ARAB CUSTOMARY LAW IN CONTEMPORARY PALESTINE: REMNANT OF THE PAST OR PART OF A MODERN ARAB SOCIETY?

Ewa Górska

Introduction

Customary law is usually associated with traditional or even primitive societies. Nevertheless, customary legal systems are still present in many modern legal systems worldwide. Arab customary law predates Islam, and after hundreds of years is still used, despite the changes in living conditions, and the development of more or less stable and efficient state legal systems. Nowadays, traditional informal legal systems are used to varying degrees, in most Arab countries. In this regard, Palestine stands out because of the status of customary law in the society. At present, despite the fact that Palestinian state legal system is operational, at least to a certain extent, due to the complicated internal political situation and military occupation exercised by Israel, and the fact that customary law is not considered an official source of law[1], the traditional legal proceedings described below are still used in cases of serious legal conflicts, such as murder, bodily injury, car accidents or rape. It is also utilized in everyday problems involving land, water and environmental conflicts, marital disputes and other cases. The aim of this paper is to look more closely at the cultural, social and political factors that can explain why customary law, and

in particular a traditional conflict resolution process, is still widely used in the contemporary Palestinian society of the West Bank. Using unofficial customary laws when other legal systems are available and when usage of state judiciary is encouraged by the authorities is assumed to be a choice that stems from cultural legacy, rather than institutional design. That choice results from the influence of certain factors – cultural values, social convictions and beliefs, historic developments and political positions – which the following text will try to identify and describe.

As tribal affiliations and clan solidarity are still one of the foundations of Arab culture and social structure, similarly to Terris and Inoue-Terris[2], this paper applies a concept of neopatriarchal society, as described by Sharabi[3], and treats customary law practiced in Palestinian society as a sign of neopatriarchal relations. Neopatriarchal society is one based on patrimonial, tribal, traditional values, and yet it uses modern state institutions. Neopatriarchy means adaptation of the ways of life, organization of government and civil society based on the model of modern Western societies, while adhering to the areas of social, economic and political hierarchy of the patriarchal clientelism and ancestry. This model is often the result of forced Westernization during colonization or occupation. While contemporary Western political systems promote the division between the state and an individual, in neopatriarchal communities the division between the state, the society and family is blurred. The internal relations are further associated with the patriarchal hierarchy, ethnicity and clan or religious groups, rather than with the individuality, political views or statehood. Tribal affiliations and family relations are still very important in such a society, and they are associated with personal safety, economic stability and sense of identity. Those values are mixed in modern notions of democracy, transparency and individuality in the face of the law[4].

In author's opinion the firmly embedded attachment to the tribal and clan structures is also prevalent in Palestinian society, and it is an important component of core values, which are the foundation for customary Arab law. In Palestinian society, division into clans (*hamūlah*), which, in turn, are further divided into patriarchally organized, extended families, is still important, even if it is losing its value in some communities, particularly in the cities. At the head of a *hamūlah* is sheikh, traditionally one of the eldest and wealthiest members of the clan. During the time of the Ottoman rule, clans were basic entities of the political structures in the region[5] and immense clan loyalty is a still present remnant of pre-Islamic *asabiyyah* (tribal solidarity). In Palestine, the model of modern state and administration is superimposed on the client-patron relationship, in which the family or clan maintains control over its members. The old structure of the family and clan rivalry is well preserved, and private interests, understood as the interests of the family, dominate, which is especially visible in the application of customary law.

Because of such strong neopatriarchal organization, which is tribal in its nature and structure, the author chooses to describe legal customs used in Palestinian society in terms of tribal customary law. Using that approach has some downsides, especially when it comes to terminology associated with research on "tribal" or even "primitive" communities, while at the same time it is an attempt at avoiding orientalism and Western-centric evaluation of the informal legal systems described. Nevertheless, research on tribal law in traditional societies can be a useful basis for the describing and understanding of modern legal customs. Therefore, application of such terms in this text is an effect of author's conviction about the neopatriarchal nature of Arab and Palestinian societies, specifically visible when customary law is used, and is not meant as any judgment or assessment of the values of different cultural or social structures.

