THE MISR REVIEW

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Introduction to this Issue

In this issue, we emulate the model we initiated in *The MISR Review*, no. 3. The bulk of the issue is a set of three lectures on a single theme; each lecture is followed by a set of comments, one or two.

The lectures were organized around a single theme, *Palestine as a Question*, given by Raef Zreik from Tel Aviv University. The three lectures were titled: 1. Formation; 2. Justice; and 3. Decolonisation. We saw the lecture series as a way of introducing a debate on two critical questions: Israel/Palestine, and decolonisation.

Each lecture was commented on by a set of discussants, and then opened up to question from the wider audience. After the lecture series, both Professor Zreik and his discussants had a chance to revise their contributions. We are pleased to publish the results here.

Following the series of lectures are two stand-alone contributions on different subjects. Mohamed Amer-Meziane of Columbia University writes on 'The Multiple Centralities of Africa: Geographies of Race, North African Perspectives and the Idea of a Decolonisation of Space'. Mbasughun Ukpi contributes an article on 'The Unconsciousness of Feminist Writing in Okot p'Bitek's *Songs of Lawino*, *Ocol* and *Malaya*'.

As is our practice, contributors to the issue include scholars from different institutions as well as doctoral students from MISR.

We invite short written responses (no more than 1,000 words) to any of the contents in this issue.

Mahmood Mamdani
August, 2020

Contributors to this Issue

Raef Zreik received his LLB from Hebrew University, LLM from Columbia University, and SJD from Harvard Law School. He is a senior lecturer of jurisprudence at Ono Academic College, academic co-director of Minerva Humanities Center at Tel Aviv University, and is a senior fellow at the Van Leer Institute in Jerusalem.

Lisa Damon is a PhD fellow at MISR, translator and teacher. Her dissertation is on rethinking Barundi migration to Buganda.

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Noura Erakat is a human rights attorney and assistant professor at Rutgers University in the Department of Africana Studies and the Program of Criminal Justice. She is the author of *Justice for Some: Law and the Question of Palestine* (Stanford University Press, 2019).

Yosef Sintayehu Jemberie is a fourth-year PhD student at MISR, specializing in political, cultural, and literary studies. His research interests are theories of sovereignty, biopolitics and the philosophy of humor.

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Mohamed Amer Meziane is a post-doctoral research fellow at the Institute for Religion, Culture and Public Life with an affiliation to the Institute of African Studies at Columbia University, and is also a lecturer in the Department of Religion. He holds a PhD in philosophy from Paris 1 Panthéon-Sorbonne University. His current publications and research projects focus on the philosophical aspects of the anthropology of Islam, on fossil empires, and decolonization.

Palestine as a Question: Formation

Raef Zreik

This paper aims to trace the way the Palestinian question has evolved through the last seven decades. It deploys the conceptual framework of settler colonialism; yet, the paper argues that one should deploy this frame in a very dynamic way, with fine-tuning to capture the uniqueness of each settler project. The paper offers a relational frame as well, which reads the evolution of the question of Palestine and the history of the Zionist settlement of Palestine as mutually constitutive. It argues that the question of Palestine is moving all the time toward certain 'internalisation'. It was framed as a question of refugees seeking to liberate Palestine while acting from outside the country, after which the centre moved to the Palestinian Occupied territories, demanding statehood and self-determination. Finally now—mainly after the recent Nationality Law and plans for annexation—it is entering its third phase in which Palestine is becoming one geo-political unit.

In the pages that follow I want to offer a specific reading of how the question of Palestine has evolved. This is not a history of the conflict writ large, but rather an attempt to set out what seems to me a certain trajectory, a narrative among many narratives of 'the becoming' of the question of Palestine.

The paper unfolds in the following manner: First, in Section Two I set out my conceptual tools and the theoretical points of departure that guide my analysis, adopting the frame of settler colonialism while remaining aware of the ongoing need for fine tuning of this frame. In Section Three I deploy the Zionist story. This

is not the Zionist narrative, rather it is my narrative of the way I see Zionism unfolding. In Section Four I tell the Palestinians' story, or the way I see the evolution of the Palestinian question. In the fifth section I bring these two trajectories into conversation to see whether they can provide an overarching narrative. I bring these two narratives together using Israel as a crossroads where the Israeli story and the Palestinian story can meet and reveal some tentative logic that guides them. In doing so I want to suggest a frame that can tell both stories and offer us a lens through which to conceptualise the current reality in Palestine-Israel. While the nature of the Palestinian question is changing, it will continue to pose itself as a serious problem for the future, though it may do so with different framing.

One very common conceptual frame that I adopt in this paper is the settler colonial frame. A number of researchers have deployed this frame, including both Palestinians and Israelis.[1] I deploy 'settler colonial' as a descriptive category that is able to capture the nature, the tools, and the evolution of the settler project in Palestine. The settler colonial frame describes the ways in which a

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1   The list of authors who use this framework is quite long and includes Palestinian, Israeli, and international scholars. The following is an incomplete list; it is important only to note the pioneering work of Fayez Sayegh in this regard from early 1960. See Fayez A. Sayegh, *Zionist Colonialism in Palestine* (Beirut: Center for Palestine Studies, 1965), reprinted in *Settler Colonial Studies* 2, no. 1 (2012): 206-225; Jamil Hilal, 'Imperialism and Settler Colonialism in West Asia: Israel and the Arab-Palestinian Struggle', *Utafiti: Journal of Arts and Social Sciences* 1, no. 1 (1976): 51-69; Joseph Massad, *The Persistence of the Palestinian Question: Essays on Zionism and the Palestinians* (London: Routledge, 2006). Nadim Rouhana and Areej Sabbagh, 'Settler Colonial Citizenship: Conceptualizing the Relationship Between Israel and its Palestinian Citizens', *Settler Colonial Studies* 5, no. 3 (2014): 205-225; Elia Zureik, *Palestinians in Israel: A Study in Internal Colonialism* (London: Routledge, 1979); Maxim Rodinson, *Israel: A Settler Colonial State?* (New York: Pathfinder, 1973); Mahmood Mamdani, 'Settler Colonialism: Then and Now', *Critical Inquiry* 41, no. 3 (2015): 596-614; Lorenzo Veracini, *Israel and Settler Society* (London: Pluto Press, 2006); Patrick Wolfe, 'Purchase by Other Means: The Palestinian Nakba and Zionism's Conquest of Economics', *Settler Colonial Studies* 2, no. 1 (2012): 133-171; Gershon Shafir, *Land, Labor and the Origins of the Israeli-Palestinian Conflict, 1882-1914* (Cambridge: Cambridge University Press, 1989); Baruch Kimmerling, *Zionism and Territory: The Socio-Territorial Dimensions of Zionist Politics* (Berkeley: University of California Press, 1983); Oren Yiftachel, 'Ethnocracy: The Politics of Judaizing Israel/Palestine', *Constellations* 6, no. 3 (2002): 364-390.

group of people moves from one country (old) to another country (new), settles in the new country that is already inhabited, and establishes its own institutions, thus refusing to accept the political system of the new country and claiming their own authority to rule. Settler colonialists are not migrants, for migrants accept the law of the new country, rather they bring their *nomos* with them.[2] In doing so, the settlers take over the land, appropriate it, settle it, and continue expanding their control of the space. The tools deployed in this process may vary from contract (i.e. purchase), to use of violence, the spread of disease, ethnic cleansing, expulsion and other practices geared to the elimination of the native.[3]

As such, the settler colonial paradigm as I deploy it here is capable of bracketing the intention, wills, and justification that the settlers present to themselves and the world in order to legitimise their project. Settler colonialists may be driven by greed or the search for wealth, they may be motivated by religious reasons,[4] or they may be fleeing danger or even persecution in their home countries;[5] they might, indeed, be driven by a universal civilising mission. In this regard I treat settler colonialism as 'structure'[6] and as a mode of expansion in space that aims to alter the new coun-

try's demography and its *nomos*, very much in the same way that one might think of capitalism as representing a certain mode of production that comes with certain labour relations, market rules, and accumulation of wealth, regardless of the intention of the actors. In this regard, what I am interested in is not the intention of Zionist leaders, but what Zionism requires as a movement in order to fulfil its targets. It might be the case (though I think otherwise) that Zionist leaders did not intend to expel Palestinians in 1948, but they in fact did.[7] It may be the case that they did not intend to prevent their return (though I suspect this), but they did. It might be the case that they did not intend to occupy the rest of Palestine, Golan Heights and Sinai in the 1967 (though I think otherwise), but they did. Finally, it might be the case that they did not intend to keep the territories and to settle them, but as a matter of fact they did keep them and expanded the settlements to the point of having around 700,000 settlers by the present day.[8]

It is no wonder that many leading Israeli Zionist scholars, such as Lissak, Gavison, Penslar, Aaronson, Friling, and Gelber have objected to the settler colonial paradigm.[9] Some of these objections

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2   On the distinction between settler and immigrant, see Mahmood Mamdani, 'When Does a Settler Become a Native? Reflections on the Colonial Roots of Citizenship in Equatorial and South Africa' (inaugural lecture presented at the Center for African Studies, University of Cape Town, 13 May 1998), https://citizenshiprightsafrica.org/wp-content/uploads/1998/05/mamdani-1998-inaugural-lecture.pdf. For the deployment of the distinction in the case of Palestine see my paper holding the same title: Raef Zreik, 'When Does a Settler Become Native? (With Apologies to Mamdani)', *Constellations* 23, no. 3 (2016): 351-364,

3   See the seminal work by Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native', *Journal of Genocide Research* 8, no. 4 (2006): 387-409.

4   Though the case of Zionism is a strong example of a religious myth of return to promised land, it is not the only one of its kind. See Donald Akenson, *God's People: Covenant and Land in South Africa, Israel and Ulster* (Ithaca: Cornell University Press, 1992).

5   I will say more on the issue of colonialism of refugees in my third lecture; it is worth noting, however, that many immigrants/settlers were persecuted in their home country. See Joanna Brooks, *Why We Left: Untold Stories and Songs of America's First Immigrants* (Minneapolis: University of Minnesota Press, 2013). Thanks to Lorenzo Veracini, who brought this book to my attention.

6   Wolfe, 'Settler Colonialism', 388.

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7   Walid Khalidi, ed. *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Beirut: Institute of Palestine Studies, 2006); Ilan Pappe, *The Ethnic Cleansing of Palestine* (London: One World Publications, 2006); Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge: Cambridge University Press, 2004).

8   On the numbers of settlers in the West Bank, see the Peace Now reports that are available online: https://peacenow.org.il/en/settlement-construction-report-2019 (accessed 8 April 2020).

9   Moshe Lissak, 'Critical Sociology and "Establishment" Sociology in the Israeli Academic Community: Ideological Struggle or Academic Discourse?' *Israeli Studies* 1, no. 1 (1996): 247-294; Ruth Gavison, 'The Jews Right to Statehood: A Defense', *Azure* (Summer 2003): 70, http://azure.org.il/download/magazine/1322AZ15_Gavison.pdf; Derek Penslar, *Israel in History: The Jewish State in Historical Perspective* (London: Routledge, 2007), 93-94; Ran Aronson, 'Settlement in Eretz Israel: A Colonialist Enterprise? Critical Scholarship and Historical Geography', *Israeli Studies* 1, no. 2 (1996): 217; Tuvia Friling 'What Do Those Who Claim Zionism is Colonialism Overlook?' in *Handbook of Israel: The Major Debates*, ed. Eliezer Ben-Rafael, Julius H. Schoeps, Yitzhak Sternberg and Olaf Glöckner (Berlin: Walter de Gruyter GmbH, 2016): 848-872; Yoav Gelber, 'Is Zionism Colonialism? Introductory Remarks' (paper delivered on 27 April 2015 in Prague, Czech Republic), https://www.academia.edu/40488008/Yoav_Gelber_Is_Zionism_Colonialism_Introductory_Remarks, accessed 20 April 2020.

are based on the rejection of the negative connotations that come with the word 'colonialism' following the wave of decolonisation in 1960-1970, which turned the word into a reference for a specific evil.[10] The claim here is that the deployment of the paradigm in itself is political and aims to achieve the goal of de-legitimating Israel. Some of these scholars focus on the lack of a mother country supporting Zionism, claiming that while all other settler projects were backed up by a mother country, Zionism did not have one.[11] It is also argued that Zionism did not take over the land by force or violence, but simply purchased it with money.[12] Others focus on the fact that in other cases of settler colonialism, the movement of capital was from the colony to the mother country, so that the colony was considered as a source of wealth, while the case of Palestine represents the opposite, where the flow of capital went in the other direction—from the 'mother country', or world Jewry, to the Yishuv, representing a logic diametrically opposed to classical colonialism. Here, the flow of capital, the pouring of money into the colony, increased the wealth of the colony itself.[13] Some scholars focus on the fact that Palestine is not a new country, but is rather the ancient homeland of the Jewish people, and that the Jews were simply returning to their ancient homeland. Others stress that Zionism and the settlement project it initiated aimed to save the Jews from the rise of anti-Semitism and increasing threats in Europe. Thus, Zionism originated out of necessity, not from a desire to colonise.[14] A similar move involves the contention that one should read Zionism as a national movement, and the project as one of self-determination, and not as a settler colonial one.[15]

I will not deal here with all of these arguments that aim to show that Zionism is not a settler colonial movement. I have addressed some of these arguments elsewhere,[16] and they have also been discussed widely in the literature.[17] For my purposes, the settler colonial frame is valid because it enables us make sense, to describe, and at times even to predict the evolution of the Israeli state and society better than any other paradigm. It allows us to view the expanding nature of the project, the centrality of the settlement project, the constitutional structure,[18] the nature of borders as open frontiers,[19] the hierarchy and social stratification of different social groups within the Israeli society,[20] the project's expansive nature,[21] and its revisionist nature that invites radical-

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10 See Friling, 'What Do Those Who Claim' and Aaronson, 'Settlement in Eretz Israel' in particular.

11 Friling, 'What Do Those Who Claim', 858. On the issue of mother country, see Ilan Pappe, 'Zionism as Colonialism: A Comparative View of Diluted Colonialism in Asia and Africa', *South Atlantic Quarterly* 107, no. 4 (2008): 611.

12 Friling, 'What Do Those Who Claim', 862.

13 See Lissak 'Critical Sociology'. For a reply to Lissak, see Yoav Peled, 'Delegitimation of Israel or Socio-Historical Analysis? The Debate over Zionism as a Colonial Settler Movement', in *Jews and the Left*, ed. Jack Jacobs (Cambridge: Cambridge University Press, 2017), 103.

14 The theme of necessity is dominant in the writings of Chaim Gans. But Gans does not establish the right of self-determination for the Jews in Palestine only on necessity, but also as a general right to self-determination that aims to preserve and cultivate a people's culture. Yet the combination of these two

arguments does not guide as to the locus where the right should be practiced or implemented. When Gans argues that Eretz Israel is the answer, he bases this on the fact that the land of Israel played a major spiritual and cultural role in the life of the Jewish people, not on the fact that Jews own Palestine, or based on ideas of first occupancy. See Chaim Gans, *A Just Zionism* (Oxford: Oxford University Press, 2008), 172.

15 This is an argument that all of the above authors share. What is not clear is why these two cannot take place at the same time: a settler colonial and national movement that is able to accomplish its self-determination at the expense of other's people self-determination.

16 Zreik, 'When Does the Settler'.

17 See Peled, 'Delegitimation'. For an answer regarding the claims to the exceptionalism of Zionism, see Lorenzo Veracini, 'Israel-Palestine through a Settler-Colonial Studies Lens', *Interventions* 21, no. 4 (2019): 568-581.

18 Mazen Masri, 'Colonial Imprints: Settler Colonialism as a Fundamental Feature of Israeli Constitutional Law', *International Journal of Law in Context* 13, no. 3 (2016): 388-407.

19 Yiftachel, 'Ethnocracy'.

20 Yoav Peled, 'Citizenship and Stratification in an Ethnic Democracy', *Ethnic and Racial Studies* 21, no. 3 (1998): 408-427. The settler aspect was even more clear in Alexandre Kedar and Oren Yiftachel, 'Land Regime and Social Relations in Israel', in *Swiss Human Rights Book*, ed. Hernando de Soto and Francis Cheneval, vol. 1, *Realizing Property Rights* (Zürich: Ruffer & Rub, 2006), 127. In this paper they develop the argument that Israel has three social groups who have different status: First, the initial Ashkenazi immigrants; second, the Mizrachi immigrants who came later; third, the indigenous Palestinian citizens. Each social status derives its location from its place in the settlement project.

21 See Fayez Sayegh, 'Zionist Colonialism'.

ism all the time.[22] This, in my view, is the best reason for adopting the paradigm.

Still, I do take the reservations of many Zionists seriously. Not in order to alter the paradigm, rather to allow us to fine tune it, allowing different variations and emphases. Settler colonialism is a paradigm that must always be retuned and developed to capture many different cases.[23] This means that we have to think of the paradigm in terms that allow its adaptability to the varying situations to which it pertains. Consequently, I believe that many of the arguments raised by Zionists should be dealt with at the level of moral justification and as a debate about a possible just solution and ways to end colonisation; but these arguments do not a provide a reason to alter the paradigm.

All of this being said, I would still suggest several comments or caveats in the deployment of the paradigm. First, while some of the arguments made by Zionists are not relevant as descriptive sociology, some might become relevant when we contemplate a future decolonisation of Palestine or other solutions, but this I will leave to my third and final lecture.

Furthermore, while we as Palestinians who are part of a political struggle that aims to indict the Zionist project place great emphasis on labelling Zionism as a colonial, and not national, movement, we must be aware of two things: The first is that while colonialism clearly has a bad reputation (for good and obvious reasons), still there is no reason to treat nationalism as positive, noble, and innocent movement. Many of the disasters, massacres, and genocides in the last century were committed by nationalist movements, from Rwanda to Yugoslavia, not to mention the atrocities of Nazism. The ongoing attempt by us Palestinians to label Zionism

as colonialism and the ongoing attempt by Zionists to label Zionism as a national movement is somewhat overstated. The moral condemnation of Zionism does not emanate simply from labelling it a colonial movement, and the exoneration of Zionism does not simply appear as a logical necessity of labelling it as a national movement. The debate on the morality of Zionism should be won by reference to its practices, actions, and its politics of expansion, dispossession, and its destruction of the Palestinian society, regardless of whether it is a national or colonial movement. Accordingly, I do not see why the two paradigms cannot be deployed to help us understand different aspects of the same movement. In fact, I do think that understanding Zionism as having more than one organising logic allows us to understand its trajectory much better than a single unified conceptual frame.

A second comment relates to the characterisation of Zionism as a settler colonial movement compared to other current characterisations of the situation in Palestine now, as one of Apartheid, occupation or ethnic democracy, or a mix of both. Here, I suggest that the settler colonial frame is underdetermined in its nature, so as not to yield from within itself a specific characterisation of the current political institutional constellation. America and Australia represent one mode of settler colonialism, Algeria represents another, Northern Ireland and South Africa represent a third option. While the desire for separation between settlers and natives exist in all of these and racial discourse in its different variations is dominant, they still ended up in different institutional and constitutional constellations. Settler colonialism and Apartheid for example, are two different categories of analysis that unfold along different levels of abstraction and are deployed to achieve different conceptual goals.[24] Thus, while deploying the frame of settler colonialism it is important to avoid any exaggeration as to the work

22 See Hannah Arendt, 'Zionism Reconsidered', in *The Jewish Writings* (New York: Schocken, 2007), 346.

23 In this regard I see some value in the remarks made by Ran Greenstein as how far one can deploy the paradigm and what conclusion to draw from that deployment. See Ran Greenstein, 'Settler Colonialism: A Useful Category of Historical Analysis', *Jadaliyya* 6 (June 2016), https://www.jadaliyya.com/Details/33333. I, of course, think that settler colonialism is a useful category, but one must use it with caution, and with fine tuning.

24 For more on this issue of characterisation, see Raef Zreik and Azar Dakwar, 'What is in the Apartheid Analogy? Israel-Palestine Refracted', *Theory and Event*, forthcoming. See also Honaida Ghanem, 'Not Exactly Apartheid', in *Israel and Palestine: Alternative Perspectives on Statehood*, ed. John Ehrenberg and Yoav Peled (London: Rowman and Littlefield, 2016): 96-114.

that the settler colonial paradigm can offer us. This paradigm is just one among others. It does not exclude class analysis, global politics, or the fact that there is also a national conflict, at times also fuelled by religious discourse.

The third comment relates to the way we can move from the past to the future and from description to solutions. In Australia and America, the settlers almost managed to eliminate the natives, and after their sweeping victory they allowed themselves some limited recognition of native rights. In Algeria, on the other hand, the settlers' project was defeated completely, while the case of South Africa and Northern Ireland tells a different story, where neither side in the conflict can claim a clear victory. Thus, from the mere characterisation of Zionism as a settler colonial project, no concrete solution could be derived as a logical conclusion.

The fourth comment requires that we deploy the settler colonial frame in a relational way. By this, I mean refraining from a static reading that situates perspectives in isolation. What I mean by a relational reading is one that reads them in context, in two senses. In the first sense, one should read Zionism and the Palestinian resistance to it not as separate histories and entities, but rather as two movements that influence and constitute each other all the time, exerting mutual and reciprocal influence. There is no way to tell the story of the Zionist settlement without the story of the Palestinian resistance to it, and vice versa. Neither Zionism nor Palestinian resistance to it are the simple unfolding of an abstract idea, rather each is the product of its concrete historical encounter with the other.[25]

It is relational in another sense in that it avoids the binary relations between the two groups as exhausting the relationship. There have always been third parties involved in the relation: Britain, France, the United States, the Soviet Union, and the Arab world, and their roles deflate the myth of a binary conflict engag-

ing only two parties. Zionism is not merely a national movement, but it is part of a historical constellation of relations between West and East, empire and periphery,[26] and the Palestinians are part of the Arab and Muslim world as well. It is based on these conceptual assumptions that I will try to offer a narrative of the way we reached the current point in time, to contemplate the nature and uniqueness of this moment and to suggest a potential trajectory for the future.

The paper proceeds as follows: I tell the story of Zionism over the last century and after this, the story of the Palestinian resistance and national movement in tandem, the Oslo accords and the establishment of the PA (Palestinian Authority); the split between Gaza and the West Bank culminating in the current reality where the Palestinian question is under serious threat of fragmentation and dissolution, and in dire need of re-articulation. This is not a history of the conflict, rather a very reductive reading with a particular narrative, which, I hope, still captures something of the truth.

Zionism Ideology and Practice: Story of Expansion

I do not intend to offer a full historical record of the Palestine question since the beginning of Jewish and Zionist settlement. Rather, I will attempt to present a picture that allows us to evaluate the current moment in Palestine, how we got here and how we might be able to move from here. The narrative regarding Zionism that I want to adopt is of a settler project of ongoing expansion and appropriation, one which, like many other settler projects, is still far from being able to solve its internal contradictions and to bring its endless movement into a solid institutional structure. The desire to expand and settle on the one hand, coalescing with the desire to exclude the Palestinians on the other, has created and continues

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25   For such a methodology, see Marcelo Svirksy and Ronnen Ben-Arie, *From Shared Life to Co-Resistance in Palestine* (London: Rowan and Littlefield, 2018); Hillel Cohen, *Year Zero of the Arab Israeli Conflict* (Waltham: Brandeis University Press, 2013).

26   Anne De Jong, 'Zionist Hegemony, the Settler-Colonial Conquest of Palestine and the Problem with Conflict: A Critical Genealogy of the National Binary Conflict', *Journal of Settler Colonial Studies* 8, no. 3 (3 May 2017): 364-383. This has also been the dominant view for some time among Palestinian circles and intellectuals. See references in note 1.

to create internal tensions within the project that have reached one of their culminating points in the Basic Law: Israel The Nation State of the Jewish People, which was passed in 2018.[27]

The Zionist movement and its leadership had entertained the idea of a Jewish state in Palestine early on, but the language expressing this goal was vague. At times the language of a Jewish national home was deployed, and at other times the terminology of a commonwealth. Yet the goal of establishing a Jewish state with a Jewish majority became the dominant official aim and guiding principle of the Zionist movement at least as early as the 1940s, following the adoption of the Biltmore Program in May 1942, which stated this goal openly and officially. Although some might have contemplated the idea of achieving the Zionist goals by peaceful means, by the time of the Biltmore conference it had become clear for most of the leadership that this aim would be achieved through the use of force.[28]

Given that the aim was a Jewish state with a Jewish majority, the expulsion of the Palestinians in the events of 1948 was almost natural, though perhaps not inevitable. Though there is some discussion as to whether the expulsion was planned beforehand, as Ilan Pappe and Walid Khalidi have long argued,[29] or whether it was not fully planned but reflected the spirit of the time that guid-

ed the Zionist forces, as Morris argues,[30] or whether it was just random expulsion as happens in war, the fact of the matter is that this expulsion was welcomed by, desirable to, and achieved several clear advantages for Zionism and the newly born state. The dream of achieving a state with a Jewish majority had been finally achieved. At least 700,000 Palestinians found themselves as refugees in the neighbouring Arab countries. The newly born state passed several laws during the early 1950s to transfer the ownership in the lands left by these refugees to Jewish and state hands.[31] Thus, the Palestinian question was born first of all as a question of a lost homeland and as a question of refugees.[32]

The expulsion managed to solve for Israel a problem of demography that had existed before the war. The expulsion also saved the newly born state the legal and institutional effort of establishing a clear Apartheid regime within Israel itself.[33] Had the Palestinians remained within the borders of the Jewish state, they would have constituted about 50 percent of its population. Such a state of affairs would have presented a difficult dilemma. Granting full and equal rights to the Palestinians would mean that the state could not be Jewish, though it would be fully democratic. In the other option, denying rights to the Palestinian citizens, constituting them as second class citizens, or institutionalising an overt Apartheid regime would mean that the state might preserve its Jewish nature and hegemony, but would clearly not be democrat-

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27 https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf (Accessed 8 April 2020). For some analysis of the law and its background, see the special issue of *Holy Land and Palestinian Studies* 8, no. 2 (2019) dedicated to the discussion of the law.

28 The Palestinian narrative affirms that the use of force was there from the start. See Nur Masalha, *The Expulsion of the Palestinians: The Concept of Transfer in Zionist Thought* (Washington DC: Institute for Palestine Studies, 1992). But for many Zionists, the use of force was not part and parcel of the Zionist plan, rather they had to resort to violence over the years, mainly after the Palestinian revolt in 1936, when Zionist leaders came to the conclusion that the use of force is inevitable. For such a thesis see Anita Shapira, *Land and Power: The Zionist Resort to Force 1882-1948* (Stanford: Stanford University Press, 1999). In any case, the Biltmore plan made it clear that force was inevitable and sent such a signal to the Palestinians. See Itzhak Galnoor, *The Partition of Palestine: Decision Crossroads in The Zionist Movement* (Albany: State University New York Press, 2013), 278.

29 Pappe, *Ethnic Cleansing of Palestine*; Walid Khalidi, 'Plan Dalet. Master Plan for the Conquest of Palestine', *Journal of Palestine Studies* 18, no. 1 (1988): 4-33.

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30 Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge: Cambridge University Press, 2004), 588.

31 See Sandy Kedar's description of their ways and legal methods deployed to transfer Arab lands to Jewish hands. Alexandre (Sandy) Kedar, 'The Legal Transformation of Ethnic Geography: Israel and the Palestinian Landholder 1948-1967', *Journal of International Law and Politics* 33, no. 4 (2001): 923-1000.

32 On the centrality of the question of refugees, see Elia Zureik, *Palestinian Refugees and the Peace Process* (Washington DC: Institute for Palestine Studies, 1996). For the attitude of Israeli authorities toward the issue of refugees, see Jacob Tovy, *Israel and the Refugees Issue: The Formulation of a Policy 1948-1956* (London; New York: Routledge, 2014).

33 On expulsion as the solution to the problem of Apartheid and the way Israel saved itself the need for an explicit Apartheid regime, see my paper: 'Palestine, Apartheid the Rights Discourse', in *Journal of Palestine Studies* 34, no. 1 (2004): 68-80.

ic. The insistence of Ben Gurion on having a state that was both democratic and Jewish went hand in hand with the plan to expel Palestinians. Their physical 'disappearance' from the land obviated the effort and the need to discriminate against them in the legal text within an Apartheid state. The few political rights that were granted to the Palestinian citizens of Israel were in fact the by-product of the expulsion of their brothers: now that the Palestinians were a minority, Israel could tolerate granting them minimal political rights.

The two decades separating the 1948 war and the 1967 war seem in retrospect to have been merely a ceasefire—one in which the firing had not really fully ceased. Many forget that in these decades, Israel took it upon itself to initiate a war against Egypt in 1956 in collaboration with the British, but mainly with France, which stepped in for a short time to replace the British influence as the supporting country. The war of 1956 reflects the deep connections and the global role that the state of Israel agreed to play against the Arab nations. No doubt the hostile environment surrounding Israel left it in dire need of external support militarily and financially as well, a dependence that continues until today.[34]

The 1956 war can be viewed as a prelude to the 1967 war, offering us an interpretive lens through which to view the latter. This paper will not fully address whether this war was one of self-defence, as many Israelis claim,[35] or offensive war in the guise of a defensive war following several decisions made by Nasser, as others claim.[36] What matters for our purposes here is the outcome of the war, which meant further expulsions of Palestinians and other local inhabitants (mainly from the Golan Heights), which created a new reality in terms of occupying the whole of Palestine and executing full military control over it.

This fact meant two things: first, it meant that the demographic problem that Israel managed to solve in the war of 1948 was back again. (But this time, Israel avoided granting citizenship to those Palestinians in the West Bank and Gaza.) Second, it meant that Palestine was once again a single unit controlled by a single power.

Since the 1967 war, the question of the future of the occupied territories has been a major issue on the agenda of the political parties in Israel, though it has dwindled drastically the last decade, a point that I will return to later. Through the years, Israel has entertained several options as to how to deal with the demographic problem that has presented itself as the major issue for Zionism. Some promulgated what is known as the Jordanian option,[37] which meant a functional division of labour between Israel and Jordan in which Jordan mainly takes care of the population while Israel takes control of the security and borders. During the Camp David years and the peace negotiations with Egypt, the idea of autonomy for the Palestinian population was put on the table,[38] but was rejected by the Palestinians. Israel acknowledged the fact there was a problem, but without feeling an urgent need to solve it immediately. Israel has controlled the West Bank and Gaza without paying high costs economically or politically, and managed to keep a certain balance that allowed it to incorporate a cheap Palestinian labour force in Israel, without granting Palestinians any political rights.

But the outbreak of the first intifada during the 1980s signalled that this reality could not last forever, and Israel had to invent a new way to deal with the fact that Palestinians were demanding the end of occupation and the right to self-determination. The intifada itself coincided with the beginning of privatisation and liberalisation of the Israeli economy, and it was clear that political instability and ongoing security threats on a daily basis

34   On the 1956 war and its significance from the Arab's point view, see Mohammad Hassanein Haikal, *Cutting the Lion's Tail: Suez Through Egyptian Eyes* (London: A Deutsch, 1986).

35   Michael Oren, *Six Days of War: June 1967 and the Making of the Modern Middle East* (New York: Random House, 2002).

36   See John Quigley, *The Six Day War and Israeli Self Defense* (Cambridge: Cambridge University Press 2013).

37   Garry Sussman, 'Ariel Sharon and the Jordan Option', *Middle East Report Online*, 5 March 2005, https://merip.org/2005/03/ariel-sharon-and-the-jordan-option.

38   See Fayez A. Sayegh, 'The Camp David Agreement and the Palestinian Problem', *Journal of Palestine Studies* 8, no. 2 (1979): 3-40.

were playing a very negative role in the economy.[39] I do not plan to enumerate here all of the considerations that led Israel to sign the Oslo accords, but clearly economic requirements and the need to find a way to manage the local Palestinian population–instead of direct management by the Israeli administration–were among them.

The point that I want to stress here is the way in which Israel developed a new conceptual tool to deal with the fact the fact of having under its immediate control several million Palestinians. If ethnic cleansing was the answer in 1948, and if during the first two decades of occupation Israel tried to ignore the question, then the Oslo era represents a new mode of dealing with the question by delivering the fate and responsibility of the Palestinians in the occupied territories to the Palestinian Authority(PA), while continuing to have overall control over security, land and borders. The conversation about the two-state solution was meant to create an illusion that the occupied territories are outside Israel, that they are not within it, that we are here and the Palestinians are there, and we owe them nothing.[40] They are on their way to their own Palestinian state, it was asserted–and with this conceptual move and political construction Israel tried to save its democracy, the 'purity' of its system, and address the demographic threat as well.

But we all know the fate of the Oslo accords, and how things have ended up. The Oslo process, which were conceived as the beginning–a first stage–of a peace process leading to self-determination and the establishment of a minor Palestinian state, ended up the way it began, and the first stage turned out to be the final stage as well. There is nothing on the horizon, and the current reality of small separated Bantustans seems to be an ultimate fate, not a transitional period. It is a temporality that will last forever.[41]

Gaza represents a separate story in this narrative. The Sharon plan for disengagement from Gaza in 2005, the dismantling of settlements there, and the withdrawal back to international borders, revealed that Israel was preparing a separate future for Gaza that differed from the West Bank's destiny. Slowly and steadily, Gaza has become subject to a different regime of control. It is fully under siege and Israel keeps it permanently at the verge of total collapse in terms of health, employment, medicine and food.[42] Of course, since 2009 Israel has also launched three wars against Gaza, killing more than five thousand Palestinians, to say nothing of the thousands of injured.[43] In fact, the withdrawal from Gaza allowed Israel to strengthen its hold of the West Bank and to expand settlements there.

It is my contention that at least in the last decade–mainly under the Netanyahu governments–the right wing is making a steady effort to show that the diagnoses made by the peace camp in Israel suggesting that Israel would either grant the Palestinians a right to self-determination in a separate state, or Israel would end up becoming a bi-national state, were misguided from the start. What the recent governments are trying to demonstrate is that Israel can have it both ways: neither separation from the Palestinians in the shape of a Palestinian state, nor full annexation

39   Joel Benin, 'Palestine and Israel: The Perils of Neoliberal, Repressive Pax Americana', *Social Justice* 25, no. 4 (1998): 20-39.

40   For this construction see Ariella Azoulay and Adi Ofir, *The One State Condition: Occupation and Democracy in Palestine* (Stanford: Stanford University Press, 2012).

41   Many Palestinians were already sceptical of the Oslo accords and thought that it would not lead to Palestinian state but rather the continuation of occupation by other means. See Edward Said, *The End of the Peace Process: Oslo and After*

(New York: Vintage Books, 2000). Azmi Bishara, 'Bridging the Green Line: The PA, Israeli Arabs and the Final Status - Interview with Azmi Bishara', *Journal of Palestine Studies* 26, no. 3 (1997): 67-80.

42   For the humanitarian crisis in Gaza see the UN report: https://www.un.org/unispal/document/auto-insert-197326/ (accessed 8 April, 2020). For a more comprehensive view regarding Israeli policy toward Gaza, see Sarah Roy, *Failing Peace: Gaza and the Israeli Palestinian Conflict* (Ann Arbor: Pluto Press, 2007). For a more recent account, see Sara Roy, *Gaza Strip: The Political Economy of De-Development* (Washington DC, Institute for Palestine Studies, 2016).

43   For those killed and injured in the recent demonstrations, see the UN Independent Commission of Inquiry on Protest in Gaza, 2018: https://www.un.org/unispal/document/un-independent-commission-of-inquiry-on-protests-in-gaza-presents-its-findings-press-release, (accessed 8 April, 2020). For the casualties following the Israeli war on Gaza in 2009, see the Goldstone Report: https://unispal.un.org/DPA/DPR/unispal.nsf/0/B4AA643FFD45856185257872004 9F754 (accessed 8 April, 2020). Caroline Glick supports the full annexation of the West Bank: See 'The Israeli Solution', *Jerusalem Post* 24 February 2014, https://www.jpost.com/opinion/columnists/column-one-the-israeli-solution-342440.

with full political rights to the Palestinians. Ironically, this right-wing formula is not far from the logic of Oslo that the peace camp delivered. In certain ways, the logic of Oslo shares aspects of the Jordanian option. Instead of assigning the management to the Jordanian state, however, it has been assigned to the PA. In both cases, the aim is to keep control over the land while enjoying freedom from responsibility for the local Palestinian population. This model means the continuation of occupation by other means, by proxy.

