

# Humanity

## The Transformative Occupations of Palestine

**Gershon Shafir**

There are two schools of thought on transformative occupations. Adam Scheffer narrowly contrasts it with the international humanitarian law (IHL) concept of belligerent occupation, whose main hallmark is its temporary character.<sup>1</sup> Nehal Bhuta offers a broad historical version, running the gamut from the *occupatio bellica* of the post-Napoleonic settlement to transformative humanitarian interventions both in the post-WWII and the post-Cold War era, and more recently in Iraq. The 20<sup>th</sup> century imposition of development and democracy by naked force—played out in the gray area between reconstruction and sovereignty—is legitimized in the name of a future order which is promised to benefit the now-occupied, later-sovereign populations.<sup>2</sup> Since theorists of both transformative occupations leave Palestine out of their discussion, our four authors have a free hand in examining its applicability there.

Norris, Anziska, Baconi, and Moses' articles, each groundbreaking in its way, bring new insight to Palestine through the lens of this novel theory of transformative occupation and, through an examination of Palestine, to the legal concept of belligerent occupation.

The failure of the British Mandatory authorities to arbitrate the competing Jewish and Palestinian national claims is commonly viewed as its most distinguishing feature and troubling legacy. The ensuing Israeli-Palestinian conflict is customarily apprehended from the perspective of its pair of inveterate adversaries, themselves shaped in the context of the Mandate. Jacob Norris, however, recalls the third protagonist by recovering the largely unfamiliar, but distinct, British imperial interest and perspective.

Two of the prongs of a low-cost British Mandatory policy in Palestine: a feeble attempt to ameliorate the fellahin's indebtedness and landlessness and the advancement of the, in large part separatist, Zionist immigration and colonization, are fairly well known. Norris highlights a third prong: the post WWI developmentalist and "highly interventionist" design of employing Jews as colonial middlemen in order to exploit the British Empire's new "undeveloped colonial estates" with an eye to ensuring its self-sufficiency in times of war. The most successful of these undertakings was the establishment of the British-Zionist Palestine Potash Ltd in the Dead Sea, under the management of Moshe Novomeysky, in 1930. The PPL became a major exporter of potash and bromine to many destinations in the British Empire and during WWII did so exclusively at the behest of British Ministry of Supply.

This is an opportunity to recall that Novomesky, jointly with four partners: Pinchas Ruthenberg, the director of the other large British-Zionist concession – the

Palestine Electricity Company, Moshe Smilansky, who served as the head of the Farmers' Federation, Gad Frumkin, a Jewish member of Mandatory Supreme Court, and Yehuda Magnes, President of the Hebrew University, proposed a capitalist binationalist solution to the conflict in June 1936, soon after the outbreak of the Arab Revolt. Novomeysky, Ruthenberg, and the Jewish orange growers employed both Palestinian Arabs and Jews and, as major exporters, were driven by global considerations and challenged the self-enclosed and separatist economic sector of the Histadrut and the LSM. Their enterprises' regional ambitions made them more amenable to seek coexistence across the national divide, even at the price of profound compromise.<sup>3</sup>

Ironically, it was the most British-centered, most imperial, and most transformative form of occupation that might have served as the alternative to a one-sided Zionist victory. But the imperial economy in Palestine had not built up a sufficiently large cadre of supporters and was no match to the transformative Zionist project which benefitted from three decades of British mandatory rule. The Palestinian Mandate's globalizing imperial project, therefore, remained another failed transformative temporary occupation.

A pair of articles by Seth Anziska and Tareq Baconi examine the dynamics and consequences of the next round of transformative occupation—the post-1967 occupation—for the main antagonists in Palestine.

Anziska, relying on recently declassified Israeli documents, carefully charts the birth of U.S., Israeli, and Egyptian collusion vis-à-vis the Palestinians between May 1979 and August 1982. The three partners, converging around Menachem Begin ideas, put forth a particularly narrowly conceived functionalist, individual rights-based, and non-territorial version of so-called autonomy in the Occupied Palestinian Territories (OPT), no more than a new variant of older international trusteeship models. The intent behind the Begin government's autonomy proposal and corresponding conceptualization of the Palestinians as a minority rather than a nation, repeatedly and explicitly explained by Ariel Sharon to President Carter and the American negotiators, was continued Israeli control of Palestinian land and its colonization. These autonomy talks' terms, Anziska argues, shape the occupation to this day.

