



## State-Building, Institutionalization and Democracy: The Palestinian Experience

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To cite this article: Amal Jamal (2001) State-Building, Institutionalization and Democracy: The Palestinian Experience, *Mediterranean Politics*, 6:3, 1-30, DOI: [10.1080/713604529](https://doi.org/10.1080/713604529)

To link to this article: <https://doi.org/10.1080/713604529>



Published online: 08 Apr 2010.



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## ARTICLES

## State-Building, Institutionalization and Democracy: The Palestinian Experience

AMAL JAMAL

Formal democratic procedures such as a separation of powers, a transparent legislative process, an independent judiciary and competitive elections are usually considered a formal institutional manifestation of functioning democratic regimes. However, the experience of several countries demonstrates that informal practices such as clientelism and patronage can impair the positive role of these institutions. Although the Palestinian Authority (PA) is not yet independent and functions under conditions of quasi-occupation, this theoretical avenue forms a suitable point of departure for examining the character of the emerging state structures in Palestine. The article concludes that the pervasiveness of informal institutions encouraged by the dominant role of a strong founding-father has had devastating consequences, not only for the future of democracy in Palestine, but also for the political stability of the Palestinian state.

The establishment of the first politically autonomous entity on Palestinian soil following the Oslo Accords raised expectations concerning the nature of the political regime that would be developed in the emerging Palestinian state. Most Palestinians in the West Bank and Gaza Strip have supported the agreement and voiced their satisfaction at the ending of three decades of occupation. In place of Israeli military rule, Palestinians overwhelmingly supported the establishment of a democratic form of government.<sup>1</sup> Palestinians can be divided into two main camps that debate the founding principles that have accompanied the development of the Palestinian National Authority (PA). Both camps agree that political norms and institutions developed now will determine the future nature of the Palestinian state and its regime.<sup>2</sup>

One camp places emphasis on the formal features of the PA. It examines the administrative apparatus, the legislative and judicial institutions, the legitimacy of the PA among its citizens, the centralization of control over the legitimate use of force, coordination between the different organs of

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Mediterranean Politics, Vol.6, No.3 (Autumn 2001), pp.1-30  
PUBLISHED BY FRANK CASS, LONDON

government, and the differentiation between governmental apparatus and other civil organizations. These features are presented as an indication of the democratic foundations of the PA. The second camp focuses on the informal features of the emerging political regime through analysis of policy issues and political behaviour. Violations of basic human rights, corruption, nepotism, clientelism, economic monopolies and the lack of accountability are seen as forming the present dominant political culture of the PA.<sup>3</sup> This camp warns that the expansion of such phenomena will not only undermine the development of a democratic regime, but also harm the very process of state-building.

The debate between the two Palestinian camps can be used as an access point for the examination of the institution-building process and its contribution to the establishment of democracy in the future Palestinian state. Scholars of institution-building and democratization in Latin America, East Asia, and southern and eastern Europe have debated the relationship between these two interrelated subjects [Diamond, Plattner and Chu, 1997; Linz and Stepan, 1996], while many others have established a link between institutionalization and democratic consolidation [Linz and Stepan, 1996]. The establishment of formal democratic institutions and their legitimization by founding elections are usually considered conducive to democratic principles [Drake and Silva, 1986]. However, other scholars have indicated that formal institutions could form a facade for informal ones that are in fact more powerful [O'Donnell, 1997]. This debate is an appropriate theoretical avenue for examination of the short Palestinian experience of state-building. The emerging institutional culture and the manner in which the different parts of the state-system interact will determine the effectiveness of governance and the chances of democracy in Palestine.

Therefore, the nature of the institution-building process, especially the relationship between formal and informal institutions, forms the main subject of this study. In the following pages I shall demonstrate the assertion that in the Palestinian territories, the growing gap between formal rules and the way most political institutions actually work form a central source of the authoritarian political conduct of the PA and the public dissatisfaction with the way most governmental institutions work.<sup>4</sup> Formal institutions as well as democratic procedures are emptied of substantive content. In most cases, they hide informal patterns of political conduct, such as clientelism and patronage, that clash with their purported democratic substance. For instance, neo-patrimonial political legitimacy concentrates the emerging state-system, including public administration, around the president of the PA, Arafat, thus undermining the principle of separation of powers that characterizes democratic presidential systems.

Presidential hegemony is rooted not only in Arafat's personality but also in the dominant political culture in which personalism rather than institutionalism is the main code of collective political conduct. The functional overlap between different state institutions is promoted through informal political patterns that empower the role of the individual officeholder, thereby weakening that of the institution. Arafat's role as the founding father, largely symbolizing Palestinian nationalism, produced a personalization of the emerging state system, placing him above the formal procedures. He has created a complex web of political communication that runs through him alone, thereby emptying formal political procedures of real substance through his personal authoritarianism. Although such phenomena can be found, in one form or another, in successful democracies, its devastating presence in the Palestinian case has to do with the lack of a strong and clear constitutional order and the marginal role of the judicial system. Arafat's authoritarianism is not subject to any form of legislative or judicial review.

I tend to accept Robinson's assertion that the logic of state-building in the unusual circumstances of Palestine plays an important role in explaining the rising authoritarianism of the PA [Robinson, 1997: 181]. However, I shall demonstrate that it is the revolutionary political culture that traditionally characterized PLO politics that still impinges upon the emerging formal political institutions. This political pattern is promoted by the PA's anxious dominant elite. The PLO old guard and some of the dominant families in the West Bank and Gaza are involved in a political struggle for domination of the PA. These elites invested their political stock in Arafat's personal power instead of formalizing it in clear and stable institutional procedures. This political pattern does not ensure future political stability, for the sudden disappearance of Arafat would leave a political vacuum. The lack of formal political procedures and functioning institutions could instigate political chaos and civil strife in the future. To make these assertions clear, I shall examine the emerging traditional structures of the modern state while emphasizing how informal practices such as clientelism and patronage undermine their functioning. I shall also examine the overlap between the different branches of government, the marginalization of the judicial system and the impact of the founding elections on the structure of the party system.

### **State Formation, Interim Government and Democracy**

The Palestinian process of state-building follows neither the Western European experience nor the exact root processes of other Arab states, but nevertheless it shares many characteristics that led to the formation of post-

colonial states. In Europe the process of centralization of authority occurred within demarcated geographical boundaries [Poggi, 1990: 3–33]. The process included a separation of state and religion on the one hand, and state and civil society on the other [Tilly, 1975; Giddens, 1985: 46]. It included the institutionalization of procedural and substantial norms into formal regulations that advanced the correlation between state-building and the formation of a democratic regime. The priority of formal institutional codes over informal socio-political institutions secured the triumph of democracy over other forms of government.

Most Arab states, on the other hand, are ‘not a natural growth of [their] own socio-economic history or [their] own cultural and intellectual tradition’ [Ayubi, 1995: 3]. As part of a colonial legacy, Arab states emerged as juridical entities before their socio-organizational base was fully developed [Jackson and Jackson, 1992: 46]. This process led to a crisis of legitimization in the Arab world, with state authority disputed [Hudson, 1977]. The same process explains the over-inflated size of the bureaucratic-administrative machine [Alavi, 1972]. This is most clear in the highly developed administrative-governmental machinery, especially the armed forces, contrasting with the weak nature of civil society [Norton, 1991]. Dominant social elites are intensively involved in processes of economic accumulation and use the state as a mechanism to maintain their hegemony [Ayubi, 1995: 14].

