Islamic Hamas and Secular Fatah: How Does the Governing Process Work?

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Islamic Hamas and Secular Fatah: How Does the Governing Process Work?

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ABSTRACT

The goal of the Palestinians in their conflict with Israel is to gain national self-determination through a two-state solution. To accomplish this goal it is necessary for the Palestinians to create a singularly viable governing system in order to negotiate with Israel as a “partner for peace.” We endeavor to provide an examination of the Palestinian governing system under the Palestine Authority (PA), operated by Fatah in the West Bank and Hamas, its main opposition, in the Gaza Strip. Underlying the conflict between the two major political parties, Fatah and Hamas, it is pointed out, that following international legal principles of uti poseditis and the doctrine of postliminium, it is necessary for belligerents to negotiate the change in the status of conflicted territory resulting from armed conflict. Negotiations between Israel and the Palestinians requires the latter to create a unified government which has its challenges internally and externally. There is, additionally, the tension between Islam and its role in governance versus a purely secularist approach. An analysis of the situation is presented along with a discussion of governance and its requirements in any future Palestinian state and its outlook.

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[W]hen you bring in the religious dimension, it absolutizes the conflict—you can divide land...but the sacred is indivisible.

Moshe Halbertal

Introduction

The emergence of an Arab, Palestinian state after its Declaration of Independence in Algiers in 1988 is again further documented by the efforts in the Oslo Accords, discussed below, with the conclusion of the Declaration of Principles (DOP) in 1993, followed by the Agreement on the Gaza Strip and the Jericho Area, the Protocol on Economic Relations, the Interim Agreement on the West Bank and Gaza Strip, the Agreement on the Preparatory Transfer of Powers and Responsibilities between Israel and the Palestine Liberation Organization (PLO), the Protocol on Further Transfer of Powers and Responsibilities, the Hebron Protocol, the Wye River Memorandum, and the Sharm el-Sheikh

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1 Jodi Rudoren, A City’s ‘War of Neighbors,’ in which the Differences Are not Negotiable, NY Times, Nov. 19, 2014, at A8. Halpertal is a noted philosophy professor at the Hebrew University of Jerusalem.
8 Aug. 29, 1994. 34 I.L.M. 425 (1995). Article II of The Agreement holds: 1. Israel shall transfer and the Palestinian Authority shall assume powers and responsibilities from the Israeli military government and its Civil Administration in the West Bank in the following spheres: education and culture, health, social welfare, tourism, direct taxation and Value Added Tax (VAT), as specified in this Agreement (hereinafter “the Spheres”). 2. For the purposes of this Agreement, the Palestinian Authority shall constitute the authorized Palestinians referred to in Article VI of the Declaration of Principles. 3. The Parties will explore the possible expansion of the transfer of powers and responsibilities to additional spheres.
11 Oct. 28, 1988, 37 I.L.M. 1251 (1988). David Newman, Along the Difficult Road of Israeli-Palestinian Peace: The Wye Agreement and Early Elections, 6 BOUNDARY & SEC. BULL. 62 (1998/99). The agreement emphasizes specific security concerns that the Israelis raised in the past. Attached to the Memorandum is a base “timeline” which outlines, step-by-step the order of implementation of mutual undertakings which are incumbent upon each side. Upon completion of each phase of the Palestinian
Memorandum. The trajectory to institutionalize democracy on the bedrock of elections was to occur in 1996 with the popular approval of a Palestine Legislative Council (PLC) (al-Majlis al-Tashriyy Filastin) as well as a republican election the same year. Hamas (Harakat al-Mugawamah al-Islamiyya) rejected participation in the former, but did actively engage in the latter. The election, which was supported and encouraged by western powers, returned results that would be momentous.

The purpose of this article is to examine the changing character of the state as a legitimate political actor and, hence, the nature and principles of governing as an example of paradigmatic change with particular reference to Palestine. The global phenomenon of democratization has also impacted the Arab World, with an ideological imprint, violent upsurges, and radical interpretations of the region’s major religious belief system, Islam. We focus specifically on the state of affairs in Palestine, a proto-state considered to be in statu nascendi, or a “stateless nation,” that has had to deal with two major competing forces, Fatah (conquest; Harakat al-Tahrir al-Filistiniyya), a secular, nationalist political party and Hamas, a nominally religious, nationalist political party. Both participating in elections, the latter operating under the title of the Change and Reform Party, and technically operating in two separate geographical units, the West Bank and the Gaza Strip (where Hamas governs effectively). The sharp

commitments, Israel was to transfer a specific percentage of land to the PA within the context of the “further deployments” as stated in previously agreed upon arrangements.

Sept. 4, 1994, 38 I.L.M. 1365 (1994). The Sharm el-Sheikh Memorandum was signed in Egypt by the newly-elected Israeli Prime Minister, Ehud Barak, and the PA President Yasser Arafat. Hosts at the ceremony included Egyptian President Hosni Mubarak, Jordan’s King Abdullah, and Madeleine Albright, US Secretary of State.


Translated as Islamic Resistance Movement, and as an acronym for “zeal.”


For an overall political analysis of the situation and condition of internal developments within the PA, see YEZID SAYIGH, ARMED STRUGGLE AND THE SEARCH FOR STATE: THE PALESTINIAN NATIONAL MOVEMENT, 1949-1993 (1997) and NIGEL PARSONS, THE POLITICS OF THE PALESTINIAN AUTHORITY: FROM OSLO TO AL-AQSA (2005). The electoral result was certainly unsuspected) by the U.S. State Department that thought Fatah would win, though by a slight margin. CONDOLEZZA RICE, NO HIGHER HONOR: A MEMOIR OF MY YEARS IN WASHINGTON 416-418 (2011).


For a further discussion of this legal condition as it affects Palestine, see Sanford Silverburg, Diplomatic Recognition of States in statu nascendi: The Case of Palestine, in PALESTINE AND INTERNATIONAL LAW: ESSAYS ON POLITICS AND ECONOMICS 9 (Sanford R. Silverburg ed., 2002, 2009).

reaction from either entity following the 1996 election, resulted in a violent civil conflict with Fatah assuming control of the West Bank, operating from its self-proclaimed capital in Ramallah while Hamas violently took governing authority (in Arabic, “authority” is sulta, whereas “power” is kuwwa (a subtlety that should not be overlooked)), over the Gaza Strip operating out of Gaza City. The latest reconciliation agreement (among several) led to a reorganized united government that met in Gaza on October 9, 2014. The issue we countenance is the nature of the governing function of two competing powerful parties whose ultimate goals overlap, but are not in complete agreement. The primary focus is the basis of governance in Palestine given the contemporary political conditions of the globe, the region, and the locus. It is important to examine how the election system operated at this time: Since Fatah was largely in control of the governing body, its operatives put a bloc vote system in place, which was understood to deliver a majority vote for Fatah and independents that were stalwarts for the former president, Yasser Arafat (Abu Amar). While not a favorable situation for a developing democracy, it was well suited to the traditional Palestinian elite families and other well-situated individuals.

The State: Traditional Versus Modern

Secularism was introduced into the region while under the domination of the Ottoman Turks. The Islamic policy of dealing with a multi-national prism was introduced largely to deal with the non-Muslim populations in the Empire. The Turkish National Assembly promulgated an edict in 1922 that called for

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20 Ironically, it was Israel that was in some way instrumental in Hamas gaining a foothold in Gaza. In a failed political attempt to unbalance the PLO and in increasing influence of pan-Arab nationalism, Israel publicly gave support to the Islamic Centre (al-Mujamma’ al-Islami) based in Gaza and created by Ahmed Yassin, in 1973. BEVERLEY MILTON-EDWARDS, HAMAS: THE ISLAMIC RESISTANCE MOVEMENT 41-42, 210-212. Once Hamas began to target Israeli citizens, it was then that Hamas became subject to Israeli retaliation. Andrew Erlich, How Israel Helped Spawn Hamas, Wall St. J., Jan. 24, 2009, http://www.WSJ.com/articles/ASB123275572295011847.


24 In the West, the influence of religion on the creation of political norms and values and their accompanying institutions, began to decline with the oncoming of the period of Enlightenment and industrialization, all leading to “modernity.” We agree with Peter Berger who had put forth the notion that western liberalism has resulted from an expanded participatory society and the continuously expanded interaction of cultures. This expansion of exposure to wider views of knowledge has led to a depreciation of religious ideology on dogma and reducing dependence on traditional value systems and the emergence of its alternative, secularism. With regard to cross-cultural communication, the observer need be careful in the use of such terms as secular, secularist, and secularism. In the Arab world, these terms and concepts are frequently understood and associated with the activist role of a supporter of civil rule. Generally see Oliver Tschanennen, The Secularization Paradigm: A Systematization, 30 J. SCIENTIFIC STUD. REL. 395 (1991). For a Muslim perspective see HÄGGAG ALI, MAPPING THE SECULAR MIND: NEOLIBERALISM: NATIONAL AND REGIONAL EXPERIMENTS WITH GLOBAL IDEAS: MODERNITY’S QUEST FOR A GODLESS UTOPIA (2013). Early in the 20th century, secularism was denounced by a prominent Egyptian intellectual, Ḥalaf al-Ra‘za‘, USUL AL-HUKM (1925) (In Arabic). From the view of another Egyptian scholar who approaches the subject as a product of western anti-religious progressivism, see DR. ABDEL-WAHAB EL MESSIRI, AL ERHAB THAT AL MEJHAR (2000) (In Arabic).

the separation of the Sultanate from the Caliphate. In Palestine, the political structure, such as it has been, followed a regionally traditional model, dependent upon families ranked upon their documented genealogy and family history’s relationship to the Prophet. Peculiar to the Palestinian and Jordanian social structure is the amula (clan) and inherited religious identity. But it is religious identification that serves as a basis for conflict with the emergence of secularist tendencies and movements. “The PLO’s [Palestine Liberation Organization] discourses on modernity were conditioned not only by the encounter with Zionism, but also by its troubled relations with different Arab regimes. They used a more conservative and religious approach with the Saudis for example, more liberal and ‘modern’ with the Tunisians, and ‘progressive’ and ‘modern’ with the then Soviet Union.”

The nation-state system requires a legal system that is common to its citizens as well as its nationals. When superimposed on a multi-religious state, those laws frequently lose their importance and superior value. Arab nationalism that developed in the early part of the 20th century was strongly influenced by western philosophy brought back to the Middle East by Arab intellectuals and allowed for not only westernization, but also an acceptance of related secularism. Against this intellectual intrusion, which bore the resemblance of development that was not only contrary to the strictures of Islam, but would be the bane of Muslim civilization. As a reaction, one Palestinian cleric and educator living in Jordan, Taqi al-Din al-Nahmi, called for the establishment of an Islamic state and a restoration of the Caliphate. To bring this condition about, he created a political party, Hizb al-Tahrir al-Islami (the Islamic Liberation Party). The movement never went too far since there was administrative action taken against it by Jordanian officials and others. However, al-Nabhani was important for putting together a complete system of Islamic governance that could be put into place, should the proper conditions arise.

