

THE SOCIO-LEGAL CONSTRUCTION OF OTHERNESS UNDER A NEO-LIBERAL REGIME

The Case of Foreign Workers in the Israeli Criminal Courts

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This paper attempts to reveal the ways in which criminal courts in Israel constructed foreign workers brought to trial as 'others'. Individual foreign workers were framed as being irrelevant as bearers of rights while, in a parallel process, foreign workers as a group were constructed as symbolically relevant to discussions regarding the state governance of social risk. The study spans the years 1994–2011, when Israel adopted a new neo-liberal regime. The paper shows that the complex penal construction of the 'other' was used as a platform to justify and support the fuelling of the country's globalized neo-liberal economy with cheap migrant workers.

Keywords: foreign workers, neo-liberalism, Israel, othering, narratives

Introduction

The analysis of penal policies towards the 'other' and the 'stranger' has taken a central place in the historical development of criminological discourse. Examining the involvement of immigrants—and, later, their children—in criminal activity, the founders of the discipline, among them Shaw and McKay (1931) and Sutherland and Cressey (1978), pointed to the high rate of newcomers that go through the criminal justice system. This led to the development of policies aiming to regulate and discipline immigrants and their families (see Tonry 1997). With the integration of critical lines of inquiry into the study of the phenomenon of crime, criminologists and sociologists of law questioned the significance of the statistical data upon which these works were based (see Bottoms 1967). Garland (1985) and others concluded that the criminalization of 'others' and the development of penal technologies are historically situated, contextualized within wider social political developments (see Hall *et al.* 1978), and grounded, *inter alia*, in the economic structure of society (Garland 2001).

Currently, criminologists and sociologists of law have focused their attention on the connection between recent labour immigrants and criminality (Butcher and Piehl 1998). While some works attempt to identify rates of detention and arrests of these new immigrants (Hagan and Palloni 1998; 1999; Martinez 2008), others trace the creation of new waves of moral panic in relation to their criminal involvement (Bender 2003; Garland 2001; Martinez 2002). Examining the genealogy of control techniques that target those considered as 'others', scholars have analysed the creation of moral

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panic, which constructed labour immigrants as dangerous—threatening the existence of democratic societies, potentially harming the social and cultural fabric of society and leading to economic catastrophe. This originates in feelings of insecurity about the ability of governments to protect public order (Bosworth *et al.* 2008; Calavita 2005; De Giorgi 2010; Nevins 2002: 11; Melossi 2003; Welch 2005).

These feelings intensify during times of globalization, when the ability of the state and the crime control apparatus to fulfil their traditional goal of protecting borders and ensuring public safety is questioned (Melossi 2003). The role of the state is being challenged during the current era of ‘liquid modernity’ (Bauman 2004; 2007), characterized by shifting borders. In order to regain legitimacy, governments are revealing their ability to identify and supervise the threatening ‘others’, who are represented as trouble-prone and difficult to control, and thus must be identified and segregated (Bauman 2000: 209). Indeed, Bauman (1995: 1) argues that ‘all societies produce strangers; but each kind of society produces its own kind of strangers, and produces them in its own inimitable way’. In order to understand current socio-legal responses to the new group of ‘criminal immigrant’, scholars encourage us to place law-enforcement practices and their accompanying rationalities within the wider political economy of globalization and post-Fordism (Chavez 2001; De Giorgi 2006; Simon 1998; Welch 2003*a*).

The current paper answers this call by following the ways in which criminal courts in Israel have constructed criminal foreign workers¹ brought to trial for committing various criminal offences. This examination of the societal reaction to foreign workers in the juridical–political domain spans the years 1994–2011, when waves of labour migrants entered Israel. In the political–economic arena, during these years, Israel turned away from policies based on collectivist values and adopted a neo-liberal regime. The narrative developed in the courts, together with its socio-political and cultural meanings, has legitimized the new regime that has emerged during the past two decades. The paper shows that the court narrative includes multiple discourses: individual foreign workers are constructed as being irrelevant to discourses of individual rights and, in a parallel process, the same narrative constructs the social group of criminal foreign workers as symbolically relevant to discussions regarding risk and state activity during a time of globalization and the adoption of a neo-liberal socio-economic order.

The paper starts with a theoretical review of the concept of the ‘other’, highlighting the specific case of the construction of newcomers as ‘others’ within the context of the neo-liberal regime. It moves to a description of the political, social and economic transformation taking place in Israel during the past two decades. The analysis then follows the construction of foreign workers in the Israeli courts as ‘others’, and concludes with the examination of the ways in which the courts’ treatment of them legitimizes the neo-liberal regime.

Theoretical Background

The ‘other’, the ‘stranger’, the ‘alien’ and the implications of this social category for social and public policy are discussed in various disciplines within diverse contexts.

¹We use the term ‘foreign workers’ to refer to both documented and undocumented labour immigrants, as well as asylum seekers. This term is currently used by the Israeli legal system.

