PALESTINE/ISRAEL AND STATE CRIMINALITY:
EXCEPTION, SETTLER COLONIALISM AND
RACIALIZATION

Ronit Lentin

Abstract: This article critically engages with Israel’s settler-colonial racial regime in Palestine as an Agambenian state of exception. The first part reiterates the author’s argument that the Israeli state extends its laws to rule occupied and besieged Palestine while excluding itself and its Jewish citizen-colonists from legal instruments of oppression, occupation and siege. Positioning itself above and outside domestic and international law as far as Palestinian citizens and occupied and besieged subjects are concerned, Israel is theorized as a textbook example of state of exception, racial state and settler colony. The second part follows Weheliye in placing race front and centre in theorizing political violence as a socio-political process of differentiation and hierarchization that differentiates between the human, the not-quite-human and the non-human, employed by the State of Israel in dehumanizing and racializing Palestinian citizens, occupied and besieged subjects.

Keywords: Israel; Palestine; Agamben; settler colonialism; race; Weheliye

Introduction

On 26 February 2016, the 33-year-old Palestinian journalist Muhammad al-Qiq, on hunger strike for 94 days since November 2015 in protest against being held in administrative detention, agreed to end his hunger strike, despite initially rejecting Israel’s offer to temporarily suspend his administrative detention and resume his sentence when his health improved, because the offer included neither his release nor a guarantee of medical treatment in a Palestinian hospital once freed (Albawaba News 2016). His agreement to end his hunger strike can be seen as a victory for Palestinian resistance in that Israel agreed not to renew his detention unless “new evidence warrants it” and in that a Palestinian medical team would look after him in the Israeli Ha’emek hospital (Abunimah 2016).
Al-Qiq was one of 670 Palestinian prisoners being held by Israel in administrative detention without trial or charge. According to B’Tselem (2014), Israel’s use of administrative detention blatantly violates the restrictions of international law. Israel carries it out in a highly classified manner that denies detainees the possibility of mounting a proper defence. Moreover, the detention has no upper time limit. Over the years, Israel has placed thousands of Palestinians in administrative detention for prolonged periods of time, without trying them, without informing them of the charges against them, and without allowing them or their counsel to examine the evidence against them. In this way, the military judicial system ignores the right to freedom and due process, the right of defendants to state their case, and the presumption of innocence, all of which are protections clearly enshrined in both Israeli and international law.

Administrative detention is just one governmental technology of state criminality – loosely defined for the purpose of this article as activities or failures to act that break the state’s own laws or public international law – employed by Israel in its war against the Palestinians. Israeli state criminality has escalated hugely since October 2015 with increased violence, administrative detention, torture, the detention of minors, house and village demolitions, and culminating in the widespread use of extrajudicial executions of Palestinians caught in or suspect of “terror” acts. Against the background of this escalation, a cynical development in the history of Israel’s politics of oppression, occupation and siege, this article contextualizes state criminality through critically engaging with Israel’s settler-colonial racial regime in Palestine as an Agambenian state of exception.

In the first part, I reiterate my argument (Lentin 2015) that the Israeli settler colony extends its laws to rule occupied and besieged Palestine while excluding itself and its Jewish citizen colonists from the legal instruments of occupation and siege, and in the process breaking international law. Governed through emergency legislation inherited from the British Mandate for Palestine and never repealed, and through practices of exception, emergency, necessity and security, the State of Israel is arguably a textbook example of Agamben’s (2005) state of exception, in the sense of both état and condition. Israeli exceptionalism positions the state above and outside both domestic and international laws as far as Palestinian citizens and occupied and besieged subjects are concerned, as the article demonstrates. The first part also theorizes Palestine/Israel as racial state (Goldberg 2002, 2009; Lentin 2008, 2015) and settler colony (Wolfe 2006).

As race is central to my analysis, the second part focuses on critically engaging firstly with Agamben’s occlusion of colonialism and anticolonialism and secondly with his failure to specifically foreground race. I begin by following Svirsky and...
Bignall’s (2012) argument that Agamben’s project is firmly anchored in Western political thought and is conceived without reference to colonialism and anticolonialism. However, like other theorists of Israeli settler colonialism, Svirskiy and Bignall occlude the centrality of race in their potent critique of Agamben. I therefore racialize the analysis by following Weheliye’s (2014) argument that westocentric theorizations of exception, bare life and biopolitics are universally transportable precisely because they do not speak from an explicitly racialized standpoint. Instead, Weheliye places race front and centre in considerations of political violence as a set of socio-political processes of differentiation and hierarchization, projected onto the biological human body. These processes differentiate between the human, the not-quite-human and the non-human, and are employed by the State of Israel in racializing Palestinian citizens, as well as occupied and besieged Palestinian subjects. Departing from white Western theorizations of biopolitics, exception and bare life as a way of examining settler-colonial conditions, I position race throughout the article at the centre of my analysis of the Israeli settler colony.