Yet even this arrangement is no longer satisfying. The ideological religious right wing is trying incrementally to impose not only de facto, but also de *jure*, Israeli sovereignty over the Palestinian territories. This is something that goes beyond managing the conflict and moves towards eliminating it, imposing unilateral and one-sided solutions by force. The moving of the US embassy to Jerusalem, the attack on UNRWA[44] and the ideas proposed within the Trump plan known as the 'deal of the century' only show the intentions of Israel and the US to impose a solution unilaterally without regard to Palestinian demands or rights.[45] There are different proposals regarding the future of the occupied territories and the Palestinian population. Very few in Israel will suggest full annexation, including granting those Palestinians—who must accept an endless list of conditions—a limited gradual Israeli citizenship. But most of the proposals suggest a gradual annexation that starts with formal annexation of the Jewish settlements and then of certain parts of the West Bank (mainly those areas known as area C) that are least populated by Palestinians, or of the Jordan Valley. Very few are prepared to suggest incorporating certain parts of the Palestinian population and granting them limited, conditional

and gradual, rights of citizenship.[46] This would involve a transformation of the Palestinian towns into gated Bantustans, or rather ghettos—separated, isolated, without any continuity, without land reserves, economy or industry.

The Palestinian question, therefore, is in this regard becoming less of a regional problem or even a conflict between two opposing countries/groups and is slowly becoming an internal problem of Israel itself—though what is considered Israel is changing as well, or must change. It is less a question across borders than a question within borders. It is no wonder that in the last two elections that took place in 2019, the Palestinian question was not on the agenda and was not publicly debated. Issues such as the Iranian threat, corruption, economy, and social welfare dominated the political agenda but not the future of the West Bank and Gaza. The Palestinian question in this respect is a disappearing topic within Israeli politics.

On the other hand, the increasing power of right-wing ideologies and the massive spread of settlements across the West Bank clearly makes the old trick of claiming that the West Bank is 'there' while we are 'here', more difficult to sustain. The settlements are not only spreading all over but are being increasingly normalised. One might say that the perception of the settlements underwent three transformations in the last decade: first, they seemed to become less associated with military or security needs. It might be the case that in reality they never were, but at least the rhetoric tried to portray such an image. A recent Supreme Court decision

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44 On the attack on UNRWA as an attack on the whole question of Palestinian refugees, see Amira Hass, 'UNRWA Under Attack', *Haaretz*, 8 August, 2018, https://www.haaretz.com/middle-east-news/palestinians/.premium-with-anti-unrwa-campaign-trump-tries-to-destroy-a-palestinian-asset-1.6358965.

45 For the Deal of the Century and a critique of its principles and approach, see Asad Ghanem, 'The Deal of the Century in Context: Trump's Plan is Part of a Long-Standing Settler Colonial Context', *The Arab World Geographer* 23, no. 1 (2020): 45-59.

46 For a survey of right-wing visions of annexations, see Carolina Landsmann, 'How Israeli Right-wing Thinkers Envision the Annexation of the West Bank', *Haaretz*, 18 August, 2018, https://www.haaretz.com/israel-news/.premium.MAGAZINE-how-israeli-right-wing-thinkers-envision-the-west-bank-s-annexation-1.6387108. For a general overview of the Israeli policies and scenarios for the future of the West Bank, see Jamil Hilal, Munir Fakhraldin and Khaled Farraj, *Review of the Israeli Policies toward the Palestinian Question* [in Arabic] (Beirut: Institute of Palestine Studies, 2017). More recently, the coalition agreement signed between Gantz and Netanyahu allows the annexation of the Jordan valley to Israel, See Jacob Majid, 'Unity Deal Allows Netanyahu to Begin Advancing Annexation from July', *Times of Israel*, 21 April 2020: https://www.timesofisrael.com/unity-deal-allows-netanyahu-to-begin-advancing-annexation-from-july-1.

stipulates that the settlers should be considered for all purposes of land allocations as part of the general public, like the local Palestinian population.[47] This means that a military commander can confiscate private land from Palestinians in order to accommodate the needs of Jewish settlers (the situation up to now was that the settlements were built only on what Israel calls public lands). Thus, their legal status has been normalised completely, and they are now considered as local communities. Second, the settlements are no longer ideological—associated with right wing religious fanatics. Many of the settlers today prefer to move beyond the green line for benefits and cheap and affordable housing. The settlements have become the only place where Israel is in fact a welfare state, and thus attract Israelis to settle for economic reasons.[48] Third, while the settlements were once conceived and imagined as temporary, or as a bargaining chip in future negotiation with the Palestinians, it is becoming clear that they are there to stay, and increasingly difficult to imagine their removal.

These conceptual and material changes on the ground underline the fact that the West Bank is 'here', and not 'there', beyond Israel's borders. The proximity of the settlers to Palestinian locals on the one hand, and the incorporation of the settlements into the structural and cultural web of the Israeli society on the other, requires a conceptualisation as to the West Bank's future and the future of the Palestinians living there. The Green Line is

being eroded[49] and the defence mechanism of Oslo that assumed separateness in two political entities has lost its appeal. From here there arises a need for a new conceptualisation of reality and new mode of separation, where Palestine appears again as one geopolitical unit. We are back again to the reality before 1948, but with a major difference: we are not under British Mandate but under Israeli rule. This is the background to reading the recent Basic Law: Israel, the nation state of the Jewish people. Separation has always been on the Zionist agenda. In 1948 it manifested itself through expulsion, and in the last thirty years through the two-state discourse; it now does so through the new Basic Law. But this new law offers another mode of separation: if the mode of 'two states' separation is based on territorial separation between two political units, each to go on its own, the new Basic Law is based on ethnic separation between Jews and Palestinians within the same unit. Now it is a separation within unity, which is more like segregation than separation. But I will leave that for the moment to tell another story: the Palestinian narrative of the struggle for Palestine.

The Palestinian Story

In wanting to retell the development of the Palestinian story of struggle, the image I have in mind is the opposite of spreading circles. Instead of spreading outward from the centre (centrifugal) the story is one of persistent movement towards the centre (centripetal). While there are many reasons to suspect the intentions and ambitions of Arab countries in their struggle against Israel, it is nevertheless true that some Arab countries were involved at various points in armed struggle against Israel. For a period of time, the Palestinian question that was born first as a question of refugees and lost homeland was at the same time an issue in which the neighbouring Arab countries were involved. Regardless of their actions and their intentions, Egypt, Syria, Iraq and Jordan

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47 HCJ 794-17, Ziadeh v. High Military Commander in the West Bank (31 October 2017), Nevo Legal Database (by subscription, in Hebrew). Following this decision, the attorney general, Avichai Mandelblit, issued a legal opinion that allows Israeli authorities to confiscate Palestinian private land in the West Bank for public purposes to serve Jewish settlers. For details, see Yotam Berger, 'Private Land Can Be Taken For Public Use in Settlements, Israeli Attorney General Says', *Haaretz*, 15 November 2017, https://www.haaretz.co.il/news/law/.premium-1.4605462. Just to complete the picture, in a later decision (following a motion for further hearing 9367-17 submitted by Yesh Din on 30 November, 2017) Justice Hayut expressed the opinion that the ruling in the Ziadeh case was rather an *obiter dictum* and as such does not to be fully considered as a guiding precedent. See further the report of Yesh Din: https://www.yesh-din.org/en/petition-demanding-annulment-amona-plan, (accessed 22 April 2020).

48 See Israel Policy Forum report, 2 May 2018: https://israelpolicyforum.org/2018/05/02/the-welfare-state-across-the-green-line (accessed 22 April 2020).

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49 On the ongoing erosion of the Green Line, even on maps, see Shaked Orbach, 'No One Knows Where Israel Ends and the Palestinian Territories Begin', *Haaretz*, 8 July 2017, https://www.haaretz.com/israel-news/.premium.MAGAZINE-no-one-knows-where-israel-ends-and-the-palestinian-territories-begin-1.5491999.

did send troops during the 1948 war.[50] Furthermore, Israel posed a threat only to Palestine, but as the war of 1956 signalled, and later the 1967 war proved, Israel was in fact threatening the entire Arab region. What solidified this image of regional confrontation was the Cold War itself, which put the Arab world—part of the rising third world politics—in opposition to an Israel supported by Western powers. Palestine, and the loss of Palestine, was conceived as part of a wider front against colonialism and imperialism.

It is no wonder that it almost took two decades before the Palestinians took full and independent control over their political struggle.[51] In the 1950s, most Palestinian activists were part of regional political parties participating in a wider arena. Those who ended up in Syria and Lebanon were very much under the influence of Arab Nationalist, or Baathist groups, those in Egypt were under the influence of Nasser, while others found themselves part of the Muslim Brotherhood. At any rate, the Palestinians were part of and reflected the internal political trends of the Arab world. Not surprisingly, the PLO originally was established by an initiative of the Arab countries themselves; its original charter reflected a pan-Arab language, rather than a Palestinian one.[52]

The first disappointment came after the collapse of unity between Egypt and Syria in 1961, but the major shift came after the 1967 war, which represents a watershed in this regard. On the one hand it became clear that Israel was a threat to the Arab countries themselves, while on the other an increased belief emerged on the part of the Palestinians that they must take charge of their own fate.[53] So while it is true that Fatah was established before the 1967

war, it was only after the war that it gained intensive momentum and was able to mobilise Palestinians to lead a struggle, and later on to claim representation over the Palestinian question. This became even more evident after the Karama battle in 1968 in Jordan, where Fatah emerged as a popular military movement that gained much support within Palestinian camps.[54] The PLO managed that year to introduce certain amendments to the Palestinian charter so as to reflect its patriotic Palestinian nature compared to the 1964 charter, which had a rather Arab national flavour and reflected a willingness to consider a one state solution.[55] The year of 1968 also witnessed the student revolt across France and the US, the anti-war movement in the US, the Prague Spring, and the Cultural Revolution in China, not to mention the successes of the revolution in Algeria, which inspired thousands of Palestinian fighters. It was in the decade that came after that the PLO managed to gain both Arab and international recognition and brought Chairman Arafat to deliver his famous speech at the UN General Assembly in 1974. It was also within this decade that the PLO positioned itself as part of the ongoing struggle against colonialism and imperialism worldwide, and its struggle was conceived by Palestinians and others as part and parcel of many other struggles, from Vietnam to Algeria to Cuba to South Africa.[56] There is no doubt, furthermore, that those years were crucial in the formation and galvanisation of Palestinian identity and crucial in gaining self-confidence, pride, and dignity.

While paradoxically the 1967 war in which Arab armies were defeated ultimately led to the 1973 war, where Arab armies

50   For an official Israeli narrative see: https://embassies.gov.il/MFA/AboutIsrael/history/Pages/The%20Arab-Israeli%20wars.aspx. (Accessed 22 April 2020). For a critical narrative see Ilan Pappe, *The Making of the Arab Israeli Conflict 1947-1951* (London: I. B. Tauris & Co Ltd, 1992).

51   Helga Baumgarten, 'Three Phases/Faces of Palestinian Nationalism 1948-2005', *Journal of Palestine Studies* 34, no. 4 (2005): 25-48.

52   For the difference between the first and second charter, between 1964 and 1968, see Muhammad Muslih, 'Toward Coexistence: An Analysis of the Resolutions of the Palestinian National Council', *Journal of Palestine Studies* 19, no. 4 (1990): 3-29.

53   See Yezid Sayigh, 'Turning Defeat into Opportunity: The Palestinian Guerrillas After the June 1967 War', *Middle East Journal* 46, no. 2 (1982): 244-265. See also

Ahmad Samih Khalidi, 'The Ripples of the 1967 War', *Cairo Review of Global Affairs* (Spring 2017): https://www.thecairoreview.com/essays/ripples-of-the-1967-war (accessed 22 April, 2020).

54   Maher Charif, 'The Palestinian National Project: From Where and to Where' [in Arabic], in *Readings in the Palestinian National Project Between Past and Future*, ed. Jamil Hilal and Khaled Farraj (Beirut: Institute of Palestine Studies, 2019), 7-34.

55   Lyla Frasakh, 'A Common State in Israel-Palestine: Historical Origins and lingering Challenges', *Ethnopolitics* 15, no. 4 (2016): 380-392.

56   Paul Chamberlin, 'The Struggle Against Oppression Everywhere: The Global Politics of Palestinian Liberation', *Middle Eastern Studies* 47, no. 1 (January 2011): 25-41.

achieved what they considered to be a half-victory, it is a matter of fact that 1973 lead to a slow de-Arabisation of the Palestinian question culminating in the peace treaty with Egypt in the late 1970s. Yet I think that one can single out the Rabat summit in 1974 as a key turning point. On the one hand, this was the summit that conceded to the PLO sole representation of the issue of Palestine and the Palestinians, and no doubt this was considered an achievement on the part of the PLO and the question of Palestine. But it is also possible to see this as a move by which Arab countries absolved themselves of responsibility for the Palestine question. If the PLO is the only legitimate representative of the Palestinian people, it was suggested, then let the PLO bear the responsibility of this representation alone.[57]

In retrospect, one might reconstruct this interpretation based on another decision adopted at the summit and events that followed. This other decision has become known as the 'ten stages' proposal. The major point in the proposal was the endorsement of the idea of a Palestinian state on any part of Palestine that is liberated, thus implicitly and indirectly endorsing the idea of a two-state solution and giving up on the idea of liberation of the land of Palestine. The growing influence of the Soviet Union at that period on many factions within the PLO was one of the key factors in this diplomatic push, and while the USSR opposed Israel's aggressive and expansionist policy, it defended the existence of Israel as a state within its existing borders. At any rate, the war of 1973 was the last war that the Arab world fought against Israel, and later that decade Egypt signed a peace treaty with Israel.

By the late 1970s the PLO was signalling the idea of a two-state solution, but the main thrust of the Palestinian national movement was still outside Palestine. After the expulsion of the PLO from Jordan in 1970, the PLO moved to Lebanon and established itself as a major power there. Following the Lebanon war in 1982, it moved to Tunisia, something that was to have major ramifications for the nature of Palestinian struggle. The Palestinians were

completely certain that there was no 'rejection front' that stood by their side and that they must seek new avenues.[58] The image until 1982 had been of a confrontation between Israel and a Palestinian entity/movement outside the border of Palestine (now under full control of Israel). While this image continued to exist, after the 1982 war the absence of a common shared border where the Palestinian fighter might confront Israel created a new reality for the PLO; armed struggle became impossible.

It was the first intifada that brought the focal point of the Palestinian struggle into Palestine itself—into the occupied territories. This intensified and crystallised the nature of the struggle as one between an occupied people against an occupying army. The role of the Fidaayi was replaced now by the role of Palestinian political activists throwing stones at Israeli soldiers. This image established the green line as a relevant political boundary. Before that, the Palestinian resistance, who fought from outside the borders of Israel, and who made endless attempts to penetrate these borders, had rendered the internal borders between Israel and the West Bank (Green Line) meaningless. But the eruption of the Intifada resurrected the Green Line as one that distinguishes between Israel proper (lands occupied in 1948), and the lands occupied in 1967.[59]

One of the events resulting from the first intifada was the legal and administrative disengagement that Jordan declared between the East and the West Bank.[60] With this, the process of de-Ara-

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57   On this trajectory, see Fouad Ajami, 'The Arab Road', *Foreign Policy* 47 (1982): 3-25.

58   Rashid Khalidi, 'The Palestinian Dilemma: PLO Policy after Lebanon', *Journal of Palestine Studies* 15, no. 1 (1985): 88-103.

59   For the relation between the inside and the outside see Helena Cobban, 'The PLO and the Intifada', *Middle East Journal* 44, no. 2 (1990): 207-233 and Hillel Frisch, 'From Armed Struggle Over State Borders to Political Mobilization and Intifada Within', *Plural Societies* 19, no. 2-3 (1990): 92-115. For the meaning of the Intifada and the new politics it brought with it, see Salim Tamari, 'The Palestinian Movement in Transition: Historical Reversals and the Intifada', *Journal of Palestine Studies* 20, no. 2 (1990): 57-70.

60   The declaration on the disengagement was made on 1 July 1988 by King Hussein. The declaration meant cutting the administrative legal and political ties that held the West Bank to be part of Jordan, following the decision to annex the West Bank in 1950. The declaration refers to the right of self-determination of the Palestinian people in order to justify itself. For the text of the declaration,

bisation moved one step ahead; the PLO was the only representative political body to negotiate with Israel. The Palestinians—for good or for ill—were on their own. It is perhaps no coincidence that following Jordan's declaration of disengagement the PLO issued a declaration of independence in November of the same year.[61] The declared state would be established in the territories occupied in 1967, and while the declaration does refer to the 1947 partition plan, it also mentions UN Resolution 242, and thus implicitly does recognise Israel within its pre-1967 borders.

Despite the fact that the principle of return never disappeared from Palestinian rhetoric and the question of refugees continued to be an issue, the way the negotiation developed after Oslo with its stress on the issue of borders, statehood, and self-determination, rendered the demand for return less prominent in nature.[62] I identify this as a second moment after the moment of the *de-Arabisation of the conflict*; I would refer to this moment as one of *internalisation of the conflict*—of moving it into Palestine itself, a 'territorialising' of Palestinian nationalism, as it has been described.[63] The focus of the struggle at this stage is self-determination and statehood, and the Palestinian territories are the major locus of this struggle. It is unsurprising that Hamas, which was established during the years of the intifada, chose as its name a phrase (*Harkat Mukawama Islamiyah*) which translates as movement of Islamic *resistance*. When occupation is immediate and present, the counter-image is resistance.[64] This rise of Hamas has continued to challenge of the

leadership of the PLO to the present day.

The Oslo process was the result of a combination of many factors within Israeli society, Palestinian society and the PLO, the Middle East, and worldwide politics. The Oslo process was preceded by the peace negotiations in the Madrid summit that brought together all Arab countries to meet Israel. These were the early 1990s, characterised by an emerging new world order led by the US after the collapse of the USSR and Eastern Bloc. It was also the period following the invasion of Iraq by US troops and the destruction of that country's military and economic structure. Within Palestine, the intifada was starting its fourth year, increasingly militarised, but unable to force Israel's withdrawal from the West Bank or to impose a solution on Israel. What is more, the PLO was undergoing a financial crisis partly due to Arafat's support for Saddam Hussein in his invasion of Kuwait and the subsequent expulsion of more than 300,000 Palestinians who lived and worked in the Gulf states and supported the PLO financially.[65] Still, within Israel, several financial and industrial sectors were demanding a solution for the ongoing intifada, which was creating a level of instability that made it difficult to recruit foreign investment and ensure economic growth. It was a combination of all these factors that persuaded the PLO to agree to enter negotiations with Israel and accept the terms of the Oslo frame.

The Palestinian leadership understood the Oslo process as leading towards a Palestinian state in the West Bank and Gaza, but this process came to a clear impasse.[66] The continued expansion of Israeli settlements, the growing incorporation of the Jewish settlements into the fabric of Israeli life, and the ongoing seizure of Palestinian lands have together revealed the idea of the two-state

see 'Jordan: Statement Concerning Disengagement from the West Bank and Palestinian Self-Determination', *International Legal Materials* 27, no. 6 (1988): 1637-1645, https://www.jstor.org/stable/20693275.

61   For the text of the 1988 Declaration of Independence as submitted to the UN General Assembly, see United Nations General Assembly Security Council, 'Agenda Item 37: Question of Palestine', A/43/827s/20278, 18 November, 1988: https://unispal.un.org/UNISPAL.NSF/0/6EB54A389E2DA6C6852560DE0070E392 (accessed 22 April 2020).

62   For the locus of the issue of refuges in the peace negotiation, see Salim Tamari, *Palestinian Refugee Negotiations: From Madrid to Oslo II* (Beirut: Institute for Palestine Studies, 1996).

63   Yezid Sayigh, *Armed Struggle and the Search for State: The Palestinian Movement, 1949-1993* (Oxford: Clarendon Press, 1997), 674.

64   Ziad Abu Amer, 'Hamas: A Historical and Political Background', *Journal of*

Palestine Studies 22, no. 4 (1993): 5.

65   See Maher Charif on the conditions that lead to the signing of the Oslo accords. Charif, 'The Palestinian National Project', 7-35, 23.

66   Azmi Bishara, 'Bantustanisation or Binationalism? An Interview with Azmi Bishara', in *Dispatches from Palestine: The Rise and Fall of the Oslo Peace Process*, by Usher Graham (London: Pluto Press, 1999), 59-66. Naseer Aruri, 'The Wye Memorandum: Netanyahu's Oslo and Un-reciprocal Reciprocity', *Journal of Palestine Studies* 28, no. 2 (Winter 1999): 17-28.

solution to be a mere illusion.

It is becoming increasingly clear that if the revolutionary and armed resistance did not and could not bring about the liberation of Palestine in the decade between 1960-70, it is also the case that the alternative path of negotiation with Israel under an international umbrella has as yet failed deliver results. The reality created after Oslo, the creation of the PA, and the withdrawal of Israeli troops outside city centres had all rendered acts of resistance more complicated and far more difficult to execute. The Palestinians could not attain their rights through negotiations, and now they were unable to continue their struggle by other means. The difficulty is both political/normative and factual.

By the normative/political I mean the increasing difficulty that Palestinians have faced in performing acts of resistance to occupation, mainly military or armed resistance. There are several reasons that together stand in the way here. The first is a product of the Palestinian performance in Oslo, the terms that were used, and the language that was adopted. In the exchange of letters between Chairman Arafat and Prime Minister Rabin that laid the bases for the Oslo accords later on, Arafat had to declare that he renounce—not only denounce—terror as a form of struggle to end the occupation.[67] The only option left was negotiation, without even considering what would happen if negotiations did not yield the desired goals.

When the talks failed, the Palestinian found themselves trapped in a tunnel where they could not proceed forward to independence and statehood, nor could they fall back on revolutionary discourse. After all, it was Chairman Arafat and the PLO who first referred to the struggle as 'terror'. From now on, Israel did not have to invent a name for the Palestinian struggle given that they have already been given a name: terror. In Oslo, Palestinians lost their language. Furthermore, the Oslo accords did not recognise the rights of the Palestinians in self-determination within a Palestinian state, nor did it state the end result of the talks, thus keeping the Palestinians locked in a process of negotiation without a clear formulation of a final aim or goal.

But beyond of this loss of discourse, there are three major material factors that contributed to the difficulty of conducting active resistance. One of these was the international climate and rise of a new dominant political discourse that posited Islamic terrorism as a major threat and tied the Palestinian struggle to an international wave of terrorism and violence. This new state of international affairs cornered the Palestinian struggle and delegitimised to some degree their armed struggle.[68] The second was the growing weakness of those regional and international states which were prepared to support the Palestinian armed struggle. Lastly, there was the fact that Israel evacuated the city centres when the PA was established, so that the image of an occupying Israeli army marching through the streets of Palestinian cities almost disappeared. The indirect control of the territories through the organs of the PA eclipses the obvious fact that the West Bank is under occupation. This perception of almost two states(Israel and the PA) makes it more difficult for Palestinians to justify violence with the same ease that it could have justified it during the first intifada, for example.

It is against this background of the failure of the PLO lead by Fatah to achieve its national goals that we can understand the rise in popularity of Hamas, which won the only election that took place, in 2006.[69] This was clearly not the only failure: added to it was corruption within the PA that seemed to be endemic and structural.[70] On the other hand, the regional scene saw a rise of

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67   See the letter from Yasser Arafat to Prime Minister Rabin on 9 September 1993, which was the basis for the Oslo accords: https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israel-plo%20recognition%20-%20exchange%20of%20letters%20betwe.aspx. (Accessed 22 April 2020). For an analysis of the letters and the Oslo accords see Raef Zreik 'The Palestinian Question'.

68   See Camille Mansour, 'The Impact of 11 September on the Israeli Palestinian Conflict', *Journal of Palestine Studies* 31, no. 2 (2002): 5-18.

69   On the victory of Hamas in 2006, see Steven Erlanger, 'Victory Ends 40 Years of Political Domination by Arafat's Party', *New York Times*, 26 January, 2006, https://www.nytimes.com/2006/01/26/international/middleeast/victory-ends-40-years-of-political-domination-by.html.

70   Lucian Fangalau Fuefue-o-ʟakepa, 'Corruption in the Palestinian Authority: Neo

political Islam beginning in the late 1970s that has continued to the present day–not only in Palestine, but across the Middle East in general from Egypt to Tunisia and from Algeria to Hezbollah in Lebanon.[71]

This reality of competition between two rival groups–Hamas and the PLO–without a uniting umbrella was exacerbated by the total separation of the West Bank and Gaza. This is not only a geographical separation, but maps onto and corresponds to a political one in which the Fatah and the PA are dominant in the West Bank, while Hamas controls the Gaza Strip. Israel, no doubt, is interested in and works towards deepening this separation between the two parts of the Palestinian territories, which itself weakens the chances of establishing a viable Palestinian state, and adds more fragmentation to an already fragmented field of Palestinian politics in which there are many different groups with different needs and demands, subject to different regimes of control, while the oppressor is one: Israel.[72]

The Two Stories in Conversation

At this juncture let us bring in the Palestinian citizens of Israel and the development of their struggle, and the potential ways in which these developments may converge, partially, with the struggle of the rest of the Palestinians, and in some other ways reflect developments within Israel itself. Unlike the case of Gaza, where Israel seems to be pushing for a separate future trajectory, there does appear to be an increasing shared ground between the situation in the West Bank and that of the Palestinians in Israel– despite many important differences. This commonality may offer

us a hint as to how things might develop. This is also the point where my discussion of the Zionist and Palestinian stories converge, leading into what appears to be one potential narrative. One of the symbols of this narrative is the recent Basic Law: Israel as the nation state of the Jewish people, which I believe connects the issue of the nature of Israel as both Jewish and democratic, and the issue of the future of the occupied territories and the right of Palestinians to self-determination, writ large. I turn finally to this link toward the end of this paper.

Anyone who is following the struggle of the Palestinians in Israel will notice the articulation of their demands increasingly in national rather than merely civic terms, and more recently still in the language of indigenous rights.[73] The Palestinians who remained within Israel's borders following the Nakba and became Israeli citizens were placed under military rule for two decades. The Nakba, the loss of the homeland, the sudden change from majority to minority, the dispersal of their nation, the loss of their elite and of city centres, and the ongoing experience of military rule have turned those Palestinians into a very weak minority struggling for its own survival.[74] The category of Israeli citizenship–among other things–allowed them to continue their existence in their own land and to face the threat of deportation, which continued to hover over their head for decades. The first years were traumatic, and despite the existence of a number of different trends and attitudes, the voice that prevailed was that of the Communist Party, who put great emphasis on citizenship discourse and embraced an Arab-Jewish brotherhood as a strategy of survival. This strategy in

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Patrimonialism, the Peace Process and the Absence of Statehood' (PhD Thesis, Durham University, 2012).

[71] The literature on the rise of political Islam is enormous. See for example: Khaled Hroub, ed. *Political Islam: Context Versus Ideology* (London: Middle East Institute SOAS, 2010); John Esposito, ed. *Revolution, Radicalism or Reform* (Boulder: Lynne Rienner Publishers, 1997).

[72] For an excellent exposition of the issue of the fragmentation of the Palestinian political field, see Jamil Hilal, 'The Polarization of the Palestinian Political Field', *Journal of Palestine Studies* 39, no. 3 (2010): 24-39.

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[73] As'ad Ghanem, *The Palestinian Arab Minority in Israel 1948-2000: A Political Study* (Albany: State University of New York Press, 2001); As'ad Ghanem and Muhanad Mustafa, 'Coping with the Nakba: The Palestinians in Israel and the "Future Vision" as a Collective Agenda', *British Journal of Middle Eastern Studies* 41, no. 4 (2014): 335-354; Amal Jamal, *Arab Minority in Israel: Politics of Indigeneity* (London: Routledge, 2011); Raef Zreik 'Subject, Subjectivity, Subjugation', *Comparative Literature and Culture* 21, no. 3 (2019), https://doi.org/10.7771/1481-4374.3548.

[74] See Adel Manna's retelling of the story of the Palestinians who remained inside Israel during the early years of the 1950s: Adel Manna, *Nakba and Survival: The Story of the Palestinians who Remained in Haifa and Galilee 1948-1956* [in Arabic] (Beirut: Institute of Palestine Studies, 2017).

many ways proved itself.[75] But beginning in the late 1960s, the rise of a Palestinian middle class and the consolidation of a Palestinian identity under the growing influence of the PLO, and later the rise of national discourse and minority rights after the collapse of the Soviet Union in the 1990s, foregrounded a nationalist vocabulary amongst Palestinians in Israel. An important turning point came in the form of the 'vision documents' articulated a decade ago, which depicted Palestinians in Israel as a national group with a right to cultural self-determination within Israel, which recognised the collective national rights of the Palestinians citizens of Israel.[76] Alongside this development, the Palestinian citizens of Israel elevated their civic discourse and managed to stamp Israel public discourse with the slogan (which began as a slogan for NDA political party) 'state of its citizens'. They demanded that the state normalise relations with its Palestinian citizens and in the process raised questions about the way Israel has defined itself as Jewish state.[77] Palestinians in Israel were therefore moving along two paths that superficially appeared irreconcilable: on one the one hand demanding collective group rights and on the other insisting on full civil equality and equal participation in the distribution of wealth and power, to be shared within the state. A more careful examination demonstrates that although there might be a tension between these two, there is in fact no logical inconsistency. The idea of collective group rights assumes civic equality and adds to it; it in fact goes beyond it with the belief that personal equality in and of itself is not enough to secure substantial equality. These are basic concepts in liberal and multicultural discourse of the last

three decades[78]

Yet one of the results of these increased demands has been that the Palestinian citizens of Israel are now less likely to be seen as an insignificant minority within the Israeli politics. These demands, put to the Israeli state and to society, elicited very right wing ethno-religious responses in the shape of a series of laws and policies stressing the idea that Israel was and will remain first and foremost a Jewish state.[79] The desire of Palestinian citizens to enjoy full equality and citizenship rights, combined with their insistence on their right to difference and the enjoyment of collective group rights, has in the last decade brought the Israeli state to emphasise with growing clarity that the state is not theirs, and the right of self-determination is exclusively Jewish.

This desire to treat the Palestinian citizens of Israel as outsiders, despite their status is Israeli citizens, parallels the desire of the Israeli state to incorporate settlers as members of Israeli state and society, despite the fact that they reside 'outside' Israel. The recent Basic Law reveals the ideological structures beneath this logic. This is a law that is aimed at saying something to the Palestinians in Israel and at the same time to the Palestinians in the West Bank. It is a law that brings together what appeared until now to be two separate questions: the first regarding the Jewish and democratic nature of Israeli state, and the other regarding the future of the West Bank, Jewish settlers there, and the possibility of having a Palestinian state.

The internal and the external question are merging. Palestinians in Israel have raised the level of their demand in a way that raises questions regarding the nature and character of the state, deploying the language of cultural self-determination, which until now has been a language deployed only by the PLO for Palestinians

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75 On the role of the Communist party in leading the struggle of the Palestinians in Israel, see Ilana Kaufman, *Arab National Communism in the Jewish State* (Gainesville: Florida University Press, 1997).

76 Ayman K. Agbaria and Muhanad Mustafa, 'Two States for Three People: The "Palestinian Israeli" in the Future Vision Documents of the Palestinians in Israel', *Ethnic and Racial Studies* 35, no. 4 (2012): 718-736.

77 See my analysis for this development and its significance during the 1990s: Raef Zreik, 'Has the Wheel Come Full Circle? Civic Service Debates in Israel', in *The Liberal Republican Quandary in Israel Europe and the United States: Early Modern Thoughts Meet Current Affairs*, ed. Thomas Maissen and Fania Oz-Salzberger (Boston: Academic Studies Press, 2012), 177-206.

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78 The major figure in these debates has been Kymlicka. See: Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).

79 On the rise of the demand by Israel to be recognised as a Jewish state see Raef Zreik, 'Why the Jewish State Now?', *Journal of Palestine Studies* 40, no. 3 (Spring 2011): 23-37. This became a demand being put to the PLO itself as a condition for the negotiation. See Ahmad Samih Khalidi, 'Why Can't the Palestinians Recognize the *Jewish State*?', *Journal of Palestine Studies* 40, no. 4 (2011): 78-81.

outside Israel. On the other hand, the PA is increasingly becoming an internal organ of the state of Israel, and a subcontractor of the Israeli occupation. This points to an increasing awareness that Palestinians in the West Bank are subject to Israeli control, but without citizens' rights, which renders the language of civic rights for the Palestinians in the West Bank more and more relevant, a discourse that until recently has been limited to Palestinians in Israel. With the passing of time, both Palestinian groups simultaneously deploy a discourse of rights and a discourse of national belonging (though clearly to a different degrees).[80]

This double movement itself contributes to the erosion of the Green Line and the two-state solution as a horizon. It intensifies the feeling and imagination of Palestine as one geo-political unit, and the new Basic Law reflects this increased feeling. Article One of the law articulates three so-called 'Basic Principles'. Principle One states that 'the land of Israel is the historical homeland of the Jewish people, in which the state of Israel was established', while Section B of the same article states the following: 'the state of Israel is the national home of the Jewish people, in which it fulfils its natural, cultural, religious and historical right to self-determination'. Section C declares that 'the right to exercise national self-determination in the state of Israel in unique to the Jewish people'.[81]

It is notable that the first principle stipulates and makes a claim to the land of Israel writ large, not only the state of Israel. It is a declaration that aims to say something about a land that is presumably 'outside' state borders. Section B relates to the state of Israel itself as 'the national home of the Jewish people, in which it fulfils its natural, cultural, religious and historical right to self-determination', while Section C makes this right exclusive right to the Jewish people. One might argue that given the fact that the law makes a distinction between the state of Israel and the land of

Israel, this might leave the door open for a Palestinian state in the land of Israel.

Yet this generous reading is problematic for a couple of reasons. The first is that Principle One makes all of the land of Israel the 'historical homeland of the Jewish people', and thus makes it rather odd to conceive of establishing a Palestinian state in what is considered 'historical homeland' (though it is possible). Apart from that, the law stipulates the exclusive right of self-determination for the Jewish people within the state of Israel. Nowhere it is unclear where the borders of the state of Israel are and where they end. Given that Israel conceives of itself in continuous movement, the ongoing process of settlement and expansion renders the idea of a border very fuzzy and plastic. Furthermore, Article Seven, titled 'Jewish Settlement', stipulates that 'the state views the development of Jewish settlement as national value and will act to encourage and promote its establishment and consolidation'. Where does this settlement project take place? The text itself does not indicate this, but new settlements are being built in the West Bank and East Jerusalem, thus the talk about 'establishment and consolidation' of the settlements refers de facto to settlements outside Israel 'proper'. This fuzziness of the borders bridges the gap between the land of Israel and the state of Israel, rendering the difference semantic. Thus, when the law stipulates that the right to self-determination is exclusive to the Jewish people, it means to be exclusive de facto in the land of Israel and not limited to the state of Israel.

In this regard the law says something about the nature of Israel and its relations to Palestinian citizens, while sending a clear message regarding the future of the West Bank, Jewish settlers, and the local Palestinian population. The law creates unity between the different parts of land of Israel-Palestine, and within this unified frame, the exclusive right of the Jewish people is declared. Thus, the old distinctions between 'here'—inside Israel—and 'there'—the occupied territories, the geographical separation—is being slowly replaced by another mode of separation that

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80 I developed this issue further in a short paper. Raef Zreik, 'The Day The Jewish State Bill Will Take Effect', *Tarabut* 1, no. 3 (2018): http://www.tarabut.info/en/articles/article/israel-nationality-law-2018.

