

# Excessive Use of Force as a Means of Social Exclusion: The Forced Eviction of Squatters in Israel

Neta Ziv\*

*This article discusses the legal concept of excessive use of force by analyzing a particular incident that took place in Israel in the summer of 1997: eighty families, faced with dire housing needs, squatted in vacant apartments in an immigrant absorption center in the town of Mevasseret Zion near Jerusalem. After a period of failed attempts to persuade the families to leave the apartments peacefully, the police moved to evacuate the families, and did so by use of massive force. In the article I describe the violent measures used by the State (police), and analyze the media portrayal of the squatting and the evacuation. I argue that both these forceful measures and the media portrayal of the squatting and evacuation cumulatively took part in constructing the squatters as criminal deviants rather than political protesters. I claim further that we should understand the concept of use of force not only as a means to achieve certain ends by the state, but also as a mechanism through which the state constructs a social problem and presents it in a manner beneficial to its own interests. Excessive use of force, in this sense, is not just a disproportionate response to a real*

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\* Senior Lecturer and Director of The Cegla Clinical Education programs, Tel Aviv University Faculty of Law. This article was first presented at a conference organized by The Cegla Center for Interdisciplinary Research of the Law which took place in May 2004 in Tel Aviv. I wish to thank the participants in the workshop for their comments on the paper, and especially Dr. Guy Mundlak, Dr. Shai Lavi and Dr. Yishai Blank. I also wish to extend my thanks to Theoretical Inquiries in Law Student Editors Ofira Alon and Meital Zimberg, for their thorough review of the article and their useful comments and suggestions.

*or perceived threat posed by an individual or group, but a means by which the state fosters a belief that the individual or group present some danger, which must be tackled through the use of a certain level of force. By drawing a line between the legitimate (that is, not excessive) and illegitimate (defined as excessive) use of force, the state affirms its monopoly on violence, which ultimately can be used to suppress political resistance.*

## INTRODUCTION

In June 1997, about eighty-five families faced with acute housing needs invaded and squatted in several unoccupied apartments in an absorption center for new immigrants in Mevasseret Zion, one of the poorer neighborhoods on the outskirts of Jerusalem. The families — veteran Israeli citizens belonging to the *Mizrahi* ethnic community<sup>1</sup> — chose this type of protest in their struggle for governmental solutions for families who could not secure appropriate housing. The absorption center was chosen for pragmatic and symbolic reasons: some of its apartments were vacant, having been designated as government-subsidized housing for new immigrants to Israel from the former Soviet Union and Ethiopia (some of these new immigrants were living on the premises). The government's policy of offering new immigrants generous housing assistance stood in sharp contrast to the acute housing needs of these veteran citizens — the descendents of Mizrahi immigrants to Israel. This ethnic/group differentiation triggered the protest and lay in the background to the event. Moreover, the protest signified frustration over governmental measures regarding land allocation to another social group, the residents of agricultural settlements (*kibbutzim* and *moshavim*), where the State provided ample monetary compensation for public use of their agricultural lands.

After two weeks of negotiations and failed attempts to persuade the squatters to vacate the apartments peacefully, the police resolved to force to evacuate them. Hundreds of policemen encircled the building during the night of July 3, 1997. Hovering helicopters lit up the skies; the policemen bore extensive arms and were assisted by police dogs. The massive force

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<sup>1</sup> "Mizrahi Jews" is a term commonly used to describe Jews whose country of origin is one of the Muslim or Arab countries, and their descendents. Mass immigration from Iraq, Iran, Yemen, Egypt, Syria, and the North African Countries (Morocco, Tunisia, Algeria & Lybia) to Israel occurred mainly in the 1950s and 1960s.

employed by the police to carry out the evacuation was extraordinary. Throughout the weeks prior to the evacuation, the squatters had been publicly depicted as dangerous figures and criminals who posed a serious threat to society; they were portrayed by the media as people with no respect for the law and the public order. Thus, the police faced no impediment to resort to violent and forceful measures during the evacuation operation, which involved clashes between the squatters and police, with some policemen physically attacked and injured. Even though both sides used violence, only the squatters were portrayed, collectively, as deviant, with criminal charges brought against the leaders of the group for trespass and aggravated assault. The criminal indictment was the ultimate step taken by the State to depoliticize the event and detach it from its socio-economic and political meaning.

This incident serves as the case study for this article. Through its analysis, I argue that use of force is not only a means to achieve certain ends by the State (in this case, vacating squatters). Rather, it also serves in and of itself as a mechanism by which the State constructs a social problem and presents it in a manner beneficial to its own interests. The use of force is a way to delegitimize and exclude weak groups (or individuals) from mainstream society and thereby circumvent the need to confront their political claims and demands. Excessive use of force, thus, is not simply a disproportionate response to a real or perceived threat posed by an individual or group, but also a means by which the State fosters the belief that that individual or group presents some danger that must be contended with by means of a *certain level* of violence. By drawing a line between legitimate (that is, not excessive) and illegitimate (defined as excessive) uses of force, the State affirms its monopoly on violence, which is ultimately used as a political tool. Whether force is excessive is a relative and contingent, rather than fixed, question. Excessive use of force is a negotiated concept that cannot be separated from the process of political marginalization and social stigmatization. It simultaneously rests on a belief in an existing threat and participates in creating this belief.

My argument is grounded on two bodies of literature. The first inquires into the relationship between law and violence and, in particular, into the unstable boundaries between "the force of law" applied by the State, on the one hand, and the "deviant" behavior of non-state actors, which is defined as violence, on the other. I focus on the political nature of this distinction and the process by which we differentiate between the legitimate and illegitimate uses of force according to the source of the force. As Walter Benjamin contended, *law* demands and claims a monopoly on violence, which it labels as the use of *force*. This monopoly on violence is used against individuals in

order to preserve law as an institution, since law cannot suffer the existence of any violence outside its boundaries.<sup>2</sup>

The second body of literature rests on contemporary theories of the sociology of deviance. Critical criminology considers the act of deviance with special attention to issues of social control. Under this understanding, the use of force by the State in general (and excessive use of force even more so) is merely a means of social control. As Lempert explains, the notion that social control *leads* to deviance (rather than constituting a response to it) is becoming a more tenable understanding of this process.<sup>3</sup> In other words, sociologists in the area of criminology regard the State's physical actions against a certain group (for example, the use of excessive force) as a dynamic process that constructs the meaning of deviance as a social and legal category.

In the first part of this paper, I examine the discipline known as *law and violence* and its relation to the term *excessive use of force*. I suggest that the law distinguishes between the legitimate and illegitimate uses of force employed by its agents by means of legal categories and terms such as "excessive," "reasonable," and "proportionate." This differentiation in and of itself establishes the law's legitimacy and reinforces its authority. The term "excessive use of force" is a category through which law sets these boundaries in that it creates an external danger or threat. In the second part, I describe the basic themes in theories of social deviance, which focus on the process of marginalization, delegitimization, and criminalization of "deviant political minorities," and consider them in the context of the issues raised in the preceding part. In Part III, I describe the sociopolitical struggle in the area of housing policy in Israel during the mid 1990s, which constituted the backdrop to the squatting event. In the fourth part, I apply the theoretical insights from the preceding parts to this case through an analysis of the media portrayal of the Mevasseret Zion event in the weeks prior to and following the evacuation of the squatters. In Part V, I analyze these insights through the prism of the doctrine of excessive use of force. Finally, in the Epilogue, I describe the criminal proceedings instigated by the State against three of the leaders of the squatting event in Mevasseret Zion and the Jerusalem District Court decision in their case. This part queries the monolithic approach to the *State* in the theories of law and violence. I demonstrate how in this particular case, the criminal process — supposedly the most depoliticized State forum — "restored" the political nature of the Mevasseret Zion squatting event and

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2 Walter Benjamin, *The Critique of Violence*, in *Reflections — Essays, Aphorisms, Autobiographical Writings* 277, 281 (1978).

3 Edwin M. Lempert, *Human Deviance, Social Problems and Social Control* (1967).

evacuation, minimized its criminal aspects, and framed the perpetrators' acts in the context of the sociopolitical backdrop of the event.

