



crisis states programme

development research centre



Working Paper no.41

**ACCESS TO JUSTICE:
THE PALESTINIAN LEGAL SYSTEM AND
THE FRAGMENTATION OF COERCIVE
POWER**

Tobias Kelly
Development Research Centre
LSE

March 2004

Copyright © Tobias Kelly, 2004

Although every effort is made to ensure the accuracy and reliability of material published in this Working Paper, the Development Research Centre and LSE accept no responsibility for the veracity of claims or accuracy of information provided by contributors.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without the prior permission in writing of the publisher nor be issued to the public or circulated in any form other than that in which it is published.

Requests for permission to reproduce this Working Paper, of any part thereof, should be sent to:
The Editor, Crisis States Programme, Development Research Centre, DESTIN, LSE, Houghton Street, London WC2A 2AE.

Crisis States Programme
Working papers series no.1

ISSN 1740-5807 (print)
ISSN 1740-5815 (on-line)

Development
DESTIN
Studies Institute



Crisis States Programme

Access to Justice:

The Palestinian Legal System and the Fragmentation of Coercive Power¹

Tobias Kelly

Development Research Centre, LSE

In recent years there has been an increased interest amongst development practitioners in the potential role of law in situations of violent conflict. The Middle East has increasingly become the focus of this concern. In particular, it has been claimed that the Palestinian National Authority (PNA) has failed to provide adequate access to the law for many Palestinians, and has instead ruled through patronage and violence. In this context the PNA has been the site of repeated calls for legal reform. Legal reform is often treated as a technical question of legal procedure or as an issue of the cultural appropriateness of legal regimes. This paper takes a third approach, which stresses the political and normative aspect of legal processes. It argues that, in order to understand the obstacles to positive legal development in situations of political transition, it is necessary to discover the ways in which legal practices are understood, used and abandoned in particular contexts. In a context where law has no absolute moral value, but is attractive for the substantive claims that can be made through it, people are willing to use whatever resources are available to them in order to enforce the tangible benefits of legal claims. This opens up the law for political manipulation, and encourages what might be called 'legal patrimonialism', whereby legal entitlements are distributed according to political resources, rather than legal procedures. The paper concludes by arguing that in the context of the West Bank the promotion of effective legal processes should not be seen as a short cut to a stable political regime. Accountable legal processes require centralised, strong and stable coercive support, based in a measure of organisational cohesion and territorial sovereignty.

Introduction

The rule of law and justice shall be the basis of governance, the motivation for the work of the governing authorities, and the protector of the rights of the people and their democratic values.

(Draft Palestinian Constitution, Article 13).

In recent years there has been an increased interest amongst development practitioners in the potential role of law in situations of violent conflict.² Not only is violent political conflict

¹ The research for this article was made possible for by an ESRC Postgraduate Training Award and an Emslie Horniman Scholarship from the Royal Anthropological Institute. An ESRC Postdoctoral Fellowship held at the Crisis States Programme, DESTIN, LSE made the writing of this paper possible. I am grateful to Peter Loizos, Martha Mundy, James Putzel, Denis Rodgers, Will Norman, Jonathan Curry-Machado and the members of Crisis States Programme Research Seminar for their comments. Above all I must thank the people of Palestine for their kindness and generosity during the most difficult times. The fieldwork for this paper was carried out between August 2000 and February 2002 in the Ramallah region. The case studies presented below were collected through extensive interviews and participant observation in the Ramallah region of the West Bank. Where appropriate identifying names have been changed. Although the situation has developed considerably since this period, I believe that the same dynamics, as outlined in this paper, are still observable. Comments can be sent to: t.w.kelly@lse.ac.uk

often seen as resulting in the lack of legal processes, but the restitution of the law is also put forward as a way out of prolonged periods of violence. The promotion of the institutions and practices of law has therefore become a key aim of many aid agencies.³ The Middle East, especially after the events of 11th September 2001, has increasingly become the focus of much of this interest, with the absence of the 'rule of law', amongst other things, being understood as a cause of much of the violence and instability of the region.⁴ In this context, Rama Mani has argued that there is a "sense that law is a prerequisite for peace... a mechanism for restoring long term stability as well as short term order".⁵ Similarly, Thomas Carothers has argued that 'the rule of law' is increasingly seen as "a panacea for the ills of countries in transition".⁶

The Palestinian Territories have become a particular site of concern over issues of the 'rule of law'. It has been widely claimed by both the international community and Palestinians that legal processes have become increasingly undermined under the Palestinian National Authority (PNA), which has instead ruled through patronage and violence.⁷ Following the start of the second *intifada* in the late summer of 2000, commentators have pointed to a "break down in law and order" in the Palestinian Territories.⁸ In this context the Israeli-Palestinian Peace Process has increasingly become linked to issues of legal reform under the PNA.⁹ The promotion of legal processes is seen as a key element in the creation of a stable, democratic and accountable Palestinian polity that would be able to negotiate a lasting peace with Israel on the road to statehood.

² See, for example: Boutros Boutros-Ghali, *An Agenda for Peace*, New York: United Nations, 1992, p.34; Neil Kritz, 'The Rule of Law in the Post-Conflict Phase: Building a Stable Peace', in Chester Crocker, Fen Hampson and Pamela Aall (eds), *Managing Global Chaos: Sources and Responses to International Conflict*, Washington: United States Institute for Peace Press, 1996; Benedict Latto, 'Governance and Conflict Management: Implications for Donor Intervention', *Crisis States Working Paper 9*, London: Development Research Centre, LSE, 2002; Rama Mani, 'Conflict Resolution, Justice and the Law: Rebuilding the Rule of Law in the Aftermath of Complex Political Emergencies', *International Peacekeeping*, 5:3 (Autumn 1998), pp.1-25; Organisation for Security and Cooperation in Europe, 'Concluding Document of the OSCE Copenhagen Conference on the Human Dimension, June 29th 1990', *International Legal Materials*, 29 (1990), pp.1505-1506.

³ See, for example: DfID, *Justice and Poverty Reduction*, London: DfID, 2000; Department of State and USAID, *Security, Democracy, Prosperity: Strategic Action Plan, Fiscal Years 2004-2009, Aligning Diplomacy and Development Assistance*, Washington: Department of State and USAID, 2003, p.19.

⁴ See, for example: Thomas Carothers, 'Is Gradualism Possible? Choosing Strategy for Promoting Democracy in the Middle East', *Democracy and Rule of Law Project Working Paper 39*, Washington: Carnegie Endowment for International Peace, 2003b; Hugh Roberts, 'North African Islamism in the Blinding Light of 9-11', *Crisis States Working Paper 34*, London: Development Research Centre, LSE, 2003; United States Institute for Peace, *Establishing the Rule of Law in Iraq: Special Report*, Washington: United States Institute for Peace, 2003.

⁵ Mani (1998) p.2.

⁶ Thomas Carothers, 'The Rule of Law Revival', *Foreign Affairs*, 77:2 (March/April 1998), pp.95.

⁷ See, for example: Nathan Brown, *Palestinian Politics After the Oslo Accords: Resuming Arab Palestine*, Berkeley: University of California Press, 2003; Council on Foreign Relations, *Strengthening Palestinian Public Institutions: Independent Task Force Report*, Washington: Council on Foreign Relations, 1999; Hillel Frisch, 'Modern Absolutism or Neo-Patrimonial State Building? Customary Law, Extended Families and the Palestinian Authority', *International Journal of Middle East Studies*, 29:3 (August 1998), pp.341-358; Glen Robinson, 'The Politics of Legal Reform in Palestine', *Journal of Palestine Studies*, 27:1 (Autumn 1997), pp.51-60; United Nations Special Coordinator for the Occupied Territories, *Rule of Law Development in the West Bank and Gaza Strip, Survey and State of the Development Effort*, Gaza: United Nations Special Coordinator for the Occupied Territories, 1999.

⁸ Menachem Klein, 'By Conviction Not by Infliction: The Debate Over Reforming the Palestinian Authority', *Middle East Journal*, 57:2 (Spring 2003), p.194.

⁹ In June 2002, the President of the United States, George W. Bush, made a speech outlining his vision for the Middle East. In the speech George Bush highlighted the need for legal reform in the Palestinian Authority as one of the key steps necessary for the building of what he saw as a sustainable peace in the region (Speech given by George W. Bush from the Rose Garden of the White House, 24 June 2002).

Issues of legal reform are often treated as technical questions of legal procedure or as issues of the cultural appropriateness of legal regimes. This paper takes a third approach, which stresses the political and normative aspects of legal processes. It argues that in order to understand the obstacles to positive legal development in situations of political transition, it is necessary to discover the ways in which legal practices are understood, used and abandoned in particular contexts. In the West Bank, rather than issues of procedural efficiency or cultural appropriateness, problems of legal access result from the fragmentation of the coercive power of the law. In a context where law has no absolute moral value, but is primarily attractive for the substantive claims that can be made through it, people are willing to use whatever resources are available to them in order to enforce the tangible benefits of legal claims. This opens up the law for political manipulation, and encourages what might be called 'legal patrimonialism', whereby legal entitlements are distributed according to political resources, rather than legal procedures. Carothers has noted that issues of the 'rule of law' in development practice are often marked by a conceptual vagueness.¹⁰ With this in mind, rather than discuss abstract concepts, this paper will examine one concrete aspect of legal processes, namely access to, and the distribution of, the formal entitlements of labour law. The paper concludes by arguing that in the context of the West Bank the promotion of effective legal processes should not be seen as a short cut to a stable political regime. Accountable legal processes require a centralised, strong and stable coercive support, based in a measure of organisational cohesion and territorial sovereignty.

