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Otherwise Occupied: An Analysis of the Causes and Consequences of Zionist Carceral Practice

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*To my Dad,
who couldn't quite hang on long enough to see this project through...*

Abstract

This thesis examines the employment of particular carceral tactics both inside and outside Israeli prisons in the context of the Zionist colonial occupation of Palestinian territories. Together these tactics are considered to form an overarching strategy to crush Palestinian resistance to the forty-five year-old occupation. Central to this study is application of Michel Foucault's model of carceral practices which occur within the walls of the modern prison and extend capillary-like into wider Palestinian society, to the extent it resembles a Foucauldian "carceral archipelago" of control. Various components of Foucault's concepts of power, discipline, punishment and resistance are applied in order to analyse overlapping canons of colonialism and Zionism, and the response of Palestinians to them. Occupied Palestinians are also linked with Giorgio Agamben's concept of people killed with impunity - homo sacer - whom Agamben refers to as living a "bare life" without human or political rights, at the margins of society or beyond. Colonial-era laws and regulations are found to have dehumanised Palestinians as a mass security threat to Israel. This categorization is in turn used to justify mass incarceration, detention without trial, torture, extra-judicial executions, collective punishments and the commodification of Palestinian prisoners exemplified in lop-sided prisoner exchanges. The thesis finds Zionist carceral practices entrench the occupation and immiserate Palestinian society, disrupting economic, social and political cohesion, and the potential of the Palestinian people. The thesis identifies hunger strikes, the commandeering of Zionist prison space as sites of Palestinian nationalist education and political recruitment, and a refusal to vacate their own land as clear mechanisms of Palestinian resistance. An oppression-resistance cycle is evident, reinforcing the centrality of the prisoner and the prison in Palestinian life. Contemporary behaviour by Israel indicates this cycle will continue for as long as Zionist carceral practice criminalizes all resistance to its occupation.

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Abbreviations

AD	Administrative Detention
AI	Amnesty International
GCIV	Fourth Geneva Convention
GSS	General Security Service
ICG	International Crisis Group
ICRC	International Committee of the Red Cross
IDF	Israel Defense Forces
IHL	International Humanitarian Law
IMFA	Israeli Ministry of Foreign Affairs
IPS	Israeli Prison Service
ISC	Israeli Supreme Court
NGO	Non-Governmental Organization
OPT	Occupied Palestinian Territory
PA	Palestinian Authority
PFLP	Popular Front for the Liberation of Palestine
PMPA	Palestinian Ministry of Prisoner Affairs
PLO	Palestine Liberation Organization
POW	Prisoner of War
PTSD	Post Traumatic Stress Disorder
UN	United Nations
UNCRC	United Nations Convention for the Rights of the Child
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Committee
UNSC	United Nations Security Council

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***"No one truly knows a nation
until one has been inside its jails."***

Nelson Mandela, 1994:174

Chapter 1

INTRODUCTION

“I dedicate this victory to our brave detainees and prisoners. Without their struggle and their historic steadfastness, we would not be able to see this historic event...your freedom is our paramount demand.”

Mahmoud Abbas, Ramallah, 02/12/12

Palestinian President Mahmoud Abbas, greeted as a hero on his return to Ramallah armed with a diplomatic victory at the United Nations General Assembly (UNGA) dedicated that victory to Palestinian prisoners. He left no doubt as to the centrality of the prisoner in the struggle of the Palestinian society, telling prisoners the world has heard their voice (Abbas, 2012). The victory was UNGA recognition of Palestine as a non-member observer state,¹ 65 years to the day after the UN voted to partition Mandate Palestine. Israel, having failed to tempt the PLO to abandon diplomacy by offering to release prisoners, responded with collective punishments - the construction of thousands of new Jewish settler houses on Palestinian land, and the withholding of \$120 million in tax revenues due to the Palestinian Authority (PA). In this simple, non-violent, diplomatic move to progress Palestinian self-determination, Abbas shone a spotlight on the presence of a Foucauldian power-resistance struggle that permeates every aspect of the Zionist-Palestinian relationship. The political and the carceral are perpetually entwined, evidenced in the incarceration of more than 750,000 Palestinian children, women and men since the 1967 war and subsequent occupation of the West Bank and Gaza, and the illegal annexation of East Jerusalem. That represents 20 percent of the total Palestinian population, and 40 percent of Palestinian males (Addameer, 2011:1). Those not physically behind bars are caught in the tentacles of a Zionist carceral structure which permeates the entire Occupied Palestinian Territories (OPT). Abbas' dedication is acknowledgement that resistance constitutes Palestinian power.

Examination of Zionist carceral practice at this juncture in the Israeli-Palestinian conflict is especially timely due to the UN bid and the convergence of a number of other significant political and carceral tactics. This thesis brings them together under the umbrella of the prison, the prisoner and the strategies of a Zionist-colonial ideology and Palestinian resistance to it. The events in question include the largest number of Palestinian prisoners exchanged for one Israeli - Gilad Shalit in late 2011; Israel's capitulation to negotiate for its soldier with its sworn enemy Hamas; Israel's assassination only three months later of the Hamas group commander who held the soldier, and in November 2012 the assassination of the leading Hamas negotiator;² Israeli breaches of the terms of the prisoner deal evidenced in the immediate rearrest of released prisoners and renewal of Administrative Detentions; and, mass prisoner hunger strikes in late 2011 and 2012 protesting harsh prison conditions and recording the longest ever prisoner starvations, some coming perilously close to death after more than one hundred days without food. These are set against a background of stagnant negotiations and contentious diplomatic efforts to resolve the crisis.

¹ The vote for the PLO was 138 in favour, 9 against and 41 abstentions.

² In March 2012 an Israeli airstrike in Gaza killed Zuhair al-Qaissi, the commander of the Popular Resistance Committee which was behind the capture of Gilad Shalit; in November 2012 another air strike in Gaza assassinated Ahmad al-Jabari, the chief of Hamas' military wing.

Since the occupation, mass incarceration has ballooned until at times during the intifadas,³ record breaking numbers of Palestinians in jail catapulted the West Bank and Gaza to the most imprisoned society in the world (Ron, 2000:455; Bornstein, 2010:460; Cook, Hanieh, Kay, 2004:7).⁴ Annual arrests had peaked at 20,000 - 30,000, with up to 15,000 in prison at any given time. Palestinians have come to be a population category which is routinely arrested, detained, tortured, and sporadically exchanged in nameless, faceless masses for as little as one Israeli citizen. Israel labels as terrorism any Palestinian resistance to occupation. Palestinians are subjected to military rule, which harshly punishes 'terrorist' acts, which are pre-judged by Israel as indefensible threats to its state security.

The seemingly endless occupation-resistance-punishment-resistance cycle raises serious questions over the value of human life - a core concern of this thesis. The sheer numbers incarcerated and then traded as commodities for Israel's political profit, those executed by the state extra-judicially, or, killed as the collateral damage of Israeli military operations, and the abuse of Palestinian rights inside and outside the prison marginalize at best, at worst, relegate Palestinians to the Orwellian category of "unpeople" (Chomsky, 2011:1). This exposes a deep, ideological mindset at play, rooted in colonial disregard for indigenous populations and explored later on through Agamben's concept of homo sacer. These practices create a price index on life, expressed so clearly in a political cartoon depicting Palestinians pouring out of an Israeli prison with one commenting that he "did the math: I'm worth 70 grams of Israeli soldier" (Chappatte, 2011).⁵ Such an exchange is indicative of vast social, political, legal, military and moral ramifications of Zionist carceral practice, yet legal and political analysts concede the prisoner release aspect of carceral practice has attracted "surprisingly little academic interest" (Sebba, 2011:164).

This thesis understands Israeli carceral practice as specifically Zionist because Zionism is the national movement for the "resumption of Jewish sovereignty in the Land of Israel [which] has come to include the development of the State of Israel and the protection of the Jewish nation in Israel" (Jewish Virtual Library, 2012). Zionist carceral practice is identified as a coherent strategy of control and punishment embedded in the agenda of the mainly European colonialists for most of the 20th Century. Incarceration is by no means an unusual element of colonization nor occupation. What is unusual is that Palestinians remain under occupation with no end in sight.⁶ Instead of persuading the indigenous population to submit or vacate, Zionist carceral practice has produced determined resistance and in turn, that resistance has elevated the status of the prisoner within Palestinian society. Arrest, torture and imprisonment are established rites of passage for successive generations of Palestinians (Peteet, 1994; Gordon, 2008).

The mass incarceration of Palestinians is designed to disrupt Palestinian political activism, individual lives and communities and "destroy the resistance movement and its networks" (Harlow, 1990:67; Nashif, 2008:33). Most

³ Intifada is Arabic for 'uprising'...it is used in reference to two Palestinian uprisings, the first which began in 1987 and continued until the Oslo Accords of 1993; the second intifada - by far the more violent of the two - began in 2000 and while 2005 is usually referenced as its conclusion, some literature considers it ongoing.

⁴ Human Rights Watch figures for incarceration rates in the OPT during the first intifada are estimated to have been 750 per 100,000, compared to the rate in the US (usually the highest in the world) which was in the low 300s per 100,000 at the time.

⁵ This cartoon refers to the 2011 exchange of 1027 Palestinian prisoners for IDF soldier Gilad Shalit. It is reproduced below in Chapter 7. See also www.visualizingpalestine.org for an infographic depicting the extraordinary disparity between Palestinian deaths and Israeli deaths since 2000. The statistics show in that time that 79% of those killed are Palestinians as a result of Israeli-generated violence, 8% are Israelis killed in Palestinian generated violence, with massive spikes in Palestinian deaths the result of Israeli incursion military operations - April 2002 Defensive Shield; June 2006 - Summer Rains; December 2008-January 09 - Cast Lead; November 2012 - Pillar of Cloud.

⁶ The only other country in the world under prolonged occupation is Tibet. Since 1949 China has occupied Tibet despite UN recognition in 1961 and 1965 of Tibetans' right to self-determination under Article 1(2) of the UN Charter and in the Universal Declaration of Human Rights. China stands accused by Tibetans of practices including arbitrary arrests and detention, torture, reproductive rights violations, religious repression, extra-judicial executions, and it continues to transfer its own people into Tibet in violation of GCIV (49), (Herzer, 2012:1-4).

recently targeted were three Palestinian human rights groups in middle of the night raids and ransacking of their offices which they claim aims to destroy the “legitimacy of non-government organizations and disregard [our] status as human rights defenders” (Addameer, 2012).⁷ In this thesis these phenomena are explained through Foucault’s theories of power, resistance, surveillance, knowledge of the prisoner and the role of the modern prison as identified in *Discipline & Punish: The Birth of the Prison*. These theories are evident in Israel’s penal and “extra-penal incarceration” practices - the latter termed the “carceral archipelago”, the “carceral continuum” or the “carceral net” which are metaphors for the extension of a prison regimen throughout a society (Foucault, 1977:297). Physically the OPT has come to resemble a Foucauldian “prison or a network of prisons” operating under a “severe regime” of movement restrictions applicable only to Palestinians (Korn, 2008:116).

The thesis also examines the Zionist carceral practices through the lens of Agamben’s theory of *homo sacer* - that is the person who can be killed with impunity. *Homo sacer* lives a ‘bare life’ on the margins of society, or worse, and with no recourse to human or political rights. As this thesis demonstrates, it requires no stretch of the imagination to appreciate how the praxis of bare life operates inside the Zionist prisons and throughout the OPT. Palestinian political, economic and social life is strangled by prison-like walls, checkpoints, blockades, surveillance towers, illegal Israeli settlements and Israeli-only highways, to the point where the non-contiguous space of the OPT resembles the Bantustans or cantons of apartheid-era South Africa. It is “telling” that 60 years after its establishment as a state, Israel has “built a separation wall around itself for fear of losing an imagined essentialist character” (Hilal, 2007:2).

The centrality of the prison metaphor coupled with prison as a reality, is further enhanced by Israel’s fashioning of the Palestinian *per se* into a potential terrorist, or suspect civilian. In order to protect its own security, Israel then justifies thousands of laws derived from the pre-1948 British Mandate era, which it applies solely to Palestinians in order to comprehensively control them (Falk and Erakat, 2012; Gordon, 2008:17-18). Palestinian human and civil rights are negated in the interest of protecting the State of Israel. In this way Israel has self-legitimized its use of mass incarceration as a strategy to repress Palestinian nationalism and resistance, while immunizing itself from adherence to international treaties and other legal obligations. Palestinians are “excluded from recourse to the law, but remain subject to it” (Hanafi, 2009:116). The Israeli occupier does not represent Palestinians as citizens, but rules them in a manner that prioritizes Israel’s national interests over any Palestinian rights (Hajjar, 2001:22-3).

The prisoner issue has been to the fore of the decades old peace negotiations, with Palestinians consistently demanding the release of all political prisoners, while just as consistently, Israel arrests politically active Palestinians (MIFTAH, 2011; Hajjar, 2001:23). The result is a daily power/control oscillation between occupier and occupied which is no match physically,⁸ and has politicized life and death in the OPT. This politicization is most overtly demonstrated in the suicide bomber who gages successful resistance as the simple act of denying the occupier the decision over the timing of death.⁹ Such extreme resistance positions elimination as the only way in which to demonstrate the political. In this thesis however, non-violent resistance as “agency” in the Foucauldian power-resistance binary is the focus, bearing in mind prison hunger strikers have in 2012, come

⁷ The offices of Addameer Prisoner Support and Human Rights, the Union of Palestinian Women’s Committee, and the office of the Palestinian NGO Network were all raided. Addameer reports its Ramallah office was raided at 3 am, and materials taken included laptops, a hard disk, video camera, legal files, together with pictures and posters of prisoners and detainees on hunger strike. This follows the detention of Addameer researcher Ayman Nasser on 15/10/12 on charges of “supporting Palestinian prisoners and detainees and calling for their freedom”. Addameer’s chairperson Abdullatif Ghaith was banned from entering the West Bank during the 2012 prisoners’ hunger strike, and that ban remains in place (Addameer, 2012).

⁸ Israel is an economically powerful state with the world’s sixth largest military and is the only nuclear weapons state in the region. The Palestinians have only just (2012) been recognised by the UN as a state but not a member state of the UN; has no military and Israel has overall control of the Palestinian Authority’s police force which, as this thesis identifies, amounts to an outsourcing of the occupation so as to limit the economic and political costs to Israel (Gordon, 2008, Parsons, 2010).

⁹ Ghanim is quoting from a suicide bomber who was captured before the act (2008:78)

perilously close to death. Their non-violent starvation is however every bit as political as the bomber - “to me my death is the total defeat of the system (and) when a man defeats a system of death, he is eternal” (Ghanim, 2008:79).¹⁰

In order to determine the causes and consequences of Zionist carceral practice as outlined, this research asks four key questions:

- Does Zionist carceral practice meet typical law and order necessities or those of colonial policing, and if it is the latter, why?;
- Can Zionist carceral practice be understood as a strategy, and if so, to what end?;
- Can clear tactics and/or mechanisms be identified within Zionist carceral practice, and if so, what are they and how do they work?; and,
- In what ways and with what consequences, do Palestinians resist Zionist carceral practices?

These questions are addressed in accord with the chapter outline below.

Chapter Two sets out the applicability of Foucault’s power/resistance model and related carceral theories to the actions of both the Zionist authorities and the occupied Palestinian population. It also unpacks Agamben’s notions of homo sacer and bare life in order to explain the causes and consequences of the “othering” of the Palestinians - individually and collectively.

Chapter Three provides a literature review which traverses a selection of a vast corpus of academic, institutional, primary source accounts, and, popular media news and editorial coverage of the Israeli-Palestinian crisis and Israel’s extensive carceral reach. The literature makes a strong case for situating examination of Zionist carceral practice within the context of the occupation. This is particularly so, given distinct carceral mechanisms which control Palestinian lives operate inside and outside the prison.

Chapter Four identifies the laws, regulations and orders which criminalize Palestinians within the context of the inescapable occupation. These include colonial-era emergency regulations and a myriad of international human rights and occupation laws and conventions which Israel adheres to selectively, or defies outright.

Chapter Five ventures inside the prisons to present the most recent census data on prisoners. This empirical data is complemented by primary source narrative from prisoners, ex-prisoners, NGOs and others, with particular reference to the impact of torture and detention without trial - Administrative Detention. Specific attention is paid to the plight of children who know only life under occupation and are considered easy targets for the Israel Defense Forces (IDF). As the future of Palestinian resistance, children constitute an unmistakable threat to the occupier.

Chapter Six focuses on Palestinian resistance inside and outside the prison, expanding the concepts of Foucault and Agamben to emphasise that where there is power there is resistance, and resistance is a principal form of agency. The 2012 mass prisoner hunger strike is examined with supporting case studies of three key figures involved. Analysis includes the deal that halted the strike and how the Israeli Prison Service (IPS) reneged on it; and, it explains how Palestinians resist by converting the Zionist carceral space into ‘universities’ of Palestinian nationalist education and recruitment.

Chapter Seven probes in detail the 2011 prisoner exchange in which 1027 Palestinian prisoners were swapped for IDF soldier Gilad Shalit, captured by Hamas in 2006. This is where questions of the value of Palestinian

¹⁰ Ghanim is quoting former Palestinian political prisoner Mahmoud Najar in order to make the point that while the occupier can use the threat of death to oppress and control

lives and the unmistakable politics in play really come to the fore. Raw political imperatives forced Israel to negotiate, but only after collectively punishing Palestinians inside and outside the prisons, including fatal military bombardments of Gaza in its search for the soldier. When bombing failed, Israel engaged in pragmatic negotiations as it has done for decades. Israel 'spent' more than one thousand Palestinians for one Israeli, but as if a sovereign deciding on life and death, immediately began to restock its prisons and assassinate key people involved in the deal.

Chapter Eight definitively answers the research questions. Zionist carceral practice is identified as a strategic mechanism consisting of various colonial policing and punishment tactics, exercised with little regard for the humanity or rights of the indigenous population. In the context of occupation, carceral practice is exposed as a blunt instrument by which to crush resistance, intimidate, and ultimately entrench occupation in order to secure the Zionist colonial goal of possessing all of what once was British Mandate Palestine. As of 2012, Palestinians hold various pockets within the 22 percent of their original homeland constituted by the West Bank and Gaza Strip; in the 60 percent of the West Bank categorized by Israel as Area C and subject to continuing Israeli military control, and even that is disappearing.¹¹

1.1 Methodology

The research process involved the study of existing primary and secondary source data, as opposed to the generation of new data in the field. This process of textual analysis is used within the discipline of political science recognizing the validity of "scholarly literature or data produced and made available by others" (Vromen, 2010:261; University of Victoria, 2012). Textual analysis interprets how data from texts and documents relates to, or is emblematic of broader social, political and cultural contexts (Vromen, 2010:264). Within textual analysis applicable methodological concerns include historiography, ontological and epistemological positions, qualitative and quantitative data collection methods, and primary and secondary data.

Historiography

Historiography involves a writing of history "based on a selective, critical reading of sources" and synthesizing the information into a "narrative description or analysis of a subject" (Thies, 2002). This approach tests theories through use of primary historical documents or historians' interpretations of them. Thies holds that qualitative historical analysts are capable of justifying purposely selected materials and thus avoid claims of bias. He also argues that the meaning of facts is "never objectively obvious - facts never speak for themselves", and refers to Levy in advancing the argument that the facts political scientists and historians find are "dependent upon the facts we seek based upon our implicit or explicit theoretical orientation" (Thies, 2002:353; Levy, 2001:51). Therefore, research credibility is established when the topic, its importance, the ontological position of the researcher and the epistemological approach taken are clearly identified.

Ontology and Epistemology

Ontological and epistemological positions deal with questions relating to the "proper scope of human action in society" and therefore deal with "deep-rooted moral positions" (Furlong and Marsh, 2010:210). Ontological questions ask "what is the form and nature of reality and, consequently what is there that can be known about it? (p. 185). This research takes an ontological position that Palestinians resisting occupation live in a world that is socially and discursively constructed, meaning their views are "shaped by social, political and cultural processes" (p. 190).

¹¹ In a recent editorial in the IHT, former Prime Minister of Norway during the Oslo years, Gro Harlem Brundtland, and former US President Jimmy Carter who negotiated the 1978 Camp David Accords and the 1979 Egypt-Israel peace treaty, consider the "staggering" growth of the illegal settlements with 500,000 Jewish settlers, to be one of the major issues impairing the two-state solution. If the "integrity of the territory promised to the Palestinians becomes further compromised", they argue there will be catastrophic consequences for both Israelis and Palestinians (26/11/12:6).

Epistemology is simply the theory of knowledge, and it guides the research in the discovery of a connection between, in this case, what the Palestinian prisoners' real world is and what we can find out or know about it. This thesis acknowledges an ontological normative position that considers the case for freedom and self-determination of the Palestinians to be a just position, firmly grounded in international law and UN resolutions. Accordingly this research interprets the interpretation of the Palestinians - a phenomena known as "double hermeneutic" - and that interpretative process privileges the qualitative method (Bernstein, 1994:31).

Qualitative Method

Qualitative data, according to Punch, focuses on interpretations, meanings and the cultural significance of some behaviour (2009:45). As Hancock notes, qualitative research seeks answers to people's behaviour, how people's opinions are formed, how they are affected by certain events, and why cultures and social groups develop in different ways. In short, qualitative research "is concerned with developing explanations of social phenomena" (Hancock, 1998:2). Qualitative data does not have to consist of representative samples of individuals or groups in order to elicit in-depth understandings of, in this case, the experience of Palestinian prisoners (Eysenbach, 2005: 130,135). It is reassuring nonetheless that the qualitative data from these prisoners is remarkably consistent in experience and interpretation. The object of qualitative data is to provide insight into specific groups or subgroups of the population. Such data is necessarily subjective, not manipulated by the researcher, and it is usually - but not always - collected through direct encounters with or observation of individuals. Hancock calls this producing the "big picture" (1998:16). Of particular relevance to this thesis, Vromen positions historiography and interpretivist discourse as qualitative methods using text and documentary primary sources to "tell the story" (2010:262). The literature review and following chapters covering prison experiences and resistance provide strong evidence of the power of qualitative data to demonstrate the realities of Palestinian prisoners and that of the wider population under occupation. It puts flesh on the bones of the quantitative data.

Quantitative Method

Quantitative method is a scientific method of research, and the data collected is, for social science research, usually done through surveys, the results of which are analysed using statistical processes (O'Leary, 2010:231). It is a process of quantification. For this research facts and figures are vital for verification of the extent of the Zionist carceral strategy - the numbers imprisoned, the types of sentences, the penalties for the 'crimes', the age and gender cohorts of the prison muster, the numbers on hunger strike and the numbers of Palestinians traded for Israelis in prisoner exchanges. The published statistics and survey results of governmental and human rights groups - Palestinian and Israeli - and prisoner support organisations, are seamlessly included in the analysis alongside the qualitative data. This mixed-methodology allows for capitalizing on the "best of both traditions", building the broad picture by adding depth and insights to numbers, and precisions to words (O'Leary, 2010:128). The major reports of B'Tselem and Addameer on carceral mechanisms such as Administrative Detention and torture are prime examples of mixing qualitative and quantitative methodology¹².

Primary Data

The accounts given first-hand by Palestinians as prisoners or an occupied population are the pivotal primary data in this research. Primary data delivers unedited the reasons for, and consequences of, resistance to occupation and surviving the prison experience.¹³ The principal benefit of primary data is accessing original, uninterpreted accounts despite the researcher not being physically in the field. For this thesis that data has

¹² This thesis uses throughout the raw data and the interpretation of it contained in reports including Without Trial: Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law, (B'Tselem/ HaMoked, 2009); Violations Against Palestinian Prisoners and Detainees in Israeli Prisons and Detention Centres, (Addameer, 2010); No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing (B'Tselem, 2011).

¹³ As will be expanded on in the thesis, it is significant that more than 750,000 Palestinians have been imprisoned during the 45 years of the occupation. From such a catchment, a vast body of primary source data has been produced.

come from Palestinian prisoners, their families, the resistance movement and those involved in the prison industry including lawyers, judges and former members of the Israeli military. It presents in books, memoirs, letters, peer-reviewed ethnographical studies, interviews (print and digital), historical documents, official documents, surveys and reports. New digital technologies have added greatly to this resource base, and this thesis includes the web postings of a variety of official government, court, NGO, prisoner support and human rights groups. One of the most powerful sources is that of 'Breaking the Silence' - a website in which former IDF soldiers deliver personal testimonies of abusive practices they employed in policing the occupation. Combined, these resources create a deep and detailed picture of the beliefs, behaviour of, and consequences for those Palestinians caught in the Zionist carceral net.

Secondary Data

Secondary sources are those that have interpreted, analyzed, summarized or commented on material that constitutes primary data. Care has been taken in the handling of secondary data for this research because it is such a contentious subject that strong bias is detected in academic and popular literature, much of it justifying control of Palestinians for security requirements or reference to Palestinians as "terrorists". This is evident in Israeli Supreme Court (ISC) arguments, editorials in pro-government newspapers such as The Jerusalem Post, and the works of pro-Israel academics such as Daniel Pipes. Bias is not confined to the Israeli side, but throughout the research process it has been found that much of the pro-Israeli/anti-Palestinian data does not withstand scrutiny.

Conclusion

Textual analysis allows this research to be completed to an exacting standard using the considerable volume of primary source data from those directly involved in the social construction of the reality under investigation. It is an interpretation of the interpretations of those directly affected, made possible by the vast amount of primary data that is consistent and corroborative, and reinforced by statistical evidence and selected authoritative academic analysis and interpretation in secondary data. Care has been taken in selection of the hundreds of interviews, journals, books, peer-reviewed ethnographical studies, web-based resources and historical and popular contemporary analysis. At every stage the polarized nature of the Israeli-Palestinian conflict has been considered in conjunction with my ontological position that self-determination and freedom for Palestinians is a just and legally well-grounded cause. This research fits neatly with O'Leary's analysis of qualitative methodology as a "creative process of uncovering and discovering themes that run through the raw data" (2010:260). Complementing this qualitative method with quantitative method provides a narrative backed by statistical evidence of mass incarceration of Palestinian children, women and men.

Chapter 2

CONCEPTUAL FRAMEWORK

2.1 Introduction

This conceptual framework laid out in this chapter determines the structure of the thesis that follows. Subsequent chapters involve the application of a body of concepts in order to expedite analysis of the interconnected actions and reactions of colonizer and colonized. Applicable concepts include those of Foucault in relation to punishment and the carceral system, and the linking of power with resistance; the application of Agamben's homo sacer and 'bare life' in terms of the negation of Palestinian rights but also as an impetus for actor resistance. The phenomena on which these concepts gain traction include the reduction of Palestinian prisoners to a nameless, faceless, dangerous mass when exchanged in the hundreds for one Israeli soldier; state sovereign power and control with regard to Israel's 'security' doctrine; and, the ideology and practice of Zionism/colonialism. The analysis will demonstrate that the OPT resembles Foucault's carceral archipelago in which prison regimentation is spread throughout society in order to intimately administer and control the lives of the occupied population.¹⁴

The prison is considered as both an actual and symbolic manifestation of power and resistance, and is central in the organisation of the themes and questions within this thesis. While prisons are institutional realities worldwide, the circumstances of an ongoing occupation have fashioned the Zionist prisons, which hold thousands of Palestinians at any one time, into unique centres of physical and psychological control and resistance. The variety of carceral techniques which seamlessly link the prison with the OPT include mass imprisonment, arbitrary arrest; detention - often indefinite for non-defined offences; disproportionate punishment by incarceration, torture, coercion and intimidation; persistent denial of human, civil and political rights; and the dehumanizing reduction of all Palestinians to a category of 'terrorists' or 'enemy' threatening Israeli state security. The purpose of this "othering" of the Palestinian in an 'us' versus 'them' construct is to legitimate the power of the occupier at the expense of the occupied (Zureik, 2011:7). Exploration of the Palestinian response to these tactics which punish them for simply being Palestinian, include non-violent resistance through prison hunger strikes and prisoner education, transforming the prison and the prisoner into the vanguard of resistance, and refusing to give up their quest for self-determination. In effect, Palestinians in the OPT resist by starving and educating themselves, and steadfastly occupying their own lands - *sumud* - Arabic for steadfastness on the land.

2.2 The Prison

Physically a prison is a public building for confining convicted offenders or people remanded for an alleged offence. Prisons have become deeply rooted in the organisation of human society: "detestable" as Foucault considers them to be, no mainstream replacement solution yet exists. Prisons function as a mechanism by which to deprive a human subject of liberty. Based on the notion that everyone possesses and cherishes liberty,

¹⁴ Archipelago literally refers to "a sea abounding in islands, such as the Aegean, hence a group of islands" (Chambers Dictionary, 2008). Foucault's use of the word archipelago is a reference to the Gulag Archipelago by Russian author and prisoner Aleksandr Solzhenitsyn, who was referring to the system of Soviet Camps built for political prisoners throughout the Soviet Union in the 1920s and 1930s, and used for most of the 20th century. Solzhenitsyn's book was written as a condemnation of the camp system. Interestingly Ann Applebaum's forward in the 2007 edition of the book notes "the Gulag Archipelago proves that "prisoners gossip", so often dismissed by scholars as inaccurate, was often right" (2007:xvii, xix). Archipelago can be applied to the Occupation in two ways - the spread of prisons and detention centres throughout Israel and the OPT, and, to the spread of prison-like techniques of control such as curfews, checkpoints, barriers and categorization, which regulate every aspect of the lives of Palestinians living under occupation.

imprisonment becomes, theoretically, an “egalitarian punishment”. Foucault posits that the prison’s purpose is to coerce the production of docile and capable bodies, and the modern prison is a civilized, legal, corrective and transformative space, operating in private, away from the public gaze (Foucault, 1977: 232-233).

All prisons represent the “institutionalization of the power to punish, or to be more precise [the] will [to] the power to punish” (Foucault 1977:130). For Foucault this naturalization of the legal power to punish and the legalization of the technical power to discipline is the formulation of a “great economy of power” which is manifested in the advent of the modern prison. That basic prison formula has survived because it was first rooted in “mechanisms and strategies of power” enabling it to defy future attempts to transform it (Foucault, 1977:303-305).

2.3 Prisons in the context of the Occupation

Any notion that the modern prison presents as a “soft social control” is disputed by Palestinians on the basis of intimate experience (Garland, 1990:2). They consistently testify to Zionist prisons as centres of violence, determined to break the Palestinian struggle and eliminate Palestinian nationalism “not by the hanging rope or the guillotine, but by techniques of gradual elimination of the human, bodily and morally” (Nashif, 2008:44). Nashif argues that Palestinians experience a “flipped side” of Foucault’s prisons in that they are sentenced to colonial prisons rather than prisons of the modern west. Colonial prisons however serve to achieve the aims of the colonizer - in this case presenting Israel to the international community as a “democratic state” and “elimination” of Palestinian prisoners without actually killing them (Nashif, 2008:44).

In the Israeli/Palestinian context the power of the prison is overt. Israel inherited from the British a mix of police stations and detention centres built in almost every town of Mandate Palestine,¹⁵ and has since augmented them. The buildings generally overlook the cities to stand as “signifiers of the seat of political/colonial power” to cover the “entire physical and imagined Mandatory Palestine” which Nashif considers no coincidence (2008:38). The geo-strategy endorses Foucault’s weaving of a “web of power relations through the signs of real and imagined localities” - in short, a means by which to accomplish expansive territorial ambitions (pp. 38-39). Politically these Zionist prisons serve a unique purpose as the holding pens for prisoners who are reduced to bargaining chips in prisoner exchanges which Israel presents, in self-serving displays of good faith, as generous concessions by the State. These exchanges expose a clear prioritizing of Israeli lives over Palestinian lives in that so many can be exchanged for so few. The many are afforded names and faces only in the demonstration of their “contemptibility” not their personal, family experiences under occupation (Hass, 2012). The released Israeli - even when a member of the occupying force responsible for thousands of Palestinian deaths - is returned as a hero.¹⁶ Israel is then quick to re-arrest after prisoner exchanges in order to maintain an artificially high prison muster for future exchange requirements (Cook, Hanieh, Kay, 2004:10).¹⁷ It is also no mistake that punishment by imprisonment - “the legacy of colonial rule” - is the antithesis of the self-determination Palestinians strive for. Prison organizing philosophies of security and authoritarian control are polar opposites of

¹⁵ The League of Nations officially sanctioned a British mandate rule over Palestine in 1923. It was abandoned on the creation of the State of Israel in 1948.

¹⁶ The 2011 exchange of Israeli soldier Gilad Shalit for 1027 Palestinians prisoners is dealt with in Chapter 7, along with the history of similar exchanges during the years of the occupation.

¹⁷ In August 2012, Israeli Prime Minister Netanyahu offered to release 50 prisoners detained before the Oslo Accords if the Palestinian Authority cancelled a proposed bid to apply for non-member observer status at the United Nations General Assembly on September 27 (Ma’an News 08/08/12). Darryl Li (2011) in his analysis of Israel’s dilemmas in effecting the Zionist project highlights the difficulty Israel would have if the PA had UN observer status because it would be entitled to access to the International Criminal Court and move for prosecution of Israeli officials for war crimes.

self-determination's "autonomy, empowerment, independence, self-sufficiency and control" by indigenous peoples (Edney, 2001: 7-31).¹⁸

Within the occupation, prisons are intended as sites in which to create Foucauldian docile bodies in order to deter participation in resistance. Continued Palestinian resistance undermines the effectiveness of this as a Zionist strategy. Foucault considers that prisons create their own criminal genre of "delinquents" - the "prison makes possible, even encourages, the organization of a milieu of delinquents, loyal to one another, hierarchized, ready to aid and abet any future criminal act" (Foucault, 1977:267). In the pejorative 'delinquent' is arguably not an appropriate term for political prisoners. However the creation of Foucault's delinquents is remarkably similar to the Zionist construction of Palestinians engaged in resistance as threats to Israel's security. A Foucauldian delinquent is "an individual to know", and that known identity is subjected to "biographical knowledge", which in turn "establishes the criminal (delinquent) as existing even before the crime and even outside it". The delinquent, personified as Palestinian prisoner, becomes categorized within a Foucauldian "ethnography of crime" to be punished and controlled as a threatening social type. Successfully typecast, it then becomes logical that the prisoner be controlled by various Zionist apparatus, including the prison (Foucault, 1977 :251-253).

Prisons are in the conceptual toolkit because they are understood as the institutionalization of the power to punish through deprivation of liberty, so as to reform and create docile bodies. They are also richly symbolic of the underlying Zionist ambition to clear land of its indigenous Palestinian people, or as Li argues, adapting the "operational mantra of Zionist settler-colonialism [of] maximum land, minimum Arabs" to one of "maximum Arabs on minimum land" (Collins, 2007:13). Within prisons, Palestinians, like Foucault's delinquents, are recreated as "pathologized subject[s]", who become known to authorities as a security-threatening class, which is then effortlessly applied to the entire population of the OPT (Foucault, 1977: 277).

2.4 The dynamics of the prison and Palestinian resistance

Resistance is a counter-tactic, and as such presents as a vital component in the overall concept of the Palestinian reality within the Zionist carceral system. Foucault considers resistance as integral to power - no resistance means no power, only obedience (Foucault, 1997:167). Power, in the Foucauldian sense, is present in any strategic situation with another, and even if it is asymmetrical, it is always subject to the possibility of change (Foucault, 1997: 167). Resistance requires active agency on the part of those resisting. This is demonstrated in the potential of Agamben's (1998) 'bare life' to spark resistance through emancipatory or revolutionary movements or actions. Resisting by refusing to eat, or manipulation of prison space as hubs of political education, are non-violent exercising of Palestinian agency. The hunger strike represents a corporeal political challenge or intervention "demanding a transformation of power relations and a redress for injustice" (Ziarek, 2008: 99). It is a usurpation of sovereign (state) power over the expendable, depoliticized bare life of the striking prisoner. By gambling with mortality the prisoner collapses the "distinctions between sovereignty and bare life, will and passivity, potentiality and actuality, the struggle for freedom and the risk of annihilation". The hunger strike can therefore be considered a weapon which turns the private action of starving into a "collective contestation of the law", and in the context of Ziarek's argument, that means what was thought impossible is instead a potential catalyst for action (Ziarek, 2008:102).

For Palestinians, non-violent resistance such as the hunger strike has become a very public, "counter-hegemonic" and galvanizing reaction to the occupation's strategic carceral practices (Foucault, 1977: 297-8). In effect it reverses the intended outcome of Zionist spaces of captivity, as illustrated in the mass hunger strike in

¹⁸ The number of carceral structures, their location and the conventions and international laws Israel breaches when sending Palestinians from the OPT to these prisons, mainly in Israel, is dealt with in analysis of the carceral regime in Chapter 4.

April/May 2012 which won considerable concessions from the IPS.¹⁹ Palestinian agency confronting mass incarceration is also active in the construction of national and personal identities, presenting “the prison struggle as a metonym for all Palestinians under occupation” and the “battered body” as symbolic of a determination to resist normalization of the occupation (Bornstein, 2010: 460; Peteet, 1994). These are counter-tactics to the occupation’s carceral tactics.

2.5 The Power of Resistance

According to Sharp’s theories of power, even the most tyrannical ruler can only rule with the consent or obedience of the ruled. When the ruled withdraw their material, human or ideological resources they eventually make “occupations unsustainable and dictatorial rule impossible” (Sharp, 1985: 151). As seen in both intifadas, the dominant power resorts to violent and punitive measures when faced with a general refusal of Palestinians to accept their occupied status. Sharp holds that the asymmetry of mostly unarmed Palestinians confronting the military might of the IDF, turns that brawn in on itself and so the IDF’s strength becomes a weakness. He terms it a “political ju-jitsu” which makes “the military occupation look ridiculous”, polarizes Israeli society, damages Israel’s international standing”, and destroys a long-held myth that “there was such a thing as a benevolent occupation” (Sharp, 1985; Stephan, 2003: 6-10). Allen argues “if power is everywhere then it can be nowhere” and thus Palestinians, by their everyday act of *sumud*, are agents of resistance. As Israeli colonialism purposefully disrupts every aspect of Palestinian life, Palestinians equally purposefully resist by staying on their land and stretching their physical and psychological capacities in order to survive ongoing violence (Zureik, 2011: 37).

Applying Foucault’s conception of power to the body of the Palestinian prisoner transforms it into a site of power from which to confront the power of the authority. The body of the captive is a tool for turning the power game upside down, and in so doing the

captured body is restored to its previous owner ... the captive eliminates the same body that the colonizer thought he would seize by capturing and jailing it - both the colonial land and its people (Nashif, 2008: 65).

Peteet argues Palestinian prisoners have succeeded in reversing Israel’s intentions to crush the spirit of resistance by turning Israeli beatings and torture of Palestinian bodies into “experiences of transformation and empowerment...as rites of passage into manhood...initiation into underground political leadership” (1994: 33). In this way the Foucauldian prisoner’s body is neither humiliated nor pacified, but an active and creative “site of text or a site of inscription” which “challenge[s] the asymmetrical power relations” of the Zionist carceral system (Zureik, 2011: 37-8).

Resistance is thus a survival instinct of Palestinians under occupation and is therefore a principal conceptual tool within the framework of this thesis in the sense of Foucault’s power-resistance binary. Life in the Zionist prisons and the wider OPT embodies the Separation barrier graffiti - “to exist is to resist” (Wolford, 2012: 2). Theories of resistance acknowledge its ability to germinate in the seemingly hopeless situations inside actual prisons or the prison-like conditions of life under military occupation. Resistance disrupts the power asymmetry, and has therefore become as much the rhythm of occupation as the military control mechanisms themselves.

¹⁹ The concessions are examined in Chapter 6, as is argument over whether the IPS has kept its promises in areas such as renewal of Administrative Detentions.

2.6 Israeli punishment of resistance

Palestinian resistance is dynamic and powerful, but it is also ceaselessly punished. Israel presides over a rare form of carceral practice amongst modern states - continued mass imprisonment of a colonized people as a tactical choice to crush political and militant resistance (Bornstein, 2010:462; Mougrhrabi, 1992: 51). Peteet identifies Israel's "explicit policy" of beatings which makes it difficult to find a young Palestinian male who has not been beaten or knows of others who have.²⁰ Yet they persist, often armed only with stones - "one of the earliest forms of weaponry known to humankind", against the IDF's technologies of power - physical and psychological (1994: 34-35). The centrality of Zionist ideology to the Israeli state brings with it an emotional or passionate urge to punish any 'others' who stand in the way of the proscribed Jewish historical right to all of Palestine. This is akin to Durkheim's account of punishment which attends to the non-instrumental elements such as emotions, social origins, values and cultures. Garland interprets this as punishment as a defensive response "grounded in the individual's sense of the sacred and triggered by any crime which violates these deeply held beliefs" (Garland, 1990: 7-9). This adds an outraged or valorizing public to Foucault's "controllers and the controlled" and as such, is another mechanism through which to understand the impact both Israeli and Palestinian societies have on shaping penal institutions and how they function.

2.7 Palestinian experience of punishment

Punishment is a penalty imposed on someone who has offended, and the core element linking it to justice is that it be restricted to the degree deserved. All evidence indicates this concept of proportionality is elusive in the Israeli administration of the OPT. As a tool for examination of the Zionist carceral strategy and attendant tactics, punishment encompasses issues of violence, legitimacy, inclusion and exclusion, and its principle purpose of "deliberate and intentional infliction of suffering" should not be lost sight of (Burgh, 1982: 193-197). All are applicable in examination of the practices of the Zionist occupier. In order to meet Zionist ideological and geopolitical goals, Israel has fashioned its own rules to deal with those who stand in its way.²¹ Imprisonment as a deprivation of liberty is a form of punishment in itself, but the physical structure of the Zionist prison also serves as the site for the administration of more corporeal forms of punishment such as beatings and torture - all supposedly anathema to Foucault's modern prison.