Based on other studies[6] and empirical research, the author distinguishes two subcategories of customary law in Palestine, though there is no place to discuss that differentiation further in this article. In short, one type is (strict) tribal law, practiced mostly among Bedouin communities and, to some extent, in regions of Sinai, Hebron and Gaza[7]. That system has more fixed rules, and judiciary positions are traditionally hereditary. The second subcategory is reconciliation (*islāh*) process, which evolved from Bedouin tribal law. Its procedures are characterized by greater flexibility, aimed at rebuilding positive relations between conflicted parties, and it is broadly accepted by all segments of Palestinian society. Both systems have social legitimization, from which the social pressure and obligation to comply with their provisions stem[8]. Nevertheless, as the tribal Bedouin law is only marginally used in a few remaining nomadic communities that choose to adhere to their traditional way of life, this article will focus on the reconciliation procedures (*sulh*) that are more widely used in all segments of Palestinian society.

Therefore, the first part of this paper describes Palestinian customary law in general – its origins, scope of usage and recognition. It is followed by a brief description of how exactly customary reconciliation procedures (*sulh*) are undertaken and used in the West Bank nowadays. Second part of the article attempts to reconstruct reasons for the contemporary usage of legal customs in Palestinian society. In the course of such digressions, the author uses such expressions as "customary law", "informal legal system" and "informal judiciary" interchangeably to describe all informal legal proceedings based on custom and tradition. Even though these terms can have slightly different meanings, thorough analysis of the nuances relating to theretois not the subject of this research.

The informal Arab legal system is sustained by uninterrupted social practice in line with the social and cultural values. Arab customary rules originated in pre-Islamic Arabia and were perpetuated for ages in Arab societies, especially in Bedouin and rural communities[9]. At its core, these legal rules can be classified as tribal law, and have typical features of legal systems of traditional (pre-state) societies. For centuries, it acted as a traditional tool for troubleshooting intra- and inter-tribal conflicts, in the absence of a central government and judiciary. Because of a high level of tensions in the tribal communities, there was always a need for mediators to maintain a state of equilibrium[10].

The customary law currently practiced in Palestine preserves elements specific to pre-Islamic Arab culture, including a high degree of tribalization and communitarianism[11]. Some of the customary rules are similar to the provisions of Islamic law, however shari'a and customary law are separate, though overlapping, legal systems. It must be stressed that the informal law in Palestine is not divided along any religious lines. Although Palestinians of all denominations are tied by the same customs and traditions their cultural background is the same, the specifics of the customs practice somewhat vary regionally.

As there are no statistics pertaining to how often customary law is applied in Palestinian society, it is hard to pinpoint the exact range of its regulatory powers. Relying on the participant observation of a few Palestinian communities living in the West Bank, the author speculates that resorting to customary law seems to be a largely unquestioned action in cases of conflict. Groups of tens to hundreds of men gathering in a public space of a village or a town to take part in the *sulh* ceremony is a natural and quite regular occurrence, therefore it largely goes un-

noticed by Palestinians not directly affected by the conflict that is being solved in a customary way. The most visible aspect to outsiders are large ceremonies (gatherings of more than a few hundred men), but those only take place in cases of very grave crimes – like homicide or serious bodily injury — so they do not happen very often. Nevertheless, according to personal observations of the author, every few weeks or months, in towns and villages, one can observe dozens of men heading to a public gathering space, public building or a private house to take part in *sulh* negotiations or a final reconciliation ceremony.

To give some numbers: according to Ibrahim Shehada, Director of the Gaza Center for Rights and Law[12], in approximately 60% of legal conflicts among Palestinians living in Israel (not the West Bank), the matter is resolved amicably using customary law and out of court. According to Hebron inhabitants[13] – a very conservative city in the South West Bank – up to 60% of land and water issues are still solved by customary reconciliation, and in 90% of cases of intentional murder the customary right to bloody revenge is applied (combined with a right to settle the dispute using the *sulh* procedure). According to Faiz al-Rajabi, a representative in informal judiciary proceedings of the al-Ja'abary family from Hebron,in Hebron area the customary law is used in 100% of cases[14]. On-the-ground observations by the author in Hebron seem to confirm these numbers.

