

THE ONE CARCERAL STATE:
MASS INCARCERATION AND CARCERAL CITIZENSHIP IN ISRAEL/PALESTINE¹

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ABSTRACT

The discussion about the one state condition in Israel/Palestine can greatly benefit by looking at Israel's carceral state. This paper shows that underneath the formal separation of Israel and the Occupied Palestinian Territories (OPT), lies one carceral state. Following the 1967 occupation, Israel initially designed the legal and carceral systems of the OPT as separate, in accordance with international law, and created a military prison system in the OPT. However, this situation has changed dramatically after the failure of the Oslo Accords and the second intifada in 2000. Through an analysis of legal and administrative documents and statistics of the Israeli Prison Service (IPS), the military, the Knesset, and Supreme Court decisions, this paper traces how gradually more prisons and Palestinian prisoners have been transferred into the 1948 Israeli territory. Ultimately, by 2006, all prisons (but one) were physically transferred into Israel and the military prison system has been dissolved. The IPS was rebranded as the Israeli "National Prison Authority", assuming responsibility to all Palestinian prisoners.

The consolidation of a single carceral system represents a contradiction between the sovereign state of Israel - defined by law and territory as separate from the OPT - and the one carceral state in Israel/Palestine - managed by a single organization and responsible for the entire prisoner population. The paper further sketches two unintended consequences of these contradictions. First, in the one carceral state, the mass incarceration of Palestinians is not exceptional but endemic. The scale and demographics of incarceration, the disproportionate growth, and the immense share of a particular ethno-national group lacking citizenship and voting rights, are all troubling features of mass incarceration. Second, despite their non-citizen status, incarceration functions as a form of inclusion, when Palestinian prisoners become entitled to prisoners' rights and can claim them under Israeli law, while authorities are finding new ways to limit these entitlements. Israel has thus established "carceral citizenship" for Palestinians, while the content of carceral citizenship is subject to ongoing negotiation between prisoners and prison authorities of the one carceral state.

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INTRODUCTION

In this paper I argue that the discussion over the one state condition in Israel/Palestine can benefit a great deal by looking at the incarceration of Palestinians by Israel, in other words, by looking at the carceral state in Israel/Palestine. Today, I will describe the consolidation of what I call the “one carceral state” in Israel/Palestine between 2000-2006. I analyze this transformation using the concepts of sovereignty and governmentality, arguing that the changing relations between four elements – territory, law, population, and organization –created a contradiction between the sovereign state, which maintained a separation between Israel and Palestine, and the carceral state that has been united. These contradictions produce unintended consequences, two of which I will briefly sketch: mass incarceration and the ambiguous inclusion of Palestinian prisoners through what has been called “carceral citizenship.”

In political definitions and agendas as well as in academic research there are two paradigms on the relationship between Israel and the Occupied Palestinian Territories (OPT): the separation paradigm and the one-state paradigm (Azoulay and Ophir 2012, Yiftachel 2012; Jamal 2018; Lustick 2019). The separation paradigm sees Israel and the OPT as separate political units, relating to formal aspects of sovereignty and law, which entail that this situation is temporary. The one state paradigm views Israel/Palestine as a single, though unequal, political system, relating to informal aspects of Israeli political agendas and actions on the ground. In terms of time, this paradigm treats the situation as indefinite.

Political science research – in both paradigms –neglects criminal justice and incarceration in the analysis of the state. Criminological research about Israel/Palestine abides by the separation paradigm, by exceptionalizing incarceration of Palestinians and treating it as external to the central Israeli carceral system (Fishman and Rattner 1997; Shavitt 1998; Lernau 2016; but see Korn 2003). Such research either ignores Palestinian prisoners and their treatment or studies these topics separately from the carceral system more generally (Baker and Matar 2011; Viterbo 2017; Viterbo 2018; Dagan 2022).

I suggest integrating these two fields, by using the concept of the carceral state, which views incarceration as a central institution of the political order (Simon 2007b; Simon 2007a; Hernández, Muhammad, and Thompson 2015). The concept of the carceral state connects the government

policies and paradigms with the practices and discourse of incarceration. I argue that the mechanisms of criminalization and incarceration can make significant contributions to the discussion about these two paradigms, showing that they embody a shift from the separation paradigm to the one state paradigm in Israel/Palestine.

