

GAZA FIVE YEARS ON: HAMAS SETTLES IN

Nathan J. Brown

MIDDLE EAST | JUNE 2012

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Summary

As political upheavals spread over much of the Middle East and North Africa in 2011, regimes throughout the region were shaken and a few fell. But in both the West Bank and Gaza, a soft authoritarianism that has provoked uprisings elsewhere has only been further entrenching itself.

In the five years since it took sole control in Gaza, Hamas has built a governing apparatus that is now in firm control of the small strip. Between January 2006, when Hamas won parliamentary elections, and June 2007, when the Palestinian Authority was split between the West Bank and Gaza in a brief civil war, Palestinian politics was marked by turmoil and uncertainty. But since that time, both halves of the Palestinian political system have settled in. In Gaza, Hamas has taken the shambles of Palestinian Authority institutions and worked to rebuild them, sometimes obscuring the division between Hamas as a movement and the Gaza government in the process.

A focus on the legal and educational fields shows a pattern of short-term accomplishments married to a worrying long-term trajectory. In its governing project, Hamas has succeeded to a degree, though progress has been slow. Civil society in Gaza continues to function, but in a context that places limits on political activity and opposition. Gaza now has a fully functional if imperfect judicial structure and an improvised system that can draft a modest amount of narrow legislation. And the Palestinians' education system not only has been revived but it is one of the few quiet areas of coordination with the West Bank.

Yet, these accomplishments are based on an authoritarian foundation. Much of Hamas's Islamizing agenda has been put on hold for now, but the political system is completely bereft of any mechanisms of accountability. The media and domestic NGOs are carefully controlled. Opposition parties can do what they like privately, but they remain restricted in what they can do openly or publicly. And the process of rebuilding the legal system has sometimes enabled and rarely obstructed the authoritarian characteristics of Gaza governance.

Entrenching authoritarianism offers Palestinians few options. A spate of unity agreements between the West Bank and Gaza—most recently a May 2012 accord—cannot obscure the reality that real steps toward unity have not been taken. There is no easy route out of Palestine's plight, but it is difficult to imagine much change without some pressure from below. And that is worrying, since elections are very difficult to imagine at present. As long as Gazans—and all Palestinians—remain voiceless in their own affairs, it is difficult to see any path forward.

An Uncomfortably Familiar Scene

As I walked down a Gaza street with a Palestinian acquaintance, I heard the “clop-clop” of horse hooves followed by a warm “Al-salam ‘alaykum” greeting and wave from the rider. I turned to see a man wearing a T-shirt and baseball cap labeled with the name of the Gaza mounted police force. Perhaps because of the fuel shortage, the Gaza Mounties (unlike their Canadian counterparts) actually still patrol on horseback. As he rode on, my acquaintance remarked sardonically, “Those are our knights.”

In a visit to Gaza in May 2012, I did see some exotic or unusual elements to be sure: a public transportation system that consisted of hailing any passing car and paying a modest amount to ride with a driver going the same direction or an urban beautification campaign—if it can be called that—of fiery posters and slogans on almost all public walls. And there were unmistakable signs of social conservatism enforced less by law than by social (and sometimes governmental) pressure—almost no uncovered women and no alcohol in any public place.

But most of what I saw were the all-too-familiar hallmarks of the softer versions of Arab authoritarianism. It is an authoritarianism that polices and regulates opposition but allows it to operate within certain limits, enforces a set of constantly shifting red lines to govern political speech and action in public, and screens government employees for their political loyalties. The authorities monopolize a set of legal and institutional tools to sustain the system, with occasional forays into completely extralegal action when rulers feel it is necessary. It is an authoritarianism that institutionalizes itself in myriad ways in both politics and society so that its continuation seems almost inevitable.

Since 2007, the West Bank and Gaza have come under what appear to be sharply different forms of rule. Gaza’s Islamist government has a counterpart in the West Bank that is an uneasy mix of technocratic rule under Prime Minister Salam Fayyad and nationalist Fatah party rule under President Mahmoud Abbas.

For all the differences in detail, and perhaps in style, there is a marked parallelism between Gaza and what is emerging in the West Bank. In both places, Palestine seems to be entrenching a form of politics that has provoked uprisings elsewhere in the region. An Egyptian from the Mubarak years might find some eerie similarities

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in either half of the Palestinian polity. Even the resigned sarcasm of the inhabitants harkens to the Egypt of the 1990s and early 2000s.

There is no sign that the Hamas leadership of the government has either abandoned its conception of “resistance” or accepted that its statelet in Gaza is anything like an end point for its ambitions.

Yet, Gaza’s government has not yet gone quite as far as Egypt. I once described Hosni Mubarak’s regime as having a strong sense of *raison d’état* but no sense of *raison d’être*. The Gaza government’s reason for existence at least remains largely clear, with Islamist ideological credentials still informing policy decisions to some extent. There is no sign that the Hamas leadership of the government has either abandoned its conception of “resistance” or accepted that its statelet in Gaza is anything like an end point for its ambitions.

