the full range of rights that being a citizen of a stronger state would. Nevertheless, citizenship in a weak state still does provide a passport and the ability to mobilize (e.g. to elect a new president in Somalia). Statelessness is a different order of magnitude, as a problem.

Statelessness means the complete lack of citizenship in a recognized state. It means you don’t have a passport; you have a laissez-passer. Since many countries won’t accept the laissez-passer, it means you can’t travel freely, you don’t have constitutional protections, you often can’t get a work permit, your property is not secure because people can take it away from you and you don’t have access to national courts that could adjudicate those disputes. It is different.

After World War II, this problem of the inter-war period of millions of stateless was resolved. And the bias in international law was against people being denaturalized against statelessness. And so statelessness became rare. Out of seven billion human beings today, the United Nations High Commission on Human Rights estimates perhaps twelve million are stateless.

Statelessness for other peoples tends to be a temporary problem that is ultimately resolved. Some 100,000 Taiwanese were stranded in Japan without a firm legal framework for their presence there in 1971 when Japan recognized the One China Policy. Over time, however, the Japanese bureaucracy worked out an arrangement for them. A similar number of Syria Kurds were denaturalized by Arab nationalists in that country in the 1960s, but with the outbreak of revolution in 2011 Bashar al-Assad offered them recognition as citizens. It seems likely that the some 300,000 Syrian Kurds, some of them descended from those denaturalized, will either be reintegrated into the Syrian state on a basis of federalism, or will become independent. In contrast, no political change or crisis has affected the statelessness of the Palestinians.

The very largest group of stateless people in the world, the largest single group, are the Palestinians. There were over a million Palestinians in 1943 in Mandatory Palestine, along with about half a million recent Jewish settlers who had bought up out about seven percent of the land. Then in 1947-48 the British prepared to withdraw and a civil war broke out between the two communities in which the Yishuv, the community that became Israel, conducted a campaign of ethnic cleansing against the Palestinians, which displaced them in very large numbers. Probably on the order of 720,000, out of the 1.3 million Palestinians of that time, were displaced. Many of them went to the West Bank or Gaza, Jordan, Lebanon, Syria, a few in Egypt. And of course of those who were displaced to the West Bank and Gaza in 1967, many of them were again displaced.

We take a place like Lebanon. The Palestinians who came into Lebanon grew over time demographically, the UN estimates on the order of 400,000-450,000, probably they are less because many of them surreptitiously emigrated to Europe in the meantime. But in any case, however many there are, most still live in camps. I once interviewed Palestinians in the Nahr al-Barid camp in northern Lebanon. They explained that they were not allowed to hold most jobs in that country, were not allowed independently to own property, and could not travel because most states feared they would overstay their visa and stay. They were not exactly slaves or in prison, but there were severe constraints on their freedom. Lebanese law does not allow them to have property rights. Despite some positive legal changes in the past decade, for the most part, they can’t get work permits, they can’t get business permits.

The camps themselves are lawless. Lebanese sovereignty doesn’t really extend very far into them. It is not as if there are police. People organize what are essentially militias for self-protection, but the militias can be predatory and some use their guns to prey on others. People have been living like this since 1948. When I visited Nahr al-Barid. I met an old man there who told me the story of how in 1948 he was with his mother in an apartment in Haifa and the Zionists came and told them to leave at gunpoint. they went north and they waited there on the Lebanese border to go back and then of course Ben-Gurion announced that he would close the borders and they couldn’t go back. And they were there for a year. And then the UN put them on trains and took them up to Tripoli, very far away from their home. And they’ve been there ever since in camps. Nahr-el-Bared was a camp. And because frankly, of the lawlessness of camp life, nevertheless there are some opportunities there that don’t exist elsewhere for unregulated commercial exchange and smuggling. And so over time Nahr al-Barid started to have some money and there was a lot of commerce there, perhaps some commerce that couldn’t be conducted elsewhere. People gentrified their buildings and there were shops and it became a town of 70,000 and it was a relatively nice town. But then because there is no police and there is lawlessness, in the middle of the last decade about 50 men formed a gang and started robbing banks in Tripoli, which angered the Lebanese government. And then these individuals who were robbing banks, for reasons that I can’t entirely understand, announced they were an Al-Qaeda affiliate. All of a sudden then vice president Dick Cheney was on the phone with the Lebanese government saying “you have to go in there.” The Lebanese army invaded Nahr-el-Bared, a civilian settlement of 70,000 people. It was destroyed. People were again refugees and their living in pre-fab UN little apartments. The old man who had been expelled from Haifa took me by the arm and brought me to one of the rooms and there were two old women there on oxygen and he said, “Is this a way to live?”

