

## 8 CIVIL RECRUITMENT

To summarize, we have argued that the ruling apparatus in the Occupied Territories is a separate military regime that coexists alongside the civil regime in Israel proper. The two regimes are nonetheless actually part of the same political system. They are not only linked but extend into each other. How does this connection that duplicates the Israeli regime work, then, splitting it into two halves, preventing their detachment from each other in spite of their separation, while at the same time blocking a full breach of the borders between them, even though each regime has emissaries present and active within the other? How is it possible to maintain an oppressive military regime whose ruling apparatus denies millions of people their freedom and rights, while free citizens, anxious for their rights, democratically elect the ruling power responsible for this occupation and enlist to defend it?

There is a ready answer to this question: the citizens of the civil regime participate in the Occupation because it is perceived as a national mission destined first and foremost to protect them. They believe the Occupation persists because of what they call terrorism and the obstinacy of the Palestinian leadership in rejecting Israel's generous peace offers. Israelis have no choice but to continue ruling the Territories by force so that armed Palestinian resistance will not shift from the Occupied Territories into Israel proper and make it a living hell. Reacting to this ready regurgitated answer, critics ask whether terrorism indeed perpetuates Occupation, or whether it is not rather the institutionalization of the Occupation that has intensified Palestinian resistance and generated terrorism, which one must fight regardless of one's view of the Occupation. Critics also point to the role of colonization in the continuation of the Occupation and the grooming of Palestinian terrorism and refuse to accept the absence of political agreement as a ground for both expanding the colonies and shirking responsibility for the well-being of Palestinians.

But such discussion misses the question we pose. The question is not about the linkage of motives and ideology to action (from quiet support to active participation in the ruling apparatus), but rather about the conditions that enable the existence of this hybrid—their coexistence—under a single governing power: two such vastly different forms of governance whose principles are mutually contradictory, and in the past each of which was often born of the ruins of the other. This chapter explores several ideological and political mechanisms responsible for the hybrid structure of the Israeli regime.

### THE INVISIBLE REGIME

Occupation of the Palestinian territories in June 1967 was experienced by most Israelis as a whirlwind drama, and by many as a religious epiphany, even the harbinger of redemption, but the emergence of the new Israeli regime was slow and hardly noticeable. In the late 1960s, the *state* of occupation became a *state project*. In the 1970s, its scope grew considerably. Sometime in the early 1980s, the project was consolidated into a new *regime*, distinct but not entirely separate from the ethno-democratic regime that had persisted until June 1967.

When this distinct-but-not-separate regime appeared, the Israeli regime was doubled, its two faces attached to each other, Janus-like. Palestinian noncitizenship was *attached* to Israeli

citizenship, and the Occupied Territories—their legal status left undetermined—were attached to sovereign Israeli space, which had already received international recognition (except for the status of Jerusalem). The spatial and civil separation of governing and governed discussed above help *separate the government in Israel from the ruling apparatus in the Occupied Territories*, isolate the former and emphasize its democratic features, while blurring and justifying the tyrannical features of the latter. By the same measure, the Palestinian governed are also separated from *the governing power that rules them*, while their participation in it—marginal and restricted as it may be—is denied. Together, these divisions and separations retain the image of the governing power as Jewish and the image of the Israeli regime as democratic. Each of these separations limits the integrity of the other and charges a high price to maintain it. No separation is fully realized, and the gap thus created produces chronic instability and a task that can never be fully accomplished.

These divisions are now integrated as components in a form of domination that has become its own end, the perpetuation of ruling by *inclusive separation*. However, each division is usually represented and conceived of without accounting for its systemic role, and is discussed and justified with respect to specific strategic objectives that it allegedly serves, such as preserving security, assuring the continuity of Jewish settlement, securing Israel's water reserves, and so on. These aims are presented as if they were consensual (among Jews, of course), and the use of separations as means for their implementation is almost indisputably accepted as within the authority of the government or the army. Indeed, in Israeli public discourse there is hardly any dispute with respect to these separations.

As strategic objectives, the principles of separation are explicitly formulated and discussed. But the form of control in which they play a systemic role goes unnoticed; its perpetuation is no one's goal, and no political party has turned it into a cause for struggle. Ruling Palestinians as noncitizens, imposing spatial divisions so as to block and monitor their movement or to create and protect "clean" Jewish areas are presented as things one prefers not to do, but must do nevertheless, as if by some force majeure. The principles of separation are accepted in public discourse in Israel as a kind of law of nature, a decree of fate, or at best, a kind of compromise imposed on the State of Israel by the actual presence of Palestinians who insist on staying and dare resist Israeli rule. But the Palestinians do stay and have turned this steadfastness into an ethos (*sumud*); geopolitical conditions make their expulsion an unrealistic mission, and the national (or ethnocentric) definition of the regime rules out their naturalization. Still, the principles of civil and spatial separation are not presented as a solution of the "Palestinian problem" or a way to end the Occupation, but rather as an efficient way to "manage the conflict." However, accepting the fact that this management—essentially temporary—will last into the foreseeable future also means accepting (without admitting it, of course) the fact that the means have become structural conditions.

The two principles of separation are seen as legitimate, not because they are conceived of as a solution, but precisely because no foreseeable solution appears, and they are presented as a substitute for a solution—a means to manage the conflict and ensure strategic objectives. Recognizing the temporality of the form of control in the Territories and refraining from a decision about their final status directly contribute to the misrecognition and legitimacy of Israel's dual regime. In other words, in order to gain legitimacy, the form of control must be

presented as a strategy of the governing power, and its temporariness must be manifest and grounded in the various governing arrangements. This manifest temporariness, expressed in endless diplomatic talks as much as in numerous changes in the Occupation regime's regulations, is one of the dimensions of the regime. This presumed temporariness plays a significant role in the political sphere of the civil regime. Since the policies at work for securing the perpetuation of the dual structure of the Israeli regime are presented as strategies for conflict management during an interim period, their unilateral dimension is hardly ever contested.

