

# Citizenship in Crisis – The Palestinian Citizens of Israel: A Counterintuitive Account [1]

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# Citizenship in Crisis – The Palestinian Citizens of Israel: A Counterintuitive Account [1]

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The story of Israeli citizenship begins with the establishment of the state of Israel on May 14, 1948, when the “Declaration of the Establishment of the state of Israel” was read out loud by David Ben Gurion.[2] It is in this declaration that we find the seeds of the theoretical and practical citizenship bind that is at the basis of the Israeli conception of citizenship, and which is at the root of the current research. This was the beginning of the application of two distinct and contradictory citizenship discourses – the civic-republican and the liberal-democratic. On the one hand, the state was explicitly set up for the ingathering of the Jewish people, and as such, one that stresses the civic-republican conception of citizenship. On the other hand, democratic-liberal ideals such as freedom, justice, equality and the principles of the United Nations Charter, were guaranteed to *all* the inhabitants of the state regardless of class, ethnicity, or religion.[3] Thus the new Jewish Democratic state was introduced – a state defined by a religion/nationality and based on liberal democratic principles – a harmless anomaly at best, a self-destructive notion at worst.

Investigations into the status of the Palestinian citizens of Israel have existed ever since the establishment of the state when citizenship was granted to part of the Palestinian minority and their ambiguous citizenship status was created. The current research examines three case studies that have yet to be studied in a joint fashion and compared for the purpose of analyzing the citizenship status of the Palestinian citizens. Each of the cases has generated much discussion independently and each on its own has led to different conclusions about the state and its citizens. Looked at together, as signifiers of an ongoing mostly hidden though sometimes-explicit tendency by the state to treat its Palestinian citizenry as, essentially, non-citizens, these cases present a picture that appears to be greater than the sum of its parts.

These events are seen as deviant. Not only do they present rare cases (the only three in the history of the state) in which citizens were shot and killed by state security forces, but also in that when analyzed in tandem they tell a theoretically counterintuitive story of a self-proclaimed liberal democracy; a deviant democracy, perhaps. The shooting and killing of citizens by state security forces is the primary similarity among the cases. The national identity of those shot – i.e. Palestinian – is not only the second similarity but also the one that allows for the drawing of conclusions with regard to their citizenship status. In a democracy citizens should not be shot and killed by state security forces, and that in a situation where such a violation occurs the burden of proof for their justification is on the state. Thus, the main interest of this research lies in the state's reaction to the shootings: the official aftermath. It is in this aspect, which is very clearly different in the three cases that we get a glimpse of how the state sees its own citizens, and how they are defined by it in terms of its own obligations and responsibilities towards them. When viewed through these three landmark affairs, the Palestinian citizens of Israel are on a downhill course in the matter of their official (even if only implicitly so) citizenship status. How can a state, self-identified as a democracy, which shoots and kills its own citizens en masse, go from seeking justice for those whose rights were violated to failing to seek similar justice a mere four decades later?

## **Kafar Qasem: a tale of one village**

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The Palestinians have officially been unequal citizens since the state was established when almost immediately a part of the Palestinian minority was granted citizenship and placed under military rule that lasted for almost twenty years.[4] It is under these circumstances, acting to restrict, among other things, their freedom of movement, that the Kafar Qasem massacre took place.

Palestinians living in localities in the area referred to as the “little triangle,” (strip of land in the eastern Sharon plain) were under military rule, and were required to have special passes, given by the military, in order to leave and re-enter their places of residence. A routine 21:00 curfew was in place, by which time all residents were required to return to their homes and remain there until the next morning. Patrolling the villages day and night was the Border Guard – a unit regularly under the command of the state police, but under military command during times of war and emergency. The 1950s in Israel were marked by numerous attempts by Palestinians residing in neighboring countries to infiltrate Israel. More often than not, it was the job of Border Guard units to patrol the borders and prevent the entrance of infiltrators, using live ammunition if necessary. Immediately before carrying out the Kafar Qasem massacre, Border Guard units had performed various acts of infiltration prevention that probably led them to believe that what they were doing was not in any way out of the ordinary.[5]