While since 1967 Israel has been operating two carceral systems in Israel/Palestine – a civilian and a military system – following the failure of the peace process in 2000 and the second intifada, these two systems have been consolidated into one system. Israel closed almost all the prisons it has been operating in the West Bank and Gaza; built and extended prisons inside Israel; and moved almost all Palestinian prisoners into Israel, with the single exception of Ofer prison in a borderline area of the West Bank between Ramallah and Jerusalem. In 2006 this move was completed when the Israeli military transferred the responsibility for prisons holding Palestinian prisoners to the Israeli Prison Service (IPS), which was branded a “National Prison Authority” and became the sole organization responsible for the incarceration of Palestinians. Israel thus created one single carceral system for the entire territory of Israel/Palestine.

The “one carceral state” represents the most tangible shift in Israeli policies, compared to any other field. Generally, the shift to the one state reality is driven by gradual and largely informal changes: 1. Changes in temporal perceptions of the Israeli occupation – from temporary to indefinite or permanent 2. Changes in political agendas and visions as to the future of the conflict – the decline of the two-state solution and emergence of various forms of a single polity. However, if we look at the changes in incarceration over the years, the same gradual and informal changes have been happening in the carceral system since 1967, but they culminated in a formal and tangible shift from two carceral systems in “Israel” and the “Occupied Territories” to a consolidation of a single carceral system inside Israel.

THE CREATION OF ONE CARCERAL STATE

Across Israeli history, the relationship between the aspects - territory, law, population, and organization - can be divided into three periods: Military regime (1948-1966); Occupation (1967-2005); and the One Carceral State (2006 – present). This paper Focuses on the second and third periods. The change if title of the third period since 2006 does not mean that the occupation is over, but that it is no longer the guiding paradigm of incarceration. During the occupation period,

there have been changes in the scope and location of incarceration (such as between the periods of pre intifada, intifada, Oslo, 2000), but I will not discuss them in detail since they are minor with relation to my main argument.

The Occupation Period

Since 1967, arrests and incarceration have been central to the Israeli control of the OPT, with thousands of Palestinians incarcerated each year (Baker and Matar 2011). Israel arrested over 800,000 Palestinians, around 20% of the total Palestinian population and 40% of the Palestinian male population in the West Bank and the Gaza Strip (Meari 2014; Bernstein 2017). The scale of incarceration is affected by the politics of the conflicts: during the intifadas and military operations mass arrests are conducted; during peace negotiations, mass releases of prisoners have been common “gestures” (Korn 2003; Sebba 2011).

Israel followed the paradigm of occupation in international law when in 1867 it established a **dual** legal system: a military legal system (law and courts) in the OPT that is separate from the civilian legal system in Israel. Under the same paradigm, a dual carceral system was created: the military assumed legal responsibility for incarceration and prison facilities in the OPT, initially using existing prison facilities in Palestinian cities (Korn 2003).²

However, the system was only formally separate. In fact, Emergency Regulations from 1967 enable movement of populations - settlers and prisoners - between the courts and prison systems.³ Very soon after the occupation, the prison facilities in the OPT were overflowing. Consequently, Palestinian prisoners held in prisons in Israel in addition to the OPT. Additionally, prisons in both areas were managed by the IPS or by the military. The IPS managed prisons in Palestinian cities as well as inside Israel, while the military was responsible for prisons in the OPT and inside Israel.⁴ The allocation to either system was Bureaucratic and discretionary, and therefore fluid. Subsequently, as Alina Korn (2003) showed, Rates of incarceration in Israel have

² Military Order on the establishment of imprisonment facilities (1967); H CJ 253/88 Sajadiyah v. Defense Minister (1988).

³ Emergency Regulations (Offenses in the Administered Territories – Adjudication and Legal Assistance) 5727–1967 2069 KT 2741, were passed in July 1967. Currently: Law Extending the Validity of Emergency Regulations (Judea and Samaria–Adjudication of Offenses and Legal Assistance) 5777–2017, 2645 SH 994.

⁴ Like Ketsiot and Megiddo military-run prisons.

been affected mostly by the conflict: since 1967, 30%-50% of prisoners in Israel are Palestinians from the OPT. The number of prisoners declined significantly after the Oslo Accords, following mass releases and decline in arrests.

