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**Sexual offences and ethnic identity**

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## **SEXUAL OFFENCES AND ETHNIC IDENTITY**

ORNA ALYAGON DARR

### **Introduction**

Nationality and ethnic origin are not elements of the substantive norm. On the contrary, considering them would be an affront to the principle of equality before the law<sup>1</sup>. Nevertheless, in practice the legal proceedings in sex offences follow ethnic patterns and provide a public stage on which national sentiments are stirred, expressed, shaped, opposed and sometimes silenced or repressed.

This chapter reviews how British, Arabs and Jews in Mandate Palestine treated and mobilised the national or ethnic identity of the various participants in sexual crimes. The British rulers' strategy was to downplay the significance of the ethnic origin of the participants in the criminal proceedings. Nevertheless, occasional derogatory remarks sometimes slipped into the British façade of neutrality and betrayed prejudice against the inhabitants of the land. The Arab press mostly ignored the subject of sexual crimes. In the courts, however, Arab defendants and defence witnesses, unlike the witnesses for the prosecution, used ethnic labels. Arab defence lawyers sometimes tried to sway the British judges by portraying the ethnicity of their clients as a mitigating circumstance (thus trying to manipulate possible prejudices of the judges). Jewish complainants were not as forthcoming as their Arab counterparts, especially regarding intra-ethnic rape, and this chapter tries to offer some explanations. The exploits of Arab offenders, however, were often reported by the

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<sup>1</sup> Unless specifically defined as an element of the offence (such as the case of hate crimes) or as an element constituting jurisdiction (for example, sections 13-14 of the Israel Penal Code, 1977, establish extraterritorial jurisdiction in cases of offences against the Jewish people or Israeli citizens).

Jewish press, which seems to fluctuate between conscious attempts to avoid sensational coverage of interethnic sexual assaults so as not to stir political tension, and portraying the Arabs as sexually aggressive, especially dangerous to young boys or innocent young female Jewish immigrants. Based on the findings of this study, British, Jews and Arabs are clearly distinct in their attitude towards sex offences. The criminal proceedings served as an arena in which the different collectives could define and shape identities, of themselves and of the “others”.

### **Sex offences and ethnicity**

Sexual crimes in general, the feminist scholarship makes clear, can be understood as a gendered and hierarchical social phenomenon. Susan Brownmiller diagnosed rape as “process of intimidation by which all men keep all women in a state of fear”.<sup>2</sup> The study of rape as part of a wider sociocultural context led many scholars to extend their scope beyond gender. Much has been written about national, ethnic or racial patterns that are interwoven into the complaints, investigation and prosecution of sexual crimes.<sup>3</sup>

Analysis of statistical data demonstrates that sexual assaults tend to be committed against victims of the same racial, ethnic or national group.<sup>4</sup> Despite their

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<sup>2</sup> Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975), 15.

<sup>3</sup> On intersectionality and effects of multiple subordination see Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43(1991).

<sup>4</sup> Gary D. LaFree, "Male Power and Female Victimization: Toward a Theory of Interracial Rape," *American Journal of Sociology* 88, no. 2 (1982): 323. According to Amir only 3 to 4 percent of the rape cases in Philadelphia in the years 1958 and 1960 were intra-racial. Menachem Amir, *Patterns in Forcible Rape* (Chicago: University of Chicago Press, 1971), 44.

relative infrequency, cases of interracial or interethnic rape, draw much public and scholarly attention, their political significance being more evident.

The most extreme association between rape and nationality exists where rape is part of warfare. Rape can be an organized activity of the troops or militias as part of a war between nations, a civil war or an ethnic cleansing, or a negative “side effect” of the contact between members of the fighting forces and civilian population.<sup>5</sup>

National and ethnic aspects of sexual assaults are present not only in warzones but also in run-of-the-mill criminal cases. This is most evident when the accused and the alleged victim belong to different nationalities or ethnic groups, but such tensions can also be manifested where the judges come from a different nationality or ethnicity than the accused and witnesses (e.g. within a colonial context), or within a general public debate stirred by cases of sexual assaults.

The connection between racism and rape has been the subject of much research attention.<sup>6</sup> Rape, as an expression of power relations between collectives can also have a racial dimension, for example the widespread occurrence of rape of black female slaves by their white owners in US. Cases brought against black men for raping white women are more likely than those brought against white men to result in conviction, being attuned to cultural myths about ‘real rape’.<sup>7</sup> The role of racial

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<sup>5</sup> Tal Nitzan, ""Controlled Occupation": The Rarity of Military Rape in the Israeli Palestinian Conflict" (The Hebrew University, 2006), 184.

<sup>6</sup> Lisa Lindquist Dorr, ""Another Negro-Did-It Crime": Black-on-White Rape and Protest in Virginia 1945-1960," in *Sex without Consent: Rape and Sexual Coercion in America*, ed. Merrill D. Smith (New York: New York University Press, 2001); Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color."; Nicola Gavey, *Just Sex?: The Cultural Scaffolding of Rape* (New York: Routledge, 2004), 27.

<sup>7</sup> Susan Ehrlich, *Representing Rape: Language and Sexual Consent* (London; New York: Routledge, 2001), 19-20; Crenshaw, "Mapping the Margins: Intersectionality, Identity

stereotypes of hypersexed black men endangering white women was the focus of much scholarly attention, especially with relation to the southern US.<sup>8</sup> Some of the works emphasize the role of such stereotypes in supporting and shaping the rape myths,<sup>9</sup> and some were more sceptical about the significance of rape myths.<sup>10</sup> Intersectional feminism called for a broad research frame which takes into consideration various aspects of identity, such as race, gender and class.<sup>11</sup>

Such a nuanced gaze is prevalent in micro-historical analysis of rape cases, which emphasizes their role in establishing national and ethnic identity and constituting a community's boundaries and collective memory.<sup>12</sup> It demonstrates how gender imbalance intersects with other social features such as class, age, race, disability, and ethnicity.<sup>13</sup> Other works concentrate on interracial rape cases, (relating to both legal and extralegal means, such as lynching) in which sexual offenses of non-

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Politics, and Violence against Women of Color," 1266; Gavey, *Just Sex?*, 18, 26. Some US states had lesser evidentiary demands when a black man was charged with the rape of a white woman. Stephen J. Schulhofer, *Unwanted Sex: The Culture of Intimidation and the Failure of Law* (Cambridge, MA: Harvard University Press, 1998), 24-25.

<sup>8</sup> Daniel A. Cohen, "Social Injustice, Sexual Violence, Spiritual Transcendence: Constructions of Interracial Rape in Early American Crime Literature, 1767-1817," *The William and Mary Quarterly* 56, no. 3 (1999): 482-83. About the cultural narrative of the "black beasts" see Andrew E. Taslitz, *Rape and the Culture of the Courtroom* (New York: New York University Press, 1999), 28-31.

<sup>9</sup> Taslitz, *Rape and the Culture of the Courtroom*.

<sup>10</sup> Cohen, "Social Injustice," 485-86.

<sup>11</sup> Gavey, *Just Sex?*, 26; Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color."

<sup>12</sup> Leora Bilsky, "'Rothstein's Affair': Nachum Guttman, Local Mythology and the First Attempted Rape in Tel Aviv," *Iyunei Mishpat (Hebrew)* 26, no. 2 (2002); Leora Bilsky, "The City, the Woman and the Drifter: A New Reading of the Yaakobowitz Trial," *HaMishpat (Hebrew)* 16(2011).

<sup>13</sup> Constance Backhouse, *Carnal Crimes: Sexual Assault Law in Canada, 1900-1975* (Toronto: Osgoode Society 2008).

whites were used to bolster racial hierarchy, which protected the privileged status of the white community.<sup>14</sup>

The role of rape cases in reinforcing social boundaries was also examined from a theoretical perspective which focused on interracial rape as a metaphor. This scholarly work studied the linguistic and cultural aspects of legal discourse rather than legal doctrine taking centre stage.<sup>15</sup> Literary representations of rape in the colonial context included the metaphor of the English colonizers as rapists of the land, narratives of the dark-skinned native raping the Englishwoman and representations of women's bodies as 'undiscovered' lands.<sup>16</sup> The European fear of inter-racial rape, it was suggested, was related to the periodic instability of the colonial regime, and narratives like those mentioned above were used to neutralize the colonizers' dominance, by stressing the violence of native men, and to perpetuate traditional gender roles within English society.<sup>17</sup> Yet, intra-racial rape cases too preserved the

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<sup>14</sup> Bonni Cermak, "Race, Honor, Citizenship: The Massie Rape/Murder Case," in *Sex without Consent: Rape and Sexual Coercion in America*, ed. Merril D. Smith (New York: New York University Press, 2001), 231.