The Kafar Qasem massacre took place on the eve of the Suez war, on October 29, 1956. The military order given on that day – to place those under military rule under special wartime curfew from 17:00 to 06:00 the next morning and to *shoot anyone who does not comply with the curfew* – was seen by most in the Border Guard as meant to contain the Palestinian minority during the upcoming war. The order was given that morning, and

passed from brigade commander Colonel Issachar Shadmi to the specific border patrol battalion commanders under his command. Among them was Major Shmuel Malinki who was in charge of the Border Guard unit in Kafar Qasem. Four of Malinki's subordinates received the same out-of-the-ordinary, *manifestly* illegal order but each reacted and applied it differently. To clarify, the order itself was given as a legal one, though its implementation should have clearly been seen as illegal. Only Gavriel Dahan (and the soldiers under his command), the one directly in charge of Kafar Qasem, followed the order to its detrimental *t*. At the end of the day, forty-nine Palestinian citizens were killed – massacred – by Border Guard forces; all shot during one deadly hour between 17:00 and 18:00.[6]

The response to the massacre in the Israeli establishment was one of sincere shock and bewilderment. However, the existing military rule made it possible to keep the story under wraps to avoid public outrage, both domestic and international. An internal military investigation was immediately set up, but both its initiators and those under investigation saw this as a necessary formality and nothing more. On November 1, 1956 Israel's Prime Minister, Ben Gurion, set up an external investigation while still keeping the details of the massacre from the public. Once the details of the massacre were published in anti-establishment papers in Israel and in international news (with the efforts of two parties, *Maki* and *Mapam*), the Israeli government was pressured by international organizations to publicize the details and to seek justice for the victims of the massacre and their families. And so, on December 11, 1956 Ben Gurion made an official governmental announcement about the massacre, and a military trial ensued on January 15, 1957. In an unprecedented move, eleven Border Guard officers and soldiers were put on trial and prosecuted by the state.[7]

The holding of the trial and its partially public character suggest that the state was ready and willing to face up to its responsibility and obligations as a state towards its Palestinian citizenry. Indeed, the trial was “the first time the [Israeli] court was called on to recognize the immanent dangers posed to the young Israeli democracy by the lack of a legal and civilian mechanism that could integrate Arab Israelis into the collective.” The importance of the trial to the conception and possible re-conceptualization of Israeli citizenship is in that it presented a rare moment in which the conception could have been broadened to become more inclusive. Judge Halevi, who headed the trial on behalf of the state did all he could to make it a transformative one for the Israeli society – creating “legal narratives designed to change the terms of the collective memory and the hegemonic narratives of identity.” This was also evident in the verdict given by the court and in the length and detail of the court's decision, which attempted “to redefine the boundaries of the Israeli collective identity by describing the atrocities committed by Israeli soldiers against innocent Arab citizens.” The narrative was seeking to transform the perception that the Palestinians were “semi-enemies” into “their recognition as full-fledged citizens.”[8] However, this transformation did not translate into a true transformation, social, political or otherwise in the Israeli society. The trial concluded on October 16, 1957 with a verdict, which established a new military legal precedent, the manifestly illegal order.[9]

Somewhat paradoxically, the trial ended up serving as a positive character-reference for the young Israeli democracy and presented it “in a positive light – as a country in which the army is fully accountable for its crimes.”<sup>[10]</sup> Thus ignoring the citizenship narrative put forth by Judge Halevi and promoting a self-congratulating democratic narrative that managed to overlook the true victims of the massacre.

## **Land-Day, March 30, 1976 – A Tale of One Day (annualy)**

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A policy of the Judaization<sup>[11]</sup> of the land of Israel has been an explicit one held and promoted by each and every one of Israel’s governments since its establishment in 1948. A new governmental program for the development of the Galilee was published in October 1975 and included the expropriation of 21,000 dunam (approximately 5,000 acres) of land in the “triangle” area. The Ministry of Agriculture openly stated that the plan was meant “to alter the demographic nature of the Galilee.”<sup>[12]</sup> The response from the leaders of the Palestinian population came immediately from the *Rakah* party (the Arab off-shoot of the Israeli Communist Party) and included a plan for a general strike and marches in all the Palestinian towns and villages throughout Israel on March 30, 1976.<sup>[13]</sup> No longer under military rule the Palestinians saw themselves not as “a small minority subject to arbitrary restrictions and devoid of political options” but rather had a self image “of an enlarged, expanding, and unrestricted political bloc.”<sup>[14]</sup> There is no doubt that in its preparations for Land Day, *Rakah* felt it was both a justified and legitimate response to the planned expropriation of lands.

