

# OUTLAWED

Migration through the Membrane of the Israeli Law

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## Abstract

The aim of this thesis was to sketch the borders of liberal democracies in an era where distance has become symbolic and measured by access to entitlements. To do so the mythical narrative of “us” and “them” was examined in light of six narratives of migrants’ life, and their processes of absorption in Israel under conditions of limited protection. The research began with a philosophical reading of the state’s right to exclude would-be migrants, and was followed by the historical review of immigration laws and their “world of sense.” The philosophical and historical reading provided the background for the analysis of the research findings. The question that guided the analysis was *how do different ways of entries to a state territory (tourist visa, working permit, border crossing permit, unauthorized border crossing), and the corresponding normative meanings that are assigned to them, shape one’s experience of migration, affect the ways in which migrants safeguard their human rights, and influence the process of securing a legal status nowadays?*

To analyse the data, I deployed a Foucauldian discourse analysis, suspending the manifested discourse of the Israeli immigration laws: “all Jewish are returning migrants” and “all non-Jewish must leave the Jewish state”. Entry through land, and entry through the national airport were chosen as *surfaces of emergence*. The findings revealed six unique processes of absorption and two main rules of formation: entry through land was associated with the legal production of subjects as “less worthy of protection”. This was reflected in the enactment of designated laws that aimed at renouncing the responsibility of legislators towards principles of liberty and equality in relation to populations entering through land. Entry through the national airport was associated with the legal production of subjects as “less equals”. This was reflected in their conditioned permits, temporality and deportability. The narratives revealed civilian commitments and resistance to the normative world of immigration law among the authorised population in Israel. In addition, the implementation of civil duties and assistance to outlawed immigrants necessitated the suspension of immigration laws, and were narrated as political acts.

# Chapter 1: “I Rather Take the Danger and Go Far Away.”<sup>1</sup>

## 1.1 MIGRATION AS A POLITICAL ACT

My maternal grandparents escaped the Holocaust; Saba Menachem left Haarlem when he was sixteen to become a settler in Palestine in 1936. Upon his departure, his parents, my great-grandparents, the leaders of the Jewish Orthodox community “sat shiva” – mourned his death while he was alive and refused to bid him farewell. In 1940, the Van-Amerongen family, all sixty members, were turned over to the Nazis for five Guldens per head. They were deported to Auschwitz. Meanwhile in Palestine, my grandfather joined his elder brother and together with a small Dutch Jewish community they established a kibbutz in east Galilee. After the war, Saba Menachem joined the British Brigade in an attempt to reach the Netherlands and look for his family. His sister and her child were the only survivors. Together, they commemorated their parents in the Portuguese Synagogue in Amsterdam. They never spoke about Auschwitz.

Savta Gita was kidnapped by her father from a hospital in Berlin. She was sick with diphtheria but they had to leave. In the summer of 1936, at nine years of age, she crossed the border to the Netherlands. She was sent to a Dutch school with her sisters in the mornings and in the afternoons, she was working in her father’s business; helping the family to earn and save money for what was about to come. When the Germans came, the family split. She and her twin sister hid in an attic of a barn, and her parents and elder sister in a basement. Her father paid a Dutch farmer ten Guldens per head per month to hide them. When the money ran out, their value was estimated in goods. “Stamps! Small pieces of paper were worth more than me!” A family album she took with her from her home in Berlin was the only remainder that she was once considered a human being. Although they survived, my grandparents lost everything to that war: their families, identities, sense of familiarity, cultural affiliation, dignity, faith in humanity, status, and wealth.

For me, they looked like a couple of exotic birds in a cage. They did not fit in the Middle East, their skin was too sensitive, Hebrew never felt welcome on their tongues, and their pale blue eyes often drifted to a place that only existed in their minds. Yet, I was alive. A result of their boundless, irreversible and unpredictable escape – a political act. My dark skin, self-confidence, and fluent Hebrew were their Universal Declaration of Human Rights. They were able to secure my humanity, and that was their victory. Their actions endowed me with

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<sup>1</sup> The sentence was taken from the life-story of Isa, a Darfurian refugee, fled Darfur in 2003, living in Israel for the past nine years.

“liberty”, their stories left me with a compass directing toward justice. Ironically, today my political rights appear to be a threat to national ethos. Today, escaping adversity is regarded illegal. Today, my grandparents would not have been able to come through war alive. How did it come to this?

How do different ways of entries to a state territory (tourist visa, working permit, border crossing permit, unauthorized border crossing), and the corresponding normative meanings that are assigned to them, shape one’s experience of migration, affect the ways in which migrants safeguard their human rights, and influence the process of securing a legal status *nowadays*? Finding answers to these questions is important, for as long as injustice is imbedded in law borders will be crossed, people will break laws, and it will be ethically imperative to cooperate with people who cross borders and break laws.

According to the United Nations High Commissioner for Refugees (UNHCR), at the end of 2016, 65.6 million people were forcibly displaced as a result of persecution, conflict, generalized violence, or human rights violations (UNHCR 2017). Their journeys are often hazardous, and their presence in transit and destination countries involve bureaucratic hassles, threats of deportation, and barriers on further movements and lawful status (Berman 2015, Chomsky 2011, Coutin 2003, De Genova 2013a, Faist 2016). While the vulnerabilities of refugees and outlawed migrants are not new (Arendt 1973, Malkki 1992), the context in which these vulnerabilities are expressed has changed over the past fifty years.

The dependency of liberal economies on immigrants has increased steadily (Castles and Kosack 1972, Castles, de Haas and Miller 2014), and with it the rise in volume and diversity of the foreign population in liberal societies (Meissner and Vertovec 2015). In most liberal states, this had led to the expansion of immigration legislations and the establishment of immigration enforcement institutions (Czaika and de Haas. 2013, Chomsky 2011, De Genova 2013b). Moreover, public discourses of a polarizing nature became part of everyday news and politics, with public and social media playing a role in the choices of coverage and language used to describe the issue (De Genova 2010, Warner 2005, Woods and Damien 2014, MaKay, Thomas and Blood 2011, Warner 2005).

The increasing numbers of refugees and asylum seekers (UNHCR 2017), and the growing numbers of unauthorized migrants in liberal democracies (O’Connell Davidson 2013, Katharine and Massey 2016) have invigorated academic research on a vast range of related topics: Changing border regimes (Andrijasevic and Walters 2010, Black 2003, Coutin 2003,

Dines, Montagna and Ruggiero 2015, Topak 2014, Cuttitta 2016). The growing precarity in migrants' lives (O'Connell Davidson 2013, Faist 2016, Zetter 2007, Meloni, et al. 2014, Baban, Ilican and Rygiel 2017). Bilateral agreements on issues of population control (Adepoju, Van Noorloos and Zoomers 2010, Aras and Mencutek 2015, Greenhill 2016). And, elaborations on the practices used by migrants to manage their migration projects while living as "unauthorized" (Ambrosini 2015, Berman 2015, Cvajner and Sciortino 2010, Hiemstra 2010).

With this research, I am inspired by the scholars who view the above-mentioned processes as part of the construction of a normative world of "us" and "them". An approach that goes beyond "illegality" per se, and depicts immigration laws as a system of control that modulates the flow of people by the stratification of their legal entitlements (Agamben 2005, Chomsky 2014, De Genova 2013a, Faist 2016, Cvajner and Sciortino 2010, Kurz 2012, Ngai 2014). With this research, I will focus on commitments to the normative world of "us" and "them" in liberal democracies; that is, in societies that base their constitution on principles of liberty and equality.

These commitments to a normative world of "us" and "them" imply that some migrants are subject to violence of the state in two respects: *power* and *meaning* (Cover 1983). With power, Cover refers to the laws that deprive people of basic rights, for reasons such as the way they crossed a border. The law goes hand in hand with a narrative that renders their humanity as less worthy of protection, what Cover refers to as *meaning*. This is especially the case for migrants who do not sufficiently conform to the norms of the narrative portrayed by the law, for example "the land of sexual liberty", and "the land of secularity" (Butler 2008). My main fascination for this research is the ways in which these normative worlds are known, understood, narrated, and experienced by the migrants themselves. How do they embody that position which the law depicts as subjects less eligible for protection?

Therefore, I will concentrate on the experiences of migration in relation to a person's eligibility for human rights with the following three sub-questions in mind:

*How do different ways of entries to a state territory and the corresponding normative meanings that are assigned to them -*

- *Shape the process of migrants' absorption?*
- *Shape migrants' rights extraction processes?*
- *Shape civilian commitments and resistance to the normative world of "us" and "them"?*

In the next section I will explore the relevance of this research and provide more background. Additionally, I discuss the methods of data gathering and data analysis as well as a first preview on the theoretical framework.

## 1.2 RELEVANCE & BACKGROUND

Narratives that stand in the basis of laws often create commitments among citizens to ideas that appear positive. Nuremberg Laws were legislated to promote the health of the human race (Chelouche 2008). The Executive Order 13769, titled “Protecting the Nation from Foreign Terrorist Entry into the United States”, known as “travel ban”, was the first step in “making America great again”. “The war on drugs” and “the war on terror” (Tyler 2017, Lurigio 2014, Butler 2004) are based on narratives about how the world would become a better and a safer place. Common to all these narratives is, of course, an over simplification of complex realities; but more so, they identify people as “a problem to be solved”, and by that they create humans as subjects less worthy of protection.

The narratives of immigration laws are no exception to this rule; thus, the social realities of immigrants are affected not only by the power of the law, but also by the grip of the normative world of “us” and “them”. Furthermore, laws can be broken, can be avoided, can be breached through loopholes, yet stories are hard to run away from. Additionally, immigration laws are one of the contexts in which new narratives of “we”, which expand beyond the traditional “us” and “them”, are created. These narratives are worth noting, as they reveal a capacity for collaborative action that does not presuppose sameness (Butler 2009b).

I chose the state of Israel as the context in which my questions will be researched. However, I find it important to note that the focus of the thesis is “liberal democracies” not “Israel”. The state of Israel was chosen because I am a citizen of this state, I have a part in the narratives that are told, and I know them by heart. Yet, “Israel” is an example that might be radical, but is under no circumstance original or exceptional among liberal democracies. Stories are told through laws in other liberal democracies (Zetter 2007, Meloni, et al. 2014, Cuttitta 2016, Millington 2010). More importantly, many nation-states today share practices and information among them, and they can unify their border regimes, laws and regulations, and technologies almost simultaneously (Andrijasevic and Walters 2010, Gil-Bazo 2015, Zetter 2007, Bierbach 2008, Massey, Pren and Durand 2016, Guiraudon 2000). Thus, Israel is a random example; any state is but a random example of the transnational practice of legal stratification of people through immigration laws.

Israel will present a case study of a liberal democracy, a high-income country, and an immigrants' society. Israel's own history of independence, development, and citizenry have been dependent on and shaped by immigration (Peled 1992, Cohen 2014, Heller 1978, Lustick 1999, Khalidi 1988)<sup>2</sup>. Furthermore, the Basic Laws of the State of Israel are based on the principles of liberal democracy, yet deploy a system of legal stratification of civil entitlements in several laws (Abraham and Kargar 1993, Kalir 2015)<sup>3</sup>. Israel has two immigration laws that were enacted to regulate the state's policy of immigration: The Law of Return (1950), which acknowledges the right of Jewish descents to live in Israel, to obtain Israeli citizenship, and to receive subsidies for their first years of settlement in Israel (Abraham and Kargar 1993). The second law is the Law of Entry to Israel (1952), which regulates the conditions for entry and departure in all other cases (Berman 2015). In the following, I will present a very brief explanation about some of the legislations in the Law of Entry that are relevant to the understanding of the next chapters. I refer to these legislations as "mechanisms of outlawing" because in their essence each regulation deprives migrants of some human rights, whether intentionally or not.

The first mechanism of outlawing is the complete halt of the Palestinians' family reunification procedures in Israel since 2002<sup>4</sup>. Initially, it was implemented as an emergency order for six months, but since 2003 The Citizenship and Entry Law (Temporary Order) was renewed every year. The right of Palestinian citizens to family life in Israel and East Jerusalem is the essence of what is denied in this case. Put simply, their non-citizen spouse can only live in Israel as outlawed, which could and often does end in expulsion. There is no data on the number of Palestinians living in Israel as outlawed as a result of this law.

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<sup>2</sup> The state of Israel received its independence from the British colonizers in 1948 (Cohen 2014). Between 1947 and 1949, in the midst of the war leading to the independence of Israel, about 700,000 Palestinians were displaced and most of them were banned from returning to their homes after the war (Bligh 1994, Khalidi 1988). Following the dispossession and displacement of the Palestinians, the state of Israel absorbed about 600,000 displaced and dispossessed Jews, mostly European Holocaust survivors, and Arab Jews from North Africa and Asia (Reichman, Katz and Paz 1991). This pattern of displacement and replacement re-occurred during subsequent regional wars in 1967 and 1973 (Khalidi 1988, Greenhill 2010).

<sup>3</sup> The Israeli liberal-democracy is known as a *defensive democracy*; namely, it enacts few laws that are meant to protect the democratic structure from an inherent threat that might destroy it (Weinblum 2015). The most notable example of such inherent threat in modern history is the democratic election of the Nazi Party in Germany in 1933.

<sup>4</sup> The family reunification process is currently halted for Palestinian women younger than 25 and men younger than 35 who wish to marry and live in Israel. If the Palestinian spouse is above the age limit, a special request to the Minister of Interior is to be made and it is up to the minister to legalize the status of the Palestinian spouse. The registration of children of "mix" couples changes considerably and unexpectedly and, as such, the criteria and process can only be applied retrospectively looking at individual cases, so it is not formulated as a procedure (Salchan and Kadman 2014).

The second mechanism of outlawing concerns another case of the family reunification process, which resides within “the periphery of the Law of Return”. In this case, families from which only one of the spouses is Jewish are entitled to a family reunification process. Non-Jewish people who are naturalized under the family reunification process make up the largest group of non-Jewish populaces in Israel, more than 250,000 migrants (Lustick 1999, Raijman 2009). However, if the couple is to divorce before the completion of the process (five years), the non-Jewish spouse loses his/her rights to residency in Israel and is asked to leave (Berman 2015).

The third mechanism of outlawing portrays a pattern of labor-migrations, which started at the beginning of the 1990s. This was the second path through which the state of Israel actively facilitated the arrival of non-Jewish immigrants to its territory (Raijman 2009). The trigger for this pattern of migration was the increasing restrictions on the entry of Palestinian workers to Israel during the second intifada (Kimhi 2015)<sup>5</sup>. As of the end of 2016, there were over 100,000 immigrant workers in Israel; more than fifteen percent of those were outlawed.

The fourth mechanism of outlawing is working migrants who entered Israel on a tourist visa, which means without the facilitation of the state. As of the end of 2016, there were over 78,000 immigrants working in Israel with an expired tourist visa. Both of these groups have a temporary visa, they cannot gain residency, and “are deportable” (De Genova 2013a) if found without a valid permit. Freedom of employment and the protection of their rights as employees are the essence of what is challenged in this case.

The fifth mechanism of outlawing is called “unauthorized land crossing”, which is regarded by Israeli law as “infiltration” since 2012. Under the Prevention of Infiltration Law over 40,000 African asylum seekers, who crossed the Israeli border by land, are regarded as “infiltrators”. The Prevention of Infiltration Law is not an immigration law, but an amendment of a law from 1954 that aimed to prevent armed Palestinians from breaching Israel’s border with Jordan (Ziegler 2015). Over 90 percent of those regarded as “infiltrators” are Eritreans and Sudanese asylum seekers whose only protection is the international law of non-refoulement<sup>6</sup>. The right for asylum and protection are thus the essence of what is denied in this case (Gil-Bazo 2015).

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<sup>5</sup> The second intifada was a popular uprising in the streets of the Palestinian Authority, which started in September 2000. This soon evolved into an extensive period of terror acts against Israeli civilians, led to the building of the separation wall in the West Bank, and to the evacuation of Israeli settlements in Gaza (Nada and Rojas 2016).

<sup>6</sup> Non-refoulement is a fundamental principle of international law, which forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution (Gil-Bazo 2015).

Clearly, the Israeli context provides an opportunity to examine a liberal society that functions under a stratified system of legal entitlements. Yet, while the normative worlds of the Israeli immigration laws are reflected in their names, and the history of the state provides a testimony to the pivotal role migrants have played in its formation, immigration laws, history, and systems of stratification are all artifacts – they are not real and what is real cannot be understood through them. To understand the normative worlds of immigration laws as realities, we need consciousness, limbic systems, a shared language, and a meeting place. The next part will elaborate on the methodology of the research and its data gathering process.

### 1.3 BORDERS STORIES: METHODOLOGY OF DATA GATHERING

With this research, I aim to understand the social and personal realities of immigrants with limited legal protection vis-à-vis the motivations of lawmakers, the experience of immigration, the possibility of the migrants to safeguard their human rights, and the pivotal steps in the life-altering journeys to lawful status. In order to understand their experiences, I wanted to use an interview method that provides the most freedom for the narrator possible. Therefore, I deployed a qualitative research method called oral history, and more specifically *life history research*.

A life-story method is a complete narrative of an individual's entire experience of life (Atkinson 1998). It provides a vantage point from which the threads and links that connect the different parts of a person's life become visible (McAdams 2008). This method differs from other qualitative methods of in-depth interviews in a few respects. To begin with, the lives of people are "taken as entities deserving sociological study" (Bertaux and Kohli 1984, 220). As such, the life-story method discloses the narrators as "subjects in socio-historical contexts" (Sandino 2006, 275). Through the narratives, life stories provide an opportunity to comprehend individuals, cultures, societies, and historical epochs as wholes (Richardson 1990). Another respect in which this method differs from other qualitative methods is its capacity to reveal the person as simultaneously unique and universal. The life-story method discloses similarities in the human experiences. "What is common to all greatly exceeds what is particular to each narrator" (Bertaux and Kohli 1984, 228). Lastly, the life-stories method resonates with the "Autonomy of Migrants" (AoM) approach to migration research<sup>7</sup>.

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<sup>7</sup> The AoM approach seeks to "represent the subjective diversity of migrants' mobilities, and to learn what migration teaches us about the conditions of contemporary forms of sociality... That which exceed the ability of

The life-story method generates specific knowledge and insights relevant to this study. For example, the relation between one's personal life and macrosocial processes. Life-story narrations reveal layers of mediation between the personal and the social through relations with local institutions, families, or peer groups, and all shape the life trajectories of the narrators (Bertaux and Kohli 1984). As such, the life-story method provides what is conceptualized by Lugones as the "pedestrian" view and "the perspective from inside the midst of people, from inside the layers of relationships, institutions and practices" (2003, 5).

