

ARTICLES

Politics and Crime in Israel: Reactions from the Home Front

Stanley Cohen

Author's Preface

THE FOLLOWING IS A SELECTION of my reactions as a criminologist to the events in Israel over the two years since the beginning of the Palestinian uprising in December 1987. There is no general political analysis here, nor any account of our work in the left opposition forces, which are involved in the symbiotic struggles for social justice in Israel and solidarity with the Palestinian's claim for self-determination in their own state. These documents don't emerge, then, from the center of the political terrain but rather from those interfaces — such as "human rights" — between this terrain and the academic subject of criminology.

The first document is a summary of a talk that I gave at the annual conference of the Israeli Society of Criminology in May 1989. There is no need for readers of *Social Justice* to be given any explanation of the theoretical routes taken by critical criminology over the last two decades. The point is to relate these ideas to a discipline like criminology in Israel. As you will see, this entails making some rather obvious points. This lecture was an untheoretical and polemical version of larger project I hope to undertake about the role of academics and intellectuals in Israeli society.

The second set of documents consists of a few of the Op-Ed articles that I published over this period in the *Jerusalem Post*. This is the daily English-language paper in Israel, more or less in the liberal center of the political spectrum, supporting the Labour Party side of the national coalition government.

A final document is a letter I wrote to the Dean of the School of Law at the Hebrew University. Such are the traditions of academic life that no other statement I have made evoked stronger denunciation than this. These reac-

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tions, however, are not meant as expressions of my own personal situation. Rather, there are examples — perhaps of relevance elsewhere — of the limitations of our intellectual baggage in confronting political realities as desperate as these.

The Political Responsibility of Criminology in Israel Today

1 ■ SINCE THE LANGUAGE REVOLUTION after the First World War, since the Frankfurt School, and most clearly since the consolidation of various forms of critical theory in the 1960s, every branch of the social sciences has been touched by the anti-positivist debate. The problems raised by critical theory — value freedom, objectivity, and neutrality; the relationship between observer and observed; the connection between knowledge and power; the political and moral responsibility of science; the ideological implications of academic work, and so on — have become standard and unavoidable. Since the 1960s, the debate has been further elaborated (and sometimes transformed) in discourse analysis, deconstructionism, critical legal studies, and feminist theory. No aspect of what Foucault calls the “soft sciences” has been unaffected by the critical movement.

2. FOR REASONS THAT FORMED PART of the critique itself and were to be exposed in the revisionist historiography of the discipline,¹ criminology was slow to register these debates. What Matza described as the amazing achievement of late 19th-century criminological positivism — the separation of crime from any contemplation of the state — ensured that the technocratic, correctionalist, and (apparently) apolitical role would dominate the discipline. By the end of the 1960s, though — initially from labelling theory and then from various versions of “critical,” “radical,” or “new” criminology — the obvious alternatives were opened up. These alternatives are too well known to summarize here. Nor is this the place to consider their roots in the more general critical tradition. Suffice it to say that for all serious criminologists in the Western world, the agenda now included an imperative to examine the nature of our whole enterprise. It was also, in particular, to register the moral and political implications of doing research, constructing theory, and advocating policy.

3. TAKING STOCK OF THIS AGENDA some 20 years later reveals the many over-simplifications, contradictions, and rhetorical excesses in the original critical project.² The emergence of “Left realist criminology” in Britain even heralds some sort of self-reversal by one part of the original radical cohort. Whatever these internal revisions, though, the heritage of the critical “moment” is very much alive — in feminist criminology; critical legal studies; the debate between realism and abolitionism; the confrontation with neoclassi-

cism; the continuing efforts of destructuring movements (informal justice, decarceration, etc.). Thus, the taken-for-granted residues from critical theory remain on the agenda in questions about the relationships between funder and researcher, cooperation with state control agencies, the choice of subjects for research, the political role of the criminologist, the nature of state crime, and abuses of power. There are, to be sure, many obvious differences in preferred method, theory, and substantive interest which at least look “clean” from the worries of critical theory. That is, there are many internal “games of truth” that can be played without invoking too many shrill moral imperatives. That is as it should be. But at the meta-level — the way we order our self-images — there are choices to be made between (in caricature): technical service for the state, detached observation, and commitment to social justice.

4. IN ISRAEL, THOUGH, NOTHING AT ALL of this discourse has been registered. Conditioned, of course, by my immersion in these debates elsewhere, my personal reactions to Israeli criminology in the eight years I’ve worked here have sometimes been like travelling back in a time machine. The mainstream of the discipline is frozen at the place it was, say, in Britain and Western Europe 20 years ago — and there are no visible sidestreams. There is no interest at all in critical theory; there is little questioning of the rehabilitative model and its professional power base; archaic enterprises such as “clinical criminology” still command academic respectability; with a few exceptions (the work of Ben Yehuda and Cromer on political deviance, and Shelef on human rights), little attention is paid to forms of crime and control outside the conventional conception of the “crime problem.” Above all for my argument here, there is no questioning of the cosy and servile relationship between academic criminologists and the criminal justice apparatus.

5. THE REASONS FOR THIS lack of skepticism — the absence, that is, of any debate about these issues — are not, of course, confined to criminology. A similar conclusion could be drawn about law, psychiatry, social work, and indeed the entire social sciences. Despite the fact that Israeli intellectuals see themselves as belonging to the Western intellectual tradition, an entire stream of this tradition (Marxist and other critical theory) is virtually absent here and the cultural revolution of the 1960s simply did not happen, nor was any element of New Left thinking registered, even in a critical way.

