

THE POLITICS OF JUSTICE: THE BELLIGERENT CONTROL OF PALESTINIANS

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ABSTRACT

This article is about the Israeli political and judicial reactions towards Palestinians, that are perceived as security threats and a source of fear. In the case of political crimes, the article argues that the judicial system is tremendously biased towards Palestinians' offenders. In general, the courts are occupied with political cases; this means that this system has become very much busy with matters of security and public order. The link among politics, laws and courts demonstrates the state security policy that causes discrimination, inequalities and domination over the Palestinians. This policy proposes to securitize and criminalize the daily life of the Palestinians.

Keywords: Palestinians, nationalistic related crimes, injustice, control, securitization, criminalization

"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 - is deeply implicated in the Occupation" (Cohen, 1989a ,9).

INTRODUCTION

The present article discusses the theoretical and the empirical significance of the Israeli criminal justice system for Palestinians. It also offers a systematic analysis of differences between Palestinians and Jews through conviction and sentencing statistics, press articles and informal reports. In particular, the article measures the control processes rather than the criminal justice processing of the Israeli political and judicial system.

Thus, the main aim of the article is to examine the political and the judicial processes which intent to control Palestinians . However, the secondary aims are:

1. Giving an initial context about the political background of Palestinians.
2. Summarizing the previous literature related to court actions and injustice.
3. Providing a brief introductory about patterns of conviction statistics connected to Palestinians and Jews.
4. Explaining the link between statistics and injustice.
5. Introducing qualitative data and cases that explore the interactions among crime, justice, injustice, courts, politics and Palestinians in the public domain.

Thus, the main question is: What do the conviction statistics and the judicial decisions reveal about the ongoing control of Palestinians?

The approach of critical criminology is employed (Shantz & Summer, 2012; O'Brien, 2007). The article uses the standard separation in criminology between questions of the objective

base of behaviors (e.g. descriptions and causal explanations of actions) and questions of reaction (e.g. formal responses of the state, such as the courts towards persons and actions). Thus, the present article is not looking for what these data, concerning convicted offenders, might say about crime and criminals, but rather what they might tell about domination. Data are drawn from three main sources for the period 2010-2016: (1) court statistical data on trends and patterns of convicted offenders, drawn from annual government publications, particularly the Statistical Abstract of Israel, publications, reports, and press.

THE CONTEXT: THE POLICY OF INJUSTICE

To recognize the Israeli criminal convictions and courts policy towards Palestinians it is crucial to summarize the wider context in which these processes eventually appear. For the purpose of this article, the article uses the term “Palestinians” to include Arab citizens who reside within the Green Line (also known as Israel’s pre-1967 border) and Arabs in the Occupied Palestinians Territories (OPT).

The war in 1948 radically altered the status of the Palestinians within the new state of Israel in comparison with their status in the Mandate Palestine (Korn, 2002), and formed a weak and fragmented ‘enemy affiliated’ society (Yiftachel, 2009). Between 1948 and 1966, Palestinians as citizens in Israel were subject to military rule (Degani, 2015). After 1966, the military rule was lifted from Palestinians living in Israel; however it was replaced by laws aimed at maintaining the demographic and material hegemony of the Jewish population (Abbas, 2009; Zulaikha, 2009). Today, there are around 1.2 million of Palestinians as citizens in Israel, about 20% of the population (CBS, 2015), which are subject to various forms of discrimination (Palestinian Civil Society, 2009; The International Crisis Group, 2004) and have had a difficult struggle to maintain their cultural and political identity (Beinin & Hajjar, 2014). The civil status of this population may be conceptualized, according to Yiftachel (2009) as being that of ghettoized citizenship, situated within a stratified system of ‘creeping apartheid’. Some scholars have underlined cases of discrimination against Palestinians as citizens, which have been tightly connected to the structure of Israel as a Jewish state (Barzila, 2015; Grossman, Gazal-Ayal, Pimentel & Weinstein, 2016).

Palestinians have, since 1948, been identified by Israeli institutions as an ‘internal security threat’. For this reason, they have always been treated as “outsiders” through waves of laws, which operate to privilege the interests of the Jews, while simultaneously marginalizing Palestinians (McBurney, 2014; Mossawa, July 16, 2014).

