

Religious Mediators in Palestine

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The rule of law in the Palestinian territories must be addressed in its historically unique context. Complex forms of legal pluralism have obtained in Palestine since Ottoman times. After 1967, the judiciary was subjected to external control through Israeli occupation and military rule. However, following the signing of the Oslo agreements in 1993/4, a secular judiciary was re-instituted under the auspices of the Palestinian Authority, as well as a sharia court system whose role was, however,

reduced from that of a general tribunal to that of a forum dealing with personal status issues. This dual system was superimposed on a long-standing network of customary institutions of conflict resolution, based on lineage or tribal councils, collective land administration assemblies, and public reconciliation committees. These institutions have not only endured the political upheavals of the twentieth century, but, in recent years, also seen their roles diversified, transformed and perhaps reinforced through the absence (until 1993) and present debility of the Palestinian proto-state, the very existence of which is now threatened. In this complex and versatile field of conflict resolution, new actors have appeared while classical players are taking on new roles.

Since the eruption of the second Intifada in September 2000, an on-going process of spatial and social fragmentation has taken place. Firstly, the construction of the separation fence/wall, destined to become a 640 kilometres long barrier, annexes de facto large portions of territory while severing the Palestinian communities, fields and families. Secondly, some 540 checkpoints and hundreds of settlements have turned the West Bank into a patchwork of ghettos whose only access to each other is through an Israeli military checkpoint. Thirdly, parallel to the above-mentioned processes, the systematic weakening of the apparatus of the Palestinian Authority (PA), combined with the disintegration of the military wings of various political factions into dozens of militant groups, has not only weakened the judicial and police systems, but, more importantly, undermined more classical conflict resolution mechanisms based on kinship and other forms of social proximity. Thus, throughout the West Bank and Gaza Strip, new actors, notably *da'yyat* and *qudah*, have stepped in to fill the breach in conciliatory mechanisms and save the now isolated communities that form the nation from total chaos by appealing to the only remaining connecting principle, namely the common reference to "Islamic values." Yet female *da'yyat* and male *qudah* differ significantly with regard to the gendered definition of their sphere of intervention in homes, inaccessible to men, and religious institutions, such as mosques, as well as interpersonal networks, charities and governmental institutions, notwithstanding their spatial and modes of operation. In the light of the present polarization between a secular bureaucracy, dominated by Fatah (the recently defeated ruling party), and the newly elected Hamas government, until now, such conciliatory mechanisms have played a key role in maintaining a high degree of social coherence in a nation that has never formed a state yet has experienced four decades of occupation. Whether this solidarity will persist is, however, an open question.

Male religious leaders as mediators

Despite the relative decline of the sharia judiciary, the *qadi* of the personal status court, as a public figure, still retains a considerable degree of moral influence in his community. His authority in the context of extra-formal conflict resolution mechanisms transcends his adminis-

The spatial and social fragmentation of the Palestinian territories has not only weakened judicial and police systems, but also undermined classical conflict resolution mechanisms based on kinship and other forms of social proximity. In this context, new religious mediators are gaining ground. The author shows that by appealing to "Islamic values" as the only remaining connecting principle, these new legal actors have played a key role in preventing the disintegration of now isolated communities.

trative and legal attributes. In contrast to many *qudah* in Ottoman Palestine, who were transferred every year so as to preclude local involvement, the contemporary *qadi* in the Palestinian Territories tends to be a full-fledged member of the community. This embeddedness has far-reaching implications, influencing spheres beyond the domain of personal status and affecting significant aspects of social practice, community life, and political encounters.

