

# Law's Conceptions of State Violence

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On 8 November 2000, the Israeli government appointed a Commission of Inquiry in accordance with the Commissions of Inquiry Law (1968). The Commission's mandate is to investigate the clashes between the security forces and Arab and Jewish citizens that culminated in the deaths and injury of Israeli citizens starting from 29 September 2000. To be sure, the "clashes" were political protests staged by Palestinian citizens of Israel in solidarity with al-Aqsa Intifada in the Occupied Territories. These protests in Israel were met with the full force of the police, and developed, in part, into acts of insurgency. The clashes also consisted of anti-Palestinian riots carried out by Israeli Jewish citizens in Palestinian neighborhoods in Israel. "The deaths and injury of Israeli citizens" were the deaths of 13 Palestinian citizens and the injury of hundreds more together with some Israeli Jews. The "clashes" also resulted in the arrests of close to 700 Palestinian citizens of Israel during the months of October and November 2000 for Intifada-related offenses, but these are not addressed in the mandate of the Commission.

The Commission began its proceedings in February 2001 and completed the first stage of its hearings in February 2002. During this time, it heard testimonies from 349 witnesses, and based on these testimonies and other evidence, reached preliminary conclusions. These initial conclusions led the Commission to issue letters of warning to former Prime Minister Ehud Barak, former Minister of Internal Security Shlomo Ben Ami and nine police officials. In addition, the Commission issued warning letters to three Palestinian public representatives. By issuing these three letters, the Commission ignored, and effectively dismissed,

several legal challenges to its mandate. The main challenge consisted of the argument that official commissions of inquiry are only permitted to investigate the actions of the executive branch.<sup>1</sup>

This essay does not discuss the Commission's preliminary conclusions explicated in the letters of warning; instead, it focuses on the legal techniques employed by the Commission to investigate state violence, and more specifically, police violence against Palestinians in Israel. The essay investigates the Commission's conceptualization and delimitation of some forms of state violence against Palestinian citizens. It attends to the specific forms of police violence, which the Commission found to merit investigation. These acts were the shooting and injuring of Palestinian stone-throwers, protestors and peaceful citizens. The essay discusses the framework of assumptions, rationales and strategies, which structures the investigation of these forms of violence. It then examines other forms of police violence excluded from the Commission's investigation, such as rituals of arrest, acts of detention and interrogation, and the theatrical demonstration of state power in the streets of Palestinian towns in Israel. The violent character of these latter acts, which, it is argued, comprise a general threatening structure, was neither recognized nor investigated by the Commission. Rather, these acts were classified as legal and legitimate performances aimed at maintaining order and securing the rule of law.

To probe these concerns, this essay focuses on Nazareth, a Palestinian city in Israel, where the above-mentioned forms of violence coincided during the Intifada. The essay proceeds by



analyzing the Commission's conceptualization of police violent performances, the legality of which is scrutinized but not necessarily invalidated. Next, the essay considers other police deeds, the violent character of which is not acknowledged and thus, the legitimacy of which is not questioned. Finally, the essay offers some reflections on the consequences of such legal techniques employed by the Commission on questions of gender and citizenship.

This essay relies mainly on the Commission's proceedings as documented in its protocols, as well as on observations I made while attending the Commission's hearings on the "clashes" in Nazareth. The quotes presented in this essay are representative of the rationales and assumptions underlying the Commission's conceptions of violence in the case of Nazareth. These rationales and assumptions, however, are neither coherent nor without failures. Further, the Commission's conceptions of violence are merely one terrain out of many that require critical attendance. Others include, but are not limited to: the Commission's interpretation of legal documents; its definition of its own mandate; its choice to summon certain witnesses and not others; the rules of procedure adopted; the interaction of witnesses with the Commission's members; the different series of questions, not related to violence, that are posed to the witnesses by the Commission; and the suppression of the historical context.

