

# POV

Community  
Engagement & Education

## DISCUSSION GUIDE

### **The Law In These Parts**

A Film by Ra'anana Alexandrowicz  
and Liran Atzmor



[www.pbs.org/pov](http://www.pbs.org/pov)

JERUSALEM, 2013

The conception of **The Law in These Parts** can be traced back to another film, a documentary called *The Inner Tour* that I completed over a decade ago.

One of the things that happens when you make nonfiction cinema is that you touch people's lives with your camera, and at the same time, your life is touched by the people and reality you document. In mid-2004, I got a phone call telling me that Ahmad S., a boy who had just turned 16 and was one of the barely-seen participants in *The Inner Tour*, had been taken from his home in the middle of the night by masked Israeli soldiers. Ahmad was charged with throwing stones at a military Jeep and was held in a maximum-security prison. After confessing during the interrogation, a remand hearing in a military court was scheduled for Ahmad. His family members asked that I attend with them.

For the first time in my life, I found myself in an Israeli military courtroom, witnessing the mechanism with which my society purports to administer justice to Palestinian residents of the territories we have occupied since 1967. This event profoundly changed my understanding of the situation in which I live.

There were many striking differences between trials I had seen in regular civilian courts in Israel and Ahmad's military trial, but the thing that disturbed me most was that I was witnessing a supposedly legal procedure, an effort to bring a "criminal" to trial, something that I, like any law-abiding citizen in a democratic state, usually support. But there was one major problem: This 16-year-old boy was not part of the society that was indicting and convicting him. Neither Ahmad nor his parents had any democratic way of influencing the law under which he was now being tried: the law of occupation, the same law that enabled an Israeli settlement to be erected on their family lands. Everyone was "playing along," but the truth was that Ahmad and his family didn't really think that he had truly committed a crime by resisting a military occupation. Ahmad was the subject of a legal proceeding, but the concepts of justice and law, words that were repeated again and again during the trial, belonged to someone else.



Filmmaker Ra'anan Alexandrowicz.

Photo courtesy of Tomer Appelbaum

After seven and a half months, Ahmad's trial ended. The judge ruled that the time he had spent in prison for the period of the proceedings would suffice as a punishment for what he had done. These seven months led me to try to understand the law of occupation.

I began reading the archived legal material published from the beginning of the occupation in 1967 until today. The more laws, orders, trial records and appeals I read, the better I understood how the system actually works and how it developed over the years. I was gaining what I felt was an almost unknown perspective on the Palestinian-Israeli conflict and its evolution over the last 45 years. I decided to try to represent this perspective in the form of cinema.

The military law and justice system functions as a parallel system to the one to which I am subject, though both are implemented by the same state. That system applies to people who, in fact, live in the same territory with regular citizens but are defined legally as a population under occupation. It is probably one of the most significant contradictions in Israeli democracy. And this contradiction is plainly visible, but somehow it is hidden from the public eye. In **The Law in These Parts**, I attempted to provide a clear view of the historical and social evolution of this contradiction and the way it functions today, in order to show the price a Western democracy pays for this kind of inconsistency.

Translating my research into a film was the most complicated cinematic challenge I have ever faced. I searched for a structure, a point of view and a cinematic form that would engage and implicate the audience in this journey into the heart of Israel's moral quandary—and the basic universal questions that it raises. Following my research, I actually had the unique chance to interview some of the people who wrote, developed and implemented the law of the occupation. I decided that it was my responsibility to look at the issue not from the perspective the victims of the occupation, but rather to find a way to tell the story of the creation and evolution of the system itself, this in effort to try to and understand how it is that we all participate in the creation of such systems and rationalize them.

**Ra'anan Alexandrowicz**

Director, **The Law In These Parts**

2	Letter from the Filmmaker
5	Introduction
6	Potential Partners
6	Key Issues
7	Using This Guide
8	Selected People Featured in <b>The Law In These Parts</b>
10	General Discussion Questions
11	Background and Discussion Prompts
11	1. Filmmaking Decisions: Why Make a Documentary About the Law?
12	2. The Law of Occupation: What Led to the Formation of the Current Legal System in the West Bank?
16	3. Defining Lawful and Unlawful Resistance
18	4. The Disputed Legality of Israeli Settlements Within the Occupied Territories
20	5. Establishing Rule of Law: Is an Independent Judiciary Possible Within an Occupation?
22	6. Judging Your Enemy: Professional Dilemmas of Military Jurists
	6.1 Administrative Detention
	6.2 Torture
26	7. The Future: What's Next?
27	Taking Action
28	Resources
30	How to Buy the Film

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A scene from *The Law In These Parts*.

Photo courtesy of United Studios Archive

In **The Law in These Parts** (82 minutes) Israeli filmmaker Ra'anana Alexandrowicz examines the system of military administration used by Israel since the Six-Day War of 1967. In a series of thoughtful and candid interviews, Israeli judges, prosecutors and legal advisers who helped devise the occupation's legal framework present a complex picture of the Israeli-Palestinian conflict and its difficult issues of sovereignty, security and human rights.

Using legal tools intended only for the short term to avoid post-war chaos, Israel's military has ruled in the occupied territories for more than 40 years—a system of long-term jurisdiction by an occupying army that is unique in the entire world. Military judges have issued thousands of orders and laws, sentenced hundreds of thousands of Palestinians and enabled half a million Israeli settlers to move to the occupied territories.

As an outreach tool, **The Law in These Parts** asks some crucial questions: Can such an occupation be achieved within a legal framework that includes genuine adherence to the principles of rule of law? And can a modern democracy impose a prolonged military occupation on another people while retaining its core democratic values?



**The Law In These Parts** is well suited for use in a variety of settings and is especially recommended for use with:

- Your local PBS station
- Groups that have discussed previous PBS and POV films relating to international law, war or the Middle East, including *The Judge and the General*, *The Oath*, *The Fall of Fujimori*, *9 Star Hotel*, *This Way Up*, *Promises* and *5 Broken Cameras*.
- Groups focused on any of the issues listed in the Key Issues section
- High school students, youth groups and clubs
- Faith-based organizations and institutions
- Cultural, art and historical organizations, institutions and museums
- Civic, fraternal and community groups
- Academic departments and student groups at colleges, universities and high schools
- Community organizations with a mission to promote education and learning, such as local libraries

**The Law In These Parts** is an excellent tool for outreach and will be of special interest to people looking to explore the following topics:

- diplomacy
- human rights
- international law
- Israel
- Middle East
- military justice
- military occupation
- national security
- occupied territories
- Palestinians/State of Palestine
- political resistance
- protest movements
- settler movement
- social justice
- terrorism
- violent resistance
- West Bank

This guide is an invitation to dialogue. It is based on a belief in the power of human connection, designed for people who want to use **The Law in These Parts** to engage family, friends, classmates, colleagues and communities. In contrast to initiatives that foster debates in which participants try to convince others that they are right, this document envisions conversations undertaken in a spirit of openness in which people try to understand one another and expand their thinking by sharing viewpoints and listening actively.

The discussion prompts are intentionally crafted to help a wide range of audiences think more deeply about the issues in the film. Rather than attempting to address them all, choose one or two sections that best meet your needs and interests.

Also keep in mind that the job of a facilitator is different from the job of a teacher. A facilitator keeps the discussion moving in positive directions, encourages respectful, active listening and ensures that everyone has an opportunity to be heard. You shouldn't take responsibility for teaching the audience about the Middle East or even about the background material in this guide.

