

The Apprenticeship Of Ariel Sharon

By Ed Morgan

Suggested Citation: Ed Morgan, *The Apprenticeship Of Ariel Sharon*, 2 German Law Journal (2001), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=97>

[1] The following essay was written prior to the tragic events of September 11, 2001, in an effort to reflect on an aspect of international law's confrontation with violence, national identity, and adjudicated forms of justice. Since the attacks in the United States, numerous commentators have expressed the need to act within the rule of international law. This essay speculates on the meaning of that notion. It is neither prescriptive in terms of policy nor reformist in terms of doctrine. Rather, it is part of an ongoing effort to discern the aesthetic significance, if not the rationality, of international law. ***** [2] Two otherwise disparate events took place within weeks of each other in July 2001: the commencement of a war crimes investigation of Israeli Prime Minister Ariel Sharon by a Belgian magistrate and the death by cancer of Canadian novelist Mordecai Richler. On deeper reflection, however, the author of the satirical masterpiece, *The Apprenticeship of Duddy Kravitz*, may have more to tell us about the international scene than political or legal specialists in the field would care to think. Certainly, a professional observer of Ariel Sharon, assessing his roles from hero of the Yom Kippur War to anti-hero of the conflict in Lebanon, might easily echo Richler's comment on his own famous protagonist as a character whom he „both admires and despises.\"(1) [3] After a career of leveling accusations of hypocrisy at his military superiors and political adversaries, Prime Minister Sharon may finally be learning the true meaning of the term. The context of the lesson, however, may take the battle-worn General by surprise. The man commonly known as Israel's most aggressive combatant will now have to come to grips not with the Sinai's mountain passes or the Knesset's treacherous corridors, but with a European courtroom and the long, if contradictory arm of the law. [4] On July 2, 2001, the same day that Slobodan Milosovic was brought to The Hague to face charges before a United Nations Tribunal, Sharon became the target of a Belgian criminal investigation relating to the 1982 massacre by Christian militiamen of Palestinians in Lebanon's Sabra and Shatila refugee camps.(2) Many in Israel and elsewhere have accused the Belgians of political hypocrisy, pointing with some justification to the fact that no Lebanese Christian leader has come under similar scrutiny. For those concerned more with international law than international politics, however, the relevant issue is the disjuncture between a northern European judiciary and the Southern Lebanese events. While Sharon may want to ask the court the defensive retort of 'why me?', the most pressing question is appropriately addressed to the court as 'why you?'. [5] To answer that question, or even to explain why it may be unanswerable, one must examine a combination of developments in international law and in Sharon's own personal history. It is particularly instructive to review Sharon's previous encounters with the judiciary in his own country and elsewhere. What is most frequently recalled is the mixed verdict of Israel's 1983 Kahan Commission,(3) in which a panel of jurists found then Defense Minister Sharon indirectly responsible for failing to foresee and prevent the Palestinian deaths, but not directly liable for murders committed by the Lebanese Phalange militia and not by Israeli forces under his command. What is often forgotten is that Sharon himself has called on foreign legal process – specifically, a 1985 libel suit in New York against Time Magazine – to aid in his exonerated from the Lebanon debacle. [6] With that background in mind, Sharon's apprenticeship in the double-edged ways of the law is about to be completed. It is in this learning process that the Sharon story and the Richler novel have most in common. In the first place, there is something irresistible, if gratuitous about pitting a staunch Zionist figure with a novel whose central quest revolves around a grandfather's admonishment that, „A man without land is nobody.\"(4) Perhaps more to the point is that Duddy Kravitz shares a fundamental ambivalence of character with the Israeli Prime Minister, and, in an ironic parallel, the values of Richler's Montréal youth share a similar ambivalence with those of international law. While both Duddy and Ariel make for a gripping story of bad boy makes good, the ethic of Richler's gritty St. Urbain Street and the norms of global legalism both develop into a tale of good origins gone bad. [7] International law starts with, and struggles against, the indelible fact that justice is historically a local matter. In terms of criminal prosecutions, it makes all the legal difference in the world whether a victim is pushed into the Rio Grande or over Niagara Falls from the north or the south side of the water.(5) The same is true with civil liability. Internet defamation cases, for example, with their potential for instantaneous world-wide publication, pose difficulties precisely because they challenge traditional notions that wrongs are righted in the locale where they occur.(6) The Anglo-American penchant for local justice, with juries typically pooled from a local population rather than a foreign one,(7) is designed to ensure that the aggrieved community passes judgment and vindicates itself as a community by rendering the perpetrator what is due. [8] In his legal battles of the 1980s, however, General Sharon defied this traditional logic, opting for internationalism over community. Thus, Sharon settled his claims against Time and its author out of court in Tel Aviv while pursuing them to trial in New York, in the process going out of his way to choose an international arena in vindication of a world-wide value. The value, of course, was the one that as Minister of Defense he had himself been accused by then Prime Minister Menachem Begin of undervaluing in his assessment of the goals of the Lebanon campaign. „We didn't come for money,\" said his New York attorney after the January 1985 verdict, „We came for truth and we got it.\"(8) [9] Sharon's complaint likewise transformed itself, moving from local to universal in its rhetoric. In his initial public defense he had expressly sought to uphold the dignity of a national community, labeling Time Magazine's statements about his supposed complicity in the Sabra and Shatila incidents a „blood libel\" against Israel and all Jews.(9) By the time the case reached federal court, Sharon presented himself as seeking to uphold the basic human rights he shares with persons

