

From policing to warfare: the Israeli governance of the West Bank and Gaza

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This piece discusses a fundamental shift in the Israeli governance of the West Bank and Gaza, a transition from a legal framework of policing, which aims to restore public order, to a legal model of war. This transition transpired alongside the Al-Aqsa Intifada, starting in September 2000. While this discussion centres on Israel/Palestine, the shift from policing to a more militarised form of governance is a topic of relevance beyond this locality. As the philosopher Alain Badiou (2002) notes, the September 11 attacks marked a fundamental transition from the colonial past, when governments spoke of 'police action' or 'security measures', to the language of war. The discursive logic guiding the transition from the state of policing to that of warfare in Israel/Palestine is the same logic suggested by the 'war on terror', or by Theresa May's pre-election commitment to 'rip up human rights laws' as means of dealing with the threats of terrorism. The realities of militarised police activities are also one of the triggers for the rise of the Black Lives Matter movement, which sets out to expose and resist these practices and the disastrous impact they have had on people and communities of colour.

In September 2000 Israel/Palestine saw the breaking of the Al-Aqsa Intifada. The immediate trigger for the Intifada was the provocative visit of opposition leader Ariel Sharon to the compound of the al-Aqsa Mosque in Jerusalem. Sharon's visit was meant to reiterate the opposition party's uncompromised commitment to keep East Jerusalem under Israeli rule. The root causes for the uprising were the persisting abusive policies of the military occupation, disillusionment with the 1994 Oslo Accords

process, and the recent failing of the Camp David Summit, all signalling to Palestinians that political negotiations were futile. The uprising started in Jerusalem and then quickly spread out in the West Bank and to Gaza. In the following years the Intifada manifested in demonstrations, strikes and violent actions in the form of attacks on Israeli armed forces and civilians, including lethal bombing attacks in Israeli cities. The Palestinian death toll in clashes with armed forces in the West Bank and Gaza between September 2000 and December 2008 amounted to 4789 (2998 in the West Bank and 1791 in Gaza). The Israeli death toll in the same period included 332 armed forces personnel and 731 civilians (B'tselem, 2016).

As the Intifada unfolded, the Israeli state legal system initiated a transformative change, redefining the framework for its governance of the West Bank and Gaza as an 'Armed Conflict Short of War', a concept not found in international Humanitarian Law. This concept was officially presented in a document provided by Israeli officials to the US Mitchell Committee, a committee chaired by Senator George Mitchell tasked to inquire the failure of the 2000 Camp David Summit and the violence erupting later that same year. The committee rejected the Israeli official position and recommended that Israel returned to administer the West Bank and Gaza guided by the framework of law enforcement. The September 11 attacks changed the US perspective, and enabled the Israeli legal system to carry on in its innovative legal pursuit. Israeli ILD Commanding Officer Daniel Reisner places the Israeli legal shift in this context:

When we started to define the confrontation with the Palestinians as an armed confrontation, it was a dramatic switch, and we started to defend that position before the Supreme Court. In April 2001 I met the American envoy George Mitchell and explained that above a certain level, fighting terrorism is armed combat and not law enforcement. His committee rejected that approach. Its report called on the Israeli government to abandon the armed confrontation definition and revert to the concept of law enforcement. It took four months and four planes [referring to the September 11 attacks] to change the opinion of the United States, and had it not been for those four planes I am not sure we would have been able to develop the thesis of the war against terrorism on the present

scale. (Feldman and Blau, 2009)

The military legal system's shift to the framework of Armed Conflict Short of War was a decisive turn facilitating a host of novel militarised practices. Lisa Hajjar (2006) suggests that both the Israeli governance of the West Bank and Gaza and the US war on terror constituted 'alternative legalities'. US legal authorities, namely the Department of Defense and the Office of Legal Counsel of the Department of Justice claimed that the existing laws were not adequate as means to handle the realities on the ground. In the US, one of the key assertions made was that the Geneva Conventions do not apply to the war on terror, because the adversaries are not states, and because terrorists are neither combatants nor civilians. This war, similarly to the Israeli situation, was supposedly 'unprecedented', constituting a legal *terra nulla*. In the absence of an applicable legal framework, state lawyers created new, alternative legalities.

One of the crucial implications of the shift to a legal framework nearing war in the West Bank and Gaza is that civilian deaths were no longer the exception to the rule, as they were in the context of law enforcement. In a form of governance guided by the logic of policing, a civilian fatality automatically led to an opening of a Military Police investigation. These investigations have earned little trust from human rights NGOs (B'tselem, 2012), but they nevertheless signaled a particular state of affairs. The transition to the legal model of war marked a significant change, as it meant that civilian death was a structural result of policy rather than an exception that should be investigated. Military Advocate General Avichai Mendelblit demonstrated the gravity of this shift:

Supposedly, our critics have a conclusive argument: 2,000 casualties, zero convictions. But there is no automatic investigation for every case of casualty. Of course we will not approve of war crimes, but it is not possible to carry out 2,000 investigations for 2,000 cases of death, when many of the cases are related to combat activity. (my translation, Mendelblit in Harel, 2003).

One of the most controversial policies that was introduced in the West Bank and Gaza following the transition to the legal framework of war was targeted killings. 'Targeted

killing' is the military term referring the practice of killing individuals suspected of involvement in terrorism. Human rights organisations refer to this same practice as assassinations. Targeted killings were made part of the Israeli army's arsenal of actions after its 2002 Operation Defensive Shield. This was, at the time, Israel's most extensive military operation in the West Bank since 1967. The practice was reviewed by the Israeli High Court of Justice, which authorized its use, subject to several requirements. Between September 2000 and until the 2008/90 military offensive on Gaza, 232 people were targeted and killed by the Israeli army in targeted killing operations, among them 150 in Gaza and 82 in the West Bank. Casualties of these operations, including both those targeted and bystanders, amounted to 277. These policies are, unfortunately, not an exclusive Israeli phenomenon. President Obama's administration, which David Cole named 'the Drone Presidency' (2016), was reported to have employed ten times more drone strikes than his predecessor. According to data produced by the Bureau of Investigative Journalism (2017), during Obama's presidency the US executed 375 drone strikes in Pakistan alone. These strikes resulted in 2095-3415 reported killings as well as 990-1474 reported injuries.

The Israeli relationship to a state of war, I've suggested, forms part of a broader shift. Since World War II, most wars are fought between states and non-state groups, or within states. These wars are commonly defined as 'asymmetrical', and do not neatly fall under the 1949 Geneva Convention definition of an 'international armed conflict'. The legal scholar David Kennedy (2006) points out a particular tension in relation to contemporary wars. The wars of our time, Kennedy argues, challenge a dichotomised understanding of war and peace. War and peace nowadays, "*are far more continuous with one another than our rhetorical habits of distinction and our wish that war be truly something different would suggest*" (p.3). This continuity, however, Kennedy argues, is coupled with a rhetorical assertion of the distinctiveness of these two states. This tension opens up a space where law is revisited, reinterpreted, and alters governance and warfare.

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Maayan Geva's book, *Law, Politics and Violence in Israel/Palestine* (Palgrave), is a fieldwork-based sociological account of the historical transformations in Israel's governance of the West Bank and Gaza.