Internationally, much of the focus on Palestinian institution building has been on the efforts of the Ramallah government, a [program](#) that I have described as [generating](#) a collective Western [self-delusion](#).¹ When attention does turn to Hamas and Gaza, international diplomacy and the threat of war are often center stage: thus the recent attempt of Hamas leader Khalid Meshaal to steer the organization toward reconciliation with Fatah and implicitly toward popular resistance and international diplomacy sparked great interest. That effort failed for many reasons, but among them was that by moving toward reunifying the West Bank and Gaza, it threatened to undermine the entrenched Hamas position in Gaza without offering any certain benefit. Hamas’s cautious and comfortable leaders in Gaza largely decided to hold on to what they have.

To understand Palestinian politics, it is just as important to start from the ground and work up as it is to view things from the vantage point of international diplomacy. I tried to take a more grassroots approach during a visit to Gaza and Ramallah in May, speaking to a host of different actors across the political spectrum, from political leaders and nongovernmental organizations to government officials and educators. It is clear on the ground that Gaza has a functioning government, even in fiscally demanding areas like education or technically demanding ones like the legal and judicial system, which confirms the findings of previous studies that have documented the way in which the Hamas-led government recovered from the blow of the 2007 split.² Much less than an Islamic emirate or a guerilla encampment, I found an emerging party-state that bore some resemblance to that which emerged under Fatah in the 1990s: unaccountable and authoritarian, with democratic mechanisms atrophying.

Of course, general elections have continuously been promised, and since my visit the Central Elections Commission was actually allowed a bit more freedom in Gaza. But public protestation aside, nobody expects a vote anytime soon. And that is a pity for all concerned; giving Palestinians a voice in their own affairs may be the best way out of the impasse.

Humorless Politics

Election Day in Sabana is a children's book that tells the story of politics in a community of animals who are electing their king. The lion—who, like his father and grandfather, has become accustomed to leading the community—loses to an alligator who makes expansive electoral promises. But the new leader's misdeeds and nepotism soon lead the animals to rue their choice.

Under pressure from Gaza's security services, the book has been quietly withdrawn from the shelves of Gaza schools and libraries. Why is *Election Day in Sabana* treated like *The Satanic Verses* by Hamas? Perhaps because the lion in the story is yellow (the color of Fatah) and the crocodiles are green (the color of Hamas). Those who banned the book have either too little imagination or too much: the book was written in French and translated into Italian and Russian as well as Arabic. It would seem to have no relationship to the 2006 Palestinian parliamentary elections in which new-entrant Hamas beat the dominant Fatah movement at the polls, but it still appeared too close to an allegory for the humorless Gaza security officials.

Yet, the Gaza government, while unmistakably authoritarian in its broad structure, still allows for some oppositional and independent voices and organizations. It backs off routinely in the face of negative domestic publicity and even international controversy. Personal conversations seem fairly free, but daily newspapers seem to be restricted to the pro-Hamas *Filastin*. At times that lack of reading material stems from Israeli restrictions on commerce with Gaza, at other times from the now-cold war between the Ramallah and Gaza governments, which makes Hamas hostile to Palestine's three pro-Ramallah dailies. As in other Arab states, however, various satellite channels and websites seem to keep interested residents well informed.

The government is at its most restrictive when it comes to public space. Demonstrations organized by Hamas, whose banners and posters are everywhere, are encouraged; those of other movements are generally barred and sometimes forcibly obstructed. The large, leftist Popular Front for the Liberation of Palestine is allowed to display itself, but only modestly. Even a recent cultural festival—Palfest, in which visiting Egyptian revolutionaries were hosted—was shut down, presumably because it catered primarily to non-Hamas actors. In general, opposition parties can do what they like in small conference rooms and converse freely in private settings. But they cannot operate openly or publicly.

Fatah is an exception, receiving far harsher treatment at times—individuals associated with Fatah can be harassed and organizations deemed close to Fatah have been closed. The party's local organization is largely hostage to the overall state of Gaza–West Bank relations. When the West Bank government

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represses Hamas, the Gaza government can respond with what some Hamas leaders acknowledge is a tit-for-tat approach. The recent revival of Hamas-Fatah reconciliation efforts, frozen as they are in reality, has led to a more permissive atmosphere, and Fatah's leadership has reacted by trying to revive its organization in Gaza—and edge out the followers of Fatah's former leader in Gaza, Muhammad Dahlan, who has been accused of corruption and fomenting dissension. But that project has had few visible public effects so far, save for limited Fatah participation in a recent tent city erected to support Palestinian hunger strikers in Palestinian prisons—permitted, ironically, even though Fatah's leaders seemed split on their position on this popular cause.

Other political restrictions are a bit less clear. Government hiring in Gaza seems to tilt heavily toward Hamas supporters, just as the Ramallah government has purged some Hamas supporters and has security services vet potential new employees. But the task for Hamas was made much easier when, after the civil war, the Ramallah government ordered employees on its payroll not to report for work in Gaza.

