



John Strawson, Partitioning Palestine. Legal Fundamentalism in the Palestinian-Israeli Conflict, Pluto, London-New York 2010, 253 p, 23.99 €.

This book does away with some myths that surrounded the Israeli-Palestinian conflict until today. One myth, for example, is the belief that the creation of the Jewish state is commonly regarded as a form of international compensation to the Jews for the Holocaust. It is claimed that guilt, in particular “western guilt”, led the international community to foist the Jews onto the innocent Palestinians, and thus provoking the conflict.

John Strawson’s penetrating analysis of the UN debates and the partition proposal contained in the report of UNSCOP (United Nations Special Committee on Palestine) show no such intention. The Holocaust is rarely mentioned, and there are no expressions of guilt. UNSCOP’s recommendations for partition were not “intended as a solution to the ‘Jewish problem’”. The author is struck by the callous manner in which the Holocaust was either ignored or referred to. In the debate on the report in the United Nations, there were also anti-Semitic remarks which were common and never challenged.

What is even more noteworthy, is the fact, that the representative of the Soviet Union to the UN Security Council, Andrej Gromyko, was the only one arguing that the Jewish people had the right to their one state because they not only incurred the Holocaust but also by “the inaction of the Western allies to prevent the Holocaust”. Gromyko continued: “It would be unjustifiable to deny this right to the Jewish people, particularly in view of all it has undergone during the Second World War.” The Soviet Union went even further in supporting the UN partition resolution by describing Zionism as the “national liberation movement of the Jewish people”. In contrast to Gromyko’s arguments, the main aim of the Zionist representatives was to establish the Jewish state by “public law”; they never used the Holocaust as a supportive argument. On the other hand, the Palestinian side regards this Zionist aim as “illegal”. Both sides have their legal narratives of international law to legitimize their actions and delegitimize those of the other. The author regards this kind of “legal fundamentalism” as a major stumbling block towards a peaceful settlement between both peoples.

John Strawson is Reader in Law at the University of East London. From 1996 to 2006 he visited Palestine and taught at the Institute of Law at Birzeit University in Ramallah. Despite being fully aware of the brutality the occupation inflicts upon the daily life of the Palestinians, he puts forward a convincing case for the Zionist-Israeli side. He shows to the reader that its claim is supported by facts and documents, and that international law is not implicitly on the side of the Palestinians as many people presume. Having taken the UN documents seriously and as a point of departure for the discussion, the author does not see these legal instruments as dictating a singular meaning but rather what possibilities they offer to the solution of the current stalemate. In his introductory remarks, Strawson warns the reader that this book will irritate not only Israelis and Palestinians but also their supporters, and he is right. First, one has to get rid of the idea that international law sets a series of strict imperatives that must be followed. The book “Partitioning Palestine” conveys a specific message: “Law and justice cannot operate without wisdom. International law needs to encode the wisdom of compromise that can aid both parties to attain their state on the basis of full equality and security.” The international community needs to guarantee that this happens.

All seven chapters focus on different ways in which Israelis and Palestinians have narrated the key legal texts of the conflict, such as the League of Nations Mandate, the UN partition plan and the Oslo accords. The author demonstrates how the conflicting readings of these documents have shaped national identity and exacerbated the conflict. In chapter one, Strawson shows that the future of Palestine was already an international concern in 1917 when the US supported the establishment of a national home for the Jewish people. Supreme Court Judge Louis Brandeis convinced US President Woodrow Wilson to put US influence in the balance for a Jewish state. The Balfour Declaration did the rest: It “clarified the national rights of the Jewish people while apparently questioning national rights for the Palestinians”.

When the League of Nations mandated Palestine to the British, the text of the Mandate for Palestine “represented a major victory for the Zionists in that the Jewish national home assumes the central place in the text”, writes the author. Article 4 granted to the Zionist movement an officially recognized role in Palestine. This role was not only confined to represent the Palestinian Jews but to “secure the co-operation of all Jews”. In this document “the Palestinian Arabs are not designated as a people”. The Arab character of Palestine was only alluded to in the form of the language. Besides English and Hebrew there was also Arabic. The collaboration between the Hashemite and the Zionist representatives administered a severe blow to the interest of the Palestinian people. This collaboration lasted until the 1930s when Palestinian lawyer Wissam Boustany challenged the legality of the Mandate, although his use of the term “legalization” appeared as if he had accepted “that the Jewish national home was a lawful project”, writes the author. His political characterization of the conflict as *international* became highly significant. Palestinian identity and Arab nationalism overlapped and became the main feature of future developments. According to Strawson, Palestine was to become a symbol of Arab unity which was being threatened by Zionism. Consequently, legal rights in Palestine were to be seen as affecting the legal rights of all Arabs.

What the Palestinian and Arab leadership had not fully grasped was the shift of power during the Second World War. The Arab League reconstituted the Arab Higher Committee (AHC) with the totally discredited Mufti Haj Amin Al Hussein at its head but with Jamal Al Hussein actually responsible for it in Palestine. Despite the Mufti’s close collaboration with the Nazi regime, the Palestinian leadership was to defend the Mufti after the war. Within the Zionist camp there were many protagonists calling for a bi-national solution. The most prominent organization was Hashomer Hatzair whose political party Mapam gained the second largest number of seats in the first Israeli Knesset. But after the adoption of the partition resolution the support for these ideas among the Jewish community ended significantly, writes Strawson.

