



THE PALESTINIAN QUESTION: THEMES OF JUSTICE AND POWER

Part I: The Palestinians of the Occupied Territories

RAEF ZREIK

Ever since 1948, Palestinian politics have been stymied by two conflicting drives: on the one hand the reality of an overwhelming imbalance of power, which mandates major concessions, and on the other a deep conviction of the unassailable justice of the cause, which refuses to accept the dictates of power. Oscillating between these two poles, Palestinians have been unable to develop a clear and consistent strategy. The first part of this essay, below, explores the ramifications of this dichotomy in the occupied territories, specifically with regard to the development of the Oslo process and the second intifada. A second part will explore how it plays out in the case of the Palestinians of Israel.

THE OSLO AGREEMENT of 1993 appeared to open new horizons for the Palestinians both in the occupied territories and in Israel. For those in the occupied territories, it seemed to offer the prospect of a final settlement based on a historic compromise involving renunciation of their claims to Israel proper in exchange for their own state on the territories of the West Bank and Gaza. For Palestinians in Israel, it brought home the fact that their fate was henceforth separate from that of their brethren in the West Bank and Gaza, opening the way to their coming to terms with their own situation and becoming more integrated into Israel. Both these trends toward a kind of “normalization” with Israel broke down with the collapse of the Oslo process and the eruption of the second intifada, which laid bare the deep contradiction that has marked Palestinian politics ever since 1948—the push and pull of two conflicting drives. On the one hand is the reality of an overwhelming imbalance of power, which mandates major Palestinian concessions, and on the other hand is the deep conviction of the unassailable justice of the cause arising from the weight of history, which refuses to accept the dictates of power and militates against concessions. Faced with Israel’s refusal to deliver on a deal combining power and justice, the Palestinians are caught between the two poles of power versus history, or the politics of the possible versus the

RAEF ZREIK, currently a Ph.D. candidate at Harvard Law School, practiced law in Israel and was formerly a member of the executive committee of the National Democratic Assembly (NDA), the Palestinian Israeli political party.

Journal of Palestine Studies XXXII, no. 4 (Summer 2003), pages 39–49.

ISSN: 0377-919X; online ISSN: 1533-8614.

© 2003 by the Institute for Palestine Studies. All rights reserved.

Send requests for permission to reprint to: Rights and Permissions, University of California Press, Journals Division, 2000 Center St., Ste. 303, Berkeley, CA 94704-1223.

imperatives of justice. The result is an impasse, a crisis of leadership, and a seeming Palestinian inability to develop a clear and consistent strategy.

This two-part essay explores how the imbalance of power/justice paradigm has played out in the occupied territories and within the Palestinian community in Israel in recent years. In this first part, I will discuss the case of the Palestinians of the territories and attempt to show how the oscillation between the two poles affected the development of the Oslo process and the second intifada that followed. The case of the Arabs of Israel, where the manifestation of the power/justice dichotomy is less obvious but where a similar mechanism is at work, will be discussed in part two.

First, however, it is necessary to analyze how the structure of Oslo that emerged from the imbalance of power planted the seeds of its own collapse.

THE ASYMMETRIES OF OSLO: POWER VERSUS NORMS, AUTHORITY VERSUS RESPONSIBILITY

One of the main criticisms of Oslo is that it was not grounded in any normative standard or international law. The process was mainly a reflection of the balance/imbalance of power between the two parties, while issues of historical justice—even relative—were set aside. In contrast to most cases of decolonization, the end result of the process was not defined. Not only did the accords not commit Israel to a total withdrawal from the occupied territories, they also did not include any clear commitment on Israel's part to stop the construction of settlements. It is true that there was a vague reference in the agreements to United Nations Security Council Resolution 242, which each side interprets differently, but there was no mention of international legal norms or UN resolutions establishing the Palestinian right of return. Compounding the absence of substantive normative standards was the absence of an honest broker to pilot the process, such as a UN body, but instead a patently biased U.S. supervision. In other words, there was no law and no judge, and everything was subject to power relations. In this context, it was not surprising that the Israeli "interpretation" of each controversial point of the agreement was invariably "adopted."