The short Palestinian experience shows that the PA is following other post-colonial states by overinflating its administrative machine. In a short period of time and under the auspices of the Oslo peace process, the PA has managed to build quasi-state structures. Under Israeli occupation, the Gazan civil administration employed 5,000 Palestinians; by 1995 the PA bureaucracy in Gaza alone exceeded 40,000 [Robinson, 1997: 178]. According to official PA reports, over 110,000 people are employed in its administration.<sup>5</sup> During the transition period,<sup>6</sup> PLO bureaucrats initiated a process of institution-building to fill the governance gap created by the withdrawal of the Israeli army. The absence of the PLO elite during the Intifada conditioned the way in which the organization sought to capture political power in the occupied territories and form its political base [Robinson, 1997: 177]. The new governmental institutions competed with the existing Palestinian civil organizations and sought to control them [Hammami, 2000: 16–19]. The newly established governmental institutions formed what Shain and Linz [1995: 4] call ‘interim government’ to lead the transition process. Based on conclusions drawn from other countries, they claim that ‘the type of interim administration is crucial in determining the subsequent regime’. They claim that interim governments may influence

the mere existence of the state, its constitutional framework and the nature of the future political system, as well as the degree of political openness in the future democracy, including respect of human rights and willingness to eradicate the legacies of the old regime, the nature of the economy, the rule of the bureaucracy, especially the position of the armed forces in society, and the country's future international posture and alliances [Shain and Linz, 1995: 4].

The PA as an interim government is caught between its endeavours towards independence on the one hand, and the establishment of a stable and legitimate regime on the other. The institution of the PA made it the central political authority in part of the occupied territories, which expanded with progress in the peace process. However, the authority of the PA is not absolute and the overarching responsibility over the territories remains in the hands of Israel. The latter exploits its power to impose policies that suit its own interests. The siege of Palestinian cities and the blockade of Gaza during the Al-Akza Intifada are a good illustration of the continuation of occupation in the new form. In other words, the ultimate authority in the West Bank and Gaza Strip is still Israel. None the less, in accordance with the Oslo Agreement, the PA is deemed responsible for the internal affairs of Palestinian citizens under its jurisdiction. Thus, it operates under Israeli pressure regarding the borders of the Palestinian state and also has an internal opposition that criticizes its policies. The balance the government strikes between power consolidation on the one hand, and accountability and public responsiveness on the other, provides an indication of the main characteristics of the emerging regime in Palestine.

The viability of state structures is dependent on the strength and character of the political institutions formed by the interim government [Shain and Linz, 1995; Karl, 1990]. Neo-institutionalists have demonstrated that 'political democracy depends not only on economic and social conditions but also on the design of political institutions' [March and Olson, 1984: 738]. This makes institutional choice important in determining the chances of transition to democracy and its consolidation. Scholars of democratization have tried to establish a relationship between institutional systems and democratic endurance [Przeworski, Alvarez, Cheibub and Limongi, 1997]. Among the different institutional factors mentioned are the constitutional system, the party system structure, the electoral system and the role of the leadership. O'Donnell, however, has warned that the 'fixation on a highly formalized and complex organizations [*sic*] prevent us from seeing an extremely influential, informal and sometimes concealed institution: clientelism and, more generally, particularism' [O'Donnell, 1997: 41].

O'Donnell maintains that a central hindrance to democratic consolidation comes from 'the combination of institutionalized elections, particularism as a dominant political institution, and a big gap between the formal rules and the way most political institutions actually work' [O'Donnell, 1997: 50]. He has demonstrated that the combination between these factors leads to the rise of delegative notions of political authority in which 'a caesaristic, plebiscitarian executive ... sees itself as empowered to govern the country as it deems fit' [O'Donnell, 1997: 50]. In such cases, legislators, the judiciary and other agencies of legal control are seen as 'hindrances placed in the way of the proper discharge of the tasks that the voters have delegated to the Executive' [O'Donnell, 1997: 50]. Delegative politics refers to the executive's efforts to weaken formal institutions, invade their legal authority and lower their prestige, as if its election has given it an unquestionable mandate to govern as it sees fit [O'Donnell, 1994: 55–69]. In a liberal democracy, however, there must be horizontal accountability where state agencies mutually control each other [O'Donnell, 1994: 55–69]. The absence of such accountability and the centralization of power by one state agency impair the chances of democratization. These critical observations, which draw upon the experience of democratization processes in various countries, form the background to the following efforts to examine the Palestinian process of state-building and the prospects for an institutional culture that promotes the chances of democracy in Palestine. Therefore, the following pages will emphasize the pervasiveness of informal political patterns in formal political structures. Special emphasis will be placed on the central role of the president and the presidency's impact on other state structures.

### **Democratic Procedures: Separation of Powers**

I turn first to examine one of the main accepted principles of presidential democratic regimes: the separation of powers. Although in some democratic systems the separation of the different branches of government is not always clear and is not a sufficient condition for democracy, a balance between the executive and the legislative is a necessary condition if democratic rule is to prevail [Zvesper, 1999: 3–23]. A functional presidential democracy has to guarantee the differential modes of operation of all branches of government, avoiding executive predominance over the legislative [Page, 1996: 3–33].

It is important to note that the Palestinians have chosen a presidential political system with an active parliament, thus adopting political structures found in several post-colonial states. The relationship between the president and his executive and the Palestinian Legislative Council (PLC), founded in February 1996, is a central issue in explanations of Palestinian politics. Both

branches of government were established according to the Israeli–Palestinian Interim Agreement signed in Washington on 28 September 1995. The new political structure raised public expectations and formed, in the view of many, a clear indication of the rising chances of democracy in Palestine. The high turnout for the first Palestinian elections mirrored public expectations.<sup>7</sup>

However, the interim agreement did not clearly define the formal competencies of the Palestinian representative bodies. The agreement commingled the legislative, executive and judicial powers and responsibilities of the new state institutions. The authority of the PLC was confined by ‘existing laws [and] military orders’ as well as by the ‘legislative powers’ of the *Ra’ees*.<sup>8</sup> According to the agreement, ‘the Council shall carry out and be responsible for all the legislative and executive powers and responsibilities transferred to it under this Agreement’.<sup>9</sup> However, the Council is not a sovereign body. It is subject to the Declaration of Principles (DOP) and the Interim Agreement and its authority is limited to areas under PA jurisdiction. Moreover, the agreement states that ‘Legislation, including legislation which amends or abrogates existing laws or military orders, which exceeds the jurisdiction of the Council or which is otherwise inconsistent with the provisions of the DOP, this Agreement, or of any other agreement that may be reached between the two sides during the interim period, shall have no effect and shall be void *ab initio*’.<sup>10</sup> Despite these limitations, the PLC sought in its initial stages to overcome them and work as a sovereign representative of the Palestinian population in the West Bank and Gaza Strip.

However, the efforts made by PLC members to expand the Council’s authority beyond what was agreed upon with Israel, were met with rising suspicion on the part of the president of the PA who sought to gradually undermine its role.<sup>11</sup> The ambiguous formulation of the Interim Agreement regarding the separation between the legislative and the executive branches of the PA was exploited to the full by Arafat. According to the agreement, ‘the Executive Authority shall be bestowed with the executive authority of the Council and will exercise it on behalf of the Council. It shall determine its own internal procedures and decision-making processes’.<sup>12</sup> The Executive Authority is to be headed by the *Ra’ees* who is ‘an *ex officio* member of the Executive Authority’.<sup>13</sup> The Agreement endows the *Ra’ees* with ‘legislative power’ that includes:

- (1) the power to initiate legislation or to present proposed legislation to the Council;
- (2) the power to promulgate legislation adopted by the Council; and
- (3) the power to issue secondary legislation, including regulations, relating



to any matter specified and within the scope laid down in any primary legislation adopted by the Council.

