

**THE POWER OF INCLUSIVE EXCLUSION**

Anatomy of Israeli Rule in the  
Occupied Palestinian Territories

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## The Colonial Foundations of the State of Exception: Juxtaposing the Israeli Occupation of the Palestinian Territories with Colonial Bureaucratic History

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Shortly after the war in 1967 and the occupation of the West Bank and Gaza by the Israeli Army, Israel declared the territories to be a closed military zone.<sup>1</sup> Military rule was established by the military commander of the territories through geographically dispersed military governors known as *moshlim* who ruled distinct areas and who had close contact with the local leadership and a central administrative body that would evolve in 1980 into the Civil Administration of the territories. The Civil Administration had separated the bureaucratic civil administrative apparatus in the territories and the management of the everyday lives of the Palestinians from organized military action, ostensibly creating two bureaucratic spheres of control. As Shlomo Gazit, the first head of the Civil Administration later described it, "We sought to provide law and order to the territories and to differentiate ourselves from the military rule of the Palestinians within the 1967 borders, which we saw as unprofessional."<sup>2</sup> This, however, was not a simple matter, because there was no role model for the Israeli Civil Administration to emulate. In retrospect, Gazit recollected, the colonial model of bureaucracy such as the British employed in India or the French in Algeria never occurred to him as the proper model of control. Rather surprisingly, he evoked the Nazi occupation of Norway as a viable analogous model. The occupation was supposed to run every aspect of human life, from hospitals, municipalities, and schools to the provision of sewage treatment, water, and electricity. The Civil Administration also conducted a population census, which later, in the years following the Oslo accords, would become a powerful tool of population control with the enactment of the permit regime.

During the early years of the occupation (1967–74), the military government's stated guidelines were based on minimum involvement and on maintaining an efficient, fair, and liberal administration.<sup>3</sup> Without claiming sovereignty over the territories and without administrative regulation of their populations, Israel

allowed the majority of the Palestinian workforce to enter Israel. In 1970, 5 percent of the Palestinian workforce was employed inside Israel or by Israeli employers. By 1987, over 45 percent of the workforce provided 85 percent of the Palestinian gross domestic product, which gradually created economic dependence among Palestinians on the possibility of entry into Israel, a situation that continued and intensified throughout the "Oslo years."<sup>4</sup> This was due to a relatively free passage of people and goods to and from the Occupied Palestinian Territories (OPT) implemented in 1971 by then defense minister Moshe Dayan as part of the "Open Borders" policy between the OPT and Israel.

The relatively free flow of labor was first obstructed during the uprising known as the first intifada (1987–92). In 1989, the administration first issued requirements for Palestinian workers from Gaza to carry "magnetic cards" as a prerequisite for entry into Israel. The flow of Palestinian labor came to a temporary halt during the 1991 Gulf War, when the Israeli Army introduced intense curfews and local closures in and around towns and villages in the West Bank and Gaza. The general decree allowing the right to free movement between the OPT and Israel was cancelled. It was replaced by a military decree ordering all Palestinians who wished to enter Israel to carry a personal permit.

Then, in 1993, Israel declared the first closure of the borders between the OPT and Israel. It took the form of a state of exception without declaring an end date for the closure. To implement the closure policy, checkpoints were built at various border points.<sup>5</sup> In May 1994, with the signing of the Gaza-Jericho Agreement as part of the Oslo Accords, civil authority and administrative powers in the Gaza Strip were transferred to the Palestinian Authority. The Civil Administration was reduced in size and function, with much of its focus turned from a focus on internal Palestinian civilian life to a focus on Israeli security and monitoring in order to control the movement of Palestinians into Israel for purposes of work, medical care, and religious practice. Annex II of the Oslo Gaza-Jericho Interim Agreement yielded the Joint Civil Affairs Coordination and Cooperation Committee between Israel and the Palestinian Authority (PA) and formed the District Coordination Offices (DCOs) and District Civil Liaison Offices (DCLs) on both the Palestinian and Israeli sides, which were to provide "day-to-day contacts between the two sides as regards matters such as employment permits, hospitalization, transportation licensing, or the transfer of information."<sup>6</sup> The DCOs and DCLs became the double-headed bureaucracy directing the occupation.

The transfer of authority from the Israeli military government and the Civil Administration to the Palestinian Authority shifted the governing paradigm from management of all aspects of Palestinian civil life to control of the Palestinian population seen from the single vantage point of "Israel's security." While

relinquishing responsibility for civil affairs, the District Civil Liaison Offices on the Israeli side, together with the downsized Civil Administration, focused on controlling the movement of the Palestinian population. This gave the security apparatuses a key role and conferred on them direct administrative power. Entry into Israel for employment or humanitarian purposes now required a permit. The requests for permits were to be transferred by the Palestinian DCOs to the Israeli military administration using the Israeli registry of the Palestinian population. The double-headed bureaucracy prevented Palestinian individuals from accessing the administrative apparatus, and all requests were passed to the Israeli side through the Palestinian DCOs. This shifted civil responsibility to the Palestinian Authority while retaining Israeli control over security matters, which included denial of entry from the territories into Israel.

Due to the turn of political events and the administrative failure of the Oslo Accords, this double-headed bureaucracy was short-lived. Since the end of the 1990s, the Palestinian DCLs have become mere post offices that deliver requests to the Israeli offices where decisions are made and policies carried out. The joint coordination committees ceased to work effectively in 1996 for political reasons, while increased impediments on the freedom of movement began to take shape in the form of roadblocks, checkpoints, and the omnipresent border police.

The state of exception in the form of military closures took two forms: closures that brought to a halt the entrance of Palestinians to Israel and internal closures that restricted the movement of the Palestinians within the West Bank itself. The closure, a form of control originally enacted for emergency security reasons, was institutionalized as the principal tool of control used by the Israeli Army. These closures had a massive effect on the Palestinian economy, since over 40 percent of Palestinian workers relied on employment within Israel.<sup>7</sup> The DCL's single-headed management remained dysfunctional until October 2000, with the beginning of the second intifada. All connections and liaisons then were halted. Since October 2000, the background to the harsh implementation of the permit regime has been assassinations (euphemized as "extrajudicial killings," or "targeted killings"), massive arrests, night raids on homes and villages, administrative detentions, house demolitions, the takeover of rooms and roofs of Palestinian houses by army units, torture and beatings during interrogations, high fines for traffic violations, and denial of exit into Jordan for security reasons.<sup>8</sup>

This intricate set of laws, decrees, and administrative decisions implemented the impediments to Palestinian freedom of movement to Israel and within the West Bank itself. The permit regime is a bureaucratic apparatus entirely separate from the state bureaucracy within Israel proper. The decrees have been founded on a racial distinction, in that they pertain to Palestinians alone and do not include

Jews, whose settlements in the Occupied Territories have been judged to be illegal under international law. Laws and decrees and their implementation and fundamental civil rights differ greatly between Jews and Arab-Palestinians, even when they commit the same offences in the same territory.<sup>9</sup>

From the end of 2000 on, the bureaucratic labyrinth of the occupation as it operates today began to take its shape. More than two hundred thousand Palestinians were recorded in the DCOs' databases as to be "denied entry for security reasons," meaning they could not obtain magnetic cards, the prerequisite for obtaining permits for entry into Israel and in many cases for traveling in the West Bank between cities and villages.<sup>10</sup> More than sixty-four thousand Palestinians are "denied [entry] for police reasons," which can mean that the person has an unpaid police traffic ticket, or a court case that is in process, or files opened by border police at checkpoints for attempted illegal entry without further legal prosecution. Although denial of entry by the Israeli police is an attenuated classification compared with denial by the General Security Service (GSS), the secret service known as the Shabak, the implications are the same. Both prevent a person from receiving a permit to enter Israel.

Following the renewal of control of the Israeli military bureaucracy over the Palestinian population after October 2000, the GSS morphed from a consultant to the military Civil Administration to an administrative body in itself, holding sole power on classification of Palestinians as security threats. (However, this change has not been officially recorded in published administrative directives, preventing the possibility of legal appeals.)<sup>11</sup> Laws criminalizing the employment of illegal Palestinian workers have set high fines and long prison sentences for Israeli employers who have employed Palestinians for over twenty years. Laws criminalizing drivers caught with Palestinian passengers who lack permits empower border police to impound cars on the spot for thirty days and to press charges against the drivers that result in prison sentences. Palestinians caught in Israel without a permit serve prison sentences of up to two to six months and are usually denied entry for at least two years afterward.

The bureaucracy of the occupation could seem like a dysfunctional mayhem, if some of its recurring exceptions, its efficiency for controlling Palestinian movement, and the racial hierarchy that governs it through separate laws and regulation administered to Palestinians and Jews in the Occupied Territories did not hint at another possibility for the interpretation of its mechanisms and working principles. In this essay, we explore that possibility—the possibility that this seeming patchwork of arbitrary policies is in fact based on a coherent and well-articulated approach to the implementation of a colonial bureaucracy, an approach based on the politics of exception and political theology.

#### MAX WEBER AND CRITICAL STUDIES OF BUREAUCRACY

How are we to conceptualize and analyze this labyrinth of bureaucratic (dis)order? The traditional model of bureaucracy espoused by liberal political theory and its critique in the tradition of critical theory is inadequate to depict the inner working of the bureaucracy of the occupation. Since Max Weber, and in the wake of his pioneering studies of bureaucracy,<sup>12</sup> the main menace associated with bureaucracy has seemed to lie in its hyperinstrumental rationality. Weber was the first to offer a systematic account of bureaucracy's ideal type—arguing that precision, speed, predictability, coordination, and the reduction of friction raise efficiency to its optimal level and that pure bureaucratic organizations are expected to function according to universal considerations of competency in order to achieve the "very calculability of results."<sup>13</sup> Yet Weber also provided an unambiguous warning about the towering threat posed by bureaucratic domination and its well-organized machinery. Following Weber, Franz Neumann focused more cogently on the disastrous connection between efficient bureaucracy and the loosely integrated apparatuses of the Nazi state terror known as "Behemoth."<sup>14</sup> In the same vein, Max Horkheimer and Theodor W. Adorno underlined the dialectic nature of instrumental rationality, pointing out the displacement of means and goals, as well as the ascent of instrumental reason as a prime ideology,<sup>15</sup> which Zygmunt Bauman later identified as the main impetus behind the "twisted road to Auschwitz."<sup>16</sup> In a different tradition, Hannah Arendt described the bureaucratic mind of Adolph Eichmann, an efficient clerk whose initial organizational task was immigration. She coined the term "the banality of evil" to capture the mechanical, bureaucratic way in which such a mind was involved in the most horrendous atrocities.<sup>17</sup> Arendt, as well as Bauman, have suggested that "moral aloofness" and the "banality of evil" are endemic to the pathologies and abnormal manifestations of a modern rational bureaucracy.<sup>18</sup>

This line of critique, which was developed in the backdrop of horrifying state atrocities during World War II, was indeed eye-opening and instructive. For one thing, it turned the ideal type of bureaucracy on its head. Rather than speed and precision, the critique of bureaucratic reason underscored the ominous nature of the organizational machinery, the detrimental effects of efficiency as an ideology, and the malicious use of its advantages toward particularistic and inhuman ends.

Yet the structure and epistemology of this critique remained anchored in European liberal assumptions about governance and the rule of law as the finest form of modern political rationality. It perceived secular law and secular reason to be the sole arbiters of the modern project of bureaucracy and the topos of its sovereignty at state level.<sup>19</sup> Despite its uncompromising critique, it also accepted the

basic European assumptions about the nature of bureaucracy: legal, rather than personal control; rationality, rather than superstition; secularism, rather than theology. At the end of the day, it was believed, the violence and evil produced by modern bureaucracy has resulted from the unexpected consequences of action and the irrational consequences of the rational machinery. However, being European in nature, the critique of bureaucratic reason was particularly oblivious to Western colonialism and imperialism. The liberal features specified above are insufficient in explaining the inner workings of contemporary bureaucratic violence as it emerged in the context of colonial rule and imperial formations of power in general and of contemporary bureaucratic violence as it emerges in the Occupied Palestinian Territories in particular.

