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Legal Education in Palestine:

What Place for History, Philosophy and Linguistics?

Wael Omar* and Asem Khalil**

Introduction

I came across Yuval Noah Harari purely by chance. After watching a documentary about him, I read *Homo Sapiens*, his best-selling book, and listened to his various lectures on YouTube. In reflecting on the future of education, he suggests that many individuals are destined to be judged as irrelevant to the needs of the market or economy, and predicts that the merging of infotech and biotech will produce this revolution.

We are still far away from this moment. Nonetheless, the economy may pass its verdict much sooner than we think. To take one example, the Palestinian Bar Association issued an unprecedented announcement a few years ago, in which it expressed its concern for Palestine's growing number of lawyers and law graduates. It suggested students should specialize in other subjects and also called on Law schools to act responsibly by limiting the number of students that they admit. In response, the Bar announced that it would be more selective in admitting students to its two-year training program, and also indicated its intention to reduce successful pass rates by revising its final exam.

If Law schools continue to treat their discipline as a profession rather than a field of knowledge, they will produce economically 'irrelevant' graduates. This is one of the main challenges that currently confronts Palestinian legal educators. In contemporary legal education, the focus is often on passing information from teachers (or, even worse, from legal texts) to students. However, if legal education is to have a future, Law schools do not just need to teach data

* Teaching and Research Assistant, Faculty of Law and Public Administration, Birzeit University.

** H.H. Shaikh Hamad Bin Khalifa Al-Thani Professor of Constitutional & International Law, Birzeit University.

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management skills that will enable students to extract, manage and apply information. They also need to provide their graduates with analytical and critical skills.

This paper tentatively asserts that legal studies in Palestine should be considered as a distinct field of knowledge rather as a profession, in which localized legal education helps maintaining the existing legal hierarchies. In advancing this argument, it attempts to establish a second hypothesis: such field of knowledge is related an intrinsically connected to humanities, and in specific to History/Politics, Linguistics and Philosophy/Theology.

The two hypotheses are examined by analyzing the available literature, surveying existing Law schools in Palestine (and their curricula), reviewing available literature and drawing on the personal reflections and experiences of the authors. In concluding, the paper also provides recommendations and open questions for future legal research and education in Palestine.

1) The Status of Legal Studies in Palestine

With regard to the specific status of legal studies and the general state of legal education, three specific observations can be made:

A) Legal Education as Practice

Most, if not all, universities in Palestine teach Law as a professional field, and this is shown by their use of mock trials and practical training to train lawyers, along with their specific curricula contents. Most courses cover the main branches of civil and private law that any lawyer needs and there are very few generic (whether comparative or analytical) and public law courses (international, constitutional or administrative law).

Many Law schools also hire practicing lawyers to teach some of their courses. Although some faculty members do not practice law, most members believe that you cannot teach Law students if you are not a lawyer, and is why they often regard registration with the Bar Association as a prerequisite for employment in the faculty. This is also why, when a committee convenes to discuss a Master in Law thesis, all of its members wear lawyers' robes.

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Most universities established Law schools after the Oslo Agreement, with the consequence that the total number mushroomed. Although this is clearly an improvement on the previous situation, in which Israeli restrictions had previously made it impossible for Palestinians to establish Law faculties and Medicine schools, the current level of admittance to Law schools has alarmed the Palestinian Bar Association. Universities, in contrast, take precisely the opposite view and regard this influx as a sign of institutional success. Their ability to ‘succeed’ is, however, limited by a number of factors: foreign and Arab students cannot enter the OPT (Occupied Palestinian Territories) without (Israeli) visa or permit. It is also near-impossible for Gazan students to obtain (Israeli) permits to study in the West Bank: and restrictions within the West Bank mean that students often study in their ‘home’ city. University specialization has therefore become defined at the most local level, and the governorate often appears as the outermost limit of the student’s academic horizons. Law schools are no exception in this regard. Students from Jenin will therefore choose the city’s Arab American University of Jenin, while their counterparts in Nablus will instead select An-Najah over Birzeit University (whose university intake primarily comes from Ramallah and Jerusalem, the nearest cities). Law schools recruit faculty members and students from the local context, and this further undermines the premise of a universal mandate.

But this mandate does not even apply at the level of theory. Educators in the West Bank only cover the Gaza Strip’s legal system to a very limited extent, and vice-versa. This is not deemed to be a problem because a lack of knowledge of the ‘other’ system does not prevent the Law student from learning about his/her ‘own’ system – which is enough for them later on to practice law. This has led to a situation where Palestinian Law schools teach Law as a practice rather than as a field of knowledge and, as a consequence, researchers and students make little effort to develop the theoretical knowledge and expertise that would otherwise help them to develop a critical understanding of the ontology of legal studies. If they made more effort in this regard, they would gain considerable insight into how legal systems develop in different contexts, what purpose they serve and how they operate in isolation from the immediate political system and historical context.