These legislative responsibilities not only blur the principle of separation of powers: they were used by the president to bypass the formal legislative process by issuing presidential decrees with important constitutional implications.<sup>14</sup> These decrees are drawn up in the presidential office without consulting the PLC. They are non-negotiable and are not subject to any judicial review, for there is no clear constitutional order regulating this issue. Arafat has already issued several presidential decrees possessing crucial legal implications, and without any possibility of the PLC or any judicial institution being able to abolish or limit them. One such decree was issued on 7 February 1995 establishing the 'State Security Court'. This court was established in response to American and Israeli pressures on the PA to deal as harshly as possible with violent opposition activists.<sup>15</sup> Another was issued on 19 November 1998, in accordance with the Wye Plantation Agreement. It warned against any provocative activities in opposition to the agreement and against racial discrimination. In response to such arbitrary decrees, the Palestinian Human Rights Monitoring Group commented critically that, 'The President, according to constitutional regulations, has the right to release such orders in the absence of the committee of representatives, but he does not have the right to release them when a legislative authority in the Palestinian Legislative Council is present'.<sup>16</sup>

The ambiguity surrounding the division of labour between the legislative and the executive bodies harmed the principle of promulgation.<sup>17</sup> Accordingly, laws passed by the PLC were frozen by the president for an unlimited period.<sup>18</sup> In four years the Council managed to debate and pass 30 laws, of which only 24 were endorsed by the president.<sup>19</sup> He ignored several laws passed by the Council, such as the Basic Law, and turned the legislative process into a conditional procedure dependent on his political and diplomatic calculations. A good example of this is the way in which the 'Charitable Associations and Community Organizations Law' was passed.

For a long time the PA sought to control the operation of NGOs in its areas. The above law was prepared by the Ministry of Justice, modeled on the Egyptian experience, but NGO representatives were suspicious of the real intentions of the PA and voiced their fears about its initiative. They organized a broad public campaign aimed at influencing the content of the law introduced by the ministry. They found support among a large number of PLC members. The PLC ratified the law in December 1998 after a long process during which the law was debated. But when it came to being ratified by the president, the latter introduced a fundamental amendment. He

returned the law in March 1999, transferring the authority for registering NGOs from the Ministry of Justice to the Ministry of the Interior, which is controlled by the president himself. This change aroused the suspicions of many PLC members who questioned the legality of the presidential amendment and its intentions. They tried to halt the legislative process by raising questions regarding the timing of the presidential amendments, which were introduced after the legal time limit given to him by law had elapsed. However, the PLC was unable to vote down the executive decision, as such a step needed a quorum of at least 44 of its members. Therefore the bill was passed and signed into law in January 2000, thus establishing the legality of the interventionist policies of the Ministry of the Interior in the NGO sector [Hammami, 2000: 19]. The experience with this law mirrors Arafat's ability to exploit the constitutional vacuum in order to manipulate laws passed by the PLC and modify them in a way that strengthens his grip on civil society.<sup>20</sup> It is also a good example of the inability of the PLC to supervise the decisions of the president and make him accountable.<sup>21</sup>

Another well-known mechanism that empowers the president *vis-à-vis* the PLC is the tradition established by Arafat according to which there are no independent and separate meetings of the Executive Authority (the cabinet). The weekly cabinet meetings are called 'leadership meetings' and are shared with members of the PLO Executive Committee, members of the Fatah Central Committee, heads of the security services and the head of the PLC. These joint meetings comply with the aspiration of the PA president to present a broad consensus providing him with political credibility. These 'leadership meetings' blur the principle of separation of powers and eliminate the principle of accountability. The joint meetings create an image of power-sharing. The Ra'ees exploits the balance of power between the different political forces, emptying the principle of governmental accountability of any real meaning. Appeals from certain ministers to the president asking that the PA cabinet be allowed to meet alone were met by outright rejection. The form of these meetings essentially meant the elimination of the cabinet as an institution.

Nevertheless, the merging of roles in the PA appears to be an even broader phenomenon. Many PLC members hold official governmental posts, such as adviser to the president, director of a governmental company or appointed head of a municipality.<sup>22</sup> This confusion of posts deepens the personalization of politics giving government functionaries direct access to the legislative process. Many PLC members claim that those who hold both positions – as MPs and as government officials – view their executive positions as much more important, for these give them more power and access to decision-making. Furthermore, this duality forms a fertile soil for corruption and clientelist politics. PLC members represent their

constituency as legislators and as executors, thus violating the principle of horizontal authority.

Another example of the powerful impact of informal practices has to do with the lack of clear judicial regulations regarding the legislature's supervision of the governmental budget. The Council has been unable to monitor government spending and force the government to submit a budget on schedule. According to a Palestinian political analyst, Ali Jarbawi, 'the executive is trying to undermine the Legislative Council by keeping it out of the final status negotiations and by curtailing its ability to hold the government financially and politically accountable'.<sup>23</sup> Two central problems were raised by PLC members: first, not all revenues were reaching the Treasury; and second, the PA's public investments were not included in the draft budget.<sup>24</sup> PLC members refused to approve the 1999 budget because it again contained features that had been criticized a year earlier. In their review of the budget, PLC members found irregularities in government expenditures. They discovered that large sums of money had not reached the intended ministries, but were instead deposited in foreign bank accounts for which various people had signatory authority, subject to Arafat's approval [Shua'ubi, 2000: 93]. These amounts relate to discretionary funds placed at the disposal of the president who refused, initially, to acknowledge the existence of this money. PLC members proposed to legalize these sums by amending the budget law in order to authorize the executive to build up a reserve that could be spent exclusively by the president. The point was to regularize these expenditures, make them known to the PLC and have them on record. The president refused to allow this.

To these irregularities one should add the fact that the revenues from the economic monopolies controlled by high-ranking PA officials do not even appear in the budget since they do not reach the Treasury. These officials have monopolies over central sectors of the Palestinian economy, such as petroleum, gravel, flour, sugar, and so on. Monopolies operate in a grey area and their revenues are managed confidentially [Hooper, 1999]. This pattern enables PA officials to avoid public scrutiny and legal regulation and form an easy way to finance activities of the PA that would be heavily criticized if subjected to internal public oversight or external supervision by donor countries [Roy, 1999: 64–82].

This situation led a Palestinian economist to comment on the PA's *modus operandi* by saying:

The PA's corruption, by now almost universally recognized, and financial mismanagement of donor funds flow from the mentality of a guerilla organization that continues to prevail, wherein the leadership cannot be questioned and operates in secrecy and without

accountability. Hence the PA's parallel budgets, one public and one covert, the latter containing hundreds of millions of dollars of public money distributed to buy loyalty for the regime ... [Samara, 2000: 20–34].

This lack of formal regulations regarding the budget makes it impossible for the PLC to monitor the budget and control the government's expenditures. The slight changes in PA economic policies and the creation of the 'Higher Council for Development', which is supposed to coordinate the PA's economic activity, did not prove effective. The expansion of the PA's payroll represents a clear deviation from the voted budget. According to a report of the Ad Hoc Liaison Committee of the PA and the IMF, 'PA employment growth in the fourth quarter of 1999 and in the first quarter of 2000 vastly exceeded what had been assumed when the budget was prepared'.<sup>25</sup> The report reveals that hiring decisions are made in an unplanned way and that 'very few of those recently recruited are in fact for positions envisaged in the budget, thus leaving genuine demands for employment in the judiciary, health and education sectors still to be met ...'. These conclusions expose the executive's disrespect for laws passed by the PLC. They reveal attempts by foreign agencies to institute respect for budgetary law given that the PLC has proved unable to achieve this.<sup>26</sup> The PA's deviation from the approved budget is an example of a broader pattern of relations between the executive and the PLC. The head of the PLC's political committee, Ziad Abu-Amr, maintained that:

the PLC is prevented from affirming its authority by the dominant and charismatic personality of Arafat and the multiple sources of legitimacy he enjoys in exercising his individualistic style of leadership. Arafat holds all the strings in his hands. He is capable of suppressing all contradictions and of manipulating them to serve his own interests ... If the PLC is an embodiment of institutionalization, Arafat's style of leadership is the antithesis of this institutionalization and the concepts of separation of powers and power sharing [Abu-Amr, 1997: 90–97].

Abu-Amr adds that

the political mentality that dominates the Palestinian autonomous areas today is a direct extension of the traditional mentality adopted by the PLO and its leaders. This mentality is far in its basics from a mentality of founding and running a state. This mentality mixes the political-public dimension with the revolutionary-clandestine dimension and is full of improvisations and total centrality of power [Abu-Amr, 1997: 90–97]

The PLO elite has returned to its homeland with a political culture that is far from embodying basic values of representative government such as accountability and transparency. This view is supported by another political analyst who characterized the relationship between the Council and the executive as one of marginalization [Ra'fat, 1998: 90]. In his view, 'the personality of Arafat, who is elected directly by the people; the fact that he is the historical leader of the Palestinian revolution whose leadership is characterized by total centralization and monopoly over all authorities'; and 'the structure of the government, most of whose members are Fatah activists' make the separation of powers impractical [Ra'fat, 1998: 91].

