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Cities of God Under Occupation: Settler Colonial Practices and Pacification in The Favelas of Rio De Janeiro and The Occupied Palestinian Territories

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A Thesis Submitted by

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To The Department of Law

Spring 2022

in partial fulfillment of the requirements for the degree of Master of Arts in International Human Rights Law and Justice

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DEDICATION

In memory of Marielle Franco. Black woman, queer, favelada, activist, and human rights advocate. Your voice will echo in us.

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ABSTRACT

The 2002 film 'City of God' tells an anecdotal story of violence in the *favelas* of Rio de Janeiro, and is a reminder that the societies we tend to take for granted can actually be a luxury. The film portrays the daily life of the peripheries of Rio and its relation with drug trafficking, crime, and poverty, and how it has deteriorated into a war zone so dangerous that anyone risk being shot to death. Thousands of miles away from the Brazilian slums there is another so-called city of God, or the city chosen by God to be the home's capital of the chosen ones, which is believed by some to be the 'Land of Israel', and nowadays illegally occupies much of Palestinian territories. The occupied areas of Palestine – Gaza and the West Bank – similarly endure daily violent life with militarization and targeted killings policies. For the last decades, there has been a state of permanent conflict in both situations, in which the government wields the law in order to justify its construction of a narrative of warfare, based primarily in 'the name of security'. This paper identifies policies of governance developed by the narratives of peace and security, and that is heavily applied in both cases, by drawing on the chore mechanism that sustain sovereignty in modern liberal democracies: its right to occupy and kill, which can be widely accepted, or at least not condemned, in circumstances of war. The central argument in this paper is that the existence of a metaphorical war – against terror or drugs – is necessary in both cases for the State to put forward a plan of social control and domination, which is carefully constructed within the legal order.

Key-words: Pacification; Settler Colonialism; Necropolitics; *Favelas*; Palestine.

RESUMO

O filme Cidade de Deus, de 2002, conta uma narrativa anedótica de violência em uma favela do Rio de Janeiro, e é um lembrete de que as sociedades que supomos normais podem ser, em realidade, um luxo. O filme retrata o cotidiano da vida nas periferias do Rio e a relação com o tráfico de drogas, a pobreza, e como isso se deteriorou em uma zona de guerra tão perigosa que qualquer um se arrisca em ser atingido e morto. Milhares de quilômetros distante das favelas brasileiras existe outra então 'Cidade de Deus', ou a cidade escolhida por Deus para ser a capital do lar dos escolhidos por Ele, que é acreditada por muitos ser a 'Terra de Israel', e que atualmente ocupa ilegalmente muito do território palestino. As áreas ocupadas da Palestina – Gaza e Cisjordânia – de forma similar suporta o cotidiano violento com militarização e políticas de assassinatos direcionados. Nas últimas décadas houve a criação de um estado de conflito permanente em ambas as situações, em que o governo maneja a lei para justificar a construção de uma narrativa de guerra, baseando-se, principalmente, em 'nome da segurança pública'. Este artigo identifica as políticas de governança desenvolvida pelas narrativas de paz e segurança pública que é profundamente aplicada em ambos os casos e que recorre no mecanismo central que sustenta o conceito de soberania nas democracias liberais modernas: o direito de ocupar e matar, que pode ser amplamente aceito, ou, no mínimo, não rechaçado, em circunstâncias de guerra. O argumento central deste artigo é que a existência de uma guerra metafórica – contra o terror ou às drogas – é necessária em ambos os casos para que o Estado impulsione um plano de controle social e dominação, que é cuidadosamente construído dentro do ordenamento jurídico.

Palavras-chave: Pacificação; Colonialismo de assentamento; Necropolítica; Favelas; Palestina.

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I. INTRODUCTION

The 2002 film 'City of God', which was based on a book with the same name, tells an anecdotal story of violence in the *favelas* (slums) of Rio de Janeiro, and is a reminder that the societies we tend to take for granted can actually be a luxury, as posed by the film critic Stephen Holder in a New York Times article right after its release.[1] The film portrays the daily life of the peripheries of Rio and its relation with drug trafficking, crime, and poverty, and how it has deteriorated into a war zone so dangerous that anyone risk being shot to death. Thousands of miles away from the Brazilian slums there is another so-called city of God, or the city chosen by God to be the home's capital of the chosen ones, which is believed by some to be the 'Land of Israel', and nowadays illegally occupies much of Palestinian territories. The occupied areas of Palestine similarly endure daily violent life with militarization and targeted killings policies.

Although the social and political context and the historical background are very distinct, there are many associations that can be established between both 'cities of God' – the Occupied Palestinian Territories (OPT) and the favelas in Rio de Janeiro. In the popular belief of Brazilians, the associations are superficially made, and usually rely on the number of deaths and the amount of violence. But there are more similarities, such as the militarization, violent daily life and social injustices, which are important components of social exclusion through capitalist accumulation in both conflict areas.[2] The existence of both locations is, in the first place, a historical product of the mode of accumulation of settler colonialism.[3]

In November 2018, the far-right congressman Jair Messias Bolsonaro was elected the President of Brazil. In his thirty years of public life, Bolsonaro has openly promoted racist, homophobic and misogynistic discourse in which he has also argued in favor of torture and dictatorship. While campaigning, he addressed his voters with anti-human rights discourses, such as 'human rights to the right (i.e. good) humans'. The violence in his words has been matched by his body language: his main campaign symbol, which went viral in social media, was to raise his fingers like a gun with which

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[1] *See* Stephen Holder. *FILM REVIEW; Boys Soldiering in an Army of Crime*. Jan. 2003. The New York Times.

[2] Bruno Huberman and Reginaldo Mattar Nasser. "Pacification, Capital Accumulation, and Resistance in Settler Colonial Cities: The Cases of Jerusalem and Rio de Janeiro." *Latin American Perspectives* 46, no. 3 (2019): 131-148. At 132.

[3] *Id*. At 133.

to shoot his political enemies, which he considers the 'enemies of Brazil'.[4] This populist rhetoric gained the hearts of great part of the voters, who perceives human rights as being an instrument of protection of the 'enemies of the state'.

Bolsonaro's campaign was strongly supported by Brazil's increasingly influential Evangelical movement, who are known to support Zionist ideas.[5] As a result, Bolsonaro promised to move the embassy from Tel Aviv to Jerusalem. In response, Netanyahu was present in Bolsonaro's inauguration, and was the first person to be embraced by him. A couple of months later, the two heads of State visited together the Western Wall in Jerusalem. The embassy was not moved, but the solidarity between the countries augmented. From this alliance, some authors claim, it is already expected a deepen relationship on trade and defense between the countries – specifically the war industry – which can threaten the lives of various communities in Brazil and Palestine, [6] for reasons further discussed.

Similarly, the city of Rio de Janeiro and Israel has exchanged apparatuses of security since before two major sport events – the 2014 FIFA World Cup and the 2016 Olympic games. Back then, the involvement of the Boycott, Divestment and Sanctions (BDS) movement created the 'Olympic Without Apartheid' campaign to protest against the Israeli securitization of the Olympics.[7] As posed by some authors, such solidarity sought to advance transnational resistance against colonialism, capitalism and racism.[8] While Brazilian activists shed light to the extend of Israeli security exports to Brazil and how these connected to the ongoing military violence against Palestinians, especially in Gaza, academics such as Lisa Hajjar, Shir Hever and Daryl Li documented how Israel used the military occupation to test new weapons and security techniques, prior to their sales.[9] Additionally, Israeli government introduced its idea of 'safe city' at a seminar on public safety for eight Brazilian states that would host World Cup games. The concept of Israeli safe city is based on state surveillance of phones and internet in Gaza, and the safe city product has reached a global market predicted to generate $226 billion from 2015 to 2020.[10]

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[4] Vanessa Maria da Castro. *Why did Bolsonaro's supporters vote for him?* In the book from Conor Foley, ed. *In Spite of You: Bolsonaro and the New Brazilian Resistance*. OR Books, 2019.
[5] *Id*.
[6] Chandni Desai, Heather Sykes. *An 'Olympics without Apartheid': Brazilian-Palestinian solidarity against Israel securitization.* Race & Class, vol. 60(4), 27-45. At 28.
[7] *Id*.
[8] *Id*. At 29.
[9] *Id*.
[10] *Id*. At 31-32.

In the city of Rio, numerous *favelas* were subject to evictions, house demolitions, occupation and siege by Brazilian military and police forces right before the Olympics. Many of the technologies used to patrol and surveil the *favelas*, such as armored vehicles and drones, were made by Israeli security and weapons companies. Gradually, *favela* inhabitants, who historically have been living under a perpetual state of violence, were struggling to resist state violence, police brutality and militarism. Instead of providing people with education, health care, adequate housing, the Brazilian government start sending in *favelas* the military that kills, under the pretext of a highly legitimized 'state of exception'– a war on drugs and the drug traffickers who controlled *favela's* territories.

During the major sport events, there were increased police killings in *favelas*, with a black majority. Police reported that the deaths were mainly resulted from armed confrontations, but Brazilian lawyers' guild and Human Rights Watch documented how most were executed by close-range shots to the face, neck, or back. During the World Cup, in 2014, police killed forty-four people throughout the city, and were responsible for 1,100 extra-judicial deaths per year in Rio. [11] Yet, police brutality and killing of black people is not the exception, but the norm: in Brazil, executions, commonly addressed under the concept of 'resistance killings' by on-duty police are legally justified on the basis of 'resistance followed by death'. This concept was formalized in 1969, during the state of exception of the military dictatorship. Since then, young and black men continue to make up the majority of 'resistance killings' by police.[12]

Contemporary conflicts are transdimensional in character. As noted by Jairus Victor Grove, although conflicts are local in character – such as the *favelas'* armed conflicts in Brazil and the occupation of Palestinian territories –, they are usually connected by interest, solidarity, or curiosity to other distant spaces that in turn reinforce and resupply these local conflicts in ways that defy settled definitions of civil wars, proxy wars, or internationalized conflicts.[13]

The rhetoric of populism generally follows a logic that creates the conditions for building up the identity of the people as a political subject. Similar to the strategy utilized by colonial powers, it aims to confront the identity of the people to the people's 'other': the threat to its own existence, its enemy. Often, ethnic and religious groups are

[11] *Id*. At 35.
[12] *Id*. At 35.
[13] Victor Faessel. *The Oxford Handbook of Global Studies*. Oxford University Press, 2018.

preferential candidates for the enemy position.[14] In the case of unwanted and/or marginalized populations, often considered to be the 'enemies of the state', such as the inhabitants of *favelas*, and the Palestinians living under occupation, Law is wielded under the pretext of securitization in order to dispossess, remove, concentrate, and control the local population. The securitized presence of colonial subjects is a way to perpetuate repression.[15]

Governments frequently justify the state intervention by asserting that the daily militarization is associated with a 'rationalist transfer of policies aimed at resolving the governance challenges that operate in such contexts.'[16] Yet, the lack of infrastructure and access to public services in these areas, and, in the case of Palestine, the denial of self-determination for its people, helps to sustain the idea that the heavy security is actually a form of social control and oppression. In the Foucauldian analysis, a structure of surveillance and control is usually justified under a narrative of security. Therefore, this paper aims to analyze the state narratives fabricated – especially through law and order – with the purpose to build a normative framework to justify military intervention in both *favelas* of Rio de Janeiro and the Occupied Palestinian Territories (OPT). Also, it intends to explore the normative discourses – based on settler-colonial policies – constructed in which Israeli and Brazilian state justifies the instrumentalization of the sovereign's right to kill in the so-called 'war on terror' and 'war on drugs', respectively.

[14] Mônica Herz, Paulo Esteves. *Metaphors, myths and 'imaginary Venezuela': manufacturing antagonisms in the 2018 election. In* the book from Conor Foley, ed. *In Spite of You: Bolsonaro and the New Brazilian Resistance*. OR Books, 2019. At 87.
[15] Noura Erakat. *Justice for Some: Law and the Question of Palestine*. Stanford University Press, 2019. Loc 606.
[16] Victor Faessel. *The Oxford Handbook of Global Studies*. *Supra* note 13. At 132.

II. SETTLER COLONIALISM, PACIFICATION, AND CAPITAL ACCUMULATION

The imaginaries surrounding settler colonialism are usually linked to the arrival of the 'brave European explorers at foreign lands'. The archetype of men such as John Smith or *los conquistadores* – who traveled to at least four continents in order to open trade routes – is still very much present when settler colonialism is discussed. Western history tries to present settler colonialism as an institution of the past, left behind by "developed modern democracies". However, the elements that constitute both contemporary colonialism and capital accumulation, especially by pacification and dispossession of populations, tell a different story.

Like any other progress that Western democracies tell us through the (fairy)tales of industrial revolution – such as the opening of railroads that spread and speeded development throughout nations – the framework of settler colonialism, once based on barbarism and violent exploitation (although far from the sight of the metropole), has also moved forward in order to accompany the developments of such modern democracies. After all, why completely dump a strategy that seems to work so well in accumulating wealth?

The colonization and occupation of geographic spaces for the purpose of extending the scope of productive labor for capital accumulation is still very much present in capitalist societies. The structure of the economic process of wealth accumulation was developed over the centuries after the transition from feudalism to capitalism modes, and it consists in first, dispossessing the natives from their original means of subsistence; second, exploit their labor force and forcing them into a wage system, and, finally, the commodification of its resources and everything else used on their daily life, including security apparatuses.[17] The capital permanently disciplines people into and in their role as productive and efficient workers, and pacification is used as its means, as will be further discussed.

i. Capital accumulation and colonial wars: the civilizing narrative

The development of most of the Western nations coincides with the period in which they engaged in movements of internal consolidation and expansion across the

[17] George S. Rigakos. *Security/Capital: a general theory of pacification.* Edinburgh University Press, 2016. At 2.

seas.[18] The overseas expansion aimed at strengthening internal economy of Western nations through the advance of mercantilism, which was the economic practice where governments sought to ensure that exports exceeded imports in order to accumulate wealth with the purpose of augmenting state power at the expense of rival national powers.[19] To further this policy, the colonized nations were only allowed to trade with the metropole, although the trade was not equal. By the time settler colonialism took place in the Americas and elsewhere, European nations had already mastered the practices for capital accumulation, based on its recent domestic experience developing property rights and the idea of what Marx calls 'primitive accumulation'. In the 17th century, European nations were engaging in a commercial war in which the globe was its battlefield, and, as posed by Marx, colonial methods were developed employing state power, having as its flagship the law and the brutal force.[20]

The process of primitive accumulation consisted in separating the workers from the means of production, since without such separation there could be no capitalist accumulation.[21] This separation was mainly done by forcible expropriation of land from agricultural peoples, who were driven from their homes, turned into a productive work force, and then disciplined into the wage system, all based on decrees (Law), known as Acts of enclosure.[22] This practice of separating workers from any means of subsistence other than the wage, enclosing the 'wasted land' (or unproductive land) and claiming its property, and rooting the workers to a particular space was crucial to the proletarianization of people.[23] These methods, however, depended in part on brutal force, for instance the colonial system.[24] The same practices were broadly used by the European colonizers in the colonies, and the practices in the latter helped to develop even further the same practices within the metropole.

Hugo Grotius, the so-called 'father of international law', and Emer de Vattel, were two of many authors that built the foundations of the normative construction for the appropriation of 'unproductive land' without compensation vastly used to justify

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[18] A. Mbembe. Necropolitics

[19] Britannica, T. Editors of Encyclopaedia (2020, May 13). *Mercantilism*. *Encyclopedia Britannica*. https://www.britannica.com/topic/mercantilism

[20] Neocleous, M. (2012). International law as primitive accumulation; or, the secret of systematic colonization. *European Journal of International Law*, *23*(4), 941-962. At 949.

[21] *Id.* At 948.

[22] *Id*. At 951.

[23] *Id.* At 953.