Meanwhile, the electoral process in Gaza has almost completely collapsed. The Electoral Commission, based in Ramallah and reconstituted in light of the Palestinian reconciliation process earlier this year, was allowed to reopen its office, but when I visited, it had not yet even been allowed to register voters in Gaza. Local elections, scheduled, cancelled, and scheduled yet again several times in the West Bank, have not even been promised in Gaza until

The political system is completely bereft of any mechanisms of accountability.

Hamah can reconcile with Fatah. And national elections are out of the question absent full Palestinian agreement (and perhaps Israeli permission as well). The result is that Palestinian political factions, some of which began to transform themselves partially and quite imperfectly into electoral parties in the dozen years after the creation of the Palestinian Authority, have no incentive to reach out to the broader public. Hamas pays only a vague reputational cost for implementing unpopular policies in Gaza, and the political system is completely bereft of any mechanisms of accountability.

It is true that viable elections have never been the norm in stateless Palestine. But even during the most authoritarian parts of the Oslo period in the 1990s, there was a set of presidential and parliamentary elections, and, in the aftermath of those elections, a parliament that worked—however fitfully and ineffectively at times—to make its presence felt and to oversee the executive. Public debates were lively at that time and a very active and professionalized (if sometimes elitist) set of nongovernmental organizations styled themselves as the functional equivalent of a political opposition.

Civil Society Soldiers On

Those NGOs still remain active even if their political voice is diminished in the current state of soft authoritarianism. And alongside prominent NGOs working in fields like human rights, rule of law, health, and education, Palestine has also developed a very rich set of grassroots or community-based organizations providing vital social services. The various organizations have developed in waves in response to shifting circumstances, with a few dating back to the period of the British mandate and with many others of far more recent vintage.

Civil society in Palestine can be seen as encompassing three levels of organizations—large, internationally based NGOs, often with local staffs but with leadership and funding from outside the country; domestic NGOs with professional staffs and sometimes with foreign funding; and an array of highly localized community-based organizations sustained by modest funds, volunteer efforts, or at most small professional staff, sometimes receiving international assistance. Each of these levels has fared somewhat differently under Hamas rule in Gaza, but civil society has generally been affected in ways that make conditions more constricted and difficult.

NGOs in Palestine

International NGOs operate fairly freely if they choose to do so. Political and legal restrictions in their home country can sometimes make interactions with the Gaza government awkward, and government officials have at times pressed international NGOs to report or register. In general, however, such organizations are prominent enough to be able to resist any pressure.

Domestic NGOs are in a more exposed position, particularly if they are less prominent. Those that registered prior to the 2007 split are routinely told that they must renew their registration with the Ministry of Interior in Gaza and comply with financial reporting requirements. Some have complied but others have insisted that their registration with the Ramallah-based Ministry of Interior is still valid.

Soon after the split, Hamas began to take more forceful action against NGOs that were affiliated with Fatah or that were led by pro-Fatah individuals, shutting some down and flooding the membership rolls of others in order to make it possible to elect pro-Hamas boards. Again, those organizations with high domestic and international profiles were particularly willing and able to resist this governmental effort, with the result that several human rights and other organizations with a strongly critical stance have continued unscathed.

The most forceful aspects of the campaign to bring NGOs in line seem to have receded, though the Sharek Youth Forum, perhaps one of the most prominent and best connected organizations, was shut down in 2010. An extended legal wrangle has ensued. Sharek is legally and formally nonpartisan,

but its leaders are clearly non-Islamist. As opposed to some pro-Fatah groups that refused to bring their cases before the Gaza judiciary because they did not recognize its legitimacy, Sharek and its supporters have won some tactical victories in Gaza's High Court, but to no practical effect.

The NGOs in the most awkward position are those that operate in both the West Bank and Gaza. Often suspect because of their West Bank ties and registration, these organizations seem to have an uneven experience. For instance, one prominent legal NGO had its videoconference link with Gaza cut when it invited Ramallah-based officials to address a conference. And movement of individuals between the West Bank and Gaza is so difficult that any coordination has to be done by telephone or e-mail. But managing finances between the West Bank and Gaza is much easier than moving people back and forth. The Gaza banking system continues to function, with Hamas reluctantly accepting that any effort to exert control over Gaza banks or interfere with the Gaza operations of the Ramallah-based Palestinian Monetary Authority would bring the Gaza financial system to collapse because international sanctions, stemming from anti-Hamas terrorism measures in many countries, would quickly be applied. So Gaza NGOs continue to access funds from the West Bank and international donors.

Community-based organizations providing social services have played a vital role in Gaza for quite some time, and the government has generally shown appreciation for their activities. Again, some Fatah-affiliated organizations were harassed or closed after 2007, but the bulk of such organizations find that the demand for their services has only grown. And the influx of donor funds after the Israel-Hamas fighting of 2008–2009, referred to by Gaza residents simply as “the war,” has, at least temporarily, increased resources at these organizations' disposal.