This, then, is how the Occupation regime is introduced and discussed in Israeli public discourse: as a temporary, misrecognized form of control whose unilateral imposition on its Palestinian subjects is legitimate almost a priori. In this context, the Occupation regime is a project that can be broken down into a series of strategic decisions. Ruling the Territories by force is a necessary aspect of this project, a mission that citizens serving in the army are called upon to carry out from time to time, in collaboration with a small group of government functionaries and devoted settlers by the tens of thousands. Those who, more or less willingly, take part in this mission see themselves as working for Israel's security, not for the perpetuation of its regime. As a form of control and a sui generis system of government, the Occupation remains almost invisible.

## **ISRAELI JEWISH CIVIL HABITUS**

Most Israeli Jews continue to regard their country as a democratic one, in which almost every resident is a citizen and all citizens enjoy equal civil status. They do not think of Israel's regime in terms of almost half a century of ruling the Occupied Territories. The policies that maintain and reproduce this regime are considered as legitimate and authorized democratically. This blind understanding is the only dimension of the civil separation that is almost impeccably concurrent with the spatial division, regardless of where it is delineated. Israelis, both "here" and "there," grasp the governing power exercised in their own habitat as "their own" and as separate from the means of control applied in the Occupied Territories. In their habitat, they expect to be ruled by law, as citizens for whom the transition from withheld to eruptive violence is authorized and regulated by the law and executed by a ruling apparatus accountable to and checked by the legislature and judiciary. Many of these citizens take their citizenship seriously, even employing highly developed civil tools and skills, and they protest in various ways when they detect a change or violation of the rule of law, or of the principles of separating the different authorities. However, they take for granted the absolute lack of such conditions under the Occupation regime.

Under the Occupation regime, violence erupts in an irregular manner and inflicts harm and humiliation when withheld. The ruling apparatus is not accountable to the legislature and is hardly ever checked by the judiciary; as regards Palestinian subjects, for all practical purposes, this apparatus at one and the same time legislates, executes, and judicially supervises its own actions. The regime thus maintained is not operated by aliens (although the government has tended to outsource some of its functions of late), but by citizens of the State of Israel.<sup>1</sup> When they cross the separation line between "their" regime and the other, they see no wrong in this mode of operation. The only place, then, where full and stable concurrence is

found in the civil and spatial divisions is in the consciousness of Israeli citizens. The citizens of democratic Israel's political habitus, in Bourdieu's sense of the term,<sup>2</sup> are therefore an arm of the Occupation and a key factor in understanding the Israeli regime.

Political habitus is the cluster of skills, tendencies, and expectations that makes possible the transformation of citizenship from a legal category with political significance into a code of relations with the various branches of government, as well as with other citizens and noncitizens—a code for living together with others who are subject to the same government. When political habitus is (ethnically) nationalized and the nation is perceived in ethnic and partisan terms, the code of civil relations is dictated by the basic division into “our” nationals and other nationals, and basic civil—and universal—companionship is incurably impaired.

Civil habitus in Israel has been thoroughly nationalized. One's political habitus is largely acquired through socialization into military service, which is almost exclusively Jewish, and through the presence of military life and preparation for it within the family, peer group, and school.<sup>3</sup> Despite the liberalization of civil society since the 1980s, Israeli Jewish and Israeli Palestinian civil society are profoundly separate. The few binational civil frameworks that do exist deal mainly with structural discrimination against Palestinian citizens. When citizens concern themselves with improving education in the school system, urban bicycle tracks, and green spaces, they usually do so in their own national grouping, replicating the separation of Jewish and non-Jewish citizens. Thus the basic solidarity of all those governed as citizens is gravely impaired and almost any opposition to the government is usually carried as if it concerns only one national group, no matter how universal the matter at stake may be.

To the above should be added explicit ideological mechanisms. The Israeli educational system denies young citizens elementary historical and geopolitical knowledge, nurtures forgetting and ignorance, and disseminates falsehoods. Whole chapters in the history and culture of the Jews that do not coincide with the Zionist meta-narrative are excluded from school curricula. The narrative of the founding of the State of Israel does not, for example, include the Nakba—the expulsion of the Palestinians, making them refugees. To the extent that it is known at all, the fact that refugee status is a central characteristic of the national existence of the Palestinians—including the internally displaced in Israel proper—is seen as a natural aspect of Palestinians' being in the world. Israel's contributions to the failure of various peace initiatives from the 1950s down to the present are not mentioned. The Green Line has been erased from maps and from Israelis' consciousness, and the scope of the jurisdiction in which Israeli law applies is unknown to the public. The state, its regime, and often its government too, are treated as one and the same and are presented simply as concurrent with “the people [*am*] of Israel,” a term that could have been used ambiguously, as referring to the entire Israeli demos but almost always refers to the Jewish nation alone. Civil disobedience is presented as treason, and refusal to do one's military duty in the Occupation forces is regarded as a direct threat to Israeli democracy.

The common denominator of all these forms of denying knowledge and nurturing ignorance is the effort to separate the citizenry (the civil nation) from the ethnic nation, drawing the image of the nation along the precepts of the Zionist narrative and blurring the difference between recruiting citizens for the government, the state, and the nation. The state apparatuses in Israel proper nationalize citizenship and systematically impair the development of civil habitus. They

disrupt the citizens' orientation in their own life-world, limit their ability to perceive and conceptualize the political and social problems they share as citizens, their ability to weigh various modes of action and select them in an informed manner. Geography, history, architecture, archaeology, urban planning, culture, and literature are permanently recruited to help Jewish Israeli citizens forget or disregard what Jewish citizens *do to others* in the name of the State of Israel. Various practices that enhance ignorance such as restricting access to information, closing certain archives and limiting access to selected documents in others, erasing traces of localities and buildings—are all permanent fixtures in civil everyday life.<sup>4</sup> And they are not necessarily dictated or orchestrated by any authority. The clerk at the mapping center knows that he must cut away the Green Line from the old maps in his storeroom before handing them to a citizen; the tour guide knows how to tell the story of the ruin in front of which he stands, attributing it to Jewish history without mentioning the Arab village that existed at this very spot until merely a few decades ago; the selector at the airport knows whom he must question and further delay, regardless of the formal protocol; the official at the Ministry of the Interior knows he may harass the Palestinian facing him, asking for documents not required of Jews. Wherever one encounters the shadow of a Palestinian presence, in person, documents, or ruins, one might encounter similar practices of denial, repression, and discrimination.

