

Settler Colonialism and the State of Exception: The Example of Palestine/Israel

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Discourse on Israel, both propagandistic and analytical, has the peculiar tendency of representing it at one moment as normal – a normal democracy, a normal Western society, a normal state – and at others as exceptional: a democracy uniquely embattled among hostile neighbors, a secular state that historically fulfills the religious destiny of a people, a democracy that defines itself as a state for a single people and religion, the only democracy in the region, and so forth. At times, defenders of Israel lay claim to its normality as the reason to exempt it from the norms of human rights and international law, at others complain that Israel is being ‘singled out’ for criticism. This paper argues that these apparent contradictions, over and above their value to public relations opportunism, can best be explained by understanding Israel’s occupation of Palestine as an exemplary settler colonial project whose contradictions are embedded in the early framing of Zionism and whose unfolding follows a logic long ago analyzed by Albert Memmi and other theorists of settler colonialism.

I was trying to think Palestine, Palestine for itself, ‘itself alone’, as the Irish say. But instead, I found myself thinking, and writing, ‘Palestine/Israel’, as if Palestine cannot be thought of and by itself. This gesture is one that proponents of Zionism have succeeded in imposing as a condition for even thinking about Palestine: it cannot be thought, rather, may not be thought, as an autonomous sovereign entity, giving the law to itself. Palestinian nationality, Palestinian statehood, if they can be contemplated at all, can only be proposed by permission of Israel and its patrons. To think or speak of Palestine as one would of any other nation, on its own terms and without obligatory reference to another, is ruled out. By the same token, one can equally think of virtually any nation in relation to another without denying either’s sovereignty. Except in the case of Palestine. The nation, which may have an ideal or cultural existence

even without a state, achieves sovereignty only once it exists in the Weberian sense as a state that maintains the monopoly of legitimate violence within its given territory. Such a status is precisely what successive Israeli governments have unilaterally denied to Palestine, reserving it as a space that, while subject not only to law but even to a labyrinthine proliferation of laws, lacks either the capacity to give itself the law or the right to offer its subjects full citizenship. For the Palestinian, the correlative of the lack of sovereignty is to inhabit the shadowland of a lacking or partial citizenship. In Israel, those Palestinians who remain on sufferance are faced with the malicious shell-game of holding formal citizenship (*ezrahut*) while being denied the right to nationality (*le'om*), which is reserved for Jews only and which grants the most substantial rights, including that of return.

This denial to Palestine of a sovereign state of its citizens indirectly affirms the sovereignty of Israel over Palestine and its status as a member of what we might call the modern network of privileged Westphalian states, through which 'sovereignty has been established as the central institution of the international system'.¹ The corollary of this relation between a Westphalian state with sovereignty and a nation without it is, as Dario Battistella notes, that a distinction is created that subjects the latter to conquest and occupation without recourse:

after the emergence of the Westphalian system in Europe, the non-European territories continued to be perceived as 'land free to be occupied', while in the European international society of the time war had become a 'resort to arms among *personae morales*', i.e. between entities recognizing each other's right to exist independently as sovereign units.²

It is this dyadic structure that constitutes the oscillating relation between norm and exception that, as we shall see further, constitutes the paradoxes of the Israeli-Palestinian relation. It is also that structure that makes the Israeli claim to being a 'normal' or 'civilised' Western state inseparable from its status as a 'settler colonial' state, investing as it does 'land free to be occupied'. Hence it is also impossible to think Palestine without thinking

simultaneously of that which negates it; it is impossible to think Palestine without thinking it in relation to that which covers it, displaces it, namely, Israel and Zionism. Whenever one thinks of Palestine, one is thus faced immediately with the paradox of the 'present absentee', of the one whose identity is shadowed by non-identity, in the peculiar after-life or afterglow of the disappeared.

These are not new perceptions or new issues. As Edward Said put it, over thirty years ago already: 'All the constitutive energies of Zionism were premised on the excluded presence, that is, the functional absence of "native people" in Palestine'.³ What topologies emerge from that peculiar but essential – existential and legal – formulation 'the present-absentee', both an actual designation and a resonant metaphor for the perpetual predicament of the Palestinians, both in their homeland and on the world stage?⁴ This peculiar condition of being absent even when all too present, or of presence manifest in absence, of being outside even when all too much inside, however metaphysical it may appear, is one that both follows the spatial logic of ethnic cleansing and occupation as material phenomena and conforms to the logical space of the exception, that space where the constitutive force of law or state is manifested in its suspension.

Is this a singular condition, we may ask, making Palestine/Israel an exception to the rule of nations, or one that makes Palestine/Israel exemplary, exemplary of settler colonial states or even exemplary of states of exception? Does this nexus of settlement and displacement represent the lingering legacy of a past whose specific characteristics have been abolished or forgotten elsewhere? Or does it stand as the cusp of new formations whose features threaten to become the general mode of the future? The more pressure we place on these seemingly paradoxical or incompatible questions, the more we will see that they are in a peculiar sense determining of the question of Palestine, of its framing as of its concrete issues. For the contradictory claims to exemplarity and at the same time to exceptionality saturate the discourse on Israel, and therefore on Palestine, to what one is tempted to call an exceptional degree.