Nevertheless, the scope of recognition and application of customary law depends largely on the type of community and varies between places. Because of the partitions and divisions of land due to occupation[15], Palestine is culturally diverse, with different communities showing a range of religious and cultural conservatism, political engagement, etc. From Bedouin communities that still try to lead their pastoral nomadic or half-nomadic life and

practice very old traditional forms of tribal customary law, through conservative villages and cities (like Hebron or Nablus) to the liberal-minded, economically thriving and traditional Christian cities of Bethlehem or Ramallah, the cultural landscape changes along with the scope of practice of customary law. Based on observations of the author, the more conservative the community, the more customary law is practiced. Therefore, in Hebron, smaller villages and some of the refugee camps, customary law seems to permeate almost every aspect of personal and social life. In case of a conflict, it is natural for members of the community to apply customary rules in order to regulate and solve the conflict. In larger cities and more liberal communities, the families might choose to pursue justice in regular state courts.

Both systems – the state law and the customary law – are often used in parallel and while the official court is adjudicating wrongdoing, offence or crime, families of the parties are simultaneously negotiating customary reconciliation[16]. In some communities, both minor matters (like marital disputes or damages resulting from brawls) and serious problems (like rape or murder) will invoke the reconciliation customary procedures (or bloody revenge). Sometimes one party would initiate the customary reconciliation process, and the other family would agree to use customary law to avoid aggravation of the dispute. In other cases, both parties will rely on the state judiciary to adjudicate the matter. The breadth of cases dealt with by customary law is therefore as wide as the range of possible human conflicts. In order to generally categorize – customary negotiations and regulations in the West Bank are used in cases in which between two parties belonging to the community[17] there exists a conflict that results from a transgression of legal norms by one party, and when both parties recognize customary rules of procedure in such situation and agree to use them.

Procedure of «sulh»

The informal Arab processes of reconciliation are called *sulh*, which means "peace, reconciliation". The *sulh* procedures involve negotiations between the parties to the conflict, conducted by an external group of mediators. The main objective of this custom is to end the dispute and restore peaceful relations within the community. A subsidiary goal is to dissuade revenge on the perpetrator and his relatives (which could lead to a vicious circle of further acts of bloody revenge)[18]. An effective agreement is often associated with payment of appropriate monetary compensation by the offender, although this is not always necessary[19].

Such procedures are carried out by members of the society, who not only know the customs and rules of such proceedings, but are also respected for their position, wisdom and skills in bringing parties together and reconciling them. Sometimes those skills involve using sophisticated manipulation in such a way as to bring the parties closer to solving the problem, without offending them. The reconciliation process in Palestine is conducted either by a single conciliator (in smaller, less violent conflicts) or by a group of the community's most respected notables – the *jāhah*. They work within the framework of a certain traditional order of actions and procedures, though they can use them flexibly to reach their goal – end the conflict[20].

The conciliators should be approached by an offender's representative with a request for mediation. Such prerogative for initiating the reconciliation proceedings results from the conviction that the reconciliation can only be achieved if the offender admits to committing the crime and takes responsibility for it. The act of asking for mediation is understood at least as a public sign of remorse, even if it is not indicative of real feelings. The family of

the perpetrator does not contact the family of the victim directly, as this could intensify the conflict when emotions are still strong[21]. As bloody vengeance is still practiced in Palestinian society in cases of violent conflicts, especially murder, one of the tasks of the conciliators is to secure a truce between the parties and prevent blood spill. Keeping the members of the immediate families of the victim and perpetrator from meeting each other is one of the best ways to achieve that. In serious conflicts, not only do the conciliators take it upon themselves to act as intermediaries in negotiations and contacts between the families, but they also secure a temporary truce (*hudnah*) for the time of investigation and initial negotiations[22]. If the risk of bloody feud is high, the offender and his immediate family might be evacuated from their homes until the conflict is resolved[23]. Again, one of the purposes, apart from securing the well-being of the offender and members of his family, is to avoid aggravating the conflict[24].