Approaches to Problems of Legal Access

Often explanations for problems of access to the law in the West Bank are not presented in a coherent manner and there is considerable overlap between them. However, two schools of thought can clearly be discerned amongst practitioners and academics, both in the West Bank and internationally.¹¹ These approaches can be thought of as the 'technical efficiency' argument and the 'cultural compatibility' argument.¹²

The 'technical efficiency' approach focuses on the internal processes of legal systems. In particular, Stephen Golub argues that many donor led 'rule of law' programmes concentrate on the efficiency of the courts.¹³ Golub quotes the World Bank's Legal Vice Presidency as claiming that the "rule of law is built on the cornerstone of an efficient and effective judicial system".¹⁴ A focus on issues of internal technical efficiency assumes that if court processes could be made more efficient, more people would realise their formal legal entitlements. Largely for this reason, donor attempts at legal reform in the West Bank have largely focused on improving the technical efficiency of the courts. USAID for example, identifies the

¹⁰ Thomas Carothers, 'Promoting the Rule of Law Abroad: The Problem of Knowledge', *Democracy and Rule of Law Project Working Paper* 34, Washington: Carnegie Endowment for International Peace, 2003a.

¹¹ A third argument, namely that legal processes are economically too expensive for developing countries is widely made in other contexts. However, it seems seldom to be made in the context of the West Bank. See for example: Jędrzej Frynas, 'Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners', *Social and Legal Studies*, 10:3 (September 2001), pp.397-419.

¹² Whilst these arguments are not made in the form presented by any single person, they represent a distillation of arguments put forward during interviews with donors and legal practitioners in the West bank between 2000 and 2004, as well as a review of the literature included below.

¹³ Stephen Golub, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative', *Democracy and Rule of Law Project Working Paper* 41, Washington: Carnegie Endowment for International Peace, 2003, pp.7-9.

¹⁴ Cited in Golub (2003), p.15.

“building of management and administrative capacity within the judicial system, increasing professionalism of the legal community, improving the curriculum and teaching capacity in law schools” as the key to strengthening the ‘rule of law’ in the Palestinian Territories.¹⁵ The main ‘rule of law’ contractor for USAID in the area, DPK, has focused its recent efforts on case management and judicial training.¹⁶ Similarly, the EU has identified technical assistance in the administration of justice, the training of legal professionals and provision of equipment and as the key to legal reform.¹⁷ Improvements in the efficiency of the courts are seen as crucial for reinforcing the ‘rule of law’.

However, a narrow technical view sees legal processes as enclosed and universally replicable practices, ignoring the wider political and historical context in which legal regimes operate.¹⁸ In doing so the ‘technical efficiency’ argument treats legal processes as neutral procedural concerns, forgetting that people use the law with concrete purposes, and with locally specific ideas of justice, authority and accountability. Furthermore, legal processes are not restricted to the formal setting of the courts, but interact with multiple formal and informal, official and unofficial institutions.¹⁹ Rather than treat law as an internally coherent and universally replicable process of dispute resolution, there is a need to take into account the perspectives of those who use the courts and the wider contexts within which they operate.

One such approach is the ‘cultural compatibility’ argument. From this perspective, courts rely on procedures and concepts that are alien to many people in the West Bank, forcing them to rely on alternative forms of dispute resolution or never make legal claims at all. For example, the DfID policy statement on ‘Safety, Security and Accessible Justice’ argues that courts often use procedures that are difficult to understand, and people have a limited knowledge of legal rights.²⁰ Similarly, the Palestinian lawyer and anthropologist George Bisharat has argued that in the West Bank formal laws and regulations are not the operative principle of social action.²¹ He goes on to argue that there is a lack of:

awareness and involvement in the law of the lawyers and the state. State law or *qanun*, especially concerning civil matters, is not a general reference point that serves to orient and guide normal transactions among individuals.²²

Bisharat claims that negotiation and compromise is the ‘indigenous’ form of dispute resolution.²³ Such an argument has widespread support in the West Bank. Palestinian lawyers would routinely complain about the lack of *hadarat al-qanun* (legal civilisation) amongst the local population. This approach is also reflected in the large number of legal education projects carried out by NGOs and governmental donors in the region.²⁴ These range from the

¹⁵ USAID, *Congressional Budget Justification for West Bank and Gaza Strip*, viewed on 26th February 2004 at www.usaid.gov/policy/budget/cbj2004/asia_near_east/west_bank_gaza.pdf, 2003.

¹⁶ DPK, 2003, *Rule of Law Reporter: West Bank/Gaza Rule of Law Project*, 1:1 (July 2003), pp.1-8.

¹⁷ EU, ‘Individual Service Contract Forecast: Technical Assistance for the Programme ‘Empowering the Palestinian Judicial System’ West Bank and Gaza’, viewed on 23 February 2003 at www.europa.eu.int/comm.europaaid/tender/data/AOF42522.htm, 2003.

¹⁸ See, for example: David Trubek & Marc Galanter, ‘Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development’, *Wisconsin Law Review*, 14:4 (Winter 1974), pp.1062–1101.

¹⁹ See, for example: Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans*, Chicago: University of Chicago Press, 1990.

²⁰ DfID, *DfID Policy Statement on Safety, Security and Accessible Justice*, London: DfID, 2003.

²¹ George Bisharat, *Palestinian Lawyers and Israeli Rule: Law and Disorder in the West Bank*, Austin: University of Austin Press, 1989, pp.36-37.

²² Bisharat (1989), p.33.

²³ Bisharat (1989), pp.39-42.

²⁴ See, for example: UNSCOT (1999).

training of judges to the teaching of international human rights law to Palestinian civilians. A related alternative has been to try and establish alternative and seemingly more culturally appropriate forms of dispute resolution. USAID and the Dutch have funded several Alternative Dispute Resolution projects in the West Bank and Gaza Strip.²⁵ The assumption behind both these approaches is that legal processes must reflect wider cultural practices in order to be effective.

However, other writers have argued that far from there being a complete absence of legal discourses, the law is often central to the way that people frame their claims across the Middle East. In Egypt, for example, Nathan Brown has written that rather than rejecting the law "...as an alien intrusion or as culturally inappropriate, [Egyptians]... have grasped at the tools that the ...legal system has given them".²⁶ In the West Bank the problems of the '*siyadat al-qanun*' (rule of law, sovereignty of law) are also widely discussed. There is an implicit assumption in the 'cultural compatibility' argument that the legal regimes in the West Bank and across the Arab world are foreign impositions. However, although the West Bank legal system may have its roots in the encounter with the Ottoman Empire, British Mandate, Kingdom of Jordan and Israeli state, the imposition of law is never a *fait accompli* but interacts with local political, cultural and economic processes.²⁷ Legal processes are adapted to locally specific contexts and lay down deep roots.²⁸

There has been a tendency to see the problems surrounding the 'rule of law' in the developing world as the product of a failed modernity, which is compared to a hypothetical ideal legal system that in reality exists nowhere, as legal processes always exist in local contexts.²⁹ As Stanley Diamond remarked several decades ago: "law has no essence but a definable historical nature".³⁰ Law is taken up and transformed in different ways depending on the local historical and political context. Rather than posit a universal template for legal processes, it is necessary to understand how legal processes develop in specific situations. This paper seeks to examine how and why legal claims are understood, used and abandoned in the West Bank. Only by doing so can we identify the consequences of issues of legal access for political, economic and social relations in countries in transition.

The Tradition of Labour Rights in the West Bank

Legal claims in the West Bank, and in particular claims over labour rights, have a long and locally specific history.³¹ The historian Bishara Doumani has argued that by the mid-nineteenth century, the *fellahin* (villagers, peasants) of the West Bank were increasingly "resorting to urban legal institutions... in order to challenge the authority" of the locally

²⁵ See, for example: USAID (2003).

²⁶ Nathan Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, Cambridge: Cambridge University Press, 1997, p.219.

²⁷ For a discussion of this issue see: Robert Kidder, 'Towards an Integrated Theory of Imposed Law', in Barbara Harrell-Bond & Sandra Burman (eds), *The Imposition of Law*, New York: Academic Press, 1979.

²⁸ For example see: Richard Wilson & Jon Mitchell, (eds), *Human Rights in Global Perspective: Anthropological Studies of Rights, Claims and Entitlements*, London: Routledge, 2003.

²⁹ For a discussion of this issue see: Mark Duffield, 'Social Reconstruction and the Radicalization of Development: Aid as a Relation of Global Liberal Governance', *Development and Change*, 33:5 (November 2002), pp.1059-1071.

³⁰ Stanley Diamond, 'The "Rule of Law" Versus the Order of Custom', *Social Research*, 38:1 (Spring 1971), p.43.

³¹ This tradition arguably goes back further than detailed here. For a wider discussion see: Tobias Kelly, *Law at Work: Law, Labour and Citizenship among West Bank Palestinians*, University of London: Unpublished PhD Thesis, 2003, pp.39-44.

powerful.³² The expanding capitalist economy of the early twentieth century saw the first Arab trade unions formed in 1923, although these remained small in comparison to the Zionist *Histradut*.³³ However, the Arab unions played a major role in the general strike that started the Arab revolt of 1936-39.³⁴ The unions also became increasingly important just before the Second World War, particularly in the military camps run by the British Army. By the late 1940s labour militancy was a firmly established tradition in the West Bank.