### The Included and the Excluded

In his "Critique of Violence," Walter Benjamin defines violence as belonging to the very act of

founding and preserving the law. Violence is the origin of law and has two functions in relation to law: "law-making violence" - the founding violence, the one that institutes law - and "law-preserving violence" - the violence that conserves the law and ensures its enforceability. This separation between the functions of violence in relation to law is suspended in the institution of the police, for the police are constantly engaged in law-making functions while preserving the law. The assertion, writes Benjamin:<sup>2</sup>

[that] the ends of police violence are always identical or even connected to general law is entirely untrue. Rather the "law" of the police really marks the point at which the state... can no longer guarantee through the legal system the empirical ends that it desires at any price to attain. Therefore, the police intervene "for security reasons" in countless cases where no clear legal situation exists... without the slightest relation to legal ends, accompanying the citizen as a brutal encumbrance through a life regulated by ordinances, or simply supervising him.

The police then have the power to exercise previously unsanctioned forms of violence through the mediation of the legal category - "security reasons." This legal technique, which belongs to the general law, allows for the expansion of law's mechanisms of control to include new forms of police violence, which until the recent actions of the police were extra-legal. Because the category "security reasons" belongs to the general law, it has the power, if there is enough factual evidence to justify reliance on it, to



transform any end achieved by police action into a legal end. It allows the police to make law while they preserve it.<sup>3</sup>

The Intifada in Israel, which resulted in the deaths of 13 Palestinian citizens and the injury of hundreds more, testifies to the law-making violence that characterizes the police. For, as Benjamin puts it, in the exercise of violence over life and death, more than any legal act, law affirms itself.<sup>4</sup> The Commission's investigation, which is restricted to the examination of what is conceived of as exceptional acts of shooting and injuring - acts that threaten life previously unthreatened on such a wide scale - is meant to address the lawfulness of the new empirical ends set by the police, the law-making violence of the police. For official commissions of inquiry are not meant to address the ordinary and the mundane, but the extraordinary, the new and the exceptional. It follows that the Commission is not investigating the ordinary law-preserving violence of the police, such as arrests, detention, and interrogation. The following quote in which the Chairperson of the Commission, Justice Theodore Or, asks about the use of snipers against Palestinian citizens, explicates this interest in the new and the exceptional:<sup>5</sup>

**Justice Theodore Or:** Do you know if, before that day, the second of October in the north, there was sniper fire, shooting at the legs of those who hurled stones by hand and by sling-shot in the state of Israel?

S: I don't recall.

**Justice Theodore Or:** You don't recall, and how many years have you been in the Special

Operations Unit?

S: You are speaking about... excuse me, Your Honor, you are speaking about the entire period?

**Justice Theodore Or:** Yes, yes. In Israel... rioting, did you come across in the past any case, or do you know of any instance in which, because of any riot during any kind of procession, and there was an order that in the case of sling-shot assaults or the hurling of Molotov cocktails, live fire should be used?

S: The case of Uzi Meshullam is a possibility, of...

**Justice Theodore Or:** That is another case.

S: Rioting...

**Justice Theodore Or:** Uzi Meshullam was another case...

S: Also firing and also throwing of barrels...

**Justice Theodore Or:** We know that in that case someone fired live ammunition at the forces. We know about another case where a person barricaded himself and opened massive fire (unclear). Therefore, I asked about mass rioting, disturbances of the peace. Was there at any time prior to the disturbances... such a directive or an instance where snipers were used?

S: Not that I remember.

## Shooting, Injuring and Killing

It is this new gap, then, between old legal ends and new empirical ones, ordinary police violence and exceptional police violence, the gap founded by the new law-making violent activity, that the Commission investigates. The police were able to establish this new end by arguing that the riots were exceptional, that they caused a state of emergency, and that security reasons necessitated

such an expansion of violence. The Commission in turn investigates the lawfulness of such law-making violence. It does so by examining whether the law of the state allows for such activity of law-making on the part of the police.

