1. Emergency Rules

Legally speaking, Israel is in a permanent state of emergency, or rather – a permanently re-enacted temporary state. It was declared in 1948. Until 1996, it used to be renewed quite regularly by a simple pronouncement of Israel’s government, each time for a period of six or twelve months. Since then, it has been repeatedly renewed by the Israeli parliament. The state of emergency empowers the government to issue ‘emergency regulations’ pertaining to very varied fields of life; its existence is also essential for the British emergency regulations, issued in colonial Palestine, to remain in force. Some persist as dead letter, others are regularly applied: From the conscription of private vehicles for military needs, the Emergency Labor Service Law, which has been used in the past to ban strikes in essential services, through land confiscation measures and price regulation to serious limitations of the freedom of movement.

The state of emergency provides the legal basis for the Emergency Powers Act (1979), which authorizes the Ministry of Defense – actually called in Israel ‘the Ministry of Security’ – to detain citizens and non-citizens without charge or trial for up to six months. Administrative detention is in principle renewable indefinitely, subject to district court review. Detainees have the right to legal representation, but the court may rely on confidential information – pertaining to security – to which the defendants and their lawyers are not privy.

In 1999, Israel’s Supreme Court instructed the government to repeal all pieces of legislation whose force depends on the state of emergency. Successive governments have failed to comply. The state of emergency itself was declared four days after the foundation of the state. Yet actual siege has given way to a convenient legal fiction which has authorized extraordinary measures of all sorts, many of which have had little to do with security, even in its widest sense. ‘Closed military zones’, first defined as security zones along Israel’s frontiers during the war of 1948, proved elastic enough to be stretched and expanded;¹ they were used to curb the freedom of

movement, especially of Arab opposition activists, and to support the Jewish settlement project – first within Israel’s pre-1967 borders, then in the Occupied Territories. After June 1967, with the military occupation of the West Bank, the Golan Heights, Sinai desert and the Gaza strip, the emergency regulations have found massive use in the occupied territories as an instrument of primary importance in the process of colonization.

This permanently renewable temporary state of emergency has long been recognized as a fiction which allows a state, proud of its democratic institutions, to circumvent its declared commitment to human rights in the name of security. There is nothing special about it. We have come to learn that democratic institutions and human rights are indeed fragile creatures, highly sensitive to perceived threats and discourses of security. So are we.

The Emergency Defense Regulations are a colonial legacy. First, in the simple legal sense: Like so many other peculiar features of Israel’s polity, they owe their shape to the British Mandate (1921-1948). The Emergency Regulations were promulgated by the British during their rule of Palestine to curb political opposition in the 1930s and 1940s. Indeed, they were used against both Arab and Jewish nationalists opposed to British presence in Palestine. They had been denounced as undemocratic and outrageous by Zionist lawyers, before being eventually adopted by the State of Israel itself.

The Emergency Regulations, however, are more than a remnant of the colonial past: they persist because they are rooted in a colonial present. Colonial situations subvert the familiar distinction between war and peace as clearly demarcated opposed states; instead, they are characterized by continuous hostilities as an essential aspect of a process of social transformation, with warfare – intense or subdued, always lurking at the background and often merging into other dimensions of colonial violence. A permanently renewed state of emergency seems to fit this situation: it offers a convenient mediation between normality and emergency. It is the half-institutionalized embodiment of that particular combination of war and peace.

More importantly, emergency regulations have proved to be effective tools in the colonial process – both within Israel itself and in the occupied territories under its military control. The wide powers they grant were used within Israel to expropriate the Palestinian native population – a process largely completed by the mid 1960s.

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After 1967, Israel’s other colonial project – in the West Bank and the Golan Heights – has required crashing the resistance of the local population and opening spaces for colonial ventures. Emergency regulations have offered wide opportunities for circumventing legal norms and creating rule-free zones, essential for frontier situations and their colonial dynamics.⁴

This might explain why the State of Israel, which has undergone an enormous process of institutionalization, refrains from supplanting the emergency regulations with proper legislation. Human Rights organizations have argued that the authorities fear that new laws – attenuated functional equivalents of the old emergency regulations – would not withstand judicial review and might be revoked by Israeli courts.⁵ It is as if the state refrains from accomplishing its own transformation into a Rechtsstaat; it favors the makeshift solutions and embarrassing historical relics of British rule to due process and formal legislation.

