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## Conceptual and Theoretical Foundations

### 1.1 Challenging Dominant Discourses

The Israeli legal system's handling of young Palestinians has been a subject of global debate. To mention just three examples touched on in this book: bills were introduced in the US Congress, requiring "that United States funds do not support military detention, interrogation, abuse, or ill-treatment of Palestinian children"; a delegation of lawyers commissioned by the British government published a high-profile report on the "treatment of Palestinian children under Israeli military law"; and Israel's detention of a 16-year-old Palestinian attracted worldwide media coverage<sup>1</sup> as well as condemnation from UN bodies, international celebrities, and a petition signed by 1.7 million people.<sup>2</sup> At the same time, in Israel, the legal system's treatment of Jewish settler youth has also been a matter of concern, with one lawmaker warning that the prosecution of young protestors could "stain them for life" and thus destroy "the lives of hundreds of young guys, the salt of the earth."<sup>3</sup>

<sup>1</sup> The US Congress bills are addressed in Chapter 5, Section 5.4 ("The Right to Childhood"); the report by the delegation of British lawyers is discussed in Chapter 2, Section 2.7 ("Israel's Human Rights Critics") and Chapter 4, Section 4.4.1 ("The Pitfalls of Child Law"); and Israel's detention of the 16-year-old Palestinian is explored, from various angles, in Chapters 2 (Section 2.4, "The Military Court System"), 4 (Section 4.4.3, "Confining Palestinian Minds"), 5 (Section 5.5.1, "Overlooking Young People's Accounts"), and 6 (Sections 6.1, "Introduction," and 6.3.2, "Denial").

<sup>2</sup> See, e.g., Office of the UN High Commissioner for Human Rights, "UN Rights Experts Alarmed by Detention of Palestinian Girl for Slapping Israeli Soldier" (February 13, 2018), [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22654&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22654&LangID=E); +972 Magazine staff, "Prominent Actors, Musicians, and Authors Demand Ahed Tamimi's Release," +972 Magazine (February 12, 2018), <https://972mag.com/prominent-actors-musicians-and-authors-demand-ahed-tamimis-release/133119>; Middle East Monitor staff, "1.7m Sign Online Petition for Ahed Tamimi's Release," *Middle East Monitor* (February 7, 2018), [www.middleeastmonitor.com/20180207-1-7m-sign-online-petition-for-ahed-tamimis-release/](http://www.middleeastmonitor.com/20180207-1-7m-sign-online-petition-for-ahed-tamimis-release/).

<sup>3</sup> See Chapter 7, Section 7.3.2 ("Israeli Settler Children as Soldiers in the Making").

Three claims recur in such debates: first, that Israel flouts international law and human rights; second, that law and rights offer the remedies for Israel's wrongs; and, third, that young people have distinct characteristics and needs, inherently different from those of their elders. As will soon become apparent, this book radically challenges all three claims. The British delegation thus asserted, quoting the UN Convention on the Rights of the Child (CRC): "The child by reason of physical and mental immaturity 'needs special safeguards.' . . . International law, international humanitarian law and the [CRC] . . . should be fully and effectively implemented [by Israel]. The international legal principle of the best interests of the child should be the primary consideration in all actions concerning children."<sup>4</sup> Similarly, the US bills note: "Children are entitled to special protections . . . under international human rights law and international humanitarian law." Citing reports by UN bodies and human rights NGOs, the bills maintain that Israel "violates international law and internationally recognized standards of human rights," including those enshrined in the CRC and in international humanitarian law.<sup>5</sup> As for settler youth in conflict with the law, one Israeli NGO emphasized the "need to remember that these minors have rights . . . [which] must be upheld."<sup>6</sup>

For some, it is not only the well-being of young Palestinians or Israelis that is at stake, but the very survival of childhood and child rights. This narrative, too, is brought into question in this book. "It is impossible to assess the . . . harm caused to [Palestinian] children [by the Israeli military's actions]," the Special Rapporteur of the UN Commission on Human Rights once warned, adding: "Many have simply lost their childhood." According to the British section of Amnesty International, "[c]hildren's rights [are] killed amid lawlessness" in the Gaza Strip. Using a similar rhetoric, the Public Committee Against Torture in Israel has

<sup>4</sup> S. Sedley et al., *Children in Military Custody: A Report Written by a Delegation of British Lawyers on the Treatment of Palestinian Children under Israeli Military Law* (Foreign and Commonwealth Office, June 2012), pp. 9, 32, [www.childreninmilitarycustody.org.uk/wp-content/uploads/2012/03/Children\\_in\\_Military\\_Custody\\_Full\\_Report.pdf](http://www.childreninmilitarycustody.org.uk/wp-content/uploads/2012/03/Children_in_Military_Custody_Full_Report.pdf) (emphasis removed).

<sup>5</sup> Promoting Human Rights by Ending Israeli Military Detention of Palestinian Children Act, H.R. 4391, 115th Cong. (2017), pp. 2, 8–9, [www.congress.gov/115/bills/hr4391/BILLS-115hr4391ih.pdf](http://www.congress.gov/115/bills/hr4391/BILLS-115hr4391ih.pdf); Promoting Human Rights for Palestinian Children Living under Israeli Military Occupation Act, H.R. 2407, 116th Cong. (2019), pp. 2, 10–12, [https://nwtac.dci-palestine.org/hr2407\\_full\\_text](https://nwtac.dci-palestine.org/hr2407_full_text).

<sup>6</sup> See Chapter 8, Section 8.1 ("Introduction: Law, Human Rights, and Young Israeli Settlers").

legitimized the more severe abuse of Palestinians classified as adults: “Childhood is not a Privilege but a Right! . . . Torture Destroys Childhood . . . [T]he threshold in which an act of abuse would be considered torture in the situation of an adult must be lowered when it comes to children.”<sup>7</sup> Similarly, within legal scholarship, Israel has been described as “stripping [Palestinian] children of their childhood,” “evicting children from childhood,” and violating their “right to childhood.” “The Israeli legal and political apparatus,” the claim goes, “does not treat Palestinian children as children. . . . [Consequently,] the children’s rights discourse disappears.”<sup>8</sup>

This book, while critical of Israel’s conduct, also poses a radical challenge to these and other prevailing narratives. It problematizes law, rights, and childhood – that is, it unsettles and disrupts common ways of thinking about them, about the problems each of them presents, and about the solutions to these problems, in and beyond the Israel/Palestine context.<sup>9</sup> As laid bare in this and the following chapters, both law and rights lend themselves to divergent uses, including those operating in the service of state domination and violence. Further, rights and law, partly due to their reliance on abstractions and generalizations, are frequently applied without sufficient sensitivity to the context at hand. Child law (the sum of legal mechanisms relating directly to those defined as children) and child rights are premised on a specific abstraction: a supposedly universal and natural model of childhood, which in reality often marginalizes young people, legitimizes harshness toward older people, and suppresses valuable forms of life and thought. Combined, the malleability of law and rights, their problematic conceptualization of childhood, and their context-insensitivity often beget harm to disempowered communities, young and old alike.

<sup>7</sup> See, respectively, Chapter 5, Section 5.3.1 (“Lost Childhood”); Amnesty International UK, “Occupied Territories: Children’s Rights Killed amid Growing Lawlessness” (December 12, 2006), [www.amnesty.org.uk/press-releases/occupied-territories-childrens-rights-killed-amid-growing-lawlessness](http://www.amnesty.org.uk/press-releases/occupied-territories-childrens-rights-killed-amid-growing-lawlessness); Chapter 5, Section 5.4 (“The Right to Childhood”).

<sup>8</sup> N. Shalhoub-Kevorkian, *Incarcerated Childhood and the Politics of Unchilding* (Cambridge and New York: Cambridge University Press, 2019), pp. 20, 25–26, 44, 50, 52, 54, 100, 103, 107, 111–12, 116–18, 121–22, 124, 126, 128–30, 132, 136–37. For my criticism of this scholarly narrative, see Chapter 4, Section 4.3.3 (“The Blind Spots of the Human Rights Community”) and Chapter 5, Section 5.4 (“The Right to Childhood”).

<sup>9</sup> This definition of “problematization” draws on A. Terwiel, “Problematization as an Activist Practice: Reconsidering Foucault” (2020) 23:1 *Theory & Event* 66, 67.

Drawing on cross-disciplinary literature, this book also takes as its point of departure that neither “children” nor “adults” are merely pre-existing groups to be served, regulated, or governed by law and human rights. Rather, each is in large part a socially manufactured category, one that is delineated, reinforced, challenged, and weaponized by historically and geographically contingent forces. Key among these forces are practices and discourses relating to law and human rights, whose role in shaping the meaning, nature, effects, and uses of childhood is a central concern of this book. Also examined in the following chapters is the intertwining of law and human rights with various other forces at both the local and global levels, including visual technologies and images, the mental health disciplines, militarism, and everyday acts of resistance.

Accordingly, and contrary to allegations by the human rights community, Israel neither simply erodes childhood nor disregards legal and human rights norms. Instead, as brought to light in this book, Israeli authorities have pursued a more sophisticated course of action: deploying law, rights, and childhood in general – and increasingly embracing international child rights law in particular – to entrench, perfect, and launder Israel’s oppressive control regime. Law and rights have thus aided Israel in its efforts to subjugate Palestinian minds, bodies, and interactions; to confine Palestinians to a legally enshrined model of childhood that works to their detriment; to discipline older Palestinians through their young; to conceal and justify state violence; to portray abusive soldiers as children deserving of compassion; to expand the Jewish settlement project while dispossessing Palestinians; and much of this, supposedly, in the name of “the child’s best interests.”

Also put on trial in this book, along with the Israeli state, are its liberal human rights critics – NGOs (both local and international), UN bodies, and scholars. Not only have such critics repeatedly failed to recognize how the child rights framework ends up harming Palestinians, but they have also, in multiple ways, contributed to this harm. Moreover, throughout the chapters that follow, the liberal human rights community is revealed to have much more in common than is generally believed with Israeli authorities, as well as with Israeli settlers. One commonality, increasingly shared by all of them, is the language of law and rights. Another is the way in which human rights actors have emulated or even endorsed the Israeli depiction of Palestinians as a national security risk, as well as Israel’s use of age distinctions as tools of control. The ever-tightening relationship between law, child rights, and state violence is a common thread throughout the book’s chapters. It stems from various

factors, including some of the characteristics of the human rights community, specifically: its questionable conception of childhood; its uncritical embrace of international law; its ignorance, misunderstanding, and misrepresentation of crucial legal and political issues; its need to keep donors and lay audiences interested in local issues that are both complex and contentious; and, on occasion, its assessment of human rights violations in isolation from their structural causes.

The main objects of inquiry of this book, then, are the Israeli legal system and Israel's human rights critics. I investigate how, and to what effect, they all conceptualize, shape, and utilize childhood. The inquiry unfolds within a multitude of contexts (as detailed in the last section of this chapter): the mass prosecution, incarceration, surveillance, abuse, and killing of Palestinians, both suspected lawbreakers and others; state policies and practices in relation to various areas, including Israeli rules of engagement, restrictions on Palestinians' movement and food consumption, the monitoring of unsuspected young Palestinians, the severing of Palestinian family ties, the use of human shields, and military hazing; the Israeli legal system's handling of Jewish settler youth who throw stones or participate in legally proscribed protests; and the multiple roles human rights organizations play across these settings, including as legal argument-makers, as disseminators of child-related imagery and truth claims, and as providers of legal counsel. Across these various contexts, I bring to light previously unexplored elements, effects, and pitfalls of legal and human rights discourses and practices.

Hundreds of hitherto unexamined legal and human rights sources are analyzed in this book, many of which are not publicly available. Among their institutional authors are the Israeli military, its legal advisors, its courts for noncitizen Palestinians, and its courts-martial for soldiers. I also scrutinize documents and actions of other Israeli authorities, primarily those of the government, parliament, and the state's non-military legal arms, including the judiciary (from lower courts to the supreme court), the state attorney's office, the police, and the national prison authority. Also examined is a wide range of human rights publications by international, Palestinian, and Israeli organizations. Further information on the various types of sources under examination is provided in the penultimate section of this chapter.

Broader contexts – local and global – are considered throughout the book. Locally, I shed new light on the Israeli control regime, its transformation over time, and its under-researched features, including: its use of childhood, uncertainty, and visual images as modes of governance; its

heavy reliance on law; its hierarchization of different types of evidence; and its interconnected modes of violence against different populations in different territories. Beyond the local context, I highlight under-examined pitfalls and characteristics of laws, policies, and social attitudes, both internationally and within various countries, while drawing comparisons and connections with Israel/Palestine. These laws, policies, and attitudes (past and present) span a wide range of issues, key among which are those concerning young people, their rights, and their legal status; armed conflict and counterinsurgency; and the (mis)treatment of colonized peoples, racialized minorities, and noncitizens. This simultaneous contextualization, at both the local and global levels, yields insights beyond this book's primary focus.

This book's contribution, then, is fivefold: conceptual, theoretical, methodological, thematic, and contextual. Conceptually, this study problematizes law, human rights, and childhood, thereby calling into question dominant assumptions in and beyond the Israel/Palestine context. Theoretically, it bridges disciplinary boundaries and brings into dialogue previously separate bodies of scholarship, including childhood studies, critical legal studies, critical human rights scholarship, and literature on Israel/Palestine. Methodologically, it dissects a wide array of legal and human rights materials, almost none of which have previously been studied, and many of which are not in the public domain. Among these materials, as detailed later in this chapter, are hundreds of military judgments and statutes – a central area of Israeli law that no academic book has thus far examined. Thematically, this study reframes various issues deserving of attention and, in so doing, provides new ways to address them. This includes casting light on subjects that have so far received little to no scholarly attention, such as the trials of Israeli soldiers, the prosecution of settlers, Israel's use of child law to govern and disempower Palestinian adults, and commonalities between the Israeli legal system and its human rights critics.<sup>10</sup> Contextually, this book brings to light parallels, connections, and tensions between the local and

<sup>10</sup> The limitations and dearth of legal scholarship on this book's following subjects of inquiry are discussed as follows: on Israeli military law, see Chapter 2, Section 2.4 ("The Military Court System"); on Israel's handling of soldiers charged with abusing Palestinians, see Chapter 6, Section 6.1 ("Introduction"); on young Israeli settlers, see Chapter 8, Section 8.1 ("Introduction: Law, Human Rights, and Young Israeli Settlers"); on the law applied by Israel to young noncitizen Palestinians, see Chapter 2, Section 2.4 ("The Military Court System"); and on childhood and law generally, beyond the Israel/Palestine context, see Section 1.2.1 ("Problematizing Childhood") in this chapter.

the global, and between past and present, thereby offering broader lessons applicable beyond Israel/Palestine. Rather than rehashing familiar tropes, this book offers a unique perspective from which alternative avenues for thinking and acting can be developed.

Unlike an expanding plethora of human rights and academic publications, I do not profess to represent the experiences and perspectives of young Palestinians. Though valuable, such discourse suffers from significant shortcomings (as explained in detail in Chapter 5).<sup>11</sup> My focus is not so much on the actions of “children” as on unexplored aspects of the legal and human rights forces that construct, conceptualize, and deploy childhood. This framing, however, is not intended to indicate that the book’s protagonists – the Israeli legal system and the human rights community – necessarily succeed in their attempts to govern childhood. Nor does it mean that those whose lives are affected lack agency. Quite the opposite. Throughout the chapters that follow, I highlight wide-ranging forms of Palestinian resistance: exiting enclosed territories, in violation of Israel’s movement restrictions, by misrepresenting one’s age; developing critical political consciousness while in Israeli prisons; smuggling sperm from prison in defiance of Israel’s ban on conjugal visits; using stones as weapons and thus destabilizing the power imbalance; committing to returning to what is deemed the stolen homeland; self-empowerment through protest; and using cameras and visual imagery to expose state violence. In addition, I demonstrate that young Jewish settlers have been at the forefront of political activism and, when detained, have refused to disclose their ages and identities. To adequately contextualize these actions, the following chapters also draw on and engage with a broad array of both Palestinian and settler sources.

