

Teaching Israel/Palestine Issues at Harvard: Interview with Duncan Kennedy

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Hello world, we have with us today Professor Duncan Kennedy. Professor Kennedy has been a professor here at Harvard Law School since 1971, and is considered one of the founders of the Critical Legal Studies movement. He has taught a course here on Israel/ Palestine legal issues and is currently teaching a course titled "The Politics of Private Law in Historical and Comparative Perspective." Thank you for joining us today, Professor.

It's great to be here—really a pleasure to do this.

Our time is short so I'd like to jump right into it. You've taught a course here at Harvard Law School Israel/Palestine legal issues. Could you describe the scope of that course, and what you had hoped students would take away from it?

The basic idea is that law students can get a surprisingly larger, deeper understanding of Israel/Palestine conflicts by looking at their legalities. The way the conflicts are resolved or not is not determined only by power and violence. Legality plays a role. The course has about equal attention paid to the situation of the Palestinian minority inside Israel, and the situation of the populations of the West Bank and Gaza. Rather than describing the coverage of the course, what I'd like to do is to say something about the main lessons that I myself have learned by preparing to teach it and then teaching it to students who initially often knew more about the issues than I did. Some students may have learned similar lessons, and some not. The way you interpret the facts that I'm about to describe depends to a great extent on your politics. The materials of the course are very carefully balanced to present conflicting political points of view, but I am going to begin talking about what I have gotten out of it as a person with a left political perspective.

A first question is: how should we understand the outcome of the 1948 war? How should we understand it now in light of recent historical research about it?

The first thing I think one needs to understand is that the story of the war has been dramatically retold by Israeli historians, "revised" on a scale that's really, really striking. If you're an older American—I'm 72—but even if you're an American who's 50 years old, if you're an American who's gone through a normal educational process who's even 30 years old, you're unlikely to have any idea about the current Israeli historical account of the "Birth of the Palestinian Refugee Problem," to borrow the title of Benny Morris's groundbreaking work. This revisionist history is produced by both Jews and Palestinians in about equal measure, and although there are violent objections to it from many Israeli Jews in the political mainstream, because it is close to what Palestinian historians have claimed from the beginning, I'm not aware that there are any mainstream historians who dispute the basics of the new account.

There are three points here. The first is the surprisingly large role that self-conscious and carefully calculated violence, which we would today call terrorism, played in the flight of the Palestinian population from what is now the state of Israel, along with a concerted military strategy to drive them out if they didn't flee on their own. So the old narrative was they ran away because they were scared and because they were urged to run away by the Arab military coalition partners against Israel, who thought it would make their operations easier, on the assumption that the refugees would return after the destruction of the new Israeli state. The new narrative—which has not been successfully challenged—is that of the perhaps 700,000 who left, a large majority (maybe as many as 600,000) left because they were driven out by the Israeli army or Israeli irregulars and paramilitaries. This is not something made up by anti-Zionists. Benny Morris, author of the most influential historical account, has said that the expulsion was justifiable because it made it possible for the new state to be overwhelmingly Jewish in population..

The second thing about this part of the story, which people are just not aware of, is the decision by the Israeli government not to let anybody back in. So, I think that's just a very surprising thing for American WASPs like me brought up in a context of a very deep WASP-Jewish alliance around the story of Israel as a heroic, resistance state, but also for Jews, particularly liberal American Jews, who come to my class and they don't know what the current Israeli historical picture says. There was a war—the war was not fought mainly by Palestinians, it was fought by the surrounding countries who attacked to prevent the creation of the Jewish state that had been sanctioned by the United Nations. The allies were defeated, and after the mass flight, the Palestinian population had been reduced from something close to half to a 15-20% minority inside the state of Israel. The usual norm in the law of war, confirmed in this case by repeated UN resolutions, is that civilian refugees, non-combatants, get to come back when the war is over, and that the victorious power is absolutely obliged to respect their property. Even wars of conquest are wars for sovereignty, not wars to expel and dispossess the population that was on the losing side. The Israeli leadership decided that if they obeyed that norm, the state would have too many Palestinians to be viable. So they simply said if you left, you can't come back. They closed the borders and shot people who tried to get back, claiming that they were infiltrators, which was certainly often but by no means always the case.

