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**Powers of Illegality: House Demolitions and Resistance in East Jerusalem**

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**Powers of Illegality:  
House Demolitions and Resistance in East Jerusalem**  
Irus Braverman

*Abstract*

This article examines how techniques of illegality based in planning laws and policy are utilized to dominate the Palestinian population of East Jerusalem. Although the demolition of homes is the most spectacular spatial mechanism of illegality exercised by Israel in East Jerusalem, my focus in the first part of the article is on more mundane techniques of illegality, such as mapping, filing, and arbitrariness. The second part of the article introduces the notion of resistance and explores the illegal building carried out by East Jerusalemite Palestinians as an act of spatial protest. In examining tactics of “everyday” resistance, I suggest that the study of illegality in the East Jerusalem context allows a nuanced understanding of the relations between bureaucrats and subjects, thereby offering a deeper understanding of the nature of power itself.

**INTRODUCTION**

Two bulldozers were working simultaneously on demolishing the house: one was destroying the children’s room and the other was tearing down the kitchen....By the time the owner got home all that was left of his house were two exposed walls. The kitchen wall was standing exactly as they had left it in the morning, with the sink and the coffee cups and everything in its exact place: such an intimate sight, although literally connected to nothing. On the children’s wall the pictures were still hanging. (Palestinian Planner, September 1, 2003)

It is estimated that 85 percent of the Palestinian houses in East Jerusalem are “illegal.”<sup>1</sup> This implies that since 1967 approximately twenty-thousand buildings were built by Palestinians in East Jerusalem without acquiring sufficient building

permits.<sup>2</sup> From 1987 to 2004 Israel demolished four hundred of these houses (Bimkom and Ir Shalem 2004). These demolitions were not executed on the houses of “terrorists,” nor were they based on rationales of military security, but rather on an enforcement of apparently benign planning regulations centered around the definition of the demolished house as illegal. This article will concern itself with the detailed techniques that constitute this illegality and with the various modalities of resistance performed in the East Jerusalem context.<sup>3</sup>

While official Israeli narratives claim an egalitarian enforcement of planning laws as the grounds for both the ascription of illegality to a house and the subsequent act of its demolition (Weiner 2003), the majority of Palestinians view this practice as a strategic ethno-national war conducted by Israel through a facade of planning for the sole purpose of taking over their lands in violation with international law (Khamaisi and Nasrallah 2003). While the two opposing discourses exercise distinct technologies of power to normalize their practices and render them neutral and a-political, they also share a strong commonality in that they both make ubiquitous use of the same tool for legitimizing such practices and for undermining those of others: the tool of illegality.

Often in the shadow of legality, illegality is usually considered a passive by-product of legality; as such, its powers largely go unnoticed. This article will attempt to look into the spatial matters practiced in East Jerusalem through the lens of illegality, destabilizing its seemingly homogenous and predictable features to provide a more nuanced account of its physical and discursive dimensions. Illegality’s

uniqueness lies not only in its opposition to legality but also in an almost mythical and moral quality assigned to its annunciation, which grants it constitutive powers.

While the Palestinian discourse moralizes the act of illegal building by what it perceives as the illegality of Israel's annexation of East Jerusalem according to international law, the Israeli discourse bases the morality of its planning apparatus on the egalitarian and professional application of planning laws that render any act of building in violation with the law, performed in any part of Israel, as illegal. In both cases, illegality is utilized in the struggle over territory and demography through its attachment to either human agency or to a physical thing. Accordingly, this article examines the interconnectedness and fluidity between *subject*-based illegality, which shapes human geographies, and *object*-based illegality, which shapes the physical geographies of landscape.<sup>4</sup> In particular, this article explores the relation between the Palestinians as marginalized people, on the one hand, and the marginalization of the specific object of the house that has come to represent them, on the other hand.

Divided into two major parts, the first part of the article provides a detailed account of the illegality techniques produced by the Jerusalem-based bureaucracy. The demolition of houses is usually presented as the most radical technique of illegality in the context of Jerusalem's planning regime, and as the most explicit use of State power. But mainly, the first part of the article focuses on the less explicit and more mundane techniques of illegality, which include mapping, filing, arbitrariness, criminality, and partitioning. The second part of the article introduces the notion of resistance. Exploring the idea that the act of illegal building is conducted by Palestinians as a spatial form of "counter-resistance" to the Israeli

occupation, the article then proceeds to discuss everyday tactics of resistance that are utilized in this spatial context. But before moving to discuss these two major themes it might be useful to introduce, even if briefly, East Jerusalem's geo-political setting.

## **FRAMING THE DISCUSSION**

### **Demography and Territory**

The contested division between East and West Jerusalem is far less archaic than one might expect. It originates in what was defined, between the years 1948 and 1967, as the city's "urban line": the border that divided Jerusalem between two nation-states, Israel and Jordan.<sup>5</sup> The 1967 war is a significant temporal event in Jerusalem's spatial genealogy: during this war, Israel conquered and unilaterally annexed East Jerusalem, including the Old City.<sup>6</sup> This annexation tripled Jerusalem's municipal territory, resulting in a new demographic condition in the city of 74 percent Jews and 26 percent Palestinians. In 1973 the Israeli government fixed this ethnic ratio as the guiding principal for planning policies enacted in Jerusalem for years to come. The 1980 Basic Law: Jerusalem, Capital of Israel added a symbolic dimension to this policy by declaring the "whole and unified Jerusalem" as the capital of Israel. Despite the demographic proclamations, a recent official report depicts that of 706,000 residents in Jerusalem, 65 percent are Jewish, 32 percent Muslim, and 2 percent Christian.<sup>7</sup>

The status of the "newly" admitted Palestinian inhabitants of Jerusalem exemplifies the ambivalent relation of the Israeli state towards their existence in this space. Palestinians who fulfill certain territorial requirements<sup>8</sup> are assigned permanent

resident status. Unlike the Palestinians residing in Israel since 1948, most Jerusalemite Palestinians do not have Israeli citizenship. Moreover, even though their residency status permits them to participate in municipal elections, most of them refrain from doing so as a disavowal of Israel's legitimate authority in East Jerusalem. This situation reveals the discrepancy between the official status of the territory, which Israeli law regards as an integral part of Israel and therefore as subject to Israel's jurisdiction, and the tenuous official status of the Palestinian population residing in this territory, which makes for its visual marginalization and spatial exclusion.<sup>9</sup>

This article posits the following analysis: that alongside the extensive use of segregation as a tool for inscribing power discrepancies into a spatial format, the colonial discourse of the Zionist state also sways towards narratives of assimilation. The term "a unified Jerusalem" can serve as an illustration of this duality. This term was used by the former deputy Mayor of Jerusalem, who stated that "if you really want a *unified* Jerusalem you have to pay the price...since even if a wall will run between east and west, how can you prevent the Arab woman from bearing more and more children?"<sup>10</sup> The deputy Mayor further explained that his "integrative" agenda is the most efficient managerial strategy for governing what he frames as a "primitive" population whose main function is the bearing of children. Integration and disintegration serve, then, as opposite poles of this colonial policy, "without the choice being made clearly and systematically applied, so that contradictory intentions could animate different officials at the same moment or the same officials at different moments" (Bourdieu and Sayad 2004, 459).

These complexities, along with additional unique geo-historical features of Jerusalem (Bollens 2000; Fenster 2004; Sharkansky 1996), account for the dialectic and symbiotic split between West and East Jerusalem: while the West is constructed as the “bright side” of the city, and is provided with modern technology and invested with legal powers, the Eastern other is constructed as traditional, chaotic, and illegal, thereby constituting the “dark side” of the city.

INSERT FIGURE 1 with CAPTION

Indeed, alongside the reorganization of populations so as to fit a particular demographic discourse, the reorganization of territory takes on a prominent role in the battle over the Jerusalem. This territorial battle is performed through creative and unexpected uses of space, for instance by imposing images of “greater” and “lesser” Jerusalem, and networks of bypass tunnels and entrapped areas such as E-1 (see Figure 1), as well as by promoting large archeological projects in an attempt to control Jerusalem through its underground. Albeit fascinating, these innovative usages are beyond the scope of this article, which focuses on the more mundane and low-level regulation of planning in East Jerusalem.

### **Planning the Jerusalem**

While the most publicized and criticized forms of house demolitions are executed either on the houses of “terrorist” families for purposes of “collective punishment”<sup>11</sup> or as military measures executed for “security reasons,”<sup>12</sup> the demolition practices explored in this article are based, at least officially, on *planning* rationales, namely, on the claim that these houses were built without permits and are

therefore “illegal.” Although not mentioning the term “illegal” explicitly, the actual practices that constitute the illegal situation are mostly defined within the central Israeli planning statute - the 1965 Law of Planning and Building. Chapter 10 of this law defines the “deviation from a permit or scheme” as “any utilization of land which does not comply with the permit, any of its conditions, or any other ordinance in this law, or which does not comply with the town scheme, unless this utilization has been permitted by law.”

Between 1967 and 1999, Palestinian residents of Jerusalem were granted three thousand building permits. These permits provided housing for roughly twenty-five thousand people, whereas the Palestinian population increased during this period by 112,000 people. Certain city planners estimate that the Palestinian housing shortage exceeds twenty thousand residential units, and state that these figures are constantly on the rise (Bimkom 2003). To understand the practicalities that prohibit Palestinian Jerusalemites from acquiring permits one must refer to the broad context of the planning regime administered in East Jerusalem.<sup>13</sup>

Of the 27.5 square miles it annexed in 1967, Israel appropriated 9.5 square miles (over one-third). Of the land that remained under Palestinian ownership, only 11.2 percent is available for development, which must comply with the existing planning schemes. In 1967 Israel annulled the Jordanian schemes that were in force in East Jerusalem and has been slow to replace them with valid Israeli schemes. As a result, over one-quarter of East Jerusalem remains unplanned. This unplanned territory is mostly defined by zoning regulations as “open areas,” which makes it practically impossible to legally build in these areas.<sup>14</sup> Furthermore, over 35 percent

of the planned areas in East Jerusalem are designated as green zones, namely as parks, gardens, preservation areas, etc. Since any form of building is prohibited in these spaces (even when private ownership is not contested), the declaration of green zones is an effective device for preventing Palestinian development in the place. Another relevant zoning use is that of open landscapes areas. The regional planner defines this use as “a land that can’t be built on or realized in any other way, though it is not expropriated so its owners are not rewarded any compensation,” further explaining that “[this] planning definition... is an invention utilized in East Jerusalem only, and is definitely a political definition that has nothing to do with planning” (see also Fenster 2004, 103). Although her idea of planning as largely distinct from the political may be contested, the critique of the discriminatory uses of certain zoning techniques, articulated by perhaps the most influential planning official in Jerusalem, should nevertheless be considered seriously.