<sup>15</sup> Kristin Bumiller, "Rape as a Legal Symbol: An Essay on Sexual Violence and Racism," *University of Miami Law Review* 42(1988): 87.

<sup>16</sup> Nancy L. Paxton, "Mobilizing Chivalry: Rape in British Novels About the Indian Uprising of 1857," *Victorian Studies* 36, no. 1 (1992): 5-7; Elizabeth Philipose, "Feminism, International Law, and the Spectacular Violence of the 'Other': Decolonizing the Laws of War," in *Theorizing Sexual Violence*, ed. Renee J. Heberle and Victoria Grace (New York: Routledge, 2011), 184. For an example for the first metaphor see: William B. Ziff, *The Rape of Palestine* (New York: Argus books, inc., 1946).

<sup>17</sup> Jenny Sharpe, *Allegories of Empire : The Figure of Woman in the Colonial Text* (Minneapolis: University of Minnesota Press, 1993); Paxton, "Mobilizing Chivalry: Rape in British Novels About the Indian Uprising of 1857," 7.

colonial power grid, by adopting evidentiary standards which construct the native complainants as nontrustworthy.<sup>18</sup>

Since rape is closely associated with the social power grid, criminal cases that involve national or ethnic tensions can shed light on the less explicit means of constructing national or ethnic identity. In this chapter I suggest that cases of both inter-ethnic and intra-ethnic sexual assaults are employed in the construction of national and ethnic identity.

### **British attitude towards sex offences**

The British legal routine of specifying the defendant's father's name, age, religion and sometimes tribal membership of the accused on the titles of the hearings or information sheets, assists those interested in their social and ethnic background. Yet, other than this practical standard measure of ensuring the identity of the accused, the British tried to ignore ethnic characterization as much as possible. This is most evident in potentially socially explosive trials, such as brutal inter-ethnic gang rape. Such was the case of the rape of Rachel Levine, on June 22, 1946. Rachel, a 19 year-old Jewish woman from Kibbutz Eilon, went for a walk with Yaacov and Raphael to the near by Wadi Karkava.<sup>19</sup> They were stopped by four armed men, who led them off the road down the wadi. After taking off their wristwatches, the men were ordered to

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<sup>18</sup> Elizabeth Kolsky, "The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-57," *The Journal of Asian Studies* 69, no. 4 (2010).

<sup>19</sup> Unless otherwise mentioned, the details about the case were taken from the Supreme Court file of Cr. A. 31/47 *Fahed Kathem & Musa Ahmed v. A.G.* (1947), which contains the transcripts of all the proceedings held by the different instances in this case (including Crime No. 229/46, District Court of Haifa, *A.G. v. Fahed Kathem & Musa Ahmed* (1947)). ISA Division 30 (Supreme Court Files), File B/441, original docket # Cr.A 31/47 (*Fahed Kathem & Musa Ahmed v. A.G.*).

strip off their shirts, and were made to lie down facing the ground with their hands tied behind them. The armed men then threatened Rachel and forced her into some bushes with them, tore her shorts and raped her in turns for about 30–40 minutes.

The ensuing investigation, led to the indictment of two Bedouins, Fahed Musa and Musa Ahmad, for robbery and rape. Although much of the case revolved around the issue of identification, the formal legal discussion led by the prosecution appears indifferent to the ethnic identities of the protagonists. In contrast, the witnesses for the defence demonstrated that the ethnicity of the protagonists did matter and that the charge of rape of a Jewish woman by a Bedouin had political significance. Rachel and her companions, who testified for the prosecution, did not testify that they were attacked by Arabs, but rather described facts from which the identity could be inferred. They stated that some of their attackers were “in Arab dress” or “fellahin dress” and that they spoke in Arabic. The complainants described specific items of clothing items worn by their assailants, such as kafiyeh, hattats, and agals (head coverings), gumbaz (robes), and libas (drawers). Although much of the testimony related to the identification of the accused, the prosecution witnesses used quite neutral language. Thus, the British police inspector Daniel Day testified that the identification parades he oversaw included persons of “similar appearance, dress and race.” He did not explain how determination of “race” was made. Day testified that, in the first parade, all wore fellahin dress and that, in the second parade, some persons wore fellahin dress and others Bedouin dress.

The sufficiency of evidence, under a legal doctrine enshrining “the rule of law,” should not depend on political, social, or cultural considerations. When the accused in this case were convicted, the District Court stated, “Now the evidence in this case is purely one [a matter] of identity.” In this statement, Judge Weldon meant



“identification” and not “ethnic identity.” At the close of the trial Fahed was found guilty of robbery and attempted rape, and was sentenced to 15 years imprisonment for the former offence and 5 years for the latter (terms running concurrently), Musa was found guilty of robbery and rape, and was sentenced to 15 years imprisonment for the robbery and 10 years of imprisonment for the rape (terms running concurrently). The supreme court upheld Fahed’s conviction, but reduced the imprisonment term for the robbery to 10 years, to run consecutively to the 5 years term for attempted rape (the overall term remaining the same). Musa was acquitted by the Supreme Court. I turn to the judgment of the Supreme Court to see whether the judiciary really was indifferent to issues of social identity.

The Supreme Court agreed that the “case rests entirely upon the evidence of identification,” but majority opinion, written by Justice Shaw with Arab Justice Abdulhadi concurring, found reason to doubt the identification of Musa. Some of the doubt, it seems, arose from Musa’s ethnic identity. Justice Shaw referred to the ethnicity of the offenders, whom he dubbed “Arabs” or “these Arabs”. The complainants, however, were not referred to as “Jews” but, rather, were mentioned by their names or are described as “the two men” and “the girl.” Unlike the defendants, the complainants are defined by their personal traits, and not essentially by their ethnicity. In laying out the specific reasons for Musa’s acquittal, Justice Shaw found it significant that “the two appellants do not belong to the same tribe. The first appellant being a member of the Kheililat Arabs, while the second appellant is a member of the Arab Muwassi.” The judge apparently presupposed that gang rape could only be committed by members of the same tribe. The Supreme Court did not go so far as to cast doubt on Rachel’s credibility but remarked that the trial court failed to consider whether Rachel had been “honestly mistaken” about Musa’s identity. Having raised

these concerns, the majority opinion found reasonable doubt and overturned Musa's rape conviction. Fahed's conviction for attempted rape was upheld.

Acting Justice Curry's dissent more obviously engaged ethnic stereotypes. Curry relied on Palestinian precedents, which had admonished that evidence in rape cases be very carefully scrutinized (*Abu Zeid v. A.G.* (1942)) and had required corroborative testimony (Cr. Ap. 138/40, not published). His reasoning relies on a stereotypical view of the "natives":

"It is quite a common thing in this country for complainants to add a charge of rape to one of assault or robbery and it is not easy for an accused to defend himself successfully against such a fabricated charge" (*Fahed Kathem & Musa Ahmed v. A.G.* (1947)).

Curry argued here that the need for corroboration is not grounded in the nature of the crime rather in the dubious nature of Palestine's inhabitants, be they Jews or Arabs. Given his view of the credibility of native rape complainants, it is no wonder that, unlike his fellow judges, Curry found quite a few suspicious elements in Rachel's story and supported the acquittal of the defendants.