B) The Localization of Legal Education

In Palestine, Law is predominantly conceived as a professional field and most courses exclusively focus on the application of law in the territories. This has been a feature of legal study since the establishment of the Palestinian Authority (PA) following Oslo Accords. Before this, lawyers had trained abroad (mostly in neighboring Arab countries) and had little, if any, knowledge of the OPT's legal system. This meant that any practicing lawyer had knowledge of at least one other legal system before he/she began practicing in the OPT. In contrast to counterparts who began their legal education after the Accords came into effect, these lawyers and legal experts had a more comprehensive understanding of Law as a field of study and a greater awareness of how law developed in different legal contexts. Upon returning to Palestine, these graduates began training and, for the first time, obtained direct access to the law of the land. If they were to succeed in legal practice, they needed to use the skills they learnt abroad – as opposed to the legal texts they studied or the legal system they were familiar with – to become familiar with the law they were practicing.'

After 1993, most universities began to offer Master or Diploma programs that provided insight into Palestine's laws, including those derived from the British Mandate, Jordanian, Egyptian sources of law and the following Israeli military orders (starting from 1967). The faculties of Law also offered Law degrees that focused on Palestine. There were no books on the teaching of Law in Palestine, and faculty members were often forced to directly refer to the legal texts, with the consequence that annotation emerged as a predominant teaching device.

There are few courses on international law, and most focus on laws that are applied in Palestine, emphasize private and sharia law and only give limited consideration to comparative law. This has produced a lack of critical engagement with the intersection between law and society and the operation of legal systems in different contexts, which has in turn made it difficult to comprehend the development and reform of laws that strengthen the social contract. It could of course be objected that this is not the role of Law schools, who should be concerned with the

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law that is in force and applied by lawyers. From this perspective, it would appear self-evident that legal scholars should be concerned with the law as it is, not as it ought to be.

C) Legal Education and the Reproduction of Legal Hierarchies

In undertaking an examination of different faculties of Law in Palestinian universities and their curricula, we propose to examine how they often cite different frameworks or concepts without first clarifying if law is a state's fiat or a system of rights. While it is true that faculties of Law often use the word *Qanun* (law) while others (such as Birzeit University) instead use *Huquq* (Droits or rights), it should not be assumed that these emphases are a product of conscious reflection or that they have a substantial impact on legal education.

One possible explanation is that Palestinian universities tend to teach Law by drawing on the English or French tradition of teaching. Both traditions predispose educators to teach Law, whether in the form of *qanun* or *huquq*, from within the domain or perspective of government. This means that the function of law and the state becomes inseparable from the question of whether law is applied as *qanun*, which in turn leads into protracted debate of what is right and wrong or legal and illegal. The question of whether law is used as *huquq*, and therefore negotiated in and through the State's available channels, presents itself as an additional concern.

Any discussion of the identity of Law Schools in the post-Oslo framework should begin with an acknowledgement that they were established after the Accords came into effect. Law schools have been established in a context where the Palestinian Authority (PA) functions as a state-like authority that legislates while lacking sovereign control over the population, territory and legal/political system. The PA exerts an authority that is still being negotiated and this means that at some points its authority is negated while at others it is confirmed. In general terms, it might be said that these schools function within the paradigm of state-building under occupation.

One of the main ways that the Oslo Agreements shape the functioning of the courts is by excluding all Israelis from the jurisdiction of Palestinian laws and courts. This means that the teaching of Law departs from an initial distinction (foregrounded in discrimination) between Israelis and Palestinians that is subsequently reproduced in the application of the law. We

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therefore teach our students a law that applies to Palestinians but not to Israelis. This apartheid-like structure is entrenched in the curricula and is then embodied in the practice and representations of lawyers.

In the OPT, law does not represent the limit of state authority but is instead synonymous with the exercise of authoritarian rule, as shown by the fact that the territories under the PA's control have, since 2007, only been subject to presidential decree laws. Under this arrangement, both the legislative and judicial branches of government are highly dependent on the executive authority and its security and administrative apparatuses. The Government is also completely dependent on the President's will, which is exercised in the absence of any serious checks and balances. In a perhaps perverse and certainly unwelcome development, these prerogatives have become integrated into the faculties of law that train future lawyers: in the West Bank, decree laws are now in the process of being added to Law school curricula.

In the Gaza Strip, Hamas's refusal to accept Abbas's authority has, in addition to other embodiments, taken the form of 'self-legislation', with the consequence that it has now become impossible for Gaza faculties of Law to ignore the law that is being de facto imposed on the Strip. Meanwhile, West Bank faculties have ignored these measures, and a pedagogical division has therefore been superimposed onto a pre-existent geopolitical divide. Insofar as the current legal system is reproduced through legal reasoning, it can be legitimately objected that legal education reproduces legal hierarchy. This further reiterates the need for a critical engagement that seeks to disassemble the social contract in Palestine and which establishes the extent to which it has been shaped by the function of law and the (quasi) state.