Differing in their focus and methods of analysis and inquiry, current studies that deal with this issue share two main concepts. First, they agree that the identification of certain people as members of the group of 'others' originates in social processes embedded within social imperatives. This identification is engaging in a dialogue with wider cultural and political themes in specific societies. Second, these social categories play an important social role, marking the normative boundaries of the community.

In his classic work on the construction of the 'other', Goffman (1956) claims that various social and legal practices are involved in the process of producing the notion of 'otherness' and its cultural and social meanings. These meanings are internalized by the object of the definition as well as the definer him/herself. Discussing the implications of this process for the study of crime and deviance, Becker (1963) claims that an 'outsider' constitutes both a judicial status and the socio-political condition of a group, designated by society as not belonging to its core values. Concepts about the nature of differences of those considered 'others' are historically situated; the discourse of 'othering' is combined with ideas about race, social class and gender, including various attributes attached to them (see Bosworth *et al.* 2008: 264).

The process of 'othering' occurs in various social institutions through many social agents, legal and social practices, and organizational structures that, together, define the status of the 'other' (see Soysal 1994: 32). Thus, scholars such as Riggins (1997) and D'hondt (2009) propose that researchers should examine the discursive practices through which 'otherness' is constructed.

Scholars claim that the construction of the 'other' as a distinct group and the public identification of ways to exclude them from the community mark the normative boundaries of society and appropriate methods of inclusion (see Ben-Yehuda 1990; Soysal 1994). The 'othering' mechanism is used mainly against those considered threatening to the social order because of their race, sexual conduct, gender and similar social, political and cultural attributes (Lee 2007; Waquant 2001). Marking the 'other'—the 'outsider'—as violating social and moral boundaries is thus a symbolic cultural code, according to which people and groups may be included in society and become a 'deserving' member, or may be excluded and regarded as 'undeserving' (Ajzenstadt 2002). This classification process leads to the designation of a host of penal, social and legal practices of control (Agozino 2008).

The examination of the 'othering' process as it is applied to labour migrants points to its complexity. Historically, newcomers were expelled to the margins of society, physically and symbolically removed from society's inner political circles and locations (Warner 2005–06; Johnson 2004; Boyd 1983; Morgan 1978). Assumptions about 'crime-prone' immigrants resulted in the introduction of laws aiming to discipline, punish and control them, prohibiting their entry into various countries (see, e.g. Gusfield 1963). As Simon (1997) phrases it, immigrants were governed through crime.

This status of 'alien criminals' (see Warner 2005–06), however, was a temporary condition. Many of the new immigrants arriving in America or Europe at the turn of the twentieth century were considered potential future members of society who would be allowed to integrate after being disciplined, regulated, educated and normalized. Their route to integration in society involved such social institutions as the family, schooling, the labour market and penal institutions.

However, such options do not exist for foreign workers, who are required to leave the host country as soon as their temporary work permits expire. As the paths for integration

in the host society are hermetically blocked for them, foreign workers cannot be considered potential future members of society. They are classified as subjects for regulation and control, aiming to protect society from the economic, demographic and social dangers they pose. Their definition as ‘dangerous’ locates them in an isolated place with its own social meaning for them and for society.

Nevertheless, Alexander (2003) and Bauman (1995) claim that a new approach recently has begun to emerge, given that the newcomers will not easily be ejected from society: ‘The essential difference between the socially-produced modality of modern and postmodern strangers is that while modern strangers were earmarked for annihilation . . . the postmodern ones are by common consent or resignation, whether joyful or grudging, here to stay’ (Bauman 1995: 12). This new position is accompanied by a complex process of ‘othering’. On the one hand, members of this group are regarded as threatening society, which needs protection from them; on the other hand, penal responses to their actual or perceived involvement in crime can be seen as legitimization techniques, making their stay accepted or, at least, tolerated.

This complex construction of foreign workers is closely linked to the neo-liberal regime that many developed states have adopted during the last three decades. The neo-liberal state favours ‘strong individual private property rights, the rule of law, and the institutions of freely functioning markets and free trade’ (Harvey 2005: 64). In practice, the adoption of a neo-liberal regime usually leads to an increase in the privatization of both social services and public assets, reducing welfare state services, enabling flexibility for employers of a cheap, dependent, vulnerable labour force, and creating a ‘good business or investment climate’ (Krinsky 2007: 4; Harvey 2005: 70). Consequently, in the event of a conflict, the neo-liberal state tends to prefer employers’ interests over employees’ rights (Harvey 2005: 70).

Along with the intensification of the globalization process in the last decades—which includes freer worldwide movement of goods, capital and labour—the requirement for a cheap labour force mainly was filled by foreign workers (Ball and Piper 2002). Foreign workers thus became necessary for managing the new political economic order, facilitating the mobility of capital.

At the same time, the fast worldwide transformation of the labour force raises fears about its negative aspects, picturing scenarios of catastrophes in which endless groups of aliens—mostly foreign workers—move around the globe, crossing the state’s geographical, national, cultural, social and political boundaries (see Bosworth *et al.* 2008: 265). The state’s ability to maintain control over its inner and external geographical borders is therefore being questioned and challenged (see Calavita 1998; Hagan *et al.* 2008; Weber and Bowling 2008). Control over foreign workers is part of the ‘border reconstruction project’, reaffirming community boundaries (both actual and symbolic), protecting the country from the invasion of ‘others’ (see Wonders 2007).

