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978-0-521-86806-8 - Law, Violence and Sovereignty Among West Bank Palestinians

Tobias Kelly

Excerpt

[More information](#)

## CHAPTER ONE

## INTRODUCTION

Majid was a West Bank Palestinian, and for ten years he had worked in a fruit warehouse on the outskirts of Jerusalem. Following a bomb attack in Tel Aviv in the late 1990s his Israeli employer had sacked him and refused to give him his redundancy pay. Majid had then turned to a lawyer based in Tel Aviv, and three years later the case had finally arrived at court. On the morning of the hearing Majid and I sat in a minibus making its way from the Palestinian National Authority (PNA)-controlled town of Ramallah to Israeli-controlled Jerusalem. After half an hour or so the road ahead was blocked by an Israeli checkpoint, and the driver of the minibus turned around to ask his passengers whether they had the necessary permits. Since the start of the Oslo Peace Process in the early 1990s, the number of checkpoints, and permits needed to pass through them, had increased exponentially. Half of the minibus passengers, Majid included, said that they did not have the permits for the checkpoint ahead. On hearing this, the driver turned off to the left, and we wound our way through a residential area, around the offices of the World Bank, and eventually back to the main road, completely bypassing the checkpoint. After a further twenty minutes of heavy traffic we arrived at a major intersection. As well as marking a shift from a predominantly Palestinian area to a Jewish part of Jerusalem, the junction was also the site of the Israeli District labour court.

Climbing out of the minibus we walked towards the court, and as we neared the front door of the building, a heavily armed security guard asked to see our identity cards. I casually handed over my well worn

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Excerpt

[More information](#)

## INTRODUCTION

British passport, but Majid began to look worried as he showed his PNA-issued identity card. The guard inspected the card carefully, and then asked Majid for his permit. As a West Bank Palestinian, Majid was supposed to have a permit to enter Jerusalem. However, although he had a case in the court, his lawyer had been unable to obtain one for him. The security guard would not let him enter the court without it. We explained that Majid was due in court, but the guard refused to allow him in. Majid's lawyer came out of the court and pleaded, but still the guard refused. Eventually we gave up and made our way back to Ramallah. Majid had waited three years to have his day in court, and now having made it literally to the front door, was returning home disappointed, his case postponed indefinitely.

This is a book about the legacy of a peace process. In 1993 Yasser Arafat, the then leader of the Palestine Liberation Organisation (PLO), and Yitzhak Rabin, the then Israeli prime minister, stood on the White House lawn and shook hands, marking the formal start of the Oslo Peace Process. The signing of the Oslo Accords was heralded at the time as the start of a new phase in the history of the Middle East, promising a brighter, more peaceful future for everyone who lived in the region. For the first time in history, the Israeli state and the PLO had recognised one another. The assumption of many people, in the region and beyond, was that the Peace Process would eventually lead to a Palestinian state in some form, standing alongside Israel. Although the Oslo Peace Process has since collapsed in the violence of the second intifada, which began in September 2000, the arrangements that the Oslo Accords created have continued to influence the ways in which the region is ruled and misruled. In particular, their attempts at creating a legal and political separation between Israelis and Palestinians have left a legacy of jurisdictional arrangements, identity cards and checkpoints that continues to shape the daily life of people across the region. It is this legacy that Majid and I had to negotiate in order to try to attend the Israeli labour court.

This book argues that the Israeli–Palestinian conflict should be understood as a conflict over legal rights (Hajjar 2005).<sup>1</sup> Wider conflicts over territory and identity have taken shape through disputes over who has particular rights, and where they have them. Oslo was part of this

<sup>1</sup> The processes through which legal rights are distributed in the West Bank have long been a focus of interest for academics, political activists and lawyers (Benvenisti 1983; Bisharat 1989, 1994; Botiveau 1999; Brown 2003; Brynen 1995; Dotan 1999; Hajjar 2005; Kretzmer 2002; Shamgar 1982; Shehadeh 1988; Tsemel 1989).