The specific literature (Adalah, 2011; Cohen, 1989b; The International Crisis Group, 2011) agrees on three components, so obvious to any watcher:

(a) Separation: As minority, Palestinians are being emasculated and marginalized in contrast with the Jewish majority;

(b) Inequality: Palestinians are separate and unequal, and they are denied access to power and elite positions;

(c) Control: the focus is on control in its political sense (i.e. the criminal justice system is regularly used as a means of delegitimizing political actions of Palestinians).

The “Green line” distinguishes Israel from what is referred to as the OPT that occupied during the 1967 Six-Day War. For the current article interest, the OPT includes the West Bank and East Jerusalem. Unlike Palestinians inside Israel that fall mostly under civilian population, the Palestinians in the OPT are subject to Israeli military rules, since 1967. With the occupation of the West Bank, the military rules was established in the area (Cook,

February 23, 2012; Yehuda, et al., 2015; Weill, 2007). These rules create a new concept of “prolonged occupation” (Lubell, 2012, 333) to justify further Israel’s rejection of basic protections to the Palestinians living under “belligerent Occupation” according to Kretzmer (2012, 208).

Dugard and Reynolds (2013) concluded that “underpinning Israel’s discriminatory policies against the Palestinians – both within Israel and in the OPT – is a legal system that constructs a notion of ‘Jewish nationality’ and privileges Jewish nationals over non-Jewish groups under Israeli jurisdiction” (p. 904), and both groups are “subject to a particularly aggravated form of apartheid” (p. 872).

POLITICAL REPRESSION AND PUNISHMENT

Crime in Israel is not regarded as a major social concern nor is it the object of ideological argument. Matters of crime and justice become public issues and open to ideological arguments, only when political aspects are manifestly involved (Hassanein, 2016).

Comparing with previous researches (i.e. Hasisi, 2008) that have ignored the exceptional political and the legal status of the Palestinians, there have been a few attempts by criminologists (Cohen 1989a; Cohen, 1996; Korn, 2003) to suggest the direction of an alternative theoretical framework by examining the relationship between crime, justice and politics.

The interest of the current article is to explore one component of the “criminal justice system”: the courts. The criminological consensus approach tends to examine what relationship there is between the punitive route of crime control policies and the decrease in crime (Lyons & Scheingold, 2000), while many studies, which close to the conflict models in criminology, highlight the role of privileged groups in the oppression of other groups (Beckett & Sasson, 2000; Reiman, 2007).

The literature on punishment has mostly recognizes the political nature of sentences and imprisonment (i.e. Oliver, 2012; Reiman, 2007; Ruddell, 2007). The empirical findings of Lyons and Scheingold (2000) suggest that punitive policies are politically constructed on surprisingly uncertain foundations. In addition, many researchers argue that racial discrimination is pervasive and deeply rooted throughout the criminal justice system (Beckett & Sasson, 2000; Brewer, 2008).

In Israel, in contrast with many researches (i.e. Hasisi, 2008) that have ignored the unique political and legal status of the Palestinians, there have been a few attempts by criminologists to study Palestinians as a political population. Hassanein (1993) found that Palestinians form a part of an Israeli social control policy, the aim of which is to reduce feelings of fear and threat, created around the subject of drugs. Conversely, Korn (2002) concluded that the Palestinians were created as an antagonistic minority constituting a threat to the Israeli national security.

By using this perspective, it is relevant to speak about fear, enemy and security. The reaction of the judicial system is viewed through the context of the security state (Krasmann, 2007). Shalhoub-Kevorkian (2015) analyzes the Palestinians experiences within the 'Israeli colonialism' and explores how Israeli doctrines and beliefs of security and fear can indefinite power dynamics while maintaining existing power structures. Within the 'security state' and fear, Lajous (2016, 33) uses terms such as 'enemy', 'threat' to represent the border relationship between exclusion and rule, inside and outside.

In order to handle with the 'imaginary fear', the security state produces at least three measures (Conde-Munzo, n.d.):

- (1) Criminalizing actions that in normal circumstances could be considered simple expressions of human rights.
- (2) Increasing the harshness of punishments beyond the idea of proportionality, applying even 'draconian punishments'.
- (3) Eliminating the rights of the accused under 'due process', while applying aggressive interrogations practices like torture; extending duration of police custody without judiciary control and establishing special Courts (i.e. military courts).

In sum, Phillips and Bowling (2003, 24) determine that the criminal justice system imposes a 'military model' of policing that emphasizes the pursuit of 'enemies within'. This ideology approves criminalization mechanisms, as a response to the politicians fearing (Atilas-Osoria, 2013). McEvoy (2015) placed greater emphasis upon imprisonment, as a dominant component in the wider political and ideological struggle, using the criminalization and the repression perspective.