everywhere, impugning the Time reporters for making him undeservedly wear „the mark of Cain\".(10) In image, if not in deed, Sharon went from invader to infringed much as his cause shifted easily from that of the nation to that of himself. [10] Richler likewise takes his complex Jewish protagonist on an excursion from community insularity to a version of cosmopolitanism beyond the confines of his Montréal ghetto. Duddy Kravitz begins his literary life as the classic *pusherke*, the 'pushy Jew' – „a throwback\", according to his 'progressive' uncle Benjy, who, according to several other characters, „almost gives anti-Semitism a good name\".(11) At the same time he exhibits a kind of homespun naiveté, foolishly investing in a worthless stock of obscene comic books as a youth, losing a small fortune at roulette later on and, in one of the novel's best known scenes, allowing a local artiste to make *avant garde* films of a *bar mitzvah* ceremony. The combined innocent and street wise impulses form the base from which a lifetime of contradiction can emerge. [11] As the story progresses, Richler turns the contradictory base itself on its head. The initial pushiness, for example, converts to a form of charity when he assists his troubled brother who has immersed himself too much in the world of upper crust gentiles. Likewise, the ghetto gives way to worldliness in Duddy's assessment that a notorious local hoodlum is „only famous on St. Urbain Street\".(12) At the same time, Duddy's business fantasies transform into ultimate real estate success, but at the expense of every meaningful worldly connection. „Nobody's ever interested in my side of the story,\" laments the main character. „I'm all alone.\"(13) Innocence becomes exploitation just as charity turns to self-absorption. Duddy cannot, as encouraged by Uncle Benjy, choose between being a „scheming little bastard\" and a „fine, intelligent boy\",(14) because he is both. [12] Ariel Sharon's reputational rights flow back and forth between local and international venues in much the same way as Duddy Kravitz' strategies span innocent boundaries and sophisticated horizons. The law's essential subject matter fluctuates between national community and universal, personal norms, or Sharon as a leader of Israel and Sharon as a human with rights. Likewise, the fictional narrative successively gazes inward at the homely old neighborhood of St. Urbain Street where Duddy grew up, and outward at the future developments on the real estate Duddy spends the novel acquiring around the beautiful Lac St. Pierre. The thematic impulses toward the local, the innocent, the national, and the community all join forces to match, but never to master or be mastered by themes of the foreign, the sophisticated, the international, and the universal. And all of that is only the first part of the story's cycle. [13] Now the politician who toyed with foreign law is about to see international legality play domestic politics. The Israeli press, in speculating about the motivation behind the recent Belgian action, has pondered the coincidence of timing of the affair with Sharon's assuming the reigns of government some 18 years after the crucial events and in the midst of a security crisis at home.(15) Political scientists have reported on the new domestic clout of a Muslim population found growing in the Belgian petri dish.(16) For its part, the Israeli cabinet has unleashed Shimon Peres to explain, somewhat incongruously, that Belgium had not allowed oil to be shipped to Israel during the 1973 war.(17) and Rabbi Michael Melchior, the Cabinet member responsible for Diaspora relations, who has opined aloud about the continuing Holocaust-related tendency of modern Europeans to accuse their Jewish accusers of atrocities equal to their own.(18) [14] Belgium's diplomatic response has been an awkward one, especially as Brussels currently holds the rotating European Union presidency. However, its spokespersons have been at pains to elaborate on the judicial independence from the political branches with which most democracies live.(19) Palestinian complainants, some of whom reside in Belgium, have triggered the legal process in a manner which is beyond the control of the host government. There appears to everyone to be politics lurking in the law, but to find it one must gaze at the scene with a slightly different eye. The trick is to look beyond the surface patterns and discern the background portrait coming out of the canvass as if in relief. [15] Since the Second World War, the prosecution of war criminals has been removed from the political and military dealings with errant nations by detaching the accused individuals from the sovereign states they serve. Thus, where traditional criminal law made persons answer to domestic state mechanisms, and classic international law made sovereigns answer to each other, the Nuremberg conceptual revolution was to make culpable individuals answer to state actors other than their own. This brand of internationalism, originally enshrined in the allies' post-war treaties, was taken a logical step farther by the Israeli courts in the 1961 trial of Adolf Eichmann.(21) The idea became entrenched in legal circles that crimes against humanity, like other human rights violations, were the business of any state that cares to take an interest. [16] Compelling as the cause of prosecuting Nazi-era war criminals might be, a nagging doubt has persisted over the potential for international justice to become victors' or, perhaps, sheerly arbitrary justice. Certainly, the idea that nationals of one state might be tried in the courts of another for offenses committed at home has met with some resistance. There seems to be no desire by even the most law enforcement-oriented of governments to try the 'ordinary' serial killers of neighboring nations, but at the same time there is no ready way to distinguish them from the 'extraordinary' mass killers of international concern. Accordingly, a number of countries that implemented war crimes legislation in the 1980s limited their sights in various ways – in Canada's case to wars in which the prosecuting country was itself a party,(22) and in Australia's case to warfare occurring between specified dates.(23) [17] The limiting mechanisms were, in fact, a product of the Nuremberg Charter itself, which contained a seemingly arbitrary commencement date of 1939 for crimes entailing the persecution of civilian populations.(24) As explained by the French court in the 1984 case of Gestapo chief Klaus Barbie, the specific rules of the Charter and its various local versions attempt to „make a distinction between brutality . . . and a major, orchestrated attack on the very dignity of man.\"(25) The former connotes crime, and even widespread, government-related crime is the stuff of domestic policing. The latter connotes the machinery of war, which is rightly the concern of all other states as well. The limiting idea of international criminal law is that while the states of the world get to hold individuals to account, they