The reasons for this are complex — and surely deserve sustained attention. The tightness of Zionist ideology; the national consensus around core values; the preoccupation with survival, security, and nation-building; the close links between military and civilian life; the instrumental nature of student culture; the hegemony until the last decade of the Labour Party; the smallness of the society and the close overlap between the formative generation of power elites (the male friendship bondings from school, pre-state underground groups, army, Labour Party) — all these elements might help us understand why so

little of an independent intelligentsia has emerged, any influential group able to take some distance from dominant social myths, able to stand a little bit on the margins of their own society.

There is no reason why criminology should be exempt from this general tendency. Indeed, given the history of criminological knowledge — its emergence, in Foucault's terms, as an elaborate "alibi" for the exercise of power — we can only expect the subject to be an extreme example of the overall national situation. (I am stressing here only these national specifics. Needless to say, any such remarks about criminology, the social sciences, or all academic life in general make little sense without comparison to other societies.)

6. WHATEVER THE COMPLICATED REASONS for all this, the *consequences* are plainly visible. The direction of Israeli criminology remains pragmatic, correctionalist, and atheoretical. Under the guise of scientific objectivity, there is an unquestioning acceptance of dominant state ideology. Criminologists, that is, have successfully reproduced positivism's most elegant sleight-of-hand: being neutral *and* serving the state.

Close relations are maintained with criminal justice agencies and care is taken not to offend those who control access to research. Sensitive subjects like torture, the operations of the Shin Bet (the General Security Services), deviance and control in the army, police violence, and the treatment of political prisoners are studiously avoided. Subjects suitable for publication in American professional journals are cultivated. The Israeli Arab population has been almost totally ignored: research projects, say, about "the epidemiology of drug use among Israeli high school students" turn out (without a word of apology or explanation) to refer only to Israeli *Jews*, thus ignoring 18% of the population; research on ethnic discrimination by the police turns out to refer to the Askenazi-Sephardi difference without mentioning Arabs at all; no one explains why illegal building by Arabs is a crime.³ Until recently, there has been little attention to female victims of male sexualized violence. There is little interest in understanding how general criminological ideas have been affected by the national context.⁴ And in eight years, I have not come across one discussion (unless I initiated it myself) of the moral problems of doing criminology. Students with whom I have raised the subject are genuinely puzzled — they cannot even imagine any role other than the technical, professional one.

7. NONE OF THE PROBLEMS about the role of criminology — and especially, its political and moral responsibility — has any general, abstract solution. If the subject is to have any intellectual integrity, these problems must be recognized as universal — but their solutions are *always* contingent on the particular national and historical conditions in which we find ourselves. In more-or-less functioning social democracies — without massive injustice, repression, or gross violations of human rights — criminologists might be reasonably secure in their role as knowledge suppliers to the state welfare and

control system. They might want to be critical, but not to the point of interrogating the moral legitimacy of the system. We might nag them to be theoretically self-conscious, but we cannot glibly dismiss their role as immoral.

In other societies, however — military dictatorships, let us imagine, where daily life is dominated by some combination of state terror, guerrilla warfare, corruption, and drug racketeering — criminologists will arrive at a different relationship to the state. The study of standard criminological subjects such as “race and crime,” “police discretion,” “street violence,” “prison conditions,” “criminalization,” “justice and social control,” or “political crime,” will surely be a different sort of enterprise in, shall we say, South Africa or Colombia compared with Switzerland or Norway.

All this is obvious. Our question is where does Israel fit?

8. IT IS MY OPINION that for a long time now — clearly since the beginning of the Military Occupation of the West Bank and Gaza 22 years ago, but inescapably since the beginning of the *intifada* in December 1987 — the actions of the Israeli state have passed the limits of moral acceptability. The brutal repression of the uprising — the beatings and killings; mass arrests, mock trials, and imprisonment; administrative detention; collective punishments such as house demolitions; deportations; torture and inhumane prison conditions; the daily rituals of humiliation; closing the entire educational system — these, and other well documented atrocities and abuses of human rights are not only morally repugnant, but also violate all accepted standards of international law.

Moreover — as I’ve argued elsewhere⁵ — no one can seriously pretend that all this is occurring in an insulated military realm beyond the Green Line and therefore does not affect the basic contours of democracy and the rule of law within Israel itself. Every part of the Israeli system — the police and Border Guards; the Ministry of Justice; the Prison Service; doctors, lawyers, and psychologists doing their army reserve service; the whole control and welfare apparatus in East Jerusalem (now close to a “police city” for its Palestinian residents) — is deeply implicated in the Occupation.

To take a “minor” example: research I am doing on settler violence shows that out of the *at least* 17 cases of settlers who have killed Palestinians since January 1988 to May 1989, only three have reached the courts. These suspects are all Israeli citizens, subject to the civilian Israeli legal system. In addition to these killings, there have been hundreds of documented cases of collective violence, harassment, and humiliation — pogroms in the making — by settlers acting outside the law.

