

Imperialism, Exceptionalism and the Contemporary World

Yehouda Shenhav

I acquired Giorgio Agamben's *State of Exception* in London on 7 July 2005, rather coincidentally on the very same day in which four bombs went off in its public transportation system. Upon returning to my hotel next to the underground stop at Russell Square, I found that the area had been sealed off and declared a 'sterile zone'. In order to get into the hotel I had to identify myself at a checkpoint, submit to a thorough body search, and be escorted by the police force. At the same time, the British government set out to fight terrorism, employing new decrees and detaining (mainly Muslim) suspects in the Belmarsh Prison without a charge or a trial, under the provisions of the Anti-terrorism, Crime and Security Act 2001. London was under a state of exception.

Similarly in 2001, the American government had issued the 'Patriot Act', under which it likewise strove to control and dissuade terrorism.¹ Under the authority of the 'Patriot Act', the United States put hundreds of administrative detainees in Guantánamo Bay without trial. Amnesty International reported that these detainees were constantly at risk of being tortured: some were drowned in cold water, they received electrical shocks and their religious beliefs were ridiculed (Judt 2005). The *Washington Post* reported that the US also incarcerated tens of detainees in secret prisons – known as 'legal black holes' – spread throughout Eastern Europe (Priest 2005). To use Agamben's terminology, these detainees were turned from lives 'worthy of living' into 'bare lives'. They never stood trial, they did not enjoy basic human rights, and their biopolitical management was often outsourced to the hands of private corporations. The existence of the extra-judicial regime in Guantánamo allows for the emergence of 'sovereignty gaps' which allow the deployment of violence outside or beyond the rule of law. The anomalous nature of the law and the

anomalous nature of those territories ('sterile zones', 'black holes', 'Guantánamo') existing within sovereign space were thus revealed. Despite a ruling of the Supreme Court, the American government claimed that constitutional protection does not apply to these 'extra-territorial zones' of illegality.

Recent evidence about the management of the Abu Ghraib prison in Iraq reveals similar features of legal and administrative anomalies. In the absence of a clear law regulating correct procedures towards those interred in the prison, the operation of Abu Ghraib was based on the 'production of secret memoranda' and 'extraordinary emergency' (Gourevitch and Morris 2009: 29). American bureaucrats who managed the prison claimed legal improvisations that allowed them 'to implement sweeping institutional changes with a speed and autonomy', in a process that 'appeared increasingly arbitrary'. They further described how the directions 'seemed as deliberately vague as the identities of the men who gave them'. As one of the bureaucrats testified, 'It was all just word of mouth' and 'deception'. Or, as another testified, 'the absence of a code was the code in Abu Ghraib' (21, 24, 94-5, 171, 92).

As an Israeli, experiences of 'state of exception' and 'emergency ruling' are not foreign to me. The Israeli state was founded on emergency legislation, reviving and thickening the legacy of the British imperial rule in Palestine. These regulations continue to be used in various forms to control the Palestinian population within, and outside, its international borders. From its inception in 1948 almost until the 1967 war, Israel controlled its Palestinian citizens² under a military regime which was founded on the state of exception. Since 1967, Israel has exercised a military rule over 4.5 million Palestinians in the West Bank and Gaza. These people are devoid of citizenship rights and have no recourse to civil protection while their towns and villages are surrounded or sealed off. While Israel attempts to describe its military regime as 'legitimate self-defence' in the face of anti-Israeli terrorist attacks, the history of the occupation reveals that it is a result of a long-term project of governmentality, which includes territorial expansion, settlement and continuous ethnic cleansing.³ These are all made possible by the 'miraculous' nature of the 'exception', to use Schmitt's terminology.

Agamben's *State of Exception* provides a theoretical framework that is helpful in assisting thinking about these issues. He examines

how the 'exception' has become a permanent working paradigm of Western democracies. He explores the European genealogy of 'exception', articulates the relationships between exception and the law, and provides a fulcrum from which practices of state violence can be read afresh. Yet, Agamben's book ignores a critical thread rooted in the history of exception: colonialism and imperialism. Whereas it is crucial to show that state of exception has a long European history and is in fact embedded within its modern theory of the state, it was imperialism that provided the main arena in which the state of exception was practised most vigorously, systematically and violently. Recognition of this point is crucial to remind us that the 'exception' not only has become a dominant theoretical paradigm following the bombing attacks on the Twin Towers in New York, or the bombings in London, but was in fact a key condition of colonial rule, making possible the passage of imperial history in the European colonies.

