

Michael Sfard, Human Rights Lawyer, “From Rule by Law to Rule by Gun”, 10.9.2025

Introduction

We are in another *Eyes on Gaza* gathering that has been taking place for almost three months. And these gatherings, as you know, are a combination of an educational act—we come here to hear details and information and to present viewpoints of experts of various kinds—together with an act of protest and opposition to the current situation, to the continuation of the war in Gaza, to the ongoing clashes that do not stop, and so on. Naturally, the great majority of our meetings are dedicated to what is happening in the Gaza Strip. But unfortunately, it is impossible not to also look at what is happening in the West Bank. And for this purpose, we have invited here the prominent expert in the legal field, attorney Michael Sfard, who specializes in human rights and has very often represented both human rights organizations and Palestinian activists and communities in the West Bank, before the High Court of Justice and other courts. We will hear from him about what is happening today, in parallel with the war in Gaza, [about] the severe deterioration in the rule of law—as he phrased it: “the rule of the rifle instead of the rule of law.” Please, Michael, eight minutes, and then we will open for questions.

Talk

Thank you, Ido, and thank you to the dozens who are here. It is very surprising and moving that in the middle of the day people come to listen to such a depressing topic. I want to share with you my insights about the change in the governing, ruling, and occupational character of our administration in the West Bank, as I experience it, as my team experiences it, and as everyone involved in representing Palestinians in the West Bank has been experiencing it since October 7th, since there is a change that is both quantitative and qualitative, and also almost philosophical in the way things are being conducted in the West Bank.

In the philosophy of law, it is customary to use two terms that appear to be opposing: ‘rule of law’, and ‘rule by law’. ‘Rule of law’ is a lofty concept, a visionary concept: that if we all together write the rules, the norms that will govern us, from an uncertain point of view of the future—because we will not know in advance on which side of the norm we will find ourselves in the future—then, if this is our approach, in the end what will govern us are those norms that we have created for us, and these norms will be applied equally to everyone, including those who are supposed to enforce the law. In this way we generate the most optimal reality, one that allows each and every one of us to actualize our individual qualities, fulfill our possibilities, and realize our basic rights as human beings. That is the theoretical, philosophical, moral idea of the ‘rule of law’, in a word.

‘Rule by law’ is a completely different concept. It does not deal with actualizing our individual qualities, to fulfill our possibilities, or with our optimal opportunities to achieve happiness. ‘Rule by law’ deals with control. Norms are used in order to control people, so that the government can rule, regulate, and determine the outcome. Rule by law is a much more totalitarian concept, much more dictatorial. And the tension between the two is part of what is dealt with in the philosophy of law.

Since 1967, in the territories that Israel occupies in the West Bank there has been rule by law. Yet, rule by law IS rule by law. Though the law is set by an entity in which the ruled population does not participate and does not take part in the process of drafting and passing those rules, yet, still there are rules, there is law. That is to say: there is no arbitrariness. There are rules, and everything functions according to rules. The rules can be draconian, because the ruled population did not participate in writing the law, and that is what we have seen for nearly six decades in the West Bank, and also in the Gaza Strip. But let us leave the Gaza Strip aside for now. In the West Bank we saw rule by law. The law is a tool to rule, to govern and control human beings, but it is built of rules, of norms, and not of orders that are conjunctural—“circumstantial,” relating to a specific person in specific circumstances.

That is what allowed lawyers, people who deal with law, to operate. Because from the moment a certain norm is written, even if it is draconian, even if it is anti-liberal and against human rights, it is still a norm. It is supposed to apply to a group of cases. It leaves a space for action to say that this norm does not apply in a certain case. In this case, you can argue in the following way for example against an arbitrary uprooting of olive trees: “You want to uproot the olive groves of my client because from that olive grove someone shot? Then there is a norm dealing with the question of when it is permitted and when it is forbidden to uproot that olive grove, and I will argue that this norm does not apply in my concrete case.” Thus, when there are rules, one can always try to argue that the rules do not apply. And sometimes the rules can even protect. The norms are not all draconian.

What has been happening since October 7th is complete dismantling of the rule by law, giving way to an arbitrary rule of force, of guns, of rifles. That is, people who have a rifle—and the people who have rifles in the West Bank are, almost entirely, Israelis: Israelis who are civilians and have received rifles from the Israeli Minister of National Security, Itmar Ben-Gvir, or from the army and soliders. By the way, many of those civilians who received rifles were conscripted after October 7, and those people who came and created terror in small Palestinian communities by simply entering and smashing, beating, stealing, and expelling—now they do it in uniform and with weapons.

What we see since October 7 is a continuous process in which there are no longer the rules that existed. As a lawyer I continue to do the same things I did before October 7th: I turn to the military’s legal adviser. I tell him: “Listen, here soldiers came and took from people their security cameras that they had installed in order to have warning if settlers come and raid their village, and there is no norm, no rule, no principle that allows soldiers to confiscate the cameras.” But then, either I get no answer, or I get the following answer: “We know it is not right, but we cannot really do much because this is the current situation.” Or they even justify it, and say there is no need for rules now, because the commander on the ground decided this is what should be done, so that is what should be done.

Thus, we see insane violence of sheriffs. And that is exactly what a sheriff means: rule by rifle and club. And we have many sheriffs throughout the West Bank who, together with their own people, enter into Palestinian communities—usually the smallest and most peripheral communities, but gradually also larger and larger communities—and without any legal backing apply massive violence. They enforce these communities, especially the smaller ones, to uproot themselves and leave. [Whether] we have the capacity to evacuate or not, there is no satisfactory answer from the authorities. They do not say: “This is wrong, we will employ the organized force of the state to ensure that these uprooted people will return to their place and prosecute those who carried out these acts.” Absolutely not. That era is over.

Therefore, as a lawyer I am faced with a situation I did not know before. I dealt with rule by law, a regime that is dictatorial, draconian, discriminatory, apartheidist, with interests to support one population against the other. But still it had norms, and I knew how to try to navigate, or I tried to navigate within those norms, and to protect as much as possible within such an evil regime, my clients. But today there are no norms, and the moment there are no norms then everyone does whatever he wants according to the gun he has in his hand.

Thus, we see, according to B’Tselem’s count, 60 or 70 Palestinian communities—depending on how one counts, sometimes the communities are split—that have been uprooted since October 7th. And we see many cases where access to agricultural lands is denied from the local population, which are private initiatives and private actions carried out on the ground: Someone puts up a roadblock or stands with a rifle and does not let people pass, for example. Of course, we can still appeal to the High Court of Justice, although not in any case. And even when the Court rules something, it does not necessarily get implemented. And if we complain that it is not implemented on the ground, we are told: “Go back to the High Court.” There is not even the minimum of rule by law that we had before.