Especially important are the denial of the Nakba (as if Palestinians are simply born refugees) and the erasure of the Green Line (making “the Territories” abstract and geographically flexible). Citizens are thus prevented from understanding the fact and significance of their own participation in a regime of inclusive and oppressive separation, and their perception of this participation as a “contribution to society” is made all the more comfortable. When civil habitus is thus recruited for the sake of the ethnic nation, *part of the governed represent the nation and the governing power instead of the governing power representing all of the governed*. Those Israeli citizens, a tiny minority, who are committed to the nation of citizens and see the state as accountable for the welfare of all are regarded as radical and often portrayed as “Israel haters.”

## **(NON)ALIEN GOVERNMENT**

The conception of the nation-state commonplace in Israeli public discourse assumes the existence of an ethnic nation as a defined political entity that has a right to self-determination. From the ethnic-national perspective, the state and its government are the nation's means to fulfill its self-determination. The state is the fullest expression of the nation's self-determination, and each of its apparatuses is supposed to serve the interests of the nation, its aspirations and vocation.<sup>5</sup> The nation is constructed as preceding the state, logically as well as spatially and temporally. The state is perceived as a stage in the nation's history. The state's territory is a contingent effect of the state's weakness or strength. It is the nation that should dictate its “natural” or “historical” borders, desirable demography, and the rules for joining the body politic to its state. The nation, not the state, is the whole that binds together the government and the governed subjected to it, contains their contradictions, and reconciles social divisions of all kinds. The nation's narratives and political imagination, replete as they are with blood and destiny, religious motifs and rhetoric, are interwoven into family life, private and collective memories, and the upbringing of individuals. The nation calls upon each

and every one of its members to rise above utilitarian considerations—to the extent, even, of sacrificing his or her own life; it has immense power to mobilize individuals and recruit them for the national cause.

However, some important facts are missing from this nationalist conception of the nation, for which the state becomes a tool of self-realization. Missing is the state's immense contribution to constructing the nation as an ethnic group, as what frames the state's historical narrative, and determines the boundaries of its body politic. Missing also is the recognition of the role of various ruling apparatuses in teaching nationalism in the home and at school, at the workplace and in the army. For the state constructs nationhood in various ways, which are not merely "ideological," through legislation, censuses, naturalization laws, and exclusions.

The relation between nationhood and state, like the relation between sex and gender, is a result of historical construction whereby the "natural" component, too, as it were, owes its separate existence to apparatuses of cultural construction. Thus constructed, nationhood is a recruiting mechanism operated by state ruling apparatuses to ensure the obedience, partnership, and loyalty of members of the nation to the state's government. Since this nationhood is ethnic and many of the state's citizens and governed subjects do not belong to it, national mobilization means recruiting members of one governed group to support the government and regime that separate them from other groups, establishing and justifying the hierarchy that ranks them. When ethnic nationhood becomes state religion, the real competition is not between the nation and the state but rather between the nation and the citizenry. This is a competition between two separate discourses of citizenship and, more than that, between two types of political habitus. The first of these is *civil*, whereby the state and its government draw their legitimacy from the entire governed demos, the association of citizens; the primary civil commitment is to this civil association, and commitment to the state and its government is derived from that civil commitment. The second habitus is *ethnic-national*, whereby the state draws its legitimacy from expressing the self-determination of an ethnic nation, and the primary commitment is to that nation.

One decisive difference between a civil and an ethnic-national political habitus is the extent of the ruling power's alienation. No matter how republican a state becomes, civil habitus leaves a certain distance and alienation between the ruling power and the citizens. The government is supposed to present its justifications to the citizenry, receive its authority from it, and renew its authority by force of the agreement vested in it by the citizens. And vice versa: where distance remains, governing power appears alien, intrusive, and interfering. While there is still enough space for political action, civil solidarity flourishes, and citizens mobilize to curb the government and limit it, to reshape it. In a democratic civil body politic whose members see themselves as the source of the government's authority, this authority is always conditioned and alienated to a certain degree, and this alienation cannot be totally eliminated. Alienation may take on more or less refined forms. The government may appear more or less citizen-friendly. It may reduce or increase the oppressive friction between subjects and rule, softening or intensifying the fact of being governed and the feeling of being "ruled by an other." However, that feeling never really disappears. It is, in fact, an expression and a guarantee of the citizens' liberties vis-à-vis the power that rules them.

National habitus functions differently. The government is supposed to be the ultimate

expression, driving force, and guardian of a national project that stems from a collective entity that both precedes this power and exceeds it. Ethno-national political habitus is about taking part in the nation, not the citizenry, and the ultimate way to do this is by taking part in the government that embodies it. Rising to the call of power, taking a position in government, serving in the military, violating basic human rights, or persecuting a national minority may all be perceived as ways of partaking in the national project. Hence, to the extent that democratic institutions introduce a certain sense of alienation with regard to the ruling power, they are perceived as obstacles to the national project and the functioning of the government, limiting the agenda of the Jewish nationalist forces in any Israeli government.

The British Mandate to rule Palestine ended in May 1948. The Jews celebrated as though they had single-handedly freed themselves of alien rule. For the Palestinians who survived the Nakba and were made Israeli citizens shortly thereafter,<sup>6</sup> the founding of the Jewish state was simply a transition from one alien rule to another. The integration of Arab citizens into the political community was limited and partial. They had the privilege of voting for the Knesset but were subject to martial law and close surveillance by the General Security Services, which largely diminished their ability to organize, take political action, or participate in the discussion of the way they were governed. Their presence in the political sphere was perceived from the outset as a disturbance to be treated by nonpolitical means. Their concentration within reduced living areas and the restriction of their movement outside and among these areas removed them—at least for a while—from public space and made them subjects of governance by special state apparatuses (in the Ministry of Defense, the Military Government, the General Security Services, the Office of the Prime Minister’s Adviser on Arab Matters, or the Ministry of Minorities).<sup>7</sup>