If the thinking of Israel/Palestine is already thus at once divided and indivisible, so too are the distinctions between the

exemplary and the exceptional. We may start by considering the ways in which, in a quite colloquial sense, Israel/Palestine can be framed as exemplary or unexceptional, and the ways in which such a self-presentation is crucial to Israel's claims to normality and legitimacy. On the one hand, Israel presents itself as an exemplary and therefore 'normal' state predicated on the no less normal desire of a historical people for a homeland or a nation-state of their own – of which there were many examples in Europe in particular at the moment of Zionism's foundations. Yet, at the same time, Israel is no less an exemplary settler colony, typical of numerous settler colonies of which, again, nineteenth-century Europe had spawned numerous instances. There was, as Said pointed out, nothing exceptional in this in the early days of the Zionist movement:

It is important to remember that in joining the general Western enthusiasm for overseas territorial acquisition, Zionism *never* spoke of itself unambiguously as a Jewish liberation movement, but rather as Jewish movement for colonial settlement in the Orient.⁵

There remained, therefore, a 'deeply ingrained [...] anomalous imperialist perspective basic to Zionism' even as it claimed – and still claims – to represent an emancipatory project akin to the desire for self-determination of other small, ethnic nations. Early Zionists, indeed, despite the claim to have located 'a land without people for a people without land', were far more willing to admit the colonial dimension of Zionism and correspondingly the legitimate existence of the Palestinians as a people than are Israel's contemporary defenders. A Jewish state, populated by settlers predominantly from Europe, would, as Herzl put it, 'form a portion of a rampart of Europe against Asia, an outpost of civilization as opposed to barbarism'.⁶

The question then emerges as to whether we can then think of Israel/Palestine, as Israel's supporters ask us to, as an instance of a conflict that is the effect of a normal nation state seeking to secure its sovereignty against an external threat. 'Any civilised nation would have done the same' is the appeal that is reiterated every time Israel assaults Gaza or invades Lebanon on the grounds of a defensive

counter-terrorist response. Such a claim requires the invocation of the 'state of necessity' that Denise da Silva has recently explored as founding the very reason of the emerging formations of the state, in a formulation that at once spells the present danger it faces and displaces the objects of its violence into the condition of a subjection to nature or impulse that absents them from the community of the civilised.⁷ It collapses, then, the claim to normality into a claim to domination predicated on the distinction, Westphalian in kind, between the civilised and those who are not understood as moral actors and whose lands are therefore expropriable. Should we, therefore, see the dynamics of the conflict as rather being typical of the unfolding of a settler colonial regime and of its efforts to *reduce* – in both senses – the indigenous population? If so, then one of the paradoxes of the Israeli case is that the more fervently it presses its exemplary status, the more evident becomes its anomalous condition as a permanent state of exception.

It is the former model, which presents Israel not merely as a 'normal' nation-state but specifically as belonging to the community of European-style or 'Westphalian' nations, that is generally invoked by Israel and its defenders. The claim is somewhat double-edged if one considers the ideological origins of Zionism and the state it eventually founded and profoundly marked. Zionism emerged among the largely assimilated, predominantly secular Jewish communities of Central Europe, of whom its founder Theodor Herzl was an entirely typical representative. Accordingly, the foundations of Zionism are imbued with the contradictory pulls of European nationalisms in general, between an inwardly directed demand for self-determination and an outwardly directed desire for expansion through the colonisation of others considered inferior to Europeans – those lands – and peoples – 'free to be occupied' of which Battistella speaks. Herzl's own trajectory, insisting on the *equivalence* of the European Jews to other European nationalities and therefore on the right to self-determination while at the same time negotiating with the German Kaiser, British Colonial Secretary Joseph Chamberlain, and the Ottoman sultan in turn for a land to colonise, embodies the terms that would come to shape Zionism through and through.⁸ Zionism's conception of nationality lay in the ethnic but largely secular nationalisms of Europe. Like its nineteenth-century European forebears, Zionist nationalism was founded in the belief in the

historical destiny of a given people to self-determination and sovereignty. That belief, which, as Benedict Anderson most famously argued, was not only 'imagined' but also inseparable from the secularisation of the political sphere, was nonetheless accompanied by a quasi-religious belief in a deep, almost mystical link between people, land, and language, a belief that descended from the cultural politics of Herder through the more virulent Germanic nationalism of Fichte.⁹ Given that inheritance, European nationalisms have generally harbored a deep prejudice against racial mixing that belies the liberal, rights-based claims of the secular and democratic idea of the state that is their Enlightenment legacy. In these respects, Zionism and the Israeli state do indeed manifest the characteristics of a typical European nationalist formation.

But Zionism, unlike the secular nationalisms it was modelled on, was also imbued with traditions of messianism, a belief not only in the historical destiny of the Jews both to return from the diaspora to Zion but also in the association of that return with the return of the Messiah and the inauguration of the end of times. As Jacqueline Rose has shown, even a secularised version of such religious messianism could not escape its vocabulary and – in most cases – its connotations. Indeed, secular Zionism was always haunted by the traditions of messianic redemption, such that 'we can fairly ask whether the affinity between Zionism and messianism is too intimate and powerful to have ever been anything other than partially – and finally unsuccessfully – repressed'. In ways extreme enough to distinguish its terms from the secular religiosity of all but the most extreme European nationalisms, 'the language of secular Zionism bears the traces and scars of a messianic narrative that it barely seeks, or fails, to repress'.¹⁰ Even the common enough reference to the quite secular Herzl as a 'Moses' or Messiah of Zionism betrays the interfusion of secular and religious claims. The end result was inevitably an apocalyptic strain of divinely-sanctioned destructive violence whose counterpart is the over-wrought conviction that every conflict involves an existential threat that might spell not the end of times but the end of Israel. At the same time, the messianic strain in Zionism, which sanctions in the most unarguable terms the notion of a 'Jewish state for a Jewish people', no less justifies – in both its religious and its secularised versions – the ethnic cleansing of

Palestinians in order to make way for the 'ingathering of Jews' in preparation for the Messiah's return.¹¹

