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Plural Belonging: The Samaritans' Negotiation of Space in the Occupied Palestinian Territory

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PLURAL BELONGING: THE SAMARITANS' NEGOTIATION OF SPACE IN THE OCCUPIED PALESTINIAN TERRITORY

ZEINA JALLAD*

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I. INTRODUCTION

Created in 1993 in accordance with the Israeli-Palestinian Peace Accords,¹ the Palestinian Authority (PA) has grappled with the administration and maintenance of a vortex of highly fragmented legal and judicial systems. These fractured frameworks are the result of centuries-old colonial and military administrations that have exercised jurisdiction over the occupied Palestinian territory (oPt).² A self-governing entity whose sovereignty has been undermined since its inception, the PA idealizes a democratic *modus-operandi* for the nation's future, while actively participating in and benefiting from an overarching network of laws, court systems, and regulatory

1. Declaration of Principles on Interim Self-Government Arrangements, Isr.-P.L.O., Sept. 13, 1993, 32 I.L.M. 1525, 1527–28 [hereinafter Oslo Accords]. According to which, the Government of the State of Israel, represented by Shimon Peres, and the Palestinian Liberation Organization (PLO) team (part of the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the “Palestinian Delegation”), represented by Mahmud Abbas signed an agreement to create a Palestinian Interim Self-Government Authority, to represent the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years. For a full list of the Israeli-Palestinian agreements since 1993, See *Peace Agreements Database*, UNIV. EDINBURGH, <https://www.peaceagreements.org/view/357> (last visited Jul. 23, 2021) (listing the Israeli-Palestinian agreements since 1993).

2. See Glenn E. Robinson, *The Politics of Legal Reform in Palestine*, 27 J. PALESTINE STUD. 51, 52 (1997) (outlining historical changes in the Palestinian legal system).

frameworks designed to discriminate against and abuse their subjects. Palestinian subjects as a whole struggle to gain access to the majority of their fundamental rights within these interweaving legal and judicial systems. Minority communities and vulnerable populations in particular have been harshly affected by these systems' shortcomings and castigate the PA for its reluctance to incite meaningful change.³

Although the Samaritans⁴ are by definition a minority group⁵, neither Israel⁶ nor Palestine legally recognizes them as such.⁷ As a

3. U.S. DEP'T OF STATE, OFF. OF INT'L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: ISRAEL, WEST BANK AND GAZA 20–23, 25 (2019) [hereinafter 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM]; See HUMAN RIGHTS WATCH, SEPARATE AND UNEQUAL: ISRAEL'S DISCRIMINATORY TREATMENT OF PALESTINIANS IN THE OCCUPIED PALESTINIAN TERRITORIES 1, 3–5 (Dec. 2010), <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied#> (explaining the discriminatory treatment faced by Palestinians and minority groups in the occupied territories).

4. According to the Samaritan Registry of Births and Mortality of 2020, administered by Samir Yousef Sarrawi, as of January 2020, Samaritans residing in Nablus counted 395 and in Holon the community is comprised of 429 members. The total number of Samaritans as of January 2020 is 824. Samaritan Local Civil Registry, Interview by Samir Sarawi, in Nablus (2020).

5. See *Mount Gerizim and the Samaritans*, U.N.E.S.C.O., <https://whc.unesco.org/en/tentativelists/5706/> (last visited Mar. 19, 2022) (discussing the Samaritan population on Mount Gerizim); See also *Palestine – Samaritans*, MINORITY RTS. GRP. INT'L (2018), <https://minorityrights.org/minorities/553ljazeera553> (describing Samaritans as a minority group in Palestine).

6. The Rabbinical courts in Israel ruled in 1985-86 that Samaritans are Gentiles; therefore, the Rabbinical system and courts do not apply to the Samaritans. Further, Samaritans were never formally recognized as a religious community. For more information See Michael Corinaldi, *The Personal Status of the Samaritans in Israel*, ISRAELI CTR. FOR ACAD. STUD. 2.85, 2.89 (1996) (discussing how Samaritans were never formally recognized as a religious community).

7. Articles 3 and 5 of The Councils of the Non-Muslim Communities, Law No. 2 of 1938 (The Councils of the Non-Muslim Communities), al-Jaridah al-Rasmiyah, no. 594, 1938 (Palestine), https://www.dls.gov.jo/ar/dlsDocuments/chapter7-Transition-Inheritance-ReligiousCommunities/low7_8.doc with its amendments and the Presidential decree No. 277 of 2008, detail explicitly the officially recognized non-Muslim religious communities in Palestine. قانون رقم (2) لسنة 1938 (قانون يعدل ويوحد القانون في العدد رقم 594 من الجريدة الرسمية الصادر بتاريخ المتعلق بمجالس الطوائف الدينية المنشور

result, Samaritans enjoy a certain amount of autonomy in their navigation of the two legal and judicial systems that official minorities do not.⁸ Their advantageous position is further bolstered by their unique ethno-religious identity, which is proximate enough to both Hebrew and Arab culture for the Samaritans to be useful to Israeli and Palestinian political ambitions. These factors have concretely enhanced the Samaritan community in a number of ways, including pathways to Israeli citizenship and its various associated freedoms.⁹

The degree of cultural, civic, and economic autonomy given to the Samaritans, otherwise unheard of for minorities in the oPt and the

(1938/4/2. Samaritans are not among the list of the formally recognized religious communities. They are operating on a *de facto* basis. Similarly, the State of Israel has retained the Ottoman Millet system in regulating the personal status affairs of religious communities, according to which, it reserved the right only to the officially recognized religions to administer their communal personal status affairs such as marriage, divorce, custody, and inheritance. While Samaritans are not considered as Jews or members of the Jewish people, Samaritans also do not appear either among the list of formally recognized religious communities. For more information on religious communities in Israel See Natan Lerner, *Religious Liberty in the State of Israel*, 21 EMORY INT'L L. REV. 239, 253–55 (2007) (discussing religious minority groups in Israel); Yüksel Sezgin, *The Israeli Millet System: Examining Legal Pluralism Through Lenses of Nation-Building and Human Rights*, 43 ISR. L. REV. 631, 631–34 (2010) (studying the historical foundations of the Israeli millet system); See also *Palestine Order in Council, 1922 – English*, ECON. COOPERATION FOUND. Art. 51, 83, https://ecf.org.il/media_items/1468 (last visited Mar. 20, 2022); Lana Tatour, *Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel*, 27 ARAB STUD. J. 8, 8–16 (2019), <https://doi.org/10.2139/SSRN.3533490> (discussing Palestinian citizenship in Israel); Nimer Sultany, *The Legal Structures of Subordination: The Palestinian Minority and Israeli Law*, in ISRAEL AND ITS PALESTINIAN CITIZENS: ETHNIC PRIVILEGES IN THE JEWISH STATE 191 (Nadim N. Rouhana & Sahar S. Huneidi eds., 2017) (discussing the status of Palestinians in Israel); Corinaldi, *supra* note 6, at 2.89.

8. The 824 people who comprise the present-day Samaritan community are divided between the city of Nablus in Palestine and Holon in Israel and together make up perhaps the only minority that has leveraged Palestine's unique legal pluralism to its advantage. Given that much has been written on the cultural, religious, and historical aspects of this community, this paper will explicitly deal with the less than 400 Samaritans living in Nablus on Mount Gerizim Arabic Jabal Al-Tūr, Hebrew Har Gerizim. Samaritan Local Civil Registry, *supra* note 4.

9. See MONIKA SCHREIBER, *THE COMFORT OF KIN: SAMARITAN COMMUNITY, KINSHIP, AND MARRIAGE*, 69–72 (2014) (describing Samaritan culture).

region more broadly, essentially amounts to a *de facto* form of self-determination.¹⁰ This is all the more remarkable in the context of Palestine's unique legal and judicial pluralism, which presents numerous obstacles to even the most relatively advantaged members of society.¹¹ Although the Palestinian system is exceptional for a number of reasons that will be explored in the following sections, its pluralistic nature is not in fact distinctive. The coexistence of multiple normative legal and judicial systems in one socio-legal space has been studied and observed in a range of contexts since the early 20th century.¹² First coined by the legal sociologist Georges Gurvitch¹³ in 1931,¹⁴ legal pluralism was believed to be part of the "normative logic of statehood"¹⁵ in a range of countries. Belgian

10. While the minority status of the Samaritans is both informed by their religious practice and their ethnic ancestry, I will compare their treatment by the PA and by the Israeli authorities to that of other minorities or vulnerable groups, whatever their identity marker (gender, sexual orientation, ethnicity, or religion). This comparison *largo sensu* aims at shedding light on the contrasting, be they imposed and/or self-created, dynamics existing between State powers and other *othered* small groups in the oPt, in particular given the uniqueness of the Samaritans. Thus, in no way does this comparison imply similarities of lived experiences among these groups.

11. According to Feras Milhem and Jamil Salem, Palestinians perceive the existence of formal legal systems "as a form of domination, control and domination." Feras Milhem & Jamil Salem, *Building the Rule of Law in Palestine: Rule of Law Without Freedom*, in INTERNATIONAL LAW AND THE ISRAELI-PALESTINIAN CONFLICT: A RIGHTS-BASED APPROACH TO MIDDLE EAST PEACE 262 (Susan M. Akram et al. eds., 2010).

12. See Sally Engle Merry, *Legal Pluralism*, 22 L. & SOC'Y REV. 869, 869 (1988) [hereinafter Merry (I)] (discussing the theory of legal pluralism); See also Sally Engle Merry, *Going to Court: Strategies of Dispute Management in an American Urban Neighborhood*, 13 L. & SOC'Y REV. 891, 891–95 (1979) [hereinafter Merry (II)] (discussing the role of the court in dispute resolution in an American neighborhood); John Griffiths, *What Is Legal Pluralism?*, 24 J. LEGAL PLURALISM & UNOFF. L. 1, 2, 4–5 (1986) (discussing legal pluralism); LEOPOLD J. POSPISIL, ANTHROPOLOGY OF LAW: A COMPARATIVE THEORY 99–107 (1971) (discussing the political organization of human societies).

13. In 1931, in his *Le temps présent et l'idée de droit social* [Present Time and the Idea of Social Law], Georges Gurvitch introduced for the first time the concept of legal pluralism. See Michel Coutu, *Collective Autonomy and Legal Pluralism: Georges Gurvitch, Hugo Sinzheimer, and the Right to Work*, 90 DROIT ET SOCIÉTÉ 351, 351 (2015) (describing the formation of the theory of legal pluralism).

14. *Id.* at 352.

15. See Keebet von Benda-Beckmann & Bertram Turner, *Legal Pluralism, Social Theory, and the State*, 50 J. LEGAL PLURALISM & UNOFF. L. 255, 256 (2018)

legal scholar Jacques Vanderlinden was the first to present legal pluralism in an analytic rather than expository framework.¹⁶ In his influential writings on the topic, Vanderlinden presents legal pluralism not as a mere feature of governance, but as an opportunity for the governed.¹⁷ Within the context of an independent society, pluralism is presented as a liberating feature which allows its members to choose between more than one set of co-existing rules, rather than be governed by one overarching system.¹⁸

Nevertheless, pluralistic systems also long existed in colonially occupied countries, such as Palestine.¹⁹ In the colonial context, multiple systems became inevitable due to the constant presence of various foreign powers.²⁰ Historically, subjects under the jurisdiction of colonial administrations always belonged to more than one legal system, depending on the preferences of the occupying power and local rulers.²¹ The constitutive elements of this type of pluralistic system, namely decentralized administrations and the precedence of colonial adjudication, cause inherent instability.²²

The occupied Palestinian territory is arguably a case of “extreme legal pluralism” wherein laws of the Ottoman, British, Jordanian, and Egyptian governates, the Palestinian Authority, various religious sects, International Humanitarian Law (IHL) and International Human Rights Law (IHRL),²³ as well as more than 1,800 Israeli

(discussing early interpretations of legal pluralism).

16. See Franz von Benda-Beckmann & Keebet von Benda-Beckmann, *The Dynamics of Change and Continuity in Plural Legal Orders*, 38 J. LEGAL PLURALISM & UNOFF. L. 1, 12, 14 (2006) (discussing law as an analytical concept).

17. *Id.* at 2–3.

18. *Id.* at 12, 14.

19. See John Quigley, *Self-Determination in the Palestine Context*, in INTERNATIONAL LAW AND THE ISRAELI-PALESTINIAN CONFLICT: A RIGHTS-BASED APPROACH TO MIDDLE EAST PEACE 209–28 (Susan M. Akram et al. eds., 2010) (discussing the pluralistic systems present in historical Palestine).

20. Milhem & Salem, *supra* note 11, at 253–77.

21. Von Benda-Beckmann & Turner, *supra* note 15, at 255.

22. *Id.*

23. For a comprehensive list of ratified treaties for the State of Palestine, See *U.N. Treaty Body Database: State of Palestine*, U.N. OFF. HIGH COMM'R HUM. RTS., https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=217&Lang=en (last visited Mar. 20, 2022) (outlining a comprehensive list of ratified treaties for the State of Palestine).

military orders,²⁴ continue an uneasy co-existence.²⁵ It is within this extreme legal context that the Samaritans' various advantages will be examined, as a means to shed light on not only the failings of legal pluralism in such 'neo-colonial' contexts but also its potential advantages, when used correctly.

Samaritans have used the favorable rulings in Israeli and Palestinian courts as the main avenue to secure their legal and civic rights.²⁶ After years of navigating various liminal identities prescribed to them by the Israeli and oPt legal systems, the Samaritans filed a case before the Israeli Supreme Court in 1993.²⁷ Their claim was cast in legal language but ultimately relied on a "supra-legal" logic, that is, the presentation of the Samaritans' Jewish indigeneity as a historical fact.²⁸ These arguments allowed the Samaritans to secure their claim to Israeli citizenship through the application of the Law of Return.²⁹ This allowed them to move to Israel as immigrants and granted them benefits which will be discussed in the following sections.³⁰ The significance of the Samaritans' victory at the Israeli Supreme Court is broader than these outcomes: it points to the group's strategic use of its hybrid

24. *Military Orders*, MIL. CT. WATCH, <http://www.militarycourtwatch.org/page.php?id=SNHdhRow9Pa30432AKJqGwVet09> (last visited Mar. 20, 2022). For more information on the Israeli military courts and its impact on the deprivation of Palestinians' fundamental rights, see LISA HAJJAR, *COURTING CONFLICT: THE ISRAELI MILITARY COURT SYSTEM IN THE WEST BANK AND GAZA* 1–20 (2005) (discussing Israeli military courts); *Born Without Civil Rights: Israel's Use of Draconian Military Orders to Repress Palestinians in the West Bank*, HUM. RTS. WATCH (Dec. 17, 2019), <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress#> [hereinafter *Born Without Civil Rights*] (discussing the effects of Israeli military orders on Palestinians).

25. See Kathleen Cavanaugh, *The Israeli Military Court System in the West Bank and Gaza*, 12 J. CONFLICT & SEC. L. 197, 201 (2007) (discussing the Israeli military courts in Palestine).

26. See subsequent sections Part 2 and Part 3.

27. Petition No. 4200/94 to the Israeli High Court of Justice, *The Samaritan Community in Israel v. The Prime Minister of Israel* (unpublished), reprinted in 606 A.B. SAMARITAN NEWS 48 (Mar. 15, 1994) (Isr.).

28. *Id.*

29. *Id.*

30. See *infra* Part 2 and Part 3.

identity, at the same time “indigenous Palestinians”³¹ and “proto-Jews,”³² as a means of securing autonomy within the overlapping sites of governance.³³

Based on archival court records obtained from the Palestinian Judicial Council, and multiple fieldwork visits in the West Bank between 2016 and 2020, this paper will unpack important legal decisions that have affected the Samaritans. Part Two spells out the historical and contemporary specificities of legal pluralism in the Palestinian context, including the shaping of the modern Palestinian legal system. Part Three examines the cultural, religious, and historical conditions that laid the groundwork for the hybridity of the Palestinian Samaritans’ social, economic, and legal advantages over other Palestinian minorities and highlights their exceptionality in the Israeli context. Without the need for a nationalist framework or the desire to be validated by one side of the conflict, Nablus Samaritans became citizens and legal subjects of both Israel and Palestine despite both sides seeking to appropriate their distinct claims to a contested land. Finally, Part Three argues that the particular case of the Samaritans, existing at the border of Israeli and Palestinian jurisdictions, offers a novel perspective on the political and legal strategies of a minority group to secure rights in the occupied Palestinian territories. As a consequence, the Samaritans have become deeply immersed in multiple intersecting legal structures and

31. Human Rights Committee, Initial Rep. submitted by the State of Palestine under article 40 of the Covenant, International Covenant on Civil & Political Human Rights, CCPR/C/PSE/1, 72–73, 90, 92 (Aug. 26, 2021) [hereinafter Human Rights Committee].

32. See JULIA DROEBER, *THE DYNAMICS OF COEXISTENCE IN THE MIDDLE EAST: NEGOTIATING BOUNDARIES BETWEEN CHRISTIANS, MUSLIMS, JEWS AND SAMARITANS IN PALESTINE* 48 (2014) (discussing the Samaritan identity); see also ADNAN AYYASH, *al-Taayaifat al-Saamuriat fi Nablus: Dirasat fi Muetaqadatiha wa Taqalidha* [THE SAMARITAN COMMUNITY IN NABLUS: A STUDY OF ITS BELIEFS AND TRADITIONS] 125 (2003) (discussing the relationship between Samaritans and Judaism).

33. See Daghlas, *Ragham ‘dam ‘ishrakahim fi al-Hayaat al-Siyasiati, limadha Yusharik al-Samiriawn fi al-Aintikhabat al-israyiiliati?* [Despite their Non-Participation in Political Life, Why do the Samaritans Participate in the Israeli Elections?], AL JAZEERA (Mar. 17, 2021), <https://www.aljazeera.net/news/politics/2021/3/17> *السامريون-الانتخابات-حق-مشروع-ونطمح* (discussing Samaritan participation in Israeli elections).

institutions, including the judicial and legal systems of Palestine, Islamic *Sharia*, Israel, and Jordan.

II. PALESTINE: THE CHALLENGES OF A PLURALISTIC LEGAL SYSTEM

This Part will chart a history of the Palestinian legal system to provide a deeper context of the Samaritans' place within it. It will make the case that Palestine's 'neo-colonial' pluralism is the byproduct of a disruption between its citizens and their capacity to exercise freedom, and survey the impacts of this disruption. Finally, the section analyzes the pluralistic system's effects on human rights.

A. LEGAL PLURALISM IN PALESTINE: AN UNPROTECTIVE STATE-CITIZEN NEXUS

In contradistinction with the prevailing norms of social contract theory on the origins of the modern state,³⁴ state institutions in Palestine have never expressed the aspirations, interests, or needs of the people on whom they were imposed.³⁵ Such systems were established by a long list of occupying powers, each looking to safeguard their own respective national interests at the expense of their subjects.³⁶ Insofar as these regulatory frameworks were not intended to benefit or allow the participation of Palestinians, these social contracts were quickly reduced to an imbalanced regime of state sponsored subjugation.³⁷

34. See G.W.F. HEGEL, SYSTEM OF ETHICAL LIFE AND FIRST PHILOSOPHY OF SPIRIT 173–74 (H.S. Harris & T.M. Knox ed. & trans., 1979) (sharing the origins of social contract theory).

35. Hussein Abu Hannoud, *Taqrir hawl at-Tashri'at walia Sinnha fi as-Sulta al-Watnya al-Filistynia "Daraasa Tahlilya"*, [Legislation and the Enactment of Law in the Palestinian National Authority: Analytical Study], 3 THE PALESTINIAN INDEPENDENT COMMISSION FOR CITIZENS' RIGHTS (Palestine) 1 (2018).

