

There is nothing exceptional about Jerusalem¹

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The scales are more than 5,000 years old. They were first used in order to demonstrate the idea of balance. Over time, they served for weighing concrete objects. They are easy to function – an object is placed on one of the pans, an equal weight on the other. The merchant and the buyer acknowledge the balance and recognize each other as part of a well balanced, impartial transaction. The fact that the balance should be seen by both parties was probably what made it a symbol of justice. *Justice should not only be achieved – it should be seen.* In some places of the world balanced scales are still used in commerce but even where they are not, the scales are still inspiring the judicial and political imaginary. During the first Palestinian Intifada, Sigalit Landau, an Israeli Jewish artist, born and raised in West Jerusalem, went to the market of the Old City and bought brass scales from a local merchant. I will use Landau's distorted scales as a point of departure for my reflection about Jerusalem.

The modern artistic gesture quite often consists of displacing an object from its everyday context of usage into the context of art. In the latter context the object is abstracted from its previous functions and uses and gains new features that enable it to become an object of reflection and demonstration. Its very displacement from one context to another is usually at stake. Following this common understanding of the ready-made in modern art let's look first not at Landau's object, but at the mere act of buying the scales. Landau went to a Palestinian merchant in order to buy scales she did not mean to use. The mutual recognition between a buyer and a merchant on the

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reliability of the balance is transformed here into a recognition shared by an Israeli Jew and a Palestinian under Israeli Occupation that the scales are going to be put out of circulation and declared unusable. By creating the *Scales of Injustice*, Landau brings the scales back to one of its initial functions – demonstrating.

What do Landau's scales demonstrate? In the image-object she created, the same old equal-arm balance demonstrates its own contradiction. One pan looks full while the other one looks empty. They are unequal but nonetheless still perfectly balanced. In one of the pans, what is supposed to be an inside – a concave pan susceptible to welcome what is to be weighed, becomes in Landau's scales an outside, a hollow elevation, a hill, a dome which can hold nothing and consequently weigh nothing. The supposedly concave pan lost its feature of a container and became convex. Devoid of its inside, nothing can be placed in it without sliding down. The inequality demonstrated by these scales, is not of what is placed in the pans but of the scales itself. The idea of the scales is based on the separation between the container and the contained. The invariant container should be neutral, while the contained is variable. The act of weighing should be practiced according to pre-fixed weights where nothing should be added to or subtracted from the neutral container.

The equal arm scales represents the law symbolically. We can see in it more than a mere representation. We can see how the constitution of its own law - the neutrality of the pan and the determination of the weigh as the sole criterion to be considered – is involved with the harsh violence of exclusion. The law can't be constituted without such violence.² This violence is what Walter Benjamin describes as the "*originary*"

² See Derrida on Benjamin (Jacques Derrida, *Force of Law: "The Mystical Foundation of Authority,"* 11 CARDOZO L. REV. 919, 996 (1990) and (Walter Benjamin, "Critique of

violence of law-making, the unique violence after which all violence is outlawed, except of course that violence which he called *law-preserving violence*. The object to be weighed is abstracted, stripped of all its other features like form, materiality, history, condition of production etc and its weigh is all that should count. The person to be weighed is abstracted, stripped of all his features as sex, gender, nationality, economical state etc, and his civil status is all that should count. Law-making violence of the law is that violence that enables in the first place the equality of all in front of the law. When law-making violence is reproduced again and again, "something is rotten in the law."³ The breaking out of the law-making violence requires the suspension of the law. Its frequent suspension makes the law unpredictable – at least for those for whom the law has been suspended. The regime of occupation is a regime where the law is constantly suspended and the occupied population is permanently in a state of exception to the rule. Whatever grievance they evoke, it slides off the pans. Landau's scales demonstrate its own incapability to pursuit its task when the pans are out of shape, or to say it more precisely – when its law is suspended. Losing its impartiality, the scales of law not only harm the population which has been declared exception to its rule, but it loses its reliability regarding all the subjects who might trust its operation.

I read the mere act of taking the scales out of use as a claim against the injustice of the legal system. Landau's scales were shown only once in an exhibition of Israeli and Palestinian artists. The exhibition was set as a civilian protest against "*indefinite detention*," a **legalized illegal** form of state's violence which in Israel is called

Violence", in *SELECTED WRITINGS*, (1927-1934) 444 (Marcus Bullock & Michael W. Jennings eds., 1999), and my discussion of both (Ariella Azoulay, 2005, "The Loss of Critique and the Critique of Violence", *Cardozo Law Review*, Vol 26:3).

³ This is Benjamin's formulation (Ibid).