The Palestinian Bar Association

The deepest set of complications comes not from any one problem but from how the overlap—the division between the West Bank and Gaza, factional rivalry, Hamas rule, and Gaza's isolation—all combine to make operations difficult for all of civil society. The difficult hurdles that Palestinian civil society organizations face in the current political context can be illustrated thoroughly by a quick review of the Bar Association—a potentially significant body that is supposed to unite lawyers in both the West Bank and Gaza.

It took much of the Oslo period to knit together a unified Palestinian Bar Association, and by 2000, there was finally a coherent body with a leadership elected according to a special law for the legal profession. The Bar Association began to work to provide licenses, continuing education, and professional benefits (such as retirement and health plans), and also lobbied on behalf of lawyers.³

There were, to be sure, always problems. Disentangling the West Bank Bar from the Jordanian Bar, working across the political factions with the legal

profession, and difficulties communicating between Gaza and the West Bank (both because of travel restrictions and mutual suspicions) consistently hampered the Bar's work. And the Bar is theoretically headquartered in Jerusalem, where Israel will not allow it to operate. But through all these difficulties, the organization managed to limp along.

The organization split in 2007, however, which resulted in a deeply divided Bar in both political and geographical senses. West Bank members of the board, predominantly from Fatah, remained loyal to the Ramallah government, but even fellow Fatah members squabbled with each other. The Gaza members of the board, while also predominantly from Fatah, did not boycott the Gaza courts even as the Hamas-led government reconstructed them, leading to a political division within the association. Either their need for work or their identification with Gaza trumped the Gaza Bar's lawyers' tilt toward Fatah.

The two sides were so divided that they could not even agree on legally required elections for a new board. After the split, when the first elections were due, the West Bank Bar leadership decided to hold balloting. But Gaza lawyers balked and successfully obtained a court order in Gaza stopping the process. West Bank lawyers were forced to halt elections even though they rejected the legitimacy of the Gaza judiciary—to have proceeded with voting only in the West Bank would have been politically difficult because it would have been seen as entrenching the division.

Years of negotiation, mediation by a prominent legal NGO, and the improved atmosphere provided by the West Bank–Gaza reconciliation talks earlier this year resulted in an apparent agreement—for a moment. The two halves of the Bar Association moved ahead with joint elections that were to reunify the organization and even assembled some consensus candidates. But the Ramallah Bar also successfully lobbied Palestinian Authority President Mahmoud Abbas to issue a decree law that both enabled the agreement to be implemented and allowed elections to proceed only in the West Bank if necessary. (In Ramallah, President Abbas uses his constitutional authority to issue decrees with the force of law in the absence of parliament.) Gaza lawyers claimed to have been taken by surprise by the decree but decided to carry on with the elections—even Hamas lawyers and the Gaza-based Hamas member of the Ramallah Bar Association's board raised no objection. But two Islamist lawyers resorted to the Gaza High Court to block the procedure and successfully obtained an order suspending the election in the Gaza Strip.

Since the elections were carried out in accordance with a presidential decree viewed as illegitimate by the Gaza legal order, the court's ruling should not have been a surprise. What was a bit more surprising was that an apparent political agreement between Hamas and Fatah did not stick because the Hamas negotiators could not prevent two of their own members from resorting to the court. Elections proceeded in the West Bank alone, resulting in a Fatah-dominated board and a continued division between Ramallah and Gaza.

Throughout the standoff, there has been no harsh oppression or use of force—since the Bar’s members are lawyers, conflicts have been fought through lawsuits and rival legal claims. Still, even in an apparently favorable political atmosphere, divisions between the West Bank and Gaza and between Fatah and Hamas, and even rivalries within each movement, have paralyzed and divided a leading civil society organization.

Rule by Law, Moving Around the Law, and Shelving Islamic Law

The Gaza government most fully resembles a state, at least in rudimentary terms, in the legal arena. It now has a fully functional if imperfect judicial structure and an improvised system that can draft a modest amount of narrow legislation. But the project of rebuilding the legal system is not without blemishes or shortcomings from a variety of angles: it remains incomplete because of the effects of the division with the West Bank; it has induced Hamas largely to postpone any Islamizing agenda; and it has sometimes enabled and rarely obstructed the authoritarian characteristics of Gaza governance.⁴

Improvising Structures

When it took full control over Gaza in June 2007, the Hamas-led government faced an immediate crisis in the justice sector. Judges, prosecutors, and even the government’s legal staff, including the most important office in the Ministry of Justice, the *Diman al-Fatwa wa-l-Tashri`* or Bureau of Legal Advice and Legislation, were all on the payroll of the Ramallah government. And that government was telling its Gaza employees to stay home and ignore any directives from the Gaza authorities.

