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CLUSTER VIII: CULTURAL AND
POSTCOLONIAL CRITIQUES IN LATCRIT
THEORY: Healing Spirit Injuries: Human Rights in
the Palestinian Basic Law

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SUMMARY: ... This Article introduces LatCrit Theory to a key issue in our post September 11 world, the plight of the Palestinians. ... In the contemporary era, many societies are grappling with constructive responses to spirit injury, including "rhetorics of history (truth), theology (forgiveness), justice (punishment, compensation, and deterrence), therapy (healing), art (commemoration and disturbance), and education (learning lessons). ... Subsequently, thousands of Palestinians have been summarily arrested or imprisoned by the PNA, and numerous human rights violations have been well documented. ... The post-9/11 situation has battered the Palestinian economy even more so. ... Beyond high unemployment and limited resources, the Palestinians have been subjected to deliberate tactics designed to hurt their economy. ... Freedom of belief and worship is guaranteed, an important right for people whose religious freedoms are restricted under occupation. ... For example, the Palestinian's freedom of movement was often denied by Israel during the occupation. ... During the occupation, Palestinians could not use the law to seek justice, so this new right emerges as significant. ... " The Article also states that "freedom of economic activity is guaranteed," clearly establishing a free market economy. ... " During the occupation, the Israelis frequently closed Palestinian schools. ... In the post September 11th world, Palestinians will no doubt continue to suffer spirit injuries as the Israeli occupation continues with no apparent end in sight. ...

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I. Introduction

Critical Race Theory ("CRT"), n1 which evolved based on U.S. legal paradigms, has begun to address more legal issues outside the U.S. as well. The LatCrit

VI conference held in April 2001 contributed to enhanced transnationalism with the wonderful theme of "Encountering Latin America: Exploring the Parameters and Relevance of LatCrit Theory In and Through a Regional Rotation." I was invited to attend the event to contribute comparative perspectives based upon my own regional expertise on the Middle East and Africa. Since the horrific events of September 11, 2001, only a few short months after LatCrit VI, my Middle East specialization has come into greater demand, rather than being regarded as an esoteric subject with limited relevance to the day-to-day lives of Americans.

So how does my specialty now link to the topic of the conference? I can think of several ways. Because of the new War on Terrorism that developed after September 11, there is little attention now being paid to Latin America by the United States, including concerning issues such as NAFTA and economic development. n2 Isn't LatCrit a perfect forum for strategizing how to avoid this near total marginalization? Second, the War on Drugs that had global, but heavy Latin American implications, has had to take a back seat to the new war. LatCrit theorists need to consider the positive and negative implications and opportunities presented.

Additionally, many Latinos look like "Arabs" and may be racially profiled on this basis, in addition to the profiling they previously may have received as potential "illegals," criminals etc. Shouldn't LatCrit [*1088] practitioners be involved in acting in legal coalitions with all groups addressing profiling?

Another relevant link to the conference theme is that the U.S is now holding an unknown number of foreign prisoners captured in Afghanistan in incommunicado detention at Guantanamo Bay, in Cuba. Even Cuban president Fidel Castro, a forty-year enemy of the U.S., does not appear to be making major objections. Shouldn't LatCrit lawyers join those raising human rights concerns?

Finally, Latinos may even be directly implicated in the War on Terrorism. Jose Padilla, a Puerto Rican U.S. citizen, also known as Abdullah al-Muhajir, is a former Chicago Latin Kings gang member who converted to Islam. As the so-called "dirty bomber," he is now being held in incommunicado detention in a military prison as an "enemy combatant." n3 LatCrit must be involved in exploring the unprecedented legal ramifications for all U.S. citizens.

Now that I have raised these potential War on Terrorism connections for further study by LatCrit and Latinos, I would like to return to the comparative perspective I brought to the conference. This Article introduces LatCrit Theory to a key issue in our post September 11 world, the plight of the Palestinians. I hope that Latinos, who have suffered from denial of their human rights both within and outside the U.S. on many levels, may be able to relate to at least some degree with these tragic people. The Article will show how the Palestinians are attempting to address their plight in part through development of a Basic Law or constitution.