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Tobias Kelly

Excerpt

[More information](#)

## INTRODUCTION

process, as it attempted to formalise the legal and political separation of Israelis and Palestinians along ethno-national lines. In doing so it linked rights to membership of the wider Palestinian or Israeli communities and, in the context of territorial integration and economic dependence, attempted to define which rights could be claimed in which places, by which people. However, such attempts to create distinctions between the entitlements of Israelis and Palestinians have produced an uneven and contradictory distribution of rights. It is the intrinsic tensions of attempts to make the distinction between those who do and those who do not have particular rights that produces much of the fear and violence of everyday life in the region. These processes create what James Scott has called the 'quiet prehistory of violent conflict' (1992: 63), and the conditions of the possibility of the more spectacular violence that dominates the newspaper headlines. Rather than the peace process being disrupted by the violence of the second intifada, violence was inherent in the practice through which Oslo manifested itself on the ground.

## THE OSLO PEACE PROCESS

The Oslo Peace Process should not be seen as a one-off isolated event, but rather as part of a much longer historical process. Oslo was a series of agreements, applied to varying degrees over several years. These years saw the assassination of an Israeli prime minister and numerous Israeli governments rise and fall, as well as a fundamental restructuring of the Palestinian national movement, from exile to the West Bank and Gaza Strip. However, the historical context of Oslo goes back further than the handshake between Arafat and Rabin on the White House lawn, and the secret negotiations in Norway that gave the agreements their name, to the structural contradictions of the Israeli occupation. Due to a mixture of perceived security needs and a desire for a messianic return to the land of Jewish ancient history, the Israeli state has made claims to part or all of the territory of the West Bank and Gaza Strip. At the same time hundreds of thousands of Palestinians have become dependent on the Israeli economy. However, the Israeli state has not wanted to incorporate fully the Palestinian population of the region into its political structures, and endanger its Jewish majority. Following the 1967 occupation, the Israeli state therefore attempted to distinguish between the legal rights of Israelis and Palestinians in the West Bank and Gaza by extending the protection of Israeli law to Israeli citizens

Cambridge University Press

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Tobias Kelly

Excerpt

[More information](#)

## INTRODUCTION

and governing Palestinians through a mixture of local West Bank or Gazan law and military regulations.

For two decades the structures of rule developed by the Israeli state allowed it to govern the West Bank and Gaza Strip with relative ease. However, the violence of the first intifada, that started in late 1987, demonstrated that it could not maintain control over the Palestinian population of the West Bank and Gaza Strip whilst simultaneously claiming to be a 'liberal democracy' that respected equality before the law (Raz-Krakotzkin 1998). The Oslo Accords helped to ease these tensions by passing partial responsibility for the Palestinian population of the West Bank and Gaza Strip to the newly formed Palestinian National Authority (PNA). For the PLO, lead by Yasser Arafat in distant Tunis, the Oslo Accords came at a crucial juncture, as the PLO had been weakened by its support for the Iraqi leader Saddam Hussein in the first Gulf War. Although the Peace Process represented an important symbolic change in the mutual recognition of the Israeli state and the PLO it contained, it did not fundamentally alter the legal structures through which the West Bank and Gaza Strip were ruled. Israeli citizens were still under the jurisdiction of Israeli law, and although the PNA took over responsibility for the daily lives of many Palestinians, the system of military regulations remained in place. Whilst the PNA was given responsibility for policing and for civil matters, such as schools and hospitals, the Israeli state retained ultimate control of the security of the area and responsibility for all Israeli citizens. Furthermore, Israel remained the only sovereign state in the territory, and the economic and political resources of the PNA were far smaller than those available to the Israeli state. Fundamental issues, such as the possible borders of any Palestinian state or the fate of Palestinian refugees, were never addressed, but left to final status negotiations that have never been finalised. The respective Israeli and Palestinian claims to the territory and people of the West Bank and Gaza were maintained, leaving competing claims to sovereignty over the region.

The language of peace enshrined in the Oslo Process should not blind us to the continuing violence that took place in the region throughout the 1990s. Peace processes do not necessarily create an unproblematic 'coexistence', but have a political logic of their own that can gloss over continuing inequalities and tensions. Oslo did not bring an end to violence in the region. Hundreds of Palestinians were killed by Israeli troops, and there were numerous suicide bombings in the heart of Israeli towns. Furthermore, Israeli settlements, one of the main

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Tobias Kelly

Excerpt

[More information](#)

## INTRODUCTION

sources of friction between Israelis and Palestinians, continued to be built across the West Bank at an unprecedented rate. At the same time, the outbreak of the second intifada in late September did not bring about the total collapse of the processes through which the Oslo Accords manifested themselves on the ground. The institutional structures established in the wake of the Peace Process have continued to shape everyday encounters and possibilities across the region. Life in the West Bank is not all blood and violence, but remains dominated by mundane bureaucratic practices.