Certainly, the Palestinian leadership had more than enough reasons to claim that Oslo was the best that could be obtained given the overwhelming imbalance of power: the neutralization of Egypt via the 1978 treaty with Israel, the forced evacuation of the Palestine Liberation Organization (PLO) from Lebanon, the impasse of the first intifada, the collapse of the Soviet bloc, and the PLO's marginalization following the 1991 Gulf War. Together these factors formed a bleak picture that could excuse any bargain with Israel. So justice and international norms were "bracketed," or set aside.

Israel well understood the Palestinian impasse and exploited it to the fullest. Throughout the entire process, Israel has acted solely from its power position in a manner tantamount to diktat. At the same time, Israel was keen on projecting to the outside world an image of the process as one of mutual

consent amounting to a historic compromise. Thus, while the deal was made on the basis of naked power, the outside image was one of normativity. It was rape portrayed as a love story.

Despite the one-sidedness, the Palestinian leadership went along with the image of "historic compromise" to avoid putting its weaknesses on public display. The failure of the Oslo accords to provide even minimum elements of relative justice was thus masked. In the leadership's defense, however, it could well be argued that at the early stages of the Oslo process the potential gulf between the just and the possible was not so readily apparent to the leadership itself, and that its eagerness to reach an accord may have led it to rely on Israeli good faith to an extent not warranted by experience. Be that as it may, the Palestinian people, exhausted by the intifada and ready to try a new direction, were encouraged to believe that the flaws of the agreement would be worked out over time. In this way the ground was laid not only for the gulf between the "just" and the "possible," but also for the gulf that ultimately developed between the leadership and the people.

The agreements that came out of such a power imbalance were, inevitably, very much weighted in Israel's favor. While the PLO recognized in the name of all Palestinians Israel's right to exist, Israel did not recognize the substantive rights of Palestinians: neither their right to self-determination within the 1967 borders, their right of return, nor any other rights spelled out in a host of UN resolutions. Instead, Israel merely recognized the PLO as the representative of the Palestinian people—in other words, as an entity empowered to recognize Israel.

But representation is only a tool, not the thing in itself. To be representative means to have the ability and the power to speak in the name of others. But it also means having the power to make demands and concessions in the name of those represented. As such, representation is a sword that can be used both by and against the represented. It allows the Palestinians to march forward, but also backward.

This being the case, Israel's mere recognition of the PLO as representative of the Palestinians is completely meaningless. Indeed, the Israeli recognition of the PLO was already implied in the PLO's recognition of Israel, since the PLO's recognition of Israel would be meaningless if it didn't represent all Palestinians. At the time of Oslo, then, it was in Israel's interest to acknowledge the PLO as the sole representative of the Palestinian people.

The result of this substitution of process for substance, and tools for content, was disastrous for the Palestinians. What it meant was that the Palestinians recognized Israel's 1967 borders while Israel itself did not recognize or commit itself to these borders. Thus, during the negotiations, the 1967 borders constrained only the Palestinian demands without imposing any limits on Israel's territorial demands; for Palestinians traveling from Nablus to Tel Aviv there were borders, while for those moving from Tel Aviv to Nablus these borders disappear. So while Israel achieved its basic goal merely by signing

the agreements, the Palestinian goals were to be discussed only during the negotiating process.

This asymmetrical situation created a reality where the issue under negotiation was the disposition of the territories occupied in 1967. While any reasonable solution could only be based on dividing the whole of historical Palestine between the two peoples (or on instituting a binational or secular state), Oslo created a mental framework whereby the cake to be divided was the occupied territories, now portrayed as “disputed areas,” with each party having its own legitimate claims to parts of the land.

Given this understanding, it is no wonder that Israel at the Camp David summit of July 2000 succeeded in portraying the Palestinians as the stubborn, uncompromising party. The Palestinian insistence on “all” the occupied territories was seen as “intransigent,” “radical,” “extreme.” For the Palestinians to appear moderate they would have had to agree to normalize the occupation and to accept its continuation under other names. The fact that the Palestinians had already made their historic compromise by signing the agreement itself, thereby renouncing 78 percent of their homeland, was completely overlooked, and the earlier major concessions were not counted when the two parties sat down to the final status talks.