36. See Tobias Kelly, *Access to Justice: The Palestinian Legal System and the Fragmentation of Coercive Power* 2, 6, 8 (Dev. Rsch. Ctr., London Sch. Econ., Working Paper No. 41, 2004) (describing the history of occupiers' legal systems in Palestine).

37. See Abu Hannoud, *supra* note 35, at 16–21.

After centuries of colonial and political domination,³⁸ the signing of the Oslo Agreements in 1993 created the Palestinian Authority (PA) and its corresponding governmental institutions, which were set to inherit a wealth of fragmented legal and judicial systems³⁹ operating alongside its new state and civic regulations.⁴⁰ As is the case with other localized representatives of occupied or newly independent peoples, the PA remains fractured by attempts to appeal simultaneously to the rhetoric of liberal democracy while using an inherited colonial legal framework to its advantage.⁴¹

Since its inception in the early 1990s, the PA's fate as a *de facto* state has been less realized than its *de jure* conceptualization.⁴²

38. For an overview of the historical evolution of laws and legal systems in Palestine, see *Al-wade al-qanuni fi Filastin (The Legal Situation in Palestine)*, BIRZEIT UNIVERSITY INSTITUTE OF LAW, <http://lawcenter.birzeit.edu/lawcenter/ar/homepage/2013-08-31-07-08-03> (providing an overview of the historical evolution of Palestinian laws and legal systems).

39. See Jamil Salem & Ilona-Margarita Stettner, *Informal Justice in the Palestinian Legal System: Conflict or Coexistence Between Legal Orders*, in K.A.S. INTERNATIONAL REPORTS: TRADITION AND JUSTICE 54–60 (Gerhard Wahlers ed., 2013) (explaining the complexities of the Palestinian legal system).

40. Since the dissolution of the Palestinian Legislative Council (PLC) first initiated in 2007 and fully authorized by the Supreme Constitutional Court in 2018, the democratic legislative process has been ground to a halt. Asem Khalil & Sanaa Alsarghali, *Palestine*, in 2019 GLOBAL REVIEW OF CONSTITUTIONAL LAW 259–60 (Richard Albert et al. eds., 2020); Indeed, Palestinian authorities in the West Bank and in Gaza have dramatically contributed to the proliferation of inconsistent and unharmonized laws and judicial systems. Under the rubric of emergency laws, the West Bank-based authority has “selectively” passed hundreds of presidential decrees and laws on an ad-hoc basis and acceded to dozens of international agreements without adopting any domestic laws which would ensure legislative harmony and consistency. Since Palestine became a non-member observer state of the United Nations in 2012, it has ratified and acceded to dozens of international treaties and instruments without any reservations. See Mutaz M. Qafisheh, *Legislative Process in Palestine*, INT'L JUD. MONITOR 3 (2013) [hereinafter Qafisheh I] (discussing Palestinian legal theory); See also Victor Persson, *Palestine's Ratification of International Treaties: A Back Door to Independence?* (2016) (Master thesis, Lund University) (discussing Palestine's ratification of international treaties); *U.N. Treaty Body Database: State of Palestine*, *supra* note 23.

41. Milhem & Salem, *supra* note 11, at 253–77.

42. While the Declaration of Principles on Interim Self-Government Arrangements (“Oslo Agreement”) was internationally heralded as a historic milestone in ending the Israeli-Palestinian conflict, many leading Palestinian

Indeed, the PA's transition from a limited body of self-government to a fully-fledged state has been severely hampered by the continued Israeli military occupation of the West Bank,⁴³ and the end of serious peace talks in 2000.⁴⁴ Around that time, in a professed pursuit of "national security," Israel imposed discriminatory bureaucratic systems on Palestinian Israeli citizens, East Jerusalem residents, and Palestinians within the territories⁴⁵ as a means to continue controlling and fragmenting the geopolitical existence of the Palestinian people.⁴⁶ This move and others along with it throughout the occupation have given the State of Israel control of all Palestinian territory and allowed for its continued belligerent occupation of the Palestinian territories.⁴⁷

figures and intellectuals like Edward Said, Rashid Khalidi, and Hanan Ashrawi took a more skeptical perspective, viewing the negotiations as an attempt to appease the international community with no guarantees for a future Palestinian State. See Rashid Khalidi, *A Palestinian View of the Accord with Israel*, 93 CURRENT HIST. 62, 62–63, 65 (1994) (discussing the Oslo Accords); see also Edward Said, *The Morning After*, 15 LONDON REV. BOOKS (Oct. 21, 1993) (providing a skeptical view of the Oslo Accords).

43. See *occupied Palestinian territory*, U.N.O.C.H.A., <https://gho.unocha.org/occupied-palestinian-territory> (last visited Mar. 20, 2021) (outlining the crisis in the occupied territories); see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 199 ¶ 155 (July 9) [hereinafter I.C.J. Advisory Opinion]. For example, paragraph 55 of the advisory opinion of the International Court of Justice, regarding the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory provides, "The Court would observe that the obligations violated by Israel include certain obligations erga omnes . . . The obligations erga omnes violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law."

44. See Camille Mansour, *Toward a New Palestinian Negotiation Paradigm*, 40 J. PALESTINE STUD. 38, 48 (2011) (discussing the failure of peace talks).

45. See Raja Shehadeh, *Multiple Legal Systems in the West Bank*, 21 PALESTINE-ISR. J. POL., ECON. & CULTURE 6, 6–15, <https://pij.org/articles/1681/multiple-legal-systems-in-the-west-bank> (describing the bureaucratic systems in Palestine).

46. See Nils A. Butenschön, *State, Power, and Citizenship in the Middle East: A Theoretical Introduction*, in CITIZENSHIP AND THE STATE IN THE MIDDLE EAST: APPROACHES AND APPLICATIONS 3, 20–21 (Nils A. Butenschön et al. eds., 2000) (discussing the Palestinian political system).

47. See Benjamin Pogrud, *Legal Pluralism in the Wild West Bank*, 21 PALESTINE-ISR. J. POL., ECON. & CULTURE (2016), <https://pij.org/articles/1686/legal-pluralism-in-the-wild-west-bank> (discussing

The occupied Palestinian territories have been territorially and politically fragmented since the Oslo II Accord in 1995, which stipulated three administrative areas (A, B, and C),⁴⁸ each with a distinct governance and administration status, for the ruling of the West Bank.⁴⁹ This deliberate land fragmentation has not only ruptured the Palestinian territories' contiguity,⁵⁰ but it has also created enormous everyday challenges for Palestinians who have found themselves living in disjointed Bantustans⁵¹ with limited access to justice.⁵² Area A (about 18 percent of the oPt) falls under the administration of the PA, which manages most internal civilian affairs and internal security; Area B (22 percent) is jointly administered by both the PA and Israel; and Area C, which comprises approximately 60 percent of the West Bank territory and contains the Israeli settlements, is under exclusive Israeli administrative and military control (although the PA is required to provide health and human services such as water, electricity, gas, sanitation, and health).⁵³ In addition, Palestinians in East Jerusalem, the H2 Zone in Hebron,⁵⁴ the Seam Zone,⁵⁵ Bedouin communities,

settlements and Palestinian law).

48. U.N. SCOR & GAOR, 51st Sess., *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip*, at 5, 16–17, U.N. Doc. A/51/889 (Sept. 28, 1995) [hereinafter *Israeli-Palestinian Interim Agreement*].

49. Mansour, *supra* note 44, at 48.

50. See Marya Farah, *Planning in Area C: Discrimination in Law and Practice*, 21 PALESTINE-ISR. J. POL., ECON. & CULTURE (2016), <https://pij.org/articles/1685/planning-in-area-c-discrimination-in-law-and-practice> (discussing the fragmentation of the Palestinian territories).

51. See Haidar Eid, *Edward Said and the Re-Drawing of the (Post)Colonial Political Map of Palestine*, 6 DECOLONIZATION: INDIGENEITY, EDUC. & SOC'Y 64 (2017) (describing the challenges of living in Palestine).

52. *Israeli-Palestinian Interim Agreement*, *supra* note 48.

53. *Id.* art. XI.

54. Despite the enactment of the Hebron Protocol on January 17, 1997, between the Israeli government and the Palestinian leadership, Israel continues to have direct military control over 20 percent of the old city of Hebron in the West Bank, which is home to approximately 33,000 Palestinian inhabitants and 500 Israeli settlers. Palestinians residing in this area are subject to Israeli military law while Israeli settlers are governed under Israeli civil law. *The Humanitarian Situation in the H2 Area of the Hebron City: Findings of Needs Assessment*, U.N.O.C.H.A. 5–14 (Apr. 2019) <https://www.un.org/unispal/document/the-humanitarian-situation-in-the-h2-area-of-hebron-city-findings-of-needs-assessment-ocha-report> [hereinafter *OCHA H2 Assessment*].

and refugee camps are constantly challenged by the discriminatory entangled web of laws, military orders, policies, and practices that limit their legal space and hinder their access to rights.⁵⁶

The deterioration of living conditions after the Oslo Accords was accompanied by a decline in the state of human rights in the West Bank.⁵⁷ The Israeli army and civil administration have shown a deliberate indifference towards the rule of law in the West Bank, and the limited ability of the PA to enforce law has contributed to a state of legal chaos.⁵⁸ Scholars,⁵⁹ nongovernmental organizations (NGOs),⁶⁰ international nongovernmental organizations (INGOs),⁶¹

55. The term Seam Zone refers to Palestinian occupied lands trapped between Israel's Separation Wall and the Green Line demarcating Israel's border. Considered a de-facto annexation, the area is a military zone where Palestinians are denied access. *The Separation Barrier and the Seam Zone*, MACHSOMWATCH, <https://machsomwatch.org/en/content/separation-barrier-and-seam-zone>.

56. See *INFOCUS: Bedouins in the Occupied Palestinian Territory*, U.N.D.P. 3–9 (Sept. 2013), <https://www.undp.org/content/dam/papp/docs/Publications/UNDP-papp-research-bedouinsoPt.pdf> (discussing the Bedouin community in Palestine).

57. See HANEEN NAAMNEH, REEM AL-BOTMEH & RAMI SALAMEH, *PALESTINIAN EVERYDAY LIFE: LIVING WITHIN AND WITHOUT LEGALITY* 8–12 (2018) (describing the state of human rights in Palestine).

58. See Leila Farsakh, *Independence, Cantons, or Bantustans: Whither the Palestinian State?*, 59 *MIDDLE EAST J.* 230, 238–41 (2005) (discussing law enforcement in the West Bank).

59. See Raja Shehadeh, *From Occupation to Interim Accords: Israel and the Palestinian Territories*, 4 *CTR. ISLAMIC & MIDDLE EASTERN L. SERIES* 152–53 (1997) (discussing the chaos and confusion stemming from the existence of multiple regulatory frameworks governing different areas of the West Bank); see Michael Mason, Mark Zeitoun & Ziad Mimi, *Compounding Vulnerability: Impacts of Climate Change on Palestinians in Gaza and the West Bank*, 41 *J. PALESTINIAN STUD.* 38, 38–39 (2012) (describing how climate change is affecting Palestine).

60. See the NGOs Al Haq and Al Dameer in the West Bank, and Al Mizan and The Palestinian Center for Human Rights (PCHR) in the Gaza Strip.

61. See *Israel and the Occupied Territories Including the Areas Under the Jurisdiction of the Palestinian Authority: Human Rights: A Year of Shattered Hopes*, AMNESTY INT'L 3–4 (May 10, 1995) <https://www.amnesty.org/en/documents/mde15/007/1995/en> (providing an overview of the human rights situation in Palestine); *Rule of Law Development in the West Bank and Gaza Strip: Survey and State of the Development Effort*, U.N.S.C.O. (May 1999), <https://www.un.org/unispal/document/auto-insert-206942>; *The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank*, U.N.O.C.H.A. 122–24 (July 2007), https://www.ochaopt.org/sites/default/files/ocharpt_update30july2007.pdf; HUMAN

the international community, and even the International Court of Justice (ICJ)⁶² have repeatedly raised concerns about the inapplicability of multiple regulatory frameworks for governance in Areas B and C⁶³ to no avail.⁶⁴ This persistent and encroaching fragmentation does not, as a phenomenon, only unfold at the territorial level; it has also deeply affected the very state-citizen nexus that is at the root of state sovereignty and its exercise.⁶⁵ For example, citizenship status remains extremely complicated for the majority of the Palestinians residing in Palestine and in the diaspora.⁶⁶ Although the PA secured residency rights and limited mobility for Palestinians, no actual right to full-fledged citizenship exists, nor does any unified legislation to regulate said matter exist.⁶⁷ Palestinian residents⁶⁸ in the West Bank and the Gaza Strip instead

RIGHTS WATCH, *supra* note 3, at 1, 3–5.

62. I.C.J. Advisory Opinion, *supra* note 43, at 199 ¶ 155.

63. *Israeli-Palestinian Interim Agreement*, *supra* note 48, at annex III.

64. See EHUD TAGARI & YUDITH OPPENHEIMER, *DISPLACED IN THEIR OWN CITY: THE IMPACT OF ISRAELI POLICY IN EAST JERUSALEM ON THE PALESTINIAN NEIGHBORHOODS OF THE CITY BEYOND THE SEPARATION BARRIER* 38–42 (2015) (discussing Israeli policy in the West Bank).

65. See RENÉ GROTHENHUIS, *NATION-BUILDING AS NECESSARY EFFORT IN FRAGILE STATES* 60 (2016) (discussing citizenship in Palestine).

66. As of today, almost half of all Palestinians are refugees (about 5.6 million Palestinians are registered as refugees by UNRWA as of 2019) and approximately 12.37 million Palestinians live around the world. Furthermore, around 21 percent of Palestinians live within the borders of Israel, but as second-class citizens. *Palestinians in the Diaspora*, PALESTINIAN CENT. BUREAU STAT., https://pcbs.gov.ps/Portals/_Rainbow/Documents/Rerugees-in-Camps-diaspora-E-2017.html (last visited Mar. 20, 2022); See *Israel Population 2021*, WORLD POPULATION REV., <http://worldpopulationreview.com/countries/564rael-population> (last visited May 21, 2021) (discussing Israel's population).

67. To this day, several laws and regulations are applied differently in the West Bank and the Gaza Strip. The PA did not harmonize all pieces of legislation in the West Bank and Gaza. It also failed to update or reform all applicable laws to correspond to the needs of Palestinian society. For example, the prevailing criminal law in the West Bank is the Jordanian Penal Law, which is different in content from the applicable law in Gaza, which is the British Mandate Criminal Code Ordinance, No. 74 of 1936. Mutaz M. Qafisheh, *Who Has the Right to Become a Palestinian Citizen?: An International Law Analysis*, 18 *YEARBOOK ISLAMIC & MIDDLE EASTERN L.* 112, 112–15 (June 2017) [hereinafter Qafisheh II].

68. Agreement on the Gaza Strip and Jericho Area, Annex II, Protocol Concerning Civil Affairs, Isr.-Palestine, U.N. A/49/180, at 83–84 (May 4, 1994) [hereinafter Civil Affairs Protocol].

possess a travel document⁶⁹ for purposes of international travel as well as an identification card (ID) [*bitaqat hawiyyah Falastinia*], both of which are issued by the PA.⁷⁰ In addition to the Palestinian-issued IDs,⁷¹ the Israeli Civil Administration forces Palestinians to obtain biometric "smart" magnetic identification cards that ensure the close surveillance of all Palestinians residing in "Judea and Samaria" as well as the Gaza Strip.⁷² Holders of these documents do not have the right to independently exit their territory until approved by the Shin Bet, the Israeli intelligence agency, and the Israeli Civil Administration.⁷³ Upon approval, they must exit as a group "through the passages"⁷⁴ or through specific, variously placed Israeli points of exit.⁷⁵

69. *Id.* ¶ 27(f), (m) ("Population Registry and Documentation" sub-paragraph (f): "Exit abroad through the passages or through Israeli points of exit by residents of the Gaza Strip and the Jericho Area shall only be possible by means of an agreed passport/travel document."; sub-paragraph (m): "The format of the aforementioned identity card and passport/travel document as well as arrangements of the implementation of the provisions set forth in this Article are detailed in *Appendix C* attached to this Annex."). Appendix C is dedicated to arranging the Schedule Regarding Population Registry and Documentation, including format, text and size of pages.

70. Palestinians living in the West Bank hold Palestinian ID cards and therefore have the right to reside in the West Bank in accordance with the Oslo Peace Accords. Yet, Palestinians living in Jerusalem since 1967 hold Israeli identification cards permitting them to reside in Jerusalem. Accordingly, legal status of Palestinians varies depending on their residential status. Due to this division, laws differ from one area to another. For more information, see Qafisheh II, *supra* note 67, at 112–15; Helga Tawil-Souri, *Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel*, 29 SOC. TEXT 67, 72–73 (2011).

71. *Id.*

72. See Amira Hass, *The Yearnings for a Magnetic Card*, HAARETZ 123, 127–28 (May 9, 2007), <https://www.haaretz.com/1.4819750> (discussing the use of magnetic cards in Israel).

73. HOME OFFICE, REPORT OF A HOME OFFICE FACT-FINDING MISSION OCCUPIED PALESTINIAN TERRITORIES: FREEDOM OF MOVEMENT, SECURITY AND HUMAN RIGHTS SITUATION 38 (Mar. 2020), https://www.ecoi.net/en/file/local/2026262/OPTs_-_FFM_report_PDF.pdf.

74. According to Annex III of the Oslo Agreement, Israel stipulated passage routes and military checkpoints for Palestinians traveling within the West Bank or between the West Bank and Gaza Strip. Alexandra Rijke & Claudio Minca, *Inside Checkpoint 300: Checkpoint Regimes as Spatial Political Technologies in the Occupied Palestinian Territories*, 51 ANTIPODE 966, 970 (Mar. 2019), <https://doi.org/10.1111/anti.12526>.

75. *Israeli-Palestinian Interim Agreement*, *supra* note 48, at annex III, art.

The fragile nature of the state-citizen nexus in Palestine has been its central characteristic for the past seventy years.⁷⁶ Despite its fragility, there have been concerted efforts to institute national Palestinian institutions, beginning with the codification of the Palestinian National Charter of 1964,⁷⁷ which reflected the aspirations of Pan-Arab nationalism to treat equally all those who had been living in Palestine since 1947, including Muslims, Christians, and Jews of Palestinian descent. According to the Charter, such minorities were considered Palestinian Arabs whose identity granted them rights to self-determination⁷⁸ and self-defense.⁷⁹ This vision of an empowered Palestinian co-existence was further codified by the seminal⁸⁰ 1988 Declaration of Independence,⁸¹ which announced Palestine as “the land of the three monotheistic faiths,”⁸² while reasserting the diverse richness of Palestinian culture and religious heritage through the “temple, church and mosque.”⁸³ These documents defined the body politic for a group of people displaced by the creation of the Jewish state of Israel and enabled

28(7); HOME OFFICE, *supra* note 73, at 10–18.

76. NAAMNEH ET AL., *supra* note 57, at 5.

77. *The Original Palestine National Charter*, JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/the-original-palestine-national-charter-1964> (last visited Apr. 4, 2022).

78. *The Palestinian National Charter: Resolutions of the Palestine National Council July 1-17, 1968*, AVALON PROJECT, https://avalon.law.yale.edu/20th_century/plocov.asp (last visited Apr. 4, 2022) (“Article 6: The Palestinians are those Arab citizens who were living normally in Palestine up to 1947, whether they remained or were expelled. Every child who was born to a Palestinian parent after this date whether in Palestine or outside is a Palestinian; Article 7: Jews of Palestinian origin are considered Palestinians if they are willing to live peacefully and loyally in Palestine.”).