After 1948 the West Bank was incorporated into the Hashemite Kingdom of Jordan. The unions became increasingly influenced by the Communist party and were banned in 1952. Then in 1967 the West Bank was occupied by the Israel military. With the encouragement of the Palestinian nationalist factions, the trade union movement began to reorganise.³⁵ The unions became increasingly radical throughout the 1970s and 80s and organised strikes and demonstrations demanding basic labour rights. However, at the same time the Israeli military accused the union movement of being a front for Palestinian nationalist groups, and forced it to go underground. By the late 1980s, the largely clandestine union movement had become divided between the various branches of Palestinian nationalist politics.³⁶ It was not until 1993 that the unions unified to form the Palestinian General Federation of Trade Unions (PGFTU). However, with the creation of the PNA in the early 1990s, many activists left the movement to take up positions with the PNA. By the late 1990s the unions had yet to recover as a collective force from the crises in the 1980s and mid-1990s, and instead focused on individual labour cases in the Israeli and Palestinian courts.

Throughout the 1970s and 80s many Palestinians began to work in the Israeli economy. By the 1980s Palestinians working in the Israeli economy made up almost 40% of the Palestinian labour force.³⁷ These Palestinians were under the jurisdiction of Israeli labour law, and their experiences of this law are crucial for an understanding of approaches to labour rights in the region. Israeli labour law promises greater severance pay and insurance, amongst other things, than local West Bank law. By the 1990s, helped by several NGOs, many Palestinians had cases in the Israeli labour courts. Although a large number of Palestinians worked illegally in Israel, and therefore had only problematic access to the protection of Israeli law, the potential benefits of winning a case in the Israeli courts were widely recognised, and many Palestinians were being awarded relatively large sums of money. As Palestinians were not allowed to join unions inside Israel, recourse to the law was one of the few avenues for labour protection.³⁸

It is in this historical context that legal claims must be understood in the West Bank. Although access to legal rights was associated with the actions of an arbitrary and often hostile occupying power, they frequently provided means of economic support.

³² Bishara Doumani, *Rediscovering Palestine: Merchants and Peasants in Jabal Nablus, 1700-1900*, Berkeley: University of California Press, 1995, p.169.

³³ For more on this issue see: Musa Budeiri, *The Palestinian Communist Party, 1919-1948: Arab and Jew in the Struggle for Internationalism*, London: Ithaca Press, 1979.

³⁴ For a discussion of these strikes see: Zachary Lockman, *Comrades and Enemies: Arab and Jewish Workers in Palestine, 1906-1948*, Berkeley: University of California Press, 1996, pp.240-26.

³⁵ For a history of the West Bank trade union movement see: Joost Hiltebeitel, *Behind the Intifada*, Princeton: Princeton University Press, 1991.

³⁶ *Fatah*, the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine and the Communist Party were all linked with their own unions.

³⁷ For a more detailed analysis of Palestinian labour in the Israeli economy see: Leila Farsakh, *Palestinian Employment in Israel: 1967-1997: A Review*, Ramallah: MAS, 1998.

³⁸ For more on the relationship between Israeli unions and Palestinian labour see: Michael Shalev, 'Jewish Organized Labor and the Palestinians: A Study of State/Society Relations in Israel', in Baruch Kimmerling (ed.), *The Israeli State: Boundaries and Frontiers*, New York: SUNY Press, 1989.

The Fragmentation of the Coercive Power of the Law

In order to understand the basis of 'legal patrimonialism' during the second *intifada* it is also necessary to understand the history of the fragmentation of the coercive power of the law. Before the creation of the PNA the formal institutions of the law in the West Bank had been undermined by several factors. In 1967, in protest at the Israeli occupation, many Palestinian lawyers had gone out on a strike that was to last, at least in part, until 1994.³⁹ At the same time, the Israeli military established military tribunals. Although these tribunals only nominally covered 'security matters', they increasingly began to become involved in other civil and criminal issues, such as taxation and land disputes.⁴⁰ Following the start of the first *intifada* in the late 1980s there was a renewed call by the Palestinian nationalist leadership to boycott the courts. New nationalist orientated forums were set up to hear disputes. These forums' decisions were enforced by the armed groups associated with the various Palestinian political factions.⁴¹ It was in this context of having been undermined by the actions of the Israeli military and Palestinian leadership over several decades, that the PNA took over control of the West Bank court system. This responsibility did not include the Israeli military tribunals, Municipal courts in the Israeli settlements, or Rabbinical courts, which remained under the control of the Israeli state. Following the Oslo Accords the coercive power of the law became increasingly fragmented in the West Bank. This situation was intensified by the actions of the PNA police force and the territorial fragmentation of the PNA.

The organisation of the police force of the PNA under the Oslo agreements meant that the enforcement of the law was increasingly problematic. Despite the fact that by the year 2000 it was estimated that there was one policeman for every 110 Palestinians, the willingness and the ability of the Palestinian police to enforce court orders was limited by several factors.⁴² Six branches of the Palestinian police force were established after the Oslo Accords, with each of these branches having their roots in pre-PNA armed groups associated with the PLO.⁴³ The officer corps of the Civilian Police was largely staffed by officers of the former Palestinian Liberation Army. One of the elite branches of the PNA police force, known as Force 17, had its roots in the group that protected Yasser Arafat during the Lebanese civil war of the 1970s and 80s. The Preventative Security (PS), which largely focused on the arrest and detention of Palestinian activists hostile to the Oslo Peace Process, was largely made up of local *Fatah* activists.⁴⁴ Jibril Rajoub, the former West Bank head of the PS, described his organisation as "the practical expression of *Fatah*".⁴⁵ Although the civilian branch of the police was nominally responsible for the enforcement of court orders, in practice several other branches of the police were also involved. Whilst the Oslo Accords had formally established

³⁹ For more on the strike see: Bisharat (1989).

⁴⁰ For more on the Israeli military courts see: Lisa Hajjar, *Authority, Resistance and the Law: A Study of the Israeli Military Court System in the West Bank and Gaza*, Berkeley: University of California Press, forthcoming.

⁴¹ For more on this issue see Adrien Wing, 'Legal Decision-Making During the Palestinian Intifada: Embryonic Self-Rule', *Yale Journal of International Law*, 18:1 (Winter 1993), pp.95-153.

⁴² Graham Usher has argued that the PNA police were mainly established in order to crack down on *Hamas*. See: Graham Usher, 'The Politics of Internal Security: The Palestinian Authority's New Security Services', in George Giacaman and Dag Lonning (eds.), *After Oslo: New Realities: Old Problems*, London: Pluto, 1998. See also: Beverly Milton-Edwards, 'Internal Security and Citizenship Under the Palestinian National Authority', in Nils Butenschon, Uri Davis, and Manuel Hassassian (eds), *Citizenship and the State in the Middle East*, Syracuse: Syracuse University Press, 2000.

⁴³ These were the Civilian Police, Presidential Security (Force 17), Preventative Security (PS), General Intelligence, the Public Security Force and Civil Defence.

⁴⁴ These were largely *Hamas* activists, but also included people associated with the Popular Front for the Liberation of Palestine (PFLP) and Islamic Jihad.

⁴⁵ *Al-Quds* newspaper, 2 February 1995

all the branches of the police force, there was no clear legislation that governed the relationship between the PNA police and the courts. In practice the PLO Revolutionary Penal Code of 1979 was applied to offences committed by PNA police officers.⁴⁶ It was not until 2002 that it was made an offence for the police not to enforce court rulings.⁴⁷ Due to their history in the armed struggle of the PLO, the various branches of the police force often acted more as political factions than as police. This legal and political ambiguity meant that PNA court orders were subject to political pressures and often went un-enforced.

The Oslo Accords also affected the organisation of the coercive power of the law in other ways. Under the Oslo Accords, the West Bank was divided into three areas (see Map 1). In Area A, which covered the main Palestinian towns, the PNA had civil and security control. In Area B, which covered most Palestinian villages, the PNA was given civil control, but shared security control with the Israeli military. In Area C, which covered most of the land in between the towns and villages, the Israeli military had full control. Israeli military control was also extended to cover all Israeli citizens no matter where they were in the West Bank. Crucially however, whilst the Palestinian police did not have territorial control over most of the West Bank, the PNA courts had jurisdiction over Palestinians throughout the area. The enforcement of Palestinian court orders in areas outside the immediate control of the Palestinian police forces therefore entailed cooperation between the Palestinian and Israeli police. Following the start of the second *intifada* this cooperation broke down. The District Coordination Office (DCO), which was supposed to liaise between the Israeli state and the PNA, became in some places the scene of clashes between the Israeli military and the Palestinian police forces. The Israeli government increasingly accused elements of the Palestinian police force of attacks on the Israeli military and civilians. As a result, the Israeli Air Force repeatedly bombed the offices of the Palestinian police, and in the autumn of 2000 destroyed the office of the Enforcement Division of the PNA police in Ramallah.

In this context, Palestinian police often refused to act outside the centre of Palestinian towns, even if the area in question was nominally under PNA jurisdiction. Many feared arrest or worse by Israeli military.⁴⁸ Whilst the Israeli police could work relatively freely in the rest of the West Bank and were responsible for the enforcement of PNA court orders, Palestinians would refuse to turn to the Israeli police out of fear of being accused of being collaborators. The result was that following the start of the second *intifada*, PNA court orders could only be enforced in the centre of the large Palestinian towns, if at all.

In this context, the enforcement of legal orders through the formal legal system was increasingly problematic. Not only was the territorial power of the PNA severely restricted, but also the PNA police forces often enforced the law according to political pressure rather than legal procedure. Many Palestinians turned to alternative avenues through which they could enforce their legal claims. In doing so they produced a form of 'legal patrimonialism', whereby legal claims were enforced according to political connections, rather than legal procedures.