The nice ambiguity of Rose's phrase, 'it barely seeks, or fails, to repress', points up the ways in which the 'intimacy' of secular Zionism and religious messianism culminates in what is at first sight an irresolvable contradiction between Israel's normalisation and its exceptionalism. As a state, Israel seeks on the one hand to be accepted as one among the community of advanced democracies; on the other, it demands to be excepted from the norms of international law and human rights conventions on the basis of its peculiar destiny as a state in which ethnic nationalism and religious prophecy are enshrined and which is called on to defend. It is important to note that this exceptional conjunction long predates the advent of the Holocaust, itself an embarrassment to Zionists like Ben Gurion until the 1960s and their recognition that the fate of European Jewry (who had by and large not seen their future let alone their salvation in emigration to Palestine) could be exploited to political effect. 'A Jewish state for a Jewish people' was not a slogan or a project that responded simply to the genocide of Europe's Jews or was determined by the need for a sanctuary that would ensure that the Holocaust could happen 'never again'. Its ethno-nationalist demand – one that would in other contexts be dismissed as 'identity politics' – was rooted in the contradictory formation of Zionism itself. It produces what is an entirely irresolvable contradiction within the normally accepted terms of the liberal, secular state. Individually, Israelis and their supporters who want to be seen as liberal, cosmopolitan, humane, nonetheless demand that we make an exception for the practices and for the ideology on which their exclusive privileges rest, and which are fundamental to the state itself. Ultimately, the institutions of Israeli secular democracy rest upon the most extreme claim to a divine or messianic exception no longer allowed to any other state in the world.¹²

And yet the terms of this contradiction are, from another perspective, both familiar and explicable. That perspective is provided by the model of settler colonialism. This model, which Said sketched, has – as Uri Ram documents – been current not only among scholars critical of Israel, like Said, but even within the mainstream of Israeli sociology, however it may be discounted for

practical purposes in public discussions and representations of Israel.¹³ The settler colonial model has, indeed, peculiar explanatory force in accounting both for the phenomena and for the apparent contradictions of Palestine/Israel. In the first place, the predicament that confronted early Zionists, the anomaly of a nation-people who lacked a land that they had occupied continuously at any point in recent history, could only be resolved by colonisation. The identification of a land that could be occupied was of paramount importance though it was, in the first place, not of critical import to secular Zionists where that land would be located. Herzl, for example, initially considered locating the Jewish state in Argentina.¹⁴ From this fundamental requirement a series of conditions flow that make of Israel an exemplary settler colonial society. For what distinguishes a settler colony from an administrative or extractive one is in the first place the settlers' focus on the permanent appropriation of land rather than the political and economic subordination of the indigenous population, the monopolisation of its resources, or the control of its markets.

The expropriation of indigenous land for the express purpose of settling a permanent colonial population demands, as Patrick Wolfe has argued, one of two possible relations to indigenous population: their exploitation as a subordinated labor force, as happened in much of Latin America, Algeria and South Africa, or their more or less rapid extermination, as occurred in Australia, North America and the Caribbean.¹⁵ Israel has clearly engaged in both tendencies, as its initial dependence on Palestinian labor, mitigated to varying degrees by the importation of Jewish labor from places like Yemen and North Africa, has given way to the systematic if gradual exclusion and displacement of Palestinian workers and residents from Israeli-settled areas and their replacement by immigrants from South and South East Asia who are denied rights of citizenship.¹⁶ Neve Gordon has similarly detailed the ways in which the post-1967 occupation has undergone a shift in the modality of its governmental strategies from a bio-political model which required the incorporation and management of a subordinated and laboring population to a model of sovereign power that aims at the enclosure and eventual displacement of the indigenous Palestinian population.¹⁷ That famous slogan, 'A land without people for a people without land', has proven to be a performative rather than a

descriptive statement, spelling the gradual ejection of a people whose persistent presence has been a perpetual obstacle to the completion of the Zionist project.

In the dynamics of Occupation, the indigenous Palestinian population is subject both to management and gradual elimination. As Albert Memmi's pioneering work on settler colonialism suggested, both modes of subordinating the indigenous population require the assumption of a racial hierarchy: both the prestige and the legitimacy of the settlers depend on the conviction of their superiority to the indigenous, whether in terms of the higher development of their culture and moral values or in terms of material civilisation. 'Racism sums up and symbolizes the fundamental relation which unites colonialist and colonized'; it is not 'an incidental detail', but 'a consubstantial part of colonialism', he noted.¹⁸ On the one hand, it justifies the removal or exploitation of the colonised whose cultural and moral inferiority is demonstrated by the inferiority of their material conditions; on the other, it legitimates the privileges of the coloniser and the 'usurpation', as Memmi puts it, of indigenous land and goods:

Colonial racism is built from three major ideological components: one, the gulf between the culture of the colonialist and the colonized; two, the exploitation of these differences for the benefit of the colonialist; three, the use of these supposed differences as standards of absolute fact.¹⁹

These components, it may be added, work both in the form of a self-reinforcing loop and in a way that seems to intensify rather than diminish over time. Precisely as the coloniser becomes more established, the rigor of the divisions, the state of apartheid, between the settler and the colonised becomes deeper, to the extent, as we know, of the construction of walls and barriers, separate areas for residence and movement, and tightly controlled bantustans. The 'iron wall' that was for Ze'ev Vladimir Jabotinsky a metaphor becomes eventually realised in concrete form.²⁰ Where he envisaged an unchallengeable military strength as a means to bring the Arab

population to despair of regaining their lost lands, the Occupation has literally erected a segregation wall that fragments the West Bank, encloses its population in fragmentary islets of territory, and with dire literalism, separates Israelis and Palestinians. At the same time, the sense of the superiority of the coloniser's material culture within its own reserved zones is reinforced as that superiority is materially displayed and secured through discriminatory access to the social goods of the colony. Meanwhile the consequent and inevitable impoverishment of the indigenous becomes the sign of their innate backwardness.