These fears from ‘others’ contribute to the design and establishment of regulations, control mechanisms and penal strategies, such as exclusion, incarceration, detention and deportation, in order to manage mass immigration (Engbersen and Van Der Leun 2001; Calavita 1994; Herbert 1992; Lynch and Simon 1999: 3; Quassoli 1999). Foreign workers thus continue to be ‘governed through crime’ (see Bosworth and Guild 2008: 711). These punitive strategies lead to the foreign workers’ socio-economic and political marginality, and turn them into an insecure, dependent and vulnerable—and, as a

result, cheap—labour force, suitable for the new neo-liberal regime (De Giorgi 2010: 147; see also Cheng and Bonacich 1984).

Historical Context

Construction of the ‘other’ takes place at a specific historical juncture. Two significant developments have shaped the socio-political context of the construction of criminal foreign workers in Israeli courts during the last 20 years: a neo-liberal regime was adopted and waves of labour migrants entered Israel.

Neo-liberalism in Israel

During the past two decades, Israel has witnessed a rapid process of political transformation. Starting in the mid-1980s, when the country adopted a programme that aimed to fight economic instability, it gradually moved from a collectivist socio-economic framework towards a neo-liberal ideology (Shalev 2000). During this period, a materialistic, individualistic socio-economic regime was established that liberalized the capital markets and downsized the state in order to minimize its market interventions (Filc 2005). With this turn towards a market-driven economy, governmental support for the welfare state was gradually reduced and various health, education and welfare services were privatized (Ajzenstadt and Rosenhek 2000; Razin and Sadka 1993).

The adoption of this neo-liberal agenda intensified during the first years of the twenty-first century, in response to the economic recession. This situation was caused by the renewal of violent conflict with the Palestinians (the Second Intifada, which began in 2000), which led to a drop in local investment, tourism and personal consumption (Doron 2005). In addition, Israel was affected by a downturn in the international economy. Together, these factors led to the rise of unemployment to a rate of more than 10 per cent. Then-Finance Minister Netanyahu, who enjoyed strong support from then-Prime Minister Ariel Sharon, declared an economic recovery programme that included tax cuts, a reduction in the government’s involvement in the economy and increased privatization of state-owned companies (Nitzan and Bichler 2002). The government reduced the role of the public sector as an employer, replacing it with the private sector, mainly through an increasing number of temporary-employment agencies (Raday 1999). Many of these agencies employed foreign workers.

Foreign workers in Israel

Following the 1967 War, Palestinian workers from the Occupied Territories were incorporated into the secondary labour market as cheap workers, especially in construction and agriculture. Their presence in Israel was limited to their working hours, with many of them returning to their homes and families at the end of the day or during the weekend. Towards the end of the 1980s, the Palestinian leadership organized periodic strikes: a civil uprising (the First Intifada), which involved terrorism and subsequent Israeli border closures, began in 1987. As a result of these phenomena, the supply of Palestinian workers became uncertain, causing labour shortages in those economic sectors in which Palestinian workers were concentrated (Rosenhek 2000).

An urgent need for a stable supply of labour thus developed, and the government authorized the recruitment of contract workers from abroad (Bartram 1998). These labourers were recruited for a limited period, and were expected to return to their countries as soon as their work permits expired. Documented migrant workers, who are employed in such areas as agriculture, construction and care work, are allowed to stay in Israel for a specified limited time. However, they are required to renew their work permit each year. They are not allowed to bring their family members with them and, in general, are exposed to a rigid regime of control.

The number of work licenses provided to employers for foreign workers rapidly increased from about 10,000 in 1993 to 70,000 in 1995, peaking roughly at 100,000 in 1996. Official reports estimate that there were in December 2010 about 76,000 documented foreign workers in Israel (Natan 2011*a*: 3). In addition, it is estimated that, at any given time during the last decade, there have been at least 100,000 foreign workers residing in Israel illegally ('undocumented workers'). In December 2010, there were at least 110,000 undocumented foreign workers in Israel: 95,000 entered originally as tourists but overstayed their visas (Natan 2011*a*: 12) and 15,000 entered as workers but overstayed their work permits (Natan 2011*a*: 3). Other estimates of their numbers are much higher (Eckstein 2010; Israel Central Bureau of Statistics 2011). These workers were recruited mainly from Eastern Europe, Africa, Latin America and South-East Asia (Israel Central Bureau of Statistics 2011).

The presence of these labourers was perceived a priori as temporary. However, with the increase in their numbers and their visible presence (mainly in the cities), moral panic arose regarding their potential invasion of society. A discourse developed, emphasizing that citizens are fearful that foreign workers might take jobs away from Israelis and put a drain on social services; it also pointed to the potential emergence of new non-Jewish minorities that were described as a threat to the Jewish character of Israeli society. Finally, a criminalization process developed, representing labour immigrants as vagrant drunks, committing crimes and breaking into private houses, looking for money or valuables to finance their drug use and gambling (see, e.g. Israeli Parliament 2010). However, in Israel, as in many other countries, although some foreign workers do become involved in criminal activities, research indicates that they are predominately law-abiding (Natan 2010).