State of Exception as Racial State

Racism is the ordinary means through which dehumanization achieves ideological normality, while, at the same time, the practice of dehumanizing people produces racial categories...This culture, in turn, is based on the modern secular state’s dependence on classification, combined with militarism as a means through which classification maintains coherence. (Gilmore 2007: 243–4)

Agamben’s theory of the voluntary creation of a permanent state of emergency as an essential practice of contemporary states (Agamben 2005: 2) is relevant to Israel/Palestine, where the state of exception involves both the extension of military wartime powers to the civil sphere and the suspension of constitutional norms that protect individual liberties (Zreik 2008). In Homo Sacer (1995), Agamben argues that the state of exception means rendering the lives of specific population groups homo sacer, or “bare life”, both excluded and captured within the political order (Agamben 1995: 9). Agamben builds on Foucault’s (2003: 255) theorization of racism as marking a caesura between what must live and what must die and establishing “a relationship between my life and the death of the other”. Israeli governmental technologies construct population categories through biopolitical population management measures of segregation and exclusion, including the 1948 Zionist “Plan D” for the ethnic cleansing of Palestine (Pappe 2006), ongoing occupation policies in the Palestinian territory occupied in 1967, and preventing the return of Palestinian refugees expelled during and after the 1948 Nakba. Under Israeli rule, Palestinians are categorized into citizens of Israel (“1948 Palestinians”),

STATE CRIME 5.1  SPRING 2016
occupied subjects (“1967 Palestinians”), Palestinians living in East Jerusalem and the Palestinian diaspora. Yiftachel (2016) likens the racial categorization of citizenship in Palestine/Israel to South African Apartheid: Jews are “white” citizens, Arabs in Israel have “coloured” (partial) citizenship and Palestinians in the territories have “black” citizenship, without political rights. As Gilmore (2007) argues, categorization or classification is at once the prerequisite and the consequence of racial dehumanization.

Dehumanizing classifications ensure that biopolitics in Palestine/Israel aims above all to ensure that Israel’s Jewish citizens – not only Jewish settlers in the Occupied Palestinian Territory (OPT) but also Jewish Israelis living within the 1948 borders of occupied Palestine – live at the expense of the Palestinian others. Such classifications affirm Israeli biopolitical control over discriminated Palestinian citizens and occupied subjects, whose lives are regulated by both the Israeli security services and the civil authorities, including the occupation’s Civil Administration.4 The exclusion and control by the Israeli state and military involve ongoing practices of surveillance, raids of Palestinian homes, checkpoints and the separation wall, curfews, house and village demolitions, population transfers, arrests and administrative detention, culminating in extrajudicial executions, all of which render the Palestinians subject to, as well as the object of, sovereign Israeli rule.

Theorizing Israel as state of exception must be coupled with theorizing it, after Goldberg (2009), as an archetypical racial state. According to Goldberg (2002), all modern nation states are racial states that exclude and include in order to construct homogeneity. This task is achieved not only through governmental technologies such as citizenship entitlements, border controls and census categorizations, but also through invented histories and traditions that construct state memory, ceremonies and cultural imaginings, and the evocation of ancient origins. Imagining Israel as “Europe away from Europe”,5 Zionism created a racial state par excellence, where exception becomes the rule and where

there is a constant state of emergency. The state inherited the British Mandate’s “Emergency Regulations” under which it continued the anomalous suspension of the law, within the law...this system enables: one rule (life) for the majority of the state’s citizens, and another (death, threat of death, threat of expulsion) for the state’s subjects, whose lives have been rendered “bare”. (Shenhav 2006a: 206–7)

Goldberg calls this “racial Palestinianization”: “Palestinians are treated not as if a racial group, not simply in the manner of a racial group, but as a despised and demonic racial group” (2009: 139).
Zionism, as Goldberg writes, is about the modernizing imperative according to which Jews (though ancient Biblical people) are modern, while Palestinians (Philistines) are premodern and thus in need of Zionism’s civilizing – but always also colonizing – mission that Goldberg calls “historicism racism”. Foucault’s articulation of the need to defend society (2003) brings to mind the Zionist imperative of protecting the nebulous body of “the Jewish nation” from antisemitic persecutions, from its 1880 state-building aspirations through the establishment of the State of Israel to its ongoing aftermath.

Paradoxically for people whose history is replete with racial persecutions, Zionist ideology itself articulates “the Jewish race”, constructing a homogeneous “Jewish people” despite obvious Jewish heterogeneities (see Sand 2009), with Jewish self- and other racialization an integral part of Zionist ideology and practice. Falk (2006: 25) reads the history of Zionism as a eugenic race project, aiming to save the Jewish genetic pool from the degeneration resulting from diaspora existence. Just as antisemitism racialized Jews as a separate “race” whose persecution was justified by biological reasoning, Zionist ideologues adopted the terminology of *volk* – a racial nation shaped by “blood and soil” (Falk 2006: 18–9), and were instrumental in producing a Zionist repertoire of racial categorization and *volkish* imagery (Bloom 2007).