When a commission headed by an ex-President of the Supreme Court (the 1987 Landau Commission) detailed the routine practise of torture and perjury on the part of Shin Bet operatives — but then went on to recommend that those responsible should not be punished, and then even to *justify* the use of “moderate physical force” — then some warning signal should have been

registered and what further warnings do we need than the *Prime Minister's* public response (on May 5, 1989) to the tragic political killing of two Jews by a Palestinian in the streets of Jerusalem: a justification of lynch-justice by calling on citizens not to let such offenders "get away in one piece"?

The comfortable belief that we are living in a fully functioning liberal social democracy — with a few "security problems" round our Green Lines and borders — surely cannot be sustained for a minute.

9. THE IMPLICATIONS OF ALL THIS for Israeli criminology should be profound. To raise, cryptically, a few issues:

- A. Can we take for granted that we are living and working in a society where the basic assumptions of democracy and legality still apply? If not, how does this affect the way we study the police, courts, and correctional system? Or what we teach our students?
- B. Should we not have begun by now to adjust our research and theoretical agenda to respond to the dominant facts of crime and its control in Israel today? Surely there are some other relevant subjects to *add to* — I stress not *replace* — the standard concerns of Israeli criminology. These must include: state terrorism; the criminalization of the entire Palestinian educational system; the desensitization to violence and brutalization on both sides; the possible carry-over of military violence into domestic life; the penalization of conscientious objection; the nature and effects of Palestinian resistance and violence; the politicization of Israeli Arab crime and its control — and so on.
- C. What about our relationship to state agencies? Surely we ought to think twice about, for example, taking money from the police for research, sitting with them on committees, or inviting them to give seminars to our students. How can we even *contemplate* inviting the Minister of the Police or the Minister of "Justice" to open our conferences? Everyone of us accepts that there is some moral limit to the state-technicist role. If we are against capital punishment, we don't take money to investigate humane forms of execution. Are there not any limits to academic criminology's willingness to cooperate with state agencies in Israel today, any point where a little *tension* might be a good thing?
- D. And our relationships to the *victims* of state violence? Does not our commitment to values of social justice call for a more activist, interventionist role on behalf of those at the receiving end of abuses of power? There is an obvious and urgent role for criminological skills — for example, in doing research on prison conditions — in cooperative work with human rights organizations. If ever some degree of

professionalism were needed rather than well meaning, but often tendentious amateurism, this surely is where we could be useful.

- E. And what about the universities in which we work and the values of academic freedom that we take for granted? As much as the critical tradition has sought to undermine the idea of the liberal university, so it is dependent on it. And surely the closing down of Palestinian universities must carry some warning for our own future independence. As is true in many Western social democracies today, classic liberal, civil-liberties causes have to be defended from more “radical” positions.

10. THESE ARE RHETORICAL QUESTIONS and I do not pretend that they have easy, unambiguous answers — neither morally nor intellectually. And although I have my own personal preferences, I seek no license to preach or convert others to my position. All I can claim with certainty is that the conventional, taken-for-granted stance of Israeli criminology as the technical servant of the state has to be scrutinized. There are two competing alternatives to this, each with its own appeals and limitations.

The *first* is that of the detached academic observer. He or she sees the criminologist as closer to the sociologist of religion than to the rabbi, as doing sociology *of* the police, not sociology *for* the police, as aspiring to the hallowed goal of knowledge for its own sake. In these terms, the criminologist in Israel today is not a hired hand of the state, but also has no more (or less) political “responsibility” than the historian studying medieval Jewish manuscripts. Any political commitment would be guided by values derived from outside the subject and, moreover, would be *expressed* right outside the subject. The political struggle has nothing to do with your academic work; indeed, you try hard to avoid “politicizing” the discipline. Although there are obvious theoretical flaws in this first alternative (and I personally don’t understand how it can be sustained psychologically in Israel today), this is a position that can be honorably defended — though I have yet to hear a single Israeli criminologist do so.

The *second* alternative is that of the committed partisan in the struggle for social justice. The criminologist unashamedly takes sides — and if this means to be “against” the state, so be it. The implications of political commitment must be followed through at all levels of knowledge and power: whether in teaching, research, or policy. The line between academic and political work might be there, but it is to be constantly negotiated, rather than taken for granted. This, again, is a stance fraught with problems. Its morality and politics (as the “Left realists” have pointed out from within the radical camp) can be inconsistent if not absurd. And when judgement is made subservient to political expediency, our overarching commitment to intellectual honesty is forgotten and our work degenerates into mere propaganda.

So each alternative has its own severe internal problems — problems which are compounded when we try (as some of us do!) to combine them or to oscillate between them. My plea here is only that these dilemmas be recognized. In other societies which, in my judgement, are faced with comparable problems, this has happened long ago. In South Africa, for example, an Institute of Criminology can choose to combine high-level academic work with an engagement in the political struggle that dominates the society (for example, by monitoring police killings, reporting on torture and detention, and educating communities to report human rights abuses).⁶

I believe that in abstract all of you understand the dangers of the political corruption of law and social science; you just don't accept that in Israel we have already reached that danger point. The fact, though, that this conference is devoted to the subject of "crime and politics," that a session on human rights is on the program, and that you are allowing me to express my deviant views, are welcome signs that some movement is taking place. In other areas of study in Israel, in history, literature, and even psychology there are further healthy signs of a willingness at last to confront dominant social myths.⁷

We all learned from Durkheim about the positive functions of deviance in clarifying the moral boundaries of society. There is a chance that the positive functions of the terrible period we are living through now will be to clarify the boundaries of intellectual and moral responsibility.