After a standoff of several months, the Gaza government finally cobbled together a way to plug the holes. It established a series of local conciliation committees to resolve disputes, sometimes training Hamas cadres familiar with Islamic legal principles to handle neighborhood problems. It also—of far more long-term importance—developed a full panoply of its own judges, staffing the various Gaza courts with its own appointees, though one judge from the pre-2007 judiciary did agree to stay on. The Gaza government similarly filled all other legal offices, including the public prosecution and the *Diman*. While these appointees were often known for their Hamas sympathies, they practiced secular law, not Islamic law; their main drawback was their total lack of experience.

Five years later, Hamas’s improvised structure seems to work. Litigants have returned to the courts. The ad hoc conciliation committees seem less active; the possibility that they would develop into a full alternative legal system has not developed. Perhaps because the rulings issued by those committees are

not enforceable in court they function largely as informal arbitrators rather than quasi-judicial bodies. And courts on occasion have even issued rulings inconvenient to the Gaza government.

But judicial and legal training remains quite limited. Unlike their West Bank counterparts, Gaza judges find that there are neither the funds nor the opportunities to participate in training programs in Arab countries, much less outside the Arab world. Suspicions abound that the judiciary is unable to withstand pressure from powerful individuals, though I was unable to verify any of these complaints, and I did not even hear many specific allegations.

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Remaining Obstacles

There are three outstanding legal issues that the Gaza government has not been able to confront effectively. First, there is no clearly legitimate way to make law. The problem is not unique to Gaza. Even after five years of a legislative vacuum in the West Bank, Abbas, who claims the authority to issue laws by decree in the absence of parliament, generally avoids decree laws unconnected to matters of pressing necessity or technical issues. And those decrees he does issue are not acknowledged or enforced in Gaza courts, since the Gaza government holds that the parliament is still in session.

Gaza has devised its own ad hoc legislative mechanism. The *Divan* and cabinet continue to develop legislative proposals and submit them to a rump parliament that meets in Gaza every two weeks. All non-Hamas members boycott the parliament, Hamas members in the West Bank are barred from entering the parliament's meeting place in Ramallah, and large numbers of Hamas deputies are in Israeli prisons. But the Gaza-based deputies from Hamas do meet and claim that they hold proxies from jailed deputies as well as consult Hamas deputies in the West Bank by telephone. Such devices allow them to assert that they have a quorum and to get majority votes. Until at least 2009—the year that Gaza regards President Abbas's term as having expired—the Gaza parliament would then submit laws to President Abbas, who ignored them.

A constitutional provision inserted because of former president Yasser Arafat's refusal to act on parliamentary legislation allows a law to go into effect if the president fails to respond. Gaza used that tool to declare laws enacted and published them in its own version of the Palestinians' *Official Gazette*—Ramallah also has its own version of the same publication. Since 2009, Gaza has regarded the president's office as vacant, so presidential inaction is a given and laws go into direct effect.

That leads to the second outstanding issue for the Hamas-led government: the Gaza–West Bank split has put real obstacles in place for any development of Palestinian law. Any law or regulation passed by the Gaza government is ignored in the West Bank; Gaza returns the courtesy. Court judgments in

lawsuits issued in Gaza are worthless in the West Bank; in that regard, Gaza legal officials profess to be more cooperative and claim that Gaza courts have occasionally enforced West Bank judgments. The rivalry can sometimes be annoying or petty: since laws are referred to by number and year, that means that there are two completely different legal enactments both called “Law 1 of 2008,” a development likely to give headaches to any officials designated to work out reconciliation if efforts resume.

But there is a more significant effect of the different legal paths. Any legal enactment taken by either government drives the two entities further apart. Since the division is deeply unpopular among Palestinians—and the general sentiment among all but the most partisan seems to be that Fatah and Hamas fail to reconcile because they prioritize the interests of their movements over the national cause—extensive legislation is politically unpalatable. Thus, with a small and still-inexperienced staff and a constitutionally dubious set of procedures for making law, Gaza, like Ramallah, has generally curbed its legislative appetites in favor of the technical and necessary.

Third, Hamas, an avowedly Islamist movement that now shares authority with no other party or movement in Gaza, has still had to shelve or postpone any efforts at Islamizing the Palestinian legal order. Any step toward Islamization of law would bring international condemnation and, more importantly, domestic grumbling.

Gaza’s appointment of secularly trained judges provides firm evidence of the strong tendency to avoid serious Islamization of law—indeed, the government has maintained one woman judge and appointed a second, moves at which its fellow Islamist movements in the region might balk. The role of the conciliation committees is also declining as secularly trained judges take on higher case loads. And attempts to police public morality have been relaxed, with Gaza residents often tying officially sanctioned but extralegal actions to economic conditions: when public dissatisfaction is high, Hamas backs off.

The clearest evidence has been the postponement of the project to write a new criminal code—and the reluctance of every official I spoke with even to address the topic. Gaza still operates on a British-mandate-era criminal code; the West Bank has a code inherited from Jordanian rule. In the Oslo period the parliament worked on a unified criminal code that seemed to draw largely from Arab sources that in turn draw from European codes, and the parliament even passed a draft code on its first reading. But an outcry by religious scholars at the decision to rely primarily on non-Islamic sources ultimately provoked an effort by some to draft a sharia-based code. Some workshops were held in Gaza on the subject, and some parliamentarians evidently showed interest in the effort. But a sudden lurch toward such comprehensive Islamization—and in a move not mirrored in the West Bank—seems politically unthinkable now.

