



PROJECT MUSE®

“I Was in a War, and in a War Things Like That Happen”: On Judgments and Ethical Investigations in Israeli Law and Literature

Renana Keydar

Jewish Social Studies, Volume 18, Number 3, Spring/Summer 2012,
pp. 212-224 (Article)

Published by Indiana University Press



➔ For additional information about this article

<http://muse.jhu.edu/journals/jss/summary/v018/18.3.keydar.html>

“I Was in a War, and in a War Things Like That Happen”: On Judgments and Ethical Investigations in Israeli Law and Literature

Renana Keydar

ABSTRACT

Focusing on two key events in the Israeli-Palestinian conflict—the Deir Yassin affair (1948) and the Kefar Kassem massacre (1956)—the article explores how Israeli narratives of different genres engage with conflict-related atrocities. Juxtaposing the literary reimagining of the Deir Yassin affair in Nurith Gertz’s ‘Al da‘at ‘atmo (Unrepentant, 2008) and the seminal court ruling in the Kefar Kassem massacre trial (1958), this article examines the ethical considerations and effects of the different formal strategies employed in each of the texts. I argue that the encounter with conflict-related atrocities leads to a break in the generic form of both the literary and the legal texts and a resort to extrageneric rhetoric. This formal disruption engages the reader and, possibly, her community in an ethical inquiry that emphasizes the process of investigation rather than final judgments.

Keywords: Israeli-Palestinian conflict, Deir Yassin, Kefar Kassem, atrocity, ethics, memory

On April 9, 1948, amidst ongoing battles between Israeli and Palestinian forces, the Israeli paramilitary organizations Lehi and Etsel attacked the Palestinian village of Deir Yassin, located on the outskirts of Jerusalem. The day of fighting resulted in many civilian casualties, with accounts estimating the death toll to

Renana Keydar, “I Was in a War, and in a War Things Like That Happen”: On Judgments and Ethical Investigations in Israeli Law and Literature,” *Jewish Social Studies: History, Culture, Society* n.s. 18, no. 3 (Spring/Summer 2012): 212–24

be more than one hundred, many of them women, children, and the elderly. Some reports mention atrocities such as looting, corpse mutilation, and rape.¹ The Deir Yassin attack was immediately denounced as a massacre by various parties, including the Jewish-Israeli leadership.² The attack on Deir Yassin remains at the heart of historical and political debate, with heated arguments about whether or not a massacre indeed occurred. Opinions are divided as to whether the killing of civilians was part of a strategic plan to expel the villagers and was thus an intentional, premeditated act or an unintended, disastrous consequence of the fighting.³

The symbolic significance of Deir Yassin is nonetheless unquestionable. In the context of the Palestinian narrative of the Nakba, Deir Yassin became a painful symbol of the Palestinian people's separation from their land and the consequent refugee problem. It is often argued that rumors of the attack on Deir Yassin and its horrific outcome (which were propagated not only by Arabs but also by Jewish mainstream parties) spread terror, fear, and panic among the Palestinian villagers and served as a catalyst for their flight from their villages.⁴

In Israeli public discourse, however, the Deir Yassin attack, like the broader predicament of Palestinian refugees, still remains on the margins of public consciousness. In recent research focusing on the Israeli-Palestinian conflict and specifically on the War of Independence of 1948 and the Nakba, Israeli sociologist Uri Ram examined the collective "ways of forgetting" by which a dominant national memory (Israeli Jewish, in this case) creates lacunae of historical memory.⁵ Analyzing the mechanisms through which selected events are removed from memory, Ram compares two competing Israeli accounts of the events at Deir Yassin: the "official" version of events from the 1960s, which remains highly evasive and ambiguous, and a more critical, detailed version from the 1990s. Ram concludes:

It is beyond debate that in the dominant and pervasive Israeli narrative of 1948, as it was determined in the official account and as it was disseminated later on by the educational and communication systems, . . . the uprooting of the Palestinians and the destruction of their society is not discussed and is not even mentioned as an important aspect of the war or as one of the consequential outcomes of it.⁶