## I. LAW, VIOLENCE, AND EXCESSIVE USE OF FORCE

Law and violence seemingly are contradictory. In mainstream legal thought, law's role is to protect against violence and lawlessness. Law is based on reason and is the product of consensual political processes. Law is words, rhetoric, and narrative; law is meaning and interpretations, as distinguished from deeds.<sup>4</sup> Alternative jurisprudence and legal theories, however, emphasize law as a coercive praxis. The law's power derives from its ability to impose its rules upon its subjects, oftentimes through the use of force: law has the ability to hurt, batter, arrest, incarcerate, kill. Derrida emphasizes the term "enforcement" of law as imagery for its coercive powers:

law is always an authorized force, a force that justifies itself or is justified in applying itself, even if this justification may be judged from elsewhere to be unjust or unjustifiable ... . [T]here is no such thing as law (*droit*) that does not apply *in itself, a priori, in the analytic structure of its concept*, the possibility of being enforced, applied by force.<sup>5</sup>

The law's force is applied through official agents: policemen, prison guards, prosecutors, judges, and other entities that operate in the name of the law and execute it. And when the law applies its force, it is a sanctioned type of force and thus not regarded as violence.<sup>6</sup> Alternatively, even if we do call it violence, it is considered a justified kind of violence, either because of its official source (a positivistic understanding of law) or because we believe that its ends are justified (the natural law approach).<sup>7</sup> Indeed, the formal, official status of the law is a prerequisite that affords state power its legitimacy and distinguishes it from illegitimate violence.<sup>8</sup> However, the formal nature of law

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4 See, e.g., James Boyd White, *Heracles' Bow, Essays on the Rhetoric and Poetics of the Law* (1985).

5 Jaques Derrida, *Force of Law: The Mystical Foundation of Authority*, 11 *Cardozo L. Rev.* 921, 925-26 (1990).

6 Austin Sarat & Thomas Kearns, *Introduction*, in *Law's Violence* 1 (Austin Sarat & Thomas Kearns eds., 1993).

7 Benjamin, *supra* note 2, at 279-80.

8 See, e.g., Joshua Segev, *Meaning and Violence — From Institutional Arrangements to Personal Responsibility, from the Landau Commission Report to the Supreme Court Ruling in the Public Committee against Torture in Israel*, 10 *Plilim* 157, 174-80 (2001) (Hebrew).

is not sufficient in itself to sustain this status. The law needs to be justified and legitimated on merited grounds as well, that is, the ends that the law's violence claims to achieve. Justification of this sort is a never-ending, ongoing task — the *law-preserving task* — and can be accomplished by various measures.<sup>9</sup> I would like to emphasize three aspects of this process of justification: 1) the relative nature of the law's violence, that is, the need to define the object of violence as "worthy" of this treatment; 2) the law's proclaimed monopoly on violence; and 3) the law's internal definition of the boundaries of its legitimate violence by means of such terms as excessive use of force.

### A. The Relative Nature of Law's Violence

In order to merit law's justification as a form of violence, a story must be told and accepted — there has to be an authoritative narrative that creates a belief in the law's benevolence. Namely, the law is not intended to impose force *per se*, but to further positive ends, be it restoring "order," guaranteeing "rights," or protecting the "administration of justice."<sup>10</sup> However, the law's violence is always inflicted *upon somebody* — it exists only in relation to the person upon whom it is imposed. The relational nature of force infuses meaning into an act of violence — and this meaning must be of the sort that provides the violent act with the necessary validation for its soundness. Hence, in order to attain this status in specific circumstances, the object of the law's violence must be delegitimized and portrayed as an imminent and real threat to a prevailing value the law seeks to preserve. Any use of violence by the law must, therefore, rely upon the construction of an antithesis, some kind of "other." The legitimacy of law's violence is contingent on the establishing of the otherness of the object of the violence.

### B. The Law's Monopoly on Violence

The law defines who is allowed to use force and when. By way of this definition, it proclaims a monopoly on violence: it prohibits, and also

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<sup>9</sup> Benjamin, *supra* note 2, at 285-87, distinguished between two functions of legal violence. The first is the lawmaking function of violence: since every legal system is born out of violence, this justification is bestowed upon law retroactively and is not conceded too easily. The second function of violence is law-preserving: law reaffirms itself through a myriad of violent acts meant to preserve the force of the original function of law, i.e., its primacy as the supreme legitimate force.

<sup>10</sup> See, e.g., Karl Olivecrona, *Law as Fact* 125, 127 (1939); Robert M. Cover, *Violence and the Word*, 95 *Yale L.J.* 1601 (1986).

punishes, any external use of force not authorized by the State.<sup>11</sup> Any violation of this principle (through recognition of the principle of plurality, for example) poses a threat not only to the particular ends protected by the law, but also to the *law itself*. This is an important point: Benjamin claims that

the law's interest in a monopoly of violence vis-à-vis individuals is not explained by the intention of preserving legal ends but, rather, by that of preserving the law itself; that violence, when not in the hands of the law, threatens it not by the end that it may pursue but by its mere existence outside the law.<sup>12</sup>

Under this understanding, resort to non-sanctioned violence — that is, violence external to the law — endangers the existing order that law has created and imposed, in toto. State law is the incarnation and expression of the existing regime, of the social order that law furthers, and of the norms law is willing to protect. The law's most powerful reaction of suppressing individual violence thus results from the latter's potential to offer an alternative basis of legitimacy, more than due to any particular interest that use of such unsanctioned violence may infringe.

Paradoxically, the more benign, favorable, or merited the external violence, the greater its threat to the law. This is because just ends that may underlie the use of violence by individuals bear the potential of being "law-making" violence. It is precisely this constitutive nature of external violence — which has a moral basis and is drawn from a just claim — that most profoundly threatens the law's claim to a monopoly on violence. This may explain why the law often reacts severely against violence that enjoys broad public support and arouses sympathy and understanding. In such circumstances, it is necessary to persuade the public that the perpetrators constitute a real danger and an imminent threat to broadly held values. As I will explain in the next section, one way in which the law accomplishes this is by depoliticizing the meaning of the act, detaching it from its political context and claim, and defining it as criminal behavior deserving of uncompromising suppression.

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11 See Robert Nozick, *Anarchy, State and Utopia* 23 (1974):

A state claims a monopoly on deciding who may use force when it says that only it may decide who may use force and under what conditions; it reserves to itself the sole right to pass on the legitimacy and permissibility of any use of force within its boundaries; furthermore, it claims the right to punish all those who violate its claimed monopoly.

See also Michel Foucault, *Discipline and Punish: The Birth of the Prison* 47 (1979).

12 Benjamin, *supra* note 2, at 281.

### C. Internal Restrictions on Violence

To justify its claim to a monopoly on violence, the State needs to create the belief that this privilege is used justly. One way to foster such belief is by drawing distinctions between the legitimate and illegitimate uses of its own force. Without these boundaries, the law's violence would not be accepted as rightful and justified. In other words, the use of force must itself be restricted to a specific space: within this space, violence is the "lawful use of force"; outside this space it is "unlawful."<sup>13</sup>

The concept of excessive use of force is one way of setting such boundaries. This concept implies that force should and can be used reasonably, for example, only to the extent necessary to overcome the threat arising from external violence. Thus, the *principle of proportionality* is a central tenet of the excessive use of force doctrine, making the use of force a *relative* concept: the level of force used by the State must not be excessive in relation to the concrete threat the State faces, on the one hand, and the particular advantage to the State anticipated from the use of force, on the other.<sup>14</sup> This formula, however, is not fixed and depends on the circumstances at hand. What may be considered "excessive" in one case may be justified in another; it all depends on the degree of the perceived danger and the anticipated harm that law's violence is required to countermand. The flexible character of *the principle of proportionality* leaves an opening for manipulation and management by the State. In the following parts, I will show how a particular image of a violent perpetrator is created — an image that justifies the application of a certain level of force in order to counter the threat the perpetrator poses to the legal and social order. The relationship between the nature of the threat and excessive use of force is not chronologically linear in the sense of a belief in imminent danger first being constructed followed by the application of some degree

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13 See Adi Ophir, Avodat Hahove [Working for the Present] 234-35 (2001) (Hebrew).

14 In the context of military operations, see, for example, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1931 (Protocol I), describing the level of force allowed to be implemented against civilians:

Among others, the following types of attacks are to be considered as indiscriminate:  
... (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, *which would be excessive in relation to the concrete and direct military advantage anticipated.*

*Id.* art. 51, § 5 (emphasis added). Regarding police use of force, see *infra* notes 77-80, and accompanying text.



of force. The very use of violent means by the State also contributes to the creation of an image of a dangerous and violent perpetrator: the State-inflicted violence is not only a response to it, but also part of the process of building the notion of grave danger, against which a high level of force must be applied.

It is important to realize how this dialectic process proceeds. As noted, for the State to preempt any claim that it has used excessive force, the stage must be set for all to realize that a *certain level of violence* (as determined by the State) must be activated to overcome the threat, which is achieved by generating the belief in a danger of a magnitude that makes acceptable a proportional level of applied force. This necessitates permeating the public debate with images, symbols, rhetoric, and fear, a task frequently performed by the media. The media often plays a crucial role in setting the backdrop for the State's use of force in its coverage of the events leading to such use of violence in a particular manner. Once the background has been prepared and the State violence implemented, state violence immediately becomes a participant in the process that has justified its use beforehand. At this stage, the use of massive force in and of itself sets an image of danger and threat. The number and type of police or other state agents chosen to take part in the maneuver, their gear and paraphernalia, the time of day chosen for the operation, the weapons and machinery utilized, the tactics, the media coverage — these are all means employed by the State to marginalize the objects of its use of force, in essence producing a self-fulfilling prophecy.