The third part of the story that people just don't seem to be aware of is, is about what happened to their land. In 1948, Jews owned about 13 per cent of the land in what became the Jewish state. By the mid-1950s, 93 per cent was held by Jews, most of it in the hands of Jewish governmental and non-governmental organizations. The land of the refugees was confiscated by the Israeli state, distributed to the new institutions of the Israeli society. But it wasn't just the people who left who lost their land, lots of people who stayed also lost their land. For the refugees, there was a statute which said something like “if you are absent from your land for more than three months consecutively, you no longer can have title to it.” The people it applied to had been expelled by force from Israel and were forbidden to come back. For those who never left, there was a process of land surveying and registration that reclassified a large part of all their land as public or state land, using an elaborate procedure which

systematically disregarded the customary tenures by which Palestinian peasants and small farmers had operated for generations.

From an ethical point of view, or a humanitarian or human rights point of view, all of this was and remains highly questionable, but it was done with strict adherence to positively enacted laws and procedures. In short, the Israeli state just drove out most of the Palestinians and dispossessed those who remained—they made it look technically legal, and they justified it as necessary for the building of a demographically and economically viable Jewish state. What is important to me here is that whether or not you think this was justified, practically (viability) or morally (self-determination for Jews vs. self-determination for Palestinians), you won't be able to understand the Palestinian position in negotiations, right up to today, if you don't know that the Palestinian leaders are representing the claims of victims of these historic decisions, justifiable or not.

A second big theme of the course is: what happened to the Palestinian minority after the creation of Israel? A very basic understanding of Israel is, is that it is the only democratic society of the Middle East, and therefore it is the most "like us" of the states in the region. It is true, that there are enormous similarities between Israeli and American society and politics, and it is completely appropriate today, to say I, as an American, a leftist or a rightist or whatever, have much more in common, much more overlap, with Israelis in relation to their political society, than to the other countries in the Middle East.

But here is the paradox that becomes visible when you get into the materials. The paradox is that the similarities include many aspects of Israeli society which are best compared to the aspects of American society that as an American leftist are deeply problematic or even shameful. The first point is that both the US and Israel are what is called nowadays "settler societies," meaning that they are the products of a re-population project in which the original inhabitants are displaced, either directly by a colonial state (the British in Australia) or through unorganized movement under the protection of a dominant state. Remember that the original American colonists were fleeing Britain, where they understood themselves as a persecuted religious minority, rather than moving at the behest of the colonial ruler. There are many analogies, as Oren Yiftachel among others has shown, between the Israeli treatment of the Palestinians and the American treatment of Native American peoples.

The second similar aspect has to do with the treatment of the black minority in the US before and after the civil rights movement and the Palestinian minority in modern Israel. Both regimes might be called "Jim Crow," followed by "de facto discrimination," and "institutional racism." From this point of view, the societies are incredibly similar in their worst as well as their best qualities. For example, I assign an article by Yishai Blank called "Brown in Jerusalem," asking what would the Israeli school system look like if *Brown v. Board of Education* were enforced in Israel? Answer: the Israeli school system is based on a very complicated set of formal and informal explicit and implicit practices of racial discrimination in schools. There's no other way to put it; it's racial discrimination in the school system. Quite like American Jim Crow and post-Jim Crow, it varies between being overt and completely non-overt, but it includes everything from school assignment (where people go to school), to how

much money schools of the different groups get, to what kind of enrichment programs they receive, and it also has, as in America, a strong class basis. So, the wealth of Israel has a massive effect on what their children get, and that's true inside Israeli Jewish society, as well as within Palestinian society.

So the basic idea here is to introduce the student to what I would just call "important facts" about Israeli society—again, there's nothing secret, and there's nothing partisan about this. It looks partisan in the American context because it makes the Israeli system look quite different than the idealized picture we typically have of it. It's based on an elaborate and to my mind very powerful academic literature produced by Jewish and Palestinian law professors and sociologists.

The second half of the course is about the occupied Palestinian territories, and I'll go much faster because that part of the course is much more familiar. A lot of it is public international law and international humanitarian law, but there's one aspect of the second half which I think is worth particularly emphasizing, and I think it can be summarized this way:

When people talk about the two-state solution vs. the one state solution, they tend to think that the legal or political theoretical concept of sovereignty is the key. They tend to argue about versions of the two state solution in terms of whether they do or do not give "full sovereignty" to the proposed Palestinian state, and they tend to imagine a one state solution as complete civil and political equality and majority rule in a state combining Israel proper and the occupied territories. I think it is useful to emphasize that sovereignty is always a matter of degree. The question is not sovereign or not, but what complex hybrid of political powers and rights will be recognized in the solution proposed. And in this context I think it is instructive to point out that there is already a type of one-state solution in the West Bank, and there's already a type of two-state solution in Gaza. So saying, one-state, two-state, as though either is a solution, is crazy.