Israel conditioned the signing of a final agreement at Camp David upon a clear Palestinian statement relinquishing any further claims against Israel arising from the 1967 or 1948 wars, including the right of return. Thus, while Israel limited the parameters of the negotiations to the territories occupied in 1967, when it came to the final settlement it demanded that the Palestinians give up their rights with regard to issues concerning 1948 that were excluded from the negotiations. In other words, the Palestinians were required to give up rights that Israel had not recognized in the first place. Israel insisted that the Palestinians give up the right of return while denying that the Palestinians had such a right. Otherwise stated, Israel removed from the table questions they had not allowed to be brought to the table. This might be called buying

Israel wanted to gain a historic compromise without dealing with history, and wanted to uproot the causes of the conflict without exposing these roots.

1948 for the price of 1967. Israel wanted to gain a historic compromise without dealing with history, and wanted to uproot the causes of the conflict without exposing these roots.

The asymmetries touch every aspect of the agreements. They established the Palestinian Authority (PA) to govern those parts of Palestine from which Israel would withdraw. But in fact, as has often been noted, the PA has authority only over the people, not the land.

Thus, under Oslo, Israel was able to build new settlements, to use water resources, and to build bypass roads all over the occupied territories, as if there were no PA at all; for all these purposes Israel acted unilaterally without the consent of the PA. And when Palestinians resisted the Israeli actions and took to the streets in protest, Israel demanded that the PA suppress them.

What all this meant was that Israel continued to act as the real sovereign over the land without bearing the responsibilities of a sovereign toward the population. Conversely, the PA lacked sovereign powers even while being asked to act as if it were the sole sovereign. In other words, Israel had authority without responsibility, while the PA had the responsibility without real authority.

With the PLO's collapse into the PA, the Palestinians expected the PA to continue their project of liberation, which entailed above all the dismantling of the settlements. Yet under the Oslo accords, the PA was supposed to take action against Palestinians acting against settlers; otherwise stated, the PA was responsible for protecting the settlements. Here we see the contradictory role of the PA as heir to the PLO, seen by the people as a liberation movement, and the PA as a kind of guarantor of Israeli security. What this boils down to is that the PA was called upon to be, simultaneously, an element of instability as a liberation movement, and an element of stability within the Oslo framework. In short, the PA had to be, and not to be, at the same time. What is the final strategy here?

ISSUES OF STRATEGY

What is of special interest to me in the formulation of the Oslo agreements is Palestinian strategy, or the lack thereof. The question can be raised as to how, given the crushing imbalance of power, the Palestinians might have acted differently. To what extent did they seriously consider the concessions they made? Concerning the recognition of Israel, for example, were all the options considered? And in the broader context, what exactly are the components of power? Is only naked military force to be considered, or might power also include moral weight, the recognized justness of the cause, and readiness to sacrifice? The issue here is not to judge whether or not Israel should have been recognized, but rather to explore, in the latter event, *how* it might have been recognized to best serve Palestinian interests, *what* the Palestinians might have obtained in return, and whether this recognition was part of a larger strategy. Was recognition reversible in the event that Israel did not deliver what was expected of it during the final status negotiations (and indeed, from the outset it was clear that many of the settlements would not be evacuated)? And is there, in the first place, such a thing as a reversible recognition? The PLO and then the PA bracketed these and other questions relating to history and justice, and those who dared raise them were branded as extremists.

Another example might be Oslo's requirement that the Palestinian charter be amended to delete the sections denying the existence of Israel. Considering the charter's almost sacred place in Palestinian history, it was amended with an almost unbearable lightness, with almost no significant debate within the PLO (by then virtually subsumed within the PA). The imbalance of power had been internalized to such a degree as to dictate not only future solutions but also a rewriting of Palestinian history.

I would like here to give a concrete example of how a different strategy, combining justice with politics and history with naked power, might have been followed during the Oslo years. Let us imagine that the PLO, when asked to change the Palestinian charter, had made it clear that it would do so only if Israel declared that it had no territorial claims in the occupied territories. Or that it had declared readiness to recognize Israel's borders and right to exist only if Israel itself recognized these borders. Such conditions could easily be supported with historical and moral arguments, and could even have been supported to an extent by the premises of the Oslo accords themselves. Whatever Israel's response, such conditions would have initiated heated debate within Israel and the international community. And whether or not such an approach was "reasonable" or likely to produce a speedy agreement, it would certainly have signaled that the Palestinians took their recognition of Israel seriously instead of simply yielding to the imbalance of power.

