

Unwanted Neighbors

A Story of Three Palestinian Women

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This article examines a recent case involving equal rights of Palestinian citizens of Israel. The case demonstrates how the Jewish character of Israel has been afforded primary status at the expense of the state's declared democratic commitment. The case further shows that even when the Israeli authorities involuntarily try to mitigate this outcome, they do so within the limits of the Jewish character of the state and therefore, reinforce existing conditions of domination. Israel is a Jewish state not only in terms of its demography and makeup but also in its policies and practices. One of the major reflections of this is the absence of equality for Palestinian citizens of Israel, one-fifth of the population.

This article focuses on the role of law in perpetuating inequality. By examining one exemplary case, I explore some of the unstated assumptions of the Jewish definition of the state. These assumptions undermine the presumed neutrality of significant governmental policies and certain Israeli laws, which, in turn, shape the political, social and legal status of the Palestinian minority in Israel.

Racist Attacks

Manal Diab, Sonia Khoury, and Wafa Khoury are three Palestinian women students - citizens of the state - from the Galilee in the north of Israel. They moved to Jerusalem in order to attend Hebrew University. In July 1997, they rented an apartment in the West Jerusalem neighborhood of Musrara, which borders the Jewish ultra-Orthodox neighborhood of Mea She'arim. Ms. Diab and the Khoury sisters were the only Palestinian tenants in the building and in the entire neighborhood.¹

On three separate occasions - October 1997, November 1997 and April 1998 - the women students came under attack.² In the first incident, the attackers threw gasoline-soaked rags at the front door of their apartment, setting it on fire. The second attack involved a bomb made of four aerosol cans, which exploded on their front doorstep. In the third attack, on the eve of Israel's Independence Day, a pipe-bomb exploded in front of their apartment.

Prior to these attacks, the women were subjected to racist harassment and intimidation in the neighborhood. The harassment began with verbal attacks including cries of "Go to Jordan!" "Go to Gaza!" "This is not your country," graffiti sprayed on the entrance door of their apartment, and stones thrown at them by neighboring Jewish youths.³ Through this harassment and the three attacks on the women's apartment, the attackers eventually fulfilled their aim of driving the women out of the neighborhood. Following these incidents, the landlord informed them that he would not renew their lease.

Despite, or maybe because of the trauma that the women suffered, they decided to talk publicly about what they experienced. They knew that if they remained silent, the essential issues they faced would never be addressed. They also knew that their case reflected broader concerns of the Palestinian minority in Israel. In addition, they decided to pursue legal action.

While working with the Association for Civil Rights in Israel (ACRI), I represented the three women following the first attack. Whereas the political nature of the attacks was clear, the legal bases for their case were tenuous. ACRI decided



to base its legal strategy on three main arguments. The first claim involved the failure of the Israeli police to provide adequate protection for the women. The second argument addressed the right of Palestinian citizens to decide their place of residence free from housing discrimination based on their race or national origin. This article does not discuss these two arguments⁴ but focuses on the third argument, which raised the issue of compensation: The State of Israel has an obligation to recognize the women as victims of terrorist attacks - a recognition which is a prerequisite to receiving compensation from public funds for property damage and bodily injuries.

Historically, the Israeli authorities have granted this recognition mainly to Jewish victims. Palestinian victims of terrorist attacks carried out by Jews have been denied any compensation. Consequently, when the Israeli authorities rejected the women's request to be recognized as victims of a terrorist attack, the women were determined to challenge the legal basis of this disparity. A discussion of the legal development of this challenge, its implication and its meaning follows.

“Hostile Acts Against Israel?”

Under two Israeli laws - The Property Tax and Compensation Funds Law (1961) (applicable to property damage) and Restitution for Victims of Hostile Acts Law (1970) (applicable to damages for bodily injuries) [hereinafter: The Compensation Laws] - victims of “hostile acts against Israel” are entitled to compensation from public funds.⁵ The idea behind this compensation

scheme is that individual victims of these actions should not be left alone to pay the price of the political conflict in the region.

