

Fresh Squeezed! Episode 1:1

Noura Erakat (English transcript)

Mohsen al Attar (MA): Welcome, Noura. We're delighted to have you on Fresh Squeezed! Thanks for taking time to join us on the podcast.

Our first question is about your book: Justice for Some, Law and the Question of Palestine. We've read a number of book reviews. They're all very positive. International legal scholars were especially impressed with your weaving of the history of Palestine with the trajectory of (European) international law. Was this integration intentional? Was that one of the objectives you set for yourself when writing the book?

Noura Erakat (NE): Thank you for those affirmations. I wish I could say that I had this brilliant idea after a tremendous amount of study, that I decided that I was going to write the book in a particular way, had an outline, and then set out to do it. But as many writers know, writing is an iterative process.

And often what you're looking for shows itself in the process of writing and then in the collaboration, because no project is ever single authored, but is always a product of collaboration and thinking out loud and grappling with ideas. So the short answer to your question is: I absolutely did not know that [the book] would look the way that it did.

What I did know is that I wanted to tell certain stories. How then do we get the chronological ordering, this weaving of history the outcome of which provides a [reading] of the present of the Palestinian struggle, as well as a theoretical intervention about the way that law works? For me, this comes from my own experience as a practitioner.

I'm trained as a human rights attorney. I wanted to do that because I wanted to sue Israeli war criminals in U.S. federal courts. And the experience demonstrated to me how nearly impossible that was. Our first claims in 2005 were dismissed on grounds of non-justiciability. The victims and the survivors never even got to tell their story. Other venues that I entered were similarly foreclosed, whether it was at the UN treaty making bodies or in other tribunals. I found that whenever I thought law was going to help catapult us beyond the politics that impeded us in the institutions within which we existed that, in fact, power and politics operated there too. So it planted a seed of inquiry for me.

What is this relationship between law and power? And how does it help tell a story about the Palestinian struggle for liberation? That inquiry in itself was very vexing because the literature is broad. The literature tells us on the one hand that law is power, which aligns the realists and the critical legal scholars in a similar camp of saying that the law may be very much a fiction. But on the other hand, we get told a story about the law operating much like a science, that it can be studied unto itself, which I definitely couldn't believe because of my own experience as a practitioner. And I refuse to believe the former because I'm an advocate, I'm an activist, and I have an infallible optimism.

So, I refuse to accept the former and, I found a number of other schools, like the constructivists, who tell us something about the relations between states, as well as scholars like Professor Duncan Kennedy, whose work on legal phenomenology was very enlightening. Once I had my own understanding about

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the relationship between law and power, I was able to weave together the rest of the story, although for full transparency, I wrote chapter five first!

Then, I think, I wrote chapter two, and then chapter three, before I went to chapter one. This wasn't even in order. The fact that it ends up right in this chronological order with what looks like a seamless theoretical strand was vexing and iterative. It was about three full revised drafts before I got there, to be able to tell the story in a particular way that I did.

MA: You find yourself now, four years on. Did you achieve the goals you set out for yourself in relation to the book? Is this one of those times where you look back and say, well, now that the book has simmered for a few years, I might have done the following differently or moving forward, I'm going to do this instead to account for the book's reception.

NE: I'll tell you, and this is just for full transparency, especially for young scholars, I had very little expectations for the book. I was just worried [about whether] the book was going to get pummelled. Another book about Palestine! I mean, [the conflict] is a hundred years old. Everybody thinks they understand Palestine. Everybody, right? My inbox is full. I have a special folder of proposals I receive almost daily from lay persons who have the solution that we haven't thought of. So, it was very stressful. I even thought to myself, maybe this shouldn't be my first book. So I had very low expectations and I was worried. I wasn't really thinking about what this book was going to do? I was just thinking, please just be okay.

I was pleased that it resonated with the two audiences I cared to read it. I really wanted this to be read by a lay audience that wanted to know about Palestine and how it is where we're at. I also wanted it to be read by experts in the region and in law to [help them] think about legal strategies moving forward.