When you’re stateless, you don’t have the right to have rights. everything is unstable. It is a little bit like being a child of an alcoholic parent. Such children suffer from everything always being interrupted. You never know what’s going to happen, you can’t make plans. "Let’s go for a picnic today." But then the picnic doesn’t happen because the parent got drunk. Well, if you’re stateless you don’t really know what’s going to happen to you. Your property is unstable, your rights are unstable. Even if you were stateless and you get citizenship, your citizenship is unstable. Jordan gave citizenship to the West Bank Palestinians at one point and then because of the Rabat Accords after Israel conquered it, they took the Jordanian citizenship back away. Jordan more recently denaturalized about 30 or 40 thousand Palestinians from Gaza in Jordan.

If you were stateless, the stigma of statelessness seems to attach to you even if you get citizenship and then that is unstable and can be taken back away. Then you never know when you’ll be refugees again. Palestinians in Gaza were not granted Egyptian citizenship even though they were ruled by Egypt 1949 to 1967. They were then directly ruled by Israel from 1967 to 2005, during which the Israelis thought it would be a good idea to try to put Israeli settlers into this densely populated resource-poor area. The Israelis felt as though like they couldn’t really protect those settlers and so took them back out in 2005, but they didn’t make any agreement with the Palestinians in Gaza about the post-withdrawal situation, leaving the Palestinians in limbo. They have no harbor, they have no airport, they had an airport, the Israelis bombed it.

Then the Bush administration thought it would be a good idea to hold elections in 2006 and insisted on letting the fundamentalist party Hamas run. When Hamas won, the Bush administration and the Israelis connived in overthrowing the Hamas government and succeeded in doing so in the West Bank but not in Gaza. Now the Western press, whenever it talks about Hamas in Gaza talks about it having made a coup there. I believe it may have been the other way around? It was in the West Bank that the coup was staged, installing Fateh even though it lost the 2006 election. Then in 2007 the Israelis clamped a blockade on Gaza to punish the Palestinians for voting for Hamas. Not all the Palestinians in Gaza voted for Hamas, and 50 percent of the Palestinians in Gaza are children. The blockade affected the entire civilian population, which is a contravention of the 1949 Geneva Convention on occupied territories. The Israeli Ministry of Defense actually sat down and figured out that each adult person needs 2200 calories and figured how many trucks of food they would let in everyday to keep them svelte. Not starving to death but not with any extra fat, either. No chocolate for the children. The blockade was conducted not only in a way that contravened international law but that is morally repugnant at its core.

This is a population that has been without citizenship since 1948 and apparently if you’re without citizenship, you not only don’t have a right to have rights, you don’t have a right to have chocolate, or more than 2200 calories a day. Your body becomes an experimental field for planners on the part of your enemies. On the West Bank, as I said, the Jordanians did grant citizenship to the Palestinians but after 1967, and after Jordan and the Arab League recognized the PLO as the Palestinian spokesman, Jordanian citizenship ultimately was revoked and so they are formally stateless.

The implications of this are that they lack control because what does a state do? It controls land, water, air. If substantial water resources, say a river, were expropriated from the US by Canada, the US government would react vehemently. But if 85 percent of the water on the West Bank is diverted to Israeli settlers, that produces no reaction because there is no Palestinian state. The water doesn’t belong to anybody. It is a no-man’s land.

States control immigration. In a typical year the United States deports 400,000 people a year for coming in without proper procedures or documentation, and sometimes in the past couple of . It was a million a year not so long ago. It is really a vast bureaucracy. But the Palestinians would deport somebody, how? There are lots of undocumented people on the West Bank, but their state is behind them.

Aquifer rights are interfered with. The Israeli settlers can dig their tube wells deeper than the Palestinians and cause the aquifer to fall and so the old wells of the Palestinian villages dry up. The Israelis have set up a vast network of checkpoints, of special highways in which Palestinians can’t drive. They’ve made it difficult to get from one part of Palestine to the other. A whole crop of post-modern novelists who should write about the class of Palestinians born at checkpoints because their mom couldn’t get through in time to the hospital. There is difficulty of travel, lack of speedy hospital access, of course there aren’t proper medical facilities for many diseases in Gaza, and Palestinians there have to apply to the Israeli government to get permission to get out of the Gaza strip for treatment. And in a few cases the permission hasn’t quite come in time. They are stateless, they have no right to have rights; they have no right to have medical care.

Palestinians rate extremly low on citizen-ness. One of the ripostes to my argument sometimes, is that there is a the Palestinian Authority, and so the Palestinians have a state, just not a very good one. In reality, the Palestine Authority doesn’t look like a proper state in most regards; it doesn’t have control of the things that a state controls. Palestinians rate low on citizenship in a state, they rate low on access to or incorporation into a market. There is some civil society although that is circumscribed by the Palestine Authority and by the Israelis.

