

HUMR5502

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Political responses I and II: Theory

Two lectures

- Political responses I: Theory. The ‘citizenship approach’ and international human rights law. Concepts and approaches.
- Political responses II: The Case of Israel/Palestine.

Lecture 1: Two major questions

- (A) The political system: How does it deal with diversity?
- (B) What are the consequences in terms of the respect for and the protection and fulfillment of human rights?
 - Framework of analysis: A citizenship approach: What does it imply?

WHY-questions

- Why does diversity appear as a problem in some political systems, but not in other systems? Why do political systems (governments) deal with diversity in different ways? (Ghai, *Ethnicity*; Lijphart).

HOW-questions

- How can insights into these questions help us understand the nature of ethnic conflicts that we observe; both what they seem to have in common, and what distinguish them as unique historical phenomena. (Kymlicka).
- How can we on this basis be helped in suggesting strategies, based on human rights standards, for solving the kinds of problems that are caused by diversity? (Ghai, *Public Participation*; Lijphart; Butenschøn)

State strategies

- (a) **Centralisation** in order to protect the hegemony of the ruling elite.
- (b) **Centralisation** in order to impose solutions to conflicts generated by socio-cultural tensions.
- (c) **Decentralisation** in order to allow sub-national autonomy.
- (d) **Decentralisation** in order to prevent unified opposition to the central government.
- (e) Building external and internal **alliances**.

The citizenship approach

- The study of the **contractual relationship** (in the broadest possible meaning of *contractual*) between the state and the inhabitants under its jurisdiction (Butenschøn).
- Under what conditions are such relationships created, how are rights and obligations codified and perceived by the parties, what are the modalities for changing the terms, and what instruments of retribution are available to the parties in case of conflict?

The politics of citizenship

- “The politics of citizenship” in a given country is taken here to be an analytical gateway to insight into the dynamics of regime formation in that country and its raison d’etat, its *state-idea*.
- What is the state-idea of your own nation-state and other states? Give examples.

A cross-disciplinary approach

- Legal and social science approaches: Status.
- The power of citizenship: Best known by those who are denied it. The right to have rights. To the extent that citizenship rights enable a person to enjoy other rights, the right to a citizenship must be considered a *basic* human right.
- A great empirical variety hidden behind formal state sovereignty.

Nation-state and citizenship

- The idea of the nation-state. The European historical context.
- The nation-state: A universal model? Can you mention other models?

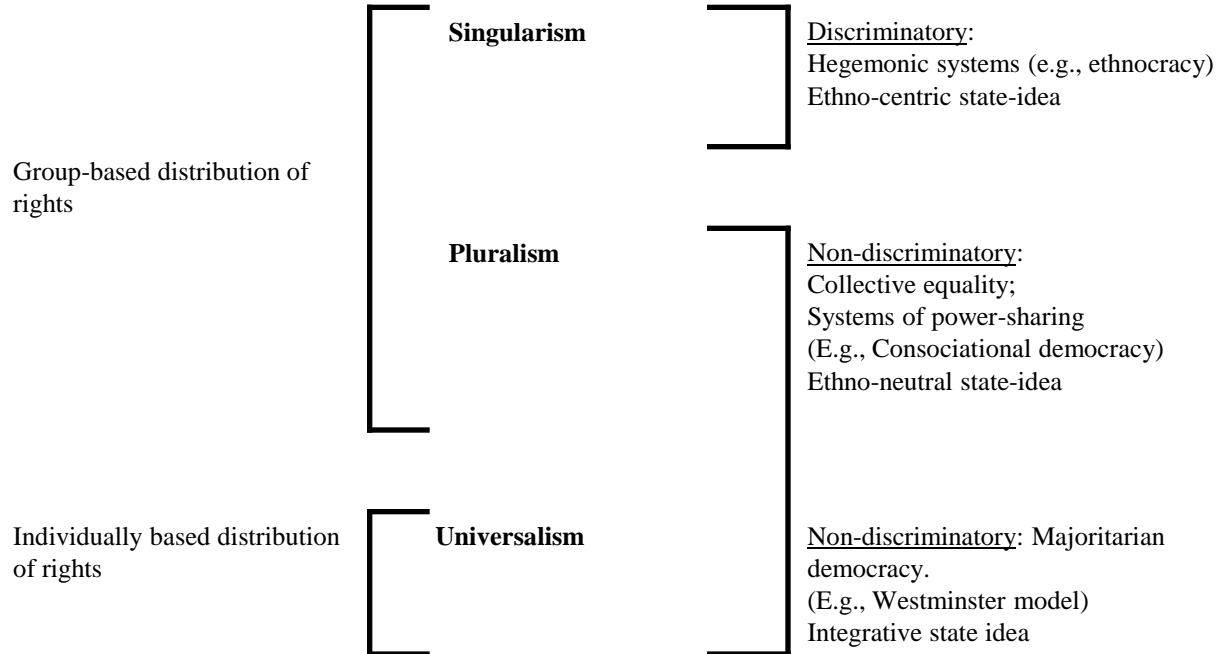
A process of gradual socio-political integration (T.H. Marshall)