79. *The Original Palestine National Charter*, *supra* note 77; *The Palestinian National Charter*, *supra* note 78.

80. See Jerome Segal, ‘Land of the Three Faiths:’ *The Little-known History of the Palestinian Declaration of Independence*, HAARETZ (Nov. 15, 2017), <https://www.haaretz.com/middle-east-news/palestinians/the-1988-declaration-of-independence-1.5150321> (discussing the Palestinian Declaration of Independence); *Palestinian Declaration of Independence*, MIDEASTWEB (2002), <http://www.mideastweb.org/plc1988.htm>.

81. The Palestinian National Charter of 1964 with its amendments and the 1988 Declaration of Independence are principal legislations that enjoy the same constitutional power as the Basic Law.

82. *Palestinian Declaration of Independence*, *supra* note 80, at preamble.

83. *Id.* at preamble, ¶ 3.

them to come together as Palestinians regardless of differentiating characteristics, such as religion or ethnicity.

The creation of the PA was meant to embody this spirit of acceptance and represented to many the codification of the long theorized Palestinian identity in government and the crystallization of its values in their institutions.⁸⁴ Nonetheless, the legacy of colonialism and the novelty of this national movement for autonomy left the authority fatally challenged. Instead of being given effective sovereignty over citizenship, territory, borders, or natural resources,⁸⁵ international agreements limited it to governmental jurisdiction with certain civil administration and policing powers and responsibilities. Meanwhile critical systems like border control, natural resources, security, and population registry remained under Israeli control.⁸⁶ The following section will explore the results of this ‘neo-colonial’ system in the hands of an overwhelmed and frequently corrupt government,⁸⁷ by looking at responses at the local level. The rise of religious courts is a particularly powerful phenomenon which was designed to fill the gaps of an inaccessible justice system, but ultimately, they repeat their failures with regard to human rights and minority protections.⁸⁸

84. See Camille Mansour, *The Palestinian-Israeli Peace Negotiations: An Overview and Assessment*, 22 J. PALESTINE STUD. 5, 9, 30 (1993) [hereinafter Mansour II] (discussing the Palestinian-Israeli peace process).

85. See Edward Said, *The End of Oslo*, NATION (Oct. 12, 2000), <https://www.thenation.com/article/end-oslo/> (“Oslo was designed to segregate the Palestinians in noncontiguous, economically unviable enclaves, surrounded by Israeli-controlled borders, with settlements and settlement roads punctuating and essentially violating the territories’ integrity.”).

86. See Hiba Hussein, *Legal Duality in the Occupied West Bank*, 21 PALESTINE-ISR. J. POL., ECON. & CULTURE (2016), <https://pij.org/articles/1683/legal-duality-in-the-occupied-west-bank> (discussing the legal system of the West Bank).

87. See A.M.A.N. TRANSPARENCY PALESTINE, 12th ANNUAL REPORT: THE STATE OF INTEGRITY AND COMBATING CORRUPTION IN PALESTINE 2019 85–93 (Oct. 2020), https://www.aman-palestine.org/cached_uploads/download/2020/10/06/12th-annual-report-final-1602000805.pdf (discussing corruption in Palestine); See also SAWSAN RAMAHI, CORRUPTION IN THE PALESTINIAN AUTHORITY 4 (Dec. 2013) (discussing corruption in the Palestinian authority).

88. NAAMNEH ET AL., *supra* note 57, at 5.

B. THE INACCESSIBILITY OF THE PALESTINIAN JUSTICE SYSTEM AND THE OUTSIZED ROLE OF RELIGIOUS COURTS

Palestinians must contend with the extremely entangled web of rights arising out of civil and religious law, as well as their respective individual court systems, as a result of what has been described as a neo-colonial pluralistic system. Countless reports, studies, and scholarly works have been issued by researchers, institutions, local Non-Governmental Organizations (NGOs), and International Non-Governmental Organizations (INGOs), to address the adverse impact of this kind of legal pluralism on the everyday lives of Palestinians.⁸⁹ These studies pay particular attention to minority groups to highlight the various ways the system denies the realization of internationally recognized basic rights for minority groups.⁹⁰ This subsection will look at the impact of these failures in the Palestinian case by examining the rise of local justice in religious courts, and in particular, within the realm of family and personal status.⁹¹

Religious courts are responsible for governing personal status and family affairs of recognized ethno-religious groups.⁹² Palestinian and Israeli military laws are also in effect—each with its own court system—in addition to customary law, known as tribal or “informal” justice systems.⁹³ As a result of such disjointed regimes and their

89. See, e.g., Joint Parallel Report submitted by Al-Haq to the U.N. Committee on the Elimination of All Forms of Racial Discrimination (CERD) on the Occasion of the Consideration of Israel's 14th, 15th and 16th Periodic Reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, 80th sess., 13 February – 9 March, 2012 ¶¶ 3, 5, 10 (Jan. 30, 2012) [hereinafter Joint Parallel Report], https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_80_9184_E.pdf; see also Report of the High Commissioner for Human Rights on the Implementation of Human Rights Council Resolution 6/19, *Human Rights Situation in Palestine and other Occupied Arab Territories*, Office of the United Nations High Commissioner for Human Rights (O.H.C.H.R.), at 12 ¶¶ 31–32, A/HRC/8/18 (2008) [hereinafter O.H.C.H.R. Report], <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/141/99/PDF/G0814199.pdf?OpenElement>.

90. O.H.C.H.R. Report, *supra* note 89, at 12.

91. See Candace Graff, *Pockets of Lawlessness in the “Oasis of Justice”*, 58 JERUSALEM Q. 13, 25–26 (2014) (discussing local justice in religious courts).

92. Samer Fares, Feras Milhem & Dima Khalidi, *The Sulha System in Palestine: Between Justice and Social Order*, 28 PRAC'G ANTHROPOLOGY 21, 21 (2006) (describing how religious courts govern family affairs).

93. See Asem Khalil, *Formal and Informal Justice in Palestine: Dealing with*

overlapping bureaucratic procedures and requirements, the pluralism of the Palestinian legal system serves not as an advantage but as a barrier for accessing and negotiating civil and social rights.⁹⁴ This type of proto-colonial pluralism also fosters various levels of civic lawlessness, as in the case of the Qufir Aqab neighborhood (a part of Area C)⁹⁵ or the city of Al Ram (divided between Area A and B), which will be revisited in the third Part.

Each recognized religious community maintains exclusive jurisdiction over the personal affairs of its members and retains the right to adjudicate family matters including marriage, divorce, custody, and alimony.⁹⁶ This system also allows religious communities to maintain their own family courts and laws, staff their own judges, regulate the ability to practice law before their religious courts, and apply their own religious and customary laws.⁹⁷ The maintenance of this complex system by minorities attempting to counteract the disempowering effects of pluralism significantly enhanced the role of the Islamic family courts and strengthened its institutionalization to the extent that the *Sharia* system became a parallel means to state-run civil jurisdiction.⁹⁸ As a result, the *Sharia*

the Legacy of Tribal Law, 184 ÉTUDES RURALES 169, 169–70, 176, (2009) (describing Palestinian and Israeli military courts).

94. See, e.g., Committee on the Elimination of Racial Discrimination, Concluding observations on the combined initial and second periodic reports of the State of Palestine, U.N. Doc. CERD/C/PSE/CO/1-2 (Aug. 29, 2019), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PSE/CERD_C_PSE_CO_1-2_36938_E.pdf; Lynn Welchman, *The Bedouin Judge, the Mufti, and the Chief Islamic Justice: Competing Legal Regimes in the Occupied Palestinian Territories*, 38 J. PALESTINE STUD. 6 (2009); Raja Khalidi & Sahar Taghdisi-Rad, *The Economic Dimensions of Prolonged Occupation: Continuity and Change in Israeli Policy Towards the Palestinian Economy: A Special Report Commemorating Twenty-Five Years of UNCTAD's Programme of Assistance to the Palestinian People*, U.N. Doc. UNCTAD/GDS/2009/2 (2009).

95. Graff, *supra* note 91, at 18.

96. See ZEINA JALLAD, GENEVA CTR. FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, PALESTINIAN WOMEN AND SECURITY: A LEGAL ANALYSIS 7–10 (2012) (discussing the jurisdiction of religious community courts).

97. INSTITUTE OF L. BIRZEIT UNIV., THE SHARIA' COURTS OF PALESTINE: JUSTICE DELIVERED?: A STUDY OF THE PALESTINIAN SHARIA' LEGAL AND JUDICIAL SYSTEM FROM THE PERSPECTIVE OF WOMEN (2016).

98. *Id.* Today, the Sharia judicial system comprises a distinct state-staffed Supreme Sharia Judicial Council, in addition to Sharia prosecution and Sharia Judicial Police, which operates fully independent from the civil Supreme Judicial

courts are allowed to lawfully discriminate and criminalize “non-officially” recognized religious minorities, like the Ahmadiyya Muslim Jama’at community,⁹⁹ and otherwise overrule the secular judiciary and legislative process with their own prerogatives, like in the case of the failed implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) after its ratification *without reservations* by the PA.¹⁰⁰

More broadly, the outsized influence of these courts testifies to the harmful effects of the polycentric legal and judicial regulatory framework maintained by the PA. Instead of modernizing laws to adhere to fundamental IHRL standards of equality before the law,¹⁰¹ and in stark contradiction to the international legal instruments it has ratified,¹⁰² the PA retains laws allowing religious court systems to

Council.

99. *Palestinian Court Declares Ahmadiyya Marriage Invalid*, RABWAH TIMES (July 1, 2016, 6:16 AM), <https://www.rabwah.net/palestinian-court-declares-ahmadiyya-marriage-invalid/> (describing how a Palestinian Shariah court declared Ahmadiyya marriage invalid); Other «non-officially» recognized minorities such as millenarian Christian denomination Jehovah’s Witnesses or the Bahai’i, are victims of such practices. 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM, *supra* note 3, at 3, 5, 23.

100. For more information on the crisis of integrating the principles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) into domestic legislation, and the debates around the adoption of a family protection bill *See* Hassan Omran, *Azmat Mashrue Qanun Himayat al-Ustrat fi Filastin [The Crisis of the Family Protection Bill in Palestine]*, VISION FOR POL. DEV. (July 13, 2020) (discussing the crisis of integrating the principles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) into domestic legislation, and the debates around the adoption of a family protection bill); *See also CEDAW Agreement: Debates About Women’s Rights and Religious Legislation*, QUDS NEWS NETWORK (Dec. 18, 2019) (discussing the adoption of CEDAW in Palestine). For information about the State of Palestine and CEDAW, *see* UNDP, STATE OF PALESTINE: GENDER JUSTICE 8–10 (2018) (discussing gender justice in Palestine); UNFPA, EVALUATION OF UNFPA SUPPORT TO THE PREVENTION OF, RESPONSE TO AND ELIMINATION OF GENDER-BASED VIOLENCE AND HARMFUL PRACTICES (2012-2017) (2018) (evaluating CEDAW in Palestine).

101. Committee on the Elimination of Discrimination against Women considers the report of the State of Palestine (July 11, 2018), <https://www.ohchr.org/en/press-releases/2018/07/committee-elimination-discrimination-against-women-considers-report-state?LangID=E&NewsID=23377> [hereinafter CEDAW Consideration].

102. The Presidential Decree No. (19) of 2009 Concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women

regulate personal status affairs, inherited from previous eras resembling the “millet system.”¹⁰³ Through its preservation of religious courts, the PA enforces and perpetuates a politics of selective tolerance rather than abiding by its rhetorical commitment to democratic governance.

The outsized role of religious courts not only weakens the rule of law in Palestine through the enabling of exclusionary practices in matters of personal status law, but it also sheds light on how religion as an identity marker defines *de jure* and *de facto* minorities and their capacity to navigate the complex web of legal systems overseen by the Palestinian State. This will prove important when understanding where the Samaritans, as a “successful” minority in Palestine, truly stand.

III. THE SAMARITANS: A COMMUNITY THRIVING IN CHAOS

With the weakened juridical system and prominence of religious courts serving as context, this Part will delve into the Samaritans’ history, identity, and relations with Palestine and Israel that work to their advantage in the oPt’s pluralistic system. The mapping of Samaritan advantages will highlight potential avenues for reform, so that the Palestinian legal system can be re-configured to become more beneficial for a larger number of minority communities.

Although the Samaritan community is characterized by a rigid and deeply religious identity, their political and cultural identities are more fluid.¹⁰⁴ For example, they reject being identified as Jewish but embrace the label of being part of a wider Israelite community in return for Israeli citizenship.¹⁰⁵ Moreover, while Samaritans mostly

demonstrates the unilateral expression of interest of the Palestinian Authority to adhere to the CEDAW. CEDAW was ratified in 2014 without reservations. The initial national report to CEDAW was due on 2 May 2015. UNDP, *supra* note 100, at 8.

103. INSTITUTE OF L. BIRZEIT UNIV., *supra* note 97.

104. SCHREIBER, *supra* note 9, at 38.

105. See Mabrook Ishaq, *A Real-Life Samaritan Leader Explains What It Means to Be a Good Samaritan*, VICE (Aug. 30, 2018, 8:29 AM), <https://www.vice.com/en/article/594v55/a-real-life-samaritan-leader-explains-what-it-means-to-be-a-good-samaritan> (discussing one Samaritan’s experience in

vote in the Israeli general elections for the far right political party,¹⁰⁶ they repeatedly state what appears to be genuine respect for and belief in the Palestinian Authority.¹⁰⁷ Some Samaritans even enlist in the Israeli army,¹⁰⁸ while yet others have reportedly launched attacks against the military.¹⁰⁹ These seemingly contradictory religious and socio-political positions work, when combined and maneuvered effectively, to enable a minuscule minority to play off their polarized representations in a way that empowers their legal and political status.

The Samaritans' minority status and their accommodation to heterogeneous cultural and political forces appear to be the only factors that differentiate their attempts at autonomy from those of other minorities. These features of Samaritan identity will therefore be examined in more detail with the aim of shedding light on the importance of their hybridized cultural identity and on how Samaritans have used the oPt's legal pluralism for their advantage. The present Part will do so in three subsections: the first will recount a brief history of the Samaritans' hybrid identity, while the second and third will focus on the ways in which the group used this identity to their gain in Palestine and in Israel.

Palestine); see also Ishaq Al Samiri, *Al-Samyriyyun fi Shekheim, Nablus wa Jabal Gerizem [Samaritans in Shechem, Nablus and Mount Gerizim]*, 2 PALESTINIAN HIST. REPOSITORY 484, 484–87 (2012) (discussing Samaritans in the West Bank).

106. See Interview with Benyamin Tsadaka, Samaritan Historian, Editor of A.B. Newspaper, Historian and Author, in Nablus (Aug. 20, 2019) (discussing Samaritan votes in Israeli elections); see also SCHREIBER, *supra* note 9, at 74–77; AYYASH, *supra* note 32, at 122–23.

107. See Gabriele Barbati, *Israeli Election Preview: The Samaritans, Caught Between Two Votes*, INT'L BUS. TIMES (Jan. 21 2013, 4:09 PM), <https://www.ibtimes.com/israeli-election-preview-samaritans-caught-between-two-votes-1028684> (reporting on Samaritan perspectives regarding Israeli elections).

108. See Benjamin Tsedaka, ISRAELITE SAMARITAN INFO. INST., <https://www.israelite-samaritans.com/benyamim-tsedaka/> (the head of the Israelite Samaritan information centre); see also, HILLEL NEUER & DINA ROVNER, ALTERNATIVE REPORT OF UNITED NATIONS WATCH TO THE 99th SESSION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION FOR IT REVIEW OF STATE OF PALESTINE 23 (July 12, 2019) (reviewing a report by a UN Committee).

109. See Usama Ayaseh, *Qssah Samri Shrir Aikhtar al-Muqawama [The Tale of a Bad Samaritan]*, AL AKHBAR (June 21, 2010), <https://al-akhtar.com/Arab/109140> (discussing attacks against the Israeli army).

A. THE CURIOUS CREATION OF A HYBRID IDENTITY: SAMARITAN FAITH AND HISTORY

The Samaritans' identity is in various ways Israeli-Jewish and Arab-Palestinian due to its similarity to critical features of both communities.¹¹⁰ The religious practices and beliefs of Samaritanism form the core of this mixed cultural identity.¹¹¹ While demographically nominal and plagued by fears of extinction since late antiquity, the Samaritans have had an outsized influence on the development of both rabbinical Judaism and early Christianity.¹¹² Samaritan creed places the group as the last and only true ancient Israelites in existence, in possession of a history which evidences their traceable lineage from three of the twelve Israelite tribes: Menasseh, Ephraim, and Levi.¹¹³ Accordingly, their name is believed to be derived from the word *Shamarim*, which means the “keepers of the truth,”¹¹⁴ though today members of the community prefer to use the Aramaic term “Shomronim.”¹¹⁵

The relationship between Samaritanism and Judaism has for more

110. Laura Overmeyer, *Samaritans in Nablus: The other “People of Israel”*, QANTARA (Sept. 26, 2014), <https://en.qantara.de/content/samaritans-in-nablus-the-other-people-of-israel>; Reuben Lewis, *The Last Samaritans, Israel’s Smallest Religious Minority*, CULTURE TRIP (May 2, 2018), <https://theculturetrip.com/middle-east/israel/articles/an-introduction-to-the-samaritans-israels-smallest-religious-minority/>.

111. SCHREIBER, *supra* note 9, at 9.

112. See Louis H. Feldman, *Josephus’ Attitude Toward the Samaritans: A Study in Ambivalence*, in JEWISH SECTS, RELIGIOUS MOVEMENTS, AND POLITICAL PARTIES 23, 23–26 (1992) (discussing the influence of Samaritans on rabbinical Judaism and early Christianity).

113. See Israel Sedaka, *Izhak Ben Zvi, David Ben-Gurion and the Samaritans*, in SAMARITANS: PAST AND PRESENT 239, 240–45 (Menachem Mor & Friedrich V. Reiterer eds., 2010) (discussing the Samaritan religion); see also Monika Schreiber, *The Samaritans*, in ROUTLEDGE HANDBOOK OF MINORITIES IN THE MIDDLE EAST 225, 229 (Paul S. Rowe ed., 2019) [hereinafter *The Samaritans*] (discussing how Samaritans trace their lineage).

114. See J.W. Jamieson, *The Samaritans*, 23 MANKIND Q. 141, 142 (1982) (discussing the origins of the name “Samaritan”).

115. See Michael Corinaldi, *Samaritan Halakhah*, in AN INTRODUCTION TO THE HISTORY AND SOURCES OF JEWISH LAW 57 (N. S. Hecht et al. eds., 1996) (emphasizing that Samaritans use “Shomronim” to indicate their role “as the authentic guardians of the Scripture and of the original tradition of the Jewish people”).

than 1,500 years ranged from ambivalent to hostile.¹¹⁶ With the closing of the Talmud in the 6th century CE, Samaritans were regarded as Gentiles, and laws on marriage prohibitions and conversion were applied to them.¹¹⁷ The *Halakhah* contends that Samaritans are not indigenous to Samaria¹¹⁸ and have no *a priori* connection with the Israelites, the Tribes of Israel, and thus by extension, Judaism.¹¹⁹ Rather, it sees them as an amalgamation of different peoples who were brought by the Assyrians after their conquest of the region in the 8th century BCE.¹²⁰ Accordingly, the current position of the religious Jewry perceives Samaritans as Gentiles,¹²¹ at most a mixture of Israelite people with non-Israelite.¹²² Samaritans vigorously reject this interpretation, insisting they have remained continuously in Palestine since the Exodus from Egypt.¹²³

The particular hostility evidenced in more contemporary dealings between the two Abrahamic faiths is a relatively more recent

116. See generally Jamieson, *supra* note 114, at 142–43 (chronicling animosities between the Samaritans and the Judaeans over the rebuilding of Jerusalem).