Tradition and modernity are not contradictory or exclusive terms; both are merely two different classes of meanings. Tradition is always still considered as part of the past, and modernity is often and, by mistake, considered as modernism, or movement forward with whatever change is considered “good.” Tradition in Palestine refers to the Palestinian society, a small-scale society; this society is derived from

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29 “Tradition was the name given to those cultural features which, in situations of change, where to be continued to be handed on, through about, preserved and not lost.” Nelson H. H. Graburn, What is Tradition, 24 MUSEUM ANTHRO. 10 (2001).
31 “At the end of 1990s there were a total of 18 different political parties or organizations in the West Bank and Gaza Strip. Seven of them could be classified as secular Palestinian national movements whose origins date back to the late 1960s and are factions of the PLO. Four could be classified secular Arab nationalist movements also dating back also to the late 1960s. Five are Islamist parties dating from the 1980s or early 1990s (prior to legislative elections). One is a self styled “democracy movement” formed at the in mid 1990s. Two are special issue groups (an environmental group and a peace group) also formed
ancient culture practices and practicing indigenous Palestinians for more than two thousand years. On the contrary, modernity in Palestine today, refers to the practices that relate to development of the political, economic, and cultural components. It is known that there is no completely traditional or completely modern society; the case in Palestine proves this point at the present time. But when Islam is attached to any of the component parts, there tends to be strong objection from Islamic elements. With the abolition of the Caliphate in 1924 and the intellectual importation of western, liberal ideas, one can say that there has been a shift in emphasis in governance away from centralized rule to the importance of the demands of the community.

In the case of the two major political forces, Fatah and Hamas, there is no deep difference than any other political party in the Middle East. The journalist Fareed Zakaria wrote: “...for the Arab world, modernity has been one failure after another. Each path followed—socialism, secularism, nationalism—has turned into a dead end.” In Israel the situation differs because Middle Easterners see them as the People of the Book and Israelis, the ones with advancements in technology and a particular form of democracy. On the contrary, on the other side of the wall (Separation Barrier), the society embraces an almost feudalistic system.

The Palestinians are thus caught right in the middle between a perceived corrupted party-Fatah and the extreme-like Hamas. It is difficult to locate the fine line between modernity and tradition in both Israel and the Palestinian territories. The choices available to Palestinians are confronting the outside world pressing on it and their closely held religious belief system. Between modernity and traditional models, one can find that the large-scale misunderstanding between Hamas and Fatah which in recent years makes manifestly clear that the approach to mutual understanding symbolized by the mediation of some Arab countries impossible. Yet, it is also evident that when this latest sustained eruption of assassinations among both factions finally subsided and the political fallout from these events was absorbed, the two long-suffering factions found themselves confronting exactly the same dilemma they faced years ago. In actuality, those Palestinian who claim a pox on all the parties, tend to be more radical than those supporters of Fatah, the PFLP, and the DFLP, but slightly less than affiliates of Hamas and Islamic Jihad Movement in Palestine.

In 1996 an election for the PLC was held. Hamas chose to boycott the election, regardless of its popularity, as a statement of its opposition to the Oslo Accords. For the period afterwards, Fatah controlled assembly with 88 seats. Hamas was not totally absent from the political scene. It did announce that it would participate in the elections for the PLC, slated for January 2006. The results of that election were explosive. In the new parliament, now with 132 seats available for representation, Hamas won 42.9 percent of the votes which translated into 74 seats. The overall effect was to break Fatah's

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38 For general background see RA’ID ‘ABDUL HAMID, LEGAL & POLITICAL ASPECTS OF PALESTINIAN ELECTIONS (1995).
legislative dominance and introduce a potential two-party system.\textsuperscript{39} The explanation for the final outcome was manifold: Hamas consistently stood up for the theme of establishing an independent state. It represented a credible opposition to the corruption of the \textit{Fatah} administration while simultaneously providing much needed social services, maintaining an Islamic face on a nationalist movement. Not more than a year after being placed in the office of presidency, the PLC’s General Oversight Office demanded that corruption be repudiated and action taken. Yasser Arafat, however, ignored the demands and sought to administratively silence his critics. This entire episode was set in motion an effort at reform in the future.\textsuperscript{40} Since then, there has been a more transparent outlook recognizing how governing is actually operating, who it is harming, and the changes that are in order.\textsuperscript{41} It was also reflective and responsive to the failure of the Oslo peace process. The Oslo process, or at least its effect, was to subvert Palestinian identity by legitimizing Israeli Arabs, isolating their Palestinian heritage and thereby fragmenting their community, contributing to the de-legitimization of the PLO. Despite the perceived failures of the Oslo Accords, Israeli acceptance of the stated goal for Palestinians to have a state of their own was pronounced by no less than Israeli Prime Minister Ariel Sharon.\textsuperscript{42} His influence also resulted in party partners from \textit{Kadima}, Ehud Olmert\textsuperscript{43} and Tzipi Livni,\textsuperscript{44} to follow suit.

So, any mutual recognition\textsuperscript{45} that is to take place requires one faction to another to find a formula in order to deal with Israel. It will also be necessary for each faction to make profound psychological adjustments. Yet, it is surprising how both factions share the same traditional and modernity way of life, but indeed they are fated to live side by side. Popular support for any political organization, but more important in a democracy, is a key indicator of legitimacy for purposes of governance. Depending upon the quality of life offered to a population, which is related to economic and political factors and their interface, means that support will necessarily fluctuate. It is interesting, therefore, to see how Palestinians identified with \textit{Hamas} over a four year period. Here, for example in 2000, poll data indicated a ten percent support for \textit{Hamas}. A mere five years later in municipal elections in Gaza, \textit{Hamas} outbid \textit{Fatah} by a factor of three, making it the premier party, winning 77 out of 118 seats in council elections.\textsuperscript{46} Perhaps more striking was in May 2005 in local council elections in the West Bank, generally considered a \textit{Fatah} stronghold, \textit{Hamas} garnered 45 percent of the vote. Just before Israel’s planned military and


\textsuperscript{40} Amal Jamal, \textit{The Palestinian Media: An Obedient Servant or a Vanguard of Democracy}? 29 J. PALESTINE STUD. 15, 45-59 (2000).


\textsuperscript{45} MICHAEL OREN, \textit{POWER, FAITH AND FANTASY: AMERICA IN THE MIDDLE EAST, 1776 TO THE PRESENT} 607 (2007).

settler withdrawal from the Gaza Strip, a conducted poll found a resounding 90 percent of Gazans expressed a belief that Hamas should be actively involved in the administration of the area.⁴⁷

The doctrine of “separation” between both factions only can make the situation complex, while reconciliation can only come about through an ongoing program of intensive personal interaction between both factions. At first glance, the vision of “one faction, two different views” may sound sublime, even utopian. Actually, it is eminently pragmatic and practical, since the realization of this new ethic could finally overcome the entrenched opposition to a mutual agreement by large constituencies on both sides. An agreement between both factions is the missing link needed to bring about genuine and lasting reconciliation.

The Movement Toward Democracy

In 1987 a spontaneous outburst of Palestinian anger erupted violently in the West Bank in opposition to continued Israeli occupation, initially sparked by a vehicle accident caused by an Israeli truck driver. With little concern for the actual initial breach of the calm, the subsequent period became known as an intifada (“dust off” one’s shoes in Arabic, but “dust up” in colloquial English). The period of civil disorder was sufficiently disruptive for caring observers to move toward some sort of a modus vivendi. A set of agreements between Israel and the PLO was worked out in Olso, Norway,⁴⁸ hence the title Oslo Accords or Agreements, creating a modicum of Palestinian semi-autonomy and the creation of the Palestinian Authority (PA) and the PLC.⁴⁹ The completion of this negotiated process proffered the hope that an independent and democratic state had the makings of a foundational beginning.⁵⁰ A most important development arose with the negotiated settlement in Oslo, notably the center of political gravity, moved Palestinian demands away from a maximalist goal of demanding total control over the geographical Palestinian mandate to something less, the pre-1967 borders and away from a revolutionary method to diplomatic negotiations.⁵¹ Introducing and insuring a continual operation was inhibited because the PA “had to allocate Israeli controlled fiscal resources to achieve political stabilization and security.”⁵² Some would argue that because of the geographical fragmentation of the West Bank and Gaza,⁵³ the commensurately different legal systems with redundant governmental institutions operating

⁴⁷ Palestinian Center for Policy and Survey Research, the poll in 2000 was conducted during the period January 27-31, 2000; the 2004 poll was conducted June 24-27, 2004, available at http://www.pcpsr.org/.
⁴⁸ More than a dozen secret meetings were held between representatives from Israel and the PLO, mediated by the former Norwegian Foreign Minister Johann Jurgen Holst. For background on Norway’s role see the work of Hilda Henriksen Waage, How Norway Became One of Israel’s Best Friends, 37 J. PEACE RES. 189 (2000); Explaining the Oslo Backchannel: Norway’s Political Past in the Middle East, 56 MIDDLE EAST J. 597 (2002); Norway’s Role in the Middle East Peace Talks: Between a Strong State and a Weak Belligerent, 34 J. PALESTINE STUD. 6 (2005).
⁴⁹ A useful chart depicting the structural transformation from the PLO to the PA can be gleaned in PALESTINE ACAD., SOC‘Y FOR THE STUD. OF INT’L AFF., PLO VS. PA 5-6 (2014).
⁵³ But the West Bank and Gaza Strip by agreement between Israel, the PA, and the international community as a single territorial unit. The Interim Agreement, Art. 11, supra note 6; The position was similarly held by the Israeli Supreme Court, HCJ 7015/02 Ajuri v. The Commander of IDF Forces in the West Bank and Gaza [2002] 1, 2.
with the then president of the PA, Arafat, assumed a strong, authoritarian and centralized position as a matter of leadership style which some saw as dictatorial.\textsuperscript{54} There should be little disbelief in the PLO’s nature of authoritarianism, since from its origins, the regional support for the organization’s institutional acumen was based upon a similar heritage in the Arab state.\textsuperscript{55}

Among other sections of governing concern was the matter of religious authority in sectarian matters. Originating in the time of Ottoman control, a millet system as a component to the empire’s Civil Code (the Majalla) remained in cultural presence where the religious law covered personal status and shari‘ah law covered inheritance. Ecclesiastical courts, when available and, to some extent, were to deal with related disputes. In contemporary Palestinian history, the political spectrum emphasizing religion, from the Left to the Right would appear thusly: PFLP, DFLP, Communist Party, and Islamic movements, i.e., Hamas, and Fatah.\textsuperscript{56}

The active attempt to create some sort of liberal, democratic governing system assumes a close relationship between the populace and its governing body, a western, politically theoretical concept of a “social contract.”\textsuperscript{57} In the context here we would discern this to be a reaffirmation of a Palestinian national identification, the removal of the Israeli occupation \textit{de jure}, and ultimately the finalization of the attempt to create an independent and sovereign Palestinian state with delimited borders.\textsuperscript{58} It is clearly recognized that the two major political parties which make up the current Palestinian polity are deeply divided by their general orientation. Each group has a set of loyal adherents that represent their respective bases, which are not stagnant but somewhat fixed in size. This example of social fracture, however, has not eluded a number of countries from creating a stable and economically viable democratic political system. The prominent political scientist, Arend Lipjart, has referred to this condition as a consociational democracy.\textsuperscript{59}

A general election law was passed in 1995\textsuperscript{60} to approve the PA’s president. Accordingly, the PLC was to draft a basic law (\textit{qanun asasi}) for the five year interim period (beginning in May 1994).\textsuperscript{61} This deadline was extended by the Palestinian Central Council (PCC) in order to declare a state at some


\textsuperscript{58} This condition would follow a rather standardized series of international law requirements, i.e., the principle of \textit{uti possidetis}, Sanford R. Silverburg, \textit{Uti Possidetis and a Pax Palestiniana: A Proposal}, 16 DUQUESNE L. REV. 757 (1977-1978) and the doctrine of \textit{postliminium}. LASSA OPENHEIM, INT’L L.: A TREATISE, 8\textsuperscript{th} ed. at 616 (Hersch Lauterpacht ed. 1955).