This race thinking was responsible for creating Israel’s racial citizenship regime. Constructed as the state of the “Jewish nation”, Israel (through the 1950 Law of Return) grants automatic citizenship to anyone who can prove she has a Jewish mother, while denying citizenship to Palestinians born on the land who were deported (or who fled) during and after the 1948 Nakba. The 160,000 Palestinians who remained were dubbed by the state “Israeli Arabs”, depriving them of their Palestinian identity, and put under a military government regime, based on the 1945 British Mandate Emergency Regulations, which abolished basic rights of expression, movement, organization and equality, though they left Palestinian citizens the right to vote and be elected. Though officially abolished in 1966, the emergency regulations are still in place, controlling 20 per cent of Israel’s citizens (Pappe 2006: 220–2).

The law works in the service of the racial state and Israel is no exception. Examples of Israel’s racial laws include the Law for Absentee Property (1950) that grants the state ownership of the property of Palestinians expropriated in 1948, dubbing them “Present absentees”; the Jewish National Fund (JNF) Law (1953) that charges the JNF, the official Israeli land purchasing agency, with administering public land in Israel, including large tracts of displaced Palestinians’ lands – designated as “state lands”, banning the selling, leasing, subletting and owning of land by “non-Jews”, read Palestinians. Adalah, the Legal Centre for Arab Minority Rights in Israel, lists 50 Israeli laws that discriminate against
Palestinian citizens of Israel in all areas of life, including rights to political participation, access to land, education, state budget resources and criminal procedures. Some laws specifically violate the rights of Palestinians living in the 1967 OPT and of Palestinian refugees. Since 2009 and the advent of Netanyahu’s right-wing government, a new series of laws seek to dispossess Arab citizens of Israel. The laws exclude them from the land; turn their citizenship from a right into a conditional privilege; limit the ability of Arab citizens and their parliamentary representatives to participate in the political life of the country; criminalize political acts or speech that question the Jewish or Zionist nature of the state; and privilege Jewish citizens in the allocation of state resources. (Adalah 2012)

These laws aim not only to curtail the access of Israel’s Palestinian citizens to land resources, but it also aims to pre-empt, circumvent or overturn Supreme Court decisions that accord them any civil rights. Furthermore, the legislation stifles freedoms of association and expression, discriminates on the basis of national belonging, and supports a series of criminal indictments and punitive measures instigated by the Knesset against its elected Arab Members.

One must therefore question whether theorizing the treatment of Israel’s Palestinian citizens in terms of “state criminality” as “activities or failures to act that break the state’s own laws” is applicable as the State of Israel makes sure that its infringements are enshrined in Israeli law in the best tradition of dictatorial legalities that have, after all, enabled extreme racial regimes such as Nazi Germany’s.

It is however worth noting that when it comes to governing the lives of occupied and besieged Palestinian subjects, the definition of state criminality as “activities that break international law” is clearly applicable. Asking whether the continued Israeli occupation of the Palestinian territory is legal or illegal, Ben-Naftali, Gross and Michaeli (2005) go beyond examining Israel’s duties as an occupying power – which tends to be the focus of most scholarship on the topic – and focus instead on the legality of the occupation itself, leading them to theorizing the very Israeli occupation as an illegal state of exception. The international law of occupation, as they write, signifies both the need to distinguish between order and chaos and thus manage the situation by eliminating chaos through controlling the exceptional situation; and the need to distinguish between orders, or between the rule and the exception, by creating an orderly space defined by its exceptionality, or suspension of the rule (Ben-Naftali, Gross and Michaeli 2005: 554).

According to Ben-Naftali, Gross and Michaeli, the legality or otherwise of occupation is measured by three legal principles. Firstly, sovereignty in
an occupied territory is vested not in the occupier but in the population under occupation. Secondly, in view of the principle of self-determination, the occupier is entrusted with managing the public order and civil life in the occupied territory, and the people under occupation are the beneficiaries of this trust, though dispossession and subjugation violate this trust. Thirdly, occupation is temporary. When any of these three principles is violated, an occupation is deemed illegal, and this is the nature of the Israeli occupation of the OPT. More specifically, the legality of the occupation is measured by its exceptionality: Once the boundaries between the normal order of sovereign equality between states and the exception (i.e. occupation) are blurred, an occupation becomes illegal. And crucially, an occupation that is illegal from the perspective of managing an otherwise chaotic situation is also illegal, in that it obfuscates the distinction between the rule and its exception (Ben-Naftali, Gross and Michaeli 2005: 555–6).