117. See *id.* at 142–43 (outlining the history of the Samaritans' exile, repression, and impoverishment).

118. "The Old Testament has many references to Samaria, but only one to the Samaritans. 2 Kings 17 records the fall of the northern kingdom of Israel to the king of Assyria . . . Are the Samaritans of the New Testament the descendants of the Israelite survivors of the Assyrian invasion of 722 B.C. and the people who were imported from other lands?" See Stephen Voorwinde, *Do Jews Have Dealings with Samaritans?*, VOX REFORMATATA 25, 27–29 (2011) (weighing the relevance of the Old Testament's account of the Samaritans' historical origin).

119. See *id.* (discussing the 2 Kings 17 narrative that the Samaritans were "imported peoples from the Mesopotamia and Aram").

120. See Jamieson, *supra* note 114, at 142 (describing an "admixture" Israelite and non-Israelite communities).

121. In 1985-1986, the Israeli Chief Rabbanite and Rabbanical Courts issued a decision ruling that Samaritans are to be treated as Gentiles. The full text of the court decision was published in *Torah She-Be'al-Peh* 29 (1988) 59–67 (in Hebrew). For more information, see Corinaldi, *supra* note 6, at 2.87 (summarizing a case involving Samaritan sisters that held they must convert to marry Jews).

122. See generally Yairah Amit, *The Samaritans – Biblical Positions in the Service of Modern Politics*, in SAMARITANS: PAST AND PRESENT 247, 247–50 (Menachem Mor & Friedrich V. Reiterer eds., 2010) (reviewing the 2 Kings narrative about the Samaritans).

123. There is a general consensus among researchers about the Semitic origin of the Samaritan people, but their exact origin remains unclear. For more information, see generally Feldman, *supra* note 112, at 23–26 (analyzing Josephus' ambiguous account of the Samaritans).

phenomenon, manifesting in frequent expressions of displeasure by Jewish religious authorities on the status of Samaritanism, the inter-marriages of Jews and Samaritans, and the general establishment of Samaritan settlements outside Nablus.¹²⁴ Despite the promulgation of this hostile stance, a revival of the dwindling Samaritan community began in the late 19th century.¹²⁵ With the growing influence of secular Zionism after the establishment of the state of Israel in the early 20th century, Jewish attitudes toward the Samaritans changed notably.¹²⁶ Much like current Israeli politicians, secular Ashkenazi Jews of the time used Samaritan indigeneity as a way to link and authenticate a connection between Jewish identity and the land of Palestine.¹²⁷ To this day it is clear that secular Zionist settlers played a major role in revitalizing the endangered minority, enabling its survival and improving its socioeconomic status.¹²⁸

Perhaps the most prominent Zionist to come into contact with the

124. *E.g.*, DROEBER, *supra* note 32, at 129–35 (discussing communities’ use of endogamy rules and marital traditions to set “borderlines” for themselves).

125. The Crisis of 1841 revealed new ambivalence from Jewish authorities, and an understanding of the ways Samaritans negotiate their space, despite respective theological and ideological differences. *C.f.* REINHARD PUMMER, *THE SAMARITANS: A PROFILE* 163 (2016) (observing over the last two hundred years a scholarly trend of harmonizing characteristics of the Samaritan Pentateuch with the Masoretic Text); *See generally* JIM RIDOLFO, *DIGITAL SAMARITANS: RHETORICAL DELIVERY AND ENGAGEMENT IN THE DIGITAL HUMANITIES* 20 (2015) (expressing the Samaritans’ transformation as an “almost extinct community” in 1920 to a population whose numbers “continue to rise due to a combination of better health, economic, and social circumstances”); Judith Fein, *The Last of the Good Samaritans*, BBC TRAVEL (Aug. 29, 2018), <https://www.bbc.com/travel/article/20180828-the-last-of-the-good-samaritans> (citing a Samaritan historian’s reflection that, throughout history, empires and civilizations drove the Samaritans to near extinction).

126. *See generally* SCHREIBER, *supra* note 9, at 52 (explaining that Samaritans in the British Mandate found a “special interest in aligning themselves with” Zionists, who treated Samaritans “as equals in the Zionist nation-building project”).

127. *C.f.* Schreiber, *The Samaritans*, *supra* note 113, at 229 (stating that the Samaritan community invokes its biblical history to lay “claim to a common Israelite identity”).

128. *See, e.g.*, Fanny Urien-Lefranc, *From Religious to Cultural and Back Again: Tourism Development, Heritage Revitalization, and Religious Transnationalizations among the Samaritans*, 11 RELIGIONS 86, 97 (2020) (discussing the “heritagization” of Samaritan religious traditions as part of the revitalization of the community).

Samaritans was Yitzak Ben-Zvi, the second and longest-serving President of Israel (1952–1963).¹²⁹ Zvi's efforts to include the Samaritans under the 1950 Law of Return helped to construct their legal identity in the newly established State of Israel and represented a turning point in their status as hybridized legal subjects.¹³⁰ According to this law, Palestinian Samaritan residents in Nablus who wished to settle in Israel were granted the Right of Return to Israel as *Olim* Jews¹³¹ arriving from Arab countries.¹³² They were also granted full-fledged civil status as Jewish immigrants arriving from Arab countries.¹³³ This was the first time that the state of Israel included a non-Jewish ethnic minority in the rubric of the Law of Return without requiring them to convert to Judaism to immigrate to the state.¹³⁴ The applicability of the Law of Return to the Samaritans,

129. With the Samaritans, Ben-Zvi saw an opportunity to provide evidence of ancient Israelite settlement and hence serve the interest of the Zionist movement in authenticating and advancing their claims of Jews' and Samaritans' shared history, destiny, and faith as the Children of Israel in the Land of Israel. In his 1935 *Book of the Samaritans (Sefer ha-Shomronim)*, Ben-Zvi deconstructed traditional rabbinical arguments on the relationship between Judaism and Samaritanism and argued for their place in the New Yishuv of the British Mandate. ITZHAK BEN-ZVI & SHEMARYAHU TALMON, *THE BOOK OF THE SAMARITANS (SEFER HA-SHOMRONIM)* (1970) (Isr.).

130. Despite the lack of Samaritan participation in Zionist organizations and the Israeli military at this time, they left Nablus in search of better socio-economic and civil rights and political stability. In 1951, a Samaritan community was established in Holon, south of Tel Aviv; as of January 2020, it had a population of 429 (According to the Internal Registry of Birth and Mortality of the Samaritan Community, administered by Samir Yousef Sarawi, Nablus, 2020.).

131. According to the Israeli Law of Return of Law No. 5710-1950 on the right of "aliya," every Jew has the right to come to this country as an "Oleh." "Oleh" (plural "Olim") means a Jew immigrating to Israel. For more information, see Corinaldi, *supra* note 6, at 2.90 (showing that Samaritans who were living in the Nablus upon the State of Israel's founding could return to Israel as "olim," or Jewish immigrants).

132. In 1949, several Samaritan families claimed their right of return as Olim, Jewish immigrants from the city of Nablus to the newly created state of Israel. According to the Population Registry of Israel, Samaritans who were granted the right of return from Nablus to Israel were the first and the only Jordanian Jews ever registered in the national registries. See SCHREIBER, *supra* note 9, at 58 (describing how Jordan was considered the legal diaspora country of "olim").

133. See *id.* (explaining that the 1949 decision for "olim" granted them the "civil status of Jews without first converting to Judaism").

134. *Id.*

however, was never made explicit in any written documents.¹³⁵ This is because the State of Israel never issued a legally binding law defining the civil and religious status of the Samaritans; it only issued declarations and statements permitting Samaritans to be considered as *Olim* depending on the political and religious agenda of those in the Zionist political institutions.¹³⁶

The two most prominent contradictions in this application of the Law of Return are that the Samaritans never emigrated from another territory, and that Samaritans do not consider themselves Jewish. Being proto-Jewish does not mean, for the Samaritans, being Jews,¹³⁷ and the group has insisted on preserving their distinct religious identity by being referred to solely as the Samaritans or the “true” Israelites.¹³⁸ Their commitment to keeping an independent sense of identity is also reflected in the Samaritans’ lived reality: they rarely mix with Muslims, Christians, and Jews, and traditionally uphold a strict prohibition on intermarriage.¹³⁹ Samaritans in Nablus speak Arabic as their first language, use Aramaic and ancient Hebrew with its Samaritan variations in religious services,¹⁴⁰ and use modern

135. See *id.* at 57–58 (underscoring how the Law of Return is rooted in a “parliamentary interpellation” as opposed to a written document).

136. See *id.* at 57–58 (discussing Ben-Zvi’s assertion of “Samaritans [as] authentic Hebrews”); see also Corinaldi, *supra* note 6, at 2.91 (citing the unpublished court decision granting Samaritans from Shechem the right to an “oleh” visa under the Law of Return).

137. They reject being labeled as Jews or Palestinian Jews by the authority of the Orthodox Rabbinate: they claim to be the descendants of the original people who never left the Land of Israel. See Schreiber, *The Samaritans*, *supra* note 113, at 225 (noting that Samaritans “have a biblical religion that stands in the Israelite tradition”). They further differentiate themselves from Jewish tradition by pointing to the “6,000 differences” between their Torah and the Hebrew Torah. See Chavie Lieber, *The Other Torah*, TABLET MAG. (May 14, 2013), <https://www.tabletmag.com/sections/belief/articles/the-other-torah> (explaining how the Samaritan religion is rooted in an ancient origin with ancient rituals).

138. See Schreiber, *The Samaritans*, *supra* note 113, at 229 (highlighting that “by definition,” a Samaritan is a descendant of a tribe of Israel).

139. But see SCHREIBER, *supra* note 9, at 53 (demonstrating Ben-Zvi’s insistence on his Samaritan friends to marry Jewish girls in the 1950’s “in the interest of demographic recovery”).

140. See ANDREW DALBY, *DICTIONARY OF LANGUAGE: THE DEFINITIVE REFERENCE TO MORE THAN 400 LANGUAGES* 32 (2006) (noting that Samaritans continued using Samaritan Aramaic in religious texts until the 1800’s).

Hebrew for their interactions with Israeli society.¹⁴¹ For all intents and purposes, Samaritans in Nablus share social values, language, education, and aspects of history with their Palestinian community in a way that renders them all but indistinguishable from Arabs.¹⁴² Even Samaritans in Holon, who speak Hebrew as their first language and have assimilated in various ways into Israeli society, retain an inseparable bond with the center of their religious life and community in Nablus.¹⁴³ These ties have allowed members of the Samaritan community across Palestine to integrate aspects of Arabic cultural and social heritage into their identity.¹⁴⁴

B. SAMARITAN IDENTITY AND PALESTINE: A POLITICS OF AMBIVALENCE

Samaritans attempt to demonstrate a political ambivalence similar to their cultural ambiguity, though not always with the same degree of success. Throughout the recent history of the region, Nablus Samaritans have claimed to be apolitical and neutral with regard to Israeli and Palestinian nationalisms.¹⁴⁵ According to Cohen Hosny Wassef, the director of the Samaritan Museum and the author of the *Israelite Exodus in Sinai Peninsula*,¹⁴⁶ the *Shomronim* are a bridge for peace between Palestinians and Israelis:

We take no part to the conflict. We were known by the tale of the Good Samaritans, and we always want to retain that reputation.¹⁴⁷ This is aptly

141. Samaritans have a special newspaper called Aleph Beit, or A.B. A.B. was created in 1969 by Benyamin and Yefet Tsadaka, the grandchildren of the founder of the Holon community, Yefet Tsadaka. It is published in English, Arabic and in Hebrew. It has been a strong voice for the community and a means of communication and connection between both Samaritan communities in the West Bank and Holon.

142. See SCHREIBER, *supra* note 9, at 77 (asserting that Nablus Samaritans are “clearly an Arab society”).

143. See, e.g., *id.* at 5 (demonstrating the frequent encounters Samaritans have between Holon and Nablus).

144. See Schreiber, *The Samaritans*, *supra* note 113, at 225 (contrasting Nablus Samaritans and Holon Samaritans regarding the preservation of Arab culture versus the closeness to modern Israeli culture).

145. See Overmeyer, *supra* note 110 (describing the Samaritans’ neutrality).

146. COHEN HOSNY WASSEF SAMIRI, *al TeehAl Israe’ili fi Shibih Jazeerat Sinai [THE ISRAELI EXODUS IN THE SINAI PENINSULA]* (2012).

147. Interview with Cohen Hosny Wassef Assamri, Founder of Samaritan

demonstrated by our participation and employment in both the Israeli civil administration in the West Bank and the Palestinian Authority.¹⁴⁸

The Palestinian perspective on Samaritan-Arab identity and their political capital are mixed. While some Palestinians regard Samaritans as Palestinian Jews,¹⁴⁹ others think of them simply as Palestinian Arabs with a minority religion.¹⁵⁰ Palestinians in the public and private eye have admittedly questioned the Samaritan allegiance to the nationalist cause, motivated by concerns about their seemingly inherent ties to Israel.¹⁵¹ The ancient connection between

Museum, Author of *The Israeli Exodus in the Sinai Peninsula*, and Member of Palestinian Interfaith Council, in Nablus (Sept. 15, 2019) [hereinafter Interview with Assamri] (maintaining further that Samaritans seek to “serve as a bridge for peace” between Israelis and Palestinians).

148. “A number of Samaritans in Nablus serve as civil servants in the Palestinian Authority, namely in the education and local governance sectors. In the Israeli system, thanks to their bilingual fluency in Arabic and Hebrew, Samaritans serve in the Israeli civil administration.” Interview with Cohen Aziz, Former Bank Manager, Bank Hapoalim in Israel, Deputy Head, Palestinian Monetary Fund, in Nablus (Aug. 6, 2019) [hereinafter Aziz Interview] (pointing to the “expensive and demanding” work for younger Samaritans in Palestine); see also SCHREIBER, *supra* note 9, at 72–73 (observing that Israeli citizenship opens economic opportunities for Samaritans).

149. See, e.g., WELFARE ASS’N, NABLUS: ENDURING HERITAGE AND CONTINUING CIVILISATION: THE REVITALIZATION PLAN OF THE OLD CITY 31, 38 (2011), https://www.spass.org/SPASSDATA/attachments/2016_04/15/5f7f3fb56053d-d33835.pdf (referring to the Samaritans as a “[Jewish] tribe with similarities to Judaism” and a cemetery in Nablus as a “Jewish (Samaritan)” cemetery); see also, Muhannad Hamed, *Samaritans . . . Palestine Jews Constitute the Smallest Sect in the World*, AL-QUDS AL-ARABI (Apr. 25, 2019), (in Arabic) [السامريون.. يهود فلسطينيون يشكلون طائفة أصغر في العالم](https://www.alquds.co.uk/%d8%a7%d9%84%d8%b3%d8%a7%d9%85%d8%b1%d9%8a%d9%88%d9%86-%d9%8a%d9%87%d9%88%d8%af-%d9%81%d9%84%d8%b3%d8%b7%d9%8a%d9%86%d9%8a%d9%88%d9%86-%d9%8a%d8%b4%d9%83%d9%84%d9%88%d9%86-%d8%a3%d8%b5%d8%ba%d8%b1/), <https://www.alquds.co.uk/%d8%a7%d9%84%d8%b3%d8%a7%d9%85%d8%b1%d9%8a%d9%88%d9%86-%d9%8a%d9%87%d9%88%d8%af-%d9%81%d9%84%d8%b3%d8%b7%d9%8a%d9%86%d9%8a%d9%88%d9%86-%d9%8a%d8%b4%d9%83%d9%84%d9%88%d9%86-%d8%a3%d8%b5%d8%ba%d8%b1/>

150. See Davide Lerner & Esra Whitehouse, *Not Muslim, Not Jewish: Ancient Community in the West Bank Feels Increasingly Israeli*, HAARETZ (May 10, 2018), [https://www.haaretz.com/israel-news/premium.MAGAZINE-for-ancient-samaritan-community-a-new-test-of-loyalty-1.6075509?v=1628261590898](https://www.haaretz.com/israel-news/premium/MAGAZINE-for-ancient-samaritan-community-a-new-test-of-loyalty-1.6075509?v=1628261590898) (remarking that some Palestinians think of Samaritans as “Israelis and Zionists” whereas Israelis think of Samaritans as “Arabs”).

151. See *id.* (understanding the three separate citizenships of Israeli, Palestinian, and Jordanian Samaritans in Kiryat Luza as hinting at a community “identity

the two religions is only reinforced by the privileges Israel bestows upon them,¹⁵² which are themselves due to the group's proximity to the Jewish faith.¹⁵³ At the same time, many prominent Palestinian politicians and nationals view the Samaritans as a crucial part of their social fabric and a testament to its diversity.¹⁵⁴ Many in the Palestine Liberation Organization (PLO) and the PA, including Yasser Arafat, Nabil Sha'ath, Saeb Erekat, and Ikrima Sabri, the Grand Mufti of Jerusalem and Palestine, have referred to Samaritans as "Palestinian Jews"¹⁵⁵ as a way of countering Israel's claim as the home of the Jewish people and bringing the group closer to the fray of community action.¹⁵⁶ Although the Samaritans never liked the designation, it is noteworthy that neither they nor the Chief Priest explicitly objected to it.¹⁵⁷

The PA's positive stereotyping of the Samaritans influenced its chairman, Yasser Arafat, to modify the Electoral Law in 1995¹⁵⁸ to

crisis").

152. AYYASH, *supra* note 32, at 124.

153. See DROEBER, *supra* note 32, at 103 (arguing the Samaritans determination to not leave their "holy land" may be the only reason why have not experienced the difficulties of other minorities in the region).

154. See Human Rights Committee, *supra* note 31, ¶¶ 325, 328, 434, 445, 449 (listing, among other facts, several provisions for Palestinian Samaritans in social, religious, and political spheres).

155. *But see* Pinhas Inbari, *Who Are the Palestinians?*, JERUSALEM CTR. FOR PUB. AFFS. (Aug. 7, 2017), <https://jcpa.org/article/who-are-the-palestinians> (showing that "there is no trace of a 'Canaanite' ancestry" when viewing how Palestinian families describe their lineages). During the Camp David Summit of 2000, Chairman Arafat polemicized the Samaritan's religious objections to the Jewish Temple in Jerusalem and suggested that "the Temple didn't exist in Jerusalem, it existed in Nablus." See generally ERIC H. CLINE, JERUSALEM BESIEGED: FROM ANCIENT CANAAN TO MODERN ISRAEL 161–62 (2004) (illustrating the tensions between Muslims and Jews regarding the history of Jerusalem); see also AYYASH, *supra* note 32, at 172.

156. See CLINE, *supra* note 155, at 161–62 (maintaining that modern leaders overlook the complexity of the issue when citing Jewish, Muslim, and Christian histories).

157. "Samaritans are tightly linked to their heritage and by the Chief Priest, who is the head of the community based on his lineage from the priestly family. Our reference is solely to the Priest. We take orders and follow the guidance of our Priest. We are a small community; we cannot be divided. We have to have one leadership and one path to follow." Aziz Interview, *supra* note 148 (stating further that even the chief priest is not "openly opposed [to] the [Palestinian Authority]").