[24] Mark Neocleous. *The dream of pacification: Accumulation, class war, and the hunt.* Socialist Studies/Études socialistes. 2003. At 2.

colonization. For them, the appropriation of 'wasted land' was justified, since cultivation was an obligation imposed by nature (or by God) on mankind.[25]

One of the most outstanding outcomes of the colonial encounter was the massive accumulation of capital by the settler colonizers by dispossessing and controlling the native population. David Harvey identified some of the processes which facilitated the development of accumulation by dispossession throughout history other than primitive accumulation, such as the monetization of exchange and taxation, particularly of land; the slave trade; usury, the national debt, and 'most devastating of all, the use of credit systems as radical means of primitive accumulation.'[26] Settler colonial practices focus on the permanent appropriation of the land as much as political and economic subordination of the indigenous population, monopolization of its resources, and the control of its markets,[27] and depended in part on brute force.[28]

In the dynamics of the occupation of settler-colonial practices – a form of colonialism that normalizes the continuous exploiting lands and resources to which indigenous peoples have a genealogical relationship[29] –, the native is subjected to both management and gradual elimination.[30] While colonizing and dispossessing native lands in the peripheral nations, the imperial powers demarcated themselves as having the universal culture, while the Other, the native, was the uncivilized. [31] This rhetoric justifies the exploitation of the colonized whose cultural and moral inferiority is demonstrated by the inferiority of their material conditions, at the same time that it legitimates the privileges of the colonizer and the 'usurpation' of indigenous land and goods.[32] The great project of colonization was supported by the law, rhetorically, aimed mainly at the 'civilizing mission' towards the native, who was considered different and inferior, but also capable of becoming the same.[33]

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[25] Mark Neocleous, International law as primitive accumulation. *Supra note* 23. At 957.
[26] Harvey, D. (2007). Neoliberalism as creative destruction, ANNALS. *AAPSS*, *610*, 22-44.
[27] D. Lloyd (2012). Settler colonialism and the state of exception: The example of Palestine/Israel. *Settler Colonial Studies*, *2*(1), 59-80. At 66.
[28] M. Neocleous (2011). War on waste: Law, original accumulation and the violence of capital. *Science & Society*, *75*(4), 506-528.
[29] Alicia Cox. "Settler Colonialism". Oxford Bibliographies in "Literary and Critical Theory". https://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0029.xml
[30] D. Lloyd (2012). Settler colonialism and the state of exception. *Supra note* 20. At 66.
[31] *See* Beckett, Jason. *Harry Potter and the Gluttonous Machine: Reflections on International Law, Poverty, and the Secret Success of Failure.* Trade Law & Development 13.2 (2021): 317-368.
[32] D. Lloyd. Settler colonialism and the state of exception. *Supra note* 20. At 67.
[33] *See* HP and GM. Jason Beckett. *Supra note* 32.

The new forms of capital accumulation and consumption perfected by the colonial adventures were based on permanent unequal exchange relations between the colonizers and the colonized. The technologies owned by the Western powers, such as weapons, medicine, and means of locomotion, very much contributed to the shaping of colonial empires and their hegemony. Moreover, the development of the art of the warfare with the mass production of weapons increased the firepower of the colonial state, which implemented the acceptance of death by the colonial subject and submission to technology, due fear.

Throughout the centuries, the Western powers presented themselves as the hero capable of taking away all failures and suffering of the colonized nations, utilizing its authoritative legal order. However, this civilizing mission could never completely succeed without disturbances or resistance from the native populations. In order to expand and enrich its own nation – by plundering and removing wealth and resources from the colonized world – the imperial powers would have to assure the perpetual nature of the great colonial project[34] which could be achieved by creating a strong imperial narrative and structure. The colonial authorities would, first of all, ensure the order of the native population, mainly by keeping them 'pacified', so they could ensure the logic of capital accumulation. The end purpose of the colonies was to make subjects more productive, first, by eliminating economic alternatives and then implementing a system of police to enforce a wage-labor system,[35] keeping the workforce pacified.

Although the term 'pacification' is often associated with military crushing of resistance, a closer examination of its theory and practice reveals a far more 'productive' dimension to the idea, in a sense that its practice is less about counter-insurgency tactics than it is about fabrication of order, in which crushing of resistance is but one part.[36] As posed by Mark Neocleous, 'the key practice of pacification is nothing less but a feat of enormous social engineering to (re)build a social order. And what is to be built in this new order is a secure foundation for accumulation.'[37] The entrenchment of the capitalist mode of production and reproduction through pacification in the colonies was also based on the implementation of the notion of productive and unproductive labor, similar to the idea of productive and unproductive land. The colony should be led by productive labor, and the penalty for being unproductive was the use of

[34] *Id.*
[35] George S. Rigakos. *Security/Capital. Supra note* 17. At 3.
[36] Mark Neocleous. *Supra note* 27. At 7.
[37] *Id.* At 8.

violence and coercion. As explored by Marx, the violence of wealth accumulation lies in the heart of the process of pacification; the idea of a police project, which should be understood as 'military power' or 'war power', has also historically been tied to the idea of pacification.[38] In other words, pacification is intended to conjoint the idea of police, war, and accumulation in the security of the capitalist order.[39]

The violence in the heart of pacification had multiple facets. Heavy security and police/military power ensured that the commodities and the technologies was kept safe for profiting purposes, since the juridical order would punish thieves and beggars, and the labor force would be available to exchange its labor power for wages. In the colonies, social control was slowly being implemented by means of irregular processes of pacification, that would target specific individuals, while also reinforcing race, class, and gender divisions among society. [40] One of the mechanisms utilized by the colonizers to reinforce this societal division and ensure the capital's conquest through productive labor in the west was 'the hunt'.[41] The hunt was the persecution of those who wouldn't contribute to the capital accumulation/productive labor, or of the victims of its unfair distribution. In a way, they epitomized the obstacles to the bourgeoisie's capital accumulation.

In Europe, the hunt occurred as the criminalization and persecution of vagabonds, beggars, and paupers. Capitalist accumulation was secured by the manhunt, that facilitated the creation and maintenance of order among society.[42] The assemblage of institutions through Law by imperial governments cracked down on vagrants, beggars and the idle, at the same time that militias were created for the same purpose.[43] The same practices of the hunt occurring in Europe were transferred to the colonies, in order to create a labor force able to reproduce the capitalist system of wealth accumulation. As posed by Neocleous, this 'manhunt' was 'nothing less than a core police power in the pacification of the proletariat.'[44] This system of the manhunt – shaped in a way to create, validate, and maintain the capital accumulation of the colonial world – evolved and transformed into what many modern democracies consider nowadays the 'security apparatuses'.

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[38] *Id.* 9.
[39] *Id.*
[40] *Id.*
[41] *Id.* At 9.
[42] *Id.*
[43] *Id.* At 10.
[44] *Id.* At 18.

The modern assemblage of institutions, procedures, analyses and reflections, calculation and tactics that capacitate the security and securitization of whole of populations is named by Foucault as 'governmentality'.[45] For him, 'with the government it is a question not of imposing law on men, but of disposing of things: that is, of employing tactics rather than laws, and even using laws themselves as tactics – to arrange things in such a way that, through a certain number of means, such-and-such ends may be achieved'.[46] The core mechanism of governmentality is the regulatory 'apparatus of security', which appeared in the eighteen-century Europe, when there was a governmental shift from power primarily directed over 'territories' to power increasingly focused on 'population'.

Foucault, when analyzing the history of Western nation-states through a politico-theoretical perspective in *Society Must be Defended*, addresses the consequences of the security state epistemic shift in Eighteen Century Europe, which helped the production of the racial divides. For Foucault, the emergence of 'biopolitics' is intimately connected with the emergence of the state racism discourse that helps to sustain the gap between the civilized and the uncivilized, particularly relating to the construction of 'the enemy of the state' or 'the enemy of the nation/society/people' – the subjects of the manhunt. The presence of the racial discourse in Western political thought and practices becomes important in order to reimagine foreign spaces and rule foreign people. It is the sovereign's practices of imperialism and exceptionalism (to include through the exclusion) that helps to sustain the racial narrative of the colonizer.[47]

The technologies of biopolitics aiming for pacification, became one of the most powerful strategies of Western imperial dominance since the colonizer's self-affirmation and identity construction is configured on the basis of stigmatizing and downgrading the identity of the Other. The identity of the native is fabricated as being different from the colonizer, in both spatial terms – alien –, but also in temporal terms – backwards, barbarous, and pre-modern.[48] The biopolitical focus on lives and bodies of the colonial subjects – and the subdivision of the population into subgroups (racism) is

[45] Michel Foucault. *Security, Territory, Population: Lectures at the Collège de France, 1977-1978.* Springer, 2007. At 10.
[46] Michel Foucault. *The Foucault effect: Studies in governmentality*. University of Chicago Press, 1991. At 211.
[47] *See* Achille Mbembe. *Necropolitics*. Duke University Press, 2019.
[48] Andrew W. Neal. *Cutting off the king's head: Foucault's Society must be defended and the problem of sovereignty.* Alternatives 29, no. 4 (2004): 373-398.

repressive *per se*.[49] As Hannah Arendt suggests, the politics of race is ultimately linked to a politics of death.[50] In Foucault's terms, the technology of racism aims the exercise of biopower, which regulates the distribution of death and make possible the state's murderous functions. It is, above all, the condition for the acceptability of putting to death.[51]

As a result, a 'society of security' appeared as the ideal model of modern liberal society ready to defend its universal values, and a project of securitization is utilized by powerful nation-states, within their borders and beyond. The law and the army (of the colonizer) represents the nation-states' most effective repressive apparatus that are used to enforce the colonizers' universal values – the latter representing the embodiment of the lawmaking violence, which is the foundation of the former. They are parts of a disciplinary and juridical machine, according to Joseph Massad.[52] For the philosopher Walter Benjamin, there is a lawmaking character inherent in military violence, which is needed in order to maintain the state.[53] To put this project of securitization in practice, the idea of war is gradually inserted in the idea of peace, since the pacification of those considered the enemies, the barbarous, was essential to the safety of the population.

In the eyes of the colonial conqueror, Western colonies are seen as the territory of 'savages', where *savage life* is just *natural life*, as posed by Achille Mbembe. They are not organized in a state form, their armies do not form a distinct entity, and their wars are not wars between regular armies. As such, colonial subjects are said to not establish a distinction between combatants and non-combatants, or between 'enemy' and a 'criminal'. It is impossible to conclude peace with them,[54] instead they need to be pacified. Colonial warfare is, thus, not subject to 'normal' legal and institutional rules, but to an exceptional one. Representing an exceptionalism, it crudely displays the ultimate expression of sovereignty: the capacity to dictate who may live and who must die. Here, *biopower* turns into *necropower*.[55]

The origins of the necropolitics of governance is connected to the colonial origin of the politics of identity and the pacification of its population. As posed by Achille

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[49] *See* John Morrissey. *Liberal lawfare and biopolitics*. *Supra* note 19.
[50] *See* Achille Mbembe. *Necropolitics*. *Supra* note 48. At 70.
[51] *Id.* At 71.
[52] Joseph A Massad. *Colonial effects: The making of national identity in Jordan*. Columbia University Press, 2001. At 4.
[53] *See* Walter Benjamin. *Critique of Violence.* In Reflections: Essays, aphorisms, autobiographical writings, ed. Peter Demetz, 277–300. 1978. New York: Schocken Books. At 283.
[54] Achille Mbembe. *Necropolitics*. *Supra* note 48. At 163.
[55] *Id*.

Mbembe, colonial occupation consisted in seizing, delimiting, and asserting control over a geographical area, and of assembling a new set of social and spatial relations on the ground. This territorialization amounted to the production of zones, enclaves, and hierarchies; different classification of people; resource extraction; and, finally, the elaboration of a large reservoir of cultural imaginaries of identities. Mbembe explains that these imaginaries 'gave meaning to the establishment of different rights for different categories of people, rights with different goals but existing within the same space – in short, the exercise of sovereignty',[56] in which the colonial power would wield its *power of death* over those who were targets of the manhunt. The manhunt – the central strategy of pacification and accumulation – is used as a necropolitical tool to guarantee the maintenance of the capitalist mode of production and reproduction for capital accumulation in settler-colonial spaces, considering that the life of those who do not fit into the capitalist mode of production is seen as less worthy, or even worthless.

It was due to the externalization of violence to the colonies and colonial subjects through racist narratives, mainly ruled by 'nonnormative conventions and customs' (or 'exceptionalism'), that the colonial conquest paved the way to a sphere of unregulated war, to *war-outside-the-law*, as posed by Mbembe. Paradoxically, while democracies were exteriorizing 'exceptional' violence onto the colonies with brutal acts of oppression, they were also internally developing norms and laws aiming at 'humanizing' war.[57] These norms would eventually become what the mainstream perspective considers nowadays the origins of 'international humanitarian law'. Although modern liberal democracies attempt to present themselves as recognizing fundamental rights and formal liberties by turning the laws of war into "Humanitarian Laws", the natural life remains included in the form of what is said to be the exception.[58] The right to kill, thus, still remains under the prerogatives of the sovereign.

ii. Bringing exception within Law

According to Carl Schmitt, the ability to suspend the law's application is a *sovereign exception*. For the author, the decision to declare an exception is based on the sovereign's own assessment of what is necessary to preserve the State's survival. The exceptional, in Schmitt's sense, is that space in which norms are suspended, and where

[56] *Id*. At 79.
[57] *Id*. At 25.
[58] Giorgio Agamben. *Homo sacer*. Homo Sacer. Stanford University Press, 2020. At 12.

programs of norm-implementation cease to govern decision-making.[59] Some authors, such as Lord Steyn, would say that the state of the exception is a zone beyond the reach of the rule of law, a space of lawlessness, and therefore not law at all.[60]

Giorgio Agamben, on the other hand, claims that the exception is a space in which the sovereign affirms its authoritative locus within the legal order by acting to suspend the law altogether. The state of exception, according to Agamben, is neither removed from the legal order, nor creates a special kind of law, but rather defines law's threshold. More precisely, in his view, the state of exception is neither external nor internal to the juridical order, it is rather a zone of indifference, where inside and outside do not exclude each other but rather blur with each other.[61]

Western legal doctrine views an exceptional fact pattern as *sui generis* (Latin for 'of its own kind'). In these cases, since there is no precedent or analogy, it is said that there is the need to establish a 'new law', or an exception to the rule. In Agamben's sense of exceptionality, declaring a fact as having a *sui generis* juridical nature produces a lawmaking authority that empowers the sovereign to produce new law that, in 'normal' situations, wouldn't be enforced.[62] The legal regime labeled as *sui generis*, however, is nothing but the outcome of a very well-constructed legal work, filled with expertise, procedure, scrutiny, and analysis, a space where law and legal proceduralism speak and operate in excess.[63]

The ability to declare an exception or a *sui generis* situation in the national and international system is predicated upon the strength of the sovereign to withstand censure. This means weaker actors, although able to produce municipal laws in order to structure its governance, can be subject to a sovereign exception by stronger states, but are rarely able to declare one against them. Overcoming this condition is not merely a matter of insistence on applicable legal norms, but requires instead a direct challenge of the geopolitical structure that maintains the framework of exception.[64] This is because there is a spontaneous consent given by the great masses to policies imposed on social life by dominant ('hegemonic') groups.[65] This consent, however, is not as consensual as

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[59] Fleur Jones. *Guantanámo bay and the annihilation of exception.* The European Journal of International Law 4 (2005): At 619.
[60] Johan Steyn. Guantanamo Bay: the legal black hole. *International & Comparative Law Quarterly*, *53*(1), 2014, pp.1-15. At 8.
[61] Fleur Jones. *Guantanámo bay and the annihilation of exception. Supra* note 60. At 624.
[62] Noura Erakat. *Justice for some. Supra* note 15. Loc 298.
[63] Fleur Jones. *Guantanámo bay and the annihilation of exception. Supra* note 60. At 614.
[64] Noura Erakat. *Justice for some. Supra* note 15. Loc 395.
[65] Joseph A Massad. *Colonial effects. Supra* note 53. At 4.

one would presume, since it is usually guaranteed by power and wealth, and a fear of turning into the enemy of the greater imperial nations.