As much as possible, a facilitator should remain neutral. In this case, that means recognizing that even "facts" may be contested, and certain words convey support for a particular political view, so choose language mindfully. It can also be helpful to remind participants of the difference between dialogue (where people share their insights in an attempt to deepen everyone's understanding) and debate (where people stake out positions and try to convince everyone else that they are right). Design your event as an invitation to the former.

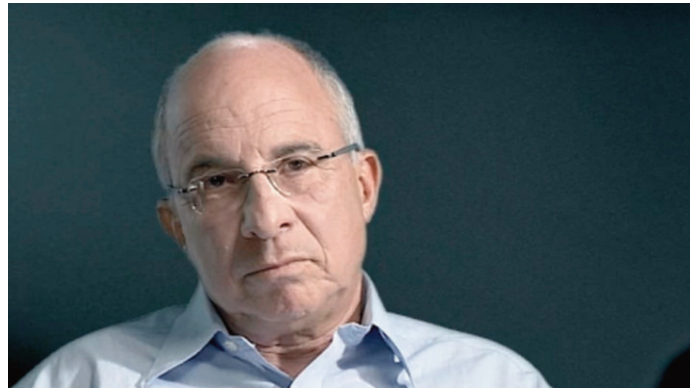
And be sure to leave time to consider taking action. Planning next steps can help people leave the room feeling energized and optimistic, even in instances when conversations have been difficult.

For more detailed event planning and facilitation tips, visit [www.pbs.org/pov/outreach](http://www.pbs.org/pov/outreach)

## Selected People Featured in **The Law In These Parts**



**Ra'anan Alexandrowicz,**  
director and narrator of the film



**Advocate Jonathan Livny**  
(Lieutenant Colonel, Retired)  
Military Judge 1976-1999



**Advocate Abraham Pachter**  
(Lieutenant Colonel, Retired)  
Military Prosecutor 1967-1970



**Advocate Jair Rabinovich**  
(Major, Retired)  
Military Prosecutor 1977-1982  
Military Judge 1988-1992



## Selected People Featured in **The Law In These Parts**

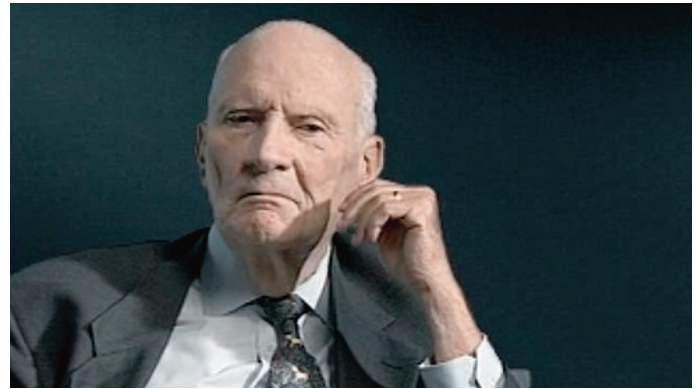


### **Advocate Alexander Ramati**

(Lieutenant Colonel, Retired)

Legal Advisor, West Bank Military Command 1973-1979

Military Judge 1980-1981



### **Justice Meir Shamgar**

(Brigadier General, Retired)

Military Advocate General 1963-1968

Supreme Court Judge 1975-1995

President of the Supreme Court 1983-1995



### **Advocate Dov Shefi**

(Brigadier General, Retired)

Legal Advisor, West Bank Military Command 1967-1968

Military Advocate General 1979-1984



### **Justice Amnon Strashnov**

(Brigadier General, Retired)

Deputy Military Advocate General 1985-1987

Military Advocate General 1987-1991

### **Advocate Ilan Katz**

(Colonel, Retired)

Military Judge 1988-1992

Deputy Military Advocate General 2000-2003

### **Advocate Oded Pesensson**

(Colonel, Retired)

Military Judge 1988-2008

All interviewees photos by Shark De Mayo

Photo of Ra'anan Alexandrowicz by Tomer Appelbaum

**Immediately after the film, you may want to give people a few quiet moments to reflect on what they have seen or pose a general question (examples below) and give people some time to themselves to jot down or think about their answers before opening the discussion:**

- What did you learn from this film? What insights did it provide?
- If a friend asked you what this film was about, what would you say?
- Describe a moment or scene in the film that you found particularly disturbing or moving. What was it about that scene that was especially compelling for you?



## 1. Filmmaking Decisions: Why Make a Documentary About the Law?

### BACKGROUND

**The Law in These Parts** is an unprecedented exploration of the evolving and little-known legal framework that Israel has employed to administer its 40-year military occupation of the West Bank and, until 2006, Gaza.

The story is told through the words of the very military judges, prosecutors, and legal advisors who helped create the system and who agreed to take the cinematic witness chair to explain their choices. Weaving together these interviews with archival footage, often in the same frame, Israeli filmmaker Ra'anana Alexandrowicz has produced a comprehensive and evocative portrait of a key facet of one of the world's most stubborn and enduring conflicts. **The Law in These Parts** reveals not only the legal architecture of military occupation, but also its human impact on both Palestinians and Israelis. The film asks a question as troubling as it is unavoidable: Can a modern democracy impose a prolonged military occupation on another people

Alexander Ramati (Lieutenant Colonel, Retired)  
Legal Advisor, West Bank Military Command 1973-1979  
Military Judge 1980-1981.

Photo courtesy of Shark De Mayo

while retaining its core democratic values?

Since Israel conquered the territories of the West Bank and Gaza Strip in the 1967 Six-Day War, the military has issued thousands of orders and laws that impact resident Palestinians. Early on in the film, Alexandrowicz explains his motives when he calls this ad hoc system of Israeli military rule “a unique system [that] very few people understand in depth.” The men, retired now, who sit down with the filmmaker to provide that depth are judges, prosecutors and other legal professionals. They are also high-ranking military officers. In the film, they are exceptionally candid about their actions and largely unapologetic, even as they admit inconsistencies and contradictions in the system they built.

Alexandrowicz writes, “I see **The Law in These Parts** as a film with three ‘layers.’ Primarily, it is a film that explores a system—that system’s genesis, its history and the effect it has

on the society that created it. On the second level, it is a film that stares into the eyes of people who developed and operate the system—people who are no different from me or my audience. The film tries to understand how these people see their work. On the third level, **The Law in These Parts** exposes the hidden seams of the very documentation of a politically charged, complicated subject. Through the film's storytelling, I hope the viewer is made aware of the parallels between the cinematic structure and the legal one."

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Kretzmer, David. *The Occupation of Justice*. Albany: State University of New York Press, 2002.

POV Press Release.

#### DISCUSSION PROMPTS

Of all the aspects of the complex relationship between Israelis, Palestinians and the land, why look at the law? What is revealed by an examination of the historical development of the law that is absent from explorations of other issues related to the occupied territories?

Why do you think Alexandrowicz begins his film by defining the term "documentary"?

How does the form of the film influence its message? How does it influence viewer reaction to what the legal professionals say?

The filmmaker explains that people subject to the law will be represented in the film by images from documentaries made over the last 40 years, mostly by Israeli filmmakers. How do you think this decision affects the audience?

When the filmmaker disagrees with one of the judges, he reminds the viewers that he will win the argument, "Because in the world of the film, I rule on what reality is." In your view, is the filmmaker's version of "reality" fair? Why or why not?

Can you find any parallels between the cinematic "procedure" of the film and the legal procedure that is documented? If so, what are they?

In your view, what are the most important questions that Alexandrowicz asks his "witnesses"? If you could ask one of the judges a single question, what would you ask?