⁴⁶ Interview with senior police officer, Ramallah, 18 June 2001.

⁴⁷ PNA Basic Law 2001, Article 97.

⁴⁸ Interview with PNA Prosecutor, Ramallah, 19 January 2001. After the April 2002 Israeli invasion of Palestinian towns, PNA police officers refused to wear their uniforms, fearing that they would become targets for the Israeli military. They continued to operate however, in civilian clothes.

The Governor of Ramallah District

One of the organisations that many Palestinian turned to in order to try and enforce their legal claims was the office of Abu-Firas, the Governor of Ramallah. The Governor's office was part of a sprawling complex, which had started life as a British prison during the 1930s. The same complex housed the Presidential office of Yasser Arafat, as well as barracks for several branches of the Palestinian police force⁴⁹. Yasser Arafat had appointed Abu-Firas shortly after the creation of the PNA in the mid 1990s.⁵⁰ As Governor of Ramallah district, Abu-Firas was nominally responsible for coordinating the activities of all the PNA police forces in the area. Before the creation of the PNA, Abu-Firas had been a member of the PLO's Western Sector wing, which played a central role in the PLO's efforts to organise the first *intifada*. Abu-Firas was therefore closely associated with the PLO and the PNA leadership. Lawyers and judges often complained that Abu-Firas encouraged the use of what they called '*urf*' (customary law). However, the Governor's legal department claimed the authority to intervene in disputes on the basis of several laws currently in force in the West Bank.⁵¹ The head of the Governor's legal department, Dr Arij al-'Awda, who had a PhD in jurisprudence from the University of Moscow, claimed that far from her office being 'outside the law', people often came to her office with their lawyers and the majority of her employees were trained jurists.⁵² It was also widely rumoured that the Governor of Ramallah had links with the gangs from 'Amari refugee camp in Ramallah. These gangs were accused of being involved in stealing cars from Israel and also formed the basis of the *shabiba* (the youth wing of *Fatah*) in the refugee camps. The Governor's office therefore stood at the intersection of legal/illegal, official/unofficial political forces in the West Bank.

Three case studies will now be examined in order to understand the role played by the Governor's office and the courts in the enforcement of the law. The case studies were all collected in the Ramallah region of the West bank between August 2000 and March 2002. These case studies represent a representative sample of a much larger project.⁵³

Case Study 1: Al-Quds Tissue Factory

The Al-Quds factory was one of the largest and oldest in the West Bank and was owned by the three sons of its Armenian-Palestinian founder. After the second *intifada* started in late September 2000 the factory had faced a crisis. Many of its workers, who came from villages outside Ramallah, could not reach the factory due to the checkpoints that had been set up on the roads into Ramallah by the Israeli military. Furthermore, the factory could not get hold of any raw materials due to the roadblocks. Finally, most of their customers stopped buying their goods or claimed they could not pay the money that they owed the factory. After two months of this situation, the factory owners decided to scale down the work in the factory and to place nearly all the workers on unpaid leave.

⁴⁹ In April 2002 the compound which housed the Governor's office and Arafat's headquarters was partially destroyed by the Israeli military. However, the Governor's office still continued to work in the partly collapsed building.

⁵⁰ Popular legend has it that it was Abu-Firas who drove Yasser Arafat around on his clandestine visit to the West Bank in the late 1960s. Abu-Firas was later expelled from the West Bank by the Israeli government and became an assistant to Abu-Jihad, the deputy leader of *Fatah*, who was assassinated in Tunis in 1988.

⁵¹ Administrative Divisions Regulation No. 1 of 1966. The 1954 Jordanian Law to Prohibit Crimes gives local Governors the power to 'prohibit crimes', arrest people and put them under curfew if he 'suspects' they will commit a crime. Other security services set up similar legal departments, citing the same precedent.

⁵² Interview with Dr. al-'Awda, Director of the Legal Department for the Ramallah Governate, Ramallah, 25 September 2001.

⁵³ See Kelly (2003).

Some of the workers, who were organised in a workers' committee, protested. The owners of the factory tried to strike a deal, by saying that they were not laying off the workers, just placing them on unpaid leave, and therefore they did not have to pay any money. However, the workers argued that they either they had jobs and should be paid, or they had lost their jobs and under the law were entitled to full severance pay. The workers' committee went to the Palestinian General Federation of Trade Unions (PGFTU) branch office in Ramallah in order to get some advice and support. In the 1980s there had been a number of disputes between the forerunner of the PGFTU and the Al-Quds factory over pay and conditions.

Following the involvement of the PGFTU, a number of high profile demonstrations were held outside the factory. These demonstrations were amongst the largest that the union had organised since the creation of the PNA and brought what was generally seen as a declining union movement to the attention of many people for the first time. Against a background of rising Palestinian unemployment and increasingly violent clashes between Palestinians and the Israeli military, placards were held up at the demonstrations claiming that "Al-Quds implements the Israeli occupation policies" and "The Al-Quds factory steals the bread from our children's mouths". The dispute was widely covered in local newspapers and on television stations in the Ramallah area. On the suggestion of the PGFTU the dispute was taken to the office of the PNA Governor of Ramallah. The workers said that it would take too long to take the case through the courts, as they needed the money they were due immediately in order to support their families. The factory owners reluctantly agreed to the involvement of the Governor of Ramallah.

After meeting both sides, Abu-Firas delegated the day-to-day negotiations to his legal department. In the negotiations, which lasted several days, the factory owners argued that the factory was itself owed money and therefore could not pay the workers' severance pay. The Governor's office promised to help the company chase up some of its debtors. The union demanded that the Governor's office enforce the labour law, and make sure the workers received severance pay. Finally, the Governor's office agreed to enforce a compromise. The factory owners would take 12 of the longest working and most skilled workers back in order to keep the factory working at a minimum level. The other 65 would receive severance pay at three-quarters of the money owed according to the labour law.⁵⁴ The union accepted the agreement on behalf of the workers.

Case Study 2: Sinjal Stone-Cutting Factory

The Sinjal stone cutting factory stood in the outskirts of Ramallah. The factory cut the white stone that was used to cover the outside of grand houses across the West Bank, or when polished, was used on the inside of buildings such as the Governor's office. A Palestinian who had made a fortune in the Saudi Arabian building trade during the oil boom of the early seventies owned the factory. The factory owner still lived in Saudi Arabia, but his brother-in-law managed the factory. Since the creation of the Palestinian Authority in 1994 there had been a building boom across Ramallah, with new homes and office blocks going up every day as the once small town began to spread out across the top of the neighbouring hills and engulf the surrounding villages. The stone cutting factory had therefore never been short of business.

Following the start of the *intifada* in late September 2000 business became increasingly difficult at the factory. After two months of slow work the factory manager told half of the

⁵⁴ This dispute took referred to the old Jordanian Labour Law of 1960 (Amended in 1965), rather than the new PNA Labour Law that was published at the end of 2001.

workers that there was no longer any work for them and he was letting them go. The workers demanded their *ta'wid* (severance pay). The manager refused saying that he had no money and that in any case there was no way that the workers could make him pay. The factory manager argued that the workers could take him to court if they wished, but they would get nothing out of him. Despite this the workers decided to start a legal case. However, their lawyer told them that it would take several years to process the case, and even if they received a favourable judgement it would be difficult to enforce as the factory owner lived outside Ramallah in an area controlled by the Israeli military. The lawyer advised them to go and see the Governor of Ramallah, Abu-Firas. However, the legal department of the Governor's office told the workers there was very little that he could do to help them, as everyone was experiencing problems due to the *intifada*.

The workers then decided to visit the union. The PGFTU in Ramallah had just experienced a major split.⁵⁵ The workers went to visit the smaller faction. This faction of the PGFTU agreed to send someone to try and talk to the people in the factory. The owner of the factory was now back in the West Bank and staying with relatives in the village of Sinjal, to the north of Ramallah. Some of the workers, accompanied by a union representative paid the owner a visit. The factory owner did not know that he was dealing with the weaker branch of the PGFTU, and having recently seen the strike at the Al-Quds factory, agreed to make a deal. In the agreement, the workers received about 50% of the money due according to the law. Although they were not happy with this amount, the workers recognised that in the current situation it was probably all they would be able to obtain.

Case Study 3: Nablus Pharmaceutical Factory

Ramzi worked in a pharmaceutical factory as the night guard in a village to the west of Ramallah. A Palestinian who had recently returned from living in America for twenty years, and had invested all his savings in the business, owned the pharmaceutical factory. After Ramzi had been working for five months, the factory owner told him that there was no longer any work for him and he would have to leave. The next week the owner brought another man to guard the factory. Ramzi thought he had been told to leave so that he was not employed long enough to be due severance pay.⁵⁶

The next day Ramzi returned to the factory and demanded his pay for one month's notice and the pay for the leave that he had not taken, but that he claimed he was due according to the labour law. The owner refused to pay as he said that he had no money. Ramzi then went to see a relative of the factory owner to ask for some help, but the relative said there was nothing that he could do. Ramzi decided to go and see a lawyer, but was told that the case was not worth taking to the courts as it would take too long and would probably never be enforced. Eventually Ramzi decided to go and see the larger faction of the PGFTU in Ramallah. The PGFTU agreed to take on the case, on the condition that Ramzi joined the union. The union sent the case to a lawyer and registered it in the court.

