

Foucauldian Evaluation of “Law’s Violence” in the Arab-Israeli Conflict

Yasmin Riaz

Barnard College, Columbia University

ABSTRACT

This paper seeks to contribute to the ongoing debate of the Israeli state’s politicisation and weaponization of law against the Palestinian people. My research question is: “**given the Israeli state’s adoption of a constitutional system based on fundamental rights and the rule of law, why has settler violence persisted against Palestinians in violation of international law?**” This paper will focus on how the Israeli state uses and abuses law and its mechanisms in its justifications of settler violence.

INTRODUCTION

The state of Israel has been long heralded as the “only democracy of the Middle East,” but recent scholarly work has investigated the state’s politicisation of law to obfuscate domestic operations violating international laws of war (potential war crimes) and the legality of certain actions within civil society and in the military (Bisharat 2009, Blau and Feldman 2009, Btselem 2019, Geva 2016, Khen 2011, Mansour 2018, Johnson 2011).

There exist several contemporary events and debates which reveal the crucial importance of this question; the Palestinian humanitarian movement has become increasingly vocal in recent years and the Israeli state (and military) are under heightened scrutiny by the international community. Further questions concerning the role of law, general legality, and morality have been raised by civil military operations since the high-profile legal cases on 2008-2009 Gaza offensive “Operation Cast Lead.”

An increased focus on the power dynamics and a Foucauldian analysis of law would provide a more robust view of the factors which allow settler violence to persist in the OPT. This framework is especially useful in these sociopolitical and legal contexts where analyses of power are critical in any understanding of political processes; how inequities of power are codified into law and how legality is constructed over time.

METHODS AND MATERIALS

This paper seeks to assess the relationship between international law and Israel’s treatment of the Palestinian OT by adopting a Foucauldian discourse analysis and evaluating several key legal cases following 2008-2009 “Operation Cast Lead,” namely the Israel High Court of Justice rulings on Khan al-Amar from 2014-2018 and Sur Baher rulings.

These cases demonstrate how policies governing separation of the Occupied Territories shaped the legal landscape, one which permitted Israeli impunity during “Operation Cast Lead.”

FINDINGS

The emergent Israeli legal landscape is hostile, unwilling to compromise, disreputable, and morally flexible. Operation Cast Lead set the legal precedent for the militarization of Israeli lawfare, and law became fundamentally intertwined with violent mechanisms of control and surveillance. The Israeli state’s constructed lawfare has produced an aggressive and permanent regime of legalised control, as a “route through which extraterritorial jurisdiction of a civilian court can construct sovereignty and facilitate annexation” (Panepinto, 2017, 314). This is above and beyond what Israel is “legally” entitled to in accordance with international law; this was previously envisaged within the political notion of military occupation in the OPT. Israeli legal scholar Maayan Geva argued that within this context, operational and legal reasoning become intertwined in order to allow law to serve “as an element in the constitution of the battlefield and enables the exercise of violence” (Geva, 2016, ix).

The aim of the settler-colonist Israeli state seems to be lawfare’s punishment of Palestinian bodies, by supervising and organising them in time and space along mutable technical boundaries. The state wields truly modern power, creating “indigenous subjects whose lives have been ‘parcelled-out’ to interface with the coloniser’s respective institutions of power in a dominant-subordinate power relationship” (Mansour, 2018, 14-15). This achieves binary outcomes: illegal versus legal, citizen or non-citizen; the Palestinian undergoes law’s punishment as a legal subject that is brutalised into “antagonistic relationships with the coloniser simply because “they exist in the coloniser’s ‘frontier’ space and time” (Mansour, 2018, 15). These extensive forms of legalised surveillance enforce illegal collective punishment through demolition orders, arbitrary fines, unjust taxes, and other forms of municipal legal authority. Israel has enacted a Foucauldian punishment on the Palestinian citizen for existing, a living threat to the state’s legal power apparatus; the demolition orders simply allow the Israeli state to determine who has the right to dwell or simply to exist.

Table 1. Label in 24pt Arial.



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DISCUSSION

A state which appears to uphold the rule of law in reality only upholds the “law of the ruler,” as the Israeli elite “define what is just and legal” (Barzilai, 2001, 206) for the Palestinian subject. As the legal regime adapted, Palestinians rightfully fear that these demolition orders set legal precedents for other contested areas in the OPT. These cases reveal the unlawful policies of the Israeli Civil Administration in the West Bank, which systematically deny the Palestinians rights to property, adequate housing, and other socioeconomic and cultural rights (Amar Shiff, 2016). The fact that these occurrences proceeded despite the fact of homeowners’ acquisition of PA-issued building permits is a sign of the changing legal landscape; even when Palestinians act within the legal regime of surveillance and control, it is subverted beneath them to conceal the illegal within the legal. Israeli involvement in the OPT has always oscillated between “selective presence and absence,” within territorial and demographic concerns: attempting to annex as much vacant land as possible (territory) while heavily regulating the areas populated by Palestinians (demographic) (Plasse-Couture, 2013, 460).



CONCLUSIONS

This is a modern use of law in Foucauldian terms; since law is consistently linked to modernity, it must adapt with the change mechanisms of power as instruments of surveillance and control. Law is continuously weaponised; it is able to continue in this fashion due to a “sense of normalcy of human rights violations apparatuses producing them” (Perugini and Gordon, 2015, 46-47).

Law has become an effective weapon for Israel in the OPT. Since 1967, Israeli authorities have occupied Arab East Jerusalem, attempting to thwart internal development by launching vicious, long-lasting legal proceedings against non-Jewish residents who build without Israeli-issued permits in a PA-controlled area. Palestinians have thus been forcefully “integrated into the Israeli discriminatory regime” (Amar Shiff, 2016). Foucault’s concept of the “power apparatus”- where power and knowledge are conjoined within the racist colonial project-certainly plays a role here; Palestinians obey the rules of engagement determined by the Israeli legal matrix, but become victims as knowledge is weaponised against them.