An example of this national forgetfulness appears in a recent ruling by the Israeli High Court of Justice from May 24, 2010. The High Court rejected a petition filed by the newspaper *Haaretz* challenging a decision made by a ministerial committee not to disclose certain



archival material regarding the Deir Yassin attack, including reports, documents, and photographs that might shed light on the events. The High Court's decision was based in part on the concern that disclosure might damage Israel's foreign policy and disrupt ongoing negotiations with the Palestinians. In a concluding remark, nevertheless, the High Court acknowledged the importance of a public debate regarding what happened at Deir Yassin, noting that the ministerial committee's decision to extend the classification period of the documents does not prevent such a public discussion from taking place.⁷

In 2008, Nurith Gertz published *'Al da'at 'atsmo: Arba'ah pirkei hayim shel Amos Kenan* (Unrepentant: Four Chapters in the Life of Amos Kenan).⁸ The text, an intriguing mixture of fiction and biography, follows four episodes in the life of Amos Kenan (1927–2009), an Israeli writer, artist, and peace activist and Gertz's husband. One episode deals with Kenan's childhood in the shadow of his mentally-ill father, and another concerns his life in Paris, where he lived from 1954 to 1962. The other two episodes examine Kenan's alleged involvement in the Deir Yassin attack and the assassination attempt on the Israeli transportation minister, David Zvi Pinkas. I say "alleged" because this is precisely the question that hovers over the episode treating Deir Yassin: was Kenan involved in the attack?

The Trial of K

The second part of the book, "Kalvei ha-kefarim harehokim" (Dogs of Distant Villages), follows Kenan in the years 1946–48, from his enrollment in the Lehi paramilitary group through the violent operations that he and his friends carried out, reaching their apex in the attack on Deir Yassin. The text unfolds the preparations for the attack on Deir Yassin from Kenan's perspective: from his visit to the village in preparation for the attack to the march of the platoon toward the village. There, moments before the launch of the attack, the narrator declares, "and here the story stops," giving way to a dialogue between Gertz and Kenan:

- That's it.

- What "that's it"? What happened later? How did you enter the village? How did the battle start?

- Later I was wounded and more than that I do not remember. And I was taken to the hospital.

- But what? How were you injured? The battle had not even started yet.⁹

There is a moment of disjuncture and tension between the attack on Deir Yassin as an event from the past that we are familiar with through testimonies and documents, and the story as Kenan retells it. Kenan refuses to serve as a literary witness to the event, to take responsibility for representing the historical event from his point of view. There is thus a “conflict of interest” here between the narrator, Gertz, who insists on revisiting the story of Deir Yassin, and the protagonist, Kenan, who denies his involvement in the event (and therefore is unable to account for it).

This conflict leads to a multifaceted break in the narrative: temporal, spatial, and most acutely, formal. On the temporal and spatial levels, the narrative abruptly shifts from present-tense narration situated in the early morning hours of April 9, 1948, at the outskirts of Deir Yassin, to the time and place of the conversation between Gertz and Kenan in 2002. The effect of this temporal and spatial break is twofold: First, by juxtaposing the perspective of the present of Deir Yassin, that is, 1948, with the narrator’s recent present (2002, the time of the interview, or 2008, the time of publication), the narrative creates links between what happened then and what we must deal with now. Second, the effect is not only cognitive but also nearly physical, as the abrupt shift pulls the reader out of the reassuring confines of fictionality and confronts him with the shaky underpinnings of the memory of Deir Yassin and, more broadly, of the story we tell ourselves about 1948.

The break is most notable at the formal level, as the narrative shifts from long lines of third-person prose narration to a conversation between Gertz and Kenan, titled “Reayon Prati” (Private Interview). The following pages unfold a densely packed dialogue between Gertz and Kenan revolving around his account of the attack. This form of dramatic dialogue between Gertz and Kenan appears on several other occasions in the narrative, all of them instances of factual uncertainty in Kenan’s story. In these moments, the text breaks and exposes the “behind the scenes” of the creation of the narrative, the layers on top of which the final, coherent, and unified narrative rests. Although these moments of disruption are limited to several sentences in other parts of the text, in the episode of Deir Yassin the interrogation continues for eight pages. During this pause in the story, Kenan’s account of the historical event and his role in it is challenged by the narrator in a manner that renders the episode of Deir Yassin the scene of a criminal trial.

