

Title: Partitioning Palestine, Legal Fundamentalism in the Palestinian- Israeli conflict.

Publisher: Pluto Press

Year: 2010

ISBN: 978 0 7453 2323 7

Pages: 264

RRP: £21.99

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John Strawson's *Partitioning Palestine* is written with the express belief that the international community has a responsibility to implement, by force if necessary, a partition of Palestine. It aims to provide a sketch of the legal landscape of the conflict that would sustain such a partition. In particular, its analysis of the UN partition plan of 1947 has many important lessons. However, in order to sustain the legal narrative of partition, the author turns a blind eye to the ethnic nature of the Israeli democracy, minimises the legal rights of the Palestinian refugees, and tries to talk as little as possible about Jerusalem. All in all, and perhaps despite the author's best efforts, this legal history of the conflict reveals that partition was never the only option on the table, nor should it be.

The subject matter of the book is the key legal documents in the history of the conflict, especially the League of Nations mandate for Palestine (1922), The UN partition resolution (1947), and the Oslo agreements (1993-99). But the remit is wider – Strawson aims to provide a historical narrative into which these documents fit. His point of departure is the advisory opinion of the International Court of Justice on the legal consequences of the Israeli wall in the West Bank (2004). According to this landmark ruling, not only the wall, but also all Israeli settlements were considered in breach of international law, as they contradict Israel's obligations as the occupying power under the Geneva Convention. It also ruled that Israel must respect the rights of the Palestinians to self-determination. Strawson takes this decision further – for him, this is an inherently balanced decision, which accepts the legitimacy of Israel, while simultaneously denies it any territorial claim on the territories occupied since 1967.

Strawson's idea of maintaining the balance is by depicting the Zionists as the good guys until 1948, and as the bad guys after 1967. Until 1948, Zionism is a benign movement, acting within the parameters of the international community of the time. The Arab objections to Zionism had no foundation, at least in law, and were marked by overt anti-Semitism. After 1967, Israel acts 'ruthlessly' as a colonial power in the occupied territories; its legal positions are described as 'absurd', and its leaders display racist attitudes. Such a neat division between pre-1948 Zionism and post-1967 Israel, lends legitimacy to Israel in its pre-1967 borders, while denying Israel any right over East Jerusalem, the West Bank and Gaza.

The key event in this narrative is the UN partition resolution of 1947. For Strawson, the Arab and Palestinian rejection of that decision was a mistake that needs to be confronted and re-thought. For him, this was not merely a tactical mistake; many would agree that, in hindsight, it is likely that the Palestinians would have fared better if they had accepted partition. Rather, Strawson's point is that the Arab position lacked legal foundation: 'it was not the intention of partition to dispossess the Palestinians...[I]t is thus a myth that the source of the problem was a legal decision to hand over part of Palestine to the Jews at the expense of the Palestinians" (p. 5).

Indeed, some of the Arab arguments at the time seem inherently weak. One common theme was the association of Zionism and communism; Strawson notes that these distant arguments undermine the current contention, all too easily made, that reduces Israel to the role of an American stooge. Another claim, still heard today, is that Judaism is a religion, not a nation. As Strawson rightly points out, this argument fails because the sense of national identity is subjective, and cannot be imposed or denied by others. It is also evident that the Arab representatives weaved quite a few biblical references, and made some explicit anti-Semitic references, which were not uncommon at the time, even so soon after the Holocaust.

But the key argument against partition was that it went against the wishes of the Arab majority of the population in Palestine. For this reason, the Arabs rejected the legality of the British mandate of 1922, which had the explicit and primary purpose of promoting a Jewish national home, at a time when the Jewish community was no more than 15% of the total. Similarly, in 1947 the Arabs claimed that the principle of self-determination is enshrined in the Charter of the UN, thereby making partition against the wishes of the majority of the current population, illegal. Strawson refutes this key argument in a rather off-handed manner, claiming that self-determination was in political currency, but was not yet enshrined in international law, and the UN charter still includes references to people who do not govern themselves, i.e., under colonial administration. In either case, whether or not the decision was legal, it was definitely undemocratic.

Since the UN partition resolution was legal, continues Strawson, the state of Israel was acting in self-defence in the 1948 war. This leads him to the matter of the refugees, in what is bound to be the most controversial chapter in the book. Strawson devotes an entire chapter to refute the claim that the refugees were expelled as part of a Zionist plan. In this chapter Strawson really struggles against the weight of the evidence, and his arguments are muddled. He accepts that a significant number of Palestinians were directly expelled by the Jewish forces, that several massacres did occur, and that it is likely that many more Palestinians fled as a result of this violence. He also recognizes the existence of Plan D, a plan that ordered the expulsion of all the population in any Arab settlement that offered armed resistance. But for him, all this was part of a war of self-defence

(he fails to note that expulsions began well before the Israeli declaration of Independence and the invasion on the Arab armies in May 1948), and the expulsion of the Palestinians was chiefly motivated by military considerations. There were individual breaches of the international law of war, but it was not 'ethnic cleansing'.

As Strawson seems to admit, this question of 'ethnic cleansing' is not primarily a legal question. It is not clear at all whether the existence of a Zionist plan to expel the Palestinians has any bearing on the rights of the Palestinian refugees to return to their homes. These are barely touched upon. He minimises the impact of UN resolution 194 that calls for the return of the refugees at the earliest possible date, claiming that it is modified by the clause that requires them to live in peace with their neighbours. For him, this clause requires the returning refugees to recognise the state of Israel: this is far-fetched, as an ordinary reading of this clause would simply mean that they would not use physical violence against the Jewish population. Strawson also cites examples, and there are many, of forced population transfers which have not been addressed by the international community. There are, however, also examples of refugees who quite recently did get restitution of their property and citizenship, most prominently the Jews who fled from Eastern European countries at the end of the Second World War. In any case, the international community had acted on the matter of the Palestinian refugees, in the form of UN resolution 194, which is as binding as the partition resolution that granted legitimacy to the creation of a Jewish state.