To illustrate state criminality and the illegalities ensuing from the 1967 occupation of the Palestinian territory, Webb-Pullman (2013) examines the recent deaths in Israeli custody of three Palestinian prisoners (out of 206 prisoners to die in Israeli jails since 1967). She argues that “torture is specifically prohibited in international law by means of the Convention Against Torture (CAT), as well as Article 7 of the International Covenant of Civil and Political Rights (ICCPR),” and that “there is no derogation possible from this prohibition; torture is never acceptable in international law, under any circumstances. Despite the absolute prohibition on torture, domestic Israeli law ‘permits’ it through what legislators and courts alike see as ‘necessity’.” Webb-Pullman criticizes the collusion of Israeli doctors in torturing Palestinian prisoners, noting that although “the UN Human Rights Committee has stated specifically that the right to health of detainees comes under the right to humane treatment in the ICCPR, and the related provision against torture (Article 7) has also been used by the Human Rights Committee to address questions of prison medical care”, Israel acts with impunity as far as international law instruments are concerned, leaving it open to charges of state criminality and making it a state of exception par excellence.

As Webb-Pullman (2013) summarizes, “Whilst Israel has ratified the main human rights conventions, Israel is not party to most Optional Protocols ... nor has it accepted the jurisdiction of any of the treaty body committees, which means that relevant committees cannot receive or act on complaints or claims against Israel” including the widespread use of torture. Even when it does ratify international conventions, Israel makes reservations, rendering itself immune from almost any action against it. Thus, while Israel has signed the 1949 Geneva Convention (enacted in the wake of the Nazi Holocaust), it has not signed the 1977 Additional Protocols, keeping it outside the remit of the Rule of Law in Armed Conflicts (RULAC) that has criticized Israel for its annually renewed domestic State of Emergency. Israel has
also refused to recognize the competency of the Committee of the CAT to examine “well founded indications that torture is being systematically practiced” as is the case in Israel. This unilateral exemption by Israel means not only that it is a state of exception par excellence, but, on a more material level, also that the exercise by Israel of governmentalities such as administrative detention without trial, detention of minors, torture, house and village demolitions, population transfers and extrajudicial executions goes without control or censure by international law.

**Racial State as Settler Colony**

Understanding Israel as a racial state is incomplete without also theorizing it as a settler-colonial enterprise. Settler colonialism’s main objective is not the enslavement or exploitation of the natives but rather access to their territory. Jewish Israeli settler colonialism was moulded not merely by Zionist ideology but also by the process of colonizing an already settled territory, a process that inevitably brought about conflict with the native society (Shafir 1993). Theorizing Israel’s conquest of Palestine as settler colonialism is not new and has its origins in the politics of left-wing groups such as Matzpen\(^{13}\) that saw Zionism as an imperial enterprise (Ram 1993) and in the work of the Israeli sociologist Baruch Kimmerling (1983) who theorized Zionism as a colonizatory movement that aimed to control the territory of Palestine, through what Pappe (2006) calls “the ethnic cleansing of Palestine”. Kimmerling highlights the centrality of the Zionist labour movement in the colonization of Palestine as resulting from the imperative to settle the frontier. Likewise, Shafir (1989) argues that the Jewish settlement of Palestine is a “pure colony” based not on enslaved or native labour but rather on the labour of the settlers who, besides the native territory, also sought to eliminate the natives from the labour force (Ram 1993: 30).

Defining Israel as settler colonial goes against Zionism’s self-image as a response to European antisemitism that enabled the settlement of “people without land in a land without people”.\(^{14}\) It is worth remembering in this regard that Zionism explicitly cast itself in settler-colonial terms: “Yishuv” – the name of the prestate polity in Palestine – literally means “settlement”. After the first Zionist Congress of 1897, which voted in favour of Jewish migration to Palestine, it was explicitly decided to establish “three types of colonies in Palestine: kibbutz, moshav and town”\(^{15}\) (Benvenisti 2002: 263). Furthermore, as Wolfe (2006: 388) argues, settler colonialism is about replacing the natives, unlike colonialism which is about the exploitation of the natives, and it always replaces what it destroys. Thus replacing Palestinian orchards with imported European conifers (which the Zionists dubbed “making the desert bloom”), depopulated Palestinian villages and urban neighbourhood with Jewish settlements, roads and national parks, Palestinian
place names with Hebrew place names, and the present-day campaign to replace Bedouin villages, deemed “unrecognised”, with Jewish space for, inter alia, army manoeuvres, are all classic settler-colonial governmentalities.

Settler colonialism is informed by various interpretations of *terra nullius* (“a land without people”) and “is an inclusive, land-centred project that coordinates a comprehensive range of agencies, from the metropolitan centre to the frontier encampment, with a view to eliminating indigenous societies” (Wolfe 2006: 393). Analysing Australian, North American and Israeli settler colonialism, Wolfe argues that settler colonialism is ultimately about a logic of elimination. Furthermore, in Israel biopolitics regulates and controls the lives of Jews and Palestinians alike, the former accorded land resources and encouraged to breed and multiply, the latter – both citizens and occupied subjects – deprived of land resources and of means of sustaining their families (through lower allocations of crucial resources, including water, roads, education, health and other services).