Palestinian victims of terrorist acts carried out by militant Jews are not entitled to any compensation, according to the official position of the Israeli authorities. Following the terrorist attacks on the women and their apartment, ACRI challenged the legality of this position for the first time. The goal of the representation was to guarantee the women's right to be compensated from public funds. The failure to provide compensation to victims of racist attacks is effectively a second injury to those persons. The second injury is the pain of knowing that the government provides no remedy and does not recognize the dehumanizing experience. Indeed, “the government denial of personhood through its denial of legal recourse may be even more painful than the initial act of hatred. One can dismiss the hate group as an organization of marginal people, but the state is the official embodiment of the society we live in.”⁶

ACRI filed an appeal to the Jerusalem District Appeals Committee arguing that the State of Israel discriminates against Palestinians because it does not apply the laws equally to both Jewish and Palestinian citizens. It follows from the Israeli authorities' position that every Jew in Israel who is attacked because he is Jewish is automatically entitled to compensation from the state, even if he is not an Israeli citizen. Meanwhile, a Palestinian in Israel who is attacked because she is a Palestinian is not entitled to compensation, even if she is a citizen of Israel. Ironically, the latter is entitled to compensation only if she shows that



the assailant mistakes her for a Jew.

The legal representative of the Israeli authorities contended that the relevant Compensation Laws do not cover the attacks against the Palestinian women. He argued that these laws were designed to cover only violent attacks that threaten either Israel's sovereignty or Israel's Jewish citizens. Accepting the argument of the legal representative, the Jerusalem District Appeals Committee dismissed the appeal.

Subsequently, ACRI appealed to the Jerusalem District Court. ACRI's brief emphasized that the attacks were extreme acts of terrorism, motivated by nationalist racism that targeted the three women for no reason but that they are Palestinians. It also argued that the goal of these attacks was to frighten and harm the women, to force them to leave the neighborhood of Musrara, so that it might remain "free of Arabs." Nationalist attacks of this sort, ACRI argued, whether aimed at Jews for being Jews or at Palestinians for being Palestinians, undermine basic democratic principles, subvert the rule of law and injure the vulnerable fabric of Jewish-Palestinian relations in Israel - and as such, are actions hostile to the state. Palestinian victims of such attacks should also therefore be entitled to compensation from public funds.

After negotiations, the parties reached a compromise agreement, freeing the Court from issuing a judgment. The compromise required the Israeli government to pay immediate compensation to the women, as soon as the damage to their property was assessed. This measure marks the first time that Israel promised to pay compensation to Palestinian citizens

targeted specifically by terrorist acts undertaken by Jews. The compromise further resulted in an undertaking by the Attorney General to consider introducing legislation, which would provide compensation to Arab victims of Jewish terror. Indeed, the compromise agreement constituted an important first step in securing equal treatment before the law. However, this legal development, as I shall further explain, falls short of providing true equality based on full equal citizenship.

While essentially admitting that the current situation discriminates against Palestinian citizens of Israel, the Attorney General decided that the Compensation Laws, as currently interpreted, do not cover terrorist attacks against Palestinian citizens. Instead, and to enhance the "feeling of equality" for Palestinian citizens, the Attorney General decided that a special governmental committee charged with reviewing claims submitted by Arab victims of Jewish terror will be established. This committee will be given the power to grant or deny compensation to Palestinian citizens, comparable to the Compensation Laws, which serve Jews only.

Thus, the Attorney General rejected ACRI's suggestion to recognize Palestinian victims of Jewish terror as victims of "hostile actions against Israel." Rather, he established a special legal arrangement resulting in two separate tracks for compensation. While Jewish victims of attacks would continue to be recognized as victims of "hostile acts against Israel" and to recover compensation according to the compensation laws, Palestinian citizen victims of terrorist attacks would submit their claims to a newly-established special governmental committee.



These separate tracks are substantially unequal. In fact, the arrangement reflects the subordinate status of Palestinian citizens. Israeli political authorities and legal institutions are unwilling to perceive terror attacks against Palestinian citizens as hostile actions against the state. Israel, in their view, belongs to the dominant group - Jews - and only attacks against this group can be recognized as “hostile acts against Israel.” This view excludes the Palestinian community from the citizenry body of the state.

Concluding Thoughts

The case of the three Palestinian women touches basic universal concepts of equal citizenship, equal opportunity and justice. It reinforces the argument that Israel’s self-definition, as a Jewish state is not a mere declaratory statement: It leaves no room for any other group and maintains a system of ethnic supremacy.

Indeed, it is impossible to understand this case without acknowledging the tension between the definition of the state as Jewish and the promise of equality between Jews and “non-Jews.” The consequences of the case must be examined on two levels. The first level relates specifically to recognizing only Jewish victims of terrorist attacks as eligible for compensation from public funds. The compensation laws were designed to cover only attacks that threaten either Israel’s sovereignty or Israel’s Jewish citizens. This in itself is hardly consistent with basic democratic principles.