Similar remarks apply to the declaration in the Oslo documents concerning a Palestinian "renunciation of terror" (note: not *denunciation* but *renunciation*). There was apparently no consideration of what would happen if Israel refused to evacuate settlements or release prisoners, denied access to Jerusalem, and so on. What tools would be left in Palestinian hands with which to carry on the struggle against Israeli occupation? If the Palestinians themselves call their earlier struggle "terror," then what could they expect the international community to call violent actions against Israeli settlements in the event the talks collapsed? Should the Palestinians then have to refrain from any violent action, even if Israel refused to honor its commitments under Oslo?

Such questions, which regrettably were never seriously entertained by the Palestinian leadership, ceased to be academic with the collapse of the Camp David summit in July 2000. Indeed, the Oslo years had created a misconception of reality. The de facto situation was that Israel had replaced an explicit occupation with an invisible one. And after years of talks, when it had become clear that the occupation was continuing by remote control even as the settlements had doubled, the Palestinians found that any resistance using the conventional methods of the first intifada had become almost impossible, both physically and politically—physically because the occupation was no longer visible in the form of soldiers patrolling the streets, and politically because the mere existence of the PA gave the impression of relations between two states and fostered the illusion that a post-conflict agenda had been entered into, even as the real issues had been deferred. In other words, the world—including the Israeli Left—was living under the impression that the Palestinians had already achieved their independence.

Thus, when the second intifada erupted, the Palestinians were, in a way, trapped. Having "renounced terror," they could not find a vocabulary to address the international community. The first intifada had been viewed by the world at large as an act of liberation aimed at ending an occupation, and

this ultimately led to what was understood as a peace process. The second intifada came against the background of the so-called peace process, and has been widely understood as a negation of peace. So while the first was understood as being conducted by an occupied people, the second is understood as being conducted by a state, and hence as an act of aggression rather than an act of liberation. Within the new context, the Israeli occupation has been perceived as “normal” and the Palestinian resistance as “terror,” while peace has come to mean simply the absence of violence, which means the absence of resistance, which means the continuation of the status quo, which means the continuation of the occupation. In this way, peace has been divorced from justice and freedom, and instead of peace being the outcome of justice and freedom, it has become the precondition for negotiation with Israel.

To sum up, the Oslo years were marked by the Palestinian leadership’s total internalization of the imbalance of power, which led it to muffle considerations of justice and history. But here, I think, the leadership underestimated its own possibilities in the sense that the justness of the cause, if incorporated into the political struggle, would constitute an important element in the overall balance of power. Instead, two completely separate spheres have evolved: one of justice (ignoring politics) and the other of politics (excluding justice). So the Palestinians were left with one of two options: to preach justice without any plan of action, or to act with political pragmatism without heeding the voice of history and justice. But history cannot evaporate, and if thrown out the window it will come back through the front door. This leads me to the second moment: the new intifada.

Instead of peace being the outcome of justice and freedom, it became the precondition for negotiation with Israel.

THE NEW INTIFADA: THE REASSERTION OF THE POLE OF JUSTICE

The outbreak of the new intifada signaled a new phase of Palestinian politics, when the dynamic of the imbalance of power employed by the leadership gave way to a reassertion of the demand for justice coming from the people. Here we see that the dichotomy of “power” versus “justice” overlaps with another dichotomy, that of “the leadership” versus “the people.” How did this happen?

As the Oslo years went on, with the proliferation of bypass roads fragmenting the ever-shrinking territory, the doubling of settlers, and the devastating effects of the closures, mounting Palestinian frustrations were compounded by increasing fears that the PA leadership was willing to make historic concessions without substantial returns: for the people, and despite the overwhelming imbalance of power, the clear justice of the cause could not bear any more concessions. Meanwhile, the ease with which the PA made concessions had created among the Israelis (some in good faith, many in bad) the false impression that there was no limit to Palestinian concessions, an impression fueled by the fact that Israel had been able to step up its settlement building

during the negotiations without provoking any serious protest on the Palestinian side. From here to the second intifada was but a short step, and the rhetoric of justice was left to Hamas.