A curfew was set over Palestinian localities the night before the planned strike (March 29, 1976) and both police and army forces were sent by the government to maintain order. The violence erupted when a military convoy making its way back from training came upon Palestinian demonstrators for which they were not prepared. In their panic, the soldiers opened fire. Violence from both sides then spread to the lower Galilee, and by the end of the day six Palestinian citizens were shot and killed.<sup>[15]</sup> No investigation took place after the events and the families or communities of the victims made no serious demand for one.

The continued annual commemoration of Land Day by demonstrations and marches attended by Palestinian and Jewish citizens alike is of major importance as this clearly shows that though practically ignored by the state, Land Day has left its mark on the Palestinian community. Indeed, it is seen as one turning point in the formation and solidification of the national Palestinian identity of the Palestinian citizens.<sup>[16]</sup> Additionally within the Palestinian community, Land Day is regarded as signifying the emergence of the community as an oppressed national minority fighting for equal rights as opposed to being a victimized, helpless community during the years since the establishment of the state.<sup>[17]</sup> Land Day is made more significant by the fact that, despite not having been investigated or otherwise dealt with by the state, it nevertheless represents to the Palestinian community a moment of strength and recognition – being commemorated and celebrated annually by them.

## **October 2000 – A Tale of One Month (and Eight Years)**

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During the first two weeks of October 2000, coinciding with the beginning of the *Al-Aqsa Intifada* (the second Palestinian uprising in the Occupied Palestinian Territories), several thousand Palestinian citizens showed their support for their Palestinian brethren in the Occupied Palestinian Territories by demonstrating in many Arab localities throughout Israel. As in many prior demonstrations held by Palestinian and Jewish citizens alike, these included waving flags and placards, burning tires, blocking roads, and general expressions of discontent with the state's actions.[18] Also, as in all demonstrations, police forces were sent to maintain order. However, unlike other such events, order was maintained by the use of live ammunition; police forces shot and killed thirteen demonstrators.[19] This in turn led to even greater outrage among the Palestinians, who demanded that the events be investigated and conclusions –both systemic and personal – be drawn and implemented.

A state inspection committee, the *Or Commission of Inquiry*, was set up on November 8, 2000 to inquire into these dire events. Allowing for the appearance of equality and a façade of importance, the commission was headed by Supreme Court justice Theodor Or and included, amongst its members a Palestinian-Israeli district-court judge, Hashim Khattib. The commission gathered evidence, deliberated and finally submitted its recommendations on September 1, 2003. Recommendations were made for the remedy of past wrongs and deep disparities between the Jewish and Palestinian communities in Israel in terms of material, symbolic and political resources. “Significant changes in police attitudes towards minorities,” were called for, and, finally, recommendations for further proceedings of certain persons were made going as high up as the former Prime Minister of Israel, Ehud Barak.[20]

The Israeli government accepted the commission's recommendations in *principle*, and appointed a follow-up ministerial committee headed by Deputy Prime Minister and Minister of Justice at the time, Yosef Lapid, that was to study the Commission's report and present its own recommendations as to their implementation. The Or Commission and the Lapid Committee were in general agreement, pointing to an unequal allocation of resources to Palestinian municipalities and communities and in describing the steps that should be taken in order to rectify these wrongs.[21] The *practical* implementation of all these recommendations remains, to this day, partial at best. In terms of personal responsibility, the Or Commission claimed that certain individuals are liable for further investigation following the conclusions reached by its own inquiry. And yet, no official has ever faced legal charges following these events. Additionally, the Commission requested that the Police Investigations Department (PID) investigate all fatalities caused during these events and those responsible for them. However, in 2005 the PID published its own report, which concluded that no one is to be indicted for any of the incidents. Following the PID's decision to close the case, *Adalah* – the Legal Center for Arab Minority Rights in Israel – claimed that it was “unthinkable that no indictments were filed, even in cases in which the Or Commission had pointed out suspects.”[22] Further attempts to settle the case, such as a one-time payout by the state to families of victims, so long as the case would be forever closed, were rejected by the families and the Palestinian Israeli community at large.[23] Their demand is for recognition, compensation, and those responsible held accountable. Following the PID report, and due to outrage in the