II. Discussion

In their decades-old quest to establish an independent state, the Palestinian people have suffered many violations of their human rights, including exile, family dissolution, land dispossession, death, torture, and imprisonment. They have also faced a "web of racism, cultural stereotypes, political imperialism, [and] dehumanizing ideology ... and it is this web which every Palestinian has come to feel as his uniquely punishing destiny." n4 A major aspect of the "Palestinian community's identification is grounded on a collective sense of deprivation Such a communal mentality is the result of prolonged discrimination" n5

[*1089] Such indignities constitute "spirit injuries" - a term derived from Critical Race Theory - a term representing a combination of physical, emotional, and spiritual harms. n6 Spirit injury on the personal level can lead to the "slow death of the psyche, the soul, and the persona." n7 On the group level, spirit injury can lead to "the devaluation and destruction of a way of life or of an entire culture." n8

Palestinian spirit injuries continue to multiply as the independent state seems further away. The Palestinians know that the nation that they may one day receive will not be the size or shape that they want, and may not include East Jerusalem as its capital. While the Islamic fundamentalist Hamas minority group wants an Islamic country in all of Biblical Palestine, including present day Israel, other Palestinians would like to receive the original land grant proposed for the Arab state in U.N. Security Council Resolution 181 of 1948. n9 This area is far greater than in any plan that has ever been considered. Some commentators have classified the small discontinuous patches of territory that will likely constitute the nation as "arabstans," the equivalent of the discredited South African "bantustans." n10 The Palestinians know that such a state will never include the majority of Palestinians who are refugees around the world. n11 It may well be

a relatively powerless country, emasculated militarily and dependent economically to a large degree on the good will of the neighbor, Israel, that has subjected it to a 35 plus year occupation - an occupation made possible in part with [*1090] American economic, military and diplomatic support.

When a society like Palestine is faced with historic and contemporary spirit injuries on an individual and collective basis, what are the possible responses? The rage of terrorism - revenge, retribution, and hatred - has certainly manifested itself, but can only lead to politically, socially, and morally unacceptable cycles of death and destruction. In the contemporary era, many societies are grappling with constructive responses to spirit injury, including "rhetorics of history (truth), theology (forgiveness), justice (punishment, compensation, and deterrence), therapy (healing), art (commemoration and disturbance), and education (learning lessons)." n12 Concretely, the cures can include individual counseling, individual criminal prosecutions, individual suits for damages or restitution, individual or collective apologies, International Criminal Tribunals (Nuremburg, Former Yugoslavia, Rwanda), Truth Commissions (South Africa), repatriation, and reparations (Japanese Americans). What South African Constitutional Court Judge Albie Sachs, who lost an arm in an apartheid era assassination attempt, states with respect to his own experience is also true for Palestinians "the real reparation we want lies with the constitution, the vote, with dignity, land, jobs, and education." n13

Despite, or maybe because of, their profound spirit injuries, many Palestinians hunger to create a constitutionally based human rights state. Such a state is "a polity that is primarily animated by human rights norms" n14 - a place where such rights trump naked power in reality as well as theory.

The Palestinian quest to cure their spirit injuries has manifested itself in the creation of a document that they hope will be the constitutional embodiment of a human rights state - the draft Basic Law of 1997. n15 "During the five-year autonomy period negotiated as part of the Oslo Peace Accords, the Palestinian Legislative Council (PLC) drafted and finalized the Basic Law which was supposed to serve as an interim constitution. n16 While this document has a number [*1091] of problems, it "was an attempt by the democratically elected parliamentarians of autonomous Palestine, representing the Palestinian people living in the West Bank, Gaza, and East Jerusalem, to join the community of nations" n17 that recognize the importance of constitutionalizing human rights. The Basic Law was signed by Palestinian National Authority (PNA) President Yasser Arafat in May 2002,

n18 but there continues to be a constitutional vacuum as it cannot be implemented in the current environment of brutal occupation. n19

While the Basic Law may never be put into effect, it "can serve an important legal function in the future." n20 For example, it will no doubt serve as one of the sources for creating the constitution of the future independent state. n21 Moreover, it remains an important manifestation of Palestinian society's desire to treat the spirit injuries that afflict it in a legally sound and legitimate manner.