In the remainder of this chapter, I establish the book’s theoretical and conceptual foundations. Section 1.2 offers a rethinking of deep-rooted notions (including those mentioned so far) about each of the subjects to be examined: childhood, law, and human rights. This sets the stage for understanding how and why this study departs from dominant legal and human rights discourses, and what conceptual alternatives it offers. Section 1.3 then places the examined issues in their political context by outlining the varying modes and degrees of control that Israeli authorities exercise over the different parts of Israel/Palestine. Section 1.4

<sup>11</sup> See specifically Chapter 5, Section 5.5 (“Lost Voices”).

discusses my methodology and sources. Finally, an outline of the book's chapters is provided.

## 1.2 Problematizing Childhood, Law, and Rights

### 1.2.1 *Problematizing Childhood*

This book lays bare the various ways in which legal and human rights discourses and practices, rather than simply regulating or responding to pre-existing children, are heavily implicated in the social production of childhood. This directly challenges two problematic views that tend to dominate social, legal, and human rights thinking about childhood: essentialism and what can be termed “developmentality.” The former is the belief that a type of person or thing (in this case, the child or the adult) has a true, intrinsic, constitutive, and invariant nature.<sup>12</sup> The categories “children” and “adults,” and the ostensible differences between the groups they designate, are thus understood as self-evident, natural, and universal. Developmentality is the conception of human life as a linear and cumulative development, and of childhood in particular as a distinct stage, or a sequence of standard stages, of development (cognitive and emotional) and socialization.<sup>13</sup>

Thus, through ageist generalizations and abstractions,<sup>14</sup> the prevailing essentialism and developmentality contrast childhood with adulthood. While this dichotomy brims with contradictions and indeterminacies, the archetypal child and adult tend to be diametrically opposed. The

<sup>12</sup> This is a somewhat crude definition. As Diana Fuss notes, essentialism has various iterations and forms. See D. Fuss, *Essentially Speaking: Feminism, Nature and Difference* (New York and London: Routledge, 1989), pp. xii, 2.

<sup>13</sup> As suggested by Lynn Fendler (whose definition of “developmentality” is slightly different from mine), this term alludes to Michel Foucault’s widely cited concept “governmentality.” L. Fendler, “Educating Flexible Souls: The Construction of Subjectivity through Developmentality and Interaction,” in K. Heltqvist and G. Dahlberg (eds.), *Governing the Child in the New Millennium* (New York and London: Routledge, 2001), p. 120. On “governmentality,” see G. Burchell, C. Gordon, and P. Miller (eds.), *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991).

<sup>14</sup> On the ageism in thinking that young people of the same age are identical, see C. Breen, *Age Discrimination and Children’s Rights: Ensuring Equality and Acknowledging Difference* (Leiden: Martinus Nijhoff, 2005); R. Pain, “Theorising Age in Criminology: The Case of Home Abuse” (1997) 2 *British Criminology Conferences: Selected Proceedings* 1, 5.



former is assumed to be relatively dependent, vulnerable, incomplete, developing, unreliable, ignorant, impulsive, and, therefore, in need of protection and supervision. The latter, in contrast, is considered relatively autonomous, competent, informed, responsible, fixed, and fully formed.<sup>15</sup>

This prevalent notion of childhood, however, is historically and culturally specific. As social constructs, childhood and adulthood have varied considerably across time and place. Although scholarship on the subject is well established, legal and human rights discourses have largely failed to engage with it. Therefore, it is worth mentioning that as early as 1928, Margaret Mead's *Coming of Age in Samoa*, the best-selling anthropological book for nearly four decades after its publication, paved the way for the presumed naturalness of young people's traits to be questioned. This ethnographic study found that teenage rebellion – perceived by many in the Global North as a universal phenomenon – was, by and large, absent in the Samoan Islands, where the transition to adulthood appeared to be relatively smooth and calm. Mead attributed this to cultural differences, including the coherent and stable values to which young Samoans were exposed (as opposed to mixed messages and expectations in the Global North), the non-concealment from young Samoans of supposedly adult information on issues such as sexuality and death, and the acceptance and approval among Samoans of adolescent sexuality.<sup>16</sup>

Later anthropological studies found a similar absence of teenage rebellion in other societies, as well as a stark contrast to dominant Western attitudes toward childhood sexuality. For example, the Canela, an Amerindian group in Brazil, were reported to encourage their young to have frequent, early, premarital sex – a practice neither the young nor their elders regarded as abuse or neglect. Certain communities in Papua New Guinea were found to gradually initiate boys into manhood through a series of ritualized homosexual oral sex, which the boys reportedly

<sup>15</sup> See, e.g., D. Kennedy, *The Well of Being: Childhood, Subjectivity, and Education* (Albany: State University of New York Press, 2006); N. Lee, *Childhood and Society: Growing Up in an Age of Uncertainty* (Buckingham: Open University Press, 2001); V. Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (Princeton: Princeton University Press, 1985).

<sup>16</sup> M. Mead, *Coming of Age in Samoa: A Psychological Study of Primitive Youth for Western Civilisation* (New York: William Morrow & Co., 1928).

came to enjoy.<sup>17</sup> To contemporary Western eyes, such practices are likely to seem perverse, to say the least.

Also influential has been historian Philippe Ariès's 1960 book, *L'Enfant et la vie familiale sous l'Ancien Régime* (translated into English as *Centuries of Childhood*). Shifting the focus to Europe, Ariès contended that childhood, as a distinct stage separate from adulthood, is an invention of modernity – a provocative albeit not entirely unprecedented claim.<sup>18</sup> In premodern times, he argued,

the idea of childhood did not exist; this is not to suggest that children were neglected, forsaken or despised. The idea of childhood is not to be confused with affection for children: it corresponds to an awareness of the particular nature of childhood, . . . which distinguishes the child from the adult . . . In medieval society, this awareness was lacking.<sup>19</sup>

Accordingly, in medieval Europe those we would now define as “children” mixed freely with “adults,” worked from a fairly young age, played the same games as their elders, and were exposed to the same sights and information.

Admittedly, such academic studies do not merely observe social reality; rather, they partake in its construction, including the construction of childhood.<sup>20</sup> Further, childhood studies do not speak in a single voice,<sup>21</sup>

<sup>17</sup> For a useful overview of some of these studies, see H. Montgomery, *An Introduction to Childhood: Anthropological Perspectives on Children's Lives* (Malden and Oxford: Wiley-Blackwell, 2008), pp. 203–05, 209–10; M. J. Kehily and H. Montgomery, “Innocence and Experience: A Historical Approach to Childhood and Sexuality,” in M. J. Kehily (ed.), *An Introduction to Childhood Studies*, 2nd ed. (Maidenhead and New York: Open University Press, 2009), pp. 79–81.

<sup>18</sup> In 1939, the sociologist Norbert Elias observed that, in medieval Europe, “[t]he distance [in behavior] between adults and children . . . was slight.” Quoted in H. Cunningham, *Children and Childhood in Western Society Since 1500*, 2nd ed. (London and New York: Routledge, 2005), p. 4.

<sup>19</sup> P. Ariès, *Centuries of Childhood: A Social History of Family Life*, R. Baldick (trans.) (London: Jonathan Cape, 1962), p. 128.

<sup>20</sup> On some of the ways in which childhood studies shape childhood, see P. Kelly, “Youth as an Artefact of Expertise: Problematizing the Practice of Youth Studies in an Age of Uncertainty” (2000) 3 *Journal of Youth Studies* 301; A. S. Benzaquén, “Childhood, History, and the Sciences of Childhood,” in H. Goelman et al. (eds.), *Multiple Lenses, Multiple Images: Perspectives on the Child Across Time, Space, and Disciplines* (Toronto: University of Toronto Press, 2004), p. 14.

<sup>21</sup> See, e.g., K. H. Federle, “Rights Flow Downhill” (1994) 2 *International Journal of Children's Rights* 343, 349 (noting that both proponents and opponents of child rights find support for their assertions in sociology and psychology).

nor are they – including the works of Mead<sup>22</sup> and Ariès<sup>23</sup> – immune to criticism. These caveats notwithstanding, the insight about the culturally and historically contingent nature of childhood is invaluable, and has been refined and developed in later academic work.

Nevertheless, contemporary society clings to what historian Steven Mintz has called the “myth of progress,” viewing “the history of childhood as a story of steps forward over time.”<sup>24</sup> Similarly, communities and individuals that diverge from the dominant ideal of childhood are often judged to be inadequate, unevolved, or even perverse. What this socially prevalent mindset overlooks, as I demonstrate in Chapters 4 and 5, is the systematic disempowerment of those defined as children and the extensive harm caused to people of all ages in the name of child-related norms.

Today’s legal and social distinctions between “children” and “adults” tend to be taken for granted and hence are rarely accounted for. When justifications are provided, they typically rest on one of two argumentative strategies. The first is to offer, as supporting evidence, examples of toddlers and preteens. What this convenient framing ignores is that the general definition of “child” or “minor,” in international,<sup>25</sup> Israeli,<sup>26</sup> and many other domestic legal systems, more broadly encompasses anyone up to the age of 18 years. According to this wide definition, every other person in the West Bank and Gaza Strip is a child<sup>27</sup>

<sup>22</sup> On the strengths and limitations of Mead’s work, see P. Shankman, *The Trashing of Margaret Mead: Anatomy of an Anthropological Controversy* (Madison: University of Wisconsin Press, 2009).

<sup>23</sup> On the strengths and limitations of Ariès’s thesis, see D. Gittins, “The Historical Construction of Childhood,” in Kehily (ed.), *An Introduction to Childhood Studies*, pp. 35–49; C. Heywood, “Centuries of Childhood: An Anniversary – and an Epitaph?” (2010) 3:3 *Journal of the History of Childhood and Youth* 341; R. T. Vann, “The Youth of Centuries of Childhood” (1982) 21:2 *History and Theory* 279.

<sup>24</sup> S. Mintz, *Huck’s Raft: A History of American Childhood* (Cambridge, MA and London: Harvard University Press, 2004), p. 3.

<sup>25</sup> Article 1 of the Convention on the Rights of the Child, November 20, 1989, 1577 UNTS 3 [hereinafter throughout the book: CRC].

<sup>26</sup> For the current law concerning noncitizen Palestinians in the West Bank, see Article 136 of the Order Concerning Security Provisions (Integrated Version) (Judea and Samaria) (No. 1651), 2009 [hereinafter: Order 1651] (amended in 2011 by Article 3 of the Order Concerning Security Provisions (Judea and Samaria) (Amendment No. 10) (No. 1676), 2011). Regarding Israelis and others, see Article 1 of the Youth Law (Adjudication, Punishment, and Modes of Treatment), 1971 [hereinafter: Youth Law]. Beyond the criminal law context, see, e.g., Article 3 of the Law of Legal Competence and Guardianship, 1962.

<sup>27</sup> For estimates of the age composition of Palestinians, see UN Office for the Coordination of Humanitarian Affairs, *2014 Strategic Response Plan* (November 2013), p. 4, <https://doi.org/10.1017/9781009019842.001>

(making the local population far younger than those of the world as a whole,<sup>28</sup> the Global North,<sup>29</sup> and Israel “proper” within its pre-1967 borders<sup>30</sup>). Palestinian defendants classified as children, in particular, are normally above the age of criminal responsibility, which Israeli law sets at 12 years<sup>31</sup> (for this reason, I will usually be referring to them as “youth” rather than “children”). To invoke the very young to generalize about all under-18-year-olds renders them, in linguist John Lakoff’s terms, a “social stereotype” standing for the entire group with which it is associated.<sup>32</sup>

A second and perhaps even more common argumentative strategy cites young people’s perceived differences – physical, mental, psychological, and experiential – as if they are pre-given and entirely natural. Contrary to this view, such differences do not simply dictate that society must be divided into children and adults. Rather, as childhood came to be thought of as distinct from adulthood, so the bodies, minds, and experiences of those defined as children came to be regarded and shaped as other than those of their older counterparts. Further, each young person potentially differs, often significantly, from her or his peers.

[docs.unocha.org/sites/dms/CAP/SRP\\_2014\\_oPt.pdf](https://docs.unocha.org/sites/dms/CAP/SRP_2014_oPt.pdf); Palestinian Central Bureau of Statistics, *The Status of the Rights of Palestinian Children 2014* (April 2015), p. 7, [www.pCBS.gov.ps/Downloads/book2147.pdf](http://www.pCBS.gov.ps/Downloads/book2147.pdf). For an estimate that nearly half of Israeli settlers are under-18s, see Central Bureau of Statistics, “Selected Data for the International Child Day 2018” (October 18, 2018), p. 3 [Hebrew], [www.cbs.gov.il/he/mediarelease/DocLib/2018/340/11\\_18\\_340b.pdf](http://www.cbs.gov.il/he/mediarelease/DocLib/2018/340/11_18_340b.pdf).

<sup>28</sup> A third of the world’s population is estimated to be under the age of 18 years. See J. Wall, “Human Rights in Light of Childhood” (2008) 16 *International Journal of Human Rights* 523, 523.

<sup>29</sup> For data concerning the USA and UK populations, see, respectively, US Census Bureau, *Age and Sex Composition in the United States* (2018), [www.census.gov/data/tables/2018/demo/age-and-sex/2018-age-sex-composition.html](http://www.census.gov/data/tables/2018/demo/age-and-sex/2018-age-sex-composition.html); Office for National Statistics, *2011 Census: Population Estimates by Single Year of Age and Sex for Local Authorities in the United Kingdom* (March 27, 2011), [www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/2011censuspopulationestimatesbysingleyearofageandsexforlocalauthoritiesintheunitedkingdom](http://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/2011censuspopulationestimatesbysingleyearofageandsexforlocalauthoritiesintheunitedkingdom).

<sup>30</sup> About a third of the Israeli population is aged under 18. See Central Bureau of Statistics, “Selected Data for the International Child Day 2018,” p. 1.

<sup>31</sup> On issues concerning the age of criminal responsibility for Palestinians and Israelis under Israeli law, see, respectively, Chapters 3 (Section 3.2, “Age on Trial”) and 8 (Sections 8.2.1, “Stone Throwing,” and 8.3, “Age, Silence, and Infantilization”).

<sup>32</sup> G. Lakoff, “Cognitive Models and Prototype Theory,” in U. Neisser (ed.), *Concepts and Conceptual Development: Ecological and Intellectual Factors in Categorization* (Cambridge and New York: Cambridge University Press, 1987), pp. 63, 76–77.

And similarities between some young and older people eclipse those within each of these cohorts. It is society that attaches importance to, enhances, and sometimes even creates certain physical differences while treating others as meaningless.<sup>33</sup> Similar realizations regarding other social groups are widely accepted in gender, sexuality, race, and disability studies.

Frequently, claims about age-based differences cite developmental theories, specifically developmental psychology and brain development studies. This brings to mind how mainstream science once supported racism, patriarchy, classism, and other forms of essentialist and infantilizing domination. However, critical literature has pointed out the reductive, totalizing, universalistic, deterministic, and essentialist tendencies of developmental psychology, as well as its concern less with actual “children” than with a mythical childhood. This discipline, the criticism goes, is part of a Western, liberal, class-specific project of turning “others” into rational subjects in the interest of existing power relations.<sup>34</sup> Neurodevelopmental studies have also been shown to suffer from myriad epistemological and methodological shortcomings. The evidence on which such studies hinge – the assumptions they make about brain activity and the equipment in use – is contested and ever-changing. Time and again, neuroscientists generalize on the basis of studies with relatively few participants, often from particular cultural or class backgrounds. Countless variables and phenomena that may influence the brain are ignored. Testing in a lab setting has limitations. Experiments exclude participants who are labeled as mentally abnormal. Moreover, brain maps are simplified (from numbers to color areas) to make them accessible to the media and public, and are normalized for statistical “significance,” thereby failing to do justice to the messy and complex data.<sup>35</sup> At a more fundamental level, neurological development

<sup>33</sup> Cf. A. James, C. Jenks and A. Prout, *Theorizing Childhood* (Cambridge: Polity Press, 1998), pp. 147, 150–51; C. Castañeda, *Figurations: Child, Bodies, Worlds* (Durham, NC and London: Duke University Press, 2002).

<sup>34</sup> See, e.g., E. Burman, *Deconstructing Developmental Psychology*, 3rd ed. (London: Routledge, 2016); J. R. Moss, *Growing Critical: Alternatives to Developmental Psychology* (London and New York: Routledge, 1996); R. Stainton Rogers and W. Stainton Rogers, *Stories of Childhood: Shifting Agendas of Child Concern* (New York and London: Harvester Wheatsheaf, 1992).