Additional aspects unique to the life-story method are the narratives it produces. According to Professor Laurel Richardson, narratives are sociologically significant as they disclose "cultural" and "collective" stories<sup>8</sup>. By cultural stories, Richardson refers to the disclosure of ruling interests and the normative order. Generating a collective narrative, on the other hand, the narrators display their subjective experiences as a marginalized social category (Richardson 1990). Both aspects are important for the understanding of the normative worlds of immigration laws and the forms of resistance they produce.

Lastly, life-history method reveals "the coexistence of the temporal nature of the human being and the activity of narrating a story. Through the narrative, temporality becomes interpretable in human terms" (Richardson 1990, 124). Narratives provide an opportunity to speak about time as experienced and valued by people, an extended awareness of the past and the future within the present (Husserl 1964). The meanings of events are produced by their temporal position and their role in a comprehensible whole (Ibid 1990). Time is made human as life-history discloses through the narrative of our temporal experience (Ibid 1964). As such, this method can improve our understanding of the impact of immigration law in terms relevant to the human experience of time and temporality.

Looking for potential narrators, I quickly realized immigrants with limited legal protection in Israel were a difficult access group due to the thin line of illegality and migration. Finding potential narrators was the main challenge of this project. The strategies I used were

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migration policies and state authorities to fix and control migrants" (Casas-Cortes, Cobarrubias and Pickles 2015, 896).

<sup>8</sup> According to Richardson, "people who belong to a particular category can develop a consciousness of kind and can galvanize other category members through the telling of the collective story... By emotionally binding people together who have had the same experiences, the collective story overcomes some of the isolation and alienation of contemporary life. It provides a sociological community, the linking of separate individuals into a shared consciousness. Once linked, the possibility for social action on behalf of the collective is present, and there with the possibility of societal transformation" (Richardson 1990, 129).

to email my network of friends working with migrants and to search the internet for lawyers who represent immigrants in legal proceedings with the Ministry of the Interior. I also looked for lawyers who specialize in immigration and citizenship laws, specifically lawyers who expressed their commitments to human rights on their websites, as I believed it would raise their motivation to help me.

Another strategy was to turn to local human rights organizations that defend and promote the human rights of immigrants and Palestinians, and to turn to leaders of the main immigrants' communities in Israel. Of the thirty emails sent initially, half received a response and these mostly lead to other people who might be helpful. Eventually, *I was able to listen to* the life stories of six migrants who entered Israel under the "Law of Entry to Israel" (1952). Two of which were via their lawyer, two through a local human rights organization, and two were migrants who replied to the email I sent. I refer to the research participants as narrators, for they provided me with the opportunity to listen to, and then read, six narratives about the contemporary history of migration, societies, and human rights from their own vantage point.

The data were gathered between May 15 and May 21, 2017, in Israel. It included nine meetings, seven of which were interviews along with two introductory meetings. The narrators' ages range from twenty-two to forty-one. Two of the narrators are men. Their countries of origin are Gaza, Eritrea, Sudan, Uzbekistan, Colombia, and the Philippines. Their number of years in Israel range from nine to nineteen years. Four of them are educated to bachelor's degree level and one is currently a student. Five of the narrators are employed, yet none of them in the profession of their training (education, environmental-engineering, law, and archaeology). Two are Muslims, three are Christians, and one is secular. Two of the narrators are married, three are the mothers of minors, and two are living with their children. At the time of writing this paper, three of the narrators are under the protection of non-refoulement, one narrator has a valid working visa, one has a temporary residency permit, and one has a permanent residency permit. Five of narrators are in the midst of legal procedures regarding their status (see table 1).

The interviews took place in locations chosen by the narrators. I traveled to meet them in Sderot, Petah-Tikva, South Tel Aviv and Herzliya (see annex 1). Four of the interviews were in Hebrew, one in English, and one in both English and Hebrew. The interviews lasted about one and a half hours each. Our meetings started with a casual conversation, I then introduced myself and provided the aims of the research and structure of the interview. We read the informed consent form, signed it, filled out the demographic details, and then we began once

the narrator was ready. The interviews often started with the question, “Where were you born?” As long as the narrator spoke, no questions were asked unless I requested a sentence to be repeated because I did not hear well or, if more details could be provided about a certain action.

We ended the meeting with another casual conversation, exchanged contact details, and said to stay in touch. The transcribed stories were sent back to the narrators at the beginning of June. All but one asked to change the names mentioned in their stories. I left Israel a few hours after the last interview. The narrators’ dialects, stories, messages, smiles, pain, and struggles were reopened in Europe, and then listened to and shaped into texts, which were the building blocks of this research analysis. I used direct translation and left the language of the narratives as is, even when this meant the reader would not read a “proper” English. I did so for two reasons: to highlight language as an act, “to language” (Lugones 2006, 84), and to preserve the sensation of communicating – both telling and listening – through a second language, a pivotal aspect in the lives of migrants. The following section will explain the data’s method of analysis.

**Table 1:** Demographic details and legal status information

<b>Name</b>	<b>Birth</b>	<b>Origin</b>	<b>Education</b>	<b>Status</b>	<b>Aliyah</b>	<b>Current Legal Status</b>	<b>Years with Status</b>
Vera	1983	Tashkent, Uzbekistan	B.A.	Divorce + 1	2005	Temporary residency permit	12
Evelin Diaz Arke	1994	Medline, Colombia	High-School Diploma	Single	2002	Permanent residency permit	5
Amal	1990	Rafah, Gaza	B.A.	Married + 2	1998	Non-refoulement	1
Isa	1980	Nyala, Darfur, Sudan	B.A.	Single	2008	Infiltrator-foreign worker	9
Melvs	1976	Baguio, The Philippines	B.A.	Married + 3	2004	Foreign worker	13
Theo	1988	Asmara, Eritrea	High-School Diploma	Single	2007	Infiltrator-foreign worker	10

#### 1.4 METHOD OF ANALYSIS

The method of analysis deployed in this research is known as Foucauldian discourse analysis. Foucault’s interest with discourse analysis rests in the realm of historical analysis of power (Gill 2000). His work illustrates the pivotal role discourses play in constructing and

maintaining social norms, and in shaping identities by delimiting and conditioning thoughts and actions (Foucault 1965, Foucault 1973). Put differently by Arteaga, “The world comes to be as the authoritative discourse says” (Arteaga 1996, 16). Taking Foucault’s approach, in this research I am less concerned with finding the “truth”, nor attempting to generate “objective” and “impartial” observations on migration and immigration laws. Instead, the analysis will focus on how rational and irrational arguments can be appropriated as “truth” through the exercise of power (Sharp and Richardson 2001) in the Israeli context of immigration laws.

The pivotal aspect of Foucauldian discourse analysis is defined as *discursive formation*: a system of regulation that can be detected between a number of statements, objects, concepts, or thematic choices (Foucault 2012, 41). To locate a discursive formation, the first step is to indicate where individual differences, which are meaningful to the conceptual codes, will be accorded the status of deviant, anomaly, or alienation (type of entry to a state’s territory in this thesis). The second step is to describe the authorities of delimitation. In the case of immigration, the law (national and international) becomes a major authority that delimited, designated, named, and established “illegality”. But it is not alone in this. Population and Immigration Authority, politicians and popular media, health and education institutions, as well as citizens, are all part of the authorities of delimitation. Lastly, the *grids of specification* must be analyzed; the systems according to which the different “kinds of illegality” are divided, contrasted, related, regrouped, classified, and derived from one another as objects of “legal” discourse (Foucault 2012, 45-46).

Once a *discursive formation* is located, the next step in the analysis is to formulate the conditions to which the elements of division are subjected. In Foucault’s terms, the *rules of formation* are the conditions of existence, coexistence, maintenance, modification, and disappearance in a given discursive division. These rules are not “facts”, “realities”, or “being”, but “referential”. They are possibilities, rules of existence for the objects that are named within it (Foucault 2012, 103). Following the location of the *discursive formation*, and the comprehension of the *rules of formation*, the next step of the process is the suspension of the manifest discourse and its reductive effects on the use of language, which Foucault refers to as:

[No] more than the repressive presence of what it does not say; and this “not-said” is a hollow that undermines from within all that is said. The first theme sees the historical analysis of discourse as the quest for and the repetition of an origin that eludes all

historical determination; the second sees it as the interpretation of “hearing” of an “already-said” that is at the same time a “not-said” (Foucault 2012, 28).

In this research, the manifested discourse of the Israeli immigration laws, the theme of the Law of Return (“all Jewish are returning migrants”) and the theme of the Law of Entry (“all non-Jewish must leave the Jewish state”), will be suspended. Foucault urges the analysts to become aware of the pre-existing forms of continuity that are accepted without question, and to suspend the unifying discourse they form during the process of analysis. Suspension, as opposed to rejection, scrutinizes the legitimacy and justification of the discourse, and of the statements that can never be accepted under any circumstances (Foucault 2012). Suspending the immediate forms of unity, an entire field of statements is set free.

The last phase of the analysis is, therefore, to locate a *pure description of discursive events*: a testimony to the infinite potential of creating ideas and thoughts, and expressing them in language and actions (Foucault 2012, 29-30). Foucault’s concept of a *pure description of discursive event* resonates with Arendt’s concept of human plurality – the condition of speech and action- emphasizing terms of equality (the ability of people to understand each other), and distinctiveness (the need to explain our own experiences in the world), and their vitality in human affairs (Arendt 1958).

The research questions, as well as the overall framing of the topic I chose to research, rest heavily on the way I encountered and came to know a particular world of migration. This frame does not respond adequately to the current major themes in migration research and, at the same time, I do not presume to create a new genre of migration research. I do wish, though, to use my specific framing for the purpose of this specific research as a “kind of perpetual breakage subject to a temporal logic by which it moves from place to place” (Butler 2009a, 10).

Thus, migration under terms of restrictions will present a case study where the “pre-legal right to have right” (Arendt 1973, 298) is relevant. The Israeli liberal democracy will provide the context; the theater that presents the play “Who is a human?” in its halls. The laws, migration laws, human rights laws as well as international law, will serve as the backdrop for the play, the normative worlds within which the human drama takes place. Lastly, the narrators themselves will provide their own “certain historical convergence of norms at the site of their embodied personhood, that opened up the possibility for action” (Butler 2009b, 11-12). These narratives will provide anecdotal answers to civilians’ commitments and resistance to

immigration laws as “power” and “meaning”. In the next sections, I will provide the outline for the following chapters.

## 1.5 THESIS OUTLINE

This research will deepen into the space between laws, immigrant and society in liberal democracies, with Israel as a case study. It wishes to bring a critical observation on the forces that shape immigration laws as “power” and “meaning”. It will also trace civilians’ commitments to normative worlds that are portrayed by various laws. This will be studied from the perspective of migrants, caught in the grip of norms, rendering their humanity as less worthy of protection. I found this subject relevant for migration research, since societies in liberal democracies are becoming increasingly diversified and the quality of their social organization is dependent upon narratives promoting a “we” that expand beyond the traditional “us” and “them” to reveal a capacity for collective action that does not presuppose sameness.

In Chapter 2, I will explore the philosophical and historical development of immigration laws in liberal democracies, and the role of immigration laws in shaping the “face of the nation”. The chapter will depart from the current debate about the philosophical justification of a state’s right to exclude would-be migrants from its territory. A crucial point for the understanding of the current border regimes. I will then continue to discuss the narratives of immigration laws as organizing a world of “us” and “them” with a stratified system of eligibility to rights. The last part of the literature review will be devoted to the new technologies deployed in the service of immigration laws, and particularly the internalization and externalization of national borders.

In Chapters 3 and 4, I will provide an analysis of the narratives in light of the research questions focusing on migrants’ “process of absorption”<sup>9</sup>, their possibility to safeguard their human rights, and the civilian commitments to the normative world of “us” and “them”. The third chapter will provide a closer look at cases of land border crossings with a visit permit and

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<sup>9</sup> I will use the term “process of absorption” to describe the acclimatization of migrants in Israel for several reasons. First, “process of absorption” doesn’t assume a monolithic society that the immigrant becomes a part of. As opposed to “assimilation”, “integration”, “incorporation”, or “super diversity” (Alba and Nee 1997, Meissner and Vertovec 2015, Portes and Zhou 1993), a “process of absorption” depicts the social context as a new environment to which the immigrant acclimatizes. Second, “absorption” depicts as inevitable and time dependent a process that is shaped by factors internal and external to the migrant and to the project of migration. Third, “absorption” highlights localities as the focal point of the process and emphasizes social hierarchies and asymmetries as context dependent. Fourth, “absorption” assumes a reciprocal process between newcomers and old timers as a result of sharing social environments within a common jurisdiction. Lastly, “process of absorption” is also the term used in Israel to describe the acclimatization process of Jewish newcomers (Lustick 1999).

unauthorized entry. The fourth chapter will focus on entry through the airport and with permits. In each of the chapters, attention will be given to the function of citizens working in public institutions operating under the authority of Israeli law. The fifth chapter will focus on migration as a political act and will elaborate on civilian resistance to the normative worlds of immigration laws, and its part in a migrant's process of absorption. The last chapter brings together the findings and presents its conclusions.

## Chapter 2: “We Had a Dream to Be Safe.”<sup>10</sup>

### 2.1 SUR REALI[TY] STIC

Evelin Diaz Arke is the only narrator who went through the membrane of the Israeli law. She entered with a tourist visa at the age of eight, outlawed three months later, and received a permanent resident status at the age of eighteen. I asked her if she could describe her thoughts upon receiving her legal status:

[Of] course, Sigal was with us in the Ministry of Interior when we got the status... It reminded me of the experience of driving my sister to the airport with the cops<sup>11</sup>. I was really detached from the moment, as if I am not there at all. I felt like something is pulling me out of my body, and I am looking from above on everything that happened. And it was the same when my sister...[was deported] and my mom was in a sea of tears and she was torn apart, and there was no one to talk to and I... I am just... I am a zombie, I am not even there. And it was the same when we got the status. I told myself, “Wow, it actually happens.” I mean, the clerk is now really signing on what we are fighting for, for twelve years.

Evelin uses the present tense and the same emotional response to describe two, almost contradicting, legal processes as similar and present. As far as she is concerned, the Diaz Arke sisters were both minors when they entered Israel, both entered with a permit, and both graduated from high school with honors. However, at the age of nineteen, Evelin’s sister was randomly detected, detained, and deported, while Evelin was randomly granted a permanent resident status, following the governmental decision No. 2183 called “an hourly arrangement to grant status to children who are staying illegally, their parents, and siblings in Israel”. For Evelin, this arbitrariness has nothing to do with law and order, rather it is experienced as an “exhausting war that is never over – not here and not anywhere else.”

This painful account provides us with a moment of clarity, and when law becomes a matter of luck, of timing, it cannot be experienced as impartial. According to the American professor of law, Robert M. Cover, “law must be meaningful in the sense that it permits those who live together to express themselves with it and with respect to it. It must both ground predictable behavior and provide meaning for behavior that departs from the ordinary” (1983,

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<sup>10</sup> The sentence was taken from the life-history of Theo, an Eritrean refugee who fled Eritrea in 2005 and has lived in Israel for the past ten years.

<sup>11</sup> The name mentioned in the quote is Sigal Rozen, the head of the Public Activities Department of “The Hotline for Refugees and Migrants” (in Hebrew, “HaMoked”). Established in 1998, and situated in South Tel-Aviv, HaMoked is Israel’s leading organization protecting the rights of refugees, migrant workers, and victims of human trafficking.

14). The main question of this chapter is how we came to know immigration laws as impartial. The other question of this chapter is how unquestioned justification for immigration laws shapes the current system of control that modulates the flow of people across national borders.

With this, I aim to illuminate the construction of a normative world of “us” and “them”, which delineate the borders of liberal democracies, in order to make sense of forced displacement and outlawed migrants in the past fifty years. In this chapter, I will trace the elusive space between laws, societies, and immigrants in liberal democracies. I begin by summarizing the philosophical debate around the moral defense of a state’s right of exclusion. I continue with patterns of exclusion in migration policies in liberal democracies. From this point, the chapter will focus on the development of illegality as a new language, recoding persisting practices of exclusion and discrimination. The chapter will end with the current border regimes and will lay its foundations for the following chapters. To do so, I will use a comparative literature review of recent social theory and post-World War II philosophy published in both English and Hebrew.

## 2.2 ON THE STATE’S RIGHT TO EXCLUDE

The right of liberal democracies to control and restrict immigration is considered an unquestionable aspect of its sovereignty (Fine 2013). Yet, one of the most fundamental principles of liberal democracy theory is that all interference with action is in need of justification (Freiman and Hidalgo 2016). Thus, the authority states claim to have over the admission and settlement of non-citizens is in urgent need of moral justification (Blake 2013). Especially since “borders have guards and the guards have guns” (Carens 1987, 251), while immigrants are unarmed (Rosen Velásquez 2016).

The philosophical debates on immigration control are beyond the scope of this thesis, and perhaps do not “belong” to the realm of sociology. However, since one of the main efforts of this thesis is to draw our attention to the story we tell with the law we enact, I need to start with the story we tell about directing some migrants to full citizenship and some migrants to “illegality”. Thus, the following will present the most articulated and debated justifications of the state’s right to exclude.

The first argument suggests that controlling access to membership of a nation-state is fundamental for a state’s “self-determination”, and unavoidably means controlling access to long-term residence by excluding would-be immigrants (Fine and Ypi 2016, Rosen Velásquez

2016)<sup>12</sup>. A second argument suggests that “legitimate states” are provided with the right to exclude would-be migrants as a means of guaranteeing their ability to fulfill their commitments to democracy and human rights (Blake 2013, Stilz 2009, Wellman and Cole 2011)<sup>13</sup>. The third argument suggests that “special relationships” between state, citizens and territory result in special claims over the right to decide which direction a state’s institution will pursue and who will make these types of decisions; namely, a right to self-determination that can only be achieved through the exclusion of would-be migrants (Nine 2012, Pevnick 2011)<sup>14</sup>.

Common to all these arguments is their inability to provide adequate defense to a state’s right of exclusion. The self-determination arguments need to provide a clear definition of the “self”, i.e. who can be regarded as a state’s “self” and how states identify its “selves”. For example, if a state’s citizens are regarded as a “self”, then they must reside within the state’s territory in order for the *state* to have the right to exclude would-be migrants from its territory (Fine 2013). Alternatively, if the “self” is identified based on contribution to the development of a state’s infrastructure and institutions, programs such as the Marshall Plan provide a troubling example of contributions that did not end in corresponding entitlements. Also, on the other end, children of citizens often receive automatic entitlements without any direct contribution to the state (De Long and Eichengreen 1991, Fine 2013)<sup>15</sup>.