## 2. The Law of Occupation: What Led to the Formation of the Current Legal System in the West Bank?

### BACKGROUND

There has never been a modern, autonomous Palestinian state. Since the 16th century, Palestinians have been subject to Ottoman and then to British rule. After the establishment of the state of Israel and the 1948 war, the Palestinians in the West Bank and Gaza Strip remained under Jordanian and Egyptian rule, respectively. In the 1967 Six-Day War, Israel conquered the territories of the West Bank and Gaza, more than tripling the area it controlled, from 8,000 square miles to 26,000 square miles. Overnight, about one million Palestinians, previously under the control of Egypt or the Kingdom of Jordan, became subject to a new legal system. This was not the legal system of the state of Israel, but a temporary system of military courts created within the requirements of the international law of occupation.

The international law of occupation says that an occupying army is responsible for the order and welfare of the residents of an occupied area. The duties of an occupying power are detailed in the cornerstones of international humanitarian law: the 1907 Hague Regulations (articles 42-56), as well as the Fourth Geneva Convention and the provisions of Additional Protocol I. Within their interpretation of these laws, the Israeli military has since issued thousands of orders to Palestinians living under occupation and tried hundreds of thousands of them in military courts. Although the law of occupation does not require it, Palestinians wishing to challenge such military orders, judgments of the military court system or any other action taken by the occupying forces have been given the right to petition the Israeli Supreme Court.

The legality of military occupation by any nation is regulated by the United Nations charter and the law known as *jus ad bellum*, "the law of war." International law states that "occupation is only a temporary situation" (as in the Allied occupation of Germany and Japan following World War II.) This temporary status of occupation (as opposed to annexation, in which an area is absorbed into another state) exempted Israel from the requirement to grant Palestinian residents of the West Bank and Gaza citizenship. Israel's long-term occupation of the West Bank is without precedent in international law, and opinions vary as to whether it is legal or sustainable. Indeed, the official position of the Israeli government is that the West Bank is, from the perspective of in-

**Additional media literacy questions are available at:**  
[www.pbs.org/pov/educators/media-literacy.php](http://www.pbs.org/pov/educators/media-literacy.php)





A scene from *The Law In These Parts*.

Photo courtesy of Israel Broadcasting Authority Archives

ternational law, not occupied. Legally speaking, a territory can only be occupied if it was previously under the sovereignty of another state, whereas the international community never recognized Jordan's prior hold over the territories. Therefore, Israel argues, it is a legal administrator of a territory whose status has not been determined. Critics of the Israeli occupation, however, dispute this interpretation of the law, arguing that the territories are indeed occupied and that the continued Israeli administration of the West Bank has undermined the internationally accepted definition of "occupation" and has created a generation of Palestinians who are not regarded as citizens of any state.

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Hajjar, Lisa. *Courting Conflict: The Military Court System in the West Bank and Gaza*. Berkeley: University of California Press, 2005.

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### DISCUSSION PROMPTS

The film explains, “According to international law, an occupying army is responsible for the order and welfare of the residents of the occupied area.” The intention of the law, however, is for occupation to be temporary. What should happen if the war that led to the occupation essentially doesn’t end? From a legal perspective, is it reasonable to continue to consider something that is still going on after 40 years “temporary”?

Advocate Dov Shefi explains that the myriad laws created by Israeli military authorities were needed “because they were part of the machinery, the mechanism that was... to bring life back to its normal course, not to let life stop.” But what happens as years and decades go by? Is the system actually taking care of the order and welfare of the residents of the occupied area, or is it failing the people it was supposed to serve? How would you design a legal system that would allow Israel to administer the area and its inhabitants and still create justice for Palestinians?

The filmmaker says, “Law is a collection of rules that organize life in a particular place and define the

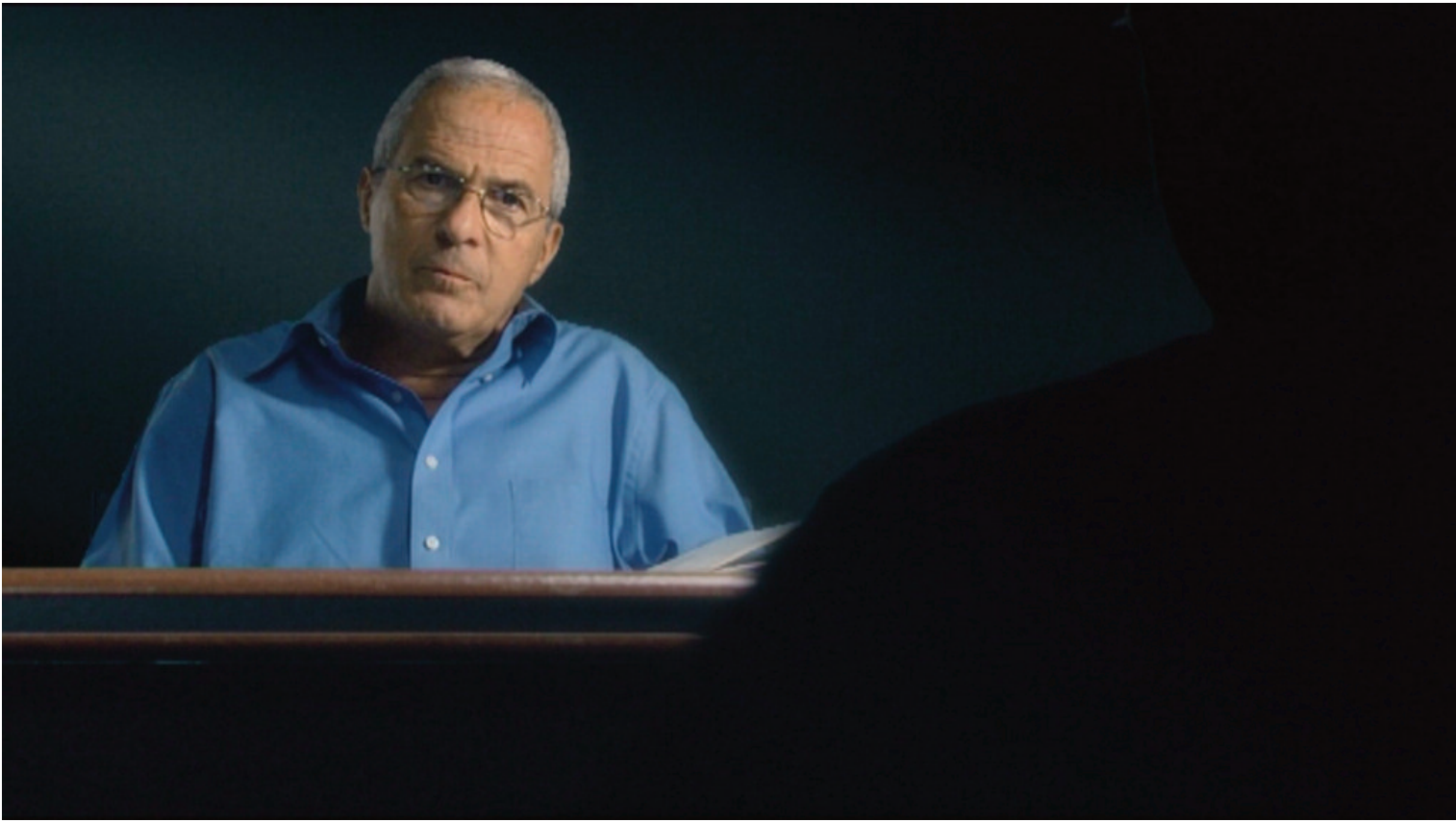
**Dov Shefi (Brigadier General, Retired)**  
**Legal Advisor, West Bank Military Command 1967-1968**  
**Military Advocate General 1979-1984.**

Photo courtesy of Shark De Mayo

rights and obligations that exist between individuals and between individuals and the authorities.” If that’s true, what does the legal system in the occupied territories suggest about the rights and obligations that exist between Palestinians and Israelis?

