Human Rights and Democracy:

Conceptualization and Application in Palestine

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"1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right to equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held in secret vote or by equivalent free voting procedures." - Universal Declaration of Human Rights (UDHR), Article 21

"Every citizen shall have the right and opportunity… (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country." - International Convention on Civil and Political Rights (ICCPR), Article 25

Abstract

Democracy and human rights are distinct yet interrelated concepts, with democracy referring to government by the people, and human rights referring to universal rights that apply to all individuals in all societies. This paper examines the interdependence of human rights and democracy, with a specific focus on the application of these concepts in the Palestinian Territories. The paper first discusses the conceptualization of democracy in terms of mechanisms, institutions, civil society and citizen rights, then discusses the conceptualization of human rights with specific focus on the human security perspective. The paper then examines human rights and democracy in Palestine with regards to elections, political parties, separation of powers, judiciary reform, security, and civil society. The paper concludes that there is widespread popular support for democracy in Palestine, but the development of institutions to exercise the

public will has been frustrated by both internal and external factors, most significantly the occupation. The paper concludes that the human rights framework should be utilized to overcome these obstacles and inform the establishment of a Palestinian state based on the principles of a substantive, liberal democracy.

Introduction

Human rights and democracy have historically been viewed as separate, albeit parallel, concepts. However, understandings of both human rights and democracy are dynamic and varied, and recent re-conceptualizations of both ideas have led to the emergence of a discourse that recognizes their interdependence. Specifically, definitions of democracy have expanded from the traditional procedural democracy to encompass the ideals of a substantive, liberal democracy. Likewise, the human rights framework has begun to further develop conceptions of social, economic, and cultural rights, in addition to civil and political rights, thus expanding the notion of human rights to include human security, and extending human rights to the collective as well as the individual level. These renewed definitions present opportunities for recognizing the convergence of the theories and fields related to human rights and democracy.

The necessity of acknowledging the interdependence of democracy and human rights is becoming especially important in emerging democracies such as Palestine. In these cases, in which the development and reform of democratic institutions is starting to take place, it is imperative to ensure that such institutions are built on foundations of both human rights and democracy if they are to be sustainable. To be sure, previous attempts at democracy by the Palestinian Authority (PA) in the 1990s proved to be ephemeral, largely due to the absence of protection for human rights. Likewise, human rights

advocates have found it difficult to affect systemic change in the absence of a legitimate democracy. Thus, as Palestine looks ahead to new opportunities for democracy in the future, it is necessary to integrate the broadened human rights framework, including human security, with the ideals and institutions of a liberal, participatory democracy.

This paper begins with a theoretical discussion of the principles of democracy, distinguishing between substantive and procedural democracy and identifying key elements and institutions inherent in a liberal democracy. The next section examines the emerging re-conceptualization of the human rights framework, including the human security perspective, which has enhanced the complementarity between human rights and democracy. The following section discusses the convergence of the democracy and human rights fields and theories, and concludes that the two concepts are not only complementary, but are indeed interdependent. The second half of the paper focuses on the application of this theory in the case of Palestine by analyzing past and present experiences with democracy and human rights in the Occupied Territories, including obstacles and points of progress, and discussing recommendations for future implementation.

Human Rights & Democracy: Theoretical Analysis

Defining Democracy: Principles & Institutions

The idea of democracy has been understood and applied in different ways, both temporally and culturally, with democracy taking various forms in different societies. From a historical perspective, the direct democracy of ancient Athens has been transformed into the representative democracy that is common today. Likewise, former

restrictions on the political participation of women and other marginalized groups have been challenged in modern times to allow for more inclusive democracies. Most recently, both theorists and practitioners of democracy are starting to further articulate differences between procedural democracies and substantive, liberal democracies. However, all of these forms of democracy are based to some extent on the original Greek notion of *demokratia*, that is, "government by the people," from the words *demos* (people) and *kratos* (rule or power). This core concept still forms the crux of modern definitions of democracy, including the 1993 Vienna Declaration's statement that "democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives."[i]   From this starting point, it is possible to identify several key principles and institutions that are inherent to a sustainable democracy.

While historically there has been more emphasis on the political institutions and procedures that comprise democracy, namely elections, political parties, and governmental bodies, increased attention has recently been given to the ideals and principles that underscore those mechanisms. As stated by David Beetham, Director of the Centre for Democratization Studies at the University of Leeds, "to define democracy simply in institutional terms is to elevate means into ends, and to concentrate on the forms without the substance."[ii] Jack Donnelly, Professor of International Studies at the University of Denver, agrees, noting that "pure procedural democracy can easily denigrate into non-democratic or even anti-democratic formalism," thus, "substantive conceptions rightly insist that we not lose sight of the core values of popular authority and control over government."[iii] However, Donnelly also notes that purely substantive

approaches fail to recognize the "idea of the people *ruling* rather than just benefiting… The term 'democratic' easily slides into an essentially superfluous synonym for 'egalitarian.'"[iv] That is, government *for* the people is not synonymous with government *by* the people, and therefore may or may not be democratic. To be sure, substantive conceptions risk being susceptible to normative associations that identify any positive sociopolitical elements as indicators of democracy.

This paper takes the position that neither "substantive" nor "procedural" conceptions of democracy should be considered more important than the other; indeed, it is questionable if the two notions can even be separated. Instead, substantive and procedural elements should be viewed as complementary and in fact essential to each other. The principles that underscore substantive democracy will only remain theoretical ideals unless mechanisms are present for translating those ideals into reality, while procedural institutions, however democratic in form, are meaningless if they do not yield ends that reflect democratic values. For the remainder of this paper, the term "substantive democracy" will refer to democracies that embody both the principles *and* the institutions that form the foundation of democracy, in contrast to "electoral democracies," which may be democratic in name and form but not in practice.

