



Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge University Press, 2018)

By: Orna Ben-Naftali, Michael Sfard, and Hedi Viterbo

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Jadaliyya (J): What made you write this book?

Orna Ben-Naftali (OBN), Michael Sfard (MS), and Hedi Viterbo (HV): More than half a century has passed since Israel assumed control over the West Bank and Gaza Strip. In the West Bank, there are now nearly 600,000 Israeli settlers, and East Jerusalem has been subsumed into pre-1967 Jerusalem. The Gaza Strip is under a continuous Israeli blockade and in many ways remains under Israel's effective control. Law has played a central role in shaping, legitimizing, and responding to this reality. Some of the legal issues concerning Israel/Palestine have been extensively studied. However, there has been no comprehensive, in-depth academic study of the role of legal mechanisms, norms, and concepts in relation to Israel's rule over the West Bank and Gaza Strip. Our book, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory*, seeks to fill this gap, while shedding new light on the subject.

J: What particular topics, issues, and literatures does the book address?

OBN, MS, and HV: *The ABC of the OPT* critically reflects on, challenges, and redefines the language, knowledge, and practices surrounding the Israeli control regime. It does so in the format of 26 alphabetically ordered entries, each dealing with a term or concept (legal, political, administrative, or military) that is central to Israel's control over the West Bank and Gaza Strip. The book engages with, and contributes to, critical political and legal theory, socio-legal studies, and also writing (across the social sciences and humanities) on Israel/Palestine.

More specifically, our book investigates the complicity of international and domestic law in the multitude of measures Israel has taken to establish and maintain its control over the West Bank and Gaza Strip. By analyzing specific cases, practices, institutions, and legal concepts, the book aims to provide a detailed and insightful analysis of the immensely convoluted legal architecture of the Israeli control regime. In the process, the book highlights the relation between local and international forces – narratives, norms, and so forth – in shaping the legal, political and social reality of Israel/Palestine.

Another central theme of the book is the relationship between the rule, the norm, and the exception. In particular, the book examines law's role in shaping or transforming distinctions between the rule and the exception in relation to the West Bank and Gaza Strip. Also examined are the structure and effects of specific rules and exceptions deployed by the Israeli authorities.

Many of the book's insights are of relevance to other situations, beyond Israel/Palestine – especially regarding state violence, justice, military occupation, and the law's role in relation to each of them.

J: How does this book connect to and/or depart from your previous work?

OBN: *The ABC of the OPT* is a natural progression of my work thus far and could not have been conceived of otherwise. I began writing on the control Israel exercises over the OPT by focusing on the (il)legality of specific measures undertaken in its context. Having realized that by looking at specific measures one turns a blind eye to the systemic issues that enable them, my focus shifted to the latter, eventually questioning law's very role in the making and sustaining of Israel's control over the Palestinian territory. *The ABC of the OPT* is a study of this role.

MS: For me, *The ABC of the OPT* is a culmination of two decades of reflections and meditation on questions of law and control, which arose while I was litigating on behalf of Palestinians subject to Israel's occupation. Authoring the book was a burst of the many insights I had reached in practice, which needed translation into theory.

HV: My previous work tackled, from an interdisciplinary and critical perspective, legal and political issues concerning state violence, childhood, and sexuality, in Israel/Palestine and elsewhere. *The ABC of the OPT* enabled me to build on and at the same time go beyond this earlier work: to investigate additional dimensions of law's violence, additional aspects of the Israeli control regime, and additional discourses and practices.

J: Who do you hope will read this book, and what sort of impact would you like it to have?

The ABC of the OPT is aimed at scholars, practitioners, activists, and policy makers, both in and beyond the field of law. For these various audiences, the book is likely to be of interest because of its comprehensive, theoretically-informed, and empirically-based analysis of legal and political issues, as well as its merging of context-specific insights with broader lessons extending beyond Israel/Palestine.

J: What other projects are you working on now?