In a different case, Edith, a Jewish woman accused two men, a taxi driver and his friend, of raping her.<sup>20</sup> Both accused, Emil Naddi and Munjid Faris, were Arab Christians, 20 and 22 years-old, respectively. In her testimony for the prosecution, Edith did not mention the men's nationality or ethnicity. She did not call them "Arabs", but rather described them as "the driver" and "another man" (in contrast, she referred to the previous passenger in the taxi as "an Englishman"). The bench, however, did not display similar indifference to the ethnicity of the complainant and the accused. Judge Dickinson opens his judgment stating that "[t]he complainant was an admitted prostitute. She was obviously a nervous psychopathic case." But the lack

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<sup>20</sup> ISA/RG 30/Law 2048 (original docket # Cr.C 320/45).

of credibility, according to Judge Dickinson, stems not only from her undignified occupation or disturbed personality, but also from the ethnic attributes of the complainant and both accused. The judgment declares that “[f]or a Jewish girl to get alone into an Arab taxi with 2 Arabs at 4 a.m. was inviting immoral advances”.

On the surface, the British prosecution projected indifference to ethnic and national identities of the participants in the criminal trials. Impartiality and neutrality were cornerstones in gaining legitimacy as just rulers. Yet, occasional judicial expressions betray prejudice against local inhabitants. The prejudice sometimes targeted particular ethnic groups, and on other occasions, the local inhabitants in general. Furthermore, sending out an air of disinterest does not rule out that the British were well aware of the disruptive potential of inter-ethnic sexual assaults,<sup>21</sup> or possible allegations of discriminating against local victims.<sup>22</sup>

### **Arab Attitude towards sex offences**

The British authorities orchestrated the prosecution, therefore the tendency of the prosecution witnesses was to use neutral terminology to describe ethnicity is not surprising. In contrast, Arabs who were witnessing for the defence in interethnic rape cases, used direct ethnic labels. The accused in the rape of Edith dubbed her the “Jewess” or “the Jewish woman” throughout their testimonies. The Bedouin accused in the rape of Rachel started their testimony by introducing their tribal identity. Fahed’s first sentence was “I am of Kleitat Arabs.” Musa’s first words were “Of Arab

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<sup>21</sup> For example, in a telegram from August 21, 1947, all CID departments were instructed to report the headquarters immediately about all cases in which Jews complained about Arabs, in a list of offences, including sexual offences. HA 47-891.

<sup>22</sup> On some occasions the British were accused of discriminating local victims of sexual offences, in comparison to foreign citizens. See for example an article protesting selective enforcement, and claiming that when the victim was an American woman, the perpetrators were instantly caught, tried and convicted. However, when the victim was a Jewish girl, the authorities were foot-dragging. *Davar*, 23 May 1928, p. 3.

Mowassi in Bassa lands.” Fahed referred to the “British Inspector” and testified that “a Jew now identified me.” Musa’s uncle described a harvest day when the police requested that his reapers (his nephew included) come for identification in “a case of the rape of a Jewish girl.” He told the court he had seen the police collecting the “Bedouin Arabs” and had heard from his nephew about “the rape of the Jewish girl.” The latter statement contradicted his earlier statement that the police had informed him of the rape, but he was consistent in referring to the incident as “the rape of the Jewish girl.” At the end of the trial Musa stated, “I have lived near to Jews for the past seven years and never done anything of this sort.” These words also acknowledge a context in which rape is part of the regional politics, the interethnic rape is not merely an offence committed by certain man to an individual woman, but an injury committed by the Arab to the Jewish collective.

It is evident that, at least for the defendants, cases of inter-ethnic rape were part of a broader context of Arab–Jewish relations having political and social significance. Within this broader context, sexual relations between Jews and Arabs were perceived as threatening by both communities.<sup>23</sup> Forcible rape of a Jewish woman by a group of Arab men represented an explosive situation. The rape could be interpreted not only as a threat to Jewish women but also to Jewish masculinity. Rachel’s friends, Yacov and Raphael, on top of being robbed, were also victims of the sex offense, lying tied face down on the ground, aware of what was going on behind the bushes but completely helpless and unable to protect Rachel. The fact that Jewish masculinity was also ravaged might have intensified the ethnic tension.

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<sup>23</sup> Tammy Razi, "Jewish-Arab Women? Ethnicity, Nationality and Gender in Mandate Tel Aviv," *Theory and Criticism (Hebrew)* no. 38-39 (2011): 147, 50.

Arab lawyers went beyond the use of ethnic labelling, and actively invoked ethnic stereotypes while defending their clients. Jamal Eff. Hamad, the Arab attorney who defended the accused in the rape of Rachel, argued for mitigating circumstances based on their origin. Contradicting the denials of his Bedouin clients, he described them as “young men. Shaken by seeing a girl in shorts with two young men. Provocation for men such as accused, who are ignorant and fanatical and led away by inflammatory propaganda.” These short, meaning-laden statements were tailored to a stereotypical narrative that might have swayed the British judge to find mitigating circumstances. They may not have reflected Hamad’s own views but, rather, his assessment of the judges’ prejudice. The implication here was that the guilt of the accused—illiterate Bedouin from the Galilee—was lessened by their backward upbringing, which made them vulnerable both to provocative sights such as women in shorts in the company of men and to “inflammatory propaganda.” The susceptibility of the accused to propaganda hinted at a context of tense Jewish–Arab relations. Rape, it was insinuated, was also a political, and even nationalistic act.

Methodologically, one should be careful not to ascribe sincerity to lawyers’ arguments in court and to note that their arguments may not represent their personal views.<sup>24</sup> It may very well be the case that the advocate tailored his argument based on his appreciation of where the British prejudice might lie. This possibly occurred in a different case, in which three family members were accused of raping an eight year-old girl.<sup>25</sup> They pleaded guilty, and their lawyer argued that this was an act of revenge, based on an “old custom” as the girl’s father raped the sister of the two of the

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<sup>24</sup> Mitra Sharafi, "A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire," *Law & Social Inquiry* 32, no. 4 (2007): 1080.

<sup>25</sup> ISA Division 30 (Supreme Court Files), File B/186/40, original docket # Cr.A 40/34

accused two years ago. The rape was committed “not to satisfy carnal desire but to wash away dishonour”. The judges of the district court (two Arab judges presided by a British judge) remained sceptical: “should such a custom in fact exist, the Courts cannot for a moment accept it or give it recognition; it is a custom which should ... be uprooted forthwith”. The appeal, drafted by Naseeb Abcarius Bey, a prominent Arab lawyer (a Coptic Christian who worked in Sudan and Egypt as well as Mandate Palestine)<sup>26</sup> repeated the argument about old custom. The judgment, written by J. Khaldy, an Arab Chief Justice of the Supreme Court, denied the existence of such custom: “The members of the Court are familiar with the custom among fellahin of killing in revenge for deflowering of a woman who is related to the murderers but not one of the members has ever heard of the alleged custom of avenging one's sister's rape by the rape of a female relation of the ravisher let alone a brutal ravishment as in this case by two men of a little girl of eight.” The argument of the Arab defence lawyer demonstrates both an explicit reference to the ethnic identity of the accused, and its deployment in regard of possible bias of the colonial rulers.

The explicit reference to the national and ethnic identities is made when suspects rank the gravity of the crime according to the victim's ethnic or national identity. The rape of an English woman was regarded far worse than the rape of a Jewish woman. Thus, Hassan Zein, who robbed and attempted to rape an English Lady, explained that he thought she was a “Jewess”.<sup>27</sup> An article which depicted sexual harassment by a group of local children of the British governor's wife and her Arab friend who visited Hebron for the Ramadan supposed the ruffians took them for

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<sup>26</sup> Nathan Brun, *Judges and Lawyers in Eretz Israel* (Jerusalem: The Magnes Press, 2008), 341 n. 9.

<sup>27</sup> ISA/RG 30/Law 2036 (original docket # Cr.C 213/44).

Jewish women.<sup>28</sup> Sexual assaults, it seems, were perceived as more severe when the victim was a British rather than a Jewish woman.

The Arab press in Mandate Palestine was active and diverse, but the subject of rape was silenced. It is extremely rare to find a report of sexual assault, although the vast majority of the accused and victims of sex offenses were Arab. One rare report of sexual assault was published in *Palestine*.<sup>29</sup> The newspaper used to publish on its front page opinions, latest developments in pan-Arabic issues and “funny” or “amusing” stories. This story is about an arrogant young man who was riding his horse in one of the Gaza streets. Having noticed a woman staring at his horse out of her window, and thinking she was staring at him, he tied his horse, went up to her flat and tried to hug her. Hearing the woman’s screams, her neighbours came to rescue and rebuked the young man. After her husband had returned home she told him what happened, and he decided to approach the young man's father. He met the father in the market, and once he laid down his accusations the father hit him. The article wonders whether this young man belongs to a higher class, of those who call themselves “princes of the land”. Sexual harassment was not the focus of the story, but rather an illustration of class degeneracy. The gravity of the assault is lessened, as it is described as a “hug”, though the screams of the wife until her neighbours came to her rescue, imply that a more severe incident had occurred.