The Oslo Peace Process was controversial from the very beginning. Israeli and Palestinian opponents accused their representatives of compromising on fundamental national rights. Many Israelis accused the government of Yitzhak Rabin of endangering the security of Israel by allowing the PLO to establish itself in the West Bank and Gaza (Netanyahu 2000). Palestinians accused Yasser Arafat of signing away Palestinian national aspirations in exchange for the continuation of the Israeli occupation under another name (Aruri 1995; Said 1995; Rabbani 2001; Roy 1999, 2002). The reasons for the collapse of the Oslo Process have been equally controversial. The former Israeli Prime Minister Ehud Barak has argued that the negotiations ultimately failed because Yasser Arafat never had a commitment to peace, secretly harboured the desire for a Palestinian state in all of historical Palestine and was willing to use violence to obtain these ends (Morris 2002). Others have argued that successive Israeli governments have never been prepared to make the necessary concessions for a viable Palestinian state, and Yasser Arafat was left with no choice but to reject the terms of the peace deal offered to him (Agha and Malley 2001).

The apparent failures of the Oslo Process have left many people in the region and elsewhere reflecting on the viability of the model of separation that was built into it (Sussman 2004a, 2004b). For many Israelis the violence of the intifada has proved that Israelis and Palestinians cannot live side by side. Their differences are so irreconcilable that they need to be permanently separated. For others, the collapse of the Oslo Process and its aftermath has proved the impossibility of a two-state solution. It is worth remembering that advocates of a single state, in various forms, have a long history in the region. In Mandate Palestine, a bi-national state, where Jews and Arabs would share power, had a significant place in Zionist debates.<sup>2</sup> According to this model

<sup>2</sup> The philosopher Martin Buber and academic and Reform rabbi Judah Magnes both advocated a single bi-national state.

Cambridge University Press

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Tobias Kelly

Excerpt

[More information](#)

## INTRODUCTION

the collective rights of Jews and Palestinian Arabs would be guaranteed within the framework of a single state. Others, although marginal, have advocated a creation of a single state, where all citizens enjoy equal, individual rights (Davis 1997). Until 1988 the establishment of unified 'secular Palestine' was the official goal of the PLO, although many Israelis saw this as a strategic decision aimed at promoting Palestinian-Arab rights at the expense of those of Jews. Advocates of a 'one-state solution', in whatever form, were marginalised throughout the Oslo years, as the model of separation based on collective national rights seemed to have won out. However, during the second intifada, voices calling for a single state have reappeared, arguing that in the face of Palestinian economic dependence and territorial integration, a 'two-state solution' would mean the promotion of collective Israeli rights at the expense of the collective and individual rights of Palestinians.<sup>3</sup>

Much of the debate over the implications of the Oslo Process and the possibility of one or two states has taken place in terms of the abstractions of the rights of national self-determination, rather than the institutions through which rights and resources are distributed. However peace processes are not abstractions but concrete practices, whose implications work themselves out in people's everyday lives. Not only do they shape everyday lives, but the unpredictable contingencies of concrete situations can subvert their formal assumptions, and influence their outcomes. Peace processes have social lives of their own. It is in the daily interactions of people such as Majid with employers, lawyers and security guards that the Oslo Agreements have been given shape and meaning. In order to understand what the Oslo Process meant, and continues to mean, for the distribution of legal rights in the region, it is important to explore how its logic worked out in the daily lives of the people who have lived under it.

## LAW AND THE ISRAELI-PALESTINIAN CONFLICT

On my arrival in the West Bank, talk of the law seemed to be everywhere. Court cases, identity cards and legal documents filled a great deal of the everyday conversation, as people sat around in shop fronts, waited for buses or met each other on evening strolls around the village. I spent many an hour with Majid talking about the respective benefits

<sup>3</sup> See the arguments of the former deputy mayor of Jerusalem, Meron Benvenisti (*Haaretz*, 8 Aug. and 20 Nov. 2003).

Cambridge University Press

978-0-521-86806-8 - Law, Violence and Sovereignty Among West Bank Palestinians

Tobias Kelly

Excerpt

[More information](#)

## INTRODUCTION

of Israeli and Palestinian law, as we sorted through piles of documents, permits and identity cards.