Even more troubling is the legitimate state argument. This argument ignores 450 years of gross human rights violations, enslavement, forced displacement, genocides, and the destruction of knowledge and communities under colonial, imperialist, and nation-states rule. This reduces the number of sovereign liberal democracies that can be defined as “legitimate” (Césaire 2000, Ngai 2014, O’Hearn and Thomas 2011, Rosen Velásquez 2016). It also ignores other forms of discrimination, displacement, and human rights violations that continue to prevail in most liberal democracies (Alexander 2011, De Genova 2013b, Chomsky 2014,

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<sup>12</sup> The self-determination idea is closely identified with Woodrow Wilson who first used the term publicly in 1918, but it did not emerge as a principle of positive international law until the 1945 San Francisco Conference on the United Nations...the idea found its way into Articles 1 and 55 of the UN Charter as the principle of “equal rights and self-determination of ‘peoples’”. The drafters did not bother to define self-determination or to identify who the “peoples” were (Kirgis 1994, 304).

<sup>13</sup> Legitimate states are defined as states that are committed to human rights and impartial laws, providing equal rights to both citizens and non-citizens, and avoiding the violation of human rights of other nationals (Wellman and Cole 2011).

<sup>14</sup> Known as the *collective acquisition accounts*, the “special relationship” argument claims that the state as a collective agent cultivates the territorial land through the construction and maintenance of infrastructure and institutions, which citizens contribute to by paying taxes and obeying the law (Fine 2013, Ypi 2013).

<sup>15</sup> The Marshall Plan (officially the European Recovery Program, ERP) was an American initiative to aid Western Europe to rebuild its economies after the end of World War II. Consequently, the United States donated over 13 billion dollars in economic support (De Long and Eichengreen 1991).

Massey and Bartley 2005, Cuttitta 2016, Meloni, et al. 2014). Even more alarming is that the legitimate state argument continues to reinforce the premise that “White” possess humanity (Rosen Velásquez 2016), as it implies that atrocities committed against non-European are not counted as a violation of human rights.

In conclusion, the liberal system of thought is struggling to make sense of its own principles in relation to migration policies. As much as the right to exclude is prevalent throughout liberal democracies, it remains unclear “why exclusion ought to be justified in the first place” (Ypi 2013, 246). According to American philosopher Michael Blake, “even if the right to exclude exists, it can hardly justify the exclusionary practices undertaken by modern wealthy states” (2013: 104). Thus, the first step into the space between laws, societies, and immigrants, in liberal democracies, is a step into “a world of sense” (Lugones 2003) that makes no sense<sup>16</sup>. If we are liberal as we claim to be, our migratory systems should reflect that (Freiman and Hidalgo 2016). If our migratory system contradicts liberal principles, then we have a bug in our system. This bug was articulated by Italian philosopher Giorgio Agamben as a state of exception, which he describes as:

The establishment of a legal civil war which, in some cases allows for the physical elimination of entire categories of citizens who cannot be integrated into the political system, leads to a permanent state of emergency in democratic states (Agamben 2005, 2).

Agamben (2005) describes the current practices of outlawing migrants as a “global civil war” in which the state of exception has become the most dominant form of government in contemporary politics. Yet, if immigration laws do not conform to liberal principles, to which principles do they conform? What is their “world of sense”? The next section will present a very brief account of immigration policies in the attempt to highlight the logic of immigration laws and its role in shaping a normative world of “us” and “them”.

### 2.3 CONSISTENCY IN MIGRATION POLICIES

The second step in understanding the underlining premise of migration policies is to trace the prominent marks of explicitly exclusionary policies in what is defined by Christopher Heath Wellman as the “legitimate states” (2011). I will randomly begin with the “White Australia” policy, which explicitly preferred the arrival of British, Eastern Europeans and New Zealanders to Australia, while restricting the entry of Indochinese people, and displacing and dispossessing

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<sup>16</sup> Lugones’ account of “worlds of sense” calls attention to the institutional structures and ideological frameworks that provide “back-up” to hegemonic worlds of sense, thus rendering them intelligible and visible (2003).

the indigenous Aboriginals<sup>17</sup>. The “White Australia” policies continued long into the era of the Universal Declaration of Human Rights and officially abandoned in 1973 (Ongley and Pearson 1995). A racially discriminatory framework of migration policies were also implemented in New Zealand until the mid-twentieth century, simultaneously displacing and dispossessing the indigenous Maoris, and privileging British and Irish immigrants as citizens (Spoonley and Bedford 2012).

Another notable example is the “White Canada” policy. From the Immigration Act of 1910, which established the right to prohibit immigration of unsuited races, through to the early 1960s, Canadian immigration legislation and procedures reflected an explicit bias toward Angiocentric and Gallic norm (Ongley and Pearson 1995). The United States also presented explicit racist immigration laws for 134 years (Rosen Velásquez 2016), which included the displacement and disposition of native Americans, the uprooting and enslavement of African descendants, and the racial preference of Europeans as immigrants designated to full citizenship rights (Chomsky 2014, Ngai 2014, Massey and Bartley 2005).

The long-standing legal traditions of racial discrimination against African Americans extended during the 1920s to other ethnic groups using the invention of a new category of identity, namely “national origins” (Ngai 1999, see also Massey and Bartley 2005). Here, as well, citizenship rights for African Americans were granted only in 1964; and, as indicated by Michelle Alexander, an African American Professor of law, these civil rights are systematically denied of socioeconomically disadvantaged African Americans through mass incarceration in the US’s privatized jails system (Alexander 2011).

“Fort Europe” represents a different type of migration policies. It includes a period of approximately three centuries of emigration in which European Crusaders, Emperors, and Colonizers left their mark upon humanity long before the eighteenth century (Lucassen and Lucassen 2009, Ferro 2005, Marks 2006). During the nineteenth century, wars, segregation policies, and genocide on the European continent were the main causes for immigration and displacement, mainly of ethnic minorities such as Greeks, Armenians, Poles, Germans, Jews, Russian, Czechs, and Slovaks (Tilly 1976, Topak 2014). Relevant to this thesis is the creation of the categories known as refugees and stateless persons as a result of conflicts and

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<sup>17</sup> Indochina is a peninsula of southeast Asia comprising Vietnam, Laos, Cambodia, Thailand, Myanmar (Burma), and the mainland territory of Malaysia. The area was influenced in early times by the cultures of India and China. One of the closest liberal democracies to this region is Australia, so the term Indochinese, or “boat people”, is often used by Australians to describe people originating from this region.

denationalization by European governments after World War I (Ngai 2014). Another relevant aspect is the formulation of citizenship as “a right to have rights” (Arendt 1973, 298), which marked the “end of the rights of man”, referring to the loss of human rights as a result of the loss of citizenship (Arendt 1973, 276).

Thus, the second step into the space between laws, societies, and immigrants is a step into a post-World War II realm, in which a brave new world was built, enlightened, and secular, based on the Universal Declaration of Human Rights (Morsink 1999). Simultaneously, it is a world that systematically deprived people of their human rights through criminalization, displacement, and dispossession of indigenous communities; discrimination of religious and ethnic minorities; and the restriction and exclusion of immigrants from political and social participation. As noted by the Afro-Caribbean philosopher Aimé Césaire, “hypocrisy is of a recent date” (2000: 2). The next section of this chapter will illustrate how practices of discrimination are recoded in an era where distance has become symbolic and measured by access to entitlements.

#### 2.4 INSIDEOUT: RECODING FRONTIERS AND SHACKLES

The previous sections aimed to frame the historical pattern of migration policies in liberal democracies as explicitly discriminatory and vaguely consistent with principles of moral liberty, designed first and foremost to shape the “face of nations” (Ngai 2014). This section will tie together old patterns and innovative techniques coded into a new language, which were developed and disseminated to continue the justification of historically immoral regimes (Alexander 2011, Rosen Velásquez 2016). In its core, nationality-based discrimination, labeled as “foreigners”, “illegal”, “unauthorized”, “undocumented”, “irregular”, “boat people”, “status-dependent”, “asylum seekers”, “infiltrators”, “out of procedure (OOPs)”, “third country nationals” and so on, serves as a new axis for imagining nations and borders. In this respect, migration policies are narrated by many liberal democracies as the last line of defense in national sovereignty (Ambrosini 2015).

The premise of irregular migration is based on the idea of controlled migration and the ability of states to regulate its population (Andrijasevic and Walters 2010). Historians still debate whether the first use of the concept was made in the Soviet Far East in the 1920s, with reference to Korean and Chinese migrants, or in 1930s Palestine, referring to Jewish migration (Cvajner and Sciortino 2010). There are even historians claiming that the first systematic use of irregularity occurred in 1950s in the US, with the amendments to the Immigration and

Nationality Act, which placed the first numerical quota on authorized immigration from the Western Hemisphere while cancelling long-standing guest worker agreements with Mexico (Massey, Pren and Durand 2016, Chomsky 2014).

What is unquestionable is that within a short time span, the distinction between regular and irregular migration has become prominent both in everyday practice and in political discourse (Ambrosini 2015, Menjívar 2014, De Genova 2002). The category of irregularity also expanded with time and currently includes overstayed tourists' visas, expired work permits, as well as asylum seekers and stateless persons (Aras and Mencutek 2015, Ambrosini 2015, Massey and Bartley 2005, Black 2003). Yet, unlike any other form of outlawing, irregular migrants can carry on a great deal of social interactions while being fully excluded from the political system (Cvajner and Sciortino 2010, McIlwaine 2015, Morris 2003, Tuckett 2015). Thus, more than a violation of laws and public order, irregular migration reflects the function of the “administrative state”, which, according to Foucault, emerged in the territoriality of national boundaries, and reflects a society of regulation and discipline (1991: 104, See also Rosen Velásquez 2016, Balibar 2010)<sup>18</sup>.

With this recently developed method of categorization, irregularities in migratory movements produce “a new legal and political subject, whose inclusion within the nation is simultaneously a social reality and a legal impossibility” (Ngai 2014, 4). The regulation of migration implies that a person who enters a country and overstays without authority to do so can potentially be deported as a result (McIlwaine 2015). In most modern liberal states, the size of the population living under the category of “irregular” ranges from a few thousands to a few millions (Meloni, et al. 2014, Massey, Durand and Pren 2014, Larramona and Sanso-Navarro 2011). Thus, internal border enforcement of “irregularity”, such as detection, detention and deportation became the most notable set of strategies under the operation of the administrative state (Kalir 2015, Menjívar 2014, Chomsky 2011, Conlon and Gill 2013). Yet, nothing about immigrants' legal status is as straightforward as this category might imply.

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<sup>18</sup> Two main tactics are deployed by liberal democracies with the aim to discipline the population within their jurisdictions. The explicit tactic is documentation: a proof of identity must be provided as a preliminary condition for the provision of human rights, whether through private or public institutions. This mechanism of discipline targets individuals by linking their entitlement for legal protection to their documents not their humanity. The implicit tactic is replaceability. Liberal democracies tend to substitute the citizenry workforce with less entitled migrants (and robots), who are deprived of political rights. This mechanism of displacement targets civilians mainly, but not exclusively, at the bottom of the social strata. This means liberal democracies manage their citizens using an implicit threat of redundancy. Citizens can be replaced by an available, flexible and more submissive workforce – the apolitical migrant with limit legal protection.

The trajectories of irregular immigrants – including changes in their legal status – depend on a composition of multiple and irreducible factors such as social relations, financial resources, cultural familiarization, local markets of employment, and the composition of the authorized population (Ambrosini 2015, Cvajner and Sciortino 2010, Tuckett 2015). Therefore, the category of irregular migration presents multiplicity of social positioning and various processes of absorption into liberal societies (Ambrosini 2015, Massey and Bartley 2005, Cuttitta 2016, McIlwaine 2015, Meloni, et al. 2014, Morris 2003, Tuckett 2015).

Another important aspect of the administrative state is that the protection given to immigrants by law varies frequently and arbitrarily. Large-scale amnesties for undocumented migrants (Van Meeteren, Mascini and van den Berg 2015), or changes in the criteria for naturalization, or legalization programs for migrant workers (Massey and Bartley 2005, Baban, Ilean and Rygiel 2017) are prominent. Thus, not only do migration laws provide space for the interpretation of official rules (Ambrosini 2015), changes in regulations present the possibility of becoming “legal” or “illegal” at any moment and are due to arbitrary factors (Cuttitta 2016, Conte 2005). Thus, the strategies used by immigrants to navigate migration regimes are a product of and consistent with the regime itself (Tuckett 2015).

When considering laws and irregular migration, a society’s role is highlighted since “laws not only reflect society but constitutes it as well... Law normalizes and naturalizes social relations and helps to structure the most routine practices of social life” (Ngai 2014, 12). In the case of irregular migration, societies play a role in legitimizing migration laws (Ambrosini 2015, Tuckett 2015), in protecting or violating migrant’s human rights, and in exploiting migrants, as well as accompanying them in their legal and social struggles (Cvajner and Sciortino 2010, Bilecen and Sienkiewicz 2015, McIlwaine 2015, Morris 2003)<sup>19</sup>. But perhaps the most notable changes in migration regulations in liberal democracies are legislations concerning the procedures and provision of asylum to refugees, and eroding refugees’ protection under international laws by expanding state’s sovereignty as entitled to regulate

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<sup>19</sup> Irregular migration often indicates the presence of an informal economy, unregulated market of accommodation, private services accessible without identity card, and a variety of social networks, all of which are crucial to mitigate the absence of social and political rights. The complexities of liberal democratic societies thus reflect “a generalized possibility of societal inclusion accompanied by the existence of a plurality of irreducible criteria that define the conditions for inclusion or exclusion” (Cvajner and Sciortino 2010, 397). One notable example of this type of inclusion is the codification of irregularity, which is often translated into the possibility of charging a higher price for goods and services (Ibid 2010). Another notable example is the ability to utilize social networks to gain access to employment, accommodation, and social protection (Bilecen and Sienkiewicz 2015, Bilecen and Sienkiewicz 2015, Massey, Durand and Pren 2014, McIlwaine 2015, Morris 2003).

migration (Black 2003, Zetter 2007, Kalir 2017). This will be further examined in the next section.

## 2.5 THE REFUGEE LABYRINTH

The 1951 Refugee Convention marked a notable international effort to secure the lives of people in a state of refuge. The convention is a key legal document with a core principle of non-refoulement, which is considered a rule of customary international law (O’Byrne 2013, Gil-Bazo 2015)<sup>20</sup>. Until the end of the previous millennium, the main strategy of asylum focused on the “non-arrival policies” (Kjaerum 2002, Zetter 2007). The aim of which was to keep forcibly displaced people as close as possible to their place of origin by supporting the relevant source or transit countries through funding and administrative support (Aras and Mencutek 2015). However, prolonged conflicts and new wars, together with decreasing funding to support the operation of refugee camps, and increasingly vulnerable situations within the camps – due to insufficient access to food, violence, and indefinite waiting – shifted refugees’ journeys toward liberal democracies (Baban, Ilcan and Rygiel 2017, Crisp 2003).

Prepared for these changes, liberal democracies began to change the procedure of asylum in their territories (Black 2003, Kjaerum 2002, Lindstrøm 2005, Morris 2003, O’Byrne 2013, Guiraudon 2000, Zetter 2007, Czaika and Hobolth 2014). The administrative state became evident in this regard due to the frequent changes of regulations and criteria for asylum, in increasingly complicated bureaucratic procedures, as well as the establishment of detention centers on remote islands and border zones (Dines, Montagna and Ruggiero 2015, Kassar and Dourgnon 2014, Topak 2014). Moreover, many liberal democracies reduced the provision of residency rights (refugee status), to a limited legal protection (temporary protection), and launched “voluntary-return” programmes to facilitate the repatriation of refugees who are protected under the international law of non-refoulement (Aras and Mencutek 2015, Andrijasevic and Walters 2010).

Even more alarming are international agreements signed between the EU member states and countries such as Turkey, Sudan, and the Maghreb in the aim of halting the arrival of candidates for asylum to their territories (Aras and Mencutek 2015, Greenhill 2016, Kassar and

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<sup>20</sup> The international laws bind all state members, regardless of their ratification of the convention on refugees, to the non-refoulement principle. A violation of this principle is a violation of International Law, which may result in sanctions (Gil-Bazo 2015).

Dourgnon 2014, Topak 2014)<sup>21,22</sup>. These developments indicate that immigration control and a state's authority wages war against people, so sovereignty should not be perceived as merely a claim to national rights but a theory of power (Ngai 2014).

The restrictions in asylum policies, together with the deteriorating situations in refugee camps in the Middle East, Turkey, and Africa, as well as enduring conflicts and civil wars, often force people with sufficient resources to risk their lives, fortunes, and integrity through irregular routes in the struggle to protect their social fabrics, and sense of meaning and belonging. The last part of this chapter will present the physical borders of liberal societies, which offer two options: life or the end of life.

## 2.6 OMNIPRESENT BORDERS

This chapter began with the philosophical state of exception in liberal democracies, and it will end with the tangible state of exception at the external borders of liberal democracies. The most crucial realization concerning the borders of liberal societies is that they are no longer confined to the territorial borders. The borders of liberal societies appear first at the migrant's point of departure, next at transit areas, and then at exterritorial zones, often an isolated island or a desert (Menjívar 2014). Since borders tend to sort groups based on their structural positioning, they have become omnipresent for those aspiring for freedom beyond their means (Ibid 2014, Andrijasevic and Walters 2010). Especially for migrants where a land or sea crossing remained the only route available for them (Kassar and Dourgnon 2014, Topak 2014).

Although migrants who cross through land and sea are unarmed, and represents a fraction of irregular immigrants, the external borders of liberal democracies over gone an unprecedented process of militarization:

Military tactics, advanced surveillance technology, naval patrols, armed guards and guard dogs, watchtowers, razor wire, and much else are all deemed politically necessary and legitimate elements in the "defense" of the borders of the Global North faced with an "invasion" of migrants and asylum seekers" (Walters 2011, 146)<sup>23</sup>.

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<sup>21</sup> The Maghreb countries are Tunisia, Algeria, and Morocco.

<sup>22</sup> Another notable multilateral agreement is the North American Free Trade Agreement (NAFTA), signed by Mexico, US and Canada. It is not directed at halting refugees from seeking asylum, but it includes an immigration policy which deregulates the flow of commodities and finance while restricting the movements of some sectors of the population, namely people attempting to cross US-Mexico border (Rosen Velásquez 2016).

<sup>23</sup> See also Williams 2015 and Topak 2014

Thus, physical borders do not merely regulate migration or enforce a state's sovereignty, it is effectively producing "the boundary between those populations whose lives should be fostered and those which can be justifiably abandoned" (Williams 2015, 13). Yet, death itself does not shape the function of the borders, but the potentiality of death is mobilized in an effort to shape and deter the actions of would-be migrants (Ibid 2015).