2) Law and the Humanities

This paper will now undertake a further examination with the intention of situating the ontology of legal studies in Palestine. In doing so, it will place particular emphasis on History/Politics, Philosophy/Theology and Linguistics.

A) History and Politics

A closer examination of the Law literature and our own experience of teaching Law in Palestine highlights the difficulties that academics encounter when they attempt to situate these laws within Palestine but do not simultaneously provide a critical examination of Palestine's legal system that is historically and politically contextualized. We will now discuss these problems in more detail.

This research is grounded within a theoretical understanding of how Law, conceived as a field of knowledge, correlates with History and Politics. A few examples of this interrelation will now be provided.

- There is the question of how academics can teach land or citizenship laws without referring to the historical and political context from which they (respectively) emerged during the Ottoman Empire and British Mandate. This is clearly a precondition for understanding how authorities expropriated public and private lands (converting them to state land) before redistributing them with the aim of furthering political, and often discriminatory, objectives. Here it should be acknowledged that the Nationality Law enabled the British Mandate to further its objective of establishing a homeland for Jews in Palestine.
- Both the Penal Code and Personal Status Law (which are Jordanian in origin) are still implemented in the West Bank. The Code refers to crimes committed against the royal king and system, and it is clearly open to question how it can apply to a republican-style authority. There is also the question of how to interpret similarities and differences between Jordanian and Palestinian personal status laws given that they both originated from the same source. Differences in the application of the Law and Code in the Gaza Strip and West Bank can also be explained by referring to their different origins (in the Strip they are British and Egyptian whereas in the West Bank they are both Jordanian). Different legal traditions also provide another possible explanation: in the Gaza Strip, the

Common Law tradition has applied since the British Mandate, while in the West Bank the Civil Law tradition prevails.

- In attempting to assess how rights are distributed differently between Palestinians under occupation, observers will inevitably refer to the area that Palestinians are from. It is only through a closer examination of how military orders apply within military and civil administration structures that it becomes possible to ascertain how Israel seeks to fragment Palestine and Palestinians. And an analysis of historical context is essential if we are to ascertain the contemporary meaning of existing laws that are applied by the Israeli occupation.

The Palestinian legal system provides an excellent example of the intersection between laws that have been received from different regimes and newly constructed legal systems. The plurality of the Palestinian legal system and culture can be attributed to laws obtained from myriad political regimes and religious authorities, in addition to the influence of various methods of informal dispute resolution. This pluralism has in turn resulted in a fluid interchange of authorities, and this feature is clearly distinguished from the tradition of Legal Centralism, in which all legal orders are embodied in state law. (Merry 1988: 889) In instances where there are myriad cultures, laws and regimes, along with assorted state and non-state actors, it is imperative to identify how these different and separate systems interact. In its current form, legal education is insufficiently adjusted to this task.

B) European and Palestinian Law: Theological and Religious Antecedents

The current mainstream theoretical framework for teaching law can be traced back to the Enlightenment. It is frequently observed that secularism is an Enlightenment value. However, it is just as frequently overlooked that key parts of secularism have been heavily influenced by Christian theology and European history and, for this reason, cannot be said to be universal.

- The theory of ‘constituent power’, which was developed by Abbe Sieyes, is evidently correlated with the theological idea of God’s power, which creates everything from nothing and is not bound by the rules of creation. It is only by first referring to this theory that observers can come to understand the role and place of constitutions and constituent power in Western societies. To take a further example, popular sovereignty and revolutions have also been historically connected in the political and legal discourse of the West. This clearly contrasts with the Islamic tradition, which stresses the rulers’ obligations to abide by God’s *sharia* and the people’s duty of obedience to rulers (which is upheld in order to maintain peace in the Islamic *umma*).
- The claim that law is simultaneously human and non-human can also be traced back to various theological traditions that assert the duality of Christ’s nature. Similarly, the Holy Trinity clearly precedes and informs the legal and political doctrine of a separation of powers. These traditions are not just absent in Islam but are actually rejected outright. This suggests that the explanation of the nature of law and the unity of the state should be rooted within a different foundation that can be reconciled with Islamic traditions. In this regard, it is instructive to note that Islamic rule had, for centuries, been sustained by an accommodation between law derived from religious jurists (*fiqh*) and secular rulers (often referred to as *siyasa* or *qanun*). Many religious theorists introduced doctrines that enabled religious authorities to apply their understanding of God's law in the civil realm, which was independent from secular political authority.
- Palestinian academics and students, in addition to many post-colonial nations, are alienated from the Judeo-Christian legal tradition that emerged in Europe, and have little theoretical grasp of its development. The Personal Status Law, for example, establishes a clear distinction between the private affairs of individuals and public life (where the law is permitted to intervene), which can be said to be the epitome of the liberal Western Judeo-Christian tradition. However, in Palestine legal practice did not uphold this prior distinction.