The trial-like scene opens with Kenan’s assertion that he cannot tell the story of the attack because he did not take part in it. Kenan attempts to provide an alibi, claiming that he was injured and taken to a

[215]

I Was in a War

●
Renana
Keydar

hospital. Questioning the gaps in Kenan's version that leave the circumstances of his injury unexplained, Gertz assumes the role of the prosecutor, trying to reconstruct the circumstances of the event. As a prosecutor she must establish a causal connection between the criminal conduct—Kenan's actions or inaction—and the result—the attack on Deir Yassin. In response to Kenan's sweeping alibi, which goes beyond claiming lack of criminal liability to deny that Kenan was even involved in the attack, Gertz provides witnesses to establish the relevant details of the crime. The first to testify is fellow Lehi member Ezra Yahin, who accompanies Gertz to the site of the village in order to resume the story where Kenan left off. Yahin admits in his testimony that the forces must have known that their warning about the coming attack could not have reached the villagers. Yahin's testimony serves to establish *mens rea*, the criminal intent that characterizes Kenan and his friends.

The next witnesses brought forth by Gertz are Zinab and Miriam Akal, a mother and daughter, survivors of the attack on the village. Their testimony, narrated in the third person, retells the Akals' flight from their house as the troops entered the village. This testimony establishes *actus reus*, the troops' criminal conduct.

By placing the two witnesses side by side in the narrative, Gertz signals to the reader that Kenan should be considered a suspect rather than a mere witness to the crime. Through cross-examination, Gertz now challenges the credibility of Kenan's alibi, progressively exposing his role in the attack. First, she reveals that Kenan did in fact participate in the fight, for at least an hour or two. She then establishes that he was injured by a bullet ricocheting off a wall, leading to the inevitable question: why did Kenan shoot a wall?

- So how were you injured?
- By a ricochet bullet.
- A ricochet? What do you mean?
- A ricochet off the wall.
- A wall? How come? Did you shoot a wall?
- I guess.
- And where were you injured?
- In the leg.
- But it doesn't make sense. Why would you shoot a wall?
- I shot because there was a fight.
- But why the wall?

- So I don't know, I guess there was someone there.
- What do you mean? Between you and the wall?
- I don't remember. I shot someone. There was someone there. Nurith, you don't get what happened there.¹⁰

[217]

I Was in a War

●
Renana
Keydar

Following his admission that he did indeed participate in the attack, Kenan's line of defense shifts: "[Y]ou don't get what happened there . . . it was a fight . . . I was fighting and in a war things like that happen."¹¹ Kenan no longer claims to be innocent because he wasn't there. Quite the opposite, he is now innocent because he *was* there, and this is how one acts in a war—something that Gertz and the readers cannot understand and therefore should not attempt to judge.

Upon further questioning, Kenan admits that the "someone" he shot was likely a woman from the village: "And later, already to a turned-off tape recorder, quietly, almost unheard, to himself: 'I did not remember shooting the woman, I did not remember it. But I must have shot, and it must have been the woman.'"¹² This moment of confession and collapse is the apex of the cross-examination, echoing familiar scenes from popular television series in which the "good" lawyer triumphs over the defendant, eliciting an emotional admission of guilt.

Surprisingly, however, Gertz does not stop here. She continues to probe: was this a young woman or an old one, what was she wearing, was she coming out of the house, were there any children next to her? This line of questioning seems redundant, considering that Kenan has already confessed to committing the crime. One possible reading of this series of questions is as an attempt by Gertz to get an explanation for Kenan's actions, to reconstruct the circumstances of the shooting, looking perhaps to find something in the scene that could have caused Kenan to shoot the woman. Gertz here shifts from triumphant prosecutor to defense attorney, trying to justify her client's horrific conduct. In so doing, Gertz also confronts the moral implications of Kenan's confession. For without an explanation for the shooting, all that is left is the simple fact that Kenan had shot an innocent woman villager in Deir Yassin.

