

# THE QUANTUM MECHANICS OF ISRAELI TOTALITARIANISM

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**Abstract:** This article argues that Israel's occupation of Palestinian territory represents criminalized state behaviour at the most systematic, intricately planned and executed. Evoking the quantum physics of Israel's matrix of control, the article argues that to understand how it feels to live as a Palestinian today requires the mindset of a particle physicist, not a social scientist. Life in Israel/Palestine involves negotiating a host of forces over which the average Palestinian has as much control as the average electron or proton does over the nuclear and quantum forces determining its path. The power embodied in Israel's matrix of control lies in the state's ability to shift rules, tactics, amplitude and frequency of the forces, strategies and techniques and technologies of occupation. The article argues that the Occupation and the conditions it creates have become normalized, and that maintaining a situation of confusion and ambiguity is key to making the Occupation effectively permanent.

**Keywords:** Israel, Palestine, occupation, state crime, colonialism, quantum physics, matrix of control

The Israeli occupation of the West Bank, East Jerusalem, the Gaza Strip and Golan Heights will soon pass the half-century mark, marking it as the longest and certainly most consequential occupation of the post-World War II era. It seems particularly fitting to explore the occupation in the context of "state crime" because in so many ways it represents criminalized state behaviour at the most systematic, intricately planned and executed, widest possible scale, and longest duration. There are, to be sure, many grades of criminal behaviour. Many other states are guilty of death and destruction on a scale that dwarfs the Israeli-Palestinian conflict. Iraq under Saddam Hussein, Syria today, the US wars in Vietnam and present Iraq have all killed innumerable more people than has the Israeli occupation, laying waste to entire cities on a scale of magnitude that in some cases far exceeds the recent destruction in Gaza.

But for duration and comprehensiveness, Israel's rule over the Occupied Territories has few if any equals. At the same time, however, trying to achieve a

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broad and deep understanding of the nature and impact of the Occupation is no easy task, not least because it first requires coming to terms – quite literally – with two concepts that still consternate scholars of all disciplines and political persuasions, namely, what exactly do the terms “state” and “crime” mean.

Both words are used so often that there is an assumption that their meaning is shared among most scholars when in fact they remain the subject of significant debate, or at least they should be. What exactly is a “state”? How do we lay out in a comprehensible manner its origins, functions, goals, institutions, borders, discourses and disciplines? What are the boundaries separating the states from societies they govern and how do non-state actors participate in governance while remaining outside the formal institutional make-up of the state? Who determines the parameters of its “legitimate” activities and how do the rest of us accept what actions are legitimate to the state and which are illicit or criminal? If those in governing authority pass laws that legalize behaviour that was previously criminal or at least illicit, or that violate international norms and/or laws, is it no longer criminal? If a state claims the right to expropriate certain land, move or even kill certain people over whom it has recognized (if contested) authority and jurisdiction, who has the right to challenge this authority?

What is more, concepts such as (or better: claims to “human rights”) have increasingly been appropriated and utilized by state and non-state actors to justify or cover for activities that clearly violate human rights norms, both in and outside their countries. Such practices are manifold and increasingly relevant to the case of Israel/Palestine. They include military and security services using the “right to protect” or “humanitarian intervention” on behalf of civilians oppressed by specific regimes or caught in the midst of wars, or who are the (potential) target of violence by specific groups (usually violent undemocratic states or terrorist groups); governments and militaries using the excuse of protecting the rights of their own citizens or diasporas as a justification for human rights violations against populations with whom they are in conflict, and various extremist nationalist and/or religious groups who define their coveting of territory belonging to or presently inhabited by others, or curtailing the civil rights or freedom of their compatriots, as a “human rights” issue for their group (see Perugini and Gordon 2015).

Given how human rights discourses are today (mis)appropriated by so many actors who act in ways that criminally violate core human rights norms, what practical meaning and impact do human rights discourses have as a way of determining “criminal” activity – especially in conflicts where the more powerful and culpable side has had a long-term near monopoly on shaping the public narrative surrounding a conflict, as is the case in Israel/Palestine? What is more, when even leading human rights organizations such as Amnesty International support the ongoing presence of occupation forces, such as North Atlantic Treaty Organization

(NATO) troops in Afghanistan, how are we to evaluate the continued salience or even relevance of mainstream human rights discourses for contemporary struggles for social and political justice.<sup>1</sup>

These questions clearly impact how we understand the relationship between stateness and criminality, whether in Israel/Palestine or anywhere else. Charles Tilly famously equated states with “organized protection rackets” and provided crucial insights into the deep conceptual, political and economic relationship and interpenetration between states and organized crime. His analysis raises two important questions for an analysis of Israeli behaviour in the Occupied Palestinian Territories. First, if all state activities contain elements of criminality in their practices and policies, then focusing on “state crime” as somehow an aberration from the normal behaviour or activities of states or governing systems becomes problematic.<sup>2</sup> Thus, for example, when scholars such as Penny Green and Tony Ward describe state crime as “essentially” or “egregiously” illegitimate organized violence and corruption “by international standards” the question remains, illegitimate to whom? (Green and Ward 2004) Equally important are the limits of Tilly’s analysis – not vis-à-vis criminality but rather in terms of the manner in which that criminality functions vis-à-vis the affected population. Tilly’s analysis focused on the emergence of European and other states which, at least in principle, represented or claimed to represent the majority of the population they governed. But the Israeli Occupation, like all colonial endeavours, in no way can be described as having such a relationship with the Palestinians whose lives it controls. Thus, the metaphor or model of a “protection racket” does not work here, or rather only works up to a point. For those who cooperate with the Occupation (in the case of Palestine, often meaning becoming “collaborators” or *muta’awinin*), the advantages of Israeli “protection” can be significant indeed. But for the mass of Palestinians, there is no racket and no protection.<sup>3</sup> Rather the relationship is one of pure oppression and dispossession, an even deeper level of criminality than Tilly discusses, and one that compounds and is compounded by the myriad other forms of criminality, from theft to murder, associated with all colonial occupations.