Foucault regards punishment as a "complex social function" and "a political tactic" within a wider field of power relations. He argues it is no longer only negative or repressive and focussed on the body of the criminal, but rather, modern punishment targets the soul of the prisoner in order to understand the criminal and the criminality (Foucault, 1977: 23-4). Overall, Foucault's consideration is that punishment should be interpreted as a political strategy of imposed control over the bodies, minds and actions of individuals (Garland, 1990: 5) - a basic concept for this thesis. Thus Foucault's theory that power is a strategy to be exercised rather than merely possessed, illuminates the reality of the Palestinian prisoners who are punished, invested in, marked, trained, tortured, tasked, forced to perform ceremonies and emit signs (Foucault, 1977:25). As a tactic within the strategic armory of the Israeli state however, the "positive political utility" of punishment is doubtful (Garland,

²⁰ On January 19, 1988, Israeli Defense Minister Yitzhak Rabin announced a new policy of "might, power and beatings" to quell the first intifada (Peteet, 1994:36)

²¹ See Parsons (2011: 358) The Palestinian Authority Security Apparatus for various Zionist laws which discriminate against Palestinians, for instance the 1948 declaration of a "Jewish state", the June 1950 Law of Return which allows Jews worldwide to apply for citizenship of Israel while hundreds of thousands of Palestinians forced to leave their lands in 1947/8 and 1967 are not allowed to return. Nashif (2008:33) argues the laws relating to annexation and confiscation of Palestinian land and labour were designed specifically to destroy the social infrastructure of an agriculturally dependent and mercantile based society. Mougrhrabi refers to the "domino theory of Zionist settlement" which means the Zionist enterprise would be jeopardized by any concession permitting Arabs to gain back property taken in the colonial settler project.

1990:6). Punishment is intended to be a sign of ultimate authority, but the scale on which it is applied to Palestinians raises questions of violence and therefore, questions of legitimacy (Garland, 1990).

2.8 Theories of Punishment

Palestinians are subjected to two leading punishment theories - incapacitation and deterrence. In incapacitation theory the aim of punishment is simply restraint. By locking up an offender, it makes it impossible for that person to offend society again (Carlsmith, Darley, Robinson, 2002: 284). Applying incapacitation theory, the Israeli military system takes the Palestinian resistor out of the field of operation, but as the evidence demonstrates, it does not take the resistor out of the Palestinian.

Deterrence theory, with its utilitarian approach to punishment, aims to make the punishment sufficiently painful so as to persuade the offender from offending again, or, others from offending in the first place.²² The utilitarianism of deterrence lies in its justification of inflicting pain if that has “beneficial consequences which outweigh the evil of deliberately and intentionally inflicting suffering on human beings” (Burgh, 1982:194). This is a two-wrongs-sometimes-make-a-right synopsis, and in the context of this thesis, it is the Palestinian who suffers in order to protect the perceived rights of Israeli citizens. Deterrence requires offenders and potential offenders to be “rational actors” involved in “cost-benefit analysis” (Carlsmith et al, 2002:285). Israeli and Palestinian rationalities however, appear as polar opposite ontologies - the Zionist reality is the creation of the Jewish homeland on as much Palestinian land as possible; the Palestinian ontological position preferences Palestinian self-determination, ergo, freedom from occupation. Sixty-four years of confrontation - 45 under occupation - indicates cost-benefit analyses have deemed the fight worthy, if only by the parties involved. For Israel the cost is the incarceration of hundreds of thousands in order to deter Palestinian nationalist resistance practices, but also maintain a supply of prisoners as political bargaining chips; for the Palestinians the cost is enduring imprisonment and other carceral related tactics in pursuit of an end to occupation.

Punishment understood this way emerges as a carceral tactic within the strategy of the Zionist occupation and colonization. Generally punishment is a penalty proportionate for an offense committed, but for Palestinians resisting occupation, the link between proportionality and justice has been lost. Punishment within this framework is overtly a mechanism by which to inflict sufficient suffering to deter further resistance. The legitimacy of the Zionist resort to punishment is therefore questionable, as is its effectiveness given Palestinians persistently exercise considerable agency in subverting it.

2.9 Control through Surveillance

Surveillance in its political sense is the act of monitoring through direct gaze or other means, a population or specific section of a population, in order to establish and maintain control over it. Surveillance is intimately tied to colonialism with respect to controlling colonized lands and peoples, be it through collection of census data, maps, fingerprinting or imprisonment. This leads inevitably to discussion of methods of control and resistance (Zuriek, Lyon, Abu-Laban, 2011:xxi).

Surveillance is central to Foucault's disciplinary power, with his concepts of panopticism and the carceral archipelago directly applicable to the Zionist colonial reach. Panopticism refers to the prison design of the utilitarian philosopher Jeremy Bentham, in which prisoners are always visible from a central control tower, but

²² see Cook, Hanieh, Kay (2004) for discussion on how arrest and imprisonment of children and youth is designed to deter other children from engaging in 'political' activities such as stone throwing.

cannot verify when, or even if, they are being watched. As a consequence the prisoner should act as if under surveillance at all times. Foucault considers this the “machinery that assures dissymmetry, disequilibrium (and) difference” thereby reinforcing the power of the surveyor (1977:202). The panoptic is the “motif” of colonial power and is readily extrapolated to include the spatial surveillance and control of OPT towns, cities, camps and prisons (Zureik et al, 2011:8). This “matrix of control” under the guise of security is designed to virtually paralyze Palestinian lives through master plans of settlements, highways and bypass roads, army bases, closed military areas, nature preserves, internal checkpoints, zoning regulations, building permits, house demolitions and an array of other restrictions (Halper, 2011:1).²³



Interior view of panoptic cell house, new Illinois State Penitentiary at Stateville.

2.10 The Colonial Gaze

Panoptical practice within the colonial paradigm is readily referred to as the “colonial gaze”. It is a powerful, imperial strategy of the colonizer to dominate the colonized and define them as “the Other” - objectified and subjugated (Zureik et al, 2011:7). The gaze involves a constant reinforcement of superiority through a visual vantage point of the colonizer against the explicit inferiority of the colonized in a way which is overtly racial. This “othering” is a concept which lies at the heart of the elements which comprise the carceral archipelago of discriminatory bureaucratic controls, laws and military orders governing Palestinians but not Israelis. Surveillance is a tactic of colonialism, employed by the Zionist colonizers since the inception of the State of Israel (Zureik, 2011:12).

²³ David Lyon (2011) discusses the “internal colonialism” akin to South Africa’s, embodied in the colonial Israeli government’s imposition of ethnic categorization via identity cards. These markers of citizenship determined economic and/or political freedom. They replaced the pre-1967 passes, and under military occupation restricted Palestinian travel, and without the ID, Palestinians are considered “illegal in their own place of residence (p.52). Simon Randles and Amjad Alqasis (2012) argue the ‘seam zones’ - the sections of Palestinian land within the OPT but falling between the annexation wall and the 1949 ‘Green Line’ have turned 50,000 Palestinians into “internally stuck persons” because the land is controlled by an Israeli permit system which severely restricts Palestinian access to their lands. Palestinians living within the seam zones have to apply to the Israeli Civil Administration for permanent resident ID cards, in order to remain on their own land. If they can’t prove ownership of property within the zones, prove a “linkage” to the land or that they have businesses within the zones, they are denied access.

²⁴ retrieved 20/09/12 from <http://www.hks.harvard.edu/sdn/sdimages/>

2.11 Zionism

Zionism's emergence as a modern, secular movement came in the second half of the nineteenth century. Its official aim was to create "for the Jewish people a home in Palestine secured by public law" (Bickerton, Klausner, 2007:33)²⁵. This Zionism was "inspired by secular nationalism and anti-Jewish prejudice" in Western and Eastern Europe, which differentiated it from the religious "traditional Jewish yearning to return to Zion, Eretz Israel".²⁶ The vision of Viennese Jew Theodore Herzl was central to the birth of political Zionism: an "imagined community for all the Jews of the world", and Jewish unity based on the suffering caused by anti-Semitism rather than a religious bond (Smith, 2010: 26-28,70). This Zionism also differed from nationalist movements per se in that it aimed to create an independent state in territory that was already inhabited by others - in this case Arabs (Ehrlich, 2003: 65)²⁷. It is this nationalist project in another peoples' territory that links Zionism to colonialism and the Palestinians.

2.12 Colonialism

Colonialism is defined as the "theory or practice of establishing control over a foreign territory" by a "mother country", ethnically distinct from the colonized native population. This was usually by way of (often violent) settlement and economic domination (Heywood, 2007:122). The British, adhering to their colonial exploits in Africa, initially considered fostering Zionism in Palestine would strengthen the Empire's hegemony in the Middle East via a surrogate colonization (Atran, 1989). Accordingly the British weakened the Palestinian nationalist movement while training and equipping the Zionist militias. Eventually Britain could not stem the "Zionist colonial project" to displace the indigenous population (Kardahji, 2007:2-3). The end result was a loss of British legitimacy and withdrawal from what the British considered a prime example of an unsuccessful mandate. After 1945 the British "walked away from the impossible" (Crawshaw, 2007:13). Israel's first Prime Minister David Ben-Gurion, amongst many other Israeli political leaders, spoke of colonization -

we will say to the Arabs: 'Move over': if they are not in agreement, if they resist, we will push them by force (Garaudy:1977:41).

This epitomized the Deleuzian Zionist ambition to create a "world without others" which involves excluding "others" at the personal and the collective experience (Svirsky, 2010:22).

²⁵ The first Zionist Congress in Basel in August 1897 stipulates the Jewish homeland will be attained by promoting the colonization of Palestine by Jewish agriculture and industrial workers; promoting local and international organization of the whole of Jewry; strengthening and fostering of Jewish national sentiment and consciousness; and, taking preparatory steps toward obtaining government consent, where necessary, to the attainment of the aim of Zionism. See Said, (1979) for discussion on the equating of anti-Zionism with anti-Semitism which he considers a formidable issue when writing about the "Palestinian struggle against Zionist settler-colonialism"... "to oppose Zionism in Palestine has never meant, and does not now mean, being anti-Semitic..."(p.14).

²⁶ The Zionism of Ben-Gurion's inaugural Israeli state in 1948 was the secular form of Zionism. Ultra-Orthodoxy Zionism (haredim) split from the Zionist movement to form an anti-Zionist organization - Aqadat Israel - in 1912. The haredim consider secular Zionism as moving against God by forcing the Jewish return to Eretz Yisrael rather than waiting for the Messiah to return the Jews to the promised land. They also consider the Holocaust to be God's punishment of the Jews, and that by colonizing Palestine, the secular Zionists have created anti-Semitism and endangered the lives of Jews (Ehrlich, 2003: 72-3).

²⁷ See Khalidi for discussion on the Zionist understanding that the only means to create a Jewish majority state which they fully controlled was "to engage in today what would be called ethnic cleansing", rather than the "Orwellian euphemism" of "transfer...employed at the time to describe what amounted to an act of politicide", and resulted in the terrorization and forced flight of more than 750,000 Palestinians between 1947-9 (2007:185-191).

2.13 The place of the indigenous people in the Zionist Colonial paradigm

The extent to which Zionism can be considered a component of colonialism remains the subject of robust academic debate.²⁸ This research considers them to be inseparable but distinct concepts, favouring Ram's view that the land acquisition, labour market closure, displacement of native Arab peasants and the development of a military culture place Zionism within the colonial paradigm. Together Zionism and colonialism amount to what Nashif calls a committed and violent decoding of "Palestine, the people and the territory, in order to pluck its surplus values".²⁹ As concepts they set the ideological frame for the "deculturation and acculturation" of Palestinians as a colonized people. Consequently, Palestinian territory and cultural space has been "disrupted, dissolved then re-inscribed according to the needs of the apparatus of the occupying power" - Israel (Parsons, 2008: 123-124). Zionism is international, ideologically bound to nationalism and driven by the acquisition of land with a view to turning the 'colony' of Palestine into its own home country (Pappe, 2010:94). Rodinson argues that the Jews connected to the concept of imperialism because of "one small detail that seemed to be of no importance: Palestine was inhabited by another people" (Said, 1979:29). This "small detail" lies beneath the continued Zionist propulsion to "secure Jewish demographic hegemony within the boundaries of Mandatory Palestine" - a goal Parsons argues the Israeli state has not deviated from (Zureik, Lyon, Abu-Laban, 2011:367). Of prime importance to this Zionist-colonial paradigm is that while post-Holocaust Jews are "mesmerised by their own profound fears about threats" to their continued existence, these fears appear to blind them to their concomitant torment of the Palestinians, now traumatized by Zionist ideology and practice into their own "profound existential crisis as a people" (Khalidi, 2012:xxvi).

Zionist and colonialist ideologies connected at a time in history when there was a "disregard for the local population[s]" in the lands they wished to take control of (Pappe, 2010:35).³⁰ European colonizers acted with "self-attributed global permissibility" supported by their privileged status and "ideology of cultural supremacy" which in the case of the Zionists, was "accompanied by a redemptive nationalism" (Svirsky, 2010:10-11). Colonizers considered indigenous peoples to be primitive, allowing the Zionist colonizers to perpetuate the myth that Palestine was a "land without people for a people without land" (Hanafi, 2009:106). The colonialist legal concept for the negation of the existence, or rendering primitive an indigenous people, is 'Terra Nullius' - literally 'nobody's land' or land without a sovereign.³¹ Such land is therefore treated as 'available' for remaking from uncivilized to civilized. The Zionists spoke of "making the desert bloom" and "land redemption", and this notion of carte blanche appropriation of Palestinian land, with little or no regard for the people to whom it belongs, continues to this day with illegal settlements, construction of a separation barrier on Palestinian land and, confiscation and demolition of Palestinian property (Svirsky, 2010: 3-5). Said presents a clear meshing of the Zionist/colonialist theme in the chain of events which allowed the Jewish national homeland to be established by way of the Balfour Declaration which

²⁸ See Forman and Kedar (2003) for extensive analysis of various scholarly arguments including; Palestinian scholars viewing Zionism as a "spearhead of Western imperialism and as a typical settler movement working to displace Palestinians" (p.497); rejection of this approach by many Israeli scholars who see Zionism as a movement of national liberation seeking to "return" to the Jewish homeland...as anti-colonial...as deviating from classical models of settler colonialism due to the absence of a powerful "metropolitan" state; other scholars have coined new terminology to place Zionism as a 'colonialism of necessity', 'colonialism of the displaced', 'non-formal colonialism'; Aaronsohn differentiates between colonization and colonialism to distinguish Jewish settlement from typical European colonialism (Forman, Kedar, 2003:498-500).

²⁹ See Said (1979) for the effectiveness of the Zionist project which he attributes to it being a detailed colonial vision that was specific "down to the last millimeter, settled on, planned for, built on...while the Arabs (Palestinians) had no counter-proposal having "assumed that since they lived on the land and legally owned it, that it was therefore theirs" (p.36).

³⁰ When Zionism was a "movement for acquiring land in the Orient" between 1815 and 1918, "Europe's overseas territorial acquisitions increased from 35% to 85% of the earth's surface" Said (1979:12).

³¹ In Australia the convention of Terra Nullius was not retracted until the 1990s when the Australian High Court in the Mabo case ushered in a new discussion on the colonization of Australian Aborigines.

was made (a) by a European power (b) about a non-European territory (c) in a flat disregard of both the presences and the wishes of the native majority resident in that territory, and (d) it took the form of a promise about this same territory to another foreign group, that this foreign group might, quite literally, make this territory a national home for the Jewish people (Said, (1979:9-10)).³²

2.14 Palestinian responses to entrenched colonialism

The resident native majority did not submit to colonization by the Zionists. Instead Palestinian society engaged in a still ongoing war of liberation. The colonizer, contrary to the decolonization taking place in the rest of the world throughout the 20th century, remained in the occupied country, and developed strategies of control focusing on punishment (Hilal, 2010:23). The numbers and narratives attest to imprisonment by Israel and the Palestinian Authority (PA) under Israel's direction,³³ constituting the dominant form of punishment. Suspending laws in order to control resistance or even the presence of the "indigenous colonized people, is a given of every colonialism" (Lloyd, 2012:71).³⁴ However, Israel has turned what should be an exception - colonial era emergency laws - into a norm. Palestinian life is thereby governed in a "state of siege" that seems destined to continue as an "ongoing project of expropriation of indigenous lands..."(Lloyd, 2012:72-6). Given this occupation, Palestine itself remains a concept. Lloyd's analysis is poignant-

...it is impossible to think Palestine without thinking simultaneously of that which negates it; it is impossible to think Palestine without thinking in relation to that which covers it, displaces it, namely, Israel and Zionism (Lloyd, 2012:61).

The concepts of Zionism and colonialism augment this thesis because they provide context for the ideologies behind the Zionist colonial actions to incrementally take over the land and resources of the Palestinians, and rid the territory of its indigenous people. The Zionism that colonized Palestine is a secular, political ideology focused on establishing a home for Jews. Its indifference to the Palestinians connects it intimately with colonialism. Zionism is thus considered a colonial movement of dispossession which aims for Palestinian disappearance (Khalidi, 2007: 189-90; Said, 1979:36). The Zionist colonial project is ongoing, manifested through perpetual occupation, settlement expansion, an overt and deep hostility towards Palestinians, and, a state-sanctioned policy of punishing them.

2.15 Conclusion

This chapter has identified the key components of the framework for the examination of Zionist carceral practice. This framework consists of inter-related concepts of incarceration, punishment, resistance and Zionism in a colonial setting. Foucault is central for several reasons: his positioning of the modern prison as the site of institutionalized punishment which ultimately fails to reform; his concept that power is incomplete without resistance; and further, that prisons produce delinquents rather than docile bodies. Foucault's description of

³² The Balfour Declaration (1917) was the British Government's legitimation for the establishment of the State of Israel in what was British Mandate Palestine, viewing "with favour the establishment in Palestine of a national home for the Jewish people". The British pledged to facilitate such a goal, but specifically stated the creation of this home for the Jewish people shall not "prejudice the civil and religious rights of existing non-Jewish communities in Palestine" (Smith, 2010:72)

³³ Under the terms of the Oslo Accords the PA delivers Israeli security in designated areas of the West Bank (in Areas A and B) but Jews in those areas are excluded from PA jurisdiction (Parsons, 2011:361). Parsons, Gordon (2008), Cook, Hanieh and Kay (2004) and others refer to this as Israel's outsourcing of its occupation.

³⁴ For example the Coercion Acts introduced by the British Government to control Ireland between 1800-1921; the permanent Special Powers Act (1922-72) which Lloyd argues affirmed the institutionalising of the settler colonial nature of the British state despite pretensions to democratic status.

delinquents is directly applicable to Israel's classification of Palestinians as an identifiable class of threats in the context of the occupation and resistance to it. While that very resistance renders, in the constructed reality of the Israeli authorities, Palestinians as ineligible for the rights they are seeking, Palestinians take the beatings, the torture, the surveillance and other colonial tactics as catalysts for the exercise of agency. This is manifested in prison hunger strikes, turning the Zionist prison space into zones of Palestinian nationalist education, and a general refusal to vacate the OPT. Theories of punishment apply in the negative given a demonstrable absence of the proportionality that links punishment with justice. Disproportionate force, discriminatory laws and policing control mechanisms are used to subjugate Palestinians on a daily basis. Zionism as an ideology, and colonialism as a practice, provide insight into the progression of the occupation which covets the land, but not the people. The result is Zionism's scant regard for the value of the lives of Palestinians who are surveilled and micro-managed within the carceral archipelago that military occupation has created, and which Palestinians are bound to resist. The following chapter presents the literature which confirms this conceptual framework as appropriate for the examination of the causes and consequences of Zionist carceral practice.

Chapter 3

LITERATURE REVIEW

3.1 Introduction

This research is situated in a highly contested political, cultural, legal and religious space. Accordingly, the literature which reports and analyses the Zionist colonial occupation of Palestinian territories is often dichotomous, reflecting the ideological stance of the various writers. Even in empirical literature, polarization surfaces in quite simple but revealing ways, including the perpetuation of narrative binaries such as resistance/terrorism, occupied/disputed, colonizer/settler, Palestinian/Arab, them/us, West Bank/Judea and Samaria.³⁵ This chapter divides the literature informing this research into two broad categories of conceptual and empirical, each category consisting of connecting subsections. The literature includes primary and secondary source government and NGO reports, peer reviewed ethnographical research, books which both analyse and deliver personal accounts of prisoners' lives, journals, interviews, popular media reports, web-based film, documentary and commentary. The literature is selected according to qualitative methodological guidelines as outlined in the introduction, which permit a preference for particular materials, and does not require a strict balancing of arguments.³⁶

As the literature selected demonstrates, there is strong scholarship on the wider Israeli-Palestinian conflict, and within that, considerable academic analysis of the occupation and the position of the prisoner in Palestinian society. The literature is consistent in both primary accounts and secondary data analysis, and there is regular cross-referencing between the peer-reviewed material and empirical data from the field.³⁷ This review first lays out the conceptual literature and critiques its applicability to the research questions. The conceptual dimension to the literature review performs a distinct function separate from the framework outlined in Chapter 2; here we take a step back to examine the concepts in more detail, the context in which they emerged, their pros and cons and the limits of their applicability to the Israel/Palestine case study. The review then analyses key scholarly, primary and secondary source data and empirical literature with reference to the conceptual themes in order to present context and factual accounts of the causes and consequences of Zionist carceral practice.

³⁵ see Lentin (2008:3;9;14) and Pappé (2008:155) for discussion on conflicts between writers ontologically dedicated to Palestinian liberation and writers who were former Israeli defence personnel, often fluent in Arabic for intelligence purposes, and are now academics at Israeli universities; see also Moughrabi (1996) *Israeli Control and Palestinian Resistance* for Israeli justification of occupation and colonial practice of subordination of indigenous populations as subhuman; Zreik (2008) *The Persistence of the Exception: Some Remarks on the Story of Israeli Colonialism* for Israeli scholarly insistence on Israel as a democracy. Judea and Samaria are the biblical names for the West Bank.

³⁶ The literature is also intentionally limited in that it does not include detailed analysis of the evidence of the 'crimes' Palestinians are imprisoned for, even if it were available. It is nevertheless inevitable that 'crimes' including membership of political groups and stone throwing, surface in prisoner testimonials and prison statistics. However it is considered that a 99% conviction rate of Palestinians in the Israeli military court system (Rahman, 2012) does not present as a credible process of justice, particularly when there is overwhelming, corroborative testimony that most convictions result from coerced confessions following torture or threats (Bornstein, 2008L464; Hajar, 2005:204; Krebs, 2012).

³⁷ The reports and statistical updates of prisoner support groups and international human rights organisations include those of Addameer, B'Tselem, UN, ICRC, Physicians for Human Rights - Israel, Adalah - The Legal Centre for Arab Minority Rights in Israel, and the Al Mezan Centre for Human Rights.

3.2 The Prison: a central tool of modern punishment

Analysis of modern forms of the exercise of power invariably cites Foucault's *Discipline and Punish*, which, through historical narrative, positions the prison as the central tool of modern punishment. In this respect Foucault's work is directly applicable to the Palestinian situation in which, given more than 750,000 have experienced prison in the 45 years of the occupation, the prison and the prisoner are indeed central. In order to set his argument that modern carceral punishment is a significant improvement on the ancient regime, Foucault begins with a gruesome, detailed description of the public torture and execution of the regicide Damians in 1757. Foucault progresses quickly to the development of the prison as the modern technique of control. This legal and civil shift took about 80 years, so by the 1820s incarceration was the "penalty par excellence" (Foucault, 1977:231). It also coincided with the development of the human sciences which influenced a move from a focus of punishment on the body, to gaining knowledge of the prisoner and the crime. Taking account of the 'soul' introduced coercion into the punishment regime (Foucault, 1977: 23-4).

Excessive and brutal public spectacles disappeared, but the normalizing of incarceration produced its own concerns including a refinement of criminal activity and the production of "dangerous individuals" whom Foucault calls "delinquents". Yet, like contemporary advocates of prison reform, Foucault was suspicious of the fact that imprisonment - the institutionalized power to punish away from the public glare - proved no solution for reducing crime, yet prisons persist (Foucault, 1977: 252, 24). Foucault reasoned that the failure of imprisonment carried its own distinct political ends, and this is a strong reason for referencing Foucault in analysis of Zionist carceral practice. Failure creates a criminal class which intentionally or not, controls the working class, and this in turn reinforces the authority of the dominant political force (Foucault, 1977: 277-282). The Zionist authorities as the dominant political force are thus able to perpetuate their systems of punishment as part of the colonial administration of the OPT in order to subdue "potentially explosive surplus populations" rather than focus on crime reduction (Moughrabi, 2004:46). Foucault's categorization of populations comes into play here, in so far as the successful categorization of political prisoners as security prisoners and terrorists incrementally reduces the political consequences for Israel's tactics of mass arrests, re-arrests and harsh punishment. Palestinians come to be seen as "delinquents" deserving of punishment.

Garland finds certain difficulties with Foucault's "unconventional" and "allusive, suggestive" style which sometimes submerges his theses as he tries to explain the disappearance of punishment as a public spectacle of violence against the body, giving way to the prison as the ultimate modern punishment. Yet Garland is very clear that Foucault does indeed set out how punishment is understood as a "political tactic situated within the general field of power relations". He considers Foucault in the company of Nietzsche, Deleuze and Guattari in positioning the body as necessarily subjugated in order for systems of production, domination and socialization to succeed (Garland, 1987: 849-852). It is here Foucault focuses on power in the abstract - not simply a possession of one party, but existing in its exercise - for this thesis, in the social relationship between Zionist authority and Palestinian resistance. Therefore Foucault is applicable to a framework of study that incorporates power, knowledge and the body. Garland credits Foucault with fundamentally changing the way intellectuals think about punishment and penal institutions by laying bare the "physical materiality of the prison" and the "ineradicable political significance in the act of punishment" (Garland, 1987: 866).

Transposing Foucault's 19th Century prisons to the operation of contemporary Zionist prisons is a multi-faceted process. Zionist prisons are a blend of the sovereign-like authority of European colonialism and Zionist political ambitions over Palestine. These converged within decades of the emergence of Foucault's modern prison, which was to replace punishment as an act of sovereign vengeance with the more humane, egalitarian incarceration. However Foucault offers no actual evidence or strategic calculation of how this came about, nor guidance of how changing political circumstances in the late 20th Century could, or should, impact imprisonment

policies (Garland, 1987:871). Alford criticises Foucault for mistaking the idea of prison for its practice³⁸. His research argues Foucault's reforms are no more than largely unrealized "utopian ideals of eighteenth-century prison reformers" (Alford, 2000: 134). This is consistent with the primary source testimonials of tortured prisoners detailed in later chapters, and in Nashif's influential critique that the reality for the Palestinian prisoner is in fact the "flipped story of Foucault". The scaffolds may be gone, but prisons in "colonized lands" do not match the Foucauldian, modern, Western prison. So much so, Nashif refers to early Palestinian captivity narrative which claims Israel imprisoned rather than killed Palestinians only to avoid making them martyrs, and because prison provided a legitimate conventional front to the Zionist colonization. For Palestinians the inherited British colonial prisons are

centres for the practice of violence against the Palestinian people and its struggling forces, that violence which aims at elimination, not by the hanging rope or the guillotine, but by techniques of gradual elimination of the human, bodily and morally (al Qaymary in Nashif, 2008:44).³⁹

Colonial prisons served to crush threats to authority, confirmed in research by Israeli criminologist Sela-Shayovitz which establishes there is nothing random or unpredictable about rates of imprisonment (Branch, 2005:262-5; Sela-Shayovitz, 2009: 772).⁴⁰ The experiences of the colonized prisoner contrast with much of the material and ideological realities of the modern French and American prisons Foucault was familiar with. Nevertheless, colonized Palestinians experience what is the underlying theme of Foucault's Discipline and Punish - that punishment is a political tactic, aiming "not to punish less, but to punish better...to insert the power to punish more deeply into the social body". Indeed Foucault argues penitentiary techniques have so pervaded society, that he coined the phrase 'carceral archipelago' to account for the contemporary widespread naturalization, legitimization and tolerance of the power to punish (Foucault, 1977: 82). These concepts which extend to a power-resistance duality, techniques of surveillance and the importance of knowledge of the inmate - in this case the Palestinian political prisoner - are deeply rooted in the management of the OPT, and it is for

³⁸ C. Fred Alford is a Professor of political philosophy who spent 14 months inside Illinois Joliet maximum security prison, and his research is highly critical of Foucault's methods and findings.

³⁹ See Branch (2005) for examples from colonial Africa which corroborate Nashif's accounts of colonialism's racial and ethnic prejudices that presumed degeneracy in certain ethnic groups such as the Palestinians. The colonial prisons per se were appropriated to serve the needs of colonial and settler regimes, and they targeted the colonized as a collective, rather than Foucault's isolation of individual prisoners under panoptic surveillance - which in itself is problematic in that few prisons adhere to Bentham's panoptic design (Alford, 2000: 128-131).

⁴⁰ As seen in civil and political unrest such as the two intifadas, imprisonment rates are inflated during periods of social and economic crises, when ethnic groups pose threats to the power of dominant conservative groups, who in turn demand enforcement of strict sanctions and harsher penalties. This sense of threat was enhanced when research considered the situation of Arab-Israeli citizens who supported the Palestinian struggles during the intifadas. The general Israeli perception was that the Arab-Israeli minority was the enemy which threatened state security, and the response was to maintain Israel's position in society by increasing social control. Arab-Israelis are also considered a demographic threat, which reinforces their perceived danger to the state of Israel (Sela-Shayovitz, 2009: 772-774).

these reasons Discipline & Punish is a widely referred to text within academic consideration of the Israeli/Palestinian conflict.⁴¹

3.3 *Homo Sacer* and Bare Life

Conceptualization of Palestinian life under occupation also regularly refers to application of theories on the power of a sovereign or state to kill with impunity, and, exceptional circumstances under which normal laws and rules may be suspended in order to protect the sovereign and the state.⁴² The Italian philosopher Giorgio Agamben traces these concepts back to Aristotle's notion of man as a political animal with the state having power over his life. The person who is killed without his death being considered murder, is known as *homo sacer* - literally sacred man, and his existence without human or political rights is 'bare life'. The apparent contradiction in calling the person whom anyone can kill a sacred man is explained by Agamben through references to centuries of scholarship linking the Latin "*sacer* with the category of taboo: *Sacer esto* is in fact a curse; and *homo sacer* on whom this curse falls is an outcast, a banned man, tabooed, dangerous..." (Agamben 1998:79).⁴³ In this respect *homo sacer* can be considered to have a "double meaning of sacred or accursed". *Homo sacer* is thus subject to a double exclusion in that he is at risk of being killed by anyone, and the killer will not be punished in what is a "sovereign sphere" where the law has been suspended (Agamben, 1998: 79,83).⁴⁴ This human victim captured in the sovereign sphere lives a 'bare life' in that he is subject to the sovereign's will and exists at the margins of politics, without rights and formal liberties. Agamben argues this "inclusion of bare life in the political realm" constitutes "the original - if concealed - nucleus of sovereign power" (1998: 83). Lentin observes that it doesn't take "a major leap of the imagination" to apply Agamben's theories to Israel's constant state of emergency and discriminatory laws and practices against Palestinians.⁴⁵

⁴¹ Garland (1986) considers Discipline and Punish to have "fundamentally changed the way intellectuals think about punishment and penal institutions". Cohen, (1985) says "to write today about punishment and classification without Foucault is like talking about the unconscious without Freud"; Zureik, (2011) Colonialism, Surveillance, and Population Control: Israel/Palestine; Lyon, (2011) Identification, Colonialism, and Control: Surveillant Sorting in Israel/Palestine; Sorek, (2011) The Changing Patterns of Disciplining Palestinian National Memory in Israel; Graham, (2011) Laboratories of War: Surveillance and US-Israeli Collaboration in War and Security; Denes, (2011) From Tanks to Wheelchairs: Unmanned Aerial Vehicles, Zionist Battlefield Experiments, and the Transparency of the Civilian; Tawil-Souri, (2011) Orange, Green and Blue: Color-coded Paperwork for Palestinian Population Control; Handel, (2011) Exclusionary Surveillance and Spatial Uncertainty in the Occupied Palestinian Territories; Parsons, (2011) The Palestinian Authority Security Apparatus: Biopolitics, Surveillance and Resistance in the Occupied Palestinian Territories; Lentin, (2008) Thinking Palestine; Goldberg, (2008) Racial Palestinianization; Ghanim, (2008) Thanatopolitics: The Case of the Colonial Occupation in Palestine; Hanafi, (2008) Palestinian Refugee Camps in Lebanon: Laboratories of State-in-the-Making, Discipline and Islamist Radicalism; McCarthy, (2008) The State, the Text and the Critic in a Globalized World: The Case of Edward Said; Gordon, (2009) Israel's Occupation; Nashif, (2008) Palestinian Political Prisoners: Identity and Community.

⁴² Chapter 7 below discusses the latest assassination of Hamas military leader al-Jabari by Israel as an example of Israeli Prime Minister Benjamin Netanyahu acting as if a sovereign with the right over life and death, rather than as the Prime Minister of a state.

⁴³ Agamben refers to a passage in Ambrosius Theodosius Macrobius's Saturnalia, Bennett (1930) *Sacer esto* as evidence of the dilemma, and cites a number of modern scholars as arguing over the term and how to interpret it. Agamben also refers to scholarly discussion of an essay by Fowler in 1911 'The Original Meaning of the Word Sacer'.

⁴⁴ Agamben refers to Alfred Ernout-Meillet's (1932) Dictionnaire étymologique de la langue latine. With respect to the suspension of the law, see also Gordon's analysis of this during the second intifada. No IDF soldier faced inquiry or trial for extrajudicial executions of Palestinians, thereby rendering Palestinians *homo sacer* (2009:205).

⁴⁵ Lentin in summarizing the contributions to his book, notes Goldberg's argument of "racial Palestinianization" which builds Palestinians as vulgar, aggressive philistines and the source of all Israel's woes - "were it not for the Palestinian there would be no terror, no threat, no insecurity, no challenge to Israel's very existence (Goldberg, 2008:35). Palestinians are not welcome within the Zionist project, but the "Jewish nation grants automatic citizenship to anyone who can prove s/he has a Jewish mother, while depriving of citizenship those Palestinians born on the land..." (Lentin, 2008:8).

The occupation and its plethora of military rules and regulations which apply only to Palestinians raise complex issues about the value of Palestinian life, as opposed, for example, to that of Jewish settlers living in the OPT under Israeli civilian law, and free to move throughout the territory at will, on highways exclusive to non-Palestinians. While complicated, Agamben's arguments are forceful as he tackles what Pappe describes as the "dark side of democracy" or the "twilight zone between democracy and dictatorship". Pappe is one of the many scholars who readily acknowledge bare life and *homo sacer* evident in the "doomsday scenarios" of the occupied Palestinian, "stripped of any human or civil rights" and living in a state of siege under emergency regulations imposed by the "oppressive Jewish state" (Pappe, 2008: 148-150). Pappe therefore supports Agamben's notion of the prevailing impact of sovereign power on the lives of citizens - Agamben calls it the politicization of death.⁴⁶

Caution is required in the application of Agamben's framework to Israel with respect to its bearing on the concept of resistance. Amongst considerable scholarly critique, is Zureik's analysis that Agamben holds a "passive, totalizing view of the oppressed" rather than allowing the subjugated to actively or vocally respond to their plight (Zureik, 2011: 133). This extends to Agamben's limiting of distinctions between "victim versus victimizer, powerful versus powerless". This thesis however prefers Foucault's "principle of power [in which] there is no such thing as two opposite classes, one with power and one without, for the simple reason that power is not a possession but an action" (Abujidi, 2011:331). The literature makes it very clear that Palestinians have been active in resistance. Their lived experience cannot be confined to Agamben's simple "juridical definitions", particularly with reference to sovereign power which limits analysis of the many dimensions of the "impact of the colonial machine" on the Palestinian condition (Abujidi, 2011:331-2).

3.4 Israel as a State of Exception?

Despite Israel's treatment of Palestinians and its permanent state of emergency, Pappe disputes much scholarship which considers Israel qualifies as an example of Agamben's 'state of exception'. The plausible argument for Pappe is that when a state, in this case Israel, is so concerned with its own security, security becomes "its only task and source of legitimacy" (Zureik, 2011:12). Therefore new 'non-laws' allowing practices such as mass detention and torture, creep in to everyday existence and threaten to become the rule.⁴⁷ Agamben cites countries like the United States as temporarily states of exception when they suspend laws and regulations in order to protect democracy in exceptional times, such as following the terrorist attacks of September 2001.⁴⁸ Pappe counters that Israel actually uses oppression to defend itself *against* democracy (Pappe, 2008:157)⁴⁹. He insists if Israel accorded democratic rights to all citizens, including Palestinians who are not Israeli citizens but are nevertheless controlled by Israel, the Zionist colonial ambition for a Jewish only, or at least majority state, would be thwarted. Accordingly, bare life for Palestinians is justified and enabled through permanent emergency rule in a *Mukhabarat* or security state, rather than a state of exception. This ensures permanent dispossession of the indigenous Palestinians - permanence being at the crux of Pappe's argument.

⁴⁶ Here he refers to the case of Karen Quinlan, the comatose American woman who lived for some time after being taken off artificial respiration and nutrition. Agamben argues Quinlan's body had entered an indeterminate zone in which 'life' and 'death' lose their meaning, which "is not unlike the space of exception inhabited by bare life". When the state takes responsibility for ending this life, the argument over the definition of a life that may be killed without homicide charges arises (pp. 163-5).

⁴⁷ Zureik (2011) *Surveillance and Control in Israel/Palestine*, provides robust debate amongst a number of scholars including Pappe, Abu-Laban, Bakan, and reference to Ghanim, (2008) and Lentin (2008) on the argument of the applicability of Agamben's state of exception to Israel.

⁴⁸ Agamben, (2005) see discussion on the US Patriot Act, and Judith Butler's description of inmates at Guantanamo Bay for whom "bare life reaches its maximum indeterminacy" (p.4). The laws connected with the so-called War on Terror are pertinent to this thesis as many aspects were mimicked by Israel allowing it a legitimate facade behind which to arrest and detain any Palestinian considered a threat to Israel's security.

⁴⁹ original italics

Agamben's states of exception eventually return to democracy, but Israel has instead entrenched its violence against Palestinians (Pappe, 2008:148).⁵⁰ Since its inception as a colonial state Israel embodied laws and rules that were "sui generis anti-democratic in their impact on the Palestinian population" (Zureik, 2011: 34,148). These laws are permanent and therefore not exceptional.⁵¹ Pappe's argument also finds support in Parsons' analysis of the state of exception as applied to the PA. Parsons argues convincingly that Israel does not meet three key criteria for a state of exception - "Zionist sovereign power has not migrated decisively from legislature to executive";⁵² Israel is consistent in its "racialized discrimination and oppression" of Palestinians which is "subject to public scrutiny and general approval";⁵³ and, as the Zionist framework applied to the State of Israel from its inception, its accompanying oppressive laws against Palestinians can not be considered exceptional (Parsons, 2011:357). This permanence goes to the core of this thesis as the Zionist project covets, and always intended to covet, as much as it can secure of Eretz Israel, devoid of the indigenous people (Hajjar, 2011:3; Gorali, 2003).

3.5 Empirical Literature

Empirical prison literature on Palestinians caught in the occupation's carceral net tends to fall into three broad categories - first-hand accounts, official documents of inquiries which invariably include statistics, and news media reports and commentary.

The primary source accounts are uniformly disturbing in content, detailing arbitrary arrest, indefinite detention, torture including beatings, rape or threats of rape of relatives, long periods of solitary confinement and psychological torture including denial of family visits.

"After several kicks to the stomach, I fell to the ground. I started to vomit blood. The interrogator throttled me. I was transferred to the hospital in Haifa. They examined me and apparently decided I was fit to take a second round of interrogation" (Barham, 2011:92).⁵⁴

Israeli prisons hold Palestinian criminal and security prisoners - the latter defined by nationalistically motivated 'crime', which has evolved into an identification code for Palestinian prisoners. Baker and Matar's edited collection *Threat* brings together twenty-two diverse accounts from prisoners, ex-prisoners, lawyers, activists and academics who give account of the physical and psychological conditions of Zionist prisons and the measures Israel go to in order to deny the "entire Palestinian struggle" (Baker and Matar, 2011:ix). Their experiences are invariably the result of the "blind, categorical" application of 'security' which transforms

⁵⁰ As well as America post 9/11, Agamben discusses at length the concentration camps of Nazi Germany where inhabitants were "stripped of every political status...wholly reduced to bare life" (p.171), but after World War II Germany returned to democracy. Agamben also argues the Nazi concentration camps as states of exception and space where bare life is indistinct from juridical rule, has reappeared in other territories including former Yugoslavia. Lentin (2008) considers the Palestinian refugee camps to be equally applicable.

⁵¹ See Neve Gordon's argument that the occupation is permanent in *Israel's Occupation*

⁵² Pappe explains this as "the state rests on its power to oppress - regardless of whether the power lies with the government of the parliament" (Zureik, 2011:34).

