

American University in Cairo

## AUC Knowledge Fountain

---

Theses and Dissertations

---

6-1-2014

### Separation, regulation, and Bio-power in the West Bank

Farah Najjar

Follow this and additional works at: <https://fount.aucegypt.edu/etds>

---

#### Recommended Citation

##### APA Citation

Najjar, F. (2014). *Separation, regulation, and Bio-power in the West Bank* [Master's thesis, the American University in Cairo]. AUC Knowledge Fountain.

<https://fount.aucegypt.edu/etds/980>

##### MLA Citation

Najjar, Farah. *Separation, regulation, and Bio-power in the West Bank*. 2014. American University in Cairo, Master's thesis. *AUC Knowledge Fountain*.

<https://fount.aucegypt.edu/etds/980>

This Thesis is brought to you for free and open access by AUC Knowledge Fountain. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of AUC Knowledge Fountain. For more information, please contact [mark.muehlhaeusler@aucegypt.edu](mailto:mark.muehlhaeusler@aucegypt.edu).

**The American University in Cairo**  
**School of Global Affairs and Public Policy**

**SEPARATION, REGULATION, AND BIO-POWER  
IN THE WEST BANK**

**A Thesis Submitted to the  
Department of Law**

**in partial fulfilment of the requirements for the degree of the  
Master of Arts in International Human Rights Law**

**By**

**Farah Najjar**

**June 2014**

The American University in Cairo  
School of Global Affairs and Public Policy

SEPARATION, REGULATION, AND BIO-POWER IN THE WEST BANK

A Thesis Submitted by

*Farah Najjar*

to the Department of Law

June 2014

In partial fulfilment of the requirements for the Master of Arts in  
International Human Rights Law has been approved by the committee composed of

Professor Jason Beckett

Thesis Supervisor \_\_\_\_\_  
American University in Cairo  
Date \_\_\_\_\_

Professor Hani Sayed

Thesis First Reader \_\_\_\_\_  
American University in Cairo  
Date \_\_\_\_\_

Professor Alejandro Lorite

Thesis Second Reader \_\_\_\_\_  
American University in Cairo  
Date \_\_\_\_\_

Professor Hani Sayed

Law Department Chair \_\_\_\_\_  
Date \_\_\_\_\_

Professor Laila El Baradei

Acting Dean of GAPP \_\_\_\_\_  
Date \_\_\_\_\_

The American University in Cairo  
School of Global Affairs and Public Policy  
Department of Law

## SEPARATION, REGULATION, AND BIO-POWER IN THE WEST BANK

Farah Najjar

Supervised by Professor Jason Beckett

### ABSTRACT

Since the establishment of the Palestinian Authority in 1993 following the Oslo Accords, Israel supposedly handed its duties of safeguarding the economic and social interests of the West Bank's Palestinian population to the Palestinian Authority. In doing so, it allegedly followed a separation strategy and granted the Palestinian people the right to self-determination by allowing them to govern themselves. This essay uses Foucault's ideas on power and governmentality to investigate whether Israel has truly ceased governing the Palestinian population and whether the PA is properly equipped to serve as a state apparatus. The essay's central thesis is that, despite the separation, Israel employs bio-political technologies that both regulate Palestinian life and incapacitate the PA from fulfilling its regulatory duties towards Palestinians. In making that argument, the essay introduces a brief explication of Foucault's modes of power before analysing, through Foucauldian lens, three primary ways through which the state of Israel intervenes in Palestinian life today. It looks at the erection of checkpoints, the building and maintenance of settlements, and the usage of laws, administrative policies and economic policies. The concept of 'dispowerment' is introduced as a neologism to describe a state apparatus's situation when the conditions for the possibility of its acting as a bio-power apparatus are made absent. For a state to be fully disempowered, it must have had its bio-political technologies rendered ineffective rendering the state an impotent bio-power apparatus. The investigation finds that Israel continues to regulate Palestinian life in the West Bank and that the structure of the occupation disempowers the PA. In other words, under the current structure of the occupation, neither Israel separated nor the PA regulated.

## TABLE OF CONTENTS

I.	Introduction, Occupation in the WBGS and the PA .....	1
II.	Theoretical Framework .....	6
A.	Foucault on Power .....	6
B.	Foucault's Modes of Power .....	7
1.	Sovereign Power .....	7
2.	Disciplinary Power.....	9
3.	Biopower and Governmentality .....	14
III.	Checkpoints.....	18
A.	Fixed Checkpoints .....	20
B.	Flying Checkpoints .....	23
IV.	Settlements .....	26
A.	Fortis .....	27
B.	Motorola's Systems .....	28
V.	Law and Policies .....	31
A.	Law in Foucault .....	31
B.	Closure Policy .....	34
C.	Pre-Oslo Economic Integration Policy .....	36
D.	Oslo Accords .....	38
E.	Israeli Labor Law .....	40
F.	Military Orders and Enactments .....	41
VI.	Conclusion .....	44

## I. Introduction:

The West Bank and Gaza Strip (WBGs) has faced a series of developments since the creation of the State of Israel in 1948. These political developments have played a major role in the political and economic status of the WBGs. The 1967 Occupation of the Palestinian Territories managed to intertwine the Palestinian and Israeli economies creating a co-dependency that was and is asymmetrical.<sup>1</sup> From the beginning, Israel held the upper hand in this asymmetrical relationship by virtue of its superior diversity and size of its economy and the rarity of imposed trade restrictions on Palestine. The WBGs holds the weaker position in this relationship, having their economy isolated by trade restrictions and having the country's already poor infrastructure damaged by war.

The 1967 occupation has resulted in the economic downfall of the West Bank. All matters relating to administrative control was in the hands of the Israeli military government known as the Israeli Defence Forces (IDF), which stated that, the already existing law of the West Bank would remain in force, in so far as it does not stand in conflict with any military decree or amendment; each decree or amendment took preference over any local law.<sup>2</sup> The IDF also asserted that powers related to government, legislation and appointment would be decided upon and exercised by the IDF exclusively, leaving the local law in the West Bank, which was Jordanian law, in effect unless amended or replaced.<sup>3</sup>

Israel had a duty under article 43 of The Hague Regulations, which stated that, the occupying power "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country,"

This included the military government's protection of the economic and social interests of the population.<sup>4</sup> However, with the increasing number of military enactments, the substance of the enactments extended to govern non-military affairs. Since 1967, around 2500 enactments have been issued in areas of "military, judiciary, and fiscal affairs, through welfare, health and education, to import duties, postal laws and the transportation of agricultural products".<sup>5</sup>

The Oslo Accords that came in the early 1990s are a set of agreements between the Israeli government and the Palestinian Liberation Organization (PLO). Oslo I, which is formally known as the Declaration of Principles (DOP) had

---

<sup>1</sup> LEILA FARSAKH, PALESTINIAN LABOUR MIGRATION TO ISRAEL 31 (2005).

<sup>2</sup> Amir Paz-Fuchs & Yael Ronen, *Occupational Hazards: Labor Law in the Occupied Territories*, INTERNATIONAL LAW FORUM OF THE HEBREW UNIVERSITY OF JERUSALEM, 7 (2011).

<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> *Id.* at 9.

introduced a timetable of the peace process for the Middle East.<sup>6</sup> The declaration proposed an interim Palestinian government. The meetings of the agreement were conveyed throughout several months in the years 1992 and 1993 in complete secrecy. Oslo II, officially known as the Israeli-Palestinian Interim Agreement on the WBGS, was a further expansion on the first agreement. Its provisions elaborated on the withdrawal of the Israeli troops from six cities in the West Bank and some 450 towns.<sup>7</sup> The agreement also came to a timetable for the Palestinian Legislative Council. After several meetings between Israeli and Palestinian officials across a span of a couple of months, in August 1993, the PLO signed the agreement with the Israeli Foreign Ministry Director.<sup>8</sup> In September 1993, the PLO confirmed its recognition of the right of Israel to exist and Israel affirmed its recognition of the PLO as the one entity representing the Palestinian people. The second signing of the Oslo Accords took place in September 1995, however, Israeli and Palestinian officials failed to reach a final peace agreement.<sup>9</sup> After the riots and the suicide bombings that took place in September 2000, the peace process was put to an end. The Oslo Accords mainly called for the Israeli withdrawal from Gaza and Jericho and the West Bank, five years of “limited autonomy” for Palestinians in the abovementioned territories, elections of Palestinian Legislative Council on the span of nine months, and the establishment of a Palestinian police force. As a result of the Oslo Agreements, the transition of the PLO into a self-governing body created an interim government, the Palestinian National Authority (PA).<sup>10</sup>

The PA currently continues to officially represent the Palestinian people, in maintaining its objective to the right of self-determination. The PA has been given the authority and responsibility to govern the Occupied Territories, which have been divided as per the Oslo Agreements; area A is under the PA’s full civil and security control (comprises 3 percent of the WB), area B is under the PA’s civil control and joint Israeli-Palestinian security control (comprises 23-25 percent of the WB), and area C is under full Israeli civil and security control (comprises 72-74 percent of the WB).<sup>11</sup> Other key agreements include the Economic Protocol, regulating the economic relationship between Israel and the PA.

The central thesis of this essay is to argue that Israel continues to regulate Palestinian life in the West Bank despite the separation strategy that they agreed upon in the Oslo Accords. The essay also argues that the structure of the Israeli occupation incapacitates the PA as a state apparatus. To state this second point in other words, the

---

<sup>6</sup> CNN Library, OSLO ACCORDS FAST FACTS CNN (2013), <http://edition.cnn.com/2013/09/03/world/meast/oslo-accords-fast-facts/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Joel Beinin, *The Demise of the Oslo Process*, MIDDLE EAST PRESS, 1999, <http://web.archive.org/web/20000816222849/http://www.merip.org/pins/pin1.html>.

conditions, which make the PA's governing possible, are being made absent by Israel's interventions in Palestinian affairs thereby diminishing if not eliminating the possibility of the PA performing its governing operations. Israeli interventions in the West Bank will thus be argued to present structural constraints on the PA's governing potential.

In making both these arguments, this essay will utilize Foucault's ideas on power and governmentality to analyze the main instruments of Israeli interventions in Palestinian affairs as a sample representing the structure of the occupation. The essay will analyze the erection of checkpoints, the building and maintaining of settlements before finally analyzing multiple Israeli laws and policies.

This essay will use a Foucauldian framework because his ideas on power present a comprehensive matrix of analysis that is suitable for the Israeli Occupation of Palestine. First, his ideas are based studying various modes of governmentalities across different times in western history and tracing the development of each mode. This makes his ideas relevant to the Israeli occupation of Palestine since the former is a recently founded modern state apparatus while the latter is an emerging state apparatus particularly since 1993. Foucault's insights on how modern governments function presents an analytical tool that can be used to explicate the conditions that a state apparatus must have satisfied for the possibility of its effective governing. Conclusions on the PA's potency or impotence given the occupation's structure can then be drawn based on whether these conditions were found present or absent.

Second, Foucault's thoughts on the working mechanisms of disciplinary power and bio-power provide an analytical tool for illuminating how settlements, for example, can serve a regulatory function beyond its obvious housing function. The Israeli occupation employs multiple security apparatuses in the West Bank but the regulatory or incapacitating effects of having these apparatuses installed would not be appreciated without the kind of insights that a Foucauldian analytical framework would provide. After all, most analyses performed on the West Bank's occupation by Israel are done within the juridico-legal framework, which is largely blind to how surveillance and population control works.

Finally, in a case where the occupying party has supposedly granted the occupied party the right to self-determination, the use of a Foucault's thoughts on bio-power would reveal whether that right to self-determination has really been granted and is actually being performed or is just political rhetoric. An investigation that uses Foucault's bio-power as one of its analytical tools reveals whether or not Israel is still regulating the West Bank's population and aids the detection of structural constraints to the PA's governing potential.

At this stage of the essay, the appropriateness of using Foucault as the selected analytical lens will be under-appreciated by readers who are not acquainted with



Foucault's thought. For this reason, the subsequent few sections of the essay will explicate Foucault's ideas on power and governmentality in developing the theoretical framework of the essay.

Before explicating Foucault, however, it is worth noting that this essay is by no means an apology for the PA's poor performance but rather aims to shed light on the regulatory activities that Israel still employs as well as on the structural constraints on the PA's space for governance rather than on the particular political manoeuvres, strategies or policies that were, are, or can potentially be employed by any particular individual or faction within the PA.

The PA officials' competence, integrity and commitment to the Palestinian cause as individuals have been under heavy scrutiny and criticism since 1993. Multiple PA officials, including senior level, have been accused and on some occasions tried and convicted of corruption charges including but not limited to embezzlement, misappropriation of funds, smuggling, money-laundering, fraud, abuse of trust and abuse of official positions for personal gains. A report prepared by the European Union asserted that financial corruption in the PA has led to the dubious "loss" of EU foreign aid amounting to an estimate of two billion Euros between the years 2008 and 2010.<sup>12</sup> Further, a report published by the World Bank in 2003 noted that the late Palestinian President Yasser Arafat had an estimated 900 million dollars out of the PA's budget transferred to an "unknown party" between 1995 and 2000.<sup>13</sup> Arafat's wife, Suha Al Tawil was under investigation by French courts for having nine million euros deposited in her name in two Paris based accounts.<sup>14</sup>

The aforementioned cases are merely a small sample of many cases of corruption in the PA that are thoroughly documented in Ramahi's report *Corruption in the Palestinian Authority*. Criticisms of incompetence too are well documented with multiple books and reports identifying what the PA did or is doing wrong and giving recommendations on how to improve its performance. An independent task force report published and sponsored by the Council on Foreign Relations is one example amongst many works that critiqued the PA's performance and choice of strategies. Moreover, Shehadeh's *From Occupation to Interim Accords: Israel and the Palestinian territories* analyses the context in which the Oslo Accords negotiations took place and blames the PLO negotiators' failure to understand Israel's real aims of

---

<sup>12</sup> SAWSAN RAMAHI, CORRUPTION IN THE PALESTINIAN AUTHORITY 4–15 4 (2013), [https://www.middleeastmonitor.com/downloads/reports/20131214\\_Corruptioninthepalestinianauthority.pdf](https://www.middleeastmonitor.com/downloads/reports/20131214_Corruptioninthepalestinianauthority.pdf) (last visited May 18, 2014).