About sentencing and punishment, the main question is on whether racial/ ethnic/ national groups are over-represented in the prison population because of higher rates of offending or because of discriminatory handling in the courts? One possible answer provides general support for the consensus and cultural conflict approaches, which view criminal activity to be linked with social and economic characteristics (Kutateladze, Andiloro, Johnson & Spohn, 2014). The another possibility provides general support for structural- racism approach that the court is somehow "biased", in that some racial/ ethnic/national groups are more easily convicted than others (Curry & Fraser, 2008).

In his classic study, Hoods's (1992) found that a higher percentage of specific minorities were being sentenced to custody. Following the Hoods's study, much discussion has centered on the existence of racial and ethnic inequalities in criminal sentencing (Johnson & Betsinger, 2009; McKinnon and Bennett, 2005; Ramirez, 2004). Many researchers (Berdejo & Yuchtman, 2010; Parker (2004) concluded shortly that getting mass imprisonment seem to be more about racial politics in particular, and less about crime wave.

The study of Smith and Damphousse (1996) is vital for the current article. The results show that the official label of the political offenders emerges as the dominant explanatory variable in the analysis; meanwhile the political motives are used as a primary criterion for sentences imposed by courts.

Korn (2002) found that Palestinians are always under greater threat of arrest and conviction and imprison for political offenses, because they are perceived as security danger. Rahav, Rabin & Yuchtman-Yaar, (2015) add that the courts tend to increase the inequality between Palestinians and Jews defendants, for reasons: (a) the Palestinians ones suffer from an out-group bias in the perception of majority judges; (b) they are often perceived as the enemy, or at least as a symbolic representative of the enemy. Whereas, the disparities between Jews and Palestinians in imposing sentences are clarified by Grossman, Gazal-Ayal, Pimentel & Weinstein (2016) in the course of Israel state power that is seen to represent some 'ethnic groups' more than others.

In sum, many researchers argue that the increased use of imprisonment linked to the criminalizing and de-politicizing practices that are taken towards Palestinians who are perceived as a threat to the Israel's security (Baker & Matar, 2011; Fishman, Rattner & Turjeman, 2006; Korn, 2003; Walk & Berman, 2015).

THE POLITICS OF JUSTICE IN ACTION

The rule of laws based nationality

A concerted legislative strategy has been pursued in the Israeli Knesset since 2009, seeking to further stifle and punish opposition to Israeli domination (Dugard & Reynolds, 2013; Lis & Khoury, Nov 13, 2016; Strickland, 10 Apr 2015). The Israel's discriminatory laws towards the Palestinians are not simply an issue of the Israeli government since 2009. Palestinians have been viewed since 1948, as a demographic and security threat (Shehadeh & Iraqi, October 14, 2013). These laws and rules give extensive powers to authorities, and shape the legal basis for the military control. From the viewpoint of the Israeli Ministry of Justice, adapting laws and regulations is a response to the growing phenomenon of "ideologically motivated offences" (Ministry of Justice, 2014, 1).

In contrast, several reports and journalists concluded that the State of Israel enacts universal laws, but in action, they based on nationality in that they relate only to the rights of Jews (Adalah, 2011; Schaeffer, 2016; Zulaikha, 2009). Although the judicial bodies in Israel, protected the separation between the two legal systems in their rulings (Yehuda, et al., 2015). In practice, the military prosecution avoids charging settlers in military courts, but does so in the case of Palestinians, in offences, which defined as against security and against public order. Consequently, Israel has maintained a dual criminal system (Schaeffer, 2016). The declaring of an Arab judge on Israel's Supreme Court proves the rule of laws based on nationality: "this state is anything but an "apartheid state, and is a place where diversity rules" (Ya'ar, April 05, 2011), or as a Jewish judge argued that Israel has "Two-Tiered Justice System" (Cook, November 19, 2009).

Within the criminal justice system, it is important to bear in mind when considering the overall experiences of Palestinians within the criminal courts. The courts in Israel are 'Jewish institutions'. This sense is confirmed by looking at the national composition of judges who are employed in the system. Hovel (2015) found that only 7.7 percent of 672 judges are Palestinians who are citizens of Israel, while in 2008, they were composed 6.9 percent of 580 judges.