In order to illustrate this *sui generis* framework that was widely used by modern liberal democracies, there are a few landmark cases decided in the US Supreme Court. In one of the first United States Supreme Court's decisions on Aboriginal Rights in 1823, *Johnson and Graham's Lesse v. M'Intosh*, the Court held that the US could not interpose Indian law, since it was not enforceable by US legal system.[66] Such aboriginal rights, which are not quite rights recognizable by the colonial powers, have come to be known as *sui generis* rights.[67] In Australia, similar decisions were being made until the *Mabo* decision. The Australian legal system was seen as 'frozen', and racial discrimination was embedded in it.[68] In *Mabo* case, the Australian Court decided that an aboriginal right has its origin in and acquires its content from the traditional laws acknowledged and traditional customs observed by the native inhabitants of a given territory. Yet, this assessment depended upon the recognition of the aboriginal law by Australian judges, in an Australian courtroom, which implies that Australian law is somehow superior.[69] Therefore, *Mabo* confirmed that the common law captures customary law within as an internal-external space of exception, incorporating it without assimilating it.[70]

Over the centuries, Western law has created a framework in order to talk across cultures about the supposed justice and efficacy of wartime violence.[71] For a while, the *sui generis* framework and the discourse of exceptionality helped sustain the appearance of legality when colonial powers faced difficulties in finding existing law. Yet, Fleur Johns observes, when analyzing the normative framework applied in Guantánamo Bay (considered by some as a 'space of exception')[72], that there was a shift in the XXI century, in which modern liberal democracies have been constraining or avoiding experiences of the exceptional. For the author, the exception has considerable effect in modern societies, since by assuming 'the affect of exceptionalism, the normative order'

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[66] John Borrows and Leonard I. Rotman. *The sui generis nature of aboriginal rights: Does it make a difference. Alta. L. Rev.* 36 (1997): 9. At 13.
[67] Christopher Bracken. *Sui Generis: Aboriginal Title and the State of Exception.* ARIEL: A Review of International English Literature 35, no. 1-2 (2004). At 15.
[68] Greta Bird and Nicole Rogers. *Talking to judges about the art of judging: an annotated performance text.* Pub. Space: JL & Soc. Just. 3 (2009): 1. At 13.
[69] *Id*. At 14.
[70] Christopher Bracken. *Sui Generis. Supra* note 68. At 17.
[71] David Kennedy. *Modern War and Modern Law.* Int'l Legal Theory 12 (2006): 55. At 176.
[72] *See* Fleur Jones. *Guantanámo bay. Supra* note 60.

soaks up 'critical energies with considerable effectiveness, for it is the exceptional that rings liberal alarm bells'. Moreover, in modern democracies, 'human rights law abhors a vacuum'.[73]

Today, efforts are being constantly made by authorities in order to legitimize tactics of violence as a way to carry out war through law, without resorting to an exception. The post 9/11 legal doctrine pushes the exception within the legal norms, and the sovereign does not need to decide upon it any longer, avoiding, thus, individual criminal responsibility. In modern liberal democracies, harsh security measures are codified or said to be found within international law. As a result, narratives of war are usually fabricated, such as 'war on drugs', or 'the war on terror'. By using rhetoric of war, the exceptionality is justified and found within the legal order. In addition, wartime is seen as a great event that includes the suspension of civil rights, and harsh measures against the 'enemies of state', that goes from interrogation of enemies to targeted killings policies.[74]

However, there are several problems in using traditional war powers in nonconventional campaigns of violence carried out by so-called 'enemies of the state'. In traditional and symmetric wars, the enemy is in uniform and belongs to an identifiable foreign government. In asymmetric conflicts, there is no uniform, no flag. The result in using traditional means of war to hybrid and unconventional conflicts is the enforcement of a set of rules which vastly diminish civil liberties.[75] Eyal Weizman observes that international organizations and human rights groups seek to push it in one direction (protect civil liberties and human rights), while state militaries seek to push it in the opposite one (diminish civil liberties and the derogation of human rights).[76] As some conservatives would say, 'human rights are to be given to the right (i.e. 'good') humans'. In this tug-of-war, the domestic audience that are often bombard with populistic views, usually perceives the human rights and its defenders as being indistinguishable from the enemy Other, and not rarely confront them.[77]

One of the greatest structural paradoxes of the laws of war is the authorization of some actions and the prohibition of others, allowing the appearance of a not stable line between both. The issue becomes wider when dealing with asymmetric armed conflicts,

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[73] *Id*. At 629.
[74] *See* David Kennedy. *Modern war and modern law. Supra* note 72.
[75] David Kennedy. *Modern war and modern law. Supra* note 72.
[76] Eyal Weizman. Legislative attack. Theory, Culture & Society 27, no. 6 (2010): 11-32. At 14.
[77] *See* Craig A. Jones. "Lawfare and the juridification of late modern war." *Progress in Human Geography* 40, no. 2 (2016): 221-239. At 228.

especially when the state approach is security related, such as Rio's 'war on drugs' and Israel's 'war on terror'. The governmentality in these situations, based on necropolitical policies, especially the manhunt, seeks to construct a 'society of security'. That is the main reason for the strategic instrumentalization of the laws of war. As posed by Nathaniel Berman, since 1990 the 'war on terrorism' has been replete with examples of the instrumentalization of the legal distinction between war and not-war, between 'exceptional' violence and 'normal' interactions.[78] In the modern democracies' perspective, it is through security that the old armatures of the law and discipline, bio and necropower, better function. In this process, the interpretation of the law is pushed and pulled in different directions, articulated in conflicting ways, by those with different strategic objectives.[79]

iii. Modern war, Law, Pacification, and Necropolitical Governance

In a century in which liberal democracies tend to reject the notion of exceptionality, asymmetric conflicts have reshaped the performance of hostilities and the institution of war. Today, to engage in hostilities involves a complex mix of local and global spaces and a greater quantity of actors participating and observing. As consequence, law has become a medium to influence the conduct of warfare, and the notion of legality plays a pivotal role in the construction of the narrative of armed conflicts.[80] As posed by David Kennedy, the distinction between war and peace, civilian and combatant, even terror and crime, have come to be written in legal terms, as Law has become the main instrument for interpreting and sustaining the modern war.[81]

Long ago, when symmetric parties used to go to war, there was supposed to be a sharper distinction between war and peace, in which it was needed a formal declaration of war and a clear distinction between combatants and non-combatants for the killing to be privileged. International law has granted combatant's privilege to most participants of armed conflicts (especially international armed conflicts) even if one side was engaged in pure aggression and the other is engaged in self-defense. By granting the combatant's privilege, law thus facilitates certain kinds of war. According to Berman, the privilege is central to the process of legally constructing war as an arena of

[78] Nathaniel Berman. *Privileging Combat-Contemporary Conflict and the Legal Construction of War*. Colum. J. Transnat'l *L.* 43 (2004): 1. At 7.
[79] Michel Foucault. *Security, Territory, Population. Supra* note 46. At 10.
[80] *Id*. At 2.
[81] David Kennedy. *Modern war and modern law. Supra* note 72.

permissible violence and of posing the Law of Armed Conflict as *lex specialis* in relation to 'normal' law, including criminal law and human rights law.[82] However, most of the armed conflicts fought in the last century occurred in the peripheries of the international system, and rarely between equivalent parties.[83] In the recent history of international law there was a shift from one battlefield to multiple and disaggregated battlespaces that has led to different narrative *(rhetorical)* forms of combat.[84]

The performance of legality became important in modern military theater. Military actors, whether states or non-state actors are producing performances of legality in combat in order to influence not only their adversaries but also a global audience.[85] International law articulates the 'right' to go to war, as it also defines the contours of what shall count as legal (just) and illegal (unjust) wars. The resort to the use of force – *jus ad bellum* – is highly regulated by international law under the United Nations Charter. After the battle commences, another set of rules is applied: *jus in bello*, otherwise known as Law of Armed Conflict (LOAC), or 'the laws of war'.[86]

The narrative of war expresses a disruption from the routine of peacetime. Wars can escalate dramatically and impact the economic and political resources which would otherwise have been allocated to public welfare projects.[87] As the narrative of war is now justified within the legal structure, the parties involved feel their cause is just and no one feels responsible for the suffering and deaths of war.[88] Moreover, the 'sovereign' becomes shielded from eventual individual criminal responsibility for international crimes and international wrongful acts. The modern warfare engaged by modern democracies, as a legal institution, needs its narrative securely entangled with the rule of law.

According to Clausewitz, 'war is nothing but the continuation of politics by other means'. Yet, Foucault identified a much earlier pre-Clausewitzian discourse of 'politics as war by other means', in which he explains that the first aphorism was coined considering the shift in European society after the Middle Ages perpetual state of war to

[82] Nathaniel Berman. *Privileging Combat. Supra* note 79. At 12.
[83] David Kennedy. *Modern war and modern law*. *Supra* note 72.
[84] Nikolas M. Rajkovic. *Dead Right: Late Modern Wars and the Insecurity of Vicarious Litigation.*
[85] *Id.* At 2
[86] Craig A. Jones. *Lawfare and the juridification of late modern war. Supra* note 78. At 222.
[87] Andrew Mack. *Why big nations lose small wars: The politics of asymmetric conflict.* World politics 27, no. 2 (1975): 175-200. At 185.
[88] David Kennedy. *Modern war and modern law*. *Supra* note 72.

a sense of civic peace in the Enlightenment.[89] Either way, war and politics are entangled until today. Nowadays, war and its narratives must be justified by political and legal means, and it is the appearance of grievance and the legality to solve it that usually justifies it. When imbued with the authoritative power to interpret law, sovereign states will subsume the facts onto the applicable legal framework in order to put forwards its state-building project, molded by neoliberal practices. If a certain group is said to be using methods of war in service of geopolitical ends, it would be reasonable to expect from the authorities the enforcement of powers associated with wartime.[90] Usually, these powers are invested in a discourse of 'pacification'.

In the case of the pacification of a population – such as the narratives utilized in the Palestinian struggle and the 'pacification program' of the Rio's *favelas,* and especially after 9/11 – it is applied a similar pattern of concepts used by law enforcement that are usually applied in counterinsurgency operations in 'failed' or 'failing' states, which are said to lack the capacity to enforce and/or uphold a monopoly of violence. The tactics of counterinsurgency are said to be a powerful means to (re-) establish the capacity for responsible self-governance, or, in another perspective, a governance that ensures capital accumulation by dispossession. As previously discussed, similar tactics were used in the pacification of the indigenous communities in the period of the great colonies of the Western empires, previously addressed as the 'manhunt'.

It is as if the colonial wars never ended: they just transformed and evolved, accordingly to the development of the Western mainstream legal discourse – to wars on drugs and wars on terror. Until this day, the necropolitical tactics of governance of modern liberal democracies aim a fabrication of a social order of wage labor that ensures capital accumulation by dispossession. Their most effective weapon for the 'manhunt' is the war power embedded in the police power, or the 'security apparatus'. With the security discourse, authorities can further their control over 'unwanted' populations, by the formation of violent geographies, enclosed spaces, targeted killing policies, and extrajudicial assassination, all under the logos of peace. The police and the

[89] *See* Andrew W. Neal "Cutting off the king's head: Foucault's Society must be defended and the problem of sovereignty." *Alternatives* 29, no. 4 (2004): 373-398. At 379.
[90] David Kennedy. *Modern war and modern law*. *Supra* note 72.

military are, thus, a hunting institution, aimed at pacifying the proletariat to ensure the wealth accumulation of imperial powers.[91]

II. Occupied Palestinian territories: settler colonialism and the open-air prison

i. The origin of settler colonialism in Israel

As explored in the first chapter, colonialism, and more precisely settler colonialism, characterizes as a set of policies and practices used to acquire foreign land and resources for capital accumulation, which is enabled by superior military power.[92] In the case of Palestine and the modern state of Israel, its history narrates the most notorious example of the implementation of settler colonialism through law in the XX century. The Israeli settler-colonial framework allows the identification of the racist and necropolitical structures in Palestine, especially in the Occupied Palestinian Territories, involved in the violent pacification of Palestinians.[93]

The policies of governance in Palestine were shaped more than a century ago. Differently from other European colonial regimes in the region, Palestine could not reach its independence after the Second World War due to the institution of a legal framework of exceptionality evoked by British colonial tactics. A sequence of *sui generis* situations have always denied self-governance to Palestinian people. This exceptional legal regime became central to Israel's governance of the region. Throughout the decades, British colonial prerogatives were transformed into international law and justified the legal framework created in order to deny self-governance to Palestinian people, and turn Palestine into Israel, as will be explained.[94]

The Mandate system was a legal regime carved within the League of Nations to administer non-self-governing territories appropriated from the Germans and the Ottomans after the First World War. The Mandate for Palestine was established in July 1922 and declared 'the historical connection of the Jewish national home in Palestine', while not mentioning Palestinian national rights or the right of self-determination. The Palestinian Arabs, which were the great majority of the Mandate's population, appeared in the document only as 'non-Jewish'. Palestine was then offered to have self-governing institutions with the condition that it accepted the Mandate system, thus formally

[91] *See* Mark Neocleous *Supra note 27*.
[92] *Id.*
[93] Bruno Huberman. *Pacification, Capital Accumulation, and Resistance. Supra* note 2. At 131.
[94] Noura Erakat. *Justice for Some. Supra* note 15. Loc 860.

accepting their legally subordinate position to the Jewish community.[95] For that reason, Palestine rejected the offer, remaining under British control.[96]

By the end of the Second World War, Palestine was considered 'sufficiently advanced that their provisional independence was recognized,'[97] and it was not possible for Britain to keep the same harsh measures of the military regime any longer. Keeping the Palestinians under control required the implementation of martial law in Palestine in order to deny Palestinians self-governance and civil liberties. As analyzed in the First Chapter, when considering structures of settler colonialism, the narrative of exceptionality is usually evoked in order to place colonial subjects 'outside of the law', or, in other words, to include and control through exclusion. However, the legal framework applied to colonial subjects represents the law in excess, the crudeness of law, and its relationship with violence. In Palestine, harsh measures within the martial law were taken with the implementation of the civil government in order to control, hunt down, and civilize the native population, such as death penalty and life imprisonment, people were detained without charge or trial, curfews were imposed on entire villages and towns, and newspapers viewed as agitating against the Mandate were suspended.[98]

In 1947, two years after the creation of the United Nations (UN), Britain relinquished her mandate to the UN, which became the institution responsible for dealing with the political aspects of the question of Palestine. On 29 November 1947, the UN General Assembly passed Resolution 181, known as the United Nations Partition Plan for Palestine, which presented the two-state solution and did not consider the will of the local population.[99] However, Israel declared its establishment in May 1948 while denying a Palestinian state under the argument that Arab countries have rejected the Partition Plan.[100]

The Jewish refugee crisis was one of the factors responsible for opening the path for the creation of a Jewish National Home, and the mass annihilation of Jews by the use of modern machinery of death by the Nazi Regime.[101] The location of the territory

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[95] Noura Erakat. *Justice for some*. *Supra* note 15. Loc 860.
[96] *Id.*
[97] *Encyclopaedia Britannica*, 8th ed., s.v. "Mandate: League of Nations" Chicago: Encyclopaedia Britannica, 2020.
[98] Noura Erakat. *Justice for some. Supra* note 15. Loc 921.
[99] *Id.* Loc 1006.
[100] Noura Erakat. *Taking the Land without the People: The 1967 Story as Told by the Law*. Journal of Palestine Studies 47.1 (2017): 18-38. At 19.
[101] *See* Noura Erakat. *Justice for some. Supra* note 15. Loc 982.

of Palestine was an important one according to the settler-colonial project of the World Zionist Organization, which was grounded in Zionist ideology aiming to create an ethnically defined nation for the Jewish in Palestine, as a 'return' of the Jewish diaspora to their homeland. In the concept of the Zionist ideology, the Jewish people were the original natives of Palestinian lands. As declared by David Ben-Gurion, Israel's founding Prime Minister, Israel would be part of the Middle East only in geography, as it did not intend to be a pluralistic society reflective of the region, and it would only be viable with an 80 percent Jewish majority.[102]

The morning after the partition plan was adopted 75,000 Palestinians in the city of Haifa were subjected to a campaign of terror, instigated by the Irgun and the Hagenah (Zionist militias).[103] The Zionist leadership understood that violence was necessary to implement the partition plan, so they mobilized to establish a Jewish state by force. The plan, though framed in defensive terms, instructed Zionist paramilitaries to inflict 'forceful and severe blows' even against civilians who provide militants with assistance and shelter, while targets would include clubs, cafes, and meeting assemblies.[104]

Zionist militias forcibly removed Palestinians or encouraged them to flee, deploying a framework of self-defense and military necessity.[105] Aiming to achieve a defensive system, the Israeli military plan authorized the destruction of villages by setting them on fire, by blowing up, and planting mines in the debris, and, in the event of resistance, the dissenting armed forces should be wiped out and the population expelled outside the borders of the state.[106] According to the legal scholar Noura Erakat, the use of violence and the logic of collective punishment against Palestinians, policies of governance that would continue to be used until this day, underpinned Israeli military strategy in the founding years of the Israeli state, even in cases where Palestinians posed no military threat.[107]

With the establishment of Israel and its acceptance as a member state in the United Nations, the erasure of Palestinian peoplehood was gradually being domestically and internationally normalized. Since the Palestinians were considered a threat to Israeli survival, the violence embedded in the law, first evoked as having a *sui generis* nature,

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[102] Noura Erakat. *The Sovereign Right to Kill: A Critical Appraisal of Israel's Shoot-to-Kill Policy in Gaza*. International Criminal Law Review 19, no. 5 (2019): 783-818. At 791.
[103] John Docker. *Instrumentalising the Holocaust: Israel, settler-colonialism, genocide (creating a conversation between Raphaël Lemkin and Ilan Pappé)*. Holy Land Studies 11, no. 1 (2012): 1-32. At 16.
[104] Noura Erakat. *Justice for some*. *Supra* note 15. Loc 1035.
[105] Noura Erakat. *The Sovereign Right to Kill*. *Supra* note 18. At 791.
[106] *Id.*
[107] *Id* At 793.

was increasingly blurring and transforming itself into normalcy. In the next couple of decades, the Israeli approach to Palestinian natives would be security-dominated, as they would be the main target of a major manhunt in the region, and the refugees were denied the return to their lands.[108] The shift of Palestine into Israel illustrates international law's utility in advancing settler-colonial desires by using the same strategies of past colonial wars,[109] as it will be explored in the next sections.

ii. The transformative occupation and the r(u)ole of Law

Beyond Israel's borders, the challenge of establishing an apparent state of emergency in order to subjugate Palestinian citizens proved more difficult, considering Israel's lack of sovereign jurisdiction in those territories. Considering the rejection of the Partition Plan by the Palestinians, the international community considered the West Bank as part of Jordan, while Gaza was under Egyptian jurisdiction.[110] As a consequence of the 1967 war initiated by Israel, with simultaneous attacks against the Egyptian and Syrian air forces, the territories of Sinai (Egypt) and Golan Heights (Syria) were occupied by Israel. However, these territories did not pose as many legal challenges as the West Bank, Gaza Strip, and East Jerusalem, also occupied by Israel.[111] The main concern was regarding the legality of Israel's occupation and its compliance or non-compliance with its legal obligations as an occupying power. The arguments of the discussions were mainly found in international humanitarian law – the laws of occupation and international human rights law.[112]

The mainstream legal order used the atrocities of the Second World War as a historical moment to develop international law regarding armed conflicts. The objective was to ensure a more 'humanitarian' approach to the laws of war. The plenipotentiaries convened in Geneva, in 1949, and drafted four conventions that were said to be an attempt to better protect civilians in situations of armed conflict.[113] The Convention Relative to the Protection of Civilian Persons in Time of War, usually referred to as the Fourth Geneva Convention, particularly enhanced protections of civilians by classifying them as protected persons under international humanitarian law. In international law,

[108] Noura Erakat. *Justice for some. Supra* note 15. Loc 1137.
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] Hani Sayed. *The Fictions of the "Illegal" Occupation in the West Bank and Gaza.* Or. Rev. Int'l L. 16 (2014): 79. At 102.
[113] Nils Melzer. *International Humanitarian Law: a comprehensive introduction*. International Committee of the Red Cross, 2016. At 36.

there was a shift of attention 'from the rights of the ousted sovereign to the rights of the civilian under occupation'.[114] Israel ratified the Fourth Geneva Convention in 1951.