In addition, although most of the land in East Jerusalem is not registered with the Israeli Land Registration Bureau, registration has become in recent years a prerequisite for obtaining building permits. Yet the threat of being exposed to expropriation based on the application of the 1950 Absentee Law<sup>15</sup> results in that the majority of the Palestinians refrain from such mandatory registration, which again manifests in their inability to acquire legal building permits.

Furthermore, many detailed bureaucratic practices exercised in East Jerusalem are bluntly discriminatory in comparison to those exercised in West Jerusalem. For example, while the approval of a local planning scheme for Jewish neighborhoods takes one year on average, in the Palestinian neighborhoods the

average is thirteen years, and when finally approved, a budget is rarely assigned to their application. Indeed, of the 76,151 housing units built between 1948 and 1995, 82 percent are located in West Jerusalem, half of which are constructed through public funding, while at the same time only 18 percent are built in East Jerusalem, mostly through private investment (B’Tselem 1995). There is also a clear discrepancy in the building percentages allotted to the two populations. For example, Jewish houses in the Moskowitch neighborhood are assigned twice the building percentage (200 percent, or maximum eight-story high) than Palestinian houses in neighboring Ras El-Amud (50 percent, or maximum two-story high). In the past, the official Israeli discourse explained the mandatory low percentage of building assigned to Palestinians by indicating Israel’s commitment to the preservation of the village-like character of Palestinian neighborhoods.

Finally, while official sources do not separate the data on illegal building and demolitions between the two populations, Amnesty International asserts that “only rarely are properties demolished in the Jewish sector and usually these are extensions to existing buildings, rather than entire homes. The practice in the Jewish sector has tended to be a retroactive granting of permits and tolerance of unlicensed buildings, rather than demolition” (2004, 41). Another source indicates that while 82 percent of the illegal construction in Jerusalem is conducted by the Jewish population, 80 percent of the demolitions are inflicted on Palestinians (Bimkom and Ir Shalem 2004, 45).

While the discriminatory nature of planning in East Jerusalem has been acknowledged widely, and most notably by the former Mayor of Jerusalem Teddy

Kollek,<sup>16</sup> it is but one visible symptom of a much thicker apparatus pertaining to this space. This apparatus produces spatial sites of power while at the same time concealing and neutralizing their effects. The investigation and, moreover, the correction of such discriminations, would therefore not expose or change the hegemonic power dynamics that are at work in Jerusalem, and might even serve to conceal them. Hence this article attempts to go beyond the discriminatory discourse to focus on the utilization of illegality for the project of governing the Palestinian population.

## **BUREAUCRATIC PRODUCTIONS OF ILLEGALITY**

### **Illegality and the Home**

[I]llegality [is] law's inevitable surplus - expelled, yet always present, constituted at the heart of law, for legality would have no meaning without it. (Cooper 1996, 255)

Widely perceived as a single act with clear-cut boundaries and homogenous contents, illegality tends to be treated as peripheral in relation to legality, rather than as a significant structuring device in its own right (Cooper 1996). This section examines the multivocal institution of illegality as it pertains to the home in both Israeli and Palestinian discourses, and in particular with regard to the administration of planning and building in East Jerusalem. By exemplifying the structural significance that illegality possesses within both bureaucratic and lay discourses, it becomes clear that illegality's moral powers are far stronger than is usually acknowledged. This might be explained by the normative condemnation attached to illegality, which goes beyond

its more formal and positivistic dimensions as a simple mirror of legality. Moreover, the specific Israeli-Palestinian setting amplifies illegality's normative significance and makes it acutely visible through the particular spatial ordering of East Jerusalem.

Though his approach can be criticized on several accounts, Ehud Sprinzak's fascination with what he calls behavioral illegalism (1985) might lend some important insights to this discussion. According to Sprinzak, specific historical circumstances such as the Ghetto culture in Eastern Europe, a lack of legal orientation in most countries of Jewish origin, and the heroic myths produced over Jewish resistance to the British Mandate in Palestine form altogether an Israeli culture in which disobedience is not only tolerated but also highly appreciated. Although Sprinzak's focus is mostly on the Jewish Israeli community, it might be interesting to also consider the implications of such a dominant culture of illegalism on the minority groups living in this place. These groups not only reflect but also produce their own versions of this cultural illegalism. Rather than limiting its scope to the historical and behavioral illegalism exercised by the Jewish Israeli community, this article focuses on the broader material and discursive aspects of illegality as they manifest in the particular context of East Jerusalem.

The high level of illegal construction in East Jerusalem is hardly unique.<sup>17</sup> However, in certain African cities, where the level of illegality also reaches high percentages, the urban divide between illegal and legal zones originates in the colonial period (Fernandes and Varley 1998), and is largely based on economically motivated migration. In Israel, by contrast, the construction of illegal landscape is largely part of a detailed ethnic project (Kemp 2002; Shamir 2001), especially in

“mixed cities” (Yacobi 2004). When compared with other mixed cities in Israel, the spatial battle over Jerusalem is particularly extreme, thereby serving as an amplified example for the ethnic management of landscape (Fenster 2004). The particular preoccupation with the house/home in East Jerusalem is but one example of such amplification.

Although initially triggered by an individualized act of human agency, the punishment for certain illegal behaviors is usually inflicted upon the product of the illegal labor rather than on the human initiator of this labor. In the case of East Jerusalem, the Palestinian house is the particular material object regulated by Israel, which usually defines the house’s construction as violating the law, and, as such, can also proceed to demolish it. Why is the house, rather than any other subject or object, the focal center for such legal attention? The infliction of illegality on the house, rather than on any other product of illegal action, is not incidental, and, accordingly, the law is preoccupied with the documentation and regulation of the house (see for example Figure 2). The extensive literature that exists on this subject mostly focuses on the anthropomorphic nature of the house, presenting it as an extension of the self and as an essential ground for personhood (Fenster 2004; Sibley 1996; Radin 1982). However, the struggle over the house/home in the Israeli/Palestinian context is not only over the individual house, but also over its collective meaning, an aspect that is less developed in the literature.

INSERT FIGURE 2 + CAPTION HERE

Indeed, the “return” of the Jewish people to the “Land of Israel” is configured in the Zionist discourse as reinitiating the primordial link between a homeless and dispersed people and their desolate land. “Israel is now the only state in the world that is not a state of its citizens but of the whole Jewish people wherever they may be,” Edward Said pointed out (2000, 190).<sup>18</sup> Within the Zionist discourse, the return to Jerusalem captures a particularly strong sentiment. The Palestinians, on the other hand, perceive the Zionist idea of a Jewish homeland as an attempt to exclude them from their physical homes. The threat of being displaced from their homes, for instance as a result of Israel’s house demolition practices, only reinforces the Palestinian attachment to the land. Accordingly, the Muslim principle of *tzumud*, an obligation to cling to one’s land, has recently been reintroduced and reiterated in the everyday vocabulary of Palestinians in East Jerusalem.

In Jerusalem, houses are built by both Israelis and Palestinians as proclamations of presence and not necessarily to be inhabited.<sup>19</sup> In particular, through utilizing microtactics of house-by-house occupation, both Jewish and Muslim organizations, such as Elad and the Waqf, conduct a daily legal war over the East Jerusalem space. Indeed, when situated in certain strategic locations, and in proximity to holy sites in particular, houses often shift hands numerous times, while each side claims the legality or the illegality of these transactions according to the outcomes it desires.<sup>20</sup>

Yet the fluid transitions between *house* and *home* attempted by both discourses should not blur the specific power dynamics that exist in this context. While appropriating the meaning of *home* on a national scale, the Zionist discourse

confines the Palestinian home to the local scale. Frequently used by Israeli Jews, the term “Arab House,” for example, describes the (abandoned) Palestinian house as a highly fashionable object of desire, focusing on the *individual* and *local* representation of this house and thereby ignoring its *collective* cultural features. As a result, the single Palestinian house becomes a condense site of colonization - emptied of the people that configured its initial meaning, form, and matter, the house’s authenticity is preserved precisely through its physical appropriation and the dislocation of its people. The Zionist reproduction of the house’s nativity is based on other forms of everyday dwelling that have formerly existed in this place, only to then undermine and even negate them. At the same time, Palestinians are made to watch others living in what used to be their homes.

Not only the Zionist discourse but Palestinians as well utilize what geographers call the “jumping scale” technique, this time not with relation to the home but rather to illegality. If the Zionist discourse attaches illegality to single houses of Palestinians through the utilization of planning laws, central Palestinian discourses define the entire Zionist construction of a national home in Palestine as illegal from an international perspective.<sup>21</sup> In particular, Palestinians refer to international law’s definition of the Jewish neighborhoods built in East Jerusalem as the largest illegal settlement in the occupied territories.<sup>22</sup> This view was recently reinforced by the advisory opinion of the International Court of Justice.<sup>23</sup>

Either way, both the Palestinian and the Zionist discourses are highly preoccupied with the house/home, and with its illegal dimensions in particular. This subsection has introduced the specific features of the home/house and the illegalities

attached to its individual and collective, as well as its real, imaginary, and symbolic manifestations. The next subsection will focus on the house's demolition as a spectacle of sovereign power.

### **The Demolition Spectacle**

If I wish to substitute a new building for an old one, I must demolish before I construct (Herzl<sup>24</sup> 1946).

Foucault's famous depiction of the great traditional spectacle of capital punishment in the opening passages of "Discipline and Punish" (1979) is currently being revived in the outdoor spaces of the Palestinian neighborhoods of East Jerusalem. As in premodern physical punishment, in contemporary East Jerusalem a large crowd gathers around the house demolition scene, gazing at the brutal exercise of State power. Hundreds of policemen and soldiers, numerous vehicles, and several large bulldozers flow into this small place, which is usually put under closure for the event. The theatrical effect is yet intensified by the intervention of international and Israeli activists who at times place their bodies between the bulldozers and the house in a symbolic attempt to prevent its demolition, as well as by the presence of numerous journalists and cameras. Altogether, these actors serve as an intrinsic part of the demolition spectacle.

Israel demolishes Palestinian houses not only "because they must be made to be afraid," but also because "they must, to a certain extent, take part in it" (Foucault 1979, 58). Living in constant fear that the next demolition may be inflicted on their home, the distinction between observers and observed is blurred in this

instance to the point where “the spectator does not feel at home anywhere, because the spectacle is everywhere” (Debord 1967). This situation is described by Abed:

Whenever my wife sees the inspectors walking around the village she immediately starts crying. They always ride on their fancy jeeps, and the children get really terrified and start yelling *shorta, shorta*, which means “police, police”....No one dares to speak with them when they come. You are expected to just shut your mouth and close your eyes, and to invite them for coffee at your home.... We are so dumb. We think that if we behave nicely to them it might help us somehow.