This, I believe, is one of the significant ways in which the colonial process leaves its imprint on the state itself, for it requires continuous de-territorialization, maintaining the thrust of settlement and subverting permanent structures, civic control and formal legal arrangements. The settlement movement is not only aimed at transforming the social and physical landscape of the occupied territories and combating the local population; its goal is also to reshape Israeli society by creating a moving frontier that unsettles the historical process of settling down. Fences, walls and checkpoints fill the landscape of the West Bank; but the settlers’ and soldiers’ action is hardly checked by boundaries and limitations. In that, it offers an extreme image of Israel itself: A settler society that refuses – or finds itself tragically unable – to settle down, able to pacify the conquered, but not to attain peace. Emergency rules.

1. Containing Violence

Spring 2004: I’m sitting at the courtroom in Kfar Saba, writing notes. This time, a settler is sitting on the dock, charged with shooting a peace activist, my friend A, who teaches Latin philology at the University of Jerusalem.

In October 2002, during the olive harvest, groups of Israeli activists accompanied Palestinian villagers to olive groves which through continued settler’s violence had gradually turned into no-go areas for Palestinians; eventually, such areas were de facto seized by militant colonists. The idea was to enable Palestinians to

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repossess their lands by joining them in the olive harvest and standing by their side in case of settlers’ attacks.6

A’s group joined the villagers of Einabous, a village in Nablus area, and it was indeed attacked by armed settlers from the neighboring settlement Yitzhar. The settlers came from the hilltops, shooting in the air until almost everyone had fled the area; A remained by the olive tree he was harvesting. ‘I’m an Israeli,’ he shouted at them. ‘I’m not leaving the tree’. ‘Shoot him in the leg’, one of the armed settlers was heart saying to the defendant, who reclined on the ground and opened fire. The bullet hit the ground a meter and a half away from A, who thought he got away unscathed. Only two days later, transported urgently to the hospital to with high fever, did A realize he had been hit; a debris from the ground had penetrated his belly and was surgically removed.

It took some convincing to make A file a complaint. Palestinians, he said, are being shot every day and ignored – why should my case be accorded special treatment? 7 Eventually, he went to the police station of Ariel – one of the largest settlements in the West Bank, with a population of some 16,000 inhabitants – to file the complaint. The policemen said there was little they could do because there was no way to identify the culprit. They did not give him the impression of trying very hard.

However, several weeks later, while surfing on the internet, A came across photos taken by another activist during the clash in the olive groves – and recognized


the person who shot him. Here was a case of clear identification – or so it seemed until the hearing at the court began.

A’s choice of a somewhat bookish term to describe his assailant’s stature was misunderstood by the investigating police officers. The police also failed to undertake even the most basic investigation procedures. More crucially, the defendant could rely on the unanimous exculpating testimony of fellow settlers who were with him during the clash. It also seemed – at least to us – that the judge favored the settlers, or at least could not really imagine how things looked like there, on the hills of Nablus area. By the end of the day it became clear that chances of conviction were slim.

This is certainly not an isolated case. The statistics of Yesh Din, a human rights organization focusing on settlers’ action in the occupied territories, shows that between September 2002 and September 2005, Israeli courts dealt with 392 cases of Israelis charged of criminal offences in the northern part of the West Bank; 257 were convicted. Only 11 Israeli citizens were charged of criminal offenses against Palestinians’ and 4 of them were found guilty. For anyone who knows her or his way about the hills of the West Bank, such numbers only confirm common knowledge: The real rulers on the ground are the settlers. Everyday knowledge points here to a deeper, structural feature of social reality: if we conceive power not solely in terms of control or formal enforcement, but in terms of the capacity to restructure social

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relations and everyday practices, to transform the social and physical landscape – then
the settlement process is not a sort of appendix to the state’s control or to military
rule, a violation of the norms of military occupation: Colonization is the heart of the
matter, while military control is but the protective shield that enables that particular
social transformation we call colonialism.

Indeed, the Israeli army and police have often claimed they were helpless in the
face of settlers’ violence; individual soldiers also occasionally expressed their
frustration when confronted with armed settlers. This is certainly often an excuse for
inaction and actual collusion, but there is an element of truth in these claims: The state
of Israel cannot enforce its laws on thousands of organized settlers, enjoying formal
and informal privileges, constantly present on the ground and operating paramilitary
forces. Facing a cohesive, privileged group of this sort, a social movement for which
harassment and terror are not merely individual offences but a collective social
strategy, a crucial element in the colonization process, the limitations of individual
law-enforcement according to liberal principles become evident. One could of course
resort to collective punishment, but this is reserved for Palestinians.

