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## Conceptual and Theoretical Foundations

### 1.1 Challenging Dominant Discourses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 1.2 Problematising Childhood, Law, and Rights

### 1.2.1 *Problematising Childhood*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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