Gaza may now have a fully functional if imperfect judicial structure and an improvised system that can draft a modest amount of narrow legislation, but

these systems must operate within the narrow strictures imposed by the division and other political constraints. And the system is unmistakably authoritarian. There is no serious mechanism for democratic oversight or even for meaningful consultation with groups outside of Hamas. The government has used the tools at its disposal—such as the licensing and reporting requirements for NGOs, as discussed above—to police dissident voices. And where the legal tools have not existed, it has often acted anyway—to shut down meetings, detain individuals, ban alcohol, harass opponents, and engage in its tit-for-tat contest with Fatah.

Gaza may now have a fully functional if imperfect judicial structure and an improvised system that can draft a modest amount of narrow legislation, but that system is unmistakably authoritarian.

Education: The Split Managed

The Gaza government has similarly managed the education system, recovering from severe initial problems resulting from the division. As with law, there are limitations to what the government can do—but they are somewhat different in nature. A large portion of the educational system of Gaza is managed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), not the government. Approximately 43 percent of Gaza's students attend UNRWA schools; but since these only go through the ninth grade, UNRWA actually educates a majority of students in the years it covers. Since UNRWA follows the West Bank curriculum, and because the West Bank–approved degrees are more accepted internationally, the Gaza government has found that it is forced to coordinate with Ramallah on educational issues. Remarkably, however, Gaza's administrators have made virtue out of necessity in the educational realm.

The 2007 civil war, followed by a civil service strike, confronted the Hamas-led government with the necessity of educating hundreds of thousands of schoolchildren with only a fraction of the body of teachers employed previously. As in the justice sector, the Ramallah government decided to pay only those Gaza-based teachers who did not go to work, which proved a temporary setback but a long-term opportunity for the new government in Gaza.

The move dramatically saved money for the fiscally strapped Gaza rulers—they only had to pay those teachers who broke the strike and showed up to work and were thus cut off by Ramallah. The government was also free to hire its own supporters to fill the gaps and pay them entry-level salaries, essentially converting the teaching profession to a core constituency rather than a pocket of opposition. When Ramallah finally called off the strike for teachers and health workers, Gaza only allowed those teachers it wanted to go back to work—and Ramallah still had to foot the bill for the salaries of

those returning teachers. Hamas has only had to pay those whom it hired. As a result, Hamas has had no trouble with teacher activism in its Gaza statelet.

But if Hamas weathered the storm and found jobs for its supporters in the process, it discovered that it does not have complete control over its education system. The existence of UNRWA inserts an uncontrollable element into Gaza's midst—and one that provides indispensable services. UNRWA is mandated to use the curriculum of local governments. Since Ramallah is still more accepted internationally than Gaza, it would be politically unthinkable for a UN body to defy the wishes of most member states and treat the Gaza rather than the Ramallah leadership as authoritative. In effect that means that were Gaza to make any changes in curriculum, the step would split the schools of the tiny Gaza Strip. UNRWA does coordinate with local governments and the Ministry of Education in Gaza but clearly does not follow their direction; it has unilaterally introduced a somewhat edgy human rights curriculum into its schools, receiving input from the Gaza ministry but not treating it as authoritative. UNRWA has taken other steps that have annoyed some elements in Hamas, such as sponsoring a gender-mixed summer program (until international funding dried up) and barring any political activity on its premises. This is difficult to accept for a government that shows a strong inclination to regulate and patrol Gaza society.

The Hamas government is also limited by the broader need to coordinate with the West Bank in order to have degrees earned in Gaza honored internationally. Most governments in the Arab world have made the political decision to defer to the Ramallah Ministry of Education when it comes to accepting diplomas and degrees. Egypt and Jordan in particular have not missed the political opportunity to squeeze Hamas by not accepting its authority to issue diplomas on its own.

Yet if UNRWA and Ramallah have limited the ability of the Hamas-led government to make education policy in Gaza, education officials have worked within and even used those limitations effectively. UNRWA-provided education and Ramallah-paid teachers' salaries make the burden of these schools bearable for the Gaza government. And, very quietly, the two Ministries of Education manage to work with each other and even consult and coordinate on all but the top political level. After some initial jockeying, the two ministries have jointly drawn up, graded, and released the results of the *tanjibi*, the secondary school examination that is crucial for student evaluation and for university admissions. They have also worked to evaluate the current curriculum and make modest changes.

Over the next year, more extensive modifications may be in store. Officials on both sides are tight-lipped about details because the cooperative effort is politically delicate and any talk about a proposal under development on one side will be treated by the other side as unacceptable unilateralism. That in fact happened when the Gaza ministry moved to introduce Hebrew into the

curriculum as an elective, a move approved in principle years ago but never implemented. But there is a redesign of the *tawjihi* being discussed and the possibility of a revamped civic education curriculum.

