

Why not “The Occupation”

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Forty years have passed since 1967, and I find it hard to come up with a term for the political situation in Israel that has resulted from that war and the historic processes that followed it. In particular, I find it difficult to use the word “occupation,” so commonly used by “members of the peace camp.” Though in the 1980s it was used only by a few, and when it was used was considered shrill and caused a stir, it has become hackneyed and has lost its critical connotations. The problem, however, derives not only from the word’s having become established in the language and its meaning eroded. Sociologically, “occupation” expresses an anachronistic worldview, a vision of Israel within the 1967 borders, a vision in which “the occupation” was perceived as a mere adjunct, something temporary, an accident in the political history of Israel. In this lax and fragmented view of history, both the 1967 conquests and the settlements in the West Bank and the Gaza Strip are the mother of all evils. This view is manifested, for example, in “the new nostalgia,” a retro way of thinking that expresses longing for the pre-1967 Israel, for “the beautiful Israel,” for a golden age in which Israel followed a Western-style “correct” policy. Yossi Beilin expressed such a view when he said that the decade before 1967 was the “most beautiful decade [of my life]” and added, “All I’m trying to do is make it possible for my grandchildren to live in this country as I lived in it during the most beautiful and peaceful decade of its history, 1957 to 1967.” In this spirit, others have called pre-1967 Israel “a lean and just republic.” But was Israel beautiful and just for the Palestinians living under martial law within the Green Line? Or for the Mizrahi population, who were sent to live outside the centers of urban power and became the backbone of what is called “the Second Israel”? What is this yearning for the period before Gush Emunim and Shas burst onto center stage, when the hegemony of the labor movement and its ideology was at its height and Palestinian nationalism (both “within” and “without” Israel) was yet to appear so conspicuously on the agenda?

Such attitudes, clearly expressed in studies of Israeli society, sometimes undermined

* Translated by Esther Hecht.

critical thought. It is worth noting that in the beginning of the 1990s, a colonial-postcolonial theory took shape in the social sciences that could have served as a meta-paradigm for a study of the occupation. It was seen mainly in the work of Avishai Erlich, Ilan Pappé, Gershon Shafir, Baruch Kimmerling and Uri Ram. But at the very same time, many researchers accepted the basic premises of the Oslo Accords and an epistemology based on a two-state solution. Though forty years have passed since the Six Day War, the imaginary borders of Israel as they are drawn in the vast majority of studies remain the June 4, 1967 boundaries. These outlines ignore the fact that the paradigm of occupation was and still is anchored in the internal mechanisms of nearly all versions of Zionism. They blur the fact that the territorial occupation did not begin in 1967 and that it is turned not only outward but also inward, within the state, where there is no military violence but rather another kind of violence, exerted administratively or by means of the law. Just look at how the state controls its land reserves and how they are allocated by the Israel Lands Administration and by supra-state Jewish bodies, such as the Jewish Agency and the Jewish National Fund. Just look at the local councils, which function as a mechanism (with an imperial history) of Jewish control of the space and as a state tool for excluding non-Jews. All these exist within the Green Line, not only outside it. The Israeli lust for land, the absence of permanent borders, the official approval of settlements, the establishment of colleges in the territories, the erasure of the Green Line in textbooks and the suppression of Palestinian violence in the West Bank and the Gaza Strip, as well as in Israel — none of these is accidental. They show that the “occupation” is not a passing whim, but rather a part of the utopian vision of more than a few Israeli groups, a vision that was realized in 1967 quite by chance.

I would like to emphasize that I do not maintain that the mechanisms used outside the Green Line and those within it are absolutely identical, but that they should be compared and that the similarities and differences between them should be understood. I also wish to argue that for these and other reasons, the term “occupation,” so common in political discourse, is deceptive. The Association for Civil Rights in Israel has determined that, under international law, “occupation is a situation in which control of a territory remains in the hands of a foreign army following military action. This situation is defined as an inherently temporary one, which must end with the arrangement of the territory’s status in a peace agreement that ends the war.”¹ The

¹ See the site of the Association for Civil Rights in Israel, <http://www.acri.org.il/hebrew-acri/engine/index.asp>.

concept of "occupation" assumes a state with clear borders and continuous sovereignty, which can be clearly defined in accordance with international law; but instead we find a fragmented sovereignty, vague borders and demands for self-definition by Palestinians both "within" and "without."