The Intellectual Roots of Agamben's Thesis

In 1921, Walter Benjamin published his *Critique of Violence*, in which he examined the dialectical relationships between violence and the rule of law. He distinguishes in particular between the violence that constitutes the law, and the violence that preserves and verifies the rule of law. In contrast to these sources of violence, he positions 'pure violence' (or 'revolutionary violence') which resides outside of the rule of law. Benjamin formulates 'pure violence' in religious-theological redemptive parole which is aligned with the tradition of the oppressed. When Schmitt published his infamous *Political Theology* in the 1920s, he implicitly addressed this theological basis of the political.⁴ He suggested that all significant concepts of modern theory of the state are secularised theological concepts, and that the omnipotence of the modern lawgiver is derived from theology. Schmitt pointed an accusing finger towards liberal political theory that allegedly incapacitated the sovereign who is forced to rely on, and is restricted by, the rule of law. He criticised liberal law and democratic parliamentary institutions for their lack of 'decisionism' and for their neglect of the 'exception', namely how the legal system suspends itself in time of political threats, in order to preserve its power of jurisdiction (Schmitt 1988: 14). Instead of the legal rule of law, he suggested that 'Sovereign is he who decides on the exception' (5), and that

the exception in jurisprudence is analogous to the miracle in theology (36). The state of exception is encapsulated in the figure of the sovereign and is necessary for the survival of the state, making it a normative condition of sovereign power.⁵

Agamben accepts the tenets of political theology as outlined by Benjamin and Schmitt, among others, and develops the logic of exception, which he argues provides a necessary supplement to Foucault's (2004) concept of governmentality. In his *Homo Sacer*, Agamben invokes a particular model of the subject of 'exception' which he draws from the Roman codex. The exemplary subject of exception is that of the 'sacred man', who is a person whom people have judged on account of crime: 'It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide' (Agamben 1998: 71). Agamben also describes how in the so-called 'camp' (be it the concentration camp, Guantánamo Bay, or the Abu Ghraib prison), life becomes 'bare': the legal 'person of rights' is purged, thus erasing the biography and subjectivity of inmates. The camp is a space in which the rule of law is suspended under the cover of the law. While, for Agamben, life is the deployment and the manifestation of power, he defines sovereignty as the capacity to manage death and mortality.

Agamben offers a partial genealogy of the 'state of exception' as a paradigm for contemporary democratic governance. He describes its origin in Roman law, in revolutionary and modern France, in Weimar Republic and the Nazi regime, in Switzerland, Italy, England and the United States. One of the typical historical examples of scholarly thinking in this tradition is provided by Benjamin Constant, who already at the beginning of the nineteenth century recognised the menace associated with exceptions to the law, which he identified as more dangerous than overt despotism (see Fontana 1988: 143). Whereas in traditional political theology, the exception was defined in relation to temporality, in theorising the camp as the exemplary site of exception Agamben added a spatial dimension to the phenomenon. Yet, Agamben's frame of reference is Europe, accepting its naturalised presence in time and space as given. As Kalyvas has rightly noted: '[u]nfortunately, *Homo Sacer* returns to a representation of time – the time of sovereignty – as uniform, one-directional and rectilinear' (Kalyvas 2005: 111). Accordingly, Agamben's work remains firmly situated 'within the horizons of the Occidental political tradition, the political destiny of the West' (114).⁶

What is conspicuously absent in this genealogy is sustained analysis of the role of the ‘exception’ in the history of imperialism.⁷ This is unfortunate, if only because at the beginning of the twentieth century Western colonies occupied some 85 per cent of the world’s territory (Fieldhouse 1967), creating political spaces in which imperial powers used alternative models of rule, and thus providing a rich arena in which to study sovereignty. As Hussain puts it: ‘Colonialism is the best historical example for any theoretical study of norm and exception, rule of law and emergency’ (Hussain 2003: 31). Emergency in the colonies was used as an elastic category, stretching over political disturbances such as riots and insurgencies, as well as to allow for imperial capitalism.