<sup>13</sup> *Id.* at 4–5.

<sup>14</sup> *Id.* at 5.

consolidating the occupation, for the damaging concessions and losses that Palestinians incurred from the process.<sup>15</sup>

Such strong performance criticisms and corruption documentation at both the individual and institutional levels indicate two possibilities with regards to the PA's relationship with Israel. The first possibility is that the PA is an independent emerging state apparatus, born out of resistance to the occupation, but has fallen under Israeli control one way or another and is largely serving Israeli interests. The second possibility is that the PA continues to serve Palestinian interests as an institution since its founding but is ridden with incompetence and corruption. This essay's second argument, pertaining to the structural constraints that the occupation maintains over the PA's governance potential, avoids the problematic of having to assume either position. The nature of the argument circumvents this problem since the argument seeks to prove that the structure of the occupation incapacitates the PA's governing ability as an institution rather than as a sum of individuals. In other words, the structuralist nature of the argument renders the integrity, competence and commitment of the PA's individual personnel irrelevant. If, hypothetically speaking, the PA's personnel were to be substituted by more committed and more competent individuals, the same structural constraints and power relationships will persist is the claim of the argument.

---

<sup>15</sup> RAJA SHEHADEH, FROM OCCUPATION TO INTERIM ACCORDS: ISRAEL AND THE PALESTINIAN TERRITORIES XIII (1997).

## II. Theoretical Framework:

The following few sections will briefly explore and explicate Foucault's modes of power that will serve as the analytical lens of this essay.

### A. Foucault on power:

Foucault does not really provide an explicit theory of power in his works but rather gives an analysis of power in many of his books, primarily in *Discipline and Punish*, *The History of Sexuality* as well as in many of his lectures across his career. In his analyses of power, Foucault traces the origins and developments of multiple forms or rather "modes" of power that still permeate in modern liberal democracies. He gives a genealogy of power and traces its evolution across various times and illuminates how the purposes, functions and technologies of power have developed over time.

If we are to have a Foucauldian theoretical framework of power, it thus must be an abstraction of the various modes of power and their particular features from Foucault's genealogy. But first, it must be noted that Foucault's usage of the term power is quite different from its common usage and so for the sake of clarity, a brief explanation of how Foucault defines power must be presented before discussing the various modes of power in his works.

The common usage of the term power usually takes power to be some sort of force wielded by institutions, states, or individuals against other entities to ensure their subjugation, dominion or annihilation. Foucault attributes such definitions of power to mistaking a contingent accidental feature of power for an essential characteristic of it. He warns his readers against such misunderstanding:

The word power is apt to lead to a number of misunderstandings-misunderstandings with respect to its nature, its form and its unity. By power, I do not mean power as a group of mechanisms or institutions that ensure the subservience of the citizens of a given state. By power I do not mean either, a mode of subjugation, which in contrast to violence has the form of the rule. Finally, I do not have in mind a general system of domination exerted by one group over another.<sup>16</sup>

What Foucault does mean by power is quite different. Foucault understands power to be a multiplicity of force relations of an omnipresent nature, meaning that it exists everywhere where there is interaction. It can be positive and productive or negative and existing between egalitarian as well as ordered social interactions.<sup>17</sup> It is manifested on micro and macro levels. It is very pervasive in most forms, which make its definition quite vague. In Foucault's own words:

---

<sup>16</sup> MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY VOLUME 1: AN INTRODUCTION* 92 (Robert Hurley tran., 1978).

<sup>17</sup> MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972-1977* 134 (Colin Gordon ed., John Mepham & Kate Soper trans., 1980).

It seems to me that power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization; [secondly,] as the process which, through ceaseless struggles and confrontations, transforms, strengthens or reverses them; [thirdly,] as the support in which these force relations find in one another, thus forming a chain or a system or on the contrary, the disjunctions and contradictions which isolate them from one another; and lastly [fourthly,] as the strategies in which they take effect, whose general design or institutional crystallization is embodied in the state apparatus, in the formulation of the law, in the various social hegemonies.<sup>18</sup>

Power for Foucault, thus has four fundamental aspects that define it:

1. It is a multiplicity of force relations of various qualities;<sup>19</sup>
2. It is the process by which these force relations are strengthened or weakened or transformed;<sup>20</sup>
3. It is how these force relations manifest themselves in terms of organization;<sup>21</sup>
4. It is the force relation's manifestation in institutions as well as in social interactions.<sup>22</sup>

It is important to note here that power is not binary and is not reduced to a sovereign agent but is rather seen as complex, permeating and interacting forces that may or may not overlap and may or may not organize into a system. Despite this discussion, the definition of power remains very difficult to comprehend; it will become clearer, however, when Foucault's modes of power are explicated from his genealogy in the following brief discussion of it.

## **B. Foucault's modes of power:**

Foucault's analysis observed three different modalities of power. These modes are not mutually exclusive and often times overlap but each has its own distinctions. The modes of power that are of relevance to the purposes of this thesis are classified as sovereign power, disciplinary power and bio-power all of which will be illuminated in the next three sections of this essay where the genealogy will be briefly discussed and the characteristics of each power module will then be summarized.

### **1. Sovereign power:**

Foucault's genealogy begins with an analysis of power in the Middle-Ages. Foucault observed that societies in the Middle-Ages were largely ruled by the juridical model

---

<sup>18</sup> FOUCAULT, *supra* note \_\_\_ at 92–93.

<sup>19</sup> Richard Lynch, *Foucault's theory of power*, in MICHEL FOUCAULT KEY CONCEPTS 13–26, 19 (Dianna Taylor ed., 2011).

<sup>20</sup> *Id.* at 19.

<sup>21</sup> *Id.* at 19.

<sup>22</sup> *Id.* at 19.

of power or what he calls sovereign power. Sovereign power pre-dates the rest of the modes of power that Foucault observed. Under this model the sovereign has “the right to take life or let live”<sup>23</sup> by virtue of the relationship between the sovereign and his subjects. The sovereign holds a monopoly of violence over a particular territory and its inhabitants. He has the right to kill any subject who transgresses against the law and to summon the subjects to defend against outside transgressors.<sup>24</sup> The sovereign’s right to wield death means that his subjects are always super-positioned between life and death. Life, is thus for the subjects, something that the sovereign lets you and allows for you to have rather than is your natural right.<sup>25</sup>

The law under this model symbolizes the sovereign’s will and any transgression against the law is thus considered a transgression against the sovereign himself and a challenge to his sovereignty; consequently transgressions are met with punishment. Since the law symbolizes the sovereign’s will, under this mode, the courts are only interested in knowing whether the defendant is guilty of breaking the law or not before physical punishments like torture is prescribed if guilt was proven.<sup>26</sup> The punishment seeks revenge against the transgressor and creates fear in the other subjects, as opposed to the courts taking interest into the motives and conditions that led the subject to commit the transgression against the law and prescribing corrective measures for instance.<sup>27</sup>

Foucault identifies four essential characteristics to this mode of power as it operated in the Middle-Ages. First, the founding procedure by which the sovereign is granted power; the sovereign is granted sovereign status not by virtue of any intrinsic value but by an external justification such as divine right.<sup>28</sup> Second, the sovereign’s intervention in the lives of individuals is always subtractive, taking away land, money, resources and even life if the sovereign demands it.<sup>29</sup> Third, the punitive measures are exercised publicly where the masses of the subjects can witness the event and fear the sovereign as he displays his sovereignty over the territory and its inhabitants.<sup>30</sup> Examples of such physical punishments that are directed at the body and made into a public spectacle are public executions, public floggings and so on.<sup>31</sup>

---

<sup>23</sup> FOUCAULT, *supra* note \_\_\_ at 138.

<sup>24</sup> *Id.* at 135.

<sup>25</sup> *Id.* at 138.

<sup>26</sup> MICHEL FOUCAULT, SECURITY, TERRITORY, POPULATION LECTURES AT THE COLLEGE DE FRANCE, 1977-1978 4 (Michel Senellart ed., Graham Burchell tran., Seuil/Gallimard 2004 ed. 2007).

<sup>27</sup> *Id.* at 4–5.

<sup>28</sup> FOUCAULT, *supra* note \_\_\_ at 88.

<sup>29</sup> *Id.* at 136.

<sup>30</sup> MICHEL FOUCAULT, DISCIPLINE AND PUNISH THE BIRTH OF THE PRISON 32 (Alan Sheridan tran., 1977).

<sup>31</sup> *Id.* at 33.

This concludes the main characteristics of sovereign power according to Foucault within the context of its operation during the Middle-Ages. For the purposes of this essay, however, sovereign power has to be distinguishable after being de-contextualized from its Middle-Age context in Foucault. While Foucault believes that sovereign power declines in the modern state<sup>32</sup>, he nevertheless does not completely exclude its role in the governance of modern states but rather claims that its role is undermined by other modes of power with the advent of modernity.<sup>33</sup> The fact that sovereign power persists today in even the most modernized states is a reason it is of relevance to this essay as a tool of analysis. Another reason for its relevance is that in times of great distress, people tend to turn to the law, in its form of being synonymous to sovereign will, with their demands. The law is usually conceived as an embodiment of the rules by which a sovereign should rule. In modern states, the law is generally perceived to prescribe citizens' rights and the state's duties towards the citizens and so when the citizens feel oppressed, they turn to the law with their demands since the law, in their view, should be the sovereign's will.

For the purposes of this essay, sovereign power will be identifiable by the following three essential characteristics. First, there exists an asymmetrical relationship between the sovereign and the non-sovereign. This means that such form of power does not exist between two equals. This power relationship can exist between a king and his subordinates or a master and a slave or a policeman and a civilian. This non-equality is protected and supported by the second characteristic, which is that the superior party is able to exercise a subtractive punishment on the inferior party. Here again the threat of violence is what protects the sovereign status against the resistance of the non-sovereigns. The sovereign status, however, is not one where the sovereign is necessarily an individual like a monarch or an emperor but rather any entity, such as a government, that almost holds a monopoly on violence in a particular territory. Third, sovereign power is discontinuous in the sense that the spectacle of its punishments and the effects of the punishments are not always active on the subjects but rather occur at various separated times. Sovereign power thus exists essentially in asymmetrical relationships between non-equals where sovereignty is protected by the threat of spectacular intermittent violence.

## **2. Disciplinary power:**

The sovereign mode of power was prevalent in the governance of people during the majority of pre-modern history and particularly the Middle-Ages. Foucault's analysis in "*Discipline and Punish*" contrasts it with the second mode of power namely disciplinary power. In Foucault's genealogy, disciplinary power began to strongly propagate in the 16th century gradually displacing the ancient above-mentioned

---

<sup>32</sup> FOUCAULT, *supra* note \_\_\_ at 136.

<sup>33</sup> *Id.* at 138.

sovereign mode in the classical age and finally becoming the most prevalent mode of power in the 18th century.<sup>34</sup>

Unlike sovereign power, disciplinary power takes an interest in the specific behaviour of every individual rather than to merely set boundaries as to what is punishable and what is permissible.<sup>35</sup> It seeks to reinforce a particular behavioural norm that individuals follow as if it was drawing a line that subjects have to walk on as opposed to drawing borders that subjects aren't allowed to cross. In doing so, it relies on three primary techniques: hierarchical observation, normalizing judgment and examination.

Hierarchical observation is a technique whereby the subject is continuously put under surveillance or at least is under the impression that he is always under surveillance.<sup>36</sup> Any individual behaves differently in the presence of others or under the gaze of others. Children behave better in the presence of their parents for example or in the presence of strangers. This phenomenon, that people behave differently when they are being observed compared to when they aren't, has always persisted throughout human history. Foucault however was probably the first to generalize it as a system of governance.

Foucault found Bentham's Panopticon as the perfect model for showing how disciplinary power works through surveillance.<sup>37</sup> Foucault believed that Bentham is more important than Kant and Hegel in understanding modernity by virtue of his making discipline generalizable as a mode of governance of societies. The Panopticon is a design for a modern prison where a guard is placed at a watchtower from which he can observe all the prisoners at any time. The watchtower is placed in the centre of a giant courtyard and the prison cells and recreational areas circle the watchtower at the centre. The watchtower guard is invisible to the prisoners but all the prisoners are visible to his gaze.<sup>38</sup> This system allows to rather than tie the prisoners to the wall using chains, the Panopticon has the prisoners physically free but under the impression that they are continuously being observed at all times even when the guard is not really observing them. Each individual prisoner under this impression believes that at any moment they might be under observation and as such always have the internal urge to behave in accordance with the norms and rules of the prison. Here, the prisoner internalizes the disciplining process and practices self-discipline just by virtue of being possibly constantly observed. Observation or the illusion of continuous

---

<sup>34</sup> MICHEL FOUCAULT, *PSYCHIATRIC POWER: LECTURES AT THE COLLEGE DE FRANCE, 1973-1974* 66 (J. Lagrange ed., Graham Burchell tran., 2006).