At first the union's lawyer tried to persuade Ramzi to negotiate with the factory owner, as he argued that the case would take a long time, and maybe it was better to get some money immediately, even it was less than that set out by the law. However, Ramzi had found another job and did not need the money straightaway. As the lawyer's fees were initially being

⁵⁵ The PGFTU in Ramallah had split after its local head had been accused of misusing funds. He had been thrown out of the union and started his own rival branch that still used the PGFTU name.

⁵⁶ Severance pay was due after six months of employment.

covered by the PGFTU, Ramzi decided that he would push for all the money that he felt he was due according to the law. The court gave the lawyer a date in three months time for the first hearing. However, at that hearing the judge did not turn up and the case was postponed for another three months. Over the next two years the case was postponed four more times.

Eventually the court ruled that Ramzi was due the unpaid leave and pay for one months notice. However, the factory owner refused to pay the money. In the meantime the second *intifada* had started. Ramzi's lawyer wrote a letter to the owner demanding that he pay. Again the owner refused. The lawyer therefore decided to visit the PNA police to see if they would seize some of the property belonging to the owner. However the police refused, saying that the owner lived outside Ramallah, and because of the Israeli checkpoints there was no way that they could enforce the court order. Ramzi's lawyer therefore applied to the court for an enforcement order. The case had taken so long by now that there was no way that he could recoup even his own expenses from the relatively small amount of money that was owed. Four years after he had started his case, Ramzi still had not received his money.

The Meaning of Legal Claims

What is perhaps most interesting about the three case studies presented above is the extent to which, despite the almost complete paralysis of the formal legal system, substantive legal claims remained central to all the disputes. In all three case studies the workers had demanded the application of the law. They were by no means alone in doing so. Nearly all labour disputes I came across in the West Bank involved some reference to the formal requirements of labour law.

However, to say that concepts and practices of law were pervasive is not to universalise the meaning of these legal claims or to say that people in the West Bank have become western style legal individualists.⁵⁷ The predominate experience of legal rights in the West Bank came from the Israeli economy and were granted, however problematically, by the Israeli state, which was often experienced as violent and exclusionary. Legal processes therefore did not have moral value in and of themselves, as it was recognised that they depended on the contingent distribution of political resources. Furthermore, making a normative claim through the law did not rule out alternative normative frameworks being held simultaneously. There is no need to assume that the people involved in the case studies looked at the world entirely in legal terms. Ramzi had initially turned to a relative to see if he could get his job back, rather than turn immediately to the law. Law was potentially just one normative frame amongst many. The meanings of these legal claims were therefore specific to the historical context of the West Bank.

The workers turned to the law not out of some sense of absolute moral value of legal processes, but because of the substantive financial entitlements that the law promised. All of the workers had only turned to the law after their jobs had come to an end. Whilst they continued to be employed, the law was a secondary consideration. Whilst in employment, many workers were reluctant to push for the application of the law in case they lost their jobs. However, once they had lost their jobs, not only did they have nothing to lose, but in their experience, particularly after working in Israel, the law provided a potential, if often distant, source of financial support. During the second *intifada* the Palestinian economy had collapsed. A survey from Birzeit University estimates that across the West Bank 69% of

⁵⁷ See, for example: Merry (1990).

respondents had a family member who lost a job as a result of the *intifada*.⁵⁸ In this context the substantive promises of labour represented one of the few avenues through which many Palestinians could support their families. In their demonstrations, the workers at the Al-Quds factory had referred directly to their need to support their families.

However, it is also important to stress that law was not viewed in an entirely instrumental manner. Legal entitlements provided an effective set of promises about the nature of political and economic life, which it was felt that the PNA had a duty to maintain. The workers at the Al-Quds factory had demanded that Abu-Firas, as representative of the PNA, should enforce the labour law. Furthermore, although legal claims were primarily attractive because of their potential substantive benefits, issues relating to the fairness of procedural distribution were also important. According to one opinion poll taken in the West Bank and the Gaza Strip in 2000 'equality before the law' was seen as the greatest priority for the PNA by almost three quarters of all Palestinians.⁵⁹ However, procedural fairness was a general aspiration. In any given situation the achievement of substantive rights took precedence over the procedural distribution. This situation will be explained below.

The Enforcement of Legal Claims

The emphasis on substantive claims put the workers in direct conflict with their employers. If the workers at the Al-Quds factory had been granted their demands for severance pay the factory owners would have probably refused to pay. If the factory owners had won, their employees would have been denied the means to support their families. In this context, both Ramzi and the workers at Al-Quds factory had pushed for the enforcement of the law. Ramzi had said that if there were mediation, he would inevitably come away with a worse deal than he had originally sought. The Al-Quds factory workers refused the initial offer of the factory owners and instead had demanded the full application of severance pay law.

This emphasis on the enforcement of legal claims is in stark contrast to the arguments usually made about attitudes to disputes in the West Bank. For example, George Bisharat writes that negotiation and compromise by *jaha* (notables) are the 'indigenous' form of dispute resolution in the West Bank.⁶⁰ However, during my fieldwork I was frequently told that people did not want mediation, as they would be forced to take less than they wanted. Mediation would have favoured the status quo and the stronger party in the dispute. These findings are also reflected in the results of a survey carried out by Gad Barzilai among Israeli-Palestinians. Barzilai found that only 18% of his respondents favoured mediation/arbitration over formal legal settings for the processing of disputes.⁶¹ This is not to say that negotiated settlements did not occur. At the Sinjal and Al-Quds factories negotiated settlements had been reached. However, it would be a mistake to interpret these settlements as being reached through consensus or as being preferential in the eyes of the workers. Instead they were reluctantly accepted due to the practical constraints of the situation.

⁵⁸ Birzeit University Development Studies Programme, [*The Impact of the Israeli-Imposed Siege on Palestinian Living Conditions, 19th February 2001*](#), Birzeit: Birzeit University, 2001. A UN report estimated that by early 2001 unemployment had risen to 38%. See United Nations Special Coordinator for the Occupied Territories, *The Impact on the Palestinian Economy of Confrontations, Mobility Restrictions and Border Closures, 1 October 2000—31 January 2001*, Gaza: United Nations Special Coordinator for the Occupied Territories, 2001, pp.10-11.

⁵⁹ Birzeit University Development Studies Programme, *An Opinion Poll on the Priorities of a Palestinian State (31/8/2000-2/9/2000)*, Birzeit: Birzeit University, 2000.

⁶⁰ Bisharat (1989), pp.39-42.

⁶¹ Gad Barzilai, *Communities and Law: Politics and Cultures of Legal Identities*, Ann Arbor: University of Michigan Press, 2003, p.129.

Turning to the law was not an appeal to the moral quality of legal procedures or ‘solving’ disputes. Rather it was concerned with the possible obtainment of substantive entitlements through which families could be supported. These claimed entitlements put the workers in direct conflict with their employers. Coercion was therefore a central feature for effectiveness of legal claims and access to legal entitlements. The question therefore becomes whether or not, and how, the formal legal system is able to deliver the coercive backing necessary for the realisation of claimed legal rights.

In the West Bank, the PNA courts faced several problems in enforcing the law. The territorial structures of the Oslo Accords, combined with the historical legacy of the Palestinian police and their relationship with the courts, meant that the formal legal system was often unable to enforce legal claims. At the Sinjal factory the workers were advised that it would be very difficult to enforce a decision outside the centre of Ramallah. The Sinjal factory manager had even claimed that there was no way that the workers could make him pay severance. Ramzi faced similar problems. Whilst the PNA courts had jurisdiction over Palestinians throughout the West Bank, the Palestinian police did not have matching territorial control. The territorial fragmentation of the West Bank, and the resulting Israeli checkpoints, also meant that access to the courts was also often problematic for both legal professionals and litigants. Furthermore, the fact that the PNA police forces often acted more as political factions than police forces, meant that, as Ramzi discovered, even if court orders could be obtained and sent to the police, they often went unenforced.

The legal philosopher Robert Cover has argued that the “organised social practice” of coercion is central to the study of the effects of legal processes.⁶² Cover argues that in what he calls a “well developed” legal system, coercion is so well organised that it almost goes without saying.⁶³ This was not the case in the West Bank. The fragmentation of the coercive power of the law meant that access to formal legal entitlements was a real problem for many Palestinians.

Alternatives to the Courts in the Enforcement of Legal Claims

Given a weak and decentralised PNA legal system, many Palestinians searched for alternative forums through which they could enforce their substantive claims. It is important not to assume that, in the eyes of many Palestinians, the court was the proper site for the enforcement of legal claims. Legal claims are dynamic normative references that can be applied in a range of settings.⁶⁴ Given that legal processes were generally seen as lacking moral qualities in themselves, but were instead valued for the substantive claims that could be made through them, the forum and procedures of enforcement were not in themselves the most important aspect of legal claims. This opened up the way for alternative methods of enforcement. Through their struggles people sought to have their substantive legal claims enforced through multiple mechanisms. Rather than being directly concerned with the technical processes and efficiency of the courts, the workers at the Al-Quds or Sinjal factories, or even Ramzi at the pharmaceutical factory, did not care how or where their legal claims were enforced.

⁶² Robert Cover, ‘Violence and the Word’, *Yale Law Journal*, 95:8 (July 1986), pp.1602fn.

⁶³ Cover (1986), p.1624.

⁶⁴ For example, see: Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization and Emancipation*, London: Butterworths, 2002, pp.99-16.