NOTES

1. Notably, of course, by Michel Foucault in *Discipline and Punish* (London: Allen Lane, 1977). For a more concrete historical study of the emergence of criminological knowledge, see David Garland, *Punishment and Welfare* (London: Gower, 1985).

2. I record something of the story of critical criminology in: Stanley Cohen, *Against Criminology* (New Brunswick: Transaction, 1988).

3. The only serious, if preliminary, attempt to deal with the subject of Israeli Arabs in the criminal justice system comes from a Palestinian sociologist living in Canada: Elia Zureik "Crime, Justice and Underdevelopment: The Palestinians under Israeli Control," *International Journal of Middle Eastern Studies* 20 (1988): 411–442.

4. Two interesting recent studies of the national transformation of criminological knowledge are: David Garland, "Politics and Polity in Criminological Knowledge: A Study of Tendentious Reasoning and Rhetoric," *International Journal of the Sociology of Law* 13 (1985): 1–33; and Dirk van Zyl Smit, "Adopting and Adapting Criminological Ideas: Criminology and Afrikaner Nationalism in South Africa," paper presented at 10th International Congress on Criminology, Hamburg (September 1988). The most relevant literature on the subject comes from Latin America.

5. Stanley Cohen, "The Myth of the Rule of Law," *Jerusalem Post* (January 23, 1989).

6. See: Institute of Criminology, University of Cape Town, Eleventh Annual Report (1987); and Dirk Van Zyl Smit, "Institute of Criminology, University of Cape Town," *The Criminologist* 13,3 (May–June 1988): 12. For an example of work coming out of this Institute, see D. Foster, D. Davis, and D. Sandler, *Detention and Torture in South Africa* (Cape Town: David Philips, 1987).

7. Note the work of recent revisionist historians such as Morris, Flapan, Pappe and Shlaim. Some of this is reviewed in Benny Morris, "The New Historiography: Israel Confronts Its Past," *Tikkun* 3,6 (November–December 1988): 19–23, 99–102.



Crime and Politics

IN *THE JERUSALEM POST* (February 10), Dr. Mamdouh Aker offers his diagnosis, as a Palestinian physician, of the current political situation. My analysis as an Israeli criminologist will be very much the same. Not because we share any esoteric professional knowledge, but because we have the same universal values and recognize the same common-sense truths: namely that the demands behind the Palestinian uprising are just and justified. This is not a problem of unrest, disturbances, or law and order. Without an end to the Occupation, the recognition of the PLO as the legitimate representative of the Palestinian people and their right to self-determination in an independent state, nothing will be solved. So much for the obvious.

Is there anything in academic criminology that might give any more special insight into the current situation? In truth, not much. Everything that we can say about the causes of the uprising, the failure of successive Israeli governments to find a remotely acceptable political solution, the frustration and bitterness engendered by the unending occupation, the conditions in the refugee camps, the emerging Palestinian sense of control over their own destiny — all this belongs to the language of politics and not crime.

Of course the Palestinians on the streets are breaking laws — not just the obvious criminal codes protecting people and property, but the hundreds of military orders (most of which, of course, are quite illegal in international law). It is less than obvious why wearing a T-shirt with the Palestinian national colors should be a crime, but no one can pretend that throwing stones or Molotov cocktails is not dangerous. These, however, are not "ordinary" crimes for two simple reasons: first, the action is based on a clear political ideology, which includes an explicit refusal to regard the occupier's law as legitimate or morally binding; second, the authorities have long given up even the pretense that "offenders" are being arrested, charged, and brought to trial for a specific crime. Their crime is to be a Palestinian living under Israeli rule.

It is under these conditions that the "deterrent effect" must be understood. Contrary to common-sense expectations, there is no evidence to suggest that most forms of ordinary crime can be controlled by a simple escalation in the severity of punishment. Increasing the length of prison sentences, for example, makes little overall difference to crime rates. And putting high-risk criminals

out of circulation ("selective incapacitation" as this is called) is technically infeasible and prohibitively expensive. When there is a widely supported movement of political resistance which is directed precisely against the legitimacy of the law, then deterrence becomes even more unlikely. It does not take a Ph.D. in criminology to know that under these conditions the only likely response to the Iron Fist will be further bitterness, deeper hatred, and a stronger resolve to continue what is believed to be a justified struggle.

Let us make the unlikely assumption, though, that our military and political strategists were proved correct and that this round of "disturbances" will be subdued for a manageable period. This would hardly settle the matter. No society pretending to be democratic can use the sole criterion of "what works." This is true for ordinary crime as well. It is simple enough to devise effective forms of control: cutting off the hands of every single shoplifter will "work." But these decisions are made in terms of our values and not just our technical resources. This is the way to judge Defence Minister Rabin's declared strategy of "ending" stone throwing by breaking the hands and arms of stone throwers.

This leads me to the nature of Israel's policy itself. Formal definitions (especially legal) sometimes obscure reality; it may or may not help matters to point out that Israeli soldiers are now committing obvious criminal offences. By any standards of national and international law, a soldier (under direct orders or not) who breaks into a house, drags out a 15-year-old boy, and then breaks his arms and legs, is a criminal. But this, again, is an "ideological crime" — the term that was explicitly used by the Landau Commission last year to justify the systematic use of torture and perjury by Shin Bet operatives. If you believe in a higher morality that transcends the law (Zionism, *halacha*, the revolution, or whatever), no legal system can touch you.