Alexandrowicz asks why Israeli law wasn’t simply applied rather than inventing a special military justice structure administered only in the occupied territories? Shefi answers, “You cannot apply law on the land and not on the people.” What does he mean? Why does Israel choose not to extend Israeli law into the territories?

Unlike civilian justice systems, military occupiers can simply issue orders, which civilians are then required to obey. This was illustrated during the Intifada, when a pre-existing requirement to bring charges against administrative detainees within 96 hours of their arrest was eliminated. There were



**Justice Amnon Strashnov (Brigadier General, Retired)**  
**Deputy Military Advocate General 1985-1987**  
**Military Advocate General 1987-1991.**

Photo courtesy of Shark De Mayo

no debates or legislative votes on this policy change. Does this process of changing the law erode the authority's ability to preserve order? In your view, is a system that is created by establishing laws through popular or legislative votes more likely to be just than military rule? Why or why not? Do you think there are circumstances where replacing a democratic civilian court with a military one would be necessary or justified?

The specific cases cited in the film provide a glimpse into the effects of military occupation on Palestinians. What about the impact on Israel? Can a modern democracy impose a prolonged military occupation on another people while retaining its core democratic values? How do you think the interviewees in the film would answer that question?

Why might Israel not have wanted to grant citizenship to the entire Palestinian population of the West Bank?

According to Article 43 of the Hague Regulations concern-

ing the laws and customs of war and land, an occupying power must take all measures to restore and ensure the public order and safety of an occupied area as it existed prior to the occupation and to be as non-disruptive as possible. Pre-existing laws must be respected unless their enforcement is "absolutely prevented" by circumstances. Were the land laws imposed by the Israelis to justify settlements imperative for the security or order of the occupied areas? Do you think Israel adhered to Article 43 of the Hague Regulations?

### 3. Defining Lawful and Unlawful Resistance

#### BACKGROUND

While the local Palestinian population was trying to understand the reality of the new occupation, Palestinian political and military organizations in the neighboring Arab countries launched a campaign of massive infiltration of the Occupied Territories by militant activists who would try to set up an infrastructure of local resistance to the new Israeli rule. The infiltrators and local cells carried out a number of successful operations, killing Israeli civilians in major Israeli cities as well as engaging with Israeli soldiers on the border.

International law draws a fundamental line, known as “the principle of distinction,” between combatants and civilians. The purpose of this principle is to spare civilians from the effects of war and to create boundaries for the participation of fighters in hostilities. Civilians are not authorized to take a direct part in hostilities and are protected against the effects of military operations and individual acts of hostility; legal attacks cannot be directed against civilians, only against those engaging in direct hostilities. Any person who participates directly in hostilities in armed conflict can be deemed an “enemy combatant” and therefore considered a legitimate target for attack. Combatants must be given prisoner of war (P.O.W.) status when captured by the enemy.

#### Omar Mahmud Kassem Case

In the case of *Military Prosecutor v. Omar Mahmud Kassem* (1969), a group of Palestinians associated with the Popular Front for the Liberation of Palestine (P.F.L.P.), a faction of the Palestine Liberation Organization (P.L.O.) were captured during a firefight after surreptitiously crossing the Jordanian border. They were carrying weapons and explosives intended for bombing Israeli targets.

The Kassem judgment was one of the first legal texts to contend with the legitimacy of Palestinian struggle against Israel. It set the terms by which thousands of Palestinians would be tried and defined the way the military law saw acts of resistance to the occupation.

Kassem testified before the court that he was a Jerusalemite who left the country after the war. In Jordan, he joined the P.F.L.P. and he was then sent to infiltrate occupied areas and help spark an armed uprising in the region. He also claimed that as a soldier who fought against soldiers, he should not be regarded as a felon but as a P.O.W., a term only applicable to those recognized as lawful combatants.

In a precedent-setting decision, the judge in the case ruled that because Kassem’s organization, the P.F.L.P., had planned and carried out attacks against civilian targets in other operations, Kassem was not eligible for lawful combatant status. The judge wrote, “Members of such an organization have no right to claim the status of ‘lawful combatant.’ International law was not written in order to protect terrorists and criminals.”

Kassem and his co-defendants received life sentences for armed infiltration, possession of firearms and membership in an illegal organization.

#### Arifa Ibrahim Case

The circle of people who were brought to trial for crimes against order and security later widened beyond militants and political organizers. In the case *Military Prosecutor v. Arifa Ibrahim* (1976), a widow and mother of five stood trial for giving food and water to a suspected combatant. For two weeks, Ibrahim brought food to four men who were hiding out in vineyards of her village.

Ibrahim’s defense attorney claimed that she should not be punished for feeding a person in need—even if he was an infiltrator wanted by authorities—and that her act could be considered a legal act of generosity. Justice Theodore Orr did not accept the defense, ruling that “human values” do not apply to suspected combatants or terrorists. Ibrahim spent a year and a half in prison.

#### Adnan Jaber Case

Adnan Jaber was a young resident of Hebron who left the country in the late 1970s to join the P.L.O. He trained in Lebanon and was recognized as a promising young officer and ordered to infiltrate the West Bank and reorganize the resistance in Hebron.

Jaber managed to infiltrate, but for a long period he and his cell had to remain hidden due to the increasing presence of the Israeli armed forces. In the spring of 1980, following the assassination of a P.L.O. leader in Cyprus, the cell received an order to carry out a retaliatory operation.

Jaber targeted the settlement in Hebron. On a Friday evening, he and three other militants ambushed a group of settlers (some armed) who were walking home after the evening prayer. Jaber’s group attacked the settlers with sub-machine guns and grenades, killing six and wounding 13. After escaping and hiding for a few months, the attackers were captured while crossing the river on their way back to



Jordan. All members of Jaber's cell confessed under interrogation and were put on trial for what became known as "the murder of the six," and is formally known as *Military Prosecutor v. Adnan Jaber et al.*

The court did not acknowledge that the defendants were lawful combatants and refused to view their actions in the context of the Israeli-Palestinian conflict, and the military judge did not view the settlers (some of whom had been armed by the army) as members of the armed forces. The court issued a sentence of life imprisonment. At the time, there was public pressure to use the death penalty to prevent Jaber from being released in the future, but Israel does not practice the death penalty. (Jaber was released after five years.)

In late 1985, four years after the trial, Adnan Jaber and his men were freed in a deal in exchange for Israeli soldiers captured in Lebanon by a Palestinian militant organization. Today, Jaber is an official with the Palestinian National Authority.

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<http://www.haaretz.com/print-edition/news/idf-expected-to-seek-death-penalty-for-killers-of-fogel-family-1.362893>

## DISCUSSION PROMPTS

In 1968, Palestinian militant Omar Mahmud Kassem (see background above) argued in an Israeli court that he was a soldier who fought against soldiers and should not stand trial as a felon. The court's position was that although Kassem's armed group was engaged with a group of Israeli soldiers (and not civilians), the organization to which he and the others belonged (the P.L.F.P.) had previously attacked and killed civilians in other operations. Kassem and

his group were therefore to be considered terrorists and not "lawful combatants." If you had been the judge, would you have treated Kassem as a soldier or as a criminal? What is the difference between being a "lawful combatant" and being a terrorist?