<sup>35</sup> Marcelo Hoffman, *Disciplinary Power*, in MICHEL FOUCAULT KEY CONCEPTS 27–39, 28 (Dianna Taylor ed., 2011).

<sup>36</sup> *Id.* at 31–32.

<sup>37</sup> FOUCAULT, *supra* note \_\_\_\_ at 41.

<sup>38</sup> *Id.* at 75–78.

observation, as the Panopticon example shows, thus internalizes the disciplining process in its subjects, making individuals behave.

While in the Panopticon example, the one guard is observing the many prisoners, it is not a necessary condition for the effectiveness of disciplinary power. The many can very well observe the many or the one. It is the gaze that has a disciplining effect and its effectiveness is maximized when it involves having a network of individuals placed in a hierarchy, like in a factory, school, or hospital for instance, whereas each individual inside the network is placed in a visible position where they both observe others and are observed. Discipline makes each individual in the network internalize the norms of the network and behave in accordance to them. Even individuals at the top of the hierarchical pyramid are subjects of disciplinary power since being observed by their subordinates makes them internalize discipline. In Foucault's own words:

Although surveillance rests on individuals, its functioning is that of a network of relations from top to bottom, but also to a certain extent from bottom to top and laterally; this network holds the whole together and traverses it in its entirety with effects of power that derive from one another: supervisors, perpetually supervised.<sup>39</sup>

The second technique through which disciplinary power expands is normalizing judgment. Of what use is it to observe individuals if their behaviour is left un-judged? Under disciplinary power, not only is everyone both observer and observed; everyone is also judge and defendant. Others judge an individual's behaviour within the hierarchal network as to whether they live up to the prevalent normative behaviour or not. Adherents to the correct behaviour are labelled normal while deviants are judged abnormal, so every departure from the established correct behaviour is punished. Exercises are prescribed in order to correct deviants. Adherence to correct behaviour is rewarded thereby establishing a hierarchy of good and bad individuals.<sup>40</sup> Hierarchical observation combined with normative judgment thus imposes a measure on individuals to keep them in control and regulate their behaviour. Usually the norm is a manner of being docile and providing utility. Each disciplinary institution has its own norms. The norms of a prison are different than the norms of a school than those of a hospital or an asylum.

The third technique combines the first two techniques on a regular basis creating a normalizing observation. While observation objectifies the observed and normalizing judgments provide a standard criterion of differentiating between conformists and deviants, examination provides an evaluation of each individual's behaviour. Under examination, Foucault understands the processes of documenting information about individuals, which come with testing, treating them as objects and

---

<sup>39</sup> FOUCAULT, *supra* note \_\_\_ at 176–177.

<sup>40</sup> FOUCAULT, *supra* note \_\_\_ at 177–183.



tracking their development.<sup>41</sup> Examination thus provides and continuously makes use of knowledge in tracking individuals' behavioural patterns, correcting them and evaluating the effectiveness of the corrective measures.

Internalizing discipline can occur in a variety of ways. One may internalize discipline and behave in accordance to norms out of conviction, fear or habit. Being disciplined out of conviction is for the subject to actually believe in the norm and its correctness. A convicted and believing subject will aspire to live up to the norm and would not necessarily require to be observed as much as whom that conforms due to fear but without conviction. The average citizen going through a full medical check-up aspires to be judged healthy and sane and works towards that end and fears being judged insane or ill out of a belief in the goodness of sanity and health over insanity and sickness.

The internalizing of discipline through fear of retribution, on the other hand, requires the subject to be continuously observed or at least under the impression of being continuously possibly observed. Without observation, the subject will cease to behave unless that behaviour has become a habit. A simple example that can show the various ways one can internalize discipline and behave according to the norms is that of a homosexual individual in a highly conservative culture like that of the Middle-East. One possibility for a homosexual in that environment is to believe the religious rhetoric that accuses him of sickness and thus believe himself to be sick and aspire to participate in conversion therapy and to behave as a heterosexual. Here, the homosexual believes in the norm and tries to conform to it. Another possibility for that individual is to not believe in the norm and to perceive himself as healthy and normal and yet pretend to be heterosexual out of fear of prosecution or social alienation. The final possibility is to internalize discipline in one of the latter fashions but to have his behaviour then conditioned as a habit over time.

While Foucault does not explicitly make these precise distinctions in the manners of which one can internalize discipline, he considers them all as effects of disciplinary power. In fact, Foucault notes in *Security, Territory and Population* that disciplinary power was present during the spectacular executions and punishments performed on transgressors under the sovereign model of power. In a public execution, sovereign power is exercised on the transgressor while a discontinuous disciplinary power is exercised over the masses watching the spectacle.<sup>42</sup> The purpose of the spectacle was to internalize the witnessing subjects' discipline out of fear rather than out of conviction. In Foucault's own words:

It is absolutely clear that in the juridico-legal system, which functioned, or at any rate was dominant, until the eighteenth century, the disciplinary side was far from being absent since, after all, when a so-called exemplary punishment

---

<sup>41</sup> *Id.* at 189–191.

<sup>42</sup> FOUCAULT, *supra* note \_\_\_ at 6.

was apparently of little importance or consequence, it was in fact precisely with the aim of having corrective effect, if not on the culprit himself-because he was hardly corrected if he was hung-then at least on the rest of the population. To that extent, the practice of public torture and execution as an example was a corrective and disciplinary technique.<sup>43</sup>

It is worth noting that disciplinary power is characterised by being continuous, which is not the case in spectacular punishments, and this, might be the reason behind the spectacle's relative modern obsolescence since the spectacle's disciplinary effect is incomplete by being discontinuous.

In the classical age, Foucault notes, disciplinary power was permeating through the societies by means of institutions or disciplinary networks, such as schools, workshops, asylums etc...<sup>44</sup> With modernity looming, however, power became increasingly de-centralized from the monarch and shifted towards service institutions like schools, universities, hospitals and factories.<sup>45</sup> The judiciary became interested in why a criminal broke the law rather than merely whether they broke the law. Punitive measures shifted from being dominantly vengeful, violent, fear generating and public to being dominantly corrective.<sup>46</sup> The purpose of punishment shifted from being deterring crime through generating fear of physical pain in individuals to being reforming and rehabilitating individuals. The soul, thus, is the subject of this power rather than the body. Adherence to behavioural norms became the standard for judgment in the courtrooms and in civil society. Social and medical sciences became the tools by which the normal and the abnormal are defined.<sup>47</sup>

Disciplinary power is thus primarily concerned with controlling individual minds rather than punishing bodies. It seeks to render its subjects both useful and docile and seeks to bind and strengthen the relationship of the former to the latter so that the more docile the individual the more utility they provide. Discipline is not directly and visibly imposed by the institutions, but is rather internalized as values and norms in the individual and consequentially society as whole making the many observe the many. The subject under this mode of power thus, practices self-discipline as one tries to conform to the norms for one reason or another. It is rather an unspectacular, continuous mode of power compared to its predecessor yet more effective and encompassing. Through disciplinary power, individuals become more alike and their combined efforts become of more utility.

---

<sup>43</sup> *Id.* at 6.

<sup>44</sup> FOUCAULT, *supra* note \_\_\_ at 209.

<sup>45</sup> *Id.* at 211.

<sup>46</sup> *Id.* at 220–221.

<sup>47</sup> *Id.* at 216.

### 3. Bio-power & Governmentality:

The permeation of disciplinary power in institutions during the classical age culminated in a new way of governance in the modern age. It gave the landscape for the rise of new technologies of power in the governmentality and political sphere that Foucault famously calls bio-power. Foucault discusses bio-power at great length in *Security, Territory and Population* and *The Birth of Bio-Politics*. Foucault contrasts bio-power with sovereign power. The latter is described as “the right to take life or let live” while the former (bio-power) is described as “the right to make live and to let die”.<sup>48</sup> With modernity’s advent, the deductive and destructive nature of sovereign power becomes complemented and largely replaced by the productive and enhancing bio-power. This means that unlike sovereign power, whose rationality is only negative and deductive, bio-power has a positive productive rationality. Bio-power is thus a productive power that through regulation seeks to control and manage its subjects’ lives. The ‘bio’ part of the term refers to that power’s interest in the life and health of its subjects. Foucault writes:

[of] a very profound transformation of these mechanisms of power, in which "deduction" would be replaced by a power "working to incite, reinforce, control, monitor, optimize, and organize the forces under it: a power bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them."<sup>49</sup>

Bio-power’s targets of control are populations rather than bodies. Its era witnesses the burgeoning of countless techniques aimed at the control of populations. It does not just differ from sovereign power in terms of its objectives but also in terms of its instruments. The main instrument of bio-power is corrective and regulatory disciplinary techniques that are based on knowledge. Power, under this mode, becomes interested in studying trends in mortality rates, health rates, employment rates, birth rates and the likes and becomes strongly tied to knowledge. Foucault writes:

The new technology that is being established is addressed to a multiplicity of men, not to the extent that they are nothing more than their individual bodies, but to the extent that they form, on the contrary, a global mass that is affected by overall processes characteristic of birth, death, production, illness, and so on . . . we have a second seizure of power that is not individualizing but, if you like, massifying, that is directed not at man-as-body but at man-as-species.<sup>50</sup>

It employs scientific mechanisms for gathering information about populations and has disciplinary mechanisms that make use of the sciences to administer and regulate

---

<sup>48</sup> MICHEL FOUCAULT, *SOCIETY MUST BE DEFENDED: LECTURES AT THE COLLEGE DE FRANCE, 1975-1976* 240–241 (M. Bertani & A. Fontana eds., D. Macey tran., 2003).

<sup>49</sup> MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY VOLUME 3: THE CARE OF THE SELF* 136 (Robert Hurley tran., 1986).

<sup>50</sup> FOUCAULT, *supra* note \_\_\_\_ at 242–243.

these populations. Foucault calls these information-gathering mechanisms as Power/knowledge regimes.

Bio-power is thus quite similar to disciplinary power with the main difference lying in the level of focus that each has. Disciplinary power is interested in controlling the individual, while Bio-power is interested in controlling populations. It treats populations as an object that is different than the sum of its individual parts. A population, of let's say farmers, has its own trends and behavioural patterns that are unknowable by merely studying an individual farmer of that population. Bio-power is thus revealed to be more macro and encompassing than disciplinary power. Disciplinary power can even be seen as a subset or a tool of bio-power. For instance, disciplinary power is interested in controlling each criminal and correcting him as to avoid further criminal activity from him. It is interested in the physical and psychological conditions that made the criminal commit the crime. Bio-power shares the same interests of disciplinary power, since discipline is a subset of it, but it is also interested in overall crime rates and seeing as to whether it is on the rise or on the fall and prescribing solutions for controlling it. Bio-power accordingly, works on both micro and macro levels; its disciplinary micro aspect working through institutions and its macro-aspect working through the state.<sup>51</sup>

An important distinction between bio-power and sovereign power is how each treats the use of violence and the death of its subjects. While sovereign power punished spectacularly as in line with its objectives and instruments, bio-power's objectives and instruments are productive and thus have to treat the use of violence and death productively. Bio-power seeks to exclude and hide violence and death rather than parade them. The use of violence and death is masked as something else that is productive and optimal for the lives of the population. Foucault notes that bio-powers have to declare a group within the population as abnormal before it can use violence against them. He argued that this "biological racism" portrays a segment of the general population as a threat to the improvement of the rest of the populations. In doing this bio-power thus lives up to its description of "to make live or let die" by letting a small portion of the population die to enhance and improve the health of the rest. Foucault writes

In the bio-political system . . . killing, or the imperative to kill, is acceptable only if it results not in a victory over political adversaries, but in the elimination of the biological threat to and the improvement of the species or race . . . Once the State functions in the bio-power mode, racism alone can justify the murderous function of the State.<sup>52</sup>

---

<sup>51</sup> Chloe Taylor, *Biopower*, in MICHEL FOUCAULT KEY CONCEPTS 41–54, 44–45 (Dianna Taylor ed., 2011).

<sup>52</sup> FOUCAULT, *supra* note \_\_\_\_ at 256.

Bio-power is thus typical of modern states, which view their subjects not as juridical subjects but rather as objects of care. Foucault outlines a genealogy of the modern state and traces that care towards the subjects back to the pastoral care typical of Christian thought. The ruler as the leader and caretaker characteristic of modern states is an evolution and an extension of the Christian idea of the shepherd leading his flock. Foucault puts it, “the shepherd directs the whole flock, but he can only really direct it insofar as not a single sheep escapes him”.<sup>53</sup> In light of racism and pastoral care, modern states are thus bio-power apparatuses that seek to regulate and administer populations using disciplinary technologies and science to manage the behavioural patterns of its population out of care for its well being.

Foucault’s discussions of the various modes of power, as explicated above, were all discussed in particular contexts for each power mode. Foucault never utilizes his power modes in analysing the power relationships that underlie an occupation. Sovereign power, for example, was always discussed in a relation between a sovereign and his subjects but not between a sovereign and another sovereign’s subjects. Moreover, in his genealogy of the modern state, he discussed how modern states, under bio-power, utilize bio-political and disciplinary technologies to normalize and administer the lives of their populations but not the populations of other states to which the state might not care for their control. I propose that the same technologies of bio-power that are used as instruments for states to control the lives of its populations, and in normal conditions improve it, could be employed to control and improve or deteriorate the well-being of another state’s population if the context allows it.