In the current Palestinian social context, the *qadi* emerges as a key actor not only in regulating relations within and between families or descent-based groups or those bound by matrimonial alliance, but more importantly as a community leader approached in his capacity as an imam, a preacher or simply a "respected person," to sponsor a solution or initiate a settlement. It seems that respectability, trust, and wisdom are the main attributes, which legitimize the intervention of particular person as a mediator acceptable to opposed parties. The fact that these same qualifications are prerequisites for the *qudah*, appointment in the formal system of the sharia court puts him in a pre-eminent position in matters of conflict management as compared with other intermediaries. This standing must today be understood in a context of weakness of the formal judicial system, which, as a consequence, tends to empower the *qadi* and permits him to occupy a greater space than he enjoyed earlier. Hence, his exercise of active authority renders his resolutions suitable for settling most sorts of conflicts between community members or groups without major objections being raised.

The centrality of his role should not, however, lead one to underestimate either the role of networks that crosscut or overarch the kinship-based relations of community members, bonds of patronage and dependency, or any other system based on formal justice, whether secular or religious. Indeed, there are several authorities or actors to whom individuals can turn for assistance before asking the *qadi* to intervene. These include kin, friends, neighbours, and family or lineage elders, including *makhatar* (sing. *mukhtar*),¹ extended family councils, police officers or relations of influence in Palestinian Authority institutions. Salha, a poor, 34-year-old widow, approached a *qadi* to resolve a dispute with her brother-in-law over a "high" payment promised to her by an insurance company after the death of her husband. The brother-in-law wanted to use his guardianship over her children to profit from their father's insurance. Had the dispute been between two Gazan notables, it is doubtful that the case would ever have reached the *qadi*. The matter would, of necessity, have been settled *en famille*. Once the case had been presented to the *qadi*, a specific range of options emerged, ranging from the judge's refusal to consider the case at all, through opening the road to a "customary" solution to his formulating of a legal decision that would gravely affect Salha. In practice, *qudah* most often opt for an "inventive," median solution that avoids irrevocable consequences for the parties from their kin and society at large. Only a systematic exploration of the contextual decisional process in cases involving fundamental moral principles would enable us to understand the *qudah's* socially and ethically situated practice. After listening to Salha, the *qadi* contacted her family's *mukhtar*. The next day, both agreed to resolve the dispute at the council. For more than a week, they kept up negotiations with the family's powerful figures. Holding the uncle responsible through the *hamula* was a way of exerting pressure on him through the collectivity. Eventually, through mechanisms of negotiation, persuasion, and agreement, a solution was reached that allowed Salha to keep her children and receive the insurance payment and even obliged the brother-in-law to pay their *nafaqa* to her.



Kalandia checkpoint, north of Jerusalem, 21 March 2006

The study of the *qudah*, extra-formal intervention thus presupposes distinguishing a number of spheres of potential intervention beyond his formal role in the sharia court. All social and power resources are differentially available to the qadi according to time, context, and the social status of parties. They converge to model specific decisions, thereby setting limits to his moral authority.

Female sub-mediators

The phenomenon of *da'iyyat* arose in the Palestinian Territories more than a decade ago, after the emergence of the Palestinian Authority and the challenges it posed to the political and social operation of the Islamist movements. Over time, the role of the *da'iyyat* has been significantly transformed from that of educators advocating Islamic values in mosques and charity centres to active involvement in various issues related to community and social life, including interventions in public and private conflicts.

These voluntary activists often come from a middle class background and enjoy a high level of education; most have a BA or higher degree in a variety of specializations such as medicine, agriculture, architecture, and, obviously, Islamic studies. Despite denying any explicit political commitment, a number of informants indicate that they are attached to the social infrastructure of the main Islamic political party (Hamas) or, to a lesser degree, of the Islamic Jihad movement.