OBN: I am currently engaged in four major and interrelated projects. First, I am the Founding Chair of Takkanah – an LL.M program specializing in human rights. The program, admitting a unique blend of students, offers an unprecedented opportunity for its students to study from the leading academic and practicing human rights lawyers in Israel and abroad. The second project, Human's Advocates, involves creating an online civic archive of filmed discussions and interviews with the leading human rights and cause lawyers in Israel. Third, I am the founding editor of *The Law online – Human Rights* – an e-law journal in Hebrew focusing on human rights litigation. Finally, I am working on establishing a civic archive of human rights struggles in Israel, as an alternative to the official archive.

MS: These days I am back in full swing in my legal practice. I am litigating major cases on behalf of Israeli human rights groups and Palestinian communities in the Israeli Supreme Court, challenging several aspects of the new governmental annexationist trends towards the OPT. One of them is the case challenging the legality and constitutionality of the Knesset enacted law which directs the military commander in the OPT to confiscate private Palestinian lands to which settlers have trespassed (known as the "Regularization" Law). I am also teaching human rights litigation at the MA program of the Emile Zola chair for human rights at the Striks School of Law, The College of Management Academic Studies.

HV: Currently, I am working on another book, on the relationship between childhood, law, and human rights in Israel/Palestine. The book will examine the ways in which the Israeli legal system and its human rights critics conceptualize and construct childhood in the West Bank and Gaza Strip, the effects this has on the lives of Palestinians and Israelis (children as well as adults), and the socio-political factors – local and global – involved in the process. The book's theoretical framework will be interdisciplinary, and its findings will be based on an analysis of hundreds of previously unexamined (and mostly unpublished) legal and human rights documents.

Excerpt from Book

The acronym OPT – short for "the Occupied Palestinian Territory" – is widely used in reference to the West Bank and Gaza Strip under Israel's control. ... At the same time, Israel's protracted and highly institutionalized rule over the Palestinian territories, coupled with the mass Jewish settlement project, the de facto incorporation of the West Bank (but not its Palestinian residents) into Israel, and the broader political and legal porosity of the borders between "Israel" and "Palestine," may well indicate that the Israeli control regime has far transgressed the normative bounds of occupation. Therefore, while the title of this book invokes the commonly used term "OPT," it avoids reducing Israel's rule over the West Bank and Gaza Strip to "occupation" by using the broader term "control" instead. ... [The] book ... oscillates between the concepts "occupation," "control," and "rule," depending on the context under examination and the analytical approach.

Indeed, if viewed through the conceptual prism of "belligerent occupation," the Israeli control of the OPT is possibly the most legalized such regime in world history. This is mainly evidenced by four interrelated factors. The first is the extensive involvement of government lawyers in designing and carrying out Israel's rule over the West Bank and Gaza Strip, since its beginning. The second is the Israeli military legal system, which tries thousands of Palestinians each year, and which has

produced thousands of enactments governing Palestinian lives. A third factor is the unprecedented decision of the Israeli supreme court, operating in its capacity as a high court of justice (HCJ), to open its gates to petitions emanating from the OPT ... Lastly, the Israeli rule over the Palestinian territories is the longest – and, accordingly, the most entrenched and institutionalized – belligerent occupation in modern history. Taken together, these facts have generated a profusion of law and, concurrently, voluminous legal scholarship.

Yet, it seems that more laws, arming to the teeth trailing troops of lawyers, legal advisors, judges, and scholars, have not operated to limit state violence. Instead, more often than not, law has enabled this violence, cloaking the use of force required to sustain the Israeli regime with a mantle of legitimacy. Judicial review exercised by the HCJ, for example, has rejected the overwhelming majority of the petitions challenging the legality of various decisions and actions of the occupying power. The very few (though highly publicized) rulings in favor of petitioners have had no significant long-run impact on Israel's conduct in the OPT, other than, in some cases, "legalizing" oppressive state practices or propelling Israel to pursue alternative legal justifications. Scholarly work, in the main, has followed the footsteps of the judiciary and other state agents, engaging in an assessment of the legality of specific decisions and institutional practices rather than analyzing, in their light, the role of law in structuring and sustaining the regime. Such an analysis is at the heart of this study.