## II. MARGINALIZATION THROUGH CRIMINALIZATION

The distinction between political activity and deviant activity has long attracted the interest of criminologists. Sociologists of crime have claimed that deviant behavior, especially with regard to dissident and minority groups, is closely related to processes of social stigmatization and political marginalization. Traditional criminology approaches relate to social deviance through a "welfare model," which considers punishment and rehabilitation as its major objectives.<sup>15</sup> It focuses largely on the deviant perpetrators' pathology and engages professionals who "treat" them, either

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<sup>15</sup> See, e.g., Lewis Yablonsky, *The Tunnel Back: Synanon 368* (1965) (emphasizing the expertise and treatment model of the traditional approach).

by disciplinary or therapeutic means. In contrast, sociological and "conflict model" approaches to criminology relate to social deviance on a political dimension.<sup>16</sup>

There are many implications to the political approach to social deviance. A pervading theme within this approach, however, is social deviance as a relational and interactive phenomenon rather than an objective or fixed practice. In and of itself, an unlawful act bears little social significance. Its meaning largely depends on its treatment and mediation by others: rule-makers, law enforcement agencies, a relevant community or social group, and other entities that react or respond to unlawful action.<sup>17</sup> Lemert, for example, underscores the significance of public consciousness in understanding society's concern over breaching the law:

We are all too familiar with the way in which populations in various cities and states have been aroused to frenzied punitive action against sex offenders. Nevertheless, in these same areas the people as a whole often are indifferent toward crimes committed by businessmen or corporations — crimes which affect far more people, which may be far more serious over a period of time.<sup>18</sup>

In other words, what a community senses as a problem depends on its perception of the harm originating from the unlawful act: its gravity and immediacy, its challenge to time-honored norms. But a community's notion regarding a particular social harm is formulated by and constructed through numerous external factors that interact with the unlawful behavior and imbue it with particular value and significance.

The nature of the interaction between a perpetrator on the one hand, and representatives of the law on the other, plays an important role in the construction of the social meaning of any unlawful act. Since we are talking about behavior that is in discord with the demands of the law, the interaction with law enforcement agents plays a vital role in formulating society's comprehension of illegal activity: how harmful it is to public interests and what ought to be done in response to the threat it poses. Therefore, the reaction of law to illegal activity is not merely a matter of policy but also of political significance.

Dealing with social deviance as part of the political domain presents a

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16 See, e.g., Irving L. Horowitz & Martin Liebowitz, *Social Deviance and Political Marginality: Toward a Redefinition of the Relation Between Sociology and Politics*, 15 Soc. Probs. 280 (1968).

17 See *id.* at 282.

18 Edwin M. Lemert, *Social Pathology* 4 (1951).

difficulty for the State, since it requires contending with problems of power relations, hierarchies, economic disparities, and other issues of distribution.<sup>19</sup> Thus the State prefers to cast the dissident act in non-political terms: to highlight its illegal aspects and draw most of the attention to the defiant nature of the perpetrators rather than the context of their behavior. This process of stigmatization is a crucial step in *criminalizing* an unlawful event or act.<sup>20</sup> It publicly defines members of the group (or an individual) as offensive and alienates them from the mainstream and social consensus, thereby diminishing the need to address the root causes of their action. Hall explains that when new dissident activities emerge, "it is a matter of critical importance whether they are legitimized publicly within the 'political' category, or delegitimized by being assigned to the 'deviant' category."<sup>21</sup>

Depoliticization of this sort pertains to all types of collective dissident behavior. Nevertheless, it is easier to criminalize groups that are not organized into recognizable frameworks such as social movements, interest and pressure groups, NGOs, and the like. To be sure, organized minority groups (for example, recognized ethnic minorities and structured environmental movements) are often the targets of State criminalization processes as well.<sup>22</sup> They too must confront questions of the boundaries of lawful dissidence and obedience to the law and suffer from a stigma imposed by the State.<sup>23</sup> However, it is easier to depict dissidents as deviants and to criminalize their acts if they are not part of an "elite minority." The struggles of elite minorities, suggests Hall, enjoy legitimacy. They are considered

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19 Howard S. Becker, *Whose Side Are We On?*, 14 Soc. Probs. 239, 240-41 (1967), differentiates between political and apolitical activity in the following manner:

The conflict segments or ranks are not organized for conflict; no one attempts to alter the shape of the hierarchy. While subordinates may complain about the treatment they receive from those above them, they do not propose to move to a position of equality with them, or to reverse positions in the hierarchy ... . We call this the *apolitical* case.

20 See Simon Dinitz et al., *Deviance, Studies in the Process of Stigmatization and Societal Reaction* 18-19 (1969) ("Stigmatization shifts the focus of deviation from the act itself to its actor. Although it is the act of stealing, or the use of heroin, that is illegal, it is the person who is the thief or the drug addict.").

21 Stuart Hall, *Deviance, Politics and the Media*, in *Deviance and Social Movements* 261, 267 (Paul Rock & Mary McIntosh eds., 1974).

22 For an example of criminalization of an ethnic minority, see the articles compiled in 3 *Adalah's Rev.* (2002) (Hebrew), on the Israeli police's reaction to the civil uprising of the Palestinians in October 2000.

23 This largely occurs in the dilemmas surrounding civil disobedience, see, e.g., Steven E. Barkan, *Strategic, Tactical and Organizational Dilemmas of the Protest Movement against Nuclear Power*, 27 Soc. Probs. 19 (1979).

part of the acceptable political process whereby minority groups, within the framework of civil society, try to exert influence and achieve certain ends.<sup>24</sup> In contrast, "[w]eak, marginal, non-institutionalized, and illegitimate political minorities share with social deviants the definition of their actions in terms of a 'social problem' paradigm: ... their actions are, by definition, 'non-political.'"<sup>25</sup>

The relevant distinction in this context, therefore, is not between majority and minority groups, but between powerful and legitimate minorities, on the one hand, and weak and outcast minorities, on the other. Since the latter are positioned at the far end of the spectrum of consensual politics, they often tend "to exaggerate their degree of deviation from institutionalized processes *as such*" as oppositional moves that are geared to overcome rejection and disregard.<sup>26</sup> A dialectic process emerges. Lacking political legitimation, weak minorities fulfill a prophecy of marginality: they infuse their activities with extreme, often unlawful modes of behaviors, crystallizing their own self-image as deviants. Their deviance then serves as a basis for social degradation and repressive social control, thereby reinforcing the process of criminalization.

Finally, when some members of a dissident group engage, even partially or loosely, in unlawful behavior (whether prior to or during an unlawful event), this association provides convenient grounds for stamping all members of the group with the same deviant label. Even though collective activity typically contains multiple modes of behavior, only selected forms of conduct are underscored and highlighted as representative of the entire group. There is a shift from a focus on the acts of individuals — who differ in manner of participation in an event or unlawful act — to a collective presentation of the group as a whole.<sup>27</sup> It is therefore of crucial importance who has the power to permeate the public domain with certain icons and symbols, and to create a collective image of the group.<sup>28</sup>

The media is a central agent in this path. Although the media must build upon an existing infrastructure of public beliefs, it has the interpretive power to shape and define political reality, especially in circumstances that seem to threaten well-entrenched norms and consensual ideologies. Hall describes

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<sup>24</sup> See Hall, *supra* note 21, at 267.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 274.

<sup>27</sup> See Allen Feldman, *Formations of Violence, Narratives of the Body and Political Terror in Northern Ireland* 88-89 (1991).

<sup>28</sup> See Samara Esmeir, *Law's Conception of State Violence*, 3 *Adalah's Rev.* 25 (2003) (Hebrew).

the role of the media in transforming an issue into a social problem, in general,<sup>29</sup> and in constructing political deviance, in particular, through the following process:

The work of "classifying out" the political universe, of building up meaning "semantic zones" to which deviant political acts can be assigned and with which they "make sense", the process of telescoping, of ascription, of amplifying descriptions and the attribution of "secondary status traits", the use of charged associative metaphors which summon up old meanings in the service of explaining the unfamiliar, the ways discrete events are selectively composed into composite "action-images" and "scenarios" of political action, the use of analogies and metaphors ...<sup>30</sup>

I suggest that the evacuation of the Mevasseret Zion absorption center squatters is a clear case of social stigmatization and criminalization, in the sense described above, in which the media played an important part. In the next Part, I set this event against its social and political backdrop, and the subsequent Part describes the process of criminalization and depoliticization of the Mevasseret squatting event, in which the use of force played a vital role.