The basic elements of a substantive democracy, according to Beetham, "are that the people have a right to a controlling influence over public decisions and decision makers, and that they should be treated with equal respect and as of equal worth in the context of such decisions."[v] Beetham refers to these concepts as *popular control* and *popular equality*, both of which contribute to the foundation of the principles and institutions that inform democracy. These primary elements, in conjunction with the rule

of law, open government, and public participation, form the core of substantive democracies, as reflected in their mechanisms and institutions, and the presence of civil society and citizen rights.

Mechanisms

The primary indicator of democracy is the presence of popular elections. According to Beetham, "popular authorization is achieved through regular competitive elections according to universal secret ballot, which ensures voters a choice of candidates and policies and gives them the opportunity to dismiss politicians who no longer command their confidence."[vi] As Shadrack Gutto, Director of the Centre for Applied Legal Studies at the University of Witwatersrand in Johannesburg, states however, "for elections to be substantially 'free and fair,' it is imperative that enabling principles and rights be observed," including "the rights to or freedom of association, opinion, expression, and assembly." [vii] Gutto also notes the importance of available and adequate material and human resources to educate voters, register voters, monitor the voting process, count election results, and reconcile disputes. Indeed, the democratic nature of an electoral process should be assessed by "the reach, inclusiveness, independence, integrity, and impartiality of elections, as well as how equally the electoral process treats citizens, how much effective choice it offers them, how far the government actually fulfills the electoral choices made, and how many people in practice exercise the right to vote."[viii] In addition, political parties function as a mechanism within electoral systems by organizing different policies into cohesive programs, nominating appropriate candidates, and advocating for the implementation of decisions supported by the electorate.

Institutions

As Beetham articulates, "although elections form a key mechanism for the popular control of government, they are of limited effectiveness on their own without institutions that secure a government's continuous accountability to the public."[ix] Gutto agrees, noting how "elected representatives can play a democratic role only to the extent that enabling institutions of governance with clear systems and procedures that are secured by a normative framework and laws exist."[x] Open and accountable political institutions depend primarily on the decentralization of governance and the separation of powers between the executive, legislative, and judiciary spheres. These branches should be monitored through a system of checks and balances by each other, through horizontal accountability, and also be answerable to the people as a whole through vertical accountability. These institutions' specific roles and functions can be best understood and implemented when articulated in a constitution or equivalent "rule of law." The constitution should also articulate the financial responsibilities of the legislature, as well as allow for a system of regional and local government.

Civil Society

As Gutto notes, "however effective public institutions and accountability processes may be in any society aspiring to democracy, their effectiveness and impact would nevertheless be diminished in the absence of a vibrant and activist civil society."[xi] Civil society, sometimes referred to as "democratic society," creates opportunities for active citizenship and direct involvement in the functioning of a democracy. The key elements of civil society include an independent media, sources of policy expertise independent of the state, and associations that may include organizations dedicated to

social services, development, health, education, human rights, women's empowerment, or other issues. An active civil society has the additional benefit of fostering respect for the rights of other citizens by creating environments of diversity and dialogue.

Citizen Rights

Democracy also includes the presence of political and civil rights for citizens, especially freedom of expression, association, and assembly, which require the guarantee of due legal process and liberty and security of person to be effective. There has been recent debate on the necessity of economic, social, and cultural rights as conditions of democracy, however, it is becoming more widely accepted that "for civil and political rights and freedoms to have any value, citizens must possess the capacity to exercise them."[xii] The majority of political, civil, economic, social, and cultural rights at the national level relate directly or indirectly to the international human rights framework, as will be discussed further.

The Dynamism of Democracy

It should be noted that, despite these common elements (mechanisms, institutions, civil society, and citizen rights), democracy can take a variety of forms; there is no "one size fits all" democracy. As Beetham explains, "different societies and diverse circumstances require different arrangements if democratic principles are to be effectively realized."[xiii] Abdul Aziz Said, Professor of International Peace and Conflict Resolution at American University, agrees, noting that "the form of democracy is always cast in the mold of the culture of a people;" he thus urges a "more democratic theory of democracy" that recognizes its potential for variation and dynamism.[xiv] Relatedly, Said specifically emphasizes that "democracy is not a western product." As noted above, the

principles and institutions that inform substantive democracy are based on tenets that transcend national and political ideologies; thus, democracy is not exclusive to the West. This point has several implications. First, it implies that there is no fundamental incompatibility between democracy and the Arab world, nor between democracy and Islam. As Said notes, "the lack of democracy in the Middle East is due more to a lack of preparation for it than to a lack of religious and cultural foundations."[xv] Secondly, the idea that democracy is not exclusive to the West can serve to caution superpowers to avoid imposing their models of democracy on other societies, and encourage them to instead assume a supportive role in developing democracy in local contexts. Likewise, superpowers should be cautious of pursuing national interests under the guise of democracy to prevent the association of democracy with western imperialism. At the same time, local democracy advocates are called upon to consider how their social mechanisms, values, and contexts can inform culturally sustainable democracies.

Defining Human Rights: The Human Security Perspective

As Donnelly summarizes, "human rights are, literally, the rights that one has simply as a human being. As such they are equal rights, because we are all equally human beings. They are also inalienable rights, because no matter how inhumanely we act or are treated we cannot become other than human beings."[xvi] Human rights are defined in several key documents, namely, the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948; the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966; and the International Covenant on Economic, Social, and Cultural Rights, also adopted in 1966. The Vienna

Declaration, adopted at the World Conference on Human Rights in 1993, further expanded the meaning of human rights.