This intense concern with legal issues among Palestinians must be understood in the context of the history of the West Bank and Gaza Strip. The Israeli occupation of the West Bank has been structured, in large measure, through a selfconscious legalism (Hajjar 2005; Shehadeh 1988). One of the first acts of the Israeli military following the 1967 occupation was the setting up of an infrastructure of military laws and military courts. Since then the Israeli military has gone to great lengths to frame its actions in the language of legality. Not only have hundreds of thousands of Palestinians been detained under military regulations, but land has been confiscated, curfews declared and areas closed through military law. In the late 1990s, for example, Majid's brother-in-law had been arrested by the Israeli military and accused of being involved with Hamas. He had eventually been sentenced by a military court to five years in prison. This military-based legalism has shaped the ways in which the Israeli state has related to the Palestinian residents of the region. Permits, issued through the Israeli military, are needed for many aspects of life, such as building homes, working in Israel and, increasingly, for travelling around the West Bank.

Against this background Palestinians have increasingly voiced their aspirations in legal terms. In the international arena Palestinian activists have used the language of human rights and humanitarian law.<sup>4</sup> At the domestic level, throughout the 1980s and 90s Palestinians increasingly took cases to the Israeli Supreme Court, largely over issues of land confiscated by the Israeli military.<sup>5</sup> Those Palestinians who worked in Israel also brought claims to the Israeli labour court. Majid told me that virtually every one he knew who had worked in Israel had, at one time or another, taken a case to the Israeli courts, or at least visited an Israeli lawyer. Against this background, dozens of rights-based non-governmental organisations (NGOs) have sprung up in Palestinian towns. At one point at the turn of the millennium there were over twenty such organisations in the town of Ramallah alone. Majid had turned to one of these NGOs in order to process his claims against his employer. The NGO had found him the Tel

<sup>4</sup> This was clearly seen in the appeal to the International Court of Justice (ICJ) in the Hague over the building of the Wall across the West Bank in 2004 (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion)), Judgment of 9 July 2004, (2004) 43 ILM 1999.

<sup>5</sup> Much of the struggle over the location of the Wall has taken place before the Israeli Supreme Court.



Cambridge University Press

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Tobias Kelly

Excerpt

[More information](#)

## INTRODUCTION

Aviv-based lawyer as well as paying his initial deposit. There were at least two other organisations that provided the same service. Given the abundance of legal practices, regulations and organisations, Palestinians have often articulated their claims in the language of legal rights.

The everyday lives of West Bank Palestinians are dominated by struggles over the meaning and implications of legal rights and documents. It is these struggles that shape the encounters of Israelis and Palestinians. Tank raids, suicide bombings and rocket attacks have undoubtedly been of major importance in the Middle East conflict. However, in focusing on such spectacular acts of violence, there is a danger of missing the reality of daily life in the region. Bombings and shootings have a terrible impact, yet they are intermittent and relatively rare at an everyday level. Majid had never been to a demonstration, and watched most of the clashes between the Israeli army and Palestinians on television at home with his family. Whilst he would get upset and angry at what he saw on the television or read in the newspaper, issues such as whether he would be able to work, support his family or finish building his house were of most immediate concern. It was in the context of stopping at checkpoints or applying for permits that he interacted with Israeli citizens and officials. It is in these thousands of seemingly mundane daily encounters, often shaped by legal claims and conflicts over the meaning of legal documents, that the Israeli–Palestinian conflict takes shape on the ground. An understanding of these processes is crucial, as it is these encounters that form the perceptions and experiences of people in the region, and in doing so create the context for the wider violence. Perhaps most importantly, the implications of these small-scale conflicts, and their injustices, will need to be addressed if any future peace process is to have a lasting purchase.

## HISTORICAL AND POLITICAL CONTEXT

I first met Majid at his home in the West Bank village of Bayt Hajjar. I had arrived in the region in summer 2000 and, after spending several months in Ramallah, eventually settled in Bayt Hajjar, drawn to the relative peace and quiet of the village and the kindness of its inhabitants. I rented a flat on the edge of the village and joined the residents, as much as possible, in their daily lives. Although the village has its own peculiarities, its history is similar to many other villages across the West Bank.



