Legal Decision-Making During the Palestinian Intifada: Embryonic Self-Rule

Adrien Katherine Wing

Follow this and additional works at: http://digitalcommons.law.yale.edu/yjl
Part of the Law Commons

Recommended Citation
Available at: http://digitalcommons.law.yale.edu/yjl/vol18/iss1/3

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Yale Journal of International Law by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
I. INTRODUCTION

The Palestinian uprising known as the intifada is now in its fifth year.
Intifada,\textsuperscript{2} from the Arabic verb "to shake," connotes an attempt to shake off twenty-five years of Israeli occupation.\textsuperscript{3} During the intifada considerable world attention has focused on the image of keffiyah\textsuperscript{4}-clad youth who throw stones in the Occupied Territories (the West Bank and Gaza).\textsuperscript{5} Due to this focus, some commentators have characterized the intifada as an uncoordinated reign of terror on a hapless population.\textsuperscript{6} Others, including this author, see rather the beginnings of de facto Palestinian autonomy and embryonic self-rule.\textsuperscript{7}

Whereas many authors have focused on the intifada's manifold social, economic, political, or human rights issues,\textsuperscript{8} this article explores another aspect of the intifada: legal decision-making and the process of attempted self-rule.\textsuperscript{9} It postulates that the Palestinians are developing embryonic elements and the Palestinians of Israel: Resurrecting the Green Line, J. PALESTINE STUD., Spring 1990, at 58.


2. There are often several common English transliterations for the same Arabic word (e.g. intifuda, intifadah and intifadeh). I have chosen spellings for Arabic words based on frequency of usage in the literature.


4. A keffiyah is the traditional Palestinian white and black or red checkered headscarf.

5. This article refers to this area as either the West Bank, Gaza, or the Occupied Territories. The former Likud party Israeli government referred to the West Bank by its biblical names of Judea and Samaria. The current government calls the West Bank and Gaza the Administered Territories. Although this article concerns both the Gaza Strip and the West Bank, it will primarily discuss the West Bank due to the dearth of information on Gaza. On Palestinians in Gaza see generally Sara Roy, The Political Economy of Despair: Changing Political Attitudes Among Gaza Refugees, J. PALESTINE STUD., Autumn 1989, at 58, 72; Ann Mosely Lesch, Gaza: History and Politics, in ISRAEL, EGYPT AND THE PALESTINIANS: FROM CAMP DAVID TO INIFADA 223 (Ann Mosely Lesch & Mark Tessler eds., 1989) [hereinafter CAMP DAVID].


8. See generally CAMP DAVID, supra note 5; HUNTER, supra note 6; INTIFADA: PALESTINE AT THE CROSSROADS 91 (Jamal R. Nassar & Roger Heacock eds., 1990) [hereinafter CROSSROADS]; INTIFADA: THE PALESTINIAN UPRISING, supra note 1; NATIONAL LAWYERS GUILD, INTERNATIONAL HUMAN RIGHTS LAW AND ISRAELI EFFORTS TO SUPPRESS THE PALESTINIAN UPRISING (1989) [hereinafter NLG]; ZE'EV SCHIFF & EHUD YA'ARI, INTIFADA: THE PALESTINIAN UPRISING—ISRAEL'S THIRD FRONT (Ina Friedman ed. & trans., 1990) [hereinafter ISRAEL'S THIRD FRONT].

9. The information conveyed in this article covers primarily the period prior to the Gulf War crisis. Source material includes interviews conducted by the first joint delegation of the National Conference of Black Lawyers of the United States of America (NCBL) and the Society of Black Lawyers of England and Wales, which visited the Occupied Territories (as well as Israel and Cairo) from December 22, 1989 through January 9, 1990 to assess the legal and judicial mechanisms developed by the
of a new legal regime under severe constraints. The article describes and evaluates the nascent process in which various legal actors are creating new executive, legislative, and judicial institutions and procedures to formulate and implement new rules of decision. Examination of this embryonic decision-making process illustrates the extent to which the intifada has contributed to both change and continuity within Palestinian legal culture.

Palestinian society during the intifada is representative of the many societies in which the dominant legal power has little legitimacy among a significant sector of the population, or is viewed as inadequate or unresponsive to a sub-community's legal needs. Far from being merely a disorga-

Palestinian people during the intifada. The delegation consisted of myself and three other individuals: Mr. Makbool Javaid, a Muslim solicitor who was the secretary and executive committee member of the Society; Mr. Manjit Gill, barrister and executive committee member of the Society; and Mr. Victor Arango, executive editor of The Human Condition, a U.S.-based newspaper. For discussion of our trip, see NATIONAL CONFERENCE OF BLACK LAWYERS, REPORT OF A JOINT DELEGATION OF THE NATIONAL CONFERENCE OF BLACK LAWYERS, USA AND THE SOCIETY OF BLACK LAWYERS OF ENGLAND AND WALES (1990) (on file with author); Victor Arango, Control or Chaos? Israel in the Occupied Territories, The Human Condition, Mar. 1990, at 1.

Participation in the intifada leadership subjects one to immediate arrest and imprisonment, and it is therefore not possible to name sources. Suffice it to say that the four researchers talked with and recorded the observations of nearly 100 people, male and female, including prominent lawyers, community activists, journalists, political leaders, labor leaders, union members, teachers, students, elders, and others to derive some of the information cited herein. Many of these individuals had been incarcerated for their alleged political activities. We were told by various informants that our sources were representative of the various political factions of the PLO in the Unified National Leadership of the Uprising (UNLU). Although this inability openly to name individuals makes it difficult to verify the data provided by interviewees independently, it cannot be avoided. The research was complicated further by the fact that we do not speak Arabic, and thus had to communicate with some informants via translator.

In an attempt to address problems of verification, the author conducted a survey of written literature in English and an Arabic-speaking research assistant conducted a similar survey of material in Arabic. Surveying data is also problematic because all media sources in the Occupied Territories are censored. See ANDREW RIGBY, LIVING THE INTIFADA 140 (1991). The article indicates where the only sources available are personal interviews. Otherwise, citations are to published sources only. For a discussion of research problems encountered by another author see HUNTER, supra note 6, at xviii.

10. A legal system may be defined as a set of institutions, procedures, and rules. See JOHN HENRY MERRIMAN, THE CIVIL LAW TRADITION 1 (1969) ("A legal system is . . . an operating set of legal institutions, procedures and rules"; distinguishes between legal system and legal tradition); John Henry Merryman, The Convergence (and Divergence) of the Civil Law and the Common Law, in NEW PERSPECTIVES FOR A COMMON LAW OF EUROPE 222 (Mauro Cappelletti ed., 1978) (defining "legal system" as comprised of "legal extension, legal penetration, legal culture, legal structures, legal actors, and legal processes").

11. Because the regime is in its earliest stages and because the occupation constrains the free flow of information, the level of available detail is often far less than would be desirable. What follows at times reflects this.


13. For a response to a similar problem in another society, see, BENEDICT ALPER & LAURENCE NICHOLS, BEYOND THE COURTROOM: PROGRAMS IN COMMUNITY JUSTICE AND CONFLICT RESOLUTION 197-210 (1981) (describing informal tribunals). Additionally, the Palestinian legal experience can be compared and contrasted with other societies which do not have independence. See e.g. ALBIE SACHS & GITA HANWANA WELCH, LIBERATING THE LAW: CREATING POPULAR JUSTICE (1990) (discussing Mozambique before and after independence). It can also be grouped with societies involved in national liberation movements or societies with other revolutionary aims. SACHS & WELCH, supra; ALPER &
nized uprising, the intifada represents in part one such community’s attempt to change its situation and create more acceptable legal institutions and traditions. The sui generis transformations taking place in the intifada are built upon selected elements of pre-existing legal institutions, rules, and procedures, as well as new concepts of justice and authority identified by the community. This article illustrates both how legal change reflects community values, and how law can be used to change these values without sacrificing legitimacy or effective enforcement.\textsuperscript{14} Specific examples include how the desires of women and the young for a greater say in their own fates interact with conservative community values. This article also explores the effect that social disruption can have on the type of justice dispensed. The article concludes that the emergence of embryonic underground autonomous legal structures is an indication that the Palestinian people are developing, both deliberately and inadvertently, an alternative power base\textsuperscript{15} which they hope may one day lead to true independence.\textsuperscript{16}

One significant aspect of this embryonic regime is the extent to which Palestinians obey new rules and whether compliance stems from the rulemakers’ legitimacy in Palestinian eyes or from coercive tactics. As such, the Palestinian experience during the intifada is an important case study of the role of coercion and legitimacy in the formation and duration of new legal institutions. Given this concern, part II discusses the roles of legitimacy and coercion in greater detail.

Since law is a function of historical circumstances,\textsuperscript{17} part III discusses the pre-existing legal traditions utilized and rejected by the Palestinians.\textsuperscript{18} Part

\textsuperscript{14} Burman & Scharf, supra note 12, at 694 (illustrating same in context of South Africa; discussing possible evolution of informal systems of justice in rural South Africa into more institutionalized system).


\textsuperscript{17} June Starr & Jane F. Collier, Introduction: Dialogues in Legal Anthropology, in HISTORY AND POWER IN THE STUDY OF LAW 24 (June Starr & Jane F. Collier eds., 1989) (law is historical product, arising from particular historical negotiations between and among groups).

\textsuperscript{18} See Norman Bentwich, The Legal System of Palestine Under the Mandate, 2 MIDDLE E. J. 33,
Palestinian Intifada: Embryonic Self-Rule

IV examines the decision-makers themselves, noting the educational, gender, age, and class characteristics of the people developing the institutions, processes, and rules. Part V explores the institutions created during the intifada which perform legislative, executive, and judicial functions, including the underground Unified National Leadership of the Uprising (UNLU), the National Reconciliation Committee (NRC), and the justice committees. Part VI discusses dispute resolution procedures, particularly mediation proceedings. Part VII looks at selected new rules that have emerged in the areas of landlord/tenant relations, labor relations, women's rights, and penalties.

Although most of the material in this article describes the period prior to the Gulf Crisis, Part VIII focuses on the intifada during and after the Gulf Crisis. Significant changes occurred during this time which have undermined many of the positive steps taken in the earlier years of the intifada toward creating a new legal regime. The article concludes with a brief look at the major obstacles that obstruct the fuller development of Palestinian legal decision-making.


21. Although there are several ways to classify the various stages of the uprising, I consider the intifada to have had four stages. The uprising started spontaneously on December 9, 1987, when four Palestinians were killed by an Israeli truck that collided with two vans of Palestinians returning to the Gaza Strip from work in Israel. Four thousand people attended the funeral, and protests and street demonstrations spread throughout the territories. By January 1988 the second phase began as the movement became organized and Palestinians began disengaging from the structures of the occupation by boycotting the Israeli economy and establishing independent economic ventures. See generally RICHARD T. DRURY & ROBERT C. Wynn, PLOWSHARES AND SWORDS: THE ECONOMICS OF OCCUPATION IN THE WEST BANK (1992); ECHOES OF THE INTIFADA: REGIONAL REPERCUSSIONS OF THE PALESTINIAN-ISRAELI CONFLICT (Rex Brynen ed., 1991); JERUSALEM MEDIA & COMMUNICATION CENTER, THE INTIFADA: AN OVERVIEW — THE FIRST 2 YEARS (1989) [hereinafter JMCC]; NLG, supra note 8; ISRAEL'S THIRD FRONT, supra note 8, at 17. This phase, which represented the height of the intifada, lasted until July 1990, the start of the Gulf War Crisis. Phase three consisted of the period leading up to and including the Gulf War, a time characterized by a deterioration in the ability of the intifada leadership to implement its directives. Phase four, the current period, began after the end of the Gulf War and is characterized by a severe loss of order despite the start of international peace talks. See infra notes 331-380 and accompanying text.
II. LEGITIMACY AND COERCION

Coercion and legitimacy each play a significant role in the evolving legal process in the Occupied Territories, motivating Palestinians to obey some of the rules and to seek out some of the dispute resolution mechanisms promulgated by local decision-makers. Coercive tactics have been well documented by the media. For example, masked shabab (youths) have forced merchants to keep their shops closed on strike days called by the leadership. Others have attacked the property of recalcitrant officials, and made an attempt on the life of one mayor, Hasan El-Tawil of El-Bireh. The Israeli-appointed head of the Gaza Strip Bureij refugee camp resigned after his car was torched and his home fire-bombed. Incidents such as these play a role in securing obedience not only from those targeted, but from the broader community as well. Furthermore, the Palestinians employ subtler forms of coercion than violence or threats of violence. In a relatively intimate community, social disapproval encourages cooperation; Palestinians who wish to be regarded as honorable members of the community are likely to obey the decisions of respected local leaders.

Legitimacy and illegitimacy also play important roles. This article uses the term legitimacy in a sociological sense: legitimacy denotes a situation in which people accept authority without coercion on the basis of their belief that the authority and its processes are valid. The new Palestinian legal regime is emerging in large part because the legal system administered by Israel never achieved legitimacy with the Palestinian community. "Unlike classic colonialist regimes" which were able to ally themselves with the local elite

---

22. This observation is consistent with contemporary legal theory, which recognizes two motivations for obedience: coercion and legitimacy. As Thomas Franck notes, "[m]ost contemporary legal philosophers deem coercive power necessary but insufficient to secure habitual social assent to governance." THOMAS M. FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS 15 (1990). Antonio Gramsci identifies two types of political control: domination (coercion) and direction or hegemonic control (exercise of control through generation of popular consent). CARL BORK, GRAMSCI'S MARXISM 38 (1976).

23. RIGBY, supra note 9, at 21.

24. HUNTER, supra note 6, at 125; RIGBY, supra note 9, at 21.

25. RIGBY, supra note 9, at 21.


Palestinian Intifada: Embryonic Self-Rule

(property owners, merchants, and professionals), "the Israeli Occupation has failed to win the sympathy or support of any meaningful sector of the occupied population." 29 By contrast, the Palestinians have embraced their emerging legal system as legitimate. 30 This legitimacy derives from the Palestinian nationalism which has developed over two and a half decades of occupation and has further intensified during the intifada. Nationalism has encouraged people to demand a Palestinian-run alternative to Israeli institutions, including a legal system. 31 The ultimate goal of the embryonic Palestinian institutions is to supplant the Israeli-administered legal regime, a goal that coincides with the intifada’s overall aims of developing autonomous governmental structures in such areas as economic development, health, agriculture, defense, and education.

Although Israel can use the coercive powers of the state to enforce its edicts, many of its edicts have failed because the Palestinian population regards neither the orders nor the governing authority as legitimate. However, the Palestinian community deems most intifada rules legitimate because it accepts both the rule-making process and the "governing" authority of the UNLU, 32 despite the fact that the UNLU is an unelected body. Western critics might dispute the legitimacy of rules promulgated by an unelected body. However, some Palestinians do not believe that elections are a necessary component of legitimacy, because their traditions confer legitimacy

30. One example of the degree to which the Palestinians accept and therefore legitimize the new system is a blood feud between two families in Halhoul, a town in the West Bank, that customary law mediation had been unable to resolve for twenty years. During September 1989, the disputants met with representatives of the intifada leadership who, because they had the respect of the parties due to their role in the intifada, were able to work out a satisfactory solution. The decision was published in the local papers. Interviews with A, B, C, and D, local West Bank lawyers, in Jerusalem (Dec. 27, 1989); Interview with M, an Israeli Palestinian, in Jerusalem (Dec. 26, 1989); Interview with J, a Palestinian lawyer, in Chicago, Ill. (Aug. 7, 1990) (transcripts of all interviews on file with author). A second example is the UNLU’s call in April 1989 for conversion to daylight savings time two weeks before the Israeli date of May 1st. Despite the breaking of Palestinian watches and wrists by Israeli forces, the West Bank went to, and stayed on, Palestinian time. Ibrahim Abu-Lughod, On Achieving Independence, in CROSSROADS, supra note 8, at 10.
31. See Starr & Collier, supra note 17, at 10. "The PLO, with the fewest tangible resources and the least effective power, is far away the most legitimate force in the region." BISHARAT, supra note 28, at 16, 181 n.26 (citing studies and polls). See generally HELENA COBBAN, THE PALESTINE LIBERATION ORGANIZATION: PEOPLE, POWER, AND POLITICS (1984). "The intrusion of tendrils of external control" from Israel, the PLO, and formerly Jordan, "leaves the local community with limited autonomy of its own and deprives its institutions of social control (such as police and courts) of most of their capacity to regulate affairs according to locally defined needs and interests. The result is a bizarre combination of immediate intervention and smothering control in matters that implicate the interests of the three external authorities (‘overcontrol’) coupled, at times, with a breakdown of the system of social accountability and virtual anarchy in realms in which only or primarily community interests are at stake." BISHARAT, supra note 28, at 16.
32. Since many Palestinians identify with one of the four political factions in the UNLU, the legitimacy which they bestow upon their faction carries over to the entire UNLU as well. HUNTER, supra note 6, at 76.
on those with social status due to inheritance or seniority. Others understand that democratic elections are not possible in the current political climate. In fact, municipal elections were last held in 1976, and Israel subsequently removed many elected Palestinian officials from office. For the Palestinians, one of the major goals of the intifada is an independent state in which they would be able to elect their leaders. Free and fair elections would bolster the legitimacy of the law-making process in the eyes of the local and world communities. Should the Palestinians achieve this goal, the election of leaders will alter traditional notions of legitimacy that stem from social status.

III. LEGAL TRADITIONS

Legal decision-making during the intifada has been influenced by a variety of pre-existing legal systems and traditions. For example, parts of customary, Islamic, Egyptian civil, and Jordanian civil law have had great influence on Palestinian decision-makers. By contrast, Ottoman law, Mandate law, Israeli military law, and Israeli civil law have been largely rejected by Palestinians, either as a symbolic estrangement from the Israeli administered legal order, or because the laws promulgated under those systems have been used to compromise Palestinian rights. This section briefly introduces these pre-existing legal systems in the order in which they became relevant to the Palestinians.