While Arab victims of sex offences, in many cases, did not hesitate to complain to the authorities, it seems that this subject was not “proper” for public discussion in the press. The Jewish attitude seems contrary, as the subject of sex offences is reported and discussed in the press, but Jewish complainants were few.

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<sup>28</sup> *Haaretz*, 28 May 1923, p. 2.

<sup>29</sup> *Palestine*, 11 September 1931, p. 1.

### **Jewish attitude towards sex offenses**

Out of 121 cases of sexual assault on which this study is based, in 111 cases the accused were Arab and one was Jewish. In 84 of the cases the victims were Arab, and in 22 cases they were Jewish. It is highly improbable that only or mostly Arabs committed sexual assaults. The Jewish press reported about several cases in which Jews were charged with sex offences, although these cases are few in number.<sup>30</sup> Since, the corpus of criminal files which I have obtained includes all cases that were heard by the Haifa District Court between 1939-1948, I assume that the absence of Jewish defendants is a social pattern which requires an explanation. The explanation does not lie in the demographic composition. While in 1922 the Jews made up about 25% of Haifa residents and the Arabs around 75%, in 1944 Arab composed only 46%.<sup>31</sup> One would expect more Jews to be accused of sex offences.<sup>32</sup>

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<sup>30</sup> *Doar Hayom*, 5 September, 1928, p. 4 (Jew arrested on suspicion of rape), *Davar*, 31 July, 1929, p. 4 (Jewish defendant acquitted), *Davar*, 1 August, 1935, p. 7 (Binkvitz and Urich convicted), *Davar*, 11 November, 1935, p. 6 (Yemanite girl raped by a Yemanite man), *Davar*, 30 January, 1936, p. 5 (Zecharia Cohen acquitted), *Davar*, 9 October, 1936, p. 10 (Max Trichter acquitted), *Davar*, 1 November, 1939, p. 6 (David Cohan convicted), *Davar*, 24 December, 1939, p. 5 (Meir Neustein imprisoned for 2 years for rape),

<sup>31</sup> May Seikaly, *Haifa : Transformation of a Palestinian Arab Society 1918-1939* (London: London : I.B. Tauris, 1995). Haifa was the largest city in the district. Taking into account Acre and the Arab villages in the Galilee, the Arabs-Jews ratio in the whole district was probably different.

<sup>32</sup> Had the files of the Tel-Aviv District Court from the Mandate period survived, we would have had a better indication to the extent of prosecution of Jewish defendants in sexual assault cases, since this court was designated to Jewish litigants. Nathan Brun, *Law, Passions and Politics: Judges and Lawyers between the British Mandate and the State of Israel* (Tel Aviv: Steimatzky, 2014), 141, 44-45.



Most cases of sex offences in Mandate Palestine were committed within the ethnic or national group (only 22 of the 121 cases in my corpus are cases of inter-ethnic or inter-national sex offences). Much has been written about the deterring effect of the *via-dolorosa* which awaits victims of sexual offences who wish to complain, including a humiliating investigation by the police and on the witness stand (sometimes described as a “second rape”).<sup>33</sup> Is it possible that Arabs and Jews were differently affected by these prospects?<sup>34</sup> In a traditional society, which cherishes virginity, its loss, though through no fault of the victim, may injure the victim’s social standing and chances of marriage. However, not only Jewish but also Arab society in Mandate Palestine included a traditional sector, so that this variable cannot explain the higher proportion of Arabs reporting sex offences.

It is hard to obtain information about cases in which the victims were too timid or ashamed to complain. Three rare incidents of complaints by orthodox Jews in the Ottoman period provide us with some insight into the mentality of the orthodox community on the subject of sexual offences. The Orthodox Jewish community that resided in the holy land at the second half of the nineteenth century (dubbed the ‘old Yishuv’) was reluctant to discuss openly sexuality and violence.<sup>35</sup> In 1903 a

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<sup>33</sup> Nazife Bashar, "Rape in England between 1550 and 1700," in *The Sexual Dynamics of History*, ed. The London Feminist History Group (London: Pluto Press, 1983), 35; Sarah E. Ullman and Henrietta H. Filipas, "Correlates of Formal and Informal Support Seeking in Sexual Assault Victims," *Journal of Interpersonal Violence* 16, no. 10 (2001); Susan Estrich, *Real Rape* (Cambridge MA: Harvard University Press, 1987), 23; Julia R. Schwendinger and Herman Schwendinger, *Rape and Inequality* (Beverly Hills: Sage, 1983), 2.3-24 About other reasons for reluctance to complain see Temkin, *Rape and the Legal Process*, 3-4, 17-19

<sup>34</sup> About ethnicity and willingness to file a complaint about sexual assault see Gavey, *Just Sex?*, 26-27, 51-52.

<sup>35</sup> Margalit Shilo, *Princess or Captive? Jewish Women in Jerusalem, 1840-1914 (Hebrew)* (Haifa: Haifa University Press, 2001), 20.

newspaper published a rare report about a mother of a seven year old girl that spread her daughter's dress before the rabbis and demanded them to investigate the rape of her daughter by a Yeshiva student.<sup>36</sup> The word "rape" was not explicitly written, but the incident was described by an allusion to the biblical story about Dinah.<sup>37</sup> The publication stirred havoc, but not because of the injury to the child, but rather because of the embarrassment and shame the community would face.<sup>38</sup> Another incident of rape within the Orthodox community of Jerusalem was reported in 1912.<sup>39</sup> A pamphlet which accused a hotel owner from the ultra-Orthodox community in Jerusalem of raping a fourteen year old girl who was a guest, and the ensuing debate, led the hotel owner to charge his accuser with libel. The case was heard neither by an official Ottoman court nor by a religious Jewish court, but by a voluntary tribunal of the Jewish community. The tribunal was headed by Rav Kook, a distinguished religious authority, who appointed six more members, three of the modern Jewish intelligentsia and three affluent business men. The case stirred fierce debate within the Jewish community, but the disagreement was kept inside the boundaries of the community, and the authorities were not involved. In 1913 another reported case of attempted rape occurred in Tel Aviv. A Jewish labourer broke and entered through a bath window and attempted to rape a 16 year old girl, who screamed and was saved by her neighbours. The Tel-Aviv council, a voluntary body of the then newly

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<sup>36</sup> *ibid.*, 231. *Hashkafa*, 27 November 1903, p. 2.

<sup>37</sup> Genesis 34.

<sup>38</sup> Shilo, *Princess or Captive?*, 233. *Hashkafa*, 4 December 1903, p. 3.

<sup>39</sup> The information about the case is taken from Nathan Brun, "Jaffa 1912: Rape of a Girl in Mea-Shearim Jerusalem," *Katedra*, no. 142 (2012).

established Jewish neighbourhood, faced a stressing dilemma.<sup>40</sup> On the one hand, criminal enforcement requires police, detention facilities, courts, jurisdiction, all of which were facilities and institutions the small Hebrew community lacked; on the other hand, handing the suspect over to the Ottoman authorities would damage the community's autonomy.<sup>41</sup> The council resolved not to inform the Ottoman authorities, but to deport the suspect abroad.

These examples reflect the Jewish community's tendency to handle such cases internally. Even at those rare occasions, where community members demanded inquiry, they did not bring the matter before the state authorities, but rather before the community's voluntary tribunals.

Five waves of Jewish immigration to Palestine starting around the beginning of the twentieth century changed the composition of the local community.<sup>42</sup> The first wave (1891-1903) doubled the Jewish population in Palestine with around 25,000 immigrants of mostly lower-middle class families from Russia, Romania and Yemen who wished to leave behind the deteriorating political and economic conditions in their countries of origin. The second wave (1904-1914) brought around 35,000 Jews, mostly from Eastern Europe. The pioneers, young people committed to Zionism and socialism (many of whom belonged to revolutionary parties in Russia) were not the

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<sup>40</sup> The description is based on Bilsky, "'Rothstein's Affair': Nachum Guttman, Local Mythology and the First Attempted Rape in Tel Aviv."