What Strawson fundamentally fails to address is the question of the Jewish nature of the Jewish state. He pokes fun at the Arab League proposal from 1946 for a unitary democratic state, which would have ensured Arab political domination through limitations on Jewish immigration, naturalisation, and a cap on Jewish representation to a third of the parliament. He compares this Arab anti-democratic proposal with the exemplary Israeli democracy, in which, so he claims, the domination of the Jewish population is not enshrined in any basic law. This comparison is naïve at best. Israel has always reconciled its 'Jewishness' and its democratic tradition by controlling demography. The Law of Return ensured free Jewish immigration, while the 1948 expulsion, whether planned or ad hoc, kept the majority of the Palestinians out. Since 1967, the supposed temporality of the occupation allowed Israel to deny citizenship to Palestinians of the West Bank and Gaza. In 2003, it has passed a specific law against the naturalisation of the residents of the occupied territories who are married to Israeli citizens. There is no formal cap on Palestinian representation in parliament, but the laws on immigration and naturalisation place an informal cap. Strawson also makes here, a factual mistake: he claims that under Israeli law, only parties that incite to racism are not allowed to run for the Knesset (p. 91); in fact, the Parties Law (1992) also disqualifies any party which rejects, in the party's goals or activities, the existence of the State of Israel as a Jewish, democratic state. Are these laws so different from the laws of the 'democratic' state proposed by the Arab League in 1946?

Like Strawson, I do not think that Zionism is inherently evil, or even racist, in as much as it reflects a Jewish national identity and attachment to Eretz Israel. The problem is that, as famously put by Ghada Karmi, the land 'was married to someone else'. The existence of the Palestinians, and their attachment to the same land, simply prevents the translation of the Jewish national identity into a state permanently dominated by Jews, except by non-democratic means. This was true in 1922, in 1948, and it is true today, when, in spite of constant Jewish immigration, and in spite of denying the refugees the right to return, Jews form only a slight majority in the borders of mandate Palestine.

So, given the legal history of the conflict, what are the options for the future? Strawson's book paves the legal ground for a future UN partition resolution, on the basis of the International Court of Justice advisory notice, that would divide the land into a Jewish state and a Palestinian state in the territories occupied since 1967. However, it will have to give much more serious consideration to the rights of the refugees, as well as the rights Israeli settlers will have acquired as individuals through prolonged residency in the West Bank and East Jerusalem. It would also have a strong federal element. It is worthwhile to note that even UN resolution 181, chiefly remembered as 'the partition plan', has envisaged a remarkably 'soft' partition. According to the proposal, each state was to be made of several disparate regions, with the two states bound in an economic union and open borders. Jerusalem was to have an international status. It also recommended strict guidelines on the drafting of the constitutions of the two states, as the status of the very substantial Arab minority (30%) within the proposed Jewish state was a matter for international concern. Moreover, it is worth remembering that some within the UNSCOP committee rejected partition in favour of a federal state.

In the beginning of the book, the author posits that the legal history of the conflict does not dictate one singular meaning, but offers a plurality of possibilities. The term 'Jewish national home' offers such plurality of possibilities. Strawson's book leaves no doubt that the international community had endowed legitimacy on this term since 1922, and that any future solution will have to accommodate the national identity of the Jews who live in Israel/Palestine and of world Jewry. But this does not necessarily mean a Jewish state. As Herbert Samuel, a Zionist and the first British High Commissioner, explained, Jews 'should be enabled to found here their home, and that some amongst them, within the limits fixed by numbers and the interests of the present population, should come to Palestine to help by their resources and efforts to develop the country to the advantage of its inhabitants' (p. 57). Similarly, in its interpretation of the League of Nations mandate, UNSCOP noted that the term 'national home' must have been chosen carefully, with the intention of restricting the meaning to something other than a state. Its main import, according to UNSCOP, was that all Jews in the world who wish to go to Palestine have the right to do so. The committee then, in what was a substantial legal leap, argued that the term 'national home' did not preclude the eventual creation of a Jewish state. In view of what the state of

Israel has become, that may have been a mistake. Perhaps it is time for Zionism to return to these origins, and to re-formulate the real and deep link of Jews to the Holy Land in terms other than that of Jewish sovereignty.

“Palestine belongs to the Arabs in the same sense that England belongs to the English or France to the French...What is going on in Palestine today cannot be justified by any moral code of conduct...If they [the Jews] must look to the Palestine of geography as their national home, it is wrong to enter it under the shadow of the British. Was the part of Palestine assigned to a Jewish state in mortal danger from the Arab armies? Israeli propaganda has largely relinquished the claim that the Palestinian exodus of 1948 was “self-inspired”. Partitioning Palestine focuses on three key moments in the Palestinian-Israeli conflict: the League of Nations Mandate, the United Nations partition plan and the Oslo agreements. None of these documents are neutral but, rather, encode a variety of meanings. The book traces the way in which these legal narratives have both shaped national identity and sharpened the conflict. In this pioneering text, John Strawson argues that a committed attachment to the belief in legal justice has hampered the search for a settlement. Law, far from offering conflict resolution, has reinforced the trenches from