And yet, for all they are immiserated by their ongoing dispossession, the indigenous population will not disappear. They present, therefore, an 'existential threat', a 'demographic time-bomb', in a post-holocaust world where the traditional forms of genocide directed at native peoples are no longer publicly acceptable. The superior proportion of settlers to the indigenous must be maintained by a combination of continuing Jewish immigration and forms of gradual ethnic cleansing or 'silent transfer' of Palestinians that demand the increasing expropriation of indigenous land and the displacement and confinement of the population into ever-dwindling spaces whose conditions of life become more and more insupportable. The daily abuse of human rights and international law, and the steady regime of state violence required to maintain it, produce a profound and insuperable contradiction between the aspiration to normality of the Israeli state and the actual practices that are essential to and constitutive of its existence rather than merely contingent responses to external threats.

Meanwhile, the constantly reiterated pretension of the superiority of the settler colony, both in its system of governance and in its social and moral values, to the population it has dispossessed and the states that surround it depends on an anxiously affirmed assertion of its own status as the representative of 'civilised values' in a 'backward region'. What in Memmi's terms was the constant reference back to the 'mother country' becomes in Israel's case the reference to a more diffuse but no less potent 'Western civilisation' of which Zionism has believed itself representative since the earliest days of the colonisation of Palestine.²¹ And yet the very maintenance

of 'a Jewish state for a Jewish people' has demanded in practice the institution of laws and measures that are in principle eschewed by 'civilised' nations, from the very ethnic exclusivity of 'a Jewish state for a Jewish people' that must maintain a distinction between 'citizenship' and 'nationality' to the denial of fundamental rights of free movement and assembly, or of access to basic resources like water and agricultural land. In the end, it requires the state of perpetual siege in which the lives of the majority of Palestinians in Gaza and the West Bank are spent. This normalisation of low-level violence (quite apart from the regular unleashing of disproportionate violence on civilian populations that has become an accepted part of its strategic posture) finds its legitimisation in an institutionalised racism that belies Israel's faith in its legality, democracy, and civic virtues. Its very existence depends upon the denial of fundamental rights to the indigenous population of Palestine purely on account of their ethnic identity as non-Jews.

This contradiction, moreover, is not a static one, but has unfolded both materially and psychically over time. As Memmi recognised, settler colonialism initially seeks to legitimate its conquest by the invocation of civilising ideals and a commitment to development or improvement of the colonised and their lands. Thus Herzl 'viewed the natives as primitive and backward looking' but 'hoped that economic benefits would reconcile the Arab population to the Zionist enterprise in Palestine'.²² But the fate of such ideals, sincere or opportunistic as the case may be, is finally determined by the hardening of the siege mentality that equally typifies settler colonial societies from the start. The settler remains perpetually on guard, poised for real and imaginary resistance behind an 'iron wall' whose institutionalisation preserves the attitude of an initial colonising minority within the very structures of the state. Rather than gaining confidence and therefore openness to the potential for change and accommodation as it gains power and security, the settler society undergoes a gradual hardening of its defensive psychic and institutional structures over time. Rather than expanding democratic freedoms and inclusivity, the more it appropriates in the name of security and development, the more deeply it becomes militarised, and the more it shapes draconian laws and restrictions on the rights of the colonised. 'Every colonial nation carries the seeds of fascist temptation in its bosom', Memmi noted.²³ Or, as David

Grossman put it in 2004, even before the second invasion of Lebanon, even before Operation Cast Lead, and even before the laws against the commemoration of the Nakba or sanctioning those who advocate for boycott, divestment and sanctions: 'it is impossible for a state to maintain true democracy while simultaneously upholding a regime of occupation and oppression'.²⁴

To use Memmi's terms, such contradictions produce in the 'colonizer who accepts' the reaction of 'rage, a loathing, always ready to be loosed on the colonised, the innocent yet inevitable reason for his drama'.²⁵ That rage manifests what Ilan Pappé has termed the 'righteous fury' that is 'a constant phenomenon in the Israeli, and before that Zionist, dispossession of Palestine'. It is at once a means of legitimation of unconscionable violence, a shield from world opinion, and a measure of the 'siege mentality' that characterises all settler colonies, even in the moment of their absolute ascendancy.²⁶ The settler's rage at the other is the antithesis of the internalised rage of the colonised that Fanon claimed affected the very bodily comportment of the native and which issued in acts of irrational violence against his own kind.²⁷ Memmi's emphasis is rather on the constant effect of 'disproportion' in the settler's response to any affront or to the least assault. As Pappé implies, such disproportionate rage lay behind the unconscionable massacre of civilians in Gaza that resulted in one hundred times the numbers of Palestinian dead to those killed on the Israeli side. It lay behind the massacre of civilians in South Lebanon in 2006 and in the repeated use of illegal weapons like white phosphorus and DIME, or Dense Inert Metal Explosive, from Beirut in 1982 to Gaza in 2009. Disproportionate response is by now the IDF's official military doctrine, designed to create the impression, as some generals have remarked, that Israel is 'crazy', capable of any excess in its own defense.²⁸ But the uncritical acceptance of such a response in a society that claims to be a liberal democracy and by a military that claims to be the most moral in the world, derives, if we follow Memmi, from a psychic and material conflict within the settler's predicament, one that requires the annihilation and not merely the regulation or containment of the indigenous. If Israelis' 'righteous rage' finds ample and distinctive fuel in Zionist messianism, its actual patterns and manifestations are not alien to the settler

colonial mentality as we encounter and analyze it in other sites or moments.