Some of my disappointment is the fact that I found, regardless of the content of the book and the critical approach that I take, I often get pegged as the doctrinal lawyer. People see Palestine, law and human rights attorney and they're leaning on me to provide a very doctrinal response about the ICC bid, about the ICJ bid, about different legal avenues and accountability, about the incursions, the onslaught of the Jenin refugee camp in July [2023]. Four years on, I often have to [remind people] that I never said the law was going to help us. In fact, the argument I demonstrate is that international law has done more to advance Israel's interests than it has to advance Palestinian interests. Whatever faith we have in it is misplaced unless we understand that, to the extent that it can be beneficial to advance Palestinian liberation, it has to be advanced in the sophisticated service of a political movement. We should do more to strengthen that political movement, to think about how to build power and then think next, how do you use law as a tool in tandem with other tools?

Where I end the book is always setting up expectations. I get asked what's the next inquiry on law? How do you expand this? What's the next legal analysis? But because I have this approach about the law, where I end is actually trying to transcend these legal structures and trying to transcend even nation state structures, to think beyond, drawing on Afrofuturism and on indigenous literature. What is

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Palestinian futurism? How can we think about alternative futures, not just what's possible right now? So I ventured much more into thinking about race and racism and the international spectrum in the law, beyond the law.

And now I'm working on a book project, primarily for lay audience with Professor John Reynolds of Maynooth University, a fellow TWAILer, where we're thinking about the recent human rights reports that [described] Israel as an apartheid regime, in order to both critique the domestication of the concept of apartheid as a domestic project eschewed of its colonial and global dimensions. [This definition] shapes the way that these human rights organizations find that Israel is an apartheid regime, where they basically tell us Israel became discriminatory in a way that absolves a colonial history and racial ideology that has led to this present. So that's the project we're working on now. To go back to this idea of the fact that international law really hasn't served the Palestinian cause much.

Omar Kamel (OK): You open the book with Resolution 2334? And it's supposed to be this monumental achievement because the US abstained from using its view of power and this is, you know, it's a new development and people hailed it as an achievement.

We're six, seven years from it today. How do you feel about it in retrospect? Has it achieved or it lived up to the expectations? It seems as though scholars have a lot of mixed feelings [suggesting] it's actually been unhelpful, even counterproductive to the cause.

NE: That's a great question. In total honesty, at the time of passage of 2334, I also celebrated it as a victory. It represented a moment of consensus. At that moment, the US got out of the way as an obstacle. It had a discursive function that could have been leveraged. It had the latent political potential to be leveraged. And yet, and this goes back to my analysis about the law on its own: it does nothing. It's another piece of paper.

[Resolution] 2334 did nothing. Israel is on the cusp of declaring de jure annexation of the entire West Bank. Forget settlements and settlement units. It has become declared sovereignty over East Jerusalem; sovereignty over the Golan Heights, which isn't even contested (this is Syrian sovereign territory); transferring the administration of the West Bank from military governance to civilian governance. They've told us this is permanent. Even the fiction of temporality and military necessity have been lifted. Not only have we gotten worse in settlements, it's advanced at record speed. I think it's become another piece of paper.

[For] the Palestinians to garner the U.S. abstention, they had to make certain acknowledgments that they wouldn't confront Israel and that they would remain within the U.S. and Israeli sphere of influence. So [the resolution] didn't make the situation worse. It just perpetuated a particular [outlook] that they never moved away from.

MA: This question comes from my students because they are often confused about it. Is Palestine a state? We study the Palestine Declaration of Independence (issued in 1988). Palestine enjoys the

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recognition of either over or close to 140 countries around the world, which in terms of population represent the near aggregate.

Yet, we also know that, in 2014, Mahmoud Abbas put forward a resolution that was ultimately vetoed by the U.S. It was a resolution on Palestinian statehood. Over to you, Noura: is Palestine a state? Indirectly, I suppose I'm asking: do you subscribe to a declaratory theory of statehood, recognition or something else?

NE: It's a great question. I think I'm going to answer rhetorically. Let's say that I subscribe to this declaratory theory of statehood, in which case Palestine is obviously a state, right? So what? What consequences does it have? Is there territorial integrity? Is there sovereignty? Is there ability to control the economy? Is there control of borders? Is there an ability to have a standing army? Is there an ability to control nationality and citizenship? Do you control the airspace? Do you control the population registry? Can you control the aquifers? The underwater resources? Can you control any adjacent bodies of water? All of these practical questions that emerge, none of those are part of our theoretical understanding of what a state is.