Wolfe’s theorization of settler colonialism as premised on securing territory in terms of “structured genocide” leads us to appreciating the concrete relationships between spatial removal, mass killings and biocultural assimilation. The logic of elimination is illustrated by the expulsion of the Palestinians from their lands during and after the 1948 Nakba, by the resettlement of their villages and urban neighbourhood by Jews, by the 1967 occupation of the West Bank and Gaza, by the progressive dispensing with Palestinian workers from the occupied territory (Kemp and Raijman 2008) and by the increasing military and civilian control of the territory. A poignant example is the building of the so-called “separation wall”: As Wolfe (2006) reminds us,

> there could hardly be a more concrete expression of spatial sequestration than the West Bank barrier ... as Palestinians become more and more dispensable, Gaza and the West Bank become less and less like Bantustans and more and more like reservations (or, for that matter, like the Warsaw Ghetto). (404)

Svirsky and Bignall (2012) critique Agamben, arguing that his project, firmly anchored in Western political thought, is conceived without reference to colonialism and anticolonialism, and ignores the critical interventions by colonized people engaged in acts of decolonization. Wolfe seems to agree. In theorizing settler colonialism as spearheaded by mavericks who establish the frontier, taken over by the colonial state once the dust settles on frontier violence, he also sees the frontier as the classic state of exception where primordial irregularity helps the sovereign to declare the rule of law. However, he adds, Agamben’s (2005) deeply entrenched eurocentrism prevented him from seeing the colonial context, focusing instead on the centrality of the paradigm of security in the state of exception, which uses
security as “the normal technique of government” (14). Security, discourses of “existential threat” and Jewish victimhood are central to Israel’s racial policies. As Israel sees itself as a haven for the “Jewish nation”, it regards the control of 1948 Palestinians, 1967 Palestinians and diasporic Palestinians as an imperative born of necessity and emergency, which, Agamben suggests, creates and guarantees the situation that the law needs for its validity.

While Agamben does not theorize colonialism in the context of biopower, settler colonialism is intrinsic to biopower, the product and process of a colonial world. According to Morgensen (2011), colonialism and settler colonialism place indigenous peoples in a state of exception, albeit one that troubles the territorial and national integrity of settlers as representatives of Western law. Morgensen reminds us, following Wolfe, that as settler colonials come to stay, assertions of sovereignty by settlers ground Western law in “a logic of elimination”. Indeed, the logic of elimination aims not to destroy but to produce life, so as to amalgamate Indigenous peoples, cultures and lands into the body of the settler nation (2011: 56). Thus, as Zionist settler colonials stayed and regarded the new colony as “their” land, they had to employ biopolitical strategies, controlling the life practices of the indigenous Palestinians, so as to enable the Jewish colonists to live at the expense of the Palestinian natives.

Israel’s settler-colonial racial regime creates constant zones of exception, as witnessed inter alia in the 2014 massacre of Gaza, conceived as exterior to any considerations of humanity or human rights. A further example of what the African American journalist and civil rights leader Ida B. Wells (with reference to lynching) called the seemingly exceptional “unwritten law” which becomes the law17 is the military courts system for trying Palestinians, including many minors, in the occupied territory, “operating with virtually no transparency, subject to very lax internal supervision, and rarely exposed to any public scrutiny” (Yesh Din 2013). Another illustration of settler colonialism as a racial state of exception is the occupation’s colonial bureaucracy enacted every day in every West Bank checkpoint, through sovereignty – practices of controlling space through the security forces and governmentality – practices of managing populations through intelligence, economic control and racial profiling (Berda 2012).

Settler-colonial practices such as the periodic lethal attacks on the besieged Gaza enclave, the disproportionate availability of water between Jewish settlers and indigenous Palestinians in the OPT, and, of late, the increased use of administrative detention and the growing numbers of extrajudicial executions (see euromedmonitor.org, 2015) illustrate how biopolitics in the settler colony that is Palestine becomes one of death, that Mbembe (2003) calls “necropolitics” and Ghanim documents as “thanatopolitics”: “from the moment that power is directed to destroying, eliminating and dismantling their group, the decision about their life becomes a decision about their death” (Ghanim 2008: 69). And death, expulsion and exclusion become
the ultimate way of overcoming (self-perceived) Israeli Jewish victimhood, which Svirsky theorizes as a settler-colonial immunitarian practice of segregation and political conservation of the paradoxical notion of “Jewish democracy” against any possibility of shared ways of life (Svirsky 2012: 58).

From Settler Colonialism to Racial Assemblages

Although theorizing Israel as a racial state of exception and its Palestinian citizens and occupied and besieged subjects as “bare life” in the Agambenian sense appears logical, Agamben is critiqued for not recognizing the potentialities of resistance in theorizing “bare life”. Indeed, vesting Palestinian subaltern subjects with the mark of exception “reterritorializes their underprivileged place in language” and imagines them as “subjects to whom all manners of things are done...but who are rarely agents in their own right” (Walters 2008: 188, cited in Svirsky 2012: 59–60). However, it is Weheliye’s critique of Agamben, in positioning race front and centre, that completes my analysis of Israel as a racial settler-colonial state of exception. Weheliye’s main argument is that exception and bare life are overarching disembodied Western theorizations that refer neither to colonialism nor to anticolonialism, but also do not recognize them as racialized categories.