Before detailing the human rights aspirations of the Basic Law, it is important to place the Palestinian quest for human rights within the geopolitical framework that, realistically, greatly limits Palestinian options. The struggle for statehood is occurring within the context of a "unipolar world order with the United States as the sole super power." n22 While the U.S. has been a major proponent of human rights worldwide, this concern has not been a priority with respect to its Middle East policy. n23 Thus, long term Israeli human rights abuses of Palestinians still under Israeli authority and continued occupation of much of the land in the West Bank, East Jerusalem, and to a lesser extent Gaza, have not resulted in a loss of Israel's special diplomatic, military, and economic relationships with [*1092] the U.S. n24

This tension-filled political environment is exacerbated for two major reasons. First, the region lacks many practicing democratic role models. Second, incidents of terrorism on all sides abounds. Such incidents by Islamic forces have led to severe Israeli retaliation and increasing pressure on Arafat by the United States and Israel to round up and imprison all those dissenting from the peace process. n25 Subsequently, thousands of Palestinians have been summarily arrested or imprisoned by the PNA, and numerous human rights violations have been well documented. n26 Significantly, the U.S. puts little pressure on Israel to rein in its armed forces. n27

Spirit injuries have thus increased to the extent that the Palestinian government itself commits human rights violations. The damage is even more profound because the U.S. government, the main influence on the PNA, dutifully records Palestinian violations in annual reports, but continues to tolerate them for the most part. n28 Thankfully, the PNA's conduct has not reached the magnitude of Israeli violations over the entire occupation. n29 The PNA has not engaged in house demolitions, forced exile, and land confiscation, well known practices of the Israelis. n30 The spirit injuries may be even more searing, however, when human rights violations are committed by one's own people rather than an occupier.

The unipolar geopolitical and economic order has contributed to Palestine's financial problems which work in tandem with and influence the social and political unrest, the peace process, and ultimately the attainment of human rights. The PNA has very limited economic resources, and is heavily dependent on Israel. n31 Since the Gulf War when the PLO sided with Iraq, the Palestinians have not been able to rely on their Arab brother/sister nations for economic support as they had in the past. n32 Major economic aid for the fledgling Palestine government has to come from American-run or American-dominated sources, including the World Bank and IMF, [*1093] coupled with American allies such as the European Union. Despite between 40,000 and 100,000 Palestinians moving to the West Bank or Gaza since the 1993 Oslo peace process and creating jobs and businesses, unemployment remains high. n33 The post-9/11 situation has battered the Palestinian economy even more so. n34

Beyond high unemployment and limited resources, the Palestinians have been subjected to deliberate tactics designed to hurt their economy. These methodologies have included massive disruption engendered by the frequent Israeli border closures, shut downs of the Gaza airport, and delay in opening the bypass roads between Gaza and the West Bank. n35 The continued Israeli confiscation of Palestinian land and building of Israeli settlements has profound negative implications for the Palestinian economy and the viability of a future state. Finally, alleged corruption in the PNA also has hindered transfer of promised international aid. n36

Now that the geopolitical difficulties facing Palestine have been detailed, a review of the human rights provisions will provide insight into how the elected representatives of Palestinian society conceive of constitutional cures for their spirit injuries. These important new rights are to be enforced by an appointed judiciary with guarantees of independence and tenure. Unfortunately, up to now, the judiciary has been undermined by both the Israelis and the PNA. n37

Basic Law Article 10 makes clear that "human rights and basic freedoms are necessary and an obligation of respect." n38 It goes even further by proclaiming that the PNA "works without delay to incorporate international and national declarations and agreements which protect human rights." n39 Thus, even though Palestine is not a [*1094] state, the PLC agreed to bind the autonomous entity to international law.

The Basic Law calls for an independent body for human rights, the Palestinian Independent Commission for Citizen's Rights which was created by Chairman

Arafat in September 1993. n40 The Commission presents reports to the President and the PLC and already has produced several reports critical of the PNA. n41

The Basic Law contains a number of civil and political rights that are found in the US Constitution. Interestingly, one of the most progressive clauses, which is the first one appearing in the human rights section, concerns equality. Article 9 states "Palestinians are equal before the law and the judiciary. There is no discrimination between them because of descent, gender, color, religion, political opinion, or disability." n42 While such discrimination still exists in reality, at least the PLC is willing to take a stand that the U.S. is countless years away from making in its own constitution.