81 For the text of the new basic law, see: https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf (accessed 22 April 2020).

is based along ethno-religious-national lines of Jews versus Palestinians—whether those Palestinians reside in the West Bank or within Israel. Thus, the guiding logic of separation that has accompanied Zionism since its early inception is becoming increasingly blatant. At first, Israel evaded an official separation regime simply by expulsion, then by means of the military regime over the Palestinian citizens in Israel. After 1967 it was the myth of temporal occupation that kept up the myth, and after the 1990s it was the myth that we are on the way to a two-state solution and that Palestinians would find themselves in their own state very soon. All of these denial mechanisms have now collapsed, and it is becoming clear that Palestine is one unit, controlled by one central power with two separate heads behind it: one for Israel and settlers in the West Bank, and another for Palestinians in the West Bank. It is the one and same sovereign, however, that has the final say in all matters of government. The Apartheid regime that Israel saved itself from becoming in 1948 by expulsion and managed to avoid for many years of occupation by ongoing conversation about a two-state solution, is coming to an end.

Conclusion

Where does all of that lead us? First, there was the *de-Arabisation* of the struggle. Second, from the 1980s onwards we begin witnessing the *internalisation* of struggle into the 1967 territories. Third, as of the late 1980s we can observe an increase in the presence of religious discourse (*religionisation*). Fourth, the increasing role and presence of Palestinians in Israel in the last two decades have created a situation in which the struggle against the ethnic Jewish nature of the state and the question of the occupied territories are becoming further entangled. The question of existence and essence are becoming tied together (*second internalisation*). Fifth, we are witnessing a growing fragmentation of the Palestinian question into separate small questions. There is an ongoing attempt to keep Gaza as a separate entity under siege and to sever it from the remaining Palestinian localities, subject to its own regime of per-

mits and movement. By doing this, Israel has managed to create within Palestine itself a system of control that has four different regimes for Palestinians under its authority including: Palestinians in Gaza, Palestinians in the West Bank, Palestinians in East Jerusalem, and Palestinian citizens of Israel, not to mention Palestinian refugees in the camps (*fragmentation*). For that reason, it is always difficult to put the different forms of Palestinian dispossession and domination under one title or category: it is at the same time occupation, discrimination, Apartheid, statelessness. The Palestinian experience has too many faces and manifestations. Six, there is an ongoing attempt to eliminate the question of refugees, by a fiercely orchestrated attack on the UNRWA and its role in keeping the refugee question alive (*elimination*).

Despite all of the above, we can nevertheless attend to two major facts. One is that in Palestine there are more than six million Palestinians spread between the West Bank, Gaza and Israel. Added to this numeric materiality, one can assert that the Palestinian national movement has managed to do two things at the symbolic and mental level. One is to raise Palestinian identity among those Palestinians and regain their political subjectivity. The other is the PLO and Palestinian people's struggle over the last century to rescue the name Palestine from oblivion. Palestine is still a question. It might require different formulation and different strategy, but it is still a question and while it might be eclipsed for a while, it must return in another form soon after. As long as there are millions of Palestinians living in Palestine devoid national, political and civil rights, the question of Palestine persists. But we are approaching the time when and where the internal question becomes external and the external becoming internal. The future of Israel and the future of Palestine has never been entangled in such an intimate manner, and the question of existence and the question of essence are slowly becoming one. The future of Palestine and the Palestinians and the future of Jews in Palestine forces itself upon us.

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Is Palestine a Question?
Is Israel a [Colonial] Fact?

Lisa Damon

Abstract

Thinking alongside Raef Zreik's first lecture in a three part series, titled 'Formation', this article asks, what is the relationship between fact and question here, and how does that relationship change when Israel or the Zionist project is framed differently? As say, simply a colonial fact? As an outpost of European imperialism? Does Palestine become a different kind of question when we understand Israel as a different kind of state? To do this, I put into conversation Zreik's framing, drawn from his particular geographical and historical location, with another seminal text concerned with a similar problem from a different geographical and historical location: Maxime Rodinson's 'Israël: Fait Colonial?', published in *Les Temps Modernes* a few days before the 1967 war and translated in 1973 by David Thorstad as *Israel: A Colonial-Settler State?*

Introduction

In the first of three lectures focusing on Palestine as Question, Raef Zreik provides us with three narrative trajectories through the history of the Israeli-Palestinian conflict, which he brings together in a final conversation meant to elucidate what kind of question(s) the Question of Palestine has become.[1] This is key to the elaboration of his next two lectures, 'Justice' and 'Decoloni-

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1   Here and throughout I refer to Raef Zreik, 'Palestine as a Question: Lecture One: Formation', in the present issue.

sation', as both depend on how the question has been posed, or poised, for an answer. To frame the question through its various historical and ideological instantiations, he deploys a settler-colonial lens throughout, reading the Zionist project as leading to the establishment of a settler-colonial state called Israel in the land of Palestine. This is a de-facto situation, but one whose facticity has been ideologically contested while also taking on different material forms throughout its history. Its changing forms have had as much to do with its settler-colonial drive—in other words, expansion—as it has Palestinian resistance to being erased as a Question. What he is concerned to do, as his conclusion shows, is to propose that Palestine is still a Question, despite its fragmentation into, at times, many different questions, as well as Israeli attempts at ignoring the question, burying it, externalising or internalising it, and the often changing set of actors that have continued to carry it forth.

I propose to consider here the relationship between Israel's framing as a settler-colonial fact/*fait*/state and the kind of question or questions Palestine emerges as. More broadly, what is the relationship between fact and question here, and how does that relationship change when Israel or the Zionist project is framed differently? As say, simply a colonial fact? As an outpost of European imperialism? Does Palestine become a different kind of question when we understand Israel as a different kind of state? To do this, I will put into conversation Zreik's framing, drawn from his particular geographical and historical location, with another seminal text concerned with a similar problem from a different geographical and historical location: Maxime Rodinson's 'Israël: Fait Colonial?', published in *Les Temps Modernes* a few days before the 1967 war and translated in 1973 by David Thorstad as *Israel: A Colonial-Settler State?*[2]

Although the parameters of my question stem from interrogating what appears as a mis-translation or over-translation by Da-

vid Thorstad of Rodinson's title, in effect anticipating our present concern with naming and defining the contours of settler-colonialism as a political phenomenon, the parameters of my analysis come from a close reading and contextualising of both texts historically and epistemologically. Does Palestine become a different kind of question depending on whether the onus is on European coloniality or Jewish settlement? I will lean on Thorstad's fortuitous translation choice to help me conceptualise the differences between a colonial-settler frame whose facticity rests on its colonial structure; while what materialises a settler-colonial state is generally understood to be the settlement of foreigners who 'bring their *nomos* with them'[3] to an already inhabited and politically organised land. I will start by interrogating the different kinds of facts attributed to the state of Israel through these two paradigms and then move on to analysing the different kinds of questions by which Palestine is produced.

Settler-Colonialism or Colonial Fact?

While reading Zreik's text, I was struck by the similarity of its organisational structure and argumentation with a text I had read over a decade ago by Maxime Rodinson, titled 'Israel: Fait Colonial'. The similarity was in the attempt to tell the story of the Israeli-Palestinian conflict from 'both' sides, culminating in a kind of dialogical synthesis meant to make evident the colonial or settler-colonial status of Israel at present. Of course, the 'presents' each writes from are different. Rodinson was writing in 1967, just weeks before the Six-Day War that culminated in the Israeli occupation of the West Bank and Gaza, confirming his analysis of Israel as a colonial project. Zreik was writing in early 2020, just weeks before US President Trump unveiled his Middle East peace plan, which materialised US support of Israel's settler-colonial ambitions to further erase Palestine as a Question. This statement of

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2   Maxime Rodinson, 'Israël: Fait Colonial?', in *Le conflit israélo arabe*, ed. Jean-Paul Sartre (Paris: Temps Modernes, 1967): 17-88; Maxime Rodinson, *Israel: A Colonial-Settler State?*, trans. David Thorstad (New York: Monad Press, 1973).

3   Here Zreik is paraphrasing Mahmood Mamdani, 'When Does a Settler Become a Native? Reflections on the Colonial Roots of Citizenship in Equatorial and South Africa', (inaugural lecture presented at the Center for African Studies, University of Cape Town, 13 May 1998).

support, however, invites us to reconsider as still valid Rodinson's diagnosis of 'the creation of the state of Israel on Palestinian soil [as] the culmination of a process that fits perfectly into the great European-American movement of expansion in the nineteenth and twentieth centuries whose aim was to settle new inhabitants among other peoples or to dominate them economically and politically'.[4] Raef Zreik, on the other hand, prefers to emphasise the internal dynamics of Israel's coloniality over its more global Western imperialist underpinnings. This he has good reason to do, as his aim is to find the internal elements of resistance that might lead to decolonisation from the inside, where he situates his own activism. Rodinson, in 1967, was writing from France, and his aim was to challenge the virulent denial of colonial diagnosis from the European, American, and Israeli Zionist left. He writes:

> This is, moreover, an obvious diagnosis, and if I have taken so many words to state it, it is only because of the desperate efforts that have been made to conceal it. What is involved here are facts. As for terminology, it seems to me that the term colonial process is very suitable, considering the obvious parallel with phenomena everyone agrees to designate in this way. But this is a linguistic question.[5]

It may be a question of semantics, as Rodinson suggests, that hardly affect the 'facts' involved, but as we know from Edward Said and his postcolonial counterparts, the questions of representation, institutional culture and the epistemological categories that inform the colonial project are key to its justification and realisation. In fact, the question of the Western imperial gaze is one that Rodinson mobilises to prove the colonial underpinnings of the Zionist project from its beginnings. In his text, Rodinson quotes a letter written sometime between 1899 and 1901 by Theodor Herzel to Sultan Abdul-Hamid II, leader of the Ottoman Empire. In it, Herzel is trying to find a place for the Jewish community within the Ottoman Empire:

> If his majesty the sultan were to give us Palestine, we would undertake to regulate Turkey's finances. For Europe, we would constitute the bulwark against Asia down there, we would be the advance post of civilisation against barbarism. As a neutral state we would remain in constant touch with all Europe which would guarantee our existence.[6]

For Rodinson, this places Zionism clearly within the framework of European imperialist policies. He goes on to examine how the program adopted at the congress of Basel in August 1897 by Herzel's Zionist Organisation unabashedly followed the above policy.[7] The reason Herzel is so open and unapologetic about his colonial pursuits, Rodinson proposes, is because, despite the fact that the Jews of Europe were subject to discrimination, pogroms, and considered second-class subjects of their respective nations and empires, they were still European, and thus harboured the same sense of supremacy and civilising mission that their contemporaries did. He goes on:

> If the ancestral homeland of the Jews had been occupied by one of the well-established industrialised nations that ruled the world at the time . . . then the problem of displacing German, French or English inhabitants and introducing a new, nationally coherent element into the middle of their homeland would have been in the forefront of the consciousness of even the most ignorant and destitute Zionists.[8]

In other words, they chose Palestine because its inhabitants were non-Europeans and their existence thus readily ignored. This is simultaneously the starting point and the foundational erasure of Palestine as a question that both Zreik and Rodinson point to. It is also one of the unique features of European colonial modernity

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4   Maxime Rodinson, *Israel: A Colonial-Settler State?* trans. David Thorstad (New York: Monad Press, 1973), 91.

5   Rodinson, 91.

6   Rodinson, 43. Rodinson is quoting from Theodore Herzel, *L'Etat Juif* (Paris: Lipschutz, 1926): 95.

7   Rodinson, *Israel: A Colonial Settler State?* 43.

8   Rodinson, *Israel: A Colonial Settler State?*, 39.

that the decolonial school has underlined, starting in 1492 with the conquest of the Americas and the expulsion of Muslims and Jews from the Iberian Peninsula.[9] But I will address the importance of designating starting points for our questions in the section below.

For now, I hope to have shown some of the 'facts' that Rodinson mobilised to answer Jean-Paul Sartre's guiding question to the contributors of the special issue on the Israeli-Palestinian conflict: 'can Israel be considered a colonial phenomenon or not?'[10] These facts are just as much epistemological as they are material. Their epistemological content, for Rodinson, stems squarely from the European birthplace of Zionism. But so does their material realisation, and this is what Zreik's paper skims over. According to Rodinson, Israel could only become a fact/state with the help of the British Empire's safeguarding of unchecked emigration to Palestine from 1917 to 1948. Before the 1917 Balfour declaration and the British Mandate over Palestine, the Jews of Europe were more concerned with leaving Europe for anywhere they could settle freely without the fear of anti-Semitism, than with reclaiming Palestine as a long-lost homeland.[11] It was Great Britain's actions in guiding and aiding settlement that allowed the Yishuv (Jewish community in Palestine prior to 1948) to increase from 11 percent of the total population of Palestine in 1922 to 31.5 percent in 1943.[12]

In the 1960s and early 1970s, by the time Rodinson was writing and Thorstad translating, colonialism was no longer considered a civilising virtue. The struggle against Western imperialism was the wider goal of both socialism and anti-colonial movements. The Palestinian question was couched in terms of liberation and self-determination, with leftist Zionism vying with the PLO to define themselves as the colonised struggling against the imperial oppressor. Which was the nationalist movement and which the

colonial one? What is clear from Thorstad's translation of Rodinson's 'fait colonial' as 'colonial-settler', is that what made Israel a fact was its colonial structure. Only subsequently did it grow into a nationalist one that refused to admit—or attempted to erase—its colonial foundation, and therefore showed itself unwilling to decolonise. Here too, the question of epistemological gaze or historical-geographical location comes in. At the time, nationalism was seen as the driving force of decolonisation. Hence the leftist Zionist argument that they were not a colonising movement but a national one, simply defending its right to exist as an independent nation-state.

Today, we are much more critical of nationalism as a liberating force. Nationalism too, is understood as a Western imperial export, an imposition from 'outside' regarding how independent states should be constituted under the present international order. In the years between Rodinson's reading of Israel as a colonial fact and Zreik's reading of Israel through a settler-colonial frame, we have seen the Israeli occupation of the West Bank and Gaza transformed by the expansion of Jewish settlements in the former and the containerisation of the latter under a perpetual state of siege. As Zreik puts it, this has led to the outsourcing of population control in the West Bank to the Palestinian Authority while Israel continues to control the land, in effect ghettoising Palestinian villages while legalising and bringing the Jewish settlements into the orbit of the Israeli state.[13] Simultaneously, Gaza has been economically and militarily isolated from other Palestinian localities, 'subject to its own regime of permits and movement'.[14]

The fifty years that have elapsed have also seen the critique of colonialism turned inward, from denouncing the expulsion and expropriation of the Palestinians to examining the colonial nature of the Yishuv itself and the internal structure of Israeli society, particularly regarding relations between its various ethnic groups. This critique was carried by the New Historians in the late 1980s,

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9   See for example, Walter Mignolo, *The Darker Side of Western Modernity* (Durham: Duke University Press, 2011) and Aníbal Quijano, 'Coloniality of Power, Eurocentrism, and Latin America', *Nepantla: Views from South* 1, no. 3 (2000): 533-580.

10   Rodinson, 'Israël: Fait Colonial?', 154.

11   Rodinson, 224.

12   Rodinson, 189.

13   Zreik, 'Formation'.

14   Zreik, 'Formation'.

by sociologists such as Baruch Kimmerling and Gershon Shafir, and by cultural and postcolonial studies scholars such as Ella Shohat in the 1990s. By focusing on the internalisation within Israeli society of the epistemological categories that informed nineteenth- and twentieth-century European colonial expansion, they provide a bridgehead between Rodinson's critique of imperialism and the emphasis of settler-colonial studies on the Nakba as a continual process of expulsion and expropriation rather than an event that took place in 1948 and led to the exile of 700,000 Palestinians.[15] Whereas Rodinson had to argue, within the zeitgeist of the 1960s, that Israel was a colonial phenomenon rather than a national one; authors such as Gabriel Piterberg and indeed Raef Zreik can show both its nationalist and colonialist facets working in tandem rather than at odds with each other.

If we widen the discussion to see what is at stake here, Israel becomes the exemplar of the co-constitution of colonialism and nationalism. This is a problematic optic indeed as we are used to thinking of nationalism as an anti-colonial project. Zreik cautions against this familiar view when he points out that pro-Zionists insist on being seen as a national movement while anti-Zionists insist on seeing Israel as colonial.[16] He instead suggests that Zionism has multiple organising logics that include both nationalism and settler-colonialism. I would push this further by suggesting that perhaps one of the elements that is unique to settler-colonialism is that its settlers eventually turn to nationalism as a means of legitimising their colonial expropriation of the 'native'. Whereas nationalism was used as an anti-colonial tool from within typical European colonies and protectorates, in settler-colonies it is deployed to secure the legitimacy of the settlers' claims over the land they have colonised. As Fayez Sayegh has remarked, in the case of Israel, colonialisation became an instrument for the construction of a nation rather than the emanation of an already consolidated

nationalism.[17]

Viewed from the vantage point of African nation-states, the 'fact' of colonialism and nationalism co-constituting each other seems even more obvious. One look at the structures in place in a postcolonial state like Uganda brings to the fore its colonial heritage, although of course that is not all there is to the matter. Uganda may exist within its current form because it was imagined as such by British colonial agents. But the content that is Uganda today is not British. It is a union of territories and peoples that existed long before the British colonised them. Perhaps this analogy may allow us to better understand Zreik's argument, in our present. If Israel is to decolonise now, it is from the inside, with its current configuration of peoples and its current hierarchies of power. Palestine as a Question exists today within these contemporary parameters. It is no longer an imperial question, as Rodinson had it fifty years ago. To decolonise empire would mean to act from outside the nation as much as from within. But the question is still a colonial one, colonial *in so far as* it is a nation-state built by colonial settlers. Settlers, not migrants: settlers concerned with retaining and building their majority.

To sum up the problem of Israel's facticity before moving on to Palestine as a Question: how does the problem of translation force us to rethink these seemingly obvious concepts of settler-colonialism on the one hand, and what we might call European colonial imperialism on the other? Thorstad's translation of '*fait*' [fact] as 'state' obscures the sociological reference to Emile Durkheim's 'social fact', or Marcel Mauss's 'total social fact', which I imagine was Rodinson's intention. Though the word 'state' retains some of the solidity and incontestability that the word 'fact' marshals, states are subject to change in a way that facts are not supposed to be. Thorstad's translation thus destabilises the categorical ground on which Israel stands in a way that mirrors Rodinson's argument but somewhat contradicts his conclusion. Indeed, for Rodinson,

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15　Michaël Séguin, 'Conceptualiser la colonialité d'Israël: retour sur la trajectoire d'une analyse polémique', *Cahiers d'histoire. Revue d'histoire critique* [En ligne] 131 (1 avril 2016), http://journals.openedition.org/chrhc/5192 (accessed 2 May 2019).

16　Zreik, 'Formation'.

17　Fayez A. Sayegh, *Zionist Colonialism in Palestine* (Beirut: Research Center, Palestine Liberation Organization, 1965): 57-69.

there was no doubt that Israel was there to stay;[18] the only way it could entertain the question of Palestine was to acknowledge its presence and look for a compromise. The only way out of a colonial situation is if the natives accept you as one of their own, he writes,[19] in other words, 'going native'. Yet this is precisely what the Jewish peoples of Israel have refused to do. He also attests, however, that most nations have a colonial beginning, with one people imposing their will on another. This, he claims, is also a fact.[20] What Zreik does, fifty years later, is continue to trace how this state of affairs—the state of Israel—has been forced to change over time, relinquishing some of its facticity because the Question of Palestine has been kept alive in equally changing forms.

The second thing Thorstad's translation does is to reverse the word order of the paradigm Zreik uses to frame his understanding of the Israeli state. The question is not whether Israel is a settler-colonial state but rather a colonial-settler one, thus keeping the onus on coloniality, which indeed captures Rodinson's argument. What this reversal has allowed me to do is think through the nuances between Zreik and Rodinson's diagnoses, based on their differing geographical and temporal locations as well as the different aims of their arguments. As I pointed out above, seeing nationalism and colonialism as co-constituted solves to a certain extent the problem of emphasis shored up by the translation. But perhaps what it does even better is to express the foundational difference Sayegh saw between Israel and other European colonies. The former was enacting colonialism for the purpose of building a nation; the latter, enacting colonialism as an extension of already-existing nationalism. We might even read Zreik's argument as updating Sayegh's analysis, showing how Israel, having built its nation on colonial grounds, is now engaged in extending its nationalism through further colonial expansion and expropriation into the West Bank. Thus, there are several crossroads at which

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18 Rodinson, 'Israël: Fait Colonial?', 231.

19 Rodinson, 232.

20 Rodinson, 231.

Zionism, and later Israel, becomes 'a fact on the ground'.[21] Each one of these crossroads involves a historical erasure of the question Palestine poses to Israel's facticity. In what forms then has the question of Palestine survived?

What Kind of Question is Palestine?

If Israel is a fact, even if it has been different kinds of facts at different points in time, why should Palestine be thought of as a question? Is it because it lacks that stability we attribute to Israel: it lacks statehood? This may be it, though one could argue that Palestine as a place and as a people inhabiting that place has existed far longer than Israel has. The situation might thus be named and argued in reverse: Palestine as a fact has been slowly but surely eroded since the mid-nineteenth century by the question of Zionism, then Israel. In some ways, this is the way Rodinson sees it, especially when he argues that contemporary Palestinians are more likely to be able to trace their ancestry to the ancient Hebrew nation than contemporary Israelis are, coming as they did from global diasporas.[22] Palestine is more likely to constitute the *longue durée* fact. But, as discussed above, he also argues that Israel is at present the fact, and its facticity must be contended with. Thinking about the fact-question relationship in this way means mobilising hierarchies of power and claims to the land. The powerful is the fact, the weak the question; or the more ancient inhabitants are the fact, the newcomers the question. Neither of these ways of distributing facticity and interrogation are very useful for probing Zreik's framing of Palestine as a Question.

More useful is to think about the importance of designating where the question starts from, and from where it is posed. The latter point—from where the question is posed—has two parts: a geographical location and an epistemological one, both of which help us see what makes Palestine a Question rather than a fact and as what kind of question or questions Palestine emerges.

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21 Zreik, 'Formation'.

22 Rodinson, 'Israël: Fait Colonial?', 218.

The first point—where does the question start, or when is it first thought as a question—depends very much on where it is being thought from, both geographically and epistemologically. Epistemologically then, both Zreik and Rodinson agree that what constitutes Palestine as a question is the desire to erase it as fact. Erasing Palestine as a fact clearly begins for Rodinson with the denial of the existence of the Palestinian people, a denial symptomatic of nineteenth-century European imperialism of which Zionism is a part. This is also one of Edward Said's arguments in *The Question of Palestine*.[23] The propensity to erase others will become the ideological construct that the decolonial school interprets as a major facet of European colonial modernity, beginning in the fifteenth century. In a way, seeing the birth of this ideological project of erasure four centuries earlier helps us frame the question of Palestine as one amongst many instantiations of the greater Question of non-European peoples.

That being said, the moment of erasure as an epistemological starting point for constituting a people as a question is more pertinently borne out by the parallel with the 'Jewish Question', emerging from European anti-Semitism and the desire of European nations to assimilate, exterminate, or export their Jewish minorities. Zreik pushes the parallel between the Jewish Question and the Palestinian one further through his analysis of how a number of different questions get collected and coalesce as one. Indeed, Zreik takes us through the different versions in which the question of Palestine has been posed in relation to the different states Israel existed as over time. 'The Question of Palestine was born out of the Nakba, which meant the total shattering of a people and its national project', he writes.[24] It follows then that before 1948, the Palestinian question was, in a sense, the Jewish question, in its multiple Zionist interpretations. This event is the birth of Palestine as a Question for Zreik because it is only with the exile of 700,000 Palestinians that Israel managed to constitute a Jewish

majority, erasing in its wake alternative possibilities for the Yishuv within a multicultural state. For Rodinson however, the starting point is earlier, in 1917, with the Balfour declaration. This, he says, is when Palestine became the 'special problem' of Great Britain, giving itself a strong foothold in the Middle East from which to make claims on the territories lost by the Ottoman Empire after World War I. But he rightly points out that Palestine was already a Question before that, in the form of Arab nationalism. There was already a national claim on the territory of Palestine.[25] Zreik's choice of a starting point makes the Question of Palestine internal to the state of Israel while Rodinson's makes it global, or at least, pan-Arab, in its nationalist anti-imperialist form. Although their epistemological starting point is the same—erasure—their historical starting points differ. And with these different starting points, different shades of the Question emerge.

However, both agree that it is through the process of erasure at certain key junctures that the Question also changes, evolving from many different questions or debates into one; and fragmenting back into many strategically separated questions from 1967 to the present. Between 1948 and 1967, for Zreik, the question of Palestine was one of a lost homeland, with the erasure of the question of a multicultural Palestine in favour of a majority Jewish state. During this time, the Question was embodied and posed to Israel's facticity by Palestinian refugees, supported by the Arab states and some of the international anti-imperialist left. From 1967 to the failure of the Oslo accords, the Question became slowly but surely internalised and de-Arabised and is carried now by the occupied peoples of Gaza and the West Bank. With Arab countries absolving themselves of responsibility for the Question of Palestine, it became a Palestinian question. The erasure that inaugurates this new form of the question is letting go of the liberation of all Palestine in favour of a two-state solution. De-Arabisation, the separation of territories, the isolation of Gaza and the encroachment of settlements in the West Bank further dissolved the Palestinian

23 Edward Said, *The Question of Palestine* (New York: Vintage Books, 1992).

24 Zreik, 'Formation'.

25 Rodinson, 'Israël: Fait Colonial?', 179.

question into many separate ones. 'In Oslo, Palestinians lost their language', he writes.[26] The language of liberation was erased and replaced by the language of terrorism, as was the case in much of the post-9/11 world. The separate questions, carried by separated peoples, could no longer coalesce into one, in a way dissolving also the power it may have had to unsettle the facticity of Israel.

Yet Zreik finds some hope for the resurrection of the Question in the unlikely guise of Israel's attempts to integrate Israeli settlements into the Israeli state proper. This is something the settler-colonial paradigm helps him to articulate. On the one hand, a new version of the question of Palestine has emerged, carried this time by Israeli Palestinians struggling for equal rights under the law, and later for special group rights as an indigenous community of Israel. Here it is no longer the question of a lost homeland, or a specific territory to be regained, but the civil rights of its people under Israeli sovereignty. Hence, he says, it has become an ethnic question.[27] With the concomitant integration of settlements into the Israeli state, an external version of the question is becoming internalised while an internal version is becoming externalised: If Israel is expanding, what then will become of the Palestinians in the West Bank?[28] This, he suggests, may be a moment in which the fragmented Question of Palestine is becoming one again. The irony is, this expanded internalisation of the Question of Palestine into an ethnic, indigenous one, reminds us all the more not only of Israel's colonial heritage, but also of its colonial-nationalist present. We might ask, what alternative versions of the question are currently being erased in order for this one to emerge? And what kind of relationship between Question and fact is borne out? This is key to developing decolonisation strategies from the inside, as Zreik seeks to do in his third lecture.

What would Rodinson say to the feasibility of decolonising the state of Israel were he still alive? In an interview in 1998 published by *Confluences* thirty years after his original text, he conced-

ed that the starting point for decolonisation was still not present: Israel would have to admit its wrongs to the Palestinian people. Instead, it continues to claim its divine right or historical rights over the land.[29] When asked whether Israel is still an imperialist state today, thirty years on; he answered in the affirmative. It is imperialist because it is expansionary: it believes in its own right to expand its territory.[30] Therefore, he would probably suggest, decolonisation—the very purpose of constituting Palestine as a Question—would have to involve an anti-imperialist struggle from the outside as much as a national struggle from the inside.

I have tried throughout this discussion to suggest that one way to 'fine tune' the settler-colonial paradigm, as Zreik proposes we should, is to think through alternative versions of it. One such version comes to us from a translation choice made decades ago by the English translator of Maxime Rodinson's 'Israel: fait colonial?' While Rodinson emphasises the coloniality of the state of Israel within a greater Western imperial project, Zreik is more interested in looking inward at its current settler-colonial characteristics in order to shore up how they might be Questioned from the inside. Perhaps, one way of restoring the onus on coloniality that Rodinson saw as evident in order to better resist Israel's continuing expansion is to propose, with Sylvia Wynter, that 'one cannot unsettle the "coloniality of power" without a re-description of the human outside the terms of our present descriptive statement of the human, Man, and its over-representation'.[31]

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26 Zreik, 'Formation'.

27 Zreik, 'Formation'.

28 Zreik, 'Formation'.

29 Maxime Rodinson, '"Israel: Fait Colonial?", 30 ans après', Interview by Régine Dhoquois-Cohen. *Confluences Méditerranée* 26 (October 1998): 30.

30 Rodinson, 31.

31 Sylvia Wynter, 'Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation –An Argument', *New Centennial Review* 3, no. 3 (Fall 2003): 268.

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DISCUSSION

Framing Palestine as a Question

Oluwatosin Orimolade

Abstract

Raef Zreik offers a settler colonial framing of the question of Palestine. Settler colonialism is understood as structure rather than event because it determines the colonial enterprise to its very endpoint. However, a structural framing that brackets intention is inconsistent with a narrative that is rich with the intents of Zionist settlers. This divide between structure and intention culminates in a disjuncture between framing and narrative. The emergent fallouts are as follows. Firstly, with an emphasis on the settler project rather than colonialism, Zreik does not explain the nature of settler colonial power. Secondly, his narrative appears to exceptionalise the settler colonial. To address these problems, I suggest a reading of Mamdani that could reconcile structures with intentions, analyse the mode of settler colonial governance, and locate settler colonialism in the history of colonial governance. Finally, I reflect on the challenges of the Palestinian struggle for citizenship in the state of Israel.

Introduction

The question of Palestine has featured prominently in global politics since 1948. Although it has absorbed national, regional and global initiatives, it has defied easy solutions. In view of this, curious readers of this volume should be interested in understanding why in spite of multi-level, multi-actor responses, the Palestinian question remains intractable. Raef Zreik's paper, which is the focus of this commentary, offers useful insights on the germ of the

problem.[1] Like other settler colonial projects, Israel's founding was similarly characterised by appropriation of land, expansion over space, displacement and expulsion of the native populations. The question of Palestine, therefore, emerged as an inevitable outcome of the disintegration of the national aspirations of the Palestinian people and as a struggle for a lost homeland. As he demonstrates, Israel's ambivalent disposition is at the core of the perpetuation of the problem—unwilling to annex the occupied territories in a bid to shirk its full political and economic responsibilities, but also reluctant to grant Palestinians the right to self-determination, resulting in an elusive quest for solutions. By providing a dense historical narrative, Zreik explains the evolution of the Palestinian question, identifies critical moments and junctures, examines rationale for adoption of particular plans and their implications for the making of the Palestinian question. Through a process-driven narrative, he reflects on the consequences of particular actions and decisions as well as on paths not taken.

In spite of formulating the Palestinian question as the outcome of a settler colonial project, Zreik warns against a one-size-fits-all application of the concept and appears willing to accommodate other analytical variables within his narrative. The settler colonial paradigm is, therefore, 'one among others. It does not exclude class analysis, global politics or the fact that there is also a national conflict, at times also fuelled by religious discourse'[2]. By moderating the value of the 'settler colonial' category, Zreik anticipates a settler colonial concept that is adaptable, flexible and fine-tuned to capture different settler colonial contexts and their differentiated institutional constellations. Zreik anticipates a settler colonial concept that is adaptable, flexible and fine-tuned to capture different settler colonial contexts and their differentiated institutional constellations.[3] These qualifications are valuable

grounds of circumspection for students of colonial studies.

In this commentary, I engage with the settler colonial framing of the question of Palestine. The problem, I would argue, is not the settler colonial framing *per se*, but his analytical strategy. I find Zreik's preference for a structural reading[4] of settler colonialism that brackets intention to be inconsistent with the narrative he offers. It is hard to see how this framing coheres with a narrative that is richly textured with intentions and motivations. Secondly, given Zreik's acknowledgement of Mamdani as a source of inspiration on this subject, I will suggest that a cautious re-reading of Mamdani could enable a possible reconciliation between the framing and the narrative.[5] After all, rather than a one-sided optic of colonialism, Mamdani strives for a sublation that demonstrates how intentions and motivations of colonial officials congealed into enduring structural legacies.[6] Finally, I reflect on the Palestinian struggle for full citizenship in the state of Israel. Given that the Israeli state is inherently a Jewish state, I will argue that the quest for collective recognition as a national group within Israel is a tall order.

Structure vs Intentions: Mismatch between Zreik's Framing and Narrative

Zreik's narrative is richly descriptive and informative, particularly for readers that are not familiar with the Zionist settler colonial project in Palestine. The crucial connection, it bears reminding, is that it is the Zionist settler project that has created the complex problem of statehood in Palestine. To make this argument, Zreik

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1   Here and throughout I refer to Raef Zreik, 'Palestine as a Question: Lecture One: Formation', in the present issue.

2   Zreik, 'Formation'.

3   This observation is inspired by Patrick Wolfe's preoccupation with colonialism as a heterogeneous phenomenon. Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event*

(New York: Cassel, 1999), 1-7.

4   See also Wolfe, *Settler Colonialism*, 2; Evelyn Nakano Glenn, 'Settler Colonialism as Structure: A Framework for Comparative Studies of U.S Race and Gender Formation', *Sociology of Race and Ethnicity* 1, no. 1 (2015): 54-74; Lorenzo Veracini, 'Introducing', *Settler Colonial Studies* 1, no. 1 (2011): 1-12.

5   Mahmood Mamdani, 'When Does a Settler Become a Native? Reflections on the Colonial Roots of Citizenship in Equatorial and South Africa', Inaugural Lecture presented at the Center for African Studies, University of Cape Town, 13 May 1998, https://citizenshiprightsafrica.org/wp-content/uploads/1998/05/mamdani-1998-inaugural-lecture.pdf, accessed January 12, 2020.

6   Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (New York: Princeton University Press, 1996).

puts together a narrative that maps a range of discourses, plans and proposals from which particular decisions or actions were taken, and their shifting implications for the Palestinian question. In effect, the problem does not evolve on a linear cumulative trajectory. Instead, it is marked by backward and forward alternations that reproduce old challenges and foreclosures. In this regard, the continuities and ruptures between 1948 and 1967 are noteworthy. In 1948, when Israel was originally confronted with the demographic question of what to do with the large native population, its immediate response was to undertake a project of expulsion and displacement that created a region-wide refugee problem for its Arab neighbours. This strategy would stall the problem only momentarily. By 1967 however, the demographic problem was back on the agenda as Israel expanded its settler project into the occupied territories. If in 1948 Israel opted for expulsions, from 1967 Israel searched for a politically and economically cost-effective strategy for managing the occupied territories. I do not wish here to further reproduce Zreik's narrative; my point, however, is that the settlement plans adopted by Israel at different critical moments recreated old challenges and produced new ones at different intervals.