<sup>35</sup> See J. Bessant, “Hard Wired for Risk: Neurological Science, ‘the Adolescent Brain’ and Developmental Theory” (2008) 11:3 *Journal of Youth Studies* 347–60; P. Kelly, “The Brain in the Jar: A Critique of Discourses of Adolescent Brain Development” (2012) 15:7 *Journal of Youth Studies* 944–59; A. Cox, “Brain Science and Juvenile Justice: Questions

is greatly affected by the information and experiences to which an individual is, or is not, exposed.<sup>36</sup> In modern society, such external stimuli have become highly age-specific. With so-called “non-age-appropriate” experiences and knowledge being withheld from young people, no wonder they appear to be less developed.

In a marked departure from most of the existing legal and human rights literature,<sup>37</sup> I analyze childhood from a social constructionist perspective.<sup>38</sup> Such a viewpoint, as sociologists Allison James, Chris Jenks, and Alan Prout explain, “rejects any idea that childhood rests on some pre-given essential nature and contends that notions of childhood, indeed the very term and concept itself, are a way of looking, a category of thought, a representation. The idea of childhood, in this view, came into being through discourses that created their own objects.”<sup>39</sup> In line with this perspective, I generally avoid using the essentialist categories “children” and “adults” in this book, opting instead for phrases such as “young people” and “those over the age of majority” respectively.

### 1.2.2 *Problematizing Child Law*

Much of childhood, in its modern form, is law’s doing. Law prescribes and enforces norms, confers entitlements and duties, informs language and social perceptions, and is thus among the key social forces shaping childhood, adulthood, and child–adult relations. At the hands of modern law and other social forces, childhood has become, according to sociologist Nikolas Rose, “the most intensively governed sector of personal existence.”<sup>40</sup> “If children per se are governed closely,” criminologists

for Policy and Practice,” in W. T. Church et al. (eds.), *Juvenile Justice Sourcebook*, 2nd ed. (Oxford and New York: Oxford University Press, 2014), pp. 123–48.

<sup>36</sup> C. M. Bennett and A. A. Baird, “Anatomical Changes in the Emerging Adult Brain: A Voxel-Based Morphometry Study” (2006) 27:9 *Human Brain Mapping* 766–77; C. Fine, D. Joel and G. Rippon, “Eight Things You Need to Know About Sex, Gender, Brains, and Behavior” (2019) 15:2 *Se&F Online*, <http://sfonline.barnard.edu/neurogenderings/eight-things-you-need-to-know-about-sex-gender-brains-and-behavior-a-guide-for-academics-journalists-parents-gender-diversity-advocates-social-justice-warriors-tweeters-facebookers-and-ever>.

<sup>37</sup> See discussion in the next section.

<sup>38</sup> On social constructionism, see, e.g., K. J. Gergen, *An Invitation to Social Construction*, 3rd ed. (London and Thousand Oaks: Sage, 2015).

<sup>39</sup> James, Jenks and Prout, *Theorizing Childhood*, pp. 139–40.

<sup>40</sup> N. Rose, *Governing the Soul: The Shaping of the Private Self*, 2nd ed. (London and New York: Free Association Books, 1999), p. 121.

Barry Goldson and Gordon Hughes argue, “those who . . . transgress normative boundaries and/or breach the criminal law . . . tend to be governed most closely of all.”<sup>41</sup> These, indeed, are the sort of young people at the heart of the discourses and practices I will be examining.

The legal delineation and governing of childhood’s boundaries take place, perhaps first and foremost, along age and spatial lines. Spatially, law’s demarcation of childhood includes trying young people in special courts, incarcerating them separately, requiring them to attend school, and excluding them from the world of work and civic life. This spatial separation, in turn, is age-based, resting on the legal ages of criminal majority, compulsory education, employment, enlistment, voting, and eligibility for election, as well as on legal terms such as “minors,” “children,” and “youth.” Statutory minimum ages – such as those for driving, drinking, contractual capacity, tort liability, sexual consent, marriage, social media use, and criminal responsibility – provide additional means for setting and regulating the moral, behavioral, and temporal boundaries of childhood and adulthood. With the assistance of these modern legal creations, a fairly age-homogeneous society has been erected and maintained, in which different sites, experiences, and actions are reserved for rigidly delineated age groups. By enshrining these norms and mechanisms in international law and human rights, this particular (and primarily Western) model of the child has been, to varying degrees, globalized.<sup>42</sup> Law’s spatial and age-regimented construction of childhood is a central theme of this book, as is the interaction between global and local norms.

Until well into the nineteenth century, the legal state of affairs was profoundly different. For example, age-related legislation was rare and mostly unenforced. There were no universal compulsory education laws,

<sup>41</sup> B. Goldson and G. Hughes, “Sociological Criminology and Youth Justice: Comparative Policy Analysis and Academic Intervention” (2010) 10:2 *Criminology & Criminal Justice* 211, 211–12.

<sup>42</sup> On the globalization of childhood by international law and the human rights community, see, e.g., J. Boyden, “Childhood and the Policy Makers: A Comparative Perspective on the Globalization of Childhood,” in A. James and A. Prout (eds.), *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*, 2nd ed. (London: Routledge, 2003), pp. 190–229; A. T. Imoh, “The Convention on the Rights of the Child: A Product and Facilitator of Global Childhood,” in A. T. Imoh and R. Ame (eds.), *Childhoods at the Intersection of the Local and the Global* (Basingstoke and New York: Palgrave Macmillan, 2012), pp. 17–33; K. Cregan and D. Cuthbert, “The Convention on the Rights of the Child and the Construction of the Normative Global Child,” in their *Global Childhoods: Issues and Debates* (Los Angeles and London: Sage, 2014), pp. 55–74.



and schools (where they existed) had mixed-age classrooms. A change in a person's social status normally occurred gradually, or through rites of passage, not through legal age thresholds.<sup>43</sup> Neither courts nor prisons separated by age; in England, prisoners were initially separated on the basis of their character, the severity of their offense, and their criminal record (or lack thereof).<sup>44</sup> And the minimum age of marriage for girls was set at 12 years, as was the age of sexual consent, on the assumption that from that point onward they were sufficiently mature to be sexually active.<sup>45</sup> To this day, similar laws and practices persist in certain parts of the world, evoking anxious censure from the international legal and human rights community.

Child law has been the subject of extensive and ever-growing scholarship. However, this literature, like the legal practice it addresses, has tended to regard both childhood and law as self-evident facts, whose nature and social construction warrant no discussion. Preoccupied with how "law" treats or should treat "children," this academic discourse largely disregards the historical and cultural specificity of childhood, the critical insights of childhood studies, and the broader lessons that can be drawn from legal scholarship's questioning of other social categories (such as gender, race, sexuality, and disability).<sup>46</sup> Studies of the legal construction of childhood are scarce and mostly short. The handful of books on the subject are valuable but, in various respects, limited.<sup>47</sup>

Departing from most of the existing child-centered legal scholarship, the present book calls into question conventional wisdom about both

<sup>43</sup> See, e.g., in relation to the United States, H. P. Chudacoff, *How Old Are You: Age Consciousness in American Culture* (Princeton and Oxford: Princeton University Press, 1989), pp. 10, 16–17, 19.

<sup>44</sup> M. May, "Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century" (1973) 17:1 *Victorian Studies* 9–11.

<sup>45</sup> Kehily and Montgomery, "Innocence and Experience," pp. 71, 74–75.

<sup>46</sup> On these characteristics of child-focused legal literature, see A. R. Appell, "The Pre-Political Child of Child-Centered Jurisprudence" (2009) 46:3 *Houston Law Review* 703, 724–27; A. R. Appell, "Accommodating Childhood" (2013) 19:3 *Cardozo Journal of Law & Gender* 715, 715. On how the idea that children are incompetent overlooks contradictory empirical evidence, see M. C. Arce, "Towards an Emancipatory Discourse of Children's Rights" (2012) 20:3 *International Journal of Children's Rights* 365, 392–93.

<sup>47</sup> A case in point is M. King and C. Piper, *How the Law Thinks About Children*, 2nd ed. (Aldershot: Ashgate, 1995), which insightfully analyzes the child as a legally constructed semantic artifact. The authors' theoretical framework – social systems theory – has major shortcomings, as discussed, for example, in H. Rottluthner, "A Purified Sociology of Law: Niklas Luhmann on the Autonomy of the Legal System" (1989) 23:5 *Law & Society Review* 779.



childhood and law. Further, my analysis rethinks child law in two additional respects. First, I systematically demonstrate how child law is no less concerned with older people and adulthood than with young people and childhood. Among the “adults” with which this area of law is preoccupied are not only those directly responsible for young people – parents, teachers, social workers, and so forth – but also countless others without such direct responsibility. I thus reveal the Israeli judiciary’s attempt to use the punishment of Palestinians under the age of majority as a deterrent to older Palestinians (Chapters 3 and 6), as well as Israel’s efforts to limit the influence of imprisoned Palestinians aged 18 and over by separating them from their younger counterparts (Chapter 4). This shows child law to be much wider in scope and effect than the existing child-centered legal literature would suggest.

Second, and more broadly, I seek to delineate how law’s relationship with childhood extends beyond child law. The few books on law’s conception or configuration of “childhood” deal exclusively with the law concerning under-18s and their carers.<sup>48</sup> Representative examples include two insightful books – Michael King and Christine Piper’s *How the Law Thinks About Children* and David Archard’s *Children: Rights and Childhood*<sup>49</sup> – as well as the collection *Legal Concepts of Childhood*, whose editor, Julia Fionda, states that “[a]n identification of legal concepts of *childhood* can offer many insights into our treatment of *children*.”<sup>50</sup> In contrast to such reductive framing, the legal and social category “childhood” is not applied exclusively to those legally defined as “children.”<sup>51</sup> Instead, childhood connotes behaviors and personality traits, elicits particular emotions and moral judgments, warrants certain

<sup>48</sup> A noteworthy exception, in this regard, is E. R. Meiners, *For the Children? Protecting Innocence in a Carceral State* (Minneapolis: University of Minnesota Press, 2016). Two other exceptions focus not on contemporary child law, but on the early modern period: H. Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005); B. Premo, *Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima* (Chapel Hill: University of North Carolina Press, 2005).

<sup>49</sup> King and Piper, *How the Law Thinks About Children*; D. Archard, *Children: Rights and Childhood*, 3rd ed. (Abingdon and New York: Routledge, 2015).

<sup>50</sup> J. Fionda, “Legal Concepts of Childhood: An Introduction,” in J. Fionda (ed.), *Legal Concepts of Childhood* (Oxford and Portland: Hart Publishing, 2001), p. 5 (emphases added).

<sup>51</sup> On the difference between “childhood” and “children,” see, e.g., D. T. Cook, “Introduction: Interrogating Symbolic Childhood,” in D. T. Cook (ed.), *Symbolic Childhood* (New York and Oxford: Peter Lang Publishing, 2002), pp. 1, 2–4, 7; C. Jenks, *Childhood*, 2nd ed. (New York: Routledge, 2005), p. 61.

modes of control, and, as I have described, draws spatiotemporal boundaries, thereby making itself readily applicable to people of all ages.<sup>52</sup> One manifestation of these issues I examine in this book is infantilization – the portrayal or treatment of adults, in the legal sense of the word, as children. Specifically, I lay bare the infantilization of two political players: soldiers and the Israeli legal system. The former, as I argue in Chapter 7, have been repeatedly characterized as children or childish, including in those rare cases where soldiers were convicted of abusing or killing young Palestinians. The latter, as I explain in Chapter 8, has been likened to a child for its purported rigidity toward settler youth.

### 1.2.3 *Problematizing Law*

The proposed problematization of law does not stop at its relationship with childhood. Israeli authorities and their human rights critics often diverge, even among themselves, in their interpretations of the law. The legal targets of their criticism also vary: Israeli authorities have repeatedly portrayed certain international legal bodies as rigged, politicized, or inept, whereas human rights organizations have leveled similar accusations at Israel's legal system. Such differences notwithstanding, a common conception of law prevails across legal and human rights discourses, and it is one that requires reconsideration. This is the notion that law, or at least specific legal norms and mechanisms, constitute a logical and scientific-like apparatus, that they are relatively autonomous and apolitical, significantly impartial and just (or at least a lesser evil), and embodied in specialized institutions, texts, and individuals.

Over the past two centuries, this view has been roundly criticized from various angles by, among others, legal realists,<sup>53</sup> socio-legal scholars,<sup>54</sup>

<sup>52</sup> See also E. Burman, *Fanon, Education, Action: Child as Method* (Boca Raton: Routledge, 2018), p. 2 (calling for analyses of “how rhetorics or mobilisations of appeals to notions of child (including abstract conceptions of ‘childhood’ as well as discussion of specific children) perform particular and significant ideological work”).

<sup>53</sup> On (US) legal realism, see W. W. Fisher, M. J. Horwitz, and T. A. Reed (eds.), *American Legal Realism* (Oxford and New York: Oxford University Press, 1993); J. Zremby, *Legal Realism and American Law* (New York and London: Bloomsbury, 2013).

<sup>54</sup> On “law and society” studies, see D. Cowan, L. Mulcahy, and S. Wheeler (eds.), *Law and Society* (London: Routledge, 2013); A. Sarat and P. Ewick (eds.), *The Handbook of Law and Society* (Malden and Oxford: Wiley, 2015).

poststructuralists,<sup>55</sup> Marxists,<sup>56</sup> and other critical legal scholars.<sup>57</sup> A detailed overview of these criticisms is beyond the scope of this chapter. It is sufficient to note that the conception of law as an autonomous, coherent order – with defined and transparent concepts, rules, and precedents dictating particular outcomes through logical reasoning – stems from a highly contested formalist tradition.<sup>58</sup> In addition, the respect for the rule of law, and the belief in legal reform and rights as cornerstones of progressive social change, derive from a problematic mindset discussed in Chapter 2: legalism – the fetishization of legal arguments and institutions. Similarly, the tendency to equate law with legal institutions, texts, and professionals overlooks the crucial role of ostensibly nonlegal factors and players in animating and shaping law.

Building on and contributing to a rich body of critical scholarship, I set out to deconstruct and challenge these conceptions of law through, and in relation to, the materials and issues I will be examining. Among other things, this necessitates reflecting on the nature of language. After all, it is largely through words and terminological distinctions – such as “peacetime” versus “war,” “children” versus “adults,” and, perhaps first and foremost, “legal” versus “illegal” – that law operates.<sup>59</sup> However, such concepts, like countless others (“proportionality,” “necessity,” “torture” – the list could go on), are not self-evident givens. Rather, they are innately fluid and elusive, readily lending themselves to multiple interpretations,

<sup>55</sup> See, e.g., C. Douzinas, *Postmodern Jurisprudence: The Law of Text and the Texts of Law* (London and New York: Routledge, 1991); D. Cornell, “Post-Structuralism, the Ethical Relation, and the Law” (1988) 9:6 *Cardozo Law Review* 1587–628; D. C. Hoy, “Interpreting the Law: Hermeneutical and Poststructuralist Perspectives” (1985) 58:1–2 *Southern California Law Review* 135–76.

<sup>56</sup> See, e.g., C. Mievil, *Between Equal Rights: A Marxist Theory of International Law* (Leiden: Brill, 2005); S. Marks (ed.), *International Law on the Left: Re-examining Marxist Legacies* (Cambridge and New York: Cambridge University Press, 2008).

<sup>57</sup> On critical legal theory, see E. Christodoulidis, R. Dukes, and M. Goldoni (eds.), *Research Handbook on Critical Legal Theory* (Cheltenham and Northampton: Edward Elgar, 2019); C. Douzinas and C. Perrin (eds.), *Critical Legal Theory* (London: Routledge, 2011); I. Ward, *Introduction to Critical Legal Theory*, 2nd ed. (Abingdon and New York: Routledge Cavendish, 2004).

<sup>58</sup> For an overview of legal formalism, see, e.g., S. Veitch, E. Christodoulidis, and M. Goldoni, “Formalism and Rule-Scepticism,” in their *Jurisprudence: Themes and Concepts*, 3rd ed. (Abingdon and New York: Routledge, 2018), pp. 167–81.

<sup>59</sup> On law as revolving around the production of distinctions, see, e.g., N. Luhmann, “Operational Closure and Structural Coupling: The Differentiation of the Legal System” (1988) 15:5 *Journal of Law and Society* 153.

including those operating in the service of state violence.<sup>60</sup> Even ostensibly watertight terms can be malleable, as I demonstrate in Chapter 3 regarding the statutory category “minor.” Whereas human rights organizations tend to depict Israel as either obeying or violating any given law, it seems that law’s inherent flexibility makes it amenable to a variety of competing interpretations.