At this point, it is appropriate to present an updated death toll of the above-mentioned border regime, however, numbers are meaningless in this respect. To conclude this chapter, the name and history of the late Alan Kurdi and his family will be brought forth as a way to acknowledge the immense efforts to escape a war<sup>24</sup>. Alan was born in 2012 into the civil war in Syria, which erupted during the Arab Spring of 2011. His family was part of the Kurdish minority in Syria (Tejel 2008)<sup>25</sup>. They lived in Kobanî, a city in the northern district of Aleppo, on the border with Turkey. The city was held by the Kurdish militia and attacked by ISIL in September 2014. Alan and his family left the city and crossed the border into Turkey. They returned in January 2015, as the Kurdish militia regained control over the city. On June 2015, the city was infiltrated by ISIL again, and the family left Syria to go to Turkey for the second time (Rashid 2015).

The family were hoping to leave Turkey and join their relatives in Vancouver, Canada. Alan's aunt, Tima Kurdi, filed for a refugee sponsorship. The application was rejected by the Department of Citizenship and Immigration Canada after the family members were denied an exit visa by Turkish authorities (Naimou 2016). Crossing the border into Europe remained their only chance to join their relatives in Vancouver. They were trying, for the third time, to reach the Greek island of Kos – five kilometers and approximately thirty-minute journey. Alan and his family boarded a small plastic boat in the early hours of the second day of September 2015, which capsized about five minutes after leaving the shore of Bodrum in Turkey. Alan, along with his brother, Galib, and their mother, Rehana, were buried in Kobanî the following day. A year later, a 3 billion euro deal was signed between Turkey and the EU. At its core, the deportation of migrants who manage to survive this deadly journey (Greenhill 2016). The civil war in Syria continues.

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<sup>24</sup> Alan was a three-year-old Syrian refugee of Kurdish ethnic background whose image made global headlines after he drowned on 2 September 2015 in the Mediterranean Sea.

<sup>25</sup> The Kurds are considered to be the largest stateless ethnic minority in the world. They were promised a state during the decolonization process in the region, yet their territories were claimed by today's Turkey, Syria, Iraq, and Iran (Tejel 2008).

## 2.7 THE LAW BROKE ME FIRST

This chapter departs from Evelin's account of receiving her legal status, and is followed by questioning the impartiality of immigration laws in liberal democracies. The comparative literature review revealed that immigration laws in liberal societies, both philosophically and historically, are based on vaguely articulated principles of entitlements and belonging that either deprive humans of their right to be part of humanity or, conditioned the participation in humanity on certain traits that are external to being a human.

Either way, this provides a first explanation to the second question of this chapter, which aimed to explain how we came to know immigration laws as impartial and how they shape the current system of immigration control. As evident from the literature, the unquestionable right to exclude migrants enables the modulation of immigration by the stratification of legal entitlements according to external factors, such as the way of entering a territory, type of permit, humanitarian causes, and different forms of social positioning. The following chapters will represent the analysis of six life stories of migrants who went through the process of crossing the borders of a liberal democracy. Their experiences during this process will supplement the theoretical background and further deepen into the space between laws, societies, and immigrants in liberal democracies.

## Chapter 3: “I Break the Law That Broke Me First”<sup>26</sup>

### 3.1 ONE, TWO, THREE, SALTY FISH!

In the following chapter, the Law of Entry as “power” and “meaning” will be examined in light of the narrators’ process of absorption in Israel. To do so, I will briefly present their narration regarding leaving their countries of origin and their years in Israel. When relevant, an elaboration will be provided on additional laws, which were mentioned as part of their process of absorption. This chapter will bring the land border crossing narratives of Amal, Theo, and Isa.

Amal was born in 1990, the youngest daughter of a Palestinian collaborator with the Israeli General Security Services who, in 1995, was transferred together with his son to a Bedouin city in the Israeli Negev<sup>27</sup>. Amal’s father and his son received a permanent resident status, and her father married an Israeli woman soon after. When Amal’s brother reached marriage age, his mother arranged him a visit to Gaza with the aim of finding him a bride. During that visit, her brother drowned in the Mediterranean Sea. His corpse was sent to autopsy at the Institute of Forensic Medicine in Israel<sup>28</sup>. Thus, the first time Amal crossed the Israeli border, she did so under tragic circumstances:

The following morning, we arrived at Rafah checkpoint at 6 a.m. in order to pass to the Israeli side to bury my brother. It took us hours in the checkpoint, because it was an unexpected passage, and we did not arrange permits to cross the border in advance. In Israel, they took us to see him before burial, and I remember giving him a kiss. We buried him and set the three days of mourning in Israel, and then went back to Gaza with my mom. This was a very hard event for my family. My brother was the only son, and sons have a special status in our society.

Amal leaves a door open for speculations about the causes of her brother’s death. Yet what she does reveal is that Palestinians from Gaza were part of the Israeli jurisdiction under its martial law. Right-less citizens whose freedom of movement was restricted to certain places and circumstances, only under the authorization of the Civil Administration (Gordon 2007)<sup>29</sup>.

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<sup>26</sup> A quote taken from Theo’s narrative.

<sup>27</sup> These kinds of movements are used as a means of protection from retaliation in cases where there is high probability that the collaborator was exposed.

<sup>28</sup> At that time, Gaza was under the Israeli martial law. An autopsy is a regulated procedure under Israeli law in cases of “public deaths”, such as drowning, in order to determine the cause of death.

<sup>29</sup> The Civil Administration in the occupied territories (Gaza and the West Bank) was established in 1981. Its aim was to release the Israeli Defense Forces (IDF) of the need to govern the civilian affairs of the Palestinians living under the martial law since 1967. The Civil Authority’s stated goal was to “administrate the civilian affairs in the ‘region’ to the benefit and welfare of the population, and to deliver and operate public services, considering the need to maintain good governance and public order”. In 1995, as part of the Oslo agreements,

According to Agamben, one of the most pervasive state of exception includes the expansion of military authority into the civil sphere, and the suspension of the norms that protect individual liberties (2005). Amal's narrative is a case in point. Her family was split due to the collaboration of her father with the Israeli forces. From that moment on, family time, ceremonies, celebration, and grief as a family needed the advanced approval of the Israeli authorities.

Soon after the death of her brother, Amal, the only unmarried child in her family, was asked by her father to move to Israel and live with him. She and her mother crossed with "a temporary visit permit" for three days and outlawed ever since:

My father could not ask for a status for us at that time because he was married to an Israeli. He decided to divorce her and filed a request for divorce in 2002, which was approved in 2004. By then, the amendment to the Law of Entry to Israel was already enacted, and we could not ask for a status in a family reunification process. My dad did not worry, he was confident in his status as a collaborator with the Israeli state.

In fact, the timing of the border crossing was more crucial in her case than the marital status of her father. The amendment of the Law of Entry to Israel, which Amal mentioned in her narrative, enacted in May 2002 as a Government Decision No. 1813. It immediately froze all the pending cases of Palestinian family reunification processes since 1997 (Salchan and Kadman 2014). This state of exception, in which the executive arm of the law uses an exceptionally broad regulatory power, is defined as "full powers law" (Agamben 2005). In this case, a Temporary Provision of the Israeli law, suspended basic liberties from being applied equally to Palestinian citizens and residents of Israel.

Until 2002, Amal's life in Israel was tolerated and understood in the complex framework of "Israel's security needs". As a daughter of a Palestinian collaborator, she was free to live, to arrange permits to visit her family in Gaza, and to attend school in Israel, even with her invalid visit permit. She was part of the Palestinians living in Israel, which the Jewish

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the Civil Administration transferred much of its powers to the Palestinian Authority, and District Coordination Offices (DCOs) were established to facilitate the collaboration of the Israeli governments and the Palestinian Authority. After the second intifada, the DCOs were mainly focused on handling Palestinians' requests for permits to travel between different parts of the "region". In September 2005, the Civil Administration in Gaza Strip was cancelled, with the departure of the martial law in the strip (Gordon 2007).

majority refer to as “present absentees” – existing as faceless and nameless<sup>30,31</sup>. In March 2001, the newly appointed Minister of Interior asked his advisers to gather statistical data about the number of non-Jewish with an Israeli citizenship. A year later, the data was published stating, among other “information”, that since 1993 approximately 140,000 Palestinian families were “reunited” through the formal procedure of family reunification.

The Minister of Interior was appalled by this statistical data. He was quoted saying, “The figure shows that through Israel’s back door, the Palestinians are realizing their right of return... The new figures are surprising and worrisome... [They] threaten the Jewish character of the state”<sup>32</sup>. His opinion was held by many. Soon after, a special team was established and missioned to look for ways in which “this phenomenon” could be decreased through legislation. However, depriving some Israeli citizens of their right to a family life, due to demographic reasons per se, was not yet possible under Israeli law. Instead, the minister had to wait for a state of exception, an emergency, a situation that would legitimize an urgent act, a justification for the suspension of individual liberties. In the midst of the second intifada, a terror act that was committed by Hanadi Jaradat, a twenty-nine-year-old Palestinian woman from Jenin, provided such an opportunity.

The official reasoning was to protect the state against terrorists who may have received an Israeli ID through the family reunification process. This imagined risk was never proven. Hanadi did not have an Israeli ID. She was driven by an Israeli Arab who commuted unauthorized Palestinian workers. The state did not explain how an Israeli ID card facilitated terror acts. When Interior Ministry officials were asked in the Knesset about their “new figures”, they revised them: only 22,414 family unification applications had been submitted, and 16,007 of those were approved. They also failed to say how many Palestinians were actually issued residence permits following the acceptance of their applications (Conte 2005).

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<sup>30</sup> The term “present absentees” was coined in the 1950s with regard to Arab residents of Israel who were declared “absentees” after they were banned from returning to their lands and their property expropriated under the Absentees’ Property Law (Forman and Kedar 2004). The Israeli author David Grossman used this term to refer to the common representation of the Palestinians in the Jewish-Israeli public discourse.

<sup>31</sup> In fact, the Palestinians’ cross-border familial ties have been part of the complex social fabrics of the Israeli reality since 1967 (Gordon 2007, Conte 2005). The provision of legal status to Palestinians from the occupied territories began around 1991, when crossing checkpoints during times of political tensions became impossible (Salchan and Kadman 2014).

<sup>32</sup> Mualem, Mazal. “Yishai Seeks to Stop Palestinians’ Backdoor Right of Return.” *Haaretz*, February 6, 2002. <http://www.haaretz.com/yishai-seeks-to-stop-palestinians-backdoor-right-of-return-1.53741>

Nonetheless, in July 2003, the government decision had become a Temporary Order: the Law of Citizenship and Entry to Israel, for, to quote the Minister of Interior, “the past does not teach anything about the future” (Conte 2005, 43). Interestingly, when asked about the future of the “provisional” law, the Head of the National Security Council stated in 2005 that Israel was not alone in enacting laws limiting individual liberties:

[The] committee advised adopting laws like the ones now on the books in Denmark or Holland, which limit the naturalization of Muslim immigrants (Conte 2005, 48).

He was referring to the restrictions on family reunification processes of “third country nationals”, relevant mostly to Muslim immigrants (Bierbach 2008)<sup>33</sup>. The Law of Citizenship and Entry to Israel is entering its fourteenth year as a “temporary” law, and it provides us with anecdotal evidence showing how certain arguments are appropriated as “truth” through the exercise of power (Foucault 2012). It also illustrates how the meaning of Amal’s life in Israel has changed over time. From a daughter of a collaborator, or an outlawed migrant, whose presence in Israel could be tolerated, to a threat to the Jewish state’s right for self-determination – part of a global surge of animosity toward Muslim immigrants.

Amal has lived in Israel for nineteen years, and reflects on her existence as a social reality and a legal impossibility (Ngai 2014). She sees herself as an Israeli and has a clear idea what “being an Israeli” means to her:

To be an Israeli is to give. Not because it is your job or duty, but out of a desire to take part. In this sense, I am an Israeli; what happens here matters to me. I want to influence the way things are in the Arab society.

Yet, aware of the grip of norms that render her “not sufficiently conform to the norms that confer recognizability” (Butler 2009b, 3), she continues:

I am restricted by the fact that I cannot work. I am an educated woman, a feminist, I volunteer. I want to change things from within in the Arab society. I have a lot to contribute – but because I don’t have a note saying I am an Israeli, there are a lot of things I cannot do.

For Amal, being an Israeli who is not allowed to be in Israel is only half the story. It is her performativity as a Palestinian that literally brings her life to a standstill:

I am afraid that Israelis will be scared of me. Since that last intifada, I am afraid to leave the house<sup>34</sup>. Even to reach my college, I take the transportation straight from Tel-Sheva.

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<sup>33</sup> Third country nationals from Australia, New Zealand, Canada, US, Japan, South Korea, and the Vatican have the same regulations for family reunification process as other EU member states (Bierbach 2008).

<sup>34</sup> Amal is referring to a surge in terror acts that began in September 2015. The terror acts were committed by

I am afraid the security forces will ask me for papers I don't have. Every time I need to take my child to the doctor, I need my father or husband to come with me, with their IDs. Even to the parks I don't go alone. I do not want them to suspect me, so that I will be arrested...

Being afraid to scare Israelis and having no papers to prove that she is an Israeli are representations of the normative world in which the Israeli law explains the meaning of Amal's life in Israel: an existential threat to the "Jewish state". This is the first case in which the Law of Entry to Israel is supplemented with additional law for a specific population: "residents of the area", applicable only to Arab Muslims and relevant mainly for Palestinians.

### 3.2 "MAKE SIMILAR MYSELF"<sup>35</sup>

While the normative framing of the Palestinians was molded to existence during the past century, the normative framing of asylum seekers in Israel is rather new, yet it swiftly moved in similar directions of criminalization and animosity. A route presented in Theo's and Isa's border crossing narratives. Theo was born in Eritrea in 1988. He has a busy schedule that often continues to the small hours. He does not like to sleep – to meet his nightmares. We spoke English and Hebrew alternatively: "It doesn't matter, both are not my mother tongue." Theo spoke calmly and quietly; his words are swollen in background noises. Only during the repetitive listening to his recording are the full horrors in his narrative revealed:

I don't know why I was born in Africa. It is a question for me. But there is a purpose for it. The point is that I know I am a human being. Equipped with one color, one nature, and a male gender... I was born to a Christian family... I learned to love and be loved... I grow [sic] up in a war zone, my village was surrounded by mines... Every morning I was told, "Don't touch any metal..." I had a dream to become an athlete, and a doctor, but at the same time my dreams were broken by the dictator. They put me in prison at seventeen... I chose to go to exile, to change my life for a better way [sic].

Theo narrates exile as the wilderness that awaits those who have decided to reject the circumstances of their existence, in the political community to which they were born. When he reached the Israeli border, it was after more than a year in which he struggled to survive. He was shot at twice and threatened with a sword once. He mentioned having no food or water for days at a time, several times, including in two refugee camps in east Sudan: "Wed-Sherife" and

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individual Palestinians, which mostly attacked civilians with knives or ran them over with different vehicles. In the first 12 months, 40 Israelis and 249 Palestinians were killed. The Israeli government is referring to these acts as "terrorism" and signifies the "single attacker", not "intifada", which has a connotation of collaborative actions. In the Israeli street language, these attacks are called the "knifes intifada".

<sup>35</sup> Taken from Theo's narration of his life history.

“Kilo 26”, which offered a refugee card only to those who could pay for it. He was sick with malaria for three weeks without access to medical care, and was persecuted out of Hartum (Sudan) and Cairo (Egypt) by security forces who deported dissidents back to Eritrea. He encountered the Israeli border in November 2007:

After we crossed the border, the Israeli soldiers showed us the way. They took us to a place near the border for two or three days till they record [sic] our names, they checked our health and things like that. Then they took us by bus to Beer-Sheva<sup>36</sup>. In Beer-Sheva, they told us, “Go.” We asked, “Where?” [They answered] “Just go wherever you want.” We were in the middle of the city without any language, without any shoes, just looking at the sky.

Theo entered Israel in the twilight zone, before the narrative about his presence was thought of and enacted. Or, as he puts it, “I was lucky.” Just as he describes himself as lost, without language and shoes, looking at the sky. The state of Israel was without laws, and without an idea what to do with the entrance of refugees from the southern border<sup>37</sup>. At that point, ignoring “them” was a good enough policy framework. Yet within a year, and as more asylum seekers crossed the border, the framework for their process of absorption to Israel began to materialize, as reflected in Isa’s narrative:

It was on November 17, 2008; I remember the exact date when we entered. They [Israeli soldiers] said in Arabic, “You are in Israel, everything is OK, you don’t need to be afraid, you are OK.” They gave us water. Then they took us to the station for about three hours, and during the night they transferred us to Ketziot<sup>38</sup>. In the morning, we met with the immigration... They asked simple questions... “Do you have papers?” I gave them my passport... We stayed there for three months and later they moved us to the prison in Ramla, the prison for the foreign people. I could not believe it at all! We had handcuffs on our arms and ankles, with two dogs in the car of the prison service.

Within a year, a non-policy of disregarding the arrival of asylum seekers was cast into a non-policy of criminalization. Isa already met with “the immigration” and was asked for “papers”.

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<sup>36</sup> The capital city of the southern province of Israel – the Negev, about two hours’ drive from Nitzana checkpoint on the Israeli-Egyptian border.

<sup>37</sup> This anecdote is an example for Foucault's description of power as blind and weak (Lazzarato 2002). “Power is not omnipotent or omniscient – quite the contrary! If power relationships have produced forms of investigation of analysis, of models of knowledge, etc., it is precisely not because power was omniscient but because it was blind. If it is true that so many power relations have been developed, so many systems of control, so many forms of surveillance, it is precisely because power was always impotent.” (Foucault 1996, 625)

<sup>38</sup> Ketziot was the first of what is today a complex of three prisons including Saharonim and Holot, located near Nitzana checkpoint. Ketziot was built in 1988 following the first intifada mainly for Palestinian security prisoners. In 1996, following the Oslo peace agreement, the facility was emptied and nearly closed, yet it was reopened in 2002 and administrated by the IDF in the second intifada. In 2007, its operation was transferred to the Israeli Prison Service, and it was the first facility to incarcerate African asylum seekers.

Rather than staring at the sky in Beer-Sheva, he was incarcerated. This dynamic, in which those who were positioned outside the “pale of law” are cast as “outlaws”, was observed and articulated by Arendt as part of “the perplexities of the rights of man” (Arendt 1973, 290)<sup>39</sup>. Imprisonment of asylum seekers for arbitrary periods of time became the norm. Here as well the suspension of the norms that protect individual liberties (Agamben 2005) reappear.