The policy for the last four decades, however, has been to refrain from accusing Jews in the military system, even if the crime was committed within the OPT (Schaeffer, 2016; Wolfson, February 2, 2007). The consequence is that Jews and Palestinians arrested of committing the very same crimes in the very same territory are accused, convicted and sentenced in different systems (Schaeffer, 2016). Accordingly, the decisions of the criminal and the military courts are the most apparent feature of the entire criminal justice system, symboling the domination that facilitates wide control of the authorities over the Palestinians (Dugard, & Reynolds, 2013; Weill, 2007).

The political conviction and incarceration

The data refers to 'convicted offenders' – an index that seems at a very advance step of the crime control processes, rather 'convictions', because offenders are regularly for than one crime.

Table 1 shows if we modify to eliminate the several order and security offences for which Arabs were liable up (due to the political and occupation positions in Israel), we find that an average of 45.2 percent of the total Arab offenders compared with 66.4 percent of the total Jewish offenders are 'conventional criminals'. In most general terms, what can be said from these figures is that the political offences, for juveniles and adults, are the major form of convicted crimes.

Table 1. Convicted juveniles and adults, by types of offence
(Jews and Arabs, 2010-2014)

Years	Total				OPT	
	Adults		Juveniles (12-18)		Adults	Juveniles
	Jews	Arabs	Jews	Arabs	Arabs	Arabs
Absolute numbers	86,149	85,890	3,251	5,890	33,325	3,602
Type of offence	100%	100%	100%	100%	100%	100%
Against the security	0.6	18.5	0.8	48.8	36.2	69.1
Against public order	32.9	36.4	18.2	19.0	44.5	18.5
other	66.5	45.1	81.0	32.2	19.3	12.4
Recidivism	%	%	%	%	%	%
New	39.9	42.7	50.7	71.5	48.8	77.3
Recidivists	60.1	57.3	49.3	28.5	51.2	22.7
Courts	%	%	%	%	%	%
Magistrate	77.3	71.1	11.4	8.2	54.9	8.0
Military	9.0	20.3	9.6	49.7	42.9	74.0
Other	13.7	5.6	11.4	7.4	2.8	18.0
Juvenile	0.0	0.0	78.9	34.7	0.0	0.0

Source: CBS (2015), Statistical Abstract of Israel, 2010-2014.

It's important to notice here that under the legal principle of territoriality, criminal offences are judged in regular Israeli courts, but if these offences are labeled as political (perceives as threat to Israel security and order) they are referred to military courts.

Further examination is made of the courts types. The data shows that an average of 20.3% of the Palestinians adults' offenders and 49.9% of the juveniles were sentenced in the military courts. According these figures, there is a trend for higher proportion of Palestinians' juveniles to be new offenders. These differences emphasize the considerable use of political laws (i.e., the Emergencies Regulations) that totally did not apply to Jews, aiming to criminalize new cases of Palestinians.

These figures also reflect the political classifications, which tell us more about the political construction of crimes as about what is happening in fact. The category of 'participation in an unlawful gathering' may be defined as political or not political; throwing stones, for an example, may appear under crimes against human life or under crimes against public order; stealing a car from Jewish neighborhood may be classified as property crime or as public order crime; attacking a police officer may be a crime of violence or may be a crime against public order; throwing a stone at Jews may be classified as violence crime or as public order. These offences have nothing in common, except matters of political classification, especially in territories which are subject for political and military decisions. These figures reflect the priorities of policing for Palestinians: regular policing is of low priority compared with the matters of military and security.

Prisoners are seen as outcomes of criminalization and repression. From the formation of Israel state, the prison system grew steadily to population numbers. Prisons are viewed as more than simply places to contain Palestinian activists that are alleged as 'enemies' while conflict is ongoing outside (McEvoy, 2015).

There were 850 prisoners in 1952; 1,100 in 1959; 1,600 in 1966. After the 1967, the overall prisoners grew intensely with the additions of massive numbers of Palestinians political prisoners (El-'Ajou, April 2013; Cohen, 1989; Korn, 2003). Since the Israeli occupation of Palestinian territory in 1967, more than 800,000 Palestinians have been incarcerated under Israeli military orders in the OPT (Addameer, 2014), while these prisoners, who charged with

“security-related offences”, are directly taken as a danger to Israel's security; meanwhile the Israeli authorities ignore the political nature of their actions (Baker, 2009; Matar, 2011).

The task of documenting trends in the numbers of Palestinians imprisoned over the years is actually compound, the numbers change dramatically from month to month and compared figures are not always given.