A close reading of colonial history shows that the great European empires encountered a similar trap. On the one hand, the empire sought, through its imperial institutions, to export the rule of law to the colonies, both to protect the subjects and to complete the task of inculcating European civilization. On the other hand, it tried to avoid annexing conquered territory and exercising full sovereignty. This resulted in lacunae of sovereignty, that is, partial sovereignty that was based on exceptions, rather than a "unity that is indivisible," as defined by Jean Bodin. The lacunae of sovereignty in the colonies — as well as the conflicting demands of the Colonial Office, the Ministry of Justice, the Foreign Office and the local high commissioner — generated "sovereign decisions" based on exceptions. The colonial bureaucrats — Lord Cromer in Egypt; Lord Curzon in India; Lord Smith in South Africa; Lord Somerset in the Cape of Good Hope and many others — created anomalous models of exceptions, in which sovereignty was not determined by the rule of law. Instead, whatever was outside the rule of law was included as if it were related to that rule. Thus they created a system of legal patches and ad hoc arrangements: extraterritorial jurisdictions, administrative orders, partial annexations, declarations of a state of war or the use of emergency regulations. All were defined as exceptional situations, a chain of exceptions that created pockets in which the law was a present-absentee. We must emphasize that the exception is not the abeyance of the rule of law, but rather its (selective) application in a spatial patchwork. In the end, the legal-political order includes and excludes simultaneously. By exposing these exceptions we can locate the sources of violence that underlie the lacunae of sovereignty. Adopting a spatial view of the "lacunae of sovereignty" enables us to give up the structuralist paradigm, which is based on a binary reading of the political reality and which distinguishes clearly between "here" and "there."

Sociologically, the phrase "end of the occupation" does not generate a clear picture. Does it mean a return to the 1967 boundaries? Does it mean dismantling the settlements in the area of Jerusalem, Ma'aleh Adumim or Ariel? Does it mean the continuing suppression of the demands for collective rights by Palestinians within Israel? It is clear today that the concept of "a Jewish and democratic state" has failed completely in its attempt to include all the "exceptions" and to provide an answer to

all these problems. It is clear, too, that fetishization of the Green Line purifies the Israeli colonial regime and enables that regime to deny both its power and the injustice of an Israeli presence there. That fetishization also makes it possible to distinguish artificially between “the good guys” and “the bad guys” and generates moral apathy.

I argue, too, that the more the (“external”) international boundaries are dissolved and blurred by terms such as “fence,” “wall,” “Philadelphi Route,” “disengagement,” “withdrawal,” “reinforcement” and “strengthening,” the more the “internal” boundaries between national, religious, class and ethnic groups become entrenched. We learn this when we examine the regimes of privilege that shape Israeli space. I invite you to read the recently published book *Hafrada (Separation)*, edited by Haim Yacobi and Shelly Cohen, with its many photographs and texts.² What arises clearly from the book is that the traditional division between “them” and “us” has collapsed. The book shows systematically how exceptions to this binary division have ceased to be exceptions to the rule and have become the rule itself. It teaches us about a multiplicity of internal divisions based on race and ethnicity, within cities and between them. Examples include the wall in Ramle between the Juarish and the Ganei Dan neighborhoods; the earthen rampart that the residents of Caesarea erected between themselves and Jisser a-Zarka; the planned wall between the Arab neighborhood Pardes Snir in Lod and Moshav Nir Tsvi; gated communities in a variety of places, the most salient of which is Andromeda Hill in Jaffa; and the “border” disputes between Modi’in, Reut or Maccabim — settlements that blur the Green Line and mark out new class spaces. These physical and symbolic walls derive from a mixture of state enterprises, entrepreneurial ventures and initiatives of residents and municipal authorities. Israeli space is made up of systems of boundaries and classifications that do not appear to form a single coherent system.

Even the wall that Israel built does not represent (only) “security needs.” It is a clearly political wall, which does not reflect a stable, defined border, but mainly the government’s chaotic policy and confusion on this issue. But that policy traps Palestinians between the Green Line and the wall, effectively forcing them to leave (“transfer” in colloquial Hebrew), and it undermines the possibility of territorial continuity in the areas under Palestinian sovereignty. The wall is not a border between states. It moves of its own accord and marks out its own path. I believe

² Haim Yacobi and Shelly Cohen (eds.), 2007. *Separation: The Politics of Israeli Space*. Tel Aviv: Hargol (Hebrew).

there is no greater obstacle to the two-state solution than the separation wall. It will ensure a slow but steady movement toward the idea of a binational state. But this will be binationalism almost like that in Lod or Ramle, where we find similar separation walls within the state of Israel. These walls make possible urban territorial separation between Jews and Arabs, and they express more than anything else the internal-external colonialism of the Israeli state and its society.