Originally, human rights were developed to outline a set of individual rights that states were required to respect or provide for their citizens. The framework not only included the *prohibition* of certain acts, but also the "imposition of *the duty to perform* certain obligations in order to promote and protect the enjoyment of certain rights."[xvii] In other words, abuse of human rights can take the form of both violations and denials. While the full realization of human rights is still an ideal, much has been achieved in the name of human rights. According to Anthony Langlois, Professor of International Relations at Flinders University in Adelaide, Australia, achievements include "international recognition of human rights as the basic set of norms of human behavior, the internationalization of human rights institutions of various types, and the development of International Human Rights Law."[xviii]

The notion of human rights has begun to be broadened in recent years. First, the responsibility of ensuring human rights has been expanded beyond only state governments to include individuals, groups of people, and other non-state actors. Secondly, the common association of human rights law with peacetime (and, in turn, the association of international humanitarian law (IHL) with wartime) has given way to the widespread recognition that human rights law applies in conflict situations, just as it does in periods of stability. Finally, and perhaps most importantly for the context of this paper, the past ten years have seen increased acknowledgment of the interdependence and indivisibility of human rights. While this has always been true in theory, in the past the two separate Covenants suggested divisions between political and civil rights and

economic, social, and cultural rights. While some divisions still exist, the gaps between the two fields of rights were largely bridged in 1993 at Vienna, where it was declared that "human rights are universal, indivisible and interdependent and interrelated" and that the international community "must treat human rights globally in a fair and equal manner."[xix]

In other words, the notion of human rights is expanding to include the concept of human security in a more conscious and deliberate manner. According to the United Nations Development Report of 1994, "human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life—whether in homes, in jobs or in communities."[xx] This renewed interest in human security and development has accordingly placed increased emphasis on economic and social rights, thus contributing to the re-conceptualization of the human rights framework. As Beetham summarizes:

> The idea of economic and social rights as *human* rights expresses the moral intuition that, in a world rich in resources and the accumulation of human knowledge, everyone ought to be guaranteed the basic means for sustaining life, and that those denied these are victims of a fundamental injustice. Expressing this intuition in the form of human rights both gives the deprived the strongest possible claim to that of which they are deprived and emphasizes the duty of responsible parties to uphold or help them meet their entitlement.[xxi]

Democracy and Human Rights

Democracy and human rights are clearly different notions; "they are distinct enough for them to be viewed as discreet and differentiated political concepts."[xxii] Whereas democracy aims to empower "the people" collectively, human rights aims to empower individuals. Similarly, human rights is directly associated with the *how* of ruling, and not just the *who*, which may be the case in an electoral democracy, though not

in a substantive democracy. Thus, "democracies" exist that do not necessarily protect human rights, while some non-democratic states are able to ensure some, though not all, human rights. On another level, the international acceptance, institutionalization, and legal aspects of human rights mentioned above do not apply to democracy.

These distinctions have influenced the traditional separation of the theories and fields of human rights and democracy. From the human rights perspective, many have adhered to the separationist theory, which argues that "democracy is not immediately needed for the observation of human rights and that the maintenance of an essential link between human rights and democracy may well have the effect of delaying the implementation of human rights norms in various states."[xxiii] A recent corollary of the separationist theory is the "democracy as neo-imperialism" notion that charges that "democracy is a 'Western-centric' approach to government that is not found indigenously in all societies and is not desirable for all peoples."[xxiv]

These arguments are subject to several key counter arguments that illustrate the interdependence of human rights and democracy. First, in terms of the neo-imperialist argument, it is certainly true that Western superpowers should not impose their particular forms of democracy on other societies and expect them to be accepted and sustainable, as noted above. However, it is equally culturally insensitive to claim that democracy is only an option in the West, or that it is incompatible with other cultures. Secondly, in reference to the separationist theory, while it would be unwise to "wait" for democracy to start promoting human rights, it must also be recognized that some human rights are intrinsically linked with institutions and principles of democracy. Furthermore, separating human rights from democracy undermines opportunities for implementation,

in that it reduces human *rights* to *standards* or *norms*; as Langlois states, "human rights amount to little more than charity if they are not functioning in a democratic framework."[xxv]

Essentially, the inclination to separate human rights from democracy is rooted in the acceptance of their traditional definitions. An electoral democracy that lacks the other institutions and principles of a substantive democracy can function without necessarily guaranteeing human rights, just as some narrowly defined human rights can still be realized in the absence of democracy. However, the re-conceptualization of democracy as substantive, and of human rights as being more far-reaching and inclusive, underscores the necessity of linking the two. This interdependence occurs on the levels of principle, enforcement, and specific rights.

On the conceptual level, as Langlois notes, "both contemporary liberal democracy and human rights are derived from and express the assumptions of liberalism,"[xxvi] which include individualism, egalitarianism, and universalism. Furthermore, both democracy and human rights pursue a common agenda, and it is "only within a democracy [that] human rights standards or norms [are] transcended such that the values articulated by these norms or standards are genuine rights."[xxvii] In addition, it is only in a well-functioning democracy that individual citizens have access to mechanisms to ensure the implementation of their rights.

The relationship between human rights and democracy is perhaps most clear through an examination of civil and political rights, especially those articulated in Article 21 of the UDHR and Article 25 of the ICCPR, both of which ensure citizen participation in government through free and fair elections and through direct service and

participation. These rights are related to the rights of expression, association, assembly, and movement, which are also interdependent with democracy, as well as the rights to liberty, security of person, and the guarantee of due process of the law.

Economic, social, and cultural rights are also being increasingly recognized as being mutually dependent, if not integral, with democracy. As Gutto writes, "the pursuit of the right to development and socio-economic rights is strongly associated with the social democracy vision of poverty eradication and the equitable distribution of ownership, control, and the benefits of wealth."[xxviii] Indeed, political and civil rights can best (and perhaps only) be realized by citizens who meet a basic level of physical security in terms of access to shelter, water, sanitation, and food, as well as education, healthcare, and employment or income. Socially, democracy is interrelated with rights to equality and non-discrimination, especially for marginalized groups including women and minorities. Culturally, the respect for diversity and pluralism inherent to democracy is linked to the protection of rights related to language, religion, or ethnicity.

