

# Violent Jurisdictions

## On Law, Space and the Fragmentation of Discourse under Oslo

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There is such a thing as post-Oslo space.<sup>1</sup> In black-letter terms, it is captured in the legalese of “jurisdiction” as set out by the Interim Accords. On the ground, it is easily discerned in the nonstop mushrooming of checkpoints on West Bank and Gaza Strip roads. Its nature and borders are traced in indigenous mental maps that are constantly drawn and redrawn for routine patterns of movement under occupation. As such, post-Oslo space is a relatively new construct, formally introduced with the signing of the Oslo Accords.<sup>2</sup> While some of its jurisdictional arrangements are a carryover from pre-Oslo times,<sup>3</sup> it is nonetheless distinguishable from the latter by an overriding characteristic: Post-Oslo space is neither stable nor unitary; rather, it is defined by the incessant fragmentation of space in ever-mutating forms. This characteristic, latent in Oslo since its inception, was starkly brought to light following the outbreak of the current Intifada.

In this article, I make two arguments about post-Oslo space. First, that Oslo’s jurisdictional regime has fragmented the Occupied Territories in a way that renders its space amenable to Israeli acts of violence. To illustrate this argument, I use collective punishment as a specific example of the relationship between violence and Oslo’s jurisdictions. Second, spatial fragmentation and its ensuing violence has a discursive sidekick: Aside from physically cutting up the Occupied Territories, Oslo’s jurisdictions have also caused a fragmentation of the legal discourse on occupation. This fragmentation has proved especially problematic in developing legal arguments against Israeli occupation. The violence wrought by Oslo’s fragmentation of space is, thus,

both physical and discursive.

Before developing this argument in detail, one caveat should be mentioned at the outset. In this article, the goal is not to use Oslo as a framework for calibrating the legality of Israeli violence. Oslo is relevant as a source of spatial reordering which makes it tenable for certain acts of Israeli violence to take place during the present Intifada. Doctrinal analysis of the legality/illegality of violence under Oslo can hardly turn out to be a useful exercise. As a legal document, Oslo is riven with such gaps, conflicts and ambiguities, such that an analysis of the legality/illegality of violence would turn out to be predictably indeterminate. More specifically, “closure” is perhaps the most rudimentary form of collective punishment known in the Occupied Territories today. A basic example of Oslo’s indeterminacy with respect to “closures” would run as follows: Oslo compels both parties to “respect... and preserv[e] without obstacles, normal and smooth movement of people, vehicles, and goods within the West Bank, and between the West Bank and the Gaza Strip.”<sup>4</sup> Oslo thus makes it illegal for Israel to pursue the policy of “closure” on these roads. However, these very same roads happen to be fully located in jurisdictions under Israel’s security control. Under Oslo, Israel can legally put these roads under “closure” given the necessary “security and safety considerations.” And yet, Israel’s security considerations are not absolute. Again, under Oslo, Israel is obliged not to close down the roads in such a way as to prejudice “the importance of the economic and social life, development programs and projects, and emergency healthcare services of the Palestinian population.”<sup>5</sup> Therefore,



even security-based closures are arguably illegal. Oslo will make closures legal/illegal depending on when, where, and how you read the document.

International law, not Oslo, is the relevant frame of reference for determining the legality of collective punishment. In the Palestinian written presentation to the Sharam al-Sheikh Fact Finding Committee (known as the Mitchell Committee), no argument is made to the effect that collective punishment is illegal under Oslo. Instead, the Palestinian presentation argues that violence during the Intifada is “the result of both Israel’s failure to abide by international human rights law and humanitarian law, and the international community’s failure to insist that it do so.”<sup>6</sup>

This article is divided into three sections. First, I explain what is meant by post-Oslo space by mapping out Oslo’s jurisdictional regime and comparing it with pre-Oslo spatial ordering. Second, I outline the various forms of collective punishment made possible under Oslo’s jurisdictions. Finally, I conclude by discussing how the fragmentation of space has also fragmented the discourse on occupation.