In some ways, then, because of the fluidity between these ostensibly separate systems, the carceral system already functioned as within one state, but it still maintained the formal and organizational separation in appearance and operation. The legal and organizational aspects remained separate during this period. The fluidity of the system meant that the population of Palestinian prisoners were transferred into Israel. As for territory, prisons have been operating in both territories, but they have gradually gravitated towards Israel: new prisons for Palestinian prisoners were opened and built and in Israel since late 1960s; prisons in Palestinian cities that were initially used by Israel were abandoned after the Oslo agreements.

One Carceral State Period

Following the failure of the Oslo negotiations and the outbreak of the second intifada in 2000, the situation has changed dramatically. The numbers of prisoners were on the rise again due to massive arrests; more prisons and prisoners were moved into Israel; and there was no expected decline in the number of prisoners, which happened in the past through negotiation and release.⁵

These have all led to a change of paradigm and the consolidation of the one carceral state. In 2006 the territorial shift was completed: all prisons except from Ofer were located inside Israel; the military transferred responsibility for prisons in Israel to the IPS; and the IPS was rebranded as “National Prison Authority,” solely responsible to incarceration of Palestinians.⁶

The following table combines data collected from IPS statistics, and data from the Israeli military (IDF) statistics collected by the NGO B’tselem.⁷ The rise in the number of prisoners in the IPS

⁵ HCJ 5591/02 *Yassin v. Commander of Military Camp Ketsiot* (2002), 408; The Knesset Research and Information Center (KRIC) brief, May 18, 2009, 48: https://fs.knesset.gov.il/globaldocs/MMM/54bb8d55-f7f7-e411-80c8-00155d010977/2_54bb8d55-f7f7-e411-80c8-00155d010977_11_7898.pdf.

⁶ KRIC brief, May 17, 2009 [Political Prisoners in Israeli Prisons]; IPS Annual Report 2008, p. 48; Also see B’tselem’s detailed information on Palestinian prisoners held by the IDF and the IPS: https://www.btselem.org/hebrew/statistics/detainees_and_prisoners#notes (last accessed June 28, 2022).

⁷ https://www.btselem.org/hebrew/statistics/detainees_and_prisoners. The data exclude Palestinians imprisoned for illegal entry and held by the military, which were not collected before 2012.

between 2005 and 2006 - correlates with the decline in prisoners held by the military. Since 2006, the total number of prisoners held by Israel is reflected in IPS statistics and is more visible in national statistics. The share of Palestinian prisoners is half of the total prisoner population.

Year	Total prisoners: IPS	Palestinians: IPS	Palestinians: Military	Total prisoners	Total Palestinians
2001	9,311	831	1,023	10,334	1,854
2002	10,868	1,435	3,076	13,944	4,511
2003	12,195	2,479	3,465	15,660	5,944
2004	13,869	3,412	4,375	18,244	7,787
2005	16,011	5,039	3,137	19,148	8,176
2006	20,708	9,051	127	20,835	9,178
2007	21,242	8,378	63	21,305	8,441
2008	22,007	7,904	48	22,055	7,952
2009	21,965	6,831	32	21,997	6,863
2010	20,441	5,705		20,441	5,705
2011	19,602	4,281		19,602	4,281
2012	19,679	4,517		19,679	4,517

Table 1: Civilian and military incarceration, 2001-2012

In sum, the dual legal system remained, and a single carceral system is consolidated: the military system was dissolved, and a single civilian system internalizes it. The entire operation of incarcerating Palestinians is concentrated inside Israel. Incarceration turned from an external military operation - to a domestic civilian issue.

THE SOVEREIGN STATE AND THE CARCERAL STATE

My analysis of the paradigm shift to the one carceral state uses the Foucauldian terms of sovereignty and governmentality as analytical tools (Foucault 2007). Most generally, sovereignty refers to the control of territory and the use of state law, while governmentality refers to the management of populations through economy and security. The carceral state uses techniques of governmentality, and unlike the sovereign state, it is not confined by territory, as explained by Foucault: “Governmentality is *both external and internal to the state*, since it is the tactics of

government that allow continual definition of what should or should not fall within the state's domain" (Foucault 2007: 109).