How does the Commission go about investigating the lawfulness of these new excessive acts of violence? How does it decide on whether the violent means of police intervention during the protests in Nazareth were lawful? Benjamin argues that the most elementary relationship within a legal system is that of means to ends, and that violence can be used only in the realm of means, not ends. The legal system, however, does not contain a criterion for violence as a principle, e.g., whether violence is a moral or immoral means to just or unjust ends. The only criterion available is for cases of its uses, e.g., the circumstances under which violence is used.

The Commission's proceedings indeed testify to its focus precisely on the cases of the use of violence: when, where and how violence is used. Violent actions by the police are not accepted or dismissed as such; rather, the different uses of violence are scrutinized. The questions posed by the Commission to police officers are not about the lawfulness of employing lethal force as such, but are about the proper and proportional use of lethal force. Whether a police officer stood 50 meters or 90 meters from the stone-throwers when opening fire becomes a central concern for the Commission, for in the former case, it is lawful to open fire, while in the latter it is not. Whether police fired rubber-coated steel bullets or live ammunition is another major concern for the Commission, even though in both cases someone

died or was injured as a result of the fire. The deadly consequences and the deadly means are not important as long as the use of the deadly means (or lethal force) meet the legal criterion of proportionality. In the following quote, Commission member Professor Shimon Shamir questions the police about the distance and the type of weaponry used:<sup>6</sup>

**Prof. Shimon Shamir:** To your knowledge, when there is such a threat from a distance of 40 to 70 meters, wouldn't rubber bullets be safer and just as effective? Isn't this exactly the range of rubber bullets?...

**Prof. Shimon Shamir:** Why is it not possible to tell them: look, this is the effective range for firing rubber, it is unnecessary to use live fire in this case?

Justice Or asks similar questions about the police to a Palestinian witness:<sup>7</sup>

**Justice Theodore Or:** And you saw them [the police] a short time before you were struck? A long time? How much time before?

**Ibrahim Krayim:** I saw them about five to seven minutes [before].

**Justice Theodore Or:** Did you see what they were doing?

**Ibrahim Krayim:** I saw them standing there. I didn't see what they were doing.

**Justice Theodore Or:** Did you see whether they had weapons in their hands?

**Ibrahim Krayim:** Everybody had a weapon.

**Justice Theodore Or:** And where were the weapons when you saw them? Holding them, aiming them, on them?

And finally, Judge Hashim Khatib poses a similar question to a police officer, whose identity is not revealed:<sup>8</sup>

**Judge Hashim Khatib:** In your opinion, if we are really speaking about a distance of 50-70 meters, as my colleague Prof. Shamir asked you, why didn't the Special Patrol Unit forces, who saw exactly the same thing that the Special Operations Unit saw, neutralize the guys with the sling shots by shooting rubber bullets? Do you have any answer, Mr. S?

All of this might seem obvious to law-trained readers, for arguably there is no other way to assess the legality of violent actions. These concerns are less obvious to those who were injured or harmed. For them, whether police used tear-gas, rubber-coated steel bullets, or live ammunition is not central, but the fact that police utilized these means against them as Palestinians is of importance. The violence of the police would then be conceptualized in terms of effects and consequences, as opposed to means. This is not to argue that there are no distinctions between the different means of violence employed by the police. Instead, it is to remind us of the kinds of questions that modern positive law is capable of asking and investigating. This constitutes an important reminder when attempting to address a political conflict through a legal investigation that keeps many questions unanswered. In the following quote, Mr. Shawkat Lawabneh, who testified before the Commission, answers the questions of the Commission's members about the means used by the police, but also attempts to register the effects of these means on his body, to

shift the focus from the means to the actuality of the bodily violence, to disturb the legal logic imposed on his testimony:<sup>9</sup>

**Shawkat Lawabneh:** I heard people, I went up to see what was happening, and this is what happened to me. I want to make a comment...