## Law and Space

Following the 1967 War, the entire territory of the West Bank and Gaza Strip lay contiguously as a single jurisdictional unit under Israeli military occupation.<sup>7</sup> Palestinians were governed by one jurisdictional regime, which applied to the entire Occupied Territories, while Israelis traveling or settling there were subject to the extraterritorial application of Israeli law. Checkpoint arrangements are a good indicator of this

jurisdictional regime. On the ground, the Israeli army could be anywhere and everywhere, inside Palestinian urban and rural communities, on the roads connecting such communities together, as well as on roads leading from the Occupied Territories into the pre-1948 borders of Palestine. The army’s potential omnipresence partially accounts for the near-absence of permanent checkpoints on any of these roads. Thus, in pre-Oslo space, indigenous mental maps emerged in which movement around the full territory of mandatory Palestine became imaginable for the first time since the country’s partition following the 1948 War. Roads, devoid of checkpoints, governed by a single jurisdictional regime, connected West Bank and Gaza Strip towns with each other and with a previously inaccessible Palestinian hinterland inside Israel.

In post-Oslo space, jurisdiction came unbound. While the Interim Agreement opens by confirming that “the West Bank and the Gaza Strip [are] a single territorial unit, the integrity and status of which will be preserved during the interim period,”<sup>8</sup> the Agreement moves on to fragment the Occupied Territories under three types of jurisdiction: Territorial, functional and personal. As of the writing of this article in 2001, territorial and functional jurisdictions are divided into three core spatial regimes: Areas A, B, and C.<sup>9</sup> In Areas A, presently covering about 17.2% of the West Bank territory, the Palestinian Authority (PA) exercises jurisdiction over “internal security and public order,”<sup>10</sup> and has a wide range of “civil powers and responsibilities.”<sup>11</sup> In Areas B, covering about 23.8% of the West Bank territory, the PA has exclusive jurisdiction over “public order for



Palestinians,” and has “civil powers and responsibilities,” while Israel has the “overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism.”<sup>12</sup> Finally, Areas C, covering about 59% of the West Bank territory, is under full Israeli jurisdiction regarding security and public order, as well as “territory related civil matters” (e.g., resource allocation and infrastructure), while the PA has “civil powers and responsibilities not relating to territory.”<sup>13</sup> A similar division of jurisdiction governs the Gaza Strip, while another mutation governs select areas in the West Bank city of Hebron. These arrangements are further subordinated to an overriding regime of personal jurisdiction, effectively giving Israel exclusive jurisdiction over Israelis in the Occupied Territories.<sup>14</sup> Finally, Israel retains all powers that are not explicitly transferred to the PA under any of the above regimes.

Accordingly, while pre-Oslo space was governed by a unitary jurisdictional regime, post-Oslo space is fundamentally riven with internal differentiations. Oslo’s new jurisdictional regime is responsible for molding a new Palestinian subjectivity, one with new mental maps of the West Bank and Gaza Strip to trace the latest change in patterns of movement under occupation. In these maps, movement occurs in a fragmented space with unstable borders, a space torn between autonomy and incarceration. More concretely, Oslo’s jurisdictional regime was meant to improve the lives of Palestinians by providing them with increased autonomy to govern their own affairs. Concurrently, by promising autonomy, each of Oslo’s jurisdictions also

functions as a prison for its residents. For example, while streets in Areas A may be free of Israeli soldiers, moving from one Area to another Area now involves the crossing of checkpoints manned by Israeli soldiers, always capable of blocking access between jurisdictions. Further, the borders of this space are far from stable. Checkpoints demarcating the boundaries of Oslo’s various jurisdictions come in different stripes and are constantly changing. The paradigmatic example here is what Palestinians call the “flying checkpoint.” This is a combination of Israeli soldiers and light plastic blocks, opening one road and closing another, changing by the day one’s mental map of which road to take between any two given points.

