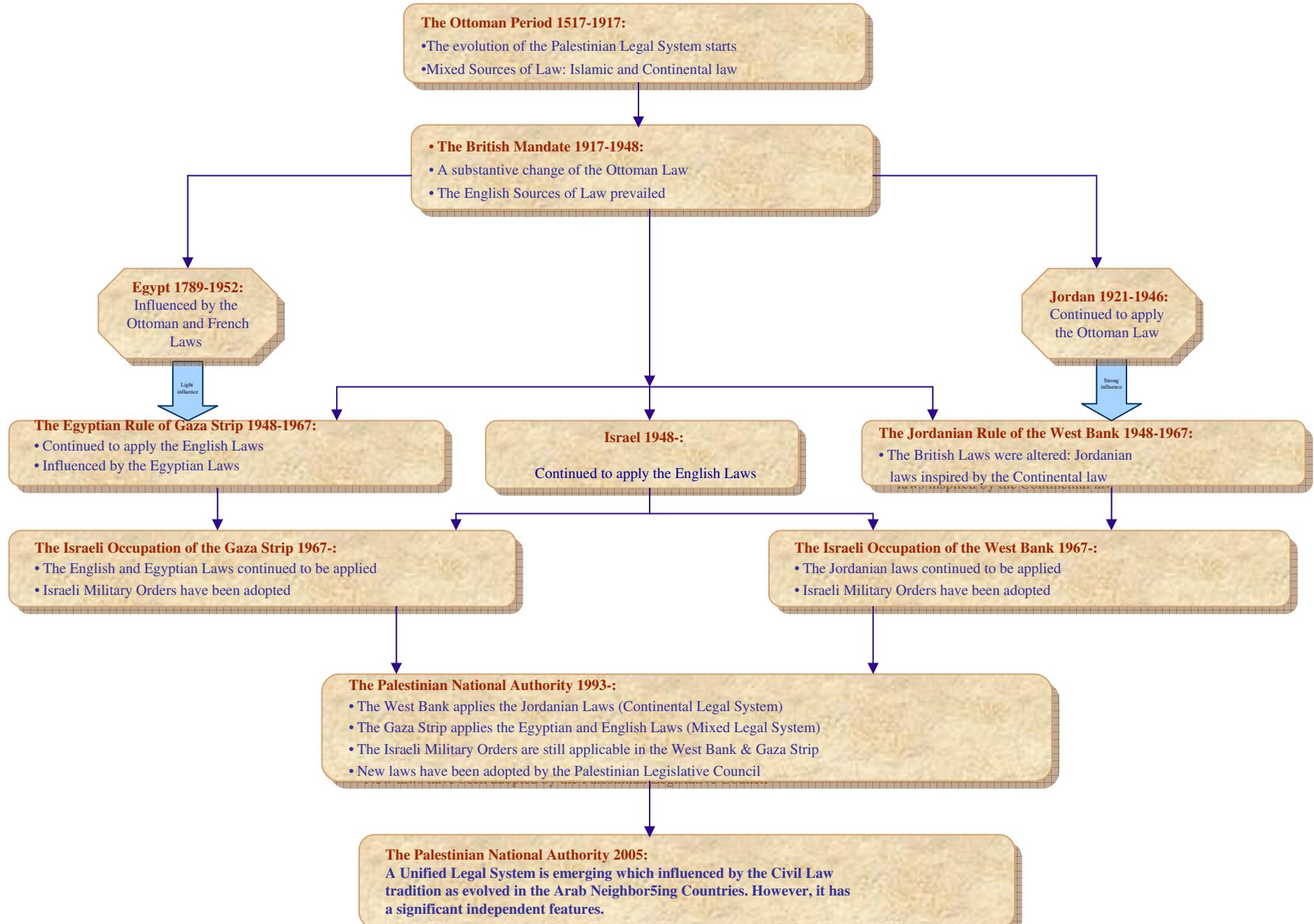