⁵³ Here Pappe considers Agamben's state of exception applicable only when the Jewish majority is affected by the state's "de facto and de jure" acknowledgement of oppression of Palestinians. Until then oppression is "noticed, acknowledged and welcomed" by the Jewish citizens (Zureik, 2011:34)

⁵⁴ Shoughry-Badarne (2011) A Decade after the High Court of Justice "Torture" Ruling, What's Changed? for account of forms of torture - "the banana position", "frog crouch", "distorted standing position", "shaking" "high handcuffing", and prison official claims to prisoners that wives have miscarried because they too have been arrested and interrogated, threats that sisters would be "arrested and raped", arrests of sick or elderly parents. Also Nashif (2008) *Palestinian Political Prisoners*; Cook, Hanieh, Kay (2004) *Stolen Youth*.

thousands of Palestinians into a stereotyped group that endangers Israel, and legitimates a carceral order of mass imprisonment, brutal treatment of Palestinians individually and collectively and commodification for the purposes of prisoner exchanges or for other politically expedient gestures.⁵⁵ The collection also includes an unconventional poem recounting torture and confession, and a sarcastic account of arrest, torture, exposure to collaborators and false evidence given by “Shin Bet”.⁵⁶

This is a concise and reliable representation confirmed regularly in the extensive volume of literature on the centrality of the prison and the Palestinian prisoner confronting the security discourse which renders them “objective enemies” of Israel and as Berda argues in a “forensic dissection of the system as a whole”, actually creates the security threat (Berda, 2011: 55; Khalili, 2011; 2). The editors are “particularly well placed to make the arguments they do” given Baker is a senior lawyer to Adalah - a legal centre for Arab Minority Rights in Israel, and Matar is an activist and co-founder of the Israeli Committee for the Palestinian Prisoners (Khalili, 2011:1). They successfully weave legal, academic and personal accounts, while insisting the consequences of the occupation must be kept “constantly in mind” in examination of Palestinian prisoners and the resistance they are involved in to fight occupation.

Second, prisoner support groups and human rights NGOs such as Addameer, Samidoun, B’Tselem, and Amnesty International produce regular empirical reports of detainee statistics, supplemented by inquiries into Israel’s uniform abuse of the rights of prisoners.⁵⁷ These reports also contain primary data from Palestinian prisoners, families and lawyers. Empirical data sources extend to official literature including UN reports and legal inquiries. Administrative Detention - the practice of holding Palestinians without charge, indefinitely, and based on a secret dossier of ‘evidence’ that neither detainee nor lawyer is privy to - is a regular feature and major concern of human rights groups, and is therefore identified as a key tactic in the incarceration strategy. Ramahi argues it is a “largely neglected instrument of legal Israeli repression”, but that position is challenged when Administrative Detention is consistently at the top of prisoner grievances alongside solitary confinement and torture. Extensive publicity afforded the deal to end the 2012 prisoner hunger strike drew international attention to Administrative Detention and Israel’s justification for its use.⁵⁸ The literature indicates arrest without charge for an indefinite period is designed as a threat mechanism to elicit confessions, collaboration or deter future political activity. It is also informative to note that key members of Palestinian society - politicians, social activists, academics, scientists, teachers and doctors - are targeted for Administrative Detention (Ramahi, 2010). On the face of it such a grouping constitutes more the core of Palestinian political and civil life than a likely terrorist threat to Israel’s physical security.

⁵⁵ Israel has a history of exchanging hundreds of prisoners at a time for as few as one Israeli soldier or captive, as was demonstrated in the 2011 swap of 1027 prisoners for Corporal Gilad Shalit; in August 2012 Israel offered to release pre-Oslo prisoners if the PLO abandoned its application for UN recognition (Harrington, 2012).

⁵⁶ Shin Bet is another name for the General Security Service (GSS).

⁵⁷ see: No Minor Matter (2011), B’Tselem’s extensive investigation into the violation of the rights of Palestinian children; On Torture (2012) from Adalah, the legal centre for Arab minority rights in Israel; Kept in the Dark (2010), B’Tselem’s report based on testimonies of Palestinians held in the Petah Tikva interrogation facility; Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons, (2006) B’Tselem; Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees, (2007), B’Tselem; Without Trial : Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law, (2009) B’Tselem; UN A/HRC/12/41 (2009) report on human rights in Palestine and other occupied Arab territories; Starved of Justice (2012) Amnesty International’s ongoing campaign to end administrative detention and other breaches of Palestinian prisoner rights; Administrative Detention in the Occupied Palestinian Territory: Between Law and Practice, (2010) Addameer’s report into the Israeli Occupying Force’s violation of the provisions of international law regarding general principles and procedural safeguards governing administrative detention; Violations Against Palestinian Prisoners and Detainees in Israeli Prisons and Detention Centres, (2010) an Addameer annual report exposing systematic violations of prisoner’s rights in contravention of International law; Children in Military Custody, (2012) British Foreign & Commonwealth Office.

⁵⁸ This hunger strike and the deal which ended it for most prisoners is addressed in detail in Chapter 6.

Krebs offers a valuable perspective in her unique systematic empirical analysis of 322 Administrative Detention cases decided by the Israeli Supreme Court (ISC) from 2000-2010. She finds the detention proceedings have become an “assembly line” in which “enemies, terrorists, or just ‘others’ are constantly losing” their freedom in a manner which suits the state’s security interests only (Krebs, 2012:314). This highly detailed contemporary legal analysis emphasizes that not one of the cases before the Court won release, or had the secret evidence rejected. Using a mixed methodological process, Krebs analysed all Supreme Court judgements for 2000-2010. This period is particularly relevant given it covers the second Intifada, the launch of Operation Defense-Shield and, includes Israel’s introduction of the new Administrative Detention mechanism - the Unlawful Combatants Law (UCL).⁵⁹ Krebs conducted in-depth interviews of ISC judges, state and defense attorneys, intelligence officers and Palestinian detainees. Her access may well have been privileged given she is Israeli, and served as legal advisor on international law matters for the President of the Israeli Supreme Court. That said, her conclusion is of a complex and less than optimistic practice which is inherently unbalanced (Krebs, 2012:695). Such scrutiny of this largely secret judicial process provides a strong, methodologically robust academic/legal verification of the body of data from prisoners, lawyers and activists personally involved in it. Somewhat unusually however, Krebs notes “prominent international law scholars” consider the Israeli “judicial review model is robust and effective” and “best suited to fulfill international human rights law requirements (Krebs, 2012: 639-640).

Popular media and the internet produce a third category of prison literature. In the Middle East the Israeli/Palestinian issue is a constant in daily news and analysis⁶⁰. Web sites accessed for this thesis include the Electronic Intifada⁶¹ and Jadaliyya⁶² which report daily on Palestinian prisoners and other issues, and ‘Breaking the Silence’⁶³ a site through which former Israeli soldiers confess to their treatment of Palestinians⁶⁴. These web sites yield powerful corroboration of detainee claims, all the more so when the evidence is admissions from the IDF perpetrators who show no mercy to those who are at their mercy (Goldberg, 2012). They have hit a raw nerve in some quarters of Israeli society, with a new movement ‘Zionists Breaking the Silence’ set up to counter the IDF confessionals (Fogelman, 2012: 1).⁶⁵ Criticism of the ‘West’ being absent in coverage of the plight of

⁵⁹ During Operation Defense Shield, Israel regained control from the Palestinian Authority over many “A” areas in the OPT, and “administratively detained hundreds of Palestinians (Krebs, 2012:697). This period also saw the high profile debate on terrorism and infringement of individual rights following the 9/11 attacks on the United States.

⁶⁰ The Palestine Chronicle, Palestinian News Network, The Jerusalem Post, Ha’aretz, Al-Arabiya, The Daily Star, Al-Jazeera, Maariv, Palestine Post, amongst others in the Middle East region. As I do not speak Arabic, I acknowledge the disadvantage in the limitation of daily news, but do not believe this is a serious obstacle in researching this topic because a number of the local news outlets print English versions, and there is consistency between the primary source daily news issues and testimonials, and the academic literature and analysis.

⁶¹ www.electronicintifada.net/

⁶² www.jadaliyya.com

⁶³ www.breakingthesilence.org.il

⁶⁴ see, amongst others, Creative Punishments Were Accepted, an account of how IDF soldiers made up punishments for Palestinians as they felt like it, available at <http://www.breakingthesilence.org.il/testimonies/videos/44034>

⁶⁵ Zionists Breaking the Silence was launched in November 2012, at a ceremony which exhibited photos of IDF soldiers helping Palestinians or making humanitarian gestures toward them in order to dispel what they consider the Breaking the Silence objective of reinforcing a “connotation that an IDF soldier is equal to a Nazi soldier”. The Israeli Ministerial Committee for Legislation has since “approved a recommendation to provide financial assistance to Israeli citizens who right for out national honor in the courts” (Fogelman, 2012).

Palestinian prisoners is argued forcefully by Falk (2012),⁶⁶ particularly as non-Middle East news services tend to show interest in the Palestinian prisoner situation only when crises occur.⁶⁷ The possibility that some of the 2012 mass prison hunger strikers might die, or, what appeared an extraordinarily lopsided 2011 prisoner exchange of 1027 Palestinians for one captured Israeli soldier, 'merited' such coverage (Falk, 2012). That said, major non-Middle East media including the Guardian, the BBC, the New York Times and the Independent do publish regularly on Palestinian issues, which answers some, but unlikely all of Falk's criticism of the West.⁶⁸

Prison literature is abundant and undeviating in its revelations of punitive measures of the quotidian experience of incarcerated Palestinians and life under occupation. Foucault is applicable in power, resistance, knowledge and control, the prisons are sites of "organized racism", and the clear message conveyed in the literature is that of veteran prisoner Walid Daka - incarceration is designed to make the concept of resistance too costly for all Palestinians (Gordon, 2008: 159-60; Daka, 2011: 234).⁶⁹ The prison literature exposes a violent and repressive policing inherent in the military occupation, and points unquestionably to the Palestinians as unwanted by the colonial master of this geographical space. The overwhelming evidence of the selected literature is that 'security' provides an implausible smokescreen for unadulterated and pre-meditated collective punishment (Carr, Hanieh, Kay, 2004:9). Importantly this message is conveyed by Palestinians and Israelis.

3.6 Sealed off and under perpetual gaze

Zureik, Lyon and Abu-Laban (2011) have brought together twenty academics to analyse the many layers of surveillance Israel employs in order to control every facet of Palestinian life in the OPT. Commercial and administrative policy of modern governments includes surveillance through the likes of census data, passport allocation, various licenses and other required documentation. However surveillance of Palestinians is part of the "architecture of occupation" determining who is where, and who presents the "largest threat to Israel". The answers dictate where checkpoints, watchtowers and other means of control are located (Weizman, 2011:xvii). Various arguments for the matrix of surveillance are proposed. Fulfilling a Zionist

⁶⁶ Richard Falk is the Special Rapporteur to the UN Human Rights Council on Occupied Palestinian Territories, an American Professor Emeritus of Political Science at Princeton University. He is highly critical of Israel's occupation, has called for boycotts of companies that do business with Israeli settlements in the OPT, and lambasts the 'Western media' for largely ignoring the plight of the Palestinians. Israeli critics accuse him of being in a "long line of Jews who have taken extreme and one-sided positions against Israeli or Jewish interests". Israel calls him "grossly biased", and Canada recently joined Israel in calling for Falk's resignation (Sharkansky, 27/10/12; Associated Press, 26/10/12).

⁶⁷ This attitude is also true of coverage of the ongoing Israeli-Palestinian conflict in general. In November 2012 for example, during the last phase of writing this thesis, the conflict was again headline news world-wide because of escalating rocket fire between Israel and Hamas in the Gaza Strip. As is always the case there was a disproportionate loss of Palestinian life compared to Israelis killed, and Israel was militarily superior in every aspect of the 8 day crisis. Media coverage often exposed the political alignments of news organisations - Israeli media focused on the five Israelis killed and the new concern that Hamas had rockets capable of reaching Tel Aviv and Jerusalem; Arab media concentrated on the 162 Palestinians killed, the massive destruction to Gaza infrastructure, the targeting of Arab journalists, the assassination of al-Jabari (see Ch. 7) which sparked the offensive, and Israel's consistent breach of Palestinian rights.

⁶⁸ See for examples: Robert Fisk in the Independent (13/10/11), Democratic Governments don't deal with Terrorists - until they do critique of Israel's prisoner swap deal with Hamas, a "terrorist" group Israel supposedly would not deal with; Harriet Sherwood for the Guardian (26/06/12) Israel subjecting Palestinian Children to 'Spiral of Injustice'; (13/05/12) Administrative detention key to Palestinian hunger strikes. Neither Fisk nor Sherwood could be accused of presenting a pro-Israeli or pro-West view of the Israeli/Palestinian conflict.

⁶⁹ Walid Daka is a Palestinian citizen of Israel, serving a life sentence for alleged involvement in the kidnap and murder of an Israeli soldier, and for belonging to the PFLP. He has, as of 2012, served 25 years in prison and is considered an authority on the Israeli prison system. The Israeli journalist Gideon Levy referred to his situation as "Daka was convicted of taking part in the abduction and murder of the soldier Moshe Tamam. If Daka were a Jew who had murdered an Arab, he would have been released long ago; the same if he were a Jew who murdered a Jew. If he were a Palestinian from the territories he would have been released in a prisoner exchange deal by now. But Daka is an Arab from Israel, and no one cares about him or his punishment" (Brittain, 2011:3).

ontology involves surveillance as a means of controlling a non-Jewish population that is considered an internal enemy to be “contained, controlled and eventually expelled”. While Bowman mainly discusses the frictions between the various category of Jews within Israel, he asserts that the demonization and provocation of Palestinians has escalated to the point where it is now “virulent” and salient to the wider concept of surveillance and control. This works in two ways - it creates a “permanent threat” on Israel’s doorstep in order to force its Jewish population to “huddle together”, and, it guarantees the production of resistance from “contained and curtailed” Palestinians (Bowman, 2011: 65, 74-76).

Sa’adi positions surveillance as the third goal of occupation following the incomplete 1947-48 ethnic cleansing and subsequent ghettoization and political control of Palestinians. Surveillance and control became part of the “structural constraints” on Palestinians individually and collectively (Sa’adi, 2011:96). For Zureik, a Foucauldian panopticism including the collection of census data so as to categorize the occupied, represents surveillance as a “basic staple of colonial knowledge”. This, as others concur, triggers resistance (Zureik, 2011:8). Gordon extrapolates this surveillance/disciplinary concept to the role of Jewish settlements within the OPT. There, topographical locations create networks of observation keeping watch over Palestinians in all aspects of their lives. As with the panoptican guard tower, just the presence of the settlement, and just the possibility of a settler watching, is sufficient to control and supervise through surveillance (Gordon, 2008:138). These settlements use sight and spatial order to create “panoptic fortresses” so as to “gaze” for control, self-defense, and, generally exercise power over the Palestinian populations (Zureik, 2011:26). In the context of the military occupation, an increasing number of soldiers in the settlements has seen them become the settlers’ “eyes and ears within the security apparatus” (ICG, 2009:23). Settler-soldiers provide settlers with advance notice of raids on their weapons or planned removal of illegal outposts, while at the same time, they aid or or protect settlers in confrontations with Palestinians.

Surveillance literature consistently evokes Foucault’s panoptical prison control as applicable to the entire OPT, hyper-regulating Palestinian life and exposing the ominous, ongoing settler colonial society. Lloyd deems Palestinians to be “included excluded”, ruled de facto along apartheid lines, watched over by “utterly privileged settlers” and, of great concern, the technologies of repression that maintain and enforce colonial rule are not in the least considered scandalous. Rather they are “coveted and purchased” by Western democracies and the trade contributes considerably to Israel’s economic prosperity (Lloyd, 2012:75-77).⁷⁰ The panoptic is a highly applicable concept to life under occupation because its architectural form epitomises the colonial gaze. Alford labels it the “carceral superego, omnipresent but strangely invisible”. While it is very much a part of penal discourse because it was the design of Jeremy Bentham’s proposed prison, “Bentham never persuaded the British to build it”, prompting Alford to call it a “nonopticon” (Alford, 2000: 128-129). Nevertheless, the literature shows panopticism to be an established theory synonymous with surveillance.

3.7 Resistance through hunger and knowledge

Palestinians have what Barrington-Moore calls the “iron in the soul” which is a “necessary ingredient for resistance” (Moughrabi, 1992:51). Resistance is examined in a prodigious body of academic critique and, following the 2011 and 2012 lengthy prison hunger strikes, there is considerable contemporary popular news and analysis.

⁷⁰ Activist and writer Naomi Klein (2007) in *Laboratory for a Fortressed World* discusses the ‘repurposing’ of Israel’s economy in the post 9/11 age, to exporter of security products including “high-tech fences, unmanned drones, biometric IDs, video and audio surveillance gear, air passenger profiling and prisoner interrogation systems - precisely the tools and technologies Israel has used to lock in the occupied territories”. Klein accuses Israel of field testing its security weaponry on Palestinians in the WestBank and in Gaza - the place Israeli politicians call “Hamastan” where Palestinians are “guinea pigs”. See also Gordon’s work on “Civilian Control” through appropriation of land and water, bureaucratic legal mechanisms, settlements and bypass roads, restrictions on Palestinian movements and development, settler surveillance, ethnic policing and distinction (2008:116-146).

Of particular interest to this thesis is the resistance from within the prisons - the hunger strike and the usurpation of prison space for universities of Palestinian nationalism. Israel responds to Palestinian resistance with “consistent and massive detention, often without trial” yet, Palestinians persevere through various acts of self-affirmation, inside and outside the prison (Harlow, 1990:43). As noted above, Daka is well acquainted with the IPS, and so his account of provocation of resistance inside prisons through harsh, violent and dehumanizing physical and psychological measures is a valuable insight into Zionist carceral practice. Daka identifies the IPS goal as being to push the prisoners into situations including “open-ended hunger strikes” which make them susceptible to “consciousness molding and brainwashing” (Daka, 2011:240). The contemporary news analysis of the mass prison hunger strikes in 2011 and 2012 indicate the IPS is not successful in this ambition, as these strikes have been the longest on record, many inmates risked death, but also a number secured release. These strikes occurred after publication of Daka’s work, and plausibly suggest a strengthening of the prisoner resistance resolve he writes of. Nevertheless, Daka is invaluable because of his knowledge of the psyche of the IPS, which exploits the overcrowding of prisons and targets young, inexperienced prisoners who more easily succumb to strike-breaking. The IPS plans as if “facing a great army, rather than incarcerated prisoners whose only weapon was their empty stomachs” (Daka, 2011:241).⁷¹

The hunger strike is long the option of last resort for those deprived of a voice, but it needs international attention if it is to be an effective tool of protest (Reyes, 1998:1-6).⁷² Contemporary news in the Arab and Western media verify the April/May 2012 mass hunger strike did just that, and continued in coverage of extreme hunger strikes motivated by Israel reneging on its agreements. Publications from prisoner support groups indicate strongly the 2012 strike was a successful non-violent protest that shamed, or perhaps frightened due to potential prisoner deaths, the IPS to make concessions on the repressive prison practices including Administrative Detention, solitary confinement, family visits and torture (Barghouthi, 2012; BBC, 2012; Samidoun, 2012; Adameer, 2012).

Academics including Harlow, Nashif and Peteet have explored at length how Palestinians have turned reading and writing into “critical weapons in the struggle” as prisons are reconstructed into universities “for resistance, a training ground for its cadres” (Harlow, 1990:43). Investigation of what Harlow says is deemed “illegal education”, verifies Palestinian political organizing and strategizing within the prisons. Harlow draws direct comparisons with the prisons of apartheid South Africa and occupied Northern Ireland - two experiences occupied Palestine is regularly associated with on many levels of colonial control. Peteet confirms it is commonplace within Palestinian society to regard the prison as a “university” and for young men upon release, to “take up the leadership mantle of the newly detained...this ensures a leadership in spite of the campaign of massive arrests and detention of young males” (Peteet, 1994:39).

⁷¹ Daka recounts Israel’s Internal Security Minister Tzahi Hanegbi telling Israeli media as far as he was concerned the prisoners “can strike for a day, a month, until death” - he had no intention of relaxing the new rules”. These rules included measures designed to create mental stress against weak and exhausted prisoners such as leaving lights on day and night, confiscating any form of comfort such as pillows or water glasses, confiscating salt, constant room searches, incessant noise, and daily barbecue parties for wardens (2011:241-2).

⁷² International attention and the politics of hunger strikes was evident in the Barcelona Football Club inviting Palestinian soccer hero, hunger striker and Administrative Detainee Mahmoud Sarsak to watch Barcelona play Real Madrid on October 7, 2012. Sarsak was released on 10/07/12 after a 96-day hunger strike but turned down the invitation when Barcelona F.C. also invited released IDF soldier Gilad Shalit. Sarsak regretted having to decline the “precious invitation”, but to attend with Shalit who was “on a tank taking part in the killing of Palestinian civilians when he was captured “ [by Hamas in 2006] would indicate a “normalization” of the Israeli-Palestinian relationship. He said “sports and politics mix here” (The Daily Star, 2012; Albawaba, 2012; AIC.org, 2012). Sarsak’s case is highlighted in Ch. 6 below.

3.8 Uneven Odds

The sheer asymmetry of the fight Palestinians have with the Zionist state begs the question of why fight? Argo's examination of what drives Palestinian resistance finds it to be motivated by communal values and collective identity rather than self-interest. Given the duration of the conflict, most Palestinians have engaged in some form of resistance, and their motivations mirror those of other insurgents - empowerment, dignity, self-worth, and respect which constitute the "micro-foundations of nationalism or ethnic behaviour".⁷³ Consistent with the Palestinian narrative, those who resist anticipate sacrifice, are willing to "endure very high costs - and for long periods of time". Argo's interviews identify Palestinians expressing known reliable predictors of protest participation - moral outrage at the occupation, and high in-group identification (Argo, 2009: 658-660). Engagement with community surpasses rationality, and the presence of "first-actors" taking "daring or heroic action in the name of resistance" draws in others, seen so dramatically in the intifadas and prison hunger strikes. Argo is aware of the limitations of surveys in generating credible and generalizable data - in this case an example is whether "professed willingness to participate" is actually a true measure of future participation.⁷⁴ She is clear that it is not, but also that her work does not "claim to predict the future" nor can it compare numbers of those willing to fight against "the actual number of wanted or arrested individuals". Argo does however make strong links with laboratory studies which show individuals exposed to violence against their group "become more communally oriented".⁷⁵ From a Zionist policy perspective, this research would indicate strong reasons to break the Palestinian communal struggle because "communally oriented individuals" are seen to view the conflict in terms of justice and so efforts to deter them are "almost useless" (Argo, 2009: 672-675). Argo was assisted in implementing and interpreting the survey results by Palestinians from the OPT, and Palestinian, Israeli and American academics.

3.9 Giving voice to the Occupied

Academic literature over the past few years has become more inclined to analyse Israel's military occupation within the Zionist/colonial paradigm (Nashif, 2008:22; Bornstein, 2003; Kimmerling and Migdal, 1994). The perpetuation of dated ideologies that prevailed at the time of the establishment of Israel were those of the existing colonial powers (Nashif, 2008:23). These powers relied heavily on forms of policing and incarceration in order to control indigenous populations. Bornstein identifies prisons, checkpoints and walls as the three architectural forms which symbolize the "military occupation as carceral society in which Palestinians are insidiously controlled socially, politically, culturally and economically".⁷⁶ This "increasing confinement" is under the guise of security - "to prevent Palestinian violence against Israelis" (2008:108). The body of literature generated by Bornstein, Gordon, Pappé, Makdisi and others, finds security an implausible justification for Israel's permanent occupation, illegal colonization of territory via settlements and other modes of control. They expose it as occupation in order to alter the demographic balance of the OPT.

Gordon's comprehensive history of the excesses of the occupation and the attempts to separate Palestinians from their lands is an authoritative resource evidencing the occupation as an intentionally permanent colonial

⁷³ Argo refers here to Elizabeth Wood's (2003) *Insurgent Collective Action and Civil War in El Salvador*; this is corroborated by Jeremy Weinstein's (2007) *Inside Rebellion: The Politics of Insurgent Violence*.

⁷⁴ Challenges in conducting surveys include capturing the required quantifiable data required from a representative sample; gathering in-depth data; proficiently analysing the the statistics; refining the method if more data is required or other questions should have been asked (O'Leary, 2010: 182-7).

⁷⁵ Argo cites Tom Pyszynski, Sheldon Solomon, Jeff Greenberg, In *The Wake of 9/11: The Psychology of Terror* (Washington, DC: American Psychological Association, 2002) (Argo, 2009: n 68, p.672).

⁷⁶ In 2005 Israel unilaterally disengaged from Gaza, technically ending its occupation of the Strip. However as Bornstein (2008) and others note, Israel's continuing blockade of Gaza, controlling its air space, sea and land perimeters, has turned Gaza in to an open-air prison for 1.5 million people..

enterprise. His is not a study on how to find solutions.⁷⁷ Rather Gordon focuses on the emergence of sovereign power/punishment as confirmation of permanence - the sealing of the West Bank and Gaza borders, deployment of security forces to crush resistance, implementation of an entry permit regime, incarceration of vast numbers, beatings and torture (Gordon, 2008:36). In line with extensive literature on the occupation, Gordon posits that this colonial disciplinary over-reach produces, rather than suppresses, resistance. Israel, having failed to discipline the Palestinian population according to colonization norms, increased its use of lethal violence against them, which added a policy of “massive incarceration” to the beatings and killings (pp.16, xix-xx,188,158).⁷⁸ This work draws on Foucault and Agamben in terms of the modes of power - “disciplinary, bio and sovereign” and the reduction of Palestinians to *homo sacer*, and Gordon weaves these philosophical concepts with what he calls an interrogation of the occupation “rather than examining the root causes of and possible solutions to the conflict” (Deane, 2008:4; Gordon, 2008: xx). Yet Gordon does offer at the end that the only way to solve the occupation is to address its “structural contradictions”, the most important of which is Israel realising that Palestinians cannot be treated as distinct from their land (Gordon, 2008: 225). The book is tightly focused on the OPT, but as Parsons comments, some of the central themes to the “Zionist project” such as “demographic adjustment” could have been fleshed out from a “biopolitical perspective” in order to better understand various techniques Israel has employed in management of the occupation and casting forward to how it will deal with its own anxieties (Parsons, 2008: 2). Ben-Eliezer questions Gordon’s Marxist argument that “the long life of the occupation is due to the Palestinian resources that Israelis want to usurp”, and holds that it is also questionable to describe the PA as a “puppet of the Israelis” (Ben-Eliezer, 2009: 333). Given the academic interest in the occupation, it is fair to assume these and similar questions will continue as long as, and plausibly longer than the occupation itself, or as Dean remarks, until a “radically new perspective” on the events surrounding the occupation is produced and has the ability to “influence public opinion in the right direction” (Dean, 2008: 1-2). In producing this theorization of the occupation, Gordon has conferred with numerous prominent Israeli and international scholars, historians and activists, drawn on material translated for the first time from Hebrew to English, and included the quantitative and qualitative data of human rights groups including B’Tselem (Parsons, 2008: 595). This, combined with his own academic position, activism, his service in the IDF, and professed “passionate commitment to Israel” reinforces Gordon’s cogency in exposing the dynamic, Foucauldian power nuances at play in making “Israel’s occupation tick[s]” (Gordon, 2008:xxi).⁷⁹

3.10 Conclusion

The literature consulted for this thesis presents Israel as engaging in draconian tactics of control which did not develop in a vacuum. Gordon is a forceful guide to an unmistakable dynamic genealogy that has moved the occupation from discipline to punishment as if Israel were Foucault’s ancien regime sovereign. This chapter outlines a sophisticated conceptual literature of power and resistance with a proven track-record of application to Israel/Palestine, weaving together primary and secondary sources on the empirical conditions and lived experiences of Palestinian prisoners in particular, and the OPT in general. Literature on the Israeli-Palestinian conflict is abundant, but this review has chosen according to the focus on causes and consequences of Zionist carceral practice. Therefore Foucault is applicable in his historical analysis of society’s progression to

⁷⁷ Although it is noted that on the last page Gordon offers “the only tenable way to solve the conflict is by addressing the occupation’s structural contradictions.” An imposition of a settlement will only lead to more contradictions and a resumption of the cycle of violence (Gordon: 2008:225).

⁷⁸ Pappé (2008) endorses this argument that Israel, in order to entrench its occupation, has resorted to an upsurge in lethal violence.

⁷⁹ Gordon was “seriously wounded during his military service” after which he became director of Physicians for Human Rights, a member of the Arab/Jewish partnership Ta’ayush and the Hagar Association. In an article in *The Nation*, Gordon went public with his explanation for his “commitment to Israel”, but criticised Israel’s “tendency to idolize the land” which he believes has “contributed to the cycle of violence in the region”. Gordon also noted that his views “are considered extreme only by those outside Israel” (2008). Reinforcing Gordon on this point, Deane’s review of *Israel’s Occupation*, quoted American Jewish lawyer/academic Alan Dershowitz as describing Gordon’s work as “a despicable example of a self-hating Jew and a self-hating Israeli” (2008:2).

institutional punishment, the export of carceral tactics such as surveillance to the entire OPT, and the power-resistance binary involved. Academics examining the occupation have embraced Agamben's concept of *homo sacer* and bare life for the very reason that it mirrors the regularly traumatic accounts contributed in the likes of *Threat*, *Thinking Palestine* and other works. This thesis considers the occupation permanent and therefore adheres to Pappe's persuasive rejection that it is not exceptional and so does not present as Agamben's state of exception.⁸⁰ In order to contextualize Zionist carceral practice, it is situated within the belligerent occupation and its micro-mechanisms explored in literature on Administrative Detention, mass arrests, prisoner releases and torture. Critical to this story is the Palestinian response - the weapons of non-violent resistance in the colonization of Zionist prison space as sites for hunger strikes and furthering Palestinian nationalist education and organisation against occupation. The themes explored in this chapter are further expanded in the following four chapters, beginning next in Chapter Four which lays out the laws Israel relies on, or ignores, in order to occupy Palestinian lands and control the Palestinian population.

⁸⁰ In July, 2012, Dani Dayan, leader of the Settler Movement, declared victory against the two state solution in 'Israel's Settlers Are Here To Stay' (New York Times (25/07/12)). He declared the intention of the settlers to "expand existing settlements in Judea and Samaria, and create new ones". Dayan denied a theological context to settlement building, arguing instead settlement expansion is a combination of "inalienable rights and realpolitik" and now an "irreversible fact".

Chapter 4

ISRAEL'S CARCERAL REGIME

Palestinians do not live in a legal vacuum. Indeed their lives are hyper-regulated, but the laws they are subjected to are not for their protection. They are for Israel's. Since its inception in 1948, Israel has employed the British colonial Mandate Emergency Regulations as the keystone of its control over Palestinians, severely limiting their rights and liberties. Initially these regulations prevented Palestinians from returning to their homes, sanctioned destruction of homes and expropriation of Palestinian lands, established closed military zones, suppressed Palestinian national and political activity, and harshly restricted freedom of expression. Now they manage the occupation. From the founding of Israel, Palestinians were considered a "hostile group" and a "fifth column" to be kept under "military surveillance" (Jabareen, 2011: 69). Foucault's carceral archipelago has been the norm for Palestinians for 64 years and counting. Their life and death is decided by the Israeli military (Korn, 2008:124). Accordingly, an integral requirement of this thesis is to identify the peculiar mix of colonial and martial laws which position the military court system as the "institutional centrepiece" of Israel's control (Hajjar, 2005:1).

This chapter provides a roadmap by which to understand the present by identifying the past. There is no doubt that the inescapable occupation with its legal, policing and carceral tactics is rooted firmly in colonial and Zionist ideologies. Each section below examines aspects of the legal basis on which Israel occupies Palestinian land and controls the Palestinian population. The chapter considers how Israel attempts to minimize international criticism by producing its own legal justifications for its actions, while ignoring a raft of UN resolutions specific to its occupation, the treatment of Palestinians and Israel's settlement of its own citizens inside the OPT.⁸¹ As a result, Israel's military system is both the "product and the site" of the conflict (Hajjar, 2005:1). Military law and military courts deal with everything Palestinians are accused of, from violence to political association, non-violent protest or cultural expression. If it is deemed by Israel to threaten Israel's security, it is regulated and punishable. This chapter shows that Israel copes with the extraordinary number of 'threatening' Palestinians, by instituting a vast carceral domain which institutionalizes its power to punish (Foucault, 1977:130). It explores the Emergency Regulations which have played midwife to the raft of legal, quasi-legal and policing measures of control, which link the contemporary Zionist occupier back to its colonial enabler, and clarifies why Palestinians are denied typical law and order policing.

4.1 Israel's 'smart' occupation

Israeli law reaches into every aspect of the OPT as if it was actually the law of a Palestinian state. Crucially however, and contrary to the laws of occupation,⁸² Israeli law and military regulations are focused on control of

⁸¹ See Occupation And Other Forms of Administration of Foreign Territory, the report of an ICRC Expert Meeting for detailed argument and analysis on the legal responsibilities of occupying powers which repeatedly contest the applicability of occupation law "showing a reluctance to be labelled as occupying power...and/or to have their actions constrained by this body of law" (2012:4). The report is unanimous on the welfare of the occupied population being protected from sliding backwards, citing obligations on the occupant to administer for the benefit of local population in "HCJ 393/82, Jamiat Askan et al. v. IDF Commander of Judea and Samaria, 37(4) @ 791-807; HCJ 351/80, Jerusalem District Electricity Co. Ltd v. Minister of Energy and Infrastructure et al., 35(2) PD @ 690 (2012:72).

⁸² See discussion below on the applicability of GCIV (1949, certain provisions of the First Protocol of 1977 and additional articles, and the Hague Convention (1907) for the limits on the rule of an occupying force.

Palestinian land and water for Israel's benefit,⁸³ while Israel takes no responsibility for the welfare of the Palestinians who are deemed not to own their own resources. It refuses to refer to the OPT as occupied - preferring the term "disputed", which in itself is a "strategic legal maneuver to separate the land from its inhabitants" and so complete the process it began in 1948 - ignore the people and claim the land (Gordon, 2008:26). This combination results in structural oppression via an idiosyncratic brand of sovereignty which disregards international commitments. Instead it favours punitive laws and military orders to protect Israel's national security concerns at the expense of Palestinian human, civil and political rights.

Israel defaults on or suspends international legal, treaty and covenant commitments including aspects of the Fourth Geneva Convention (GCIV).⁸⁴ It has refused to sign others, and it persistently disregards UN resolutions demanding it end the occupation, including United Nations Security Council (UNSC) Resolution 242 (22/11/67) which calls on Israel to withdraw its armed forces from territories occupied in June of that year.⁸⁵ Gordon considers ingenious Israel's legal demarcation between the Palestinians and their land, coupled with a selective application of international law. This is because by adhering to some laws and building an institutional apparatus of military courts, judges, prosecutors, translators and other measures, Israel portrays an "enlightened rule", protects itself from overwhelming international criticism for its actual "despotic rule", and then uses that very system of military order as "a means of control in its own right" (2008:27-28). Such a legal infrastructure is constructed to serve Israel in any treatment of Palestinians as Agamben's *homo sacer* because it protects the authorities and their agents from the repercussions of their actions - from denial of human rights to targeted assassinations or human collateral damage within the context of occupation. Israel is thus punishing, but packages the punishment as Foucauldian disciplinary measures so as to avoid the consequences of punishment which is no longer compatible with the principles of "virtually all Western industrialized states" (Ron, 1977:284). The result for Palestinians is a "distinctly illiberal" military occupation

⁸³ Roy discusses at length how Israel's use of resources in the OPT forms part of an "annexationist agenda" in which legal measures are employed to rob Palestinians of their own economic resources. She cites the Dec 26, 2011 ISC (sitting as High Court of Justice) affirmation of the "legal right of Israeli companies to engage in mining and quarrying operations in the West Bank" despite "clear prohibition in international law against the mining of natural resources in new quarries in occupied territory". The Court's decision reasoned that in a "long term occupation" the "economic reality often demands the opening of new quarries". "Ten Israeli and internationally owned companies currently operate in the West Bank and 75-94% of their output is transferred for use by the Israeli construction industry". (2012:79-80). Also, the Council for European Palestinian Relations (CEPR) reports on Israel's monopoly of Palestinian water resources, which is "sustained by hundreds of laws and regulations, military orders, restrictive bureaucracy and other limitations" emphasising a "profound structural imbalance between Israelis and Palestinians (CEPR, 2012).

⁸⁴ Israel is party to the GCIV, but argues it does not bind its actions in the OPT. Israel adopts the argument of the "missing revisioner" with respect to the rules of belligerent occupation. Israel argues neither Jordan nor Egypt had lawful territorial entitlement in the West Bank or Gaza when they were seized by Israel in the 1948-9 war in the process of acts of aggression against Israel. This position is not recognised by the UN or the ICRC, because the GCIV extends to territory occupied, even if it was done so without resistance. Israel's position has been further undermined by the UNGA's November 29, 2012 vote recognising Palestine as a state. Palestinian Prime Minister Abbas argues the vote turned "Palestine into a state under occupation...voiding the Israeli claim that this is a disputed territory" (Levy, 2012:1). Israel does agree to apply some "humanitarian provisions" of the GCIV to the OPT, but has never clearly defined what those provisions are (Cavanaugh, 2007:203-4; Aruri, 1978:52). Israel's objection is not however, unique with a Harvard Law School policy brief noting Iraq rejected the GVIC with respect to its 1990 invasion of Kuwait; Russia in Afghanistan (1979-89); Indonesia in East Timor (1975-1999) and the U.S. in Granada (1983) and Panama (1989) Review of the Applicability of International Humanitarian Law to the Occupied Palestinian Territory (2004).

⁸⁵ UNSC 242 also calls on Israel to acknowledge the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force; UNSC 248 (24/03/68) condemns Israel's military action causing loss of life and heavy damage to property and flagrant violation of ceasefire resolutions; UNSC 252 (21/05/68) deplores Israel's expropriation of land and properties and measure to change the status of Jerusalem; UNSC 452 (20/07/79) calls on Israel and its citizens to urgently cease from constructing settlements in the "Arab territories" occupied since the 1967 war, including Jerusalem; UNSC 478 (20/08/80) and UNSC 476 (30/06/80) state clearly that acquisition of territory by force is inadmissible; UNSC 605 (22/12/87) deplores Israel's policies and practices as an occupying power in violating the human rights of Palestinians - particularly by killing and wounding "defenseless Palestinian civilians" and calls upon Israel to comply with GCIV; UNSC 607, 608, 636, 641, 681, 694, 726, 799, deplore Israel's deportation of Palestinian civilians from the OPT. In 1968 the UNGA resolution 2443 (XXIII) established the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the OPT, which reports annually.

which strategically mixes colonialism and martial law, resulting in the emergency itself becoming the conflict (Hajjar, 2005:4).

4.2 Emergency Defense Regulations (1945)

Israel's initial state of emergency was a response to neighbouring states which were hostile to its existence. Israel's right to protect its citizens was recognised by the United Nations then, as it is today. However UN agencies and human rights groups maintain Israel also has legal obligations as a result of its occupation. This remains so despite the occupation itself contravening UNSC resolutions (Makdisi, 2008:7).⁸⁶

The Emergency Regulations (1945)⁸⁷ allow Israel to declare any part of the country a closed military area, exercise administrative detention, expel and execute citizens and non-citizens (Pappe, 2008:148).⁸⁸ These regulations which are invoked to exempt a state from the rule of law were repealed by the British on termination of its Mandate. In the 1940s when the British had used the regulations to contain Zionist violence, including terrorism, Jewish jurists vehemently denounced them as "unparalleled in any civilized country", as "Nazi laws" and "terrorism under official seal" (Ray, 2008:3; Smith, 2010:173-5; Aruri, 1978:53, Cohen, 2012:8).⁸⁹ Yet on independence, Israel argued the regulations were still in force, and so they remain for use against Palestinians in order to "control, detain and arrest those defined as threatening Israel's security" (Darcy, 2003:59; Ajzenstadt, Barak, 2008:359).

Israel justifies continued reliance on the Emergency Regulations with claims these powers contain "imminent clear and present danger to its survival" - a conviction most security analysts worldwide do not share (Cohen,

⁸⁶ The most recent affirmation of Israel's right to protect its citizens came in the November 14-22, 2012 confrontation with Hamas rocket fire into southern Israel. Israel's major supporters such as the U.S. and Canada backed Israel's response as defensive and UN Secretary Ban Ki Moon demanded Hamas stop firing into Israel. Exemplifying the dichotomous nature of every aspect of the Israeli-Palestinian relationship, the Arab League called for international recognition of the impact of the ongoing occupation and siege on Gaza, and the fact that Israel fires rockets into Gaza to assassinate Hamas militants even when there is no Palestinian aggression to answer. Factors driving a more assertive attitude towards the plight of Palestinians from the Arab League include the election of the Muslim Brotherhood's President Morsi in Egypt, and recognition of the unified demand for Arab assistance to end the occupation and Gaza siege which emerged from the so-called Arab Spring.

⁸⁷ Defence (Emergency) Regulations, 1945, (1945) Palestine Gazette (No. 1442), Supp. No. 2, 1055, (Darcy, 2003:66). The Emergency Regulations 1945 were readopted by Israel on the day of its foundation in 1948. The regulations were briefly annulled in 1996, but reimposed and remain in place today. In 1991 Israel signed up to the International Convention on Civil and Political Rights (1966) but informed the UN that because of its state of emergency, it would derogate from certain Convention's obligations, allowing it to arrest and detain in order to protect life and property of the State of Israel (Krebs, 2012:655-6). The Defence Emergency Regulations are only "marginally modified versions of the punitive detention laws the British used in the 1930s" (Khalili, 2010:424)

⁸⁸ See Hanafi, (2009) for discussion on closed military areas as means of prohibiting foreigners or journalists in to sites during, for example, military invasions of Palestinians towns.