appropriately do so only when the accused individuals acted on behalf of a nation — especially one whose cause somehow involved the prosecuting nation as well. [18] In the post-Nazi prosecution era, the most noteworthy manifestations of this thinking have taken the form of European judiciaries seeking to discipline their former colonial subjects. The famous attempt by a Spanish judge to bring charges of torture against Chile's General Pinochet,(26) or Belgium's own prosecution of Rwandan *genocidaires*,(27) more or less fit the established pattern. Since indicting the person under these circumstances is, at least conceptually, to impugn the acts of the people, there is a felt, if often paternalistic need for some connection to the national events at issue. International justice, even if well removed from government foreign policy, cannot escape the broader intellectual hold of national politics. Indeed, were it otherwise international law would come unmoored from its grounding, to be exploited arbitrarily or as a farcical part of an exuberant victory bash. [19] Re-entering the Belgian case against Ariel Sharon with this background in mind is a jarring experience. The disconnect between the court and the accused is complete even if the events at Sabra and Shatila could be shown to have been a „major, orchestrated attack“ by the nation that Sharon lead – a dubious proposition in light of the Kahan Commission's findings and the *Time Magazine* verdict. The Belgian charges deviate so substantially from the notion of international justice carefully sculpted by the Nuremberg tribunal and its prodigy that they have come ungrounded, and can be seen in the international arena floating randomly in the sea of politics.(28) In doing so, they seem to betray the trust placed in national judiciaries to do the delicate job of justice. It is this lesson of betrayal that constitutes the final step in Sharon's two decades of legal education. [20] The convoluted twists of trust and betrayal also make up the final stages of Duddy Kravitz's apprenticeship in life. In a street-wise world of business adversaries and untrusted cronies, the only characters loyal to Duddy are his grandfather, Simcha, who set him on his proprietary quest in the first place, along with his girlfriend Yvette and his epileptic poet friend Virgil. Duddy exploits Virgil's devotion by prompting him to drive around as an agent for the film distribution firm which Duddy has cooked up to earn the money needed to purchase the Lac St. Pierre land. Inevitably, Virgil has a seizure, crashes into a tree, and suffers injuries which will paralyze him for life. Despite the personal devastation he has visited on his friend, Duddy manages to reach a new low even by St. Urbain Street standards when he coaxes out of Virgil the information that he has received an inheritance from his father and then forges a check on the helpless Virgil's account. Taking the ethic of the street to its cynical end, Duddy sees the fraud as necessary in order to pay for the last parcel of land before another local bandit can scoop it up. [21] On one hand, Duddy is himself an abused child of the financial world, and has learned through his own hard knocks to heap abuse on those at his mercy. However, in fulfilling his ownership dreams Duddy has gone down the road of betrayal and alienation rather than self-realization. In fact, the final ruthless move against Virgil is portrayed as one by which Duddy alienates everyone including, ultimately, himself. Yvette informs Simcha of Duddy's misdeed, resulting in the much loved *zayda* refusing to take the plot that is offered to him. Duddy has acquired the land, but lost the one person to whom its acquisition really mattered. Yvette, until this point his French Canadian loyalist, announces her disdain for him, prompting an anguished but twisted response from Duddy in which he accuses her of betraying him rather than the patently obvious other way around.