What is the role and the effect of the legal rhetoric employed by Gertz in such a charged moment in the text and in the history of the Israeli-Palestinian conflict? *Al da'at 'atsmo* oscillates between fiction and biography. The text weaves the episodes of Kenan's life from bits and pieces of diary entries and literary writings by Kenan, interviews, archival materials, and testimonies. Gertz refers to this hybrid form in the preface to the book, where she tells her reader that her aim is to reach the truth. In order to do so, Gertz declares, she must venture



from the facts and into the realm of imagination and invention. Gertz's declarations in the preface establish a kind of contract between the narrator and the reader, framing the horizon of expectations for the text and its imaginative exploration of historical events. In the case of Deir Yassin, however, it seems that "the realms of imagination and invention" are neither sufficient nor appropriate for dealing with an event of such magnitude.¹³ The burden of responsibility for "reaching the truth" feels much heavier when the subject is not simply Kenan's private life but the reconstruction of an ethically charged moment in the history of the Israeli-Palestinian conflict. With so much at stake, fictions are replaced by the elements of a trial: by testimony, fact-finding, evidence. In order to fulfill her contract with the reader, Gertz resorts to the legal system, the most useful tool society offers for establishing facts and deciding questions of culpability.

Legal scholar Leora Bilsky addresses what she sees as the ability of a trial to serve as a "consciousness-transforming vehicle":

A courtroom, in particular during criminal trials, is first of all a field of human drama. The political struggle waged in the courtroom transforms dry and distant history or abstract ideological worldviews into a living story with a name, a face and a body. It turns the theoretical dilemma into actuality. . . . [I]t provides a unique forum in which society as a whole can confront its moral, historical and political dilemmas in a more concentrated and intensive way.¹⁴

In the absence of a real trial in the case of Deir Yassin, Gertz's literary trial serves not only as the process for Kenan's recounting of—and accounting for—his actions but also as the process for "society as a whole to confront its moral, historical and political dilemmas," to use Bilsky's words. Gertz's trial can be read as an attempt to deal with the problematic memory of Deir Yassin or, more precisely, the forgetfulness of it.

Adopting the form that most naturally leads to judgment—a criminal trial—Gertz, however, works contrary to the generic expectations for an "ethical stand," as James Phelan terms it.¹⁵ Phelan argues that the default expectation for reading fiction is that "authors will take ethical stands on the events and characters they represent and will guide us explicitly or implicitly . . . to adopt those stands."¹⁶ Phelan sees the nature of the ethical relationship between author and reader as a reciprocal one, authors giving guidance according to their particular value systems and the ethical judgments that follow from those systems and audiences expecting reinforcement, challenges to, or disagreement with their own value systems.¹⁷

Al da'at 'atsmo does not offer a clear verdict in the literary trial of Kenan. In her insistence on continuing the investigation after Kenan's admission of guilt, Gertz signals to her reader that what matters to her in her quest for the truth is not necessarily making judgments but rather the process of inquiry itself.

[219]

I Was in a War



Renana
Keydar

In emphasizing the process of inquiry rather than the final judgment, Gertz reveals to her reader not only the legal procedure but also the process of narration. Gertz refuses to supply her reader with a unified, coherent, and finite account of Kenan's actions and the events of Deir Yassin. Instead, she reveals the process of the creation of this story, the "making of" the story of Deir Yassin. As a result, the reader becomes involved in both processes, the legal as well as the narratological one. The reader can no longer retain a passive role as a mere observer, a consumer of a complete product. The effect of employing legal rhetoric can thus be seen as leading to a shared responsibility between Gertz and the reader, responsibility for investigating Kenan's conduct at Deir Yassin and more generally for telling the story of Deir Yassin. For the literary trial to serve as a "consciousness-transforming vehicle," the reader must take part in the legal procedure.

Judgment and Metaphor

Gertz employs legal rhetoric in order to deal with the haunting presence of the Deir Yassin attack in Kenan's life story and in the national narrative of the State of Israel. The debate surrounding the facts and details of the attack—amplified perhaps by the lack of court adjudication on the matter—is addressed by the literary trial Gertz conducts as narrator. In this legal procedure, and through the employment of legal rhetoric, the reader is invited to ask questions and to challenge the givenness of prevalent notions about Kenan, Deir Yassin, and the Israeli-Palestinian conflict.