The analogy with Foucault’s depiction of the spectacular event is not without significant discrepancies. At least two elements that distinguish between the events also serve to highlight the unique nature of the demolition spectacle in East Jerusalem. First, Foucault’s depiction of spectacular punishment focuses on the production of “truth.” The process of demolition, on the other hand, not only lacks a truth-seeking mission but also places humans in the backstage of the grand theatre, regarding them as only marginal participants in the triumphant catharsis of machine-inflicted destruction. Indeed, the East Jerusalem spectacle focuses not on the human subject but on the gigantic machines that gobble up, in split seconds, the large physical contours of a house (Figure 3). In this sense, the spectacle takes on a modern and fetishistic nature, totalizing the technological to construct a delusional image of the real (Debord 1967).

INSERT FIGURE 3 + CAPTION HERE

In addition, while Foucault's analysis depicts brutality as inflicted upon the *human* body, in the demolition instance this brutality is imposed upon the *nonhuman* body of the house. Significant as it may seem, this distinction between human and nonhuman bodies is rendered irrelevant by most of the Palestinian informants. The Palestinian community planner, for example, claimed that "a person whose house has been demolished, I don't see any difference between him and a person whose only child is killed," and a Palestinian defense lawyer told me: "to demolish a man's house is to tear his heart into little pieces...the demolition is an...extremely inhuman act."<sup>25</sup> Clearly, most Palestinian informants not only themselves relate to their house as interchangeable with their body, but also believe that Israel relates to it in a similar way. Accordingly, this is how a Palestinian Jerusalemite that has worked as a planner in the Jerusalem municipality for over thirty years described the situation: "they twist our hand behind our back until they hear a cry of pain: [then] the municipal officials smile with pleasure, and twist our hand even tighter in order to produce a louder cry. They take pleasure in the Palestinian pain more than in anything else."<sup>26</sup>

But while the identification of the Palestinian body with the body of her house may establish one cause for its demolition, another explanation is also possible. Such an alternative explanation is provided by a Jewish Israeli defense lawyer who has been representing Palestinians from East Jerusalem for over twenty years. The lawyer suggests that the official Israeli discourse regards the Palestinians as "airplanes that are not even detected by the Israeli radar," namely as invisible to Israeli administrators. Rather than choosing between these two seemingly conflicting interpretations, it is important to see their simultaneous existence: while the first

interpretation embodies the Palestinian in this space by rendering her body *opaque*, the second interpretation disembodies her, making for a *transparent* Palestinian body.<sup>27</sup> Instead of undermining each other, the bifurcated dialectic between these two bodily interpretations provides for their reciprocal reinforcement.

Furthermore, this dialectic is not only a one-way mechanism of exclusion by which the dominant Israeli group demarcates certain spaces as “go” or “no go” (Levy 1997; cf. Sally Merry) for the dominated Palestinian population to passively abide by. Spatial demarcations serve also to promote preservation and are therefore self-inflicted, not only by Palestinian Jerusalemites who indeed refrain from visiting certain spaces in West Jerusalem even when they are formally allowed access to them, but also by the dominant Jewish Israeli population that largely excludes itself from East Jerusalem, forming tunnels and bypass roads to eliminate any physical contact with the Palestinian space/population.<sup>28</sup> Hence, the discursive ordering of East Jerusalem into bifurcated typologies of legal and illegal also manifests in the specific human relations and networks exercised in this space. However, although the two discourses attempt to form excluded spaces “clean” of the other, as on a chessboard, ultimately concrete places force them to come into contact and interact so as to create less dogmatic and more hybrid sites. The next subsection will discuss the more specialized spatializations of power, those that lie at the root of the spectacle, demonstrating Guy Debord’s assertion that “the root of the spectacle is that oldest of all social specializations, the specialization of *power*” (1967).

### **Maps, Colors, Photos, and Files**

The municipal bureaucrat doesn't have time to go out and see the place, so he sits in his AC room, identifies a „green area“ on the map, and immediately puts a cross over [the house built on] it. The bureaucrat doesn't see anything beyond this: the policies, the other choices he could have made - he simply doesn't see those as part of his job. (Regional Planner, September 9, 2003)

The modern control over space is executed first and foremost through its cartographic mapping. Furthermore, “the elusive goal of the modern space war was the subordination of social space to one, and only one, officially approved and state-sponsored map” (Bauman 1998, 31). This positive state mapping effort is coupled with a disqualification of alternative maps, hence presenting the hegemonic map as objective, impersonal, and transparent, which also makes it a useful panoptic mechanism of surveillance.

The mapping process in East Jerusalem is unique in that the generic technique of modern state mapping is utilized there for the advancement of strong ethnocentric goals. Indeed, the high mobility of the Palestinian population, its cultural and economic ties with the West Bank, and its resistance to complying with any type of Israeli administration, all make Israel's control over this space a rather challenging task. The lack of “proper” historical documentation of lands in East Jerusalem provides yet another threat to Israel's efficient management of this space. Hence, planning mechanisms that seem sufficient when applied to the general, usually more conforming, Jewish Israeli population of the city, require sophisticated modifications and radicalization when applied to the Palestinian residents of East Jerusalem. These

modified mechanisms attempt to document Palestinian movement in East Jerusalem in detail, evoking, in turn, practices of counter-surveillance on the part of the Palestinians. Of the various planning mechanisms practiced in East Jerusalem, its representation within contradicting mappings provides a magnified example for Zygmunt Bauman's depiction of the "battle of maps" (Bauman 1998, 29).

The bureaucrat in his air-conditioned room mentioned in the above quote provides an illustrative example for the unique character of mapping in East Jerusalem. The central role that abstraction performs in all maps, which results in an intrinsic discrepancy between the physical landscape and its uniform translation in the map, is enhanced in East Jerusalem by the alienation, and at times even hostility, between the city's bureaucrats and its Palestinian residents. A Jewish Israeli defense lawyer described the peculiarities of this situation: "day after day I argue before Jewish judges that stare at me with glazed eyes, failing to understand what I say. So I tell them: "come with me, this world I'm talking about is only five minutes away!...Jerusalem is like *Alice in Wonderland*: it enfolds two completely separate realities." The gap between the city's spatial realities is also expressed by some of the Palestinian informants. In his interview, Abed chose, rather, to highlight the cultural gap: "During my trial I pleaded with the judge: "If you destroy my house where will I take my family?"... „This is the law and the law has no mercy," he answered. That made me so embarrassed for him: an elderly man like him, if he was living in our village the years would make him so wise. But this man didn't even stop to think."<sup>29</sup>

In general, space is alienated from its users through the deployment of expertise in a process of professionalization, and through the exclusionary use of

planning language in particular. Such alienation occurs, for example, when planners map territory into cadastral grids and translate it into a variety of colors, thereby prescribing certain uses to this space. In the Israeli planning language the color green, for example, stands for parks, gardens, preservation spaces, etc.; brown indicates public uses; and yellow represents an area designated for private construction. But while colors have frequently been utilized as conspicuous markers of political affinity (Bhabha 1990), in the East Jerusalem instance they serve, rather, to blur hegemonic ideology by objectifying the physical and by constructing a gap between the way space is conceived and how it is actually lived. In particular, the ubiquitous use of a green zoning in East Jerusalem not only *neutralizes* but also *naturalizes* the ideological uses of planning, concealing this ideology behind the positive connotation of the color green (Figure 4). By presenting itself as a war between homogeneous colors rather than a negotiation between complex people and interests, the struggle over space is flattened, distanced, and dehumanized. Furthermore, the colors allow the eye to conduct its own visual surveillance over space.

#### INSERT FIGURE 4 and Caption

An additional colonial feature of mapping utilized in this context is presented by the director of the municipal prosecution department who admitted: “I don’t go out there [to East Jerusalem] and the judge doesn’t either. We look at pictures. I could visit there, but what for? I’ve got the pictures and I’ve got the town plans and those are all I need for court.” Another Jewish Israeli official, this time the former regional prosecutor, stated similarly that “both the regional planner and I have never been in

these places, and that's precisely why we would sit with the inspector and go through each and every file. I don't trust anyone...I want an exact chart in my office, and also demand photographs of these [illegal] places."<sup>30</sup> These descriptions provide an excellent illustration of what Bauman characterizes as the move from the mapping of space to the spatialization of maps. If before "it was the map which reflected and recorded the shapes of the territory," it is now "the turn of the territory to become a reflection of the map" (Bauman 1998, 35). In other words, the translation of territory into maps results in the transformation of this territory according to the unified hegemonic perspective that is, in turn, projected back to this territory. "The „great man“ is a little man looking at a good map," said Latour adequately (1986, 29).

In addition to techniques of mapping, photographing and coloring, files or dossiers serve to translate space into schematized formulations that advance governance efficiency. The information collected on each illegal house is grouped within a yellow file with a photo of the house glued to its front cover. From the moment of their inception, these files come to represent the contested place and its people for those who exercise the power to decide over their legal status, namely inspectors, prosecutors, and judges. "There is nothing you can *dominate* as easily as a flat surface," Latour argued accordingly (1986, 21), suggesting that files deflate three-dimensional spaces into two-dimension "immutable mobiles." Moreover, the director of the municipal prosecution highlights the mobilization of the *legal* file:

We take hundreds of indictments to court every year, and more than a thousand judicial decrees are pending. Fifteen hundred indictments are

now in various motions, and twelve prosecutors deal with them only...

There are three court rooms but four judges, so each time one of the judges rests. One judge might listen to as many as sixty to seventy cases a day! It's insane!

Managed as an assembly line, the Palestinians are impersonalized and homogenized to conform into prefigured patterns, thereby making them susceptible to a bureaucratic mobilization in terms of numbers and workload. The relevant knowledge for managing this population is thereby transformed into statistics (Foucault 1978, 99).

But the bureaucratic project of distancing and alienation is never complete. Despite having worked in the prosecution for over eleven years, including six years as the director of the department of building violations in East Jerusalem, the municipal prosecutor admitted that "it is awfully hard to work through these cases." As an example of the difficulties, he described the case of five houses from the Isawiye neighborhood of East Jerusalem that were issued for demolition. After years of managing the prosecution of this case in court, the prosecutor felt that he, in his own words, "got to know these people and started to feel connected to them." At a certain moment in the interview he also unwillingly admitted that this familiarity had caused him many sleepless nights, to the point where he considered resigning from this position. Nevertheless, the prosecutor concluded the interview by stating that "on the other hand, they should have known better than to build illegally." Although the ambivalence illustrated in the prosecutor's narrative can be interpreted as a failure on the part of modern bureaucracy's dehumanizing scheme, this ambivalence can at the

same time reinforce the hegemonic strength of this apparatus, which is only enhanced by constructing the bureaucrat as a moral actor. The alienated apparatus is thus further legitimized by lending a moral face to its mechanic operation.

The maps and photos documenting the illegal houses, the informal practices of refraining from visiting these places, and the unfamiliarity and alienation of Israeli bureaucrats towards Palestinian space in East Jerusalem make for a depersonalized and remote control of this population. Through an application of these mechanistic techniques, complex stories of people that build and live in East Jerusalem are flattened and split into simplistic bifurcated formulations of legality and illegality, making for a more efficient governance of what is constructed as a recalcitrant population.