It is now a truism that the European powers have used their colonies as laboratories for experimentation with "modern projects." And it was there, in the colonies, that European powers privileged a radically different model of state bureaucracy. In this paper, we invoke an alternative ideal type of bureaucracy that was developed by Lord Cromer during the British rule in Egypt. Cromer's bureaucracy was a sovereign organ for managing the "subject races" in the colonial territories, representing the state's apparatuses and the state's law. This model stood in contradistinction to the liberal model of state bureaucracy developed by Max Weber in Germany.<sup>20</sup> Rather than subscribing to the rule of law, the colonial bureaucracy created and inscribed itself into a political *nomos* where European liberal law was suspended.<sup>21</sup> This political *nomos* was founded on a tapestry of European laws and local "traditional laws," as well as abruptly promulgated rules and decrees that allowed for administrative discretion and what Carl Schmitt called constant "decisionism." Thus, colonial state bureaucracy has acted as a fount of sovereignty—as autonomous machinery that has carried the prerogative to decide on the exception to the law and to exercise real and symbolic violence.

Thus, whereas the liberal version of bureaucracy renders the exception undesirable, an indication of malfunctioning, Cromer's colonial bureaucracy is founded on the principle of the exception. We look at colonial sovereignty through the lenses of the exception and explore the concrete practices of rule in which sovereignty as a political category loses its uniform meaning. Furthermore, colonial bureaucracy has employed race as an explicit category for action and differentiation. At times, it also has created and altered racial distinctions to serve its purposes. All in all, it has appeared to the "subject races" as a phantom organ that manufactures miraculous decisions, but that conceals the locus of the decision-making process, the inner working of its machinery, and its criteria for judiciousness.

Our main objective is to describe the morphology of this colonial model of bureaucracy and to suggest that it should serve as the proper framework against which colonial situations should be measured and compared, including the Israeli

occupation of the Palestinian Territories. The rest of the essay is structured as follows. First, we discuss the political-theological perspective, which calls attention to the growing phenomenon of rule through the exception, rather than the rule of law, in the postcolonial world, as well as in Western democracies. Second, we present the essentials of Lord Cromer's ideal type of bureaucracy, which challenged liberal universal law and extended racially based political exceptions as the main arbiter of the ruling reality. Thus we offer an alternative ideal type of bureaucracy that introduces racial hierarchies into the administrative structure, rendering Weber's prerequisites for a bureaucracy that operates "without scorn and bias" all but obsolete. Third, we provide several illustrative examples from Egypt, India, and Occupied Palestine to show how the model has been implemented in practice. We end with a theoretical reflection that turns the gaze from the colonies to the metropole. In so doing, we challenge the modernist interpretation of Weber's ideal type and show that the Weberian model itself may be subject to political-theological interpretation, a neglected aspect in the literature on bureaucracy and domination.

#### POLITICAL THEOLOGY AND THE "STATE OF EXCEPTION"

In his *State of Exception*, Giorgio Agamben examines how the exception has become a permanent working paradigm of Western democracies.<sup>22</sup> For example, in 2001, the United States passed the USA PATRIOT Act,<sup>23</sup> under which it strove to fight terrorism. Under the act, the United States put hundreds of administrative detainees in Guantánamo Bay without trial. Amnesty International reports that these detainees are constantly being tortured: They are nearly drowned in cold water, they receive electrical shocks, and their religious beliefs are ridiculed. The *Washington Post* reported that the United States has incarcerated tens of detainees in secret prisons—known as "black sites" and forming "legal black holes"—which are spread throughout Eastern Europe and around the globe. The lives of these detainees were turned from lives worth living into "bare lives," to use Agamben's terminology. They never stood trial, they do not enjoy basic human rights, and the management of their everyday lives is often outsourced to private contractors. The anomalous nature of this territory and the anomalous status of the law are at stake here. Despite the ruling of the Supreme Court, the American government claims that the Constitution does not apply to the "Guantánamo camp," including Camp X-Ray, and the other "camps" located there. Do sites such as these constitute a territory within the axes of the rule of law, or outside of it? This is the question that Walter Benjamin, Carl Schmitt, and Agamben attempt to address.

In 1921, Benjamin published a rather cryptic article under the title "Critique of Violence" in which he examined the dialectical relationships between violence

and the rule of law, between the violence that constitutes the law and the violence that preserves and verifies the rule of law. In contrast to these two sources of violence, the state cannot tolerate "pure violence" (or "revolutionary violence"), which exists outside of the law. Benjamin formulated "pure violence" in religious-theological redemptive language.<sup>24</sup> When Schmitt published his *Political Theology*, he implicitly addressed this theological turn.<sup>25</sup> Schmitt pointed an accusing finger at liberal political theory, which allegedly incapacitated the sovereign by forcing him to rely on and be restricted by the legal rule of law. He criticized liberal law and democratic parliamentary institutions for their lack of "decisionism," that is, for defining sovereignty through the law, rather than through administrative discretion, and for neglect of the exception, that is, how the legal system suspends itself in light of political threats.<sup>26</sup> Instead, he suggested that all significant concepts of modern theory of the state are secularized theological concepts, arguing that the omnipotence of the modern lawgiver is derived from theology. In *Political Theology*, the "Sovereign is he who decides on the exception," suggesting that the exception in jurisprudence is analogous to the miracle in theology.<sup>27</sup> Schmitt did not renounce Benjamin's claim that violence underlies the European democratic parliamentary system itself. He argued that this violence, which liberalism tends to deny, is encapsulated in the figure of the sovereign and is necessary for the survival of the liberal state itself. As we argue below, the violence embedded in the law becomes even more apparent and visible in the colonial system of governance.

Agamben accepts the tenets of political theology and develops the logic of exception, which, he argues, provides a necessary supplement to Michel Foucault's concept of governmentality.<sup>28</sup> In *Homo Sacer*, Agamben invokes a particular model of exception that he draws from the Roman codex, that of the sacred man, who is a person whom people have judged on account of his having committed a crime: "The sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice."<sup>29</sup> Agamben describes how in the so-called "camp" (be it the concentration camp or Guantánamo Bay), life becomes bare, purging the legal persons, the subjectivity, and the biography of its inmates. It 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 the Weimar Republic and the Nazi regime, in Switzerland, Italy, England, and the United States. His frame of reference, however, is Europe, accepting its time and space as given modalities. As Andreas Kalyvas has rightly noted "Unfortunately, *Homo Sacer* returns to a representation of time—the time of sovereignty—as uniform, one-directional, and rectilinear,"

remaining "within the horizons of the Occidental political tradition, the political destiny of the West."<sup>30</sup>

What is conspicuously absent in this genealogy is the role of the exception in the history of imperialism. This is unfortunate, if only because at the beginning of the twentieth century, Western colonies occupied some 85 percent of the world's territory,<sup>31</sup> and they used alternative models of rule that provide a rich arena in which to study sovereignty. As Nasser Hussain firmly puts it: "Colonialism is the best historical example for any theoretical study of norm and exception, rule of law and emergency." The concept of "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 colonial capitalism. Because an emergency is a "situation of danger that can never be exhaustively anticipated or codified in advance, and thus the suspension of the law would have to be the result of a conscious decision,"<sup>32</sup> and in colonial bureaucracies, it came to be a decision on which administrators increasingly relied.

Agamben owes some of his insights not only to Schmitt, Benjamin and Foucault, but also to Hannah Arendt.<sup>33</sup> Unfortunately, he fails to take her perspective on imperialism and on "race and bureaucracy" seriously. In *The Origins of Totalitarianism* (1951) Arendt turned her gaze to the increasing gap between the political centers in Europe (the metropole) and the colonies, a gap that she described as the inevitable result of the insatiable appetite of imperialism for new lands. Arendt suggested that when imperial conquerors disengaged from the European state and its democratic laws, they replaced democratic culture with despotism and with coercive rule over the subject races. She pointed to the initial gap between the legal status of citizens in the home country and the subject races in the colonies, which are never full-fledged citizens, as the locus of her political inquiry. When it migrates back home, this gap partially explains the rise of totalitarianism. Arendt's causal reasoning is ambiguous, but there is no doubt that she alludes to political governance that is based on exceptions. For example, she shows how imperial rule rests on abrupt and changing decrees. It is these exceptions that we want to mark out in order to explore the political-theological underpinnings of colonial rule.

We take Arendt's perspective on imperialism seriously and combine it with the Schmittian understanding of the exception. However, instead of treating sovereignty as a formal legal category, we examine it as a sociological praxis full of exceptions, fissures, and fractures. In other words, we suggest studying the concrete practices of rule, practices in which sovereignty as a political category loses its uniform meaning. Indeed, in *Society Must Be Defended*, Foucault suggests decomposing the notion of sovereignty and tracing its ephemeral histories. Adi Ophir delineates this project rather succinctly: "Sovereignty can be described as an Archimedean point that can rescue the political philosophy of the law and the

legal philosophy of the political from its vicious circle. Sovereignty at one and the same time is the authority to decide the law in every moment and to dictate the law and the ruling power." Yet Ophir also suggests going one step further and distinguishing between the concept of sovereignty and the "sovereign decision": "We ought to keep a distinction (which Agamben underemphasizes) between sovereignty and the 'sovereign decision' as manifested in concrete governmental reality. We should definitely not transpose the same uniform and unified form of 'sovereignty' to the actual exercise of ruling. In every regime, even in the most atrocious forms of totalitarianism, the sovereign rule negotiates the exception."<sup>34</sup>

This comes close to our definition of sociological praxis. The examination of sovereign practices offers multiple manifestations of sovereignty that cannot be identified with a single privileged point of decision. In the colonial context, this multiplicity takes on an additional meaning. Colonial rule is characterized by a tapestry of multiple partial sovereignties, as well as by a collection of rules and abrupt decrees, both of which challenge the unified concept of sovereignty.

One needs only to consider anticolonial manifestations of resistance in order to realize that legal exceptions, states of emergency, closures, the apprehension of administrative detainees, and assassinations authorized by the state were not issued only in response to the destruction of the Twin Towers in New York in 2001 or to terrorist attacks from Gaza or the West Bank. These also were practices that, from the start, characterized colonial occupations and the racial hierarchy upon which they were founded. The fact that states of emergency overlapped with racialized bureaucracies is well known to the subject races whose life developed into bare existence. Franz Fanon's manifesto *Wretched of the Earth* testifies to the distinction between "legitimate violence" and "illegitimate violence" that characterizes the architecture of the modern European state and shows how the distinction becomes blurred in the colonial context. It also clearly suggests that in the colonial context, the state of emergency has become the rule, rather than the exception. As Benjamin prophetically put it: "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 accords with this insight."<sup>35</sup>

The history of imperialism shows that states of exception were ubiquitous and omnipresent in the colonial territories. Colonial governance was entrapped between the desire to export the rule of law to the colonies, on the one hand, and a lack of desire (or ability) to annex those territories or to establish full sovereignty, on the other. Colonial administrators had no imperial handbook about what 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."<sup>36</sup> The colonizers 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 labeled as indigenous "customary law."<sup>37</sup> Thus, racial distinctions were molded by the sovereign to serve its ruling purposes. On top of that, the church was also a legal authority that profoundly influenced the functioning of colonial law.<sup>38</sup> 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."<sup>39</sup>

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, and Lord Lytton in Afghanistan, among others,<sup>40</sup> 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 the unified liberal rule of law. This resulted in the endless negotiations and disagreements that Ross Johnston called "jurisdictional Imperialism" and that Lauren Benton defined as "jurisdictional politics," "jurisdictional flexibility," and "jurisdictional jockeying."<sup>41</sup> These "anomalous models" have resulted in sites of lawlessness under the auspices of the law: foreign jurisdiction, exterritorial jurisdiction, administrative decrees, partial annexations, combat zones, martial law, and states of emergency.<sup>42</sup> Recently, Ann Stoler has used the concept of "imperial formations," which she defines as "macropolities whose technology of rule thrives on the production of exceptions and their uneven and changing proliferation." We could not describe it better:

Critical features of imperial formations include harboring 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.<sup>43</sup>

It is there, in the colonial territory, that the exception has become a permanent working paradigm of Western democracy. The exception, we should emphasize, is not only the suspension of the law, but also its selective use through a legal and administrative patchwork. The British pictured the colonies as representing "anarchy and confusion, selfishness, cowardice, treachery, unpatriotic betrayals and horrible reigns of terror, the tyranny of the strong."<sup>44</sup> They founded their rule on the concept of divine providence bestowing "law and order" and good governance upon its racialized subjects. British sovereignty—both *de facto* or *de jure*—viewed the colony as a feudal state with the queen as the natural sovereign ruling

under God.<sup>45</sup> As Bernard S. Cohn firmly put 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."<sup>46</sup>

Not surprisingly, British bureaucracy was anchored in Christian moral code. It allowed for judicial intervention (the analogue of divine miracle) to manufacture uncertainty for its racialized subjects, it was based on personal rule, rather than on formal written documents, and it manufactured capricious administrative decrees, rather than the predictable nature of the rule of law.