Further, if legality is an ever-changing product of discourse, imagination, and practice – as prominent jurists have long observed<sup>61</sup> – then law extends far beyond the institutions, professionals, and texts with which it is typically associated: the judiciary, the legislature, jurists, statutes, and the like. With potent yet porous and elastic boundaries, law is neither truly separate nor distinguishable from other imagined fields of knowledge and power, such as the media, culture, and politics.<sup>62</sup> Accordingly, among those actively participating in its construction are lay people,<sup>63</sup> including, in the present context, Palestinians and settlers of all ages, as well as Israeli soldiers.

Law’s violence is also overlooked by dominant discourses. Violence is, by no means coincidentally, part and parcel of law’s operation, of every legal interpretation and decision.<sup>64</sup> Law realizes itself through physical and symbolic violence, it occasions violence, and it justifies certain forms of violence while proscribing others. In defining what counts as violence in the first place, part of law’s function is to deny and thus launder its

<sup>60</sup> On these aspects, see, e.g., C. Jochnick and R. Normand, “The Legitimation of Violence: A Critical History of the Laws of War” (1994) 35:1 *Harvard International Law Journal* 49; D. Kennedy, “Lawfare and Warfare,” in J. Crawford and M. Koskeniemi (eds.), *The Cambridge Companion to International Law* (Cambridge: Cambridge University Press, 2012), p. 158; I. Hurd, *How to Do Things with International Law* (Princeton and Oxford: Princeton University Press, 2017).

<sup>61</sup> See, e.g., R. M. Cover, “The Supreme Court 1982 Term – Foreword: Nomos and Narrative” (1983) 97:1 *Harvard Law Review* 4; R. M. Cover, “Violence and the Word” (1986) 95:8 *Yale Law Journal* 1601. On law as subject to an endless “deference of meaning,” see J. Derrida, “Before the Law,” in J. Derrida and D. Attridge (eds.), *Acts of Literature* (London: Routledge, 1991).

<sup>62</sup> See, e.g., P. Schlag, “The Dedifferentiation Problem” (2009) 42 *Continental Philosophy Review* 35; N. Rose and M. Valverde, “Governed by Law?” (1998) 7:4 *Social & Legal Studies* 541, 545–46.

<sup>63</sup> P. Ewick and S. S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998), pp. 43–46.

<sup>64</sup> W. Benjamin, “Critique of Violence,” in P. Demetz (ed.), *Reflections: Essays, Aphorisms and Autobiographical Writings* (Berlin: Schocken, 1986), pp. 227, 284; Cover, “Violence and the Word.” For further discussion, see, e.g., A. Sarat (ed.), *Law, Violence and the Possibility of Justice* (Princeton: Princeton University Press, 2001); A. Sarat and T. R. Kearns (eds.), *Law’s Violence* (Ann Arbor: University of Michigan Press, 1993).

own violent nature,<sup>65</sup> in an attempt to monopolize the use of violence.<sup>66</sup> Violent as well as plastic, law thus provides a framework not only for restricting but also for enabling, legitimizing, and expanding state violence.

Complicity in state violence is not limited to states' own legal systems. As I argue in Chapters 2–4 and 7, international law is also implicated. Among other things, Israel's military legal system has long incorporated international law into its self-legitimizing rhetoric,<sup>67</sup> as evidenced by its following claim: "While various complaints have been made about [Israel's] ... administration of law generally ..., and regarding [Palestinian] minors specifically, it is important to emphasize [Israel's] conformity with international law."<sup>68</sup>

International law's utility for Israeli authorities largely stems from the elasticity of what are commonly described as its two key elements. The first, international *treaty* law, involves endless struggles over the interpretation of treaties due to the inevitable indeterminacy of legal (and all) language. The second, *customary* international law, is commonly understood to derive from state practice; this potentially enables states to reshape customary international law by engaging, consistently and with enough companions, in what was once deemed a violation of the law.<sup>69</sup> A testament to the Israeli military's awareness of this idea of legalization through violation is a remark by one of its top lawyers: "If you do something for long enough, the world will accept it. The whole of

<sup>65</sup> E. Grosz, "The Time of Violence: Deconstruction and Value" (1998) 2:2–3 *Cultural Values* 190, 193–94.

<sup>66</sup> Cf. M. Stirner, *The Ego and Its Own* (D. Leopold ed., Cambridge and New York: Cambridge University Press, 1995), p. 176 ("The State ... calls its violence 'law'; that of the individual, 'crime'."); M. Weber, "Religious Rejections of the World and Their Directions," in H. H. Gerth and C. W. Mills (eds. and trans.), *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 2009), pp. 323, 334 (discussing the state's desire to monopolize violence).

<sup>67</sup> H. Viterbo, "Lawfare" and "Violence," in O. Ben-Naftali, M. Sfard, and H. Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge and New York: Cambridge University Press, 2018), pp. 246–50, 257, 259–60, 436–39.

<sup>68</sup> Military Courts Unit, "The Legal Treatment of Malak Ali Yussef Khatib's Case," *IDF* (February 11, 2015), ¶ 23 [Hebrew], <https://web.archive.org/web/20150921111312/http://www.law.idf.il/163-7111-he/Patzar.aspx>.

<sup>69</sup> D. Kennedy, *Of War and Law* (Princeton: Princeton University Press, 2006); Kennedy, "Lawfare and Warfare"; E. Weizman, "Legislative Attack" (2010) 27:6 *Theory, Culture & Society* 11, 19.

international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries.”<sup>70</sup>

#### 1.2.4 Problematizing Human Rights

As a language and a praxis, human rights have significant parallels with law. They, too, have come to figure prominently in contemporary public rhetoric. Like law, they assume varied shapes, meanings, and effects within different settings, due in part to their intrinsic plasticity, ambiguities, and contradictions. For these and other reasons, human rights readily lend themselves, as does law, to divergent uses.<sup>71</sup> This includes providing states – Israel (as this book shows) and many others – with a useful vocabulary for justifying their controversial conduct while maintaining their self-image as law-abiding.<sup>72</sup>

Doubtless, human rights can help highlight and confront certain instances of inequality, exclusion, and oppression. However, in their current institutional and ideational configuration, they tend to focus on technical violations and remedial solutions, without systematically exposing – let alone challenging – the root political and economic causes of injustice.<sup>73</sup> In the process, intentionally or not, they can end up

<sup>70</sup> Quoted in Y. Feldman and U. Blau, “Consent and Advise,” *Haaretz* (January 29, 2009), [www.haaretz.com/consent-and-advise-1.269127](http://www.haaretz.com/consent-and-advise-1.269127).

<sup>71</sup> C. Bob, *Rights as Weapons: Instruments of Conflict, Tools of Power* (Princeton and Oxford: Princeton University Press, 2019); C. Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (London: Routledge, 2007), pp. 8–14; T. Evans, “International Human Rights Law as Power/Knowledge” (2005) 27:3 *Human Rights Quarterly* 1068; J. Curtis, *Human Rights as War by Other Means: Peace Politics in Northern Ireland* (Philadelphia: University of Pennsylvania Press, 2014); D. Kennedy, “The International Human Rights Movement: Part of the Problem?” (2002) 15 *Harvard Human Rights Journal* 101, 116–17 [hereinafter: “Part of the Problem?”]; N. Perugini and N. Gordon, *The Human Right to Dominate* (New York: Oxford University Press, 2015), pp. 16, 19.

<sup>72</sup> C. Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart, 2000); Bob, *Rights as Weapons*; A. Bogain, “Security in the Name of Human Rights: The Discursive Legitimation Strategies of the War on Terror in France” (2017) 10:2 *Critical Studies on Terrorism* 1; Kennedy, “Part of the Problem?,” p. 119; D. Kennedy, “The International Human Rights Regime: Still Part of the Problem?,” in R. Dickinson et al. (eds.), *Examining Critical Perspectives on Human Rights* (Cambridge and New York: Cambridge University Press, 2012), pp. 19, 19, 30–31.

<sup>73</sup> K. Marx, “On the Jewish Question,” in R. C. Tucker (ed.), *The Marx-Engels Reader*, 2nd ed. (New York: W. W. Norton, 1978), pp. 26–46; Douzinas, *Human Rights and Empire*, pp. 108–10; Evans, “International Human Rights Law as Power/Knowledge,” p. 1067; Kennedy, “Part of the Problem?,” p. 118; S. Marks, “Human Rights and Root Causes”

marginalizing more radical emancipatory discourses, whether by making such alternatives appear too “political,” “ideological,” and “subjective,” or by engrossing public attention, resources, and imagination at their expense.<sup>74</sup>

In large part, this state of affairs stems from, and contributes to, the legalism of human rights. It is predominantly in legal terms that the dominant human rights discourse of today, and the associated human rights scholarship, frame harm and solutions.<sup>75</sup> For most liberal human rights organizations, the panacea seems to lie specifically in international law. For instance, a UNICEF report on young noncitizen Palestinians in Israeli custody, which garnered extensive media coverage both in Israel<sup>76</sup> and abroad,<sup>77</sup> “considered whether the [Israeli] military detention system is in conformity with the . . . Convention on the Rights of the Child,” and “whether the legal safeguards in place . . . are in line with the norms, guarantees and safeguards found in international law.” The report adds: “Ill-treatment of Palestinian children in the Israeli military detention system appears to be widespread, systematic and institutionalized . . ., in violation of international law.” Typically of the genre, the report “concludes by recommending . . . measures to improve the protection of children within the system, in line with applicable international

(2011) 74:1 *Modern Law Review* 57, 70–72; R. West, “Tragic Rights: The Rights Critique in the Age of Obama” (2011) 53:2 *William and Mary Law Review* 713, 720–21.

<sup>74</sup> W. Brown, “The Most We Can Hope For. . . : Human Rights and the Politics of Fatalism” (2004) 103:2 *South Atlantic Quarterly* 451–63; Kennedy, “Part of the Problem?,” pp. 108, 115; Perugini and Gordon, *The Human Right to Dominate*, p. 17; R. Williams, *The Divided World: Human Rights and Its Violence* (Minneapolis and London: University of Minnesota Press, 2010), p. xvii. See also J. R. Slaughter, “Hijacking Human Rights: Neoliberalism, the New Historiography, and the End of the Third World” (2018) 40:4 *Human Rights Quarterly* 735.

<sup>75</sup> Evans, “International Human Rights Law as Power/Knowledge,” pp. 1046–47, 1067; Kennedy, “Part of the Problem?,” pp. 109–10, 116–17, 125; Perugini and Gordon, *The Human Right to Dominate*, p. 130.

<sup>76</sup> J. Khouri, “UNICEF: Israel Abuses Palestinian Children,” *Haaretz* (March 7, 2013) [Hebrew], [www.haaretz.co.il/news/politics/1.1953252](http://www.haaretz.co.il/news/politics/1.1953252); Ynet Staff, “UNICEF: Israel Humiliates Palestinian Child Detainees,” *Ynet* (March 6, 2013) [Hebrew], [www.ynet.co.il/articles/0,7340,L-4353138,00.html](http://www.ynet.co.il/articles/0,7340,L-4353138,00.html); A. Valdman, “UN Report: Israel Systematically Abuses Palestinian Children,” *Channel 2 News* (March 6, 2013) [Hebrew], [www.mako.co.il/news-military/israel/Article-22d64aafd4f3d31004.htm](http://www.mako.co.il/news-military/israel/Article-22d64aafd4f3d31004.htm).

<sup>77</sup> BBC Staff, “Palestinian Children ‘Mistreated’ in Israeli Detention,” *BBC News* (March 6, 2013), [www.bbc.co.uk/news/world-middle-east-21683420](http://www.bbc.co.uk/news/world-middle-east-21683420); Reuters, “U.N. Finds Israeli Military Abuses Young Palestinians,” *New York Times* (March 6, 2013), [www.nytimes.com/2013/03/07/world/middleeast/un-finds-israeli-military-abuses-young-palestinians.html](http://www.nytimes.com/2013/03/07/world/middleeast/un-finds-israeli-military-abuses-young-palestinians.html).



standards.”<sup>78</sup> The legitimacy and morality of international law, its efficacy, and its complicity in structures of domination – none of these are called into question in such human rights texts.<sup>79</sup>

Further, human rights have all too often been applied without due sensitivity to the social, political, and even legal specificity of the context at hand. This, it appears, is no mere accident. The prevailing human rights discourse promotes and rests on generalizations and abstractions: it holds an overly abstract concept of the human being, articulates rights in a one-size-fits-all manner, groups individuals into crude categories, and reduces sociopolitical complexity to the fairly simplistic terms it deploys.<sup>80</sup>

Children’s rights – the joint offspring of human rights<sup>81</sup> and child law – exhibit all of these traits. Riddled with ambiguities and contradictions, children’s rights invite various, and potentially competing, interpretations and applications. Illustrating this equivocality of children’s rights is the question, dealt with in Chapter 4, of whether to separate and rehabilitate young Palestinians in Israeli custody. On the one hand, the separation and rehabilitation of young inmates are rights enshrined, in various formulations, in the CRC and the International Covenant on Civil and Political Rights,<sup>82</sup> as well as in several UN General Assembly resolutions.<sup>83</sup> On the other hand, according to most of these legal documents, these (and other) child rights should be implemented

<sup>78</sup> UNICEF, *Children in Israeli Military Detention: Observations and Recommendations* (February 2013), pp. 1–2, 13–14, [www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_-\\_6\\_March\\_2013.pdf](http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf).

<sup>79</sup> Evans, “International Human Rights Law as Power/Knowledge,” pp. 1046–47; Perugini and Gordon, *The Human Right to Dominate*, pp. 132–33.

<sup>80</sup> Kennedy, “Part of the Problem?,” pp. 111–12.

<sup>81</sup> On the centrality of human rights organizations in the history of child rights, see P. S. Fass, “A Historical Context for the United Nations Convention on the Rights of the Child” (2011) 633 *Annals of the American Academy of Political and Social Science* 17.

<sup>82</sup> Article 37(c) of the CRC; Articles 10.2.(b), 10.3, 14(4) of the International Covenant on Civil and Political Rights, opened for signature December 16, 1966, 999 UNTS 171 (entered into force March 23, 1976).

<sup>83</sup> Articles 13.4, 24.1, 26.3 of the GA Resolution 40/33: Standard Minimum Rules for the Administration of Juvenile Justice (adopted: November 29, 1985,) UN Doc A/RES/40/33 [hereinafter: Beijing Rules]; Articles 27, 29, 32 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, GA Res 45/113, UN Doc A/RES/45/113 (December 14, 1990) [hereinafter: Havana Rules]. See also Articles 4, 11, 88, 91–94, 96, 98, 104, 112 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Annex, UN Doc A/RES/70/175 (December 17, 2015).



only when they serve children's "best interests" and enhance their "well-being."<sup>84</sup> What these open-ended phrases – "best interests" and "well-being" – actually entail, however, remains unresolved.

In its preoccupation with how best to implement and monitor international legal norms, the child rights discourse offers little to no critical consideration of their legitimacy and benefit. Time and again, this legalism – combined with the abstractions and claim to universality of the child rights discourse,<sup>85</sup> the cultural specificity of the childhood envisioned by children's rights,<sup>86</sup> and the broader conceptual limitations of rights – leads to decontextualization<sup>87</sup> in the form of giving precedence to international legal norms over the particular conditions in which those classified as children live, or even overlooking those conditions altogether. Thus, in Chapter 4 I argue that reforms made by the Israeli military regarding young Palestinians, which were advocated by most of the human rights community without due attention to the context at hand, are actually detrimental to Palestinians, young and old alike. In Chapter 5, I likewise show how the human rights framing of young Palestinians' plight disregards the realities and views of those in whose name it purports to speak.

### 1.3 Reframing Israel/Palestine

In public debates, including those on law and human rights, "Israel" tends to be treated as a separate entity to the "Palestinian territory" (or "territories"). Zionist discourses, in particular, reserve the term "Palestine" exclusively for pre-Israeli-statehood eras.<sup>88</sup> In line with a growing body of academic writing, however, I employ the concept

<sup>84</sup> Articles 3, 37(c) of the CRC; Articles 1.1, 5.1, 14.2, 17.1(d) of the Beijing Rules; Articles 2, 29, Annex – Articles 1, 28 of the Havana Rules.