158. See Elhanan Miller, *Clinging to Ancient Traditions, the Last Samaritans*

include a Samaritan quota seat in the Legislative Council for the Palestinian Samaritans of Nablus.¹⁵⁹ Despite the very small number of eligible Samaritan voters, Arafat was widely understood to have positively discriminated in favor of the community¹⁶⁰ as a way to counter Israel's inclusion of Samaritans as Israeli citizens.¹⁶¹ While Palestinians at large welcomed this decision,¹⁶² the reaction within the Samaritan community was mixed.¹⁶³ In 2005, the Palestinian

Keep the Faith, TIMES OF ISR. (Apr. 26, 2013, 12:49 AM), <https://www.timesofisrael.com/clinging-to-ancient-traditions-the-last-samaritans-keep-the-faith> (detailing how, officially, the Palestinian Authority “embraced” Samaritans); IFES, IRI, & NDI, PALESTINIAN ELECTIONS: A PRE-ELECTION ASSESSMENT MISSION REPORT 44 (Aug. 2002) (reporting Yasser Arafat's interventions in elections); Law no. 15 of Dec. 7, 1995, art. 5.2, Palestinian Nat'l Auth. (Election Law) (Pal.) (providing proportionality requirements for seats in district councils). The regulations implementing this Law shall establish the number of seats of the Council allocated to each district, which shall be proportional to the number of their inhabitants, subject to a minimum of one for each constituency, and shall also establish which districts shall have some seats specially reserved for Christians and the number of these seats, in addition to one seat for the Palestinian Samaritans in the constituency of Nablus.

159. Art. 5/2, Election Law No. 15 of 1995, Nativity 14 Ragab 1416 of the Hijri: The Electoral Constituencies (Dec. 7, 1995) (Gaza).

160. See NAT'L DEM. INST. FOR INT'L AFFAIRS & THE CARTER CTR., THE JANUARY 20, 1996 PALESTINIAN ELECTIONS 32–33, 80 (1997) (reporting that the distribution of seats on the Council “was not strictly based on registration or population figures”). During the first elections, the High Priest Salloum Cohen was the first Samaritan representative in the Palestinian Legislative Council. See David Schenker, *Palestinian Democracy and Governance*, 51 WASH. INST. FOR NEAR E. POL'Y 1, 11 (2000) (breaking down the Council's religious composition); see also *Samaritan High Priest Saloum Cohen Dies at 82*, HAARETZ (Feb. 10, 2004), <https://www.haaretz.com/1.4710850> (stating that the “spiritual head” of the Samaritans sat on a reserved seat in the Palestinian parliament for several years).

161. *C.f.* Miller, *supra* note 158 (describing Yasser Arafat's attempts to benefit the Samaritan community, including giving scholarships to students to study abroad).

162. See Bassam Yousef Ibrahim Banat, *Samaritans Caste: A History of Thousands of Years*, 4 INT'L J. HUMAN. & SOC. SCI. 175, 179 (2014) (asserting that Samaritans “take pride in their Palestinian belonging” as part of their shared interests with the larger Palestinian society).

163. Three out of the five Samaritan families (total 100 eligible voters in the community) fought over candidacy in hopes that they would retain a position of power. Eventually, it was decided that only Saloum Cohen, who had a close relation to Chairman Arafat, could be the official candidate for the community. Aziz Interview, *supra* note 148 (opining that Samaritans “are a very small community but with many opinions”).

presidency decided to annul all quota representations—women, Christian, and Samaritan—in the Palestinian Legislative Council to achieve what was promoted as “a more inclusive electoral model.”¹⁶⁴ After subsequent lobbying, quota seats for women and Christians were re-allocated, but not to Samaritans.¹⁶⁵ Their ambivalence to play a role in the PA’s political institutions¹⁶⁶ is based on a perceived opinion that the Palestinian State is too weak¹⁶⁷ to bring about a modern and prosperous national state-building project.¹⁶⁸ Instead, fearing backlash or ostracization inside Israel, the Samaritans disengaged and retained their official image as apolitical.¹⁶⁹

164. “The regulations implementing this Law shall establish the number of seats of the Council allocated to each district, which shall be proportional to the number of their inhabitants, subject to a minimum of one for each constituency, and shall also establish which districts shall have some seats specially reserved for Christians and the number of these seats, in addition to one seat for the Palestinian Samaritans in the constituency of Nablus.” Law no. 15, *supra* note 159, art. 5.2.

165. Palestine Election Law No. 9 of 2005 was adopted to expand the legislature from 88 to 132 seats. *See* 2007 Decree on General Election, Chairman of PLO Executive Committee, President of Palestinian Nat’l Authority, Sept. 2, 2007 (Pal.) (prescribing the method for electing Council members but disregarding the Samaritan quota); *see also* Law No. 10, arts. 17, 71, 2005 (Election Law) (Pal.) (ignoring Samaritans in the quota of women representatives). A law issued by decree number (1) of 2007, relative to the general elections: Article (4): Electing the Council Members; Article (5): Through a decree a number of the Council seats shall be allocated to Christian Citizens. Presidential Decree No. 4 of 2010, 9 Jun. 2010 (Palestine); Presidential Decree of 2016, 31 Jul. 2016 (Palestine); Presidential Decree of 2017, 15 Jul. 2017 (Palestine).

166. Notwithstanding the fact that the Samaritan quota representation has been annulled since 2005, yet the Palestinian government in its first ever report submitted to the Human Rights Committee in its fulfillment to its international obligations under article 40 of the International Covenant on Civil and Political Rights. For more information, see Human Rights Committee, *supra* note 31, ¶¶ 434, 449 (providing for the allocation of a seat to represent Samaritans in Nablus and calling for the “active involvement of all Palestinian people in the administration of public affairs”).

167. *See* SCHREIBER, *supra* note 9, at 80–83 (attributing this “ambivalence” to less contact with Israelis, socialization in Palestinian education systems, and strong susceptibility to political change).

168. Tsadaka 2019, *supra* note 106 (arguing against Samaritans having “any dealings with the Palestinian government”).

169. According to Benyamin Tsadaka, a Samaritan historian, author, head of the Israelite Samaritan Information Center and a leading figure in the Holon community, the engagement of the Samaritan community in the Palestinian political life is unnecessary and brings about tension in their relationship with Israeli political institutions. In his opinion, there is more to lose on the Israeli side,

The deeply enmeshed nature of faith and national political agendas in the region makes the avoidance of any political stance nearly impossible for a minority community as ideally situated as the Samaritans. While the group maintained cordial relations with all parties in the early days of Israel's statehood, tensions peaked between the Samaritans and their respective allegiances at the outbreak of the second *intifada* in September 2000.¹⁷⁰ Their unwitting involvement in politics became explicit when the Samaritans' expressed concern that their ties to the Palestinian community might compromise their relationship with Israel and the advantages which come with it.¹⁷¹ Ultimately, the Samaritans sent an official delegation to the Palestinian President and requested annulling the Samaritan quota, in a move generally perceived as a self-interested rejection of their association with the Palestinian community.¹⁷²

Samaritan presence in the Israeli civil administration proved a further sticking point during the tumultuous days of the first *intifada*.¹⁷³ In response to Israel's attacks on their community, Palestinian civil society led a boycott of Israeli institutions.¹⁷⁴

rather than the gains that they might obtain from the Palestinians. Accordingly, Samaritans retain their role as a bridge for peace between Israelis and Palestinians and should refrain from any involvement in the Palestinian political life as it is counterproductive for them. Interview with Benyamin Tsadaka, Samaritan Historian, Editor of A.B. Newspaper, Historian and Author, in Nablus (Apr. 15, 2018) (arguing that there is “no point” in Samaritans entering the political fray); AYYASH, *supra* note 32 at 123.

170. FOR MORE INFORMATION, SEE GENERALLY JEREMY PRESSMAN, *THE SECOND INTIFADA: BACKGROUND AND CAUSES OF THE ISRAELI-PALESTINIAN CONFLICT*, 23 J. CONFLICT STUD. 114, 114–15 (2003) (ARGUING THAT THE SECOND INTIFADA OCCURRED AS PART OF A “CHAIN OF EVENTS” BEGINNING IN THE 1990'S, AS OPPOSED TO BEING CENTERED ON TWO INDIVIDUALS).

171. Tsadaka 2019, *supra* note 106 (pointing out that becoming involved in the Palestinian government “does not bring . . . Samaritans any benefits”).

172. Assamri, *supra* note 147 (calling the move for Israeli citizenship a “pragmatic” move that granted Samaritans economic and health benefits).

173. See SCHREIBER, *supra* note 9, at 78–81 (identifying the “recent economic ascent” of Samaritans and Arafat's “indemnities paid . . . for damages incurred by Samaritans during the First Intifada”).

174. See Salim Tamari, *The Uprising's Dilemma: Limited Rebellion and Civil Society*, MIDDLE EAST REPORT 164–65 (1990) (noting a “rush to dismantle the Israeli Civil Administration”).

Nonetheless, rather than participate in solidarity with the oPt citizenry, Samaritans living in Nablus actively distanced themselves from the resistance movement and continued to work for the Israeli administration while receiving their benefits.¹⁷⁵ A small minority did however begin participating in protests and donated money to the *Intifada* Fund, which further testifies to the mixed nature of the relationship between the Samaritans and their broader ethno-religious communities.¹⁷⁶

At the leadership and institutional level of the community though, their fealty to Israel as the granter of civic and political rights and employment opportunities has largely guided their politics during various conflicts in the region.¹⁷⁷ Though some expressed fidelity to the Palestinian cause, they did so being protected, untargeted, and enjoying a margin of freedom of movement and access to basic needs.¹⁷⁸ The *intifada* and subsequent conflicts therefore brought new opportunities to further polarize public opinion about the Samaritans, leaving the community misunderstood and maligned by both sides.¹⁷⁹ This experience distinctively displays the intricacies of the Nablus Samaritans' identity within Palestinian culture: on most occasions

175. See Hussein Ahmad Yousef & Iyad Barghouti, *Minority Under Occupation: The Sociopolitics of the Samaritans in the Palestinian Occupied Territories*, 10:3 AL NAJAH U.J. RSCH. 34, 42–43 (1996) (illustrating Samaritan neutrality during the Intifada).

176. See, e.g., *id.* at 42 (demonstrating the difficulties that Samaritans who worked in government jobs in the Occupied Territories faced because of their “collaboration” with Israeli authorities).

177. See generally SCHREIBER, *supra* note 9, at 75–82 (indicating clashes in “survival strategies” regarding association with Israelis versus Palestinians that affect their political affiliations).

178. However, this unique treatment led some Palestinians to express anger at the Samaritans. Some Palestinians even considered Samaritans to be an arm of the Israeli occupying regime, or labeled them as settlers, collaborators, or traitors. See *id.* (showing the differences in mobility and opportunities afforded to Samaritans based on their affiliations).

179. See Yousef & Barghouti, *supra* note 175, at 43 (noting that there were differences in the treatment of Samaritans based on “the origin of the [military] commander” of the day, with commanders “from oriental origin deny[ing] the Samaritans [special care] and treat[ing] them like the other Palestinians”). Those who actually feared for their safety and security and traditionally lived in the old city of Nablus in the Yasmin Quarter moved to their holy sanctuary, Mount Gerizim, and took up permanent residence there. Since then, Mount Gerizim has been the main neighborhood occupied only by Samaritans.

they can pass as Arabs, but during moments of heightened political tension, their allegiance is called into question given their privileged access to rights as holders of Israeli citizenship.¹⁸⁰

Key figures¹⁸¹ of the Samaritan community in Nablus still insist they are Palestinians and part of the Arab nation despite their ties to Israel. For example, the General Director of the Palestinian Ministry of Education,¹⁸² who is Samaritan, summarized his identity as follows:

Do you have a phone with a recorder? Can you record what I am about to share with you? [in a loud voice, he shouted] I am a Nabulsi, I am a Palestinian, I am an Arab. The Palestinian Liberation Organization is my official representative, Fateh is my party, and Yasser Arafat, the late Palestinian president, may God rest his soul, was my leader and father [metaphorically, to reassert his allegiance].¹⁸³

Cohen Hosny Wassef, the Museum director mentioned above, also sees the fate of the Samaritans as forcibly tied to the Palestinians.¹⁸⁴

180. *See, e.g., id.* (describing the impact of Samaritan affiliation on tensions with members of the Unified Leadership of the Intifada).

181. The High Priest Adballah Wassef Al Samri, the head of the Samaritan community, gave a pre-nationalistic answer to the question of identity and belonging: “The question of national identity is very simple for me. We have been here for thousands of years, we are not only Nabulsi, but we are an inextricable part of the Palestinian people. Although we have our own religion and traditions, we are not Jews, indeed we have thousands of differences between Samaritanism and Judaism.” Interview with Abdallah Wassef, High Priest and Head of Samaritan Community, in Nablus (Mar. 19, 2019) (understanding that the “question of national identity is very simple”).

182. Interview with Ishaq Radwan Al Samiri, Former General Director, Palestinian Ministry of Education, Current Diplomat, Palestinian Ministry of Foreign Affairs, in Nablus (Mar. 19, 2019).

183. *Id.* At the time of the interview, Mr. Ishaq Radwan Al Samiri was a General Director at the Palestinian Ministry of Education. In March 2021, he has been appointed as a diplomat serving at the Palestinian Ministry of Foreign Affairs.

184. He said: “We are an inseparable part of the Palestinian people, we are Palestinian. Samaritans, Christians and Muslims are together what constitute the Palestinian people. The three religions have lived on this land for thousands of years, sharing the good and the bad. We are at adversity with the Jews, they disdain us, for them we are Kuthim. This is a major insult for us.” Assamri, *supra* note 147 (declaring Samaritans as an “inseparable part of the Palestinian people”). Wassef the Samaritan, Director of the Samaritan Museum, Head of the Samaritan Library, Nablus (Mar. 19, 2019). Note: the term “Kuthim” refers to the ancient city of Kutha, located in present-day Iraq.

This tie was further strengthened in 1995, when the PA issued them Palestinian *de facto* citizenship documents (identification card and passport),¹⁸⁵ following the Samaritans' inclusion via a quota seat at the Legislative Council.¹⁸⁶

Notwithstanding such figures and the Basic Law of Palestine—which establishes rights to *all Palestinians* (including freedom of religion)¹⁸⁷ without discrimination based on race, sex, color, religion, political views, or disability¹⁸⁸—the Samaritans' Palestinian legal status remains rather ambivalent. The list of recognized non-Muslim Palestinian communities explicitly spells out twelve recognized Christian communities and Jews of Palestinian descent,¹⁸⁹ without any mention made of the Samaritan people or the Samaritan community.¹⁹⁰ This means that, contrary to *recognized* non-Muslim ethno-religious communities who have access to their respective special Personal Status Courts as mentioned in the previous Part,¹⁹¹ Samaritans are left with only access to the state-run judicial system

185. For information about the *de facto* citizenship documents of the Palestinian inhabitants of the West Bank, East Jerusalem and Gaza Strip, For information about the *de facto* citizenship documents of the Palestinian inhabitants of the West Bank, East Jerusalem and Gaza Strip, *see* Qafisheh II, *supra* note 67, at 118–19 (describing the invention of “West Bank citizenship”).

186. According to Cohen Hosny, in 2019, a delegation from the Samaritan community in Nablus met with Palestinian president Mahmoud Abbas requesting regrating a quota in the next PLC election. In 2019, the Palestinian president decided to directly appoint the Samaritan High Priest as a member in the Palestinian Central Council (PCC) which acts as a link between the PA and the PLO. Assamri, *supra* note 147 (stating that the Palestinian government “[had] promised . . . to reallocate a quota”).

187. Opinion No. 504/2008, Basic Law of the Palestinian National Authority, CDL(2009)008, at 7 (Mar. 4, 2009) (“Freedom of belief, worship and the performance of religious functions are guaranteed, provided public order or public morals are not violated”).

188. *Id.*, at art. 9 (“Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability”).

189. Law No. 2 of 1938 (The Councils of the Non-Muslim Communities), al-Jaridah al-Rasmiyah, no. 594, 1938 (Palestine) https://www.dls.gov.jo/ar/dlsDocuments/chapter7-Transition-Inheritance-ReligiousCommunities/low7_8.doc.

190. *Id.*

191. *Id.*

or the *Sharia* courts,¹⁹² thereby contributing once again to their hybridized social and political identity.¹⁹³

In sum, the ambiguous place of the Samaritans within both Israeli and Palestinian societies and legal systems is a product of their unique status as a religious minority that belongs to the Abrahamic tradition but does not adhere to any of its three major faith groups. This ambiguous status has allowed for their continued inclusion in Zionist political institutions, largely against the wishes of long-standing rabbinical opinions,¹⁹⁴ as well as in Palestinian political movements.¹⁹⁵ Their engaged presence in Holon and the oPt and their particular religious status have allowed the Samaritans' legal possibilities to expand, while other minorities continue to regress, in the eyes of the law. The following sub-section will explore this inverse relationship in more detail and highlight how Palestine's pluralistic legal and juridical systems enable it.¹⁹⁶

192. CERD, *Initial and Second Periodic Reports Submitted by the State of Palestine under Article 9 of the Convention, Due in 2017*, at 8, U.N. Doc. /C/PSE/1-2 (2018) [hereinafter CERD Report] (stating that Samaritans follow their own laws “relating to marriage, divorce, inheritance and food”).

Besides, the Samaritans understandingly tend to selectively resort to *Sharia* courts only when there is a vested interest. *C.f.* Yousef & Barghouti, *supra* note 175, at 34 (demonstrating that the main interests of the Samaritans are to survive, keep their identity, and maintain neutrality and good relations with neighbors and factions).

193. Samaritans in Nablus resort to *Sharia* courts for personal status matters including for example inheritance, mental incapacitation and widowing deeds. Court of Appeals Decision No. 223 of 2010, Personal Status, 18 Oct. 2010; AYYASH, *supra* note 32, at 125.

194. For the rejection and derision of Jewish communities of the Samaritans, see generally SCHREIBER, *supra* note 9, at 38–39 (overviewing “two diametrically opposed positions” on the questions of who the Samaritans are and why they are separate from the Jews); see also Lawrence H. Schiffman, *The Samaritans in Amoraic Halakhah*, BRILL, 371, 372 (2012), https://doi.org/10.1163/9789004235458_019 (noting the “ambivalence and even disagreement” about the Samaritans in the amoraic halakhah); AYYASH, *supra* note 32 at 125.

195. See Yousef & Barghouti, *supra* note 175, at 43 (highlighting the fact that Samaritans in Nablus have been in political harmony with Palestinian society); see also Ayaseh, *supra* note 109.

196. For more information, see Daniel Estrin, *Who Stole the Torahs? An Ancient Sect, A Brazen Theft and The Hunt to Bring the Manuscripts Home*, NPR, (April 29, 2018), <https://www.npr.org/2018/04/29/602836507/who-stole-the-torahs> (detailing the theft of these ancient texts).

C. “GOOD SAMARITANS”: THE PREFERENTIAL TREATMENT OF SAMARITANS WITHIN PALESTINIAN INSTITUTIONS

The previous section highlighted the Samaritans' ambiguous position in Palestinian and Israeli politics and their respective ethno-religious narratives when placed in different social and political environments. This section will show how this unique positionality is adapted by the Samaritans in various ways to take advantage of Palestine's 'neo-colonial' pluralism and its failings under the PA.

