

Introduction

The Editors

Law and violence are often understood to be opposites. The rule of law is conceived of as constituting an orderly alternative to violence. In abandoning this dichotomous depiction of law and violence, legal scholar Robert Cover describes how law manages to work its lethal will while distancing itself from its violent deeds.¹ Violence, others argue, provides the method for establishing legal order, the means through which law works, and the reason for having law.²

This volume of *Adalah's Review* addresses this relationship between law and violence, and attends mainly, but not exclusively, to law's relationship to state violence. The questions that concern the authors in this issue are: How does law conceive of violence and authority? How does law relate, conceptualize, regulate, and punish certain forms of violence that threaten legal order? What forms of state violence are made legal and authorized by law? How does law draw the boundary between criminal violence and legal violence? Does law acknowledge its violent characteristics? And finally, what are the consequences of law's relationship to violence on questions of citizenship?

This issue was conceptualized in early 2001, after the eruption of al-Aqsa Intifada in the 1967- Occupied Palestinian Territories and in Israel, in an attempt to address these questions. Given the limited literature available on the Intifada in Israel, we decided to take state violence and its relationship to law during this period as our point of departure. At the same time, we chose to situate these forms of violence historically and connect them with state violence in the Occupied Territories. Meanwhile, during the course of

production of this journal, state violence in the Occupied Territories severely escalated. As of this writing, we have witnessed the military re-occupation of all Palestinian towns, the massive firing of heavy weaponry from the ground and from the air, targeted political assassinations, destruction of houses and fields resulting in the displacement of thousands of families, operations in the refugee camps and Palestinian towns resulting in the killing and injury of hundreds, the rounding up and interrogation of all men and boys and their massive arrests, the total closures and curfews, and the imprisonment of people in their homes taken over by the Israeli army. The offensive in the Jenin refugee camp, the siege of the Church of the Nativity in Bethelhem, the imprisonment of President Yasser Arafat in his compound in Ramallah, the total devastation of the Old City of Nablus, and the destruction of Palestinian Authority institutions and civil society organizations are specific events that testify to this escalation of state violence. The overwhelming continuous Israeli violence in the Occupied Territories and the changing nature of it requires another volume in order to analyze these wide-ranging forms of state violence and their relationship with law.

This volume maintains as its starting point the Intifada in Israel, during which the State employed violent means to suppress the political protests of its Palestinian citizens. State violence culminated in the deaths of 13 Palestinian citizens, the injury of hundreds, and the arrests of over 1,000 people. Some of these political protests developed into acts of insurgency, which took mainly the form of stone-throwing and the burning of tires to prevent



the police from entering certain Palestinian areas in Israel. Israeli law and legal actors were active participants in the employment and/or the evaluation of these forms of violence.

The Intifada in Israel erupted on 1 October 2000, three days after al-Aqsa Intifada broke out in the Occupied Territories. The Intifada in Israel was to be renamed as the “October Events,” or “Habatt October” (October Uprising), among other reasons that this introduction addresses, to distinguish it from al-Aqsa Intifada in the Occupied Territories.

On 28 September 2000, Ariel Sharon, then Likud Party leader and Member of Knesset (MK), surrounded by scores of soldiers, visited the Muslim religious compound of al-Haram al-Sharif. To Palestinians and many others in the international community, Sharon’s visit to this holy site was extremely provocative. The next day, Israeli security forces opened fire on demonstrators at al-Aqsa Mosque (located in al-Haram al-Sharif) who were protesting Sharon’s visit. Following these events, violent clashes erupted in the Occupied Territories, resulting in the death and injury of dozens of Palestinians during the first days.

On 30 September 2000, the High Follow-up Committee for the Arab Citizens in Israel called for a general strike by Palestinian citizens in Israel to express their solidarity with Palestinians in the Occupied Territories. From 1-3 October 2000, Palestinian citizens of Israel, in massive numbers, staged demonstrations in scores of Palestinian towns and villages throughout the country. On 1 October 2000, the demonstrators were met by Israeli security forces, and the protests developed into riots. In these areas, Palestinian citizen

demonstrators threw stones at the Israeli police, who opened fire on them using tear gas, rubber-coated steel bullets and live ammunition. On this day, the Israeli police killed two Palestinian citizens, and the news of their deaths led thousands of others to engage in intense acts of insurgency against the security forces on 2 and 3 October 2000. During these three days, the Israeli police killed 11 Palestinian citizens and wounded hundreds more.