⁸⁹ Aruri (1978:53) in *Resistance and Repression*, cites Israeli Supreme Court judge Dunkelbaum referring to the Defence Laws as "contradicting the most fundamental principles of law, justice and jurisprudence...as anarchic and irregular"; Yaacov Shimshon Shapiro, who later became Israeli Attorney General and Justice Minister noted "there were no such laws even in Nazi Germany". See Cohen, (2012:11-12) for discussion of more contemporary discriminatory laws, such as the Knesset's 2009 Nakba Law under which public mourning of the Palestinian catastrophe was punishable by up to 3 years in prison. Amendments in 2011 replaced this punitive provision with financial sanctions against Arab authorities marking Nakba.

2012:3).⁹⁰ This constant state of emergency is the enabler for the privileging of Israeli citizens with rules which are concerned with their “life” over the fate of the “state’s subjects” for whom the rules mean “death, threat of death, threat of expulsion” - in other words, Agamben’s ‘bare life’ (Lentin, 2008:7).

4.3 Construction of Palestinians as ‘Security Threat’

Since 1967 Military Proclamation No. 2 permits IDF control of the West Bank and Gaza “in the interests of security and public order” (Weill, 2007:401). In that time more than 3,000 orders to legislate Palestinian lives and “depoliticise national aspirations” have resulted in the detention of over 750,000 Palestinians - 20 percent of the total Palestinian population or 40 percent of the male population (Addameer, 2011; Makdisi, 2008:79).⁹¹ Israel utilizes sovereign power to which it is not legally entitled in order to, as the Nazi ideologue and theorist Carl Schmitt would put it, “declare the existence of an absolute and intolerable enemy” (Ray, 2008:4). Thus Palestinians have been fashioned into that threatening enemy while Israel portrays itself as exercising “commendable democratic restraint under circumstances of irrational (and collective) Palestinian terror”. As “enemy nationals”, Palestinians are objectified in absolutist terms, rather than the “traditional conception of racism that is simply hostile toward another race”. Applying Foucault’s principle of biological safety, “death and control of the other” ensures the protection of the “racially exclusive population” - in this case Jews, whom Israel “vows to protect” (Chebab, 2012: 40-43).⁹²

The security imperative and supporting legal/carceral apparatus of Israel has transformed it into one of Agamben’s “brittle organisms”. Such a state Agamben warns, “will remain vulnerable to terrorism and will ultimately become terrorist itself” (Lentin, 2008:10). Israel, as colonizers have before it, accounts for its use of violence by asserting that Palestinians understand only force. The resulting “typical” colonial aggression is designed to keep Palestinians at arm’s length, dehumanise them, and remind them “out loud that it [Israel] alone is master”. What it actually does is ferment anger which in turn, in accordance with Foucault’s power dictum,

⁹⁰ Israel’s neighbour Egypt used emergency regulations to perpetuate the authoritarian rule of dictator Hosni Mubarak. Egypt was in a state of emergency for 30 years following the assassination of Mubarak’s predecessor Anwar El Sadat. Even following the overthrow of Mubarak on February 11, 2011, the Supreme Council of Armed Forces (SCAF) took 15 months to lift the state of emergency, just weeks before the election of Mohammed Morsi of the Muslim Brotherhood - an organisation that was regularly subjected to the powerful emergency regulations. (Pulitzer Center, 26/09/11; BBC, 31/05/12). Halabi notes nothing has resulted from sporadic pronouncements from Israel that it would alter the blanket nature of its emergency, and so it remains in place (2011:204).

⁹¹ Nashif, in his comprehensive research on Palestinian prisoners puts that number at 813,000 based on a 1993 Amnesty International report. Amnesty has reported on Palestinian imprisonment in the OPT since the late 1980s. Nashif quotes a typical report as the following: “About 25,000 Palestinians, including prisoners of conscience, were arrested in connection with the intifada (uprising) in the Occupied Territories. Over 4,000 served periods in administrative detention without charge or trial. Several thousands of others were tried by military courts. By the end of the year over 13,000 people were still in prisons or detention centres” (Amnesty International 1990:129) (Nashif, 2008:11-12).

⁹² For substantive analysis of racial, social sorting see Yasmeen Abu-Laban and Abigail B. Bakan, ‘The “Israelization” of Social Sorting and the “Palestinianization” of the Racial Contract’, Ch 14 in *Surveillance and Control in Israel/Palestine*, Elia Zureik, David Lyon, Yasmeen Abu-Laban (Eds.).

generates resistance (Lentin, 2008:12).⁹³ Berda argues radical simplification of traits and tendencies are the basic step in constructing the Palestinian as a threat. Criteria such as age, geographic area, political or cultural affiliations and family relations form the basic template and become the security threat default category. This system of classification then becomes institutionalized and accepted. The General Security Services (GSS), also known by its Hebrew acronyms Shabak or Shin Bet, has the “monopoly” on the profiling. While it is not authorised in any Israeli law, it nevertheless determines the minutiae of Palestinian life under occupation (Gordon, 2008:31).⁹⁴ The collective and individual profiles the GSS establishes become “an impenetrable wall of taxonomy and classification of the Palestinian population” (Berda, 2011:52). Classification of prisoners is determined by the ideologies of each side, with Palestinians referring to political prisoners or prisoners of war, while the IPS and GSS call them “security detainees” - a term which has no legal basis, and is reserved for Palestinians, including those with Israeli citizenship (Abdallah, 2012:1). Palestinians are convicted of security crimes such as “hostile terrorist activity” which regularly amounts to being a member of a political party or any organisation Israel deems a “terrorist organisation” (Abdallah, 2012:2).

Physically, Israel extends colonial-era tactics of categorization and “spacio-cide”. Hanafi considers spacio-cide to be the targeting of space in which Palestinians live in order to make life so unbearable their ‘voluntary’ transfer is inevitable. Both tactics aim to further alienate the people from their land (Hanafi, 2009:106). Palestinians are designated as refugees, stateless, or, post Oslo as residents of zones A, B, B-, B+ C, H1 or H2 (in Hebron) (Hanafi, 2009:114, Gordon, 2008:177).⁹⁵ Post 9/11, the category of ‘potential terrorist’ became official, facilitated through the ‘Imprisonment of Illegal Combatants Law’ (2002) (Hanafi, 2009:114). This means any resistance to sovereign power can be categorized as terrorism, and anyone believed to act in a direct or indirect manner hostile to Israel - the de facto sovereign - can be imprisoned indefinitely, without charge or trial (Gregory, 2004:191).⁹⁶

⁹³ This exercise of dominance occurs regularly, examples being the military bombardment of Gaza in search for the captured soldier Shalit in 2006 - Operation Summer Rains - in which 406 Palestinians were killed; the 2008-2009 offensive against Gaza - Operation Cast Lead - which killed 1400 Palestinians; the November 2012 rocket attacks on Gaza - Operation Pillar of Defense - in which the Palestinian casualty rate far outstrips that of the Israelis. Somewhat ironically Israel claims to “surgically strike” to minimize civilian casualties, but the numbers of civilians killed make that a questionable claim particularly as Israel controls Gaza’s borders, rendering disingenuous its warnings to Gazans, crammed into the most densely populated space in the world, to stay out of the way of military targets.

See also Fanon (1970) *A Dying Colonialism*, for discussion on how the doctrine that the colonized only understanding the language of force is, over time “ironically turned” back on the colonizer to stand in affirmation that it is the colonialist who understands nothing but force. Fanon’s repulsion at colonialism’s role in the Algerian Revolution is arguably equally applicable to the position of many Palestinian writers on the colonization of Palestine, and why Lentin refers to it in *Thinking Palestine*.

⁹⁴ The GSS sets “the pace, methods and timings” of operations including curfews, arrests, deportations, house demolitions, hiring and firing of teachers, doctors, bureaucrats, when schools and universities were permitted to be open. It operates as “king of the land”, yet its existence, actions and power are “the result of unwritten agreements between it and other state authorities” (Gordon, 2008:31).

⁹⁵ Hanafi argues this is the modern form of the Zionist myth of a land without people for a people without land in that it is a strategy to attain the most land with the least people, (2009:106). Gordon refers to Israeli anthropologist Jeff Halper who considers the spatial division as working like the Japanese game of Go, in which the aim is to immobilize your opponent with obstacles at key points in a wide “matrix of control”. Israel facilitates this with Jewish-only spaces such as settlements, parks, and military bases designed to split Palestinians into hundreds of disconnected enclaves and monopolize control over their movement (2008:179).

⁹⁶ This Incarceration of Unlawful Combatants Law (2002) contradicts the rules of international humanitarian law, in which combatants, as defined in Article 4 of the Third Geneva Convention, are legitimate targets but if they are taken prisoner, prisoner-of-war status must be granted to protect their rights, and they must not be punished. Israel does not refer to any captive Palestinian as a prisoner of war (Abdel-Rahman Mohammad Ali, *Palestinian Prisoners in Israeli Jails: Their Legal Status and Their Rights* (2012:1); The European Network to Support Rights of Palestinian Prisoners, *UFree*, (2011) details case studies of Israel’s retroactive application of this law, including Hamouda Abu Oun who completed 5.5 years in prison for being a member of the PLFP. Before release his family had to pay a NIS15,000 fine, but he was immediately re-arrested under the Unlawful Combatants Law, and the fine was not returned.

4.4 The Geneva Conventions I-IV

Israel became a party to the Fourth Geneva Convention (GCIV) in July 1951, and over the years has selectively signed on to other conventions and protocols.⁹⁷ The UNSC has confirmed the applicability of the GCIV to the OPT in 25 resolutions, along with scores of resolutions calling for the occupation to end and recognition of the inalienable rights of the Palestinian people (Permanent Observer Mission, 1999:3). GCIV signatories are bound to comply with the Convention's resolutions in all circumstances, irrespective of any particular conflict they are involved in, or security imperatives or pretexts they may interpret as applicable. Application of GCIV ends only when the occupation ends or a political solution, "in accordance with the rules of general international law" is reached (Permanent Observer Mission, 1999: 21).

A number of GCIV legal responsibilities are directly pertinent to the imprisonment of Palestinians and the consequences of their resistance. Article 49 prevents individual or mass forcible transfers of "protected persons from occupied territory to the territory of the Occupying Power..." and it prohibits the occupying power transferring its own civilian population into the territory it occupies;⁹⁸ Article 76 provides for accused and convicted persons to be detained or serve their sentences in their occupied country (ICRC, 2012). Israel's transfer of prisoners to Israeli prisons breaches these provisions (Addameer, 2011). Article 66 authorizes the occupying power to establish its own military courts which form the "centerpiece of Israel's controlling apparatus" in the OPT (Hajjar, 2005). As such "virtually all Palestinians have had some experience with the military court system" (Gordon, 2005:2; Weill, 2007). The legislative capacities of occupying powers are extensive, but are "not under any circumstances [to] serve as a means of oppressing the population (Weill, 2007:398). Yet, the operation of the military courts by judges who are members of the occupying military power, raises questions of impartiality and separation of powers. It also indicates extensive domination and control by the military over the occupied population, particularly when these military courts assume jurisdiction over non-security offenders such as car thieves and drug dealers (Weill, 2007:406).

Israel, almost in isolation, claims the Geneva Conventions do not apply to the OPT, and so it is not obliged to adhere to the GCIV's demands which "ensure the wellbeing of the occupied people, their medical care, freedom of movement, access to food, water, work, and educational institutions" (Makdisi, 2008:8). Such an interpretation amounts to a conspicuous and relentless pressure on Palestinians to vacate. Israel's interpretation also indicates a strategic, permanent annexation of the OPT "without the people that come with it",

⁹⁷ Israel is a signatory to CGIV (1951), Additional Protocol (AP) III, 2005; Convention on the Rights of the Child (CRC) 1989 and the optional protocol (2000) concerning the rights of the child in armed conflict; The Hague Convention (1954) and its First Protocol dealing with the protection of cultural property in the event of armed conflict; the Geneva Protocol (1925) prohibiting the use of asphyxiating, poisonous or other gases and warfare; The Convention prohibiting or restricting the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (CCW) (1980) and its protocols governing the use of non-detectable fragments (I), mines, booby-traps and other devices (II) and blinding laser weapons (III) (1995).

Israel is not a signatory to GCIV AP relating to the protection of victims of international armed conflicts (1977) or the acceptance of the competence of the International fact-finding commission according to article 90 of that AP; the International Criminal Court Statute (ICC) (1998); Second Protocol of the Hague Convention for the protection of cultural property in the event of armed conflict (1999); the convention on the prohibition of military or any other hostile use of environmental modification techniques (ENMOD) (1976); the convention prohibiting the development, production and stockpiling of bacteriological (biological) and toxin weapons (BWC) (1972); CCW Protocol III prohibiting or restricting the use of incendiary weapons (1980) or its amendment (2001); the convention on the prohibition of the development, production, stockpiling and use of chemical weapons (CWC)(1993); the convention on the prohibition of the Use, stockpiling, production and transfer of anti-personnel mines (AP Mine Ban)(1997); and the convention on cluster munitions (2008). (ICRC, States Party to the Main Treaties, 2012).

⁹⁸ The establishment of Jewish settlements within the OPT is in breach of this article, which is arguably why Israel did not ratify Article 8 of the Rome Statute which defines as war crimes, the "transfer, directly or indirectly by the Occupying Power of parts of its own civilian population into the territory it occupies..." (Gorali,2003:2). In 1968, Israel's knowledge that it was breaching its international legal obligations in terms of settlements is confirmed in then Defence Minister Dayan's acknowledgement that "Settling Israelis in administered territory is as known, contravenes international conventions, but there is nothing essentially new about that" (Gorenberg, 2011:75) The Unmaking of Israel.

(Makdisi, 2008:8-9).⁹⁹ The Zionist strategy to facilitate the settling of Israeli citizens by seizing land inside the OPT intensified in 2011, with settler aggression as part of a “Judaization and displacement policy” increasing 40 percent on 2010 rates (Epshtain, 2012).¹⁰⁰

4.5 Occupation Law

Palestinians are stateless and denied self-determination, but under international law governing occupation, they are still legally due protection from exploitation which furthers the interests of their occupier. Despite the establishment of the PA in 1994, the supposed temporality of occupation,¹⁰¹ and the UNGA vote in favour of Palestinian non-member observer state status, Palestinians have no sovereignty. Israel, while it does not claim to represent Palestinians “only the right to rule them ... remains the de facto sovereign” (Hajjar, 2005:2; Cavanaugh, 2007: 202), rejecting International Human Rights (IHL) obligations.

Occupation law regulates partial or total occupation of a territory by a hostile army and is a branch of IHL, with provisions including the 1907 Hague Regulations, the GCIV, and Additional Protocol I (1977). Occupied territory is that “actually placed under the authority of the hostile army...[and]...extends only to the territory where such authority has been established and can be exercised” (ICRC,12).¹⁰² An occupying power is legally bound to respect, as far as possible, existing laws and institutions of an occupied territory, it does not have carte blanche over the population or territory, and is not the sovereign of the occupied territory. Despite this the Israeli military system takes for granted the same authority as a sovereign state (Weill, 2007:409). Israel’s “homeland doctrine” posits that as the OPT “form part of the natural boundaries of the State of Israel”, they are not occupied, nor subject to international law (Aruri, 1978:52).

⁹⁹ Gordon argues constant modification of “numerous administrative arrangements, legal orders, and policies” has concealed the “permanent nature of Israel’s control. Through the imposition of temporary curfews, closures, checkpoints, roadblocks and issuing and revoking various permits, Israel creates an “illusion that entrenched practices were provisional” leaving Palestinians constantly guessing how they are expected to behave under occupation (2008:24-5).

¹⁰⁰ (original italics) Israel currently has more than 500,000 citizens in the OPT in 149 settlements and 102 outposts. Together with closed military zones and declared nature reserves, Israel controls over 40% of the West Bank. The UN Office for Coordination of Humanitarian Affairs has identified 80 Palestinian communities (250,000 people) as being at risk of settler violence (Epshtain, 2012). On 30/11/12, in retaliation for the successful PLO bid at the UN for non-member state status, Netanyahu announced the construction of 3,000 more settler houses in the West Bank and East Jerusalem. The measure was widely condemned by world governments including Israel’s ally the U.S., but Israel has ignored the criticism (The Times of Israel, 01/12/12).

¹⁰¹ Occupation following a war is technically a cease-fire (Hajjar, 2005:2)

¹⁰² In March 2012, the ICRC released a substantial report *Occupation and Other Forms of Administration of Foreign Territory* to address issues of contemporary occupation, usually characterized by tensions between the occupying power and the occupied population. The ICRC notes the opinions of the experts gathered for the project do not necessarily represent those of the ICRC. However it believes discussion in the 147 page report will contribute to much needed clarification of the provisions of occupation law. The report notes the role of the Geneva Conventions (1949) particularly the Fourth Convention which aims to protect civilians in times of war, was considered adequate at the time, but additional Protocol I (1977) directly increased the legal protection under international humanitarian law for occupied peoples. The report considers the current law requires clarification of how the spirit of the law is interpreted to ensure the needs of the occupied population and the security interests of the occupying power are met simultaneously. The ICRC concludes occupation law continues to face difficult challenges, with a noticeable incidence of occupying states contesting the applicability of occupation law to them (ICRC, 2012:4). Such a position is taken by Israel which refers to the OPT as “disputed” territories.

Israel is further problematic in the application of occupation law, because the law was never written with the expectation that an occupation would endure for so long.¹⁰³ Israel's Supreme Court Justice Aharon Barak called the occupation "long-term" so as to justify "permanent, massive investments in the territories" and extraterritorial application of Israeli civilian laws for Jewish settlers, but Israeli military rule over Palestinians - a situation the "international community customarily" refers to as "apartheid" (Gorali, 2003:1). Indeed, none other than former US president Jimmy Carter summarised the "forced separation and domination" by Israel as apartheid for "acquisition of land", reinforced by the "apartheid wall" and the "onset of legal apartheid" in the West Bank following the High Court approval of "de facto exclusive road system in Palestine for Israelis" (2009: xxii-xxiii, 65,100).

Moreover, the legal intricacies of occupation law are amplified by the Oslo Accord's restructuring of the West Bank into a complex territorial configuration of Areas A, B, and C. Control responsibilities and jurisdictions were divided between Israel and the newly formed PA, with its highly restricted police force which was "politicized and cantonized" by the zoning to the point of resembling an "indigenized disciplinarity, a proxy mechanism for containing resistance to Zionist occupation" (Parsons, 2010:63).¹⁰⁴ Such a control system has come to be considered a de facto legitimization of the ongoing colonization of the OPT, reinforced by Israel's consistent breaches of the contours of the Areas to suit its security purposes (Barclay and Qaddumi, 2011:3). The IDF "does as it pleases" in all the Zones (Gregory, 2004:188).

Israel's military legal system thereby dominates the OPT in a manner "almost exclusively concerned with upholding security interests" of Israel as the occupier (Weill, 2007:406).¹⁰⁵ Israel confines and corrals Palestinians through endless curfews and closures, and a "frenzied cartography of mobile frontiers rather than fixed boundaries" which effectively annul everyday life of the occupied (Gregory, 2004:188; Gordon, 2008: 25). These present as a prima facie breach of both word and intent of occupation law, and they also represent the export of Zionist carceral practice from within the prisons to the wider OPT - a Foucauldian carceral archipelago.

¹⁰³ As Hajjar (2011) notes the Fourth Geneva Convention was written in response to the often horrific treatment of occupied populations during WWII, but when the war ended so did the occupations (not to be confused with colonial occupations which, Palestine excluded, continued until the 1970s). See also the ICRC's (2012) *Occupation and Other Forms of Administration of Foreign Territory*, which argues for specific regulations addressing the practical problems arising from prolonged occupations such as Israel's of the OPT (p.55).

¹⁰⁴ The West Bank was divided into Areas A, B and C; Area A (3% of the land and 26% of the population) is the full civic and law and order responsibility of the PA; Area B (24% land, 70% population) is the PA's responsibility for public order but Israel has overriding control over security; Area C (73% land, 4% population) is fully under Israel's control (Gordon, 2008:177). Of significance within the context of entrenched Zionist occupation is that Area C - most of the land with the smallest number of Palestinians, is the site for IDF installations, Israeli settlements and zones designed for settlement expansion (Parsons, 2010:63). Mansour reads the Oslo zoning arrangements as seized upon by and arrogant Israel in order to facilitate a new cartography to be managed militarily in order to scar the daily landscape of Palestinians lives making any social or economic systems impossible. It is all in the name of colonization, conquering maximum Palestinian territory, and forcing the Palestinian leadership to acquiesce. It exploded into the second Intifada (2011:83-87). Koptiy considers Oslo a prop of a guaranteed and profitable occupation for Israel, while excusing it from responsibility for civil services in the OPT. Koptiy argues recent strikes and protests across the West Bank over rising prices are a symptom of the Oslo-backed occupation (2012).

¹⁰⁵ See Roy for discussion on Israel's concerted efforts to rid Area C of Palestinians in line with what she calls an "annexationist agenda". In Area C, Israel targets the declining population of Palestinians through administrative practices which restrict their security, freedom of movement and access to services, restrict allocations of land and water and the permission build, and Israel tolerates settler and military harassment and violence. During the 2012 (January) Israeli-Palestinian talks, Israeli envoy Yitzhak Molcho reportedly told the Palestinian delegation that "either they allow a permanent IDF presence in the Jordan Valley or Israel will be forced to annex it" (Roy, 2012:79).

4.6 State Sanctioned Torture

The Israeli Supreme Court (ISC) provided the legal means justifying the torture of Palestinian prisoners in Zionist prisons. Torture including sleep deprivation, stress positions, hooding, invasive sound and shaking during interrogations were specifically prohibited in a 1999 ISC judgement except when “necessary”. The court stated there may not be criminal liability for interrogators using “physical pressure...in extreme circumstances, in the ticking bomb scenario” (Morgan, 2000:194; Shougry-Badarne, 2012:47).¹⁰⁶ Testimonies of physical and psychological torture from the “vast majority of detainees” puts lie to claims that the ticking bomb criteria is applied sparingly. However every complaint made against GSS in the last decade has been “closed without a criminal investigation” (Shougry-Bardane, 2012:48, 50).¹⁰⁷

International law prohibits absolutely torture, cruel, inhuman or degrading treatment. Moreover, Israel ratified in 1991 the key anti-torture conventions - the International Covenant on Civil and Political Rights (1966), and the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment (1984). In 1951 Israel ratified the GCIV Relative to the Protection of Civilian Persons in Time of War (1949) - considered a primary instrument in IHL (B’Tselem, HaMoked, 2007:19). Breaching these conventions and treaties constitutes an international crime, and, under international law, responsibility lies with the individual perpetrator, and those who gave the order or assisted in carrying out the torture or ill-treatment. Israel is not, however, a signatory to the Rome Statue (1998) which established the International Criminal Court (ICC) and under which, depending on the circumstances, torture and ill-treatment constitute crimes against humanity or war crimes (B’Tselem, HaMoked, 2007:20).¹⁰⁸ Israel’s actions present as those more akin to Foucault’s sovereign of the ancien regime who is above any law, than the operation of a liberal democratic state. It is also consistent with Agamben’s *homo sacer* and bare life in that Israel acts so as to avoid having to answer for its (mis)treatment of Palestinians.

¹⁰⁶ The logic justifying torture in the ticking bomb scenario is that if the security services believe a hidden bomb is about to detonate and injure many, torture in order to extract information of its whereabouts is justified because it would save many lives. In the context of this thesis this would refer to torture of a Palestinian Israel considers a terrorist in order to prevent injuries and death of Israelis.

¹⁰⁷ See On Torture, a collaborative report from Adalah (The Legal Center for Arab Minority Rights in Israel), Physicians for Human Rights - Israel and Al Mezan Center for Human Rights which details the widespread use of torture in Israeli prisons. The report provides primary source accounts of torture, legal, political and medical analysis of the use of torture, and examines reports and rulings such as the 1999 ISC ruling, and the 1987 Landau Commission which concluded that “torture is sometimes permissible” but interrogators lying to courts about their use of torture is “intolerable”. The Commission drafted a secret list of tortures which are permissible, but that list has never been made it into the public domain (Tsemel, 2012:9).

¹⁰⁸ In 2009 the PA as the “Government of Palestine” declared “for an indeterminate duration” its recognition of the jurisdiction of the ICC “for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Palestine since 1, July 2002”. However in April 2012 the Prosecutor of the ICC, Moreno Ocampo, declared he was not competent to decide whether Palestine is a state able to accept the jurisdiction of the ICC. Such a decision has to be made by the UN Secretary General, who could defer to the UNGA or the Assembly of States Parties of the Rome Statute in accordance with article 112(2)(g) of that Statute. This response has since been the subject of a campaign from international scholars and lawyers including John Quigley, John Dugard, Iain Scobbie and Max du Plessis, who have urged the Assembly of States Parties to urgently address the question of Palestine’s Statehood for this purpose (Khashan, 2009; Akande, 2012). At the time of writing it remains unresolved.

4.7 Arbitrary Detention

Arbitrary detention of Palestinians “remains one of the key pillars of Israel’s colonialist policy” in the OPT, (Addameer, 2012:5). Israel uses arbitrary detention¹⁰⁹ - Administrative Detention - “more extensively” than human rights groups and the UN Human Rights Committee (UNHRC) consider permissible under international law (B’Tselem, 2012:2). Israel makes a “mockery ... of procedural safeguards in both domestic and international law regarding the right to freedom and due process” (Addameer, 2010:8).¹¹⁰ Israel applies Administrative Detention collectively and on a large scale, deliberately infringing on restrictions (Addameer, 2012:10-11). Under the International Covenant on Civil and Political Rights (ICCPR), anyone who is arrested must immediately be informed of the reasons for arrest and the charges, and arrested persons must be permitted to appear before a court (B’Tselem, 2010:1). GCIV, Article 78 provides for detainee rights to be restricted in “time of public emergency which threatens the life of the nation”, but not as an indiscriminate means of punishment (Addameer, 2010:7). Israel on its inception as a state, and in accordance with Article 4.3, informed the UN Secretary General that it was in a state of emergency and so derogated from this requirement. Such behaviour is “commonplace in authoritarian regimes which choose not to proceed “according to rules of evidence” and other legal safeguards of democracies (Cohen-Almagor, 1996:9).

4.8 Military Orders

Thousands of military orders and regulations control, subjugate, and strip Palestinian citizens and prisoners of civil and human rights.¹¹¹ The orders often “remain unknown and become apparent only when they are implemented”, are “temporary and arbitrary” and constitute an inexorable component of colonial control (CEPR, 2012; Gordon, 2008:33-4). Military Order 378 (1970) establishes the military courts and defines their jurisdiction and criminal code (Addameer, 2012; Milton-Edwards, 1997:37). This order defines “security offences”, and because it does not allow for Palestinians to be recognised as combatants, the practical effect is all forms of Palestinian resistance to the occupation can be labelled as terrorism (Addameer, 2012). Two months into occupation Israel passed Military Order 101 which criminalizes political activity, requiring permits for any gathering of ten or more people, and publication of any notices, posters, photos or pamphlets containing

¹⁰⁹ Administrative Detention (No.1651) 5770-2009 empowers military commanders in the West Bank to detain a person for a maximum of 6 months, when there is a “reasonable basis for believing that the security of the region or public security” requires it. There is no maximum cumulative period for renewal of detention orders so it can be an indefinite sentence (B’Tselem, 2010:1). These rules are only “marginally modified versions of the punitive detention laws the British used in the 1930s” were first used as “collective punishment” against Palestinians who stayed within the borders of the nascent state of Israel, and then they were applied to the Palestinian Territories when they were occupied in 1967 (Khalili, 2010:424).

¹¹⁰ See Gross, (2001) Human Rights, Terrorism and the Problem of Administrative Detention in Israel: Does a Democracy have the Right to Hold Terrorists as Bargaining Chips? for discussion from Israeli Supreme Court concerning Anon v. Minister of Defence, for discussion on the objectives of Administrative Detention’s objectives and the balance between society’s right to freedom and security and the violation of the freedom of individuals.

¹¹¹ CEPR estimates 1500 military orders govern the West Bank and 1400 the Gaza Strip. They are promulgated and altered on a constant basis and it is not feasible to assess them all here. Examples include a September 15, 2012, order signed by Maj. Gen. Nitzan Alon, barring for “unspecified security reasons” Addameer Board Chairman Abdullatif Ghaith from East Jerusalem where he lives, and from traveling abroad (Human Rights Watch, 26/10/12); A 2010 military order extending Israel’s policy of limiting Palestinian freedom through permits was presented as a move to prevent infiltration. It enables widespread revocation of residency status, “deportation of tens of thousands of Palestinians from the West Bank” and the division of Palestinian families. It criminalizes citizens, and applies only to Palestinians it refers to as “illegal sojourners in Judea and Samaria” (Hass, 2012). An extensive search of Israeli Military Orders is possible on the website of the Applied Research Institute of Jerusalem (ARIJ) <http://orders.arj.org> which has a database of military orders searchable by number, law, district, locality and/or date (ARIJ, 2006). Gordon, (2008) addresses the issue as part of Israel’s infrastructure of control. For the purpose of illustrating the reach of the military orders, I have selected four significant to military rule of the OPT.

material deemed to be political.¹¹² Military Order 1644 (2009) established the military court for Palestinian children, but does not guarantee child protection during arrest and interrogation, and if children turn 16 while waiting for sentencing, they are sentenced as adults.¹¹³ Military Order 1651 (2009) - the Administrative Detention order - (see 4.7 above) epitomizes the flexibility and convenience of military orders because of the “ease in invoking (and revoking)” it with the “mere signature of a military commander” (Pelleg-Sryck:2011:123). Crucially for Palestinians detained under 1651 is its frequent use as a threat in order to recruit collaborators. Avoiding such detention, or its indefinite renewal, is a powerful incentive (Pelleg-Sryck, 2011:130).¹¹⁴

4.9 Colonial policing

The rate at which Palestinians have been incarcerated - the highest in the world during the intifadas - is illustrative of how Israel manipulates domestic and international laws. The policing methods and ideology that fill Israeli prisons with Palestinians are an indispensable consideration in the politics of Zionist carceral practice, because high incarceration rates indicate either pervasive criminality or evidence of state sanctioned legal repression (Hajjar, 2005:3). Israel’s use of soldiers in a policing capacity as part of a military/legal control that legitimates mass imprisonment has more in common with colonial-era tactics than the law and order operations typical of a post-colonial state. Israel’s contemporary policing of the OPT is simply a more technologically advanced, but otherwise replicate, version of British policing which violently suppressed the 1936-9 Arab Revolt.¹¹⁵ This is evidenced in the targeting of politically engaged individuals and groups, house demolitions as collective punishment, mass incarcerations, expulsions, curfews,¹¹⁶ detentions of men of certain ages, and, the deliberate elision of the categories civilian and combatant (Khalili, 2010:413, 427; Darcy, 2003; Terry, 1980).

Official records of colonial police include implementation of tactics to “terrorise the population by punitive searches”; “spiriting away” detainees to the “Gaza Cage” where their “fate will remain a mystery for some time”;

¹¹² Under Military Order 101, “prominent human rights defenders Abdallah and Adeeb Abu Rahma from Bil’in village, and Baseem and Naji Tamimi from Nabi Saleh were convicted in 2009 with incitement and organizing unauthorized demonstrations and public gatherings which were peaceful demonstrations against the occupation and the impact of the Separation Wall on their villages (Addameer, 2012:15).

¹¹³ Military orders provide child detainees few protections that differ from adults, except children are supposed to be separated from adults, although this is “frequently violated”. Military Court records from 2010 report acquittals in just 0.26% of all indictments and most children plead guilty to charges rather than face unfair trials and harsh sentences; 99.74% were convicted, 99% the result of plea bargains (Addameer, 2012:12).

¹¹⁴ Pelleg-Sryck is a lawyer specialising in defence of administrative detainees, and provides primary source accounts of how it is manipulated in the “hermetically closed” military circle that legislates and enforces it eluding any “shred of transparency” (2011:124).

¹¹⁵ Khalili notes that British Mandate policing in Palestine used personnel and techniques it had used during colonial exploits in places such as Ireland, Bengal and the North-West Frontier Province. Notorious amongst these were the Irish ‘black and tans’ and their “indiscriminate brutality against civilians, and the use of torture in interrogations. After Britain exited Palestine, these colonial policing techniques were “exported” to Malaya, Cyprus, Kenya and other colonies in the 1950s and 1960s anti-colonial revolts (pp. 416-7). The British used Emergency Regulations (1936) and Palestine (Defence) Order in Council (1937) to cement martial control over Mandate Palestine, justify collective punishments, allow unannounced punitive searches, expand death-penalty sentencing and “effectively give commanders of the security forces on the ground a carte blanche” (2010:424).

¹¹⁶ Section 119 (1) Defence Emergency Regulations (1945). This punishment which was widespread during the first Intifada, ceased during the Oslo years when the IDF refrained from entering areas under PA control. However it was re-instituted in 2001 after the outbreak of the second Intifada (Silber, 2010:89-90). It is deemed in violation of Article 53 of GCIV which forbids the occupying power destroying individually or collectively owned private or public property, unless absolutely necessary for military operations. Article 49 of the GCIV prohibits expulsions as punishment for crimes and Article 68 prohibits any punishment other than imprisonment upon conviction. Regulation 124 of the Defence Emergency Regulations allows a military commander to impose geographical and time curfews for any purpose.

demolition of houses”;¹¹⁷ implementation of policies to search and upset Palestinian civilians because it “keeps them more in suspense”; destruction of stored food; expropriation or destruction of harvests and livestock - even donkey seizures; detention without trial; violent interrogations; using relatives or neighbours of suspects as human shields or “human minesweepers”;¹¹⁸ curfews; developing collaborators in order to divide and rule; deportations; and, construction of physical barriers. These collective punishments were applied “to whole communities in order to neutralize even the mildest intransigence” (Khalili, 2010, pp.422-424, *Breaking the Silence*, 2012). Identical technologies of colonial suppression and policing are all in play in the OPT, circa 2012. They are the counterinsurgency instruments of conventional militaries used against “unconventional combatants or guerrillas” which early Israeli soldiers learned from the British and then the French in Algeria¹¹⁹ (Khalili, 2010:415). These policing mechanisms became highly “kinetic in practice” after the 1967 war and during the two intifadas. Beatings were favoured as the “non-lethal method of enhancing Palestinian pain” thus avoiding the “pain in the ass” bureaucratic process of a lawful arrest (Ron, 2000:457).¹²⁰ Israel as occupier added to its repertoire the colonial-era practice of controlling populations by enclosing their physical spaces with checkpoints, barriers, and walls, subjecting Palestinians to surveillance, massive regulation and the contemporary version of the apartheid-era South African identity card which is now connected to a biometric database (Ron, 2000, 425-6).¹²¹

In a deeply rooted colonial ideology of control, the occupier expects the PA police to arrest and transfer to Israeli military, any OPT residents suspected, arrested or convicted of crimes falling “within Israel’s criminal jurisdiction”. These include “hostile acts against the Settlements”, settlement infrastructure and military areas” which Abbas claims positions the PA as “working as guards” for [the Israelis] (Parsons, 2010:61; Sabbah, 2012). This “outsourcing” of the Occupation mandates the PA to “police the consequences of accelerated Zionist colonization” (Gordon, 2008:20; Parsons, 2010:58). Additionally the PA carries significant costs of imprisonment, financing the purchase of much of the prisoners’ food, clothing, cleaning products and paying IPS

¹¹⁷ As Palestinian homes are often inhabited by extended family, demolition is particularly punitive. Darcy (2003:61) notes in *Qarabsa v. Minister for Defense*, H.C. 2665/90, a Supreme Court decision to uphold the demolition order left 27 people homeless - a clear illustration of the collective nature of the punishment. Thus demolishing homes is to make the family suffer rather than just deny the rights or freedoms of the accused/convicted. Darcy argues “one would be hard pressed to find domestic legal systems that would explicitly endorse the demolition of homes as a punishment for crimes”.

¹¹⁸ See *Breaking the Silence*, 2012, ‘Prevention’ pp. 46-27 for contemporary use of Palestinians as human shields and to disarm explosives; Ahmad Chebab, *The Interplay of Foucauldian Biopolitics and Jewish Nationalism in The Israeli Supreme Court Decision-Making*, (2012:14) for legal challenges to IDF use of Palestinians forced to walk through and scan buildings suspected of being booby-trapped, and Palestinians positioned so as to deter shooting at IDF forces; See also footage in *Israhell On Earth*, a documentary by OccupiedPalestine, available at www.youtube.com/watch?v=Yt3d3Fmouh4

¹¹⁹ These young Israel soldiers included Yitzhak Rabin who was later Prime Minister of Israel from 1947-77 and 1992 until he was assassinated in 1995; and Haim Herzog, Israeli Ambassador to the UN and Israeli President from 1983-93.

¹²⁰ Ron quotes former IDF private Ram Eilam who explained “on-the-spot clubbings were a quick and easy way of expressing their (IDF) anger and punishing Palestinians”. Other non-lethal options include tear gas, plastic and rubber bullets and gravel-spewing cannons. Eilam is one of 52 IDF veterans interviewed for Ron’s research.

¹²¹ in Malaya the British enclosed the rebellious indigenous populations into ‘new villages’, in Kenya they used ‘Kikuyu reservations; the French depopulated southern Algeria into barracks-like camps; and, the US herded the Vietnamese into ‘strategic hamlets’ - a practice they had in turn borrowed from the British (Khalili, 2008:425).

Despite the underlying politics of each colonizing power with respect to an indigenous population, the “carceral and related techniques” of each colonial-anti-colonial struggle remain similar according to Cobban (2006) in her analysis of Caroline Elkin’s (2005) *Imperial Reckoning* which explores the treatment of the Mau Mau in Kenya by the colonial British forces. Elkin described the destruction and savagery of the British as betraying “a perverse colonial logic; only by detaining nearly the entire Kikuyu population of 1.5 million people and physically and psychologically atomizing its men, women, and children, could colonial authority be restored and the civilizing mission reinstated” (p.112).

In October 2012, three elderly Kenyan survivors of those “unspeakable acts of brutality” won the right to claim damages from the British government. More survivors are expected to come forward to sue the British government, which, at the time of writing, plans to appeal the High Court decision (Cobain, 2012).

finances imposed for various offences. This amounts to Palestinians financing their own detention to the degree it is profitable for Israel" (Daka, 2011:246-7).¹²² In effect, the PA is expected to act as "secretary for the occupation" (Sabbah, 2012).¹²³

A state which sustains the policing methods of its preceding colonial-era "counterinsurgent army", has, by definition and practice, bypassed the typical law and order practices of contemporary enlightened democracies. As with Foucault's analysis that prisons persisted in using failed techniques as the "only means of overcoming their perpetual failure", Israel has reproduced the British techniques that crushed the 1936-9 Arab revolt, but ultimately failed to destroy Palestinian nationalist sentiment. Refining colonial-era techniques has however positioned the Palestinian civilian as the "central object of war-making, coercive discipline and violence", and as is the practice of colonial administrations, incarceration features as a key, yet demonstrably imperfect Zionist control technique (Khalili, 2010: 427).

4.10 Physical infrastructure

The geographical distribution of the facilities holding Palestinian prisoners represents another facet of Zionist practice in breach of the GCIV - in this case the explicit requirement that detainees serve their sentence in their own country (Adameer, 08/08/12). Zionist carceral structures are spread across the entirety of the former Mandate Palestine area, and while only Ofer prison is within the OPT, it is run by the IPS. Palestinian prisoners are held in a total of seventeen prisons (including Ofer), four interrogation centres and four military detention centres within the 1948 borders of Israel. The geographical distribution of prisons exemplifies a blend of colonial-era military domination and civilian policing, intended to project an image of legitimate law and order. The prisons consist of British Mandate-era constructions, augmented by those built by the state of Israel.¹²⁴ When the numbers of Palestinians incarcerated reached peaks during the first and second intifadas, some previously closed facilities were re-opened to accommodate the extra thousands arrested (Hunter, Groten, Abu-Qtaish, 2003:14).

In the context of the Israeli-Palestinian conflict these prisons are more than just buildings. Given their locations they add a "structural isolation" to the internal prison punishment of solitary confinement and isolation. The illegal transfer of Palestinians from their own territory purposely disconnects prisoners from families and the

¹²² This practice of paying security prisoners is mandated in 2003 legislation which stipulate the amounts paid to prisoners serving various offences. A 2011 decision to increase the money sparked an outcry from Israeli and international right wing media (e.g. The Times of Israel, Commentary, The Jerusalem Post) who billed it as paying Palestinians for suicide bombings while the PA cries poor. Daka, who has spent 25 years in prison, argues the IPS makes it necessary for the prisoners to buy additional food and products, with the insult being the produce is supplied by Israeli companies. Daka is however concerned at the impact the basic issue of 'employing' prisoners has on those prisoners. It reinforces the prisoner as being at the centre of the liberation struggle, but, it can also change the focus of the prisoner from struggling with the occupation government to succumbing to an Israeli tactic to immerse prisoners in struggles with their national authority (2011:246-7). Addameer quotes the Palestinian Ministry of Prisoner Affairs in 2010 as having paid NIS 500,000 in fines, and "transferring NIS 13 million to Palestinian prisoners to assist them in purchasing food and other basic necessities from the prison canteens". These figures represent a significant increase on the 2009 figures of NIS 369,195 and NIS 28 million respectively (2010:5).