A. Customary Law

The oldest and most influential tradition still in partial usage today in the Occupied Territories is the customary law (urf). In the eyes of many

33. Rigby, supra note 9, at 7.
34. Id. at 18.
35. According to Professors Merryman and Clark:
   A legal tradition, as the term implies, is not a set of rules of law about contracts, corporations, and crimes, although such rules will almost always be in some sense a reflection of that tradition. Rather it is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected, and taught. The legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective. Merryman, supra note 10, at 3.
36. Starr & Collier, supra note 17, at 13 (describing Palestinian refusal to participate in legal activities as symbolic estrangement from Israeli legal order).
37. The term "customary law" is used in modern anthropological literature in a very vague and often meaningless way, connoting any type of non-legislative law in a tribal society. Posner, supra note 20, at 194. See, e.g., Karl Llewelyn & E. Adamson Hoebel, The Cheyenne Way (1941) (discussing customary law among Cheyenne). The term "customary law" must be used with caution; the implementation of something called customary law in the developing world has often been rationalized as based on time-honored tradition, but in reality, much "customary law” is merely a product of, and reaction to, the colonial experience. See, e.g., Bisharat, supra note 28, at 191 n.35.
Palestinian Intifada: Embryonic Self-Rule

Palestinians, customary law remains a viable, legitimate tradition which can and should influence modern legal developments; thus, the intifada's decision-makers draw extensively from this source. Palestinians in the West Bank and Gaza have used urf to handle disputes outside of the official civil and religious courts on the basis of traditional customs and norms that stress conciliation, mediation, and family and group honor within the community.

Historically, respected elders or reconciliation committees (lujnat el-islah) adjudicated and administered urf. Clans (hamayil) were often parties in adjudicatory proceedings since "an offense against any individual, male or female, [was] also seen as an offense against his or her family or clan." The types of disputes handled included contract matters between businessmen, feuds between large extended families (often including payments of diya, or blood money), trespass and other land matters, and personal injury.

One traditional use of reconciliation committees was to mediate murder cases. Customarily, a murder "triggered a period in which members of the aggrieved's family [might] justifiably take vengeance against any member of the offender's family." To forestall this, neutral men mobilized elders, notables, or makhateer to act as temporary mediators to obtain a three-day

---

This section focuses on the customary law of dispute resolution, which is indeed a non-legislative, non-governmental legal process.

38. According to Robert Hunter, "Throughout the intifada the Palestinian Press [has] featured articles on the return to customary law." HUNTER, supra note 6, at 3.

39. BISHARAT, supra note 28, at 37.

40. Id. at 32, 187 n.5 (citing "a plethora of anthropological studies that document the venerated status of mediators, often religiously sanctioned, in Middle Eastern societies"); see also ABNER COHEN, ARAB BORDER-VILLAGES IN ISRAEL 82 (1965) (referring to existence of committees of reconciliation).

41. BISHARAT, supra note 28, at 37. The Hamayil is a patrilineal descent group of males related to the fifth degree through a common ancestor. ROSEMARY SAYIGH, PALESTINIANS: FROM PEASANTS TO REVOLUTIONARIES 192 (1979).

42. BISHARAT, supra note 28, at 41. Diya or blood money is an amount paid to the victim of a personal injury and/or his family by the perpetrator and/or his family. Id. at 40; see also PHILIP J. BALDENSPERGER, THE IMMOVABLE EAST: STUDIES OF THE PEOPLE AND CUSTOMS OF PALESTINE 115 (1913) (providing early account of blood dispute).

43. BISHARAT, supra note 28, at 37. Diya or blood money is an amount paid to the victim of a personal injury and/or his family by the perpetrator and/or his family. Id. at 40; see also PHILIP J. BALDENSPERGER, THE IMMOVABLE EAST: STUDIES OF THE PEOPLE AND CUSTOMS OF PALESTINE 115 (1913) (providing early account of blood dispute).

44. Traditionally, only men were selected to perform such adjudicatory tasks. See id. at 40.

45. A mukhtar (pl. makhateer) is a village official who, since the Ottoman era, serves as a liaison between families, and between clans and state authority in order to help maintain order and security in the village. In the Jordanian era, makhateer were nominated by the hamula (clan) and confirmed by the Jordanian district commissioner. Although a mukhtar is not a judicial officer, there are recorded instances in which a mukhtar served as an arbitrator of disputes (e.g. the mukhtar of Dura settled a land dispute in 1963). In 1954, the mukhtar of Halhoul mediated a land dispute between the villages of Khirbet Jala and Bayt Umar. Id. at 54. Israeli Military Order No. 366, described id. at 196 n.27, calls for appointment of makhateer by the military government. In the early 1980s, some 826 people serving in a mukhtar capacity received small stipends from the military government in addition to fees earned by authenticating documents. Moshe Dori, Local Government in Judea and Samaria, in MILITARY GOVERNMENT IN THE TERRITORIES ADMINISTERED BY ISRAEL 1967-1980, THE LEGAL ASPECTS 237, 243 (Meir Shamgar ed., 1982) [hereinafter MILITARY GOVERNMENT]. The unpopularity of Israeli rule and the use of makhateer to compel unwanted regulations has diminished the credibility of some makhateer. "By the mid-1980s, makhateers were frequently considered collaborationists." DAVID MCDOWALL, PALESTINE AND ISRAEL: THE UPRISING AND BEYOND 107 (1989).
After the conclusion of the *atwa*, respected men formed a formal reconciliation committee to mediate the dispute. Some disputes remained unresolved, but in many, both parties eventually agreed to a binding settlement (*sulh*). Parties to such disputes may have had mixed motivations for complying with the process and the *sulh*: the committee members were both legitimate decision-makers, by virtue of their status within the community, and potentially coercive enforcers, by virtue of their physical resources. This blend of legitimacy and coercion enabled disputants to accept a judgment without losing honor.

Inheritance disputes provide a modern example of the use of customary dispute resolution processes. The Israeli military has ordered that land shares inherited by Palestinians categorized as "absentees" during the 1967 war revert to the state. Thus, heirs disputing an inheritance with an absentee sibling have relied on customary dispute resolution so as not to involve the government.

Beginning in the British Mandate period after World War I, customary law often functioned parallel to or overlapped with the civil court system. Similarly, during the current Occupation, "judges in the civil courts generally appear to tolerate the competing systems, sometimes even consciously accommodating [customary law] by delaying actions in a case while awaiting a *sulh.*"

Customary law has continued to play a major role in Palestinian legal culture because many Palestinians regard it as valid, and because those who believe in its legitimacy are willing to bring social and physical pressure to bear on those who do not. Palestinians have sustained the authority of customary law through four occupations. Customary law has served as an example of Palestinian control over Palestinian affairs, according to Palestinian custom. Nevertheless, the legitimacy of customary law is no longer absolute. Since the *intifada* began, women's groups, labor unions, and others have challenged certain aspects of customary law and have limited its use, as described below.

---

46. COHEN, *supra* note 40, at 141.
48. Committee members were generally respected men who had to be neutral and approved by both sides; in addition, the parties themselves participated in the discussions, and had agreed to the terms of the *sulh*. COHEN, *supra* note 40, at 142.
49. The committee members were generally powerful men, and had the support of the family or *hamula*. Id.
50. BISHARAT, *supra* note 28, at 32.
51. Id. at 42.
Palestinian Intifada: Embryonic Self-Rule

B. Islamic Religious Law

The embryonic Palestinian legal regime derives important aspects of its rules and procedures from the Islamic heritage of the decision-makers. Religious heritage is an important social characteristic of the Palestinian community: "[a]s in the Middle East in general, religiosity within both Muslim and Christian communities is strong, especially in the rural areas; even in the towns and cities, religion and sect constitute important components of social identity."52 Given religion's major role in Palestinian life and self-definition, many Palestinians look to religious courts as legitimate arbiters of appropriate social behavior.53

For Palestinian Muslims the sharia, the Islamic law found in the Koran and other sources, provides rules that govern day to day life. The sharia is a comprehensive code of behavior that embraces both public and private conduct, and in theory governs crimes, torts, contracts, trusts and estates, and family law.54 Since the eighteenth century, sharia courts have used this law to decide disputes on matters of personal status (marriage, divorce, child custody, alimony) and inheritance, and to decide when to award diya.55 Prior to the nineteenth century, sharia courts were the only formal courts in Ottoman Palestine.56 In the mid-nineteenth century, Ottoman reforms known as the Tanzimat centralized political authority, modernized the state bureaucracy,57 and established civil courts. The latter development gradually diminished the power of the sharia courts.58

52. Id. at 11.
53. The vast majority of Palestinians are Sunni Muslim. A Christian minority composed of several denominations comprises eight percent of the Palestinian population. This minority is centered in Jerusalem, Ramallah, and Bethlehem. Id. at 197, n.41.
56. Bentwich, supra note 18, at 36.
57. BISHARAT, supra note 28, at 19.
Today, the religious courts that remain are managed by the Supreme Muslim Council, a group not officially recognized by the Israelis, but nonetheless allowed to operate. Cases in the religious courts are heard in Arabic, often without lawyers. Judicial determination is fairly rapid; most cases are decided in two months time. However, the rulings of these courts are often ineffectual because Israel does not enforce these courts' orders. This indicates that however legitimate some Palestinians may find religious courts, others are unwilling to obey religious courts without some threat of force. Perhaps for this reason, Palestinians' use of these courts since the beginning of the intifada has declined. Some of the work of religious courts in the Territories has been supplanted by intifada justice committees, the UNLU, and private individuals who now often handle such personal status matters as mediating spousal quarrels and regulating bride price (mahr) reductions. It seems that Palestinians stopped going to religious courts to resolve these matters in part because they no longer accepted as legitimate the truly unequal treatment women received under the traditional approaches.

C. Ottoman Law

Each of the foreign occupations of the region brought legal traditions that have affected current Palestinian legal culture. Ottoman law is the oldest of these foreign traditions. The Ottoman empire ruled the Middle East for four hundred years, superimposing its own civil code on pre-existing Islamic and customary law. The Ottoman law applicable today is primarily real property law. Since land ownership is central to the Palestinians' territorial struggle, the choice of land law is of vital symbolic importance. While real property issues are addressed by almost all of the legal sources that currently influence the Palestinians, the Ottoman Land Code is the oldest concerning land holdings in the West Bank and Gaza. Although Palestinians relied on the

60. BISHARAT, supra note 28, at 120-21.
61. JOHN HENDY, OCCUPIED PALESTINE: TRADE UNIONS AND THE LAW 30 (1989). As a result of the prohibition against enforcement, decisions of sharia courts in the Territories are not recognized in Israel, and claimants must start new suits in sharia courts in Israel if they want a judgment enforced in Israel. BISFR ARAT, supra note 28, at 141.
62. See infra notes 175-178 and accompanying text.
64. BISHARAT, supra note 28, at 127 (noting view that "struggle for control over the land, regarded as the national patrimony of the Palestinian people and the key to their sumud, or steadfastness . . . is a sacred responsibility.")
Ottoman Land Code long after the Ottomans left the region, the Israelis' use of Ottoman land law in a manner that disadvantaged Palestinian property holders has delegitimized Ottoman law in the eyes of Palestinians.

In 1979, the Israeli High Court ruled that Palestinian land could not be confiscated for non-security reasons. In response, the government devised a process to take Palestinian land which conformed with the High Court's ruling. This process relied on the distinction in Ottoman law between state-owned land (miri) and privately-owned land (mulk). Beginning in December 1979 the government conducted a comprehensive land survey of the West Bank which revealed that the majority of the land had not been properly registered under Turkish or Jordanian law as privately owned land. This enabled the military government to declare all such unregistered land in the territories to be state-owned miri land, subject to Israeli confiscation. Thus, Palestinian landholders who possessed valid tax receipts were dispossessed of land they had occupied for years. Israeli settlements were then built on confiscated land. Similar land in Israel, however, has not been treated in this way. Whereas only thirteen percent of the West Bank was considered state land in 1967, today approximately sixty percent of the West Bank is state land. Relief from the Israeli High Court is unavailable, since it refuses to hear appeals concerning state land. Because the Israelis have used Ottoman law in this manner, Ottoman law is no longer considered a legitimate source of law by Palestinians; as a result, Palestinians currently eschew Ottoman-based rules, institutions, and procedures, and are trying to develop their own institutions and rules for resolving land disputes.

D. British Mandate Law

After World War I, the League of Nations carved up the territories of the defeated Ottoman empire and granted Great Britain a Class A Mandate over Palestine, the area now embracing Jordan, Israel, the West Bank, and the

66. RAJ SHEHDEH, OCCUPIERS LAW 28 (1985) [hereinafter SHEHDEH, OCCUPIERS].
67. Id.
68. Id. at 31; BISHARAT, supra note 28, at 140.
70. In Israel the government converted such miri land into private mulk land held by those Israeli citizens who had occupied it previously. Israel Land Law (1969), ¶ 153; SHEHDEH, OCCUPIERS, supra note 66, at 26; Bisharat, supra note 69, at 347.
71. SHEHDEH, OCCUPIERS, supra note 66, at 213.
72. Id. at 21 (referring to Elon Moreh case, supra note 65).
Gaza Strip. In 1922, Great Britain divided the Mandate into two jurisdictions and established the principality of Transjordan east of the Jordan River.

When violence escalated between the British, Zionists, and Palestinians, the British passed emergency regulations which limited civil liberties. The Palestinians perceived these regulations and other alterations in the pre-existing legal regime as intrusive and illegitimate. Today, Israel still invokes the British Defense Emergency regulations of 1945 to justify curfews, expulsions, censorship, and house demolitions. Since these Mandate regulations, like the Ottoman land laws, are used to restrict the liberties of the Palestinian people, they are not viewed as legitimate by the Palestinian population; thus the intifada decision-makers do not include institutions, rules, or procedures from British mandate law in their new legal structures.

E. Jordanian and Egyptian Civil Law

The first Arab-Israeli war started in 1948 when neighboring Arab states invaded the newly declared State of Israel. The four armistice agreements between Jordan, Egypt, Syria, Lebanon, and Israel which followed the conflict gave Israel control over seventy-seven percent of the territory of Mandate Palestine (other than Transjordan), including West Jerusalem. Jordan, which had become an independent state in 1946, occupied and annexed East Jerusalem and the West Bank area of the Jordan River,

73. A class A mandate was a quasi-colonial form of governance established for "advanced" territories whose independence was envisioned by the League of Nations. HAZEM Z. NUSEBEBH, PALESTINE AND THE UNITED NATIONS 19 (1981).

74. For a discussion of British Mandate law, see generally BISHARAT, supra note 28, at 21-26; Bentwich, supra note 18, at 33. For a discussion of Mandate policy and its effect on Palestinian society, see Anis Kassim, Legal Systems and Developments in Palestine, 1 PALESTINE Y.B. INT'L L. 19, 23-24 (1984); Ylana Miller, Administrative Policy in Rural Palestine: The Impact of British Norms on Arab Community Life 1920-1948, in PALESTINIAN SOCIETY AND POLITICS 124 (Joel S. Migdal ed., 1980). Israel's High Court has defined one section of the emergency regulations as a "Draconian provision passed by a colonial regime and incompatible with the basic values of a democratic state." Moshe Nebgi, Paper Tiger: The Struggle for Press Freedom in Israel, 39 JERUSALEM Q. 17, 18 (1986).

75. British Defense Regulations of 1945, from 1937 Orders in Council, discussed in NLG, supra note 8, at 13. Curfews authorized by Regulation 124. Id. at 69. Expulsions permissible under Regulation 112. Id. at 62. For a discussion of specific issues see Cheryl V. Reicin, Preventive Detention, Curfews, Demolition of Houses, and Deportations: An Analysis of Measures Employed by Israel in the Administered Territories, 8 CARDOZO L. REV. 515 (1987); Ghada Talhami, The Palestinian Perception of the Human Rights Issue, 13 SYRACUSE J. INT'L L. & COM. 475, 482-3 (1987) (deportation). While these regulations only apply in legally declared states of emergency, Israel has been in such a state of emergency since its independence in 1948. ZE'EV SEGAL, DEMOKRATIA ISRAELI [ISRAELI DEMOCRACY] 152, 158 (1990). The continuing validity of these regulations was upheld by the Israeli High Court in 1979 when it said that the regulations had "neither been implicitly or explicitly repealed." Abu Awad v. Commander of the Judea and Samaria Region, H.C. 977/79, 33(3) Piskei Din [Judicial Decisions] 309 (1979) (English summary in ISRAELI Y.B. HUM. RTS. 343 (1979)).