This essay will thus treat the power technologies and instruments discussed by Foucault as employable for purposes other than the care for the control of its population. In light of this, in this essay I will treat the West Bank as a battlefield of Foucauldian powers, where the state of Israel and the Palestinian Authority are two competing state apparatuses utilizing sovereign, disciplinary and bio-political technologies to varying success.

The Foucauldian analysis will focus on the primary ways through which Israel explicitly intervenes in Palestinian affairs, to reveal each of the intervention mechanisms as either performing a regulatory function or an incapacitating one or both, in making two connected arguments. The first argument is that the state of Israel employs sovereign, disciplinary and bio-political technologies to regulate the Westbank’s Palestinian population despite the Oslo Accords and the establishment of the PA. The second argument is that the Israeli sovereign and bio-political technologies, which comprise the occupation’s structure, diminish if not completely incapacitate the PA from performing its regulatory duties as a state apparatus. In other words, the second argument seeks to show how the Israeli mechanisms of

---

<sup>53</sup> FOUCAULT, *supra* note \_\_\_ at 128.

intervention, namely the erection of check points, the building and maintaining of settlements and the uses of law in the West Bank, sabotages the conditions for the possibility of the PA's functioning as a proper bio-power apparatus.

Throughout this essay, I will refer to the act of incapacitating a state apparatus from being an effective bio-power apparatus as an act of 'dispowering' that renders an apparatus 'dispowered'. This neologism is introduced to describe the special state of affairs for a state apparatus where the conditions for making the governance, in a bio-political sense, of a particular population possible are absent. The neologism is a minor alteration on the term disempower only disempowerment wrongfully suggests a power that was once held and was later lost which is not the case with the PA.

### III. Checkpoints:

This section will explain how Israeli checkpoints at various locations along the roads of the occupied territory regulate the lives of the Palestinian population in the West Bank and disempowers the Palestinian authority. But first, a brief overview of the types of checkpoints must be given.

Checkpoints can be internal or external and fixed or flying. Internal checkpoints are those that are located deep within Palestinian territory in the West Bank while external checkpoints are those that are located outside of the Palestinian territory or at the borders of the territory. Fixed checkpoints are those whose locations are permanent and are stationary while flying checkpoints are moving, surprise checkpoints. As of February 2014, there are 99 fixed checkpoints 59 of which are internal.<sup>54</sup> Furthermore, in 2013 the UN's Office for the Coordination of Humanitarian Affairs counted a monthly average of 256 flying checkpoints erected on West Bank roads.<sup>55</sup>

In erecting checkpoints, the Israeli Defence Forces (IDF) or the Israeli police, depending on the location, purchases, installs and fully operates checkpoints or they privatize the whole operation.<sup>56</sup> In either case, the average Palestinian passing through a checkpoint experiences most of the following: passing through a metal detector, a luggage scan, a submission of the work permit and a magnetic card and a full body search where full body scanners are unavailable.<sup>57</sup> Moreover, armed soldiers, policemen or contracted civilian security guards are present with K-9 Police dogs and Patrol vehicles at the checkpoints to operate the equipment, perform the searches handle dissent and filter crossers.<sup>58</sup> Additionally, the arduous process of passing through checkpoints is often times accompanied by long delays, verbal harassment and long lines of crossers.<sup>59</sup>

The regulatory nature of checkpoints is exemplified in its functions of managing circulation, and its disciplining effect on Palestinians. Foucault's ideas on geography's role in bio-political relationships reveal how the Israeli checkpoints do more than just protect settlements and settler populations but also regulate and administer Palestinian lives. While Foucault's thoughts on space and geography are

---

<sup>54</sup> Checkpoints, Physical Obstructions, and Forbidden Roads, B'TSELEM (2014), [http://www.btselem.org/freedom\\_of\\_movement/checkpoints\\_and\\_forbidden\\_roads](http://www.btselem.org/freedom_of_movement/checkpoints_and_forbidden_roads).

<sup>55</sup> *Id.*

<sup>56</sup> Privatizing Security – Corporate Involvement in the Checkpoints, WHO PROFITS (2009), <http://www.whoprofits.org/content/privatizing-security-%E2%80%93-corporate-involvement-checkpoints> (last visited May 14, 2014).

<sup>57</sup> Martin Asser, GUIDE TO A WEST BANK CHECKPOINT BBC NEWS, [http://news.bbc.co.uk/2/shared/spl/hi/middle\\_east/03/w\\_bank\\_checkpoints/html/](http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/w_bank_checkpoints/html/).

<sup>58</sup> Checkpoints, Physical Obstructions, and Forbidden Roads, *supra* note \_\_\_\_.

<sup>59</sup> MAIN FINDINGS OF VIOLENCE SURVEY IN THE PALESTINIAN SOCIETY, 2011, (2011), [http://82.213.38.42/Portals/\\_pcbs/PressRelease/el3onfNewenglish.pdf](http://82.213.38.42/Portals/_pcbs/PressRelease/el3onfNewenglish.pdf).

vague and perhaps under-developed, some of its elements are key for analyzing power relations. Foucault treats space, in the context of power, not as absolute Cartesian space but rather as relational space.<sup>60</sup> By relational space, Foucault is concerned with where individuals are positioned with respect to each other and what type of power relationship that each spatial arrangement between individuals implies.<sup>61</sup> In the Panopticon for example, the disciplinary power relationship is possible only on the condition that the spatial arrangement of prisoners with respect to the watchtower guard renders the prisoners visible and the guard invisible. The architectural design of the Panopticon is thus a spatial arrangement that is absolutely essential for the successful disciplining of the prisoners.<sup>62</sup>

In line with the insight that spatial orderings condition the possibilities of power relationships, Foucault discussed geography within the context of bio-politics and modern states. Foucault saw geography as a regime of knowledge/power where governments' urban planners, using scientific tools and disciplines, gather information about the qualities of the territory and determine the logistics of how the circulation of people, goods, money, water and the likes will take place.<sup>63</sup> Modern states, under the regime of bio-power, take an interest in regulating circulation and in differentiating between good and bad circulation because of circulation's strong effects on the wealth, health, and migration etc... of its citizenry.<sup>64</sup> If contaminated water for example was to freely circulate to resident areas, the health of that area's residents will be affected. If a territory is starved of resources, people will tend to migrate from it to more resourceful territories. Along the same lines, the higher the population density of a particular city, the higher the rates of infections and disease amongst the members of that city's population. Examples in that mould elucidate how spatial arrangements and the management of circulation are heavily tied to phenomena that states as bio-power apparatuses are interested to control.

Circulation management is thus an essential technology of bio-power or rather a condition for the possibility of having effective bio-political tools. In managing circulation through the urban planning of roads, states normalize the use of roads by placing state or private employees to supervise the use of the roads. Traffic police, Traffic signs, checkpoints and toll stations for example are installed to manage the roads circulation. These mini-institutions are themselves normalized as well.

As previously mentioned, one type of checkpoints that the state of Israel erects is internal to the West Bank territory. As of 2013, there are 59 internal checkpoints

---

<sup>60</sup> Jeremy Crampton, *Space, Territory, Geography*, in *A COMPANION TO FOUCAULT* 384–399, 385 (Christopher Falzon, Timothy O'Leary, & Jana Sawicki eds., 2013).

<sup>61</sup> FOUCAULT, *supra* note \_\_\_ at 11.

<sup>62</sup> FOUCAULT, *supra* note \_\_\_ at 200–201.

<sup>63</sup> Crampton, *supra* note \_\_\_ at 389.

<sup>64</sup> *Id.* at 389.



erected on West Bank roads, not including the frequent random flying checkpoints.<sup>65</sup> By installing these checkpoints Israel effectively manages circulation in the West Bank. Checkpoint guards can allow, deny or delay passage; they can even arrest and detain Palestinian crossers. Through checkpoints, Israel can thus manipulate employment rates, mortality rates and literacy rates of the Palestinian population by increasing or diminishing logistical access to markets, hospitals and schools for instance. Roads are an essential component of any state's infrastructure and by denying, allowing or delaying the passage of Palestinians, Israel effectively manages West Bank roads; a major component of Palestinian infrastructure and a condition for the possibility of the PA's governing. The regulation of a main component of the West Bank's infrastructure gives Israel an instrument for interfering with the economy and health of the West Bank population both of which are objects of administration for bio-power apparatuses. In erecting checkpoints, Israel thus regulates and administers Palestinian life by controlling circulation and subsequently controlling Palestinians' access to health, trade and education.

The regulatory function of checkpoints is not just exemplified by control of circulation; it is also exemplified by the checkpoints' surveillance systems' disciplinary effect on crossers. While the surveillance and security apparatus might vary across different checkpoints, the following systems are widely installed across fixed checkpoints and could thus serve as a sample for gaining insights about the power structures underlying the fixed checkpoints' relationship with Palestinian subjects. Analysis of checkpoints' surveillance systems will now follow.

#### **A. Fixed Checkpoints:**

Fixed checkpoints with the aforementioned types of technologies and personnel permeate all three modes of power. The presence of the sovereign mode of power is apparent by virtue of two observations: Firstly, the use of armed guards and armed patrol vehicles in operating and securing the checkpoint against the subjects. Secondly, the physically violent fashion by which dissent or non-compliance is handled and the occasional public nature of punitive measures that are taken against non-docile subjects. The use of physical force against the body of the subject is a characteristic of sovereign power where the sovereign's will demands the compliance of the Palestinian subject to the difficult security procedures and publicly punishes dissenters and non-docile subjects. Violence at checkpoints has been thoroughly documented in the past. In a press release by the Palestinian Central Bureau of Statistics in 2011, it was documented that 8% of Palestinians in the West Bank between the ages of 18-29 suffer from physical violence in the checkpoints.<sup>66</sup> Sovereign power thus permeates between the state of Israel and Palestinian civilians in the checkpoint arrangement.

---

<sup>65</sup> Checkpoints, Physical Obstructions, and Forbidden Roads, *supra* note \_\_\_\_.

<sup>66</sup> MAIN FINDINGS OF VIOLENCE SURVEY IN THE PALESTINIAN SOCIETY, 2011, *supra* note \_\_\_\_ at 15.

Sovereign power is not the only mode of power present in the fixed checkpoint arrangement. Disciplinary power is heavily present on subjects passing through the checkpoints. As discussed in the section on disciplinary power, hierarchical observation, normalizing judgment and examination are the three main techniques of disciplinary power. The hierarchical observation technique is satisfied in the checkpoint arrangement. The guards and the surveillance technology observe subjects, as they await their turn to pass through the checkpoint and as they are going through the checkpoint. Here the guard is 'superior', in the hierarchal sense, to the subjects and is observing them and judging each subject as to whether his/her behaviour is in compliance with the norms of being a 'docile crossers'.

A well-behaving subject in this situation is the docile and cooperative individual that refrains from any sudden or violent verbal or physical action. Formal guidelines as to how a crosser should behave are lacking however, general obedience and patience is expected of crossers. This demonstrates the presence of the second technique of disciplinary power namely normalizing judgment. Subjects are observed and judged on the basis of their observed behaviour as to whether they should be allowed to pass or sent home and in some cases detained.

The phases of passing through the metal detectors, the luggage scans and the presentation of magnetic ID's and work permits and the full body search are a clear example of the third technique of disciplinary power, namely the examination. The surveillance and security technology on the checkpoint location examines each subject and determines the effectiveness of the disciplining process. Crossers must present valid work permits and in some checkpoints magnetic cards that the guards can use to review each subject's security and personal history but that will be discussed at length later in this section.

The satisfaction of all three disciplinary power techniques has thus been demonstrated. Under the effect of these three techniques, Palestinians, who pass through the checkpoints, become subjects of disciplinary power. They internalize the disciplining process by behaving in a docile manner while waiting in line, by making sure their luggage and their person are free of any material that might be deemed as threatening to security and by obtaining their IDs and work permits and keeping them on at all times. Here discipline is internalized out fear of retribution rather than out of conviction. The internalized discipline in this case, however, is discontinuous rather than continuous. The activity of self-discipline exists only insofar that the crosser is in the queue, crossing or having just crossed through the checkpoint. The discontinuous disciplining here is reminiscent of how the masses were disciplined by watching the spectacular execution of a criminal by the sovereign in the Middle-Ages. In both these cases, self-discipline is exercised by the subjects but only for a temporary amount of time and out of fear of the sovereign's threat of violence. It is thus a case where the method of control is a borderline between sovereign and discipline.