The tracing of previous legal frameworks and their intersection with religion in the region leads us to question how these Judeo-Christian conceptions of law have impacted the current legal system, the practice of law and the rights of those who live under Palestinian law. Interpreting the theoretical correlation between Law, Philosophy and Theology, while conceiving of them as fields of knowledge, makes it possible to both examine historical legal systems that existed in this region and to also assess the ontology of legal concepts that underpin the contemporary legal system.

C) The politics of language and translation in the adoption of laws

Language played an instrumental role in helping to forge a national identity, unity and state in Europe, and it achieved this by creating a common connection and consciousness. Even now, the relationship between language and national identity remains strong, and this link is embodied both in the form of official languages recognized by the state and the (direct or indirect) suppression of minority languages. Whether in the form of linguistic subjugation or unification, language has been widely recognized as an important part of a strategy that seeks to develop political and national consciousness (Trudgill 1983).

However the legal studies literature often overlooks the question of how concepts and ideas can be lost in translation and interpretation, and also fails to acknowledge how this oversight can result in academics, students and citizens becoming detached and alienated from these laws.

- One example is the concept of 'the state'. In the original Latin, 'status' refers to stability. When translated to Arabic, *dawla* references the continual change of regimes and rulers.
- Constitutions originated in the Latin word 'constitution', which means to establish or found. When translated to Arabic, *dustour*, whose origins can be traced back to Persia, means rules.

Both examples serve to demonstrate that the word that is used makes all the difference.

Many laws adopted in the region and in postcolonial nations more generally were developed in the mother country with the intention of governing the 'natives'. In the Gaza Strip, for example,

laws that were adopted after the 1948 War could originally be traced back to the French rule of Egypt. Jordan, subsequent to the same war, also applied laws that originated in the Mandate period. In both cases, laws were translated from the original French and English. This lends support to Merry's observation that, when language and law are viewed from within a framework of power, law appears as a form of violence that possesses the legitimacy of a constituted authority. (1992, 358)

Language and the interpretation of language are key tools of colonial and imperial power, and are often deployed to help maintain the status quo of discrimination and inequality. Psycholinguists have also demonstrated how legal outcomes can be influenced by ostensibly minor variations in language usage. (Sales & Alfini, 1982)

- In Israel's military courts, translators and language interpreters actively assist discrimination against Palestinian defendants. Court proceedings are conducted in Hebrew and this also applies to the physical apparatus of the court, including its 'no smoking' signs. Palestinians who do not speak the language are at a clear and immediate disadvantage, in no small part because their testimonies are often translated by an Israeli soldier before being interpreted by the court. (Addameer 2014, 26).
- The plurality of laws that created the Palestinian legal system in the context of colonialism have benefited those with relevant knowledge (of history, languages, laws and values). This has cultivated an elite culture, which has been to the clear detriment of an open and accessible legal culture and language.

In Palestine, the (quasi) state has shown little inclination to question these colonial laws, and has instead preoccupied itself with their application. This raises the question of what happens when laws are translated, imported or imposed. There is also the question of how these laws are locally understood and practiced. As the previous discussion has demonstrated, it is at this point that the need for a theoretical understanding of the correlation between law and language presents and asserts itself.

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3) Conclusion: Where Next?

When law is viewed as a right rather than a duty, it needs to be justified rather than accepted as an unquestionable authority. Critical Race, Feminist and Postcolonial Theory have made an essential contribution in this regard by providing an analysis of how the rights of groups are protected and empowered or denied and rejected.

There is definitely a need for more critical discussion of how Law, conceived as a field of knowledge, is viewed within Palestinian academia. But it can be legitimately objected that this is not enough. There is perhaps a clear and ongoing need for a bold revisionist approach that addresses itself to ontological and epistemological questions that currently exist in the field of Law in Palestinian universities. This raises the question of how steps can be taken to make Law more relevant to the Palestinian context.

Questions that seek to work towards a more universalistic or comparative approach are also important. Contributions that expand beyond the limited horizon of Palestinian academia to anticipate the comprehensive decolonization of law are therefore to be welcomed. As a precondition, this requires de-centering the Eurocentric framework of law as a field of study and practice. Observers should then attend to tracing, understanding and incorporating the roots of Arab and/or Islamic law, with the intention of exploring Arab or Palestinian legal theory and sketching a Palestinian/Arab jurisprudence.