From 1996, and much more intensively from 2003–04, Israel attempted to reduce the number of foreign workers in the country and prevent their permanent settlement, in order to fight unemployment (see Israel Government Decision No. 2469, 2002). The state developed a highly restrictive policy concerning their entry and settlement, and utilized exclusionist practices with respect to the legal status of those already residing in the country (Kemp and Rajjman 2008; Kemp 2004), declaring a deportation policy. The state established an Immigration Police force and built detention centres to house undocumented foreign workers before their deportation. Police began to patrol public and private areas, in order to find undocumented foreign workers. As a result, tens of thousands of arrests and deportations occurred: for example, in 2003, about 21,000 undocumented foreign workers were deported (Bar-Zuri 2009: 15). Remaining foreign workers faced daily fears of being deported from the country as well (Rajjman *et al.* 2003; Kemp and Rajjman 2008). There have been various reports that the rights of foreign workers were abused by their employers, state institutions and mediating agencies benefiting from both this trade and the commission fees paid by the foreign workers in their countries of

origin (e.g. US Department of State 2010). It is also important to note that shortly after the establishment of control policies aimed at reducing the number of foreign workers, these policies were ignored and new waves of people continued to enter Israel.

During the last decade, asylum seekers also came to Israel—mainly from Sudan and Eritrea—over the Egyptian border. Although this phenomenon was marginal at first, their numbers in Israel began to rise in 2007, reaching about 33,500 in 2010 (Natan 2011*b*: 2). After being detained, most of them received temporary permits to stay in Israel, known as Temporary Collective Humanitarian Protection. However, very few of them received the officially recognized (and more permanent) status of ‘refugee’, and practically none of them can expect to become citizens. Therefore, much like foreign workers, they cannot be considered as potential future members of society. The rights of these asylum seekers during their sojourn in Israel—including their right to work—remain ambiguous; up to 2011, however, they have been at least *de facto* free to search for work. Nonetheless, it should be noted that since 2010 the Israeli Government has been increasing its efforts to prevent asylum seekers from entering Israel and, once they have crossed the border, their rights and freedom of movement have been restricted (Natan 2011*b*: 2).

Court Narratives of Foreign Workers

In most developed countries, including Israel, the last decades have witnessed a process called ‘judicialization of politics’ (Hirschl 2006), in which expanded judicial power has shaped governing institutions and political activity (see Tate and Vallinder 1995). Against the new neo-liberal regime—and, in particular, the intensive involvement of the business sector in policy making and the ‘shrinking’ of the state—the judicial system has been seen as a tool for ensuring democracy and the rule of law, and for protecting civil and human rights, especially of minorities and other marginalized communities. At the same time, the court is a social space where judicial, social, cultural and political issues are discussed and debated. Legal proceedings taking place in court occur at a specific historical juncture in which certain cultural determinants and discourses are created, regarding such issues as entitlement, membership and ‘otherness’. As with other control mechanisms, judicial ideas about moral conduct and social expectations are determined and perpetuated within society (see Simon 1998). The courts’ own specialized discourses and logic thus reflect the socio-political environment within which they are created. In this way, court rulings and the narrative formulated there can be seen as contributing to the technologies of governing, especially in arenas ‘governed through crime’, such as migration.

In accordance with this perspective, various scholars doubt whether courts in neo-liberal states are willing and able to promote progressive values and protect marginalized communities if these contradict neo-liberal principles and business interests (Ajzenstadt 2009*a*; Couso 2003). Indeed, as scholars of the Israeli legal system have shown (Sitbon 2007), although they occasionally protect foreign workers’ rights by ruling against the state’s official stance, courts in Israel rarely challenge the (neo-liberal) state’s basic logic and narratives regarding foreign workers.

In order to examine the construction of foreign workers in Israeli courts, and to explore its links to neo-liberal ideology, the study analysed 85 court records covering the period of 1994–2011. These court files were generated from all the available resources

that store published court cases in Israel. Most of these cases were quoted in the media or in reports of non-governmental organizations (NGOs) that offer legal assistance to foreign workers in Israel; they were also mentioned in public, official debates in the Knesset (the Israeli parliament) and parliamentary committees. Moreover, many of those cases were quoted as precedents in other cases. Thus, the cases analysed are not a representative sample, and the statistics that will be presented in this paper should be regarded accordingly. However, due to their high visibility, these cases constitute the backbone of the court discourse in Israel in relation to the involvement of foreign workers in crime.

We analysed the court records using a narrative analysis approach. The social phenomenon of narratives, which has 'become a central feature of qualitative research in many social sciences' (Atkinson and Delamont 2006: 164), is a basic form of communication and interaction through 'story-telling', where notions of identity, power, gender, seniority and culture are formed, and social meaning is constructed. Narrative, therefore, attributes meanings to social phenomena, and has an impact on our understanding of social and political reality (Fischer 2003; see also Hajer 1995; Sheaffer *et al.* 2011). Like other social phenomena, narratives are embedded within wider cultural, social and political processes.