In the context of the fragmentation of the coercive power of the law, the enforcement of legal claims could often only be done *bi-laffah* (round about), through the Governor's office or other PNA policing organisations. By turning to the Governor's office, people could cut out the courts and turn directly to a source of legal coercion. One lawyer told me that Abu-Firas was *qawi* (strong), whilst the courts were *dif* (weak).⁶⁵ At the Al-Quds factory the workers said that Abu-Firas was the only person who could *yasallim* (deliver) their *huquq* (rights). Not only could he use his own police force, but also he could call on the connections that he had throughout Ramallah, and his reputation as a representative of Yasser Arafat. Abu-Firas also had connections, real or imagined, with local gangs and political activists. Although there were very few cases where Abu-Firas actively used coercion, his reputation was usually enough to enforce a decision. Due to the weak coercive power of the formal court system, people turned to forums such as the Governor's office to enforce the substance of legal claims. In this context turning to forums such as the Governor's office should not be seen as a direct challenge to the law. Rather it represented the failure of the formal court system to live up to its substantive promises.

'Legal Patrimonialism'

Whilst the Governor's office gave people a space in which they could try to enforce their substantive claims, the office lacked the formal restrictions and procedures that meant it had to take all the cases. The Governor's office often interpreted the law with what might be called a 'nationalist' attitude. In its work it tended to stress the importance of 'national unity', and indeed issued certificates to people who had made compromises stressing their support for the Palestinian *sha'ab* (people). This meant that the office not only tried to force people to make compromises in the name of *wahda* (unity), but also often refused to intervene in cases at all. The workers at the Al-Quds factory were forced to make a compromise on their formal legal entitlements to severance pay because of the 'situation'. The Sinjal factory workers were turned away altogether. The emphasis on 'unity' often favoured the stronger party in the dispute. This resulted in a situation of 'legal patrimonialism' where legal entitlements were distributed according to the prevailing balance of power.

The fragmentation of the PNA meant that the mobilisation of legal coercion depended on the political resources of the litigants and their ability to mobilise these disparate sources of coercive power. Whilst the dispute at Al-Quds, which had a high profile, was taken on by the Governor's office, the workers at the Sinjal factory were turned away. Although all the cases outlined above concerned basic legal rights supposedly enforceable through the courts rather than industrial action, it took the collective strength of the Al-Quds workers to get their legal rights enforced. For the workers, the parallel fragmentation of the union movement, which was almost their only potential source of political and economic leverage, meant that their collective power was often limited. In Ramzi's case, as an individual worker he had very little leverage and had to resort to sending the case to court, with all its attendant problems.

Issues of procedural fairness were of course important. The people who turned to it did not see the Governor's office as a neutral, selfless or even a particularly wise organisation. It was common for people to talk about Abu-Firas as a self-interested *siyasi* (politician), and accuse him of not treating all people with the same interest. There were frequent accusations that Abu-Firas' office favoured the dominant economic and political personalities in Ramallah.⁶⁶

⁶⁵ Interview with lawyer, Ramallah, 22 September 2001.

⁶⁶ Abu-Firas' family came from the village of Bayt Lifta, in what is now Israel. After 1948 many of the residents of Bayt Lifta had become refugees and settled in the Ramallah area, becoming important political and economic figures in the region.

One of the unionists involved in the Al-Quds strike claimed to me that Abu-Firas owed his position to the large families of Ramallah and therefore did not want to make problems with them.⁶⁷ The procedural failings of the Governor's office were well recognised. However, given the wider context, it was often the only forum through which people could enforce the substantive elements of their legal claims. The lack of a strong centralised legal system meant that people had to turn to alternative and less accountable forums in order to try and enforce the law. As Suad Joseph has argued, in situations of political fragmentation and inequality, people use political and personal relationships in order to enforce legal claims, resulting in hybrid forms of law and patronage.⁶⁸

In the West Bank, the major obstacle in the way of the effective application of the law was not the internal technical efficiency of the courts, but the fragmentation of the coercive power of the law. The application of the law is not simply a matter of technical adjudication. Given the emphasis on substantive claims, the enforcement of the law was crucial for its effectiveness. However, the courts lacked an organised monopoly over coercive power and could only problematically enforce the law. The PNA courts lacked exclusive territorial control over the regions they had legal jurisdiction. Furthermore, there was considerable political ambiguity concerning the role of the PNA police forces in relation to the court. In this context, the effectiveness of legal claims depended on the ability of the litigants to mobilise political support, beyond the narrow confines of the courthouse. To do so meant gaining political backing from unions, the media or relatives, amongst others. Only by doing so could the intervention of the Governor's office, or any of the branches of the PNA police, be ensured. Without this support the law simply went unenforced and was ineffective, not just technically inefficient, as far as many Palestinians were concerned.

Furthermore, the attractiveness of the law was not simply a question of the cultural appropriateness of legal values. Law does not need a monopoly on normative assumptions in order to be effective. In the West Bank legal claims were used both instrumentally and normatively.⁶⁹ Law was used normatively in that it was felt that the PNA had a duty to provide the substantive promises of law, through which people could support their families. Law was used instrumentally, as at the same time there was recognition that the practical manifestation of legal rights in any given context was contingent and depended on the distribution of political resources. This encouraged what might be called 'legal patrimonialism', whereby legal entitlements were distributed according to political resources, rather than legal procedures. In this context it is irrelevant to argue whether access to the law is an issue of technical improvement or cultural compatibility. Instead people were working within the context of political and legal possibilities available to them in order to support their families.

Some Concluding Remarks

It is worth concluding by asking what it will take to build an effective legal system in the West Bank that responds to the needs of the people who would use it. For many people the promotion of legal processes is seen as a key stage in the creation of a stable, democratic and

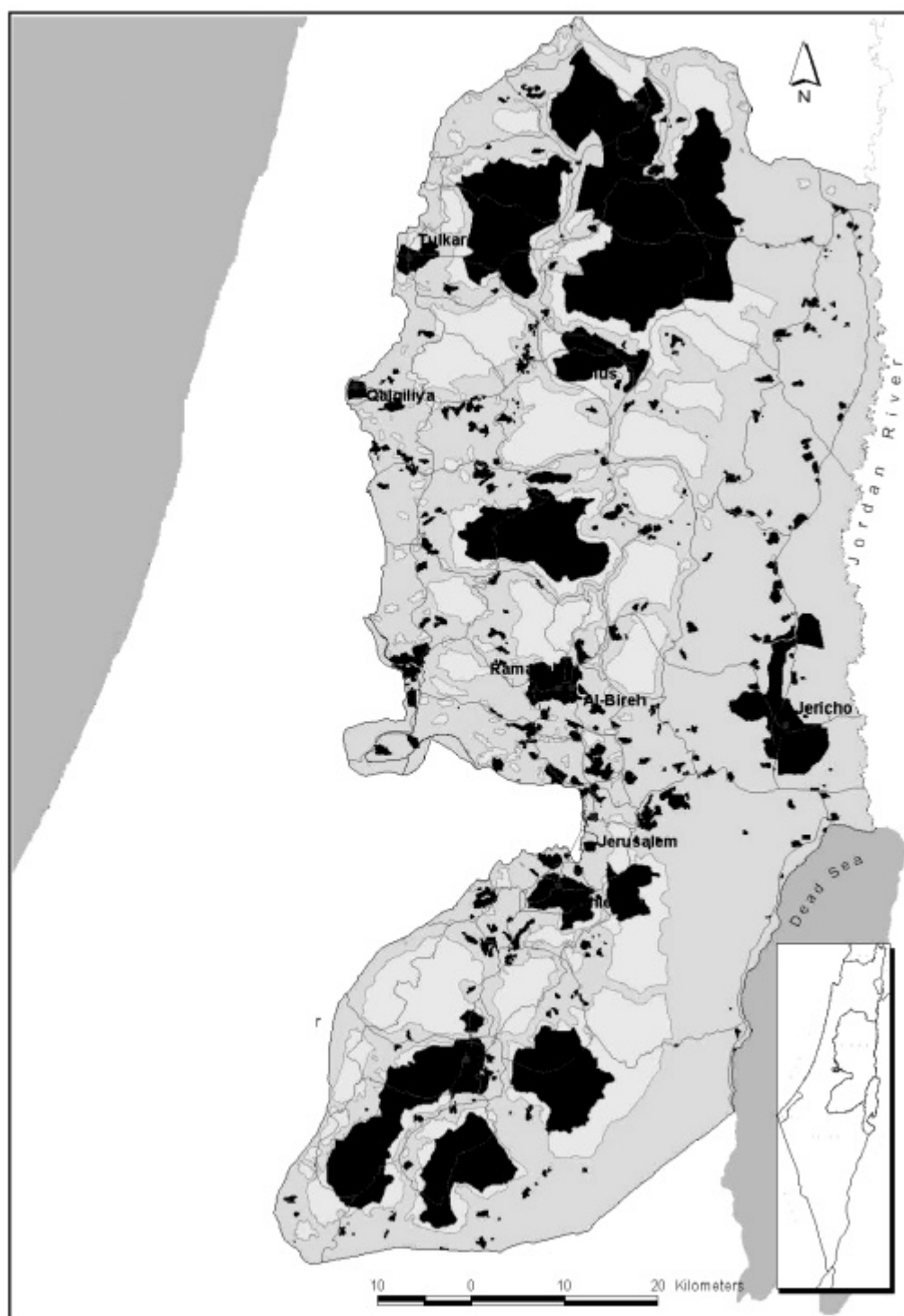
⁶⁷ Interview with unionist, Ramallah, 12 March 2001.