Therefore, notwithstanding the political circumstances in which the PA functions, one cannot explain Palestinian politics without taking into account the impact of Arafat's charismatic persona. According to public opinion polls conducted by the Center for Palestinian Research and Studies (CPRS) in September–October 1996, a majority of 72 per cent of Palestinians were supportive of Arafat's policies and 52 per cent considered the relationship between the executive and the PLC to be either 'good' or 'very good'. On the other hand, a majority of 60 per cent believed that the executive authority should implement all of the decisions made by the PLC.<sup>27</sup> In January 2000 the positive evaluation of Arafat reached 54 per cent whereas that of the PLC was 42 per cent. Despite the deterioration in Arafat's position among the general public, he is still viewed as the symbol of Palestinian national aspirations and would be voted back into office if elections were held.<sup>28</sup> Arafat's position has been influenced more by the state of the peace process than by public satisfaction with the performance of the PA's different institutions. An in-depth analysis of public opinion polls shows that the public differentiates between Arafat and his cabinet as well as between him and the widespread corruption in PA institutions. Despite the fact that between 76.0 and 83.5 per cent of Palestinians attribute corruption to PA ministries, only between 43.0 and 48.7 per cent believe that corruption exists in the president's office.<sup>29</sup> The polls do not indicate, however, the percentage of those who attribute corruption to the president himself. But based on the deterioration in Arafat's image, one can conclude that the worst accusation leveled at the president would be that he does not work hard enough to reduce corruption and dissociate himself from corrupt people around him.

### **Legitimate Authority and Neo-patrimonial Politics**

Another dimension of the process of state-building in which the relationship between formal and informal institutions can be examined is that of the

governmental bureaucracy. The following pages focus on the attempts of the dominant leadership, especially those who returned from exile with Arafat, to establish its power in the new socio-political context of the West Bank and Gaza Strip.

As the nucleus of an emerging state in a new political entity, PA leaders had to draw upon multiple sources of authority. But given the fact that the PA was introduced as an extension of the PLO, its legitimacy had to be based on the same symbolic sources. As a result, Arafat, the main source of authority in Palestinian politics, quickly managed to establish his authority as the central figure in the PA. Serving as head of the PLO, the leader of Fatah and the elected president of the PA, in addition to being a charismatic personality who symbolized more than anyone else the Palestinian aspiration to self-determination, gave him enough power to organize the emerging political system around himself. His official positions enabled him to appoint his people to central positions and to intervene at all levels of decision-making.

Arafat silenced critics, co-opted enemies and ostracized dissenters by either integrating them into the government or marginalizing them [Brynen, 1995: 23–36]. A good example of his authoritarian interventions was his reorganization of the electoral list of Fatah members who were elected in democratic primaries prior to the first Palestinian general elections [Ghanem, 1996: 513–28]. Not satisfied with the results of the primaries, he dropped young elected candidates and added others who had not managed to be elected. His intervention was perceived as anti-democratic and caused much dissatisfaction. Several members who were dropped from the official list, ran as independents and were elected to the PLC. Arafat's aim was to marginalize locally popular and partially autonomous Fatah leaders [Robinson, 1997: 178–81].

Sara Roy observed this process of appointing traditional, old-guard types to key positions in Fatah and claimed that 'such appointments are at the expense of Gaza's younger Fatah activists, who enjoy substantial grassroots support and who are seen as having paid their dues through long years in prison. Many believe that Arafat's aim ... is to marginalize Fatah's younger political leadership so as to diminish the challenge they inevitably present' [Roy, 1994: 86]. Arafat's personalization of politics changed the rules of the game in the PA. It de-institutionalized collective action. He tried to empty of any political role the political structures established by the local political elite in the West Bank and Gaza Strip during the struggle against occupation [Robinson, 1997: 175–200]. He did not want to commit himself to the existing civil organizational infrastructure and instead promoted the establishment of new institutions connected to himself and led by people who were personally loyal to him. To advance this goal he manipulated the

national security discourse, even when the issue debated had nothing to do with the struggle for independence.

Furthermore, Arafat's measures were explained as necessary steps to bridge the gaps between the local and the returning leadership. The returning PLO rank and file entered the West Bank and Gaza Strip in accordance with the terms of the Interim Agreement. Their return changed the social fabric of Palestinian society in these areas [Tamari, 1999: 3–8]. The returnees were suspected by the local residents of the West Bank and Gaza Strip. They represented an authoritarian political culture and sought high ranking positions with special prestige in the PA at the expense of the local political elite. The returning political elite, meanwhile, viewed the local population as conservative and provincial [Hilal, 1998: 138]. Nevertheless, it was clear to the PLO elite that political survival compelled them to accept the existing socio-political balance of power. Social integration and political consolidation were promoted for political purposes [Shikaki, 1996: 5–20]. Patronage politics became an indispensable phenomenon.

The establishment of new governmental organizations opened the door for political leaders to create their own circles of political supporters. Since the new political structure had to be established quickly, the patterns of recruitment familiar in Arab society were the most readily available. Neopatrimonialism became evident, with benefits distributed according to familial affiliation. Social groups that did not establish political coalitions found themselves unable to obtain access to public resources or to participate in policy-making processes. As a result, the boundaries between public role and private interest became blurred. Bureaucrats turned their jobs into power positions and sought private interests using public titles for that purpose. A local lawyer commented on this issue saying:

Since the establishment of the Authority most of the big families began to reunite themselves in order to operationalize their quantitative quality in order to achieve personal interests and goals. These efforts concentrated mostly around getting as many positions in the PA as possible, overlooking the professional or practical qualities that these positions demand.<sup>30</sup>

The coupling of familial connections with bureaucratic positions was criticized in the Report of the Public Oversight Office and later by the PLC.<sup>31</sup> The Report criticized the increase in arbitrary employment in high-ranking positions and decision-making roles. It referred to the habit of appointing close relatives and affiliated friends to important positions without paying attention to professional qualities.

### **The Emerging 'Dominant Party' Political System**

Neo-patrimonial considerations also determined the structure of the PA cabinet. The first appointed PA cabinet was formed as an interim government in June 1994 based on a decision of the PLO Executive Committee.<sup>32</sup> It included 16 ministers and had full authority to conduct its executive goals based on a plan set for it by the PLO.<sup>33</sup> The government included returnees as well as locals, West Bankers as well as Gazans, members of large and well-known families as well as independent personalities. Despite the broad social and geographical distribution of the cabinet members, one cannot speak about real plural representation. Political opportunism and social clientalism were far more dominant than inclusive representation of the different socio-political fragments of society. All of the appointed ministers were personally loyal to Arafat and indebted to the Ra'ees for entrusting them with a portfolio, reimbursed by personal loyalty and allegiance.

However, the appointed government was replaced in June 1996, months after the elections to the PLC. The five-month delay was a result of serious attempts to strike a balance between people from the PLO apparatus, especially from the Fatah movement who had been loyal to Arafat over the years, and prominent local personalities who represented large families or central regions in the occupied territories. The new government marked some change in the make-up of Palestinian politics. Traditionally, political coalitions in the PLO have been based on factional organizational affiliation, with the seats on the Executive Committee divided among the various PLO factions. The new political circumstances changed this form of developing consensus politics to one based on majority rule. Social, regional and political background became the main keys to coalition-building.

The new government included 21 ministers and was endorsed by the PLC by a majority of 50 to 24.<sup>34</sup> In constructing the PA government, new social and political factors had to be taken into consideration. The absence of real opposition in the PLC prevented the building of a pluralist political coalition. This opened the door for Fatah supporters to dominate the political scene and win all the key positions in the newly established government. However, Arafat sought to avoid an opposition boycott or to reduce its impact by seeking to include politicians from the opposition, especially those who did not agree with the boycott policy.