For Memmi's 'colonizer who refuses', the psychic response is no less vexed, as 'the leftist colonizer is part of the oppressing group and will be forced to share its destiny'. Accordingly, 'even if he is in no way guilty as an individual' he suspects that 'he shares a collective responsibility by the fact of membership in a national oppressor group'. In this dilemma, s/he wants to be sympathetic, or at least 'in dialogue' (the interminable dialogue industry of the 'peace process'), but remains unable to relinquish either the privileges granted by a colonial status or the overall project of the settler colonial state in whose supposedly civilised values s/he grounds the moral values that lead to the rejection of its excesses. The consequence is what Grossman, the very voice of a liberal and idealistic Zionism, describes as 'the unease of a moral dilemma' that arises when 'somewhere deep inside, every person knows [...] he is committing or colluding with an injustice'.²⁹ Meanwhile, whether in rage or in guilty pathos, in vituperation or in extenuation, the Zionist settler faces an 'impossible historical situation', one in which 'colonial relations [...] like any institution, determine *a priori* his place and that of the colonized and, in the final analysis, their true relationship'.³⁰ Willy-nilly, the historical contradictions of the settler colonial society grind steadily on in the gradual regression of that society into a less and less flexible state, both for the coloniser and for the colonised on whom those contradictions are played out. What was true for the French in Algeria, the Unionists in Northern Ireland, the Afrikaners and other whites in South Africa, is proving daily more true for Israel.

If Israel is a settler colony, it is indeed *exemplary*, normal and normative, in almost every respect. Yet we cannot overlook the fact that Israel's exemplarity includes the fact that the 'state of exception' is an exemplary practice of settler colonies. For the characteristic siege mentality of the settler colony issues in the declaration of a 'state of siege' under a panoply of names, from the legalisms of Jim Crow to the declaration of martial law. The suspension of law in face of the legitimate, violent or non-violent resistance, or, indeed, even the very persistent presence, of the indigenous colonised people, is a given of every colonialism. But on account of the peculiar intimacy of

the interface between settler and native, it becomes a virtually constitutive element of the settler colonial society, inflecting all its relations much as a deep geological formation shapes the permanent features of a landscape. Thus, according to civil rights activist Michael Farrell, 'In Ireland, from 1800-1921, the British Government brought in 105 Coercion Acts dealing with Ireland. That means that *Habeas Corpus* was as often suspended as in force in 19th-Century Ireland'.³¹ These Coercion Acts survived, along with various forms of legalised discrimination, in the form of the permanent Special Powers Act in Northern Ireland from 1922-1972, while Northern Ireland was still nominally integrated into the UK, thus affirming and institutionalising the settler colonial nature of the state despite its pretensions to democratic status. That Act was in turn the envy of South African Prime Minister and architect of Apartheid Hendrik Verwoerd, who would have swapped one clause of it for every anti-apartheid law.³² Israel similarly maintained in force the British Mandate's indispensable 'Emergency Regulations' that have regularly and continuously been deployed for purposes of censorship, house demolitions or deportation of Palestinians.³³

Such continuities in colonial law highlight the peculiar topology of the settler colonial state of emergency that ultimately makes what appears as an exception actually a norm. We can, indeed, read from the siege mentality of the settler colonial state to the increasingly generalised 'state of siege' that governs Palestinian life, always in the name of Israel's security, or of the security of its settlers who cultivate the sense of siege and existential threat. Yet it is the Palestinians who occupy within this imaginary of the siege the peculiar topological location of being the incorporated outside. Said remarks on the anomalous fate of Palestinians who remained in Israel after 1948 that 'everything that did stay to challenge Israel was viewed not as something *there* but as a sign of something *outside* Israel and Zionism bent on its destruction – from the outside'.³⁴ That anomalous condition has been extended to occupied Palestine as it has become more and more annexed within the undeclared borders of Israel. Insofar as the segmentation, occupation and siege of Palestine continues and seems destined to continue, Palestine is incorporated within Israel as a perpetually alien entity, as a proliferation of folds within its still undeclared borders. And yet these besieged territories are envisaged as themselves besieging. As

Naomi Klein eloquently describes it, '[a]n entire country has turned itself into a fortified gated community, surrounded by locked-out people living in permanently excluded red zones'.³⁵

This effect of the excluded interior, graphically visible on every contemporary map of Occupied Palestine and the illegal Israeli settlements that segment it into an archipelago of disconnected compartments, conforms to the topology of the exception. As Giorgio Agamben has described the topological structure of the exception in what are by now classic formulations:

The state of exception represents the inclusion and capture of a space that is neither inside nor outside [...]. *Being-outside and yet belonging*: this is the topological structure of the state of exception.³⁶

The state of exception appears as a kind of catastrophic cusp, that domain that disappears, folding underneath the topological map, and yet continues to have effect, to be the locus of change and instability. For Agamben, drawing here on Carl Schmitt's writings on sovereignty and the 'decision' on the state of emergency with reference to European state and legal theory, this topology of the exception is principally theoretical and poses a set of questions regarding the constitutive role of the suspension of the law in the very foundation of the law itself. The state of exception is at once *in* the law, taken account of by the law, and yet *outside* the law. No judicial procedure governs, or can govern, the state of exception, since it is a suspension of the law. In this respect, the state of exception repeats the violence in which the state is constituted, a violence which founds the law but whose ongoing operation in and through the law the law prefers to forget.³⁷ We might say then, with only a slight extension of Agamben's argument, that the state of exception is the truth of the law, its unacknowledged absent but ever-present foundation.