Until the mid-1990s, Arabs were never an explicit category in Israeli law. Their “treatment” was not a part of the government’s overt policy; rather, it remained the business of the state’s security system. Jewish citizens were expected to agree tacitly to this kind of treatment of their Arab fellow citizens. They were supposed to accept that a whole group of citizens posed a “security threat” and could therefore not be partner to the general public space, but had to be “treated” in supervised spaces, in a different manner than the rest of the state’s citizens. This treatment was meted out covertly, behind the screen created by the military government, but its existence was an open secret. Even those not partaking in it were in the know. Knowledge of the “security” secret vested Jewish citizens with a sense of partaking in the government, as well as orientation in its clandestine affairs, even when they had no official position. This made it an effective tool for erasing the alienation of the government and its presentation as Jewish self-rule. An alliance was thus struck between Israel’s government and its Jewish citizens in the context of the urgency and secrecy of “security matters.” Jewish citizens became responsible for not forgetting that *other* citizens who were a potential danger lived among them. They were to stand guard, warn of danger, confront it, and, when necessary, act in the name of the government.

Since then, long after the dismantling of the military government in 1966, and even after the Palestinian citizens’ civil status and economic condition largely improved, their alienation and exclusion from the ruling power have been basic aspects of it. This exclusion has been enacted time and again in the name of security, which has always been used to win the support or

acquiescence of Jewish citizens and reduce their own alienation from the ruling power. The existence of their alliance with the government depends on distancing Israel's Arab citizens from "sensitive areas" and intensifying the government's alienation in their regard.

Taking part in "the security matter" or "the national matter" almost always means taking part in excluding Arabs—and vice versa. When it comes to Arabs, Jewish citizens soon enough see themselves as a part of the ruling power and stand in solidarity with one another; when they participate in the government's actions—in the army, public administration, or as appointed or voluntary representatives of Israel abroad—they are readily socialized to take part in this exclusion.<sup>8</sup> Nowhere is this more obvious than at points of "security inspections." It is obvious to one and all that Palestinians are the ones sought out, or Arabs, or Muslims; in any case, not Jews. Jews are not suspect. Everyone knows that it is permissible, and at times a must, to search for suspects everywhere. Until the Oslo Accords were implemented, as long as Palestinians living in the Territories could still move relatively freely within the Green Line, the ruling apparatus glided into Israel proper in their footsteps and attempted to supervise their movement. But this could not possibly suffice, because once in a while, Palestinians carried out deadly attacks in Israel's city streets, cafes, and cinemas. Security guards were therefore placed at public sites, as well as in private assemblies involving large audiences. When suicide bombings began, the number of security guards grew accordingly, and a huge security apparatus was set up within the Green Line. Suspect Palestinians are sought after, but the public at large has to be stopped, bags and trunks of cars opened, and personal effects x-rayed. Conversation has to be struck up to detect accents. As suspicion grows, IDs are demanded. When a Palestinian from the Occupied Territories is encountered, passage permits are demanded and a more meticulous inspection follows. Sometimes the waiting lines stretch long and everyone's time is consumed. And still, nearly always, nearly everyone cooperates.

The security apparatus created a new arena for the governing power to invade everyday life and endless opportunities for daily friction between Israeli citizens and the representatives of power. This friction is usually accepted with understanding on the part of most citizens, who have grown used to daily rites of passage at the entrance to any institution and public site. The body willingly concedes, the bag is opened and mechanically handed over to the guard, as its owner continues a cell-phone conversation or a chat with the neighbor in line, making the guard invisible. When things are calm, the threat is remote, but the governing power is always near.

People are not obedient participants in these rites because they believe in the government's idea of security. On the contrary: most believe because they have grown accustomed to reassure the guards at the gates—in gesture or speech—that they are not Arabs, and that they have become used to the inevitable light search of their clothes and belongings. Any guard placed at a gate creates a site displaying and reproducing separation. Every "security inspection" or simulation thereof is a small popular show in which citizens take part in the act of separation. They agree to it and provide it with one side of the two that must be separated. Clearly, Arab citizens cannot participate in this ritual in the same manner, for they are always suspects, or at least potential suspects. It makes no difference that Arab citizens might be injured by such an attack (and already have been) just like Jews, and that Jews too committed violent attacks, and not only against Arabs. And yet Jews are not suspected of terrorism, but

perceived strictly as its victims.

The nationalized security apparatus thus deprives Israeli citizens of the right to equal governance. Identifying the security issue with the national one is absolute. More than any other factor, this accounts for the identification of most Jewish Israeli citizens with their ruling power—many of them behave as though they own it, in fact—and for the almost complete lack of civil solidarity across the national divide. It is in the interest of the government to keep identifying matters of security with the well-being of the Jewish nation, preserving the principle of national separation and using it in order to undermine the very possibility of a civil body politic. This separation has recently been re-created under circumstances whereby certain political and legal differences between the two groups are eroded, largely in response to the strengthening of the civil habitus of the Arab citizens, who are increasingly making political demands to reinforce their citizenship and implement their rights.

When military rule was dismantled in 1966, half a year prior to the occupation of the Territories, an opening had seemingly been made to reduce the alienation of the Israeli government vis-à-vis its Arab citizens. Half a year later, a new experiment began: maintaining a democratic regime to which about a million noncitizen residents had been added, whom no one had the least intention of naturalizing as citizens. The appearance of this new, blatant form of alienation only consolidated the alliance between Israel's ruling power and its Jewish citizens, who were as always expected to participate in the exclusion of “the Arabs”—henceforth above all Palestinians from the Occupied Territories—in the name of the religion of security and loyalty to the national cause. Taking part in excluding “the Arabs” has been sweepingly legitimized by most of the state's Jewish citizens; moreover, it became an acceptable way to partake in the national cause, and through it—in the ruling power.