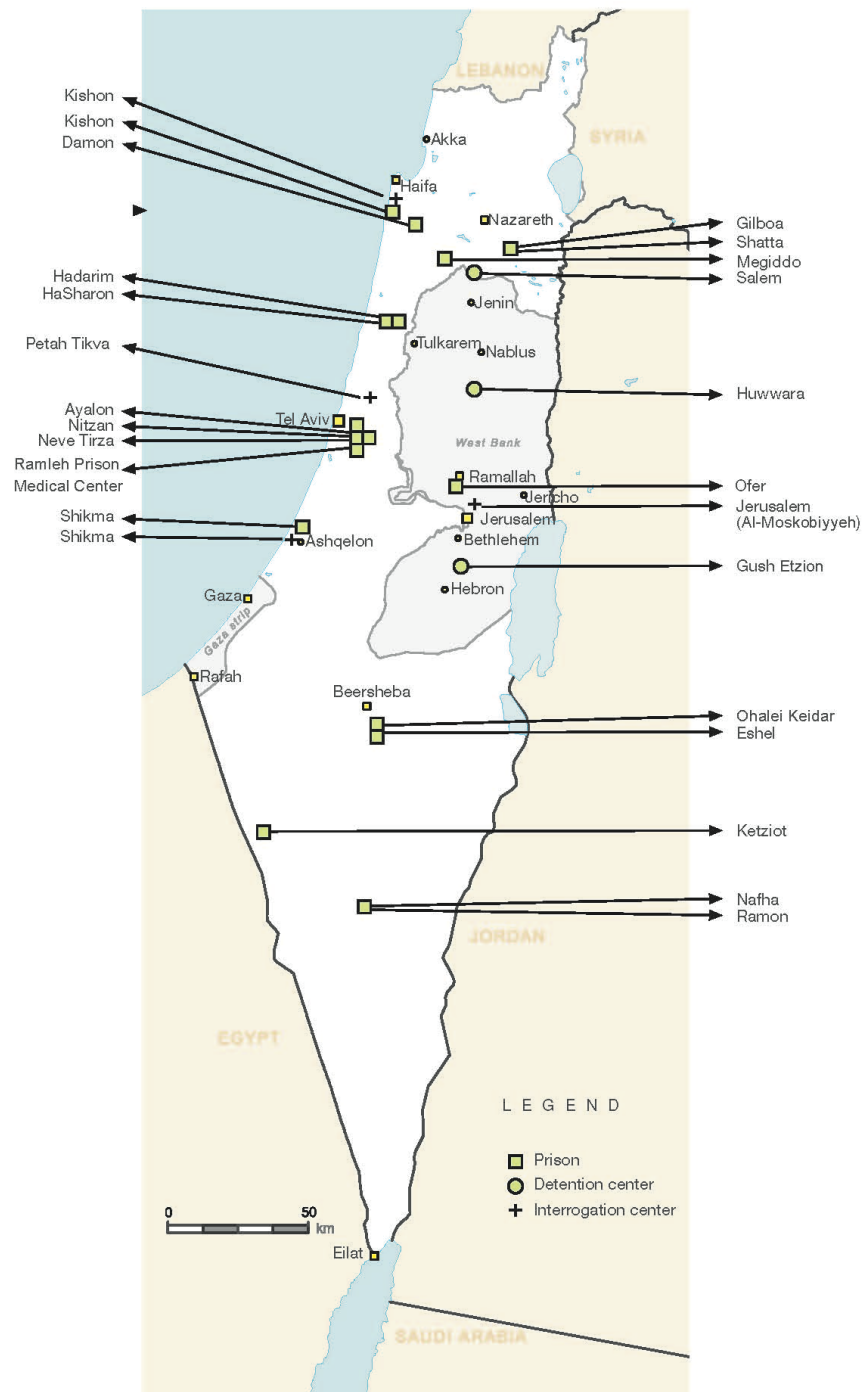
¹²³ Sabbah is quoting Abbas who was responding the September 2012 Israeli threats to abandon the OPT and void the Oslo Accords and the Paris Protocol should the PLO forge ahead with its UN bid for observer-state status in November, 2012.

¹²⁴ See Parsons (2010; 2011) and Bornstein (2001) for analysis of the difficulties the PA has in operating detention and prison facilities within Area A. Violence by prison officers is often due to poor training in how to transform from revolutionary/liberation movement to institutional operation; arrests are often the result of political vendettas between Fatah and Hamas (complicated further by Hamas control of Gaza); there are high numbers of deaths and torture in custody; and, competing penal codes - for example in Gaza the death penalty applies to 15 offences, in the West Bank to 17, and under the operation of the PLO penal code which is in force because there is no Palestinian state, 42 offences are subject to the death penalty. Added to this is the IDF overall control over security, interference in methods of Palestinian policing and targeting of Palestinian security personnel.

outside world, and from each other - particularly political leaders who are frequently transferred between prisons.¹²⁵ Isolation as punishment was exacerbated for Gazan families who were denied visits to prisoners in retaliation for the capture of Shalit (Francis and Gibson, 2011: 217).¹²⁶ Israeli prisons therefore represent institutions in which fields of multiple political, legal and social forces interact in what is Foucault's wider carceral continuum. The knowledge the IPS gleans from its Palestinian inmates is exported back from the OPT via prison tactics of surveillance, control and punishment, and the recruitment and deployment of collaborators.

¹²⁵ See Francis and Gibson for details of prominent political detainees, including Ahmad Sa'adat, former General Secretary of the Popular Front for the Liberation of Palestine (PFLP) who is in 2012, four years into a 30 year sentence for "offences arising from his leadership of the PFLP, and has been held in "continuous isolation or solitary confinement" since arrest in 2006 (2011:219).

¹²⁶ This policy has been slightly eased following the release of Shalit in 2011, but at the time of writing only a few Gazan families have been permitted to visit prisoners held inside Israel.



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This map locates prisons, detention centres and interrogation centres in which all Palestinian prisoners are detained. The areas shaded grey are the OPT and Gaza¹²⁷

¹²⁷ image retrieved 15/08/12 from <http://www.addameer.org/etemplate.php?id=302>

4.11 Conclusion

Israel's rule over the OPT is strikingly isomorphic of the colonial British Mandate era for the very reason that Israel has adopted and adapted practices, doctrines, laws, regulations and policing methods it inherited. Scrutiny of Israel's legal and carceral framework, including breaches of IHLs, regulations, and UN resolutions with respect to Palestinians, unmask the distinctive colonial ideology which pays little heed to the rights of the indigenous peoples. Yet, while every facet of Palestinian life is hyper-regulated by a colonial-Zionist security doctrine spawning thousands of racially specific laws and military orders, Israel denies it is even an occupying force. Each section of this chapter has presented legal and carceral practices resulting from the combination of colonial ideology and Zionism. Serendipitously for early 20th Century Zionists settling in Palestine, the doctrines of colonialism were acceptable to world powers at the time. Israel is not unaware of the international and domestic political issues associated with its occupation. If it was, it would not go to such lengths to justify mass arrests, detention, and albeit officially restricted torture under a questionable security doctrine. Nor would it need to so tenaciously fashion Palestinians as suspect citizens, so dangerous as to merit the destiny of *homo sacer*. Israel has taken full advantage of the Oslo Accords in as much as they have facilitated its outsourcing of the occupation. This minimizes the political downside of being the enforcer by turning the Oslo-created PA into an arrest and incarceration proxy. Foucault warns of the folly in considering prisons as corrective or reforming, but Israel's conduct gives no hint of concern with carceral - or any other legal reform - in the first place. The reforms that would give Palestinians the rights international law and the United Nations have repeatedly stipulated they are entitled to, would require major alterations to the relationship between Israel and Palestine. Not the least would be a halt of illegal settlement construction on Palestinian land, and ultimately the end of the occupation with its mass incarceration strategy of control and more generally, the carceral tactics which rule Palestinians in the OPT.

Chapter 5

PALESTINIANS IN ISRAELI PRISONS

“It would be better to drown these prisoners in the Dead Sea if possible, since that’s the lowest point in the world”

Avigdor Lieberman, Israeli Foreign Minister, July 2003¹²⁸

“I do not believe in this court because it is an unjust one. I am opposed to the occupation ...so go ahead and sentence me. I will join my brothers and sisters in jail and consider it a badge of honour”

Majd Ziada , prisoner, October 2011¹²⁹

“The prison also produces delinquents by imposing violent constraints on its inmates; it is supposed to apply the law, and to teach respect for it; but all its functioning operates in the form of an abuse of power”

Michel Foucault, Discipline & Punish, 1977:266

5.1 Introduction

The sheer number of Palestinians who have been through, or are currently in Israeli jails, positions prisoners as the “vanguard of the struggle” and therefore central to Palestinian society (Bornstein, 2008:117). Mass incarceration also stations Zionist carceral practice at the centre of Israel’s web of military justice which has fundamentally reconfigured most, if not all aspects of Palestinian society.¹³⁰ This thesis recognises carceral practice as an overall strategy, consisting of various penal tactics operating inside and outside the prison. The impact of this on Palestinian society can be understood by studying the prisoner as a “parable of the lives of civilians” throughout the OPT, subjected to overtly repressive conditions designed to “remold Palestinian consciousness” (Daka, 2011:235). Such conditions are tactics themselves and are examined in this chapter. They include a Foucauldian “constant surveillance, careful spatial ordering and meticulous regimentation” as punishment for defying occupation - sometimes by simply remaining on the land (Ron, 1997:283). Inside the prison the tactics are manifested in punishment of the prisoners’ bodies and souls through torture and indefinite sentences, and the ideological nature of the strategy is apparent in the targeting of the Palestinian future - its children.¹³¹ In presentation of prisoner numbers, profiles, and experiences this chapter reinforces Hajjar’s

¹²⁸ Lieberman made the proposal to the Israeli Knesset, and as he was then Israel’s Minister of Transport, he offered to provide the buses to take the Palestinian prisoners that Israel releases to a place “whence they will not return” (Alon, 08/07/03)

¹²⁹ For this “defiant” statement the military court added an extra 15 years to Ziada’s sentence (Palestinian Solidarity Organisation, 21/10/11)

¹³⁰ Addameer, Violations Against Palestinian Prisoners and Detainees in Israeli Prisons and Detention Centres (2010:5) argues the fragmentation of Palestinian territories and the restriction on the population’s movement in order to suppress freedom, independence, economic, political or social progress is paralleled in the IPS policy of segregating prisoners inside jail according to their geographical origin and political affiliation.

¹³¹ It is accepted that Palestinians are incarcerated for non-violent and violent crimes, but they are not afforded trial in a civilian court as are Israelis and settlers in the OPT, and that military court system is fraught with hurdles for Palestinians, including the proceedings being held in Hebrew, which most Palestinians do not speak, sentences regularly based on confessions which have been coerced through torture, and in the case of Administrative Detainees there is no charge or trial, just indefinite imprisonment.

argument that the imprisonment of more than 750,000 Palestinians over the last 45 years represents “legal repression” rather than the existence of a pervasively criminal population (2005:3).

5.2 Political context

The arrests and detentions of Palestinians have become rituals of violence, dominance and resistance, turning the very bodies of prisoners into politicized fields of Foucauldian power relations (Foucault, 1977:25). While Foucault’s modern prison with its emphasis on discipline rather than punishment, falls short in accounting for the *modus operandi* within the Zionist prison, his linking of the body of the prisoner with overt political objectives is directly applicable. As Peteet argues, Palestinians have construed the beatings and incarceration as “right[s] of passage into manhood that galvanizes political consciousness and agency ... performed in a highly charged atmosphere of domination and crisis” (1994:31-2). The role of the Palestinian prisoner - invested in, marked, trained, tortured, forced to carry out tasks, perform ceremonies and emit signs - is to be terrorized into silence so as to “confirm the mythical Zionist landscape of an empty Palestine” (Foucault, 1977:25; Peteet, 1994:33).¹³²

The political and legal foundation for Israel’s strategy vis à vis the Palestinian prisoner is the perpetual colonial-era state of emergency and focus on its own security. International law permits occupying forces to preserve their security interests, but it also requires they protect the welfare of the occupied population (ICRC, 2012:72). Dereliction of this legal duty is evidenced in Israel’s selective adherence to relevant laws, verified mass incarceration rates, often indefinite sentences, use of secret evidence, violent arrests and consistent testimonies of ill treatment at the hands of the military enforcers and, ultimately, the prison service.¹³³ Israel’s colonial-like categorization of Palestinians as either potential or actual threats is, in itself, a political instrument of control, resulting in Palestinians of all ages being “tucked away behind fences, bars, walls; ...[to be] disciplined and controlled” in the Foucauldian carceral archipelago of the OPT (Baker, Matar, 2011:viii). Resistance is effortlessly elided with ‘terrorism’ in order to justify military, policing and carceral tactics, in an attempt to decouple Palestinians from their nationalist struggle.

5.3 Prisoner profiles

The Palestinian prison population is a “powerful political force” with imprisonment considered “an active state” of struggle and organisation (Cook, Hanieh, Kay, 2004:83). In the last five years the muster of political prisoners has dropped from record high spikes of 14,000 - 15,000 during the intifadas, to hovering between 4,000 and 5,000. Prison numbers reflect the political climate of this Zionist “colonial project ... sustained through political violence” (Gordon, 2008:167). Mass arrests and detentions are means by which Israel can “artificially inflate the prison population” in order to ensure a “powerful bargaining chip” when it is politically expedient (Cook, Hanieh, Kay, 2004:169). During the intifadas mass arrests of 20,000 - 30,000 a year were a means of controlling the

¹³² The next chapter deals with the extent and success of Palestinian resistance to this Zionist end game.

¹³³ Although see Hajjar, 2005 *Courting Conflict*, for discussion on Israel’s use of “law enforcement” as opposed to “war” to rule in the OPT. She refers to arrest and imprisonment rather than expulsion and massacre en masse, and closures, curfews and permits rather than aerial bombings to subdue resistance. This does constitute a commitment to law in that it has constrained “untrammeled use of force” (p. 27), but this does not relieve the Palestinians of their hyper-regulated lives and apartheid-like cantonization and permit systems. Nor does this apply to Israel’s ignoring of human and political rights as proscribed in international human rights laws; the policy of targeted assassinations of Palestinians Israel claims to be militants and/or in the process of preparing or launching rockets at Israel; nor what Gordon refers to as the “politics of death” during the intifadas (2009:206).

violent uprisings mainly synonymous with the second Intifada (Bornstein, 2008:113).¹³⁴ The “sheer quantity of prisoners” was reported by ICRC and B’Tselem as a “problem of massive proportions” which the military attempted to address by administering street beatings in order to bypass the prisons altogether.¹³⁵ Use of direct physical abuse and deportation were widely condemned by “world polity”, and while Israel bristled at international encroachment on its sovereignty, it reluctantly reverted back to mass imprisonment because it needed to present, at the very least, “legitimate patterns of violence” (Ron, 1997:292-295). Israel knows the “dangers” inherent in mass incarceration, specifically, inter-Palestinian networking, but prison has other purposes. Israel employs imprisonment as a mechanism through which to pressure other members of a detainee’s family (B’Tselem, HaMoked, 2010:59; Dayif et al., 2012:103; Ron, 1997:295).¹³⁶ Israel also ensures prison enhances “Palestinians’ punitive experience” through “quasi-intentional” overcrowded and filthy detention conditions including metal shipping containers which are ovens in summer and freezers in the winter (Ron, 2000:455-6). Mass incarceration is thus established as a Zionist form of social control, which is why the numbers in prison are a litmus test for the occupation itself. Currently the prison population is stable, reflecting the ‘stability’ of the occupation which for Israel is “not uncomfortable” because it manages to avoid the sharp domestic divisiveness of a “meaningful [peace] agreement, let alone implementation” (ICG, 2012:29).¹³⁷

As of November 2012, 4,520 Palestinian political prisoners were in Israeli jails.¹³⁸ Amongst them are 156 held under Administrative Detention - including two of the 20 jailed Palestinian Legislative Council members. Targeting elected politicians is considered a deliberate, vengeful undermining of Palestinian democratic institutions (Sherwood, 2012; UFree, 2012). Prison statistics also include ten women, 111 pre-Oslo prisoners, including 72 held continuously for more than 20 years, and 23 so-called “patience generals” imprisoned for more than 25 years (Addameer 01/11/12; Gaza Interior Ministry, 31/05/12). By the end of 2011 the number of Administrative Detainees had increased sharply from 219 to 307 - 29 percent had been held for six months to a year, 24 percent for one to two years, seventeen had been held continuously for two to four and a half years, and one for over five (B’Tselem, 2012:1).¹³⁹ At the beginning of November 164 children - 21 aged 12-15, were in

¹³⁴ Palestinians used “ruthless” tactics including firearms and suicide bombers. Gordon explains at length Israel’s role in “fanning the flames” of the second Intifada, which was initially sparked by Ariel Sharon’s “provocative” visit to the Al Aqsa mosque (28/09/00) flanked by an armed entourage. Palestinians began throwing stones at the IDF who responded with tear gas and rubber coated metal bullets, and the rebellion and repression grew as the IDF was unable to contain the Palestinians decisively (2008:197-9).

¹³⁵ Between 1987 (the outbreak of the first intifada) and 1993, IDF figures confirm over 100,000 Palestinians had been detained. The prison population of 10,000 - 15,000 at any time between 1987 and 1993 was when Palestinians reached the highest imprisonment rate per capita in the world (Ron, 1997:295).

¹³⁶ See also Bornstein (2008) for analysis of the increased use of confinement in the OPT from the 1970s, growing to the effective imprisonment of all Palestinians through curfews, roadblocks, checkpoints and the Separation Wall. Gordon also points to the rise in extrajudicial executions from the second Intifada on, which he refers to as a policy to move from shaping or altering Palestinian behaviour, to doing away with “recalcitrant individuals” all together (2008:207).

¹³⁷ The ICG report discusses further the concept that the status quo is considered by many Israelis as the best they can hope for, and by continuing with it, Israel “deflects international criticism, demonstrates good-will and thus heads off the possibility of more costly forms of action” (2012:29-30). Yossi Beilin, one of the architects of the Oslo Accords and former Israeli Justice Minister and deputy Foreign Minister wrote in an IHC editorial that Israel has hijacked the Oslo Accords and hidden behind the interim agreement to expand settlements in the West Bank; “rid itself of the responsibility of the day-to-day management” in the OPT; avoid the cost of the occupation because donor countries finance the Palestinian budget; and it benefits from cooperating with the Palestinian security forces (IHT, 26/11/12:6).

¹³⁸ It is noteworthy that this prisoner number follows the late 2011 release of 1027 prisoners in exchange for an Israeli soldier, which was itself followed by immediate IDF arrest and re-arrest operations incarcerating more than 500 Palestinians and bringing the prisoner catchment back up (see Chapter 7).

¹³⁹ The monthly detention report of November 1, 2012 shows a relatively dramatic decline in some prisoner statistics. While the overall population of political prisoners has dropped only 60 since the August muster of 4,660, the number of Administrative Detainees is down from 307 in January to 285 in August and now 156 as of November. Of the 14 PLC members amongst them in August, only two remain on Administrative Detention and six PLC members have been released between August and November. This may indicate the IPS is adhering, in part at least, to the deal brokered to end the 2012 prisoner hunger strike - the details of which are included in the following chapter on prisoner resistance.

Israeli detention. Children constitute 3.7 percent of the prison population.¹⁴⁰ They were charged with security violations and more than half were transferred to prisons inside Israel (UNICEF, in CAAC¹⁴¹, 2012). These regularly updated statistics reveal how the prison muster is linked to the Palestinian-Israeli conflict.¹⁴² Liberal use of Administrative Detention - even for elected Palestinian politicians - reflects Israel's projection of threats to its security, and widespread arrest of children is a tactic aimed at destroying the will of the next generation to resist by teaching them to fear (Bornstein, 2008:114).

5.4 Administrative Detention

“The administrative detention order was renewed 14 times, and I was held for a total of six-and-a-half years, without trial and with no idea of what the allegations against me were”

Osama Barham, 2011¹⁴³

A key Zionist carceral tactic is Administrative Detention - detention without charge or trial, for the purposes of preventing the person from committing a future act that “is liable to endanger public safety” (B’Tselem, 2012). Its principal importance within this thesis is its centrality to the politics of a military occupation: detention is at the request of the executive branch and not the judiciary”; Articles 42 and 78 of the GCIV stipulate Administrative Detention is only for “explicit and exceptional circumstances” such as “imperative reasons of security” and not as punishment; yet, Addameer asserts, it is an “integral part of Israel’s military legal system” and is used “as a matter of policy ... indiscriminately, and, as a means of collective punishment” in order to exact “revenge on Palestinians” (Addameer, 2010:5 -7). Not knowing the details of your crime, nor when you will be released amount to psychological punishment - punishment of the soul which is in turn “the prison of the body” (Foucault, 1977:30). Foucault positions the soul as existing as “produced permanently around, on, within the body by the functioning of a power that is exercised on those punished” (Foucault, 1977:29).

Administrative Detention Order No.1591 empowers the military commanders in the West Bank to detain a person for a maximum period of six months, but which may be renewed by the military commander

¹⁴⁰ Children under 15 represent 41.3% of the Palestinian population in the West Bank and Gaza Strip (Palestinian Central Bureau of Statistics, 2011).

¹⁴¹ CAAC is the Children Affected by Armed Conflict bulletin which sources the UNICEF working group dealing with children in Israel and the OPT - that group includes Al Mezan Centre for Human Rights, Save the Children, DCI-Palestine, B’Tselem, Palestine Centre for Human Rights, War Child Holland, OCHA, OHCHR, UNESCO, UNICEF, UNRWA and WHO.

¹⁴² In Chapter 7 this is evident in the pattern of prisoner exchanges and the currency of Palestinian prisoners for political expenditure. In the 2011 prisoner exchange the politics extended to Israel’s timing of the swap so as to deflect attention from the PLO’s UN bid for statehood, and thereby undermine Palestinian President Abbas. This was further enhanced because the deal was between Israel and Hamas, which, while a sworn enemy of Israel, was useful for Israel’s domestic political needs in ensuring the return of a captured soldier, but also undermining reconciliation attempts between Fatah and Hamas.

¹⁴³ After 78 months under administrative detention, Barham was released and went in to hiding fearing re-arrest. He was arrested again, charged with being a member of a political party - determined an illegal organization by Israel, and in possession of lethal weapons. He was sentenced to a further five years in prison which ended in June 2008.

indefinitely.¹⁴⁴ The nature of the ‘security’ warranting such an infringement on rights is determined by the occupying power and is not defined (Addameer, 2010: 7-11). A military judge may extend, truncate or cancel the detention. Appeals are in camera, permit hearsay evidence, and the ‘evidence’ categorizing the Palestinian as a future risk is classified on the grounds that disclosure is “liable to harm the security of the region or public security” (B’Tselem, HaMoked, 2009:14).¹⁴⁵ Israel argues there is “no other way to counter the threats to [its] security” from individuals it alone categorizes as “supporters of terror”, including members of Palestinian political parties and what it deems ‘terror organizations’ (Pelleg-Sryck, 2011:133).

International law intends that Administrative Detention is not a substitute for a criminal proceeding, and detainees must be held in their own territory, not a foreign state - a provision Israel habitually breaches (B’Tselem, Hamoked, 2009:7-9). Human Rights groups, academics and lawyers accuse Israel of manipulating and violating IHL by holding about 300 Palestinians on Administrative Detention at any one time.¹⁴⁶ Since the occupation, thousands of Palestinians have been held for months or years under administrative orders, arrests are arbitrary and daily, and spike dramatically during organized protests such as the two intifadas (1987-1993, 2000-2005). This pattern exposes the practice as one of collective punishment in order to clear the streets of political activists, by an excessive and panicked Israeli authority intent on punishment rather than prevention (Hilal,2010:32-37;¹⁴⁷ Cohen-Almagor, 1996:3). The security reasons proffered by Israel are “broad enough to include non-violent political subversion and virtually any act of resistance against the Israeli occupation” (Addameer, 2010:8).¹⁴⁸ Furthermore, Article 75 (2) of the Additional Protocol of the GCIV prohibits collective punishment through collective Administrative Detention (Addameer, 2010:12). Yet Israel’s detention

¹⁴⁴ Following Israel’s 2005 disengagement from Gaza, its residents are held under the Emergency Powers (Detentions) Law as the Administrative Detention Order applies only in the West Bank (B’Tselem/HaMoked, 2009:12). See Baker (2011) for discussion on Israel’s continued trial of residents of Gaza in Israeli Military courts on Israeli sovereign soil, despite its disengagement which “automatically terminated the jurisdiction of the military courts that had been set up pursuant to the military occupation”. Article 77 of the GCIV specifies that prisoners held by the occupier are to be handed over “to the authorities of the liberated territory” at the end of occupation, yet Israel has not handed over prisoners from the Gaza Strip to the authority governing it now (2011:102-3). See also Without Trial (B’Tselem/HaMoked, 2009:19-21) for details of dialogue when defense counsel tries to gain access to privileged evidence from the military prosecutor. The report describes the imposition of privilege as “sweeping”, and quotes military judge Elyakim Rubenstein as announcing in cases of privileged evidence the judge “must be an eye and mouth for the persons from whom the material is hidden” (Majdi Ta’imah v State of Israel, Decision 09/11/06).

¹⁴⁵ The trial proceedings are usually conducted in Hebrew, which few Palestinians speak, and so translations are provided by soldiers adding to the power imbalance in which the Israeli military runs “the entire show” - the judge, prosecutor, translator and all the court staff are from the military (Addameer, 2012:17). This power relationship with respect to language is also regularly played out at checkpoints where IDF soldiers yell orders in Hebrew, make arrests using Hebrew, and many of the forms and documents Palestinians are required to fill out in order to travel are printed only in Hebrew, leaving Palestinians to “depend on the goodwill of the clerks to explain what documents have to be brought”, or pay for translators. “Goodwill toward Palestinians is in short supply in the Israeli Ministry of the Interior” (Makdissi, 2008:48,97).

¹⁴⁶ Critics of Israel’s manner and frequency of administrative detention include: Amnesty International (2012) Starved of Justice: Palestinians Detained Without Trial By Israel; Emanuel Gross (2001) Human Rights, Terrorism and the Problem of Administrative Detention in Israel: Does a Democracy Have the Right to Hold Terrorists as Bargaining Chips?; Yael Berda, (2011) The Security Risk as a Security risk: Notes on the Classification Practices of the Israeli Security Services; Shiri Krebs (2012) Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court; Tamar Pelleg-Sryck (2011) The Mysteries of Administrative Detention; Maya Rosenfeld (2011) The Centrality of the Prisoners’ Movement to the Palestinian Struggle against the Israeli Occupation: A Historical Perspective. In July 2012, the UN Committee Against Torture asked Israel to explain the increased number of Palestinians subjected to Administrative Detention through military orders (UN CAT, 2012:2).

¹⁴⁷ On 05/11/89 1,794 Palestinians were in administrative detention; during Operation Defensive Shield in the second Intifada on 08/12/02 there were 960 administrative detainees by February 2003 there were 1,140 with an average of 765 at any given moment between 2005-07 (B’Tselem/HaMoked (2009:13)

¹⁴⁸ Addameer’s report is based on the findings of a team of lawyers who visited 20 administrative detainees in different prisons.

proceedings have become an “assembly line” in which “enemies, terrorists, or just ‘others’ are constantly losing” their freedom in a manner which suits only Israel’s security interests (Krebs, 2012:314).¹⁴⁹

Administrative Detention contravenes the “fundamental principles of every proper legal system” (Baker, 2011:104). Given it is integral to Zionist carceral practice, it undermines Israeli claims of legitimate practice. As Chapter 6 below shows, this systematic and deliberate policy of denying Palestinians their right to trial is at the top of the list of prisoner grievances, and administrative detainees have been at the forefront of recent, dangerously prolonged hunger strikes to protest their detention.¹⁵⁰

5.5 Torture

“...beatings like I can’t describe...everywhere...head, face, mouth, arms, balls...many had broken arms, legs, and teeth...when you couldn’t hit them anymore without killing them (the interrogators) poured a fiery liquid like acid on the open wounds”

IDF sergeant ‘AM’¹⁵¹ in Ron, 2000:459

The prevalence of torture within the Zionist prisons positions it as a primary means of oppression, and an “imminent threat” to intimidate all.¹⁵² Torture is the weapon used against individuals and groups “who oppose existing order” - peasants in Mexico, Blacks under South African apartheid, the Islamic Front in Algeria, and, Palestinians under occupation (Gordon, 2009: 159). Torture pays a Foucauldian attention to the body, but also to the soul, scarring it through threats and isolation so as to induce depression and a sense of dependence on interrogators (Ron, 1997:285-8; Ron, 2000:458; Shoughry-Bardarne, 2011:120)¹⁵³.

During the first 32 years of the occupation most Palestinian detainees endured torture or ill-treatment that the police, guards, doctors, nurses, judges, prosecutors and soldiers were complicit in. Detainees were “dragged

¹⁴⁹ Krebs conducted systematic empirical analysis of 322 Administrative Detention cases decided by the Israeli Supreme Court between 2000 and 2010

¹⁵⁰ On October 30, 2012, Palestinian political prisoner Hasan Safadi was released from Administrative Detention after two almost back-to-back hunger strikes totaling 168 days. The first hunger strike ended in mid-May after 73 days, but when he was sentenced to a further six months Administrative Detention instead of being released, he resumed his strike, this time for 95 days (IMEMC News, 30/10/12).

¹⁵¹ AM are the initials of a former IDF sergeant who tortured young Palestinian males suspected of minor offences.

¹⁵² In July 2012, the United Nations Committee Against Torture (UNCAT) posed 59 questions to Israel with respect to its use of torture and non compliance with the UN convention against torture. These included questioning by Israel has not removed the “defence of necessity from its Penal Law as a possible justification for the crime of torture in the context of physical interrogation methods by the ISA”. UNCAT also asked for Israel to answer reports of “painful shackling and binding, immobilization in stress positions, sleep deprivation and the use of threats and verbal abuse during interrogations” (2012:1). As of November 2012, Israel has not replied.

¹⁵³ Isolation and solitary confinement are considered by human rights and prisoner rights groups to be punitive measures bordering on, and often tipping into, torture. Ending isolation of prisoners, some of whom have been cut off from even the prison world for years, was one of the demands agreed to in the May 14, 2012, deal to end a mass prisoner hunger strike.

into courtrooms stinking, shivering and crying. It was common knowledge” (Dayif, Hesketh, Rice, 2012:8).¹⁵⁴ When GSS officers were caught lying to military judges about systematic use of torture, the Israeli initiated Landau Commission (1977) investigated and found that “torture is sometimes permissible, but lying to the courts is intolerable...torturers must refer to a secret list of permitted and non-permitted methods”.¹⁵⁵ While this technically prevented interrogators from being “original” in their torture methods, it left open notable loopholes in terms of practice (Dayif et al., 2012: 9). Significantly, not one of 700 complaints of torture made to the Israeli Attorney General in the last ten years has led to a criminal investigation (Dayif et al, 2012: 50; Shoughry-Badarne, 2011:120-1).¹⁵⁶

All “evidence” points to special methods being preauthorized, thereby skirting the intention of the Israel High Court (IHC) ruling which prohibited brutal or inhuman means being used during investigations (B’Tselem, HaMoked¹⁵⁷ 2007:iii). GSS investigators knew that if they invoked the ‘ticking bomb’ they would likely avoid criminal liability for using physical pressure in such extreme cases, or with certain classes of suspects.¹⁵⁸ Prison watchdog groups have noted a reduction in - not an elimination of - extensive use of the most brutal forms of torture, but now there is also evidence that interrogators are taking care not to leave obvious marks on the body. Contrary to Foucault’s theory that imprisonment itself is the modern form of punishment with the body no longer the “constituent element of the penalty”, in Zionist prisons beating continues and is enhanced with squeezing testicles, cutting off prisoners’ air supply, sleep deprivation, body position abuse, drastic temperature changes and persistent noise (Foucault, 1977:11).

Torture is considered a useful “clandestine operating code” within the Zionist carceral system, because it extracts forced confessions when evidence is difficult or impossible to gather and thereby legitimates mass detentions. The resulting conviction rate based on such confessions in turn satisfies military prosecutors,¹⁵⁹ validates the state’s “savage restraint” as opposed to lethal force, and alleviates the threat a massive prison population poses to the army’s lawful image or that of Israel as a “lawful occupier” (Ron, 2000:455-460). While torture within the Zionist carceral regime coerces confession it is also a tactic to silence political activists in

¹⁵⁴ Dayif, Hesketh and Rice are co-editors of a major report On Torture which is a joint initiative by Adalah (the Legal Centre for Arab Minority Rights in Israel), Physicians for Human Rights - Israel (PHR-Israel) and Al Mezan Centre for Human Rights in Gaza. The 107 page report presents extensive evidence of use and methods of torture, the officials complicit in it, and the torture of juveniles. It includes analysis of international conventions against torture, primary source data and affidavits from tortured detainees, and discussion on the increased use of torture in the name of ‘counterterrorism’ following 9/11 and the wars in Afghanistan and Iraq; See also Laleh Khalili, Ch. 5 in Thinking Palestine (2008); Walid Daka, Ch. 22 in Threat:Palestinian Political Prisoners in Israel (2011); Nahla Abdo, Ch. 9 in Thinking Palestine (2008) for graphic primary source accounts from Palestinian women detainees of sexual assault during interrogation, humiliation such as interrogations while naked, denial of sanitary products etc. See also referral to UNGA, 32nd session (July 5, 1977) outlining Sunday Times investigation implicating all Israel’s security services in methodically organised torture to extract information, confessions and ‘evidence’ for use in court trials at <http://unispal.un.org>.

¹⁵⁵ The Landau Report was split into two parts: the first accepted the GSS contentions that moderate force was needed in the fight against terrorism and legal restraints had meant GSS officers had no option but to lie about using torture; the second part outlining approved interrogation methods was not published and remains secret (Morgan, 2000:185).

¹⁵⁶ UNCAT’s 2012 report also asked Israel for details of how many of these 700 complaints have been “properly or impartially investigated, and it wants “data on the perpetrators prosecuted and penalties imposed for the acts of torture or ill-treatment” (p.5).

¹⁵⁷ HaMoked - Centre for the Defence of the Individual - is a human rights organization established in 1988 originally to safeguard the rights of Palestinians under occupation during the first Intifada.

¹⁵⁸ According to the ticking bomb scenario, the principle of the ‘lesser evil is applied’ - that is while it is evil to harm the body or honour of the detainee, in extreme cases this has to be weighed against the wider or greater evil that could be caused innocent persons if the detainee was not forced to confess he/she had laid a bomb or had information relevant to such a possibility (B’Tselem, 2007:29). See UNCAT for reports on Israel’s use of torture. Amongst 59 questions to Israel about its use of torture was a request for “detailed information on the number of Palestinian detainees interrogated since 2002 under the “ticking time bomb” exception (12/07/12).

¹⁵⁹ 95% of cases do not come to trial, but are settled by lawyers and judges negotiating the sentence once the defendant has confessed (Abdallah, 2012:1)

particular, in order to break them and suppress resistance. Yet torture is now seen by Palestinian prisoners as “normal” and so unless torture is particularly harsh, it is rarely even reported (Dayif, et al., 2012:48). Sexual torture, which Israel knows undermines traditional Palestinian sexual mores, is under-reported because of a Palestinian/Arab societal stigma associated with breaches of ‘virtue’ and manhood (Peteet, 1994; Abdo, 2008).

Torture does not take place in a void. It is conducted under the auspices of the Zionist occupier’s law enforcement (B’Tselem, 2007:iii). Thus it is tied directly to the engine of the occupation. Torture violates individual Palestinian rights, and its harmful psychological and physical effects are akin to post-traumatic stress disorder (PTSD), particularly amongst children (Dayif et al., 2012:87-90). The consistency with which torture is reported by prisoners is evidence that it is a structural mechanism within the Zionist prison. The task of such institutionalized punishment is to hurt, humiliate and terrorize Palestinians. As such it falls outside the disciplinary focus of Foucault’s modern prisons, reflecting instead a brutality which has much in common with the counterinsurgency practices of the British colonials or the ancien sovereigns.¹⁶⁰ At each stage the intent is to dominate in a way which extends authority, but as Chapter 6 confirms, even state sanctioned torture has failed to completely break or silence Palestinian resistance.

¹⁶⁰ Khalili refers to techniques used in Northern Ireland, Malaya, Kenya, Cyprus, British Cameroons, Brunei, British Guiana, Aden, and Palestine. They are also documented in Guantanamo, Bagram Airforce Base in Afghanistan, and in Abu Ghraib, (2008:110).

5.6 Children - terrified, arrested, detained, tortured...killed

Palestinian children are treated as potential terrorists and so subjected to a “spiral of injustice” and a harrowing litany of abuse (Macintyre, 2012; Sherwood, 2012). Consideration of Palestinian imprisonment would be remiss if it did not pay attention to the Zionist prison’s most vulnerable inhabitants, all born in occupation and living daily with its consequences. Every year 500-700 Palestinian children have some direct contact with the Israeli military justice system and while in 2009 Israel increased the age of majority for Palestinian children from 16 to 18, adult sentencing provisions still apply to 16 and 17 year olds.

Israel rejects that its ratification of the UN Convention on the Rights of the Child (UNCRC) binds it beyond its own borders. The British Foreign and Commonwealth Office rebuffed that claim as a factual and legal unreality, considering absurd Israel’s argument that -

“children who are arrested by the Israeli Defence Force, interrogated by either the Israeli police or the Israeli Security Agency, held in Israeli prisons and judged by Israeli military courts are not within the jurisdiction of the State of Israel” (2012:par.30).¹⁶¹

Israel’s discriminatory treatment of Palestinian children, compared with its treatment of Jewish children, was fundamental in the British delegation’s assessment of “irreconcilable accounts” of arrest and detention practice in the OPT. Palestinian and Israeli NGOs, UN agencies, lawyers, former Israeli soldiers and Palestinian children detail nighttime raids, blind-foldings, painful wrist binding, transport to interrogation centres while face-down on the floor of military vehicles, verbal and physical abuse, not being informed of rights - including the right to silence or a lawyer, forced signing of statements in Hebrew which children don’t understand, denial of education, and plea bargains to try and reduce sentences - guilty or not (pars. 36-37). Such accounts are corroborated by former IDF soldiers in *Breaking the Silence*, but conflict on every point with those proffered by the Israeli government departments, military judges and prosecutors (pars. 38-40). The official Israeli line is not believed by the investigating British delegation.

¹⁶¹ The June 2012 report by nine British lawyers and QCs, and funded by the British Foreign and Commonwealth Office is the result of the delegation’s visit to the West Bank in September 2011. It found Israel in breach of several aspects of the GCIV and the Convention on the Rights of the Child. The delegation expressed at length its concerns at the differentials between the treatment of Israeli children and Palestinian children. The age of majority for Palestinian has been raised from 16 to 18 as it is for Israeli children, but the delegation notes “major differentials in the law governing the treatment of Palestinian children and that governing Israeli children” and “serious differentials in procedure and practice” (par. 14). Israeli children are subject to the Israeli civilian legal system while Palestinian children are subject to the Israeli military detention system; Israeli children are permitted to have parents and/or lawyers present during questioning while Palestinian children are not; Israeli children can only be detained for 12-24 hours before seeing a judge - it is 8 days for a Palestinian child; the maximum period of detention without access to a lawyer is 48 hours for an Israeli child and 90 days for a Palestinian; maximum period of detention without charge for an Israeli child is 40 days compared to 188 for a Palestinian child, and the maximum period of detention between being charged and conclusion of trial is 6 months for the Israeli child and 2 years for the Palestinian child (par.19). Critical to the jurisdiction of military law is children as young as 14 can be subject to the same penalties as adults for throwing stones (the most common offence), where the maximum penalty ranges between 10 and 20 years (par. 23).

5.7 'Atfal al-Hijara' - Children of the Stones¹⁶²

“Mahmoud was taken by jeep, handcuffed and blindfolded. Local residents demanded that the officer release the child. The officer replied that the child would be released only if the stone throwing in the village stopped, thereby using the nine-year-old child as a hostage for the conduct of the entire village”

B'Tselem, 2011:33.

The message Israel sends to Palestinian children is that they are not beyond the reach of the punishment, intimidation or coercion of the occupying forces. However, the very fact that the vast majority of children are arrested for stone-throwing is demonstration that Israel's security imperative is a “smokescreen to obscure deliberate policies of collective punishment against a civilian population” (Cook et al, 2004:9).



14-yr-old Fares Awdeh at Mintar crossing, (29/10/00). He was shot and killed by the IDF 10 days later¹⁶³

¹⁶² This term is used to refer to children who resist the occupying forces by throwing stones (el-Helah, Itani, 2010:15). Military Order No. 898 permits the arrest of children without warrant for throwing stones; Military Order 378 permits the Israeli police, military or even Israeli settlers to detain a Palestinian child merely suspected of violating any military order; Military Order 1500 allows Palestinian child and adult detainees to be held for 18 days before seeing a judge (Cook et al, 2004:51-2, 115, 117).

¹⁶³ Awdeh's story is in el-Helah and Itani, The Suffering of the Palestinian Child Under Occupation, (2010:91)

IDF soldiers admit to going out looking for children throwing stones. They shoot them, aiming at kneecaps for the throwing of regular sized stones, and shoot to kill for larger stones (Breaking the Silence, 2012:31-4). Official IDF orders advise soldiers “every kid you see with a stone, you may shoot him” (p. 51). Children are also shot dead, even when they don’t have stones -

“There were lots of guesses about his age. First they said he was 8, later, that he was 12. I don’t know. In any case he climbed on an APC and one of our sharpshooters killed him....we were looking for kids” (Breaking the Silence,2012: 13)¹⁶⁴.