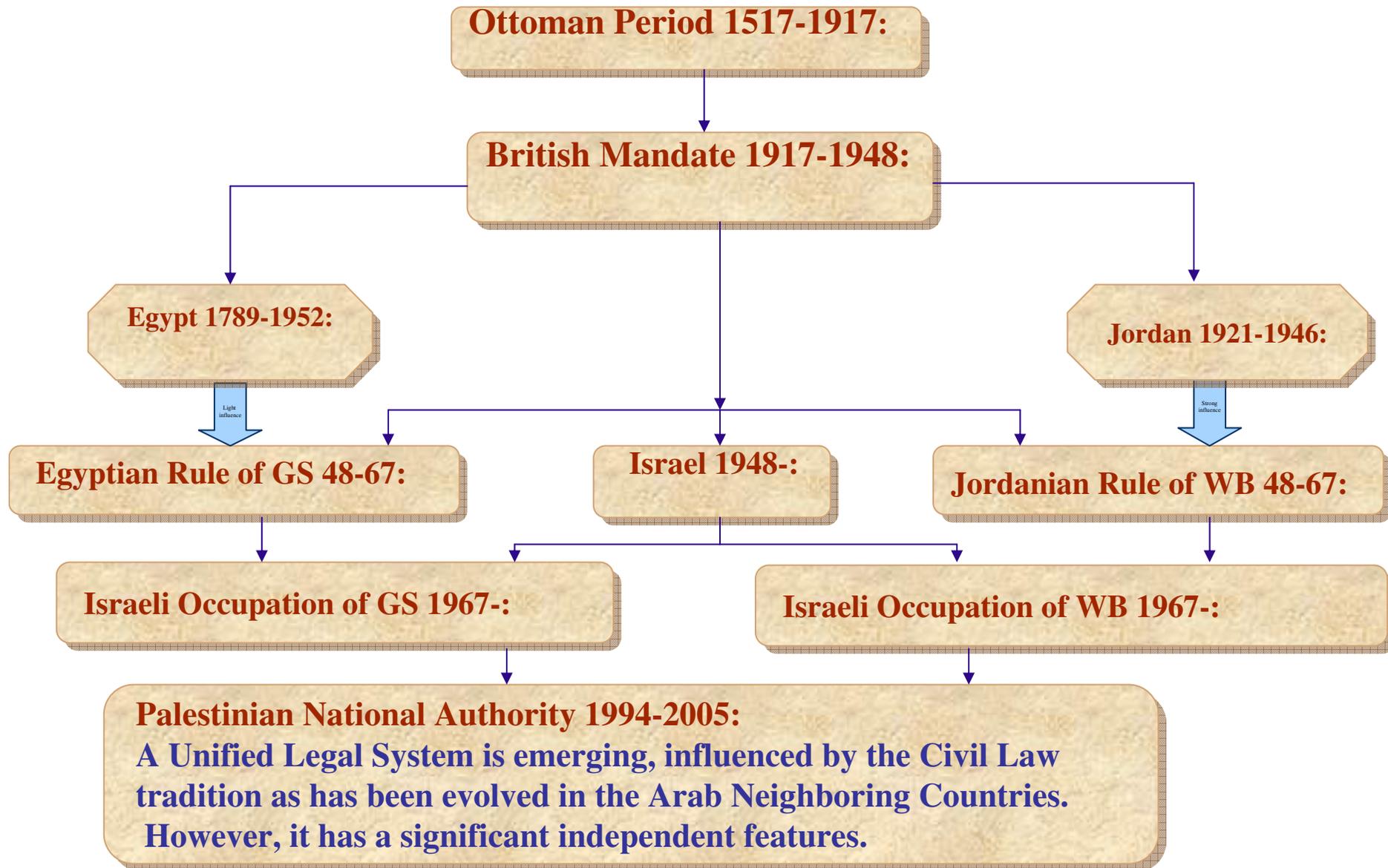