If we take Zreik's desire to offer a narrative that emphasises structures rather than intentions seriously, there is nothing to suggest that we are not in the domain of wills and intents. After all, the entire narrative is laced with the adoption of particular plans out of a range of proposals at key moments. It is therefore worthwhile to query Zreik's preference for a conception of settler colonialism as structure, even though the narrative appears to suggest otherwise. As Zreik suggests, the ground for this conception is explained by the fact that the settler colonial state is a distinct state genus.[7] Its distinct character is explained by the fact that the settlers' motive in the colony is to stay and never to return. Moreover, unlike migrants willing to subject themselves to the *nomos* of the new country, the settler refuses subjection to the 'institutional and political structure of the new country'.[8] Once this motive is established, it creates in the colony an 'endless movement' of expansion and appropriation that is 'far from being able to solve its internal contradictions'. In fact, the settler project creates its own imperatives—a train of inevitabilities that are necessary for its consummation and consolidation. For this reason, Zreik claims that to understand settler colonialism, the accent should not be on 'the intentions of Zionist leaders but on what Zionism requires as a movement in order to fulfil its targets'.[9]

This analytical manoeuvre is superfluous and inherently contradictory. Even if it were admitted for the sake of the settler colonial project that certain decisions are made not out of sheer will or desire, but rather as an inherent outcome of the settlement plan, it is still easy to see that these unforeseen actions are themselves an outgrowth of the original intentions of Zionist leaders to conquer and settle the territory in the first place. Besides, it is inconceivable that Zionist leaders could have envisioned a comprehensive proposal, given the law of unintended consequences. It is doubtful that such actions belong in the realm of structures. Instead, actions and decisions that may not be explainable within the original settlement plan are arguably conceivable as contingencies. Given the incoherence between framing and narrative, Zreik struggles throughout the text to frame the narrative. On one hand, he wants to argue that the settler project generates its own imperative. Yet he must acknowledge that there was an original intention to settle in Palestine, to establish a Jewish state and that this was the guiding principle of the Zionist movement and its leadership since the 1940s. Elsewhere, Zreik claims that the intention of creating a Jewish state was encoded within the state's genetic make-up as to obviate codification of formal law as basis for segregation.[10]

This is not an argument against structural analytical frame-

7   This claim is central to recent writings on settler colonialism. Veracini, for instance, contends that 'Colonisers and Settler Colonisers want essentially different things'. Veracini, 'Introducing', 1; see also Wolfe, *Settler Colonialism*, 1-2.

8   Zreik, 'Formation'.
9   Zreik, 'Formation'.
10   Raef Zreik, 'Why the Jewish State Now?', *Journal of Palestine Studies* 40, no. 3 (2011): 23-37.

works. My contention is primarily against a structural analysis that is disembedded from intentions. The duality between structure and intention is analytically unhelpful as Zreik's narrative strategy amply illustrates. The result is a rich descriptive narrative that does not cohere with the affirmed narrative framing. There are, therefore, two emergent fall-outs of this analytical strategy. Firstly, Zreik's structural framing of the settler colonial project appears to place emphasis on the settler project per se rather than on colonialism. According to Zreik, his analytical strategy is one of a 'settler project of ongoing expansion and appropriation'. It is 'the desire to expand and settle on the one hand…and…to exclude the Palestinians on the other' that has 'created and continues to create internal tensions within the project'.[11] As such, Zreik is unable to espouse the anatomy of colonial power that is crucial to the production and consolidation of settler privileges. Secondly, given his accent on settlement, Zreik, as is the case with other recent scholarship,[12] exceptionalises the settler colonial state.

Reconciling the narrative with the framing demands a nuanced understanding of structure grounded in the relationality between structure and intentions, as I will argue in the next section. There are at least two reasons why this sublation is analytically expedient vis-à-vis Zreik's project: firstly, it could enable the subsumption of settler colonialism broadly within the history of colonialism. Secondly, it could offer useful insights for de-exceptionalising settler colonialism. To do this, I propose a (re)reading of Mahmood Mamdani,[13] to whom Zreik has acknowledged analytical debts.[14]

Settler Colonialism is Colonialism: De-Exceptionalising the Settler Colon

I earlier suggested that recent writings on settler colonialism claim that settler colonialism is not colonialism.[15] Given that Zreik's conception of settler colonialism can be located within this burgeoning scholarship, his tendency to exceptionalise the settler colonial is unsurprising. Justification for the extrication of the settler colonial from colonialism is premised on the idea that the settler project is an invasion that persistently shapes the endeavour in pursuit of a specific end-point.[16] For this reason, Patrick Wolfe asserts that settler colonialism is structure rather than event.[17] The distinctness of settler colonialism vis-à-vis classical colonialism inheres in the settlers' quest to eliminate the native, replace the local population, or reduce them to a minority. As Veracini contends, the specificity of settler colonial projects derives from the fact that it encapsulates two conceptions of the colony—as the domination of a political body by an exogenous agency on one hand, and the desire of the exogenous entity to reproduce itself in a given environment on the other.[18] Invariably, in this context, it is the first that eventually becomes the last. The Zionist settler project, as Zreik shows, was similarly marked by the objective of reducing the native population to a minority, creating opportunity for an Israeli state that could be simultaneously Zionist and democratic,[19] while obviating the construction of an apartheid-type state in Palestine.

As could be inferred from Zreik's paper, it is the settler project that generates ramifying effects for settlement expansion, constitutional form, the nature of the borders and frontiers, hierarchy and social stratification among different social groups. However,

11　Zreik, 'Formation'.

12　I will argue that this point can equally be made about recent scholarship on settler colonialism such as: Veracini, 'Introducing', and Wolfe, *Settler Colonialism*, among others.

13　Mamdani, *Citizen and Subject*; Mamdani, 'When does a Settler Become a Native'; Mahmood Mamdani, 'Settler Colonialism: Then and Now', *Critical Inquiry* 41, no. 3 (2015): 596-614.

14　Raef Zreik, 'When does a Settler become a Native? (With Apologies to Mamdani)', *Constellations* 23, no. 3 (2016): 351-364.

15　This includes, among others: Wolfe, *Settler Colonialism*; Lorenzo Veracini, *The Settler Colonial Present*. (London: Palgrave Macmillan, 2015); Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview*. (London: Palgrave Macmillan, 2010); James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783-1939*. (Oxford: Oxford University Press, 2009).

16　Wolfe, *Settler Colonialism*.

17　Wolfe, 2.

18　Veracini, *Settler Colonialism*, 2-3.

19　Zreik, 'Formation'.

the emphasis on the settler project understates the significance of the settler colonial state in creating and perpetuating settler privileges and native exclusion or marginalisation. In fact, Zreik merely hints at the nature of the settler colonial state in Israel. Its crucial defining element is a commitment to Zionism as a guiding principle. But it is not clear how Zionism congeals into a state form, and the range of institutionalised practices that it necessitated.

I have already suggested some reasons for underplaying the settler colonial state that deserve elaboration here. The first is that, as Zreik has argued elsewhere,[20] Zionism was congenitally woven into the fabric of the Israeli state so as to make unnecessary the reproduction of settler privilege through law. It would appear that given this, no deliberate attempt was made to create a juridical order that could promote and entrench settler privileges in the early decades of state making. Zreik notes, however, that the settlers' discriminatory logic was merely inscribed in the intention of legislators. In view of this, we can infer that it is the uniqueness of the settler project in Palestine that justifies understating the place of the settler colonial state to start with. After all, Israel was created not by a constitution but as a revolution.[21] The second point, I want to contend, is traceable to a 'settler colonial framing' that locates the settler project as explanans and the colonial state, among others, as explanandum.

But shouldn't the explanatory strategy have been otherwise? After all, as Mamdani makes clear, 'settlers are kept settlers by a form of the state that makes a distinction—particularly juridical—between conquerors and conquered, settlers and natives and makes it the basis of other distinctions that tend to buttress the conquerors and isolate the conquered, politically.'[22] This insight from Mamdani is doubly instructive because it could enable an explication of the state form and practices that were integral to

the settler colonial project in Palestine. In addition, it could offer methodological and analytical possibilities for transcending the exceptionalism that has shaped recent scholarship on the subject. The result of this would be to firmly situate Palestine as part of the history of colonial governance in the modern world.

Mamdani has observed that the overriding question that preoccupied colonial states and colonial officials everywhere—whether under settler or classical colonialism—was the native question.[23] Everywhere, colonial state makers have been confronted with three alternative responses to the native question: eliminate and displace native populations, integrate natives into the institutional designs adopted from the mother country, or selectively appropriate native customs and laws by undertaking a project of institutional segregation. These three responses gave rise to three broad institutional constellations—the settler colonial state, the direct rule colonial state, and the indirect rule colonial state.

These are not ideal types, but are distinct analytical categories with profound overlap in political design and practice. Indeed, more than any of these, it is the political technology of indirect rule that suffused settler state making if we think of them analytically as distinct types, fragmenting native populations, containerising them within territorial enclaves such as reserves, and discouraging the inter-mixing of natives and settlers. Yet beyond this, as Mamdani as noted, the methods of colonial governance that typified indirect colonial rule were largely of settler colonial provenance.[24] The enclosed tribal homelands under indirect rule were originally invented in response to the native question in the United States.[25] The invention of this means of power was necessitated by the evolution of the settler project from conquest to legitimation of the colonial enterprise and pacification of the tribal populations. Zreik's narrative captures this shift in the evolution of the Palestinian question from preoccupation with exter-

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20 Zreik, 'Why the Settler Colonial State?'.

21 Zreik argues that only later did Israel become a state particularly as the logic of its formation shifted from an ethnic logic to a civic logic. See more on this in Zreik, 'Why the Settler Colonial State?'.

22 Mamdani, 'When does a Settler become a Native?', 1.

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23 Mamdani, *Citizen and Subject*, 3; see also, Mamdani, 'Settler Colonialism: Then and Now'.

24 Mamdani, 'Settler Colonialism: Then and Now'.

25 Mamdani, 608.

mination and displacement to a concern with managing the native population through cost-effective methods that included granting Palestinian Authority control over the occupied territory, while retaining control over security, land and borders.[26]

Among the range of colonial technologies of governance that were devised in response to the native question, law was particularly important in discriminating between settlers and natives, or between the excluded and included.[27] An emphasis on law may not have been necessary at the conquest phase of the colonial enterprise, but there is an explosion of legislation as the settler project expands to encompass large native populations. This arguably justifies why, as Zreik observes, there was no need for a law to define the Israeli state as the state of all Jewish people worldwide. Such laws would only become necessary in the context of the expansion of control over larger Palestinian populations. These colonial structures of power were products of colonial designs and intentions articulated at different times by settlers, statesmen, cabinet members, political thinkers, and colonial officials. But the making of the colonial state unfolded over an extended time, as such newer colonial enterprise could borrow and adapt technologies of governance that were designed in the early history of the colonial state. In this regard, the native reserves and the pass system that were applied in the making of the apartheid state were originally developed under experiences of colonial rule in the United States and Canada.[28] This observation points to the structured context in which later colonial state-makers made history as they borrowed from the wisdom of colonial state-builders that preceded them.[29] The colonial modes of power that they designed congealed over time into enduring structural legacies.

My point, therefore, is that by failing to pose the Palestinian question as a form of the native question, Zreik is arguably unable

26   Zreik, 'Formation'.
27   Mamdani, 'Settler Colonialism: Then and Now', 606.
28   Mamdani, 608-609.
29   Crawford Young, *The African Colonial State in Comparative Perspective* (New Haven and London: Yale University Press, 1994).

to explain the nature of the settler colonial state in Palestine, its institutional form, and its method of colonial governance. Starting with the native question is key to appreciating the colonial state as a distinct form while acknowledging its institutional variations. The convergence between settler colonialism and indirect rule colonialism is interesting and could offer grounds for de-exceptionalising settler colonialism. A cautious engagement with Mamdani's writings provide refreshing analytical entry-points in this regard. There is one more reason why it is important to think of colonialism generically, and this is because with reference to the emancipatory possibilities from all colonial structures of domination, it could offer grounds for forging political solidarities based on our common histories of colonialism.

In view of the above, the challenge that confronts all students of colonialism is this: how can we think of colonialism as a generic category in a way that valorises our collective struggle against colonial oppression on one hand, while remaining aware of the fact that the concrete dimensions of this struggle would be waged at the immediate context in which we continually experience colonial domination? I want to suggest that it is this concern that in part justifies Zreik's choice for an under-stated conception of settler colonialism that can be fine-tuned to the specificity of the Israel case and what decolonisation would mean given its supposed peculiar settler colonial history. In the next section, I reflect on the conundrum of granting Palestinians full citizenship status within a state that remains congenitally Jewish. It would seem that given this situation, only an explicit de-ethnicisation of the state could provide grounds for incorporating Palestinians as individuals rather than as a collective within the state of Israel.

Palestinian Quest for an Israel for all Citizens

Is it possible to anticipate the recognition of Palestinians as a collective national group within the state of Israel, if the state remains congenitally Jewish? This question is important given the two-pronged nature of the Palestinian demand for citizenship in

the state of Israel. On the one hand, they demand full citizenship rights as individuals, yet on the other, they desire collective recognition as a distinct national group. Zreik seems to think that these demands are not contradictory. I want to argue otherwise, given that they presuppose different logic of statehood—ethnic and civic statehood. The reconciliation of individual and collective rights within a discourse of liberal citizenship has been argued by liberal theorists who suggest that minority rights are not at odds with individual rights. What liberals contest instead are collective rights that restrict the liberty of individual members, but they are protective of collective rights that limit the exercise of economic and political power of society over a group.[30] This point notwithstanding, it is still the case that liberals have an irreducible commitment to individual rights, while collective rights are only perceived as sacrosanct in as much as they do not contradict the rights of individuals. In fact, it is arguable that in the liberal theory of collective rights, group level membership is instrumental to the extent that they are supposed to advance the interest of individuals—it is the group that exists for individuals rather than vice versa. The challenge, therefore, is to account for the distinct realm from which group rights emerge as rights that precede individual rights, and is therefore irreducible to the sum total of individual rights. Appreciating that these are inherently contradictory demands is particularly important for thinking about how both rights discourses could be coherently articulated within a comprehensive demand for emancipation.

The demand for collective rights by Palestinians, however, would mean that the Jewish state must be willing to recognise Palestinians as a national group. This is a high-stakes game. It reinforces Bruno Bauer's scepticism of the possibility for Jews to expect emancipation from a Christian state if the state retained its Christian character and if Jews remained Jews.[31] The particular form of

the problem is analogous to a dialogue of the deaf. It is therefore ethnic narrowness that forecloses common citizenship. It would seem that only a process of democratisation that dissolves the ethnic premises of the state of Israel would offer an opportunity for the incorporation of Palestinians within the state. This would require transforming the underlying basis of statehood from an ethnic to a civic logic. The claim that the state of Israel was originally created for Jews already undermines the possibility that Jews and Palestinians can exist as equal ethno-national groups within the state of Israel. This is not to suggest that Palestinians cannot have collective and individual rights, as is the case in some federations today, but that this would require, as is widely acknowledged, a challenge to the definition of the state of Israel as a Jewish state.

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30 Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).

31 Karl Marx, 'On the Jewish Question', in *Karl Marx: Selected Writings*, ed. David McLellan (Oxford: Oxford University Press, 2000), 46-70.

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LECTURE TWO

Palestine as a Question: Justice

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Abstract

This paper offers a frame through which to view debates concerning the justness of Palestinian demands. In its major part the paper does not offer substantive arguments to support the justness of the question of Palestine (though it does that sometimes when it discusses the Partition Plan in 1947). Rather, it investigates the modes and structures of arguments and the grammar of the debates around justice in Palestine that hinder and constrain the ability of Palestinians to air and make their arguments for justice. The paper develops a distinction between first and second order arguments for justice (FOAJ, SOAJ). FOAJ relate to substantive argument of justice like arguments for corrective justice or rules of just war, while SOAJ are those rules of engagement that adjudicate the way we run the conflict itself, akin to justice in war. The paper argues that, under the guise of self-defence and security threats, Israel aims to perpetuate the conflict itself in order to benefit from SOAJ.

Introduction

My treatment of justice in this lecture is in part analytical/discursive and in part substantive. By analytical I mean discussing the nature of discourses about justice in Palestine and their inherent problems and limits. I will explore modes of argumentation that hinder the possibility of presenting Palestinian arguments for justice. In doing so I assume, at a substantive level, that the Palestini-

ans do have valid arguments for justice, but that there are regimes of discourse that imprison and block these arguments. Part of the job of the paper is to locate and unearth these moments of block-age. The paper would be lacking, however, if it said nothing on the level of substantive justice–i.e. who deserves to get what, and why? For this reason, I will touch upon this aspect as well, but only in a minor key. In addressing this issue of substantive justice, my intent is only to deal with the past, not the future. A discussion regarding the future will be left to the next and final talk about decolonisation, which is forward-looking in nature and takes on issues of corrective justice, distributive justice, and what recently Mamdani called 'political justice'.[1] But the kinds of substantive ar-gument discussed here are related to the past, and will consider several cross-roads (the Balfour Declaration, 'Partition Plan') re-lating to the kind of injustices done to the Palestinians.

When talking about justice, it is worth making a tentative distinction between discourses about rights and discourses about justice. We can speak of two reasons, or justifications, as the ba-sis of rights: entitlement and need. My right to a salary from my university is a right based on entitlement, and my right to win a certain piece of land might depend on the fact that I have been cultivating the land for twenty years. In such cases we do some-thing to 'earn' the right. But my right to be represented by a law-yer in criminal procedures or my right not to be tortured do not depend on a certain act or fact in the past, rather these are rights based on need.[2] On the other hand, we can distinguish between

matters of corrective justice and matters of distributive justice. We can tentatively claim that corrective justice aims to correct a wrong done in the past regardless of the result in terms of dis-tribution–i.e. the end result after we bring about the corrective justice. Corrective justice requires that I pay back Bill Gates the $100 that I borrowed from him last year, even though I may end up with no money while the $100 will make no difference to him. Distributive justice, on the other hand, aims to achieve a specific result in terms of distribution between the citizens, regardless of the past.[3] It is tempting to associate corrective justice with entitle-ment rights, and distributive justice with rights based on need. At this stage I will not commit to this association in full, but suffice it to say that when I deal with substantive questions of justice they relate to the past, I do so with reference to both kinds of rights: rights based on entitlements and rights based on need.

In this sense my treatment of the past is not limited to con-siderations of corrective justice; rather I consider the argument for distributive justice as a competing argument based on entitle-ments. Thus, I will address arguments that emerged in the past at certain historical junctures, like those in the time of the Balfour Declaration or the Partition Plan in 1947. Specifically, I examine Zionist-Jewish arguments based on the need for safe heaven and shelter as opposed to the rights of the Palestinians to continue to inhabit, live, and cultivate their land without interruption. But the question of how to move forward, to decolonise, and to reach a true reconciliation in the future through a justice-based orienta-tion will be left to the third lecture.

This paper has several parts. In Section One, I address some difficulties relating to the fragmentation of the Palestinian ques-tion, leading it to a point where it threatens to lose its historical context. In this section, I address the importance of historical frame and what is jeopardised if we lose it. In Section Two of this paper I take issue with two key documents in the history of Pal-

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1   Mamdani contrasted 'survivors' justice' (as in the case of South Africa) with 'criminal justice' or 'victors' justice', as in the case of the Nuremberg trials. In his forthcoming book he associates the term political justice with survivors' justice to denote the idea of a certain mode of justice where victims and perpetrators put together a new regime. See Mahmood Mamdani, 'Beyond Nuremberg: The Historical Significance of Post-Apartheid Transition in South Africa', *Politics and Society* 43, no. 1 (2015): 61-88.

2   In making this distinction I follow that drawn by H. L. A. Hart between 'special rights' and 'general rights'. H. L. A. Hart, 'Are There Any Natural Rights?', in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 77-91. This distinction was further developed and elaborated by Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), 106-127.

3   There is an extensive body of literature on the topic. For a historical survey, see Itzhak Englard, *Corrective and Distributive Justice: From Aristotle to Modern Times* (Oxford: Oxford University Press, 2009).

estine: The Balfour Declaration in 1917, and the UN Partition Plan in 1947. I try to evaluate these two documents in terms of justice, arguing that they were unfair and unjust toward the Palestinians. In part, this section states the obvious but sometimes even the obvious must be restated. In Section Three, I return to analyse certain modes of argumentation and discourse that are being developed and deployed by Israel, and by liberal Zionists in particular. Here, I want to develop a distinction between what I will call 'first order argument of justice' (FOAJ) compared to the 'second order argument of justice' (SOAJ). While the first is related to and concerns substantive forms of justice like corrective/historical justice, the second deal with rules of engagement in the conflict itself: the first is similar to laws of just war, while the second akin to rules of justice in war. In this section, I argue that there is a certain persistence of the second mode of arguments about justice that hinders the ability of the Palestinians to narrate their story. In this sense, the third section of the paper continues some of the arguments made in the first section. I finish by offering a tentative answer as to the second mode of argumentation that the Palestinians can adopt.

The Importance of Historical Frame and Its Limits

In one sense it is important to maintain a historical framework to understand some of the Palestinian claims when we discuss historical justice. I found that something was lost when I attempted to argue in a fragmented manner about the rights of the Palestinians. What I mean by fragmented is the disintegration of the question of Palestine into different smaller questions, both analytically and geographically. By 'geographically' I mean to draw attention to the fact that the Palestinians are under a wide range of different legal regimes: refugees in exile in the Arab world, West Bank, Gaza, East Jerusalem, Palestinian citizens of Israel, unrecognised villages within Israel itself, etc. Each of these situations is in part the product of military, political, and legal acts that have been carried

out by Israel.[4]

If the Palestinians were to make separate arguments and demands for each group and for specific rights independently, they might lose something of the bigger picture. Palestinians in Israel might argue for equal citizenship, Palestinians in the West Bank for self-determination, the refugees for the right of return, and in Gaza for ending the blockade, etc. When issues are segregated and dealt with separately, one can find good arguments against granting any of these rights in full.[5] The moment one accepts the geographical boundaries and the current fragmentation of the Palestinian Question, it becomes possible to develop a point of view and a mode of moral and legal argumentation that is coherent within the framework that one sets for oneself, and that denies or restricts those rights. The structure *structures* itself in a way that will allow more coherence than one might think. A perpendicular on a slope will still appear to be perpendicular for someone on the slope itself, but for someone who is on the ground that perpendic-

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4   The issue of fragmentation for the native community is not unique to Palestinians, thought it might be an extreme case. Fragmentation has been a classical tool of rule for colonial regimes. See Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Cambridge: Harvard University Press, 2012). Bonita Lawrence, 'Legislating Identity: Colonialism, Land and Indigenous Legacies', in *The SAGE Handbook of Identities*, ed. Margaret Wetherell and Chandra Mohanty (London: SAGE Publications Ltd., 2010), 508-526. Kevin Bruyneel, *The Third Space of Sovereignty: The Post-Colonial Politics of US-Indigenous Relations* (Minneapolis: Minnesota University Press, 2007).

5   One does not need to be original to argue (for example) the following: 1) Against the right of return—that the return of Palestinians would change the demography drastically and there is no reason to give up on that willingly, or that there are precedents in international law in which refuges did not return; 2) Against a Palestinian state in the West Bank—that such a state with sovereignty might mean the existence of a foreign army close to Israel's capital, besides which fact there is no reason and no possibility at this stage to evacuate the settlers (with some arguing that it would even be immoral to uproot them); 3) Against full equality for Palestinians in Israel—that Israel was meant to solve the problem of the Jews and that Palestinians do not contribute the same efforts to maintaining the state and supporting its existence, or that there are different needs that require different treatments, or that Jewish hegemony is itself part of the meaning of self-determination, etc.; 4) As to Gaza, arguments regarding security threats might be easily reproduced as well. Of course, one might offer very strong counter-arguments in return, but I want to draw attention to the fact that that they have some internal coherence.

ular will seem to be to be diagonal.

But is there really something called 'on the ground'? A location that is the reference point for all other locations? Is there is something called 'in the beginning'? The measure of all measures? Clearly not. Any ground is relative, and Archimedes will not be able to stand anywhere outside the earth. Still, I want to argue that we can and ought to distinguish between relative grounds and different points of departure in terms of time and geography. One can take 1882 and the first Jewish settlement, or 1917 and the Balfour Declaration, or 1947 and the Partition Plan by the UN, or the eve of the 1967 war as a ground for evaluating the subsequent events. Chaim Gans, for example, took the first.[6] One might want to take the second to be the decisive moment given the fact that until that moment the Jewish presence was not clearly national and was not clearly aiming to build a national home—whether in the form of a state or not. Even if it was, the danger was not eminent. In many ways the choice that one makes might always sound arbitrary and unjustified. I want to take 1917 because I think that this is a key watershed locating the start of the real conflict.[7] The argument I make in this regard is the following: if we take the question of Palestine as a question of one hundred years, we can easily discern how in that period the picture has drastically changed in terms of sovereignty, demography, land ownership, etc. A people of refugees and second-class citizens in Europe and lacking self-determination, the Jews managed to settle in the land of another people[8] and to turn them into refugees and second-class citizens, denying them self-determination in turn. If one leaves all details (and details are important) and other issues of moral justi-

fication aside and merely sticks to simple facts, this is the reality. It is this frame that I want to regain and use to provide a big picture from where to begin. This framework allows us to perceive things in a different manner from the case where we break up the question into fragmented bundles of rights.[9]

Theoretically, it is imaginable that the Palestinians might lose the moral argument over Jerusalem, or the dismantling of settlements, or the borders of the Palestinians state, or the size of the Palestinian state, or the question of refugees, or the question of full equality for Palestinians in Israel. But it is unthinkable and unjust that they would lose on all of those fronts at the same time. The problem is that when we fragment the Palestinian question into Palestinian questions in the plural, and we dissect each problem into its derivative elements, we risk a situation where the Palestinians lose on all fronts at the same time, without be ability to register the loss itself anywhere. Geographical boundaries and time frame screen out all kinds of arguments as being 'irrelevant' to the debate. The boundary, the field, the sphere, the domain, and the frame comes ready with its tools and its classifications of valid and invalid arguments that one is allowed or not allowed to make.[10] Thus what could be argued and what is considered a legitimate argument is decided a priori by the invisible hand of the regime discourse.[11]

6   See Chaim Gans, *A Just Zionism: On the Morality of the Jewish State* (Oxford: Oxford University Press, 2008).

7   Hillel Cohen, for example, argues that the watershed moment came with the events of 1929, a year of no return that crystallized both as national groups in opposition to one another. See Hillel Cohen, *Year Zero of the Arab Israeli Conflict* (Lebanon: University Press of New England, 2015).

8   Of course, some can argue that this is a land promised to the Jews by God. I have no answer to this. I am aware that the argument that Palestine 'belongs' to the Palestinians carries many different meanings and requires different justifications. Here I merely appeal to its intuitive meaning.

9   I have no intention to simplify things in at least two senses. The first concerns the exact relationship between those who lived one hundred years ago and the Palestinians alive now (the intergenerational question). Second, things develop through time, and what was completely unjust at one point might become just at another. These arguments can resurface later and offer corrections to the frame, but I do not start with them, rather I start from the frame itself.

10   There is a copious literature addressing *a priori* limits on discourse, amongst them Wittgenstein's language games, Heidegger's idea of the ready-to-hand, Foucault's concept of discourse, Bourdieu's concept of the field, all the way to Lyotard's concept of the differend. Using this literature, I dealt with this problem within legal discourse in 'When Winners Lose: On Legal Language', *International Review of Victimology* 17 (2010): 49-68.

11   To avoid any misunderstandings, the fact that the field comes with its own rules governing the nature of the conversation applies not only as something that places limits on the Palestinians alone, but also as something that might place limits on Israel too. Thus, citizenship discourse, for example, has its own internal logic that allows the Palestinian citizens of Israel to make arguments

Let us imagine the following: think of the seven different major demands of the Palestinians (according to their different status and location) as being discussed in front of seven different juries in different separate rooms. Assuming that there are eleven members in each jury, the result might be that they lose in all seven cases in a vote of six to five against them. Had the proceedings regarding the seven cases taken place in front of one jury at the same time, there is a good chance that the result would have been different, so that the jury could have granted them five out of seven demands and denied them two. The reason is that the context offered by the historical frame becomes an interpretive tool and a lens through which we approach the conflict. The loss becomes visible.

The same holds on the Israeli side. Fragmentation allows a mode of argumentation to justify various policies by the Israeli state and governments, lending them a certain internal coherence that would be lacking if one examined the overall picture within its historical frame. I will give some examples: One relates to the kind of arguments being put forward to justify the law of return that allows any Jew to immigrate to Israel and to become an Israeli citizen.[12] When the state itself is taken as the starting point of the debate—regardless of the conditions of its establishment and the events of 1948—then the mode of justification becomes one that derives its rhetoric and modes of argument from a communitarian vocabulary that justifies closing its borders and focusing on the right of the state to exercise discretion amongst those who to might want to immigrate.[13] The debate is rearticulated in terms

familiar to European-American debates, with the Palestinians appearing merely as potential immigrants standing at the gates. The question of the moment of the birth of Israel itself, and of the violence and expulsion associated with it, is simply brushed aside. The conversation starts halfway, leaving foundational elements beyond its scope.

Regaining or reclaiming the historical framework in this regard will allow us to see the loss and to smuggle into the conversation arguments that otherwise would not be allowed to enter. Allowing us to see the loss is important—not simply as fetishism of the past, but for other reasons, both political and practical, which stand in tension with the desire to keep the historical frame: it enables all kinds of trade-offs that can be obscured by focusing on each separate case (Gaza, West Bank, refugees, etc.) in the mode of rights discourse. Viewing things in their totality can allow certain modes of trade-off that are necessary for any pragmatic and political solution. These trade-offs could be within and between the different segments of the Palestinians groups or within the same segment itself. Theoretically, the Palestinians might be able to compromise, for example, the right of return to their exact homes, villages and towns in the event that they were compensated not only in financial terms, but also though the building of their own state on a bigger territory than West Bank and Gaza (which is barely 22 percent of historical Palestine) and being allowed to

while bracketing many historical questions, including questions of 'loyalty' to the state, for example, or even bracketing the conflict itself. Citizenship becomes *sui generis* regardless of what preceded the establishment of the state and the fact that Palestinians fought against its establishment. On the independent dynamics of the discourse of citizenship in Israel and its double edge see Raef Zreik, 'Does the Wheel Come Full circle?', in *The Liberal-Republican Quandary in Israel, Europe and the United States*, ed. Fania Oz and Thomas Maissen (Boston: Boston Academic Studies Press, 2012), 177-206. Nevertheless, I think that the degree of restriction that this places on Palestinians exceeds those it puts on Israel, and the fragmentation plays more into the hands of Israel than the Palestinians.

12 Israel: The Law of Return, 5710-1950, 159.

13 See Naama Carmi, 'Immigration Policy: Between Demographic Considerations and the Preservation of Culture', *Law and Ethics of Human Rights* 2, no. 1 (2008):

387-415; Alex Yacobson and Amnon Rubinstein, *Israel and the Family of Nations: The Jewish Nation- State and Human Rights* (London: Routledge, 2008); Asa Kasher, 'Justice and Affirmative Action', *Israel Yearbook on Human Rights* 15 (1985): 101-112; Gideon Sapir and Mark Goldfeder, 'Law, Religion and Immigration: Building Bridges with Express Lanes', *Emory International Law Review* 32, no. 2 (2018): 201-254, https://law.emory.edu/eilr/_documents/volumes/32/2/sapir-goldfeder.pdf. In these papers the debate becomes whether a state has a legitimate interest in *preserving* its culture through selective immigration policy. When the question is posed this way, the feeling is that the author is writing for a European or American audience and is not addressing a potential Palestinian reader. Furthermore, the case is formulated in cultural terms to avoid its political stakes regarding the Palestinians who were expelled (or at least prevented from return). To a certain extent, the discussion of Gavison and especially of Gans keeps the historical/political stakes more present. See Ruth Gavison, *The Law of Return at Sixty Years: History, Ideology, Justification* (Jerusalem: The Matzila Center, 2010).

return to that state. To see the historical framework does not mean that the solution is one and the same, one of specific performance or going back exactly where we were. Framing the question does not dictate the solution in itself, but it does show that if specific performance is impossible, this does not mean the right evaporates, but rather that one should look for another kind of remedy.

One can thus argue that if the Palestinians are ready to compromise on territory they must be compensated in terms of return, or if they compromise on return they should be compensated in terms of Jerusalem, or if they compromise on Jerusalem they ought to be compensated on refugees and territory etc. These statements of ought to be, should be, must be, derive their argumentative power not from concrete, specific and separate arguments pertinent to the domain/segment under discussion, but from the historical global claim: once there were people in this land, living, loving, building homes, plant crops, and now most of them either refugees, living under occupation or as second-class citizens. Someone must give an account of this fact.

I can already hear the counter-argument: if we are obliged to expand the framework, then let us look at an even wider picture—not only Palestine, but include in that picture Europe and the status of the Jews in Europe and their persecution. The point is conceded. The picture must of course include this, and the interests of all parties must be considered. But how one person's needs can impose duties on the other is a complicated question.[14]

Historical Entitlements

First Moment: 1917 and the Balfour Declaration

In this section I want to make several claims on behalf of the Palestinians that they usually do not take the effort to make, believing that the justness of their cause is so obvious that engaging with such arguments might even contaminate the justness of their cause and render it questionable and in a need of a proof or defence.[15] I take this task upon myself here. One reason to do this is that the Palestinians have to address a European and Western political audience with a colonial frame of mind, for whom settler colonialism is almost taken for granted. What is more, this is an audience which, following the Holocaust, feels guilt—and at times responsibility—toward the Jewish people in a way that that makes it difficult to see the picture from a Palestinian point of view.[16] This is something that Edward Said took upon himself forty years ago in his path-breaking book on the *Question of Palestine*.[17] (I leave aside a further assumption that Israel is offering invaluable services to the Empire and that entrenched interests are at stake in a way that renders the Palestinian absence an imperative.) In the following I do not intend to make a full-fledged argument in support of the historical rights of the Palestinians. Instead, I will focus on two periods, or rather two moments. The first is the time around the Balfour Declaration and its aftermath.[18] The second is

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14   I deal with these issues in more detail elsewhere, where I discuss the kinds of possible duties of the Palestinians to aid Jews fleeting from Europe to Palestine and the limits of duties of aid. Raef Zreik: 'Notes On the Value of Theory: Reading in the Law of Return: A Polemic', *Law and Ethics of Human Rights* 2, no. 1 (2008): 1044. Many of the ideas in the next section are already developed in that paper.

15   In this regard, I think that John Strawson has a point when he suggests that many Palestinians thought that international law stood on their side, that it represented eternal principles of justice and that they assumed that the justness of their cause was clear and self-evident. Strawson shows instead how international law was associated with colonialism and imperial powers for centuries. See John Strawson, *Portioning Palestine-Legal Fundamentalism in the Palestinian Israeli Conflict* (London: Pluto Press, 2010), 40.

16   On the deployment of the Holocaust by Israel, see Idit Zertal, *Israel's Holocaust and the Politics of Nationhood* (Cambridge: Cambridge University Press, 2011). On the other hand see, for example, Edward Said reporting his disappointment with French intellectuals on the issue of Palestine: Edward Said, 'An Encounter with J.P. Sartre', *London Review of Books* 22, no. 11 (2000): https://www.lrb.co.uk/the-paper/v22/n11/edward-said/diary.

17   Edward Said, *The Question of Palestine* (New York: Vintage Books, 1979).

18   For a recent take on the Balfour Declaration, see Rashid Khalidi, '100 Years

the Partition Plan in 1947. In doing so, I will offer a liberal defence of the Palestinian rejection of both.

Let us first start with the Balfour Declaration and the mandate era. What is the nature of the distribution of rights and entitlements prior to the full eruption of the conflict in 1947-48? What rights did the Palestinians have in Palestine and what kind of rights did the Jews as a national collectivity have?

As I have mentioned above, I will refrain from developing a full-fledged argument to support the historical rights of the Palestinians. Instead, I want to limit myself to discussing one argument put forward by Ruth Gavison regarding the symmetry between the Jewish Yishuv and the Palestinian community in Palestine, which places both on an equal footing.[19] Gavison argues that both groups, Jews and Palestinians, had the *liberty* under both Ottoman and British rule to pursue their national project, and this Jewish right was even vindicated after the Balfour Declaration and its adoption by the League of Nations in 1922.[20] Liberty here means something like privilege, or liberty in the sense that is used by Hobbes in *Leviathan*.[21] A state of liberty is a situation where one is not under a duty to others, but on the other hand one does not have a claim against others as well. Thus, for example, if we arrive

at the theatre for a concert, and there are no marked seats, then each of us has the liberty to sit wherever she likes. We are all situated on equal footing and no one is under any obligation. In some sense, this situation of liberty is another way to describe the 'state of nature', given that such liberty is meaningless. This is a reality that is devoid of any clear conception of justice,[22] with each free to pursue their goals or desires. Thus, Hobbes in fact removes any meaning or residue of normative order from the state of nature.