“Jurisdiction” is used to endow post-Oslo space with the conflicting functions of sanctuary and prison. In doing so, the Oslo Accords appear in line with the basic workings of neo-colonial legality, where new jurisdictional arrangements reify old relations of authority based on spatial affiliation. Similar examples abound: Late apartheid in South Africa is marked by a conspicuous expansion of jurisdictional strategies as a mode of enforcing a rigorous separation between white neighborhoods and black shantytowns, effectively expelling black Africans from 87% of all land in the nation. Northern Ireland is another case where jurisdiction was used to similar effect.<sup>15</sup> Equally significant is local government law in the United States, where “the production of local jurisdictions and local cultures... can be an effective strategy for consolidating and maintaining centralized power.”<sup>16</sup> Finally, Israel applies jurisdictional



arrangements to disempower its Palestinian citizens.<sup>17</sup> In all of these examples, the power of jurisdiction lies in its ability to avoid defining authority in the language of force. As it levels and equalizes the parties involved (black / white, majority / minority, colonizer / colonized), jurisdiction gives the impression of moving away from a violent regime of status to a liberal universe ordered by contractual consent.<sup>18</sup>

## Space and Violence

Israeli violence against Palestinians in the Occupied Territories is as old as the occupation itself. However, to the extent that there is such a thing as post-Oslo space, there is also a specific type of violence that this new space has made available. The specific type of violence examined here is a new form of “collective punishment,” closely connected with the jurisdictional regime described above. This form of collective punishment is something that generally happens in relation to an Israeli military checkpoint on the road from one jurisdiction to the next. While punishment may literally take place at the checkpoint, more often than not, it does not: Palestinians are collectively punished in a space physically divorced from the checkpoint yet effectively rooted in its shadows. The “collective” character of the various forms of punishment described below is manifested by the fact that none of the Palestinians killed or injured and none of the Palestinians with property damaged or economic livelihood impaired were involved in clashes or resistance to occupation. They were punished simply by virtue of “being there,” e.g., their punishment was made possible merely by

the fact of living in post-Oslo space, by virtue of seeking movement within Oslo’s jurisdictional regime.

The list below is neither exhaustive nor conceptually coherent. It is merely intended to give a sense of the different kinds of collective punishment taking place in the jurisdictional interstices demarcated by Oslo’s checkpoints.

With respect to being punished *at the checkpoint*, the most simple example here is that Palestinians who need to physically cross the checkpoint from one jurisdiction to another are often “collectively” not allowed to do so. This is the moment when Oslo’s jurisdictions, promising sanctuaries of autonomy, flip into the prison-like role of spatial incarceration. This basic formula produces hundreds of mutations from the systematic smashing of headlights by Israeli soldiers of Palestinian cars waiting to cross the checkpoint, to Palestinians literally losing their lives because of roadblock delays that prevent ambulances from crossing checkpoints on time. In this vein, the Palestine Red Crescent Society cited at least 162 incidents during the first months of the Intifada in which its ambulances were denied access through the Israeli checkpoints between Areas A and B.

The simple act of “closing the checkpoint” produces an even longer list of collective punishments, covering diverse fields of social activity that span from education to economic development.<sup>19</sup> For example, since the beginning of the Intifada, checkpoint closures are responsible for shutting down 41 schools attended by approximately 20,000 students. Further, education at 275 schools has been severely



disrupted; many textbooks are missing from classrooms because Israel does not allow trucks carrying these books to cross the checkpoints. With respect to the economy, the inability of Palestinians to travel on roads blocked by the checkpoints has caused total daily economic losses estimated at \$12,700,000, which amounts to a 51% drop in the GNP. Every day checkpoints prevent 125,000 Palestinians from reaching work, producing an average daily income loss of \$6,250,000. The number of Palestinians living in poverty, those who earn less than \$2 a day, has doubled with “checkpoint closures,” affecting 1.3 million people today. The World Bank has estimated that if the policy of internal and external closure of the Occupied Territories is not lifted, then 50% of the population will live under the poverty line by the end of 2001.

Checkpoints can thus extend their shadows far beyond their immediate space. Laying siege on Palestinian population centers is the most ubiquitous example where the closing of checkpoints ends up punishing Palestinians regardless of their need to cross the checkpoint. Closure has meant that public services such as water and sanitation have deteriorated rapidly, increasing the frequency of water-borne diseases. Closures have disrupted health plans affecting over 500,000 children, including vaccination and early diagnosis programs, with the result that almost 60% of children in Gaza suffer from parasitic infections today. Even freedom of worship is affected: Since the beginning of the Intifada, checkpoints have prevented the absolute majority of Palestinians from reaching Jerusalem, denying them access to Christian and Muslim holy

sites even during religious holidays such as Easter or Ramadan.