Eight years after the events of Deir Yassin, news reached the public of another traumatic event involving extreme and morally questionable violence against civilians by Israeli soldiers: the Kefar Kassem massacre. On October 29, 1956, the eve of the Sinai War, a battalion of Israeli border police was ordered to enforce an unusually early curfew that had been imposed on the Arab villages of the so-called Little Triangle, a group of Israeli Arab towns near the Green Line. The battalion commander, Major Shmuel Melinki, in accordance with an order from his superiors, instructed his soldiers to kill anyone found outside his or her house in violation of the curfew. The order was

given despite the fact that many villagers who worked outside the village could not know about the new curfew. In one of the villages, Kefar Kassem, this order resulted in a gruesome massacre. During one hour, more than 40 villagers were shot and killed by the soldiers, among them women and children as young as eight years of age.¹⁸

One crucial distinction between the two events—Deir Yassin and Kefar Kassem—lies in the fact that unlike Kenan and his friends, the soldiers involved in the Kefar Kassem massacre were brought to trial and eight soldiers from the border-police unit were found guilty of murder as a result of obeying a manifestly illegal order.

The trial against the soldiers opened in January 1957 and lasted for nine months, one of the longest trials in the history of the State of Israel at the time.¹⁹ Despite requests by the army for a closed-door trial, it was conducted in public and drew considerable attention. During the trial the court collected extensive testimony from the victims of the massacre. There was no major conflict about the factual basis of the case.²⁰ Unlike the trial Gertz conducts in *'Al da'at 'atsmo*, the facts of the Kefar Kassem massacre were hardly debated. The challenge facing the court was not to discover whether or not the soldiers had indeed shot and killed unarmed innocent civilians but rather to decide the normative status of the shootings. That is, the court had to determine whether the order to shoot the villagers was manifestly illegal and as such should have been disobeyed, following military code.

The court in the Melinki case faced an unprecedented trial concerning the murder of civilians by Israeli soldiers, and it had to define normative guidelines to assure that such atrocities would not recur. In trying to formulate the definition of manifest illegality, presiding judge Benjamin Halevi—who was later appointed to the Israeli Supreme Court—coined one of the most iconic metaphors in Israeli culture:

The hallmark of manifest illegality is that it must wave like a black flag over the given order, a warning that says: “forbidden!” Not formal illegality, obscure or partially obscure, not illegality that can be discerned only by legal scholars, is important here, but rather, the clear and obvious violation of the law, . . . illegality that pierces the eye and revolts the heart, if the eye is not blind and the heart is not impenetrable or corrupt.²¹

Earlier in this judgment, Judge Halevi defined the task of identifying manifest illegality as “a question of law.”²² But here we see that instead of offering legal distinctions between what is and is not manifestly

illegal, Judge Halevi adopted figurative language, using the images of a black flag, a pierced eye, and a revolted heart.²³

What can account for the shift from the confines of legal rhetoric to the sphere of figurative language? The court needed to find words for what should have been understood without words or definitions (“manifestly”) but in practice failed to be so. The bare legal language of manifest illegality in the military code did not guide the soldiers, as they failed to apprehend the evident illegality of their conduct. What terminology, then, would make the manifest, the obvious—that such an appalling massacre is absolutely forbidden, even if given as an order—even more obvious and clear? The court needed to find a new way, a new vocabulary to express the clear nature of a manifestly illegal order. Facing the challenge of formulating norms for what must be comprehended instinctively rather than legally, the court abandoned legal rhetoric and resorted to figurative language, drawing images for what words failed to convey.²⁴

The power of metaphors lies in their idiosyncrasies; there is no prescribed meaning for a metaphor. Any attempt to give the meaning of a metaphor is an attempt to do so through familiar words, ignoring the central trait of metaphor—its unparaphrasability.²⁵ Because a metaphor has no denoted meaning, the reader of Halevi’s verdict, upon encountering the image of the black flag, must ask what it means and how it can be used.²⁶

By employing figurative language, the court denies its reader the convenience of a given set of rules. Instead, it invites the reader to ask what she would have done in such a situation, if given such an order.²⁷ The reader’s generic expectation of conclusive legal reasoning is upset. Instead, Judge Halevi offers the reader a process of metaphoric imagination. In order to come to terms with the figure of the black flag, the reader must think of herself as the soldier facing the questionable order, she must imagine herself in the situation, deciding for herself the meaning of the metaphor. In this metaphoric redescription of the legal norm, the reader’s existing vocabulary and beliefs are challenged by “scraps of poetry which send shivers down our spine, non-sentential phrases which reverberate endlessly, change our selves and our patterns of action.”²⁸

Through this metaphoric process, the reader becomes a part of the legal procedure. She is no longer a mere recipient of a finished product, the final verdict. Instead, she takes an active part in the creation of the norm. As such, the reader shares the burden of responsibility for judgment with the court. The figurative test of the black flag drafted by the court then is not a final judgment handed to the reader. It is rather

[221]

I Was in a War



Renana
Keydar

an invitation to a process of ethical investigation that the reader now becomes a part of.