\textsuperscript{59} AREND LIPJART, DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLANATION 25 (1977). Lipjart goes on to provide a set of definitional and conditional principles.


\textsuperscript{61} A “basic law” is to be distinguished from a “constitution” (\textit{dustur}), which was to be written \textit{after} the state was established. Anis Al-Qasem, \textit{Commentary on Draft Basic Law for the Palestinian National Authority in the Transitional Period}, 7 PALESTINE YB INT’L L. 187 (1992/1994).
undefined time. Additionally, that first election law was used to cement Fatah’s control by accepting a bloc vote system that allowed Fatah’s and pro-Arafat Independents a majority. 62 In 1997 the PLC wrote a Basic Law that was ratified and signed by President Arafat on May 28, 2002 which served as a binding legal force for the transitional period. 63 In 1999 the PLO’s Executive Committee created a Constitutional Committee tasked with drafting a constitution prior to the establishment of a state. Meanwhile in 2001, the Committee produced the first draft of a constitution which was then sent to the PA’s legal committee, the Law Faculty of Birzeit University, the Arab League and other advisory bodies for respective comments. This action was then followed by a second draft in February 2003 which resulted in several published forms as a product of the received advice. 64 A Revised Third Draft Constitution of the State of Palestine was published on May 4, 2003, allowing for the introduction of the office of Prime Minister. 65 In practice, the office of the prime minister meant a limitation on the presidency, an office held by Yasser Arafat at the time. Mahmoud Abbas was the first appointed prime minister on March 10, 2003, but he resigned less than six months thereafter. Speculation pounced on what appeared to be obvious--internal political differences. 66 The excruciatingly long time frame in which the Basic Law was finally put into place has a great deal to do with a purely internal scenario. Fatah, the main body in the PLC, held sway with 77 percent of the membership. This situation occurred largely because the opposition, Hamas and some of its supporters boycotted the elections in 1977. At this evolutionary point in time an amendment to the Basic Law made the political system semi-presidential with a parliamentary legislature. 67 The amended changes to the Basic Law had a profound effect on the regime type to wit: an office of the prime minister was created along with a Council of Ministers who were given explicit powers not found in the Law of 2002. Under the new system, the president is directly elected, as was the case, but now to whom the prime minister is accountable as well as to the Legislative Council. Important to note is the authority of the president to appoint and dismiss the prime minister. These conditions are what sets out a semi-presidential system, and within this construct a president-parliamentary form of governance. 68 The

64 Available at http://muqtafi.birzeit.edu/data/txt/2005/14860.htm.
66 Hani Al-Masri, Al-Falasteyya Al-Jadeeda: Azmat Azma wa Hakaeb, Am Khelal Sayase? 14 MAJALLAT 20 (2003) (in Arabic). Ahmad Qure’î (Abu Ala) followed Abbas. What was interesting was the manner in which internal political disputes were resolved, i.e., Arafat held many leading positions in both the PA and PLO, a r’a’ees. When Abbas became president in January 2005, the power of the president began to reappear in that office. For general background see AHMED QUIRIE (ABU ALA), NEGOTIATING PALESTINE: FROM THE SECOND INTIFADA TO HAMAS’ ELECTORAL VICTORY (2014).
68 GIOVANNI SARTORI, COMPARATIVE CONSTITUTIONAL ENGINEERING: AN INQUIRY INTO STRUCTURE, INCENTIVES AND OUTCOMES 2d ed. (1997). But see Robert Elgie, Semi-
drafting process was notable by the lack of republican participation; it was clearly an elitist product in the style of traditional or neo-patrimonial Palestinians political procedure. Hence, the social contract, if there was to be or should be one, was marred, or even flawed.

Democracy in the Middle East

The notion of democracy in the Middle East is complicated. Of course, here we are not dealing with majority rule; we are dealing with governments that are in power on the basis of hereditary monarchies. One only has to think of the religious extremism, the growing power of Islamist in the Arab States, and the growing strength of Islamic parties in some Muslim States such as in Afghanistan and Egypt.
Going forward, the controversy will remain about whether the Middle East is ready for democracy, and if so, what kind of democracy should be imposed? And how democracy can be reached so as to ensure stability in the region? Furthermore, a few nations across the Middle East rose up in the Arab Spring for a democracy with a Western standard, such as the right for expression and economic opportunities. The governments in the region however, did not respond to the expectations of their people; the response to stability will take a long-time, even if possible, to achieve. From here, what is the role that is expected of the Middle East states? Middle East plays a major role with the West for their long and complex shared history. Democracy as it developed in the West was established in tandem with its unique legal system and the overwhelming rule of law which will have to be in place in the Middle East for a long time. On a practical level, the structure of law is absolutely a functional necessity for the operation of an effective and efficient modern bureaucracy.

Theories are diverse on the subject of democratic values in different places around the world. Revisionist theories argue that democracy is slightly incompatible with Islamic values. The level of democratic process and values varies widely from state to state in the Middle East. A few states, such as Saudi Arabia and Yemen, do not claim to be democracies. At any point, most of the larger states claim to be democracies, although this claim is in most cases disputed for the reason that democratic principles are incompatible with religion, one’s cultural orientation, and customs of Middle Easterners. Western liberalism emphasizes the individual. Whereas in Islam, the individual is a part of the umma (a community) and subject to the Prophet’s word.

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73 “The origin of the Middle East as a region of weak states penetrated by international powers goes back to the decline of Ottoman power in the eighteenth century. The term “Middle East” emerged in Western diplomatic parlance in the early twentieth century to refer to the area between the eastern Mediterranean and India. The Great Powers had already divided up most of Africa and Asia and were looking to carve out influence in the Ottoman Empire, Persia, and Afghanistan.” PAUL SALEM, THE MIDDLE EAST: EVOLUTION OF A BROKEN REGIONAL ORDER, Carnegie Endowment Rept., no.9, at 7 (2008). For a general appreciation of the geopolitical concept of the Middle East see Bernard Reich, Sanford R. Silverburg, David Ettinger, The Greater Middle East, in OXFORD BIBLIOGRAPHIES ONLINE (2012).

74 The term “democracy” first appeared in ancient Greek political and philosophical thought in the city-state of Athens during classical antiquity. Led by Cleisthenes, Athenians established what is generally held as the first democracy in 508–507 BC. Cleisthenes is referred to as “the father of Athenian democracy.” JOHN DUNN, DEMOCRACY: THE UNFINISHED JOURNEY 508 BC – AD 1993 (1994). There are also several versions of the political philosophy that have emerged over time fitting a particular geographical and cultural setting. For a political scientist’s understanding of the governing style, see ROBERT A. DAHL, DEMOCRACY AND ITS CRITICS (1989). Democracy was understood at the time as rule by the multitude and not held up for adulation. Indeed, Aristotle thought that democracy was the best of the worst forms of government. ARISTOTLE, THE POLITICS 1292 (Ernest Baker trans, Cambridge U Pr. 2d ed. 1988). For a position that says democracy is the “best form of government,” see LARRY DIAMOND, DEVELOPING DEMOCRACY TOWARDS CONSIDERATION 2 (1999).


76 PHILIPPE NONET & PHILIP SELZNICK, LAW AND SOCIETY IN TRANSITION: TOWARD RESPONSIVE LAW 64 (1978).

The West does not believe they have a magic wand to solve the region's complexities,\textsuperscript{78} since they have learned from Iraq and Afghanistan that military action alone cannot solve the deep-rooted political issues\textsuperscript{79} or force democracy on the people of the East; westerners believe democracy is a gradual process. Islam is more than a religious belief system; it is a complete communal way of life. There is nothing in Islamic history or its development that resembles the western European concept of the nation-state. The closest we can find in Arabic, and thus in Muslim culture is \textit{dawla}, referring to a governing system.\textsuperscript{80} Hence, once conjoining Islam with a western-style state system, we must now infuse some form of Islam that will allow for the reevaluation of centuries of thought in the East.\textsuperscript{81}

Many proposals have suggested that the West should play a leading role in the global response to the “Arab Spring,”\textsuperscript{82} and democracy. The future of the region itself depends on this trend. Regardless of the reasoning, most agree on the fact that democracy has not been the dominant form of governance in the Middle East for many years; it is not impossible to practice democracy in the Middle East, and if democracy is going to work in the region, it must find a way of incorporating the full spectrum of mainstream views, from Islamist \textit{Hamas} to secularist \textit{Fatah}, as in the case here.

In the case of \textit{Fatah and Hamas}, history does not demonstrate the compatibility and blending principles and objectives. \textit{Hamas}'s principle is to liberate Palestine from foreign occupation, and to stop the colonial expansion's project,\textsuperscript{83} and to achieve freedom and independence. Also, \textit{Hamas} is working to impose the visions of fundamentalism, an extreme ideological principle, and uphold the “word of God,” at least in Gaza Strip, the first power to the Muslim Brother's movement in the world. But as strong a

\textsuperscript{78} In the last decade, political Islam was not only ascendant, but destined to dominate. The Muslim Brothers and other Islamic extremist groups and its allies seemed to have an automatic majority in Egypt and some other Middle Eastern countries; they did very well in elections in Libya, Tunisia, Morocco and elsewhere, and were becoming dominant even in the Syrian opposition, these some of the complexities the Middle East confront today. With respect to the subject matter herein, see Nathan J. Brown, \textit{Principle or Stubborn? Western Policy Towards Hamas}, 43 THE INTL SPECTATOR 73 (2008).

\textsuperscript{79} Today, in the Middle East the deep-rooted political issues are expanding. The gains and pains of going global are still visible and are not limited to one Middle Eastern country. Most of the Middle Eastern countries are not ready for the adaption of international standards, political diversification, democratic facilities and above all building a knowledge-based politics as an alternative to the power in the hand of the minority.


\textsuperscript{81} For background see Gudrun Krämer, \textit{Islamic Notions of Democracy}, (83) MIDDLE EAST REPT. 2 (1993).

\textsuperscript{82} The Middle East has been described as immune to the waves of democratization that have transformed other regions, with the Arab states being identified as particularly asking in this regard. Alfred Stepan & Graeme B. Robertson, \textit{An “Arab” More Than a “Muslim” Electoral Gap}, 14 J. DEM. 30-44 (2003).