Of course, not all signs of the division are forgotten in the educational realm. Gaza applicants to positions at al-Azhar University—sometimes seen as a Fatah stronghold—must still have their degrees accredited in Ramallah. Meanwhile, the Islamic University—friendlier to Hamas—looks only to Gaza for guidance.

Overall, when it comes to education, Gaza’s leadership is acting like a statelet first and an Islamist movement second. When the new Palestinian curriculum was introduced over a decade ago, some Islamist critics peered through the books to see if there were too many uncovered women or asked that teaching about rights be grounded in the Islamic sharia rather than international human rights documents. While hijab counters still exist, the overall tone of the educational discussion in Gaza focuses much more on questions of administration, budgets, and workplace needs than the Islamization of society.

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Voiceless in Gaza

In March 2006, I interviewed Nasir al-Din al-Sha’ir, the incoming deputy prime minister and minister of education in the Hamas-led government in a Ramallah hotel lobby. The interview was interrupted by a cell phone call. As he answered it, a second phone rang—Isma’il Haniyya was calling from Gaza. Al-Sha’ir looked up at me sheepishly, a cell phone on each ear, “See,” he whispered, “we are already corrupted!” If two cell phones constituted corruption in 2006—at a time at which Hamas parliamentarians took shared taxis, ministers flew coach on very rare foreign trips, and all Hamas members taking up government positions were required to resign any leadership positions within the movement—then standards have changed.

It is not necessarily graft and venal corruption that is so notable in Gaza, though rumors abound, especially about kickbacks and involvement in illegal drugs on the part of government officials. But a deep and multilayered interpenetration has developed between the Hamas movement and the Gaza government. Hamas and governing is clearly not a Las Vegas marriage; the question is whether it is a Catholic one.

Hamas has not molted from movement to government; it remains both in some awkward but sustainable ways. What seems undeniable is that Hamas has wedded itself to running its statelet in the short to medium term and has jettisoned its concerns about becoming so closely intertwined with official structures that it would follow Fatah’s fate. Hamas’s rival became so closely identified with the Palestinian Authority during the 1990s that it seemed to

have much less vitality outside of government and lost all direction as the Palestinian Authority lost domestic support.

When it came to power in 2006, Hamas said it would never do the same—it would always keep the movement and government separate. But since 2007 in Gaza, the Hamas movement and the Gaza government are difficult to disentangle. Isma'îl Haniyya is an example of that. He now serves as prime minister in Gaza and also as a strong movement leader as a result of 2012's internal Hamas elections; when he makes a decision, it is not clear which he represents. Political loyalists stock official positions, and the closely cropped beard characteristic of Hamas supporters (but much less common on Gaza streets than I had expected) virtually constitutes a part of the police uniform.

Perhaps most disturbing for any notions of accountability is the continued opacity of the movement's leadership structures and decisionmaking. In its recent internal elections, the Hamas candidates and voters were secret, as were the results. Hamas is still in many ways an underground movement even as it has moved into ministerial offices.

It seems that time has slowed down for the movement; the rapid tumble of events that followed Hamas's 2006 electoral victory—forming a government, forming a national unity government, the 2007 split, rebuilding the Gaza state, and the 2008–2009 war with Israel—have been replaced by the month-to-month grind of slow developments. While drama takes place in neighboring Egypt, Palestinians wait for actors elsewhere to reshape the world in which they operate.

And that is just one of the many ways in which Hamas has come to resemble Fatah to a limited, but still uncomfortable, extent. Both movements were formed decades ago and dedicated themselves to ensuring that Palestinians

would be able to act on their own and seize control of their own destinies. Both now wait with surprising patience for outside actors. Ramallah depends on U.S. diplomatic support that may never arrive and European financial help as if it will never dry up; Gaza leaders all but explicitly wait for the rising Islamist tide in Egypt and elsewhere to lift their boat. Neither seems concerned that they may join a Palestinian archeology already deeply layered with interim structures, emergency institutions, and ad hoc arrangements—some of them generations old.

Yet, the Hamas-Fatah resemblance is not boundless. Hamas has shown few signs of the personalization and backbiting that grew to dysfunctional proportions in Fatah under Arafat. When Fatah lost its lifelong leader, the movement disintegrated, but Hamas has already lost most of its founders and has soldiered on nonetheless. It still has a viable collective leadership, though it is one that shows serious if thus far manageable strains at the top—as the public squabbles of the past few months have shown—as well as bouts of incoherence

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at lower levels, which the election of the Gaza Bar Association demonstrated. Hamas retains a far sharper ideological focus; though the range of opinions inside the movement is large, it has not fallen into Fatah's incoherence.

What Will Change Things?

Hamas is so deeply entrenched in Gaza that it is difficult to imagine any fundamental change anytime soon. Another round of warfare could indeed bring change to Gaza, but even the harshness of the last one did not alter much in the internal political scene. Two other paths may be likely ways to address the crisis at the core of Palestinian politics.