## **EMERGENCY REGULATIONS AND BRANCHES OF GOVERNMENT**

Article 1A of chapter 1 of the State of Israel's Law and Administration Ordinance No. 1 of 1948 states:

The Provisional Council of State consists of the persons whose names are set out in the Schedule to this Ordinance. Representatives of Arabs being residents of the State who recognize the State of Israel will be co-opted on the Provisional Council of State, as may be decided by the Council; their non-participation in the Council shall not derogate from its power.<sup>9</sup>

Formally, Arab citizens have been able to take part in both the legislative and the executive branches of the State of Israel ever since its founding. The law did not limit Arab participation in governance, but the same breath that permitted their participation established that their nonparticipation—the fact that they were not represented, although constituting about 13 percent of the state's population when it was founded<sup>10</sup>—did not detract from the legitimacy of the governing power. When the political habitus is a Jewish nationalized one, the government is not required to represent the citizens; rather, Jewish citizens volunteer to represent their government state and do so in every dimension of coexistence within the state.<sup>11</sup> This legal twisting and turning, the government's shirking of its duty to represent Israel's *entire* citizenry, has become the norm. The basic distinction between Jews and non-Jews is manifested in the distinction between the formal right to partake in political life and the essential weight of this participation and actual access to the various governing authorities. Governing power held by

one ethnic nation and the national discourse of citizenship have produced differentiation and hierarchy among Jewish and Palestinian citizens in various realms of action. Formal civil equality has not done away with this, in spite of all the efforts made to expand it into areas where it is not assured and to manifest it in areas where it has been merely a dead letter of the law. The ethnic-national differentiation of citizenship is no passing evil, a distortion to be corrected, but rather a permanent aspect of the regime in Israel, to whose stabilization it contributes. It also organizes the relations among the various arms of the regime and enables its replication through democratic election procedures and regulated changes of power. This distortion cannot be changed without actually changing the regime.

The perpetuation of the state of emergency that has been maintained in Israel ever since the founding of the state is a characteristic expression of the structural difficulty of changing the hierarchical relationship of Jewish and Arab citizens. The state of emergency is one of the main instruments for producing differential citizenship and naturalizing national differences. It also contributes decisively to institutionalizing the Occupation as a regime and for its misrecognition as an appendage attached to the “Jewish and democratic state” from the outside as a project. The state of emergency was first declared immediately following the declaration of the State of Israel, under the Law and Administration Ordinance. This declaration was the first piece of legislation by the new state’s temporary council, which became the Knesset (the Israeli parliament). Since then, the state of emergency has been regularly renewed every half-year by a Knesset ruling, usually almost automatically.<sup>12</sup> The declaration of a state of emergency grants the government nearly unlimited authority.<sup>13</sup> Its emergency powers are usually not employed, however, and the Jewish public hardly ever senses them. When emergency powers have been used, their objects have almost invariably been Arab citizens. The real possibility of their use always hovers over any confrontation between Palestinian citizens and the governing power, and any case where hostile activity is suspected.<sup>14</sup> The fact that the state of emergency has not been lifted enables the system to leave intact laws in various areas that if examined today from a constitutional standpoint would not pass the “High Court of Justice test”—among other reasons, because they embody discrimination against Arab citizens. The state of emergency, an exceptional situation that could be invoked as the rule in all circumstances because by default and in principle it is always already in force, was the seedbed for many laws and regulations that diminished civil and human rights, permitted undemocratic regulations, and reduced the transparency of Israel’s ruling system.

The permanent state of emergency is not a consequence of a specific reality indicated by the sovereign power—after all, it is renewed almost automatically, a kind of parliamentary instinct that makes no reference to reality, invoking the formula of “the security situation” and its “existential threats” as a kind of incantation. Since the excuse for the state of emergency is always a security issue (rather than a political, economic, or ecological one), there is always ample justification for reinforcing national separation. As the state of “security emergency” is renewed regularly every six months, it has become part of the conditions of governing activity and a permanent constraint on civil relations and activities—in fact, part of the structure of Israel’s regime. And since the excuse is always security, and “security” is always conceived of in terms of the “Jewish-Arab conflict,” state-of-emergency regulations affect Jews and Palestinians differently.

The differentiation here is twofold. *First*, the mere use of emergency regulations is a call or excuse to silence public discussion, suspend the democratic game, dismantle binational civil partnerships, and recruit Jewish citizens to the ethnic-national cause as defined by the ruling power. Orchestrated Jewish participation in imposing military rule on non-Jewish citizens until 1966, and Israeli Jews' subsequent tacit consent to taking part in the implementation of emergency regulations in the "Arab sector," illustrate the way in which the interest of the government and the ruling hegemony and "the interest of the people"—that is, Jewish Israeli citizens—have been made to coincide through "security considerations." The state of emergency is also one of the major tools for managing the permanent distancing of non-Jews from power in Israel. The participation of so many Jewish citizens in the ruling apparatus in the Occupied Territories and the perpetuating of the Occupation regime, often against their private interests, constantly reiterates and often exacerbates the principle of differential citizenship and "the security effect" that accompanies it wherever it is applied.

*Second*, restrictions under the emergency regulations are implemented and enforced differently upon Jews and Arabs. Even if they are not, the regulations affect Palestinian citizens more than Jews, since they bestow more power upon the executive branch, in which Palestinians hardly take any part, at the expense of the legislative and judiciary branches, where they do have some say. A more general phenomenon can be discerned here as regards the balance between the three branches of government. Generally speaking, the strengthening of the High Court of Justice and of professional institutions such as the Israel Bank and State Comptroller's office, where experts preserve their professional autonomy to some extent, has benefited Palestinian citizens, whereas the weakening and loss of independence of these institutions since 2000 has injured them. The chronic weakness of the Knesset also diminishes the main political arena Palestinians share with Jewish citizens, while the strengthening of the executive branch enhances the influence of the latter and erodes the civil protection that Palestinian citizens are supposed to enjoy.