There's a one-state solution in the West Bank because Israel has annexed it, de facto, and incorporated it legally, although not formally at the level of international law, into Israel proper. This is the thesis of a terrific article by Aeyal Gross, Oren Ben-Naftali and Keren Michaeli, three Israeli Jewish academics: There are 350,000—at the lowest possible estimate—Israeli settlers in the West Bank. They are mainly concentrated in settlement blocks in the 60 per cent of the West Bank that is under full Israeli control. They are connected among themselves and to Israel by a network of roads. The Palestinian economy is completely integrated with the Israeli economy, with no barriers to the passage of goods between the sectors, and a single regime governing imports and exports. The Israeli government has plenary power over the West Bank to just as great an extent as it has in Israel proper, and subject in principle to the same regime of constitutional law. The Israeli interpretation of the law of occupation imposes no meaningful restriction on what the government can do with its powers in the West Bank. If the Israel were to declare to the world that it has now annexed the West Bank, as some part of the Israeli right proposes, it is fair to say that absolutely nothing would have to change on the ground.

It seems plausible to me to describe the situation in Israel proper as like Jim Crow as modified by some civil rights. It is hard to describe the legal regime of the West

Bank part of the de facto single Israel/West Bank state without using the word “apartheid.” It doesn’t make sense to say, “you can’t use that word, it’s offensive, what do you mean, it’s nothing like South Africa!”

Sorry, but when you look at it legally, it is astonishingly similar to the legal structure of South African apartheid. I’m not talking about politics, I’m not talking about racism, I’m not talking about the attitudes of Israeli Jews towards Palestinians in the occupied territories—I’m not talking about that. I’m talking legally. So here are some characteristics:

First of all, the spatial segregation. Although the territories are small—and if you looked at the whole territory, there’s lots of Arabs and lots of Jews—they are rigidly but asymmetrically spatially separated: Palestinians are categorically prohibited from entering the Jewish areas unless they have specific permission, which is granted only when there is a reason, e.g., to work as a laborer building new Jewish settlements. Settlers can enter Palestinian areas unless prohibited for some specific reason. Justified on security grounds, but everyone understands that that is only a small part of the actual cultural and political justification, and no Israeli would deny that. So, the rigid separation is very much like the rigid separation of populations in South Africa—it’s very similar. Palestinians are also categorically prohibited to use the system of access roads linking the settlements and Israel proper, and while Jews can pass into the West Bank, the famous wall, built largely in response to Palestinian suicide bombings during and after the intifadas, makes it impossible for Palestinians to enter Israel without justification of some kind.

Secondly, there is a pass system. One of the most famous characteristics of apartheid was the pass system. In the West Bank, there is a pass system. So, all the Palestinians in the West Bank have to have identification papers which specifically determine where they can go and when, and when they’ll be searched and when they won’t be searched, how they will get to the hospital if they’re sick...all this is done in a way that is just not very different than apartheid South Africa.

Third, there are two legal systems in this version of a one-state situation. Jewish settlers in West Bank settlements are under the law of Israel proper. It’s just like living in Israel proper, although you are living in the West Bank, an occupied territory. If you’re an Israeli living in the West Bank, it is exactly like living in Israel. Now, the wall around you is higher than an Israeli residential compound with a wall around it— but basically you vote, you get subsidies, you pay taxes—except that it is a much better economic deal because your settlement in the occupied territories is heavily subsidized by the Israeli government.

Then, if you’re a Palestinian you live under a regime of occupation law, which is the opposite of Israeli law. So, the Israelis living in the West Bank are living as if they’re in Israel, and the Palestinians...it is fair to say that they have very restricted civil rights and no political rights, nothing like what we would call due process, nothing like what we would call free speech, nothing like what we would call the right of security, all of these things don’t exist vis-à-vis the government. Moreover, the Palestinian authorities have only the most minimal powers of local self-government, for example none with respect to the authorization of new housing for Palestinians, and no entitlement to any revenue

except that produced by tariffs, and that only when the Israeli government decides to remit it to them.