During Yom Kippur weekend (8-9 October 2000), immediately after an attack on a Jewish holy site in the West Bank and the kidnapping of three Israeli soldiers by Hezbollah, Israeli Jews participated in anti-Palestinian riots, targeting people, properties, and mosques in various towns in Israel. Among the worst events was an attack on the Eastern neighborhood in Nazareth by hundreds of Israeli youth from neighboring Natserat Illit (a Jewish settlement neighboring Nazareth). The youth from Natserat Illit threw stones at Palestinian-owned cars and houses and set some of them on fire, vandalized and looted Palestinian shops and restaurants, and shouted “Death to Arabs.” As a result of the clashes in Nazareth, another two Palestinian citizens were killed by the police.

In October 2000, the police arrested more than 1,000 people for Intifada-related acts, about two-thirds of whom were Palestinian citizens and the remaining, Israeli Jewish citizens. By mid-October, the demonstrations and riots in Israel had ended, but arrests of Palestinian citizens continued. During October and November, Palestinian citizens comprised over 80% of those criminally indicted and detained without bond until the end

of trial.³ A national network of over 100 Palestinian lawyers represented the detainees on a voluntary basis throughout the criminal detention process.⁴

These events, namely, the killing of 13 Palestinian citizens by the police and the injury of hundreds more; the massive number of demonstrations in so many locations throughout the country; the sweeping arrests of Palestinian citizens; and the Israeli Jewish anti-Palestinian riots were a significant episode that seemingly reshaped the relationship between the state and the Palestinian minority. This episode, however, was not unique, aberrant or exceptional. In recent years only, police have used excessive violence against Palestinian citizen protestors, employing means not used against Israeli Jewish demonstrators. For example, in April 1998, violent clashes between Palestinian citizens and the police took place in Umm al-Sahali, following the court-ordered demolition of Palestinian homes in Israel. In September 1998, police in Umm al-Fahem clashed for three days with Palestinian citizen demonstrators, who were protesting against the expropriation of Arab-owned farmland for use by the army as a military training area. Hundreds of Palestinian citizens, including students, were injured by tear gas, rubber-coated steel bullets, and live ammunition, after police stormed the high school in Umm al-Fahem. Tens of Palestinian citizen demonstrators were also injured in Lod in June 1999 and during student protests in March and April 2000, due to police violence.⁵

Accordingly, this issue of *Adalah's Review* also convenes essays that address other forms of violence against Palestinians in Israel outside the scope of the Intifada. Convening these essays is

meant to escape an event-centered depiction of the Intifada protests and the state's response. An event-centered depiction would approach state violence during the Intifada as a sequence of violent acts, either politically expedient or improper, detached from the flow of other events. This in turn would allow for these specific events to be evaluated and possibly dismissed or condemned.⁶ State violence against Palestinian citizens would be narrowed down to the month of October 2000 to allow the investigation of its lawfulness. By including articles that discuss other aspects of violence against Palestinians in Israel, we attempt to situate the violence that occurred at this time in the longer history of violence against Palestinian citizens without reducing the Intifada to this history. In other words, we are hoping to capture these events in Israel as an integral unit of a larger structure without losing sight of the ruptures that events can generate, the different reasons for the various episodes of violence, and their diverse dimensions and characteristics.

The renaming of the Intifada in Israel as the "October events" has other consequences. It not only detaches the events of October from other events involving state violence against Palestinian citizens, it also removes them from the Intifada in the Occupied Territories. State violence in the West Bank and Gaza, which continues to this day, has lost its bounded and fixed characteristics. The continuing state violence in the West Bank and Gaza has resulted in countless deaths. The impossibility of establishing the definite number of the dead testifies to the transformation of this episode of state violence into a structure of daily life that can no longer be isolated from the flow of



other events. Redefining the Intifada and separating its two spatial components - Israel and the Occupied Territories - was necessary in order to distinguish between an event that ceased to be and an event that came to dominate the structure of daily life.