The political-theological form of colonial bureaucracy was used to differentiate between different political communities, because it was based on the racial distinction between "Europeans" and "natives," or between "Jews" and "Arabs," in the context of the Palestinian territories.<sup>47</sup> In the economics of the bio-political, racial hierarchies became the definers of life and death, as well as their justification. To be sure, racial hierarchies are sometimes camouflaged and justified by alternative regimes of justifications, be it a national struggle, a security paradigm, a distinction between a friend and a foe, or various other definitions that mask the racial elements. However, as Hussain has suggested, "it is race that undermines the legal identity between metropole and colony."<sup>48</sup> The bureaucracy as a differentiating mechanism between "subjects" who are European citizens and "subject races" who are not is at the core of the foundation of the political order.

#### PROTOTYPES OF COLONIAL BUREAUCRACY

Quintessential to this system of exceptions was Lord Cromer's model of colonial bureaucracy in Egypt. Cromer provided an alternative ideal type of bureaucracy to Weber's. It was a sovereign organ that was suffused with political-theological and racialized procedures and that manufactured miraclelike decisions. At the same time, it was largely invisible and inaccessible to the subject races.

When Lord Cromer became the British Consul General in Egypt in 1883, the future of colonial rule in Egypt was still uncertain, and at first, he advocated a temporary government and a policy of evacuation of British citizens.<sup>49</sup> As it turned out, Cromer governed Egypt for no less than a quarter of a century, and when he realized that the occupation was enduring, he put forward a set of principles for bureaucratic governance that were later published in his essay "The Government of Subject Races" and in part in *Modern Egypt* (1908).<sup>50</sup> In order to avoid full sovereignty, Cromer and his associates acted according to the Foreign Jurisdiction Act of 1843,<sup>51</sup> which facilitated the use of legal and bureaucratic (along temporal and spatial) exceptions. Cromer explained that the regular rule of law, common in liberal representative democracies, is incompatible with racially inferior groups: "So limited is the stock of political ideas in the world that some modified copy of

parliamentary institutions is, without doubt, the only method which has yet been invented for mitigating the evils attendant on the personal system of government. But it is a method that is thoroughly uncongenial to Oriental habits of thoughts."<sup>52</sup>

A similar position and justification was stated by Sir William Jones, a philologist at Oxford, upon the seizure of India. British law could not become the law of India, he proposed, because "a system of liberty, forced upon a people invincibly attached to opposite habits, would in truth be a system of tyranny."<sup>53</sup>

Under the Foreign Jurisdiction Act in Egypt, the colonial bureaucracy would become an effective method of control, which Cromer perceived as an enlightened alternative to the liberal rule of law on the one hand, and the brute use of force, on the other. After all "the sword will assuredly be powerless to defend us for long, and the days of our imperial rule will be numbered," he argued.<sup>54</sup> He assured that no matter what the initial qualities of the bureaucrats are, once entered on the unending process of expansion, they will become "instruments of incomparable value in the execution of a policy of Imperialism."<sup>55</sup> In contradistinction to his role in Europe, the colonial bureaucrat "ceases to be what he was and will start to obey the laws of the process, identify himself with anonymous forces that he is supposed to serve in order to keep the whole process in motion; he will think of himself as mere function...mere instrument."<sup>56</sup> Cromer's vision of imperial bureaucracy did not adhere to stable and predictable laws, employed secretive decision-making processes, and issued capricious bureaucratic decrees. To the subject races, the colonial bureaucracy thus represented an illusive "phantom sovereign" that did not respond lawfully to their appeals and challenges.

Cromer's model of bureaucracy was imbued with strong racial assumptions and procedures, which in turn "necessitated" and legitimized the rule of British imperial bureaucracy over the racialized natives. He was explicit in emphasizing that bureaucratic sovereignty is essential, especially where "the inhabitants of the countries under British rule are not of Anglo-Saxon origin."<sup>57</sup> In his two-volume book *Modern Egypt*, he proposes to accomplish the mission of civilizing the natives—the white man's burden—through a racialized form of bureaucratic apparatus:

It is for the civilized Englishmen to extend to them the hand of fellowship and encouragement, and to raise them, morally and materially, from the abject state in which he finds them. And the Englishman looks towards the scene of other administrative triumphs of worldwide fame, which his progenitors have accomplished. He looks towards India, and he says to himself with all the confidence of the imperial race—I can perform this task.<sup>58</sup>

The rationale and legitimacy of Cromer's bureaucratic model rests upon what was perceived as the low level of the inferior race: "In fact, the Englishman will soon find that the Egyptian, whom he wishes to mould into something really

useful with a view to his becoming eventually autonomous, is merely the rawest of raw material." Furthermore: "Contrast... the European talkative mind, bursting with superfluous energy, active in mind, inquisitive about everything he sees and hears... with the grave and silent Eastern, devoid of energy and initiative, stagnant in mind."<sup>59</sup>

Cromer believed that "so long as British supervision is maintained, the Egyptian will readily copy the practices and procedures of his English teachers," and consequently, the "intellect" of the Oriental worker will "be developed" and "his moral being elevated under British auspices."<sup>60</sup> However, as it was, bureaucratic sovereignty simultaneously manufactured constant decisionism and functioned as a phantom sovereign that concealed its proliferating rules and conduct from the subject races.

Cromer's ideal type of colonial bureaucracy thus exhibited four salient features. First, the bureaucratic sovereign was perceived as an organ that allowed for the suspension of the law and that produced miraclelike interventions. These interventions allowed for a constant state of decisionism. Second, colonial bureaucracy appeared as a phantomlike sovereign. On the one hand, it was omnipresent and ubiquitous, but on the other, it was illusive, and its whereabouts were hard to trace. Third, the bureaucratic sovereign used racial distinctions and procedures to segregate Europeans from local natives. Fourth, colonial rule manufactured endless spatial and temporal exceptions, most of them concerned with freedom of movement. In sum, colonial bureaucracy has functioned as a phantom sovereign and performed miraculous decisions over racialized subjects. We can observe the colonial bureaucracy functioning in this way in three examples from the British Empire—in Egypt, India, and Palestine.<sup>61</sup>

#### COLONIAL BUREAUCRACY IN EGYPT

The vision of colonial bureaucracy outlined by Cromer was readily materialized in practice. As Timothy Mitchell writes, the British established a system of control in Egypt that, as Cromer admitted, was tantamount to the introduction of legal exceptions.<sup>62</sup> Upon its foundation, 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, an infinite number of decrees, and an abruptly changing set of rules and regulations about movement in the region. This required competent and knowledgeable professional bureaucrats who were familiar with racial distinctions, as Cromer himself testified: "No man, however experienced and laborious, could properly direct and control the various interests of so vast an Empire, unless he

were aided by men with knowledge of different parts of the country, and possessing an intimate acquaintance with the different and complicated subjects involved in the government and welfare of so many incongruous races."<sup>63</sup> The justification for British imperial bureaucracy is particularly blunt (and sanctimonious): "It is important that, in our well-intentioned endeavors to impregnate the Oriental mind with our insular habits of thought, we should proceed with the utmost caution." Furthermore: "Before Orientals can attain anything approaching to the British ideal of self-government they will have to undergo very numerous transmigrations of political thought."<sup>64</sup>

British colonial bureaucrats were perceived as benevolent rulers who provided the foundation for British moral conduct. They possessed the necessary moral virtues to rule the subject races: "He [the bureaucrat] will not be possessed with any secret desire to see the whole of Africa or of Asia painted red on the map."<sup>65</sup> The imperial officials were said to be informed "by the light of western knowledge and experience tempered by local considerations," and they "conscientiously think [what] is best for the subject race."<sup>66</sup> This breed of bureaucrat was placed in every Egyptian village, and a central office was set up to organize the official registration of births. This process required what Lord Cromer called "systematic English inspection" in Egyptian villages. This was applied by force, using police and hired watchmen who "surrounded the village at night; in the morning over 400 were found unregistered, and the Sheick will be tried by court-martial."<sup>67</sup>

Similar methods of supervision and governance were applied to capitalist production in Egypt. This is not surprising, since methods of population control that were initially used for combating insurgencies became institutionalized methods of exercising bio-power through population control in general. Mitchell describes the process in which these methods were used to prevent labor desertion from lands on which colonial 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 censuses, taxation penalties, and the usurpation of land. Furthermore, when crop monopolies were met by villager resistance, who deserted their lands which were guarded by the military, and moved to agricultural lands beyond government control, a permit regime was introduced under which permits issued by the military were required for travel outside one's village locality.<sup>68</sup> 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.

Colonial bureaucracy also introduced another land reform, for the Bedouins, a reform directly linked to population control and to infringement on the freedom of movement. Those who had fled and who had lost their lands were offered small plots in exchange for submitting to the authority of the military officer assigned to their locality. As Mitchell describes it:

They were to give the officer a list of the heads of the sections of each tribe, with the number of persons and a description of each individual enumerated "tribe by tribe, section by section, name by name." The officer would then issue a permit with the name, physical description, and tribe of every individual under his authority. A person who wished to move from one tribal section to another, or to another part of the country, required this permit to travel.<sup>69</sup>

This method of control inscribed the exception in space, the reason at this point being economic. As revolts occurred, the reason shifted from the purely economic justification of preventing the desertion of farm laborers to one that prescribed control over those posing a "security threat." Villagers were required to round up "depraved and malicious persons and suspicious characters" in their locality, who were then pressed into labor or sent to the army.<sup>70</sup> If, after the assigned period, the suspicious characters were found to have returned to their district, the head man would be punished. The colonial bureaucracy also placed work gangs under continuous police control, with the police overseeing a system of "tickets" that were handed out to workers in their villages before they traveled to their work sites, "but only to those men whom the local police deemed not to be troublemakers."<sup>71</sup>

Besides the organization 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."<sup>72</sup> This intervention in capitalist production based on population control and impediments on movement was created under the autonomous political *nomos* of the colonial bureaucracy. In this form, the notion of sovereignty and the notion of governmentality became enmeshed and practically indistinguishable.

Colonial bureaucracy represented the sovereign at every level, from the state to the village. It was based on a repertoire of exceptions that allowed for constant decisionism to manage the racial "other."<sup>73</sup> This form of bureaucracy is characterized by multiple and incoherent sovereign decisions and is therefore polytheistic, rather than monotheistic. This by no means comes close to Weber's ideal type of bureaucracy. It was quintessentially Cromer's.