\textsuperscript{83} “As outlined in its 1988 charter, Hamas’s principal objective is the confrontation with Israel, which it considers a foreign cancer on sacred Muslim land. Indeed, without this mission, Hamas has no reason to exist; it would simply revert to being the Muslim Brothers. Numerous routes exist for achieving this goal, ranging from the evolutionary Islamization of Palestinian society, which would overwhelm Israel through demography, to the armed struggle against the Jewish state.” ROBERT SATLOFF, \textit{A PRIMER ON HAMAS: ORIGINS, TACTICS, STRATEGY, AND RESPONSE}, The Washington Institute for Near East Policy, Policy Focus, no. 5, at 5 (2006).
movement as it is, it is not without opposition and competition from other Palestinian groups with similar objectives.84

There then is Fatah that believes in intellectual, political, partisan, and religious pluralism.85 Therefore, Fatah has not prevented thought of any kind, or any party in the Palestinian Authority area, but they kept balance in the framework of institutions and the involvement of everyone in the community. On the one hand, Hamas claimed that any party not based on religious teaching is a misguided party. But also Fatah believes in working in a party-like fashion; in principle, it is the strongest and most effective party for its ability to engage other parties to join the political arena where we can find the success of Fatah in both, the Central Council and the Executive Committee in the PLO. On the contrary, Hamas in 2006, and since its majority achieved on Election Day until the day of the coup, tried to keep a purely partisan government that was headed by Hamas's Isma'il Haniyeh, its Vice President of the group's political bureau. Hamas has led the political and partisan opposition to Fatah coalition government for a period of ten years since the first election in 1996 until 2006 Election Day. Today, the dust has settled, and the two largest Palestinian factions—Hamas and Fatah—continue to be in a state of conflict.

Religion and Diversity: A Concept

Religion as a belief system is universally pacific unless, under specific terms the individual believer or group is subject to threat or extinction. Hence the question arises: What are those conditions that authorizes, requires, or encourages the use of violence? In the modern Islamic interpretation, one person’s thoughts that appear to be influential, is that of Sayyid Qutb. His belief spells out a Sunni interpretation of Islamism that only rule by sharī'ah can prevent human abuses. Additionally, all non-Islamic things are evil, reversible only by sharī'ah rule.86 Much of the Middle East was under the political control of the Ottomans and the religious influence of loyalty to the Caliph in Istanbul. The Ottoman Porte, recognizing the necessity to reduce European intrusion into its Empire, especially with norms and values, began to introduce secular legislation from 1856 to the present.87 According to Mohammed Dajani, a member of the Palestinian social elite, Palestinians’ posture toward Islam was “moderate,” neither a secular approach nor fundamentalist, but the “middle way” (al-Wasatieh).88 One Moroccan theorist’s Muslim political thinking and writing about the concept of the state that developed in the West, but with which Islamic territories had to deal, put forth the notion that fundamentalism, or as is sometimes referenced radicalism, is not Islamism and beyond that are not mutually exclusive.89 While diversity as a concept can manifest itself to encompass a variety of meanings, it could be broadly understood as a term signifying the existence of heterogeneity, difference, and variety. Within the Palestinian context this could indicate variety in cultural heritage, religious orientation, socioeconomic status and political opinion.90 According to Minority Rights Group International, Gaza is a subset of the broader Palestinian society.

85 Fatah is a secular nationalist political party that is dominated Palestinian politics for decades; it controls the Palestinians Liberation Organization and The Palestinian Authority.
87 Exceptions on enforcement of laws, particularly with reference to taxation, is examined in CHRISTIANS AND JEWS IN THE OTTOMAN EMPIRE: THE FUNCTIONING OF A PLURAL SOCIETY (Benjamin Braude & Bernard Lewis eds. 1982).
88 Dajani supra note 55.
While Islam is the most dominant religion, there is also a Christian presence. The Palestinian Territories then include 200,000 Christians, 500,000 Jews, of which 364,000 are Jewish settlers, and 400 Samaritans. Arabic is the most dominant language though many speak Hebrew, English and French.\(^{91}\)

A discussion on the scope of religious diversity,\(^{92}\) at least in the Gaza Strip, shows that Islam is the dominant religion. Religious pluralism\(^{93}\) is an attitude or policy regarding the diversity of religious belief systems co-existing in society; therefore, the lack of religious pluralism leads to violence against smaller religious groups.\(^{94}\) In general, interfaith dialogue between different religions is not the main key to interpersonal relations in the Middle East, or in the Gaza Strip.

\(\text{Hamas, known as renowned for its contradictory position, practices its religious beliefs in the Gaza Strip similar to the way Iran practices it.}^{95}\) Hamas showed the non-diversity to pursue an Islamic state; it also campaigns for *shari'ah* law. Practicing any religion should have nothing to do with the destruction of another religion. Since winning the election in 2008, Hamas became a key player in the politics of the Middle East. Today religion, violence, and democracy in the Palestinian territories are not necessarily incompatible. Hamas as a contemporary Islamic movement in the heart of the Arab World has so far failed to achieve its stated fundamental goal of establishing the Islamic state. Therefore, Hamas has been able to rely on the support of broad segments of the population. Criticism of Hamas is increasing for imposing ideological and cultural identity, but does not take into account the cultural diversity of the community. Recommendations to impose diversity can be sorted as follows: 1) There is a need for efforts among governmental and non-governmental organizations to spread a culture of tolerance and understanding in society; 2) There needs to be a general agreement among relevant actors with regards to the democratic principles that would guide the sociopolitical development of the Palestinian Territories; 3) The school curriculum needs to include more lessons promoting diversity in society; 4) Decision makers should always be in favor of diversity in society, and renounce violence and repression directed towards minorities; 5) The current state of Palestinian disunity needs to end with relevant political actors accepting that Palestinian politics encompasses a variety of views and opinions; 6) The principles of democratic dialogue need to be instituted and promoted in order to encourage coexistence in a democratic society that respects and promotes the principles of pluralism and community partnership.\(^{96}\)

**The Palestine Authority and Religion**

While the PA is a Palestinian nationalist group with deep religious underpinnings,\(^{97}\) it has set goals with a clear political emphasis, but without rejecting Islam, but not prioritizing it. The major political party

\(^{91}\) [http://www.minorityrights.org/?lid=4919](http://www.minorityrights.org/?lid=4919).

\(^{92}\) The diversity of religions in the world has been a fact throughout the entire history of mankind. MIRCEA ELIADE, THE SACRED AND PROFANE 29-32 (1957).


\(^{94}\) The Gaza Strip is one of the many areas where right-wing radical Islamists and right-wing radical Israelis repeatedly have conflicts. This complex and seemingly endless struggle is just one of the many examples of religious-based conflict in Israel and the Occupied Territories.

\(^{95}\) The strong religious belief of *Hamas* as a militant political organization is the eradication of Israel as a nation.

\(^{96}\) Supra note 89.

\(^{97}\) Much of our interest here is the relationship and influence that religion has on organized religion. For general coverage see LUCA OZZANO, RELIGIOUSLY ORIENTED PARTIES AND DEMOCRATIZATION (2014).
representing the PA is *Fatah*.\[^{98}\] It began as a national liberation organization; a revolutionary movement whose ideology was most popular during the decade of the 1960s and 1970s is seriously secular in orientation.\[^{99}\] The *Fatah* Charter,\[^{100}\] written in 1971, clearly placed the organization in the realm of other national liberation movements emerging at the time.

**The Charter: PLO**

The first Palestine National Council gathered in Jerusalem with wide representation and concluded on June 2, 1964 with the creation of the PLO and adopted The Palestine National Charter.\[^{101}\] In particular Arts. 9 and 15 authorized and encouraged an aggressive and violent policy toward Israel. According to the Interim Agreement pursuant to the Oslo Accords, the PLO was to amend the Charter eliminating the egregious stipulations to Israel’s concern for national security. The amendment was ultimately adopted, albeit three years after the deadline.\[^{102}\] What is most important to take into consideration is that the Charter was both amended and altered to approach the organization’s goals with less animus toward Israel, recognizing the pragmatic need to reduce Israeli apprehensions.

**Hamas and Religion**

*Hamas* originated on December 8, 1987 with a statement signed by the Islamic Resistance Movement directed by Dr. Mahmoud Zahar with other former Palestinian students who studied in Egypt. The organization began as a Palestinian affiliate of the Egyptian-based Muslim Brothers (*al-Ikhwan al-Muslimun*), with a clear identification with Islam under the sponsorship of Sheikh Ahmed Yassin, following the eruption of the first *intifada*.\[^{103}\] It was also at this time, fortuitously for *Hamas* that the conditions under which served as the underlying cause of the *intifada* found a total loss of legitimacy of *Fatah* with the

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\[^{103}\] [http://Avalon.law.yale.edu/20th_century/Hamas.asp](http://Avalon.law.yale.edu/20th_century/Hamas.asp). Published on August 18, 1988 and ostensibly authored by Abd Al-Fattah Dukhan, head of the *ikhwan* in Gaza and known to be one of the seven founders of *Hamas* and considered to be a close associate of Sheikh Ahmad Yassin, then the leader of the movement. For a discussion on *Hamas*’s origins see AZZAM TAMIMI, HAMAS: UNWRITTEN CHAPITERS, 2d ed. 10-14 (2009) and ZAKI CHEHAB, INSIDE HAMAS: THE UNTOLD STORY OF THE MIGHTY ISLAMIC MOVEMENT 25-27 (2007). It should be noted here that a popular attribution in the West is that *Hamas* is a terrorist organization, a theme we purposely avoid since it can be found in numerous sources and violates the social science dictum to avoid making value judgments. The organization’s identification with Islam has similarly been labeled “radical” or “extremist.” While there is no generally accepted, objective, definition of either opprobrium, we can attribute some characteristics to the perception: a sense of crisis faced by the group, marginalization of the group either by a government or a dominant social entity, and a ready acceptance of the use of violence to recreate the group’s acceptance and some set of goals. Indeed, much of the Arab world refuses to relate terrorism to *Hamas*. REESE ERLICH, CONVERSATIONS WITH TERRORISTS: MIDDLE EAST LEADERS ON POLITICS, VIOLENCE AND EMPIRE 62 (2010).
Palestinian people.\textsuperscript{104} At the same time, Hamas exploited its opportunity to grow and expand its activities within the Palestinian community.\textsuperscript{105} While Hamas has a strong spiritually-oriented base on the body of Islamic thought,\textsuperscript{106} it is also importantly a political party structured in a hierarchical fashion with a 15-member political bureau and a consultative body known as the Advisory or shura council created in 1991, with an ideological agenda. The shura, or decision making unit, was based in Amman throughout the decade of the 1990s. When faced with external pressure, particularly from the United States, the Amman office was closed. Then in November 1999 a Qatari private jet took Khalid Mashal, head of Hamas’s political bureau, and his closest aides to Doha, Qatar, although its main office was in Damascus until civil disorder there forced the last element moved to Doha in 2012; at this time, others were dispersed throughout the Arab and Muslim world, serving as sources of influence.\textsuperscript{107} In order to maintain the bloc of support for its existence, it is known to be necessary\textsuperscript{108} not only maintain a foundation of loyal supporters, but also continue to reinforce and expand its acolytes by mobilizing a continuously larger sector of its community.\textsuperscript{109} Shura councils are active at the local level, answerable to the higher body.\textsuperscript{110}