Agamben owes some of his insights not only to Schmitt, Benjamin and Foucault, but also to Hannah Arendt;⁸ however, he fails to take seriously her perspective on imperialism. In *Origins of Totalitarianism* (1951), Arendt turned her gaze to the increasing gap between the political centres in Europe and the colonies, which she described as the inevitable result of an insatiable imperial appetite for new lands. Arendt suggested that when imperial conquerors disengaged their actions of conquest from the European state and its democratic laws, they replaced democratic culture with despotism and coercive rule over the ‘subject races’. As the locus of her political enquiry, she points to the initial gap between the legal status of citizens in the home country and the ‘subject races’ in the colonies, which were never permitted to exist as fully fledged citizens. She argues that this gap partially explains the rise of totalitarianism, when the colonisers arrived back to the European societies. Arendt usefully described the exceptions and violence that emerge through this political structure, although she failed to extend her analysis to the operation of exception to European political theory itself.⁹

Frantz Fanon: Responding to the Imperial State of Exception

Walter Benjamin prophetically described the philosophy of history from the standpoint of the oppressed: ‘The tradition of the oppressed teaches us that the “state of emergency” in which we live is not the exception but the rule. We must attain to a conception of history that is in keeping with this insight’ (Benjamin 1978: 257). Whereas Benjamin formulated his thesis in the context of

the holocaust, it was Frantz Fanon who painfully described how the exception became the rule in the imperial context. To him, as a colonial subject whose life was forced into bare existence, the contours of the colonially imposed 'state of emergency' overlapped with racialised distinctions shaping different modes of subjectivity. Fanon left the colony (Martinique) for France; in fact, he ran away intending not to come back. In Paris he discovered with great dismay that the black subject could not escape his blackness, and so he left once more for Lyon. Fanon's *Black Skin, White Masks* (1967a) (*Peau noire, masques blancs*, 1952) was one of the first books born of this tormented intellectual and chronic transgressor of boundaries. Fanon provides an assertive depiction of the ways in which the cultural melting pot of colonial encounters is at best an illusion of lives shared, portraying the splits, attractions and rejections that characterise every colonial subject. Fanon was drafted into the French occupation forces in Algiers, only to resign and join the FLN anti-colonial forces. His biography traces his movement from a post-colonial subject who aspired to integrate into the French Republic, to an anti-colonial fighter who strove to see it disintegrated. In 1961, when he was dying of leukaemia at the age of thirty-six, he put together his *The Wretched of the Earth* (1967b) (*Les damnés de la terre*, 1961), a book that emerged out of the heart of darkness. *The Wretched of the Earth* became a quintessential anti-imperialist text; it was translated into twenty-five languages and sold more than a million copies in the English language alone.¹⁰ During the sixties in the United States Hannah Arendt condemned this text, arguing that it infused black politics of liberation with a penchant for violence (Arendt 1970).

As an anti-colonial thinker, Fanon explained in this book why revolutionary violence ('pure violence' in Benjamin's terminology) is essential if the oppressed are to successfully fight imperial violence: 'colonialism is not a thinking machine, nor a body endowed with reasoning faculties. It is violence in its natural state, and it will only yield when confronted with greater violence' (Fanon 1967: 61; see also Macey 2000). As a psychiatrist in the French army, he witnessed the atrocities of imperial power and saw how 'Western democracy' suspends the law and employs a 'state of exception' to advance its imperial expansionism. Fanon therefore resolved to use the master's tools against the master: '[t]he violence which has ruled over the ordering of the colonial world, which has ceaselessly drummed by the rhythm for the

destruction of native social forms [. . .] that same violence will be claimed and taken over by the native' (40).

If the sovereign power abandoned the rule of law in order to facilitate colonisation, so should do the 'subject races' to facilitate liberation. Thus, for Fanon, anti-colonial violence should become the mirror image of imperial violence: '[t]he violence of the colonial regime and the counter-violence of the native balance each other and respond to each other in an extraordinary reciprocal homogeneity' (Fanon 1967: 88). Frantz Fanon personified the 'partisan' in Schmitt's terminology, employing 'pure violence' in Benjamin's terminology.¹¹ His manifesto, *The Wretched of the Earth*, testifies to the distinction between 'legitimate violence' and 'illegitimate violence,' which characterises the architecture of the modern European state, and shows how it becomes blurred in the imperial context. It also clearly suggests that in the colonial context, the 'state of exception' has become the rule rather than the anomaly.