One highly significant area of the Basic Law involves criminal procedural rights. The framers thought it necessary to create law to prevent the Executive from obstructing the rights of citizens, without having to create an entirely new criminal code. Concern over an overly powerful Executive is particularly justified for Palestinians, who have experienced decades of occupation in which the British Emergency Defense Laws of 1945 and Israeli military law denied them criminal due process rights. The provisions covering these rights, however, are relatively vague, and could permit future violations by the Executive. For example, Article 11 states: "it is not permitted to arrest someone, search him, imprison him, restrict his freedom through any restriction, or forbid his movement except through judicial order in accordance with the provisions of the law. The law limits the period of precautionary imprisonment." n43 Recent practice by the Executive, however, indicates that precautionary imprisonment without judicial oversight occurs with regularity. Rather than articulate rights that are observed in the breach, it would be better to designate fundamental rights that cannot be abrogated, even in a state of emergency.

The Basic Law does provide that "all those arrested ... shall be informed of the reasons They may contact a lawyer and apply [for] trial without delay." n44 Another section confirms that "everyone [*1095] [who is] accused of a crime must have a lawyer to defend him." n45 Regrettably, these clauses do not require the state to provide a lawyer - a right I hope can be added in the future - especially in a society where so many are poor or unemployed. The section also addresses the problem of torture in Israeli prisons - an evil which is seemingly being continued by the PNA n46 - by stating that "no one may be subjected to any compulsion or torture ... [and a]ny statement or

confession procured in contradiction with the first subsection of this Article shall be deemed void." n47.

Article 14 reaffirms the principle that the "accused is innocent until proven guilty in a legal trial which guarantees him all assurances to defend himself." n48 The problem is that the PNA has created state security courts that operate with great rapidity, including the issuance and execution of death sentences in days. n49 This reality effects results that are directly contradictory to the aspirations of the law.

"Collective punishment is forbidden" as well. n50 The importance of this provision is manifest to a people who, during the occupation, were subject to exceedingly inequitable punishments. The law seeks to avoid subjecting those involved in a minor crime, such as throwing a rock at an Israeli soldier, to unfair punishments, such as destroying that person's home or imposing a curfew on the entire village. n51 Similarly, Palestinians are used to being subject to warrantless searches of their homes by Israeli soldiers, who will often take family members into custody and destroy the home in the process. Under the Basic Law, houses cannot be searched without a warrant. n52

Freedom of belief and worship is guaranteed, n53 an important right for people whose religious freedoms are restricted under occupation. Palestinians living in the West Bank and Gaza cannot go to East Jerusalem, not even to pray at the Al-Aqsa Mosque, the third [*1096] most holy shrine in Islam. As a multi sectarian society with a Muslim majority, Christian minority, and even a few Jewish Samaritans as well, it is critical to permit religious diversity.

A potential source of tension exists in the text here, however, as Article 4 indicates that "Islam is the official religion of Palestine." n54 The meaning of this clause is unclear and far from uniform. Apparently all Arab countries have such a provision in their constitutions, and I was present in the room when it was added to this text. n55 Each country has decided what it means in their specific cultural context, and some nations discriminate against those who are not Muslim. Nonetheless, Article 4 guarantees the practice of monotheistic religions. n56 The tension between clauses promoting an official religion yet allowing freedom to practice one's own religion are manifested in the fact that this freedom of religion is not absolute, and exists on the condition that it does "not interfere with public order or public morals." n57 Though the PNA is not currently religiously affiliated, a problem could arise if a more fundamentalist faction came into power. The clause proclaiming Islam as the official religion could be used to enforce Islamic law on all Palestinians, as happened during the 1989 hijab

campaign in Gaza, during the Palestinian uprising known as the intifada. n58

Article 19 states: "there shall be no interference with freedom of opinion. Every person has the right to express his opinion and spread it through speech, writing, or through other methods of expression or art with the supervision of the provisions of the law." n59 This provision is not unlike the religious freedom provision, only stated more subtly: the second sentence limits the grant of expressive freedom to that which is within the provisions of the law. Curtailment of freedom of expression is not uncommon to Palestinians. In the past, Palestinians had been imprisoned for expressing agreement with the PLO, and recently, a similar fate has also befallen those who merely disagree with the PNA. For example, several of the twenty prominent signatories of a November 27, 1999 statement accusing the Executive of "tyranny and corruption" were arrested or placed under house arrest. n60 These men included [*1097] members of the PLC, doctors, writers, and professors. n61 One of the legislators who signed the statement was attacked and shot in the foot, while another was severely beaten. n62 More than 200 people signed a petition to release the detainees and those under house arrest. Within two months, everyone was released. n63 What can freedom of opinion mean under such conditions? Clearly such a right has no meaning in a climate of violence and intimidation. What does the affiliated right to form a political party mean if there is no freedom of opinion? n64