If most states in the world in fact behave criminally to some degree, if the most powerful and “advanced” countries not only sponsor and aid governments that commit systematic crimes against their peoples but in fact have political systems in which bribery, cronyism, massive corruption and systematic violence against the most marginalized citizens have literally been written into the law, then the resulting criminalization draws much of its strength from the “rhetoric of human rights” (Cohen 1996: 492). If crime and governance seem to go together far more commonly than crime and punishment even in liberal or liberalizing states, then in what way are these state crimes in fact criminal in any meaningful – as opposed to merely moral or technically legal – sense?<sup>4</sup> What happens when corporate,

organized and other forms of systematic criminal activities are simply the way business is – legally – done? These questions must be addressed before the actions of the Israeli state vis-à-vis the millions of Palestinians whose lives it controls and the territory it claims can be fully appraised.

## States of Confusion

From the Weberian bureaucratic state broadly autonomous from society to the Marxist conception of the state that sees it as acting in the interests of the leading class; whether “strong” or “weak” in its involvement with or control over the everyday lives of citizens; engaged through “pastoral”, “sovereign” and/or “disciplinary” power – each conception or aspect of governance provides state power with a different set of opportunities and constraints, all of which rest on a near monopoly on the use of force as well as on the ability to define precisely what society and institutions more broadly define as crime (Matthews and Kauzlarich 2007). At the same time, however, the very idea of “state power” is in fact problematic because it depends on a conception of the state as a concrete institution or a set of institutions and actors, when in fact much of its power derives from the very porousness and confusion surrounding the boundaries between what is “inside” and “outside” the state. This “conceptual confusion” remains even if we substitute “governmental crime” for state crime (Friedrichs 2000).

Indeed, one of the most important reasons scholars are facing such difficulty in assessing the Arab revolutionary protests, uprisings and even civil wars five years into the so-called “Arab Spring” is the continued lack of precision in defining the state – both broadly conceived and across the contemporary Arab world – and its relationship to those under its jurisdiction and/or control. Already a generation ago, the work of political scientist Timothy Mitchell called into question the viability of traditional definitions of the state, offering a reading of the seemingly discrete boundaries between states and the societies they govern as more accurately understood as being “internally drawn” within a network of institutional mechanisms and power relations “through which a social and political order is maintained” (Mitchell 1991: 78). The process through which these boundaries are drawn creates the effects of structures – an epistemology of power – external to society, and through them, of subjects who “stand outside the state and refuses its demands”.

This idea of the subject standing outside of the state and refusing to obey is a foundational image within revolutionary discourses and ideology. However, Mitchell, building on Foucault’s seminal discussion in *Discipline and Punish*, does not accept this political cartography. Instead, he argues that “political subjects and their modes of resistance are formed as much within the organizational terrain we call the state, rather than in some wholly exterior social space” (Mitchell 1991: 93).

To the extent that a clear breach does occur between the mass of people and the forces comprising the “state”, it is the end and not the beginning point in a process whose genealogies have yet to be adequately investigated. Mitchell does not stop to explore the implications of the simultaneous multiple interior/exterior subject positions of citizens vis-à-vis the “state”. The question Mitchell’s analysis raises for an exploration of the “state effect” in Israel/Palestine is how the creation, enforcement and contestation of state/society boundaries specifically impact the possibilities for agency by various sides to the conflict, settlers, soldiers and Palestinians alike.

But there is another important dynamic that Mitchell’s analysis points us to consider, particularly when combined with Foucault’s analysis of “police states” and Tilly’s argument that all states by their nature behave criminally to a greater or lesser extent. It suggests that we need to explore the Occupation as criminal not just from the perspective of international humanitarian or human rights law but also in terms of the far more “ordinary” crimes that the Occupation involves as I described above, including theft of land, of resources (trees, water, computers, money and innumerable other items taken by soldiers and settlers on a regular basis), extortion (forcing Palestinians to become informers in order to have freedom of movement, obtain goods from outside the Occupied Territories and even medical care) and kidnapping (the extra-legal abduction of thousands of Palestinians, children as well as adults, without any due process or legal reasoning to justify it). On the other hand, Arab governments across the region resemble in many respects the occupation regimes from the perspective of activists who frequently compare their authoritarian systems with the Israeli occupation.<sup>5</sup>

The structures of governmental power laid bare by the Arab uprisings of the last five years point to a larger dynamic underlying the nature not merely of Arab states or even authoritarianism more broadly. They remind us that to a greater or lesser degree, all states are at the same time police and mafia states, protectors and occupiers.<sup>6</sup> Whether at the surface/public level or far deeper, “states” generate power and energy through the pendulum-like motion between “defending” and “protecting” society and policing and repressing it, between legality and illegality, all with the goal of producing disciplined and docile citizens who act, wittingly or not, to preserve and even strengthen the power of the “state”.<sup>7</sup> This dynamic holds even when, under the current “neoliberal” system, states are supposed to be in the process of shrinking or even “disappearing”.

Mitchell’s words point us to consider how resistance not only operates within the kind of framework of institutionally conceived political power commonly understood as the “state”, but that the existing processes and flows, networks and conduits of power shape the very horizons of possibility for resistance. In this sense, what Foucault did not directly address in *Discipline and Punish* and the College de France lectures that surrounded its publication, but which is clearly

implicit in his analysis, is just how deep goes the “multiple regimes of governmentality” that both reinforce and “relativize the notional boundary line between state and society” (Gordon 1991).

If understanding the “limits”, never mind nature, of state power is far more difficult than it is often assumed, how can we then accurately assess the nature of “state crime”, in particular when it relates to the legally ambiguous nature of Israel/Palestine? If we begin with the biggest “crime” under our purview, can occupation of foreign territory ever be legal under international law, and if so, under what conditions? Under what circumstances would and could the Israeli occupation be considered legal under international law and what actions would be outside the bounds of international law and make it, in part or whole, illegal?

