From Gaza to Ferguson: Exposing the Toolbox of Racist Repression

Mass incarceration and militarized police forces are two of the most potent tools in a panoply of repressive instruments of power used by Israel and the U.S.

By Corinna Mullin and Azadeh Shahshahani

From the death and destruction in Israel's latest war on Gaza to the dramatic arrival of the national guard on the streets of Ferguson, Missouri, there have been plenty of brutal reminders on display of the violence that underpins racist repression.

But amid the headlines, one could easily forget the more sustained and entrenched forms of oppression through which various hierarchies, including race, citizenship, nationality, and class are produced and maintained by both the United States and Israel. Among the most significant of these is mass incarceration.

In his acclaimed novel No Name in the Street, James Baldwin suggested asking "the wretched how they fare in the halls of justice" to determine whether a country has "any love for justice, or any concept of it" at all. If, as Baldwin insinuates, the law itself "is guilty" in the production of local and global inequalities, what does that tell us about how Israel and the US fare in the justice stakes?

With U.S. military and political aid continuing to flow to Israel and Israel contributing to the evolution of U.S. techniques of power, the politics of incarceration in both countries, despite their distinct histories and contexts, are not only parallel but connected.

Israel's Policy of Mass Incarceration

The draconian conditions imposed by Israel's siege of Gaza have often led critics to liken the embattled strip of land to an "open-air prison," pointing to Israel's panoptical control of Gaza's borders, airspace, and sea coast.

But conventional brick-and-mortar prisons continue to enjoy robust use throughout Israel-Palestine. Since the 1948 Nakba, and expulsion and dispossession of Palestinians from their land, Israel has imprisoned approximately 20% of the total Palestinian population, including 40% of the male population.

Today, Israel holds over 6,500 Palestinians in its prisons and detention centers. These include over 466 Palestinians subjected to "administrative detention" (detention without trial), 27 Palestinian members of parliament, and three former ministers.
Though media coverage has rightly focused on the atrocity of the hundreds of Palestinian children killed in Israel's latest Gaza assault, it is important to remember how precarious life is for Palestinian children even in "normal" times. Since 2000, more than 8,000 Palestinian children have been detained and nearly 2,000 children have been killed--with almost complete impunity for the Israeli soldiers and settlers involved.

Around 230 Palestinian children are currently imprisoned--50 of them under the age of 16. Human rights groups including Amnesty International and the Israeli organization B'Tselem, as well as the United Nations, have condemned Israel's routine mistreatment of these children, many of whom were pulled from their homes in the middle of the night and have faced solitary confinement, torture, and denial of contact with their families.

Israel's use of imprisonment as a political tool was on full display in the latest violence in Gaza. Following the disappearance of three Israeli settler teens who were subsequently found dead last June, Israel detained thousands of Palestinians, effectively using mass arrest and incarceration as a form of "collective punishment," which is considered a war crime under the Fourth Geneva Convention. Of those individuals arrested, 62 had only recently been freed in the Gilad Shalit prisoner exchange. Their release, along with an end to the siege of Gaza, has been among Hamas' most strident demands during negotiations to end the conflict.

Hamas has clearly been the immediate target of Israel's latest wave of arrests, in which well over 2,000 Palestinians were captured in July alone. But Israel's broader political aim is to terrorize the entire Palestinian population and deter unity and resistance. As Noura Erakat explains, Israel's long-standing "emergency rule" in the occupied territories means that Palestinians are subjected to "a matrix of 1,500 military laws" that "can be changed arbitrarily, without notice, and applied retroactively, in violation of the most basic tenets" of the rule of law.

As Nasser Rego reminds us, the use of colonial law as a tool of "dispossession, displacement and oppression" is not confined to Israeli conduct in the occupied West Bank. There at least 50 laws that discriminate against Palestinian citizens of Israel. In Gaza, we see yet another example of the law's injustice. At least 250 Palestinians were arrested during Israel's ground operation in Gaza, many of whom were charged with "belonging to an illegal organization"--which, according to the Al-Mezan Center for Human Rights, generally refers to Palestinian political parties, especially but not only Hamas. Others are undergoing interrogation and have been denied access to a lawyer.
At least 15 of those arrested and later released were held under the "Unlawful Combatants Law." Providing even less protection than administrative detention orders, this law allows the detention of Gazans for an unlimited period of time without charge or trial, in violation of international human rights norms. Enacted by the Israeli Knesset in 2002, the Unlawful Combatants Law embodies some of the many practices shared between Israel and the United States, which codified its own legal definition of "unlawful combatants" who could be indefinitely detained under the Military Commissions Act of 2006.

The death and destruction inflicted on the Palestinian people in recent weeks, part of what Israeli historian Ilan Pappé has referred to as Israel's policy of "incremental genocide," is one reminder that incarceration and more overt forms of violence are not mutually exclusive.

The Israeli government also employs a variety of other tools to repress and dispossess the Palestinian population. These include forced evictions, land grabs and other forms of ethnic cleansing, the denial of the right of return of Palestinian refugees, significant monetary and military support for settlements, and apartheid policies and practices-- including the "community-shattering" wall and system of checkpoints, and permits and barriers restricting the free movement of Palestinians.