But is this the right way to describe the relation between the Jewish Yishuv and the Palestinian inhabitants of Palestine. Both were situated in a semi-state of nature so that each was at liberty to pursue his national project. Were they situated morally (not just legally) in a symmetrical manner *vis-a-vis* their right to a national homeland and self-determination? Were they both free to pursue their project respectively without there being any possibility to make *moral* judgments between more justified and less justified claims for national self-determination?

Let me describe the historical and conceptual ground that stands beneath such an argument. Here again, the argument is not new but rather has a long European history, with its basis in nineteenth-century international law, that is, in colonial European international law. In fact, the reliance of the Zionist movement on the Balfour Declaration as the basis for its rights clearly shows the intimate relationship between Zionism and colonial-imperial powers.

Some might take a romantic view of international law as a kind of moral order that hovers above states and nations. As a historical matter of fact, however, international law of the eighteenth

of the Balfour Declaration and its Impact on the Palestinian People', (lecture, ECOSOC Chamber, UNHQ, New York, 2 Nov. 2017), https://www.un.org/unispal/wp-content/uploads/2017/10/Lecture-by-Prof.-Rashid-Khalidi-100-years-since-Balfour-Decl-UN-2Nov2017.pdf. The Balfour Declaration has been viewed as a continuation of the British policy that began as early as the nineteenth century as part of imperialist colonialist project. See Alexander Schlosh, 'The British in Palestine 1838-1882: The Roots of Balfour Declaration', *Journal of Palestine Studies* 22, no. 1 (1992): 39-56.

19   Many of the arguments here appear in Raef Zreik, 'On First Order and Second Order Arguments for Justice', *Theoretical Inquiries in Law* (forthcoming July 2020).

20   See Ruth Gavison, 'The National Rights of the Jews', https://ruthgavison.files.wordpress.com/2015/10/the-national-rights-of-jews.pdf (accessed 8 April 2020). Gavison developed this argument further in her paper, 'The Jew's Right to Statehood: A Defense', *Azur* 15 (2003): http://azure.org.il/article.php?id=239. For a different take on the question that is closer to my reading, see Gans, *Just Zionism*, 47-51.

21   See Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1996), 28. Hobbes writes, 'The Right of Nature, which writers commonly call Jus Naturale, is the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature', 91.

22   'For they say, that Justice is the constant Will of giving every man his own. And therefore where there is no Own, there is no propriety, there is no injustice, and where there is no coercive Power erected, that is, where there is no Commonwealth, there is no propriety; all men having rights to all things'. Hobbes, 101. The impossibility of justice is also the result of radical moral subjectivism, as he writes: 'For these words of Good, Evil, and Contemptible, are ever used with relation to the person that useth them: there being nothing simply and absolutely so; nor any common Rule of Good and Evil, to be taken from the nature of objects themselves; but from the person of the man, or, from the person that representeth it; or from an arbitrator or judge, whom men disagreeing shall by consent set up, and make his sentence the Rule thereof'. Hobbes, 39.

and nineteenth centuries was a positivist form of law that reflected agreement between states, rather than an order imposed on states by a divine will or an international body.[23] The international law that emerged from the peace of Westphalia following long and fierce civil wars in Europe praised the rise of the state—the sovereign state that claims monopoly over the use of force within its own territory. The legal world was split into two major actors: citizens and states. All other mediating groups—tribes, clans, groups, races, guilds, and sects—were not allowed any standing whatsoever. The model of sovereignty was absolute, territorial, and assumed the homogeneity of space.[24] When Europe started its colonisation of the rest of the world, it did not treat the modes of social and political organisation it encountered as sovereign states because they did not in fact resemble the European model. In this light, European actors did not consider colonisation as an act of aggression given that aggression takes place against a sovereign state.[25] This was the basis for the *terra nullius* doctrine.[26] These communities were considered to lack sovereignty and also to lack any right of self-determination. Thus, conquest in itself was to be considered the basis for gaining sovereignty over new territories in the colonies.[27] The idea that colonised groups enjoyed a right to self-determination gained full force only toward the second half of that

century.[28]

Thus, when one argues that the Palestinians did not have a right to self-determination at the turn of the century, one is reproducing the European understanding of the rights of nations and the concept of sovereignty through the eyes of Europe. When Zionists base their rights on the Balfour Declaration they also reproduce the colonial mindset that dominated that colonial era.[29] In this regard, Zionism stands clearly in the same line and based on the same logic of the colonial mindset that prevailed at the time. But that is not evidence of the moral soundness of the argument. After all, when the Balfour Declaration was made, which promised to turn Palestine into a homeland for the Jews, they constituted only 10 percent of the population while the Palestinians were 90 percent. While the declaration recognises Jewish national rights, it only recognises the civil rights of the Palestinians while denying them any national rights whatsoever.[30]

If we accept the argument that before there is an established sovereign state all sides are at liberty to pursue their project for statehood and self-determination as mere liberty, then we do not

23 For the structure of international law in the eighteenth and nineteenth century, see Sir Hirsch Lauterpacht, 'The Grotian Tradition in International Law', *British Yearbook of International Law* 23 (1946): 1-53; and C. F. Murphy, 'The Grotian Vision of World Order', *American Journal of International Law* 76, no. 3 (1982): 477-498.

24 On the modern concept of sovereignty, see David Held, *Democracy and Global Order: From the Modern State to Cosmopolitan Order* (Cambridge: Polity Press, 1995).

25 To date it has been common to describe acts of aggression that entitle self-defence in terms of an attack on sovereignty. Thus, Helene Frowe writes that 'A just cause for war is usually defined as a military act that violates (or threatens to violate) a state's sovereignty'. Helen Frowe, The *Ethics of War and Peace: An Introduction* (London: Routledge, 2011), 53.

26 For more on the doctrine of *terra nullius* as a principle employed in international law to justify the acquisition of uninhabited or unsettled land, see Malcolm Shaw, *International Law* (Cambridge: Cambridge University Press, 2003), 414-443.

27 Sharon Kornman, *The Rights of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford: Oxford University Press, 1996), 9.

28 The two Additional Protocols to the Geneva Conventions in the 1970s officially extended the rights and duties of international law to indigenous groups and self-determination movements in armed conflicts, while the UN General Assembly declaration, UNGA Res 2625 (XXV) of 24 October 1970, 'Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States', UN Doc A/RES/2625 (1970), affirmed an authoritative indication of customary international law's provision of the right of self-determination. Art. 43 of the 1977 Protocols expanded the definition of belligerents to also include national liberation movements and effectively included those armed struggles against colonial domination, alien occupation, and against racist regimes towards the aim of self-determination [Art. 1(4)], also extended these belligerents the rights of prisoner of war status [Art. 44(3)], the Geneva Conventions of 1949 and their Additional Protocols, 1949-2005. See also James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2000) for a further discussion of the legal developments of international law and the rights it extended to indigenous groups in the nineteenth and twentieth centuries.

29 See Orna Ben-Naftali, 'Nomos', in *The ABC for OPT: A Legal Lexicon for the Israeli Control Over the Occupied Palestinian Territories*, ed. Orna Ben-Naftali, Michael Sfard, and Hedi Viterbo (Cambridge: Cambridge University Press 2018), 294, 277-300. Ben-Naftali argues that Levy Committee is implanted in such colonialist orientalist conceptions of international law.

30 For a recent take on the role and impact of the Balfour Declaration on the Palestinian People, see Khalidi, '100 Years of the Balfour Declaration'.

have any grounds to evaluate the moral soundness of the Balfour Declaration. According to this logic, each side has the liberty to pursue their projects for nationhood on an equal footing, and within this logic, the argument that war is the best arbiter gains credibility. In the concluding sections of this paper I argue that this logic—the logic of permanent war—becomes an organising moral principle in certain parts of liberal Zionist discourse.

Still, against the argument that it is only sovereign states that can have rights over territory, I argue that even communities of people have an invested interest in occupying and continuing to occupy certain territories and parts of the earth.[31] They have a legitimate interest in continuing to reside at the same place, maintaining the same social and economic relations, and pursuing cultural life with other members of their community, regardless whether this community of people is already organised as a nation or a state. Thus, I think that Palestinians as a community and collectivity have a legitimate interest, amounting to a collective right, that they continue to live as a community and society on their homeland. To launch an orchestrated project by one group to settle collectively with the aim of establishing its own state in the land of another group (under the protection of British empire and its support) is clearly a threatening and invasive act, if not an act of aggression.

It is true that events in Europe in the 1930 and 1940s exacerbated the distress of the Jews in Europe while the Holocaust created an extraordinary set of historical circumstances that culminated in the UN Partition Plan of 1947. All that is true, but my argument is that the ground had already been laid in 1917 with the Balfour Declaration, and the seeds of the conflict to come had already been planted. While the dire need for a safe home in the 1940s is clear and posed a humanitarian question that demanded answers, it is not clear why the Palestinians had to pay the price for European anti-Semitism and to accept the loss of more than

half of their land.[32] But I will deal with this in the next sub-section.

If we recognise from the start that the Balfour Declaration was unjust, then this should shape the way we view the developments that came after, offering an interpretive lens through which to view later developments. The declaration initiated and supported a series of developments and events that were born and based on an unjust and colonial mindset. Clearly, that does not mean that one can simply ignore the realities that came after because they were based on an unjust declaration or policy. If the human race decided to undo each and every injustice done in the past, regardless of the passage of time or the changes in the interim, it would be in endless war. But on the other hand, one cannot judge the dynamic reality that developed later on, including the Palestinian resistance, without grasping the initial injustice inflicted on Palestinians by forcing them to share their homeland with another nation. In this regard, we are still living under the shadow of the Balfour Declaration. The disaster it brought upon the Palestinians is not a matter of the past, rather it is an ongoing reality of occupation and statelessness.

Second Moment: The Partition Plan of 1947

It is true that the injustice of the Balfour Declaration does not logically entail that the Partition Plan in 1947 was unjust.[33] One has to offer arguments as to why it was unjust, given that thirty years had passed and the demographic balance had changed, with the Jews now constituting one third of the population. My intention to offer

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31 See for example the discussion by Ana Stilz in this issue, where she develops what she calls rights of occupancy. See Ana Stilz as well, 'Occupancy Rights and Wrong Removal', *Philosophy and Public Affairs* 41, no. 4 (2013): 324.

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32 I cannot do justice to all aspects of this debate. On the resulting injustice, see Zreik, 'Notes on the Value of Theory'. It is one thing that the plan was unjust, but it is still another to acknowledge that it creates a reliance interest in and of itself for the Jewish community in Palestine. For an attempt to answer why the safe shelter should be Palestine and no other place, see Gans, *Just Zionism*, 27, 33, 48-49.

33 See the United Nations, General Assembly, *United Nations Special Committee on the Palestine Report to the General Assembly*, A/364 (3 September 1947), https://ecf.org.il/media_items/412. This report is known as UNSCOP, and became the basis for what is known as Resolution 181. For the text of the resolution see: UN General Assembly, resolution 181 (II), *Future Government of Palestine*, A/RES/181 (II) (29 Nov 1947), https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253.

such an argument in the following pages may seem like an exercise in stating the obvious, but the Zionist narrative had and still has a certain purchase, particularly among western audiences. I argue that the rejection of the Partition Plan by the Palestinians was justified.[34] I suggest a number of arguments supporting the rejection of the plan. These reasons can find support in classical liberal arguments.[35]

Two questions must be answered: The first is relatively easy and relates to whether the partition could have caused harm to the Palestinians. The second, more complicated, deals with whether, notwithstanding the harm that might have been inflicted upon them, the Palestinians should have accepted the Partition Plan or whether such a rejection was morally unjustified.

Turning first to the question of harm, I assume that most would agree that some harm would have been incurred as a result of the implementation of the plan. First, Palestinians who were to become part of the Jewish state, numbering approximately 600,000, would have been transformed overnight into a minority in their own homeland.[36] Even if granted full civil political rights, they would still be excluded from access to public goods and in a state clearly declared to be the state of the Jewish people—a Jewish state whose leaders aimed to gather all Jews in Palestine and considered themselves trusted by and representative of the Jewish people. Second, Palestinian citizens of Israel would have been cut off from the rest of the Palestinian people and their homeland: Nablus cut off from Haifa, Jaffa from Gaza, etc. Third, they would have had to share scarce resources with another nation, which, due to the nature of Zionism and Jewish nationalism, would in

some respects include not only Jews in Palestine, but also Jews throughout the world. Thus they would not simply be sharing their homeland with a Jewish collectivity in Palestine, but rather with Jews all over the world. Their political and legal weight would have been diluted. Fourth, since the mass immigration of Jews to the new state was to be anticipated, the confiscation and appropriation of Palestinian land became—if not wholly inevitable—at least unsurprising, a natural and a legitimate means to absorb the new immigrants.[37] Palestinians living in the planned independent Palestinian state stood to incur similar harm. They would be severed from parts of their homeland and the rest of their people. They would lose access to the sea and the most important seaport in Haifa. The most significant harm, however, is difficult to quantify, and lies in the fact that the Partition Plan entailed the shattering of Palestinian society and community and the fragmentation of its national project, including the process of modernisation. In comparison, the Palestinian-Arab state would have included only few thousand Jews; the Partition Plan would thus have cut Palestinian society into two, while uniting the Jewish community. To conclude, one could contend that *prima facie* the Partition Plan would have caused serious harm to the Palestinians and, all other things being equal, they were justified in their rejection of it.

Now to the second question: Can the Palestinians' rejection still be justified in liberal terms given the overall background circumstances in Palestine, including the increase in the number

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34   See Walid Khalidi's analysis of the UN: Walid Khalidi, 'The Hebrew Reconquista of Palestine: From the 1947 United Nations Partition Resolution to the First Zionist Congress of 1897', *Journal of Palestine Studies* 39, no. 1 (2009): 24-42.

35   Many of the arguments here were developed in Zreik, 'Notes on the Value of Theory'.

36   Palestinians who were to become part of the Jewish state numbered approximately 407,000 (not including Jerusalem, which had about 100,000 Palestinians). See Robert John and Sami Hadawi, *The Palestine Diary* (Beirut: Palestine Research Center, 1970), 274-279.

37   Though it is important to note that according to the UNSCOP report, Palestinian property rights in the Jewish state ought to be respected. See Strawson, *Partitioning Palestine*, 71-103. The truth is that I am not overly impressed by the fact that the resolution stipulates respect for Palestinian property rights, for several reasons. One is that the principle of self-determination grants every state the right to decide on the distribution of wealth and other political and legal measures within the state, and no international bodies are allowed to interfere with this right. Second, as a matter of fact, those Palestinians who remained in the country and comprised almost a fifth of the Palestinians that inhabited those parts of Palestine have since lost most of their lands, which were expropriated by Israel within two decades. On the history of the transfer of lands to the Jewish state and Jewish bodies, see Alexander Kedar, 'The Legal Transformation of Ethnic Geography: Israel and Palestinian Land Holders 1948-1967', *New York University Journal of International Law* 33, no. 4 (2001): 923.

of Jewish immigrants, the Holocaust, the persecution of Jews in Europe, and the pressing need to have their own state in the only place on earth where they had some spiritual relationship? Here we face two competing logics—one based on entitlements and the other based on needs. This is a much more difficult question to answer, but I think that sufficient reasons can be found within liberalism to defend such a rejection.

In dealing with this question, I will draw on private law theory, taking Kant's theory of rights as a paradigm for liberal legality. Kant makes a distinction between perfect and imperfect duties. The first are duties that we owe others as a matter of justice. The second are duties that Kant labels duties of virtue.[38] The former are mainly negative duties to refrain from actions and duties that impose prohibitions on actors, for example: do not steal, do not kill, do not make false promises. Their aim is to allow others to live their lives according to their own plans, and what is required of actors is merely not to interfere in these plans. Let us call these 'duties of respect'. Duties of virtue, by contrast, are positive in nature. Here, we are asked to do something positive for the sake of others. It is not enough to refrain from interfering in other people's plans; one has a duty to help others to achieve their ends. These might be described as 'duties of solidarity'.

The first set of duties is narrow and perfect, while the second set is wide and imperfect and as such allows considerable discretion in their fulfilment. According to Kant, duties of respect are enforceable by the state, whereas duties of solidarity are not. The latter duties should be left for each person to decide freely for herself whether she wishes to comply with them or not. For Kant, it is immoral to enforce imperfect duties of solidarity.[39] It is immoral to force a person to contribute part of his wealth—even if he is extremely wealthy—to another, needy person. To enforce

duties of solidarity would be to violate the right to autonomy and would contradict duties of respect. The fundamental principle is very simple and is based on the 'deed principle'.[40] This represents the basic intuition of modern liberal legality, which states that no person should be liable or put under any enforceable duty unless she willingly undertook the act, for example by signing a contract (which raises contract liability), or through a wilful act that causes harm (in torts). The mere need of one party is not a reason to impose duties on others. To force one person to aid another amounts to using other people as mere tools for our needs.[41] Many legal theorists think that the main aim of private law (torts, contract property) is corrective rather than distributive justice, and that there is no reason to impose liability on a party that bears no fault.[42]

A similar logic can apply when we deal with relations between groups and nations. A nation has no duty to share its wealth with other nations, or at least its duty is limited in this context. There is a duty to assist, but not to fully share. Even the liberal Rawlsian, who would endorse some duties of solidarity between citizens of the same state according to his 'difference principle', argues that at the international level, apart from a limited duty of subsistence, there is no duty on wealthy nations to support poorer ones.[43] Many

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38 For the basic distinction, see Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Indianapolis: Hackett Publishing Company, 1993). For a developed account of the distinction, see Immanuel Kant, *The Metaphysics of Morals* (Cambridge: Cambridge University Press, 1996), 23-27 (229-234), 145-148 (379-385).

39 Kant, *Metaphysics of Morals*, 148.

40 Kant, 16, 19. For a good exposition of the deed principle, see Leslie Mulholland, *Kant's System of Rights* (New York: Columbia University Press, 1990), 16-7.

41 For a similar attitude in contemporary political theory that understands rights as side constraints representing 'our separate existence', see Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 33.

42 For a contemporary debate in legal theory that understands the tasks of tort law only in terms of corrective justice and not distributive justice, see Ernest Weinrib, *The Idea of Private Law* (Oxford: Oxford University Press, 1996). Here I must add that one can draw a distinction between private law and public law, thus while it is unacceptable to use tort law (private law in general) as a mechanism for wealth distribution, it is nevertheless acceptable to use public law and state mechanisms to redistribute wealth through taxation. I suspect that libertarian writers like Nozick would reject using the legal system as a mechanism for distribution in both private and public law, while writers like Weinrib and Rawls himself would approve of a certain amount of wealth redistribution through public law only.

43 John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 113-114. The analogy between the private law argument, which aims at regulating relations between individuals, and the international law argument, which aims at regulating relations between groups, is reasonable but not straightforward.

also argue that subject to certain exceptions, countries have a legitimate interest in closing their borders and limiting immigration in order to keep some level of homogeneity within the country.[44] Why are the Palestinians under a duty to share their homeland and their wealth with others?

In answering this, liberal Zionists will try to make their case through two main arguments: necessity and the special status of the land for the Jewish people. The main argument is based on necessity: We need this place in order to survive. The second argument aims to answer the question of why this place in particular is needed and not another. The answer is that this place has a special status in the origin and history of the Jewish people and continues to play a central role in their spiritual life.[45]

Let us go back to the main argument of necessity and make the following observations: No one can overlook the situation of necessity, not even Kant, and the case of Israel represents a clear example of an exceptional moment in modern history that calls for a solution. Kant recognises that there are cases of necessity when the life of one person is endangered, and in order to save his own life he might sacrifice the life of another. What Kant is suggesting is that in such cases of necessity, of existential threat, we face a situation in which there is a suspension of norms, and we momentarily suspend our attempt to morally judge these actions.

I do think that arguments of necessity are strong. Moreover,

In both cases, the organising principle is autonomy. In private law this takes the form of the 'sovereignty' of the individual over his property and other entitlements, while in the case of national groups it takes the form of the sovereignty of the nation over its territory. The concept of self-determination for individuals and for the national collective is the underlying principle for both. For more on this analogy, see Hersch Lauterpacht, *Private Law Sources and Analogies of International Law* (North Haven, Archon Books, 1970).

44 Paradoxically, these are the major arguments being put forward by many Zionists against the right of return and to justify the idea of closed borders. See Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), chap. 2 'On Membership'. See David Miller, *Strangers in Our Midst: Political Philosophy of Immigration* (Cambridge: Harvard University Press, 2016). For deployment of the same argument to justify Israel's policy of closing the borders on the basis of the same logic, see Carmi, 'Immigration Policy'.

45 See Chaim Gans' account of and justifications for the Jewish state in Gans, *Just Zionism*.

I think that there is no reason to assume that each nation has an absolute right over its territory and wealth regardless of the needs of others. That is why many of us think, myself included, that we owe something even to people across borders, not only fellow citizens.[46] That is why there are many who argue for a policy of open borders.[47] When it comes to refugees there are even special norms that impose an obligation on other countries to accept them within its borders.[48] There is a limit on how far one country, or one nation, can close its borders to other groups of people. There is no absolute right to exclude, whether it be at the level of an individual excluding other individuals from their property,[49] or at the level of nations excluding other peoples from their territory. The whole concept of human rights is based on the assumption that the right to self-determination is not absolute; even the sovereignty of independent states is always subject to human rights regimes and should allow a certain level of interference.[50]

46 For duties across borders see Stanley Hoffmann, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse: Syracuse University Press, 1981); Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (New York: W.W. Norton& Company, 2006); Judith Lichtenberg, *Distant Strangers: Ethics, Psychology, and Global Poverty* (Cambridge: Cambridge University Press, 2014).

47 See for example Joseph H. Carens, 'Aliens and Citizens: The Case for Open Borders', *The Review of Politics* 49, no. 2 (1987): 251-273.

48 For the protection that is granted to refuges under international law, see UNHCR's guidebook: Inter-Parliamentary Union and United Nations High Commissioner for Refugees, *A Guide to International Refugees Protection and Building State Asylum System*, 2017, https://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html. On ethical duties to refugees, see David Hollenbach, 'Borders and Duties to the Displaced: Ethical Perspectives on the Refugee Protection System', *Journal of Migration and Human Security* 4, no. 3 (2016): 148-165.

49 For the limits of the right to exclude in property law see Hanoch Dagan, 'The Limited Autonomy of Private Law', *The American Journal of Comparative Law* 56, no. 3 (2008): 828.

50 The tension between self-determination or sovereignty with relation to borders and human rights regimes can appear in two cases. In one set of debates it appears in relation to the question of whether there is a legitimate *right* to interfere in the affairs of other countries in cases of gross human rights abuse. See for example Justin Conlon, 'Sovereignty and Human Rights or Sovereignty and Human Rights', *Journal of Race and Class* 46, no. 1 (2004): 75. On the other side it appears as a *duty* to assist other countries and as such to put limits on the sovereignty of the assisting country. See Henry Shue, *Basic Rights* (Princeton:

Despite the persuasiveness of necessity, however, Palestinian liberals could make the following counter-arguments: First, there is a difference between saving the lives of Jews and having a Jewish state. The former is a moral imperative, while the latter is (more) political in nature. Although there is a relationship between the two, they remain two different missions unless one can establish a further argument that the establishment of a Jewish state is the only way to save Jewish lives. Thus, while I think that there was some duty on the part of the Palestinians to accept immigrants and refugees and to host them, it was clearly unfair to ask the Palestinians, a small nation with a small country, to bear the entire burden. More importantly, Jewish refugees arriving in Palestine did not treat themselves as immigrants, but rather as settlers claiming the country to be their own and planning to establish a national ethnic state. They did not accept the *nomos* of the land, rather they wanted to establish their own legal order, their own institutions and society, and not to merge with already established institutions.

Furthermore, in the post-Holocaust period there was no immediate threat to the Jews in Europe and the USA. The period of necessity was during the war years, during the Holocaust, when most European countries and the United States closed their borders to Jewish refugees. The establishment of the state of Israel at that point should thus be conceived in terms of compensation rather than in terms of necessity. Yet while it clearly makes sense to compensate the Jews, it is less clear why the Palestinians should be the ones to pay the price.

Third, he who claims necessity bears the burden of proof. This is not technical or lawyerly argumentation, rather a core political and philosophical issue. The reason is that arguments of necessity trump and suspend legal and normative order as a whole and put us all in a world with no norms—except that of survival—to orient us. As such it must be kept at bay, limited and exceptional.

Fourth, necessity is an excuse and not a full justification; it is

always subject to proportionality and other restraints and must be thought of as last resort. The distinction between justification and excuse has been elaborated in the literature as follows: 'To say that an action is justified is to say (insofar as we focus on the action, rather than the agent) that though the action is of a type that is usually wrong, in these circumstances it was not wrong, by contrast, is to say that it was indeed wrong (and the agent did commit the act we are saying was wrong), but the agent is not blameworthy'.[51] Acting in self-defence against the aggressor who is the source of danger is justified. The person acting in self-defence might injure or even kill the aggressor, but although it would otherwise be considered wrong and illegal, in this situation it seems the correct thing to do. While acting in self-defence, the defender was acting against a source of danger and on behalf of the whole community and of public order. His action is justified. But when the actor acts under insanity, or duress, or in an involuntary manner, we still consider the act itself to be wrong, though we might want to refrain from assigning responsibility to the actor for the simple fact that he was not fully responsible for the act or was not able to control himself. This is the case of excuse. In the case of Zionism and Palestine, the source of threat was Europe, not the Palestinians themselves. As I demonstrate later on in this paper, the aspiration of Zionists in Palestine to establish a state, disregarding Palestinian rights, was in itself a source of tension, conflict, and threats first to the Palestinian community, but later on to the Jewish collectivity, given the Palestinian resistance. The Jewish state was an answer to a certain threat that was caused in part by the demand for a Jewish state. Thus Zionism in this regard was an answer to a problem that it had created by itself.

I will stop here. My aim in this section was to show that the Palestinians were justified in rejecting the Partition Plan. The question that I want to deal with next is the following: Assuming that the Palestinians were justified in rejecting the plan, given

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Princeton University Press 1980).

51 Marcia Baron, 'Justification and Excuses', *Ohio State Journal of Criminal Law* 2, no. 2 (2005): 389.

their historical entitlements, their rejections still led to a war. The argument of liberal Zionists might proceed: They provoked war by their rejection, and they must bear the consequences of the results of the war. War itself can change the original entitlements and distribution of rights between the parties given that war has a logic of its own, and rules of engagement that allow us to suspend for a moment any original entitlement. In the next section, I want to first develop, and then attempt to answer, this mode of argumentation.

The Logic of War as an Independent Source of Discourse about Justice

Israel's mode of argumentation

One can imagine varieties of claims regarding Jewish rights in Palestine, and in fact Israel does deploy many modes of argument about justice. The first mode of arguments, including those based on historical justice or historical rights, involves claiming that the land of Israel belongs to the Jewish people and they are simply returning to their ancient homeland.[52] Second, one can imagine a mode of argument that is based on the rights of nations to self-determination combined with the necessity argument from the previous section. A third set of arguments could be based on reliance interest. Arguments based on reliance interest tend to bracket the original justness of the Balfour Declaration or even the Partition Plan, and focus instead on the fact that here and now there are millions of Jews living in Palestine who have changed their life plans and established a home and life in this country, and as such have a legitimate interest in continuing their life here. The last mode of arguments, which I call Second Order Arguments for Justice (SOAJ), are opposed to what might be called First Order Arguments for Justice (FOAJ). FOAJ are mainly those arguments that feed on the conflict itself and draw their rhetorical power from the fact of the ongoing dispute. In their more general form, they bear

on security, at other drastic moments they involve a question of self-defence. In extreme cases, what is at stake is a matter of emergency or even existential threat. While there is a clear difference between these three concepts, and not every case of security is a case of self-defence, they still have something in common and share certain qualities regardless of a difference in quantity. For the purposes of this paper I treat these modes of argumentation under one name: 'arguments from security'. It is this kind of argument that I address in the rest of this paper.

What do I mean by SOAJ in contradistinction to FOAJ? Let us take the rules of war. The question of whether a war is just, or whether there is cause for just war, is separated from the question of what means and what weapons are allowed in war. These two concerns are subject to different rules. We 'bracket' the justness of the war—whether the war is justified and whether there is a good reason to go to war—and focus on the way it is being conducted on the battlefield. Even the 'bad guy' in war is 'allowed' to use force in war and even to kill, and the good guys have no right to win the war at all costs, as it were. These are the rules that govern the process of war itself. This is the well-known distinction between *jus ad bellum* and *jus in bello*.

If we translate this logic to the case of Israel-Palestine, then the Israeli argument will tend to bracket the distribution of rights before the conflict erupted, thereby presenting a case that is solely organised around the fact that we are at war. This fact in and of itself can generate arguments of security and self-defence. Now that we are enemies, that we are fighting, I have the right to defend myself regardless of the original entitlement and its distribution, or of the justness of my claims before the conflict. It is not difficult to imagine this line of argument starting from the events of 1947 and claiming that the Palestinians and Arabs in general started the war by attacking the Jewish Yishuv, and that the latter had the right to react in self-defence.[53] Later on, after the establishment of

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52 The discourse of return to the homeland is manifest in Israel's proclamation of independence. https://www.knesset.gov.il/docs/eng/megilat_eng.htm (Accessed 8 April 2020).

53 For the argument that the Yishuv was under threat in 1947-8 and that Palestinians and Arabs started the war, see Israel Ministry of Foreign Affairs, 'Arab League Declaration on the Invasion of Palestine' (15 May 1948), https://

the state, the argument continues, it was the Palestinian refugees who tried to 'infiltrate' Israel, thereby causing security threats to Israel. As Moshe Dayan (who was to become military chief of staff and minister of defence) stated, all the territory of the state is a frontier suffering from security issues.[54] Later still, it was Israel that had to face Palestinian 'terrorism' after the establishment of Fatah and the PLO,[55] and Israel, after the occupation of the West Bank and Gaza, also had to fight against the resistance in these occupied territories.[56] Some have even claimed that Palestinian resistance was not caused by and is not a result of the ongoing occupation, asserting that Israel needs the occupation to fight terrorism.[57] The logic that I am trying to develop here is one that argues that I am entitled to attack you simply because you attack me,

because you are a 'terrorist'.[58]

In the case of Israel, given its unique history and the fact that the Jews in Palestine started as a tiny minority at the time of Balfour Declaration, and that the whole project was aimed at becoming a majority (by following different methods such as Jewish immigration, expulsion, reducing fertility rates of the Palestinians, raising fertility rates within the Jewish population, and preventing family unifications for Palestinians) the issue of demography plays the prominent role in the shaping of the conflict. Issues of demography are thus associated with national security,[59] and given that Palestinians owned almost all the lands on the eve of the Zionist project, appropriating Palestinian lands becomes natural, crucial and essential for the success of the project and of high national

mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/5%20arab%20 league%20declaration%20on%20the%20invasion%20of%20pales.aspx.

54 For the framing of Israel's fight against refugees in the early 1950s as a security threat, see Moshe Dayan, 'Israel Borders and Security Problems', *Foreign Affairs* 33, no. 2 (January 1955): 250-267. Thus, the term 'frontier security' has little meaning in the context of Israel's geography. The entire country is a frontier, and the whole rhythm of national life is affected by any hostile activity from the territory of neighbouring states.

55 For years, Israel considered the PLO and other Palestinian factions as terrorist organisations according to law; even meeting them was regarded as a crime. See Israel Ministry of Foreign Affairs, 'Prevention of Terrorism Ordinance', 5708-1948, No. 33 (23 Sep 1948), https://mfa.gov.il/mfa/mfa-archive/1900-1949/ pages/prevention%20of%20terrorism%20ordinance%20no%2033%20of%205708-19. aspx. The ordinance does not make a distinction between citizens and soldiers. See, for example, the position of the Israeli foreign ministry, which argues that terrorism has been always there and existed long before the 1967 war. Israeli Ministry of Foreign Affairs, 'Which Came First-Terrorism or "Occupation"? Major Arab Terrorist Attacks against Israelis Prior to the 1967 Six-Day War' (March 2002), https://mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/ which%20came%20first-%20terrorism%20or%20occupation%20-%20major.aspx.

56 For Israel, any form of armed resistance—even directed at soldiers—is considered a terror attack. Israel does not make a clear distinction between attacks on soldiers and those against civilians. Both are listed under the general rubric of 'victims of Palestinian violence and terror'. See Israeli Ministry of Foreign Affairs, 'Victims of Palestinian Violence and Terrorism since September 2000', https:// mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/victims%20of%20 palestinian%20violence%20and%20terrorism%20sinc.aspx (Accessed 8 April 2020).

57 See Alan Dershowitz, 'Terrorism causes occupation, not Vice Versa', *Huffington Post*, August 11, 2006, https://www.huffpost.com/entry/terrorism-causes-occupati_b_27057.

58 For examples of Israelis claiming self-defence in the face of Palestinian 'terrorism', see B'Tselem's *Tacit Consent: Law Enforcement towards Israeli Settlers* (Jerusalem, March 2001), https://www.btselem.org/sites/default/files/ publications/200103_tacit_consent_eng.pdf.

59 Demography has always been a central issue, first in Zionism and later on in the policy of the state of Israel. See the following: Ian Lustick, 'The Red Thread of Israel's Demographic Problem', *Middle East Policy* 26, no. 1 (2017): 141-149; Endika Martin, 'Settler Colonial Demographics: Zionist Land Purchases and Immigration During the British Mandate in Palestine', *International Journal of Postcolonial Studies* 2, no. 4 (2019): 486-509. In Ruth Gavison's *Two-State Solution* (New York: Bloomsbury, 2013), she elaborates the ideological awareness of a demographic sensitivity at the outset of the Zionist project. Second, the enactment of the Citizenship Law on 31 July 2003 by the Israeli Knesset prohibited the extension of residency or citizenship status to Palestinians from the 1967 Occupied Palestinian Territories (OPT) to those who are married to Israeli citizens and the two HCJ cases (HCJ 7052/03, Adalah et al. v. The Interior Ministry, et. al. (14 May 2006) Nevo Legal Database (by subscription, in Hebrew); HCJ 466/07 MK Zahava Gal-On (Meretz-Yahad) et al. v. Attorney General et al. (11 December 2012) Nevo Legal Database (by subscription, in Hebrew). Third, explicit plans were established to create specific majority groups in Israel in both the Negev and the Galilee. As an example, see the 2019 announcement to relocate 36,000 Bedouin citizens living in unrecognized Negev villages in the name of expanding military training areas and implementing economic development projects. Israeli Authority for the Development and Settlement of the Bedouin in the Negev, 'Strategic Plan for the Regulation of the Negev: In the Coming Year, a Quarter of the Negev's Scattered Bedouin Population will be Evacuated for the Benefit of National Projects' (28 January 2019), unofficial Hebrew to English translation by Adalah, 'Israel Announces Massive Forced Transfer of Bedouin Citizens in Negev' (30 January 2019), https://www.adalah. org/en/tag/index/1565. In general, see Ghazi Falah, 'Israeli "Judaization" Policy in Galilee', *Journal of Palestine Studies* 20, no. 4 (1991): 69-85.

strategic interest.[60] Given the multi-layered nature of the conflict, the fuzziness of the borders of Israel, and the ongoing expansion of settlements, the ongoing negation of exile and the endless Zionist mission of gathering the exiled, all of this extends and stretches the concept of security to embrace many other fields and is not limited to armed struggle only.[61] Almost anything might be considered as a threat to security and many acts are even labelled as 'terror'.[62] Thus, in arguing for the law of return and against the Palestinian right of return, the argument against the Palestinians' return need not go back to the original entitlement and face questions of historic justice. Rather, the argument can be developed through the deployment of the logic of war and demographic threat. One of the arguments against the right of return for Palestinians might be that such a return would simply annul the results of the 1948 war and the achievement of Zionism that were brought about by

war and bloodshed, and thus pose a demographic threat to the Jewish state.[63] Given that we are still at war, there is no reason to give up any achievement that was enabled by war. This is the logic of war, regardless of the distribution of entitlement before 1948 or before 1917 or 1967. The argument might unfold in the following manner: 'By rejecting the 1947 Partition Plan, you wanted war, and you got war'; there is no reason to complain about its results.[64] The argument can proceed: 'The return of Palestinian refugees means the end of the Jewish state, it is a threat to our national project, and there is no reason why we should accept such a political suicide on our part and to allow the Palestinians to win by peace what they were not able to gain by war'.[65] They can say to the refugee: 'Let's

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60　For the issue of transformation of land from Palestinian hands to Jewish hands, see the work by Sandy Kedar and Jeremy Forman, 'From Arab Land to "Israel Lands": The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948', *Environment and Planning D: Society and Space* 22 (2004): 809. The appropriation of land seems to be a natural necessity for building the newly born state. For the mandate period, see Sandy Kedar and Jeremy Forman, 'Colonialism, Colonization, and Land Law in Mandate Palestine: The Zor al-Zarqa and Barrat Qisarya Land Disputes in Historical Perspective', *Theoretical Inquiries in Law* 4, no. 2 (2003): 491-539.