<sup>85</sup> See, e.g., E. Burman, "Local, Global or Globalized? Child Development and International Child Rights Legislation" (1996) 3:1 *Childhood* 46–47.

<sup>86</sup> See, e.g., A. T. Imoh, "The Convention on the Rights of the Child"; T. Kaime, *The Convention on the Rights of the Child: A Cultural Legitimacy Critique* (Groningen: Europa Law, 2011).

<sup>87</sup> On the decontextualization and technicalization of child rights, see D. Reynaert, M. Bouverne-de-Bie, and S. Vandeveld, "A Review of Children's Rights Literature Since the Adoption of the United Nations Convention on the Rights of the Child" (2009) 16:4 *Childhood* 528.

<sup>88</sup> J. Alloul, "Signs of Visual Resistance in Palestine: Unsettling the Settler-Colonial Matrix" (2016) 25:1 *Middle East Critique* 23, 29–35; Julie Peteet, "Words as Interventions: Naming in the Palestine-Israel Conflict" (2003) 26:1 *Third World Quarterly* 153, 163.

“Israel/Palestine” to convey the intricate relation between these territories, whose overall population is divided almost evenly between Palestinians (mostly noncitizens) and Israelis. On the one hand, the slash in this phrase denotes the separation and exclusion, attempted or actual, of certain Palestinian territories and populations from Israel “proper” (the latter being delimited by its pre-1967 borders). On the other hand, by placing “Israel” and “Palestine” together, this phrase calls attention to the inextricable ties between the territories subject to Israeli control: Israel “proper,” most of the West Bank, East Jerusalem, and the Gaza Strip.<sup>89</sup> The varying, albeit interrelated, modes and degrees of control that Israeli authorities exert over Palestinians in these territories are the subject of this section.

### 1.3.1 Israel “Proper” (Within Its Pre-1967 Borders)

A fifth of Israeli citizens (around 1.9 million) are Palestinian.<sup>90</sup> As in other contexts, the terminology surrounding them is paramount. In contemporary Zionist discourse, they are commonly called “Israeli Arabs.”<sup>91</sup> This term might, however, deny their Palestinian identity,<sup>92</sup>

<sup>89</sup> Some scholars characterize Israel’s control over these territories as amounting to apartheid, (settler) colonialism, or both. See, e.g., J. Dugard and J. Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory” (2013) 24:3 *European Journal of International Law* 867; L. Veracini, *Israel and Settler Society* (London and Ann Arbor: Pluto Press, 2006). Israel has also controlled the Golan Heights since 1967, in a manner condemned by the UN Security Council and General Assembly as “null and void and without legal effect.” See SC Res 497, UN Doc S/RES/497 (December 17, 1981); GA, 64th Meeting, UN Doc GA/10794 (December 5, 2008).

<sup>90</sup> Israeli Central Bureau of Statistics, “Population of Israel on the Eve of 2019 – 9.0 Million” (December 31, 2018), [www.cbs.gov.il/he/mediarelease/DocLib/2018/394/11\\_18\\_394e.pdf](http://www.cbs.gov.il/he/mediarelease/DocLib/2018/394/11_18_394e.pdf).

<sup>91</sup> Polls differ considerably regarding the proportion of those in this group who self-identify as “Arabs” or “Palestinian.” See, e.g., D. Scheindlin, “+972 Poll: Joint Arab List Would Raise Voter Participation,” *+972 Magazine* (December 24, 2014), <https://972mag.com/972-poll-joint-arab-list-would-raise-voter-participation/100442/>; A. S. Muhammad, M. Khatib and S. R. Marjeh, *Palestinians in Israel: The 5th Socio-Economic Survey – 2017 – Abstract* (Shefa-‘Amr: The Galilee Society, April 2018), [www.gal-soc.org/en/the-5th-socioeconomic-survey-on-palestinians-in-israel](http://www.gal-soc.org/en/the-5th-socioeconomic-survey-on-palestinians-in-israel).

<sup>92</sup> D. Rabinowitz, “Oriental Nostalgia: The Transformation of the Palestinians into ‘Israeli Arabs’” (1993) 4 *Theory & Critique* 141 [Hebrew]; H. Rashed et al., “Nakba Memoricide: Genocide Studies and the Zionist/Israeli Genocide of Palestine” (2014) 13:1 *Holy Land Studies* 1, 15–17.

in addition to overlooking the Arab origin of many Jewish citizens.<sup>93</sup> Another term in use, the “48 Palestinians,” distinguishes this group from the noncitizen “67 Palestinians” of the West Bank and Gaza Strip.<sup>94</sup>

In the first two decades following its establishment in 1948, Israel placed most Palestinian citizens under military rule. Thousands were tried and convicted in military courts, primarily for failing to carry proper permits or exceeding travel restrictions. Military governors and their staff outlawed political organizations, censored the media, placed Palestinian political activists in “administrative detention” (incarceration without charge or trial) or under house arrest, and confiscated lands on a massive scale in an overt effort to “Judaize” the country. Undercover security agents were deployed, and some Palestinians were recruited as informants and collaborators through a combination of incentives and disincentives. The military regime came to an end a few months before Israel seized control in the West Bank and Gaza Strip. These practices have, however, remained in use toward noncitizen Palestinians,<sup>95</sup> as I show throughout the book. Moreover, from 1967 to 2000, a military court continued to operate within Israel’s pre-1967 borders, in which dozens and sometimes hundreds of Palestinian citizens were tried annually.<sup>96</sup>

With limited exceptions, Jewish and Palestinian citizens live in separate communities and attend separate state-run schools with different curricula taught in different languages.<sup>97</sup> Most Palestinian citizens, unlike their (non-ultraorthodox) Jewish counterparts, are not conscripted into

<sup>93</sup> Y. Shenhav, *The Arab Jews: A Postcolonial Reading of Nationalism, Religion, and Ethnicity* (Stanford: Stanford University Press, 2006); E. Shohat, “Rupture and Return: Zionist Discourse and the Study of Arab Jews” (2003) 21:1 *Social Text* 49.

<sup>94</sup> See, e.g., G. Burton, “Building Ties Across the Green Line: The Palestinian 15 March Youth Movement in Israel and Occupied Palestinian Territory in 2011” (2017) 38:1 *Third World Quarterly* 169.

<sup>95</sup> H. Viterbo, “Outside/Inside,” in Ben-Naftali, Sfard, and Viterbo, *The ABC of the OPT*, pp. 305–08.

<sup>96</sup> S. Ben-Natan, “Citizen-Enemies: Palestinian Citizens and Military Courts in Israel and the Occupied Territories, 1967–2000,” in A. Jamal (ed.), *The Politics of Inclusion and Exclusion in Israeli-Palestinian Relations* (Tel Aviv: University of Tel Aviv Press, 2020), pp. 47–78 [Hebrew].

<sup>97</sup> I. Abu-Saad, “State-Controlled Education and Identity Formation Among the Palestinian Arab Minority in Israel” (2006) 49:8 *American Behavioral Scientist* 1085; Y. T. Jabareen, “Law and Education: Critical Perspectives on Arab Palestinian Education in Israel” (2006) 49:8 *American Behavioral Scientist* 1052.

the military.<sup>98</sup> Though they enjoy formal equality with Jewish citizens in many areas of life, Palestinian citizens are systematically discriminated against,<sup>99</sup> a reality acknowledged and harshly lambasted by a government-appointed Israeli commission in the early 2000s.<sup>100</sup> Moreover, in certain areas – such as land acquisition, education, and immigration – Israeli law either explicitly denies Palestinian citizens the rights afforded to their Jewish counterparts or lays the foundation for exclusionary state policies.<sup>101</sup>

The country's longest-serving prime minister, Benjamin Netanyahu, affirmed in 2019: "Israel is not a state of all its citizens. [It] is the nation-state of the Jewish people – and them alone."<sup>102</sup> Judging from polls conducted around that time, his view largely aligns with those of Jewish Israelis at large: about 80 percent object to their daughters being friends with "an Arab boy," 50 percent oppose having "an Arab resident in their building," and 48 percent deny the very existence of a Palestinian people.<sup>103</sup>

### 1.3.2 *The West Bank, Excluding East Jerusalem*

Prior to Israel's capture of the West Bank in 1967, the law in this territory was an amalgamation of remnants from the Ottoman, British Mandate, and Jordanian periods, as well as Islamic law. Some of this earlier

<sup>98</sup> Palestinian and ultraorthodox Jewish citizens are exempt from military conscription under Articles 26b–26x, 36, 40 of Defense Service Law (Integrated Version), 1986.

<sup>99</sup> See, e.g., N. Rouhana (ed.), *Israel and Its Palestinian Citizens: Ethnic Privileges in the Jewish State* (Cambridge and New York: Cambridge University Press, 2017).

<sup>100</sup> *Report of the Commission of Inquiry into the Clashes between Security Forces and Israeli Citizens in October 2000* (Jerusalem, 2003) [Hebrew], <http://uri.mitkadem.co.il/vaadat-or>.

<sup>101</sup> See, e.g., M. Masri, *The Dynamics of Exclusionary Constitutionalism: Israel as a Jewish and Democratic State* (Oxford and Portland: Hart, 2017).

<sup>102</sup> Haaretz staff, "'Israel Is the Nation-state of Jews Alone': Netanyahu Responds to TV Star Who Said Arabs Are Equal Citizens," *Haaretz* (March 10, 2019), [www.haaretz.com/israel-news/.premium-israel-belongs-to-jews-alone-netanyahu-responds-to-tv-star-on-arab-equality-1.7003348](http://www.haaretz.com/israel-news/.premium-israel-belongs-to-jews-alone-netanyahu-responds-to-tv-star-on-arab-equality-1.7003348).

<sup>103</sup> Guttman Center for Public Opinion and Policy Research, "Survey: Attitudes toward the Other," *The Israel Democracy Institute* (December 12, 2018) [Hebrew], [www.idi.org.il/media/11758/%D7%A1%D7%A7%D7%A8-%D7%A2%D7%9E%D7%93%D7%95%D7%AA-%D7%9B%D7%9C%D7%A4%D7%99-%D7%94%D7%90%D7%97%D7%A8.pdf](http://www.idi.org.il/media/11758/%D7%A1%D7%A7%D7%A8-%D7%A2%D7%9E%D7%93%D7%95%D7%AA-%D7%9B%D7%9C%D7%A4%D7%99-%D7%94%D7%90%D7%97%D7%A8.pdf); D. Scheindlin, "Poll: Most Israelis Have Positive View of Jewish-Arab Relations," *+972 Magazine* (April 4, 2019), <https://972mag.com/poll-israelis-positive-view-jewish-arab-relations/140846/>.

legislation remains in effect to date, including emergency laws kept in force by Israel across both sides of its 1967 borders.<sup>104</sup> Israel has operated two separate legal systems, along ethnic lines, concurrently in this territory. On the one hand, the Palestinian population, numbering more than 2.7 million,<sup>105</sup> have been subject to Israeli military law and are usually tried in Israeli military courts. With international law and the Israeli supreme court attracting most of its attention,<sup>106</sup> legal scholarship on Israel's control over the West Bank and Gaza Strip has, for the most part, neglected this military legal system, an issue discussed in Chapter 2. Breaking new ground, this book is the result of an analysis of, among other materials, hundreds of military judgments, together with military statutes. Such an analysis of Israeli military legal documents is unprecedented, both in scope and in its theoretically informed approach.

On the other hand, Israeli settlers, numbering nearly 400,000,<sup>107</sup> have been extraterritorially placed under the non-military Israeli law<sup>108</sup> and are tried in civil courts, which I examine in Chapters 7 and 8. Notwithstanding some similarities between these two ethnically aligned legal systems, some of which are brought to light in Chapter 4, their overall disparity is considerable. The result, as I argue in Chapter 8, is a substantially broader array of rights and protections being given to Israeli settlers. Human rights organizations, the Israeli military, and others have reported not only this institutionalized discrimination<sup>109</sup> (which some

<sup>104</sup> See, e.g., Y. Mehozay, *The Rule of Law and State of Emergency: The Fluid Jurisprudence of the Israeli Regime* (Albany: State University of New York Press, 2016).

<sup>105</sup> Central Intelligence Agency (CIA), *The World Factbook – Middle East: The West Bank* (last accessed on July 25, 2018), [www.cia.gov/library/publications/the-world-factbook/geos/we.html](http://www.cia.gov/library/publications/the-world-factbook/geos/we.html) (data referring to July 11, 2018) [hereinafter: CIA Factbook].

<sup>106</sup> See, e.g., A. Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge and New York: Cambridge University Press, 2017); S. M. Akram et al. (eds.), *International Law and the Israeli–Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (New York and Abingdon: Routledge, 2011); D. Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (Albany: State University of New York Press, 2002).

<sup>107</sup> CIA Factbook (data referring to July 11, 2018).

<sup>108</sup> The term “non-military” is used in this book due to the inadequacy of alternative terms. “Civil law” might be confusing given the present focus on criminal law. “Domestic law” fails to capture the legal and political porosity of the boundaries between the supposedly domestic territory of Israel “proper” and the territories Israel conquered in 1967. On this porosity, see Viterbo, “Outside/Inside.”

<sup>109</sup> See, e.g., ACRI, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank* (October 2014), <https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf>; M. Schaeffer Omer-Man, “IDF Admits Discriminating against Palestinian in Home Demolitions,” *+972 Magazine* (April 6, 2016), <http://972mag.com/>

legal scholars describe as apartheid),<sup>110</sup> but also poor standards of law enforcement when settlers harm Palestinians.<sup>111</sup>

Alongside these Israeli legal systems, the Palestinian Authority, established in the mid-1990s, operates its own courts in regions under its jurisdiction. The Israeli military retains jurisdiction over Palestinians' offenses in these regions,<sup>112</sup> while allowing the Palestinian Authority courts to adjudicate cases involving internal Palestinian matters. In 2014, for instance, Israel transferred to Palestinian Authority custody 18 percent of arrested Palestinians below the age of 18.<sup>113</sup> At the same time, Israel denies Palestinian courts any jurisdiction over Israelis who commit offenses within Palestinian Authority territory.<sup>114</sup>

Israeli authorities' position on the applicability of international law to the West Bank has been controversial and, at times, confused. Initially, on the day it entered the West Bank and Gaza Strip, the Israeli military published an ordinance decreeing that its courts would abide by the Fourth Geneva Convention (widely regarded as the principal international treaty concerning belligerent occupation).<sup>115</sup> At the time, the

[idf-admits-discriminating-against-palestinians-home-demolitions/118434](#); C. Levinson, "Precedent: Military Court Acquits Palestinians Discriminated Compared to Settlers," *Haaretz* (January 2, 2014) [Hebrew], [www.haaretz.co.il/news/politics/premium-1.2206078](http://www.haaretz.co.il/news/politics/premium-1.2206078).

<sup>110</sup> See, e.g., Dugard and Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory."

<sup>111</sup> See, e.g., Z. Stahl, *Mock Enforcement: The Failure to Enforce the Law on Israeli Civilians in the West Bank* (Tel Aviv: Yesh Din, May 2015), [www.yesh-din.org/userfiles/Yesh%20Din\\_Akifat%20Hok\\_%20English.pdf](http://www.yesh-din.org/userfiles/Yesh%20Din_Akifat%20Hok_%20English.pdf); V. Azarov, *Institutionalised Impunity: Israel's Failure to Combat Settler Violence in the Occupied Palestinian Territory* (Ramallah: Al-Haq, 2013), [www.alhaq.org/publications/institutionalised-impunity.pdf](http://www.alhaq.org/publications/institutionalised-impunity.pdf); A. Strashnov, *Justice Under Fire* (Tel Aviv: Yedioth Ahronoth, 1994), pp. 40–41 [Hebrew].

<sup>112</sup> Articles 10(d)–10(e) of Order 1651; MilA 3924/06 *Sa'adi v. Military Prosecutor* (October 17, 2007); MilA 2016/07 *Issa v. Military Prosecutor* (May 16, 2007); MilA 1628/13 *John Doe v. Military Prosecution* (June 10, 2013). For discussion, see S. Weill, "The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories" (2007) 89 *International Review of the Red Cross* 395, 407–09.