Palestinian Intifada: Embryonic Self-Rule

spreading Jordanian civil law to those areas. 77 Egypt took control of the Gaza Strip and imposed its own set of laws in that region. 78 On the first day of the Israeli occupation in 1967, the new military regime declared that local law (Jordanian, Egyptian, Mandate, Islamic, and customary) would remain in force. 79 Over the last twenty-five years, the Israeli government has limited the application of Jordanian law in the West Bank, and Egyptian law in Gaza, to certain land, trademark, criminal 80 and landlord-tenant disputes. While the intifada utilizes some of these laws, it rejects those that are outdated, 81 or are used by the military government against Palestinians. 82

Cases employing Jordanian or Egyptian law are heard in Israeli-administered civil courts 83 that are entirely subordinate to an Israeli military

---

77. SHAUL MISHAL, WEST BANK/EAST BANK: THE PALESTINIANS IN JORDAN, 1949-1967, at 1, 6 (1978) (discussing political situation of Palestinians during Jordanian period).
78. For a discussion of Jordanian and Egyptian law from 1948-1967, see Kassim, supra note 74, at 27-29. The Egyptian Administration reinstated most of the basic legislation from the Ottoman and Mandate years. It also passed Basic Law No. 255 which served as a constitution, leaving all prior laws in place to the extent they did not conflict with the Basic Law. In 1962 Egypt passed a constitutional order emphasizing Palestinian identity. Id. at 29. Egypt held the Gaza Strip from 1949 to 1967 but did not claim sovereignty. It asserted that it was holding the area pending the exercise of self-determination by the population. John Quigley, David v. Goliath: Humanitarian and Human Rights Law in Light of the Palestinian Right of Self-Determination and Right to Recapture Territory Taken by Force, 21 N.Y.U. J. INT'L L. & Pol. 489, 490-91 (1989). "It published laws in the Palestine Gazette" and "treated Gaza as 'an inseparable part of the land of Palestine.'" Id. "Court judgments were 'delivered & executed in the name of the people of Palestine.'" Id. at 491. The 1962 constitution decreed for Gaza was supposed to remain in force until a permanent constitution was promulgated for Palestine. Id.
79. Proclamation of Commander of Israel Defense Forces in the West Bank Region on Law and Administration, June 7, 1967, § 2, reprinted and translated in 1 ISRAEL Y.B. HUM. RTS. 419-20 (1971). There was some dispute over whether the British Mandate-period Defense Emergency Regulations had been in force; the Jordanian government claimed that they had not been. Reicin, supra note 75, at 536-37.
80. Local penal laws have been repealed or suspended "only where they constitute a threat to security or an obstacle to the continuation of orderly government," ESTHER R. COHEN, HUMAN RIGHTS IN THE ISRAELI- OCCUPIED TERRITORIES 1967-1982, at 107 n.183. In effect this means that many criminal offenses are heard in the military tribunals.
81. For example, the intifada leadership has rejected the 1965 Jordanian labor law in favor of more modern international standards. See infra notes 245-247 and accompanying text.
82. For example, the Jordanian civil code states that a privately owned parcel of land that is not cultivated for three years shall revert to the state. Thus, military authorities have attempted to deny an owner access to land for three or more years in order to seize it. Emergency Regulation 125 states: "A Military Commander may by order declare any area or place to be a closed area . . . . Any person who . . . . enters or leaves . . . . without a permit . . . . shall be guilty of an offence against these Regulations." Cited in Bisharat, supra note 69, at 350 n.149.
83. After the annexation of East Jerusalem in 1967, Ramallah, which was the seat of a magistrates' court, district court, and the Court of Appeals, replaced Jerusalem as the judicial capital of the West Bank. The Court of Appeals became the highest indigenous court, since access to the Jordanian Court of Cassation was cut off. For a chart of the West Bank civil court system see BISHARAT, supra note 28, at 59. There are eight magistrates courts hearing criminal cases carrying fines up to 200 Jordanian dinars or three years in prison, as well as land, water, and landlord-tenant disputes. There are three district courts that hear all cases that do not fall into the jurisdiction of the magistrate courts, and also hear a few appeals. The Court of Appeals contains three judges and hears all appeals from the district court and most from the magistrate courts. Many plaintiffs and defendants do not use lawyers in cases involving small fines, traffic violations, etc. As in the U.S. system, many cases settle outside of court. Like the continental system, there are no juries. There is a similar judicial structure in Gaza.

109
commander. He appoints all judges and court personnel and retains all powers of dismissal and promotion. The local Palestinian civil court judges have no authority to review his orders or to hear suits against Israeli Defense Force (IDF) personnel. "The single most influential officer in the military government of the West Bank as regards the local courts is the officer in charge of the judiciary. He has been vested with all the powers and privileges of the Minister of Justice under Jordanian Law...." Allegations of corruption from Palestinians and Israelis against the judges have been rampant, and several judges, including the President of the Court of Appeals, have been convicted. Palestinians view these courts as hostile, intrusive, inefficient, and therefore, illegitimate. This perception is enhanced by the fact that Palestinians deny the legitimacy of any Israeli-run institution. For these reasons, many litigants have taken their legal problems to the few institutions developed during the intifada.

F. Israeli Civil and Military Law

In the Six Day War of June 1967, Israel quickly defeated the Egyptian, Jordanian, and Syrian armies. By the end of the war, Israel controlled the West Bank, the Gaza Strip, the Sinai Peninsula, and the Golan Heights. Israel annexed East Jerusalem in 1967, and has ended the jurisdiction of Jordanian courts in that area. The international community, however, still considers the Occupied West Bank to include East Jerusalem. Under the
Palestinian Intifada: Embryonic Self-Rule

Camp David Accords of 1979, Israel returned the Sinai to Egypt. In 1981 Israel extended Israeli law to the Golan Heights; however, it did not formally annex the area. Since the Palestinians do not accept the Occupation or the 1967 annexation of East Jerusalem, the intifada leadership does not incorporate Israeli civil law in any way.

Palestinians living in the West Bank and Gaza are not subject to Israeli civil law. Soon after the Occupation began in 1967, Israel introduced a system of military occupation law for the Occupied Territories to supplement existing customary, Islamic, Ottoman, British Mandate, and Jordanian and Egyptian civil law. Israel also acknowledged that international law applied in the Territories. Since 1967 Israel has supplanted approximately 1000 civil laws in the Occupied Territories with more than 1213 military decrees that regulate many areas of daily life. Thousands of Palestinians have been arrested and detained by the military criminal justice process. It is estimated that from 1967 to 1986, interrogation or arrest under military order affected 250,000 people (one in six people, or one in three over fifteen years of age). Over forty percent of adult males were detained overnight during this period. The level of arrests and detention without charge has escalated since a March 17, 1988 military order revoked the 1980 procedures for

93. MILITARY GOVERNMENT, supra note 45, at 13, 15. A survey of the voluminous literature on the applicability of the laws of belligerent occupation and international human rights law is beyond the scope of this article. See Falk & Weston, supra note 3 and citations therein.

94. See BISHARAT, supra note 28, at 47-69 (discussing impact of military system); SHEHADEH, OCCUPIERS, supra note 66, at 219 (1213 orders issued as of Dec. 3, 1987); see also Kassim, supra note 74, at 30 (1100 orders in West Bank and 835 orders in Gaza by 1984). In the early years of the Occupation from 1967 to 1971, the orders were unpublished and were unavailable even to lawyers. Id. at 35.

95. These areas include immovable property; use of water and other resources; authority to operate banks; agricultural product export; drivers' licenses; travel permits; professional licenses; identity cards; initiation of businesses; building permits; control of municipal and village councils; arrest without warrants and administrative detention without charge; assembly; and attorney access to clients. SHEHADEH, OCCUPIERS, supra note 66, at 8. For a discussion of freedom of speech, see Norman Bernstein, Freedom of Speech in the Israeli Occupied Territories: The Search for a Standard, 21 N.Y.U. J. INT'L L. & POL'Y 527 (1989); John Quigley, The Relation Between Human Rights Law and the Law of Belligerent Occupation: Does an Occupied Population Have a Right to Freedom of Assembly & Expression?, 12 B.C. INT'L & COMP. L. REV. 1 (1989). For a general discussion of Occupation law from the Israeli viewpoint see MILITARY GOVERNMENT, supra note 45.


97. Id. at 22. Among the human rights violations found by B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories which was founded in 1988, were the following: (1) failure to inform family members and attorneys of arrest and location of detainees; (2) prison transfers without documentation or notification to families; (3) failure to allow detainees to meet with lawyers at time of arrest; and (4) failure to maintain open court hearings or to allow attorneys to be present at hearings on extension of detention. B'TSELEM, THE MILITARY JUDICIAL SYSTEM IN THE WEST BANK 40 (1989).
review by a military court and allowed any IDF officer above the rank of colonel to order detention. 98

One of the most devastating tools of the Israeli military justice system is deportation — the permanent expulsion of Palestinians from their own homeland. More than 2000 deportations have been reported since the beginning of the Occupation. 99 More than 400 have been deported since the beginning of the intifada. 100 The Israeli High Court has never overturned a deportation order. 101

The demolition or sealing of houses is a form of collective punishment. For example, if the Israelis suspect someone from a particular family or area of throwing rocks, participating in a demonstration, or attacking a soldier, the IDF will demolish or seal a house without compensating the owners. 102 The National Lawyers Guild estimates that as many as 20,000 house demolitions or sealings have occurred. 103 Israel admitted to demolishing or sealing 1265 houses between 1967 and 1981. 104 B'Tselem has documented that 159 houses were demolished or sealed in the first year of the intifada and 222 in the second year. 105

In addition, curfews are also utilized as a form of collective punishment. According to the U.S. State Department's Country Reports, the Israeli military has imposed "hundreds of curfews, some lasting several weeks." 106 It also has restricted press coverage, 107 banned some newspapers for periods as long as a month, and closed other newspapers indefinitely.

Israeli military law clearly has had a negative impact on the Palestinian community; therefore, the intifada leadership rejects the application of Israeli military law and the military court system. 108 Overall, Palestinians reject

---

98. Quigley, supra note 78, at 511 & n.139 (referring to Order Covering Administrative Arrests, Interim Instruction No. 1229 for West Bank, and No. 91 for Gaza).
99. SHEHADEH, OCCUPIERS, supra note 66, at 229.
100. The PLO: Is It Time to Talk, Newsweek, Jan. 11, 1993, at 44.
103. NLG, supra note 8, at 65.
104. Id.
107. Quigley, supra note 78, at 520.
108. The military courts often do not comport with traditional notions of justice. Offenders before these courts have no absolute right of legal representation. Furthermore, in a large number of the cases, the judgment is based upon a confession written by a military officer in Hebrew, a language few Palestinians can speak, read, or write. SHEHADEH, OCCUPIERS, supra note 66, at 87. "Military courts tried almost 3000 cases in 1984-85, almost 40% concerning illegal demonstrations and rock-throwing. Almost all received prison sentences, double the number in 1983. A typical sentence for rock-throwing is nine months imprisonment." MERON BENVENISTI, AMERICAN ENTERPRISE INSTITUTE, 1986 REPORT: 112
Palestinian Intifada: Embryonic Self-Rule

those legal traditions that have harmed them, especially Mandate, Ottoman, and Israeli military law, and the intifada leadership has not utilized these systems in any way. By contrast, intifada decision-makers incorporate those aspects of customary, Islamic, Egyptian civil, and Jordanian civil law that they regard as legitimate components of the new norms and procedures the intifada legal actors are crafting. All these choices indicate an attempt to create a new tradition more consistent with evolving community values.

IV. NEW ACTORS

Palestinian legal actors traditionally have been highly respected men who have served as religious or customary leaders, customary law mediators, Islamic judges (qadis), and lawyers (muhamem).¹⁰⁹ The numbers and types of legal actors have expanded during the intifada. This change has significantly nullified many of the traditional patterns of Third World Leadership [including past Palestinian leadership], which rely on systems of notables and dignitaries and big names, who also rely for their credibility and power base either on external sources of strength, like their connections with the colonial regime or an external power, or on family connections and wealth within their society. The UNLU in a sense has reinforced the people’s legitimacy, the voice of the people rather than the voice of the notables and the dignitaries.¹¹⁰

Thus, the intifada is in many ways also an attempt to shake off the traditional leadership of elders and notables, to bring about dramatic changes in the class and age of legal actors.¹¹¹ To illustrate, the National Guidance Committee (NGC) established in 1978 "consisted of familiar public figures drawing their authority from political and social status," while the membership of the UNLU "appear[s] to be relatively youthful and educated and drawn widely from lower and middle social strata, with a significant number of professionals and self-employed persons."¹¹² The emergence of more

---

¹⁰⁹. See generally BISHARAT, supra note 28.


¹¹¹. Darweish, supra note 63, at 57.

¹¹². Sayigh, supra note 96, at 29.
Youthful legal actors is a function of the interaction of demographics and the duration of the Occupation. Eighty percent of Palestinians are under thirty years old and have but hazy recollections of life before occupation; sixty-five percent of Palestinians are under twenty years old and have grown up entirely under occupation. Interestingly, growing up under Israeli occupation has emboldened young people to challenge rather than to accept the political status quo of occupation.

In addition to the clandestine UNLU members, the new leadership includes a network of public "personalities" who are frequently referred to in local, national, and international media. They tend to be younger than traditional dignitaries, but older than the youth that have grown up entirely under occupation. This middle-aged group consists of working professionals such as academics, intellectuals, journalists, publishers, lawyers, and businessmen. While some, like Faisal Husseini, come from prominent families, many traditionally would not have become important figures. These people owe their significance to their roles in the intifada. Like UNLU members, then, these personalities represent a change from the traditional social structure.

Another example of change brought about by the intifada is the growing importance of women. Professor Julie Peteet notes:

Long-term conflict makes for flux as gender roles and ideologies are blurred and subject to conscious reexamination. Households are mobilized for communal defense, and women take on tasks usually associated with men. Yet there also occurs a process of feminization of specific sectors of the national movement. Both processes involve a complex reconceptualization of gender.

Traditionally, Palestinian women were not political actors. That Palestinians have a fertility rate of seven births per woman might lead one to believe that women would have little time for political activity. During the intifada, however, the political participation of women has been "comprehensive, direct and active."

113. McDowall, supra note 45, at 105.
114. Id. In addition, some believe that "Israel [has] helped cultivate the new Palestinian leadership by channeling some 20,000 young people through its prisons and then releasing them." Israel's Third Front, supra note 8, at 218. Prison time produces seasoned activists who have received political education from fellow prisoners, led hunger strikes, broadcasted appeals, and managed relations between political factions within the prison. Sayigh, supra note 96, at 23. In addition, these prisoners established popular committees in the cell blocks that were models for the intifada popular committees. Israel's Third Front, supra note 8, at 214.
115. Rigby, supra note 9, at 26.
118. Benvenisti, supra note 59, at 2.
119. Giacaman, supra note 63, at 142 (citing Union of Palestinian Working Women's Committees, Palestinian Women's Role in the Uprising: Eye-Witness Accounts 1 (1988)).
Prior to the intifada, students and long-term activists constituted the core of female involvement against Israeli occupation. When the intifada began, women of all ages and from all sectors (including those from rural areas, villages, and refugee camps) became involved. They have mobilized their households, staged demonstrations, formed committees, and been arrested, killed, and wounded. At least one woman has served in an urban defense committee, and several older and less educated women have served in the village and camp defense committees. Feminization of specific sectors of the national movement is indicated by female predominance in teaching children, providing child daycare, collecting clothing, and other areas. This represents a slight expansion of women’s traditional roles as sustainers and nurturers who did not work or volunteer outside the home.

It is unclear how many women have been involved in the UNLU, the NRC, or in other non-traditional leadership positions. Customary norms and the growing influence of Islamic fundamentalism have prevented women from playing prominent roles in the leadership of the uprising. In addition, women’s responsibilities as de facto heads of large households (in which several male family members may be in prison, in hiding, injured, dead, or deported) hinder women’s ability to be public leaders. Although the UNLU may have included women at various times, an analysis of the communiqués and the pattern of arrests and deportations suggests the leadership is generally male.

The most striking international evidence of women’s participation in the intifada was the PLO’s selection of Professor Hanan Mikhail Ashrawi, Birzeit University Dean of the Faculty of Arts, as the principal spokesperson for the Palestinians during the peace negotiations that started in 1991. While her urbane Western-educated demeanor has won admiration in many circles, vociferous critics at home feel these very characteristics make her an inappropriate representative for the Palestinian masses. Rather than indicating an increase in female political participation, her selection is aberrational at this point in time and its significance should not be overstated.

121. According to Schiff and Ya’ari, one-fifth of those wounded in the first three months of the intifada were women. ISRAEL’S THIRD FRONT, supra note 8, at 126.
122. Giacaman & Johnson, supra note 63, at 164. For a discussion of the defense committees see infra notes 167-171 and accompanying text.
124. Id. at 134-35; Hiltermann, supra note 120, at 52-53.
125. Hiltermann, supra note 120, at 53.
126. Id.; Giacaman & Johnson, supra note 63, at 165.
127. WALLACH & WALLACH, supra note 116, at 3. For example, the fundamentalist group Hamas has called her a "loose" woman. Id. at 30.
The *intifada* has thus increased the range of significant Palestinian legal actors beyond traditional notables, expanding this role to include younger individuals, middle-class professionals, and even a few women. Most of these new actors derive their positions from their active roles in the *intifada*. That most Palestinians respect and obey these actors and their statements reflects the legitimacy of the movement in Palestinian eyes.

V. INSTITUTIONS

While embracing or rejecting pre-existing traditions, Palestinian legal actors have developed new institutions that must operate alongside Israeli-controlled institutions. The Israeli "civilian administration" manages the day-to-day affairs of the Territories, largely by passing military edicts. A Palestinian with a civil legal problem may seek judicial relief in the civil courts of the West Bank or Gaza, in which Israeli-appointed Palestinian judges preside. For a personal status dispute, such as divorce, inheritance, or custody, a Palestinian may seek relief in Islamic or Christian religious courts. Customary mediators may resolve certain disputes. Most criminal matters are heard in military courts under Israeli-appointed Jewish judges. However, when Palestinians can choose a dispute resolution mechanism, they almost invariably prefer a non-Israeli institution. Since many Palestinians view the Israeli-run institutions as illegitimate, inefficient, and slow, they have turned to the new institutions created during the *intifada*.

A. UNLU

The primary legal institution of the *intifada* is the UNLU. It serves as both the executive and legislative branches of underground authority.\(^{128}\) In fact, the UNLU has taken on the "character of an 'embryonic state': coordinating activities in civil society, administering the provision of certain basic services, and seeking to control the use of force within the boundaries of its own territory."\(^{129}\) It formulates policies and issues laws in the form of communiqués known as *bayanat*.\(^{130}\) The UNLU consists of a highly decentralized network of leadership committees, which ensures that the Israeli military cannot destroy the UNLU by isolating specific individuals or geographic areas.\(^{131}\) While it may appear that each segment operates autonomously

\(^{128}\) In the *intifada*, as in many Middle Eastern societies, there is no Western-style separation of legislative and executive powers.

\(^{129}\) RIGBY, supra note 9, at 19.

\(^{130}\) In this article, "*bayan"* (pl. *bayanat*), "communiqué", and "leaflet" are one and the same.

