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Hegemony, Law, Resistance: Struggles Against Zionism in the State of Israel

Elian Weizman

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Department of Politics and International Studies

School of Oriental and African Studies

University of London

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Abstract

In their struggles against Zionism, Israeli citizens, both Palestinians and Jews, paradoxically seek to challenge through the law the very laws that institutionalise the hegemony of the state's ideology. Law and resistance are seemingly two contradictory concepts: while the law is instrumental in producing and sustaining the hegemonic order, resistance aims to subvert that very order. Zionism – the formula that Israel is a 'Jewish and Democratic state' – is the structuring ideology of the State of Israel; it shapes and is grounded in Israeli laws, and the apparatus of the law underwrites and protects Zionism. Nevertheless, in resisting Zionism, groups and individuals have utilised the law in struggles to overturn it. This research project interrogates the paradoxical relationship between law and resistance and evaluates the efficacy of different strategies of resistance to Zionism by Israeli citizens, both Palestinians and Jews. It offers an in-depth analysis of the spectrum of resistance practices in Israel, from resistance inside the law using legislation and adjudication, parliamentary and extra-parliamentary work, to resistance that disregards the law. This thesis reveals that an ensemble of resistance that acts simultaneously both inside and outside the legal system, constructing and disrupting, building and dismantling, seems to be most strategically effective in countering hegemonic structures, exposing their weaknesses and internal contradictions and forcing hegemony to reveal its oppressive nature, thereby losing its legitimacy both internally and internationally. In Israel, it is a strategy that exposes the contradictions between the state's Jewish and democratic pretensions, showing its willingness to suspend the one to defend the other, thereby revealing its coercive side.

Preface

In the course of the continuous Peloponnesian war between Sparta and Athens (431-404 BC), the people of the Island of Melos wanted to keep their neutrality, but were forced by the Athenians to choose between submission and punishment. Thucydides (1959: 159), the Greek historian, dedicated much space to what came to be known as the *Melian Dialogue*, an exchange between the representatives of Athens and those of Melos who put forward arguments against their collective punishment. While the Melians invoked arguments connected to justice, the Athenians replied with the reasoning of power:

> Since you know as well as we do that, when these matters are discussed by practical people, the standard of justice[1] depends on the equality of power to compel and that in fact the strong do what they have the power to do and the weak accept what they have to accept.

Across history the relations between justice and power have undergone several mutations, developing notions of jurisprudence and providing answers to the conflicting relations between the two.[2] In the case of the Melian dialogue, the Athenians conveyed the simple message: justice is determined by those in power, and those in weaker positions must surrender to it. Indeed, this relation has prevailed ever since: those in power determine what is considered to be just and accordingly enshrine it in law. In modern times, it was Max Weber who identified the factor of violence in this equation. Power is entrusted in the hands of the state, and the state is "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory." Furthermore, he argues, "the state is considered the sole source of the 'right' to use violence" (Weber 2004: 33). This violence, which is held and exercised by the state, varies along an endless spectrum of manifestations, ranging from the implicit to the actual, from the suspended to the eruptive. Hence, violence is not only the direct and actual exercise of force, but also the threat to use such violence. This violence – held in suspension – is founded on the law.

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[1] The Greek word *dikaia* can mean both right and justice, both referring to a system of law.

[2] Power itself is a contested issue. The debate is not discussed here. It is presented and analysed thoroughly by Steven Lukes in his 2005 revised essay *Power: A Radical View*. In this project, the specific forms of the exercise of power presented is that of hegemony, as elaborated below.

Walter Benjamin theorises the interrelation between violence and the law in his well-known essay *The Critique of Violence*, (2009: 240-242, 248) where he points to violence's role in regard to law, which is based on violence and functions through force,

> If, therefore, conclusions can be drawn from military violence, as being primordial and paradigmatic of all violence used for natural ends, there is a lawmaking character inherent in all such violence. […] If the first function of violence is called the lawmaking function, this second will be called the law-preserving function. Violence, violence crowned by fate, is the origins of law. […] Lawmaking is powermaking, assumption of power, and to that extent an immediate manifestation of violence.

Power, violence and law are intertwined. Those in power constitute the law, which in turn enables, justifies and legitimises the exercise of violence. This understanding of power (as held by the state), its relations to the exercise of violence, and its codification and grounding in the law, leaves the question of resistance and its location unanswered. Since the state holds the monopoly over the use of violence in its various manifestations, the unavoidable conclusion is that radical resistance, one that challenges the foundations of state law, is and will always be an illegitimate form of violence exercised against the state. But similar to the spectrum of the manifestations of state power and violence, resistance also materialises along a spectrum of actions, within and outside the official places of power and law. These concepts of power (in its specific manifestation as hegemony), law, resistance, and their interrelations stand at the core of this research project.

In the aftermath of the 1948 war between the Zionist Jewish community and the Palestinians in British Mandatory Palestine, the Zionists gained the upper hand. The State of Israel was established as a 'Jewish and democratic state,' and laws were enacted according to the new powerful ideology and its goals. Ever since, Zionism has been the official ideology of the State of Israel. Since Zionism is not a monolithic concept and is found at the centre of both academic and popular debates and its precise meaning can be elusive, in this thesis it is conceptualised in its dominant contemporary sense as the specific sentiment that Israel is and should remain a Jewish state, a place of refuge for all Jews worldwide. Yet Israel was also declared as a democracy, and this

is also a key element of Israeli political ideology and is grounded in its laws. I argue that the notion of the 'Jewish and democratic state' became part of the 'common sense' of Jewish-Israeli society, and since it is grounded in state laws, all other views are deemed illegitimate, and their active pursuit potentially illegal. This thesis is interested in these views and activities.

My interest in these questions is borne out of my own biography as an Israeli Jew, who was inserted into the hegemonic constellation of the Jewish and democratic state from birth. What was shaped as my common sense view was later challenged during my early university years, being exposed to critical literature and opposing worldviews, and I was then able to reflect more critically on the nature of the political and ideological system in Israel. Later on, during my MA and doctoral studies in London my much better-shaped critical approach led me to dismiss and reject altogether the importance and even the potential of engagement with the existing system of power in the struggle to transform or overturn it. This project began as an investigation attempting to understand why Israeli citizens, both Palestinians and Jews, struggle against Zionism in certain ways rather than others; what limitations are posed on different practices of resistance; and what the potential and possibilities of these forms of resistance are. Early on, law, broadly defined, surfaced as the most crucial constraint on resistance. In law, state authority is embodied, its violent potential is contained and its ideological underpinning is exposed. Why, then, use the law and legal institutions in the struggle against the order they enshrine? However, my in-depth investigation of the world of resistance with and inside the legal system, in the courts, parliament and on the ground revealed that it is less about the legal tools themselves but rather the ways in which they are utilised in the struggle that actually matters. This, in a nutshell, is the core of my research project.

Aims and arguments

This thesis interrogates the ways in which law sets the boundaries of dissent. It investigates limitations and possibilities of resistance to hegemony where law serves as a point of departure or focus of different strategies of resistance. Those strategies act in relation to the law, on a spectrum that moves from resistance within the law, to

resistance through legislation and adjudication, to resistance that disregards the law. Furthermore, reflection on the relative successes and failure of these resistance practices will enable a more nuanced evaluation of their efficacy in context specific cases.

A few theoretical conceptualisations and assumptions lay the ground for this project. The concepts of hegemony, law and resistance that are found at the core of scholarly debates underlie the discussion, and the thesis investigates them separately as well as their interrelations and entanglements, wherein law can be a mechanism of hegemony as well as a site of resistance. Furthermore, the analysis is grounded in the idea that uncovering the ways in which hegemony functions reveals the ways available to counter and resist it. Indeed, resisters utilise the law and legal institutions in struggles to expose hegemony's internal contradictions and to weaken it where possible. Otherwise, where hegemony's internal structures are strong, strategies of resistance that are exterior to the state's legal institutions are in place, outflanking it from outside. I offer a nuanced analysis of resistance practices within and outside the legal system throughout this thesis to shed light on this very intersection between hegemony and resistance.

The following are the building blocks of the argument: firstly, I conceptualise the Israeli system as a hegemonic system. An elaborated discussion of the concept is offered in chapter one, but here it suffices to say that hegemony, as conceptualised by Antonio Gramsci, is a form of rule that is based on formation/manipulation of consent rather than reliance on force alone, and it is one which strives to keep a balance between these opposing poles. Although force and violence set the limits of resistance, it is hegemony that plays the central role as exemplified in the role of law. Law's violence remains as the threat that can be invoked when hegemony fails to lead to the desired results by consent. Second, I contend that law is the one of the most significant mechanisms sustaining hegemony, as it plays a double role of education and repression (resonating consent and coercion as components of hegemony), disguised under the rule of law which as outlined, in Israel, includes the grounding in law of the Jewish and the democratic components of the definition of the state. Third, this research project studies resistance as multiple practices that are intended and recognised as such by hegemony. Fourth, in this project, law frames the discussion on different forms of

resistance, and resistance is conducted within or without the law, inside and outside the institutions of the state, using both judicial and extra-judicial means. Law, indeed, serves as the ultimate limit for resistance, but also provides a site where resistance can occur. As a mechanism of hegemony, the paradoxes and limitations embodied in resistance through the law are highlighted, alongside the possibilities that still exist within it to subvert hegemony. This possibility exists since hegemony is not a complete end-state but rather an open-ended and incomplete project, and its weaknesses and internal contradictions can be used in the struggle against it. Fifth, within this legal framework of analysis, citizenship is the defining category of the population of resisters, since citizens are able to mobilise legality and legal structures in ways that are blocked for non-citizens.[3] Indeed, this thesis encompasses resistance practices of Israeli citizens, both Palestinians and Jews, and leaves out the resistance of Palestinian non-citizens subject to Israeli military occupation in the Occupied Palestinian Territories (OPT) or living elsewhere, despite the fact that they constitutes different parts of the same whole. Citizenship is a defining factor for the position one has before the law and legal institutions: it is a category that is located inside the law. Citizens, either Jews or Palestinians (despite the differences between them that are highlighted below) are in a position of interiority in relation to the law. The law, even if at the declarative more than the actual level, is composed by and functions for the benefit of the community of citizens. The implications of this for resistance are elaborated in chapter one and two. Moreover, citizenship here should be seen as a structure of opportunity and a central resource for mobilisation, as well as a manoeuvring space for resistance "that forms a shield in face of possible brutal state policies that may result from its ethnic loyalties" (Jamal 2007: 265). Additionally, citizens can use their citizenship in order to expose the differential distribution of power in society and to "uncover the manipulations embedded in the dominant citizenship ideology by pointing out its dual character" (Ibid). It is indeed these strategies adopted by citizens in their resistance to hegemony that I explore below.

Using these assumptions and frames of analysis, the thesis aims to contribute to two bodies of scholarship. The first is engaged specifically with the studies of the internal politics of Israel and the intricacies of interrelations and power transactions

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[3] On the ways in which Palestinian inhabitants of the OPT utilise the Israeli legal system to struggle against Israeli policies, see the important studies of Bisharat 1994, 1995 and Hajjar 2005.

that make the polity there. The engagement in this analysis uncovers the ways in which resistance to this form of power becomes possible and effective. Since the research project is theoretically framed by examinations of how Gramscian hegemony is made by means of the apparatus of the law, and the mutual constitution of the social/political sphere and the law itself, the research aims to contribute more broadly to the ways in which the law can on the one hand provide spaces of dissent and on the other hand, severely draw the borders of this space. This contradictory effect of the law means that dissent, while extremely important to transformations in the political sphere, might bolster the very state it challenges. More importantly, this research project is dedicated to the ways in which these obstacles and limitations are overcome in the specific cases analysed and more broadly in the struggles against Zionism within the State of Israel.

In light of these assumptions and theoretical framing, this thesis deals with the following questions: what are the possibilities and limitations of resistance to the law within the law? Can resisters adopt legal means as a means of resistance or should the legal framework be abandoned, partially or fully, in order to bring about a real transformation of state and society? How can resisters avoid co-optation and neutralisation by the state? Where can we find political spaces for the construction of an alternative political programme? Which strategies of resistance to Zionist hegemony are more effective?

My argument goes against a deterministic understanding of hegemony (and law within it), within whose structures all possibilities and opportunities of struggle are blocked. This is because hegemony is an unfinished and open-ended system, beset by internal contradictions, unachieved forms of mastery and persuasion rather than a fully existing end-state. Indeed, it is here that the role of resistance within hegemonic structures fulfils its promise. I argue that despite the strength of existing legal structures, those who operate within them have an enormous potential to subvert them and bring about a change, and this ability has everything to do with the way in which legal tools and structures are used in the struggle. Nevertheless, this thesis argues that an ensemble of resistance that acts simultaneously both inside and outside the legal system, constructing and disrupting, building and dismantling, seems to be most strategically effective in countering hegemonic structures, exposing their weaknesses and contradictions, and forcing hegemony to reveal its oppressive nature, thereby

losing its legitimacy both internally and internationally. Indeed, due to the very nature of the Israeli state, which offers a context in which settler colonial logic (embodied in the Zionist movement) operates within a liberal democratic framework (embodied in Israeli state institutions), only a conscious utilisation of the tools available within the state institutions, combined with the engagement of external forms of resistance, can reveal the full potential of radical resistance. It is resistance that exposes the contradictions between the state's Jewish and democratic pretensions, showing its willingness to suspend the one to defend the other, and revealing its coercive side. Different forms of resistance both inside and outside state institutions are analysed and evaluated through the examination of the ways in which hegemonic power-holders react to them and their effects on the different audiences that resistance is directed at, internally and internationally. Overall, the deterioration of the Israeli political culture from liberal structures and pretences into a more blatant oppressive system of rule, one that is expressed on both the discursive and legal (judicial and juridical) levels, can count as successes of resistance, which is conceptualised here as a strategy that sees the transformation of the system as part of a long-term practice of dismantlement.

Case selection, methods and sources

The primary research material for this thesis is extensive semi-structured interviews and open and informal conversations conducted during several research trips to Israel. These were done within three cases I have selected. First, I interviewed current and former attorneys and other officers of Adalah, 'The Legal Center for Arab Minority Rights in Israel', founded in 1996 as an institution that would devote its work solely to legal activism and advocacy, with an emphasis on Palestinian group rights within the Israeli state. Adalah is a fascinating case to investigate since it is consciously working to challenge the power relations from within, through the Israeli legal system. Adalah's focus on collective or group rights reflects its commitment to subverting the attempt of the Israeli state to disaggregate and individualise the Palestinian citizens in Israel. Additionally, Adalah's work is not restricted to the legal front, but also strives to advance an alternative formulation to the Israeli legal system, drafted as a constitutional proposal based on democratic, bilingual and multicultural notions, to

replace the ethno-national conception of the Jewish state. To inform and enrich the discussion and analysis on the limitations and opportunities of legal resistance, I also interviewed independent attorneys who dedicate their work to cause-lawyering, who provided a critical perspective on the organisational legal work of Adalah.

Second, I interviewed members of parliament, party activists and members of the National Democratic Assembly party (NDA), established in 1995. The struggles of the NDA within and outside the Israeli parliament provide an interesting case study for exploring a different type of resistance within the institutions of the state and its legal structures. The NDA's is a struggle to democratically change the nature of the State of Israel to a 'state for all its citizens' instead of the current 'Jewish and democratic' formula. Ever since its inception the party was subject to ongoing attempts to discredit and ban it from participating in the general elections and its members were and still are persecuted. Hegemonic power-holders' attempted repression of the activity of the NDA party does indeed provide an indication of the potential and actual threat that this kind of resistance poses to Israeli hegemony.

Third, I interviewed activists from Anarchists Against The Wall (AATW), and the 'Boycott! Supporting the Palestinian Call for Boycott, Divestment and Sanctions from Within' group. The first was established during 2003 in response to the construction of the wall Israel is building in the Occupied West Bank, and the second in response to the 2005 Palestinian-initiated campaign of boycott against Israel. Both are loosely defined groups engaging in resistance practices outside the institution of the state and on the borderline between the legal and the illegal, through participation in demonstrations and direct action in the case of the AATW, or campaigning for boycott, divestment and sanctions against Israel, mainly in the cyber sphere. Additionally, I interviewed other activists involved in resistance to Zionist hegemony in various ways, such as refuseniks, members of Abnaa al-Balad[4] and other groups engaged in resistance outside the institutions of the state. These informed the analysis of the possibilities as well as the constraints on resistance from the outside that state institutions impose, facilitated by the examination of how hegemonic power-holders

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[4] Abnaa el-Balad is a Palestinian movement that started in 1969 as part of the rising of Palestinian citizens' resistance. The movement call for the return of all Palestinian refugees and end to the Israeli occupation and the Zionist apartheid, and the establishment of a democratic secular state in Palestine. The movement boycotts elections to the Knesset.

react to these forms of resistance, discursively, juridically and judicially.

Finally, I spoke with scholars from the fields of law, politics and sociology, in conversations that contributed greatly to the processing of data and provided insights that enriched my analysis.

Establishing contacts and networking can be a difficult and lengthy process, but here I benefited from personal acquaintances with many of the Jewish-Israeli activists, due to my personal involvement with these forms of resistance. Forming a small intimate group of resisters – non- or anti-Zionist activists are few in number – and once contact is established with some, one can meet most of them. As for contacts with Palestinian activists, these relations were considerably more complex to establish. I would like to point to several ethical and methodological issues I encountered throughout my work. A fact that cannot be overlooked or dismissed is that ethnically speaking, I am a member of the hegemonic group this research project examines. A Jewish-Israeli Ashkenazi woman coming to investigate forms of dissent and resistance to hegemonic power is rightly treated with suspicion and mistrust. Often, my position and stance had to be clearly delineated upfront, and my contacts and credentials as not being part of the security apparatus of the state had to be reaffirmed. Secondly, language issues. Since my Arabic is not good enough for conducting complex interviews, where possible, conversations and interviews were conducted in English. Where interviews were conducted in Hebrew, the language of power, many times it obstructed the possibility of establishing empathy and understanding, and made openness by my interviewees difficult. From an ethical point of view, I took special consideration of the fact that many of the people involved in anti-Zionist activity are or can be subjected to persecution. This may come in the form of covert or open surveillance by the security services, which can, and indeed in many cases does, end up in detention or imprisonment. This is mainly true for the Palestinian citizens of Israel but also for some of the Jewish activists. Among them, many who express in words or actions strong anti-Zionist sentiments are indeed silenced by the state. In order to avoid putting any individual or group in danger, the purposes of the research project were presented openly and fully to all the interviewees, and consent was sought in order to be included in this thesis.

This research project also entailed discourse analysis of legal materials,

including documents, appeals to the Supreme Court and position papers. Additionally, other verbal and written statements, publications, and reports were examined and evaluated. Since this project is not grounded in legal studies, but rather in social and political analysis, these materials are dealt with accordingly: they were read in their social and political setting. Pierre Bourdieu (1991: 76) has noted that "Since a discourse can only exist, in the form which it exists […]socially acceptable, i.e. heard, believed, and therefore effective within a given state of relations of production and circulation, it follows that the scientific analysis of discourse must take into account the laws of price formation which characterised the market concerned or, in other words, the law defining the social conditions of acceptability." Since most of the material involved in this research is found within the rubric of attempts within Israeli law to subvert it, close attention is paid to the use of language, frames and to the context in which they were produced, the identity (political, national, social) and social location of the actors who produced them as well as to the silences within them.

Chapter outline

Following this preface, chapter one offers an introduction to the concepts of hegemony and law, both theoretically and in the Israeli context. Chapter two then conceptualises resistance practices, within and outside hegemonic structures of the state. Since law and resistance are seemingly two contradictory concepts – while the law is instrumental in producing and sustaining the hegemonic order, resistance aims to subvert that very order – these chapters untangle the paradoxical relationship between them and contextualise it in relation to resistance to Zionist hegemony in Israel. The complexities and possibilities of different forms of resistance, both internal and external are revealed and discussed.

Chapter three examines the legal resistance of Adalah, the 'Legal Center for Arab Minority Rights in Israel.' This form of resistance is a multi-layered activity that by its nature strives to overcome the severe limitations the legal field imposes on its actors. It begins with the work of litigation and engagement with the Israeli court system, thereby exposing the paradoxes of litigation as resistance, and then moves on to other forms of legal resistance outside the courts, in advocacy, representation and

promotion of an alternative legal-political programme for the state. While initially the engagement is with the existing legal structures and procedures, it ends up in an attempt to overthrow the legal system and construct an alternative one in its place.

Chapter four is dedicated to the slow and steady struggle of the National Democratic Assembly party in the Israeli parliament, a platform that constrains its actors through its procedures and regulations, and the set of laws that determines the rules of its game. The NDA attempts to evade these limitations and constraints through a multi-layered approach. This chapter reveals the ways in which the party's very existence, the political agenda it promotes, its parliamentarian work, as well as the extra-parliamentarian engagements of its elected members are posing a threat to hegemony and undermine it from within, thereby leading to severe reactions, both judicial and juridical.

Chapter five shifts the discussion to a contradictory strategy of resistance and withdrawal, following a non-hegemonic theoretical underpinning. It is dedicated to the aims and patterns of activity that two groups of resisters engage in: Anarchists Against The Wall, and Boycott! Supporting the Palestinian BDS call from within. Despite their differences in terms of tactics, these two loosely defined groups share a strategy of resistance that refuses to engage itself with the state's institutions but rather strives to find alternative spaces of action in which they are able to evade hegemony's firm grip. The chapter also engages in a discussion of the ways in which hegemony reacts to these threats, in terms of repression, and the effects these reactions have on resistance and its goals.

Chapter six considers and evaluates the strategies of resistance based on a threefold reconstruction, based on different forms of hegemonic reaction to resistance; effects resistance has on the audiences it is directed at; and the creation of a repertoire of resistance. This in turn leads to the conclusion that the theatre of contemporary 'war', in terms of hegemonic and dominative forms of power, exemplifies the need for the ensemble of resistance. Since the scope of hegemony and the execution of power manifest themselves on a spectrum of violent means, resistance must therefore engage in a combined within/withdrawal strategy that does not exclude any means or tactics, but rather utilises them in concert, in a way that uncovers their true potential.

Chapter One: Introduction: Hegemony and Law

In December-January 2008/9, the Israeli army launched an attack on the Gaza Strip, known as Operation Cast Lead. While the Israeli government insisted that the operation was a response to the continuous rocket shootings from the Gaza Strip towards the nearby Israeli towns and villages, the operation should be understood as one in a series of Israeli assaults on the Gaza Strip in the ongoing attempt to destabilise the Hamas government and lead to its downfall, continuing ever since it rose to power in the Palestinian elections of 2006. Operation Cast Lead left more than a thousand Palestinian dead, thousands more injured, and immeasurable damage to infrastructure and houses. Operation Cast Lead met with strong criticism and condemnation by international public opinion.[5] Thousands took to the streets in many European capitals around the world, calling for an immediate stop to all military operations, labelling Israel's actions as massacres and war crimes. The UN Human Rights Council established a fact-finding mission on the 'Gaza Conflict' to investigate violations of international human rights law and international humanitarian law in the Gaza Strip during the attack. The mission published its findings in a report named after the judge who headed the mission, Richard Goldstone, and accused Israel of violating international law in a number of cases.[6]

During and following the attack, the gap between public opinion in Israel and internationally was huge. Jewish-Israeli public opinion showed unprecedented support for the operation, its objectives and for the conduct of the Israeli army. A poll conducted a week and a half into the attack, published on 9 January 2009 in the popular Israeli news platform *Ynet*, indicated that 94% of the Jewish population either supports or highly supports the military operation, and that 90% think that Israel should continue the operation until it achieved its full goals.[7] During the attack, even a quick glance at the Israeli newspapers, TV channels and radio programmes revealed the level of support for the leadership that was expressed in that period. It is another

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[5] I refer here to civil society and not governments.

[6] It is important to mention that Israel refused to cooperate with the mission and therefore no Israeli officials, civilian or military contributed to the investigation.

[7] This poll is part of a monthly 'War and Peace Index' poll supervised by Prof. Ya'ar from Tel Aviv University and Prof. Tamar Herman from the Open University.

sign, out of several others that indicates, "how efficient the Israeli propaganda and justification machine is, and how naturally people here believe in myths that have been disproved again and again. […] People are not being told what to think or say; they reach these insights 'naturally'" (Mendel 2009).

The almost undisputed public support of Operation Cast Lead is just one recent and striking example of the ways in which the Jewish Israeli population is willingly and unwillingly conscripted to justify and identify with the national project that stands at the core of the Israeli state. This support exemplifies how a combination of 'security culture', propaganda and people's 'common sense' function in the State of Israel. Similar situations of overwhelming conscription and unquestioned support occurred also during the outbreak of the Second Intifada in September 2000, the Israeli invasion of Palestinian cities and towns during Operation Defensive Shield in 2002, and finally the Israeli army's assault on the Gaza Freedom Flotilla in May 2010.[8] This 'common sense' is the manifestation of Zionist hegemony, which this research project seeks to understand in order to reveal the ways in which it can be effectively resisted.

As promised in the preface, this research project offers an evaluation and analysis of modes of resistance to hegemony in contemporary Israel, through the prism of the law. Since different forms of coercion are likely to give rise to different forms of resistance, an understanding of the way hegemony works is essential, as well as the place law takes within it, in order to recognise and (ab)use the contradictions and weaknesses that are part of this very system. This chapter contextualises the discussion in the State of Israel and prepares the ground for the empirical investigations the following chapter presents.

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[8] On the Israeli public opinion and the role of the media during the outbreak of the second Intifada and Operation Defensive Shield see Dor 2001, 2003. Dor describes 'newspapers under the influence' – of fear, rage, hatred, ignorance and mainly – under the massive propaganda activated by the government and security apparatus (Dor 2001: 20). Tanya Reinhart's (2010) book, which is based on a course taught in Tel Aviv University, is an excellent analysis of the interrelation between the Israeli media and the political and security establishment.

Hegemony and law: theoretical reflections

Understanding 'hegemony'

For decades scholars have used the term hegemony in various contexts, to conceptualise diverse political systems, local and international, in multiple and incompatible ways. Although not the first thinker to invoke the term hegemony, Antonio Gramsci (1891-1937), the Italian thinker, founding member and leader of the Italian Communist Party, was the one who gave currency to it. The use of the concept throughout Gramsci's *Prison Notebooks* is inconsistent and contradictory mainly because of the peculiar conditions of their composition. Gramsci was imprisoned in 1926 by Mussolini's Fascist regime as part of the clamp down on opposition parties, and spent the rest of his life in prison where he composed the most important texts of his theoretical work. As such, Gramsci's work is a living text, open to interpretations and re-articulations which many scholars have undertaken. Due to the conflicting interpretations and understandings, it is vital to provide a precise explanation of the way in which the concept of hegemony is treated here.

Gramsci understood hegemony both as a form of rule – a way in which power is organised (in which terms he referred to it as the hegemony of the bourgeoisie), and as a strategy of struggle and an aim in itself (the establishment of the hegemony of the working class). Both these meanings of hegemony are used in the analysis of the case of Israel. By and large, Gramsci treated hegemony as a system of sophisticated rule that is sustained by means of both coercion and consent, which must be maintained in a delicate balance, however throughout his writings, the concept changes and contradicts itself. These contradictions stem from Gramsci's mixed treatment of the concept of the 'state,' as further discussed by other scholars (for example see Cain's discussion of narrow and expanded conceptions of the state (1983); Lears 1985 and Fontana 2005; 2006).

At first, Gramsci draws a distinction between consent and coercion and the spheres in which they operate. These are civil society and political society (or the 'state') respectively. But in his later articulation they become one in the functioning of hegemony by the 'integral state' (Anderson 1976; Fontana 2006). I suggest that Gramsci's later version embodies the complete form of hegemony in modern

parliamentary democracies, according to which the way hegemony works is a combination of coercion and consent, violence and persuasion, which are "variously balancing one another, without force exceeding consent too much" (Gramsci 1988: 261).[9] Furthermore, only modern and democratic states have the resources to develop systems of mass persuasion and mobilisation "to make it appear that force is supported by the consent of the majority, expressed by the so called organs of public opinion", such as the media, schools and churches. The notion of 'public opinion' is crucial here, since it is the contact point between 'civil society' and 'political society'. Ultimately, the strength of the state (or hegemony) depends on its ability to incorporate the cultural and ideological activity that takes place within civil society, thereby transforming it into legitimating support. The desired outcome of this process is that only one force shapes opinion, the national political will, thus reducing opposition to scattered and disorganised dissent (Fontana 2006: 36-38). This point is emphasised later in the discussion.

Indeed, the line of separation between state and society is an artificial one and the state should be understood as a 'structural effect' rather than an actual structure. In this way "the state seems to stand apart from society and yet […] this distinction [is] […] an internal arrangement. The boundary of the state is merely the effect of such arrangements and does not mark a real edge" (Mitchell 1991: 95). Hence, one of the defining characteristics of the modern political order is the aim to produce and reproduce this line of difference between the state and society. It seems that this line of argument goes hand in hand with Gramsci's perspective, since he notes the "distinction between political society and civil society, which is made into and presented as an organic one, whereas in fact it is merely methodological. [...] since in actual reality, civil society and State are one and the same" (Gramsci 1971: 159-160).

As mentioned earlier, hegemony is produced and reproduced by both coercion and consent. This dyad depicts the state as the embodiment of an ethical/cultural life reinforced by force and coercion. Coercion is used against the 'enemy classes' that cannot be united under hegemony through consent. Coercion includes a variety of oppressive means ranging from use of brute force and state violence, to the threat of

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[9] Hannah Arendt's essay *On Violence* (1970) stands on the distinctions between force, coercion and violence. In this project, violence is used to describe a mean of coercion.

this violence in the presence of surveillance techniques, the work of the secret 'security' police and other forms. It is important to note that what separates hegemony from direct domination are the organisation of consent and the control of the consciousness of the population, and not reliance on force alone. At the same time, one must not ignore the important role of coercion that should be seen as the "balancing and limiting pole of the dyad" (Fontana 2006: 44). Hegemony thus cannot be understood but as a delicate balance of the two.

Since organisation of consent and control of consciousness are indispensible to hegemony, ideology plays a vital role here. While hegemony constitutes a complete fusion and a higher synthesis of economic, political, intellectual and moral objectives between various social groups, ideology should be understood as the cement through which hegemony manages to hold together the whole of society (Mouffe 1979). Since consciousness is not originally given but is the effect of the system of ideological relations into which the individual is inserted, it can be determined that ideology creates subjects and makes them act (ibid: 186-187; see also Lears' (1985) discussion of cultural hegemony). The intellectuals are the organs of civil society that manufacture and maintain ideology throughout it, and in fact exercise the political and social hegemony of a social group.

As hegemony embodies the synthesis of state and civil society, it is sustained by various mechanisms: manufactured 'public opinion', manipulation, formation of consciousness and ideology. One of the most powerful instruments of hegemony is the state's legal system. In what follows, I argue that law is a vital tool in the 'hands' of hegemony, and explain the mechanisms by which it serves to bolster it. However, despite this seemingly complete synthesis, it is crucial to remember that hegemony is an incomplete system rather than a fully existing end-state, therefore there always exists a space within hegemonic structures where one can resist.

Understanding law

> …[L]aw is not simply, or even primarily, a gentle, hermeneutic apparatus; it always exists in a state of tension between a world of meaning in which Justice is pursued, and a world of violence in which "legal interpretation takes place in a field of pain and death."
>
> Sarat 1998, quoting Cover (1986: 1601)

Law, state, society

What is law? This question has everything to do with how one perceives law's place in society. Following the analysis of the American legal historian Lawrence Friedman (1984), legal historiographical debate surrounding the place of law and relations between law, state and society developed in three phases, distinguished chronologically. The first can be defined as the 'formalistic' approach or the 'closure paradigm.' The second is the 'instrumentalist' one (or the Wisconsin School), and the third is the critical approach. The formalistic approach flourished in the US towards the end of the 19th century and until the beginning of the 20th century (in other places it prevailed even longer), and saw law as a set of norms, practices and rules that function as an autonomous and closed system. According to this view, the rule of law appears rational and benign. It presupposes a critical distance between the vagaries of social life and the higher rationality of legal knowledge, and also supposes its independence from the power struggles and value judgments of social and political life (Horwitz 1992: 33; Gordon 1981; Peller 1985; Cotterrell 1986). The Wisconsin School developed during the 1950s-60s in Wisconsin University's law school, with Willard Hurst as its founder. One of the main concerns of the school was "law's living relation to general values and processes of the society" (Hurst as quoted in Friedman 1984: 565). It placed the analysis of legal change within a larger context of external influences, as contrary to the previous focus on internal processes and doctrines alone. The basic assumption of this school was that law is functional, thereby it fulfils an instrumental role in society. In this way, social, economical, political and ideological changes have a crucial influence on the legal sphere and they must be taken into account when analysing legal change (Friedman 1984: 564-567).

The Critical Legal Studies School (CLS) emerged among scholars throughout the 1970s and the 1980s as a critique of both the formalistic and instrumentalist approaches. It strives to show how law is manipulated by the interests of those in power, and tends to conceive the legal project as necessarily a social and political one: since law is socially constructed, it is therefore analytically inseparable from social and political relations (for example see Kairys 1990; Gordon 1998; Hunt 1985). Legal doctrine is treated as ideology, "a way of structuring social experience that seems to be a functional response to social need but in fact is a way of making the existing order

seem natural and necessary" (Gordon 1981: 1054).

The work of some CLS scholars is closely connected to the neo-Marxist social theory that has gained increasing influence in Western academia in the 1960s. It placed an increasing emphasis on the internalised feeling of social alienation and sense of powerlessness caused by the capitalist society, which became a self-generating source of social repression that reproduces social categories that are unchanging. In this process of internalisation and acceptance, the legal system plays a vital role: "The legal system is an important public arena through which the State attempts – through manipulation of symbols, images, and ideas – to legitimize a social order that most people find alienating and inhumane" (Harris and Gebel 1982: 370). A less radical version of the CLS approach still highlights the opportunities of bargain (or struggle) that exist within the law. Thus, while implicated in politics, "law is one of the things that constitute the bargaining power of people across the whole domain of private and public life" (Kennedy 1991: 361). Here, even if using the law is an exercise of power that "seem[s] merely instrumental to existing goals" it still leads people to "bargain again from the new starting point", that was altered from a previous appeal to the law (Ibid).

Following the insights offered by the CLS approach, I treat law as a social and political institution: it is socially constructed and therefore analytically inseparable from political relations. Furthermore, I discuss law as producing social relations, subjects and subjectivities. In this way, law "neither operates in a historical vacuum, nor does it exist independently of ideological struggles in the society" (Hutchinson and Monahan 1984: 206).

Alongside these symbolic and political effects of the law, violence remains a crucial element in establishing and maintaining the law's authority. As mentioned in the preface, Walter Benjamin's important essay *Critique of Violence* (2009) sketches the intimate relations between law and violence. The argument claims that law is based on violence and functions through force. Violence gives birth to law, as it establishes the regime and the legitimacy of action within it. Hence, state law draws the line between legally permissible violence and impermissible violence. The legally prescribed violence is occasionally mobilised against impermissible forms of resistance/violence that seek to fundamentally challenge state law. Permissible

violence receives immediate justification, as the law declares the obligation to respect it and gives authority to the regime to use force in order to *enforce* it. In fact, in his discussion of Benjamin's essay, Derrida (1990) points out that the word 'enforce' contains the use of force, and therefore reminds us that law is indeed an authorised and justified use of force.

Thus violence is the other side of law, according to the instructions and limitations determined in law and by law. Without limitations on the exercise of force, law loses its legitimacy and the use of force can be exposed immediately as lawless violence. Challenges to the law are met with force, and the greater the threat, the greater the chance the use of violence may occur. The comprehension of these relations is vital for the analysis of the interrelations between law and hegemony, as well as the educative and coercive aspects of the law. These issues are of particular importance in the analysis of the Israeli case, as discussed below here, and later, in the analysis of the ways in which the state responds to what it perceives as threats to its very foundation.

The Janus face of the law: education/repression

According to the analysis offered thus far, law is social and political both in terms of its effects and its origin. It is born in the violence that constitutes the state, and exists in order to produce and reproduce the social and political order. Law plays a crucial part in the creation of both the political and ideological elements of hegemony, and thereby must be understood as part and parcel of the hegemonic order. Law thus embodies a manifestation of various sorts of power, including the authority to legitimate a certain social order, determine relations between persons and groups, and form cultural understandings and discourses.

As a discourse and consciousness, the law assists "in proliferating state control and discipline across landscapes and population(s), in disseminating the marks and effects of the state and state reason, its modes of comprehension and logic [...]. Law fashions state identity and order over diffuse regions, people(s) and activities." (Goldberg 2002: 139-140). Law therefore is deeply implicated in establishing state sovereignty and consolidating it, since it is the grounding and the expression of the

political regime (Giddens 1985). Additionally, law has a national dimension and it can function as a 'shield' under which the imagined community of the nation unites through the adherence to its rule, a place where the nation seeks to realise and recognise its values (Gilroy 1987; Povinelli 2002). Following this line, it can be determined that through law, ideological notions of nation and ethnicity are also becoming routinised in state institutions, penetrating into civil society and its institutional frameworks. Law defines the community protected by the state, categorising people differentially and hierarchically, thus enabling state power.

Several aspects of the law induce the submission and resignation typified by hegemony. Firstly, the exclusivity element. The state holds a monopoly on the enactment and enforcement of the law, and therefore the power to determine the notion of the subversive. Thus, legal discourse is in fact a discourse of power. Secondly, law is an instrument of social construction. Law defines criminality and legitimises certain behaviours as desired. The criminal sanction applies to activities that are seen as harmful to existing interests, and law thus discourages such behaviours. At the same time, the law rewards those who adhere to a selected set of institutions and relationships, recognises these actions as meaningful and protects people who follow them. It therefore can be determined that law structures the very manner in which people experience and understand social life. In this way, legal discourses serve to reproduce certain social categories of people, places and events, and determine roles for any individual or group as well as teach people how to behave in these roles. However, it is important to remember that this social construction is incomplete because law itself is not necessarily coherent and determinate (Kennedy 1997). Thirdly: the closure of the legal system. The legal system seeks to form a bounded universe of possibilities that frames all legal disputes within its parameters. The hegemony that dominates the existing legal system consists of the firm hold deployed by a few key concepts (in a similar way to those used by sciences like biology, physics or medicine) that form a deep structure that perpetuates the existing power relations. It is a code that is self-referring and self-legitimating and therefore very difficult to subvert because it forms a closed system at any given time (Litowitz 2000; Blomley 1994). Yet, the law is not a flawless system as it is also host to contradictions and ambiguities (Kennedy 1997). This in turn allows a space for counter-hegemonic struggles and ideological contestation.

Finally, "legal reasoning itself is an ideological form of thought whose distinctive legitimising characteristic is that it *presupposes* both the existence of and the legitimacy of existing hierarchical institutions" (Harris and Gebel 1982: 373).[10] Hence, the conservative power of legal thought is to be found in the reification of the very categories through which the nature of social conflict is defined. The legal system channels all forms of serious social conflict into the courtroom, a public setting that is loaded with ritual and authoritarian symbolism, in a way that helps generate a belief in the authority of the law and authority in general. Indeed, "law becomes an object of belief which shapes popular consciousness toward a passive acquiescence or obedience to the status quo through the association of this legitimizing political imagery with the spectacle of authoritarian ritual that the legal system acquires its mass-psychological power" (Ibid: 374). The idea of law as a mechanism of formation of consciousness indeed brings the argument back to its Gramscian origins.

Although Gramsci dedicates no more than few paragraphs to the role of law in the hegemonic structure, the scattered remarks throughout his notebooks indicate his understanding of law as being both educative/persuasive and repressive/coercive. This becomes evident from his comment that, "If every state tends to create and maintain a certain type of civilisation and of citizen [...], and to eliminate certain customs and attitudes and to disseminate others, then the Law will be its instrument for this purpose" (Gramsci 1971: 246). On the one hand, law is educative/persuasive since it assists the dominant group through the creation of a 'tradition' or norms in an active sense, since the standards and ways of thought embodied in the law penetrate civil society and become part of the 'common sense' of the people. Law produces a correspondence between individual conduct and the ends which society sets itself in a way that makes these ends accepted in a 'spontaneous' and 'free' way (Cain 1983; Benney 1983). Therefore, law is a form of disciplinary power, which typifies hegemonic rule. On this Gramsci has noted that the law operates in civil society (as opposed to its formal role in the state) "without 'sanctions' or compulsory 'obligations', but nevertheless exerts a collective pressure and obtains objective results in the form of an evolution of customs, ways of thinking and acting, morality, etc" (Gramsci 1971: 242). For Gramsci, norm creation and practices directed towards

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[10] Emphasis in the original.

securing compliance with norms are both legal. Thus, legal behaviour can be found in civil society, and not just in the state's institutions. Law calls subjectivities into being, and this is "law's constitutive role in daily life, at work in consciousness formation and cultural creation" (Goldberg 2002: 146). Accordingly, law assists in shaping and circulating identities, meanings, and so the social world. Foucauldian analysis of law and governmentality, refers also to the disciplinary role of law, and reminds us that contrary to the 'old system' in which law secured obedience by itself, nowadays, in the modern disciplinary system, "it is not a matter of imposing a law on men, but of the disposition of things, that is to say, of employing tactics rather than laws, or of as far as possible employing laws as tactics; arranging things so that this or that end may be achieved through a certain number of means" (Foucault 2009: 99). Again, it is not the existence of laws themselves that secure compliance, but the norms that became part of the common sense of the people subjected to the rule of law. This relieves the law from too frequent deployment of violence against its subjects.

On the other hand, and simultaneously, law is repressive/coercive since it secures compliance with those norms, and punishes those who disobey them. One may subvert the law or violate it, but the law always stands as the dominant force that defines the subversive activity as subversive in the first instance. In the process of changing the law, one must first recognise the law and accept the consequences of breaking it. Moreover, one cannot escape the law by inaction since it applies to everyone regardless of personal beliefs about its legitimacy (Litowitz 2000; Cain 1983; Benney 1983; Kennedy 1979; Hirsch and Lazarus-Black 1994; Vincent 1994).

Herein lies the uniqueness as well as the strength of law as a political institution: it is simultaneously "rule and politics, ideal and reality, neutral and partisan, above the fray and in the midst of it" (Abel 1998: 69). Many times, it is about appearance more than actuality, as law maintains itself as an effective ideological tool through the display of an independence from gross manipulation and appearance of adherence to justice (Thompson 1975: 263). This is precisely what makes law so powerful as a mechanism that sustains power, and also as a sphere of struggle against it.

The 'rule of law', 'liberalism' and 'democracy'

In order to ground the conceptualisation of the regime in the State of Israel, which is defined as both Jewish and democratic, wherein ethno-nationalism and (liberal) democracy both play a role in the shaping of state institutions and the law, further definitions must be made. While the concepts of democracy, the rule of law and liberalism indeed deserve a much wider discussion since they are found at the centre of vast scholarly debates, for the purposes of this project a brief sketch of the main themes in them is offered in a way that highlights the possibilities to utilise law in the struggle against hegemonic structures of the Israeli state. I offer a discussion in the ethno-national component in the next section.

Many authors point to the interrelations between rule of law, liberalism and democracy and the rivalry between them. A narrow definition of the rule of law entails "government not by the arbitrary determination of the ruler, but by fixed rules of law, to which the ruler himself is subject" (Hobhouse 1964). Therefore, at its core, the rule of law requires that government officials and citizens will be bound by and act consistently with the law. By itself and within this narrow definition, the rule of law does not imply democracy, respect for human rights or any particular content in the law. It can also be law that enforces an authoritarian order, imposes an alien or antagonistic set of values on the populace, or when the law is used by one group within society to oppress another (Tamanaha 2007). Nevertheless, the rule of law implies that a level of predictability is maintained, and citizens "know in advance how the law operates and how they must act to avoid it having a detrimental impact on their affairs" (Waldron 2008: 6). Another legal school focusing on the concept of the rule of law emphasises the issue of procedure, where it is not just about general rule but also about impartial administration, meaning that the rulers must apply those with care and attention to fairness. In this strand, the rule of law is associated with political ideals such as the separation of powers and the independence of the judiciary (Ibid: 7).

Liberalism is the ideology that sees liberty as the fundamental political good. Liberalism centrally values the autonomy of individuals and their rationality and claims that government has to treat citizens with equal concern and respect. In this sense, liberalism promotes the respect of freedom of 'choice,' as the exercise of an individual autonomous will. Whether implicitly or explicitly then, crucial questions

raised about the nature of the representative authority of the autonomous agent and about the extent to which the state can legitimately limit individual 'choice' and the extent to which the state must guarantee and protect an individual right to make a choice. Hence, the institutions and principles of the liberal state are designed in order to secure the individual "against robbers, petty [fellow lawless citizens] and great [lawless tyrannical rulers]" (Kautz 1999: 440). These principles and institutions include limited government founded on the separation of powers; checks and balances; representation and an independent judiciary; freedom of speech and thought; and respect for right of property and contract in order to unleash human industry (ibid: 440-442). What is important here for the purposes of this study is the distance between the power of the state and the individual which liberalism secures.

What is democracy then? There are many ways in which democracy can be defined for the concept has been subjected to many studies. The most basic definition is 'the rule of many.' While some scholars speak about the responsiveness of governments to the demands of their citizens (Dahl 1971), others emphasise the importance of active and equal participation in collective self-rule (Macpherson 1973). Another definition includes, in a democracy: a) regular, free, and fair elections of representatives with universal and equal suffrage; b) responsibility of the state apparatus to the elected parliament; and c) freedoms of expression and association as well as the protection of individual rights against arbitrary state action (Reuschemeyer et. al., 1992). Finally, an alternative definition of democracy offers a spectrum along which regimes can be measured, which includes indication of broad and equal citizenship, binding consultation of citizens and protection of citizens from arbitrary state action (Tilly 2000: 4). This definition captures the depth of a particular democracy, according to the extent to which the criteria he mentioned are met.

It is important to note that the rule of law does not necessitate democracy, and some democracies are not liberal. Indeed, the rule of law provides essential support for democracy, but we can see many occasions in which it has also joined with liberalism against democracy. Hence, it is not an equal partnership, since "liberalism is the dominant partner in this aspect of their relationship, utilizing the rule of law to advance liberal ends. When liberal ends are threatened by democracy, democracy has often suffered" (Tanamaha 2004: 517).

Nevertheless, the very structure of liberal (sometimes referred to as constitutional) democracy is contradictory since while democracy suggests unconstrained freedom for the will of the majority, constitutionalism draws in the opposite direction by imposing constraints on this freedom since it guarantees that legislative powers have limitations. Constitutionalism can be understood as the rules and principles that place limitations of the political powers of the parliament, and its main characteristics can be a constitution, the separation of powers, a declaration of rights, and/or juridical review on legislation. "Metaphorically, constitutionalism is the gatekeeper that guards against closing the gap between legitimacy and justice. It also maintains the tension between the common good – as understood by popular majorities – and the protected space delineated by individual rights to allow the pursuit of differing conceptions of the good life" (Sultany 2012: 382). While the paradox is not solved here, the point raised is crucial in the study of law as a sphere of resistance. It draws our attention to the fact that there is a space within the law in which citizens can claim their rights. I explore this space and its possibilities in depth throughout the thesis.

With these considerations in mind, together with the theoretical literature about hegemony and the place of law within it we can now better understand the special combination of law and ideology that form the consciousness of the Jewish society in Israel, and sustain the Zionist hegemony, and to conceptualise the nature of the regime in Israel also in relation to the concepts presented above. Indeed, Israel is a state governed by the rule of law, and is self-proclaimed as a democracy, and these categories play a crucial role in determining both the limitations and the possibilities of resistance practices against the hegemonic structures and ideology of the state. This is interesting since in Israel there is a constant attempt to maintain a balance between the democracy of the state and its Jewishness. The tension between the two poles is used by those who resist this hegemonic conception.

Zionism: law and consciousness in the State of Israel

Historical contextualisation and definitions

In the aftermath of the 1948 war between the Jews and the Arabs within and outside Palestine, the State of Israel reaffirmed its 14 May 1948 declared establishment. The Palestinian people were defeated militarily, socially and politically, with more than 700,000 of them becoming refugees, scattered between the territories of Jordan, Egypt, Syria, Lebanon and elsewhere. From 1949 until 1966, the Palestinians that remained in the territory of the State of Israel (their numbers range from 140-160,000 people) were subjected to a military regime that was officially established by the government as a security measure, but in practice, its unlimited authority became a mechanism of physical, economic and political control over the Palestinian community (Jiryis 1976; Peled and Shafir 2002: 110-112; Robinson 2005).