The negotiations are generally focused on determining an agreeable price of financial compensation for the crime committed. The victim's family evaluates the harm done and asks for a specific sum, which can be further negotiated, but the conciliators have the final say on the amount of compensation[25]. There are no general or abstract norms binding customary judges, there is only a framework to guide the process. The aim of the process is to determine all the circumstances involved in the case and find a solution that could be considered fair not only to the parties of the conflict, but to the community as well. To accomplish this, the negotiator has flexibility in choosing measures corresponding to the situation[26].

Negotiations can take years, but once both families ultimately reach a compromise, the final agreement is signed during a celebratory ceremony. This public event is attended not only by the male members of both families or

clans, but also by other members of the community, local notables and representatives of authorities. The ceremony preferably takes place outdoors, in a public space large enough for even thousands of men to gather[27]. Representatives of both parties make speeches, share a meal or at least coffee, and finally publicly shake hands as a sign of peace, forgiveness and reconciliation[28]. The ceremony ends with the reading out and signing of the negotiated agreement, which is also later published in local newspapers at the expense of the family of the offender[29].

Why customary law is still practiced in Palestine

Jurisdiction of customary law in Palestine exists in parallel with other legal systems: the laws introduced by Israel during the occupation years, the Palestinian official law and religious laws that govern matters of personal status for members of all denominations. The issue of overlapping traditional and borrowed legal solutions is mixed with the problem of the occupation of the West Bank by Israel since 1967. At the same time, the Palestinian National Authority, since the Oslo agreements, has tried to build structures of independent statehood, including a modern state judiciary. In that complex cultural and political situation, the contemporary usage of Arab customary law can be explained in multiple ways. Here, the author will try to generally categorize and briefly describe the factors that seem of greatest importance to the modern-day practice of informal legal systems in the West Bank.

I. *Socio-cultural factors: reconciliation, honour and social control*

Palestinian contemporary customary law is characterized by a lack of formal legal institutions and is based

on direct regulation (resting on private relations between members of a community). Its norms are legitimized mostly through the power of tradition, are created by the community over the course of history and cultural development, and are not superimposed by any official authorities. Its rules are flexible, and so are the rules of the judiciary process. Social pressure ensures compliance with the customary legal norms. The characteristics mentioned above are strongly tied to cultural values that are embodied in the goals of customary reconciliation procedure: restoring peace to the community and restoring the honour of the victim's family.

Restoring amity in the community is often more important in Palestinian society than punishing the culprit according to official law. An act of breaking the norms, be it a theft, a dispute or even a murder, is treated by customary law as a conflict between two families or clans, rather than a crime that needs to be punished. Therefore, it is not just a matter between private individuals, the victim and the perpetrator, or even between the perpetrator and the ruling power. Instead, it is an issue for the entire community, as it is divided by the conflict. The whole process of informal customary proceedings is focused on investigating the matter, evaluating the damage as perceived by the party (the family or clan) of the victim, and trying to reconcile the parties by imposing a reparation payment on the perpetrator's party, as well as mending the divisions and encouraging amity and reconciliation. As Thabit mentions: positive law has the "ability to implement the provisions, but it cannot remove the hatred of the soul"[30]. In the opinion of Palestinians, customary law is faster and more efficient at resolving legal conflicts, as it addresses the key problem – personal relations damaged by the conflict. Customary law serves the function deemed most necessary in this context: it guarantees a compromise solution to the social problem caused by

the legal conflict. Unlike official judiciary proceedings, in Palestinian society it is more important to resolve a conflict that hinders positive relations between members of the community than it is to indict the guilty party and punish it with sanctions. This was important in ancient times, under tribal social organization, but it is also important nowadays, under Israeli Occupation.

The other aim of informal reconciliation in Palestinian society is restoring honour, which has great value in Arab society and culture, and is one of the most important features of Arab culture and traditional social order. When a family member falls victim of an act which stains his honour, not only is his personal reputation adversely affected, but the honour of the entire group suffers, and it is in the interest of the whole family to re-establish it. Traditionally, it is possible to redeem the honour through bloody revenge (usually a direct attack on the offender or a member of his family), as well as through a successful reconciliation procedure[31].