Recognizing that the “October events” in Israel have been confined both temporally and spatially, this volume of *Adalah's Review* resituates them in the longer history of violence against Palestinians and in the broader context of al-Aqsa Intifada. The essays in this volume attempt to offer an understanding of the ways in which law, in different historical and political settings, exists in relationship to violence. Together, however, they also shed light on the structural and pervasive dimensions of state violence and law's treatment of such violence.

The *Review* opens with an essay by Rina Rosenberg entitled “On the Collective Criminalization of Political Protestors.” In this essay, Rosenberg traces the process of collective criminalization of Palestinian citizen protestors detained during October and November 2000. Rosenberg analyzes the legal mechanisms by which criminalization was made possible, and argues that law's denial of police violence is a necessary measure in transforming political protestors into disorderly criminals. Rosenberg further argues that instead of treating Palestinian citizen protestors as individual criminals - one of the basic assumptions of criminal law - police, prosecutors and judges emphasized the collective characteristics of their actions and attended to the political nature of the insurgencies.

The “October 2000” events in Israel resulted in

the establishment of an official Commission of Inquiry, the mandate of which is to investigate the clashes between the security forces and Arab and Jewish citizens beginning on 29 September 2000 and culminating in the deaths and injury of Israeli citizens.⁷ In her “Law's Conceptions of State Violence,” Samera Esmeir discusses the ways in which the Commission conceptualizes and delimits police violence employed against Palestinian citizens. It attends to the specific forms of police violence excluded from the Commission's investigation, such as rituals of arrest and interrogation, and the theatrical demonstration of state power in the streets of Palestinian towns in Israel. These acts, Esmeir explains, are classified as legal and legitimate performances aimed at maintaining order and securing the rule of law.

Next is an article by Amr Shalakany on the violent jurisdictions of Oslo in the Occupied Territories. Shalakany explores the connections between the laws of jurisdiction under the Oslo Accords and the collective punishment inflicted by the Israeli army on Palestinians living in the Occupied Territories. He investigates the physical violence wrought by Oslo's jurisdictional arrangements, as well as the discursive violence, which fragments the space of the Occupied Territories and disempowers lawyers struggling against the occupation as a whole.

Whereas Shalakany leaves us with a fragmented space of action available for lawyers under the framework of Oslo, Nimer Sultany begins with this fragmented space of action and investigates petitions brought before the Israeli Supreme Court during al-Aqsa Intifada in the Occupied Territories.

In these petitions, Palestinians and human rights organizations asked the Supreme Court to declare illegal certain practices of the occupation such as closures, land confiscations, arrests, etc. Sultany documents the Court's systematic rejection of such petitions, analyzes the legal techniques employed by the Court in this process, and concludes that petitions brought before the Israeli Supreme Court to challenge specific occupation practices are doomed to failure.

Next is a testimony by attorney Jamil Dakwar, co-authored with Jake Wadland. The testimony offers an account of Dakwar's experience while representing a Palestinian citizen of Israel who was administratively detained in November 2000. The use of repressive legal measures such as administrative detention points to the continuous state of emergency to which Palestinians in Israel and the Occupied Territories are subjected. In their article, Dakwar and Wadland address different constraints lawyers face when representing administrative detainees.

The next two essays in this section offer some insights on other forms of violence against Palestinian citizens and law's response to it. Leora Bilsky discusses the massacre of Palestinians in both Majd el-Krum in 1948 and Kufr Kassem in 1956. She analyzes how the Supreme Court separates the state's legitimate violence from its illegitimate violence, and explains the consequences of this separation for the boundaries of citizenship in Israel. Yousef Taiseer Jabareen investigates a violent attack carried out in 1997 by militant Israeli Jews against three Palestinian women, citizens of Israel, who lived in West Jerusalem. He too probes law's response to this

attack. Jabareen explores law's definition of "hostile attacks against Israel" and the Court's refusal to recognize the three Palestinian women as victims of such hostile attacks. The consequences of this legal response to violence, Jabareen argues, have far reaching effects on the definition of citizenship in Israel, from which Palestinians are effectively excluded.

