N. Erakat, *Justice for Some: Law and the Question of Palestine*. Stanford, CA: Stanford University Press, 2019, 352pp, USD22.00 (paperback).

Reviewed by Ihab Shalbak

Noura Erakat's 2019 *Justice for Some: Law and the Question of Palestine* tells, in five meticulously researched chapters, the history of a hundred years of Palestinian encounters with international law. Erakat is not content to chronicle the contours of this often-detrimental encounter; rather she is seeking to alter its trajectory through transformative "legal work" (8). The law, for Erakat, is a tool to wrestle from the powerful. Rather than shying away from the law because of its historical association with power, she argues that Palestinians should embrace its indeterminacy, that is, the law's "utility as a means to dominate as well as to fight that makes it at once a site of oppression and of resistance" (5). Relying on this re-perception of the law, Erakat recounts how the Zionist movement and later Israel won the legal battle over the course of the past century, while at the same time hinting at how the Palestinians might win this battle in the future.

In the early twentieth century, international law arrived in Palestine in the guise of the British Mandate, following the defeat of the Ottoman Empire in World War I. Across the Levant, the mandate system of the League of Nations entrusted Great Britain and France with overseeing the consummation of newly recognized legal personhoods in future statehoods. In Palestine, this consummation was the reserve of the Jewish settlers rather than the native Palestinian population. The personhood given to the Palestinians in the Mandate came up short of statehood. In her first chapter, "Colonial Erasure", Erakat traces the Mandate era attempts at preventing the birth of the juridical Palestinian. Jewish settlers were recognized as a political community while native Palestinians were described as "non-Jewish" and afforded limited civil and religious rights. In drafting the Mandate text, Britain, in collusion with the Zionist movement, exploited the indeterminacy of the emerging self-determination norm to diminish Palestinian claims and back Jewish colonial aspirations. The incorporation of the 1917 Balfour Declaration into the League of Nations Mandate for Palestine is an example of the sort of legal work that "transform[ed] the British colonial prerogative into international law and policy" (38).

International law, for Palestinians, was largely synonymous with the British prerogative and Zionist designs. Therefore, Palestinians engaged the Mandate as a matter of fact, but never accepted its legality. In developing their counter strategies during the Mandate period, as Natasha Wheatley has recently shown, Palestinians remained "aloof from the very name [it] ascribed to them" as a mere non-Jewish population of the country (2017: 283). To overrule the colonial

erasure imposed by the Mandate, Palestinians, Erakat writes, sought to “change the material conditions on the ground . . . not by use of moral and legal persuasion” but, rather, by rebelling. Between 1936 and 1938 Palestinians launched their Great Revolt in which they took “up armed resistance . . . [and] created self-governing institutions on their own terms” (44). This revolt was brutally crushed by the armies of the British Empire and the Zionist paramilitary forces. In 1948 the legal personhood given to the settler population consummated what became the Middle East’s only settler colonial state.

In Chapter 2, “Permanent Occupation”, Erakat introduces us to the legal work carried out by Israel to normalize its conquest of the West Bank and Gaza Strip as *sui generis*. The double imperatives of Israel’s legal strategy remained the same as during the Mandate period: denying Palestinian sovereignty while at the same time endowing Israel with sovereign prerogatives. In a 1968 article, the Israeli academic Yehuda Zvi Blum articulated Israel’s *sui generis* argument. Blum opined that “the legal standing of Israel in the territories in question is thus that of a State which is lawfully in control of territory in respect of which no other State can show better title” (1968: 79). This line of argument, as observed by Orna Ben-Naftali et al. (2005), allowed Israel to simultaneously exercise “the powers of an occupant and a sovereign” (86). In the geopolitical circumstances following the triumph of Israel in the 1967 war, Security Council Resolution 242 supplanted the Mandate as a legal tool to extinguish Palestinian sovereignty. In this resolution, the juridical Palestinian was completely absent. The United States, after 1967, replaced Great Britain in aiding Israel’s permanent occupation of the West Bank and Gaza Strip by “shield[ing] Israel from international legal accountability, [and] helping it to normalize its legal arguments into a tenable political framework” (64). In the following years, Palestinians sought to change the conditions on the ground. Once again, they took up armed resistance and constituted themselves as a national liberation movement.

In Chapter 3, “Pragmatic Revolutionaries”, Palestinians conduct their most successful international offensive, which culminated in Yasser Arafat’s arrival at the podium of the United Nations General Assembly “bearing an olive branch in one hand, and the freedom fighter’s gun in the other” (Arafat 1974). For Erakat, the Palestinian involvement in drafting the Additional Protocols to the Geneva Convention (1977) is another fine example of successful counter-legal work. Supported by newly decolonized countries, the PLO along with other national liberation movements secured a space for their combatants in international law as legitimate forces. The PLO, Erakat notes, was not interested in the technicalities of international law; rather it was interested in using legal instruments and institutions to “inscribe the juridical status of the Palestinian people” (98). Erakat commends the PLO’s effort of the 1970s as a reversal of the erasure of the juridical