[222]

*Jewish
Social
Studies*
●
Vol. 18
No. 3

Conclusion

Placing the literary narrative of Deir Yassin and the legal narrative of Kefar Kassem side by side allows us to examine how these narratives deal, each in its own way, with key moments in the Israeli-Palestinian conflict. Although the two events and the two narratives differ greatly from one another, the moment of encounter with atrocity leads to a similar response—a disruption of the generic form and a resort to extrageneric rhetoric. The effect this formal disruption has on the reader is a shift of the responsibility for judgment from the narrator (be it Gertz or Judge Halevi) to the reader.

In this shared responsibility, the concept of judgment is transformed from a binary decision between right and wrong, guilty or not guilty, to a more complex ethical reflection that focuses on the process of inquiry rather than its conclusions. In emphasizing the procedure, the narratives signal to the reader that the primary task in seeking the truth is not to look for answers but to ask questions—questions that were not asked in or about 1948 and that continue to haunt Israeli society.²⁹

Notes

- 1 Benny Morris, *The Birth of the Palestinian Refugee Problem* (Cambridge, Engl., 1987), 113, and Isabelle Humphries and Laleh Khalili, “Gender of Nakba Memory,” in *Nakba: Palestine, 1948, and the Claims of Memory*, ed. Lila Abu-Lughod and Ahmad H. Sa’di (New York, 2007), 212.
- 2 Morris, *Birth*, 114.
- 3 For the debate surrounding the events of Deir Yassin, see Morris, *Birth*, 113–15 (note the differences between this description and the one in the 2004 edition, pp. 237–40); Uri Milstein, *History of Israel’s War of Independence*, 4 vols., trans. Alan Sacks (Lanham, Md., 1998), 4: 343–88; Saleh Abdel Jawad, “Zionist Massacres: The Creation of the Palestinian Problem in the 1948 War,” in *Israel and the Palestinian Refugees*, ed. Eyal Benvenisti, Chaim Gans, and Sari Hanafi (Berlin, 2007), 59–127; Yoav Gelber, *Komemiyut ve-nakba: Yisrael, ha-Falestinim u-medinot ‘arav, 1948* (Or Yehuda, 2004), 153–62.
- 4 Morris, *Birth*, 114–15; Jawad, “Zionist Massacres,” 124; Uri Milstein, *‘Atilat dam be-Deir Yassin: Ha-sefer ha-shahor* (Israel, 2007), 9. See also Humphries