Two overarching lines of critique [are interwoven through the book] ... The first, which enshrines concepts such as "the rule of law" and "legal normalcy," largely comports with a mode of thinking and operating that [sociologists] Patricia Ewick and Susan Silbey have labeled "before the law." This approach generally tends to treat legal norms (here, especially international legal norms) as "distinctive, yet authoritative and predictable," as "a formally ordered, rational, and hierarchical system of known rules and procedures." In this critique, legality appears, more often than not, "as something relatively fixed," if not in practice then in principle. ...

The second line of critique amalgamates two other modes of thinking and acting. The first, toward which this critique primarily leans, can be termed, following Ewick and Silbey, "critiquing against the law." It includes what they have described as "exploit[ing] the interstices of conventional social practices to forge moments of respite" – ideationally and concretely – "from the power of law ...". The second mode, which ... can be called "critiquing with the law," involves "playing" law "as a game ... in which pre-existing rules can be deployed and new rules invented to serve the widest range of interests and values." The concern is less with protecting or respecting (international) "law's power than ... [with] the power ... to successfully deploy and engage with the law."

By juxtaposing and/or combining these critiques, this study aims to produce a multilayered analysis, richer than would have been possible through a single perspective. ... Neither of these lines of critique – it is important to stress – is simply "internal" or "external" to law, especially considering the porosity, elasticity, and contestability of law's (imagined) boundaries. Instead, these critiques exemplify different types of "legal consciousness" – [described by] ... Ewick and Silbey [as] "participation in the process of constructing legality... The production [of legality] may include innovations as well as faithful replication ... Consciousness is not merely a state of mind. Legal consciousness is produced and revealed in what people do as well as what they say."

Seeing law and legality as ever-changing products of discourse, imagination, and practice – a view long shared by prominent jurists – also sheds light on the nature of law in Israel's control of the West Bank and Gaza Strip. In addition to Israel's formal legal institutions and texts, there are also,

no less importantly, Israeli soldiers on the ground. While not professionally lawyers, they too engage in ... "legal consciousness." Among other things, soldiers produce various, and at time concurrent, narratives of legality and illegality in the OPT, narratives that largely revolve around the question of the ability, or the authority, to locate and identify the rule and the exception. Thus, in testimonies of Israeli ex-soldiers, the OPT is sometimes described as a space of lawlessness, where "there is no law, only Jewish interests." According to another narrative, the OPT is in fact replete with law, but since soldiers "only follow orders" they are somewhat distinguishable and remote from that law. In yet another narrative, soldiers not only perform but actually embody the law, a dynamic that finds its ultimate manifestation whenever a soldier asserts: "I am the law." ...

The book is structured in a lexical format, comprising 26 alphabetically ordered entries. Each entry ... focuses on a legal, administrative, and/or military term/concept that is central to the modus operandi of Israel's rule over the West Bank and Gaza Strip. Each entry begins descriptively, with a definition, description, or presentation of the legal doctrine relative to the term/concept ... [The] ensuing discussion ... focuses on the actual use, or role, of the term/concept under examination, and on its impact on life under Israeli rule. This format thus encompasses both the traditional function of a lexicon, as an instrument for the organization of knowledge, and the function of reflecting on this knowledge in a critical manner that challenges and redefines it. These analytical and deconstructive moves take place at both the level of each separate entry and also, through abundant cross-references, at the level of their interaction. Indeed, to a large degree, the meaning of each term or concept is to be found in its relation to the other terms and concepts discussed in this book. ...

The methodological choice to opt for the format of a lexicon for the study of law's role in the making and shaping of the Israeli control regime rests primarily on the centrality of language to law and, more specifically, on the performative nature of legal language. Legal language does more than merely describe reality, and even more than enable or limit action: it creates reality, and shapes both experience and consciousness.