I am aware that these ideas may be identical to those of the radical right. Indeed, I believe there is a certain similarity in the diagnosis, but that does not necessarily invalidate it or make it wrong. The difference is not in the diagnosis, but rather in the political view that it dictates. The similarity between the diagnosis reached with my view and that of the political right becomes clear, in my humble opinion, when compared with the liberal views of the Zionist left, which rely on erroneous assumptions. Holders of these liberal views maintain that the conflict can still be resolved by: (a) dismantling blocs of settlements; (b) creating an independent Palestinian state with territorial continuity in the 1967 borders; (c) opposition to collective rights for Palestinians who are Israeli citizens. I fear that such a solution is not politically realistic. I think that dismantling settlements is not realistic and may even be immoral; that a fragmented Palestinian state controlled in part by Israel is not a solution that can end the conflict; and that Israel must come to terms with the ethnic and nondemocratic foundations of its rule, including that within its own boundaries. This does not mean the end of a state for Jews, as some detractors claim. What it does mean is that we must find a creative and more egalitarian alternative to the formula of a Jewish and democratic state. My views do not necessarily reflect those of the authors in this issue, which is devoted to the forty years that have elapsed since 1967 and to the political aspects of the Israeli presence in the territories. The articles in this issue do not conform to a single paradigm; on the contrary, as will certainly become apparent to our readers, the authors' analyses are very diverse.

The article by *Orna Ben-Naftali*, *Aeyal Gross* and *Keren Michaeli* examines the legality of Israeli control of the Palestinian territories and the legal structure of what the authors call “the regime of occupation.” The authors argue that, oddly, legal discourse does not address the legality of the occupation, and they wish to do so through a political discussion of international law. The authors reach the conclusion — which is perhaps not surprising to non-jurists — that “the continuing Israeli occupation of the Palestinian territories captured in 1967 is today an illegal regime of occupation.” Meanwhile, they discuss how the occupation is legitimized despite its

lack of legality (for example, by means of “security needs”), the obscure meaning of the distinction between “here” and “there,” and the blurring of the distinction between the rule and the exception and between the temporary and the unlimited in time.

Arie Arnon uses an economic prism to examine the connection between the areas of occupation and Israel within the Green Line. This issue is important because it represents a different dynamic from that of political logic. Israel, like many imperial powers at the time of their great conquests, uses its political power not to gain political sovereignty over the territories, but rather to enhance its economic sovereignty over them. Arnon’s article sketches the history of the ambivalence of Israeli policy. The tension between integration and separation points to the fetishization of the Green Line, a Janus-faced line that annexes or separates each group or period according to that group or period’s own logic.

Daniela Mansbach discusses the protest practices of the Machsom Watch organization. She, too, challenges the traditional distinctions between “here” and “there,” and between cooperation and resistance. She analyses not only the effect of the movement’s protest practices on the occupation, but also, and perhaps mainly, the relationship between those practices and gender discourse. According to Mansbach, these practices bring into the male military space an alternative that sheds a critical light on the republican classification of people according to their contribution to the army. The movement’s practices also challenge the panoptic watchtowers that enable monitoring of the roadblocks.

Ariel Handel provides us with a graphic and coded image of the technologies of spatial control in the territories. He focuses on what he calls “the technologies of uncertainty” and examines how they are created, distributed and used in the territories. He presents two kinds of spatial values — an absolute spatial value, which is indifferent to what is happening in the measured space, and a usage value, which takes into account the technologies of control themselves — and he presents graphic means for exemplifying their use.

Regev Nathansohn considers a different visual dimension of the occupation in the territories: photographs by photojournalists. Actually, he deals with attempts by photographers to tame, organize and distill the chaotic reality of the occupation by means of photography. Having analyzed hundreds of photographs, he distinguishes between three types and attempts to identify the photographers of what he calls “transgressive photography.” One of the surprising results of the analysis is that photojournalists rarely create transgressive photographs. Rather, soldiers who are not

professional photographers are the ones who, surprisingly — or perhaps not — create most of the photographs that are not banal.

The article by *Ariella Azoulay* and *Adi Ophir* attempts to map types and forms of violence in the territories. The authors draw two conceptual distinctions. The first is between spatial separation (between the areas of occupation and the area within Israel) and legal and administrative separation (between citizens and noncitizens). Instead of the accepted binary distinctions, Azoulay and Ophir propose a structure in which there was never total separation between the two systems, nor was there full sovereign annexation. They believe that the purpose of spatial separation is to cut off or distinguish between two national groups, but at the same time to include them in a single system of control. The second distinction they draw is between two types of violence: expressed and pent-up. The latter is latent violence, and its potentiality, which is usually hidden, becomes visible. We are talking not only about declarations of authority or mention of them, nor of the publication of orders or boasting about decrees or uniforms, but rather a representation of "the thing itself."