### III. THE ISRAELI HOUSING CRISIS AS A REFLECTION OF ETHNIC TENSIONS

In the Summer of 1997, the lack of housing solutions for needy families in Israel became an acute problem and developed into a national crisis. Hundreds of families (primarily young couples with children) found themselves unable to secure housing. Numerous tent camps were set up

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29 *But see* A. Clay Schoenfeld, *Constructing a Social Problem: The Press and the Environment*, 27 *Soc. Probs.* 38 (1979).

30 Hall, *supra* note 21, at 279; *see also* Walter Weiss, *Effects of the Mass Media of Communication*, in 5 *The Handbook of Social Psychology* 77 (Lindzey Gardner & Stanley Aronson eds., 1968) ("The media do not only transmit messages, but structure 'reality' by selecting, emphasizing and interpreting events."); Kurt Lang & Gladys E. Lang, *Television and Politics* 77 (1969) (claiming that media "structures issues and personalities"); Dennis McQuail, *The Influences and Effects of the Mass Media*, in *Mass Communication and Society* 72 (James Curran et al. eds., 1977) (suggesting that the press presents "a consistent picture of the social world which may lead the audience to adopt this version of reality, a reality of 'fact', and of normal values and expectations").

in public places (mainly in Jerusalem), and hundreds of families resided in these camps for weeks on end. The camps represented a combination of protest activity with a true attempt to find a place to live, and for many of these families, staying in these camps was an act of genuine despair.

Numerous cumulative factors had led to this crisis: reduced government provision of low-rent public housing for needy populations;<sup>31</sup> the abolishment of government housing projects for low-income families;<sup>32</sup> the rise in purchase prices of apartments;<sup>33</sup> low-income families' lack of the funds to make the down-payment necessary for purchasing an apartment;<sup>34</sup> and the rise in unemployment, which hindered apartment renting in the free market and increased defaulting on mortgage payments.<sup>35</sup> Most of these families were second- or third-generation socio-economically distressed and were growingly frustrated over their fate.<sup>36</sup>

At a certain stage, eighty-five families from Mevasseret Zion invaded a number of apartments in a new immigrant absorption center. They refused to vacate the apartments until adequate housing solutions were found for them. Apparently, some of the squatters equipped themselves with potentially explosive materials and threatened to injure themselves if evacuated by force. For about two weeks, the police negotiated with the families, and tried to persuade them to leave the building, but the parties did not succeed in reaching an agreement. On the night of July 3, the police acted to remove the squatting families by force.

The evacuation of the squatters from the Mevasseret Zion absorption center in July 1997 triggered similar squatting attempts in other towns, including in Beer-Sheva, Jerusalem, Lod, Ashdod, Carmiel, Netanya, and

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31 See Bar Dadon-Israeli, *Public Housing in Israel: A Proposal for Reform 8-9* (2000) (Hebrew). According to Dadon-Israeli, the government channeled its building activities during this period through private contractors and aimed to sell the new apartments rather than hold on to them through rental arrangements, which, at the time, were the most common way of assisting needy families.

32 See, e.g., Daniel Ben Simon, *Conflagration Across the Street*, Haaretz, July 6, 1997, at B2.

33 See Gilat Ben-Chetreet, *Housing Policy in Israel 12* (2003) (Hebrew).

34 See Hana Kim, *The Proclamation According to Mevasseret Zion*, Haaretz, July 7, 1997, at B1 (claiming that most squatters asked only for a fair and equal opportunity to purchase an apartment and contended that the initial obstacle was making the down-payment on the apartment).

35 This was partially due to the massive entrance of migrant workers to the Israeli work force.

36 See Yossef Elgazi, *The Third Generation Is Being Raised Now*, Haaretz, Aug. 1, 1997, at B4.

Or Akiva.<sup>37</sup> In Jerusalem and Lod, families with acute housing needs invaded empty apartments in absorption centers; in other towns they squatted in empty public housing apartments. In most cases, the State sent the police to vacate the squatters, and in some cases, considerable force was used to carry this out.<sup>38</sup> In almost all of the cases, the squatters were families from the *Mizrahi* ethnic community. This point is of great significance and is an important starting point in understanding the political dimensions of the housing struggle.

The squatting events took place alongside two parallel developments in Israel that began in the early 1990s: the absorption of hundreds of thousands of immigrants from the former Soviet Union and Ethiopia and the agricultural land affair in Israel, in which excessive monetary compensation was awarded to members of agricultural settlements (*moshavim* and *kibbutzim*) following the redesignation of their agricultural lands for industrial and residential uses. Both these developments involved the allocation of State resources in land and housing to two distinct groups other than the veteran *Mizrahi* residents in Israel.

The first development began with the arrival and absorption in Israel of over 600,000 immigrants in the period from 1989 to 1996. The vast majority of the immigrants came from the former Soviet Union following its collapse, and the minority were brought by the State from Ethiopia.<sup>39</sup> The government's official policy was to assist the immigrants to purchase apartments after a short period in an absorption center.<sup>40</sup> For this purpose, the government offered subsidized mortgages to the newcomers and assistance to any family wishing to buy an apartment.<sup>41</sup> The newcomers received significant financial advantages through this arrangement. Contrary to market-based mortgages, the sum of the government loan and its terms were not contingent on the

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37 See, e.g., Tzvi Alush et al., *Setting Up Tents, Invading Apartments*, Yediot Aharonot, July 24, 1997, § 2 (24 Hours), at 12; Rali Sa'ar, *10 Houseless Families Invade an Absorption Center in Lod*, Haaretz, July 21, 1997, at A9; Rali Sa'ar, *A Hundred Houseless People Invade a New 7 Story Apartment Building in Be'er Sheva*, Haaretz, July 23, 1997, at A12; Uri Binder & Said Badran, *Another Houseless People's Invasion — This Time in Beer-Sheva*, Ma'ariv, July 23, 1997, § 1, at 23.

38 In Beer Sheva, for example, 450 policemen, accompanied by dogs, equipped with helmets and weapons, and assisted by helicopter, were enlisted to vacate fifteen families squatting in empty public apartments.

39 State Comptroller, State Comptroller's Report 46, 133 (1995) (Hebrew).

40 On the historical aspects of the Israeli government's policy of preferring ownership of dwellings to rental arrangements, see Yuval Elimelech & Noach Levine-Epstein, *Immigration and Housing in Israel, Another Look on Ethnic Inequality*, 39 Megamot 243, 247-53 (1998) (Hebrew).

41 See Ben-Chetreet, *supra* note 33, at 12-13.

financial soundness of the immigrant family. The more needy the family, the better the terms of assistance.<sup>42</sup> Immigrant families were released from making the required down-payment if they did not have the necessary means; the interest rate on the government mortgages was significantly lower than the commercial bank loan rate; and families were allowed to "double-up" and combine two households in order to take larger mortgages to purchase bigger apartments.<sup>43</sup>

The policy that encouraged new immigrants to purchase their homes has had notable success. According to data collected by the Ministry of Housing, by the end of 1998 over 75% of immigrant families that had moved to Israel between 1989-1996 had purchased their homes.<sup>44</sup> In general, being a homeowner is considerably beneficial as compared to long-term rental. Homeowners gain from the increase in the value of their property; ownership offers a sense of stability and security and is a key factor in the transferal of inter-generational wealth.<sup>45</sup>

This last point is of vital importance. A significant number of families that faced acute housing needs in the 1990s were of *Mizrahi* ethnic descent, the offspring of immigrants who had moved to Israel from Arab and Muslim countries during the 1950s and 1960s. Many of these immigrants were sent to live in new development towns in the periphery of the country and were housed in poor quality public housing projects. A great number of the residents were unable to purchase their apartments and remained tenants in these dwellings.<sup>46</sup> As a result, they had no property asset to pass on to their descendents.<sup>47</sup> Levine-Epstein has shown the link between home ownership,

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<sup>42</sup> *See id.*

<sup>43</sup> According to a survey conducted by the Ministry of Housing, almost half of the immigrants assumed that if they were not able to fulfill their repayment obligations, the government would "bail them out" and not permit them to lose their homes. *See id.* at 13 (referring to Aharon Fein, *The Plans of Immigrants from FSU to Purchase an Apartment in Israel, the Results of a Survey Prepared for the Ministry of Housing* (1993)).

<sup>44</sup> *See* Ministry of Housing, *Monthly Information* 39 (Aug. 2000); *see also* Etti Konor, *Execution of Government Mortgages according to Region, Town and Special Groups, Update Papers 2* (Adva Center Sept. 2001) (Hebrew).