As Agamben seeks to materialise what has been a discursive or theoretical topology of the exception, it is the 'camps' – the extermination centers of the Holocaust – that appear as its exemplary instance, sites where an internal zone of exclusion concentrates those who have been reduced to what he terms 'bare

life'. As many have pointed out, in focusing on the Nazi destruction of European Jewry and on the specific instance of Auschwitz, Agamben ignores the long history of colonial genocide and domination in which the techniques and spaces of the Holocaust were first developed.³⁸ Expressly dismissing the historians' interest in the origins of the concentration camp and related sites in specifically settler colonial or plantation societies, and seeing them, rather, as occasional effects of a 'state of exception linked to colonial war' (my emphasis), Agamben ignores the absolute normality of the state of exception under colonial regimes. He continues therefore to argue for the singularity of the Nazi camp in relation to the state of exception:

*The camp is the space that opens up when the state of exception starts to become the rule. In it, the state of exception, which was essentially a temporal suspension of the state of law, acquires a permanent spatial arrangement that, as such, remains constantly outside the normal state of law.*³⁹

Agamben describes this material topological structure of the camp, through which it concretely instantiates the theoretical paradoxes of the state of exception on the 'threshold' of the law, as a territory that is '*captured outside*, that is, it is included by virtue of its very exclusion'.⁴⁰ If this 'zone of indistinction between the outside and the inside' has become 'the structure in which the state of exception is permanently realised', it is important to recognise that both the state of exception and the excluded inside have been constitutive elements of colonialism, and in particular of settler colonial formations, from the Indian reservations to Bantustans and pass laws, from the regular use of concentration of the Philippine population by both Spain and the US to slave plantations and their precociously modern architectures. Colonial and plantation law had long furnished the means by which colonised and enslaved populations were 'so completely deprived of their rights and prerogatives to the point that committing any act toward them would no longer appear as a crime'.⁴¹ While the Nazi camps may have represented a peculiarly malevolent concentration of such techniques, forged in colonial

laboratories even more than in modern disciplinary institutions, they were neither so singular as Agamben wants to claim, nor was the camp in his sense the only trajectory along which settler colonial regimes continued to evolve, or through which the state of exception could manifest itself as a permanent norm. As Achille Mbembe puts it, 'the links between modernity and terror spring from multiple sources', and we cannot afford to overlook the colonial genealogy of what we must see as a normalisation of the exception.

If, then, the declaration of emergency was the means by which the settler colonial regime could justify its invocation of a generalised and effectively permanent state of exception, the exception was governed less by the absence or sheer suspension of law than by innumerable legal and quasi-legal protocols instituted for its regulation. Certainly what is announced in the settler colony, in Israel/Palestine, is itself a state of exception, determined in large part by Israel's urgent desire to normalise the exceptional status of its regime of occupation in accord with law. And in the absence of an actual declaration of emergency, what results is a *proliferation* rather than a *suspension* of law. The regime of permits, closures, controls, dispossessions, demolitions, all proceed according to a labyrinthine web of civil law and military decree, the '5,000 Israeli military orders, regulating Palestinian life', that form the legal counterpart to the material and physical obstacles to movement in the occupied territories, all painstakingly detailed by Saree Makdisi.⁴² What Makdisi describes as 'Israel's hyperregulation of everyday life' conforms to what Nasser Hussain has termed the regime of *hyperlegality* that typifies the contemporary counter-terrorism state: the multiplication of laws and legal categories rather than the state of *anomie* that Agamben explores.⁴³

With this supplement to Agamben's model, we can grasp that the combination of the regime of hyperlegality with the variegated and self-enfolding topology of 'zones of exclusion' constitutes an exemplary form of a new 'state of exception' that has become globally the increasingly generalised norm. As Agamben puts it, 'the voluntary creation of a permanent state of emergency (though not declared in the technical sense) has become one of the essential practices of contemporary states, including the so-called democratic states'.⁴⁴ For Agamben, it is the Nazi model that has become

generalised. Naomi Klein suggests another model for the global normalisation of exception and of techniques honed in a settler state: for her, Israel has become exemplary of this generalised state of exception, furnishing the model of 'the cutting-edge homeland security state'.⁴⁵ In order for Israel to become that cutting edge, the West Bank and Gaza have had to become the 'laboratory', as architect and theorist Eyal Weizman puts it, of a 'territorial and urban conflict that can take place in other places'. It furnishes not only the technologies of surveillance (as Klein perceptively notes), but the spatial organisation of political control: for Weizman, the Occupation and the continuing and illegal settlements model 'the design of a closely knitted fabric of homes and infrastructure – as acts of spatial exclusion creating wedges that separate the habitat of a population marked as a political "outside" and perceived as a political threat'.⁴⁶

Following Weizman, we can trace the genealogy of this topology of normalised exclusion and exception to the settler colonies of the past, to Algeria, South Africa, and, I would add, Northern Ireland, one that demonstrates the continual importation of colonial practices to the metropolis, from urban counter-insurgency techniques forged in nineteenth-century Algiers to surveillance technologies developed in Belfast that are now current in London and Birmingham. In line with that genealogy, the seeming contradiction between Israel's claim to be a normal liberal democracy and its manifest status as a settler colonial society with a still ongoing project of expropriation of indigenous lands resolves, and resolves in ominous ways. Israel permanently imposes that state of exception that Benjamin found to be the historical norm for the oppressed.⁴⁷ In doing so, however, it is no longer exceptional, although it may offer to other states a more advanced model of a future for sovereignty in which the Westphalian distinction between the moral persons within and the savages outside the law becomes increasingly a relation of exclusion by inclusion, to modify Agamben's terms. That is, as neo-liberal states increasingly manage and defend the corporate appropriation of public resources within their territories, as liberal states did with regard to colonial and neo-colonial states outside, and as they increasingly confront the redundancy of large segments of their own populations, so the topologies and protocols of the state of exception will become ever more the norm. For this new norm,

Israel offers the most pertinent and precocious model: having succeeded in incorporating the Occupied Territories within its undeclared borders as an included excluded, it has divided the populations over which it exercises de facto rule along apartheid lines, between the utterly privileged settlers and the redundant Palestinian remainder.