Last, *Ariel Handel* has succeeded in amassing an impressive chronicle of the implementation of Israeli rule in the territories beyond the Green Line (and also within it) since 1967.

Three essays appear in this issue. *Lev Grinberg's* essay presents a position different from that of *Arie Arnon's* article, offering another view of Israel's economic-military pattern of control of the territories. The essay by *Hannan Hever* concerns a book of poems by *Yitzhak Laor*, *The City of the Whale*, written in response to the second intifada. And finally, *Hanna Herzog* takes leave of a colleague and friend, *Baruch Kimmerling*, who died this year.

Meir Wigoder presents a set of works on the state of the occupation, focusing on two "disengagements": one by the IDF from the part of the territories called "Area A" during the first phase of the Oslo accord and the other from the Gaza Strip in 2005. The photographs of *Eldad Rafaeli* show the political and cultural connections between various "displacements," and they reveal the complex link between territory and population. This issue also includes reviews of books by the three editors of the department: *Ronna Brayer-Garb*, *Orna Yoeli* and *Tal Kohavi*. *Raef Zreik* discusses four roadblock books (which describe the Palestinian experience at the various roadblocks) published in recent years; *Ishay Rosen-Zvi* analyzes four stories dealing with the settlements; *Shlomo Fischer* deals with "radical religious Zionism"; *Bashir Bashir* writes about Palestinian research on the Israeli-Palestinian conflict; and *Rona*

Sela analyzes books by Palestinian researchers about the visual representation of the Palestinian past in photographs.

The occupation within us

This issue should have appeared in Fall 2007. It is appearing quite late because two articles that were planned for publication were withdrawn: *Eyal Weizman's* "Walking through Walls" and *Neve Gordon's* "From Colonization to Separation." Weizman's article analyzes the IDF's organization of space when it fights in populated areas in the territories. Weizman describes how Israeli strategists and officers conceptualize space using principles developed in critical theory. An example is the practice of "walking through walls," which the army used during "Operation Defensive Wall": movement through the walls of homes of residents in cities and refugee camps such as Jenin and Balata. The military inventors of this practice claimed that it derived from the socio-spatial approach of Gilles Deleuze and Felix Guattari, two central French critical theorists. This approach deconstructs the binarism of "inside" versus "outside" as well as the distinction between subjects consciously acting in a space and objects that are merely there. Yet what Deleuze and Guattari proposed as a model for opposition to a state and an army has been absorbed and appropriated by the military war machine. Weizman's analysis raises fundamental questions about ideology and epistemology, and about the migration of critical ideas and the ownership of them. Weizman does not confine himself to the analytical level. Using a conscious critical-political perspective, he points out the responsibility of individuals, such as Brig. Gen. (res.) Dr. Shimon Naveh and Brig. Gen. Aviv Kohavi, for the great harm that the use of these new military methods allegedly inflicted on the civilian population. After Weizman's article was accepted for publication, I asked Shimon Naveh for a response. He agreed in principle to write one, but he never sent it, despite repeated requests by our editorial office.

At the end of the day, Weizman's article is not appearing in this issue due to a chain of events that generated a complex situation. At its heart was a threatening letter from Kohavi's lawyer, warning us that Weizman's article contains statements that would probably cause his client to take legal action. Wrapped in the civil law of libel, militarism and the occupation have landed on the threshold of *Theory and Criticism*. It is essential that we put the complex relations between free speech, the law of libel, and the occupation regime on our agenda.

When the chairman of the editorial board of *Theory and Criticism* assumed his position in September 2007, he asked to read the papers that were to be included in this issue. He was of the opinion that the personal criticism in Weizman's article obligated the editorial board to allow the main object of the criticism, Brig. Gen. Kohavi, the right of rebuttal. The article was sent to the military spokesman, on the assumption that as an officer on active duty Kohavi would not be free to respond directly. The military spokesman did not respond; instead, the letter from Kohavi's private lawyer landed on our desk.