<sup>45</sup> *See* Peter Saunders, *A Nation of Home Owners* (1990); Blaire Badcock, *Home Ownership and Accumulation of Real Wealth*, 7 *Soc'y & Space* 69 (1989); Elimelech & Levine-Epstein, *supra* note 40, at 248; Ben-Chetreet, *supra* note 33, at 8-9.

<sup>46</sup> *See* Haim Darin-Drabkin, *Housing and Absorbition in Israel* 16-38 (1955) (Hebrew).

<sup>47</sup> *See* Neta Ziv, *Housing Law and Social Exclusion: The Case of Public Housing in Israel* (May 2004) (paper presented at The Annual Law and Society Association Meeting, Chicago, May 2004, on file with author).



inter-generational transfer of wealth, and socio-economic mobility<sup>48</sup> and how, in Israel, this factor can at least partially explain the correlation between ethnicity and socioeconomic gaps.<sup>49</sup>

A second development that served as the backdrop to the squatting events was what has been coined the "agricultural land" affair. This involved the granting of an exceptionally high monetary compensation by the State to members of agricultural associations (*kibbutzim* and *moshavim*) by way of a rezoning of their agricultural lands, thereby enabling them to utilize these lands for industrial and residential purposes. Most of the land in Israel (including agricultural land) is owned by the State, and thus this land is public property. Land designated for agricultural use is leased on a long-term basis to agricultural settlements. This usage is conditional: if the lessees stop cultivating the land, it must be returned to the State, and they are entitled to receive compensation based on their actual work, investment, and input in the land. Beginning in the early 1990s, the agricultural sector together with the Israel Land Authority (the public agency responsible for administering State lands) initiated a series of administrative decisions that facilitated changing the designated use of land from agricultural purposes to residential and industrial purposes.<sup>50</sup> These decisions included a clause providing for the compensation of the agricultural lessees upon return of the land to the State, calculated according to the new, altered land usage value. This value was, at times, vastly higher than the original agricultural value of the land to which the *kibbutzim* and *moshavim* were entitled according to their leases — which meant, at times, millions of shekels for these associations.<sup>51</sup>

These decisions generated vociferous public outcry, led mostly by a newly established NGO with a strong *Mizrahi* cultural-ethnic orientation, "The New Discourse — The *Mizrahi* Democratic Rainbow" (hereinafter "the Democratic Rainbow"). The agricultural land affair was conceptualized and publicly presented as a conflict between the two dominant ethnic

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48 Noach Levine-Epstein, *Family and Stratification: Patterns of Inequality Reinforcement*, in *Distributive Justice in Israel* 121 (Menahem Mautner ed., 2001) (Hebrew).

49 Elimelech & Levine-Epstein, *supra* note 40, at 262.

50 The process came about due to a combination of various factors: the decline of agriculture as a viable source of income over the years, the need to "unfreeze" land to build housing for the wave of incoming immigrants and entrepreneurship initiatives emanating from the agricultural movement itself.

51 On the distributive aspects of the agricultural land affair, see Yossi Yona & Itzhak Saporta, *Land Policy and Housing: The Limits of Citizenship Discourse*, 16 *Theory & Criticism* 121 (2000) (Hebrew).

groups in Israel, the *Mizrahis* and *Ashkenazis* (descendants of European immigrants), because the majority of the residents of most of the *kibbutzim* and *moshavim* (especially those in the center of the country, who stood to gain the most from the compensation) are of *Ashkenazi* descent. As a result of massive public protest against these decisions, the State appointed two public committees to deliberate the level of compensation granted to the agricultural sector under the Land Authority decisions.<sup>52</sup> In addition, in 2000, the Democratic Rainbow, together with ten academics, petitioned the Israeli Supreme Court, claiming that public monies were being allocated to a preferred sector at the expense of needy populations, particularly the *Mizrahi* residents of development towns and poor urban neighborhoods. The petition challenged the exceptional benefits awarded to the *moshavim* and *kibbutzim* and asked the court to nullify them based on distributive justice arguments. The Supreme Court accepted these claims and nullified the decisions.<sup>53</sup>

During this struggle, the exceptional economic privileges afforded to the agricultural sector were time and again cast against the inadequate governmental support given to needy families, especially in housing.<sup>54</sup> The agricultural land affair resonated with a powerful ethnic schism. Although the Supreme Court decision did not explicitly describe the legal conflict in ethnic terms, these tensions were a clear undercurrent in the case.<sup>55</sup>

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52 The Ronen Committee gave its recommendations in 1997. Although it did recommend somewhat lower compensation for the agricultural associations, the Democratic Rainbow still regarded this amount as too high. The Milgrom Committee was established in February 2000. In December 2000, it handed down its recommendations, stating that the compensation granted to the agricultural sector was unreasonable and that the prior Ronen committee recommendation should therefore not be implemented.

53 H.C. 244/00, *New Discourse, Ass'n for a Democratic Discourse v. Minister of National Infrastructures*, 56(6) P.D. 25. In August 2002, the petition was granted by the Israeli Supreme Court, following the declared stance of the Attorney-General (representing the State) rejecting the Israel Land Authority's decisions as unreasonable. Once the Ministry of Justice had decided not to defend the Land Authority in this matter, the door was opened for the Court to overturn ILA decisions. In this particular case, the Supreme Court based its decision upon distributive justice, a rather novel concept in Israeli administrative law.

54 See Democratic Rainbow, Position Paper, Land and Social Justice: The Entrenchment of the Agricultural Rights in the Land Compared to the Rights of Public Housing Tenants (Nov. 2000) (Hebrew), available at [http://www.ha-keshet.org.il/articles.asp?action=form&article\\_id=28](http://www.ha-keshet.org.il/articles.asp?action=form&article_id=28).

55 On the ethnic aspects of land allocation, see, for example, Ofer Petersburg, *The Struggle of the Keshet Democratit Is Upgraded* (Feb. 12, 2002), available at <http://www.ynet.co.il/articles/0,7340,L-1647568,00.html> ("The war between the Kibbutzim and Moshavim and the development towns ... is breaking new ground.

In sum, the housing crisis that led to the squatting events was, to a large extent, a *Mizrahi* issue. It arose against the background of growing frustration over the unequal distribution of State land and housing resources. While generous government assistance to new immigrants enabled them to buy their homes shortly after their arrival in Israel, many descendants of veteran immigrants from the *Mizrahi* communities lagged far behind without the means to obtain adequate housing, some without the means of even putting an adequate roof over their families' heads. And, at the same time, the State was awarding exceptional monetary compensation to yet another sector from which *Mizrahim* had largely been excluded: the agricultural settlements. As will be demonstrated below, this ethnic schism permeated the struggle that led to the squatting activities.

#### IV. THE MEVASSERET ZION SQUATTING INCIDENT — A POLITICAL OR CRIMINAL STORY?

##### A. Causal Stories

According to Deborah Stone, public events are explained through a causal story — a process by which we identify the origin of an issue and, from this source, draw a reasoned conclusion as to its consequences.<sup>56</sup> Since any event can be explained in a variety of ways, it is of crucial importance who is in a position to control the causal story and capture the public domain with an explanation of an occurrence. Causal stories often compete with one another: different groups put forth competing narratives as their respective explanation, their accepted and approved version, of reality. Stone claims that in order for a causal story to succeed and become acknowledged "public opinion," this explanation must move an issue away from complex models of cause to more simple, linear schemes — for example, towards an intentional model where actions are purposeful and consequences are intended.<sup>57</sup>

Borrowing from Stone's work, I suggest that there are various agents that participate in creating a causal story. Law, for example, is an instrument in the hands of the State, taking part in creating and supporting a particular

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The argument is about land, i.e., over millions of Shekels, and despite all the denials it conceals one of the most acute ruptures of Israeli society — between Ashkenazi and Mizrahi communities.").

<sup>56</sup> Deborah A. Stone, *Causal Stories and the Formation of Policy Agendas*, 104 *Pol. Sci. Q.* 281(1989).

<sup>57</sup> *Id.* at 282.

causal explanation of a certain event within the framework of competing causal stories. The media are another important mechanism by which a causal story can be promoted.

In the following sections I discuss both of these agents and focus on the way law was used to promote the causal story preferred by the state in the context of the Mevasseret Zion squatting incident in the Summer of 1997. In this case two competing stories were told. The stories were not totally exclusive, of course, and overlapped to a certain degree. However, they did differ in their underlying causal theme. For the most part, the squatters offered a political story as the cause for their unlawful behavior. It had to do with historical group inequality, past deprivation of the *Mizrahi* ethnic community, poverty, housing shortage, and discrimination in relation to new immigrants, on the one hand, and the veteran *Ashkenazi* population on the other. Any criminal behavior on the part of the squatters was a consequence of these circumstances. This was a complex story. There were numerous and cumulative factors, grounds, and sources that explained the act of squatting, some standing in stark contrast to two prevailing and central tenets of the State ethos: the agricultural settlements' fundamental contribution to the Nation and State-building and the *raison d'être* of the State of Israel as providing a safe haven and eternal homeland for Jews all over the world.