Colonial and Post-colonial Zones of Exception

It suffices to browse through anti-colonial manifestos of resistance in order to realise that legal exceptions, state of emergency, closure, administrative detainees, and assassinations authorised by the state were the norm rather than the exception during times of colonial rule. Imperial bureaucrats, such as Warren Hastings and Lord Curzon in India, Lord Cromer in Egypt, Lord Charles Somerset at the Cape, Sir Harry Smith in South Africa, Sir George Grey in New Zealand, or Lord Lytton in Afghanistan, among others (Burroughs 1999), have created a new political nomos that produced anomalous and partial models of sovereignty in which ruling was based on legal patchwork and ad hoc arrangements or exceptions, rather than on a single liberal rule of law. Evidently, they had no handbook about which forms of the law were best to institute in colonial settings; rather, they treated European legal traditions as a 'useful collection from which they might draw selectively in crafting colonial legal systems' (Benton 2002: 261). The colonisers relied 'on the blueprint of metropolitan law for distinguishing among categories of legal actors, and they looked for analogous distinctions in indigenous law', sometimes reinventing what they labelled as indigenous 'customary law' (18). As a result, the colonies 'tend not to be organized under a single,

vertically-integrated sovereignty sustained by a highly centralized state [. . .] rather they consist in a horizontally woven tapestry of partial sovereignties' (Comaroff and Comaroff 2006: 61).

This resulted in endless negotiations and disagreements which Johnston (1973) has coined 'jurisdictional imperialism', and Benton (2002) has defined as 'jurisdictional politics', 'jurisdictional flexibility' and 'jurisdictional jockeying'. These 'anomalous models' have resulted in sites of lawlessness under the auspices of the law: foreign jurisdiction, extraterritorial jurisdiction, administrative decrees, partial annexations, combat zones, martial law and states of emergency (see, for example, Mitchell 1991; Hussain 2003). Ann Stoler has used the concept of 'imperial formations' to describe these features:

Critical features of imperial formations include harbouring and building on territorial ambiguity, redefining legal categories of belonging and quasi-membership, and shifting the geographic and demographic zones of partially suspended rights [. . .] The legal and political fuzziness of dependencies, trusteeships, protectorates, and unincorporated territories were all part of the deep grammar of partially restricted rights in the nineteenth and twentieth century imperial world [. . .] Imperial states by definition operate as states of exception that vigilantly produce exceptions to their principles and exceptions to their laws. (Stoler 2006: 2, 8, 10)

Egypt is a case in point. As Timothy Mitchell has demonstrated, the British established there a system of control which was tantamount to the introduction of legal exceptions (Mitchell 1991: 97).¹² The system was based on the so-called 'Brigandage Commissions' and was composed of abrupt military raids, secret police, local informants, massive imprisonments and the systematic use of torture. A decade after they were introduced, these commissions were replaced by a more disciplined and consolidated bureaucratic system. It included selective use of the law, endless decrees, and an abruptly changing set of rules and regulations about movement in the region (Mitchell 2002: 96). Similar methods of supervision and governance were applied for capitalist production in Egypt. This is not surprising, since methods of population control that were initially used for combating insurgencies became institutionalised methods of exercising biopower through population control in general. Mitchell describes the process by

which these methods were used to prevent labour desertion from colonial lands in which crops were grown. In order to coerce villagers to cultivate export crops and deliver them to government warehouses, they used methods such as the regulation of population census, taxation penalties and usurpation of land. Furthermore, when crop monopoly was met by resistance when villagers deserted their lands guarded by the military, and moved to agricultural lands beyond government control, a permit regime was introduced whereby military-issued permits were required for travel outside of the village locality (Mitchell 2002: 60–1; Mitchell 1991: 34, 40–3). The land laws and decrees that were issued represented attempts to compel individuals to remain on their lands, and to confirm the seizure of lands from those who fled.

As revolts occurred, the political reasoning shifted again: from pure economic justification concerned with preventing desertion, into prescriptions of control over those posing a ‘security threat’. Villagers were required to round up ‘depraved and malicious persons and suspicious characters’ (Mitchell 1991: 97) in their locality, who were then sent to labour or to the army. If, after the assigned period, the ‘suspicious characters’ were found in the districts, the headmen would be punished. Imperial governance also placed gangs under continuous police control to oversee a system of ‘tickets’ that were handed out to workers in their villages before they travelled to their work sites, ‘but only to those men whom the local police deemed not to be troublemakers’ (97). Besides the organisation of the police force, a system of English inspection was set up within the Ministry of the Interior; ‘the interior of Egyptian village life was thus to be under continuous supervision’ (Mitchell 1998: 98). Thus, this intervention in capitalist production was based on population control and impediments on movement, which was created under the autonomous political *nomos* of imperial governance. In this form, the notion of sovereignty and the notion of governmentality became enmeshed and practically indistinguishable.