The arrival of asylum seekers to the “foreign people” prison brought these changes to the attention of the only human rights organization specializing in legal aid for working migrants, as Isa continues to explain:

I was in Ramla for two months, and after two months they came from the “Hotline”<sup>40</sup>. I remember a young woman from the “Moked” came and asked, “Where are you from?” and “How long have you being in prison?” We answered, and within two days we were released.

This anecdote brings to life the full depth of the legal context of liberal democracies by presenting competing normative worlds: that of “the right of nation” to restrict entry to its territory and that of the “right of man” for asylum (Arendt 1973). The arrival of a human rights lawyer to the prison expanded the legal interpretation of Isa’s presence in Israel, from a criminal to an asylum seeker. Thus, Isa’s narrative provides an opportunity to observe the force of the law as “power” without “meaning”. His rights could be taken away from him by force. Yet without a story explaining why he is deprived of his rights, the force of the law was exposed to alternative meanings of his imprisonment, i.e. a violation of human rights. As articulated by Cover:

By exercising its superior brute force, the agency of state law shuts down the creative hermeneutic of principle that is spread throughout our communities. The question, then, is the extent to which coercion is necessary to the maintenance of minimum conditions for the creation of legal meaning in autonomous interpretive communities (1983, 44).

We saw in Amal’s example that as little as the minister’s statement, “the past does not teach anything about the future” (Conte 2005, 43), was sufficient for the creation of a legal meaning (enemies) that coercively suspended the individual liberties of Palestinian citizens of Israel. Yet, in the case of asylum seekers in Israel, the lack of legal meaning opened up “the creative hermeneutic” interpretation of the law among the human rights organizations and, thus, more

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<sup>39</sup> According to Arendt (1973) “the calamity of the right-less is not that they are deprived of life, liberty, and the pursuit of happiness... But that they no longer belong to any community whatsoever... No law exists for them (295). The nation-state, incapable of providing a law... Transferred the whole matter to the police. Its strength and its emancipation from law and government grew in direct proportion to the influx of refugees (287).”

<sup>40</sup> The Hotline for Refugees and Migrants, called in Hebrew “HaMoked”, is the name of the legal aid organization, which was also mentioned in Evelin’s narrative in the previous chapter.

coercion was needed to impose a legal meaning of “less worthy of protection”. The following section will portray the state of Israel’s search of a story about the newly arrived asylum seekers, which would justify renouncing its responsibility to provide protection for those seeking asylum in its territory.

### 3.3 “WE CONNECTED WITH THE PEOPLE”<sup>41</sup>

“Have you heard about the ‘freedom march?’” Isa asked me and began his narration of Holot<sup>42,43</sup>. When we scheduled a meeting, Isa invited me to his house. He led me to his backyard and brought us black coffee and fresh grapes. I asked appreciatively, “Isa, is this how ‘an infiltrator’ looks a day after Misrad Hapnim?”<sup>44</sup>. He laughed. “If I am in a bad mood, I stay at home and reschedule the appointment. I never go there unhappy, and I tell members of my community to do the same.” Isa spoke Hebrew throughout the meeting; his Hebrew sounded like winds from the Sahara Desert, rooted in the Semitic dialect.

Isa was born in 1980 in Nyala, a city in Darfur, West Sudan. He is the eldest son; his parents were small farmers who managed to send him to high school. He was a gifted student and managed to receive a scholarship for his university studies. There he became a political and social activist. Activism ties together the main chapters in his narrative. His story reached Niger, Canada, Libya, Spain, Uganda, South Sudan, as well as Israel, Darfur, and Sudan. A testimony to his torn country, which is the fifth largest refugee-producing country in the world<sup>45</sup> (UNHCR 2017). When he reached Israel, he had already left Darfur four years previously and lived in Libya, which Isa described as safe until the end of 2007 when “Gaddafi signed an agreement with Al-Bashir to deport all the Darfurians from Libya back to Sudan”<sup>46</sup>. The main

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<sup>41</sup> Taken from Isa’s narrative.

<sup>42</sup> The freedom march began on December 15. About 150 African asylum seekers, mostly Sudanese, began a march from the Holot prison in the desert with the intention of reaching the Israeli prime minister’s residence in Jerusalem. They walked for three days braving the freezing cold and refusing meals in protest of an “anti-infiltration” law, which was passed on December 10 in Israel’s parliament, the Knesset.

<sup>43</sup> Holot prison is called the “open” detention center. It was built in the Negev, near Saharonim and Ketziot prisons, as part of the third amendment of the Law for the Prevention of Infiltration, and was opened on December 2014 with the aim of detaining African asylum seekers living in Israel.

<sup>44</sup> In Hebrew, “Office of Interior”.

<sup>45</sup> According to the UNHCR report, by end of 2016 the total number of refugees worldwide originating from Sudan was 650,600, compared to 628,800 people in 2015. South Sudanese refugees peaked in 2016 to 1.4 million people.

<sup>46</sup> Muammar al-Qaddafi seized control of the Libyan government in 1969 and ruled as an authoritarian dictator for more than forty years before he was overthrown in 2011. Omar Hassan Ahmad al-Bashir is the seventh president of Sudan and head of the National Congress Party. He came to power in 1989 in a military coup. In March 2009, al-Bashir became the first sitting president to be indicted by the International Criminal Court (ICC) for allegedly directing a campaign of mass killing, rape, and pillage against civilians in Darfur.

Darfurian leaders in Libya were caught and deported, and some disappeared. Isa realized he had to leave:

I said to myself, I will cross the sea. There is no other choice. When crossing the sea, you have to pay the “helping people” [sic], the Libyans who are working in this. You pay them, and they bring you to a place like a jail. You stay there until the weather is good. They then put you on a small boat. The first time the Libyan regime caught us, and put us in jail. I called my friends, they paid money and released me. I tried again. This time they did not caught [sic] us on land, but in the middle of the sea. We were imprisoned again, and released again. I decided not to try again, because I remembered... I had a very good friend from Nyala; his name was Ibrahim. The third time he tried to cross his boat capsized in the middle of the sea, and he didn’t survive. I decided not to try again.

This is another representation of Agamben’s “legal civil war”, in this case against “would-be” refugees. The war takes place in Libya. However, the Libyan detention centers and sea and border patrols mentioned in Isa’s narration were funded by Italy, a liberal democracy and an EU member state, through bilateral agreements (Klepp 2010). Bilateral agreements with dictators are another mechanism for the suspension of the norms that protect individual liberties – in this case, the right for asylum (Ibid 2005)<sup>47</sup>.

Moreover, Isa’s narration provides an illustration of what Williams described as “the possibility of death is used as a mechanism to deter potential refugees from pursuing their right for asylum in Europe” (2015, 13). For lack of a better option, Isa bribed his way to obtain a visa for Egypt. He reached Cairo, and from there he paid smugglers to reach Sinai and to cross the border. He was shot at by the Egyptian soldiers as he tried to cross, but he managed to escape the bullets: “We came out of it cheaply. I mean, we said, ‘Thank God, we succeeded to cross’.”

Isa was released from the “foreign prison” with a “temporary permit for a visit”. When the permit expired, he reached the UNHCR office in Tel Aviv in the attempt to ask for asylum:

They told me, “Your case is with the Ministry of Interior, we cannot help you, go and file an application there.” I went to the Ministry of Interior, and they interviewed me and gave me a permit for three months. Same temporary permit, that I cannot work. I asked people, and asked my friend, and they all told me there is nothing to do. I mean, I have a permit but, you don’t know, no one show you the way.

By 2009, the Ministry of Interior through the Population and Immigration Authority took responsibility over asylum procedures. By doing so, the route for asylum in Israel, which was

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<sup>47</sup> The European Court of Human Rights ruled in 2012 that the return agreement, signed between Italy and Libya in 2008, is illegal, since staying in Libya poses a danger to the refugees. <http://hudoc.echr.coe.int/eng?i=001-109231>

hardly accessible, became completely blocked<sup>48</sup> (Berman 2015). This is another example of the “full powers law” principle. However, in this case it was not the suspension of a law but its absence<sup>49</sup>. Isa realized that he is in limbo: “We still didn’t know how our lives will continue. But for now, we have the reality of life, and the reality is to start work to pay the rent.”

Isa’s “absorption basket” during his first year in Israel included a bed in his friend’s apartment in Jerusalem and a job as a room service worker, and later as a dish washer in a restaurant<sup>50</sup>. While in limbo, Isa took responsibility to provide the means necessary to lead a decent life in Israel, and so did most of the asylum-seeking community in Israel. This was soon turned against them and used as a disclaimer of their “true” reason for coming, i.e. employment. It was then possible to claim that all Africans are “illegal” working migrants. The link between performativity and precarity surfaced again. Had they not begun working, they would live below the minimum necessities required for a life with dignity. Yet, as soon as they were employed, their claim for asylum was dismissed and their image branded as unauthorized working migrants.

However, the majority of asylum seekers in Israel are citizens of Eritrea and Sudan protected from deportation under international law. In this case, the appropriation of the “working migrants” argument as “truth” through the exercise of power was insufficient. It reached a point where the narrative was inconsistent with the state’s actions, and ineffective as a coercive reaction. In terms of “power”, the constant and increasing arrival of asylum seekers from the southern border soon filled all available spaces in the prisons designated for the mission. In terms of “meaning”, presenting asylum seekers as unauthorized labor migrants raised public doubts regarding the capacity of the state to control its borders.

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<sup>48</sup> The admission of non-Jewish refugees has traditionally been very limited. Among the refugees who have been authorized to stay over the years were just a few hundred Vietnamese between 1975 and 1979 who later gained Israeli citizenship. In 1993, Israel issued temporary visas to eighty-four Bosnian Muslims who were driven from their homes as a consequence of the conflict in the former Yugoslavia.

Scheinerman, Naomi. “Immigration to Israel: Vietnamese Boat People in Israel”, *Jewish Virtual Library*, Oct. 3, 2009. <http://www.jewishvirtuallibrary.org/jsource/Immigration/VietBoatPeople.html>, archived at <https://perma.cc/WC4N-JZPN>. Kinzer, Stephen. “Israel Accepts 84 of Bosnia’s Muslim Refugees” *NY Times* Feb. 18, 1993, <http://www.nytimes.com/1993/02/18/world/israel-accepts-84-of-bosnia-s-muslim-refugees.html>, archived at <https://perma.cc/Q3QE-2K4U>.

<sup>49</sup> Israel articulates its commitment to the Refugee Convention selectively toward “Jewish” refugees through The Law of Return (1952) (Yaron, Hashimshony-Yaffe and Campbell 2013). So far, this discriminatory interpretation has never been sanctioned by other “liberal democracies”.

<sup>50</sup> A term taken from the process of absorption of Jewish migrants. According to the Law of Return, Jewish migrants receive benefits such as subsidies for renting an apartment, language lessons, and employment orientation. This, in addition to social rights to which they are entitled as citizens (Habib, Factor and Tamir 1993).

### 3.4 PEDESTRIAN VIEW

To provide a solution to the discrepancies in the narrative about the arrival of African asylum seekers to its territory, the Israeli government resorted once again to the state of exception. A law, presenting consistency in both “power” and “meaning” was redecorated. In this law, the type of entry played a crucial role. Unauthorized entry from land was the thin line connecting two populations the Israeli law could not contain: Palestinians and African asylum seekers. The amendments to the Law for the Prevention of Infiltration (1954), legislated in 2012, supplied the government with the needed devaluation of asylum seekers as less worthy of protection. Leaving one responsibility in the hand of the legislator – the duty to ensure the departure of African asylum seekers from Israel:

“The state invented a law, I am not calling it the Prevention of Infiltration Law, but the law to prevent Africans from entering Israel. The third version of the law was approved... The organizations filed a petition to the supreme court, and then the law was cancelled<sup>51</sup>. Then they moved [changed the law] to one year in prison and unlimited time in Holot. They did the law of Holot facility [sic]. The first group entered Holot on December 15, 2014.”

Isa phrases the law as “power” and “meaning” in the clearest way: to prevent (power) Africans from entering (meaning). Since Africans are already in Israel, “entering” presents the symbolic meaning of the law: entering the Israeli society through legal recognition of their right for asylum. More alarming, and similarly to the Italy-Libya bilateral agreements mentioned earlier, the principle of non-refoulement was breached through the Prevention of Infiltration Law<sup>52</sup>.

The narratives of Theo and Isa reflect the effects of time, demography and resistance in the development of immigration laws. Their narratives highlight the transition from a non-policy of indifference, to a non-policy of criminalization, to a non-policy of animosity. Isa’s and Theo’s timing of entering Israel are, in some ways, reflected in their process of absorption. Theo’s entry was ignored: “Go wherever you want.” Consequently, after ten years in Israel he still feels left out:

It is hard to say this... Most of the Israelis are good people, but they don’t care about the life of others. They don’t see the people that work with them, don’t ask them, “How

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<sup>51</sup> The phrase “the organizations” is commonly used to refer to human rights organizations situated in South Tel Aviv and working with migrants and refugees in Israel, among which are: UNHCR, A.S.A.F, The Hotline for Refugees and Migrants, Physicians for Human Rights, African Refugees Development Center, Amnesty International, and The Eritrean Women Center.

<sup>52</sup> African asylum seekers that have applied for asylum are fully dependent on the quarterly renewal of their “temporary visit permit”. They are risking losing their only path for employment and they can be incarcerated if caught without a valid permit (Berman 2015).

do you live?” You explain them [sic] and they still don’t believe you... He believes what his state is claiming, he doesn’t see how you live and how you have suffered in your life.

In Isa’s case, it is the criminalization through which he entered Israel that provided him a place and a part in the Israeli society – that of the criminalized (Arendt 1973, 286):

The behavior of the state is one thing, and the citizens are another thing. We connected with the Israelis, with those who were willing to open their hearts and understand us deeply. Those who do not look at human beings according to their color or religion. There are people that say, “These are dangerous people, I shouldn’t come close to them.” But some got very close and understood us.

The following section will summarize this chapter and bring together the normative worlds, the modulation of the flow of Palestinians and African asylum seekers to Israel, and the ramifications of a single story of animosity.

### 3.5 THE CALAMITY OF A SINGLE STORY

On October 18, 2015, Mahand Halil, a twenty-one-year-old Bedouin Arab, killed a soldier in the central bus station of Beer-Sheva. He kidnaped the soldier’s gun and began to fire at civilians in the station. Habtum Zarhum, a twenty-nine-year-old Eritrean, who happened to be in the station on his way to renew his permit, was identified as the attacker. He was first shot at by police who were at the scene, and then he was lynched by unarmed civilians and left unattended for eighteen minutes before the medical team, who were already present in the station, attended to him. He died<sup>53</sup>. The civilian commitment to the narrative of the “infiltrator” provided the first evidence of its successful implementation within the Israeli consciousness, three years after its enactment. It was not the first nor the last time an asylum seeker was lynched<sup>54</sup>.

The aim of this chapter was to question how entry to Israel through land, and the corresponding normative meaning that is assigned to this type of entry, shapes the process of migrants’ absorption, their exercise of human rights, and the civilian commitment to the Law of Entry. The findings indicate that entry through land is associated with a “threat to Israel’s right to self-determination”; however, not logically, actually, or demographically – but

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<sup>53</sup> Ben Zikri, Almog. “CCTV Footage: Shot Eritrean Asylum Seeker Beaten, Untreated for 18 Minutes”, *Haaretz*, January. 18, 2016 <http://www.haaretz.com/israel-news/premium-1.698111>

<sup>54</sup> Efraim, Omri. “Sudanese housekeeper nearly 'lynched' in Eilat”, *Ynet*, May. 29, 2012 <http://www.ynetnews.com/articles/0,7340,L-4235642,00.html>

Yaron, Lee. “Two Israelis Charged With Manslaughter in Death of Sudanese Man”, *Haaretz*, December. 4, 2016 <http://www.haaretz.com/israel-news/1.756950>

narratively. Except from the fact that states do not have a “self” to determine, Israel depicts unarmed migrants as a threat to its sovereignty. In addition, the vast majority of non-Jewish in Israel entered Israel through the Law of Return following the collapse of the Soviet Union (Raijman 2009). Nonetheless, Israel presents a dependency on “enemies” to formulate its laws and to shape its public policies.

The accounts and analysis revealed in this chapter are not new, and in many respects intrinsic to nation-states: “enemies” can be created through law. The Citizenship and Entry Law (Temporary Order) and the amendments to the Prevention of Infiltration Law are cases in point. The narratives present a three-stage practice for the creation of “enemies” through law: first, there is a “void” filled by “new figures”; then there is the suspension of liberties through force, (the invention of the “criminal”); and then the criminalized population is “outsourced” from the “human” Law of Entry to new or renewed laws (the invention of the “enemy”). The main difference between a “criminal” and an “enemy” is the production of a new category of being: a human less worthy of protection. However, the state is not aiming to eliminate the “threatening” beings, but to renounce its commitment to the values of liberty and democracy in their regard. The rights for a lawful status as refugees and to family life were renounced in these cases.

When it comes to the process of absorption and the exercise of rights, it seems that the timing of entry was crucial in these cases. Theo and Amal entered at points of indifference and avoided incarceration; whereas, Isa entered during the initial phase of criminalization and reported a total of eighteen months of incarceration. Since the most tolerant policy in their regard was indifference, the three narrators presented a large dependency on social networks in their process of absorption: food, employment, accommodation, and language lessons were all accessed and provided informally. Amal was the only narrator who was entitled to a public education under the Mandatory Education Law (which I will discuss further in the following chapter).

Moreover, being outsourced to designated laws, their human rights were no longer self-evident; to this day, the three are protected only by the international principle of non-refoulement. Nothing in their humanity alone could be used as proof of their entitlement to individual liberties. Instead, they have to prove it with legal terms and by using the law. A tool that is in the hand of those who deprived them of their liberties in the first place. As a result, restrictions on employment, freedom of movement, and other forms of discrimination are prominent. But even more alarming is the unleashing of restrictions on the use of violence

against them, by state institutions and civilians alike. Amal's claim that "she is afraid to scare an Israeli" is the first example of Foucault's *rules of formation*: the interpretation of "hearing" of an "already-said" that is at the same time a "not-said" (Foucault 2012, 28). What Amal leaves untold is that the Israeli law, by narrating her as an enemy, provides an alibi to the deeds of the Israeli, had he or she chosen to use violence against her.

Needless to say, the civilian commitment to these laws is high. Both laws are still enacted. Yet, besides a small and hunted group of social activists and human rights lawyers, Israelis are sleeping well at nights. Regardless of these immense challenges, Amal, Isa, and Theo have become part of the social fabric of Israeli society. Isa is a relentless social and political activist. Theo is one of the leaders of the Eritrean community in South Tel Aviv, to whom the Mayor of Tel Aviv keeps the door open, with the joint aim of finding creative solutions to the grievances of his community. Amal, who worked her way into higher education despite lacking a legal status, is now studying law and aspires to incorporate Arab women into the police to help fight violence against women in her community. She also wants to establish an NGO that will provide swimming lessons to children from different backgrounds to commemorate the life of her brother, and she hopes her children will grow up as equals in Israel.