There is, therefore, a two pronged pursuit: The ideological base of the organization promises an efficient bureaucracy for which policy outcomes benefit loyalists, i.e., acting in the public interest (maslaha al-amma).\textsuperscript{111} Secondly, the spiritual message is increased by the cost which, in the case of Hamas, is the Prophet’s demand (asl al-sultat) on the Muslim community.\textsuperscript{112} The organization’s

\textsuperscript{106} Upon reading the Hamas Charter, a passage from the Qur’an (Sura 3: 110-112) is followed by a statement by Hasan al-Banna, the Brothers’ founder, to wit: “Israel will be created and will continue to exist until Islam sweeps it away, just as it swept away what came before it.” Id.
\textsuperscript{108} The leadership is democratically elected with reliance on popular support. Zia Abu-Amr, Hamas: A Historical and Pol. Background, 22 J. PALESTINE STUD. 11 (1993).
\textsuperscript{111} JOSHUA L. GLEIS & BENEDETTA BERTI, HEZBOLLAH AND HAMAS: A COMPARATIVE STUDY 144 (2012).
\textsuperscript{112} Matthew Levitt, Political Hardball Within Hamas: Hardline Militants Calling Shots in Gazq, 89 WASH. INST. FOR NEAR EAST POL’Y WATCH (Nov. 2008).
\textsuperscript{113} This is the argument put forth by Gaza-watcher and Hamas scholar, SARA ROY, HAMAS AND CIVIL SOCIETY IN GAZA: ENGAGING THE ISLAMIST SOCIAL SECTOR (2011).
\textsuperscript{114} Quintan Wiktorowicz & Karl Kaltenthaler, The Rationality of Radical Islam, 121 POL. SCI. Q. 295, 301 (2006). Hamas has championed the Islamic principle of jihad to be used against Israel, considered to be a usurper of Palestine as a Muslim waqf (a religious endowment). On this argument, it should be noted that the region of Palestine under Ottoman administration structured land ownership under several conditions in addition to waqf. But also it sponsors and offers schools, medical clinics, and food distributor
ideology’s core revolves around the plight of the Palestinians and their goal, which for Hamas is linked to Islam (Islamiyat al-qadiyya al-Filastiniyya). In 1973, the Brothers augmented their activities in Gaza with the creation of an Islamic Center (al-Mujamma’ al-Islami), a nonviolent, religious, and educational program which was used as closely associated with Hamas and aids in recruitment.¹¹³

While intent on which can be formed in a moment, and actual practice may not necessarily coincide, there is the basis of a conclusion that can be drawn. Prior to the PLC elections, in an interview with an important Hamas official from Gaza, Mahmoud Zahar, responded to a question on whether Hamas would rely on shari’ah law for the guide to implement related policies. His reply was instructive even if not definitive: “Islam is our constitution. It’s controlling our relationship among the Palestinian society, among the Arabs, and also with the international community.”¹¹⁴ However, it is necessary to balance such statements with the organization’s election platform statement issued in mid-January 2006, in which the Preamble declares that Hamas maintains the goal of achieving “a free, independent and sovereign Palestinian state on every portion of the West Bank, Gaza Strip and Jerusalem without conceding on any part of historic Palestine.”¹¹⁵ Modern Islamic political theory continues to rely upon the faith and the Prophet’s words to set out the guidelines for a proper government. How those words are implemented, nevertheless, is left to individual or group devices. This goal from the emergence of Hamas has been underpinned by the openly declared employment of armed attacks on Israeli targets—whether civilian or military—by its armed wing, the Izz al-Din al-Qassam Brigade, under the general rubric of armed resistance to an occupying power. Nonetheless, the Hamas electoral victory was one of Islamists à la the Muslim Brothers over their nationalist rivals.

There are any number of explanations and perspectives that are available of goal-setting and the manner of achievement to attract attention to this theme. One category of interest is a political economic one to the extent that Hamas’s attacks are perceived as victorious. If this condition is positive, it serves Hamas in a number of ways: What it shows is that the population operating with an organization that has a committed membership, the religious character dissolves the intent toward corruption, and most importantly, will in a governance sector, be able to provide needed social services.¹¹⁶ Thus as Hamas tends to gain popular support, where more moderate¹¹⁷ parties, i.e. Fatah, loses support.¹¹⁸ But while the

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¹¹³ Mishal supra note 104, at 20; Milton-Edwards supra note 19, at 41.
¹¹⁵ The election platform is available at http://www.elections.ps (in Arabic) and for a Hamas document outlining its electoral strategy, see Shaul Mishal & Avraham Sela, Participation Without Presence: Hamas, the Palestinian Authority and the Politics of Negotiated Coexistence, 38 MIDDLE EASTERN STUD. 1 (2002).
¹¹⁶ Jaeger et al. supra note 36.
¹¹⁷ It might help if “moderation” is understood by the Arabic, wastiyya.
¹¹⁸ For background see Harvey E. Lapan & Todd Sandler, Terrorism and Signaling, 9 EUR. J. POL. ECON. 383 (1993); Andrew A. Kyyd & Barbara F. Walter, The Strategies of Terrorism, 31 INT’L SEC. 49
use of violence produces support domestically, externally it leads to an image of radicalism and extremism. The impact can also be visible in the diplomatic negotiations between Israel and the PA, because under these conditions, Hamas plays the role of a spoiler. If then there is a strategic decision to move away from this approach, it often results in a reimagining to one of moderation. The adaptation adopted by Hamas is a serious acceptance of the changing nature of the political environment combined with a pragmatic design. A pragmatic acceptance of Israel is necessarily balanced by having an independent Palestinian Arab state. A critic of Hamas’s evolving strategy, supposedly toward moderation, might counterfactually claim their approach to be “machiavellian.” This opprobrium in some circles would be labeled “orientalism,” but fails to appreciate the Islamic counterpart found in the work of Muhammad ibn Zafar al-Siqilli. Philosophy and ideology aside, along with Hamas’s political strategy, one example of the critically damaging effect on the Palestinian population is the results of the al-Aqsa intifada. It must be added here that if a rational choice approach is employed to understand why Hamas might not want to renounce violence is the lack of incentives that would make the decision cost effective. As long as Israel's national security policies continue to be well established, i.e., settlement expansion, targeted assassinations, albeit understandable, few incentives are in place for Hamas. Certainly, Hamas has agreed to a tahidiya (a temporary lull in conflict) and even proposed a hudna (a long term peace) under some circumstances, certainly not a sulh (treaty) with Israel since this would rupture the character of Palestine as a Muslim waqf, but events and timing have always nullified their conclusion.

The Charter: Hamas

119 For a fuller discussion of some of the nuances here see As'ad Ghanem & Mohamad Mustafa, Explaining Political Islam, The Transformation of Palestinian Islamic Movement, 41 BRIT. J. MIDDLE EASTERN STUD. 335 (2014).
122 An explanation for this idea is found in Michael P. Arena & Bruce A. Arrigo, Identity and Terrorist Threat: An Interpretive and Explanatory Model, 14 INT'L CRIM. J. REV. 124, 152 (2004).
126 GLEIS & BERTI, note supra 109, at 144.
Hamas’s constitution, its Covenant, is the Charter of Allah--The Platform of the Islamic Resistance Movement (Mithaq harakat al-muqawama al-Islamiyya-Filastin) (1988). The Charter explains Hamas’s targeting Jewish civilians as part and parcel of its mission, “fight the Jews and kill them.” Hamas’s enmity toward the Jews, based upon the organization’s Islamic beliefs, may be to some degree roiled against the Jews qua Israelis because Palestinians see the qualified difference in life styles between Israel and Palestine, even setting aside the factor of the occupation. The occupation, in fact, becomes a fantasized explanation for the reality of dealing with modernity as it affects life rooted in a feudalist order. Also, the Charter encourages replacing Israel with an Islamic state. The Charter is not only standing for the abolishing of the State of Israel, but, it’s blocking any type of peace negotiation and diplomatic end to the conflict that “stand[s] in contradiction to the principles of the Islamic Resistance Movement.”

The Charter contains a preamble, five Chapters, and a conclusion. The thirty six articles in the Charter includes Ideological premises, the relation between the Islamic Resistance Movement and the Muslim Brotherhood, structure and formation, the Islamic Resistance Movement-dimensions of time and place, distinctiveness and independence, the universality of the Islamic Resistance Movement, the motto of the Islamic Resistance Movement, causes and goals, the strategy of the Islamic Resistance Movement, Palestine is an Islamic waqf, homeland and nationalism as seen by the Islamic Resistance Movement, peaceful solutions, initiatives and international conferences. The three circles, Jihad for the liberation of Palestine which is a personal duty, educating the next generations to include the role of Muslim women, the role of Islamic art in the war of liberation and social solidarity, and remove the forces that support the enemy. Hamas’s political ideology was in the late 1990s further developed and spelled out as it realized that its message was not being accepted without adjusting to a wider audience.

Moreover, the Charter’s philosophy is rooted in totalitarianism and radical antisemitism that has undergirded Islamism since its rise in the 1930s to the present. The authors of the Charter cite Hassan al-Banna, the iconic founder of the Muslim Brotherhood in Egypt, who said, “Israel will exist...” Available at http://fas.org/irp/world/para/docs/880818.htm. Another translated version can be found in MISHAL supra note 104, at 175-199. For a general analysis of Hamas’s Charter see ABD ALLAH AZZAM, HAMAS: AL-JUDHUR AL-TARIKIYYAH WA-AL-MITHAQ (1990) (In Arabic); Are Knudsen, Crescent and Sword: The Palestinian Hamas, 26 THIRD WORLD Q. 1373 (2005).


Hamas Covenant, supra note 126.

Our struggle against the Jews is very great and very serious. It needs all sincere efforts. The Movement is but one squadron that should be supported by more and more squadrons from this vast Arab and Islamic world, until the enemy is vanquished and Allah’s victory is realized.” Id. Art. 15. See the document “This is What We Struggle For,” in AZZAM TAMIMI, HAMAS: UNWRITTEN CHAPTERS 147 (2009).

The most radical element of Hamas’s leadership use sharp rhetoric interchangeably employing al-Isra’iliyun (the Israelis) for al-Yahud (the Jews) and vice versa. See e.g., http://www.aljazeera.net/programs/withoutbounds/2004/6/4/%D8%A7%D9%84%D8%A7%D9%81-%AD%D9%84-%D8%B4%D9%87%D8%A7%D8%AF%D8%A9-%D8%A7%D9%84%D8%B4%D9%8A%D8%AE-%D8%A3%D8%A3%D8%AD%D9%85%D%AF-%D9%8A%D8%A7%DA%93%98%8A,% (in Arabic)


Hert supra note 134.
and will continue to exist until Islam will obliterate it, just as it obliterated others before it.” Furthermore, the Charter conveys the idea of destroying Israel as a nation. Specifically, one of the principals of modern international law is to keep international peace and security in place. For Hamas, however, peace and quiet would not be possible except under the wing of Islam. In fact, the Charter is not the only document that established Hamas hatred against Israel: the founding document of Fatah, the PLO, and Hezbollah as well are clearly aligned as obtuse.