#### COLONIAL BUREAUCRACY IN INDIA

This rule by the exception rather than by the rule of law, was not exclusive to Egypt. Cromer himself admitted that the Egyptian case was modeled after the administrative system that had been developed in India and suggested "this portion of the Indian system is deserving of reproduction."<sup>74</sup> The story of British rule of India is one of overcoming the sovereign excess of despotism in favor of a bureaucratic form of government.<sup>75</sup>

The East India Company, which was the first British "sovereign" of India, was gradually transformed from a monopoly trading concern to an administrative structure with an elaborate bureaucracy.<sup>76</sup> The East Indian Company had acquired many of the attributes of a European state. It could wage war, make peace, raise taxes, and administer justice.<sup>77</sup> Until the beginning of the twentieth century, British rule in India was direct, including a huge, multilayered bureaucracy comparable in size to those of the Czarist Russian or Chinese empires.<sup>78</sup> According to Edward Thompson and G. T. Garrett's *Rise and Fulfillment of British Rule in India* (1934), colonial bureaucracy was believed to facilitate productive life: the building of irrigation systems and railroads, the conducting of land surveys and censuses, the creation of a police force, all these managed by a trained bureaucracy.<sup>79</sup>

The Charter Act of 1833 offered a systematic codification of Indian criminal and civil law. It was based on a theory of authority that was founded on assumptions about the proper ordering of groups in Indian society and their relationship to the British rulers.<sup>80</sup> Despite relatively coherent proclamations about sovereignty and the rule of law, British rule in India was still based on a patchwork of rules and regulations, elaborated administrative sections, intricate legal divisions, and flexible offices. As one British legal expert has observed, "the administrative frontier [in India] was a moving one,"<sup>81</sup> and the government was styled as imperfect or as half-sovereign.<sup>82</sup> It is evident that the phantom theological sovereign in India manufactured endless exceptions.<sup>83</sup> For example, the British frequently resorted to martial law. Yet British sovereignty did not rest on the authorization of ordinary law, but on the legal maxim *Salus populi suprema est lex* (Safety of the people is the supreme law).<sup>84</sup> Similar to the logic propounded in Egypt, the "necessity" for marshal law was legitimized with racially based justifications about the natives as inferior and as bad subjects of the law. At the very least, it represented a foundational schism in the conceptualization of authority in India between natives and Europeans.<sup>85</sup>

In the mid-nineteenth century, John Stuart Mill clearly formulated a similar position regarding the natives of India: "A rude people... may be unable to practice the forbearances which it [representative government] demands... in such a case, a civilized government, to be really advantageous to them, will require to be in a considerable degree despotic." He further explained that cultural inferiority justifies the suspension of the rule of law: "It is characteristic of born slaves to be incapable of conforming their conduct to a rule or law."<sup>86</sup> What was perceived as racial superiority thus served as rationale for British despotic rule and the suspension of the law. The British in India described the subject races as despotic and autocratic, as lawless and inferior.<sup>87</sup> Lauren Benton shows, for example, that "in nineteenth-century India, whole ethnic communities found themselves defined as being outside the law—as 'criminal tribes'—while in many parts of Africa colonial administrators embraced efforts to shore up, and even re-create in quite distorted

forms, 'traditional' law."<sup>88</sup> This is indeed noteworthy, especially since the British at the same time acknowledged the political-theological character of their mandate in India. The first crown charter in India stated, for example, that we are "firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion."<sup>89</sup> Noted above, this meant that since the British monarch ruled under God and divine providence, the viceroy then became the physical representative of the divine order in India.<sup>90</sup> Yet because British assault on Indian society was so fierce culturally and religiously, large segments of the Indian population came to reject it and to promote counterideologies and reactions, the most famous being the Great Mutiny and Civil Rebellion of 1857.<sup>91</sup>

On April 13, 1919, the British authorities in Punjab declared that the residents were forbidden to leave the city or to gather in processions and assemblies. The city was observing the fourth day of a general strike, and there were funerals being held for people shot by the military a few days earlier. On top of that, many people had come to the city to celebrate the Hindu New Year. The local sovereign, General Dyer, had found out that residents were planning a procession in Jallianwala Bagh at 4:30 p.m. and mobilized his troops and armored vehicles. Jallianwala Bagh was an unused area in the shape of an irregular rectangle about two hundred and fifty yards long and two hundred yards wide. General Dyer stationed his troops around the rectangle. Then, without warning, he opened fire, and the firing lasted for ten to fifteen minutes. When it was over, the official estimate was that 379 people were killed, with thousands seriously injured.<sup>92</sup> After this event, the Amritsar Massacre of 1919, public discourse in England focused on the need to adopt emergency measures in advance, based on the Indian subjects' ignorance of the law and the natives' lack of sufficient respect for the legal system.

Furthermore, martial law in India was not just a means for restoring order, but also for reestablishing the general authority of the colonial bureaucracy. A British committee that studied another case in Gujranwala found that colonial bureaucrats had resorted to "fancy punishments" as ways to reinforce the general notion of authority and order. Thus, a local bureaucrat issued the infamous "salaaming [greeting] order," which required Indians to leave their wagons and greet European officers. When pressed by the committee to explain the purpose of such an order, the commander insisted that it was used to reinforce a general sense of respect for the sovereign. As Hussain argues, "it is a purely nonmediate form, purely performative, the purpose of which is the sheer manifestation of power itself. It is a form of violence that Benjamin called 'mythical violence.'"<sup>93</sup>

After 1945, during the period known as "decolonization," the state of emergency became a ubiquitous model for rule in the colonies: Malaya, Rhodesia, Cyprus, Palestine, Nigeria, Uganda, Burma, Morocco, Algeria, and Kenya, among

many others.<sup>94</sup> Under the state of emergency, the colonial states fought "hostile elements," and suspects were massively arrested and incarcerated in imperial camps. States of emergency provided the colonial empires with a breathing space to fight insurgencies,<sup>95</sup> and they were institutionalized in European law, as well.<sup>96</sup>

#### CONCEPTUALIZING COLONIAL BUREAUCRACY IN OCCUPIED PALESTINE

The features of the colonial bureaucracy suggested by Cromer and implemented in India and Egypt are clearly present in the ways that the movement of Palestinians is managed in the Israeli Occupied Territories in the West Bank. Operating in the background of physical, military violence, the bureaucracy of the Israeli occupation takes its form based on racial separation in the law and law's implementation and in the way it organizes time and determines and controls space. The construction of separate roads, the separation of territories—practices formed under the pretext of security needs (which create a hierarchy of space)—were all based on the inhabitants' racial characteristics. The exceptions in law, space, and time provide the organizational universe of the permit regime, the heart of the bureaucracy of the occupation. The permit regime forms a racialized bureaucracy that uses the "security threat" as a basis for the miraculous interventions. The following offers glimpses of the inner workings of these exceptions in space and time, which have become the institutionalized rules of the permit regime.<sup>97</sup>

The management of the permit regime is characterized by colossal inefficiency, unpredictability, unaccountability, conflicting orders, unpublished rules, and what seems to be a chaotic handling of administrative matters. This, however, has produced an incredibly effective machine for achieving its ultimate goals: controlling the Palestinian population, placing impediments on the freedom of movement, atomizing Palestinian society, and creating "procedural bare life."<sup>98</sup>

The definition of what constitutes a "security threat"—and the bureaucratic inner workings that produce it—executed through an intricate set of constantly changing and unpublished security criteria, follows hidden procedures and appears on the scene as an administrative "miracle," to use Schmitt's analogy. This racialized profiling procedure is based on an all-powerful instant *classification as security threat* that overrides other procedures and renders all hitherto administrative procedures obsolete. Its justification relies on the belief that inside every Palestinian—regardless of age, residence, or profession—hides the ghost or demon of a Palestinian terrorist. The official policy of the Ministry of Defense was expressed in a letter from the Office of Coordination of Government Activities in the Occupied Territories to a human rights organization. The letter explicitly refers to the sovereign inability to differentiate between a friend and a foe. The Ministry of

Defense claimed that impeding the freedom of movement is necessary to fight terror and is therefore justified:

One of the phenomena encountered by the Israel Defense Forces in its fight against Palestinian terrorists is the total and intentional insignificance [i.e., indistinction] created by the terrorists between themselves and the innocent Palestinian population. The Palestinian terrorists operate within the civilian population, dressed in civilian clothes, through assimilation into the population and exploitation of its patronage. Houses, hospitals, ambulances, religious institutions, schools—are all exploited by the terrorists as cover for their activities.<sup>99</sup>

In other words, every Palestinian is a potential terrorist, which provides the justification for a racialized regime, with the declaration of someone as a “security risk” acting as the ubiquitous, omnipotent, miraculous intervention that can be applied abruptly to anyone, immediately implying identification, separation, and exclusion. The status of “denied for security reasons” prevents one from obtaining a magnetic card, but can also mean frequent checks at checkpoints, denial of passage from one area of the West Bank to another, and harassment by border police. And because the criteria for identification, separation, and exclusion as a security threat are never articulated and constantly changing, they never have been part of a rational discourse that can be argued, debated, or questioned. When presented with the demand for published criteria for denial of passage on a security basis, the Department of Population Registry of the military advisor in Judea and Samaria replied that the criteria could not be published for security reasons. This practice collapses the distinction between one’s race and one’s potential threat to security.

The General Security Service denies entry on the basis of general, changing, and unpublished criteria or on the basis of “specific information.” Many cases of this categorization can be linked to the refusal of a Palestinian to collaborate with the GSS in supplying information or to the fact that a member of his or her family is incarcerated in criminal or administrative detention. Denial of entry by the police can occur for many reasons, one of them being that one has not paid a traffic ticket. Tickets can be paid in Israeli post offices that one cannot reach without a permit. Other reasons for this type of denial include the existence of an open police file or court case or because of criteria of the recently formed Denied Entry Department of the police headquarters.<sup>100</sup>

Not surprisingly, in a system administrated by phantom decision makers, the Israeli government and the office of the prime minister, officially in charge of the General Security Service, deny the very existence of the procedure of classification of Palestinians as denied for security reasons. In November 2005, in a letter from the media advisor of the prime minister’s office to attorney Limor Yehuda

from the Association for Civil Rights in Israel (ACRI), the prime minister’s office claimed they had no knowledge of such procedures and wrote vaguely that “prevention on the basis of security relates to an action a person wishes to make.”

The classification “denied entry for security reasons” provides a powerful tool for the GSS to recruit collaborators and informants, offering them a Faustian deal—lifting the classification of security threat and receiving a permit in exchange for working for and providing information to the GSS. This ongoing practice creates suspicion and atomization within the innermost family and community circles in Palestinian society. As Arendt has phrased it, alluding to government-imposed terror of this sort:

The effectiveness of terror depends almost entirely on social atomization. Every kind of organized social opposition must disappear before the full force of terror can be let loose. This atomization—an outrageously pale academic word for the horror it implies—is maintained and intensified through the ubiquity of the informer, who can be literally omnipresent because he is no longer merely a professional agent in the pay of the police but potentially every person one comes in contact with.<sup>101</sup>

Since the reasons for a denial are unknown, and since almost any political participation is considered problematic because of the criminalization of membership in organizations, criteria for “correct behavior” remain a hidden matter. Political participation, even on a community level, publishing articles and leaflets, is criminalized. The more one is associated with activity in the public sphere, the less chance one stands of obtaining one’s right of passage. Participation in the Palestinian political community of any kind is viewed as a threat to the sovereignty of the security apparatus. The Palestinian whose freedom of movement is impeded by the permit regime remains in a permanent state of waiting, aware of the possibility of restriction of movement on entering Israel, whether in order to travel in the West Bank, to cross the Separation Wall, or to cross the bridge to Jordan.

The “state of waiting”—a source of incredible uncertainty—is yet another powerful force of control, preventing long-term and short-term planning and the management of economic and social structures that require freedom of movement and contact. For a traveling Palestinian, not only the General Security Service, but the individual soldier at the checkpoint *is the law*, exercising sovereign decisions. As one low-ranking officer told an American professor who has supported Palestinian human rights organizations and who was denied entry into the West Bank at the Allenby Bridge: “For you, right now, I am the chief of staff. Maybe even the prime minister.”<sup>102</sup> The powerful position of the phantom decision makers of the General Security Service, when it comes to dealings with Palestinians, positions them as half gods, empowered by the force of the total, unappeasable decision based on unknown criteria. The administrative decisions of the security

apparatus create a dynamic force that is independent of government decisions and is influenced only by general, vague instructions that can be interpreted and reinterpreted at the site and on the spot.