- and Khalili, "Gender of Nakba." Humphries and Khalili argue that the fear of rape among Palestinian women, which originated with the rumors about Deir Yassin atrocities, served as a "primary explanation behind the decision of many of the refugees to flee" (212).
- 5 Uri Ram, "Ways of Forgetting: Israel and the Obliterated Memory of the Palestinian Nakba," *Journal of Historical Sociology* 22, no. 3 (2009): 366–95.
- 6 *Ibid.*, 373.
- 7 Haaretz Newspaper et al. v. Ministerial Committee for Permission to Study Archival Material et al., HCJ 10343/07 (not yet published), accessed Oct. 4, 2011, <http://elyon1.court.gov.il/files/07/430/103/p08/07103430.p08.htm>.
- 8 Nurith Gertz, *'Al da'at 'atsmo: Arba'ah pirkei hayim shel Amos Kenan* (Tel Aviv, 2008). All translations are my own unless otherwise noted.
- 9 Gertz, *'Al da'at 'atsmo*, 189–90.
- 10 *Ibid.*, 195–96.
- 11 *Ibid.*, 196–97.
- 12 *Ibid.*, 197.
- 13 *Ibid.*, 9.
- 14 Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor, Mich., 2004), 3.
- 15 James Phelan, *Experiencing Fiction: Judgments, Progressions and the Rhetorical Theory of Narrative* (Columbus, Ohio, 2007).
- 16 *Ibid.*, 53.
- 17 *Ibid.*, 53–54.
- 18 See the factual framework as it was established by the court in its ruling in the Kefar Kassem trial: Military Prosecutor v. Major Melinki, 17 P.M. (1958–1959) 90, Military Court 3/57. See also Benny Morris, *Israel's Border Wars, 1949–1956: Arab Infiltration, Israeli Retaliation, and the Countdown to the Suez War* (Oxford, 1993), 417 n. 3; Ruvik Rosenthal, "Mi harag et Fatma Sarsur: Ha-reka', ha-meni'im ve-hishtalshelut ha-'inyanim be-farashat tevah Kefar Kassem," in *Kefar Kassem: Eru'im u-mitos*, ed. Ruvik Rosenthal (Tel Aviv, 2000), 11–51. 47 people were shot and killed in Kefar Kassem between 5:00 p.m. and 6:00 p.m. of that day. The charges against the soldiers included only 43 of the victims, after the court ruled that the circumstances of the killings of four of the victims—members of one family—remained unclear. The official account of the Israeli Arabs includes two related deaths, a man who died of a stroke the day after the massacre and a fetus in the womb of one of the victims; Rosenthal, "Mi harag," 32–33.
- 19 *Ibid.*, 37.
- 20 *Ibid.*, 37–38.
- 21 *Melinki*, 17 P.M. (1958–1959) 90, 213–14; emphasis added. The translation is taken from Tom Segev, *The Seventh Million: The Israelis and the Holocaust* (New York, 1993), 301.
- 22 *Melinki*, 17 P.M. (1958–1959) 90, 211.

[223]

I Was in a War



Renana
Keydar



- 23 For a criticism of the vague nature of the black-flag metaphor and its unsuitability as a legal test for deciding on the illegality of military orders, see Adi Parush, “Bikoret mivhan ‘ha-degel ha-shahor’: Pesak hadin be-farashat Kefar Kassem, mivhan ha-degel ha-shahor, vеха-musag pekudah bilti hukit be‘alil,” in Rosenthal, *Kefar Kassem*, 131–77. Parush argues that a distinction must be made between the ethical question of the black flag and the legal question whether the order is manifestly illegal or not.
- 24 Bilsky sees Judge Halevi’s decision to “avoid highly technical legal doctrine and appeal to fundamental, intuitive moral sentiments” as a solution to the conflict he was facing between setting a limit on the duty to obey and explaining why his decision did not undermine military discipline. Bilsky, *Transformative Justice*, 190.
- 25 Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge, Engl., 1989), 18. See also idem, “Unfamiliar Noises,” *Proceedings of the Aristotelian Society, Supplementary Volumes* 61 (1987): 283–311.
- 26 With the term “reader” I refer in general to anyone who makes use of the court’s ruling (future soldiers, for example). It is worth noting in this context that since it was coined by the court, the “Black Flag” test has been incorporated into the army’s educational program. See Segev, *Seventh Million*, 301; Ilan Schiff, “Bi-zekhut mivhan ha-degel ha-shahor: Ha-pekudah ha-bilti hukit be‘alil be-tساهal, ‘ekronot ve-yisumim,” in Rosenthal, *Kefar Kassem*, 129–30.
- 27 Ted Cohen sees the ability to imagine oneself as another person as an indispensable human capacity. For Cohen, this talent for identification is the same as the talent for metaphor; the ability to see oneself as someone else is to exercise the ability to deal with metaphor and other figurative language. Ted Cohen, *Thinking of Others: On the Talent for Metaphor* (Princeton, 2008).
- 28 Rorty, “Unfamiliar Noises,” 285.
- 29 Shira Robinson argues that many Palestinians—Kefar Kassem residents in particular—draw connections between the killings of 1956 and the expulsions of 1948 (of which Deir Yassin is a prime example). According to Robinson, this is a link that few Israeli Jews have accepted thus far. Shira Robinson, “Local Struggle, National Struggle: Palestinian Responses to the Kafr Qasim Massacre and Its Aftermath, 1956–1966,” *International Journal of Middle East Studies* 35, no. 3 (2003): 393–416.