The second level relates more generally to the limits of identification and belonging to the state. The state privileges one group - the Jews - those

who reside in Israel and those who reside abroad whether or not they hold Israeli citizenship. Even if Palestinian citizens achieve truly equal compensation through the special committee established to handle their claims, the implication of the Compensation Laws is clear: Israel is the state of the Jewish people and not that of the Palestinian citizens. This illustrates how the Jewishness of the state dictates a distinct structure of Israeli citizenship, and a unique “us versus them” relationship in Israeli society.

A state that is defined by the ethnic-religious-nationalist project has, then, given up the idea of ever guaranteeing true equal rights for all citizens. Palestinian citizens can never belong to this project. The three women challenged the compensation laws with the idea that entitlement to a public good must be based on civic principles (citizenship) and not on ethnic-religious affiliation (Jewishness). Namely, a racially motivated attack against Israeli citizens is a hostile attack against the state regardless of the victims’ ethnic-religious affiliation. This view suggests an inclusive model of Israel as the state of all its citizens.

Apart from the inclusive approach suggested by ACRI, and the exclusive approach initially advocated by the Israeli authorities, the compromise proffered by the Attorney General suggests a third alternative. Reiterating that the entitlement for compensation from public funds for victims of “hostile acts against Israel” is based on ethnic-religious affiliation, the Attorney General practically conceded that this interpretation excludes Palestinian citizens from the scope of the Compensation Laws’ protection. However, the Attorney General’s alternative may

enhance the feeling of equality for Palestinian citizens, as under the new legal arrangements, both national groups, Jews and Palestinians, are entitled to compensation from public funds as victims of racially motivated violence. Thus, while rejecting the encompassing civic principle, the Attorney General's approach, in essence, deals with Palestinian citizens as a distinct ethnic group.

This special remedy should be seen as an acknowledgement of the Palestinians' group dimension. Because they, as a group, are excluded from the definition of the state, they, as a group, must be "compensated."⁷

While granting them compensation as a group, this remedy actually reinforces their group-exclusion. Namely, in order to guarantee complete and true equality for its Palestinian citizens, Israel must seriously and honestly offer them, as a national group, the same structure of rights and the same sense of belonging that it offers to its Jewish citizens. In effect, this requires a re-definition of the state to encompass both of its national groups, Jews and Palestinians.

This case demonstrates that the Israeli political establishment is unwilling to take the risks involved in the suggested sweeping change. But for the Palestinians in Israel, not belonging to the state does not weaken their belonging to the land - their homeland. The Israeli establishment, then, has to reckon with the fact that its Palestinian citizens have not given up on the idea of realizing their full individual and group rights in their own homeland.

End Notes

1. See Netty Gross, "Worst of Both Worlds," *The Jerusalem Report*, 8 January 1998; and Dan Izenberg, "Unwanted Neighbors," *The Jerusalem Post*, 5 December 1997.
2. For a broader description of these attacks, see "A State of Denial: Israel's Disregard for Palestinian Victims of Terrorism," 4 *The Palestinian Human Rights Monitor* 2, 5-9 (April 2000). See also Robin Shulman, "Women Besieged in Apartment: Three Arab Israelis Suffer Threats, Violence in Jerusalem," *The Miami Herald*, 26 May 1998; Patrick Cockburn, "No Home for Israel's Arabs," *The Independent*, 21 May 1998; and Barry Trachtenberg, "On the Frontline in Jerusalem," *Peace News*, March 1998.
3. Ms. Diab and the Khoury sisters were not the only Palestinians subjected to harassment because of their nationality; former Palestinian residents of the same neighborhood were also subjected to similar verbal intimidation. See Manal Diab, "Facing Israeli Violence: A Palestinian Woman's Personal Account," *Tikkun* 11 (July/August 1998).
4. For a discussion of those aspects of the case, see *The Palestinian Human Rights Monitor*, supra note 2, at 20.
5. Section 35 of The Property Tax and Compensation Funds Law awards compensation from public funds for damage to property incurred as a result of "... hostile acts against Israel." The Restitution for Victims of Hostile Acts Law awards compensation from public funds for bodily harm to victims of an injury "caused through hostile actions by military or semi-military or irregular forces of a state hostile to Israel, through hostile acts by an organization hostile to Israel or through hostile acts carried out in aid of one of these or upon its instructions, or its behalf or to further its aims."
6. Mari Matsuda, "Public Response to Racist Speech: Considering the Victim's Story," in *Words That Wound*, eds. Mari Matsuda, Charles Lawrence, Richard Delgado, and Kimberle Crenshaw (Boulder: Westview Press, 1993) at 49.
7. On group compensation see Charles Lawrence and Mari Matsuda, *We Won't Go Back: Making the Case for Affirmative Action* (Boston: Houghton Mifflin, 1997).