In the lead-up to the outbreak of violence, the growing Palestinian anger against Israel was compounded by alienation from the PA for the falsely rosy images of the future it had held up to them. There was also the sense that the Palestinian population's opinions with regard to the final status issues had been ignored. Israel had promised to bring any agreement with the Palestinians to a national referendum, but the PA had made no such commitment (not to mention the fact that the required new Palestinian parliamentary elections had been delayed). This was no accident, since the leadership knew very well that the peace that Israel had in mind would not be accepted by the Palestinian majority: indeed, the likely deal *presupposed* the absence of popular Palestinian participation. It is true there was a great deal of public debate within the Palestinian community, at least at the elite level, regarding final status issues, but it never moved from the domain of discussion to the level of decision—in other words, there was no effective political institutional mechanism of decision making.

The second intifada, then, represents the swing from the pole of the imbalance of power (leading to pragmatism, the peace process) to the pole of justice and history (where the “pragmatic” compromise is rejected). For the outbreak of the second intifada did not arise from a misunderstanding, but from a resounding Palestinian popular “NO” to the Israeli *diktat*. Because of the lack of a political process capable of reflecting Palestinian popular sentiments, these found expression in violence: lacking political channels, the people said “no” with their blood. Indeed, the most dramatic embodiment of the second pole at work is the suicide bombers.

Such desperate actions fed on the public's exacerbated frustration and indignation at the increasingly obvious lack of minimal justice as the process unfolded. This is not to say that Oslo was rejected only by those sending suicide bombers. Many Palestinians, including many who subscribed to the two-state solution, had been highly critical of Oslo from the outset because of their doubts that the process could lead to this goal. But the absence of a functioning mechanism within the Palestinian political structure capable of translating these opinions into political action created a situation where Palestinians were either with or against the PA. Small wonder that in this reality, and with the fast deteriorating situation on the ground as the process continued, the more radical groups like Hamas became a symbol and an address.

Thus, the point I want to make is not that the Palestinian leadership adopted the intifada as a new strategy, nor that the leadership had in any way been behind the intifada, but that the Palestinian people, with their sense of justice, reacted to the Israeli provocation. In this sense I would say that while the leadership went to Oslo disregarding the people, and therefore had to conduct its negotiations in secret behind closed doors, the new intifada

found the people disregarding the leadership. And while the Oslo accords, in ignoring justice, represented the supremacy of the imbalance of power, the second intifada, coming from the people, was an attempt to assert justice while being blind to the imbalance of power.

The last two years, fraught with contradictions, have only exacerbated the lack of an overriding strategy. Instead of reinforcing each other, the resistance action on the ground and the political action (and statements) by the leadership undermined one another. The PA is denouncing "violence" even while attempting to use it in the negotiations; in so doing it delegitimizes both its own powers and the resistance. The same holds true for the resistance actions which, carried out without any clear context or political cover, work against the leadership and undermine its legitimacy and power to rule. The result is that those who have some power on the ground are not negotiating, and those who are negotiating have no real power. Israel will always have the excuse not to negotiate. Israel, in order to embarrass the PA, can point to Hamas or even Fatah activist *actions*, and in order to embarrass Hamas or Fatah activism, can point to PA *words*.

Would the result have been different if the PA had acted differently, that is to say, could some kind of an intifada have been avoided? I tend to think not, insofar as Israel was clearly not prepared to make the kind of offer needed to satisfy the Palestinians' minimum requirements of justice and had an interest in a return to a zero-sum game. What would have been different is that when the hour of truth had struck, when the talks had broken down and the violence erupted, the violence would more likely have been seen as an uprising against occupation rather than, as now, a war between two states. In such a context, the PA could have led the intifada with a clear agenda, instead of being led, directionless, by the intifada.