In the next chapter, three cases of authorized crossings through the national airport will be examined in light of their process of absorption in Israel. The case of Evelin who crossed the border in 2002 on a tourist visa. The case of Melvs who crossed the border in 2004 with a working permit. And the case of Vera who crossed the border in 2005 with a tourist visa as part of a family reunification process.

## Chapter 4: “I Am (a)part of You”<sup>55</sup>

### 4.1 “WHERE ARE ALL THE CAMELS?”<sup>56</sup>

Evelin was the first narrator I met. Now twenty-two years old, she was eight years old when she came to Israel. Her Hebrew is fluent and Tel-Avivan: young, witty, and cosmopolitan. Evelin came to Israel with her mother and elder sister where they joined her grandmother, aunt, and cousin. They all came from Medellin, Colombia, a city at the frontline of the global war on drugs when they left<sup>57</sup>:

I left there feeling like I am running away from something. It was clear something was wrong. I only knew my neighborhood; crime was everywhere, but it was something that I was born into. My mother wanted to leave with all her strength, to give a better future to her children. We fled for our lives but had no idea what will happen next.

Her narrative continues in Israel and with the state of exception:

We arrived at the airport and went through the checkpoint, and at the same very place we were sent back to Colombia. Which was crazy! My mom took a lot of loans, and mortgaged the house, and got herself in deep debts for nothing. They deported us straight away.

Evelin’s first experience in Israel was the state’s right to exclude would-be migrants from entering its territory. The following year her mother managed to cross the border, and the three of them joined the rest of the family in Israel. Evelin’s first interaction with the Israeli society was through the education system. She was sent to school as part of the Mandatory Education Law and soon discovered the normative world that provided the meaning to her life in Israel:

I entered the third grade at the age of eight, and... It was a very hard age, you know... There was no one who spoke my language and no one that tried to understand what I want [sic]. I remember that every day I was coming to school, and I was crying in all the lessons. Because I have no way to communicate with the environment, and I was frustrated, and no one spoke to me, and children were being cruel to me, and the teachers were not into talking with me, they had thirty-five children and “who cares about the migrant girl that just came to class?”.

Evelin narrates her experience as the last in line for her teachers’ care and attention. Their message was clear: there is a school, you are in it, but education is not for you. Registered with

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<sup>55</sup> Taken from Evelin’s narrative.

<sup>56</sup> Taken from Evelin’s narrative.

<sup>57</sup> Sibylla Brodzinsky, “After 30 years on the frontline, Colombia looks beyond the failed war on drugs”, *The Guardian*, 18 April 2016. <https://www.theguardian.com/world/2016/apr/18/colombia-united-nations-assembly-war-on-drugs>

her passport, she was not entitled to extra tutoring or language lessons, which are offered for children in a pathway for citizenship<sup>58</sup>. Living without status also meant changing apartments every year and schools every two years. It took Evelin two years to say her first sentences in Hebrew: “I don’t understand what you are saying” and “I don’t speak Hebrew”. Her way of becoming part of the Israeli society was by declaring her state of exception.

Children of foreigners without a pathway to citizenship in Israel are caught between two normative worlds of the Israeli law: childhood and deportability. As children in a liberal democracy, they are entitled to education. As unauthorized migrants, they are “about to be deported”. Children whose parents violate the restrictions of the Law of Entry to Israel are soon caught in its normative world: their achievements are insignificant and their presence is perceived as temporary. And so, the education system, the main system of socialization, which accompanies children in the formative years of their development, renders them as not sufficiently conforming to the right for education.

Childhood and deportability collide in the defenseless exposure of children to systematic discrimination. An attitude that quickly trickles down from administration (passport as an ID), to teachers (who cares?), and children (being cruel). Again, performativity is linked with precarity: as children, they have to go to school, yet in school the main lesson they are taught is that they are irrelevant and should not be there. Evelin provides an account of her complex process of absorption. The memories of her first years in Israel shaped a strong sense of rejection and an internal decision to leave Israel as soon as she can:

I tried with all my strength, soul, and the sweat of my brow, to acclimatize into the Israeli society – I was fighting for it. And I think that as a girl I grow up [sic] with a lot of anger, hate, rage, and grudge because I felt rejected and I had to fight for my place all the time... And it is funny because if you’ll ask me, I am not familiar with the Israeli culture, I am not familiar with [prominent Israeli] personalities, never listen to Israeli music, and I asked myself how come? And I realized that it was my wish to reject everything that rejected me. If you don’t want me, I don’t want to be part of you.

Her words while spoken evoked memories of my grandmother; or more accurately, the nine-year-old girl who occasionally, and unexpectedly, burst out of my grandmother. Full of anger,

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<sup>58</sup> The main way by which children are recognized in the Israeli system of education is through their means of registration. Children without an Israeli ID can attend public schools, yet they will be registered using what the school system refers to as a “fictional identification number”. According to Willen (2005) this method is used as “a symbol of a symbol” (78), since this renders the children as not existing in the state’s administrative terms. Additionally, Israel has no legal pathway for the naturalization of foreign children, and according to the regulations of the system of education they are not entitled to scholastic assistance like children in a pathway for citizenship, regardless of their needs (Moshe 2014).

hate, rage, and grudge toward the “Germans” who expelled her as a “Jew”; the “Dutch” who bullied her as a “German”, and then used her vulnerability as a “Jew”; and toward the “Jews” to which she, as the daughter of a Christian mother, never fully belonged. In the introduction of her book, *On Being Included*, Sara Ahmed articulated similar childhood memories as “being made into a stranger, the one who is recognized as ‘out of place’, the one whose proximity is registered as crime or threat” (Ahmed 2012, 2).

In Evelin’s narration, being ignorant of the culture, music, and prominent figures of Israeli society was her way of rejecting what has rejected her. According to Scott, “those without power deploy the ordinary weapons of relatively powerless groups: food dragging, dissimulation, false compliance, pilfering, feigned, ignorance...and so forth” (1985, 29). Evelin’s narrative is full of such accounts of “ordinary weapons”, but also with a sense of belonging:

Ironically, over the past year, as I am planning for my complete departure [from Israel], and even before that, I realized that I have created for myself some sort of an environment that is very warm and loving. In terms of friends and work. My work is not really a job, it is actually a home. They are more like my family than my own family. So, this family that I have created for myself, this warm niche that I am leaving – this is hard. And in the last year, it was like the Red Sea was opened; I began to listen to Israeli music and things like that. It is a different experience of...of belonging, but belonging to what I feel that I have created... That even if I do not want to – I am part of you.

The term “the Red Sea was opened” refers to a pivotal narrative in the Jewish culture. The Biblical story of the Jewish people escaping slavery in Egypt by crossing the Red Sea, which “miraculously” opened up. For Evelin, the opportunity to leave Israel as a permanent resident and to study abroad represents her “miracle”, her path from slavery to freedom, which enabled her to delay her rejection of the Israeli culture. A culture that she knows well, as she acknowledged, whether she likes it or not. Evelin invested fourteen years in finding her part within Israeli society as a child of an unauthorized working migrant. The next part will discuss Melvs’ border crossing stories as a foreign caregiver.

#### 4.2 “WE CAN TOLERATE TO MISS OUR FAMILY”<sup>59</sup>

Melvs was born in Baguio, a district on the main island in the Philippines. She was trained as a teacher and came to Israel following her sister just six months after giving birth to her third

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<sup>59</sup> Taken from Melvs’ narration.

child. She left her children in her mother's care. We spoke English. In her opening words, she captured her embodied experience as a Filipino caregiver locally and globally:

Most of us Filipinos are women who are strong and have the courage to go out of the country, not men. I think we don't have the same heart [as] the Jews. Israelis, I think don't have the heart to be apart with [sic] their family, but we can tolerate to miss our family. It is because we put in our mind that we are going there, not because of our own interest but because of them, for our family.

Melvs described in her own terms the "international division of reproductive labor" (Parreñas 2000) and its intersectionality of gender, "most of us are women, not men"; class, "we don't have the same heart (or privilege) as the Jews"; and labor migration, "we are going there...for our family". Melvs' narration surfaced two of the major shifts in the global economy over the past two decades: First, the role women play in the demand for cheap and flexible labor, often referred to as "the feminization of the workforce" (Huang, Yeoh and Toyota 2012, Rosen Velásquez 2016). Second, the fragmentation of systems of care across national borders where privileged households demotes the manual housework to migrant workers, which relegates the care for their children to relatives and household in the country of origin (Kofman and Raghuram 2010, Parreñas 2012). Melvs described her first encounter with Israeli society as somewhat less holy than she had anticipated:

Let me start when I arrive here. My thinking when I arrive here is that people here are still religious because according to our Christian life...they are discipline, you know, they are behaved, everything that good, that we were being taught in the Bible... So, I was in shock because...[on the first day I went to the street to fetch one of my sister's friends] and there was one car, which stop beside me...the [man in the] car said "Cama? Cama?" I didn't know, I didn't understand what is *cama, cama*, so I back off, and then a lady with a lot of lipstick came to me and shouted, "This is not your place! Go there! This is my place!"

Of course, an unfortunate encounter with a woman in prostitution is hardly evidence of a normative world created by law, but it is Melvs' way of describing the place that was made available to her in Israeli society: near the drug users, at the fringes of the workforce. "This is like garbage, everything here." Melvs' narrated the vulgarity of the streets as her first schooling of life in Israel: "Israelis have the attitude of shouting, but this doesn't mean that they are angry."

As a Filipino caregiver, Melvs' main interaction with the "Israeli" society is through her work in people's households. Besides the hard work around the clock caring for those who have recently lost their ability to function, she has a very tricky place in relation to other carers

in the family. Throughout her narrative, the nondependent family members represent her with the biggest challenge of her work. For example, she left her first contract after a month due to problematic relations between her and her employer, Anat. However, it was only when she tried to leave her first employer that she became fully aware of her position within the Israeli labor force:

Before I left, we talked and Anat said, “You know what, Melvs, you want that I will send you back to the Philippines?” I said, “Yes OK, fine, Anat, this no problem for me, as long as you give me everything that I spend to come here to go back to the Philippines. I can manage to go there rather than to stay here, in this kind of situation.” That is what I said. So, I get the tourist visa and it is very hard for me to get another job because we need a referral from our former employer, so she made balagan<sup>60</sup>. She said, “No, she is no good, and everything.” So...my agency said, “Why can you not work? Why you work like this?” I said, “The work is not the problem, the relation between me and her is the problem.”

As apparent in Melvs’ narrative, the normative world in which the Law of Entry provides meaning to Melvs’ life in Israel is that of subordination and deportability. Putting aside the situation itself, her narrative reveals structural constraints on her capacity to leverage her position in relation to her employers. Her version of reality is less legitimate than that of her employer, her employer’s recommendations prevented her from finding a new employer, and she is threatened with losing her permit and being “sent back”. However, as a temporary caregiver in Israel she is entitled to seek a new employer and has a five-year working permit (Berman 2015), in which her social rights as an employee are supposed to be guaranteed, including minimum wage, health insurance and National Insurance.

Melvs describes herself as “aware of my rights”. She has worked for seven employers since her arrival, mainly due to maltreatment and miscommunication with her employers. She found her current employer on her fourth year in Israel. Melvs has been working there for nine years. It enabled her to extend her five-year permit without losing her legal status, yet her rights are violated, and her patient’s wife is financially and emotionally abusive:

Now I find this job, which is in Givatayim. I stay with them even though I am underpaid. The children there are very good... I don’t complain with the salary even you know that this [is] underpaid. I am not in the minimum wage [sic] with her, but I said, “It’s OK.” I went to my agency, and even they cannot talk with them... You have to follow your laws. When the law says that you need to pay this, so [even if] it’s a lot to you, you pay... Only the woman is somewhat like... She is complaining that I am not doing

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<sup>60</sup> “Balagan” in Hebrew means “a mess”. A word that is relatively easy to pronounce and frequently used by native speakers and foreigners alike.

something. That I am not cleaning the house, that I am always on the telephone. She finds things... And I say, “You know, the only thing to keep my stress away is to talk with my family on the phone if someone is calling!”

Melvs’ account provides another illustration of Foucault’s *rules of formation*: “I don’t complain/she is complaining” is an example of the “interpretation” of “hearing” an “already-said” that is at the same time a “not-said” (Foucault 2012, 28). What is “not-said” is that after five years in Israel, Melvs is “free” in the “neoliberal” sense of the word “choice” (Bansel 2007, 284, Lemke 2001, 201) to leave her job if she is not “pleased” with her terms of employment. However, if she “chooses” to stay, she needs to please her employer and consent to her terms: “not in the minimum wage *with her*”. The violation of her rights is no longer a matter of law but a matter of an individual decision, according to her own estimation of personal satisfaction and capacity to endure.

The asymmetries, which were present since her first day at work, intensified after five years. According to Rachel Parreñas, a Filipino professor of sociology and gender studies, “Numerous studies have shown that the race and class inequalities that structure this division of labor are aggravated in the daily practices of paid household work” (2000, 562). After thirteen years in Israel, rather than becoming part of the Israeli society, her subordination and deportability increases with time, as her current employer is her only “choice” for legal status in Israel. The last narrative for this chapter will be that of Vera and her daughter.

#### 4.3 “TO BE HONEST, I HAD NO IDEA WHAT BUCHARINS ARE LIKE”<sup>61</sup>

I met Vera twice. First near her work, and then I was invited to her house to meet her daughter and dog. We sat and talked in Hebrew for more than two hours, yet I know much of her story was narrated by the parts that were left unspoken. Vera started with the account of her childhood memories in the Soviet Union, which in many respects shaped her decisions as an adult. She was eight years old when the Soviet Union collapsed. As a Russian in Tashkent, Uzbekistan, it was a question of when and where to leave:

When we came back to Tashkent, it wasn’t the same place anymore. I remember the Uzbeks started to throw stones at us calling, “Russians, go to your Russia!” They looked at us from above... A lot of Russians left Uzbekistan, everyone who could. I was about to finish my [university] studies and to move with my mother to Russia, but then there was a change in the plan... My husband didn’t want to raise the baby in Uzbekistan, and I followed him to Israel.

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<sup>61</sup> Taken from Vera’s narrative.

Vera met her husband in Tashkent when she was eighteen. He was a thirty-two years old, a Bukharan Jew whose brothers were already living in Israel. A few months after his arrival in Israel in 2005, he received an Israeli ID. When Vera joined him with their child, they moved to her husband's family house: five rooms, four brothers and their mother. At first, Vera, who was a single child from a single family, enjoyed the change:

In the beginning, I was excited, the togetherness, Friday dinners, the table, the family, the intimacy – it was a fun atmosphere. In Israel, I don't even know how to say, but I loved it from the beginning, the weather, the way it looked, the people. I loved it.

The couple needed to go through the gradual process of family reunification. Meanwhile, their daughter received an Israeli citizenship, and Vera received a temporary resident permit, a "dependent status", which had to be renewed each year for four years. In their first two years in Israel, Vera was mostly at her husband's family house, attending to her daughter and extended family needs, and learning Hebrew in the subsidized public Hebrew program (Ulpan). Her husband received subsidies for rent and assistance with finding employment as part of an "absorption basket" to which he was entitled as a Jewish migrant. Their gender roles kept intact:

I did not have a say in this family. I became a kind of a housekeeper or a servant... I don't know how to explain this. When I didn't work, I had to ask him for money all the time...

After two years in Israel, Vera started to acclimatize to her new society through employment and higher education, while her husband seemed to struggle. A tendency that became more evident, partly because he was no longer entitled to subsidies:

... Then I started to work as a house cleaner and with elderlies [sic], but all the money I earned went straight to him, supposedly to a shared account... I was locked in a kind of prison... His nerves reached... I don't know. It was the worst. He was kicked out of his job... We had no money... He started to borrow from the black and gray markets... Goods were starting to disappear from the house... I found empty capsules in the garbage bin... He became too jealous, there was too much control... I did not know what to expect, and then for the first time I heard him saying that he would "kick me out of the country, and the girl would stay with him".

To unpack this intensive narration of a rapidly deteriorating reality, the inverse relation between the absorption processes of Vera and her husband, and Vera's legal dependency is analyzed. First, their processes of absorption reveal an inverse relation between "time since arrival" and acclimatization:

I think his absorption into Israel was much more difficult than mine. Over there, he did not work hard, he ran small businesses, had a car, and a place to live. He was the

“landlord of the situation” [sic]. Here the situation was a bit different, and maybe this is what broke him.

Vera described the intersectionality of gender and immigration as reflected in her husband’s case: men are expected to provide for their families and to be “the landlord of the situation”, regardless of the challenges posed by their new environment. However, economic insecurity, language barriers, and a lack of adequate skills for the local labor market limit the ability of male immigrants to produce and maintain employment. Long-term unemployment, in turn, increases the likelihood of turning to substance abuse and other self- and family-destructive behaviors (Raj and Silverman 2002).

While her husband’s masculinity and self-image were crushed, there was still one domain in which he could be “the landlord of the situation” – his status-dependent wife. Two main vulnerabilities relating to the dependent status appear in her narrative: the couple needed to present a shared bank account as a proof of the “sincerity of their relations” (Berman 2015) and her vulnerable position as a temporary resident in relation to her rights as the guardian of her daughter<sup>62</sup>:

This relationship could no longer be called relationship, with all that happened...it was like [being] inside a pressure pot... The man needed help. Everyone saw that he was not OK... I felt like I am nothing, like this was the end of my life, and it will be that way to the end because I am not leaving my child. I realized he would kill me at some point, he simply become a monster and not a husband. It was one big nightmare. I went through almost every kind of violence imaginable with him. Including rape, and sexual abuse, and I had no hope.

Performativity and precarity surface again: she is entitled to family life as a wife of a Jewish citizen, yet she is risking deportation due to “failing to perform as a wife”. The fact that she is the mother of an Israeli citizen did not provide her with the right to residency, and she could only leave Israel without her daughter. Her narrative reveals the normative world of the Law of Entry in her regard: she is a legitimate legal reality only through the legitimacy of her Jewish spouse, a potential captive, in the merciful hands of the entitled spouse. As Vera continues to describe:

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<sup>62</sup> The “sincerity of the relationship” is a measure used by “liberal democracies” for the past three decades as a means to identify “fraudulent marriages” between “unlikely couples”, for example between Jewish and non-Jewish. The measure comprised of a list of so-called “objective indicators” to help authorities detect a fraudulent marriage. For example: inability of the partners to communicate verbally with each other, earlier short marriages of the eligible partner, a considerable age difference, separated entrances to the state, and so on, indirectly defining what “proper marriage” in the context of migration should look like (Bonjour and De Hart 2013).