- 1. Civil citizenship: Equality before the law (18th century)
- 2. Political citizenship: Political participation (19th century)
- 3. Social citizenship: Social equality (20th century)
- Modern citizenship is “inclusive and complete”.

The politics of citizenship

- Since citizenship is such an important right – it is the right to have rights in a state – and since there is no legally binding convention on citizenship, many governments seek to limit the access to citizenship through mechanisms of *inclusion* and *exclusion*.
- Discuss examples.

Principles of distribution of rights



Political Organisation of State Territories. A Typology

Territorial Principles

Constitutional Principles *The Unitary State* *The Non-Unitary State* *Separate Territories*

<i>Singularism</i>	Ethnocratic systems	Imposed/dominated self rule	Ethnic "Homelands"
<i>Pluralism</i>	Consociational systems	Cantonization, ethnic federation	Partition/separate states along ethnic lines
<i>Universalism</i>	Majoritarian systems	Regionalisation, functional federation	Partition/separate states along functional lines

The idea of Autonomy

- Autonomy as federalism and other territorial arrangements (Yash Ghai)
- Ethnic autonomy
 - The problem of asymmetry
 - The dilemma
 - Consociational democracy

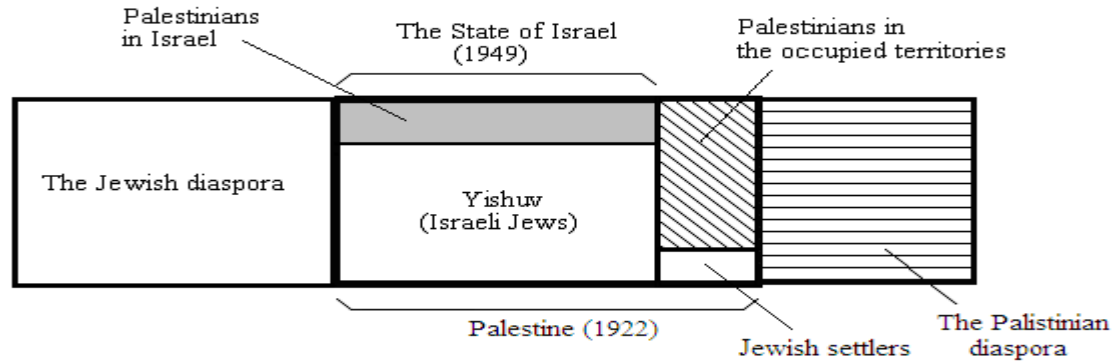
Discussion

- The politics of citizenship: Cases
- Choose a country, identify its political system in terms of the model, discuss human rights implications and prospects for alternative developments/outcomes.