61　Of course, there are different views in the literature as to what is considered to be security or self-defence and whether self-defence includes by definition the right of the majority to hegemony. For a more pervasive definition and understanding of what is to be a matter of security, see the position papers published by the Herzliya Forum for Re-formulating Israel's National Security Doctrine and the 2018 Herzliya Insights Report (Institute for Policy and Strategy, IDC Herzliya, 2018). See among others, water as a security issue in Saul Cohen, *The Geopolitics of Israel's Border Questions* (Boulder, Westview Press, 1986) and Ze'ev Schiff, 'Security for Peace: Israel's Minimal Security Requirements in Negotiations with the Palestinians', *Policy Papers*, no. 15 (Washington Institute for Near East Policy, 1989), and Mark Zeitoun, *Power and Water in the Middle East: The Hidden Politics of the Palestinian-Israel Water Conflict* (New York: I. B. Tauris, 2008). On the other hand, see Gans' discussion of this point in *Just Zionism*, Chapter Three; Samira Esmer, 'In the Name of Security', *Adalah Papers* 4 (24 Apr. 2012): 1-7: https://www.adalah.org/uploads/oldfiles/Public/files/Hebrew/Publications/Adalah4preface.pdf; Menachem Hofnung, *Democracy Law and National Security in Israel* (Aldershot: Dartmouth 1996).

62　The Foreign Ministry labelled the BDS movement, which is committed to non-violence, as 'terrorists in suits'.

63　Ruth Lapidot, a very prominent legal scholar, argued that 'if Israel were to allow all of them to return to her territory, this would be an act of suicide on her part, and no state can be expected to destroy itself'. See Ruth Lapidot, 'Do Palestinian Refugees have The Right of Return to Israel', Israel Ministry of Foreign Affairs, 15 January 2001, https://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/do%20palestinian%20refugees%20have%20a%20right%20to%20return%20to.aspx. For a discussion of how the notion of return is incompatible with the interests of a Jewish state, see Yaffa Zilbershats, *Return of Palestinian Refugees to the State of Israel* (Jerusalem: The Metzilah Center, 2011). Also see Benny Morris, 'Revisiting the Palestinian Exodus of 1948', in *The War for Palestine: Rewriting the History of 1948*, ed. Eugen L. Rogan and Avi Shlaim (Cambridge: Cambridge University Press, 2012): 37-59.

64　All these assumptions are problematic as a matter of history, but I am trying here to present an argument that is based on second order claims for justice in its best light. There is a controversy regarding what happened in 1948. Some, like Ilan Pappe, think that expulsion was planned early on; see Ilan Pappe, *The Ethnic Cleansing of Palestine* (London: One World Publications, 2006), Nur al-Din Masalha, *Expulsion of the Palestinians: The Concept of Transfer in Zionist Political Thought, 1882-1948* (Beirut: Institute of Palestine Studies, 1992): There are others who think that even if there was no clear plan, this was nevertheless the spirit during the fight and there was no need for clear or written policy; see Benny Morris, *The Question of Refugees Revisited* (Cambridge: Cambridge University Press, 2004). Hillel Cohen, on the other hand, makes a distinction between the first months of the fighting until May 1948 and the war after, which clearly was not a war for self-defence in any sense. See Hillel Cohen, 'Two Wars of 1948' [in Hebrew], *Hazman Hazeh*, August 2018, https://hazmanhazeh.org.il/1948-war/.

65　See for example, Amos Oz's interview in the *New York Times* stating that the Palestinian right of return is 'a euphemism for the liquidation of Israel', 'Sitting Down With Amos Oz', *New York Times*, 28 January 2013, https://www.nytimes.com/2013/01/29/opinion/global/roger-cohen-sitting-down-with-amos-oz.html; on the 'right' of return as tantamount to 'making Jews a minority within Israel itself', see Ruth Gavison, 'The Jews' Right to Statehood: A Defence', *Azure* 15 (2003): 70-108; on the right of return as a 'nonstarter for Israel: too many

put aside for a moment the justness of the 1948 war, for even if the deportation was not just, now we are at war, you are an enemy, and your claim for justice here and now threatens my existence'.[66]

In this mode of argument, the arguments being put forward by Israel and Zionists derive from the conflict itself. These arguments are derived from what might be called 'the rules of engagement'. These rules of engagement become the frame within which the debate takes place.

Trying to Make Sense: First and Second Order Arguments for Justice

Let me first try to make sense of this mode of argument, to show it in its best light and to try to make sense of it. Only following this will there be a point in offering a full-fledged reply. Let us assume a moment in which the conflict between two parties erupted, and assume that there was a certain distribution of entitlement and rights prior to the eruption of the conflict, and let us ask the following question: How far, when, and under what conditions can or should the conflict, in and of itself, change the original distribution of rights and entitlements?

The basic immediate intuition is that the conflict itself should not and need not be the source of distribution of entitlements or rights. In fact, things should be the other way around: the conflict should be judged and adjudicated and resolved according to a prior conception of the rights of the parties. The conflict should be subjected to the requirement of justice; justice should not be subject to the conflict, which might mean surrendering to the idea that 'might makes right'. Our conception of justice in this regard is guided by the distribution of entitlements that prevailed before the conflict erupted, and we judge it according to this distribution as the baseline. Imagine that I see someone trying to break into my car or my trespass on my property; I push him hard with my hand. He responds by hitting me with a stick. It might seem strange to us if he tried to claim that he was actually defending himself when he attacked me back. We might think he is an aggressor and trespasser, and this logic governs our whole analysis. Substantive justice rules supreme and the conflict itself is subjected to its demands. The conflict and its management do not create, *sui generis*, its own entitlements and rights.

Now I want to start to destabilise this basic intuition. I will do that by introducing an example from the laws of war. My aim is to present this as the basis for my distinction between 'first order arguments of justice' (FOAJ) and 'second order arguments of justice' (SOAJ).

Let's start from the common distinction between just war (*jus ad bellum*) and justice in war (*jus in bello*). According to the 'orthodox view', these are two separate questions, and as Walzer put it 'the two sorts of judgment are logically independent'.[67] We do not merely ask who initiated the war unjustly. We are interested in the way the war is being conducted so that 'when we focus exclusively on the fact of aggression, we are likely to lose sight of that responsibility and to talk as if there were only one morally relevant decision to be made in the course of war: to attack or not to attack (to resist or not to resist)'.[68] For Walzer, there is more to be asked; we cannot judge war only by its beginning as to whether it was a just

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returnees would end Jews' demographic majority and therefore Israel's status as both a Jewish and democratic state', see Max Fisher, 'The Two State Solution', *New York Times*, 29 December, 2016, https://www.nytimes.com/2016/12/29/world/middleeast/israel-palestinians-two-state-solution.html; and the sentiment that absolute return is the 'call for the end of Israel as a Jewish state', see Luke Akehurst, 'Absolute Return is Incompatible with a Peaceful Solution', *Times of Israel*, 4 May 2019, https://blogs.timesofisrael.com/absolute-return-is-incompatible-with-a-peaceful-solution.

66   Recently one of the most prominent historians of the Holocaust, Yehuda Bauer, claimed in two articles published in the *Haaretz* newspaper that Palestinians claiming the right of return are anti-Semitic, are aiming at the destruction of Israel, and that the demands for return are even genocidal: 'On Anti-Semitism and distortions', *Haaretz*, 4 July 2019, https://www.haaretz.co.il/opinions/.premium-1.7438296. See my reply to Bauer: 'Right of Return is Antisemitic? Be Serious' [in Hebrew], *Haaretz*, 10 July 2019, https://www.haaretz.co.il/opinions/.premium-1.7488660, and see his reply to my arguments in Letters to the Editor, 'Antiemetic Genocidal Threat' [in Hebrew], *Haaretz*, 19 July 2019, https://www.haaretz.co.il/opinions/letters/.premium-1.7538425.

67   Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 2006), 21.

68   Walzer, 33.

war. Walzer stresses the distinction between *jus ad bellum* and *jus in bello*.[69] Within this frame, one might fight justly in an unjust war, and unjustly in a just war. Soldiers might kill each other in the battlefield and be immune from any prosecution regardless of the question of whether they were fighting a just war. While judging the question of *jus in bello*, we can and should 'bracket' the question of the justness of the war itself—of *jus ad bellum*. According to this 'orthodox view', we are equipped with the moral tools to make a judgment regarding the justness of conducting of war, regardless of the justness of the war itself.

I want to characterise SOAJ as being similar to those arguments made for and related *to jus in bello*—i.e., that govern the rules of engagement and the way the parties ought to conduct the fight. I reserve the term FOAJ for those arguments that are derived from substantive historical justice—those that aim to regain the distribution of rights prior to the eruption of conflict.

The point that I wanted to develop with the example of just war and justice in war (we can add more, like rules of civil or criminal procedure compared to substantive civil or criminal law) is to show that we can distinguish between different levels of justice (or rather of fairness), so that we can speak of justice in war while bracketing the question of the justness of war. The idea here is to bracket the original first question of substantive justice. It invites us to focus on the present, the here and now, while bracketing the past. The present, the conflict itself, becomes a reason for assigning all kinds of rights and gains a relative autonomy, creating its own logic of argumentation.

This is one mode of argumentation that many liberal Zionists offer. That does not mean that this is the only or the dominant mode of argument, and it clearly does not mean that Israel is justified in arguing that it is acting in self-defence. In fact it is the

Palestinians who are under attack and acting in self-defence most of the time. Nevertheless, I want to challenge this mode of argumentation based on SOAJ, and as such and for the purposes of my argument I assume that such arguments do appeal to a certain audience. It is this appeal that I want to challenge. My aim is not to prove that Israel is not acting in self-defence, or that it does not face security threats, but rather to assume the existence of these threats and nevertheless develop counter arguments to the positions based on these assumptions.

Thus, in the following section I argue against this logic in order to show its limits.

The Palestinian Reply: The Persistence of First Order Arguments of Justice

While the separation between FOAJ and SOAJ can make sense, it must be read in a certain way. While there might be a certain autonomy of SOAJ, this autonomy should be a relative autonomy. SOAJ cannot and should not eclipse arguments for historical justice, and SOAJ should not have absolute autonomy and suspend issues of substantive justice forever. I argue for the importance of the historical frame and aim to regain the importance of the 'original' question, the distribution of entitlements that existed before the conflict erupted, inviting us to view the conflict through these lenses. Instead of viewing the past through the present, I want to suggest viewing the present as an outcome of the past, and I want to invite us to read SOAJ in the light of FOAJ.

In fact, recent developments both in the laws of war and private legal theory tend to revise the sharp distinction between FOAJ and SOAJ. Thus, for example, one of the most prominent figures in international law has launched an attack on this logic of separation.[70] The revisionist view finds it hard to accept symmetry

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69 Walzer finds rationale for this distinction in the fact that we hold soldiers responsible for the conducting of the war given that they are the ones in the field, as opposed to the responsibility of the politicians who decide on waging the war (*jus ad bellum*). See Walzer, 38. For the purposes of my paper, I am not interested in arguing for or against Walzer's justification. I find it partially convincing.

70 See Jeff McMahan's writings on the subject in a series of papers and books. Jeff McMahan, 'The Ethics of Killing in War', *Ethics* 114 (2004): 693-733; Jeff McMahan 'On the Moral Equality of Combatants', *Journal of Political Philosophy* 14, no. 4 (2006): 377-393. See also Helen Frowe, *The Ethics of war and Peace* (London: Routledge, 2011): Chapter Five.

between an army that is fighting a just war and an army that is fighting unjust war.[71] Many of us find the idea that one can initiate an unjust war of aggression, but still fight in a just manner, to be problematic. If there is no reason to justify the war in the first place, then how can we say that someone is conducting war justly? As Helene Frowe has put it 'if what one is trying to achieve is morally wrong, any methods that one employs to try to achieve it are similarly wrong'.[72] She adds that if it is wrong to rob or steal someone else's property, then it is clearly absurd to think that robbing the person violently is wrong, but gently deceiving him is just. It seems rather odd to think that soldiers fighting unjust war should be immune from moral censure and entitled to kill. As McMahan puts it 'even when unjust combatants confine their attack to military targets, they kill innocent people'.[73] By the same token, if one is fighting a just war, it seems strange that one should be placed under the same rules of engagement as someone who is fighting an unjust war. We feel that the one fighting a just war should be able to do things that we might not permit someone conducting an unjust war to do.

When things are viewed in this way a Palestinian can argue that it is not enough that an Israeli is fighting in what might be called self-defence. Rather, he must also show that he is fighting for a just cause. When Israeli Jews claim in the face of the Palestinian refugee that his demand for return threatens their collective existence, then the Palestinian refugee can answer: 'It might indeed be the case that my justice threatens your existence, but it might the case that your existence is based on injustice'.

This is intended to be the end of the debate, but it is important to underline that the issue of historical justice cannot be brushed off the table. Security arguments must thus respond to and address the issue of justice.

This is even more important in a situation like Israel-Palestine, where the conflict, the process of colonisation, and the occu-

pation of 1967 land seem unending.[74] Most of the laws of war are understood to be temporally limited and are shaped by the image of war between two national sovereign states. Such laws, however, do typically allow for an ongoing process of settlement and colonisation over a period of time. In such a situation, the prolongation of the conflict indefinitely means that the only arguments that prevail are those of a second order, while arguments of a historical nature relating to the start of the conflict, who interfered in the lives of others, and who settled in another nation's land–are delayed, deferred, and postponed *ad infinitum*. In this way, the whole moral and political discourse becomes saturated with second-order arguments, which perpetuate themselves through their claim to exclusivity and create new security questions.

In such a situation there is a fear that Israel will be increasingly invested in sustaining the conflict given that the conflict is itself an independent source of moral arguments to justify policies of aggression and expansion under the rhetoric of security and self-defence, thus turning the exception into the norm.[75] Clearly, this does not mean that we can ignore SOAJ relating to security or self-defences as long they are sincere. Reaching a historical compromise can't take place overnight, and as such second order ar-

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71 See McMahan, 'Ethics of Killing', 706.

72 See Frowe, *Ethics of War and Peace*, 130-1.

73 Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), 64.

74 On the prolonged nature of the Israeli occupation, see Richard Falk, 'Some Legal Reflections on the Prolonged Israeli Occupation of Gaza and the West Bank', *Journal of Refugee Studies* 2, no. 1 (1989): 40-51. For more on the transformative nature of the prolonged occupation, see Andrea Carcano, *The Transformation of the Occupied Territory in International Law* (Leiden: Brill, 2015). On the prolonged occupation in the case of Palestine, see Orna Ben-Naftali, Aeyal M. Gross and Keren Michaeli, 'Illegal Occupation: Framing the Occupied Palestinian Territory', *Berkeley Journal of International Law*23, no. 3 (2005): 551-614; Valentina Azarova, *Israel's Unlawfully Prolonged Occupation: Consequences Under an Intergraded Legal Framework* (European Council on Foreign Relations, 2017), https://www.ecfr.eu/publications/summary/israels_unlawfully_prolonged_occupation_7294.

75 It is one of the conclusions of the Goldstone Report that 'what is fallaciously considered acceptable "wartime" behaviour has become the norm'. United Nations, *Human Rights in Palestine and other Arab Occupied Territories: Report of the United Nations Fact Finding Mission on the Gaza Conflict*, A/HRC/12/48, (Sep. 15, 2009), section 1433, https://www.un.org/ruleoflaw/blog/document/human-rights-in-palestine-and-other-occupied-arab-territories-report-of-the-united-nations-fact-finding-mission-on-the-gaza-conflict.

guments must be on the table as well. But for those to be genuine, they must be addressed in conjunction with historical questions about justice and original entitlements and must be brought to the table in good faith. By good faith in this regard I mean with a genuine interest in bringing the conflict itself to an end, and with it those arguments that feed on the continuation of the conflict. Refusing to deal with historical questions of justice can itself feed into the risks of security and self-defence, and thus Israel itself should be viewed as responsible for this reality.[76]

Arguments related to security or to the rules of engagement are—by definition—temporal in nature. That is, they will disappear if a just historical compromise is reached. These rules of engagement or SOAJ can be justified as long as there is a conflict. However the underlying assumption is not only that the conflict is temporal, but rather that there is a genuine desire or effort or attempt by the parties to end the conflict.

The argument I want to make, therefore, is that Israel is invested in 'war talk', and that it feeds on the continuation of the conflict. The conflict becomes a source of argument and it has an interest in prolonging the conflict itself. Over and above this, insistence on the privileges given to Jewish Israelis might in itself become a reason for the continuation of the conflict. The longer the conflict persists, the more Jews in Palestine will insecure in their future, in spite of their possessing nuclear weapons and absolute military superiority. This insecurity—real or false, authentic or imagined—feeds a discourse of war that in itself justifies the assertion of Jewish privileges forever and forever postpones any serious discussion of historical justice or original entitlement, whether we take the watershed to be 1917, 1948, or even 1967. The discussion of corrective or historical justice is simply delayed, eclipsed, and taken off the table. Not only that, but everything and every measure employed might seem to be necessary to defend Jewish existence

in Palestine, and this includes the Apartheid regime that is crystallising in front of our eyes, together with all of the laws that tend to guarantee Jewish supremacy and privileges.

Before ending this section it is crucial to stress the following: This portion of the paper has assumed several facts, each of which is controversial. I have assumed that Israel has valid SOAJ and that the Palestinians have valid FOAJ. Both assumptions could be disputed. Many Palestinians can deny the fact that Israel is acting in self-defence, and that it does not in fact have good SOAJ, and that its claims for security are false and cannot be sustained. While I tend to agree with many of these Palestinian arguments, I chose to develop my position against the Israeli argument on its own grounds, assuming that it bears a certain validity while still showing the deficiency and bad faith in its deployment.

Conclusion

The present paper is not directed to the future, nor does it aim to offer solutions for the future that are based on considerations of justice; as such it is not a forward-looking paper. The paper had three sections. Two of these—the first and the last—were mainly discursive, aimed at demonstrating some problems inherent in the discourse about justice in Palestine that prevent Palestinians from showing the justness of their case. In Section Two of the paper, I addressed two moments in the history of Israel-Palestine to show that international decisions and resolutions made in relation to Palestine were problematic and unjust. The first is the Balfour Declaration and the second is the Partition Plan of 1947. It is only in the last talk that I will address the questions related to the future. The issue of justice will figure again, but this time with an eye to what lies ahead.

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76   On this inversion of reasons and results see Hedi Viterbo, 'Future Oriented Measures', in *The ABC of the OPT: A Legal Lexicon of Israeli Control over the Occupied Palestinian Territory*, ed. Hedi Viterbo, Michael Sfard and Orna Ben-Naftali (Cambridge: Cambridge University Press, 2018), 118, 121.

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Shielding Violence Through the Structure of Argument and Law

Noura Erakat

Abstract

This response essay to Raef Zreik's second lecture, 'Justice', builds on his critical intervention in two ways. First, it examines the history of the Balfour Declaration to flesh out one of Zreik's 'good arguments for justice' by highlighting how the British policy document's juridical erasure of Palestinian peoplehood represented a sovereign exception beyond the reach of legal challenge and oversight. Once incorporated into the Palestine Mandate, the exception became international law and policy and, thereafter, structurally impeded Palestinian claims for self-determination. Second, the essay addresses Zreik's critique of first and second order arguments of justice and shows how the structure of law, like the structure of an argument, can reify an unjust status quo even as it seemingly advances claims for justice. The essay concludes by exploring how decolonial alternatives may help pave a path towards optimal futures.

Introduction

In his second lecture, 'Justice', Raef Zreik sets out to demonstrate how analytical and discursive modes of argumentation have impeded the realisation of justice for Palestinians. He also discusses the substance of the arguments themselves because he believes that Palestinians have 'good arguments for justice'. He offers two such 'good arguments' in regard to the Balfour Declaration and the Partition Plan, respectively. His primary concern, however, is with 'regimes of discourse' that have paralyzed or prevented those arguments from having effect and he aims to 'unearth and locate those moments of blockage'. Zreik locates those moments in two places: 1) in the historical frame of an argument, and 2) in the structure of an argument. Both discursive approaches work to disaggregate Palestinian claims for justice by arbitrarily occluding critical context that shapes subsequent grievances. In the absence of such context, Israel's advocates are able to advance arguments based on present circumstances without accounting for how those circumstances came into being. Consider, for example, Israel's reference to settlements as 'facts on the ground' in the course of peace negotiations. Beginning history in the present day transforms settlements from a systematic tool of dispossession in the settler-colonial encroachment of Palestinian lands into a neutral fact of reality to be incorporated into calculations of justice. This is emblematic of an arbitrary historical frame.

In this response essay, I build on Zreik's critical intervention in two ways. I begin by examining the history of the Balfour Declaration to flesh out one of the 'good arguments for justice' that Zreik forwards. I highlight how the British policy document's juridical erasure of Palestinian peoplehood represented a sovereign exception beyond the reach of legal challenge and oversight. Once incorporated into the Palestine Mandate, the exception became international law and policy and, thereafter, structurally impeded Palestinian claims for self-determination. I then turn my attention to Zreik's critique of first and second order arguments of justice to show how the structure of law, like the structure of an argument, can reify an unjust status quo even as it seemingly advances claims for justice. I conclude by exploring how decolonial alternatives may help pave a path towards optimal futures.

The Balfour Declaration

Zreik not only contends with when we choose to begin and end history, but he also takes issue with our understanding of historical events. Prime among them is the Balfour Declaration—the 1917

letter from British Foreign Secretary Arthur James Balfour to Lord Rothschild, on behalf of the British Jewish community, designating Palestine as a site of Jewish settlement and promising to establish a Jewish national home therein. Zreik insists that Palestinians 'usually' do not contend with the details of the Balfour Declaration because doing so 'might even contaminate the justness of their cause and render it questionable and in need for a proof or defence'. He takes issue with it precisely to disrupt a hegemonic understanding of historical events among European and Western audiences, steeped as they are in the colonial and civilisational logics that undergird the policy document.

Zreik zeroes in on the liberal deployment of 'liberty', in the Hobbesian sense, to justify the Balfour Declaration in order to unpack and reveal its illiberal core. As put by Thomas Hobbes, all men exist in a state of nature driven by the primary purpose of self-preservation and owing no duties to one another. Accordingly, the liberal argument goes, Zionists and Palestinians competed to achieve national self-determination in the Mandate for Palestine in a fair state of nature and the issuance of the Balfour Declaration marked Zionist victory. Thus, any Palestinian objection to British Zionist policy is merely childish protest based on unfavourable historical circumstance. However, as Zreik demonstrates, structural conditions—legal, moral, and political—reveal that there never existed a naked state of nature, let alone a modicum of fairness.

Here I want to build on Zreik's scrutiny of the legal context underpinning the Balfour Declaration. He summarily describes the international legal order at the turn of the twentieth century as an imperial project that defined sovereignty in the image of European states and predicated its enjoyment on proximity to European norms. Hence, non-European communities 'lack[ed] sovereignty and also…any right of self-determination'. Within this framework, Palestinians could not be eligible for national self-determination and, 'thus', Zreik continues, 'when one argues that the Palestinians did not have a right to self-determination at the turn of the century, one is reproducing the European understanding of

the rights of nations and the concept of sovereignty through the eyes of Europe'. I agree with Zreik's analysis, but I want to complicate and deepen it a bit more.

Britain's denial of Palestinian sovereignty was not merely a rejection of their juridical peoplehood because of their non-European origins. This kind of civilisational logic indeed regulated the earliest encounters between Spanish settlers and indigenous peoples in the sixteenth century and justified the conquest of indigenous lands and communities in the language of law.[1] However, by the end of the First World War, protests among peoples enduring imperial domination—including within Europe—had grown so fervent that it could not be arbitrarily denied as a matter of fiat. In fact, in the course of war, Britain drew Arabs into their sphere of influence through the promise of national independence following victory against the Ottoman empire; these included Arabs in Palestine who sought to belong to a Greater Syria along with other Levantine Arabs.[2] Victors in the war convened the Paris Peace Conference in 1919, mindful that indefinite domination was not tenable. They also did not want to relinquish their control of the vanquished Ottoman and German empires. The Great Powers established the League of Nations Mandate System in order to simultaneously appease native demands for independence while maintaining control of the territories.[3]

The Mandate System established an infrastructural arrangement that facilitated ongoing European penetration of the colonies under the banner of providing 'tutelage…entrusted to advanced

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1 Francisco de Vitoria, 'On the American Indians' and 'Lecture on the Evangelization of Unbelievers' in *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 2012), https://stanselminstitute.org/files/Vitoria%20on%20the%20Evangelization.pdf; See also Antony Anghie, 'Francis de Vitoria and the Colonial Origins of International Law', in *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 13-33.

2 George Antonius, 'Appendix A – The McMahon Correspondence', in *The Arab Awakening: The Story of the National Arab Movement* (London: Kegan Paul International, 2015), 413.

3 Antony Anghie, 'Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations', in *New York University Journal of International Law and Politics* 34, no. 3 (Spring 2002): 513-633.

nations' to peoples 'not yet able to stand by themselves'.[4] The arrangement explicitly predicated sovereignty on the likeness to European political systems, social relations, cultural norms, and commerce. It stratified the former German and Ottoman territories into three classes—A, B, and C—based on their proximity to these European standards. The designation of former territories reflected a combination of colonial interests as well as dominant racist civilisational frameworks. Thus, while the League of Nations designated the former Ottoman territories as Class A mandates, granting them provisional independence for exhibiting the greatest likeness to Europe, it marked the former German territories in the African continent as Areas B and C, subject to indefinite mandatory rule 'in the interests of the indigenous population'.[5]

Although the Mandate System recognised the provisional independence of the former Ottoman territories, it nonetheless forcefully denied them national independence. Having failed to convince the Great Powers to grant Arab nations immediate independence at the Paris Peace Conference, Prince Faysal returned to Damascus in May 1919 and established the Syrian Arab Kingdom, a constitutional monarchy replete with an elected congress and a constitution. Establishment of the Syrian Arab Kingdom sought to demonstrate Arabs' political maturity and the capacity for self-rule, thus establishing the redundancy of European tutelage. However, as the Mandate System was less of a benevolent project than it was a colonial one, French troops crushed the constitutional experiment in a single day at the Battle of Maysalun in 1920.[6] The Arab nations would thereafter have to revolt against the Mandatory powers in order to ultimately enjoy national independence.

As a former Ottoman territory, Palestine was also designated as a Class A mandate. However, unlike the other Arab nations, it was set apart and distinguished without the elusive promise of independence. The denial of Palestinian sovereignty was not crude civilisational violence amounting to *terra nullius*. Rather, it was a deliberate and meticulous juridical erasure completed in order to advance British colonial interests in the Middle East. Namely, Britain sought to secure a foothold in the region for the sake of competing against growing French influence as well as to maintain continued access to geopolitical resources and trade routes.[7] Promising national independence to Palestinians would certainly undermine that possibility, while guaranteeing a Jewish national home, to be distinguished from a state, would both stave off the spectre of independence as well as provide a pretext for continued British intervention in the name of protecting a Jewish religious minority.[8] Zionism suited and furthered British colonial interests. The Balfour Declaration approximated those interests by declaring a right to Jewish settlement in Palestine while negating the status of Palestinians, 90 percent of the whole in 1917, as a political community with the right to self-determination.

This juridical erasure that denied Arabs in Palestine even a nominal right to self-determination, while recognising it among other Arabs in Class A mandates, constituted a sovereign exception. A sovereign can declare an exception to the law, demanding its suspension, in order to fulfil a political imperative the sovereign deems necessary for self-preservation.[9] Such exceptions are beyond legal regulation, challenge, or oversight, and while seemingly arbitrary, this is not merely a matter of colonial hubris. As I have shown elsewhere, sovereign exceptions are sites of robust law-making and regulation.[10] An exception to the law is essentially a declaration of a unique fact pattern or, in Latin, a *sui generis*

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4   League of Nations, *The Covenant of the League of Nations*, Article 22, April 28, 1919, https://www.refworld.org/docid/3dd8b9854.html.

5   Ibid.

6   Elizabeth F. Thompson, 'Justice Interrupted: Historical Perspectives on Promoting Democracy in the Middle East', *United States Institute of Peace*, June 1, 2009, https://www.usip.org/publications/2009/06/justice-interrupted-historical-perspectives-promoting-democracy-middle-east.

7   Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (London and New York: Verso Books, 2011).

8   Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood* (Massachusetts: Beacon Press Books, 2006); Thompson, 'Justice Interrupted', 4.

9   Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford: Stanford University Press, 2019), 15.

10   Erakat.

case that is unlike any other. A *sui generis* case justifies a law-making authority to establish new law, where a sovereign insists no applicable legal analogy or precedent exists, giving rise to what I call 'alternative legal models'.[11] Once created, an alternative legal model and the sovereign exception that justified its establishment become co-constitutive: the unique fact pattern justifies the specialised legal regime and the specialised legal regime reifies and reproduces the unique fact pattern. The Balfour Declaration was a British sovereign exception that ultimately established the Palestine Mandate as an alternative legal model.

What did the British insist was the unique pattern that justified the juridical erasure of Palestinians in the Balfour Declaration? In part, it was exactly what Zreik tells us, outright racial logics that disregarded Palestinians as worthy of consideration or capable of self-rule. But it was more than that as well. A cornerstone of the unique fact pattern was the insistence that Palestine was of significance to the three monotheistic religions and therefore unsuitable for national sovereignty.[12] This logic endured through 1947, when in UN General Assembly Resolution 181, state parties designated Jerusalem as *corpus separatum,* subject to international regulation despite the binational arrangement stipulated in the Resolution.[13] A third pillar of unique distinction was an imperative to resolve the Jewish Question, as posed by European societies, though this would not become an acute international imperative until the height of a Jewish refugee crisis in Europe following the Second World War.[14] Together, the racist disregard of Palestinians, the insistence that Palestine was a Holy Land exceeding national governance, and the need to definitively resolve the Jewish Ques-

tion as articulated by Europe constituted the unique fact pattern that justified the sovereign exception eliding the juridical status of Palestinians as a people within the meaning of law.

When the League of Nations incorporated the Balfour Declaration into the Palestine Mandate in 1922, it enshrined Britain's juridical erasure of Palestinians as international law and policy. Thereafter, Britain in its capacity as the Mandatory power, the Permanent Mandates Commission responsible for oversight of the mandates, as well as the UN Special Committee on Palestine established in 1947 to resolve Britain's colonial blunder, all regarded the Palestine Mandate as *sui generis,* unlike any of the other Class A mandates and thus subject to its own, specialised, and internally coherent legal regime.[15] Therefore, when Palestinians challenged the abrogation of the terms of the League of Nations Covenant alleging mismanagement, violation of the 'trust of civilisation', and distinct treatment relative to the other Class A mandates, these various institutions acknowledged the blatant denial of Palestinian self-determination and justified it as conforming with the 'special regime' governing the Palestine Mandate.[16] What was a violation of the law became adherence to it under a *sui generis* framework. So indeed, when one argues that Palestinians did not have the right to self-determination at the turn of the century and that Zionists won that right in a fair contest, they are reproducing a colonial argument: racist, and devoid of any fairness even in the most liberal sense.

The Logic of War

In part one of his essay, Zreik explores how the structure of time, or historical frames, can fundamentally alter the meaning of justice in the Palestinian struggle by fragmenting it into smaller parts as well as by separating it from antecedent events that define the struggle. He does something very similar in part three of his es-

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11 Erakat, 17.

12 See William Peel et al. (1937), Report of the Palestine Royal Commission, UNISPAL, para. 48, available at http://unispal.un.org/pdfs/Cmd5479.pdf.

13 General Assembly Resolution 181 (II), *Future Government of Palestine*, A/RES/181(II), chap. 2, November 29, 1947, https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253.

14 Susan Pederson, 'The Impact of League Oversight on British Policy in Palestine', in *Britain, Palestine, and Empire: The Mandate Years*, ed. Rory Miller, (London: Ashgate, 2010), 39-65.

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15 See the discussion of this in Erakat, *Justice for Some*, 37, 41, and 45.

16 See for example William Peel et al. (1937), Report of the Palestine Royal Commission, UNISPAL, paras. 24, 33, and 42, available at http://unispal.un.org/pdfs/Cmd5479.pdf, as quoted in Erakat, *Justice for Some*, 16.

say where he explores the impact of the structure of an argument. Zreik introduces two distinct modes of argumentation, first and second order arguments of justice, to show how an argument's structure can disaggregate Palestinian claims and empty them of their political context to the disadvantage of Palestinians.

Whereas, First Order Arguments of Justice (FOAJ) establish a normative framework based on an original event or root cause, Second Order Arguments of Justice (SOAJ) are autonomous inquiries that bracket the original event in order to evaluate conflicts that flow from the original one without the cumbersome burden of resolving it. Zreik uses the distinction between just war (*jus ad bellum*) and justness in war (*jus in bello*) to illustrate his point. While *jus ad bellum* determines whether an adversary had a right to declare war, *jus in bello* evaluates how a war is waged irrespective of its legitimacy and legality. Thus, the soldier fighting an unjust war still has the right to use lethal force and the soldier fighting against an unjust war, does not have carte blanche to defeat their adversary but must still conform to the laws governing their use of force. The conduct of hostilities is bracketed from the original event, or the declaration of war, in order to evaluate it on its own terms. Zreik explains, that this mode of argumentation invites us to focus on the present, the here and now, while bracketing the past. The present, the conflict itself, becomes a reason for assigning all kinds of rights and gains a relative autonomy, creating its own logic of argumentation. This logic risks creating its 'own entitlements and rights' that can benefit a 'bad guy' who inflicted the original harm and incentivise the prolongation of conflict to continue to accrue benefits all the while avoiding resolution of the historical injustice.

In regard to the question of Palestine, Zreik highlights that while all parties deploy both modes of argumentation, on balance, liberal Zionists deploy SOAJ to advance their cause—in warfare, land tenure, immigration policy, etc.—while Palestinians are often subsumed in FOAJ to demonstrate the original harm and unjustness of the subsequent events in question. As FOAJ arguments cannot override SOAJ ones—which create their 'own entitlements

and rights'—Palestinians often lose the argument all together and, with it, the ability to coherently narrate their story. Zreik cautions that 'SOAJ cannot and should not trump and eclipse arguments for historical justice' because it creates an incentive for Israel to avoid achieving a resolution and continue conflict in order to benefit from its SOAJ arguments.