Nevertheless, since the State of Israel was declared also to be a democratic state, Israel extended its citizenship gradually to the Palestinians living in its territory. However, citizenship does not entail equality between Jews and Palestinian in the State of Israel. Although the Israeli Supreme Court asserts that equality is a core value, the principle of equality has no explicit expression in state laws (Zamir and Sobel 1999). Indeed, the fact that Israel is defined as a Jewish state guarantees special privileges to the Jewish citizens, enshrined in state laws.[11]

But history neither begins nor ends in 1948. The establishment of the State of Israel in 1948 was a culmination, albeit not the end, of the colonial project of the Zionist movement since the late 1800s to settle in the biblical land of Israel with Jews.[12] Indeed, the colonial drive of the Zionist movement continued and found a fertile ground following the occupation of the rest of the territories that were once part of Mandatory Palestine in June 1967. Only six months after the final lifting of the military regime in November 1966, Israel occupied the territories of the West Bank, the Gaza Strip, (as well as the Golan Heights and the Sinai), and still today, Israel controls the lives of millions of Palestinians residing in these territories, under military

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[11] A detailed discussion of these will be offered below.

[12] Conceptualisation of Zionism as a settler colonial movement can be found for example in Gershon Shafir's important 1996 study. Other studies include Piterberg 2008; and a collection of articles in the second volume (2012) of the *Settler Colonial Studies Journal*, "Past is Present: Settler Colonialism in Palestine."

and civilian occupation.[13] This occupation includes massive expansion of settlements throughout the occupied territory, that despite the fact that these territories (with the exception of East Jerusalem and the Golan Heights) were never officially annexed, deem the demarcation of Israel's borders impossible. Effectively, Israel controls the whole of the territory of the former British Mandate of Palestine together with the occupied Syrian territory of the Golan Heights, in a way that makes its democratic claim debatable.[14]

What are the effects of these political realities on the nature of the Israeli regime? As already mentioned, Israel defines itself as a Jewish and democratic state. A great deal of literature is dedicated to defining the nature of the Israeli regime and Zionist ideology, ranging from apologetic studies that try to accommodate the tension between the democratic principle and the Jewish one (Gabizon 1999; Smooha 1997) to critical ones undermining or denying the democratic character of the state altogether (for example see Bishara 1998; Yiftachel 2006; Azoulay and Ophir 2008). I do not go in depth into this discussion but rather investigate the opportunities that exist for resistance within the particularities of the Israeli regime.

Israeli political discourse is made up of three competing currents: Jewish ethno-nationalism, democratic liberalism and a colonial version of civic republicanism (Peled and Shafir 2008). These three components are vital to an understanding of the nature of the Israeli regime. Moreover, it is fundamental to understand that in Israel, the nation is imagined as an ethno-cultural community that is distinct from the citizenry of the state. When such a definition of the nation prevails, nationalism becomes internally as well as externally exclusive, "in a way that leaves other citizens, as outsiders to, perhaps even enemies of, the nation" (Brubaker 2004: 122).

Indeed, I argue that the conceptualisation of the Israeli regime as a settler colonial society based on ethno-national ideas of community operating within a

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[13] Civilian Occupation is the name of a banned exhibition catalogue, which was later published as a book in 2003, edited by Rafi Segal and Eyal Weizman. The term describes the spatial dimension of the Israeli occupation, exploring the ways in which specific architectural strategies have been used to control territory and to wield power over the OPT.

[14] The territory of the Gaza Strip was formally de-colonised as part of the Israeli disengagement plan in 2005, but as Gisha – Legal Center for the Freedom of Movement report show and according to International law, Israel still occupies the Gaza Strip. See http://www.gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol_en.pdf

framework of liberal democratic institutions can best indicate the uniqueness of this case as well as to explain the opportunities of resistance that exist within such system. Indeed, most Israeli Jews perceive themselves as living in a liberal democracy, and that the colonial and the religious-ethnic components do not contradict the democratic character of the state. This is also how the majority of the international community perceives it. Actually, this self-perception and image that Israel holds (as a state and amongst its citizens) is fundamental for understanding how forms of resistance can undermine this stance: resisters indeed use the state's democratic structures in order to struggle against its Jewish component. This in turn forces the state into a defensive position in which it resorts to emphasise more explicitly its Jewish component at the expense of the democratic one, mainly through legislation, thereby losing its credibility and legitimacy internally (amongst the liberal circles in the Jewish Israeli community) and internationally. This process is explained and analysed in depth in the following chapters.

This point is crucial for explaining the choice of citizens as the population of resisters that this research project investigates. Citizens (Israeli Jews and Palestinians) are internal to the state's institutions and legal system. The state's democratic ambitions aim to guarantee and secure all citizens' equality before the law, regardless of their national belonging. But here surfaces again the contradiction between the Jewish and democratic components. Palestinian citizens' utilisation of the state's democratic structures in their resistance to the state is exposing and highlighting this internal contradiction.

Hence, the dichotomy between citizenship and nationality is pivotal in the Israeli context, because the ability to influence the law – resist – is different for those who belong to the national group to those who are just citizens and are not nationals because they are not part of the definition of the 'public good.' This also opens up questions about Jewish anti-Zionists, and their contribution to the public good, which remain questionable. Nevertheless, all citizens have the ability to access and address the legal system, regardless of their national belonging, even if their ability to influence is divergent.

Zionist hegemony

Zionism as an ideology can be found both at the basis of the state's legal system and in the common sense of Jewish Israeli citizens. Although Zionism is not a monolithic concept and its meaning is open to different interpretations among various segments of Israeli society and Jewish communities around the world, in this research project, a contemporary and narrow meaning of Zionism is offered: the State of Israel is and should remain a Jewish state, a state in which the Jewish people expresses its right to national independence and self determination. At the same time, Israel is legally defined as a democracy. Both principles appear in the 1948 founding charter of the state, the 'Declaration of Independence.' Although the Declaration is a political edict and not a legal document, it nevertheless holds legal significance: it is an expression of the 'basic norm' of the law in Israel and it is the expression of the nature of the state, the creed of the nation (Rubinstein and Medina 2005: 37). Hence, it is a source of inspiration for future legislation of the Israeli parliament.

Over the years multiple laws have been enacted in the Israeli parliament which legally ground the Jewish nature of Israel and grant many privileges to its Jewish citizens, thereby structurally discriminating against its Palestinian citizens. The Israeli *Law of Return-1950* is a paradigmatic example of a law expressing the Jewish character of the state. It grants every Jew the right to emigrate to Israel and receive an automatic Israeli citizenship without conditions. This right is denied to Palestinian (inhabitants) spouses of Palestinian (citizens).[15] Other examples include the right to ownership of state lands, including the rights to transfer and sell them,[16] and legality of political activity.[17]

As elaborated above, law has an educative role. It is a tool that expresses the values of the hegemonic culture and enforces its norms, and at the same time creates new cultural norms. The legal definition of Israel as a 'Jewish and democratic' state preceded the formation of consciousness within the Jewish society in Israel, and

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[15] The Citizenship and Entry into Israel Law-1952. This law was amended several times to deny "unification of families" of Palestinians on both sides of the Green Line.

[16] The network of laws regarding land management and ownership can be a topic for a separate study. These include the management of state lands by the Jewish National Fund, transfer of Palestinian 'absentee' property to the development agencies and through that to the use of Jewish citizens, to name just two. See: Israel Land Administration Law-1960; Development Authority Law (Transfer of property)-1950; Jewish National Fund Law -1953 and its amendments.

[17] I offer a further discussion in these laws in the next chapters.

reflected the values and norms of the new Israeli elite at the time of the establishment of the state. Since law defines the community, the nation – which in Israel encompasses Jews only, the law by definition excludes the Palestinians that hold Israeli citizenship from enjoying certain rights and privileges. But nowadays, while we can consider law as a means of coercion in the hands of the state for those who do not conform to these principles willingly, the notion of a 'Jewish and democratic' state is produced and disseminated throughout society, and functions as a hegemonic principle in the Israeli-Jewish society. The vast majority of Jewish-Israelis hold the belief that the democratic principle does not contradict the state's simultaneous definition as a Jewish state, even in the demographic and political realities within which Israel is found. In fact, nationalism is perceived as an essential component of the democratic regime. This situation exists because Israel is a nation state in which the nation is defined in ethnic terms, and the right to self-determination of the ethnic group is perceived as axiomatic in the political discussion (Azoulay and Ophir 2008; Ram 2006).

Various apparatuses of the state play a fundamental role in structuring the nation as an ethnic group, as a historical narrative and political partnership. National identity and collective memory are structured and rooted in the ideological, bureaucratic and military spheres, in schools and households, in the work place and in the army, thus becoming firmly established in the subjectivity of the people. Accordingly, the commitment of the citizens to the state means commitment to the existence of the Jewish state (Azoulay and Ophir 2008. Similar discussions can be found also in Bishara 1993 and 1996). The perception of Israel as a democratic state despite its national-ethnic nature, receives further justification and legitimacy by the current overriding political concern, 'security.'

The employment of the term 'security' in Israel is pervasive and encompasses all spheres of life. Security in contemporary Israel "is linguistically employable at any given moment without the need to reference the reasons for any of its particular operations. [...] The term security contains the reasons, the means and ends, and as such, it justifies its own deployment. [...] It is like a black hole in outer space into which energy, stars and other heavenly matter collapse and disappear." (Esmeir 2004: 3). In accordance, the Israeli Security Agency (Shin Bet) is entrusted with maintaining

the Jewish character of the state and acting against any subversive practices (Khoury and Yoez 2007). The consensus view in Jewish-Israeli society is that of existential danger (Sakana Kiyumit) to the very existence of the state. David Ben Gurion, Israel's first prime minister, nurtured this view from the early days of the state. Israeli society has internalised the feeling of danger and this expresses itself in the terminology which people use to speak about the conflict with Arab states, understand Iran's nuclear programme, or perceive the Israeli occupation of the Palestinian territories. The perception of 'existential danger' has turned into an important component of Israeli 'security culture.' One of its manifestations is the ongoing legal 'state of emergency', activated in Israel from the day of its establishment until the present day.[18] The 'State of emergency' allows the security apparatus to act in ways that contradict the norms and laws that form the basis of democracy, without attracting public criticism. Indeed, 'security measures' and 'emergency regulations' are being endorsed and seen as necessary and inevitable parts of the life in Israel (Pedhazur 2003). Security thus creates a strong bond between the Jewish citizens and the regime. Indeed, many scholars describe Israeli society as a 'conscripted society' (for example see Kimmerling 2001; Ophir and Peled 2001).

Similarly, Israel is described as a 'nation in arms'; Jewish identity in Palestine was constructed mainly through the militarisation of society whereby the army served as an agent of development and integration (Ben Eliezer 1998; Kimmerling 2008). 'Media in arms' is a term referring to co-option and recruitment of the Israeli media on behalf of this 'nation in arms', thus curbing any significant criticism or alternative thinking in Israeli society (Pappé 2011).

Needless to say, the expansion of the term security and the view of protest activity refracted through the lens of security pose a huge constraint on the ability of different actors to act or even produce counterhegemonic discourse. Maintenance of 'national security' and the discourse around it is not unique to Israel (Peirce 2009: 10). Like all states, Israel is entrusted to deal with threats to its national security, but the difference lies in the definition of the 'nation' which needs protection, which in Israel is framed in ethnic-religious terms, thereby excluding a significant part of the citizens

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[18] In fact, the 'state of emergency' predated the state and was established by the British Mandatory Government in 1945.

of the state that are indeed considered to be the enemies of the nation.

As the theoretical analysis demonstrates, the media plays a vital role in the formation of public opinion and creation of common sense, thereby sustaining the hegemonic position. While in non-democratic regimes the biased and manipulative position of the state-controlled media is obvious, in democratic states the situation is more complicated, and thus more dangerous. Here, the manipulation of public opinion is covert, and the public remains blind to the ways in which the media reflects the position of the ruling establishment in a profound sense. The commonly held view in Israel is that the media is 'too committed to democratic values' or 'leftist', but in reality, "in Israel there was never, and surely not today, a (non partisan) newspaper that reflects an alternative to the dominant ideology" (Reinhart 2010). The relations of the media with the security and political establishment in Israel is intimate, in ways that sometimes make it unclear who is the speaker – the journalist or the Israeli army spokesperson. For example, during Operation Cast Lead, the Israeli mainstream media led a militaristic line that justified the war almost unquestionably, and often published information delivered by the spokespeople of the army without any fact-verifying journalistic work. Even when contradictory information was discovered, it was generally marginalised or not published altogether (Persico 2009).[19] This situation is born out of the control that the security establishment holds over the public, one which is almost absolute, leading to a situation in which Israeli journalists accept the worldview they both manufacture and take for granted (Dor 2001).

In spite of these constraints, and following the theoretical conceptions that were introduced earlier, it can be determined that formally and institutionally Israel is a liberal-democracy, as well as a state which is bound by the rule of law. Despite the debate on the essence of Israel's democracy, scholars agree that formal democratic institutions and processes do exist, including free elections, separation of powers and the rule of law maintained by an independent judicial system (even critical accounts such as Azoulay and Ophir (2008) emphasise this point; see also Peled and Shafir (2002). Yiftachel (2006) also maintains that Israel holds at least a formal procedural

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[19] There were also critical voices in the Israeli media. Ha'aretz gave a less enthusiastic support for the military's actions and performances, but overall the majority of Israelis were exposed to an uncritical account of the operation.

democracy while being an 'ethnocracy'[20]). This point is crucial for the analysis of the forms of resistance that I conduct in this study, as the democratic structures enable forms of resistance that would not be available otherwise. At the same time, the settler colonial drive and the ethno-national component in the state's definition are impeding its democratic structures. Additionally, resistance can put strains on the democratic structures, pushing the state to rely more on its ethno-national component and thereby lose its stance and legitimacy as 'the only democracy in the Middle East.' I explore these processes throughout this thesis.

This research project argues that among Jewish Israelis there exists an almost complete form of hegemony; in most (if not all) cases civil society is willingly conscripted to the national project, identifies with the government's policies and justifies its acts. This situation is fundamentally different among the Palestinian citizens of Israel, a community that nowadays consists of about 20% of the entire current Israeli population (Central Bureau of Statistics 2011).

Although most of the Palestinians officially gained Israeli citizenship over time, even after the abolishment of military rule in 1966 to this date, and despite a formal equality between all citizens, the Palestinian citizens of Israel are are perceived as a security threat and a demographic threat, and suffer from institutionalised discrimination, segregation and national oppression. [21] Since the violence that established the regime during the 1948 war was erased and retrospectively justified with the foundation of the State of Israel as a Jewish state, the violence that has been exercised ever since defends this model. Consequently, the Palestinians that found

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[20] Ethnocracy, a term coined by the geographer Oren Yiftachel (2006) describes a system of rule that is constituted by and for a dominant ethnic group. In this regime, a separation exists between pseudo democratic characteristics such as free elections, freedom of religion and freedoms of expression and the structure that reflects clear ethnic discrimination such as immigration laws, land laws, divisions of capital and resources.

[21] This is clearly evident from the report submitted by the Governmental Commission of Inquiry concerning the clashes between the security forces and Israeli citizens in October 2000, where thirteen Palestinian were shot dead, headed by Supreme Court's former judge Theodor Or. The report reads: "The Arab citizens of the state lives in a reality in which they are discriminated because they are Arabs... Large percent of the Jewish population think that the Arabs should not be included in the government… In addition to that, representatives of the Arab sector in the parliament usually cannot achieve basic improvement in the situation of their voters. The limited achievements contributed to the feeling of frustration and lack of confidence in the institutional channels of action... The discrimination the Arabs suffer from the central institutions stayed in tact by the end of the century. Few of the gaps [between the Jewish and the Palestinian sectors] were gradually bridged but in the central issues the improvements were too slow or non existent". The translation is mine. Chapter three offers an in depth discussion in the events of October 2000 and the Or Commission report.

themselves living under military regime could not have legally resisted their condition since as Israeli citizens, this kind of resistance was seen as undermining the regime. Ever since, the political and social oppression suffered by the Palestinian citizens has been the very "basis of Israeli democracy (or the lack of it) that is based on racial laws and decrees as well as on military and police violence" (Shenhav 2010: 131).

The Palestinian citizens of Israel: hegemony or domination?

This thesis argues that the Zionist ideology has hegemonic control over its citizens, but while the idea of a Jewish and democratic state gains support through mechanisms of legitimation and production of consent in the Jewish society, it is improbable to assume that Palestinian citizens internalise Zionist ideas and consent to Zionist ideology. Therefore, it might seems plausible to assume that the Palestinian citizens are subject to a system of direct domination. I argue that this is not the case. In the attempt to offer a unified conceptualisation of the Israeli control system over its citizens the Palestinian citizens must be seen as part of the hegemonic system in Israel, albeit the fact that they are coerced into compliance with it. As the theoretical literature concerning hegemony discussed above demonstrates, hegemony embodies the delicate balance between coercion and consent, and one cannot understand its function without considering both elements together. In regard to Israeli state control over its Palestinian citizens, we can detect the changing balance of consent/coercion over time, space and community, and the move from direct domination that characterised the early decades of the state, to a more sophisticated means of control later on. At the same time, the change is not linear, and a collapse into domination seems to have become more probable in the last decade.

The changing balance over time can be roughly divided into three periods. From the establishment of the State of Israel in 1948 and up to the abolition of the military regime in 1966, the first period is characterised by a straightforward and direct domination over a Palestinian population that was integrated in the citizenry community in Israel but was deprived of most basic civil rights and freedoms. The military regime, apart from being a mechanism of control, served also as a disciplinary regime, and marked clearly the boundaries of political action (Jiryis 1976; Robinson

2005). Following the abolition of the military regime and until October 2000, we can distinguish a second period, in which the state's tight control over the Palestinian citizenry was loosened, but continued by other means, subtler, less visible, thereby allowing new social and political forces in the community to surface and establish themselves (Ghanem 2001; Rouhana 1997). Finally, with the outbreak of the second intifada in September 2000 in the OPT and the eruption of violence within Green Line Israel, the balance tipped again towards the coercive end, and the security regime regained control over the Palestinian population. The political and social forces that arose in the second period now becoming dominant and assertive, posing a more direct threat to hegemony than before, and accordingly subjected to more open repression (Bishara 2001; Zreik 2003). Again, this process is not linear, and episodes of the tightening/easing of control are apparent within the different periods.

In regards to space/community, the consent/coercion balance changes radically. Thinking about the Palestinian population under Israeli control as a whole, divisions are made between religious communities and geographical locations. Distinctions are made between Druze, Christians and Muslims; while the Druze are recruited into the Israeli military is ways of manipulation, other communities are treated with suspicion and are subjected to tighter security monitoring and surveillance of social and political activities (Firro 2001; Hajjar 1996). In respect to subjects (inhabitants of the OPT) divisions are made between those residing in East Jerusalem, the West Bank and the Gaza Strip; subjected to different systems of law, military decrees and regulations (B'Tselem 2010; B'Tselem 2010a; Al-Haq 2006; Shehadeh and Kuttab 1980).

The issue of legal status is significant – while Palestinian citizens are subject to the Israeli legal system, with the privileges and obligations that come along with citizenship, they are excluded from a system of privileges that is the sole domain of the Jewish citizens of the state. At the same time, they are subject to the emergency laws and regulation, activated frequently in matters considered as involving 'national security' (Kretzmer 1990; Saban 2002, 2008). Palestinians residing in East Jerusalem hold the status of 'permanent residents' of the State of Israel, which differs substantially from citizenship. While holding the right to live and work in Israel, and entitled to social benefits, they are not entitled to vote in elections to the Israeli parliament, the Knesset. The legal status of the OPT (both the West Bank and the Gaza

Strip) is that of a territory under belligerent occupation, meaning that: a) Israeli law does not apply to the territory; b) the legal regime in these areas is determined by international law, in particular the rules regarding belligerent occupation. In any case, the commander of the Israeli forces is holding control over the legislative, executive and judicial authorities in the occupied Palestinian territories (B'Tselem 2010; Hajjar 2006; ICJ 2004; Shehadeh and Kuttab 1980). Indeed, ever since the territories were occupied, changes occurred on the ground, under which some territories were put under full or partial control of the Palestinian Authority, the Israeli settlements in the Gaza Strip were evacuated, and the Israeli military withdrew from its posts inside the Gaza Strip. In respect to the Gaza Strip, Israel holds that it is no longer the occupying force in the territory and thereby rejects any legal or administrative responsibility for the people living there (IDF MAG Corps 2010). This position is disputed by many governmental and legal organisations both locally and internationally (See for example Adalah 2012; B'Tselem 2010a; Al-Haq 2006).

As this research deals with forms of resistance exercised by Israeli citizens, the relevant political category here is that of citizenship. Several scholars highlight the fact that the Palestinian citizens of Israel view Israeli citizenship as the best way in which they can promote their rights and wage their political struggles (Jamal 2007; Rouhana 1990). Hence, there is a political consensus among them that all forms of resistance should be conducted within the limits prescribed by Israeli law and enforced through Israeli institutions. This pattern can be framed as part of general minoritarian behaviour under which people "respond to state injustice and utilize all possible options available to them within the repertoire of citizenship before adopting more radical challenges to the state" (Jamal 2007: 264). Thus, citizenship is viewed as an opportunity and resource for mobilisation, a space of manoeuvre for resistance that is protected from the exercise of the state's brute force. Indeed, "the Arab minority in Israel has been very cautious not to slide into counter-civic tactics that would endanger the benefits it has managed to achieve through its civic struggle thus far [...]" (Ibid: 278). This can be explained in the fact that the state still leaves spheres and spaces for protest, as well as hope for democratisation. Thus, "all minority groups, including the Arab minority, tend to use available legal means to ensure their equality" (Ibid). I argue that this point indicates the fact that the Palestinian citizenry is indeed part of the hegemonic structure that prevails in the State of Israel. Thereby, the repertoire of

resistance,[22] which seems available to it, is shaped by the nature of the regime, which controls it, that frames reality and the possibilities accorded to it.

The Israeli legal system

From its establishment, the Supreme Court saw itself as an organ of the Zionist state.

Mautner (2008: 91)

In order to further explore the role of resistance and its relations to hegemony and law, one must understand the nature of the Israeli legal system. The Israeli legal system is rooted in several legal traditions: Ottoman,[23] British, Hebrew, continental (European) and American. In the aftermath of the First World War and the collapse of the Ottoman Empire, Palestine was ruled directly by the British military that occupied the country. It was only in 1922 that Palestine was put under the authority of a British Mandate, as decided by the League of Nations. In those years, the British preserved some parts of the Ottoman system that was in place beforehand, but with several substantial changes, including the adaptation of the principle of precedence and the adversarial system. In addition, the British applied laws in Palestine that originated in Britain and its colonies (Haris, Lahovsky and Kedar 2002).

When the British authorities decided to terminate the mandate and leave Palestine in May 1948, political authority remained for a short while in a void and the question of the nature and character of the new regime was open. Soon enough, this question was answered by force: the war of 1948. The Palestinians that remained in the land that became Israel became subjects of the new regime against their will, through violence that made the new law and constituted the regime and the state as a Jewish and democratic one.

While developing and nurturing separate institutions in the political, military and social spheres, the attempts to establish an autonomous legal structure by the Jewish community in Palestine did not materialise until the establishment of the State of Israel. Thus, at the point of its establishment, Israel lacked a national-Zionist legal

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[22] I deal with this concept in detail in chapter six.

[23] Until the middle of the 19th century, the Ottoman legal system was based on Muslim law, but following legal reforms, it became a mixture of Islamic norms, European (mainly French) and Ottoman.

system. Out of several alternatives that were considered, the continuation of the Mandatory legal system prevailed. Continuation meant not just preserving the mandatory legislation and rulings, but also maintaining the connection between the local and British systems at the levels of legal culture (precedence and adversarial methods) and the level of the concrete connections of the system to British law, such as turning to the British law for interpretation and to fill gaps in the existing Israeli law. It is important to note that the British emergency regulations of 1945 were incorporated in their entirety and became part of the body of law in the newly established state. Although the affinity to British law was gradually reduced, it was only in 1980 that a new legislation officially cancelled it, and determined that where a legal question arises that does not find an answer in a law, court judgement or analogy, "it will be determined in the light of the principles of freedom, justice, integrity and peace of the heritage of Israel" (Mautner 2008: 94).

While continuity was the most efficient and accepted alternative for private and criminal law, the case of constitutional law was a different matter. The legal framework of Mandatory Palestine could not support the independent State of Israel, a newly created state that was substantially different from the British Mandatory government in several respects: it was declared a Jewish state; it was established as a representative democracy; its demographic composition dramatically changed after the Palestinian exodus and with the massive Jewish immigration from Europe and the Arab states; it was involved in an armed struggle with its neighbours. These and other considerations forced the state to take fundamental constitutional decisions in the first years to its establishment. Nevertheless, Israel 'missed' the opportunity to draft a constitution in its 'revolutionary moment' of establishment, and to this day, Israel lacks a constitution (Rubinstein and Medina 2005: 76). The Israeli parliament assumes constitutional authority to enact Basic Laws that are given a higher normative status than other laws and thus can be changed only with special majority. From its establishment up to the time of writing, the Knesset has enacted thirteen such laws, dealing with two issues: basic human rights and definitions of the authorities and functions of the state's central institutions – the Knesset itself, the government, the courts system, the president, etc. A further discussion of some of these laws is presented later.

The Israeli legal system is thus based on mixed legal traditions, and the lack of legal stability (stemming from the absence of a constitution) makes it more easily 'abused' by opposing political forces, all attempting to change it according to their worldviews. At the same time, although the Israeli legal system is not rooted in Zionist ideology alone, and the different legal traditions on which it is based sometimes pull it in opposing directions (such as ethno-centrism versus liberalism), the overall Zionist principle of a 'Jewish state' gained a higher status and can be understood as lying at the foundation of all the other principles. Rubinstein and Medina (2005) insist that Israel is a Jewish state in the sense that under its framework, the fulfilment of certain interests of the Jewish people is guaranteed, but the sovereignty is given to all its citizens, including the non-Jewish ones. In effect, Israel as a Jewish state fulfils the interests of the Jewish people as a national and cultural group on six levels: preference to Jews in entry to Israel (the law of return); means to maintain the Jewish majority among the citizens of Israel; arrangements to maintain 'Jewish character' in public life; governmental providence of religious services, mainly to the Jewish public; Jewish law as the basis of personal law for Jews in Israel; affiliation to Jews in the diaspora and state-status to institutions of the Jewish people (such as the Jewish Agency). Another level is the preference given to the interests of the Jewish citizens by state authorities: allocation of budgets, lands, resources to education, support of families in need and so on. This principle was somewhat eroded legally, but it is still in effect. It is hard to maintain that the non-Jews in the state are left with substantial sovereignty after this list of special interests, some of which are directly at the expense of and in direct contradiction to the interests of Palestinian citizens (Kretzmer 1990).

However, in the early decades of the state, "discrimination was not in the text of the law but in the intent of the legislator" (Zreik 2011: 27). Many Israeli laws do not even mention the words 'Arab' or 'Jew' but granted privileges that apply either exclusively to Jews (particular groups such as Holocaust survivors or residents of border regions) or largely to them (such as to persons serving in the army). In this way, these laws could be justified "as having been passed not to benefit Jews per se but to address the needs of a particular group" (Ibid). Indeed, in the early years of the state, at a time when the nation-building project entailed massive Jewish immigration and land confiscation at the expense of the Palestinians, "there had been no need to spell out in legislation that Israel was a state for the Jews when this was the operating premise of

the entire state apparatus, the project in whose service the entire state was organized"
(Ibid). But ever since the 1990s, when the idea was threatened from a civic point of
view and ideas such as a creation of a state of all its citizens surfaced, the need to
ground the Jewishness of the state on a legal basis became eminent, and such laws
proliferated. A thorough discussion of those threats and the legislative and judicial
reactions to them, borne out of resistance to Zionist hegemony, are the backbone of
this research project.

It is important to mention here briefly the roles and interrelations of the
legislative and judicial branches of the Israeli legal system. Basic Law: *The Knesset*
declares, "the Knesset is the house of representatives of the state," holding three main
roles: enacting a constitution and legislation; supervising the work of the government;
and discussing issues of public interest (Rubinstein and Medina 2005: 708). For the
purposes of this analysis, the Knesset's double role as the legislative authority,
entrusted with legislation, and at the same time as the constituting authority, entrusted
with enacting a constitution is interesting. It would appear that the Knesset is therefore
omnipotent in its ability to legislate, and that these laws cannot be overruled.

However, this principle is not absolute and overtime its power was eroded.
There is now room for juridical review on laws enacted by the Knesset, and even for
annulling laws. Given the lack of a constitution, the principle of judicial review is not
grounded in legislation but on precedent. The Supreme Court can overrule a law if it
contradicts instructions that are part of an existing Basic Law. Juridical review is
mainly exercised according to the Court's interpretation of the 1992 Basic Law:
Human Dignity and Liberty and the 1994 Basic Law: *Freedom of Occupation* (ibid:
250-253).[24] Many laws and governmental decisions are now measured according to
their compatibility with the provisions of these new laws. The Court's legitimacy to
interpret laws and exercise juridical review is under continuous scrutiny and debate
concerning the amount of power the Supreme Court should have over the Knesset.
Some segments of Israeli society severely oppose the Court's legitimacy to intervene
in legislation and since the Court aims to maintain the public's trust and its legitimate
position in society it exercises much caution in its interventions.

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[24] In fact, after these laws were enacted a 'constitutional revolution' was declared in Israel.

Attempts to regulate and legislate the Knesset-Supreme Court relations resurfaced throughout the years. The latest of which was in April 2012, when the minister of justice, Yaakov Ne'eman, promoted a memorandum for a bill: Basic Law: *The Legislation*, aiming to enshrine in law the hierarchy between the different stages of legislation in Israel, including grounding for the first time the authority of the Supreme Court to exercise juridical review and overrule Knesset laws. One of the clauses of the law allows the Knesset to reinstate a law that had been struck down by the Supreme Court with a majority of 65 votes (Zarchin 2012). This law will enable the Knesset an easier escape route from the Supreme Court's decisions regarding laws. This memorandum drew criticism from different quarters, including the president of the Supreme Court, Chief Justice Asher Grunis, who criticised the fact that the memorandum was prepared without consultation with the Supreme Court, necessary given this law has central and historical significance. Until the time of writing, this law was not submitted for readings.

Even if the parliament has an ability to bypass judicial decisions regarding laws, there is a limit to this: judicial decisions enjoy support from the media, the opposition, the legal profession and the courts themselves. This in turn can consume more political capital than what the regime is willing to spend. That means that even if legislation can bypass the court's decision, the damage (to legitimacy) that can be caused to hegemony as a result, might be of a higher political cost than the decision itself (Abel 1998).

Finally, it is important to mention in brief the structure of the Israeli judicial system. The Israeli juridical system is composed by three 'instance courts.' At the first instance stands the Supreme Court that can sit in two capacities. The first is as appellate court – where appeals on the judgments and other decisions of district courts are heard, as well as appeals on judicial and quasi-judicial decisions of various kinds, such as matters relating to the Knesset elections. The second capacity is of High Court of Justice, a court of first instance, primary in matters regarding the legality of decisions of state authorities such as governmental decisions or those of local authorities as well as direct challenges to the constitutionality of laws enacted by the Knesset. The District Courts are the second/middle instance courts, that discuss matters that cannot be discussed in the Magistrate Courts that function as the third

instance courts, or its decisions. Aside the courts there exist other tribunals dealing with specific matters, such as the Labour Tribunal, the Rabbinical Tribunal and the Military Tribunal.

Palestinian citizens in the Israeli legal system

The Palestinian citizens of Israel are stranded in a unique situation. They are citizens of a state that defines itself as Jewish, but at the same time seeks to be, or at least appear to be, a liberal democracy. It attempts this by granting the members of the minority some rights as individuals, while at the same time preserving the de facto and de jure hegemony of the Jewish majority (Al-Masri 2012). For the first nineteen years, the Palestinian citizens lived under strict military regime, regulated by a legal frame of emergency regulations, giving authority to the military commander to perform any action including expulsion of population, seizure of land, arrests for unlimited period of time and restrictions of movement, all in the name of 'security.'[25] Even if the Palestinian citizens could turn to the Supreme Court to appeal against the military government's decisions, the court would not interfere with any decision that had to do with 'security reasons'; such reasons were impossible to disclose or investigate (Jiryis 1976; Kretzmer 1990; Robinson 2005). Indeed, "the Supreme Court increasingly identified with the military government, at times almost adopting that government's position and doing its best to legally justify its actions" (Jiryis 1976: 22).

Following the abolition of the military regime in 1966, the Palestinian citizens found themselves living under a different sets of laws. Despite the removal of the restrictions on movement and political activity, the authority of the state to activate emergency regulations remained intact. Indeed, up to this day, some emergency regulations continue to enable undemocratic decrees and laws to be enacted. The fundamental issues regarding access to land, citizenship and resources remained outside the reach of the Palestinian citizenry. However, segregation and discrimination are not inscribed into the written word of law. Indeed, a main characteristic of Israeli

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[25] It is interesting to note that this situation is almost identical to the one in the 1967 occupied territories of the West Bank and Gaza Strip. Indeed, the legal structure of the 1949-1966 military regime was later applied almost in full in the OPT.

law is the existence of the formal equality of the joint rights of citizenship: political rights, freedom of expression, the right to demonstrate and freedom of movement, and there are no distinctions based on grounds of national belonging. The actual diversions from the principle of equality are few and appear in relation to collective rights (Kretzmer 1990; Saban 2008).

Hence, appearance of equality is usually kept, which leaves the potential margin of resistance within the law. Moreover, the self image of the Israeli legal system is one of an autonomous, un-biased and brave apparatus that is capable of taking independent decisions that limit and constrain the political system. The State of Israel proudly and repeatedly proclaims its respect for the rule of law to both foreign and domestic audiences.[26] Politically un-popular decisions of the court, rare as they are, are lauded as evidence of the independence of the judiciary.[27] Finally, because of its adherence to the rule of law, whether discursively or practically, there is a theoretical, and sometimes real possibility that the state can be vulnerable to legal contestation. I deal with these attempts and their problematisation in the next chapters.

Understanding the nature and function of the Israeli legal system in both its legislative and judicial branches and their delicate relations that are subjected to the changing political climate many times, as well as the place of the Palestinian citizens within it, allows us to proceed further in the analysis to forms of resistance to Zionist hegemony conducted within these institutions. Before doing that, we must deal with the concept of resistance from a theoretical perspective. How can we best understand the term 'resistance'? How should resistance be perceived and where can it best be

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[26] These declarations can be found in many speeches given by the Prime Minister (currently, Benjamin Netanyahu but also in the past by others) directed at the Israeli audience, in which he praises the vibrant democratic culture in Israel, the strength and independence of the judiciary and respect for the rights of minorities. Similar speeches are given in the United Nations on different occasions. The emphasis on the rule of law is also apparent in cases of military attacks on the Gaza Strip, where Israel repeatedly claims its respect for international law in belligerent activities.

[27] See for example the Supreme Court decision in 2000 regarding the Ka'adan case. This was a case where a Palestinian family with Israeli citizenship that had been barred five years earlier from Katzir, a rural community in northern Israel, on the grounds that the community was intended for Jews only, appealed to the court. The Supreme Court decided that Katzir must reconsider the Ka'adan's application for admittance since selling lands solely to Jews constitutes illegal discrimination. The international community and the liberal Israeli Jewish public have universally hailed the decision as a 'landmark' decision, but the Palestinian community in Israel and beyond was more critical and skeptical about the implications of this same decision. For further discussion see Adalah's analysis on the matter, among many other critical accounts:
http://www.adalah.org/eng/Articles/40/Adalah%E2%80%99s-Comments-on-the-Supreme-Courts-in-the-

located, inside hegemony or rather outside it? Which limitations or constraints can present obstacles to resistance? What is the role of law in resistance? These questions are found at the centre of many scholarly debates and constitute the core of the following chapter.

Chapter Two: Conceptualising Resistance

'Resistance' describes a variety of actions and behaviours at all levels of human social life, to the extent that "everything from revolutions to hairstyles has been described as resistance" (Hollander and Einwohner 2004: 534). Nevertheless, there seems to be an agreement among scholars that resistance entails both action (verbal, cognitive or physical) and opposition as core constitutive elements. Still, a debate revolves around the notions of intent and recognition: must resistance be intended by its actors and must it be recognised as such by its targets and/or external observers in order to be considered to be resistance? In this chapter, I focus on two out of a typology of seven types of resistance, distinguished by their relation to the elements of intent and recognition offered by Hollander and Einwohner.

The debate here is between what can be called the 'Gramscian' or the 'hegemony' approach, which focuses on the importance of consciousness (can be read as 'intent') versus the one advocated by James Scott (1985; 1990) that tends to minimise this importance, and instead points to the everyday struggles people wage against forms of oppression. While resistance remains an overarching concept both theoretically and empirically, this research project focuses upon forms of resistance that are both intentional and recognisable.

However, another distinction can be made within the intended and recognised resistance formula: what is the political space in which resistance can be waged? Can people resist within the structures of the hegemonic order or only outside them? Can resisters utilise the state's legal system despite the fact that the law bolsters and sustains the hegemonic order? The distinction between what is conceptualised as the *within* approach that calls for engagement with the hegemonic system versus the *withdrawal* approach that calls for creating alternative spaces of resistance comprises the second debate that this chapter revolves around. Indeed, using the law to resist hegemony forms the heart of the *within* approach. I argue that despite the inherent limitations law poses on resistance, it offers by its very nature a space where resistance is still possible. The chapter ends with a contextualisation of resistance and counterhegemonic struggle in the State of Israel, thus enabling the empirical discussion

to develop in the following chapters.

Intent and recognition

The 'hegemony' approach is based on the writings of Gramsci that were later elaborated by others (Chalcraft and Noorani 2007; Laclau and Mouffe 2001; Mouffe 1979). Gramsci saw hegemony as the field of struggle fought in the 'redoubts of civil society.' He put emphasis on the creation of a 'collective will,' constructed of an ensemble of social groups with the aim of unifying the whole society around the political struggle. In order to achieve this, the disintegration of the bases of the existing hegemony, by disarticulating the ideological bloc of the existing intellectual position, is imperative. The precondition for this is the ability to rearticulate a new ideological system that will serve as cement for the new hegemonic bloc, incorporating national-popular ideological elements into a new hegemonic principle in a way that will represent the general interest.

For the process of disarticulation and rearticulation, which aims at achieving a truly democratic transformation of society, there is a need for the multiplication of political spaces and political agents and for the formation of a 'chain of equivalences' between the different groups that will lead to the construction of a new 'common sense': a change in the identity of the different groups in such a way that the demands of each groups are articulated equivalently with those of others (Laclau and Mouffe 2001). The importance in this approach lies in the necessity of having a set of proposals for the positive organisation of the social. Here lies the difference between a strategy of opposition (resistance) and a strategy of construction of a new order. In the strategy of opposition, the elements of negation of a certain social or political order predominate but the element of negativity is not accompanied by any real attempt to establish different nodal points from which a process of positive reconstruction of the social fabric could be instituted, and as a result the strategy might be condemned to marginality.

Elsewhere, the concept of rearticulation went beyond the mere contestation and modification of hegemonic terms, to encompass a potentially radical reconfiguration of hegemonic structures (Chalcraft and Noorani 2007). Accordingly, hegemony must be

understood as a process, an open ended construction, and its forms can be partial, strong or weak, and include concealed contradictions and fractures, as well as meanings and resources that are not fully controllable. These instabilities and contradictions can be exploited by other political subjects, unless filled with a new positive political programme.

Following this line of thought, resistance can be seen as essential to hegemonic relations in order to project their ordering effects. Indeed, resistance becomes political when a particular set of resistances inhering in a particular set of relations is presented as legitimate opposition to oppression, and poses a threat to hegemonic legitimacy, when features that were formerly tolerated as disciplinary come to be renounced as tyranny. The hidden insurrection that exists in resistance is only discovered as a struggle against the hegemonic order when changing social conditions enable the rise of an opposing principle of freedom that alters the moral strength of a set of resistances by rearticulating them along its axis (Noorani 2007). This kind of analysis echoes Foucault's understanding of the relations between power and resistance, according to which resistance is never exterior to power but rather located inside it, as its adversary (Foucault 1978). It can be determined therefore, that the location of resistance within hegemony, and the recognition of the hegemonic power of resistance and its need of it, stands at the heart of this approach. The important point is that of the moment when resistance, which always exists, poses a threat to hegemony and exposes its weaknesses and forces it to use coercion, tipping the balance away from consent, thereby causing it to lose its legitimate standing. Following the analysis so far, that moment necessitates a new principle around which to organise the resistance. This in turn, is organised around the conscious decisions of those who resist.

While Gramsci and his later interpreters insisted on the importance of consciousness and ideology to resistance, other scholars, the most renowned of them being James Scott, sought to minimise it and to problematise the possibility of external observers to detect intent by actors (Scott 1985, 1990, see also Gavey and St. Martin 1996; Leblanc 1999). In an insightful study of everyday forms of resistance, Scott claims that the dominant culture does not penetrate the level of ideas/consciousness of the subordinate classes, and this fact is manifested in an everyday subculture of resistance, where petty acts, both symbolic and material exist in a hidden sphere

outside the reach of the dominant power. Here, the importance of intent and recognition is undermined, since resistance encompass acts that are done in a hidden, private sphere and do not loudly proclaim themselves against the dominant classes; hence the necessity for an elaborated ideological underpinning of resistance is superfluous.

Consequently, Scott proceeds to insist that Gramsci's concept of hegemony ignores the extent to which most subordinated classes are able to penetrate and demystify the prevailing ideology. The argument put forward is that the ruling classes never manage to penetrate the level of ideas/consciousness of the subordinated classes. Accordingly, a more modest view of hegemony is offered, according to which "the main functions of the system of domination [... is] to define what is realistic and what is not realistic and to drive certain goals and aspirations into the realm of the impossible [...]" (Scott 1985: 326). Scott acknowledges that his definition of hegemony recognises the vital impact of power in deciding what is practical and achievable in a given situation, but he does not expand on the implications of this. But the definition of what is realistic and what is impossible is the core of the problem: this is exactly where hegemony also penetrates the level of consciousness, and limits the ability to consider some means of resistance as realistic.

Indeed, here lies the weakness of Scott's argument, since assuming that the peasants (or for that matter any individual/group) are going through 'rational decision making' concerning their options of resistance, one has to remember "the rational is never something calculated in a manner that is context free. The calculation will always depend on estimations and suppositions that are the effect of a set of hegemonic relations" (Mitchell 1990: 555). This way of understanding power is vital to any analysis of counter-hegemonic activity, such as in Israel. It calls for a very close examination of the various actors that claim or are considered to conduct counter-hegemonic activity, to try and understand if they work inside the confines of power or manage to surpass it. I suggest that this point about 'rationality' can be found in many cases in which groups/individuals make decisions about modes of operation which disguise themselves as rational, and here the basic constraint and limitation of their activity can be found. In this context, it is worth remembering, "self-censorship and public censorship almost never appear in their pure form, but instead are well hidden

inside so-called obvious concepts of rationality, reasonability and impartiality" (Shenhav 2007: 13).[28] Here, it is important to recall the argument put forward above, that the Palestinian citizens are indeed located inside Israeli hegemony, and this fact is reflected in their choice of strategies of resistance.

Indeed, the commonly used metaphor of distinction between persuading and coercing, between the behavioural and the conscious levels that creates an artificial binary world of techniques of order and domination, works itself into the very vocabulary with which we speak of hegemonic power, in approaching the question of domination in terms of an essential distinction between physical coercion and ideological persuasion. Instead, hegemonic power must be understood as diverse methods of creating and recreating a world that seems reduced to this simple, two dimensional reality, but in affect penetrates into both.

Despite the weaknesses in Scott's study, some important points are brought into the discussion of resistance and its possibilities. The effects of power relations and their manifestation is an interesting example. Since power relations are most manifest in the public domain, only close examination of the hidden sphere, where the subordinated classes express their true values and ideas, protected from direct control and surveillance, can map a realm of possible dissent. The 'hidden transcript' provides the foundation for action upon which more open forms of social movements and rebellion may build (Scott 1990). Furthermore, the frontier between the public and the hidden transcripts is a zone of constant struggle between the dominant and the subordinated, and this struggle over its boundaries is possibly the most vital arena of any struggle. Indeed, it is important to examine two levels of discourse that prevail in any resistance groups. The distinction between the two may be generated out of physical fear, but also due to other reasons such as fear of marginalisation or censorship, and even the chosen sphere of struggle. The zone of struggle between the hidden and the public is an interesting one to examine: what can be said, when, where,

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[28] Yehuda Shenhav wrote this comment in his editorial to the issue dedicated to the 40th anniversary to the 1967 occupation of *Teoria Vebikoret* (Theory and Criticism), a critical Israeli journal published by the Jerusalem based Van Leer Institute. The editorial reflects on the incident in which an article written by the architect and theoretician Eyal Weizman was sent for comments by the editorial committee to Aviv Kochavi, the commander of the paratrooper brigade during operation 'Defensive Shield' in 2002 when the IDF invaded Palestinian cities and towns, since the article contains accusations against him. This was an unprecedented move in regard to academic articles. Kochavi's response arrived through his lawyer, threatening to sue the journal if the article was published.

and how to push the limit of what is 'forbidden' to say or do.

The debate above revolves around the notions of intent, consciousness and the possibility of resistance, and underlines the need to work towards the formation of a new hegemonic project. Here, effective resistance should be at once negative and positive. It should be conducted *within* the system, with the aim of breaking it and replacing it with a new one. In this regard, the differentiation between counter-hegemony and the creation of a new alternative hegemony is vital. Counter-hegemony can be explained as "any practice that diminishes the number of sites of hegemonic articulation, reduces their range of application and makes them disarticulate and break up, thereby exposing [...] the growth of violence and coercion in the social [...]" (Chalcraft 2007: 181). This type of activity should be distinguished from the concrete production of alternative hegemony, which involves the building of new sites of hegemonic articulation on an alternative basis. The Gramscian approach grasps resistance as aiming to create an alternative hegemony, but other scholars hold that the struggle should be conducted non-hegemonically, and therefore should not aim to replace the existing hegemony with a new one.

Strategies of resistance: within or withdrawal?

The *withdrawal* approach tries to provide a different answer to the goals and strategy of resistance, and reveals a contrasting way to perceive resistance and its desired outcomes. In general, it aims to create alternative spaces located outside hegemony, and not to create a new hegemonic order to replace the existing one. This approach is presented by various scholars, coming from diverse standpoints, from anarchism (Critchley 2007; Day 2005) to autonomist Marxism (Hardt and Negri 2001; Virno 2004).

The *withdrawal* approach calls for the creation of 'interstitial distance' within the state's territory, in which the struggle should be conducted: politics has to work independently of the state but it is still within and acts upon the state's territory: "one works within the state against the state in a political articulation that attempts to open a space of opposition" (Critchley 2007: 114). The notion of interstitial distance within the state in which politics resides means the opening of a space for opposition that will

not be co-opted by the state, but will stand independently, and will enable resistant groups to work within it.

For the advocates of the anarchist approach, anarchism presents a radical disturbance of the state's attempt to establish itself as a whole through the continual questioning from below of any attempt to establish order from above. Anarchism does not seek to set itself up as the new hegemonic principle of political organisation, but rather remains the negation of totality and not the affirmation of a new totality. 'Ethical anarchism' is a strategy of struggle that puts the emphasis on ethics as a binding factor in political practice between various groups that conduct different struggles. It is organised around a shared responsibility to correct the situation of wrongs and injustices that prevail in our world. The starting point of resistance is in the control and occupation of the terrain upon which one stands, lives, works, acts and thinks, with the goal of expanding to connect various cells of resistance to create a common front (Critchley 2007). This point echoes Gramsci's concept of ideology, as well as the idea of the creation of 'chain of equivalences' that characterises the hegemonic approach, with one crucial difference: this approach does not wish for a new hegemony to replace the old one, but rather offers to open up the consensus to a dissensus in which every group can find and express itself.