Palestine through strategic legal work. However, the appeal to international law had a salient effect on Palestinian politics that warrants a further elaboration. For the pragmatic wing of the PLO, which dominated the Palestinian movement after its military defeat in Jordan in 1970–1, international law linked personhood to statehood. Acquiring juridical personhood would put the Palestinians on the statehood track. This recourse to international law was in part a symptom of the growing crisis of a movement in search of a foothold in an increasingly hostile environment. Unlike the Kurds, Palestinians had no mountains to befriend. As the Palestinian space of action rapidly shrank after the Israeli invasion of Lebanon in 1982, the promissory normative and rehabilitative link between legal personhood and statehood dominated the political horizon of the Palestinian leadership. Although, as a legal adviser to the PLO admitted, “no one could answer the question of how the PLO should translate its legal achievements into diplomatic victories” (124), international law (to echo Giorgio Agamben 1998) came to be a “force without significance” in Palestinian politics.

In Chapter 4 on “The Oslo Peace Process”, Erakat laments the squandering of the hard-won Palestinian international law achievements of the 1970s. Erakat provides an overview of the internal wrangling of the Palestinian leadership and its constant fear of being usurped by the local and younger leadership in the West Bank and Gaza Strip and the resurgent Islamic Resistance Movement (Hamas). To survive, the leadership of PLO abandoned international law as a referent and as a tool in the negotiation process. For Erakat, this was a *break* with the legal work strategy of the 1970s. However, it is plausible to argue that the Oslo track was a *continuation* of the pragmatist approach that internalized the link between personhood and statehood. Many of the same personnel of the pragmatic faction within the PLO who invested heavily in juridical recognition in the 1970s went on to play a pivotal role in the Oslo process. Nabil Shaath, Arafat’s emissary in 1974, staunchly defended Oslo in a 1993 interview in Arabic with the *Journal of Palestine Studies*. Crucially, the temporal structure of the Oslo process, in which the PLO would “obtain Israel’s recognition of its juridical status” (160), while deferring vital questions to final status negotiations, parallels the promissory normative futurity of international law from personhood to a statehood.

In Chapter 5, “From Occupation to Warfare” Erakat shows how, in the context of the War on Terror, Israel wrestled back the law-breaking/making process. She produces a fine legal analysis of Israel’s attempt to “exceptionalize . . . its in fact nonexceptional confrontation with the Palestinians during the second Intifada” (180). A new take on *sui generis* was introduced to characterize the confrontations with the Palestinian as “armed conflict short of war”. This new Israeli legal work aimed to deprive Palestinians of protection under occupation law and prevent them from assuming a belligerent combatant status under international law. Erakat

sees Israel's transformative legal work as a testimony to "the nature of international law as a living instrument that is continually made, broken, and remade" (183). Indeed, throughout the book Erakat maintains that the malleability of international law, its indeterminacy, is key to harnessing "the law's emancipatory potential" (220).

As a principal coordinate of Erakat's narrative, indeterminacy provides much needed insights into the conjectural complexity of international law. The contention underpinning it is that law, like history and institutions, is made by humans and could be remade by them. Nonetheless, the conjunctural indeterminacy of the law operates within historical and institutional limits. These limits not only constrain the Palestinians by brute force; they also form the conditions of possibility of an order of things that makes certain subjects visible and their demands tenable. The law is malleable to regulative interventions, but its constitutive force endures.

Since the 1970s, the relational and orientational pattern of international law has conscripted and shackled the Palestinians to statist outcomes; first in the shape of two states, and more recently in the calls for a one-state solution, both of which privilege the Zionist project as a matter of fact. This is why Palestinians, early in their struggle, remained "aloof" from international law. Before politically enlisting the indeterminacy of the law for a new Palestinian project of liberation, these limits must be seriously challenged. Indeterminacy under current historical and institutional conditions provides Palestinians with minimal room to manoeuvre while providing their opponents with a latitude to determine. The Palestinian movement has been most successful at those times when the juridical Palestinian was a shadow of the political Palestinian, not its silhouette.

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References

- Agamben, G. (1998) *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press.
- Arafat, Y. (1974) "Question of Palestine, A/PV.2282 and Corr.1 of 13 November 1974." Available online at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/A238EC7A3E13EED18525624A007697EC> (accessed 28 November 2020).
- Ben-Naftali, O. Gross, A. and Michaeli, K. (2005) "Illegal Occupation: Framing the Occupied Palestinian Territory", *Berkeley Journal of International Law*, 23(3): 598.
- Blum, Y. (1968) "The Missing Reversioner: Reflections on the Status of Judea and Samaria", *Israel Law Review*, 3(2): 279–301.
- Shaath, N. (1993) "Oslo Agreement", *Majallat al-Dirasat al-Filistiniyyah*, 4: 16.
- Wheatley, N. (2017) "New Subjects in International Law", in Clavin, P. and Sluga, G. ed. *Internationalism: A Twentieth-Century History*. Cambridge: Cambridge University Press.