The penalty for shooting a child is a 100 - 200 Shekel fine. Those IDF soldiers who kill Palestinian children throwing stones face neither trial nor imprisonment because such ‘incidents’ of death rarely go further than the battalion commander. Soldiers are permitted to shoot children throwing stones because a stone “is a murder weapon” (p.41).¹⁶⁵

¹⁶⁴ Anonymous account from 1st Sergeant, Paratroopers, Jenin included in the ‘Breaking the Silence’ (2012:13); See also Gordon (2008:201) for Israeli sniper comment that shooting children “twelve and up is allowed. He is not a child anymore; he is already after his bar mitzvah”.

¹⁶⁵ On 30/09/88 Jewish Rabbi Moshe Levinger shot and killed one Palestinian and wounded another. Following a plea bargain he served three of a five month prison sentence (B’Tselem, 1994 Law Enforcement on Israeli Citizens in the Occupied Territories); On 15/12/2000 17-yr-old Murad Rashad Abu Judeh was sentenced to 10 months, a one-year suspended sentence for any offence within five years and a 3,000 NIS fine for throwing stones (Cook et al., p. 114). In October 2012, an Israeli border policeman was found “not responsible” for shooting dead 10-yr-old Palestinian, Ahmed Mosa. Mosa had been shot twice in the head in 2008 while demonstrating against the Separation Wall. The Israeli Magistrates Court concluded “it has not been proven that the bullets that were shot at the boy were the reason behind his death” and the policeman was exonerated (Alresalah Press, 31/10/12).

5.8 Night visits

“The masked soldier whispered in my ear, “We’ll rape you one by one’

Murad Abu Judeh, 17.¹⁶⁶

“In the afternoon, I confessed because I was very tired and my whole body ached, and I wanted to end the interrogation and the beatings by the two interrogators. I confessed that I threw stones, and I signed my confession”

Yazen a-Sha’ar, 16.¹⁶⁷

“We went in house by house, knocking at 2 in the morning...they are dying of fear, girls pee in their pants from fear...”

IDF soldier, Kfir Brigade, Nablus District, 2009¹⁶⁸

Most Palestinian children are arrested between 10pm and 7am,¹⁶⁹ soldiers - often masked - break in to homes which they then deliberately destroy. They break floors, closets and tiles, turn over sofas and beds, throw plants and pictures (BtS, 2012:42). Night arrests are designed to make “minors extremely malleable” because having been rushed from their beds they are tired and scared. They are usually prevented from sleeping before interrogation which could be much later that day or the next night - “every time I closed my eyes, a soldier kicked me in the legs with his heavy boots” ((B’Tselem, 2011:27-28).

5.9 Child detention

Arrest and detention of children is designed to deter resistance “intimidate and scare you [and] as a political tool to discourage Palestinian political activism more generally” (Kestler-DAmours, 2011). The children are seen as “soft targets...easily yielding grist for their military intelligence...the children speak quickly” and so preparing for prison has become imbued in Palestinian “social pedagogy” with the main lesson “to teach kids...not to confess” (Largerquist, 2004:35).

Upon arrest children’s rights are “flagrantly violated [by] the army, the police, the GSS, the courts, and the IPS at every stage of the proceedings - from arrest, interrogation, trial, serving a sentence and upon release (B’Tselem, 2011:25). Under military order 1651 which establishes 12 as the age of criminal responsibility, minors under 14 can face up to a maximum of six months in prison (Chergui, 2012:2). Sentences are determined by Israeli policy objectives as influenced by the current political situation, and evidenced in the increased severity of sentences during the intifadas.¹⁷⁰ Administrative Detentions for children have also increased dramatically, in

¹⁶⁶ Murad was arrested at 12:40am, 15/012/2000 from Al-Arroub Refugee Camp, Hebron District (Cook et al., 2004:53)

¹⁶⁷ Yazen a-Sha’ar was arrested at 1:30am from his home in Husan and not permitted to sleep until his interrogation that afternoon, (B’Tselem, 2011:36)

¹⁶⁸ Anonymous testimony in Breaking the Silence , (2012:41), corroborated in reports of B’Tselem, Addameer, Amnesty International.

¹⁶⁹ Adult Palestinians, particularly political activists and organisers involved in popular resistance initiatives against the occupation are also routinely arrested during the night in violent storming of homes, and often detainees are not permitted to get dressed before being taken to interrogation facilities (B’Tselem, HaMoked Kept in the Dark (October 2010); Palestine Solidarity Project, 22/05/12; Addameer, The Tactic of Arresting Palestinian Children, (2011).

¹⁷⁰ See Cook et al for details of individual cases, including a 14 yr-old boy sentenced to six and a half months and a 2,000NIS fine for stone throwing; a 16 yr-old to 18 months and a fine and a 17-yr-old to 20 months and 4,000 NIS fine (2004:85)

parallel with an overall increase across the prison population. Children are detained with adult prisoners in prisons and camps run by the Ministry of Defence and the IPS - mainly Megiddo and Ketziot (tent prisons), Hasharon and Ofek, and all female Palestinian child prisoners are held in Ramleh Women's Prison.¹⁷¹ Child prisoners are routinely denied family visits, adequate sanitation, outdoor recreation, medical care and educational material; they are overcrowded and subjected to harsh punitive measures and orders in Hebrew which Palestinian children do not understand (Cook et al, 2004: 87-88). Children are isolated, shackled to their beds and beaten -

"14-year-old Sanaa' Amer.....her arms were tied behind her back and she was kicked repeatedly in the stomach, leaving her coughing up blood" (Cook et al. 2004: 97).¹⁷²

Targeting children drags them into the web of repression through collective punishment, but it also verifies a particularly nefarious brutality in this occupation. The testimonies of former IDF soldiers who admit to terrorizing children - heavily armed military dragging sleepy children from their beds and homes in the middle of the night - are not typical, legitimate policing/soldier practices. Rather, they stand as testament to an ideologically loaded strategy that is not satisfied with dominating Palestinian land, resources and lives, but targets the future through Palestinian children.¹⁷³

5.10 Conclusion

This chapter has delivered statistical evidence and primary source narrative to present the strategy of a Zionist state which "rests on its power to oppress" and thereby sanctions violence and repression at the operational and tactical levels of its administration (Pappe, 2008:156). Palestinians are collectively punished through Israel's politicized and discriminatory legal system which systematically abuses their human rights with, under certain circumstances, an Agamben-like impunity. It is clear the threat of incarceration hangs heavily over every Palestinian family in the OPT, condemned to Foucauldian "extra-penal incarceration" so long as the occupation endures (1977:297). Arrest, Administrative Detention and torture as outlined above, are tactics of domination and control of the bodies and souls of Palestinian prisoners, their families and communities. In the Foucauldian non-theological sense, the souls of the colonized are targeted for punishment, be they prisoners or OPT residents "supervised" as if prisoners (1977:29). Primary data accounts from prisoners and former IDF personnel unmask Zionist carceral practice as a strategy which entails a particular tactical mix in order to humiliate, terrorize and deter Palestinians from political activity. In the case of children, it is especially noxious as it aims to shatter the possibility of a self-determined future for the next generation. The conditions of Zionist prisons are deliberately harsh, adherence to international law relevant to the treatment of prisoners is widely disregarded, and the policing methods which round up Palestinians in extraordinary numbers are evocative of the British colonials of the Mandate era rather than the 21st Century democracy the occupier claims to be (Pappe, 2010:157). The Zionist authorities have identified Palestinian children, women and men as security threats sentenced to either Foucault's carceral sites of institutionalized punishment, or subjected to prison

¹⁷¹ Ramleh prison is in Israel, just outside Tel Aviv, and so when Palestinian children are detained there Israel is in breach of the GCIV by transporting prisoners into the country of the occupying force. While family visits to prisoners are regularly problematic, they are even more fraught when children are involved. Cook, Hanieh and Kay discuss the impact of child detention on the entire family and the community - "the fabric of family life is torn apart...the arrested children generally come from large, poor families", from rural villages and the camps, who face lengthy processes trying to secure permits to visit (2004:6-7).

¹⁷² Cook, Hanieh and Kay (2004) include throughout Stolen Youth numerous testimonials of children, and adults who have witnessed mistreatment of children.

¹⁷³ See Cook, Hanieh, Kay for discussion on the reported higher levels of aggression, withdrawal and nervousness reported amongst Palestinian children. Palestinian children also display "widespread fear of soldiers (nearly 50 %); fear of leaving the house (28%) and increased aggressive behaviour (45%) (2004:130). Also A.M. Baker (1990) 'The Psychological Impact of the Intifada on Palestinian Children in the Occupied West Bank and Gaza: An Exploratory Study'; and, R. L. Punamaki, (1987) 'Psychological Stress Responses of Palestinian Mothers and their Children in Conditions of Military Occupation and Political Violence.

regiments in the Foucauldian carceral archipelago of the OPT. Palestinians personify Foucault's delinquents - and as such, they are stripped of their rights, under siege, and in accordance with Agamben's most extreme concept, killed with near or total impunity. Palestinians go to prison because they don't want to live in one. The reality is they do (Largerquist, 2004:35).

Chapter 6

TURNING THE TABLES: PALESTINIAN RESISTANCE TO THE ZIONIST CARCERAL REGIME



Banksy on the Separation Wall (2012)¹⁷⁴

“...power is not exercised simply as an obligation or a prohibition on those who do not have it; it invests them, is transmitted by them and through them; it exerts pressure upon them, just as they themselves, in their struggle against it, resist the grip it has on them.”

Foucault, 1977:27

¹⁷⁴ Banksy is a British guerrilla artist who has painted a number of images on the Separation Wall. This depiction of a Palestinian girl frisking an IDF soldier was retrieved from Searching For Banksy on the West Bank Wall at <http://www.matadornetwork.com/abroad/searching-for-banksy-on-the-west-bank-wall/>. Hundreds of images can be found via a google search for 'graffiti images on West Bank Wall'.

6.1 Introduction

Palestinian resistance is a counter-strategy to the grip of the powerful Zionist occupier. The belligerent occupation has produced a power-resistance nexus which exemplifies Foucault's notion of a social relationship in which power always meets resistance "right down into the depths of society" (Foucault, 1977:27). Power is not the exclusive privilege of Israel, despite its military might. Rather, power is demonstrated in both the mechanisms of occupation and in Palestinian agential resistance which challenges to the point where even inside the Zionist prisons, a sophisticated Palestinian society endures. In examination of Palestinian resistance this chapter is mindful of the distinct imbalance in power as measured by the most basic aspects of daily routines being "out of the control of Palestinians under occupation" (Peteet, 1994:31). Instead of defeat however, this imbalance has triggered an evolution from armed struggle which failed to overthrow occupation, to non-violent acts which undermine Israeli authority and, within the Zionist carceral space, redefine the technologies of power.

This chapter addresses how mechanisms of subversion within the prison walls percolate into wider Palestinian society for the simple reason that virtually every Palestinian family has an intimate connection to a prisoner. This reality strengthens the resolve of an "entire nation that refuses to accept its own negation" (Aruri, 1978:48). The two most prominent means of resistance within the prison walls - the prisoner hunger strikes and prisons as 'universities' - are shown to make Foucault's case that where there is power there is resistance. This chapter includes case studies as tangible revelations of the extent to which prisoners were prepared to go in the 2011-2012 hunger strikes in order to force the Zionist authorities to act within the law. The unprecedented lengths of starvation triggered extensive attention, from world leaders, NGOs and international media, and this chapter addresses the deal that ended the strike, followed by Israel's violations of that deal. Prisoners have historically commandeered the prison space as the locus of their own education in, and organization of, Palestinian nationalist politics. Prisons as universities are shown in this chapter as a resistance tactic that ensures a succession of well connected and politically astute Palestinian leaders passing in and out of the ever-revolving prison doors. These key forms of resistance undermine the Zionist carceral mechanism, and have become the "natural extensions of the struggle of our revolt and our people" (Bornstein, 2001:558).¹⁷⁵ Resistance within the prison has become a parable of resistance outside in the larger prison of the OPT. The empirical and narrative data which follows reveals the intimacy of the connection between Palestinians and their struggle against the occupation. Their persistence is the core of this chapter and is evidence that Israel has failed to discipline or punish Palestinians to the point of Foucauldian docility.

¹⁷⁵ Bornstein's translation of Jabril el-Rajub's (1986) book *al-Zinanzah raqm 704* (Prison Cell number 704).

6.2 The War of Empty Stomachs: The Hunger Strike

“The newest heroes of the Palestinian cause are not burly young men hurling stones or yielding automatic weapons. They are gaunt adults, wrists in chains, starving themselves inside Israeli prisons”

Jody Rudoren, New York Times, 03/05/12

“On his seventy-third day of hunger strike, Thaer Halahleh was vomiting blood and bleeding from his lips and gums, while his body weighs in at 121 pounds - a fraction of his pre-hunger strike size”

Falk and Erakat, 2012 in Jadaliyya 1/05/12

“I shall be free, alive or dead, within a month”

Terrence MacSwiney, IRA hunger striker who died after 74 days without food Falk, in Foreign Policy Journal, 2012

Prison hunger strikes represent the “ontology of potentiality” (Ziarek, 2008:98) in that prisoners’ own bodies can become the sites of the exercise of power and the contestation of authority. Imprisoned Palestinians are consistent with Agamben’s concept of bare life, but their very lives are also the source of latent possibilities for confronting power through well established forms of resistance. Prisoners on hunger strike gamble with their health, and their own mortality.¹⁷⁶ Yet this “non-act of self-starvation” exposes the repressive nature of the Zionist carceral regime by contesting the physical and ideological terrain upon which the regime is built (Ziarek, 2008:100). Prison hunger strikes have long been a form of prisoner resistance to prison conditions such as torture, isolation, limited or no family visits and Administrative Detention¹⁷⁷. Hunger strikes are actions of last resort when prisoners have no other form of protest or access to judicial safeguards. By starving, prisoners are engaging in a “powerful symbolic appeal to the conscience of humanity” for their international legal rights (Falk, Erakat, 2012). They aim to “shame the authority into giving in to whatever demands are being made”, all the while garnering publicity outside the prison (Reyes, 1998:1-6).

Palestinian prisoners consider the hunger strike a means of drawing attention to the goal of ending the occupation.¹⁷⁸ On September 27, 2011, they launched a campaign of disobedience that escalated into a mass,

¹⁷⁶ Reyes (1998, 2007) provides extensive argument on the legality of force-feeding hunger striking prisoners. The World Medical Association (WMA) in its 1975 Declaration of Tokyo and 1991 Declaration of Malta, prohibit the use of force-feeding of prisoners. Reyes argues if the prisoner has “clearly stated that he refuses to be force-fed” then the prison doctor must do his best for the prisoner without resorting to coercion. During the 2012 prisoner hunger strikes, there were (and remain) many concerns for the health of the hunger strikers with calls from Amnesty International and others for Israel to hospitalize or release hunger strikers “on the verge of death” (31/08/12; 06/09/12); calls to stop shackling hunger strikers to bed when they are hospitalised (Addameer 08/09/12); and forcing hunger strikers to leave their beds in order to see their lawyers (Khoury, 03/05/12).

¹⁷⁷ Comparisons between the Palestinian hunger strikers and those in Northern Ireland are regularly made, as with the Good Friday Agreement release of political prisoners and the Palestinian prisoner releases for reasons of “political realism” according to Korn, 2011:77; Korn (2008).

¹⁷⁸ The first Palestinian hunger strike was in 1968, one year into the occupation when detainees in Nablus prison went on strike for three days to protest the “occupation policy of beatings and humiliation...at the hands of the Israeli soldiers, and to demand better human living conditions” (Arar, 2012). Since then hunger strikes became an established tactic of Palestinian prisoner resistance with some lasting as long as 45 days as in Ashkelon prison in 1976. The following prisoners died in hunger strikes: Abdel Qader Abu Elfahm, 11/07/70 - Ashkelon prison; Rasem Abu Elhalawah, Rasem Ali Jaafari, 24/07/80 - Nafha prison; Mahmoud Fritkh, 1984 - Junaid prison; Hussein Nemr Obaidat, 14/10/92 - Ashkelon prison (Palestine Solidarity Project, 20/02/12).

open-ended prisoner hunger strike by April/May 2012.¹⁷⁹ In order to undermine the prisoners' campaign, the IPS administered punishments including increased solitary confinement, prisoner transfers, restriction on access to healthcare, education, books and family visits, an increase in fines, shackling during transfers and lawyer visits, and confiscation of salted water - the hunger-striking prisoners' only nourishment (Amnesty International, 2012). The crackdown on the disobedience inflamed resistance. Khadr Adnan, detained without charge for the sixth time on December 17, 2011, immediately began a hunger strike that positioned him as Argo's "heroic...first actor" - the one who draws others into collective high-risk resistance, in this case, of starvation (2009:654). He is widely credited with opening the latest chapter in Palestinian non-violent resistance which grew into the "biggest act of defiance by Palestinians since the second intifada" (Abu Lebedeh, 2012; al-Sharif, 2012). Hunger strikes are prisoners' nonviolent and selfless means by which to advance freedom, with the power of nonviolence lying in its challenge to subjugation by "Palestinians of all ages and walks of life" (Barghouthi, 2012:6).

6.3 The April 17 - May 14, 2012 Mass Hunger Strike

The 2012 mass, open-ended hunger strike by up to 2000 Palestinian prisoners generated widespread domestic and regional interest and support.¹⁸⁰ On April 17 - Palestinian Prisoner's Day - between 1500 and two thousand Palestinian prisoners in Israeli jails started refusing food and liquid in order to force an end to arbitrary administrative detention, solitary confinement, the storming of prison cells, humiliation of visiting relatives at checkpoints, to have family visit restrictions lifted and medical care improved. Many of the harsh restrictions were collective punishment for the 2006 Hamas capture of IDF soldier Shalit, but even after Shalit's release in 2011 the restrictions continued (Middle East Monitor, 2012:3).

As the number of hunger strikers grew, and the duration of strikes for some exceeded sixty and seventy days, the prisoners vowed to continue until their demands were met. Their official support network claimed the prisoners "will not be defeated by [Israeli] crimes and cruelty as we draft a vision for a decent life" (Samidoun, 2012). The IPS responded by increasing solitary confinement and other punitive measures. The prisoners relied on a "rock solid" commitment grounded in the strength of their numbers and the willingness of some to starve to death, ironically for a more dignified life (al-Sharif, 2012). In the short-term this challenge to institutional power proved problematic for the carceral authorities and the Israeli government, which feared a custodial death would trigger violence.¹⁸¹ Hamas warned of "expected and unexpected" consequences if any of the prisoners died in jail (al-Haya, 2012). The Palestinian Authority warned if any of "our prisoners return in coffins from the occupation's prisons ...the reaction will not remain inside prison walls but will extend to the outside" (Qaraqaa, 2012).¹⁸² Palestinian President Mahmoud Abbas threatened to take the case of the hunger strikers to the United Nations, while the UN itself urged Israel to charge and try the detainees, or release them "without delay" (Abbas, 2012; Sherwood, 2012). Middle East quartet envoy Tony Blair called on Israel to "take all necessary measures to prevent a tragic outcome that could have serious implications for stability and security conditions on the ground" (Blair, 2012). Amnesty International demanded Israel release or charge detainees, end torture and other ill-treatment and fulfill its international obligation to conduct fair trials (Amnesty

¹⁷⁹ The campaign was launched by Popular Front for the Liberation of Palestine (PFLP) prisoners who refused to cooperate with IPS rules including wearing prison uniforms and participating in the multiple daily role calls, as well as embarking on the open-ended hunger strike. They were soon joined by prisoners from other political factions (Addameer, 13/11/11).

¹⁸⁰ International media attention focused mainly on the strikers who were near death, prompting the UN special envoy for Palestinian human rights, Richard Falk, to accuse the international media of being "missing in action" and to claim that had such a massive prison strike occurred anywhere but Palestine the world media would have been "obsessed".

¹⁸¹ This was particularly so as the annual Nakba (the Catastrophe) commemorations of May 15 were fast approaching.

¹⁸² Issa Qaraqaa is the Palestinian Prisoners' Minister. The necessity for such a portfolio underscores the centrality of the prison in Palestinian life.

International, 2012; Dayan, 2012). Conservative Israeli media labelled the strike a “stunt” and a “political tool, much as Gilad Shalit was used as a bargaining chip to obtain the release of Palestinian prisoners”, and warned the Israeli government against negotiating because concessions will only “encourage this method of resistance” (Jerusalem Post Editorial, 13/05/12).

6.4 The Faces of Hunger

Throughout this thesis it is apparent the control and punishment of Palestinians by Israel is intended to dehumanize and depoliticize their struggle. Palestinians are repressed en masse, arrested and incarcerated en masse, categorized as a mass of potential or real security threats, murderers and terrorists, and, as the next chapter illustrates, are exchanged en masse for one Israeli soldier. Palestinians therefore engage en masse in resistance, but as with any nationalist struggle, the movement consists of individuals. For that reason, the following case studies aim to provide an in-context focus through names and stories representative of the thousands engaged in resistance (Punch, 2009:151). The role of the occupation in generating resistance is unmistakable.

Khader Adnan

“I starve myself for you to remain. I die for you to live. Stay with the revolution”

‘Letter from Khader Adnan’s hospital bed’, Samidoun, 12/02/12.

Adnan, 33, Jenin baker, post graduate student and political activist, starved for 66 days to protest his four month Administrative Detention based on ‘secret evidence’. His lawyer brokered a deal with Israeli authorities under which Adnan would end his strike, serve his term and unless new evidence was brought against him, be released on April 17. He gained attention outside the prison for his individual act of starvation when his physical condition began to deteriorate and the focus turned to his potential death. Palestinians in the OPT demonstrated in support, Addameer and Samidoun highlighted his situation, and the media picked up his story. Adnan maintained that his “dignity is more important than his life” (Silver, 08/03/12).

Hana al-Shalabi

“...strip searched by male Israeli soldiers after arrest...kept in solitary confinement...as punishment for her hunger strike.”

Amnesty International, 2012:29.

Al-Shalabi, 30, Burqin Village, West Bank, member of the Islamic Jihad militant group, detained by IDF February 16, 2012. This was just four months after being released from 25 months of Administrative Detention as part of the October 2011 Shalit prisoner exchange. She was released after 43 days without food, during which Physicians for Human Rights-Israel and Amnesty International had warned prison authorities she was “at risk of death” (BBC, 29/03/12). In contravention of the GCIV which explicitly forbids prisoners being deported, Israel exiled al-Shalabi to Gaza. Her village is in the West Bank, but she is confined to Gaza for three years - a move the Palestinian Prisoner Affairs Minister Issa Qaraqaa claims she was pressured to accept (BBC, 29/03/12).

Why is there no one moving to save his life?"

Sarsak's mother on her son's 83rd day without food, 06/06/12¹⁸³.

Sarsak, 22, Rafah Refugee Camp, Gaza, university student and member of the Palestinian National soccer team starved for 96 days before being released. Arrested by the IDF in July 2009 while on his way to a national team contest in the West Bank, Sarsak was branded an illegal combatant and held for three years under Israel's Unlawful Combatants Law (Baroud, 2012.)¹⁸⁴ His arrest epitomized the Zionist occupier's intent on breaking Palestinian society - "if you degrade the national team, you degrade the idea that there could ever be a nation" (Zirin, 2012). Operation Cast Lead (2009) in Gaza killed three other national team players, and goal-keeper Omar Abu Rwayyis was arrested in 2012 on "terrorism charges".¹⁸⁵ Zirin asks what would happen if a member of "Team USA Basketball - let's say Kobe Bryant - had been traveling to an international tournament only to be seized by a foreign government and held in prison for three years without trial or even hearing the charges for which he was imprisoned?". Indeed imagine New Zealand's outrage if All Black Dan Carter or Silver Fern Irene van Dyk were imprisoned by another government and held without trial? An IPS offer of early release was withdrawn when Sarsak insisted it be in writing, and he was not included in the May 14 deal (Addameer, 2012). Sarsak was finally released on July 10, and sent home to Gaza.

These are the human faces of Palestinian resistance. Adnan is Argo's "first actor" taking "daring or heroic action in the name of resistance" which others follow (2009:650); Shalabi represents the degradation of Palestinian society through abuse of women and treatment in contravention of international law; Sarsak exemplifies the occupation's destruction of the hopes of yet another generation. Instead of his talents on the soccer pitch inspiring the pride of a nation, they earned him a prison cell for no known reason. Together these three, willing to die in their demand for dignity, personify the impact of a colonial policing and incarceration order on a population determined to obstruct the Zionist pursuit of a Palestine without Palestinians.¹⁸⁶

¹⁸³ Sarsak's family had not seen him since his arrest in 2009 as Gazan families were not permitted to visit prisoners in Israeli prisons as punishment for the Hamas capture of Israeli soldier Shalit. A reprieve as part of the May 14 deal saw the first Gazan families to visit prisoner in five years travel under the auspicious of the ICRC on July 16, 2012 (Al Jazeera, 16/07/12)

¹⁸⁴ This allows Palestinians from Gaza to be detained for an unlimited amount of time without charge or trial, and in practice contains even fewer protections for detainees than administrative detention orders in the West Bank, (Addameer, 2012, Mahmoud Kamel Mohammad Sarsak).

¹⁸⁵ In early June FIFA President Joseph Blatter wrote to the Israel Football Association expressing "grave concern and worry about the alleged illegal detention of Palestine football players" according to a FIFA statement (Egyptian Gazette, 13/06/12). However a Palestine Football Association bid to have Israel removed as the host of the 2013 European Under-21 Championship failed with UEFA confirming the tournament in Israel "despite a certain amount of pressure being put on us" (ESPN, 18/06/12).

¹⁸⁶ Meissa Irshaid, a lawyer for PCATI (Public Committee Against Torture-Israel) was abused by Israeli Police. When she told an Israeli nurse examining her that her injuries were caused by the police the nurse replied "that does not interest me...if you don't like it here leave this land and go somewhere else" (2011:4).

6.5 The May 14 Deal

“We will have victory, but only through either martyrdom or immediate release...”

Bilal Diab on 75th day without food, 12/05/12

On May 14, 2012, Israeli and Palestinian officials announced a deal to end the mass hunger strike which had involved up to 2000 prisoners for 28 days, and more than two months for several other prisoners.¹⁸⁷ Egypt and Jordan mediated the deal of which the following are the main provisions:

- prisoners would end hunger strikes following the signing of the agreement
- the IPS would end the use of long-term isolation of prisoners for security reasons, and the 19 in long-term solitary would be moved into the general prison population within 72 hours. These prisoners have to agree they will not continue military work from inside the prisons.¹⁸⁸
- family visits for first degree relatives of Gaza Strip (about 400) prisoners and some West Bank prisoners who have been denied visits on security grounds would be reinstated within one month
- the Israeli intelligence agency guaranteed to establish a committee to facilitate the improvement of daily prison conditions
- there will be no new Administrative Detention orders or renewals of such orders for the 308 Palestinians on administrative detention at the time of the agreement, unless secret files contain “very serious” new information (Addameer, 15/05/12; Samidoun, 16/05/12).
- the bodies of Palestinians held by Israel would be returned to the PA as a goodwill gesture.

The deal was immediately the subject of competing Palestinian-Zionist narratives. For prisoners it was an opportunity to demonstrate subversion of the occupier’s power in word and in deed. The Palestinian propaganda machine promptly praised their hard won victory in which - “hunger and pain [must] beat the jailer’s dominance and arrogance” (Samidoun, 16/05/12). Letters hunger strikers had written on the verge of death were released. Bilal Diab who went 77 days without food had, just three days before the deal, detailed for his family his funeral wishes. Halahleh, also on hunger strike for 77 days, apologised to his two-year-old daughter for the occupation having taken him away from her, and explained how she will grow up to know of the injustice of an occupation that has put thousands of Palestinians in prisons, “shattering their lives and future for no crime but their pursuit of freedom, dignity and independence”.¹⁸⁹ Adnan’s letter from his hospital bed cited the extremes of the occupation - humiliation, beatings, senseless harassment, and deprivation of the simplest human rights, as provoking a battle in which the “only thing [I] can do is offer my soul to God as I believe righteousness and justice will eventually triumph over tyranny and oppression” (Adnan, 2012).

Israel responded with propaganda of its own. Alamgor, the Israeli group representing the “families of terror victims” vehemently claimed the deal “opened the “floodgates to high-security prisoners’ demands”. Alamgor Chairman Meir Indor regarded it as a “victory for terrorists”, and the graves of the “terrorist” bodies returned to the Palestinians as part of that deal will “become a monument to martyrdom” (Jeffay, 2012). Netanyahu’s right wing government publicly convicted the administrative detainees despite their never having been tried, with his

¹⁸⁷ On May 15, the day after the deal, Addameer listed Bilal Diab and Thaer Halahleh on hunger strike for 77 days, Sassan Safadi (71 days), Omar Abu Shalal (69 days), Jaafar Azzedine (54 days). Mahmoud Sarsak who continued his hunger strike after the deal was on strike for 96 days before concluding his own deal.

¹⁸⁸ Some of whom had been in isolation for ten years according to Addameer and Amnesty International (2012:6).

¹⁸⁹ Diab’s and Halahel’s letters were widely published and readily available on line. These excerpts are from <http://www.rense.com/general95/hungdeal.html>

office declaring Adnan to be “involved in planning terrorist activities against Israel” and chastised international calls for his release “so he could kill our kids, [they] wouldn’t want him near their kids” (al Arabiya, 20/02/12).

The two responses underscore Foucault’s dueling power-resistance relationship. The prisoners exercised their agency and achieved their potentiality to confront Zionist authority. Their many grievances were exposed internationally and addressed domestically. However, this victory was short-lived. The Zionists conceded a tactical defeat in agreeing to the deal, but almost immediately reneged on the deal (Ma’an News 24/06/12; AFP, 27/05/12; Wafa, 27/05/12).

6.6 Israel Violates the Deal

Israel’s failure to honour all the May 14 commitments is consistent practice in its dealings with Palestinian prisoners. Israeli based Physicians for Human Rights (PHR-I) accused Israel of perpetuating policies “entrenched in the spirit of revenge...institutionalized racism and contempt for anyone not Jewish” (Addameer, 2012; Lendman, 2012).¹⁹⁰ The particular violations are continued use of Administrative Detention with 30 renewed detentions in the weeks following the agreement, new detentions, and denial of proper medical treatment for sick inmates (Abu Toameh, 2012; Browning, 2012; Salem-News.com, 2012).¹⁹¹ Israel has simply “returned to business as usual” treating Palestinian prisoners as “criminals and terrorists”, with suppression and violations an extension of the process against Palestinian people in general (Lendman, 2012; Amnesty International, June 2012).¹⁹² As a consequence Hassan Safadi and Samer Al Barq renewed their hunger strikes.¹⁹³ Safadi had ended a 71-day strike on the promise his Administrative Detention would not be renewed, but in “blatant violation of the agreement”, it has been extended for another six months and prisoners are still being placed in solitary confinement (Ma’an News, 24/06/12; Amnesty International, 31/08/12).¹⁹⁴

6.7 The Prison as University

The second form of in-prison resistance under consideration is the Palestinian prisoners’ active commandeering of the prison space for their own purposes. The ‘prison as university’ strengthens the resistance by providing for regular and nationalist education, facilitating political recruitment and organization, grooming future Palestinian

¹⁹⁰ Lendman quotes PHR-I physician Amaney Dayif, and Addameer’s legal counsel Sahar Francis.

¹⁹¹ Addameer reports one of its researchers, Ayman Nasser, is being held for interrogation on the basis of “secret evidence” and fighting to have the IPS allow him to access the medication he requires on a daily basis (Addameer, 18/10/12). See also *Doctoring the Evidence, Abandoning the Victim: The Involvement of the Medical Profession in Torture and Ill-Treatment in Israel*, (2011) Public Committee Against Torture, Physicians for Human Rights-Israel, for extensive evidence and discussion on doctors ignoring complaints of prisoners who require medical assistance for existing conditions, and/or as the result of torture and ill treatment by the IPS and Israel Security Agency interrogators.

¹⁹² Amnesty’s June 2012 report *Starved of Justice*, (Appendix 2, p. 55) lists the three new detention orders between May 14 and 31, together with the 30 renewed orders, including those of eight members of the Palestinian Legislative Council.

¹⁹³ On September 14, the European Union requested Israel “do all it can to preserve the health of Mr al-Barq and Mr Safad” and it reiterated its “longstanding concern about the extensive use by Israel of Administrative Detention orders” (Ashton, 2012).

¹⁹⁴ As of September Samer Al Barq has started for more than 105 days; Hassan Safadi, more than 75 days (Addameer, Al-Haq, Physicians for Human Rights-Israel (PHR-IL, 03/09/12; Amnesty International, 06/09/12). An Israeli military court also extended the administrative detentions of Hamas MP Mohammed al Natshe, former Fatah MP Hossam Khader and Hussein Abu Kweik (Al Harthi, 28/05/12); Hussein Abu Kweik was promised release but his detention has been extended (Lendman, 2012). With respect to the health of the hunger strikers, Jamil al Khatib who represented strikers Bilal Diab and Thaeir Halahleh, was told by a military court judge that his clients are “responsible for their own state of health” and “their hunger strike was their choice and does not affect the danger which they pose” (Al Arabiya, AFP, 23/04/12).

leadership, and building the Palestinian narrative which promotes societal cohesion - all through using the mind and body as tools to challenge Zionist carceral authority.

Inside the prisons Palestinians build their “internal order/organisation/regime” to counter and challenge prison order (Rosenfeld, 2011:6-7). Israeli prisons are “major sites of the Palestinian national movement” evidenced in the writings and interviews of many former political captives, establishing a literary history of Palestinian political captivity and a recognised “pedagogy of revolution...developed by the political captives” (Nashif, 2008:72-77). The agenda driving the perpetuation of harsh conditions in Israeli prisons is one of control. As Foucault outlined, control within the prison system is about resocializing prisoners into docile and submissive bodies/souls. Consistent with Foucault, Israeli prisons have failed in that quest as demonstrated in Palestinian prisoners resisting with a counter-hegemonic construction of a Palestinian culture, built on the praxis of writing, reading, lecturing, creating and disseminating. In this way the technologies of power over the body which are the focus of Foucault’s modern prison, have in turn been usurped by the prisoners themselves to regain control through their bodies as weapons of resistance (Nashif, 2008:73-4). The prisoners have resisted the “spatially defined limits of the colonizers by expanding the agency of the colonized” to the point where prisons holding very long term inmates are “the most communally organized, intellectually elaborate, culturally democratic and politically sophisticated and mature” (Nashif, 2008:75).¹⁹⁵

In these appropriated pedagogical environments, some Palestinians learn to read and write first, second and even third languages, including Hebrew, the language of the occupier. They study security issues operating outside the prison, their own history and that of Zionism, and the traditions of Palestinian life. This is an established “reciprocal responsibility” of the ‘educators’ and ‘students’ generating loyalty and self-sacrifice to the group (Bornstein, 2001:557). This loyalty is paramount in the fight against the Zionist cultivation of collaborators in order to sow division amongst the never ending stream of “naive young men cycling through the prisons” (Tamari in Bornstein, 2001:557). Palestinian prisoners negotiate the perils of collaboration by keeping secret the prison leadership and cross-examining new prisoners on their origins, offense, family ties and friends. This information is then cross-checked with contacts outside the prisons (Bornstein, 2001:557-8). As the young men who are educated in prison are released, they leave equipped to “take up the mantle of the newly detained...this ensures a leadership in spite of the campaign of massive arrests and detention of young males” (Peteet, 1994:39).

Learning and passing on knowledge is a patriotic duty in the “struggle to defend our rights against Zionism and colonialism” and is central to the development of a “patriotic and revolutionary culture that can be a pillar of the liberation movement” (al-Azraq 2009:1).¹⁹⁶ This is particularly so given Palestinian books on their own history and colonization were banned by Israel, “burned or confiscated by the army” (p.1).¹⁹⁷ Israeli texts, political discourse, curricula and media erased Palestinian reality replacing “expulsion, colonization, massacres, rape, and the burning of villages” with tales of Jewish “heroism, glorious campaigns...moral courage...military competence” (Chomsky, Pappé, 2010:59; Winstanley, 2012).¹⁹⁸ Prisoners’ resistance extends to smuggling in

¹⁹⁵ Nashif (2008:75, n.4@153) uses the example of Asqalan Prison in which the shortest sentence was commonly 15 years, beatings and abuse were a daily occurrence, prisoners were deprived of most concessions ‘won’ through strikes and protests, and yet this prison lead the captives’ community in Palestine, and was later replaced by Jnaid Prison in Nablus. The IPS goes to great effort to disperse the ‘ringleaders’ of the prison communities.

¹⁹⁶ Khaled al-Azraq was 16 when he was first imprisoned in 1982, and has spent 23 years behind bars.

¹⁹⁷ See Rashid Khalidi’s *Palestinian identity: The Construction of Modern National Consciousness*, (2010) for extensive discussion on the “disappearance” and re-emergence of Palestinian identity.

¹⁹⁸ Winstanley reviews *Palestine in Israeli School Books: Ideology and Propaganda in Education* (2012), a book which indicts the Israeli “system of indoctrination and its cultivation of anti-Arab racism from an early age”. Claims such as those by Israeli MK Tzipi Livni that “Palestinians teach their children to hate us and we teach love they neighbour” are “strategies of negative representation” and regularly picked up by politicians as powerful as Hillary Clinton and repeated until they become accepted parlance regarding Palestinians.

books and smuggling out various forms of communication.¹⁹⁹ They hold seminars and workshops on a variety of topics including “literature, languages, politics, philosophy, history and more”. When books were in short supply prisoners resorted to making handwritten copies - “I remember copying Naji Aloush’s *The Palestine National Movement* of which we made five handwritten copies” (al-Azraq, 2009:2). When lectures were given - on topics chosen by the prisoners - they would be written down by a prisoner, summarised, edited and disseminated” (Nashif, 2008:136).²⁰⁰ Such exercise of prisoner agency is constantly and systematically interrupted by prison guards through enforcement of regulations such as those which stipulate a prisoner must occupy only his or her own space and not that of a tent turned into a “lecture hall” (Nashif, 2008:136-7).

The prisoners have a strategy to remain “united” to fight separation, isolation and the draining of Palestinian identity (Peteet, 1994:54). They operate collectively, agreeing the “hero” of their story to be the prisoner in general - “just the prisoner, not one person, but the prisoner in general”. As a body the prisoners would admonish the Israeli officers, calling out “shame on you” or “Ansar Auschwitz - that would make them really angry” (Tamari, 1984: 55).²⁰¹ Recognition of the importance of staying united in resistance is clear in the response of a Palestinian prisoner to an observation on overcrowding that detainees are “packed like sardines in a can”. He counters that Palestinians are not like sardines, arranged head to tail, but like a “book of matches...facing in the same direction” (Harlow, 1990: 40-42).

Resistance through prison education therefore positions the Palestinian prisoner as an active agent in liberating the Palestinian people, history, culture and land from the control of the Zionist colonizer. As the occupier, the Zionists may control the material and physical aspects of the relationship, but they have been foiled in control of the ideological. This scenario, according to Louis Althusser’s theory on ideological state apparatuses, translates to Palestinians’ “control (of) the meanings of being a subject in order to seize the physical and material” of the repressive apparatus. Within this colonial context, it means the Palestinians control who they are - their minds, bodies, “actions, practices and rituals”. That control is a weapon against the Israeli control of the space in which all attempts are made to repress the physical and ideological Palestinian. Education is thus a Palestinian “strategy” for redefining the colonial context because it prioritizes the liberation of Palestine, with the objective of building a nation-state (Nashif, 2008:76-77).

¹⁹⁹ In Nashif (2008) *Palestinian Political Prisoners*, Ch 3 ‘Building the Community’ gives detailed accounts of the methods of smuggling in and out written communications. Some was intended for prisoner families, some to co-ordinate prison uprisings amongst the various Israeli prisons, and, during times like the intifadas messages carried on, or hidden inside the body (the *cabsulih*) facilitated the directions of the incarcerated political leadership. Peteet (1994) and Pitcher (1998) discuss the use of the body to carry political captive’s communications as a form of resistance by a society confronting the “realities of colonization” (in Nashif, 2008:59). Marwan Barghout’s 255-page book *One Thousand Nights in Solitude* (2011) was smuggled out page by page via lawyers and family members. It was published on the eve of the 2011 Prisoner Exchange (see Ch. 7) - a deal in which Israel refused to include Barghout amongst the released (Dana, 2011). Prisoners have also been documented as resisting the Zionist carceral regime by smuggling sperm out of the prison for use in artificial insemination of their wives (BBC, 2012; Ha’aretz, 2012).

²⁰⁰ Nashif’s (2008) Chapter 6 ‘The Hidden Intellectual’ provides extensive primary source data on the process of prison education - the preparation of lectures with themes including exploration of the individual in society, the meaning of ‘revolutionary’ in contrast to ‘reactionary’, world history, organizational issues and day-to-day political issues in Palestinian society.

²⁰¹ Prisoner referencing of the Nazi concentration camp Auschwitz is poignant in terms of analysis of Agamben’s concepts of *homo sacer* and bare life. In discussion of the ‘camp’ - be it those of the Spanish in Cuba, the British in South Africa or the Nazi WWII camps - Agamben holds that camp inhabitants had already been deprived of the rights of citizenship - “stripped of every political status and wholly reduced to bare life...”. However rather than hypocritically question how such atrocious crimes were committed, Agamben asserts it would be “more honest” to investigate the “juridical procedures and deployments of power by which human beings could be so completely deprived of their rights and prerogatives that no act committed against them could appear any longer as a crime” (1995:170-1). This thesis attempts such an investigation with respect to the carceral tactics inside and outside the Zionist prisons.



