

**THE LAW IN THESE
PARTS:
III**

temporariness & legal reform

PERMANENT TEMPORARINESS

- 1. The “temporary” expectation of the suspension of sovereignty makes IHL an indirect enabler the hard, legal denialism of the “Shamgar Doctrine,” and of the continued occupation.
- 2. Legal rulings create “permanent temporariness.”
- 3. Time and law.
- 4. Allow the viewing of the conquests of 1967 War as a historical incident.
- 5. From the League of Nations’ mandatory system to IHL.
- 6. Palestinian sense of temporariness.

PETER BEINART, *THE CRISIS OF ZIONISM* (2012)

Thesis: The phrase "nondemocratic Israel" for the occupied territories "suggests that there are today two Israels: a flawed but genuine democracy within the Green Line and an ethnically-based nondemocracy beyond it. It counters efforts by Israel's leaders to use the legitimacy of democratic Israel to legitimize the occupation and by Israel's adversaries to use the illegitimacy of the occupation to delegitimize democratic Israel." And he concludes: "If Israel makes the occupation permanent and Zionism ceases to be a democratic project, Israel's foes will eventually overthrow Zionism itself. We are closer to that day than many American Jews want to admit. Sticking to the old comfortable ways endangers Israel's democratic future. If we want to effectively oppose the forces that threaten Israel from without, we must also oppose the forces that threaten it from within".

WHAT IS LEGITIMATE RULE?

- State's legal powers (e.g. to arrest, try, and convict) are legitimized when they are viewed as serving public interest.
- Where state doesn't represent subjects, law enforcement is exercised to serve narrow interests (in non-democratic, e.g. colonial, authoritarian, military, or apartheid, governance) but a degree of legitimacy is still cultivated.
- Rule by force is not accepted by its subjects as legitimate.

RELATIONSHIP OF LEGITIMACY AND SOVEREIGNTY

- 1. Sovereignty vacuum (de facto v. de jure rule)
- 2. Military occupation is TEMPORARY since “military occupation over a ‘foreign’ population is legally unacceptable and politically unstable as a permanent arrangement” (Hajjar: p.2)
- 3. “Military occupation, by its very nature, perpetuates conflict because it negates the occupied population's right to self-determination” (Hajjar: p.2)

1. HOW CAN THE LACUNA BE RECTIFIED?

- Exercise of judicial review not only by domestic, but also by third country, and international tribunals; civil suits for compensation, UN standing committees, special representatives as well as missions and commissions that invoke human rights standards in the context of reviewing occupation measures. While these...modalities are important, they still leave much to be desired.

2. HOW CAN THE LACUNA BE RECTIFIED?

- A more radical suggestion comes from Orna Ben-Naftali, Aeyal Gross, and Keren Michaeli to create for indefinite occupations a new category of illegal occupation, with all its likely consequences.

3. HOW CAN THE LACUNA BE RECTIFIED?

- The most radical reform was put forth by Asli Bali, a law professor at UCLA as part of a symposium in *Jadaliyya*. She argues that “separate and higher standard of obligations [should] be imposed on belligerents that deliberately prolong their occupation of territories seized in war.” With every added year of occupation the balance between the occupier’s security needs and the occupied population’s human rights would shift further and further in the direction of the latter. Taken to their logical conclusion, she and another participant Daryl Li, argue “the full human rights of the population under occupation in the long-run will require their full enfranchisement.”