The Basic Law also guarantees "freedom of residency and movement ... in the limits of the law." n65 This proviso could be seen in two ways: as stating the known fact that the right to freedom of movement only exists when guaranteed by law; or that such rights could (and will be) limited by future legislation. Without cooperation from Israel, "freedom of movement" cannot have significant meaning. For example, the Palestinian's freedom of movement was often denied by Israel during the occupation. The Palestinian's land is controlled at all entry and exit points by Israel, who may restrict passage between towns in the West Bank, as has been done in the past, n66 or close the Gaza crossing into Israel, making Gaza into a virtual prison. Even the Gaza airport has frequently been shut down by Israelis. Freedom of movement can only be so without Israel's interference.

Along with these rights is the Article 28 statement that Palestinians cannot be exiled from their land. n67 Once again, this right has special significance because several thousand Palestinians were deported during the occupation and many Palestinians living in the diaspora are not permitted to visit. n68

Freedom of the press and other means of communication "are [*1098] guaranteed in accordance with this Basic Law and other related laws." n69 Because much censorship of the press existed during the occupation, this right is particularly important. It is especially poignant now that the Palestinian press has been driven to self-censorship by the PNA, which like its Israeli predecessors, has resorted to such intimidating tactics as arresting journalists and shutting down newspapers. For example, the editor of one paper was arrested for failing to put a story on page one instead of page eight. n70 Another journalist was arrested for broadcasting the public sessions of the PLC. n71

The right to litigation is found in Article 30 of the Basic Law. n72 It ensures that people can use the courts and seek compensation. n73 During the occupation, Palestinians could not use the law to seek justice, so this new right emerges as significant.

The right to private property is also one of great concern for Palestinians. Many have been deprived of property that had been in their family for generations, due to Israel's confiscation of large areas of the West Bank and Gaza. n74 Article 21 makes clear that "private property is protected. Expropriation or acquisition of real or moveable property shall not be completed except for public benefit in accordance with the law and with the presentation of just compensation or mandated by judicial ruling." n75 The Article also states that "freedom of economic activity is guaranteed," clearly establishing a free market economy. n76 Palestine's economy has often been adversely affected by Israel's closure of borders, n77 confiscation of farmland, and closure of businesses. n78

The Basic Law also includes economic, social, and cultural rights not found in the U.S. Constitution but found in international instruments. For example, Article 23 states that "convenient [*1099] housing is a right for every citizen. The National Authority shall endeavor to insure housing to those who do not have a dwelling." n79 Similarly, Article 25 states "work is a right for every citizen." n80 Going far beyond Article 23, Article 25 states, "it is an obligation and honor and the National Authority endeavors to provide it for all those who are able." n81 In reality, though, the PNA does not have the resources to undertake this type of well meaning enormously expensive obligation at this time.

Article 22, regarding social security, is much more limited in scope. It does not promise a right to social security. "The law shall regulate social security and health insurance services for citizens and provisions for incapacity and old age." n82 The only people

guaranteed social security, as well as health insurance and educational services, are "the families of martyrs and prisoners and the care of wounded, injured, and the disabled." n83

With respect to education, the Basic Law is more encompassing: "education is a right of every citizen and compulsory at least until the end of the formative stages." n84 Nevertheless, "formative stages" is deliberately undefined, and could be taken to mean any age or education level, from kindergarten to high school. Another important aspect of this Article is that it "guarantees [the] independence of universities." n85 During the occupation, the Israelis frequently closed Palestinian schools. The PNA has sent troops onto campuses, detained students for protesting, and even arrested a professor who wrote something critical of the PNA in his exam. n86

The Basic Law even contains a provision relating to motherhood and the rights of children. Under Article 29, children must have "protection from harm or cruel treatment," and must be punished and imprisoned separately from adults. n87 This Article addresses the plight of Palestinian children who are not exempt from mistreatment at the hands of the Israeli police or military.

