



BOSTON CONSORTIUM *for* ARAB REGION STUDIES

Palestinian (non)Citizenship

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The complete study is published by *Middle East Journal*, Volume 73, Number 4, Winter 2019, pp. 573-590, available at <https://doi.org/10.3751/73.4.13> -- also available through Project MUSE and ProQuest.

This study traces the historical trajectory of Palestinian nationality, from Ottoman citizenship, through the period of the British Mandate, the *Nakba* and dispossession of 1947-78 and through the ups and downs of subsequent conflicts, and includes a brief discussion of their current legal situation(s). Today, Palestinians live under at least five different forms of legal status that have been imposed upon them, including Jordanian and Israeli citizenship, various levels of legal residence and concomitant rights, and the continued statelessness of over half of their total population.

This exploration demonstrates that the story of Palestinian nationality and citizenship has been one of gradual and steady disenfranchisement. It is a story of a hundred-year anti-colonial struggle to develop the constituent power necessary to exercise the human right to self-determination as a community of people who have not yet been able to legalize or formalize their citizenship. Yet they have not been without agency, clamoring for years for a form of citizenship and belonging that is fundamentally democratic and representative. A salient and persistent feature of Palestinians' views of their own nationality is that it's not based in ethnicity or race or religion, but in their historical and geographical identification with pre-1948 Palestine.

In their insistence on democratic and representative government, the Palestinians throughout their recent history have had to confront ethnicity-based definitions of nationality and citizenship. After the defeat of the Ottoman Empire and the formal breaking up of its constituent provinces Palestinians were stripped of Ottoman citizenship and came under the British Mandate, established by the League of Nations with the express purpose of "putting into effect the [Balfour] declaration originally made on November 2nd, 1917," and creating the conditions necessary to "secure the establishment of the Jewish national home."¹ Thus was set in motion the differentiation of Palestinians by religion and race as perceived by the British. Throughout the mandate period, non-Jewish Palestinians never ceased to demand self-government in the form of an elected legislative council. They demonstrated and boycotted and claimed a right to citizenship based on concepts of equality and equal representation, but were constantly rebuffed by the Mandate's requirement of helping establish the Jewish state.

In the aftermath of the UN General Assembly Partition Resolution 181 on November 29, 1947, armed conflict broke out and resulted in the Zionist conquest of 78 percent of the land area of Mandatory Palestine, which Israel claimed as its new state. The vast majority of Palestinians who had fled or were actively expelled during and after the fighting became refugees. Those who remained eventually became citizens of Israel under a legal framework that ensures the Jewish character of the state and primacy of its Jewish citizens. Starting with the Law of Return (for Jews only) in 1950, through the Israeli nationality law of 1952 and its subsequent amendments and the steady promulgation of more than 65 overt or covert discriminatory laws. Most recently, the Israeli government has dropped any pretense of being a state for all its citizens with the passage of the so-called nation-state bill on July 19, 2018. Passed as a Basic Law with constitutional implications, the bill affirms that “the exercise of the right to self-determination in the State of Israel is unique to the Jewish People.”²

Gaza Palestinians became stateless as they came under Egyptian administration, and in October 1948, the All-Palestine Government was formed in Gaza under Egyptian tutelage, dedicating itself to liberate all of Palestine and to deriving its authority “from a Representative Council based on democratic principles...”³ However, this All-Palestine Government never attempted to establish a legal entity to provide citizenship and did very little of note after its initial declarations.

Jordan took control of the West Bank and very quickly moved to unify it with the Hashemite Kingdom, amending the nationality law of 1928 to consider Palestinians living under Jordanian administration to be full Jordanian citizens with parliamentary representation. This continued in the following decades and through the Israeli occupation in 1967, but abruptly changed in 1988, when Jordan announced its disengagement from the West Bank. West Bank Palestinians, including Jerusalemites, suddenly found themselves stateless again, and they continue to be so to this day. Today, the Palestinians in Gaza, East Jerusalem and the West Bank are stateless persons who are allowed ‘permanent residence’ in their ancestral homes by the Israeli occupation authorities. This residence can be taken away at will.

Lebanon hosts nearly half a million stateless Palestinian refugees who enjoyed a better status before the Lebanese civil war, which ended in 1990. Since then, they have been barred from membership in syndicated white-collar professions, given that they are foreigners without a state that can provide for reciprocal professional syndicate arrangements, and they are specifically barred from dozens of specific jobs. The situation is similar for approximately 75,000 stateless Palestinians in Egypt, who are treated as foreigners who must negotiate a complex system of residency permits that are renewable every two to five years.