This question is not as easily answered as we might imagine. While the issue of morality, ethics and/or justice of the Occupation has long been the subject of scholarly as well as polemical attention by scholars on all sides of the political divide, the question of its inherent (il)legality has received far less consideration. To cite one example of this perspective, Claude Bruderlein argues that “For most observers, Israel’s repeated violations of IHL [international humanitarian law] are to blame for the derailment of its occupation” (Bruderlein 2004). That is, the Occupation was not inherently illegal or derailed; rather, it was Israel’s actions as an occupier that derailed the occupation.

One of the most in-depth analyses of this question is Ben-Naftali, Gross and Michaeli’s (2005) “Illegal Occupation: Framing the Occupied Palestinian Territory”. The article takes as its starting point “the missing question of the legality of an occupation”, explaining that while “Israeli occupation has been subject to a widespread political and moral critique, both internationally and domestically... the reason lies in the perception of the occupation as a factual, rather than a normative, phenomenon” (2). In other words, few analyses focus on whether the Occupation is, *ipso facto* and *ipso jure* – by the fact and the law itself – illegal, regardless of how the Occupier conducts itself. If the Occupation is, *ipso facto*, at its core and without any other considerations illegal, then every action the Israeli state, military or settlers take as part of the Occupation would, at least to some degree, be illegal because they aid and abet an illegal criminal activity.

To rectify this lacuna, the authors approach the Occupation from a number of perspectives, which I review here. But it must be stated at the start that however much the preponderance of evidence might support the argument for the inherent illegality of the Occupation, the reality is that no competent authority (such as the United Nations (UN) Security Council or the International Court of Justice (ICJ)) has ruled thus, which would give that opinion the actual weight of international law. Many aspects of the Occupation, from the “Security Wall” to settlements themselves, have been declared illegal, at least under certain conditions and

circumstances (being built across the Green Line or on private Palestinian land). But there is no authoritative opinion that declares the Occupation inherently illegal as a matter of fact, not conduct.

The lack of a firm ruling on the legality of foreign military and civilian occupation, not merely vis-à-vis Israel/Palestine but broadly, is not surprising. After all, there are many countries involved in occupations that would most likely be considered equally as illegal as the Israeli occupation. Western Sahara, Kashmir, Tibet, the US occupation of Iraq, Russia's occupation of Crimea and many other situations involving the biggest and most powerful countries in the world would all be open to scrutiny, condemnation and even sanction. This reality naturally has made it much less likely that the leading actors of the international community would step in to make a judgement that the very act and condition of occupation violate international law except in the most limited of circumstances. At the same time, the US veto in the Security Council makes it all but impossible that an enforceable determination of illegality would be made that might lead to the unequivocal demand for Israel's withdrawal from the remaining territories conquered in 1967 – East Jerusalem, the West Bank, Gaza and the Golan Heights.

On the one hand, many in Israel attempt to argue that the "Occupied" Territories are not in fact occupied, but rather disputed, based on a claim that they were never under the recognized sovereignty of another country before their conquest by Israel in 1967. This view has increasingly slight credibility today, however, particularly in the wake of the very explicit opinion of the ICJ that

under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories [to be detailed infra] have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.<sup>8</sup>

Yet Security Council resolutions 242 and 338, the Madrid peace process and, most important, the Oslo peace process and the many agreements signed by Israel and recognized representatives of the Palestinian people, and endorsed by the international community have together created a legal, diplomatic and political grey zone that has perfectly coincided with the long-term Israeli goal of controlling as much territory as possible without having to assert full sovereignty over it (the exception being East Jerusalem, an ever expanding zone to which Israeli law was applied in 1980).

As much as right-wing Israelis might like to annex the entirety of the West Bank, doing so would impose a new and highly problematic set of obligations towards the Palestinian population, including the granting of full political (i.e. citizenship) rights. A formal declaration of annexation would also put Israel squarely



in violation of Security Council Resolution 242's declaration of the "inadmissibility of the acquisition of territory by war" (Wood 1998), although even here the fairly explicit provisions of Security Council Resolution 242 do not have the weight their words might suggest, since Security Council resolutions not based on Chapter VII of the Charter are "not binding" and thus do not have the force of law.<sup>9</sup>

Instead of forcing clarity and a definitive declaration of sovereignty over – and with it, responsibility for – the West Bank and Gaza, Israel essentially continues to eat its territorial cake and still have it. On the one hand, Netanyahu can declare that the Occupation will "last forever", while on the other hand avoid the responsibility that comes from accepting the political-legal implications of such a declaration (Schaeffer Omer-Man 2014). Indeed, as far back as 1983 "many observers doubt[ed] the government will opt for annexation, with the international furore it would bring. They say that Israel will choose instead to maintain the current policy of *permanent impermanence*" (Rubin 1983). This temporal indeterminateness has been crucial to what I term the "quantum mechanics" of the Occupation to the present day.

The fault does not lie completely with Israel; the Palestinian leadership deserves a large share of the blame, as they signed onto a peace process that specifically declared that all the "final status" issues such as settlements, refugees and the disposition of East Jerusalem would be open to negotiation, severely weakening the Palestinian negotiating position by turning rights into bargaining chips. That is, they signed agreements that contradicted international and customary law, in the process undermining the most powerful legal basis for Palestinian territorial claims. The acquiescence to this framework can be considered one of the biggest diplomatic blunders of the post-war era.<sup>10</sup> Moreover, by dividing the Occupied Territories in the West Bank into three regions – A, B and C – with Area C specifically being designated to encompass the settlements, the negotiating process from the start designated the settlements as something as far removed from Palestinian control as possible within a negotiating process that diplomatically and politically superseded debates about the legality of the Occupation.