It is thus clear that human rights and democracy are interdependent, especially when defined in the broader conceptualizations of democracy as *substantive* democracy, and human rights as civil, political, economic, social, and cultural rights. These different kinds of rights cannot be realized in a non-democratic system, and likewise, no democracy is sustainable without the presence of these rights. While this relationship is evident in theory, it is perhaps more useful to consider the interdependence of human rights and democracy through the case study of an emerging democracy.

Human Rights and Democracy in Palestine

The status of democracy in Palestine is somewhat open to interpretation. Many democracy advocates agree that Palestine is moving in the direction of becoming a substantive democracy, but that it still has ways to go. Specifically, the will of the people reflects a keen desire for democracy, but that has yet to translate into viable democratic institutions and principles. As Nathan J. Brown of the Carnegie Endowment for International Peace states, "Palestine is… a model liberal democracy. Its most significant flaw is that it does not exist."[xxix] That is, democracy in Palestine is evident in theory, but it has not been able to fully manifest itself in practice.

Obstacles to realizing both human rights and democracy are rooted in both external and internal factors. In terms of external factors, the Israeli occupation and the protracted Israeli-Palestinian conflict have posed obvious challenges to the development of democracy and human rights in Palestine. To start with democracy, political reform is difficult in the midst of any ongoing violent conflict.[xxx] In the case of Israel-Palestine, the challenge of political reform is further exacerbated by the nature of the occupation, which creates a complicated system of dual authority between Israel and the PA. Indeed, according to democracy advocates interviewed for this report,[xxxi] the occupation remains the most prominent obstacle to Palestinian democracy.

Challenges resulting from the external influence of the occupation are interrelated with internal factors as well, most notably corruption in the executive branch of the PA under Arafat and the failure of the security services to be effective. Indeed, the Oslo Accords "were predicated on the ability of the PA to enhance Israeli security and thus focused on enabling the executive and placing few fetters on the security services in

internal matters."[xxxii] In addition to, and perhaps, because of the fact that the PA lacked sovereignty, it also lacked legitimacy. This problem emerged not only from the external fact of the occupation however, but also from internal shortcomings such as centralization of power, lack of accountability and transparency, corruption, and human rights violations.

To be sure, human rights, like democracy, have suffered from both internal and external factors. On the one hand, numerous human rights violations by Israel against Palestinians have been cited, including targeted assassinations, restrictions on movement, collective punishment, and home demolitions. On the other hand, Palestinian security forces under the PA have also been guilty of numerous human rights violations, including detention without trial and/or specific charges, improper trials, torture, maltreatment, and use of the death penalty.[xxxiii]

Both human rights and democracy have also been hindered by poverty and the lack of human security in many communities in Palestine. As George Giacaman of Muwatin (the Palestinian Institute for the Study of Democracy) stated, "the democratic system is not sustainable with rampant poverty. Democracy requires a more equitable economic system based on a fair distribution of wealth."[xxxiv] Khalid Nassif of the Civic Forum Institute agreed, noting that democracy regresses in the absence of economic and social rights that ensure human security. According to Nassif, "when the economy improves, people have a greater sense of freedom and safety, and they can give more time and attention to joining parties and organizations and taking an interest in democracy."[xxxv]

Clearly then, both human rights and democracy in Palestine have been hindered by both internal and external factors, primarily, the conflict with Israel and the limitations of the PA, and also by regional and international influences. Nevertheless, the will for both democracy and human rights in Palestine is strong on both individual and collective levels, and in fact, both exist to some extent in theory and on paper. The current key issue before Palestinians at this time is to translate those conceptualizations into realized practices and institutions, which can only be possible through an integrative approach that recognizes the interdependence of human rights and democracy. At the same time, Israel and the international community must acknowledge that a democratic state in Palestine requires the existence of a state, as well as democracy. The next section of this paper examines the institutions and elements of a substantive democracy that are necessary for bringing the ideals of human rights and democracy in Palestine to fruition.

Elections

The presidential elections of January 2005 were a major step towards procedural democracy. The elections followed the death of president Yasser Arafat, who had been elected in January 1996, and provided an opportunity for new leaders and parties to emerge. Though the election of Mahmoud Abbas (Abu Mazen) was predicted, the elections saw widespread participation, with 71 percent of registered voters casting ballots,[xxxvi] and were declared free and fair by local and international monitors. To refer to Beetham's standards for democratic electoral processes, the January elections were deemed successful in terms of their reach, inclusiveness, independence, integrity, and impartiality. The Central Elections Commission (CEC) was credited with making laudable efforts in registering voters, coordinating the monitoring of the voting process,

and counting and implementing results. While the process was far from flawless, it was considered to be an overall success, and resulted in a smooth transfer of power and authority. The success of the election was largely made possible by pressure on both Israeli and Palestinian officials to protect rights to association, assembly, and expression, and the process itself underscored the procedural rights defined in Article 21 of the UDHR and Article 25 of the ICCPR.

The municipal elections of May 2005 were likewise considered to be successful overall. In addition to being another step towards procedural democracy, these elections also affirmed support in the electoral system and thus contributed to the strengthening of substantive democracy. As journalist Bakr Abu Bakr wrote in the Palestinian daily *Al-Hayat Al-Jadidah*:

> It is important…to point out what these elections represent[ed] to a Palestinian people still struggling to be free, still fighting Israeli occupation, and exercising democracy… They represent[ed]: first, an assertion of a course and a way of life chosen by the Palestinian people exemplified by freedom, dignity, dialogue, responsibility, and respect for the will of the people; second, the will and aspiration of many popular leaderships to serve the people…; third, a demonstration of Palestinian solidarity…; fourth, the continuity of Palestinian political struggle towards common goals; fifth, a renewal of societal leaderships.[xxxvii]

Clearly, the elections represented more than simply a procedure; they were a tangible expression of democratic ideals and principles. These ideals were intertwined with human rights, including the rights to dignity, freedom, and political participation. Furthermore, the electoral process, while reflecting human rights, also served to facilitate human rights by functioning as an expression of Palestinian unity.