The anarchist approach suggests minoritarian thinking as a strategy for struggle, according to which, being a minority is not an obstacle, but rather a principle that motivates the construction of circumscribed geographical spaces in which the minority will reach a critical mass (Day 2005). This is the way to avoid both waiting for the revolution to come and perpetuating existing structures through reformist demands, and instead achieving small scale experiments of construction of alternative modes of social, political and economic ways of living. In summary, it calls for withdrawal from the existing order and for the construction of alternative spaces, at first minoritarian, but with the aim of taking over the whole social space, without determining their nature but leaving it to the various groups to decide for themselves. The logic of the minority is important to examine in the construction of resistance in Israel, since it describes best the situation in which those who resist Zionist hegemony find themselves – commonly divided and marginalised.

Although this approach is termed by its advocates as non-hegemonic, one can

detect similarities to the Gramscian approach. Gramsci's strategy is not based on that of revolution, but rather, of an ongoing struggle, a 'war of position,' fought in the 'redoubts of civil society,' until it gains enough strength, ideological and physical to overtake the existing hegemony, in ways that resemble the minoritarian strategy. It can be claimed that the *withdrawal* approach is hardly value-free, and in order for withdrawal to be operational must be based on hard values, which are by implication hegemonic. Nevertheless, this theoretical consideration can be useful in the analysis, as a different strategy of resistance is being promoted here.

The logic of withdrawal also guides the autonomist Marxist School. In a work that constitutes part of the debate sparked by Antonio Negri and Michael Hardt's renowned book *Empire* (2001) that discusses the strategy of struggle of the multitude – the 'collective worker', the unmediated, revolutionary, immanent, and positive collective social subject[29] – Paolo Virno (2004) proposes two key terms to grasp the type of political action characteristic of it: civil disobedience and exodus. Civil disobedience here is fundamentally different from the liberal tradition, as formulated by John Rawls (1999: 320) to be a "nonviolent, conscientious yet political act contrary to the law usually done with the aim of bringing about a change in the law or policies of the government." Embodied in this action is the willingness to accept the legal outcomes of it, which emphasises the fact that the disobedience is done within a general loyalty to the rule of law. What the *withdrawal* approach advocates is a radical civil disobedience: the multitude should not just ignore a specific law because it appears incoherent or contradictory to other fundamental norms, such as a constitution for example. Radical disobedience is one that undermines the state's very ability to act as the sovereign power, and "is not limited to the breaking of these laws but also calls into question the very foundation of their validity" (Virno 2004: 70).

The second key term is exodus, which is a fully-fledged model of political action, capable of confronting the challenges of modern politics. It consists in a mass defection from the state aiming to create a non-state public space. This requires the development of a radically new type of democracy framed in terms of the construction and experimentation of forms of non-representative and extra-parliamentary

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[29] It is beyond the scope of this work to discuss and analyse these concepts thoroughly. The definition here is taken from the work of Antonio Negri (1991: 194).

democracy organised around leagues, councils and soviets. The democracy of the multitude expresses itself in an ensemble of acting minorities that never aspire to transform themselves into a majority and develop a power that refuses to become government. Its mode of being is 'acting in concert' and while tending to dismantle the supreme power, it is not inclined to become state in its turn. Despite common wisdom, defection or exit here should not be seen as a passive mode of political action. Instead, is it a mode of action that modifies the context and condition in which the struggle takes place, it "alters the rules of the game and throws the adversary completely off balance" (Ibid). This last remark is significant as this mode of action aims to disrupt and shake the very ground on which the struggle is waged. It makes hegemony, or Empire, lose the comfortable ground on which it operates, and weakens its position.

For Hardt and Negri 'Empire' is a nexus of institutions and alliances of the global world, "a series of national and supranational organisms united under a single logic of rule" (Hardt and Negri 2001: xii). The idea of 'being against' is the key to every political position in the world. The multitude must recognise imperial sovereignty as the enemy and discover adequate means of subverting its power. In order to resist and topple Empire, desertion and exodus are used as the most powerful forms of class struggle. But this desertion "does not have a place; it is the evacuation of the places of power" (Ibid: 212). In Empire, there is no more outside, the distinctions between inside and outside have collapsed, and therefore the struggles must be conducted in every place. Empire can (and indeed does) isolate, divide, segregate, reinforce cleavages and borderlines of race, gender and culture but there is always a limit to these restrictions, since the productivity of the multitude is what Empire depends on. Therefore, the actions of the multitude become political primarily when they begins to confront directly and with an adequate consciousness, the central repressive operations of Empire, not allowing it to re-establish order, exercising the experiences of resistance in concert against the nerve centres of Empire.

The positive message in this approach is the potential embodied in the multitude to change reality: "The creative forces of the multitude that sustain Empire are also capable of autonomously constructing a counter-Empire, an alternative political organisation of global flows and exchange" (Ibid: xv). These remarks can help us to think about the potential contained in those who sustain hegemony to

counter it, and construct counter-hegemony, and moreover, to think about the potential embodied in the desertion of 'places of power' – and resisting outside the apparatuses of the state.

A critique of the *withdrawal* approach insists on the need for engagement with the existing order. Consequently, the emphasis is on the moment of rearticulation, since if it is neglected, there is a possibility that we will be faced with a chaotic situation in which non-progressive forces can appear (in the form of right wing, religious and nationalistic forces) and will make attempts at re-articulation. The *withdrawal* approach neglects the importance of antagonism in politics, which always exists, and therefore necessitates the advancement of a new articulation of the political in the light of a new vision (Mouffe 2008). According to the critique, resistance has to be inside, and fully engaged with what exists, not by moving away, but through activity within the state with the aim of transforming it into something new. Consequentially, a proper political intervention is always one that engages with a certain aspect of the existing hegemony in order to disarticulate/rearticulate its constitutive elements, and it can never be merely oppositional or conceived as desertion because of the danger embodied in this kind of action.

Indeed, the bulk of the research is focused upon forms of resistance that are located well inside hegemonic structures and are fully engaged with the existing order and simultaneously promote an alternative programme, a new vision of the political. As their tactics are revealed, the constraints and paradoxes emerge. At this exact place the *withdrawal* approach regains its significance. It assists us in evaluating different modes of political resistance which are conducted outside the institutions of the state, and to some extent, outside the legal boundaries marked by the existing law in the State of Israel. It also supports the reflections about alternative political spaces within which the struggle should be conducted. This point is crucial. Since hegemonic power tends, or at least attempts, to be all-pervasive, accordingly spaces of action are commonly under the control, surveillance or influence of hegemonic power-holders. The need to escape those is vital since hegemonic power-holders constantly try to adapt, co-opt and neutralise resistance practices. Carving new spaces of action that aim to go outside and beyond hegemonic institutions might be proven indispensible in this context. At the same time, new spaces (physical, symbolic and metaphorical) can be

discovered also within existing structures, and that depends largely on those who are utilising them to wage their struggles. I discuss these in detail throughout this research project.

The tension between the *within* and *withdrawal* approaches is not solved here, but rather stands at the heart of this thesis. Only after a detailed discussion of each case, with its particularities, will we be able to reach a more grounded evaluation of them. In what follows, I analyse the variety of constraints on resistance through participation in state institutions and appealing to the legal course, as well as the possibilities embodied within this strategy.

Law as resistance: possibilities and limitations

As much as law sustains hegemony and forms part of it, the rich scholarship on power, hegemony and resistance informs us that law can serve simultaneously as a means of resistance. Thus law can open up a space for resistance, namely in democratic societies, or embody this space in itself, when the legal system is used to resist injustices. Therefore, although the state has the power to encode and enforce law, a crucial part of the law is its very contestability. This contestability is an outcome of the indeterminate nature of the legal discourse that is revealed through legal work. This indeterminacy invites competing political and ideological influences thereby refuting the claim of law's autonomy and apolitical character.

The law provides a space for counter-hegemonic struggles in the form of litigation that challenges the key components of the legal system. A trial can be seen as a 'symbolic struggle' between 'antagonistic world-views' with each view seeking to become the legitimised vision of the social world (Bourdieu 1986). This is possible since the state has to maintain the legitimacy of its rule both internally and externally, and therefore power relations have to be masked, and the law should appear to be just and independent of manipulation. Apart from appearance, in many cases, namely in democratic societies, there must be a real space for the citizens to question and object to what they see as unjust in the attempt to challenge and change it. Thus, it can be determined that the limitations of the law operate on the rulers as well as on the ruled (Thompson 1975; Fitzpatrick 2008). Indeed, in contemporary societies where law

forms a diffused and complicated code, social reform involves subversion of a dominant rationality, and therefore struggle to redefine the boundaries of what counts as 'legal' – that can be argued from the point of view of the 'law' as opposed to 'politics' (Litowitz 2000).

Courts and legal institutions in general can be seen as sites of public manifestations of resistance by individuals and groups. Courts are crucial sites for resistance and the mediation of power since they can serve as symbols to legitimate an oppositional political position or to assert group identity in the face of hegemony. Thus, they have the potential to play pragmatic, ideological, and symbolic roles in contestations over power (Hirsch 1994). Oppositional practices in courts assume many forms and generate diverse outcomes. On the one hand, they can offer liberation to the subordinate and on the other, they can authorise the dominant culture (Merry 1994: 54). Since law is intertwined in society, which formed it and is being formed by it, law can serve as a mode of cultural transformation, but its capacity to do so depends on the ways it can mobilise local support for this purpose. In this way, legal victories are in fact determined outside the court. In this regard, one should always ask what is the goal of the resistance and who is its audience. This is true in questions of legitimacy of the court and of the state itself, the symbolic importance of the court for the formation of identity and as a bridgehead for larger political struggles.

This remark brings us to reflect on the limitations that resistance through the law entails. The central political contradiction of legal resistance is that "it seeks transformative goals while working within legal processes that are wedded to the established order" (Scheingold 1998: 124). Entry into the juridical field implies as well as necessitates the tacit acceptance of the field's fundamental principle that within the field conflicts can only be resolved juridically and according to the rules and the conventions of the juridical field itself. To be included in the legal 'game' and the agreement to 'play' in it, to accept the law for the resolution of conflicts, necessitates adoption of a certain mode of expression and discussion and implies the renunciation of physical violence and of elementary forms of symbolic violence. The resister is left only with what can be argued from the point of view of legal pertinence (Bourdieu 1986). Hence, even when the problem is not legal but political, the lawyer has to give the court the legalistic rhetoric. Furthermore, those who tacitly abandon the direction

of their conflict by accepting entry into the juridical field, thus giving up the resort to force for example, are reduced to the status of clients and remain bound to liberal institutions, values, and practices.

Using the law as an instrument of dissent presents yet another limit, which is embodied in the nature of any professionalised field. Like other professionalised fields, in the 'legal universe', the practices are heavily patterned by tradition, education and the experience of legal custom and professional usage. The uniqueness of the legal field rests upon its nature: it is a social space organised around a conversion of direct conflict between directly concerned parties into juridically regulated debate between professionals acting by proxy. These professionals have in common their knowledge and their acceptance of the rules of the legal game, "the written and unwritten rules of the field itself" (Ibid: 831). Participation in the legal field requires a specialised language, a professional group of fighters, and a narrow and elitist space of contention.

Utilisation of the legal system in resistance implies not only the recognition of the legitimacy of that law,[30] but also the circumscribing of the domain of who can be involved in active roles in the very act of resistance. The problematic position that is rooted in this type of resistance can be reflected upon through Trotsky's comment on the role of individual terrorism in the struggle, which in his eyes is "inadmissible", because it "belittles the role of the masses in their own consciousness, reconciles them to their own powerlessness, and turns their eyes and hopes toward a great avenger and liberator who someday will come and accomplish his mission" (Trotsky 1911). In a similar way, this can be true for court cases or to resorts to the legal course in general, through the mediation of a lawyer, which can sometimes lead to the neglecting of other modes of resistance. It is important to remember that lawyers and legal experts are educated in the legal schools of the state, recognised and certified by its professional bodies, and therefore are part of the hegemonic structure of the state, willingly or by default. Finally, winning in court is not enough since a court decision can face a hostile political climate that will not facilitate the execution of a legal decision into a changing policy (Sarat and Scheingold 1998).

Resistance through the law can be seen as a practice of the 'lesser evil.' The 'lesser evil' is a situation in which a particular case is presented to a person or to a

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[30] Further discussion of the question of legitimacy in relations to the law follows in chapter three.

group of people as a dilemma between two or more bad options. The general case is the structuring principle in an economy of ethical calculations, manifested in attempts to reduce or lessen the bad and increase the good. Both cases affirm an economic model embedded at the heart of ethics according to which, in absence of the possibility to avoid all harm, various forms of misfortune must be calculated against each other, evaluated, and acted upon (Arendt 2003; Weizman 2008; 2012). The principle of the lesser evil implies that there is no way out of these calculations. The lesser evil presents a dilemma that cannot be questioned or negotiated, and therefore, its acceptance "leaves the political power that presented this 'choice' unchallenged and even reinforced" (Weizman 2008). Therefore, the dilemma should rather be whether to choose between the options presented in a given situation at all, whether to accept the very terms of the question itself.

Thus, one can recognise appealing to the law as a lesser evil practice. It entails inclusion and acceptance of the hegemonic system which one tries to resist, and can also assist in bolstering the system rather than challenging it, but at the same time, it is one that can still offer some, 'lesser evil' improvement to an existing 'evil' situation, such as small victories in courts that bring about some change, although not structural, but practical. Indeed, as other scholars remind us, legal challenges to the foundations of established authority can be counterproductive as well as ineffectual. Occasional victories that might occur "may well enhance the legitimacy of the prevailing order and, thus, inhibit the mobilization of political opposition" (Scheingold 1998: 124).

Keeping these limitations in mind, one can still argue that while appropriation of the terms, constructs and procedures of law in formulating opposition may appear as underpinning existing power relations, the negotiation of this logic is also possible, and historical experience proves that subordinated people can engage in transforming the law, sometimes in radical ways. Since law and society are intertwined, law's legitimacy depends on the support it receives from the media and also from outside the society. For example, in South Africa, when the courts confronted apartheid, the media, both domestic and foreign was supportive and celebrative, together with the support from foreign governments that extolled the rule of law, and private donors that financially supported human rights lawyers. In a similar way, the civil rights struggle in the American south gained from the support of the northerners, the national media

and federal government (Abel 1998). Thus, law can be a source of countervailing power, and this potential derives from the fact that the state is not monolithic – its power is divided among branches and within them; in addition, law inherently embodies and expresses ideals that nowadays many states do not tend to oppose openly, such as democracy and equality, and therefore the potential to change does exist.

Since law is also a tool in the hands of lawyers, the potential of resistance through the law depends on the ways lawyers choose to utilise it. A 'delegitimisation strategy' is one through which lawyers might "find a way of working in the legal arena that consistently challenges the State's control over the way that we are to both feel and think about the nature of social reality" (Harris and Gebel 1982: 374). This can be achieved through a power-oriented approach to law practice, in which the goal of defending people's rights will be subordinate to the goal of "building an authentic or un-alienated political consciousness" (Ibid: 375). Here, lawyers assume an instrumental role in the construction of a social and political movement, through the utilisation of the courts to increase people's sense of personal and political power, developing a relationship of equality with the clients and de-mystification of the whole legal procedure and instrumental use of the different legal instances in order to achieve different political goals. Instrumental use of the legal system for the achievement of political goals stands at the core of the work of these lawyers that can be called 'cause lawyers'.

Cause lawyering can be defined as "any activity that seeks to use law related means or seek to change laws or regulations to achieve greater social justice – both for particular individuals [...] and for disadvantaged groups" (Sarat and Scheingold 1998: 37). Cause lawyers are distinguished primarily by their willingness to undertake controversial and politically charged activities and/or by a sense of commitment to particular ideals. Since the legal struggle entails limitations that are inherited from the nature of law, and with the acknowledgement of the narrow possibilities of change through the courts, cause lawyers often wish to go beyond defensive tactics and adopt political strategies and associate themselves with social movements. The result is that cause lawyering is merged with political activism to the extent that often it is indistinguishable from it.

Litigation is just part of the work cause lawyers engage in. Where the courts offer only limited margins of change, other forms of legal struggles prevail, such as lobbying, legislative advocacy and education. In other cases, cause lawyers also engage in non-legal strategies and present their cause in different sites such as the streets, generating movement publicity, coalition building and political strategising in a way that breaks with conventional legal strategies that see the court as the only site for achieving legal victories (ibid: 37; McCann and Silverstein 1998: 270). In fact, the courtroom is used as a public/political forum rather than a legal avenue to establish a precedent or gain an acquittal. Thus victory in the courtroom is not the essential objective, although even a small victory achieved for an individual client can be reason enough to litigate. Litigation can be seen as a way of gaining 'public time,' a way to elevate an issue into the public agenda, to occupy time in parliament and the media, in instances where the political climate gives only little attention to a certain issue (Scheingold 1998: 127; Sterett 1998: 310). I deal with the limitations and possibilities of legal resistance, together with the experiences of cause lawyers in Israel in the next chapter.

Apart from litigation, this research project defines legal resistance as any resistance practice that is conducted within the legal institutions of the state, and within the existing law of the state. Accordingly, the research project includes legislative work as part of membership of parliament as form of legal resistance. The resistance of those actors who engage with legislative work and take part in parliament itself are indeed constrained by the very nature of the system. Similar to the limitations outlined above, legislators are also confined by the boundaries of the existing legal system, the conventions of the field and its accepted language. A full elaboration of the limitations embodied in this type of resistance is offered in the fourth chapter, together with a discussion of the ways in which different actors are pushing the boundaries forward and expand the space available for their struggle.

These calculations and contradictions and the dilemma of resistance through the law are indeed part of the everyday conduct of resistant groups in the complex reality of Israel. While some choose to use legal means in order to challenge and change the system, others choose to abandon this framework altogether.

Limitations of resistance

Law, of course, is not the only form of resistance that poses limitations on its actors. Several authors mention possible limitations or constraints on resistance which have to be taken into consideration in the analysis of resistance to Zionism within the State of Israel. In fact, any chosen strategy of resistance entails a set of constraints and particular limitations on itself (Condit and Lucaites 1993). Thinking about germane cases from Israel, if one is trying to address a wider public or certain sections of the public, or to gain more attention and support, other limitations are in place, such as the need to make compromises or the need to take into consideration the public consensus. It is important to explore each form of resistance/protest to trace the limits that that particular form places on itself by its very definition. In a different discussion about resistance, another possible limitation surfaces. The ways in which the dominant power deals with acts of defiance also poses a limitation on resistance: often, by denying rebels the status they seek in public discourse, the authorities choose to assimilate their acts to a category that minimises its political challenge to the state (Scott 1990). This is an important point to examine in the context of Israel and I further elaborate on this in chapters five and six.

In a similar way, 'hegemonic intervention,' referring to Gramsci's terms 'hegemony through neutralisation' or 'passive revolution,' describes a situation where demands which challenge the hegemonic order are recuperated by the existing system by satisfying them in a way that neutralises their subversive potential (Mouffe 2008). It is a concession that can materialise as reforms, minor adjustments or by addressing partial demands of protest groups, made by hegemonic power in order to re-establish its leading role and restore its challenged legitimacy. This should be considered in every struggle, the way in which the existing hegemony tries to co-opt the resistance, by undertaking small scale reform within itself; changes that do not transform the basis of the hegemony, but are used to appease the resisters. Following the limitations that hegemony can put on resistance, there is a need to find the political spaces in which the struggle can be best conducted, one that can avoid being taken over by hegemony or being constrained by it. In this regard, the non-hegemonic strategy offered by the anarchist approach might provide a way out. When the struggle is conducted outside hegemony, and not through its institutions, the possibility of it being able to recuperate

resistance is minimal. Therefore one does not have to compromise the principles of the struggle so that it will fit the existing system. At the same time, there is the risk that the resistance can be fully outlawed and therefore crushed altogether, before it becomes a mass movement.

Nevertheless, resistance through the law (appealing to courts), and through participation in the institutions of the state (legislation in the parliament) can be seen an embodiment of the *within* approach described above. Since law, as argued before, is one of the most powerful mechanisms in the 'hands' of hegemony to sustain and bolster its position in society, a conclusion can be drawn that it embodies an immense limitation on resistance, in a much more substantial way than any other limitation presented here. Thus, the question arises: can law be adapted as a means of resistance, or should its framework be abandoned, party or fully, in order to bring about a real transformation of state and society? This research directly addresses this dilemma, its current manifestations in the case of counter-hegemonic practices in Israel, and attempts to provide some possible answers.

Resistance and counter-hegemonic practice in Israel

The history of resistance to Zionist hegemony in Israel is as old as the state itself, and even dates back to the foundations of the Zionist movement in Europe in the late 19th century. This research does not trace its history, but rather focuses on forms of resistance in contemporary Israel centring on forms of resistance in relation to the law: with and through the law in courts and beyond them; making the law and expanding its boundaries in the parliament and elsewhere; and against/with disregard of the law in sites of resistance that are located outside the institutions of the state, such as on the ground, in the streets and in advocacy work which is mainly done in the cyber sphere.

Since Zionism is a state ideology and is embodied in the state's legal system it frames political discourses and sets the boundaries of protest and resistance. Accordingly, what can be considered as counter-hegemony in Israel is every practice, in the forms of discourse or activity that subverts the notion of a 'Jewish and democratic state,' and is by definition non- or anti-Zionist.' Not all oppositional discourses are counter-hegemonic or threaten the political order in a non-Zionist or

anti-Zionist sense. A good example can be found in the self-declared apolitical social protests that erupted in Israel in the summer of 2011, inspired both by the Spanish *indignados* movement and the wave of uprisings that swept through Arab world, toppling regimes and transforming reality. In Israel, the agenda of the protest remained restricted to socio-economic issues, with demands varying from caps on the costs of living, housing, basic products and childcare. The organisers of the protests, as well as the people occupying the streets of Tel Aviv and other cities throughout the country, insisted time and again that "The people demand social justice!" but at the same time insisted, "The protest is not political/partisan." By so demanding, the protest did not touch on one of the important roots of the problem in the Israeli context, the ongoing oppression and occupation of the Palestinians, the costs of which are being paid by the Palestinians struggling under it, and the citizens of the country that finance the military and civilian expenditure of the army and the settlements. The protest demanded social justice mainly for Jews, and only to a lesser extent for the citizens of the whole country, disregarding a population of millions of Palestinians living under direct and indirect military occupation. This example should be seen as paradigmatic in the Israeli context, where a strict separation is maintained between the social and the 'political,' where 'political' signifies the occupation, colonisation and supremacy of the Jewish citizens over the Palestinians in the country.

Conceptualising counter-hegemonic practice in Israel as non-Zionist or anti-Zionist necessitates some clarifications of terms, in order to avoid confusion. It is important to distinguish between Zionism, neo-Zionism, post-Zionism and non/anti-Zionism. While neo-Zionism characterises the more extreme right-wing sections of Israeli society such as the religious-national settlers that perceive themselves as the pioneers of the late nineteenth century, settling the land of Israel and establishing Jewish presence within it, post-Zionism can be considered as a 'family name' to a multi-faceted and sometimes contradictory phenomenon, that criticises the official Zionist narrative. It is an ongoing tendency of researchers and thinkers, artists and intellectuals to revise the Zionist narrative – the body of literature as well as the 'common sense' that is characterised by high levels of statism, apologetics and mythology. By doing so, it aims to challenge and criticise the moral, normative and motivational values of its message. Important in this regard are the ground breaking historical studies published from the late 1980s by several Israeli historians, that came

to be known as the 'new historians' undermining and demythologising the Zionist narrative of 1948 and the early decades of the state. Although this kind of practice is indeed counter-hegemonic, this research does not focus on it. The reasons for this choice are two-fold. First, it has been the centre of a vast literature analysing it from different approaches and angles (to name just few: Nimni 2003; Ram 2007; Segev 2002; Shapira and Penslar 2003; Silberstein 1999; Yakira 2006). Secondly, following the line of Amnon Raz-Krakotzkin (2005) who convincingly argues that post-Zionism is a sort of national Jewish identity that defines itself as post-national but in reality serves to reaffirm the Jewish-democratic character of the state, post-Zionism remains out of the framework of this thesis. This kind of differentiation excludes from this research all kind of protest or resistance practices which are openly or covertly Zionist, or work within the premises of Zionist hegemony. Non-/anti-Zionism is a practice that undermines and rejects the Zionist notion altogether. Finally, it is important to mention that parts of the Jewish-orthodox community living in Israel are openly non- or anti Zionist. Nevertheless, this research project is not focused upon them, as they refrain from any political activity, apart from a few exceptions.[31]

What can henceforth be termed the 'Israeli Resistance' is the practice of different actors who engage in varied political activity. This research presents two distinctions in the discussion on different political actors: between resistance within the system and resistance that withdraws from the system, and between resistance practices that are engaged in disarticulation of hegemonic principles and those who engage in their rearticulation. While disarticulation is the activity that serves to disintegrate and weaken the bases of the existing hegemony, rearticulation is the activity that also pushes forward an alternative political programme. The first distinction is made according to the relations of the resisters to the law. To analyse the resistance from within, this project examines two cases: legal resistance, and mainly the work of Adalah, 'The Legal Center for Arab Minority Rights in Israel' and the parliamentary and extra parliamentary struggle of the National Democratic Assembly party. For the resistance from without, I focus on the case studies of activist groups, in particular the 'Anarchists Against The Wall' and the 'Boycott! Supporting the

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[31] The segment of the orthodox community that engage in anti-Zionist activity still today is Neturei Karta, an ultra-orthodox community that opposed the establishment and the existence of the State of Israel.

Palestinian BDS Call from Within' group.

A second distinction is between dis-articulative and re-articulative resistance. Disarticulation activity can be seen as part of the resistance in all the case studies examined in the research. On the one hand, it can be claimed that this type of activity serves and strengthens the existing hegemony within which it acts, and which limits it simultaneously. On the other hand, it has a role in exposing weaknesses within hegemony, thus forcing the system to use more coercion, thereby revealing its oppressive nature (Noorani 2007).

Disarticulation is only one face of the struggle. An effective counter-hegemonic activity, radical politics in Israel is accompanied by social and political actors that engage in the process of rearticulation of a positive political program. By that I refer to actors whose agenda surpasses the basic premises of Zionist hegemony, which secures the separation between Jews and non-Jews, and offers a new political programme that is fundamentally different from the existing one. Several attempts of this kind can be found in the history of political struggle in Israel. Historically, these include the Israeli Communist Party, the al-Ard movement, the 'Progressive List for Peace', and today the 'National Democratic Assembly' (NDA), but also other organisations and individuals such as legal organisations like Adalah who are also engaged in promoting a radical political programme. These examples reflect an attempt to work inside the existing hegemony in order to create a structural change within it, but their history also reflects the problems these kind of platforms encounter.

The Israeli Communist Party (ICP) went through several transformations, and it is today, despite its Jewish component, more an Arab party than a Jewish-Arab platform that advances a radically different political programme.[32] The 'Progressive List for Peace' (PLP) started as a faction of the Democratic Front for Peace and Equality (the latest incarnation of the ICP) at the beginning of the 1980s, and was set up as a party for the general elections of 1984. It had a mixed candidate list of Jews and Palestinians, and supported full equality for Palestinians in Israel, with an emphasis on Palestinian national identity. It manifested the right to self-determination

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[32] For further reading about the Israeli Communist Party see Ghanem 2001; Kaufman 1997; Rekhess 1993.

of the two peoples, Jews and Palestinians, similar to the al-Ard movement that also stood for Arab unity, influenced by the pan-Arabist Nasserite ideology that was banned from participating in the election in 1965. The PLP was disqualified from participating in the 1988 elections, but the decision was overturned by the Supreme Court. Later, the PLP weakened and disappeared from the political arena, while its activities found a place in other parties and political movements. The history and experience of the NDA is discussed in detail in the fourth chapter, where I offer an examination of the limitations as well as the successes of the NDA in participating in the political system and their ability to negotiate with the law despite their subversive agenda.

The master's tools

In a 1979 conference celebrating the thirtieth anniversary of the publication of Simone de Beauvoir's book *The Second Sex*, Audre Lorde, a black lesbian feminist scholar and activist gave a speech in which she argued that "the master's tools will never dismantle the master's house." She criticised the conference in which she was presenting her paper for its limited range of speakers, substance and very structure. Lorde dealt with what she saw as the internal oppression of black and lesbian women within the feminist movement, and claimed that as long as one uses the frameworks and points of reference of the oppressors, the ability to evade and construct a new reality remains impossible.

Lorde's speech was dedicated to challenging the ironies and paradoxes (or hypocrisy and dishonesty) resulting from dominating those who are different while denouncing one's own experiences of oppression. This she ascribed to feminist reformists that were seeking to dismantle some forms of oppression and privilege across sex difference while perpetuating other forms of oppression across race, sexuality, age or class, out of the desire to keep some symbolic and material privileges. Lorde insisted that the master's tools "may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change" (Lorde 1993: 112). Indeed, this tendency should not be seen as unique to feminist discourse but also applies to other discourses representing diverse subordinated communities, in which an

internal hierarchy of oppression continues to persist.

While the 'master' in this maxim refers to those in positions of power in any relationship (in Lorde's context, the master can be either a man in relation to a woman, or a white woman in relation to a slave), the 'master's tools' designate techniques of domination through the exercise of political power (such as the parliament, the legal system, among others), moral judgement and social privilege. The 'master's house' might refer to the site for exercising power (the state), judgement (the court), and privilege as well as to the products of these deeds.

The speech was later published in two of Lorde's books thus reaching a wider audience, and it was accordingly appropriated in different contexts and attracted interpretations and controversy. Indeed, this speech deserves attention from scholars dealing with resistance to domination, since it focuses on the uses of power and this has significance for a range of discourses of struggles for liberation. The argument put forward is that by using what Lorde referred to as 'the master's tools' to protest domination, "liberation advocates not only may ironically reproduce tools or domination but also may become "masters" undistinguishable from those habituated to that role" (Olson 2000: 261-262).

Application of this maxim to the use of the legal system in struggles for liberation is unavoidable, since as the previous sections highlighted, the legal system is part and parcel of the existing order, but at the same time it is commonly used as a tool for struggle against it. Indeed, many legal and social scholars wonder if indeed the legal tools can bring a substantial change in the system, if any. On the face of it, agreement with Lorde's assertion in this context seems inevitable. However, this thesis argues that it is not the tools themselves, but rather the way in which they are used that makes the difference. "After all, a claw-foot hammer, even if it was made by a man, can both drive nails in and pry them out, depending on your purpose and which side of the head you are using" (Ling 1987: 155 as quoted in Olson 2000: 278). However, while a subversive use of the tools is a possibility, one must not neglect the construction of alternative tools that release the movement from the paradoxes and dangers involved in using the master's own.

The discussion presented above reveals several ways to conceive strategies of resistance: *within* the established order versus *withdrawal,* an overt or covert strategy. I

have offered some preliminary remarks about the limitations on resistance, mainly those posed by the hegemonic order, which is reinforced by law. In the course of this thesis, I examine and evaluate all the above and more in relation to resistance practices in contemporary Israel. The two main theoretical approaches regarding strategies of resistance point to a dialectics of *within* and *withdrawal* which are both exclusive. It is understood that in order to be effective, the strategy of withdrawal must be total. If all, or at least the majority withdrew at once, the democratic face of Israel would be undermined. The strategy of *within* is founded on mass participation and engagement with the existing order, unification of the struggles and entails a belief (at least to some extent) in the possibility of change. These two strategies were referred to by Albert Hirschman (1970) as 'voice' versus 'exit.' 'Voice' should be conceived of not only as a possible 'response to decline in quality' as Hirschman suggests, but as a possible response to the belief that an organisation (firm or state) could do better. This belief is a necessary condition for the exercise of 'voice' to be rational, since there is no point in exercising voice where it is not believed possible that any improvement could occur (Barry 1974).

But the picture is more complicated than that. It seems that one is left with more than just the decision between 'exit' and 'non-exit'. The other dyad is between 'voice' (activity, participation) and 'silence' (inactivity, non-participation). In any situation, one choice has to be made out of each pair of options, even if only by default. Thus, there is also 'silent non-exit', and this may well be the rational course to follow if exit is unattractive, even if it is believed that things could be done better by the organisation or state concerned. The fourth combination is 'exit' with 'voice' and would correspond to a case where someone campaigns for improvements after withdrawing. In fact, the question is not one of 'exit' as such. The alternative is now not so much between 'voice' and 'exit' as between 'voice from within' and 'voice from without,' after exit. Those two possibilities guide the analysis in this study. Since our concern here is with resistance – this thesis examines practices that are both intentional and recognisable, and above all, involve action and opposition. In so doing it excludes practices that are passive and therefore include only 'exit.'

Since hegemony by its own nature is an all-encompassing system that prevails both on the political and civil spheres, and penetrates into the levels of consciousness

and practice, it seems unavoidable to conclude that in order for it to be most effective, resistance to hegemony should not be unified and total but rather diffused, multi-layered and multi-faceted. Resistance can be found in the combination of critiques that aim to dissolve the foundations of the existing order, and the activity that struggles against features of the regime, and is accompanied by a platform that offers a new system, a new way to conceive politics. This project examines attempts of these kinds in contemporary Israel, and evaluates the possibility to negotiate with the existing hegemony, and also aims to understand where political spaces for alternative political action can be found. Since law has a fundamental role in sustaining hegemony, this research evaluates how effective resistance is when conducted through the law, with the law or outside of the law.

Chapter Three: Resisting Hegemony at its Stronghold:
The Legal Resistance of Adalah

> The Palestinians describe themselves as a national group. Israel, for them, is the homeland that they had before the 1948 war, and the one they would like to continue to have now and in the future. Thus, they are interested in bringing to the court the story of their uprooting and displacement, emphasizing the national struggle over land in Israel. Israeli law, on the other hand, conceives of Palestinian as individuals or at best, as part of three religious groups – Christians, Muslims and Druze. The state is a Jewish state and it belongs to the Jewish people. Israeli law, aspiring to a scientific and objective authority, treats these historical connections as a blur – wide, general, inexact, unscientific, subjective – and, thus, not neutral.

> Esmeir 1999: 16-17

The Israeli state, and the legal system as one of its main institutions, exists in a dialectic of constraints and possibilities with its 'other,' namely the Palestinian citizens. The situation of enduring discrimination on the one hand, together with the existence of space of resistance, due to the very nature of the law and the democratic claims of the state on the other, has been the grounds on which Palestinian civil society organisations engaged in legal activism have developed. One of them, Adalah, 'The Center for Arab Minority Rights in Israel,' is the focus of this chapter. Adalah ('justice' in Arabic) was founded in 1996 as an independent human rights organisation that devotes its work solely to legal activism and advocacy, with an emphasis on Palestinian collective rights inside Israel. Adalah first started as the legal department within the Arab Association for Human Rights (HRA) and the Galilee Society[33] and it finally became a separate organisation towards the end of 1997. Within a few years Adalah has become one of the leading organisations representing the Palestinian citizenry in Israel, and one of the most important legal institutions in the country.

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[33] The HRA was established in 1988 for the purpose of offering legal advice to Palestinians in the West Bank and Gaza but later reoriented itself towards campaigning for human rights for the Palestinian community in Israel through education and lobbying (Payes 2005: 92). The Galilee Society: The Arab National Society for Health Research and Services is one of the first Palestinian NGO to be established in the State of Israel. It has run major health operations first in the Galilee region and later throughout Israel and initiated the establishment of three other nation-wide Palestinian NGOs in Israel (Ibid: 111).

This chapter examines the ways in which the law is manifested in the constellation of the Jewish democratic state, and if, and how, it can be used in the struggle against the very nature of the state. Theoretically, it traces the unique dynamic of cause lawyering in the context of a settler colonial situation in which justice is framed ethnically but operates within a theatre of liberal democratic institutions. In so doing, it offers an evaluation of the efficacy of this strategy of resistance, addressing its advantages and limits within this particular scenario, and elucidating the meaning of cause lawyering in a colonial/liberal context. Building on the insights of the legal struggle against apartheid in South Africa (Abel 1995), this chapter argues that the law has an important role in this struggle; while its capacity to effect social-political change should not be exaggerated, at the same time, its effect should not be dismissed outright. Sometimes the law is the only meaningful source of influence, and much of the time it serves to expose the contradictions in the hegemonic system, thereby uncovering its weaknesses and forcing it to reveal its oppressive nature. The legal battles should be seen as part of the long and steady counter-hegemonic project. However, the utilisation of the legal sphere for resistance exists in the dialectic of practices: between submitting and subverting (Esmeir 1999). This chapter analyses this exact tension, and the ways in which it can be overcome.

Through the discussion of Adalah's role, its uniqueness, the background for its activity and its actual work, I offer an analysis of the possibilities, limits, constraints and boundaries of legal resistance, as well as the possible way out of these limitations. I discuss the organisation's work through the lenses of three cases in which the organisation was (and still is) involved, representing three different types of resistance in relation to the law. First, I analyse the role of the lawyers, the organisation and the strengths and shortfalls of litigation in the context of the battle against the *Citizenship and Entry into Israel Law* (Citizenship Law). Second, I assess the power of advocacy and public campaigning with specific reference to the events of October 2000 and their ongoing aftermath. Finally, I scrutinise the programme for the transformation of the state and the legal system offered in Adalah's *The Democratic Constitution*. These three cases represent different kinds of activity in relation to the law: first, engagement with the law through litigation; second, public campaigning and representation; and last, transformation of the law in the form of a political/legal proposal. In examining

this diverse range of cases geared towards varied ends, this chapter offers a measured consideration of the full spectrum of Adalah's legal and political activities.

The fight for collective rights as a counter-hegemonic project

Adalah's stated goals are to achieve equal individual and collective rights for the Palestinian citizens in Israel in different fields including land rights; civil and political rights; cultural, social and economic rights; religious rights, women's rights, and prisoners' rights, as well as involvement in the protection of human rights in the OPT. Adalah's involvement in the struggle against the violation of human rights in the OPT came at a later stage, after the outbreak of the second Intifada. Abeer Baker, a senior attorney at Adalah explained that Adalah started to deal with the OPT after Israel's policies led to the almost complete erasure of the Green Line. Even though the Palestinians inside the Green Line have citizenship, she notes that many commonalities are to be found in the way the State of Israel treats the Palestinian people as a whole:

> Israel controls and hierarchises people. First there are the Israeli Jews [who are also hierarchised into Ashkenazis, Mizrahis, Ethiopians, Russians…]. In the second tier, we then find the non-Israeli Jews. Subsequently, and in descending order there are the Arab citizens, residents of East Jerusalem, those in the West Bank and finally Gaza. Between you and me, this is already a single state and Israel controls it all. In Adalah this reality is reflected in the fact that we are also dealing with the Occupied Territories.[34]

Initially, Adalah focused its work on appeals to the Israeli Supreme Court but due to its awareness of the limitations that typify this kind of activity it expanded its work beyond litigation. Today it operates as a human rights organisation that deals with a wide variety of issues concerning the Palestinian citizens of Israel and uses public tools and international platforms to achieve and advance its goals. It advocates legislation that will ensure equal individual and collective rights for the Palestinian citizens; appeals to international institutions and forums; provides legal consultation to individuals, non-governmental organisations and Arab institutions; organises study days, seminars, and workshops; and publishes reports on legal issues concerning the

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[34] Interview with Abeer Baker, 1 April 2010, Haifa.

rights of the Palestinian minority in particular, and human rights in general. Adalah is consciously working to challenge the power relations from *within* the institutions of the state. It therefore directs its campaign at influencing Israeli public discourse through high visibility in the Hebrew media, regular participation in conferences organised by Israeli universities and involvement in human rights campaigns in cooperation with Jewish-Israeli organisations (Payes 2005: 124).

Adalah's focus on collective rights reflects its commitment to subverting the attempt of the Israeli state to disaggregate and individualise the Palestinian citizens in Israel, dividing them into sub-groups based on religious or other affiliation. For Adalah, the Palestinian community in Israel is a national-indigenous minority, characterised by its own language, culture, history and collective memory. The organisation proclaims a liberal conception of social relations, viewing the personal autonomy of the individual as an aim in itself. Nevertheless, it simultaneously advocates a multicultural approach that connects personal autonomy to recognition of the collective rights of the group to which the individual belongs, so that he/she can act freely and without oppression. Indeed, Adalah seeks to harmonise civil-political rights with the collective rights of the Palestinian minority as a national-indigenous minority.

Following this line, Adalah selects its court cases on the grounds that they constitute a precedent-setting legal challenge that significantly affects the rights of the Palestinian community as a collective. Usually, its cases are initiated and court petitions are filed on a proactive basis, based on in-house research. Thus, Adalah is sometimes its own client on behalf of Israel's Palestinian population. Abeer Baker explained that Adalah is using the law as both a shield and a sword:

> We see our role as pushing forward positive rights and not only negative rights. This means that we do not only defend citizens against something that happened to them, such as land expropriation or arrests during political protests, but we are dealing also with positive rights, which means that we are demanding that things will be done in a way that will promote the rights of the Palestinian community in Israel.

A combination of factors led to Adalah's establishment in the mid-1990s. These explain better Adalah's role and position in the struggle for the collective rights of Palestinian citizens of the State of Israel. Adalah was established in the aftermath of the Oslo Accords, signed in September 1993 between the Israeli government and the

Palestine Liberation Organization (PLO), and the series of related agreements and negotiations that followed. During that period there was an increasing need for the Palestinian citizens of Israel to emphasise the importance of citizenship and civil rights issues for defining state-minority relations. The Oslo Process did not touch on the issue of the Palestinian citizens, and made it clear to them that they were not seen as part of the same problem of the Palestinians in the 1967 Occupied Territories (to whom the Oslo process was addressed), nor were they included in the negotiation process to find a possible solution. At the same time, it was clear that they were also not part of the Israeli state as full and equal citizens (Payes 2005: 125; Zreik 2003: 45).

It was at this juncture that the Palestinian community took matters into its own hands, and in order to get out of its isolation it adopted an assertive agenda of positive struggle: "We have started to demand what we haven't asked for before. Now the main issue is the connection between the Jewishness of the state and our status, and we want change" (Jabareen 1996: 24). This understanding also contributed to a major shift in the operational logic of Adalah (among other newly established NGOs), and led to its increased professionalism and outreach to the international community, in an attempt to generate public opinion and attract attention to the status of the Palestinian citizens inside the Jewish state (Soehnchen 2007).

Additionally, Adalah's establishment filled a gap that existed in the arena of legal advocacy in Israel, which until then had been dominated by the ACRI, the Association for Human Rights in Israel. Hassan Jabareen, Adalah's co-founder, explains that Adalah does not follow the same premise that is the basis of the ACRI's work: "We Palestinians cannot work from this perspective [of the Jewish democratic state]. Our problem is about minority rights, as well as human rights and rights from a collective perspective" (Quoted in Soehnchen 2007: 176). Jabareen testifies that he was inspired to establish Adalah following his short internship at the National Association for the Advancement of Colored People (NAACP), the strongest and biggest Black organisation in the United States. Jabareen recalls that this experience had a tremendous effect on him and he describes his ideological difficulties in working for the ACRI: "When I saw the model of the NAACP and how much it contributed to the struggle of the Blacks, advanced their rights and gave inspiration and pride to the

Black jurists, I decided to establish Adalah" (Jabareen 2009: 20).

Orna Kohn, a Jewish-Israeli lawyer who has worked in Adalah ever since its foundation, highlighted the same issue. ACRI, where both Jabareen and Kohn worked before, focused its work on individual human rights, something that they both found unfitting for the actual situation of the Palestinian population in Israel, which is determined by the political reality.

> ACRI was then [in the mid 1990s] blinder to the existence of Palestinians in Israel... I remember a discussion in the legal department of ACRI, it was at the time of the campaign for the lands, before the Democratic Mizrahi Rainbow's appeal to court about the lands.[35] The slogan was 'This land is also mine!' We had an interesting discussion on discrimination, Mizrahi and Ashkenazi, and I said "but this is a stolen land! Let's speak about who this land really belongs to!" People did not understand what I was talking about. The gap was too wide... The only place I was interested to go to work in, using the profession I acquired, was Adalah. [36]

Finally, behind the establishment of Adalah, stood the changes and possibilities for action in the Israeli legal system, manifested in the passing of new legislation in the form of the 1992-94 Basic Laws (mentioned in the introduction). Although these laws legally grounded for the first time the character of Israel as a Jewish and democratic state, and were therefore founded on the same Zionist logic, they opened up a narrow space of manoeuvre within the law that did not exist beforehand. Former Chief Justice and President of the Supreme Court, Aharon Barak affirms (2006) that the Supreme Court took these laws seriously, their rhetoric became that of human rights, and consequently the space for the existence of organisations like Adalah was widened.

In sum, towards the mid-1990s, the combination of the political climate of the early-Oslo years together with the enactment of these two constitutional laws underpinned the establishment of Adalah, enabling it to offer a completely novel legal discourse and practice within Israel. It then became possible to discuss issues that had previously been considered taboo. As Kohn suggested, "the court then allowed itself to

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[35] The Democratic Mizrahi Rainbow, an organisation representing Mizrahi Jews in Israel, filed a petition to the Supreme Court in 1996 against the decision of Israel's Land Administration to enable Kibbutzs and villages to privatise land and to change its original agriculture purpose to commerce, industry, residency and tourism. The Democratic Mizrahi Rainbow claimed that these decisions were illegal discrimination against the weak sectors in society, residing in the developing towns and neighbourhoods of the big cities, in favour of the Ashkenazi landowners. See http://www.ha-keshet.org.il/
[36] Interview with Orna Kohn, 20 December 2009, Haifa.

be a bit braver."[37]

A few years later, in the aftermath of the events of October 2000, in the violent clashes between Palestinian citizen demonstrators and the police when 13 Palestinians were shot and killed, Adalah made its breakthrough in both the public and professional spheres. At this time the organisation had already taken its first steps and it was challenged by these events. Hence, the combination of a dynamic organisation and a highly skilled and professional team enabled the organisation to respond in real time and give answers to the events as they unfolded. I explore Adalah's involvement in the October 2000 events in depth below.

Adalah's prominence and focus on collective rights place it on a collision course with Jewish-Israeli public opinion. Striving to make the state less Jewish and more democratic, it can be characterised as anti-Zionist. This leads to a negative public image of the organisation in Jewish-Israeli society. Salah Mohsen, Adalah's Media coordinator explains, "When they speak about us in the Israeli media they tend to write Adallah, with a double 'L,' instead of Adalah. This links it automatically to something like 'Hizballah,' with religious and violent connotations."[38] Mohsen ascribed this to the tendency of Israeli society to close itself off and to turn against any individual or organisation that undermines the logic of the Jewish state. However, the media is one of Adalah's important spheres of activity since it also aims to mould, influence and mobilise public opinion as part of its operational strategy, as the groundwork for both filing petitions to the Supreme Court and as part of its public campaigning. In effect, Adalah's lawyers and the organisation itself are mentioned many times in news outlets, since the organisation places itself at the centre of the most important junctions of the Palestinian community in Israel: October 2000 events, the disqualification of Arab parties from participating in elections and issues relating to the OPT. It is its engagement in counter-hegemonic activity, in the form of battles for collective rights using the state's legal institutions, which make Adalah an important case study for this research.

At this point it is possible for us to dwell on three specific cases in which Adalah

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[37] Ibid.
[38] Interview with Saleh Mohsen, 28 December 2009, Haifa.

was and still is involved. Throughout the analysis, different relations to the law and the legal system will surface and frame the discussion, and these reveal a full spectrum of activities shaped around the law. The three cases chosen demonstrate different layers of legal activity and their political implications: litigation, with its limits and possibilities, paradoxes and opportunities in the case of the battle against the Citizenship Law; legal representation and local and international advocacy around the events of October 2000; and finally, a proposal for a constitution, and a new political programme for the state of Israel.

The possibilities and limitations of litigation: Israeli citizenship law

At the end of March 2002, Eli Yishai, then Minister of Internal Affairs, decided that all requests for family unifications submitted by Palestinian citizens of Israel married to Palestinians from the OPT would be frozen until further notice. The media reported that the decision was made following the suicide attack at the 'Matza' restaurant in Haifa, which was executed by a Palestinian man whose father had been granted citizenship through the procedure of unification of families (Mu'alem 2002). However, previous publications reveal that even months before, Yishai had examined ways in which the law could be changed to decrease the number of Palestinians gaining Israeli citizenship. This was an attempt "to find ways to minimise the number of non-Jews, including Arabs, gaining Israeli citizenship, which had risen dramatically in the last few years and posed a threat to the Jewish character of the state of Israel" (Mu'alem 2002a).