Yet the situation is more complex. For the settler who was accused of shooting
during the olive harvest, apart from claiming he was not the one who shot and relying
on the unanimous testimonies of his comrades, had a more basic claim to make: He
was not some bully, but the personification of law and order. True, he wore no
uniforms, but in fact he was the head of the local settlement guard, the security officer
acting quite autonomously but affiliated with the army. He was not an anonymous
criminal, but well-known to the soldiers as the one in charge of coordinating security
issues with the local army units. Security was his business, and he came to keep the
peace. He was actually the local, not those leftists; were it not for those provocateurs
who came from outside, pretending to help the Palestinian, he would have had no
problems with the Arabs. He knows them well.

This should turn our attention from the limitations on the state organs’ capacity
to enforce law in the colonial frontier, to the proliferation of local armed groups – to
the actual alliance between the state and the settlers and their militias. Heavy state
subsidiies and government infrastructure enable their actual domination in the West
Bank. Power – even modern power – works in this case through a complex division of
labor with organized movements, armed settler communities – should I say civil
society? This is undoubtedly a conflict-ridden collaboration; one is reminded of vivid
images of settlers and soldiers confronting each other during Israel’s pullout of the
Gaza Strip (Summer 2005). Yet even during this direct confrontation, cooperation
continued – first and foremost through massive state investment in building
settlements, assigning army units to protect them and expanding the system of fences, roads and settlements that lies at the heart of this particular colonial project.

At variance with the image of an omnipotent state enjoying full control over its population and a formal monopoly over the use of violence, we encounter here a no less powerful form of domination, in which colonial dynamics require cooperation between the state and “civil society”, and occasionally even a formal delegation of authority. This has nothing to do with the State of Israel being ‘week’ in any sense; by any of the standard criteria, this is a formidable, centralist, state enjoying strategic control of essential resources.

How exceptional is this? Can this be but a limiting case of a more widespread trend? Looking around us, we can see that private enterprise, security firms, private armies and mercenaries, protection brokers and military subcontractors – all familiar to any historian of early modern Europe – are back on the scene not only between Israel and Palestine, but elsewhere as well. The seem to proliferate on the frontiers – indeed, on some of the more treacherous fronts, it is politically more opportune to post them rather than regular soldiers, accountable civilians in uniform; more fundamentally, it seems that here it becomes ever more difficult to delimit state authorities from contractual arrangements. One may perhaps detect some sort of movement from the periphery to the center. At least in Israel’s case, retired Israeli officers often used to embark on a second career in building and supervising private armies of the third world. Nowadays, however, such entrepreneurs of violence and some of their typical technologies are reintegrated within Israel; major construction corporations, for instance, are building Israel’s system of separation fences and private security firms are taking over parts of the checkpoint system.

3. Living with Checkpoints

The last part of my paper focuses not on particular incidents, but on a prevalent, repeated experience, perhaps one of the most basic daily experiences of life in the West Bank since the early nineties: The checkpoint. I should say in advance that my experience is limited and I do not claim to represent the experience of Palestinians living under the system of checkpoints, unmanned roadblocks, passes and special permits, fences, walls and yellow gates which divides and wraps the whole of the West Bank. There are hundreds such checkpoints in the West Bank, dividing

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Palestinian localities from each other.\footnote{Avi Issacharoff, „World Bank Scolds Israel for Impeding Travel in West Bank,“ Haaretz, 9.5.2007.} I did cross checkpoints occasionally with Palestinians, that is, without making use of the privileged access and sometimes even the separate lane reserved for settlers and Jewish Israeli citizens.

What I shall try to do, with the help of a few images, is to pose some questions about the sort of power embodied in the checkpoint system – and the specific experience it gives rise to.\footnote{Some useful accounts: Azmi Bishara, Checkpoint, Rachid Akel trans. (Arles, 2004); Lia Nirgad, Winter in Qualandia. Strassensperre zwischen Jerusalem und Ramallah (Neu-Isenburg, 2005), and the documentary film by Yoav Shamir, Checkpoint (Israel, 2003), 80 Min.}

How would you describe the experience of being controlled by a voice, sometimes coming from a behind a concrete wall or a dark booth, sometimes from a pillbox over your head.

Bei Iba Checkpoint; photo: Esther Tsal
The voice has a limited vocabulary: Go ahead. Stop. Turn around. Take off your coat. Turn left; turn right (are you carrying explosives?).

*Bei Iba Checkpoint; photo: Esther Tsal*

Open your bag and show its contents. Wait. And then: Go. Or sometimes: Go back, no passage.
This voice is omnipotent and arbitrary. There is no appeal, decisions are final; protest is punished immediately: standing for hours in the fields, hands up; confiscating your car keys, your papers; being humiliated in front of all the checkpoint community, waiting in the queue. I can’t forget a blind young man in Kalandya, back in 2002, being escorted by a relative. They stood in the middle of that no-man land, the queue behind them, facing the concrete booth. The relative was ordered to leave; the blind man was left alone. In the end, he gave up and returned.