Leaving moral justifications aside, we must remember that the crimes being carried out by the soldiers — like all crimes — are learned. There are instructions about what to do, rewards for conforming to these demands, punishments for nonconformity. At each stage, the behavior is reinforced and the tolerance level (for what you will do or allow others to do) is changed. Violence thus becomes normalized. The cumulative result might be (as the 470 mental health workers suggested in their recent petition) that the violence spreads to the rest of the society: schools, personal relationships, families. But we have no clear evidence for this effect. What is more certain — and equally disturbing — is that the edifice of the legality breaks down once a whole minority national group is identified as a legitimate target for violence. Not just soldiers and border guards but also the regular police will learn that attacks on these "cockroaches" (Eitan) or "two legged monsters" (Begin) will be condoned.

We have the perfect recipe, then, for what the language of politics calls "escalation" and what criminologists call "deviancy amplification." On the

one side, the threshold of fear is being lowered: the Palestinians in the street have gone past the stage of caring what might happen to them if they continue. All they fear is to go back to where they were two months ago. On the Israeli Jewish side, the threshold of violence is being lowered. The government, the army, and their supporters (so far, the vast bulk of the Israeli public) fear that if they let go now, then the battle will be lost. All they want is to go back to two months ago: a state of "order," however sullen and fragile.

But this analysis is not meant to be pessimistic; the cycle is not yet closed. One of the most depressing research findings in modern criminology is that "nothing works." That is, however much we might vary the treatment of individual criminals, the results will be much the same. But this applies only to *individual* intervention. As soon as we identify the *social* causes of crime — deprivation, inequality, alienation, demoralization — then differences between societies have a vast effect on the crime picture. Similarly, by analogy only, like Dr. Aker's medical analogy from the language of "diagnosis" and "treatment" — the cycle can be broken not by turning troublemakers into individual criminals, but by turning the trouble into an opportunity for a political solution.

Reprinted from *The Jerusalem Post*, February 16, 1988.



Geography and the Rule of Law

FOR A LONG TIME NOW — perhaps since the beginning of the Occupation in 1967, at least for the last 10 years, and certainly since the start of the *intifada* in December 1987 — a powerful myth has been circulating under the title of "The Rule of Law in Israel." The myth goes something like this:

"Israel is and always has been a functioning liberal democracy. All the standard elements of the rule of law are honored: civil rights, freedom of speech, an independent judiciary, due process, the right to appeal, and so on. True, there are occasional lapses and departures (*harigim*) but these are invariably brought to light and the system contains mechanisms to rectify its own errors. As to the Occupied Territories — well, that's an entirely different story. Everyone understands that the rule of law ends beyond the Green Line. Military regulations, the security situation, public safety, the needs of the army and settlers, varied interpretations of international law — all this means that con-

ventional notions of justice and human rights must be suspended pending a political solution.”

This myth is disseminated in different circles for quite different reasons. Government supporters who understand well enough the manifest absurdity of the claim that the whole occupation and the repression of the uprising are being conducted according to the rule of law find the myth useful to justify anything. “Here,” things are fine, but “over there” we can’t afford the luxury of legality.

MORE IMPORTANT, though, opponents of the government also find the myth helpful and are responsible for working out its most elaborate forms. Thus politicians from left-liberal parties, civil liberties groups, liberal lawyers, and academics all employ the myth as a criticism of the government. How dreadful that these official illegalities and violation of human rights are occurring: detention without trial, collective punishment, deportation. They will only stop when a political solution is found (ending the Occupation, as some will even concede). Meanwhile, the legal system can only be used to restrain or delay the more gross violations (for example by appeals to the Supreme Court). All we can do now is be vigilant — and set up civil rights bodies to monitor and condemn these violations according to the high standards that apply here in Israel.

These critics all earnestly repeat this story to themselves, their students, and colleagues and to credulous journalists and visitors from abroad. It’s a good story — and it even contains a kernel of truth. No one can seriously deny that the major lines of the rule of law are present in Israel — just to the same extent that they are absent in the Occupied Territories. But beyond this, the myth bears no relationship at all to reality. An intelligent schoolchild will surely spot the following points:

- **Police:** Do not members of the same Israeli Police Force, responsible to the same Minister of Police, also serve in the Territories? And what about the police operating in East Jerusalem and its surrounding villages and refugee camps? (Is East Jerusalem “here” or “there”?) Then there are the Border Police (who are responsible for some of the worst “irregularities” in the past year) — aren’t they formally part of the Israeli Police rather than the army?
- **Courts:** Hasn’t it been the regular Israeli courts that have judged Occupation cases — land confiscation, deportation, house demolition, appeals — for the last 20 years? And surely these same courts deal with the crimes (killings, assaults, harassment) by the (illegal) settlers from the Territories.
- **Ministry of Justice:** There might be some members of the ministry staff who deal only with Occupation matters — but surely most senior people (certainly the same attorney general and minister) are responsible for both sides of the Green Line. And how about documents such as the Landau Com-

mission's report on the General Security Service: did this permit "reasonable force" in torturing only people with mailing addresses across the border?