Individual compliance with the decision of the conciliators, and the whole traditional system of adjudication, is based on notions of honour and social pressure to resolve conflicts within the community. Agreeing to the negotiations, accepting the *jaha's* decision about compensation, signing the final reconciliation and paying the awarded sum, as well as adhering to all other customary steps and acts during the entirety of the proceedings, are all connected with and secured by the notion of honour[32]. Deviating from the traditional framework of informal customary justice could result in the loss of personal honour or worse – the honour of the family. This further ensures the customary reconciliation, as reneging on the agreement reached under the careful watch of the whole community and its most respected members would be an immense disgrace.

A focus on community relationships and the traditional value of honour are some of the traits of neopatriar-

chal societies. Nowadays, tribal affiliations and family communitarianism within Palestinian society – traits of neopatriarchalism – are best visible when customary law is employed. First, in cases of legal confrontation, it is the whole clan, or at least the extended family, that becomes a party to the conflict and takes part in reconciliation procedures. Sharabi[33] notes that Arab patrimonial societies have no confidence in the Western way of governing and the concept of individuality, and independence of the citizen is treated as a threat to the traditional values of clan and family ties. Arab society is built on the concept of *wāstah* ("connections", "clout" – meaning favouritism, nepotism) – the distribution of privileges, patronage and protection. In neopatriarchal society, this concept merges social, economic and political relations, and identity is built upon belonging to a certain group. Social structure, based on kinship ties and patriarchal hierarchy, also contributes to the desire of the parties to reconcile, thus alleviating the threat of breaking cooperation within the family or between neighbours.

Another important notion, connected with the above-described political culture of Palestinian society, is the concept of individuality in the face of state institutions. It is a factor especially when it comes to positions towards customary traditional law and state law. Because Palestinian society is built on ideas of clan loyalty, the identity and social position of the individual is constructed on private relations with his blood relatives, and the distribution of privileges and protections resulting from being a member of a certain group. The Western idea of independence of the individual under the law is treated as a threat to this traditional cultural system. So are Western ways of administrative governing and rules of judging. In Palestinian society, the individual never faces court alone - it is always a family that is put to trial. Similarly, it is not the individual that faces punishment if he

is convicted – it is primarily his family that faces social sanctions, like loss of honour. Therefore, Arab customary law is characterized by a different emphasis placed on the relation between the judged and the judge. While in Western societies there is focus on the rights of an individual in the face of court and state, in the legal process Arab culture focuses instead on social solidarity rather than the individual actor. Also, it is not the guilt of an individual or the penalty that are highlighted in the process – it is the honour of his relatives which is at stake. Customary Arab law grows from the same cultural traits and is based on the same values, while official state judiciary, even in Palestine, seems to relate more to Western ideas of law and individualism.

II. *Political factors: distrust towards state law and Israeli occupation*

The above mentioned socio-cultural traits of Palestinian society are mixed with political factors, as they influence general attitudes towards state institutions. As previously noted, crime is traditionally understood in Arab culture as an act that destroys highly valued and protected community relationships. Therefore, punishing a perpetrator is not viewed as the main solution to an issue arising from the crime. In Palestinian society, there is a strong belief that many problems cannot be solved by the state judiciary system. Palestinians living under occupation do not believe that the state judiciary system, even run by the Palestinian National Authority, is sufficient, not only in the context of their social culture and sense of fairness, but efficiency as well[34].

The lack of confidence in the efficiency of the official judiciary system stems from the cultural values mentioned above, as well as a general distrust towards state institutions. Palestinian statutory law was introduced

only after obtaining Autonomy from Israel, following the Oslo Agreements in 1994. However, even in the present day, Israeli law still dominates in the Occupied Palestinian Territories. Even after the establishment of an official Palestinian judiciary, modelled on the European judicial system, many Palestinians remain distrustful of the official law, as they remain distrustful of the Palestinian National Authority in general.