Eleven ministers were Fatah members, while seven others were independents but well known for their close connections with the PLO leadership. Thirteen ministers were members of the PLC and four were members of the PLO Executive Committee. Most of the independents were



local residents of the West Bank and Gaza Strip and their presence reflected the endeavours of the PA leadership to integrate all of the new Palestinian social fabric into the governing bodies of the emerging state. They were also a legitimizing factor in according the new government credibility among the local population. Three ministers were affiliated to small political organizations that did not have a substantial constituency in the population. They were appointed for their support of the Oslo process.

After only one year in office and as a result of public accusations of corruption, Arafat was asked to reform his government. The General Oversight Office Report published in May 1997 accused several ministers of misusing and wasting public money and some were accused of corruption. A public debate between the president and the PLC broke out. The PLC demanded that the president repudiate ministers accused of corruption. Arafat tried to ignore these demands and sought to silence his critics in the PLC [Jamal, 2000: 45–59]. But one year after publishing the report he reshuffled his government and on 5 August 1998 he presented his new government to the PLC.<sup>35</sup> The introduction of the new cabinet demonstrated not only Arafat's ability to outmanoeuvre his critics, but also to bypass the law. Arafat's new government included all the ministers accused of corruption as well as nine new ones.<sup>36</sup>

The new government consisted of almost 30 ministers. This exceeded the number allowed in the ratified draft of the PA's Basic Law. Moreover, some of the appointees were awarded posts of dubious ministerial status.<sup>37</sup> Several of the nominated ministers now headed governmental agencies that were not originally established as ministries. This is the case of the 'ministries' of the environment, of administrative supervision and parliamentary affairs. However, in the meantime the president gave the directors of these agencies the rank of minister without adjusting the legal status of their offices. The president's step came after these directors, without any legal basis, hung signs over their buildings' entrances announcing them as ministries [Shua'ybi, 2000: 89].

Furthermore, only 67 per cent of the members of the new government were PLC members and it thus failed to meet the 80 per cent requirement stipulated in the Interim Agreement. Arafat repeated his policy of appointing four or five members of the Executive Committee of the PLO as ministers in order to broaden the cabinet's base of legitimacy. Some 60 per cent of the new cabinet members were affiliated with Fatah and 20 per cent were independents, historically affiliated with the movement [Hilal, 1998: 188–202]. The dominant role of Fatah was not only reflected in the structure of government but was in evidence also in the balance of power within the cabinet itself. Ministers who do not belong to Fatah usually 'find it more difficult to acquire budgets and other resources or to assert their authority.'<sup>38</sup>

This phenomenon has to do with the division of labour within the PA, which is based on *de facto* rather than *de jure* regulations.

The structure of Arafat's new government invited heavy criticism. Many accused him of using the government as a device to co-opt opponents and turning it into an appeasement mechanism. Arafat in turn incorporated the loudest critics of his second government into his third one. This act was an attempt to reduce the number of those dissatisfied by making them partners.<sup>39</sup> By doing this, Arafat discredited his critics by exposing them as greedy opportunists whose criticism was based on personal goals rather than the common good. Two successful autonomous ministers of his second government were reassigned to new ministries in the third. Hanan Ashrawi and Abdel-Jawad Salih, known for their critical positions and wide public appeal, were moved from the Ministry of Higher Education to Tourism and from the Agriculture Ministry to minister without portfolio respectively. However, both quit in protest at the lack of qualitative change in the new government and to express disapproval of the consolidation of Fatah's control over the executive authority.

In my view, Arafat's move was not totally naive. He presumably anticipated their reaction and managed to portray them as opportunists who had kept quiet about their criticisms of the PA as long as they received what they wanted. Despite the heavy criticism of Arafat's government and the dissatisfaction with its composition, he managed to obtain a large majority in the PLC in support of his intentions. Some 55 PLC members voted with the new government, 28 were against and three abstained. The approval of the government is a clear example not only of Arafat's hegemony, but also of the impact of the dominant role played by Fatah in the PA. Neo-patrimonial patterns of power proved to be effective in bypassing formal political procedures and in emptying them of any substantial meaning.

Another clear example of the centralization of power and neo-patrimonialization of politics in the governing bodies of the PA is the monitoring of state local authorities, such as municipalities and local and regional councils. On 20 May 1994 Arafat issued a decree stating that 'the laws, regulations, and orders that were operational before 5 June 1967 in the Palestinian territories will remain in force until they are standardized'.<sup>40</sup> This decree invalidated Israeli military regulations that had been issued since the occupation of the West Bank and Gaza Strip and reactivated Jordanian and Egyptian law in these areas respectively. According to Jordanian and Egyptian law, the West Bank and the Gaza Strip are divided into administrative districts [Zuabi, 1993]. Accordingly, the interior minister is responsible for all internal affairs and has an administrative apparatus for the purpose of fulfilling his duties. He can appoint governors, who constitute the highest legal and political instance of each of the different

districts. The governors are the representatives of the executive branch of government and are supposed to implement its policies. Their authority has an administrative dimension connected to public services and another relating to public order. Consequently, the governors are in charge of all municipalities, administration of the central government and the police in their districts.

In appointing the governors, the minister of the interior has to consult the head of state, but as matters stand the head of the PA is himself the interior minister and thus Arafat is the only person in charge of this powerful governmental apparatus. There are no clear credentials that governors must have according to the law in order to acquire the position of governor [Zuabi, 1993: 142]. The PA areas were divided into 12 districts where governors were appointed. Although they are appointed by law, they turned out to be efficient agents of presidential control.

The governors' offices became a central channel through which the local population could reach the central authority. Their dominant roles have personalized politics and re-established the power of the extended families and kinship groups. This role was conditioned by the fact that most governors are foreigners in their districts. Six of the nine West Bank governors, for instance, are returnees.<sup>41</sup> These governors, who came mainly from the Western District of the PLO which was in charge of Palestinian resistance against Israeli occupation in the West Bank and Gaza, had to establish a new power base in the new social fabric. To ensure their effective role and make sure that their authority was respected, they tried to legitimize their power by co-opting the dominant families in their regions. Patronage, including the exchange of allegiance for posts in the administrative apparatus, surfaced as a successful mechanism for all parties.

Since governors coordinate all activities of the official offices of government, they turned out to be central personalities in their districts. As a result, all strings in the system led to the governor who became the mediator in every local conflict, be it between citizens, between citizens and officials or between different governmental branches. The governors became the main point of arbitration for most conflicts in society and arbitrators in familial and tribal conflicts. Their central role enabled the president to become involved in local issues in very urgent cases as the supreme judge.<sup>42</sup> As a result, the governors' offices became another structural tool that strengthened the central government and weakened civil organizations. The enhancement of family and kinship politics diminished the room for manoeuvre of modern civil and political agents, such as parties and non-governmental organizations. One should note, at this stage, that Arafat postponed the elections for the local councils and municipalities and instead appointed his loyalists to office in the larger towns in the West Bank

and Gaza Strip. In one particular case the appointed head of a central city in the West Bank is also a member of the PLC and the PLO Executive Committee, which conflates his legislative role with his executive positions.<sup>43</sup>

### **Constitutional Order and the Judicial System**

To elaborate further on the impact of informal institutions on the democratic character of PA, it is worth noting the emerging constitutional order and the functioning of the judicial system. Since its establishment, the PA has functioned without a clear constitutional order [Khader, 1998]. A debate has been taking place between, on the one hand, constitutionalists within the PLC, characterized by ambitious vision and supported by external legal NGOs, and on the other hand, Arafat, regarding a Palestinian constitution that affirms Palestinian autonomy and establishes a clear basic legal framework [Brown, 2000: 25–43]. Five different versions of a Palestinian constitution, the Basic Law, have been drafted. In 1997, the PLC passed the Basic Law in three readings by a majority, but it was not promulgated by the executive. Instead, the mixture of inherited codes and laws that were in effect prior to the Israeli occupation of the West Bank and Gaza Strip has been applied. PLC pressures on Arafat to ratify the Basic Law did not bear fruit. Arafat was not enamoured of the legislative process that took place in the PLC and favoured the transfer of responsibility for the Palestinian constitution to a broader quorum that included PLO institutions. He thereby followed his dominant line of political conduct in which he chooses to play on his multiple roles as head of the PA and the PLO. The confusion of mandate and overlap of authority between PLO and PA institutions enabled him to bypass the PLC. During the meeting of the PLO Central Council headed by Arafat in April 1999, the Council adopted a decision to transfer responsibility for the Basic Law to an ambiguous committee headed by one of his ministers.<sup>44</sup> According to Brown, the decision appears to have buried the Basic Law passed by the PLC [Brown, 2000: 25–43].