The Historical Evolution of the Palestinian Legal System

*



The Historical Evolution of the Palestinian Legal System



The Ottoman Period 1517-1917:

Legal System Post 1839

Legal Reform:

- 1) Transplantation of Laws (Mainly French):
e.g. Trade Code, Penal Code...

Legal Transplants were the main tool of reform

- 2) Codification of Laws (Islamic Law & Custom):
i.e. Majalla (*Code Civil*), Land Law.

- 3) State Legal Pluralism:

- * Positive Laws.
- * Religious Laws.

The Ottoman Period 1517-1917: Judicial System Post 1839

Judicial Reform:

- 1) Adoption of new set of Laws related to the judiciary:
e.g. Civil Procedure Law
Criminal Procedure Law
Organization of Courts:

Cassation Court; & Appeal, First Instance & Magistrate Courts

- 2) Creation of Judicial Pluralism in the State Justice:

The Ottoman Period 1517-1917: Judicial System Post 1839

Judicial Pluralism:

- 1) Regular Judiciary:
 - * Based on the French Judicial System.
 - * Had General Competence in all Civil, Criminal & Administrative disputes.

- 2) Religious Judiciary:
 - * Limited Competence in Personal Status Disputes.
 - * There were family courts for Christians, Jews & Moslems.

The Ottoman Period 1517-1917:

The Nature:

- 1) Mixed Legal System was created.**
- 2) Judicial System, based on the French Judiciary & Practice.**
- 3) Secularization of Law.**
- 4) Legal Positivism, even for religious courts.**

British Colonisation 1917-1948:

- British Colonial Legislation was Adopted.
- British Judicial Practice and Procedure were introduced.
- Only a few Ottoman Legislation remained applicable:
e.g. Majalla, Land Code, Moslem Personal Status Law...

British Colonisation 1917-1948:

The Judiciary:

1) Structure:

- *Final Resort; Privy Council (London).
- *Appeal, First Instance & Magistrate Courts (Palestine).
- * High Court for Administrative Disputes (Palestine).

2) Legal & Judicial Pluralism Maintained.

3) Some Important Court Precedents were Introduced and Followed.

British Colonisation 1917-1948:

Nature of the Legal System:

- 1) Common Law Tradition, as was evolved in the British Colonies.
- 2) Civil Law Culture Maintained; Legislation was the Main Formal Legal Source.



Jordan Annexation of the West Bank 1948-1967:

Intensive Legal Reform Replaced the Laws of the British Mandate Legal & Judicial Systems.

The New Adopted Laws were Transplanted from the Arab Countries' Legal Systems that Apply the Civil Law Tradition

Courts' Structure: Similar to that of the Ottoman Empire.

The Court of Cassation in Amman

Egypt Administration of the Gaza Strip 1948-1967:

Minor Change took place at the British Mandate
Laws of Palestine.

Mixed Legal System, Common Law &
continental elements

Courts' Structure: Similar to that of the British
Mandate.

The continental legal thinking and culture
prevailed, as a result of Egypt and Legal
Education

Israeli Occupation of WB&GS

1967-

Nature of the Legal System:

- 1) Israel has kept the administrative, legal & judicial dualism (total separation)

However

- 2) Israel introduced substantial legal change through military orders (Over 1500 MO in each of the WB&GS). They are laws in force.

Israeli Occupation of WB&GS

1967-

Nature of the Judicial System:

- (1) Physical infrastructure: buildings and equipment in a poor state;
- (2) Institutional infrastructure: Palestinian courts with a reduced jurisdiction,
- (3) Israeli military officers intervened during the case, or prevent implementation judgments.
- (4) No independence, no effectiveness, no career prospects for judges
- (5) Informal justice prevailed, as a tool of resistance of the occupation

Israeli Occupation of WB&GS

1967-

Nature of the Judicial System:

- (1) Judges were appointed by the military authorities.
- (2) The absence of high courts for final appeals (Cassation).
- (3) Removal the court of appeal from Jerusalem to Ramallah.
- (4) Some lawyers declared prolong strike.
- (5) No legal training or education for judges or lawyers.

Palestinian National Authority 2004-

Challenges:

Building a democratic state based on the rule
of law:

- 1) Modernisation of Law
- 2) Unification of legal & judicial system
- 3) Re-establishing the Palestinian judicial
system

Palestinian National Authority 2004-

Modernisation of law:

- 1) Over 43 laws were adopted by the Palestinian Legislative Council
- 2) Legal Transplants are the main tool of Legal reform
- 3) The Material sources are based on the continental legal tradition, as was evolved in the Neighboring Arab Countries. However, there are some elements from the Common Law.
- 4) International standards are carefully taken into account
- 5) Over all, the Palestinian legislative activity is of good quality and promising

Palestinian National Authority 2004-

The Basic Law sets up:

- 1) Bases of legal, judicial & administrative centralism v. dualism between the WB&GS
- 2) Re-enforce the legal & judicial pluralism in the state law.
- 3) Separation of powers
- 4) Human rights and freedom norms
- 5) Organization of the judiciary

Palestinian National Authority 2004-

Reforming the Judiciary:

- Adopting a package of laws related to the judiciary
- Re-organization of the judiciary
- Unification of the judicial system between WB&GS