So you're a right-less population. This is one single, organized legal regime. It just doesn't look like the type of one-state that more and more informed Palestinian observers, though of course they are still a small minority, are imagining. I'm a one-state person in these disputes—but not like this! So you need to say more, before you talk about the one-state solution, you've got to say a lot more than that.

Now the two-state solution is Gaza. "Hey! Two-state solution, really cool!" The Gazan state is a separate state; it is not a state that's controlled by Israeli government in a juridical or legal or operational sense on the grounds that Hamas controls it. Israelis don't control it. *Except* that it's a two-state solution in which the Palestinian state has no control over its airspace, no control over its borders at all, including its sea border. No control over its natural resources because the gas is claimed offshore. No ability to control people going back and forth across the border. And it's completely dependent on electricity from Israel, which Israel can cut off at anytime. Israel understands itself as entitled to intrude on or shell or massively invade Gaza whenever it deems it necessary for its national security, without regard to the usual international law ideas of what is permissible in self defense between sovereigns.

But...The point of this is not that you could fix either solution through just applying the idea of sovereignty, either of the two states or of popular sovereignty in a single state. In international law, everyone recognizes that the kind of "full sovereignty" we associate maybe with France vis-à-vis Germany in the nineteenth century never exists for anyone anymore, and particularly including France and Germany. That is the kind of sovereignty that the Israelis assert vis-à-vis Gaza: they treat it as completely independent hostile state and they claim they can do whatever they want to it for that reason. The Palestinian state contemplated by two-staters will not have that kind of sovereignty and everyone knows and accepts that: it will be elaborately bound by treaties and international agreements of all kinds, and it will give up "full" control of its territory as the price of Israeli withdrawal, and Israel will give up the kinds of rights of sovereign intervention that it now claims vis-à-vis Gaza. The question is which attributes of "full" sovereignty and to what extent will the two give up?

Ok, so you want a one-state solution...what do you want? It better not be the one now in place in the west Bank. It would have to be based on civic and political equality but bi-national, meaning that the constitutional structure would include various kinds of guarantees for Israelis and Palestinians as group participants in the national government, some kind of federalist decentralization to regions and localities, and a web of international treaties designed to minimize the risk of unraveling. Again, nothing like the 19th century Western European model.

What were some of the reactions to your course from the faculty and administration at Harvard Law School?

The administration has treated me just like everybody else. Absolutely no sense that anybody in the administration had the slightest concern, or the slightest special support.

Just like any other course. Institutionally, there was no moment where I ever thought that teaching this course would be in any way problematic.

My colleagues? Overwhelming silence. Very occasionally a colleague would say, “wow, you’re a brave man,” or “you really have a taste for punishment,” or “you’re really willing to take chances,” or “what’s the reaction to the course been?!” Those colleagues were conveying that on American campuses, you are really asking for trouble if you get into it at all.

They understand that I’m a 68ish scholar, and they can predict that I’m probably going to be very sympathetic to the Palestinians, and that the course will be regarded as pro-Palestinian by a person that’s sympathetic to the Zionist project. They anticipate that I’m going to take a lot of heat for teaching the course the way I probably will. And they’re expressing admiration not for what I’m going to say, but for the idea of being willing to step into the buzzsaw.

There is no buzzsaw. If you do this kind of thing or you’re interested in it within the bounds of academic propriety—and my course is completely within the bounds of academic propriety—there is no issue, there is no buzzsaw.

Unless you’re the unlucky person who turns up as a plausibly vulnerable target at a moment when the Israel lobby or its sympathizers feel they have to strike back. Finkelstein. That could happen to you. It could happen anywhere in the country to quite prominent people, or quite unprominent people, but it’s now like, you know, you’re walking down the street and they drop a safe on your head. It’s not likely, and it’s unfortunately difficult to predict, and the consequences can be nasty if you are institutionally vulnerable. But at this point, unlike the situation say ten years ago, it’s unlikely and basically very random.

However, there was one very powerful faculty reaction at Harvard, which was from Alan Dershowitz. Many people said, “Alan Dershowitz will come after you and destroy you, how could you open up your life to Alan Dershowitz’s assault?” Now, I didn’t think that anything would happen at all vis-à-vis Alan Dershowitz, but it wasn’t a matter of—well let’s put it this way: It wasn’t that scary in the realistic context of me as a tenured professor. I’ve known Alan Dershowitz for 40 years. Here’s what he did, which, could I say just wasn’t that bad. So, all the people who said, “oh my God, what is Alan Dershowitz gonna do to you?”—it just wasn’t that bad!