Article 35 of the Israeli Military Proclamation Number 3, issued by Israeli Area Commanders of the West Bank in July 1967, instructed Israeli military courts in the West Bank to apply the Fourth Geneva Convention, under which Occupation Law is subsumed.[115] Article 49 of the Fourth Geneva Convention expressly forbids the individual or mass forcible transfer of protected persons from occupied territory; and the transfer or deportation of the occupier's civilian population into the occupied territory. The norm was created to explicitly prohibit any future occupying power from using their authority to fulfill political, racial, territorial, or colonial ambitions they might nurture.[116] Besides the Fourth Geneva Conventions, the provisions of The Hague Regulations of 1907 also address norms regarding occupation law.

In mid-September of 1967 the Israeli Prime Minister Levi Eshkol sought to establish a civilian settlement near Bethlehem, in the West Bank.[117] He thus asked Theodor Meron, then Legal Adviser to the Minister of Foreign Affairs, whether occupation law applied to the West Bank. The legal adviser concluded, in a top-secret memo, that the Fourth Geneva Convention did apply in the OPT and its Article 49 categorically prohibited the establishment of permanent civilian settlements in the West Bank and the Gaza Strip. Additionally, Meron advised in his memo that, if Israel chooses to build a civilian settlement, it should be built in the framework of camps and with the appearance of a temporary nature.[118]

By the end of September 1967, Israel started building civilian settlements in the West Bank under the coverage of military outposts, to create a veneer of temporality. Despite their civilian status, the government would publicly refer to the settlers as soldiers.[119] Later on, however, Israel would claim the inapplicability of occupation law (Fourth Geneva Convention and The Hague Regulations) in the Occupied Palestinian Territories, primarily in order to avoid compliance with the obligations of an occupying power, such as the rights of the protected persons. Additionally, the norms embedded in the Fourth Geneva Conventions and The Hague Regulations consider the occupying power as a trustee, incapable of modifying the territorial and demographic *status quo*

[114] Noura Erakat. *Justice for some. Supra* note 15. Loc 1430.
[115] Noura Erakat. *Taking the Land without the People. Supra* note 99. At 21.
[116] *Id*. At 19.
[117] Noura Erakat. *Justice for some.* Supra note 15. Loc 1302.
[118] *Id.*
[119] *Id*. Loc 1315.

ante (before the occupation), which, therefore, would be a hurdle for future Israeli settler-colonial policies.[120]

Meanwhile, Israel would avoid absorbing the Palestinian population, as this would disrupt the demographic Jewish majority achieved after the 1948 War.[121] Additionally, by 1967 colonialism and conquest had become delegitimized in the eyes of the international community. Due to the development of 'Human Laws' in the mainstream legal order, the old colonial tactics for the exploitation of native lands could not be used any longer, and there were not many legal options left. For Israel to 'grab the land without its people' it had to construct legal and political machinery through legal work to justify the administration of West Bank and Gaza and its policies of governance.[122] In order to implement its regime of accumulation by dispossession, including its necropolitical tactics, as discussed in the previous Chapter, Israel would need to maneuver its legal structure, to create the appearance of legality.

A very common settler-colonial narrative, when the colonizer intends to make the new environment they land at as their permanent home, is to claim that the indigenous of the land does not exist, as people or as a community with a separate identity, and the land is empty. In many cases, in order to ensure the land is in fact empty, the settler just does not exploit but eliminates the native population[123], such as with the manhunt institution. Israel, when confronted to safeguard international humanitarian norms, claimed the land was empty when the first Jewish settlers arrived, in other words, it was *terra nullis*.[124]

Law Professor Yehuda Zvi Blum, a lecturer at the Hebrew University of Jerusalem, published an article titled 'The Missing Reversioner: Reflections on the Status of Judea and Samaria' in 1968.[125] The article, an examination of the lawfulness of a military order under the law of occupation, explored a preliminary question on whether Jordan had a valid title to Judea and Samaria (West Bank).[126] The article concludes that Jordan had no title, nor did anyone else, and, therefore, the law of occupation did not apply in the situation of the West Bank. Blum's 'missing

[120] *Id*. Loc 1457.
[121] *Id*. Loc 1315.
[122] *Id*. Loc 1326.
[123] Somdeep. Sen *Decolonizing Palestine: Hamas between the Anticolonial and the Postcolonial*. Cornell University Press, 2020. At 11.
[124] Id. At 32.
[125] Eyal Benvenisti. *An Article that Changed the Course of History?* Israel Law Review 50, no. 3 (2017): 269-298. At 269.
[126] *Id*. At 271.

reversioner' theory became the centerpiece of Israel's official position to deny the applicability of the law of occupation in the West Bank and Gaza Strip. In 1971, Israel's Attorney General, Meir Shamgar, stated that:

> [t]he territorial position [of the West Bank and Gaza] is thus *sui generis*, and the Israeli government tried therefore to distinguish between theoretical juridical and political problems on the one hand, and the observance of the humanitarian provisions of the Fourth Geneva Convention on the other hand.[127]

By this time, Israeli did not consider the Palestinians as a juridical people and therefore denied their rights to sovereignty and self-governance. The Palestinian people had very little to say in the debate. The supposed sovereign void in the territories, in Israel's understanding and Blum's theory, nullified the application of occupation law and freed Israel from the law's strict regulation. The argument presented was that the territories were neither occupied nor not occupied, but rather *sui generis*.[128] The construction of this exceptional situation reflects the outcome of a policy needed in order to avoid the regulation of the territories through occupation law. It was desirable for Israel that settler-colonial mechanisms were assembled in order to dispossess, concentrate, and control the native population.

In the international arena, right after the conquest of territories in the 1967 War, Israel started to engage in a political chess match with two countries it has seized lands from – Egypt and Syria – promising it would return the territories in exchange for the promise of peace.[129] In November 1967, the United Nations Security Council passed Resolution 242, which called on the Arab states to accept Israel's right to 'live in peace within secure and recognized boundaries free from threats or acts of force'. For geopolitical reasons, Arab states acknowledged the resolution, mainly because of its clause calling for Israel to withdraw from 'territories occupied in the recent conflict'.[130] The Resolution, however, did not address the Palestinians as a people, nor mention their right to self-determination. Moreover, the omission of the definite article 'the' when referring to 'territories occupied' by Israeli raised the question: from which territories would Israel have to withdraw in order to allow peace?[131]

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[127] *Id.*
[128] Noura Erakat. *Taking the Land without the People. Supra* note 99. At 19.
[129] Noura Erakat. *Justice for some. Supra* note 15. Loc 1504.
[130] *Encyclopaedia Britannica*, 8th ed., s.v. "United Nations Resolution 242" Chicago: Encyclopaedia Britannica, 2020.
[131] *See* Noura Erakat. *Justice for some. Supra* note 15.

iii. The permanent occupation and the r(u)ole of Law

After launching its settler-colonial state, Israel set off a new colonial endeavor to expand its boundaries even further. Throughout the 1970s, there was a proliferation of civilian settlements in the West Bank. Israel's Prime Minister Menachem Begin justified the presence of the settlements as temporary and therefore not a seizure of Palestinian lands.[132] Although temporary, Israel's Chief Supreme Court Justice, Meier Shamgar, would argue that factual conditions determined the length of the occupation, which could be indefinite so long as not permanent. In his own words, 'according to international law, the exercise of the right of military administration over a territory and its inhabitants had no time-limit' and this system of government could 'continue indefinitely'.[133] This legal work has allowed Israel to continue its civilian settlement, demonstrating intent not to annex the land and without posing on the territories any duty to withdraw.[134]

Long before the occupation of the West Bank and Gaza Strip, Israeli Courts had already adopted the *dualist* theory in order to enforce international law in domestic courts. In this approach, customary international law is part of domestic law and, unless it contradicts an act of parliament, it applies in domestic courts. In contrast, norms contained in treaties must be explicitly incorporated into domestic law by an act of parliament in order to be applied by domestic courts.[135] The laws of occupation prohibiting the establishment of civilian settlements in occupied territories, as being norms of customary law are thus theoretically enforceable in Israeli Courts.[136] However, the Supreme Court has refused to apply the Fourth Geneva Convention as part of customary international law and has exempted itself from expressing its opinion regarding the application of Article 49 (6) of the Fourth Geneva Convention.[137]

The Israeli Supreme Court's jurisprudence on settlements was framed, between 1968 and 1979, by three points: it had avoided ruling on the legality of the settlements while claiming that general petitions against the policy settlement were non-justiciable; it had rejected arguments based on the prohibition of populations transfer as customary

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[132] *Id.* Loc 1842.
[133] Meir Shamgar. *The observance of international law in the administered territories.* In The Progression of International Law, pp. 429-446. Brill Nijhoff, 2011.
[134] Noura Erakat. *Justice for some. Supra* note 15. Loc 1765.
[135] Virginia Tilley. *Beyond occupation: apartheid, colonialism and international law in the occupied Palestinian territories*. Pluto Press, London, 2012. At 6.
[136] *Id.*
[137] The Article states "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

law; and it had accepted that civilian settlements by Israel's nationals could serve military goals.[138]

In 1972, in the *Helou* case, the Supreme Court ruled that it was necessary to evict the Bedouin inhabitants from their place of residence, an area separating the Gaza Strip from the Egyptian Sinai, claiming a security measure, even though the same land which they were living was designated for Jewish settlement. This opinion paved the way for the establishment of settlements under the guise of military or security needs.[139] In the *Beit El* case (1978), private land was requisitioned from Palestinian landowners on the pretext of military necessity and given to civilian Jewish settlers in accordance with the military's strategic regional defense plan. In this case, the Israeli Supreme Court (ISC) did not recognize the distinction between the needs of the occupying army and the general security interests. For the Court, '[t]he military aspect and the security aspect are therefore one and the same.'[140] After these two decisions, a recurring argument used by Israel to justify requisition of land in the West Bank was 'for essential and urgent military need.' According to the scholar Noura Erakat, ISC would act steadily in the creation of the legal fiction of military necessity, while at the same time blocking any Palestinian effort to challenge the contradictions posed by the requirements of humanitarian law.[141]

In 1979, in the *Elon Moreh* case, civilian militant settlers' movements had initiated the establishment of a settlement in Palestinian private land, which was later supported by the military, for military reasons, although the first and dominant consideration had been political. When deciding on the matter, the ISC diverged from the previous decisions by limiting 'military needs' to needs based on a military-strategic analysis of the dangers faced by the state, rather than ideological goals.[142] The ISC, then, rejected the claim that the military requisition of private land for the establishment of permanent settlements could be lawful.[143]

Following the *Elon Moreh* case, the Israeli government justified the land seizures in the West Bank through a combination of administrative tools, including the declaration of land as state land, or as absentee property, expropriation for public needs,

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[138] Virginia Tilley. *Beyond occupation Supra* note 136. At 55.
[139] *Id.* At 56.
[140] *Id.*
[141] Noura Erakat. *Justice for some. Supra* note 15. Loc 1765.
[142] Virginia Tilley. *Beyond occupation. Supra* note 136. At 57.
[143] *Id.*

among others.[144] The goal was to 'settle the areas between the concentration of the minority population (Palestinians) and around them, with the objective of reducing to the minimum the possibility for the development of another Arab state in these regions.'[145] Later Supreme Court decisions dealt with the procedures to declare Palestinian land as state land, and other aspects of the settlement policy, such as 'planning decisions, the building of roads, and the expropriation of land for that purpose.'[146]

Israel's juridical approach highlighted the prolonged character of the occupation in Palestinian territories. This quasi-permanent character of the occupation draws attention in two ways: first, whether prolonged occupation softens or eliminates legal restrictions on the occupying power in making legislative changes in the occupied territory; and second, whether Israel has exercised its legislative competence over the OPT such that it has effectively annexed the territory, either *de jure* or *de facto*. Either way, as posed by Professor Virginia Tilley, its regime of occupation is characterized as settler colonialism.[147]

The settler-colonial framework – which is indispensable for the necropolitical tactics of governance in Palestine – was and still is applied through the legal work produced by the occupier. The construction of all these legal exceptions – military necessity, public needs, etc – displays the creation of a violent geography in Palestine. Although 'the exception' should confirm the norm, in the OPT it doesn't: the exception appears to be the norm, considering the number of settlements being constructed in the occupied lands. The legal work produced by Israelis over decades seems to be the foundation of the exception becoming normalcy. In other words, the fabrication of a forged exception would no longer be needed. For Palestinians, nothing really changed. Israel was simply following the well-known script posed by liberal democracies by wielding its law in accordance to put forward its state-building project, which encompasses the colonizers' safety, and the realization of its economic, political, and ideological ambitions at the expense of Palestinian livelihood.

[144] Hani Sayed. *The Fictions of the "Illegal" Occupation. Supra* note 113. At 112.
[145] Virginia Tilley. *Beyond occupation. Supra* note 136 At 57.
[146] *Id*.
[147] *Id.* At 60.

iv. The myth of the peace process and the creation of a violent geography

In the 1990s, after the First Intifada, the Palestinian, represented by the PLO[148], shifted its strategy: it would finally agree on the application of UNSC Resolution 242 to the interim process.[149] However, although Palestinians believed that the agreement would facilitate a gradual but inevitable Israeli withdrawal and grant Palestinians state sovereignty, it actually did exactly the opposite. To achieve its goals, Israeli negotiators pursued a strategy that permitted maneuvering around international law and human rights norms by giving its own interpretation.[150]

One of the main goals of the PLO-Israel agreement was to perpetuate Palestinian subservience to Israel and its fragmentation. Edward Said called the agreement 'an instrument of Palestinian surrender, a Palestinian Versailles'.[151] In practice, Israel wanted to legalize the existing arrangements it had unilaterally imposed on Palestinians and their lands since 1967.[152] The Oslo agreements sustained the legal and administrative arrangements that Israel had established over the preceding 24 years, many of which violated international laws of occupation.[153] The outcome was settlement expansion, including land expropriation in violation of the Hague Regulations; the destruction of private Palestinian property in violation of Article 53 of the Fourth Geneva Convention; and the continued transfer of its population, contravening Article 49(6).[154]

In September 1995, the document known as Oslo II[155] was signed in Washington. According to Oslo II, Israeli forces would withdraw from territories where there was Palestinian population. The authorities of the Civil Administration would be gradually transferred to the institutions of the Palestinian Authority.[156] The agreements also divided the West Bank to be administered in three territorial categories, or jurisdictional zones: Areas A, B, and C (excluding East Jerusalem). By the term of the accords, in Area A – which constituted approximately 2 percent of the West Bank and encompassed six major Palestinian cities – the Palestinian Authority (PA) was entrusted

[148] The Palestine Liberation Organization.
[149] Noura Erakat. *Justice for some.* Loc 3040.
[150] *Id*. Loc 3053.
[151] Edward Said. *The morning after*. London Review of Books 15 (20-21): 5-5. 1994. Culture and Imperialism.
[152] Noura Erakat. *Justice for some.* Loc 3066.
[153] Virginia Tilley. *Beyond occupation. Supra* note 136. At 40.
[154] *Id*.
[155] The Interim Agreement on the West Bank and the Gaza Strip.
[156]Hani Sayed. *The Fictions of the "Illegal" Occupation. Supra* note 113. At 124.

with exclusive authority over the internal affairs of the Palestinian population, such as health, education, policing, and other municipal services. The PA would also be responsible for security, although Israel retained preeminent authority over its own citizens and all Jewish settlers.[157]