#### THE OCCUPATION OF TIME

The exceptions by which the bureaucracy of the occupation rules occur as exceptions in time and exceptions in space.<sup>103</sup> In the District Civil Liaison Offices we have the opportunity to glimpse into the control mechanism of the occupation of time. There are currently nine regional DCLs in each area of the OPT, run by the Israeli Army's Civil Administration. In order to reach a DCL, Palestinians must pass various checkpoints, which function as labyrinths, checkpoint after checkpoint, some permanent and others random (called "flying checkpoints"), most of them operating from 6:00 a.m. to 7:00 p.m. The entrance to the DCL is another checkpoint. The hours when the DCLs are functioning are unknown, even when there is a sign posted with opening times. Sometimes the computer systems are down, other times, the DCL is closed for renovation. Sometimes the long lines of people are told to wait until 1:00 p.m., and other times, they are told to come back tomorrow.

Even during the hours that the DCLs are open, usually only from one to two of four windows are open to receive requests. People invest ample amounts of time in returning again and again to the DCL, because of the dire need for and scarcity of various permits allowing for movement. For instance, the DCL in Hawara, in charge of the area of Nablus, has jurisdiction over 319,453 Palestinians. The head officer of the DCL claims that the DCL services 180,000 people. During 2003, for example, 7351 permits were issued; only 2.3 percent of the population received a permit. Even when most visits to the DCL are futile, people return to this site of the perpetual administrative production of uncertainty. The sense of uncertainty is aggravated when closures take place. When border or internal closures occur, no requests are processed, regardless of their nature, besides medical emergency cases involving life-threatening situations. The dates of closure are unpublished and unknown, except for recurring closures during the Jewish holidays. Therefore, temporal uncertainty is an omnipresent feature of the bureaucracy of the occupation.

#### CLOSURE: WHEN THE ARMY REPLACES THE MOON

In the racialized theological bureaucracy of the occupation, the apparatus takes charge over the elements of nature, rendering their functions obsolete and replacing them. The sun and the moon determine day and night, the passing of time, as well as the division of the weekday, the time of sleep and waking, work days and holidays. In Palestine, besides the Gregorian calendar introduced at the time of the British Mandate, the Islamic calendar is followed. The Islamic calendar is governed

by the moon. However, control over Palestinian freedom of movement by the Israeli Army not only has impeded the ability to move, travel, and satisfy the basic needs of life, but has literally and practically changed the definition of time. The Palestinian calendar is no longer determined by the lunar cycle, but rather by the decisions of military officers and by General Security Service recommendations. The Separation Wall, barbed-wire fences, surveillance cameras, the active presence of the border police, roadblocks, and checkpoints have altered the definition of Palestinian time. The Palestinian kilometer, although it remains the same physical distance as the Israeli kilometer, has become much longer, measuring the time it takes a Palestinian to travel it.<sup>104</sup> One cannot plan a journey, go to work or school, or go shopping without encountering a military obstruction in some form.

Closure brings even this obstructed movement to a halt. Closure means that no Palestinian can enter Israel legally through the permit regime (work permit, residence permits, or humanitarian permits), which is entirely suspended except for extreme humanitarian exceptions decided at the discretion of the military commander. During a closure, the entire bureaucratic apparatus of the occupation ceases to function, and no requests for permits or magnetic cards are processed. For example, during 2002, 240 days of closure were enforced. In 2005, full closure was enacted for 132 days, and in 2006, 127 days of closure were enforced.

Closure is enacted for a variety of reasons. Many of them pertain to the events of the Israeli and Jewish calendars. During religious holidays or Israeli national holidays or during a diplomatic visit of leaders or officials from Europe or the United States, closure is in effect. Closure has also been used as a tool in political negotiations. Due to closure, the Palestinian calendar ceases to be relevant. The times of work and the carrying out of life are determined by the army, not by the moon. Palestinian workers try to coordinate their movements according to the Jewish holidays and plan their time according to the Israeli calendar. However, even when the holiday's date is known, the exact timing of the closure is not known in advance. Moreover, the dates of closure are not directly publicized, and sometimes they are publicized in the Israeli press only. The longest closure in 2006 lasted from Passover through Holocaust Remembrance Day, Memorial Day, and Independence Day, which was a long weekend during the April–May 2006 closure—it lasted for forty-four days.

#### THE IRRELEVANCE OF THE SUN

During days when entry is permitted, workers rise at 2:00 and 3:00 in the morning to get to work on time, since the waiting time at the checkpoints can easily take over three hours. Sunrise has ceased to govern the time of awakening. At the Erez checkpoint, before the complete restriction on the entry of Gazan workers into Israel, which continues as these lines are written, workers coming from

Gaza would arrive at 1:00 or 2:00 in the morning to take their places in the queue and then sleep on pallets made of cardboard. The time of awaking and sleeping is calculated by the time it takes to ride to and pass through an unknown number of checkpoints, including changing taxis at different roadblocks and checkpoints, since obtaining a permit for a Palestinian car is incredibly difficult. The calculation of time includes security checks, the probable traffic jam at checkpoints, and the consequences of meeting a harassing soldier or border policemen, who hold up Palestinians for various reasons every day. For those without magnetic cards or those classified as "denied entry," the probability of getting stopped rises exponentially, and any calculation of time becomes virtually impossible.

#### SOVEREIGNTY OVER TIME

In 2003, the Palestinian Authority enacted daylight savings time one week earlier than the Israeli government. This single act of sovereignty over time created chaos at the checkpoints, most of which close at 7:00 in the evening. During this week, people left work at 6:00 p.m. in Palestine and arrived at the checkpoints at what was nearly 8:00 p.m. in Israel, finding themselves trapped. The soldiers at the checkpoints surrounding Nablus said that the checkpoint was closed according to their time, no one was permitted to pass through, and it was not their fault that the Palestinian Authority decided to do "whatever it wanted" and push the clocks back an hour. People simply could not reach their homes. The soldiers told the passengers that it was not their problem that the Palestinians has decided to take the time into their own hands, and for security reasons, the checkpoints closed at 7:00. The week of chaos ended when the Israeli Ministry of the Interior enacted daylight savings time over its territory, restoring the relationship between Palestinian time at the checkpoints and Israeli time. These closure practices, together with the permit regime of movement, have created an occupied time, a colonial time that alters the concept of the collective, family, and personal time of Palestinians at any given moment.

#### THE PHANTOM SOVEREIGN

Besides the unknown dates and times of waiting for administrative decisions, the most potent, unknown variable in the bureaucracy of the occupation is the identity of the officials who possess administrative discretion in decision making. As we have noted, the sovereign in the Occupied Territories is a phantom sovereign. The military commanders who sign permits are hardly ever remotely connected to a decision to grant a permit. Orders for closed military zones are hardly ever published or presented to Palestinians, and those who issue them remain permanently anonymous. The identity of the General Security Service decision makers is unknown, and they cannot be contacted unless they decide to summon a person

who requests a permit for an interview. Usually, soldiers eighteen to twenty years old doing their obligatory military service are the only ones to come in direct contact with such people, but they do not make decisions, except for the decision to allow or to refuse one entry into the DCL in order to make a request, and they rarely have knowledge of the apparatus' policy beyond their specific duties. At any rate, most attempts to trace the origin of power are futile. Conflicting orders issued by the Civil Administration, the local army commanders, the Ministry of Defense, the General Security Service, the police, the border police, the Ministry of Labor, and the Ministry of the Interior may seem to be simply an inefficient mayhem, merely the kind of dysfunction apparent in bureaucracies of various kinds. However, as the residents of the Occupied Territories experience it, without being able to identify any official who is accountable and without knowledge of the structure and process of the decision-making body, its protocols, or its directives, the system of bureaucratic control of movement of the Palestinian population is incredibly powerful and effective. The phantom sovereign is sovereign nonetheless.

#### TURNING THE GAZE BACK TO THE METROPOLE: REVISITING WEBER'S THEORY OF BUREAUCRACY

The political-theological model of colonial bureaucracy that we have examined here differs markedly from the ideal type developed by Max Weber in *Economy and Society* for liberal civil society in Europe.<sup>105</sup> As we saw, although they are very different from one another, the colonial bureaucracies in Egypt, India, and Palestine have four shared common methods of control.<sup>106</sup> First, a decision on a state of exception analogous to the intervention of a miracle allows for the suspension of the law. In Egypt and India, the occasion for the "miracle" is one of economic need: exploitation of labor and land; in Palestine, it is the existence of a national/racial conflict and the need to protect Jewish settlers. In all cases, when a measure is introduced for reasons of emergency, it becomes an institutionalized, normalized practice. Even in the cases where the occasion for the original miraclelike intervention is not the infamous "security threat," once there is an outcry or revolt by the subject population, the basis for the reasoning underpinning the intervention shifts to issues of security. Second, in all cases, an intricate bureaucratic system is formed, including many administrative and executive bodies, that functions as a phantom sovereign in the experience of the subject peoples. The presence of authority is ubiquitous, omnipresent, and yet unnamed and not available for any process of appeal. Third, the colonial bureaucracies employ the notion of race to differentiate the metropole from the subject peoples and as a basis for administrative action. And fourth, as methods of control, colonial bureaucracies produce

exceptions along spatial and temporal dimensions, principally as ways of regulating freedom of movement.

Weber conceptualized bureaucracies as instruments that secure rationality and predictability: "precision, speed, unambiguity, knowledge of the files, continuity, direction, unity, strict subordination, reduction of friction and of materials and personal costs" raise efficiency to its optimal level. According to this view, the prevalence of uncertainty creates irregularities and complications in planning, standardization, precision, consistency, and the causal linkage between means and ends.<sup>107</sup> Cromer's vision of imperial bureaucracy, on the other hand, provided room for secretive decision-making processes and the issuance of capricious bureaucratic decrees.<sup>108</sup> Cromer believed that colonial rule necessitated flexible structures and needed significant freedom and liberty to issue unpredictable decrees in order to respond to changing conditions and shifting grounds in the colonies.<sup>109</sup> He established the justification for an imperial political-theological bureaucracy based on the inferiority of the "subject races." It possessed mysterious, secretive, unpredictable and arbitrary features. This freedom it achieved by the suspension of the law and the bureaucratic rule by administrative decree.

We have shown that colonial rule was based on fractured sovereignty, selective enforcement of the rule of law, and political-theological bureaucracy resulting in legal and administrative exceptions. We have argued that it is essential to take into account these features in conceptualizing the contemporary violence exerted by those who consider themselves representatives of "Western democracies." We now turn our gaze from the postcolony to the metropole by reexamining Weber's theory of bureaucracy.

Max Weber provided the first systematic formulation of rationality in the social sciences. Integrating social theory with neo-Kantian philosophy and the German institutional school of economics, his work resulted in methodological as well as historical observations about rationality. In his methodological writings, Weber suggested that systems of rationality could be reconstituted as ideal types for the study of social objects. In his historical writings, he examined different aspects of rationality (e.g. action, decision, and systematized worldviews) and applied rationalization—the cultivation of rationality in Western society—to diverse spheres of life, such as religion, law, and economics.

However, Weber's impressive legacy on rationality generated unbridgeable contradictions. Most notable are those between the universality of heuristic devices, on the one hand, and the idiosyncrasy of social processes, on the other; between the intentionality of action and its unintended consequences; and between Kantian-like "objective" ideal types and the subjective meaning of action. Weber's analysis established well-known contradictions between the peculiar historical aspects of charismatic authority and the ahistorical nature of its routinization; between

free choice or moral judgment and the constraints imposed by the iron cage of rationality; and between the impersonal nature of instrumental rationality and the highly personal nature of value rationality. Weber believed that only the coexistence of such negating perspectives—historical and ahistorical, subjective and objective, idiographic and nomological, normative and value-neutral—provides the social sciences with tools to analyze the richness of social action in changing historical patterns. Weber understood the impossibility of his position, and he reconciled himself to the limit of social sciences as a peculiar cultural artifact in a given historical moment. Weber did not abandon his incommensurable dualisms. On the contrary, he foresaw that the strength of the social sciences lies in maintaining this ambivalence.