The British founded their rule on the theological percept of divine providence bestowing ‘law and order’ and good governance upon its racialised subjects. The sovereign – both *de facto* and *de jure* – viewed the colony as a feudal state, with the Queen as the natural sovereign ruling under God (Cohn 2004: 216). Indeed, the church was a legal authority that profoundly influenced the functioning of colonial law (Benton 2002: 13). As Cohn firmly puts it,

in the context of India: ‘The British Monarch rules under God and divine providence. The Viceroy then becomes the physical representative of the divine order and the monarchy’ (Cohn 2004: 219). Thus, British imperialism was anchored in the Christian moral code: it allowed for judicial intervention (the analogue of the divine miracle) to manufacture uncertainty for its racialised subjects; it was based on personal and traditional domination rather than on formal written documents; and it manufactured capricious administrative decrees rather than the predictable nature of the rule of law.

Racially Based Exceptions as Acts of Sovereignty

In colonial locations, the political-theological form of the state of exception was used to differentiate between different political communities, based on the racial distinction between Europeans and ‘natives’, between indigenous groups and their rulers in settlers’ societies, or between Jews and Palestinians in the context of Palestinian territories (see also Lentin 2008; 2011; Goldberg 2008). In the economics of the biopolitical, racial hierarchies became the definers of life and death as well as their justification. As Hussain (2003: 113) has suggested, ‘it is race that undermines the legal identity between metropole and colony’. As a mechanism differentiating between ‘subjects’ who are European citizens and ‘subject races’ who are not, the bureaucracy was central to the foundation of the political order. To be sure, race is sometimes camouflaged and justified by alternative regimes of justifications: a national struggle, a security paradigm, a distinction between a friend and a foe, and various other definitions (such as class), all can mask racial hierarchies.¹³

Yet, the relationships between Europe and its ‘subject races’ have changed since the era of decolonisation. Whereas in the past the ‘subject races’ were to be found mainly across the ocean, today they are present *en masse* in the metropole. As Allan Buena, a spokesperson for the French right wing, stated already in 1946, Europe has become the colony of all colonies (Spektorowski 2000). Some features of the imperial rule and its mixed methods of perpetrating the ‘state of exception’ are to be found now at the very centre of these Western postcolonial societies.

The core distinctions are no longer confined to the binary of metropole versus colonies. Whereas the two were formerly geo-

graphically and culturally distinct, they now often constitute a heterogeneous centre in which a simple distinction between 'friend' and 'foe' may not be easily discerned. It is 'race' that became a signifier for the distinction. Imperialism has shifted locus from the colonies, back to Europe. The imperial diasporas brought with them masses of 'subject races' who now struggle for equal rights in the capitals of Europe. Some argue that this internal division is a bigger threat to Europe than conflicts with external powers. In 2002, the head of Interpol argued that resources should be transferred slowly and gradually from the NATO forces to homeland security (see also Agamben 2000). Immigrants from the 'Third World' blend the traditional party lines and threaten 'security' at the European metropolises. For example, during the unrest of immigrants of North African descent in Paris in September 2005, the government used the same emergency measures that were legislated to control the unrest in Algiers in 1955. We have come full circle. The emergency rules which guide the war on terrorism and the management of these societies today painfully resemble those of the imperial age.

Despite his neglect of imperial history, Agamben's book reminds us that we need to look at 'exceptions' as acts of state sovereignty. One prominent example for this position is the unfounded claim that Israel withdrew from Gaza in 2005. As imperial history has taught us, occupation can also be administrated from a distance, without permanent military presence and without settlers. Israel is still enacting an occupation regime in Gaza, as it denies the latter's elected government, controls its economy, holds the border crossings, prevents access from the sea and air, and wages an ongoing war against the leaders of the struggle. Each week Israel's Ministry of Defence decides how many calories its subjects in Gaza will consume and which products will enter the Strip. The apparent ending of occupation in Gaza, and the disengagement which accompanied it, only mark the continued colonisation by other means. The fact that Israel did not apply its political sovereignty in Gaza (or in the West Bank) by no means alters this conclusion. To the contrary, as I have argued in this essay, the majority of the former colonial powers avoided the imposition of full sovereignty on the occupied territories and created arrangements to support a form of control which was devoid of legal sovereignty. It is this deployment of 'exceptional' practices by 'democracies' that is one of the most challenging aspects of current political theory and practice.