Area B, which included many Palestinian villages and towns, represented 26 percent of the West Bank and was the territory in which the PA was vested with the same functional authorities regarding Palestinians, but Israel retained overriding responsibility for security and complete jurisdiction over Jewish settlers and other Israelis. Area C comprised approximately 72 percent of the West Bank and was composed of Israeli settlements, major roads networks, military installations, and largely unpopulated areas, in which Israel retained full authority and responsibility.[158]

The fragmentation of the West Bank territories became even more exposed after its division into the jurisdictional areas and the exclusion of the Jewish settlements in Gaza from any Palestinian authority. This fragmentation is described by some authors as Palestinian Bantustans, a reference to the Apartheid-style territories in which the white National Party administration of South Africa set aside for black inhabitants, as part of its policy of apartheid.[159] Additionally, the Oslo Accords did not transfer meaningful authority over the OPT from Israel to the PLO. In effect, the Palestinian Authority's competence and jurisdiction extended only to governing the Palestinians living in the occupied Palestinian territories, not the territory itself.[160] The agreements also enabled the Israeli authorities to control Palestinian movements inside the West Bank between Areas A, B, and C, facilitating the construction of a network of checkpoints, roadblocks, and a permit system that would regulate the population's movements. This structure was also usually internally closed in response to Palestinian attacks in Israel, stopping all movement between the Areas.[161]

This construction of West Bank's violent geography by Israelis stands as an apparatus devoted to the assertion of power over Palestinian livelihood, but also with the possibility of the production of death, since Palestinian life is controlled, exposed, and threatened. As a consequence of the transformative occupation of the West Bank, Palestinians experience life in a space governed by necropolitical policies, where certain

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[157] Virginia Tilley. *Beyond occupation. Supra* note 136. At 39.
[158] *Id*.
[159] Jeff Halper. *A middle Eastern Confederation: A Regional "Two-stage" Approach to the Israeli–Palestinian Conflict.* Arabic Media Internet Network 15 (2002).
[160] Virginia Tilley. *Beyond occupation. Supra* note 136. At 41.
[161] Hani Sayed. *The Fictions of the "Illegal" Occupation. Supra* note 113. At 128.

laws governing life and liberty (of the colonizer for the colonizers) seems not to apply. Additionally, as elaborated by Hani Sayed, the state-building strategy of Israeli authorities regarding Palestine goes beyond the mainstream legal institution debate whether occupational law is or is not applied in the West Bank and Gaza Strip.[162] The concrete governmental practices in which Palestinians have been daily subjugated display the brutal tactics of oppression against the native population. The 'architecture of enmity' shapes the social and cultural imaginaries through fear, and Palestinians bodies exist on the verge of destruction, or disappearance.[163] As Noura Erakat names it, Palestinians are seen as 'the shrinking civilian'.[164] The politics of death becomes even more flagrant with the development of the surveillance techniques, the reform on the Palestinian security sector, and the targeting killing policies, as will be addressed in the following sections.

The surveillance techniques implemented after the PLO-Israel agreement facilitated the subjugation of Palestinians to Israeli power, rendering them susceptible to all manner of state intervention, from quotidian monitoring to the military onslaught. Ultimately, the aim of the security sector reform was to target the Palestinians and preempt any resistance, thus resuming the process of colonization and dispossession that had started decades before.[165]

v. The Palestinian security sector

The cornerstone of the Oslo state-building project was the Security Sector Reform (SSR). The Oslo Accords had produced a conflicted version of the security model of governance in the OPT. The outcome of the agreements did not meet the aspirations of the PA as a liberation movement, but rather envisioned its function as the occupation's enforcer, as it emphasized the pervasive limitations to the Palestinian's force jurisdiction.[166] Since the legal and institutional arrangements of governmentality in occupied Palestine are assembled to meet Israeli policy objectives, one of the most significant strategies of Israel was to take over the security sector on the occupied

[162] *See* Hani Sayed. *The Fictions of the "Illegal" Occupation. Supra* note 1113.
[163] *See* Pramod K. Nayar. Comments on 'Necropolitics and the arts of the occupied'. Occupied Pleasures.
[164] Noura Erakat. *Justice for some*. *Supra* note 15.
[165] *See* Elia Zureik, David Lyon, and Yasmeen Abu-Laban, eds. *Surveillance and control in Israel/Palestine: Population, territory and power*. Routledge, 2010.
[166] Tahani Mustafa. *Damming the Palestinian spring: security sector reform and entrenched repression.* Journal of Intervention and Statebuilding 9, no. 2 (2015): 212-230. At 213.

territories, aiming to turn this important body of government into an instrument for the social control of its population.

The transformation of the security sector in Palestine can be traced by three different phases: the Oslo Accords phase, with the building of the security forces, (1993-1999); the second Intifada phase (2000-2006); and, finally, the Fayyadism, or the second state-building project phase (2007-2013).[167]

In 1994, the Cairo Agreement (a follow-up treaty to Oslo Accords I) stipulated the establishment of a 'strong police force' to guarantee 'public order and internal security within the jurisdiction of the Palestinian Authority,' which led to the creation of various Palestinian-Israeli joint security bodies. The proliferation of security forces was such that, in 1998, the number of security personnel reached between 30,000 to 40,000. During this period, Yasser Arafat, who was the President of the Palestinian National Authority, performed a personalized style of governance, marked by corruption, nepotism, and lack of transparency, which fraught the ability of the security forces' reputation and its ability to provide safety to Palestinians.[168]

This phase was also characterized by a clash between the project of state-building with the national liberation movement, once led by Arafat himself. While the former implied the construction of the 'institutional underpinnings and capacities for the interim authority to transform into statehood phase on the 1967 borders by 1999', the latter presumed that the PA security forces would be an extension to the PLO's Palestinian Liberation Army, and therefore engage in a national liberation endeavor of historical Palestine based on 1948 borders. The two frameworks, however, were irreconcilable.[169]

A new round of violence erupted with the Second Intifada, especially after an incident where, in Ramallah, the PA police stopped two Israeli soldiers in plain clothes and dragged them to the main police station, where they were beaten, stabbed, and killed. This incident deepened the Israeli mistrust of the PA forces, resulting in reconsiderations of their relationship. Right after the event, Israel launched several attacks against PA security targets, completely destroying the security premises, which resulted in the destruction of PA forces' capabilities. As consequence, a gap was created, that was soon filled by armed groups, including Hamas. The security vacuum

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[167] *See* Alaa Tartir. *The evolution and reform of Palestinian security forces 1993–2013*. Stability: International Journal of Security and Development 4, no. 1 (2015).
[168] *Id.* At 3-5.
[169] *Id*. At 5.

filled by non-PA security actors imposed new challenges to Palestinian governance, as the Palestinian people perceived these actors as more reliable and legitimate than the PA actors.[170]

Yet, the rising of non-PA actors was considered a threat to Israeli security, since the power of the Palestinian security sector was taken from the hands of those Israel could control. As consequence, under international and Israeli pressure, the PA was forced to start a reform project for its security sector and forces. The PA would have to undertake 'visible efforts on the ground to arrest, disrupt, and restrain individuals and groups conducting and planning violent attacks on Israelis anywhere.' As a result, the PA's security sector was forced to combat 'terrorism', apprehend suspects, outlaw incitements, collect illegal weapons, provide Israel with a list of Palestinian police recruits, and even report progress to Israel and the United States. In other words, Israel and its main ally had the primary role in transforming the Palestinian security sector into an instrument in their 'fight against terror'.[171]

The electoral victory of Hamas in the Gaza Strip, after the Israeli disengagement, rearranged all the cards, confused all the actors, and challenged the PA security doctrine. Because of the international community's boycott of the Hamas-led Palestinian government, the PA President declared a state of emergency and reorganized the security forces' administrative structure. With the appointment of Salam Fayyad to the Presidency, PA shifted its polity and style of governance, committed to both a strict reform agenda based on establishing a monopoly of violence by the PA security forces and the adoption of a neoliberal post-Washington Consensus economic agenda.[172]

As a result, several executive orders were enforced, such as curtailing freedom of expression in public spaces and allowing the crackdown on protests against Israel. As mentioned by Tahani Mustafa, '[t]he security sector has effectively become the mediator between the population and the regime and has been pivotal in creating a widespread culture of fear through authoritarian practices and human rights violations.'[173] This was demonstrated in February 2011 during the pro-Egyptian and pro-Tunisian demonstrations in Ramallah, which were allowed in the first place because these were not directly challenging the PA or its policies. Although the PA leadership promised to ensure the safety of the protestors, the security forces violently suppressed

[170] *Id*. At 6.
[171] *Id*. At 7.
[172] *Id*. At 11.
[173] *Id*.

the protests and made arbitrary arrests. Yet, the effective monopoly of violence was never devolved to Palestinians, but rather remained with the occupier.[174] Without security independence, which is one of the bases of nation-states and self-determination – the right to defend itself against foreign and domestic threats – Palestine continued to be colonized by Israel, and its citizens continued to be seen as worth-less. The security sector reform implemented by the Oslo accords triggered the emergence of authoritarianism in Palestine and the criminalization of resistance, both much needed in order to forward necropolitical tools of dominance, in which targeted assassinations, the ultimate strategy of the manhunt institution, were the epitome of Israel's most recent state-building project.

vi. The sovereign right to kill: the evolution of the targeted killing jurisprudence

Modern democracies are in a constant struggle to develop the most repressive measures to combat the enemy threat. With the changes of modes of war, particularly the standardization of asymmetric wars, special operations are conducted against the enemies, although existing risks of retaliation by the international community. The great challenge nowadays is the elaboration of a legal framework to avoid criticism, that can allow the conduct of assassination policies in order to maintain the population under control since anyone can become the next target. In the case of Palestine, the policies of extrajudicial assassinations epitomize the ultimate necropolitical form of governance used by Israelis in its pathway to its state-building project.

Current practices of assassination carried out by state agents find precedents in Israeli history as far back as before the inauguration of the Israeli state. As narrated by Markus Gunneflo, there was a transition of the killing of political opponents from clandestine, extrajudicial acts of violence perpetrated by the Zionist militias, into 'targeted killings' conducted by a sovereign state in occupied territories. The asymmetry of the legal relationship between the state of Israel and its Palestinian targets, which is embedded in the history of the Israeli state as previously shown, is at the heart of the account of Israeli targeted killings.[175]

[174] Tahani Mustafa. *Damming the Palestinian spring*. *Supra* note 184. At 224.
[175] Markus Gunneflo. *The targeted killing judgment of the Israeli Supreme Court and the Critique of Legal Violence*. Law Critique. Faculty of Law, Lund University, 2012. At 51.

The violent foundation of the Israeli state, combined with several decisions based on necropolitical policies against the local population, provided Israel the legal authority and the factual power to designate Palestinians as the 'Other', the 'enemy of the state', and even 'terrorist', while its own violent and deadly actions are presumed lawful, in a sense of 'counterterrorism'.[176] In other words, the creation and development of an assassination doctrine epitomized the manhunt against Palestinians, and is widely used by Israel as the main policy to reduce Palestinians to a surplus labor force that desperately needs to be pacified so the capital accumulation by Israeli settlers can progress. This narrative of constructing the identity of Palestinians – the native population – as inherently 'terrorists' makes them presumed guilty by virtue of its refusal to disappear.[177] Palestinians are considered dangerous by the Israeli because they pose a threat to them (the colonizers), a circumstance that goes back to the fact that it was the colonizer that invaded the native's lands in the first place. By turning Palestinians into 'dangerous', any (violent) response to the violence they faced in the first place is awaited, in a self-fulfilling prophecy.

Targeted killing, thus, became a novel strategy in the 'war on terror', a new form of warfare, developed to fight a new form of threat to the colonizers. The ultimate goal is to provide a legal framework of 'security' able to hold within its boundaries all the racialization and dehumanization needed in order to control and subjugate the Palestinian population, reflecting global regimes of capital, violence, and governance.[178] Yet, considering this new strategy on counterterrorism and its role in the global 'war on terror', an important question arises: how can Israel create a legal framework that addresses the compatibility of targeted killing practices with liberal democratic values? In other words, how to engage authorities in extrajudicial assassinations with no accountability? Two decisions of the Israeli Supreme Court (ISC) help to answer the question.

In 2002, the ISC issued a decision on a petition by a member of the Knesset to stop the targeted killing policy. In a very condensed decision, the Court determined that the targeted killing policy was 'non-justiciable', as the choice of means of warfare could

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[176] *Id*. At 39.
[177] Noura Erakat. *Extrajudicial executions from the United States to Palestine*. Just Security Website. Published on August 7th, 2020. Available at https://www.justsecurity.org/71901/extrajudicial-executions-from-the-united-states-to-palestine/?fbclid=IwAR1ljHEOwVxj-l9abSXJaiN5N2y9mpAKHZC81XjemcBbPWK_Djtd-so6nsg
[178] *Id.*

not be intervened by the Court. [179] With this decision, the ISC claimed that there wasn't a legal framework that could be applied in the situation, since it was the 'sovereign's' discretion to choose which means to use to protect its own existence. The Court, thus, acknowledged that there was enough room for the Israeli Defense Forces and the Israeli government to use means of warfare against the 'enemies of the state', as explored in the First Chapter, without judicial scrutiny. Therefore, targeted killings would occur in the frame of exceptionality, usually under the justification of a 'security threat'.

Yet, four years later, the ISC reversed its decision by issuing a second judgment regarding the targeted killing policy. In the decision, published in 2006, the same state policy – targeted killing – was ruled justiciable, and the Court was able not only to exercise its jurisdiction, but also decide on the applicable law and the interpretation of that law.[180] There was no apparent reason for the eventual realization that a situation which four years earlier could not be adjudicated by the ISC was now spotted inside the Israeli legal order. Yet, the decision was taken by the ISC based on international law, more specifically, international humanitarian law. This landmark decision demonstrates that Israel spotted the exceptional within the norm, in order to legally justify its violent policies of death against Palestinians and try to avoid being accused of having an oppressive regime. The new interpretation given by the Court underscores an environment of impunity for state violence, considering that the shoot-to-kill policy appears as an excessive use of force, and Israel is trying to regulate it under the laws of military occupation as well as the laws of armed conflict.[181]

The 2006 judgment recognized a 'continuous situation of armed conflict' between the state of Israel and 'various terrorist organizations' since the first Intifada. In order to define the ongoing conflict, the decision considered an armed struggle between an occupying state and 'terrorists' who come from the territory under belligerent occupation as amounting to an international armed conflict. Also, by referring to International Court of Justice (ICJ) case law, the Court acknowledged that in addition to the international humanitarian law, international human rights law was also applicable in international armed conflicts, although that relationship between the two is one in which international humanitarian law applies as *lex specialis*.[182] In other words,

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[179] Markus Gunneflo. *The targeted killing judgment of the Israeli Supreme Court and the Critique of Legal Violence*. Law Critique. Faculty of Law, Lund University, 2012. At 51. At 69.
[180] *Id*.
[181] Noura Erakat. Extrajudicial executions from the United States to Palestine. *Supra* note 178.
[182] *Id*. At 70.

international human rights law is applicable when there is room left by the norms of IHL.

After establishing the legal framework to the rules governing the case, the Court turned to the question of the categorization of the individuals being targeted under the targeted killing policy. The ISC decided that it would apply the customary international law dealing with the status of *civilians who constitute unlawful combatants*, a term that, according to Gunneflo, was invented for the purposes of this particular judgment. Such category of civilians may, in accordance with the ISC decision, be attacked for such time as they take direct participation in hostilities, thus constituting an exception to the principle of distinction. This exception is not limited to the issues of 'hostilities' towards the occupying army, but also applied to hostilities against the civilian population of the state.[183]

As a result of the argument constructed by the Court, civilians who constitute unlawful combatants may be lawfully killed through executive decision (sovereign power) without prior judicial oversight. The decision also gives room regarding the lawful killing of others than those targeted as 'collateral damage'. The outcome of this Israeli violent policy is the ultimate example of international law being wielded as a weapon of war, with which the Israeli government can proceed with its policy of targeting civilians within the bounds of the law.[184] After all, there is a lack of accountability, not only because of the failure to investigate such incidents, the denial of autopsies on Palestinian bodies, and the refusal to release bodies for burial; but also the legal permeability of the killing of Palestinians *per se*, as a matter of law and policy.[185]

Because Israel possesses political hegemony in the international arena, its interpretation of international legal institutions is authoritative within its domestic jurisprudence. This arrangement of tactics of necropolitical governance throughout the decades by Israeli authorities turned the Palestinian body turn into something that can be killed, without judicial scrutiny. As posed in the previous Chapter, the technologies of power concerning violent spaces are considered the exception by the mainstream legal institutions, such as the occupied territories of Palestine, although it can be justified by legal means. In reality, they are nothing more than the normal, mirroring what is considered the norm when it concerns the necropolitical manhunting institution.