Previous sections have mentioned that the Samaritans are not an officially recognized religion in Israel or Palestine. The Palestinian Civil Status Registry is required to include the religion of each citizen on official certificates, including birth, death, and marriage certificates.¹⁹⁷ The PA, however, denies official recognition of Islamic sects such as Sufi, Isma'ili, Ahmadi, and Ja'afari, as well as Jehovah's Witnesses and the Baha'i,¹⁹⁸ but selectively shows tolerance and positively discriminates in favor of the Samaritans, who do not belong to any of the recognized faiths, and allows them full religious freedom. When asked about this type of favoritism towards the Samaritans and their conspicuous absence from government registries, Palestinian Deputy Minister of Interior Hassan Alawi¹⁹⁹ focused on the need to consider them Palestinians:

Whether Samaritans are Jews belonging to a monotheistic religion, or members of a separate religion that is unrecognized in Palestine is a very troubling question. This is an intriguing case that we haven't thought much about it. This can stir tension and divide the Palestinian people. For us, this is a complicated political issue where it is better not to look into the legal questions around it. They are Palestinians and have always lived

197. Law No. 2 of 1999 (Civil Affairs Law), al-Jaridah al-Rasmiyah, arts. 5, 16-35, 1999 (Palestine).

198. See 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM, *supra* note 3, at 9 (examining the restrictions on marriage and divorce in Jewish law); *Personal Status Rights at Issue for Jehovah's Witnesses in Palestinian Territories*, JW.ORG, (Mar. 2, 2016), <https://www.jw.org/en/news/legal/by-region/palestinian-territories/personal-rights-jehovahs-witnesses> (explaining that the Ministry of Interior refuses to recognize marriages of Jehovah's Witnesses).

199. Interview with Hassan Alawi, Deputy Minister, Ministry of Interiors, in Ramallah (Sept. 10, 2019) [hereinafter Alawi Interview] (pushing back on the need for doing research on Samaritans in the first place when “[there] are much more important subjects than this one”).

in Nablus. Our duty is to protect them.²⁰⁰

Such evasive responses from officials are common when faced with concerns over Samaritan positionality in Palestinian society. For example, the Legal Advisor for the Interior Ministry, Ahmad Thabalih,²⁰¹ replied to similar concerns by noting that the Palestinian registry system is replicated from Israel's and is based on legally binding statutes from the Oslo Accords. Thabalih argued that because Palestinians cannot change this system, it has remained static in its treatment of certain minority groups:

[We] Palestinians have never prepared our own civil registry and records. The system was transmitted to us from the Israeli Civil Administration in accordance with the Oslo Accords. We are obliged in accordance with the Peace Agreement to coordinate and share our system with the Israelis. Our system doesn't deliberately include or exclude any group. We enter the data in accordance with the system that they have provided us with. In the system we have a field for religion that we must fill in, and we have 14 groups that are based on the Israeli data base. We have Druze as a category although there are no Druze in the West Bank or Gaza. We technically follow templates and an already built system for us.²⁰²

Though this sentiment points to the aforementioned constraints of a 'neo-colonial' pluralism on effective governance, it fails to acknowledge any desire on the part of government officials to change these decrees even if they did have the ability to do so. Such ambivalence demonstrates the PA's explicit favoritism of Samaritans even outside or despite the law. A prominent example is the official recognition given to the Samaritan Chief Priest, who enjoys the privileges as an ordained religious head of a minority community, despite not having any legal grounding for such a *de facto* title.²⁰³

200. *Id.*

201. Interview with Ahmad Thabalih, Deputy Minister, Palestinian Ministry of Justice, in Ramallah (Oct. 5, 2019) [hereinafter Thabalih Interview] (stating that the Palestinian registry "was designed and built by 'our cousins' [referring to the Israeli authorities – Abrahamic root, cousins of Muslims]").

202. *Id.*

203. Since Samaritans as a community is not recognized as an official religious community in Palestine, consequently legally and formally speaking the head of the community, known as the chief priest, doesn't enjoy an official status, however the chief priest enjoys *de facto* powers such as administering the internal civil

Through the PA, he receives benefits including health insurance, a car, and a salary to protect and administer the affairs of his community, like his Christian and Muslim counterparts, without having the authority to do so.²⁰⁴

In addition to the official recognition of the Samaritan Chief Priest, leading a non-recognized minority religion, is the appointment of a Samaritan *mokhtar* (community leader)²⁰⁵ by the Minister of Local Governance, Saeb Erekat, who according to the prevailing laws does not have the jurisdiction to exercise such powers.²⁰⁶ The appointment of a community leader by the PA for such a small minority religious group that already follows the leadership of its High Priest reflects the PA's contradictory approach to the Samaritans, who are alternatively understood as members of a minority religion, a tribal community similar to the Bedouins, and an ethno-racial minority.²⁰⁷ Samaritans are tightly linked to their heritage and by the Chief Priest, who is the head of the community based on his lineage from the priestly family.²⁰⁸ Therefore, the decision to appoint a *mokhtar* stirred contempt and spurred internal power clashes within the community.²⁰⁹ A main point of contention centered on who had the ultimate authority over the community: the

affairs of the community, including officiating marriage contracts. See Zeina Jallad, *When Human Rights Go Wrong: The Limits of International Human Rights Law in Two Case Studies from the Arab Region* 169 (2022) (J.S.D. dissertation, Columbia University) (observing to the ambivalence characterizing the Palestinian Authority's legal and extra-legal favoritism of Samaritans).

204. Aziz Interview, *supra* note 148 (explaining the privileges that the Chief Priest receives that are "similar to any head of [a] religious community").

205. In Turkey and some Arab countries, a *mokhtar* is the head of local government of a town or village. Jallad, *supra* note 203 (describing the role of the "mokhtar").

206. According to the Palestinian law, the Governor has the capacity to appoint leaders (*Mokhtar*) and not the Minister of Local Governance. Law. No. 52 of 1958 (the *Mukhtars* Law within the boundaries of municipal areas and local councils), art. 4, 1958.

207. Interview with Khaled Zawawi, Director of Public Relations, Palestinian Ministry of Religious Affairs, in Ramallah (July. 25, 2019) [hereinafter *Zawawi Interview*] (explaining, in part, the complexity of Samaritan identity).

208. Aziz Interview, *supra* note 148 (explaining that Samaritans' "reference is solely to the Priest").

209. See *id.* (noting that the community already had a Chief Priest).

mokhtar or the High Priest.²¹⁰ Most Samaritans, due to their deep religiosity and the centrality of the High Priest in their community, felt that the Minister was attempting to supersede the role of the High Priest.²¹¹ As a result, they attribute appointment of the *mokhtar* to vested interests between him and the Minister and regard him with contempt.²¹²

The PA's peculiar treatment of the Samaritans and its selective tolerance for their community's practices raise existential questions as to why and how the PA reads the Samaritans as legal subjects.²¹³ For political reasons, the PA instrumentalizes a discourse referring to the Samaritans as the "Jews of Palestine," as explained in the previous subsection. Yet historically, legally, and theologically speaking, Samaritans are *not* the Jews of Palestine who resided on the Land of Palestine before 1948.²¹⁴ Given that Samaritans do not regard themselves as Jews and the Jewish orthodoxy excludes them from Judaism, it remains unclear why the PA continues to avoid granting them official recognition as a religious group.²¹⁵

The PA's relationship to the Samaritans also raises concerns about discrimination and denial of rights to other social and religious minorities. There is no consistent institutional logic in allowing the Samaritans access to legal recourse and rights, while intolerance remains writ large for the Ahmadi, Jehovah's Witnesses, those who desire to belong to a secular identity, or other groups, like women

210. *See id.* (lamenting the "big divide" the appointment created).

211. *See id.* (believing that there was not a need for the government to appoint such a leader in the community).

212. *See id.* (speculating that the appointment of a "random guy" may have involved some vested interest).

213. Zawawi Interview, *supra* note 207 (stating that Samaritans "have to show to every sovereign that they belong" and "are part of every system").

214. Based on the Population Statistics of the Late Ottoman Period and the Mandate (1990), before 1917, the number of Arab Jews who lived and held the Ottoman citizenship in historical Palestine was 39,000 in comparison to over 700,000 Ottomans, including Muslims and Christians living in historical Palestine. For more information, see *Demography and the Palestine Question (I)*, PALESTINE JOURNEYS <https://www.paljourneys.org/en/timeline/chart/6639/demography-and-palestine-question-i-population-figures> (last visited Mar. 19, 2022) (graphing the changes in Palestine's religious demographics between 1914 and 1947).

215. Zawawi Interview, *supra* note 207 (arguing that "there is not [a] real collective effort" among the Samaritans "to protect the religion").

and the LGBTQ community. Instead of an underlying institutional logic, the PA's treatment of the Samaritans is simply the byproduct of political instrumentalization. When considered by the PA as "Palestinian Jews," in addition to being such a small and unthreatening group, the Samaritans conveniently showcase the PA's alleged tolerance in contrast with Israel's treatment of the Palestinians.²¹⁶ Such an interpretation would be consistent with Arafat's expressed interest at countering Israel's inclusion of Samaritans as Israeli citizens, when granting them a quota seat at the Legislative Council.²¹⁷ All in all, not only are the Samaritans benefitting from their hybrid identity and institutional location,²¹⁸ but both the PA and Israel use them to profit in their relationship to one another, as will be seen in the following section.

D. SAMARITANS AS LEGAL SUBJECTS: THE POSITION OF SAMARITANS IN ISRAELI INSTITUTIONS

Having established the Samaritans' unique position in the Palestinian system and their preferential treatment by its governing class, this section will explore how Israeli policies have also influenced their current position. To do so, it will focus on the role of Samaritans in the Israeli national narrative and their status within the country's institutions, before looking at case studies showing which advantages these dual imaginations bring the community.

Over the past several decades, Israel has adopted laws that expand the definition of Jewishness²¹⁹ to secure higher levels of Jewish immigration, despite the opposition of the Rabbinic establishment.²²⁰

216. *See id.* (remarking that the Palestinian Authority "deals with the Samaritans as a décor" necessary "to emphasize on the Jewish component in the Palestinian narrative").

217. *Cf. id.* (noting that the Israeli citizenship of Nablus Samaritans' "is more than an arrangement . . . it is more than a tool to facilitate their everyday life, it is not only about having access to their relatives in Holon . . . [but it] is a form of an absolute identity").

218. *See generally* Urien-Lefranc, *supra* note 128, at 87 (providing the background for Samaritan ethnoreligious and geographic identity).

219. *See, e.g.,* Corinaldi, *supra* note 6, at 2.89 (describing how the situation involving Samaritan marriages to Jews has "changed somewhat", with male Samaritans being able to marry Jewesses on certain conditions).

220. *Cf.* MINISTRY OF DIASPORA AFFAIRS, REPORT OF THE PUBLIC ADVISORY

Concurrently, while expanding the legal definition of a Jew and adopting policies to increase its Jewish majority, it has used all possible means and policies to exclude non-Jewish minorities.²²¹ The Samaritans have unwittingly been cast into consequential debates surrounding the definition of Jewishness due to their inclusion in the Law of Return.²²² Defining Jewishness has been central for expanding the state's territory and citizenry, as well as their promulgation of a positive and inclusive national image on the global scene.²²³ When taken in this context, the Samaritans can be seen to have played a significant role in Israel's attempt to authenticate its history with the land and, as a result, fragment the Palestinian people.²²⁴

The Samaritans since 1949 held a *de facto* Jewish Status under the Law of Return (cemented by a ruling in 1954) until 1992 when their right to be Israeli citizens under said law was questioned.²²⁵ Ultra-Orthodox factions in the Israeli government worked to exclude them from the scope of the Law of Return, led by Aryeh Deri, the co-founder of the ultra-orthodox religious political party Shas and then

COMMITTEE FOR EXAMINING ISRAEL'S APPROACH REGARDING WORLDWIDE COMMUNITIES WITH AFFINITY TO THE JEWISH PEOPLE 17 (2017) (reporting on how the Jewish tradition is "open to all" and "not limited to within the Land of Israel").

221. See, e.g., Tatour, *supra* note 7, at 9 (describing various methods by which the Knesset has entrenched its view of Palestinians through a 2018 statute).

222. See Urien-Lefranc, *supra* note 128, at 88 (demonstrating how Samaritans have sought to differentiate themselves from Judaism as well as from Palestinian and Israeli citizenship).

223. For a detailed analysis of such a process as part of Israel's settler-colonial approach to state building, see Jallad, *supra* note 203, at 114 (stating that the Law of Return provides an example of a "civic-territorial doctrine" that gives a legal basis for communities to gain legal rights rights). In the present paper, my analysis is limited to providing the factual and legal context to the Samaritans' re-inclusion within the scope of the Law of Return.

224. Atef Daghlas, *Ragham 'dam 'ishrakahim fi al-Hayaat al-Siyasiati, limadha Yusharik al-Samiriwn fi al-Aintikhabat al-israyiylati? [Desptie] their Non-Participation in Political Life, Why do the Samaritans Participate in the Israeli Elections?*, AL JAZEERA (Mar. 17, 2021), <https://www.aljazeera.net/news/politics/2021/3/17>.

225. See Corinaldi, *supra* note 6, at 2.89 (highlighting the *de facto* recognition as being "sufficient for practical purposes"); see also, Haim Shapiro, *Samaritans: 'We Call Ourselves Israel'*, JERUSALEM POST, (June 8, 1993) (*reprinted in* 37 A.B. SAMARITAN NEWS (1993)) (citing Tzedaka's attempt to gain a Jewish identification card in 1990).

Minister of Internal Affairs.²²⁶ Deri denied a Nablus Samaritan the request to “emigrate” from Nablus to Israel, “on the grounds that they fail the elements of the Jewish identity.”²²⁷ Deri further argued that, based on the amendment of the Law of Return of 1970, Samaritans are considered non-Jews belonging to a different religion and therefore not within the scope of the law.²²⁸ Deri successfully barred Samaritans from seeking immigration visas (*Oleh*) to Israel as *Olim Hadashim*.²²⁹ Almost overnight, their legal status was lost, seemingly arbitrarily and without substantive justification.²³⁰

The Samaritans vigorously lobbied to reclaim their immigration status and filed a petition for conditional order before the Supreme Court of Israel in 1993.²³¹ In their petition,²³² instead of resorting to legal arguments, the Samaritans used historical arguments asserting the specific nature of their religious identity and its proximity to the Israeli national narrative to re-gain their position within the scope of the Law.²³³ These arguments resulted in an agreement between the

226. See SCHREIBER, *supra* note 9, at 59 (asserting that ultra-Orthodox religious parties are the cause for the continuing “rabbinical antipathy” against Samaritans).

227. See Corinaldi, *supra* note 6, at 2.90 (demonstrating the Israeli government’s change of policy).

228. See SCHREIBER, *supra* note 9, at 59 (pointing to the Samaritan sister decision as an example of the Ministry of the Interior excluding non-Jewish Samaritans).

229. See *id.* at 59 (citing Deri’s position as Minister of Internal Affairs as part of the “legal complications” in “smooth Samaritan-Jewish” relations).

230. Cf. Menachem Mor, *Who is a Samaritan?*, in 25 STUDIES IN JEWISH CIVILIZATION 160–61 (Leonard Jay Greenspoon ed., 2014) (overviewing the decades-long arguments underpinning Samaritans’ requests to emigrate as “*oleh hadash*”, or new immigrant, including the assertion that they are part of the Jewish nation due to their tradition following the law of Moses).

231. Shapiro, *supra* note 225, at 37.

232. Petition No. 4200/94 to the Israeli High Court of Justice, *reprinted in* 606 A.B. SAMARITAN NEWS 48 (Mar. 15, 1994) (Isr.) [hereinafter SAMARITAN NEWS].

233. Based on the expert opinions of Professor Smaryahu Talmon and Dr. Menhem Mor, Michael Corinaldi, the Samaritans’ lawyer before the Supreme Court, raised two arguments pertaining to their denial of *Olim Hadashim* legal status. Corinaldi asked the state what kind of changes might have occurred between 1949, when the Samaritans were granted the Right of Return, and 1992 to justify the change to precedent by the Minister of Internal Affairs. He also forcefully rejected the argument that Samaritans belonged to a different religion, arguing that the definition of “Jew” for the purposes of the law was based on a secular modernist interpretation, not in accordance with Rabbinic criteria. Corinaldi, *supra* note 6, at 2.91.

Samaritans and the Ministry of Interior in March 1994, when the Israeli court re-affirmed the right of Samaritans to receive immigration visas and to be treated as *Olim Hadashim*, like all other Jewish immigrants coming to Israel.²³⁴ The Samaritans were therefore successful in forcing the government to re-instate its 1949 policy to treat all Samaritans as Jews traversing from Arab countries and grant them access to Israeli citizenship and all associated rights.²³⁵

Although the decision clearly showed the extent of Samaritan influence in the Israeli court system, the 1994 ruling to reinstate their immigration status differed in important aspects from earlier inclusions of the Samaritans in the Right of Return.²³⁶ Nablus Samaritans have largely never stated any possibility of leaving their homes in the West Bank and abandoning their aforementioned socio-cultural ties to the Arab-Palestinian community.²³⁷ Given the reality of the Samaritans' disinterest in practical immigration, it would appear that Israel's reversal of its decision is, above all, in the interest of expanding their own citizenry and enhancing their image on the global stage. This would also explain the significance of the Samaritan identity for their success at changing Israeli law. In this context, the opened-arms stance to the Samaritans may be seen more concretely as an attempt by the state at Judaizing a distinctly non-Jewish community that has rejected any such subsumation for centuries.²³⁸

The feigned nature of the Samaritans' proximity to Israeli identity becomes more apparent in light of the arbitrary classification of community members under official state census statistics after the 1994 law passed. Until the 1995 Israeli National Census, Samaritans were counted as members of the Druze population,²³⁹ a minority

234. SAMARITAN NEWS, *supra* note 232.

235. *Id.*

236. See SCHREIBER, *supra* note 9, at 69–72 (discussing the living conditions of Samaritans over time).

237. *Id.* at 70.

238. For detailed analysis of the significance of the inclusion of the Nablus Samaritan minority in the Israeli Law of Return, see Jallad, *supra* note 203, at 163.

239. ISRAELI CENTRAL BUREAU OF STATISTICS, *Demographic Features – Definitions and Explanations*, [https://www.cbs.gov.il/he/Pages/default.aspx%20\(Isr.\)](https://www.cbs.gov.il/he/Pages/default.aspx%20(Isr.)).

category which encompassed a range of religions including Muslims and Hindus.²⁴⁰ From that census to the present day, the Samaritans stand separate from the traditionally “minority” Druze category and belong instead to the category of “no religious affiliation.”²⁴¹ This ambivalent status echoes their similar position in Palestinian law. The Samaritans ultimately are not acknowledged as having their own faith in the Israeli legal system but are instead defined simply as “non-Jewish.”

Their position within the two systems shows that Nablus Samaritans are legally annexed to the Jewish people,²⁴² institutionally non-Jewish, religiously Samaritan, selectively Palestinian, and culturally Arab. The following Part will show how the Samaritans learned how to navigate these interlocking circumstances to their advantage through six case studies. The examples provide detailed accounts of the shortcomings and opportunities presented by the “extreme legal pluralism” that characterizes Palestine.

IV. SIX EXAMPLES OF SAMARITAN NAVIGATION OF LEGAL PLURALISM IN THE OCCUPIED PALESTINIAN TERRITORIES

This Part explores how the Samaritans use the multiplicity of their identity as a tool to negotiate their legal rights and offers concrete examples of strategies they have employed to do so. By using strategies of compliance, non-compliance, resistance, civic engagement, positive participation, and passive muted participation, Samaritans have remarkably expanded their duties, rights, and entitlements under both legal systems.