The State for its part promoted a rather different story, less complex in its reasoning and emphasizing the squatters' purposeful acts and intended consequences. This explanation was arranged in a criminal framework conforming to a linear structure. It emphasized the danger posed by the squatters and the threat emanating from their unlawful acts. It downplayed the complex political aspects of the events and accentuated their deviant, criminal features. It focused on the character of the people rather than on the course of events that led to their actions.

### **B. Media Portrayal of the Housing Struggle**

The media constituted an important channel and domain for the competing causal stories. In the media coverage of the Mevasseret Zion squatting incident, the two narratives contended with one another for over two weeks. The media were also present when the State, through its law enforcement agency, took the step of using massive force to evacuate the squatters, in an authoritative attempt to define and control the crisis on its own terms.

In the police evacuation operation on the night of July 3, hundreds of armed policemen, equipped with batons, helmets, dogs, and other crowd-control gear, raided the center and removed the squatters using massive force. Although there were severe clashes between the policemen and the

squatters, the latter were far outnumbered and easily removed from the scene. A leading *Mizrahi* activist noted with regard to the extent of police force that "the evacuation of squatters from Mevasseret [Zion] looked like pictures from Nablus and Hebron";<sup>58</sup> the head of the Mevasseret Zion Municipality similarly claimed that the excessive force used and scenes like these "were not observed even in Hebron."<sup>59</sup>

There was ongoing media coverage of the squatters and their plight both during the two weeks leading up to the evacuation and in the weeks following. The account put forward by the media contained mixed messages and diverse symbols regarding the nature of the affair. Some publications focused on the unlawful, criminal aspects of the squatting, placing emphasis on the illegal occupation of the vacant apartments, the squatters' threats to harm their own families if evacuated, and the fact that a few squatters had brought ammunition with them. This was presented as behavior which threatened and frightened some new immigrant families, who still lived in a number of apartments in the absorption center. Other publications told the story of deprivation and distress, underscoring the State's unequal distribution of housing resources among different groups in Israel and emphasizing the enduring deficient treatment of immigrant families of *Mizrahi* background and of their descendants.

On June 15, 1997, immediately after the squatters' invasion, the following item appeared in the daily newspaper *Ma'ariv*: "[H]ouseless [people] invaded the absorption center: 'We will blow ourselves up if they try to evacuate us'... immigrants in the absorption center: 'We are afraid.'"<sup>60</sup> Two days later, in the same newspaper, Yaakov Yona published an editorial describing some of the findings of a study that claimed that variances in the capacity of *Ashkenazi* families and *Mizrahi* families in Israel to assist their children in purchasing apartments result in economic disparities between the two ethnic groups. The *Haaretz* daily contained mixed messages as well: one item set the squatters against the new immigrants whose designated housing had been invaded;<sup>61</sup> the next day the same paper described the squatters in ambivalent terms, expressing sympathy for them due to their poverty but nevertheless

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58 Raviv Druker, *The Land Is Shaking*, *Ma'ariv*, Weekend Edition, July 25, 1997, at 30 (quoting Shlomo Vazana, spokesperson for the Democratic Rainbow).

59 Daniel Ben-Simon & Sami Sokol, *Policemen Used Force to Vacate the Houseless from Mevasseret Absorption Center*, *Haaretz*, July 4, 1997, at A1.

60 Golan Yossifon, *Houseless Invaded Absorption Center: "We Will Blow Ourselves up If They Try to Evacuate Us,"* *Ma'ariv*, June 15, 1997, § 1, at 12 (author's translation).

61 Sami Sokol, *85 Young Couples, Houseless, Invaded an Absorption Center in Mevasseret Zion*, *Haaretz*, June 15, 1997, at A17.

denouncing them for hoarding ammunition.<sup>62</sup> In the most widely-circulated Israeli newspaper, *Yediot Aharonot*, there was a less ambivalent portrayal of the squatters: "[T]hose who most suffer from the invasion are the new immigrants who live in the [absorption] center. The invaders cut off their electricity and disrupted their daily life, which is not easy to begin with."<sup>63</sup>

Even though the media occasionally referred to the massive force used by the police during the Mevasseret Zion evacuation, the squatters were predominantly depicted in the electronic and written media through a deviant, criminal lens. The general picture was of a violent, dangerous gang of ex-drug addicts, who posed a serious threat to the public.<sup>64</sup> Time and again, these squatters were unfavorably contrasted with the newcomers and cast as a threat to this vulnerable group.<sup>65</sup> The media also followed the subsequent cases of squatting that sprang up across the country following the

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62 Lilli Galili, *The First Time I Have a Bath*, Haaretz, June 16, 1997, at A1 ("It's hard to sympathize with people who accumulate Molotov cocktails in order to injure; it's hard not to sympathize with people who sleep in cars, raise children in tents and their marriage collapses on the way.").

63 Ora Arif, *From Here I Only Leave Dead*, Yediot Aharonot, June 15, 1997, § 1, at 18 (author's translation).

64 See, e.g., Raffi Mann, *Build Your Home, with Force*, Ma'ariv, July 4, 1997, § 1, at 9; Raffi Mann, *There is Reward for Violence and Disobedience of Law*, Ma'ariv, July 9, 1997, § 1; Binder & Badran, *supra* note 37, at 23; Shmuel Meiri, *Three Houseless Threatened to Burn Themselves up in the Ministry of Housing in Beer Sheva*, Haaretz, June 27, 1997, at A1; Zvi Zerachia, *Molotov Cocktails Were Thrown at the Police During a Violent Conflict with Houseless People in Mevasseret Zion*, Haaretz, July 3, 1997, at A1 (opening with the following statement: "Two policemen were injured last night in a violent clash with the houseless in Mevasseret Zion ..."). In Haaretz the next day, Daniel Ben Simon and Sami Sokel, *An Outburst on the Other Side of the Street*, Haaretz, July 4, 1997, at A1, the police were quoted on the amount of weapons found in the squatters' possession. See also Yossef Elgazi, *The Third Generation is Being Raised Now*, Haaretz, Aug. 1, 1997, at B4 (representatives of the State claiming that the squatters are "junkies and ex-cons"); Itim News Agency, *A Family Invaded an Apartment in Mevasseret Zion Again, Evacuated by the Police*, Haaretz, Sept. 1, 1997, at A12 (mentioning the immigrants' fears concerning the affair); Doron Meiri, *Houseless Squatters in Mevasseret Throw Molotov Cocktails at the Police Station in the Town*, Yediot Aharonot, July 3, 1997, at A16; Doron Meiri, *The Evacuation Battle Is Over*, Yediot Aharonot, July 4, 1997, at A4.

65 A few examples of such a comparison, which permeated the press during these weeks, are Yaakov Galanti, *The Jewish Agency Received Its Property, 114 Families Are Left Without Homes*, Ma'ariv, Aug. 26, 1997, Today, at 1; Daniel Ben Simon, *Conflagration Across the Street*, Haaretz, July 6, 1997, at B2 ("Why can a new immigrant from Russia get an apartment from the state and we, who serve in the army and are part of this country, are thrown to the dogs? This is a racist state ..."). A representative of the Jewish Agency is quoted as saying that 140 new immigrants,

Mevasseret Zion evacuation. During the similar events, the squatters were also described by the press in a deviant framework, gradually stamping out the political aspects of the struggle.<sup>66</sup>

It is noteworthy that some journalists criticized the media's portrayal of the invaders. Ben Dror Yemini, a *Mizrahi* journalist and activist, accused the television media of constructing a deviant image of the squatters:

[O]n TV the veteran residents of Mevasseret Zion were portrayed as a bunch of invaders ... the orchestrated background was just a preparation for the vigorous action of the [police] force to preserve social order. The policemen, even if they didn't know it, were agents of a social policy held by the Finance Ministry.<sup>67</sup>

And *Ma'ariv's* Yaakov Yona similarly claimed that "[t]he image of the houseless is corrupted in the media, pitiable and homeless people are depicted as a gang of violent criminals, who threaten law and order."<sup>68</sup>

In sum, the media served as an important platform for the causal stories competing for recognition and legitimacy. To be sure, it was not the only site of contention, but it was an essential one. The media had the power to portray the illegal aspects of the events and shape them accordingly. Of crucial importance in defining a "common sense" explanation of "reality" were the words chosen to describe the affair and its participants; where the account of the violent aspect of the events was positioned relative to the acute housing needs in the description of the course of events; the polarization and replication of minor events; the decision if and to what extent to quote public figures who attributed extreme meanings to the situation; the time slot in which the item describing the events appeared on TV, and so on.