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[183] *Id*. At 70-71.
[184] *Id*. At 72.
[185] *Id.*

III. Rio's *Favelas*: from performative violence to 'pacification'

'Every police car has a bit of slave ship in it.'
O Rappa – (Brazilian band)

i. The formation of the favelas and its process of colonization

Officially called "subnormal agglomerations" by the Brazilian Institute of Geography and Statistics[186], *favela* is a pejorative term for slums, squatter settlements, poor outskirts, and irregular settlements.[187] It is difficult to say how many *favelas* exist today in Rio de Janeiro, but some authors considered it to be more than a thousand.[188] The first *favelas* in Rio were formed in the XIX century, when Rio de Janeiro was still Brazil's capital, and was inhabited mainly by descendants of freed slaves and poor northeastern migrants.[189] Due to the rapid urban growth of the region in the twentieth century, the *favelas* were formed as a gathering of irregular houses, such as shacks, and were established mainly in hills, among and even within wealthy areas of the city.

Until the 1980s, the *favelas* were mainly represented as locations of poverty, although counterbalanced by their valorization as the land of samba and popular culture. The messy and precarious urbanization process of Rio de Janeiro transformed *favelas* in communities that contrasted with the urban lifestyle of the *carioca*[190], as these locations were also perceived as exotic places where the black population brought their beliefs, their music, and their extravagances.[191] The formation of several *favelas* in the outskirts of Rio de Janeiro originated the term *favelada* (and its masculine form, *favelado*)[192], which eventually became an extreme figure of 'otherness'.[193] The opposition '*favela* versus the city' (or 'the hill' versus 'the asphalt'[194]) until today is related to the manifestation of the colonial opposition civilized/savage, rich/poor, clean/dirty, moral/amoral. Throughout the first half of the twentieth century, even the medical

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[186] Anjuli Fahlberg, and Thomas J. Vicino. *Breaking the city: Militarization and segregation in Rio de Janeiro*. Habitat International 54 (2016): 10-17.
[187] For the purpose of this thesis, the author chose the word 'community' interchangeably with *favela*, since the latter is a common term referred to by its residents.
[188] Marielle Franco. *UPP–A redução da favela a três letras: uma análise da política de segurança pública do estado do Rio de Janeiro*. Universidade Federal Flumense. Masters dissertation. 2014. At 52.
[189] Anjuli Fahlberg. *Rethinking Favela governance. Supra* note 264. At 487.
[190] Term used to refer to anything related to the city of Rio de Janeiro, but especially its local residents.
[191] Amanda Sá Dias. *Palestinian Refugee Camps and Brazilian Favelas as Urban Heterotopias*. Birkbeck L. Rev. 5 (2017): 81-96. At 90.
[192] Meaning, literally, 'the inhabitant of the favela'.
[193] Amanda Sá Dias. *Palestinian Refugee Camps and Brazilian Favelas. Supra* note 192. At 85.
[194] The favelas inhabitants refer to the city as 'asphalt', in contrast with the 'the hill', since the majority of the first favelas were built in the unpaved hills of Rio de Janeiro.

discourse gradually joined the urban discourse, and the favelas started to be addressed as a 'social pathology' that put the city's beauty and health at risk.[195]

The definition of *favela* goes beyond their 'illegality', since most of them have *de facto* tenure; it also cannot be defined by their lack of infrastructure, since almost all have access to water, sewage, and electricity; nor can they be defined by the precarious construction materials, as most of the houses are now made of brick and mortar.[196] A remaining distinction between favelas and the rest of the city of Rio is the deeply-rooted stigma that still adheres to them.[197]

The stigma of the *favelas* has its origins in the history of settler colonialism in Brazil, since the project of elimination of the native population and the slave trade (and its abolition without compensation) of African people. Settler colonialism in Brazil was initially marked by 'pacification' of the indigenous populations which included expropriation, elimination, confinement, and assimilation of entire communities in an effort to 'civilize' them, aiming to produce individuals capable of working for the capital accumulation of the settlers.[198] The idea of a 'pacified' group was that of a group that had been militarily defeated and, as consequence, had set aside its customs by the imposition of the colonizer.[199]

Brazil was the last country in the West to abolish slavery, in 1888, and by that time, an estimated four million slaves had been brought from Africa to Brazil, which represents 40% of the total number of slaves brought to the Americas.[200] In the time of slavery, African slaves used to work in the house of the aristocracy, but to live in separate buildings, called *senzala*. The spatial separation between the slave/black and the colonizer/white remained long after the slavery abolition. As consequence, the segregation system existing between aristocracy and the black people perpetuated and played a pivotal role in the formation of the identity of the *favelada*, the black woman resident of a *favela* (and its masculine form: *favelado*).

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[195] Amanda Sá Dias. *Palestinian Refugee Camps and Brazilian Favelas. Supra* note 192. At 89.
[196] Janice E Perlman. *The myth of marginality revisited: The case of favelas in Rio de Janeiro.* Becoming global and the new poverty of cities (2005). At 9.
[197] *Id*. At 10.
[198] Bruno Huberman. *Pacification, Capital Accumulation, and Resistance. Supra* note 2.
[199] Flávia Rodrigues de Castro, Thaiane Mendonça e Thiago Rodrigues. *A exceção como prática: as políticas de pacificação no Rio de Janeiro (2008-2015).* Brasiliana-Journal for Brazilian Studies 4, no. 2 (2016): 73-111.
[200] Laird Bergad. *The comparative histories of slavery in Brazil, Cuba, and the United States*. Cambridge University Press, 2007.

The legacies of colonialism and slavery in Brazil include the epistemological production of the black body as the 'internal enemy that must be fought against', especially due to the class-based racism that, translating the social conflicts of the industrial world in racial terms, ends up comparing the working class and the black body to the 'savages' of the colonial world.[201] A great part of the *favela* population represents what Karl Marx called the 'industrial reserve army of labor',[202] and, as such, represents the superfluity of the city labor force. Over generations, due to the black subjectification as 'the enemy', patterns of police brutality demonstrate that the primary objective in the police's engagement with poor, black and *favela* residents is to kill first and ask questions later.[203] As a result, the black body was subjected to the power of the transnational liberal policies of necropolitics, as analyzed in the First Chapter. Black Brazilian workers were, thus, not only confined to informal, segregated, walled-off housing in periphery regions, but also targeted and often killed with impunity.

ii. From spaces of exception to spaces of capitalist production and reproduction

Throughout the XX century, several urbanization projects have contributed to the development of many of the *favelas'* infrastructure. Although these communities are perceived as territories excluded by the official authority, the existence of numerous laws and decrees since the beginning of the XX century addressing directly the *favelas* challenges this perception. Rio's first zoning law authorized the construction of *favela* shacks in the city, provided they were outside the most valued hills.[204] The objective was to transform *favelas* into invisible cities, by allowing the settlement of the poor in the outskirts, while proscribing it in central and bourgeois areas.

However, the state's investment in public services has always been very limited and inadequate to meet the needs of the growing population.[205] The services provided by the state were only sufficient to maintain a symbolic sovereignty over these territories. As noted by Rafael Gonçalves, the governmental orientation regarding the *favelas* was to 'tolerate without integrate': while some public services and investments

[201] Christen A Smith. *Strange fruit: Brazil, necropolitics, and the transnational resonance of torture and death.* Souls 15, no. 3 (2013): 177-198. And also, Achille Mbembe. *Necropolitics*. Duke University Press, 2019.
[202] *See* Susan Marks. *Law and the production of superfluity*. Transnational Legal Theory 2, no. 1 (2011): 1-24.
[203] Christen A Smith. *Strange fruit. Supra* note 202.
[204] Rafael Soares Gonçalves. *Favelas do Rio de Janeiro: história e direito*. Pallas Editora, 2016. At 86.
[205] Anjuli Fahlberg. *Rethinking Favela governance. Supra* note 190. At 488.

would be realized, the state would also avoid stabilizing the *favela* as a legitimate urban space.[206] As a result, *favela* residents would not have their social rights recognized by the authorities, reinforcing the illegality and informality in such communities. Gradually, the *favelas* acquired a *sui generis* juridical and political status. The appearance of a juridical emptiness constituted a symbolic border which placed such communities as being at the same time urban and marginal territories in the city.[207]

The shift in society's perception of the *favelas* occurred during and after the democratization process in Brazil (1980's), which corresponded to the increase in narcotrafficking, formation of organized groups, and augmentation of urban violence in the city.[208] With the new political scenario, the State monopoly over violence ceased: there was a shift in actors and motives – from predominantly political to predominantly criminal –,[209] which was not, however, a historical coincidence. At the end of the 1970's, more than a decade since the establishment of the dictatorship, in a prison called Cândido Mendes at Ilha Grande ('Great Island'), state of Rio de Janeiro, members of armed political groups opposing the dictatorship and common prisoners were housed in the same unit of the prison. Because of the military dictatorship's strategy of repressing prisoners, sometimes assuming their relations with the opposition, and submitting them to harsh treatment, common prisoners absorbed tactical and ideological lessons of how to behave and survive within prisons from the political prisoners, who were much more collectively organized.[210]

Due to its ideological origins, the group named itself as *Comando Vermelho* ('Red Command'), known as CV, and eventually became Rio's strongest and most violent non-state organization, controlling the drug trade of seventy percent of Rio's *favelas* by the end of 1985.[211] Although the group was originally created to deal with situations inside prisons, their ideas and rules were quickly spread among Rio *favelas*, causing a profound effect upon the social relations established within the communities. The group began to develop deeper roots in the *favelas* not only because many prisoners were from these neighborhoods, but also due to the fact that its successful organizing in prison was advantageous for criminals to join the organization so they would have allies

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[206] Rafael Soares Gonçalves. *Favelas do Rio de Janeiro: História e direito. Supra* note 205. At 95.
[207] *Id.*
[208] Amanda Sá Dias. *Palestinian Refugee Camps and Brazilian Favelas. Supra* note 192. At 90.
[209] Polly Wilding. *"New Violence": Silencing women's experiences in the* favelas *of Brazil.* Journal of Latin American Studies 42, no. 4 (2010): 719-747. At 722.
[210] Ben Penglase. *The bastard child of the dictatorship: The Comando Vermelho and the birth of "narco-culture" in Rio de Janeiro.* Luso-Brazilian Review 45, no. 1 (2008): 118-145. At 126.
[211] *Id*. At 128.

in prison if they were arrested.[212] Because CV members were locals and often had better knowledge of local needs, their ruling started to be perceived as a sharp improvement from the actions of the police. Police terror was more feared than the barbarity of drug traffickers since the official authorities would abuse the discretionary power by utilizing morbid creativity, while traffickers would constrain themselves to CV's principles and rules while subordinating their despotic practice to an intelligible and public order.[213]

From 1990 onwards, with the rise of narcotrafficking and other criminal organizations, the state's approach to the *favelas* was securitized.[214] Although illegal drug markets were being regulated by networks that contained state agents and economic elites who used money and influence as well as violence in managing their relationships,[215] progressively, the inhabitants of *favelas* as a whole were identified as extreme figures of otherness, where anyone could be acknowledged as a potential criminal.[216]

As explored in the first chapter, settler colonialism is not a process that history leaves behind. Marx's concept of primitive accumulation demonstrates that dispossession is a continuous process. The violent neoliberal mode of accumulation called by David Harvey as 'accumulation by dispossession' seeks to balance the crisis of overaccumulation due to the surplus of capital and labor force.[217] This process is frequently sustained by racism, which legitimized a 'civilizing project' that aims to make the colonized lands productive. Yet, the dispossession of poor and marginalized people living in the *favelas* is an important component of Rio's capitalist accumulation process. The *favelas* in Rio de Janeiro still permit the accumulation of capital and considerable investment. De Sousa Santos describes countless outsiders who invest in the most stable and developed favelas and take out considerable profits from it.[218] A recent study made by 'Data Favela' and 'Locomotiva' institutes found that *favelas*

[212] *Id.*
[213] *Id*. At 132.
[214] Amanda Sá Dias. *Palestinian Refugee Camps and Brazilian Favelas. Supra* note 192. At 89.
[215] Matthew Aaron Richmond. *"Hostages to both sides": Favela pacification as dual security assemblage.* Geoforum 104 (2019): 71-80. At 72.
[216] Amanda Sá Dias. *Palestinian Refugee Camps and Brazilian Favelas. Supra* note 192.
[217] *See* David Harvey. *The 'new' imperialism: accumulation by dispossession.* Socialist register 40 (2004).
[218] Boaventura de Sousa Santos. *The law of the oppressed: the construction and reproduction of legality in Pasargada.* Law & Soc'y Rev. 12 (1977): 5. At 109.

residents in the entire country move approximately U$ 25 billion a year, which represents more than each of 20 of the 27 total states of the Brazilian federation.[219]

In 2010, one-fifth of Rio's population was a *favela* resident. Settler colonial studies have pointed out that the preferential accumulation of space, without necessarily exploiting the labor of dispossessed populations, has been central to settler colonialism for centuries. The settler colonizer accumulates the lands and wealth of the population. As such, the population must be controlled by neoliberal policing strategies, which in these situations are revealed as a crude form of necropolitics. Yet, the biggest challenge for Rio's government in controlling the 'superfluous' amount of poor and marginalized people since the 1980's is the development of an illicit authority implemented by criminal organizations.

iii. The parallel-state and the performative violence in Rio's favelas

In the past forty years, the high unemployment rate among young men and the absence of strong public institutions, combined with the proximity to wealthy neighborhoods, turned *favelas* ideal places for drug sales operations commanded by criminal organizations.[220] Violence erupted as rival groups competed for control over the territories. As articulated by Professor Anjuli Fahlberg, brutal violence gradually became the core mechanism for the incipient governance in *favelas*, a fact that leads scholars to refer to these neighborhoods as 'narco-states' and to their governance structures as 'micro-level armed regimes'.[221] According to the author, in the 1980s, drug lords would kill community leaders who attempt to speak out against the drug trade and replace them with their allies.

Similar to domestic roles of the modern state, gangs would employ coercive means through violence to construct social control.[222] The existence of drug gangs ruling territories in Rio challenged the official and institutional governance of the State.[223] As a consequence of the State's absence and its unwillingness (and even inability) to directly enforce the official law in such communities, there was the

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[219] Agência Brasil. Camila Boehm. *Moradores de favelas movimentam R$ 119,8 bilhões por ano.* 27.01.2020. Available at https://agenciabrasil.ebc.com.br/geral/noticia/2020-01/moradores-de-favelas-movimentam-r-1198-bilhoes-por-ano

[220] Anjuli Fahlberg. *Rethinking Favela governance. Supra* note 190. At 488.

[221] *Id.*

[222] Christopher Marc Lilyblad. *Illicit authority and its competitors: The constitution of governance in territories of limited statehood.* Territory, Politics, Governance 2, no. 1 (2014): 72-93. At 80.

[223] *See* Garmany, Jeff. The embodied state: governmentality in a Brazilian favela. *Social & Cultural Geography* 10, no. 7 (2009): 721-739. At 723.

institution of alternative sources of governance by gangs and drug traffickers.[224] Traffickers would enforce the 'law of the *favela*' (also known as 'law of the hillside') in order to protect the residents from petty crime and interpersonal violence,[225] which eventually formed internally safe communities.[226] From time to time, the internal peace would break, typically when a local *dono* (drug boss) was killed or imprisoned and his subordinates struggled to succeed him.[227]

Drug traffickers would make investments in community facilities for the residents, while in exchange these would have to remain quiet about their illegal activities, in a sort of 'forced reciprocity'.[228] The use of violence and the profit from illegal activities would generate pressures on the gangs to assist the community, even if in limited ways.[229]

By taking advantage of the historically embedded patronage politics to maintain territorial control, drug traffickers would engage in 'clientelism'. They would allow certain politicians access to the communities for campaigning and vote-gathering, and command local residents to vote for specific political candidates in exchange for their support once elected.[230] This social scheme provided a link to political organizations, as well as basic infrastructure to the communities.[231] While politicians would control state interventions, the traffickers dominated over spaces and co-opted communal leaders. As consequence, both politicians and traffickers would show no interest in changing the situation or in transforming the nature of social relations in a significant way. [232]

In order to keep the drug trade and control over the territories, drug organizations would enter into corrupt relations with the police, often at a price of weekly or monthly payments from traffickers to police.[233] In some cases, usually when traffickers and police had trouble in the negotiations, militias would take control over entire communities after taking down the ruling organization. Eventually, some military police officers realized they could make more money by controlling territories than

[224]Janice E Perlman. *The myth of marginality revisited. Supra* note 197. At 9.
[225] Anjuli Fahlberg. *Rethinking Favela governance. Supra* note 190.197 488.
[226] Janice E Perlman. *The myth of marginality revisited. Supra* note 211. At 9.
[227] Matthew Aaron Richmond. "*Hostages to both sides*". *Supra* note 216. At 74.
[228] Ben Penglase. *The bastard child of the dictatorship. Supra* note 211. At 131.
[229] Matthew Aaron Richmond. "*Hostages to both sides*". *Supra* note 216. At 75.
[230] Anjuli Fahlberg. *Rethinking Favela governance. Supra* note 190. At 488.
[231] Enrique Desmond Arias. *Trouble en route: Drug trafficking and clientelism in Rio de Janeiro shantytowns.* Qualitative Sociology 29, no. 4 (2006): 427-445. At 428.
[232] Roberto Malighetti. "Exception and resistance in the favelas of Rio de Janeiro." *Tracce urbane. Rivista italiana transdisciplinare di studi urbani* 5 (2019).
[233] Ben Penglase. *The bastard child of the dictatorship. Supra* note 211. At 136.

receiving bribes from the drug traffickers.[234] Off-duty police organizations would also benefit by providing services to residents of the communities they have taken, such as cable television, cooking gas, and private security to shop owners.[235]

According to Human Rights Watch, much of the deadly police violence in Brazil is believed to be committed by off-duty police officers acting in so-called extermination groups, which target suspected criminals for execution.[236] The objective of these groups would be 'to clean the area' and 'maintain peace'.[237] The sense of vigilantism confirms that off-duty and on-duty police violence uses similar procedures and seeks similar results.