**Justice Theodore Or:** Yes, please.

**Shawkat Lawabneh:** I, now... my life is in tatters. I want to show you what happened to me.

**Justice Theodore Or:** Yes. The witness is raising his shirt and revealing his body.

**Shawkat Lawabneh:** Before I was injured, I worked, I was satisfied. They asked... my children do not come to me as they did before. I stopped going on trips. I hurt at night. I have been receiving treatment at Rambam Hospital twice a week. My life is different than it was before. My body has lost something. My son doesn't come up to me as he did in the past. I can't pick up my small children.

**Justice Theodore Or:** You remember that at the time of the incident... not the day of the incident [but the day] with investigators from the Commission who prepared a report at the location?

## Arresting, Interrogating, Detaining and Torturing

Nazareth witnessed a deployment of police and security forces on its streets for several days. In addition to the use of lethal weaponry, the activities of the police ranged from a mere presence in the streets of Nazareth to acts of harassment and intimidation, leading to massive arrests and culminating in night-time "commando" raids, storming into houses to arrest people. When people were arrested, they were interrogated and

sometimes beaten; many of them reported brutal treatment. Specific official statistics about arrests during this period in Nazareth are not available. However, the official statistics that do exist indicate that from 28 September-30 October 2000, police arrested about 1,000 people throughout the country, 660 of whom were Palestinian citizens and 340 Israeli Jews.<sup>10</sup> These official numbers do not include the number of those who were arrested during the following months for Intifada-related cases. The majority of Palestinians were arrested for participating in political protest activities against the police and the state, including stone-throwing. The others were arrested for harming police and Israeli Jewish citizens. The majority of Israeli Jews were arrested for carrying out attacks against Palestinians and their property.

Instead of probing the discriminatory policies of the police, it is important to attempt an understanding of the different functions of these arrests. Official statistics indicate that among the 660 Palestinian arrestees, 248 were indicted, while 126 were indicted and detained.<sup>11</sup> The fact that less than half of those arrested were indicted, indicates that arrests were not only meant to locate offenders and to punish them; nor were they only meant to restore order in the sense of extracting individual disorderly offenders from the community. Arrests appeared to function as a mechanism by which to monitor the population and extract information. They were also rituals symbolizing the power of the state and reminding the population of the state's ability to repress challenges to its monopoly over violence.<sup>12</sup> Or as Benjamin would put it, law-preserving violence (the violence that conserves the law and ensures

its enforceability), is a threatening violence. The threat is not intended as a deterrent as liberal theory would have it. A deterrent would require a certainty, which contradicts the idea of a threat. It is the uncertainty of the violence that is threatening, Benjamin asserts.

Deployment of police forces in the streets of Nazareth signified a threat that the police would exercise its power to open fire, arrest, detain and torture. The periodic exercise of these powers reinforces this threat and alerts the population to the possible actualization of these threats, if it fails to act in an orderly way.

The story of Tawfiq Darawsheh, which, like many similar stories, will not be subjected to the Commission's investigation, is illustrative. Tawfiq Darawsheh was arrested in Nazareth for throwing stones at the police. In the court hearing in which the State Prosecutor asked for Darawsheh's detention until the end of the trial, his lawyer, Fahim Dahoud, presented the court with the details of his arrest and torture:<sup>13</sup>

The Respondent admitted to the police that he threw a stone, but we contend that his confession was drawn from him unwillingly by means of extreme brutality. Regarding the *prima facie* evidence, even if his confession is sufficient to make a *prima facie* showing, we deny the evidence. Respondent 2 went with his two minor brothers and picked up their relative, Respondent 1, to guide them to the houses of invitees to the wedding of his sister, which is taking place on Saturday in Kufr Iksal. In Nazareth, in the Safafreh neighborhood, they were forced to stop the car, were pulled from within the car with batons and beatings. The person

involved is a young man who completed twelfth grade with honors, and was accepted into medical school. He had no criminal record. A person who wants to throw stones can do it in Kufr Iksal. Did he decide to go with his two brothers, when there were invitations to his sister's wedding in the car, reach Nazareth, get out of the car, take a stone, and throw it at police officers? I intend to file a complaint with the Ministry of Justice Police Investigation Unit. The policemen used a forbidden method that recalls unpleasant times when they brought a dog into the room where this young fellow was being interrogated and the policeman was standing over him telling him, "You threw the stone." Under the threat of the trained dog this young, inexperienced fellow was directed what to do. I would have done the same. He was beaten in the interrogation room, and that [signing the confession] was his only choice... I sat with him in the cell. He sat there and wept. Such an incident causes incredible emotional injury that the court is aware of.