Israel's military control of the Palestinian Territories has made manifestations of Arab customary law particularly visible. The occupation of the Palestinian territories since 1967 has brought sweeping changes to the organizational structure of the judiciary and legal institutions. Palestinians in the West Bank and Gaza boycotted the official courts introduced by Israeli authorities, protesting against the laws imposed by the Occupier and believing that the official judiciary system was one of the tools of the occupation. On 22 January 1979, in Amman (No. 924/m /912, Jordan), the Palestinian National Council issued a decision to establish the General Administration of Tribal Affairs and Reform, which was partly tasked with organizing social life in the occupied territories based on custom and tradition. As an effect of the resistance towards Israeli legal institutions, particularly in the 1980s, in the years leading up to first Intifada (uprising), the traditional customary courts became an alternative judiciary system to the one run by the occupation forces[35]. Terris and Inoue-Terris give three reasons for the increase in the importance of customary law at that time: 1) the lack of local police able to deal with civil and criminal cases, 2) the lack of confidence in the Israeli military court system, 3) the use of customary law as an expression of independence from Israel and a way to fight the occupation[36].

During the First Intifada, in 1988, Palestinian leaders officially called for a boycott of the Israeli-imposed civ-

il justice system. To enforce judgments and seek justice, Arab civilians, once again, resorted to alternative methods of dispute resolution. Customary courts began to be perceived as an expression of national identity. At the same time, because of the limited usage, the quality of the official civil judiciary seriously suffered[37]. As an important element of tradition and culture, and thus a symbol of Arab identity, customary law has become not only a means to organize social life, but also one of the fronts of the political struggle for recognition of the independence and the right to self-determination[38].

When the Palestinian Authority took control of the judiciary, at the end of 1995, it lacked professionals and court resources were very poor. There were no law schools, or even procedures for certifying and regulating lawyers. Furthermore, the legal pluralism stemming from the combination of local sources of law and foreign influences, as well as the lack of legal publications, caused problems, leading to confusion when it came to, for example, the hierarchy of sources of law or precedence of authority. These issues were amplified, because most of the lawyers were educated abroad and were ignorant of Palestinian law(s), with its multitude of foreign implementations. In addition, the division of powers was not clear and the Palestine National Authority's (PNA) executive branch was interfering with judicial matters. For example, it established military judiciary and state security courts, working in parallel to the civilian ones[39].

At the beginning of the 21st century, there were only two law schools operating in Palestine, one in the West Bank and one in Gaza. There were less than a thousand active lawyers in the West Bank, and in Gaza only one in four employed lawyers were considered competent. The courts did not provide the right to a public defender to the parties that could not afford hiring an attorney, because of the lack of training and resources. Judges were

poorly paid, hence the lack of applicants for these positions among the educated lawyers and the susceptibility to corruption[40]. All these problems intensified public distrust for the formal judiciary and had to be addressed by the authorities. However, the absence of proper legal regulations and overall chaos led to the Palestinian Authority's decision to transform the system by enforcing new laws. With regard to the current status of the judiciary in Palestine , the most important act is the Judicial Authority Act No.1 of 2002. Prior to its implementation, courts in the West Bank acted on the basis of the pre-1967 Jordanian Act, while the judiciary in Gaza still operated under the laws introduced by the British Mandate before 1948. The Judicial Authority Act introduced the chief administrative body, called the High Judicial Council, which was tasked with the inspection and administration of the judiciary, appealing decisions, addressing grievances and disciplinary inquiries into judges. The Law of the Formation of Regular Courts of 2001 introduced five levels of judiciary in Palestine[41]. Nevertheless, the new judiciary system has yet to gain the people's trust. And in the meantime, as already mentioned – distrust and deeply held convictions about the lack of efficiency of the state judiciary tend to assert the importance of customary law.

Summary

Palestinian customary law is rooted in pre-Islamic times and tribal social order, and has basically remained unchanged throughout the centuries, with just a few minor adjustments. The informal Palestinian legal system, especially customary reconciliation, is widely used in virtually all areas of life – from neighbourhood and marital conflicts, through accidents (especially car accidents) to conflicts arising after acts of a criminal nature – theft, rape or murder. Conciliation procedures, carried out by

men specialized in such mediations, help to restore peace to the community and are highly efficient according to the society. The primary objective of Palestinian customary law is to resolve conflict between the involved parties – members of the community – using procedures developed through ages of practice. There are no official powers of coercion in this informal system, which is based on tradition and cultural values. The binding force of the verdict comes only from social control and cultural notions – especially the value of honour, which hinges upon respect for societal traditions.