In particular, Israel's framework of an ongoing war, or 'war talk', provides a 'source of moral arguments to justify policies of aggression and expansion under the rhetoric of security and self-defence'. Within the realm of hostilities, everything that Israel does *to* Palestinians is framed as defensive, necessary, and legal because it is bracketed from an original harm and ultimately blames Palestinians for the harm Israel inflicts upon them. Israel *must* build a wall, Israel *must* shoot to kill, Israel *must* build a settlement, Israel *must* confiscate lands, Israel *must* demolish a home, Israel *must* maintain a military occupation, and so on. Taken to its logical end, the bifurcation of FOAJ and SOAJ could enable Israel to make a second order argument in defence of an apartheid legal regime for the sake of preserving Jewish sovereignty in Israel/Palestine with no sense of irony regarding the immoral nature of a racialised system of governance or the original harm upon which it is predicated.

I agree with Zreik that the bifurcation of FOAJ and SOAJ has enabled Israel to expand and entrench its settler-colonial enterprise on Palestinian lands under the veneer of a liberal structure of argumentation. Significantly, I think that this is also an issue with the law itself; nearly any appeal to law is, by default, a second order argument because of its incapacity to redress structural violence. Cognisable legal claims must be disaggregated in order to establish harm, culpability, and redress. To the extent that collective claims can be made, such as in a class-action suit, they are the sum of many smaller parts and must still identify a tangible harm and an individual culprit.[17] This is as true for domestic dis-

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17   Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Duke University Press, 2015).

crimination civil suits as it is for international criminal law. Consider that the 1964 Civil Rights Act outlawing *de jure* discrimination in the United States transformed collective condemnations of US white supremacy into individual and group grievances subject to judicial arbitration.[18] The legal articulation of anti-racism was so thoroughly depoliticising that within a decade and a half, the US Supreme Court recognised that white claimants could suffer racial harm, thus equating anti-racism in the United States with colour-blindness.[19] The latter approach both blunts the original claims alleging structural racism and frames legal remedies like affirmative action as forms of racial discrimination.[20] In effect, while legal advocacy may mitigate harm to individuals and groups, it simultaneously shields US white supremacy from more sustained critique among liberal circles.[21]

In the case of international criminal law, consider the Palestinian bid to the International Criminal Court in late 2014. Assuming that the bid surmounts the myriad jurisdictional questions that currently dominate it, the Court is incapable of addressing the colonial condition that characterises Palestinian unfreedom.[22] This is most evident in regard to allegations concerning Israeli war crimes in the course of repeated large-scale military offensives against the Gaza Strip. To investigate alleged war crimes, the Court would have to examine individual military attacks to assess whether the military harm outweighed the military advantage. The emphasis on harm and advantage is examined in a political vacuum. The Court would have to bracket the legal inquiry of whether Israel had the right to use military force against Gaza, a territory that it continues to occupy, thus reifying a deleterious

power imbalance between coloniser and colonised that Palestinians insist is the source of the conflict. This is to say nothing of the fact that the Court would be obligated to investigate Palestinian use of force without regard to the severe asymmetries underlying Palestinian grievances. More, the legality of Palestinian force is much easier to decipher, relative to Israeli force, because their crude weapons technology is *ipso facto* reckless due to its incapacity to target military objectives with precision.[23] In contrast, assessing the legality of Israel's use of force depends on military intelligence that belligerents are reticent to make available, thereby shielding it from unfettered scrutiny. The appeal to international criminal law would *at best,* instruct Israel how to better use force against Palestinians while leaving the structural violence characterising their lives intact. Like first and second order arguments of justice, the issue here is the structure of the law itself.

Not only can a legal argument work to depoliticise and reify structural violence, but like second order arguments, they are also relatively autonomous and have the capacity to establish their own 'and rights', what Zreik agrees are *sui generis* claims. Continuing with the example of warfare against Palestinians in the Gaza Strip, this legal structure has enabled Israel to establish new laws of war to expand its right to use force, and inflict unprecedented harm, within the language of law.

In 2005, Israel unilaterally withdrew from the Gaza Strip by withdrawing its troops and 9,000 civilian settlers and announced the end of its occupation. Two years later, Israel declared war on Gaza, which it insisted had no right to use force in response. There are several contradictions in this formulation. According to the International Court of Justice, a belligerent cannot declare war on

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18 US Federal Legislation, 'Civil Rights Act (1964)', United States Senate (1964).

19 Regents of Univ. of California v. Bakke, 438 US 265 (1978).

20 Grutter v. Bollinger, 539 US 306 (2003).

21 Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1993).

22 International Criminal Court (ICC), 'Statement of ICC Prosecutor, Fatou Bensouda, on the Conclusion of the Preliminary Examination of the Situation in Palestine, and Seeking a Ruling on the Scope of the Court's Territorial Jurisdiction', December 20, 2019, https://www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine.

23 International Committee of the Red Cross (ICRC), 'Protocols additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)', 8 June 1977, Art. 51(3)(b), https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4BEBD9920AE0AEAEC12563CD0051DC9E; See also Noura Erakat, 'Who is Afraid of the International Criminal Court?', *Jadaliyya*, January 12, 2015, https://www.jadaliyya.com/Details/31657/Who-Is-Afraid-of-the-International-Criminal-Court.

territory wherefrom it has already usurped policing powers and is responsible for the well-being of the civilians under its occupation.[24] If an occupation has ended, sovereignty vests in the people formerly under occupation, which affords them the right to use armed force. Significantly, Additional Protocol I of the Geneva Conventions affords a people the right to use armed force to resist 'colonial domination, alien occupation or racist regimes' and recognises such combat as international armed conflict.[25] Therefore, so long as Palestinian use of force is organised under a command structure and on behalf of a public purpose, as opposed to personal enrichment, they have the right to fight against the occupation—and not only the right to force when the occupation ends. Israel has refused to recognise the Palestinian people as a nascent sovereign and insists any Palestinian use of force, even if directed at military targets, is criminal and terroristic. But setting aside this controversy and accepting Israel's argument at face value, either Israel is the occupying power and cannot wage war against Palestinians in Gaza or it is no longer an occupying power and Palestinians in Gaza can organise their armed forces. According to Israel, neither of these things are true.

The ICC as well as the Human Rights Council concluded that because Israel maintained control of Gaza externally, (i.e., of its air space, its territorial waters, and four out of five points of ingress and egress of goods and people), and internally, (i.e., of its population registry, electromagnetic sphere, telecommunications network, and sewage system), that it is in 'effective control' of Gaza and therefore remains an occupying power.[26] Israel nevertheless insisted its occupation ended but also did not recognise Gaza as sovereign Palestinian territory. Instead, it declared Gaza a 'hostile entity', a category that has no precedence in international law.[27] Essentially, Israel declared war on a territory over which its occupation endured and which, it claimed, did not have the right to defend itself. It thus made the Palestinians in Gaza triply vulnerable: occupied, targets of war, and defenceless.[28]

Based on its own legal innovations, Israel now insisted that its warfare against Palestinians in Gaza was *sui generis*, unlike anything other, where no applicable law existed and set out to propose new laws of war.[29] These propositions included shifting the burden of warfare from soldiers to enemy civilians in determining proportionality. Proportionality balances military harm to advantage and considers force protection, the value of soldiers' safety, as part of a belligerent's military advantage. Under a traditional proportionality assessment, sparing civilian life, including enemy civilians also known as collateral damage, is more valuable than protecting a belligerent's armed forces. Israel's proposition made the lives of its soldiers more valuable than Palestinian civilians, thus tolerating higher Palestinian civilian casualties so long as more Israeli soldiers were safe.[30] Taken to its logical end, Israel could use a tremendous amount of force with less precision targeting, from an aerial or land distance, which is sure to inflict greater harm upon civilian life and yet be legal precisely because it mitigated the risk to its armed forces, thereby justifying the harm as proportionate to the military advantage. What might have been considered disproportionate use of force for inflicting excessive

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24 International Court of Justice (ICJ), 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory', ICJ 63, paras. 138–142 (July 4, 2004).

25 ICRC, 'Protocols additional to the Geneva Conventions of 12 August 1949'.

26 Office of the Prosecutor, ICC, 'Situation on Registered Vessels of Comoros, Greece and Cambodia: Article 53 (1) Report', November 6, 2014, paras. 24–29, https://www.icc-cpi.int/iccdocs/otp/OTP-COM-Article_53(1)-Report-06Nov2014Eng.pdf; United Nations Fact Finding Mission on the Gaza Conflict, *Human Rights in Palestine and Other Occupied Territories*, 12th Sess, UN Doc A/HCR/12/48, 676 (15 September 2009) 276, https://digitallibrary.un.org/record/666096?ln=en.

27 Israel Ministry of Foreign Affairs, 'Security Cabinet Declares Gaza Hostile Territory', September 19, 2007, www.mfa.gov.il/mfa/foreignpolicy/terrorism/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx.

28 George Bisharat, et al., 'Israel's Invasion of Gaza in International Law', *Denver Journal of International Law & Policy* 38, no. 1 (2009): 41, https://repository.uchastings.edu/faculty_scholarship/1002.

29 For a discussion of how a state can create new laws of war, see chap. 5, 'From Occupation to Warfare', in Erakat, *Justice for Some*, 175.

30 Asa Kasher and Amos Yadlin, 'Military Ethics of Fighting Terror: An Israeli Perspective', *Journal of Military Ethics* 4, no. 1 (2005): 3-32, doi:10.1080/15027570510014642.

harm to achieve a military advantage historically became proportionate under Israel's burden-shifting framework. Indeed, when in 2009 one of the architects of Israel's revised laws of war was asked about the disparate register of death and destruction following Israel's 2008-09 winter offensive (1,398 Palestinian casualties versus 9 Israeli casualties), he replied that 'the concept of proportionality had changed' and there was no longer any 'logic' in comparing the number of casualties.[31]

Separated from the historical injustice of forced removal, exile, military occupation, and siege, Israel's legal arguments create their own logic. Unencumbered by the existing context, Israel is at liberty to assert a new reality—it can effectively control Gaza, call it a hostile entity, relieve itself of its duties as an occupying power, declare war upon it—and proclaim that its circumstances are *sui generis* and, thus, necessitate new law. While seemingly unbelievable, these legal arguments must be taken seriously and examined on their own terms so long as Israel insists upon them. Part of the reason Israel has not been held to any account for its offensives against Palestinians in Gaza is because it insists that everything it did was legal and that it has the right to do it again.

Decolonial Futures

While Zreik deals with decolonial futures in a separate essay, I want to conclude by considering what a decolonial assessment of Israel's use of force would look like. Whereas a hostilities framework disaggregates Israel's use of force into a series of isolated military operations in a context unto its own, employing a settler-colonial analysis reveals how Israel has historically deployed lethal force as an organising principle of land theft and the maintenance of its settler sovereignty.[32] Even before its establishment as a state, Zionist paramilitary troops forcibly removed Palestinians from

their homes under the framework of military necessity and defensive force.[33] Zionist leaders have regarded Palestinian natives as constituting a threat to national mythologies of uninterrupted Jewish temporal and spatial presence in historic Palestine and thus a threat to Zionist settler sovereignty regardless of whether they pose an actual military threat.

After 1948, Israel securitised the presence of Palestinians in the language of law, inscribing the Palestinians that remained within an emergency regime necessitating martial rule and the Palestinian refugees who attempted to return as criminal infiltrators.[34] The legal frameworks racialised Palestinian natives as 'always-already signifying violence' thus justifying the use of lethal force to contain or remove them.[35] Examined through the lens of settler-colonialism, Israel's confrontations are better understood as ongoing frontier warfare aimed at native elimination rather than asymmetric combat featuring disproportionate or excessive force.

Neither Israel's eliminatory violence nor its legal arguments justifying them in liberal terms is unique. Israel's use of force continues a legacy of other settler colonies, and colonies, that have excluded natives from the category of 'civilian' in the laws of war. By casting them as savages who cannot understand, let alone comply with, laws of war, liberal jurists have advocated for excessive and indiscriminate use of force as a matter of practice against native belligerents. As argued by US Army Captain Elbridge Colby in 1927, though yielding high death tolls of non-combatant natives, or massacres, this approach is more humane than prolonged warfare of 'a more polite character'.[36] The US and Israeli outstanding objections to the Additional Protocol I recognising guerrilla combatants

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31   Amos Harel, 'The Philosopher Who Gave the IDF Moral Justification in Gaza', *Haaretz*, June 2, 2009, www.haaretz.com/1.5071578.

32   Noura Erakat, 'The Sovereign Right to Kill: A Critical Appraisal of Israel's Shoot-to-Kill Policy in Gaza', *International Criminal Law Review* 19, no. 5 (October 2019): 783-818.

33   Walid Khalidi, 'Plan Dalet: Master Plan for the Conquest of Palestine', *Journal of Palestine Studies* 18, no. 1 (1988): 4-33.

34   Nadera Shalhoub-Kevorkian, 'Infiltrated Intimacies: The Case of Palestinian Returnees', *Feminist Studies* 42, no. 1 (2016): 166-193, https://www.jstor.org/stable/10.15767/feministstudies.42.1.166?seq=1.

35   Denise Ferreira da Silva, 'No-Bodies: Law Raciality, and Violence', *Griffith Law Review* 8, no. 2 (2014): 213.

36   Elbridge Colby, 'How to Fight Savage Tribes', *The American Journal of International Law* 21, no. 2 (April 1927): 283–284.

as soldiers similarly illuminates the contemporary legacies of colonial violence and its attendant logics.

Shifting from a legal hostilities framework to a settler-colonial one rehabilitates a critical historical context for understanding violence in the 'here and now'. Whereas the former approach fragments time and space, thereby shielding the original harm from scrutiny and perpetuating the conflict indefinitely, the latter approach takes full aim at the underpinning structure of violence. The gesture towards decolonial alternatives is a bid for affirming all life. It is contingent on rehabilitating first and second order arguments, as put forward by Zreik, and provides an opportunity to resolve conflicts rather than prolong them under a liberal veneer of justice.

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Methodology, Political Modernity, and Theory

Yosef Sintayehu Jemberie

Abstract

Palestinians' demand for historical justice confronts us with three major intellectual questions. Which type of historical understanding effectively connects the past and present of this demand? What is specific about the modern political question of Palestine within the genealogy of the modern/colonial state? Which theory of justice is translatable to a pragmatic practice of justice? The following piece evaluates to what extent Raef Zreik's contribution succeeds in responding to these questions. In doing so it makes three underlying arguments. First, 'genealogical historiography' is an indispensable critical methodological tool in order to connect the past and present of the Palestinian question for historical justice. Second, there is a need to situate the specific Palestinian demand for justice as one lineage within the genealogy of political modernity and the modern/colonial state. In addition, it is important to distinguish the moral imperative from the political imperative when thinking about the demand for historical justice. Finally, any theory of justice should be translatable to a pragmatic practice of historical justice.

Introduction

Raef Zreik's second lecture, on the topic of 'Justice', consists of three major sections. The main argument of the first section is that the appropriate methodological approach to better understand the Palestinian claim for justice is historically grounded. The second section adopts this approach to identify the Balfour Declaration of 1917 and the UN Partition Plan of 1947 as the two historical roots of the continued injustice against Palestinians. The third section can be read as theoretical, offering a distinction between 'First Order Arguments for Justice' and 'Second Order Arguments for Justice', and criticising liberal Zionism for ignoring the former in its defence of Israeli occupation. The following discussion raises some questions in relation to each of these sections.

Methodology and the Palestinian Question for Justice

One of the major arguments in the first part of 'Lecture Two: Justice' relates to the framing of the Palestinian question for justice in that it should focus on the 'big picture' or the originary 'loss', namely the dispossession of Palestinians from their homeland. This 'loss' is, and should be, registered in the past and, in that sense, it is historical. If the focus is entirely on the present, then the historical problem of dispossession will be fragmented into contemporary issues of settlement, territory, refugee, citizenship, equality, and so on, and in the process lost. An analysis that starts from these fragmented contemporary bureaucratic issues falls into the trap of a liberal Zionist mode of analysis. The paper thus urges us to locate in the past the root cause of existing injustices in Palestine. It is this methodological approach that the paper calls 'the historical frame'.

The problem we immediately encounter using this approach is: what is 'the beginning'? When and where did it happen? Was it in 1882 (the first Jewish settlement in Palestine), 1897 (the first Zionist Congress in Basel), 1917 (the Balfour Declaration), 1922 (the League of Nations Mandate for Palestine), 1947 (the UN Partition Plan), or 1967 (the Six-Day War)? Zreik is certainly aware

of this question, hence he asks, 'is there something called "in the beginning"?' He admits that there is no Archimedean point, but proceeds to argue that 'still, we can and ought to distinguish between relative grounds, and different points of departure in terms of time and geography'. Consequently, he identifies 1917 as a 'decisive' 'point of departure'. He explains that it was in 1917 that the Jewish presence in Palestine clearly took the form of a national project.[1]

A question to ask here is, what about 1882, 1897, 1947, or 1967? Why are these markers less important than 1917 as 'points of departure' in the history of Palestinian dispossession? More generally, we may ask, why does historical analysis have to think in terms of origin in order to understand the modern question of Palestinian dispossession? Even when this is necessary, it is still possible to address the question of origin more easily by adopting a specific kind of historical methodology that precisely reverses the approach suggested by Zreik. That is, within the spirit of Foucauldian genealogy, instead of beginning from the past, we begin from specific contemporary contradictions and trace their trajectories backwards to historical origins. In other words, rather than treating the present and the past separately, we read them as part of a connected process in which the present is understood as a changing legacy of the past. The goal of both this approach and that of Zreik is of course similar in that they both seek out the bigger picture. But the task of reaching this goal seems to be less daunting in the former case, since it enables us to think more in terms of legacies than origins, lineages than departures. This is one of the methodological lessons of Mahmood Mamdani's analysis of colonial rule, which Zreik draws from to understand Israeli occupation. Such an approach connects the contemporary postcolonial context to the realities of the colonial and the precolonial in a meaningful but discontinuous whole.[2] The advantage of this

approach in the case of Palestine would be that it allows us to start our analysis from any one of the many 'fragmented' Palestinian issues of the present (whether it be territory, citizenship, resettlement, refugees, etc.) and make the connection to the bigger historical picture. As such it has the potential to 'sublate' past and present, departure and process, break and continuity, aggregation and disaggregation, agency and structure, and so on. Given this, would it not be much better to think in terms of a historical methodology where we are not required to choose between the 'big picture' and existing struggles, but instead adopt a methodology that thoroughly and intimately connects the two?

Although Zreik calls for a historical analysis, he at times employs a mode of thinking in the style of normative analytical philosophy, which tends to de-historicize the question of Palestine. An example of this methodological problem can be found in his use of 'thought experiments' to critique the liberal Zionist defence of Israeli occupation.[3] 'Thought experiments' that we often find in normative analytic philosophy are 'controlled exercises of the imagination in which test cases are envisaged with a view to establishing their conceptual coherence or their compatibility with some proposed theory'.[4] Even though they are important tools of analysis, by their very nature 'thought experiments' de-historicize and de-contextualize their subject matter. The risk in this regard is that we end up working with more conceptual than historical materials, thus limiting our methodological commitment to the 'historical framework'.

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1   Please refer the first section of Raef Zreik's 'Justice', in the current issue.
2   See the methodological strategy of Mamdani's *Citizen and Subject: Contemporary Africa and the Legacy of Colonialism* (Kampala: Makerere Institute of Social Research, 2017) and his *Saviors and Survivors: Darfur, Politics, and the War on Terror*

(Kampala: Makerere Institute of Social Research, 2013).
3   Take for example Zreik's thought experiment about someone trying to break into a car or a trespasser on a property and the conflict that follows between the owner of the property and the trespasser.
4   E. J. Lowe, 'Thought Experiments', in *The Oxford Companion to Philosophy*, ed. Ted Honderich (Oxford: Oxford University Press,), 919.

Political Modernity and the Palestinian Question for Justice

In the second part of 'Lecture Two: Justice', Zreik gives a critique of the assumptions that drove the Balfour Declaration of 1917 and the liberal Zionist argument that depends on it. According to Zreik, the underlying assumption of the Balfour Declaration was that Palestine under the Ottoman Empire and under British rule was in a kind of 'state of nature'.[5] It was a state of 'liberty' and 'perpetual war'[6] in which the logic of conquest was the norm. This was the moment of the constitution of a Grotian-Hobbesian[7] modern sovereign state in a historical land called Palestine. Whoever had might in that land at the time was right, and both the Jewish Yishuv and Palestinian communities were equally at liberty to create their own states. Prior notions of entitlement, right and justice could not apply because these could only arise after the fact, i.e., after the constitution of the modern sovereign state—which, in this case, would be the state of Israel. As we can see, this argument is first and foremost a political argument.

To make his counterargument, Zreik turns first to the domain of morality. He states that because the political and theoretical ar-

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5 See chap. 13 of Thomas Hobbes's *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 2008).

6 Hobbes, chap. 21.

7 According to Richard Tuck, the roots of the natural law argument for a 'state of nature' can be traced to the works of humanist writers such as Hugo Grotius of the seventeenth century. The latter was important for two major contributions to this argument. The first is his 'claim that there is no significant moral difference between individuals [in nature] and [sovereign] states, and that both may use violence in the same way and for the same ends', which is self-preservation. Related to this is his second claim that 'self-preservation was the prior obligation', in that 'one's own good takes precedence over the good of another'. Accordingly, war of conquest is justified if either of the two laws of self-preservation are violated: 'Let no one inflict injury upon his fellow and Let no one size possession of that which has been taken by another. The former is the law of inoffensiveness; the latter the law of abstinence'. Tuck states that 'Hobbes took absolutely seriously the picture of war in the humanist writers', and that Hobbes's model of individuals at war in a 'state of nature' reflects Grotius's claim that individuals in nature are like sovereign states. See Richard Tuck, *The Rights of War and Peace: Political Thought and The International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), 82-86. See also in Tuck's introduction to Hobbes, *Leviathan*, xxix.

gument assumed in the Balfour Declaration ignored the rights of 90 percent of the population of Palestine, it was morally unsound. There is a curious overlap here between the domain of politics and of morality. Is this overlap because of the impossibility to debunk the political argument without necessarily resorting to arguments from morality? Why not engage the Zionist argument for 'state of war/liberty' within the domain of historically conscious political theory? Can there be a discourse of justice in the domain of politics beyond morality?

The question of the relation between morality and politics is important not only in relation to Zreik's critique of the Balfour Declaration, but also in relation to his critique of the 1947 UN Partition Plan. He argues that Palestinian rejection of the Partition Plan was justified because it forcefully imposed what Immanuel Kant called 'imperfect duties of solidarity' on Palestinians.[8] This imposition, Zreik argues, would be immoral in Kantian ethics because it means sacrificing one human life for the purpose of another; more precisely, it means sacrificing Palestinian lives for the purpose of the Zionist national project. It may be true that we cannot make a sharp distinction between the imperatives of morality and those of politics. However, we have to consider the challenges of trying to think about the political and historical question of Palestinian dispossession through the lens of Kantian universal moral principles.

With regard to the UN Partition plan, both Zreik's argument against it and the liberal Zionist argument in support of it are equally caught up in the same problematic of the relation between politics and Kantian morality. Zreik indicates that according to the Kantian *argument from necessity*, it is not immoral to sacrifice another life in order to save one's own. In this state of necessity or exception judgements of morality can be momentarily suspended. Zreik explains that it is this principle of necessity that a liberal Zionist

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8 Refer to Immanuel Kant's *Groundwork for the Metaphysics of Morals*, edited and translated by Allen W. Wood (New Haven: Yale University Press, 2002) and his *Groundwork for the Metaphysics of Morals*, edited and translated by Mary Gregor (Cambridge: Cambridge University Press, 1991).

deploys to justify the creation of the state of Israel at the expense of Palestinian lives. In his rejection of this liberal Zionist defence, however, it is this same Kantian principle that Zreik adopts, thereby reproducing the same underlying mode of argument that he aims to refute. If the liberal Zionist defence is 'Jews needed their own state in order to save their lives', Zreik's rejoinder is that 'Palestinians needed to reject the Jewish state to save their lives'. In both cases the premise depends on the Kantian moral imperative of necessity from which a political conclusion is drawn about the status of a modern nation state. The major question once again is, what is the relation between politics and morality? Who benefits from the overlap between the two? How do we locate the question of historical justice in this?

Zreik's second counterargument against the assumption that underlies the Balfour Declaration is one of political theory. He argues that the Declaration wrongly assumes national territorial sovereignty to be the only recognizable and universal mode of political formation when it is only a European/colonial mode. The Balfourian concept of sovereignty ignored the possibility of other modes of political organization. It does not recognize, for example, the possibility of a political formation—such as 'tribes, clans, groups, races, guilds, and sects'[9]—in which communities come together to occupy a portion of the earth and maintain some form of social and cultural relations. In short, the Balfour Declaration legitimized the values of Western/colonial political modernity. Zreik seems to be arguing that at the beginning of the twentieth century there was the possibility of an alternate political modernity in Palestine—one outside of the European/colonial model of territorial sovereignty. It was this possibility that the Balfour Declaration thwarted.

With this argument Zreik consciously or otherwise enters into an important debate on the relation between modern political formation and the European/colonial sovereign state model. Two broad views can be identified within this debate. The first

view—which partially overlaps with Zreik's own argument—claims that European/colonial sovereignty is not the only mode of modern political life because there are other historical models. This is part of the broader 'multiple modernities' thesis that 'western patterns of modernity are not the only "authentic" modernities, though they enjoy historical precedence and continue to be a basic reference point for others'.[10] Opposed to this view is the claim that modernity as we know it (with liberalism its 'core ideology, capitalism its paymaster, and the state its highest social realization, primary agent, and paramount problem'[11]) is necessarily European. Greg Anderson argues that there is no such thing as a nonmodern state.[12] Similarly, Wael B. Hallaq in his *Impossible State* claims that the idea of a *modern Islamic state* is 'both an impossibility and a contradiction in terms', because the modern state and the Islamic world are materially, structurally, constitutionally, philosophically and conceptually two distinct and incommensurable contexts.[13]

Related to this second view is the postcolonial argument that, to the extent that the European model of political modernity is tied to the history of colonialism, it is the universal model. The internal debate between proponents of this argument surrounds the nature of the relationship between European political modernity and colonial modernity. Thus, for example, while Partha Chatterjee sees colonial modernity as a 'constituent part' of the history of European political modernity,[14] David Scott makes a distinction between the colonial and European 'careers' of political modernity and identifies the various historical stages and ways in which

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9   Zreik's own examples in the first section of 'Justice: Palestine as a Question'.

10 S. N. Eisenstadt, 'Multiple Modernities', *Daedalus* 129, no. 1 (Winter, 2000): 3, https://www.jstor.org/stable/20027613.

11 Nicholas Greenwood Onuf, 'Sovereignty: Outline of Conceptual History', *Alternatives: Global, Local, Political* 16, no. 4 (Fall 1991): 425-26, https://www.jstor.org/stable/40644726.

12 See Greg Anderson, 'Was There Any Such Thing as a Nonmodern State?', in *State Formation: Global Histories and Cultures of Statehood*, eds. John L. Brooke, Julia C. Strauss and Greg Anderson (Cambridge: Cambridge University Press, 2018), 58-70.

13 Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), x-xiii.

14 Partha Chatterjee, *The Black Hole of Empire: History of a Global Practice of Power* (Princeton: Princeton University Press, 2012), xi.

the two are related.[15]

The latter view teaches us that neither the European model of territorial sovereignty nor what Zreik sees as alternate forms of political formations ('tribes, clans, groups, races, guilds, and sects') has an entirely independent history. Each has to be read on the background of the other. The work of Richard Tuck shows how the idea of individual and state sovereignty emerged in part as a response to the political questions confronted by Europeans during their overseas expansion since the sixteenth century. The idea 'arose in the period in which the European nations were engaged in their dramatic competition for the domination of the world, and in which there were urgent questions about how both states and individuals adrift in a stateless world behave to one another and to newly encountered peoples'.[16] It is in relation to this Western 'cartographic imagination of political space'[17] that the modern question of territorial sovereignty should be understood. The genealogy of this idea, therefore, should not be completely separated from the history of the 'native question' which is the colonial question of 'stabilizing alien rule' over native populations.[18] Postcolonial writers such as Mamdani argue that the political categories of race, tribe, clan, caste, and sect were reinvented and instrumentalised by indirect colonial rule in an effort to address this question.[19] To that extent therefore these forms of political organizations are as modern and colonial as the model of national territorial sovereignty.

The question is thus, to what extent were 'tribes, clans, groups, races, guilds, and sects' in Palestine in the beginning of the twentieth century non-European or non-colonial, and similarly, could they be seen as possible models of political formation beyond the territorial nation state? Has there ever been a model for political modernity outside of the Western/colonial paradigm of territorial

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15　David Scott, 'Colonial Governmentality', *Social Text* 43 (Autumn, 1995): 195, https://www.jstor.org/stable/466631.

16　Tuck, *Rights of War and Peace*, 14.

17　Chatterjee, *Black Hole of Empire*, 49.

18　Mamdani, *Citizen and Subject*, 3.

19　See Mamdani, *Citizen and Subject*. See also Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Kampala: Makerere Institute of Social Research, 2013).

sovereignty? Is it not true that the *nomos* of twentieth century political modernity is nothing but sovereignty? In this context, what would be Zreik's answer if a liberal Zionist were to ask, is it not the case that every history of the modern state starts with the same sombre line that 'in the beginning there was conquest'. To avoid falling into this kind of trap, Zreik has to elaborate, beyond mere normative assertions, as to how and in what ways the history of political modernity in Palestine would have been different at the beginning of the twentieth century—in an international order that was already colonial, Grotian, Hobbesian, and Westphalian.

Furthermore, in emphasizing Palestinian 'self-determination' and 'rights to pursue their national project' at the beginning of the twentieth century, Zreik, unwittingly or otherwise, indicates that the Palestinian struggle was equally driven by the modern idea of national territorial sovereignty, and that the Palestinian question is as modern as the Zionist question. How would Zreik engage this assertion historically? How can we rigorously articulate the historical difference between the two *modern* political questions, so that the Palestinian struggle for justice is conceived as a response to (and in no way the cause of) Zionist nationalism?

Theory and the Palestinian Question for Justice

In the third part of his lecture on justice, Zreik makes a distinction between what he calls 'First Order Arguments for Justice' (FOAJ) and 'Second Order Arguments for Justice' (SOAJ). He explains that while the former is based on substantive justice, the latter depends on procedural justice; while the former aims at corrective justice, the latter emphasizes distributive justice; while the former is an argument addressing the 'justness of' war, the latter is an argument addressing 'justice in' war (rules of engagement, self-defence, security, emergency, etc.); while the former raises the question of prior entitlement to and ownership of property, the latter only assumes the right to defend possession. The contemporary liberal Zionist mode of argumentation in defence of Israeli occupation often deploys the second set of arguments and forecloses the first. It is this

liberal Zionist foreclosure of FOAJ that Zreik exposes and critiques in this section. By framing the question of justice in relation to SOAJ (concerning contemporary issues such as citizenship, resettlement, equality, land rights, rules of engagement, self-defence, security, and emergency), the liberal Zionist analysis fails to see justice in the historical sense. Zreik seems to be suggesting that the Palestinian question for justice should be framed in terms of FOAJ, as this mode of argumentation emphasizes the 'big picture', which is the historical dispossession of Palestinians from their homeland. Furthermore, it provides a greater chance for Palestinians to win their case (if, for example, it is considered in a court of law).

There is, however, one issue that Zreik does not explain: what is the implication of framing the Palestinian question for justice in this way? Where do these theoretical binaries leave us with regard to the possibility of a fruitful intellectual conversation and political negotiation on the question of justice between Palestinians and liberal Zionists? Wouldn't this mean that, strictly speaking, there is no room for any such conversation and negotiation? This is because the question of justice is in the first place differently understood by the two parties; for Palestinians, it is in terms of FOAJ, and for Zionists, it is based on SOAJ. Each mode of argumentation seems to have an upper hand within its own terms. What then are the implications of this deadlock for the ongoing efforts at negotiation between the two parties? Or are these negotiations doomed from the very beginning precisely because of this theoretical deadlock? Is this impasse a necessary one? Is this the reason many international and regional efforts toward negotiations have so far failed?

We may therefore ask how we ought to conceive the road ahead? Should we think in terms of sublation and ask how we might overcome the Zionist mode of argumentation on its own turf and that of Palestinians, both at the levels of SOAJ and those of FOAJ? In other words, can there be a way of connecting the two modes of argumentations for justice in which the Palestinian argument wins on both fronts, from perspectives of both procedural justice and substantive justice, considering questions of 'justice in war' and 'justness of war', and regarding issues of defending possession of property and those of prior ownership and entitlement? In short, how can the Palestinian argument succeed in relation to the question of historical justice as well as existing questions of justice?

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LECTURE THREE

Palestine as a Question: Decolonisation

Raef Zreik

Abstract

The paper offers a conceptual frame as how to approach the question of decolonisation in Palestine. First, the paper tries to locate the concept of decolonisation as compared to other neighbouring concepts such as emancipation, reconciliation, settlement, solution, etc. The paper moves to investigate whether the frame of settler colonialism by itself can offer a way or a path as to the meaning of decolonisation, reaching the conclusion that it is an under-determined conceptual frame, and that different cases of settler colonialism offer different ways as to how to view the process of de-colonisation. Given that the reality in Israel-Palestine is moving steadily toward uniting the space between the river and the sea into one geo-political unit, this raises the question as to the nature of the relation between citizenship and decolonisation, whether the concept of equal citizenship can be a tool for decolonisation in Palestine (and in general), and if so, under what conditions?

Introduction

In this talk I will address the issue of decolonisation in Palestine/Israel. Far from offering a blueprint or a clear solution for the ongoing colonisation of Palestine, I will primarily be posing problems and raising questions. In dealing with the question of decolonisation—as with the issue of formation as presented in my first talk—the question of exceptionalism faces us at different stages of the debate. In many respects, the case of Zionism and Israel fits within the paradigm of a settler colonial project, although clearly there is no case that resembles other cases perfectly or meets all the parameters of the paradigm. One must strike a certain balance between forcing the case at hand into a theoretical framework and in the process losing sight of its specific characteristics, or of emphasising a case's uniqueness to the point of losing an analytical frame by which to address the phenomenon, and in doing so rendering it rather ahistorical. There are no clear rules as to how to do this, and my hope is to be able to strike a balance that allows fidelity to the specificity of the case within a theoretical and comparative frame of reference. (Here I can refer the reader to my first lecture, which dealt with the uniqueness of Zionism as a settler colonial case.)

It is important to remember in the case of Palestine that colonisation took many forms and shapes, with different processes producing different results. There are Palestinians in Israel who suffer deep structural discrimination, in the West Bank there is ongoing indirect occupation, Gaza is separated and under siege, and above all there is the question of refugees who still live in camps in Jordan, Lebanon, and Syria. There are many Palestinian experiences, and different modes of victimisation and dispossession. Can we speak of one overarching process of decolonisation? Is that meaningful? Is there a single guiding logic for all of them?[1]

The complexity of this reality becomes even clearer when we compare it with the reality in South Africa during the last years of Apartheid. Three major differences catch the eye immediately.

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[1]   One might argue that the multifaceted nature of the problem is very common, albeit not universal, in other cases of settler colonialism. In hindsight the question may seem to have been crystal clear, but in real time the issues were rather fragmented and far more complex. Thus, for example, in South Africa there were differentiated regimes of control for different groups in different regions, and it took some time before they were united in one struggle. For the development of Apartheid and different strategies of segregation, see Nigel Worden, *The Making of Modern South Africa* (Hoboken: Wiley Blackwell, 1993), 73-103. For the politics of fragmentation in South Africa, see Neville Curtis, 'South Africa- The Politics of Fragmentation', *Foreign Affairs*, January 1972, https://www.foreignaffairs.com/articles/south-africa/1972-01-01/south-africa-politics-fragmentation.