Palestinian Israeli community, the case was further investigated by the State Prosecutor's office, which suggested not to overturn the decision reached by the PID.[24] Finally, on January 27, 2008, Israel's Attorney General, Menachem Mazuz, decided to close the case of the October 2000 events and not to indict any police officer or other officials involved in the case. While this decision is in effect the highest official one that can be decreed in the state of Israel, and provides a very final "case closed," it has already been stated by *Adalah* that the organization will turn to the United Nations in their attempt to seek justice for the deaths of thirteen Palestinian civilians of Israel.[25]

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While being, quite officially so, unequal citizens of a state which considered itself to be a liberal democracy, the injured and dead of the Kafar Qasem massacre received justice. This came in the form of a military trial which led to the imprisonment of three, and to the creation of a legal precedent – the "black flag," manifestly illegal order. The aftermath of the Kafar Qasem case shows the most liberal-democratic treatment of the Palestinian citizens of Israel by the state; unequal though they were in every other aspect of their citizenship status.

Twenty years later, no longer under military rule and legitimately objecting and protesting a discriminatory governmental plan, the Palestinians showed and exercised their political power in planning and executing Land Day. The state in its excessive response exposed the unvarnished truth – it neither truly saw the Palestinians as equal, nor as a legitimate political power; this despite the fact that officially, they were.

The injured and dead of the October 2000 killings, twenty-some years later, did not receive justice. They, and the Palestinian community at large, received a long-lasting façade of justice in the form of state commissions and investigations. Judging by the null results of all of these, and the final demise of the case at the hands of Attorney General Mazuz in January 2008, it is clear that they have encountered "deaf ears" in the Israeli informal and formal establishment. This despite being perceived and officially conceived of, as gradually achieving greater equality and more civil and political rights over the years through a process of liberalization of the state of Israel.

It appears that the state of Israel has managed, throughout the years of its existence, to maintain a dual identity being both a democracy and a Jewish state. While the state's insistence on both aspects can be easily explained, their coexistence is anything but peaceful. The constant tension between the Jewish character of the state and its democratic nature is clearly visible in many of the laws of the state. Moreover, looking at state symbols, such as the flag of Israel and its national anthem, and many of Israel's laws it appears that this tension is not symmetrical and the supremacy of the Jewish aspect is clear. Thus, this tension might be able to provide some explanation to the inequality and discrimination of the Palestinian citizens in the state of Israel. It is clear that the Palestinian citizens of Israel can never become full-fledged citizens in Israel, at least so long as its Jewish character reigns.

The three cases presented, and more specifically, the historical narrative they tell go beyond this inequality and discrimination. Not only do these cases involve shooting and killing of citizens by state security forces, their aftermaths follow a downward trajectory in terms of state obligations and accountability towards its citizens. In other words, why is it that when the Palestinians were under military rule, and clearly unequal their plea for justice was met, but not when they were demonstrating against state actions, nearly fifty years later?

The cases present a counterintuitive account for a liberal democracy, which cannot be explained simply by relying on the constant tension between the Jewish character of the state on the one hand, and its democratic character on the other hand. The two citizenship discourses only really clarify how counterintuitive this picture is. Yet they cannot provide a coherent analysis of it. It is when the civic-republican discourse was strong enough to justify military rule, that the Palestinian citizens were treated as full-fledged citizens (though they were not) and their rights, based on a liberal-democratic discourse, respected. Twenty years later, and then again nearly fifty years later, despite having gained more rights – based on the liberal-democratic discourse – the Palestinian citizens were not treated as citizens at all, and their plea for justice fell on deaf ears. The inability of this theoretical paradigm to shed light on these cases and the narrative they present means that different theoretical articulations must be looked into.

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*Notes:*

1. Parts of this paper have been presented in the Texas A&M Graduate History Conference, 2010 and the Mid-America Humanities Conference: “Downward Spirals? Thinking about Crisis Across the Disciplines,” 2010.

2. Elli Wohlgelernter, “One Day That Shook the World,” *The Jerusalem Post*, April 30, 1998 1998.

3. “The Declaration of the Establishment of the State of Israel,” in *Official Gazette, No. 1 of the 5th, Iyar, 5708* (14th May, 1948). (My italics, MB).

4. Sherry Lowrance, "Being Palestinian in Israel: Identity, Protest, and Political Exclusion," *Comparative Studies of South Asia, Africa and the Middle East* 25, no. 2 (2005); Yoav Peled, "Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State," *American Political Science Review* 86, no. 2 (1992).