### **Inspection**

The inspectors perform a crucial role in the administration of illegality in East Jerusalem. As the only actors that routinely mediate between the physical space and its bureaucratic representations, the inspectors are vested with strong powers. In general, they decide which houses are illegal, which should then be demolished, and by which legal procedure to do so, administrative or judicial.<sup>31</sup> This subsection will examine techniques of illegality that are produced and practiced by the inspectors in East Jerusalem, and their fluidity as they shift between compliance, discretion, and arbitrariness.

Every year, the inspectors announce hundreds of houses in East Jerusalem as illegal.<sup>32</sup> The first question that comes to mind in this regard is the discrepancy

between the large number of illegal houses that exist in this space in theory, and the relatively small number of annunciations of illegality in practice, as well as the even smaller numbers of demolitions executed in this space. The former head of the municipal inspection squad argued that the decision which house to render illegal is a rational one. He referred to an “enforcement priority” list that he compiled in 1998. According to this list, the highest preference is assigned to identifying and demolishing illegal houses located in the Old City, as well as in green and public zones. “I would initiate around one hundred forty administrative decrees each year,” the former inspector stated, “of which thirty to forty would actually be demolished, and judicial, well, I would say about eight hundred indictments per year. That’s how I’d put order into things. Do you see what I mean when I say that I put my heart into my work?” The inspector’s depiction of this procedure emphasizes its claims for rationality and orderliness. These claims allow the bureaucrat to exercise a moral indifference towards the outcomes of her practice, while at the same time portraying this practice as innovative and efficient, hence strengthening its humanistic faculties and thereby its legitimacy. Indeed, the former regional prosecutor, who represented the Ministry of Interior’s inspection of building cases in Jerusalem for over six years, described the choice between administrative and judicial proceedings<sup>33</sup> as “based on the facts of the case: if the construction is not finished and the house isn’t inhabited we would go for the administrative,” he remarks. In this narrative, efficiency is tied together with predictability and stability, portraying bureaucratic decisions as objective and even technical. However, other informants present a very different story.

Indeed, further explorations of the everyday practices of the inspectors reveal a complex set of actors and networks that undermine the claim that this system operates according to a single rational logic. A first example for such seemingly nonrational practices concerns the duality of inspection enforcement in East Jerusalem. A double set of planning units, one municipal and the other regional, operate in East Jerusalem simultaneously. Each planning unit has a planning committee and a corresponding inspection squad. When relating to the division of powers between the units, the regional planner explains that “in West Jerusalem the municipality operates in the urban areas, and the Ministry of Interior in the open areas,” and adds that “the municipal squad does not even come near East Jerusalem.” A Palestinian defense lawyer describes the allocation of powers in a different manner: “legally, the two bodies hold parallel authority but in fact the authority is in the hands of the municipal body and the Ministry of Interior hardly interferes.” At the same time, the defense lawyer also admitted that he “can’t make any sense of when the Ministry of Interior intervenes and when the municipality does.” This ambiguity is not without concrete consequences, as the current regional prosecutor indicated: “There are failures...such as in cases that we submit two similar administrative decrees on the same illegal construction, first by the municipal committee and then by us....The defendant suddenly draws a valid decree out of his pocket, with a date for trial and everything:... this makes for an embarrassing moment in court”.

A second example that brings to question the rationality and predictability of inspection decisions in East Jerusalem is what several informants describe as the “highly competitive” relationship between the regional and municipal committees and

their corresponding inspection squads.<sup>34</sup> The former regional prosecutor described the nature of this competition as follows: “We compete over who destroys more [houses]...each committee shows off with the level of fines it manages to collect. Obviously, the higher [the fines are], the better.” The former municipal inspector says more about the informal procedures that form and reflect this competitiveness: “The committee that first detects the illegal house owns the right to manage the entire proceedings over this particular house.” According to the former regional prosecutor, this “discovery rule” is inspired by financial reasons - the fines paid upon conviction are directed to the committee that initiated the proceedings over the specific house.<sup>35</sup> “Discovered” by the municipal squad, for example, a house would then be handled by the municipal committee and its bureaucrats. Furthermore, different prosecutors handle the judicial procedures of each committee, and a double set of officials handles administrative cases.<sup>36</sup>

The former head of the municipal inspection squad provided a glimpse into the way that the rule of discovery is practiced: “When I’d detect some poor guy who built illegally only for himself and his family, I’d immediately run to court with his case. [I would do that] to prevent the regional squad from submitting an administrative decree for the demolition of his house. The regional squad is much more extreme than us.” Indeed, several informants related to the institutional differences between the two inspection squads, usually indicating that while the regional squad is more fanatic than the municipal squad, the regional committee officials are moderate in comparison to the officials in the municipal committee. However, not only institutional but also personal tendencies make a difference in the

everyday praxis of governance. For instance, the Palestinian defense lawyer complains about a certain regional inspector who believed in his messianic role of redeeming Jewish land, thereby targeting for administrative demolitions those houses that he believed were built on Jewish lands.

It becomes clear, then, that the semiformal criteria indicated by the inspector to explain why certain houses rather than others are declared illegal, and at times subsequently demolished, are only part of the story. Beyond the rigid criteria, the application of illegality and its concrete consequences largely depends on the specific circumstances of the particular house, and especially on which of the two inspection squads initiates the procedure, and who is the specific inspector that happens to first “discover” the illegality of the house. Hence, the proclamation of illegality does not necessarily dictate any specific spatial consequences, but rather is a trigger for a myriad of potential bureaucratic responses.

### **Arbitrariness: Two Perspectives**

Moreover, each bureaucratic case contains a different balance between discretion and arbitrariness. The boundaries between discretion and arbitrariness are problematized in the following story told by the former head of the municipal inspection squad:

Despite having a valid demolition decree, and the equipment and manpower to do so at hand, I decided to call it a day, allowing the fifth house to remain in place. I knew that the person living in this house was extremely poor, that he had eight children and that his wife was

pregnant. So I decided that four houses were enough, and didn't demolish his house. Since then, no one has ever asked me what happened that I didn't demolish this one house... Obviously, no one could say anything to me because my [inspection] squad was the only one that actually knew about these issues: so if we wouldn't raise the problem, who would?

Is the inspector's act an appropriate use of discretionary powers, such that protect the system from immoral stagnation, or is it, rather, a case of arbitrary use of sovereign power, one that exposes the omnipotent nature of inspection in East Jerusalem and its systemic lack of accountability? Amar, a Palestinian Jerusalemite whose house was demolished twice, provides another, somewhat different, account of the powers exercised by inspectors in East Jerusalem:

The second demolition was much more difficult than the first. We had already lived in our new home, and had a court injunction that prohibited its demolition. But the people from the inspection squad said that they never heard about this legal order. They were not even prepared to listen... My wife, she did not scream or shout. She just stood there, tears rolling down her cheeks. So silent. It hurt me so much to see her like that....

This depiction of the inspectors' behavior illustrates the downside of their lack of accountability. A final example of the inspectors' unusual powers in East Jerusalem relates to their way of enforcing administrative decrees. In his interview, one of the defense lawyers explained that "the Palestinians make use of every

technical mistake, every unclear signature on the administrative decree, to postpone the demolition.” As a result, the lawyer continues, “the inspectors do everything within their powers so that the Palestinians don’t find the decree. While they comply with the law that requires posting the decree twenty-four hours before demolition, they might hide it under a rock or post it on a high pole.” Flirting with the liminal space between legality and illegality, the inspectors find innovative ways to bypass certain obstacles so as to advance the efficient operation of the bureaucratic system.

How do other bureaucrats relate to such practices of the inspectors? The former judge responded to the complaints argued by Palestinian claimants against the inspection practices by saying that “if both litigants were there to argue before me, that means that somehow the decree indeed reached them on time, one way or the other, or else their house would already be demolished.” In addition, the judge’s indifference towards the inspectors’ misapplication of the law is supplemented, conversely, with his depiction of the inspectors’ practices as “weeds” that should be “uprooted from the system.” According to this perspective, while the inspectors’ practices exceed the rule of law, they do not taint the overall legitimacy of the system. Hence, the detailed division of responsibilities that relays such powers to the inspectors, while at the same time failing to apply adequate accountability measures over their conduct, provides the bureaucratic system with a convenient double-standard of governance.<sup>37</sup> The system in fact relies on the inspectors’ “excessive” practices for its efficient operation.<sup>38</sup>

Subjected to the bureaucratic oscillation between legitimate discretion and illegitimate arbitrariness, the perspective of the Palestinian residents of East

Jerusalem tends to focus on the latter, lamenting the arbitrary and random nature of Israel's bureaucratic operation. The former city planner, a Palestinian Jerusalemite, claimed, for example, that the inspectors "count „one, two, three,“ and the house that comes out „four“ is demolished." Another informant, this time a Jewish Israeli defense lawyer, compared the demolition of the house to a strike of lightning, stating that "you never know when and where it will strike next." Finally, Abed, a Palestinian Jerusalemite, described the effects of the inspection practices on his everyday life:

Sometimes I don't fall asleep because I am so afraid that my house will be torn down. I never have good dreams, any night. I am always thinking about the house and about my children. Never in the last ten years did I take a holiday: I wouldn't dare to be away from my home since I am so afraid I would come back to find it ruined. Whenever my wife sees the inspectors walking around the village, she immediately starts crying.

Clearly, the nontransparent and highly unpredictable nature of the inspection practices makes them appear random in the eyes of Palestinians. However, when analyzed through a bureaucratic perspective, the decision to demolish one house rather than the other transforms into a systematic implementation of informal practices that are grounded in traceable institutional interests. Yet this does not deflate the arbitrariness of these practices.<sup>39</sup> But rather than defining the inspectors' arbitrary practices and the systems' corresponding silence as irrational, they can

instead be interpreted as an instrumental application of the law. The arbitrary exercises of inspection in East Jerusalem are *made* to subject the Palestinians to constant anxiety, thereby minimizing their everyday life to a struggle for survival (Agamben 1998). Furthermore, the level of uncertainty produced by the rational infliction of arbitrariness replaces the need for a more aggressive execution of state power, which may be framed as a form of “savage restraint” (Ron 2001). In other words, through utilizing symbolic, rather than physical violence, bureaucratic arbitrariness makes it unnecessary to execute more than a few house demolitions for the efficient management of the entire Palestinian population.