Few analyses of Israeli settler colonialism privilege race.18 This is despite the obvious racial differentiations between Jewish Israeli humans; complicit not-quite-human Palestinian citizens, denigrated as “Israeli Arabs”, an unacceptable categorization (Makdisi 2015); and finally, non-human, or dehumanized, occupied, besieged and refugee Palestinians as well as Bedouin citizens living in “unrecognized villages”.

However, in “comparing colonial and racial regimes”,19 Wolfe does posit races as “traces of colonial history that reproduce relationships of inequality” firmly within his theorization of settler colonialism. Comparing the relationship between North American settlers and, firstly, Native Americans, and secondly, African American slaves, Wolfe argues that while chattel slavery was equated with blackness, in the case of Native Americans an exception was made for admixture of racial descent. Thus while one drop of blood made you black, any amount of non-Native blood actually compromised your indigeneity, making you less than Native, a “half breed”. Thus, while African American slaves were a valued commodity, Native Americans got in the way of settler expansion and had to be eliminated. According to Wolfe’s reading, race emerges as a category of humanity when, despite the colonizers having to share space with the native colonized, hierarchies and exceptions must be maintained. This was done not only through “scientific” measurements but also through cultural assimilation, leaving the task of homogenizing to the colonizers. And, Wolfe reminds us, to homogenize is to divide, leaving the white colonizers to do the ruling.
Wolfe’s invoking race in theorizing settler colonialism leads me to Weheliye’s critique of Agamben’s Eurocentric theorizations of exception and bare life based primarily on the Nazi extermination camps, without giving credence to their colonial antecedents (for instance, ignoring the German colonization of Namibia and the genocide of the Herreros). Thus, in *Homo Sacer* (1995), Agamben paradoxically posits the Muselmann (a term used for concentration camp inmates who have reached rock bottom and who are thus named because, totally deplete of life force, they crouched as if in Muslim prayer) as transcending race, even though it is an explicitly racial category referring to Muslims. Agamben’s analysis, as Weheliye argues, rests on the philosophical *unseeing* of what he calls “racializing assemblages”. Weheliye follows black feminists tackling the human rather than the specificities of black womanhood, while resisting comparativity, which, he argues, leads subjugated groups to compete for limited resources while white humanity and Western theorists take home all the prizes (Weheliye 2014: 14).

Weheliye’s black studies standpoint, relevant in analysing Palestine, insists that as humans create race for the benefit of some and to the detriment of other humans, as Wolfe demonstrates in his analysis of settler colonialism, employing the Nazi camps to explicate race is both Eurocentric and theoretically inadequate. According to African American feminist theorist Hortense Spillers (2003 [1987]), the racializing assemblages of the middle passage, plantation slavery, Jim Crowe, etc., not included in most conceptualizations of the biopolitical nomos of modernity, highlight how routine the brutalization of black flesh continues to be in the world of (Western) man. Just as black flesh was routinely created by “the calculated work of iron, whips, chains, knives, the canine patrol, the bullet” (Spillers 2003 [1987]: 207; Weheliye 2014: 38–9), so Palestinian flesh, I argue, is routinely created by the calculated work of sponge, rubber and metal bullets, tear gas, riot control equipment, air bombardments and ground offensives, military court systems, torture, jails, administrative detention, checkpoints, walls and extrajudicial executions. The grammar and practice of racializing Palestinian flesh not only illustrate the routine rather than exceptional workings of Israel’s racial-settler colony and state criminality, but also demonstrate that theorizations of exception and bare life are inadequate in understanding the embodied centrality of race in the Palestinian context.

Wolfe’s insertion of race into his analyses of settler colonialism is more successful, as he himself acknowledges, in the North American and Australian cases, where assimilation played a central role in the process of colonization than in the Palestinian one. Asking how race applies in the reproduction of Zionism’s settler-colonial inequality, Wolfe concedes that there has been no sign of Zionist attempts to assimilate the Palestinian natives. On the contrary, I would suggest, Zionist ideology and practice are above all about the division between Arabs and Jews, the
former subjugated and dehumanized, the latter constructed as a superior race in the best tradition of European antisemitism (see Falk 2006).

Wolfe does make a case for racializing the Zionist settler colony by discussing labour relationships between the Zionist colonizers and the Palestinian colonized, suggesting that the role of race becomes apparent through the importation of Mizrahi Jewish labour from Arab countries in order to avoid reliance on Palestinian labour (see also Shafir 1989). While they filled labour vacancies that urbanized Ashkenazi Jews were unable or unwilling to fill, Arab Jews were housed in sub-standard transit camps and frontier zones, and even though many had held commercial and professional positions in their countries of origin, they were relegated to menial labour upon arrival in Palestine. Their situation has stabilized over the years, but Arab Jews’ second-class citizenship is compensated by sharing Ashkenazi Jews’ superiority vis-à-vis the Palestinians. Mizrahi Jews, as Wolfe suggests, were more like African American slaves than Australian convicts, as their subordination was racially encoded. In creating a Jewish under-class Zionism carved Arab Jews as racially inferior. However, after having airlifted them out of their homelands, Arab Jews had to be deracinated as Zionism forced them to choose between being Jews and being Arabs. However, Wolfe suggests, the deracination of Mizrahi Jews was itself racial, race operating through unracialization: contradictorily cutting through the category “Arab” enabled the Zionist settler-colonial project that leaves the Palestinians at the bottom of the racial heap.