In addition to Sovereign and Disciplinary power's presence in the surveillance and security apparatus at most checkpoints, bio-power is also manifested. Bio-power's manifestation is clearly demonstrated by the checkpoint's requiring of subjects to present magnetic ID cards to be able to pass through the checkpoint. The magnetic ID cards referred to earlier is key to the operation of a population surveillance and control system called "the Basel System".<sup>67</sup> EDS Israel, a subsidiary of the famous electronics corporate Hewlett Packard, is the primary contractor of the Basel system. The "biometric database law" was passed by the Israeli Knesset in 2009 and was subsequently installed at the West Bank checkpoints in Jericho, Bethlehem, Jenin, Nablus, Tulkarem, Hebron, Abudis, Tarkumia and the Ephraim Gate by 2010.<sup>68</sup>

The Basel system software is a huge information system with a database that collects and analyzes biometric information about the cardholders, which in this case are Palestinian workers. Its features include hand and facial recognition, as well as, the security history and personal information about each individual in the database. According to WhoProfits.Org, holding these magnetic cards has been required of Palestinians who wish to work in Israel or on Israeli settlements since 2005.<sup>69</sup> Consequently, the system probably holds biometric as well as personal and security information about almost every member of the Palestinian population in the West Bank above the age of 16.<sup>70</sup>

That the Basel system is a manifestation of bio-power is easily noticeable. Bio-power is a power that seeks to regulate the lives of populations. It relies on the statistical disciplines in gathering information and regulating behavior through the arms of the state. The Knesset's passing of the law and the military's purchasing of the system and its contracting to HP's subsidiary EDS Israel for installing and maintaining the system is an indicator of the state's role in the creation of that biometric system. The personnel operating the system and performing continuous decisions regarding whether a given subject is to be allowed to pass through the checkpoint are IDF soldiers, policemen or private security guards contracted by the former two groups, which are all extensions of the state.

The guards' decisions themselves are detrimental to the lives of the subjects involved in the process. Their economic wellbeing, their access to health, work and education among other things are affected by whether they are allowed to pass and proceed to work, whether they get to work on time, whether they are detained or told to return home or seek other routes for instance.

---

<sup>67</sup> TECHNOLOGIES OF CONTROL: THE CASE OF HEWLETT PACKARD, (2011), [http://whoprofits.org/sites/default/files/hp\\_report-\\_final\\_for\\_web.pdf](http://whoprofits.org/sites/default/files/hp_report-_final_for_web.pdf).

<sup>68</sup> Hewlett Packard (HP), WHO PROFITS (2014), <http://whoprofits.org/company/hewlett-packard-hp> (last visited May 14, 2014).

<sup>69</sup> TECHNOLOGIES OF CONTROL: THE CASE OF HEWLETT PACKARD, *supra* note \_\_\_\_ at 11.

<sup>70</sup> *Id.* at 11.

The existence of the Basel system thus, further supports the argument made earlier that checkpoints are bio-political instruments that regulate the West Bank's circulation.

On the subjects' front, bio-power's disciplinary element is active by virtue of the Basel system. By being aware that the guards at the checkpoints have access to their personal and security records, they internalize discipline on a consistent and continuous basis as to avoid having a bad history that would impede their future endeavours of crossing through checkpoints. Anger, frustration or other negative emotions are repressed and self-control is exercised to ensure a safe passage. Sovereign power permeates by virtue of the presence of potential violence by the armed guards whose decision making is aided by the system's database of the Palestinian subjects.

I have thus explicated the power structures underlying the fixed checkpoint surveillance with all three techniques mapped by Foucault satisfied during the waiting in line and passage process. Bio-power too is demonstrably detectable through the analysis of the biometric database: the Basel System. The next section will look at the power structure underlying flying internal checkpoints.

## **B. Flying Checkpoints:**

The surveillance and security apparatus in flying checkpoints is more or less similar to the apparatus at fixed checkpoints. Consequently, the same power structures that were discussed in the last section probably persist in flying checkpoints too. However, the random and surprising element exclusive to flying checkpoints and the rate at which they are erected deems it worthy of analysis. As mentioned earlier, in 2013 the UN's Office for the Coordination of Humanitarian Affairs counted a monthly average of 256 flying checkpoints erected along West Bank roads. This amounts to an average of 8 to 9 random checkpoints in the West Bank per day.<sup>71</sup>

The frequency at which these flying checkpoints are erected indicates that Palestinians will probably be wary of the checkpoints popping up unexpectedly. The lack of predictability of the flying checkpoints suggests that disciplinary power permeates between the flying checkpoints as a whole and the Palestinian subjects in a manner that is somewhat reminiscent to Bentham's Panopticon. As discussed in the section on Foucault, Jeremy Bentham's Panopticon was a prison design whose main concept was that watchtower is placed in the centre of the prison where the watch guard could observe all of the inmates, while the inmates could never tell whether they are being observed at each particular point in time or not. Foucault used the prisoners' state, of not knowing whether they are actually being observed or not but

---

<sup>71</sup> Checkpoints, Physical Obstructions, and Forbidden Roads, *supra* note \_\_\_\_.

knowing that they could be observed, in explicating the hierarchal observation technique through which disciplinary power works on the prisoners.<sup>72</sup>

Similarly, in the case of the frequent erection of flying checkpoints, Palestinians using West Bank roads are generally aware of the position of fixed checkpoints, where they are certain they would be observed, searched, and judged. They, however, are unaware of whether they are going to run into flying checkpoints but know that they could run into one at any point given how frequently and randomly these check points are erected. Thus, Palestinians walking streets that do not have fixed check points do not know whether they will go through the arduous disciplinary procedure of passing through a checkpoint but do know that they could go through it if a flying checkpoint pops up. Unlike the fixed checkpoints, flying checkpoints thus subject Palestinians to disciplinary control continuously. Consequently, Palestinians thus internalize the disciplining process at all times, as if they are always going through a checkpoint, in the same manner the Panopticon's prisoners internalize discipline and become docile as if the watchtower guard is always observing them.

Moreover, the disciplining effect of checkpoint crossers is transferable to non-checkpoint crossers. This is analogous to how the prison for Foucault works on the non-prisoned population by virtue of what happens in the prison. How prisoners make non-prisoners docile is also analogous to how the disciplining of the insane in asylums transfers to the sane who always fear being found insane and thus behave 'sanely' and docilely. For the Palestinian citizens of the West Bank, the disciplining effect on crossers transfers to those who aren't crossing. The latter group fear being found a threat to security since that would lead to their detainment or their abuse even while they are not crossing and thus exercise self-discipline continuously.

The disciplinary power permeating through the erection of flying checkpoints is thus demonstrably more effective than that of fixed checkpoints. Flying checkpoints do not only share the power dynamics that underlie fixed checkpoints, but also include a much stronger disciplinary element, purely by virtue of being randomly placed and more invisible. This leaves Palestinian subjects with the impression that they might be being observed and also makes the disciplinary effects of the checkpoints on crossers transferable to those who are not crossing at that instant.

Now that Checkpoints have been demonstrated to serve a regulatory function for the state of Israel, through managing circulation and disciplining subjects, I will argue that it serves to dispower the Palestinian Authority at the same time. As previously mentioned, a modern state apparatus' dispowerment occurs when the conditions for the possibility of it operating as a bio-power are made absent. Moreover, circulation management was previously explained to serve as both a bio-political technology that bio-powers employ to regulate and administer the lives of its populations and a

---

<sup>72</sup> FOUCAULT, *supra* note \_\_\_ at 200–202.

condition for the possibility of utilizing other bio-political technologies. Therefore, if a state was incapacitated with regards to circulation management, it is rendered impotent as a bio-power apparatus.

Effective circulation management with regards to roads assumes that the state can catalyse good circulation and impede bad circulation. In the West Bank, the presence of Israeli checkpoints obstructs this operation. The presence of Israeli checkpoints sabotages the PA's attempts to normalize the use of roads since the managing effects of traffic police, toll booths and similar mini-institutions becomes nullified by the checkpoints' sabotaging of those very effects. Checkpoints for instance can congest and direct traffic in a manner reminiscent of poor circulation. Even if checkpoints intended no regulation of traffic at all, it still at the very least defines the possible choices for PA managerial normalizing activities by virtue of its existence in staggering amounts.

This chapter has thus shown how Israel utilizes checkpoints as bio-political instruments that regulate Palestinian life and disempower the Palestinian Authority. Illuminating its role in circulation management showed the regulatory function of checkpoints. Analyzing the surveillance systems installed at fixed and flying checkpoints also showed the regulatory function of checkpoints. The disempowering function of checkpoints was shown by illuminating its incapacitating effects on the PA's own circulation management functions.

#### IV. Settlements:

Settlements are exclusively Israeli communities created by the state of Israel on the territories it occupied in 1967. The aftermath of the 1967 war saw numerous settlements erected in the Golan Heights, Jerusalem, the Jordan Valley, Sinai, the Gaza Strip and most importantly the West Bank. The settlement program in Sinai and the Gaza strip has ceased, however it is still active in the West Bank. Settlements that were built past the 1967 green line on the Palestinian side were found to be illegal under International law by the International Court of Justice.<sup>73</sup> The state of Israel however, has its own classification for the types of settlements based on legal status under Israeli law. Settlements that are officially approved by the Israeli government are called just settlements while those who are not officially approved by the government are called illegal outposts.<sup>74</sup> As of 2013, there are 124 official settlements and approximately one hundred outposts in the West Bank. Official settlements have approved planning schemes and receive the same services that towns located inside Israel receive. Outposts on the other hand lack planning schemes approval but are indirectly supported by Israeli institutions and are given state-funded protection in most cases despite their illegal status.<sup>75</sup> Both settlements and outposts combined control about 42% of the West Bank's territory.<sup>76</sup>

This chapter will discuss how Israeli settlements are bio-political instruments of regulation and disempowerment. Settlements will be shown to perform a regulatory function with respect to the West Bank's Palestinian population and a disempowering function with respect to the Palestinian Authority state apparatus. In showing settlements' regulatory function, this chapter will analyse the settlements' relationship to the Palestinian labor force, and settlements' surveillance and security systems. Moreover, this chapter will analyze settlements' bypass road network and its land confiscation mechanism towards showing settlements' disempowering effect.

Settlements regulate a portion of the Palestinian labor population by virtue of its providing of employment in an economy ridden with a high unemployment rate of 23%.<sup>77</sup> For the settlements' industries, Palestinian laborers are an opportunity to hire

---

<sup>73</sup> Land Expropriation and Settlements, B'TSELEM (2014),

<http://www.btselem.org/settlements> (last visited May 14, 2014).

<sup>74</sup> Illegal Israeli Settlements, COUNCIL FOR EUROPEAN PALESTINIAN RELATIONS (2014),

[http://thecepr.org/index.php?option=com\\_content&view=article&id=115:illegal-israeli-settlements&catid=6:memos&Itemid=34](http://thecepr.org/index.php?option=com_content&view=article&id=115:illegal-israeli-settlements&catid=6:memos&Itemid=34).

<sup>75</sup> Israel's Settlement Policy in the Occupied Palestinian Territory, AMERICAN FRIENDS SERVICE COMMITTEE, <https://afsc.org/resource/israel%E2%80%99s-settlement-policy-occupied-palestinian-territory>.

<sup>76</sup> EYAL HAREUVENI, BY HOOK AND BY CROOK: ISRAELI SETTLEMENT POLICY IN THE WEST BANK 5 (Zvi Shulman tran., 2010),

[http://www.btselem.org/download/201007\\_by\\_hook\\_and\\_by\\_crook\\_eng.pdf](http://www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf).

<sup>77</sup> PALESTINIAN CENTRAL BUREAU OF STATISTICS,

<http://www.pcbs.gov.ps/site/881/default.aspx#Labour>.

cheap skilled labor. Salaries handed out in the settlements service industry are on average 33% higher than salaries handed out in the same sector outside of settlements rendering the prospect of working at settlements financially lucrative. Consequentially 16.1% of the West Bank's entire labor force is employed either in Israel or in Israeli settlements.<sup>78</sup>

The financial well being of West Bank Palestinians is thus financially tied to the erection of settlements and the access to employment in settlement services. This implies that the state of Israel is in a position to influence the West Bank's employment rates and salary levels by means of its control over the construction and erection of new settlements and by limiting the Palestinians' access to settlement jobs. This influence through the settlement-building program is thus a bio-political technology that the state of Israel can employ to alter the economic behavior and influence the economic state of Palestinians. The subjects of Israeli bio-power, in this case, are thus the Palestinian labor population. The object of knowledge and control is that population's employment rate and average incomes. What constitutes the normal, however, varies depending on the intensity of Israel's closure policy as will be shown in a later section of this essay. Settlements thus have a regulatory function with respect to the West Bank's labor population's employment and income levels.

As previously mentioned, settlements and outposts control about 42% of the West Bank's territory. Being located on Palestinian lands, settlements require hefty technologically advanced surveillance and security systems to ward off any threats. While the surveillance and security apparatus might vary across different settlements, the following systems are widely installed across multiple settlements and could thus serve as a proper sample for gaining insights about the power structures underlying the settlements' relationship with Palestinian subjects passing in its vicinity.

#### **A. FORTIS:**

Fortis, developed by Magal Security Systems, is a surveillance and security system that is installed in the Ariel, Alfei Menashe, Karnei Shomron, Shilo, Geva Binyamin (Adam), Tzofim, Shaked and Giva'at Ze'ev settlements.<sup>79</sup> Its main feature is that it integrates perimeter control, CCTV cameras, radar technology, infrared sensors and information analytics with database and access control.<sup>80</sup> Moreover, an intriguing feature of the system is its ability to tailor and automate workflow procedures to counter previously simulated scenarios.<sup>81</sup> The system enables its user to simulate multiple scenarios of breach and tailor responses to these scenarios. In the event of a

---

<sup>78</sup> *Id.*

<sup>79</sup> Magal Security Systems, WHO PROFITS, <http://whoprofits.org/company/magal-security-systems> (last visited May 14, 2014).

<sup>80</sup> *Id.*

<sup>81</sup> Fortis 4G, , [http://www.magal-s3.com/contentManagement/uploadedFiles/SolutionsProducts/FORTIS\\_4G\\_NEW.pdf](http://www.magal-s3.com/contentManagement/uploadedFiles/SolutionsProducts/FORTIS_4G_NEW.pdf).



breach that resembles a previously simulated scenario, the system reacts automatically according to its tailored previously set instructions.