He was awarded an honorary degree by the University of Tel Aviv about three years ago, and there was a giant public celebration. I don’t know, there were probably seven or eight hundred students and faculty and their families there for his speech. And a significant piece, ten or fifteen minutes—maybe it was a little shorter than that, I want it to have been longer but I’m worried that it might have been only seven or eight minutes but it was up there, you know—was devoted to me.

Without mentioning names, he said, “I have a colleague on the Harvard Law School faculty who teaches a course on Israel and Palestine, and the course is completely and totally biased. It’s a pro-Palestinian course which gives no room for any issue from the point of view of the Israelis,” but then he said, “but hold on a second! I’m not in favor of censoring him or firing him, because I believe in academic freedom. So, I actually have a research assistant who took the course, and the research assistant decided to fight back. And the research assistant started a blog, called ‘Guide for the

Perplexed,' and what he basically did was he fought back and blogged denouncing Professor Kennedy's bias and falsehood, and he won the class over." [laughs]

Now, that's nothing! That's just zip! That is not enough for anyone to say, "when Alan Dershowitz comes after you, you'll be the grass and he's the lawnmower," so that's the end of that story.

Given that you are no longer offering this course, students like myself who are interested in this issue are left with limited alternatives. The other courses here which address these issues tend to approach them from either an international law/national security framework, or, alternatively, through the increasingly popular negotiations framework. In your view, what are some of the strengths and weaknesses of these approaches, and how did you address them in your course, if at all?

I think international law/national security approaches, in general, have the weakness of a certain sort of global North world power bias. What's often lacking, I think, is a serious attempt to present, as Richard Falk for example often does, the public international law and international humanitarian law arguments in favor of the kinds of things that the Palestinians have done in resisting the occupation. It seems to me that the frameworks of the laws of war and human rights law have a certain bias against revolutionary groups, in spite of the accomplishments of the Rome Protocols that deal with domestic insurrection. The right of resistance to my mind is systematically underplayed in public international law treatments of armed conflict.

Obviously, the national security approach is incredibly significant. If I have a criticism of that way of looking at, it's the criticism that is worked out by my course. I don't think you can understand either the national security dimension, or even the public international law/human rights/international humanitarian law dimensions of the Israel/Palestine conflict, unless you understand the legal structures of both the Israeli polity on the one hand inside Israel, and the peculiar legal arrangements of the West Bank and Gaza. And those seem to be over and over again left out because of the real need to identify and condemn terrorist acts and repressive responses.

I'm not saying that the international human rights groups and international humanitarian law people and domestic civil rights group disregard the Israeli responses—they are the major source of our knowledge about what happens inside Israel/Palestine. The people in these groups are incredibly brave, they play guts ball, and I think it's just great, what they do. But there is a problem which seems hard to avoid of decontextualizing, so that our attention is riveted to the alternation of atrocity and counter-atrocity, and that's a very limiting approach.

The negotiation approach has a different kind of problem for me, which would be something like—look, I totally and completely believe in negotiation. I don't think anything could ever happen there without incredibly elaborate negotiations, and I was very sympathetic to Oslo—what an idiot I was—and I would be totally sympathetic to another Oslo—hopefully with completely different terms, conditions, and outcomes than Oslo. But a basic problem of the negotiations outlook from my point of view is their overwhelming commitment to settlement, and that commitment to settlement is

too often accompanied by an idea that if we get into these background questions of the extreme claims of the two sides, settlement will never happen.

So, no peace without justice is the anti-negotiations approach to it, and it's just a question of balance. There's got to be a sufficient sensitivity to the actual substantive content of the justice claims so that it doesn't look like it's just splitting the difference, because that won't work. And that's what happened in Camp David. According to me, [Clinton] basically had it very worked out in terms of splitting the difference between the Palestinian Authority and the Israeli government. But he just left out of account that a splitting of the difference didn't give the Palestinians enough to satisfy their plausible justice claims. It looked mathematically perfect. People always say, you know, final settlement is easy to determine, the only obstacle is the persistence of both sides in their primitive claims. But that's not true. As a matter of fact, or at least from my point of view, the plausible justice claims of the Palestinians make very serious obstacles for splitting the difference on the basis of the status quo of the moment, especially when the Israeli's are consciously committed to changing the "facts on the ground" so that splitting the difference as a basis for settlement will continually shift in their direction.