Many intellectuals were intrigued with the nature of Weber's dualistic epistemological framework, but often ignored one dimension of his work or another. For example, American sociologists refused to accept the Janus-faced features of his formulation and relied on the modernist, ahistorical nature of his work on bureaucracy and legitimation.<sup>110</sup> Following Talcott Parsons, they perceived Weber's work as a "generalized theory of authority." They borrowed his thesis on the ascendancy of rationality and left out his critical views about domination. They subscribed to a reified prescription that emphasized the consensual and ahistorical nature of authority and abandoned the historical and phenomenological nature of Weber's rationality. Something of this sort has happened in interpreting the intellectual association between Weber and Schmitt.

The modernist interpretation of Weber's political theory offers three historical, progressive, and consecutive phases of legitimacy: charismatic (personal), traditional, and legal. The postcolonial perspective, on the other hand, offers a hybrid fusion of all three models and allows for their simultaneous appearance: personal influence and sovereign decisionism, together with multiple assisting legalities and bureaucracies.<sup>111</sup> A careful reading of Franz Neumann's *Behemoth* shows that he already had suggested that the bureaucratic model of the Nazi terror state represents a fusion of two kinds of rule: charismatic and bureaucratic.<sup>112</sup> Wolfgang Mommsen has persuasively argued that Weber's threefold model of legitimacy should be reinterpreted in terms of three different, but complementary, issues.

First, his model of legitimacy never suggested that these are three consecutive phases, and in fact, "all forms of domination encountered in empirical reality are mixtures of these three pure types."<sup>113</sup> Weber never ruled out the possibility of charismatic leadership, even in highly bureaucratized societies.

Second, Weber never defined autocratic leadership. His model was based on the basic idea that charisma is the source of all creative leadership. Traditionally, it had been seen as a divine gift by which "God himself had designated certain persons as leaders."<sup>114</sup> Weber substituted for the religious meaning of charisma

a phenomenological one, but in fact, his concept was still heavily freighted with political theology. This was best manifested in what he called "plebiscitarian leader-democracy."<sup>115</sup> The British theologian John Milbank has presented ample arguments that attest to the theological roots of Weber's concept of charisma and of charismatic leadership.<sup>116</sup>

Third, Weber's model of legitimacy never included in its scope an epistemological sphere of illegitimacy. As Mommsen again remarks, "the concept of 'illegitimate rule' turns up in Weber's sociology only once and there it refers to the medieval city state." Thus, in Weber's sociological theory of "legitimate rule," "there is no room for illegitimate forms of domination."<sup>117</sup> It does not allow for a distinction between government by consent and tyrannical dictatorship. He seemed to have assumed that every stable political system appears to enjoy the consent of the governed. In a letter to Robert Michels in 1908, he shows intolerance of the theory of the "sovereignty of the people." "The true will of the people ceased to exist for me years ago," he says. Parliamentary democracy was for him "mere ideological trash."<sup>118</sup> Weber believed that the main purpose of politics is to bring strong leaders with genuinely charismatic qualifications into power.

This interpretation of Weber's model of legitimacy comes close to both Schmitt's and Benjamin's notions of political theology. In 1919, a year before his death, Weber had argued that "there is, however, only the choice between leader-democracy with a 'machine' [i.e. a highly bureaucratized party organization that is completely subservient to the political leader] and leaderless democracy, that is to say the rule of professional politicians without a calling, i.e. without the inner charismatic qualities that make a leader."<sup>119</sup> As Mommsen correctly noted, "When he [Weber] argued that it is the charismatic qualification of leaders which matters whereas the democratic institutions are mere functional machinery in their hands, he overstated his own case and came dangerously close to the 'Führerprinzip,' the Fascist leadership principle."<sup>120</sup> According to this interpretation, Weber stood the liberal model of legitimacy on its head and insisted on a scheme in which the creation of the political is designed from top down.<sup>121</sup> Furthermore, Weber expressed clear dissatisfaction with liberal legal formalism, suggesting instead the need for independent political leaders who stand above party machines. He judged the "Caesarist transformation of leadership selection" to be unavoidable, and he viewed the "will of the people" as pure fiction and formal legality as an effort to minimize the rule of man over man.<sup>122</sup> Weber was Schmitt's chief witness for his thesis that "faith in legality of the parliamentary legislative state had to a great extent hardened into mere formalism."<sup>123</sup>

Mommsen argues that Schmitt's infamous thesis about sovereignty "already appears implicitly in Weber's work."<sup>124</sup> Thus, in Weber's work, "the Reich president was essentially conceived as a counterweight to the petty activities of a leaderless

parliament and as a valve for the emergence of leadership in a bureaucratic society that tended to leaderlessness."<sup>125</sup> After all, "an increase in the power of the nation state and the selection of leaders who are charismatically gifted within a society hardened into bare legalism."<sup>126</sup> This analysis suggests that Weber perceived bureaucracy as a counterpart to strong personal leadership and opened the space for the antiliberal political decisionism strongly manifested in Carl Schmitt's definition of sovereignty. Raymond Aron has argued that "this re-interpretation of Weberian politics caused an outrage because it robbed the new German democracy of a 'founding father.'"<sup>127</sup>

This observation presents a tough challenge to contemporary Western democracies whose audacious violation of the rule of law calls for a new model of political theory. In particular, they need to ask to what extent they can perceive themselves as secular and liberal in light of their theologically based political foundations—which they tend to deny. This is particularly crucial in light of the gross epistemological asymmetry in the political literature by which the fusion of sovereignty and theology tends to be underplayed in observations about the West and overplayed in observations about the East and the global South.

We believe that the colonial model of bureaucracy as represented by Cromer's ideal type sheds this asymmetry unambiguously. While the colony is a site in which we observe the relationships between bureaucracy, law, and violence most lucidly, it also emphasizes the way that the law—any law including the metropole's law—originates in violence.<sup>128</sup> While martial law was proclaimed most vigorously in the colonies, its sources remained the laws of Europe. Not only that, but the relationship between the colony and the metropole exerts a constant movement between them. As Hussain put it in the context of British rule of India, the exception "could not be exclusively situated in the colonial realm; its ideological consequences would inevitably return to Britain itself."<sup>129</sup> This movement should be carefully traced and followed in a comparative study of metropole-colony relationships.

This conclusion suggests two particular lessons regarding the nature of the Israeli occupation of Palestinian territories and its political framework. First, the notion of legitimacy through charismatic rule is mistaken for legitimacy through exception. The army official and especially the representative of the General Security Service, on site, represent a colonial bureaucracy in which charisma is ushered in by the singular, ultimate power to decide, which in turn raises the status of the security official to that of a half god, able to inflict "procedural violence" at any moment, thus creating unbearable conditions of life. "Security theology," as it collapses the distinction between race and security on the basis of a continually constructed and institutionalized "emergency" situation of "clear and present danger" is thus again mistaken for charismatic leadership.

Second, and more importantly, colonial rule in the territories does not follow the contours of Weber's rational model of bureaucracy. Rather, it is based on a series of exceptions, on racial supremacy, and on particularistic assumptions of governance. The bureaucracy of the occupation retains the administrative memory and paradigms of colonial bureaucrats, whose principles of government are an opposite mirror image of the Weberian model and include unpublished rules, flexibility, total discretion, secrecy, and different rules for different categories of people based on race, with *ira et studio* ("scorn and bias"), rather than without it, as Weber proscribed, perpetuated by an imminent security threat and a constant classification process distinguishing between friend and foe. The bureaucracy of the occupation is an administrative weapon that employs procedural violence as a tool for managing a population engaged in a conflict. And yet, critics and supporters of this mode of administration alike continue to view it as a dysfunctional bureaucracy, rather than as one that follows a model that differs from Weber's classical model bureaucracy. This view, which follows the framework of bureaucracy in liberal democracies, creates an epistemological lacuna. The interpretation we have proposed above views the aggregation of exceptions to the rule as the foundational principle of the bureaucracy itself, rendering it functional and effective for the exacerbation of control and domination over the colonized.

The permit regime, although not unique to the Palestinian case, forms a framework for the control of civilians and does not engage directly in physical violence and death, but rather in the denial of conditions of life and the perpetuation of a social, economic, and political implosion. The bureaucracy of the occupation relies on a complex system of administration that does not begin and end with the military, but permeates the administrative borders of Israel proper. No ocean separates metropole and colony, Israel and the OPT, but the twenty-minute ride between the two, quite exceptionally, leads to a particular administrative planet where colonial bureaucracy produces the possibility of occupying not only space, but time itself.

Yet Israeli bureaucrats, academic researchers, and Palestinian subjects still look for elements representing the rational model. If we may put it this way, Weber's model of bureaucracy serves as an illusionary framework that forges false consciousness for both the Palestinian subjects and the ruling bureaucrats. While numerous observers have attempted to conceptualize the bureaucratic model of rule and to emphasize its dysfunctional forms, at the same time, they have overlooked the inner workings of the colonial form of bureaucracy that is actually in operation in the Occupied Territories.

To be sure, false consciousness does not necessarily conform to the Marxist's interpretation of it. It is a cognitive schema that shapes the consciousness of both the colonizer and the colonized. The application of the rational model as a cognitive schema helps colonial bureaucrats manage their everyday lives and offers a

language for rational communication. The disparities between the rational model and the actual colonial model are perceived and interpreted as deviations from the rule, rather than as the rule itself. This "mistaken" diagnosis is therefore functional, rather than dysfunctional, for further domination by the colonizer.

#### NOTES

1. We thank Adi Ophir, Michal Givoni, Ronen Shamir, Gideon Kunda, Khaled Fourani, Alexandra Kalev, and Michal Frenkel for excellent comments on earlier drafts.
2. This declaration has some precedents. From 1949 to 1966, the Palestinian citizens of Israel were put under severe military rule. One can easily expect that some practices traveled from this experience into the new regime in the Occupied Territories. This resemblance or continuity, however, has never been studied systematically, but it suggests a link between the 1948 occupation and the 1967 occupation. To be sure, although we speak here about the occupation that took place in 1967 and after, we do not subscribe to the position of the Zionist left in Israel that acknowledges the occupation in 1967, but denies that what happened in 1948 was an occupation, as well.
3. Interview with Shlomo Gazit, the military coordinator of operations in the territories and the first head of the Civil Administration (1968-74), June 9, 2006, Tel Aviv University.
4. *Report on the Occupied Territories, 1967-1974*. Ministry of Defense and the Coordination of Government Activities in the West Bank and Gaza Strip (June 1975) (in Hebrew).
5. Eitan Diamond, "Crossing the Line: Violation of the Rights of Palestinians in Israel without a Permit," B'Tselem report (March 2007), available on-line at [http://www.btselem.org/Download/200703\\_Crossing\\_the\\_Line\\_eng.pdf](http://www.btselem.org/Download/200703_Crossing_the_Line_eng.pdf) (last accessed July 25, 2008).
6. In December 2007, B'Tselem reports, the army maintained sixty-six checkpoints in the territory of the West Bank, posing a great impediment to freedom of movement, since every passenger was checked. Thirty-six more checkpoints were on the Green Line border and were manned around the clock. Some were at gates in the Separation Wall, some on the roads. Sixteen more checkpoints were partially manned or had a watchtower. Twelve checkpoints existed within the city of Hebron. In December 2007, there were 459 unmanned blockades by cement blocks, dirt mounds, and areas that had been dug up to prevent passage. There also were forty-one roads, spanning 700 kilometers, that Palestinians were prevented from using and that were restricted to use by Israelis in the West Bank. B'Tselem press release, December 31, 2007, available on-line at [http://www.btselem.org/english/press\\_releases/20071231.asp](http://www.btselem.org/english/press_releases/20071231.asp) (last accessed July 25, 2008).
7. Gaza-Jericho Interim Agreement Annex II, Protocol Concerning Civil Affairs, Article 1 (a) (2) (c), available on-line at <http://www.mfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Peace%20Process/Gaza-Jericho%20Agreement%20Annex%20II> (last accessed July 25, 2008).
8. Yehezkel Lein, "Bullders of Zion: Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and the Settlements," a B'Tselem report (August 1999), available

