4. LAW, VIOLENCE AND SOVEREIGNTY AMONG WEST BANK PALESTINIANS

Tobias Kelly

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Reviewed by Bernard Botiveau*

How do people claim their rights – individual or collective? When do they decide to go to court, for what reasons, and on which social, legal and political grounds? What are the various meanings of legal behaviour in non-legal contexts? How do people – as individuals and citizens – relate to notions of law and rights?

Such academic questions of legal anthropology, addressed by Tobias Kelly in his book, are of great importance in the approach to the legal and political changes that have affected Palestinian society since the Oslo process started.

Kelly, a social anthropologist, conducted fieldwork in the Occupied Palestinian Territories between the summer of 2000 and February 2002 in preparation for his Ph.D. dissertation. A witness to the crucial period after the signing of the Oslo agreements, he spent a couple of months in Ramallah before settling in the Palestinian village of Beit Hajjar, which has almost 7,000 inhabitants and is contiguous to the “autonomous” Palestinian area created by the Oslo Agreements (Area A). He was therefore able to observe the legal consequences of the Oslo Agreements on the daily life of Palestinians, as well as the constant degradation of the whole peace process since the beginning of the second intifada.

Observing the judicial resolution of labour conflicts cases in which Israeli labour courts play a significant role, he extended his remarks to the whole legal system, since labour law is dependent in such cases on Israeli law, Palestinian legal practices and legal arrangements decided by the Palestinian Legislative Council. It is noteworthy that Beit Hajjar, south of Ramallah, is also located near the Green Line (the 1949 armistice line between Israel and the West Bank) and that many of its male population had to go through the border in search of available jobs with adequate wages. In doing so they had to deal indirectly with Israeli employers and directly with Palestinian brokers, who helped them to get these jobs in Israel. In the courts they pursued different paths in their quest for justice and experienced different meanings of basic values like equity and fairness – to say nothing of the expected solidarity between workers. Contradictions also arose with regard to the different approaches of rights (huquq) and law (qânun). For instance, Kelly insists that people can have some civil rights as

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citizens when being subjected on the other hand to “the administrative and coercive power of the state” (see p. 13). Kelly extracted rich material from the contact and numerous interviews he had with Beit Hajjar workers and brokers, and his collection encourages concerned readers to further their reflection and to open up to an original methodological approach.

The introductory chapter to the book is devoted to historical and political context (the Oslo process and Beit Hajjar in Palestinian history) and to anthropological considerations of law. In this preliminary and dense overview, Kelly gives us his own view perspective and provides us with his main arguments on how law is created, shaped and negotiated in contemporary Palestinian society. Firstly, he explains that the practice of law has been formatted by the Israeli-Palestinian conflict, which can be described, according to Kelly, as a “conflict over legal rights.” The ways through which some key notions like territory, identity and sovereignty are often interpreted by Palestinian people are mainly dependent on the distinction between those who are entitled with rights and those who are not.

While the Oslo process has contributed to generating violence between Israel and the Palestinian Authority (PA), as well as among Palestinians themselves – something that became obvious in Gaza in June 2007 – it has also highlighted the particular importance of law within Palestinian society. For instance, by emphasizing the separation between the West Bank and the Gaza Strip, the Israeli occupation has contributed to enforcing the existing legal pluralism, since the two parts of Palestine have long been using divergent norms, be it in civil law or in family law. Also, the enforced use of legal items such as “permits” increased the presence of law in social interactions. In order to move from one place to another, Palestinian workers have to negotiate with various intermediaries and to learn how to use military regulations and legal practices. This is also the case whenever a labourer comes into conflict with an Israeli employer. A number of specialized NGOs were created to help Palestinians understand the jungle of Israeli legal procedures and deal with local Palestinian institutions. Through all these interactions, the Palestinian people have developed a “political culture of rights” – the study of which brings new perspectives not only to other legal systems in the Middle East but also on the various ways by which individuals are able to affirm and defend their legal identity, including in the face of political constraints that result from occupation. Such a situation ultimately produces a strong legal culture.

Between the methodological introduction and the concluding chapter, five sections present the body of fieldwork Kelly conducted. A stimulating second chapter explains – through several individual experiences – the significance of the decision to claim one’s individual rights. Kelly explains that during the second intifada, rather than making demands for an abstract notion of “justice” (which would itself have deserved more explanation), litigation became “one of the few ways in which [Palestinians] can try to support their families.”

Chapter 3 then focuses on what Kelly calls “jurisdictional politics,” in reference to Lauren Benton’s works on the “colonial state.” Successive Israeli governments have indeed been faced with a major contradiction between the affirmation that Israel is...