(29) [22] Finally, in a climactic scene, Duddy and Yvette find Virgil sprawled on the floor unconscious beside his wheelchair, with the telephone receiver dangling loosely overhead. The picture evokes an earlier scene where the invalid wife of a schoolteacher died of a heart attack when Duddy instigated a nighttime prank call. The bank, of course, has now called Virgil to advise him of the forgery and Virgil has had a fit. For Richler, the portrait of alienation is by this time complete. „Duddy ran, he ran, he ran.“(30) [23] Richler's character has fulfilled himself by betraying himself, and has mastered the ethic of St. Urbain Street by alienating himself from the street and all who live there. But the ultimate irony is that this fundamental breach of trust seems inevitable, his life's story having followed its own internal logic to its predestined deconstruction. As Duddy's apprenticeship comes to its completion he has been unable to iron out the contradictory folds in his world. Unlike Joyce's Stephen Dedalus, Richler's con artist comes of age as a young man aware of, but unable to fully master, the conflicted course of his own life. In Duddy's words, „It's hard to be a gentleman – a Jew, I mean – it's hard to be. Period.“(31) [24] The lesson of international law is likewise that fulfillment begets betrayal, since to master the law's contradictory ethic is to harvest the seeds of its destruction. The Belgian magistrate has only taken up where the New York jury left off, although he has managed to evade the federal court's findings just as he has extended its jurisdictional logic. The result is a parodied portrait of justice gone international, one nation trumpeting itself over another in the name of a supposedly de-nationalized humanity. [25] Since the days of Nuremberg it has been obvious to all who take a close look that international law needs a lid on its internal impulses, because without any limitations the contradictory desire to vindicate community and nationhood by prosecuting individuals will result in the undermining of community and nationhood. A Belgian court can hold its own individuals to account to the community or nation it represents. The same Belgian court can hold foreign individuals to account when they act for their own community or nation; but it cannot do so without undermining that nation, thereby creating the need for some connection to the events. [26] In the absence of an international institution that is up to the task of universal prosecutions, it has been left to national courts to ensure, in the words of the *Eichmann* court, that people cannot be „murdered with impunity“. (32) At the same time, courts are admonished to ensure that, in the words of the Nuremberg tribunal, international justice does not proceed „as an arbitrary exercise of power“. (33) The legal battle against impunity can clearly give rise to its own brand of impunity. Moreover, this fundamental breach of trust is inevitable once the law's story follows its own internal logic to its predestined deconstruction. The result of this fulfillment is alienation from the principles that inspire international law itself. [27] As Ariel Sharon's apprenticeship in