Accordingly, the current paper treats the court documents as social texts, the product of a specific social, cultural and political context, namely the new Israeli neo-liberal regime. In order to analyse the way in which foreign workers are constructed in the courts, we examine the court narrative, the 'story' told about the foreign worker brought to trial. The analysis aimed to identify recurrent themes across the court records, illuminating the context in which the range of meanings given to the foreign workers' involvement in crime was produced (see discussion in Ryan and Bernard 2000; Simon and Lathlean 2008).

The 'Othering' Process of Foreign Workers in Israeli Courts

The 'othering' process of foreign workers that took place in the courts rested on two premises: (1) the *irrelevance of the individual* foreign worker standing trial, placing him/her in a 'space of nonexistence' (Coutin 2000); and (2) the *structural or social relevance* (Borja and Castells 1997) applied to his/her criminality. This construction carries with it a specific social-cultural meaning, placing the individual brought to the court in a wider context, as part of the social group of 'foreign workers'.

The irrelevance of the individual

The process of constructing an individual's 'irrelevance' lies in the nexus between two timelines: the past and the present.

Erasing the past

Legal subjects in the courts are usually situated within a broad personal, social and cultural environment as participants in the 'judicial act', referring to such aspects as the criminal record of the accused, his/her education and work experience, and similar details relating to his/her personal background. In this way, an 'agencing' process takes place in the court, in which traces of historical echoes are woven into the factual

legal framework. Court case narratives dealing with foreign workers in Israel usually have ignored this context, leaving out the criminal's personal environment and moving directly to the legal facts related to the case.

In rare cases, the foreign worker's attorney endeavours to engage the court with shreds of such information, making usually weak references to their prior work experience, family status or the absence of a criminal career. These pieces of information do not go beyond a general statement, pointing to the attorney's lack of familiarity with the foreign worker's background and the lack of formal documents that may be presented in court.

One attorney, for example, asked the judge to consider the fact that, in the case of a foreign worker from Thailand, 'there is no evidence of past violent activities and, according to his statement, he [the accused] does not have any criminal record in his country of origin' (case no. 16II). In another case, a criminal past is only guessed at: '... it seems that the accused had a clean record, as it can be assumed that the manpower company that brought him to Israel would not recruit him if he had a criminal record' (case no. 7II).

In response, judges invoke legal reasoning, claiming that—since these descriptions are not supported by formal reports or documents—they cannot be considered part of a factual foundation worthy of discussion in court. This presents the criminal foreign worker as a rootless person whose history was erased at the port of entry into Israel. The case of Michael Takia is a clear example. He is an asylum seeker from Eritrea who came to Israel in mid-2008 and worked on construction sites. In December 2008, he was accused of attacking a fellow worker (a foreign worker himself) and causing him severe injuries; he was convicted after pleading guilty. When his lawyer argued that Takia had no criminal record in Israel (he could not provide documents regarding his criminal record in Eritrea) and thus should be punished lightly, the judge discarded it by claiming that 'the lack of prior convictions can tell us nothing about his character, personality and lifestyle, since he's a 26-year-old refugee who came to Israel from Africa and has been living here only six months' (case no. 72II). He was later sentenced to 3.5 years in prison.

In this way, foreign workers whose criminal history is recorded as 'unknown' are constructed as 'unworthy' of becoming a subject of inquiry and learning; as such, they do not penetrate the 'gaze of knowledge' that forms the foundation of the modern control system (see Cohen 1985; Garland 1996; Feeley and Simon 1992; O'Malley 1992).

Ignoring the present

The absence of the foreign workers' 'present' is created through a complex process that emphasizes his/her alienation from Israeli society in terms of language and social ties. They are refused entitlement to basic services offered by the penal regime. Within this context of emptiness, the court narratives highlight the fragile, temporary nature of the economic connection, the only bond linking foreign workers to general society. When this single weak linkage breaks, the foreign worker is left rootless, without any social network whatsoever. This process of social, cultural and legal loneliness occurs through various dimensions.

Language: While the courts are required to provide translators to ensure that the accused understands the full meaning of the process, in only about 19 per cent of the

examined court cases was a translator present during the trial. Although we cannot tell exactly how many of the accused actually needed translators, it can be assumed that their need is much higher than that of other groups. This linguistic ‘otherness’ is also evident during police interrogations, when evidence is documented in Hebrew, ignoring the fact that the foreign worker does not speak the investigator’s language (see Kav La’oved 2005: 27). For example, the attorney of Yohan Bulmga, a 33-year-old foreign worker from Romania accused of rape, claimed that Bulmga’s police interrogation should be ignored in court, since it was documented only in Hebrew. In his verdict, Supreme Court judge Rivlin wrote:

This court has—more than once—harshly criticised the police for not following the instructions regarding interrogations of suspects speaking foreign languages . . . documenting a testimony in the suspect’s own language is of great importance. Documenting it in a different language is a severe deficiency. In our case, there were severe deficiencies in the police’s work. (Case no. 28II)

However, it should be noted that, in Bulmga’s case—as in other cases—the suspect’s testimony during police interrogation was nevertheless accepted by the court as valid evidence: Bulmga was convicted and sentenced to 10 years’ imprisonment.