In the course of their activism, *da'iyyat* meet hundreds of women from various regions, generations, statuses, and classes. They often take the lead in introducing women from different backgrounds to each other and design shared teaching programmes and various activities for different communities, which indicates the importance of social networking for their activism. Part of their daily agenda is to follow their "clients" to their homes; they regularly pay visits, both at times of crisis and of celebration. Their female "clients," in response, make them privy to their intimate problems as well as more "public" conflicts. This might be the most interesting question in the study of the roles and actions of *da'iyyat*, their modes of intervention in the social conflicts submitted to them by their female "clients." The preliminary data indicate that the motivation for their intervention in social conflicts is not public status; rather, their intervention is veiled behind their religious activity. They seem to prefer confining themselves to the role of *sub-mediators* between the parties to a dispute and the principal mediators, i.e., those "wise" men who share with them both their religious background and willingness to resolve communal conflicts. Studying their activism may therefore provide us with further insights regarding the careful gender division of labour, political vs. non-political activism, and the public-private division.

The variety of cases in which *da'iyyat* intervene is vast: domestic disputes, sexual harassment and assaults, adultery, inheritance, financial disputes, land disputes, etc. The male leaders of the community do not seem to feel threatened by their activism, unlike their reaction to other outspoken feminist activists. Despite their advocacy for women's rights (regardless of what that means), their religious background and Islamic perspective ensure them a positive reception in the community. The interventions of the *da'iyyat*, may, I believe, (as in the case of their counterparts, the *qudah*) fill the gap left by the increasing vulnerability of the formal justice system of the Palestinian Authority. Further, the fact that

these new actors have gradually earned the people's trust may also signify a degree of scepticism with regard to the neutrality, influence, and legitimacy of other informal systems.

The *da'iyyat* have a particular method of dealing with community disputes including those related to political conflicts between Hamas and Fatah. For example, in 2004, a sixteen-year-old young man was arrested by the preventive security force (one of the many security branches functioning in Gaza) on the basis of his membership of Hamas and his involvement in preparing crude bullets. His mother was one of the followers of Dr. Salma, who is one of the most active *da'iyya* in Gaza. Dr. Salma, who does not deny her sympathy for Hamas, however has good relations with Fatah (then the ruling party) through her kinship with a high-ranking official in the Ministry of Islamic Endowment (*awqaf*). She approached him with the argument that the first half should not imprison the second half of the nation. This is Dr. Salma's conception of the polarised political matrix in Gaza between Fatah and Hamas. The man, on his part, approached the top security head to release the boy, astonishingly using the same argument as Dr. Salma: "it is unfair for one half of the nation, which dominates the political scene, to imprison the other half." After several attempts by the Shaykh of *awqaf*, the boy was released and returned to his mother. What is significant and requires deeper theorization, which unfortunately is beyond the scope of this short article, is Dr. Salma's advice to the mother: "Our God works for our good, even if His decisions seem to be illogical to us. Your boy may or may not come back. We should work hard to release him, but if we cannot do so, we have to look beyond our agony. God may want to teach us how to be patient, compliant, and accommodating through such tests." Thus, while doing her best to release the boy, Dr. Salma's advice to the mother was that of acceptance and confession. This approach is not unique in the discourse of *da'iyyat*. They teach their followers to work hard to improve their living conditions, but at the same time they train them to accept the hardships of being truly pious.

In conclusion, there is a need to examine not only the roles of these new actors in conflict resolution but also the position they occupy vis-à-vis other justice systems. Thus, their interventions should not be perceived as a linear process; rather, they should be viewed in their emergence, development, transformations, and shifts, in terms of the objectives of the parties involved and their terms of settlement. There are areas of overlap and intersection, or, alternatively, conflict and contradiction in the course of disputing and resolution. This implies the need to document conflicts through their entire duration so as to understand at which stage particular institutions are invited to intervene, the reasons for their success or failure, and the choices to be made by both disputers and mediators.

Note

1. Literally, the "selected person." In contemporary Palestine, one must distinguish between *makhafir* designated according to the principle of locality and those designated on the basis of descent. The former act on behalf of the sharia court and the civil authorities, mainly in marriage-related disputes. The descent-based *makhafir* are not recognized by the authorities; they are designated by their kin to mediate in conflicts within and between wider patrilineal descent groups.

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