The situation remains confusing, however, even from an Israeli legal standpoint. Israeli courts have themselves ruled that aspects of the settlement enterprise are illegal, while a national commission, the Sasson Commission, revealed that "settlement outposts in the West Bank describes widespread state complicity, fraud and cynicism, illegal diversion of government funds and illegal seizure of private Palestinian land" (Mitnick 2008; Erlanger 2005).<sup>11</sup> The core issue here seems to be time: the longer the Occupation has continued, the more entrenched it has become and the more its internal dynamics and momentum have violated even Israel's own legal framework. As one Israeli judge who helped enforce the entire occupation system – including the system of torture and denial of basic civil and political rights to Palestinians – admitted, "As long as it's temporary, it's fine. But when it goes on for



forty years?” (Alexandrowicz 2011). The problem is that the more entrenched the Occupation and the settlement enterprise have become, the further to the Right the country has moved, leaving the actual legal framework practically meaningless.

## The Road to Criminality

The deliberately confusing legal status of the Occupied Territories and settlement system raises the question: Can and should the Occupation, *ipso facto*, be considered a crime, particularly a war crime? It is certainly the result of and sustained by innumerable crimes, from petty theft to crimes against humanity.<sup>12</sup> But being suffused with criminality is not the same thing as the Occupation being illegal on its face and regardless of how it is conducted. On this question, the weight of international legal opinion is not strong enough to support such a contention, despite many arguments in its favour.

However, there is a strong consensus on the quite narrow parameters that constrain how a foreign occupation can be conducted and under what conditions it can be initiated. First, it must be the result of a clearly defensive war and oriented only towards protection of a responding state that can demonstrate the lack of an alternative to occupation to protect itself from further attack. That is, the act of occupation as well as its conduct must be proportional to the immediate threat posed by the occupied population and its actions. An Occupation can thus be in compliance with international law, but only under the conditions that it (1) does not undermine the inherent right to self-determination and sovereignty of the occupied population, (2) is conducted and managed by the occupying power “for the benefit” of the local population, and (3) is clearly of a temporary nature (Ben-Naftali, Gross and Michaeli 2005: 553–55).

Occupations can no longer be based on wars of aggression. Israel has long claimed that its conquest of territories in 1967 was the result of a defensive if preemptive war that launched as a question of survival, given that five surrounding states were seemingly about to launch an invasion. The veracity of this claim is beyond the competence of this article, but even if we accept this version of the aetiology of the 1967 war, the ICJ decision reminds us that neither the reasons for, nor the legality of, the conquest changes Israel’s responsibilities under international law towards the territory and its inhabitants once the occupation takes place.

Israel must conduct its occupation of the Palestinian territories according to fairly strict rules. As the Occupying Power – whether it wants to admit such a position – Israel cannot dispose of the conquered territories as it desires. Rather, it must as far as possible act on behalf of the indigenous/conquered population, preserve the legal, cultural, political and economic status quo, cannot requisition or expropriate territory except for military necessity, and most definitely cannot move its civilians into the territory as settlers or force the indigenous inhabitants out.

In reality, Israel has behaved in the very opposite manner of these prescriptions in the most systematic manner possible; effectively if not *de jure* annexing or at least applying Israeli law to a significant part of the conquered territory (and often applying different and preferential laws to Jews compared with Palestinians), engaging in massive population transfers in and out of the conquered territory, exploiting the land and resources for the benefit of its citizens to the clear detriment of the local population, transforming the local legal system in a manner that privileges its rule and its citizens over the indigenous population, and engaging in a level of harmful control over almost every aspect of the lives of Palestinians, including institutionalized discrimination and segregation. Each and together, these actions constitute a systematic and large-scale violation of international humanitarian law.<sup>13</sup>

Here again, we can point out that even were Israel to annex more of the Occupied Territories, its claim to sovereignty, whether recognized or not, does nothing to alter either the Israeli government's obligations to the indigenous population under the fourth Geneva Conventions (specifically Article 47) or the legality or lack thereof of its policies of expropriating territory and resources and settling it with its own civilians. Indeed, Israel's refusal to accept the *de jure* applicability of the fourth Geneva Convention to the Occupied Territories (although it has stated it would apply the "humanitarian provisions") has no legal standing, since it long ago attained the status of customary international law, which explains why the country's High Court has declared its applicability.<sup>14</sup>

Moreover, because the fourth Geneva Convention has attained the status of customary international law, Israel's position on the matter is no longer relevant. It must abide by all its terms, regardless of whether it has formally signed and/or ratified the convention, a position that is strengthened by the fact that the ICJ has in fact declared explicitly that the territories are in fact occupied. This holds equally for Gaza, nominally free of Israeli settlements or military occupation as it does for the West Bank and East Jerusalem. Finally, the "right of self-determination" of all peoples, as enshrined in the UN Charter, which Israel has signed, makes it very difficult for the Israeli government to act in ways that frustrate this right for Palestinians without being in violation of international law.

Simply put, then, there is overwhelming evidence that Israel is obligated to behave according to international norms as laid out in various conventions, treaties and international law and that it systematically violates them in the conduct of the now half-century occupation. These violations include wilful killing, torture and inhuman treatment, wilfully causing great suffering or serious injury to body or health, extensive destruction or appropriation of property not justified by military necessity and carried out unlawfully and wantonly, wilfully depriving prisoners of war or other protected persons of the rights of a fair and regular trial, unlawful deportation or transfer of indigenous inhabitants, unlawful confinement,

and the taking of hostages. Both individually and together, they constitute “serious” and even “grave breaches” of the Geneva Conventions, and as such are war crimes and, to the extent they occur systematically, crimes against humanity (International Committee of the Red Cross n.d.).