In Syria, Libya, and Iraq, stateless Palestinians had been historically accorded treatment and rights in the social and economic spheres at levels equal to those of citizens. However, the civil wars in those countries took away those privileges and forced the majority of Palestinians to seek refuge, again, in Lebanon, Egypt, and Jordan. Stories abound of Palestinians stranded at borders between Egypt and Libya, between Iraq and Jordan, between Syria and Jordan, and between Syria and Lebanon.

Palestinian approaches to nationality and citizenship

The first official Palestinian iteration of nationality can be found in the Palestine Liberation Organization (PLO)'s Charter of 1964, later re-adopted with amendments as the Palestinian National Charter by the National Council of the PLO in 1968. The amended charter defines Palestinians as “those Arab citizens who were living normally in Palestine up to 1947, whether they remained or were expelled,” including “anyone born, after that date, of a Palestinian father—whether inside Palestine or outside it.” The Charter’s definition of “Palestinian” also included Jews of Palestinian origin who resided there “until the beginning of the Zionist invasion.” When the “Zionist invasion” actually began is, of course, a matter of some debate. In 1988, The Palestinian National Council issued The Declaration of Independence, which calls for “a parliamentary democratic system of governance . . . based on principles of social justice, equality and non-discrimination in public rights of men or women, on grounds of race, religion, color or sex.”

The Oslo Accords of 1993 established the Palestinian Authority. For the first time, Palestinians could exercise some autonomy, limited as it may have been. As early as 1994, the Palestinian Authority began work on a constitutional document and, in 2003, a draft Constitution was prepared and published in local newspapers but was never adopted by the Legislative Council. The draft Constitution went into more detail on citizenship in its Article 16, which departed from the patrilineal approach to citizen acquisition by birth:

Palestinian citizenship shall be organized by law without prejudicing the right of anyone who acquired it before 15 May 1948 in accordance with the law or the right of the Palestinian who was resident in Palestine before that date. This right is transmitted from fathers and mothers to their children. The right endures unless it is given up voluntarily.⁴

The promulgation of a Palestinian citizenship law by the Palestinian Authority has been under discussion since the mid-1990s, but no law has yet been adopted. The last available draft was prepared in 2011 for the PLO's Negotiation Affairs Department and was published and discussed within the institutions of the PLO.

The draft Palestinian nationality law is quite comprehensive in detailing who would be entitled to Palestinian citizenship and the process required for acquiring it. Eligibility for citizenship would extend to all residents of the West Bank and Gaza who would become citizens *ipso facto*, East Jerusalem residents and all displaced persons and refugees, and to those who were excluded by the Palestinian Citizenship Order in Council of 1925 through to the present day. Even Palestinian citizens of Israel would be able to acquire it on application, as well as Palestinian Jews who were habitual residents there before 1948, thus echoing the inclusive and geographically based definition of “Palestinian” in Article 7 of the Palestinian National Charter.

Although the State of Palestine, as recognized by the international community today would be within its authority to promulgate a citizenship law, it is perhaps not surprising that no consensus for adopting this or other drafts has been achieved, given the extremely complicated political and legal situation of Palestinians everywhere, as the essay demonstrates. It would certainly draw serious retaliatory measures on the part of Israel, the United States, and possibly Jordan and other countries. For the time being, Palestinians remain trapped in their current legal limbo.

¹ Article 1 of “The Palestine Mandate” available at Yale Law School, The Avalon Project: [Documents in Law, History and Diplomacy, 2008](http://avalon.law.yale.edu/20th_century/palmanda.asp), http://avalon.law.yale.edu/20th_century/palmanda.asp.

² Government of Israel, “Basic Law: Israel - The Nation State of the Jewish People,” Article 1, Knesset, <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>.

³ The Palestinian Academic Society for the Study of International Affairs, “Declarations of the All-Palestine Government, September-October 1948,” in *Documents on Palestine Volume II: 1948–1973* (Jerusalem: The Palestinian Academic Society for the Study of International Affairs, 2007), 1.

⁴ “Full Text of Palestinian Draft Constitution,” published in *Al-Ayyam*, February 17, 2003, available at Federation of American Scientists <https://fas.org/irp/news/2003/02/paconst.html>.

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