\(^{131}\) One source estimated that UNLU leadership changed at least four times during the first year of the uprising as a result of arrests and rotation. RIGBY, supra note 9, at 33.
Palestinian Intifada: Embryonic Self-Rule

under its own local committee, a supreme leadership unites to issue the communiqués. According to one theory, the central committee has sixteen members — eight from Gaza, eight from the West Bank — with six Sunni Muslims, two Christians, and eight drawn from the major parties. Unfortunately, given the need for security, it is impossible to determine if this description represents the UNLU’s actual structure.

The UNLU consists of representatives of the four political factions of the PLO that have a following in the West Bank: Fatah, which is the party of Yasser Arafat and the largest by far; the Palestine Peoples Party (PPP), formerly called the Palestine Communist Party (CP); the Democratic Front for the Liberation of Palestine (DFLP); and the Popular Front for the Liberation of Palestine (PFLP). These groups represent four of the eight political factions in the PLO. A fifth group, not part of the PLO, is Hamas, the Islamic resistance movement that arose during the Islamic revival that began in 1978, and re-emerged shortly after the uprising. Hamas often works with, but is not an actual part of, the UNLU leadership. Another smaller fundamentalist group that is not part of the UNLU is the Islamic Jihad; it also seeks to establish an Islamic state in Palestine.

133. McDowell, supra note 45, at 267 n.8.
135. Although no precise figures exist, Fatah is thought to represent 85% to 90% of all Palestinians. Interviews with PLO representatives to the United Nations, in New York, N.Y. (1989) (transcript on file with author). Other sources estimate Fatah represents 65%-70% of all Palestinians. Interview with J, supra note 30.
136. The CP changed its name to Palestinian Peoples Party (PPP) in late 1991, and has been included in PLO bodies since the 18th PNC. The influence of the PPP in the post-Soviet era is unclear. Salim Tamari, Left in Limbo, MIDDLE E. REP., Nov.-Dec. 1992, at 16-17 [hereinafter Tamari, Left].
137. The DFLP has few members and is weaker than the PFLP and Fatah but stronger than the CP. Abu-Amr, supra note 29, at 400.
138. The PFLP is probably the second largest group after Fatah. Id.
139. The various factions of the PLO are discussed in Cheryl A. Rubenberg, ISRAEL AND THE AMERICAN NATIONAL INTEREST: A CRITICAL EXAMINATION, 99-100 (1986). The factions vary in their approaches to centralization of leadership. The Communists, whose main base of support is within the territories, prefer to have the popular committees play a greater role. Fatah prefers greater centralization, as well as closer connection with the PLO leadership-in-exile. Abu-Amr, supra note 29, at 389. Coordination among the groups is not always successful. Although the substance of each leaflet is discussed by the various groups, one group takes responsibility for drafting each communiqué. As a result, some communiqués reflect the views of one faction more than others. Id. at 393.
140. Hunter, supra note 6, at 205. By January 1989, the UNLU and Hamas were trying to coordinate their efforts. Occasionally, however, Hamas has insisted on enforcing strike days in defiance of the UNLU. Rigby, supra note 9, at 37.
141. McDowell, supra note 45, at 109. Islamic Jihad and Hamas are rivals who differ in tactics, although both want an Islamic state in Palestine. Hamas is stronger and more vocal. See Roy, supra note 5, at 77. A 1989 accord between Hamas and the PLO provides that Hamas will support PNC resolutions until independence is achieved. After independence, Hamas will compete in the parliamentary arena. Ann Lesch, Prelude to the Uprising in the Gaza Strip, J. PALESTINE STUD.,
The UNLU is the latest incarnation of PLO leadership within the Territories. The relationship between leadership inside the Territories and that outside appears symbiotic rather than dictatorial. Those inside make their wishes and interests known, and the outside leadership "can issue orders and [be] obeyed precisely because and to the extent that it represents [the people within the Territories], their needs, and their aspirations." Additionally, during the intifada decision-makers and groups in the Territories have acquired much more influence within the PLO and increased responsibility for planning activities on the ground. The intifada has strengthened, not weakened, links between internal and external Palestinian structures.

One example of the symbiosis between inside and outside leadership is the drafting of the intifada's primary legislation, the communiqués. From an early stage of the intifada, the bayanat were signed by the "Palestine Liberation Organization, Unified National Leadership of the Palestinian Uprising in the Occupied Territories," indicating that the UNLU is an arm of the PLO. Communiqués are sometimes sent by facsimile or courier to Tunis, the PLO headquarters, for approval. The drafts are then returned by facsimile.

Given the difficulties of communication, the degree to which the UNLU can act independently of the PLO leadership-in-exile has on occasion become an issue. For example, UNLU bayan No. 10 of March 10, 1988 called on Palestinian deputies in the Jordanian Parliament to resign. This action angered both the Jordanians and the PLO Fatah faction leadership-in-exile. As a result, the UNLU was forced to issue a second version of the communiqué omitting this call. This revision indicates that the external PLO leadership

---

142. Daoud Kuttab, A Profile of the Stonethrowers, J. PALESTINE STUD., Spring 1988, at 20. Under Israeli occupation, Palestinian leadership consisted of the Palestinian National Front (PNF) from 1973 until it was outlawed in 1979, followed by the National Guidance Committee (NGC) which was outlawed in 1982. RIGBY, supra note 9, at 6-7.

143. Jonathan Kuttab, The Children's Revolt, J. PALESTINE STUD. Summer 1988, at 26, 31. Schiff and Ya'ari have described the process by which the outside PLO has been able to exert increasing leadership over the UNLU. See generally ISRAEL'S THIRD FRONT, supra note 8; see also Helga Baumgarten, Discontented People and Outside Agitators: The PLO in the Palestinian Uprising, in CROSSROADS, supra note 8, at 207.

144. HUNTER, supra note 6, at 4. See infra notes 209 -233 and accompanying text.

145. HILTERMANN, supra note 89, at 211, 238 n.18 (describing issuance of first few bayanat and role played by four political factions). But see PEREZ, INTIFADA: THE PALESTINIAN UPRISING 92 (1991) (indicating that "the bayanat of the UNLU contained the name of the PLO as a co-equal in leadership").

147. ARONSON, supra note 69, at 331; ISRAEL'S THIRD FRONT, supra note 8, at 209.

148. ARONSON, supra note 69, at 331.

149. See Abu-Amr, supra note 29, at 393. Rigby indicates that the first version was issued by the PFLP. RIGBY, supra note 9, at 20.
may have some veto power over proposals of the internal UNLU leadership.

B. Popular Committees

In the beginning of the intifada, each locality formed various popular committees (lijk shā'biyā) which became involved in day-to-day underground governance.150 By May 1988, there were 45,000 functioning local committees of various types.151 The local popular committees elected representatives to larger coordinating committees, which in turn established regional ties, and then linked up with the UNLU.152 It appears, however, that the local committee structure had broken down in many localities even prior to the Gulf crisis as the result of massive arrests and infiltration of committees by Israeli informants.153 During the Gulf War, round-the-clock curfews suspended almost all aspects of the intifada.154 The committees had not revived as of September 1992.155

Due to the likelihood of arrest, the membership of any one committee fluctuated. This suggests the availability of a large number of leadership candidates and an organization that could accommodate flexibility without crippling security leaks. In addition, the deliberate redundancy in local command structures such as UNLU branches, unions, relief, action, and youth committees enabled a local leadership system to remain intact despite arrests.156 No one committee or person was irreplaceable. The UNLU encouraged women to become active in executive functions of the popular committees in many localities in the early 1980s to provide security, medical care, emergency food supplies, and collective agriculture. See Mustafa Barghouti, Popular/Mass Movement in the Community, 2 J. REFUGEE STUD. 125, 128 (1989). They are also successors to the voluntary work committees of the 1970s. Husain Jameel Bargouti, Jeep Versus Bare Feet: The Villages in the Intifada, in CROSSROADS, supra note 8, at 107, 108.

150. These committees succeeded those formed in many localities in the early 1980s to provide security, medical care, emergency food supplies, and collective agriculture. See Mustafa Barghouti, Popular/Mass Movement in the Community, 2 J. REFUGEE STUD. 125, 128 (1989). They are also successors to the voluntary work committees of the 1970s. Husain Jameel Bargouti, Jeep Versus Bare Feet: The Villages in the Intifada, in CROSSROADS, supra note 8, at 107, 108.
151. John Kifner, Israelis and Palestinians Change Their Tactics But Not Their Goals, N.Y. TIMES, May 15, 1988, at Al; NLG, supra note 8, at 80. In August 1988, the Israeli government outlawed the popular committees. RIGBY, supra note 9, at 32. Membership became a criminal offense, as did attendance at a meeting of, possession of literature of, or contribution of money to a popular committee. Military Order 378 sets a penalty of ten years imprisonment. Id. After declaring the committees illegal, the government made mass arrests of persons believed to be committee members. Then-Defense Minister Rabin put 200 to 300 alleged members in administrative detention. Israel Says It Seized 200 Arabs to Crush a Political Network, N.Y. TIMES, Sept. 10, 1988, at A28. See also ISRAEL'S THIRD FRONT, supra note 8, at 210; Quigley, supra note 78, at 522. Despite their illegal status, the committees organized daily life by protecting property, as well as setting up food committees to determine needs in curfew areas and to arrange collection and distribution of donations. These actions helped place de facto control of daily life in Palestinian hands and thereby helped build a measure of self-sufficiency. RIGBY, supra note 9, at 22-25.
152. NLG, supra note 8, at 12.
154. See infra note 331 and accompanying text.
155. Interviews with Z and Q, in Iowa City, Iowa (Sept. 1992).
156. Sayigh, supra note 96, at 31. One local activist reported that it took only two to three weeks in the beginning of the intifada to replace a local committee after its complete dismantlement by Israeli security forces. RIGBY, supra note 9, at 33.
committees relating to their traditional role as "sustainers," such as medical relief, food distribution, and fund raising. Women collected donations, ran blood banks, passed out leaflets, watched for soldiers, and looked after families of the dead, arrested, and wounded. In addition, women became the core of the home economy movement to develop Palestinian self-sufficiency and boycott Israeli goods. Women also organized and operated income-generating projects outside their homes.

In December 1988 the women’s organizations affiliated with Fatah (the Women’s Committee for Social Work), the DFLP (the Palestine Federation of Women’s Action Committees), the PFLP (the Palestine Federation of Women’s Committees), and the CP (the Association of the Palestine Working Women’s Committees) formed the Higher Women’s Council. Representatives of these groups have actively intervened in domestic disputes at women’s request. These groups "perceive themselves to be fully equal participants in the national movement, not mere adjuncts to the male leaders and combatants." The aim of the Council is to strike a balance between the national liberation struggle and women’s social struggle.

C. Police

The relationship between a community under occupation and its police is understandably hostile. When UNLU Communiqué No. 10 of March 10, 1988 called on all Palestinian police in the Territories to resign, two-thirds of them turned in their weapons and uniforms within weeks. Some of these former policemen serve in the defense or guard committees, strike forces (al quwwa al darriba), or the popular army (jaysh shaabi filistini). The defense

157. Abu-Amr, supra note 29, at 399. For a discussion of the role of women see Darweish, supra note 63, at 59; Miller et al., supra note 110, at 36; Giacaman & Johnson, supra note 63, at 155; Eileen Kuttab, Community Development Under Occupation: An Alternative Strategy, 2 J. REFUGEE STUD. 131, 135; Sayigh, supra note 96, at 37; Jad, supra note 123, at 134-35.

158. Peretz, supra note 146, at 96. Hiltermann also saw women’s gains as an extension of their traditional roles as teachers. Hiltermann, supra note 89, at 197; Jad, supra note 123, at 134-35.

159. Darweish, supra note 63, at 59. For a comparison of the roles of Palestinian women with the roles of women in Lebanon from 1969-1982 see Peretz, supra note 117, at 8.

160. Israel’s Third Front, supra note 8, at 247.


162. Hiltermann, supra note 89, at 198.


164. Peretz, supra note 146, at 97.

165. Hiltermann, supra note 120, at 53.

166. Sayigh, supra note 96, at 34.

167. The strike forces often act as the front line troops of the intifada in confrontations with the Israeli military or settlers. The strike forces also served an internal control function, enforcing UNLU edicts in their area. The strike forces monitored strike hours and the harassment and punishment of collaborators. Rigby, supra note 9, at 22. Strike forces to execute punishments were formed in May
Palestinian Intifada: Embryonic Self-Rule

or guard committees were formed to fill the gap left by the resignation of the police. They provide advanced warning and protect property from attacks by Israeli security forces, Israeli settlers, and common criminals. The UNLU has reprimanded strike forces utilizing unauthorized force. Some strike forces and other enforcers have taken the law into their own hands by failing to obey UNLU edicts, and some Palestinians fear these groups as much or more than they fear the Israeli military.

D. Judiciary

The intifada’s judicial function is performed on two levels, corresponding approximately to trial and appellate courts. On the highest level is an ad hoc entity about which very little is known, called the National Reconciliation Committee (NRC). The NRC generally performs the role of a supreme court. However, it can exercise original jurisdiction in some cases to resolve particularly volatile disputes. This latter power is exercised infrequently.

The NRC contains equal numbers of members from the various political factions in the UNLU. Its members are scattered throughout the Occupied Territories, and are responsible for particular regions. Disputes are heard by a panel of four representatives (five in Gaza) consisting of one person from each political faction. Unfortunately, the need for secrecy means that little information — including that about the nature of the legal traditions utilized and legal rules implemented — is available about the cases the NRC has handled. The NRC may even be relatively inactive.

On the local level, popular committees known as justice committees or

1988. GLORIA EMERSON, GAZA: A YEAR IN THE INTIFADA 123 (1991). Each political faction had its own strike forces. For information on how strike forces have often taken law into their own hands during the Gulf crisis see infra notes 336-343 and accompanying text.

168. The "popular army," a successor to the strike forces formed in the first year of the intifada largely of youthful shabab, was named on January 1, 1989, the 24th anniversary of the start of the armed struggle by Fatah. Sayigh, supra note 96, at 38. The popular army is quite similar to the strike forces. HUNTER, supra note 6, at 202. Joel Greenberg notes "the consolidation of the 'strike forces' and 'popular army,' which are playing increasingly dominant roles as enforcement arms of the uprising." Joel Greenberg, The Plight of the "Collaborator," JERUSALEM POST, May 5, 1989, available in LEXIS, Nexis Library, Int file.

169. RIGBY, supra note 9, at 22-23.


171. Interviews with A and B, supra note 153; Interviews with Z & Q, supra note 155.

172. The term National Reconciliation Committee was chosen instead of Supreme or High Court in order to indicate that the system aims to foster national reconciliation. As noted above, Palestinians customarily utilized reconciliation committees to handle their legal disputes. Using the term "reconciliation" for their new judicial entities is thus consistent with their legal culture and history. See supra notes 39-50 and accompanying text (discussing traditional mediation).

173. See infra note 193 and accompanying text.

reconciliation committees have handled legal disputes: 175 "[I]n January 1989, the UNLU requested that popular courts try 'thieves, agents, and brokers.' Underground tribunals were set up to gather evidence, conduct trials and issue sentences." 176 Schiff and Ya'ari found that these committees "were formed to settle disagreements in place of the court system, and often based their rulings on the rural-popular legal tradition to stress their dissociation from both Jordanian and Israeli law." 177 Although they have utilized custom to emphasize the historical continuity of the Palestinian community, these committees have also instituted new procedures. For example, the committees now give some of the fines they assess to the poor and needy. 178 In the past, the poor only received assistance through charitable religious and secular institutions.

Some Palestinians have proposed a National Arbitration Board to handle certain labor disputes. 179 Joost Hiltermann found that there has been an attempt to substitute reconciliation committees for civil courts to help enforce workers' rights. 180 Popular committees or specially designated labor arbitration groups may also hear such cases. 181 Unfortunately, there is no information available concerning the numbers and types of cases, the traditions or rules used, or the decisions reached in these labor disputes; this may be due either to secrecy concerns or to inactivity on the part of the reconciliation committees. 182

As the preceding discussion has illustrated, the intifada has created new legal institutions 183 to replace those Israeli institutions which the Palestinians regard as illegitimate. These new institutions have varied in legitimacy and coercive power over time and among regions. Thus even the most developed and legitimate of these institutions, the UNLU, has at times been unable to enforce its decrees or to prevent others from exercising "police" powers.

175. Helena Cobban, The PLO and the Intifada, in The Intifada: Its Impact on Israel, the Arab World and the Superpowers 70, 83 (Robert O. Freedman ed., 1991) ("reconciliation committees of trusted community members . . . replace boycotted court system"). Rigby believes these social reform committees are "designed to replace the Israeli courts by mediating in disputes between individuals and families." RIGBY, supra note 9, at 23.

176. HUNTER, supra note 6, at 202-03 (footnote omitted).

177. ISRAEL'S THIRD FRONT, supra note 8, at 247.

178. HUNTER, supra note 6, at 138.


180. Hiltermann, supra note 163, at 36.


182. Interview with Joost Hiltermann, supra note 163.

VI. DISPUTE RESOLUTION PROCEDURES

A procedure of particular importance in the intifada is one that my sources called mediation.\textsuperscript{184} The traditional Palestinian concept of mediation encompasses the kind of mediation, arbitration, and adjudication that take place outside of formal courts in America.\textsuperscript{185} Palestinian culture embraces an honor system in which potential plaintiffs are proud not to seek monetary compensation.\textsuperscript{186} "There is also a strong sense that right needs no justification or defense, that justice is self-evident. To take affirmative action to defend oneself is thus to betray a lack of confidence in the righteousness of one's position."\textsuperscript{187} Thus, some lawyers report that potential plaintiffs hesitate to hire lawyers for fear that doing so may make their claims look weak.\textsuperscript{188} Injured parties do not pursue claims in the same way as injured parties in Western systems; claims for monetary damages signal that only money, not honor, is at stake, or that the victim's honor could be purchased.\textsuperscript{189} As a result, responsibility for seeking the resolution of a dispute lies with the offending party or members of his or her family — it is they who are fair game for vengeance — or with the "good citizens" of the community, anxious to restore harmony.\textsuperscript{190}

Various individuals described a procedure by which the NRC intervenes to resolve especially serious local disputes.\textsuperscript{191} This process perpetuates the customary practice of seeking the most influential and powerful community members to mediate such disputes.\textsuperscript{192} Of course, the individuals selected are not necessarily those who would have performed such tasks before the intifada.