As with most other colonial projects, the intent and effect of the Occupation are to place the indigenous population in a more or less permanent “state of exception” – that is, to place them outside the normal bounds of Israeli and international law. Yet it is even more extreme than that, as the majority of European colonial regimes at least had to pay lip service to the idea of uplifting, enlightening and developing the indigenous population – the so-called *mission civilisatrice* or White Man’s Burden. But in the case of a settler colonial movement whose goal is to replace rather than rule and exploit the indigenous population, even this potentially moderating discourse has no rationality or place. The local people are ultimately, *desechables*, throwaway people (as street people in Colombia are derisively called), of no value outside a nominal use value to the settler colonial project until their removal can be effectuated.

By refusing to apply Israeli law to Palestinians and leaving them under military regulations, and by routinely ignoring these regulations (which themselves are often in violation of international law and norms) for half a century, an occupation that according to international law constitutes an exceptional condition that must be quickly remedied has become the norm. In so doing, it has normalized the continued existence of Palestinians within a state of exception, outside the protection of any law.

The Occupation and the conditions it creates become normalized, a fact to contend with rather than a normative failing to be redressed. As soon as the government would officially signal its permanence through the application of Israeli law or a declaration of sovereignty, all confusion and uncertainty would clear up and Israel would, as already mentioned, take on a new level of obligations towards the indigenous population that would be much harder to betray. Doing so would create a level of segregation and discrimination that would unmistakably be Apartheid-like, while as long as the territories remain in a conceptual as well as legal limbo it is much easier to engage in the very same practices without triggering the same level of condemnation.

Keeping the situation confusing and ambiguous, as it turns out, is the key to making the Occupation effectively permanent, even if it is clear that the Occupation violates so many of the most basic normative regimes of occupation under international law that it has become “intrinsically illegal” (Ben-Naftali, Gross and Michaeli 2005: 559–61).<sup>15</sup> Indeed, so extensive are these violations that

from a legal perspective, the Israeli government’s actions actually constitute a greater violation of international law than that which would have been created by a straightforward annexation, as they confer the benefits of annexation to the occupier

without requiring it to incorporate the people under occupation to its polity, with its ensuing rights and privileges (Ben-Naftali, Gross and Michaeli 2005: 586).

In other words, *the Occupation is a form of colonialism*, and as such is illegal,<sup>16</sup> producing not only states of exception encompassing the vast majority of the inhabitants of the Occupied Territories, but that it is conducted through “necropolitics” that, as Franz Fanon so piercingly described it, produces a long-term condition of “social death” (Agamben 2004; Mbembe 2003; Fanon 1967). This state makes the physical removal and even death of members of the population much easier to carry out, producing a situation where, in the words of Israeli sociologist Baruch Kimmerling, “politicide” – the destruction of any possibility of the indigenous population realizing their internationally guaranteed right to self-determination – becomes possible and even inevitable (Kimmerling 2006).

It is hard to exaggerate the importance of defining the Occupation as a colonial regime, even if to activists the two terms seem almost coterminous. To begin with, defining the Occupation as a colonial regime ties Israeli rule and control over the West Bank, Gaza and East Jerusalem to the much longer history of (self-described, it needs to be remembered) Zionist colonization of Palestine. Second, given that colonialism is no longer a legal political and territorial regime, it reminds us of the inherent illegality of the Occupation as an act of colonialism. As such, it cannot be defended as simply an “occupation” and therefore temporary and, at least on the face of it, not illegal, while it involves acts from ethnic cleansing to Apartheid that are inarguably international crimes.<sup>17</sup>

## Exploring the Quantum Mechanics of the Occupation

There is something missing so far in our analysis, and it is central to understanding the full dynamics of the Occupation: Palestinian agency. The debate over the legal status of the Occupied Territories and Israel’s behaviour therein is, however, important, and on its own, potentially harmful to Palestinian struggles for decolonization and self-determination. That is because they either leave Palestinians out of the discussion or describe them mostly as objects and victims of Israeli actions and/or international law and legal regimes. On the ground, where the daily struggles against the Occupation continue without pause, Palestinians are necessarily the centre of analysis because they constitute the ground experiences in which the discourses of Occupation become material realities and against which Israel must constantly adjust its techniques of control.

Occupation, particularly colonial occupation – and even more so settler colonial occupation<sup>18</sup> – depends on control over conquered territory for its successful execution. The more penetrative the occupation and colonization, the more control that is

necessary, and the more complex and holistic the occupation regime will become to achieve and maintain that control. If modern states must achieve and exercise a greater level of control than their predecessors to function, colonial states must have an even more microscopic level, especially when they function in many ways as the kinds of totalitarian states normally associated with Communist and Fascist governments.<sup>19</sup>

In that context, Zionism, whether its “political” wing focused on achieving international recognition for ownership and sovereignty over the territory of Eretz Yisra’el/Palestine or its “practical” wing engaged in direct settlement and colonization, has from the start had as a primary objective controlling territory. Particularly after the start of the second wave of immigration, or *aliya*, in 1906, settlement of both agricultural and urban land was the product of an increasingly sophisticated set of strategies, discourses and technologies that sought, first, to overcome the natural predilection of the Ottoman government to support the continued presence of the local indigenous population on the land, and after 1917, to appeal to the similarly colonial views of the British Mandatory government, which favoured supposedly “modern” as opposed to allegedly “traditional” means of land ownership, development and working the land.<sup>20</sup> Few avenues of control have been ignored, to the point of Israeli generals adopting the radical approaches to space and resistance to state power offered by Lefebvre, Deleuze and other seminal late twentieth-century French Marxist analyses of spatialized power.<sup>21</sup>

In the last section of this article, I would like to construct a cartography of Israeli rule and Palestinian resistance and counter-assertions of sovereignty in the space of the Occupied Territories, focusing on what Israeli geographer Jeff Halper terms its “matrix of control” over what remains of 1948 Palestine but building out the concept in manifold dimensions spatially as well as temporally and discursively. Here, we should again recall that if “state crime” means, “essentially, illegitimate organized violence and corruption”, the questions asked at the beginning of this article remain relevant, particularly surrounding the meaning and impact of “illegality” in the context in which the vast majority of the colonizing population supports the activities described as “criminal” – or, as a Burmese activist put it describing the criminal activities of his own government, when “state crime is [the] legal rule of law” (Green and Ward 2015). At the same time, the “secrecy, official resistance and an ideological/juridical culture which confines hegemonic understandings of criminality to the actions of the powerless” (Green and Ward, 2015) ensure that the majority of the occupying population never has to confront or even acknowledge the reality of its government’s crimes, even though it knows well that they are being committed (see Green and Ward 2012; S. Cohen 1996).