Lack of social network: The foreign worker rarely enjoyed the support of family members, friends,² co-workers or employers. Only in one incidence of the examined court cases did a family member provide character evidence; in another three cases, a former employer spoke to the judges. In one of these cases, the employer attended the sentencing scene in order to request the court to rapidly expel the foreign worker to his country of origin, so that his work permit could be used to bring in a new employee in his stead.

Almost no reports documenting personal matters were submitted to the court. Thus, the court, which already lacked historical background, also missed information about current familial or personal traits, such as performance at work, friendships the worker may have formed or the worker’s attitude towards family members. When presented to the court, such data allows the judges to expand their knowledge of the accused. This plays an important role in the decision-making process regarding the court’s response to the criminal offence. Foreign workers, however, were excluded from the ‘knowledge gaze’ of the law-enforcement agencies.

Not deserving services: Another dimension of the irrelevance of the individual foreign worker is the consideration as to whether he/she deserves the basic legal or welfare services usually provided to offenders: bail, community work, rehabilitation programmes in prison and early release or parole.

Foreign workers rarely have the financial means to pay bail. Nor, due to their lack of a social network, can they ask people to serve as their ‘guardians’ until their sentencing date. Moreover, the police oppose bail in the case of foreign workers, as the penal practice of bail involves close police monitoring of the released person (which requires such ‘guardians’). Michael Takia’s attorney, for example, proposed several possible ‘guardians’ to supervise his client: two of Takia’s relatives were rejected by the court because they only have temporary permits for staying in Israel. The third and fourth proposals, Takia’s neighbour and two other asylum seekers, were rejected because, as

²It can be assumed that this absence is due to the inability of foreign workers to be absent from their work, or from their fear that they will be detained and expelled in cases of undocumented immigrants, or that employers or law-enforcement agents will retaliate in some way.

foreign workers, 'they need to go to work and earn money, and thus cannot supervise him regularly' (case no. 721). Similarly, Feetle Santi (case no. 40) remained in detention until her trial date, as the 'only people she knows are foreign workers like her, who go to work early in the morning and come back late at night' and thus cannot monitor her activities. This led to the classification of foreign workers as dangerous, without any reference to their legal status. Indeed, about 88 per cent of the foreign workers in the examined cases were detained until trial.

Moreover, after sentencing, foreign workers could not be considered as eligible for community work, which can be undertaken as an alternative to incarceration in cases of sentences of up to six months, or can replace imprisonment time before release. This service is considered a rehabilitation programme to which non-citizens are not entitled. Similarly, while in prison, foreign workers cannot participate in long-range rehabilitative programmes. The state, it seems, distinguishes between legal and welfare entitlement:

The State of Israel is doing whatever it can to grant foreign citizen prisoners equal rights to those of Israeli citizens. However, not every right and condition granted to an Israeli citizen can be given to an undocumented citizen for objective reasons. (Case no. 34)

Finally, foreign workers were not eligible for early release or parole, as they could not be supervised by the police (case no. 27).

Being an economic subject: Court records refer repeatedly to the only visible link connecting foreign workers to Israeli society: their participation in the work force. Committing an offence or even being suspected of violating the law shatters the economic status of the foreign worker and, thus, their only connection to Israeli society. An open criminal record results in the Immigration Authority's decision to cancel the work permit of the accused, or not to renew it. Even in the rare event that the accused was found not guilty (about 6 per cent of the cases studied), he/she was deported. As the fragile economic link connecting foreign workers who stood trial to Israeli society was broken, they were considered a nuisance to the system and to society, thus justifying and legitimizing their physical and symbolic ejection.

Structural and symbolic relevancy

Individual foreign workers appearing before the court were constructed as irrelevant to society. Further analysis of the court discourse reveals, however, that another discourse has been created simultaneously, through a parallel process, constructing the foreign workers as belonging to a dangerous class, threatening both external geographical borders and the internal moral boundaries of Israeli society.

Geographical borders

The 85 foreign workers whose cases are discussed in this paper were accused or found guilty of a range of offences. In about 14 per cent of the cases, an illegal border transgression was added to the main criminal offence. Almost a third (33 per cent) of the foreign workers stayed illegally in Israel and, in addition, around 5 per cent of the accused were asylum seekers. In these cases in particular, and sometimes also in cases in which the foreign worker resided legally in Israel, judges and state representatives framed the discussion about the crime within a risk discourse, emphasizing the threat of illegal entry

(or residence) to state sovereignty, economy and society. The individual foreign worker was thus characterized as part of the wider, dangerous social class of foreign workers.