This confusion regarding the Basic Law characterizes the attitude towards the rule of law in the PA. Despite the mere existence of a legal system not being a sufficient guarantee of democracy, the rule of law is one of the most central characteristics of democratic rule. Gregory Mahler warned that law is not only a written commitment, it is ‘an attitudinal and behavioral commitment on the part of the leaders of a country and of the people of a country to honor the distribution of powers described in a constitution ...’ [Mahler, 1996: 35]. In the PA, laws have not always reflected the manner in which formal political institutions operate.<sup>45</sup> The law has been there only nominally.<sup>46</sup>

This confusion is mirrored in the PA judicial system. Despite the fact that there is a court system, there are no clear formal procedures of enforcement. A good example of such a confused situation is the tense relationship between the various security forces that compete over responsibilities and duties, and the overlapping authorities between them and the minister of justice, the chief justices in Gaza and the West Bank, who have quasi-cabinet status, and the attorney-general. On many occasions the security forces did not accept the authority of the minister of justice or the attorney-general and did not respect their decisions.

In several cases, the police were not prepared to release prisoners who had not been charged. Detainees were held in police custody for long periods without being charged despite decisions made by courts to release them.<sup>47</sup> Palestinian citizens are arrested by the security services and jailed for long periods without formal charges. Many Palestinian detainees were denied any possibility of speaking with their lawyers and of representation in court.<sup>48</sup> Since 1994 more than 21 prisoners have died of torture in Palestinian gaols.<sup>49</sup> Detainees have confessed that they feel no less threatened in Palestinian jails than they did in Israeli ones.<sup>50</sup>

Torture methods used in Palestinian gaols can be divided into two main categories – physical and mental. According to human rights organizations, 98 per cent of detainees admitted that they were exposed to more than one kind of mental or physical pressure.<sup>51</sup> Moreover, opposition activists are arrested based on emergency laws issued by the British government in Mandatory Palestine in 1945. In the past, these laws were severely condemned by the Palestinian leadership for being laws of a colonizing power. Emergency laws were put into effect in order to enable the PA leadership to enforce policies of political restraint against opposition activists. The laws were used recently to clamp down on Islamic opposition and close a number of affiliated welfare institutions in an attempt to disconnect Hamas from its supporters [Roy, 2000: 24–6].

Furthermore, the lack of judicial independence has led the minister of justice to intervene in the judicial system in contravention of legal rules and regulations. He has forced judges to resign or ordered their early retirement without consulting the chief justice or any other judicial authority.<sup>52</sup> The interventions of the attorney-general to enforce the decisions of the court have not helped secure respect of legal procedures. Such violations led to the resignation of Attorney-General Fayyez Abu Rahme in May 1998, after serving only eight months in office.<sup>53</sup>

The intransigence of the executive regarding judicial decisions has discredited the judicial system in the eyes of the population, which has led to the expansion of informal protection systems based on personal connections and allegiances.<sup>54</sup> Therefore, the public's evaluation of the

judicial authority and court system has been in steady decline.<sup>55</sup> Many residents have turned their backs on the official judicial system and have returned to traditional forms of problem-solving. Customary law became a common ground for many Palestinians who recognized its effectiveness relative to state courts [Frisch, 1997: 341–58]. The overlap between modern formal state institutions and informal traditional ones has created two parallel judicial systems that in many cases contradict one another.<sup>56</sup> The PA's active role in encouraging this process affected the reliability of the official judicial system and consequently had a negative impact on the universalization of the rule of law.

These patterns have not emerged solely as a result of misconduct by the executive authority, yet there are clear indications regarding the contribution of personalized politics to the deteriorating status of the courts and, as a result, of the rule of law. Since proximity to key individuals defines the distribution of power, and patronage politics is based on personal connections, many PA officials, especially from the security forces, are involved in applying customary law. This not only deepens the overlap between modern and traditional jurisdiction but also adds to the confusion of authorities [Frisch, 1997: 341–58]. An illustrative case occurred on 30 September 1995, when 'Force 17', the presidential guard, was involved in a customary law reconciliation between two families in the Jericho area. The Qaysiyya and Nisan families announced their willingness to reach a solution of the quarrels between them. Their gratitude for the involvement of the PA security forces was announced in the daily newspapers.<sup>57</sup>

The involvement of PA officials in such familial quarrels is coordinated by the Office of the President for Tribal Affairs which was established by Arafat in October 1995 to settle problems between families. Since the establishment of the Office for Tribal Affairs, the engagement of PA officials in traditional problem-solving has risen dramatically. The institutionalization of a modern judicial system does not replace traditional forms of problem-solving, rather it supplements them. This process would not have been problematic were it not exploited by high-ranking civil servants as a mechanism of surveillance and as a vehicle to enhance political interests. It leads to deinstitutionalization and corrupts the governmental system by creating power monopolies parallel to the well-known economic monopolies.<sup>58</sup>

The weak court system and the lack of basic judicial, logistic and technical facilities promote inefficiency and corruption.<sup>59</sup> In areas where there is only one court and one judge for over 100,000 residents, there is much room for manoeuvre by bureaucrats.<sup>60</sup> They promote their influence by procedural measures, exploiting the judicial vacuum and violating basic democratic principles. The new bureaucracy has pervaded the private

sphere, making administrative demands that leave very limited room for personal freedom. A good example of such administrative control is the 'good behaviour certificate' that citizens have to present when they ask for basic state permits – for example, to open a store or establish a non-governmental organization. Citizens have to contact the security services for such certificates, which are not issued if the applicant cannot prove that the project they intend to initiate has no hidden agenda. This administrative measure enables the government to control any social, economic, political or cultural activity and monitor society by bureaucratic processes.

### **Electoral System and Party Design**

Another institutional dimension that illustrates the main thesis of this article is the party system. Party systems are influenced by electoral systems where electoral rules have an impact on party competition [Carey, 1997: 67–92]. Political parties are essential instruments for representing constituencies and interests, voicing demands and preferences, organizing electoral competition for power, crafting policy alternatives, setting the policy-making agenda and integrating individuals and groups into the democratic process. It is usually argued that a solid plural party system is not a necessary condition for the consolidation of democracy [Diamond, Plattner and Chu, 1997: xxiv]. The Palestinian experience, however, leads us to draw different conclusions. A plural active party system is a prerequisite for democracy. The boycott of the elections by opposition parties was a severe blow to the chances of democracy in Palestine. Elections are considered to be a necessary condition for the transition to democracy but they can have no serious impact without an active, pluralist party system.