One example of NRC intervention is instructive. In October 1989, a twenty-four year old man, Mahmoud Jadallal al-Falaneh, was stabbed to death in Saffa (Ramallah) during a confrontation between two groups of Shabab from different families. One family was apparently aligned with the PFLP.

\textsuperscript{184} Mediation was the one procedure discussed in detail by my sources. See supra note 9. Unfortunately, the need for secrecy makes it impossible to evaluate accurately the frequency of mediation. HUNTER, supra note 6, at 144. All informants mentioned that fewer legal disputes have arisen among Palestinians during the intifada, because people prefer to present a unified front in their struggle for independence.

\textsuperscript{185} It is also possible to characterize the secretive way mediation must work during the intifada as indicative of an inquisitional adjudicatory proceeding, bearing only a superficial resemblance to traditional mediation.

\textsuperscript{186} Id. at 38.

\textsuperscript{187} Id. at 39.

\textsuperscript{188} Id. at 190 n.24. The contrary practice seems to occur in the United States where potential plaintiffs seek out lawyers to indicate they have a good claim.

\textsuperscript{189} Id. at 39.

\textsuperscript{190} Id. at 38.

\textsuperscript{191} Interviews with A, B, C, and D, supra note 30.

\textsuperscript{192} For a discussion of traditional mediation see supra notes 39-50 and accompanying text.
political faction and the other with Fatah. Because the situation was very volatile, local leaders called upon the NRC to intervene directly. NRC representatives immediately followed the customary practice and called an atwa (truce) to prevent the dispute from escalating. The alleged perpetrator of the offense took an oath in front of a group of people that he would take no further act of revenge to escalate the violence. The victim’s family also swore that they would not take revenge. According to customary practice, the period of atwa lasted three days during which time the NRC committee tried to establish basic facts. After a second atwa, the families again guaranteed that they would not take further provocative action. While no information is available about how the dispute between the families was ultimately settled, the PFLP issued a communiqué on November 9, 1989 that contained the following declaration:

1) [The PFLP recognizes] the necessity of forming a national committee of investigation and acting to reveal all the facts surrounding the unfortunate event. It also appreciates the national reconciliation committee’s efforts, its great role in soothing feelings and its participation in containing this painful event and preventing the spread of strife among the children of our people.

2) The Popular Front for the Liberation of Palestine also announces that it is fully ready to take on any responsibility or obligations resulting from the decisions of the committee on investigation or the national reconciliation committee.

This marks a significant departure from customary practice, under which only a family or clan accepted such responsibility. It indicates that a political party is now assuming a role previously reserved to the most basic and legitimate of all Palestinian social organizations, the family or clan.

The mediation process is the same when a local committee rather than the NRC handles a dispute. During the atwa period(s), a process of investigation and interviewing witnesses commences. Unlike customary practice, however, this process must now be clandestine to prevent exposure to the Israelis or their informants. Interviewers, who are chosen by the committee, are not required to divulge their role. As a result, a witness may not realize that he or she is being "interviewed" or "investigated" since the interviewer may be someone well-known to the witness. Where it is impossible to approach a witness without arousing suspicions, the witness must be informed of the purpose of the exercise and asked to cooperate; failure to cooperate will result in social ostracism, an example of subtle coercion to secure compliance.

Four different interviewers interview each witness on separate occasions to help compensate for the fact that neither party has the right to cross-examine witnesses. That a witness may not realize that he or she is being "interviewed" on one or more of the four occasions may also improve the odds of catching inconsistent testimony. Once all the interviews are

---

193. The PFLP has broken ranks with the UNLU several times. Sayigh, supra note 96, at 48.
194. PFLP, Communiqué of Nov. 9, 1989 (on file with author).
Palestinian Intifada: Embryonic Self-Rule

completed, the interviewers meet to compare reports. If there is any conflict in the reports, witnesses are re-interviewed. This method of discovery does not always work, and a committee must sometimes resort to alternative methods to ascertain a witness' activity or reliability. For example, if it is suspected that a party or a witness is an informant for the Israelis, the committee will seek information on that person from the various political groups. Seeking opinions from the various factions lessens the likelihood that one group can falsely accuse an individual. Once the process is completed, the interviewers submit a full record of the interviews together with any recommendations to representatives of the four judges on the committee. This ensures that neither the investigators nor the parties know the judges.

The parties directly involved are informed orally that they will receive a decision within a stated number of days. If the committee of four is split equally, then a new committee is appointed to begin the process again. Hearsay has it that the local committees send specific files to PLO headquarters in Tunis for decision. When the committee (or the PLO) reaches a decision, the parties are invited to attend a sulh gathering, a private reconciliation proceeding. In keeping with customary practice, the parties, their families, and respected persons in the neighborhood attend the gathering. This group typically includes some or all of the interviewers and committee members, but their capacity as participants in the legal process is not officially recognized as it was in the past. Given the presence of a variable number of community members who are not directly involved in the dispute, the identity of the judges will not necessarily be obvious. At the meeting the victim and his family formally state that their rights have been satisfied and that differences between the two parties have been settled. This process helps ensure that no one takes the law into his or her own hands after the decision, and engenders unity among the community. There is no mandatory right of appeal, but the parties may ask the NRC to exercise its discretionary appellate jurisdiction.

196. Id.
197. Id.
198. Jerome M. Segal, Does the State of Palestine Exist?, J. PALESTINE STUD., Autumn 1989, at 14, 18. If this is indeed the case, it is unclear how the local committees decide which files to send to Tunis. It may be that local committees send certain especially serious matters, such as collaboration, to Tunis on a routine basis, or that they send only deadlocked cases to Tunis. It is also possible that the NRC may send all death penalty cases to Tunis to help prevent the summary execution of alleged collaborators. In one instance the wrong individual was executed, and the UNLU issued a public apology.
199. Interviews with A, B, C, and D, supra note 30; HUNTER, supra note 6, at 132 (noting use of sulh gatherings in Gaza during intifada).
201. Id.
The mediation process that has developed during the intifada is consistent with theories that characterize mediation as a process which invokes the parties' belief systems.\(^2\) According to one theory, the likelihood of successful mediation depends on five factors.\(^2\) Palestinian society during the intifada satisfies most of these factors. Palestinians hold many common principles; for example, status, honor, and prestige in the community remain more important to most Palestinians than the achievement of individual justice at all costs. Parties prefer to settle their disputes in a private forum because they find court appearances even more dishonorable than mediation. In addition, Palestinians are extremely alienated from the Israeli-run civil courts. Finally, the intimate nature of Palestinian communities and Palestinians' inability to travel freely outside the Territories mean that Palestinian families must deal with each other on a recurring basis.

Mediation therefore has a number of advantages. It handles grievances therapeutically by allowing the free ventilation of anger and frustration in a manner consistent with Palestinian tradition. During the turbulent times of the intifada, mediation is readily accessible, quick, and inexpensive. It helps equalize and realign status, thus promoting the more egalitarian ethic for which the intifada strives. It assists in re-establishing and confirming an individual's sense of belonging to the community. Moreover, the agreements reached are "enforceable through informal social control, and [have] legitimacy through community consensus."\(^4\) Societal pressure and coercion from family, friends, and the community have traditionally been very strong, and are even stronger during the intifada; for whatever reason, people usually comply with agreements.\(^5\)

Despite its positive aspects, the failure of the mediation process to comply with international standards of justice is a significant problem. When questioned about the fact that an accused cannot defend himself in person, know the evidence against him, confront witnesses, or know the judges,

\(^{202}\) See, e.g., Witty, supra note 26, at 10 (discussing factors and beliefs conclusive to mediation, including (1) some degree of on-going personal interaction between parties; (2) willingness of both parties to settle in private forum; (3) willingness of both parties to express personal wants and needs; (4) shared cultural or community identity between parties; (5) belief that intangible social resources such as status, honor, prestige, and personal satisfaction are as important as or more important than tangible resources such as money, property, or land; and (6) belief that reaching an agreement is more important than determining absolute right or wrong).

\(^{203}\) These are (1) the quantitative intensity and number of principles in a community; (2) the political and cultural distance from legal institutions (the greater the alienation, the greater the possibility of mediation); (3) the amount of social stratification (the more equal the parties and the less differentiated the community in terms of status and economic power, the greater the possibility of mediation); (4) the presence of or desire for on-going social relationships; (5) the greater the range and integration of local distribution and leadership networks, the more pervasive and strong mediation is likely to be. Id. at 20-24.

\(^{204}\) Id. at 4.

\(^{205}\) Interviews with A, B, C and D, supra note 30.
several interviewees responded that these rules were an effective way to avoid exposing those involved in the process to the Israelis or their informants. Nonetheless, these violations of commonly accepted human rights norms cannot be condoned. One partial way to balance human rights concerns with the real danger of exposure to the Israelis might be to permit the accused to know and challenge the evidence. The committee could provide the accused with a written report and allow a response, while keeping the mediators, interviewers, and witnesses unknown. Another partial solution would be to make more systematic use of the public personalities in intifada mediation. They have a great deal of legitimacy given their public role in the Palestinian struggle, and are already well known to everyone, Israelis included. This has already occurred to some extent.

The intifada mediation process is thus an altered and updated version of traditional Palestinian legal procedures, a fact that contributes to its legitimacy. Mediation is an effective dispute resolution procedure which helps build greater Palestinian solidarity through mutual non-compliance with Israeli institutions. However, the failure of intifada mediation to comply with international standards of justice is extremely troubling. Secrecy can contribute to inadequate fact-finding and mistaken results; in addition, it may encourage some Palestinians to use mediation to settle personal grudges. Moreover, while the Palestinians do not yet have a state that can openly run a justice system in compliance with international standards, there are a number of reasons why their interim arrangements should comply with international standards to the greatest degree possible. One is normative: procedural due process is quite simply that for which the late twentieth-century world and its inhabitants strive, or for which they should strive. A second is more practical: it makes sense to set up the best possible system now to simplify any eventual transition. A third is purely pragmatic: reports of injustices committed in the name or course of the intifada undermine the strength and breadth of international support for the Palestinian cause. For all of these reasons, complying with international standards should be a goal of the intifada.

206. Id.

207. See, e.g., U.N. International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 14(3), reprinted in 6 I.L.M. 368, 372 (1967) ("In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality ... (d) ... to defend himself in person ... (e) [t]o examine, or have examined, the witnesses against him ... ."). Some Americans may also question the lack of a jury. As with most of the world, however, none of the legal traditions the intifada utilizes includes juries. BISHARAT, supra note 28, at 112. Moreover, the committee system itself is somewhat analogous to a jury or arbitration panel, and is at least an improvement over entrusting verdicts to a single anonymous judge.

208. For example, Faisal Husseini mediates disputes involving family matters, blood feuds, and accusations of collaboration. WALLACH & WALLACH, supra note 116, at 71.
VII. Rules

Since the beginning of the intifada various Palestinian institutions, notably the UNLU, have issued directives that include rules for behavior and dispute settlement. Overall, compliance with these directives has been problematic and far from universal. While areas such as labor law exhibit the UNLU's ability to legislate effectively, women's rights and legal penalties demonstrate that the legitimacy and coercive power of the UNLU leadership is not absolute. Furthermore, the directives themselves sometimes fail to conform to international human rights standards for accused wrongdoers and women. This is especially troubling in light of Palestinian calls for Israel to respect these same international standards.

The primary source of rules are the UNLU communiqués and leaflets called bayanat. The Palestinian people generally treat the directives and their rules as law: "[the bayanat] are like the Koran to the people, to the youths. When they arrive in the villages they are studied, discussed . . . they are our constitution." The Israelis clearly recognize the importance of these documents, and have made numerous attempts to find the printing presses to arrest UNLU members who allegedly authored the bayanat, and to issue false UNLU leaflets. The Shin Bet, the Israeli equivalent of the FBI, produces fake bayanat "to give the impression of divisions amongst the leadership with the aim of spreading confusion and despondency amongst the wider Palestinian public." In addition to the UNLU communiqués, local committees, individual political factions, women's groups, and others have also issued leaflets. These bayanat supplement UNLU directives, indicate the issuers' perspectives on various issues, and

209. Translations of 1988 Communiqués Nos. 1 through 29 appear in INTIFADA: THE PALESTINIAN UPRISING, supra note 1, at 327-94. For an analysis of Communiqués Nos. 1 through 13 and others, see Abu-Amr, supra note 29, at 389-93. For a description of the process of drafting the early communiqués, see ISRAEL'S THIRD FRONT, supra note 8, at 194-95. There is no complete collection of the bayanat in English; such a collection would be of great help to scholars who want to study the legal structures developed during the intifada.

In addition to the bayanat, rules also come from contracts, judicial decisions, and mediation settlements.

210. RIGBY, supra note 9, at 25.
211. PERETZ, supra note 146, at 92.
212. ISRAEL'S THIRD FRONT, supra note 8, at 215 (discussing March 19, 1988 seizure of UNLU leaders writing bayan No. 11).
214. RIGBY, supra note 9, at 34.
215. Jamal R. Nassar & Roger Heacock, The Revolutionary Transformation of the Palestinians Under Occupation, in CROSSROADS, supra note 8, at 191, 196. (stating that each of the four principal groups which comprise the UNLU has issued leaflets defining its policies on issues such as slogans, the frequency of general strikes, and the pace of movement toward civil disobedience).
Palestinian Intifada: Embryonic Self-Rule

occasionally list timetables for events and actions.216

The job of writing the general communiqués rotates among the four main political groups in the UNLU. After jointly deciding upon the basic points, one to four middle-level cadres write a draft that then circulates for comments and changes.217 The communiqués have a regular format. They contain political guidelines, practical instructions, and action agendas which local popular committees and individuals are to implement.218 Each one opens with a preamble laying out the PLO's political position,219 followed by operative sections containing directives for the community for a two- to three-week period. The UNLU issued double leaflets four or five times in the first two years of the intifada; these occasions may have indicated important policy differences between different factions in the UNLU.220 The UNLU secretly prints the communiqués and distributes them widely in a variety of ways,221 including radio broadcasts from various Arab countries.222 The UNLU has even used facsimiles transmit the communiqués abroad.223

The communiqués have called for a wide variety of domestic actions, including comprehensive strikes,224 organization of popular teaching,225 resignation of civil and municipal employees,226 boycotting of Israeli goods and taxes,227 and sit-ins and marches.228 Communiqué No. 38 instructed the Palestinians not to use firearms against the Israelis; this directive limited fighting in the beginning of the intifada primarily to stone-throwing.229

216. RIGBY, supra note 9, at 26.
217. Jamal R. Nassar and Roger Heacock, The Revolutionary Transformation of the Palestinians Under Occupation, in CROSSROADS, supra note 8, at 197; see also HUNTER, supra note 6, at 76.
219. ARONSON, supra note 69, at 331; Miller at al., supra note 110, at 40; RIGBY, supra note 9, at 30.
220. Jon Immanuel, 'Moderate' Intifada Leaflet Indicates Internal Dispute, JERUSALEM POST, Feb. 26, 1991 available in LEXIS, Nexis Library, Intl file (discussing appendices to leaflet no. 67). Rigby discusses two versions of Communiqué No. 10, RIGBY, supra note 9, at 20. There were two versions of Communiqué No. 17 as well, one of which the PFLP issued calling for a campaign of total civil disobedience. Id. at 21.
221. For methods of distribution see PERETZ, supra note 146, at 92; ISRAEL'S THIRD FRONT, supra note 8, at 209-10.
222. COBBAN, supra note 31, at 72 (noting broadcasts from Syria and Iraq).
223. For example, the author was present in December 1989 when the Washington convention of a charitable Palestinian organization received Communiqué No. 49 over the hotel facsimile machine.
224. See, e.g., INTIFADA: THE PALESTINIAN UPRISING, supra note 1, at 328 (citing UNLU Communiqué No. 1, Jan. 1, 1988).
225. INTIFADA: THE PALESTINIAN UPRISING, supra note 1, at 338 (citing UNLU Communiqué No. 9, Feb. 188).
228. INTIFADA: THE PALESTINIAN UPRISING, supra note 1, at 360, 362-63 (citing UNLU Communiqué No. 19, June 9, 1988).
229. Communiqué No. 38, Mar. 1989, called for the use of knives, axes, and Molotov cocktails,
sight of Palestinian youths throwing stones at Israelis armed with Uzi machine guns generated substantial sympathy from the international community.\textsuperscript{220}

In the international arena, the communiqués have called for Israel to withdraw from Palestinian and Arab lands occupied in 1967, to dismantle settlements in the Occupied Territories, to place the Occupied Territories under United Nations supervision for a limited time, and to convene an international conference under United Nations auspices.\textsuperscript{221}

The UNLU has occasionally retracted its own rules. For example, in June 1989 the UNLU called upon Gazan men not to use the new computerized identification cards that permitted them to travel to Israel to work. Strike forces were told to confiscate the cards prior to use. However, the proposed rule apparently exceeded what the UNLU could legitimately require of the Gazan workforce, which was economically dependent on access to Israel. Gazan workers were willing to make the economic sacrifices represented by boycotts and strike days, but not this near-total sacrifice; as a result, the UNLU eventually retracted the rule.\textsuperscript{222} Ironically, while issuing the rule may have threatened the UNLU's legitimacy, retracting the rule probably strengthened it. "Although this could be seen as a defeat for the [UNLU], the very fact that it was prepared to acknowledge the mistakes and retreat from untenable positions reinforced its image as an authentic leadership that was willing to respond to pressures from below."\textsuperscript{223}

The following sections survey selected legal rules that have appeared in the UNLU bayanat and other rule-making pronouncements.

