

Economic Domination and Law's Collaboration

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In 1966 the United Nations adopted two covenants relating to basic rights; one encompassing civil and political rights and the other social, economic and cultural rights. The creation of two distinct instruments in the same year, which together are considered the cornerstone of international human rights protection, suggests a question as to why two covenants rather than one. A primary reason for establishing a dichotomous system of rights was the persisting Cold War ideology-guided normative debates, including that concerning basic human rights. The civil and political rights covenant was advocated by a camp called "the West", led by the emerging empire of the post-World War Two United States. A second camp, considered "the East", advanced the social, economic, and cultural rights covenant. It was led by the USSR, which itself attempted to establish an empire after 1945².

The inconsistency of both camps to secure the paradigms of the very rights they supported was staggering. In the second half of the 20th century, the USA doggedly supported repressive regimes that negated every civil and political right, notable examples being Pinoche's Chile, Saddam's Iraq, Apartheid South Africa and Israeli occupation and racism. The USSR failed in an alternate manner, reducing the state and citizenry to a mere political party, bankrupting the country's wealth in favour of the ruling few³.

By the end of the cold war, the triumphant empire declared the birth of a new world order, with some of its intellectuals announcing not only the victory of the liberal democratic way of governance, but also the end of history itself. The new world order made democracy both inherent to, and an entity of, the free market pursued by capitalist American interests and desires⁴.

Yet history, being made by individual men and woman, did not end. The new world order has found its rivals in an organized, international, anti-globalization movement, who protest against the institutions of a dominant order that notices no history as it creates and reproduces massive disparities between the wealthy few and many poor across our planet. This movement has been inspired by the revolt of those who were actually socially and economically oppressed, such as the Zapatistas in the Chiapas in

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² See B. Lyon "Discourse in Development: A Post-Colonial 'Agenda' for the United Nations Committee on Economic, Social, and Cultural Rights Through the Post - Colonial Lens" 10 *Am. U. J. Gender Soc. Pol'y & L.* (2002) 535.

³ Fawaz Tarabulsi "Jardat Hisab Awalliya Lil-Ishtirakiya Almotahakika wa Al-Markssiya" in **Aks Al-Sayr** (Beirut: Riyad Al-Rayes Lil-Kutob wa Al-Nashr, 2002) 303 – 326. See also Mohammad Jaber Al-Ansari **Al-Arab wa Al-Siyasa: Ayna Al-Khalal?** (Beirut: Dar El-Saqi, 1998).

⁴ See Noam Chomsky **Hegemony or Survival: America's Quest for Global Dominance** (NY: Metropolitan Books, 2003).

Mexico⁵. The election of a labour union leader to power in Brazil in 2002⁶ and the recent wins of the left in Spain and India, each also for domestic, non-economic reasons, contribute to the cracks already evident in the political agenda of the empire of our age which is so often indifferent to hardship.

The argument that freedom alone, or in its contemporary, political manifestation as the "free market" is a source of, or even a safe road towards, democratic governance that secures basic rights of the citizens, has been refuted by the Constitutional Court of south Africa. Considering the right to housing in its landmark *Grootboom* decision in 2000, the South African court transformed what is common sense for millions into a justiciable matter⁷: with no economic rights there can be no human dignity, no potential to realize any declared political rights:

"Our Constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights...The realisation of these rights is also key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential."⁸

The Israeli regime of occupation in the 1967 Occupied Territories, and the racist regime within Israel, consistently produce social and economic disparities. These are mainly between Israeli Jewish citizenry and Palestinians in Israel and those who are and have been under direct Israeli military occupation for the last 37 years in East Jerusalem, the West Bank and Gaza. In the 1967 Occupied Territories the gross violation of social and economic rights is being continued through the building of the massive Separation Wall. When the International Court of Justice declared the Wall illegal under international law in its advisory opinion of July 9th 2004, it also highlighted the violations of basic social and economic rights. The court quoted the September 2003 report of the Special Rapporteur of the United Nations Commission on Human Rights on the situation of human rights in the Palestinian Territories occupied by Israel since 1967, which states that "Palestinians between the Wall and Green Line will effectively be cut off from their land and workplaces, schools, health clinics and other social services."⁹ The court emphasized that the wall "...has further

⁵ See Noam Chomsky **Profet Over People: Neoliberalism & Global Order** (NY: Seven Stories Press, 1999)

⁶ See M. Cooper & T. Frasca "Lula's Moment" *The Nation* (20.2.2003).

⁷ See A. Sachs "Social and Economic Rights: Can They Be Made Justiciable?" 53 *SMU L. Rev.* (2000) 1381; F.I. Michelman "The Constitution, Social Rights, and Liberal Political Justification" 1 *In'l J. Const. L.* (2003) 13, 15–17.

⁸ See CCT11/00 **Government of RSA and others v Grootboom and others** par. 23 at <http://www.concourt.gov.za/files/grootboom1/grootboom1.pdf> (last visited on July 12 2004).