References

- Agamben, G. (1998), *Homo Sacer: Sovereign Power and Bare Life*, trans. D. Heller-Roazen. Stanford: Stanford University Press.
- (2000), *Means Without End: Notes on Politics*, trans. V. Binetti and C. Casarino. Minnesota: University of Minnesota Press.
- (2005), *State of Exception*. Chicago: Chicago University Press.
- Arendt, H. (1951), *The Origins of Totalitarianism*. New York: Harcourt, Brace and World.
- (1958), *The Human Condition*. Chicago: Chicago University Press.
- (1970), *On Violence*. New York: Harvest.
- Benjamin, W. (1978), 'Critique of Violence', in *Reflections*. New York: Schocken Books, 277–300.
- Benton, L. (2002), *Law and Colonial Cultures*. Cambridge: Cambridge University Press.
- Burroughs, P. (1999), 'Imperial Institutions and the Government of Empire', in A. Porter (ed.), *The Oxford History of the British Empire: The Nineteenth Century*. Oxford: Oxford University Press, 170–97.
- Cohn, S. B. (2004), *The Bernard Cohn Omnibus*. New Delhi: Oxford University Press.
- Comaroff, J. and J. Comaroff (2006), *Law and Disorder in the Postcolony*. Chicago: University of Chicago Press.
- Fanon, F. (1967a), *Black Skin, White Masks*. New York: Grove Press.
- (1967b), *The Wretched of the Earth*. New York: Grove Press.
- Fieldhouse, D. K. (1967), *The Colonial Empires: A Comparative Survey from the Eighteenth Century*. New York: Delacorte Press.
- Fontana, B. (ed.) (1988), *Constant: Political Writings*. Cambridge: Cambridge University Press.
- Foucault, M. (2004), *Security, Territory, Population*. New York: Palgrave Macmillan.
- Gendzier, I. (1973), *Frantz Fanon: A Critical Study*. London: Wildwood House.
- Goldberg, T. D. (2008), 'Racial Palestinization', in R. Lentin (ed.), *Thinking Palestine*. London and New York: Zed Books, 25–45.
- Gourevitch, P. and E. Morris (2009), *The Ballad of Abu Ghraib*. New York: Penguin Books.
- Hardt, M. and A. Negri (2004), *Multitude: War and Democracy in the Age of Empire*. New York: Penguin Press.
- Hussain, N. (2003), *The Jurisprudence of Emergency: Colonialism and the Rule of Law*. Ann Arbor: University of Michigan Press.
- Johnston, R. (1973), *Sovereignty and Protection: A Study of British*

- Jurisdictional Imperialism in the Late Nineteenth Century*. Durham: Duke University Press.
- Judt, T. (2005), 'The New World Order', *New York Review of Books*, 14 July, 17.
- Kalyvas, A. (2005), 'The Sovereign Weaver: Beyond the Camp', in A. A. Norris (ed.), *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's Homo Sacer*. Durham: Duke University Press, 107–34.
- Lentin R. (2005), "'Femina Sacra": Gendered Memory and Political Violence', *Women's Studies International Forum*, 29: 463–73.
- (2011), 'Palestinian Women from *Femina Sacra* to Agents of Active Resistance'. Paper presented at the International Colloquium, WWW. World Wide Women: Globalisation, Genders and Languages, Research Centre for Women's and Gender Studies (CIRSDe), Università degli studi di Torino, 10–12 February.
- (ed.) (2008), *Thinking Palestine*. London and New York: Zed Books.
- Macey, D. (2000), *Frantz Fanon: A Life*. London: Granta Books.
- Mitchell, T. (1991), *Colonizing Egypt*. Berkeley: University of California Press.
- (2002), *Rule of Experts: Egypt, Techno-Politics, Modernity*. Berkeley: University of California Press.
- Naimark, N. M. (2001), *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe*. Cambridge, MA: Harvard University Press.
- Neuman, F. ([1930] 1987), *Social Democracy and the Rule of Law*, ed. Keith Tribe. London: Allen and Unwin.
- Priest, D. (2005), 'CIA Holds Terror Suspects in Secret Prisons', *The Washington Post*, 2 November, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>, accessed 15 September 2011.
- Scheuerman, E. W. (1997), *Between the Norm and the Exception*. Cambridge, MA: MIT Press.
- Schmitt, C. (1988), *Political Theology: Four Chapters on the Concept of Sovereignty*. Cambridge, MA: MIT Press.
- ([1950] 2003), *The Nomos of the Earth*. New York: Telos Press.
- (2007), *Theory of the Partisan: Intermediate Commentary on the Concept of the Political*, trans. G. L. Ulmen. Ann Arbor: Telos Press.
- Sharif, H. (2003), *Approaching Palestinian Liberation with the Theory of Franz Fanon*. Unpublished MA Thesis, Mansfield College, Oxford University.
- Shenhav, Y. (2006), *The Arab Jews*. Stanford: Stanford University Press.
- Spektorowski, A. (2000), 'The French New Right: Differentialism and

