

Between Citizenship, Equality, and Law

• • • *The Language of the Summer 2011 Social Protests*

Shulamit Almog and Gad Barzilai



The intersection of law and protest may be perceived as an oxymoron. For many, law symbolizes stability and the maintenance of the socio-political and economic status quo while, at the same time, protecting human rights. Protest, conversely, points to the need to alter and reform the very same status quo, arguing that the conventional means of constructing politics and public policy through legislation and litigation have failed and that democratic and all other perceptions of justice have been halted. Nonetheless, more than a few protest movements all around the globe have used lawyers, legal arguments, and legal mechanisms to advance social visions of an egalitarian society (see, e.g., McCann 1994; Sarat and Scheingold 1998). Especially after World War I, jurists held leading positions in protest movements, and legal arguments were regarded as relevant and efficient mechanisms to negotiate with political power.

Israel itself has been characterized as an increasingly litigious society with the highest number of lawyers per capita and one of the highest litigation rates per capita in the world (Barzilai 2007). Furthermore, in Israeli society, especially since the 1990s, lawyers have been political players in the organization and activities of NGOs.

Accordingly, one could have expected to see lawyers among the leading figures in the waves of social protest that erupted in Israel in the summer of 2011. In a country of about 8 million citizens, around 500,000 people were actively involved in demonstrating against the Israeli government, chanting: "The people demand social justice." In comparative perspective, these demonstrations in Israel were the largest non-violent demonstrations in any democracy (even in absolute figures) since the conclusion of the Vietnam War. However, lawyers were not on the leading edge of the protest, and the protestors did not use the language of legal rights.

Why is this so? Why have lawyers not been among the prominent initiators and leaders of protests? And why were legal arguments so marginal, despite the extensive prevalence in Israel of legalistic arguments since the 1970s and the widespread expansion of judicial review, especially since the mid-1990s? In line with conventional wisdom, we began with the assumption that it was largely because of the Internet that lawyers are much less essential as tools for organization, mobilization, and activation of social protest than they were even a couple of decades ago. Yet our research revealed more intricate and intriguing explanations regarding law and social protest in Israel.

In addition to content analyses of various primary and secondary sources, our methodology was based on structured personal interviews with 28 leaders of the protests, as well as with activists and jurists who were involved in them. We used a series of 11 questions that were identified by us as crucial in order to explore our issues. We identified the interviewees in a snowball sampling that allowed us to detect the people most involved in initiating and maintaining the protests, thus obtaining a much deeper picture than the one created by media coverage. In designing the sample, we considered a number of significant factors, including gender, ethnicity, nationality, and location—especially the center (Tel Aviv) versus the socio-economic periphery.

One of our first findings was that the relative absence of law has a minor relationship to the digital age. In fact, its absence derives from deeper sources and is associated with disillusionment, apprehension, and distrust of law that has evolved to be an overwhelming phenomenon. In this context we would like to unveil two approaches that we found particularly revealing. First, we looked at the power structure of the protest and the reasons that caused the law to be almost redundant within that structure. Second, we examined the poetics of the protest, that is, the systems of signs it produced, and the relation—or, rather, the lack of relationship—between the novel systems of representation that emerged during the protest and the conventional system of expressing meaning that is relevant within the legal sphere.

The theoretical literature points to the importance of legal mobilization as a means to advance social aims and greater equality. Indeed, lawyers from the Association for Civil Rights in Israel believed that the social protest might be a golden opportunity to advance a Basic Law of social rights. Similarly, legal experts in a committee established by the Rothschild Boulevard leadership were keen to promote such a law. Yet no agreement was reached. While the former aspired to produce a comprehensive list of very specific social rights, the latter were thinking only in terms of a very vague and general basic law.

However, those lawyers and this debate had only a minor impact among the protestors—even among the lawyers engaged in the protest. The most widespread enthusiasm was not for legal mobilization but rather for legal *demobilization*. In some cases, a strong sense of alienation toward law was expressed by our interviewees. Most lawyers among the protestors and most of the protest activists were very critical of both litigation and legislation as a primary strategy. Thus, legal discourse was absent from the protest and was of marginal importance in the power structure of the emerging discourse as well. Hence, based on our structured interviews, we concluded that lawyers had no leadership positions in the protests. The extent of their involvement was at the level of experts called on to assist in the case of arrests.

Even within this limited range of tasks, the involvement of lawyers was rather marginal, since the authorities did not mount a serious legal campaign against the protest. In general, their policy was to contain the protest as much as possible and to empathize with the protesters, although several dozen arrests in the summer of 2012 did take place, and a few lawyers appeared in court *pro bono* to release them. During the main protests in 2011, though, the tents were not evacuated until the fall, public demonstrations were not halted, the right to freedom of speech was not threatened, and, with a few exceptions, the presence of the protesters in the public domain was hardly restricted. The use of legal language and legal tools by the authorities during that summer was scarce and indecisive. As a result, the new language and the new system of signs that were introduced to the public by the protesters reigned supreme. Government authorities had attempted to restrict the protest through efforts at co-optation, not repression, so violence against them was very limited.

The most conspicuous sign of the protests during the summer of 2011 was the tent—or cluster of tents—that is, the emergence of tents within the urban space. These tents appeared in the center of Tel Aviv and became the primary icon of what was termed the ‘Rothschild Protest’. However, in the socio-economic periphery, the principal symbols of the protest were not the tents but rather the public assemblies. **As Gaby Wineroth, one protest leader** in Kiryat Shmona, put it: “Assembly is the heart of the protest.” Wineroth continued: “[E]very person that passed by the tents became a partner to the assembly that was characterized by discourse culture, attentiveness, containment, and openness to the opinion of others ... Rothschild was a very unaccommodating place for assemblies.”