THE ONGOING IMPASSE

The Palestinians of the occupied territories have shown, despite the crushing imbalance of power between themselves and Israel, an extraordinary capacity to resist the Israeli *diktat*, and have refused time and again to renounce their struggle. There is no doubt that the driving force behind this will to resist is their clear sense of a just cause. This sense of justice feeds and nourishes their resistance and allows them to go on despite terrible costs and almost unimaginable hardships. Yet at the same time, it is precisely this notion of justice that makes it so difficult for them to go forward in the sense of developing a clear strategy likely to reach a solution, which, by virtue precisely of the tremendous imbalance of power, will necessarily involve important concessions. For the Palestinian case is so unambiguously just, their claims and rights so unassailable under any standard of justice and international law, that virtually any concession is like cutting into flesh and bone. Thus, while the justness of the cause is a shield against surrender, it also acts as a kind of shackle, because moving forward means bargaining, which,

given the price already paid, is not an easy thing to do. The Palestinians are surrounded by the justness of their cause: everywhere they look it is staring at them.

A qualification at this point is necessary. The problem is not whether the Palestinians would accept a reasonable offer—which, by the way, the Israelis have never made and which would include a Palestinian state in all the occupied territories, evacuating all settlements, dividing Jerusalem, and right of return (though mainly to the Palestinian state). My guess, and this is only a guess, is that a large majority of the Palestinian people would accept this. But the problem is not whether this is an offer that they could *accept*, but whether this is an offer that they could *make*, to which they could commit themselves *in advance* and then adhere to consistently. Here my guess is that the answer is negative, for the reasons discussed above. The difficulty of “swallowing” the concessions such a deal would entail would prevent them from articulating it as a clear goal and making it the linchpin of their strategy—as did the African National Congress (ANC) in South Africa, for example. There, the terms of the bargain (which also involved substantial concessions, such as recognizing white ownership of vast swaths of the country’s territory) were set ahead, firmly placed on the table as a standing offer from the blacks to the whites. This clarity and consistency allowed the ANC to develop a strategy to which its actions were subordinated. This clarity and firmness won for the ANC the respect and confidence of friends and adversaries alike. The approach put pressure on the white community even while offering it a way out of the historical impasse.

Certainly, there is no easy solution to the Palestinian dilemma. The Palestinian failure to achieve even minimal or relative justice arises from their weakness vis-à-vis Israel and its powerful supporters (sponsors?) as well as from their reluctance to turn their weakness into strength by adopting “slave morality” (in the Nietzschean sense) as a strategy for gaining power. In order to try to bridge the gap between realities and representations, between the leadership and the people, between what is just and what is possible, I can offer only very general prescriptions. If we do not know the right answer to these dilemmas, at least let us know where to look for it: in the popular will of the Palestinian people. This means building transparent and accountable Palestinian institutions that would be the reference for any future talks and responsible for long-term Palestinian strategy. Such institutions, which could be a crucible of contradictions, need to replace the often-improvised unilateral politics—whether the secret talks in sealed rooms that characterized the Oslo process, or the suicide bombers who have come to symbolize the second intifada. What the two poles have in common is lack of popular participation and institutional decision-making; as such, both are bad ways of making politics. The first finds justification in the imbalance of power, the second in the patent injustice of the proposed solutions. Without transparent and democratic institutions, themes of power and justice will continue to alternate instead of being integrated. The resort to political institutions reflective of the

popular will is the only way to turn what is just into something possible, and what is possible into something just.

The result of bracketing justice and ignoring the weight of history has been to underestimate the Palestinians' overall power, for power is not only brute strength but also includes elements of justice and a people's readiness to endure and suffer. This underestimation of power in turn has led to the tendency to see every small gain in the peace process as an achievement (as if we had not already paid the price in advance) and has blinded us to the fact that the Palestinians are a source of fear to Jewish Israelis. And the source of this fear and perception of threat derive less from suicide bombers than from an Israeli realization, however suppressed, that the Palestinian cause is just. It is only by considering all elements of the power equation that a sound Palestinian strategy can be devised, without which we will be doomed to continue to oscillate between outbursts of anger expressing the demand for justice, and unrestrained secret talks ruled by the imbalance of power.

In this essay I have concentrated on the Palestinian side. Unfortunately, one cannot discern on the Israeli side any sign that might justify hopes for a historic compromise. This does not mean that the two sides will not be able to reach some arrangement, even a long-term arrangement, but this is not to be confused with anything resembling a historic compromise.