In the last twenty eight years, and since the establishment of Hamas and its Charter, while there is the implicit recognition of the State of Israel, nevertheless, the Charter also holds that “Hamas’s immediate goal is to destroy Israel.” However, very much like the Israeli government’s plans, the statements, and actions advocate violence overtly in order to promote the destruction of a state of Palestine and its people. To conclude, at the level of the Palestinian cause, the Charter allowed Hamas to expose the nature of the conflict and the way to reach a peaceful settlement as well as strategic perspectives that help to manage the conflict in an effective and efficient way. It has been pointed out above that given one of the goals of Hamas is national self-determination for Palestinians, it can only come about once there is a cohesive national movement. In turn, mass mobilization for a political objective, in this case, must be non-violent. The purpose of the organization as explained by its ideology was elaborated in the late 1990s with the publication of a political pamphlet, This is What We Struggle For; this pamphlet employed political rhetoric in place of the religious mantra found in the Charter. This publication was then followed in early 2000 with still another attempt to place Hamas in the context of a resistance organization, a position that could be more easily appreciated by the West.

There, then, was an attempt to draft a completely new Charter in 2006. The election that year provided Hamas with its election victory, thus placing in abeyance the drafting in order not to provide leverage to Hamas's opposition.

The Membership

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138 “Al-Banna was born one year after the death of the renowned Islamic reformer Muhamed Abduh, on October 14, 1906, in the small town of Mahmudiyya in the province of Buhayra, 90 miles north east of Cairo. Growing up in a traditional Muslim family in which his father, Shaykh Ahmed Abdelrahman al-Banna, was an Islamic scholar and the local imam (prayer leader) of the mosque in Mahmudiyya, al-Banna received his basic education and religious knowledge from his father and from the rural community in which he grew up.” RICHARD MITCHELL, THE SOCIETY OF THE MUSLIM BROTHERS 1 (1969).
139 U.N. Charter ch. 1, art. 1. The purposes of the United Nations is: “To maintain international peace and security.”
140 The Fatah Constitution was formulated in 1964--well before Israel held a square inch of territory now claimed as usurped Palestinian land.
141 The Constitution of Palestine Liberation Organization (PLO): In addition to amending and ratification of the Palestinian National Covenant, the Palestine National Assembly amended and ratified the PLO Constitution, at their Fourth Session in Cairo, from July 10-17, 1968.
144 Tamimi, supra note 102, at 147.
145 Id. 149.
146 Id. 250.
Since its founding in 1987 in Gaza, Hamas has been a movement that holds an obligation to destroy Israel or at least reduce its sovereignty and Jewish character.\textsuperscript{147} As a movement, it started as a religiously-oriented organization, later becoming a political and social group. In the East in general, the religious impression given to an organization becomes the overriding norm.\textsuperscript{148} With that in mind, Hamas initiated its call for a holy war. Accordingly, members become individuals who are committed to this end.

Hamas's membership is not limited to any certain ethnic, social, racial, or religious group, although it is primary Palestinian Muslims, marginalized and removed from active participation in Palestinian society. The principal requirement is full acceptance of the organization’s Charter. As a political opponent of the ruling Fatah, it is Hamas's objective to supplant them with it in a dominant position. From this also comes an assignment to preach and engage in terroristic violence aimed at creating an Islamic state.

For some, Hamas is both a terrorist organization and a mass political movement.\textsuperscript{149} Observable is an interesting mix of peace and violence, a highly structured group with an external, advisory body, the shura council, and a para-military groups, the Izz ad-Din Qassam Brigade that is divided into three sections: an intelligence unit that gathers information, a religious police section that pursues violators of shari'a law, and the political unit.\textsuperscript{150}

Parliament

Political reform as a goal set forth by the PA is seen by experts and policymakers as a necessary step in Palestinian democratization\textsuperscript{151} and the Israeli-Palestinian peace process.\textsuperscript{152} As noted above Hamas had a significant majority of seats in the January 2006 legislative election, placing it on an even keel with Fatah president, complicating any negotiated settlement with Israel via the Roadmap, as proposed by the United States.\textsuperscript{153} Israel, the United States, and much of the West were totally surprised,

\textsuperscript{148} Charles Liebman, Extremism as a Religious Norm, 22 J. SCIENTIFIC STUD. REL. 75 (1983).
\textsuperscript{149} Yousef M. Aljaml, Hamas: A Terrorist Organization or Liberation Movement? 8 POL & REL 41 (2014).
\textsuperscript{150} Its callow behavior, ostensibly to prepare for war with Israel, is also a means of strengthening its ability to mobilize support from Gazan youth and further its hold over Hamas's administrative control in Gaza, through the creation of a “liberation Army” under the campaign slogan “Vanguards of Liberation.” Khaled Abu Toumeh, Hamas Forms “Liberation Army” in Gaza, Thanks to EU Support, Gatestone Inst., Jan. 21, 2015, http://www.gatestoneinstitutelorg/5124/hamas-liberation-army.
\textsuperscript{151} “Notwithstanding the fact that the most progressive and democratic forces in Palestinian society have historically been hostile to Israel and its governing policies, it is likely that genuine democracy among Palestinians ultimately will be good for their neighbors, particularly for Israeli Jews. Ma'oz, supra note 49, at 213, 237-238.
\textsuperscript{152} The “peace process” has a long history beginning with the Lausanne Conference (1949) to the Camp David Accords (1978), the Madrid Conference (1991), Oslo Accords (1993/95), the Hebron Protocol (1997), Wye River Memorandum (1998), Sharm el-Sheikh Memorandum (1999), Camp David Summit (2000), Tabasummit, the Road Map (2003), the Agreement on Movement and Access (2005), and the Annapolis Conference (2007).
disappointed and dismayed by the election outcome; however, there could be little to no doubt that it was conducted fairly and democratically.

The PLC was created pursuant to the Oslo Accords and designed with the provisions of the Oslo II Accord that dictated its composition, powers and responsibilities in detail. The unity government at that time faced certain complexities to fulfill the responsibility of administering the affairs of the West Bank and Gaza Strip. The most recent parliamentary elections were held in the Palestinian territories in 2006, where Hamas ousted Palestinian President Abbas, the Fatah Party leader.

**General Population**

By 2006 Hamas had become a refuge for many of those Palestinians who disagreed with the aims and leadership of Fatah and the general direction perceived to be the result of the Oslo Accords. Since the early thrust of Hamas was spiritual, the base of its support were those whose belief system was strongly attached to Islam, which is all encompassing to include “political affairs.” The core strength of Hamas is in the Gaza Strip where the number of mosques doubled between 1967 and 1987. The Mujama’ Islami model mosque community, introduced by Sheikh Ahmed Yassin, expanded the religious interest by offering more than prayer services, such as afforded public assistance and social service programs.

Hamas and its new wave of political thought have increased its popular support in Gaza as compared to other cities in Palestine. The aim of the Islamic armed resistance as has been stated is to create an Islamic society and has clearly overtaken Fatah in popularity, but most notably only in Gaza. The population in the Gaza Strip is about 1,611,933 settled in 365 sq. km., the level is considered after the evacuation of all the Israeli settlements, estimated at 9,000 Israeli settlers and the Israeli military presence in the area. Since al-Nakhba and the exodus of so many Palestinians, Gaza became one locale to which they ended up in 1948. The region experienced a huge influx of refugees realizing an increase of six times its population in a period of 20 years, diminished periodically as a result of Israeli retaliatory military action. It is to the area’s detriment that the Gaza Strip now has one of the highest population densities in the world, with 80 percent of the residents living below the poverty level.

Fatah and Hamas are the premier political forces in Palestine. Both organizations have a primary goal that is essentially political: the creation of the State of Palestine with permanent borders. These groups also are Palestinian nationalistic in orientation under a similar ethnic banner. Aside from whatever pacific intent can be found in these groups’ policies and actions, they are balanced off by purely violently and destructive groups: al-Jihad al-Islami, the Democratic Front’s National Resistance Brigades, the PFLP’s Abu Ali Mustafa Brigade, the Fatah-affiliate al-Aqsa Martyrs’ Brigade (formerly known as al-Asifa (the storm)) and Hamas’s military wing, the Izz ad-Din al-Qassam Brigade.

**Governance**

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154 The PLC is a unicameral body with 132 elected members, representing 16 electoral districts in the West Bank and Gaza Strip.


157 In 1948, the population was registered as 80,507, in 1949 it was 102,603, and in 2010 it was 1,666,933. Davis Brown & Patrick James, *The Religious Characteristics of States Database and International Relations: Classic Themes and New Evidence* (ms. forthcoming, 2015).


The term “governance” can most easily be understood as the authority held by somebody to make decisions over a community or society and implement or disregard those decisions. Governance is a topic that has been taken up by the World Bank and its Worldwide Governance Indicators (WGI) project. Their simple definition is:

Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, maintained and replaced, the capacity of the government to effectively formulate and implement sound policies, and the respect of citizens and the state for the institutions that govern economic and social interactions among them.

The project has recorded data employing six variables: 1) voice and accountability, 2) political stability and absence of violence, 3) government effectiveness, 4) regulatory quality, 5) rule of law, and 6) control of corruption. The data on Palestine show little that is exemplary. The level of expected accountability has remained constant but requires considerable improvement. For an Arab political system to achieve wide acceptance, there has to be a strong sense of accountability. But in the Arab political world there is considerable evidence of autocracy which leads to a lack of popular legitimacy. The ability to maintain order and avoid violence showed to be quite low among the indicators. While not superlative, the best indicator in terms of comparative value was the PA’s ability to control corruption along with the rule of law.

Following is the qualified question: Are there absolute and global metrics to measure good governance? If “good” is measured by western standards, non-western cultural standards may deviate for purposes of such measurement. While we emphasize the importance of institutionalizing democracy, it may fall short of providing the necessary conditions for the establishment of good governance. There are, to be sure regime types, democratic types with performance standards that can be empirically tested, generally to satisfy the interest of academic audiences. Perhaps a consolidation of positions would put forth the following: “security and the rule of law; transparent and efficient institutions; the provisions of essential services to the population; the operation of democratic processes and norms; and the fostering of the conditions for market-led development.” These
indicators then appear in a staged or of institutionalized importance: An emphasis on the establishment of a rule of law and establishment of civic order, the creation of a transparent bureaucracy serving the national community, the establishment of democratic norms and values, ultimately leading to a market economy.\textsuperscript{168} We would add here that the ultimate indicator of popular legitimacy is an election, free from domestic coercion and external pressures.

**Requirements**

The ultimate goal of Palestinians, whether resistance groups or the general population, has been national self-determination and their own sovereign state. This objective in diplomatic parlance has been the two state solution. The acceptance of the creation of a separate and independent Palestinian state astride of Israel as a solution to the Israel-Palestinian conflict came out of a European conference and The Declaration of Venice Summit (June 13, 1980).\textsuperscript{169} This gathering and decision was followed by another European Council meeting in March 1999.\textsuperscript{170} American President George Bush gave credibility to the ultimate establishment of a Palestinian state in a speech on June 24, 2002.\textsuperscript{171} This series of proclamations gave rise to an American proposal for a “Road Map” to peace\textsuperscript{172} and yet another formal statement by the Quartet.\textsuperscript{173} Even Israeli Prime Minister Netanyahu publicly proclaimed his support for “two states for two nations.”\textsuperscript{174}

Governance has become a concept that been popularized in legal academia recently in response to a harbinger of thought in this direction by Bradly C. Karkkainen,\textsuperscript{175} an argument is put forth to provide a set of organizing principles: “increased participation of non-state actors, public/private collaboration, diversity and competition, decentralization and subsidiarity, integration of policy domains, flexibility and non-coerciveness (‘soft law’), adaptability and learning…and…legal orchestration.”\textsuperscript{176} For convenience purposes, we accept the notion of “[a] ‘good government,’” which we hold to be the equivalent of “governance,” “it is reasonable to assume, is one that accomplish the essential executive tasks of 1) choosing and formulating policies in a way that expresses a clear symbolic direction, and 2) guaranteeing that those policies will receive effective implementation.”\textsuperscript{177} While law, at least in theory, is a


With regard to creating a market economy see NIDAL RASHID SABRI & RANIA Y. JABER, PALESTINE COUNTRY PROFILE: THE ROAD AHEAD FOR PALESTINE: FISCAL POLICY AND PERFORMANCE (2006).