**Conclusion: Racializing State Criminality**

In 2016, one doesn’t have to be Adolf Eichmann to be executed here – it’s enough to be a teenage Palestinian girl with scissors. The firing squads are active every day. Soldiers, police and civilians shoot those who stabbed Israelis, or tried to stab them or were suspected of doing so, and at those who run down Israelis in their cars or appear to have done so. (Levy 2016)

As I was writing this article in February 2016, a video published by *Electronic Intifada* showed the apparent execution of a young Palestinian in occupied East Jerusalem. Although Israel said that the young man, identified as Muhammad Abu Khalaf from the Jerusalem area town of Kufr Aqab, was carrying out a stabbing attack on Israeli border police officers when he was killed at the Damascus Gate of Jerusalem’s Old City, the video footage showed that the young man posed no threat to anyone and that a border police officer was shooting at the man after he fell to the ground. Then, several other heavily armed officers shot dozens of bullets into the man’s body as he lay on the ground and as passers-by were hurrying away from the scene. According to *Electronic Intifada*, “the video is a shocking
display of Israel’s routine and reflexive use of lethal force, which has resulted in the slaying of approximately 170 Palestinians, including dozens of children, since a new phase of violence began in October 2015” (Murphy 2016). A random selection of *Electronic Intifada* headlines indicates the widespread use of Israeli state criminality against racialized Palestinians:

Two Palestinians were shot and killed in Jerusalem after an alleged armed attack on Border Police and three other youths were slain there two weeks earlier during a similar incident; Israeli forces killed two more Palestinians on Friday; Khaled Yousif Taqatqa, 21, was shot during confrontations between protesters and the Israeli military in the village of Beit Fajjar near the West Bank city of Bethlehem and the Palestine Red Crescent Society said that medics were prevented from treating Taqatqa at the scene and that he died of his injuries at a hospital in Jerusalem; in the West Bank village of Silwad, near Ramallah, Israeli forces shot dead a Palestinian man who allegedly attempted to ram them with his car though no Israelis were injured – the slain man was identified by Palestinian media as Abed Raed Hamad, 22, a student at Birzeit University focusing on journalism and media; Israeli forces killed two other Palestinians in Silwad in December 2015, both of whom were allegedly waging car-ramming attacks when they were shot dead, though investigations by journalists and a human rights group suggest that one of those killed, Mahdia Hammad, was not attempting any attack and was trying to get home to feed her baby when soldiers opened fire at her; two Palestinian attackers, Omar Rimawi and Ayham Subih, both 14, were shot by a bystander and are reported to be in serious but stable condition in separate hospitals in Jerusalem—Israeli media published a video of Israeli soldiers apparently raiding and documenting the boys’ homes to prepare to demolish them; nearly half of the more than 200 attacks the Shin Bet says have been waged since October were “committed by assailants aged 20 or under”; The alleged attacks, mostly involving knives or car-ramming, have largely taken place at Israel’s settlements and military checkpoints in the West Bank—symbols of the occupation; Three boys among six Palestinians killed during bloody weekend (16 February 2016); Israel’s “excessive force” kills two more children (12 February 2016); Palestinian youths slain in deadly attack on Israeli police (4 February 2016); Israeli settlement guards kill young Palestinians (26 January 2016). (Murphy 2016)

I began by reiterating the theorization of Palestine under Israeli rule in Agambenian terms of exception and bare life, and went on to theorize Israel as a racial state and a settler colony. The article then deconstructed Agamben’s Eurocentric disembodied theorization and employed Weheliye’s critique in positioning race front and centre.
In theorizing Israel as a settler-colonial regime, Wolfe positions race as a trace of colonial history through noting racial hierarchies of European versus Arab Jews. However, he does not position race as central to the everyday criminality of the settler-colonial regime in Palestine, which is what I want to end with.