<sup>113</sup> A. Laor and R. Jaraisy, *Arrests, Interrogations and Indictments of Palestinian Minors in the Occupied Territories: Facts and Figures for 2014* (Tel Aviv: ACRI, February 2016), p. 11, [www.acri.org.il/en/wp-content/uploads/2016/02/arrests-minors-OPT2014-ENG.pdf](http://www.acri.org.il/en/wp-content/uploads/2016/02/arrests-minors-OPT2014-ENG.pdf).

<sup>114</sup> I. Zertal and A. Eldar, *Lords of the Land: The War over Israel's Settlements in the Occupied Territories* (New York: Nation Books, 2005), pp. 372–73.

<sup>115</sup> Articles 5 and 35 of the Order Concerning Security Provisions (West Bank), 1967.

military referred to itself as an “occupying military” and to the newly captured territories, accordingly, as “occupied.”<sup>116</sup> Shortly thereafter, however, this ordinance was rescinded. Nevertheless, military officials have continued invoking the Convention as a legal basis for the country’s military court system. During the first two years following the rescinding of the ordinance, a similar inconsistency prevailed, whereby Israeli military courts continued holding the Geneva Convention applicable to the newly acquired territory. In Chapter 3, I bring to light these and other legal inconsistencies and uncertainties, as well as their effects on Palestinians.

Using legal interpretations roundly rejected by most of the international community – including many human rights organizations,<sup>117</sup> the International Court of Justice,<sup>118</sup> UN treaty monitoring bodies,<sup>119</sup> and most international law scholars<sup>120</sup> – Israeli governments have come to maintain that the West Bank is not occupied, a view shared by nearly two-thirds of Israeli Jews.<sup>121</sup> Instead, Israeli governments refer to this

<sup>116</sup> See, e.g., IDF General Staff, *Capturing Occupied Territories and Military Government* (June 1969) [Hebrew], [www.akevot.org.il/article/aims-and-means-3-file-gl-17005-6-the-reordering-of-control-over-palestinian-citizens-of-israel-at-the-late-stages-of-the-military-government/#popup/26e10ef6471eb29068949c449e6342cc](http://www.akevot.org.il/article/aims-and-means-3-file-gl-17005-6-the-reordering-of-control-over-palestinian-citizens-of-israel-at-the-late-stages-of-the-military-government/#popup/26e10ef6471eb29068949c449e6342cc).

<sup>117</sup> See, e.g., petition in HCJ 8092/20 *Bejawi v. Military Commander in the West Bank* (November 22, 2020) [Hebrew], ¶¶ 78–85, 97, 106, 108, [www.hamoked.org.il/files/1664680.pdf](http://www.hamoked.org.il/files/1664680.pdf).

<sup>118</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ 136 [hereinafter: ICJ Wall Opinion].

<sup>119</sup> See, e.g., UNCAT, Consideration of Report Submitted by States Parties Under Article 19 of the Convention – Israel: Concluding Observations, UN Doc CAT/C/ISR/CO/4 (May 14, 2009), ¶ 11, [www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf](http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf); UNCRC, Consideration of Reports Submitted by States Parties Under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict – Concluding Observations: Israel, UN Doc CRC/C/OPAC/ISR/CO/1 (January 29, 2010), ¶ 4, [www2.ohchr.org/english/bodies/crc/docs/CRC-C-OPAC-ISR-CO-1.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-OPAC-ISR-CO-1.pdf).

<sup>120</sup> See, e.g., Kretzmer, *The Occupation of Justice*; O. Ben-Naftali and Y. Shany, “Living in Denial: The Application of Human Rights in the Occupied Territories” (2003) 37:1 *Israel Law Review* 17; A. Imseis, “On the Fourth Geneva Convention and the Occupied Palestinian Territory” (2003) 44:1 *Harvard International Law Journal* 65; A. Roberts, “Prolonged Military Occupation: The Israeli-Occupied Territories since 1968” (1990) 84:1 *American Journal of International Law* 44.

<sup>121</sup> E. Yaar and T. Hermann, *Peace Index: May 2017* (June 4, 2017), [www.peaceindex.org/indexMonthEng.aspx?num=322](http://www.peaceindex.org/indexMonthEng.aspx?num=322).



territory as “administered”<sup>122</sup> and “disputed,”<sup>123</sup> terminology also used by the Israeli supreme court.<sup>124</sup> According to Israel’s claim, this means that international treaties it has ratified do not apply to the West Bank, including not only the Fourth Geneva Convention but also the CRC, the Convention Against Torture, and the International Covenant on Civil and Political Rights, among others. While avowing to act in accordance with the “humanitarian provisions” of the Geneva Convention, Israeli governments have never specified these provisions. And the supreme court, despite referring to the Convention time and again in its rulings, has never determined its applicability.<sup>125</sup> Israeli military courts and courts-martial, for their part, have occasionally mentioned international humanitarian law or the CRC when adjudicating cases involving young Palestinians, but they have insisted that these legal frameworks have no binding force over Israel’s actions in the West Bank.<sup>126</sup>

Israel’s relation to the West Bank can be summed up as one of duality. On the one hand, it has effectively, if not entirely formally, annexed this territory.<sup>127</sup> In tandem with the mass settlement project and Israel’s

<sup>122</sup> This formal Israeli position was developed in Y. Z. Blum, “The Missing Reversioner: Reflections on the Status of Judea and Samaria” (1968) 3:2 *Israel Law Review* 279; M. Shamgar, “The Observance of International Law in the Administered Territories” (1971) 17 *Israel Yearbook on Human Rights* 262.

<sup>123</sup> See, e.g., Israel Ministry of Foreign Affairs, “Israel, the Conflict and Peace: Answers to Frequently Asked Questions” (December 30, 2009), [https://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/FAQ\\_Peace\\_process\\_with\\_Palestinians\\_Dec\\_2009.aspx](https://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/FAQ_Peace_process_with_Palestinians_Dec_2009.aspx).

<sup>124</sup> See, e.g., HCJ 9518/16 *Harel v. Israeli Knesset* (September 5, 2017), ¶ b of deputy chief justice Rubinstein’s leading opinion.

<sup>125</sup> See, e.g., HCJ 591/88 *Taha v. Minister of Defense* (1991) 45(2) PD 45, 53 [Hebrew]; HCJ 1661/05 *Coast of Gaza Regional Council v. Israeli Knesset* (2005) 59(2) PD 481, ¶ 4 of the majority opinion. Israel’s position regarding the Hague Regulations (which, among other things, define the occupying power’s responsibilities) has been different: the HCJ has affirmed their applicability and enforceability in the West Bank, and Israeli governments have not rejected this position. See Kretzmer, *The Occupation of Justice*.

<sup>126</sup> For such references to international humanitarian law, see, e.g., MilA 41867/01 *Military Prosecutor v. Abu Esh-Shabab* (April 7, 2003); MilA 1/07 *Meshbaum v. Military Prosecutor* (January 29, 2007); MilA 3335/07 *Dar-Halil v. Military Prosecutor* (May 29, 2008); CMC (South) 400/04 *Military Prosecutor v. Captain R.* (November 15, 2005). For references to the CRC, see, e.g., MilA 128/02 *Kudsi v. Military Prosecutor* (December 23, 2002); MilA 346/03 *Military Prosecutor v. Jawadra* (July 1, 2004); MilC (Judea) 4941/08 *Military Prosecutor v. Dray* (August 6, 2009).

<sup>127</sup> See, e.g., N. Kadman, *Acting the Landlord: Israel’s Policy in Area C, the West Bank* (Jerusalem: B’Tselem, June 2013), [www.btselem.org/download/201306\\_area\\_c\\_report\\_eng.pdf](http://www.btselem.org/download/201306_area_c_report_eng.pdf); Z. Stahl, *From Occupation to Annexation: The Silent Adoption of the Levy Report on the Retroactive Authorization of Illegal Construction in the West Bank* (Tel Aviv: Yesh Din, February 2016), <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/%D7%9E>



application of its non-military law to settlers, there has also been an ongoing diffusion of practices from Israel “proper” to the West Bank and vice versa, as I demonstrate in Chapter 4. Accompanying this has been the Israeli government’s symbolic annexation of the territory: though Israeli officials initially referred to it as “the West Bank,” a conscious decision was quickly made to change its formal name to “Judea and Samaria,”<sup>128</sup> a biblical term now commonly used by Jewish Israelis.<sup>129</sup> The military legislation disambiguates: “The term ‘Judea and Samaria Area’ carries the same meaning . . . as the term ‘West Bank Area’.”<sup>130</sup> On the other hand, Israeli authorities generally view and treat Palestinian noncitizens as foreigners. The Israeli supreme court, for instance, has referred to prisoners from the West Bank, including residents of Area C (where Israel retains full authority over security and civil matters according to the Oslo peace accords of the 1990s), as “foreign prisoners” residing “outside the borders of the State of Israel.”<sup>131</sup> Similarly, the supreme court, military courts, and some human rights NGOs have distinguished the military law applied by Israel to Palestinians in the West Bank from “Israeli law,” as if the former is somehow external to the latter.<sup>132</sup>

### 1.3.3 East Jerusalem

After assuming control over the West Bank in 1967, Israel formally annexed East Jerusalem (the territory’s largest urban center) and applied its non-military law there – an act considered unlawful by the

<https://www.akevot.org.il/en/article/linguistic-move>

<sup>128</sup> Recently declassified government documents on the subject from 1967 to 1968 are available at Akevot staff, “Linguistic Move,” *Akevot* (n.d., last accessed on May 27, 2019), [www.akevot.org.il/en/article/linguistic-move](http://www.akevot.org.il/en/article/linguistic-move).

<sup>129</sup> Peteet, “Words as Interventions,” pp. 158–59, 163; M. Billig and U. Lebel, “Introduction: Judea and Samaria Jewish Settlers and Settlements – Cultural Sociology of Unsettled Space” (2015) 21 *Israel Affairs* 309, 310.

<sup>130</sup> Article 1a of Order 1729 Concerning Interpretation (Integrated Version) (Judea and Samaria), 2013.

<sup>131</sup> HCJ 4644/15 *Ra’ee v. Prison Service* (June 15, 2016), ¶ 1 of justice Vogelmann’s leading opinion. For a publication of Israel’s national prison authority using the same terminology, see D. Valk, “We and the World – Incarceration Figures in Israel and Other Countries” (2012) 33 *Seeing Shabas* 27 [Hebrew], <http://shabas.millennium.org.il/Items/04434/33.pdf>.

<sup>132</sup> Viterbo, “Outside/Inside,” pp. 301–02.

overwhelming majority of the international community.<sup>133</sup> Consequently, if charged with an offense, Palestinians residing in East Jerusalem are usually tried under non-military Israeli law in civil courts – a major difference to the situation in the rest of the West Bank.

At the same time, Palestinian residents, numbering nearly 300,000,<sup>134</sup> are not citizens, unlike the 200,000 or so Israeli Jewish settlers in East Jerusalem. Approximately 15,000 Palestinians have also had their residency revoked by Israel, a practice some critics link to Israeli governments' stated aim of "maintaining a solid Jewish majority in the city."<sup>135</sup> Further, depending on where an offense is alleged to have been committed, Palestinians from East Jerusalem, unlike Israeli citizens, can also be tried in military courts.<sup>136</sup>

### 1.3.4 *The Gaza Strip*

Currently home to around 1.8 million Palestinians,<sup>137</sup> the Gaza Strip first came under Israeli military control not in 1967, but in 1956, following Israel's war with Egypt. Over the course of its subsequent one-year occupation of the territory, Israel instituted a military tribunal, detained political activists, and replaced the local police with Israeli police officers. Two agricultural army settlements were also established, and additional reforms were introduced with the aim of permanent Israeli presence. Eventually, intense international pressure forced Israel to withdraw from the occupied territory.<sup>138</sup> Nevertheless, this short-lived belligerent occupation laid the groundwork for the country's later control of the West Bank and Gaza Strip, as the military advocate general acknowledged in 1967.<sup>139</sup>

<sup>133</sup> See, e.g., SC Res 298, UN Doc S/RES/298 (September 25, 1971); SC Res 478, UN Doc S/RES/478 (August 20, 1980); ICJ Wall Opinion.

<sup>134</sup> CIA Factbook; United Nations Relief and Work Agency for Palestine Refugees in the Near East, "West Bank & Gaza Strip: Population Census of 2007" (January 2010), [www.unrwa.org/userfiles/2010012035949.pdf](http://www.unrwa.org/userfiles/2010012035949.pdf).

<sup>135</sup> Human Rights Watch, "Israel: Jerusalem Palestinians Stripped of Status" (August 8, 2017), [www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status](http://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status).

<sup>136</sup> See, e.g., Addameer, *In the Shadow of the 2014 Gaza War: Imprisonment of Jerusalem's Children* (2016), pp. 52, 65–66, [www.addameer.org/sites/default/files/publications/imprisonment\\_of\\_jerusalem\\_children\\_2016.pdf](http://www.addameer.org/sites/default/files/publications/imprisonment_of_jerusalem_children_2016.pdf).

<sup>137</sup> CIA Factbook.

<sup>138</sup> Viterbo, "Outside/Inside," pp. 308–09.

<sup>139</sup> Constitution, Law, and Justice Committee, 6th Knesset – Transcript 126 (July 5, 1967) [Hebrew], [https://fs.knesset.gov.il/6/Committees/6\\_ptv\\_425043.PDF](https://fs.knesset.gov.il/6/Committees/6_ptv_425043.PDF).

For nearly four decades since 1967, the legal status of Gazans resembled that of their West Bank brethren. In 2005, however, Israel unilaterally withdrew its armed forces from the Gaza Strip and evacuated all Israeli settlers, numbering about 8,000 and including around 3,400 under the age of 18.<sup>140</sup> The following year, the Hamas party won the local elections, remaining in power ever since. In 2007, Israel declared the Gaza Strip an “enemy entity,” and it has subsequently carried out several large-scale military offensives, resulting in thousands of Palestinian fatalities, including hundreds of under-18s.<sup>141</sup> Gaza’s local justice system currently comprises the following: sharia courts dealing with personal status matters; administrative, civil, and criminal courts adjudicating other civilian issues; and, for “security” matters, military courts.<sup>142</sup>

Israeli law and public discourse refer to the formal pullout as “the disengagement.”<sup>143</sup> Its aim, according to the Israeli Ministry of Foreign Affairs, was to “dispel the claims regarding Israel’s responsibility for the Palestinians in the Gaza Strip.”<sup>144</sup> In actuality, Israel continues to actively, if remotely, regulate and take Gazans’ lives in ways amounting to a more sophisticated mode of engagement.<sup>145</sup> Among the areas over which Israel retains control are: the entry and export of goods; the supply of electricity; the entry of fuel, building materials, and medical and communications equipment; travel and access by land, sea, and air, including travel to and from the West Bank; and the permissible fishing areas. Following decades of economic de-development under direct

<sup>140</sup> Knesset Research and Information Centre, *The Governmental Treatment of the Children of those Evacuated from Gush Katif – A Follow-up Report* (June 22, 2009), p. 3 [Hebrew], [https://fs.knesset.gov.il/globaldocs/MMM/87546b58-e9f7-e411-80c8-00155d010977/2\\_87546b58-e9f7-e411-80c8-00155d010977\\_11\\_8594.pdf](https://fs.knesset.gov.il/globaldocs/MMM/87546b58-e9f7-e411-80c8-00155d010977/2_87546b58-e9f7-e411-80c8-00155d010977_11_8594.pdf).

<sup>141</sup> Between January 19, 2009 and May 31, 2018, the Israeli security forces reportedly killed 3,283 Palestinians, of whom 2,865 were from the Gaza Strip. Of the fatalities, 764 were under the age of 18, including 643 from the Gaza Strip. In addition, 29 Palestinians were reportedly killed by Israeli civilians, and 7 others by an unknown Israeli party. During this period, 91 Israeli security force personnel and 84 Israeli civilians were reportedly killed by Palestinians. B’Tselem, “Fatalities Since Operation Cast Lead” (n.d., last accessed on September 17, 2018), [www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-event](http://www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-event).

<sup>142</sup> Human Rights Watch, *Abusive System: Failures of Criminal Justice in Gaza* (September 2012), pp. 8–23, [www.hrw.org/sites/default/files/reports/iopt1012ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/iopt1012ForUpload_0.pdf).

<sup>143</sup> See, e.g., Disengagement Plan Implementation Law, 2005.