The [criteria to statehood are such] that there's going to be recognition: there's a concentrated population with a shared history and so on. Yet, instead of having a state, regardless of what theory you subscribe to, we're in a sovereignty trap. Palestinians are in a sovereignty trap, as are many indigenous peoples. This was articulated very clearly by the Palestinian leadership during the negotiations that culminated in Oslo or the 1993 Declaration of Principles: for a colonised people, the greatest form of success would be to earn the formal recognition of colonial power. That's stated very explicitly by Ahmad Rekha, who was one of the three negotiators who led to the ultimate agreement, the back channel agreement in Oslo. Very clear: desire and goal. That's what they get.

But in exchange for Israeli recognition, Palestinians can only now get incremental privileges that are afforded by the colonial power and its patron in response to perpetual subservience and proving that they are good natives, where there is zero potential for that to culminate in any form of meaningful self-determination. It's a trap. You can't win in that trap. There's no amount of recognition that you can get. While these traps are taking place simultaneously, any idea of achieving anything that resembles a positive outcome, a two-state solution or whatever you might like to call it, is actively corroded.

OK: You paint this picture very well in the book: the increasing encroachments by Israeli settlements, the land grabs, the population transfers, all of that. How are you supposed to envisage any solution from here on out? When you look at the debate, it seems as though nobody is considering a two-state solution anymore. The one-state solution is slowly revived at times. Do you consider that as a possible outcome at all?

NE: I have been saying since the collapse of the peace process (when the Camp David talks fell apart in 2000) that the two-state solution was formally dead. Not only in the words of Edward Said that it was born dead letter, and it's a flawed project, which it was. I demonstrate this in the book as well: it's so

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obvious that if you read the actual legal documents—you only have to be literate to understand, you don't have to have legal expertise to understand—but there was never a Palestinian state promised. It was never going to lead to statehood.

We have empirical evidence that demonstrates everything they told us in the first seven years: there was no incremental transfer of authority; a hundred percent increase in the number of settlements under a labour government (not even the Likud or what we have now, an even more far right government) but under a labour government. The most they were willing to offer at the Camp David talks was a series of Bantustans. There is no two-state solution. An excessive amount of faith had been placed in it where there was no empirical data or legal stipulations that should have been in place [for that to] have been a peace agreement.

Now we have seven years of empirical evidence, the collapse of the talks, the end of the two state project. I said then to those who described the one-state solution as fanciful, that it was an activist dream, that it wasn't practical. But even then I had said the two-state solution is no less fanciful than the one-state solution.

Both are incredibly difficult to implement. Both would require a radical political shift. Both would require a tremendous amount of resistance and political power. When people think the one-state solution is more difficult than the two-state, frankly, they're not thinking hard enough. If I have, if I have a piece of pie and I want to share it, we divide it. But when you cannot divide the pie, you have to think about eating it together.

Partition is not a solution here. Partition has been proposed since 1936 in the partition plan, again in 1947 as a result of the UN Special Committee on Palestine, again in 1988 with full Palestinian acquiescence. The Israeli leadership from left to right, the entire spectrum told us that they would never partition the land and there will never be a Palestinian state. Ehud Barak was the one exceptional Israeli leader who acknowledged there could be a Palestinian state and then proposed this truncated state that looked like the 1968 Igal Elon plan that divided the West Bank into two parts with a perimeter connecting Tel Aviv that flows through Jerusalem and the Jordan Valley.

Rather than trying to compete over who is sovereign on the land—which is a mutually exclusive equation—we should shift to a mutually inclusive equation of who can belong there. Because belonging has infinite potential. And yet the primary obstacle to the project of belonging is not Palestinians, but Zionist settler sovereigns who believe that they have a divine right over this land, from the river to the sea; who believe it is divine right to be supreme as a racial and religious and national class.

And the rest of the world, rather than object to this, rather than hold Israel to account, enables it because of a failure to confront anti-Semitism in its modern forms, so that the Israeli project is equated with it. That's where we're stuck: we're not stuck on a solution for Palestine; we're stuck on how to address anti-Semitism. The future of Palestine is clear: there's a native population that has been removed and replaced and is at threat of complete annihilation according to this government explicitly.

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There's only [one solution]: refugees must return. There should be repatriation. This is about the restoration of some form of indigenous sovereignty and recognition.