<sup>41</sup> *ibid.*, 428.

<sup>42</sup> About the standard periodization and its criticism see Hizky Shoham, "From 'Great History' to 'Small History': The Genesis of the Zionist Periodization," *Israel Studies* 18, no. 1 (2013): 32; Gur author Alroey, *An Unpromising Land: Jewish Migration to Palestine in the Early Twentieth Century* (Stanford, CA : Stanford University Press, 2014), 5, 11.

majority of these immigrants, but were clearly in the focus of the Zionist ethos.<sup>43</sup> The 1917 Balfour Declaration expressed British commitment to establishing national home for the Jews in Palestine. After WWI and the constitution of the British Mandate in Palestine, Jewish immigration continued with around 35,000 immigrants in the third wave (1919-1923), with prominence of young pioneers until 1921. About 62,000 immigrants (mostly from Poland) arrived in the fourth wave (1924-1933), many of whom settled in the cities. The fifth wave (1933-1939) included close to 300,000 immigrants, mostly middle class, who were driven from Europe with the rise of the Nazi regime. Most of these immigrants, be they socialist pioneers or urban bourgeoisie, were more “modern” than the ultra-orthodox Jews of the Ottoman Period. One would expect them to be more open about matters of sexuality, less worried about the reputation of themselves, their family or community should it be known that they had been victims of sexual offences.

Not only did pioneer women shy away from complaining about sexual abuse, those who exposed such incidents could have faced sanctions.<sup>44</sup> In 1927 an official of the Jaffa Worker’s Council was accused of misdoings, including sexual harassment of

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<sup>43</sup> Alroey, *An Unpromising Land: Jewish Migration to Palestine in the Early Twentieth Century*, 20-21.

<sup>44</sup> A literary example reflecting this atmosphere is found in the unpublished manuscript of Rivka Alper, pioneer-author who tells the story of Dinah, who blamed herself for being rape, and did not even consider complaint to the authorities. Alper’s first book was met with hostility – one reviewer sarcastically asked if it’s proper that a woman-pioneer, one of those who labour as hard as the man, should also be a pioneer of sexual descriptions. The Alper’s story and biographic information by Ruth Beckie Colodny were published in *Haaretz*, 11 April, 2014, <http://www.haaretz.co.il/literature/prose/.premium-1.2291395..>

female comrades by attempted kisses, indecent proposals and nightly visits.<sup>45</sup> The council nominated a board of inquiry that prepared a secret report that asserted that the charges, except of general indecency, were mostly unfounded. One board member dissented, claiming that the conclusions were politically biased, and that a number of female comrades were too embarrassed to testify. This minority board member published his opinion in an opposition magazine, and was tried by a Comrades Law Tribunal,<sup>46</sup> which found him guilty of “unlawfully publicizing secrets from a judicial chamber”.<sup>47</sup> Just like the old-Yishuv ultra-orthodox community, the Zionist-socialist environment displayed dismay at allegations of sexual abuse, and concern of their smearing effect on the community’s reputation.

A rare autobiography of a female pioneer, Henya Pekelman, *The Life of a Worker in her Homeland*, originally published in 1935, contains an exceptional testimony about her rape by a fellow pioneer, Yeruham Mirkin.<sup>48</sup> Henya described him as a corrupt person, lazy, and self-indulgent. Henya worked with Yeruham in a tobacco farm he established, and testified against him when he was sued for irregularities with investor’s money. Yet, when he later raped her, she gave up on legal proceedings.<sup>49</sup> It is obvious from Henya’s writing that being a rape victim was

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<sup>45</sup> The description of the incident draws on Ronen Shamir, *The Colonies of Law: Colonialism, Zionism, and Law in Early Mandate Palestine* (Cambridge: Cambridge University Press, 2000), 140.

<sup>46</sup> For background about comrades law in Palestine see *ibid.*, 135.

<sup>47</sup> *ibid.*, 140.

<sup>48</sup> Henya M. Pekelman, *The Life of a Worker in Her Homeland* (Or-Yehuda: Kinnert, Zmora-Bitan, Dvir, 2007).

<sup>49</sup> Henya’s straightforward and candid writing turns to silence when she describes the rape, which is represented by a few lines of dashes. “-Why are you locking the door? I asked. -The landlady does not allow strangers to enter the room, -- he responded. I immediately felt his

perceived by society as a violation of the codes of sexual modesty.<sup>50</sup> When Henya found out she was pregnant she was on the verge of suicide.<sup>51</sup> She moved north and lived under an assumed name until the birth of her daughter. Had she not become a mother, the rape might have remained unknown, a well kept secret, but having a child exposed unmarried Henya, who courageously confronted her old friends, to social pressures. Henya even considered complaining to the authorities about the rape:

“I started to think what should I do now. I decided to go to the government and ask for advice, can I seek revenge. All I wanted was revenge. I came to the police and told everything to officer Cohen. First he asked me why didn’t I go to the government immediately after the act. I answered that I was very naive and was too ashamed to tell anyone. The officer responded that the government can find out the truth, but can take no action without witnesses. I must go to the offices of the offices of the Rabbinate, and the government could intervene on the basis of their judgment. I left the police, but did not go to the Rabbinate: I knew what the verdict would be: he should either marry me or pay compensation. I did not want to marry such a villain nor did I want money from his hand. Can money heal my misery? No! Should he pay he’d feel as if he had atoned for his sin, and I did not want that”.<sup>52</sup>

When she finally braced herself to complain, the encounter with the justice system was discouraging. Henya’s account may shed light on the scarcity of Jewish complainants and Jewish suspects in the corpus of cases which I was able to obtain. Others may have been likewise dissuaded. Henya did not accept the officer’s suggestion to seek the help of the Rabbinate, a patriarchal institution that could only offer her solutions that would preserve her inferiority. Henya sought justice her way.

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deceit and wanted to exit the room, but Yeruham forcefully held me. We began to struggle until I got a hard blow on my head and fell to the floor.-----

----- I remember nothing more. I only remember myself pacing on the beach like crazy” (translation mine). Ibid., 163.

<sup>50</sup> Tamar B. Hess, "I Am Not Alone in the World: The Memoirs of Henya Pekelman," in *The Life of a Worker in Her Homeland* (Or-Yehuda: Kinneret, Zmora-Bitan, Dvir, 2007), 227.

<sup>51</sup> Pekelman, *The Life of a Worker in Her Homeland*, 166-67.

<sup>52</sup> *ibid.*, 188.

She published her story in a book, and clearly stated on its first page “I do not intend to blame anyone or demonstrate my righteousness. But I could not surrender to society’s requirements and taste”. Reporting the rape publicly is an act of defiance. Society, it seems, was not ready. Henya’s testimony stood in brilliant solitude for many years, and her book got no responses until the end of the twentieth century.<sup>53</sup>

Yet, Pekelman’s insistence to sound her voice was exceptional, and even she had no words to describe the rape, but a series of dashes. Even Henya Pekelman wished she were dead (indeed, she committed suicide fifteen years later). Others, with less strength, did not last that long. Chaya Probtzam, a recent immigrant from Germany, committed suicide four days before she was scheduled to testify against her rapist in court. Unfortunately for Chaya, on her way back from a visit in Ramat Hakovesh, the Kibbutz where she planned to settle, she got a ride with Shafiq George Halaby, a serial rapist. A newspaper article described: “The life of Chaya Probtzam was destroyed. The terrible experience in her first days in the country... the loss of her chances to enter Ramat Hakovesh, meeting the rapist before the police and before the magistrate, and the rapist’s confidence that nothing bad would happen to him, his cynical laughter, lack of help in the matter of her disaster, sadness from every direction in the Tel Aviv turmoil depressed her. ... She said she had no energy to go to court, that she could not bear it all”.<sup>54</sup>

The data reflect little tendency of Jews to complain about fellow-Jews in cases of sexual offences. It is hard to tell whether informal sanctions were posed on transgressors within the Jewish community. Inbar describes a 1940 case where a Haganah (literally: defence, an underground resistance organization) member was

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<sup>53</sup> Hess, "I Am Not Alone in the World: The Memoirs of Henya Pekelman," 219.