The rift that emerged between the two territories in 2007 has been the source of many of Gaza's difficulties. Bridging those gaps through a reconciliation effort could go a long way. The two leaderships have committed themselves to such a path on several occasions, and the most recent effort actually had some promising elements: there appeared to be some sincere interest on both sides; the negotiations began to delve into practical details; and other factions and independents were brought into the process. And there were some real effects as well. A slight *détente* at the leadership level and a mildly more permissive political atmosphere emerged. But that effort came to a halt, partly as a result of power struggles within each camp, especially, but not exclusively, in Hamas.

Even if the commitment were stronger, the practical difficulties remain both numerous and immense. It is not just the petty regulations and administrative chains of command that would have to be sorted out; any attempt to bridge the division would run directly against deeply institutionalized interests. For instance, both governments have sought to augment their administrative capacity, repressive tools, and political support by hiring their supporters. Since reconciliation would likely have some effects on external funding for the Palestinian Authority, both sides might quite literally feel that it would carry too high a price tag because they might no longer be able to pay all salaries.

What's more, for all the political pressure for unity—and it is quite strong—there are deep social divisions between the West Bank and Gaza that go beyond ideology and politics. If the two sides reconcile, it will likely begin as a limited and slow process that is allowed to go forward precisely in those ways that cause the least disturbance to existing interests and political arrangements. Such “reconciliation” would really amount to a *modus vivendi* designed to make the current situation manageable rather than resolve the split.

Then there are elections. The salutary effects of renewed Palestinian voting would be numerous. Both leaderships would be compelled to reorient themselves toward soliciting people's support rather than simply managing their

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own affairs. A Hamas movement that had to ask for Palestinians' votes would likely behave differently—paying attention to public opinion, articulating its strategic vision, and seeking to persuade those outside Islamist circles. A Fatah movement encountering the same need would either have to adapt or continue its slow fade from the scene.

But the obstacles to elections are even deeper than those to reconciliation. There are some practical difficulties—the Palestinian electoral machinery is

To allow Palestinians to return to the polls would be risky, but as long as Gazans—and all Palestinians—remain voiceless in their own affairs, it is difficult to see any path forward.

broken but not beyond repair. Israel's acquiescence would be necessary, but it would be difficult to envision the country's current leadership reacting to competitive and meaningful elections as anything other than a strategic threat. Most significantly, elections would encounter all the obstacles that reconciliation would—precisely because elections require a measure of reconciliation.

To allow Palestinians to return to the polls would be risky—for Hamas, Fatah, Israel, and the international sponsors of the late peace process. But as long as Gazans—

and all Palestinians—remain voiceless in their own affairs, it is difficult to see any path forward. And the fact remains that elections are not in Hamas's interest right now—the movement would have to be cajoled, outmaneuvered, or enticed somehow. Hamas appears to be in little hurry, leaving Gaza's inhabitants not only without a voice but also without much hope for change.

Notes

- 1 See my earlier commentaries for Carnegie, including “Are Palestinians Building A State?” (June 2010); “The Peace Process Has No Clothes: The Decay of the Palestinian Authority and the International Response” (June 2007); and “Evaluating Palestinian Reform” (June 2005).
- 2 See “Ruling Palestine I: Gaza Under Hamas,” International Crisis Group Report Number 73, March 13, 2008; Yezid Sayigh, “ Hamas Rule in Gaza: Three Years On,” Crown Center for Middle East Studies, Brandeis University, Middle East Brief 41, March 2010; Are Hovdenak (editor), “The Public Services under Hamas in Gaza: Islamic Revolution or Crisis Management?” Peace Research Institute of Oslo, March 2010; and Yezid Sayigh, “Policing the People, Building the State: Authoritarian Transformation in the West Bank and Gaza,” Carnegie Paper, Carnegie Endowment for International Peace, February 2011; Haim Malka, “Gaza’s Health Sector Under Hamas: Incurable Ills?” Center for Strategic and International Studies, February 2012, http://csis.org/files/publication/120215_Malka_GazaHealthSector_Web.pdf.
- 3 For the historical background, see George Bisharat, *Palestinian Lawyers and Israeli Rule* (Austin: University of Texas Press, 1990) and my own *Palestinian Politics After the Oslo Accords: Resuming Arab Palestine* (Berkeley, Calif.: University of California Press, 2003).
- 4 For an earlier but more detailed examination of the legal system in Gaza under Hamas rule, see Nicolas Pelham, “Ideologie und Praxis—Das Rechtssystem im Gazastreifen unter der Hamas” (Ideology and Practice—The Legal System in the Gaza Strip Under Hamas), in *Palästina und die Palästinenser: 60 Jahre nach der Nakba* (Berlin: Heinrich Böll Stiftung, 2011), www.boell.de/downloads/2011-11-Palaestina_Palaestinenser.pdf.

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