Indeed, the efficacy of the policies and strategies described below in fact depend on the acquiescence, support and participation of the majority of Jewish Israeli citizens in the process, otherwise they could not function just as their clear illegality from an international legal perspective in fact reinforces their power (Israel’s ongoing impunity

gives its numerous legal fictions greater power than internationally accepted norms that have no effect on the ground). Essentially, what for Palestinians is a permanent state of exception is in fact just the state acting as it is intended to, for and on behalf of Jews.

## Occupation as Totalitarianism

The first thing to understand about the matrix of control is that its power lies in its ability to shift rules, tactics, amplitude and frequency of the forces, strategies and techniques and technologies of occupation. The term was coined by Jeff Halper, founder of the Israeli Committee Against House Demolitions and one of the foremost geographers of the conflict.<sup>22</sup> The name evokes numerous overlapping layers of control, including the physical infrastructure of settlements and their security corridors and zones, bypass roads, closed military areas and even “nature reserves”. The matrix also includes the bureaucratic and legal/planning levels and the use of large-scale violence and imprisonment to control people’s behaviour and movement.

With its matrix of control, Israel has achieved an unparalleled and uniquely successful synergy of “bio” and “necro-” politics, controlling life and death at almost every scale of Palestinian existence. This constant movement between life and death, epitomized by the razor’s edge on which so many children, or sick Palestinians, are forced to exist, and perhaps most by the literal adjustment of Gazans’ caloric intake to ensure that it remained just above the international baseline for malnutrition, reflects the power of indeterminacy, of “permanent impermanence”, that has defined the regulation and maintenance of the Occupation for decades.<sup>23</sup>

The dynamics described here can be experienced, each in its own way, in almost every square metre of the Occupied Territories. For me, however, it was walking through the Jordan Valley, for example, near the front-line village of Fasayel that I realized how one reason for the difficulty in explaining the intensity and all-encompassing scope of the “matrix of control” is the relative weakness of the language to describe it, even by its critics.

Specifically, what becomes clear as one hears the F-16s scream overhead, sees Israeli military jeeps kick up dust in the distance and reads the latest home demolition orders received by villages is that Israel is in fact more than just an “occupier” or “coloniser”. However democratic it may (or may not) be inside its 1967 borders in the Occupied Territories, Israel’s rule is nothing short of totalitarian. In calling Israeli rule totalitarian, I am not arguing that the government mimics the worst policies of thought control and ideological purism practised by the twentieth-century Fascist and Communist states such as Nazi Germany, Stalinist Russia or Maoist China (although Israel’s constant harassment and imprisonment of Palestinian activists do reflect a desire to control how Palestinians think and act, at least publicly). Nor am I referring to the clear similarities between core ideologies

of state control, or *étatisme*, articulated by fascist ideologues like Mussolini and the ideology and policies of *mamlakhtiyut* espoused and shaped by the greatest Zionist leader and first prime minister, David Ben-Gurion (Mbembe 2003; Foucault 1997b; Foucault 1997a).<sup>24</sup> Rather, I am talking about a much deeper level of control, which can only be described as the quantum level of Palestinian daily life.

Essentially, to understand how it feels to live as a Palestinian today, you need to think like a particle physicist, not a social scientist. Moving through the space of Israel/Palestine involves negotiating a host of forces that the average Palestinian has about as much control over as the average electron or proton does of the nuclear and quantum forces determining its path. And it is through this near total control of the space that Israel is able, in George Orwell's description of totalitarianism, to "control the past as well as the future" (Orwell 1944).

A look at the group of detailed maps created by Israeli Committee Against House Demolitions (ICAHD) and available on their website ([icahd.org](http://icahd.org)) reveals upwards of two dozen parameters of control that can intersect at any given coordinate on the map. But the map is only a two-dimensional representation of a multidimensional and multilevelled reality. It is not just various forces meeting on the ground. When you are walking through the 97 per cent of the West Bank that is in Areas B or C and thus under Israel security control (in clear violation of the promises enshrined in the Oslo process to arrive at the conditions for a permanent status agreement within five years of signing the 1993 Declaration of Principles), you realize that the matrix extends both under the ground you are walking on and above your head.<sup>25</sup>

Below ground, Israel controls all the water resources in the West Bank, and for 50 years it has systematically taken over every possible well, stream, aquifer or other water source from Palestinians (in direct violation of the international law, it must be remembered).<sup>26</sup> It has also controlled the airspace above Palestinians' heads, as the constant buzz of Israeli fighter jets training overhead in the Jordan Valley, the ubiquitous presence of drones and helicopters almost everywhere at any time, and the prohibitions on building new floors on the existing structures make it clear.

In whatever direction Palestinians look or want to step or reach – left or right, forwards or backwards, above or below them – the land, air and water surrounding them are largely outside their permanent control. While Israeli settlers and soldiers are no longer based in Gaza, Israel controls every inch of coastline and the sea, the airspace and, whenever it wants, the territory as well.