Finally, Article 33 provides environmental protection by stating that "[a] balanced, clean environment is one of the human rights. Preservation and protection of the Palestinian environment for [*1100] present and future generations is a national responsibility." n88

III. Conclusion

In the post September 11th world, Palestinians will no doubt continue to suffer spirit injuries as the Israeli occupation continues with no apparent end in sight. Any upcoming war with Iraq will undoubtedly have untold consequences for Palestine as well. The implications for all of us in the Americas remain unforeseen. Let us hope that one day the efforts of the Palestinians to heal their spirit injuries in part through the Basic Law will come to fruition, and that Palestinians will join the world community of nations as an independent human rights state.

FOOTNOTE-1:

n1. For more on Critical Race Theory, see, e.g., *Critical Race Theory: The Cutting Edge* (Richard Delgado & Jean Stephancic, 2d ed. 1999).

n2. See Ginger Thompson & Tim Weiner, *Mexico Struggles for the Attention of a Preoccupied U.S.*, N.Y. Times, Oct. 13, 2002, at 4.

n3. See *Lawyer: Dirty Bomb Suspect's Rights Violated*, at <http://www.cnn.com/2002/US/06/12/dirty.bomb.suspect/index.html> (last visited December 15, 2002).

n4. See Edward Said, *Orientalism* 27 (1978) (referring to Palestinians in the U.S.). See also Edward Said, *Out of Place* (1999) (Said's autobiography illustrating the effects of this "web").

n5. Gad Barzilai, *Community, Law and Identities among Israeli-Arab-Palestinians*, 1 *Adalah Rev.* 9, 11 (Fall 1999) (referring to the Palestinians who are citizens of Israel).

n6. Professor Patricia Williams characterizes the harm of racism as "spirit murder." Patricia Williams, *Spirit Murdering the Messenger: The Discourse of Finger Pointing as the Law's Response to Racism*, [42 U. Miami L. Rev. 127, 129 \(1987\)](#).

n7. Adrien Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 *Berkeley Women's L.J.* 181, 186 (1991).

n8. Adrien K. Wing & Sylke Merchan, *Rape, Ethnicity and Culture: Spirit Injury from Bosnia to Black America*, 25 *Colum. Hum. Rts. L. Rev.* 1, 1 (1993).

n9. On November 29, 1947, the United Nations issued Resolution 181, recommending the partition of Palestine into a Jewish and an Arab state with Jerusalem and Bethlehem as a separate entity under a special international regime. The partition plan granted the Jewish population in Palestine just over 56% of the area at a time when they owned 6.2% of the land and constituted one-third of the total population.

Samira Shah, *On the Road to Apartheid: The Bypass Road Network in the West Bank*, [29 Colum. Hum. Rts. L. Rev. 221, 229 \(1997\)](#) (citing G.A. Res. 181, U.N. GAOR, 2d Sess., U.N. Doc. A/519 at 131 (1947)).

n10. Trudy Rubin, *Netanyahu's Leopard-Skin Solution Won't Work*, *Balt. Sun*, Mar. 21, 1997, at 17A.