In short, these state rituals are meant to threaten the population and to force them into submission. They constitute a reminder of the party holding power and the means of violence. But more importantly, when actually exercising law-preserving violence, the police succeed to establish a distinction between violent, disorderly and criminalized activity on the part of the monitored population, and their own activity now defined as one of restoring order.

These law-preserving forms of violence are not subjected to the Commission's investigation. In fact, very often the Commission members would wonder about the criticism that Palestinian

witnesses voiced to the very presence of the police on the streets of Nazareth. They refused to recognize the hostility that Palestinians had for the police. The police, defined as neutral restorers of order, Commission members asserted, should be present in the streets of Nazareth, for the terror-imposing function of the police is not acknowledged.

Accordingly, the mediation of law, which deems legitimate acts of arrest and interrogation, makes the search for stories about terrorizing forms of violence in the protocols of the Commission more difficult. Each of the testimonies given during the Commission's hearings is a direct speech. However, it is a speech prompted by the requirements of an official investigation<sup>14</sup> that does not question police presence and its violent, yet non-lethal, rituals. These are not subjected to the test of proportionality, for these are considered *a priori* legitimate and unexceptional.

Nevertheless, traces of the terrorizing power of the police can still be found in testimonies of Palestinians who appeared before the Commission. However, these traces were not pursued by the Commission. Omar Abu Ass'ad Ben Walid, who witnessed the killing of Iyad Lawabneh by police forces, explained the reasons for his hesitation to provide information to police about the incident:<sup>15</sup>

**Justice Theodore Or:** How long after the incident did you talk about it to attorney Odeh for the first time? When was the first time that you approached them or they approached you, and you told the story of what happened that day? Do you

understand the question?

**Omar Abu Ass'ad Ben Walid:** No, I did not understand.

**Justice Theodore Or:** How much time passed from that day, the second of October, to the time that you told somebody from Adalah about what happened?

**Omar Abu Ass'ad Ben Walid:** At least two, three months.

**Justice Theodore Or:** Two, three months. Why didn't you do it sooner? You saw how a person was killed, you saw a person that...

**Omar Abu Ass'ad Ben Walid:** I'll tell you, sir. Before this incident, I passed by another incident in which policemen took a fellow named Iyad Zo'abi, took him in the front of his house, I was passing in my car, and I tell you, this is like the reason why I didn't go to the Ministry of Justice Police Investigation Unit... Then they took him alongside the house, beat him, and took him back in to the house, just like that - just like a gang.

**Justice Theodore Or:** Yes...

**Omar Abu Ass'ad Ben Walid:** And then I... It was as if, not wanting to get involved in these matters, I did not want to, but on the other hand, it is necessary to gather the strength and will to tell about everything that I saw and about everything that I saw [sic] and about everything that I know.

**Justice Theodore Or:** And so you kept it inside yourself for two months?

**Omar Abu Ass'ad Ben Walid:** Yes, but not to the police, to Adalah, at least someone who would give me proper support, who would not support to close the... to tailor [to cover up] the police officers.

**Justice Theodore Or:** Good.

## Consequences

The Commission seeks to break away from the Intifada and distinguish it from the ongoing killing of Palestinians in the Occupied Territories by eventualizing specific actions that occurred during October in Israel. The structure of violence that governs Palestinians' lives is dealt with by reducing it to isolated injuries and deaths: concrete violent actors who operated at certain times, from specific locations, and from particular distances. The minutes of the hearings reveal precisely such a process of detaching an event from its living context and setting it up as an empty positivity outside of power relations. It is a process intended to leave nothing of state violence except the "then" and "there" of a deadly exceptional activity. The matrix of a real violent experience is transformed into a set of questions and answers aimed at extracting the illegal from the legal, and setting it apart as something that can be evaluated and possibly dismissed. All that is defined as legal and that has shaped Palestinians' lives during the Intifada and its aftermath, remains unquestioned, completely excluded.