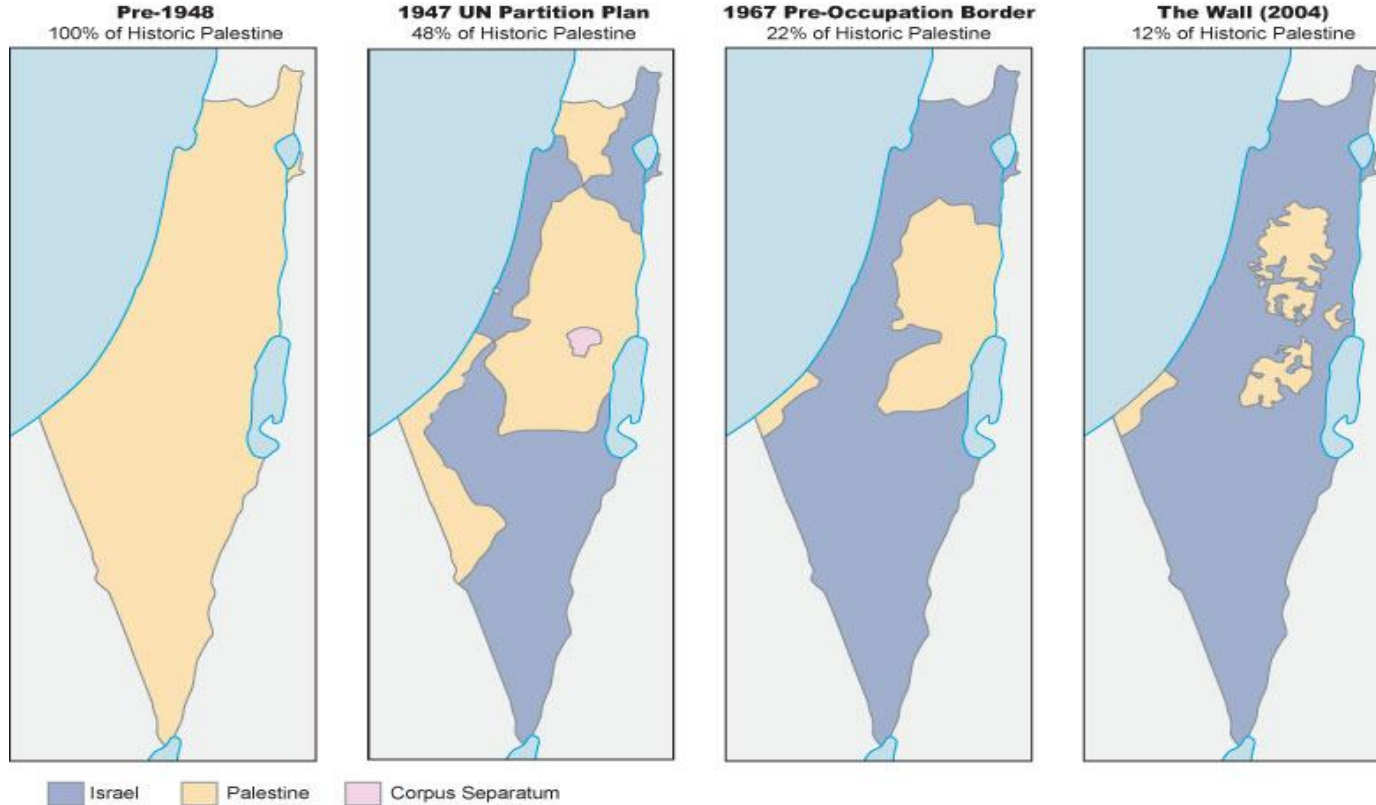
Lecture 2: Israel/Palestine as a case

- Let's start with a figure that can represent some major dimensions relevant to my lectures. (Next slide).

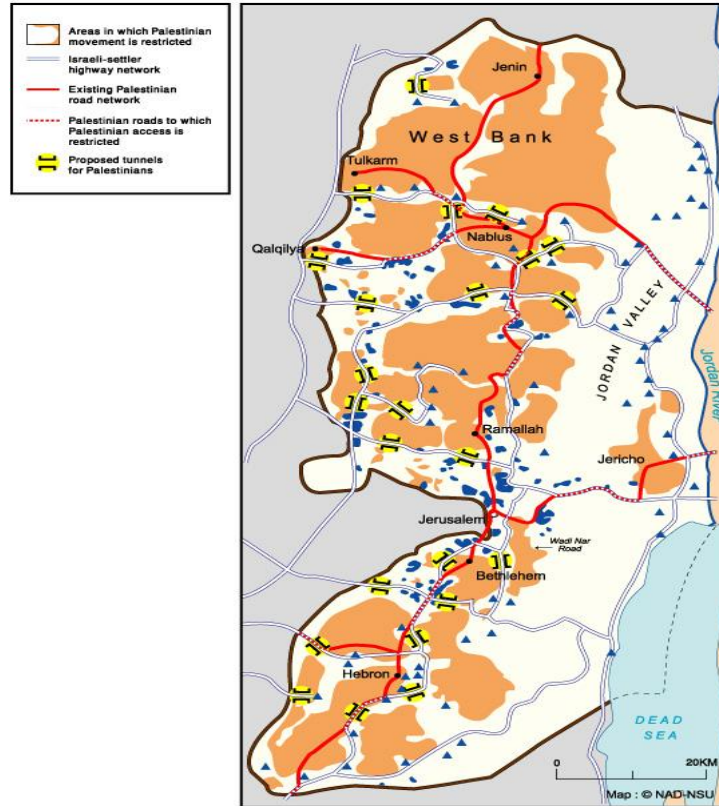
Alternative demographic foundations for claims of self-determination in Israel/Palestine