- **Prison and detention:** What about those prisons in the Territories — Jenin, Nablus, Ramallah, Hebron, J'naid, Gaza — which hold some 1,600 prisoners and are run not by the army, but by the regular Israeli Prison Service? Then there are prisons and detention centers in Israel — Ansar III, Atlit, Ramla, Meggido, the Russian Compound — which hold (illegally) at least 3,000 Palestinians from the Territories, but also belong to the regular Prison Service.

- **Settlers:** Yes, they live in the Territories, but aren't they subject entirely to the normal Israeli legal system?

- **Army:** Surely these are ordinary Israeli citizens — not foreign mercenaries — who are serving in the occupying forces. And are not some of these soldiers (the doctors in places like Dahariya, the lawyers who staff the military courts, those in the Education Corps who give lectures on subjects like democracy) the very same people who think that the Occupation is "out there"? And so on.

IT WOULD BE an insult to anyone's intelligence to "prove" these points with detailed evidence. There is only one simple fact to remember: the Israeli state is a single unity. For over half the 40 years of its existence, it has directly controlled a directly adjacent territory over which it claims sovereignty. The notion that a state's claim to the rule of law can be divided geographically is pure fantasy.

Why, then, don't Israeli liberals see this? (The Right, of course, with its concept of "Greater Israel," has long denied the myth.) Some perhaps might genuinely miss the point. Most, I am sure, understand things well enough — but need a morally convenient way to evade some tricky political and professional choices. The myth allows for business as usual. So: self-congratulation tempered with moderate criticism about Israel; apparently radical criticism about the Occupation. Such critics are not even consistent. If they really mean what they say, they have only two choices: working politically to end the Occupation or working professionally to deny the legitimacy they give to the Occupation.

Meantime, my colleagues in the Law Faculty here at Mount Scopus continue teaching about "the rule of law" — while in parts of East Jerusalem, or villages and refugee camps a few hundred meters away, people are being shot, beaten up, and summarily arrested. Some days you can smell the tear gas from the campus.

At about this time last year, students were awarded their law degrees at the annual graduation ceremony. It was the usual pleasant occasion attended by students, lecturers, and proud parents. Fine words were addressed to the graduates by a Supreme Court judge: the rule of law was the rule that transcended

all else. On January 25th, this year's graduation will take place (and there will be similar rituals at other universities, at the Bar Association, in the Knesset, in the courts). The rule of law will again be sanctified. I hope that I'm wrong, but I doubt that any of the speakers will refer to 10-year-old children being killed, to the conditions in Ansar, or to women being beaten in detention. To do so would be bad taste or — the worst offence of all — to bring politics into academic life.

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Education as Crime

Police said yesterday that they had uncovered a network of illegal classes held by two West Bank universities at private high schools in East Jerusalem (*The Jerusalem Post*, April 19).

WELL, AS I EXPLAIN TO MY STUDENTS each year, there is no fixed, constant, or universal way of determining what actions make up the category of "crime." Crimes have one, and only one, thing in common: they are actions designated as illegal by the state. Just about every conceivable human action has at one time or in one society been "criminalized": what books you read; how and with whom you have sexual relations; what chemical substances you smoke or drink; what flags you fly; how you dress...as well as the more obvious matters that most people think of as "crime" (theft, murder, rape, robbery).

So it should come as no theoretical surprise to discover that the Israeli military authorities have decided that education in the Occupied Territories is so dangerous that it must be prohibited and that the police must organize raids to uncover secret teaching networks. Nor should it be politically surprising to note that this designation of education as illegal (closing schools, banning alternative classes) is itself only of the most dubious legality. It goes clearly against local (Jordanian) law, against the Fourth Geneva Convention, and against the Universal Declaration of Human Rights. And nothing in Israeli law allows police in East Jerusalem to break up classes in private high schools. So declarations such as Dr. Gabi Baramki's (the acting president of Bir Zeit University) that "closure of academic institutions is a crime against the Palestinian people," use the word "crime" not just as a rhetorical term, but in the exact sense of violation of legality.

But neither respect for law nor sensitivity to international declarations of human rights have disturbed Israeli governments during the last 21 years and certainly not during the *intifada*. The ubiquitous system of military orders justifies everything in the name of security. Schools and universities have to be closed, we are told, because they are centers of disturbance and unrest.

This justification is extremely weak. While it is true that at some times and in some places schools have been focus points for demonstrations, protest, and stone-throwing (often in response to provocation and harassment from soldiers, settlers, or police), this cannot justify the collective punishment of indefinitely prohibiting the entire educational process. In the academic year 1987–1988, pupils in the West Bank lost some 175 out of 210 school days because of forced closures. In the current year, schools have only been open for 40 days. The most recent (January 20th) order closed all West Bank schools “until further notice.” Effectively, two complete years of schooling have been lost for some 290,000 school-age children. Universities have not functioned at all.

Why should they *all* be punished? And how can *kindergartens* be a “security threat” or gathering point for violence? And what about teachers being suspended, arrested, and harassed? Schools being used (as they were last year) as military camps? Then there is the position in Gaza: schools there have been allowed to stay open for much longer periods than in the West Bank without any obvious difference in the level of “unrest.” Even if the security/unrest argument were valid (preventing mass assembly points), this could hardly justify the prohibition of alternative education in private homes and gardens. Teachers in the West Bank have even been prevented by threats of punishments from distributing homework assignments to parents to give their children. Off-campus university classes have been raided by the police or army.