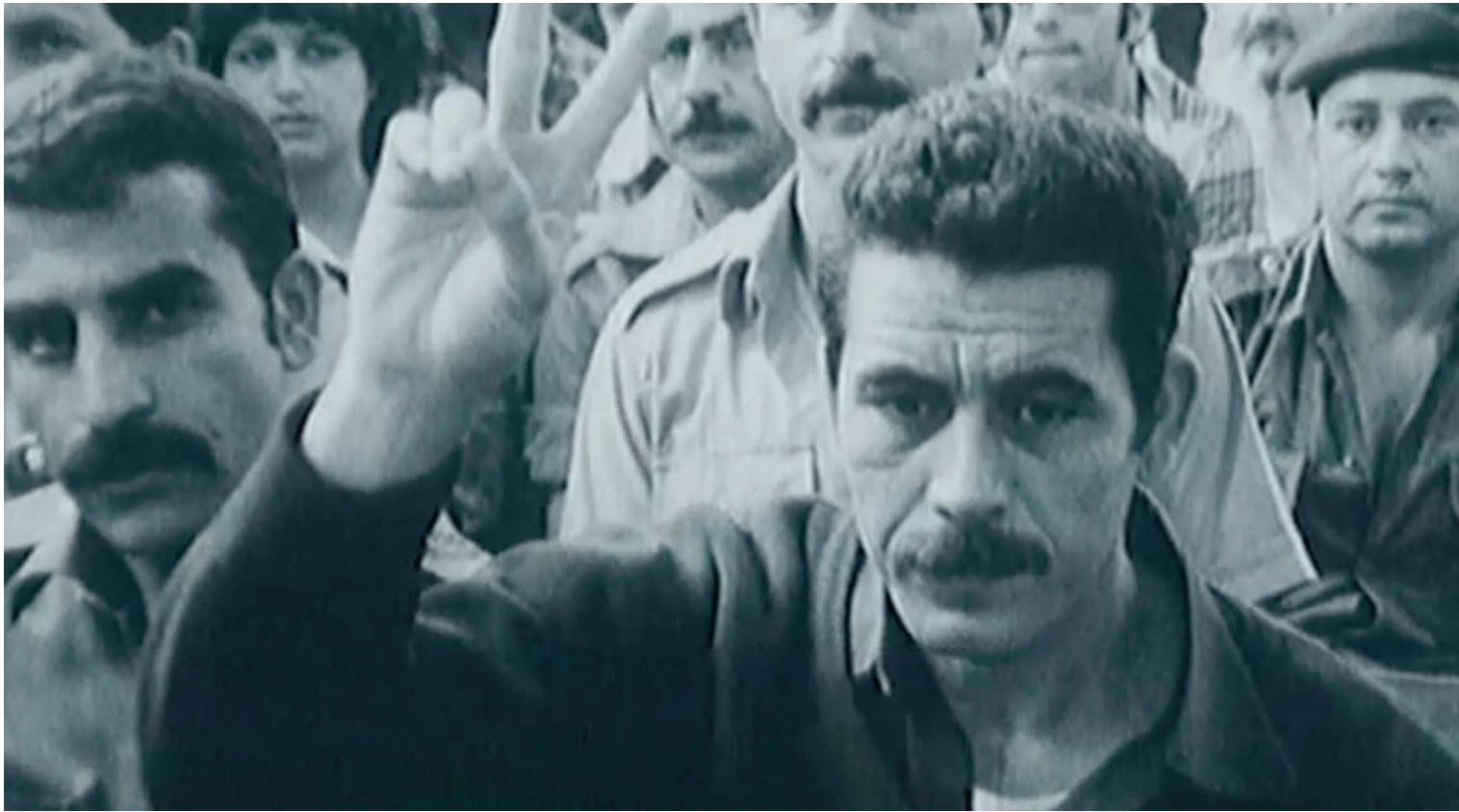
Alexander Ramati (interviewed in the film) presided over the trial of Adnan Jaber and three others who were then convicted of killing six Jewish settlers in Hebron, an occupied territory. The Israeli policy today, as in 1980, is not to sentence Palestinians to death in military courts, so the defendants were sentenced to life in prison. At the time, there was public pressure to use the death penalty to prevent the possibility that Jaber might be released in the future. (He was released after five years.) In your view, should the military court have imposed the death penalty? Would it matter whether the target was primarily civilian or military? Does it matter that in Israel proper the death penalty is not used?

Both Kassem and Jaber saw themselves as soldiers fighting the enemy. From their point of view, how would you classify Israelis? Are all Israelis, even those not in the military, enemy combatants to them and therefore fair targets? Does it matter if the Israelis are settlers in the occupied territories or within the pre-1967 boundaries of the state?

In 1976, Arifa Ibrahim was tried for giving food to a group of infiltrators who hid in caves near her village. The court rejected her claim that giving food to a person in need is universally accepted human behavior and that such humanitarian aid is not criminal. Do you agree with the court's decision? Why or why not?

Alexandrowicz explains that he isn't going to interview Arifa Ibrahim to get her side of the story, "Because this film is not about the people who broke the law, but about those entrusted with the law." How did you feel about this choice? In the context of the film's story, do you think that was the best decision? Why or why not?

What was your reaction to Theodore Orr's explanation that "terrorists are like venomous snakes. The 'human values' mentioned by the defense attorney do not apply to them... We have to make the residents understand that infiltrators must not be aided"? In your view, is it fair to punish people who give food, water or shelter to recipients who are deemed criminals? Would Orr's reasoning be acceptable in a normal criminal court that tries citizens of the state it represents?



A scene from *The Law In These Parts*.

Photo courtesy of Israel Broadcasting Authority Archives

#### 4. The Disputed Legality of Israeli Settlements Within the Occupied Territories

##### BACKGROUND

While establishing the military judicial system, then Israeli attorney general Meir Shamgar decided that Palestinian residents in the Occupied Territories under Israeli military jurisdiction should have the right to appeal to the civilian Israeli Supreme Court. This became known as “judicial oversight,” and it has been both praised and criticized. Although it created complications for military administrators on the ground, it also legitimized their actions with the approval of a respected, non-military authority.

The 1979 Supreme Court ruling on the Israeli settlement of Elon Moreh highlights the court’s controversial role in the occupation. In the first decade of the occupation, some Israeli civilian groups began to build settlements within the Occupied Territories for various political and religious reasons.

Usually, the military commander declared that the land on which these settlements were to be built was needed for the area to be secure. The land was then seized

by the army. In the case of Elon Moreh, and in many previous cases, the Israeli Supreme Court first accepted the military’s position and authorized the seizure of the land.

Residents of the Palestinian village of Rujeib objected to the military’s appropriation of their lands to build the new Elon Moreh settlement. The Palestinian villagers appealed to the Israeli Supreme Court, arguing that the Israelis’ claim that they needed the land for security reasons was merely justification for an illegal land grab. The Palestinians also cited the Hague Regulations that prohibit an occupying power from undertaking permanent changes in the occupied area unless they are undertaken for the benefit of the local population or due to military necessity.

This time, the Supreme Court was convinced that the security imperative was not the main reason for the appropriation and deemed the state’s practice of seizing Palestinian land to establish settlements illegal and ordered removal of



the settlement. The ruling tied the hands of Israeli government officials. To accommodate the desire to settle the land with the Supreme Court's ruling, these officials, including then minister of agriculture Ariel Sharon, began to search for legal solutions.