## From Liquid to Frozen in the Blink of an Eye

But it is not just that most of their territory is out of Palestinian hands. The quantum physics of Israel's matrix of control also has its own Heisenberg or uncertainty principle. In quantum mechanics, this principle asserts that it is impossible



to know with precision the exact state of a particle because the very act of observing it changes its state. In the same way, merely by changing their location Palestinians change the state of territory upon which they are moving.

On the one hand, despite the rockiness of the landscape, the geography of the West Bank can be among the most liquid on earth. It changes as one moves through it, depending on who you are – Jew or Palestinian, settler or refusenik, soldier or international. Spaces that seem open and free can suddenly be surrounded by military forces and closed off, declared off-limits for any length of time for a variety of reasons merely because Palestinians moved into and through it or used it for grazing, water or other normal activities.

Moreover, their very movement through the geography can change it not just for a moment but permanently. At the same time, the uncertainty principle can also operate with a time lag. If Palestinians decide to walk through a Jordan Valley village, for example, or to plant trees on their land in the hills around Hebron or Jenin, it is not at all uncommon for the Israeli military to issue demolition or confiscation orders a few days later in a clear if unstated retaliation for their actions.

In particular, the movement of Jews has an even more profound effect on Palestinians, especially when an outpost or settlement is established. Once land is claimed even on the flimsiest of pretexts, the military usually moves in and declares a still larger area a security zone, making it impossible for Palestinians to access the land for months, years or even decades. And so, land in Palestine can change states from liquid to solid almost instantly, freezing in place whatever Israel decides it wants frozen, from people to legal categories. The quantum physics of geography in Palestine can thus produce permanent changes not just in the three normal dimensions of space but in the conflict's "fourth dimension", time, as well. However many dimensions one considers, the goal remains the same: to achieve, in the words of the Palestinian-Israeli hip-hop group DAM, "Maximum Jews on maximum land; minimum Arabs on minimum land" (DAM 2006).

There is even a fifth economic dimension in which the physics of the Israeli-Palestinian conflict operates. The neoliberal policies imposed on the Occupied Territories under Oslo have ensured that when Palestinians are not being displaced by Israeli settlers or bombs, they are fixed in place as objects of development, whose economic life is confined to small spaces that remain largely under Israeli control. The possibility of their becoming subjects able to shape their own destinies is, as it seems, outside the laws of physics operating in the Holy Land.

## **New Theories and Strategies Needed**

It is the changing nature of the political, physical and economic geographies of the Israeli-controlled Occupied Territories that has made it so difficult for

Palestinians and their supporters internationally (including Israel) to develop effective strategies of resistance, never mind transcending the occupation and its particular laws of cause and effect. Achieving such relative powerlessness by Palestinians has been one of the primary goals of the Occupation for decades, at least since the assumption of power by the Likud Party in 1977, if not earlier. It has been at the core of the strategies of almost every Israeli prime minister since then, almost all of whom acted on a strategy of stalling a final agreement until “Palestinians turn into Finns”, as Prime Minister Ariel Sharon’s bureau chief, Dov Weisglass, puts it in 2004 – meaning, never (Shavit 2004). But as long as Israel cannot remove the vast majority of Palestinian inhabitants of the Occupied Territories (and Israel), it cannot simply annex them and create a juridical one-state solution in which Jews are a clear numerical minority and Palestinians realize that the chance for a territorially independent state is permanently foreclosed, while full democratic citizenship is finally open to them (the very possibility is among the greatest fears of mainstream Israeli politicians of all parties, as epitomized by former prime minister Ehud Olmert’s declaration that if Palestinians completely give up on Oslo and demand Israeli citizenship, the Jewish state would be “finished”) (Ravid et al. 2007).

Rather, the entire facade of Oslo, and the incredibly complex and multidimensional geographies it has created, and through which it attempts to control every aspect of Palestinians’ existence, has been designed to enable an illusion of movement and the possibility of progress when in fact the only movement is towards ever greater fragmentation and isolation. The crimes that enable and define the Occupation are part of this process and have to be understood as such, in all their brutality yet indeterminacy. And thus to obtain a deep and broad understanding of the occupation, from the macro- to the quantum levels, requires a far more sophisticated analysis of the dynamics underlying politics, criminality, stateness, resistance and agency than is possible through most disciplinary, epistemological and political approaches being used today to study the conflict and ameliorate its consequences. This is the task before scholars, activists and artists alike working towards a more just, free and independent future for both people – for “human rights for all from the River to the Sea”, as Israeli theatre and film director and human rights activist Udi Aloni describes it.<sup>27</sup>

What is clear is that with the final demise of Oslo, now impossible to deny, Palestinians and Israelis do not just need new strategies for resisting an occupation without end; what is needed is an entirely new physics as well. If critics of Palestinian resistance strategies have long argued that they are still waiting for their Ghandi, in fact it might well turn out that to overcome decades of totalitarian Israeli rule intensified by ineptitude, corruption and authoritarianism internally, Einstein would be a far more welcome and useful figure.