- the Idea of Ethnofilial Exclusionism', *Polity*, XXXIII (2 Winter): 383–403.
- Stoler, A. L. (2006), 'On Degrees of Imperial Sovereignities', *Public Culture*, 18: 117–39.
- Weiss, Y. (2004), 'Ethnic Cleansing, Memory and Property: Europe 1944–1948', *Historia: Journal of the Israeli Historical Society*, 13: 43–74. (In Hebrew.)
- Weitz, D. E. (2003), *A Century of Genocide: Utopias of Race and Nation*. Princeton: Princeton University Press.

Notes

A previous version of this essay first appeared in Hebrew in *Theory and Criticism*, 29(Fall) 2006: 205–18 and is reproduced with permission of the Van Leer Jerusalem Institute.

1. Hardt and Negri (2004) suggest that the institutionalisation of the exception as a global paradigm is based on the juxtaposition of two traditions: the exception in German legal thought and the American ideology of exceptionalism.
2. Palestinians comprise 15 per cent of the Israeli population after the ethnic cleansing of Palestinians in the 1948 war and thereafter.
3. To be sure, ethnic cleansing is not genocide. For the distinction between genocide and ethnic cleansing see Weitz (2003: 10) and Weiss (2004). For a different position see Naimark (2001).
4. Schmitt (1988). On Schmitt's text as a response to Benjamin's *Critique of Violence*, see Agamben, *State of Exception* (2005), chapter 4.
5. Schmitt himself was not oblivious to the exceptional implications of imperialism. In *The Nomos of the Earth* (2003) he criticised imperialism as a pseudo-secular strategy, which leads to the de-politicisation and de-theologisation of the European nomos.
6. Ronit Lentin (2005; 2011) also provides a feminist critique of Agamben, speaking particularly about what she labels as 'femina sacra'.
7. In *Homo Sacer*, Agamben refers in passing to the Spanish colonial history in Cuba and to the British in South Africa, as two cases in which 'the camp' was born.
8. For example, Agamben echoes the distinction that Arendt borrowed from Aristotle between *zoē* and *bios* as two forms of life (Arendt 1958), or her analysis of stateless people (Arendt 1951).

9. In his *Political Theology*, Schmitt has already pointed to Hobbesian theory of the state as theological moment which enabled the creation of modern Europe.
10. One of the striking facts about Fanon's two major books is the manner in which they influenced racial and national struggles in the Middle East. For example, in Israel, *Black Skin, White Masks* has become a founding book for the Mizrahi struggle (that of Arab Jews; see Shenhav 2006), whereas *The Wretched of the Earth* remained outside of the discourse. In the Arab world, the opposite situation occurred. Whereas *The Wretched of the Earth* was translated into Arabic in the 1960s and arguably fuelled the Palestinian national struggle (Sharif 2003), *Black Skin, White Masks* was never translated into Arabic (Gendzier [1973] made this argument in the 1970s, and as far as I know this is still the situation).
11. I use the term 'partisan' following Schmitt (2007). According to Schmitt, the partisan uses pure violence. It marks politics as war rather than peace.
12. Martial law was a frequent manifestation of the 'exception' in the colonies. As Hussain (2003) persuasively argues in his excellent analysis, it carried different meanings in Europe and in the colonies. Based on cases from Punjab and St. Thomas, Hussain shows how their use in the colonies were suffused, both in practice and in theory, with racialised definitions and interpretations.
13. Some of Schmitt's students, such as Neuman and Kirshcheimer, criticised the liberal rule from the leftist ranks (Neuman 1987; see Scheurman 1997). They launched a sharp critique of the big monopolies and show how the distinction between a friend and a foe is organised also in the economic sphere.