Legal advisors invoked a concept from Ottoman land law that dealt with *mawat*, or "dead land." Even though the Ottoman Empire had declined after World War I, this law had remained in effect under the British Mandate for Palestine and under Jordanian sovereignty over the West Bank. As such, international law recognized Ottoman land-law as presiding in the Occupied Territories. Under the Ottoman law, the ownership of "dead land" that was not cultivated for a period of at least three years reverted back to the empire. The Israeli legal advisors interpreted this to mean that "the empire," in this case, was the occupying power—the Israeli military.

This interpretation of the law provided politicians with a tool to claim land in the occupied territories, despite the ruling of the Supreme Court. In the years following the Elon Moreh case, Israeli authorities claimed over one million dunams (a measure of land from Ottoman law that equals 100 square meters) as state land. Approximately 38 percent of this land is today within the jurisdiction of the regional councils of the settlements. The settlements themselves cover between 1 and 2 percent of the land area.

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## DISCUSSION PROMPTS

What do you think about the legal arguments Israel uses to justify the settlements, including the right (according to international law) to seize land needed for security purposes, and the right to declare certain areas of land *mawat*, or dead, and then use that land for the purpose of building and expanding settlements?

Article 49-6 of the Geneva Convention prohibits an occupying power from transferring its citizens into an occupied area. Dov Shefi explains that the Israeli interpretation of Article 49-6 is that a government can't force its population to move, but that those who live in Israeli settlements do so voluntarily, so there is no violation of that article. Do you find this interpretation convincing? Why or why not?

Can an occupying army satisfactorily fulfill the role of legislator and regulator for the civilian population in the area it occupies? Why or why not?

What role did the Israeli Supreme Court play in enabling or restricting the construction of the settlements? Justice Meir Shamgar concludes that the settlements are the result of politics, not courts. What do you think he means by "politics"? Can you think of a similar example in the United States? Has the U.S. Supreme Court also supported political agendas? When? Which ones?



**Jair Rabinovich (Major, Retired)**  
**Military Prosecutor 1977-1982**  
**Military Judge 1988-1992.**

Photo courtesy of Shark De Mayo

## 5. Establishing Rule of Law: Is an Independent Judiciary Possible Within an Occupation?

### BACKGROUND

Israeli military courts are based on the rules of the Geneva Convention. Each court has three judges who are Israeli military officers who have studied law. (For the first three decades of the occupation, only one of the judges was required to have studied law). The prosecutor can be anyone appointed by the military commander, and the defendant may be represented by an attorney of his or her choice. The proceedings take place in Hebrew, but a soldier who can translate the proceedings into Arabic must be present.

The orders for establishing the court include this sentence: "A military court may order the use of procedures that are not designated in this order but are deemed to be the best procedures to achieve justice."

The first Palestinian defendants in the military courts were brought in for offenses such as looting, breaking curfew, possession of arms and defying military

orders. But as the occupation continued, the courts began to rule on an expanding set of crimes, ranging from resisting the occupation by political, popular or armed means to defying nature preservation rules or committing traffic violations.

Hundreds of thousands of Palestinians in the Occupied Territories have been prosecuted in the military courts since 1967. According to the United Nations Human Rights Council, more than 150,000 Palestinians were prosecuted between 1990 and 2006.

As mentioned above, the Israeli Supreme Court has heard petitions from Palestinians wishing to appeal the judgments of the military courts. Apart from the issue of land seizures and appropriations, the Supreme Court has also heard arguments regarding many of the military orders issued in the Occupied Territories. Among the issues it has considered are the punitive demolition of homes of Palestinians suspected

of harming Israelis, the forced deportations of suspected resistance leaders, the restrictions on Palestinians' freedom of movement within the territories and the practice of "targeted killings"—the summary execution of suspected militants.

In practice, the Israeli Supreme Court has rarely opposed or struck down actions taken by military in the occupied area. Even when the court has opposed the actions of the military occupation, it has often issued narrow rulings, or simply urged restraint. As a result, some consider the court to be unfairly biased toward the priorities of the occupying forces over the rights of the Palestinian residents of the Occupied Territories. It is widely accepted, however, that in those instances when the court has chosen to intervene, it has curbed the powers of the occupation.

In the film, filmmaker Ra'anana Alexandrowicz reads Meir Shamgar an assertion from an Israeli legal scholar at Hebrew University that states that the court's judicial review of the occupation authorities gave the occupation itself a measure of legitimacy in the eyes of the Israeli public that it might not otherwise have enjoyed—a characterization that Shamgar rejects.

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tary rather than civilian?

Amnon Strashnov acknowledges competing interests, saying, "On one hand, we're supposed to help the armed forces carry out their duties and... on the other hand, to protect the rights of the residents of the territories." Jonathan Livny describes the tension this way: "I'm sent to the West Bank by the Israeli flag, to the people who sit here, opposite me, [who] view it as the flag of the enemy. And I represent that flag. But on the other hand, the other symbol which is even higher than the flag are the scales of justice, and I always say that I would like to be able and I hope I can always love my country as represented by the flag and still love justice and still uphold justice." Would it be possible to resolve the contradictory demands of the judges' dual roles so that Livny and his peers could love their country and "still uphold justice"? How?

Alexandrowicz says, "A legal professional's work is hidden by its very nature; it's carried out in a language most of us do not understand." What role does language play in the attainment of justice? In what ways can language empower and disempower people?

The filmmaker notes, "The law that organizes people's lives is entrusted to certain people. People like the protagonists of this film." To whom is the law entrusted where you live?

What do you learn from the film about the difference between administering the law and administering justice?

What do you think Dov Shefi means when he says, "Order and justice don't always go hand in hand"? If you had to choose between order and justice, which one would you choose? What might a system that preserved both order and justice look like?

Shamgar observes that Israel is the only place in the world where a supreme court hears petitions from "enemy aliens." He says, "I hope other countries will emulate this practice, or include it in international treaties so that... it would become universal, not an esoteric Israeli practice." If you had a vote in international forums, would you vote to incorporate this Israeli practice into international law? Why or why not? What have been the benefits and drawbacks of the practice for Palestinians?

Near the end of the film, Alexandrowicz reads Shamgar a text by a legal scholar who asks what effect the absence of judicial review would have on the Israeli occupation. What effect does the court have on the apparent legitimacy of the occupation? Can the court adequately protect the needs of Palestinian civilians? Does it?

## DISCUSSION PROMPTS

How does the role of law (and the question of who is protected by it) change when the authority is mili-



**Jonathan Livny (Lieutenant Colonel, Retired)**  
**Military Judge 1976-1999.**

Photo courtesy of Shark De Mayo

## 6. Judging Your Enemy: Professional Dilemmas of Military Jurists

### BACKGROUND

The legal system put in place by the Israeli occupying forces after 1967 was a stopgap program intended to avoid a breakdown of the rule of law following the occupation, but it has endured in the long term and become a system of laws that govern every aspect of life in the Occupied Territories. This has required a great deal of modification, improvisation and compromise on the part of the individual judges and legal advisors who are charged with presiding in court and administering the law. Ultimately, Israel asks these judges to reconcile the different priorities of national security, settling an occupied area and upholding the rule of law.

Two subjects that demonstrate the dilemmas that military jurists face are administrative detention—imprisonment without trial—and the alleged use of torture by Israel's General Security Service in interrogations that led to indictment of defendants in military courts.