After receiving it, we turned to the legal adviser of the *Van Leer Jerusalem Institute*, whose opinion was that statements in the article could indeed serve as a basis for a libel suit. Following legal consultation, I proposed several changes to Weizman that might prevent a libel suit against the journal. At that time, the editorial board of the journal met and resolved to approve continued work on the article with the changes. The editorial board also decided on a policy statement to the effect that in the future the journal would not send out any article, for any reason, for a response prior to publication. It was also decided, in keeping with a proposal by the chairman of the editorial board, that in those rare cases where an article might contain statements that could serve as grounds for a libel suit, the editor would submit the article to an additional internal review, in order to ensure that factual allegations would be supported by appropriate documentation. This sweeping decision of the editorial board to eschew prepublication response retrospectively recognizes the mistake inherent in the recourse to prepublication response. It should also be noted that both the editorial board and the chairman of the editorial board are aware that the decision to be very cautious with regard to articles containing personal references may also contain an unfortunate ideological-political bias: Because the documentation of Israeli rule (as of many such occupations) is decentralized and incomplete, particularly with regard to concrete actions in the Palestinian territories, government behavior can be documented only to a limited extent. Comparative colonial history teaches us that evil actions, such as the massive destruction of Palestinian villages in the 1948 war, or the murder and extermination by the French in Algeria, are revealed only after the fact. Hence an epistemological asymmetry exists between the ability to expose such evil acts in retrospect and the inability to prove them while they are happening, despite the vaunted ubiquity of the media. With this ethical obligation in mind, the editorial board decided that such painstaking documentation of articles would be undertaken only in

those exceptional cases in which an article contains clear allegations of misconduct; the journal will not routinely undertake such internal reviews.

Weizman ultimately decided to withdraw his article, even though he had previously agreed that the proposed changes did not undermine either his arguments or the nature of the article. As the editor, I regret that these two articles, which would be important for understanding the internal grammar of Israeli rule in the territories, are not included in this issue. But it seems that both Eyal Weizman and Neve Gordon have fundamental differences concerning both the act of documentation and the reciprocal relations between *Theory and Criticism* and its political and legal environment. It could be argued that our decision to institutionalize our treatment of articles that include personal allegations contains an inherent potential to curtail our ability to criticize the occupation.

This crisis provides us with a “critical moment” that requires us to examine the relation between our ability to criticize the occupation and the ability of *Theory and Criticism* to reflect upon and to criticize itself. The omission of these articles, and the related processes both within *Theory and Criticism* and in its political and institutional contexts during this crisis, have made it clear that we need to try to understand how a journal operates within the various matrices of power: political, economic and legal. By analyzing this outcome, we can learn about ourselves both as Israelis who are subject to a regime of occupation and as Israelis who are participating in it, either passively or actively, as individuals, or as a group that is seeking to produce a critical-scientific journal. Like Israel within the Green Line, like all Israeli citizens who pay taxes that feed the occupation, this journal does not exist outside that regime. It exists within the occupation’s matrices of power and the military logic that shapes those matrices. Moreover, this crisis provides an opportunity for a discussion of the relation between the journal’s routine institutional constraints (budgetary, legal, administrative) and our ability to continue developing critical thought and language, the very realization of which depends on our ability to step beyond the bounds of “legitimate” (polite, responsible and legal) discourse. Self-censorship and social censorship almost never appear in their naked form, but rather appear disguised by seemingly palpable concepts such as decency, fairness, rationality and reasonableness.

This problem is well articulated by one of the formulations in the letter we received from General Kohavi’s attorney: “Note that not mentioning my client in the article will certainly not detract from the ideas in it...” Here the lawyer touches on a point that is essential if we are to locate the “political” in critical theory.

Weizman maintains in his article that both theory in general and the analysis of particular structures, institutions and mechanisms must not blur our perception of the responsibility borne by specific individuals for war crimes. Moreover, in the framework of every theory that is employed to analyze the mechanisms of occupation (like other mechanisms of power that generate inequality, injustice and crimes), a way must be found to determine personal responsibility for acts that may be criminal and to accuse the individuals who carry them out or cause them to be carried out. In effect, this attorney is proposing that the "personal" be removed from political discussion.

Therefore, in addition to criticizing the occupation directly, one needs to ask what role is played in mechanisms of censorship and self-censorship by the rules of civil law, i.e. by abiding by the ban on libel. Civil law, as formulated by this attorney in the case at hand, would remove the personal dimension and leave only the "ideas." We cannot agree to our automatic obedience to the dictates of this law. Our submission on the basis of a legal rationale to the need to avoid a libel suit, bifurcates between the theoretical analysis of the mechanisms of power and the acting subjects who bear legal and moral responsibility. This division goes to the heart of the nature of the fundamental question posed by critical discourse and what conditions would make it possible to "bring the structures down to the street." It turns out that our current conditions require us to examine how the "criticism of the occupation" is deconstructed within the prosaic context of the everyday life in which we think and write and exchange opinions and attitudes with our colleagues.