The techniques and technologies by which it maintains and enforces its colonial rule, far from causing scandal to the Western democracies, are coveted and purchased by them: as Klein points out, Israel's economic prosperity is predicated on its development of the technologies of repression in the laboratory of the Occupied Territories and their export to the neo-liberal world; virtually every major police department in the United States has benefited from its instruction in racial profiling and other counter-terrorist methods.⁴⁸ In this respect, the settler colony, managing its permanent state of exception, offers a model for the future of the neo-liberal states globally, and not least to those states that have occluded where they have not renounced their own settler colonial histories. Our fear may be that that historical norm is being projected from the exemplary state of exception that is Israel/Palestine to the generalised form of our collective future. If so, it ironically legitimates Israel's claim to be a normal western state, though not in the sense that its proponents mean. Our hope may be that the continuing and insurmountable resistance of the Palestinian people to their transfer, dispossession and colonisation offers a counter-model and an inspiration within which the seeds of an alternative future may emerge.

BIOGRAPHICAL NOTE

David Lloyd, Professor of English and Comparative Literature at the University of Southern California, works primarily on Irish culture and on postcolonial and cultural theory. He is the author of Nationalism and Minor Literature (1987); Anomalous States (1993); Ireland After History (1999) and Irish Times: Temporalities of Irish Modernity (2008). His most recent book is Irish Culture and Colonial Modernity: The Transformation of Oral Space (Cambridge University Press, 2011) and is currently at work on two further books, a study of Samuel Beckett's visual aesthetics and a work on aesthetics, race and representation. He has co-published several other books, including The Nature and Context of Minority Discourse (1991), with Abdul JanMohamed; Culture and the State, co-authored with Paul Thomas (1997); The Politics of Culture in the Shadow of Capital (1997), with Lisa Lowe; and The Black and Green Atlantic: Cross-Currents of the African and Irish Diasporas (2008), edited with Peter D. O'Neill.

NOTES

¹ Dario Battistella, *The Return of the State of War: A Theoretical Analysis of Operation Iraqi Freedom* (Colchester: ECPR Press, 2008), p. 5. Battistella notes here that among the exceptions to this norm is Israel/Palestine.

² Battistella, *Return of the State of War*, p. 85.

³ Edward W. Said, 'Zionism from the Standpoint of its Victims', *Social Text*, 1 (1979), p. 29.

⁴ For this term, which designated 'Palestinian refugees who were wandering about the state of Israel [after the Nakba], homeless and stateless', and therefore subject to deportation by Israel, see Ilan Pappé, *A History of Modern Palestine*, 2nd edition (Cambridge: Cambridge University Press, 2006), p. 157. Present absentees included the poet Mahmoud Darwish and his family. On the ethnic cleansing of Palestine, see Pappé, *Modern Palestine*, pp. 122-140, and, in greater detail, Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford: Oneworld Publications, 2006).

⁵ Said, 'Zionism', p. 23. For a similar genealogy of Zionist settlement, see Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: Norton, 2000), pp. 1-27.

⁶ Theodor Herzl, *The Jewish State*, cited in Abu-Manneh Bashir, 'Israel in the U.S. Empire', *Monthly Review*, 58, 10 (2007). Available at:

<http://monthlyreview.org/2007/03/01/israel-in-the-u-s-empire> Accessed:

12/11/11. On the attitudes to the Palestinians and the colonial project, from Chaim Weizman and Ze'ev Jabotinsky to David Ben Gurion, see Shlaim, *The Iron Wall*, pp. 7-19.

⁷ Denise da Silva, 'No-Bodies: Law, Raciality, and Violence', *Griffith Law Review* 18, 2 (2009), pp. 214-219.

⁸ Shlaim, *The Iron Wall*, p. 5.

⁹ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, revised edition (London: Verso, 2006), pp. 9-36. For a detailed, if largely antagonistic account of the genealogy of modern European nationalism from Herder and, in particular, Fichte, see Elie Kedourie, *Nationalism* (London: Hutchinson, 1960).

¹⁰ Jacqueline Rose, *The Question of Zion* (Princeton: Princeton University Press, 2005), pp. 33, and 42-43. Rose elaborates the logic of messianism's interweaving with secular Zionism – to the extent that even socialists like Ben Gurion are finally absorbed by its language – throughout the chapter entitled 'Zionism as Messianism', pp. 1-57.

¹¹ Rose, *Question of Zion*, pp. 48-52.

¹² For only one example of how such religious claims saturate the discourse on Israel, see Benjamin Netanyahu's speech to the US Congress, May 24, 2011: 'This is the land of our forefathers, the Land of Israel, to which Abraham brought the idea of one God, where David set out to confront Goliath, and where Isaiah saw a vision of eternal peace. No distortion of history can deny the four thousand year old bond, between the Jewish people and the Jewish land'. Reprinted in the *Jerusalem Post*, <http://www.jpost.com/LandedPages/PrintArticle.aspx?id=222056> Viewed: 13/08/11.

¹³ See Uri Ram, 'The Colonization Perspective in Israeli Sociology', in Ilan Pappé (ed.), *The Israel/Palestine Question: A Reader*, second edition (London and New York, Routledge 2007), pp. 53-79. For a comparative, exploration of the settler colonial paradigm as an explanatory framework for Israel and Palestine, see Lorenzo Veracini, *Israel and Settler Society* (London: Pluto, 2006), pp. 16-40 and passim.

¹⁴ Shlaim, *The Iron Wall*, p. 2.