- n11. For arguments on refugees' right to return to Palestine, see Donna E. Arzt, *Refugees into Citizens: Palestinians and the End of the Arab-Israeli Conflict* (1997); John Quigley, *Displaced Palestinians and a Right of Return*, [39 Harv. Int'l L.J. 171 \(1998\)](#).
- n12. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* 147 (1998).
- n13. *Id.* at 132 (quoting Albie Sachs, *Human Rights: Good or Bad for South Africa*, Harvard Law School Human Rights Program (Jan. 21, 1998)).
- n14. Makau wa Mutua, *Hope and Despair for a New South Africa: The Limits of Rights Discourse*, [10 Harv. Hum. Rts. J. 63, 65 \(1997\)](#).
- n15. Third Reading of the Palestinian Basic Law (Saladin Al-Jurf, trans., Oct. 1997), reprinted in *31 Case W. Res. J. Int'l L. Appendix*, at 495 (1999) [hereinafter "Basic Law"]. In 1996, I was an advisor to the Palestinian legislature on earlier drafts of the Basic Law. See Adrien Katherine Wing, *The Palestinian Basic Law: Embryonic Constitutionalism*, [31 Case W. Res. J. Int'l L. 383, 384-85 \(1999\)](#).
- n16. Wing, *supra* note 15, at 385.
- n17. *Id.*
- n18. See Barbara Plett, *Arafat Signs 'Constitution,'* at <http://news.bbc.co.uk/1/low/world/middle-east/2015666.stm> (last visited December 15, 2002). Arafat's failure to sign the Basic Law for so long "may have been related to the lack of progress in the peace process and the anomaly of enacting a constitution when the PNA does not even control its own borders." David P. Fidler, *Foreign Private Investment in Palestine Revisited: An Analysis of the Revised Palestinian Investment Law*, [31 Case W. Res. J. Int'l L. 293, 306 \(1999\)](#). The principal reason I heard for his refusal to sign is that the Basic Law establishes checks and balances that would fill the constitutional vacuum, and end the legal possibility of governance by executive fiat supported by the British Emergency Laws.
- n19. See Rachele Marshall, *Bush and Sharon's Agendas: War with Iraq, Continue Occupation of Palestine*, Wash. Rep. Middle East Affairs, Nov. 2002, at 6.
- n20. Wing, *supra* note 15, at 385.
- n21. *Id.* A new constitution is said to be under study by the PLO. See Peace Monitor, 29(2) *J. Pales. Stud.* 125 (Wint. 2000).
- n22. Wing, *supra* note 15, at 386.
- n23. See *id.* at 390.
- n24. See *id.*
- n25. See *id.* at 386.
- n26. See George E. Bisharat, *Peace and the Political Imperative of Legal Reform in Palestine*, [31 Case W. Res. J. Int'l L. 253, 275-76 \(1999\)](#).
- n27. See Marshall, *supra* note 19, at 6.
- n28. See Bisharat, *supra* note 26, at 276, 286, 288-89.
- n29. *Id.* at 282.
- n30. *Id.*
- n31. Adel Samara, *Globalization, The Palestinian Economy, and the "Peace Process,"* 29 (2) *J. Pales. Stud.* 20 (Wint. 2000).
- n32. For discussion of the Palestinian position since the Gulf War, see Adrien K. Wing, *Legal Decision-Making During the Palestinian Intifada: Embryonic Self-Rule*, 18 *Yale J. Int'l L.* 142-43 (1993).
- n33. Ward Sayre & Jennifer Olnstead, *Economics of Palestinian Return Migration*, Middle East Report 8-9 (Fall 1999).
- n34. See *Palestinian Economy Battered by Conflict*, at <http://www.cnn.com/2002/WORLD/meast/08/29/palestinian.economy/index.html> (last visited December 15, 2002).
- n35. David P. Fidler, *Peace Through Trade? Developments in Palestinian Trade Law During The Peace Process*, [38 Va. J. Int'l L. 155, 164-65 \(1998\)](#). The Office of the United Nations Special Coordinator in the Occupied Territories ("UNSCO") found that the Israeli closure policy "has cost the Palestinian economy approximately \$ 6.5 billion for the 1993-1996 period." *Id.* at 164.

