There is no simple solution for the Palestinian refugee problem--only a creative one. One must first begin by questioning the nature of both the Palestinian and the Israeli nation-states, the concept of state sovereignty and its inherent violence, and the inclusion/exclusion that the state exercises to determine who is a citizen.

In the spirit of Hannah Arendt, the state is seen as more of a problem than a solution. Take, for example, a Bethlehem Fatah communiqué of December 2003: “If we must choose between the Palestinian state and the right of return, we will choose the latter.” But is there a solution that encompasses the right of return and a Palestinian state? Only the framework of an extraterritorial nation state does, especially if one third of the population of that state is refugees. We must rethink all traditional political-legal categories, particularly in the Middle East. In that process, the refugee figure becomes the frontier of humanity, revealing the current crisis in the "trinity" of nation-state-territory.

The crisis of the modern nation state is that the exception is everywhere becoming the rule. We increasingly live in a time where populations' ontological status as legal subjects is suspended. The failure of laws that govern citizenship marks a decisive turning point in the life of the modern nation-state and a definitive emancipation from the naive notions of "people" and "citizen."

In this context, the status of the "refugee" vis-a-vis the "citizen" is more than problematic. Can we imagine a solution to the problem of stateless and refugee Palestinians that does not rely on the disciplinary apparatuses of the police and security forces? This issue is not relegated to the Middle East; more and more refugees are excepted from legal norms in many European countries. There, refugees maintain the vulnerability of their status even after acquiring nationality. Any criminal or other questionable activities puts them at risk for denaturalization.

A solution that proposes head-counting the refugees in a given place and offering them a few months to decide their fate is an utopist solution. Individuals prefer to maintain flexible citizenship and multiple passports, even if they choose to settle in one place.

According to a 2003 Palestinian Center for Policy and Survey Research survey, some 60 percent of Palestinians willing to return to Israel want to hold nationality to the Palestinian state. Only two percent want Israeli nationality and one fourth of the entire sample prefer to hold both nationalities. If the accumulation of foreign passports for some globalized businesspeople is “a matter of convenience and confidence” in uncertain political times, for almost all of the Palestinians who reside abroad, it is a matter of survival. For those who have never possessed a passport in their lifetime, having been forced to make do with a travel document, the passport signifies and allows basic connectivity to family and labor markets.
As such, while the classic model of return migration studies mainly envisions a definitive return, the concept of return can be amplified to include a form of being “in between.” Transnational studies provide an excellent conceptual framework for analyzing the experiences of migrants, those who choose to live between worlds. This emerging new form of refugeeeness and migrant status is marked by active participation in the cultural, social, economic and political lives of both the country of origin and the host country, and provides new boundaries for solving the Palestinian problem. This cannot be realized if the future Palestinian state is conceived as a classic nation-state. Instead, why not propose extra-territorialized Palestinian and Israeli nation states?

Currently, the political environments that frame Palestinian transmigration are hostile to many transnational practices--or at least do not facilitate them. Broadly, there appear to be two asynchronous dynamics at work: one that accelerates the presence of transnational actors in the territories, and another that is bound up with the identity and political cohesion of the decision makers of the Palestinian National Authority (PNA). For example, since the 1999 promulgation of a PNA law regulating non-governmental organizations, the Palestinian Ministry of Interior has refused to allow Palestinian Israelis to serve on the administrative board of any Palestinian organization. This demarcation policy was also shared by some in the private sector who wanted to reinforce the separation between the interim Palestinian territories and Israel. The Palestinian Telecommunications Company, PALTEL, tried for some time to price calls between the Palestinian territories including East Jerusalem, and West Jerusalem and the rest of Israel, as international calls--not taking into account how this might impede connectivity within family networks for one. The tension between these interests is quite normal. Refugees develop a flexible notion of citizenship in order to accumulate capital and power. Meanwhile however, the state seeks to preserve its inflexible sovereignty.

While Palestinian scholars are accustomed to dealing with identity in its strict legal sense, it is important to recognize that capitalism, colonialism and culture also constrain and shape the subject, the individual and the collective. The crystallization of Palestinian identity is a relatively recent phenomenon. The same can be said for the Arab and Israeli identities that emerged during the same period. Because of the tenuousness of this process, the state in the Arab world became a nationalizing state: after "making" Syria, Lebanon, and Jordan, those states must subsequently make Syrians, Lebanese and Jordanians. The same could be said of Israel and Israelis.

Thus we are far from a civic type of nationalism which relies on voluntary commitment, a flexible criteria of membership in the national collectivity, and a consensual legal process for resolving tensions. Generally speaking, migrants are not encouraged (and sometimes hindered) from declaring allegiance to both their countries of origin and their host countries. This fact explains the manner in which some Palestinians are assimilated to their host societies, while others retain a sense of unstated double identity with less feeling of alienation.

The weakness of the center of gravity of the Palestinian diaspora, alongside the relatively new Palestinian national identity, raises many complex questions about Palestinian state formation and the ability of the PNA to challenge the classic pattern of citizenship and nation-states. One can imagine two forms that might allow a nation-state to deal with people outside of its borders: a de-territorialized nation-
state or an extra-territorialized nation-state. Studies on transnationalism may be a
good framework for thinking about the former. Some consider countries of origin as
"de-territorialized nation-states" in the sense that the state now stretches beyond its
geographic boundaries. By this logic, there is no longer a diaspora because wherever
its people go, their state goes with them. In this region, however, it is very hard to
imagine this kind of state being born. Anthony Smith’s argument that nation-states
are "territorial by definition" bears some weight.

The tension that currently exists between the practices of Palestinian
transmigrants/returnees/refugees and the policies of the PNA shows that the
prospect of an extra-territorialized nation-state is more feasible than the former. In
this case the state is territorialized, but it distinguishes between citizenship and
nationality. Accordingly, the rights and the duties of those who live in Palestine
would not be a function of their nationality (i.e. whether they are Palestinian or not.)
At the same time, those who live abroad who are of Palestinian origin could also
enjoy rights and duties, even though not residing permanently in Palestine. Such an
arrangement would be possible only if the PNA was able to enter into special
agreements with countries that host Palestinian refugees, in order to facilitate full
dual citizenship. This, particularly in light of outstanding questions regarding the
capacity for absorbing Palestinian refugees, could be an honorable solution for those
not willing to return but who would nevertheless like to belong to a Palestinian nation
and be involved in Palestinian public affairs. It can be expected that many Palestinian
refugees will return only to obtain Palestinian nationality and then leave, or
simultaneously maintain two places of residency.

The model of two extraterritorial nation states--Israeli and Palestinian--is a model
that falls somewhere between the two-state solution which due to power inequities is
now leading to an apartheid system, and the absolutely unpopular solution of a bi-
national state. A sort of "confederation" may be a more feasible solution: two
extraterritorial nation states, with Jerusalem as their capital, contemporaneously
forming, without territorial divisions, two different states.

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