One could think that invisible cities such as the favelas are off-Panopticon, especially when they have their own enforced rules. However, the complexity of the surveillance regime surrounding the favela is better described as a 'double panopticism'. While agents of the state monitor the residents from the outside, drug traffickers monitor them inside. The modern state and its policies of governance are situated in the daily lives of the inhabitants of the *favelas* through the narrative of securitization, considering its ability to employ tactics rather than laws, and even using laws themselves as tactics to meet its desirable ends.[238]

Throughout the years, national and local media helped to create and sustain the idea that residents of *favelas* are responsible for their perpetual state of brutality and violence, such as the colonized were told as responsible for their misfortune. Also, they were blamed for the overall criminality of the city and turned into the scapegoat for the high rates of murder and violent crimes that were gradually occurring in the wealthy areas. This discourse of insecurity can be understood through the lens of what Stanley Cohen delineates as a society's scapegoat or 'folk evil', which is an identifiable object onto which social fears and anxieties are projected.[239] They are, thus, subjects of the manhunting institution: the police.

As consequence, since the 'enemy must be fought', some sense of control over the *favelas* gradually became desirable to the elites and the middle class. Such as the

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[234] Conor Foley. *Pelo telefone: Rumors, truths and myths in the 'pacification'of the favelas of Rio de Janeiro.* Rio de Janeiro: HASOW Discussion Paper 8 (2014): 1-52. At 22.
[235] Sabrina Villenave. *The racialization of security apparatuses in Brazil.* PhD diss., University of Manchester, 2018.
[236] James Cavallaro, and Anne Manuel. *Police brutality in urban Brazil*. Human Rights Watch, 1997.
[237] Sabrina Villenave. *The racialization of security apparatuses in Brazil. Supra* note 265.
[238] *Id*. At 725.
[239] Stanley Cohen. *Folk devils and moral panics: The creation of the mods and rockers*. Psychology Press, 2002. At 41.

'terrorist' must be fought in the war on terror in a spectacular manner in order to meet the orderly desires of the global audience and its middle class, the *favelado* also must be fought in the war on drugs to meet the orderly desires of the Brazilian middle class, which mirrors the desires of the financial international community.

The shift in the Brazilian economy in the late 1990s and early 2000s, due to a set of measures taken to stabilize it, changed the relations between social classes. As a result, real estate speculation started aiming at poor neighborhoods in wealthy areas, even though some of them were *favelas* criminally controlled, such as *favela* Santa Marta, in the South Zone of Rio de Janeiro[240]. It was time for the state to drop the *sui generis* character of some of the *favelas* in order to regain territorial control and integrate these areas into the neoliberal mode of production and reproduction.

From the late 1990s onwards, the rhetoric of 'war on drugs', imported from the US and extended by the national media, contributed to the public support for the violent operations undertaken by state military police and the special forces of Rio de Janeiro in order to 'regain territorial control'. Although there is no guarantee that the fight against retail drug trafficking represents an effective demobilization of the drug trade, Rio's authorities felt the need to elaborate new spectacular forms of policing the *favelas*, which would be designed for televised consumption by the middle class.[241] While authorities would base their choice of which *favela* to launch the occupation on the amount of violence within it, studies demonstrate that the chosen communities were the ones that would have the most profitable outcome when integrated in the society and economically exploited.[242]

The metaphor of 'war' facilitated the launch of a security-related program by the state of Rio, mainly to address a response to the performative violence of drug gangs. These military operations would also be performative, and the state, supported by the national media, would give rise to an aggressive campaign against 'the enemy within'.[243] However, and not surprisingly, the war ended up turned against *favela* residents, who would also be seen as enemies, since they were family, companions, parents, and neighbors of traffickers, and as so, 'conniving in their way of life', having

[240] Dona Marta was the first hillside *favela* to be military controlled, in 2008. It is located among the wealthiest neighborhoods of Rio, and its location provides one of the best views of the city's landscape.
[241] Matthew Aaron Richmond. *"Hostages to both sides"*. *Supra* note 216. At 72.
[242] *See* Marielle Franco. *Supra* note 202.
[243] Anjuli Fahlberg. *Rethinking Favela governance. Supra* note 190. At 488.

chosen the 'law of the hillside' instead of the official law, as if they had a choice.[244] The allegory of the criminally controlled *favela* which was embedded in the collective consciousness of Brazilians demanded for one side to be picked: the *favela* or the *asphalt*.

Over the years, intellectuals and human rights organizations denounced the arbitrary and systemic coercion of armed interventions inside the *favelas*. Because of the recurrent civil and human rights violations, these territories became qualified as 'spaces of exception'.[245] Spaces of exception are territories in which the state of exception is permanent, such as *zones d'attente* in international airports, where asylum seekers and refugees are held, and even certain outskirts of the city.[246] *Favela* residents were, since the genesis of these communities and mainly as result of the state's omission, banished from the city, targets of social hygiene politics, and excluded from society while at the same time included in its regime of exceptionality, subject to being pacified and controlled. Here, the security apparatus – in this case, the military police – becomes important to the reassurance of power in a deeply destabilized economic environment, such as Rio de Janeiro.

iv. The exception as practice in Rio's favelas

The Brazilian flag displays the motto *Ordem e Progresso* (Order and Progress) and was inspired by a quote from the positivist Auguste Comte, which says 'love as principle, order as basis, and progress as goal'.[247] The notion about the possibility of progress after the implementation of order is part of the Brazilian collective consciousness. When the middle classes and the elite of Rio began to agitate for a sense of order in the poor communities surrounding them, the main objective was to integrate these territories into society so they could be economically exploited, and, therefore, they could 'progress'. Thus, to counterbalance the spectacular violence of drug gangs, the public security practices utilized by the state of Rio de Janeiro, were based on the strategies of "*zero tolerance* policies" of North American origin. Yet, when addressing 'order', one must bear in mind cultural relativism: the Brazilian notion of order differs radically from the North American one.

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[244] *See* Márcia Pereira Leite. *Da "metáfora da guerra" ao projeto de "pacificação": favelas e políticas de segurança pública no Rio de Janeiro.* Revista Brasileira de Segurança Pública 6, no. 2 (2012).
[245] Amanda Sá Dias. *Palestinian Refugee Camps and Brazilian Favelas. Supra* note 192.
[246] Giorgio Agamben. *Homo sacer. Supra* note 59.
[247] Elomar Tambara. *Novamente ordem e Progresso?* Educere et Educare, v. 12, n. 27. At 1.

Military institutions occupied a prominent position in the national scenario throughout Brazilian history: from the proclamation of the Republic, when a group of military officers led by Marshal Deodoro da Fonseca staged a *coup d'état* without using violence, deposing Emperor Pedro II to the 20-year military dictatorship, which left the current structures of the military police, responsible for all of the ostensive policing and the maintenance of public order, as one of its main legacies.[248] The sense of order for the majority of Brazilians is, therefore, connected to the notion of militarized order.

Besides the military police, the federal armed forces are also entitled to uphold public order. Article 142 of the 1988 Constitution reads:

> The Armed Forces, made up of the Navy, Army, and Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic, and intended to defend the Nation, guarantee the constitutional branches of government and, on the initiative of any of these branches, law and order.

§1 of the same document states that a complementary law would establish the general rules to be adopted in the organization, preparation, and employment of the armed forces in local and national operations, which was later accomplished by the Complementary Law n. 117, of 02 September 2004, which stipulates in Chapter V the use of federal troops in 'Law and Order Guarantee Operations' (LOG operations).[249] These norms are the constitutional and legal foundation, respectively, of the LOG operations, which mandate the summoning of the federal armed forces to act in functions described as subsidiaries. As a result, the Brazilian Federal Government, through its President and Minister of Defense, is authorized to deploy military personnel from the Army, the Navy, and the Air Force to support state governments facing problems in public safety.[250]

The rhetoric of 'war' against *favela* citizens and the brutality of the criminal organizations lead to widespread public support for LOG operations. The participation of the federal armed forces was indispensable in a war against the 'enemy' of the asphalt. The narrative of 'war on drugs', 'war against narco-traffic' was widely used to create new spectacular forms of policing the favelas, now with the federal army's help,

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[248] Charles Pacheco Piñon. *As Forças Armadas e a garantia da lei e da ordem sob uma perspectiva histórica e social.* Jus Navigandi, Teresina, ano 12 (2007). At 2.
[249] Jorge Calvário dos Santos, José Cimar Rodrigues Pinto, and Ricardo Alfredo de Assis Fayal. *Armed forces and internal security: reflections on civil-military relations in Brazil.* Revista de Estudos e Pesquisas Avançadas do Terceiro Setor 2, no. 2 (2019): 206-231. At 215.
[250] Mariana Kalil, Thiago Rodrigues, and Fernando Brancoli. *Brazil, Pacification and Major Events: Forging an "Ambience of Security" in Rio.* (2018). Revista de Estudios en Seguridad Internacional. At 96.

in order to regain territorial control over communities taken by criminal organizations. In this context, the State displays its sovereignty by assuming control of the political entity's decisive power: it is responsible for the distinction 'friend/enemy', for the declaration of 'war on drugs', and for the decisions upon the supposed exception.[251] The marginalization of *favela* communities legitimizes the necropolitical policies used against its inhabitants, creating spaces of violent geography that are seen as 'exceptional' by the mainstream legal order, which in reality displays the ideological project aimed by state authorities. A project of dehumanization and racism.

As mentioned in the First Chapter, harsh security measures require a constant reference to the state of exception. Thus, with the escalation of violent military incursions – now with the involvement of the federal armed forces – determined by the state of Rio de Janeiro, the *favela* becomes, once more, a place where the exception is normalized.[252] As detailed by Matthew A. Richmond, after the military police and the army adopted violent operations in order to occupy the *favelas*, the residents started to perceive their rights as citizens suspended during such operations.[253] Police authorities would abuse their discretionary power, and the use of stop-and-search and random house raids became part of the daily life of the *favela* resident.

Additionally, prosecutions resulting from deaths at the hand of the police became extremely rare.[254] The necropolitics of the governmentality being implemented in the *favelas* inaugurated the possibility of official forces to kill without consequence; without the characterization of assassination and murder – to kill without the possibility of a sacrifice, as posed by Agamben when defining *homo sacer*.[255] By waging 'wars', Rio's Government was aware they could adopt exceptional measures that would otherwise be unacceptable. The possibility of 'death penalty' (re)appears,[256] targeted killings are relativized, and collateral damages are accepted by the public audience. During military incursions, residents are being constantly exposed to an unconditional power of death. Even those not involved in conflicts are seen as the 'enemies' of the

[251] Flávia Rodrigues de Castro, et al. *A exceção como prática. Supra* note 194. At 82.
[252] *Id.*
[253] Matthew Aaron Richmond. *"Hostages to both sides". Supra* note 216. At 72.
[254] *Id.*
[255] *See* Giorgio Agamben. *Homo sacer. Supra* note 59.
[256] The Brazilian Constitution, in its Article 5, XLVI, "a", forbids the death penalty, except in the event of declared war. Although the narrative of 'war on drugs' is not characterized officially as 'declared war', what it as stake is the narrative propagated to the wider public. Usually, if a trafficker is killed by the police, the argument presented by those who chose the 'asphalt side' is 'he deserved it'. If an innocent is killed, the argument used is 'collateral damage'.

state and can be shot dead with impunity by State agents; all in the name of a metaphorical war deployed to justify such brutality. The ability to generate war through legal work, therefore, plays a pivotal role in the *favela*'s state of affairs.

v. Extrajudicial assassinations and the death penalty in Rio's favelas

Professor Zaffaroni explains that the punitive power of the State is constituted by two types of criminalization: the primary, which is the establishment of criminal conducts, and the secondary, which is responsible for the selection of those who will, in practice, be punished. The author highlights that impunity is the norm, and only a few agents will be selected by the authorities to be punished. As consequence, most crimes committed do not come to the attention of the state authorities.[257] Moreover, there is a stereotype of people that are more vulnerable to the selection of the penal system in Rio: the black population, particularly from the *favelas*.

In Brazil, the Judiciary frequently acts as a racist structure. As an example, in a recent shocking judicial sentence made by a criminal judge in Curitiba, in August 2020, the accused was considered a 'member of a criminal group, due to his race', and portrayed as acting causing population's unrest and hopelessness.[258] In another shocking judicial sentence made by a judge from Campinas, Sao Paulo, in 2019, it was highlighted the fact that the victim could not easily mistake the accused by another person, since he did 'not have the criminal stereotype, having lighter skin, eyes and hair, thus not being able to be easily mistaken'.[259] In this decision, the judge clearly recognizes the existence of a 'criminal stereotype': the black body. As a result, in such a state of punitivism, the final judgment is usually anticipated when the accused is black.

When incurring in violent operations within *favelas*, the military police tend to perceive the whole population as criminal, and anyone can become the target of excessive use of force. Additionally, it was the state authority that fabricated the conditions for the production of a violent geography in the *favelas* that would allow the police incursions, in the first place. Hence, the criminalization and dehumanization of black bodies are used to provide solutions to this violence. The extrajudicial

[257] Eugenio Raul Zaffaroni. Nilo Batista. *Direito penal brasileiro*. I. Rio de Janeiro: Revan, 2015.
[258] Igor Carvalho. *Apuração do CNJ pode levar à demissão de juíza que proferiu sentença racista.* Brazil de Fato Website. 14 Aug 2020. Available at https://www.brasildefato.com.br/2020/08/14/apuracao-do-cnj-pode-levar-a-demissao-de-juiza-que-proferiu-sentenca-racista
[259] Ricardo Bonfim. *Juíza de Vara Criminal diz que réu não parece bandido por ser branco.* Conjur Website. 1 de março de 2019 Available at https://www.conjur.com.br/2019-mar-01/juiza-campinas-reu-nao-parece-bandido-branco

assassinations are an important fragment of the anti-black genocidal practices of the Brazilian neoliberal penal state since the middle class objectifies its fear and anxiety onto the black body. The outcome is the elaboration of a set of necropolitical tactics of terror carried out by the military police that contains, kills, and lets black be killed in the *favela*.[260]

The UN Special Rapporteur on extra judicial executions noted that in 2007 Rio's 'on-duty police [were] responsible for nearly 18% of the total killings, and kill[ed] three people every day', adding that '[e]xtrajudicial executions are committed by police who murder rather than arrest criminal suspects'.[261] He stated that the killing of 'criminals' is tolerated and even publicly encouraged by high level Government officials, and the former Secretary for Public Security José Mariano Beltrame commented that, 'while police did their best to avoid casualties, one could not 'make an omelet without breaking some eggs'' .[262]

Due to internal legal barriers, it is difficult to investigate and punish extrajudicial assassinations. One of the main legal strategies utilized in order to prevent the investigation of the killings perpetrated by on-duty police officers is the 'procedure regarding resistance killings', that is, killings committed in presumed self-defense. Although in the *favelas* many drug traffickers directly confront state authorities, the classification of self-defense many times conceal illegalities done by police officers, especially considering the index of police lethality and the selectivity of the social class being permanently targeted.[263] The large amount of cases being closed in the investigative procedure and even by judges, when they reached Courts, gave rise to a sense of police impunity among the residents of the communities in conflict.

The Brazilian criminal procedural system privileges police testimony to the detriment of all other evidence. Also, the procedural delay in the Brazilian judicial system limits the rights of countless victims of this institutional violence. It seems that the same institution that works so efficiently in order to punish and imprison the black body, is completely inefficient to punish state officers that abuse its discretionary

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[260] Jaime do Amparo-Alves. *Spatialization of Death: Police, Black Youth, and Resistance In a São Paulo Shantytown.* The University of Texas at Austin, 2008. At 31.

[261] *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, Mission to Brazil, A/HRC/11/2/Add.2 future, 23 March 2009, para. 9. Available at* https://www.refworld.org/docid/49f6c5602.html

[262] *Id.*

[263] Thays Alves Bezerra. *Autos de resistência e violência policial: estratégias utilizadas para negar a violência institucional no registro das mortes dos acusados na guerra contra as drogas em duas capitais brasileiras, Curitiba e Salvador.* Universidade de Brasília. Faculdade de Direito (2014).

powers and excessive use of force. As consequence, the possibility of having their family, partners, daughters and sons killed by state authorities without being able to address justice turned life in the *favelas* apparently precarious, or even worthless.