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- ¹⁵ Patrick Wolfe, 'Race and the Trace of History: For Henry Reynolds' in Fiona Bateman and Lionel Pilkington (eds), *Studies in Settler Colonialism: Politics, Identity and Culture* (London: Palgrave Macmillan, 2011), pp. 275-77 and passim.
- ¹⁶ Ram, 'Colonization Perspective', pp. 64-70.
- ¹⁷ Neve Gordon, *Israel's Occupation* (Berkeley and Los Angeles: University of California Press, 2008), pp. 11-21.
- ¹⁸ Albert Memmi, *The Colonizer and the Colonized* (Boston: Beacon Press, 1967), pp. 70, 74.
- ¹⁹ Memmi, *The Colonizer and the Colonized*, p. 71.
- ²⁰ On Jabotinsky, see Shlaim, *The Iron Wall*, pp. 11-16.
- ²¹ Memmi, *The Colonizer and the Colonized*, p. 67; On founding Zionist leaders' attitudes to the Arabs of Palestine and often pragmatic affiliation with Western powers, see Shlaim, *The Iron Wall*, pp. 1-27, and Said, 'Zionism', pp. 21-29.
- ²² Shlaim, *The Iron Wall*, p. 4.
- ²³ Memmi, *The Colonizer and the Colonized*, p. 62.
- ²⁴ David Grossman, 'Contemplations on Peace', in David Grossman, *Writing in the Dark: Essays on Literature and Politics* (New York: Picador, 2008), p. 115.
- ²⁵ Memmi, *The Colonizer and the Colonized*, pp. 66-67.
- ²⁶ Ilan Pappé, 'Israel's righteous fury and its victims in Gaza', *Electronic Intifada*, 2 (2009). Available at: <http://electronicintifada.net/content/israels-righteous-fury-and-its-victims-gaza/7912> Accessed: 08/08/11.
- ²⁷ Frantz Fanon, 'Concerning Violence', in Frantz Fanon, *The Wretched of the Earth*, (New York: Grove Press, 1968), pp. 54-55.
- ²⁸ On the Israeli military thinking 'like serial killers', see Eyal Weizman, *Hollow Land: Israel's Architecture of Occupation* (London: Verso, 2007), p. 197, citing Brigadier General Shimon Naveh. On the association of the peculiar destructive violence of Zionsim and its messianic entanglements, see Rose, *Question of Zion*, pp. 42-47.
- ²⁹ Grossman, *Writing in the Dark*, p. 103.
- ³⁰ Memmi, *The Colonizer and the Colonized*, pp. 38-9.
- ³¹ Michael O'Farrell, quoted in Mike Tomlinson, 'Imprisoned Ireland', in Vincenzo Ruggiero, Mick Ryan, and Joe Sim (eds), *Western European Penal Systems: A Critical Anatomy* (London: Sage, 1995), p. 196.
- ³² See, for this widely disseminated comment, Ed Moloney, 'Israel has taken over from Northern Ireland as a factory of grievances', *Mondoweiss*, January 24, 2011. Available at: <http://mondoweiss.net/2011/01/israel-has-taken-over-from-northern-ireland-as-a-factory-of-grievances.html> Accessed: 08/08/2011.
- ³³ Gordon, *Israel's Occupation*, pp. 36 and 52. On the history of British emergency legislation, see Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003).
- ³⁴ Said, 'Zionism', p. 33.
- ³⁵ Naomi Klein, 'Losing the Peace Incentive: Israel as Warning', in Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (New York: Picador, 2007), p. 558.
- ³⁶ Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005), p. 35.
- ³⁷ Agamben sees Schmitt's thinking of the exception as involved in a dialogue with Walter Benjamin's 1921 essay, 'Critique of Violence', which elaborates the relation between violence and 'law-making'. See Benjamin, 'Critique of Violence', in Walter Benjamin, *Reflections: Essays, Aphorisms, Autobiographical Writings* (New York, 1978), pp. 283-287, and Agamben, *State of Exception*, pp. 52-64.
- ³⁸ See especially Achille Mbembe, 'Necropolitics', *Public Culture* 15, 1 (2003), pp. 11-40.
- ³⁹ Giorgio Agamben, 'What is a Camp?', in Giorgio Agamben, *Means without Ends: Notes on Politics* (Minneapolis: Minnesota University Press, 2000), pp. 37 and 38 (Agamben's emphasis).

⁴⁰ Agamben, 'What is a Camp?', p. 39 (Agamben's emphasis).

⁴¹ Agamben, 'What is a Camp?', p. 40. For a thoroughgoing demonstration of the genealogy of modern law and carceral practice from slavery, see Colin Dayan, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton, NJ: Princeton University Press, 2011).

⁴² Saree Makdisi, *Palestine Inside Out: An Everyday Occupation* (New York: Norton, 2008), p. 6.

⁴³ Makdisi, *Palestine Inside Out*, p. 6; Nasser Hussain, 'Hyperlegality', *New Criminal Law Review*, 10, 4 (2007), pp. 514-531.

⁴⁴ Agamben, *State of Exception*, p. 2.

⁴⁵ Naomi Klein, 'Losing the Peace Incentive', p. 551.

⁴⁶ Eyal Weizman, interviewed by Philipp Misselwitz, 'Military Options as Human Planning', in Eduardo Cadava and Aaron Levy, *Cities Without Citizens* (Philadelphia: Slought Books, 2003), pp. 195-6. For a more extensive exploration of the spatiality of Israel's occupation, see also Eyal Weizman, *Hollow Land*, chaps 4 and 5.

⁴⁷ Walter Benjamin, 'Theses on the Philosophy of History', in Walter Benjamin, *Illuminations: Essays and Reflections*, (New York: Schocken Books, 1968), p. 257.

⁴⁸ Klein, 'Israel as Warning', pp. 549-557.