In fact, throughout this period, slowly, slowly and gently I was explained from here, and there, and from around me that I am nothing here. “I brought you here, so you should thank me that you are here at all!” So, I realized that I have no right to talk, and I realized that I am nothing in this country, that they extended my visa only because of him. And I had no one to ask for advice, I had no one here. I had no money, I couldn’t take a lawyer. I was trapped, there was no way out. If I didn’t have my daughter I would commit suicide, that’s for sure.

Without guards, without a detention center, and without designated laws, Vera was imprisoned by the Law of Entry. The subordination of a status-dependent spouse, and their vulnerability to the threats and abuses of their entitled spouses, is another example of Foucault’s *rules of formation*. By stating, “you should thank me”, Vera’s husband is not referring to his actions as a husband, a man, or a father, but to the theme of “an origin that eludes all historical determination” (Foucault 2012, 28).

According to the Israeli immigration laws, Vera’s husband had “returned” to his land, while Vera entered with a temporary permit to stay. As such, they are not two immigrants from the collapsed USSR, trying to make a living in a Middle Eastern “liberal democracy”, and using a random fact that had expanded their range of options of places where they could raise their daughter. They are part of the endless and pointless perpetuation of violence and inequalities that found yet another place to flourish – immigration laws in “liberal democracies”. As Kimberlé Crenshaw notes, “Intersectional subordination...is frequently the consequence of the imposition of one burden that interacts with pre-existing vulnerabilities to create yet another dimension of disempowerment.” (Olivares 2014, 269). Gender roles and immigration laws are the main dimension of disempowerment in this case.

An elaboration of the mechanism that perpetuates and sustains this complex intersection of gender and ethnicity is beyond the scope of this thesis; however, two points should be stressed in this regard. First, the vulnerability to abuse, the use of legal status to control the dependent spouse, and barriers to seeking and receiving help are prominent in the status-dependent context (Anderson 1993, Raj and Silverman 2002). Second, family migration had become one of the most salient topics in a liberal democracy’s legislation, with increasingly restrictive reforms of family migration policy that have been implemented in the US, Austria, the UK, Denmark, and various EU countries (Bonjour and De Hart 2013, Olivares 2014). These trends only exacerbate the already complicated process of family migration and absorption. Vera’s narrative, like Melvs’ narrative, reveals that their composition of rights is determined by the “good will” of the Israeli citizenship-holder that legitimizes their presence in Israel

(Narayan 1995, Berman 2015). Melvs had to compromise her rights as an employee in order to keep working legally in Israel. Vera had to compromise her right for safety and dignity in order to keep her rights as a legal guardian of her daughter. The following section will summarize this chapter.

#### 4.4. THE CALAMITY OF A DUAL STORY

The aim of this chapter was to question how entry to Israel through the national airport, and the corresponding normative meaning that are assigned to this type of entry, shape the process of migrants' absorption, their exercise of human rights, and the civilian commitment to the Law of Entry. The findings indicate that entry through the airport is associated with temporality and deportability, which conditioned the exercise of human rights to the "good will" of the Israeli citizens, which again presented an adherence to the Law of Entry as "power" (deportability) and "meaning" ("less equals") (Amit, Achdut and Achdut 2015, Rajiman and Semyonov 2004). While each of the narrators described different normative worlds, a double standard regarding their human rights was common to these narratives. Evelin was entitled as a child, yet deprived as a child of a foreigner; Melvs was entitled to work, yet deprived as a worker; and Vera was entitled as the wife of a Jewish man, yet deprived as a guardian of an Israeli minor.

This type of a "state of exception" arises from a condition framed as "a lacuna in public law". The lacuna is not within the law, but it is in the way the law is related to reality (Agamben 2005). In the case of Evelin, education is provided to all children; yet children must be registered with an Israeli ID to be regarded as children. In the case of Melvs, the law provided her with the right to work in Israel for more than five years; yet, by then, her Israeli employer had the authority to chose her terms of employment. In Vera's case, she was entitled to family life – yet only to the happy kind of family life. The law provided no framework for the not at all unlikely case of an abusive relationship.

The normative worlds that were narrated by Evelin, Melvs and Vera are that of rejection, subordination, and captivity. These cases are different from the normative worlds of indifference, criminalization, and animosity, which were mentioned in the previous chapter. However, not by the absence of discrimination and precarity, nor by their partial inclusion, but by the fact that discrimination and exclusions are inherent in the law. It is the law of education that exposes children to a dose of discrimination five hours a day, six days a week for as long as they go to school. It is the right to work legally for more than five years that exposes care

workers to discrimination by their employers. It is the right to family reunification that exposes women to abuse and the risk of captivity.

Moreover, being “deportable” meant that their legal status could be changed at any moment. Evelin was entitled to a permanent resident permit after ten years as an outlawed, while her sister and grandmother were deported. Melvs loses her status if she is fired or chooses to leave her employer. Vera lost and regained her temporary status twice during her life in Israel. The dry law in their regard clearly states that Melvs, Vera, and Evelin should have been deported by now, yet amnesties, humanitarian causes, and loopholes in the Law of Entry managed to postpone the verdict of the law as “power”, leaving an indelible trail of evidence of the law as “meaning”.

Regardless of the state of Israel, and practices of rejection and subordination, Evelin, Vera, and Melvs have been part of the social fabric of Israeli society for more than a decade. Evelin is the proud sister of her young brother whom she raised since he was born, and she is determined to make Israel “a bit different” for him. Melvs is a prominent member of the caregivers’ community, a language teacher for Filipino children, and a fundraiser for the right to education in the Philippines. Vera was able to save herself from the devastation of her husband who died of an overdose six years into his project of migration. She is leading a peaceful life with her daughter and their dog. The next chapter will focus on migration as a political act, changing the lens from the asymmetries encouraged by the law to the plurality of human actions.

## Chapter 5: Migration as a Political Act

### 5.1 “HERE THE STATE IS DEMOCRACY”<sup>63</sup>

The previous chapters focused on the narrators’ process of absorption, their possibilities to protect their individual liberties, and the civilian commitments to the normative worlds of “us” and “them” established by the Law of Entry to Israel as “power” and “meaning”. The creation of categories and the subjection of migrants to the law, by attempting to objectify them as “residents of the area”, “infiltrators”, “foreign workers/children”, and “status-dependent spouse”, were the main focus. In this chapter, the aim is to connect the evidence of the previous chapters to migration as a political act. More accurately, the evidence of the previous chapters discloses not only adherence, but also resistance to the unified hegemonic common sense of the Law of Entry. How an “infiltrator” is not imprisoned for an indefinite time in Holot? How a “status-dependent” wife was able to leave her deadly marriage with her daughter? How “a resident of the area” is officially recognized as a mother of Israelis?

In this chapter, interactions between citizens, residents, and migrants will serve as an opportunity to examine the “suspension” of immigration laws as “power” or “meaning”. Interactions that Lugones (2003) described as political insofar as they intentionally interfere with the reductive and unitary logic described in the Law of Entry and its annexes. By doing so, I want to add another layer to the answers provided to the research questions using the “pedestrian” view (Lugones 2003, 5). Evidence in the previous chapters showed that human rights are not distributed universally or equally among humans (Balibar 2010, 6). Therefore, Arendt’s concept of “human plurality”, “with words and deeds we insert ourselves into the human world” (Arendt 1958, 176), would be the main focus of this chapter – placing resistance in a migrant’s process of absorption and access to human rights. Additionally, this chapter will attempt to trace the limen: the places where “we are neither in the presence of power, nor related to each other in terms of power” (Lugones 2006, 76).

I will begin with one of Isa’s memories from his first months in Israel. “We are simply sorry. We know you are not criminals, but we are doing the job of the prison services,” said the prisons service’s guards in Arabic while they transferred Isa and other refugees from Ketziot to Ramla prison, using unnecessary measures such as handcuffs and patrol dogs. Isa’s first impression of Israel was ambiguity, reflected in the actions of the guards: they were acting

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<sup>63</sup> Taken from Isa’s narrative.

in accordance with the norms of one's reality ("the job of the prison services") and with the norms of another reality (apologizing in Arabic, the "minority" language in Israel). By acknowledging that Isa and the other refugees were not criminals, the guards were resisting the normative world of "us" and "them" as "meaning". Arabic, a language that is spoken throughout the Middle East and North Africa, but hardly understood by Israeli Jews, provided a liminal space for recognizing multiple oppressions. It is not only Isa who was deprived of his right for asylum, the guards "know" but could not act with discretion due to their own subordination in the hierarchy of the institution they work for.

Another example given by Isa and involving language was his access to Hebrew and English lessons, during his first year in Israel:

The students heard there were asylum seekers in the city, and they opened a schoolhouse for English and Hebrew. We would come to their houses, sat in their living rooms, met and talked. It was great! I truly loved it. I was shocked that people are so willing to help. But they were Jewish from outside, from the US and UK. The Israelis, I saw less.

The living rooms of "Jewish from outside" present another liminal space and another possibility to suspend the Law of Entry as "meaning". This time to defy illiteracy, one of the main borders to be crossed in the process of absorption, in liberal democracies. Language lessons are an example of a political act that takes place in private homes. This action removed barriers in Isa's acclimatization process, and provided a path to participation in the public sphere through speech and action, rather than a mere presence (Arendt 1958). Isa finds it important to distinguish the students as "Jewish from outside", referring both to the absence of Israelis, and to the right of all Jewish people to act politically in Israel. When Isa moved to Tel Aviv, he took part in human rights activities:

I used to help whomever I could. I also started to collaborate with the organizations. I went to give lectures in universities and schools, to tell people about our situation, and how we live and why are we here. I enjoyed this volunteering; I felt connected to it. And it was also something new because I didn't know how to do human rights, I only know politics.

Isa's proficiency in Hebrew and English were crucial steps in learning "how to do human rights"; namely, disclosing his personal story in public spheres. As articulated by Arendt, "the action he begins is humanly disclosed by the word, and through his deed...becomes relevant only through the spoken word in which he identifies himself as the actor, announcing what he does, has done, and intends to do." (1973, 179). Isa took part in the efforts to shape the public

debate about the arrival of refugees from the southern border. This is another example of a political act. This time resisting the reductive and unitary logic of the Law for the Prevention of Infiltration.

Six years into his life in Israel, Isa was sent to Holot. He continued his political activities against the Prevention of Infiltration Law from within the facility by violating one of the regulations of the facility (the three times a day mandatory signature regulation). According to Lugones, while these resistant intentions are unsupported by institutions, they are nevertheless important as they help subordinated individuals to “sustain themselves” by “keeping from being exhausted by oppressive readings” (2003, 15). After three days, Isa was summoned to the manager’s office at Holot: “We have a few questions we want to ask you.” Isa depicts himself as prepared for their questions better than they anticipated his actions:

I know you are going to punish me, and I knew that since I have left the room to reach your office. I know I am not going to get out of it easily, but I am not afraid of it. Because I am not a bad person, and I am not a criminal, and you are also normal people, I know you are not killing me.

In this example, the conversation with the managers of Holot is a liminal space, within Holot. Like the guards he met in his first months in Israel, he used language, this time Hebrew, to expose the unitary logic of the Infiltration Law, by describing his guards as “normal people” and himself as “not a bad person”. Following that conversation, he was incarcerated in Saharonim for a month. His allies, ‘the organizations’, filed a petition to the Supreme Court, on his name and he was released from the ‘open’ detention center on August 2015<sup>64</sup>. Isa’s narration was full of liminal spaces through which he was able “to maximize freedom in an unfree situation” (Lugones 2006, 79). Israeli Arabs, “Jewish from the outside”, “the organizations”, as well as his Darfurian friends throughout the world, are his reading reality as multiple. The next section will look at birth as a political act, as reflected in Amal’s narrative.

## 5.2 CLAIMING TO BE THE HOSPITAL

Amal lived as outlawed when her first son was born in 2014. Nonetheless, she has a unique composition of rights: she is not allowed to work, yet she is covered by the National Insurance Institute (NII) through her husband’s ID and has a private health insurance. Sixteen years into

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<sup>64</sup> With Isa, the detained “infiltrators” that spend more than twelve months in Holot were realised, and the indefinite detention is currently limited for twelve months.

her life in Israel, and under the delicate circumstances of becoming a mother for the first time, the following happened:

When we came to receive the birth certificate of my son, the name of my husband was written under “the name of the father”, and beside my name was written “claiming Sharif is her husband and the father of the son”. This attitude really hurt me, and we started to act so that they will write in the birth certificate that I am the mother.

Her narrative disclosed the administration of the Citizenship and Entry Law, by the agency of the hospital clerk, disconnecting Amal’s name from the title “mother” as part of the administrative duties of the hospital. According to Lugones, modernist agency is “a mirage of individual autonomous action” in which the social, political, and economic institutions that back up the successful agent are effectively obscured (2003, 211). The “autonomous” clerk is supported by the state in her actions, erasing the relation between the Israeli newborn and his Israeli-Palestinian mother. Described differently by Cover, “it is difficult to ignore the fact that the tie between administration and coercive violence is always present” (1983, 57).

In this narration, Amal also disclosed her ally in this process. The phrase “hurt me and we started” is a testimony of an alliance between Amal and her husband in an attempt to suspend the reductive and unitary “world of sense” of “resident of the area”. Their relations are her only liminal space in the process:

We arrived at the Ministry of Interior with all the papers they instructed us to bring. The clerk glanced at the documents and said we brought the wrong ones. And all that time she was looking and talking only with my husband, she was not referring to me at all! Even though it was me who prepared all the documents to the meeting... We came back again, with all the papers... They told us to wait thirty days. After forty-five days, we did not get any answer. We took a lawyer to find out what was going on. We were told that we need to do a genetic test<sup>65</sup>.

Here, once again, the clerk is administrating the Citizenship and Entry Law by disregarding the presence of Amal next to her husband. In her narrative, we can observe layers of administrative violence: the hospital in which she gave birth wrote that she is a liar (“claiming”); Ministry of

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<sup>65</sup> The genetic test procedure is part of the family reunification process, for the provision of an Israeli ID to the children of non-citizen mothers, who were born outside of Israel (Berman 2015). Clearly, the case of Amal is different: the child was already recognized as an Israeli citizen, and the birth took place in an Israeli hospital. While in the case of Amal there is an enforcement of irrelevant regulation, the case of Vera and her husband presents an opposite scenario. They were also asked to provide a genetic test; however, they were able to appeal through litigation, claiming that they do not have the financial means to pay for the test, but they are willing to do the test if the Ministry of Interior would cover the cost. After six months, the Ministry of Interior withdraw its request and their daughter received in Israeli ID, without a genetic test. Vera’s description of this process was: “it was a bit ... I don’t know how to define it, a bit defective let’s say, but that what happened.”

Interior scheduled two appointments for submission of papers such as health insurance and proof of employment, which have nothing to do with “establishing” her motherhood; her request was ignored; a lawyer had to be involved; and a genetic test was “required”. This is a clear example of governmentality reflected in the range of specific regulations (birth certificate), knowledges (which papers needed to bring to “proof” of motherhood), and representations (lawyer, genetic test) that control populations (Butler 2004).

Israeli bureaucracy was clearly buying time before stating the obvious, and counting on financial barriers and Arab patriarchy to keep Amal at the Palestinian side of the Israeli border. Yet, Amal and her husband were determined to fight for their right to family life, which is largely dependent on Amal being officially recognized as a mother:

This was a heavy expense, and in general I see myself as a feminist, and all the time I need to ask my husband for money. It took me ten months to write my name as the mother of my son. At that point, I realized I can no longer live and move ahead in my life without a status, so I started to act to get a status.

This example illustrates that for populations under the state of exception, the rules of formation (Foucault 2012, 28) has tangible qualities. In Amal’s case, the rule “a Palestinian cannot be the mother of an Israeli citizen” materialized as a sentence on her son’s birth certificate, in ignoring her presence during an official meeting, in denying response for her requests. To regain her individual liberties, she and her husband had to deploy “legal” and “objective” measures to connect the inseparable by “proving” that her motherhood, the legal impossibility, is in fact a social reality. At the birth of her second son, the hospital spared her the political struggle of “claiming to be the wife of the father of the child”, and she was released with a birth certificate with her name as the mother. Two months after the birth of her second son, she was arrested and nearly expelled to Gaza. Her son’s birth certificate was her only defense, as the policeman who released her said, “There is no possibility to expel you to Gaza because *your son* is less than a year old.”

The Israeli citizen resisting this injustice was, of course, Amal’s husband. By investing resources, going together to the meetings at the Ministry of Interior, and taking a genetic test, he was acting politically insofar as interfering with the reductive and unitary logic of the Citizenship and Entry Law as both “power” (erasing her name from her son’s birth certificate) and “meaning” (a Palestinian cannot be the mother of an Israeli citizen). Legal struggles are often out of the budget for most Palestinians, and immigrants. Vera’s narration is a case in point, which will be presented in the following section.

### 5.3 HYSTERIA

Vera's relationship with her husband reached a melting point in their fourth year in Israel. Vera, without money, social networks, or a lawyer, was trapped. With a husband that deteriorated into drug abuse, and a child she could not take with her to escape. In this dead end, Vera called her husband's uncle, who she hardly knew. The uncle and his wife offered Vera to move to their house "meanwhile". Vera refused their offer as she felt it was not safe to do so. Lugones articulates Vera's actions as "active subjectivity", which she defines as "a subject who must move tentatively, with care, aware both of the lack of institutional backup, and of the possibilities for creating coalitions necessary for bringing her intentions to action" (2003, 210). The following morning, Vera went to work; her husband harassed her with text messages, until she suffered a breakdown:

He texted me: *That's it! The police are on their way, with the Home Office, they will throw you out of the country.* At that point, I was hysterical. All that time I tried, I mean I didn't cry, I didn't have tears, I was so desperate and dry! But all of a sudden, it was breached. And the woman I was working at her house, whom I didn't know, it was my first time there, and I am the cleaner... She saw me for the first time, a woman sitting on her staircase crying. She came to me and asked, "What happened?" At first, I was afraid to tell anyone, but I had to tell someone, so I did. The first thing I saw was caring. It was the first time in four years...almost five years in the country, that a human being, someone, cared – and the strangest thing, she was a complete stranger.