- on-line at [http://www.btselem.org/Download/199908\\_Workers\\_Eng.doc](http://www.btselem.org/Download/199908_Workers_Eng.doc) (last accessed July 25, 2008).
- 8 B'Tselem reports that from October 2000 to December 2007, 4,330 Palestinians were killed by Israeli armed forces, 864 of them under the age of eighteen. Of these, 2,056 were not engaged in combat when killed. In the same period, 1,130 Israelis were killed, 119 under eighteen. See <http://www.btselem.org/English/Statistics/Casualties.asp> (last accessed March 3, 2009). Until 2005, when the policy was stopped by the Civil Administration, 668 homes were demolished as a form of punishment. See [http://www.btselem.org/English/Punitive\\_Demolitions/Statistics.asp](http://www.btselem.org/English/Punitive_Demolitions/Statistics.asp) (last accessed March 3, 2009). In 2005, 29 people were killed in "targeted assassinations" and 70 in 2007. During 2007, 840 prisoners were in administrative detention during 2007 without being charged with an offense. See [http://www.btselem.org/English/Administrative\\_Detention/Statistics.asp](http://www.btselem.org/English/Administrative_Detention/Statistics.asp) (last accessed March 3, 2009).
  - 9 On the coexistence of the two legal systems, see Orna Ben-Naftali, Aeyal M. Gross, and Keren Michaeli, "The Illegality of the Occupation Regime: The Fabric of Law in the Occupied Palestinian Territories," in this volume and the sources cited there. Here is one example: If a Palestinian from the OPT and an Israeli citizen or resident are arrested for participation in a demonstration or for entering into a closed military zone at the exact same time and place, the disparity in rights and consequences is great. The Israeli usually will be released by the police after a few hours or brought before a civil court twenty-four hours after his or her arrest, usually to be released on self-bail. The Palestinian can be arrested for four days, then will be brought before a military judge and will face a trial that can result in prison sentences anywhere from a month to three months.
  - 10 Interview with Dov Zdaka, former head of the Civil Administration (1998–2002), December 2006.
  - 11 Interview with Dov Zdaka, 2006.
  - 12 Max Weber, "Characteristics of Bureaucracy," in *From Max Weber: Essays in Sociology*, trans. and ed. H. H. Gerth and C. Wright Mills (Oxford: Oxford University Press, 1946).
  - 13 *Ibid.*, p. 96.
  - 14 Franz Neumann, *Behemoth: The Structure and Practice of National Socialism* (1942; New York: Harper Books, 1963).
  - 15 Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment* (1944; New York: Continuum, 1994).
  - 16 Zygmunt Bauman, *Modernity and the Holocaust* (Ithaca, NY: Cornell University Press, 1989).
  - 17 Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Viking Press, 1963), p. 60.
  - 18 There are additional arenas in which this structure of modern bureaucracy is manifested, for example, in the sphere of industry, in formal organizations, and in the processes of institutionalization. See Harry Braverman, *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century* (New York: Monthly Review Press, 1974); Richard Edwards, *Contested Terrain: The Transformation of the Workplace in the Twentieth Century* (New York: Basic Books, 1979); Michael Burawoy, *Manufacturing Consent: Changes in the Labor Process under Monopoly Capitalism* (Chicago: University of Chicago Press, 1979); W. Richard Scott, *Organizations: Rational, Natural, and Open Systems* (Englewood Cliffs, NJ: Prentice Hall, 2003); and James C. Scott, *Seeing Like a State* (New Haven, CT: Yale University Press, 1998). We excluded these areas from the current discussion, which pertains solely to political theory.
  - 19 Achille Mbembe, "Necropolitics," *Public Culture* 15, no. 1 (2003): pp. 11–40.
  - 20 Pierre Bourdieu provides a historical description of the emergence of the bureaucracy of the European state, focusing on its institutionalization and its putatively natural appearance. He describes the state as a culmination of a process in which different species of capital are consolidated: the capital of physical force or instruments of coercion, economic capital, cultural capital, and symbolic capital. Bourdieu focuses on the conflictive and coercive elements that were used not only externally, but also internally, including seizures, arrests, imprisonments, and a writ of restraint binding on all parties. "Rethinking the State: Genesis and Structure of the Bureaucratic Field," in Pierre Bourdieu, *Practical Reason: On the Theory of Action* (Stanford, CA: Stanford University Press, 1998), pp. 35–74. By focusing on the conflictive history of bureaucracy's emergence, this description resonates well with Michel Foucault's account of sovereignty and Walter Benjamin's account of violence. See Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975–76*, ed. Mauro Bertani, Alessandro Fontana, and François Ewald, trans. David Macey (New York: Picador 1997); Walter Benjamin, "Critique of Violence," trans. Edmund Jephcott, in *Walter Benjamin, Selected Writings, Volume 1: 1913–1926*, ed. Marcus Bullock and Michael W. Jennings (Cambridge, MA: Harvard University Press, 1996), pp. 237–52.
  - 21 See also Carl Schmitt, *The Nomos of the Earth* (1950; New York: Telos Press, 2003).
  - 22 Giorgio Agamben, *State of Exception*, trans. Kevin Atell (Chicago: University of Chicago Press, 2005).
  - 23 The all-caps name is an acronym for the act's real title, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.
  - 24 Benjamin, "Critique of Violence," in *Walter Benjamin Selected Writings, Volume I: 1913–1926*, ed. Howard Eiland and Michael W. Jennings (Cambridge, MA: Harvard University Press, 1998), pp. 247–52.
  - 25 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (1922; Cambridge, MA: The MIT Press, 1988). On Schmitt's text as a response to Benjamin's "Critique of Violence," see Agamben, *State of Exception*, chap. 4.
  - 26 Schmitt, *Political Theology*, p. 14.
  - 27 *Ibid.*, pp. 5, 36.
  - 28 Michel Foucault, "Governmentality," trans. Rosi Braidotti and rev. Colin Gordon, in Graham Burchell, Colin Gordon, and Peter Miller (eds.), *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991), pp. 87–104.
  - 29 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), p. 83.
  - 30 Andreas Kalyvas, "The Sovereign Weaver: Beyond the Camp," in Andrew Norris (ed.), *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's "Homo Sacer"* (Durham, NC: Duke University Press, 2005), pp. 107–34. Ronit Lentin also provides a feminist critique, speaking particularly about what she labels the "femina sacra." See Ronit Lentin, "Femina Sacra: Gendered Memory and Political Violence," *Women's Studies International Forum* 29 (2005): pp. 463–73.
  - 31 D. K. Fieldhouse, *The Colonial Empires: A Comparative Survey from the Eighteenth Century* (New York: Delacorte Press, 1967).
  - 32 Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: The University of Michigan Press, 2003), p. 19.
  - 33 For example, Agamben echoes the distinction that Arendt borrowed from Aristotle between *zōē* and *bios* as two forms of life (Hannah Arendt, *The Human Condition* [Chicago: University

- of Chicago Press, 1958]) and her analysis of stateless people (Hannah Arendt, *The Origins of Totalitarianism* [New York: Harcourt, Brace and World, 1951]).
- 34 Adi Ophir, "Introduction to *Homo Sacer*," in Lavie Shai (ed.), *Technologies of Justice* (Tel Aviv: Ramot) (in Hebrew), pp. 360, 377.
- 35 Walter Benjamin, "On the Concept of History," trans. Harry Zohn, in *Walter Benjamin, Selected Writings, Volume 4: 1938-1940*, ed. Howard Eiland and Michael W. Jennings (Cambridge, MA: Harvard University Press, 2003), p. 392.
- 36 Lauren Benton, *Law and Colonial Cultures* (Cambridge: Cambridge University Press, 2002), p. 261.
- 37 *Ibid.*, p. 18.
- 38 *Ibid.*, p. 13; Sally Engle Merry, "Law and Colonialism," *Law and Society Review* 25, no. 4 (1991): pp. 889-922; Sally Falk Moore, "Treating Law as Knowledge: Telling Colonial Officers What to Say to Africans about Running 'Their Own' Native Courts," *Law and Society Review* 26, no. 1 (1992): pp. 11-46.
- 39 Jean Comaroff and John Comaroff (eds.), *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press, 2006).
- 40 Peter Burroughs, "Imperial Institutions and the Government of Empire," in Andrew Porter (ed.), *The Oxford History of the British Empire: The Nineteenth Century* (Oxford: Oxford University Press, 1999), pp. 170-97.
- 41 Ross Johnston Ross, *Sovereignty and Protection: A Study of British Jurisdictional Imperialism in Late Nineteenth Century* (Durham, NC: Duke University Press, 1973); Benton, *Law and Colonial Cultures*, pp. 20, 104, 172.
- 42 See, for example, Timothy Mitchell, *Colonising Egypt* (Berkeley: University of California Press, 1988) and Hussain, *The Jurisprudence of Emergency*.
- 43 Ann Laura Stoler, "On Degrees of Imperial Sovereignties," *Public Culture* 18, no. 1 (Winter 2006): pp. 126, 132, 134.
- 44 Bernard S. Cohn, "Political Systems in Eighteenth-Century India," in *The Bernard Cohn Omnibus* (New Delhi: Oxford University Press), p. 483.
- 45 Bernard S. Cohn, "African Models and Indian Histories," in *The Bernard Cohn Omnibus*, p. 216.
- 46 *Ibid.*, p. 219.
- 47 See Ronit Lentin (ed.), *Thinking Palestine* (London: Zed Books, 2008) and Theo David Goldberg, "Racial Palestinization," in *ibid.*, pp. 25-45.
- 48 Hussain, *The Jurisprudence of Emergency*, p. 113.
- 49 Roger Owen, *Lord Cromer: Victorian Imperialist, Edwardian Proconsul* (Oxford: Oxford University Press, 2004).
- 50 Evelyn Baring, Earl of Cromer, "The Government of Subject Races," *Edinburgh Review*, January 1908, pp. 1-27; Evelyn Baring, Earl of Cromer, *Modern Egypt*, 2 vols. (New York: Macmillan, 1908).
- 51 Peter Burroughs, "Imperial Institutions and the Government of Empire," in Andrew Porter (ed.), *The Oxford History of the British Empire: The Nineteenth Century* (Oxford: Oxford University Press, 1999), p. 191.
- 52 Cromer, "The Government of Subject Races," p. 13.
- 53 Bernard S. Cohn, "Anthropology and History in the 1980s," in *The Bernard Cohn Omnibus*, p. 68.
- 54 Cromer, "The Government of Subject Races," p. 6.
- 55 Evelyn Baring, Earl of Cromer, letter to Lord Salisbury, 1899, quoted in Arendt, *The Origins of Totalitarianism*, p. 95.