### 6.1 Administrative Detention

Administrative detention, as a legal concept, was introduced to the Occupied Territories through the security orders of the Post-World War I British authorities in Palestine and was subsequently adopted by the Israeli military justice system. Administrative warrants allowed the Israeli army and Israel's General Security Service—the country's internal intelligence agency, also known as Shin Bet—to arrest and hold people for long periods of time without trial.

The number of administrative detainees in Israeli prisons changes according to the level of Palestinian resistance to the occupation. In 1999, when it seemed that a political agreement was within reach, there were only a few administrative detainees in holding. Two years later, in the midst of the second Palestinian uprising (Intifada), thousands were held under administrative arrest. At the end of June 2013, there were approximately 140 Palestinian residents of the



Occupied Palestinian Territories held under administrative detention.

During the first Intifada in 1987, open air prison compounds were established to hold large numbers of arrested Palestinians. Some of the people held in these compounds were tried, but many were held under administrative warrants and did not know how long they would stay incarcerated.

A prisoner who is under administrative detention has the right to appeal to a military judge. The administrative arrest order and judicial supervision proceeds in this manner: the General Security Service shows classified material in the form of a written testimonial to the judge. The defendant is brought before the judge and has the right to be represented by an attorney. The army and General Security Service are represented by a prosecutor. The judge then has to decide whether to uphold the arrest order, cancel it or shorten the defendant's period of detention.

The process allows evidence used against defendants to be withheld from them. The General Security Service justifies this practice with the claim that releasing classified (secret) evidence would expose intelligence sources and harm the security of the area. Since the defendants in this situation do not know the grounds for keeping them under arrest, they can only speak in general terms to the court. For his part, the judge is not allowed to question the defendant regarding the alleged accusations and must make a decision based only on his impression of the material he sees. The defendant is physically present in the courtroom, but his or her presence has little or no effect on the decision.

The judges who reviewed administrative arrests at the time of the first Intifada rarely cancelled administrative arrest warrants. They did sometimes shorten arrest warrants by a month or two. But a new release date was not a guarantee that a new warrant would not be issued for the defendant prior to his or her release.

Military judges faced a professional dilemma in administrative detention cases, which highlighted the tension between their roles as judges (i.e., impartial administrators of the law) and their concurrent roles as soldiers whose army was engaged in an armed conflict with Palestinian residents from the Occupied Territories and who are, at least nominally, therefore on the same "side" as the army and the General Security Service.

## 6.2 Torture

The use of torture during interrogations posed another dilemma for military jurists. In most trials in the military courts, defendants arrived in court having confessed to the charges during interrogation—interrogation during which the General Security Service and the Israeli Army often secretly used torture to extract confessions.

In 1987, an Arab-Israeli army officer who had been found guilty of treason appealed to the Israeli Supreme Court. As a result of this case, for the first time the public was made aware of the methods of interrogation used by the General Security Service, which had interrogated the officer. A governmental commission was appointed to determine the procedure actually used in interrogations conducted by the General Security Service, and the commission's findings, known as the "Landau Commission Report," shook the Israeli public.

Part of the report was classified, but the unclassified portion confirmed that the General Security Service had used torture widely in its interrogations. In its conclusions, the courts accepted the General Security Service's position that torture in interrogations was necessary if the security of the country was to be maintained. But the commission was harsh about the fact that General Security Service agents had apparently perjured themselves in court for 20 years when questioned under oath about their means of obtaining confessions.

The commission wrote:

*The interrogator, when taking the stand, saw a jeopardy in telling the truth. For one, the danger of exposing the techniques of the interrogation (to the enemy). Secondly, the disqualification of the confession and the acquittal of the defendant.... The solution the interrogators found was the easy one. They preferred secrecy to the duty of [telling the] truth in a courtroom. On the stand they boldly denied applying any physical pressures and thus committed a criminal felony of perjury.*

The Landau Commission Report triggered public debate that led to the 1999 Israeli Supreme Court decision in *Public Committee Against Torture v. State of Israel* that banned the use of torture in interrogations. Interrogators are not prohibited, however, from "asserting the defense of necessity" under circumstances where torture is seen as immediately necessary to save human lives.





**Justice Meir Shamgar (Brigadier General, Retired)**  
**Military Advocate General 1963-1968**  
**Judge, Supreme Court of Israel 1975-1995**  
**President of the Supreme Court 1983-1995.**

Photo courtesy of Shark De Mayo

In the film, judges who heard the false testimony from General Security Service representatives are asked whether they were aware of the illegal use of torture by the General Security Service. Their answers vary, but all reflect the extreme pressure on these judges to enforce the law of occupation while upholding the principles of justice.

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A scene from *The Law In These Parts*.

Photo courtesy of Shark De Mayo

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### DISCUSSION PROMPTS

According to the film, the law in the occupied territories allows the Israeli army to issue "administrative arrest" orders against particular individuals, who can then be arrested without being indicted or brought to trial. Administrative arrest orders state that a person constitutes a threat to security, and therefore, must be arrested. In your view, can this type of law be justified? Why or why not?

Israel began widespread use of administrative de-

tention as a response to the 1987 Palestinian uprising known as the Intifada. The Intifada involved both armed actions and mass protests. Do you see a difference between using the administrative detention policy to detain a few suspects and using it to justify the detention of thousands of protestors?

Israel's military courts sometimes rely on classified information to convict detainees. As the subjects of the film attest, a defendant in military courts is not always permitted to know the identity of his or her accusers or the information or evidence they have provided, making it virtually impossible to formulate a defense. The Israeli judges maintain that this is necessary to preserve the safety of sources who supply this information. How might this policy affect the definition of "justice"? Can you envision a way to shield identities of informants while also giving defendants a reasonable chance to defend themselves?

Oded Pesensson describes the burden of a judge confronting a defendant who is accused of engaging in terrorist activities, saying, “My obligation is to make a ruling. And if I make a different ruling, I know that someone might die.” What do you think he means by this? How could this perception on the part of a judge affect the rights of defendants in his court?

The film explores whether or not the judges knew that defendants held by the Israeli General Security Service were tortured in custody. Former military judge Jonathan Livny says that he was aware of defendants being tortured during interrogation. Why does it matter whether the judges knew about these practices or not? What should change for them if they knew a defendant had been tortured?

In your view, in what ways might the use of torture during interrogation have affected the justice system in the Occupied Territories? How might the fact that the Israeli Supreme Court banned the use of torture affect the justice system in the Occupied Territories?

According to the film, territorial law allows the army to issue orders against particular individuals, who can then be arrested without ever being indicted or brought to trial. “Administrative arrest” orders state that a person constitutes a threat to security, and therefore, must be arrested. How does this practice compare to the treatment of detainees in the U.S. detention center at Guantánamo Bay? In your view, what types of laws is it okay to ignore in order to address threats to national security, and which laws can never be ignored?