Tightly woven with the notion of arbitrariness, bureaucratic practices in East Jerusalem also utilize the technique of *partitioning* as a form of population management (Foucault 1979, 143). The complex and fractured planning definitions that apply to each case, the individualistic and unpredictable character of the demolition, and the monadic nature of the demolished object introduce a high level of suspicion between Palestinian families. Accordingly, most of the Palestinian informants are convinced that their Palestinian neighbors collaborated with Israel in order to seek revenge or for personal profit, which they see as the major reason for their specific misfortune. Usually mentioned with very strong conviction, the frequent mutual accusations of collaboration with Israeli authorities that occur within the Palestinian community frequently result in that they ignore Israel’s responsibility for the demolitions. By fracturing the physical space, the partitioning technique also reinforces the Palestinians’ fragmented self identity and their fractured sense of community.

### **Criminality: “Living in Air”**

We show them the legal way with a strong projector...but although they can build legally, the Arabs seem to prefer the [illegal] way....Indeed, the illegal way is the cheapest and fastest way to go, and that’s why Arabs prefer it, though they know they are playing a game of Russian Roulette. (Deputy Mayor of Jerusalem<sup>40</sup>)

Articulated by the most influential official on Palestinian matters in the Jerusalem municipality, this citation demonstrates the bifurcated construction of illegality as the only other alternative to legality and, moreover, as an intentional act performed by the “Arabs.” This construction of intentional illegality provides the necessary link for the inception of criminality. The criminal aspect of illegality will be the focal concern of this subsection.

Later in the interview, the deputy Mayor also suggested that the majority of illegal constructions are built by Palestinian real estate agents that despite not having any legal rights to the land, take advantage of the chaotic land situation in East Jerusalem to make a personal profit. When the illegal houses are discovered by the “real land owners,” the deputy Mayor continued to explain, they “turn to the Jerusalem municipality begging us to tear [the illegal houses] down.” By this infliction of the criminal stigma, the formal Israeli discourse defines the entire Palestinian community as either disloyal and deceitful, or as passive and helpless,<sup>41</sup> while the municipality is presented, almost despite itself, as the moral savior.<sup>42</sup> Moreover, the criminal rationale not only reflects but also produces a reality whereby certain Palestinians are encouraged to engage in criminal activities.

However, the bureaucratic actors do not all speak in unison on the matter of criminality. For example, the regional planner admits that “we have made these people criminals: we made them build illegally.... What makes one a criminal? Having a different choice!”<sup>43</sup> Similarly, Amar, a Palestinian whose illegal house was demolished, perceives himself as being “a criminal without a choice.” On the other hand, Abed, a resident of East Jerusalem who has built his house illegally, argues that “the law against illegal construction is not a law at all. What kind of law is it that makes people live in air?”<sup>44</sup> Again alluding to the transparency of the Palestinian subject, this narrative invokes morality as a basic condition for legality, hence configuring those immoral norms that are impossible to adhere to (people can’t “live in air”) as *unlawful laws*. Another, more gradual, form of criminality is suggested by the former municipal planner, himself a Palestinian resident of East Jerusalem: “You can’t relate to a person who steals chicken the same way you relate to a person who steals an entire bank,” he says, adding that “similarly, you can’t relate the same way to a person who constructs an illegal house for his own family on his own land and to a person that steals another person’s land. The second should have his house demolished.” Following the same line of thought, another Palestinian planner complains that “if once you could tell the good guy from the bad, now the situation is much more obscure.” At the same time, most of the Palestinian informants portray Israel as the “real” criminal, and some even go so far as to argue that certain bureaucratic behaviors practiced in East Jerusalem constitute war crimes.<sup>45</sup>

However, the imposition of criminality is not only an external imposition by the sovereign; it is also an internalization of the hegemonic idea of the immorality

of the illegal action into the subject's self image. Indeed, some of the Palestinian informants allude to the transformative influence that Israel's disciplinary planning regime in Jerusalem has on their behavior: "Once, for a single arch a Palestinian would postpone the entire building for a month, just so that he could do it perfectly," says the community Palestinian planner, "but today [we] try to build as much as we can and as fast as we can to establish facts on the ground." Accordingly, some Palestinian informants express disgust towards what they perceive as their "ugly" neighborhoods, and jealousy towards the "beauty" of Jewish neighborhoods. In part, these notions might be interpreted as projections of the Palestinians' undermined self-perception as criminals (or as illegal persons) onto their everyday space, which as a result transforms not only their perception of the space, but also its visible materiality into an ad hoc and deteriorated space of illegality. Simultaneously, the stigma of the Palestinian landscape as illegal and ugly also revalidates the Palestinian's self-perception as a noncompliant dweller of this space, and even as a criminal, albeit a "criminal without a choice," as remarked by Amar. It might be suggested, then, that the illegal subject reflects the illegal object with which she identifies, and vice versa. This suggestion deserves further explorations beyond the scope of this discussion.

## **RESISTING THROUGH ILLEGALITY, AND OTHER FORMS OF RESISTANCE**

### **Framing the Discussion**

Recent accounts indicate that the number of houses built without permits in East Jerusalem is constantly on the rise (Khamaisi and Nasrallah 2003). This

section will explore some possible explanations, alongside the pragmatic and criminal ones indicated earlier, for the willingness of such a large part of the Palestinian population in East Jerusalem to violate the law despite the radical potential implications of such violation.

As in the detailed exploration of illegality, the investigation of resistance also sheds light over technologies of power that are not clearly visible in the East Jerusalem context. In particular, the close examination of varying forms of illegality reveals the relation between power and resistance. According to Foucault, resistance is “never in position of exteriority in relation to power” (1979, 95). This claim was interpreted by some to imply that precisely by being power’s antithesis, resistance becomes an integral part of power, its “symbiotic other (Cooper 1995, 125). At the same time, the notion of a dispersed power that folds resistance under its all-embracing wings is also considered problematic. This section will discuss themes of resistance and their relation with power within the East Jerusalem context.

The notion of resistance, in one variation or the other, was mentioned by all of the informants interviewed as part of this study. This section reorganizes their narratives according to certain conceptual themes. The East Jerusalem occurrences are first framed within an understanding of resistance as a counter-hegemonic act, and are subsequently explored through other, perhaps post-modern, perspectives of resistance, as those emerge from the interviews.

### **Illegal Building as Counter-Hegemonic Resistance**

Frequently, the literature on resistance poises it as the “infrapolitics of the powerless” (Scott 1990, xiii). This definition of resistance is also expressed by Muhammad, who stated: “we don’t have any power against the power of the Israelis.... We feel so weak and have no power against the occupation. Our only power is Allah’s.” Nonetheless, Muhammad contends: “We will build again and again. We will build even if they promise to destroy; we will build until the occupation ends. Only then will there be hope for our home.” This narrative is easily framed as a model of “spatial protest” (Yacobi 2004), and, moreover, as a conscious and collective national alternative posed by the Palestinians against the Israeli occupation of East Jerusalem. In this sense, Muhammad’s perspective has much in common with the official Israeli discourse, which also suggests framing the East Jerusalem illegality as a collective and political form of spatial resistance on the part of the Palestinians.<sup>46</sup> The deputy Mayor, who is the most quintessential representative of this perspective, perceives illegality as part of a carefully orchestrated political agenda, intentionally enacted by Palestinian leaders to collide with Israel’s essential interests. But unlike Muhammad’s perspective, the deputy Mayor’s view presents the illegal building enacted by the Palestinians as one side of a battle fought between two equal forces,<sup>47</sup> thereby ignoring the power discrepancies that pertain to the occupier/oppressed constellation in Jerusalem.

Members of the “Israeli Committee against House Demolitions” also adopted a counter-hegemonic approach: by placing their bodies between the house and the bulldozer, they declare their opposition to its demolition as well as their solidarity with the “powerless.” But while strongly supporting the rebuilding of

demolished houses, this organization's formal approach is to refuse to assist Palestinians in obtaining building permits.<sup>48</sup> Amar adds an interesting perspective to this context, which also illuminates his personal intentions for building illegally: "the "Committee" told me that they'd be happy to help me rebuild, but I know that they are political, and I don't want to have anything to do with political wars. If I choose to rebuild my house the third time I would only be provoking [Israeli] authorities, and then I'd really be a criminal." While his statement revalidates the framing of illegal building as an act of spatial protest, it is precisely this definition of the act that prevents him from its performance.

Samer, also a Palestinian informant, presents another counter-hegemonic approach, albeit one that regards the identity of the hegemonic entity differently. His desperate tone throughout the interview is already different from Muhammad's fiery tone of protest. Instead of casting any blame on Israel, Samer exclaims:

If Arafat would not be so invested in his selfish pride we would already have a place of our own to live in. But why should he care? He gets to live in his fancy house, drive his Mercedes. His bureaucrats are the ones who I blame for the whole situation: Abu-Amar [Arafat] wants the Golden Dome for himself, and so the poor [Palestinians] must pay the price by becoming homeless.<sup>49</sup>

Unlike Muhammad, Samer chooses *not* to rebuild his demolished house, although this means life in an UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) tent for him and his ten-member family. Instead, Samer puts his faith in the Israeli state. But while seemingly juxtaposed, Muhammad and

Samer's narratives are similar in that they both resist by counteracting hegemony, although their resistance targets different hegemonic constituents. However, while Muhammad's act of building is intentional, Samer's awareness of the resistance enfolded in his inaction is unclear, as is frequently the case with passive acts.<sup>50</sup> In other words, when enacted in this particular context. Samer's abstention from building and Muhammad's engagement in building are both acts of spatial protest. Interestingly, while most Palestinian informants perceive Israel's planning practices as part of a comprehensive political agenda intended to transfer them out of Jerusalem, or at least to minimize their power in the city, many of them are reluctant to define their own actions by utilizing a similar political vocabulary. Moreover, several Palestinian informants go out of their way to explain why their act of building without a permit is not political in any way, instead presenting it as a pragmatic response to the daily hardships they endure.

Muhammad's and Samer's acts of spatial resistance through their respective building and non-building construct a concept of resistance which is counter-hegemonic, namely, not only intrinsically tied with hegemony but also fully dependent on it, and even constituted by it. The act that Israeli law defines as illegal is thus contested by the Palestinian actor precisely by performing that same illegal act which the law prohibits her from doing: resistance is performed through the act of mirroring the image of the legal norm. Similarly, Adriana Kemp (2002) frames as an act of resistance the Mizrachi immigrants' shift from agricultural settlements, where the government placed them in the first years of the Israeli state, to the city. Here, too, the counteract of *re*-settling is inherently and directly tied to the hegemonic act of

*settling*. A similar interpretation of spatial protest as an act of counter-hegemonic resistance is also presented by Haim Yacobi in relation to illegal building in the mixed-city of Lod (2004). Conversely, the next section will explore the possibility that resistance is not necessarily an *oppositional* act (Moore 1987, 93).