Cambridge University Press

978-0-521-86806-8 - Law, Violence and Sovereignty Among West Bank Palestinians

Tobias Kelly

Excerpt

[More information](#)

## INTRODUCTION

Bayt Hajjar has a population of around 7,000 people and is situated on the edge of the Mediterranean plain, where the hills begin to rise steeply up to Jerusalem. From a distance it looks like a grey scar across the brown hills behind. Although part of the West Bank, the village sticks out like a thumb into the heart of Israel. In 1948, following a series of heavy battles between the Trans-Jordanian Arab Legion and what was eventually to become the Israeli Defence Forces (IDF), Bayt Hajjar remained under Arab control and was later incorporated into the Hashemite Kingdom of Jordan. The new armistice line between Israel and Jordan lay just a few kilometres to the west. When the 1967 war between Israel, Jordan, Egypt and Syria broke out, the IDF took control of Bayt Hajjar overnight, and the Palestinian villages to the west of Bayt Hajjar were demolished, forcing their residents to flee. After the occupation, the Israeli military encouraged many of the men in the village to work in the Israeli economy, where they provided cheap unskilled labour for the building sites and factories of Israel. Majid was just one of hundreds, perhaps thousands, of men from the village who commuted daily to Tel Aviv or Jerusalem. At the same time, new settlements for Israeli citizens were built on two sides of the village, and the main road between Tel Aviv and Jerusalem was built on another. By the early 1970s driving into Israel from Bayt Hajjar was just a simple matter of taking the rough roads past the newly built Israeli settlements. Trips to the beaches, restaurants and nightclubs of Tel Aviv became a regular feature of life.

When, in the early 1990s, the government of Israel and the PLO signed the Oslo Accords, Bayt Hajjar fell under the civil control of the newly created PNA. Ramallah, which was the main administrative and commercial centre for the villagers and just 20 kilometres away over the hills, also passed into PNA hands. New PNA ministries took over many of the responsibilities for the day-to-day lives of the villagers. However, the countryside between Bayt Hajjar and Ramallah remained under the full control of the IDF. In order to pay their bills, visit doctors or go shopping, the residents of the village had to pass through Israeli-controlled territory. During the early 1990s, a permanent checkpoint was established for the first time on the main road between Bayt Hajjar and Israel. The workers from the village, like Palestinians across the West Bank, were told that if they wanted to enter Israel they had to apply for a permit. As the 1990s progressed these permits became increasingly difficult to obtain. However, many of the people in the village continued to work in the Israeli

Cambridge University Press

978-0-521-86806-8 - Law, Violence and Sovereignty Among West Bank Palestinians

Tobias Kelly

Excerpt

[More information](#)

## INTRODUCTION

economy even if they did not have permits, slipping easily pass the Israeli checkpoints. Others decided that they did not want to risk working in Israel without a permit and being arrested. They therefore started to look for work in Ramallah, despite the fact that the pay was a great deal less than could be earned in the Israeli economy. As far as the villagers of Bayt Hajjar were concerned the Oslo Peace Process and the formation of the PNA was closely associated with economic decline.

I arrived in Bayt Hajjar for the first time just before the end of September 2000. Just weeks afterwards, as frustration with the Oslo Accords reached a peak, clashes broke out between stone-throwing Palestinian *shabab* (youths) and Israeli soldiers on the edges of the main towns of the West Bank and Gaza Strip. Whilst Bayt Hajjar was far from the main centres of violence, I watched on my television screen, along with the other residents of the village, as these clashes quickly turned into gunfights between armed Palestinians and Israeli troops, and later into Israeli invasions of Palestinian towns and Palestinian attacks inside Israel. The relative quiet in the village was broken by the occasional overnight raid by Israeli troops, or Israeli helicopters buzzing low over the village as they made their way to Ramallah. In the following weeks and months travel on the roads between Bayt Hajjar, Ramallah and Israel became increasingly difficult, due to the large number of Israeli patrols. Checkpoints and the periodical cancelling of all permits to enter Israel meant that, by April 2001, there were virtually no men in the village holding permits who worked in Israel and ever larger numbers were too afraid to try and work without one. When I first arrived in Bayt Hajjar there were virtually no men in the village during the day. As the intifada continued, increasing numbers could be seen milling around the village streets with no work to go to. Unemployment and lack of money was becoming a real concern for many people. This was a process that was repeated across the West Bank. A survey from Birzeit University estimated that 69 per cent of West Bank residents had a family member who lost a job as a result of the intifada (Birzeit University Development Studies Programme 2001). Similarly a UN report estimated that over 40 per cent of the West Bank and Gaza's population had experienced 'economic distress', with unemployment rising to 38 per cent (UNSCO 2001: 10–11). Although the Oslo Accords had seen a gradual economic decline, with the start of the intifada this turned into a full-scale collapse, as access to the Israeli economy became increasingly problematic.