Destroying the Two-State Solution

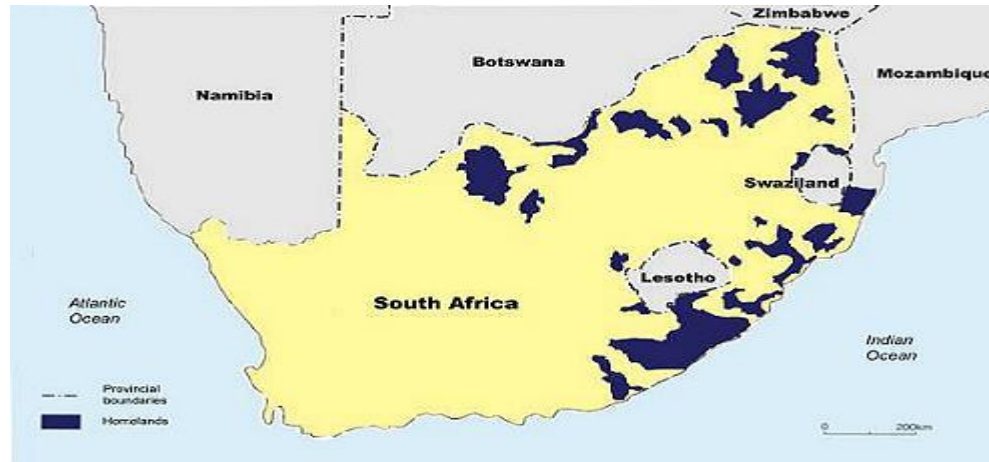


ISRAEL'S ROAD NETWORK FOR SETTLEMENT CONTIGUITY
JULY 2005



A comparison

- South Africa under Apartheid. Homelands



Palestine: Some aspects of international law

- The right to self-determination
 - UDHR, Art 21: "the will of the people shall be the basis of the authority of government."
 - An individual and collective right to "freely determine . . . political status and [to] freely pursue . . . economic, social and cultural development." (ICCPR and ICESCR, common Art 1).
 - A norm of *jus cogens* (the highest rules of international law) and *erga omnes* ("flowing to all": the international community is under a mandatory duty to respect it in all circumstances in their relations with each other).
 - Self-determination and "the politics of avoidance". An arena for intense politization (national liberation vs. state integrity, freedom struggle vs. terrorism, etc).

Palestine and de-colonialisation

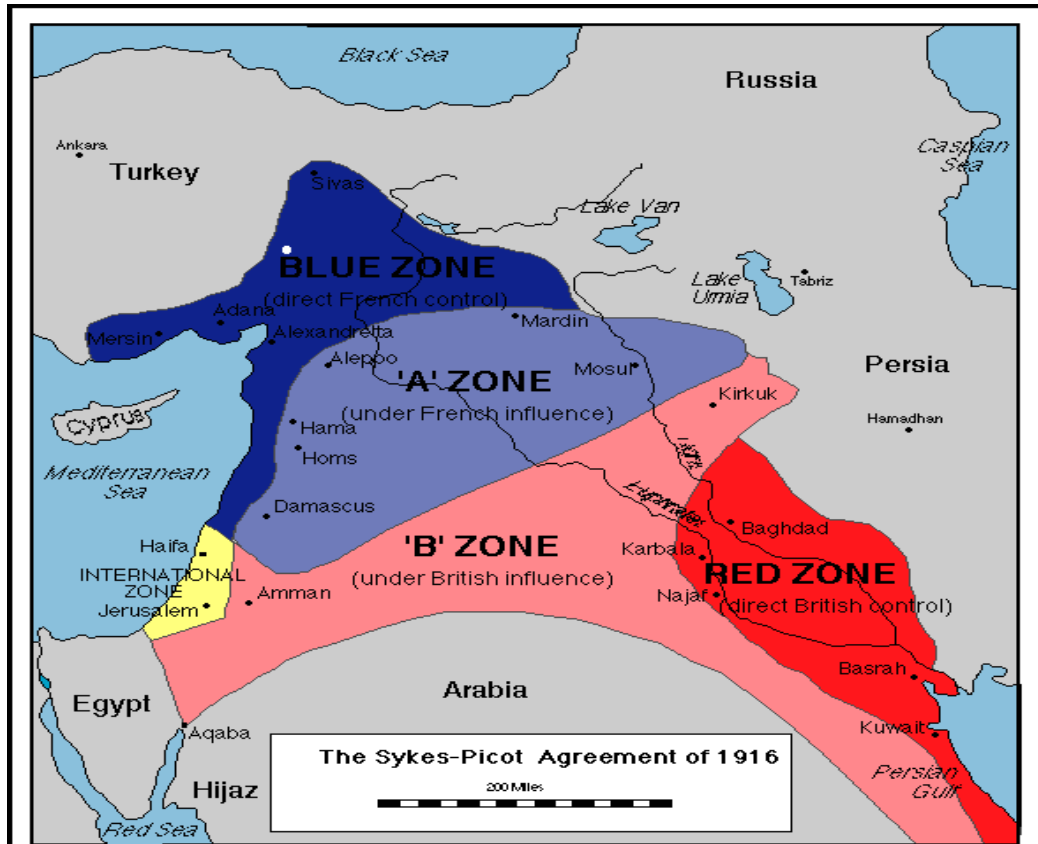
- «Perfect» and «imperfekt» de-colonisation.
 - The Declaration on the Granting of Independence to Colonial Countries and Peoples (GA Res 1514 XV, 1960).
 - “Perfect” de-col.: Full and orderly transition from the colonial power to a new independent state.
 - “Imperfect” de-col.: *de jure* but not *de facto*; leaving the colonial territory with intractable conflicts.
 - Palestine as a case of imperfect de-colonialisation.