Government decision 1813, taken on 12 May 2002, declared that all requests for family unification regarding Palestinians from the OPT would be frozen, due to the 'security situation.' On 4 June 2003, a governmental bill, *Nationality and Entry into Israel Law (Temporary Order) – 2003* based on Governmental Decision 1813 was submitted:

> During the period in which this Law shall be in effect, notwithstanding the provisions of any law […], the Minister of Internal Affairs shall not grant a resident of the region nationality pursuant to the Nationality Law and shall not give a resident of the region a

permit to reside in Israel pursuant to the Entry into Israel Law. The regional commander shall not give such a resident a permit to stay in Israel pursuant to the defence legislation in the region.

In the explanatory notes of the new bill, the rationale behind the proposal surfaces:

> Since the outbreak of armed conflict between Israel and the Palestinians, which has led, inter alia, to dozens of suicide attacks on Israeli territory, there has been increased involvement of Palestinians in this conflict who are by origin residents of the region and carry Israeli identity cards following family unification with Israeli nationals or residents, and who take advantage of their status in Israel, which enables them free movement between Palestinian Authority territory and Israel.

On 31 July 2003 the majority of parliament members voted for the governmental proposal and the law was enacted as a temporary order, meaning that it was limited in time. Nevertheless, its duration has continued to be extended ever since. The law puts a complete halt on the submission of new applications by citizens requesting status for their spouses who are residents of the OPT, as well as on all requests submitted after May 2002. The law explicitly excludes Jewish settlers residing in the OPT, and only affects Palestinians. It therefore distinguishes between people on national grounds.

Ever since its legislation, throughout its extensions and amendment, Adalah has worked to fight the law. It has petitioned the Supreme Court, both challenging the law and trying to halt its application, sent letters and petitions to the Minister of Internal Affairs, addressed members of parliament, and issued countless press releases and appeals to various international platforms such as the United Nation's committees for human rights and the European Commission. Here, the focus is on Adalah's struggle on the local legal stage, namely the Israeli Supreme Court.

In August 2003 Adalah filed a petition to the Supreme Court (Adalah et al. 2003) against the new law calling for its nullification. Petitions to the Supreme Court are divided into two parts: the factual part in which the petitioners are free to unfold 'the story,' and the legal part in which the petitioners must keep the argumentations strictly legal and grounded in precedents, laws and legal conventions. The tension between the factual description and the legal argumentation highlights the dichotomy between the language of rights and the language of justice, which Adalah is striving to bridge. By its very nature, "the justice language, which is meant to raise demands, is uprooted

from the legal argument. It is (dis)placed in other discursive practices" (Esmeir 1999: 18). Following this line, it seems that the subversive practice can be found only in the factual part of the petition. However, further investigation can prove otherwise, when the use of petitioning and litigation is placed within a context that has different aims. These are elaborated below.

In Adalah's petition, the factual introduction to the petition narrated personal stories of Palestinian couples whose lives together would become impossible as a result of the new legislation. In addition, Adalah claimed that the law was enacted in the absence of sound factual grounds elaborating the need for this law and its repercussions. The petitioners proved that the records showed only twenty cases of suspected involvement of Palestinians with Israeli citizenship in terror attempts, out of a population of many thousands of inhabitants of the OPT who had received residence status in Israel due to the unification of families.

Adalah's main legal argumentation was based on the assertion that the law explicitly contradicted the instructions of Basic Law: *Human Dignity and Liberty*, namely the constitutional right to equality between citizens. Hence, "the discrimination against Arab citizens in the Law is apparent from the clear, unambiguous wording of the Law" (Ibid: 25). The petition continued, claiming that, "The constitutional status of the principle of equality is required for a constitutional regime built on a free and democratic society. […] A society that wishes to establish itself on the fundamental principle of freedom and equality has no choice but to recognize the constitutional status of the principle of equality" (Ibid: 27). The fact that the petition had to follow strictly legal argumentation using the state concepts and narratives of 'liberal democracy,' 'constitutional rights,' and 'equality between citizens' is not surprising. Indeed, the legal field has established conventions that must be adhered to by those who choose to enter it. Indeed, "the order of the legal language seems distorted and suppressive, as it fixes the presence of Palestinians in legal categories, presumably neutral" (Esmeir 1999: 18). However, of interest here are the silences in the petition that Adalah's lawyers were obliged to keep, which found their full expression outside of the petition and the court.

While insisting on constitutional rights and democracy was a good legal tactic, a

more sincere line of argumentation is revealed in Adalah's lawyer's publications, where they expressed their conviction that security considerations have been used many times as a cover for ideological-demographic ones and that what guided the legislators in this case was the need to preserve the Jewish character of the state (Baker 2005). Accordingly, 'security legislation' often serves as a disguise for ideological motives. Indeed, while security related practices should normally function as exceptional measures that can suspend liberal norms until the threat that issued them has been eliminated and order restored, in Israel, the lives of the Palestinian citizens are regularly structured by the exceptional legalities of emergency powers. Security laws in Israel had become part of the general law; they were not confined to the exception, but instead "began to make an appearance everywhere in Israeli law... the exceptional legalities have become an integral part of the working of the Law" (Esmeir 2004: 8). Finally, for Adalah's lawyers this case marked a transition from discrimination to extreme racial oppression, leading to the conclusion that this law was not only blatantly and radically unconstitutional, but it also contradicted basic human morality (Jabareen 2004).

The Supreme Court gave its decision after almost three years, rejecting Adalah's petition (together with six other petitions against the law) by a six to five majority. Deputy Chief Supreme Court Justice Michael Cheshin, who was in the majority, gave the second main opinion on the decision. He found that the law did not violate constitutional rights and even if it did, the violation was proportional. He explains that in a 'state of war', the state is entitled to prevent the entry of enemy nationals into its territory […]. The Palestinian residents of the region are enemy nationals and as such, they constitute a risk group […]. For this reason, the state is entitled […] to legislate a law prohibiting their entry into the state" (H.C. Decision 7052/03 2006).

As an immediate response to the Court's decision, Adalah issued a press release, stating that the court had approved the most racist law to date in the State of Israel, a law that even the apartheid court in South Africa had refused to approve, since it undermines the most fundamental right to family life (Adalah 2006). Ever since the Court's decision, the law has been extended again and again, albeit with minor amendments put in place, while Adalah has tried to challenge these extensions. On 31

May 2007, Adalah petitioned again to the Supreme Court, demanding the nullification of the Law with its new amendment that expanded its scope to also include residents/citizens of 'enemy states' such as Iran, Iraq, Syria and Lebanon. In its legal argument, Adalah determined again that the law was unconstitutional, and thereby undermined the dignity, equality, right to family life, freedom and personal autonomy of citizens. Another point made by Adalah was that the law denied Palestinian citizens the right to family life with spouses from their nation, the Arab nation, and from their people, the Palestinian people. This is especially offensive since the Palestinians in Israel are a homeland minority; therefore restricting their right to family life with their nation and people is contrary to the precepts of International Law.

Examining the text of the petitions and the nature of the legal arguments brought forth by Adalah reveals some of the inherent limitations of resistance in courts. The legal argument of Adalah follows the logic of proving the new law to be unconstitutional and unsuitable for a 'liberal democracy.' As many lawyers point out, appeals to court and the choice of struggle in the legal system of the state bear some concessions that must be understood and calculated in advance. This entails the unavoidable use of some of the state's narratives and concepts.[39] Adalah could not have used arguments accusing the state of deliberate discrimination in the name of demographic considerations and the preservation of the 'Jewish state.' Nor could it have straightforwardly attacked the alleged security considerations that were brought up. Instead, it had to maintain and use a certain language, confined within the boundaries of the acceptable legal (and hegemonic) discourse, in which the law can be challenged only from the point of view of the existing legal framework of the state. This meant that the law had to be examined in the light of Basic Law: *Human Dignity and Liberty*, which is meant to guarantee equality and dignity to all citizens.

The problematic point in this line of argument became evident in Adalah's roundtable discussion on the Supreme Court's decision. One participant claimed that the court did not nullify the law since the issues addressed in it go to the heart of the Zionist logic: questions of nationality and citizenship. Since the legal system in Israel

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[39] Interview with Baker; Interview Kohn; Interview with Emily Schaeffer, 16 August 2010, Tel Aviv; Interview with Michael Sfard, 30 December 2009, Tel Aviv; Interview with Lea Tsemel, 15 August 2010, Jerusalem.

is based on the premise of Israel being both a Jewish and a democratic state, a certain degree of discrimination will always have to be justified. The question thus becomes centred on the extent of discrimination and not on the discrimination itself. "The law and ruling are the inevitable outcome of an indispensable, institutional anti-Arab slippery slope. Thus, I find the ruling perfectly consistent with the constitutional structure and political culture, wherein the problem inheres" (Sultany in Dakwar, Saban and Sultany 2006). Following this line, those who argue that the law is unconstitutional under Israeli law are in fact ignoring the problematic nature of the Israeli political ideology on which the law is based.

This issue opens up an important discussion about the paradoxes that are part and parcel of legal resistance, first and foremost of which is the question of legitimacy, which is found at the core of debates amongst professionals and legal scholars. Indeed, "the dilemma [of the Palestinian minority in Israel] is how to gain justice through the state's legal ideology without granting legitimacy to the nation-state which constitutes that ideology" (Barzilai 2005). Many lawyers actually point to the fact that the law serves to legitimise political authority, and therefore recourse to legal help and justice in the Israeli courts provides legitimacy to the courts and thereby sustains the Zionist hegemony that is found at their base. It also assists the State of Israel to hold to its claim to be a democracy, since the Supreme Court in particular maintains a positive image, both locally and internationally, as the 'gatekeeper of Israeli democracy,' a vanguard for the protection and maintenance of human rights in the country (Al-Haq 2010: 7). Another aspect in this regard is the fact that the state needs internal opposition, a role played by cause lawyers, to better assess the feasibility and ease of implementing its policies. In this way, resistance can become part of the practice to which it objects, and a phase in the policy structuring procedure (Sfard 2009: 48).

This question of the lawyers' 'existential dilemma' becomes more severe and complex with regard to petitions filed by Palestinian residents of the OPT: "The existence of the Court, and Palestinian petitions to it, inherently promotes the idea that the occupied population has a legitimate recourse to justice, thereby allowing Israelis and third parties to transfer moral responsibility for what happens in the OPT onto Israel's 'fair and democratic' justice system" (Al-Haq 2010: 18). But the question is

also relevant to the Palestinian citizens. The need to avoid the legitimacy trap brings Palestinians to argue against secondary issues, or the symptoms of the problem, instead of the core issue itself (Barzilai 2005). This comment is highly relevant not only with regard to the Citizenship Law, but also to many other issues such as land, Jerusalem, internal refugees and others.

Other lawyers and legal scholars claim that the law, as a tool of legitimation, may be effective only among those proximate to the centres of social and political power. "The effectiveness may diminish, however, as the law radiates 'outward' in the direction of socially and culturally marginal groups in the society, or 'downwards' in the direction of less powerful social classes" (Bisharat 1995: 560-561). According to this approach, the legitimacy argument concerns mainly the Israeli regime and its supporters (in the Israeli society and beyond) and forms part of its internal discourse, in which the Supreme Court has an important role of legitimation. To a lesser extent, it also has an effect on the way in which Israel is perceived by the international community. Thus, in order to deal with the questions of legitimacy and its potential dangers, one must always put it in the context of the audience to which the legitimacy question is referring. Certainly, it should be examined from the point of view of the victims, and not the oppressors. Indeed, it seems to be less relevant to Palestinians who are being oppressed by it (Bisharat 1994; 1995; Jabareen 2010: 279). Nevertheless, as resistance to Zionism is an important issue on the international stage, the question of the effect on international public opinion is important and still needs to be taken into consideration.

Upon further examination of the Supreme Court's ruling regarding the family unification case, in the light of the discussion so far, one can claim that the 'bright side' of the ruling lies in the fact that it exposes the system's problematic nature; as the court becomes more self-consistent, its absolute adherence to the system of subordination becomes more apparent. Legal centres and human rights organisations such as Adalah should focus on creating the memory of the court regarding its failure to defend human rights and its submission to repressive ideology (Sultany 2006). This can be achieved by filing continuous collective and individual petitions that relate to the Citizenship Law. The court will thus come across its democratic pretences time and

again. Similarly, Sultany suggests creating a memory of resistance. Victims of the law should be encouraged to violate it, and organisations should represent them. Shaming activities should target not only the executive branch but also the judicial officials, including the justices who supported the law.

Many lawyers agree with this perspective and analysis. Since the hope of creating change through litigation is limited due to the fact that this will necessitate a change in the political and legal culture as a whole, litigation assumes a different role. Indeed, apart from the small-scale victories and first aid to individual clients which materialises occasionally, litigation has other roles in the resistance.

One of the most important roles of litigation is to expose contradictions in the 'Jewish and democratic state' formula, and to force the court to face these contradictions and the need to defend them time and again. In this sense, there is an accumulative effect that can influence the court, together with the fact that it also creates pressure on the system.[40] Exposure of contradictions in the hegemonic system forces hegemony to be more explicit in its coercive nature and in its need to defend itself and repress attempts at resistance against it.

Another related role of litigation is the exposure of information that otherwise would be kept hidden from the public. Appeals to court often attract media interest and can serve to expose to the public hidden aspects of the Israeli regime and its practices.[41] This exposure of information in turn contributes to the creation of social movements, since it enables both lawyers and their clients to show how the law provides legitimacy to practices that perpetuate alienation and injustice, and stir public debate (Jabareen 2010: 249). It also exposes the brute force of the state that may be rendered illegitimate or at least questionable.

Additionally, litigation constitutes the documentation of the struggle, and functions as both history writing and narration of the resistance. Litigation in these types of cases, which can be defined as 'losing causes,' constitutes a refusal to accept

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[40] Interview with Kohn; Interview with Schaeffer; Interview with Yael Barda, 22 August 2010, Tel Aviv.
[41] Interview with Barda; Interview with Smadar Ben Natan, 24 August 2010, Tel Aviv; Interview with Gabi Lasky, 10 August 2010, Tel Aviv; Interview with Sfard.

the present and lawyers carry a vision of the future in which "justice prevails over that violence" (Sarat 1998: 322). In this way, the lawyer also serves as a witness, testifying against these injustices. The lawyers is thus "bearing witness, writing history" (Ibid).

Litigation also empowers the individual or community that is using it. What the Palestinian citizenry lacks in political terms, it can compensate for in the legal sphere.[42] Finally, litigation can also be used as a first step before an appeal to international platforms. The information exposed and revealed in the courts can also be brought up in international platforms, such as the United Nations and European Union bodies.[43]

In spite of these important roles assumed by litigation, while Palestinians are unlikely to ever support an ideology or system of government that is built upon their oppression, the legal struggle might weaken the intensity of other forms of resistance. Some lawyers refer to this as the 'anaesthetic effect of the court.' This means that the appearance of recourse to justice transfers responsibility to the justice system and its representatives and can lead to the paralysis of other forms of struggle, and in general to the legalisation of the political struggle (Sfard 2009; Esmeir and Rosenberg 2000).

Adalah's lawyers testify that they are aware of this limit and try to maintain the delicate balance. Orna Kohn explained that in some cases Adalah refuses to take a case to court. A good example is the attempted expropriation of the lands of Al-Roha, in central Israel.[44] She recalled, "we knew that legally speaking, the chances of winning this case are low, and that the court would most probably uphold the confiscation. We therefore understood that there was a need for a public struggle and refused to take the case to court. We knew that if we opened the legal struggle, it would paralyse the public one."[45] Ultimately, the local Palestinian citizens mobilised popular support using grassroots and political means such as demonstrations, strikes, parliamentary debates and media outreach and succeeded in stopping the expropriation. Abeer Baker confirmed that Adalah thinks about and examines every case in depth before it agrees

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[42] Interview with Baker; Interview with Kohn.
[43] Ibid; Interview with Ben Natan.
[44] Portions of land in the al-Roha area were seized for the establishment of military firing ranges in 1976 and again in 1985. On 12 May 1998 another portion of land was designated to create an additional firing range, of which 18,000 dunams were Palestinian owned and used mainly for agriculture. Nine Palestinian towns border on the firing range, and in some cases the perimeter runs along the walls of residents' homes.
[45] Interview with Kohn.

to take it to court, taking into consideration the possible risks, outcomes and implications: "it is a struggle with strategies and tactics. You do not go to court for every violation of human rights; you have to think about the bigger picture."[46] Nevertheless, criticism of Adalah's use of litigation can be found. In a conversation about the limitations of the legal work, Lea Tsemel, an independent attorney who has worked for over forty years in the defence of human rights both inside and outside the Green Line, mentioned that for her, "the legal struggle around *Citizenship and Entry into Israel Law* is nonsensical. We must organise the people; we must go out to the street and protest. It is horrible when we replace political work with legal work. We are losing cases in court instead of doing the hard political work."[47]

Tsemel's comment leads us to consider the differences between the work of independent attorney and that of legal organisations, who engage in the struggle against Zionist hegemony in courts. In many ways, the work of independent attorneys who specialise in cause lawyering and resisting Zionist hegemony can be seen as more subversive than that of the organisations. Generally speaking, their work is not on the principled level that involves petitions to the Supreme Court, but instead seeks out the cracks and holes in the system, in an attempt to 'steal corners' and make radical use of the tools and institutions of the state.[48] Tsemel explained that independent attorneys sometimes ask for mercy for their individual clients, and try to make the court make some exceptions: "We are trying to harass the system as much as we can, hoping for some individual help and change to a person's life, not a change in the system as a whole. That will never happen as a result of a legal struggle."[49] Indeed, much of the time independent attorneys use the system cynically, because they do not aim to change it. Therefore, they are trying to disturb the system, to burden it and force it to expose 'enlightened' pretences as false. Some of these lawyers claim that the real opportunities for resistance are to be found at the lower instance courts, and not at the Supreme Court. In the lower instance courts, the judges are less interested in the discourse of justice and principled ideas but are more readily able to give answers to the individual.

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[46] Interview with Baker.
[47] Interview with Tsemel.
[48] Interview with Barda.
[49] Interview with Tsemel.

In spite of the wider and to a certain extent more subversive possibilities available to independent attorneys, there has been a proliferation of organisations over the last two decades. For the individual attorney, working in an organisation can offer protection and security. As a political statement, it has an importance derived from the fact that rights cannot be effectively defended by one lawyer. Rather, they can be better fought for by a strong and established organisation that leads a clear agenda with political implications for the lives of a whole community.

In sum, while litigation can be an important tool of resistance, in the light of its limits it should be used carefully and should never remain as the sole strategy. A possible way out is limited use of litigation in a wider context of socio-political legal calculation, where the variety of possibilities for collective action is found under constant examination. Despite the limitation and narrow possibilities, Adalah's struggle against the Citizenship Law still continues. On 11 January 2012, the Israeli Supreme Court decided to reject the petitions against the law by a majority of six to five. Adalah did not give up, and on July 2012 filed another petition to the Supreme Court, which, at the time of writing, is still pending. However, as a legal organisation, Adalah is not restricting itself to litigation only. It uses other means reserved for cause lawyering.

Truth and power: Adalah and the al-Aqsa intifada

Colonial law is characterised essentially by the existence of two law enforcement systems, which articulate domination of the native inhabitants and their low civil status. In the context of October 2000, the rule of Israeli law provides a clear example of colonial law.

Adalah's newsletter October 2007

Police that arrive to demonstrations with snipers and live ammunition come with the purpose of hurting and murdering civilians. Police that shoots civilians […] are *complicit to a pogrom*. […] A government that seeks some legitimacy from the Palestinian public in Israel must take these minimal steps: *to prosecute* those who are responsible for the murder of the Palestinian citizens. *To establish a Commission of Inquiry* investigating the murder of Palestinian citizens by Israeli police. *To discharge Shlomo Ben-Ami*, the minister of internal security that is in charge of the police and

Alik Ron under whose command 13 Palestinians citizens were murdered.[50]

Adalah, 10 October 2000, ad published in *Ha-aretz*

On 28 September 2000, Ariel Sharon, then member of parliament, visited al-Haram al-Sharif (the Noble Sanctuary, otherwise known as Temple Mount), surrounded by tight security, in what was described as an attempt to reclaim and display the Jewish right to visit the compound (Roa and Waked 2000). Demonstrations that occurred in protest the following day at the compound were violently repressed by the Israeli security forces, using open fire. Following these events, violent clashes erupted in the OPT, resulting in the death and injury of dozens of Palestinians. These clashes marked the outbreak of the al-Aqsa Intifada. On 30 September 2000, as an act of solidarity with the Palestinians in the OPT, the High Follow-up Committee for the Arab Citizens in Israel[51] called for a general strike. During the first three days of October, thousands of Palestinian citizens participated in demonstrations in many towns and villages throughout the country.

From the outset, the demonstrations were severely and violently repressed by the security forces that reacted to stone throwing with open fire using tear gas, rubber coated steel bullets and live ammunition. On the first day of the demonstrations, the Israeli police shot and killed three Palestinian citizens. The news of their death spread and led to intensified clashes in the next two days, during which the Israeli police killed eight Palestinian citizens and wounded hundreds more.

The following week, immediately after an attack on a Jewish holy site in the West Bank and the kidnapping of three Israeli soldiers by Hizballah, Israeli Jews participated in anti-Palestinian riots, targeting citizens and property in various towns throughout the country. The most brutal of these attacks was launched against the Palestinian city of Nazareth in the hands of the Jewish inhabitants of the neighbouring Jewish city of Nazareth-Illit. During the clashes in Nazareth on 8 October, the police

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[50] Emphasis in the original. Translation from the Hebrew is mine.
[51] The High Follow-Up Committee for the Arab Citizens in Israel is an extra-parliamentary umbrella organisation that represents the Palestinian citizens on a national level. Together with the National Committee of Heads of Arab Localities, it sets much of the agenda for the extra-parliamentary campaign of the Palestinian in Israel. It draws its legitimacy primarily from the elected public figures that compose its membership and consent to its leadership. Among its successes is the ability to mobilise the street and to set up a national calendar of political activity (Payes 2005: 112).

killed two more Palestinian citizens.

During the course of those two weeks, the police arrested more than a thousand people, about two thirds of them Palestinian. By mid-October the demonstrations had ended, but the wave of arrests continued. Palestinian citizens comprised over 80% of those criminally indicted and detained until the end of their trial. These violent clashes, killings and riots were referred to by the Israeli state as the 'October Events,' in an attempt to disconnect them from the Intifada in the OPT as well as from on-going incidents of police violence against Palestinian citizens (Esmeir and Rosenberg 2002: 4-5). Here, the events of October-November 2000 will be referred to as 'October 2000' as a matter of convenience.

In this section, the purpose is not to describe and analyse the events of the al-Aqsa Intifada inside Green Line Israel, its causes, events and repression by the Israeli police but rather to point to and analyse Adalah's involvement in the public campaign to demand justice for the families of the victims, and to disseminate a counter narrative of these events in the Israeli society and internationally.

Adalah involvement in the October 2000 campaign is continuing until this day. It started from the very first days in initiating and leading the public outrage and protest against the government and its policies, demanding the establishment of a commission of inquiry and the dismissal from office of the minister and police commanders under whose authority the killings took place. This work was followed by the struggle against the mandate of the committee, and today Adalah is still involved in the campaign demanding that the government and the police take full responsibility for their part in the killings of Palestinian citizens.

The importance of this case to the analysis of resistance to hegemony through the law is two folded. First and foremost, as the previous case demonstrates, litigation enfolds numerous limitations and paradoxes, and thus it is never an exclusive end in itself. Cause lawyers are therefore typically committed to encourage, enhance, and supplement deployment of other political tactics that can enhance the goals of the overall struggle. In that sense, Adalah's involvement in the public campaign is not unique to an organisation that is engaged in cause lawyering. Nevertheless, Adalah not

only encouraged and enhanced but also virtually led the public campaign. Second, it is a case in which a legal organisation assumed a leadership role within its society and waged a public campaign both inside and outside Israeli society. On the one hand, this type of activity contributes to the wider struggle of the Palestinian citizenry against Zionist hegemony in several ways that are discussed below, namely exposure of information, history writing and as a way to force the state to account for its actions against part of its citizenry. On the other hand, it is important to note that Adalah is a professional organisation dedicated to the legal sphere, and not an elected representative leadership of the Palestinian population in Israel. In fact, some critics say that its assumption of a leadership role overtakes the role of the elected representative of the population – namely the Palestinian Members of Knesset that are now at times 'exempt' from reaching settlement and negotiation with the Jewish population in the country in terms of political agreements.

The Or Commission

Immediately after the events abated, Ehud Barak, Prime Minister at the time, appointed a Commission of Examination to examine the clashes of those days. The commission lacked any legal powers or independence and was therefore rejected outright by the families of the Palestinian victims. Following intense pressure from the families, together with the Palestinian leadership, NGOs and academics, among them Adalah, the Israeli government decided to establish an official Commission of Inquiry, headed by the Supreme Court Justice Theodor Or, known as 'The Or Commission.' The Commission was mandated to investigate the clashes between the security forces and Jewish and Arab citizens and to investigate "the causes leading to their occurrence […] including the conduct of the *inciters,*[52] organisers, participation from all sectors, and the security forces" (Or, Khatib and Shamir 2003).

The families of the victims and the High Follow-up Committee appointed Adalah to represent them before the Commission. Hassan Jabareen explained that Adalah was considered by then a highly professional and skilled organisation, dedicated to cause of the Palestinians inside Israel, and therefore acquired high

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[52] Emphasis is mine. I return to discuss this in greater length below.

credibility in the eyes of the Palestinian public.[53] In fact, Adalah not only took a dominant role in the investigation and legal accompaniment, but assumed also a leading role in the struggle from day one.[54] In accordance with Israeli practice in relation to official commissions of inquiry, neither the families of the victims nor Adalah had any official legal standing before the commission at that stage of the proceedings, and Adalah's lawyers were not allowed to cross-examine witnesses. Nevertheless, throughout the course of the yearlong hearings and as a result of Adalah's ongoing motions and interventions in an attempt to challenge the procedures and evidence, the organisation gained a quasi-official status before the Commission (Dalal 2007: 12-13).

From the outset, Adalah opposed the scope of the mandate given to the commission for two main reasons. First, the commission dealt with the events only from 29 September onwards. In doing so, it not only ignored Sharon's visit to the holy compound the day before, but more importantly, neglected the underlying social processes, deriving from years of historical discrimination against the Palestinian minority in Israel, that began in the 1948 Nakba and continue up to the present day. This, according to Adalah, led to the narrow and at times ahistorical and a sociologically uninformed view of the events that appeared to guide the members of the Commission (Dalal 2007).

Second, and significantly, Adalah rigorously opposed the reference to the role of the 'inciters.' Adalah claimed that it is clear that the term inciters would be applied only to Palestinian political leaders and not to Jewish-Israeli political figures. When these fears materialised, and the Commission issued warning letters to three Palestinian leaders – Azmi Bishara, Abd al-Malik Dahamshe and Ra'ed Salah, with regards to the 'inciting messages' they delivered in the period preceding October 2000 – Adalah submitted on three separate occasions letters in an attempt to challenge the mandate of the Commission that was carried out in a discriminatory manner against Palestinian leaders. Here, Adalah pointed also to the fact that Ariel Sharon's visit to al-Haram al-Sharif on 28 September 2000 remained outside the scope of the Commission in spite the fact that it ignited the outbreak of the Intifada.

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[53] Interview with Hassan Jabareen, 22 April 2011, Haifa.
[54] Interview with Kohn.

Adalah published the arguments and the materials it presented in front of the Commission in March 2003. Indeed, although a judge headed the Commission, the procedures cannot be defined in strictly legal terms. The title of Adalah's report reveals its contents: *Law and Politics Before the Or Commission of Inquiry.* The report outlines the main reasons for the October 2000 protests thereby unfolding the counter narrative to the one that was presented by the Commission and which defined its work.

Adalah's report brings forward several aspects that constitute a counter narrative to the Or Commission report. Adalah opens by stating the immediate reasons for the outbreak of the demonstrations, analysing them as a direct response to Sharon's visit to the holy compound in Jerusalem and its aftermath, namely the severe and violent repression by the Israeli security forces of the demonstrations both inside and outside the Green Line. In doing so, Adalah placed the first and foundational brick of the case, placing cause and effect in a different order, as well as tying together the protests inside and outside the Green Line.

Furthermore, Adalah's report emphasises the realities of the Palestinian citizens' lives in Israel, highlighting the fact that they are treated as the enemy by state officials, a situation that has led to the repression of the demonstrations using methods developed during the course of decades of military occupation in the West Bank and Gaza Strip. Adalah turns to describe the deeper reasons behind the events, contextualising them in the aftermath of 1948, two decades of military government, and the ongoing discrimination and national oppression the Palestinian citizens suffer from in almost all spheres of life. Adalah also points to the failure of the Hebrew-Israeli media to grasp and represent the reasons behind the events, and instead chose to represent the Palestinian community solely through the eyes of 'security sources' without even trying to balance those with other sources, totally refraining from using sources from the Palestinian community itself.

Additionally, Adalah traces the decision making process of the High Follow-up Committee in its decision to call for a general strike as a form of protest rather than an attempt to escalate the events, as was described by the Commission, while shading light on the function and role of the Palestinian leadership in Israel since 1948 until the present. This aspect of the report constitutes an attempt to undermine and prove the

illegality of the warnings that the Commission issued to the Palestinian leaders.

Lastly, and in a similar vein, Adalah attempts to discredit the Commission's determination that Palestinian leaders, like Sheikh Ra'ed Salah, Azmi Bishara and others, were "conveying repeated messages denying the legitimacy of the existence of Israel" (Or, Khatib and Shamir 2003). Adalah's report aims to untie the link between the state and Zionist ideology, highlighting the strict separation between the two, as opposed to the bond Zionist hegemony creates between the two. In Sheikh Salah's case, the report determines: "There is a different understanding of the relationship with the state among the Palestinian minority and the Jewish majority. Most Jewish Israelis, in contrast to Arab citizens of Israel, equate the existence of the state with its Zionist political ideology. Sheikh Ra'ed Salah recognises the state of Israel and its institutions […]. Similar to the vast majority of the Arab public in Israel, Sheikh Ra'ed Salah rejects and contests discriminatory state polices and ideologies, which aim to marginalise the community" (Dalal 2003: 53).

The Or commission's report and its aftermath

The Or Commission published its report on 1 September 2003, almost three years after its establishment. The report does not recommend any legal action against those responsible for the killings of unarmed civilians. It indeed points to failures in police conduct and excessive use of lethal force but recommends taking only minor disciplinary steps against those responsible. The Commission investigated incitement – only in relation to statements made by Palestinian leaders, and ignored the role of Jewish leaders in the process, claiming that incitement in the 'Jewish sector' was only a response to the events of the 'Arab sector'. Hence, the ideological nature of the Commission was expressed in full in the description of the victims of the October events, according to which the main victims were the Jewish citizens, and only in second place one can find the bereaved families and those injured. "[T]he Palestinians, as a moral community and as citizens, are not mentioned" (Sa'di 2010).

Despite Adalah's affirmation of the report and its recommendations, first and foremost towards police conduct with the Palestinian citizens, Adalah severely

criticised the fact that the Commission did not put enough effort into making final decisions about the direct circumstances of the killings and therefore refrained from providing a substantial and satisfying answer to the families of the victims. In addition, Adalah raised questions about the Commission's treatment of Palestinian leaders: the fact that they were investigated 'under warning,' the focus on their political positions, at the same time not treating Jewish leaders in the same manner. Adalah also criticised the fact that the Commission describes the actions of the police as an inappropriate reaction to unprecedented riots – thereby ignoring the fact that police violence led to the escalation in the intensity of events. Adalah finally pointed to the fact that there exists a gap between the conclusions and recommendations of the Commission, regarding the conduct of the Minister of Internal Security Shlomo Ben-Ami, the Northern District Commander of the Police Alik Ron and others (Adalah 2003).

In spite of the flaws in the Or report, its importance should not be underestimated. It must be evaluated in the context of the existing Israeli discourse regarding the Palestinians. Discursively, the report is ground breaking: it mentions the Nakba and acknowledges the existence of discrimination against the Palestinian citizens for the first time. These are the results of the work Adalah did in the committee: inserting 'new' terms into the hegemonic Israeli discourse. Jabareen confirmed that for Adalah, the campaign is considered a success – not because of its specific results (which were unsatisfactory) but due to the process – it stirred public opinion and for months and even years the whole country was talking about the events and police conduct.[55] This empowered the families of the victims and the Palestinian population as a whole. The platform of the committee was used as a stage to present the Palestinian narrative of history as well of the specific events of October 2000: hours of testimonies, witnesses, experts, all testifying in front of an official governmental committee about the history and reality of discrimination against the Palestinian citizens of the country.

The publication of the Or Commission report did not put an end to Adalah's involvement in the case. Adalah took an example from 'Bloody Sunday' in 1972 in Northern Ireland, where massive public pressure combined with an ongoing legal

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[55] Interview with Jabareen.

struggle led the British authorities to agree to the establishment of an international commission of inquiry, 26 years after the events.[56] In a similar fashion, Adalah decided to continue to struggle until all those responsible, in the police and governmental level were punished. In fact, the events of October 2000 should be seen as just a part of a chain of events, starting with the massacre of Kafr Qassem through the events of the Land Day,[57] but the difference now lies in the way the Palestinian community choose to deal with it. Alongside the ongoing struggle against national oppression, the new component and unique form in the campaign is that of the "holding of those responsible to account and the punishment of the guilty" (Dwairy 2005). In this kind of strategy, Adalah plays a significant role, providing the professional knowledge and legal tools, and together with the High Follow-up Committee that provided the representational framework and the political rationale, and the bereaved families that reflected the human dimension – the different components of the struggle are complete. Indeed, this strategy had some successes, such as the establishment of the Or Commission and the publication of its report, despite its flaws. This proves the fact that public and political activity are strengthening the legal work and they are complementing each other, "since we know that the investigations and decisions of the Israeli judicial apparatus are influenced by the level of popular pressure and by the existence of the possibility of taking the issue out into the international arena" (Ibid).

Indeed, many lawyers are well aware of the inseparable connection between the two spheres of struggle. Since the judges 'sit amongst the people,' judicial decisions will never be distant from the widely held opinion in society. This connection was clearly apparent in many cases. One such example is the Supreme Court's ruling in favour of the petitioners in the case of the wall built around the village of Bil'in in the West Bank. Over there, massive popular struggle uniting Palestinian, Israeli and

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[56] Bloody Sunday was the name given to the events of 30 January 1972, in Derry, Northern Ireland, during which 26 unarmed civil rights protesters and bystanders were shot dead by the British Army, while participating in a Northern Ireland Civil Right Association march.

[57] On 29 October 1956, a unit of the Israel Border Patrol shot and killed 43 inhabitants of Kafr Qassem, situated on the Green Line in Central Israel. The Palestinian villagers were returning from their field, unaware of the nightly curfew orders issued by the Israeli army on the village. The soldiers were ordered to shoot on sight and acted accordingly, killing unarmed men, women and children.

On 30 March 1976, Palestinian citizens protested the Israeli government's announcement of a plan to expropriate thousands of dunams of land in the Galilee for 'security and settlement purposes.' In confrontations with the Israeli police, six Palestinian citizens were killed, hundreds were wounded and many were arrested. The events gained the name the Land Day, and are commemorated every year, with demonstrations and actions conducted worldwide.

international activists was caught up by the media, and became familiar all over the country. Michael Sfard, a human rights lawyer that handled the Bil'in case, told me that once he arrived to the Supreme Court for the discussion of the case, Chief Justice Aaron Barak asked him, "what is so special about Bil'in that they demonstrate there for so long?"[58] This, for Sfard, is a clear example of the way in which the popular struggle had succeeded in making Bil'in's struggle unique, which made the difference in the court's ruling. "There are 100 petitions against the construction of the wall. You have to make yours unique. And the popular struggle in Bil'in succeeded in doing so. A convention was created that 'this time we went too far' [in the decision to build the wall at that particular spot]. Therefore, I can say that the popular struggle goes hand in hand with the legal one."[59]

A great part of Adalah's work around the October 2000 case is dedicated to the creation of an alternative narrative of the events. The Or Commission report treated the October 2000 events within the framework of public order and law enforcement, and not citizenship rights, collective rights or freedom of expression. The approach the Commission adopted, its basic assumptions and the fact that the Commission itself "should be placed within, rather than outside, the prevailing matrix of power relations," (Sa'di 2010) make it a highly problematic one. It enables the state to compose "a hegemonic narrative of the October 2000 events, in which the main official actors, State institutions and ideology are positively appraised. [...] By the very fact of its nature, as part of the body of the State and its ruling ideology, the Commission cannot offer the Palestinians more than trivial symbolic gestures…" (Ibid). All these factors lead to the problematic status of the report as a source of information to those who are trying to understand the protest of the Palestinian population.

Hence, Adalah assumed a role of exposing the Palestinian narrative of events and providing a documentation of the struggle, a narration of the resistance. As Baker explained, the Palestinian struggle inside Green Line Israel is not documented, and in the absence of museums or textbooks – the appeals to courts, the petitions, reports and

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[58] Interview with Sfard.
[59] Ibid.

researches are a form of history writing and evidence of the resistance.[60] This is a central component of Adalah's work.

Adalah's work consists of media campaigns in the Hebrew newspapers, countless appeals to the police and the Ministry of Justice Police Investigation Unit (Mahash) and the Attorney General with ongoing requests to investigate and bring to justice those responsible for the killing of 13 Palestinian citizens, countless appeals and petitions to the Supreme Court during the work of the Or Commission (such as requests to cancel the warning to the Palestinian leaders or around questions of representation in front of the Commission) and a flow of publications, reports, articles and conferences that are continuing to this day.

Adalah's involvement in the October 2000 campaign constitutes another front of legal resistance. Adalah assumed a leadership role in the public campaign, together with the High Follow-up Committee and the bereaved families. Its involvement derives from the understanding that it is never enough to follow the official-legal institutional channels in order to strive for its goals. A question arises if this kind of activity can be categorised as 'legal resistance' as such. Indeed, in many cases cause lawyers reach the point where "frustrations with the halting tempo and uncertain consequences of litigative strategies lead to adoption of political strategies and to close association with social movements." The availability to counsel and defend movement activists, place cause lawyers within the "fairly restrictive definitions of professional responsibility." But the problem occurs where cause lawyers get more involved in organising activities and become engaged in political mobilisation up to the point that they might participate in legally proscribed activities. These activities move them beyond the "generally accepted understandings of the appropriate role of legal professionals." Whether the boundaries of the profession are real or constructed, "cause lawyering may so merge with political activism as to be indistinguishable from it" (Sarat and Scheingold 1998: 8).

Adalah's legal resistance can be termed 'flexible lawyering,' (McCann and Silverstein 1998: 276), a style of legal activism that encompass a variety of activities cause lawyers engage in, within a context where litigation strategies are deemed to

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[60] Interview with Baker.

bear only partial, if any, results. Adalah took this flexibility even further when on the tenth anniversary of its establishment it published a document titled *The Democratic Constitution* calling for the reconstitution of the entire Israeli legal system.

Adalah's democratic constitution

The State of Israel does not have a written constitution. As a result of a debate between the supporters and the opponents of the idea of a constitution, the Knesset decided to adopt a compromise known as 'the Harari resolution' according to which the constitution will be made up step by step by the Knesset Committee of Constitution, Law and Justice. Over the years, different elements within society made several attempts at proposing draft constitutions. These efforts intensified at the beginning of the 2000s by elite groups within Israeli Jewish society, in an attempt to persuade the Israeli authorities to adopt a constitution based on the common denominator among the Jewish community.

A sense of urgency to finalise a 'Jewish and democratic' constitution arose "only after the Arab elites in Israel advanced their 'Israel as a state of all its citizens' platform [in the mid-1990s] and in doing so highlighted the contradictions in Israel's claims for democracy" (Rouhana 2006: 67).[61] The efforts to draft a constitution were led by the Constitution, Law and Justice Committee of the Knesset, the official body that can make it law, but were previously spearheaded by unofficial bodies, notably the Jerusalem based Israel Democracy Institute (IDI), that published in 2005 the *Constitution by Consensus*, a constitutional proposal for the State of Israel based on the premises of Israel as a Jewish and democratic state. The consensus here means mainly the Jewish consensus, since Palestinian citizens were basically excluded from the process, while being used only as a 'fig leaf.' In the discussions held by the IDI and in the Law, Constitution and Justice Committee, only one Palestinian member out of a total of seventeen members was invited to participate. Consequently, participation in the Committee's discussions posed a dilemma to the Palestinian member: whether

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[61] This agenda was initiated by the National Democratic Assembly and later adopted by many others amongst the Palestinian citizens. A full elaboration of the idea follows in the next chapter.

"to boycott the effort and to be accused of missing an opportunity to influence the outcome, or to participate and legitimise an effort that will result in a constitution approved by the Knesset majority proclaiming Israel as 'Jewish and democratic,' when this member and most of his constituency believe that Israel is not democratic and should not be Jewish, and that this description is in any case self-contradictory" (Rouhana 2004: 2).

Set against this background, Adalah published *The Democratic Constitution* in March 2007. Adalah's proposal is based on the concepts of a democratic, bilingual and multicultural state. Marwan Dwairy, Adalah's Board of Directors Chairman explains the rationale behind Adalah's Democratic Constitution, stating that the other proposals that have been put forward by other Israeli groups are distinguished by "[T]heir lack of conformity to democratic principles, in particular the right to complete equality of all residents and citizens, and by their treatment of the Arab citizens as if they were strangers in this land, where history, memory and collective rights exist only for Jewish people" (Dwairy 2007). Adalah's Democratic Constitution is based upon two assumptions which were lacking in all other proposals put forward by the Jewish society: "Firstly, the Arab community in Israel is a subject which possesses a history, rights, interests and feelings and is not an object to be excluded or given charity. Secondly, the democratic nature of the constitution which we have prepared is non-negotiable, which necessarily poses a challenge not only to the aforementioned constitutional proposals, but also to the prevailing constitutional framework in Israel" (Dalal 2007).

Adalah's constitutional proposal can therefore be seen as a political proposal for the redefinition of the nature of the regime in Israel, based on democratic values. This document is a result of work and discussions that involved Adalah's team, management and board of directors, but it does not constitute a final text, but rather a draft, open to further discussions and suggestions. It is important to mention that Adalah's members who were involved in the drafting process, highlight the fact that the main, if not only, reason for the drafting of this document was to form a response to the attempts in the Jewish society to draft a constitution. Dalal made it clear: "A minority will never initiate a constitution. It will never be in its favour. This [the other

proposals] is the only reason we did it, we have much more important things to deal with. It is meant to be a challenging document, and not a real constitutional proposal."[62] Hassan Jabareen re-affirmed this and explained that in the environment of that time, the idea was "to challenge, we didn't want to sit on the fence."[63]

The Democratic Constitution is not only a response to processes in the Jewish-Israeli society, but it is also a part of a broader set of documents, four in total, drafted by teams made of the Palestinian citizenry's intellectual elite together with community and political activists during 2006-7. The first of them is the 2006 *The Future Vision for the Palestinian Arabs in Israel*, which was prepared by a team consisting of the heads of the High Follow-up Committee for the Arabs in Israel on behalf of National Committee of Heads of Arab Localities. The document focuses on affiliation, identity and citizenship of the Palestinian community in Israel, dealing with legal, economical, social, political and national issues that stand at the core of their lives (Khateeb 2006: 3-4). The second, *The Haifa Declaration*, published on May 2007 was prepared by a team consisting of staff members of Mada al-Carmel, the Haifa based 'Arab Center For Applied Social Research.' In its opening statement, the project's executive committee states that this document forms the collective vision of intellectuals, academics and activists coming from different backgrounds, that it aims to break and go beyond the boundaries of power relations and the political discourse that is dictated by them, and discuss freely the ways in which they treat the past, present and future. The declaration focuses on the future and the collective status of the Palestinian community in its homeland, the central challenges it faces and the relations with the rest of its people, nation and the State of Israel (Rouhana, Jabareen et al 2007: 4).

Finally, a fourth document, *An Equal Constitution for All?*, was published in May 2007, by the Mossawa Center, 'The Advocacy Center for Arab Citizens in Israel.' In the words of Mossawa's Director, Jafar Farah, the document aims to provide a "rationale for the inclusion of the Palestinian-Arab's constitutional protections and collective rights as a national minority into any discussion or proposal for an Israeli constitution. The document examines the current legal status "[...] and advocates for full equality, participation and partnership [...] based on due respect [..], historical

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[62] Interview with Marwan Dalal, 19 December 2010, Haifa.
[63] Interview with Jabareen.

rights, and universal human rights standards" (Farah 2007: 7). This document differs from the others since it is not the result of a grass-roots team thinking of the Palestinian community, but it can still be seen as complementary and related to the others.

The 'vision documents' were published against a background of processes among the Palestinian citizenry in Israel. The growing oppositional consciousness among the intellectual and political Arab leadership in Israel and its activation after the crisis of the events of October 2000 serves as the most important setting of these processes. Additionally, the aftermath of Oslo that led to a growing sense of isolation of the Palestinian citizens that were left out of the two state solution equation. This evoked the urgent need to address the status of the Palestinian minority in the state of Israel as an internal Israeli affair. Moreover, the documents should be seen as a product of the growth of a Palestinian politically engaged intellectual class in Israel that refuses to internalise suppressive policies and aims instead to challenge reality in visionary terms. Finally, the publication of the 'vision documents' by civil organisations indicates a trend in which civil organisations are involved in political strategic thinking, thus assuming a political role historically associated with parties (Jamal 2008).

The multiplicity of the documents reflects rivalry between different organisations to some extent, and can be understood as a matter of prestige. For example, Adalah viewed the preparation of a *The Democratic Constitution* as a professional task that should be left solely to lawyers, which led to the separate publication of this document despite the fact that prominent figures in Adalah were very central in other projects (Ibid). Although the different documents deal with similar issues, each of them has its own distinguishing features and complements the others. Following this line, *The Democratic Constitution* can be understood as the legal manifestation of the 'vision documents.' As a whole these documents can be viewed as an expression of the political and social empowerment of the Palestinian citizens of Israel. In this way, "the 'future vision' documents […] were not isolated from the accumulated mass of politics and struggles that preceded them. Rather, it can be argued that they constitute a political climax to a social and political movement..." (Ghanem 2010). Hence, the

documents establish the foundations for a positive collective national project that takes into account the views of the majority of the Palestinian community, in a way that was so far neglected by the existing Palestinian parties.

Not long after its drafting, the document was put on hold, and currently it does not constitute an active project of Adalah. The reason for this, according to Kohn, is found in the simple fact that the issue of forming a constitution went off the agenda in Israeli society as a whole. In the current state of events and the political atmosphere prevailing in the country, "it is better to have no constitution than a bad one. A bad constitution will just make things worse".[64] Nevertheless, in the context of the analysis presented here, it is important to discuss and understand the nature of character of this document, while keeping in mind the background for its formation, as it constitutes a third level of legal resistance exercised by Adalah. This time, Adalah stretched the boundaries of the legal profession to their farthest limits – or as some would claim, surpassed them – in its proposal for the radical transformation of the entire legal system in the State of Israel.

The document

Despite its visionary deliberativeness, *The Democratic Constitution* is formulated in professional legal language due to its purpose as a proposal for a state constitution. The language of the document is declarative, aspiring to formulate a comprehensive bill of rights to ensure principles of equality and universal justice for all citizens (Jamal 2008: 19). As clearly indicated, it is a draft, open for discussions, suggestions and further changes.

The Democratic Constitution draws on the experiences of different peoples and countries with majority-minority situations, countries that went through a democratic regime change, such as the South African constitution and the constitutional arrangements in Canada, Belgium, the Republic of Ireland and Macedonia (Adalah 2007: 4, 10 notes). Special attention is given to the South African experience, a place where significant historical change has taken place with the ending of the apartheid regime. This change entailed the initiation of a process of historical reconciliation

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[64] Interview with Orna Kohn, 16 November 2010, London.

based on recognition of historical injustice. It also ensured "effective participation [...] in the process of constitution making" (Ibid: 4) for the groups upon which the discriminatory and repressive policies were inflicted. On the whole, the content of the proposal deals with two fields. The first deals with individual rights in the state and the collective rights of the Palestinians in Israel as a homeland minority. As for the second, it addresses the political structures and institutions in the State of Israel, including the demarcation of the borders of the state.

The preamble to the constitution is considered to be one of its most important parts. Besides its legal importance, it also has an educational and public importance because it expresses the fundamental principles of the state, is based upon its historical narrative, and defines the components of its collective identity. The preamble serves also as a cornerstone for the subsequent articles in the constitution, which are to be interpreted in its spirit (Ghanem 2007). *The Democratic Constitution*'s preamble is based and rests upon universal human values, as well as the particular experience of the Palestinian people in their homeland. It reaffirms its connection to anti-colonial struggles for liberation and the post-apartheid process, and demands historical reconciliation based on Israel's recognition of the injustices it inflicted upon the Palestinian people. The proposal is calling for the establishment of a democratic society, based on full equality and respect for both individual and collective rights of the groups residing in the country (Adalah 2007: 4-5).