The picture is more complex than this, however. There is actually a kind of division of labor among the various governing authorities, which quickly comes into play whenever the principle of national separation is compromised by legislation, judicial rulings, NGO activity, or (more rarely) governmental regulations. For example, when the High Court of Justice insists on civil equality in matters like the right to buy property or choose one's neighborhood, the Knesset hastens to pass new ethno-nationalist laws. The government in turn stalls implementation of the court's rulings by budgetary and administrative means. When a new law of citizenship and of entry into the country was enacted, it was formulated in vague universalist language but gave the minister of the interior—traditionally a post occupied by one of the nationalist religious parties—authority on a scale nearly unprecedented in democratic governments to exercise judgment in granting, revoking, or denying citizenship.<sup>15</sup> Anticipating future compromises of the principle of national separation, the 2002 Law Ensuring Rejection of the Right of Return, which prohibits Palestinian refugees from returning to the Occupied Territories unless it is approved by an absolute majority in the Knesset, ties the hands of any future Israeli government on what has been construed as a "sensitive issue." This law was presented by its advocates as "nonpartisan, Zionist, Jewish, Israeli, moral, and historically just." However, behind the fear of acknowledgment of the Palestinians' right of return we may

perhaps discern a deeper fear that someday political circumstances, whether internal or external, will cause a government in Israel to doubt the synonymy of the above adjectives, however obvious their equivalence may seem to its proponents at present. The deeper fear is here related to the possibility of an anational understanding of universality and the clear logical aporia that such an understanding implies. It is not universal logic that is at stake here but the separatist logic of the regime, for which ethnic national separation is constitutive.

Even if the three branches of governance have differing interests in specific cases, even if a different aspect of the political order is at stake, the issue that repeatedly comes up, whether as cause or as effect, is the preservation of the ethnic-national character of Israeli citizenship in general and of Jewish supremacy in particular. Binding legislation by which the Knesset forces the hand of the executive branch has always been directed against civil-democratic trends that seem to jeopardize the national or religious “Jewish interest.” The government in turn counters the Knesset and the Supreme Court by using emergency regulations, and these are always implemented in the name of “state security” and threats to “Jewishness” (which often causes the legislator to act like a mechanical puppet, and the Supreme Court to bury its head in the sand).

The Occupation regime is supposedly subordinate to the Israeli government as a whole, but in fact it answers only to an exclusive ministerial committee. In 1967, “primary legislative authority” in the Occupied Territories was vested in the “regional commander” of the West Bank and Gaza Strip, who in turn authorized local commanders to promulgate “secondary laws” regarding military-criminal matters, and staff officers to draw up civil and administrative laws. These officers thus in effect constituted a legislative power independent of the Knesset.<sup>16</sup> In practice, the “legislation” they engage in is an exclusively military affair that produces decrees, not laws. It is performed secretly, and even its products, the new regulations themselves, are not always made public, for it is up to the military commander to decide when and how to publicize them.<sup>17</sup> Moreover, military judges tend to ratify military edicts and accept them the way courts in Israel accept Knesset legislation, and they are rarely impressed by violations of the Geneva Convention.<sup>18</sup> Regulations and edicts change constantly and accumulate indefinitely. It is sometimes claimed that there is a “culture of illegalism” in Israel proper, but in the Territories, there is “overlegislation,” owing to the enormous number of decrees and the number of those with legislative authority.

If in Israel itself the regulations replicate and intensify differential citizenship and structural discrimination among Jews and Arabs, in the Occupied Territories they directly impact the situation of Palestinians, exposing them to various types of violence, disrupting their ability to maintain social institutions and political lives, to work and create. Inevitably, they largely reduce their capacity to resist the ruling power. In Israel, emergency regulations restrict Palestinians’ access to political space, but they by no means close it down completely. In the Territories, such space does not even exist, and the regulations generate countless state-induced injuries, which only rarely make their way to the Supreme Court or to political space in Israel, and are very rarely redressed by the court or become a stake in a political struggle that concerns Israeli citizens.

Like other civil branches of the Israeli government involved in ruling the Territories, whose formal role is to supervise the Occupation regime’s military side, set its goals, and establish its

budget, the High Court of Justice is too often manipulated by the military authorities. The former rely on data and analyses supplied by the latter, much of which is subject to censorship and cannot be made public. Alternative sources of information and analyses provided by a few investigating journalists and human rights and humanitarian organizations are considered biased and unreliable and usually rejected on sight. When there is discussion of such information and analysis, it remains an internal issue of the governing power. Usually disputes between various arms of the ruling apparatus do not become a matter of public discussion, nor are Israeli citizens—let alone Palestinian noncitizens—party to them. The entire ruling apparatus “hangs” from the democratic regime of Israel itself as from a small hook. The military commander is legislator, executor, and judge. All authority is channeled to him from the apex of Israel’s ruling power—the Ministry of Defense and the Prime Minister’s Office.

Judicial supervision and civil resistance are too feeble to hamper this unification of authority in the Territories, and the pressure of international activists and public opinion actually solidify it even further. In spite of the multiplicity of its heads and emissaries, control of the Occupied Territories is unitary. If there is division and conflict among the various arms of the Occupation regime, the Palestinians have no part in it. Unlike Palestinian citizens of Israel, they cannot take advantage of such divisions. They are not present in the space where these gaps appear and unfold. They have no practical way of taking part in government, entering into negotiations with it (except those it holds itself, usually on its own terms, with those of their leaders who have been recognized as worthy partners), nor of opposing it within any accepted rules of the game. Their alienation from the governing power to which they are subjugated is absolute. They can either surrender or rebel. When they surrender, most Jewish Israelis see this as a normal state of affairs, in which “law and order” (of the Occupation regime, of course) are maintained, and the national project sails ahead on calm waters. When they rebel, most Jewish Israelis flock to the flag, and even if they do not take active part in suppressing rebellion, they vest full authority to do so in the ruling apparatus and its men—all neighbors, relatives, and friends.