- 56 *Ibid.* In conceptualizing colonial bureaucratic sovereignty, Cromer criticized the "Continental school of bureaucracy," which refers to the French system of direct rule. "Over-centralization is a danger which should be carefully shunned," he suggested. He disparaged the centralized structure and "the tendency of every French central authority... to allow no discretionary power whatever to his subordinate," resulting in a reciprocal tendency of the subordinate "to lean in everything on superior authority." In contrast to the French model, the British model offered a decentralized bureaucracy that "pervades the whole British administrative system, and that has given birth to a class of officials who have both the desire and capacity to govern." Decentralized structure and its irregular form of exceptions should not be regarded as a menace to the empire's rule of law, he argued. After all "the British official... whether in England or abroad, is an Englishman first and an official afterwards. He possesses his full share of national characteristics." Cromer, "The Government of Subject Races," pp. 15-16.
- 57 Cromer, "The Government of Subject Races," p. 1.
- 58 Cromer, *Modern Egypt*, p. 2:130.
- 59 *Ibid.*, 2:131, p. 2:148.
- 60 *Ibid.*, 2:155, p. 2:143.
- 61 In accounting for the following examples, please note that they by no means attempt to be exhaustive or representative. They are used as illustrations only, to underscore our arguments.
- 62 Mitchell, *Colonising Egypt*, p. 97. Martial law was a frequent manifestation of the exception in the colonies. As Hussain persuasively argues in his excellent analysis in *The Jurisprudence of Emergency*, it carried different meanings in Europe and in the colonies. Based on cases from Punjab and St. Thomas, Hussain shows how the use of martial law in the colonies were suffused, both in practice and in theory, with racialized definitions and interpretations.
- 63 Cromer, "The Government of Subject Races," p. 16.
- 64 *Ibid.*, p. 14.
- 65 *Ibid.*, pp. 1-2.
- 66 *Ibid.*, p. 6.
- 67 Mitchell, *Colonising Egypt*, pp. 97, 96.
- 68 Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (Berkeley: University of California Press, 2002), pp. 60-61; Mitchell, *Colonising Egypt*, pp. 40-43.
- 69 Mitchell, *Rule of Experts*, p. 62.
- 70 Mitchell, *Colonising Egypt*, p. 97.
- 71 *Ibid.*
- 72 *Ibid.*, p. 98.
- 73 Ilana Feldman, in "Government without Expertise?: Competence, Capacity and Civil Service Practice in Gaza, 1917-67," *International Journal of Middle East Studies* 37 (2005) describes the British rule of Gaza and Palestine after 1917. Despite the fact that she adopts a completely secular position, she still argues in favor of what she labels "Palestinian peculiarity" (p. 489).
- 74 Cromer, "The Government of Subject Races," p. 16.
- 75 Hussain, *The Jurisprudence of Emergency*, p. 38.
- 76 Bernard S. Cohn, "The Study of Indian Society and Culture," in *The Bernard Cohn Omnibus*, p. 148.
- 77 Cohn, "Anthropology and History in the 1980s," p. 58.
- 78 John W. Cell, "Colonial Rule," in Judith M. Brown and William Roger Louis (eds.), *The Oxford History of the British Empire, vol. 4, The Twentieth Century* (Oxford: Oxford University Press, 1999), p. 236.

- 79 Cited in Hussain, *The Jurisprudence of Emergency*, p. 39.
- 80 Bernard S. Cohn, "Representing Authority in Victorian India," in *The Bernard Cohn Omnibus*, p. 632.
- 81 Bernard S. Cohn, "From Indian Status to British Contract," in *The Bernard Cohn Omnibus*, p. 468.
- 82 Johnston, *Sovereignty and Protection*, p. 217.
- 83 There is a vast literature that describes the contradictions and cultural clashes between the rulers and the ruled, as well as the cultural transformations and cultural machinations in and around these differences. Ranjit Guha articulated this as a paradox in which the law was intended to serve as the basic defining principle of colonial rule, "indeed as a primary signifier of British dominance in the subcontinent corresponding in function and structure to the hegemonic signifier of Rule of Law in metropolitan Britain." Ranjit Guha, "Introduction," in *The Bernard Cohn Omnibus*, p. xvii. Yet it is exactly the law that became an instrument for producing rifts and cleavages and an arena for struggle over issues such as decisionism versus the lack of decisionism, personal versus contractual relations, and equality versus inequality before the law. Bernard S. Cohn, "Some Notes on Law and Change in North India," in *The Bernard Cohn Omnibus*, pp. 568-71.
- 84 Hussain, *The Jurisprudence of Emergency*, p. 102. As Hussain argues, "a given act of violence contains no integral difference whether executed by those under legal authority or by those set against it" (*ibid.*, p. 107). It is therefore the case that "the law resorting to violence" produces a need for external signature of legality in order to distinguish between the two. As Benjamin taught us, the law fears "revolutionary violence" more than regular crime, since it threatens not so much to transgress the law, but to set up an alternative logic to it.
- 85 *Ibid.*, p. 80.
- 86 Quoted in *ibid.*, pp. 119, 120.
- 87 Bernard S. Cohn, "African Models and Indian Histories," in *The Bernard Cohn Omnibus*, p. 212.
- 88 Benton, *Law and Colonial Cultures*, p. 15.
- 89 Cohn, "African Models and Indian Histories," p. 216.
- 90 *Ibid.*, p. 219.
- 91 D. A. Washbrook, "India, 1818-1860: The Two Faces of Colonialism," in Andrew Porter (ed.), *The Oxford History of the British Empire*, vol. 3, *The Nineteenth Century* (Oxford: Oxford University Press, 1999), pp. 395-421.
- 92 Hussain, *The Jurisprudence of Emergency*, p. 100.
- 93 *Ibid.*, p. 124.
- 94 Robert F. Holland (ed.), *Emergencies and Disorder in the European Empires after 1945* (London: F. Cass, 1994).
- 95 To be sure, the legal exception and the state of emergency were not originally discovered in the colonies. Already in the early nineteenth century, Benjamin Constant had identified the fact that freedom is threatened by the frequency of emergency rulings by both right-wing and left-wing politicians. Constant issued a stern warning about the institutionalization of emergencies in political practice. See Fontana Biancamaria (ed.), *Constant: Political Writings* (Cambridge: Cambridge University Press), p. 143. Yet it was in the colonies where the state of emergency was practiced time and again and where it was institutionalized through the use of racialized bureaucracies. Arendt has pointed this out, although Agamben does not pick it up. In *Homo Sacer*, Agamben mentions only in passing the colonial Spanish history

- in Cuba and that of the English in South Africa as two territories into which the exception was extended.
- 96 For example, in order to fight the protest of North African immigrants in Paris in September 2005, the state enforced an emergency law that had been legislated in the context of the Algerian War.
- 97 In this context, we focus mainly on permits requested by Palestinian workers for labor purposes only. However, permits are needed for movement within the West Bank, for humanitarian reasons such as medical treatment and accompaniment of sick persons, and for access to holy sites. Denial for security reasons affects the right to exit to Jordan over the Allenby Bridge.
- 98 See Hohaida Ghanim, "Biopower and Thanato-politics: The Case of the Colonial Occupation of Palestine," in Ronit (ed.), *Thinking Palestine*, pp. 65-81.
- 99 Letter of Colonel Daniel Beaudoin, head of the Foreign Relations Branch, Coordination of Government Activities in the Territories, Israel Ministry of Defense, to Physicians for Human Rights, June 4, 2004.
- 100 The category of "denied entry" issued by the General Security Service includes two hundred thousand Palestinians, while those "denied entry" by the Israeli police numbers sixty-four thousand.
- 101 Hannah Arendt, *On Violence* (New York: Harcourt, Brace and World, 1970), p. 55.
- 102 Exchange between Allenby Bridge security guard and M. N., June 2006.
- 103 Amal Jamal, "On the Voyages of Racialized Time," in Yehouda Shenhav and Yossi Yonah (eds.), *Racism in Israel* (Tel Aviv: Ha'Kibutz Ha'Meuchad and the Van Leer Institute, 2008) (in Hebrew), pp. 348-80.
- 104 See Ariel Handel's essay, "Where, Where to, and When in the Occupied Territories: An Introduction to Geography of Disaster," in this volume.
- 105 Max Weber, "Characteristics of Bureaucracy," in *From Max Weber: Essays in Sociology*, trans. and ed. H. H. Gerth and C. Wright Mills (Oxford: Oxford University Press, 1946), p. 463.
- 106 One major difference in the bureaucracy in Palestine stems from the conflicting claims on land and the need to separate the Palestinian minority in Israel from the Palestinians in the Occupied Territories in order to maintain demographic hegemony, as well as the "security needs" of the Jewish settlers that produce a massive separation based on racial and national identity.
- 107 Yehouda Shenhav, "Fusing Sociological Theory with Engineering Discourse: The Historical and Epistemological Foundations of Organization Theory," in Knudsen Christian and Haridimos Tsoukas (eds.), *The Oxford Handbook of Organization Theory: Meta-theoretical Perspectives* (Oxford: Oxford University Press, 2003), pp. 183-209; Yehouda Shenhav, *Manufacturing Rationality: The Engineering Foundations of the Managerial Revolution* (Oxford: Oxford University Press, 1999); and Yehouda Shenhav, "Manufacturing Uncertainty and Uncertainty in Manufacturing: Managerial Discourse and the Rhetoric of Organization Theory," *Science in Context* 7 (1994): pp. 275-305.
- 108 Michal Frenkel and Yehouda Shenhav, "From Binarism Back to Hybridity: A Postcolonial Reading of Management and Organization Studies," *Organization Studies* 27, no. 6 (2006): pp. 855-76.
- 109 This point was crucial to Arendt's analysis of totalitarianism, because she saw the growing disparity between the political center and its economic goals on the periphery as endemic to the disintegration of European liberal democracy. It was particularly the gap between the bureaucracy as a form of governance for one's own citizens and bureaucracy as a form of

- governance for the noncitizen "subject races" that she saw as crucial to understanding the conditions under which atrocities took place. In this vein, Arendt even made a direct comparison between imperial bureaucracy and the bureaucratic machinery of the Third Reich: "everything was always in a state of continuous flux, a steady stream," a description that "sounded plausible to the student of totalitarianism, who knows that the monolithic quality of this form of government is a myth." Arendt, *The Origins of Totalitarianism*, p. 136. For the relationship between colonial/imperial genocides, administrative massacres, and the Nazi genocide, see also A. Dirk Moses, "Conceptual Blockages and Definitional Dilemmas in the 'Racial Century': Genocides of Indigenous Peoples and the Holocaust," *Patterns of Prejudice* 36, no. 4 (2002): pp. 9-36; Benjamin Madley, "From Africa to Auschwitz: How German South West Africa Incubated Ideas and Methods Adopted and Developed by the Nazis in Eastern Europe," *European History Quarterly* 35, no. 3 (2005): pp. 429-64; and Isabel V. Hull, "Military Culture and the Production of 'Final Solutions' in the Colonies: The Example of Wilhelminian Germany," in Robert Gellately and Ben Kiernan (eds.), *The Specter of Genocide* (Cambridge: Cambridge University Press, 2003), pp. 141-62. They trace the colonial origins of "the Final Solution," "Lebensraum," "concentration camps," and "institutionalized forms of racism."
- 110 See Shenhav, "Fusing Sociological Theory with Engineering Discourse" for an elaborated discussion.
- 111 See Wolfgang Mommsen, *Max Weber and German Politics, 1890-1920* (1959; Chicago: The University of Chicago Press, 1984), and Wolfgang Mommsen, *The Age of Bureaucracy: Perspectives on the Political Sociology of Max Weber* (New York: Harper & Row, 1974).
- 112 Neumann, *Behemoth*.
- 113 Mommsen, *The Age of Bureaucracy*, p. 74.
- 114 *Ibid.*, p. 78.
- 115 *Ibid.*, p. 83.
- 116 John Milbank, *Theology and Social Theory: Beyond Secular Reason* (Oxford: Blackwell, 1990), pp. 84-98.
- 117 Mommsen, *The Age of Bureaucracy*, p. 83.
- 118 *Ibid.*, p. 87.
- 119 *Ibid.*, p. 90.
- 120 *Ibid.*, p. 93.
- 121 Mommsen, *Max Weber and German Politics*, p. 183.
- 122 *Ibid.*, pp. 186, 189.
- 123 *Ibid.*, p. 405.
- 124 *Ibid.*, p. 382.
- 125 *Ibid.*, p. 383.
- 126 Weber, quoted in *ibid.*, p. 452.
- 127 Raymond Aron, *Main Currents in Sociological Thought*, 2 vols., trans. Richard Howard and Helen Weaver (New York: Basic Books, 1967), p. 2:248.
- 128 Benjamin, "Critique of Violence."
- 129 Hussain, *The Jurisprudence of Emergency*, p. 114.

A LETTER FROM THE JUDGE ADVOCATE'S OFFICE to an Israeli attorney representing a Palestinian applying for a permit. The Israeli defense establishment refuses to publish the criteria on which it grants or refuses to grant permits to enter Israel. To receive an entry permit and movement permits, Palestinians are at times summoned to a meeting with Shabak agents at a Coordination and Liaison Office, where they are required to collaborate in exchange for obtaining the permit.