5. Ruvik Rosenthal, "Who Killed Fatmah Sarsur: The Background, Motives and Events of the Kafar Qasem Massacre," in *Kafr Kassem: Iru'im Ve-Mitos (Kafr Kassem: Myth and History)*, ed. Ruvik Rosenthal (Tel Aviv: ha-Kibutz ha-Meuchad, 2000).

6. 49 is the number commemorated by the Palestinian citizens of Israel to this day, even though only 43 were mentioned in the trial. The excluded were 4 of those killed as their cause of death was not clear; an elderly man who died of a stroke the next day; and a fetus who was in the womb of Fatma Daud Sarsur, one of those killed. ———, ed. *Kafr Kassem: Iru'im Ve-Mitos (Kafr Kassem: Myth and History)*, Kav Adom (Tel Aviv: ha-Kibutz ha-Meuchad, 2000).

7. Rosenthal, "Who Killed Fatmah Sarsur: The Background, Motives and Events of the Kafar Qasem Massacre," pp. 33-37.

8. Leora Bilsky, *Transformative Justice : Israeli Identity on Trial, Law, Meaning, and Violence* (Ann Arbor: University of Michigan Press, 2004), p. 170, 72-73, 80.

9. "The hallmark of manifest illegality is that it must wave like a black flag over the given order, a warning that says: "forbidden!" Not formal illegality, obscure or partially obscure, not illegality that can be discerned only by legal scholars, is important here, but rather, the clear and obvious violation of law... illegality that pierces the eye and revolts the heart, if the eye is not blind and the heart is not impenetrable or corrupt – this is the measure of manifest illegality needed to override the soldier's duty to obey and to impose on him criminal liability for his action." Tom Segev, *The Seventh Million : The Israelis and the Holocaust*, 1st ed. (New York: Hill and Wang, 1993), p. 301.

10. Bilsky, *Transformative Justice : Israeli Identity on Trial*, pp. 192.

11. This refers to demographically boosting the numbers of Jews residing on the land.

12. Nayef Hawatmeh, "Remembering Land Day," <http://weekly.ahram.org.eg/2005/737/op3.htm>.

13. Ehud Sprinzak, *Brother against Brother : Violence and Extremism in Israeli Politics from Altalena to the Rabin Assassination* (New York, NY: Free Press, 1999), pp. 194-95.

14. Ibid., pp. 195-96.

15. Ibid., pp. 194-95.

16. Zeev Schiff and Ehud Yaari, *Intifadah* (Yerushalayim: Shoken, 1990), pp. 213-14.

17. Mustafa Kabha, "The Conspiracy and the Victim," in *Kafr Kassem: Iru'im Ve-Mitos (Kafr Kassem: Myth and History)*, ed. Ruvik Rosenthal (Tel Aviv: ha-Kibutz ha-Meuchad, 2000), p. 100.
18. Ilan Saban, "Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel," *International Law and Politics* 36, no. 4 (2004): pp. 895-96.
19. Azmi Bishara, "Reflections of October 2000: A Landmark in Jewish-Arab Relations in Israel," *Journal of Palestine Studies* 30, no. 3 (2001): p. 54; Rema Hammami and Salim Tamari, "The Second Uprising: End of New Beginning?," *Journal of Palestine Studies* 30, no. 2 (2001): p. 13.
20. Saban, "Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel," pp. 897-98.
21. Shimon Shamir, "The Arabs in Israel – Two Years after the or Commission Report," (The Konrad Adenauer Program for Jewish-Arab Cooperation, 2005), pp. 5, 17-26.
22. Yoav Stern, "Adalah: Police Failed to Seek Indictments in Oct. 2000 Riots," *Haaretz*, Oct., 13, 2006.
23. Yoav Stern and Jack Khoury, "Eight Families of October 2000 Riot Victims Reject Payout Deal," *Haaretz*, Nov. 11, 2006.
24. Aviram Zino, "Mazuz Will Not Indict Police Officers Involved in October 2000 Riots," YNET, <http://www.ynet.co.il/english/articles/0,7340,L-3499341,00.html>.
25. Yuval Yoaz, "Arab Rights Group to Seek United Nations Intervention on October 2000 Riots Case," *Haaretz*, Jan., 28, 2008.

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