### **Everyday Resistance**

In the previous section, domination and resistance are largely conceived as being locked in a perpetual death dance of control “where [they] hold each other’s hands, each struggling to master the steps of the dance, each anticipating and mirroring the moves of the other, but neither able to let go – for dancers are nothing without the dance” (Pile 1997, 3). However, one can also conceive resistance as less paradigmatically interlocked with power. Accordingly, resistance can utilize “everyday weapons” such as “foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so on,” which “make use of implicit understandings and informal networks” (Scott 1985, xvi). These small acts are often forms of individual self-help, typically avoiding any direct or symbolic confrontation with authority (Silbey and Ewick 1995; White 1990, 49; Sarat 1990, 377). Expanding this already broad definition of resistance, Michel de Certeau (1984) suggests what he calls the “art of using,” namely the everyday subversions that ordinary people do as they bypass, evade, buy, cook, and perform daily actions that are “absent of discipline.” In certain instances these dispersed acts conglomerate to construct networks of “antidiscipline” that illuminate the “clandestine forms taken by the dispersed, tactical, and make-shift creativity of

groups or individuals already caught in the net of „discipline“ (de Certeau, XIII). According to de Certeau, people subvert discipline not by rejecting or altering it, but by *using* it with respect to ends and references that are foreign to the system to which they adhere. Although the interpretation of mundane routines as forms of resistance to disciplinary mechanisms overly romanticizes the “everyday,” it nonetheless demonstrates the significant shift in perspective that poststructural and subaltern studies have brought to the study of resistance. Similarly, Cooper suggests an alternative to what she refers to as Gramsci’s framework of counter-hegemonic resistance. By adopting the term “anti-hegemony,” Cooper highlights the non-unitary strategies that resist not only the existing status quo, but also the hegemonic apparatus at large (1995, 140).<sup>51</sup> Although both de Certeau’s terminology of “*antidiscipline*” and Cooper’s “*anti-hegemony*” are problematic in that they still imply an oppositional relation with hegemony, some of their ideas prove helpful to the exploration of what I prefer to allude to as *everyday tactics of resistance*. While in constant relation with hegemony, these everyday tactics of resistance are less paradigmatically constituted by the hegemonic scheme or in overt opposition to it.

The first example of such everyday tactics of resistance provided by this study is the use of sarcasm. In particular, Abed utilizes a sarcastic undertone when viscerally describing the daily realities of having no sewage connection to his house. In addition, Abed provides a lengthy mimicry of the Israeli court proceedings in his case, especially ridiculing the prosecutor for his petty bargaining tactics. In this instance, Abed’s sarcasm can be interpreted as a survival mechanism, an indirect way of dealing with the mundane implications of oppression. A second example of

everyday resistance is provided by Amar's narrative. Immediately after providing a detailed emotional description of the demolition of his second home, Amar mentions the following:

My attitude toward the municipality in particular, and towards the rule of law in general, has changed completely since the demolition of my second home. I was so upset and angry that I also decided to turn in my paramedic certificate to Magen David Adom [hereafter - the Israeli Red Cross]. But after a few days I told them that I changed my mind and took the certificate back. I realized that the ill and wounded, some by terrorist attacks, have nothing to do with the demolition of my home. The tragedy of demolition is the result of policies of the Israeli government, and has nothing to do with us ordinary people.

This text records an important transformation in Amar's narrative: while his first reaction was of disengagement from the Israeli Red Cross, Amar soon realizes that he should continue doing precisely what he had done previously. Yet the repetition of this behavior ascribes it with a different meaning, this time as a site of resistance. Indeed, Amar's not necessarily intentional or conscious insistence on continuing to perform a daily routine is his way of resisting domination.

Much of the literature on everyday forms of resistance pertains only to "relatively powerless groups" (Scott 1985, xvi), either the "welfare poor" (Sarat 1990) or other "subordinate groups" (Moore 1997). However, just as there is no such unitary entity as "powerless" people, there is also no reason to assign the concept of

resistance to certain groups while completely depriving it from others. Instead of paradigmatically defining actors as “powerful” or “powerless,” they can be understood as exercising nuanced forms of power that vary in different contexts. Although not necessarily rigid, predictable, or counter-hegemonic, resistance is, in itself, a form of power. This line of reasoning opens up the possibility of applying the notion of everyday resistance also to bureaucratic acts, even when those acts can be framed, simultaneously, as acts of law enforcement. For example, the Palestinian planner, who has worked for the municipality for over thirty years, described his work as follows: “All along I did all I could to help Palestinians. I sat with the legal councilor and made sure he heard a different approach on house demolitions.” While his initial intention when taking this bureaucratic position was largely pragmatic, throughout the years the planner’s political consciousness increased until at a certain point he made the decision that for moral reasons he can no longer work as part of the Jerusalem municipality. Clearly, working and living such an intense daily clash between their professional and their personal identities, the performance of everyday acts of resistance is difficult for those in governmental positions. This is especially true when the resistance is practiced by Palestinian bureaucrats that are expected to prove their constant allegiance to the system. The tension that this situation entails is depicted by the Palestinian planner, whose salary is paid by the Jerusalem municipality: “Yes, I feel a stronger loyalty towards the [Palestinian] residents than towards the municipality. So I make sure that the head of the municipal department [I work with] understands that I live in a totally different reality than his [and that] I will never be his collaborator.”

Beyond its application to Palestinian bureaucrats, the theme of everyday resistance can also be applied to acts conducted by Jewish Israeli bureaucrats. An example for such resistance is provided by the regional planner, one of the leading bureaucrats on planning matters in the central Israeli government. Since administrative decrees are problematic in her view, the regional planner is proud of the fact that recently the number of administrative decrees has reduced drastically, to the dismay of the regional inspectors. However, at the time of the interview the regional planner was unaware of rather basic information about East Jerusalem, such as the non-citizenry status of its Palestinian residents, and the specific division of authority between the municipal and regional committees. While this level of unawareness can easily be framed as a demonstration of outrageous ignorance, the regional planner's narrative can also be interpreted as a proclamation of ambivalence, and even as an act of resistance on her part from engaging with Israel's occupation of East Jerusalem.<sup>52</sup> This sort of ambivalence and perhaps even resistance is not unique to the regional planner but rather demonstrates the heterogeneity of bureaucratic agency (Ron 2001), which is highly innovative in how it deals with its own legitimacy, both inwardly and outwardly.

The definition of resistance as encompassing counter-hegemonic strategies as well as everyday tactics, and as intentional and unintentional, individual and collective – makes room for a thick interpretation of the narratives presented by the informants in this study. But is hegemony weakened by such a broad definition of resistance? Rabinowitz argues the contrary: while presenting certain Palestinian acts of hospitality towards Israelis as a form of resistance, Rabinowitz also claims that this

resistance furthers the cooptation of Palestinians.<sup>53</sup> In his words, “perhaps the state does consciously encourage occasions for constraint resistance as a twisted element of cooptation and control...by weakening the willingness of Palestinians to look for drastic change” (Rabinowitz 1997, 180). This claim may explain Israel’s abstention from massive demolition projects not merely as an expression of the preference for symbolic, rather than physical violence enacted to increase the effective management of the Palestinian population, but also as aimed to limit the scope of the Palestinian reaction to such a “small” act as illegal building, thereby preventing a large scale uprising. But Rabinowitz presupposes two assumptions: first, he assumes that drastic forms of resistance, or revolutions, are at all possible, and secondly, he assumes that drastic and everyday resistances are mutually exclusive. Though Rabinowitz’s analysis may be convincing in the specific context in which it was conducted, it does not necessarily apply to all instances of everyday resistance. Is Abed’s sarcasm what prevents him from performing more drastic measures of resistance against the occupation? Does Amar’s volunteering for the Israeli Red Cross make him less susceptible to participate in a radical uprising? Furthermore, “small,” everyday resistances can in certain circumstances be experienced as empowering and might even conglomerate to form a web of “antidiscipline” in the de Certeauian sense. Finally, while Rabinowitz’s caution from romanticizing small resistances, and his claim that they are unable to bring, in themselves, radical social change – are both valid claims, it is also important not to encourage a static and schematic interpretation of such complex and dispersed acts when in fact there is no way to predict where they would eventually lead.

## CONCLUSION

I am in favor of gardens. Many gardens..... But not at the expense of Arab citizens of East Jerusalem. If you want to plan gardens, plan them on land, not on people. (Knesset Member Dahamsha<sup>54</sup>)

May 2005. The Jerusalem municipality introduces a plan for the demolition of eighty-eight illegal houses in Silwan, an East Jerusalem neighborhood, for the purpose of creating a National Garden in what it calls the “King’s Valley.”<sup>55</sup> If this plan is implemented, it will result in the most extreme demolition project performed in Jerusalem since 1967, with more than one thousand people losing their homes. “They can shoot me, they can drive over my body with their tanks: I’m willing to die with my home,” exclaimed a Palestinian resident of Silwan in response to the plan.<sup>56</sup> In an emergency meeting held on the subject by a Knesset committee, the head of the committee states:

This is sheer madness. Does someone really think that they could recreate an imaginary vision from thousands of years back?... They say it used to be a garden, and that King [David] walked in this garden... Do they think they are playing chess?!... They are playing with real people, destroying real families!<sup>57</sup>

This event demonstrates the ongoing emotional intensity with which both sides of the Israeli/Palestinian conflict deal with the issue of the “home.” It also explicates the ideological dimensions of landscape and the preoccupation with

illegality that occurs in this space. At the same time, this event reveals the power discrepancies that exist both between occupier and occupied, and between the dominating and the marginalized groups in East Jerusalem. Finally, it also speaks to the relevance, perhaps even the urgency, of understanding the complexities of this situation and its profound effects on the everyday lives of residents of both Jerusalems.

Throughout the article, illegality's dimensions are explored from various perspectives. Defined both as the opposite of legality and as an autonomous entity in itself, the moral powers of illegality serve in both Israeli and Palestinian discourses as strong legitimizers for different, at times opposing, acts. Moreover, this study explores the intricate, counter-dependent, and even symbiotic relations between illegality, power and resistance, as well as the extent to which one informs the other within the particular space of East Jerusalem. While undoubtedly the most brutal and paradigmatic technique exercised in this context, the house demolition is but one of numerous techniques of illegality produced by the Jerusalemite bureaucracy for the efficient management of the Palestinian population that resides in the city. Less explicit and more nuanced, other techniques, this time of disciplinary nature, produce varying degrees of illegality that, albeit mundane, make possible more diffused and subtle forms of domination.

While state power focuses mostly on territorial objects, and in this instance through the control over the form and location of the East Jerusalem house, disciplinary mechanisms tend to focus more on the subjects' bodies and minds, and in this context they operate through techniques of criminality and surveillance,

partitioning and arbitrariness. But rather than conforming to a rigid division, the illegality ascribed to the act of building and to the builder flows into the thing that was built, carrying material as well as discursive consequences. In this sense, subject- and object-based illegalities inform, reflect, and even constitute one another, as in the case of the “ugly” and illegal Palestinian neighborhood that supports the Palestinian’s self-image as a criminal. In this sense, discursive themes of legality and illegality and their bifurcation as such also carry material implications, constructing corresponding spaces that are visibly different from each other.