The relations sovereign state and carceral state change over the two periods: in the occupation period – the sovereign state and the carceral state are aligned with each other, there were two territorial and legal units, and two carceral systems. In the one carceral state there is a contradiction between them: the sovereign state still defines itself according to the separation paradigm – two political and legal units - while the carceral state is united to one organization, in one territory, as demonstrated in the following table:

Period	Sovereignty	Carceral organization
Internal military regime (1948–1966)	State/one	IPS/one
Occupation (1967–2005)	State and Occupied Territories/two	IPS and military/two
One carceral state (2006–present)	State and Occupied Territories/two	IPS/one

The contradictions between sovereign state and the carceral state – different law, same prison system – create various unintended consequences:

- Palestinian prisoners are included under Israeli law and prison regulations: for example, they are (theoretically) entitled to parole, and can access to courts through inmate litigation that challenges prison conditions and policies.
- With the rise in numbers, the classification of “Security prisoners” that has been applied to Palestinian prisoners since 1958 becomes more important.
- Israeli institutions such as the Israeli National Public Defender have oversight on their conditions, and they can get representation from public defenders.

It also leads to multiple changes in policy, to give just a few examples:

- New legislation and regulations are introduced, designed to limit prisoners' rights, such as: restricting the conditions of "security prisoners, a new ban on academic studies, legalizing force feeding of hunger striking prisoners, and limiting rehabilitation services to Israeli residents.
- A new trend of penal populism: politicians are gaining support from advocating for harsher the living conditions for Palestinian prisoners.

I will briefly articulate two main implications of these various consequences:

MASS INCARCERATION

In the one carceral state, mass incarceration of Palestinians is internalized. While Palestinian prisoners have comprised between a third to a half of the total prisoner population under Israeli control since 1967, what has changed is that Palestinian prisoners are *no longer exceptionalized* and regarded as external to the Israeli carceral system. Once the entire population of prisoners has been unified into a single category of "prisoners in Israel", despite divisions into sub-categories, their mass incarceration became an integral feature of the Israeli carceral state.

Mass incarceration, as understood in the sociology of punishment (relating mostly to the US), represents systemic domination, rather than a response to crime (Garland 2001; Mauer 2001). Some of its main characteristics are exemplified in Israel/Palestine:

- The Growth of prison population: Total number of IPS prisoners rising 25% in 2006.
- The growth is unrelated to crime rates or trends.
- Palestinian prisoners' inclusion becomes a permanent, core function of IPS.
- Incarceration and its effects are concentrated on one ethnic group, which is disproportionately represented in the prison population and suffers from other systemic discrimination and racialization.
- The same group is lacking citizenship and voting rights.
- Harsh, long punishment, without parole.
- Incarceration is being politicized through frequent changes in carceral policy for control and popular political discourse.

CARCERAL CITIZENSHIP

The inclusion of the Palestinian prisoners' population can be understood through, as well as extend the concept of carceral citizenship, coined by Miller & Stuart (2017). Citizenship is understood here not as a formal status but as practices relating to political membership, a social reality of participation in the polity. Carceral citizenship stands for the restrictions and benefits, obligations and rights, which are uniquely accorded to incarcerated people. The governance of incarcerated people operates through both coercion and care, combining the coercive and protective aspects of the legal and carceral system and creating an alternate legal reality for carceral citizens.

In the context of Israel/Palestine, carceral citizenship is extended to large numbers of Palestinian non-citizens who would not have been subject to many of these rights if they were not incarcerated and transferred into Israel, in what I would call "exclusionary inclusion" (compare: (Ophir, Givoni, and Hanafi 2009). For example, care is manifested entitlement to rights and access to courts and public defenders that enable prisoners to claim these rights. It works through the logics of the liberal state: of rights, equal treatment, predictability, transparency, accountability, meant to apply to citizens. On the other hand, coercion is the set of restrictions placed on prisoners through various legal and bureaucratic means. One example is the internal bifurcation of the prison system through the "security prisoners" classification of Palestinian prisoners, which significantly restricts their rights in comparison to those of criminal prisoners, mostly Jewish citizens. Palestinian prisoners are subject to double coercion: as prisoners and as Palestinians. Nonetheless, they can claim more rights and more effectively than other Palestinians because of their alternate status as carceral citizens. Since the mechanisms of coercion and care operate simultaneously, the content of carceral citizenship is being negotiated between the state and the prisoners.

In conclusion, in the carceral system there has been a tangible shift to the one state paradigm, which supports the current prominence of this paradigm. However, the separation paradigm has not disappeared and still functions on the formal level. The analysis of relationship between the sovereign state and the carceral state uncovers the contradictions between them that serve as a useful tool to see the various intended and unintended consequences of the "one state condition".

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