Table 2. Distribution of detainees and prisoners in Israel: criminal and political
(Arabs and Jews, in selected years: 1989 and 2015)

Years	Criminal			Political			Total	% of Arabs
	Jews	Arabs/ Israel	Arabs/ OPT	Jews	Arabs/ Israel	Arabs/ OPT		
1989 *	3,389	1,104	556	11	426	2,944	8,430	59.6
2015*	5,628	8,657		31		6,252**	20,568	72.5

Sources: *IPS- Israeli Prison Service

** both (Arabs in Israel and in OPT)

According Table 2, out of the prison population in 2015, 72.5% are Arabs. The classification of 'political crime' is problematic but according to the Prison Service classification of 'security offences' some 41.9 percent of all Arabs in prison could be called officially 'security prisoners'.

DISCUSSION AND SUMMARY

The article offers an analysis of the issue of crime, from the perspective of political relationships between Palestinians and the Israeli justice system. Here, I point to the roles of courts in shaping the criminality of Palestinians. The current article emphasizes three apparent possibilities, which might explain the Israeli courts actions: (a) Due to the spreading of the 'criminal justice system' into more aspects of the lives of Palestinians, the meaning of crime changed meaningfully and has been related to politics and injustice.

(b) Major method of political control is the influential use of law to criminalize human right actions and public resistance. According this possibility, courts' practices have played an indispensable role in constructing conviction and punishment for Palestinians.

(c) The political situation might influence the state to define political actions as crimes because they are seen as a threat to the security of Israel. In this context, Palestinians are defined as 'enemies within'. Thus, the statistics, which generated by courts, are constructed in the context of 'ideology-based security'. This process is part of an intended injustice machine, which planned to criminalize the daily life of the Palestinians, with over control in areas of security and under control in others.

A part of this process is the legal classification, which gives only the unclear information. Many of them are meaningless catch-all that include quite different forms of behaviour, such as 'offences against the public order' may or may not be political actions.

Specified the singular history of the Palestinians, the link between politics and crime is significant. The continuing Israel–Palestine struggle and the importance of the security fears have significant outcomes on the actions of the Israeli criminal justice system in general and the courts in particular, and foremost influences on punitive policies.

The demagogic link between Palestinians and “terrorism” is used to justify using laws and courts as legitimization of inequality, injustice and as instruments of political control. The laws are used as means to protect these interests of the controllers and maintaining their status, by a process of criminalization of political actions and putative politicization of ordinary crimes.

Thus, the Israeli criminal policy towards Palestinians reveals ongoing and belligerent political oppression and domination.

Determining political acts as crimes connect to ideological motives. A whole range of acts, which are committed by Palestinians, might be carried out for political reasons, but the legal terminology and the authorized statistics do not tell us obviously about the offences, which are formed by political reasons. Offences such as murder, theft and kidnapping might be defined as political if the actors are Palestinians and the victims are Jews.

Focusing on security questions and political has been repeated as reasons for the aggressive actions against Palestinians. Concerning Palestinian offenders, a 'law-and-order' penal direction has been grown, and punitive policing powers and imprisonment have been determinedly implemented. For Palestinians and human rights parties jail is considered much more clearly as an instrument of suppression and domination. It is extensively used to separate allegedly persons, who are perceived as threatening to the security. The harsh sentences, imposed over Palestinians, may aim to eliminate the 'imaginary threat' of politicians and the criminal justice agents, by identifying a common 'enemy' or "suitable enemy".

This article offers some future outlines for research, theory, classification and politics: (1) the research priority is to add some in-depth data by implementing detailed research about the link between judges and politicians in constructing the means and the ends of the Israeli criminal justice system; (2) the records of conviction, sentencing and imprisonment are poorly structured, incoherent and inaccessible. This data must differentiate clearly between Palestinians in Israel and in the OPT; (3) the major theories about crime and Palestinians which have been developed by Jewish sociologists and criminologists need reconsiderations. They lack any sense of history and lack of a political edge; (4) determining properly whether a particular act of crime can be measured as political: the most clear answer is to limit the category only to those offences officially defined as such by the criminal law; the second answer is to term who is the political offender, according his reasons and intentions; and finally the third solution is to state that a political crime is whatever the system reacts to as a political crime; and (5) These solutions are depended on the dominant Israeli political context which defines Palestinians as a source of an existent danger for Jews. Thus, ending the processes of securitization, criminalization and incarceration, as a real solution, is connected with ending the basic sources of the political struggle between Palestinians and Jews.

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