**Mass Incarceration in the Land of the Free**

On the other side of the globe, the burgeoning U.S. prison population now comprises a quarter of all the prisoners in the world.

Close to 70 percent of all people in U.S. incarceration, moreover, are people of color. As Adam Gopnik observed in The New Yorker, "there are more black men in the grip of the [U.S.] criminal-justice system--in prison, on probation, or on parole--than were in slavery" on the eve of the civil war.

Over the past three decades, the U.S. prison population has quadrupled. This is in large part a result of the "war on drugs." Since the Anti-Drug Abuse Act of 1986 was passed, incarceration for nonviolent offenses dramatically increased--disproportionately impacting poor black people. "Relegated to a second-class status" by their experience with prison, notes legal scholar Michelle Alexander, an inordinate number of black men have once again become "disenfranchised," losing the right to vote, to serve on juries, and to be free of legal discrimination in regards to employment, education, and access to public services.

This exponential increase in incarceration has accompanied the unprecedented rise in the detention of undocumented immigrants as well as the growth of the prison-industrial complex, demonstrating the salience of the political economy of incarceration. These developments are rooted in the socio-economic changes of the post-industrial era and the
retrenchment of social safety net programs that occurred in the United States from the 1980s forward, paralleled by the spread of the neoliberal economic paradigm to the Global South. As the scholar and social justice activist Angela Davis has highlighted, prisons were central to the government's strategy of addressing the structural violence "produced by the deindustrialization, lack of jobs," and "lack of education" that has characterized this era, impacting poor people of color in particular.

Although mass incarceration as a tool of oppression entails less blatant violence than past forms of racial control practiced in the United States, its impact has nevertheless been harmful and extensive. The institutionalized racism inherent in this system has led Alexander to describe U.S. mass incarceration as the "new Jim Crow," likening it to the "racial caste system" maintained through racist laws and violence after the formal abolition of slavery.

University of London professor Laleh Khalili agrees. In Time in the Shadows: Confinement in Counterinsurgencies, she examines continuities in carceral strategies from 19th-century colonial rule until today. Khalili shows that while the use of mass incarceration rather than brute force to control "problematic populations" may have developed as one of the "more humane," "administrative and legal solutions" to social unrest, their aims have often been the same: "to oblige" an oppressed or "occupied people to admit defeat and recognize their own subjugation."

With the "war on terror," the practice of mass incarceration has expanded in use and impact, with a dramatic increase in the targeting of Muslim and Arab communities. An Associated Press report in 2011 found that in the United States alone, there had been 2,934 terrorism-related arrests and 2,568 convictions since 9/11--eight times the number of such arrests in the previous decade.

Activists have raised serious concerns regarding the "discriminatory investigations" and "questionable" prosecutorial tactics that have characterized many of these cases. These allegations were detailed in a report by Human Rights Watch and Columbia Law School's Human Rights Institute, which cited prosecutors' use of "evidence obtained by coercion, classified evidence that cannot be fairly contested, and inflammatory evidence about terrorism in which defendants played no part" to convict suspects of terrorism.

Another unsavory feature of these cases has been "fabricated war crimes," including "conspiracy" and "material support," that have been widely used to convict people when in normal legal circumstances there would be no grounds for charge. Moreover, nearly three-quarters of convictions in the "war on terror" are "based on suspicion of the defendant's perceived ideology and not on his/her criminal activity," according to a report published by
the Muslim civil rights group SALAAM and the National Coalition to Protect Civil Freedoms.

Additionally, "war on terror" cases in the United States have reinforced the widespread use of plea-bargains against individuals from marginalized and oppressed communities, with over 90 percent of cases settled through pleas before going to court. According to SALAAM, "terror enhancement" effectively quadruples normal sentences, enabling prosecutors to "force defendants to accept plea-bargains as the only alternative to draconian prison terms." Once in prison, these detainees and prisoners are subjected to "harsh and at times abusive conditions," including "prolonged solitary confinement and severe restrictions."

Perhaps the most notorious of the U.S. "war on terror" incarceration sites has been the extralegal regime at Guantanamo Bay, where a majority of the remaining 149 prisoners have been long cleared for release. Inmates in this island prison have been subjected to cruel, inhuman, and degrading treatment--including torture and long periods of solitary confinement--without the opportunity to see or challenge the alleged evidence that sent them there. Detainees who have launched hunger strikes in protest of their conditions have been force fed through tubes brutally shoved down their throats.

Added to that are the numerous "war on terror" extraterritorial and extralegal "black sites" that have been established across the world, as well as the harsh incarceration regimes found within U.S. borders, most notoriously the Communication Management Units (CMUs). Described as "little Gitmos" due to their similarities to Guantanamo Bay, these self-contained units within the federal prison system employ harsh segregation and control measures against largely Muslim detainees.