## **THIS REGIME THAT IS NOT ONE**

The Israeli regime was not doubled overnight. In the early days after the war of 1967, Occupation was simply a temporary state of deploying the armed forces in territories occupied in war and controlling the local population. However, control of the population and territory had to address the surge of nationalist sentiment among the Jewish public, the colonial ambitions of significant groups within it, and the broad political agreement among Israeli Jews that following a peace treaty, at least some of the Occupied Territory should remain in Israeli hands. Soon the administration of the situation became a project with its own inner logic, necessitating budgets and resources to promote it “in the best possible way.” A lively debate took place among the Jewish public over “the future of the Occupied Territories”: whether and what to give back or annex. Little attention was paid at the time to the question of how to control the Territories and their population until the eventual signing of a peace treaty. Reports on control of the Territories published in Israel before the outbreak of the First Intifada were relatively few and far between. Only a handful of people knew much about Palestinian resistance prior to the First Intifada and its violent suppression. Of the many aspects of the

Occupation project, only one really penetrated the Israeli public sphere: the question of whether—and where—to build Jewish colonies in the Occupied Territories. This became the focus of an ongoing political dispute—exclusively among Jews, needless to say—that was always stormy, but in fact lagged behind the expansion of the colonies and the emergence of a new map of Jewish presence in the Territories. Other aspects of the project, such as moving army bases into the Territories, opening the borders, making the labor market accessible to Palestinians, civil modes of action by the military government, and the military measures taken to suppress Palestinian resistance, aroused very little public attention. They were discussed in closed government circles or simply “taken care of” without being discussed at all.

Even when the colonizing project burgeoned and began to demand enormous resources, however, no public or governing clarification took place in Israel as to its nature and purpose, its giant investments and oppressed population. The project grew and an institutionalized ruling apparatus was consolidated within a stable ruling format that set a space of possible action, creating some opportunities and closing off others. By the late 1970s or early 1980s, it was already possible to speak of a separate Occupation regime and of a ruling apparatus that systematically (albeit partially and differentially) erased borders between Israel and the Occupied Territories, enabled the mixing of the two populations, and at the same time constantly produced their separation, subjugated them, and ensured its own separation from the regime inside Israel itself.

Neither this separate regime nor the way it is attached to the democratic regime inside Israel itself were created by an explicit or conscious, regulated governmental or parliamentary decision to the making of which the governed were privy. Many explicit and conscious decisions relating to occupation as a project contributed to the emergence of the Occupation as a separate regime, but one cannot attribute the intention of establishing such a regime to them. One day, this simply came about and became the mold in which most important governmental decisions in Israel are cast.

Some of the governmental and military instruments serving this regime in its early years were created during the years of Israeli military government of Arab citizens in the Galilee and the “Triangle area” along the Jordanian border northeast of Tel Aviv in the 1950s and 1960s. The civil-national habitus that was shaped at the time was imprinted by the military government and naturalized the separate and special mode of governing Arab citizens. Hence there had been nothing unusual about the fact that the “new” Palestinians in the Occupied Territories were bereft of any political status and stateless—as if these were their congenital characteristics, which came along with their cheap labor power and the suspicion that they might be terrorists. Even years later, their political rights did not become an issue. Within this habitus, the governmental decision not to discuss and decide on the question of annexation of the Territories and naturalization of their residents has never been questioned. Citizens taking some part or other in the Occupation could thus imagine it as not harming the democratic nature of their regime and not subverting their good citizenship; quite the contrary: active participation in this project was proof of civic virtue.

As a project, the Occupation was perceived first of all nearly exclusively in terms of security and settlements. Control of the Palestinian population was conceived of as some kind of inevitable burden that Israel had to bear, the unwilling by-product of a war imposed on it

(not by Palestinians—but this fact was hardly mentioned). In the meantime, until some *deus ex machina* arrangement was found, it seemed possible to gain from administering this control correctly, to benefit from Palestinian labor and improve Israel's security situation, as well as its standing in future political negotiations.

The economic integration of Israel and the Occupied Territories forced tens of thousands of Palestinians to work in Israel, where they were systematically exploited but also regularly exposed to different facets of Israeli society. They became external witnesses of a relatively developed economy, a divided yet mobile society, and a lively, vivid democratic game, in which they, the most harshly impacted victims of injury in every respect hallowed in Israeli political space (claim to land, ownership rights, freedom of expression and organization, the right to life) played no part, not even when it came to their own lives and future. Friendly contacts at the workplace between Jews and Palestinians could not change the basic conditions of Palestinian existence much. During work hours, they were no more than laborers—any other dimensions of their own universe were erased; and “after hours,” their very presence was erased, and they were obliged either to go back to the tin shanties and basements they lived in or return to their homes in the Occupied Territories. They had no way of taking part in the power that governed them, and being governed nevertheless, if they sought for ways to improve their lot, they were left no choice but to resist.

The First Intifada brought this resistance to public awareness in Israel. Only then did the Palestinians succeed in turning their oppression and deprivation of rights into an issue addressed by Israeli political discourse. At this point, the Palestinian resistance organizations had already managed to persuade numerous Palestinians to reduce their contacts with the Israeli ruling apparatus, primarily through mass resignation from their posts in the civil administration. Although the civil administration collapsed, the effect of this step was smaller than anticipated, because the administration of Palestinian life in the Occupied Territories was already in the hands of the security system, and this resignation—like the commoner occasional traders' strikes—immediately became a “security” matter. Indeed the ruling apparatus in the Territories, which already functioned as a separate system of government, presented the Palestinian popular struggle entirely as a security problem and erased most of its civil facets.

The splitting of the Israeli ruling apparatus was gradual, and separation of the two halves was not fully institutionalized until the early 1980s, when the Israeli army assumed control of Palestinians' civil affairs. With the creation of the civil administration in the Occupied Territories as an office in the Ministry of Defense, they became a closed market both administratively and legally. Most governance questions dealing with the Palestinians in the Territories were decided upon and “solved” between the civil administration, the army, and the General Security Services, involving a small circle of officials in the Ministry of Defense and the Prime Minister's Office. This circle was—and still is—the bottleneck through which public discourse, political struggle, and legal and political decisions flow from Israel's political space to the Territories. This is also the bottleneck through which the political space and legal system of Israel proper are fed with “authorized” information about happenings in the Territories. Naturally, in an era of open globalized mass media, with the humanitarian crisis always already an international issue, information also flows through many other channels. It is not the actual information that is blocked, however, but rather its interpretation, processing,

and translation into relevant political decisions. The general picture of ruling the Territories disappears into a series of cases, and the tally of casualties, demolished houses, and arrests, and questions about the “proportionality” of particular measures are substituted for any serious attempt to question the overall structure of the ruling apparatus and the regime it embodies.<sup>19</sup>