In his report, Mr. Terje Roed-Larsen, UN Middle East Envoy, describes the above forms of collective punishment as the most severe and sustained set of movement restrictions imposed on Palestinians since the beginning of the occupation in 1967.<sup>20</sup> Herein lies another paradox of post-Oslo space: The cutting up of the Occupied Territories into a myriad of jurisdictions has allowed the realization of many of the above collective punishments, punishments which were spatially unimaginable prior to Oslo. For collective punishment to be feasible, the punished group of people must be located on some differentiated space, a space that may then be bounded and controlled. As argued earlier, pre-Oslo space remained largely undifferentiated: All occupied and all open.

One caveat is important to note here. Israeli acts of violence and Palestinian acts of resistance existed in pre-Oslo space, as much as they exist today in 2001. However, with the post-Oslo reconfiguration of space come alternative modes of violence and resistance. Among other factors, pre-Oslo violence derived much of its possibilities from the physical presence of the Israeli army of occupation within Palestinian urban and rural space, as opposed to the army’s post-Oslo presence outside and around such space. Thus, for example before Oslo, while closures rarely took place around Palestinian cities and villages, these sites were repeatedly subjected to curfews that restricted movement within them. Modes of resisting violence have also changed. The pre-Oslo presence of the Israeli army inside



Palestinian urban centers gave rise to a plethora of resistance strategies, based on social networking, which ultimately characterized the first Intifada. Due to a variety of factors, space being among them, most of the first Intifada strategies are unavailable in today's post-Oslo space.<sup>21</sup> None of this implies that conditions of violence and resistance qualitatively "improved" or "deteriorated" under Oslo. Space, and hence violence and resistance, are simply different.

## Fragmented Space Fragmented Discourse

Did you draw the map on soap because when it dissolves we won't have any of these stupid borders?<sup>22</sup>

The violence wreaked by post-Oslo space is not merely physical; it is also discursive. The fragmentation of space into a myriad of jurisdictions has made the imposition of a number of collective punishment measures against the Palestinian people possible. However, the dangers of fragmentation do not stop there. The legal reordering of space under Oslo has also produced a fundamental reordering in the discursive practices available to lawyers working against occupation. To the extent that Oslo's law of jurisdiction has fragmented the Occupied Territories, it has also fragmented the way in which we have come to discuss "occupation" itself. Oslo broke down the debate from a clear demand for de-colonization into minute legal arguments regarding the nature of powers in the different jurisdictions it created. In that sense,

law's relevance during the current Intifada has been discursive rather than normative. Law is not about right and wrong, nor is it about rights and duties. Law shapes what people discuss, and more importantly, what they fail to discuss. To the extent that Oslo caused a violent reordering of spatial experiences, it has also controlled and reshaped the discourse through which such experiences are discussed.

The Israeli-Palestinian conflict has always been legalized in the sense that law has always exerted a role in shaping the issues discussed under the rubric of the conflict. The pre-Oslo discourse on occupation was no more coherent than its post-Oslo counterpart; lawyers working prior to the Oslo Accords also had to discuss occupation in a fragmented way. They were constantly bogged down with minute and intricate questions ranging from specific challenges such as the demolition of Palestinian houses or the expropriation of Palestinian land, to the staging of a mega-critique of occupation under international law. The Accords' significance lies in the type of fragmentation it introduced. There are at least three ways in which the fragmentation of space under Oslo jurisdictions has fragmented the way we discuss occupation.