The American Studies Association, described as the "nation's oldest and largest association devoted to the interdisciplinary study of American culture and history," recently voted to endorse the boycott of Israeli academic institutions. The Native American and Indigenous Studies Association, as well as the Association for Asian-American Studies, have also recently endorsed the academic boycott, and the movement to divest from American and Israeli companies profiting from the occupation of Palestine has been rapidly growing on university campuses nationwide. What is your opinion on these recent happenings, and more generally on the wider boycott, divestment, and sanctions movement?

I think the main although small hope for progress toward justice in Israel/Palestine lies in changes in American attitudes rather than in developments within Israel. So I think the emergence of the BDS movement over the last couple of years—spearheaded, originated, dominated by students in often small liberal arts colleges and now in bigger universities like Berkeley—is a very significant development. Another important development would be the changes in sentiment within the younger Jewish generations, particularly younger, liberal Jews, as described by Peter Beinart among others. And a third is a fairly dramatic shift in the attitude of the WASP-Jewish allied liberal intelligentsia in positions of relative power in the political elite, strikingly represented by Walt and Meerscheimer's book on the Israel lobby.

So, these are really different things. Peter Beinart is one thing, Mearsheimer and Walt is another thing, and BDS is a third thing. They are no means identical, but they're parallel, and what they have in common is, I think, that just in the time that I've been teaching the course, the narrative that I was giving has absolutely begun to take hold in various ways within each of the three.

For all three groups, the shift in Israeli domestic politics to the right, which is very striking for American liberals who used to identify with Israel not just as "the only democracy in the Middle East," but as a model of social democracy, is very important.

The older liberal idea was, “we should be learning from them” on many different levels. Everything from union power, to collective property organization, you know, all the different forms of kibbutzim and stuff like that. And serious ideological politics, wild debate, a whole range of spectrums from the far religious right to the communist party. “Wow! This is Israel! Yes!”

It’s been many, many years since anything like that has been a plausible image for the establishment types. They travel, they’re sophisticated, and little by little, they’ve observed not just the steady weakening practically to the point of disappearance of the Israeli left, but the steadily more nastily right wing tone of Israeli politics in general. From the point of view of these people—they can’t believe what they’re hearing. They identify with Golda Meir... “What?! What is—huh?!” It’s just very hard for them.

I think it’s different for each group. For the Peter Beinart phenomenon, which is younger—well, first of all you can’t underestimate everything from inter-marriage to the general social integration of educated, relatively wealthy Jews into the system, but also their own experience of Jewish success. So their paranoia about anti-Semitism is way, way down. They actually are likely to say, “we are fucking rich. Wow.” They’re no longer saying, “we are prevailing barely against all odds”...they just don’t have that attitude. They understand that that is a fantasy of their parents and grandparents. So they look around and they say, “wow, we are being asked by our parents and grandparents to associate with something that just doesn’t look that great, and they’re over there obsessed with it and basically their judgment is really skewed.” So they might come to my course and say, “I am here because I’ve been hearing about this issue all my life at the dinner table, and I’ve come to think I need a little broader perspective on it.” (And then, in the same class, there is a Lebanese-American or a Palestinian-American or a Pakistani Muslim who says, “I am a second-generation immigrant in the Bronx, that’s all my family talks about, I’m sick of it, I want a little distance.”) So you’ve got this younger generation thing which is anxious to step back and imagine they can get a more objective take, and that’s just disastrous for the basic, automatic endorsement of Israeli policy by that group.

The BDS movement is the heir to the great 60’s local activist rebellions, by students and young people in general, not just against the draft and the war in Vietnam but many many forms of large and small injustice. They have the vocation of the activist, with which I very deeply sympathize, and the idea that you can do an intervention—it’s not like you’re tired of what’s happening at the dinner table—but you can actually do something that’s small and local, which is a kind of poke at the system that causes an irritated reaction, and then people are attracted to the spectacle of the irritated reaction, and you can really get somewhere. You can exploit the vulnerabilities of the unbelievably PR-conscious, hopelessly opportunistic, corrupt American media and commerce, and to get them to actually divest—it’s astonishing! And it is very like South Africa.