The Commission's narrative of the law-making violence of the police violates the actual sequence of what happened in order to conform to the logic of a legal intervention, which occurs only in exceptional cases. Palestinians did not simply protest against the state, and some of their protests did not suddenly develop into acts of insurgency. These acts also resulted from the ordinary unexamined practices of the police. In many cases, the threatening presence of the police and its offensive non-lethal activities as experienced not only during the Intifada, but also in previous



interactions with police, have mobilized some to riot against the police, who symbolize the state. These riots in turn resulted in the use of deadly force against them despite the absence of danger to the police. To only investigate the use of deadly force is to abuse the full experience of Palestinian citizens and to forget that the exceptional always follows the ordinary.

In addition, when the investigation is narrowed down to concrete acts of violence, of shooting and injuring, the testimonies that become relevant are those of Palestinian citizens who witnessed or were directly injured by the police, as these were demarcated from other law-preserving violent acts. The testimonies of those who feared leaving their homes, those who worried about walking in the streets, those who had to depart from their family members, and those who were arrested, interrogated, tortured, and sometimes imprisoned - all of these testimonies are not relevant to the inquiry. It is not surprising, then, that only two Palestinian women testified before the Commission. One woman who testified was directly injured in her car, while driving with her husband and the other woman was protesting at the forefront. Women who were in their homes or in the streets of Nazareth, not necessarily protesting, were not asked to testify about their experience of police violence during this time. They were not effective witnesses.

Fiona Ross, who wrote about women's testimony in the first five weeks of public hearings of the South African Truth and Reconciliation Commission (SATRC), argues that the differing testimonies of these women were similar in one important way. For the most part, she observes,

women told stories about the human rights violations experienced by others and how these experiences affected them. Ross writes: "in their testimonies about others, women described their own experiences of the pernicious effects of apartheid on domestic life, families, intergenerational relations, and gender roles."<sup>16</sup>

Israel's Commission of Inquiry is not and should not be compared to the SATRC. Its mandate, status, procedures and above all, the expectations from it are distinct from those of the SATRC. Ross' observation, however, is relevant in another way. Her explanation of the logic of women's testimonies in South Africa sheds light on the reasons why the testimonies of Palestinian women were not considered by the Commission. The women's potential testimonies would not be directly related to the events. Women, for the most part, occupied the domestic sphere, and did not directly witness the actual violent events as defined by the Commission. All the Palestinian witnesses that the Commission investigated were either political personas or were directly involved in the Intifada events. The absence of women is indicative of the absence of many others who experienced state violence from their homes, schools and neighborhoods. When state violence does not include, in its official conceptualization, law-preserving violent rituals, relevant witnessing is also impinged upon. The gendered structure of power that reaches into the domains of intimate feelings and familiar spaces<sup>17</sup> is not examined and testimonies testifying to its overreaching consequences are no longer effective testimonies.

Finally, if police violence is reduced to concrete acts of shooting and injuring, and if the general

threatening structure imposed on Palestinian citizens is neglected in the Commission's investigations, it will be difficult to appreciate the structural consequences of the violence utilized by the state against Palestinian citizens. The violence experienced through arrests and interrogation, and by threats of arrest materializing in the presence of the police on the streets of Nazareth, is as politically and socially determining as the experience of deadly force. These serve, as Allen Feldman reminds us, the purposes of surveillance, extraction of information, spatial obstruction, and periodic elimination of family and community relations.<sup>18</sup> They remind Palestinians of the party holding the monopoly over violence and they police their daily behavior and their potential political opposition. They contribute to the production of alarmed citizens who shun expressing challenging opinions and avoid pursuing political change.