<sup>54</sup> “Rape which Caused Suicide”, *Davar*, 4 July 1935, p. 8.

tried before a court martial for rape.<sup>55</sup> He left his guarding post without permission, and walked to an adjacent lot with his friend, where they saw a couple having sex. The two men pointed the gun at the couple, and agreed to release them only if the woman would have sex with them. Then they took turns in raping the woman while holding the man under gun point. The accused was expelled from the Haganah for eternity. I have no evidence of other informal proceedings within the Jewish community, but this does not mean that they did not exist.

In 20 out of 121 cases of sexual offenses the complainants were Jews. In comparison to Arabs, Jewish victims were less forthcoming with complaints about sexual assault, most noticeably within their community. Only one case in my corpus of court files is a case of intra-ethnic sex offence among Jews.

One possible explanation for the disproportion between Arab and Jewish complainants is that the Jews used sexual assaults to characterize the Arabs, thus creating a distinction and bolstering the boundaries between the communities. The attribution of sexual dangerousness to Arab males was complemented by producing a mirror image of sexually non-aggressive Jewish males (an endeavour that was doomed to fail should there be complaints about Jewish sexual offenders).

In an article titled “Caution!”, a daily newspaper laments the widespread phenomenon of rape, and the reluctance of the Jewish public to complain.<sup>56</sup> The article claims that in many cases the victims inform neither the authorities nor the community institutions, out of fear, embarrassment, or wish to preserve the family honour. The stereotypical scenario is described as follows:

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<sup>55</sup> Zvi Inbar, *Scales and Sword: The Foundations of Military Law in Israel* (Tel Aviv: Ministry of Defense Publishing, 2005), 57.

<sup>56</sup> *Davar*, 18 July 1935, p. 3.



“Most calamities fall on new immigrants ... the girl recklessly travels to a location, distant from a Hebrew settlement, with an Arab driver, without knowing the environment and road. The Arab driver does not take her to the Hebrew location, but on side roads --- if she has the strength to struggle she saves her soul, and if she is weak, she keeps the secret lest anyone would discover the shame of her disaster.”

The article further condemns the frivolity of the newcomers who travel unknown roads, and the reluctance of the victims to complain. “Saving the honour” of an individual is not justified, the author proclaims, if such “honour” endangers the whole community. The article draws very sharp lines between the Jewish and Arab community. Lack of care by naive female immigrants to keep geographic distance from Arabs might lead to their ultimate destruction. Further weakness, expressed by their unwillingness to complain, risks the whole community. It is not merely the fear of rape that is expressed in the article, but also the fear of the Jews, newcomers in the land, of being exploited by the native Arabs. The article assumes as an axiom that a rape is a well kept secret, and its release a source of shame for the victim.

In a similar vein, a 1945 article titled “They did not learn a lesson”, blames a couple of university students in Jerusalem, who were attacked around 1 a.m. The article rhetorically asks “why would a young man and woman go so late to a non-Jewish isolated area? Why aren’t they more careful after so many incidents of rape and violence? Why didn’t they learn the lesson?”<sup>57</sup> This article takes for granted that rape is typically committed by Arabs.

The Hebrew press contains various reports of sexual offences committed by Arabs. The victims were either Jewish or Arab, female or male, adult or a child, but the perpetrators were mostly Arab.<sup>58</sup> Most of the reports were not sensational (even

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<sup>57</sup> *Doar Hayom*, 5 June 1928 p. 1.

<sup>58</sup> Few examples are: three Arab policemen suspected of raping a Jewish boy were released as the boy later recanted (*Davar*, 12 June 1938, p. 4), two Arabs raped a male train employee

when they referred to the most brutal cases of rape, including inter-ethnic rape), but rather concise items in the criminal sections.<sup>59</sup> The portrayal of Arabs as dangerously hyper sexed was sometimes toned down by conscious wish to prevent the escalation of ethnic confrontation, as the following episode demonstrates.

In June 1928, a series of acts of sexual harassment of Jewish women by Arab men in Jerusalem was the subject of public debate.<sup>60</sup> One article, titled “Protect the daughters of Jerusalem” protests that it was not only unsafe for young Jewish women to walk alone at night, but that acts like patting, pinching, pushing or rude language are openly committed in the most central locations in Jerusalem.<sup>61</sup> Such acts, the author claims are no less offensive to the women of Jerusalem and their companions at the time of the incident, than acts of actual rape. Furthermore, most of those acts are unknown to the public or the police, and they are not forbidden by law. The author also gives an example of a young Hebrew woman, who was pinched on her bottom by

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under gun threats (*Davar*, 28 July 1928, p. 4), a young woman who stroled with an Arab man was raped by three Arabs (*Doar Hayom*, 11 April 1932, p. 4), an Arab who raped an orphan Jewish child (*Doar Hayom*, 11 June 1928, p. 4), four cases of rape and sodomy by Arab defendants (*Doar Hayom*, 20 May 1932, p. 8), an Arab convicted for attempted rape (*Davar*, 22 June 1934, p. 3), a female recent immigrant raped by an Arab policeman (*Davar*, 19 October 1936, p. 3), an Arab raped his 12 year old daughter (*Davar*, 18 March 1937), an Arab investigated for tempting and raping four Jewish girls (*Davar*, 7 December 1939, p. 6), an Arab raped an Arab virgin (*Al Hamismar*, 14 November 1943), an Arab imprisoned for raping a woman (*Davar*, 15 May 1944, p. 2), a Jewish woman raped by Arabs (*Davar*, 21 July 1946, p. 3), Arabs attempted to *rape* a six year old girl and stabbed the policeman who tried to protect her (*Davar*, 7 October, 1947, p. 3).

<sup>59</sup> One glaring example is a report on a Jewish defendant that was convicted and sentenced to two years imprisonment for the rape of a 25 year old woman, along side a report about a 10 year old boy who fell off his bike and was injured. *Davar*, 24 December, 1939, p. 5

<sup>60</sup> *Davar*, 18 July 1935, p. 3.

<sup>61</sup> *Doar Hayom*, 5 June 1928 p. 1, *Doar Hayom*, 8 June 1928 p. 5.

an Arab in front of a police officer, who wanted to arrest him. The young woman, however, refused to complain, to save herself the embarrassment.

The Hebrew press was aware of the sensitivity of the subject. Two letters written in 1928 by Henrietta Szold, the head of the Zionist Organization Department of Health, Education and Welfare, had explicitly addressed the problem of “molestation” of Jewish women by Arab men in Jerusalem.<sup>62</sup>

The police maintained that public perception of widespread sexual harassment of Jewish women by Arab men was “due to the particularity and insistence with which every such incident is reported, and to the vehemence of the editorial comment upon the misdemeanours”.<sup>63</sup> The Zionist National Committee (Vaad Ha-Leumi) sent a delegation to the British high commissioner, who subsequently met with Muslim and Arab authorities to discuss the matter. As Szold noted, the high commissioner’s efforts to calm emotions were coupled with a request that the Jewish press be more restrained in its coverage. The Zionist National Committee met with representatives of the Jewish press and offered to provide them with a “trustworthy” person to investigate such reports. The offer was rejected as an infringement of the liberty of the press, but journalists agreed to exercise “very great restraint” in reporting such incidents.<sup>64</sup> It may be that not reporting inter-ethnic rapes such as the brutal rape of Rachel Levine by a group of Arab men was an example of this “great restraint,” aimed at reducing tensions between Arab Palestinians, Jews and their British rulers.<sup>65</sup>

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<sup>62</sup> CZA S28/46 A letter to the Executive, Zionist Organization (June 21, 1928) 992/sz/389, and a letter to the Secretary, Zionist Organization (June 22, 1928) 992/sz/396.

<sup>63</sup> CZA S28/46 A letter to the Executive, Zionist Organization (June 21, 1928), p. 2-3.

<sup>64</sup> CZA 992/sz/396, Szold’s letter to the Secretary, Zionist Organization (June 22, 1928).