None of this makes sense except as a deliberate attempt to suppress all manifestations of Palestinian self-organization and to increase their ties of dependency on Israel. This has been happening for many years — and is the essence of the Occupation. The uprising has simply allowed for more extreme forms of collective punishment — which (as the authorities have correctly judged) will evoke no protest from the Israeli public. The Ministry of Education, the Teachers Unions, and the Israeli university authorities can all be relied upon to keep quiet. Perhaps they are impressed by the stigmatization of Palestinian educational institutions as “nationalistic” — a bizarre notion coming from one of the most nationalistic educational systems in the world, where institutions like the Hebrew University (even in its name) were historically associated with a movement for national revival.

Whatever theoretical or political sense we make of all this, the situation should surely be a little disturbing to the Jewish self-image as the “people of

the book,” the great bearers of culture and learning. But leaving aside questions of moral principle, surely no one can seriously believe that our long-term interest in finding a just and peaceful agreement with the Palestinians can better be served by exposing a cohort of children to the violence of the streets, detention centers, and prisons rather than to regular education.

But these are not the times for such rational considerations. Let’s leave it to future historians and criminologists to explain to their readers what the police force of the Jewish state was doing breaking up classes in literature, history, or mathematics. In Orwell’s *Nineteen Eighty Four*, war is waged by the Ministry of Peace. In Israel in 1989, a military occupation is organized by the “Civil Administration” and the main responsibility of the “Office of the Director of Education, Judea and Samaria” is to close down schools and universities.

Reprinted from the *Jerusalem Post*, May 18, 1989.



Settler Killings: Outside the Law?

THE MANSLAUGHTER TRIAL of Rabbi Moshe Levinger (a prominent settler leader) opened on May 22, 1989. On April 13, he was charged with the September 30, 1988, killing of 42-year-old Kaid Salej in Hebron. Levinger’s car was stoned, he fired into the air and then allegedly continued to fire even after the stoning stopped. His indictment was greeted with the predictable chorus from the Right and the settler lobby: “the Defence Minister should be on trial,” “Jews must be allowed to move safely in all of *Eretz Israel*,” “no one should be prosecuted for self-defence,” or “the State Attorney’s office is full of leftist and anti-Zionist elements” (Yuval Ne’eman, a Member of Parliament from the extreme-right Techiya Party).

Variations of these slogans have been used to justify the recent wave of attacks on Palestinians — both by settlers and by other Israelis seeking revenge. The slogans were heard again at Levinger’s trial, which he opened by telling the Jerusalem District Court that the leaders of the *intifada* should be tried in his place. The State Attorney’s office, he claimed, “was serving Ishmael instead of Israel.” On the same day as the trial opened, Likud Knesset Member Michael Eitan denounced the State Attorney, Dorit Beinisch, for appealing against the decision of the Beer Sheva judge who released on bail a Jew suspected of throwing a petrol bomb, on the grounds that this was quite different from an Arab throwing a petrol bomb. The appeal, Eitan claimed, was a capitulation to left-wing politicians: “When Yossi Sarid [a Member of

Parliament from the dovish Citizens Rights Movement (CRM)] shouts, Dorit Beinisch takes action.”

All this rhetoric relies on two assumptions. The first is that the settlers are always acting in reasonable self-defence in the face of immediate threat to life or direct provocation. The second is that the Israeli legal authorities are zealously (and therefore unfairly) holding the suspects criminally responsible and doing their utmost to bring them to justice.

The first assumption is open to many interpretations. Obviously there have been numerous incidents of throwing stones or Molotov cocktails that meet all reasonable criteria of danger and permit self-defence. But the vast bulk of settler violence falls nowhere near this category: planned rampages (wild shooting, smashing windows, burning cars and shops, and beatings) by organized groups acting in “retaliation” or simply to “show a presence.” As for the second assumption — the supposedly strict response of the Israeli legal system — there have been hardly any cases of this type of vigilante justice which have actually been punished over the last year and one-half. At worst, the army colludes; at best, soldiers on the spot try to restrain the more provocative settlers. Other forms of law enforcement now virtually don’t exist in the Territories.

A reasonable test of this second assumption would be to analyze the formal legal responses to the most extreme form of violence: killings. Since the start of the Uprising in December 1987, at least 17 Palestinians from the Occupied Territories have been killed by Jewish settlers. “At least,” because in addition to these certain cases — which I have checked from journalist’s reports, the files of three human rights organizations, and the few available first-hand accounts — there are eight other cases where settler involvement in killings was suspected at some point, but cannot be proved.

In only three of those 17 crimes have the suspected killers been charged and brought to court. Besides Levinger, these cases include Pinchas Wallerstein, the Chairman of the Mateh Binyamin Regional Council, on trial now for shooting and killing 17-year-old Nasser Ghanem Hamad of Beitin on January 11, 1988, and Israel Ze’ev from Shilo, sentenced in December to three years of imprisonment for manslaughter (shooting a shepherd, Jauda Awad, last May). In one further case, the police have recommended prosecution but the files are still awaiting a decision from the Attorney General’s Office (and given that the killing took place on February 7, 1988, my guess is that nothing more will happen). In three more cases (where settlers were briefly detained and then released) the police started an inquiry, and then recommended closing the file because of lack of evidence.