It is Jewish Zionists who believe they belong to this land who are quite strange to me, who rather than understand what it means to belong to Palestinian, based on the indigenous population, the native population, are trying to create a satellite European state instead. And so, I think there has to be a lot more courage in what folks do about anti-Semitism. Israel is not the solution. Zionist settler's sovereignty in Palestine is not the solution. It's a failure. It's a failed model. It's what we should not support and it's what we should not export or replicate.**

MA: I want to pick up on belonging. I'm really curious about that word because of the shift we've seen in the debate surrounding international law. Because of the work of TWAIL and critical legal scholars, we've now seen at least even some mainstream international legal scholars beginning to acknowledge the biases that are built into the regime. The European Society of International Law held a conference on inclusivity; AJIL, at least AJIL Unbound, ran a special issue on race. You published in that along with John [Reynolds] and Darryl [Li]. We're starting to see certain efforts by, we might say, white scholars, by historically white supremacist learned societies at being more inclusive. Are these efforts indicative of a type of an awakening? Or is this what Malcolm X might term a reckoning? The chickens are coming home to roost with those scholars who were made peripheral now in a kind of open confrontation with that mainstream core.

NE: I want to say I agree with you, Mohsen, because I think I'm hearing you say the latter. And I couldn't agree more. I think that the moment we're in is one where we see the shift to inclusivity and belonging. UNHCR also has used the framework of "I belong" in that mantra as well. We're at this moment that is wrought by crises, where refugee status was thought to be an exceptional state, but it's now becoming quite pervasive.

The Middle East is home to the largest refugee population: Iraqi refugees, Syrian refugees, Palestinian refugees, Yemeni refugees, Sudan refugees. But this is the primary condition; it's not the exceptional condition. Well, if we think about refugees no longer being exceptional, but quite possibly becoming more of a norm, we're at a major crossroads where we and we have to rethink the nation state and their borders.

If initially the nation-state was envisioned by many anti-colonial revolutionaries as a form of emancipation and leadership, it was to protect us from domination. But, in this particular moment, the nation-state instead is used as a way to protect and enshrine a particular amount of privilege.

Most of these refugees are fleeing climate doom and warfare and instability and are trying to seek access to Europe, to the United States, to Canada and so on and so forth. These former colonial powers have acquired most of their wealth through the theft of land and labor. And peoplehood altogether. Slavery is not a theft of labor; slavery is a theft of people. There's a tremendous amount of wealth that

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has not been redistributed. And these industrialized countries are the primary sources of climate harm because of their advanced stage of development. Reparations are needed here.

The crossroads we are going to face is for meaningful reparations, not only forgiving debt. Reparations in the form of open borders. Or what we're seeing with a lot of these fascist supremacist movement, which is a closing of those borders, making them more rigid and not only making the borders rigid, but then being righteous about the ability to be supreme, to have that privilege as a matter of right and to exercise that as a form of sovereignty. That's a very dangerous future. I see Israel on that trajectory. I see white supremacists who want to emulate Richard [Spencer]. After the nation state law was legislated in 2018, Spencer remarked that Israel is offering the model for the future of European sovereignty. I see it in Hungary very explicitly. We see it in a Modi led India. We're seeing it in a number of places. We see it in the threat of the ascendance of a far fascist right. That is the future they want to place us on.

And how do we respond to that moment? If we're thinking beyond this, it's very helpful to think that the nation state is basically an invention. We created it. It's about 200 years old. We can organise ourselves in other ways. And we have to adjust to these times and have better prospects of survival. Again, that requires vision, risk, openness. And I think that we see that in the work of a lot of civil society, but not yet led by any particular state.

MA: Let me pick up on the word risk. I'm bringing this up because of your own work as a scholar of international law. You've been appointed at various American universities and your research focuses on Palestine, racial justice, solidarity, those topics for which, at least within American legal academia, have been frowned upon, if you will. Is the situation in the US, in US legal academia changing because of the work of scholars like you, Tendayi Achiume, James Gathii, Asli Bala, and so on? Or are you still peripheral?

NE: I think two things can be true. I think change is the norm in the words of Octavia Butler in *Parable of the Sower*: change is the only thing that's constant, the only thing that stays the same. Obviously, there is a tremendous amount of change and shift within the legal academy. We see that just in the uptake of how we deal with race and racism as a serious topic, not only as a matter of study and knowledge production but even in management, even in hiring, even in the way of teaching in the classroom, and that's a result of uprising, of Black uprisings.