<sup>65</sup> Rachel was not the first Jewish woman from Eilon that was sexually assaulted in the nearby wadi. On a previous attack in 1945 see ISA/RG 30/Law 2046 (original docket # Cr.C 206/45).

To sum up, the Hebrew press reflects ambivalence toward Arab suspects and accused of sexual assaults. On the one hand the Jewish press reported many incidents of sexual offences committed by Arabs, whereas only few incidents pertain to Jews.<sup>66</sup> On the other hand, the reports were not sensational, and there is evidence that suggests that the coverage of inter-ethnic sexual assaults was calculatedly restrained. The mirror image of the hypersexed aggressive Arab male, is an image of a sexually mild Jewish man. Such an image would have been doomed to shatter if the Jewish community had condoned public discussion of Jewish sex offenders.

Another possible explanation to the disproportion between Jewish and Arab complainants is the Arab dominance in the personnel of the police forces, forensic physicians, prosecutors and non-British judges.<sup>67</sup> Jewish complainants, it may be speculated, would have felt more comfortable about complaining had there been more members of their ethnic group in the police and justice system. Another related aspect, is the Jewish disinclination to trust the British occupiers with the mission of making justice, and attempt to act as autonomously as possible.<sup>68</sup> This sometimes implied

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Nevertheless, the rape was not covered, except for a brief mention of Musa and Fahed's escape from prison a month following their conviction (*Palestine Post*, 11 May 1947, p. 3). They appear to have been caught, since the record of their appeal makes no mention of their absence.

<sup>66</sup> Out of 7 references to cases against Jews, three articles relate to acquittals. *Supra* fn. 23.

<sup>67</sup> In 1946 the regular police forces in Palestine consisted of 6,285 policemen (3,259 British, 2,376 Arabs, 650 Jewish). In December 1945, out of 48 government attorneys 22 were Arabs and 17 Jews, and out of 533 employees of the civil courts, 341 were Arabs and 166 were Jews. Jacob Reuveny, *The Administration of Palestine under the British Mandate 1920-1948: An Institutional Analysis* (Ramat Gan: Bar Ilan University Press, 1993), 154, 235.

<sup>68</sup> On the Jewish tradition of reluctance to submit to the jurisdiction of foreign sovereigns see Shamir, *The Colonies of Law: Colonialism, Zionism, and Law in Early Mandate Palestine*, 58.

taking the law into their own hands. For example, Irgun (an underground resistance organization) members opened fire at British Army soldiers (including an officer) as revenge for the rape of a Jewish young woman in Jerusalem by British soldiers.<sup>69</sup> The indiscriminate shooting of British soldiers, reveals that the rape was framed in national terms. It was not merely an individual woman injured by individual men, but the Jewish people harmed by the British collective.

Individual revenges, however, also had a national aspect. Around 1942 a Jewish mother and daughter lost their way and reached an army camp near Mahanayim. Two Arab guards from the camp raped both women, who were illegal immigrants, and thus unable to file a complaint.<sup>70</sup> The Haganah conducted a proceeding against the rapists in their absence, and sentenced them to death. However, they managed to escape, until they were detected a few years later, and it was found out that one of them worked as a policeman in Haifa, and the other as a guard in his uncle's orchard in the north. A unit of three disguised as policemen arrived, and asked him to accompany them on a pretext. They killed and buried him in a grave that was dug the day before. The worried uncle went to the police the next day to find out why his nephew had not come home, only to realize he was never taken by the police. Rumours began to spread, and the tension between Jews and Arabs began to rise. The Jews denied, and as the man had a criminal record and was known as a weapons smuggler, the uncertainty remained. The other partner, however, escaped again.

In at least three cases, members of the Haganah, revenged incidents of rape of Jewish women by Arab men by castration. Around 1935 a Jewish female physician took a taxi from Haifa to Nahariya to treat her patients. The Arab taxi driver raped her

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<sup>69</sup> *Davar*, 22 December 1947, p. 1, *Palestine Post*, 22 December 1947, p. 1.

<sup>70</sup> HA 49-38, HA 169-2.

on the way.<sup>71</sup> Upon hearing her story, some Haganah members demanded revenge. Haifa's Haganah commander<sup>72</sup> approved the revenge and high rank leaders were also consulted.<sup>73</sup> In a sting operation three Haganah members mounted the driver's taxi as passengers, attacked him on the way, and tied him to an electricity pole. He was castrated and left attached the pole .

In 1945 a series of sexual assaults troubled the Jewish inhabitants of Beit She'an Valley. Two attempted rapes of Kibbutz women and later a rape of a third victim, who was attacked by two armed men as she was walking with her companion, motivated the regional commander of the Haganah to react.<sup>74</sup> The suspect was identified shortly after the first incident.<sup>75</sup> Matti, an eighteen year old girl, was striding from the bus stop to her Kibbutz, Sdeh Nahum. She was crossing a creek where two young Arabs were fishing. One of them, embraced and kissed her forcefully, and tried to take off her underwear. After a few minutes' struggle, she managed to escape. Pursuant to her complaint, Aref Ben Ahmad Esh Sharida, a

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<sup>71</sup> HA 178-28, interview with Gershon Ritov.

<sup>72</sup> Later in 1939, Yaacov Dori became the Haganah's commander in chief, and with the establishment of Israel, he became IDF's first commander in chief.

<sup>73</sup> HA 80-134-2, Berl Raptor's testimony, pp. 3-4. Berl consulted with high rank Haganah officials who advised him "we don't interfere in such matters", and he also consulted with two political leaders of the socialist movement, Berl Katznelson (who was also the editor of the leading newspaper, Davar) and Isaac Tabenkin, who advised him that a response to the rape is due, but death should be avoided.

<sup>74</sup> HA 214-1, HA 115-7, HA 140-4, HA 101-6, HA 25-30 (Amos Nevo, "The Punishment", *Yediot Ahronot*, 30.4.93) .

<sup>75</sup> Although the suspect was identified by Matti at an identification parade organized by the police, the Palmach conducted their own intelligence operation to discover his identity, and took credit for the identification (although same person was identified). This is another manifestation of the lack of trust in British justice, and the desire for autonomous action. See also Gamliel Cohen, *Under Cover* (Tel Aviv: Ministry of Defence, 2002), 44.

nineteen year old Arab from Biesan, was arrested, identified by Matti in an identification parade, and charged with an attempted rape and an indecent act.<sup>76</sup> While he was released on bail pending his trial, members of the Palmach, the striking forces of the Haganah, made their own inquiries about the identity and whereabouts of the suspect, and resolved to castrate him (after two more sexual assaults had occurred). The operation was approved by the Palmach's chief commander, Isaac Sadeh, who decided they should teach a lesson, but not kill.<sup>77</sup> A Palmach unit prepared for the operation. Undercover agents gathered information about the suspect and consulted with a doctor who instructed them how to use ether and which veins to cut. Disguised as Arabs, they came to the suspect's house and lured him to come with them to a wadi.<sup>78</sup> Despite the anaesthesia their victim remained confused and active, and was therefore stunned with a club's blow on his head. The primitive operation was performed with a shaving knife and the veins were tied with a shoe lace. Several Jews were subsequently investigated by the police, but no arrests were made.<sup>79</sup> When Aref was brought to trial, he pleaded guilty to indecent act and not guilty to an attempted rape. He was convicted of an indecent act, yet, the Arab prosecutor stated that he offered no evidence for the contested charge of attempted rape, and Aref was consequently acquitted of the more severe charge. The British judge, expressed horror and repulsion: "The accused has had a sufficient punishment by the abhorrent and bestial offence committed on his person by those who have taken the law into their

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<sup>76</sup> ISA/RG 30/Law 2043 (original docket # Cr.C 104/45)

<sup>77</sup> HA 214-1, interview with Jacob Cohen, p. 24.

<sup>78</sup> HA 178-28, interview with Gershon Ritov.

<sup>79</sup> Kurt Weil, who guided the Palmach warriors, participated in an identification parade. He whispered to the castrated victim, who had known him, "didn't you have enough?", and prevented him from identifying him. HA 115-7.

own hands in such an unjustifiable and uncivilized manner without awaiting the trial and punishment of the accused by the Courts of Justice who are the sole and proper persons to try such offences.”<sup>80</sup> The judge clearly perceived the act as a bold challenge to the authority of the British justice system. Notwithstanding the conviction, Aref was discharged on a bond for one year. The brutal castration was commemorated in a popular Hebrew song “We castrated you, Mohammed!”<sup>81</sup> The choice of a common Arabic name, rather than the real name, Araf, and pronoun of the first person plural implies the castration was perceived in the context of the broader national conflict, and not merely a punishment to an individual wrongdoer.