The next phase of elections, for the Palestinian Legislative Council (PLC), were originally scheduled for July 2005 but were postponed to allow more time to formalize

amendments to the proposed new electoral law. While most democracy advocates

support the adoption of the new law and recognize the need for giving ample time for its

passage, most view the indefinite postponement as a setback to democratic processes and

momentum. Furthermore, the postponement was interpreted by many as an attempt by

Fatah to consolidate its support to secure a victory over Hamas in particular. This widely

accepted theory, regardless of its veracity, has unfortunately undermined the apparent

commitment to democratic procedures established in the presidential and municipal

elections.

Political Parties

Political parties are a mechanism that can facilitate free and fair elections, and

thus contribute significantly to a sustainable procedural democracy. Likewise they

provide opportunities for citizen participation and expression, and thus contribute to the

development of a substantive, liberal democracy as well. As Giacaman stated, "a multi-

party system is essential for establishing a sustainable democracy."[xxxviii]

In Palestine, there exists some foundation for a pluralist party structure. Although

Fatah has remained the dominant party for some time, and has at times been difficult to

distinguish from the PLO and the PA, other political parties have always remained in

existence, and Islamist parties like Hamas in particular have gained considerable support

in the past ten years. Thus, it is clear that "there is a plurality of parties; the parties are

based on ideological differences but still operate within a national consensus; and they

generally accept one another's legitimacy. Missing, of course, are the democratic

institutions that would induce existing parties to channel their energies toward

electioneering and governance."[xxxix] That is, while various groups have long existed in

Palestine, until recently they have lacked the electoral processes within which to operate.

To be sure, the majority of parties in Palestine have traditionally considered

themselves "movements" or "fronts," and thus focus their attention on activities not

necessarily related to electoral processes. In addition, the historical dominance of Fatah,

and more recently, Hamas, have created challenges for the development of electoral

parties in that "Fatah is too indistinguishable from the PA and Hamas too removed from

it."[xl] Indeed, while Fatah has traditionally identified itself as the primary force for

Palestinian liberation, its loose cohesion has suffered from various fractions, due both to

its position as the central party of the PA and to its handling of the second intifada. In

contrast, Hamas has distanced itself from the PA, identifying itself as an "alternative to

the status quo" and "the main opposition to Fatah and the PA."[xli] This contrast was not

only established on the conceptual level but on the direct level as well, as Hamas

provided numerous social services to communities that Fatah and the PA had been unable

to supply. Also, Hamas has distinguished itself from Fatah by intentionally using

religious rhetoric, in contrast to Fatah's secular nature. In the past six months however,

the nature of Hamas's political involvement has been shifting from that of an independent

movement to a perhaps viable party in that members participated for the first time in

municipal elections and plan to participate in PLC elections.

Many democracy advocates are now calling for a "third movement" that would

provide an alternative to the so-called "old guard" of Fatah and the PA, and to

fundamentalist groups like Hamas. As Mustafa Barghouthi, Director of the Health,

Development, Information, and Policy Institute on Palestine commented, "Palestinians do

not have to choose between autocracy and fundamentalism. There is a democratic alternative. Palestine could be a state that is independent and sovereign."[xlii] Dr. Lily Feidy of MIFTAH (Palestinian Initiative for the Promotion of Global Dialogue and Democracy) agreed, advocating for a third movement that is secular and democratic. According to Nassif, who has observed numerous town meetings through the work of the Civic Forum Institute, it is evident that "people want change, and want more participation by political parties. They want real democracy, and they want political parties to function as a fundamental part of that democracy."[xliii]

It should be noted that electoral party systems can take many forms, and in fact, a strictly organized party system could actually be detrimental in Palestine since many active reformists in the PLC have functioned essentially as independents, in practice at least if not in name. However, it is clear that the development of institutions to support electoral parties is becoming a necessity. Brown suggests three minimal steps to further democratic transition in the area of electoral parties. First, Fatah must be disentangled from the PA, for "when politicization of official positions runs deeply throughout the bureaucracy, and where there is a conflation of roles and ruling bodies… mechanisms of horizontal and vertical accountability begin to break down."[xliv] Secondly, parties need to develop clear structures of internal governance and take "significant organizational steps, such as determining their membership, internal procedures, selection of candidates, and decision-making structures."[xlv] Third, organizations need to re-orient themselves to function in electoral competition, that is, groups need to consciously decide if they are primarily violent movements or if they are electoral parties.

In order for these steps to take place, certain human rights must be ensured. The rights to assembly and movement are inherent to political party organization, and the rights to opinion and expression are necessary for allowing diverse parties to develop and mature. These rights must be protected by both the PA and by Israel. As Barghouthi stated, "[Israeli] suppression of secular democratic forces in Palestine will lead to a polarization… between Hamas fundamentalists and the PA."[xlvi] Indeed, the protection of human rights are essential for the emergence of a third movement.

Separation of Powers

As Hussein Sirriyeh, Professor of Arabic and Middle Eastern Studies at the University of Leeds, writes, "the definition of democracy should not merely be restricted to the narrower sense of free elections and a multi-party system. It should also encompass a broader spectrum of ingredients, including government by consent and accountability…"[xlvii] To be sure, in order for political parties to function in effective institutions, especially the legislature, there needs to be a clear separation of power between the executive, legislative, and judiciary branches, with a viable system of checks and balances between them, articulated in a Constitution. This is necessary for ensuring transparency and accountability, and for enabling the different branches to fulfill their respective duties.

In Palestine, power was largely concentrated in the executive branch under the leadership of Arafat, who developed a highly personalized system of authority. Under this system, Arafat managed to bypass the majority of institutions to extend his personal influence. While this strategy was arguably motivated by Arafat's attempt to unite various factions of Palestinians with different opinions and interests, and to bolster his

status as the unifying symbol of Palestine, the centralization of power proved detrimental and only further crippled the already limited legitimacy of the PA.