## Notes

1. For a discussion of Amnesty International's support for the continued NATO presence in Afghanistan, see Evans (2012); Human Rights Investigations (2012).
2. For the most comprehensive rehearsal of Tilly's seminal observations, see Tilly (1985); Tilly (1992).
3. A good discussion of how Israel recruits informants is Abu-Zahra and Kay (2013). The best Hebrew account is H. Cohen (2004). Also see Cook (2015).
4. For an interesting discussion of the problem of criminality in the context of liberal and liberalizing states, see Green and Ward (2008).
5. Author interviews with activists in Morocco, Tunisia, Palestine and Iraq, 2011–14.
6. The unprecedented levels of legal corruption in the US (as reflected in the 2007–present mortgage and banking “crisis”) as well as the increasing curtailment of one solid constitutional protection evidence the ubiquity of this reality in the “advanced democracies” as well as the autocracies of the developing world.
7. As Foucault points out, even in the most democratic of societies, the individualization of each citizen is “linked to the state” (Foucault 1982: 785), while “the development of the individual must foster the strength of the state” (Foucault 1979: 252). In all there is a deep interdependence of economic and police order, which the liberal state inherits from the police state. If states began to be understood as “existing in a field of forces”, we now understand that the state in fact does not merely exist in a field of forces, it is a field of forces, and that field includes all the people through whom the forces flow, either willingly or not, or most often a combination of both (Foucault 2009: 237, 294–96).
8. International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion [2004] ICJ Rep. 136 (9 July 2004), at para. 78.
9. As no less an authority than Secretary General Boutros Boutros-Ghali himself explained in 1992 (UN Press Release SG/SM/4718 of March 19, 1992, p. 11, and the clarification, DPI of March 20, 1992). Moreover, it should be noted that preambles do not have the same legal weight as the operational – that is, numbered – clauses of a resolution.
10. For a discussion of this argument, see Cavanaugh (2002).
11. A summary of the Sasson report in English is available as “Summary of the Opinion Concerning Unauthorized Outposts-Talya Sason, Adv.” at <http://www.mfa.gov.il/mfa/aboutisrael/state/law/pages/summary%20of%20opinion%20concerning%20unauthorized%20outposts%20-%20talya%20sason%20adv.aspx>, accessed 20 November 2015. The full Hebrew Language report, “מאוזנים בלתי מורשים” is accessible at <http://www.pmo.gov.il/SiteCollectionDocuments/PMO/Communication/Spokesman/sason2.pdf>.
12. For the commission of war crimes and crimes against humanity, there are numerous reports, from major human rights organizations, both international, Israeli and Palestinian. The most recent report from Amnesty International documenting such behaviour is Amnesty International (2014). A list of the full range of international crimes is provided by Cohn (2014) (note that the accusation of genocide is far more contentious than the accusations of war crimes and crimes against humanity). For examples of the smaller thefts, see, inter alia, Rishmawi (2006); *Euro-Mediterranean Human Rights Monitor* (2014); Ma'an News Agency (2015).
13. The legal regulations regarding occupations are drawn from many sources, including the fourth Geneva Convention, the UN Charter, Art. 51, the Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, Security Council resolutions 242 and 338, General Assembly Resolution

- 194, the Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on the Suppression and Punishment of the Crime of Apartheid.
14. For Israel's High Court of Justice's opinions on the applicability of the fourth Geneva Convention, see *Bassil Abu Aita v. the Regional Commander of Judea and Samaria* 1983; Dinstein (1989). For two rather differing views on how the HCJ views the applicability of the fourth Geneva Convention, see Krezmer (2012) and Horton (2014).
  15. The basic principles of occupation that it violates include the clear understanding that the occupation does not confer title to the territory and is exceptional.
  16. For the illegality of colonialism, see the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (the Declaration on Colonialism), UNGA Resolution 1514 (XV), 14 December 1960, available online at <http://www.un.org/en/decolonization/declaration.shtml>, accessed 30 March 2016.
  17. Among the instruments of international law that codify colonialism are UN resolutions such as the Declaration on the Granting of Independence to Colonial Countries and Peoples (UN General Assembly Resolution 1514 of 1960). They also include violations of the territorial integrity of the Occupied Territories through the acquisition of territory by force and its fragmentation through the settlements and other aspects of the "matrix of control", violations of Palestinian sovereignty over natural resources such as water and agricultural land, dominating the Palestinian economy, denying freedom of expression and other basic freedoms of Palestinians. Even more important, Israeli colonialism includes another inherently illegal act, ethnic cleansing, which violates a host of international laws and precedents, including the Charter of the Nuremberg International Military Tribunal (1945), the Fourth Geneva Convention (1949, Articles 49(1 and 6) and 147) and the Rome Statute of the ICC (2002, Articles 7.1 (d) and 7.2 (d), 8.2 (a) (vii) and (b) and 8.2.15), as well as the case history of the International Criminal Tribunal for the Former Yugoslavia (ICTY). For a good summary of the legal documents related to these violations, see Tilly (2012); *Birzeit University Institute of Law* (2013).
  18. The most succinct description of the unique aspects of settler colonialism is provided by Shafir (2007).
  19. Timothy Mitchell, building on Foucault's analysis of the development of state power, provides a detailed analysis of the functioning of modern, particularly colonial state power, in Mitchell (1988), and Mitchell (2002). Also see LeVine (2005).
  20. I discuss the Zionist mechanisms of control in LeVine (1994), and LeVine (2005).
  21. For the use of these theorists, see Weizman (2015a) and Weizman (2015b). For a discussion of how these theorists can be used to critique state power, see LeVine (2005: introduction and chapters 1, 5, 7 and 8).
  22. Halper describes the matrix of control in several writings, including "The Matrix of Control", Israeli Committee Against House Demolitions website, available online at <http://icahd.org/get-the-facts/matrix-control/>, accessed 5 December 2015; "The 94 Percent Solution: A Matrix of Control", *Middle East Report*, #216 (2000), available online at [https://www.radioislam.org/historia/zionism/216\\_halper.html](https://www.radioislam.org/historia/zionism/216_halper.html), accessed 5 December 2015; "Dismantling the Matrix of Control", *Middle East Report*, 11 December 2009, available online at <http://www.merip.org/mero/mero091109>, accessed 5 December 2015.
  23. For the calorie counting by Israel, see Associated Press (2012); Hass (2012); Cook (2012).
  24. See, inter alia, Mussolini (1932). For Ben-Gurion's concept of *mamlakhtiyut*, see Möller and Schierenbeck (2014: ch. 6), which quotes most of the relevant passages by and about Ben Gurion's use of the concept.

25. For an analysis of the wide gap between the promises and realities of Oslo, see LeVine (2009).
26. A good early summary of Israel's strategies of control over water resources is Stork (1983). A more recent analysis is Amnesty International (2009).
27. Udi Aloni, quoted in LeVine (2011).

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