Describing smuggling into Israel as hazardous ‘the world is becoming one global village’ (case no. 31), law-enforcement representatives predicted a disastrous future when waves of people would knock on Israel’s gates, leading to their collapse. The ‘danger’ of foreign workers in Israel was further framed in the context of the security problems facing Israeli society at the turn of this century. The court narrative described the illegal entry of people as paving the way to the smuggling of terrorists, weapons and dangerous materials into the country, risking the safety of its residents.

Frail, unsecured gates and borders, and the inability of the police and the army to patrol and monitor entrance points, were therefore described as threatening the existence of society. The prosecution claimed that since Israel’s borders cannot be fully protected, severe punishment of those who succeeded in being smuggled into the state would be a proper legal response and would deter attempts to challenge the right of the state to control its borders.

Dong Liangqin, a Chinese citizen, was convicted in 2005 of entering illegally into Israel and of assisting others in doing so, and was sentenced to 10 months in prison. In his verdict, the judge wrote:

Illegal entry into Israel is a severe crime. While its main aspect is a security one . . . it is impossible to ignore its economic, social and demographic aspects. I mentioned more than once that criminals who break this law should be severely punished. Illegal entry into Israel is a burden on the army and the police, and harms the right of the state to decide who will enter its gates . . . Israel’s borders should be protected, but since they cannot be hermetically closed, the criminal’s punishment should be severe . . . my goal in this case is to deter potential criminals. (Case no. 18II)

The demand for severe punishment of foreign workers who were smuggled into Israel took a central place even in cases in which this was not the main offence for which they were brought to trial. Finally, criminal foreign workers were depicted as threatening the state’s image, and its international status and relationships with other countries, thus harming its ‘external sovereignty’, which depends on recognition by outsiders (on external sovereignty, see Thompson 2006). In this vein, law-enforcement representatives opposed light sentences, claiming that such a penal response would harm Israel’s image as a responsible state and law-abiding community, and also might affect the external relationships between Israel and other countries, harming reciprocal responsibility between states.

For example, in the (failed) appeal of H. B. P. Shingamong, a foreign worker from Thailand convicted of possessing and using dangerous drugs and sentenced to 18 months in prison, the state’s attorney claimed that ‘we have obligations to other countries, based on international conventions of drug-related offences. It would be the wrong message if we ease the punishment of a foreign citizen convicted of a drug crime’ (case no. 31). The judge went on to explain that he cannot endanger citizens of other countries and that this would harm reciprocal responsibility between states.

Internal boundaries

The accused foreign workers were represented as part of a social class that threatens Israel’s internal boundaries, namely morality, law and public order. Accordingly,

law-enforcement agents called upon the courts to punish those found guilty in order to send out a message of their ability to manage the dangerous, frightening population of foreign workers. They therefore claimed that it is the duty of the courts to send a 'loud, clear message' (case no. 17) to foreign workers employed in Israel, or those who plan to come, that they must obey the law. Advocating a law-and-order rhetoric, state representatives declared that the State of Israel is one 'with laws that are seriously enforced and would not tolerate any law violations from non-citizens, who would be severely punished' (case no. 22). Otherwise, it was claimed, public order itself would collapse. For example, Jorge Kisno-Remirez, a foreign worker from Colombia, was convicted of an assault and sentenced, following a plea bargain, to 18 months in prison. The judge said:

Were it not for the plea bargain, the accused should have gotten a severe punishment, in order to deter potential delinquents who dare to abuse Israel's hospitality, offending the state hosting them and allowing them to make their living there. (Case no. 3)

Two main groups were considered especially vulnerable, requiring court protection from delinquent foreign workers: women and elderly people. In about 32 per cent of the examined cases, the victim was a female and the court responded vehemently. Judges and state prosecution representatives saw it as their responsibility to protect young women from undisciplined foreign workers, 'wandering in the streets, attacking our girls, frightening innocent women' (case no. 23VI). Similarly to other waves of moral panic (see discussion in Doezema 1999), the protection of innocent girls was presented as a symbol of the stability of a society that could manage delinquents challenging its ability to guard women. The courts thus declared it is their duty to punish abusers of women. For example, in the verdict of Tarkon Tzatzki, a foreign worker from Thailand convicted of attempted rape and sentenced to 3.5 years in prison, the judge wrote:

Often we come across sexual assaults in which foreign workers are involved. . . it is the court's duty to send a message to the potential criminals not to dare to use Israel's hospitality to commit such severe criminal offences. (Case no. 49)

Elderly people cared for by foreign workers comprised the second group considered in need of court protection. After several cases of foreign workers being found guilty of abusing their elderly employers, the prosecution initiated a wave of moral concern over this behaviour, demanding severe punishment to prevent similar violence.

For example, Laqwa Ramd, a foreign worker from India whose 85-year-old employer has dementia, was convicted, following a plea bargain, of abusing him. The prosecution requested 18 months in prison, but the judge doubled the imprisonment period, explaining that his decision aims to deter future foreign workers from acting violently, especially against the helpless:

. . . many thousands of elderly people need medical and nursing care and, unfortunately, most of the workers are foreign . . . it is very important to send a clear and loud message to these foreign workers regarding their duty to respect the elderly they are taking care of . . . A society that does not know how to care for its weakest elements, especially its elderly, helpless citizens who cannot take care of themselves and have lost their cognitive ability to communicate with their environment, is losing part of its humanity. (Case no. 42)

Protecting elderly people and innocent girls was part of the process of re-bordering (De Giorgi 2010) through which Israeli law-enforcement agencies constructed the

cultural and rhetorical borders that separate insiders and outsiders—those belonging to the group of ‘threatening others’.