This centralization manifested itself in various ways. The most measurable indication was evident in the PA budget, in which over one quarter of the PA revenues were placed under the direct and unaccountable control of Arafat by 1997. The executive's domination was also felt strongly by the legislative and judiciary branches. While the PLC had the authority to draft and pass laws, it had no mechanism to ensure that the president would approve them. Thus, numerous bills and laws that were passed by the PLC, including the Basic Law, were subject to interminable waiting for Arafat's approval. Similarly, the executive responded to many court orders from the judiciary by simply ignoring them.

Sirriyeh proposes several theses to explain the authoritarian nature of the PA under Arafat. Some of these reasons include the desire of the PA to make an impression on the Israelis by suppressing anti-Oslo opposition, the issue of internalized PNA insecurity, the "outsider" status of the original PA leadership, the lack of political experience of the PA, and the desire to promote national unity by subordinating divisions within Palestine. Whatever the reason, the failure to separate powers, compounded by widespread corruption within the PA, resulted in a system that lacked transparency, accountability, and ultimately, legitimacy. This crippled the development of democratic institutions in their early stages, and it is only recently that the new PA leadership under Abu Mazen has begun to confront the process of de-centralizing authority.

Judiciary

The branch of government that perhaps requires the most immediate attention is the judiciary. The judiciary was virtually nonexistent during the majority of the post-Oslo period, and it was only in 2002 with the passing of the judicial organizational law that the judiciary began to be managed by an independent judicial council. However, to date the council has consisted of judges who, while inexperienced in administrative matters, are intent on preserving their autonomy, thus causing them to lose the support of the bar association. The judiciary has also been embroiled in rivalries with the PLC and the executive branch's Ministry of Justice, with disputes occurring most recently over a draft judicial law for reform introduced by a special committee under Abu Mazen and currently referred to the legislature. Despite these challenges, the fact that an independent judiciary council does exist provides a foundation for starting judicial reform.

Although building a strong judiciary is a long, complex process, it is imperative for several reasons. On the conceptual level, judicial reform is symbolically significant because it can address the general lawlessness that directly affected many Palestinian communities during the second intifada and can thus restore confidence in the PA. To be sure, an effective court system has the potential to restore order and thus serve as an indicator to Palestinians of the authenticity of reforms.

Furthermore, "judicial reform is a logical priority because it can be a genuine tool—not simply a symbolic one—in addressing the corruption that is perhaps one of the most corrosive issues for Palestinian governance."[xlviii] Although laws exist regarding hiring for government positions, disclosing personal finances, and monitoring public

funds, there have been no mechanisms for implementing them or prosecuting corrupt officials. This problem can be addressed by focusing initial reform efforts on the office of public prosecution.

A strong judiciary can serve other important functions as well, including being a leading force in constitutional reform and the development and application of the Basic Law. It also can function as a key body for placing checks and balances on the executive and legislative branches. Indeed, according to Hamdi Shaqqura of the Palestinian Centre for Human Rights (PCHR), the empowerment of a strong and independent judiciary can alleviate current debates regarding concern over the popularity of Hamas as a political party. Shaqqura suggests that any hypothetical attempts by elected Hamas officials to "Islamicize" the system or re-introduce violence as an acceptable policy would be countered by the judiciary.

Finally, a strong, independent judiciary is necessary for preserving human rights. First, it would provide a legitimate institution for prosecuting cases of human rights abuses. According to Lamis Alami of the Palestinian Independent Commission for Citizens' Rights (PICCR), ombudsmen and monitoring groups like PICCR can document human rights violations, but they currently lack effective institutions for addressing them.[xlix] Furthermore, an effective judiciary branch is necessary for protecting rights to fair and public hearings and trials, as articulated in Articles 10 and 11 of the UDHR.

Security

Closely related to the topic of judicial reform is the issue of security. Indeed, in order to ensure due process and avoid violations such as arbitrary arrests or torture, it is necessary that an effective security apparatus, including a police force, operates with

legitimacy. Viable security services are necessary for preserving the rule of law, which is essential in a sustainable democracy. The issue of security is particularly important in Palestine, as security continues to play a vital role in many aspects of the Israeli-Palestinian conflict. To be sure, "for some external actors—especially Israel—security forms the basic logic of the reform process,"[l] and many of Israel's actions and policies are justified by concern for security. In the post-Oslo period however, many Palestinians perceived that the thrust of the so-called security reforms in the Occupied Territories was to protect Israeli security at the expense of Palestinian security. Inside Palestine, security concerns were not only associated with Israel but with internal elements as well, as the security services came to be associated with authoritarianism, corruption, and human rights violations against fellow Palestinians, including illegal detentions, improper trials, torture, and executions.[li]

The failure of the Palestinian security services after Oslo is largely attributable to other flaws within the PA. Primarily, "the absence of an effective control by an identifiable institution led to the excessive manipulation of responsibilities by members and leaders of these organizations."[lii] To be sure, "the security services effectively answered to the president regardless of the content of the Basic Law. When Arafat was president, he encouraged multiple security services but declined to draw clear divisions of responsibilities among them."[liii] This resulted in a lack of order and organization, lack of mandate, lack of professionalism, and consequently, lack of legitimacy. Indeed, over a dozen security organizations were operating under Arafat, and none of them proved effective in providing either internal or external security.

As Brown suggests, "the myriad layers of overlapping forces and command structures need to be replaced with a consolidated and transparent organization with clear lines of command to a democratically accountable official or set of officials."[liv] The president should still have some involvement, but other executive branch officials should include members of the Ministry of the Interior. Furthermore, the PLC should be involved by finishing the draft of the legal framework for the security services' operation, as well as by examining the security budget.