Adalah conducted a roundtable discussion about the content of the preamble, which brought together Jewish-Israeli and Palestinian intellectuals. The critique can be roughly divided into two positions. The first pointed to the excessive particularism of the preamble and the fact that it represents only the voice of the Palestinians, and not the overall citizen community in the country, thereby neglecting the place of the Israeli Jews in it. In doing so, the critics claimed that the preamble fails to treat citizenship as a bond between both Jews and Palestinian to the state that will belong equally to both (Ophir, Azoulay and Gross 2007). The second points in an opposite direction (Esmeir and Mansour 2007). For Esmeir, the preamble is too universal, "in a tragic way." For both, the preamble must put emphasis on the particular historical-political experience of the Palestinians more than on universal and international legalities. Only the

particular context can "birth a new law for a reconfigured political community" (Esmeir 2007).

It is not surprising to discover that the contradicting points of view diverge along national lines between the Israeli Jews and the Palestinians intellectuals. For the Israeli Jews, the partnership between the two peoples in a reconfigured political community is of importance, while for the Palestinians the demand for their place in history and politics is of greater significance. I would suggest that the fact that the democratic constitution of Adalah is more of a challenge and response than a serious constitutional proposition explains the greater emphasis of the Palestinian perspective and disregards the Jewish Israeli community. The other reason for this is the plain fact that *The Democratic Constitution* was prepared by a team composed only by Palestinians. Jabareen explained that at that time it was the only possible way since, "any dialogue was due to be too long and we didn't want to compromise on the difficult issues. But we added a footnote to the introduction saying clearly that the constitution should be written by both sides and present a neutral narrative."[65] At the same time, the insistence on universal experience and norms are indeed part of the international legal discourse Adalah is committed to, and reflects the boundaries of that legal discourse.

An analysis of the articles of the constitution itself serves to illustrate several points. To begin with, perhaps the most controversial article in the constitution is article number one: "The borders of the State of Israel are the borders of the territory which was subject to Israeli law until 5 June 1967." Opening in this way, Adalah takes a firm stand as to the territorial solution to the Israeli-Palestinian conflict, in support of the 'two state solution,' with a Jewish majority in the State of Israel. This issue stands at the centre of both the praising and the condemnation of the document. On the one hand this is a brave step forward, since the question of the borders of the state is one that Israel has avoided defining ever since its establishment (Ghanem 2007). Indeed, all other proposals set forward by Jewish-Israeli groups have continued to avoid defining the borders of the state. On the other hand, by clearly defining the borders the document is laying down the solution, instead of offering guidelines and criteria for

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[65] Interview with Jabareen.

various possible solutions to the Israel/Palestine question. After all, the question of borders is highly debated amongst the Palestinian community, and to a lesser extent the Jewish one. Orna Kohn criticised this decision: "I was not part of the team working on the document since I was away at the time. But I think that setting the solution was a mistake, and I think that today they all understand it. But it is a draft and we can still change things. I would have liked to see the document develop further by setting out minimal norms for a democratic constitution and present alternatives on how to do this. This would have better suited the fact that we are not a political party, but an organisation."[66] As the document clearly states, the demarcation of the borders of the state is critical for issues of civil rights, since "the test of belonging to 'a clear territory' facilitated the definition of 'who the citizen is' that stands as an equal before the state without intermediary agents. This is particularly true with regard to the State of Israel, where the lack of a defined border contributed to the fact that tribal and ethnic affiliation became the essence of citizenship" (Adalah 2007: 6).

The document in fact calls to turn the Israel of the pre-1967 borders into a democratic state, based on the values of human dignity, liberty and equality. The state will be a bilingual and multicultural state, as opposed to a 'Jewish and democratic' state, which grants many privileges to its Jewish citizens. In practice, it calls to cancel any privileges granted to Jews and to secure the protection of the Palestinians as a homeland minority, the most important of which is the right to citizenship, including the provisions of the Law of Return, that gives the right to every Jew to emigrate to Israel and get to automatic Israeli citizenship but also distributive and restorative justice – annulment of the special privileges granted to Jews in the purchase of land (in the form of JNF control of land and the sorts). The constitution suggests two alternatives to participation in the decision making process, in the form of power sharing in government. Both models ensure the inability of parliament to enact any law that discriminates against the Palestinian population if the vast majority of the Palestinian parties object to it. In addition, for the sake of historical justice, it calls for affirmative action in the allocation of land and water and in planning to those groups of citizens that have suffered from injustice and historical discrimination. The proposal

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[66] Interview with Kohn, London.

calls for the return of the uprooted citizens of Israel – the internally displaced[67] to their land, as far as circumstances allow, and for the state to finally recognise the 'unrecognised villages' and also includes a demand for either restoration of property or compensation for every person whose land has been expropriated on national grounds under the series of land laws adopted and enacted by the Israeli parliament throughout the 1950s.[68]

In sum, it can be said that the Democratic Constitution calls for the transformation of the state of Israel in accordance with a totally new paradigm, a bi-national one that overturns the entire Israeli legal system. The involvement of the Palestinian citizens and their representatives in decision-making is precisely the meaning of a bi-national state. In other words, the proposal correlates its demands with an unequivocal abandonment of the paradigm of the 'Jewish and democratic' state.

Apologists of the Jewish democratic paradigm criticise the document precisely on these grounds: a "great many demands which appear in the proposed constitution do not shatter the Zionist paradigm, namely the fair allocation of land to the Arabs, cultural autonomy for the Arabs […], the right to have a say in the state's symbols, returning the uprooted citizens (as opposed to the right of return of the refugees). All of these and more are attainable and even morally necessary according to the humanistic concepts of Zionism. Why, then, set forth a proposal that sounds like 'all or nothing'?" (Saban 2007). But here stands the core issue of the document and its importance. The imaginary or aspired-for 'humanistic concepts of Zionism' do not correspond to the implementation of Zionist ideology in the State's laws ever since 1948, which secure privileges for the Jewish community while systematically discriminating against the Palestinians. This is precisely Adalah's answer to attempts within Jewish-Israeli society at composing a constitution that will ground and bind the

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[67] The Internally Displaced Persons (IDPs) are Palestinians who were expelled or fled from their homes during the war in 1948 and its immediate aftermath, but remained within the area that became the state of Israel. The IDPs are not permitted to live in their original homes, even if some of the original homes still exist. They are also termed 'present absentees' since according to the Israeli authorities, they are regarded as absent – because they left their homes, and their property is managed by the Custodian for Absentee Property, but in reality they are present in the country. They amount to about one quarter of the Palestinian citizenry in Israel.

[68] The Land Ordinance (Acquisition for Public Purposes) of 1943 is a British Mandatory legacy that was adopted by the Israeli parliament. Other laws include, the Land Acquisition (Validation of Acts and Compensation) Law of 1953, and the Absentee Property Law of 1950, among others.

existence of Israel as a Jewish state. *The Democratic Constitution* is a type of activity which forms part of Adalah's answer to its adversaries from within the Palestinian community, who claim that the participation approach leads to accommodation and legitimisation of the Israeli institutions to which Adalah appeals.

The Democratic Constitution calls for integration of the Palestinian citizens in the state, but a kind of integration that is neither individual nor affirmative. On another occasion Hassan Jabareen explains, "integration is harmful when it involves Arab individuals who are willing to be part of institutions that highlight national divisions [... these] may lead to the opposite result from that desired by the advocates of integration" (Jabareen 1999: 26). Indeed, *The Democratic Constitution* offers a process of 'transformative integration,' in which the state's structure will undergo a radical change that will enable the creation of real equality between Palestinians and Jews as citizens as well as national collectives (Jamal 2008: 23).

A radical document or an accepted strategy of resistance?

The Democratic Constitution (as well as the other 'vision documents') should be seen as a distinctive form of protest (Jamal 2008). It is an expression of political self-confidence on the part of the Palestinian community in Israel. Simultaneously, it is also a protest that is expressed in a way that does not put the Palestinian citizens' status at risk. The writing of the documents is an expression of the balance between the oppositional consciousness among the Palestinians and the endurance mechanisms of the Israeli control system, in a way that does not completely break the boundaries of tolerance of the Israeli political discourse (Ibid: 9). Indeed, "the goal is to have a serious discussion with the Israeli Jewish elite […]. We will also launch a campaign to enlist international experts in the fields of human rights and constitutional law in backing our proposed Democratic Constitution, and to present it on international platforms" (Dalal 2007). Nevertheless, while accepting this analysis, I would like to suggest that the evaluation of this form of resistance should be contextualised within the reaction the document received after its publication.

The reactions in the Jewish Israeli public can be described as ranging from panic, dismissal and overall unwillingness to engage in a serious discussion around the contents of the documents. The documents were referred to in phrases such as "declaration of war" (Tal 2006); "bill of divorce from the state" (Margalit 2006); "an attempt to empty Zionism from its meaning" (Lapid 2006); and "subversive activity against the state of Israel, while joining its enemies" (Arad 2007). In a closed discussion in 2007, Yuval Diskin, the head of the Shin Bet expressed to Ehud Olmert, then the Prime Minister, the Shin Bet's concerns about the phenomenon of the 'vision documents,' claiming they deny the existence of the state of Israel as a Jewish state. The assessment was that these documents were representing separatist tendencies amongst the Palestinian elite in Israel that might carry with them the Palestinian masses (Caspit and Haleli 2007). This reaction led to an appeal to the Shin Bet from the editor of *Fasl al-Makal*, the National Democratic Assembly Party's weekly, in an attempt to check whether an attempt to change the character of the state openly using democratic means is a subversive act that necessitates special treatment. The Shin Bet's response is revealing. It follows, "the Shin Bet would thwart the activity of any group or individual seeking to harm the Jewish and democratic character of the State of Israel, even if such activity is sanctioned by the law […] in issuing documents, that pretend to be constitutional or foundational there is not fault as is, unless they have contents that can mirror or encourage forbidden phenomena like political subversiveness" (NDA Media Team 2007).

The reactions in the Jewish-Israeli society and the security apparatus of the state tells us much about the delicate status in which Palestinian citizens find themselves in the State of Israel and about the nature of Zionist hegemony itself. The dichotomy of citizen/enemy is fragile, and the movement between the poles is easy and quick. Every attempt to change the rules of the game, a game which condemns the Palestinians to marginal, second class citizen status, who can only exercise passive participation in the institutions of the state, results in categorisation as 'enemies' of the state.

Jabareen explained that in Adalah "we were surprised by the severe Israeli reactions that saw in the vision documents a threat to the State of Israel. And that was

not the case! This reaction did not enable rational dialogue."[69] However, Jabareen thought that it was an important and positive experience for Adalah, "phrasing the constitution released us from the legal tools we must adhere to as a legal organisation, proving that we have a vision beyond the limited legal tools. This enabled the organisation to know what it wants: we want a democratic and multicultural society and state. This is the vision and everything we do should be intended to enhance it."[70]

In sum, one can evaluate the full meaning of *The Democratic Constitution* only in the context of the reactions to it. It is perceived as a highly subversive document, one that challenges and refuses to accept the reality that is imposed upon the Palestinian citizens of Israel. Here lies its importance as a form of resistance. The document shows Adalah's work in a different light, not just as an organisation that represents and fights for Palestinian's collective rights in Israeli courts, but one that also aims to advance a new and positive political programme that calls for a radical transformation in the nature of the regime itself.

Nevertheless, the document has its weaknesses. It can be criticised from a more radical national-Palestinian point of view. The document accepts as fact the historical situation that led to the fragmentation of the Palestinian people and the need to find a separate 'solution' to each segment of it. It accepts the existence of Israel as a separate state on Palestinian territory, while neglecting the rights of the Palestinian refugees to their lands and homes. Nevertheless, I argue that in the light of the context in which the document was published, it offers a distinct form of resistance that poses a threat to Zionist hegemony in the State of Israel. It forced the state to reveal its intolerant and repressive face: the attempts to advance a political programme that undermines its foundations, are treated as subversive activities and lead to close monitoring by the state security services.

Legal resistance re-evaluated

The analysis presented in this chapter suggests the need to rethink two interrelated

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[69] Interview with Jabareen.
[70] Ibid.

arguments. The first one is Shany Payes' (2005) analysis of Palestinian NGOs, which draws a continuum of 'level of change campaigned for,' ranging from 'politics of interest inside the system' to 'demanding regime change.' She places Adalah in a category of 'second generation' organisations that struggle for inclusion and campaign for reform within the system. She highlights that the change they campaign for is multi-dimensional and includes change within the Palestinian society and "emphasises the interdependence of power structures within this society and Jewish domination in Israel" (Ibid: 141). Payes goes on to claim that other organisations that are located in a third category of 'campaigning for a change in the regime' are the least practical of all NGOs. The impracticality stems from the strength of the hegemonic system (from the support its gets within Jewish society) and to the fact that NGOs use the tools (practices and institutions) of the Israeli democratic system – therefore, instead of dismantling the system, they end up strengthening it. These tools also dictate a "preference for contents of reform rather than a wholesale change" (Ibid).

The second argument is made by radical critical writings dealing with resistance through the law that point to the limits and ineffectuality of this type of activity. Recently, a journal of the Haifa based research centre Mada al-Carmel, dedicated wholly to the issue of legal resistance, was titled "The Master's Tools," referring to the essay by Audre Lorde, mentioned earlier. Reflecting on this claim, this chapter suggests that there is a need to rethink how the dismantling process should be approached: is it about a full-blown strike to the house's foundations, or a patient process of dismantling it, removing it brick by brick. I argue that Adalah's legal resistance aims at the latter. By characterising Adalah's resistance in this way, we can revisit Payes' argument and understand Adalah's legal resistance as more radical than a mere struggle for inclusion and reform. It also includes demands for transformation of the regime, involvement in appeals to international platforms (a work indicated by Payes as one with more radical potential) alongside the more standard legal battles in courts. The use of the tools of hegemony, while contributing to its enhancement, serves to expose its soft spots and weak points.

In the study of the role of law in the struggle against apartheid in South Africa, resistance is portrayed as not about all or nothing at once: "most paralyzing is the

anxiety that limited victories will co-opt the masses. Some activists argue that only progressive immiseration can stiffen resistance. All the evidence contradicts this. Hope is necessary for struggle. Legal victories, far from legitimating the regime, demonstrate its vulnerability and erode its will to dominate" (Abel 1995: 549). Indeed, legal battles cannot win the war by themselves, but they have a role in empowering the masses while offering some protection from state retaliation, and their importance lies therein. Moreover, the contribution of the legal struggle to the dismantling process lies also in the weakening of the system's foundations, through the exposure of information that highlights the contradictions inside hegemony revealing its oppressive and coercive nature. The strength of litigation can also be found in the fact that it takes political issues that the state would prefer remain in the political arena which it controls, and places them in the more autonomous legal field that the state has lesser control over. As such, political issues that directly challenge hegemonic discourse are forced into the public discourse with the assistance of the media. In any case, litigation has to be used strategically and as a supplement for other forms of struggle.

While litigation is indeed a limited form of legal resistance, lawyers and legal activists tend to move into other forms of struggle within the legal framework, and become more heavily involved with social/political movements. As a result of this, the legal strategies become more diverse in range and can include individual service, calls for institutional change, advocacy, legislative lobbying, challenging conventional legal strategies and giving more direct voice to clients who choose to politicise the legal process. These strategies are chosen in accordance with the needs of the clients, the political/institutional environment, the remedies possible (from formal proceedings in courts to other means of solving the legal issue) and the assessed efficacy of the advocacy methods in the specific context (Menkel-Meadow 1998). Hence, it is the combination of both legal and non-legal strategies that constitute cause lawyering such as Adalah's in a background in which legal victories in court are not easily achieved. In fact, a broader definition, according to which cause lawyering is "any activity that seeks to use law-related means or seeks to change laws or regulations to achieve greater social justice – both for particular individuals […] and for disadvantaged groups," seems more appropriate (Ibid: 37). Certainly, the boundaries between legal strategies and other political strategies are not clearly marked, and cause lawyering and

political activism become indistinguishable. Following this analysis and understanding of cause lawyering, the different strategies of resistance used by Adalah that have been discussed above can be located in the realm of legal resistance.

Although Adalah is involved in various court cases and campaigns, the three cases chosen here uncover and reveal a spectrum of legal resistance. The legal battle around the *Citizenship and Entry into Israel Law* unveils the limitations and paradoxes connected to litigation in the Israeli courts, but also points to its immense possibilities and advantages that are not always, or indeed are almost never, strictly connected to the actual legal battle in court. Adalah's involvement in the campaign around the al-Aqsa Intifada inside the Green Line demonstrates its role as a representative of the Palestinian citizenry, and its assumed position as one of the main leaders of its public struggle for truth and justice. Finally, in the case of the Democratic Constitution, Adalah offered a new political programme, aiming to radically transform the nature of the Israeli regime. Despite criticisms of the document, its importance is immense. It can thus be determined that Adalah's work unfolds a multi-layered approach to legal resistance. It is never confined to litigation in courts, but rather combines popular struggles, proposals for the political that will affect the Palestinian collective as a whole, while keeping in mind possibilities to help individuals. Adalah's unique role and position lies exactly within this combination of struggles, all located within the legal boundaries, but at the same time openly suggesting the option of ignoring them and aiming to break and overturn them. The three cases show a changing relationship with the law: from the engagement with the existing law and machinations in the courts, through the no-law nature of the public campaign of October 2000, to the proposal for the entire transformation of the Israeli legal system in the form of a new constitution.

It is difficult evaluate the efficacy of each struggle. Each one bears its advantages and at the same time faces limitations and constraints. It is only the combination of the three that brings to light the greatest potential of effective legal resistance. Thus, in our case it becomes clear that using the tools of hegemony can indeed lead to its weakening, if used strategically, in a delicate balance between the use of courts, public campaigns and political struggles. Multi-dimensional strategic

campaigns that involve litigation, organising, lobbying, public demonstrations, and other tactical activities are the most effective combination of legal resistance.

Adalah was and still is involved in many other court cases and political campaigns. One of the most interesting of which is the struggle for political participation of the Palestinian citizens, namely, defending their right to participate, a right that time and again has been nearly denied to several Palestinian political parties, but following petitions to the Supreme Court, the decisions to ban them being overruled.

The next chapter explores resistance from within the Israeli parliament, and focuses on the struggle of the National Democratic Assembly party, and by that also touches upon Adalah's campaign for political participation and the battle in court. Political resistance in the centre of power where decisions are made, laws enacted and realities are determined, also bears possibilities and limitations. These are known to the Palestinians who choose to follow this line and participate in the parliamentary 'game.' Tracing the aims and outcomes of participation, the next chapter aims to shed light on yet another form of resistance from within the institution of the state.

Chapter Four: Law Making and Law Breaking in the Israeli Parliament

…They have diagnosed us [the NDA-Tajamu] as a danger and have tried with all their means to fight us. The fact that we have a strategy and a clear vision meant that we could stand up to them, keep our movement together, and maintain it among the Arab minority inside Israel … It is very important to maintain and to keep the national Arab identity alive; to give it democratic depth; to keep the solidarity with the West Bank and Gaza going; to keep up our cultural interactions with the Arab world… because in the end, we believe there is a contradiction with the Arabs in Israel [and Zionism] if they remain Arabs and Palestinians and organised in the right way. This will be the contradiction of the future.

Bishara 2007 [2003]: 243-244

On April 8, 2007 the Israeli media announced that Azmi Bishara, Palestinian intellectual and the head of the National Democratic Assembly (NDA) party in the Israeli parliament at the time, had left the country and was planning to resign from the Knesset. The details of the story remained obscure since a gag order had been placed on the case. On April 22, Azmi Bishara handed his resignation from the Knesset to the Israeli Council-General in Cairo, but it was not until May 2nd of that year that what until then had remained at the level of rumours came out into the open: an investigation was opened against Bishara, with harsh accusations against him (Stern 2007; Khoury, Ravid and Stern 2007). According to an unnamed Shin Bet official, Bishara had had prolonged contacts with Hizballah members, to whom he provided information, suggestions and recommendations, including secret material, during Israel's war with Hizballah in summer 2006. In addition, the same official suggested that Bishara was given 'missions' from Hizballah which he then carried out (Ilan and Lis 2007).

This was not the first time that an investigation had been undertaken against Bishara or that accusations were made against him. In 2001 Bishara was accused of violating the 'anti-terrorism law' and assisting in organising visits of Palestinian citizens to Arab states with which Israel has no official diplomatic relations and who

are defined as 'enemies.' With the coming elections of January 2003 the legal advisor of the election committee filed a request to disqualify Bishara's party from running in the parliamentary elections on the basis that its platform contains a call to transform Israel into a 'state for all its citizens,' a principle that stands in fundamental contradiction to Israel's self definition as a Jewish state. Indeed, ever since Bishara turned his theoretical writing into a political programme and took part in the founding of the NDA party, he was kept under the surveillance of the security services, who tried time and again to find incriminating evidence against him. The investigations against Bishara always produced a raucous of media coverage and public debate, but to date all have eventually amounted to nothing.

Here, the aim is not to reject or disprove the accusations. The aim of this chapter is rather to analyse and discuss the form of resistance embodied in the NDA and its parliamentary and extra-parliamentary activity, the threat it represents to Zionist hegemony, and the potential of this resistance that manifests itself in the severe hegemonic backlash, thereby exposing hegemony's repressive side, both legislatively and juridically.

The history and activity of NDA and its elected representatives has fundamental role in this research. Firstly, the chosen path of the NDA is a struggle *within*, through participation in the state's institutions. It advances a new political programme from within, using parliamentarian and legislative work. Still, it is openly anti-Zionist and promotes a political agenda which stands in fundamental contradiction to the prevailing hegemonic principle in Israel. It is therefore a counter-hegemonic resistant force inside the hegemonic system, which makes the investigation of its activity and its outcomes vital.

Secondly, due to the fact that despite this success, and in fact, because of it, ever since its inception the party and its members have been subjected to continuous persecution: attempts to discredit and ban the party from participating in the general elections and criminalisation of the activity of its elected representatives. The investigation of the nature of the persecution reveals the threat embodied in the resistance of the NDA: it exposes the weaknesses of the hegemonic system and shakes the delicate balance of consent/coercion that characterises it, thereby making oppression explicit and straightforward.

This chapter examines three layers of resistance exercised by the NDA. First, the party's agenda, aims of participation in the parliament and the ways in which these are perceived as a threat to the very existence of the state, as well as the hegemonic response to this threat; second, a glance into the parliamentary activity and legislative acts of the members of the Knesset (MKs), acts of law making; finally, examination of some of the extra-parliamentary activity of the NDA's MKs as acts of resistance, the ways in which they are challenging the Israeli law and the reactions of the political and legal establishments to these. By investigating these three spheres this chapter offers an evaluation of law making and law breaking as counter-hegemonic resistance.

Consolidating Palestinian identity in Israel

After the establishment of the State of Israel, Palestinian citizens had the right to vote and to be elected to the Israeli parliament. However, Palestinian political life was completely paralysed as a result of the social and political catastrophe the Palestinian people suffered during the aftermath of the 1948 war. The majority of Palestinian voters (52-58%) voted for Zionist parties and the affiliated Arab 'satellite' lists,[71] that were set up by the Zionist parties as a mechanism to control Palestinian political activity while securing Palestinian votes. The only organised Palestinian political platform and leadership in the critical early years after 1948 was the Israeli Communist Party (ICP). In the mid 1960's the ICP went through a crisis and split, mainly due to personal struggles and ideological differences between Jewish and Arab members. The new dominant faction named itself the New Communist List, gained prominence and reached its heyday in the 1977 general elections, when it won five seats in parliament and 50% of the Palestinian votes.

Since the mid-1980s a gradual decline in the status and position of the communist party occurred. At the basis of this decline stood the crisis and total desolation of the Soviet Union that provided the ideological backbone and substantial financial assistance, as well as the pluralisation of the political life of the Palestinian citizens of Israel. New political forces rose, presenting a threat to the position of the

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[71] In Israeli parliamentary politics the concept of 'list' is used to describe a document that specifies the group of people that can submit their candidacy to the parliament together. It can include parties (one or more), or individuals and movements that are not registered as parties, united for this purpose.

communists from both sides of the political spectrum: nationalism on the one hand, and Islam on the other. One of these was the National Democratic Assembly party (in Arabic al-Tajamu' al-Watani al-Dimuqrati).

The NDA was established in 1995 out of the joint efforts of Palestinian activists and academics, the most prominent of them was Azmi Bishara, who was its leader until 2006. The party is composed of a coalition of political, academic and student movements: the 'Equality Alliance' that was established by Azmi Bishara in 1991; a number of small left-wing political groups that had previously operated in Palestinian towns and villages such as Abnaa el-Balad, the remains of the Progressive List for Peace, and several local groups and organisations together with various Arab public figures. In a way, it can be seen as a continuation of the political currents represented by the 'al-Ard' movement in the 1950-60s (Rouhana, Saleh and Sultany 2004: 16-17; Ghanem 2001: 105).

The NDA first participated in the general elections for the Israeli parliament in 1996 in a joint platform with the Democratic Front for Peace and Equality (the latest incarnation of the ICP), but shortly after, due to profound differences between Azmi Bishara and the other members of the faction, the partnership broke apart. In the subsequent elections of 1999 it ran as a separate list of candidates, reinforced by Ahmed Tibi and his movement[72] and won about 17% of the valid Palestinian votes. Ever since the 2003 elections, it has run as a separate list. The party is represented today in the Knesset by three members (out of the 120 members of the Israeli Knesset). In just a few years, the NDA became one of the most popular political forces among the Palestinian citizens of Israel, establishing over 60 branches in Palestinian towns throughout the country. Its ideas became common ground and were adopted by other political movements, and in the general Palestinian discourse inside Israel. Haneen Zoabi, MK of Tajamu, explained, "our discourse has gained a hegemonic position in the Palestinian society in Israel. But this is not electoral hegemony, they can even vote for the Islamic movement but believe in the idea of a state for all its citizens."[73]

The background for its establishment was the 'earthquake' that shook the world

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[72] 'The Arab Movement for Change' (Ta'al) was established in 1996. During the 15th session of the Israeli Parliament it broke from the NDA and became a separate list, due to differences between Tibi and Bishara.
[73] Interview with Haneen Zoabi, 28 April 2011, Nazareth.

of the Palestinians in the early 1990s. The first wave of shock came from the collapse of the Soviet Union, the camp that traditionally supported the Arab and Palestinian cause. Basel Ghattas, one of the NDA's founding members explained, "For me and my colleagues, even though we were in the opposition inside this camp, when it collapsed… part of our lives collapsed. It led to a severe internal crisis. We tried to understand: why did this happen and why we didn't go public with our criticism…?"[74] The second wave of shock was, according to Ghattas, the defeat of the national groups identified with Fatah, indicated by the Oslo process. The historical national movement of the Palestinians, "went into the peace process just to get international recognition, and it gave up the core demands of its people."[75]

The effects of the Oslo process were tremendous in regard to Palestinian citizens. Areen Hawari, previously a member of the politburo of the NDA explained that in the early 1990s the Palestinian community praised Oslo and enjoyed the euphoria surrounding it, "Rabin was seen as a hero, as our hero. People felt they were a part of the state, but it became apparent that the state was not ours. Oslo didn't give answers for any national question, and it did not address any of our red lines, such as the issues of return, Jerusalem, 1967, settlements. We [the Palestinian citizens] were not seen as a part of the Palestinian question, and at the same time we were also not part of the State of Israel."[76] Oslo left the Palestinian citizenry behind, neglecting its vital concerns, as Ghattas explained, "That was huge! People felt they were being told 'you are Israelis, go solve your problems in your country – Israel!'" He recounted the fact that even some key Palestinian figures urged the Palestinian citizens to vote for the 'peace camp' in the parliament. "We felt like we were the 'reserve' for the Zionist left. Some of us liked this role, and therefore became members of the Zionist parties. The values have changed. People thought that there is no more Palestinian problem, leaders were speaking about peace, shaking hands; so why should we be more Catholic than the Pope?"[77]

The reaction to Oslo was considered by many as the peak of the process of 'Israelisation' that Palestinians citizens underwent in the previous decades. The

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[74] Interview with Basel Ghattas, 21 December 2010, Shafa'amr
[75] Ibid.
[76] Interview with Areen Hawari, 16 December 2010, Haifa.
[77] Interview with Ghattas.

'Israelisation' process started by coercion – since the Israeli citizenship was forced on the Palestinians as an outcome of the 1948 war, and during the military government (until 1966) the Palestinians were systematically subordinated to the Israeli economic and political system while suffering repression of their own culture and political organisation. However, due to certain social and political circumstances the Israeli component in the Palestinian citizen's identity became an inseparable part of their existing culture, an important feature of identity and part of a dynamic process of formation. The problem is found in the fact that this Israeli identity of the Palestinians is a split one, in which the 'Arab-Israeli' plays the role of an Israeli, while being excluded and marginalised from the state – while the socioeconomic gap between Palestinians and Jews is constantly widening since the very structure of the state of Israel does not allow equality to occur. During Oslo came an opportunity to expose the contradictions and the disturbance this split identity of Palestinian citizens creates. However, this process "will not happen by itself but only when it is translated into a democratic discourse that will combine the national and the civic dimensions, in front of the reality which is tearing them apart, and the existing political discourse that merely reflects this reality" (Bishara 1999: 190).

Other elements in the Palestinian community in Israel, witnessing this process and its disastrous effects that became explicit in the Oslo years, "suddenly saw that they must unite and struggle together to find a way out of the crisis. These were the ruins of the several political groups that came together with some independent individuals, and started discussing, putting together principles that everyone agreed on."[78] Jamal Zahalka explained that in this period of political impasse and atomisation of groups and activists, "Azmi suggested something that will stand above all argument, a new flag that will unite everyone. That was the platform of the NDA."[79]

On March 1995 the first declaration of the establishment of the National Democratic Assembly was released, announcing its goal to mobilise national consciousness and accumulate national experience in order to develop and build a national Palestinian political awareness and identity (Bishara 2007 [2001]: 93-94). It was just before the 1996 general elections to the Israeli parliament that it was formally

[78] Ibid.
[79] Interview with Jamal Zahalka, 28 April 2011, Kafr Qara'.

incorporated and registered as a party.

Democracy as a threat to the Jewish state

> We say, "We are democrats." We are the ones who coined the whole concept of "state of all its citizens." Thus, on the one hand, we do say, "We want to be citizens," but on the other, we are challenging the [Jewish] state, saying, "We are a national group."
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> Bishara 2007 [2003]: 247

> The Islamic movement has the mosque, but what is the political space of the NDA?
>
> Lerer 2010[80]

In order to understand the ideological foundation of the NDA, one should delve into the writings of one of its principle founders, Azmi Bishara. Bishara, an intellectual who holds a PhD in philosophy, taught for years in Bir-Zeit University and worked in the Jerusalem-based Van Leer Institute, that turned his political philosophy into a political programme. Bishara's theoretical and political writings are to be found at the basis of the party's ideology and agenda.

Bishara and the NDA can be recognised as the initiators and leaders of the process of strengthening the Arab and Palestinian national identity of Israel's Palestinian citizens. In addition, it emphasises the fact that the Jewish component in the definition of the state is creating the structural inequality of the Palestinian citizens in Israel since it tends to regard them not as an indigenous national minority living in its homeland, but as various religious sects (Honig-Parnass and Haddad 2007: 133-134).

The NDA therefore offers a new model for the state and the place of the Palestinian citizens within it. This model offers a way to confront the Israeli-Palestinian reality, by presenting an overall political/civil framework in which the two nationalities can coexist. This framework is embodied in the plan of the 'state for all its citizens' with cultural autonomy for the Palestinians. Bishara explains, "In the state for all its citizens I think citizens should accept and act like citizens with equal rights, and

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[80] Interview with Yael Lerer, 7 April 2010, Tel Aviv.

neutralise their identity as far as their citizenship goes. But as a community, they have the right to conduct their cultural concerns as a national community" (Bishara in Azoulay 2005).

The NDA offers a democratic alternative that holds onto the sense of Arab-Palestinian belonging. Equality between the citizens of the state can be achieved only if the Palestinians become full citizens. Haneen Zoabi (2009) explains that the NDA has turned the issue of equality for the Palestinian citizens in Israel from a demand for integration into an anti-Zionist project, both theoretically and practically within the framework of a state of all its citizens. In the current structure of the state as a Zionist one that grants special rights to its Jewish citizens, full citizenship and equality are impossible. Equality thus becomes contradictory to Zionism: the idea of the state for all its citizens opens up the discussion around many basic questions such as the relations between religion and state in Israel, the Zionist character of the state, the relations to the land, the contradiction between liberal democracy and universal human values and the definition of the state, in a way that poses a challenge to Zionist hegemony.

The demand for full equality and citizenship in a state for all its citizens does not entail neglecting the national dimension. On the contrary, the NDA demands that Israel would acknowledge the Palestinians in Israel as a national minority, which means recognition of their rights as a collective to conduct its cultural affairs in the form of 'cultural autonomy.' Bishara explains autonomy as a privilege beyond equal citizenship that adds another dimension to it. The right to conduct the community's affairs is important mainly in the spheres of education (the right to determine the curriculum in Arab schools) and planning and development, particularly with regards to lands, matters currently under Jewish dominance (Bishara 1993: 217; Bishara in Haddad 2007 [2003]: 246-248).

According to the NDA's vision, citizenship will become the basis of rights in the country as opposed to the existing criteria of ethnic, national or religious affiliation and the national dimension of the identity of Palestinians in Israel will be emphasised. This means a combination between liberal individual rights of citizenship and the collective rights of a national minority (Beinin 1996: 27). In a similar way to Adalah's view, collective rights are not contradictory to individual rights. Rather, they are two

sets of rights that complement each other: "One individual right is the right to have a national identity, and this should be maintainable through what we call [collective] cultural rights" (Bishara in Haddad 2007 [2003]: 246).

The NDA sees its project also as one of identity building amongst the Palestinian community in Israel. When Bishara argues for a state for all its citizens, he argues not only for a transformation of the Israeli state, but also for a transformation amongst Palestinians, in a way that demands them to become subjects able to identify with their collective, demand their rights, and be conscious about their identity, nationality, and the ways in which the state can combine them both together, without the need to suppress the one or lose the other. "It is important to raise these demands, as it is a kind of identity building, all identities are constructed… Even if you do not achieve some of the things, at least you present yourself as Arabs in a progressive way and not anymore as a religious group [as Israel aims to do]" (Ibid: 248).

In sum, the project of the state of all its citizens can be defined as an offensive political project, demanding full rights and equality, since no equality can exist for Palestinians in a Jewish state. "It is neither utopia nor an example we desire. It is a political-cultural project through which we deal with the reality of this country" (Bishara 2000 in Ghanim 2009: 149).

Contrary to other opposition parties, aiming at influencing from within and getting closer to the centre of power, and aspire to be part of the governing coalition, the NDA perceives itself as a different type of opposition party. Hawari explained, "we want to deconstruct the hegemonic structure from within, and our party starts from this point."[81] For the NDA, participating in the coalition is never an aim, in the same way that participating in the parliament itself is part of a strategy; it is a tool, not a goal. "We always understood participation as something that should be measured and evaluated according to its gains – if it is beneficial for our people. If the cons are greater than the pros – we will not participate. Participation for us was never a principled issue. It is only a matter of benefits and gains and the interests of our people."[82] Therefore, as Hawari explained, there are members of party that oppose participation; this is a decision that is left for the individual, since it is not the centre of

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[81] Interview with Hawari.
[82] Interview with Ghattas.

the party's activity.[83] Nevertheless, although Palestinian participation is not meant to shape policy in the governing coalition, it is offensive participation, aimed to disrupt and counter the hegemonic order from within.

Thus, the reasons behind the NDA's participation in the parliament are more utilitarian than ideological. This is confirmed through conversations with party founders and members Basel Ghattas, Areen Hawari, Yael Lerer, Rimonda Mansour and Haneen Zoabi. Political participation in the parliament helps in political organisation – building the party and leadership. Through participation, the movement becomes a structured political organisation; there are people in different functions, all getting salaries that are paid by taxes paid to the state. Having a structured political organisation it also becomes easier to recruit and mobilise people. These are important processes that are enabled by the physical presence as a political party in the parliament. Furthermore, the elected MKs became prominent leaders of the Palestinian community. Ghattas explained that elections for the parliament function as an important event for choosing the representatives of the Palestinian community, they receive legitimacy and a consensus is created about them.[84]

Another important factor is the daily work the MKs are doing for their community of voters. This can often be neglected or dismissed, but in reality can bring about a change to people's lives, these include: the allocation of budgets, creating work places, building roads and establishing schools. In a way, the Palestinian members of parliament are being looked upon as the elected government for the Palestinian community since the actual Israeli government does not represent them and take care of their interests.

Nevertheless, the main reason for participation is to be found in the fact that the parliament provides the Palestinians with a platform to make their voices heard – for disseminating ideas of identity, and putting the anti-Zionist idea on the public agenda. The parliament thus provides a political space that otherwise could not be easily found, it brings with it a media interest that creates dynamics and sense of strength. This issue has double importance – internally towards the Palestinian community, contributing to the process of identity building – and externally towards the Jewish community, as a

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[83] Interview with Hawari.
[84] Interview with Ghattas.

challenge to the Zionist consensus. Here the NDA sees its role as educational, as teaching a lesson in democracy, once again, both internal and external, for the Palestinians – teaching them what is the meaning of citizenship and the demands that a citizen can make to the state – and for the Jewish community, to expose the limitations and contradictions of the oxymoron of a 'Jewish and democratic' state. The NDA's presence in parliament forces Israel to acknowledge that "there is a strong Arab voice that is challenging its claims to be a democracy in a way that puts it in trouble both internally and internationally."[85]

Additionally, participation empowers Palestinian citizens. Since the strategy of the state is to weaken the Palestinian population, "through various mechanisms and bodies such as the police, the bulldozers, the education system, the media," as Zoabi claims, "…I am in the Knesset in order to empower my people. In front of the racist and fascist environment, I stand firm and proud and make my voice heard. I channel the anger from years of oppression to political activity that has strength and meaning."[86]

Finally, one must consider the fact that parliamentary work does not present obstacles to any other form of political action, and restricts neither the positions nor the activities of the Palestinian community. Zahalka insisted that the question is not participation per se, but what one does with it, "we expose the contradiction of Israeli democracy while using its tools. I think that in the struggle you should use the tools that are given to you. If you don't participate, what is the alternative?"[87] Indeed, many people agree that until the time when structured national-civic institutions, able to represent and care for the Palestinian citizenry in Israel are formed, participation in the Knesset is inevitable.

Indeed here one of the main features of the NDA's participation in a strategy of resistance to Zionist hegemony comes to light: using the tools of hegemony to counter it leads to the exposure of hegemony's coercive and oppressive nature. Yael Lerer, who was involved in the party since before its inception, explained that for the NDA, participation in the parliament is "an exercise in democracy. It is a strategy of exhausting all rights possible. We are using the democratic space this state allows us

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[85] Interview with Rimonda Mansour, 17 December 2010, Qiryat Bialik.
[86] Interview with Zoabi.
[87] Interview with Zahalka.

and the citizenship given to us, and we take it until the end."[88] By using all democratic means, both in terms of right to speak and to be heard and by promoting and advancing legislation, the NDA is in fact teaching Israel an important lesson in democracy. The main point here is the fact that this form of resistance leads to the exposure of the state's oppressive nature towards political activity that aims to undermine the notion of the Jewish state that is found at the base of Zionist hegemony. Indeed, the NDA's consistent ideology mixed with its political activity, place it in a direct collision course with the Zionist hegemony, leading to the persecution of its leadership and its membership. It can be determined that the emergence of the NDA as a political movement has created a qualitative change in the political and security establishment's approach towards the political activity of Palestinian leaders. The party's call for national collective rights and for the recognition of the Palestinians as a national minority raises the concern of the Israeli establishment that sees it as a challenge to the nature of the Jewish state. This becomes clear from both the legislative and judicial backlash the party encountered.

On May 2002, the Knesset enacted an amendment to Basic Law: *The Knesset* that aims to restrict political participation in the parliament:

> A candidates' list shall not participate in elections to the Knesset, and a person shall not be a candidate for election to the Knesset, if the aims or actions of the list or the actions of the person, expressly or by implication, include one of the following:
>
> 1. Negation of the existence of the State of Israel as a Jewish and democratic state;
> 2. Incitement to racism;
> 3. Support for armed struggle by a hostile state or a terrorist organisation against the State of Israel.

The amended version of the law provides a possibility to disqualify candidacy of a person as well as of a list, and determines that support for armed struggle (even if it not considered as terror) by what Israeli defines as an enemy state or terrorist organisation against the State of Israel is a cause for disqualification of a list or a candidate. Additionally, the Knesset amended the *Election Law*, stating that any candidate will declare that he/she is committing to be loyal to the State of Israel and refrain from activity that stands in contradiction to section 7a to the Knesset Law. This entails, in theoretical and practical terms, that the Palestinian candidate must accept his/hers

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[88] Interview with Lerer.

inferiority, and not to act, even if democratically and peacefully to change the nature of the Israeli state (Jamal 2007: 270; Saban 2002: 245-246; Sultany 2003: 24-25).

Indeed, with the coming elections of 2003 and again in 2009, the NDA was disqualified by the Central Election Committee (CEC)[89] on the basis of above mentioned law. In the run up to the 2003 election, the Attorney General, Alyakim Rubinstein, in an unprecedented move, submitted requests to the CEC to disqualify the NDA as a list, and Azmi Bishara as a candidate. The CEC accepted the request and disqualified both, and opened a vast public debate in the question. An analysis of this debate concluded that public opinion started with vast support for the CEC decision (including from the liberal 'left'), bringing up arguments of democracy defending itself from subversive activity aimed at toppling it, but ended with the liberals fearing for the image of Israel as a democratic state and from losing the elections due to a possible boycott by Palestinian citizens, thus hesitating to support the disqualification (Sultany 2003).

Following the disqualifications, Adalah appealed to the CEC and the Supreme Court. The Supreme Court overturned the decision of the CEC and approved the candidacy of Azmi Bishara and the NDA in both cases. Indeed, Zahalka claims that the court still hesitates to ban the NDA as it has Israel's democratic image in mind.[90] In the run up to the February 2013 elections, Haneen Zoabi was disqualified by the CEC in a similar move, a decision that was also overturned by the Supreme Court. The context for the disqualification move is elaborated below.

Despite the understanding of the benefits of participation in the parliament, the NDA pays a price for its decision. First and foremost, participation in the Knesset means acceptance of the rules of the game, and by that it provides the state with legitimacy. In the words of Hawari, "participation is the embodiment of conflict inside us."[91] Additionally, Israel uses the participation of Palestinians in its parliament internationally as a proof of the existence of a 'vibrant democracy' in it. This issue has also an internal negative effect, a moral-educational price. Participation in the Zionist parliament signifies the acceptance of the outcomes of the 1948 war, and this transmits

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[89] The Central Election Committee is composed of representatives of the different parties in the parliament, and its chairperson is a Supreme Court justice. Amongst the roles of the committee is to approve lists of candidates according to the instructions of section 7 to the Basic Law: *The Knesset*.
[90] Interview with Zahalka.
[91] Interview with Hawari.

a message to the young generation that "we are choosing to be part of this game, we want to be part of it, we trust it."[92] At the same time, this is similar to any decision one makes in political life – the will to represent the people and to fight for their agenda leads to a necessity to make compromises. At the same time, both Zahalka and Zoabi insisted that participation in the Knesset is not the core of the NDA's work: the anchor of the struggle is outside of the Knesset – and is found in the party's activity inside its community, in education, address to the youth and political mobilisation of the public.[93]

An exercise in democracy: law making in the Zionist parliament

> What do I do in the Knesset? I speak. This is the main role of the Knesset, to speak, to express political opinions. I don't have illusions about Israeli democracy. The Knesset is a platform to express opinions, and to give service to the public.
>
> Zahalka 2011[94]

Members of the Knesset for the NDA are working to advance its goals and to put them on the agenda, through the submission of bills, motions, participation in parliamentary committees and exercising their right to speak in parliament. The Palestinian members are considered to be the most active members of the Knesset, in terms of using the right to speak and submitting motions and bills. This is part of the strategy of exhausting all possible tools and possibilities provided by the democratic game in the Israeli parliament, also in order to use the system in order to turn it against itself, to point to its contradictions and expose its weaknesses. "This is how Azmi [Bishara] always behaved in the parliament – he was a 'champion' in submitting motions, exercising the right to speak. In this way, we disrupt and challenge the system from within."[95]

While Palestinian political parties work to change and improve the socioeconomic and political status of the Palestinian citizens, powerful obstacles stand in their way and prevent their success. This is especially true in the right wing Knesset, elected on February 2009, where "the legislative branch has become a primary venue

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[92] Interview with Ghattas.
[93] Interview with Zoabi; Interview with Zahalka.
[94] Interview with Zahalka.
[95] Interview with Lerer.

for restricting the scope and punishing Arab political activity." (Shihadeh 2010). In that session (2009-2013), the Knesset was using the legislative process to block bills submitted by Palestinian MKs and to weaken their position by procedural means. This reality in turn makes it particularly difficult for the Palestinian parties to represent their community and advance their interests in the parliament, such as to advance legislation related to identity and collective rights, as well as bills intended to enhance the socioeconomic standing of Israel's Palestinian citizens.

Nonetheless, the parliamentary work of the NDA's MKs is underway. Here just a few of the suggested bills that have significance towards the Palestinian citizenry community, but also the public at large will be mentioned. In 2001, Azmi Bishara suggested an amendment to Basic Law: *Human Dignity and Liberty* that was enacted in 1992. The wording of the law does not mention the principle of equality but instead emphasises ethnicity in the definition of the state. It reads, "The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state." Bishara put forward an amendment that addressed these lacks in the law, insisting on the importance of the principle of equality and suggested adding the following section to the law: "Everyone is equal before the law; Equal opportunities are the right of all of the citizens of the state; a person will not be discriminated against based on race, nationality, sect, religion, opinion, personal or social position, political affiliation or any other cause" (Bill 2556, 2001). The majority of MK voted against it, and the bill was dropped. Similar bills were advanced and put on the Knesset's agenda every few years, by Bishara himself, and later by NDA members Jamal Zahalka, Haneen Zoabi and Said Naffaa. They have been constantly voted against.

On the same day, Bishara submitted a bill suggesting an amendment to the *Citizenship and Entry into Israel Law*, calling for the addition of knowledge of the Arabic language as an alternative condition for gaining citizenship in addition to knowledge of the Hebrew language (Bill 2559, 2001). This suggestion was overruled by the majority of votes. Dan Naveh, then the minister acting in liaison with the Knesset, explained that the government opposed this bill since the real objective behind it was the transformation of the nature of the State of Israel to a state of all its citizens, and not a Jewish democratic state (Knesset Session 308, 2002).

Bishara also promoted the enactment of Basic Law: *The Arab Minority as a National Minority*. This bill aims to recognise the status of the Palestinian citizens as a national minority entitled to collective rights and full civil equality, including the right to nurture their own culture, supervise and determine their own education system and participate in decision making that concerns the community's affairs (Bill 2705, 2001). The government opposed this bill on the grounds that it did not follow and recognise the values of the State of Israel as a Jewish and democratic state, one that by definition gives priority to special institutions representing the Jewish people, their language and culture. The bill was therefore dropped by a majority of votes (Knesset Session 317, 2002).

MKs of the NDA submitted on several occasions bills calling to nullify laws that establish the privileged position of the Zionist institutions and their connection to the state, such as the Jewish National Fund, the World Zionist Federation and the Jewish Agency, claiming that they all serve only the Jewish community and thereby discriminate against the Palestinian citizens of the state, mainly in questions of land and settlements. These bills emphasise that the State of Israel must stop serving an ideology that benefits only one community at the expense of the other. All of these bills were dropped by majority vote (Sultany 2003).