the ways of the law comes to its completion, he has had the opportunity to „examine the soul“ of his subject, as his own libel lawyer put it in the opening of the *Time Magazine* case.⁽³⁴⁾ The lesson, of course, is that it is hard enough to identify let alone to iron out the contradictory folds of the law. Having gone out of his way in his (relatively) younger years to invoke the processes of foreign courts, he has come of age aware of, but unable to fully master, the conflicted course of his legal life. [28] Legal proceedings can be their own worst enemy. Left unchecked, transported from Beirut to Brussels and beyond, they eventually parody themselves. In this, one can almost hear the patronizing voice of the Belgian magistrate saying of international law what the pretentious rabbi, who plays such a pompous role in the novel's celebrated *bar mizvah*, says of the notorious film: „A most edifying experience. . . A work of art.“⁽³⁵⁾

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- (1) Gibson, Graeme, "Interview with Mordecai Richler", in: *Eleven Canadian Novelists* (Toronto: Anansi, 1973), p. 290.
 - (2) LaGuardia, Anton, "West Accused of Double Standards in Atrocities", *The Daily Telegraph* (London), July 13, 2001, p. 21.
 - (3) Report of the Commission of Inquiry into the Events at the Refugee Camp in Beirut (the Kahan Commission), February 8, 1983, <http://www.us-israel.org.jsource/History/Kahan.html>.
 - (4) Richler, Mordecai, *The Apprenticeship of Duddy Kravitz* (Harmondsworth: Penguin, 1964), p. 48 (hereinafter *Duddy Kravitz*).
 - (5) See, e.g., *Simpson v. State of Georgia*, 17 S.E. 984 (Sup. Ct. Geo. 1893) (shot fired from South Carolina across Savannah river hitting victim in Georgia); and *R. v. Coombes* (1785), 168 E.R. 296 (Adm. Session) (shot fired from land hitting victim on board ship beyond high water mark).
 - (6) See, *Zippo Manufacturing Co. v. Zippo DotCom, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997) (jurisdiction over internet commercial claim); and *Braintech, Inc. v. Kostiuik*, [1999] B.C.J. No. 622 (B.C.C.A.) (jurisdiction over defamation posted on internet chat site).
 - (7) *R. v. Keyn* (1867), L.R. 2 Ex. D. 63 (Cr. Cas. Res.) (county court jurisdiction over crimes committed within county lines).
 - (8) Rosentiel, Thomas B., "Sharon Loses Suit As Jury Finds No Malice; But Verdict for Time Carries Unusual Warning, Citing Negligence, Lack of Verification of Facts", *Los Angeles Times*, January 25, 1985, p. 1.
 - (9) Evans, Katherine, "Declarations of Victory", *The New York Times*, April 5, 1987, section 7, p. 13 (review of *Blood Libel* by Uri Dan and *Vietnam on Trial* by Bob Brewin and Sydney Shaw).
 - (10) Denton, Herbert H., "Sharon Aims to Teach Time a 'Lesson'", *Washington Post*, January 14, 1985, p. A3. For Richler's version of a similar sentiment, see *Duddy Kravitz*, p. 255 ("I've got the mark of Cain on me," [Duddy] said.).