Another major disparity between the signs of protest in Tel Aviv and its manifestations on the socio-economic periphery was the public face of the protest. The media identified several individuals as the leaders and covered them intensively. The faces of Daphne Leef, Stav Shafir, Itzik Shmuli,

Regev Contes, and others became well-known in every Israeli living room and on every screen. Yet many in the periphery resented the media coverage, claiming that the coronation of leaders, initiated by the media itself, was inauthentic. In the words of another one of the Kiryat Shmona leaders: "Leadership is flat, we are all leaders."

Despite the considerable differences, some characterizations, such as the language and slogans that were present at the Tel Aviv 'tent city', could also be found all over the country, in cities such as Beersheva, Haifa, and Jerusalem. The language of signs replaced legalistic language and lawyers' arguments. Another element of the protest was the use of short, catchy slogans. **In the preface of *The Revolution Song-Book*, which was published during these events (Cemper 2011)**, there is a description of some of the main slogans that were written with markers on cardboard and chanted by the masses of people: "The people demand social justice"; "The boulevard as if I was a Rothschild" (a paraphrase of the song "If I Were a Rich Man" from *Fiddler on the Roof*); "Let us live in this country"; "We demand justice, we do not want charity." All of these representations, notwithstanding the differences between them, indicate a deliberate shift away from legal and litigious language and legal practices (see Almog 2006).

It is important to emphasize that legal procedures and legal language were considered irrelevant by both the Rothschild leaders and the periphery activists. The only exceptions were when legal procedures were necessary to release demonstrators from police detention and to halt the evacuation of the tents. However, the number of such procedures was minor, due to the general tolerance toward the events demonstrated by the police and other authorities. This was also due to the government's attempts to subdue the demonstrations not through force **but through the recommendations of the Trajtenberg Committee, which it established in August 2011.**

Here is a typical expression with regard to the relevance of the law that we gathered during our interviews. Regev Contes, one of the main protest leaders, said to us: "We wanted to **eliminate** the clichés from the discourse, and Bagatz [the Supreme Court/High Court of Justice] is a cliché." Lawyers engaged in the demonstrations considered their legal knowledge to be secondary to their non-legal role. One important jurist, who was very much involved, told us: "The path of the Bagatz is not the path of the protest." Some of the lawyers considered litigation to be harmful to the attempts to generate the protest, while others saw it as having a limited role to play.

Clearly, the protests were overflowing with the alienation toward law that was apparent among each and every group of protestors. While the Rothschild protesters deemed law to be irrelevant because of its subordination to the current political system, the socio-economic periphery viewed

law as an instrument that serves the hegemony of the 'center of Israel' and perpetuates its socio-economic domination. In either case, law seemed to be universally regarded as outmoded or, at best, of very limited value.

For those who considered the main goal of the protest to be achieving a fundamental reform in the public discourse, the absence of the law and legal mechanisms was hardly significant. From such a perspective, the protest per se was a triumph, since it seems that the public discourse in Israel was indeed dramatically changed, even if only for a limited time. For those who aspired to more practical and permanent results, the lack of legal language and the minor use of legal practices marked the protest as doomed to failure from the beginning. The absence of litigious discourse in the social protest may mark attempts by groups in Israeli civil society to find alternative ways to define and articulate citizenship. However, the lack of litigation as a salient phenomenon certainly does not mean that **future** social protests will not be suppressed by the state.

Many of our interviewees expressed the belief that the tolerance exhibited by the authorities during the summer of 2011 will not repeat itself. Indeed, some of them have since been summoned for questioning by the police, and local municipalities are becoming more aggressive in evacuating new tents. Perhaps sobered by the huge scope of the previous year's protests, the political establishment has been attempting to enclose the re-emerging demonstrations in 2012 within boundaries drawn by conventional legal language. Currently, it seems that the tendency of the state and the municipalities is to demand that every act of protest be authorized by a specific, pre-designated permit. In this way, they aim to push the struggle into the old hegemonic and clearly defined legal field.

To conclude, the broad social protests in Israel during the summer of 2011 demonstrated that state law and the discourse of litigation are not necessary ingredients to incite social action in order to promote more equality. These protests also revealed that, for both positive and negative reasons, the language, strategy, and goals of the protesters—both in the center and at the periphery—deliberately avoided legal discourse and formulations.

SHULAMIT ALMOG is a Professor of Law at the University of Haifa and Director of the PhD Program. Her academic research is on law and literature, law and film, law and digital culture, and children's and women's rights. She has appeared before the Knesset, drafted sections of Israel's report to the UN on the International Convention on Children's Rights, and participated in reforming Israel's Adoption Law and in combating trafficking in persons. She is also a member of the Israeli Press Council Executive Board.

GAD BARZILAI is a Professor of Law, International Studies, and Political Science. He is the Dean of the University of Haifa Law School, a Professor at the University of Haifa, and a Professor at the University of Washington. He has published extensively on law, politics, and society and is also the President of the Association for Israel Studies.

REFERENCES

- Almog, Shulamit. 2006. "Creating Representations of Justice in the Third Millennium: Legal Poetics in Digital Times." *Rutgers Computer and Technology Law Journal* 32, no. 2: 183–245.
- Barzilai, Gad. 2007. "The Ambivalent Language of Lawyers in Israel: Liberal Politics, Economic Liberalism, Silence and Dissent." Pp. 247–277 in *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism*, ed. Terry C. Halliday, Lucien Karpik, and Malcolm M. Feeley. Oxford: Hart.
- Cemper, Shaun Danielle, trans. 2011. *The Revolution Song-Book: The Poetry of the Tent*. Tel Aviv: Daka, Maayan, Etgar, Erev-rav, Gerila.
- McCann, Michael W. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- Sarat, Austin, and Stuart Scheingold. 1998. *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford University Press.