A. Landlord Tenant Relations

One area the bayanat have addressed is landlord-tenant law. Rents in the West Bank are paid in Jordanian dinar; by 1989 the unfavorable exchange rate between the Jordanian dinar and the Israeli shekel had pushed rents to prohibitive levels.\textsuperscript{224} Thus, in 1989 the UNLU issued a call for all Palesti-
Palestinian Intifada: Embryonic Self-Rule

ian landlords to reduce rents by twenty-five percent.235 While landlords in Northern West Bank cities such as Tulkarem, Jenin, and Qalqilya widely obeyed this bayan, others did not do so. Ramallah landlords began to demand full rent in dollars.236 One popular committee interpreted the UNLU bayan as requiring a reduction only if rent was over 250 dinars, while another committee asked that the bayan apply only to leased shops, not to home rental property.237 While these deviations from the UNLU directive may constitute honest attempts to interpret an unclear bayan, they more likely represent instances in which communities had to compromise for fear of landlord retaliation. This indicates that all sectors of the Palestinian community do not regard the UNLU as a legitimate legislator for all issues. Non-compliance also indicates the limits of the UNLU’s coercive ability.

B. Strikes

From the beginning of the intifada, UNLU rule-making has focused on the regulation of total and partial strikes that are intended to signal a rejection of Israeli control of the Palestinian economy.238 Each communiqué provides a schedule of strikes.239 To alleviate the economic distress felt by Palestinian shopkeepers, the UNLU issued a bayan in January 1988 that permitted shops to open for three hours a day on non-strike days.240 While a minority of shopkeepers had to be warned by masked shabab to keep their stores closed, a majority obeyed the UNLU directives voluntarily.241 This demonstrates the UNLU’s high degree of legitimacy in the eyes of most Palestinians, and also a degree of effective authority that the Israelis resented and feared. In the early days of the strikes the Israeli government attempted to reassert its authority over the Palestinians by having soldiers force shop owners to keep their shops open, or by having soldiers weld shut the doors of those whose owners refused to follow their orders.242 However, the Palestinians repaired the damage and continued to close their shops on strike days. The Israelis abandoned their efforts to break the strikes after four months.243 By mid-May 1988 Palestinians closed their stores in compliance with UNLU bayanat with little interference from the Israeli army.244 In many ways this repre-
sents a victory of UNLU legitimacy over Israeli coercive force.

C. Labor Relations

The Jordanian labor law of 1965 officially governs in the West Bank, although even prior to the intifada it was outdated, superseded in Jordan itself, and in many instances superseded by Israeli military orders in the Occupied Territories. As part of the intifada's drive to give Palestinians more control over their own lives, the UNLU has issued several communiqués on labor relations. One urged factory owners not to deduct employees' salaries on strike days, and to compensate their workers for the increased cost of living and the decline in the value of the dinar. Another called for employers to raise wages by forty percent. The UNLU also has noted that unions play a useful role by mediating disputes, and has issued warnings to Palestinian employers not to fire union organizers.

The widespread belief generated by the intifada that all Palestinians must work together has contributed to an increased incidence of private labor agreements between Palestinian employers and Palestinian employees. Prior to the intifada written labor agreements were rare, but more factories have entered into written agreements with their workers since the intifada began. The Palestinian employees union, the General Federation of Trade Unions (GFTU) and Palestinian employers have negotiated labor contracts, including several in the first year of the intifada. The first major negotiations at a Palestinian-owned factory were those at the Royal Crown Cola bottling plant in Ramallah in August 1988. The resulting contract

---

246. The law does not provide a minimum wage, id. at 37, does not provide for paid sick leave (except for that under Worker's Compensation), id. at 46, and sets overtime only at the level of time and one quarter of regular wage, id. See generally HILTERMANN, supra note 89, at 90.
247. See, e.g., HENDY, supra note 61, at 12 (discussing Military Order No. 825). The labor unions have begun looking at the possibility of developing a new labor law. HILTERMANN, supra note 89, at 191, 206.
248. HILTERMANN, supra note 89, at 183.
249. Id.
250. Id. Unfortunately there is no information available concerning the extent of obedience with these bayanat.
251. MCDOWALL, supra note 45, at 107, 281 n.39.
252. There have been three employees' federations, all calling themselves GFTU. HILTERMANN, supra note 89, at 190-91. In 1989, the GFTU had more than 100,000 West Bank members in ninety trade unions. 1989 COUNTRY REPORTS, supra note 106, at 1443. The unions have become very active during the intifada. MCDOWALL, supra note 45, at 107; Joost R. Hiltermann, Worker's Rights During the Uprising, J. PALESTINE STUD., Autumn 1989, at 83, 85.
253. Various commentators and press services whose names cannot be revealed here publish these labor contracts.
Palestinian Intifada: Embryonic Self-Rule

granted workers an eight-hour day and pay for UNLU strike days.\textsuperscript{254} By the end of 1989 most contracts eschewed the 1965 Jordanian Labor Law in favor of "a sense of what [was] fair, evolving from a dialogue between employers and unions, encouraged by the UNLU."\textsuperscript{255}

Three contracts negotiated in late 1989 represent this shift. The first is the Solh Carpentry contract of November 1, 1989.\textsuperscript{256} This contract guaranteed time-and-a-half for overtime and set a minimum wage of JD80 (Jordanian dinar) per month, with the JD set at 4.6 New Israeli Shekels (U.S. $2.30). Since neither the 1965 Jordanian Labor Law nor Israeli military law set a minimum wage, the minimum wage standard was a significant achievement.\textsuperscript{257} The Solh Carpentry contract provided health coverage and twenty-three paid vacation days, including Palestinian Independence Day. The agreement also addressed the unique circumstances posed by the intifada. It set the minimum number of workdays per month at twenty-two, but provided that employees would be paid if they worked less than twenty-two days because of UNLU strikes or military curfew. The employer and employees split the cost of the remaining eight days.\textsuperscript{258} A unique provision provided half salary for three months for anyone arrested; since arrest is a daily possibility for virtually every Palestinian worker, this clause was essential. In addition, the contract obligated the employer to place matching amounts in a contingency fund every month for additional payments to jailed workers.

The second, which may become a prototype for collective bargaining agreements during the intifada, was the November 12, 1989 contract between Silvana Factory and the General Union of Workers in Food Industries, part of the GFTU.\textsuperscript{259} This contract contained a number of features not present in the Solh Carpentry agreement. An unprecedented feature was the equalization of salaries for men and women,\textsuperscript{260} a victory won on the last day of negotiation.\textsuperscript{261} Also new was an employer monthly contribution to the company credit union.\textsuperscript{262} The terms provided thirty paid days of leave per

\textsuperscript{254} HILTERMANN, supra note 89, at 182.
\textsuperscript{255} Id. at 189.
\textsuperscript{256} Collective Work Agreement in Solh Carpentry, Nov. 1, 1989 (on file with author). Hiltermann discusses other 1989 contracts and is an excellent source for discussion of the labor movement. HILTERMANN, supra note 89.
\textsuperscript{257} 1989 COUNTRY REPORTS, supra note 252, at 88.
\textsuperscript{258} This provision seems to mean that the employer pays the cost for half of the days missed beyond the 22-day minimum working month.
\textsuperscript{259} Collective Bargaining Agreement between Silvana Factories and General Union of Workers in Food Industries, Nov. 12, 1989 (on file with author) [hereinafter Collective Bargaining Agreement].
\textsuperscript{260} HILTERMANN, supra note 101, at 189.
\textsuperscript{261} The contract set a new minimum wage of JD80. The company had argued for wages of JD60 for women and JD80 for men, even though they did the same work. Prior to the contract 25% of the men and 95% of the women had earned under JD80. Collective Bargaining Agreement, supra note 259. The union negotiating team included a woman.
\textsuperscript{262} The procedures for using this credit union are unclear.
year and up to fourteen days of pay in the case of layoffs; previously these
days had been unpaid. The contract prohibited arbitrary dismissal and required
negotiations between the employer and the workers' committee in order to
dismiss a worker. Other provisions agreed upon, but not written into the
contract, included a holiday on Palestinian Independence Day and a
commitment to continue paying the salaries of imprisoned workers for an
unspecified length of time; prior to the contract, a worker imprisoned for
more than two months lost his or her job. Since Silvana is the single largest
factory in the West Bank, many viewed this contract as a victory for the labor
movement in the Occupied Territories.\footnote{263}

The third contract is the November 27, 1989 agreement between the
Ramallah Brick Factory and the Union of Brickmakers, Stonecutters, and
Tilemakers.\footnote{264} This contract is noteworthy because it sets the highest
minimum wage, JD130. It made all workers regular employees rather than
daily workers, and set minimum yearly raises at five percent. Workers unable
to reach work for reasons beyond their control, such as strikes, sieges, or
curfews, received full wages for the first four days, and half wages
thereafter.\footnote{265}

While many of the new provisions in these contracts probably would have
been negotiated eventually even without the \textit{intifada}, the uprising has
energized the labor movement to demand them sooner and more vociferously.
The \textit{intifada} has brought a sense of common struggle and a greater sense of
solidarity to the Palestinian community which is reflected in these labor
contracts. In addition, the more progressive provisions of some of these
contracts, such as equal pay for women, may contribute to a further change
in traditional community values.

\section*{D. Women's Rights}

During the \textit{intifada} women have made small strides towards increased
rights and status, but have also suffered important setbacks. On the positive
side, women's groups, justice committees, and individual women have begun
to give advice on spousal quarrels or potential divorces for the first time.
Professor Philippa Strum provides an example. When a husband in the 'Aqbet
Jabir refugee camp refused to permit his wife to find a new job or to
participate in the women's groups, she consulted a committee (it is unclear
what type of committee) concerning her desire to leave him. The committee

\footnote{263. At the time, the Silvana Factory employed 314 workers, including 65 women. Collective
Bargaining Agreement, \textit{supra} note 259.}

\footnote{264. Contract Between Ramallah Brick Factory and Union of Brickmakers, Stonecutters, and
Tilemakers, Nov.-27, 1989 (on file with author).}

\footnote{265. \textit{Id}.}

134
Palestinian Intifada: Embryonic Self-Rule

couraged her, and when her spouse threatened to take their children, the committee told her to go to the sharia court to obtain custody. Knowing she would not go to the Israeli police for enforcement, the husband said he would ignore any court order. The committee, however, assured her that local popular committees would enforce the court’s decisions.\(^6\) In this incident, then, one of the new intifada institutions acted in a way that both acknowledged its belief in the continuing legitimacy of tradition in the form of the sharia court, and marked a break with tradition by intervening in a domestic situation and by implicitly approving of and encouraging a woman’s right to work and be active outside the home. Women’s committees also have started to give lectures about personal status and divorce law.\(^6\) One women’s committee attempted to draft a more egalitarian family status law to replace the traditional laws governing divorce, inheritance, and other matters that favor men over women.\(^6\)

Women’s groups have also tried to regulate or eliminate the bride price (mahr). Since many men have been unable to work in a consistent fashion during the intifada, they have been unable to raise the large sums customarily required.\(^6\) Breaking with tradition, some committees have encouraged couples to refuse to have the male pay mahr on the grounds that payment for women is a burdensome custom that is not compatible with the goals of the intifada in improving the status of women.\(^7\) The custom may, however, have been in decline even before the intifada. In some areas, such as refugee camps, inhabitants had already all but abandoned mahr both because families were too poor and because the women may have found the custom humiliating.\(^7\)

Despite these few strides, the intifada has not been successful in eradicating traditional Palestinian notions of women’s role in society. By the third year of the uprising, there had been no permanent change in women’s social and political position.\(^2\) On the contrary, Islamic fundamentalist


\(^6\) Hiltermann, *The Woman’s Movement*, supra note 120, at 56.


\(^7\) Darweish, *supra* note 63, at 56.

\(^7\) Kitty Warnock, *Land Before Honour: Palestinian Women In The Occupied Territories* 63 (1990).

\(^7\) Id. at 61.

\(^7\) Hiltermann, *supra* note 89, at 193.
groups have in fact attempted to restrict women's options in the name of creating a Palestinian society. An important illustration of this phenomenon was the hijab (headscarf) campaign. In Gaza, Hamas and other traditionalists organized a social and political effort to impose the hijab on almost all women. Wearing a veil became a sign of political commitment to the intifada, cultural struggle, and national heritage. Many inhabitants regarded those women who refused to wear a veil, primarily leftist activists, as "vain, frivolous, or anti-nationalist," and some men attacked them with graffiti, insults, or even stones.

The situation worsened in August 1989 when a group of shabab threatened two activist women who had only recently donned the hijab, telling them that their heads were not completely covered. One woman said she would protect herself, and began to unzip her bag, claiming possession of a knife. The attackers shouted to a crowd that the women were collaborators and had a tape recorder in the bag. The crowd chased the women into a shop and searched the bag. The men dispersed when no recorder was found.

The women notified the shabab's local committee who apprehended one of the men who had instigated the incident. A justice committee sentenced them to pay a fine of JD3000 ($4500) to the women and their families. The next UNLU communiqué condemned "attacks by radical groups on Palestinian women in Jerusalem, Hebron and Gaza." An appendix to the communiqué elaborated the UNLU's view of the role of women in the intifada:

Woman as we perceive her, besides being a mother, daughter, sister or wife, is an effective human being and full citizen with all rights and responsibilities . . . .

4) The phenomenon of harassing women contradicts the traditions and norms of our society as well as our accepted attitudes about women. At the same time it denigrates the patriotism and humanity of each female citizen.
5) Nobody has the right to accost women and girls in the street on the basis of their dress or the absence of a headscarf.
6) The Unified National Leadership will chase these hooligans and will stop such immature and unpatriotic actions, especially when it is found that many such hooligans consistently engage in their own suspicious activities.

While item four embodies traditional Palestinian values, items five and six represent distinct changes. Patriotic graffiti appeared soon after the UNLU issued this communiqué, proclaiming "those caught throwing stones at women...

274. Id. at 24.
275. Id. at 26-27.
276. Id. at 27.
277. Id. (citing UNLU Communiqué No. 43, Aug. 1989).
278. Id.
Palestinian Intifada: Embryonic Self-Rule

will be treated as collaborators."\(^{279}\) In a demonstration of the legitimacy and penetrative ability of UNLU rules, the atmosphere changed dramatically in a few days "and women without headscarves no longer felt so threatened. Few men dared tell a woman to cover her head, and those who did could be accused of considering themselves greater than the Unified Leadership."\(^{280}\)

The way the new intifada institutions referred to both customary norms and to new norms espousing women's equality when handling this hijab incident has both positive and negative implications for women's status. On the positive side, the UNLU defined attacks on women as a political and social crime. However, some women felt that "the [use of a] suleh only feeds into traditional conceptions of women by bringing in the women's families and treating the issue as a question of honor and the women not as political individuals but as family property."\(^{281}\) The hijab incident indicates continued conflict between women's participation in the independence movement and their participation in a broader women's rights movement. The UNLU has a limited vision of women's political participation; women can participate, but should not abandon their traditional role as sustainers. Hamas has an even more limited vision: women belong in the home, suitably attired.\(^{282}\)

While the UNLU bayan in the hijab incident supported women's rights, other communiqués often marginalize women by referring to them in ways that are traditional, patriarchal, and condescending.\(^{283}\) Participants in the intifada are usually "our sons," "brother doctors," "brother workers," or "brother businessmen and grocers."\(^{284}\) When the bayanat mention women, it is usually as among the people "who are suffering"\(^{285}\) or as "mothers,"\(^{286}\) rather than as women in their own right. Some communiqués exclude women altogether, despite the ongoing activity of the women's committees.\(^{287}\)

Certain UNLU statements depart from this marginalizing pattern. For example Communiqué No. 5 called on "mothers, sisters, and daughters to work side by side with their husbands, sons, and brothers."\(^{288}\) In August 1988, the UNLU reminded women's committees that they had to "shoulder

---

\(^{279}\) Id.

\(^{280}\) Id.

\(^{281}\) Id.

\(^{282}\) Roy, supra, note 5, at 66.

\(^{283}\) HITTERMANN, supra note 89, at 201.

\(^{284}\) Id. (citing UNLU Communiqué No. 3, Jan 18, 1988; No. 9, late Feb., 1988; and No. 23, Aug. 5, 1988); see also INTIFADA: THE PALESTINIAN UPRISING, supra note 1, at 328, 347 (citing UNLU Communiqué No. 1, Jan. 8, 1988 and No. 14, Apr. 20, 1988).


\(^{286}\) HITTERMANN, supra note 89, at 201 (citing UNLU Communiqué No. 8, Feb. 18, 1988; No. 29, late Feb., 1988; and No. 53).

\(^{287}\) HITTERMANN, supra note 89, at 201 (citing UNLU Communiqué No. 21, July 21, 1988).

\(^{288}\) HITTERMANN, supra note 89, at 201.
a special responsibility in organizing sit-ins and other appropriate activities" in solidarity with male and female prisoners.\footnote{INTIFADA: THE PALESTINIAN UPRISING, supra note 1, at 372 (citing UNLU Communiqué No. 23, Aug. 5, 1988).} Furthermore, the UNLU has consistently recognized International Women’s Day. In 1988, the UNLU merely called for demonstrations on March 8 as part of its weekly schedule,\footnote{Hiltermann, The Women’s Movement, supra note 120, at 54.} but the following year it expressed its desire to "salute the Palestinian woman" and declared its "admiration for her heroism in the national struggle."\footnote{Id.} The UNLU also urged "strengthening the unity of the women’s movement in the State of Palestine within the framework of the Unified Women’s Council."\footnote{Id.}

Outside Palestinian leadership has exhibited the same pattern. The Palestinian Declaration of Independence states that "[g]overnance will be based on principles of social justice, equality, and nondiscrimination in public rights on grounds of race, religion, color or sex."\footnote{Proclamation of the Independent Palestinian State, 19th Session of Palestine National Council, Algiers, Nov. 15, 1988, reprinted in INTIFADA: THE PALESTINIAN UPRISING, supra note 1, at 397-99.} The document later "render[s] special tribute to the brave Palestinian woman, guardian of sustenance and life, keeper of our people’s perennial flame."\footnote{Id. at 399.} Joost Hiltermann interprets the Declaration to mean that "the only roles assigned to women in the new state are to protect, preserve, and procreate."\footnote{HILTERMANN, supra note 89, at 202.} A preferable interpretation, however, is that the Palestinian leadership, while acknowledging women’s current status, also genuinely aspires to the lofty goals of equality.