During the period of the intense discussions in the parliamentary Committee for Constitution, Law and Justice, Bishara, who acted as a member of the committee, submitted two position papers regarding the constitution proposal of the Israeli Democracy Institute (IDI) that was discussed thoroughly in the Committee. In his document, Bishara emphasises and elaborates on the problematic nature of the definition of the state as an expression of Jewish sovereignty, as suggested by the IDI. Bishara here uses theoretical as well as practical explanations, drawing on a comparative approach to different countries such as Finland, India, South Africa, Switzerland, Spain, Russia, France and Italy. Following this line, Bishara points to the fundamental contradiction between this definition and the fact that 20% of the country's citizens are not included in it. In addition, he pointed out the impossibility of secularising a state that is an expression of Jewish sovereignty, since Judaism is also a religious definition, and belonging to the 'Jewish nation' is conditioned first and foremost in conversion or recognition by the Rabbinical establishment in Israel.

Finally, Bishara insists that this definition is not based on the right to self-determination as a modern principle but on 'godly promise' of the land.

Instead Bishara offers a preamble to the constitution that will be based on and recognise the historical processes that led to the establishment of the State of Israel on the ruins of the Palestinian people. Bishara opposes the inclusion of the Declaration of Independence in the preamble, and claims that the preamble should determine the nature of the state as a democracy, not as a Zionist state. According to him: "An preamble that we can live with will give legitimacy to the existence of the State of Israel as a state in which the right of self determination to the Jewish majority that was created in Israel, legitimacy that is given despite Zionism and not because of it, one that is aware of the Zionist history as a history of colonial practice. We will recognise the existence of the Jewish-Israeli people and their Hebrew culture and we live with it in joined citizenship despite the fact that it was created while committing historical crime against our people" (Bishara 2005).

In his second position paper Bishara focuses on the issues of return and citizenship, emphasising the discriminatory nature of the Law of Return and the Citizenship Law that exclude Palestinians. Bishara asks, "What is more just: to give immigration rights to a Palestinian refugee that was exiled from his land more than fifty years ago or to give the right to enter the county and citizenship to a Jew and his descendants from anywhere in the world? From the point of view of natural justice, I think the answer is clear. But in the case of the Law of Return that is grounded in the constitution proposal, it is not about justice but ideology" (Bishara 2005a). Bishara continues by arguing that despite the claim that every country can discriminate in its immigration policy, and can exercise it selectively, in Israel's case this policy does not discriminate between individuals but is rather based on selection of one group, chosen according to religious definitions. Therefore – this right and its grounds in the constitutions is the base of the principle of discrimination, and an embodiment of the idea that it is not its citizens' state but a state of the Jewish people, including those who are not its citizens. This is also connected to the fact that the Palestinians are understood and treated as a demographic threat. In conclusion, Bishara asserts that a democratic state needs immigration laws and not the law of return, since there is equality in the civic status and in the concept of citizenship.

Ever since being elected to the Knesset, Haneen Zoabi has insisted that there are still things that can be done for the Palestinian community in the margins of Israeli democracy. For example, she brought up the issue of integration of Palestinian women into the labour market, a topic she has advanced fiercely in the Knesset ever since her election. Zoabi explained that this is an issue that has an influence on Palestinian society as a whole, where poverty rates are very high. The possibilities to push the issue forward have arisen since Israel joined the Organisation of Economic Co-operation and Development (OECD) in 2010; it has an interest in closing the gaps between Arab and Jewish poverty rates, an issue that it is being constantly criticised for by other member states. In this way, the ground was ripe for her programme that involves allocation of budgets for the creation of small businesses and infrastructure in Palestinian towns and villages.[96]

These examples are few, but many more exist. In total, the ability of the Palestinian MKs to legislate is very limited, and their parliamentary work is confined to speeches, and submission of bills that are almost automatically rejected. Nevertheless, every bill or decision in the parliament that is accepted has major influence and makes a difference to the lives of individuals, and in some cases the life of the community at large, and this is possible if the context is right. It is important to contextualise the place of parliamentarian work in the struggle. Zahalka stressed that despite the fact that their ability to act is diminishing, the importance of their attempts is to be found in the fact that issues regarding the Palestinian citizenry are brought into discussion. Indeed, "the worst situation is when things are kept in silence. We break this silence and put our issues on the agenda, in matters of education, budgets, general discrimination and more. In the parliament, is it not always the results but rather the process that matters."[97]

Indeed, consistent parliamentary work has an accumulative effect, and its existence does make a difference. It is registered and documented, and serves also to expose the contradictory character of the Zionist hegemony that is found at the basis of the Israeli parliament and guides its work, since bills that are democratic by definition are being regularly rejected and dismissed. Since the actual legislative work of the

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[96] Interview with Zoabi.
[97] Interview with Zahalka.

NDA's members is limited, its members are exercising other means in order to advance their agenda and promote their goals.

'Law breaking' outside the parliament: pushing the boundaries of resistance

> I don't speak only in the parliament; I try to put our agenda on every possible stage.
> They don't like us there because we cross the red lines!
>
> Zahalka 2011[98]

The activity of the NDA's elected representatives does not stop in parliament. This section looks at acts of two of the NDA's elected representatives, Azmi Bishara and Haneen Zoabi, which are aimed at pushing and expanding the boundaries of political resistance within the confines of legally sanctioned action. Both cases represent activity done outside the parliament, and by their very nature challenge existing norms of action, and the understanding of responsibility of community leaders in the struggle against the system that oppresses them. Whilst I present and discuss their acts of resistance, I emphasise the discursive, legislative and judicial backlash they instigated. Accordingly, this strategy of resistance pushes hegemony to react in ways that forces it to reveal its repressive-coercive side. Despite the immediate narrowing of the resistance moves, the long term goal is enhanced, since as much as hegemony needs to rely upon its coercive side, it jeopardies its internal and international legitimacy since repression becomes more visible and less tolerable.

Bishara resists occupation and separation

On 5 June 2000, Azmi Bishara gave a speech in a NDA convention in the Palestinian town of Umm al-Fahm, marking the 33rd anniversary of the 1967 war:

> For the first time since the tragic June, we savour the taste of victory and try to glimpse the ray of hope in the Arab situation that arose following June 1967. Resistance such as Hizballah realises it cannot defeat Israel militarily or overcome its military arsenal… The resistance was wise in this realm and thought how it could provide the other side

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[98] Ibid.

with no justification and use of all its strength. And in order not to lose its case, knew when and where to strike. The resistance had clarity in objective, perseverance, stubbornness and realism until it achieved its aim.

In his words, Bishara was referring to the Israeli army withdrawal from southern Lebanon, completed in May 2000 that was celebrated as Hizballah's victory of steadfastness, endurance and persistence against Israel. A year later, in a memorial service marking a year after the death of the Syrian president Hafez al-Asad, Bishara spoke about the importance of resistance and the unification of struggles against Israel:

> It is no longer possible to continue, without enlarging the realm between the possibility of a full-scale war and the impossibility of surrender. […] It is not possible to continue with a third option – that of resistance – without expanding this realm once again so that the people can struggle and resist. Nor it is possible to expand this realm without a unified and internationally effective Arab political position. This is precisely the time for such a stance.[99]

Apart from speeches manifesting unity of aims and means in the Arab world, Bishara strived also to foster relations between Palestinians in Israel and their family members living in refugee camps in Syria since 1948. To this end, he organised and facilitated visits of hundreds of people, mainly the elderly, travelling through Jordan to Syria. This act has more than a humanistic dimension and it bears a political statement: "We always looked for the continuity with the Arab world, but it was not normal continuity, it was through the radio...through Nasser's speeches, through Um Kulthum's songs. The space was divided into political borders and we began to stand on one of both sides of the barricade, as enemies when our families were on the other side..." (Bishara in Azoulay 2005).

Bringing together members of the same families that belong to states that consider each other enemy states, is an act that rejects the forced separation political boundaries put upon individuals, families, people, as well as the definition of certain areas as enemy entities or states, where personal connections are destined to be disconnected. Bishara (2005) asserts, "I am not an Israeli patriot, and I will never be… Syria is Israel's enemy, not my personal enemy. My heart is culturally, politically and historically with the occupied people."

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[99] Both quotes are taken from Adalah's website:
 http://www.adalah.org/eng/features/bishara/speeches.htm.

Bishara's words and deeds triggered a spectrum of reactions: discursive, legislative and judicial. Examination of these reveals the perceived danger his actions posed to the state's hegemonic ideas. On the discursive level, Bishara's speeches, and particularly the one he gave in Syria, led to enraged reactions within the Israeli political establishment and the Israeli public at large. In a poll published in the leading Israeli newspaper *Yediot Ahronot* on 12 June 2001, 84% of the Jewish citizens thought that the appropriate response to Bishara's speech in Syria should be criminal prosecution, and 77% thought it necessary to enact a law that would enable the removal of Bishara from the Knesset. In a Knesset discussion held after Bishara's visit to Syria, several MKs expressed their opinions against Bishara, calling to outlaw him and his party. Several statements made by members of Knesset also reveal the extent of rage these actions aroused. Michael Kleiner of the right wing Herut party claimed, "in any normal state Bishara would have faced a firing squad" (Abbas, Shmuel et al. 2001). Ze'ev Nisim of the Shas party added, "it is not a secret that Azmi Bishara is a threat to democracy and society in Israel" (Knesset Session 213, 2001).[100]

Legislatively, laws had to be amended and enacted in order to change what was perceived to be an unacceptable political situation and to facilitate further prosecution of Bishara. Bishara's travel to Syria did not fall outside the framework of the existing law, since the special service passport held by MKs enables it. Moreover, his speeches did not constitute a direct cause for the party's disqualification from participation in the elections. On March 2002 a law amending the emergency regulations regarding travel abroad was enacted. The new law extended the effect of the previous law that forbade travel to certain countries (Lebanon, Syria, Egypt, Jordan, Iraq and Yemen) unless granted special permission from the Ministry of the Interior, and now includes also members of parliament that hold diplomatic passports from doing so without permission.

Additional laws were amended in order to reshape the boundaries of parliamentary discourse/action, thereby matching it to the boundaries of the Zionist consensus. These laws were meant to deny Bishara (and the NDA in general) the right to participate in the elections. Amendment to article 7a to Basic Law: *The Knesset* (discussed above), and the *Party Law (Amendment 13)*, were similarly changed and

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[100] For more on this see session 213 of the 15th Knesset, 20 June 2001.

added with a section regarding the "support for armed struggle against the State of Israel" as a cause to disqualify a party from registering and participating in the elections.

Furthermore, the *Knesset Members' Immunity, Rights and Duties Law* was amended, in order to restrict the immunity given to MKs. The law determined that immunity will no longer include any expression, even if performed in the fulfilment of the role or in order to fulfil his role as a MK, that "… denies the existence of Israel as a state for the Jewish people, its democratic nature, incitement of racism and support for an armed struggle of an enemy state or acts of terror against the State of Israel or against Arabs or Jews because they are Arabs or Jews, in Israel and abroad." These laws, and in particular the latter, are narrowing down the political rights of the Palestinian citizens, by limiting the space given to their political leaders to promote and struggle for their rights.

In order to facilitate judicial steps against Bishara, his parliamentary immunity was revoked. This move was unprecedented in the political history of Israel. It was the first time that immunity was revoked from a member of parliament following political statements made while serving in duty. With these new laws in place and the revocation of his parliamentary immunity in effect, the ground was ripe for prosecuting Bishara. Two separate indictments were filed against him, the first on the grounds of his speeches in Umm al-Fahm and Syria, and the second indictment regarding the organisation of the trips to Syria.[101]

The case against Bishara should be categorised as a classical political trial, directed against a prominent political leader with the aim of silencing him and removing him from his platform where he can exercise his right to exist, speak and act in a way that challenges and shakes the very foundations of Zionist hegemony (Sultany and Sabbagh-Khouri 2003).[102] This, in turn, also led to the criminalisation of political activity, the meaning of which is discussed below.

Bishara was aware of the meaning and motivations of the judicial moves

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[101] It is important to mention, that Bishara complained that the indictment concerning his Umm al-Fahm speech was not based on the true speech he actually made, but rather on an article published in *Ma'ariv*, about which he complained separately to the editor and received the answer that indeed some of the expressions were changed and edited (Appeal 131/03 NDA vrs the CEC 2003: 47-48)
[102] For a similar analysis, though with different emphasis, see Bilsky 2009.

against him, "Israel has a dangerous racist atmosphere… they need to decide if their democracy is a reality or a lie" (Bishara in Peri and Abbas 2001). On another occasion, Bishara explains that since his words were only reflections of his political views, they should have been protected by the parliamentary immunity, the revocation can only be done "by suspending the claim that this is a democratic society. They can't say that this is 'democracy defending itself' because it would only be nationalism defending itself. After all, what I'm calling for is extending Israeli democracy to all of its citizens, not abolishing Israeli democracy" (Bishara in Tikkun 2001: 27). These remarks are telling about the possible effects of the judicial measures against Bishara. While aiming to narrow down the space for resistance, they simultaneously create a discursive space that allows reflection on the meaning of these moves, and in turn, on hegemonic motives, means and legitimacy as a democracy.

Indeed, despite the immediate effect of removing him from the political scene, there could be positive effects to a judicial process, as it could be used to Bishara's (and, of the Palestinian citizenry at large's) benefit: "They understood that it would not be a case of MK that would be judged according to the rules of the Israeli public opinion. International public opinion would be involved here. […] If there will be a trial, I will bring witnesses from the Résistance française to testify what is resistance. I will bring people from South Africa to testify what is occupation. It will be a first time that in the State of Israel there will be a trial based on world-views […] Let's say, that if they would have thought about it pragmatically they would give this one up…" (Bishara in Jalal and Shavit 2001). This comment indeed reminds us the function of the courtroom as a performative space, where contesting worldviews can assert themselves in the face of the symbols of power.

Eventually, in a Supreme Court decision given on 31 March 2003, the indictment against Bishara regarding the case of organising trips to Syria was dropped. On 1 February 2006 the Supreme Court accepted Bishara's appeal, filed by Adalah, on the matter of the effect of his immunity on his speeches in 2000 and 2001. The court decided that the immunity should apply to these speeches, and the criminal proceedings against him were terminated.

That was not the last word in the persecution of Bishara. What followed were the accusations laid out against him in 2006 that ultimately forced him into exile,

described at the beginning of the chapter. Even after his departure from the political scene in Israel, the legislative measures against Bishara are still underway. One of those aims to revoke his citizenship, and deny him the pension he deserves as a former member of the Knesset. The bill is emphasising the connection between the right to Israeli citizenship and loyalty to the state. The bill is providing legal foundation to penalise citizens and MKs accused of security offenses, even if they have not been prosecuted and convicted.

Finally, what came to be known as the 'Bishara law,' aims to withhold salary, pension or any other payments to any MK suspected or convicted of terror, was accepted in the Knesset in February 2011. The law determines that the divestment of salary and pension payments will apply to any MK suspected of or convicted of a crime which carries a punishment of a five year prison term or longer, who has not reported to his investigation, trial or sentence (Sofer 2011).

Before discussing the strategy of Bishara's type of resistance as manifested in the examples above and the meaning of these legislative measures, we turn to look at another case, that of MK Haneen Zoabi, and her attempts to push forward the boundaries of legally sanctioned action.

Haneen Zoabi breaks the siege on Gaza

At the end of May 2010, MK Haneen Zoabi, the only Palestinian woman elected to the Israeli parliament as a member of a Palestinian party, participated in the Gaza Freedom Flotilla, sailing from Cyprus towards the blockaded Gaza Strip.[103] In an interview to *Ha-aretz* just before the flotilla went underway Zoabi declared that she was not worried about the consequences of her actions, since she is determined to fulfil her duties as a representative of the Palestinian community: "The state and the media are presenting us with two options – either to do what we are committed to, within the atmosphere of incitement, or not to do anything. So I surely choose to follow my duties and commitment" (Zoabi 2010). The events of this flotilla hit the headlines due

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[103] A flotilla of eight boats carrying thousands of tonnes of construction materials, medical equipment and other aid sailed from Cyprus on 30 May 2010 in an attempt to break Israel's blockade of the Gaza Strip. The boats were carrying around 700 passengers from over 40 different countries.

to the bloody outcomes of the Israeli military takeover of the Mavi Marmara boat, leaving nine activists dead and dozens more wounded.

Upon Zoabi's return to the Knesset a few days after the events, she attracted fire from all sides of the political map, and physical and verbal violence. Anastassia Michaeli from the Yisrael Beiteinu party chased her to the podium and tried to prevent her from delivering her speech. When she finally managed to begin, she was interrupted time and again:

> Reuven Rivlin (Chairman): I am pleased to open this session. Everybody take a seat. […]
>
> Yoel Hason (Kadima): She will not talk in this place!
>
> Arie Bibi (Kadima): In another state she would have been hanged. […]
>
> Michael Ben-Ari (Haichud Haleumi): Letting her speak is like giving the right to speak for terror. It is freedom of speech to terror, to terrorists, to those who hate Israel!
>
> Orit Zuaretz (Kadima): Go to Haniyeh [Ismail Haniyeh, Hamas leader and elected prime minister], he will help you. […]
>
> Michael Ben-Ari: She's a terrorist! […]
>
> Haneen Zoabi: The siege is illegal, inhuman and illegitimate. Every politician who has a moral stance opposes the siege.
>
> Orit Zuaretz: Hypocrisy! Hypocrisy! Why don't you help to bring Shalit [Gilad Shalit, the Israeli soldier that was held in captivity in Gaza from 2006 until his release in the prisoner swap deal in 2011] back home? […]
>
> Haneen Zoabi: The pirate military operation is an act of crime according to international law… [Interruptions] An international inquiry should be set up in order to investigate what happened. Why does the Israeli government oppose an investigation? Why does it oppose the discovery of the truth? Are you sure about the Israeli story? […] Why did the Israeli government ban the press from reporting? […]
>
> Carmel Shama (Likud): Why did you go aboard the terrorist boat?! […]
>
> Haneen Zoabi: You are afraid to hear what I have to say…! The Israeli Knesset is afraid to listen to me. You know that the whole world is against you. […]
>
> Yulia Shamalov-Berkovich (Kadima): You are a terrorist, a saboteur, terrorist, terrorist! No one is afraid of you! [104]

MK Miri Regev from the Likud party shouted at Zoabi in Arabic, "Go to Gaza, traitor!" and asserted that Zoabi must be punished since "we don't need Trojan horses in the Knesset!" Zoabi also received threats on her life, and several Facebook groups opened a campaign against her, one of which bluntly called "To Kill Haneen Zoabi."

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[104] Knesset Session 139, 2 June 2010.

The legislative backlash arrived almost immediately. In order to facilitate the prosecution of Zoabi, motions to enact a law that would enable the removal of MK Zoabi from the Knesset as well as to revoke her citizenship were submitted. On June 3, 2010, classifying MK Zoabi's participation in the flotilla as treason, Minister of the Interior Eliyahu Yishai (Shas) requested permission from the Attorney General Yehuda Weinstein to annul her citizenship once her immunity was revoked (Ravid 2010). The Ministerial Committee for Legislation met two days later to discuss the proposed amendment to Basic Law: *The Knesset (Amendment – Transfer of Tenure of Knesset Member)*. The bill is meant to create the means to expel a serving Member of the Knesset for supporting an armed struggle of an enemy state or terrorist organisation against the State of Israel, for inciting racism, or for denying the existence of Israel as a Jewish and democratic state.

A month later, the Knesset decided by a large margin to strip some of Zoabi's parliamentary privileges, including her privileges to travel to countries where Israeli citizens are not allowed travel ('enemy states'), her diplomatic passport and she was denied from any state participation in her legal expenses. The discussion in the Knesset, similar to the previous one, was tense, accompanied with many insults towards Zoabi. Anastassia Michaeli suggested Zoabi address Mahmoud Ahmadinejad with request for Iranian citizenship and a diplomatic passport that will "certainly benefit you in your incitement tours, because we will be revoking your Israeli passport tonight" (Branovsky 2010; Lis 2010). During the discussion, Zoabi explained why she chose to participate in the flotilla,

> My name is Haneen Zoabi, I am a woman, a liberal, a Palestinian, citizen of this country, member of Knesset for the NDA. […] I believe in universal values of freedom, liberty, justice and equality. […] I have the right and the duty to struggle for my values and rights. […] I am standing against the occupation, the siege, the oppression of people. […] You were supposed to protect me from racism and incitement and from those who want to prosecute me and narrow my freedom of activity and expression. But I know and the world knows how far you are from this. […] When you threaten the Arab MKs and the Arabs' protectors, you threaten democracy and co-existence between Jews and Arabs."[105]

Zoabi's speech in the Knesset raises two interesting points. First, she acknowledges

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[105] Knesset Session 156, 13 July 2010.

that by persecuting her for her actions, the State of Israel is damaging its own reputation and legitimacy both internally and internationally and contradicts its own claim to be a pluralist democratic state were Jews and Arabs enjoy full equality. Secondly, it echoes Zoabi's explanation regarding the merits of participation: sending a message of empowerment to the Palestinian citizens, in a firm and proud stand in front of a rain of insults and violent comments. She explained that this becomes possible only since "we now have the moral high ground. Whoever participated in the flotilla can stand at the Knesset and feel moral superiority, this gives me strength."[106] For Zoabi, the decision to participate in the flotilla is naturally connected to her political stance as a member of the NDA and representative of Palestinian citizens, and was meant to send a message to her community: "These are our values. If we will struggle with determination we will gain, and our people will gain. People now admire the NDA because of the flotilla, it was a proof that we are not only talking, and we are national and democratic also in our actions. Our society saw that we are willing to pay the price, and we gained a lot from that." She is aware that she personally, and the party itself are paying the price, as this means more presecution, more racism and more direct oppression – but this is just the confirmation that "we are not just another party, we are a qualitative change in the political scene."[107] I return to this issue below.

On November 2010, Adalah and the Association for Civil Rights in Israel submitted a petition to the Supreme Court against the decision to revoke Zoabi's parliamentary privileges, arguing that the Knesset exceeded its power and acted against the Law of Immunity of the MKs, which prohibits the Knesset from harming the rights of MKs for their political activity. The petitioners warned that the decision not only endangered the status of the representatives of the Palestinian minority in the Knesset but also it legitimises the racist incitement against Palestinians in Israel in general (Adalah 2010). The court's decision is still pending.

The incitement against Zoabi continues apace the time of writing. In October 2012, with the run up to the Knesset general elections of February 2013, motions were submitted by several MKs to ban Zoabi from participating in the elections based on section 7a to Basic Law: *the Knesset,* for her support of 'terrorist organisations' such

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[106] Interview with Zoabi.
[107] Ibid.

as the Turkish IHH that stood behind the organisation of the flotilla. These motions were accepted by the CEC, but were later overturned by the Supreme Court that allowed Zoabi to participate as a candidate in the elections. Zoabi claimed she is not concerned about the personal incitement against her. In fact, it made her a hero in her society. Nevertheless, there is also a political price to be paid. Zoabi explained, "My vision is also directed to the Jews and not only to the Arabs. […] I have the most progressive agenda regarding separation of religion and state, and women's issues. The incitement is hurting my audience and it distorts my vision, which is a democratic one. I want respect from my people because I am democratic and not because I am a radical. I am not a chauvinist, I am a nationalist. So the state is hurting me in this way."[108]

Redrawing the boundaries of resistance

Both Bishara and Zoabi's affairs are significant for reflection on the political/physical location of the Palestinian citizens of Israel and their elected leaders. Palestinian citizens are 'like an acrobat on a thin wire,' trying to maintain and accommodate their split identity and position, as citizens of the State of Israel and as part of the Arab nation and the Palestinian people (Medina and Saban 2009). The elected representatives and leaders of the Palestinian population, in their very participation in the Israeli parliament are on the one hand part of the 'game,' and located inside hegemony, but on the other hand their activity, both inside and outside the parliament is meant and aimed at undermining Zionist hegemony. Examination of the reaction of the Israeli establishment to their actions and speeches teaches us about the position of the Palestinian citizen inside Israel from the point of view of the Zionist hegemony, the easiness in which their leaders are accused of treason and presented as aliens to Israeli politics and any expression of political/national position that is contradictory to the Israeli consensus is used as an excuse to try and push them out of the political game.

However, the importance for the purposes of the analysis of the limits and possibilities of resistance to hegemony, the perceived and actual threat of the NDA's resistance stands out. Both Bishara and Zoabi knowingly decided to push forward and

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[108] Ibid.

expand the boundaries of action allowed to them by Israeli law, within the framework of their activity as elected representatives of the Palestinian community in the Israeli parliament. Hegemonic reaction to this is uncompromising and tends to be outright oppressive, thereby weakening its legitimate position, both locally and internationally.

The decision to prosecute Bishara, and possibly in the future also Zoabi, is part of a strategy of criminalising dissent, which is not unique to Israel. Many oppressive states, such as apartheid South Africa, have used it to de-legitimise parties, ideas and activities un-favoured by regimes (Sultany 2009). This strategy also leads to the persecution of activists and party member of lower ranks, their harassment by the security services and constraints of their activities. The application of criminal law on their acts neutralises and depoliticises political activity, since criminal law does not allow political motives to enter into the legal deliberations. Thus, "a successful political trial for the authorities is one that transforms a legitimate political adversary into a criminal whose criticism of the authorities no longer has to be addressed politically" (Bilsky 2009). Accordingly, criminalising Bishara and Zoabi releases the Israeli Jewish public from the need to listen and deal politically with their critical stance towards the Israeli regime.

Furthermore, for more than a decade, the blurring of the distinction between criminal law and laws of war has been achieved through the introduction of the concept of 'terror.' This blurring helps to distinguish those who are defined as terrorists (or supporters of terror) from the community of citizens and the ordinary ways of protesting and breaking the law (Ibid). This strategy holds true in regards to Bishara and Zoabi – they were both accused of supporting terror. This strategy further curtails any possibility to approach the challenge posed by the NDA politically.

It seems that up to the time of writing, with regards to the prosecution of MKs, there is still hesitation as to the possible outcomes of this move. As many suggest, if Bishara would have indeed stood on trial, and jailed as a consequence, the loss and damage to the State of Israel would have been much greater: "If the state of Israel will choose to conduct a world war against one of the most fascinating intellectuals in the Middle East […] it will be defeated. With its own hands, it will turn Bishara to what he is not – an Arab Martin Luther King. If Bishara will be sent to prison the outcome will be even worse – Bishara will become a Nelson Mandela" (Shavit 2001). In a similar

way, pushing Zoabi out of the parliament would be a mistake since "the damage she can cause as a movement outside parliament that can accuse Israel of apartheid is inestimably greater than the damage she can do from inside" (Shai Hermesh as quoted in Branovsky 2010). Indeed, here surfaces hegemony's strategic thinking in relation to resistance: to safeguard itself by incorporating resistance through reforms and compromises or pushing it out, thereby risking being hit by its dangerous potential, now external to it. Nevertheless, with the deterioration of the Israeli democratic-political culture into an abyss of blatant chauvinistic sentiments, one can only wonder if these rational considerations will continue to take precedence.

'War of position' in the Israeli parliament

> In politics, once the war of position has been won, it has been won definitively.
>
> Gramsci 1988

This chapter did not cover the full scope of activity conducted by members of the NDA party ever since its inception to today. Instead, a glance into different acts of resistance, operated on different levels was offered. I explored and analysed the party's agenda, and the subversive message embodied within it that led to the attempt to ban it, and thereby to the party's struggle for the right to participate in the elections to the parliament. Furthermore, I looked at parliamentary-legislative attempts that put the party's goals on the Knesset's agenda, thereby being curtailed almost in the first instance. Finally, I investigated the 'crime and punishment' of extra-parliamentarian acts of MKs of the NDA, directed at expanding the boundaries of resistance within Israeli law, and the reactions and repression they encountered by the state's legislative and judicial apparatuses.

Overall, the strategy of resistance of the NDA can be conceptualised as a 'war of position,' a term borrowed from the military field, reformulated by Gramsci and elaborated by others. For Gramsci, the 'war of position' is the essence of the (counter)hegemonic struggle: the replacement of the existing hegemony of the bourgeoisie with the hegemony of the proletariat. What 'war of position' means is the long process of ideological struggle, process of transformation, disarticulation and

rearticulation of existing ideological elements through which the new hegemonic bloc is cemented (Mouffe 1979). Furthermore, this strategy aims at exposing the inherent weaknesses inside the hegemonic order that are an integral part of its character and internal contradictions. Its goal is to push towards the situation in which what was previously tolerated or considered as a legitimate disciplinary action within hegemony will come to be understood as outright oppression, and the struggle itself as legitimate resistance to it (Noorani 2007). Similar to the legal resistance of Adalah, the NDA's resistance is a long and patient process of dismantling, rather than a full strike against the centre of power.

This strategy is reflected in the very existence of the party and in the acts and words of its representative members, inside and outside the parliament, its educational role inside the Palestinian community and its activity aimed at challenging Zionist hegemony. The state's reaction to this is first and foremost through legislation. Basic Law: *The Knesset* narrows the possibilities of political participation of parties that do not follow the lines of the Zionist consensus ('Jewish and democratic' state; Arab countries and Palestinian non-citizens as enemies/terrorists) was enacted after the appearance of the NDA onto the Israeli political scene. Multiple laws that were enacted and amended after the Bishara and Zoabi 'affairs,' and most recently since the elections in February 2009, which brought one of the most right-wing government coalitions in the history of Israel to power, a flood of discriminatory legislation has been introduced in the Knesset that targets Palestinian citizens of Israel in a wide range of fields. According to a report produced by Adalah in 2011, these laws aim to exclude Palestinian citizens from the land; turn their citizenship from a right into a conditional privilege; undermine the ability of Palestinian citizens of Israel and their parliamentary representatives to participate in the political life of the country; criminalise political expression or acts that question the Jewish or Zionist nature of the state; and privilege Jewish citizens in the allocation of state resources. Some of the legislation is specifically designed to pre-empt, circumvent or overturn Supreme Court decisions providing protection for these rights.

Looking at the situation in which possibilities of resistance are narrowing and the lives of the Palestinian citizenry community in Israel is hardening in the immediate and short term, the effect of these draconian laws on resistance and its goals could be

tremendous. Despite the fact that it can be deemed irresponsible to evaluate the results of a process which is still underway, examination of the local, namely among liberal individuals and organisations, and international discourse around Israel's latest legislative moves can offer a possible answer to this question. For example, after the government approved the amendment to the *Citizenship and Entry into Israel Law* that included making a 'loyalty oath'[109] to Jewish and democratic state a condition of citizenship, the Guardian editorial commented that:

> […] It is, by definition, discriminatory. […] The new version requires future citizens to declare their loyalty not just to a state but an ideology, one specifically designed to exclude one fifth of its citizens who see themselves as Palestinian. […] There are 20 others in the slipstream that have a similar effect. […] The authors of these proposals not only intend to create a state ideology but to police it. The Palestinian Israeli experience of inequality and discrimination only promotes the view that being a minority in a state with a Jewish majority is rapidly becoming untenable. (The Guardian, 11 October 2010).

Although this is just one example, it becomes increasingly clear that the constant 'war of position' in the parliament is pushing the Zionist establishment to reaffirm itself on the legal ground, in a way that exposes its undemocratic nature explicitly, both locally and internationally. In its latest session, from 2009 and up until the February 2013 elections, the Israeli Knesset was more openly and explicitly anti-Palestinian and the Jewish component in the definition of the state took precedence over the democratic one. This is yet also another sign of the effectiveness of the war of position. In many respects, it seems that the Israeli Knesset is on the road to legislate itself out of democracy. Indeed, the political capital such moves consume is high. While the price is still acceptable among the local Jewish-Israeli society, albeit one that raises outrage and protests from the liberal and Zionist leftist sides of the political map, in the international arena, one which Israel relies on both politically and to a lesser extent economically, where the legitimacy it receives as a liberal democracy matters, the 'price' gets increasingly higher.

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[109] The bill was originally promoted by the foreign minister, Avigdor Lieberman, who has made the issue of loyalty a hallmark of his political career, and was passed by a big majority despite the opposition of Labour party members. The loyalty oath will be required of non-Jews seeking to become Israeli citizens, mainly affecting Palestinians from the West Bank who marry Palestinian citizens of Israel, to swear an oath of allegiance to the State of Israel as a 'Jewish and democratic state' (Somfalvi 2010).

It can thus be determined that the strategy of the NDA forces the State of Israel to deal with questions and situations that were masked before and remained unchallenged, and thus expose the exclusive character of the state that privileges one type of citizens over others. An analysis of the increasing emphasis on the Jewish component in the character of the State of Israel brings forward a similar point. While the state's Jewishness was common sense for the Jewish majority for several decades, "the need to declare it became more urgent as the possibility of becoming "normalized" (i.e., a state for all its citizens) became an option, however distant" (Zreik 2011: 23). Indeed, historical evidence shows that when Palestinian citizens decide to take the promise of citizenship seriously and to promote a political agenda that challenges the Jewish definition of the state, "he or she would find the Jewish state fully mobilized to block the way" (Ibid: 28). Such was the case with the al-Ard movement that was banned from participating in the elections in 1965, and was outlawed altogether, and such is the case with the NDA, in the continuous attempts to ban and discredit it. Indeed, "the invisibility of the Jewish state in the legal texts went hand in hand with the invisibility of the Palestinians in the land. Only when this situation changed would that which had been taken for granted – the Jewishness of the state – need to be asserted" (Ibid). It was the NDA that for the first time put on the public agenda the idea that there could be something other than a Jewish state, and its discourse gained relative success and was adopted by other Palestinian parties. Rimonda Mansour affirmed this point and asserts that the challenge the NDA poses is a philosophical-moral one. "Finally the NDA and Azmi forced the state to enact anti-NDA laws that are bluntly racist, in a way that can not be interpreted otherwise. This is the reason that NDA is posing a challenge to Israel. We use democratic tools against the democratic pretences of the state."[110]

When will the strategy of participation and internal counter-hegemonic struggle be exhausted? Most of the people involved with the party with whom I spoke, seemed to agree that this moment is approaching. It seems that while participation can benefit the Palestinian community in the ways mentioned before, with the growing deterioration of the political culture in Israel and the dominance of the right wing, the question becomes more complicated. Indeed the Knesset becomes an impossible

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[110] Interview with Mansour.

platform – where the activity of the Palestinian members is almost automatically blocked, and any attempt to stand and speak turns into a 'circus' of shouting and insults towards the Palestinian members. But on the other hand, at a time when an ever increasing discourse about revoking citizenship from the Palestinians citizens – as led by former Minister of Foreign Affairs, Avigdor Liberman – it is also problematic to willingly give up citizenship rights and boycott the elections. Most of the party's activists expressed hope for the CEC to disqualify the NDA from participation in the elections, and that this decision will not be overturned by the Supreme Court. This for them will be a step that will truly expose the nature of the Israeli 'Jewish and democratic' character of the state.

It is interesting to mention here the words of Azmi Bishara from 2001 (Bishara 2007 [2001]a: 142) in relations to the issue of participation. According to him, the question of participation:

> [I]s a point that can not be understood by [Jewish] Israeli parliament members – it is not as though they made a compromise to allow us Arabs into the Knesset. Rather, it is we who make a compromise in our very decision to enter the Knesset. […] Trying to balance the daily struggle within the Knesset for equal rights with our nationalist positions has presented the largest and most unprecedented challenge to the Jewish-Zionist state. No one in the history of the state has been incited against the way we have been. This provides evidence of the extent of the challenge we have been posing.

Chapter Five: 'Withdrawal': Direct Action, Boycott and 'Illegal' Activity

On 26 December 2003, the Israeli army shot unarmed demonstrators protesting against the construction of the 'separation barrier'[111] Israel was building around the West Bank village of Masha, injuring two. While similar incidents in which Palestinian inhabitants of the OPT are injured often go unnoticed in the media, this particular incident attracted media interest in Israel and internationally since one of the injured demonstrators happened to be Gil Na'amati, a Jewish-Israeli activist.[112] All reports mentioned the involvement of a group named 'Anarchists Against The Wall' in the demonstration, but did not expand much on its identity, ideology or patterns of activity.

Writing in response to this same incident, Meron Benvenisti (2004), an Israeli essayist and historian, pointed to the uniqueness of this loosely connected group. According to him, the demonstration was not aimed against the wall alone, but represents an ideological rebellion against the Israeli state and the sanctity of its laws:

> […] a society that attributed to the 'Jewish State' an absolute, sacred value, and worships "laws" as though they embody, by their very legislation, supreme moral and social values. There is no democratic state in the world in which statism and submission to the law are the main principles of faith, as they are in Israel. […] The test of loyalty is unconditional obedience to any decision taken by those "authorized by law," and democracy means the dictatorship of the majority. Whoever wishes to claim the right to refuse – because democracy also means defending the rights and beliefs of the minority – is branded as a law breaker.
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> Anyway, everyone is an expert in defining 'a patently illegal order,' and everyone is preoccupied with whether the law may be violated for conscientious reasons "if one pays the price." As if obedience to the law is the supreme social test rather than the moral and social values inherent in the law. 'The rule of law' is put forward as an ideal that binds all, without distinguishing between 'the rule of law' as a concept encompassing universal social values, just and moral, and 'the rule by law,' which is nothing but a system reflecting changing and sometimes corrupt interests, that are

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[111] The same barrier has multiple names: 'security fence' is the term commonly use by the Israeli government, together with the term 'separation barrier.' It is also termed 'the wall' or 'the fence,' depending on who the speakers are and which part of the barrier is being described, since parts of it are built out of 8 meter high concrete wall and other parts from high fence with barbed wire.

[112] The incident was reported in the New York Times, the BBC, the Financial Times and the Jerusalem Post, among others.

legislated in the Knesset.

In analysing the relations between Jewish-Israeli society and the law, some interesting points are brought up in this text. The common sense perception of law as a scared entity, embodying social and moral values, to which obedience is the highest 'social test' is highlighted. This view disregards the fact that in Israel, law is a fragile and dynamic instrument in the hands of political actors and dependent on the shifting political climate in the country. Thus an important distinction must be made between the 'rule of law' as a universal principle and the 'rule by law' as a reflection of the Israeli case.

In this state of affairs, activities that disregard laws or military orders, such as those of the Anarchists Against The Wall represent an ideological and intellectual challenge to the very idea of Zionism and its manifestations in current day Israel. Benvenisti's reflections are used here as a point of departure into the discussion regarding the strategy of resistance that refuses to struggle inside the institutions of the state and within its legal framework, but rather chooses to act outside them, although in different ways.

The interrelation between law and resistance that has been analysed so far from *within* now shifts onto the other pole, where different actors mobilise alternative strategies of resistance from outside state institutions and with disregard to the existing laws. The chapter follows an investigation in stages. I introduce the different actors and their agendas and discuss the patterns of activity they choose, while highlighting their relation to the law and pointing to their limits and possibilities. Furthermore, I evaluate the outcomes of their activity as reflected in the hegemonic response to resistance. Finally, I offer a discussion about the state's use of coercion, where investigation of the repression of resistance practices reveals once again the tension between coercion and consent that typifies hegemony. This, in turn, brings us back to the theoretical considerations regarding law, resistance and their intersections in a way that seeks to overcome existing limitations.

This chapter argues that the cases presented below reveal the potential embodied in what is conceptualised here as the *withdrawal* approach to resistance, overlooking hegemonic structures and legal frameworks and thereby creating and expanding

existing spaces of resistance and revealing weaknesses within hegemony and contributing to its dismantlement. The two main actors here are the AATW, engaged in direct actions and the Boycott! group, calling and promoting boycott, divestments and sanctions (BDS) against the State of Israel. These two actually intersect and overlap, while most members of the AATW are also members of the Boycott! group, and vice versa. Indeed, these are both sides of the same struggle – from inside, on the ground and outside, appealing to international public opinion.

Resistance from without: introducing the main actors

Anarchists Against The Wall

Anarchists Against The Wall (AATW) is a direct action group, inspired by the South African resistance movement, that was formed in April 2003 in response to the construction of the wall in the occupied West Bank. Ever since its formation, the group has participated in hundreds of demonstrations and direct actions against the wall specifically, and the occupation generally, in the West Bank as well as within Green Line Israel.

AATW activists join the Palestinian led struggle against the occupation and the wall, coordinated through the Palestinian villages' local popular committees. This point is crucial, as Ronnie Barkan, one of AATW activists explained, since AATW activists are "among the group of the over-privileged in this struggle for Palestinian rights, acting against a system that has at its very core the Zionist principle of differentiation."[113] Accordingly, it is not a 'joint struggle' in the manner it is commonly described, but a Palestinian struggle to which anti-Zionist Israeli (and international) activists join and lend support.[114]

The AATW's stated goal declares, "It is the duty of Israeli citizens to resist immoral policies and actions carried out in our name. We believe that it is possible to

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[113] Interview with Ronnie Barkan, 30 July 2012, Tel Aviv.

[114] The issue of the 'joint struggle' was at the centre of several debates among Israeli and Palestinian activists. See Linah Alsaafin's article in The Electronic Intifada from 10 July 2012; responses by Maath Musleh on Beyond Compromise on 12 July 2012, and interview with Ronnie Barkan on the Electronic Intifada on 8 August 2012, among many others.

do more than demonstrate inside Israel or participate in humanitarian relief actions. Israeli apartheid and occupation are not going to end by themselves – they will end when they become ungovernable and unmanageable. It is time to physically oppose the bulldozers, the army and the occupation" (AATW website).

The group's nature and patterns of activity are revealed in conversations with its activists. The AATW is not an organisation, but rather a loose group of people, working together in a non-hierarchical and horizontal mode of operation, with no central leadership. Decisions are taken together, in consultation within meetings or during operations, but always in response to the Palestinian needs and calls for support.[115] This is a vital principle: the popular resistance movement is first and foremost Palestinian, and "the Israelis are a mere footnote in it" (Pollack in Hass 2010). The AATW can be understood more as a continuation of the International Solidarity Movement (ISM)[116] than of the other Israeli groups in regards to patterns of activity and networks. AATW constantly uses the ISM coordinators if they want to make initial contacts in a new location of struggle. At the same time, they are also in contact and co-operation with the other Israeli activist groups, such as Ta'ayush[117] that deals mainly with solidarity, support and direct actions, mainly in terms of fundraising.[118]

The founding moment of the group can be traced to the ongoing struggle in the village of Masha in the West Bank, where massive amounts of land were expropriated to enable the construction of the wall in 2003. During an eight month presence in a protest tent on the ground, strong bonds were created between Israeli and Palestinian activists. The protest tent served as a base of activity, people went from there to meetings in other cities and refugee camps. Eidelman recalled, "During that time, the

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[115] Interview with Ronen Eidelman, 24 December 2009, Jaffa.

[116] The International Solidarity Movement (ISM) is a Palestinian-led movement committed to resisting the Israeli apartheid in Palestine by using nonviolent, direct-action methods and principles. Founded by a small group of primarily Palestinian and Israeli activists in August, 2001, ISM aims to support and strengthen the Palestinian popular resistance by providing the Palestinian people with two resources, international solidarity and an international voice with which to non-violently resist an overwhelming military occupation force.

[117] Ta'ayush (Arabic for "living together"), is a grassroots movement of Arabs and Jews formed in 2000 constructing a true Arab-Jewish partnership. The group engage in concrete, daily, non-violent actions of solidarity and humanitarian aid to end the Israeli occupation of the Palestinian territories and to achieve full civil equality for all.

[118] Interview with Kobi Snitz, 4 January 2010, Tel Aviv.

media did not know how to deal with this group, one that issued communiqués under different names. Soon after the incident where Gil Na'amati was injured in December 2003, a sudden media interest began. They picked up the name 'Anarchists Against The Wall', and the name stuck."[119]

AATW presence as a group in the demonstration provides Palestinian civilians some degree of protection against army violence. The Israeli army's code of conduct is significantly different when Israelis are present and the tendency to resort to violence is significantly lower, even though still severe. The army tries to put an end to the Palestinian popular resistance using every form of repression, and to prevent Israeli activists from joining this struggle, using legal means. A military decree determines that Israeli citizens are not allowed to enter the Palestinian Authority's controlled areas 'A' as marked in the Oslo Accords.[120] Frequently a military commander order will declare the area of the demonstrations a closed military zone to which entry is denied. Since under the law of the occupation it is possible to indict people for participating in a demonstration, in the course of several years AATW activists have been arrested hundreds of times and dozens of indictments have been filed against them. This legal repression, according to many activists, is an attempt to crack down on the resistance. Indeed, the human and financial burden of the activists is severe.

AATW activists are, by definition, supporters of the boycott call, promoted by the Palestinian civil society in 2005, "it is because we join the Palestinian struggle, and one of the main tenants of the struggle is the support for the BDS. It is an inside-outside simultaneous strategy that demands Israel stops its violation of Palestinian rights."[121] It is therefore a continuation of the same strategy, using different tactics.

Boycott! Supporting the Palestinian Call for BDS from Within

On 9 July 2005, Palestinian civil society, a collection of Palestinian political parties, unions, associations, coalitions and organisations representing the three parts of the Palestinian people (Palestinian refugees, Palestinians under occupation and Palestinian

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[119] Interview with Eidelman.
[120] The Oslo II Accords determined that the Palestinian Authority holds both civil and security control over areas 'A' that include all Palestinian cities in the West Bank.
[121] Interview with Barkan.

citizens) issued a call for boycott, divestment and sanctions against Israel "until it complies with international law and universal principles of human rights." According to the call, these non-violent punitive measures should be maintained until Israel meets its obligation to "recognise the Palestinian people's inalienable right to self-determination and fully complies with the precepts of international law." These include ending the occupation and colonisation; recognising the rights of the Palestinian citizens of Israel to full equality and respecting, protecting and promoting the right of return of the Palestinians refuges according to UN resolution 194.[122]

Currently, the BDS is an international movement with growing numbers of people from around the world participating and collaborating at an increasing pace. The emergence of the BDS movement was inspired by the South African model of the international solidarity movement that waged a BDS campaign at the time of apartheid, and was one of the factors that led to its eventual collapse.

Involvement of Israeli citizens in boycott related activities predate the formal Palestinian call on 2005. For many years, Israelis who chose to respect and promote the rights of the Palestinians have done so based on personal interaction and on a relatively small scale. Those few conscientious Israelis, Barkan explains, "have also paid a personal price for speaking up and taking the side of the oppressed, and in trying to minimize such events in the future we decided to answer the 2005 Palestinian call for BDS as a group, allowing for those who wish to remain anonymous to still be active as well as allowing for like minded individuals to join in" (Barkan 2012). The group, answering to the name 'Boycott! Supporting The Palestinian BDS Call from Within' was finally officially formed in 2008. This long name puts the emphasis on the group's role in supporting an existing and ongoing struggle rather than a creation of a new front of struggle. "Our job is, therefore, not to come up with demands, but rather use our relative power to act as enablers for the needed change – being among the privileged, the mode of struggle is not ours to dictate, but it is certainly our duty to participate" (Ibid). The role of the Israeli Boycott! group is to support the international BDS call against Israel and legitimise it: to stress that it is directed towards Israeli governmental policies and Israeli institutions and not Israeli individuals and therefore

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[122] For the full Palestinian call for BDS see: http://www.bdsmovement.net/call

it is not anti-Semitic (as it is commonly portrayed by its opponents), but rather an anti-racist stance.

In their early years, boycott related activities of Israeli citizens were sporadic and unorganised. They consisted in the work of individuals, prominent among them academics, cooperating with and contributing to the larger international campaign and calls to boycott the Israeli academia. While more organised calls to apply a restricted boycott against settlement products were issued by Gush Shalom ('The Peace Bloc'), an organisation dedicated to influence Israeli public opinion and lead it towards peace and conciliation with the Palestinian people based on the principles of a two state solution, it was only after the outbreak of the second intifada in September 2000 that a call to apply a comprehensive boycott against Israel supporting international calls emerged. The Israeli army's invasion into West Bank cities, towns, villages and refugee camps during the 2002 Operation Defensive Shield constituted a turning point in the BDS campaigns worldwide, and in Israel itself. The invasion and the massive destruction it left behind, together with large number of casualties, combined with the initiation of the construction of the wall in the West Bank effected change among an element of the Israeli radical left. On the whole, a growing number of activists protested against the occupation, and some also voiced support for such boycott and divestment campaigns (Giora 2010).

Several additional calls of support and activities were issued over the years, by individuals or existing organisations, but it was not until June 2006, when a group of Israeli citizens supporting BDS was formed, issuing a statement to this effect later on in June 2007, asserting, "we stand against all forms of racism and oppression and support and encourage BDS actions as a legitimate and necessary form of non-violent resistance."[123] Finally, a report about a working group's discussions on how to build the BDS campaign by Israeli citizens was published in September 2008, documenting the way in which the group called Boycott! Supporting the Palestinian BDS Call from Within, was formed during that year. The document stresses, "there currently exists no agent within this society that operates within the framework of the 9 July 2005 Palestinian civil society call for BDS. Thus, it is felt that it is important to join the

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[123] The full statement can be found here: http://www.jai-pal.org/content.php?page=540

Palestinians in their call for boycott, accepting their role as the original initiators, accepting the Palestinian call for boycott as it is […]. Participants see BDS as an essential campaign, potentially the most powerful nonviolent campaign possible to stop the ongoing war crimes committed in the name of Jewish people" (Harush and Snitz 2008).