In addition to their operation through direct subjection, disciplinary techniques also operate through various spatial modalities. Along with the dual inspection practices that split this space, schematic assembly-line procedures and a ritualistic documentation project which is conducted through mapping, coloring, photographing and filing generate a sense of bureaucratic rationality, assigning inner cohesion and orderliness to the bureaucratic administration of planning in East Jerusalem. Simultaneously, the legitimacy of the system is promoted by emphasizing the ambivalence of its actors and by framing their practices as instances of moral discretion or as states of exception. In other words, the quest for legitimacy both humanizes and reinforces the bureaucrat’s role in the hegemonic scheme. Hiding decrees or granting an exemption to one of five houses, the inspectors manipulate the liminal moral spaces that lie in between discretion and arbitrariness, expanding the borders between legality and illegality. Indeed, by their detailed daily enforcement of the Israeli planning regime, the inspectors perform a central role in the construction of the East Jerusalem landscape, a role that is mostly not accounted for, yet is

indirectly supported by the system. Accordingly, the unique character of the institutional decision-making processes in East Jerusalem, and the significance of competition in this context in particular, constitute forms of illegality that go beyond its binary and symbiotic interaction with legality, exposing its fluid and heterogeneous dimensions. For instance, a list of demolition criteria presented by the former inspector depicts a hierarchy of illegality that is utilized in practice, undermining the bifurcated duality of the legality/illegality construct.

Finally, this article argues that illegality is very much a part of the hegemonic discourse when explored from the perspective of the law, as it is also a strong counter-hegemonic discourse when constructed as an act of resistance. Accordingly, the article explores the possibility that the Palestinian illegality enacted in East Jerusalem is a form of counter-hegemonic spatial resistance to Israel's occupation of this place. The Palestinians legitimize this form of illegality by alluding to what they present as a larger scale illegality: the illegal annexation of East Jerusalem. However, in an attempt to see beyond this mirror stage in which power and resistance are juxtaposed, more nuanced and mundane forms of resistance are introduced and explored. Abed's sarcasm and Amar's Israeli Red Cross story can be read, accordingly, as examples of nonbinary, everyday tactics of resistance. Taking this approach one step further, the article proposes that in certain circumstances it is also possible to interpret certain practices enacted by bureaucrats as tactics of everyday resistance.

These mundane resistances may empower their initiators or they may paralyze them; there is no real way to predict the specific consequences that different

circumstances might produce. Moreover, what is framed here as tactics of everyday resistance could also be perceived as another of power's multiple faces. Nonetheless, this observation suggests that a detailed and open-ended comprehension of the multivocal character of resistance invites a more diverse and intricate understanding of the nature of power.

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### **Figures**

Figure 1: (map of “Greater Jerusalem”; see separate PDF file - please edit the PDF photo to smaller size when inserted back in text) **CAPTION:** Splicing Jerusalem, a Map of the Green Line, the Separation Barrier, E-1 etc. in “*Greater Jerusalem 2006*,” courtesy of Ir Amim.

Figure 2: (below)



Figure 2: Illegal Constructions in East Jerusalem (marked by red lines) (courtesy of Justus Reid Weiner and the Jerusalem Center for Public Affairs, photos by Justus Reid Weiner)

Figure 3: (below)



Figure 3: left - demolition of the Hassan family house (Beit Hanina, November 30, 2004); right - largest house demolished in East Jerusalem, Harhash and Kirsh families (A-Tur, February 22, 2005). Photos by Karim Jubran, courtesy of B'Tselem

Figure 4: (see below – I might be able to send an updated version of this aerial photo soon)

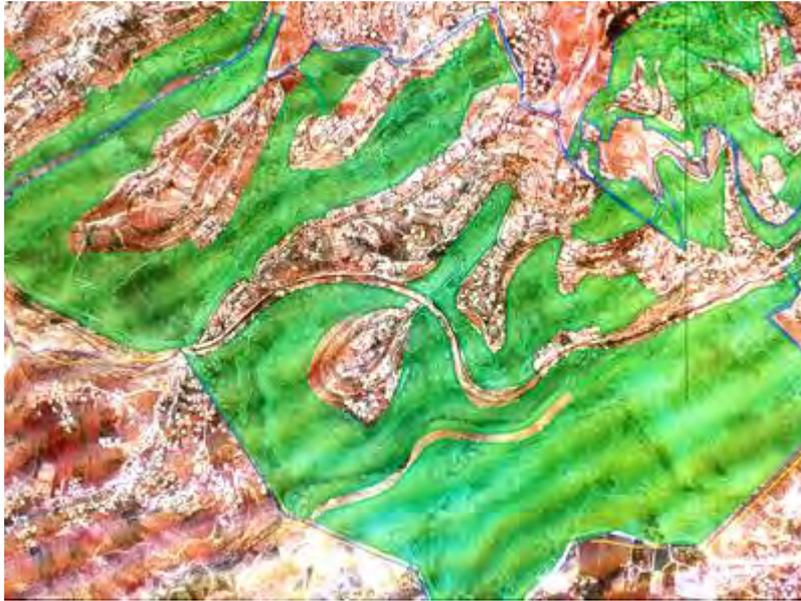


Figure 4: Aerial photo of Jabel Mukaber depicts 69.8 percent of the land (marked in green) as “open landscape area” (courtesy of *Bimkom*)

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### Notes

<sup>1</sup> This is the average between Ir Shalem’s estimate for the years 1967-2001 (Bimkom and Ir Shalem 2004) and Yisrael Kimhi’s estimate for 1968-1997 (Kimhi 1998).

<sup>2</sup> These figures are provided by the Jerusalem Municipality (2004) and include illegal buildings and any part thereof. According to Bimkom and Ir Shalem, fifteen thousand *housing units* were built in East Jerusalem during this time (2004, 40). Since no official data exists in this regard, the estimates regarding the level of illegal construction in East Jerusalem vary considerably and include 50 percent (Fenster 2004, 105) and 30 percent (former municipal planner; interview, September 4, 2003).

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<sup>3</sup> Utilizing an interpretive/phenomenological methodology, this paper is based on twenty-six in-depth, open-ended interviews conducted between May and December 2003. An initial group of informants was identified for its vast knowledge on the topic studied (a “purposeful sample”), and was followed by a “snowball sampling” through which a wide range of professional informants that could provide diverse angles on the topic were identified by “chain referrals.” In all, approximately one-third of the informants are bureaucrats working on planning and legal issues *within* local and state governments. This group includes the former deputy Mayor of Jerusalem, a former judge, the regional planner, former and current Palestinian planners, several prosecutors in various positions, and the former head of the municipal inspection squad. Another one-third of the informants are professionals that work *outside* of the governmental system. This includes planners and architects, defense lawyers and directors of NGOs that are active on issues of planning in East Jerusalem. Both groups of professional informants - those inside and those outside the system - include Palestinians (Israelis and non-Israelis) and Jewish Israelis. The third group of informants (the last one-third) is comprised of Palestinians from East Jerusalem that have built their houses illegally. I identified this group both through knowledge that I acquired in my previous work with an Israeli NGO, and through specific referrals from Palestinian NGOs that have provided these people with advocacy services. While the sample is not statistically generalizable in terms of a defined population, the wide range of informants interviewed, the richness of the materials they provide, the breadth and length of the interviews (on average 2.5 hours

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each), and the informants' heterogeneity in terms of age, gender, political affiliation and ethnicity - provide a comprehensive and detailed account of the planning administration in East Jerusalem. The interviews are supplemented by direct field observation of demolition sites and of other practices (such as NGO meetings), as well as secondary data such as human rights reports, newspaper articles, and legal documents.

<sup>4</sup> The binary construction of humans and nonhumans, subject and object, is problematized by many, for instance by the literature of Actor Network Theory, which proposes to explore the hybridity of the Middle Kingdom (Latour 1993, 48).

<sup>5</sup> The Urban Line was crudely drawn by the Israeli General Moshe Dayan and King Abdallah of Jordan on a low-detailed map, and still carries a prominent effect on the features of the city's landscape (Azoulay 1999).

<sup>6</sup> Dinstein (1994) and Hirsch (2005) explore the illegality of this annexation from the perspective of international law. While Yacobi and Yiftachel (2002) oppose the use of the term "annexation" in this context, James Ron (2001) refers to Israel's control over East Jerusalem as a "creeping annexation."

<sup>7</sup> Israel's Central Bureau of Statistics, media release 120/2005, 5 June 2005 (data relevant to December 2004). As a result, the local outline plan for Jerusalem 2000 recommended "fixing" this ratio to 60:40 (Ir Shalem and B'Tselem 2004, 18).

<sup>8</sup> On the genealogy of the territorial requirement from its relatively simple initial version in 1967 to its "center of life" or "reasonable relationship with Jerusalem" variations see Amnesty International 1999, 27.

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<sup>9</sup> Indeed, even when granted (which is not always the case; for example, two hundred families in the Nu‘man village in East Jerusalem are considered illegal in their own homes), the Palestinian residency status is not as permanent as this official term might suggest. Under the 1952 Law of Entry into Israel the status of Palestinian residents of East Jerusalem is equivalent to that of incoming foreigners who live in Israel under conditional residency. When interpreting this law in the context of Palestinian Jerusalemites, however, the Israeli Supreme Court has granted the Minister of Interior discretion to demand proof of de facto life in Jerusalem, even if the resident lived abroad for a shorter period of time than that dictated by the law (HCJ 282/88 *Mubarak ,Awad v. Yitzhak Shamir et al.*, Piskei Din 42(2), 426; HCJ 7023/94 *Fathiya Shqaqi et al v. Minister of Interior*, Takdin Elyon 95(2), 1614). In addition, because nonresident Palestinians who marry Palestinian Jerusalemites are not automatically permitted to reside in Jerusalem, many Jerusalemites who wanted to reside with their partners had no choice but to leave the city. As a result, an estimated number of seventy thousand Palestinian Jerusalemites were exposed to the risk of having their residency status canceled (for a detailed account of this policy see Hamoked and B“Tselem 1997). Although this policy has decreased since its peak in the 1990s, it still points to the instability of the residency status assigned to Palestinian Jerusalemites.

<sup>10</sup> August 24 and 26, 2003. Throughout the article I will refer to the professional informants by describing their position. All other informants are referred to by pseudonyms.

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<sup>11</sup> Since the start of the Second Intifada in 2000, 3,983 Palestinians were left homeless due to the *punitive* destruction of 628 housing units by the Israeli Defense Force (B’Tselem 2004). Recently, Israel announced an end to this practice for its “lack of efficiency.” It is yet to be determined if and how the IDF will comply with this announcement.

<sup>12</sup> Based on Regulation 119 of the 1945 Emergency Defense Regulations.

<sup>13</sup> Unless stated otherwise, the data presented in the remainders of this section is cited from Bimkom and Ir Shalem 2004.