In addition to these top-down measures, reforms need to occur directly within the security services, first through consolidation and re-organization, and also through improved trainings. Specifically, security personnel trainings should be infused with human rights training, and ideally, should take place in conjunction with local human rights organizations. This model is helpful for facilitating a professional ethos within the security services; that is, "their training should focus not only on developing technical expertise but also on fostering a sense of what security services should *not* do."[lv] Steps should also be taken to establish a multi-level system of monitoring and accountability, including:

- A system for security personnel and officers to report human rights abuses and violations;
- A procedure for families to appeal for investigations;
- A joint investigative body at the local level consisting of senior and junior security officers, human rights activists, and jurists to review cases of abuse allegations;
- A stronger Committee on Human Rights within the PLC;

- A stronger PICCR or similar ombudsman institution.

Some reforms have already taken place under Abu Mazen, but the process of security reform will inevitably be long and complex. Nevertheless, "Palestinian reform will clearly be moving forward if the Ministry of Interior exercises real oversight, if the PLC passes (and monitors compliance with) a set of laws governing security forces, and if the regular reporting of human rights groups and other NGOs suggests that the security forces are more respectful of the limits to their authority."[lvi]

Civil society

As discussed above, democracy depends largely on the presence of a vibrant civil society. In Palestine, the presence of a strong civil society can be considered one of the most promising assets for the development of a sustainable democracy. Numerous civil organizations have existed since the early years of the occupation, essentially "keeping the country going before the PA, and still very active" after Oslo and during the present period.[lvii] Dajani notes that, in Palestine, "in the absence of a state and central government, and without any formal, centrally organized political socialization via schools, the media, religion, friends or family, people began to organize themselves in civil groups--which subsequently became known as NGOs—and took over the role of a government."[lviii] These organizations have assumed a variety of roles and duties, including the provision of social services, political activism, human rights monitoring, education and advocacy, media and outreach, and others. Civil society groups have thus taken a number of forms, such as women's groups, media outlets, trade unions, human rights groups, religious groups, etc. While duplication, and at times, competition, are inevitable, many civil society organizations collaborate with each other and complement

each others' work, and over 90 organizations belong to the Palestinian NGO Network (PNGO), an umbrella group that seeks to support, strengthen, and consolidate Palestinian civil society.

Organizations that focus on women's rights and empowerment are especially important for ensuring the viability of a sustainable democracy. As Feidy explains, a strong Palestinian women's movement has existed since the 1920s, and women have been active in civil society throughout Palestinian history. However, women have been largely marginalized under the PA, with the old guard seeking to limit the participation of both women and youth.[lix] According to Alami, the women's agenda has lagged at times because many active women believe that political activism against the occupation deserves more attention than the women's movement, although one cannot really separate one agenda from the other. Indeed, if women are to have an impact politically, they need to have the rights and access to participation. As Giacaman stated, "Equality is central to democracy."[lx]

In addition to political marginalization, women also face challenges related to employment, education, violence, early marriage, and inheritance rights.[lxi] Many Palestinian Muslim women also confront unique issues related to certain interpretations of Islam. The range of challenges related to women has resulted in a variety of responses by different civil society groups. Some focus on advocating for legal reform, such as the establishment of a quota to ensure a certain percentage of local or PLC seats are reserved for women, while others focus more on assisting female candidates and encouraging women to run for office or to vote for candidates who are female or who support women's rights. Other groups focus on making women aware of their civil and

political rights through trainings, workshops, and conferences. As Mu'alim explains of his work with PCPD, "We are not speaking for people; rather, we empower people to speak on behalf of themselves. People have listened too long. They need to use their own voices now."[lxii] This approach is especially important for women's empowerment.

An obvious institution for channeling these voices is the media, and indeed, newspapers and media outlets are important institutions within Palestinian civil society. A strong foundation exists in Palestine for a free press; according to Brown, "the basis for independent media that can facilitate reform [in Palestine] is solid."[lxiii] To be sure, the majority of media outlets in Palestine are privately owned, in contrast to the state-controlled media that dominates in some other parts of the Arab world and elsewhere. Similarly, despite noted attempts by some PA officials to constrict discourse on certain topics such as Islamist parties, or certain stories, such as internal discord, the PA never fully stifled public expression. Nevertheless, there is still much room for improvement. Palestinian journalists should thus continue to build on their sound foundation of free media institutions to ensure that the media can function as a viable institution in a substantive democracy.

Journalists and media outlets are not the only groups focusing on media concerns. Many organizations that advocate for democracy and reform are embracing media issues, as well as women's rights, as key areas of concentration for their work, under the larger goal of promoting democracy and working towards the development of sustainable institutions. Some of the leading democracy organizations include MIFTAH, which focuses on democracy, human rights, gender equity, and participatory governance; Muwatin, which initiates intellectual debate on democratic issues and options; PCPD,

which promotes human rights, tolerance, participation, accountability, empowerment, and rule of law; and Civic Forum Institute, which aims to increase citizens' awareness of democratic concepts and institutions and develop civil society institutions. This list is not intended to be exhaustive, but rather is meant to provide brief insight into the types of organizations that currently exist in the area of democracy advocacy.

Civil society is just one vital aspect of a participatory democracy, in which citizens are active participants in their government and communities, rather than just passive recipients. It should be noted that democratic participation can take many forms, including voting, holding public office, volunteering a service, writing letters to officials and/or newspapers, participating in marches, protests, and other forms of direct activism, and countless others. It is not the objective of this paper to evaluate the impact of various forms of participation; rather, it is to recognize the importance of citizen agency. Perhaps the best indication of the potential for participatory democracy in Palestine was the early years of the first intifada, which saw widespread popular participation of different forms. Though the nonviolent "people power" strategies employed during that time have yet to be duplicated on the same scale, the spirit of that period is evident in the willingness of the people to express their opinions and voice their criticisms of both the PA and Israel.

