
Reviewed by Kristen Alff

This remarkable work of activism from human rights attorney and scholar, Noura Erakat, places the Palestinian-Israeli conflict within the analytical framework of international law. Revealing the respective legal failures and successes of the Palestinian and Israeli administrations to employ legal strategy over time, Erakat highlights inequities between the two political groups: Palestinian Arabs had fewer opportunities and the Zionists, and later Israelis, had more. Beginning with the signing of the Balfour Declaration in 1917 and concluding with Palestine’s unsuccessful bid for UN statehood and Trump’s Jerusalem announcement, *Justice for Some* “explores the role and potential of law in the pursuit of Palestinian freedom” (xi). The small openings in international law for Palestinians throughout the past century, Erakat affirms, suggest that this freedom is not completely out of reach.

Erakat’s main argument in *Justice for Some* is twofold. First, and most broadly, Erakat comments on the function and character of international law itself. She claims that international law is not, as is commonly assumed, merely a byproduct of colonial power. Nor is it completely hollow due to the lack of a sovereign international arbitrator. Rather, international law is “like the sail of a boat” that “guarantees motion not direction” (11). It can be strategically deployed as a means to dominate and justify violence, or as a tool for liberation and an object of protest.

The most innovative of Erakat’s broad claims in *Justice for Some* is her second assertion. She contends that Zionists possessed and continue to possess the power of “sovereign exception” (15). In the specific case of Palestine/Israel, she characterizes “sovereign exception” as Israel’s ongoing ability to deny precedent. This describes Israel’s deliberate choice to claim that the legal situation in Palestine is *sui generis*—unlike anything that came before it. This does not completely raze the legal playing field. Palestinians indeed possessed opportunities to direct the sail of international law. However, either as subjects of this sovereign exception or products of their own disorganization, Palestinians have been comparatively hampered at harnessing international law to their ends.

The book’s five chapters develop this history of Palestinians, on one hand, and Jews/Zionists/Israelis, on the other, through the dual frameworks of “sovereign

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exception” and settler-colonialism. The Balfour Declaration, Erakat argues, was the moment that first defined the Palestinian community as unprecedented and legally exceptional. Between the signing of the Declaration and the British Mandate for Palestine three years later, “Palestinians became ineligible for self-determination as a matter of British law as well as policy, rendering their protest cumbersome but nonetheless immaterial” (32). This same legal maneuver, she adds, persists though the mechanisms of the enfeebled Oslo process, in which the PLO possessed “negotiating leverage” (159) but ultimately failed to both combat Palestine’s exceptional status and expose U.S. unfitness as “impartial” broker (223).

Erakat’s most original empirical contribution in Justice for Some indeed comes in her tracing of the ongoing invention and reinvention of the legal anomaly narrative surrounding the Palestinians over time. This is most path-breaking in her treatment of the “legal opportunity” of the 1967 War and the international law of occupation (64). Continuing her examination of the exceptional legal status of Israel and Palestinians, she argues that the rhetoric surrounding the 1967 War defined that it, too, as “not ‘normal’” (61). Legal adviser to the Ministry of Foreign Affairs, Theodor Meron, relayed to then Israeli Prime Minister Levi Eshkol that his proposed establishment of permanent civilian settlements in the West Bank after 1967 would not be in accordance with occupation law under Article 49 of the Fourth Geneva Convention. Occupation law from the 1940s required the displaced sovereign authority to return following a peace settlement. The Israeli government’s solution was to make the territories of the Gaza Strip and West Bank “exceptional as a matter of law” by claiming them as a non-sovereign anomaly (63). Jordan, they argued, did not fit the bill (79–80). This conclusion permitted the administration to create a regime under which it could make land grabs in the name of legal anomaly, while simultaneously not requiring the Israeli government to treat these territories as part of Israel.

Noura Erakat indeed breaks new ground with her analysis of the relationship between international law and politics in the origins and the evolution of the Palestinian-Israeli conflict. As a testament to this innovation, her book raises questions about the construction and application of international law in the period between World War I and the present. Namely, is international law solely or even primarily a “tool” of employment for political ends (xii)? If Israelis and Palestinians have employed law as a sail that can be directed for their national interests to a greater and lesser extent, does it not still matter who or what made the boat? Is it significant who or what made the water? More concretely, if law is not strictly a colonial byproduct, as Erakat says, what broader historical circumstances under Western paternalism have gone into the continued shaping and application of international law? If anything, the details of Erakat’s historical analysis points to the impossibility of an objective international law that could be
called upon by those more or less powerful. It suggests that international law does not have an independent existence outside of Ottoman legacies, Mandate and post-Mandate realities, adjacent regional conflicts, and global hierarchies of race, class, and gender.

In addition to international law itself, Erakat’s brilliant and provocative book also raises questions about the deployment of law by both Palestinians and Israelis. While acknowledging the long history of statelessness for Palestinians, Erakat’s flirtation with political realism in the service of her international history perspective might obscure some of the nuance within and between Palestinian Arabs and Israeli Jews. What are the seemingly uniform Israeli and Palestinian “interests” that each uses the law to serve (19)? Are there not, sometimes conflicting, political and legal interests of communities within these groups? It is fairly well documented, for instance, that Levi Eshkol, Moshe Dayan, and Yaakov Shimshon Shapira did not possess a consensus of interests before or after the 1967 War, no more than Hamas and Fatah did in 2005. Additionally, what about the constituencies outside of leadership? Have not average Palestinians and Israelis influenced the shaping of Palestinian and Israeli leaders’ legal decisions, as is arguably the case for Hebrew Labor before World War I, the growing irredentism in the lead up to 1967 War, and the slow defeat of Oslo after November 1995?

These major questions are evidence of the innovativeness and provocativeness of Noura Erakat book. Her narrative adds a much-needed frame of analysis to scholarly works on internationalism and conflict. The book’s legal dimension reframes previous scholarly discussions of politics, promises, declarations, and mandates in new and exciting ways. A rarity among scholarly works, Justice for Some is both readable and theoretically rigorous. For that reason and for its treatment of the question of Palestinian statehood and international law as broadly unexceptional and yet fashioned and refashioned by colonial and settler-colonial powers as a legal anomaly, Justice for Some should be included on undergraduate syllabi, in lecture material, as well as added to graduate reading lists, and put on bookshelves outside academy walls.