For our case review, Muhammad Dahleh, in his "Fire and Advance," offers a critique of a Supreme Court decision on a petition filed by the Committee of Martyrs' Families and Adalah, which challenged the promotion of a Border Police Commander, Benzy Sau. The official Commission of Inquiry hearings revealed that Sau had command responsibility for the Wadi 'Ara area in which four Palestinian citizens of Israel were killed by security forces during early October 2000. Dahleh argues that in rejecting the petition, the Supreme Court ignored its own precedent in cases involving the promotion of an official whose actions had resulted in the loss of public trust. Dahleh concludes that the Supreme Court's decision in *Sau* failed to include Palestinian citizens in its definition of the "public." Palestinian trust or lack of it in state institutions is thus relegated as irrelevant, allowing the Court to uphold the promotion and ignore the consequences of Sau's actions.

The Special Inquiry dossier, the second section of this issue, compiles a collection of materials about the official Commission of Inquiry, which is investigating the "October 2000" events in Israel. The dossier presents readers with five documents. The first two - the indictment pronounced by the High Follow-up Committee for the Arab citizens in



Israel against the State of Israel and the statement of the Committee of the Martyrs' Families - reveal the expectations and ambivalence of the Palestinian community in Israel to the Commission. The next two documents address the connections between the Israeli Commission and tribunals that investigated state violence in England and Northern Ireland, including the Bloody Sunday Inquiry. The first of these documents is a letter to the Palestinian martyrs' families written by a civil rights activist from Northern Ireland, whose father was killed during the Bloody Sunday events in Derry in 1972. The second document is a legal opinion prepared by the Bar Human Rights Committee of England and Wales that outlines English laws and practices before tribunals of inquiry. Adalah solicited this document in preparation for the hearings before the Commission in Israel.

The Commission has not concluded its proceedings yet, and therefore this Special Inquiry dossier does not offer an evaluation of its work. The Commission, however, reached preliminary conclusions in February 2002 and issued 14 warning letters to eleven Israeli political leaders and police officials and to three Palestinian public representatives. In response, Hassan Jabareen, the General Director of Adalah, filed a motion to the Commission charging that the issuance of the warnings against the Palestinian public representatives is illegal and called on it to rescind these warnings. The Commission rejected this motion and warnings hearings began in mid-June 2002. Adalah's motion is the final piece in this volume.

End Notes

1. Robert Cover, "Violence and the Word," 95 Yale L.J. 1609 (1968).
2. Austin Sarat and Thomas Kearns, "Introduction," in *Law's Violence*, eds. Austin Sarat and Thomas Kearns (Ann Arbor: The University of Michigan Press, 1993) at 1.
3. See The Ministry of Justice, "Statistics on Arrestees and Detainees, 28 September-30 October 2000," available on Adalah's website: www.adalah.org/coi_reports/detainees.htm.
4. Statement of the Palestinian lawyers, 17 October 2000 on file with Adalah. See also ad in *Ha'aretz*, 27 October 2000 signed by over 450 lawyers calling for the immediate release of all Palestinian citizen detainees.
5. See Adalah, 1998 Annual Report; Adalah, 1999 Annual Report; Julia Kernochan, "Land Confiscation and Police Brutality in Umm al-Fahem," 1 *Adalah's Review* 49 (Fall 1999); and Orna Kohn and Tawfiq Rangwala, "Palestinian Students, Political Space, and Haifa University," 2 *Adalah's Review* 69 (Fall 2000).
6. Allen Feldman, "The Event and the Shadow: Figure and Ground in Violence," 8(1&2) *Transforming Anthropology* 3 (1999).
7. Government Decision No. 2490 issued on 8 November 2000 regarding the establishment of the official Commission of Inquiry.