Because of the previously stated functions of the Arab informal law, especially belief that the customary legal system is an answer to resolve not only legal conflicts, but also social problems, official state judiciary proceedings are therefore not considered efficient, as they focus on punishing the perpetrator, rather than mending the broken relationships between the parties. In the opinion of Palestinians, customary law is faster and more useful at resolving legal conflicts, as it addresses the root of the problem – personal relations damaged by the conflict. The lack of trust in government institutions and lack of transparency in the Palestinian National Autonomy's political and judicial decisions only enhance that. Moreover, customary law flourished at the end of the twentieth century, as a result of the occupation of the Palestinian Territories by Israel, and later by the political instability caused by the Intifadas.

The societies, in which the formal and informal legal systems have developed in some mutual relations, tend to reinforce cultural codes and complement one another. At the same time, in the societies where the state legal systems and institutions lack social legitimacy or political reach, often the formal and informal legal systems act independently of each other. State institutions may lack the basic infrastructure, legitimacy or capacity to impose and

execute law. In such societies, the state legal systems are likely to be rejected, ignored or not understood. This was the case in Palestine, before and during the Intifadas. Distrust towards the occupation-run legal institutions, and the subsequent lack thereof, created a void between customary law and positive law, resulting in the rejection and avoidance of the institutions of formal law[42]. The result of the Israeli occupation, and opposition to it, was the flourishing of Palestinian culture, including legal traditions.

After the Intifadas, the Oslo Accords and subsequent gaining of partial independence from Israel, the Palestinian authority began to build a centralized system of government and law. It was expected that, with foreign aid, Palestine would introduce Western models of jurisprudence, free of customary Arab influences. That failed to happen due to the inefficiency of the Palestinian Authority and political reality of the occupation, as well as cultural traits of Palestinian society. Therefore, a unique political history – falling under consecutive foreign rules, with the current Israeli occupation, has resulted in customary law becoming an expression of cultural and national independence, and a sign of national identity.

The informal legal system used contemporarily in Palestine is a unique product of tribal values and cultural customs, preserved in Palestinian society in the form of neopatriarchal structure and culture, in conjunction with the political situation: sequential military occupations, as well as the administrative incapability of the Palestinian National Authority, which contributes to lack of trust towards the state judiciary.

NOTES

1. Customary law is not mentioned as a source in Basic Law of Palestine or in other laws introduced by the Palestinian National Authority.

2. R. Terris, V. Inoue-Terris. "A case study of third world jurisprudence-Palestine: conflict resolution and customary law in a neopatrimonial society", *Berkeley Journal of International Law*, vol. 20, 2002, p. 462–495.
3. H. Sharabi, *Neopatriarchy: A theory of distorted change in Arab society*, Oxford 1992, p. 3–9.
4. H. Sharabi, op.cit, 27-32,
5. D. Bensimon, E. Errera, *Żydzi i Arabowie: historia współczesnego Izraela*, Cyklady 2000.
6. Especially D. al Khalidi, *Informal Justice, Rule of Law and Dispute Resolution in Palestine. National Report on Field Research Results,* 2006, http://lawcenter.birzeit.edu/iol/en/project/outputfile/5/a391785614.pdf, pp. 12.
7. M. S. Thabit, *Al-Qada' al-'ashā'irī 'aind qabā'il B'ir al-'Saba,* Ghaza 2006, p. 6–12.
8. Ibidem, p. 28.
9. R. B. Sergeant, *Customary and Shari'ah Law in Arabian Society*, Aldershot 1991.
10. J. Schacht, "Law and Justice", in: P. J. Bearman, Th. Bianquis, C. E. Bosworth, E. van Donzel, W. P. Heinrichs et al. (eds.), *Cambridge Encyclopedia of Islam*, II, (VIII). Leiden 1964.
11. R. Terris, V. Inoue-Terris, op.cit.
12. R. Terris, V. Inoue-Terris, op.cit.
13. Munir Qafisheh, *Hebron inhabitant*, interview: 12.03.2014; Abd Alhamid Slemiah, *Idna inhabitant*, interview: 29.03.2013.
14. "Ahl Al-Khalīl yahqinūn al-dimā' wa āilat Al-Haymūnī yu'tūn 'atwa li muddat sana", *Hebron Times*, no. 84, 9 March 2014, pp. 108–109.
15. The West Bank was divided into areas A, B and C as part of Oslo II Agreement in 1995. Area C (61% of the West Bank) is under direct Israeli control, area B (21% of the West Bank) is under mixed control exercised by Israeli military and the Palestinian National Authority and area A (18% of the highly urbanised West Bank) is under the PNA control. Cities, town and villages are further divided by permanent and ad-hoc checkpoints and blockades.
16. D. al Khalidi, op.cit. pp. 81–84.
17. There seem to be no agreement as to how persons from outside the community, for example foreigners, are treated by the customary law.
18. S. Lang, "Sulha Peacemaking and the Politics of Persuasion", *Journal of Palestine Studies*, no. 31 (3), 2002, pp. 52–66.
19. D. al Khalidi, op.cit., pp. 79.
20. D. al Khalidi, op.cit., p.75.