<sup>144</sup> Quoted in M. Luft, “Living in a Legal Vacuum: The Case of Israel’s Legal Position and Policy towards Gaza Residents” (2018) 51:2 *Israel Law Review* 193.

<sup>145</sup> Cf. L. Bhungalia, “Im/Mobilities in a ‘Hostile Territory’: Managing the Red Line” (2012) 17:2 *Geopolitics* 256.

Israeli rule, Gaza's population is now forbidden to build a seaport or to rebuild their airport.<sup>146</sup>

Not only does the closure limit Gazans' life chances and inflict mass suffering, it also brings about actual loss of lives. Among the contributing causes of death are: Israel's rejection of applications for permits to receive lifesaving treatment in the West Bank; the prevention of medical teams from traveling between Gaza and the West Bank; the frequent electricity shortage and its ramifications for hospital equipment and refrigerated medicine; and the lack of adequate water and sanitation.<sup>147</sup> Israeli armed forces have also conducted multiple military incursions,<sup>148</sup> occasionally taking Gazans into detention in Israel. These detainees are either interrogated and then tried in civil courts (under civil security legislation),<sup>149</sup> or they are held in "administrative detention" without trial. Despite Israeli claims to the contrary, many have therefore concluded that Israel's control over the Gaza Strip has not fully terminated.<sup>150</sup>

Israel has thus come to deploy two modes of control in the Palestinian territories outside its pre-1967 borders, depending on the presence or

<sup>146</sup> See, e.g., M. Niezna, *Hand on the Switch: Who's Responsible for Gaza's Infrastructure Crisis?* (Tel Aviv: Gisha, January 2017), [http://gisha.org/UserFiles/File/publications/infrastructure/Hand\\_on\\_the\\_Switch-EN.pdf](http://gisha.org/UserFiles/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf); Human Rights Watch, "Unwilling or Unable: Israeli Restrictions on Access to and from Gaza for Human Rights Workers" (April 2, 2017), [www.hrw.org/report/2017/04/03/unwilling-or-unable/israeli-restrictions-access-and-gaza-human-rights-workers](http://www.hrw.org/report/2017/04/03/unwilling-or-unable/israeli-restrictions-access-and-gaza-human-rights-workers); M. Abo Arisheh, #Denied: Harassment of Palestinian Patients Applying for Exit Permits (Physicians for Human Rights – Israel, June 2015), <http://cdn3.phr.org.il/wp-content/uploads/2015/06/Denied.pdf>. On the de-development of Gaza under Israeli control, see S. Roy, "The Gaza Strip: A Case of Economic De-Development" (1987) 17:1 *Journal of Palestine Studies* 56.

<sup>147</sup> Viterbo, "Violence," pp. 440–43.

<sup>148</sup> The Israeli military made at least 262 known ground incursions and operations between 2015 and 2018, according to data obtained from the UN Office for Coordination of Humanitarian Affairs. See H. Chacar, "Israeli Incursions into Gaza Are the Rule, Not the Exception," +972 *Magazine* (November 13, 2018), <https://972mag.com/israeli-incursions-in-gaza-are-the-rule-not-exception/138600>.

<sup>149</sup> See, e.g., G. Cohen and A. Hass, "Israel Holding Unknown Number of Palestinians Captured in Gaza Strip," *Haaretz* (July 25, 2014), [www.haaretz.com/news/diplomacy-defense/.premium-1.607185](http://www.haaretz.com/news/diplomacy-defense/.premium-1.607185); Y. Yagna, "Palestinian from Gaza Detained by Israel for 'Security Crimes'," *Haaretz* (July 10, 2013), [www.haaretz.com/news/diplomacy-defense/palestinian-from-gaza-detained-by-israel-for-security-crimes.premium-1.534999](http://www.haaretz.com/news/diplomacy-defense/palestinian-from-gaza-detained-by-israel-for-security-crimes.premium-1.534999).

<sup>150</sup> See, e.g., S. Darcy and J. Reynolds, "An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Law" (2010) 15:2 *Journal of Conflict and Security Law* 211; I. Scobbie, "Gaza," in E. Wilmshurst (ed.), *International Law and the Classification of Conflicts* (Oxford: Oxford University Press, 2012), p. 280; N. Stephanopoulos, "Israel's Legal Obligations to Gaza after the Pullout" (2006) 31 *Yale Journal of International Law* 524.

absence of Israeli inhabitants. In areas predominantly populated by Palestinians – the Gaza Strip and Palestinian Authority territories in the West Bank – Israel has effectively “outsourced” responsibility over Palestinian lives to non-state Palestinian actors, while maintaining control over issues seen as affecting fundamental Israeli interests. Rather than being a permanent military presence on the ground, Israel conducts intermittent incursions and also, in the case of Gaza, exercises control through closure and airstrikes. In contrast, most of the West Bank, apart from Palestinian Authority regions, is populated by both Israeli settlers and Palestinians, and therefore has Israeli security forces, legal institutions, and administrative authorities operating regularly and extensively on the ground. Israel’s rule over the West Bank combines the not entirely coherent mix detailed earlier: annexation, formally for East Jerusalem and effectively for other parts of the West Bank, in tandem with exclusion and separation.<sup>151</sup>

#### 1.4 Methodology and Sources

This book is largely based on my analysis of hundreds of texts<sup>152</sup> collected between the years 2007 and 2020, whose authors are the Israeli legal system and its human rights critics, local and international. Hardly any of these documents have thus far been studied, and many of them are not in the public domain. Israel has a record of preventing access to such sources, especially, though not exclusively, to non-Israeli scholars.<sup>153</sup> My being identified as Israeli and Jewish, coupled with being a former soldier, may well have been instrumental to getting hold of these and other unpublished Israeli legal documents.

<sup>151</sup> For related analyses, see L. Allen, “The Scales of Occupation: ‘Operation Cast Lead’ and the Targeting of the Gaza Strip” (2012) 32:3 *Critique of Anthropology* 261; A. Cohen, “Israel’s Control of the Territories – An Emerging Legal Paradigm” (2016) 21:3 *Palestine-Israel Journal* 102.

<sup>152</sup> By “text” I am mostly referring to written documents but also, for Chapters 6–8, visual materials. On visuality as discourse, see, e.g., H. Piper and J. Frankham, “Seeing Voices and Hearing Pictures: Image as Discourse and the Framing of Image-Based Research” (2007) 28:3 *Discourse: Studies in the Cultural Politics of Education* 373.

<sup>153</sup> See, e.g., Gisha, “Military Changes Procedure in Order to Justify Its Refusal to Allow a British Student to Enter the Gaza Strip” (February 25, 2014), <http://gisha.org/updates/2690>; L. Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (London: University of California Press, 2005), pp. 16–17; C. A. Jones, “Frames of Law: Targeting Advice and Operational Law in the Israeli Military” (2015) 33:4 *Environment and Planning D: Society and Space* 676, 678.

The documents under scrutiny can be divided into three main groups. The first consists of human rights publications, mostly obtained from relevant human rights organizations, their websites, and mailing lists. The second, analyzed in Chapters 6–8, contains materials concerning Israelis in conflict with Israeli law. The documents included in, and absent from, this latter group require some explanation. Only a few criminal court cases concerning settlers under the age of 18 are included, all of which, for various reasons, were heard in adult courts. The reason is that hearings involving Israeli defendants in that age group are normally held in youth courts, behind closed doors,<sup>154</sup> and the civil court administration refused my requests to access them, despite my offer to redact any identifying details and cover the redaction costs. As in other countries,<sup>155</sup> the (non-military) youth justice system thus remains out of public sight and scrutiny.<sup>156</sup> The Police Prosecution, which handles some charges against under-18s, also refused my freedom of information requests, claiming that tracing the information would be too time-consuming. This book also analyzes transcripts of Israeli parliamentary debates relating to young settlers, obtained from the website of the Israeli parliament, the Knesset. To some extent, these transcripts may help compensate for the inaccessibility of youth court judgments. Also examined are Israeli judgments involving soldiers who were, uncharacteristically, charged with abusing young Palestinians. Of these cases, those involving border police soldiers (who are under civil jurisdiction) were heard in either civil courts or police disciplinary tribunals, whereas those involving other soldiers were heard in courts-martial.

The third and largest group of Israeli legal materials concerns Palestinians in conflict with Israeli law. Among them are some non-military legal documents: police and prison regulations and publications, statutes, and supreme court judgments, as well as lower civil court decisions regarding young residents of East Jerusalem (who are subject to Israel's non-military law). However, the vast majority of these

<sup>154</sup> Article 9 of the Youth Law.

<sup>155</sup> See, e.g., G. Geis, "Publicity and Juvenile Court Proceedings" (1957) 30:2 *Rocky Mountain Law Review* 101; J. L. Trasen, "Privacy v. Public Access to Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System" (1995) 15:2 *Boston College Third World Law Journal* 359.

<sup>156</sup> On some of the ramifications in the Israeli context, see T. Morag, "The Effect of the Commission for Examination of the Basic Principles Concerning the Child and the Law on the Israeli Case Law's Underlying Conceptions" (2010) 3 *Family in Law* 68, 74 [Hebrew].

documents comprises hundreds of military law documents: judgments and statutes.<sup>157</sup> Though Israeli military judgments are not formally secret,<sup>158</sup> one of the challenges for researchers is that most of them are not publicly accessible. In the first four decades of its rule over the West Bank and Gaza Strip, the military published, every two years or so, only a meager number of “select” judgments.<sup>159</sup> I have analyzed all the cases in these compilations that are identifiable as involving defendants below the age of 18. Moreover, until the second decade of the twenty-first century, not only military judgments but also the military statutes in force were difficult to obtain; thereafter, however, the military codified its numerous and ever-changing statutes, and has published updated compendiums from time to time.

Since 2008, the military has also been routinely sending new military court of appeals judgments to the Israeli online commercial legal database Nevo, in which I found relevant cases through several keyword searches over the past few years. However, earlier decisions by the military court of appeals usually remain unpublished. No less crucially, also unpublished are first-instance judgments, which (as detailed in Chapter 2) constitute the overwhelming majority of military court decisions. In 2010, following two years of attempts to get hold of unpublished military court decisions, I gained from the military court administration access to several dozen unpublished military cases from the years 1993–2009.<sup>160</sup> Under surveillance by specially assigned soldiers, I was allowed to read some of the requested cases at the Ofer military court, located near the city of Ramallah in the West Bank. Time and resource constraints required me to photocopy only the documents that seemed most relevant.

<sup>157</sup> In addition to military statutes and judgments, I attempted to obtain records of internal military deliberations over military legislation from the 1960s. To this end, I turned to the military archive (which is separate and much larger than the military court archive described shortly), but was told by the staff that there was no relevant information there. Regrettably, a meager 0.4 percent of files in the military archive are available to the public. Akevot, “State of Access to Israeli Government Archives – Data Sheet” (September 2017), pp. 1–2, <https://akevot.org.il/wp-content/uploads/2017/09/Akevot-State-of-Access-to-Govt-Archives-2017-09-Eng.pdf>.

<sup>158</sup> Military courts, unlike civil ones, are not required (though they are authorized) to hold hearings involving under-18s behind closed doors, as detailed in Chapter 2, Section 2.4 (“The Military Court System”).

<sup>159</sup> Hajjar, *Courting Conflict*, p. 59.

<sup>160</sup> I had gleaned the details of these cases through two sources: other documents in legal databases, and acquaintances with ties to the military legal system.

I deliberately avoid treating the sources under examination as a gateway into either “reality” or the intentions of their authors. Indeed, that they cannot be taken at face value will become patently evident throughout this book. It will thus become clear that Israeli state documents, legal and other, are often inconsistent not only with compelling evidence (Chapters 6 and 7) but also with one another (Chapter 2). Similarly, I will show that human rights reports evince repeated misunderstanding, and hence misrepresentation, of Israeli military law (Chapter 3) as well as of young Palestinians’ voices (Chapter 5). Further, while most military and youth court judgments are inaccessible, the many other Israeli state documents I have obtained conceal as much as they reveal. They lack clear, consistent information about Palestinians in Israeli custody (Chapter 2) and systematically cover up violence toward young Palestinians (Chapters 6 and 7). Military judgments, in particular, will be shown to reflect neither the actual court hearings (Chapter 2) nor the military statutes that formally bind them (Chapter 3). In this book, I take as my subjects of inquiry not only what is visible or said about the issues under examination, but also what is, or at least seems to be, out of sight, excluded, or silenced. Such omissions and invisibilities, I will demonstrate, are part and parcel of the relationship between law, human rights, and childhood in Israel/Palestine.

As for intentions, it may seem tempting to attribute them to documents, assertions, and actions, be they those of Israeli authorities or of human rights organizations. This, ostensibly, would advance the analysis further. However, doing so would be problematic in three key respects: analytically, epistemologically, and normatively. First, from an analytical standpoint, claims to unearth supposedly “invisible” or “underlying” motives tend to resort to questionable causal or structural explanations.<sup>161</sup> If such explanations are supported by nothing other than one’s preconceived theories, a disservice is likely to be done to the complex issues in question. Second, epistemologically, to treat statements or deeds as indicative of intents is to make untenable assumptions about the transparency, knowability, and even existence of intentions. Regardless of whether a certain legal or human rights actor acts (or believes it acts) strategically, one’s motivations and interests are never fully transparent

<sup>161</sup> M. Valverde, *Law’s Dream of a Common Knowledge* (Princeton: Princeton University Press, 2003), pp. 12–14. See also M. Foucault, *Power/Knowledge: Selected Interviews and Other Writing, 1972–1977* (Colin Gordon et al. trans., New York: Pantheon Books, 1980), p. 97.



to oneself, nor, obviously, are the implications of one's words and actions. Finally, from a normative perspective, conceptualizing contentious practices in terms of intentions might inadvertently help those who, by describing them as unintentional, seek to legitimize them. A sounder course of analysis, in all three respects, is to focus on the content of the available sources, while constantly questioning and problematizing it, confronting it with and contextualizing it within its surrounding socio-political environment and developments.

For these reasons, rather than equating texts and practices with either reality or intentions, I concentrate on their available content, as well as on their effects, both symbolic and material. When carefully inspected, these sources are thus revealed to be of great value in two key respects. First, they advance understanding of the ethos of Israeli authorities and their human rights critics, shedding light on the stories – about themselves and about the world in which they operate – these actors tell themselves and others. Second, when examined within their sociopolitical context, these sources lay bare the ways in which the language, narratives, and framings of law and human rights govern knowledge, imagination, and conduct regarding childhood in Israel/Palestine, with real-life consequences for Palestinians and Israelis of all ages.

Complementing my discourse analysis is a quantitative analysis of military court files. In late 2010, I gained access to the so-called archive (a small and cluttered portable cabin) of the Salem military court, on the West Bank's northern border. The files there were from the years 2008–09, and 155 of them had been classified by the military as involving defendants under the age of 18. In Chapter 2, I provide the findings of a quantitative analysis of these 155 files, such as the conviction rate, sentencing averages, and the defendants' average age. At the same time, unlike the proclivity of some quantitative researchers to reduce representativeness to numbers and size,<sup>162</sup> my quantitative analysis of the 155 military court files does not profess to be any more representative of "reality" than the non-quantitative analysis of other materials (including hundreds of other military court decisions). Further, statistics and quantification are anything but politically neutral. Among other things,

<sup>162</sup> On the potential misuses and limitations of statistics, see, e.g., J. Best, *Damned Lies and Statistics: Untangling Numbers from the Media, Politicians and Activists* (Berkeley and London: University of California Press, 2001); D. Huff, *How to Lie with Statistics* (New York: W. W. Norton & Co., 1954).

they provide states with instruments of governance<sup>163</sup> and means of promoting particular forms of knowledge.<sup>164</sup> In Israel/Palestine, where statistics with political implications are hotly contentious,<sup>165</sup> the military has also repeatedly dismissed empirically based criticism by the human rights community as statistically unrepresentative, including a report based on more than 800 military court observations.<sup>166</sup>

Also informing this book are observations I made while attending hearings at the Ofer military court, as well as my other experiences at both Ofer and Salem military courts. For example, several scholars have observed Israel's attempts to legitimize its control over the Palestinian territory by presenting it as temporary.<sup>167</sup> In visits to the military courts, I was able to witness an emblem of this semblance of temporariness: the makeshift appearance of the military courts' architecture. Thus, the military makes use of portable cabins not only for its so-called archive (in which I analyzed files), but also for most of the courtrooms themselves. Despite criticism by senior state officials in and outside the military, the military announced in 2018 that constructing permanent court buildings is not a priority in the coming years.<sup>168</sup>

<sup>163</sup> See, e.g., Burchell, Gordon, and Miller, *The Foucault Effect*; C. Shore and S. Wright, "Governing by Numbers: Audit Culture, Rankings and the New World Order" (2015) 23:1 *Social Anthropology* 22.