"administrative detention." The aberrant figure of the *indefinite detainee* exemplifies the suspension of the law in exceptional cases that are gradually becoming the rule. The legal procedures of arrest are suspended while thousands of persons are being detained for months and years without being accused of anything. As it is usually the case, the protest-exhibition was short lived. Today only a photographic image of Landau's scales is available. The photo shows very clearly that the equal arm scales do not stand on its own. It is held like a marionette in the hand of the one who manipulates it. The subordination of the law to the ruling power which plays with it as if it was a marionette is a sure sign for the expiration of the law as a medium of civic life.

Jerusalem is a paradigmatic case for observing the subordination of the law to demographic fantasies and other nationalist projects. Take for example the flagrant discrimination of Palestinians in building new housing. Palestinians are denied permission to build eight times more often than Israelis. Half of the Jewish neighborhoods flourished in the area that has been officially declared as Jerusalem were built on confiscated land. The relationship between what is "in" and what is "out" of Jerusalem is even a better example. Since 1967 the municipal boundaries are extremely flexible and they had been changed a few times in order to force the populated area designated as Jerusalem to meet the desired image of its ruling power, an image of a Jewish city with a negligible Arab minority. By a spatial acrobatics, the annexation of East Jerusalem and its surroundings incorporated as much land as possible for future Jewish development and as few Arabs as possible. Later changes served to bring more Jewish neighborhoods into the city. Today there are about 400,000 Jews and

160,000 Palestinians who live within the jurisdiction of the city. But a different map, which would have taken into account the dynamics of Palestinian life in and around the city and the geographical reality in the Palestinian neighborhoods, would have yielded a very different demographic ratio.

Jerusalem is the most non-civilian Israeli city. This is so first and foremost because every one out of four residents is a non-citizen. But it is not only the residents who are exceptional in Jerusalem - almost everything is exceptional about this city (its history, its political status, its lands, buildings, services, the holy places, the poverty rates, etc). Moreover, Jerusalem motivates those who bother to think about it to envisage exceptional solutions for its problems and propose extraordinary visions and utopias. Giorgio Agamben's discussion of the city in a recent article is one example of this tendency, which I would like to discuss briefly. Taking a distance from this attitude, an attitude which is also being reflected, I am afraid, in the idea that haunts this conference, I suggest reversing the direction and thinking about the need to make Jerusalem *a less exceptional city*. In other words, I would like to propose a very ordinary vision or a vision of the ordinary: a city in which none of its resident is made an exception to the rule, a city where no one is excluded from the law that governs it.

Let me present briefly Agamben's discussion of Jerusalem. In a short article entitled "We Are Refugees," published about a year ago, he proposes to get rid of the naïve terms 'people' and 'citizen' and adopt in their stead the figure of the refugee as the central figure of our political discourse (Agamben, 2004).⁴ He presents the refugee not only as a metaphor for all the victims of contemporary politics; for him it is also

⁴ The refugee encompasses for him the "stateless person" as well, for he thinks that the distinction between the two cannot stand conceptual scrutiny.

the only way available today of untying the knot that links birth, nationality and territory, which since the French Revolution has been responsible for creating non-citizens: "If in the system of the nation-state the refugee represents such a disquieting element, it is above all because by breaking up the identity between man and citizen, between nativity and nationality, the refugee throws into crisis the original fiction of sovereignty" (Ibid). Several hundred of thousands of "refugees" in Agamben's sense live in and around Jerusalem. Apparently, the disquieting element associated with their existence has not prevented the Israeli sovereign from exercising its power and constantly making exceptions in their case, suspending the law that is supposed to protect their rights and liberties. Agamben uses Hannah Arendt's assertion that refugees "who have been expelled from one country to another are the avant-garde of *their own people*" [italics mine; A.A.], in order to empower the refugee and buttress his standing in the political game. Already in his citation of Arendt, however, Agamben subscribes to the essentialist figure of the "people" and revives it. A "people" is not a nation and there is not reason to confine it to a nation-state, but nonetheless, the notion of a people still preserves the conception of belonging to a group through birth and homeland. The refugee can only be understood as an individual tied to "his" or "her" people, and not as a citizen negotiating with other citizens the terms of his or her political association, or associations and the rules of membership in these associations. Even if the refugee should succeed in his or her mission—as vanguard—she will at most lead "her" people after her, weather this people is the one she left behind, or the one that would become her own. In order to overcome the mass production of non-citizens, Agamben turns to the figure of the refugee despite the fact that it is still haunted by the specter of nationalism, and seeks to get rid of the term citizen, despite the fact that the universal moment in citizenship

makes the citizen the only political actor capable today of struggling against the nationalist and neo-liberal abuses of law and power.

