Seminar

Israel/Palestine Legal Issues

Syllabus

Duncan Kennedy

Course Summary

Class 1: Historical background up to 1949

Part one: Inside Israel

Class 2: The legalities of the appropriation of Palestinian land

Class 3: The public law structure of the Israeli polity: “Jewish and democratic”

Class 4: The issue of discrimination against the Arab minority

Part two: The West Bank and Gaza

Class 5: Legal status of the occupation of the West Bank and Gaza, and of Israeli settlements

Class 6: The issue of the duties of the occupier with respect to social and economic development: before Oslo and after Oslo

Class 7: Are the settlements occupation or de facto annexation?

Class 8: Palestinian resistance: the legality or not of violence in response to occupation

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Class 10: The legality or not of Israeli responses to Palestinian resistance

Part Three: Legal dimensions of deal breaking issues

Class 11: Sovereignty: The status of Jerusalem and the binational state proposal

Class 12: The right of return as a legal issue

Class 1: Historical background

Historical documents (except for the Fourteen Points, all are from The Israel-Arab Reader (Walter Laqueur & Barry Rubin, eds.))
The Fourteen Points from Wikipedia
Sykes-Picot agreement
MacMahon letter
Balfour Declaration
Emir Faisal – Chaim Weizmann agreement
League of Nations Mandate for Palestine
Israel Declaration of Independence
U.N. Resolutions 194 & 303
Israeli Law of Return


Benny Morris, The Origins of the Palestinian Refugee Problem, 2nd ed. (Cambridge: Cambridge Univ. Press, 2004), Conclusion

Nur Masalha, ch. 2 (critique of Morris)

Alan Dershowitz, The Case for Israel (New York: Wiley, 2003), Ch. 12


Part one: Inside Israel

Class 2: The legalities of the appropriation of Palestinian land

David Kretzmer, The Legal Status of the Arabs in Israel (San Francisco: Westview, 1990) ch. 4


**Class 3: The public law structure of the Israeli polity: “Jewish and democratic”**

Intro:
The Israeli Ministry of Foreign Affairs: Israel’s System of Government


Haaretz, Editorial, “A Racist Jewish State” and selected “Talkback” from readers, 7/20/07

**Class 4: The issue of discrimination against the Arab minority**

[OPTIONAL BACKGROUND] Eyal Benvenisti & Dahlia Shaham, Facially Neutral Discrimination and the Israeli Supreme Court


**Part two: The West Bank and Gaza**

**Class 5: Legal status of the occupation of the West Bank and Gaza and of Israeli settlements**


Leila Farsakh, Independence, Cantons, or Bantustans: Whither the Palestinian State? 59 Middle East J. (No. 2, Spring 2003)


Class 7: The settlements: occupation or de facto annexation?

Oren Ben-Naftali, Aeya Gross & Keren Michaeli, Illegal Occupation: Framing the Occupied Palestinian Territory, 23 Berkeley J. Int. L. 551 (2005)

Class 8: Palestinian resistance: the legality or not of violence in response to the occupation


Class 9: The targets and techniques of armed resistance: the issue of Palestinian violations of international humanitarian law


Michael Walzer, Arguing About War (New Haven, Yale Univ. Press, 2005) chs. 3 & 4
Class 10: The legality or not of Israeli responses to Palestinian resistance: before and after Oslo


Israeli Ministry of Foreign Affairs, Answers to Frequently Asked Questions: Palestinian Violence and Terrorism, 5 August 2002, website


Lisa Hajjar, Courting Conflict: The Israeli Military Court System in the West Bank and Gaza (Berkeley: Univ. of Cal. Press, 2005)


Part three: Legal dimensions of deal breaking issues

Class 11: Sovereignty: The status of Jerusalem and the binational state proposal

UN General Assembly Resolution 303: On the Internationalization of Jerusalem (1949)

UN Security Council Resolution 242 (1967)

UN Security Council Resolution 338 (1973)

The Likkud Party: Platform (March 1977)

The PLO: Six-Point Program (December 4, 1977)
U.S. Letter of Assurances to the Palestinians (October 18, 1991)

Nathaniel Berman, “But the Alternative is Despair:” European Nationalism and the Modernist Renewal of International Law, 106 Harv. L. Rev. 1792 (1993)

Adnan Abu-Odeh, Two Capitals in an Undivided Jerusalem, 71 Foreign Affairs 188 (1991)


Jonathan Kuttab & Claude Klein, Aspects of Sovereignty: Introduction, in Ma’oz & Nusseibeh

Jonathan Kuttab, Thoughts on a Medical Model, in Ma’oz & Nusseibeh

Beshara Doumani, Palestine versus the Palestinians? The Iron Law and Ironies of a People Denied, 36 J. Pal. Stud. No. 4, Summer 2007, p. 49


Class 12: The right of return as a legal issue

U.N. resolution General Assembly Resolution 194 (1948)

Israeli Ministry of Foreign Affairs, What is Israel’s Position on the Palestinian claim of a “right of return? (Website, 5 August 2002)

Sari Hanafi, Opening the Debate on the Right of Return, Middle East Report No. 222 (Spring 2007) p. 2-7


Nadim Rouhana, Zionism’s Encounter with the Palestinians: The Dynamics of Force, Fear and Extremism, in Robert Rotberg, ed., Israeli
and Palestinian Narratives of Conflict: History’s Double Helix
(Bloomington: Indiana Univ. Press, 2006)