<sup>164</sup> On tensions between political and military actors who seek to promote specific forms of knowledge – statistical versus qualitative – about war, see L. Khalili, "The Uses of Happiness in Counterinsurgencies" (2014) 32:1 *Social Text* 23.

<sup>165</sup> On political disputes over demographic statistics in Israel/Palestine, see, e.g., I. S. Lustick, "What Counts Is the Counting: Statistical Manipulation as a Solution to Israel's 'Demographic Problem'" (2009) 67:2 *Middle East Journal* 29.

<sup>166</sup> IDF Spokesperson, "Response to the Yesh Din Report Draft: Backyard Proceedings," *Yesh Din* (November 12, 2007), ¶¶ 14–18 [Hebrew], <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/%D7%9E%D7%A9%D7%A4%D7%98%D7%99%D7%9D+%D7%91%D7%97%D7%A6%D7%A8+%D7%94%D7%90%D7%97%D7%95%D7%A8%D7%99%D7%AA/BackyardProceedings+IDF+Response+ENG.pdf>. For similar dismissals, see IDF Spokesperson, "Response to B'Tselem Report," *B'Tselem* (June 22, 2015), pp. 1, 9 [Hebrew], [www.btselem.org/download/20150622\\_presumed\\_guilty\\_idf\\_response\\_heb.pdf](http://www.btselem.org/download/20150622_presumed_guilty_idf_response_heb.pdf); P. Greenwood, "Israel Furious at UN Report Detailing Torture of Palestinian Children," *The Telegraph* (June 21, 2013), [www.telegraph.co.uk/news/worldnews/middleeast/israel/10135157/Israel-furious-at-UN-report-detailing-torture-of-Palestinian-children.html](http://www.telegraph.co.uk/news/worldnews/middleeast/israel/10135157/Israel-furious-at-UN-report-detailing-torture-of-Palestinian-children.html).

<sup>167</sup> See, e.g., O. Ben-Naftali, "Temporary/Indefinite," in Ben-Naftali, Sfar, and Viterbo, *The ABC of the OPT*, pp. 406–13; Zertal and Eldar, *Lords of the Land*, pp. 352–62.

<sup>168</sup> State Comptroller and Ombudsman of Israel, *Annual Report 69B* (2019), p. 2352 [Hebrew], [www.mevaker.gov.il/sites/DigitalLibrary/Documents/69b/2019-69b-504-Aiosh-Mishpat.pdf](http://www.mevaker.gov.il/sites/DigitalLibrary/Documents/69b/2019-69b-504-Aiosh-Mishpat.pdf).

Empirical research, qualitative and quantitative, is often equated with objectivism and structuralism.<sup>169</sup> This book, in contrast, makes no claim to “uncover” an objective “truth” through its analysis.<sup>170</sup> Instead, the aim is to offer a rich and hopefully reflexive interpretation of the materials at hand.

## 1.5 Outline of Chapters

Having presented the conceptual and methodological framework of this study, I introduce in Chapter 2 the book’s two institutional protagonists: the Israeli legal system and its human rights critics. I outline their key characteristics, examine their shared legalism, describe the intricate dynamic within and between them, and identify issues and trends in their approaches to noncitizen Palestinians below the age of 18. The chapter expands on the mass prosecution and incarceration of Palestinians, the military court system, the mechanisms for judicial review of military actions, and Israel’s repeated invocation of international law, with special attention to the effects and manifestations of each of them in relation to young Palestinians. At the forefront of my analysis are the importance, characteristics, blind spots, and silences of legal and human rights texts. Accordingly, my entry point into the subject matter are extensive quotes from two documents – an Israeli military court file and a human rights report – both of which concern Palestinians convicted of stone throwing. As this is the most common charge against noncitizen Palestinians under 18, it is also a common thread through the chapter.

With these theoretical and factual foundations in place, each of the following chapters delves deeper into specific areas and dimensions of the childhood–law–rights triad. Chapter 3 investigates the constitutive role of age in marking and shaping Palestinians’ lives, with a focus on four

<sup>169</sup> D. M. Trubek and J. Esser, “‘Critical Empiricism’ in American Legal Studies: Paradox, Program, or Pandora’s Box?” (1989) 14:1 *Law & Social Inquiry* 3, 12. On the different meanings attributed to empiricism in critical legal studies, see D. M. Trubek, “Where the Action Is: Critical Legal Studies and Empiricism” (1984) 36:1 *Stanford Law Review* 575, 579–88. On objectivism, see, e.g., R. J. Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics, and Praxis* (Philadelphia: University of Pennsylvania Press, 1983). On structuralism, see, e.g., E. Kurzweil, *The Age of Structuralism: From Lévi-Strauss to Foucault* (New York: Columbia University Press, 1980).

<sup>170</sup> Cf. Valverde, *Law’s Dream of a Common Knowledge*, pp. 12–14.

areas: military court trials, Israel's open-fire regulations (rules of engagement), food quotas for the Gaza Strip, and impediments to Palestinian movement. Starting with the first of these areas, military judges are required, under the Israeli law that formally binds them, to consider a Palestinian defendant's young age. By closely inspecting the actual implementation of this statutory requirement, I bring to light previously unknown findings that run contrary to assertions by both Israel and its human rights critics. Some judges, I demonstrate, have deliberately treated young age not as a mitigating factor but, rather, as grounds for harsher punishment, aiming to send a deterrent message to other Palestinian youth as well as to their adult environment. I argue that this judicial view reflects two Israeli traditions: the portrayal of Palestinians as weaponizing their young, and the desire to discipline older Palestinians through their younger counterparts. I show how others in the judiciary have sentenced Palestinians based on their bodily appearance, taking into account not their chronological but their apparent age. Further, the military judiciary has exhibited inconsistency on all these matters, as well as on the meaning of seemingly precise statutory age terms, such as "minor." These findings, I suggest, offer lessons regarding both Israel's apparatus of governing through uncertainty and the inherent fluidity of childhood and age. To further contextualize the statutory age categories that Israel applies to Palestinians, I trace their origin to colonial British law and compare them to laws enacted elsewhere in the British Empire.

From military sentencing, the chapter turns its gaze to three areas where age potentially determines if and how Palestinians get to live. First under examination are legal disputes over Israel's open-fire regulations. In principle forbidding shooting at under-14s, these regulations have been interpreted to authorize firing at younger Palestinians whom Israeli forces perceive to be dangerous or older. I then cast a critical light on the logic guiding the biological warfare on Gazans in the form of age-based food and calorie quotas, as well as on Israel's attempts to justify this warfare in humanitarian and legal terms. Next, I interrogate Israel's deployment of age as a risk management tool within the movement restrictions that curtail Palestinians' access to medical treatment, work, resources, their families, their communities, and their territories. Palestinians, for their part, do not let these measures go unchallenged. The chapter hence concludes by casting light on their resort to deception about their chronological age to circumvent Israel's movement restrictions.

Age, I have noted, operates in tandem with space to demarcate and construct childhood. Shedding light on their interaction, Chapter 4 turns to the age and spatial boundaries of Palestinian childhood, as perceived, negotiated, and transformed by discourses and practices of law and human rights. Whereas the previous chapter brought to the fore childhood's fluidity, my test case here is a series of reforms in the first two decades of the century, which represented, for both Israel and the human rights community, the opposite: fixing childhood's boundaries in line with international child rights law, non-military Israeli law, and Israel's national security interests. Key among these reforms were the separation of incarcerated Palestinians under 18 from their adult counterparts; the establishment of the world's only "military youth court"; raising the age of majority under military law; and assessment of the rehabilitation chances of Palestinian youth.

Contrary to claims by Israeli officials and their human rights critics, I reveal that some reforms have made little to no actual difference, while others have served to fragment, monitor, and suppress Palestinian interactions, bodies, and minds. Age-based segregation and "rehabilitation" behind bars, in particular, have been designed to prevent intergenerational knowledge transfer among Palestinians and to undo such knowledge as already exists. Neither exceptional nor unique, Israel's reforms and the rhetoric surrounding them exemplify five broader issues that I discuss in turn: the blind spots of human rights actors (NGOs and scholars alike); the long-standing complicity of child law and children's rights in the oppression of disempowered communities around the globe; the growing convergence between military and non-military Israeli law; the multiple forms of separation Israel imposes on Palestinians, which, like their age-based segregation in prison, operate to divide and conquer them; and Israel's attempts at confining Palestinian minds beyond the prison walls. In the process of examining Israel's modes of control, I also call attention to Palestinian acts of resistance: running study groups in prison, smuggling sperm of incarcerated men, and conducting readings and discussions in public protests.

Continuing the critical assessment of the child rights discourse, Chapter 5 tackles four interrelated interpretive frameworks recurring in human rights publications: a mental health discourse of childhood trauma and loss; a depiction of Palestinian childhood as lost or stolen; talk of a "right to childhood"; and a claim to represent young Palestinians' voices. I call into question their essentialist and developmentalist assumptions, reveal their pitfalls, and reflect on their

omissions, all of which I link to wider issues at both the global and the local levels.

Specifically, I demonstrate how the mental health language of trauma and loss individualizes, and thus potentially decontextualizes, the issues it supposedly conveys; how it pathologizes young Palestinians; and how it casts them as a future threat to Israel's security. Next, I argue that the stolen-childhood narrative portrays Palestinians as both an exception to normal childhood and an epitome of a worldwide demise of childhood, without sensitivity to the actual sociopolitical circumstances. Further, I look at how human rights texts tie the loss of childhood to another loss – that of the Palestinian homeland – and how this linkage depicts Palestinians' collective past, present, and future. Turning to the notion that Palestinians have a "right to childhood," I explain how it perpetuates two harmful tendencies of the dominant children's rights discourse: the exclusion of those under the age of majority (or their inclusion only on older people's terms) and the legitimization of apathy and harshness toward those defined as adults. Finally, and contrary to what human rights organizations claim to be doing, I point to several ways in which they obscure rather than simply represent the voices of young Palestinians: prioritizing older people's voices; excluding youth from the writing and editing process; omitting crucial information relating to the quoted testimonies; ignoring witnesses' nonverbal expressions; and overlooking the inseparability of the human voice from the messy social fabric.

In a shift from the verbal to the visual, Chapter 6 takes as its subject the legal and political forces that determine the visibility, knowability, and experience of Israeli state violence against Palestinian under-18s. After outlining the impact of visual technologies and imagery, I zoom in on three ways in which Israel subjects Palestinians to its gaze or pressures them to internalize it: putting up posters with threats accompanied by photographs of Palestinian youth or their parents – a disciplinary visual tool presented by Israel as serving the best interests of young Palestinians; taking pictures of unsuspected Palestinian youth at home and on the street, who are presumed potential rather than actual wrongdoers; and soldiers filming their abuse of young Palestinians.

At the same time, where such visibility is deemed jeopardizing to the state and to its agents, concealment comes into play. I lay bare a number of mutually complementary Israeli practices serving this function in cases of violence against young Palestinians: the destruction of potentially incriminating evidence; the prevention of such violence from being

witnessed in real time; restrictions on publishing unflattering information about Israel's conduct toward Palestinians; the failure to record interrogations, either in whole or in part; the resort to torture tactics that leave no marks on the body; and legally sanctioned secrecy across a range of areas. Also analyzed are the de facto impunity of alleged perpetrators; their depiction by the Israeli judiciary as a few rotten apples unrepresentative of either Israel or its military; and other discursive techniques employed by state authorities to deny, dismiss, and downplay Palestinian complaints. Against this backdrop, the chapter concludes by offering an alternative approach to evidence, visual and other. The Israeli legal system and its human rights critics alike tend to privilege two forms of evidence: video footage and state agents' testimonies. In so doing, they ultimately validate both Israel's dismissal of uncorroborated Palestinian allegations and its "rotten apples" narrative. I argue that alternative images – specifically pictures of absence, reenactment photographs, and sketches – bring to the fore the representation and mediation at work and, for this reason, possess the unique evidentiary potential to highlight the invisibility shrouding both state violence and young witnesses.

Whereas the spotlight up to this point has been on Palestinian childhood, the final two chapters bring into the picture Israeli childhood as well. At the heart of Chapter 7 are two characteristics of the dominant Israeli legal and human rights discourse. One is its infantilization of soldiers (its portrayal of them as children), particularly in court cases concerning either soldiers' violence against Palestinians or military hazing. I pay special attention to the conjuring up, in judgments involving violence against Palestinians under the age of 18, of two potentially conflicting childhoods: that of the violent soldier, who is not formally a child yet tends to be perceived as such; and that of the young Palestinian, who, by the applicable statutory definitions, is an actual "minor." In addition, I call into question the Israeli legal system's insistence that soldiers' acts of violence, whether against their comrades or Palestinians, are no more than isolated transgressions. As I contend, the military has a long record of internal violence, and the resemblance between this violence and that of soldiers against Palestinians may well be no mere coincidence. The other discursive feature I examine is the militarization of young Israelis and Palestinians – that is, their characterization or treatment in military terms. Regarding young Israelis, specifically those evacuated from settlements in the Gaza Strip, I analyze their depiction as soldiers in the making, as well as the judiciary's consideration of their future military service as a mitigating factor when they



come into conflict with the law. Regarding young Palestinians, I discuss their use (alleged or actual) as human shields, as well as Israeli contentions that they are trained for combat from an early age. I cast light on the double standards in such Israeli accusations and call into question the claim that, whereas Palestinians use their young as weapons, Israel wages war to protect its young.

The chapter inspects how, across these contexts, state and human rights actors invoke, shape, and challenge what I explain are two problematic versions of the child/soldier dichotomy: first, international law's categorization of people below certain ages as protected civilians (as opposed to non-protected combatants), and, second, the international legal ban on recruiting underage soldiers. I discuss the role militarism and childhood play in this respect, as well as the political consequences for both Palestinians and Israelis.

Finally, Chapter 8 delves deeper into the legal construction of young settlers' childhood, revisiting in the process key themes and insights from all the previous chapters. The greater rights and preferential treatment enjoyed by settlers under 18, compared with those of same-age Palestinians (be they citizens of Israel, residents, or nonresident-noncitizens), are explored in this chapter, at the levels of both statute and state practice. My two test cases are stone throwing by settler youth and the question of whether to detain settlers aged under 18 separately from their elders. The former, I reveal, has been subject to several trends: lax law enforcement on settler youth; lenient sentencing; soldiers' abuse of Palestinian victims of stone throwing; the Israeli judiciary's rejection of selective enforcement claims by Palestinian stone-throwers, contrasted with its acceptance of such claims by their settler counterparts; the courts' consideration of settlers' military service as a mitigating factor; and convictions only where Palestinian complaints are corroborated by Israeli witnesses. In the second test case, I look at the Israeli policy of jointly detaining settlers under and above the age of 18 who protested the Gaza pullout – a policy contrary to Israel's age-based separation of incarcerated Palestinians.

At the same time, the childhood–law–rights triad is not reducible to such disparities between Israelis and Palestinians, important though they are. Accordingly, the chapter expands its scope of inquiry to interrogate, first, what critics have described as Israel's childish response to the refusal of detained settler girls to disclose their ages. From this dynamic, I draw broader lessons about age, voice, and infantilization. Second, I shed light on the operation, effects, and interaction of two modes of representation

that figured centrally in parliamentary debates on the impact of the Gaza pullout on young Jewish evacuees: a mental health language of trauma and loss, and visual imagery.

Running throughout these chapters are several meta-themes, key among which are: the malleability of childhood as a legal-political construct; the pitfalls of child law and children's rights, including their operation as means of domination; the human rights industry, its shortcomings, and its commonalities with the state; the preoccupation of seemingly child-focused law with those not formally classified as children; the modes of operation of the Israeli control regime, including its legalism; the practices shaping what can be known and seen about the issues under examination; the perceptions and roles of Israeli armed forces on the ground; the resistance and collective imaginary of Palestinians, as well as of Jewish settlers; the intersection of childhood with other identity categories; and the inextricable connections, parallels, and tensions between the global and the local, and between the past and present.