This decision made by the media, of how to depict a story such as

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who are all "computer engineers" and the like from the former Soviet Union and South America, live in the building and as accentuating the fact that the squatters "carried knives.").

66 Rali Sa'ar, *Ten Families Invaded the Absorption Center in Lod*, Haaretz, July 21, 1997, at A9.

67 Ben Dror Yemini, *Victory of the Institutionalized Violence*, *Ma'ariv*, July 7, 1997, § 1, at 7 (author's translation).

68 Yaakov Yona, *Under the Sky*, *Ma'ariv*, July 8, 1997, Today, at 1. See also the description of invaders in Beer Sheva, who took hold of vacant public housing apartments towards the end of July 1997, in Yossef Elgazi, *The Third Generation Is Being Raised Now*, Haaretz, Aug. 1, 1997, at B4 ("The authorities claim that the invaders are ex-drug addicts. They respond: 'We do not deny that some of us are, but this did not prevent us from serving in the army and paying our taxes. Will we be judged for this all our lives?'").

the Mevasseret Zion eviction, ties into what Hall terms the political-criminal distinction, which reflects the majority-minority paradigm, i.e., the manner in which we determine the nature of a group.<sup>69</sup> The crucial issue at stake is whether a group can achieve the status of a legitimate minority that is struggling for political change. If it does succeed at this, then incidental unlawful behavior can be contained and tolerated by the audience formulating an opinion about its nature. On the other hand, if the group is considered an outcast, illegitimate minority, excluded from the acceptable political domain, then it is tainted *in total* by its unlawful behavior.

As illustrated above, in the Mevasseret Zion squatting incident, both narratives appeared in the media prior to the evacuation and participated in preparing the collective mental scene for the massive use of force during the enforcement of the evacuation.

## V. EXCESSIVE USE OF FORCE AS A MEANS OF SOCIAL EXCLUSION

### A. The Doctrine

The use of force by law enforcement agencies is strictly regulated and considered an exceptional authorization in any legal system. Under international law, two main documents embody the principles under which law enforcement agencies may use force: the 1978 UN Code of Conduct for Law Enforcement Officials and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>70</sup> The standards set by these codes authorize law enforcement officials to apply force only to the extent that is reasonably necessary to perform their duties — i.e., to prevent a crime or to assist in the performance of a lawful arrest of suspected offenders — and only after all available non-violent means have proved ineffective.<sup>71</sup> The use of force beyond these limits is considered "excessive."<sup>72</sup>

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<sup>69</sup> Hall, *supra* note 21.

<sup>70</sup> Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, U.N. GAOR, 34th Sess., Annex, Supp. No. 46, at 186, U.N. Doc. A/34/46 (1979) [hereinafter Code of Conduct]; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, U.N. Doc. A/CONF.144/28/Rev.1 (1990) (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders) [hereinafter Basic Principles].

<sup>71</sup> Code of Conduct, *supra* note 70, art. 3(a); Basic Principles, *supra* note 70, art. 4.

<sup>72</sup> See, e.g., Amnesty Int'l & CODESRIA, Monitoring and Investigating Excessive Use of Force 5-7 (2000).



The principle of proportionality is a central requirement in regulating the use of force in many domestic laws as well as in international law. Under this principle, the use of force by law enforcement officials must be proportionate to the seriousness of the offence or the threat posed and force applied only to the extent necessary to overcome this danger or to achieve a legitimate and authorized objective.<sup>73</sup> The application of these standards entails the use of discretion: the seriousness of the offense/threat is a matter of circumstances. Accordingly, the permissible extent to which force can be used is a derivative of the anticipated peril emanating from the perpetrator.<sup>74</sup> Whether force is excessive or not thus depends on the *perceived* gravity of the harm from the danger that law enforcement agents must confront and overcome.

Israeli law authorizes the police to use "reasonable force" in the course of an arrest and in the course of preventing a crime from being committed, and force can be used only to the extent necessary to carry out these objectives.<sup>75</sup> The police are also permitted to use reasonable force to disperse an "unlawful assembly," if the assembly involves the committing of an offense, constitutes a breach of the peace or public order, or is likely to cause such disorder.<sup>76</sup> The Israeli Supreme Court has ruled that in dispersing unlawful assemblies, the police are permitted to use reasonable force in order to overcome resistance to the execution of police duties.<sup>77</sup>

From a doctrinal point of view, therefore, the assumption is that in any particular situation, the use of force is a response to an assessable and existing risk. Whether a legal system tries to define the circumstances

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<sup>73</sup> See Basic Principles, *supra* note 70, art. 5(a). See also Code of Conduct, *supra* note 70, art. 3(b):

National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

<sup>74</sup> See Amnesty Int'l & CODESRIA, *supra* note 72, app. 2, at 36-37.

<sup>75</sup> See The Criminal Procedure Act (Arrest and Search) [New Version], 1969, 58 Dinei Medinat Yisrael 12, art. 19 (1969).

<sup>76</sup> See The Penal Law, 1977, § 151, L.S.I. Special Volume 49-50 (defining the offense of "Unlawful Assembly" as "[w]here three people or more assembled with intent to commit an offense ... conduct themselves in such a manner as to give persons in the neighborhood reasonable grounds to fear that the persons so assembled will commit a breach of the peace or will by such assembly needlessly and without reasonable cause provoke other persons to commit a breach of the peace, ...").

<sup>77</sup> C.A. 189/56, Odize v. Attorney-General, 11(1) P.D. 115, 117. See also Attorney-General Guidelines, Freedom of Demonstration, No. 3.1200 (Apr. 1, 1983) (updated Mar. 23, 2003).

that permit the use of force or leaves broad discretion to law enforcement agencies, the basic premise is that the State is reacting to a preexisting situation. This set situation projects a determinable degree of harm against which a certain level of force may be applied.

### **B. The Critical Approach**

As explained in section I, a critical approach to understanding the doctrine of excessive use of force questions the internal reasoning of this doctrine described above. The critical approach rejects the notion that there is an *existing* predetermined, measurable danger or threat against which a certain degree of force may be used, beyond which the force will be considered excessive. Rather, a combination of the methodologies described above leads to the following assertion:

The State constructs and develops the doctrine of excessive use of force in order to sustain and preserve its monopoly on violence. Excessive use of force is a means by which *the State itself* — through its political institutions, including the law — sets internal boundaries for its own application of violence. These boundaries are established in order to secure legitimacy for the monopoly that the State demands in its use of force, i.e., to persuade society that this monopoly is exploited in a just manner. Such legitimacy is achieved by constructing a public perception that a danger of a certain magnitude exists and predates the use of the force. The use of force paradoxically serves as one of the means for creating such a perception. Once this belief has been created and sustained, the State can apply the degree of force it deems sufficient to crush the threat and, at the same time, claim that this force conforms to the principle of proportionality and that the force applied is, therefore, not excessive.

To construct a perception of grave danger in circumstances of political minority dissidence, the dissident activity needs to be defused of its political potency and meaning. It is easier to justify the use of force against social deviants than against political dissidents. To successfully neuter the dissidence, the nature of the struggle must be transformed: the activities must be conceptualized as illicit and offensive behavior, and the actors must be stigmatized so as to set the struggle in the criminal framework. The group must be depicted as an illegitimate minority, excluded from the normative political realm. It is then easier to define the activity through the unlawful behavior of its participants. Criminal activity is commonly considered a type of social problem that justifies the use of force. The more deviant the image drawn of the dissenters and the greater the projected threat, the more force can be applied to suppress the opposition without being considered excessive.

### C. The Mevasseret Zion Event

The evacuation of the Mevasseret Zion squatters illustrates how the use of force was managed by the State to depoliticize and criminalize the events. The problem that led to the squatting was, in all respects, a political issue. The claims of unequal distribution of State resources in land and housing ran parallel to the acute ethnic tensions between the veteran *Ashkenazi* agricultural sector and the *Mizrahi* development town and public housing tenants, and between the new immigrants from the former Soviet Union and the veteran *Mizrahi* immigrants and their descendents. At the time of the squatting incidents, a bill that would entitle public housing tenants to purchase their homes at a considerable discount was being fought for in the Israeli Parliament, but had encountered government opposition and was yet to be passed. The generous government subsidies and monetary benefits to other sectors led to strong feelings of frustration, distrust, and anger within the *Mizrahi* community. Conventional channels of protest and activism did not seem effective, and the legitimacy of the government's policy in this area was eroding within this community.

