BOOK REVIEWS

1. PARTITIONING PALESTINE: LEGAL FUNDAMENTALISM IN THE PALESTINIAN-ISRAELI CONFLICT

John Strawson
Pluto Press (2010), p. 223
Reviewed by Raef Zreik*

Reading the introduction of Partitioning Palestine: Legal Fundamentalism in the Palestinian-Israeli Conflict, one gets the impression that one is about to read an interesting legal effort to use the tools developed in recent legal theory – mainly in the critical legal studies tradition (hereafter: CLS), as applied to the case of Palestine-Israel. One hopes, through this, to gain new insights into the way we understand the conflict and the way law functions and frames the relevant political questions, and what impact this “legalization” of the political leaves on the way we have come to view and debate the conflict. The author, John Strawson, appears to warn us against having any illusions regarding the nature and role of international law. He writes that “international law is an elusive system;” (p. 2) though from time to time the legal materials are determinate and lead in one direction, but that “legal determinism at an authoritative level is rare” (p. 3). The “indeterminacy thesis” becomes the heart of the legal approach the author takes, and he tells us: “The existence and the identification of the sources of law . . . offer only the raw material for legal argument rather than offering a clearly understood code. As a result international law remains highly indeterminate as there are many competing but often equally authoritative statements about the same principles” (p. 3). Against this backdrop, Strawson defines what he understands to be “legal fundamentalism” – a term he deploys in the title of the book – in the following manner: “Legal fundamentalism denies that there is a choice to make and, rather, asserts that legal principles are clearly fixed, categorical and imperative” (p. 3). This way of interpreting law results in the impoverishment of the political sphere and law appears “as a substitute for political assessment . . . this version of law requires that one side wins and the other side loses” (p. 7). This fundamentalism became rather clear after the International Court of Justice decision regarding the Separation Wall. The decision itself posed “a challenge to the dominant legal narratives of both Palestinians and Israelis”

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The Court decision redrew the Green Line and made a clear distinction between the territories of 1948 and those of 1967. By clearly declaring the 1967 territories to be occupied territories – something the Palestinians welcomed and the Israelis deplored – it declared at the same time the 1948 territories as non-occupied territories and established Israeli control over these territories as legitimate and legal – something the Israelis celebrated and the Palestinians deplored.

Against this rigidity in reading legal text, Strawson suggests an alternative approach: instead of treating them as being carved in stone and leading to one right answer, he argues that “Partitioning Palestine thus takes the texts themselves seriously but only as a point of departure for the discussion” (p. 5). He declares the main message of his book to be: “If Partitioning Palestine has one message it is that law and justice cannot operate without wisdom” (p. 7).

Clearly this is an important mission and a promising project. There have not been enough studies that try to apply the insights of CLS to the Israeli-Palestinian conflict. The openness, ambiguity, and indeterminacy that CLS requires stand in tension with the entrenched feeling of what appears to be a clearly just cause. The idea and feeling of justice requires a certain clarity, fixity, and closure that critical theory threatens with its radical questioning of taken-for-granted truths. Many subaltern, discriminated against, marginalized, and feminist groups have deployed critical tools to shake the taken-for-granted legal/social system that claims to be and portrays itself as natural. These challenges to the dominant “nature-like” picture have created fissures, rifts and cracks in the dominant story that allowed those groups to challenge it and tell a different counter-story, as opposed to the hegemonic one.

The fact of the matter is that those critical tools – CLS in law, deconstruction in literature and the humanities in general – do not challenge only the hegemonic narrative of the powerful/victimizer/dominant group, but potentially question any attempt to claim monopoly over truth, justice or a sense of victimhood. Thus, in principle, there might be a prima facie tension between maintaining a sense of justice that requires some closure and clarity, against the openness of the intellectual who never tires of subjecting everything to questioning and is not afraid to flirt with indeterminacy and ambiguity.

However, although the proposal of the book sounds promising and innovative, the reality falls far short. I will argue here that the book never follows its own methodology, and the openness, questioning, and second-guessing that the author espouses usually only applies to those ideas that he disagrees with, rather than to his own. Before delving into the details of how and why I think the book fails exactly where it promises to be most original, I will conduct a short survey of the book’s chapters and main arguments.

Chapter One introduces the ideological background of Zionism and covers the diplomatic efforts of Zionism to win international recognition and support, culminating in the Balfour Declaration. What is interesting in this chapter (and it is a recurring theme throughout the book) is the close association the author makes between international law and the colonial powers. This is of special interest to Palestinians and other people in the developing world who may be enchanted with international