Favelas' black and poor bodies were also worthless from an economic perspective. Marcelo Neri, an economist who was chief minister of the Secretariat for Strategic Affairs of the Presidency of the Republic in 2014, wrote that the 'favelado was a person poor of resources', and because of that they were like 'dead people, with no market value'. For him, when talking about Rio's favelas, 'there [was] a loss of productive capital in one of the noblest points of the city'.[264] Since the 2000s, Rio's mayors were trying to find new strategies to regain control over territories near rich areas and reorder social structures in the city, which have lost prestige since the moving of the national capital from Rio to Brasilia, in the 1960s. Aiming to regain the lost prestige, Rio de Janeiro applied to host the 2004 Olympic Games and was defeated but ended up hosting the Pan American Games in 2007. In October 2007, Rio was chosen to host the FIFA World Cup and in June 2009, Rio was chosen to host the Olympic Games, in 2016.

On the eve of the major sports events, the state of Rio de Janeiro launched a program as part of the new public safety policies in order to improve security in the city of Rio de Janeiro. Although named 'pacification program', the operation consisted of the militarization of the most violent *favelas* in Rio. In order to achieve legitimacy for the military intervention and avoid public rejection, the incursions of the military police in the favelas were strongly supported by the media-led metaphor of 'war'. The construction of a narrative of war was needed in order to justify the invasion and permanent territorial occupation and control about to be done by the military forces. In the case of Rio's pacification program, law played a central role in creating a framework in order to talk about the 'justice' and efficacy of wartime violence.[265]

As posed by Roberto Malighelli, the pacified/militarized communities becomes similar to the notion of 'the camp' proposed by Hannah Arendt and Giorgio Agamben, as 'within this type of space, delimited by territorial and symbolic enclosures, the legal order includes and controls what it excludes, through its own exceptional

[264] S. G. Silva. Politica de Pacificacao de favelas (UPPs): fundamentos juridico-politicos e suas criticas. PUC-Rio. 2016. At 26.
[265] Carolyn Prouse. *Framing the World cUPP: Competing discourses of favela pacification as a mega-event legacy in Brazil.* Recreation and Society in Africa, Asia and Latin America 3, no. 2 (2013).

suspension'.[266] The state of exception during a military operation in a *favela* acquires a biopolitical, even a necropolitical meaning, representing a structure in which the law includes the living through its own interruption.[267] *Favelas*, in being permanently occupied by the state's authority, are turned into the idea of 'camp', constituting a space of permanent exception.

v. The colonial myth of the pacification project

The program implemented by the state of Rio de Janeiro named *Unidade de Polícia Pacificadora* (UPP) – Police Pacification Units – is considered to be the largest security operation in Brazilian history.[268] As an example of its dimension, on 28th November 2010, 'a combined force of two thousand seven hundred soldiers, and civil and military police, aided by air force attack helicopters, navy marines, armored cars, tanks, high-velocity weapons, and elite special forces' launched a military invasion on *Complexo do Alemão*, a group of favelas in the North Zone of Rio de Janeiro.[269] The media covered the invasion, providing news in real time.

Created in 2008, the pacification program was a replacement for the unsuccessful short-term LOG operations. It proposed to combine proximity policing with infrastructural, social, and economic projects in order to bridge the existing gaps between segregated territories within Rio de Janeiro.[270] The program was intended to consist of three phases: a military invasion of the violent community, followed by several months of heavy patrol forces, and finally the training of its residents to assist the recruited military police in long-term social projects.[271]

The first UPP was installed in Santa Marta, south zone of Rio de Janeiro, in 2008, three years earlier than the Decree that officially created the program was published. Eventually, the program, which was originally linked to the Secretary of Human Rights of Rio de Janeiro, had its own decree with norms and budget.[272] Although there is a regulation requiring that police officers have some kind of training

[266] Roberto Malighetti. *Exception and resistance in the favelas of Rio de Janeiro. Supra* note 233. At 74.
[267] *Id*.
[268] Conor Foley. *Pelo telephone. Supra* note 235. At 4.
[269] *Id*.
[270] Celina Myrann Sørbøe. *Security and Inclusive Citizenship in the Mega-City.: The Pacification of Rocinha, Rio de Janeiro*. MS thesis. 2013.
[271] S. G. Silva. Politica de Pacificacao de favelas (UPPs): fundamentos juridico-politicos e suas críticas. PUC-Rio. 2016. At 26.
[272] Rute Imanishi Rodrigues, and Eugênia Motta. "A Pacificação das favelas do Rio de Janeiro e as organizações da sociedade civil." (2013). At 34.

in human rights, there are no defined rules for the procedures of the officers of the pacification units.[273]

Rio's government wanted to occupy and pacify *favelas* so they could be administered by the state in the same way as the rest of the city, that is so that *favela* residents could become full citizens while stressing that policing paves the way for investment in infrastructure and the establishment of social programs to solve the community's issues.[274] Most of the UPP was planned to be established at the top of the *favelas*' hills in a strategic location so the police could observe the movement and symbolically take the place of gangs who used the same strategic locations.[275] Many residents were cynical about the reasons behind the program, seeing it as an effort to show foreigners Rio's ability to deal with violence on the eve of major sports events; they wonder if the program would survive the next elections or past the 2016 Olympics.[276]

The policy of pacification implemented in the favelas of Rio de Janeiro is essential to a set of neoliberal accumulation strategies, as explained in the First Chapter. The favelas are retaken based on military operations that invade and dominate them through armed power. Once the mission is completed, the Brazilian and the Military Police's flag is raised by tactical teams to celebrate the regaining of the territory. After the first phase, the control over the territory continues, and the permanent presence of military police officers becomes disproportionately higher than in other areas of the city.[277] In some areas, houses are marked with blue paint and later demolished, on the basis of 'irregular housing', and are then given to companies that have a public-private partnership with Rio's government.[278]

According to Rio's government, the project was designed to help the state regain control over territories long lost to drug trafficking, as well as to reintegrate these economically challenging communities into society,[279] in a sort of transformative occupation. However, the program can also be described as the transformation of the public and sociopolitical tutelage of these communities into forced militarized tutelage,

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[273] Id. At 35.
[274] J. Freeman (2012). Neoliberal accumulation strategies and the visible hand of police pacification in Rio de Janeiro. At 104.
[275] *Id.*
[276] *Id.*
[277] Pier Angelli de Luca Maciel. *The Pacification of Favelas of Rio de Janeiro: a neoliberal twist to an old-fashioned intervention.* University of Ottawa. 2015. At 74.
[278] *Id.*
[279] *See* Carolyn Prouse. *Framing the World cUPP. Supra* note 286.

aiming at the promotion of 'new markets', reduction of economic risks, and creation of profit opportunities. Several companies saw new business opportunities in the occupied *favelas*, not only those who have a partnership with Rio's government but others that aim to install factories and industries. The program received direct donations from several private companies, such as Coca-Cola, Souza Cruz, and even banks, and on the program's website, it was listed other institutions, such as International Lions Club and the U.S Consulate General in Rio de Janeiro.[280]

As Wikileaks revealed, in 2009 the Embassy of the United States sent a telegram to the government of Rio de Janeiro praising the UPPs, by saying

> In addition to the obvious security factors involved in the pacification program, there are also significant economic interests at stake, with many analysts estimating that Rio de Janeiro's economy could grow by 38 billion reais if favelas are reincorporated into traditional society and markets. The peace program shares many characteristics with US counterinsurgency doctrine and strategy in Afghanistan and Iraq. The program's success will ultimately depend not only on effective and sustained coordination by the police and state and municipal governments but also on favela residents' perception of the state's legitimacy.[281]

The term 'pacification' originated in times of colonial warfare, and it has only more recently been reappropriated as a theoretical concept. Some scholars dedicated to developing a critical pacification theory draw attention to both the destructive and the productive qualities of 'pacification', while modern liberal democracies only address the productive qualities of the theory.[282] The pacification of a population, in accordance with settler-colonial practices and colonial warfare, encompasses the promotion of the acceptance of the native population to the new state of affairs. For Neocleous, security entrepreneurs play a role in the fabrication of capitalist relations through a 'war for accumulation' that 'involves the production of conditions for capitalist accumulation'.[283] At the favelas, there was the need to create docile bodies that could become a disciplined and cheap workforce to the companies that would economically explore the locations. As an example, Procter & Gamble was installed at Cidade de Deus a year after it was occupied by the military police forces being granted tax

[280] Guilherme Soledade Silva. Política de Pacificação de favelas (UPPs): fundamentos jurídico-políticos e suas críticas. PUC Rio de Janeiro. 2016. At 27.
[281] Guilherme Soledade Silva. Política de Pacificação de favelas (UPPs): fundamentos jurídico-políticos e suas críticas. PUC Rio de Janeiro. 2016. At 32.
[282] Koenders, S. (2020). "Pedagogy of Conversion" in the Urban Margins: Pacification, Education, and the Struggle for Control in a Rio de Janeiro Favela. At 123.
[283] Mark Neocleous. 2014. War Power, Police Power. Edinburgh: Edinburgh University Press.

incentives by Rio's government, and Philips consulted with Rio's secretary of public security about the UPP installations at Morro do Dendê, as it had interests in opening a factory in the region.[284]

Other businesses that already existed in the communities were taken over by the pacification units. For instance, although illegal, the alternative transportation provided by motorcycles, which had social value because it is the only transport modality capable of accessing narrow steep alleys of the *favela,* was taken over by police units and managed it as their own business.[285] This decision implies that the *favela* is an inferior space that deserves their compassion, but also a space to personally benefit from.

The biggest intention of the pacification program is to produce a disciplined workforce, able to work but not to accumulate from it, which is faced by the resistance of the residents themselves. UPP's are often seen by residents – especially the young, dark-skinned men – as aggressive forces of occupation.[286] Although there is the question of temporality, it is uncertain for how long the units will stay in the communities. A *favela* resident, when asked how quickly the drug traffic would return if the UPP was withdrawn from their community, answered that 'they would meet each other on the way out'.[287]

The pacification program was developed as a strategy that maintains a direct link with a project of city and power. Such as the pacification of natives as explained by Neocleous in the first chapter, Rio's program is aimed as a tool to build a new social order in certain favelas, with a huge impact on the inhabitants' lives. The police started to define what culture and leisure are, by determining the organization of local events, including vexatious searches in residents, and implementing curfew in some areas. Resolution 013/2007 of the State Government of Rio de Janeiro determine that the well-known 'baile funks'[288] would have to be authorized by the police forces, which, from the residents' point of view, is an emblematic example of how the local government tries to erase favela culture and controls residents' socio-spatial right to public space and local traditions.[289]

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[284] *Id.* At 33.
[285] Pier Angelli de Luca Maciel. *The Pacification of Favelas of Rio de Janeiro. Supra* note 278.
[286] *Id*.
[287] Conor Foley. *Pelo telephone. Supra* note 235. At 37.
[288] Traditional Afro-Brazilian music festivals that originated in the favelas and are now popular in Brazilian middle and upper classes.
[289] Comelli, T., Anguelovski, I., & Chu, E. (2018). Socio-spatial legibility, discipline, and gentrification through favela upgrading in Rio de Janeiro. *City*, *22*(5-6), 633-656. At 15.

The Resolution confirms that Rio's government recognized the importance of funk as a cultural manifestation of *favelas* and believed that it was vital to tame the informality and the disorder of these manifestations that could 'lead to criminality', a logic that resembles the broken windows theory.[290] This is another element that demonstrates the colonial underlying logic of the control of police over Rio's *favelas*, based on a false superiority of the conqueror's lifestyle, and the attempt to enforce these parameters in *favelas.*[291]

With the presence of the state embodied in their agents, the inhabitants of *favelas* under military occupation are subjectified and corporeally disciplined, as in any other 'normal urban agglomeration'. Yet, after pacification, the double-panopticism turns into a claustrophobic space, since both police and drug traffickers are permanently present within the community. Residents, therefore, must deal with the fact that both may be watching at the same time, and in order to navigate such a context, they must be simultaneously aware of the presence and behavior of police and traffickers in order to know what they can and can't do at different times and places.[292]

[290] Pier Angelli de Luca Maciel. *The Pacification of Favelas of Rio de Janeiro. Supra* note 278. At 90.
[291] *Id.*
[292] Matthew Aaron Richmond. "*Hostages to both sides*". *Supra* note 216. At 78.

IV. CONCLUSION

The seeming contradiction between Israel's claim to be a liberal democracy and its status as a settler-colonial state with an ongoing project of expropriation of Palestinian resolves when we take into consideration that Israel permanently imposes an apparent 'state of exception' that Benjamin found to be the historical norm for the oppressed.[293] The techniques by which it maintains and enforces its colonial rule, far from causing scandal to the Western democracies, are coveted and purchased by them[294], due its well-constructed legal narratives. As posed by Neocleous, the development of the mainstream legal order originated from the colonization and exploitation of the colonies aiming the continuous capital accumulation and the subjugation of the Other by settler colonial policies.[295]

Pacification is a powerful mechanism for social control, and its tactics are found to be utilized by western hegemonies from colonial wars until modernity when wars on drugs and wars on terror are wielded against the so-called 'enemies of the state'. Applied in the politics of security, pacification occurs with construction and reconstruction, and politics and force. According to Neocleous, security achieves pacification through political and economic force, deconstruction and reconstruction, and social reconstruction through the military and police force, and it is a mechanism that has been historically used to control and oppress certain populations, aiming capital accumulation.[296] The analysis of the recent history of Rio's favelas and the occupied Palestinian territories demonstrates how the main strategy of governmentality shifted from exceptional spaces to spaces where hyper legality brings its inhabitants to the center of necropolitical policies of death, such as the manhunt institution – which is one of the main tactics of the pacification project. This security strategy demands one of two possible relations to the native population: their exploitation as a subordinated labor force – as in the case of Rio's favelas – or their more or less rapid extermination – as in the case of the occupied Palestinian territories.[297]

While Gaza serves as an enclosed camp for brutal Israeli experiments of its military and security, not only Rio, but several other States in joined solidarity with

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[293] D. Lloyd (2012). Settler colonialism and the state of exception: The example of Palestine/Israel. *Settler Colonial Studies*, *2*(1), 59-80. At 76.
[294] *Id.* At 77.
[295] *See* Mark Neocleous. International law as primitive accumulation. *Supra* note 20.
[296] Ackerman, A. R., Sacks, M., & Furman, R. (2014). The new penology revisited: The criminalization of immigration as a pacification strategy. *Justice Policy Journal*, *11*(1), 1-20.
[297] D. Lloyd (2012). Settler colonialism and the state of exception: The example of Palestine/Israel. *Settler Colonial Studies*, *2*(1), 59-80. At 66.

Israel continues to acquire their security apparatuses in order to develop its own local settler colonial strategies. On December 2018, the Rio's governor went to Israel in order to buy drones to be used for security reasons. He was also clear when stated that 'what is happening in Israel will happen in Rio de Janeiro', followed by several statements about the possibility for state agents to 'shoot to kill'[298]. What he addressed was the existence of an authoritarian effort to construct a new legal approach that will give the possibility of state agents to 'shoot first, and ask later', similar to the targeted killing policy already been used by Israel – the ultimate expression of the manhunt institution. The discourse of 'state of security' concerning Brazilian *favelas* is transforming through legal narratives in order to give state agents a 'license to kill' in hot pursuits.

Recently, a project of federal law was presented to the Brazilian National Congress in which military and security agents may be exempt from punishment when committing murder (and other criminal acts) justified in order to keep the 'law and order', a legal exemption beyond self-defense and that can be used mainly to justify targeted killing in the favelas. Although the law was not approved, the project represents the ultimate instance of how the sovereign's right to kill is being wielded by state's authority, under the populist discourse of a 'war on drugs' justified due to its exceptionality, which is, in reality, included in a space of hyper legality.

In July 2018, the Knesset approved the Jewish Nation-State Law that declared Israel to be the 'nation-state of the Jewish people,' and that the 'right of self-determination in the State of Israel is unique to the Jewish people.'[299] The Law is an 'Israeli Basic Law', in other words, a constitutional law, that claims Palestinian people are unable to claim liberation on, or a right to, the land that constitutes the State of Israel.[300] The law emphasizes the importance of collective identity, although only of the Jewish people, and fails to offer any basis for attachment of non-Jewish citizens to the state of Israel, utterly ignoring their existence.[301] It was the last (so far) nail in the coffin that ultimately furthered Palestinians away from self-determination and advanced the Israeli settler-colonial strategy.

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[298] *See* The Times of Israel. *Far-right Rio governor likens drug dealers to Hezbollah, vows to act like Israel.* 17 July, 2019. Available at https://www.timesofisrael.com/far-right-rio-governor-likens-drug-dealers-to-hezbollah-vows-to-act-like-israel/

[299] Somdeep Sen. (2020). Decolonizing Palestine. In *Decolonizing Palestine*. Cornell University Press. At 38.

[300] Id. At 39.

[301] Responding to the Nation-State Law: Norms and Narratives of Solidarity in Israeli Constitutional Law.