This wasn't a case of people sitting in a room reading a lot of books on racism and having an enlightened moment, right: oh, racism sucks, we need to do something about it. This was brought about by uprising. Similarly, other changes on the question of Palestine have been wrought by protests and disruption, not by acquiescence. There's a movement that's changing, shifting the grounds we stand on, that makes someone like me legible within the academy.

But again, two things can be true. That all this change is real and happening and we're still—TWAIL, critical scholars, the critical race theorists, critical feminists and so on and so forth—on the periphery of

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what remains a very mainstream doctrinal approach to these matters. Two things can be true. But because we take up more space, it means that we have a broader and larger student audience who also take up more space. It becomes about planting the seeds and the promise of what we do moving forward. It's one thing to be tolerated as a minority voice; it's another thing when the minority voice exercises a threatening amount of power.

Let me be really explicit here. Like when Obama became president: it was one thing to think about equality for Black people but the idea was equality for Black people in a country where white supremacy was not questioned. So you could be equal to whiteness. This is the height of your aspiration, but the idea of taking power and possibly shifting what that ceiling looks like, that becomes a threat to a base and, quite ironically, because Obama didn't mean to threaten any of it. It was more of an identity politics and I think he pursued more of the same. In the words of Ta-Nehisi Coates: was there ever a first black president?

I think that once we get to that moment where those of us who are on the periphery and are now taking up more space, when we are about to take up a threatening amount power, we're going to see a lot of those who might think this is great and tolerate it become part of an opposition because we've gone too far. I'm being very blunt, but I don't think it's particular to the academy and I don't think it's particular to the government and I don't think it's particular to civil society or institutions. I think this is power and any group that's in power is not going to happily relinquish it.

And so, thinking about what it means to be an ally, we're not competing for power but trying to change the conditions under which we exist. It's not competing for domination; it's actually struggling to create other conditions that afford us better futures.

MA: Noura, let's end with where we began. My question builds upon something you mentioned at the very outset: you spoke of Afrofuturism. What is your freedom dream for Palestinians and for Palestine? Of course, being the international legal scholar that I am, I have to ask, is there a role for international law in advancing this freedom dream you have?

NE: I love this question! Thank you. My freedom dream for Palestinians is a freedom dream for all people, which is to be able to live without fear and with infinite possibility; that you are not bound by geography or geographic determinism, or status determinism, where you were born, how you were born. It is the freedom that we can live without fear and with infinite potential.

That's a vision that not only requires us to get past settler colonialism, which is a requisite element in this process, but also to get to the financial structures of how people live. That also gets us to addressing social ills and the future of gender freedom. And it's a composite. It's not merely limited to the politics that define Palestinian life.

What is the role, if any, for international law? I think the role is to use it as a tool to the extent that it can help us get there. That's what it is: we can create new rules. What is law, if not, the legitimacy that we

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offer it? We comply with it because we believe it offers us a good. There must be voluntary compliance, otherwise...if it's completely coercive, it's illegitimate and it's tenuous apartheid. Think Jim Crow; it can't last and is not going to last.

How do we use law as a tool and how do we create investment in it when it serves us in a voluntary form? That's all up to us. That remains contingent.

OK: Thank you very much, Noura. Thank you.

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*Please note that while we've made every effort to ensure the accuracy of our transcriptions, minor edits have been made to enhance clarity and address any transcription software inconsistencies.

**Following the interview, Noura provided some clarifications to the point about anti-Semitism. We reproduce it in full below.

“Too often, Jewish emancipation is collapsed with and equated to Zionism. Hence, the misleading effort to frame anti-Zionism and critiques of Israel, more broadly, as antisemitism. But as Jewish tradition as well as contemporary political efforts make clear, Jewish collective life is distinct from Jewish nationalism, and offers models that exceed the nation-state. In contrast, Zionism demands a state with a decisive Jewish majority that is predicated on Palestinian dispossession in the pursuit of territory and Palestinian removal in pursuit of exclusive sovereignty. Most conversations in the US and European academy take the latter position for granted and expect Palestinians to contort themselves to fit into whatever space may be left after Zionist priorities are achieved. Recent uprisings have made increasingly clear the racial and colonial dimensions of such expectations.”