The Fortis system surely propagates disciplinary power on Palestinian subjects that might be passing in the vicinity of settlements let alone those that are thinking of committing an aggression. With its CCTV cameras, infrared sensors, and radar technology, enforcing perimeter control, the Fortis system casts a powerful disciplinary gaze at the external of the settlements.

Unlike the Panopticon or the fixed checkpoints where the gaze is cast over existing subjects like the prisoners in the former case and crossers in the latter, settlement surveillance systems in general, and Fortis in particular, casts its gaze on an empty space or perimeter surrounding the settlements that may or may not have any subjects in it. It carves off a spatial perimeter in which sovereign power is exercised on trespassers. Disciplinary power permeates, whenever a subject is outside that close range to the surveillance devices but is aware of the settlement's presence. The Palestinian in proximity to the settlement is aware of the danger of getting too close to a settlement zone out of fear of offsetting its security system. At this stage the subject internalizes discipline out of fear and not out of conviction. If the subject were to alarm the system however, he might become the subject of sovereign power as the system's automated workflow reactions can be set to automatically shoot suspects. Fortis' subject thus is either rendered docile by disciplinary power or eliminated by sovereign power.

Moreover, Fortis' CCTV cameras and infrared sensors are installed on the external of fences and gates of the settlements rendering the eye of the gazer somewhat visible to any potential subject.<sup>82</sup> Fortis' surveillance model is thus one where both the observer and the observed are visible to each other. This is in contrast with the Panopticon's model where the observer is invisible to the prisoners while the prisoners are fully visible to the observer.

### **B. Motorola's systems:**

Corporate giant Motorola supplies settlements with multiple security and surveillance technologies.<sup>83</sup> The most prominent of these systems is Motorola's WASS-STRONGHOLD system. WASS, which stands for Wide Area Surveillance System, is a radar system installed at key settlements that can detect a variety of targets: crawling, walking and running, people, vehicles, boats and swimmers at a great distance.<sup>84</sup> The system is usually integrated with a command centre.

---

<sup>82</sup> *Id.*

<sup>83</sup> Motorola Solutions, WHO PROFITS (2014), <http://whoprofits.org/company/motorola-solutions> (last visited May 14, 2014).

<sup>84</sup> Motorola Solutions, PRESS FOR CONVERSION!, 2014, <http://coat.ncf.ca/P4C/67/20-21.pdf>.

WASS's STRONGHOLD model has a key feature of creating a virtual radar fence rather than need a real physical fence around its territory. Virtual fences are composed of a series of radars and optical and thermal cameras that cover a perimeter of up to seven hundred meters outside of the settlements. It alerts guards of any perimeter intrusions and its command centre has an intelligent algorithm that can determine human intrusions from environmental and non-human caused alarms.<sup>85</sup>

Virtual fences create a very peculiar assortment of space between the observers and the observed. Once again, the gaze is cast upon a perimeter rather than a person only with STRONGHOLD; the perimeter is very wide and undefined to the Palestinian subject. The Palestinian subject is completely ignorant of how far out he/she has to be to trigger the system's alarms since the perimeter is unknown to him/her. As a result of this ignorance about whether one is observed or not, discipline is internalized in subjects passing anywhere around the wide vicinity of the settlements out of fear that they might be getting observed.

Another important and interesting technology supplied by Motorola is a solutions system called Motobridge, which connects and manages multiple surveillance systems across various locations like military bases, checkpoints and settlements. Motobridge is a technology that summons each surveillance system's gaze into one system thereby placing the gaze process into a hierarchy.<sup>86</sup> Through Motobridge's bridging of surveillance systems across various locations, the hierarchal observation technique becomes super-amplified since it implies that when one is being observed, he/she is not being observed by merely one observer but rather by the full Israeli Security apparatus. In other words, Motobridge unites all gazes into one mega-gaze.

The gaze's normalizing judgment is quite peculiar in the arrangement where a perimeter is surveilled to detect intrusions, the norm is that either the perimeter is empty or friendly subjects are in the perimeter, non-friendly subjects alarm the system and sovereign power is summoned to neutralize the threat. The examination technique on the other hand is not utilized in the disciplinary apparatus of surveillance systems.

The above modest analysis of surveillance and security systems installed at settlements, thus demonstrates that disciplinary power permeates through settlements providing a regulatory function with regards to the Palestinian population. While it is true that the scope of that discipline is limited to the areas around the settlements, it is significant given that settlements control a giant 42% of total West Bank territory. For this reason, the limitations on the scope of settlements' disciplinary effects cannot be discounted. Settlements thus perform a regulatory function by virtue of its ties to the

---

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

Palestinian economy and by virtue of its surveillance and security systems' disciplinary effect across a vast portion of the West Bank's land.

Next to its regulatory functions, settlements perform a disempowering function with respect to the Palestinian Authority. For starters, settlements and outposts are built on Palestinian land; lands that belong to a population the control of which are the object of the PA's bio-power. The settlement expansion program confiscates lands and places them under the IDF's protection. This implies that 42% of West Bank's territory is impossible to regulate by the PA. The PA's urban planning schemes are nullified by the possibility that a settlement or an outpost might be erected creating an uncontrollable territory and a security perimeter around it that effectively makes areas adjacent to the settlements inhabitable. The PA as a bio-power apparatus can thus neither impose its sovereignty nor utilize bio-political technologies of geo-surveillance to regulate Palestinian life. In short, settlements disempower the PA.

Settlements and their security perimeters is not the only PA disempowering aspects of their presence, the bypass roads network too, augments and magnifies that disempowering effect. The bypass roads network is a network of roads that connects Israeli settlements with each other and Israel so that settlers can avoid Palestinian villages and enclaves. The network is erratically carved through the West Bank's territory, demolishing and confiscating lands in its way and creating enclaves.<sup>87</sup> Moreover, only Jewish Israeli settlers are allowed to use the network's roads. In other words, it is an exclusively Israeli infrastructure built on top of and carving through the Palestinians' already primitive infrastructure.<sup>88</sup> The network clearly performs a regulatory function with regards to the settler and Israeli population; however, it doesn't exactly regulate or manage Palestinian life but rather sabotages any PA efforts that seek to do so. Circulation management and urban planning for example, become very difficult if not impossible when huge chunks of the territory you are trying to manage are suddenly beyond your control or when roads are erratically built and you are banned from even accessing them let alone managing them. The PA is thus disempowered by settlements and settlements' bypass road networks. This concludes the chapter after having showed the regulatory and disempowering functions of settlements.

---

<sup>87</sup> ISRAELI SETTLEMENTS AND SETTLER ROADS IN THE WEST BANK, 2, [http://sadaka.ie/Articles/Factsheets/FACTSHEET-Settlements\\_and\\_Settler\\_Roads.pdf](http://sadaka.ie/Articles/Factsheets/FACTSHEET-Settlements_and_Settler_Roads.pdf).

<sup>88</sup> *Id.* at 2.

## V. Laws and Policies

This chapter will first explore the main readings of Foucault's position with respect to the law before analysing Israel's various uses of the law to intervene in Palestinian life in the West Bank. It will rely on primary as well as secondary sources in explicating Foucault's position given the variance of interpretations of his thought.

### A. Law in Foucault:

Although Foucault never dedicated any of his works explicitly for the law, he did discuss the subject intermittently throughout his lifetime and across many of his works. Currently, there are multiple readings of Foucault's position on the law. The subtle distinctions between each reading and the next are too dense to be discussed here; however, two main interpretations stand out for their noticeable opposition. The first, and in my opinion misled, understanding of the law in Foucault was expounded by Hunt and Wickham. This interpretation understands, what was dubbed by Golder and Fitzpatrick as the expulsion thesis, as the core of Foucault's position on law.<sup>89</sup> The expulsion thesis is an understanding of Foucault that claims that law has been expelled from its ancient role of organizing society with the advent of modernity as the burgeoning of disciplinary and bio-power displaced sovereign power.<sup>90</sup>

As discussed in the section explaining the sovereign mode of power, the juridical model of power predominated the west. Subjects were physically and publicly punished when they transgressed over the sovereign will. The sovereign will was synonymous with the law and the predominant mode of power during that epoch was sovereign power. Hunt and Wickham's expulsion thesis reads Foucault as considering the law as the sovereign will and they thus understand the displacement of sovereign power by disciplinary power as the displacement of sovereign will and the law.<sup>91</sup> To put it simpler, they believe that since Foucault understood the law as tied with sovereign power, then his finding of sovereign power to have become empirically marginal in favour of disciplinary power, and his observing of the dispersion of the locus of power from a unitary sovereign to a multiplicity of sites, is a marginalizing of the rule of law or in other words, its obsolescence and expulsion.

Under Hunt and Wickham's interpretation, Foucault then had a particular conception of what the law is and how it operates regardless of context.<sup>92</sup> The law for Foucault was thus a mere formulae "Law=rules + sanctions" laid down by the

---

<sup>89</sup> Salvatore Cucchiara, *Towards a Retrieval of Law in Foucault An Encounter with: Ben Golder and Peter Fitzpatrick*, 6 PHAENEX 167–176, 167–168 (2011).

<sup>90</sup> *Id.* at 168.

<sup>91</sup> Victor Tadros, *Between Governance and Discipline: The Law and Michel Foucault*, 18 OXFORD JOURNAL OF LEGAL STUDIES 75–103, 79 (1998).

<sup>92</sup> *Id.* at 79.

sovereign that exemplified the sovereign's authority.<sup>93</sup> This interpretation, however, was widely rejected by many Foucault experts such as Golder, Fitzpatrick and Tadros amongst others. While their readings of Foucault differ, they largely agree that Hunt and Wickham's reading was misled. More importantly, they reject the idea that Foucault had one particular conception of law and rather believe that Foucault saw the law's role as evolving throughout different times.<sup>94</sup> Ironically, Hunt critiqued Foucault for disregarding the various roles that law plays in modern society.<sup>95</sup>

For Tadros for instance, the expulsion thesis is accurate only to the extent that Foucault thinks the law in its old form has largely declined but that, in Tadros' view, does not entail that law per se has been expelled or declined but rather changed its character and took on a new form under modernity.<sup>96</sup> In fact, Foucault makes it clear on many occasions that his understanding of law is very contextual and that the law's role changed overtime. For example, in Introduction to the first volume of his *History of Sexuality*, Foucault discusses the regression of the juridical model, as the expulsion thesis likes to point out. He, however, declares the following:

I do not mean to say that the law fades into the background or that the institutions of justice tend to disappear, but rather that the law operates more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory.<sup>97</sup>

Here, not only does Foucault explicitly reject the expulsion thesis, he also asserts that the *modus operandi* of the law has changed. With the advent of modernity, the law has increasingly incorporated and integrated itself as an arm of bio-power acting in a regulating and norm-setting manner rather than as a boundary setting oppressive manner. The power modus underlying the law's operation shifted from being a manifestation of sovereign power to that of bio-power, regulating populations through the various modern state apparatuses and the economy. Tadros is a strong proponent of this interpretation of Foucault. He writes:

Law, in my understanding operates as a field through which techniques of governance can intervene in the disciplinary network. Law, then, acts as an interface through which governmental decisions can take effect by adjusting the operations and arrangements of the disciplinary mechanisms.<sup>98</sup>

As Tadros explained, Foucault understood the law as married to sovereignty only in the context of the pre-modern ages. The law then divorced itself from sovereignty and

---

<sup>93</sup> ALAN HUNT & GARY WICKHAM, *FOUCAULT AND LAW: TOWARDS A SOCIOLOGY OF LAW AS GOVERNANCE* 41 (1994).

<sup>94</sup> Tadros, *supra* note \_\_\_ at 79.

<sup>95</sup> *Id.* at 76.

<sup>96</sup> *Id.* at 79.

<sup>97</sup> FOUCAULT, *supra* note \_\_\_ at 144.

<sup>98</sup> Tadros, *supra* note \_\_\_ at 79.

ties itself to bio-power. The quantity of legislation increased in the modern age but it was used to regulate and alter the behavior of populations rather than just describe a threshold of transgression and prescribe physical punishments.<sup>99</sup> The law today is not limited to criminal law and criminal law itself has fallen under the spell of disciplinary mechanisms. Law today is rather largely used as a bio-political technique that interferes in the dispositions of the disciplinary mechanisms. In his lectures on governmentality Foucault asserts

It is a question not of imposing laws on men, but of disposing of things: that is to say of employing tactics rather than laws, and even of using laws themselves as tactics-to arrange things in such a way that, through a certain number of means, such and such ends may be achieved.<sup>100</sup>

Here Foucault was discussing how new political technologies target populations and alter their behavior and uses the disciplinary apparatuses and mechanisms as the arms of bio-power in its governance. The law is one political technology that is now used for this purpose.