A. “IF YOU CANNOT BEAT THEM, JOIN THEM”: SAMARITANS AT THE NEGOTIATION TABLE DURING OSLO

The previous Part briefly evidenced the ways in which Samaritans engaged in politics despite their claims of disinterest and independence. The Oslo peace talks provide a further example of this

240. *Id.*

241. *Id.*

242. Jallad, *supra* note 203, at 223.

tendency. For Samaritans, the prospect of a peace agreement in the 1990s between the Palestinian Liberation Organization and the Israeli government created a familiar sense of uncertainty and collective anxiety.²⁴³ Samaritans were worried that any agreement might result in a division between the Samaritans in Nablus and Holon. Regardless of which sovereign was in control, their main priority was to ensure that the Samaritan people as a collective remained inseparable, and their access to their holy site continued to be uninhibited.²⁴⁴

The group therefore deftly worked to remain current in discussions without requiring their absorption into the full agenda of any negotiating party.²⁴⁵ They were able to do so in large part because, unlike other ethno-religious minority groups inside Israel or in the oPt, Samaritans became their own stewards through ethno-political mobilization.²⁴⁶ The origins of this strategy can be seen in a 1993 excerpt from a local Samaritan newspaper, *AB News*, urging the community to mobilize to protect itself from the possibility of “Israeli transfer of areas to Palestinians”:

We cannot wait for events to shape our future. We must depend on no one but ourselves. Any scenario is now for the community’s future. Everyone involved is declaring that the recently signed accord is an agreement in principle only and does not go into details. We must not, however, rely on declarations any longer. Facts are being established behind the scenes, and we may find ourselves faced with a *fait accompli*, which we have no

243. *Political Permutation*, 597–98 A.B. SAMARITAN NEWS 87–88 (Oct. 28, 1993) [hereinafter *Political Permutation*].

244. As the Samaritan Cohen Aziz expressed “We are such a small community, we do not care. We do as the Egyptian proverb says: ‘the man who marries my mother, I call him uncle.’ In other words, if Samaritans are powerless and cannot change their reality on the ground, at least they can cooperate and hopefully gain some advantages” (The Egyptian proverb *اللي يجوز امي اقوله يا عمي* (*ilalee yajuwaz omee aquluhu ya ‘amee*) Literal translation: The man who marries my mother, I call him uncle.). Aziz Interview, *supra* note 148.

245. See Stephen Kaufman, Samaritan Political Identity 16–18 (1998) (unpublished M.A. thesis, Tel Aviv University) (on file with the Samaritan Political Identity Part II) (explaining that “the current status quo has been a very beneficial period” which incentivizes the Samaritans to maintain these benefits with upcoming challenges).

246. See MILTON J. ESMAN, *ETHNIC POLITICS* 27 (2018) (reflecting what an ethnic political movement represents to a community).

possibility of changing.²⁴⁷

Inspired by this and similar sentiments from within the community, Samaritans in Nablus and Holon came together in order to develop and ultimately present their own political agenda on the local and global stage.²⁴⁸ At the international level, they lobbied the United States and the United Kingdom for an improvement of the Samaritan situation in the West Bank and the inclusion of Samaritan rights in the final peace agreements.²⁴⁹ This lobbying included requests of reassurance for the future survival of the Samaritan community, the expansion of the Samaritans on Mount Gerizim, and guarantees of freedom of movement between the West Bank and Israel.²⁵⁰ Domestically,²⁵¹ they lobbied the Palestinian and the Israeli negotiators to address their rights and settle the legal status of Mount Gerizim, while regionally they communicated with Egyptian and Jordanian officials to advocate for Samaritan religious, social, economic, and political rights.²⁵² Their various and multi-layered efforts successfully resulted in a draft treaty, presented by the Samaritans to their Palestinian and the Israeli counterparts to be included in the Final Conflict Resolution Negotiations.²⁵³

The main concern of the Samaritans in protecting their holy ties to Mount Gerizim surfaced in the Oslo II debates and culminated in the eventual interim agreement detailing a plan to divide the mountain into various jurisdictions.²⁵⁴ The top of the mountain, an archeological site and an important sacred site for Samaritans, was classified as Area C (most historical sites in the West Bank are within Area C).²⁵⁵ The main purpose of this classification was to

247. *Political Permutation*, *supra* note 243.

248. *The Samaritan Delegation to the United States and United Kingdom*, 6430644 A.B. SAMARITAN NEWS 75 (Sept. 1, 1995) [hereinafter *The Samaritan Delegation*].

249. Ayaseh, *supra* note 109.

250. *Id.*; Kaufman, *supra* note 245, at 16–18.

251. *The Samaritan Delegation*, *supra* note 248.

252. *Political Permutation*, *supra* note 243.

253. *Id.*

254. *Id.*

255. The city of Nablus itself is divided bizarrely: neighborhoods, the city's main road, and Mt. Gerizim are located in C, while schools and infrastructure are

allow the redeployment of the Israeli army, ultimately codifying support for Israeli expansion in the name of security.²⁵⁶ As a result, the site remains effectively and fully under the direct control of the Israeli Department of Antiquities, despite its important place in the Samaritan imagination and history.²⁵⁷ The following section explores the consequences of this negotiation on the lives of Samaritans and shows the group successfully using similar strategies to leverage their positions in a more local context.

B. LAWLESSNESS AND PRIVILEGE: EXCEPTIONALISM IN PRACTICE

The post-Oslo II division of the West Bank into three administrative units (Areas A, B, and C) has been one of the main drivers of legal pluralism and one of the biggest problems in the codification of law and deliverance of rights to Palestinians.²⁵⁸ A comparison between the Samaritan neighborhood on Mount Gerizim and the town of Al Ram—both areas classified as B and C according to the Oslo Accords—will show the discrepancies in the application of legal pluralism and testify to the way in which the Samaritans used their position in this system to their advantage.²⁵⁹

Al Ram, once known as the Northern Gate of Jerusalem, was a bustling trade center connecting Jerusalem to other districts in the West Bank.²⁶⁰ Following the Oslo agreement, the town was removed from the Jerusalem municipality.²⁶¹ It was divided into both Area B

in B. In practical terms, that means that the Palestinian government is required to provide services where people live, work, and go to school in areas A and B, but where money is generated (in zone C) the proceeds go directly to Israel. *Ar Ram Town Profile*, APPLIED RES. INST. – JERUSALEM, 5, 18 (2012) http://vprofile.arij.org/jerusalem/pdfs/vprofile/Ar%20Ram_EN.pdf.

256. See Nasser Ishaq & Peeka Hakala, *Area C: More than 60 % of the Occupied West Bank Threatened by Israeli Annexation*, EUROPEAN PARLIAMENT, 4–5 (2013) (“Israeli activities in Area C are in fact increasing at a rate that has raised serious concerns about the territory being annexed into Israel.”).

257. Urien-Lefranc, *supra* note 128, at 92–93.

258. Emilio Dabed, *Constitutional Making and Identity Construction in Occupied Palestine*, 86 CONFLUENCES MÉDITERRANÉE 115, 116 (2013).

259. See NAAMNEH ET AL., *supra* note 57, at 24 (commenting on the differing regulatory frameworks).

260. *Ar Ram Town Profile*, *supra* note 255, at 21.

261. See *Ar Ram: A Palestinian Town Facing the Threat of the Segregation*

and Area C, a major checkpoint was established with military posts, and a military base and settlements began circulating the town, restricting the movement of its residents.²⁶² Accordingly, the PA is very limited in its ability to govern the town, and the Israeli Civil Administration is indifferent to Al Ram.²⁶³ Thus, it became an essentially lawless zone:²⁶⁴ a destination for criminals and peripheral communities seeking to escape Palestinian jurisdiction (and therefore the law) in Area A.²⁶⁵ The construction of the separation barrier adds another layer of complexity to the lawlessness and isolation of Al Ram.²⁶⁶ Infrastructure services, sewage, water, electricity, education, health, and landownership rights have been severely compromised, if available at all, due to the conflicted jurisdictions of the multiple regulatory frameworks.²⁶⁷

Despite falling within two disparate zones²⁶⁸ and not retained under the control of the Samaritans or Palestinians, Mount Gerizim is better serviced than most if not all similar sites in the territories.²⁶⁹ Samaritans on Mount Gerizim essentially live in a gated

Wall, EYE ON PALESTINE (Aug. 14, 2004), <http://poica.org/2004/08/ar-ram-a-palestinian-town-facing-the-threat-of-the-segregation-wall/> (noting the construction of the Segregation Wall to the north of Jerusalem municipality border).

262. *Id.*

263. See Daoud Kuttab, *Will Separation Wall be New Israel-Palestine Border?*, AL-MONITOR (Nov. 21, 2013), <https://www.al-monitor.com/originals/2013/11/al-ram-west-bank-palestine-israel-separation-wall.html> (claiming that “the Israelis have abandoned al-Ram and its inhabitants”).

264. For an in-depth discussion of the consequences of the Oslo fragmentation of the Palestinian lands on creating a state of lawlessness in the West Bank, Graff, *supra* note 91, at 14.

265. Kuttab, *supra* note 263; *The Separation Barrier Surrounding A-Ram*, B'TSELEM (Jan. 1, 2016), https://www.btselem.org/separation_barrier/a-ram.

266. Kuttab, *supra* note 263.

267. EYE ON PALESTINE, *supra* note 261.

268. See Ahmad Melhem, *How One of the Smallest Religious Communities in the World is Struggling to Sustain its Community*, AL-MONITOR (Sept. 17, 2015), <https://www.al-monitor.com/originals/2015/09/samaritans-smallest-community-west-bank-mount-gerizim.html#ixzz6WGI4p2h5> (reflecting the small number of total Samaritans split between Gerizim and Holon).

269. The State of Israel retains an active control over Mount Gerizim and the archeological site. See Chaim Levinson, *Ancient Site Near Nablus ‘Too Problematic’ to Open*, HAARETZ (July 2, 2010), <https://www.haaretz.com/1.5142887>.

compound,²⁷⁰ in stark contrast to members of the Al Ram community and others within the same zoning.²⁷¹ The community is adjacent to a major checkpoint with joint PA-Israeli armed patrol forces, who are deployed to ensure Samaritans' security and comfort as Israeli citizens.²⁷² They enjoy regular sanitation services, an ordered system of urban planning, well-serviced streets, and the adequate provision of infrastructure services and development.²⁷³ The PA does not uniformly and consistently provide all Palestinians in Area C with education, power, sanitation, and sewage services,²⁷⁴ yet those services are adequately available for Samaritans.²⁷⁵ This in part stems probably from their political significance and subsequent concerns for their protection.²⁷⁶ Despite nearly total Israeli control of Mount Gerizim,²⁷⁷ in a rare and instructive gesture of united interests, PA and Israel forces patrol the mountain together in service of the Samaritan community.²⁷⁸

A recent Samaritan report claims that, fearing the spread of the virus COVID-19 in their extremely small and relatively vulnerable community, its members drew on their advantageous circumstances to convince the Israeli Civil Administration to restrict access to the

270. *Al-Mashakil alati tuajih al-Taayifat al-Saamiria [The problems facing the Samaritan Community]*, PALESTINE NEWS AGENCY, https://info.wafa.ps/ar_page.aspx?id=4059.

271. Author's description based on in person visits to Mount Gerizim between 2016 and 2019.

272. Author's description based on multiple first-hand visits to the occupied Palestinian territories, including the city of Nablus and Mount Gerizim for the purposes of the research between 2016 and 2019. *See also* Ishaq, *supra* note 105; AYYASH, *supra* note 32, at 124.

273. Ishaq, *supra* note 105.

274. *See* ORHAN NIKSIC ET AL., AREA C AND THE FUTURE OF THE PALESTINIAN ECONOMY, 19 (World Bank, 2014) (illustrating the lack of basic services for those in Area C).

275. PALESTINE NEWS AGENCY, *supra* note 270.

276. Wadah Eid, *al-Taayfiat al-Saamuriat fi Nablus Rahinat Hawajiz al-Aihtilal [The Samaritan Community in Nablus is held hostage by the Occupation Checkpoints]*, AL-JAZEERA (Apr. 12, 2006), <https://www.aljazeera.net/news/reportsandinterviews/2006/12/5/-الطائفة-السامرية-في-نابلس-ر-هيئة-حواجز>

277. *Id.*

278. Interview with Majdi Shar'ab and Mohammad Mashni, Prosecutors, Nablus Prosecution Office, in Nablus (Aug. 1, 2019).

mountain, by retaining a checkpoint that denies non-Samaritan Palestinians from entering that part of Palestinian territory.²⁷⁹ Likely aware of their leverage via the Right of Return and their habitation in Area C, the Samaritans did not communicate their concerns or intentions to the PA or the Palestinian police.²⁸⁰ Instead, they sought the protection of the Israeli occupying powers to deny their fellow Palestinians from accessing Palestinian land to protect their own community's health.²⁸¹

C. LEGAL PRACTICE IN PALESTINE: SAMARITANS AS ISRAELI CITIZENS

Another instance of positive discrimination is the admittance of Samaritans to the Palestinian Bar Association (PBA). The PBA is the sole body regulating the legal profession in Palestine,²⁸² and its founding law clearly allows only Palestinians or Arab citizens who reside permanently in Palestine to become members of the PBA and register to officially practice before the Palestinian jurisdictions.²⁸³ The organization explicitly imposes a prohibition on Israeli citizens or those admitted before the Israeli bar from joining the Palestinian legal profession as part of the Arab Union of Lawyers Boycott movement to pressure Israel for human rights abuses.²⁸⁴

Nevertheless, an exception was made in 2011 for two Samaritan lawyers who had recently graduated from the Al Najah Palestinian National University to join the bar association despite holding dual citizenship.²⁸⁵ The Chairman of the Bar at the time, Ali Muhanna,

279. Videocall Interview with Khaled Zawawi, Director of Public Relations, Palestinian Ministry of Religious Affairs (Nov. 2, 2020).

280. *Id.*

281. *Id.*

282. Mutaz M. Qafisheh, *Ethics of the Legal Profession in Palestine*, 42 FORDHAM INT'L L.J. 554, 565 (2018) [hereinafter Qafisheh III].

283. See SAWASYA JOINT PROGRAMME, LEGAL TRAINING IN PALESTINE AND THE ROLE OF THE PALESTINIAN JUDICIAL INSTITUTE 9 (May, 2018) (listing the qualification for lawyers of the Palestinian Bar Association).

284. The PBA in line with the regulations of the Arab Lawyers Union boycotts any interactions or relations with the Israeli "Zionist establishment." THE ARAB LAWYERS UNION, *al-Qanun al'Asasy [The Basic Law]*, arts. 3b, 4, 8, 2-3, <https://www.alu1944.com/Sections/Details?id=mI7WW1f5Yf0=> (last visited Mar. 19, 2022).

285. Interview with Ali Muhanna, former Chairman of the Palestinian Bar

based his unprecedented decision on the claim that the Samaritans' Israeli citizenship was merely opportunistic:

Our brothers and sisters from the Samaritan community are a key component of the Palestinian society. They have lived for centuries in Nablus and have always been part of the Palestinian people. They enjoy Palestinian citizenship as any other Palestinian, and their access to Israeli citizenship was only a programmatic arrangement to facilitate their connectivity to their community in Holon.²⁸⁶

Following the Chairman's decision, the two Samaritans took the oath and were admitted to practice law in Palestine.²⁸⁷ One of them, Radwan Al Kahen, who decided to change his name to the Hebraized Tomer Cohen; he hangs a banner of his law practice using his Hebrew name in one of the main streets in the West Bank city of Ramallah.²⁸⁸ Tomer claims to have chosen to use his Hebrew name publicly in a Palestinian city as a way of marketing his capabilities to resolve Palestinians disputes with Israeli legal jurisdictions.²⁸⁹ And instead of being vilified for his Hebrew name, his clients see it as an advantage, he claims.²⁹⁰

Clients have more trust in my effectiveness in resolving their legal issues before the Israeli system, thanks to my Hebrew name. Do you think an Israeli judge would treat a lawyer named Mohammad the same way as a Cohen, Levi or Ziv? No Palestinian, Israeli, or Druze of Palestinian descent can have the dual access to both legal and judicial systems as me. Currently, I work exclusively as a middleman: I resolve tax, customs and import issues for Palestinian businessmen with the Israeli administration. My business is booming; I have clients from all over the West Bank, they look for me because of my Hebrew name.²⁹¹

In summary, dual-citizen Samaritans like Tomer gain access to the

Ass'n, former Minister of Just., former Chief Just. of Palestine and former legal advisor of the Palestinian President Mahmoud Abbas, in Ramallah (Sept. 12, 2019).

286. *Id.*

287. Interview with Shadi Eltief, Lawyer, in Nablus (Aug. 13, 2018).

288. As observed by the author during field visit to Ramallah, in the occupied Palestinian territory in 2018.

289. Interview with Tomer Cohen, Lawyer, in Ramallah (Aug. 10, 2018).

290. *Id.*

291. *Id.*

Palestinian legal profession. Their dual legal status and the plurality of applicable laws uniquely position them to practice law in the West Bank, East Jerusalem, and inside Israel—access otherwise unattainable for both Palestinians and Israelis.

D. EVASION OF LEGAL CONSEQUENCES: TWO CASE STUDIES

The first case study examining the usage of the Samaritans of their multiple identities to their advantage depending on the context of different jurisdictions is based on a case before the Palestinian Anti-Corruption Court.²⁹² In 2008, the Palestinian Anti-Corruption Court indicted Ezzat Al Samri, deputy director of the Department of Transportation, for requesting and receiving bribes from individuals and corporations to forge vehicle-licensing transactions.²⁹³ Al Samri was accused of professional misconduct, abuse of public office, and deliberate complacency in performing public duties.²⁹⁴ In 2012, he was sentenced to ten years imprisonment with hard labor for intentional forgery of official documents, ten years imprisonment with hard labor for use of forged documents, three years and 200 Jordanian dinars for requesting and accepting bribes, and three months imprisonment for deliberate complacency in performing public duties.²⁹⁵ In its final decision, the appeal circuit decided to inflict its harshest punishment *in absentia*, as the defendant was a fugitive from justice.²⁹⁶

The defendant, Al Samri,²⁹⁷ happens to be a Samaritan who holds both Palestinian and Israeli citizenship.²⁹⁸ Although the Anti-Corruption Court has jurisdiction over public servants and Palestinian citizens, its sentencing was rendered *in absentia* because Al Samri fled to Mount Gerizim, which is considered part of Area C and thus unreachable by PA law enforcement or the Palestinian

292. muhkema hara'm al-fasaad [Anti-Corruption Court], *The Public Order v. Izzat Ismael Sarawi Al Samri*, 2008 (Palestine).