Vera described this moment as the first time she actually crossed the Israeli border. The staircase in a stranger's house was her liminal space, where she could crash and begin her resistance. The anonymous house owner, who lost yet another "cleaner" that day, probably and unknowingly saved Vera's life; suspending the Law of Entry as both "power" (deportation) and "meaning" ("I am nothing in this country"). She asked Vera if she could share her story with her neighbor who is a social worker. Vera agreed. After this short conversation, she received a phone call from the Ministry of Welfare in Tel Aviv, who arranged an appointment for her at the welfare department in her city of residence the following day. At that meeting, for the first time, Vera told her story in Hebrew to the social worker who assessed the degree of danger, in her case:

I sat with the social worker and kept saying, "I am here with an orange ID, I am not a citizen; I do not deserve help." And she kept telling me, "I don't mind what your status is, tell me your story." After I told her my story, she asked... Well, she did not ask, she said, "From what you are telling me, I am not sure that tomorrow or in two days you will still be alive. I suggest you go to the shelter with your child, I wouldn't wait if I were you."

Her narrative portrays a chain of anonymous women: a house owner, a neighbor, and a social worker acting politically by offering their knowledge, social connections, and institutional backup. The agency of the social worker, and her suspension of the Law of Entry, (“I don’t mind what your status is, tell me your story”), served as a link between a status-dependent spouse and her current independent legal status, which she obtained following the examination of her case at the Committee for Exceptional Humanitarian Affairs<sup>66</sup>. The last case presented in this chapter will be Evelin’s struggle to complete her mandatory education.

#### 5.4 “SHE DOES NOT COME TO SCHOOL”<sup>67</sup>

In 2010, two years after her sister’s deportation, two parallel processes took place in Evelin’s life. She was eligible for resident status following the Government Decision No. 2183, and then was awaiting a response to her pending application. And, her mother became pregnant following a relationship with a foreign worker, who left Israel soon after. When her mother told her employers that she was pregnant, they immediately sacked her. Unable to pay her bills, Evelin and her mother were pushed onto the streets. Her mother started to have labor pains in her third month of pregnancy. Uncovered by any insurance, her mother was hospitalized in an emergency unit for the rest of her pregnancy<sup>68</sup>. She has not returned to the labor market since. Deportation, dismissal, homelessness, high-risk pregnancy, and permanent work disability were all narrated as a landslide, which left Evelin’s mother in ruins and forced Evelin to take actions to support her mother and newborn brother:

When things started to deteriorate, I had to skip school a lot; especially in the year my mom got pregnant. And my teachers did not give up on me, not at any point. It wasn’t just “she is not coming to school”, [it was] “we are calling to ask what happened?” and “where are you?” and “we are coming to the hospital”. They were very much involved and took a very central part in my life.

Her narrative presents an inversion: throughout her initial years at school, her presence in the class was ignored by her teachers. Yet the teachers noticed her absence during her last years in school:

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<sup>66</sup> The Committee for Humanitarian Affairs deals with exceptional cases of foreigners who are not entitled to status in Israel according to the usual criteria. The committee is chaired by the head of the Population and Migration Authority. Other committee members are representatives of different government offices, representatives from the Israel Police, a representative of the Ministry of Foreign Affairs, a representative of the Ministry of Health, a representative of the Ministry of Social Affairs, and a representative from the General Security Service. They work on a case-by-case basis and gather every sixty days to provide responses to new cases.

<sup>67</sup> Taken from Evelin’s narrative.

<sup>68</sup> For another example of reproductive care provision for undocumented migrants see Willen 2005.

At some point, I had no idea how am I going to graduate; I had a mother and a baby to feed. And, as a child, I was ready to give up. But they fought so that I won't dropout. They stood by me in ways that I could not have even imagined in my best dreams. They came to the hospital many times, sat with me at cafés after school to help me catch up... They knew they were making the difference. It is either I will study or I will find myself in the streets in few years. That's the difference. That is what my mother fought so hard for, I mean, think of all that she has been through... I realized in the purest sense, and in the simplest sense, what is the essence of education. There is no price for what they have gave [sic] me, it was more than a home, they gave meaning to my life. I will never forget this.

This narration is another example of resistance as a way of “keeping from being exhausted by oppressive readings” (Lugones 2003, 15). While the Law of Entry to Israel was consuming every part of Evelin's life, her family, her mother's health, her home, and her childhood, the teachers of 'Geula high school' provided her with alternative reading for her existence – a bright student worth fighting for. The liminal spaces in her narrative are cafés and hospital rooms, which were converted into classrooms. Places where she could “do” math, history, and grammar. Her teachers' political actions were not only an opportunity to catch up with the scholastic materials, but a much-needed relief from her reality as “foreign migrant child”. This is another example of an institutional agency that suspended the Law of Entry as “meaning”.

Evelin described her graduation as a “relay race” that started with her mother's decision to provide her daughters with a better future, which almost failed due to the burden of the Law of Entry as “power” (“I was ready to give up... Finding myself on the streets”). Yet, she graduated with honors due to her teachers' fight to keep Evelin from dropping out of school and Evelin's devotion to her studies. These parallel processes were tied together in her narrative, as the first thing she did with her Israeli ID was to go to school and receive her diploma printed with her Israeli ID number. The next part will summarise the chapter and its findings.

## 5.5 READING REALITY AS MULTIPLE

According to Arendt, “no other human performance requires speech to the same extent as action” (1958, 178). The narratives brought forward are cases in point. The plurality of actions, the brave coalitions, and the creative ways of resistance provided additional insights on migrants' process of absorption and the possibilities available to them in their efforts to protect their liberties. The narrators presented language used for communication as meaningful for their process of absorption. They “language” their way into the Israeli society. Hebrew

proficiency was narrated as a border to cross, while Arabic acquired qualities of resistance to the Hebrew hegemony. Moreover, in the cases of Isa, Amal, and Vera, they “litigate” their way into the realm of individual liberties. Access to representation by lawyers was narrated as crossing a border. Their political actions were directed at providing “objective” and “legal” proofs of their entitlements. They deployed the tool of the oppressors to limit oppression.

Another aspect playing a role in their process of absorption was an institutional agency. While the four of them resisted the ramifications of immigration laws through actions, Isa and Amal narrated actions which lacked institutional support (to say the least), while Evelin and Vera narrated actions that were backed by an institutional agency. This adds to evidence from the previous chapters and provides interesting anecdotes for a status-dependent agency, administrators that resist or perpetuate immigration laws, depending on a migrant’s status.

Besides language and type of legal status, actions and relations were narratively linked: “I was hurt and we started”, “I collaborated with the organizations”, and “they fought so that I”. Each of the narrations presented similar plots of action: they began with trusting the “other” and revealing/disclosing personal vulnerability (“it hurt me”, “I was afraid to tell”, “I had to skip school”, “I tell people why we are here”). The disclosure was successful in the sense that their vulnerability was not abused by the Israeli citizens (as opposed to Melv’s boss, Vera’s husband, Theo’s co-workers, or Evelin’s mother’s boss).

The successful disclosure was accompanied by identification, a field of power, which suspended subordination within the relation: the “cleaner” and the “house owner” identified as “women”. The “foreign student” and the “teachers” identified through the “power of education”. The “husband” and the “wife” identified through the world of “parenthood”, and their subordination to the world of “Jewish-Israel”. The “refugee” and “the organizations” identified through the narrative of refuge, and their subordination to the world of “non-policy for refugees”. What might be the intangible difference between these relations and relations of subordination is a sense of dependency. The narrators presented stories in which each part had power/value/function. Two types of dependencies were evident. A mutual dependency, in which both actors had a similar goal, as in the cases of Isa (a refugee law) and Amal (the birth certificate). The second type was reciprocity, in which each actor had a different goal, as in the cases of Vera (to escape/to help) and Evelin (to graduate/to make the difference).

Lastly, each plot presented commitment. Vera’s house owner did not know what to do, but she was committed to help and called her neighbor. Amal’s husband did whatever was

needed including preserving his wife's image as a feminist, in spite of the institutions reading her existence as outlawed. Evelin's teachers were committed to teach her wherever she was and they waited for her Israeli ID to print her diploma. And "the organizations" provided Isa with the litigation he needed in order to be released from indefinite time in detention. The narrators and their allies could rely on each other throughout the process of resistance, whether it took years, ten months, or a phone call.

Obviously, these are rare stories; yet they are rare partly because our attention to the sociology of borders is relatively new. Looking for a theory that could accommodate these narrative plots, the term "relational capital", taken from economics, provided an insight on these findings<sup>69</sup>. Relational capital refers to "assets that are created and leveraged through relationships. These assets enable relationships to become a resource for attaining individual and collective goals" (Blatt 2009, 534). Of course, adaptation is needed for a term from economics to be applicable for sociology. But if we assume that "assets" can be intangible, then we can say that "trust, identification, and commitment were assets that enabled relationships to become a resource for attaining individual (escaping home/register as a mother/graduating high school) and collective (limiting indefinite time in detention to twelve months) goals" for the narratives mentioned in this chapter. As opposed to the famous "forms of capital" articulated by Bourdieu (1986), relational capital is fluid and situational. It assumes no boundaries, no prior relations, it is activated at certain times and spaces, it is established through actions and speech, and its "assets" are intangible.

These narratives are as close as this thesis reached to Foucault's *pure description of discursive events*. A testimony to the infinite potential of creating ideas and thoughts, and expressing them in language and actions (Foucault 2012, 29-30). The narratives reflected a society comprised of chains, bridges, and net structures, disrupting the imagined binary of "us" and "them". They presented "complex communication", in which the narrators "created and cemented relational identities" (Lugones 2006, 84). The narratives presented resistance "to particular forms of oppression, at particular times, in particular spaces" (Ibid 2006, 77). Lastly,

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<sup>69</sup> "Relational capital" resonates with Foucault's concept of "strategic relations". Foucault described "strategic relations" as the capacity to structure the field of action of the other. He characterized these relations as a play of infinitesimal, mobile, reversible and unstable field, which expresses the exercise of power at the interior of relationships (Lazzarato 2002). This definition provides adequate articulation for the above-mentioned narratives. However, this concept describes the potentiality for resistance more than the ways in which "strategic relations" are formed or capable of achieving collective or individual goals.

the idea of “time is made human” (Husserl 1964) was most evident in these narratives and provided a different vantage point on immigration laws as situational. Amal’s resistance to the Citizenship and Entry Law was eleven years after its enactment and following her son’s birth. The Law of Entry became unbearable ten years into Evelin’s life in Israel and due to her mother’s collapse. In Vera’s case, she first experienced the law two years into her life in Israel, following her first steps of independence and her husband’s mental collapse. With this, I will turn to my conclusions.

## Chapter 6: Safe Dreams

### 6.1 THE JEWISH STATE

When my grandmother made preparations for her burial, she received a letter from the Ministry of Interior stating that she would have to convert to “Judaism” to be buried next to my grandfather. To which she responded, in her typical sense of humor, “I didn’t like him anyway.” My maternal grandparents escaped the Holocaust, and we grow up with its ripple effects. The Holocaust raised my mother and uncle, and us with unspoken anger and pain. With a sense of loss and a vengeful instinct to protect “our” new land. The “Jewish State” was initially thought of and enacted by the Nuremberg Laws, or, to quote Amal, “If it wasn’t for the Holocaust, the Zionists would not lead to a Jewish state”. Yet, one fundamental question hovers above the claim of repetition and the sense of origin. To quote Imre Kertész, “I don’t even know what this ‘Jewish people’ is, to be honest, but perhaps we shouldn’t raise that question, it’s a complicated one” (Kertész and Cooper 2011, 40).

The aim of this research was to disclose the narrated links between migrants’ types of entry to Israel, and the legal and social trajectories of their migration projects. Emphasis was placed on associative links that perpetuated a normative world of “us” and “them”, which were in odds with statistical data or historical facts. A philosophical reading of the state’s right to exclude would-be migrants served as the basis of my inquiry. Immigration laws stood at odds with liberal principles and reflected a state of exception. Laws, which once shaped the “face of nations” (Ngai 2014), are today, and for the past fifty years, shaping a stratified system of eligibility to individual liberties. To further my inquiry, Israel was chosen as a case study of a liberal democracy, a high-income country, and an immigrant’s society, which deploys several mechanisms of outlawing as part of its immigration laws.

Six migrants, who entered Israel under the Law of Entry, narrated their life histories as “subjects in socio-historical contexts” (Sandino 2006, 275). Their narratives brought to life the theoretical background and articulated prominent issues in migration studies. They highlighted textures of social fabrics and contextualized Israel as part of their life stories. To analyze the narratives, I deployed a Foucauldian discourse analysis, suspending the manifested discourse of the Israeli immigration laws: “all Jewish are returning migrants” and “all non-Jewish must leave the Jewish state”. The Law of Entry was divided into two groups: entry through land and entry through the national airport. Each type of entry corresponded with different narratives, different normative worlds, and highlighted a stratified system of eligibility to individual

liberties. The findings of the research provided anecdotal evidence to the ways in which “law normalizes and naturalizes social relations and helps to structure the most routine practices of social life” (Ngai 2014, 12).

Entry through land was narratively associated with a threat to sovereignty. The narrators described normative worlds of indifference, criminalization, and animosity. Entry through land was outsourced from the Law of Entry to Israel to designated laws, which eliminated individual liberties of both migrants and Israeli citizens. The right for family life and the right for asylum were denied for people crossing through land, marking them as “less worthy of protection”. Entry through land led to the complete denial of a route to residency or citizenship in Israel. Correspondingly, entry through land was associated with an informal process of absorption, with administrative violence, and with the migrants’ need to deploy litigation to protect their individual liberties.

Entry through the airport was narratively associated with temporality and deportability. The narrators described normative worlds of rejection, subordination, and captivity. Their eligibility to individual rights was dependent on and conditioned by their type of permit, and the good will of the Israeli citizenship holders. Migrants who entered Israel through the airport and under the Law of Entry were narrated as “less equals”. Their partial inclusion, discrimination, and precarity exacerbated by a lacuna in the way the Israeli law addressed their realities of migration. Pathways to citizenship or resident status in Israel were conditioned and exceptional. Similarly, entry through the national airport was associated with formal and informal processes of absorption, with administrative violence as well as an institutional agency, which suspended the immigration laws, and with opportunities to expand the entitlements given under the Law of Entry to Israel, with and without litigation.

The narratives from both types of entry were saturated with exposure to administrative violence and its many effects, shaping the process of absorption and the possibility to protect individual liberties. Attaining resident status was more a matter of luck and timing than anything else. However, in this small sample, legal entry was found crucial for the possibility to make further claims for individual liberties. Needless to say, the legal tools deployed to mark people as “less worthy of protection” and as “less equals” are not unique to Israel. The state of asylum procedures is reaching a breaking point, long before the real refugee crisis had begun (Black 2003, Crisp 2003, Goodwin-Gill 2011, Greenhill 2016, Kalir 2017, Naimou 2016, Zetter 2007). Discriminatory legislations to limit the liberties of mainly the poor/African/Muslim citizens in liberal democracies are neatly concealed in a liberal jargon of

justice (Alexander 2011, Bierbach 2008, Conte 2005). Working migrants on temporary visas, unauthorized migrants and minors, as well as status-dependent migrants, are also part of a system of modulation designed to control population flows in most liberal democracies (Ambrosini 2015, Anderson 1993, Castles and Kosack 1972, Coutin 2003, O’Connell Davidson 2013, Huang, Yeoh and Toyota 2012, Meloni, et al. 2014, Olivares 2014, McLaughlin and Hennebry 2013).

## 6.2 “THE ART AND SKILLS OF LIVING WITH DIFFERENCE”<sup>70</sup>

The anecdotal findings provide some insights about the reality of outlawed migrants in the Israeli context. First, “living and the productive requirements of life have moved to the heart of the political struggle” (Lazzarato 2002, 99). Not only migration was narrated as part of a political struggle for a better future but also births, marital choices, family life, scholastic achievements, friendships, and work. In simple terms, what was once an unquestionable civil duty – to provide a birth certificate, to teach, to protect the rights of workers – have become political statements about entitlement and inclusion.

Second, while the private and public spheres become indistinct, there is a growing gap between the rule of law and principles of liberal democracy. Law supposed to “permit those who live together to express themselves with it and with respect to it” (Cover 1983, 14). To achieve that, democracy must be strengthened with diversity, through the expansion of electoral rights (Raskin 1993). However, electoral rights are designated only to the privileged “us”; thus, law is becoming less of a reflection of democracy, and democracy is becoming less effective as a tool through which people can safeguard their individual liberties (both immigrants and citizens). Moreover, litigation is becoming a crucial language for liberties, and courts have become a new sphere of democracy. The main difference is that justice systems tend to prefer the interpretation of the state to the law. To quote Isa’s impression from the Israeli supreme court, “as far as I am concerned, the supreme court don’t want to go against the state”.

Third, while legal permits to stay in Israel provided little protection from the state’s violence (Isa, Theo, and Melvs), coalitions were narrated as a gate through which individual liberties were accessed. The skills of action involved knowing whom to trust, creating mutual/reciprocal dependencies, and joint commitments. Actions involved choosing which

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<sup>70</sup> (Bauman 2007b, 4)

forms of oppression to resist, when, and where. They demanded the ability of the migrant to protect herself/himself from oppressive readings. Moreover, the suspension of immigration laws by civilians was narrated as based on core principles of liberal sociality: equality, solidarity, risk sharing, commitments, and trust. Thus, one of the main challenges of living with difference arise from the need to challenge the law. Performativity and precarity in the lives of the authorised population may arise from the performance of civil duties towards outlawed migrants. The ethically imperative duty to assist people armed with dreams of a better future, suggests the risk of complicity.

As noted by Bauman (2007b) while the narrative plot of “us” and “them” is as old as the known written history, the distinction between them has lost much of its former meaning and clarity. This raises questions about the ability of the “us” to depart from the illusion of “them” and to cultivate a future of “we”. For example, how liberal democracies’ sociality – trust, solidarity, and commitments to shared goals – adjust themselves to notions of temporality and lawlessness? How the growing role of the judicial system in managing democracy affects the attainment of individual liberties? And how, in the midst of a global civil war on people armed with dreams of a better future, can attention be directed to the systematic study of the arts and skills needed in order to amplify the capacity of societies to live with difference?

As an Israeli-Jew, the Holocaust and the Jewish State were narrated to me as contradicting events. As a committed listener to my grandparents’ stories of escape, they become more and more similar as I grow older. For me, the Holocaust is more of a blueprint for modern nation-states, than a “never again” story. Populations are monitored, classified, and treated according to a coherent narrative about entitlement, and through the rule of law. For me, the ease with which facts, statistical data, and universal declarations are discarded in the face of modern challenges, and the ease with which people are defined as less worthy of protection, is far more alarming than people’s dreams of a better future. My Auschwitz taught me that humans can witness the end of humanity, but not the other way around. To quote Evelin’s conclusions of her life in the Israeli turmoil, “I had no tears left; they took it to the limit of my ability. But human, human, he is interesting; and even when he doesn’t want to, then he will lift himself”.

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# Annex 1: Mapping the Narratives