To conclude this section, I will summarize the main points explicated in it. I have looked at two readings of Foucault with regards to his position on the law. I have first explored the expulsion thesis, developed by Hunt and Wickham, which claimed that Foucault holds a rigid particular conception of the law. That conception, for Hunt and Wickham, is almost synonymous with sovereign power and as such, the law has become obsolete with displacement of sovereign power by disciplinary power. I then explored another, and clearly better, reading of Foucault that understands him as seeing law as changing roles and purposes throughout the time. This second interpretation, developed by Tadros amongst others, is more comprehensive and coherent with Foucault's works. It understands Foucault's law as not having a single particular conception. While it used to be tied to sovereign power and defined transgression thresholds and sanctions in the classical age, it has evolved under modernity to largely become a technique or tactic of bio-power that is employed to regulate and adjust the behavior of populations by interfering in the arrangement of the disciplinary mechanisms. Throughout all the following sections of this paper, Tadros's reading of Foucault will be utilized in the analysis rather than Hunt and Wickham's for its comprehensive nature. The Law, for the purpose of this essay, thus could be understood in either *modus operandi*: tied to sovereign power or to bio-power.

This chapter will highlight the ways in which Israel uses the law and procedural policies as a bio-political technology to interfere in the dispositions of the disciplinary mechanisms that regulate the Palestinian population. The chapter will

---

<sup>99</sup> *Id.* at 92–93.

<sup>100</sup> MICHEL FOUCAULT, THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY 95 (Graham Burchell, Colin Gordon, & Peter Miller eds., 1991).

also illustrate how these policies dispower the PA from governing their population.

## **B. Closure Policy:**

As previously mentioned the law under modernity has transformed from its role of representing the sovereign will to becoming a technique or tactic of bio-power. In its modern form, law takes multiple shapes ranging from its addressing of crime to its addressing of procedures and regulations. Israel's closure policy is an instant where law has been used as a procedural strategy aimed towards regulating a population by manipulating the disposition of checkpoints as well as the permit system and their relation to Palestinian subjects. By population, I am not referring to the sum of all individuals living in the West Bank. I will rather use the term population to refer to groups who have their own behavioural patterns that are measurable statistically and targeted for bio-political control. A fixed group of individuals could be viewed as many populations at once. For example, the Palestinian population, in the common usage of the term, will be viewable as both, a labour population with unemployment rates, average incomes, and a patient population with mortality rates and birth rates and so on.

In the years prior to the very intense restrictions on movement, the WBGS has witnessed a growth in its labor force despite the incapability of the economy to realize such an increase, making the issue of the lack of economic development in the WBGS a central factor in determining labor migration. Since 1976, and up until the signing of the first Oslo Accords, the Palestinian labor force more than doubled in number, however local employment in the WBGS grew by only a third.<sup>101</sup> The lack of the closure policy at the time gave the Palestinian labour population access to employment in Israel, which was responsible for keeping unemployment in the WBGS at less than seven percent. This caused the WBGS's labour population to depend on Israel's larger economy. Consequently, even though the GDP per capita was on the increase, the conditions of growth and employment in the West Bank were not enhanced and the national productive potential diminished.<sup>102</sup>

In March 1993, Israel implemented a full closure policy restricting movement between Israel, East Jerusalem, the Gaza strip and the West Bank. The origin of this policy stems all the way back to 1967 and it is the evolution of this policy as well as its instances that demonstrates Israel's use of law as a bio-political technology towards regulating Palestinian life.

In the aftermath of the 1967 six day war, Israel issued military orders proclaiming the West Bank and Gaza as closed military areas. These orders made the West Bank's citizenry into subjects of military law. In 1972, the first signs of the

---

<sup>101</sup> FARSAKH, *supra* note 1, at 31.

<sup>102</sup> *Id.* at 31.

closure policy began to emerge as general exit permits were issued allowing Palestinians to move freely between Israel and the occupied territories but not to stay in Israel or East Jerusalem between 1:00 AM and 5:00 AM.<sup>103</sup>

In 1991, Israel started amending its policy. It revoked the 1972 general exit permits and issued personal exit permits in its stead. This policy change allowed the individualization of the permit granting process, giving Israel the ability to restrict the movement of unwanted individuals. Permits were not granted to former prisoners and detainees and any personnel whose backgrounds might be considered threatening. The new system effectively divided the Occupied Territories into three areas, where movement between them was now regulated by the Israeli Military. Movement between the West Bank and Gaza, West Bank and East Jerusalem, and the West Bank's northern and southern areas became restricted and regulated. The regulation coupled with the granting of individual personal permits gave Israel the ability to use these technologies to differentiate between good and bad circulation and to utilize a primitive form of geo-surveillance for the first time.<sup>104</sup>

In 1993, the closure policy evolved to its final form. Israel began erecting checkpoints along the green line, between East Jerusalem and the West Bank and within the West Bank itself in order to implement the policy.<sup>105</sup> The disciplinary effects of, and the state of the art geo-surveillance technologies present at, these closure-imposing checkpoints have already been reviewed and analysed in this essay's chapter on checkpoints. One can easily recognize how the Basel System fortified the effectiveness and the individualization of the closure policy. The system optimizes the Israeli checkpoints' effective management of circulation on Palestinian lands. The system gathers, processes, classifies and analyses data about the Palestinian population and allows Israel, through the use of its checkpoints to separate good circulation from bad. Palestinians whose information is gathered and kept by the system are viewable as legal subjects, health subjects and economic subjects since the Basel system has their criminal, health and employment backgrounds on it. Through the ability to separate between the good and the bad, West Bank Palestinians as a patient, criminal and labour populations are regulated through first, the manipulation of their employment rates and income levels by determining their access to employment, second through manipulating mortality and birth rates by determining their access to health services and crime rates and third through determining the frequency of their arrests and detainments by the checkpoints' security guards.

Israel's use of the closure policy as a regulatory mechanism can further be evidenced by the variation in the intensity of the restrictions on movement imposed

---

<sup>103</sup> Closure, B'TSELEM (2014), [http://www.btselem.org/freedom\\_of\\_movement/closure](http://www.btselem.org/freedom_of_movement/closure) (last visited May 14, 2014).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*



over the years. Israel altered the intensity of the restrictions for example following the Palestinian Aqsa Intifada. Palestinians were almost completely banned from entering Israel and from moving between the West Bank and East Jerusalem.<sup>106</sup> Furthermore, Israel regularly bans movement barring exceptional cases during Israeli Holidays.<sup>107</sup> These regular alterations in the restrictions' intensity demonstrate Israel's ability to manipulate something it controls which, in this case, is the movement patterns of Palestinians. In other words, the ability to tighten and loosen the restrictions at will is evidence for control. The object of bio-political knowledge and control here can be a number of things ranging from migration rates of the migration population between the West Bank and Gaza, West Bank and Jordan, and within the West Bank, to the employment rate of the labour population and the population densities of each area.

The closure policy is thus an example of Israel utilizing the law in its modern form as a tactic (closure policy) of adjusting the regulatory activity of checkpoints with the objective of controlling circulation in the West Bank and consequently administering the employment rates, migration rates, and crime rates among others. It is worth noting that the closure policy intensified after or with the birth of the Palestinian Authority at the Oslo Accords. Prior to the birth of the PA, Israel was officially recognized as being responsible for regulating life in the WBGS. During that period, Israel used the law as a bio-political tool for regulation as will be shown in the next section.

### **C. Pre-Oslo Economic Integration Policy:**

The huge dependency of the Palestinian labour population on the Israeli job market in the years prior to 1993 was the result of Israel's employment of several legal and economic policies that aimed to integrate the Palestinian economy with the Israeli. As Leila Farsakh explains, there are four main policies that caused the WBGS economy to integrate into the Israeli one.

The first policy was to grant Palestinians access to the Israeli job market. The tactic aimed to absorb Palestinian labor rather than to make way for free capital flows between the two economies.<sup>108</sup> This was one instant where the law was used as economic policy to create a Palestinian economic dependency on Israel. In this instant, Israel as a bio-political apparatus regulated the Palestinian labour population by regulating its own businesses economic behaviour. The average income per capita during that period mostly improved up until the strict closure policy came along in 1993. These structural developments made the Palestinian economy dependent on the Israeli labor market, allowing Israel to take in a considerable percentage of labourers that resulted in a shift in employment patterns from agriculture to the service and construction sector. In other words, the farmers' population shrunk while the

---

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> FARSAKH, *supra* note \_\_\_ at 36.

construction population expanded. The law in this case did not operate as sovereign will in the manner typical of the Middle-Ages' sovereigns but rather as a bio-political regulatory instrument with the objective of increasing the employment of the Palestinian labor population at Israeli businesses.

Another economic policy was a trade regime imposed on the WBGS that further diminished the likelihood of having a growing Palestinian economy. The policy determined that the WBGS customs union would be incorporated into Israel's customs union. This was an enforced policy that allowed Israel to restrict the kinds of commodities that were to be imported to and exported from the WBGS. It also imposed an external tariff structure that was solely determined by Israeli officials, leaving trade with other countries to be approved and passed through Israel, with the assistance of Israeli agents.<sup>109</sup> Here, Israel regulated the circulation of goods at the borders of the WBGS by means of utilizing the law as an economic policy that entails installing a hierarchy of Israeli officials and agents who are disciplined to differentiate between good and bad circulation of goods be it in-flowing or outflowing. This control over Palestinian customs and importing/exporting activities acted as a mechanism to affect and regulate the wealth of the Palestinians through determining their access to international trade and their dietary habits by determining their access to imported goods. This is thus another case of the law acting as a bio-political technology of control rather than, as sovereign will.

In addition, an economic management system that was determined by Israel as macroeconomic policy played a role in the integration process. An example of this imposition includes a monetary union with Israel, with the Israeli currency being the trading currency.<sup>110</sup> Through unifying the currencies, the Israeli government's regulation of its own monetary policy becomes extended over Palestinian subjects. The rate of inflation and consequently, Palestinians' purchasing power for instance became administrable by the Israeli government. An increased purchasing power implies an increase in wealth both of which became objects of knowledge and control. Here, an economic policy of uniting currencies gave the Bank of Israel a method for regulating the Palestinian economy and consequently multiple aspects of Palestinian life. By manipulating purchasing power, Israel is able to manipulate the financial ability to access health, food and education. This implies an ability to control the rates pertaining to each of these fields such as mortality rates and illiteracy rates. Once again the law here acted as a bio-political regulatory mechanism rather than a punitive, subtractive and sovereign one.

The high intensity closure implemented in 1993 dealt a heavy blow to the Palestinian economy. World Bank estimates Palestinian losses due to total closure in August/September 1997 to amount to \$4-6 million per day, which is at least \$2.8

---

<sup>109</sup> *Id.* at 39.

<sup>110</sup> *Id.* at 36.

billion in the 1993-1996 periods.<sup>111</sup> It altered the economy by prohibiting the movement of labor and goods from and to the WBGS. The decreasing movement of labor affected unemployment, diminished trade and weakened both the agricultural and industrial sectors causing a decline in local production and the geographic alienation of the both the West Bank and the Gaza Strip's populations respectively.<sup>112</sup> Unemployment rates rose to over sixty percent after the 1997 total closure,<sup>113</sup> further emphasizing the severity of the dependence throughout the previous years and the damaging effects of the lengthy checkpoint stops and delays at the borders.<sup>114</sup>

The closure was also responsible for an increase in child labor, a growing phenomenon that became more visible, placing a negative impact on education and the livelihoods of children since the majority was not registered with the Labor Office.<sup>115</sup> The Israeli usage of the law as a bio-political technique for regulating Palestinian life in the West Bank prior to the Oslo negotiations process is clear, what is interesting here is how these policies extended beyond the Oslo Accords and were in some instances consolidated by it.

#### **D. Oslo Accords:**

The Oslo Accords is another lucid example of Israel's use of the law as a bio-political instrument that both interferes with the Palestinian economy and disempowers the PA. From the onset of the Oslo process, Israel was identified as the overriding power in the negotiation process and the main determinant of the Palestinian economy. This is particularly a feature of the Economic Protocol, which maintained rather than improved the structure of occupation.<sup>116</sup> Even in the policy parameters of the interim period, Israeli military law that entailed restrictions on Palestinian economic activity, continued to place the WBGS under "occupational regime".<sup>117</sup> The PA could not improve the state of the Palestinian economy since their power to legislate was rejected by Israel when signing the second Oslo agreement only a couple of years later.<sup>118</sup>

A disempowering aspect to the Oslo Accords is its consolidating Israel's the determination of Palestinian trade policies. Israel's determination of trade policies under the customs union consolidated by the Economic Protocol legally bans Palestine from establishing trade relations with countries that do not have trade links

---

<sup>111</sup> SARA ROY, THE PALESTINIAN ECONOMY AND THE OSLO PROCESS: DECLINE AND FRAGMENTATION 22-23 (Jamal Al-Suwaidi ed., 1998).

<sup>112</sup> *Id.* at 2.

<sup>113</sup> *Id.* at 17.

<sup>114</sup> *Id.* at 21.

<sup>115</sup> *Id.* at 32.

<sup>116</sup> *Id.* at 3-4.

<sup>117</sup> *Id.* at 7.

<sup>118</sup> *Id.* at 8.

with Israel, rendering Palestinian trade with most Arab neighbouring countries impossible.<sup>119</sup> The protocol's objective was to deepen Palestinian-Israeli ties by keeping the territories economically linked to Israel but ended up weakening their economic ties with the rest of the world.<sup>120</sup> The PLO thus conceded the PA's right to administer the entry and exit of goods in the West Bank by agreeing to the economic protocol. This renders the PA permanently incapacitated and disempowered with regards to administering an essential part of circulation management, namely the circulation of goods as well as wealth.