So far we examined Britain and Israel's transformative designs as foreign rulers, while Baconi offers the perspective of the colonized. In examining Hamas' changing discourse of resistance during the Second Intifada, he demonstrates that even Israel's most intransigent adversary, itself at the height of the bloodiest and most indiscriminate wave of resistance to the Israeli occupation, was caught up in the transformative dialectic. Discovering that it couldn't strike a balance of terror with Israel or outsuffer its population, Hamas diversified its strategy by adding an intra-Palestinian political dimension, all the while maintaining scrupulously the rhetorical umbrella of *muqawama* (resistance). As part of its "political resistance" Hamas sought a sufficient measure of unity through inter-Palestinian negotiations with the Palestinian National Authority—a body formed as part of the Oslo accords Hamas vehemently opposed—to seek the role in governing earned by its "military record."

Just how significant are these continuities and new initiatives when measured against the transformative intentions and effects of Israeli occupation? The Oslo process, based on the kind of mutual recognition between Israel and the PLO that did not exist in the early 1980's, clearly broke new ground. Rabin committed Israel to, and carried out, sequential though partial withdrawals. Barak committed to the division of Jerusalem and to territorial partition. Olmert accepted the Green Line as the basis of such partition. Nevertheless, Israeli occupation continues, directly in the 60% of the West Bank's Area A, indirectly in the 40% of Areas A and B, and from the outside in Gaza, reinforcing the thesis that even today autonomy serves as the glass ceiling to Palestinians political ambitions. Nor has the Hamas-PNA rapprochement hastened Palestinian self-determination and, in fact, had reverted to an unproductive stasis by leading to even more division through the Palestinian territorial fragmentation. The power of Anziska's and Baconi's arguments lie, in large measure, in establishing that under the asymmetrical power relations of foreign domination, even as Israeli-Palestinian and intra-Palestinian relations change, they fundamentally remain the same. They share the conclusion that the era of imperial foreign rule continues from Mandatory times into present day Palestine. After all, both transformative occupations, British-Zionist and Israeli, left Palestinians stateless.

Dirk Moses' erudite article is the capstone of this dossier. His thesis is that the recourse to IHL's "security exception"—the construction and legitimation of the doctrine of self-defense by occupying powers—is what in large part enables the conversion of temporary occupations into transformative ones. This doctrine is born in the context of early Spanish colonial warfare in order to justify its intrusive character, but endures through generations of legal successors. Its foundation is the distinction between a European defensive, moderate, and proportional, that is "civilized warfare" and the irregular and "uncivilized violence" of the colonized indigenous peoples and later of irregular forces and guerrillas. The suppression of the latter is always a matter of exception, emergency, and necessity that know no limits, and can remain so since, as legally construed, indigenous peoples are not sovereign in the Western sense and therefore cannot belong in the 'family of nations.' Notwithstanding progressive reforms, such as the counter-principle of national self-determination, the restrictive Geneva Conventions, and the replacement of the ancient right of conquest by IHL, the persistence of the security exception still serves as a stalking horse for effective transformation of the landscape and institutional order of occupied peoples.

No one has explained the justification that lies at the bottom of the security exception—the occupier's right to defend itself from violent resistance to its occupation—better than David Ben Gurion did during the Arab Revolt, in an internal Jewish forum:

When we say that the Arabs are the aggressors and we defend ourselves—that is only half the truth. As regards our security and life we defend ourselves...But the fighting is only one aspect of the conflict, which is in its essence a political one. And politically we are the aggressors and they defend themselves.<sup>4</sup>

The colonial legal framework allows for the reversal of the roles and responsibilities of the occupier and occupied and the corresponding terms of reference and, in so doing, empowers the continuation of a transformative occupation.

Israel's transformative occupation is ironically conducted under the color of a temporary belligerent occupation. But the half-century long and by now indefinite Israeli occupation is not a temporary belligerent occupation. Nor is it a transformative occupation in its humanitarian sense of democratizing failed or tyrannical states. In contrast to both, it is a throwback to colonial occupations that advance the aims of the occupier. In this case, this is done by colonizing the OPT and at the same time denying the principles of self-determination and the protections of human rights, let alone citizenship, to occupied Palestinians, and all the while claiming to act on security considerations. As long as IHL ignores the occupied peoples' viewpoint, the occupation under which they live will remain a state of exception predicated on a state of denial.

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<sup>1</sup> David J. Scheffer "Beyond Occupation Law," *American Journal of International Law* 97, no. 4 (October 2003): 842–59.

<sup>2</sup> Nehal Bhuta, "The Antinomies of Transformative Occupation," *European Journal of International Law* 16, no. 4 (September 2005): 721-740.

<sup>3</sup> See Gershon Shafir, "Capitalist Binationalism in Mandatory Palestine," *International Journal of Middle Eastern Studies* 43 (2011): 611\_33.

<sup>4</sup> Simha Flapan, *Zionism and the Palestinians* (London: Croom Helm, 1979), 141.