*Cartoon reads:— One eye on my homeland.
— And the other eye on my son
in Israeli prisons.*

*By the Palestinian cartoonist, Naji al-Ali. Assassinated
in London. August 1987.*

(Cartoon in Harlow, 1990:41)

6.8 Prison outside the prison

“...they [friends] have a son in prison, my son is in prison, and Imm Hamin has three in prison...[it is not] shameful to have a family member in prison...they are proud of them...mothers of heroes we are!”

Imm Firaz (mother) in Jean-Klein, 2001 pp.98-99

Outside the Zionist prisons, Palestinians are involved in daily resistance, which, because it often results in arrest, is intimately connected to the prison system. During the first intifada Palestinians engaged in a “form of domestic self-nationalization” as a strategy of resistance: this strategy required various demonstrations of political awareness and commitment through “counter-hegemonic liberational” tactics. Specifically these included suspending elaborate weddings, boycotting Israeli products, closing markets for half days, forgoing holidays, family visits and women’s coffee mornings (p. 96). This counter-hegemony complemented the organised methods of resistance such as “street militancy” (Jean-Klein, 2001: 91-111). As the Firaz quote and Naji al-Ali cartoon above demonstrate, the omnipresence of the prisoner and the everyday violence of the Israelis connect nearly all Palestinians to the prison. Accordingly families exercising control over their own lives under occupation become a “source of moral authority” and support for the prisoners, who are themselves considered the “vanguard of the struggle and metaphors” for Palestinians under occupation (Jean-Klein, 2001:100; Bornstein, 2001:559).

6.9 Repressive responses

As the IPS imposes repressive punishments for control inside the prison, the military does so outside the prison walls. Between 2000-2006 (from the beginning of the second intifada) approximately 4,984 Palestinians were killed by IDF or settlers (including 810 minors and 343 targeted assassinations); 49,377 were injured and 41,156 were arrested - including 5,200 under 18 years of age (Ghanim, 2008:75).²⁰² B’Tselem has noted a recent marked increase in the military repression of protests outside the prison. As the Israeli “matrix of control” pervades everyday Palestinian life, demonstrations reflect the extent of colonial repression, targeting the expanding illegal settlements, appropriation of private Palestinian lands, house demolitions and the Separation Barrier (Halper, 2006:62). While freedom to participate in demonstrations and processions is a “basic right in any democratic regime”, Israeli law and military/policing practice denies this right to Palestinians resisting occupation (B’Tselem,2010:4).²⁰³ In the last two years the Israeli military has become more aggressive in its response to Palestinian demonstrations, subjecting them to the ‘Order Regarding Prohibition of Incitement and Hostile Propaganda Actions’ (Order 101: 1967).²⁰⁴ This order, together with other Israeli military legislation, “applies solely to Palestinians in Areas B and C”. Israeli nationals come under the Israeli civil legal system (B’Tselem, 2010:3). Under Order 101, the IDF arrests Palestinian protest organizers, uses violence to disperse

²⁰² The number of prisoners held since the second intifada has dropped from 10,500 in 2008 to 4,660 in August 2012. Amongst this prison muster are 285 on administrative detention - including 14 PLC members; 6 female; 210 children under 16 yrs; 20 PLC members; 530 serving life sentences, 432 more than 20 yrs and 22 more than 25 yrs; and 120 pre-Oslo prisoners (Addameer, August 2012).

²⁰³ B’Tselem identifies a body of case law which recognizes the freedom to participate in demonstrations as a central human right, although it has not been enshrined in a Basic Law in Israel. See: HCJ 2557/05, Mateh Harov v Israel Police et al.; HCJ 8988/06, Yehuda Meshi Zahav et al. v Jerusalem District Police Commander; HCJ 1928/96, Yesha Council v Commissioner Aryeh Amit; HCJ 148/79, Zvi Saar v Interior Minister and Police; (B’Tselem, 2010:4).

²⁰⁴ Order 101 came in to law immediately after the 1967 War and was used consistently during the first intifada, but such use declined during the Oslo process, only to be resurrected to quell protests in the last two years (B’Tselem, 2010:3).

protests, deports participating foreign activists and designates areas adjacent to the Separation Barrier as “closed military areas every Friday, during the hours at which the demonstrations regularly take place”.²⁰⁵ Hence, the law is used by the occupying force to “dispossess and disempower rather than protect Palestinians”, and this alienation from the law in turn feeds the resistance (Hajjar, 2001:34). It is what Gordon argues constitutes a genealogy of control that is excessive and contradictory in its confiscation of land, partitioning of space and its monitoring of Palestinians. It shapes Israel’s policy choices and the Palestinian response (2008:15-16)²⁰⁶. At times the excessive control garners the ultimate resistance -

*“Not a single living creature dared walk the streets. Soldiers fired at everyone, even at those who just stepped into their gardens. I peeked out through the window and suddenly I saw a dog wandering freely in the street. The soldiers didn’t arrest it or shoot at it. At that moment I thought, either I live a life that is less than the life of this dog, or I die as a shahid.”*²⁰⁷

The violent resistance of a suicide bomber is not unconnected to the non-violent resistance of prisoner hunger strikers in that both control and politicise the form and timing of their own deaths. Hunger strikes cause self violence rather than physical injury to Israeli military or citizens, but together with suicide bombings, they are acts imbued with “symbolic political meaning” because the occupier can’t control them. Living as Agamben’s bare life is to live with the constant danger of slipping into the “perpetual threat of death” at the hand of the occupier, and so to determine one’s own death becomes a form of resistance (Ghanim, 2008:74-78).

6.10 Conclusion

The Palestinian response to the Zionist occupation is a manifestation of Foucault’s maxim that where there is power there is resistance, and no one party simply possess power because power is a commodity that exists in its exercise. Israel exercises power in a repressive occupation; Palestinians exercise power in resisting repression. The repression-resistance cycle has resulted in hundreds of thousand of Palestinians incarcerated since the 1967 occupation, and in that time Palestinians have fought against the “very materiality” of the prison as an “instrument and vector of power”, the “technology of power over the body” and over the soul as “tools” of incarceration (Foucault, 1977:30). Palestinian captives have commandeered Zionist space as the locus of a physical and ideological resistance - the latter beyond the reach of the carceral authorities. Hunger strikes attract domestic and international attention in order to improve prison conditions, and prisons-as-universities further the Palestinian nationalist agenda. Foucault argues power generates resistance from the depths of society. This chapter has shown this is undisputedly the case in Palestinian society, where the prisoner is central to resistance because most families have a direct connection with a prisoner. Agamben’s bare life is an ever present threat blanketing life inside and outside the prison. The OPT is saturated with visible, coercive and destructive suppression which “exposes the occupier’s fangs for all to see” (Gordon, 2008:55). Those “fangs”

²⁰⁵ Palestinian villages Bil’in and Ni’lin, where demonstrations take place every Friday are most affected by these Declarations Regarding Closure of Area. B’Tselem notes that the Occupying Forces often issue “sweeping, a priori” prohibitions for protected periods of time in advance of any demonstrations in these villages, exposing a practice of giving no consideration to each specific demonstrations. B’Tselem says this is not considered lawful (2010:11).

See also the August 2012 Israeli High Court decision to clear the IDF of any responsibility for the death of US activist Rachel Corrie who was crushed by an army bulldozer at the height of the second intifada in 2003 while defending a Palestinian home from demolition. Corrie was a member of International Solidarity Movement (ISM) - a group of Palestinian led international activists involved in non-violent resistance of the occupation (AFP, 2012; Menon in Frontline, 2012). Findings of no responsibility on the part of the IDF in Corrie’s and other deaths in the line of resistance, add strength to the argument that homo sacer - to kill with impunity - applies to the IDF as raised in Ch 2 of this thesis and in Horowitz, 2102).

²⁰⁶ A key contradiction lies in the increased confiscation of Palestinian land for illegal settlements which increases the probability of a one-state-nation, and in a single state the Jews will not be a majority, so thwarting the original Zionist ambition.

²⁰⁷ Explanation of foiled young suicide bomber; shahid has three significant meanings in Islam - ‘witness’, ‘always alive’ and the one who ‘killed in the name of God’ (Ghanim, 2008:78).

bite hard, but in turn harden the resolve of resistance to the point where Palestinians proclaim, “existence is resistance. If you remain on the land, then the game isn’t over”.²⁰⁸

²⁰⁸ A slogan which appeared on the Israeli built separation barrier just before the PLO’s UN statehood bid in 2011, Tolan, (2011)

Chapter 7

AN EXTRAORDINARY EXCHANGE RATE

Gilad Shalit against 1027 Palestinians



Patrick Chappatte in Le Temps, (Geneva 10/12/11)²⁰⁹

²⁰⁹ retrieved 10/12/11 from <http://www.globecartoon.com> This cartoon was one of many published world wide calling attention to the magnitude of the numerical imbalance in the swap of 1027 Palestinian prisoners for one Israeli soldier who had been captured by Hamas.

7.1 Introduction

The exchange of more than a thousand Palestinian prisoners for a single Israeli is a stark example of the value-of-life concept referred to in the introduction, and which permeates this thesis. The latest life-price index - that of the 2011 prisoner exchange - put an Israeli life as 'worth' 1027 Palestinians. Israel shows no recognition of the paradox in claiming it celebrated "life" in securing the return of a soldier from an occupying force, while accusing Palestinians fighting that occupying force of "celebrat[ing] death" in the release of "people who have killed dozens of men, women and children...a huge ethical difference" (Rogin, 2011). The exchange of prisoners politicizes their lives, plays games with their fate, and the lop-sided exchange rates reduce them to a nameless, faceless, and categorized dangerous mass. That so many Palestinian prisoners can be regularly "worth wasting" on prisoner swaps exposes the political nature of the bargains, which in turn raises serious doubts over the threat they actually pose to Israel's security in the first place (Ha'aretz, 22/11/07). This chapter identifies the considerable political, military, legal and moral implications of prisoner exchanges²¹⁰. Together these phenomena are shown to actualize Foucauldian power politics, punishment and control, and the relegation of a population to Agamben's marginalized bare life, or in the cases of those who are assassinated or collateral damage in the search for captured Israelis, *homo sacer*. This chapter brings these concepts to life in: exploration of the politically expedient business of the prisoner exchange; Israel's crossing of its own red lines in that it deals with those it deems terrorists when it suits domestic politics; Palestinians as a population are commodified in their being traded en masse, and in order to maintain a reservoir for future deals prisoner re-arrests or new arrests begin immediately. These are all elements of the Wafa al-Ahrar/Shalit deal which is examined in detail as a prime, contemporary amalgam of the many facets of the prisoner exchange²¹¹.

7.2 Transactional diplomacy - the business of prisoner exchanges

The bureaucratic misrepresentation of Palestinians within the OPT - the proof of "extra penal incarceration" - together with brutal arrests, arbitrary detention and torture of prisoners, accentuate the distortions between life as a Palestinian being a citizen of no state, and that of an Israeli citizen (Foucault, 1977:297).²¹² Philosophically these carceral practices entwine Foucault's questioning of the purpose of the modern prison as a "great economy of power" in its "accumulation and useful administration" of people; with, Agamben's synopsis of relegation to bare life on the margins, or completely excluded from, society (Foucault, 1977:303; Agamben, 1998). The reality is that with more than 750,000 Palestinians imprisoned during the time of the occupation, few, if any families are unfamiliar with the political currency of prisoners when it comes to exchanges, which are now an established component of Zionist carceral practice.

²¹⁰ Sebba notes there is still little academic literature on the issue of Israeli-Palestinian prisoner exchanges, and suggests this subject is worthy of some in-depth legal-criminological analysis. Sebba recommends scholarly investigation along the lines of the work of Kevin McEvoy's work on Northern Ireland, which is referred to throughout this chapter.

²¹¹ Wafa al-Ahrar is Arabic for 'the loyalty of the free' see www.pfip.ps/uploads/1337009833VictoryorDeath27eng.pdf

²¹² Foucault discusses at length the spread of carceral techniques from the prison to the "entire social body" which include mechanisms of surveillance, control, regulation and punishment (1977:298-308). Applied to daily life in the OPT they impact directly on the social, legal, civil and political rights of Palestinians, and restrict them as if they were in a prison. This is why Gaza and the West Bank are regularly referred to as open-air prisons. Gaza is sealed off by Israel apart from the Rafah Crossing into Egypt. The West Bank is divided hundreds of permanent checkpoints, mobile blockades, the Separation Wall, and a road system that differentiates between religions and races which signs that read "Arafat Makkah: Muslims Only" and "Taif Riyadh: Obligatory for Non-Muslims", (BoliwarRed, (2009) 'Palestine: The World's Largest Open Air Prison: Checkpoints Part 1' (2/10/09) retrieved 09/11/12 from www.youtube.com/watch?v=mllejP6TvDA

Prisoner exchanges have occurred sporadically throughout the history of occupation, with the 2011 Wafa al-Ahrar/Shalit deal the most recent.²¹³ The release of prisoners is at the core of all Israeli/Palestinian peace negotiations, just as it was in peace processes in South Africa and Northern Ireland. Prisoner releases and amnesties are widely regarded as basic elements in peace negotiations and considered necessary for putting an end to a conflict (Addameer, 2009:5).²¹⁴ However by categorizing Palestinians as security threats, they are denied the status of being released as political prisoners, incarcerated for their nationalist struggle.²¹⁵ As with the IRA prisoners in British jails, the stripping of political status is designed to “delegitimize the political motivation of anti-state activists...[and] systematically undermine ... characteristics that determine[d] political motive and ethos” (Moen, 2000:6).²¹⁶ This strategic distinction between security and political prisoner is also used by Israel to reinforce the paramountcy of its own security. Yet, if these prisoners are so dangerous, with so much Israeli blood on their hands, how can their freedom in such numbers be countenanced?²¹⁷

7.3 Consistent Inconsistencies

The prisoner release process “may be an imperfect process, but it is better than no process at all”

Tony Blair, 1998²¹⁸

The release of prisoners, particularly security prisoners, presents a dilemma for Israel. While it wants to recover its captured citizens, the political cost entails releasing Palestinians it has branded for Israeli public consumption, as terrorist threats who must be punished and incarcerated for lengthy terms.²¹⁹ These security

²¹³ This prisoner exchange is more commonly referred to in non-Arab media as the ‘Shalit deal’, because the Israeli soldier Gilad Shalit was exchanged for 1027 Palestinian prisoners. Israel’s Institute of National Security Studies (INSS) also reports the deal to be known as the ‘Netanyahu government deal’ in order to identify this “capitulation to terrorism” as the product of a right wing government of hawkish politicians, and even those who voted against it did not resign (Schweitzer, 24/10/11).

²¹⁴ Addameer outlines the role Nelson Mandela, released in 1990, played in a joint ANC-government committee which defined “political offences” and advised on future releases of prisoners. See also McEvoy for The British Government’s clear distaste at releasing IRA prisoners, but acknowledgement that without releases the Good Friday Agreement would not have been possible (1998:1539). The ICG (2006) notes that prisoner exchanges are necessary in any mutual accommodation between Israel and the Palestinians The Arab-Israeli Conflict: To Reach a Lasting Peace, Middle East Report No. 58, Brussels: ICG.

²¹⁵ See Baker (2011) for discussion on the meanings of “political prisoner” and “security prisoner”. He argues that given Palestinian prisoners are treated very differently from other prisoners, and that treatment is based on “political-national grounds” then they are correctly considered political prisoners. However Israel refuses to do so. Instead it categorizes Palestinians as security prisoners, and that affects how the IPS deals with them, which prison they are assigned to, and how prisoner rights such as leave, phone calls, family visits and post sentence surveillance are determined (pp.102-3).

²¹⁶ The British Government criminalized IRA prisoners from 1976 until the signing of the Good Friday Agreement (1998). This measure prompted a “prolonged struggle between the British state and republican prisoners, culminating in the hunger strikes of 1980-81” (Moen, 2000:1).

²¹⁷ See discussion below on Israel’s official letters noting security concerns about prisoners it releases - before and after release.

²¹⁸ See McEvoy, 1998:1564-7, for Blair’s justification of the British legislation providing for the release of paramilitary prisoners as part of the Good Friday Agreement. Controversy arose because there was no clear legislative linkage between prisoner release and a decommissioning of paramilitary activities.

²¹⁹ See Ghanim for discussion on the categorization of Palestinians as culturally and genetically deficient, murderers, subhuman, semi-savage and other labels “deeply rooted in the Zionist conceptualization of the Palestinians since the beginning of the Zionist colonial enterprise” (2008:72-3).

prisoners number in the thousands, deemed so dangerous their 'crimes' are not disclosed publicly, nor even to the detainee or his or her legal representative. Israel, in Arendt's words, renders the Palestinian to "a man who has lost the very qualities that make it possible for other people to treat him as a man" (Ghanim, 2008:73). This is the result of criminalizing every aspect of resistance to occupation, which creates murderers out of anyone with "Jewish blood on their hands", and "unlawful combatants" out of those who participate "either directly or indirectly in hostile acts against the State of Israel".²²⁰ They are denied prisoner of war status and the protections that international law stipulates for POWs (Addameer, 2009:21-26).²²¹ Yet, Israel releases them when it suits politically. It is as if an "institutional schizophrenia" emerges in which terrorist militants are suddenly eligible for release before their sentences are completed (Sebba, 2011:163). Hamas interprets the practice as consistent with Israel never doing anything "unless it is under pressure" and then it misleads Israelis into believing Israel got "the best possible deal" (Meshaal, 2011).²²² Critics of the process accuse Israel of surrendering to extortion, of humiliating the Israeli people and of forsaking principle to do "business with terrorists" for short-term gain - a practice claimed to only encourage more abductions (Lior, 2011; Pipes, 2011; Fisk, 2011; Reich, 2011).²²³ It is also argued exchanges such as Wafa al-Ahrar/Shalit are nothing more than "transactional diplomacy" in which "an ideologue and Islamic zealots" are forced to compromise (Miller, 2011:1-2). Neither gained everything they wanted but they did draw attention away from Fatah leader and Palestinian President Abbas, who at the time was centre-stage with the PLO's bid for statehood before the UN (Dromi, 2011:8).²²⁴

Israel has to decide when to use overwhelming force to free Israeli captives, and when to negotiate. The lives of Palestinians do not feature in that equation as verified in Operation Summer Rains just after Shalit was captured in 2006. Israel rendered homo sacer 416 Palestinians, as it bombarded Gaza, killing with impunity in search of its one soldier (Agamben, 1998:72; Bergman, 2011:3). Together with the lack of concern for civilians killed and injured, and given Shalit was held in Gaza, Israel's determination to display its power even risked the soldier's life (Barghouthi, 2011). Only when Netanyahu failed did he negotiate with a political entity he had refused to

²²⁴ Sebba (2011:169) notes during the Oslo Process, then Israeli President Ezer Weizmann refused to pardon Palestinian prisoners with "blood on their hands". This was problematic because the President has the ultimate discretionary power to over-ride the wishes of Ministers and the Government in terms of prisoner releases.

²²¹ It is noteworthy that while Israel denies Palestinians POW status, Israeli President Shimon Peres argues the country's policies are vital to its security given it is "in a state of war". The logical position would therefore be captives from a state of war were prisoners of that war - POWs. (New Perspectives Quarterly (NPQ), 2010:52).

²²² Meshaal's claim underscores the politics of prisoner exchanges because each side must present itself as the winner. Israeli Ambassador to the US, Michael Oren, claimed the Wafa Al-Ahrar/Shalit deal was proof Hamas had been weakened by the unrest in Syria which had imploded Gazan support for Hamas, in favour of support for Fatah (Rogin, 2011).

²²³ Extensive media coverage was given to calls from released prisoners, families and members of Hamas and the Popular Resistance committees in Gaza for "another Shalit each year until all remaining Palestinian prisoners were free" (Reich, 20/10/11; Reuters, 27/04/12). However, in January 2012, once Shalit had been safely returned, the Shamgar Commission on guidelines for the freeing of 'abducted' Israelis reported to Defence Minister Barak. The Government has not released all the recommendations, but it is known the report recommends an end to the mass prisoner releases such as Jibril and Shalit. It discusses "red lines" in order to avoid resorting to "lopsided" mass releases of "terrorists" in exchange for Israelis; it recommends an intimate involvement by the Prime Minister, Cabinet and IDF leadership in any negotiation process; centralizing of the efforts to free soldiers; avoidance of using "government sponsored special negotiators to discuss matters with terrorists"; and a maintenance of secrecy which includes avoiding giving updates about the status of negotiations" (Lev, 05/01/12; Ministry of Defense, 05/01/12; Bronner, 05/01/12).

²²⁴ Palestinians have been split between Fatah in the West Bank and Hamas in Gaza, following the Hamas victory in the 2006 Palestinian elections and Hamas' successful take-over of the Gaza Strip where it now operates in full military control. Since the PLO's bid for statehood at the UN in September 2011, various attempts have been made for the Fatah and Hamas factions to unite and while no deal has been finalized as of the time of writing, the issue is again at the fore of Palestinian politics following Abbas' success at the UNGA on November 29, 2012. It should be noted that in November 2012 Abbas was again in a weakened position following the ceasefire negotiations between Israel and Hamas, brokered by Egypt and the U.S.

recognize as legitimate.²²⁵ Netanyahu had, in 1986, argued that threat of, or actual military action, should prevail over negotiations in all circumstances.²²⁶ Twenty-eight years later he found his own dictum failed him, when he was confronted with the political realities of regional uprisings against Arab dictators, mounting tensions with Iran, domestic Israeli protests against the costs of living, and the PLO's direct appeal to the international community. Netanyahu calculated the political benefits of a released soldier, and justified his crossing of the 'never-deal-with-terrorists' line as an honouring of the 'no man left behind' commitment to the Israeli public (Bennis, 2011). In a garrison state of compulsory military duty, paying a high price in terms of numbers for any soldier captured is the quid pro quo for service.²²⁷ To refuse to deal with Israel's enemies in order to secure the return of an Israeli captive would "shatter one of the basic precepts of Israeli society...degrad[ing] the willingness of future generations to take up arms in their country's service" (Schweitzer, 2012:1). Only when Israel had exhausted any possibility of a successful military rescue did it entertain "non-tactical negotiations" while trying to minimize the price (Schweitzer, 2012:1).²²⁸

Prisoner exchanges are thus considered political transactions with an institutional reliance on a mass incarceration strategy, and a disregard for the humanity of the occupied Palestinians. Typical law and order policies are absent in the construction of Palestinians as terrorists, and the prisoner, the prison and, to a degree the Israeli public, all take second place to the Zionist state's determination to control Foucauldian technologies of power, necessary to both 'sell' and enforce the occupation (Foucault, 1977:30). That power depoliticizes the Palestinian nationalist struggle, and it makes complicit the Israeli public which buys into the handwringing of its own government. Prisoner exchanges show the handwringing to be raw transactional politics of which the byproduct is the Palestinian prisoner.

7.4 Commodification of Prisoners

Releasing prisoners in order to secure agenda-driven concessions is an established practice of successive Israeli administrations, creating the impression that Israel's prisons are

"a gestures bank with revolving doors...just so long as the supply of prisoners doesn't dry up and a few dozen candidates for immediate release are always available" (Ha'aretz, 22/11/07).²²⁹

Such political expediency was demonstrated most recently in Netanyahu's July 2012 offer to release 50 Palestinian prisoners jailed before 1993 and known as pre-Oslo prisoners, as an inducement for the Palestinian political leadership to abandon its UN bid for observer-state status (Ma'an, 2012; EJPress, 2012; IMEMC,

²²⁵ When Hamas won the 2006 democratic elections, Israel refused all formal interaction with it, as did other countries including the United States, Canada and the EU. The then Israeli government asserted "there will be no negotiations to release prisoners...the government of Israel will not give in to extortion by the Palestinian Authority and the Hamas government, which are headed by murderous terror organizations. The Palestinian Authority bears full responsibility for the welfare of Gilad Shalit and for returning him to Israel in good condition" (Haddad, 2011).

²²⁶ Netanyahu edited *Terrorism: How the West Can Win* (1986, New York: Farrar, Straus & Giroux), a selection of 37 essays advocating a no-negotiation approach to terrorists, force and no hint of compromise. He wrote "under no circumstances should governments categorically rule out a military response simply because of the risk of civilian casualties" (DeConcini and Ma, 1986). Italics added.

²²⁷ Estimates of exchange rates vary between 7,000 and 10,000 prisoners having been exchanged over the years for 16 Israelis and the bodies of 10 more (Reich, 2011:8).

²²⁸ Israel's Chief of Staff Benny Gantz, Director of Shabak, Yoran Cohen and Defence Minister Ehud Barak all concluded a military operation would not produce Shalit alive (al-Sayyed, 2011).

²²⁹ This Ha'aretz editorial referred to the release of 440 Palestinian prisoners ahead of the Annapolis conference. It also references the arrest procedures that followed the capture of Shalit which it referred to as "conspicuous examples" of the policy of refilling the prisons once any releases have been made.

2012).²³⁰ This offer had nothing to do with saving captured Israelis. Rather it verified the reduction of Palestinian prisoners to a commodity for trade, irrespective of the supposed threat factor of these pre-Oslo prisoners, most of whom are “security detainees” in indefinite detention (IMEMC, 2012). It also suggests there is a “mutual understanding between the government and the military judicial system” that sentences meted out are negotiable, so long as the “reservoir of bargaining chips” remains high enough for measured batches of release (Ha’aretz, 2007). Further, it signals Israel has run out of options to prevent international recognition of Palestinian self-determination and so, aware of the importance of prisoner releases in Palestinian society, is prepared to use prisoners as political pawns in order to ‘persuade’ the PLO of the cost of its UN intentions.²³¹ Palestinians consider this blackmail and exploitation of the suffering of their prisoners, more so as release of the pre-Oslo prisoners had already been agreed, but Israel failed to honor its commitment (Abu Tomeh, Keinon, 2012; AlAkhbar, 2012).

The Supreme Court of Israel in *Anon. v. Minister of Defence* (2002) overturned a 1997 decision that it was legal to detain prisoners in order to “promote State security, even if the danger...does not emanate from the detainees themselves” (Addameer, 2009:20). This referred to the holding of Lebanese nationals in order to force Hizbollah to release the missing Israeli Air Force navigator Ron Arad. In the reversal decision, then Chief Justice Barak ruled “holding persons as ‘bargaining chips’ actually means holding them as hostages”, and Israel could not justify detaining the Lebanese bargaining chips. Dissenting opinion included that of Justice Y. Kedmi who argued the

“redemption of captured Israeli soldiers was one of the basic values of the Jewish people. Thus in the same way that the home of a terrorist’s family could be lawfully demolished, even though the family members had committed no crime, it was permissible to detain the Lebanese petitioners” (Gross, 2001:732).

Barak employed the principle of proportionality, overruling with an argument that indefinite detention breached proportionality because “everything must have an end” (Gross, 2001:750) - a principle Israel demonstrably fails to adhere to with respect to Palestinian prisoners and the occupation of Palestinian territories.

While Palestinians are prohibited from being held as bargaining chips, prisoner exchanges demonstrate the prohibition goes unheeded. Such commodification of the bodies of prisoners can be argued two ways: that they are the “property of society” to be spent for societal gain (Foucault, 1977:109); or, currency to be expended at a sovereign’s discretion, reinforcing Nashif’s claim that Zionist carceral practice is contra that expected in the modern prisons of Foucault (Nashif, 2008:44).

²³⁰ The 2012 initiative by the PLO for observer-state status at the UN, is a lesser goal than the PLO’s 2011 bid for full member status which failed at the Security Council.

²³¹ See also Bannoura (2012) for discussion from Riyadh al-Ashqar, a Palestinian researcher who specializes in detainees’ affairs, that Netanyahu, rather than regional military commanders, directs the arrests (he calls them kidnappings) of elected members of the Palestinian Legislative Council, and that the January arrest of PLC head Dr. Aziz Dweik and Legislator Khaled Tafesh was deliberately timed in order to attempt to foil, or at least delay, the national unity agreement between Hamas and Fatah, that aimed for a united Palestinian political leadership for the PA and the PLO.

7.5 A History of Exchanges

“There will be no peace until all Palestinian prisoners are released”

Yasser Arafat, 2004²³²

If Arafat's argument is to be taken seriously there will be no peace because Israel needs prisoners as mechanisms for controlling peace, and any other negotiations. As Foucault's dominant class used the delinquent class for its own profit, so the history of prisoner exchanges reveals the value to Israel of the 'delinquents' in its Zionist prisons (Foucault, 1977:286). As the occupation has progressed, the price of an Israeli life has steadily risen, particularly when the 'enemy' death tolls from failed military rescue operations is considered.

Since 1948, Israel has been involved in exchanges of captured IDF personnel for captured or imprisoned Arabs from its neighbouring countries, Syria, Jordan, Egypt, and especially Hizbollah in Lebanon. The first, and largest, exchange of Palestinian prisoners in 1983 swapped six IDF soldiers captured by Fatah, for 5000 prisoners.²³³ Then Israeli Prime Minister Yitzhak Shamir acknowledged the asymmetry of the deal, but in order to dominate the exchange discourse, insisted the “heavy price” was paid for the saving of Israeli fighters rather than for the release of the prisoners (IMFA, 1983:2). This was the birth of the political discourse of never leaving behind a soldier on any battlefield as justification for negotiating with terrorists.²³⁴ However, it was also Israel seizing on the mechanism of control that prisoners provided. That control extended to agreements to release prisoners nearing the end of their terms so as to inflate release numbers, dictating the list of prisoners to be released, and, when it suited politically, to renege on the deals through tactics such as rearrest.

Key exchanges have included:

Jibril (May 1985), Israel traded 1150 Palestinian prisoners for three Israeli Special Forces soldiers, in a deal that is better known as “Jibril's exchange” after Ahmad Jibril, founder and leader of the PFLP General Command. Mounir Mansour who was exchanged after 18 years in prison, decries the emphasis on the numbers involved in prisoner exchanges, rather than the human element of “expectation and mortifying anticipation” euphoria and “tragedy” of those left behind (Mansour, 2011:176-179).

Oslo (1993), Israel considered prisoner releases as confidence building measures at a time when it held 12,000 Palestinian prisoners (Addameer, 2009.²³⁵ Releases over the next year were accompanied with a raft of

²³² Quoted in Addameer's 2009 report Reaching the 'No-Peace' Agreement.

²³³ 4,500 of the prisoners came from the Ansar detention camp in southern Lebanon (who were about to be released anyway), 63 from Israeli jails and 36 from Israeli navy detention (Israeli Ministry of Foreign Affairs (IMFA), 1983). Israel's co-operation was dictated by fear that the 6 Israeli captives would be killed in fighting between the PLO and anti-Arafat forces in Tripoli where the PLO was then in exile and where the captives were held. Israel also feared they could fall into Syrian hands. After the deal Israel exercised a degree of retaliation in a last minute refusal to release three of the agreed prisoners (Dorsey, 1984:182-4).

²³⁴ See Bergman, (2011:5) for Shalit's father reporting then Israeli Prime Minister Olmert told him “I don't have a contract with any citizen of Israel that says that if he is taken prisoner I have to rescue him...there are things I will not do as prime minister of the state of Israel”. In contrast Netanyahu, on release of Shalit, announced “When I took office I took it upon myself, as a personal mission, to bring Gilad home to his family” (Bronner, 2011:3)

²³⁵ The first 101 prisoners were non-violent and near the ends of their sentences; March 1994 - 570 PLO-affiliated supports of Oslo were released, again near the ends of their sentence; anti-Oslo detainees were excluded; the Palestinians had to provide amnesty for collaborators with Israel.

politically motivated conditions. On the signing of the 1994 Gaza Jericho Agreement²³⁶ Israel pledged to release 5000 prisoners if they signed declarations supporting the peace process. This violates prisoners' rights to freedom of opinion and expression without interference, and so most political prisoners refused to sign ²³⁷. Mass arrest campaigns continued.²³⁸

Oslo II²³⁹ provided for a three stage prisoner release,²⁴⁰ but no numbers were stipulated. PLO negotiators controversially abandoned the "principle of an all inclusive prisoner release" by allowing Israel to categorize eligible prisoners, and this divided the, until then, united Palestinian prisoner body, germinating a "deep mistrust among those who remained behind bars" (Rosenfeld, 2001:17). Significantly in December 1999 Israel released 33 Palestinian prisoners, including a number allegedly involved in attacks against Israelis - the first with 'Israeli blood on their hands' (Addameer, 2009:13, 36).

To balance these releases throughout the Oslo years Israel arrested 13,000 Palestinians between 1993 and 2001, and a further 15,000 between March and October 2002.²⁴¹ Israel pledged to release 540 prisoners to bolster the Road Map plan for peace, closely mimicking the colonial-era tactics of targeting males between 15 and 45.²⁴² Prisoner releases as goodwill gestures stopped in 2008-2009 with Israel's Operation Cast Lead offensive in Gaza.²⁴³ Oslo provided no respite from Israel's strategy of release and daily arrests - the latter persistent in the OPT today (Rosenfeld, 2011:19). In October 2009, 19 Palestinian female prisoners were released for video proof Shalit was still alive (Addameer, 2009:40).

²³⁶ This agreement between the PLO and Israel set out the jurisdiction of the PA in these areas Gaza and Jericho (excluding Jewish settlers) (Article V); committed Israel to providing safe passage for Palestinians between the areas (Article XI); provided for the transfer of authority from the IDF to the PA (Article III); declared a 20 nautical mile fishing zone for Palestinians off the Gazan Coast (Annex 1, Article II (a)(2)); and codified Israel's agreement to the deployment of a temporary international presence in the Gaza Strip and Jericho area (Article XXI) (Addameer, 2009:8-9).

²³⁷ The pledge was individualised with the name and ID number, the signatory had to pledge to avoid any terror or violent acts as a condition of release, and the prisoner had to acknowledge the release was part of the Oslo DoP which the prisoner supported (Addameer, 2009:9, n.17). A number of Hamas prisoners who did sign were not released, but rather transferred to another prison. By July 1994, 4,450 prisoners were eventually released but 550 of them into the custody of the PA which confined them in Jericho until the end of their terms; 7,000 remained in Israeli jails (Addameer, 2009:9).

²³⁸ In the first 2 weeks of April, 1994, 2,700 Palestinians were arrested for belonging to Hamas, and 200 Administrative Detainees were sent to Ketziot prison in the Negev Desert (Addameer, 2009:33). Meanwhile in October 1994, Israeli Prime Minister Rabin, Foreign Minister Peres and PLO Chairman Arafat were awarded the Nobel Peace Prize in Oslo.

²³⁹ Oslo II was signed on September 28, 1995. In 1996 the bodies of two Israelis were returned in exchange for the remains of 123 Palestinians.

²⁴⁰ Addameer (2009:35) lists the actual release numbers as Jan 10, 1996, 800 - all for minor offences (no Jewish blood on their hands) for which two thirds of their sentences had been completed; Jan 11, 1996, 230 prisoners transferred to PA custody; Feb 1997, 30 Palestinian female detainees on the ruling of the Israeli Supreme Court for all female prisoners to be released; Feb 1998, 23 prisoners released in a goodwill gesture to mark the end of Ramadan; 20 Nov, 1998, 250 prisoners in accordance with the Wye River Memorandum - only 100 were political prisoners, 150 were criminal offenders (mainly car thieves); September 1999, 199 political prisoners in accordance with the Sharm el-Sheik Memorandum which was supposed to break the deadlock in the Israel-PLO negotiations and implement Oslo II. At this stage Israeli still held 1,800 political prisoners; 15 October 1999, 107 political prisoners and 42 from Arab states released.

²⁴¹ In April 2003, the 'Road Map' (launched by the Quartet of the U.S., Russia, E.U. and the UN) aimed at restarting the peace process again and establish a Palestinian state by 2005, made no provision for prisoner releases.

²⁴² Following releases included 331 Palestinians - one third of whom were in prison for entering Israel without permits; Jan 2004 - 403 Palestinians and other Arab prisoners released for the return of an Israeli businessman and the bodies of three soldiers held by Hizbollah - one-third in prison for permit violations; throughout 2005, 2007, 2008 3,075 prisoners were released for a variety of reasons including good will gestures ostensibly to boost the Palestinian leadership and the peace process.

²⁴³ See 'Gilad Shalit, Hamas and Olmert' in Journal of Palestine Studies (2009, Vol. 38, No. 4) for claims Operation Cast Lead was planned to "teach Hamas a lesson" rather than negotiate a new ceasefire and the release of Shalit, giving the lie to Israel's claim it was a "war of no choice".

Each side claims benefit from prisoner releases and exchanges, which ultimately come down to a question of quantity over quality. For Palestinians the disappointment that leading nationalist figures are not released is tempered to a degree by the numbers released.²⁴⁴ For Israeli domestic consumption, the quantity is mitigated by the types of prisoners released - many non-security prisoners near the ends of their sentences. This political spin became problematic with the 2011 exchange.

7.6 The *Wafa al-Ahrar* / Shalit Deal

“The resistance won, and the Palestinian people won”

Bahaa al-Madhoun (Hamas official) 11/10/11²⁴⁵

“Today we are all united in joy and in pain”

Israeli Prime Minister Netanyahu, 18/10/11²⁴⁶

On October 17, 2011, the Israeli Supreme Court rejected four appeals from relatives of Israelis killed by a number of the prisoners listed for release in exchange for Shalit.²⁴⁷ This set in motion the two-stage release of 1027 prisoners, approved by Netanyahu’s Cabinet 26-3,²⁴⁸ concluding a process which had been in play since

²⁴⁴Top political leaders such as Marwan Barghouti (see n. 41) and Ahmad Sa’adat remain incarcerated. Sa’adat is the General Secretary of the Popular Front for the Liberation of Palestine (PFLP), and his lengthy period in isolation was one of the major drivers of the 2011 mass hunger strike. Like Barghouti, he refuses to recognize the legitimacy of the Israeli court which they both describe as a “tool of repression against Palestinian prisoners” (Samidoun, 15/09/12).

²⁴⁵ Quoted in Bronner, 11/10/12.

²⁴⁶ Quoted in Bronner and Farrell, 18/10/11.

²⁴⁷ The appellants acted in conjunction with Almagor, an Israeli Terror Victims Association which considers such prisoner exchanges motivation for future ‘kidnappings’, and argue until the next prisoner exchange everyone plays a “legal game of pretend” with respect to families seeking justice (Miskin, 2012). It should also be noted that the Kahanists (followers of slain nationalist leader Rabbi Meir Kahane) announced a bounty of \$100.000 on the head of released prisoner Mustafa Muslimani, imprisoned for Kahane’s and his wife Taila’s murders in 2000 (Ronen, 2011). Under Israeli law Palestinian prisoners’ names have to be published 48 hours before their release so any legal appeals against them may be made (Rabinovitch, al_Mughrabi, 2011).

²⁴⁸ Yisrael Beiteinu Party MKs Avigdor Lieberman (Foreign Minister) and Uzi Landau, and Likud Party MK Moshe Ya’alon opposed the deal because it sent the message that “abduction pays off” (Stewart, 2011). Netanyahu maintained Israel did not deal directly with its enemy Hamas because Egypt mediated the deal. This is arguably semantics as the fact remains Israel cut a deal with Hamas (Dromi, 2011).

the June 25, 2006 capture of Shalit in a cross border raid.²⁴⁹ The Court determined the exchange to be a political rather than legal decision.²⁵⁰ Netanyahu's letter to the appellants expressed his understanding of the "difficulty in accepting that the vile people who committed the heinous crimes against your loved ones will not pay the full price they deserve" (Rabinovitch, 2011). However personal political interests dictated the deal, after Netanyahu was relentlessly targeted by an Israel-wide campaign insisting on negotiation. It was instigated by the soldier's family and friends and elevated Shalit to a "symbol of national solidarity" (Rabinovitch, 2011; Addameer, 2011). Shalit's death as a result of political inability to return him would have had potent ramifications for Netanyahu, particularly as military service is compulsory in Israel. The Justice Ministry conceded to "significant security concerns" about many of the individuals to be released and the inclusion of many long-term prisoners was considered a victory for Hamas²⁵¹ (Amnesty International, 2012:53; Haddad, 2011:2). Despite this, the "ideological knot" Netanyahu twisted himself into earned the backing of Israeli public opinion (IHT, 20/10/11).²⁵²

On October 18, 450 male and 27 female prisoners were released. Shalit, the first Israeli captive to be returned alive in 26 years, and who had been promoted twice while in captivity, was simultaneously moved from Gaza to Egypt through the Rafah Crossing and flown to Israel (Bronner, Farrell, 2011; Ha'aretz, 2012). No conditions were attached to his release. In violation of GCIV, Article 49, 205 of the first tranche of Palestinian prisoners were deported to Gaza, Qatar, Turkey, Jordan and Syria, effectively extending their "previous isolation from homeland and families" (Addameer, 2011). Over the next two months, 550 more prisoners - predominantly Fatah members from the OPT and chosen by Israel - were released. Top Fatah leader, Marwan Barghouti, known amongst Palestinians as the "Prince of Resistance" (Dana, 2011), "Palestine's Mandela" and a popular alternative leader to Abbas, was not amongst them (al-Shibeeb, 2011).²⁵³ Many of the Palestinians had to sign

²⁴⁹ The timeline has included: June 28, 2006 - Israel launches a massive military operation in Gaza in an attempt to locate Shalit but fails; two months later Hamas confirms the soldier is alive; September 15 a letter from Shalit reaches Egyptian mediators trying to broker a release deal; Nov 26, Israel ends assault on Gaza; August-Dec Israel confirms it has a list of 1,400 Palestinian prisoners wanted in exchange for Shalit; May 2008 talks falter; September 2008 Hamas rejects Israel's prisoner offer; Dec 27 Israel launches Operation Cast Lead in Gaza - 1,400 Palestinians and 13 Israelis are killed; Jan 18, 2009 Gaza ceasefire; March, 2009 Israeli President Olmert refuses to "cave in to the demands from a terrorist organisation" and exchange talks collapse. The exchange had been opposed by then Mossad chief Meir Dagan and the head of Shin Bet, Yuval Diskin on the basis of what they claimed to be a 45 percent recidivism rate of security prisoners previously released (Bergman, 2011:5); October 2, 19 Palestinian female prisoners are released in exchange for video proof Shalit is still alive; Nov 25, Israel rejects demands for the release of Hamas commanders in any deal; Dec 22, Israel offers a 2-stage release of 450 including many involved in deadly attacks on Israelis, to be followed by a release of 500 more at a later date; June 27, 2010, Shalit's parents march to Netanyahu's Jerusalem residence to press for a negotiated exchange; October 17, 2010, Netanyahu announces talks have resumed; June 23, 2011, ICRC demands Hamas provide proof Shalit is alive; Oct 3, hundreds of Palestinian prisoners begin a hunger strike to protest imposition of harsh restrictions imposed in order to force Hamas to release Shalit; Oct 3, 2011 Israel and Hamas announced a deal of 1027:1 has been reached ('Timeline: Shalit saga' Al Jazeera, 12/10/11)

²⁵⁰ The ISC has never before overturned a government decision to release even those who have been involved in attacks against Israelis, nevertheless the law provides for appeals before any exchange (Rabinovitch, 2011).