Discussion

The 85 court records that we examined show that the construction of foreign workers in Israeli court as ‘others’ through complex narratives—both as being irrelevant as individual bearers of rights and as being very relevant as group signifiers of social risk—justifies and supports the Israeli neo-liberal regime, and thus can be seen as contributing to the technologies of governance.

On the one hand, the Israeli neo-liberal regime requires a dependent, vulnerable and insecure labour force. As this requirement is largely filled by foreign workers, the regime seeks to preserve their marginal status. On the other hand, the rapid movement of populations (mostly foreign workers) across borders draws a picture of an unstable, ‘fluid’ society. Especially in the context of the more usual security problems facing Israel, this potentially dangerous situation generated concern about the strength and stability of the government to maintain control over its borders and sovereignty. Thus, the same entrance of the mass labour force of foreign workers that nourish the neo-liberal regime was seen simultaneously as risking public order, threatening national sovereignty and undermining cultural solidarity and national identity (Welch 2003*b*). The ‘dual’ construction of foreign workers in Israeli courts should be examined, therefore, against this context.

The construction of the individual’s irrelevance as a bearer of rights in court narratives can be seen as part of the technologies of governing under the neo-liberal regime, embedded with the ideology of individualization (Ajzenstadt 2009*b*). This contributes to the preservation of the foreign worker’s marginal status as part of a dependent, vulnerable, insecure labour force through: (1) highlighting his/her temporary, fragile and partial membership in Israeli society as an ‘economic subject’ who may lose his/her work permit and be deported at any given moment; (2) depriving him/her of the entitlement to basic services offered by the penal regime; and (3) ignoring his/her criminal record and educational background, work experience, language and social ties.

In addition, although this research focuses on court narratives, it shows how other law-enforcement institutions use control mechanisms and penal strategies to preserve the foreign workers’ marginal status. For example, police interrogations of foreign workers ignore the fact that this population does not speak the local language and that, according to state regulations, foreign workers cannot participate in long-range rehabilitation programmes while in prison. Moreover, since they cannot be supervised by the police, they are also ineligible for early release from prison or parole. In summary, the construction of the foreign workers’ ‘otherness’ in court narratives through ‘individual rights irrelevance’ represents them as an insecure, dependent and vulnerable labour force, in accordance with the requirements of the new neo-liberal regime.

The social meaning attached to the foreign workers’ behaviour was a symbolic mechanism, enabling law-enforcement agents to reconstitute state control on Israel’s physical and symbolic borders. The court narrative about the ‘criminal foreign workers’ threatening Israel’s borders played a discursive role, becoming a platform for enabling discussions marking (1) external geographical borders and (2) internal boundaries regarding morality, law and public order.

By stressing that these borders cannot be crossed, state representatives and judges contribute to the symbolic 'restoration' of Israel's borders, which are drawn from both the 'hard' hand of the state—the police, army and fiscal policy—and the 'soft' hand, represented by the need to protect women and elderly. Moreover, by identifying this social class—the foreign workers—as posing a risk to society, and harshly punishing them and deterring potential ones, the government can claim to regain its legitimacy as being determined and capable of controlling and managing their entry into Israel and its citizens' security under the new neo-liberal regime in a time of globalization. The construction of the foreign workers' 'otherness' in the court narrative through 'social risk relevance' justifies the neo-liberal regime by showing that it can—and does—protect its external borders.

The construction of multiple discourses of 'relevance', namely individual irrelevance as opposed to social relevance, symbolically enhances the marginality of foreign workers, preventing them from moving from the status of temporariness to one of permanence. Court narratives produce a complex figure of the 'other': on the one hand, this figure marks and identifies an economic thread, closely monitored and supervised, making a narrow link to Israeli society. On the other, the foreign worker continues to be regarded as endangering society.

This duality that emerges in the court narratives reflects the acknowledgement that the 'stranger is here to stay' by distinguishing between individual 'others' and the group of 'others'. Under a neo-liberal, globalized political economy, cheap labourers are seen as essential and must be part of society. However, as was seen in the courts, their inclusion excludes the possibility of personal familiarity with foreign workers as individuals. They have been 'effaced'—stripped of their individual, personal uniqueness, which could prevent stereotyping (Bauman 2000: 209)—but remain invisible (Thompson 2005: 35). Instead, they are categorized as a group of 'others' that must be regulated throughout their stay in Israel. The 'invisible', similarly to the 'irrelevant', is excluded from society and its subjectivity is denied; but the 'visible' is not necessarily included. In particular, the 'visible' may be perceived as threatening and frightening, and may lead to his/her exclusion (Shamir 2005), in the same way as the social relevance of the foreign worker may lead to his/her criminalization.

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