- n36. "An internal audit revealed that PNA corruption and mismanagement wasted approximately U.S. \$ 326 million, or forty percent of the PNA's annual budget." Fidler, *supra* note 18, at 304.
- n37. See Bisharat, *supra* note 26, at 266, 271-73 (discussing the Palestinian judiciary); see also John Quigley, Judicial Autonomy in Palestine: Problems and Prospects, [21 U. Dayton L. Rev. 697, 707-08 \(1996\)](#) (discussing the impact of the Israeli occupation on judicial autonomy in Palestine).
- n38. Basic Law, *supra* note 15, at 496, art 10 1.
- n39. *Id.* at 496, art. 10 2.
- n40. See *id.* at 501, art. 31.
- n41. *Id.*
- n42. *Id.* at 496, art. 9. I have written about this clause in more detail. See *supra* note 15 and accompanying text.
- n43. Basic Law, *supra* note 15, at 496, art. 11.
- n44. *Id.* at 491, art. 12.
- n45. *Id.* at 497, art. 14.
- n46. In a much heralded decision, the Israeli High Court banned the use of torture in September 1999. Dan Izenburg, Ten Year Battle Against Brutality Ends in Victory, *Jerusalem Post*, Sept. 10, 1999, at 1B. Amnesty International has received substantive and consistent testimonies alleging torture by most branches of the Palestinian security forces. See, e.g., Human Rights in the Autonomous Areas, 9 *Palestine Yearbook Int'l L.* 327, 327-54 (1996-97).
- n47. *Id.* at 497, art. 13.
- n48. Basic Law, *supra* note 15, at 497, art. 14.
- n49. 1998 Annual Human Rights Report, Palestinian Soc'y for the Prot. Of Human Rights & Env't, at 118-19 (1999), available at www.lawsociety.org/Reports/reports/1999/98rep.html (last visited December 15, 2002).
- n50. Basic Law, *supra* note 15, at 497, art. 15.
- n51. See *id.* at 497, art. 17.
- n52. *Id.*
- n53. *Id.* at 498, art. 18.
- n54. *Id.* at 495, art. 4.
- n55. See Wing, *supra* note 15, at 414.
- n56. See Basic Law, *supra* note 15, at 495, art. 4.
- n57. *Id.* at 498, art. 18.
- n58. Adrien K. Wing, Custom, Religion and Rights: The Future Legal Status of Palestinian Women, [35 Harv. Int'l L.J. 149, 190 \(1994\)](#).
- n59. Basic Law, *supra* note 15, at 498, art. 19.
- n60. William Orme, 7 Palestinians Arrested for Criticism of Arafat, *N.Y. Times*, Nov. 29, 1999, at A7.
- n61. *Id.*
- n62. Another PLC Member Assaulted, Palestinian Soc'y Prot. Human Rights & Env't, (Dec. 16, 1999) available at <http://www.lawsociety.org/Press/press/1999/dec<uscore>16.html> (last visited December 15, 2002).
- n63. See Terence Neilan, World Briefing: Middle East, *N.Y. Times*, Jan. 7, 2000 at A10.
- n64. See generally Basic Law, *supra* note 15, at 499-500, art. 26 (stating Palestinians have the right to form political parties).
- n65. *Id.* at 498, art. 20.
- n66. For examples of the closures, see Human Rights Watch Report, Israeli Closure of the West Bank and Gaza Strip, reprinted in 9 *Palestine Yearbook Int'l L.*, *supra* note 46, at 305.
- n67. Basic Law, *supra* note 15, at 500, art. 28.
- n68. I have had numerous Palestinian Americans tell me that they have not been able to enter Israel, despite possessing valid American passports, which normally do not require a visa for entry into Israel.
- n69. Basic Law, *supra* note 15, at 500, art. 27.

n70. Human Rights Watch, Palestinian Authority: Human Rights Under The Palestinian Authority: Violations of Freedom of Expression and Association at 25 (Sept. 1997), available at <http://www.hrw.org/reports/1997/palestina/Israel-06.htm#P403> (last visited December 15, 2002).

n71. Id.

n72. Basic Law, supra note 15, at 501, art. 30 1.

n73. Id.

n74. Raja Shehadeh, Occupier's Law: Israel and the West Bank 17 (International Commission of Jurists ed., Institute for Palestine Studies 1985).

n75. Basic Law, supra note 15, at 498 art. 21 3.

n76. One author has advocated regional free trade as a solution to the various Palestinian economic problems. See generally Jack I. Garvey, Regional Free Trade Dispute as Means for Securing the Middle East Peace Process, [47 Am. J. Comp. L. 147, 147-48 \(1999\)](#).

n77. See Fidler, supra note 35, and accompanying text.

n78. Shehadeh, supra note 74, at 17.

n79. Basic Law, supra note 15, at 499, art. 23.

n80. Id. at 499, art. 25 1.

n81. Id.

n82. Id. at 498, art. 22 1.

n83. Id.

n84. Id. at 499, art. 24 1.

n85. Id. at 499, art. 24 3.

n86. Charles Robert Davidson, The Challenge to Democratization: Arafat and the New Elite, [23 Fletcher F. World Aff. 171, 181 \(1999\)](#).

n87. Basic Law, supra note 15, at 500-01, art. 29 3-5.

n88. Id. at 501, art. 33.