## 7. The Future: What’s Next?

### DISCUSSION PROMPTS

The film closes with a statement by defendant Bassem Tamimi, excerpted below:

*Your honor, I was born in the same year as the occupation, and ever since, I’ve been living under its inherent inhumanity, inequality, racism and lack of freedom. I have been imprisoned nine times for a sum total of almost three years, though I was never convicted of any felony. During one of my detentions, I was paralyzed as a result of torture. My wife was detained, my children wounded, my land stolen by settlers and now my house is slated for demolition. International law recognizes that occupied people have the right to resist. Because of my belief in this right, I organize popular demonstrations against the theft of more than half of my village’s land, against settler attacks, against the occupation. You, who claim to be the only democracy in the Middle East, are trying me under laws written by authorities I have not elected, and which do not represent me. For me, these laws do not exist; they are meaningless. The military prosecutor accuses me of inciting protesters to throw stones at the soldiers. What actually incited them was the occupation’s bulldozers on our land, the guns, the smell of tear-gas. And if the military judge releases me, will I be convinced there is justice in your courts?*

What is your reaction to this statement? How would you respond to his suggestion that demonstration organizers are not the ones who incite stone throwers and that instead the incitement comes from Israeli actions?

Tamimi closes by questioning the capacity of the judge to deliver justice, no matter what the verdict. What does this suggest about the limits of military courts in the context of an occupation? What would justice look like for Tamimi? What would constitute justice for Israel’s military courts? Can you envision what justice would look like if it satisfied all of the stakeholders in this conflict?

The filmmaker ends the film with the observation that the audience can now go back to “everyday reality” and he will likely “move on to document another subject.” But those living in the limbo of occupation wait. Why do you think he ends the film with this sentence?





Abraham Pachter (Lieutenant Colonel, Retired)  
Military Prosecutor 1967-1970.

Photo courtesy of Shark De Mayo

## Taking Action

- Invite a local judge or panel of judges to discuss the film and the job judges do. If possible, involve military lawyers and judges to share the differences between military jurisprudence and the civilian system.
- Stage mock trials on the issues raised in the film.
- Invite Palestinians and Israelis to share stories about their relationship to the land and their families' experiences during and after Israel's wars.
- Convene a community conversation about your country's relationship to international law and policies covering issues raised in the film (e.g., detention without charges, classified evidence, defining "enemy combatants"). Include a discussion about what happens to the legal system in a nation that is in a perennial state of war (the so-called War on Terror in the United States is one example). For a U.S. audience, you might consider discussing the military commissions at Guantánamo Bay.

## FILMMAKER WEBSITE

## THE LAW IN THESE PARTS

[www.thelawfilm.com](http://www.thelawfilm.com)

The film's website provides information about the film and filmmakers, including an extensive collection of reviews and international news coverage of the film.

## Original Online Content on POV

To further enhance the broadcast, POV has produced an interactive website to enable viewers to explore the film **The Law In These Parts** in greater depth. The website—[www.pbs.org/pov/thelawintheseparts](http://www.pbs.org/pov/thelawintheseparts)—offers a streaming video trailer for the film; an interview with Ra'anan Alexandrowicz; a list of related websites, articles and books; a downloadable discussion guide; and special features.

## What's Your POV?

Share your thoughts about **The Law In These Parts** by posting a comment at <http://www.pbs.org/pov/thelawintheseparts/>

## National Perspectives

## ISRAEL DEFENSE FORCES

<http://www.idf.il/english/>

The official website of Israel's military includes information on events involving Palestinians as reported through the military's perspective. Available in English as well as Hebrew.

ISRAEL MINISTRY OF FOREIGN AFFAIRS:  
ISRAEL'S INTERROGATION POLICIES AND PRACTICES

<http://www.mfa.gov.il/mfa/aboutisrael/state/law/pages/israel-s%20interrogation%20policies%20and%20practices%20-%20de.aspx>

On this website, the Israel Ministry of Foreign Affairs outlines its policies and practices on interrogation, citing the basic guidelines set up by the Landau Commission.

## PALESTINIAN NATIONAL AUTHORITY

[www.minfo.gov.ps/](http://www.minfo.gov.ps/)

Recognized by the United Nations as the official representative of Palestinians, the Palestinian National Authority reports on current events from a Palestinian point of

view on its (Arabic-language) website.

## THE STATE OF ISRAEL: THE JUDICIAL AUTHORITY

<http://elyon1.court.gov.il/eng/home/index.html>

The official website of Israel's court system includes a searchable database of decisions made by the Supreme Court and military courts, as well as information about the appointment of judges.

U.S. DEPARTMENT OF STATE 2012  
HUMAN RIGHTS REPORT

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

For the U.S. government perspective on Israeli jurisdiction in the occupied territories, see this most recent report on human rights. Additional information is scattered throughout the site. Search using terms like "Israel," "Palestine," "occupied territories" or "Israeli settlements." To find speeches by President Obama related to the conflict, search similar terms at [www.whitehouse.gov](http://www.whitehouse.gov).



## International Law and International Observers

### AMNESTY INTERNATIONAL

**[www.amnesty.org/en/region/israel-occupied-palestinian-territories](http://www.amnesty.org/en/region/israel-occupied-palestinian-territories)**

In addition to general information about international law and human rights, this advocacy organization shares updates on current court cases, as well as comments, reports and briefs submitted to various authorities related to violations of human rights by Israelis and Palestinians.

### HUMAN RIGHTS WATCH

**[www.hrw.org/middle-eastn-africa/israel-palestine](http://www.hrw.org/middle-eastn-africa/israel-palestine)**

Press releases, testimony from observers in the occupied territories and comprehensive reports provide a picture of life in the West Bank and Gaza.

### UNITED NATIONS: INTERNATIONAL LAW

**[www.un.org/en/law/index.shtml](http://www.un.org/en/law/index.shtml)**

This site aggregates U.N. resources, reports and activities related to international courts, law, and human rights. Also see <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session19/Pages/IsraeliSettlementsInTheOPT.aspx> for the March 2012 report of the International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory

## HOW TO BUY THE FILM

To order the **The Law In These Parts** DVD or to watch the film online, visit <https://www.thelawfilm.com/eng/>



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### POV Digital [www.pbs.org/pov](http://www.pbs.org/pov)

POV's award-winning website extends the life of our films online with interactive features, interviews, updates, video and educational content, as well as listings for television broadcasts, community screenings and films available online. The *POV Blog* is a gathering place for documentary fans and filmmakers to discuss their favorite films and get the latest news.

### POV Community Engagement and Education

POV's Community Engagement and Education team works with educators, community organizations and PBS stations to present more than 600 free screenings every year. In addition, we distribute free discussion guides and standards-aligned lesson plans for each of our films. With our community partners, we inspire dialogue around the most important social issues of our time.

POV has the honor of receiving a 2013 MacArthur Award for Creative and Effective Institutions. Major funding for POV is provided by PBS, The John D. and Catherine T. MacArthur Foundation, National Endowment for the Arts, New York State Council on the Arts, the New York City Department of Cultural Affairs in partnership with the City Council, the desJardins/Blachman Fund and public television viewers. Funding for POV's Diverse Voices Project is provided by the Corporation for Public Broadcasting. Special support provided by The Fledgling Fund and the Lucius and Eva Eastman Fund. POV is presented by a consortium of public television stations, including KQED San Francisco, WGBH Boston and THIRTEEN in association with WNET.ORG..

### American Documentary, Inc. [www.amdoc.org](http://www.amdoc.org)

American Documentary, Inc. (AmDoc) is a multimedia company dedicated to creating, identifying, and presenting contemporary stories that express opinions and perspectives rarely featured in mainstream-media outlets. AmDoc is a catalyst for public culture, developing collaborative strategic-engagement activities around socially relevant content on television, online, and in community settings. These activities are designed to trigger action, from dialogue and feedback to educational opportunities and community participation.

**You can follow us on Twitter @POVengage**  
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POV Community Engagement & Education.



**Front cover: A scene from *The Law In These Parts*.**  
Photo courtesy of Shark De Mayo



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