The stated goals of the group are to promote and support the Palestinian BDS call, and to act inside and outside Israel to encourage awareness and support for BDS. Until today, only around 300 Israeli citizens and residents have signed the call. It is this group and its activists that will be discussed here. Rachel Giora, an academic and supporter of the boycott strategy for many years explained, "it was the young activists, coming mainly from the AATW, who decided to answer the Palestinian call for BDS, and addressed us 'the elder' boycotters to join them, and so we did."[124] It is a very small minority group, but its potential is nevertheless dangerous for the Israeli state.

Patterns of activity: from direct action to the call for boycott

The chosen strategy of resistance of the AATW and the Boycott! group is fundamentally different from that of the NDA or Adalah. They both chose to disregard the state and its institutions, legal frames and constructions as an arena of struggle, and rather attempt to invent and create new spaces of resistance, separately from the state. They frequently openly and intentionally disregard the law, and sometimes act knowingly against it. Still, they are conscious of the law and calculate their moves accordingly.

Trespassing boundaries and borders: direct action

Why demonstrate in Tel Aviv if you can go and resist where the injustice actually takes place?

Feldman 2010[125]

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[124] Interview with Rachel Giora, 7 January 2010, Tel Aviv.
[125] Interview with Yotam Feldman, 7 January 2010, Tel Aviv.

The most common strategy of resistance of the AATW is 'direct action.' Direct action deals specifically and directly with the source of the problem, and not only with its representations, such as demonstrating in front of the Ministry of Defence or in the streets of Green Line Israel. Thus, direct action has an affect on the realities on the ground since "we go and dismantle a road block or a checkpoint and we open a road, clean a well or a cave."[126] For example, in the area of the south of Mount Hebron the outcomes of the AATW actions could be seen on the ground, where families came back to live in the caves and used the clean wells after the prolonged cleaning activity conducted there.[127] Direct action is a practical demand, and there is typically a shortage of people who are willing to take part in these activities: "what is always missing is the struggle and resistance on the ground. This is a pragmatic matter, this is what is needed, and this is what we [AATW] do."[128] As activists from the group testify, this is the least conflictual way for them to work.

Direct action is the embodiment of "the move from the symbolic to the physical and material world. Even if actions can still be symbolic sometimes, they are nonetheless real."[129] Indeed, there is always a spectrum and there is no one point between the symbolic or the real, every action embodies both, "I think that a series of demonstrations in one village can help, if it means delaying the construction of the wall, and entails expenses and losses for the state and the army. Every day of delay in construction means losses of thousands of Shekels…. You can not break the whole wall in one day, but you can create an accumulative effect."[130] In sum, the actions are meant to disrupt, create chaos, interfere and make the army spend its resources on dealing with the constant harassments that the demonstrations or actions are causing on the ground.

Direct action and resistance on the ground symbolises also the constant struggle against the boundaries and borders imposed by the state, aimed to separate Israelis from Palestinians, borders that have become firm both physically and consciously for most Israelis. It is a struggle to dismantle existing distinctions and at the same time to

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[126] Interview with Daniel Dukarevich, 22 December 2009, Jerusalem.
[127] Interview with Emily Schaeffer, 16 August 2010, Tel Aviv.
[128] Interview with Snitz.
[129] Interview with Eidelman.
[130] Interview with Snitz.

point to them and show them to the public.[131] In this way, demonstrating in the West Bank together with the local Palestinian population should be understood as a highly subversive activity since it is resisting Israel's attempt to create a strict separation between the two populations. The very act of the struggle together is undermining this separation, "you cross checkpoints and borders in order to struggle together against the separation, in this sense, it is an anti-apartheid action."[132] In a similar way, activities often aim to emphasise the absurdity of the situation on the ground. For example, building an 'outpost' in the vicinity of a settlement is an activity that is directed both to the international and the Israeli media, in order to point to the inconceivable double standards with which these issues are treated by the Israeli government and military.[133]

The exposure of the reality of oppression, separation and denial of rights that Palestinians suffer from, kept hidden by the state from the Israeli and the international public for many years, forms an important part of the group's activity. This necessitates engagement in developing and maintaining relations with the media. This can be a hard and frustrating work, but its importance is immense. The exposure in the media is vital for the struggle, since in this way resistance receives coverage, and many people become aware to the realities the Palestinians are suffering under Israeli military occupation. Continuous demonstrations in a certain location lead to the exposure of the whole project of the wall piece by piece, and gain the media's attention. Emily Schaeffer, an activist and lawyer points out that the message from activism is directed also towards the outside, international media outlets that influence international public opinion. In the case of Israel, where international public opinion plays a role in the conflict, and Israel is struggling to maintain its positive image, this is an important outcome to keep in mind.[134]

The media coverage also influences the parallel legal struggle that is conducted against the construction of different sections of the wall. The case of the West Bank village of Bil'in is a striking example of this: the continuous struggle of this village for over six years against the wall became symbolic to the struggle as a whole. Demonstrations and actions in Bil'in attract local and international attention through

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[131] Interview with Feldman.
[132] Interview with Adar Grayevsky, 24 December 2009, Tel Aviv.
[133] Interview with Dukarevich.
[134] Interview with Schaeffer.

media outlets around the world. As mentioned earlier, as the lawyers involved in the case attest, the decision of the court to dismantle the wall that was built there is connected to the high media attention given to this particular location.[135]

Although AATW activities focus on direct action on the ground mainly in the occupied West Bank, there are also some instances of activities inside Green Line Israel, "according to the need."[136] Most activists agree that these are not meant to convince or even communicate with the Israeli public, since they all affirmed that they gave up any hope for a change from within Israeli (Jewish) society: "whomever thinks he can communicate with the Israeli society is simply deluded. The rift it too wide."[137] Alternatively, actions inside Israel are meant to be disruptive, to create a confusion and chaos and to help the group form its community. For example, during Israel's war in Lebanon in Summer 2006, several activists conducted direct action in Sde Dov military airport, located in the north of Tel Aviv, blocking with their bodies the entrance to the base, attempting to prevent pilots from accessing the jet planes on their way to attack Lebanon. Other actions inside Israel are meant to raise awareness to a policy or event, that otherwise would remain hidden from the eyes of the public. In any case, usually it involves a small-scale demonstration of a few dozen people standing in the streets of Tel Aviv under a rain of insults from bystanders.

The activities of the AATW in the West Bank aim to put shift the balance of power against the occupation, and to create constant resistance to it, in a way that makes life harder for the army.[138] The struggle includes Jews and Palestinians, in a way that each side contributes in what it can to the struggle, and increases each other's strength. The Palestinians are the initiators, the leaders, they bring the most 'manpower' to the struggle, and they scarify much more, since they are the ones that suffer constantly from the direct oppression of the army and the extensive arrests and harassments. The Israeli activists contribute in attracting media attention, gaining access to land and resources since they enjoy freedom of movement, but remain more 'silent partners' in the struggle.[139] As mentioned before, this struggle is a subversive activity by its very nature, since it stands against Israeli separatist policies.

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[135] Interview with Michael Sfard, 30 December 2009, Tel Aviv.
[136] Interview with Snitz.
[137] Interview with Feldman.
[138] Ibid.
[139] Interview with Snitz.

The weapon of mass destruction called 'email'[140]

> BDS action is a life-saving antidote to violence. It is an action of solidarity, partnership and joint progress. BDS action serves to preempt, in a non-violent manner, justified violent resistance aimed at attaining the same goals of justice, peace and equality.

<div align="right">Aloni 2010</div>

BDS is an act of resistance that consists of the call to the world to put pressure on Israel to radically change its policies and to respect international law and human rights in regard to Palestinian rights of self-determination, freedom and equality in their homeland. The main idea behind the BDS campaign is that Israelis will only be convinced to push their government to change its policies if the costs of maintaining the current situation become too high. It is an offensive-initiative act of resistance, rather than being a defensive-responsive one like direct action.

As Tali Shapiro, member of Boycott! and editor of the groups' weekly newsletter explains, "Israelis do have that unique role in the BDS movement […] one of our roles is to 'kosher stamp' the movement, but that's hardly our only role, and we're not the first in history to hold this status. Whites did it in South Africa, in the US, Christian Germans in Nazi Germany, veterans do it in the anti-war movement […]. They can choose to be a tool, or they can choose to take an active, thinking part. […] We commit much of our time, resources and energy, and we do it knowing the consequences. We initiate and we join – that is what activists do" (Shapiro 2010). One important role Israelis have in the campaign is to do research into the corporations and institutions supporting and legitimising Israel's occupation, in coordination with the global campaign and the Palestinian BDS National Committee (BNC). This work is currently carried out by 'Who Profits,' an investigation conducted by activists of the Coalition of Women for Peace, a leading Israeli feminist peace organisation, dedicated to ending the Israeli occupation of the West Bank, Gaza and the Golan Heights and reaching a just peace in Israel/Palestine, that since 2009 decided to actively support the BDS call. Their investigation aims at exposing companies and corporations involved in the occupation, and to promote a change in public opinion and corporate policies. The information uncovered about corporation's involvement in the 1967 occupation of the West Bank, Gaza Strip and the Golan Heights is then used in order to increase pressure

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[140] Shapiro 2010.

and promote sanctions and divestments by foreign companies and corporations. Many of Who Profits' activists are part of the Boycott! group.

While the aim of the BDS call is to bring about the severing of ties between Israel and the international community, the effects of the BDS campaign can be felt already, in the fear of losing those ties and losing international legitimacy. "This pressure was instrumental in fighting the South African apartheid regime […] This doesn't mean BDS is the only action taken. People have been taking to the streets in a very organised and consistent manner for years: we write, we speak abroad. South Africans did all this as well. Just as evil doesn't substantially change through geography and time, neither do the ways to fight it effectively" (Shapiro 2011). Kobi Snitz explained that the support for BDS also stems from the fact that activism (such as the AATW) is limited in its ability to bring about a change: "In regards to the BDS, the positive thing is that the strength of the Zionists is limited. The solidarity movement is deciding the moves. After all, Zionists can't control British or French society."[141] Since Snitz is also a committed AATW activist, he understands that the two forms of resistance are intertwined and mutually benefit each other. BDS is more of a middle class activism as it involves academics and professionals and most of the work is done in front of a computer.

The Boycott! group is involved in advocacy. Who Profits aims to uncover and provide information about the economic dimension, which Boycott! uses in its appeals to the relevant individuals, companies or groups. The target is not the economy alone but also the cultural and academic sphere. The actual work consists of letter writing to artists who intend to come and perform in Israel, pleading them to cancel their shows, to companies that are involved in projects in the OPT, and to organisations and individuals who support the BDS, as a sign of solidarity and to fend off any accusation of anti-Semitism, and well as participating in talks in Israel and beyond.

The work of Boycott! is outward facing, and indeed many of its members admit that they lost their belief in the attempt to address the moral conscience of Israeli society, and to trigger change from within. This in turn, has led to the understanding that only an external pressure disrupts and alters the lives of the people that are now living in relative comfort and detachment from the surrounding reality of occupation,

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[141] Interview with Snitz.

oppression and discrimination of the Palestinians will make people understand that the situation is not sustainable and therefore needs to change. Ofer Neiman, a Boycott! activist claimed that his engagement entails a belief in the rationality of the Israeli society, "that the majority of people in the country still desire to live and maintain certain quality of life for themselves, and are not driven solely by national-fanaticism. This means that with pressure things can change."[142] It can be thus determined that the resistance of the Boycott! group is an 'end of the game' strategy, telling society that it must pay a price if it continues to support the policies carried out by all elected governments, that of occupation, oppression and discrimination.

Legal or illegal?

Since most of the activists of the AATW are also part of the Boycott! group, I discuss the two together. Activists admitted that their relationship with the law is a complicated one. Kobi Snitz explained that the AATW choose to walk on the thin line between legal and illegal activity and aim to push further the boundaries of the possibilities of action. However, activists are conscious about the law and have decided not to become an underground movement conducting strictly illegal activity since this would limit and narrow the possibility of the group to act much more, at least while the possibility to continue their current activity still exists. Ronnie Barkan explained that thinking about Israeli law is more a question of "looking behind one's back, making sure that no one sees that I did something illegal, I just don't want to get caught, this is elementary." In any case, law is not a determining factor in the activity, but it plays a part in the decision making process of costs and benefits of a particular action: "I am indifferent about the law. It will not make me refrain from doing something, or stop believing in it."[143]

Indeed, activists from the AATW view the law in a more flexible manner – they do not necessarily see their actions as breaking the law in any way: "Even in a democracy there is a limit to what people should do and to what they should obey. I don't think I am breaking the law. There are other legal principles that say that one

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[142] Interview with Ofer Neiman, 21 May 2011, via Skype.
[143] Interview with Barkan.

should do all in his/her power to prevent war crimes for example."[144] Another activist added, "law doesn't have a value as a law if it lacks the principles of justice and morality. In our case, in an apartheid state, law and justice are two parallel lines that hardly ever meet. Therefore, there is not much of a problem with breaking the law, since it has no real value."[145] Elsewhere, Yonatan Pollack adds another dimension, and rationalises the reason why activists tend to get arrested in the course of their activity: "I don't believe that when you protest against the regime, the regime needs to authorise the demonstration" (Pollack in Hass 2010). Pollack, together with many other activists, simply does not believe that demonstrations or marches inside Green Line Israel should be authorised by the police.

AATW's activities, which are always located between the legal and the illegal, together with the easiness of breaking the law while conducting protests in the OPT entails high risks, and accordingly heavy costs, primarily in legal expenses. While the activists are conscious about the law and refrain from becoming an underground movement, some activity is still illegal but done anyway. Arrests, indictments of a certain type – such as 'forbidden gathering,' disobeying a military decree, entering a closed military zone – are part of the experience of activists. Snitz explained, "we are very careful. It is very easy to get arrested and to go to prison, but we must ask ourselves what is the benefit in that. It is so easy to attack a soldier… but that doesn't happen. Maybe we are too careful?"[146] Indeed, a constant costs and benefits calculation is done here.

Apart from political oppression in the forms of legal consequences and costs, more limitations confine the activists' resistance. In present day Jewish-Israeli society, both the AATW and the Boycott! group constitute one of the smallest minorities. Indeed, anti-Zionist activists are located outside of the spectrum of legitimate political activity in Israel. "In this kind of reality, we are very limited in our actions. Fortunately for us, this isn't reality, just one way of perceiving it. Again, this is where radicals come in: our role is to challenge these concepts, while visualising and working towards a more just/free society" (Shapiro 2011). Support for BDS, or the activity of the AATW are marginalised positions within Jewish-Israeli society and some of the

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[144] Interview with Snitz.
[145] Interview with Grayevsky.
[146] Interview with Snitz.

prominent advocates of the boycott campaign, such as Prof. Ilan Pappé and the late Prof. Tanya Reinhart, had to endure a great deal of pressure as a result of their stance. This societal pressure is successful in intimidating potential supporters of the campaign. A more thorough discussion on this follows below.

In the case of AATW, another limitation is physical: there are some places where activity cannot occur such as the Gaza Strip, where the tight Israeli control almost prevents any possibility of acting on the ground there, thus activity is confined to the Erez checkpoint (or 'crossing'), at the northern border of the Gaza Strip.

Both groups encounter psychological limitations, although those are more severe for activists engaged in direct action. Many activists admit that the struggle is hard and frustrating, and therefore carries along with it a quick burnout time. Despite the fact that the activists are in a privileged position in the Israeli society (most of them are Jewish-Ashkenazi), they still suffer from political oppression, even if not as harsh as that suffered by the Palestinians. Due to its limited resources and numbers, the community of activists is sensitive to oppression. When some of the activists are arrested, there are simply not enough people to continue with.[147] Burnout levels are high since the fear and personal and economic burden on the activists is sometimes hard to bear for long, and people simply drop out of the activity.[148] Additionally, engagement in the activity leads to almost complete alienation from society, and sometimes when it becomes too much to bear, people prefer to leave the country.[149] Another dimension is the despair that sometimes can be part of the activists' experience and can lead to the questioning of the effectiveness of this strategy of struggle.

Lastly, ideology limits resistance. Apart from the above-mentioned strength of the ideology in the Israeli society, which makes most people blind and deaf to the oppression and violence exercised against the Palestinian people, it also has an effect on the activists themselves, and makes all moves and actions measured and calculated, in a way that is unprecedented in other countries, where political activists are less hesitant to use violent means and break the law more openly.[150] This point is

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[147] Interview with Feldman.
[148] Interview with Eidelman.
[149] Interview with Grayevsky.
[150] Interview with Eidelman.

interesting. It strengthens the idea of the power of legality, norms, accepted social behaviour as a factor affecting acts of resistance. One can see how Israeli citizens hesitate to fully break the rules of the game and to wage an uncompromising struggle against the state and its policies, even if the activity of the AATW can be seen as a step in this direction. We can then reflect on Benvinisti's point again in order to understand the extent to which the strength of legal norms and accepted conduct are influential with Israeli society.

Hegemonic reactions

Efficacy of struggle can be measured in different ways. Here, it is evaluated according to the reaction is provokes from the hegemonic institutions and power-holders in society that reveals the perceived threat of resistance to the hegemonic order. However, before the engagement in this investigation, I offer a more straightforward evaluation, looking at the extent to which aims and ends meet, and making the distinction between overall goals and intermediate goals.

While an overall Israeli policy change does not occur as a result of the pressure, intermediate goals are more achievable and in fact successes can be seen, and activists can testify to those. First and foremost, it is possible to detect a discursive change, both in Israeli society and internationally about Israel and its policies. It is possible to notice an international discursive shift in relation to Israel. Barkan explains the move "from discussing 'the only democracy in the Middle East, to calling it 'a flawed democracy' and eventually arriving at discussing the Israeli state for what it really is – an ethnic-supremacist state that is responsible for a brutal occupation and siege over millions of Palestinian civilians."[151] Accordingly, the BDS movement succeeded in attracting public opinion internationally and is winning some battles – pleas to artists to cancel their shows in Israel are sometimes successful; there are companies that are withdrawing their investments in Israeli companies, the struggle against the wall is brought to the headlines internationally, a fact that sometimes contributes to the legal struggle that manages to bring about a victory and dismantlement of the wall in particular locations.

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[151] Interview with Barkan.

But there are other issues. Tali Shapiro explains that gaining the trust of the Palestinians, enough to be welcomed into their safe spaces is an indication of success, "our voices can only become relevant if we manage to achieve the latter. Otherwise, we are still the oppressors, speaking from a place of privilege. It's only when we're radical enough to step out of the binary paradigm that we can truly become part of the movement; otherwise, all we do is to perpetuate oppression" (Shapiro 2011). Eyal Sivan, a filmmaker and strong supporter of the boycott campaign explains, "we have to give a new sense to the notion of what it means to be in a common struggle. There are the Anarchists Against The Wall, for example, fighting against the construction of the wall in Bil'in, and the Palestinians in Bil'in are not boycotting them. You have to remember another thing. The official Israeli policy is about separation. We have to think, also, what it means to fight against separation" (Sivan 2011). These comments help us understand that there is another, long term educational goal here, which involves lessons about how to live together, how to get out of the indoctrination in a way that will enable a different future for the people.

The backlash to these struggles by hegemonic power-holders is an important indication for the evaluation of the efficacy of resistance. The harsher the repression is, and the more severe the reactions, are an indication of the fact that the state perceives these activities as potentially dangerous and harmful. Additionally, it embodies a discursive change within Israeli society, regarding its self-perception.

Legislative backlash: the boycott prohibition law

On 11 July 2011 the Knesset approved the *Law for Prevention of Damage to the State of Israel through Boycott-2011* that prohibits the public promotion of boycott by Israeli individuals and organisations of both Israeli institutions and of OPT settlements' produce. The law imposes financial sanctions against civil society organisations and businesses that call for or participate in economic, cultural or academic boycotts of Israel. It defines public boycott as a type of 'civil offence,' and therefore enables parties targeted by boycott calls to sue those who called for it, and the court may award compensation to the boycotted parties. The law also revokes tax exemptions and other legal rights and benefits from Israeli individuals and groups or

institutions that receive state support if they engage in boycott related activity. For example, according to this law, activists of the Boycott! group can be personally sued by a music concert producer for encouraging artists to participate in the cultural boycott of Israel and supplying them with information with the aim of promoting a boycott.

The law was endorsed by members of various factions in the Knesset and brought together a mixture of conservatives, right-wingers and men of faith representing parties from the ultra right to the centre. It was generally supported in the Israeli mainstream media but drew criticism from NGOs involved in the protection of civil and human rights in Israel. During the stages of the readings of the law, fifty-three NGOs submitted a joint petition to the Attorney General protesting what they defined as "an attempt to silence criticism and legitimate protest through anti democratic laws."[152] In the process of its legislation, the Association for Civil Rights in Israel (ACRI) submitted a position paper to the Knesset's committee of Constitution, Law and Justice highlighting that boycott is a legitimate, legal and non-violent form of political activity aimed at change, protest and criticism. ACRI further stresses that from the explanatory notes to the law it becomes clear that it is directed towards specific boycott initiatives, those that have to do with the occupation. According to ACRI, such selectivity means posing limits on certain types of expression that the current political majority in the Knesset disapproves of, and as such it undermines Israeli democracy (Yakir and Gild-Hayu 2010). The law was also under sever international condemnation, with the editorial of *The New York Times* arguing on 18 July 2011, "Israel's reputation as a vibrant democracy has been seriously tarnished by a new law intended to stifle outspoken critics of its occupation of the West Bank." Additionally, Amnesty International Deputy Director for the Middle East and North Africa, Philip Luther said, "despite proponents' claims to the contrary, this law is a blatant attempt to stifle peaceful dissent and campaigning by attacking the right to freedom of expression, which all governments must uphold" (Amnesty International 2011).

Indeed, while enacting this law, Israel has damaged its reputation and eroded its legitimacy, both internally, at least amongst liberal circles, and internationally,

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[152] The full petition can be view here: http://www.coalitionofwomen.org/?p=1760&lang=en.

where Israel struggles hard to maintain its positive liberal-democratic image. Certainly, attempts at repressing resistance expose the weaknesses of hegemony: resistance forces hegemony to use coercive means, such as legislation of this type, which in turn erodes its consensual base and sources of legitimacy, which are both vital parts of its strength, locally and internationally.

Reactions and fears

Although it cannot be attributed to the work of the Boycott! group alone, the impact of the BDS movement inside Israel can be evaluated through examination of discourse of those in the centres of power in Israeli hegemony: the media, parliament and economy. Some examples of this will be given.

In a speech given by the Israeli Prime Minister Benjamin Netanyahu in the diplomatic convention in the Ministry of Foreign Affairs, Netanyahu mentioned the 'delegitimisation process' as one of the three main issues, together with the 'peace process' and the 'Iranian threat.'[153] Natanyahu asserted, "I, as well as the Minister of Foreign Affairs treat this ground as a strategic threat the state of Israel is facing" (Netanyahu 2010). On another occasion, Ehud Barak, then Israel's Minister of Defence, warned that Israel must take initiative since it can be pushed into a place similar to the one South Africa found itself in the Apartheid years, "there are powerful elements in the world, inside states, including friendly states, in trade unions, academics, consumers, green political parties… [that] sum up to a great movement that is called the BDS movement. And this is what they did with South Africa. It will not happen immediately, it will move like an iceberg towards us from all directions… We can not afford it" (Barak in Weitz 6 May 2011).

The Israeli government and some civil society organisations are investing money and resources in an attempt to counter the BDS movement. In April 2011 a lobby dedicated to countering the delegitimisation against the State of Israel was established in the Knesset. Its founding member, MK Miri Regev claimed that in the economic field alone the damages to the State of Israel from the boycott amount to

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[153] The de-legitimisation process is defined by the Reut Institute as a "Negation of Israel's right to exist or of the right of the Jewish people to self-determination based on philosophical or political arguments. The BDS movement plays a major part in the de-legitimation process.

millions of dollars (Ezra 2011). The Reut Institute, an influential policy group designed to provide "strategic decision-support to Israeli leaders and decision-makers" presented its research paper dealing with the delegitimisation challenge that Israel is facing in the 2010 annual Herzliya conference, in which the Prime Minister and other political figures were giving much anticipated speeches about policy and security.[154] The report offers overall responses to the strategic challenge, locally and internationally, and suggests an operative plan for Israel's diplomatic network. The Ministry of Foreign Affairs claimed in its website FAQ addressing "The Campaign to Defame Israel" that the delegitimisation process is a threat equal to the one of Hizballah or Hamas, and condemned it. The document describes the BDS campaign as anti-Semitic, inverting the Holocaust (equating Israel to the Nazis and the Palestinians to their Jewish victims) and therefore leads to its denial (Israel Ministry of Foreign Affairs 2010).

Regarding the reactions and publicity the BDS issues gain in the Israeli mainstream media, it is very common to find articles, news spots and radio shows that include remarks about 'Israel's declining image in the world' or the 'delegitimisation' of Israel. Sometimes, looking into the article itself reveals behind titles such as "the boycott is working" in reality generally means that some company has decided to review its policies. This reflects the high level of tension and fear surrounding this issue amongst Israeli society. In mid-May 2011 the Israeli business newspaper Calcalist, revealed that Israeli businessmen are leading a political initiative for a possible settlement of the Israeli-Palestinian conflict, since as one of Israel's leading businessman, Idan Ofer said "We are rapidly turning into South Africa. The economic effect of the sanctions will be felt by every family in Israel" (Bindman and Peled 2011). The details of this initiative, which is based on the Saudi plan is less relevant here, but the importance is found in the centrality of what is now perceived as the new threat.

These statements, counter-campaigns and diplomatic efforts made by Israeli politicians and businessmen indicate that the BDS activity is effective. It is too early to assess the long term effect and whether it will lead to a change of policies, but the

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[154] For example, in December 2003, Ariel Sharon, then the prime minister gave in Herzliya his famous 'disengagement speech', during which he announced the disengagement plan from the Gaza Strip.

hegemonic reaction, in terms of both legislation and counter-BDS activity reveals its threatening potential. This perceived threat has two contradictory effects. While on the one hand it can lead to societal pressure on the government to change or at least review its policies, on the other hand, it creates a feeling of 'siege,' in which the international community is perceived as turning against 'Israel,' 'Israelis' and sometimes, for utilitarian purposes – against Jews, and therefore it becomes anti-Semitic in nature. This in turn leads to additional closure of the Israeli society, and the entrenchment of its positions. The later process is the dominant one in Israeli society. This, in turn, leads to further repression and use of coercion against these expressions of resistance.

Assessing coercion

Hegemony by definition constitutes a delicate balance between consent and coercion, with the latter to be kept under strict control and careful use in order for it not to become direct domination that relies on force alone. Nevertheless, the role of coercion is important, and cannot be ignored. Hegemony uses it to control those who cannot be co-opted otherwise. The aim here is to analyse and assess the level of coercion/repression that the state or civil society (and sometimes both) exercise against these forms of resistance which are located outside the institutions of the state.

Despite the fact that direct actions in the OPT encounter violent repression from the Israeli army that includes arrests, administrative detentions, shooting of tear gas canisters, rubber coated bullets and sometimes live ammunition, many activists amongst the AATW point to the fact that despite those measures, the state is actually allowing these activities to proceed. One must remember that in these activities the Jewish-Israeli activists are just accompanying (together with international activists) the Palestinians. Palestinian demonstrations and activities in the OPT encounter uncompromising and violent repression as a customary practice. But repression towards the Jewish-Israeli activists is a different matter. In fact, many activists believe that there is a conscious decision of the state to maintain the activities of the AATW in a marginal position. "It is a decision from above not to turn us into martyrs, to ignore us as much as possible... only when a severe repression occurs we will know that we

are on the way to victory. But before that, there will be harsh violence."[155] Activists of the AATW are often arrested during direct actions, but released shortly after.

The story of Yonatan Pollack stands out as an exception that teaches us about the rule. Pollack is one of the main organisers and the spokesman for the co-ordination committee of the popular resistance. During a demonstration/bicycle ride in January 2008, protesting the siege on Gaza in which a few dozen activists participated in the streets of Tel Aviv, Pollack was singled out and arrested. Following a court process Pollack was convicted and was sentenced to three months in prison. In reality, a probation sentence given to Pollack for participating in another demonstration in 2004 was activated by the judge. Upon the beginning of his sentence, Pollack said, "the imprisonment is part of a trend of constraining protest in Israeli society… It is not my personal story" (Einav 2011).

Despite Pollack's assertion about the trend, cases of imprisonment of Jewish-Israeli activists are very rare, especially when compared to the level of repression exercised on Palestinian political activity, first and foremost on Palestinian inhabitants in the OPT but also in regard to Palestinian citizens of Israel. A good example to this is the high level of repression encountered by Palestinian citizens in response to the widespread protests against the Israeli attack on Gaza in December-January 2008-9. A report prepared by Adalah's lawyers which deals with this exact topic, shows how the police, the State Prosecutor's Office, the Shin Bet, the courts and even certain academic institutions made arrest the easiest and fastest method of suppressing the protest. The report gives appalling figures as to the dimensions of the oppression, according to which during and after the Israeli attack on Gaza a method of collective and disproportionate arrest was exercised: 832 persons were detained by the police during the military operation; 34% of the detainees were minors; 54% of all detainees held in custody until the completion of the proceedings were minors; 73% of adults who were indicted were detained in custody until the completion of proceedings against them. According to Adalah, these numbers point to the fact that "arrests were used as a rapid method of dispersing the demonstrations, in order to create panic and as a deterrent" (Asali and Baker 2010). The use of arrests as deterrence was commonly

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[155] Interview with Eidelman; Interview with Grayevsky.

used also during the first and second Intifada, the Nakba Day, the Land Day and other protests in the Palestinian localities inside Israel.

Gabi Lasky, a lawyer who represents mainly activists from the AATW explained that the treatment of Jewish activists is radically different from that which the Palestinian encounters. For Palestinian citizens, repression levels are higher; the methods resemble those used in the occupied territories (but still with major differences). Lasky gave the case of Samih Jabbarin, a Palestinian activist from the Abnaa el-Balad movement as an example. Jabbarin was arrested during a protest in Umm al-Fahm in February 2009 and accused of assaulting a police officer. He was held in arrest for three weeks and was later put under house arrest until the end of proceedings against him and his release in November 2009. Lasky described how the police refused to release him, "it was insane… if he were Jewish… they would never do something so extreme."[156] It is important to mention that the evidence against Jabbarin was limited to one testimony, that of the police officer. All charges were later dropped.

The case of Pollack's imprisonment therefore stands out. The facts and figures indicate the disparity with which state apparatuses treat Palestinian protest and Jewish-Israeli protest. This is done with a completely different approach and means. Repression of protest activity of Palestinian citizens is tolerated and accepted by the Jewish-Israeli public as legitimate control over 'subversive activity' from the kind that is identified with Israel's enemies and aims to undermine the very existence of the Jewish state. On the contrary, repression of protest of Jewish citizens, even if belongs to the same ideological frame, is still considered to be less legitimate in the public opinion, and is therefore not widely used.

Repression is not in the realm of state institutions alone. The strength of hegemony generates coherence of interests and means between political (state) and civil society, while the later can step in to suppress forms of resistance that threaten its integrity. Indeed, activists in the Boycott! group face forms of repression exercised by civil society, though often backed by official state representatives. These sometimes stem from the work of resourceful NGOs that are dedicated to monitoring and tracing these kinds of activities and have access to political power in the state. This is true

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[156] Interview with Gabi Lasky, 10 August 2010, Tel Aviv.

mainly in regard to Israeli academics involved in the BDS movement. The 'Israel Academia Monitor' (IAM), an NGO headed by Prof. Mordechair Kedar from Bar Ilan University, was established in order to counter activities by "academics who defame their own universities and advocate measures that will harm Israel in general and their universities in particular…" The organisation is dedicated to trace and expose those academics that are "sometimes described as revisionist historians or post-Zionists, among other labels… [That are] exploiting the prestige (and security) of their positions, such individuals often propound unsubstantiated and, frequently, demonstrably false arguments that defame Israel and call into question its right to existence" (IAM mission statement). Due to the IAM's influential position, the 2010 annual meetings of the Board of Governors of Israeli universities discussed for the first time what was termed as "the disturbing influence of anti-Israel ideologue professors on Israeli university campuses and how these faculty members have often taken a leading role in anti-Israel activities" (Ibid).

The work of IAM was also involvement in two important reports delivered on May and October 2010 to the Knesset Educational Committee and the Minister of Education, Gideon Sa'ar by two other organisations. These organisations are different in nature, modes and methods of activity but both are dedicated to strengthening Zionist values in the State of Israel. The first report was submitted by 'Im Tirzu', a movement that mainly acts through Hasbara[157] for the State of Israel and Zionism in the campuses, but also public campaigns, conventions and tours. The report focused on 'the anti-Zionist bias' in Israeli academia, pointing mainly to the political science departments (Im Tirzu 2010). The organisation's ruthless witchhunt and campaign against academics and organisations that they do not consider as Zionist enough (or at all) were described as fascist ambitions and methods (Aloni 2010). The second report was submitted by 'The Institute for Zionist Strategies,' a research centre/think tank that was established in order to counter and offer an alternative to the existing 'post-Zionist leaning' think tanks that constitute an influential force affecting public policy. The report examines the syllabuses of courses in the sociology departments and determines that in all universities (excluding Bar Ilan University) there is indeed a post-Zionist bias (The Institute for Zionist Strategies 2010).

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[157] Literally: to explain. Hasbara is public diplomacy, the efforts to advocate for Israel and its policies around the world. It can also be understood as state propaganda.

As a response to these reports, the Minister of Education, Gideon Sa'ar promised to examine these claims that he described as of great significance. In addition, Sa'ar said he is determined to act against faculty members that are calling for the academic boycott of Israeli universities asserting, "this thing is unacceptable" (Kashti 2010). The Knesset Education Committee conducted a discussion around the topic of 'exclusion of Zionist positions in the academia' on 2 November 2010, to which members of both Im Tirzu and the Institute were invited, together with the heads of all Israeli universities. In the discussion, remarks were made about the unacceptability of the fact that academics support the boycott calls against Israeli universities in which they work. In September 2012, following a recommendation by an international committee established to investigate the academic quality of Ben Gurion University's (BGU) Politics and Government Department, to revise some of its programmes and hire new staff, Israel's Council of Higher Education decided to close the department altogether, forbidding it to register new students as of the 2013-14 academic year, due to what was described as an anti Zionist bias in the department (Nesher 2012). At the time of writing, it seems likely that this decision will be overturned (Nesher 2013).

On another front, both Tel Aviv University senior academics and active member of the Boycott! group Rachel Giora and Anat Matar were summoned for 'talks' with the rector of the university, in an attempt to constrain their activity and threaten their position in the university. Rachel Giora recounted, "The rector of the university summoned me for a warning talk and told me that if I will publish something about the university and its complicity in the occupation, he will sue me in the university's disciplinary court. This court has almost unlimited authorities, they can have me fired. He also stressed, 'I don't care about the freedom of speech, I need to protect Tel Aviv University.'"[158]

Another interesting case is that of Neve Gordon, a lecturer from BGU who published an article in 2009 in the *Los Angeles Times* determining that Israel is an apartheid state and therefore must be boycotted economically, culturally and politically. In response, the BGU president, Prof. Rivka Carmi denounces Gordon's views, "Ben Gurion University is a Zionist institution… expressions of this sort, of

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[158] Interview with Giora.

harsh criticism and incitement against the State of Israel is damaging the great work that is done in the university and all Israeli universities. Academics that feel like that towards their state, are invited to find a professional and personal roof in another place" (Benhorin 2009). On another occasion, Carmi explained that since Gordon has tenure, he cannot be readily dismissed and fired, but instead she urged him to resign: "The demand for his resignation is legitimate and I hope that after this tough week he will reach the right decision" (Curiel 2009). Both the article by Gordon and Carmi's response created a massive public debate on questions of freedom of speech and academic freedom. Education Minister Gideon Sa'ar harshly criticised Gordon's article, calling it 'appalling and condemnable' (Ravid 2009). Religious Affairs Minister Yaacov Margi called on Carmi to immediately suspend Gordon from his job and to publicly condemn his article (Jpost 2009). Some donors to BGU raised concerns that were delivered to Carmi, warning that they would withdraw their donations in response to Gordon's act.

As mentioned earlier, the state keeps the balance between consent and coercion and does not cross the line in countering the activities of Jewish-Israeli activists. This means that a space for activism does exist. At the same time, this space is tightly controlled by the state that regulates it and maintains it under its supervision. In this way, it can also maintain the resistance in its marginal position. This state of affairs clearly indicates the dichotomy of native/coloniser, which in our case is the dichotomy Palestinian/Jewish in the eyes of Israeli law and hegemony. For the Palestinians, whether their activity is done within the law and through the law, levels of repression are relatively high. For the Jewish activists, even when their activities are borderline or outright 'illegal' the levels of repression remain low. This point reflects questions of legitimacy. As E. H. Thompson (1975) explains, in order to be legitimate, power relations have to be masked, and law must appear to be just and independent of gross manipulation. Therefore, in order for the state to maintain its legitimacy both locally (within the Jewish society) and internationally – it has to maintain at least the appearance of a adherence to liberal-democratic norms and procedures that allows other, dissident voices to exist. In the case of the Palestinian citizens, the state has fewer concerns of questions of legitimacy, since this does not exist to begin with.

Additionally, their acts of resistance are more easily portrayed as dangerous subversive activity, ones that work in accordance with the Palestinians in the OPT and outside Palestine, and therefore need to be repressed without hesitation. And still, considerations regarding Israel's international image are important here. Cases of prosecution of Palestinian citizens' political activity gain negative publicity around the world and erode Israel's image as a democracy.

Cases of severe repression and outright violence towards Jewish Israeli activists are rare, but do exist. These were used in cases in which Jewish activists were involved in underground movements in co-operation with Palestinian organisations. In the 1970s and 1980s three such organisation existed and were captured and its members imprisoned. These were 'The Red Front' of Ehud (Udi) Adiv, an organisation that was formed in 1971 and promoted a communist revolution through violence, and struggle against the Zionist state and its army; the second was 'Derech Hanitzotz' (the path of the spark), a Maoist organisation that co-operated with the Democratic Front for the Liberation of Palestine (DFLP) in the mid 1980s but was captured in 1988 and its members imprisoned. Both cases are of activists that were willing to take their resistance to the violent stage, either symbolically (through the co-operation with Palestinian organisations) or practically. The third was the Alternative Information Centre, a Trotskyist organisation that co-operated with the Popular Front for the Liberation of Palestine (PFLP). Even though the organisation mainly worked as an alternative media outlet, its relations with the PFLP led to its members being arrested and imprisoned (Kaufman 2003: 65-69). These are few but extreme cases, exceptions that tell us about the rule.

Law, resistance, disobedience

This chapter investigates the *withdrawal* approach to resistance, that is, resistance practices that are conducted outside the institutions of the state and its legal structures. As elaborated in chapter two, the theoretical literature concerning this type of resistance varies from anarchism to autonomist Marxism. Several elements of this literature can help us locate and understand resistance in Israel.

What was termed as 'interstitial distance' describes a space within the state's

territory, in which political struggles can be waged. This space is independent of the state but still located within and upon the state's territory. Thus, one has to work within the state against the state in a political articulation that attempts to open up a space of opposition that will not be co-opted by the state (Critchley 2007). I argue that this is the exact location of resistance practices such as those discussed above. Both AATW and the Boycott! group resist within and upon the state's territory, but in separation from the state and its institutions, aiming to stay out of its reach. It opens new spaces of opposition that did not exist before, and constantly pushes the boundaries of political action together with the boundaries of legality. In this space, the strategies adopted vary. One of them is radical civil disobedience.

As explained earlier, radical civil disobedience means that one should not just ignore a specific law because it does not conform to the principles of the constitution or the general frame of loyalty to the state, but act in a way that puts into question the state's very ability to act as the sovereign power. Furthermore, contrary to the liberal tradition, where acts of disobedience are done under the understanding that those who break the law are willing to accept the legal consequences of their actions, the radical version refuses to accept the state's rule of law and questions its moral authority. Often the activities of the AATW can be categorised as such since they do not recognise the applicability of the existing law to them. These activists are not looking to break the law publicly and accept the consequences but rather attempt to avoid, escape and evade the law. Nonetheless, they are still conscious about the law and cautious not to cross certain lines in order to maintain their position as a movement that can act openly.

It is interesting for our case to reflect on the obligation to obey the law and its limits. If laws or policies that contradict the political moral values can be changed in a legal way (if this possibility exists) this should be preferred, but one must remember, "the existence of legal possibility to change the law does not always mean that there exists a real and practical possibility to change it. The question is if this possibility exists in the complex situation of the political reality" (Gans 1992: 113). Therefore, a theoretical possibility to create legal change might exist, but the political environment is blocking the practicality of it. To many of the activists, disappointment with their inability to change political realities through the parliament or the legal system has led

to their involvement in direct actions or boycott calls. For others, law has no meaning in the Israeli state, as law and justice are two parallel lines that never meet. For many, the question of obeying the law is strictly a utilitarian one: the need to keep up the struggle and avoid becoming an underground movement.

In sum, there seem to be an almost total abstention from any illegal activity per se, but examining the nature of the Israeli law in regard to the Palestinians, namely the inhabitants of the OPT but also citizens, breaking the law is an inevitable practice, a fact that is well calculated in the moves and strategies of resistance groups. Following Ewick and Sibley's investigation into forms of law and legality in everyday life, this form of resistance can be categorised as 'against the law.' Here, "resistance lies at the intersection of the power of legality and the possibilities for escaping it" (1998: 184). Hence, rather than being conditionally appropriate or useful, in this form of relation to the law, legality is condemned since there exists no connection between law and justice. Accordingly, legality is characterised as something to be avoided as much as possible. The lack of belief in the power of law to promote social and political change, together with the lack of interest in pursuing its other advantages for resistance in a way that the other actors we discussed earlier do, leads to evasion and disregard of legal constructions and realities. Resisters' disdain of legality does not lead to a necessary similar disregard for it on the part of those in power. When resistance reveals its potential in the disruption of hegemonic relations, undermining its legitimacy, reactions become more severe. At the same time, hegemonic power-holders also engage in calculation of costs and benefits of repression against those who can undermine its legitimacy in the Jewish Israeli society and internationally. While the potential threat is not severe enough, hegemonic power-holders prefer to maintain the resistance in its marginal, negligible and peripheral position, and that is done through minimal repression.

Considering Benvenisti's comments presented at the beginning, resistance practices of the kinds examined above are unique in the State of Israel, in which the levels of obedience to the law and the ways in which law equates with loyalty to the state gains a sacred place. Since law is the representative of the normative and current state of affairs of the community, and reflects current political power, it does not constitute the only state of affairs possible. In this way, disdain and avoidance of the

law can be seen as a struggle for the construction of an alternative system of laws that will represent a different balance of political power. In the name of this new system, with its moral stance, legitimacy and justification, breaking the law and occasional use of violence is justified. It was Derrida who reminded us that after all, "all revolutionary situations, all revolutionary discourses, on the left or on the right […] justify the recourse to violence by alleging the founding, in progress or to come, of a new law. As this law to come will in return legitimate, retrospectively, the violence that may offend the sense of justice, its future anterior already justifies it" (Derrida 1990: 991). Although it seems that a discussion analysing resistance by AATW cannot be framed as struggling for a new system of law, but in the state of affairs of the Israeli context, the anarchists are indeed struggling for the respect for Palestinian rights, in the name of international law, human rights, and the right to political self determination.

Chapter Six: Evaluating Resistance's Efficacy

On 14 November 2012 Israel assassinated Hamas military chief Ahmed Jabari in an airstrike in broad daylight. According to the Israeli government, the strike was the outcome of several days of escalation in which missiles were launched from the Gaza Strip towards nearby Israeli towns. Later that day the Israeli security cabinet authorised the army to draft reserve soldiers to enable the expansion of the attack and prepare for a ground invasion 'if necessary.' In response, Hamas declared that the Israeli aggression would lead to war. For eight days, up to the cease-fire agreement signed on 21 November, in what became known as Operation Pillar of Defence, hundreds of airstrikes were conducted, and thousands of missiles were fired at Israeli towns and cities. During the attacks, 139 Palestinians, most of them civilians including 34 children, were killed while on the Israeli side four civilians and one soldier were killed. The damage to Gaza's infrastructure was immense. In Israel, the operation gained the support of most of the political system. In a poll conducted by the Israeli Channel 10 news on 16 November, 91% of the Israeli public supported the operation, while only 5% objected to it, and the vast majority also supported the continuation and expansion of the operation.[159] While American and European leaders expressed their support in Israel and indicated that they consider Hamas as the aggressor in the conflict, the European public opinion was more critical, and massive demonstrations were held in many European capitals calling to stop the Israeli aggression.

The writing of this thesis was concluded after the cease-fire entered into effect. I suggest that the violence exercised by the Israeli army should not be seen as the disturbance of the normal state of affairs in the 'relations' between Israel and the Gaza Strip, but rather as a conversion of 'cold' or implied violence into 'hot' or eruptive violence. 'Cold' violence is implied and concealed in the continuous domination and occupation of the Gaza Strip (and the West Bank), and is manifested in a network of laws, military decrees, administrative apparatus and conflicting policies. 'Hot' violence, by contrast, is the physical military power that erupts in the form of aerial bombs, artillery and ground invasion. Indeed, any form of government is located on

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[159] Record of this poll can be found here: http://news.nana10.co.il/Article/?ArticleID=938040.

the continuum between implied, concealed and eruptive violence, and there is a constant movement between these poles (Azoulay and Ophir 2008: 225-236).

Indeed, the shift on the continuum and increased reliance on the eruptive end of it implies a form of rule that is domination rather than hegemony. A hegemonic regime that is concerned with the legitimacy of its rule (from Jewish-Israeli citizens and part of international public opinion) must exercise restraint in the exercise of violence, and accordingly its violence is largely concealed (ibid: 233). Nonetheless, eruptive violence is also present in the relations between the Israeli state and its Palestinian citizens, but the conversion of one type of violence into another is infrequent, or indeed rare and what we see instead is the kinds of implied and concealed violence that are undertaken by cultural, political, juridical and judicial means. Episodes of eruptive violence came about in the period of the military regime, in the Land Day of 1976, in the repression of the October 2000 al-Aqsa intifada uprising, among other cases. Therefore, albeit present, it cannot be compared in frequency and extent to its manifestations in the OPT.

Although this research project is based on an artificial delimitation and demarcation of geographical, legal and political territories to focus on resistance practices of Israeli citizens alone, a discussion of resistance to Zionism (in the forms of hegemony and domination) cannot stay confined to citizens alone. It must therefore consider a larger theatre of resistance practices, to include the front of struggles against the variety of manifestations that Israeli state control over the territory of Palestine takes. While these include acts of legislation, bureaucratic decrees, administrative policies and the brute use of force, among others, acts of resistance similarly take multiple forms and manifest themselves in an expanded and extended theatre of war. Indeed, resistance also holds a repertoire of 'cold' and 'hot' means, and includes struggles in the legal sphere, in courts, in the parliament, on the ground in direct actions, on the cyber sphere as calls for boycott, divestment and sanctions, as well as in armed struggle. Indeed, the spectrum of hegemony/domination and resistance operates across the entire geographical extent of the region in different ways.

However, the attack on Gaza proves that the components of hegemony/domination and resistance are entangled. When Israel bombs Gaza,

different forms of resistance increase, in direct relation to the increase in state violence. The attack on Gaza made more extreme the repertoire of resistance that exists on different levels: legal struggles, BDS, direct actions and, critically, the armed struggle. It is important to investigate these forces of resistance at a point of their extreme eruption. In order to reflect on the observations made throughout this thesis on different actors and different means of resistance, I now look at these different actors and the ways in which they were kick-started into action during and following the attack on Gaza, in order to expose a situation in which law, economy, perception, media, politics and culture converged and expressed themselves as a combined force.