⁶⁸ Suad Joseph, 'Working the Law: A Lebanese Working-Class Case', in Daisy Dwyer (ed.), *Law and Islam in the Middle East*, New York: Bergin and Garvey, 1990.

⁶⁹ For a similar situation in another context see: Julia Eckert, 'Governing Laws: On the Appropriation and Adaptation of Control in Mumbai', *Max Planck Institute for Social Anthropology Working Paper* 33, Halle: Max Planck Institute for Social Anthropology, 2002; Julia Eckert, 'Rules of Law and Law's of Ruling', Paper Presented to the Research Seminar in Anthropological Theory at the London School of Economics, 4 July 2003.

accountable Palestinian polity, which will eventually result in statehood. This paper has addressed these issues by focusing on the obstacles to the attainment of substantive labour rights. These obstacles are not due to issues of cultural compatibility, or technical efficiency, but are the result of the fragmentation of the coercive power of the law, caused at least in part by the Oslo Peace Process. A context where legal processes have no absolute moral value, but are instead primarily attractive because of the substantive claims that could be made through them, opens up space for the political manipulation of the law. However, the importance of forums such as the Governor's office should not be seen as a direct challenge to the formal legal system. Rather it is a result of the failure of the formal legal process to live up to its perceived substantive promises. The territorial and organisational fragmentation of the law in the West Bank meant that legal claims lacked stable coercive backing, forcing people to turn to potentially less accountable forums for the enforcement of their legal claims. This situation produces a hybrid form of 'legal patrimonialism' where legal entitlements are distributed according to political connections. It has recently been argued that territorial and organisational sovereignty, in the Weberian sense of a unified state monopoly on violence within a given territory, is not necessary for the effectiveness of legal processes.⁷⁰ However, in the West Bank at least, where the attraction of the law for many people is the substantively enforceable claims that can be made through it, a centralised authority, that has a monopoly on coercive control, is necessary for the fulfilment of legal promises. Without a stable and centralised coercive foundation, both the substantive and procedural elements of legal processes are unobtainable. Effective legal processes are not a short cut the creation of strong and stable states, but depend on the existence of those very regimes. Strong states produce effective law, not the other way around.

⁷⁰ The literature on this issue is voluminous. For a view see: Dora Kostakopoulou, 'Floating Sovereignty: A Pathology or a Necessary Means of State Evolution?', *Oxford Journal of Legal Studies*, 22:1 (March 2002), pp.135-156; Ann Mason, 'Constructing Authority Alternatives in Colombia: Globalisation and the Transformation of Governance', *Crisis States Working Paper* 40, London: Development Research Centre, LSE, 2004; John Ruggie, 'Territoriality and Beyond: Problematising Modernity in International Relations', *International Organisation*, 47:1 (Winter 1993), pp.139-174.



Key: ■ Area A ■ Area B ■ Area C

Map 1: West Bank Showing Areas A, B and C According to the Oslo Agreements

References

- Barzilai, Gad, *Communities and Law: Politics and Cultures of Legal Identities*, Ann Arbor: University of Michigan Press, 2003
- Birzeit University Development Studies Programme, *An Opinion Poll on the Priorities of a Palestinian State (31/8/2000-2/9/2000)*, Birzeit: Birzeit University, 2000
- Birzeit University Development Studies Programme, *The Impact of the Israeli-Imposed Siege on Palestinian Living Conditions*, 19 February 2001, Birzeit: Birzeit University, 2001
- Bisharat, George, *Palestinian Lawyers and Israeli Rule: Law and Disorder in the West Bank*, Austin: University of Austin Press, 1989
- Boutros-Ghali, Boutros, *An Agenda for Peace*, New York: United Nations, 1992
- Budeiri, Musa, *The Palestinian Communist Party, 1919-1948: Arab and Jew in the Struggle for Internationalism*, London: Ithaca Press, 1979
- Brown, Nathan, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, Cambridge: Cambridge University Press, 1997
- Brown, Nathan, *Palestinian Politics After the Oslo Accords: Resuming Arab Palestine*, Berkeley: University of California Press, 2003
- Carothers, Thomas, 'The Rule of Law Revival', *Foreign Affairs*, 77:2 (March /April 1998), pp. 95-106
- Carothers, Thomas, 'Promoting the Rule of Law Abroad: The Problem of Knowledge', *Democracy and Rule of Law Project Working Paper 34*, Washington: Carnegie Endowment for International Peace, 2003a
- Carothers, Thomas, 'Is Gradualism Possible? Choosing Strategy for Promoting Democracy in the Middle East', *Democracy and Rule of Law Project Working Paper 39*, Washington: Carnegie Endowment for International Peace, 2003b
- Council on Foreign Relations, *Strengthening Palestinian Public Institutions*, Independent Task Force Report, Washington: Council on Foreign Relations, 1999
- Cover, Robert, 'Violence and the Word', *Yale Law Journal*, 95:8 (July 1986), pp.1601-1631
- Department of State and USAID, *Security, Democracy, Prosperity: Strategic Action Plan, Fiscal Years 2004-2009, Aligning Diplomacy and Development Assistance*, Washington: Department of State and USAID, 2003
- DfID, *Justice and Poverty Reduction*, London: DfID, 2000
- DfID, *DfID Policy Statement on Safety, Security and Accessible Justice*, London: DfID, 2003
- Diamond, Stanley, 'The "Rule of Law" Versus the Order of Custom', *Social Research*, 38:1 (Spring 1971), pp.42-72
- Doumani, Bishara, *Rediscovering Palestine: Merchants and Peasants in Jabal Nablus, 1700-1900*, Berkeley: University of California Press, 1995
- DPK, *Rule of Law Reporter: West Bank/Gaza Rule of Law Project*, 1:1 (July 2003), pp.1-8
- Duffield, Mark, 'Social Reconstruction and the Radicalization of Development: Aid as a Relation of Global Liberal Governance', *Development and Change*, 33:5 (November 2002), pp.1059-1071

Eckert, Julia, 'Governing Laws: On the Appropriation and Adaptation of Control in Mumbai', *Max Planck Institute for Social Anthropology Working Paper* 33, Halle: Max Planck Institute for Social Anthropology, 2002

Eckert, Julia, 'Rules of Law and Law's of Ruling', Paper Presented to the Research Seminar in Anthropological Theory at the London School of Economics, 4 July 2003

EU, 'Individual Service Contract Forecast: Technical Assistance for the programme "Empowering the Palestinian Judicial System" West Bank and Gaza', viewed on 23 February 2003 at www.europa.eu.int/comm.europeaid/tender/data/AOF42522.htm, 2003

Farsakh, Leila, *Palestinian Employment in Israel: 1967-1997: A Review*, Ramallah: MAS, 1998

Frisch, Hillel, 'Modern Absolutism or Neo-Patrimonial State Building? Customary Law, Extended Families and the Palestinian Authority', *International Journal of Middle East Studies*, 29:3 (August 1997), pp.341-358

Frynas, Jêdrzaj, 'Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners', *Social and Legal Studies*, 10:3 (September 2001), pp.397-419

Golub, Stephen, 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative', *Democracy and Rule of Law Project Working Paper* 41, Washington: Carnegie Endowment for International Peace, 2003

Hajjar, Lisa, *Authority, Resistance and the Law: A Study of the Israeli Military Court System in the West Bank and Gaza*, Berkeley: University of California Press, forthcoming

Hilterman, Joost, *Behind the Intifada*, Princeton: Princeton University Press, 1991

Joseph, Suad, 'Working the Law: A Lebanese Working -Class Case', in Daisy Dwyer (ed.), *Law and Islam in the Middle East*, New York: Bergin and Garvey, 1990

Kelly, Tobias, *Law at Work: Law, Labour and Citizenship Among West Bank Palestinians*, University of London: Unpublished PhD Thesis, 2003

Kidder, Robert, 'Towards an Integrated Theory of Imposed Law', in Barbara Harrell-Bond and Sandra Burman (eds), *The Imposition of Law*, New York: Academic Press, 1979

Klein, Menachem, 'By Conviction Not by Infliction: The Debate Over Reforming the Palestinian Authority', *Middle East Journal*, 57:2 (Spring 2003), pp.194-212

Kostakopolou, Dora, 'Floating Sovereignty: A Pathology or a Necessary Means of State Evolution?' *Oxford Journal of Legal Studies*, 22:1 (March 2002), pp.135-156

Kritz, Neil, 'The Rule of Law in the Post-Conflict Phase: Building a Stable Peace', in Chester Crocker, Fen Hampson and Pamela Aall (eds), *Managing Global Chaos: Sources and Responses to International Conflict*, Washington: United States Institute for Peace Press, 1996

Latto, Benedict, 'Governance and Conflict Management: Implications for Donor Intervention', *Crisis States Working Paper* 9, London: Development Research Centre, LSE, 2002

Lockman, Zachary, *Comrades and Enemies: Arab and Jewish Workers in Palestine, 1906-1948*, Berkeley: University of California Press, 1996

Mani, Rama, 'Conflict Resolution, Justice and the Law: Rebuilding the Rule of Law in the Aftermath of Complex Political Emergencies', *International Peacekeeping*, 5:3 (Autumn 1998), pp.1-25