#### *The Founding of the Electoral System*

The first Palestinian elections were based on the Interim Agreement. The elections were important for Israel as a procedural act that legitimized the PA as a partner in the peace negotiations. They were important for the Palestinian leadership as a source of its authority and of support for its policies. The electoral system was determined in general terms in the agreements with Israel. The election law was ratified by the PA executive in December 1995 and followed the guidelines set out in the peace agreements. The presidential form of government chosen by the Palestinians created a mixed election system. For the presidential elections, the West Bank and Gaza strip are considered as one area in which all citizens over 18 years of age are eligible to participate in the direct elections. The elections to the Parliament were supposed to be 'general, direct, and free' and would take place in 16 different districts. Each district sends

between one and 12 representatives to Parliament in proportion to its number of residents. The elections took place in January 1996 and 75.86 per cent of the eligible population took part in them. They led to the election of Yasser Arafat, of the two candidates for President of the PA, and to the constitution of the first elected Palestinian Parliament, with 88 members emerging from 725 candidates.<sup>61</sup>

The division of the West Bank and Gaza Strip into 16 districts tipped the scales in favour of the large families and tribes and led to the consolidation of their power in the new political system. The district-based, winner-take-all electoral system shut out political parties that would have won up to six seats in the parliament had the PA chosen a proportional representation system. This electoral choice was made in order to achieve the desired results and to avoid a disobedient parliament. It managed to bring into being a very homogeneous parliament consisting of local Fatah leaders, PLO activists, young Fatah candidates, notables, members of the business community and tribal representatives. The composition of the elected parliament ensured support for Arafat on almost every issue. Although the elections marked a democratic change in Palestinian political history, the chosen electoral system reduced the chances of proportional democratic representation and reduced the possibility of a change of leadership. On the contrary, the chosen electoral system formed a secure way of consolidating the power of the dominant Fatah elite in a coalition with the dominant families.

### *The Party System*

The fact that the elections were a result of the peace agreements between the PA and Israel has led opposition parties to boycott them. The three main opposition political groups, Hamas, the Popular Front for the Liberation of Palestine (PFLP) and the Democratic Front for the Liberation of Palestine (DFLP), did not take part in the elections. They viewed the elections as legitimizing the peace agreements with Israel, which they opposed. Furthermore, the chosen electoral system left no doubts as to the efforts of the PA leadership to marginalize them and deny them any chance of winning enough seats in Parliament to be effective. The PA leadership did not wish to repeat the quota system that characterized PLO politics. Thus, the boycott has led to disproportional representation of the candidates in the different districts and secured the triumph of Fatah.

Among the candidates, a large majority were independent and unaffiliated with any political party. The second largest group of candidates represented new *ad hoc* political parties established solely for the elections. Of the 130 candidates that were affiliated with existing parties, 75 were affiliated with Fatah. Fatah won 77 per cent of the seats in Parliament, a



high proportion that affected the role of the parliament as a representative body. The Fatah hegemony became one of the main sources that paralysed the ability of the parliament to control the executive and form the source of public legitimacy.

The founding elections led to the establishment of a stable but unbalanced party system in the PA. The opposition parties that did not participate in the elections were marginalized. The emerging political system is dominated by one party without any serious political alternative. The fact that the elected president is the head of the dominant party turns the majoritarian decision-making system into a stagnant majority rule.<sup>62</sup> This combination in a highly personalized political system constitutes fertile soil for clientelist relations that in many cases lead to institutionalized corruption.

Fatah seeks to present itself as an integrative party in which all segments of Palestinian society can find a place. However, the elected members of the movement from within the official list are high-ranking officials or traditional figures historically identified with the movement. Most of the party's young leaders had to run as independents after they were dropped from the official list. The success of the party in the elections was unavoidable. Not only was Fatah almost the only well-organized party in the elections, it also led the process of state-building. Fatah dominated the state's bureaucracy. It was able to provide people with jobs and positions, which neither of the other movements could have done. A high-ranking Fatah official in the West Bank admitted that many of those who supported Fatah in the elections did so for personal interests. He claimed 'this is true and this should not be understood as an accusation of Fatah. The movement managed to provide people with jobs by its establishment of the PA. After Oslo, new social, economic and political segments of society joined the movement for the sake of interests, not for the sake of struggle.'<sup>63</sup> This reality opened the way for patronage and political deals that strengthened informal political institutions while weakening the formal ones.

The elections marked a regression in the role of political parties in Palestinian politics. The new political reality and the split between supporters and rejectionists cut across most political parties. Many supporters of opposition parties participated in the elections despite the boycott of the elections by their movements. On the other hand, none of the newly established parties won a seat on the PLC. It seems that none of them managed to attract the public or formulate new political and organizational programmes that challenged the existing political structure. All the new parties appeared as splinters of existing movements or as superficial, temporary organizations founded for the elections. This political reality left people with no serious options but to go for Fatah. The weakness of the

opposition and the closeness of Fatah to the PA, as well as the role the latter plays in intimidating opposition parties, does not leave much potential for a serious change in the Palestinian party system in the near future.

### **Concluding Remarks**

Contrary to the assumptions made by some scholars of democratization, the Palestinian experience demonstrates that electoral competition and formal institutional democratic structures are not sufficient for democratic consolidation. On the contrary, elections can legitimize informal power structures. Informal institutions that exist beside formal ones can assist in establishing authoritarian power structures. In the Palestinian experience, we have witnessed the impact of the central role of Arafat and the hegemony of the Fatah movement on democratic procedures. Furthermore, informal institutions empty democratic principles, such as accountability, representative government and elections, of their meaning. The lack of legal clarity and the absence of clear constitutional order are exploited to suppress democratic freedoms. There is insufficient evidence to establish that the dominant elite in the PA seeks to lay the ground for a clear formal, legal or administrative order that fills the gaps in the existing state structures. As a result, there is a sense of chaos in the state administration, which is exploited by the dominant elite to promote its political interests through clientelist relations. It seems that institutional choice is an important factor for democratization only if civic culture and substantial pluralism are manifested in the formal state structure. The Palestinian experience demonstrates that only the match between formal and informal institutional systems and their correspondence with democratic and civic principles can guarantee a functioning, efficient and lasting democratic process.

Although Palestinians still live under partial occupation and the peace agreements have limited their institutional choices, the PA leadership has had enough room to determine the normative and substantial dimensions of their political regime. There has been a clear process of institutionalization in which formal state structures were established. There was also a clear tendency to establish an institutional infrastructure for a democratic regime. The elections of January 1996 and the establishment of the PLC were central components of this process. But as this article has demonstrated, the experience of recent years has provided enough evidence to show that the formal institutions are void of a serious substantial role. On many levels of governmental policy we can see disrespect for formal procedures. In most cases this pattern comes from people close to the centres of power. This pattern enhances authoritarian forms of authority based on traditional and patrimonial power structures. The mixture of formal and informal

institutional structures creates a hybrid situation in which democratic procedures are both resilient yet limited in their influence.

Accordingly, the PLC is marginalized as a representative body. The domination of the Executive goes far beyond the desired efficiency sought in every government. It suppresses sound and deliberate legislation and cripples the role of the purportedly independent judiciary. Arafat's symbolic role has a heavy impact on the functioning of formal institutions. He centred many of the newly established political structures around himself, thereby opening avenues for political patronage. Being a founding father with strong charismatic appeal has exempted him from being held responsible for the authoritarian governmental structures.

It seems that the Palestinians are following the experience of most post-colonial states where a dominant party ruled the state for a long period and as a result blocked the way for a real change of power. Evidence from other experiences demonstrates the negative effects that such an experience can have, not only on democracy but also on political stability [Gilliom and Simkins, 2000]. The dominant logic of the state that legitimizes the enduring dominance of Arafat's personality as well as the deepening connection between clientelism, patronage and corruption, endanger the entire Palestinian political order. If the dominant elite seeks to ensure its survival, it will have to institutionalize its power in legitimate formal procedures, for Arafat is not an eternal guarantee in the long term. The formalization of political procedures could be the common denominator around which the dominant elite could reconcile its interests with the broader interest of establishing a stable Palestinian state.