A few days into the attack, different strands of resistance were already underway. Adalah, together with the Gaza based 'Al-Mezan Center for Human Rights' sent two letters to the Israeli Military Advocate General demanding investigation of cases of the bombing of a civilian media building and the bombing that led to the killing of eight members of the Al-Dalou family in Gaza, arguing that these actions were in violation of International Customary Law. Apart from the advocacy work that involves reference to International Law, Adalah was also engaged in legal work in the protection of the right to protest of Palestinian citizens that were arrested on 21 November 2012 following their participation during the previous two days in demonstrations in the city of Acre. The court accepted Adalah's appeal and rejected the police's request to prolong the detention of the eight detainees that were released on house arrest.[160] Furthermore, in its November 2012 newsletter, Adalah narrated the alternative reading of the Israeli attack on Gaza, in a position paper titled *The Truth about Gaza: The Occupation, the Siege and the Context for War* in which it aims to break the prevailing myths, both in Israel and internationally that hold Israel neither in control of or responsible to the Palestinian residents of Gaza living under occupation, thereby obfuscating the reality and "confus[ing] the analysis of both the applicable legal standard and the just solution." Therefore, Adalah here attempts to put forward a list of facts that contradicts the disseminated myths about the Israel-Gaza relations, and by so doing to contribute to the public discussion both locally and internationally, aiming to influence public opinion as well as facilitate legal action against Israel's

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[160] All information regarding Adalah involvement around the November 2012 Israeli attack on Gaza can be found in Adalah November 2012 newsletter, at http://us4.campaign-archive1.com/?u=4c0bb759968fd1dcd47869809&id=80c9a8a9f7.

military actions in Gaza.

Activists and elected members of the NDA party also protested against the attack. Representatives of the party in the Knesset joined demonstrations taking place mainly on university campuses and in various cities around the country, giving speeches in support of the popular protest and against Israeli policy in the OPT, and particularly in Gaza. Haneen Zoabi asserted that the Israeli operation in Gaza is in violation of International Law and constitutes an infringement on the Palestinian right to live in peace, "this is part of (Prime Minister Benjamin) Netanyahu's elections campaign… It appears that it's paying off. […] Israel has a military force, but no military force can crush the people's survival instinct" (Zoabi quoted in Sha'alan 2012). Jamal Zahalka, in turn, charged that the Israeli government is to be blamed for the deaths caused by the strikes on Gaza: "Anyone who was killed during this last operation is a victim of the occupation, and the Israeli government is at fault" (Ibid). Former Knesset Member Wasil Taha added, "Anyone who takes out leaders and children is destined to end up in the trash can of history… In this war, like in previous ones, the occupiers will run away, and Gaza will remain" (Ibid). The NDA thus maintained its consistent position of supporting the struggle of the Palestinians in the West Bank and the Gaza Strip and their right to resist Israeli aggression. These kinds of reactions arouse the anger of the rest of the Israeli political scene, especially since the members of the NDA decided to observe a moment of silence at the party's primary elections held during the operation for those who were killed in the army's strike in Gaza.[161]

On the ground, Anarchists Against The Wall organised and participated in several demonstrations inside the Green Line as well as in the West Bank, protesting against the attack. In regards to the activity of the Boycott! group, the attack pushed forward the BDS campaign that enjoyed then more international support and backing. The plea to respect the guidelines of the economic, cultural and academic boycott of Israel stressing the violence exercised against Gaza featured in letters sent to artists and companies throughout the days of the military operation and the following period.

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[161] MK Michael Ben-Ari posted on his Facebook page the question: "What do you think should be done with MK Zoabi following her moment of silence for the Shahids in Gaza?" Hundreds of responses were recorded, among them 'recommendation' to physically harm Zoabi (Lis 2012).

As activists attest, the availability and support of international figures increased at the time of the attack and in its immediate aftermath.[162]

In sum, this thesis suggests that we cannot think of resistance as a series of mutually exclusive alternatives which one selects at the expense of the other. While some choose to work in the legal sphere in courts and through advocacy, others choose to engage in parliamentary work, and others choose to struggle on the ground. The theatre of manifestations of state violence and control exemplifies the togetherness of resistance: since the state projects its hegemony/domination through the use of concealed and implied, as well as eruptive violent means, encompassing law, diplomacy, economic strangulation and many more, resistance has to take all these means simultaneously. Resistance thus encompass the use of arms, BDS, popular resistance and direct actions, UN diplomacy and patient work in the courts and in the parliament. Hence, in a reality of a full spectrum of manifestations of state violence, varying from hegemony to domination, there must exist a full spectrum of resistance. Nevertheless, it is important to engage in an analysis of the efficacy of different strategies of resistance, in order to reveal their potential and perhaps suggest a context specific efficient utilisation of one strategy instead of others.

Evaluating the efficacy of resistance

I measure the efficacy of the strategies of resistance in three ways. First, I examine the reactions of hegemonic power-holders to them. These reactions vary from direct and outright repression on the one hand, to marginalisation on the other, in a continuum that includes juridical means such as punitive legislation and judicial procedures, the use of deprecating discourse/propaganda in the mobilisation of the media, and the manipulation of public opinion. It is important to remember that when hegemony is drawn to rely more heavily on force/coercion it risks being exposed as a repressive and dominative system and lose its consensual bases. Consequently, repression of resistance, while neutralising its dangerous and harmful effects, in turn entails a political price. When the state is willing to pay the price, this can be seen as an

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[162] This information is based on my conversations with Ofer Neiman and Ronnie Barkan, both from the Boycott! group, in December 2012.

indication of the real threat these resistance practices pose to hegemony.

Second, I evaluate resistance's efficacy through the examination of the effects of resistance in the particular 'theatres of war,' Gramsci's labelled counter-hegemonic struggle. Here, the outcomes of resistance vary in the different contexts of the international and the national spheres. I examine how these different spheres influence separately according to given particular situations, indicating that while a failure can be registered in the national spheres, it can simultaneously signal a victory in the international one. Third, I assess whether these resistance practices form a repertoire of resistance that other groups or individuals draw upon. Following Tilly's theorisation, what I mean by 'repertoire' is strategies of organisation-building, influences (what resistance draws on), and imagination (Tilly 1986; 2006).

Hegemonic reactions

Following the material analysed in previous chapters, it is now possible to shift the focus to the hegemonic reaction to different practices of resistance. While this research offers an insight into the world of legal resistance, in the parliament and in the courts, and on the other hand into forms of resistance conducted outside of legal institutions of the state and on the fringes of the law itself, cases of state's outright violent repression are not commonly present.

The state's eruptive violence is preserved to cases of eruptive resistance, which operate in a way that poses a threat to the hegemonic order. Such was the case with the uprising marking the beginning of the second intifada in October 2000, where mass protests taking place in various Palestinian localities, as well as in the cities of Haifa, Jaffa, and elsewhere met with police armed repression, killing thirteen Palestinians and injuring many more. Otherwise, direct violent repression was used in other cases of mass protests such as during Operation Cast Lead of December-January 2008-9 and the wave of arrests that followed, where detention was used as a tool of political repression, and in past events.

Nonetheless, overt coercive repression was apparent in the response that followed the publication of the 'Vision Documents' in the course of 2006-7, which

Adalah's Democratic Constitution is part of. The Shin Bet then revealed that it is engaged in thwarting activities by groups that seek to harm the Jewish and democratic nature of the State of Israel, even if by means which are sanctioned by law, since they encourage politically subversive activities. Shortly after, the Shin Bet added a clarification, saying that it is within its mandate to closely watch individuals deemed as "conducting subversive activity against the Jewish identity of the state, even if their actions are not in violation of the law" (Khoury and Yoaz 2007). This admission is important to note: the state's security service admitted that while Israel is democratic as well as Jewish, the Jewish component gains supremacy in a way that sees any activity that undermines the Jewishness of the state as subversive, even if not illegal, and one that necessitates close monitoring and surveillance. With this admission, the liberal-democratic image Israel is exteriorising is severely damaged.

Legal measures. One of the most common ways in which hegemony reacts to the practices of resistance I examined throughout this thesis is by legal repression, both legislative and judicial. The use of juridical means as counter-resistance measures is most apparent in the state's dealing with the resistance of the NDA party and its elected representatives. Basic Law: *The Knesset* (and to a lesser extent amendment to the *Election Law-2002*) narrows the possibilities of political participation of parties that do not follow the lines of the Zionist consensus of the 'Jewish and democratic state.' The law was amended after the appearance of the NDA on the Israeli political scene. Indeed, it was the very existence of the NDA as well as its activity inside and outside the Knesset that led the state to assert its Jewishness through legislation. The judicial backlash came with the disqualification of the party and the candidacy of Bishara in the 2003 and 2009.

Several other laws were enacted and amended following Bishara and Zoabi's extra-parliamentary activities, in order to criminalise their political activity and to prosecute them accordingly (see amendment to the emergency regulation 2002; amendment to Basic Law: *The Knesset* 2002; amendment 13 to the *Party Law*; amendment to the *Knesset Members' Immunity, Rights and Duties Law 2002*). In the case of Bishara, two indictments were filed against him and he was finally pushed out of political life, and indeed, physically pushed out of the country with the accusations piled up against him in 2007. Even after his departure from the Israeli political scene,

the legislative measures against Bishara were still underway (amendment of the *Citizenship and Entry into Israel Law (Amendment – Revocation of Citizenship for an Act of Terrorism or Espionage-2010))*. The proceedings against Zoabi and the judicial measures against her are still pending. On 19 December 2012 Haneen Zoabi was disqualified by the CEC following motions submitted by Likud MK Ofir Akunis, for her participation in what he termed "the Marmara terrorist attack. […] The Israeli democracy needs to know how to defend itself against those who seek to destroy it from within" (Bender 2012). The decision was later overturned by the Supreme Court, as was the case of the other disqualification decisions made by the CEC in the previous elections.

Indeed, it can be determined that in the last few years, the Israeli parliament is engaged in a quest to legally ground the Jewishness of the state at the expense of its democratic nature. This is a clear indication of the existence of a real and permanent alternative to this formula, posed by the NDA and other political and social forces promoting similar agendas. The persecution of the NDA's elected representatives are indicative of the attempt to silence and remove the party from the political scene where its members can exercise their right to exist, speak and act in a way that challenges the very foundations of Zionist hegemony.

Legal repression is also used against the activities of the AATW and the Boycott! group. A military decree that forbids the entry of Israeli citizens into the Palestinian Authority's controlled areas 'A' as marked in the Oslo agreement or other orders or decrees that declare the area of the demonstrations as a closed military zone deem all activities within these areas to be prohibited by law. Accordingly, activists have been arrested hundreds of times and dozens of indictments have been filed against them. This legal repression, and the financial burden it places on the activists is an attempt to crack down on these forms of resistance. The *Law for Prevention of Damage to the State of Israel through Boycott-2011*, that prohibits public promotion of boycotts by Israeli individuals and organisations of both Israeli institutions and of OPT settlements' produce is again legally restricting forms of political protest and thus limiting freedom of expression and action. In mid-November 2012, the space of action narrowed even more when activists received an early morning 'home visit' from the police, handing them decrees declaring the villages where the weekly demonstrations

against the wall take place as closed military zones. These decrees were issued according to the *Prevention of Terrorism Ordinance-1948* and the emergency regulations.[163] Finally, in late December 2012, the Shin Bet summoned Kobi Snitz, an activist both with the AATW and the Boycott! group, for questioning regarding his activities, including what was termed as 'de-legitimisation' activities (Hass 2012). It is certainly not the first time an activist has been summoned to a conversation/interrogation by the security services, but it is indeed the first time that BDS related activities are included under the mandate of the Shin Bet. These examples expose the state's dealing with these acts of resistance, and its resort to a more direct approach of oppression, again weakening its consensual bases.

Societal repression. As already discussed, hegemony's strength generates a coherence of interests and means between political (state) and civil society, while the latter steps in to suppress forms of resistance that threaten hegemony's integrity. Societal pressure is apparent in relations to resistance practices outside the institutions of the state, such as that of the Boycott! group, even if it is often backed by official state representatives. Here, examples of lecturers that are involved in the campaign for academic boycott of Israeli universities who are summoned to warning talks with their superiors stand out. Also, the constant monitoring of their activities by civil society organisations (such as the Israeli Academia Monitor, among others) are creating an accumulative effect of fear and control. It has been successful in intimidating potential supporters of the BDS campaign, as well as putting strain on the work of those already active. Whilst putting pressure and constraints on the work of activists these measures can also lead to their dismissal from their work place. Additionally, many activists, especially those who take part in the AATW weekly direct actions throughout the West Bank, testify to a feeling of total alienation from the society within which they live. Activities that subvert the Zionist consensus are considered to be so extreme that it places the activist in an isolated societal position. Although placing limits on their activity, societal repression is indeed another indication of the threat these acts of resistance pose to the hegemonic order.

Discourse. The activity of the BDS movement, which the Boycott! group is part of, is mentioned in the centres of power of the Israeli hegemony: the media, parliament

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[163] This information is based on my personal communications with activists.

and prominent members of the Israeli economic elite. The fact that what is termed the 'de-legitimisation' of Israel is perceived as a strategic threat to the State of Israel, as mentioned by the Ministry of Public Diplomacy and Diaspora Affairs, the Prime Minister and civil society organisations (Reut Institute, the IAM) is indicative of the potential and actual effect of this form of resistance.

In the case of the Democratic Constitution (and the larger 'Vision Documents') hegemonic reactions on the discursive level were severe. Jewish-Israeli politicians and intellectuals saw these documents as a highly subversive activity undermining the foundations of the state and attempting to overthrow it, and there was a comprehensive refusal to deal with the content of the document.

Marginalisation of resistance. This type of hegemonic reaction can indicate that the state does not see these activities as a severe enough threat and therefore allows for them to continue. While Palestinians involved in protests in the OPT encounter harsh and violent repression, activists of the AATW point to the fact that despite some oppression, the state is actually allowing these activities to proceed. Despite occasional exceptions, repression towards Jewish-Israeli activists is a practice that the state still refrains from. Activists believe that there is a conscious decision on behalf of the state to maintain the activities of the AATW in a marginal position. This point echoes the discussion presented in chapter two whereby denying resisters the status they seek in public discourse, the state chooses to assimilate their acts to a category that minimises their political challenge. Indeed, representations of resisters by the apparatuses or institutions of hegemony (such as media, police, army and political figures) varies from titles such as 'radicals,' the 'moonstruck' left, 'a bunch of outlaws' to describe the Jewish Israelis, to 'terrorists' to describe the Palestinians. This leads to either marginalisation or de-politicisation of the political character of their resistance.

In sum, while resistance is the practice that puts on the public agenda alternative conceptions and narratives of reality, including the idea that there could be something other than a Jewish state, and forces the state to deal with questions and situations that were masked before and remained unchallenged, and thereby exposes the exclusive character of the state that privileges one 'type' of citizens over others, in the discussion

of hegemonic reaction and the efficacy of resistance, two simultaneous processes and calculations should be taken into consideration. On the one hand, I argue that when resistance reveals its potential in the disruption of hegemonic relations, reactions become more severe, as the case of the NDA indicates. Here, the perceived and actual threat of the NDA's resistance stands out: both Azmi Bishara and Haneen Zoabi, in their attempt to expand the boundaries of legally sanctioned action, within the framework of their activity as elected representatives of the Palestinian community in the Israeli parliament exposed Zionist hegemony's internal contradictions and thereby forced it to reveal its oppressive nature, and the oppressive reactions to their resistance, in terms of legislation and the juridical measures taken against them, indeed weakened hegemony's legitimate standing internally and internationally.

On the other hand, I argue that hegemonic power-holders also engage in calculation of the costs and benefits of repression and the political prices they might have to pay for these actions in terms of its legitimacy and standing, both internally and internationally. This frequently leads to restrained reactions, as, for example, the (so far) hesitation to prosecute Palestinian members of parliament from the NDA party might indicate. Another indication is the overturning of the CEC disqualification decisions in all occasions by the Supreme Court that still, within the deteriorating Israeli political culture, serves as a watchdog of its democratic structures. While outright violent repression demands high political 'costs', legal or societal forms of repression come with a political price tag. The boycott prohibition law is just one noble example of this, where Israel encountered internal and international criticism and opposition to this legislative move, and eroded its legitimacy. Accordingly, when the potential or real threat resistance poses is not severe enough, hegemony might prefer to maintain resistance in its marginal and peripheral position and repression will be minimal, such as in the case of the AATW.

Ultimately, repression of resistance exposes the weaknesses within hegemony: resistance forces hegemony to use coercive means, such as legislation that stresses the Jewish character of the state at the expense of the democratic component, prosecution of members of parliament and McCarthyist witch-hunts of academics which in turn erode its consensual base and sources of legitimacy, which are vital parts of its strength, both locally and internationally. Indeed, the strategic thinking of hegemony in

relation to resistance is evident here: to safeguard itself by incorporating resistance through reforms and compromises or push it out, thereby risking being hit by its dangerous potential, now external to it.

Possibilities of resistance are narrowing and the lives of the Palestinian citizenry community in Israel is hardening in the immediate and short term, the effects of hegemonic reactions, whether legislative, judicial, discursive or otherwise, is tremendous. This understanding is facilitated at a time when we want to examine the effects of resistance on different audiences, and ask the question of who the target audience of resistance ought to be. One must remember that the target audience of resistance is not just hegemonic power-holders, but it is also directed at other centres of influence as well as the community of resisters themselves.

Effect on target audience: the theatre of war

The discussion on the effects resistance might have on its target audience can benefit from the use of a military term coined by Carl von Clausewitz (1780-1831), 'theatre of war' (or theatre of operations). This term describes a confined and independent portion of space where war prevails, which constitutes a small whole complete in itself, in a way that changes that take place in other locations have only indirect or no influence on it. Indeed, to facilitate the understanding of its meaning, one important criterion "might be found by imagining an advance in one theatre simultaneous with a withdrawal in the other, or a defensive action in one simultaneous with an offensive in the other" (Clausewitz 1993: 322).

Here, battles are not conducted in the field, but rather in the "trenches of civil society" as Gramsci put it, aiming to create and shape public opinion. In accordance, the use of the term in regard to ideological-political battles can refer to an area of influence, audience, or even different physical locations such as different countries. It is interesting to note how effects of resistance manifest themselves differently, increase or decrease across different theatres, according to the shifting lenses of one audience to the other, from the local to the international, from the Jewish to the Palestinian and from the legal to the social. Often defeat or retreat in the local sphere, inside the Israeli systems (legal, political or 'public opinion') can simultaneously signify an advance in the international theatre, in

the same way that defeat in the legal arena can signify success in other spheres, such as the shaping of public opinion, empowerment of the resistant community and the such. This is true for all resistance practices this research project has looked at.

Litigation, and the limited possibilities it poses in terms of achieving actual victories in courts is often used just as a first step before addressing international legal platforms such as the International Court of Justice (ICJ) in the Hague. A striking example of this is the case of the wall Israel is building in the West Bank, that was submitted in 2004 to the ICJ after a failed attempt to achieve an Israeli legal condemnation of the legality of the wall itself. On July 2004, the ICJ indeed determined that the construction of the wall is contrary to international law and therefore illegal, and ordered Israel to dismantle it. Despite the fact that this legal victory did not have any effect on the ground since Israel refuses to recognise the application of this decision to it, and the construction of the wall is still underway, it had a rather enormous effect on campaigns ever since, the most significant of which is the BDS campaign. The Palestinian call in July 2005 for the international community to adopt a policy of boycott, divestment and sanctions against Israel until it complies with International Law mentions that it drew its inspiration from the ICJ decision, since international campaigns such as the BDS benefits greatly and gains legitimacy from the condemnation of Israel's actions in the OPT by an international legal body such as the ICJ.[164]

As thoroughly discussed in the third chapter, litigation has other objectives apart from achieving victories in court. Actually, litigation can be utilised in campaigns that aim to influence public opinion also internationally, and Adalah is certainly using it in that way, in its appeals to extra-juridical international platforms such as the UN or the European Union, in a way that serves to erode Israel's international standing and image. A report Adalah submitted to the EU in February 2011 together with the Arab Association for Human Rights serves as an interesting example. The report deals with the Palestinian minority status in Israel and the specific steps the EU could take in this regard. The report enumerated cases of discrimination against the Palestinian citizenry Adalah was involved in, embodied in legislation (such as the citizenship law) and limitation of political

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[164] The Palestinian 2005 BDS call opens with a direct reference to the ICJ's decision. It follows "One year after the historic Advisory Opinion of the International Court of Justice (ICJ) which found Israel's Wall built on occupied Palestinian territory to be illegal; Israel continues its construction of the colonial Wall with total disregard to the Court's decision." See www.bdsmovement.net/call.

participation (disqualifications and restraints on political activity) among others. [165] Following the submission of this report, the EU issued a statement for the first time calling upon Israel "to increase efforts to address the economic and social situation of the Arab minority, to enhance their integration in Israeli society and protect their rights."[166] Additionally, Adalah participates and intervenes in different UN committees, where states are monitored for their compliance with treaties and conventions they sign on. In these committees Israel is often implicated in 'issues of concern' regarding different aspects of its treatment of the Palestinian citizenry in the country, also based on Adalah's on-going local involvement and monitoring.[167]

Litigation also has an extra-judicial effect in the local setting, to expose information and bring issues into the public agenda. Legal failure in court can still generate 'public opinion' success, and truly empower the resisters themselves. It is worth remembering that legal battles will not win the war by themselves, however they do have a role in empowering the masses while offering some protection from state retaliation, and here their importance lies (Abel 1994).

Examining the resistance of the NDA party, the shift from one theatre to another reveals the full potential and strength embodied in this form of resistance. The fourth chapter discussed the ways in which the NDA's 'war of position' in parliament pushes the Zionist establishment to reaffirm itself on the legal ground, in a way that exposes its undemocratic nature explicitly, both locally and internationally, and the political prices for these legislative moves are becoming increasingly high. While the price is still acceptable within the local Jewish-Israeli society, despite the occasional outrage and protests in the liberal circles, in the international arena, on which Israel relies both politically and to a lesser extent economically, where the legitimacy it receives as a liberal democracy matters, the 'price' becomes progressively higher.

Moreover, if the lenses shift internally, the effects of the NDA resistance on the Palestinian community are immense, in terms of empowerment, shaping discourse and constructing political-national identity. As discussed in chapter four, the NDA project is also inward facing and meant to facilitate the transformation of Palestinian identity

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[165] For the full report see: http://www.adalah.org/eng/Arab_Minority_Rep.pdf.
[166] For the full statement see:
http://eeas.europa.eu/delegations/israel/press_corner/all_news/news/2011/20110222_01_en.htm.
[167] For some of these comments and reports see: http://www.adalah.org/eng/pressreleases/unccs.html

and political organisation in the country. Indeed, to recall Bishara's explanation (in Haddad 2007 [2003]: 246), the state for all its citizens is not only about the transformation of the Israeli state, but also about a transformation amongst Palestinians, "in a way that demands them to become subjects able to identify with their collective, demand their rights, and conscious about their identity, nationality, and the ways in which the state can combine them both together, without the need to suppress the one or lose the other." Additionally, the physical presence of Palestinian representatives in the Israeli parliament, that stand tall and insist on their rights, sends a strong message of empowerment to the community.

The activity of the Boycott! group is outside facing, therefore the theatre of war is the international community. The logic of the resistance here is that only an external pressure that disrupts and alters the lives of the people that are now living in relative comfort and detachment from the surrounding reality of occupation, oppression and discrimination of the Palestinians will make people understand that the situation is not sustainable and therefore needs to change. Success and victories of the BDS movement worldwide are numerous and will not be listed here.[168]

Hence, constraints placed on their activity within Israel, such as the boycott prohibition law, have a contradictory effect outside Israel. Indeed, while enacting this law, Israel has damaged its reputation and eroded its legitimacy, both internally, at least amongst the liberal circles, and internationally, where Israel struggles hard to maintain its positive liberal-democratic image. This, in turn, erodes its consensual base and sources of legitimacy, which are both vital parts of its strength. Apart from that, the other target of this resistance practices, both of the Boycott! group and the AATW is to create a space of contact and a ground for shared resistance with the Palestinian people, a space that the State of Israel tries to block with its policies of separation. Therefore, there is another, long term educational goal here, which involves lessons about how to live together, how to get out of the indoctrination in a way that will enable different future of the people in the country. Thus, despite a marginal position within the Jewish Israeli society, their influence internationally and within the Palestinian community is much wider.

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[168] For a comprehensive list of victories internationally see
http://www.bdsmovement.net/category/news.

Repertoire of resistance

Charles Tilly who coined the term 'repertoire of collective action' defines it as "the whole set of means it [a social movement] has for making claims of different kinds on different individuals or groups" (1986: 4). Hence actions meant to redress a grievance are drawn from a repertoire of forms of action that provides activists with a ready toolbox of known actions that can be used in different given situations, and vary according to historical and/or geographical context. The repertoire consists of "not only what people do when they are engaged in conflict with others; it is what they know how to do and what others expect them to do" (Tarrow 1994: 31). Consequently a repertoire of resistance is "culturally inscribed and socially communicated. The learned conventions of contention are part of a society's public culture" (Tarrow 2011: 29). However, apart from constituting a useful set of actions and a ready-made toolbox, the repertoire can also be seen as a constraint: since chosen actions are in fact innovation done "within limits set by the repertoire already established for their place, time, and pair" (Tilly 2006: 35), this to turn to familiar routines, indeed overlooks the fact that unfamiliar forms of action might serve the cause much better.

In the attempt to evaluate the efficacy of different forms of resistance, examining if they constitute a repertoire of resistance has been discovered to be a useful measure since forms of contention serve as a collective incentive for some people to engage in acts of resistance, drawing on motivations that worked previously for their network of trust and solidarity. Indeed, "skilled use of the repertoire does not guarantee success, but it can certainly have an impact upon the fate of a movement" (Dugas 2001: 814). Accordingly, it can be argued that effective forms of resistance are the ones that establish a repertoire other actors draw on.

Did a new repertoire emerge from the forms of resistance analysed throughout this research project? The answer to this question is indeed yes. In terms of ways of organisation and patterns of activity, the establishment of Adalah was a unique milestone in the resistance of Palestinian citizens in Israel. It was the first Palestinian organisation dedicated to legal activism and the struggle for collective rights within the Israeli legal system. A field previously dominated solely by ACRI, working within the

frame of the Jewish and democratic state, and independent attorneys representing individual cases, Adalah had set the stage for the collective legal struggle and principled petitions to the Supreme Court. Whereas no more than two to three petitions were filed in Israeli courts in an average year until the 1990s, within a decade this number has risen to an average of two petitions a month and by the end of the decade, the number of Arab lawyers in Israel increased, many of whom have engaged in civil rights cases, independently or in co-operation with Adalah or ACRI (Payes 2004: 125).

In terms of discourse, the 'state for all its citizens' formula, initiated and promoted by the NDA also set new grounds for demands and strategies of struggle that became common currency amongst the Palestinian citizenry in Israel, and an integral part of the discourse of various political and social movements. It is important to recall here Haneen Zoabi's comment that the NDA's discourse became hegemonic in the Palestinian society, even if this hegemony is not manifested electorally.[169] This fact resonates in the 'Vision Documents,' all promoting, despite their differences, a similar political vision of civic rather than ethnic grounds in the definition of citizenship and the state's identity. Moreover, patterns of extra-parliamentary action taken by elected members of the NDA are also inspiring other segments of society to use their leadership position, media attention and political stance to promote their struggle. It was again Zoabi who asserted that her participation in the Gaza flotilla, as well as her firm and proud position against harassments and attacks that followed it, pushed other leaders to follow a similar path. In her words, "now they all stand in line to go on another Gaza flotilla."[170]

In terms of strategies of struggle, patterns of activity exercised by the AATW are inspiring various other movements and groups. Influences were seen in the social protest occurring in Israel with great intensity during the summer of 2011 and again in 2012. Ronnie Barkan, an AATW and Boycott! activist explained that the repertoire of state oppression influenced the protest movement, which came to draw on the experience as well as demands made by the resistance activity conducted in the OPT. It was state violence that drew heavily on years of oppression of protest activity in the OPT, such as police violence against unarmed demonstrators, now exercised against

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[169] Interview with Haneen Zoabi, 18 April 2011, Nazareth.
[170] Ibid.

Jewish-Israeli activists, that led to the radicalisation of the movement itself. [171] Outraged against state violence, the movement demanded democracy, equality, all these mantras and demands that had been for years central to the struggle in the OPT. As Barkan suggested, this might lead people to create connections between both struggles that constitute one struggle for true democracy in the whole of Palestine.[172]

At the same time, the limitations of these repertoires are also apparent. We can now recall the danger of the legalisation of the political struggle that several of Adalah's lawyers mentioned. It is when people put their trust in the legal system rather than taking their struggle to the streets, that the existing repertoire of resistance might constrain the horizons of available effective action. In this light it is possible to critically reflect on the realistic assessment of Palestinian scholars, activists and leaders (see Jamal 2007; Rouhana 1991 and my interviews with Jabareen Zahalka) that the struggle of the Palestinian citizens is consciously conducted within the limitations of Israeli citizenship and therefore within the confines of the law. This choice of struggle is presented by the existing repertoire of resistance against Zionist hegemony, and might constrain other forms of resistance.

Ensemble of resistance

Resistance is a multi-faceted activity. It is simultaneously inside and outside state institutions; it is legal and illegal, constructive and disruptive and engaged in building and dismantling. The state understands resistance in this manner and wages its fights against it accordingly. Resistance therefore has always to move between the fissures and openings that exist within the hegemonic system: when one avenue of action is blocked, another opens. All the different strategies are indeed divergent manifestations of the same resistance; the goal is one, while all the rest is a matter of tactics. As such, a conversion of one form of resistance into another is also a matter of tactics. Resistance that is done outside the institutions of the state supports resistance inside

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[171] I refer here principally to the case when Daphni Leef, one of the main organisers of the protest, together with other protesters, was violently handled and arrested by the police while attempting to reconstruct the protest tents in Rothschild Boulevard in Tel Aviv on 22 June 2012. Leef later needed medical care. See report in Ha-aretz on 22 June 2012 at
http://www.haaretz.co.il/news/education/1.1738049
[172] Interview with Ronnie Barkan, 30 July 2012, Tel Aviv.

them and vice versa. The model proposed in this research enables us to think the relationship between these as a topological reality in which one form supports and opens the possibility for the other.

Thus, the question of resistance and its chosen strategy should not be seen as one of mutually exclusive alternatives and 'pure' practices. Every society is subjected to the attempt to co-opt its resistance into the complex mechanisms of power. Those who resist always attempt to escape these efforts and strategies. In the case of the Palestinian citizens, the questions of hegemony and resistance exist in a grey area of the lesser evil, since resistance within the institutions of the state might end up both challenging and reinforcing them. Two elements exist simultaneously: affirmation and negation of the state. Whatever aspect of the two will prevail, is a question of the alignment of forces on which resistance relies. This is the reality of a full spectrum of the manifestations of state authority between domination and hegemony and a full spectrum of resistance that exists in the entirety of the full spectrum of human action. Any action needs to be judged according to the logic of the situation, the political and military environment, the historical context and thus the judgement cannot be immediate.

The overall strategic choice Palestinian citizens made to wage their struggle against Zionist hegemony within the boundaries of Israeli citizenship and thereby inside the limited spaces allowed by Israeli law does not necessarily imply that they are willingly accepting the confines of this reality. Indeed, this research shows how these boundaries are being pushed, redefined and redrawn in ways that weaken the system of power and force it to narrow the spaces of resistance within it, thereby leading to a realignment of forces and the increasing reliance on coercion rather than consent, and deterioration into an outright system of domination. Interestingly, the state does not even accept resistance that is done through the law and engagement with the state's institutions, and these spaces are increasingly narrowing and closing, in a way that again leads to the exposure of the state's oppressive nature. Indeed, hegemony and resistance are found in complete entanglement, the one is influencing the other, forms of resistance shape forms of hegemonic control and vice versa.

How to use the master's tools

Amal Jamal's assertion (2007: 264) regarding the politics of contention versus the politics of radicalisation, states that,

> whereas politics of radicalization is counter-systemic in which national minorities mobilize resources to abolish citizenship and confront the state up to the point of secession, politics of contention entails mainly the attempts to reframe the relationship with the state by challenging its basic assumptions about citizenship. But, whereas the politics of radicalization aims at countering and even breaking the system, the politics of contention aims at transforming the system by reframing the interpretation of its own rules of the game.

Jamal accordingly analyses Palestinian citizens' resistance within the model of the politics of contention, where resistance is conducted in a way that seeks to expand the meaning of citizenship by utilising the structures of opportunities available to them through it (access to state institutions such as the parliament and the court system) before moving to alternative strategies that might endanger their status and achievements that were gained within this frame, such as the use of violence.

However, this thesis argues that here lies the key to understanding the strategies of resistance this study analysed. The radical element in these resistance practices is to be found in the demands they put forward, which surpass the current definition of the state as 'Jewish and democratic' and aspire to turn it into a state for all its citizens, or for collective rights of the Palestinian community within it, which ultimately means the replacement of the current hegemonic principle that guarantees the supremacy of the Jewish citizens, with another. The demands for this sort of transformation of the state cannot be framed as demands for integration within the existing system but rather as a radical demand for overall transformation. Jamal himself points out that citizenship is used as a manoeuvring space for resistance as well as a structure of opportunity that provides a shield "in face of possible brutal state policies" (Ibid: 265). By that, citizenship and the access it provides to state institutions is used to reveal and expose the contradictions that are part of the dominant ideology, and in order to embarrass the state and bring about a fundamental change in its policies.

Indeed, here the participation in the democratic game and the exhaustion of its

tools serve to uncover the internal contradictions of Zionist hegemony. Despite the fact that these forms of resistance work through legal means and from within Israeli hegemonic institutions, this utilisation of citizenship and these forms of action are both radical and illegitimate. As such, the state is constantly struggling to narrow them down if not to eliminate the space of resistance from within, and due to that, resistance groups are constantly searching for new strategies that can overcome these limitations. This, in turn, might lead to escalation and the choice of even more radical strategies of resistance.

Finally, I revisit Audre Lorde's assertion about the 'master's tools', presented earlier. Lorde's argument that as long as one uses the frameworks and points of reference of the oppressors, the ability to evade and construct a new reality remains impossible seems undeniable and applicable to all counter-hegemonic struggles. However, throughout the analysis, I argue that it is not the tools themselves, but rather the way in which they are used that makes the difference. A conscious use of these tools can weaken the foundation of hegemonic institutions, crack the cement that holds the bricks together, and start a process that will ultimately lead to the dismantling of hegemonic structures. In our context, participation and engagement with the institutions of the state, appeal to its legal system can be deemed counterproductive when they are incorporated and co-opted by the state and used to increase its strength and legitimacy. However, there always exists a potential of radical use that can turn them on their head. To recall the words of American singer Ani DiFranco, "every tool is a weapon if you hold it right."[173]

An information paper published by Mada al-Carmel in 2012 points to an interesting direction in this regard. It indicates that in recent years there has been an increased effort to entrench the Jewish character of the state, in part by means of legislation, where the state seeks to compel, by statute, its Palestinian citizens to recognise the Jewish character of the state (Shihadeh 2012). Indeed, while the state's Jewishness was for the first decades a self-evident and commonsensical assumption of the Jewish majority, the need to assert it in legislation became urgent only when this idea became threatened from a civic discourse of citizenship and from increasing challenges to the Jewishness of the state. Indeed, it was due to the uncompromising

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[173] This quote was brought by Hardt and Negri at the opening of their book *Empire*.

activity of political parties such as the NDA within the parliament, and legal organisations such as Adalah that use the tools of liberal democracy to expose its actual absence, that the need to legislate the Jewish state arose. What it proves is that if the Palestinian citizens take the promise of citizenship seriously, they find the state mobilised to block their way and take paths of oppression that seriously damage its liberal pretensions, thereby leading to its weakening position and exposure of coercion at the basis of its rule.

At the same time, the metaphor of the master's tools can assist us in understanding that in the case of a sophisticated system of rule such as the one analysed, the utilisation of alternative tools to those of the master's cannot and should not be dismissed, since it is vital for the dismantlement process itself. Sometimes, the use of the drills, hammers and the removal by hand of bricks is insufficient, when the strength of the house also depends on its external support, in terms of a block of buildings and the soil it stands on. In this case, in order to facilitate the process and bring about the final blow of dismantlement, external efforts must be made. Here is where resistance outside the institutions of the state, drawing on international pressure, de-legitimisation and moulding of public opinion comes into play.

Indeed, since hegemony works on both the political and civil spheres (or: societies), and utilises various means to assert its control, and since resistance can never truly be external to it, resistance should not be unified but rather diffused in order to be more effective. There is no one effective way to conduct the struggle: there is a need to struggle on all fronts simultaneously. On the one hand, the struggle within for practical improvements at the social and political levels, and for the exposure of the weaknesses and contradictions in hegemony, of the kind that also forces it to use coercion and to expose its oppressive nature. On the other hand, there is a need to work consistently to advance alternative spaces and programmes for a genuine transformation of the regime, which are now blocked by the existing legal system in Israel that forbids a democratic transformation in the nature of the state. NGOs like Adalah, and party like the NDA, are built around people who are educated in Israeli institutions and speak its language, who besides the legal and parliamentarian work and 'lesser evil' politics, work to advance a new political agenda boldly and openly, both theoretically and practically. Hence, resistance should be thought of in its

togetherness rather than in parts. It is the incorporation and combination of dialogue, culture, discursive and physical struggles and possibly even the recourse to violence that constitute the ensemble of resistance.

The paradox is that ever since the 2009 elections, which brought one of the most right-wing government coalitions in the history of Israel to power, even activity which is conducted within the formally legal sphere has been severely constrained by the state with: new draconian laws that have been passed in the parliament on an almost daily basis which affect Palestinian and Jewish resisters;[174] constraints on the activities of human rights organisations and de-legitimisation of their work;[175] prosecution of lecturers who call for the boycott of Israeli academic institutions; and the deprivation of parliamentary privileges of an Palestinian Knesset Member, Haneen Zoabi because of her participation in the Gaza flotilla. These developments are putting in question the basic premises and distinction between legal and illegal activity, between within and withdrawal, between the citizen and the enemy, in a situation where law and legality undergo constant shifts and transformations according to the political climate of the country. At the time of writing it is still too early to judge if and how the situation will change with the aftermath of the February 2013 election, and the identity of the new coalition that was formed.

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[174] For a list of these discriminatory laws, updated to June 2011 see: http://www.adalah.org/upfiles/2011/New_Discriminatory_Laws.pdf
[175] For a report on this issue see the Association for Human Rights in Israel: http://www.acri.org.il/he/wp-content/uploads/2011/12/tmunat2011part2.pdf [Hebrew]

Conclusion

> The regime in Israel wants to define our personal characteristics, define our views, the way we struggle, if we must struggle, it wants to define our beliefs, the terms that are forbidden to use while criticizing the state or describing its policy. If you consent to this, you are a 'good Arab,' and part of the 'moderates.' If you express a national defying position in the Knesset, or to the media, but your political activities are summing up to speeches that do not solidify a political consciousness, and you do not provide an alternative programme to the 'Jewish democratic state' – you are ok, and pass the legitimacy test. The NDA failed in all these miserable 'legitimacy' tests […] the NDA will not allow anyone to define an 'admission test' for the Arab society, our legitimacy and the legitimacy of our struggle are not determined, and will never be determined by racists groups that see a real democracy as a threat!
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> Haneen Zoabi, translation from the NDA election brochure, December 2012

The run up to the Israeli general election that took place in February 2013 provided an exciting background on which this thesis is concluded. Zoabi's words above encapsulate some of the important points this research project has brought to light. As much as the Israeli hegemony strives to control and define structures of thoughts and modes of behaviour, thereby categorising legitimate and illegitimate forms of struggle, the NDA brings a clear message of dissent. However, the NDA resistance is just one side of the struggle.

I have argued that in the context of modern hegemonic organisation and a distribution of power that simultaneously engages in the production of consent and repression of dissent, and exercises a spectrum of violence ranging from 'cold' to 'hot' means, resistance must act in concert. Indeed, in the context of ethno-national settler colonialism that finds expression in the ideological underpinning and legal framework of the Israeli state, operating within a liberal democratic institutional structure, an ensemble of resistance that acts simultaneously both within and outside the state's legal system, constructing and disrupting, assembling and dismantling, is the most strategically effective measure in countering hegemonic structures. It exposes their inherent weaknesses and contradictions thereby forcing hegemony to reveal its oppressive nature and thus lose its legitimacy both internally and internationally.

Overall, it is a long term strategy that sees the transformation of the system as part of a steady practice of dismantlement, disarticulation, war of position, contrary to a revolution that aims to inflict a blow to the heart of the system and cause its collapse. The deterioration of the political culture from liberal structures and pretensions into a blatant racist and oppressive system is an indication of the success of resistance, that in the case of the NDA manifested itself in the disqualification of Zoabi by the CEC from participation in the elections, a decision that was later overturned by the Supreme Court, that still functions as the watchdog of the remains of the liberal democratic political culture in Israel.

At the inception of this project, law and resistance were introduced as seemingly two contradictory concepts: law is instrumental in producing and sustaining the hegemonic order, while resistance aims to subvert that very order. Throughout the thesis, I un-tangled the paradoxical relationship between the two and evaluated the efficacy of different strategies of resistance to Zionism. An in depth enquiry into the world of legal resistance and the work of cause lawyers introduced the investigation into the possibilities of making a radical use of the legal system. Adalah's pattern of work, and the alternative legal strategies it adopts succeed in overcoming the limitations posed on litigation in courts by its very nature. These strategies involve public advocacy, movement building and its peak was seen in the introduction of a legal document, a constitutional proposal that suggests the overthrow of the existing legal system and replacing it with a civic-based democratic one. Similarly, the National Democratic Assembly party utilises the physical and discursive space provided by the parliament to wage its struggle. While still constituting part of a larger *within* approach and legal resistance, the very existence of the NDA, its agenda, and the tactics its members utilise in their struggle place the party in a larger resistance spectrum that encompass extra-judicial, and sometimes illegal means. Here, the hegemonic reaction took a central stage. As the NDA poses a real threat to the stability of hegemony since it exposes its internal contradictions, legislative as well as juridical backlashes were, and still are, underway, thereby forcing hegemony to rely more on its coercive side. On the opposing end of the spectrum, the strategy of *withdrawal* from state institutions and carving up of alternative political spaces of struggle was investigated through the goals and practices of two loosely defined groups, the AATW

and the Boycott!, and the ways in which they challenge and resist hegemonic constructions of separation, adherence to the law, and disregard of the society and internal politics in Israel. The target audience is different, and the activities are outward facing. The analysis of the ways in which hegemony sees these activities and the prevalence of their terminology of 'delegitimisation' in the public and political discourse in Israel is an indication of their success. Although the direct actions of the AATW on the ground in the OPT are allowed to continue by the state, recent experience shows that their spaces of action are narrowing as well.

The reflection on the ways in which state power works, using the latest example of the Israeli operation in the Gaza Strip in November 2012 revealed once again that the theatre of contemporary war, in which state power uses a spectrum of means and violent expressions, exemplifies the necessity for the togetherness of resistance, that works on a similar spectrum. This necessity does not deem the evaluation of the efficacy of singular resistance practices dismissible. Apart from highlighting the ways in which hegemony reacts as an indication for success or efficacy in general, and the repertoires of resistance that were formed over the years by these practices, it is important to determine more specifically the forms of engagement with/without the law and their efficacy in specific situations. Put differently, when can it be better to use one strategy rather than another, and in what circumstances?

Relying on the experience of lawyers, party members, political leaders and activists, several 'rules' can be detected. When seeking an individual, everyday solution to a practical problem, appealing the court system (preferably lower instance) might be the best possible solution in a given situation. Similarly, direct action can sometimes solve a practical specific situation, such as cleaning a well or delaying the construction of a segment of the wall. Appealing to a higher instance court, mainly the Supreme Court, similar to placing an issue on the parliament's agenda (in the form of speeches or submission of bills for readings), can best serve as a means to expose previously concealed information to a wider audience, both local and international, since this type of activity usually generates media interest and coverage. As a rule, filing petitions to the Supreme Court is a step that must be exhausted before appealing to international juridical platforms. Extra-parliamentary activities of political leaders (such as those of Zoabi and Bishara) contribute to the struggle in their provocative

nature, in attracting media attention, making 'a point,' insisting on the right to resist without hesitation. Any action directed towards an international audience, such as the boycott, must go before through local channels, and represent a situation where all paths were explored and employed before turning outside. These observations and suggestions are far from being exhaustive, but they still indicate a trend.

This research re-examined and offered different understandings of two claims. The one, argued by Amal Jamal regarding the categorisation of Palestinian politics in Israel and the other of Audre Lorde regarding the possibility of using of tools available by structures of power in order to dismantle them. Revisiting Jamal, this study has argued that despite the fact that Palestinian citizens utilise their citizenship in their struggle, in the cases presented here, it is about the way they utilise it that makes their claims and resistance radical, since it aims to transform the structures of power and the very definition of the state, undermining its current definition as a Jewish and democratic state. It is a struggle that forces the state to re-affirm its Jewish component at the expense of the democratic one, and indeed succeeds in weakening the bases of legitimacy on which the Israeli regime relies. By that, Lorde's negation of the ability to use the master's tools to dismantle the master's house can indeed be reconsidered, and the potential of this use is revealed through a subversive use of the existing tools, one that utilises the opportunities and possibilities enabled by the liberal democratic structures to expose the system's internal contradictions.

In conclusion, it becomes clear that determining the efficacy of a chosen strategy of resistance is a complex matter. Indeed, in the histories of the discussions about revolutions and processes of decolonisation, the problems of the utilisation of the political, physical, infrastructural, and architectural tools of the dominant regime comes into question: can they be utilised in the struggle against it? After all, systems of domination, as well as hegemonic systems, tend to be all encompassing and therefore it is nearly impossible or at least very hard to find tools of struggle that are located completely outside of that frame. It was Trotsky who advocated the need to use the military structures and organisation of Tsarist Russia in the struggle against it, as much as almost all colonial struggles from India to Palestine and Africa used the language, concepts and physical instruments of domination in the struggle against them. A critique of this use has always insisted that every tool of the dominant regime is

already contaminated and saturated by the existing power structures and therefore social and political agents cannot mobilise them or subvert their use.

Nevertheless, a balance is sought between shattering and the re-appropriation of the instruments of domination. On the level of re-appropriation, another model that exists is that of the Situationist International,[176] that held that the capitalist system is so omnipresent that it is only through its own subversion and transformation that liberation could occur. The key strategy here is adaptation rather than rejection. The term 'detournement' (hijacking, misappropriating) has come to describe the ways in which instruments, objects and all other things of use can be subverted and used in a different way from that which they were are designed for. Here, the revolution is found in revolutionising the use of the language and the instruments of domination.

In a sense, it seems that the answer to the question of resistance is to be found in a much more complex and varied approach between the straightforward use of the instruments of domination, through a total rejection, fragmentation and catharsis and appeal to a certain romantic authenticity which is located outside power, to the 'detournement' model that seek to re-appropriate the tools of domination and use them against themselves. The varied approach involves negotiation and thus is the embodiment of politics: some things will be used, some re-appropriated and others would need to be destroyed. Hence, it is a struggle over the use of the tools, the very way of using the instrument is the one which is more interesting and productive than the conflicts over whether to use it or not. Every instrument and every language involves a power struggle about its meaning, use and liberating potential.

What, then, remains of our hegemony? The long-term effect of resistance, both legal and non legal, is the exposure of the already-existing paradoxes and internal contradictions of hegemony, thereby weakening its structures and bases of legitimacy, and pushing it to use more coercion and lose its internal coherence. It can thus be claimed that the accumulative effect here might be the turning of hegemony into a system of domination. If what separates the two is the balance hegemony maintains between the acquisition and manufacturing of consent and the exercise of coercion, a system of domination operates on a much more exhaustive reliance on force. Whether

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[176] The Situationist International was a Marxist internationalist group of revolutionaries operating in the late 1950s and throughout the 1960s mainly in France, but also elsewhere in Europe. See Debord 1995.

this is the direction the State of Israel is marching in, only history will reveal. Nevertheless, this thesis follows the existing literature on hegemony and exposes its potential in analysing current day manifestations of authority, and the way people struggle daily to subvert them. The terms borrowed from the battlefield and the theory of war that were used throughout the thesis in different contexts, such as the 'theatre of war' and the 'war of position' are highly instructive in our context. Indeed, Gramsci explained that the battle against hegemony is waged in the 'trenches of civil society,' that is, in the struggle for public opinion, in the attempt to change political discourse, to get recognition, to achieve impact and finally to change reality. Similar to battles in the real trenches that characterised the First World War, the struggle is long and persistent. However, contrary to the real trenches, in politics, once the battle is won, it is won definitively.

Acknowledgements

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