Even the High Court of Justice cannot bridge the gap between the two systems of government. When the court reviews petitions concerning government actions and policies in the Territories, it limits itself to issues of the valid authorization and proportionality of isolated acts, without referring to any longstanding, structural feature of the Occupation regime. The High Court of Justice hardly ever questions the information provided by the Occupation authorities, lets them keep their sources confidential, and is very cautious about overturning the military commander’s edicts, even when they blatantly contradict Israeli law, international law, or natural justice.<sup>20</sup> In monitoring mostly soldiers, commanders, and security agents, who are supposedly under its judicial supervision, the court assumes that “every Israeli soldier carries with him, in his backpack, the rules of customary international public law concerning the laws of war and the fundamental principles of Israeli administrative law” anywhere in the Occupied Territories.”<sup>21</sup> In fact, however, this sententious maxim is a perverted description of the true systemic bond between the High Court of Justice and state violence in the Occupied Territories: the High Court is a device employed by the ruling apparatus, an extension of the military, not a protector of the governed population.

The High Court of Justice has no access whatsoever to the residents of the Territories. It reaches them only because it is dragged there after the soldiers, and only when their actions entail petitions that it is willing to review. This willingness was its contribution to the Occupation project from the outset, but soon became its duty under the Occupation regime. Like the few government ministers in charge of administering control of the Occupied Territories and the senior officials who assist them, the High Court functions at one and the same time as a part of the closed governmental economy of the Occupation regime, and as a conduit connecting the two regimes, introducing a whiff of democracy into the Occupied territories and traces of military dictatorship into the halls of justice of Israeli democracy. When the petitions from the Territories reach the High Court of Justice, it becomes clear time and again that the supreme judges can be the defenders of democracy only in the civil regime of Israel proper. When they intervene in Occupation matters, and even in the rare cases when they rule in favor of Palestinians, they are revealed as the defenders of the military regime of inclusive separation.

Inside Israel, administration of the Occupation as a project took on the nature of an ongoing military operation. As is commonly the case in such operations, the government’s military leading edge runs things and may conduct a considerable part of its activity in secret, without any prior public discussion, and often even without regular accountability or the possibility of external criticism. When especially blatant assaults on human rights—targeted assassinations, house demolitions, and the erection of the separation wall, for example—are subject to public and legal debate, they enjoy much more support among the Israeli Jewish public than the government does in other matters. The reason is obvious: the issue is presented in terms of national security, overruling legal and moral considerations. Palestinian grievances are all too quickly addressed as issues of the abuse of power, whose legitimacy, in itself, is not

questioned. Israeli soldiers following orders, facing violent resistance, and acting under pressure are counterposed to victimized Palestinians. Such rhetoric makes it nearly impossible to ask what project is served by such measures and what kind of regime thus enables the abandonment of some of its subjects for the sake of the security of others.

Occasional debates over specific actions and policies do not threaten the Occupation regime, because they revolve around the Occupation as a military project. When the struggle of Jewish citizens is perceived as more threatening, as is the case with movements that cross the national divide (Sheikh Jarakh Solidarity or the Anarchists Against the Wall in Bil'in), the ruling apparatus act violently and, aided by mainstream Israeli media, seek to marginalize the activists. Jewish citizens are required to take an active part in the ruling apparatus and legitimize it, because its action is a function of legally and democratically constituted governmental authority. Recruitment to the Occupation as to some military project makes it possible to see it as a necessity, a lesser evil, whose temporariness is its mode of existence. It seems then as though there is no choice but to continue maintaining it as the present condition of Jewish and Israeli existence.

Once every few years, the Israeli public is called upon to take part in elections, where political parties propose different “solutions” to “the Palestinian problem,” but never address the mode of ruling the Palestinian people, and end up playing their roles in the ruling apparatus, which no one dreams of dismantling. The democratic game and a change of power are always possible—their regularity assures the stability of the regime—and, indeed, parties with different answers to questions about the Territories do rise to power. They do not—indeed, cannot—differ regarding regime questions, however, because they all presuppose a differential and split regime and believe in separating the governed populations, and for most of them, only Jewish political parties are authorized to decide regime and security issues.

Regular changes of power preserve the stability of both regimes, but in a different manner. In Israel proper, they ensure the realization of the prime democratic principle that government does not belong to anyone in particular—as Claude Lefort expressed it, “the seat of power is empty.”<sup>22</sup> Anyone may seize it, as long as it is done by the book. But since this is “an ethnic democracy,” “anyone” can only be a Jewish citizen. In the Territories regular changes of power in *Israel* contribute to the stability of the Occupation regime precisely because they leave the ruling apparatuses intact and ensure the separation of the ruling apparatus in the Territories from Israel’s political space.

The two separate regimes that constitute the Israeli regime, then, are relatively stable. The main significant regime change in Israel’s history took place with the institutionalizing of the Occupation project, when the Israeli regime was doubled and split into two adjacent parts, creating two relatively “clean” forms of regime: on the one hand, the rule of law, democratic rules of the game, and limited ethnic discrimination; on the other hand, military dictatorship and spatial-ethnic separation mechanisms. This split enables the forces that preserve the regime form on both sides to act without disturbing each other. Thus, for example, liberalization of the economy and judicial system in Israel proper might leak into the Occupation regime to some extent. But there it will soon enough be blocked by recurring emergency situations, new edicts, and ignored court rulings. By the same token, the new mode of violence that has made its appearance in the Occupied Territories—the increasing

disengagement of eruptive violence from withheld violence and the law, allowing the ruling apparatus to exert violence upon its subjects with no due legal process—increasingly seeps into Israel proper. So far, however, these processes have been more or less balanced by various branches of government, a still functioning system of law enforcement, and a certain measure of respect for human and civil rights. Israeli democratic institutions *keep* the Occupation regime *out*, temporarily, of course, and the military institutions of the Occupation regime *preserve* the civil regime in Israel proper *from the outside*. The inverse is also true: the Occupation *keeps* Israeli democratic institutions *out*, while these very institutions *preserve* the Occupation *from the outside*.