Analyses condemning the 1967 Israeli occupation of Palestine do not necessarily accept as illegal the 1948 occupation of Palestinian lands or the Nakba which saw the expulsion of some 800,000 Palestinians and the destruction and depopulation of more than 500 villages and urban neighbourhoods, or the very occupation itself. With few exceptions, such analyses often focus on “Israel’s refusal to accept the legal obligations that the status of an occupying power entails” (Ben-Naftali, Gross and Michaeli 2005). The discourse of obligations as an occupying power appears to focus on specific actions undertaken within the occupation rather than on the illegality of the occupation itself. As Ben-Naftali, Gross and Michaeli argue,

even the recent advisory opinion rendered by the International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, while critical of both this construction and the related settlement enterprise, and decreeing their illegality, still focused on specific actions by Israel without questioning the legality of the occupation regime itself. (Ben-Naftali, Gross and Michaeli 2005: 552)

Offering an opinion on the legality of the Israeli occupation of Palestine is beyond my competence. However, the recourse to increasingly violent measures by the Israeli security forces against Palestinians mounting what I consider legitimate resistance against occupation and siege, including at the extreme end extrajudicial executions – with the full support of the political leadership from Prime Minister Netanyahu downwards and of the military command – must be understood not merely in legal but also in racial terms.

Following Israel’s war against the Palestinians, it has become clear that house and village demolitions, whether as punishment for alleged wrongdoings, as deterrence or as population clearance mechanisms (in the case of demolitions of Bedouin villages, or of expulsions of Palestinians in the Jordan Valley region), administrative detention (used against Palestinian but not against Jewish “terrorists”), and particularly extrajudicial executions are performed along racial lines. As Weheliye (2014) argues,

if we follow Ruth Wilson Gilmore’s definition of racism as not resting on phenotype or culture, but “as the state-sanctioned and/or extra-legal production and exploitation of group-differentiated vulnerabilities to premature death”, what, then, is racism if not the political exploitation and (re)production of race? (55)
Palestinians are targeted by the Israeli settler colony not for phenotypical or cultural reasons (though the former also pertain, as the Israeli security forces have been known to target not merely Palestinians but also, in some cases, “Arab Looking” Israeli Jews and, in one notorious case, an Eritrean asylum seeker, shot by a security guard in Tel Aviv’s central bus station and later lynched by an Israeli Jewish mob; Gross 2015), but for state-sanctioned political ends, the ultimate aim of which is what Wolfe calls “the logic of elimination”.

Racism, as Weheliye further argues, is “the ordinary means through which dehumanization achieves ideological normality”. And since Agamben’s homo sacerization goes hand in hand with racialization – even if Agamben does not explicitly say so – “homines sacri not only legally and ideologically reside beyond the scope of the political community ... their alterity is also visibly marked, rendering the homo sacer’s ban logical within the constraints of Man’s racializing assemblages” (Weheliye 2014: 72). Just as Jews were racialized as non-whites/Aryans, so does Israel racialize Palestinian citizens and occupied, besieged and diasporic Palestinians as non-Jews/whites while justifying their racialization in terms of self-defence.

**Dedication**

For Patrick Wolfe, in memoriam.

**Acknowledgements**

Thanks to Elaine Bradley and the reviewers and editors for their helpful comments on earlier drafts.

**Notes**

1. According to Addameer, there are 7,000 Palestinian political prisoners in Israeli jails, including 60 females and 406 children, of whom 108 are under 16 (http://www.addameer.org/).
2. As part of the 1919 post-World War I Paris Peace Conference, the administrative control of Palestine was allotted to the British mandate under Article 22 of the Convent of the League of Nations, and the territory was named “British Mandate for Palestine”. In July 1920, the civil administration of the mandate took over military control with Jerusalem as capital of Palestine (http://www.palestinefacts.org/pf_ww1_british_mandate.php).
4. The Civil Administration is part of the Israeli Government coordination apparatus in the occupied territories, responsible for the implementation of the government’s policy in Judea and Samaria and the progression of the region in civil areas, according to the state level instructions, and in coordination with government ministries, the Israeli Defence Forces (IDF) and the security system. As such, the CA is a vital part of the IDF activities ... A central role of the Civil Administration is civil and security liaison with the Palestinian
Authority ... In addition, the CA is in charge of liaising with international bodies in relation to humanitarian aid and entrepreneurship in Judea and Samaria. (http://www.cogat.idf.il/1279-he/Cogat.aspx)

5. Israel’s former Prime Minister Ehud Barak often used the telling metaphor of Israel is “a villa in the middle of a jungle”. Meaning: We are an island of civilization surrounded by savage animals. This is remarkably similar to old-established colonial attitudes and, indeed, a variation of Theodor Herzl’s (the father of modern Zionism) metaphor of the “wall against barbarism” (Avnery 2002).


7. Or, for the wave of immigration from the former Soviet Union, 50 per cent of whom were not Jewish according to the orthodox reading, Jewish relatives (Hayeem 2010).


9. In fact, the emergency regulations are revalidated annually by the Israeli Knesset (Pappe 2008: 149).


15. Kibbutz (Hebrew for “gathering”) is a collective agricultural community; the first kibbutz was established in 1909. Moshav (Hebrew for “village, settlement”) is a cooperative agricultural community of small farms established by Labour Zionism.


18. However, some scholars have begun theorizing it in terms of racism (e.g., Shenhav and Yokna 2008), and discussions of racism are becoming more common in the Israeli media.


References


STATE CRIME 5.1 SPRING 2016