Palestine and the history of imperfect de-colonisation

- Pre 1948: Mandate system; Balfour Declaration.
- 1947 Partition Plan: Two-state solution (GA Res 181).
- 1948: Right of Return (GA Res 194).
- 1967 and The Green Line (SC Res 242).
- 1993/1995: Oslo Accords.
- 2002: SC Res 1397 («a vision of two states»).
- 2004 ICJ Advisory Opinion on The Wall.
- 2011-2012: The quest for UN recognition

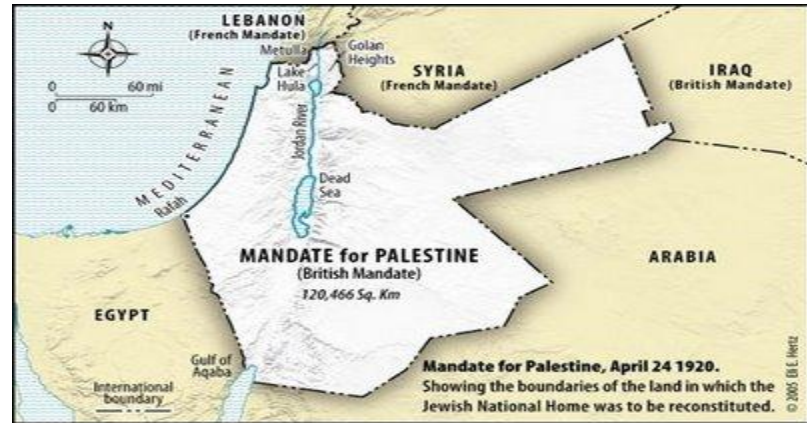
Pre-1948: Sykes-Picot 1916

- Blue: French
- Red: British
- Yellow: Joint



Balfour Declaration 1917

- British occupation 1917-1918
- League of Nations mandate 1920
- Unsolved:
 - What is a ‘National Home’?
 - Borders?
 - Status and rights of indigenous people?



The Partition Plan 1947 and post-war situation

- Two states within an economic union.
- 1948-49: Cease fire agreements, not peace agreements. The cease fire lines known today as 'The Green Lines' or '1967 borders'.
- Resolution 194: The Right of Return.

1967 and the principle of 'Peace for territory' (SC Res 242)

- SC Res 242: «the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security”
 - Withdrawal of Israeli armed forces from territories occupied in the recent conflict;
 - respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;
 - For achieving a just settlement of the refugee problem.

The Oslo Accords 1993/1995

- Oslo I: A declaration of principles: Conflict to be solved by peaceful means; The establishment of a Palestinian Authority in parts of the territory; Political institutions and elections; Permanent status questions to be negotiated within three years.
- Oslo II: Division of OPT in A, B, and C status.

The ICJ Advisory Opinion 2004

- Defining all post 1967 settlements as illegal; The route of the wall in OPT is illegal.
- Until now, no or little practical importance because Palestine is not a state. The admission of Palestine as a «non-member observer state» in the UN might change this.

The Palestinian 2011-bid for recognition of statehood

- Montevideo Convention 1933
- PA letters and application
- UN Security Council rules
- GA rules
- Positions and alliances/negotiations
- Why did it fail?

Discussion: Prospects

- If not a two-state solution, what then?
- Impacts of the Arab Spring?