Another six cases have “disappeared” for other reasons: the police do not appear to have initiated any serious investigation, the case was transferred to the army, or else no official body claims any knowledge. (These include, for

example, the murder of Rawda Hassan, a 13-year-old girl shot at the gate of her house in Baka A-Sharkiya on February 22, 1988.) This leaves another four killings that occurred in the last two months that are still under some investigation. Going by previous statistical trends, perhaps one of these will result in some legal action.

In summary: 17 killings almost certainly committed by settlers in 18 months, with only three prosecutions. This ratio is hardly evidence of a zealous and formalistic application of the rule of law, plotted by leftists in the Attorney General's office in response to lobbying from Dedi Zucker (also from the CRM) and Yossi Sarid (the only two Knesset members who have indeed taken a consistent interest in this subject). Remember that this is the prosecution ratio for *killings* only. Hundreds of incidents of vandalism, arson, harassment, and serious injuries from shooting and beatings have evoked no legal response whatsoever.

Little in this story is new. Like many other features of the *intifada*, this period has seen a speeded up, more intense version of what was happening in slower motion during the previous 20 years of the Occupation. In the 1980–1985 period in particular (which covers the years of the Jewish Terrorist “Underground”), the threat of violence from settlers became a fact of life for many Palestinians. For obvious reasons — fear of retaliation and the knowledge that law enforcement authorities will not do much — these cases are heavily under-reported.

The context in which the killings take place is obviously very complicated — and the settler lobby is entirely correct to insist on a political rather than strictly legal reading of the situation. Besides those reasons, such as provocation or self-defence, which might conceivably stand up in a court of law, these events are classic political crimes. That is to say, the offence is justified by appealing to ideology. Like Palestinians (*haredim*) throwing rocks, these offenders will not concede that we are talking about “crimes.” Settlers believe that they have a divine right to be where they like, that the state has failed to protect them, and that Palestinians are less than human.

Above all, they have long understood the ambivalence of official government policy: a verbal allegiance to legality, but active support or tacit encouragement for them to operate without constraint. Their violence is facilitated by: easing the conditions under which they are allowed to be armed and organize their militias; the increasingly vague definition of “self-defence”; the long record of equivocal law enforcement (documented already in the 1982–1983 official Karp Report) and the low sentences in the few cases that get to court (remember the initial six months given to Nissan Ish Goyev for killing a 13-year-old Palestinian boy — later increased on appeal to three years).

All this adds up to a very dangerous situation. It can take only an event like the Beita incident to happen again, or an escalation of violence by the Pales-

tinians in which, this time (unlike Beita) they actually do kill or injure a Jewish child, for the full depth of settler frustration to be unleashed. And the more the political choices appear to open up in the international arena — further legitimization of the Palestine Liberation Organization, pressure from the U.S. — and reverberate here (even in the weak form of the Shamir-Rabin election plan), the more desperate will the settlers become, and the more likely to try to provoke the Palestinians further — thus inviting massive military retaliation.

On the same day that Rabbi Levinger's trial opened, President Herzog denounced "the practice of taking the law into your own hands." It must be made quite clear, however, that the concept of "taking the law into your own hands" is totally inaccurate to cover settler killings or the lynch mobs of Ashkelon and Ashdod. Taking the law into your own hands means that unauthorized citizens do what official law enforcement agencies are *allowed* to do. But no system of law — unless it be the unprecedented type of law that the Techiya Party tried to pass in November 1988, which would have formally placed settlers in a privileged legal category — allows an agency of law enforcement to kill people (whatever they may have done) without any trial.

Meron Benvinisti once described the legal situation in the Territories as "rule by law" rather than the "rule of law." In this context, the settlers are now dangerously close to being not just outside the law, but beyond any form of government restraint.

Reprinted from the *Jerusalem Post*, May 31, 1989.



January 19, 1989

To: Dean, Faculty of Law

Thank you for your reminder and invitation to attend the Faculty's Graduation Ceremony on 25th January. I am writing to let you know why I will not be present.

At the ceremony last year, someone whom I believe is now a Supreme Court Judge devoted his address to the usual exhortations about the rule of law. This principle, the assembled graduates were solemnly told, transcended all else. At the time he was talking, the current wave of events in the Occupied Territories were just beginning. These events, as I don't have to tell you — killings, woundings, and atrocities committed by Israeli soldiers and police; mass administrative detention; deportation; collective punishment; house demolition, etc. — are in complete violation of morality and of international and

national notions of the rule of law. Not a word about any of this was said at the ceremony. Nor, in the year since then, has the faculty made the slightest attempt to recognize the reality of what is going on within a few hundred meters of our building on Mount Scopus. This reality is a direct threat to everything the faculty professes to teach its students.

Given the year's silence, I have no reason to believe that anyone at the ceremony next week will raise the issue of the political situation confronting these graduating lawyers. For me to attend would be to collude in this denial. I am sorry that I'll be missing this opportunity to congratulate our criminology students. I hope that you understand my reason.

Shades of Gray

by Diane Csepela-Chehab

*Clouds of smoke
Mingle
With essence
Of caraway
Wildflowers blossom
Shades of gray
Blood runs down
Stone steps
Where veiled women
In shadows weep
While Israeli soldiers
Sneer
From their jeeps*