The focus of the Commission on acts of shooting and injuring, therefore, testifies to the shrinking of Palestinians' citizenship in Israel. The killing of 13 Palestinian citizens constituted the ultimate act of disenfranchisement. For after depriving citizens of their rights and turning them into subjects, the state, as a last resort, can either expel its citizen-subjects or kill them. The act of killing, then, can occur only after rights have been deprived or gradually violated, after citizens have been turned *de facto* into subjects. These citizen-subjects could find themselves engaged in existential struggles - struggles to live, to have a life. Accordingly, it was not only the Commission that focused on acts of shooting and injuring but the Palestinian organization, Adalah, which

provided the Commission with testimonies focusing on similarly defined acts of violence. The act of killing 13 citizens was for Adalah and others in the Palestinian community an extraordinary act generating a rupture in their relationship with the state, attenuating their expectations from the state, widening the boundaries of their potential suppression to include murder, and effectively shrinking the substance of their citizenship to that of the new empirical end introduced by the state, e.g., to that of killing or injuring (attempting to kill).

End Notes

1. See Adalah's letter to the Commission of Inquiry, "Request to Cancel Notices of Warning Given to Arab Public Representatives," published in this volume of Adalah's Review at 128.
2. Walter Benjamin, "Critique of Violence," in *Reflections*, ed. Peter Demetz (New York: Schocken Books, 1978) at 287.
3. See Jacque Derrida's reading of Benjamin's "Critique of Violence" - Jacque Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michel Rosenfeld, and David Gary Carlson (New York and London: Routledge, 1992) at 3.
4. W. Benjamin, *supra* note 2, at 286.
5. Protocol of the Commission of Inquiry at 3103. "S" is a police witness who testified behind a screen. His identity was not revealed.
6. *Id.* at 3116.
7. *Id.* at 3398.
8. *Id.* at 3131.
9. *Id.* at 3408.
10. 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](http://www.adalah.org/coi_reports/detainees.htm)
11. *Id.*
12. See Allen Feldman, *Formations of Violence* (Chicago: University of Chicago Press, 1991) at 86: "The analysis of arrest and interrogation forces one to read the state not only as an instrumental and rationalized edifice but as a *ritual* form for the constitution of power; in turn one is led to the central role arrest and interrogation play in the performative construction of state power in Northern Ireland."
13. Protocol of the hearing in Cr.M. 3663/00, *The State of Israel v. Adel Barakat, et. al.* (Mag. Ct. Nazareth, 5 October 2000) (Azulay, J.) at 2.
14. One very specific incident testifies directly to the Commission's attempt to generate narratives that are a product of its legal interrogation, as opposed to narratives

that are prepared in advance by the witnesses and Adalah. While delivering his testimony, Mr. Tarik Kubty was asked by Justice Or whether he or someone else had read him his testimony prior to the session. Justice Or explained that Mr. Kubty simply paraphrased his testimony that Adalah had submitted as an affidavit to the Commission months before. Although the protocols do not reveal his unease, it was clear during the hearing that Justice Or did not appreciate that witnesses prepared themselves, and he appeared to question the truth-value of such narratives. Interestingly, while Justice Or blamed Mr. Kubty for reading his own affidavit beforehand, Mr. Kubty did not understand the critical nature of Justice Or's comment and instead emphasized that he had been reading his affidavit every day. See Protocol of the Commission of Inquiry at 4060.

15. Protocol of the Commission of Inquiry at 2875.
16. Fiona Ross, "Speech and Violence: Women's Testimony in the First Five Weeks of Public Hearings of the South African Truth and Reconciliation Commission," in *Remaking a World*, eds. Veena Das, Arthur Kelman, Margaret Lock, Pamela Reynolds, and Mamphela Ramphele (Berkeley: University of California Press, 1999) at 250.
17. See Begona Aretxaga, *Shattering Violence* (Princeton: Princeton University Press, 1997) at 53.
18. A. Feldman, *supra* note 12.

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