Women activists have expressed concern about how to solidify and expand the few gains women have made during the intifada so as to prevent a return to traditional norms when the intifada is over.\footnote{Id. at 198.} Some women’s groups have said that they "must participate in developing legislation and a constitution, which will give women equal rights with men."\footnote{Id. at 198.} Professor Hanan Ashrawi has said that "there is an urgent and concentrated need to crystallize a feminist perspective and ideology."\footnote{Id. at 198.}

Nevertheless, it has proven extremely difficult to eradicate traditionalist tendencies. Despite the UNLU communiqué in the hijab incident, fundamen-
talists renewed the hijab campaign in February 1990, and attempted to impose the jilbaab (full length dress) as well. By September 1990, Hamas activists patrolled the Gaza streets looking for inappropriately attired women and dousing them with vegetable dye as punishment. Women in parts of the West Bank fear being attacked with stones and pelted with fruit. In June 1990, one female activist tried to explain the inability of the UNLU and the women's committees to change the hijab campaign by saying, "[w]e couldn't act earlier in Gaza, because the time was not right. The Intifada was at its height, and we didn't want to create internal differences while fighting the occupation. . . . It is late now to act against this religious coercion, but not yet too late." However, the prognosis for change at that time was not good. By mid-1990 it appeared that the UNLU and other nationalists were unable, or perhaps unwilling, to counter the growing fundamentalist tendency. It remains to be seen if the more progressive intifada leadership will be able to curtail such fundamentalist pressures. Given that increased economic and political hardship divert attention from women's issues, it is unlikely that women will be able to obtain any support for a vigorous feminist agenda in the near future.

E. Penalties for Criminal and Tortious Conduct

Intifada penalties, particularly the execution of alleged collaborators, have received much international attention and have been a cause of great concern to intifada actors and the greater Palestinian community. Mediators, justice committees, and the NRC impose penalties that derive from customary law, including house arrest, curfews, beatings, fines or diya compensation to the victim, probation, banishment from an area or from the Occupied Territories altogether, execution, and forcing businesses to close for months. The imposition of penalties is not always formally announced, although the fact that a penalty has been imposed usually becomes obvious to all concerned. Often, however, the person being punished does not know the exact nature of the penalty; thus, for example, the length of a period of house arrest may not be disclosed to the wrongdoer until the period is at an end. Palestinians justify this practice by arguing that it ensures that potential wrongdoers do not

299. Hammami, supra note 273, at 28.
300. Roy, supra note 5, at 58, 65.
301. Strum, supra note 266, at 222.
302. Hiltermann, supra note 89, at 204.
303. Id. at 207.
304. Id. at 216.
305. Interviews with A, B, C, and D, supra note 30; Interview with J, supra note 30.
become aware of standard penalties for particular types of wrongs. This practice, in their eyes, is an effective deterrent.\textsuperscript{307}

The treatment of suspected collaborators illustrates the nature of legitimacy and coercion during the intifada particularly well. Bayan No. 11 declared March 29, 1988 the "Day of Repentance," and asked collaborators to confess and "return to the national consensus on pain of the punishment due to them."\textsuperscript{308} Coercive societal pressure, coupled with the fear of death and perhaps even some genuine repentance, induced many informers to comply.\textsuperscript{309} The mid-1988 resignation of Palestinian civil servants dealt another blow to the Israeli intelligence network, since many of the informants were civil servants.\textsuperscript{310} Israel turned to new recruitment, focusing on prisoners and people seeking assistance from the government.\textsuperscript{311} By early 1989 this policy had paid off, and the numbers of collaborators had risen again.\textsuperscript{312} Most Palestinians hate the collaborators because they betray the nationalist struggle. Following armed attacks on collaborators, the Israeli government armed many of them; these collaborators assisted in army interrogations, harassed, beat, and shot activists, extorted money, and vandalized property.\textsuperscript{313} These atrocities gave the majority of the population further reason to hate collaborators and to coerce the collaborators into "repenting."

To discourage collaborators, the UNLU devised a graduated scale of penalties in certain communities that ranged from social ostracism to physical assaults and firebomb attacks on property; if all else failed, local leadership, in consultation with outside leadership, passed a death sentence which was executed by hit squads.\textsuperscript{314} The UNLU hoped this system would encourage some individuals to repent and join the national struggle. However, the UNLU was also aware of the propaganda value to the Israelis if the intifada could be portrayed as a "politically coordinated terror campaign orchestrated by the PLO to intimidate" the populace.\textsuperscript{315} Nevertheless, by mid-1989 "[l]ocal strike forces increasingly [took] matters into their own hands as judges and executioners," and there was a dramatic increase in the numbers of Palestinian

\textsuperscript{307} Interviews with A, B, C, and D, supra note 30.

\textsuperscript{308} RIGBY, supra note 9, at 43.

\textsuperscript{309} Id.

\textsuperscript{310} Tamari, Eyeless, supra note 213, at 39-40.

\textsuperscript{311} Id. at 40-41 (describing entrapment methods in prisons).

\textsuperscript{312} Joost Hiltermann, Israel's Strategy to Break the Uprising, J. PALESTINE STUD., Winter 1990, at 94-95 [hereinafter Hiltermann, Strategy]. (Government authorities asked applicants for permits especially family reunification permits — to collaborate in exchange for what they wanted).

\textsuperscript{313} Tamari, Eyeless, supra note 213, at 40-41.

\textsuperscript{314} Hiltermann, Strategy, supra note 312, at 95; see also Tamari, Eyeless, supra note 213, at 41 ("By mid-summer [1989], bands of armed collaborators were roaming the territories, terrorizing villagers and assisting the security forces in the arrest and interrogation of suspected activists.").

\textsuperscript{315} RIGBY, supra note 9, at 44.

\textsuperscript{316} Id.
Palestinian Intifada: Embryonic Self-Rule

collaborators slain by other Palestinians.317 Increasing frustration with the lack of progress on the diplomatic front may have furthered resentment against suspected collaborators.318 Palestinians knifed, bludgeoned, hacked to death, or shot other Palestinians in broad daylight.319 Some of these attacks were meant to decrease the numbers of collaborators and thus disrupt Israeli ability to govern.320 Others may have been committed in connection with personal or political disputes having nothing to do with collaboration.321 When questioned, Palestinians claimed that the victims had been given opportunities to repent, that they had been given "due process," that all revolutions have to deal harshly with collaborators,322 or that since the UNLU could not control all areas, unauthorized slayings were bound to happen.323 The UNLU and others made continuing efforts to stem the violence. In October 1989 PLO Chairman Arafat issued a special appeal to halt the slayings, but it had little effect.324 Local reconciliation committees and traditional elders made an effort to hear collaborator disputes, but they, too, were unable to stem the executions.325 By the spring of 1990 more Palestinians were slain by other Palestinians than by Israelis.326

By the late summer of 1990, for the first time since the Uprising had begun, there were signs of a serious undermining of the authority of the [UNLU]. Whilst seeking to replace the Israeli state as the locus of political authority within the occupied territories, the [UNLU] was finding it increasingly difficult to perform that most fundamental of state functions — the maintenance of law and order. The unauthorised slaying of alleged collaborators continued unabated, family and clan feuds persisted, and theft and other forms of criminal activity increased.327 The situation has continued to deteriorate since the Gulf Crisis.328

It is impossible to know how often parties not authorized by the UNLU or PLO impose penalties. That the intifada institutions cannot stop these killings indicates a failure of their legitimacy and influence in the Territories, as well as their inability to coerce those acting without their approval. These failures have no doubt caused many Palestinians to question the intifada decision-makers' ability to "govern." Others, however, point to the conditions of the Occupation to excuse the UNLU's failure to control the violence; after all, ultimate control of law and order remains in Israeli, not Palestinian,

317. Id.
318. Id. at 45.
319. HUNTER, supra note 6, at 203.
320. Id.
323. HUNTER, supra note 6, at 203; see also RIGBY, supra note 9, at 44.
324. RIGBY, supra note 9, at 45.
326. RIGBY, supra note 9, at 45.
327. Id. at 47.
328. See infra notes 358-359 and accompanying text.
hands. Nonetheless, if the situation is not to deteriorate into pure chaos, with widespread violations of human rights and a consequent loss of international support, the UNLU and PLO must continue to criticize and attempt to stop punishments not authorized by the UNLU, PLO, or another organization with relatively widespread legitimacy in the Territories.

Even those penalties imposed by the UNLU present a number of significant problems. Punishments such as beatings or execution may comply with customary or sharia law, and may even be regarded as legitimate by the Palestinian people, but they do not comply with modern international standards of justice. Similarly, banishment must be condemned in the same fashion as Israeli deportations are condemned. In addition, the secrecy surrounding penalties must be rethought. However useful secrecy may be, a system in which potential offenders have no idea of the sanction for violating societal norms does not comply with international standards. Publication of a criminal code in the bayanat would address this problem by informing all Palestinians of the sanctions against certain behavior, and by encouraging uniformity in application of penalties. Overall, as with norms surrounding trials, the intifada leadership should strive to meet international penal standards to the limited extent it can, in order to achieve the normative goal of complying with human rights standards and the practical goals of maintaining order and retaining international sympathy.

The intifada leadership has responded to changing circumstances by issuing new rules for behavior in a number of contexts. Popular compliance with some of the new rules, such as certain rules governing landlord/tenant relations and labor relations, indicates both the legitimacy of the rule-makers and their coercive power. However, non-compliance with other crucial rules, notably those regarding penalties, indicates that both the legitimacy and coercive power of the rule-makers may be deteriorating. If the UNLU is unable to respond to and resolve these difficulties, which have worsened considerably during the Gulf Crisis, it risks losing what legitimacy it may still have in the eyes of the Palestinian population.

VIII. THE PERSIAN GULF CRISIS AND ITS IMPACT

The Palestinians’ support for Saddam Hussein during the Persian Gulf Crisis and its consequences for the Palestinians under occupation have occasioned a fundamental shift in the nature of the intifada that, in turn, may be affecting significantly the embryonic legal processes discussed thus far.

329. E.g., International Covenant on Civil and Political Rights, supra note 207, at 372 ("any judgment rendered in a criminal case . . . shall be made public").

330. See supra notes 206-208 and accompanying text (discussing reasons for noncompliance with international standards and normative and practical problems of noncompliance).
Palestinian Intifada: Embryonic Self-Rule

During and after the crisis, several calamities befell the Palestinian community. The Israeli Military Government put the entire Occupied Territories under curfew for extended periods, which forced a slowdown in the *intifada*.\(^\text{331}\) The PLO’s disastrous support of Saddam Hussein\(^\text{332}\) resulted in a major loss of support from Western sympathizers, Israeli peace activists, and Arab governments, which eliminated or lessened direct payments to the PLO at the same time that remittances from Palestinians working in the Gulf dropped considerably.\(^\text{333}\) After the war, the restored Emirate’s tragic expulsion of the majority of the Palestinian community in Kuwait resulted in monetary problems for family members in the Occupied Territories, and an influx of refugees into Jordan.\(^\text{334}\) In early March 1991, the Israelis instituted a pass system that restricted Palestinian access to the Israeli labor market and resulted in rising unemployment.\(^\text{335}\) Tensions mounted in the Territories, and the tenor of the *intifada* shifted considerably.

Palestinian rage and despair caused the *intifada* to take a more violent turn. When the *intifada* resumed after Israel lifted the curfew, hostile tendencies that the UNLU had previously suppressed flared; the UNLU did not sanction the violence, but was hard pressed to contain it. By August 1991, Palestinians’ use of firearms and grenades against Israeli troops had increased.\(^\text{336}\) This violence also resulted in random attacks on Israeli civilians and Palestinians presumed to be collaborators.\(^\text{337}\) Masked *shabab*...
began robbing, attacking, kidnapping, and murdering victims.\textsuperscript{338} Gangs such as the Black Panthers (\textit{Fatah}) engaged in increasingly violent activities against the Israeli military and civilians.\textsuperscript{339} During 1990-92, armed clashes between \textit{Fatah}, \textit{Hamas}, and other factions injured many.\textsuperscript{340} The UNLU called a strike in 1991 to protest the internecine violence, the first strike for such a purpose in the twenty-four years of occupation.\textsuperscript{341} Palestinian leaders characterized this violent trend as "youthful unrest without ideological meaning,"\textsuperscript{342} perpetrated by "teenagers who know nothing about justice," which led one commentator to conclude that the "revolution is the phantom starting to eat its own children."\textsuperscript{343}

Another manifestation of the increased tension was a growing dissatisfaction with the earlier \textit{intifada} power structure. Particularly significant was the rise in popular influence of the Islamic fundamentalist group \textit{Hamas}. The Hebron Chamber of Commerce's June 1991 election of six \textit{Hamas} sympathizers to its eleven-member board was a symbol of disenchantment with the UNLU.\textsuperscript{344} Many Palestinians have observed strikes called by \textit{Hamas}, and \textit{Hamas} has imposed several general strikes despite pleas from the UNLU not to do so.\textsuperscript{345} On the other hand, the UNLU and \textit{Hamas} have attempted to cooperate in some strikes; UNLU \textit{bayan} No. 70 of May 1991 called on the people only to obey strikes called by the UNLU or \textit{Hamas}.\textsuperscript{346} The retrenchment of efforts to improve women's status and rights is further evidence of fundamentalism's increasing power. There has been a "reinforcement of the family unit and the role of maternity to the detriment of the political organization of women."\textsuperscript{347} The number of early marriages is increasing and the average age of marriage has dropped from 21 to 17.\textsuperscript{348} Some Palestinians have attacked coeducation and have called for single-sex schools.\textsuperscript{349} In addition, the \textit{hijab} campaigns have resumed, with some

\begin{footnotes}
\footnotetext{338}{\textit{Areas Terror Not Subsiding}, JERUSALEM POST (INT'L ED.) May 4, 1991, at 3.}
\footnotetext{339}{Daniel Williams, \textit{Next Step; Arab Revolt: From Rocks to Revenge}, L.A. TIMES, May 5, 1992, at 4.}
\footnotetext{340}{Peretz, \textit{Gulf War}, supra note 331, at 21 (describing \textit{Fatah-\textit{Hamas}} clash).}
\footnotetext{341}{\textit{Palestinians: and Now the Boomerang}, ECONOMIST, June 8, 1991, at 46.}
\footnotetext{342}{Peretz, \textit{Gulf War}, supra note 331, at 21 (quoting Palestinian journalist Daoud Kuttab).}
\footnotetext{344}{Peretz, \textit{Gulf War}, supra note 331, at 21.}
\footnotetext{345}{Emad Fraitekh, \textit{Intifada: Now the War Among the Palestinians}, WASH. POST, Nov. 24, 1991, at C2.}
\footnotetext{346}{UNLU Communiqué 70, May 1991 (unpublished manuscript, on file with author); Jon Immanuel, \textit{Bloody Week In Territories}, JERUSALEM POST (INT'L ED.) May 25, 1991, at 3 (noting UNLU ordered that \textit{Hamas} strikes be observed).}
\footnotetext{348}{\textit{See STRUM}, supra note 266, at 228.}
\footnotetext{349}{Tamari, \textit{Left}, supra note 136, at 17.}
\end{footnotes}
Palestinian Intifada: Embryonic Self-Rule

evidence of increasing success. In general, there are increased pressures on women to assume a more traditional lifestyle.

The rise of Hamas marked a corresponding decrease in the relative strength of the UNLU, evidenced by a failure to enforce strike days. Hard-won coordination, unity, and legitimacy broke down as Palestinians stopped obeying UNLU bayanat. For the first time, the inhabitants of Nablus did not follow a strike called by a UNLU bayan in December 1991; in fact, store owners beat an activist who tried to close shops. This event was particularly significant because Nablus is the hub of secular nationalism and the largest city in the Occupied Territories. The shortage of UNLU activists to enforce the strike, caused by continued Israeli security force arrests, may have encouraged shop owners to defy the strike. This probably indicates that some owners only complied previously out of fear of retribution, rather than from an inherent belief in the legitimacy of the strikes. It probably also indicates that the shop owners have lost faith in the UNLU and will no longer follow its edicts. The UNLU’s failure to produce any concrete results to end the occupation may have contributed to this result. Even before the October 1991 peace talks, the intifada had "lost its meaning for the shopkeepers and merchants who financed and supported it in its most active stages. They no longer know why they are striking, or on whose authority such instructions are given." Once the talks began, many Palestinians came to view constant strikes as economically disruptive and no longer necessary in light of the international peace process. Even before the UNLU reduced the number of strike days in April 1992 some merchants had started keeping shops open beyond the hours the UNLU permitted because of severe economic hardship.

Another major challenge to the power structure and legitimacy of the UNLU and PLO is the continued increase in the unauthorized killing of collaborators. In response to this problem, in June 1991 the UNLU followed a PLO order to issue a bayan that banned "all enlisted activists, regardless of their affiliation, from resorting to killing or executing suspects," and branded anyone who carried out such attacks as "a violator of the laws of the state of Palestine [who would] be punished with an iron fist." Outside leadership

350. See supra notes 299-303 and accompanying text.
351. Peretz, Gulf War, supra note 331, at 20.
353. Id.
355. Id.
358. Peretz, Gulf War, supra note 331, at 20; PLO Demands Halt to Killing of Informers, N.Y.
publicly censured young activists for not following established guidelines for executions. Senior PLO spokesperson Bassam Abu Sharif stated that the guidelines required twice warning an alleged collaborator. If that individual continued to collaborate, then he or she would be tried before a "court" of local lawyers. A death sentence by that court would then be sent to Tunis for authorization.\textsuperscript{359} It is unclear how often these rules have been followed.