⁹ See *International Court of Justice Advisory Opinion* of July 9, 2004 "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", par. 133 at <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm> (last visited on July 12 2004).

led to increasing difficulties for the population concerned regarding access to health services, educational establishments and primary sources of water.”¹⁰

Since the mid-1990's, Israeli governments have consistently implemented policies that are hostile to the poor and disempowered, including some such groups from the Israeli Jewish citizenry. Yet Israeli settlements in the Occupied Territories continue to thrive economically, while the Israeli government declares its own war on the unemployed and the disadvantaged, including migrant workers. Within Israel, the structural, social and economic discrimination that the Palestinian Arab minority endures is not a mere result of a free and deregulated market policy pursued by the Government. One can easily notice the rapid and solid increase of the social and economic gap not only between Arabs and Jews in Israel, but also between the poor on both sides of the national divide. 86.4% of the socially and economically disadvantaged towns and villages in Israel are Palestinian Arab¹¹. The 51 towns and villages with the highest rates of unemployment in Israel are Palestinian Arab as well. The rates of unemployment in these towns and villages range between 13.5% to 34.3%¹², while the average unemployment rate in Israel is 10.8%¹³.

The Israeli Government's exclusion of the vast majority of Arab towns and villages from the scope of social and economic programs declared to be designated to the poor and disadvantaged is the primary source of social and economic disparities between the two communities. It is a clear majoritarian policy that not only aims to deprive a native national minority of social and economic development but is an unsophisticated attempt to control and contain the Palestinians in Israel politically. Thus benefits for industrial investors are never granted in areas of Arab towns and villages. Similarly the most important governmental plan for distributing economic benefits excludes the vast majority of Arab towns and villages from its map. This plan, entitled “National Priority Areas”, determines benefits for, *inter alia*, educators, commerce, and industry mainly through granting tax benefits. This plan became the source of criteria for applying other governmental social and economic plans, making its inherently discriminatory nature available to those programs as well. Adalah challenged both the methods and substance of this plan in the Israeli Supreme Court in 1998, when Benjamin Netanyahu was Prime Minister. The court has yet to decide on this case, despite the excessively long time since its submission. This time has seen Netanyahu lose his job as Prime Minister, retire from politics, return to it, and reach the position of Minister of Finance.

The Bedouins of the Naqab area in the south of Israel who live in what have become known as unrecognized villages face the hardest social and economic discrimination and exclusion. About 70,000 Bedouins in the Naqab are considered trespassers on their own ancestral lands, both by the law and Israeli authorities, and as a consequence receive no basic services such as clinics for health care, water, and electricity. The economic repression of these indigenous communities is motivated by the government's desire to control as much land possible with fewer Palestinian Arab Bedouins residing on it. To achieve this purpose, the government allocated

¹⁰ **Ibid.**

¹¹ See: http://www.cbs.gov.il/hodaot2004/13_04_22t1.pdf (last visited on July 12 2004).

¹² Data of the Ministry of Industry, Trade, and Labor (March, 2004).

¹³ See: http://www.cbs.gov.il/indicators/ind_tab11h.shtml (last visited on July 12 2004).

special funds to oppose any claim of title to land pursued by any Bedouin individual in the Naqab. Such flawed allocation of public money to serve a discriminatory aim was deemed not illegal by the Israeli Attorney General Elyakim Rubenstein (now a Supreme Court judge), despite the clarity of the government's motives as declared specifically in its decisions of April 9, 2003.

The Israeli government's persistent approach to disadvantage and disempower the Palestinian minority is something that must be consistently contended. Both the government and the Israeli courts are far removed from the benevolent approach of the Constitutional Court of South Africa. The government's policies are too clear, and the court's jurisprudence is limited to determining what is "the minimum standard for living in dignity"¹⁴. Their policies stand in sharp contrast also to the proclamation of Articles 21 – 23 of the UN Draft Declaration on the Rights of Indigenous Peoples that define the basic social and economic rights for such communities. Article 23 of the Draft Declaration attempts to liberate the disempowered indigenous communities from the economic control of the state by creating a space of economic self-determination:

"Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions."¹⁵

Law, particularly in industrial societies, has rarely proved to be a safe haven for the social and economic rights of the disadvantaged. Law has played an active role in observing the "hidden hand" of the free market with minimum intervention. It has relied on the separation of powers or lack of expertise arguments to maintain an appearance of neutrality. But such active disengagement in economic policies has rendered the court an institution that only legitimizes State decisions, merging itself with the executive. In such a situation, the law clearly cannot be considered a redeeming institution for the deprived, who will have no option but to organize and resist the government by themselves.

¹⁴ See Marwan Dalal "Economics, Society and Law: Critical Reflections," in *Economic, Social and Cultural Rights in Israel*, eds. Y. Rabin & Y. Shany (Ramot Publishing - Tel Aviv University, forthcoming in 2004) (Hebrew).

¹⁵ See J. Burger "The United Nations Draft Declaration on the Rights of Ingenious Peoples" 9 *St. Thomas L. Rev.* (1996) 209.