The soldier at the checkpoint decides whether you may arrive home or to see your relatives within 20 minutes or 6 hours, whether you get to work at all, whether a pregnant woman may reach the hospital, whether the children would reach school.
Sometimes it is enough for the soldiers not to be there: the yellow gate at the fence remains closed, the schoolchildren wait and then go home.

Faced with this sort of power, you should not try to plan your day, to make appointments, to have a schedule. Resign yourself to a condition in which you cannot foresee what would happen. You never know. You wait.
Sometimes you don’t see the soldier’s face, just a shadow behind a window; sometimes you can see a rifle; in the smaller, more improvised checkpoints, you get to meet a young soldier. He knows you, and knows nothing about you.

He knows a lot because the West Bank is under complete Israeli surveillance. Israel controls the Palestinian population registry,\(^\text{13}\) observes the land from the air and operates an effective network of collaborators and informers. The soldier may find in his lists that for some reason – both of you may not know the precise one – you are not eligible to cross the checkpoint: you may be a young male, not yet 35, you may have some relative in one of the Palestinian political organizations or involved in armed clashes or attacks on civilians. In the case of the separation fence, only a fraction of the villagers are allowed to cross the yellow gates and reach their fields, usually only the elderly. As a rule, the soldier would not know on what grounds you are barred from crossing the checkpoint. He is all-knowing, and knows nothing.

More importantly, he – or sometimes she – knows nothing about you as a social being, about your reasons for visiting your aunt, or where you daughter studies: Unlike forms of intrusive power that governs communities, this form of power ignores the local implications of its actions. In the past, Israeli occupying forces controlled the daily lives of Palestinians in the West Bank through massive

\(^{13}\) Amira Hass has repeatedly drawn attention to the strategic importance of Israel’s control of the population registry; see, e.g., Hass, “No Direction Home,” *Haaretz*, 13.10.2005.
interventions in the social fabric – controlling access to health services or building permits, maneuvering local factions and allocating privileges in classical colonial fashion. Yet the checkpoint system allows power to control access and movement without actually entering local communities and without assuming responsibility for the consequences; it leaves people to their misery and prefers action at a distance. Limiting human contact to the minimum, it focuses on gate-keeping and maintaining fences and walls; it is oblivious to the social implications of its action, and reinforces mutual deionization and ignorance.

Finally, there is an enormous distance between this power and those finding themselves subjected to it. The soldier at the checkpoint does not speak your language. He often has never been to the place you’re coming from or the one you’re heading for. He is often too young to understand the plight of a family, or to sympathize with the cares of parents and breadwinners. And omnipotent as he is, deciding your fate without appeal or discussion, he is often afraid. He is nineteen or twenty years old; he has no reasons to trust you, seeing you only as passing through, a walking potential, and he knows stories of suicide bombers and killer attacks.

What kind of power figuration is this? It is certainly not providential power, and obviously remote from images of governance and comprehensive control, designing social textures and shaping subjects. Its intervention is punctual, its grip short and
painful. It has supervision, but no need for circumspection. It is no less modern than other forms of power we speak about: Other figurations of power – providential, seeming rational, all-intrusive and productive – have certainly not vanished, but I would simply suggest that the one sketched here grows in importance.

If that form of modern power – governing, designing and shaping people’s lives – diagnosed among others by Foucault is indeed meaningfully related to the rise of industrial societies, the one we catch a glimpse of at the checkpoint may be correlated with the growing number of people who are not worthy of being exploited, who are by definition a living danger. Its logic is that of containment; its fleeting subjects are perceived not in terms of their potential productivity, but of the potential danger they embody. In other corners of the world, such power may be experienced for short spans of time at gates and ports, in transitory spaces marked by anonymity and fragility. In the West Bank, this form of power has become all-pervasive, leaving its imprint on the everyday lives of hundreds of thousands.

What terms would capture the daily experience of those subjected to this form of power – omnipotent, arbitrary, hidden, all-knowing and ignorant, too distant to communicate with, close enough to see your bags and strip you of your clothes? Wouldn’t it be useful to think about this soldier as a minor hidden God, controlling your movements, unpredictable, all-powerful? Wouldn’t specific religious idioms not be the most accessible cultural repertoires for capturing this experience? It is a specific form of helplessness, facing a hidden, arbitrary power, with few chances of mediation and patronage, of securing a modicum of predictability. Few modern cultural idioms can encode and make sense of this experience. Perhaps we need historians after all.