21. D. Pely, "Resolving Clan-Based Disputes Using the Sulha, the Traditional Dispute Resolution Process of the Middle East", *Dispute Resolution Journal* 2009, vol. 63, no. 4, p. 82.
22. H. Tarabeih, D. Shmueli, R. Khamaisi, "Towards the Implementation of Sulha as a Cultural Peacemaking Method for Managing and Resolving Environmental Conflicts among Arab Palestinians in Israel", *Journal of Peacebuilding & Development*, 2009, vol. 5, no. 1, p. 52.
23. D. Pely, *Resolving Clan-Based...* op. cit., p. 83.
24. S. Lang, op. cit, p. 56.
25. A. M. Hajah, *Al-'Urf al-'ashā'irī fī al-islāh, second edition, Doura (Al- Khalīl)*, 2011, pp. 177–188.
26. A. M. Hajah, Ibidem.
27. A. M. Hajah, Ibidem, pp. 190–191.
28. H. Tarabeih, D. Shmueli, R. Khamaisi, op.cit., p. 52.
29. D. al Khalidi, op.cit., pp. 80, 94–97.
30. M. S. Thabit, op.cit., p. 28.
31. D. Pely, "When Honor Trumps Basic Needs: The Role of Honor in Deadly Disputes within Israel's Arab Community", *Negotiation Journal,* 2011a, vol. 27, no. 2, pp. 205–225.
32. D. Pely, "Honor: The Sulha's Main Dispute Resolution Tool", *Conflict Resolution Quarterly*, vol. 28, no. 1, 2010, p. 77.
33. H. Sharabi, op.cit., pp. 45–48.
34. H. Sharab, ibidem, pp. 26–27.
35. Al-Qāda' al-'ashā'irī fī Filastīn (n.d.). Markaz Al-M'alūmāt Al-Watnī Al-Filastīnī [Wafa], http://www.wafainfo.ps/atemplate.aspx?id=9238.
36. R. Terris, V. Inoue-Terris, op.cit.
37. D. al Khalidi, op.cit., p. 36.
38. G. Barzilai, Fantasies of Liberalism and Liberal Jurisprudence: State Law, Politics, and the Israeli-Arab-Palestinian Community, Israel Law Review 2000, vol. 34, no. 2, pp. 425–51.
39. G. Barzilai, ibidem.
40. G. Barzilai, ibidem.
41. W. Lafee, *Palestinian Law and the Formation of Regular Courts*, Jurist - Dateline, June 19, 2012, http://jurist.org/dateline/2012/06/wael-lafee-palestine-judiciary.php.
42. L. Chirayath, C. Sage, M. Woolcock, Customary Law and Policy Reform:
43. Engaging with the Plurality of Justice Systems, Washington, DC: World Bank, 2005, https://openknowledge.worldbank.org/handle/10986/9075