I think all of these things are great. I think there’s a deep change that’s going on now on all of these levels. And it is, to some extent, mutually reinforcing. I think it’s reasonable, not wrong, for the Israeli governing elite of all political stripes and their American supporters to think that there’s a problem. The viability of the policies of the Israeli government which seem to be the most wrong is closely connected to

American support. So we in the United States—we Americans are responsible in a very deep way for most of the bad things that have happened to the Palestinians since 1948. The Palestinians are responsible for quite a few bad things that have happened to them—they have often behaved in shocking ways for me as a leftist—horrible, shocking ways. But an enormous responsibility for the bad things that have happened to them is just American, because we have basically pandered to the Israeli understanding of the Israeli situation.

We haven't dared, because of the larger set of taboos that the Israel lobby has skillfully exploited, but they could do it in part because liberal Americans have not wanted to give up their fantasy identification with Israel as a paragon of courage, progressive innovation, admirable culture, the Israel of Abba Eban, say. American willingness to turn a blind eye, or even to support very bad stuff did not come originally from any kind of identification with the Shaons or Begins, quite the contrary. But that mind set has been waning, even disappearing, for years now. And the Israeli political elite is right to try to figure out what's going on.

I think they've been misled or misled themselves into believing that the fading support in the very broad upper-middle political class/intelligentsia/university-educated/relatively-wealthy American elite of that kind is made up for by the turn in their direction of the Republican, evangelical, generally Christian right-wing, along with a slew of very conservative plutocrats, some Jewish and some not.. And it's true

That's a possible strategy: replacing a particular base of support for Israel which was this very broad elite, strongly liberal consensus with the opposite.

I guess on one level, Netanyahu, who has no possibility of allying back in the other direction, has nothing to lose. It's all that's on offer from his point of view. But I think that they're making a catastrophic mistake which will come back to bite them in the ass, very, very, very painfully. They don't seem to realize that Las Vegas casino owners...if there is a form of money which is disreputable in American culture—it is that. So it's inviting anti-Semitic stereotyping. A system of alliance between Vegas, Zionism, and Christian evangelicalism is just—how can it possibly be stable?! It's totally polarizing vis-à-vis the larger liberal elite. Evangelicals, Vegas, and Zionism. It seems like it's inviting delegitimation.

I think it's appropriate for the Israeli elite to be terrified of delegitimation. Though what they call delegitimation might also be described as the emergence of a more informed and ethically nuanced understanding of the conflict.

My understanding is that your last visit to the region was in the 90's, is that right?

I think yeah it was '92, '93, something like that.

What was that experience like for you, and do you have any plans to visit again anytime in the near future?

I'm not planning to visit in the near future, and that's not because I'm boycotting, it's because I've pretty much given up traveling for work. The only reason I would go would be to deepen my relationship with the left Jewish Israeli legal academics who I've

gotten to know over the last fifteen years. I have a very high opinion of their work and their politics and their courage and I want to do what I can to support them, and to support quite similar Arab Israeli academics I've come to know in the same period.

It is April 2014. At this moment in time, how do you see this issue moving forward?

The big puzzle to me is why the US keeps pressing for negotiations toward a two state solution, when it seems just from reading the papers that the Israeli right in power could never ever conceivably agree to a deal that would be acceptable even to the "moderate" technocratic faction in the PLO. Maybe insiders know something we don't (that's usually the case, after all). As I think I mentioned a lot of intelligent observers say something like: The terms of settlement have been known to everyone for years so the only problem is political will. That could make them think that the key is a well-crafted US intervention that will produce the political moment when the not very difficult substantive issue can finally be finished off. This seems absurd to me because it looks as though there are many interrelated questions and the answers to all of them would have to somehow be in equilibrium in order to say "everyone knows what it will look like."

I think the most likely outcome is that the internal Israeli move to the right is stable, so there will be only faux negotiations for the indefinite future. I think a disastrous outcome would be for a more centrist Israeli governing coalition to actually go for a West Bank two state solution on the most favorable possible terms. The US might pressure the PA into accepting something that would be so bad for the Palestinians that it would be unstable and we'd end up with the deal unraveled in a third intifada.

I think the US situation of erosion of support for Israel in the Establishment, among younger liberal Jews, and among young activists of all stripes on campuses will continue. At least for the time being the same for the weird alliance of Vegas, evangelicals and Zionists.

Great, thank you very much for your time.

Thank you very much for interviewing me.