A similar occurrence took place in late 1946, when a mentally-ill Jewish woman was raped near Ramat Gan by an Arab greengrocer from Sheik Munes, who was consequently arrested, but released on bail despite his admission.<sup>82</sup> The Haganah abducted the man, Mahmoud Mohammad Shoulabi, upon his release. The castration

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<sup>80</sup> ISA/RG 30/Law 2043 (original docket # Cr.C 104/45)

<sup>81</sup> Richard Silverstein, "Amos Horev: Castrated Palestinian in Blood Vengeance," <http://www.richardsilverstein.com/2010/06/17/amos-horev-castrated-palestinian-in-blood-vengeance/>. There is some uncertainty regarding the identity of the castrated victim. The prosecutor and judge take it for a fact that Aref was the victim. See also the testimony of Jacob Cohen, one of the participants in the Palmach operation, who stated: “The British arrested one person, I think it was Aref Ahmad Shakawi, whom they arrested and released, without indictment, nothing. As far as the British were concerned, they were done. Then we made up our mind to work on this guy. Apparently this guy, the one we castrated, was accomplice in all three [rape] cases. The guards of Kibbutz Mesiloth brought us information about this guy. We knew his name. We knew more or less where he lives. ... He was not hiding.” HA 214-1, p. 25. However, Amos Nevo, a journalist who interviewed Palmachniks who participated in the operation, identifies the rapist as Mohammad Tawash. This indiscrepancy might be attributed to the fact that the rapist had an accomplice. Amos Nevo, "The Punishment," *Yediot Ahronot* April 30, 1993.

<sup>82</sup> HA 173-23, HA 177-27.



was performed in a forest near a governmental hospital (Bellinson Hospital, in Petach Tiqva), by Dr. Reuven (Rudolph) Meir, a psychiatrist. After the operation, an anonymous caller notified the police about a wounded Arab in the forest. Mahmoud was hospitalized. He was eventually convicted, but given a short sentence in consideration of what he had gone through. One Haganah member indicated that after a while the castrated victim became their informant, and was subsequently murdered by fellow Arabs who suspected him.<sup>83</sup> A critical Jewish newspaper article titled “Rascals take the law into their own hands” denounced the operation.<sup>84</sup>

The act of castration transforms both the castrated and the castrating.<sup>85</sup> The castrated, in the attacker viewpoint, receives a punishment that befits the crime - he who uses his genitalia to attack women, has his genitalia mutilated, his virility becomes permanently destroyed. The castrator commits a brutal act, and transforms into a ruthless oppressor. In the context of a national battle, preventing a member of the “other” group from procreating is a powerful symbol. While the acts of castration attempted to re-establish the boundaries between the Jewish and Arab communities, they were not disruptive to gender hierarchies. Emasculation through castration “both reinforces and threatens masculinity”.<sup>86</sup> The rape of a Jewish woman was perceived as an injury to Jewish men, and it is men who vindicate rape by mutilating other men.

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<sup>83</sup> The testimony of Hilel Levin seems inaccurate, as it implies that the rape had occurred around 1940 and that the Arab became an informer only years later, while in fact the rape took place around the end of 1946. HA 177-27, pp. 8-10.

<sup>84</sup> *Hatzofe*, 14 January 1947, p. 1.

<sup>85</sup> Larissa Tracy, "Introduction: A History of Calamities: The Culture of Castration," in *Castration and Culture in the Middle Ages*, ed. Larissa Tracy (Cambridge: D.S. Brewer, 2013), 9.

## Discussion

Perhaps the most striking finding is the one lacking from my material: it seems that rape was not part of the conventional warfare repertoire in the Jewish-Arab national conflict. Throughout its history, the Israeli-Palestinian conflict is often violent, with two neighbouring groups fighting over one small territory. One could expect a systematic use of military and paramilitary rape. Yet, there is no evidence that either side endorsed rape as part of its tactics, and there is little documentation of sexual offences which resulted as a “side effect” of the friction between military forces and civilians.<sup>87</sup> This is not to say that there was no inter-ethnic rape - such incidents occurred, but were mostly “ordinary” criminal sexual assaults, rather than combat related or military orchestrated crimes. The roots of the rarity of rape as a standard warfare measure in the Israeli-Palestinian conflict seem to lie in the Mandate Palestine period. Was it the geographical proximity and the resemblance between the two Semitic nations that rendered them unrapeable to each other?

The rarity of systematic rape as part of national battle, does not mean that sexual offences that are not committed by military units, militias or other types of fighting organizations lack a national and ethnic dimension. Quite the opposite, this

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<sup>87</sup> Some incidents occurred, but historians disagree regarding their extent. Such allegations often rely on hearsay and are unsubstantiated by direct evidence. Hillel Cohen reviews contradicting statements about the rape of Jewish women by Arabs during the 1929 disturbances in Hebron, and concludes that the only incident documented by an official document is the testimony of the Hebron police commander, Raymond Cafferata, who shot an Arab policeman, whom he had seen standing with a dagger on the top of a bloody woman. Another famous incident on which historians diverge is the rape of Arab women during the conquest of Dayr Yasin in 1949 (See Nitzan and Masalha). For these and other reports see Cynthia Cockburn, *The Space between Us: Negotiating Gender and National Identities in Conflict* (London: Zed Books, 1998), 128; Nur al-Din Masalha, *The Palestine Nakba: Decolonising History, Narrating the Subaltern, Reclaiming Memory* (London: Zed, 2012), 82-83; Nitzan, "Controlled Occupation", 23-25; Hillel Cohen, *1929: Year Zero of the Jewish-Arab Conflict* (Jerusalem: Keter, 2013), 199-200.

chapter argues, that ethnic and national identity is also negotiated and interpreted in “civilian” cases of both inter-ethnic intra-ethnic sexual assaults.

Constituting national identity through the employment of law, is not done only by celebrated political trials or establishing national systems of jurisdiction. Self-definition and establishing the identity of the “other” occurs also in mundane criminal cases, that allegedly have nothing to do with ethnicity or nationality. An analysis of cases of sex offences that were heard by the Palestine courts demonstrates that the British, the Arab and the Jewish sectors displayed distinctive attitudes and mobilised the proceedings in different ways. To gain legitimacy from the Arabs and the Jews the British justice system had to display impartiality. The British tried to neutralize the significance of the ethnic or national identities (although condescending remarks towards the local inhabitants sometimes revealed prejudice). In court, the Arabs used ethnic labels in reference to the various participants, and displayed awareness of the political significance of inter-ethnic rape. We can wonder whether, in a climate in which rape is not a legitimate tactic in a national battle, the emphasis of the ethnic and national labels served as a rhetorical device of distancing the accused from the charges. Arab lawyers did not hesitate to point to ethnic attributes when arguing mitigating circumstances. Arab media, however, avoided the “unpleasant” subject of sex offences. The Jews displayed ambivalence. On the one hand the Hebrew press repeatedly reported cases of Arabs that were charged with sexual assault, and stereotypically described rape of Jewish young women by Arab men. On the other hand, they refrained from intensifying national tensions. Jews, it appears, were less inclined to complain of other Jews (unlike the Arabs). Yet, not complaining to the police did not necessarily entail passivity or acquiescence, as a few incidents of

“private justice” imply. These incidents, though horrifying in effect, were few, and except one, did not address intra-ethnic rape.

Constructing the “other” is also an act of self definition, as identity is relational. Sometimes law explicitly shapes the “other”. Other times law may be employed in subtle ways to construct social boundaries and create social hierarchies. Not only inter-ethnic sexual assaults but also intra-ethnic ones were building blocks in the construction of national and ethnic identity in Mandate Palestine. Constructing differences between British and “natives”, Jews and Arabs through criminal cases, in which national and ethnic identity allegedly plays no part, naturalizes and essentializes culturally shaped differences.

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