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. Shar'ab Interview, *supra* note 278.

judiciary.²⁹⁹ Despite the defendant's location being well-identified and close to Area A, the PA has not been able to prosecute him.³⁰⁰ Al Samri explained his good luck in an interview, stating that Palestinian police are not allowed to enter the Mount Gerizim area without prior coordination with Israeli authorities:

As an Israeli, I am allowed to drive the direct road that connects Mount Gerizim to the Israeli settlements and the highway to the main cities, and in 40 minutes I'm in Tel Aviv. Those roads are inaccessible to Palestinians. From my house in Nablus to my work in Tel Aviv, Palestinians cannot have any access to me.³⁰¹

By working in Israel and using settler roads outside the jurisdiction of the PA, Samaritans like Al Samri manipulate a fractured system to evade the PA in ways that other minorities cannot. This unique legal positionality has been castigated by Dr. Ahmad Barak, the head of the Anti-Corruption Court, who, like previously quoted government figures, blames institutional failures for the Samaritans' evasion of justice.³⁰² Barak notes that the fragmentation of the West Bank makes it difficult to regularly administer indictments and sentencing for subjects who have Israeli citizenship and are outside the scope of Palestinian law in addition to being able to move in between various jurisdictions:

Unfortunately, we have a serious issue in executing court decisions. We simply cannot prosecute Israeli citizens based on the Oslo Accords. In the case of the Samaritan, it was possible, because he holds Palestinian citizenship. However, we are unable to bring him to justice even though we know his exact address. Based on the Oslo Accords, our law enforcement personnel are forbidden to access Area C territories without security coordination with the Israeli authorities. The Israelis in the vast majority of the cases that concern Palestinian crimes and Palestinian criminals are reluctant to help. This is a well-known fact and there is no

299. *Id.*

300. *Id.*

301. Interview with Ezzat al Samiri, former Civil Servant, in Nablus (Aug. 20, 2018).

302. See Interview with Dr. Ahmad Barak, former Att'y. Gen. and the Head of the Palestinian Anti-Corruption Comm'n., in Ramallah (Oct. 5, 2019) (stating that divided territories limit authorities' ability to bring people to justice, particularly when they flee to another area to avoid prosecution, because of jurisdictional issues).

point in hiding it.³⁰³

Samaritan public servants not only benefit from the Palestinian employment system, but they are also able to exploit loopholes and evade local laws as a further result of their dual status and the general disorder in the West Bank.³⁰⁴

The second case study showing how Samaritans have been able to exploit the structural weakness of Palestinian criminal prosecution is that of *Public Prosecutor v. Najeh Adel Ghassal Al Samri and Ahmad Mohammad Jaber Ji'an*.³⁰⁵ In April 2005, Najeh Adel Ghassal Al Samri, a Samaritan from Nablus, was caught with his friend Ahmad Mohammad Jaber Ji'an by the Palestinian Customs Police, smuggling undeclared valuable goods into the Palestinian territories.³⁰⁶ While entering the West Bank city of Qalqilya in an Israeli plated vehicle, Al Samiri crossed the city's Israeli-controlled checkpoint with his friend following suit in a separate car. When the Palestinian Customs Police stopped and inspected the car at the city's entrance, they found in Al Samiri's possession twenty-eight parcels of illegally smuggled commercial goods, which they used to indict him on related charges in 2006.³⁰⁷

From his indictment until 2012, Al Samiri was a fugitive from justice who was able to successfully avoid Areas A and B by retaining his domicile in Mount Gerizim,³⁰⁸ while continuing his activities inside Israel. Aware of the vulnerabilities of the system, Al Samri eventually argued in court that too much time had passed since the court's last legal proceeding in 2006 for any legal action to be initiated on his criminal offence. Invoking the statute of limitations, the court dismissed the case.³⁰⁹

303. *Id.*

304. *Id.*

305. *Public Order v. Najeh Adel Ghassal Al Samri and Ahmad Mohammad Jaber Ji'an* (2006).

306. *Id.*

307. *Id.*

308. *See* Shar'ab Interview, *supra* note 278 (noting that Mount Gerizim is in Area C and therefore unreachable by the Palestinian law enforcement and judiciary).

309. *See* Interview with Dr. Ahmad Barak, *supra* note 302 (lamenting that they were unable to bring Al Samiri to justice despite knowing his exact address).

The public prosecutor of Nablus, Majdi Shar'ab, and the head of the Nablus police, Mohammad Mashni, explained that the court had not taken previous action between 2006 and 2012 because of the complexity of executing court orders against Samaritans.³¹⁰ The two figures offer a familiar exposition of the advantages offered to the Samaritans by their unique status, noting that even though they are Palestinian citizens residing in the Palestinian Territories, Samaritans can appear before the Palestinian courts only voluntarily and only with their full consent because they are Israeli citizens.³¹¹ According to Mashni, when a case involves an Israeli citizen, the Israeli army and police interfere to prevent the Palestinian police from arresting perpetrators or proceeding with an investigation.³¹² In such cases, the Israeli police interfere to protect Samaritan defendants because they are Israeli citizens.³¹³

We cannot prosecute Samaritans, or any other Israeli citizen. We live under occupation and our situation is very complicated. If we try to prosecute any Israeli citizen, we take a huge risk—the Israeli army would invade the city to interfere, and this would cause tension and possibly provoke clashes between the Palestinians and the army. Sometimes we have to make compromises and close our eyes on certain violations to protect the public good. We do not want to lose more Palestinian souls in clashes with the Israeli Forces.³¹⁴

As Al Samri's example shows, the efforts of Palestinian police and public prosecution to enforce legal order and deliver justice are constantly challenged by the complex legal terrain in which they are forced to operate. This last case in particular exemplifies how, thanks to their access to the Israeli Civil Administration and their protection as Israeli citizens, a handful of Samaritans are uniquely able to manipulate the inefficient Palestinian criminal justice system to their

310. See Shar'ab Interview, *supra* note 278 (reflecting that the Palestinian police and prosecution cannot go to Zones A, B, and C without prior coordination with the Israeli Civil Administration).

311. *Id.*

312. See *id.* (highlighting that when Samaritans are stopped or arrested by Palestinian police, they often call the Israeli Civil Administration who then call the Coordination Office to complain. This results in the Israeli Army asking the Palestinian authorities to release the individual).

313. *Id.*

314. *Id.*

advantage. The presence of such cases further demonstrates the extent to which certain members of the Samaritan community opportunistically disregard their affiliation with Palestinian social fabric and can bypass its laws depending on the circumstance. Such behavior, although not reflective of the entire Samaritan population, would suffice to argue that it has served to further fissure their ties from the Palestinian collective and reinforce their connection with the Israeli State. The following section will show how the Samaritans navigate the courts to their advantage on a smaller level, through family courts, whose proliferation was explained earlier.

E. SAMARITANS AND THE SHARIA LEGAL SYSTEM

Religious courts are used extensively by various minority communities throughout the oPt, though the Muslim courts are of particular relevance for the present discussion of Samaritan exceptionalism.³¹⁵ This is because the Samaritans turn to the *Sharia* court to resolve issues of child custody, disability guardianship, and the division of inheritance, while still using the broader non-religious legal and juridical systems of the oPt and Israel for other purposes.³¹⁶ Even though they are neither Muslims nor they have a mandatory legal obligation to do so, Samaritans have approached the *Sharia* court in Nablus to seek particular advantage in the division of movable and immovable property in accordance to Islamic laws of distribution.³¹⁷ The Head of the *Sharia* Court in Nablus, Judge

315. See Zeina Ghandour, *Religious Law in a Secular State: The Jurisdiction of the Shari'a courts of Palestine and Israel*, 5 ARAB LAW Q. 25, 28 (Feb., 1990) (noting the expansive jurisdiction of Shari'a courts for matters of personal status, including the establishment of the courts by the State which pays the courts' expenses).

316. During which, Judge Hroub provided the author with copies of court rulings on custody, mental incapacitation and distribution of inheritance involving Samaritan parties. Also, in a letter from the Chief of the Samaritan community, Cohen Abdallah Wassef, the Samaritan Priest confirmed the community's full adherence to the decisions of the *Sharia* courts and the principals of Islam in all matters regulating inheritance. Letter from Cohen Abdallah Wassef, Chief of the Samaritan Cmty., to Dr. Mahmoud Habbash, *Sharia* Chief Just., and the Head of the Supreme Jud. Couns. (Nov. 18, 2020) (on file with the author).

317. See Interview with Judge Abdallah Hroub, the Head of Shari'a Ct. in Nablus, in Nablus (Aug. 6, 2019) [hereinafter Interview with Hroub] (explaining that Samaritans primarily look to Shari'a courts for issues relating to money and

Abdallah Hroub, explained that the Samaritans' use of the *Sharia* law courts is long-standing and in full compliance with the law:³¹⁸

Samaritans are Palestinians, they are legal subjects before Palestinian laws. They are entitled to protection and equal treatment before the applicable laws in Palestine as any other members of Palestinian society. Islam is the official religion of Palestine, if a recognized religious minority opts to utilize the *Sharia* law, we accommodate their choice. Samaritans have had access to the *Sharia* court of Nablus since the Ottoman period, it is nothing new.³¹⁹

The legal rationale used by Judge Hroub clearly shows how Samaritans use their ambivalent identity to their benefit within the context of a failing pluralistic legal system. It also highlights the exceptionalism of such benefits being given to minority communities. Neither Hroub nor his broader network of legal representatives mention the fact that unrecognized Muslim communities, such as Ahmadis, cannot use the Muslim courts in the way Samaritans can.³²⁰ Instead, such minorities are treated as apostates (*murtadd*)³²¹ who must convert and repent before even having access to courtrooms abiding by *Sharia* law.³²²

The Samaritans also exploit the application of law by religious local courts to selectively disadvantage women. Samaritan journalist Badawiyya Hosny Assamri notes that while female Samaritans like herself are well-treated within their community, it is not uncommon for families to access *Sharia* courts to lower the amount of money a

inheritance, especially if an individual had been employed by the Palestinian government).

318. Christians also use the sharia courts for certain inheritance matters, such as issuing an inheritance deed. See *Baseline Study: Women Inheritance Rights in Palestine*, WI'AM: THE PALESTINIAN CONFLICT TRANSFORMATION CTR. (Jan. 18, 2013), <https://www.alaslah.org/baseline-study-women-inheritance-rights-in-palestine/> (noting that Christians also use the Shari'a courts for matters such as inheritance).

319. Interview with Hroub, *supra* note 317.

320. See *id.* (excluding mention of those that cannot access the court).

321. The act of secession from the Muslim community by abandoning the religion or converting to another religion. Niaz A. Shah, *Freedom of Religion: Koranic and Human Rights Perspectives*, 6 ASIA-PACIFIC J. ON HUM. RTS. & LAW 69, 75 (2005).

322. See, e.g., Nablus *Sharia* Court Decision No. 228 of 2010 (June 6, 2010).

woman may otherwise inherit, despite the lack of justification for such practices in the Samaritan faith.³²³ According to some schools of Islamic law, women are entitled only to half the share of inheritance allotted to men, as Assamri explains: “Generally, women are not entitled to equal shares, and internally it’s our tradition that women do not inherit immovable property. They are normally awarded from immediate male family members an amount of money, as a gift.”³²⁴

That the Samaritans are able to use the Islamic courts to their advantage, despite not practicing Islam or having any outward familiarity with its complex legal system, illustrates the scope of the group’s leverage over local law. The following section will look at the way in which this leverage is exercised outside the context of familial matters and in broader socio-economic scenarios.

F. ECONOMIC PRIVILEGE AND SOCIAL DUMPING: SAMARITANS, ISRAEL AND THE PA

Alongside their various legal advantages, Samaritans have managed to gain socioeconomic benefits offered by both Israel and the Palestinian Authority.³²⁵ For instance, many Samaritans in Palestine are civil servants.³²⁶ If they want to retire, they ask for their benefits under the Palestinian pension scheme, which includes retirement lifetime allowance, financial plans, health care, and social security benefits.³²⁷ If that same Samaritan, who is also an Israeli ID holder, wants other social benefits like social security, child support allowance, or access to a more advanced health care system than the Palestinian system, he or she may then obtain those services in Israel.³²⁸

323. See Interview with Badwiyya Hosny Assamri, Samaritan journalist for Palestinian News and Press Agency (Oct. 4, 2019) (“Generally, women are not entitled to equal shares, and internally it’s our tradition that women do not inherit immovable property. They are normally awarded from immediate male family members an amount of money, as a gift.”).

324. *Id.*

325. AYYASH, *supra* note 32 at 125.

326. Hamed, *supra* note 149.

327. See Interview with Aziz, *supra* note 148 (noting the major benefits of Israeli citizenship because of access to the best medical care system, decent retirement programming, and freedom of movement).

328. *Id.*

With regard to commerce, some Samaritans have profited from lower tax and fiscal regulations in Palestine, while also taking advantage of Israeli's strong marketplace by producing their goods in Palestine and selling them in Israel.³²⁹ A high-profile instance is when a Palestinian Samaritan businessman Yacoub Cohen, who built a tahini factory on Mount Gerizim and, after having his products certified as Kosher, sold them exclusively outside the Palestinian market, targeting instead the Israeli and the international markets.³³⁰ Cohen's "The Samaritans' Tahini" is promoted as an Israeli product³³¹ while being a Palestinian law-based production. Despite being labeled as kosher, the factory is registered as a Palestinian company and employs Palestinian workers, who are paid according to Palestinian labor standards.³³²

Because the factory is located in the Israeli-administered oPt of Area C, the Kashrut department and its monitors have rare unhindered access to it.³³³ To ensure the continuation of the "kosher" certification, the factory owners decided to hire one Kashrut employee and pay the statutory fees.³³⁴ As they were allowed to enter the Israeli market thanks to their owner's dual citizenship and reach a niche Jewish market thanks to this certification, the owners have been able to increase their profits based on cheaper labor costs in the

329. *See id.* (providing an example of different earned income for a similar tech-related job in Palestine versus Israel; the difference is about 1900 USD which provides a significantly different quality of life).

330. Interview with Yacoub Cohen, Head of the Samaritan Legend Association and CEO of Har Bracha Tahinii Factory, in Nablus (Oct. 7, 2019) [hereinafter Interview with Cohen] (explaining, as well, that obtaining a Kosher label requires Jewish authorities to monitor and have regular examinations of the production process to ensure compliance with the Jewish Halakha).

331. *See* HAR BRACHATAHINI, <https://www.harbracha-tahini.com> (last visited Mar. 22, 2022) (marketing the Tahini as from "the heart of the Holy Land Mount Gerizim").

332. Interview with Cohen, *supra* note 330.

333. *See, e.g.,* Eliyahu Kamisher & Adam Rasgon, *Common Ground: Palestinian Tehina Flows from Nablus to Tel Aviv*, JERUSALEM POST (June 25, 2017), <https://www.jpost.com/opinion/common-ground-palestinian-tehina-flows-from-nablus-to-tel-aviv-497693> (demonstrating the converse for factories in Area A which are monitored by a rabbi through video cameras because the IDF forbids Jewish Israelis from entering that area).

334. *Id.*

West Bank and larger consumer buying power in Israel.³³⁵

Several non-Samaritan Palestinian businesses have tried to emulate this model with less success.³³⁶ For example, Al Karawan Tahini factory, an establishment of tahini makers in Palestine, has its factory in the outskirts of Nablus, in Area A.³³⁷ Contrary to Area C, this territory falls under the administrative authority of the Palestinian government and is theoretically inaccessible to the Kashrut supervisor.³³⁸ After the *Intifada*, the company lost their previously held Kosher label and only recently regained it under strict conditions.³³⁹ Al Karawan factory's production is monitored through cameras in the facility by a rabbi.³⁴⁰ In yet other instances such as that of Abu Ayesh Tahini, the oldest Nablus producer whose factory is also located in Area A, special permits are delivered by the Israeli Defense Forces to allow rabbi's access to factory grounds for on-site monitoring.³⁴¹ In the Abu Ayesh case, as in many others, the monitoring rabbi declined to renew the Kosher label on the grounds of "lack of access."³⁴² According to Abu Ayesh's marketer, though, the rabbi's decision was a political one, given the relative paucity of such decisions for near identical factories run by Samaritan

335. When interviewed about the way he manages his tax books, imports and exports, the owner responded: "You ask too many questions, this is the secret of our profession, but rest reassured, we have everything under control and well taken care of." Interview with Cohen, *supra* note 330.

336. See Kamisher & Rasgon, *supra* note 333 (noting that for the average Israeli family a kosher label matters more than superior quality of product; therefore, without an "elusive kosher certification," producers fail to reach a majority of Israeli consumers); see also Kobi Nahshoni, *Nablus Tahini with Kosher Seal*, YNETNEWS (Jan. 19, 2011), <https://www.ynetnews.com/articles/0,7340,L-4008978,00.html> (discussing the unusual request for a Palestinian business to receive a kosher seal given the complexity of the matter); Ronit Veret, *Pleasure Hunting: Secrets, Past & Present*, HAARETZ (Jan. 28, 2010), <https://www.haaretz.com/food/1.5091407> (noting how tahina from dozens of tiny factories in Nablus have been smuggled into Israeli restaurant kitchens); Gideon Levy, *Twilight Zone/ The Tahini Trail*, HAARETZ (Nov. 22, 2007), <https://www.haaretz.com/1.4958855> (stating that Dove Tahini from Nablus is one of the last Palestinian products sold in Israel).

337. Kamisher & Rasgon, *supra* note 333.

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.*

342. *Id.*

Palestinians.³⁴³

Juxtaposing the Nablus Samaritans' experience with that of other Palestinians helps shed light on the structural privileges enjoyed by the former and lack for the latter, as a result of their respective identities within the legal system. Legal maneuvering by the Samaritans of the type seen in these examples has nourished a type of group autonomy which emboldens its members to selectively adhere to the law without pushback from those administering it.

V. CONCLUSION

"We are a piece of antiquity and a curious site for preservation, we are unique. Palestinians, Israeli and the entire world should strive to protect us. We are a World Heritage that should be preserved."³⁴⁴

A unique minority in the midst of a singularly complex web of legal regimes, the Samaritans powerfully testify to the limits of law and its susceptibility towards biased treatment, with the majority disempowered to the advantage of a privileged few. This paper has contextualized the lack of rights for average Palestinians within the context of the Samaritan community's tumultuous history and present struggle for autonomy. The lack of minority rights in the oPt must not be understood only in the realm of ever-increasing Israeli human rights violations. Rather, the inability of the PA to safeguard Palestinian citizen rights in the West Bank, Gaza Strip, and East Jerusalem and the rise of ethno-religious fundamentalism are serious factors that contribute to compromising their fundamental human rights. This paper has suggested that the combination of these unequal power differentials and contrasting values have led to the vast majority of Palestinians not having a right to self-determination at the most basic level. The 'neo-colonial' pluralistic system that Palestine inherited after various occupations is still maintained by the PA to serve their own interests while saving face and professing support for liberal democracy. The inherent failures of such extreme

343. *See id.* (explaining that the rabbi refused to renew the certification despite the obtainment of a special permit from the IDF for entry into Nablus).

344. Interview with Assamri, *supra* note 147.

pluralism, corruption, geo-political strife, and generally compromised national agency all contribute to a larger and more critical failure that this paper has aimed to highlight: the inability of human rights law to protect the very minority populations which it was designed to defend.

The failures of this system are best highlighted by the exception of the Samaritan minority group, which can be instructive for future reform to the extent possible within such enormous constraints. This paper has ultimately argued that their exceptional status in the eyes of the PA, as well as to some extent in that of the Israeli governance, is the product of the Samaritans' decades-long efforts to instrumentalize their hybrid ethno-religious identity for their own benefit. Samaritan political organizing at the domestic, regional, and international levels allowed members of the community to use their unique identities to affirm the humanitarian and socio-political rights which have been denied to minorities in the oPt and throughout the region. Whether in Nablus or Holon, the Samaritans constitute a united bloc with hard-earned uncompromised citizenry rights in both Israel and a potential Palestinian State.³⁴⁵ As a result of the communities' secured position in the two jurisdictions, both the occupiers and the occupied continue to cede to Samaritans' demands, at the local level and more broadly through their success at achieving a form of 'diplomatic immunity' in Oslo. Perhaps most startlingly, however, this paper has demonstrated that the Samaritans effectively secured the insecurities of a legal and juridical system to establish an essential and increasingly rare right: that of existing as a people untethered to national boundaries or their civic and legal codes.

Therefore, the Samaritan case calls for an examination of the successes and failures of international law with respect to marginalized communities, while also being instructive for the positive development of Palestinian pluralism at the local level. Despite their various constraints, the PA has the same opportunity that all political groups in these contexts do: to use a pluralistic legal framework to the benefit of its entire citizenry and extend some of

345. See Kaufman, *supra* note 245, at 16–18 (touching on the Samaritans' independence campaign as a community to ensure its special status with Israel, the Palestinian Authority, and the international community).

the Samaritans' freedoms to other minority groups. Doing so would be a step in the right direction, towards a governing system that promotes justice and egalitarianism in virtue of its pluralism rather than despite it.

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