Participatory democracy, and thus civil society, are both inputs and outputs of human rights. First of all, as an output, the emergence of civil society depends on the rights to freedom of thought, opinion, and expression (Articles 18 & 19), the right to assembly and association (Article 20), and the right to participation and service in government or country (Article 21). As an input, many civil society groups adopt missions that help to ensure economic, social, and cultural rights such as access to social

services like food, clothing, housing, and medical care (Article 25), education (Article 26), and human security (Article 22); and others focus on securing civil and political rights. In addition, human rights organizations in particular, as a part of civil society, play an important role in monitoring and documenting human rights violations and advocating for the protection of rights.

Assessment of Democracy & Human Rights in Palestine

Foundations clearly exist in Palestine for the emergence of a substantive democracy, but the process still has far to go. A helpful way of conceptualizing Palestine's current level of democracy is the transition theory, advocated by Dankwart Rustow. According to this theory, democratic development occurs in four main stages: "a stage when a national unity is being established; a preparatory phase of prolonged and inconclusive political struggle; a decision phase when a historical movement of choosing a democratic path is taken; and a habituation phase witnessing a consolidation of democracy."[lxiv] In the case of Palestine, a national unity has long been established, and one might consider the post-Oslo period and second intifada to be periods of prolonged struggle. It is possible that, at present, Palestine is transitioning into the third stage, embarking upon a path of decision to work deliberately towards democracy. Most democracy advocates interviewed agreed, suggesting that Palestine is in a middle stage, on the way to democracy.

It is thus important at this stage to identify obstacles that prevent Palestine from fully realizing a substantive democracy. First, it should be noted that any transition to democracy is a long, slow process. In the case of Palestine, there have also been additional setbacks in the form of clashes in reform visions, both internally and between

internal and external actors. Another obstacle is the persistence of the old guard, who continue to occupy many key positions. The past six months have seen hope for progress in both of these areas however, with the election of Abu Mazen. The new president has committed himself to reform, and in doing so has reconciled differences between international and domestic agendas, and has opened up the PA and Fatah to be more transparent and accountable.

As Brown notes however, "the primary obstacle to further Palestinian reform lies in the international context: Political reform is difficult in the midst of an ongoing conflict."[lxv] Specifically, it is not possible to establish a substantive democracy under occupation. Unfortunately, international actors like the United States have to date have "approached diplomacy and reform as sequential rather than interdependent… [though] it is precisely the mutual dependence of reform and peace that make both so difficult achieve."[lxvi] To be sure, the "peace now, democracy later" philosophy of Oslo proved to be ineffectual and perhaps even detrimental, and it is doubtful that the current logic of "democracy now, peace later" will be any different. As Brown notes, it is futile to build "public institutions that are expected to establish authority and accountability while placing them in a context of extremely limited autonomy."[lxvii]

Perhaps a better way to conceptualize the peace and democracy equation is to integrate the variable of human rights. As has been discussed in this paper, democracy is necessary for human rights, and human rights are necessary for democracy. Likewise, a real just peace cannot exist unless peace is integrated with the protection of human rights. Because human rights is thus a common variable to both peace and democracy, it makes sense to focus on the human rights framework when pursuing both diplomacy and

institution-building. Only when human rights and democracy are pursued simultaneously will either be achieved, and it is only then that a just peace will be possible.

Recommendations & Conclusion

Human rights and liberal democracy are not merely complementary, rather, they are interdependent. A democracy that is substantive as well as procedural cannot function without human rights, just as human rights, meaning civil, political, economic, social, and cultural rights, cannot be ensured in the absence of democracy.

In the case of Palestine, a foundation exists for both the realization of human rights and the development of a substantive democracy, but both internal and external factors have hindered the building of viable institutions to actualize those ideals. Greater attention thus needs to be given to the development of mechanisms such as elections, political parties, and separation of powers, and the restructuring of institutions including the judiciary branch and security sector.

Despite the absence of these institutions to date, the will and perseverance of the Palestinian people, through both civil society and direct participation, has continued to push forward the democracy and human rights movements. Thus, attention must be given to these bottom-up efforts of popular participation, in addition to the top-down efforts of institution-building, if a liberal democracy is to be established. To be sure, no amount of institutional reform will be sustainable if it does not develop in tandem with popular will and public participation. For this reason, it is necessary for civil society organizations and actors to continue to facilitate political participation and raise public awareness, and it is imperative that individuals and communities seize opportunities to

demonstrate their will. Media institutions in particular can play a key role in this process by serving as a means of popular communication, education, and mobilization. The human rights framework can be helpful for developing direction and coordination for these efforts, and can integrate the distinct yet interdependent ideals of peace and justice, and human rights and democracy.

A summary of specific recommendations thus includes:

Top-down institution-building initiatives

- The continuation of fair and free elections, including the scheduling of the PLC elections, currently postponed indefinitely;

- Political party reform and the development of a pluralist party structure;

- Separation of power and the establishment of a system of checks and balances between the executive, legislative, and judiciary branches of the PA;

- Security sector reform through consolidation, re-organization, and the infusion of human rights training;

- The strengthening of the Committee on Human Rights within the PLC and the PICCR as an independent ombudsman.

Bottom-up community participation initiatives

- Strengthening of PNGO and improved coordination between civil society organizations;

- Increased opportunities for community meetings and civic forums;

- Empowerment of women, youth, and other marginalized groups;

- Humanitarian aid and sustainable development initiatives;

- Utilization of a free and independent media;

- Human rights education and training;

- Increased opportunities for direct public participation and nonviolent activism.

In addition to these initiatives, the success of both top-down and bottom-up efforts for the development of democracy depends also on the deliberate removal of internal and external obstacles. Under Abu Mazen, it appears that some of the internal problems that plagued the PA under Arafat are beginning to be addressed. Yet these reforms will prove ineffectual if the perpetuating issue of the occupation is not acknowledged. It is thus now imperative for both domestic and international actors to recognize the legitimacy of the public will for democracy in Palestine and support the establishment of an independent Palestinian state built on the foundations of democracy and human rights.

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