The increased influence of fundamentalism, the unauthorized killing of collaborators, and unenforced strike days all indicate that the \textit{intifada} leadership's hold on the population weakened during the Gulf War crisis. This loss of control was a source of great embarrassment to the Tunis leadership.\textsuperscript{360} To restore its waning legitimacy, the UNLU attempted to alleviate social and economic pressure by taking actions such as permitting restaurants to remain open all day.\textsuperscript{361} In addition, \textit{Fatah} leaders launched a public campaign to get the masked \textit{shabab} off the street.\textsuperscript{362} These efforts to reassert control illustrate the problems faced by the \textit{intifada} leadership:

\begin{quote}
[\textit{W}hilst the economic situation could explain a part of the increasing lawlessness, it was also linked to the declining ability of the leadership of the Uprising to enforce its rulings and control the wilder acts of the gangs of masked youths. This erosion of authority was linked in turn to the factionalism that had permeated the popular committees, the very bodies which had constituted the organisational infrastructure of the Uprising during the high point of the Intifada in the years up to 1990.\textsuperscript{363}
\end{quote}

In this new phase of the \textit{intifada}, the UNLU no longer enjoys the same degree of legitimacy that it did in the period preceding the Gulf War. The hardships caused by the Gulf War and the failure of the UNLU to meet popular expectations have significantly changed the dynamics of the uprising.

A new leadership structure has emerged in certain locales that relies more extensively on local committees linked with particular communities. An example is the Nablus \textit{Qasbah} (market), where in 1991 a five-person committee of \textit{Fatah's Shabiba} movement made executive and judicial decisions with the cooperation of the community.\textsuperscript{364} The committee's

\textsuperscript{360} Id.
\textsuperscript{361} Id.
\textsuperscript{362} Ya'ari, \textit{supra} note 7, at 16.
\textsuperscript{363} RIZBY, \textit{supra} note 9, at 16.
\textsuperscript{364} \textit{The Shabab in Control of Nablus' Qasbah}, AL FAJR, June 3, 1991, at 10 [hereinafter \textit{The Shabab}].

146
Palestinian Intifada: Embryonic Self-Rule

executive tasks included enforcement of UNLU bayanat, particularly those concerning strike days. The committee also issued licenses for taxis and street vendors and arrested thieves. Its judicial functions included punishing collaborators and drug dealers and intervening in family disputes. The committee expressed pride that it had been able to stop collaborator killings for ten months. Israeli television correspondent Ehud Ya’ari also reported on bands of young people who fought Palestinian crime, collected taxes, and held trials. Following some kind of public trial (how exactly the trial worked is not clear), thieves received 150 lashes in public, "just like in Saudi Arabia." The use of this traditional sharia punishment and the fact that Saudi Arabia is proposed as a model represents a growth in the Islamic fundamentalist trend even among Fatah members. Recognizing the effectiveness of these committees, the Israeli authorities told local merchants complaining of thefts to "go to the shabiba." To some extent, these new local committees have assumed the roles and responsibilities the pre-Gulf War elites no longer exercise. Miscellaneous bayanat that appeared in July and August 1991 expressed disenchantment, accusing the PLO of corruption, inefficiency, and personal aggrandizement, among other things. The Gazans have expressed concern about the breakdown in the pre-Gulf War legal decision-making process. "For them, this means the breakdown of the internal system of proto-legal appeal, dispute mediation, and social protection that emerged in response to the increasingly partisan and punitive nature of Israeli military law since the uprising." The deterioration in the Palestinian social fabric worsened after the opening of the October 1991 peace talks. While there was initial euphoria in some circles, many fundamentalists and others opposed to a negotiated settlement with Israel stepped up their violence. As the peace talks dragged on with no positive results, more Palestinians despaired. Internecine violence, attacks on collaborators, and disobedience of UNLU directives all increased. Hamas’ popularity had dropped in the wake of optimism surrounding the opening of the peace talks but was reinvigorated as the talks stalled. The June 1992 election of Labor party leader Yitzhak Rabin to replace hardliner Yitzhak Shamir had a similar impact. While some Palestinians were optimistic about the prospects for autonomy, others were

368. Andoni, supra note 332, at 57.
369. Roy, supra note 5, at 64.
skeptical or pessimistic. Some of those opposed to any negotiated settlement with Israel or a settlement that fell short of statehood engaged in violent or disruptive actions.\footnote{372}

These fundamental changes have caused many Palestinians to reassess the \textit{intifada} itself.\footnote{373} The public personalities and the PLO-backed negotiating team have raised the possibility of accepting interim autonomy as proposed in the peace talks,\footnote{374} noting that "albeit transitional, [interim autonomy would provide] breathing space, a period of respite during which the Palestinians might struggle to reconstruct the infrastructure of their own autonomous society."\footnote{375} Those supporting this alternative questioned the continuance of general strikes, which harm Palestinians more than Israelis.\footnote{376} Thus, while the general strike remains the primary symbol of the movement, the UNLU is calling fewer of them.\footnote{377} In April 1992, \textit{bayan} No. 81 directed that only one general strike be held each month. Furthermore, the UNLU permitted shops to remain open until 3 pm instead of 1 pm, except in the Old City of Jerusalem where shops could remain open until 5 pm. Leaflet No. 81 also abolished localized general strikes to mark the deaths of martyrs by calling instead for traffic to stay off the road for 15 minutes. This \textit{bayan} also reduced the boycott of Israeli goods, allowing shopkeepers to sell certain goods "for which there is no national alternative."\footnote{378} In a period in which many Palestinians challenge the legitimacy of the \textit{intifada} itself, the uprising’s leadership faces a choice between adapting or relinquishing control. The UNLU’s decision to abate its calls for general strikes indicates a realization that the strikes cause undue economic hardship not justified by their political benefits, particularly in light of the diminished effectiveness of strikes in the wake of the Gulf War.

The UNLU’s crisis of legitimacy, characterized particularly by its inability to enforce strikes and control collaborator killings, has created a vacuum of sorts in which four groups have tried to assert authority. These groups are the PLO, the public personalities, the UNLU, and the gangs. On the highest level, the external PLO continues to have influence that exceeds that of the

\begin{footnotes}
\footnote{372} Tom Masland et al., \textit{The Inner Intifada}, NEWSWEEK, Aug. 3, 1992, at 32, 32-33.
\footnote{373} Jon Immanuel, \textit{Palestinians Rethinking Intifada}, supra note 343, at 2; \textit{The Intifada at the Crossroads}, supra note 337, at 9.
\footnote{375} \textit{RIOBY}, supra note 9, at 16-17 (footnote omitted).
\footnote{376} Id. at 16.
\end{footnotes}
other groups. Its power, however, is subject to considerable limitations; for example, while PLO directives calling for an end to collaborator killings may influence activists generally, the PLO is incapable of halting the activity on a local level. On the next level are the public personalities, such as Faisal Husseini, who appear to articulate both external PLO directives and popular sentiments. Any conflicts between the PLO and the public personalities apparently are synthesized privately so that the personalities appear to speak in harmony with the PLO. The third level of authority, which enjoys a degree of legitimacy parallel to that of the personalities, is the UNLU, which appears to have retained its underground rotating character. As noted, however, the population’s reluctance to comply with the UNLU’s edicts is a sign of its diminished legitimacy. Moreover, bayanat that reflect inconsistencies and the influence of various factions vying for control demonstrate the UNLU’s internal problems. Finally, in the post-Gulf era, the influence of gangs has grown considerably. Possible participation in reviewing bayanat, in addition to control over areas like the Nablus Qasbah, indicate that gangs have achieved a tremendous level of power. These developments may indicate either a permanent shift of authority to youth gangs or merely a passing influence on intifada decision-making. In any event, the rise in the influence of gangs and the corresponding diminution of UNLU’s power indicate that the intifada’s embryonic legal decision-making process is currently in flux.

Leaflet No. 84 of July 1992 demonstrates this problem. It glorifies stabbers, and condemns then newly-elected Israeli Prime Minister Yitzhak Rabin. While all PLO factions generally proofread leaflets, this bayan appears to take an uncharacteristically hardline stance by contradicting PLO Chairman Arafat’s positive assessment of Rabin. Its glorification of stabbing may indicate that Fatah youth gangs proofread it, rather than PLO senior officials. Communiqué No. 84 thus indicates the failure of senior activists to control the content of important bayanat and represents a significant breakdown in the intifada’s legal decision-making structure.

The Gulf War has thus had a deleterious effect on the embryonic legal decision-making of the intifada. The lowest level of authority — gangs and other violent elements — increased their coercive abilities and even their legitimacy in some circles at the expense of three higher levels of authority — the UNLU, the public personalities, and the PLO. Hamas also increased its influence on the population in this time of economic and psychological depression as more Palestinians turn to Islam’s consolation in lieu of diplomacy. Since Israel does not permit general elections in the Territories, the popular legitimacy and support accorded to each group is unclear.

380. Id.
IX. Conclusion

The Palestinian uprising against Israeli rule in the Occupied Territories has striven to increase Palestinians’ control over their own lives, both for the short-term goals of weakening Israeli control and demonstrating the Palestinian belief that Israeli rule is illegitimate, and for the longer-term goal of setting the groundwork for more permanent institutions after eventual self-rule. To help accomplish these goals, the movement in its early days created underground institutions to perform many of the legal functions normally in the hands of governments; these institutions, in turn, crafted substantive and procedural rules to guide the lives of Palestinians. Both these institutions and their rules draw upon elements of traditional culture. Palestinian legal culture remains primarily based upon customary norms that evolved from the different legal traditions in the region. Rather than disregarding customary law as primitive or backward, the new Palestinian institutions have used those aspects that can help restore social order. Thus, for example, the intifada institutions have emphasized traditional family and community norms and the traditional reliance on mediation and reconciliation rather than individual justice. This utilization of selected aspects of past indigenous traditions has the advantage of lending legitimacy to the new system.

Intifada decision-making has done more than reproduce traditional legal structures, however. It has also made an effort to respond to changed circumstances by selectively retaining or revitalizing aspects of Islamic law, customary law, and Jordanian and Egyptian law, while augmenting them with new institutions, rules, and procedures. Thus, the intifada has marked a change in the characteristics of the leadership; leadership and decision-making now involves younger individuals, people from middle or working class backgrounds, and perhaps some women. This leadership has introduced new rules, some of which, such as those on labor relations or women’s issues such as mahr, may represent not only a response to changed circumstances, but even factors that will contribute to social change.

These new institutions, particularly the UNLU, and the rules they promulgated enjoyed widespread legitimacy in the early period of the intifada. Since the Gulf War, however, they have faced an escalating crisis of legitimacy that threatens their continued growth, effectiveness, legitimacy, and possibly even existence. The most fundamental of the factors contributing to this crisis is the continuance of the Israeli occupation. As long as the institutions have to operate underground, the costs of invisibility (such as the denial of internationally-accepted trial rights in the name of protection) will be high. In addition, the fact that participants in the UNLU are subject to arrest and deportation makes continuity, consistency, institutional memory, and the sharing of experience difficult, and has contributed to the growing
Palestinian Intifada: Embryonic Self-Rule

strength of more youthful, and possibly more radical and violent, leadership. Moreover, the fact that the UNLU has thus far failed to achieve its overarching goal of independence contributes to popular dissatisfaction and a loss of credibility. Finally, the Occupation contributes to this crisis of legitimacy because the methods that would best enhance legitimacy, such as a free and fair election, are unlikely to occur in the current political climate.

The disorganization and internal divisions that plague Palestinian decision-makers, for reasons both within and beyond their control, is another factor in this crisis. As a result, the UNLU has had to contend with independent action on the part of private individuals, Hamas and other political factions, local committees, public personalities, and the external PLO. This multitude of voices contributes to increased popular noncompliance with the rules set out in UNLU bayanat; many Palestinians now refuse to strike on strike days, attempt to enforce the hijab on women, and continue to execute suspected collaborators without paying any attention to the procedures propounded by the UNLU.

This escalating violence is both a particularly visible sign of the UNLU’s loss of legitimacy and a particularly acute contributor to it. Frustration with the continued occupation also contributes to the delegitimation of the UNLU, as does the perception that the UNLU is not accomplishing much and that other groups (such as Hamas) or methods (such as increasingly deadly violence) may work better. Each escalation in the violence makes more people realize that the UNLU is unable to control it, and further hurts the UNLU’s legitimacy. What makes this problem particularly acute is the fact that, absent significant progress in the peace process, the occupation will almost certainly continue to entail violence and coercion, emanating both from internecine conflict amongst the Palestinians and from the Israeli occupation forces. Even a grant of partial autonomy as a result of the talks might cause individuals who want immediate independence to respond with even greater violence.

The PLO and UNLU must do what they can to respond to this crisis of legitimacy. Palestinian decision-makers should create a centralized political leadership for the Occupied Territories. This new authority must change the current disorganized, undefined, and dysfunctional relationship between local leaders and the external PLO, although this may be difficult given the continued illegality of official contact. The new leadership must also increase efforts to connect to grassroots groups; for example, the new leadership could appoint people to play judicial roles in local communities. Alternatively, it could arrange to have the local communities elect judges, thus strengthening the judges’ legitimacy in their jurisdictions. Greater ties to grassroots groups

---

382. Id.
would increase the legitimacy of the central leadership. Moreover, having one centralized political leadership would reduce or eliminate the number of overlapping or conflicting signals the leadership sends to Palestinians. Such unanimity would contribute to the likelihood that most Palestinians will perceive the leadership as legitimate, make it easier for those Palestinians to know what they should or should not do, and make it easier to police and enforce compliance among others. Unfortunately, however, the present climate of despair, internecine violence, and diplomatic stalemate makes it unlikely that much progress will be made until there is some kind of interim settlement with the Israelis; preventing the situation from deteriorating further may be the best that can be anticipated until then.

While enhancing the legitimacy of the UNLU will alleviate some of the problems, a constitution or autonomy charter providing the principles for a Palestinian legal system is essential to a more complete resolution. Palestinians must draft this document on the basis of their own evaluation of the efficacy and relevance of pre-existing legal traditions, new rules introduced since the beginning of the intifada, and international standards. A constitutional document imposed by other actors, such as Israelis, Jordanians, Americans, or even the United Nations, will lack legitimacy and will not increase rule of law in the Territories. The new legal system should include rules, procedures, and institutions, including a law school and police force. This article has discussed a number of issues that would pose significant problems if the Territories obtain autonomy or independence, including what to do with the complex legal regime developed during the intifada. The new leaders would have to review systematically the Occupied Territories’ legal traditions and laws, including those innovations introduced during the intifada. Some, such as Mandate and Israeli law, they might abandon altogether. Others, such as elements of religious and customary

383. The creation of a permanent, centralized judicial body for the intifada would help significantly. It would need to have a rotating group of members (since participation in intifada institutions is illegal), but like the UNLU would develop its own character over time. Having such a set judicial body would make it easier to establish that judgments from the center are binding on local justice committees or mediators. Publication of its decisions in bayanat would clarify judicial rules and procedures, thus facilitating compliance. Moreover, this approach would help counter the media’s focus on reports of violence, gangsterism, and hooliganism, and present Palestinians, Israelis, and others with a view of a Palestinian leadership that can resolve disputes peacefully.

Two other steps would help achieve similar results. The UNLU should consider publishing a criminal code, which would enable people to know in advance what they may and may not do, and help address the human rights problems discussed above in connection with secret sentences. See supra notes 206-208 and accompanying text. Finally, some kind of Ministry of Justice could effectively coordinate practice throughout the Territories, and issue rules clarifying procedures. This, again, would increase predictability.

384. Such an institution would centralize learning and scholarship; moreover, faculty, students, and practitioners could assist in the process of further legal drafting. A school might also help revitalize the legal profession in the Territories.

385. The new leaders would have to decide whether Israeli law should apply to any remaining
Palestinian Intifada: Embryonic Self-Rule

law, they probably would retain in light of the deeply entrenched nature of these laws and their close connection with Palestinian culture and world-view. The new leaders would have to address the problem that arises when these earlier laws conflict with other possible goals or international standards, such as equality for women.\textsuperscript{386} In addition, certain aspects of the intifada legal processes might or should be abandoned, particularly those practices that violate international standards of human rights. Finally, the new government would need to consider simplifying whatever old rules are kept and publishing them along with all new rules that it passes in a single collection.

Despite its many problems, the intifada has been an important attempt to gain control over legal decision-making, an area which has often been in the hands of outsiders. "The value of the intifada cannot be measured by its ability to win independence in the shortest possible time."\textsuperscript{387} The development of Palestinian embryonic self rule is a phenomenon of internal, regional, and international significance. A greater comprehension of it can give us a greater theoretical understanding of social process in general, and can help to guarantee that other nations will be better able to deal with Palestine when and if it takes its place among the states of the world. For these reasons, the intifada's various aspects and ramifications present a fertile, and necessary, field of academic inquiry.

---

\textsuperscript{386} Customary and Islamic law, sexism, and a resurgence of fundamentalism make it very difficult to address the restrictions on women. Any attempt to do so would no doubt require delicate balancing. The total abandonment of all past practices would delegitimize any new laws on women's rights, and certain sectors are sure to advocate a return to earlier customary and religious norms and vehemently oppose changing the status quo. Nonetheless, a governing constitution should firmly assert the equality of women, along the lines of the PNC Declaration of Independence. In addition, any government should pursue the current proposals for reform of the family code and make revisions to other statutes affecting the status of women so as to improve their position vis-à-vis men.

\textsuperscript{387} Bishara, \textit{supra} note 377, at 6.