In my reading of the *Declaration of the Rights of Man and of the Citizen*, which I have developed elsewhere, I tried to show that the citizen born in and through this constitutive document is a twofold figure.⁵ On the one hand, being the armor-bearer of Man and enlisted to protect his natural and inalienable rights, he is subordinated to the nation-state and exposed to the market; on the other hand, he is a political agent, an author of speech and actions, capable of, and often engaged in negotiating the limits of his citizenship with the power to be. I believe that the gap between these two figures of the citizen should be maintained and that the former – the citizen of the nation-state who is haunted by the ghost of nationalism – should be banished while the latter – the one who is entitled to and actually engaged in struggles over the way people are governed – should be placed at the foreground of political theory and action. The necessary condition of existence for such a citizen is the separation between state and nation (in the nationalist sense of this term).⁶ In short, what is needed is a state which is "the state of all its citizens".

In the new political imaginary proposed by Agamben, the nation-state will be dissolved by itself when it will face waves of the refugees. Although Agamben probably didn't intend it, his refugee is unable to give up neither his ties of belonging, nor his national aspirations toward a capital and a separated political community. Thus the desired political model for Jerusalem that Agamben proposes is a city that serves as the capital of two states: "*The*

⁵ In writings: *The Civil Contract of Photography*.

⁶ In his writings and in his parliamentary work, Azmi Bashara has developed this idea, which has become an object in the political discourse as "the state of all its citizens." On the separation of the nation from the state, see the opening and concluding chapters of (Ariella Azoulay, Adi Ophir, 2002).

*paradoxical condition of reciprocal **extraterritoriality** (or, better, aterritoriality) that this would imply could be generalized as a model of new **international** relations. Instead of two national states separated by uncertain and threatening boundaries, one could imagine two political communities dwelling in the same region and in exodus one into the other, divided from each other by a series of reciprocal extraterritorialities, in which the guiding concept would no longer be the ius of the citizen, but rather the refugium of the individual” (Ibid.)*

This solution for Jerusalem takes for granted that a people—the Palestinian people in this case—can't exist unless it has a state of its own. Agamben, together with so many others moderates, leftists, and other peace lovers, propose to share the city between **two nation states** – as if one is not already one too many. I would contend that the free citizens – the privileged and the deprived citizens alike, who will struggle together for the liberation of the state from the hold of the nation – are the real political avant-garde.

Two tendencies in contemporary global reality make Agamben's proposal problematic. First, contrary to Agamben's implied assumption, the power of citizenship is not in decline. This power is immediately manifest in the costs of access to citizenship, which are constantly on the rise. Citizenship as an interface between the subject and the power that governs her is still today the most stable protective armor in face of existing forms and methods of state violence, its control and intervention in people's lives. The point is not only the obvious one, that the citizen is much better protected from the abuses of power than the refugee, but also, as an addressor who is entitled to speak back to power, she is much better equipped than the refugee to negotiate with power over the ways it governs her and others. Second, processes of de-territorialization are gradually turning the nation into one out of many human associations, throwing nationalist belonging into competition with other types of belonging, and making it possible to question its territorial dimension. These

processes prepare the ground for the separation of nationalism from the state, which may be conceived in a way similar to the separation of the church from state. In these conditions, we must find a way to *get rid* of a concept of citizenship based on “belonging” and “identity.” Such an understanding of citizenship prompts the citizens to identify with the government that governs them at the expense of their capacity to struggle over the ways it governs them and others. These citizens, who join the power that govern them in persecuting their non-citizens fellows, who are governed together with them by the same power, are completely contaminated by what was rotten in the law. The balanced imbalanced scales of Landau can be used as a warning sign that citizens should adopt in order to remember that their citizenship worth nothing if they are governed together with others who have been made into exception to the rule and are being governed differently than them.

Citizenship should be the main, common and equal tool of all those who are governed by the same powers and of all those who are entitled to negotiate over and strive for their right *not to be governed in this or that way*. The city itself cannot serve as a model for citizenship any longer, for cities tend to separate those who are equally governed and introduce inequality among them. No utopia for Jerusalem can be morally and politically acceptable if it separates this exceptional city from all the others governed by the same powers. Its glorious and contested history is not a reason for its exception, and its state of exception declared by the Israeli sovereign – Israel never declared the annexation of other areas in the west bank except Jerusalem – should not be eternalized. Peace and justice will be possible only when the citizens of Jerusalem will be governed like their fellow citizens in Tel Aviv and Nablus, Ramallah and Haifa. All the residents of the Israeli-Palestine

territory should have equal access to the struggle for being governed otherwise than they actually are.