First, the emergence of Oslo's jurisdictions allows Israel to use law in order to stall, defer, postpone, suspend, and generally legitimate a condition of impasse in de-colonization. For example, Israel has repeatedly argued that it will not sit down and negotiate a final settlement of the conflict until the PA brings a "100% end to the violence." However, the jurisdictional regime created by Oslo makes it nearly impossible for the



PA to fulfill such a demand. In the West Bank, Palestinians control security only in Areas A, which in the aggregate is 17% of its territory. As discussed earlier, this aggregate is itself fragmented into disconnected islets of jurisdiction. In order for Palestinian security personnel to move between the various clusters, which form this 17%, they first need to obtain Israel's permission to cross through jurisdictions under Areas B and C. Israel arbitrarily grants and refuses to give such permission, thus effectively limiting the PA from achieving what Israel demands of it. In this way, the legal division of jurisdictional powers allows Israel to indefinitely postpone its return back to the negotiating table.

Second, by creating a jurisdictional regime in which an entity called the "Palestinian Authority" enjoys a certain degree of "autonomy" in Areas A, the Oslo Accords promote a fuzzy and decidedly fictitious impression of an independent Palestinian state. This impression is then marshaled against Palestinian interests in a variety of discursive maneuvers. For example, relying on the PA's jurisdiction in Areas A, Israel has argued before the Mitchell Committee that the present conflict in the Occupied Territories is an "armed conflict short of war."<sup>23</sup> Such a characterization is meant to give Israel legitimate leeway in using severe military violence against Palestinians. Needless to say, such a characterization is incorrect, least of all because the legal situation in the Occupied Territories is one of military occupation, with rules of engagement governed by international humanitarian law, as well as the Geneva Convention (IV).<sup>24</sup> In addition, Oslo's fuzzy jurisdictional regime allows Israel to impart on the

PA a misleading impression of sovereignty, leading the outside world away from the simple fact that the West Bank and Gaza Strip are still under occupation. Outsiders ask over and over why the Palestinians are complaining anyway since CNN/BBC/NY Times say that jurisdictions such as Areas A, Residual Areas, whatever you want to call them, are not occupied anymore? Explaining that Oslo's jurisdictional regime is really a neo-colonial ploy that allows Israel to continue occupying the territories while appearing not to do so, often serves to aggravate media-led syndromes of "Palestine-fatigue."

Third, the fragmentation of space allows Israel to justify its violence against Palestinians more easily, because Israel's violence is now viewed *piecemeal*. Each action belongs to a fragmented space, and each is governed by a fragmented legal discourse. Under X, Y or Z scenarios, in Areas A, B or C jurisdictions, was it legal/illegal for Israel to stop the ambulance/worker/schoolboy, demolish the house/orchard/olive tree, smash my car's headlights or kill my neighbor's cousin? Under the weight of a fragmented mass of stories, as we attempt to deal legally with each story on its own jurisdictional terms, Israel can legitimate its actions more easily. Palestinians lose the sympathy of the outside world for the rudimentary facts of occupation now masked by Oslo's jurisdictions.

And so, though it may be a well-worn cliché that Oslo as a "process," is dead, its concept of jurisdiction has demonstrated tremendous staying power in its ability to shape the issues we argue about today. In other words, Oslo has a specter, and its specter is discursive. In that sense, Oslo's violence does not stop at the fragmentation of



space in a way that makes people suffer under a myriad of collective punishments. Rather, it is these collective punishments, the product of post-Oslo space, that have silenced the greatest problem of all: Occupation. For people interested in formulating arguments against Israeli occupation, Oslo's immediate violence happens to be discursive. Instead of discussing the immediate need for de-colonization, we are now consumed with fragmented stories of segregated spatial experiences, staged in the shadow of checkpoints, on roads that lead us nowhere in particular.