In 2012 the Palestine Authority went to the United Nations and asked for the status of an observer state. Some journalists have said they asked for recognition of their state, as a state. This is not true; they already believed that they were a state, they weren’t asking for recognition of that. They were asking for observer state status at the. It had been enjoyed previously only by the Vatican. The United States and Israel fought tooth-and-nail against this. And of course the United Nations Security Council declined, but the General Assembly did recognize them in this way. And the reason that the Palestinians wanted this status is that as international law has evolved, there is now an International Criminal Court, established by the Statute of Rome. There are therefore now some ways of adjudicating certain kinds of sorts of torts, of wrongs done by a state official to the people of another state. That is to say, in the law, standing is very important. You have standing to sue and you have to have standing to participate in a legal settlement of some sort. The Palestinians, being stateless, did not have standing in international law. That is another problem with being stateless. No tort can be committed against you because you have no standing and no tort can be adjudicated.

What Palestine was doing in seeking UN observer state status was to begin to establish standing to pursue tort cases against the Israelis, who daily are breaking international law. They are breaking the Hague Convention of 1907, they are breaking the Geneva Convention on Occupied Territories of 1949. They are also contravening large numbers of UN Security Council Resolutions. At one time or another, the Americans have occasionally let the UNSC pass resolutions critical of Israeli policy, most recently in late 2016. There is quite a body of UN Security Council resolutions about Jerusalem, about the West Bank and so forth, which the Israelis disregard. There is a set of cases to be made, but the Palestinians were not able to make that case as long as they didn’t have standing, as long as they didn’t have this state observer status. I think that this is exactly the right strategy. It is the strategy of beginning to establish Palestinian claims on citizenship.

The statelessness of the Palestinians is virtually unknown as an issue in the United States. If you did a poll of Americans asking whether Palestinians are without citizenship rights, almost none of them would know this fact. And on the other hand, everybody in the Middle East knows it. American foreign policy towards the Palestinians is practically speaking to aid the Israeli oppression of them, despite occasional muted demurrals. This policy derives not from an essential US interest in harming the Palestinians but from a desire to please an important ally, Israel. The Wikileaks revelation of State Department cables about Israeli policy and the blockade of Gaza demonstrate that these Americans and the US Embassy in Tel Aviv were positively enthusiastic about it. They were perfectly willing to help half starve the Palestinian children in Gaza. I was taken aback by the language of these cables, they were very harsh and may as well have been written by the Likud party.

What is the end game here? What is the solution? I’m arguing that it is unacceptable in international law, in international diplomacy to have four and a half million people permanently kept in a status of statelessness, which is to say kept in a status where they have no right to have rights and are taken off the human rights table, altogether. It is unacceptable for that to continue. when Prime Minister Binyamin Netanyahu of Israel campaigned in the last election on preventing any Palestinian state as long as he was prime minister, what was he saying. He was saying Palestinians must remain stateless for the time being. They must remain without rights for the time being. Well that not acceptable. It is not acceptable for any group of people to be deprived of basic human rights. This problem is coming to the fore and people are beginning to mobilize. you begin to see entire governments like the government of Ireland, the government of Norway, beginning to highlight this issue. There are moves among some European countries to raise the status of the Palestinian representation in the country to that of full embassy status. What does that do? It recognizes a Palestinian state, it is one more step towards recognizing the Palestinians as having citizenship.

There are increasingly boycotts of, especially of West Bank Israeli enterprises that are making money off the exploitation of the statelessness of the Palestinians and I expect those boycotts to grow. Israel does over a third of its foreign trade with Europe and the Israeli economy is actually quite fragile and very dependent on international trade, and international technology transferring. If the European countries have a meeting on technology, they invite the Israelis. That gradually could end if the Israelis go on like this as people become more and more aware; the Israelis are actively depriving so many people of citizenship rights.

I know many feel strongly about the need for a two-state solution, the need for a Palestinian state of the West Bank and Gaza. But frankly, I think the time has probably already passed when that plausible. There are so many settlers in the West Bank, it looks like Swiss cheese and it is not going to happen. And then what’s left is probably long-term apartheid, which, however, is not stable. I don’t think that the world will put up with apartheid forever. There will be increasing boycotts, increasing pressure, increasing economic problems. Ultimately it seems to me very likely that you end up with a single state. I’m not arguing for it, I’m not saying it is desirable, I’m not saying it is the best outcome but I think somebody has to give citizenship to the Palestinians. Increasingly, the only one that could plausibly do that is the Israelis and the Israelis increasingly own all of Palestinian territory so they are responsible for the people that live on that territory even though they don’t think they are. I don’t really care how this problem is solved, from my point of view, it is all the same to me. The important thing, as you can tell is that I insist, the Palestinians must end up with the right to have rights.