#### NOTES

1. In the public opinion polls conducted by the Center for Palestine Research and Studies (CPRS), between 77 and 81 per cent preferred elections as the best means of selecting the members of the Palestinian 'elected council'. CPRS, opinion polls no.7-14, Nablus, West Bank.
2. A good example of the discussion regarding democracy is Budeiri *et al.* [1995].
3. Human rights activists are the most famous among those who criticize the political culture of the PA.
4. Public opinion polls conducted by the CPRS, Nablus.
5. 'West Bank and Gaza Economic Policy Framework Progress Report', *Journal of Palestine Studies*, 30/1 (Autumn 2000), pp.144-62.
6. The transition period is seen as 'the interval between one political regime and another': see O'Donnell *et al.* [1986: 4].
7. The rate of voter participation in the elections reached 75.86 per cent. Details of the elections can be found in Central Election Commission, *Palestinian Authority Elections 1996*, Gaza: Palestinian National Authority, 1996.
8. Article XVIII of the *Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip* defines the head of the PA as the Ra'ees, which means president. The name Ra'ees was chosen as a compromise between Israel and the PLO. It satisfied the latter's expectations

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- for a presidential title that had been Arafat's official title since the declaration of the Palestinian state in November 1988.
9. Chapter I, Article III.
  10. Article XVIII, sub-article 4.
  11. See interview with, Azmi Shu'aybi, 'A Window on the Working of the PA: An Inside View', *Journal of Palestine Studies*, 30/1 (Autumn 2000), pp.88–97.
  12. Article V.
  13. Article XVIII.
  14. The president has issued several decrees that subdue the regular legislative process. An important decree was issued on 7 February 1995, establishing the State Security Court. A more recent decree was that of 10 January 2000, which established a 'Higher Council for Development' charged with 'promoting investment in Palestine and ensuring good revenue performance and sound revenue administration, as well as strengthening the public finance system'. See: [www.pna.net/events/decrees.htm](http://www.pna.net/events/decrees.htm).
  15. *Al-Siyassa Al-filastiniyya* (Palestine Policy), 2/5 (Winter 1995), pp.183–6.
  16. *Monitor*, 3/1 (Jan. 1999), p.4.
  17. The importance of promulgation was pointed out by St Thomas Aquinas in *Summa Theologica* Ia, Iiae, Q 90, Art. 4.
  18. *Parliamentary Horizons*, a documentary newsletter published by Muwatin, the Palestinian Institute for the Study of Democracy, 3/3 (June 1999), p.6.
  19. *PLC Report*, PLC: Information Department, 3/1 (2000), p.1.
  20. *Parliamentary Horizons*, 3/3 (June 1999), p.8.
  21. In the public opinion poll conducted in September-October 1996, 47 per cent of the people evaluated the overall performance of the Council as 'good' or 'very good'. The evaluation exceeded 50 per cent when linked to specific issues such as defence of Jerusalem (52 per cent) and defence of land against settlers (60 per cent). CPRS, poll no. 24, Nablus, West Bank.
  22. *Parliamentary Horizons*, 3/8 (Nov. 1999), p.2.
  23. *Middle East International*, 10 April 1998, p.19.
  24. See the report prepared by the PA in co-operation with the IMF and presented to the Ad Hoc Liaison Committee that met in Lisbon in June 2000. *Journal of Palestine Studies*, 30/1 (Autumn 2000), pp.144–6; see also: [www.pna.net](http://www.pna.net).
  25. *Ibid.*, p.146.
  26. For information on the donors' role and financial aid for development, see 'Aid for Trade: Putting Donors to Work', *Palestine Economic Pulse*, 1/5 (Sept.–Oct. 1996).
  27. Public opinion poll No.24, Sept.–Oct. 1996, CPRS, Nablus, West Bank.
  28. Public opinion poll No.46, Jan. 2000, CPRS, Nablus, West Bank.
  29. Public opinion polls Nos.42–46, July 1999–Jan. 2000, CPRS, Nablus, West Bank.
  30. Saed Ahmad Sidqah, *Al-Quds*, 12 Oct. 1995.
  31. *Report of PLC Special Committee* based on the Report of the Public Oversight Committee, 1997.
  32. *Filistin Al-Thawra* (Palestine the Revolution), no. 987, 5 June 1994.
  33. For the composition of the government, see *Journal of Palestine Studies*, 24/1 (Autumn 1994), p.133.
  34. *Majalat al-Dirasat al-Filastiniyah* (*Journal of Palestine Studies*), 28 (Autumn 1996), p.209 (in Arabic).
  35. *Al-Siyasa Al-Filastiniyya* (Palestine Policy), 5/20 (Fall 1998), p.121.
  36. *Journal of Palestine Studies*, 28/1 (Autumn 1998), p.145.
  37. According to the Basic Law passed by the PLC but not ratified by the president, there should be 18 ministers in any government.
  38. Report of the Council on Foreign Relations, *Strengthening Palestinian Public Institutions*, pp.32–4, [www.cfr.org/public/pubs/palinstfull.html](http://www.cfr.org/public/pubs/palinstfull.html).
  39. See the report and the reactions of different people on this issue in *Al-Siyasa Al-Filastiniyya* (Palestine Policy), 5/20 (Fall 1998), pp.116–30.
  40. *Al-Quds*, 24 May 1994; *Journal of Palestine Studies*, 24/1 (Autumn 1994), p.133.
  41. Personal interviews with rank and file people in the districts.

42. See the frequent advertisements of gratitude for the president in the Palestinian daily newspapers.
43. Ghassan Al-Shakaa, for instance, is the appointed head of the municipality in Nablus and at the same time a member of the PLC.
44. For more details on this overlap and Arafat's politics, see the report of the Council on Foreign Relations, *Strengthening Palestinian Public Institutions*.
45. This is not only a Palestinian phenomenon. In many modern states we notice the same pattern. See S.E. Finer (ed.), *Five Constitutions* (Sussex: Harvester, 1979), p.15.
46. A clarification of this point is found in I. Jennings, *The Law and the Constitution* (London: University of London Press, 1957), p.xiv.
47. The case of Dr Abdel-Satar Qasim, a history professor from Al-Nagah University in Nablus, is a good example. Qasim was arrested by the Preventive Security Forces (PSF) on 18 February 2000 and not released until the following November. He was one of the 20 signatories of a petition accusing the PA of corruption. The PA High Court twice ordered the PSF – on 3 April 2000 and 11 July 2000 – to release Qasim, but its decision was not respected. See [www.lawsociety.org](http://www.lawsociety.org).
48. *People's Rights*, 1/9 (Nov. 1997), p.24.
49. *Monitor*, 3/1 (Jan. 1999), p.22.
50. *People's Rights*, 1/8 (Oct. 1997), p.17.
51. *Monitor*, 3/1 (Jan. 1999), p.22.
52. *People's Rights*, 1/12 (Feb. 1998), p.10.
53. *People's Rights*, 2/16 (June 1998), p.36.
54. See the interview with the ousted Chief Justice in *People's Rights*, 1/12 (Feb. 1998), pp.11–13.
55. Public opinion polls show that the public evaluation of the judicial authority and court system declined from 50 per cent in 1997 to 40 per cent by 2001. CPRS, Nablus, West Bank.
56. The women's movement is very vociferous on this issue. See Khader [1998].
57. *Al-Quds*, 24 Oct. 1995.
58. Public opinion polls show that between 63 and 71 per cent of the population think that the PA institutions are corrupt. See polls 29–45, Sept. 1997–Dec. 1999, CPRS, Nablus, West Bank.
59. *People's Rights*, 2/21 (Dec. 1998), p.34.
60. According to the Palestinian Independent Commission for Citizens' Rights, 'as of the end of 1998, the PNA has failed to take steps to develop the judicial apparatus and to reform the problems and deficiencies afflicting its work, even though appropriate authorities are aware of the situation. Completely to the contrary, the Executive Branch has continued to solidify the existing deficiencies and defects.' For further details on the ratio of conciliation court judges to population in Gaza and the West Bank, see the *Fourth Annual Report* of the Palestinian Independent Commission for Citizens' Rights, published in April 1999 in Ramallah, West Bank.
61. For more details on the candidates, see Ghanem [1996] and Hilal [1998].
62. Hannah Arendt has suggested differentiating between these two concepts. Whereas majority decision is a legitimate technical procedure in democracy, majority rule is a form of authoritarianism where the majority utilizes its power to suppress the minority. Hannah Arendt, *On Revolution* (New York: Viking Press, 1963), pp.163–4.
63. *Al-Ayyam*, 17 Sept. 1997.

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