²⁵¹ See Haddad for various mathematical calculations which present the deal in Hamas' favour, including that of the 315 life sentence prisoners 163 have multiple life sentences which in total equate to 926. However because life sentences in military courts are open ended they could be more than the 25 years applied in civilian courts. Nevertheless, using the 25 year as his norm, Haddad calculates that 23,150 years in prison for Palestinians was negated in this deal (2011).

²⁵² The Guardian, 2011, reports 79%-14% in favour; Al Arabiya (16/10/11) reports a Channel 10 poll findings of 69% backing the exchange, while 32% opposing. Of those backing the deal 62% said it would worsen Israel's security situation and 32% thought it would have no impact on security. Netanyahu caved in to public opinion according to 35%, and 35% said Netanyahu was trying to weaken Palestinian President Abbas.

²⁵³ Barghouti was a sitting member of the Palestinian Parliament when arrested in 2002. In 2004 he was sentenced to five life sentences for murder and 40 years for attempted murder. He was involved in organisation of the first Intifada from exile in Jordan where Israel had deported him. On the collapse of the Oslo talks and the outbreak of the second Intifada, Barghouti embraced armed resistance as a way of ending the Occupation. He has consistently refused to acknowledge the legitimacy of the Israeli legal/court system, stating in court that Israel has no right to try, accuse or judge him, and that he has a legal right to resist occupation (Dana, 2011).

declarations renouncing “terrorist activities” and agreeing to post-release “security arrangements” which amounted to virtual detention in the town or village they were released to. Registration with military or police authorities exports prison mechanisms into the OPT through the monitoring of ex-prisoner movements which Israel insisted as necessary to prevent prisoners returning to “terror activities” (AlJazeera, 16/10/11). Despite such conditions, Palestinians celebrated with “indescribable joy” the homecoming of the prisoners, greeted by Abbas as “freedom fighters” (AlJazeera 19/10/11). A Hamas leader, Ahmad Bahar, paid tribute to a victory of the “resistance” having “forced the Zionist occupation to submit to its conditions”. After twenty years of peace talks and no results, the capture, negotiation and release of one Israeli soldier had returned 20 percent of the Palestinians in prison (Barghouthi, 2011).²⁵⁴ In a blatant display of power, Netanyahu’s government simultaneously announced an acceleration of building in West Bank settlements and East Jerusalem (Greenberg, 2011).

The 2011 exchange is remarkable for its life-price index - the one Agamben invokes so thoroughly in his exploration of bare life to which those of little or no value to the sovereign are condemned. Salman refers to it as a “racist price index” which, with “mathematical certainty”, assigns a market value to various races. This deal set the value at 1,027 - 1 in favour of an Israeli (2011:1). Israel is unmasked as considering its citizens superior to Palestinians, and its colonial policing methods make ‘collecting’ Palestinians so easy it does not have a “hard time offloading such goods”. However, Hamas arguably played the ‘market’ too, exploiting Israel’s “racist foundations” in order to gain “bargaining power”, for exchanging so many Palestinians for one Israeli (Salman, 2011).

7.7 Restocking the Cells

Between the two phases of the exchange - October 18 and December 12 - a wave of arrests and re-arrests disclose a dominance of the carceral over the judicial in the occupation. One of Foucault’s main themes is the relationship between punishment and knowledge, and the inseparability of knowledge and power. Not only did the IDF immediately arrest 470 Palestinians - just seven fewer than released in the first tranche - it targeted well known political subjects. These included human rights defenders, protesters from selected villages,²⁵⁵ and political activists - 150 of whom were mainly PFLP and detained for “alleged party membership” (Addameer, 2012:2).²⁵⁶ Administrative detention orders were renewed or imposed²⁵⁷ - six of them on PLC members, and Haneh Shalabi who had already spent 30 months in detention because the army suspected she was a “global jihad-affiliated operative”.²⁵⁸ Shalabi was re-arrested in February, 2012, “on suspicion that she posed a threat to

²⁵⁴ See also Dawoud Abu Lebdeh in The Christian Science Monitor (03/11/11) for discussion on the paradox when Abbas appeals to peace and diplomacy and is rebuffed by the international community, while Hamas which doesn’t recognise Israel is rewarded for conducting what Israel considers a terrorist activity. The prisoner exchange shows Hamas’ tactics yield results.

²⁵⁵ Bil’in, Nabi Saleh, Beit Ummar, Al-Ma’asara, Kufr Qaddum and Al-Walajeh hold weekly demonstrations against the occupation and the Annexation Wall, and those participating are regularly the targets of settler violence and violent IDF arrest procedures (Addameer, 2011).

²⁵⁶ Refer to Chapter 6 - the PFLP were targeted as punishment for initiating a 22-day prison hunger strike as a form of resistance to the imposition of harsh measures intended to force Hamas to release Shalit (Addameer, 2012:2).

²⁵⁷ See Amnesty International’s (2012) Starved of Justice, Appendix 2, for a list of 30 newly issued or renewed administrative detentions in the two weeks immediately following the May 14 deal which ended a mass prisoner hunger strike. A key component of that deal was to end administrative detentions and not renew those already in place.

²⁵⁸ See Chapter 6 for details of Shalabi’s hunger strike. The IPS released her before the end of this 6 months detention, but exiled her to Gaza where she must remain for three years before being permitted to return to her village of Burqin near Jenin.

the area” near Jenin (Al Arabiya, 2012), and a “security threat to Israel” (Zeiger, 2011).²⁵⁹ Samer Issawi, was re-arrested in July for allegedly breaching his confinement to Jerusalem. Since August 1, he has been on an open-ended hunger strike demanding release (Hastings, 2012).²⁶⁰ The Palestinian Minister for Prisoners’ Affairs, Issa Karaki, accused Israel of violating the Egyptian-mediated prisoner release deal by re-arresting at least seven of the released prisoners (AIC, 2012).²⁶¹ The October exchange clearly did nothing to deter Israel’s policy of detention of Palestinians,²⁶² but Israel rejects accusations it breached the deal, claiming “Palestinians were recaptured because of renewed military activity” (Ma’an News, 2011; AlArabiya, 2012).

7.8 Revenge via aerial “liquidation”

Eleven months after securing Shalit’s release, Israel assassinated Ahmed al-Jabari - the head of Hamas’ military wing.²⁶³ Jabari was responsible for eventually closing the prisoner exchange deal, and is known for having taken an “extremely tough stance during the negotiations” (Khoury, 2012).²⁶⁴ Israel began in earnest a policy of “extrajudicial executions”, regularly referred to in popular media as “liquidation”, of Palestinians during the first intifada, and accelerated it in the second (Gordon, 2008:21; 2004:307-8).²⁶⁵ Statistics on those executed show a strong correlation with history of imprisonment creating an almost naturalized “incarceration/execution binary”.

²⁵⁹ Amnesty International (2012) released Israel’s official explanation letter regarding Shalabi’s rearrest and then the cutting of her 6 months detention order to four months, followed by deportation to Gaza after more than 40 days of hunger strike. The Israeli Justice Ministry said it had had “significant security concerns about her for quite some time”, that she had been involved in “dangerous activities including planning to commit a terrorist suicide attack”, that she was one of those released in the October exchange “despite significant security concerns”, but the decision to release and deport her to Gaza was made “due to concerns regarding Ms. Shalabi’s currently psychological state and was not related to the significant security concerns regarding her”.

²⁶⁰ As of November 30, Issawi was into the 121st day of hunger strike, alongside Ayman Sharwana who was on the 152nd day of his strike. Both prisoners told PHR-I that they will intensify their strikes by refusing water. Both were re-arrested after the exchange deal and are being held without charge (Ma’an News Agency, 27/11/12).

²⁶¹ Allison Deger in a February 2012 report puts the number of rearrests at that time at nine - Shereen Al-Esawy, Mofeeqa Al-Qawasmi, Mona Abu Sneina, Aesha Mousa Ghannam, Hana Shalabi, Ayman Abu Da’oud, Yousef Abdul-Rahman Shteiwy, Mahmoud Adnan Salim, Rami Abu Haniyya. The news website Occupied Palestine (18/05/12) reported the re-arrest of Aref Fakhuri, released in the October 17 deal. He had been imprisoned for being a commander of the Aqsa Martyrs Brigade and released after 9 years of a 28-year sentence. Occupied Palestine (11/06/12) reported the re-arrest of Iyad Abu Fanoun who had been released after serving 8 years of a 29-year sentence. He was reported as being threatened with serving the rest of his original sentence “plus ten years if he did not confess to charges that he returned to anti-occupation activity”.

²⁶² Addameer lawyer Jawad Boulos told Palestinian Radio that the Palestinians and the Egyptians made the mistake of leaving the Israelis to determine the meaning of the deal, and the Israelis have “taken our understandings to the furthest possible extreme” which is “sad, painful and angering, not just for us but for the prisoners who had had their terms extended three or four times” (Browning, 2012).

²⁶³ Jabari was assassinated in Gaza on 14/11/12, and is the most senior Hamas official to be killed since Operation Cast Lead in 2008-09. Israel has an “abundant history of liquidating enemy leaders” and during the second intifada when Palestinian suicide bombers killed hundreds of Israelis, assassination effectively put a “price tag on suicide terrorism to be paid by those who recruited and dispatched the human bombs” (Bergman, 2012:6).

²⁶⁴ The most up-to-date photo of the usually secretive Jabari which was shown by news organisations world-wide on the news of his assassination, was the one of him accompanying Shalit to the Rafah crossing to be handed over to Egyptian arm intelligence officials in compliance with the exchange deal.

²⁶⁵ See Gordon (2004) ‘Rationalizing Extra-Judicial Executions: The Israeli Press and the Legitimation of Abuse’ for full exploration of the marketing of Israel’s policy of assassinations, which began with the Golda Meir doctrine after the 1972 Munich Olympic Games murders. Meir “avowed that Israel would hunt and gun down those responsible for killing its citizens” - the justification being those to be killed had “Israel blood on their hands”. Gordon also explores how prominent Israeli news outlets have “helped produce, disseminate and reinforce both the rationality and the morality of executions” (305). Evidence in Gordon’s research shows the liquidation of Palestinians after they have served their prison sentences is not unusual - Ha’aretz covered 30 assassinations and all but eight were former prisoners; Ma’ariv, 28 assassinations of which 21 were former prisoners and Yedioth Ahronoth 25 executions, half of whom were former prisoners (312).

A Foucauldian analysis would suggest that in the Israeli lexicon, “execution...carries a subtext which is obviously tied in some way to incarceration” (Gordon, 2004:312). Bergman argues targeted assassination is considered by Israel to be the “harshest punishment in a penal toolbox”, and warns that “using it too often will not serve well as deterrence”. Rather, such “disproportional punishment” results in anarchy, and assuming assassinations will convince Palestinians to shut down all resistance is “naïve” (Bergman, 2012:6).

Israel has created a databank of Palestinians to be assassinated - sentenced to death without trial, in contravention of international human rights law and humanitarian law. It has been labelled “aerial enforced occupation” - a facet of control and surveillance of Palestinians by drones, balloons, zeppelins and military helicopters (Gordon, 2008:202-3). This practice is arguably the ultimate in the exercise of *homo sacer*, as Israel, acting as a sovereign with ultimate power over life and death, determines whom it wishes to kill, and it kills with impunity. Netanyahu declared he was responsible for choosing the right time to kill Jabari - “to exact the heaviest price, and so be it” (Harel, Issacharoff, Cohen, Reuters, 2012).

Assassinations and the habitual restocking of prison cells, even during prisoner exchanges, call into serious question Israel’s willingness to “resolve the prisoners issue”, which even it acknowledges lies at the core of resolution of the occupation, and, the occupation itself (Addameer, 2009:6-16). Foucault warns of the “blatant political tactic” of punishment, and of penal mechanisms as “new tactics of power” (Foucault, 1977:23) - tactics extending to extra-judicial executions which carry a strong relationship with incarceration. It is implausible to consider as anything but the exercise of Foucauldian power tactics, Israel’s maintenance of a stock of prisoners for political gain, easily replaced through arbitrary raids and other colonial-era policing methods, and its state-sanctioned assassination of those it decides must die. Netanyahu assassinated Jabari just nine weeks out from Israel’s upcoming election, and followed up with a crippling bombardment of Gaza in response to Hamas rockets. All indicate the political profit of getting tough with the Palestinians can deliver a coalition which has moved significantly to the right.²⁶⁶

7.9 The Named and the Nameless

The exchange of 1027 “nameless, faceless...en masse terrorists” (Assaf, 2011) for one Israeli, goes to the heart of the power discrepancy between Israel’s economic, military, carceral and legal superiority, and the reality of Palestinians under occupation or blockaded in the Gaza Strip.²⁶⁷ When Palestinians are represented in larger numbers than Israelis, it is invariably in imprisonment and fatality statistics. With respect to prisoner exchanges, scant attention is paid to the wider context of disproportionality. As the occupier, Israel controls every facet of colonized Palestinian life - land, borders, economy, food, health, education and freedom. Zionist carceral

²⁶⁶ Netanyahu has formed a coalition of his Likud party with the right wing Yisrael Beitenu, of Foreign Minister Avigdor Lieberman who is himself a settler, living outside Israel yet sitting in its parliament. Such a coalition raises serious doubts about the commitment of the Netanyahu-Lieberman coalition towards a two-state solution, or the possibility of Israel making any concessions in order to facilitate that. Lieberman is widely regarded as favouring a “Greater Israel at the expense of the Palestinian people” - a position the settlement expansion appears to confirm (Hussain, 2012). Extensive commentary on the underlying politics of the Israeli-Hamas rocket firings following al-Jabari’s assassination links the assassination and the fierce bombardment of Gaza with upcoming Israeli elections and the criticism of Netanyahu for not acting to stop the rockets being fired from Gaza into southern Israeli towns (Bergman, 2012:6; IHT Editorial 17-18/11/12).

²⁶⁷ Operation Cast Lead (2009) is a strong example of the disproportionality Israel’s military strength - in terms of casualties 1434 Palestinians were killed in 22 days - only 235 of them militants, and the rest civilians including 288 children; 5,303 were injured; three Israeli civilians and one security force member were killed by rocket fire into Southern Israel (UNHCR, 2009); See B’Tselem for investigation of the fatalities of Operation Cast Lead; also Cohen (2009) *The Principle of Proportionality in the Context of Operation Cast Lead: Institutional Perspectives*, for discussion on proportionality within the context of international law, particularly the laws governing war and human rights law; the applicability of notions such as indiscriminate military attacks; persistent claims of Israel’s use of disproportionate force; obligations to prevent or minimize damage to civilian population; and whether the statistical count of the numbers of Israelis and Palestinians killed and wounded can actually capture the full effects of the conflict on both sides.

policies ensure a consistently high number of Palestinians are in prison at any given time, and therefore available to be traded as a single mass for the single life of one Israeli. By holding thousands of prisoners, Israel fortifies its control by undermining Palestinian family and political units which are the crucial basis for resistance. The benefits of this to Israel far outweigh the high price of a relatively brief control Hamas had over the life of one single Israeli soldier, particularly so given the death toll, infrastructure destruction, and blockade of Gaza (which remains in place)²⁶⁸ when Israel attempted to find Shalit (Bennis, 2011).

Again Israel's behaviour invokes the price index on life steeped in a Zionist-colonial consciousness which diminishes the value of Palestinian lives. This enables the perpetuation of occupation, seemingly without guilt on the part of the occupier for the suffering of the occupied.²⁶⁹ Tangible examples of disdain for Palestinian life include violent arrests, mass imprisonment, torture, abuse of children, home demolitions, and the "automatic ease" with which military courts extend detentions in a prejudiced military-legal framework (Salman, 2011:1). Netanyahu explained the exchange rate as a sign of how greatly he valued Shalit's life (Orr, 2011;²⁷⁰ Zionism's former paramount spiritual leader Rabbi Eliyahu preached "the life of one yeshiva boy is worth more than the lives of 1,000 Arabs" (Nahshoni, 2008). Hamas acknowledged Shalit was "precious to his people" but a "Palestinian is more precious, not least because all of our people paid the price for Shalit's release" (Meshaal, 20/10/11; Issacharoff, 2011).

In being named, Shalit exemplified what Chomsky (2011) refers to as belonging to the category of "people", while Palestinians and other indigenous or colonized people are "unpeople", or as argued above and in Chapter 2, *homo sacer*. Accordingly, the Wafa al-Ahrar prisoner exchange is known as the Shalit exchange; media was saturated with the life, capture, agonized family and release of the 19-year-old who had been 'kidnapped';²⁷¹ Israeli society and even American Jewish organisations denounced Shalit's deprivation of his "most basic rights"

²⁶⁸ In October 2012 an Israeli court found in favour of Israeli human rights group GISHA and forced Netanyahu's government to release a study it commissioned on how many calories Gazans needed to consume in order to avoid malnutrition. The research was commissioned when Israel tightened its blockade of Gaza following the Hamas victory in 2006. The report is Food Consumption in the Gaza Strip - The Red Lines (2008) (BBC, 17/10/12). While Israel denies the research was for the purpose of knowing how little food Palestinians in Gaza could exist on, it is revealing that just one year before the research was commissioned, Dov Weisglas, a senior Israeli government advisor recommended that Israel "put Palestinians on a diet, but not make them die of hunger" as a tactic for forcing out the democratically elected Hamas government (Makdisi, 2010:170). Operation Summer Rain killed 202 Palestinians including 44 children, thousands were forced to flee their homes due to aerial assaults, the electricity grid and bridges were severely damaged leaving more than 1 million Gazans without regular water or electricity, and little if any humanitarian aid was permitted into the Strip "for security reasons" (Ha'aretz, 27/08/06)

²⁶⁹ See Parsons for discussion on how Israel has been spared the full blame for the punishments meted out to Palestinians once the PA was created. The PA's policing and carceral duties lowered for Israel the economic and political costs of occupation, ensured "better carceral results [by] enhancing effectiveness and by multiplying its circuits" and, it reduced the "return effects" of punishment on itself despite it being the ultimate punishing authority (2010:63).

²⁷⁰ Political commentator Dr. Aref Assaf considers such comments from Netanyahu and Israelis as inferring Palestinians do "not cherish their loved ones in the same way" and so a Jewish life is therefore "more valuable than that of a Palestinian" (Assaf, 2011). Fisk, (2011) argues the exchange rate "suggests one Israeli life equals 1,300 Palestinian lives" - just under the number of Palestinians killed in Operation Cast Lead in 2008-9.

²⁷¹ See Matt Wells (30/06/06) for a dispute between the BBC and The Guardian over the way to report Shalit's fate. The BBC argues Shalit was a captured soldier, not a kidnapped civilian, and the fact that Hamas held Shalit as a kind of hostage does not alter the fact that soldiers in the line of duty are captured by enemy combatants, not kidnapped. Wells argues for the Guardian that it looks like a kidnap, feels like a kidnap, therefore surely it should be called a kidnap. Middle East media also frequently refer to the exchange as the Shalit deal.

while in captivity,²⁷² without mention of the breach of GCIV and various human rights of the thousands of Palestinians imprisoned in Israel, or the 1.5 million Palestinians under siege in Gaza (Abunimah, 2010). While world media covered the exchange, outside the Middle East there was barely a mention of any details of the released Palestinians, their travails living under belligerent occupation, the human stories of their families (Cobban, 2011). They were instead a mass, an “unprecedentedly high number of murderers” disproportionately exchanged in a grossly lopsided deal for an “abducted” soldier (Schweitzer, 2011:2; Bronner, 18/10/11). Shalit was 19 when captured, but Ashraf Baluji, Imad Abu Rayyan, Imad al-Masri and Ysuf al-Khalis were 19 when they were arrested in 1991 only to spend more than twenty years in Israeli prisons (Halawa, 2011:2). Shalit was an armed IDF soldier in an occupying force, yet the majority of Palestinian prisoners are incarcerated for resisting the very military occupation Shalit enforces. Hundreds of Palestinians in prison are years younger than Shalit was on capture. Hundreds are in prison without charge, conviction or trial, 111 political prisoners have been held since before the Oslo Peace Process began in 1993, and they are all held in violation of Articles 49, 77 and 79 of the GCIV in that they have been transferred to the country of the occupying force (Addameer, 2012:2).

The invalidation of Palestinians as an occupied people is crystallized in prisoner exchanges which refuses to afford them equal value as humans, and instead refers to them as a dangerous mass. As such they are detained in numbers which ensure sufficient are always on hand as commodities to trade. Israel displays either a deliberate or a learned blindness to the irony of heroizing one individual soldier, while despising the very people that soldier is responsible for repressing.

7.10 Conclusion

This chapter has identified the prisoner exchange as an integral facet of the Zionist carceral web because of the political gain it delivers to Israel. There is an “interlacing of politics and bare life” which, as Agamben notes, loses sight of the “juridico-political foundation of classical politics” to the detriment of those stripped of their rights (Agamben, 1998:120). Israel knows well the importance of the prisoner in Palestinian society, and therefore the currency prisoners represent in negotiations. Analysis of the Wafa al-Ahrar/Shalit deal identifies the degree to which Israel will breach its own red lines and do business with terrorists. However, as demonstrated in subsequent events including Jabari’s assassination, Israel acts as a sovereign with a self-appointed right to kill with impunity, rather than within the legislative confines of a state. The 2011 exchange delivered the greatest ever number of prisoners categorized as dangerous threats to Israel’s security, thus rendering questionable future objections to Hamas and the release of so-called security prisoners. Equally questionable is the immediate refilling of prisons in order to, in contravention of Israel’s own laws, have sufficient bargaining chips on hand. This chapter provides evidence of Agamben’s concepts of bare life - that of the dehumanized, commodified prisoners, and *homo sacer* - Palestinians assassinated or collateral damage in IDF recovery operations. These concepts mesh with Foucauldian considerations of power as existing in its exercise, and to an extent a resistance from Palestinians in that they never agree to trading one Israeli for just one Palestinian prisoner. This chapter contributes to the thesis an understanding of the political expediency of mass incarceration. It provides empirical evidence that Israel does not place an equal value on the lives of its own citizens and those of the population it subjugates, and it acts with the impunity of a sovereign against Palestinians when it suits. As the following and concluding chapter confirms, the disproportionality of the

²⁷² Hamas denied Shalit visits from the ICRC, however the ICRC appeared to consider Shalit a Prisoner of War, and as such Hamas, as the detaining power, would be entitled to take into account its own security before allowing external visitors to see a POW. Under the Third Geneva Convention, a detaining power must do all it can to protect the life of a POW. Hamas official Mahmoud Zahar is reported as claiming Hamas had no intention of harming or killing Shalit, and Hamas sent proof of life to Shalit’s family. Israel, while decrying Hamas’ treatment of Shalit collectively punished Palestinians in Gaza in its 2006 offensive, blockaded them in, denied Gazans their right to visit family members imprisoned in Israeli jails, and Israel collectively punished Palestinian prisoners by imposing harsh measures on them in order to pressure Hamas to surrender Shalit (Abunimah, 2010).

prisoner exchanges is no accident. Accordingly the price index on life under occupation has been updated and is indeed tangible. The 2011 exchange set that price at 1027: 1, or as Chappatte's cartoon estimates, one Palestinian for "70 grams of Israeli soldier".

Chapter 8

CONCLUSION

This thesis has discussed the causes and consequences of Zionist carceral practice. The discussion has centred on four key questions outlined in the Introduction: Does Zionist carceral practice meet typical law and order necessities or those of colonial policing, and if it is the latter, why? Can Zionist carceral practice be understood as a strategy, and if so, to what end? Can clear tactics and/or mechanisms be identified within Zionist carceral practice and if so what are they and how do they work? In what ways and with what consequences do Palestinians resist Zionist carceral practices?

Each of the previous chapters examines elements of these questions, often overlapping under the umbrella of the occupation, so fundamental in contextualizing the issue under study. The occupation is identified as impacting legally, militarily, politically, economically and socially on every action and counter-action of the Zionist policing regime and the Palestinians inside and outside the prisons. The occupation is not the subject of this study, but it is inseparable from the objective of Zionist carceral practice, so its omission would render meaningless any in-depth analysis. Addressing the research questions in the current climate has allowed for a highly contemporary examination of connected events: the 2011 prisoner exchange; the 2011 and 2012 hunger strikes; the 2012 IPS-prisoner deal; daily arrests and re-arrests of exchanged prisoners; continued detention without trial; torture; extra-judicial assassinations and associated military aggression; and the steady creep of illegal Jewish settlements on Palestinian land. The settlement expansion is particularly significant as it has been used in December 2012 to punish Palestinians for taking their statehood bid to the UN.²⁷³ The convergence of these components is new and fluid, and so they are yet to receive full academic analysis as connected realities within a framework of power and resistance circa 2012. This thesis begins that process, approaching events through the prism of the ideological and strategic role of Zionist carceral practice to which all these roads lead.

After setting the scene for the contemporary reality of Palestinians living under occupation, the Introduction provides an explanation of the methodology chosen. It is evident throughout this entire body of work, that while the Israeli-Palestinian conflict remains unresolved, it has spawned an enormous and varied literature. Critically, there is an abundance of primary source data, particularly from prisoners and former prisoners. This has seriously turned on its head the adage that history is written exclusively by its victors. This research has established that Palestinians, despite living under a repressive occupation, have found voice, and that voice is carried in a number of highly credible books, academic and legal literature, together with reports on life under occupation compiled by international and domestic political and human rights organisations which themselves can be subject to attack by the Zionist carceral regime as the IDF December raid and ransacking of Addameer's Ramallah offices testifies. Therefore a methodology which interprets such existing texts and documents, supported by secondary source analysis and empirical literature, facilitates a comprehensive in-depth study.

The concepts which guide this thesis are outlined in Chapter 2. They are a mix of the very practical and the philosophical, and thereby provide an insight into what lies at the heart of Zionist carceral practice, together with guidance on why. Given the Zionist prison has evolved as the focal point of physical and psychological control and resistance, analysis is expedited using Foucault's theories of punishment, the modern prison, the exercise of power and the resistance that it generates. Also employed are Agamben's notions of *homo sacer* and 'bare life' in exploration of the negation of Palestinian rights, Palestinian marginalization within - or expulsion from Zionist society, and the reality that the occupier can terrorize, torture and even kill with impunity. The framework presents the prison in three ways - as physical structure institutionalizing the power to punish, symbol of colonial

²⁷³ The planned extension of an area called E1, which previously Israel had undertaken not to build on, effectively cuts the West Bank in two, and cuts off sett

and Zionist domination designed to control a categorized population, and, site of resistance. Application of Foucault and Agamben allows us to see that power is not only in the hands of the occupying force, but exists in the agency of the occupied via counter-tactics which upend the intended use of Zionist prison space. These theories show that while the bodies and the souls of the Palestinian prisoners may well be worked on by the occupiers' carceral practices, the prisoners disrupt that power to punish with the power to resist. Their experience has become a parable for Palestinian life even outside the prison, where a carceral matrix of control permeates in a Foucauldian carceral archipelago, impacting every activity within the OPT. The paradigm in play mixes Zionism and colonialism, which is a convergence of an ideological but largely secular land grab, with a no longer acceptable disregard for subjugation of indigenous populations. Hence the reference to Zionist carceral practice.

In order to summarise the findings of this thesis, I now address the primary research questions in turn.

Chapters 4 and 5 establish whether Zionist carceral practice is best understood as typical law and order or colonial policing, and if not why not. The answers are found in the analysis of the legal environment which sanctions the carceral regime and the arrest and detention procedures which fill the prisons. Chapter 4 defines the laws which are in place in order to police the occupation. These laws are not consistent with typical 21st Century democracies. Rather they are rooted in colonial law which authorizes military rule. The laws are applied specifically on the basis of race - in this case to Palestinians only - and are applicable to all Palestinian activity, be that violent or non-violent resistance to occupation, political association and even cultural expression. Given there are approximately 3,000 military orders regulating Palestinians, the probability of offending is extremely high. Legislated denial of rights secures for the occupier a conviction rate of Palestinians in the military courts which hovers around the 98 percent mark.

The basic strata of this non-typical law and order is the British Mandate-era Emergency Defence Regulations of 1945. Since its inception in 1948 Israel has operated under this permanent state of emergency which it argues justifies its non-adherence to various international treaty obligations that would otherwise protect the rights of Palestinians. Within the discourse of emergency, Israel has fashioned Palestinians as threats to its security, and as such they are dehumanised, subjugated and criminalised as were other populations colonized early in the 20th Century, but who have since won independence. Two key tactics of Zionist carceral practice - Administrative Detention and torture - are not consistent with contemporary law and order practice. Administrative Detention is allowable in tightly specified and unusual circumstances, but international legal watchdogs have expressed concern at Israel's systematic breach of this proportionality principle. Torture is outlawed internationally, yet Israel has legislated its way around this obstacle by compiling a secret list of permissible torture which GSS officers are sanctioned to use. The evidence produced in Chapters 4 and 5 expose torture as the norm rather than the exception, and this applies to children as well as adults. That is not typical law and order practice, and Israel is still to answer UN demands for explanations.

Comparison is made between contemporary Zionist practice and that of colonizers, with the results showing astounding similarities in whole-scale collective punishments, surveillance and other control and deterrence mechanisms involving systemic brutality. The IDF - an armored military - operates as a police force but the results for Palestinians are far removed from the expectations of conventional policing and justice. For example, regular police do not break in to homes in the middle of the night, smash the belongings of the family and drag half asleep children and teenagers to detention centres, beat them up, threaten and interrogate them, often without parental knowledge of their whereabouts or legal representation.

Contemporary Zionist carceral practice is therefore established as inconsistent with colonial policing, but why? The answer lies in the situation being policed. Israel has occupied Palestinian territory since the 1967 war but as Chapter 4 indicates clearly, it has refused to consider itself an occupying force so as to excuse itself from the

obligations of occupation law.²⁷⁴ Moreover, it has subjected Palestinians in the OPT to military law - a policing which requires soldiers, not a gendarmerie. Massive resistance to the occupation in the two intifadas was met with full military force, clandestine death squads and regulations permitting open fire when no clear and present danger existed for the soldiers (Gordon, 2008:157). The reality is the colonial-era policing, resuscitated to control the intifadas never dissipated. Children throwing stones at armored vehicles which patrol the OPT exemplify the presence of military policing, which has been referred to in this thesis as “savage restraint” - the practice of inflicting painful but not necessarily lethal repression (Ron, 2002: 445). This acknowledges the military has the capacity to kill and destroy even more than it does, but because the world is now watching, Israel strives to give the appearance of legitimate policing. Physical and human destruction is justified under the cloak of ‘security’ - a paradigm Israel has plucked from its past in order to control the future of its Zionist enterprise.

To answer the second question as to whether Zionist carceral practice can be understood as a strategy and if so, to what end, the thesis builds empirical and narrative evidence of the legal, carceral, resistance and prisoner exchange facets of the occupation. It claims that Zionist carceral practice is a ‘strategy’, the ultimate purpose of which is to make life so unbearable for Palestinians under occupation that they will submit or leave. The end goal is to complete the 1947-1949 first wave of killing and expelling more than 750,000 Palestinians in what would now be called ethnic cleansing; followed by the purges associated with the initial stages of the 1967 occupation, and today, embodied in the strangulation of Palestinian national, political, social and economic life. This is evidenced in the fact that Zionist carceral practice does not limit itself to the physical structure of the prison, but embodies all the tactics of the Foucauldian carceral archipelago in which prison discipline and punishment spreads capillary-like into wider society in order to regiment daily life outside as if it were just a larger prison. Chapters 4, 5, 6 and 7 provide sound evidence that Palestinian individuals, families and communities are treated as prisoners. They are punished for being Palestinian. They are controlled and regulated by law, but for the protection of the occupier, not themselves and certainly not their property. Their resources are controlled, but not for them. In fact Palestinians are deemed not to even own resources as precious as water on their lands, nor vast tracts of the land itself.

The third question asks whether clear tactics and/or mechanisms can be identified within Zionist carceral practice, and if so what are they and how do they work? This thesis claims the tactics of Zionist carceral practice are both overt and covert. As outlined in Chapters 4, 5, 6 and 7 the laws and regulations of the Zionist occupier criminalize and imprison Palestinians in numbers which at times have made them the most incarcerated people in the world. This is more indicative of an overly legislated population than one with endemic criminal tendencies, but by criminalizing resistance to the occupation, Israel provides itself with a veil of legitimacy - the legal form of savage restraint. Legislation is therefore a tactic of Zionist carceral practice which invites outsiders to view an elaborate, albeit military court structure, with judges and security personnel, lawyers, defendants and use of what Foucault refers to as the universal egalitarian punishment of incarceration. Chapters 5, 6 and 7 explode the legislative veneer with evidence of laws based on race, absence of civil jurisdiction, denial of Palestinian human and political rights ostensibly to protect Israel’s security, arbitrary detention and incarceration without trial for indefinite periods, liberal use of state-sanctioned torture, and, prisoner exchanges - arguably one of the most glaring examples of a price index on life which places a premium on the lives of Israelis over Palestinians. Palestinians are incarcerated in numbers which provide Israel with an abundance of tradeable commodities whom it exchanges, often in the hundreds, for the release of a handful or fewer Israeli citizens - a practice which breaches Israel’s own Supreme Court ruling.

These are tactics, designed and implemented to control Palestinians and convince them to cease, or at least minimize, all resistance to the occupation. Administrative Detention and torture present as harrowing physical and psychological punishment of those who resist. The evidence is of a state which rests on its power to

²⁷⁴ Israel has had varying degrees of control over Palestinian lives since 1948, and authors such as Gordon (2008) argue with sound reasoning that this should never be left from the context of the occupation.

oppress by controlling the bodies and minds of Palestinian prisoners and their families. This is designed to humiliate, terrorize and hurt them, and ultimately, destroy their political and civil communities and with that, their resistance. Within the prison walls the punishment is hidden from direct public gaze, as is the occupation itself largely hidden from Israeli public view. However as the primary and secondary data in Chapters 5, 6 and 7 attest, the exercise and the purpose of these tactics remain hidden no longer. Torture is seen as a clandestine operating code which is effective in eliciting confessions on which most convictions are based. Convictions in turn validate the colonial policing methods which have delivered the inmates, and imprisonment - Foucault's egalitarian punishment - presents as the legitimate outcome of a law abiding carceral practice. Administrative Detention permits Israel to incarcerate its most vehement political opponents without having to explain the charge, present evidence, or nominate a release date. As a tactic it is regarded by prisoners as pernicious because it is shrouded in a self-serving secrecy for Israel, and the threat of perennial renewal is used to discourage future political resistance.

In what ways and with what results Palestinians resist Zionist carceral practice? The answer to this question emerged in Chapter 6, although resistance as a concept runs throughout the entire thesis. Specifically identified are the prisoner hunger strike and the commandeering of the Zionist carceral space by Palestinians as sites for their own nationalist education and political organization. This is the concept of the 'prison as university'. Both of these examples are Palestinian agency in practice. As Foucault so unambiguously states, where there is power, there is resistance, and Palestinian agency exemplifies Foucault's theory that power exists in its exercise. Therefore resistance is Palestinian power, and the prisoners incarcerated for exercising their power through resistance are valorized by Palestinian society, the political establishment and the Palestinian media.

The methods and results of Palestinian resistance are manifest in the most recent, and arguably the most significant prisoner hunger strikes in Palestinian prisoner history - in both duration and numbers. Electronic dissemination of information from the prisoners, their families, lawyers, prisoner support and human rights organisations has allowed this research to follow intimately the daily machinations of the power-resistance battle. It has played out in a real-time duel between prisoners and the IPS. Details of the health of prisoners - some who remain on strike after more than 100 days - are available world-wide, as are appeals from some of the world's most senior politicians and diplomats calling on the IPS to act before any prisoners die. The hunger strike as resistance thereby succeeded in two of its key goals - it attracted international attention to the plight of Palestinian prisoners and the wider community under occupation, and it forced a deal with the IPS, the details of which were outlined in Chapter 6.

The export of carceral practices including surveillance, curfews, intimidation and extra-judicial beatings and executions beyond the physical walls of the prisons means that all Palestinians are involved in resisting Zionist carceral practice. It is evident within the thesis that the resistance response comes naturally to Palestinians, most of whom have intimate connections to prisoners. Accordingly, the prisoner is held in high esteem within Palestinian society, and prisoners have come to represent parables of life in the wider OPT. The resistance is demonstrated in the refusal of Palestinians vacate their lands. It is a reality expressed clearly with respect to the Algerian Revolution:

"...large forces of occupation cannot last and that for the colonized natives the most essential value because the most concrete, is first and foremost the land". (Fanon, 2001:34).

In closing, this thesis offers the following thoughts on the causes and consequences of Zionist carceral practice; both causes and consequences have ideological as well as physical dimensions. Zionist carceral practice is driven by a secular desire, underpinned in part by a religious belief, that the whole of what was Mandate Palestine should be the State of Israel. The colonial-era approach to disregard the rights of the indigenous people is still active in the Israeli treatment of Palestinians - in, amongst many examples throughout this thesis, appropriating their land for illegal Jewish settlement expansion, commandeering their precious commodities of water and land, arresting them in massive numbers and denying them the legal and civil rights available to the

colonial occupier's citizens. Invoking Foucault's power-resistance binary, and the concept that power is possessed in its exercise, Palestinian resistance is necessarily a response to the primary action of occupation. Israel, in order to secure its ambitions, has resorted to a physical and psychological strategy which relies on the exercise of a myriad of carceral tactics against Palestinians in its prisons, and throughout the entire OPT. The causes therefore point to a now endemic strategy to crush resistance.

Israelis and Palestinians are impacted by Zionist carceral practice. The reality for Israel is that it will never experience peace while it represses Palestinians through colonial-era laws and military regulations which incarcerate them in the thousands, mistreat them, and extend prison-like regulations throughout the OPT.²⁷⁵ Zionist carceral strategy and its repressive supporting tactics are also now at the centre of a growing body of academic, legal and media examination - much of it Israeli - which consistently finds the Zionist state and its agents to be acting unlawfully (let alone morally), in their treatment of Palestinians. Scrutiny is more likely to intensify than decrease, particularly with the expansion of digital media, and the PLO's success in gaining an upgraded UN recognition of Palestine as a non-member observer state. The word 'state' is the critical element as it could deliver access to bodies including the International Criminal Court, where Palestine could take legal action against Israel and its soldiers for their conduct in an occupied state. Transferring the population of an occupying force into occupied territory as is the case with the settlement construction, is considered a war crime. Israel has created for itself an ideological fortress of fear of Palestinians by essentially criminalizing their existence. It has to reinforce this security doctrine with a physical fortress of settlements, Jewish-only highways, the Separation barrier and race-based laws - none of which go unnoticed by the international community.

The consequences of continuing Zionist carceral practice for Palestinians are also ideological and physical, strategic and tactical. An entrenched occupation facilitating the exercise of an array of carceral tactics inside and outside the prisons means continued disruption of the economic, social and political cohesion and the potential of the Palestinian people. While Israel continues to flout international laws and UN resolutions, Palestinians will continue to live with the threat of relegation to Agamben's bare life. They will continue to be transferred illegally to prisons inside sovereign Israel, and subjected to colonial-era military justice with its thousands of laws criminalizing life. The consequences also extend to resistance. Even if they are resistance-weary, Palestinians will only be able to achieve self-determination and an independent, sovereign, contiguous Palestinian state if they persevere in defying the overall strategy of Zionist carceral practice by remaining on their lands. In the words of Palestinian human rights activist Omar Barghouti, the

"moral Palestinian challenge to their colonial existence is not an existential threat for Israelis but rather a magnanimous invitation to dismantle the colonial character of the state" (Lentin, 2005:19).

Zionist carceral practice is evidence that, as with prisoner exchanges, Israel negotiates only when no other options are available. It is not a practice recommended in Foucault's final lines of *Discipline & Punish* when he warns that within the "fabrication of the disciplinary individual" and the complexity of power relations and "multiple mechanisms of incarceration...we must hear the distant roar of battle" (Foucault, 1977:308). This thesis strongly indicates the roar of Palestinians in their battle against Zionist carceral practice is no longer in the distance.

²⁷⁵ While specific to Gaza which is under siege rather than occupation, this lack of peace was demonstrated most recently in the exchange of rocket fire and bombs between Hamas and Israel in mid-November, 2012. Six Israelis and 162 Palestinians died during the eight days of conflict, with a ceasefire eventually negotiated by Egypt's President Morsi and US Secretary of State Clinton.

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