- Mason, Ann, 'Constructing Authority Alternatives in Colombia: Globalisation and the Transformation of Governance', *Crisis States Working Paper* 40, London: Development Research Centre, LSE, 2004
- Merry, Sally Engle, *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans*, Chicago: University of Chicago Press, 1990
- Milton-Edwards, Beverly, 'Internal Security and Citizenship Under the Palestinian National Authority', in Nils Butenschon, Uri Davis, and Manuel Hassassian (eds), *Citizenship and the State in the Middle East*, Syracuse: Syracuse University Press, 2000
- Organisation for Security and Cooperation in Europe, 'Concluding Document of the OSCE Copenhagen Conference on the Human Dimension, June 29th 1990', *International Legal Materials*, 29 (1990), pp.1505-1506
- Hugh Roberts, 'North African Islamism in the Blinding Light of 9-11', *Crisis States Working Paper* 34, London: Development Research Centre, LSE, 2003
- Robinson, Glen, 'The Politics of Legal Reform in Palestine', *Journal of Palestine Studies*, 27:1 (Autumn 1997), pp.51-60
- Ruggie, John, 'Territoriality and Beyond: Problematising Modernity in International Relations', *International Organisation*, 47:1 (Winter 1993), pp.139-174
- Santos, Boaventura de Sousa, *Toward a New Legal Common Sense: Law, Globalization and Emancipation*, London: Butterworths, 2002
- Shalev, Michael, 'Jewish Organized Labor and the Palestinians: A Study of State/Society Relations in Israel', in Baruch Kimmerling (ed.), *The Israeli State: Boundaries and Frontiers*, New York: SUNY Press, 1989
- Trubek, David and Galanter, Marc, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development', *Wisconsin Law Review*, 14:4 (Winter 1974), pp.1062– 1101
- United Nations Special Coordinator for the Occupied Territories (UNSCOT), *Rule of Law Development in the West Bank and Gaza Strip, Survey and State of the Development Effort*, Gaza: United Nations Special Coordinator for the Occupied Territories, 1999
- United Nations Special Coordinator for the Occupied Territories (UNSCOT), *The Impact on the Palestinian Economy of Confrontations, Mobility Restrictions and Border Closures, 1 October 2000—31 January 2001*, Gaza: United Nations Special Coordinator for the Occupied Territories, 2001
- United States Institute for Peace, *Establishing the Rule of Law in Iraq: Special Report*, Washington: United States Institute for Peace, 2003
- USAID, *Congressional Budget Justification for West Bank and Gaza Strip*, viewed on 26th February 2004 at www.usaid.gov/policy/budget/cbj2004/asia_near_east/west_bank_gaza.pdf, 2003
- Usher, Graham, 'The Politics of Internal Security: The Palestinian Authority's New Security Services', in George Giacaman and Dag Lonning (eds), *After Oslo: New Realities: Old Problems*, London: Pluto, 1998
- Wilson, Richard, and Mitchell, Jon, (eds), *Human Rights in Global Perspective: Anthropological Studies of Rights, Claims and Entitlements*, London: Routledge, 2003
- Wing, Adrien, 'Legal Decision-Making During the Palestinian Intifada: Embryonic Self-Rule', *Yale Journal of International Law*, 18:1 (Winter 1993), pp.95-153

Working Papers in Series (January 2002 to January 2004)

- WP8 Shaibal Gupta, 'Subaltern Resurgence: A reconnaissance of Panchayat election in Bihar' (January 2002)
- WP9 Benedict Latto, 'Governance and Conflict Management: Implications for donor intervention' (February 2002)
– *Also available in Spanish*
- WP10 Jo Beall, 'The People Behind the Walls: Insecurity, identity and gated communities in Johannesburg' (February 2002) – *Also available in Spanish*
- WP11 Jo Beall, Owen Crankshaw & Susan Parnell, 'Social Differentiation and Urban Governance in Greater Soweto: A case study of post-Apartheid reconstruction' (February 2002) – *Also available in Spanish*
- WP12 E. A. Brett, 'Liberal Theory, Uneven Development and Institutional Reform: Responding to the crisis in weak states' (July 2002)
- WP13 John Harriss, 'The States, Tradition and Conflict in North Eastern States of India' (August 2002)
- WP14 David Keen, 'Since I am a Dog, Beware my Fangs: Beyond a 'rational violence' framework in the Sierra Leonean war' (August 2002)
- WP15 Joseph Hanlon, 'Are Donors to Mozambique Promoting Corruption?' (August 2002)
- WP16 Suzette Heald, 'Domesticating Leviathan: Sungusungu groups in Tanzania' (September 2002)
- WP17 Hugh Roberts, 'Moral Economy or Moral Polity? The political anthropology of Algerian riots' (October 2002)
- WP18 James Putzel, 'Politics, the State and the Impulse for Social Protection: The implications of Karl Polanyi's ideas for understanding development and crisis' (October 2002)
- WP19 Hugh Roberts, 'From Segmentarity to Opacity: on Gellner and Bourdieu, or why Algerian politics have eluded theoretical analysis and vice versa' (December 2002) – *Also available in French*
- WP20 Jonathan DiJohn, 'Mineral-Resource Abundance and Violent Political Conflict: A critical assessment of the rentier state model' (December 2002)
- WP21 Victoria Brittain, 'Women in War and Crisis Zones: One key to Africa's wars of under-development' (December 2002)
- WP22 Apurba Baruah, 'Tribal Traditions and Crises of Governance in North East India, with special reference to Meghalaya' (March 2003)
- WP23 Giovanni M. Carbone, 'Emerging Pluralist Politics in Mozambique: the Frelimo -Renamo Party System' (March 2003)
- WP24 Francisco Gutiérrez Sanín, 'Fragmentación electoral y política tradicional en Colombia – piezas para un rompecabezas en muchas dimensiones' (March 2003) – *English version forthcoming*
- WP25 Francisco Gutiérrez Sanín, 'Los tiempos de las involuciones democráticas' (March 2003) – *English version forthcoming*
- WP26 Manoj Srivastava, 'The Dynamics of achieving 'Power' and 'Reform' as a Positive-Sum Game: A report on the preliminary ethnographic explorations of the politics-governance nexus in Madhya Pradesh, India' (March 2003)
- WP27 Francisco Gutiérrez Sanín, 'Criminal Rebels? A discussion of war and criminality from the Colombian experience' (April 2003)
- WP28 Luis Eduardo Fajardo, 'From the Alliance for Progress to the Plan Colombia: A retrospective look at US aid to Colombia' (April 2003)
- WP29 Jean-Paul Faguet, 'Decentralisation and local government in Bolivia' (May 2003) – *Also available in Spanish*
- WP30 Maria Emma Wills & Maria Teresa Pinto, 'Peru's failed search for political stability' (June 2003)
- WP31 Robert Hunter Wade, 'What strategies are viable for developing countries today? The World Trade Organisation and the shrinking of 'development space' (June 2003)
- WP32 Carlos Medina & Hermes Martínez, 'Violence and drug prohibition in Colombia' (August 2003)
- WP33 Antonio Giustozzi, 'Respectable Warlords? The Politics of State-Building in Post-Taleban Afghanistan' (September 2003)
- WP34 Hugh Roberts, 'North African Islamism in the Blinding Light of 9-11' (October 2003)
- WP35 Dennis Rodgers, 'Dying For It: Gangs, Violence and Social Change in Urban Nicaragua' (October 2003)
- WP36 Giovanni M. Carbone, 'Developing Multi-Party Politics: Stability and Change in Ghana and Mozambique' (November 2003)
- WP37 David Keen, 'Demobilising Guatemala' (November 2003)
- WP38 Miguel García & Gary Hoskin, 'Political Participation and War in Colombia: An Analysis of the 2002 Elections' (November 2003)
- WP39 Apurba Baruah, 'Ethnic Conflicts and Traditional Self-governing Institutions: A Study of Laitumkrah Dorbar' (January 2004)
- WP40 Ann C. Mason, 'Constructing Authority Alternatives in Colombia: Globalisation and the Transformation of Governance' (February 2004)

It is our intention for all Crisis States Programme working papers eventually to be available in English, Spanish and French. Some in the series have already been translated. For further details, and an up to date list of Working Papers, please consult our website (www.crisisstates.com).

The aim of the Crisis States Programme (CSP) at DESTIN's Development Research Centre is to provide new understanding of the causes of crisis and breakdown in the developing world and the processes of avoiding or overcoming them. We want to know why some political systems and communities, in what can be called the "fragile states" found in many of the poor and middle income countries, have broken down even to the point of violent conflict while others have not. Our work asks whether processes of globalisation have precipitated or helped to avoid crisis and social breakdown.

Crisis States Programme collaborators

In India:

Asia Development Research Institute (Patna, Bihar)
NEIDS, North-East Hill University (Shillong)

In South Africa:

Wits Institute of Social & Economic Research (WISER)
Sociology of Work Workshop (SWOP)
Department of Sociology
(University of the Witwatersrand, Johannesburg)

In Colombia:

IEPRI, Universidad Nacional de Colombia
Universidad de los Andes
Universidad del Rosario

Research Objectives

- 1 We will assess how constellations of power at local, national and global levels drive processes of institutional change, collapse and reconstruction and in doing so will challenge simplistic paradigms about the beneficial effects of economic and political liberalisation.
- 2 We will examine the effects of international interventions promoting democratic reform, human rights and market competition on the 'conflict management capacity' and production and distributional systems of existing polities.
- 3 We will analyse how communities have responded to crisis, and the incentives and moral frameworks that have led either toward violent or non-violent outcomes.
- 4 We will examine what kinds of formal and informal institutional arrangements poor communities have constructed to deal with economic survival and local order.



crisis states programme

Development Research Centre,
Development Studies Institute (DESTIN),
LSE, Houghton Street, London WC2A 2AE
Tel: +44 (0)20 7849 4631 Fax: +44 (0)20 7955 6844
e-mail: csp@lse.ac.uk