 - (11) Davidson, Arnold E., *Mordecai Richler* (New York: Frederick Ungar Publishing Co., 1983), p. 81 (chapt. 5: "Adventures of a Pusher in *The Apprenticeship of Duddy Kravitz*").
 - (12) *Duddy Kravitz*, p. 198.
 - (13) *Duddy Kravitz*, p. 312.
 - (14) *Duddy Kravitz*, p. 279.
 - (15) Gordon, Evelyn, "A Badly Flawed Case", *The Jerusalem Post*, July 10, 2001 (opinion page).
 - (16) Prince-Gibson, Eetta, "The Long Arm of the Law", *The Jerusalem Post*, June 22, 2001, p. 4B.
 - (17) Keinon, Herb, "Peres Snipes at Belgians over Sharon Case", *The Jerusalem Post*, July 3, 2001, p. 2.
 - (18) Keinon, Herb, "Belgian Ambassador to Post: Sharon war crimes lawsuit is no witch-hunt", *The Jerusalem Post*, July 13, 2001, p. 4.
 - (19) Bodreaux, Richard, "Belgian Prosecutor Looks at Sharon Role in '82 Massacre", *Los Angeles Times*, July 4, 2001, p. 8.
 - (20) Agreement for the Establishment of an International Military Tribunal, 5 U.N.T.S. 251; 39 A.J.I.L. Supp 257 (1945).
 - (21) See, <http://www.nizkor.org/ftp.cgi/people/e/eichmann.adolf/transcripts/ftp.py?people/e/eichmann.adolf/transcripts/Sessions/Defence-Submission-01-01>
 - (22) *Criminal Code*, R.S.C. 1985, c. C-46, section 7(3.71), see *R. v. Finta* (1994), 112 D.L.R. (4th) 513 (S.C.C.).
 - (23) *War Crimes Act*, 1945, as amended by the *War Crimes Amendment Act*, 1988 (No. 3 of 1989), section 9, see *Polyukhovich v. Commonwealth of Australia* (1991), 101 A.L.R. 545 (Aust. H.C.).
 - (24) *Judgment of the Nuremberg International Military Tribunal*, 41 A.J.I.L. 172 (1947) (defining 'crimes against humanity' as those perpetrated after commencement of war in 1939).
 - (25) *Matter of Barbie*, 78 Int. L. Rep. 125 (1988) (Court of Cassation).
 - (26) *R. v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte*, [1999] 2 All E.R. 97 (H.L.) (considering Spanish extradition request).
 - (27) Van den Wyngaert, Christine, "War Crimes, Genocide and Crimes Against Humanity – Are States Taking National Prosecutions Seriously?", in: Bassiouni, M. Cherif, *International Criminal Law* (2d ed., 1999), p. 227, 232 (describing Belgian statute as "applicable to Rwandans who, on Rwandan territory, have committed war crimes

against their fellow-citizens).

(28) Gilmore, Inigo, "Sharon's EU tour cut over fear of war crimes suit", *The Daily Telegraph* (London), July 3, 2001, p. 15.

(29) Duddy Kravitz, p. 315 ("We betrayed you, I suppose." "Yes. You did.").

(30) Duddy Kravitz, p. 306.

(31) Duddy Kravitz, p. 292.

(32) *Attorney General of Israel v. Eichmann* (1961), 36 I.L.R. 5 (Dist. Ct. Jer., affirmed Is. Sup. Ct.), para. 35.

(33) *Judgment of the Nuremberg International Military Tribunal*, *supra* (reviewing "The Law of the Charter").

(34) Rosentiel, Thomas B., "Imprint on Sharon, Time Seen as Case goes to Jury", *Los Angeles Times*, January 14, 1985, p. 1.

(35) Duddy Kravitz, p. 159.