The decision of the group of Mevasseret Zion residents to occupy vacant apartments in the absorption center signaled yet another stage in the challenge to the State's moral authority to impose what was deemed by the squatters as an unjust social and legal order. The squatters resorted to external, non-sanctioned violence, thereby threatening the law's claim to a monopoly on the use of force. Posed by such a challenge to *the law itself* rather than to any particular ends, the State chose not to pursue housing solutions for the squatters but, instead, to direct the crisis to the criminal law realm. The media facilitated this process by conveying simultaneously both political and criminal depictions of the affair and its participants. Since the squatters' cause enjoyed some public support, a heightened level of force was necessary to suppress the threat from an alternative claim to legitimacy and from the challenge to the law's supreme authoritative status. The illegal aspects of the event (threats by the squatters to harm themselves and their families and the accumulation of ammunition) were singled out, highlighted, and replicated by the press and the State. Thus a deviant shade was cast upon the group in its entirety, accentuating the threat the squatters posed to the public-at-large and to the new immigrants who lived in the absorption center building in particular.

The decision to use massive force during the evacuation of the squatters played an important part in this process of criminalization. The magnitude of the police force recruited for the orchestrated operation, the use of violence during the evacuation, the media coverage and drama, the arrests

— all can be understood as a means to diminish the political features of the conflict and transform it into a criminal episode. In order to ensure the repression of the opposition, the State had to utilize force of such a dimension so as to ensure the complete removal of all squatters from the scene and deter other protesters who might follow in the footsteps of the Mevasseret Zion squatters. To justify this level of force (so that it would not be considered excessive) a "proportional" appearance of dangerousness had to be constructed. In a dialectic manner, the massive force employed by the police took part in forming such an image of the struggle and its participants, as well as in the actual suppression of the act of resistance itself.

## VI. EPILOGUE: THE JUDICIAL PROCESS

The Mevasseret Zion squatting incident found its way to the judicial system through a number of cases. After the mass evacuation of July 3, some leaders of the group were brought to the Jerusalem District Court, and restraining orders (labeled "exile orders" by the squatters) were issued prohibiting them from coming near Mevasseret Zion for a certain period of time. Three of the squatters (Shlomo Bozit, Refael Avivi-Abdel Haq, and Eliahu Dahan) were indicted in the Jerusalem District Court following an incident a few days prior to the mass evacuation in which they assaulted policemen who tried to enter the apartments they were squatting in. The three were convicted based on their own confessions, and about a year after the verdict in the case, Justice David Cheshin sentenced the three to a combined suspended jail term and community service.<sup>78</sup> In his decision, Justice Cheshin condemned their actions, declaring them as having been harmful and posing a danger to themselves and others. However the decision did also express strong empathy with the accused. In fact, the majority of the decision is worded in a way that reintroduces the political struggle into the legal arena.

The decision describes the three defendants as "leaders of a social action group" made up of 330 couples, which launched oppositional activity against their mistreatment by the State due to the lack of housing assistance. The offenses, continued the judge, were performed against this background. After describing the wrongdoings committed by the three, Justice Cheshin continued to infuse the decision with the personal and social aspects of the

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<sup>78</sup> Cr.C. (Jm.) 465/97, *State of Israel v. Shlomo Bozit*, 32(2) P.M. 733 (decision given on Sept. 7, 1998).

case. The illegal squatting and assault on the policemen, he explained, were acts of "despair." The accused (and their families) bore a deep-rooted sense of maltreatment and neglect, which was "understandable and justified" from the perspective of their subjective points of view. This originated in the fact the State gave them no aid for housing and in their need to provide basic shelter for themselves and their families — "a necessary means of survival for any person, qua person." The Head of the Mevasseret Zion Municipality was quoted at length. He had explained that the three men had operated as part of an "action committee" that led a *social and public struggle* to raise public awareness regarding their problem and to try to arrive at a solution to this problem. Justice Cheshin quoted the Head of the Municipality describing how he had warned the State authorities about the need to find housing solutions for young couples, that the problem was "a ticking bomb," but to no avail.<sup>79</sup>

Bozit, Abdel Haq, and Dahan did not receive a harsh sentence. This aside, the significant point, however, is the court's rhetoric, which reintroduced the political and social dimension of the event and played down its deviant and criminal nature.<sup>80</sup> By and large, State criminal proceedings are the ultimate forum in which the State can depoliticize an act of political protest.<sup>81</sup> Decontextualizing unlawful behavior and focusing on the mere breach of law can strip the act of unlawful disobedience of its political meaning.<sup>82</sup> The individualized structure of the process can constitute the final step in the process of stigmatization.<sup>83</sup> In contrast, the Jerusalem District Court decision reconnected the unlawful act to its social and political origins and gave it an alternative meaning through the judicial process. Though a State institution, the court opened up a small space — albeit limited and finite in scope — for alternative, non-State use of force by minimizing the deviant aspects of individual political violence.

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<sup>79</sup> *Id.* at 736.

<sup>80</sup> On the relationship between the legal text — its rhetoric, choice of words, omissions, and emphases — and the perceived social order, see James Boyd White, *Law as Rhetoric, Rhetoric as Law, The Arts of Cultural and Communal Life*, 52 U. Chi. L. Rev. 684 (1985); Yoffi Tirosh, *A Rape Story — Not More; On the Politics of Textual Representation in Cr. App. 3031/98, the State of Israel v. Dan Shabtai*, 31 Mishp'ot 579 (2001) (Hebrew).

<sup>81</sup> Cf. Michael Welch, *Flag Burning, Moral Panic and the Criminalization of Protest* (2000).

<sup>82</sup> See Peter Gabel & Paul Harris, *Building Power and Breaking Images, Critical Legal Theory and the Practice of Law*, 11 Rev. L. & Soc. Change 369 (1982).

<sup>83</sup> See *id.* at 373.



The housing crisis in Israel is far from over. In 2003, following another wave of cuts in government subsidies for housing, squatting reemerged as a self-help solution for several hundreds of families with dire housing needs. But the nature of this squatting was different from the 1997 events noted in this article. The collective dimension of the activity was absent, and there was no organized attempt to use squatting as a form of political protest. Accordingly, the State chose to use another kind of force against these squatters: individual civil eviction suits. Since most squatters cannot afford to defend themselves in court or get legal representation, in nearly all such cases, they are swiftly evicted by a court order. Although a more obscure and subtle form of State violence, we again find law employed to suppress a form of resistance that is perhaps one of the only means available to poor and disempowered minorities.<sup>84</sup>

### CONCLUSION

In this article, I have offered a critical analysis of a familiar and well-known legal term: "excessive use of force." A doctrinal and positivistic approach would dictate inquiring into its meaning by discussing, analyzing, and understanding this term on the assumption that it embodies finite and predetermined parameters that are set against a changing reality. Under such a methodology, the principle of proportionality, for example — the core concept underlying excessive use of force — expresses a balance between competing State interests that antedate the application of force by law enforcement agencies.

The methodological departure point of the analysis put forth in this article approaches law from an external point of view. It views legal terms such as excessive use of force or the principle of proportionality as fluid concepts that are constructed, at times manipulated, by the State. What is considered "reasonable," "serious," "dangerous," etc., ought to be understood, under this approach, as contingent and indeterminable concepts that do not necessarily

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<sup>84</sup> On the political dimensions of individual legal disobedience in the area of housing, see Neta Ziv, *Lawyers Talking Rights and Clients Breaking Rules, Between Legal Positivism and Distributive Justice in Israeli Poverty Lawyering*, 11 *Clinical L. Rev.* 209 (2004).

*exist* — per se — but, rather, are legal terms of (political) art. They acquire their meaning only through a representation of a certain reality. The ability to be in a position of creating a certain image of reality and promoting a particular depiction of the truth is, thus, of crucial importance.

Since the State cannot rely on the use of its physical force alone to maintain social order, the use of force must rest on a public belief in its legitimacy. Excessive use of force, under this understanding, is a legal "device" that facilitates the dialectic process that makes it possible to achieve these ends. Although it (seemingly) defines the boundaries of the use of physical force by the State, the concept is simultaneously external and internal to this process. The concept rests upon definitions that require an apparent balance between alleged interests (the internal factor); at the same time the public belief in the existence of these interests (especially their scope and magnitude) is created by way of political measures aimed at confronting political resistance and maintaining the existing social order (the external factor).

This kind of analysis takes the doctrinal definition of legal concepts seriously, but, at the same time, scrutinizes these definitions in relation to the power structures within which they are applied. An analysis of this sort can be utilized in a variety of public contexts. The case of the Mevasseret Zion squatters ties into the Israeli socio-political scene and offers a critical view of the relationship between law and power in one of the most crucial areas of Israeli polity.