\textsuperscript{168} Id.


\textsuperscript{171} 1 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES, GEORGE W. BUSH, 2002, at 1059 (2004); Rice, supra note 15, at 147.

\textsuperscript{172} Supra note 151. DENNIS ROSS, STATECRAFT: AND HOW TO RESTORE AMERICA’S STANDING IN THE WORLD 163-164 (2007).

\textsuperscript{173} The Quartet is a diplomatic coalition of four international and national groups (United Nations, European Union, the United States, and the Russian Federation). The Secretary-General, Letter from the Secretary General to the President of the Security Council, U.N. Doc. S/RES/1515 (Nov. 19, 2003).


\textsuperscript{177} Sergio Fabbrini, Presidents, Parliaments, & Good Government, 6 J. DEMOC. 128 (1995).
platform that provides a structure for order, the style of governing body—in this case a regime—may not necessarily be the ideal organ for providing a similarly quality system.\textsuperscript{178} In the scholarship of legitimacy assigned to the ruling body, which in this case is an aspiring nation among nations,\textsuperscript{179} consensus is lost as long as there is no reconciliation between Hamas and Fatah.

Even assuming the formation and operation of a unified governing system that will satisfy domestic demands, the effectiveness of government will in some large part be dependent upon external impediments.\textsuperscript{180} It must also be brought to the fore that a key domestic issue is the geographic fragmentation of a Palestinian state. Because Israel sits between the two major territories of Palestine, the manner by which either the government in Ramallah or Gaza create an interactive system, it will be supervised from afar by Jerusalem. How Palestinian officials administer a split territorial state is reflective of the Pakistani experience.\textsuperscript{181} A governing structure, is to a large degree, rests upon the persona and administrative acumen of the system’s leadership. In Palestine, this idea is bifurcated with the life and role of Yasser Arafat and the PLO and Mahmoud Abbas and the PA.\textsuperscript{182} The PA’s attempt to introduce reform must be qualified: Reform what? What are the goals of reform? In terms of exposing the failures of the Palestinian socio-economic past, there is a need to bring about a technologically and professional public administration. There must be a secure environment insured by national institutions that simultaneously encourage popular engagement for positive change that affect the community. A cynical—readable as politically realistic—view would have reform to reduce the heritage of patrimonial influence in elite recruitment and authoritarian decision making at the highest levels of government. Recognizing the pressure from within Palestine and the international community—mainly from the West—the PA created a Reform and Development Plan in 2008, pursuant to the Paris donor’s conference held in December 2007.\textsuperscript{183} This action was followed up in August 2009 at the 13th meeting of the Palestinian cabinet that

\begin{thebibliography}{99}
\bibitem{178} The complementary of the two concepts is taken up by Lewis A. Kornhauser, *Interest, Commitment, and Obligation: How Law Influences Behavior*, in *JUSTICE AND POWER IN SOCIOLEGAL STUDIES* 210-212 (Bryant G. Garth & Austin Sara eds., 1998).
\bibitem{183} \url{http://www.mop-gov.ps/mew/web_files/issues_file/PRDP-en.pdf}.
\end{thebibliography}
presented its own program. The effect of this program was announced by Palestinian Prime Minister Salam Fayyad along with a challenge to have a Palestinian State by the end of 2011, which remains unmet.

**Religion and Politics: The Nexus**

If there is an issue that sums up the "clash of civilizations," it is the line that is drawn between religion and politics; how thin or thick must that line be? If we allow ourselves to ask the following questions: What is the origin of the connectivity of religion and politics? Is there an intrinsic connection between the two phenomena? If so, is the relationship a valid one? The concept and, indeed, the word for the phenomenon, is a product of the ancient Greeks. We also know that ancient religious beliefs preceded by centuries what the Greeks formulated intellectually. We know of no area or region of the globe where there is an absence of religion, although its connection to the governing structure or the polity itself may be meager.

With regard to Palestine, its political space and the most evident political actor with the face of religion is *Hamas*. But with the exception of Vatican City, what country, even with a state religion, has absolutely no separation? In this sense, *Hamas* has failed, since it has recognized the need for a pragmatic strategy reserving its Islamic interests in favor of increasing its political metal. From laypeople to academic scholars, all understand religion and its social function differently operate. For Muslims, or at least many, the meaning of *jihad* can be complicated when associated with a political party seeking control of a government. Meanwhile, *Hamas* is not a monolith; it has two sides. There is a radical or extremist element that confronts Israeli occupation with terroristic violence in many forms. There is also a moderate component actively supporting the Gazan community with a variety of public services. However, the question remains open to what extent does the moderate faction have any influence or control over the insurgent element.

Notwithstanding the fact that most progressive and democratic forces in Palestinian society have been suspicious or hostile to Israel and its government’s policies, it is likely that genuine democracy will ideally be a functional reward for its Israeli neighbors. The schism within Palestinian politics is often considered to be a fundamentally a chasm, pitting a religious party against a secular nationalist

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186 SAMUEL P. HUNTINGTON. THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER (1996). For an argument that takes on the proposition and falsifies it that recent Palestinian governance was affected to some great extent by Israel see Hillel Frisch & Menachem Hofnung, *Power or justice? Rule and Law in the Palestine Authority*, 44 J. PEACE RES. 331 (2007).


movement. Palestinians tend to view the divide as a secularist versus a religious form of national identity. Over the years, Fatah certainly has emphasized nationalist symbols and attracted many followers who have little interest in religion, while Hamas has often declared that there is a distinction between nationalists and Islamists, and the case should not be overstated. Certainly there are differences between Hamas and Fatah, but they are not absolute. Whatever the deepest divisions are, they most likely can be found in political questions rather than in the realm of religion. With these two poles, issues are potentially bridgeable, but less so when it comes to consolidating power.

**Comparative Analysis: Hamas v. Fatah**

Repeatedly noted, both Fatah and Hamas are the premier political forces in Palestine. It merits attention that both organizations have a primary goal that is essentially political: the creation of the State of Palestine. It would be unwise not to admit that these groups also are Palestinian nationalist in orientation under a similar ethnic banner. Aside from whatever pacific intent can be found in these groups’ policies and actions, they are off balanced by purely violently and destructive groups. Each group has its own idiosyncratic dynamic. Fatah has an issue dealing with “the rift between the Tunisian ‘old guard’ and Fatah’s ‘youngerst’ [who] are now first-rank leaders.”\(^{190}\) Hamas must also deal with real issues. Based upon its electoral success in 2006, and the violence it took to control the Gaza Strip, Hamas now has been given the responsibility to govern and provide necessary public services.\(^{191}\) The importance of violence, combined with religious belief in the Middle East as the region of choice for concern, was highlighted by former British Prime Minister Tony Blair, speaking at the Bloomberg Headquarters in London. He blatantly and boldly declared that current developments in the region that were the “biggest threat to global security of the twenty-first century.”\(^{192}\) Palestinian politics certainly has been characterized at late by political competition—and violent confrontation between Fatah and Hamas.\(^{193}\) Whether the characterization of the relationship between the two is a conflict (an-Niza‘ bayna Fatah wa Hamas) or more severe a civil conflict (al-Harb al-‘Ahliyyah al-Filistiniyyah), without some sort of a stable agreement there can be no unity government.\(^{194}\) Are both Hamas and Fatah to be defined by their worst evidenced scenarios, or is a more nuanced view more proper? This is probably the most difficult of tasks for analysis since both operate with such different operational agendas. Formal attempts to bring about a reconciliation in order to reduce the tension in the wrangle between Fatah and Hamas have a history. In both the Arab and Muslim world political leaders have brought both camps together and have achieved understandings and documented agreements, but ultimately all have been insufficient for one reason or another. Beginning in March 2008, Yemen created an initiative that went nowhere, however.\(^{195}\) This was followed by a mediation attempt by Senegal’s Abdoulaye Wade, President of the Organization of Islamic States (OIS), between Israel and Hamas.\(^{196}\) Subsequently a series of reconciliation agreements were reached and signed: Mecca (Feb. 8, 2007),\(^{197}\) Cairo (May 4, 2011)\(^{198}\)

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\(^{191}\) Id. 272.


\(^{194}\) A unity government was the issue in the Sudan between the Khartoum government and the rebel insurgent agency, the Sudan People’s Liberation Movement (SPLM), resolved by the Comprehensive Peace Agreement (CPA), but in reality was a power-sharing arrangement. JAMES COPNALL, A POISONOUS THORN IN OUR HEARTS: SUDAN AND SOUTH SUDAN’S BITTER AND INCOMPLETE DIVORCE (2014).


An issue that came up as a precondition in the most recent agreement was one that under pressure came from the international community, the PA accepted albeit reluctantly, namely the recognition of Israel which has been “a red line.” With the creation of a unity government, its first cabinet meeting was held in Gaza on October 6, 2014. On Monday, December 15, 2014, the day before the electoral roll was to be updated in Gaza, Hamas suspended the duties of the Central Elections Commission. This body routinely updates the rolls on the West Bank, but hasn’t done so in the Gaza Strip since 2006. Hamas claimed its action was responsive to what it perceived to be political manipulation by Ramallah. There had been an increase in the number of detentions of Hamas operatives on the West Bank in recent weeks thereby making it difficult for its affiliates to register to vote or hold party meetings, all necessary to prepare for the forthcoming election. The latest agreement in Cairo called for a unity government to last for six months. But according to Ismail Radwan, a high ranking Hamas official, the new government should be dissolved for it, i.e., Fatah, has failed to provide the necessary assets to Gaza for its rebuilding efforts, following the violent conflict with Israel during the summer 2014. But then there was also reported bombings of Fatah-related homes in Gaza. Reconciliation has also been considered as an option for programs by the Palestinian affiliate of Islamic Jihad. At a meeting in Gaza on January 11, 2015, organized by Hamas and other political factions—but not Fatah—the host proposed the creation of an administrative committee to provide support for a consensus government to implement the most recently agreed upon reconciliation effort. While the Left rejected the proposal, Islamic Jihad appeared to be more ready to contemplate it.