<sup>14</sup> Unplanned areas are marked as white zones (Regional Planner, September 9, 2003). This color quota is another theme in the battle of colors alluded to in section II(3) herein.

<sup>15</sup> Applied throughout Israel, this law authorizes state expropriation of certain lands without notifying the owners or awarding them compensation. The law applies when anytime between November 1947 and September 1948 one of the owners had lived in the “Land of Israel” [“Eretz Yisrael”] outside of the State of Israel, or in one of Israel’s “enemy states.” If this definition were to apply in East Jerusalem, more than half of the land could be declared “absentee” and thereby subjected to expropriation. Throughout the years, the unofficial policy was to refrain from applying this law in East Jerusalem. Nonetheless, time and time again Israel initiates various enforcement threats that in turn trigger a heightened level of anxiety among Palestinian Jerusalemites (Rappaport 2005), reifying their sense of instability in this space.

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<sup>16</sup> *Maariv* newspaper, October 10, 1990; Protocol of Municipal Committee meeting, December 27, 1987.

<sup>17</sup> It is estimated that 40 to 70 percent of the populations of most large cities in “developing” countries live in “illegal conditions” (Fernandes and Varley 1998). Another study proclaims that 85 percent of the entire urban residents of the developing world “occupy property illegally” (King 2003). Illegality occurs widely also in “developed” countries (including West Jerusalem), but is rarely studied as such.

<sup>18</sup> In a different text Said added that the status of the Palestinian was first of an “inconsequential native” and then of “an absent one” (1992, 103). The Zionist link to Israel differs from the conventional colonialist utilization of *terra nullius* in that it perceives a primordial connection of the Jewish people to this land.

<sup>19</sup> “Architecture replaces human presence. The question of whether there are a pair of eyes looking out of the windows of settlement homes becomes irrelevant as the effect of domination is achieved by the mere presence of these buildings,” said Segal and Weizman about Jewish settlements in the occupied territories (2003, 22).

<sup>20</sup> Accordingly, *Haaretz* has recently reported that four policemen were injured during the evacuation of a Palestinian family squatting in an apartment house taken over by the Jewish Elad organization in the East Jerusalem neighborhood of A-Tur. “Police officials say the buildings were purchased legally and there was no legal obstruction to their occupation,” cites the report (Rappaport, April 9, 2006). Several hours later, the court reversed this situation by declaring the house as legally owned by the

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Palestinian claimants, hence declaring the settlers as the illegal squatters. This decision was followed by the settlers' forceful evacuation from the house.

Meanwhile, a member of the Palestinian family suspected of selling the land to Jews, Mohammed Abu al-Hawa, was kidnapped. As a response, the family published a statement indicating that the land was never sold to Jews but rather to a Palestinian who then sold it to a Jordanian company. Four days later, Hawa's body was found near Jericho. The police believes that "the murder was motivated by Hawa's recent sale of [his] apartment building to Jews" (Lis and Rappaport, April 14, 2006).

<sup>21</sup> According to the Palestinian perspective, the illegality of Israel's annexation of East Jerusalem is based on the general principle in international law against the acquisition of territory by force (Hirsch 2005, 301). From Israel's point of view, East Jerusalem was captured in 1967 as a lawful act of self defense, and it has therefore acquired sovereign title there (300).

<sup>22</sup> In the summer of 2005 nearly two hundred fifty thousand Jewish Israelis lived in one hundred twenty-five officially recognized West Bank settlements, while another one hundred eighty thousand lived in the annexed areas of East Jerusalem (Gorenberg 2006).

<sup>23</sup> Advisory Opinion on Legal Consequences of a Wall in the Occupied Palestinian Territory, July 9, 2004, General List, No. 131. For a discussion of the legal status of Jerusalem in light of this decision see Hirsch 2005.

<sup>24</sup> Considered the "founder" of modern political Zionism.

<sup>25</sup> September 11, 2003.

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<sup>26</sup> September 4, 2003.

<sup>27</sup> Rosen-Zvi (2004) depicts the dynamics of this distinction when applied to three Israeli minorities: Arab Jews, Bedouin Arabs, and Orthodox Jews.

<sup>28</sup> But while André Levy depicts the self-exclusion practiced by Jews in contemporary Casablanca as a self-imposed preservation technique of a marginalized ethnic community, in this case, despite the ethnic dominance of the Jewish population, it behaves like a minority.

<sup>29</sup> September 10, 2003.

<sup>30</sup> September 15, 2003.

<sup>31</sup> According to Articles 204 and 205 of the 1965 Law of Planning and Building, a judicial demolition decree is issued by the municipal court upon conviction, in which case the court can also inflict additional sanctions such as a two-year incarceration and/or fines. The administrative decree, on the other hand, is handled by either regional or municipal officials and focuses on the rapid elimination of the illegal construct (Articles 238a and 239). The owner can interfere with this process by acquiring a court injunction within a twenty-four hour mandatory lapse. Altogether, approximately six hundred demolition decrees are pending in the regional process, and similar numbers are awaiting execution by the municipality (Regional Prosecutor, August 21, 2003). Of approximately 20,000 illegal constructions in East Jerusalem, 5,318 have been traced and documented from 1992 to 2001, of which 3,980 cases went to judicial proceedings and 616 were subject to administrative injunctions. Altogether, the processes resulted in 238 house demolitions (Bimkom and Ir Shalem

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2004). This data illustrates the variety of consequences that flow from the seemingly homogenous classification of a house as illegal.

<sup>32</sup> In all, “over a third of East Jerusalem residents live under the threat of house demolition” (Amnesty International 1999, 32).

<sup>33</sup> The choice between these procedures largely determines whether a house would be demolished within days, or subject to years of judicial proceedings that usually get resolved with a plea-bargained fine.

<sup>34</sup> While tensions between local and regional or state level administrations are quite common in various jurisdictions, they take on particular features in East Jerusalem, where nontransparent governance seems to be the rule rather than the exception.

<sup>35</sup> The most frequent sanction over illegal construction is relatively high fines, resulting in an annual addition of \$16 million dollars to the municipal budget (Knesset committee, protocol 447; June 19, 2005).

<sup>36</sup> However, only one court system - the municipal court - adjudicates both proceedings. This court is operated with municipal funding, which accounts for another set of informal complexities.

<sup>37</sup> Such a double-standard of governance also occurs between judges of trial courts and of the Supreme Court. For example, while the trial court judge interviewed as part of this study does not see any moral problem in the demolition of Palestinian houses, the president of the Supreme Court, Justice Aharon Barak, says that he “eats himself up every single day and every single hour” for needing to approve such demolitions (Gorali 2003).

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<sup>38</sup> For example, the private company hired by the city to execute the demolitions requires full payment for a demolition (approximately \$16,000 U.S.) even if canceled twenty-four hours in advance. By hiding the decrees, the inspectors prevent such last-minute cancellations, thereby saving the municipality significant financial costs.

<sup>39</sup> For the purpose of this study, arbitrariness is defined as based on rational but irrelevant criteria, while randomness is defined as based on no rational criteria at all.

<sup>40</sup> August 24 and 26, 2003.

<sup>41</sup> Furthermore, the former Mayor of Jerusalem (and currently Israel's Prime Minister) Ehud Olmert depicts the illegal building in East Jerusalem as an "epidemic" and a "cancer," thereby indirectly reinforcing the stigma of the Palestinian community as abnormal and sick (cf. <http://www.jcser.org>, in "*Occupied East Jerusalem: A New Soweto?*") (last accessed in December 2005)).

<sup>42</sup> This perspective is further developed by Weiner (2003).

<sup>43</sup> This sentence and the narrative presented by the regional planner in general present the need to comment on my influence as an interviewer on the narratives of the informants. It might be suggested that, guessing my political position, the planner presented herself in a manner that could better fit my "expectations" of her, even if unconsciously so. Aware of such possible affects, I usually cross-checked important assertions both during the course of the same interview (through asking other, less direct questions), and in the interviews conducted with other informants. The radical tendencies of the regional planner, for example, are not only backed-up by several

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informants, but are also consistent with her more general inner-ambivalence, which I will allude to in the next section.

<sup>44</sup> Abed, August 30, 2003.

<sup>45</sup> Recently, the Israeli Committee against House Demolitions, together with a British law firm, filed a criminal complaint on behalf of several Palestinians from East Jerusalem, whose houses have been demolished, against two of the four officials that sign administrative decrees in Jerusalem, claiming that their work constitutes war crimes. In response, the Jerusalem municipality and the Ministry of Interior announced that their employees' actions "were taken within the framework of the law" (Lis 2005).

<sup>46</sup> When enacted by certain Jewish groups such as the Jerusalemite Ultra Orthodox or the low-income residents of Givat Geula in Ramat Gan (see for example Justice Mualem's decision, Ramat Gan trial court, May 2, 2005), illegality is rarely, if at all, scale-jumped to the collective dimension. It should also be noted that although beyond the limited scope of this article, there is no reason not to apply the analysis of spatial resistance also to Jewish groups.

<sup>47</sup> Accordingly, two Jewish Israeli informants draw commonalities between the Jewish resistance against the British in Palestine (for example, through the Homa U'Migdal technique) and current illegal building practices by Palestinians. This brings to mind Sprinzak's analysis of the Jewish Israeli culture of "behavioral illegalism" (1985).

<sup>48</sup> Interview with director, May 2003.

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<sup>49</sup> August 30, 2003.

<sup>50</sup> The relations between intentionality or consciousness and resistance have produced extensive academic discussions. While some argue that consciousness need not be essential to the constitution of resistance (Pile 1997), others regard an autonomous subject as a precondition for constituting resistance (Santos 1991).

<sup>51</sup> Moreover, Cooper argues for “the need to go beyond resistance to embrace a diversified approach towards strateg[ies]” of social change (1995, 135). However, one can embrace a diversified approach while still utilizing the term resistance.

<sup>52</sup> Such an interpretation may be supported by the planner’s critical tendencies, renowned among human rights groups and also mentioned by several of the professional informants that have indicated that when all other resorts are exhausted, they often turn to her for help.

<sup>53</sup> Although basing his analysis on an ethnography of Israeli Palestinians from Nazareth - and therefore on an economy of resistance and cooptation that is different in many respects from that of the Palestinian residents of Jerusalem - for the current purpose of problematizing everyday resistance, the differences between these groups are not as relevant.

<sup>54</sup> From protocol 447 of the Knesset Committee for Internal Affairs and Environment, June, 19, 2005.

<sup>55</sup> Municipal officials claim that the British have declared the area as “green,” that the illegal houses interfere with this scheme, and that they must now be demolished for the general public good. Since many of these houses have been around for more than

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thirty years, some Palestinians speculate that the plan's timing is politically linked to Israel's withdrawal from Gaza.

<sup>56</sup> „Mabat“, Israeli Television 1, June 30, 2005.

<sup>57</sup> *Supra* note 54.

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