The Oslo Accords disempowered the PA even further with regards to the distribution of water. For starters, it allotted Israel 80% of the West Bank's water resource and capped the amount of water that the West Bank can ever draw to merely 118 million cubic centimetres, 80 of which to have been extracted from new wells. For the creation of future wells and water resource projects, the agreement established the Joint Water Committee. The committee that was initially established to build cooperation failed miserably according to a 2013 study by Jan Selby, a British researcher.<sup>121</sup> Israel regularly vetoes or delays all water projects that would service Palestinians while its military implements the projects that would service Israeli settlements in the West Bank regardless of whether the PA's representatives vetoing the proposals.

This here is a staggering demonstration of PA disempowerment. Other than the fact that Israel effectively regulates the West Bank's water supply, legal agreements that favour the PA are ignored and show no regulatory effect on the ground. Even in the instances where the joint water committee does approve a PA project, Israeli military law requires additional permits to be granted by the military itself before any projects are executed in Area C of the West Bank. Once again, a bio-political state apparatus should be regulating the circulation of water and the distribution of key resources within its territory. Since Israel does the regulatory function for both parties, the PA is by default disempowered and the Oslo Accords agreement consolidates that disempowerment.

More than anything, the Oslo Accords disempowers the PA with its geographical division of the West Bank. The accords determined that Area A is to be under the PA's full civil and security control and Area B to be under Palestinian civilian control and joint Israeli-Palestinian security control while Area C is to be under full Israeli civil and security control. This division of security responsibilities disempowers the PA by default regarding the management of its people's lives. Even optimistically

---

<sup>119</sup> *Id.* at 11–12.

<sup>120</sup> *Id.* at 12.

<sup>121</sup> Amira Hass, LIQUID ASYMMETRY: HOW THE PA IS FORCED TO SUPPORT WATER PROJECTS FOR WEST BANK SETTLEMENTS HAARETZ (2013), <http://www.haaretz.com/weekend/week-s-end/liquid-asymmetry-how-the-pa-is-forced-to-support-water-projects-for-west-bank-settlements.premium-1.513694>.

assuming an effective security apparatus in area A and B that would at most amount to securing 28% of the territory, which is far from enough for a state apparatus to effectively regulate its population since 72% of the land is regulated by the Israeli Military and the Israeli Civil Administration.<sup>122</sup>

#### **E. Israeli Labor Law:**

The PA's disempowerment with regards to regulating the Palestinian economy is exemplified by its attempts at reducing the unemployment problem. The PA's attempts at absorbing some of the unemployed labor force mostly involved the creation of job opportunities in the public sector under the PA itself. Although this effort took in about fifteen percent of the labor force, it was unsuccessful in permanently addressing the issue of unemployment.<sup>123</sup> Despite the PA's efforts, employment in Israeli settlements has grown and permits to work in settlements became easier to obtain since they were more accessible as opposed to working in Israel.<sup>124</sup> In other words, it was Israel that could alleviate the unemployment problem and not the PA.

16.1% of the West Bank's entire workforce is employed at Israeli settlements or in Israel. As employees of Israeli firms, they fall under Israeli law's jurisdiction. Israeli law was granted jurisdiction in West Bank settlements by military enactments number 783 and 892 in the year 1981 and companies operating in the settlements were thus made bound by Israeli labor law.<sup>125</sup> The applicability of Israeli law to Palestinian labourers working at Israeli settlements is a relatively new phenomenon, however, considering that the Israeli High Court of Justice settled the matter only in 2011 in the famous *Workers Hotline* case. The 2011 court ruling granted Palestinian workers that are employed at settlements the same rights that Israeli workers are granted under Israeli law. The court's argument that employers must provide equal treatment to all employees did not cause the expected positive effect on Palestinian labourers well being since employers reacted by hiring Palestinian companies as middle men that subcontract job arrangements with Palestinian labourers.<sup>126</sup> By using sub-contractors to do the hiring, Companies are not legally bound to provide the workers with the same benefits that Israeli workers enjoy.

This here might be seen at first glance as an example of a failed attempt of using the law to regulate a portion of Palestinian labourers. However, the failure to implement the law as it is stated by the HCJ can be seen as a tactic of regulation rather

---

<sup>122</sup> What is Area C?, B'TSELEM (2013), [http://www.btselem.org/area\\_c/what\\_is\\_area\\_c](http://www.btselem.org/area_c/what_is_area_c) (last visited May 15, 2014).

<sup>123</sup> FARSAKH, *supra* note \_\_\_ at 148.

<sup>124</sup> *Id.* at 152.

<sup>125</sup> Paz-Fuchs and Ronen, *supra* note \_\_\_ at 27.

<sup>126</sup> *Id.* at 22.

than as a sign of sovereign weakness. If law is to be understood as sovereign will and this is a case of a law that is not applied then that would imply that the sovereign is weak and is unable to impose his will. If however, the law is understood as a tactic of regulation, then regulatory function of the law is not necessarily tied to the wording of the law or as in this case, the judge's ruling. The law here can be seen as regulatory insofar as it defines how businesses can avoid having to provide equal treatment to employees by defining how the courts get to consider Palestinian labourers as part of the staff of the Israeli businesses. In other words, by defining the hiring method that makes a Palestinian worker be considered an employee of the businesses, the court indirectly defined how a business could adjust its hiring methods to avoid the courts' considering of the Palestinian labourers as the business's employees.

#### **F. Military Orders and Enactments:**

Israel's use of the law as a bio-political tactic employed towards managing Palestinian life can further be elaborated by its use of military law. Apart from the fact that the closure policy itself has its origins in a military order, Israel has used and still uses military orders for expropriating lands that are then used for the development of settlements, and bypass roads amongst other things all of which have been shown to provide both a regulatory and a disempowering function in preceding chapters in this essay.

The state of Israel employed Israeli military orders to confiscate Palestinian land under the pretext of military and security reasons for the purpose of building settlements during the years between 1968 and 1979. The lands on which the settlements of Matitياهو, Neve Zuf, Rimonim, Bet El, Kokhav, Hashahar, Alon Shvut, El'azar, Efrat, Har Gilo, Migdal Oz, Gittit, Yitav and Qiryat Arba were built was confiscated using this method<sup>127</sup>.

In June 1979, a petition was submitted to the High Court of Justice concerning the acquisition on which a settlement with the name of Elon Moreh was to be constructed. The HCJ ruled against the pretext of military and security need for the first time after intense pressure from two affidavits that were submitted by the Palestinian petitioners and the settler group that was supposed to live in Elon Moreh upon its construction.<sup>128</sup> The two affidavits undermined the argument of military and security necessity and the ruling came against the land seizure order that was issued to confiscate the land effectively nullifying it.

Since that case in 1979, the use of military orders that confiscate land under the pretext of military necessity with the purpose of building settlements ceased. The use

---

<sup>127</sup> YEHEZKEL LEIN & EYAL WEIZMAN, LAND GRAB: ISRAEL'S SETTLEMENT POLICY IN THE WEST BANK 7–133 46 (Shaul Vardi & Zvi Shulman trans., 2002).

<sup>128</sup> *Id.* at 49–50.

of that legal tool only returned after 1993 as a pretext for building the bypass roads network that was discussed in the settlement section of this essay.<sup>129</sup>

Israel used military law to confiscate lands by declaring huge areas of land as 'state land'. The declaration of land as state land was based on Order No. 59 "Order Concerning State Property (Judea & Samaria)" (1967). It established the 'Custodian of Government Property' to take control of land owned by the Jordanian Government that was occupied in 1967.<sup>130</sup> After a careful examination of Ottoman and Jordanian law, additional areas of land were found eligible for registration as state law. In December 1979, following the *Elon Moreh* case, the Custodian for Government and the Civil department of the State Attorney's Office initiated a double investigation to systematically study all land ownership records and all areas of cultivation to determine which areas of land would have been eligible for seizure by the Jordanian custodian under Ottoman and Jordanian law. Studying land cultivation activities was important since Jordanian law allowed the Jordanian state at the time to declare land that was not farmed for at least three consecutive years, or land that had not been farmed for three years or land that is at a big distance from all villages as state land. 26% of all West Bank land was deemed to fall under this category and was consequentially declared state land.<sup>131</sup> Once the declaration was made, those liable to be injured had to file for appeal to an Israeli military committee within 45 days of the declaration or else permanently lose the right to appeal.<sup>132</sup>

Israel seized Palestinian lands by means of military law also by issuing the Order Regarding Absentee property. The order entails that any private lands whose owner departed from the West Bank, before during or after the 1967 war, was declared 'abandoned property'.<sup>133</sup> Abandoned property becomes trusted by the Israeli custodian who is then obliged to protect the land and to save any profits accrued from its management until the owner returns. Given that Israel banned the return of Palestinian refugees, the Custodian very rarely had to return lands that were declared abandoned to their owners. Also, if a piece of land was unrightfully declared abandoned, owners had 45 days to appeal the declaration before the military committee or the property is forever lost.<sup>134</sup>

The final method of land expropriation using the law is to expropriate it for public needs. Jordanian law allowed Jordanian public bodies to expropriate private land by publishing its intent in the official gazette, where in the absence of appeals for a period of 15 days after notifying the owner, the Ministerial Council decides whether

---

<sup>129</sup> *Id.* at 50.

<sup>130</sup> *Id.* at 52.

<sup>131</sup> *Id.* at 53.

<sup>132</sup> *Id.* at 54.

<sup>133</sup> *Id.* at 58.

<sup>134</sup> *Id.* at 59.

the intent is in line with public interests. Israel amended this law by means of military orders to transfer the authority of the ministerial council to the Israeli Civil Administration and abolished the requirement of publishing the intended expropriation in the official paper. The military order also transferred the power of local courts to review petitions to the Israeli Military Appeals Committee. Expropriated land became legal possessions of the Custodian for Government and Abandoned Property. This method was used by Israel primarily for the construction of the previously discussed bypass roads network serving the settlements.<sup>135</sup>

This section has thus far briefly overviewed how Israel used military law for expropriating Palestinian land. It has not however, explained how this law relates to the Foucauldian framework of this essay. At first glance, the expropriation appears as a manifestation of sovereign power since the activity of seizing lands has been of a subtractive nature from the Palestinian perspective. This, however, is misleading since the law under sovereign power defines the lines of transgression and punishes in a subtractive and spectacular manner that is not the case here.

As explained above, Israel built and amended on already existing laws of another fallen sovereign to give itself the right to expropriate Palestinian lands. Israel's large refrainment of using military orders that confiscate land under the pretext of military necessity since 1979 in favour of using State Land declarations demonstrates that the law is not regarded, as sovereign will. If law were sovereign will, then the military necessity method would have sufficed, especially since Israel has the military power to back up these confiscations. Moreover, Israel's finding that the methods of state land declarations and abandoned land declarations are better alternatives demonstrates the lack of a unitary sovereign and more importantly the varying effectiveness of each tactic compared to the next one. In other words, the fact that Israel had to manipulate and alter old laws of another sovereign to make their land confiscation schemes appear lawful demonstrates that the law in all these instances was used as a bio-political technology of managing the distribution of land, the construction of settlements and bypass roads all of which serve a regulatory and a disempowering function as has been emphasized in earlier chapters of this essay. Military law is thus, like any law under bio-power, by itself neither regulatory nor disempowering but it rather employs other bio-political technologies of control to perform both regulatory and disempowering functions.

---

<sup>135</sup> *Id.* at 60–61.



## VI. Conclusion:

Since the establishment of the Palestinian Authority in 1993 following the Oslo Accords, Israel supposedly handed its duties of safeguarding the economic and social interests of the West Bank's Palestinian population to the Palestinian Authority. In doing so, it allegedly followed a separation strategy and allowed the Palestinian people to govern themselves. This essay has applied Foucault's ideas on power and governmentality to the Israeli mechanisms of intervention in Palestinian life in the West Bank to reveal that Israel continues to regulate and govern Palestinian life in the West Bank and at the same time disempower the PA.

With respect to the argument pertaining to Israel's continued regulation of Palestinian life in the Westbank, Flying checkpoints were found to perform a regulatory function at the individual level with respect to its acting as disciplinary institutions that can appear anywhere within the West Bank by virtue of its random placement nature. Moreover, both types of checkpoints were found to act as bio-political instruments that manage circulation in the Westbank and thus perform a regulatory function at the population level. As the second object of analysis, Settlements were found to perform a regulatory function at the individual level by virtue of their acting as discontinuous disciplinary institutions across a large landscape of lands and bypass roads while they performed a regulatory function at the population level by virtue of its employment of a sizable 16.1% of the Palestinian labor force. As the third object of analysis, the law was found to perform a regulatory function by acting as a bio-political instrument that organizes the disposition of checkpoints, settlement and settler roads, trade relations and the distribution of water resources.

With respect to the argument pertaining to the structure of the occupation disempowering the PA, checkpoints and settlements were found to incapacitate the PA when it comes to circulation management. The presence of checkpoints, settlements and settlements' bypass road networks makes the PA's management of the West Bank's circulation, impossible. The law was found to serve the PA's disempowerment, by its ordering of the checkpoints through the closure policy, its ordering of settlements and settler roads through its land confiscation mechanism as well as by its consolidating of the pre-Oslo occupation's structure.

Taking the findings of all the performed analysis combined, this essay can demonstrably conclude that the PA is incapable of managing the Palestinian population of the West Bank since it is almost completely disempowered. Israel, despite the alleged separation strategy, continues to be the regulatory bio-power apparatus in the West Bank. The PA was born disempowered out of the Oslo Accords and Israel's use of bio-political technologies diminishes, if not eliminates, the conditions for the possibility for the emerging state apparatus of the PA to ever develop into a modern bio-political apparatus.