Although Hamas was a signatory to a recently agreed upon reconciliation agreement, following an Israeli intelligence operation by its Security Service (Shin Bet), a coup d’autorité was uncovered with Hamas attempting to unseat Fatah from power. Understandably, the most recent attempt at

http://www.wafainfo.ps/atemplate.aspx?id=5143 (In Arabic) or
http://www.wafainfo.ps/atemplate.aspx?id=9281368 (In Arabic). For background on reconciliation, see
Jacob Shamir & Khalil Shikaki, Determinants of Reconciliation and Compromise Among Israelis and Palestinians, 39 J. PEACE RES. 185 (2002).
http://wwwmaannews_.net/eng/ViewDetails.aspx?ID=500752..
Ibrahim Abu Alhija, Hamas Coup on the Palestine Authority Between Truth and Illusion, Al Jazeera Publications (2014), http://www.aljazeera.net/knowledgegate/opinions/2005/7/29%D8%A7%D9%86%D9%82%D9%84%D8%
reconciliation fell on deaf ears in Ramallah. What is intriguing is the gap between the two nationalist groups which may, perhaps, be best identified as competing for power and domination, since both have strong Palestinian identifications. Because both groups have so much in common, there is as much overlap in their outlook as there are gaps. The onset of “the Arab Spring” has, perhaps, done much to spur the hope for the introduction of a pathway to democracy with more transparency and wider acceptance of democratic values infused into the Palestinian community’s identity. In the end, it is dependent upon who holds power, legitimately or not, to dominate, from which an ideology can be either imposed or achieved through passionate persuasion. At the historical core of Palestinian Arab nationalism is an agriculturally-based society’s attachment to the family-settled and owned land. It is not merely a material possession but a sacred trust held with the peoples’ culture. What the community focuses now is the transformation to sovereign control over a large tract of territory as a state.

Conclusion

The competition between the two political parties may indeed represent an agon, which will be a remarkable feat if this is the case. Assuming that at some point in time, reconciliation of some sort can be reached by the two factions, based upon a mutually agreed upon settlement and plan for the future, even to the maximum interest of either, conditions for continued existence will most likely be forced by Islamic belief to continue to the Day of Resurrection. It must be added here that any reconciliation may not be temporary if this condition is to be fully realized. Whichever organization is dominant—and one must be—the subordinate one must not be so marginalized as to perceive itself isolated from the main body politic.

If 1) a unification effort is successful, even if only partially, and 2) Fatah maintains its secular identification while Hamas maintains its Islamic identification, reform must produce positive results or


The distinction is examined in Sam Fleischacker, Owning Land Versus Governing a Land: Property, Sovereignty, and Nationalism, 30 SOC. PHIL & POL’Y 373 (2013).

CLAUDIO COLAGUORI, AGON, CULTURE: COMPETITION, CONFLICT AND THE PROBLEM OF DOMINATION (2012). Having said this, it should be recognized that members of both Fatah and Hamas speak Arabic as their native tongue, are Muslim by and large, and are Palestinians who live under the domination of Jewish-Israeli military and administrative control at least and most prominently since June 1967.

MICHAELLE L. BLOWERS, POLITICAL IDEOLOGY IN THE ARAB WORLD: ACCOMODATION AND TRANSFORMATION 10 (2009);


The main Palestinian political forces earned the rubric of secular factions largely because they adhered to Arafat’s leadership in distinct position to the leader’s Islamic opposition.
whatever promises are made by either, in order to solidify either’s social mobilization efforts. Whatever agreement that can be reached between the two parties that would ultimately lead to the establishment of a sovereign Palestinian state would, realistically, continue to face external impediments. Clearly recognized by anyone with their eyes open, the effort to build a state de novo is herculean, to include the attitudes of almost all Palestinians.\textsuperscript{216} It is beyond plausibility to expect that Israel would forego its policy to establish settlements in strategic locales,\textsuperscript{217} immediately tear down the entire separation barrier,\textsuperscript{218} and the elephant in the room, change the status of the Jerusalem municipality in any serious manner.\textsuperscript{219} The inability of the two major Palestinian factions to agree amongst themselves to unify in a manner that was suitable to negotiate anything with the Israelis has left both parties in dismay. Recognizing the inability of the Palestinians to coalesce politically, the Israelis decided at one point to act unilaterally on provisions of the Roadmap and reduce friction with more Palestinians in Gaza by disengaging its military and forcing the Israeli settlers out of the area.\textsuperscript{220}

Domestically of great importance is the institutionalization of those elements of a governing system that provides not only security for its citizens, but also make available those services that will reasonably satisfy the largest possible portion of the community. Effective Palestinian leadership, if it comes to fruition, should go forward in a manner that will present a future representing more than a vague vision.

\textit{Hamas}'s history and official pronouncements on the use of violence toward Israeli targets cannot be forgotten—or forgiven—by an Israeli administration, regardless of how the action is rationalized.\textsuperscript{221} The overly anxious resolve to employ violence allows for analysts to fixate on Hamas and its strategy, largely because behavior forms perception. As Egypt has continually considered the Muslim Brothers an internal threat and a subversive element, by way of association, \textit{Hamas} cannot expect too much support


from Egypt. An important factor here is that geographically, the Gaza Strip is surrounded on three sides by Israel and Egypt, and the organization is also generally held with suspicion. On January 31, 2015, an Egyptian special court established to handle emergency matters banned Hamas’s military arm, the Iz al-Din al-Qassam Brigades as a terrorist organization based on the believe and evidence that it had smuggled arms to groups in the Sinai responsible for the attack and deaths of Egyptian security forces there. Hamas, therefore, finds itself isolated politically and economically and forced to accede to Fatah on issues of joint importance. Plus external pressure includes isolation, even from the Arab World. Most of these difficulties, which could reappear with some type of iteration, could be seriously reduced depending upon the completion of the peace process; thus the requirement that Hamas be strategically agile

In a speculated attempt to strengthen its symbolic hold over Palestinian leadership and in an arguably, imprudent attempt to promote the national position while gaining a diplomatic payoff, the PA submitted an amended draft resolution, through Jordan, to the United Nations Security Council on December 30, 2014. Not only did the effort fail, by one vote, but it also engendered hostility from a broad spectrum of Palestinian sources. Apparently the PA miscalculated with its allies in the United Nations on its gambit, but it also strained its relations with the remaining organized Palestinians and

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225 S.C. Res. S/2014/916 (Dec. 30, 2014). But with a affirmative vote from France and an abstention from Great Britain. The draft resolution would have expressed the political views of the majority of the Security Council membership, and nothing more. It would have not been a binding resolution. U.N. Ch. VII has a stringent requirement that there has to have been a serious breach of the peace.


dynamics of the Persian Gulf and specifically, crossing denominational lines within Islam, provides a question of its religious commitment. Nevertheless, in the end Mashaal was supposedly deported from Qatar in early January 2015, but reports have been mixed.

One of the major conditions for the emergence of a politically viable Palestinian state will be the establishment of a firm economic condition. A significant element of this requirement will be the rebuilding of the infrastructure of Gaza, laid waste as a result of the 50-day long (July 8-Aug. 26, 2014) period of violence between Israel and Hamas. Hamas continues to find fault with the PA for poor budgeting measures, redirecting funds for rebuilding Gaza by placing those funds in the PA’s general operating budget. While an economic base is essential for a political community to flourish—and even exist—there are similarly important issues with which to contend and consider. Palestinians have had to face insurmountable obstacles, making this case far different from other developing states’ experiences. The economic situation in the West Bank is notably more solvent than Gaza. To be sure, even though both areas are reliant to some degree on the stronger and more vibrant economy in Israel and the lack of full integration, the West Bank, i.e., an entrepôt of resources, has a greater industrial base, more options for trade, a greater ability for self-sustenance, and most importantly, less subject to Israeli military attack. Inasmuch as there is this differential in potential for economic development, Palestine is dependent to no small extent upon foreign aid and remittances from expatriates.

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240 Khan, supra note 51, at 43.


243 *ISHAC DIWAN & RADWAN A. SHABAN*, *DEVELOPMENT UNDER DIVERSITY: THE PALESTINIAN ECONOMY IN TRANSITION* (1999); *INT’L MONETARY FUND (IMF)*, *WEST BANK AND GAZA: ECON. PERFORMANCE, PROSPECTS, AND POLICIES* (2001), and *WORLD BANK*,...
The findings of Frisch and Hofnung suggest from their analysis that “the domestic structural approach presents a better explanation for the failure to institutionalize a rule of law in the Palestine Authority.” For state-building it is the rule of law that will provide the best assurance to allow for the development of a democratic polity. With law presumably comes the absence of or at least an abatement of non-governmental violence. While it has been argued in some quarters that Hamas has undergone an ideological movement toward either political or religious moderation, nevertheless, as a movement may move in this direction, there is no guarantee it couldn’t reverse itself, which could only result in a disastrous finale. There is also out there somewhere the possibility of taking on a purely secular posture.

It would be foolhardy to present conditions by which a unified governing structure could come about in Palestine. Certainly without contestation the lessening and beyond the removal of factionalism would be a prerequisite to this end. In order to ensure that a declared, independent state could function relatively effectively and efficiently, Israeli restrictions on individual movement and trade traffic would have to be removed, all of which can only occur once Israeli fears of terroristic violence—or if preferred, violent resistance—are removed, allowing for some period of calm. But Hamas’s reliance or insistence on the use of violence which is assured, means an escalation with guaranteed martyrs (shahid)—Palestinian lives—to serve as a basis for continual cultural loyalty and coincidental social mobilization becomes dangerous. A following stage would probably involve confidence-building measures. It is not necessary that all inhibitors to “peace” be completed in order for Palestinians to govern. To be sure, the measurement of governance in the case of Palestine is its financial status. As radical or extremist Islam, sometimes understood as fundamentalist, is its opposition to western, liberal ideas, the reduction of actions expected from radicals and extremists can be reduced by the introduction of a market economy. It must kept in mind that according to western liberalism, individual rights as well as obligations are produced by the state that also serves as the protector. Whereas in Islamic orthodoxy, an individual’s strongest affiliation is with the family, clan, tribe and, of course, their religion, whether Sunni or Shia. Thus needed services are provided by those affiliations most closely attached. Largely because of the lack of funds available to reconstruct Gaza, expected largely to come from the PA, in addition to the inability of the Hamas government to pay the salaries of its employees, it reactivated its separate parliament, closed since the April 2014 reconciliation agreement. From the perspective of a prominent sociologist, Edward Shils, Hamas is an extremist organization within the Palestinian community by way of its use of violence, not only toward Israeli subjects as a part of a liberation movement, but also its political rivals although it has been an accepted part of the larger Palestinian political community at some point in time.

In the end the stakes are great and the obstacles are high for Palestinians in order to reach their goal. Perhaps most pressing are the relationships of powerful groups within their own community, their relationship with their neighbor Israel, and somewhere on the periphery, the West. Inasmuch as governance, if it is to occur, will be based on principles developed outside the region, morphed and


There can be a reference made to diplomatic duplicity early in Islamic history (628 AD) with the Treaty of Hudaybiya. 3 ENCYC. ISLAM 539 (n. ed. 1971). There is also a reference to the episode in the Qur’an, Surah 48:1.


integrated over time in the calmest manner possible, it must be matched to the ability of Palestinian technocrats and its public administrators, with the support of politicians and diplomats alike. Positive efforts on the part of all political elements within the Palestinian political system will lead to legitimacy only through sound management, which lessens the use of violence at least and best if forsworn.