#### End Notes

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- 1. The term "space" is a convenient, if somewhat too fashionable tool, for describing a set of new disciplinary movements that connect between social theory and geography. I use the term here in an intentionally opportunistic way, cutting and pasting between different schools of thought in the field. For an excellent collection of the various methodologies available, see Mike Crang and Nigel Thrift, eds., *Thinking Space* (London: Routledge, 2001).
- 2. The term "Oslo Accords," "Oslo," for short, will be used throughout this article to describe a series of agreements between the State of Israel and the Palestine Liberation Organization. The most important agreements for purposes of this article are the 1993 Declaration of Principles on Interim Self Government Arrangements (the "DOP") and the 1995 Palestinian-Israeli Interim Agreement on the West Bank and the Gaza Strip (the "Interim Agreement").
- 3. For example, the personal jurisdiction regime governing Israelis in the Occupied Territories under the Oslo Accords continues a pre-Oslo tradition in this field. For further analysis on this point, see Raja Shehadeh, *From Occupation to Interim Accords: Israel and the Occupied Territories* (London: Kluwer Academic, 1997) at 79-93.
- 4. *Interim Agreement*, supra note 2, Annex I, Art I.2.
- 5. *Id.*, Annex I, Article IX.2.b.
- 6. *A Crisis of Faith: Second Submission of the Palestine Liberation Organization to the Sharam al-Sheikh Fact Finding Committee*, 30 December 2000 at 20.
- 7. Following the 1967 War, Israel redrew the map of Jerusalem, officially annexed the territory, and then applied its civil jurisdiction over it.
- 8. *Interim Agreement*, supra note 2, Article XI.1.
- 9. The following description of the jurisdictional regimes in the Occupied Territories is intentionally simplified. A detailed analysis would further expose the numerous exceptions, which riddle the functional powers enjoyed in each of these jurisdictions. For a detailed discussion, see R. Shehadeh, supra note 3, at 35-45.



10. *Interim Agreement*, supra note 2, Article XIII.1.
11. *Id.*, Article XI.2.
12. *Id.*, Article XIII.2.
13. *Id.*, Article XI.2.
14. Article XVII.2.c of the *Interim Agreement* states that, "The territorial and functional jurisdiction [of the PA] will apply to all persons, except for Israelis, unless otherwise provided in this Agreement." Annex IV gives Israel exclusive personal jurisdiction over Israelis involved in any criminal offense, even for those committed in areas under full PA jurisdiction. In civil matters, Israelis come under PA jurisdiction only under six exceptional scenarios.
15. See Allen Feldman, *Formations of Violence* (Chicago: University of Chicago Press, 1991) at 17-45.
16. Richard Ford, "Law's Territory (A History of Jurisdiction)," 97 (4) Mich.L.R. 843, 915 (1999). For intellectual background, see Michel Foucault, "The Eye of Power," in *Power/Knowledge*, ed. Colin Gordon (New York: Pantheon Books, 1980) at 146, 149.
17. See Raef Zreik, "On Law, Planning, and the Shaping of Space," 1 (1) HAGAR International Social Science Review 168 (2000).
18. The same argument has been applied with equal force to liberal legality. Liberalism promises a move from status to contract, from relations based on sheer force to those based on the legitimate power of consent. Yet, force continues to permeate liberal legal regimes in a myriad of forms. An extensive critical tradition in this vein can be traced back to diverse founding texts in both fields of law and philosophy, such as Walter Benjamin or the American Legal Realists. For an excellent overview, see Beatrice Hanssen, *Critique of Violence* (New York: Routledge, 2000) at 16-29. For the Realist critique, see William W. Fisher, et. al., eds., *American Legal Realism* (London: Oxford University Press, 1993).
19. All the data mentioned below is cited from the Health Development Information Policy Institute, "HDIP Fact Sheet," covering the period of 28 September 2000-27 November 2001, available at: [www.hdip.org/intifada\\_files/fact\\_sheet.htm](http://www.hdip.org/intifada_files/fact_sheet.htm).
20. *Id.* as cited by HDIP.
21. For an excellent comparison between the first and second Intifada, see Rema Hammami and Salim Tamari, "The Second Uprising: End or New Beginning?" XXX (2) 118 *Journal of Palestine Studies* 5 (Winter 2001).
22. Question asked to the Palestinian artist Mona Hatoum on her artwork entitled "Present Time," depicting the map of Oslo on fragmented pieces of Nabulsi soap. See Mona Hatoum, et. al., *Mona Hatoum* (London: Phaidon Press, 1997).
23. See *First Statement of the Government of Israel to the Sharam al-Sheikh Fact Finding Committee*, 28 December 2000.
24. See *The Palestine Liberation Organization Final Submission to the Sharam al-Sheikh Fact Finding Committee*, 3 April 2001.

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