The UNSCOP was established in May of 1947 with the task of making proposals for a solution on the future of the country. The Arab League did not cooperate with UNSCOP. The report included, however, a reference to an authoritative statement of the Arab League on Palestine which it took as an “Arab assessment”. In one passage, Zionism was accused as an “expansionist projects at the expense of the Arab countries”. It involves “recourse of terrorism” and the establishment of a “secret army” which would cause an “atmosphere of tension and unrest”. Further it declared that “against a state established by violence, the Arab states will be obliged to use violence; that is a legitimate right of self-defense”. John Strawson concludes: The content of the statement was clear: “the Arab League was threatening to use force if a Jewish state were to be created.” Any violence by Arabs – and not just Palestinian Arabs – was not only a legitimate response, but also constituted in their view self-defense, writes the author.

According to Strawson, in the UNSCOP recommendations there is only “one oblique reference to the Holocaust”, i. e. a reference to the displaced persons whose “present plight is difficult”. “The mass murder of Jews is never mentioned.” With few exceptions, this holds true for the debate of the report in the United Nations. “Contemporary arguments that the international community decided to create a Jewish state in a wave of guilt for the Holocaust is not borne out by reading UN documents. There were no expressions of guilt nor was there any public opposition to anti-Semitic statements expressed in the debates. It is noteworthy, that UNSCOP addresses not only the Jews in Palestine but also the “Jewish people as a whole”. Taking up this commitment, the report continues “would imply that all Jews in the world who wish to go to Palestine have the right to do so”. In lieu of the absence of a submission by the AHC, UNSCOP considered proposals by the Arab League to the London Palestine conference that called for a “unitary state, with a democratic constitution and an elected assembly”. This constitution contained articles that would limit Jewish representation in the democratic assembly to one-third, irrespective of the size of the Jewish population. The author writes that the actual proposal would have created a legally entrenched ethnic ascendancy, not unlike Northern Ireland at the time. “Yet the reality is that the 1947 proposals would have created a Palestine where Arabs would be legally privileged over Jews.” Strawson does not mention, however, that after the establishment of the State of Israel,

the Zionists did privilege the Jewish inhabitants of Israel over their Arab compatriots by law, thus creating a state which discriminates against non-Jews.

The Soviet Union and its Eastern allies voted not only for the creation of a Jewish state but also provided military support for Israel's war against the Arab armies, whereas the Palestinian Arabs increasingly became subject to the policies of the Arab world. When the author discusses the so-called Israeli Declaration of Independence, he stresses the legitimacy for the state on the basis of historical claims and the way they had been recognized by the "international community". The Jewish state was established by public law as a "natural right", and no invocation of a divine right to the state was made. The Holocaust was mentioned in the declaration not as a justification for its establishment, but "as the acute modern example of why the Zionist movement's project of overcoming the homelessness of the Jewish people was necessary". The Holocaust was seen as part of the narrative of the Jewish people. The author dismisses the widespread assumption that the Holocaust was the central reason for the establishment of the Jewish state. With the exception of the Soviet Union, none of the other actors at the time saw Israel's creation as a compensation of the Holocaust.

When Strawson discusses Israel's policy of expulsion of the Palestinians, he does neither endorse the arguments made by Benny Morris nor those of Ilan Pappé or Nur Masalha. He not only rejects Morris' argument that the displacement of the Palestinians was "inherent in Zionist ideology", but also Pappé's who claims that the Plan D was a "blue print for ethnic cleansing", not to speak of Masalha's notion that transfer (expulsion) was a "secret policy". Contrary to their views, he argues that transfer was not central to Zionism. As a case in point, he quotes the revisionist Zionist leader Zeev Jabotinsky who was totally opposed to transfer. The "evidence" of the notion of transfer can only be linked to the figure of Yosef Weitz who, according to the author, was the only figure campaigned before and after the creation of Israel for such a policy.

At the end of his book, Strawson argues that the main obstacle to a solution of the conflict lies in the legal narratives of Palestinians and Israelis, which reinforce rather than resolve the conflict. In the last chapter the author places most of the blame on Israel's policy, while in the other chapters he regards the Zionist-Israeli narrative as better supported by the documents than the Palestinian-Arab one. For Strawson, Zionism and Palestinian nationalism are equally legitimate. Neither side has the right to use international law as claim to sole representation. International law should be used to foster dialogue on the basis of equality, self-determination and human rights. Only through "Partitioning Palestine" can the conflict be ended, so the author. According to him, Israel's colonial settlements, the rights of refugees to return to the Palestinian state and ending both state violence and terrorism must be addressed. International law should be deployed, not to censor either side but to provide the means for peace and reconciliation. Taking Israel's and the US American rejectionist policies into account, one must be skeptical whether international law can fulfill the author's expectations. People with a fixed image of the conflict will find the book irritating.

Ludwig Watzal

First published here:

http://www.international.to/index.php?option=com_content&view=article&id=816:partitioning-palestine-legal-fundamentalism-in-the-palestinian-israeli-conflict&catid=53:press-releases&Itemid=82

And here:

http://mwcnews.net/index.php?option=com_content&view=article&id=7905&Itemid=125

<http://between-the-lines-ludwig-watzal.blogspot.com/2011/01/john-strawson-partitioning-palestine.html>