

PREFACE

This book is a culmination of fifteen years of advocacy, struggle, disappointment, and enlightenment. As a human rights attorney and scholar, my advocacy for Palestinian rights quickly confronted political obstacles, which in turn inspired deeper questions about knowledge and practice.

Originally my research for this book focused on bias in U.S. federal courts, the limits of human rights advocacy at the United Nations, and the political incapacitation of international tribunals like the International Criminal Court. With time and experience, new questions expanded the scope of this research. As a result, this book examines the relationship between international law and politics in the question of Palestine over the course of a century. It explores the role and the potential of law in the pursuit of Palestinian freedom.

More specifically, *Justice for Some: Law and the Question of Palestine* surveys how occupation law (the body of international law that addresses enemy occupation of a territory) has failed to regulate Israel's settlement enterprise; the incongruence between the United Nations' attention to the question of Palestine and its inability to deliver any meaningful change; and finally, how the Oslo peace process ensured the failure of a two-state solution. It also addresses how Israel's devastating register of death and destruction in the Gaza Strip became permissible within the language of law. None of the conditions on the ground today in Israel and Israel-Palestine have been inevitable. The law has the capacity to dominate as well as to resist. Using international law to advance the Palestinian cause for freedom requires a praxis of "movement lawyering," where lawyers follow the lead of political movements to buttress their collective

efforts. At most, the law can be a tool, and even then, its efficacy will depend on multiple factors. These include geopolitical power, national and international interests, personnel capacity, strategic cohesion, effective leadership, and most significantly, political vision. There is no lack of good Palestinian lawyers. There is a lack of a robust political movement to inform their legal advocacy and to leverage their tactical gains.

Justice for Some builds on a rich literature on the relationship between international law and Palestine. These works include Victor Kattan's *From Co-existence to Conquest: International Law and the Origins of the Arab-Israeli Conflict 1891–1949*, and John Quigley's *The Case for Palestine: An International Law Perspective*. I build on these texts by scrutinizing Israel's legal and political strategy following the 1967 War; analyzing the Palestine Liberation Organization's legal advocacy at the United Nations during the 1970s; tracing the peace talks in Madrid, Washington, and Oslo between 1991 and 1993; and examining how Israel's legal interventions shifted the legal framework from occupation to warfare between 2001 and 2017.

The formative literature on international law and the question of Palestine also includes the essays in *Beyond Occupation: Apartheid, Colonialism, and International Law in the Occupied Palestinian Territories*, edited by Virginia Tilley, and *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace*, edited by Susan M. Akram, Michael Dumper, Michael Lynk, and Ian Scobbie. These texts pay meticulous attention to the law, either to advance a legal argument or to suggest practical approaches for resolving the conflict. The works of George Bisharat, *Palestinian Lawyers and Israeli Rule: Law and Disorder in the West Bank*, and Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, examine how Israel's legal regimes and Palestinian legal advocacy have shaped Palestinian subjectivity and social life. They highlight the simultaneous durability and vulnerability of Israeli structures of domination over Palestinians.

This book does not advance legal prescriptions nor make exhaustive legal arguments. It reveals how the law is working during consequential historical moments. It shows how the law's ability to oppress is evidence not of its failure but rather of the fact that it can be strategically deployed. This cynicism about the law is also found in volume four of Raja Shehadeh's *From Occupation to*

Interim Accords: Israel and the Palestinian Territories, which traces Israel's deployment of law to successfully consolidate its land takings and sanctify its system of domination in the negotiated peace agreement between Israel and the Palestine Liberation Organization (PLO). More recent titles, such as Lori Allen's *The Rise and Fall of Human Rights: Cynicism and Politics in Occupied Palestine*, and Neve Gordon and Nicola Perugini's *The Human Right to Dominate*, similarly examine the limitations of human rights law and the risks posed by invoking it.

Finally, *Justice for Some* benefits from researchers' resurgent use of a settler-colonial framework to understand the question of Palestine. The return of this analytical approach has made it possible for this book to delve into the settler-colonial nature of the Palestinian struggle. Ongoing struggles in the United States, Canada, Hawai'i, and Australia also offer instructive lessons on decolonization. Similarly, U.S.-based movements protesting state violence and the dehumanization of black communities—in particular—inform my optimism. Among the many lessons that black radical protest and knowledge production have offered is that there is no return to an optimal past. There are only optimal futures to shape.

While I build on and advance a skeptical analysis of the law's utility, I am not pessimistic. Change is possible. Our present is the culmination of people's triumphs. This work is intended to contribute to ongoing scholarly endeavors about the role of the law on behalf of progressive causes. It also intends to empower future advocates, legal and otherwise, to be more strategic in their efforts, tempering their faith in the law's capacity to do what only a critical mass of people are capable of achieving.

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