Such legal regimes, when coupled with broader targeted surveillance and policing, have an immediate and tangible impact on individuals, families, and already marginalized communities. They have also been "imperative," as the sociologist Nisha Kapoor has argued, "for retaining racial hierarchies and facilitating racial interventions within the West itself."

**Rise of the National Security State**
Now rounding out its 13th year, the U.S.-led "war on terror" has featured racist and repressive national security practices as well as extensive physical and structural violence both within the United States and abroad.

Through the power it exercises in international institutions like the United Nations, the United States has also sponsored the restructuring of "counter-terror" legal architecture in states across the globe. As the principal author of what Princeton University professor Kim Lane Scheppele has termed "global security law," the U.S. government has contributed to
the violence of both administrative control as well as harsh policing tactics employed by neoliberal and authoritarian states to manage populations and corral political dissent. With the violent policing of American black communities traceable back to the "slave patrols" of the early 18th century, the origins of the U.S. national security state are particularly deep-rooted and brutal. Yet although the context is different, the United States' own history of settler-colonialism and techniques of racial and economic domination yield many similarities with Israel.

Importantly, both states operate according to a "national security state" logic, in which a host of violent as well as mundane administrative practices result in physical harm and limits to individual and group freedoms.

Linked to the notion of a "state of exception," a context in which a state claims leeway to violate a host of legal and constitutional norms, the national security state requires a dehumanized "Other" to sustain its politics of fear. Those constructed as "Other" are deemed threatening not on the basis of their actions, but rather on the basis of their identity or perceived ideology. In other words, it is not what they do, but who they are (Blacks, Palestinians, Muslims, Arabs, Islamists, etc.) that matters in determining whether a criminal act has been committed. Inversing the logic of the law, the Other in a "state of exception" is guilty until proven innocent.

The national security state is characterized by a concentration of power in the hands of the executive, violations of due process and other constitutional guarantees, and liberal use of the state secrecy prerogative. It also entails increased restrictions on speech, association, and privacy; the targeting of whistle blowers, lawyers, and civil liberties advocates; the criminalization of entire communities; and an expanded role for the military and intelligence agencies in civil life, including through the militarization of the police and the use of violence against civilian populations.

These phenomena, which have been part and parcel of Israeli and U.S. forms of control, have come under the media spotlight in recent weeks. Protests in Ferguson over a white police officer's fatal shooting of Michael Brown, an unarmed black teenager, were met with tear gas, rubber bullets, and lines of riot police in military-style body armor. Although this particular killing attracted national attention, it was by no means novel. Pointing out the precariousness of black life in the United States, a recent report by the Malcolm X Grassroots Movement noted that "police officers, security guards, or self-appointed vigilantes extra-judicially killed at least 313 African-Americans in 2012" alone.

As in Palestine, resistance in the streets of Ferguson has been met with violence, leading several shocked Ferguson protesters to compare the local police to Israeli occupation forces.
Some analysts pointed out that Ferguson and St. Louis County police forces had even received training in Israel.

Drawing his own parallels, Stanford senior Kristian Davis Bailey described what he witnessed on a recent trip to Palestine as a "dystopic mashup of the pass laws Blacks faced in apartheid South Africa and the cruel humiliation of the Jim Crow South." These similarities are not coincidental. As Israel's most prominent backer, the United States underwrites Israeli repression to the tune of over $3 billion dollars a year. Yet that influence is not unidirectional--the United States borrows Israeli legal justifications as well as militarized policing tactics and forms of torture employed in prisons. There is also the shared equipment and services supplied by private security companies to both states.

By providing sustenance for the politics of fear that underpins the "war on terror," these practices further institutionalize racism, increase hostility towards Muslim and Arab communities in the United States, and justify intervention in Muslim and Arab countries.

As sociologist Lisa Hajjar argues, "One way a government can project the appearance of acting in accordance with the law is to produce interpretations that the law does not apply." Both Israel and the United States have used such legal obfuscation and evasion, as well as the elaboration and adoption of new laws, to justify inhumane treatment and oppressive rule. It is often not violations of the law, but rather the law itself that functions as a tool of power.

Mass incarceration has a devastating impact on individuals and communities. As a form of state terror, it is designed to strike fear in whole communities and prevent the establishment of sustainable bonds, based on justice and respect, between state and society. By breaking up and isolating members of movements and pressuring individuals to collaborate, dissimulate, and betray their beliefs, it causes alienation among brothers, sisters, and comrades. And with the law often functioning in service of power rather than justice, prisons serve as the handmaiden of legal oppression.

Despite the overwhelming imbalance of power, resistance is growing--in Palestine, as well as in the United States. From prisoners' hunger strikes to boycotts, divestment, and sanctions (BDS), and various forms of protests reclaiming public space, broad-based movements driven and led by those individuals whose rights and humanity have been denied for so long in the "halls of justice" are coalescing around effective strategies for change. Activists are increasingly focusing in on the symptoms of incarceration as a repressive governance tool, as well as on the national security state paradigm to which it is linked--which is itself connected to a much broader system of political, racial, and economic injustice.
In so doing, these movements bring us closer to the day when the law may finally become a tool of justice rather than oppression.

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