One is that the geo-political unit in South Africa was defined and known. Both groups spoke of South Africa as their homeland and as one unit; the major question being about how to run it, how to change it and according to what constitution.[2] In Palestine/Israel, by contrast, the paradigm of two states is not fully dead and the Palestinians still speak of a two-state solution.[3] Second, participants in the conversation in South Africa were known and defined: the citizens of South Africa. But in Israel/Palestine even this question is not clear. There are Palestinian refugees and potential Jewish immigrants, and thus there is a real dispute as to who has the right to make decisions regarding the future of the country and who has the right to politics.[4] The third aspect relates to the neat and clean slogan that the ANC put to the white majority as an offer on the table: one person, one vote (a neatness which came out of long debate and struggle within the ANC). The Palestinians are still far from being able to make such a clear offer. There is a difference between what the Palestinians can accept if they are being offered it and what the Palestinians can put on the table beforehand. While

in certain scenarios the Palestinians may accept the solution of a Palestinian state next to Israel, guaranteeing the right of return to the Palestinian state itself but not to historic homes and villages inside Israel, this is still not an offer that the Palestinians can make beforehand, giving up their right of return before negotiations have even started. The feeling of total weakness in terms of power relations as compared to their total strength in the justness of their cause renders it difficult to develop a strategy that combines justice with power. For whatever seems available within the balance of power seems unjust, and what seems just seems unavailable within existing power relations. This dualism hinders the possibility of developing a clear and consistent strategy that puts power and justice into dialogue with each other.[5] This reality places Palestinians in a receptive mode, reacting to offers made by others rather than initiating proposals. This complexity must first be acknowledged before any debate about decolonisation can move forward.

Settlement, Decolonisation and Emancipation

Now, let me move to more conceptual issues. I suggest that we delimit the subject matter we have at hand, otherwise we may end up discussing too many important topics without a clear focus as to what are we aiming at when we speak of decolonisation. Decolonisation could be understood as related to other concepts such as emancipation, independence, reconciliation, freedom and many other. Decolonisation—as I will be using it in this paper—is a distinctive process compared with other neighbouring concepts, ideas, and ideals. To the right of the concept of decolonisation we can find the concept of a 'settlement'. The concept of 'settlement' clearly sounds better than another term being circulated these days, i.e., a 'deal'. Yet decolonisation has more to it than the flat notion of a 'settlement', which rings rather indifferent to issues of historical justice, colonisation, and past dispossession. The legal

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2   Here again, one must be cautious. It is true that South Africa became one geo-political unit, but that does not mean that this has always been the case. The union of South Africa was established in 1910 at the end of the Boer war. Unity between whites at the national level invited a unity between the blacks at the national level as well. See Nancy L. Clark and William H. Worger, *South Africa: The Rise and Fall of Apartheid*, 2nd ed. (London and New York: Routledge, 2013), 17-18. Moreover, blacks protested when they were excluded from the South African state and assigned political rights only in the Bantustans. Desmond Tutu resisted this exclusion from citizenship, for he considered himself and other blacks to be citizens of South Africa. See John Dugard, 'South Africa's Independent Homelands: An Exercise in Denationalization', *Denver Journal of International Law and Policy* 10, no. 1 (1980): 11-36, especially 22-23. One should remember that the Freedom Charter itself starts with the preamble 'We, the people of South Africa'.

3   See the recent speech delivered by President Abbas in reaction to the Trump plan where he restates his commitment to a two-state solution: 'Abbas Blasts Trump's Plan for a "Swiss Cheese" Palestinian State in UN Speech', *France24*, 11 Feb 2020, https://www.france24.com/en/20200211-palestinian-leader-attempts-to-drum-up-opposition-to-trump-plan-at-un.

4   Again, let us compare this to the Freedom Charter in South Africa, which opens with the following words: 'We, the people of South Africa declare for all our country and to the world to know: First- That South Africa belongs to all who live in it, black and white'. Find the text of the charter here: http://www.historicalpapers.wits.ac.za/inventories/inv_pdfo/AD1137/AD1137-EA6-1-001-jpeg.pdf (accessed 8 April 2020).

5   For more on this impasse and the difference between what the Palestinian can accept and what they can offer see Raef Zreik, 'The Palestinian Question: Themes of Power and Justice: Part I: The Palestinians in the Occupied Territories', *Journal of Palestine Studies* 32, no. 4 (Summer 2003): 39-49.

connotations of settlement reflect the atmosphere of a courtroom, where the plaintiff might be ready to settle simply because the witness to a wrongful event decided to withdraw or has disappeared. Cold calculation may persuade plaintiffs and their lawyer to settle given the low chances of success in the proceedings, regardless of their inner conviction or belief in the justness of the compromise being reached. Settlement does not go deep into the roots of the conflict, instead it merely assigns itself a limited task.[6] So, decolonisation is not a settlement, or at least it is not only a settlement.

To the left of the concept of decolonisation one finds the concept of emancipation. Two major differences exist between the two. The first is the fact that settlement assumes a certain moral symmetry between both parties involved in the conflict, while emancipation assumes one party dominating the other, and seeks to end this domination. Second, the ambitions of emancipation are far greater: it is transformative of the relations themselves. Emancipation is in many ways far more than decolonisation (at least the way I use it in this paper). As we know, the term has a long history from Marx to Ernesto Laclau.[7] Emancipation—as I use it here—is an ideal that aims to achieve freedom, self-realisation, self-fulfilment, ending all forms of domination, ending alienation, and promising a society without any form of discrimination formal or informal, implicit or explicit. A long tradition of critical thought—

tracing Karl Marx,[8] Franz Fanon,[9] Michel Foucault,[10] and Catherine MacKinnon[11]—has shown that what seemed at first glance to be progressive or emancipatory achievements turn out to be either partial or to hide an oppressive dark side. Marx, in his essay on the Jewish question, explained how the political emancipation achieved by the French Revolution and the neat promise of equality was merely formal, hiding harsh realities of inequality and difference at the economic and material level. Foucault revealed that the emergence of humane forms of punishment in the last two centuries, by comparison with violent barbaric punishments in earlier ages, masks the way the modern state designs, disciplines, and controls the individual. MacKinnon subjected liberal feminist theory to a similar critique. Fanon warned us not to succumb to the allure of national discourse in liberation struggles that might end up, and historically indeed did end up, by replacing a foreign colonial bureaucracy with local national one, while keeping the system of control almost intact.

It is this kind of pressing need that fuels ongoing attempts to escape colonial control after Third World countries gained formal independence but continued to be entangled in relations of dependency on Western colonial countries, becoming subject to new systems of control through world markets, the World Bank,

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6   John Burton and Frank Dukes, *Conflict: Practices in Management, Settlement & Resolution* (New York: St. Martin's Press, 1990), 83-87.

7   I mainly refer here to Marx's essay on the Jewish Question, in Karl Marx, 'On the Jewish Question', in *Early Writings*, trans. Rodney Levingston and Gregor Benton (London: Penguin Books, 1975), 211-242. See Ernesto Laclau, *Emancipation(s)* (London: Verso, 1996).

8   Marx distinguishes in his essay on the Jewish Question between political emancipation, which the French Revolution managed to achieve, and human emancipation, which has yet to be achieved and which goes beyond mere formal political and legal equality in the public sphere. See Marx, 'On the Jewish Question', particularly 226 & 231.

9   See Franz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963), particularly chap. 3, 'The Pitfalls of National Consciousness', which traces what happens after the colonial regime is formally over and is replaced by a local national regime that almost delivers what it has promised.

10   I refer here mainly to Michel Foucault, *Discipline and Punish* (New York: Vintage Books, 1979). Foucault demonstrates how we experience the move from the spectacle of physical torture into modern regimes of punishment as a progress into more gentle mode of punishment, arguing that this is merely a shift from control of the body to the manufacturing of souls and affords new systems of control.

11   I refer to those writings where MacKinnon critiques formal aspects of liberal legality that superficially appear to guarantee equality but at a substantive level do not. See Catherine MacKinnon, *Toward A Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), especially sec. 3, pp. 155-236.

the IMF, and other economic institutions that continue to pursue domination and exploitation by other means. Third World political leaders, and at the intellectual level, a range of thinkers such as Walter Mignolo,[12] Enrique Dussel,[13] Arturo Escobar,[14] Ashis Nandy,[15] and of course Edward Said[16] have sought to take up the unfinished business of decolonisation that started in the 1950s and 1960s. The aim of such efforts is to complete the process of formal political sovereignty that was accomplished during these decades with a more substantive one, while also achieving economic, cultural and scientific independence. There is also a clear turn towards the goal of decolonising epistemological frames of knowl-

12   Mignolo distinguishes between colonialism and coloniality. Coloniality is a much wider and more comprehensive issue, in terms of times, space and topics. For him, the logic of coloniality, which is the dark side of modernity, assumes 'the idea that European modernity was the point of arrival of human history and the model for the entire planet came to be taken for granted', Walter Mignolo, *The Darker Side of Western Modernity* (Durham and London: Duke University Press, 2011), xiv. Accordingly, coloniality is something that started early on in the sixteenth century and includes all fields of life and practices of power, systems of belief, and knowledge. Thus, he writes that 'the decolonial confronts all of Western civilization, which includes liberal capitalism and Marxism', Mignolo, xviii. To struggle against coloniality requires a challenge to the project of modernity writ large. 'I learned that hidden behind modernity was the agenda of coloniality; that coloniality was constitutive of modernity', Mignolo, xxi.

13   Enrique Dussel argues that the peripheral world is not merely lagging behind and denies that it is only a matter of time before it will catch up with Europe and become developed, thus joining the march of progress. Instead, he contends that 'the peripheral world will never be able to be "developed", nor "center", nor "late". Its path is another. Its alternative is different. Liberation philosophy gives expression to this distinction', Enrique Dussel, *The Underside of Modernity* (New Jersey: Humanities Press, 1996), 5.

14   See Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 2012). Escobar develops a critique of development discourse and practices and shows that it represents another model of domination and control, similar to that prevailing in the colonial era.

15   See Ashis Nandy, *Intimate Enemy: Loss and Recovery of the Self Under Colonialism* (Oxford: Oxford University Press, 1983), where Nandy develops the thesis that the struggle against colonialism is not only a material but rather a mental war, given that colonialism is also a psychological matter. He distinguishes between two kinds of colonialism. One is simple-minded and materialist in character and the other is led by rationalists, who focuses on the mental aspect.

16   Edward Said, in many ways, started this tradition with his seminal work, *Orientalism* (New York: Pantheon Books, 1978).

edge that are deemed to be Eurocentric, and towards rethinking and even developing alternatives to modernity itself, or at least finding alternatives within modernity. At times it can appear that to decolonise and to de-modernise are the same project.

These efforts are crucial for anyone dealing with issues of decolonisation, and I have learned a lot from these engagements. In many ways, the Palestinians are not there yet, however. They still lack even formal sovereignty, a currency, passports, and an army. This does not mean that we can continue the struggle regardless of the disappointing experiences of many Third World countries. There are many lessons to be learned, myths that must be abandoned, and illusions to be shattered. If one wants to avoid certain disappointments, then one should perhaps reflect on whether a state is in fact desirable. What for? For what reasons and what aims? Who stands to benefit from it and who might lose? Why is national self-determination a value? And how can a small newborn state—a future Palestine—survive within the new capitalist global order?

In this sense, the conversation about decolonisation should learn from the mistakes and failures of other national movements in the Third World, and try to avoid their missteps. We should avoid conceptual fetishism and be fully aware that formal sovereignty or self-determination will not be the absolute and guaranteed solution. We maybe simply moving from one form of domination to another.

Despite all of this, Palestine is still situated in a reality that is vanishingly rare in this moment: ongoing *direct* occupation and colonisation. The de-colonial project in Palestine in this sense bears a certain materiality of here and now: thousands being killed, tens of thousands injured, ongoing land dispossession, house demolition, thousands of prisoners in Israeli jails, severe restrictions on freedom of movement by Israeli roadblocks, etc. Not only that, but Israel's expansionary project of taking more lands, making more settlements, and slowly transferring populations, is still taking place. Any conversation about de-colonisation in Palestine should

take the reversal of this expansion as its immediate mission. In the face of this reality, the question of whether it is possible to decolonise Palestine without decolonising modernity itself (or whether one can criticise Zionism without criticising European colonialism at the same time) must be temporarily bracketed. This is not because these issues are unimportant, but rather because the political materiality of the Israeli expansive settlement project demands a certain urgency. It might be the case that formal self-determination will not be able to solve all the problems for Palestine, but this is not the right question to pose. Rather, what matters is whether it can solve *any* problem or achieve *any* progress at all (whatever that means).

Because of this, the tasks confronting the Palestinians are, in part, old-fashioned. The current literature on decolonisation is limited in its relevance to Palestine, given that most of this literature either deals with questions of economic and epistemic decolonisation in the relation between north and south, or with questions related to native people in Australia, Canada, and Latin America. As for the first kind of literature, while I do find it inspiring, it is limited in its applicability to our case. Most writers in this regard address a different positionality: either from India, Africa, or Latin America. They speak from countries that gained formal independence, and they speak in the names of large-scale projects and populations (South Asia, Africa, Latin America as whole regions). When it comes to the second kind of literature, I have learned a lot from the historical-analytical paradigm that explains the emergence and evolution of these societies, and at times have found it relevant for the case of Palestinian citizens in Israel. Nevertheless, they are of less relevance in addressing issues related to national self-determination in an independent state or of issues related to the right of return.

For all of these reasons, I want to situate decolonisation in this paper as somewhere between emancipation and settlement, less than the first but more than the second: as a critical, sceptical, and realistic utopian goal involving the achievement of specific aims. I am fully aware that many pressing questions and vexing problems will remain to be solved. In this regard I consider ideas of emancipation to be regulative ideas that should guide and instruct the project of decolonisation.

I suggest that despite the emancipatory horizon of every decolonial project, and the centrality of freedom, independence, and equality as basic values that must guide the whole process, it is nevertheless not the case that any society that does not achieve full equality for its members is one that is still under colonial rule. My aim in making these remarks is to distinguish between colonial rule and the many other forms of discrimination or inequality that might prevail in a certain society, which for analytical reasons we should not label or categorise under the label of colonial rule. For doing so would imply that the category of decolonisation entails the elimination of all forms of discrimination and full equality in all its dimensions, as well as the achievement of national self-realisation and fulfilment. This would mean that decolonisation would lose its critical edge as an independent and separate category of analysis.

The Decolonising Practices in Palestine Within Comparative Models

When contemplating decolonisation, we must start from the current reality in Palestine. In the first lecture I tried to conceptualise this state of affairs and to sketch its main characteristics and features. As we saw, one of these main features is the increased entanglement between Israel and the occupied territories. It is becoming clearer every day that de facto and de jure Israel is the one and only sovereign power in the whole area between the river and the sea, despite the fact that it practices this sovereignty through two different regimes of control.[17] This growing 'oneness' of control testifies to the fact that the settler colonial project is a totalising project that extends across Palestine. While it is true that it de-

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17　See Ariella Azouly and Adi Ofir, *The One State Condition: Occupation and Democracy in Israel/Palestine* (Palo Alto: Stanford University Press, 2012).

ploys different tools and offers different rights and freedoms to different groups of Palestinians, this 'oneness' demonstrates the fact that Palestinians have, from the start, been subject to a single large project of settler colonialism, but one which has assumed different shapes through the years.[18]

Yet in speaking of decolonisation I clearly mean a process that entails both Palestinians in Israel and Palestinians in the occupied territories and Gaza, and one which relates to the refugee problem, despite the fact the colonial practices differ between these places. If we take settler colonialism as a practice of the movement of a group in order to settle, control, and transform another territory while subjugating its native inhabitants, then decolonisation must start from this understanding of the nature of the project.[19] I think that we can then imagine three ways or modes of decolonisation.

The Algerian model ended colonisation by negating the movement, by simply forcing French settlers to move back. Instead of moving from the French mother country to Algeria, the revolution forced the French to move back from Algeria to France, in an act of undoing the past. The case of South Africa offers another model. Here, instead of requiring white settlers to be sent back to Europe, decolonisation involved another kind of change: instead of undoing a spatial fabric, it proposed undoing a political-legal structure. The Algerian model was aimed at ending the French presence, but the South African model involved ending white supremacy, while granting equality for all (legal-political). The whites stay, but the colonial regime goes. In this regard the South African model is not really about undoing the past, but rather taking it to its limit and letting it pass, in a forward-looking manner.

A third model could be considered when we look at places like Canada, the US, Australia, and New Zealand, together with recent developments regarding the rights of indigenous groups as have recognised in international law.[20] Despite differences between the legal-political status of indigenous groups in these countries, the emerging consensus in international law in this regard is to acknowledge that these indigenous groups are nations, and to recognise the fact that these new countries were built on the ruins of and at the expense of these groups. The new approach in international law acknowledges these groups as nations deserving the right to self-determination, but not within a separate state of their own, rather within the existing state, through forms of autonomy in part territorial and in part cultural. Along with the right to self- determination, UN Declaration on the Rights of Indigenous People grants these groups several additional group rights, including rights to preserve and develop their own distinctive languages, traditions, and cultures. In some cases, this new wave of rights led the supreme court of Australia to recognise claims to property title according to the laws of the aboriginal groups in Australia and to place limits on the colonial doctrine of *terra nullis* in property law.[21]

What actually allows this third model is in part the fact that the process of settler colonisation in these countries has almost been completed; settler colonials have managed to achieve their goals, transforming the nature of the country, its culture, its demography and its legal-political regime. Settlers have also, crucially, become the majority. It is this almost total victory that allows some level of generosity on the part of the colonial to agree to certain modifications in the legal regime in order to recognise the distinctive claims of these indigenous groups (we shall call this the indigenous model). Which of those paradigms can instruct us, and to what extent? And what are the particular characteristics of

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18   Oren Yiftachel developed a concept of 'ethnocracy' to describe the settler project in Israel. Yiftachel first started to deploy the term to describe the reality and politics inside Israel proper, but in the course of time he expanded this model to include all of historical Palestine as being subject to the same model—though there are different practices in different regions, times, groups. See Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (Philadelphia: University of Pennsylvania Press, 2006).

19   For more details regarding the nature of the settler colonial project I refer readers to my first lecture.

20   See for example the 2007 UN Declaration on the Rights of Indigenous People: https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html (accessed 8 April 2020).

21   See the landmark case in Australia known as the Mabo case. Mabo v Queensland (No. 2) [1992] HCA 23; (1992) 175 CLR 1.

the reality in Palestine that might require certain modifications or adjustments?

As a matter of history and as a descriptive issue, one can find that these three models have inspired and continue to inspire the Palestinian struggle in parallel, but without a clear preference or full awareness as to the different shifts in paradigms. This is the case in part due to a fact I just mentioned above: Palestinians' multiple and distinct experiences of colonisation.

Thus, for example, the Algerian paradigm has been present since the establishment of the PLO, but with a number of modifications. The PLO was inspired by the FLN in Algeria and it adopted armed struggle with the aim of liberating Palestine.[22] But while the language it employed was one of liberation through armed struggle, the PLO did not suggest sending the Jewish settlers back to Europe (at least not explicitly). The Palestinian charter recognised the rights of Jewish settlers as individuals and was ready to grant them citizenship (subject to certain conditions). By the end of the 1960, some voices even entertained the idea of one secular democratic state over all of Palestine.[23]

As more time passed, however, the image of the Algerian revolution became slowly restricted to the territories occupied after 1967.[24] Here the idea of decolonisation was limited in its territorial scope, but it demanded the removal of Jewish settlers from the occupied territories, The Oslo accords were based, in part, on this kind of logic (at least from the Palestinian point of view). What makes this assumption thinkable was the fact that the settler co-

lonial project in the occupied territories was still defeasible and reversible. Moreover, those settlers were understood to have a mother country—Israel—to which they could and should return. The thinkability of the Algerian model was in part an acknowledgment of Israel and of the success of the settler project inside Israel. Thus, it was in fact the image of the two-state solution that allowed this imagination of the Algerian model to hold.[25]

But as we know and have witnessed in the last thirty years following the Oslo accords, the settlements have only expanded and intensified, and the idea of a Palestinian state seems less feasible, to say the least. Indeed, it is almost unimaginable. Given such a reality, the Algerian model, even when it relates to the 1967 territories only, is becoming less realistic. The 'oneness' of the geo-political unit is becoming increasingly evident, and the idea of total separation is becoming more difficult to sustain. This, I think, is what allowed and invited the image of the South African model to emerge, and the increased use, in the past twenty years, of the analogy of Apartheid. The Apartheid analogy has been accompanied by an increase in the discourse of the 'one-state solution' as an alternative to the 'two-state solution'. Nevertheless, both modes and discourses (the Algerian and the South African) are deployed when the Palestinians speak of decolonisation—without their being able to focus or adopt one instead of the other.

When it comes to the Palestinian citizens of Israel, we can witness a clear deployment of the indigenous model. This is true in the political discourse of the media, in the Knesset, in the platforms of political Palestinian parties,[26] and even more so, in the

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22 For an excellent history of the Palestinian armed struggle and its achievements and limits, see Yezid Sayigh, *Armed Struggle and the Search for a State* (Oxford: Clarendon Press, 1997).

23 For the idea of one state and the changes in the Palestinian charter, see Leila Frasakh, 'A One State in Israel/Palestine: Historical Origins and Lingering Challenges', *Ethnopolitics* 15, no. 4 (2016): 380-392. On the different meanings of the one-state solution between those offered in the 1960s and those circulating now, see Honaida Ghanim, 'Between Two "One State Solutions": Dialectics of Liberation and Defeat', *Constellation* 23, no. 3 (September 2016): 340-350.

24 On the changing agenda and program of the PLO and the focus on the idea of two-state solution, please see my first lecture, in the section dealing with the Palestinian story.

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25 In this respect it is very instructive to read Lorenzo Veracini and the way he theorises the settler colonial projection Palestine. For him, the project succeeded inside Israel, but it is not succeeding in the West Bank. See Lorenzo Veracini, 'The Other Shift: Israel Settler Colonialism and the Occupation', *Journal of Palestine Studies* 42, no. 2 (Winter 2013): 26-42.

26 In this regard it is worth noting the deployment of what became known as the 'vision documents', which were adopted by different representative bodies of the Palestinians in Israel and which invoke the language of indigenous people and indigenous rights. See, for example, the Haifa Declaration: http://mada-research.org/en/files/2007/09/haifaenglish.pdf (accessed 8 April 2020). See also the alternative constitution suggested by the Adalah Center: *The Democratic*

tens of petitions submitted to the Supreme Court, where one can find traces of this discourse starting mainly in the mid-1990s.[27] One can trace this discourse back to the establishment of the National Democratic Assembly (NDA)[28]—a political party that tried to combine national and civic discourse—and on the other hand the establishment of Adalah—the legal centre for the defence of the rights of the Palestinian minority in Israel. Both deployed the rhetoric of group collective rights, indigenous rights, and cultural autonomy, based on recent developments in international law regarding rights of minorities in general and indigenous groups in particular. The tacit assumption here is that insofar as we speak of the settler colonial project inside Israel's 1948 borders, the settler project has succeeded in achieving its main goals by transforming the demography, nature, culture, and legal-political regime of the land. In a paradoxical way, this victory may open the door for a conversation about the past that had not been possible until now, and can open the door for demanding collective rights and framing the rights of the Palestinian minority in terms of rights of indigenous people.[29] Thus the 1990s witnessed both the rise of a civic discourse demanding that Israel become a state of citizens, and a rise in demands for a differential treatment based on group rights and inspired by new trends in international law. But while this kind of discourse gained a limited momentum that lasted somewhat less than a decade, it has also been witnessing some clear regression. Part of this stems from the fact that the Israeli legal and political system was ready to be tolerant of such a discourse as long as the

idea of the two-state solution was dominant on the horizon with its clear vision of a border between here—Israel, and there—the occupied territories. But as the two-state paradigm lost momentum, mainly after the second intifada in 2000, the discourse of indigenous rights became less effective or acceptable.[30]

The brief survey that I have just presented was aimed at showing that the Palestinians have been deploying different modes and models at the same time. None of these seem to have been fully effective up to this point.

Decolonisation: Thoughts on the Nature of the Concept in Palestine

Decolonisation and Civil Rights

In this section I want to offer an outline regarding the kind of consideration that one must make when discussing any future prospect for decolonisation. When I speak of decolonisation I mean it to be in the whole of Palestine, not only in the West bank and Gaza, despite the fact that the Palestinian citizens of Israel enjoy a set of rights that differ from those in the occupied territories and what decolonisation would require for them may differ accordingly. Colonisation creates systems of control, privileges, supremacy, and domination that can prevail in many different societies and might have different names in given contexts. Relations of domination can exist in many forms and constellations and are not limited to the case of colonisation. One can speak of relations of domination within gender relations, or domination and oppression of religious or ethnic groups within larger nation-states. A question may then arise: in what sense is decolonisation a unique category? How is it different from other forms of struggle for equality? How is colonisation different from other forms of structural discrimination?

Constitution, 30 March 2007, https://www.adalah.org/en/content/view/7483 (accessed 8 April 2020). For an analysis of these documents, see Asad Ghanem and Mohanad Mustafa, 'Coping with the Nakba: The Palestinians in Israel and the "Future Vision" as a Collective Agenda', *Israeli Studies Review* 24, no. 2 (2009): 335-354.

27   Most of these petitions were submitted by Adalah-The Legal Center for Arab Minority Rights. See: https://www.adalah.org/en (accessed 8 April 2020).

28   See the official site of the party in the Knesset: https://www.knesset.gov.il/faction/eng/FactionPage_eng.asp?PG=103 (accessed 8 April 2020).

29   For a survey and analysis of this discourse, see Amal Jamal, *Arab Minority Nationalism in Israel: the Politics of Indigeniety* (New York and London: Routledge, 2011).

30   For this shift in the discourse, see Raef Zreik, 'Has the Wheel Come Full Circle? Civic Service Debates in Israel', in *The Liberal-Republican Quandary in Israel, Europe and the United States*, ed. Thomas Maissen and Fania Oz-Salzburger (Boston: Academic Studies Press, 2012), 177-206; Nadim Rouhana and Nimmer Sultany, 'Israel's New Hegemony: Redrawing the Boundaries of Citizenship', *Journal of Palestine Studies* 33, no. 1 (2003): 5-22.

And why is it important to maintain this distinction and for what purposes? Can we dispense with the category of decolonisation if the ultimate aim is to achieve equality—formal and substantive, material and symbolic, political and social?

The case becomes more pressing when we move away from the Algerian model and toward the South African model of decolonisation. The South African model is different from classical models of decolonisation based on a war of liberation. Instead, the South African model invites a discourse of human and civil rights. At a certain point it becomes tempting to view the struggle in South Africa by drawing on the struggle of African Americans during the 1960 in America—a struggle for equal civil rights.[31] But this affinity with the struggle of African Americans itself raises the question as to whether one can consider African Americans as a colonised nation, and if so, in what sense? In what sense are black South Africans different from African Americans? To complicate the picture one might want to ask: how one can consider the struggle of African Americans by comparison with that of the Native Americans, and in what sense is the nature of their struggle different? Where does the African American mode of discourse converge with that of the Native Americans, and where does it diverge? To complicate the picture still further, one might add the struggle of the Jews to the picture, or of Italians fighting for equal rights in American society, or the Kurds in Iraq, or the Basques in Spain.

The aim of posing such questions is twofold: one, to see that the struggle for decolonisation has common goals and aims with many other struggles for emancipation, freedom and equality, but not every struggle for these aims is a struggle for decolonisation. Thus, the aim is to specify what is unique about decolonisation—and in our case the decolonisation of a settler colonial project. But another major question arises intuitively here, namely that the South African model may not be well suited to Palestine, for it overlooks the national aspect of the conflict and the desire for self-determination. In South Africa, the civic and the national converged in many ways given that the blacks formed the majority, something that does not exist in Palestine.

These questions are becoming more relevant now that we are moving from the Algerian model to the South African one, and the question of Palestine is being internalised into the politics of Israel and further entangled with the Jewish question in a way that means both questions now figure within the same geo-political unit. This poses the question of whether decolonisation is a question of civil rights. Can we frame the question of decolonisation in the West Bank and Gaza in terms of civil rights? Can we do so in relation to decolonisation inside Israel itself? And what is lost and gained by posing this question or framing it in the discourse of rights? What remains of the question of nationalism within this formulation? And is national self-determination the best answer to colonial rule?

Justice and Decolonisation:
Corrective, Distributive and Political

Any de-colonial project like that in South Africa or Palestine must take into account three modes of justice: corrective, distributive and political. Added to that, one must be reminded that while justice is of utmost importance as a value, it is worth remembering that it is not the only value that matters. I will start from a general conceptual frame then move to the case of Palestine.

Let's start with the concept of corrective justice. Kant comments that 'if justice goes, there is longer any value in human beings living on earth'.[32] On another occasion, he approvingly quotes the old saying 'let justice be done though the heavens may fall'.[33] The justice that Kant refers to is corrective justice. Corrective justice that lies at the heart of private law—contract, torts and property—serves as Kant's model. When we wrong someone by interfer-

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31   For the relation between the two struggles and the role of African Americans in the struggle against apartheid, see Robert Massie, *Losing the Bond: United States and South Africa in the Anti-Apartheid Years* (New York: Doubleday 1997).

32   Immanuel Kant, *Metaphysics of Morals* (Cambridge: Cambridge University Press, 1995), 105 (para. 6-332).

33   Kant, 'Perpetual Peace', in *Perpetual Peace and Other Essays*, ed. Ted Humphrey (Indianapolis: Hackett Publishing, 1983), 133.

ing with her external freedom, we do more than merely frustrate her aspirations or her purposes, rather we rob her of her purposiveness; we infringe on her agency and capacity to set purposes, and in doing so we interfere with her innate right to freedom.[34] To think of justice in this sense means that the duty to perform redress plays a role in restoring not only the thing being robbed, but in returning to the agent her lost agency. In this regard, it would be wrong to think that human beings are creatures that have rights; rather rights are constitutive of personhood itself. Part of the understanding of the moral self is the fact that it is a bearer of rights, and as such a moral agent that can decide how to deploy its agency as free agent. This is what explains Kant's obsession with corrective justice, because the loss of justice means that humans have lost what most dear to them—their agency as moral subjects.

In this regard, if and when a person is robbed of her rights, she is not only in a position to claim those rights from others; rather she is under a moral duty to herself to claim those rights. Kant thinks that we have to stand up for ourselves to claim our rights.[35] The intrinsic dignity that resides in each of us demands from us that we stand up for our rights. We cannot and should not let ourselves down and betray our rights, which are constitutive of ourselves as human beings. It is an enormous mistake to understand Kantian ethics in terms of 'turning the other cheek' or of infinite altruism. The agent is constrained morally not only by the rights of others that impose duties upon her, but also by duties that are self-imposed as duties to oneself. Both duties derive from the same source of respect for the dignity of human beings as autonomous moral agents.

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34 For an excellent explication of Kant's concept of right and the relation between right and agency, see Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge: Harvard University Press, 2009), 43.

35 See Kant, *Metaphysics of Morals*, 29, where he reiterates Ulpian's division of the system of rights. Kant states the guiding principles, of which the first is: 'Be an honourable human being (honestas vive). Rightful honour (honestas iuridica) consists in asserting one's worth as a human being in relation to others, a duty expressed by saying, "don't make yourself a mere means for others but at the same time an end for them". This duty will be explained later as obligation from the right of humanity in your own person (lex iuridica)'.

Why is this important? It is important because it explains a basic intuition regarding the impossibility of moving ahead in life by agents who bear duties to themselves. We can approach happiness and seek pleasure only insofar as we have discharged our moral duties to ourselves. In this regard this is right for individual persons as well for groups and nations. Thus, in discussing possibilities of decolonisation, issues of corrective justice must be addressed. Property was taken, land was confiscated, and people were expelled from their homes. How much and how far—this should be subject to the considerations of distributive and political justice as well. It is also important to make sure that corrective justice must not revert to mere revenge, as it easily can. For justice to be justice and not revenge, it must take place within a legal-political frame that includes both Palestinians and Israelis, and the principles that guide the process must be understood to be principles that are well justified in a way that a reasonable Israeli seeking peace and justice, in good faith, can accept them and have a good reason to accept them.

Now let me move to issues of distributive justice. Corrective justice, as we know, is not the only form of justice that matters, and a society that is based only on ideas of corrective justice could only, indeed, be cruel and savage, lacking empathy and solidarity. This is why we will always need a system of *distributive justice*.[36] If corrective justice aims to regain, or reinstate, the state of affairs *ex ante*, before the event, before the conflict, before the war, before the robbery, one must still pose the question of why the ex-ante state of affairs is in and of itself desirable. One answer is that without corrective justice people cannot be secure in their holdings, and they have a have a legitimate interest in continuing to hold and own what they own already. Disregarding the demands of corrective justice means that wrongdoers can get away with the wrongs they committed, and this runs counter to our moral intuition. However, appealing this may be, and it is appealing, this is not enough

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36 For the distinction between corrective and distributive justice, its history and its current deployment, see Izhak England, *Corrective and Distributive Justice* (Oxford: Oxford University Press, 2009).

(which is why we are still inspired by Robin Hood). What if the distribution of entitlements, resources, wealth, rights, and privileges before the 'event', 'the wrong', is itself manifestly unjust?

When it comes to the issue of historical justice between groups, nations, or races, and the demand for reparation in the shape of corrective historical justice, things get more complicated. Another set of philosophical problems arises (though I think that what hinders such a form of reparation is never philosophy, but rather an unwillingness to share wealth), amongst which is the assignment problem (who has the duty, and who has the right), the cooperation problem, the counterfactual problem, the calculation problem, the collective responsibility problem, and the intergenerational problem.[37] Given the complexity associated with corrective justice in these historical circumstances, many put distributive justice in the foreground, arguing that in each case in which we deal with corrective justice we are in fact dealing with a new distribution of wealth in society.[38] There is no reason to think that considerations of corrective justice must triumph all other considerations and strip us of our discretion regarding the assignment and distribution of resources in society here and now.

To these two modes of thinking about justice I want to add a third, which Mamdani refers to as political justice, or more generally as the justice of survivors.[39] We could, perhaps, reframe Mamdani's conception of political justice in the following manner: Political justice is the kind of *a priori* socio-political frame within which the conversation about corrective justice and distributive justice can take place. For corrective and distributive justice to be meaningful, they require a social and political framework in which such arguments make sense and can be made in a meaningful manner. Discourses of justice assume a certain institutional arrangement or a setting within which the conversation takes place, a setting which cannot be taken for granted and requires effort for it to be built. This is akin to the duty of justice that one individual in the state of nature owes another and that put both under the duty to enter into a civil condition and leave the state of nature, as Kant formulated this duty both at the national and international level.[40] Political justice means establishing the framework for a new political life, and as such it is geared to our duties to the future, not the past.[41]

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37   For many of these problems see Steven Smith, 'Historical Rightness', *Soundings: An Interdisciplinary Journal* 98, no. 2 (2015): 127-145; Jana Thompson, 'Historical Injustice and Reparation: Justifying Claims of the Decedents', *Ethics* 112, no. 1 (October 2001): 114-135. For the trans-generational question see George Sher, 'Trans-Generational Compensation', *Philosophy and Public Affairs* 33, no. 2 (2005): 181-200. Daniel Butt, 'Nations, Overlapping Generations and Historic Injustices', *American Philosophical Quarterly* 43, no. 4 (2006): 357-367. For the question of collective responsibilities, see David Miller, 'Holding Nations Responsible', *Ethics* 114, no. 2 (2004): 240-268; Joseph Levine 'Collective Responsibility and the Individual', *Essays in Philosophy* 10, no. 2 (2009): http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1020.6401&rep=rep1&type=pdf.

38   I read the work of Jeremy Waldron and David Lyons as representatives of such an approach in political theory. See Jeremy Waldron, 'Superseding Historic Justice', *Ethics* 10, no. 1 (1992): 4-28; Jeremy Waldron, 'Redressing Historic Justice', *University of Toronto Law Journal* 52, no. 1 (2002): 135-160; David Lyons, 'The New Indian Claims and Original Rights to Land', *Social Theory and Practice* 4, no. 3 (1977): 249-272. Lyons shows more sympathy to the Indian claims than Waldron does, though both insist that any decision to give back certain lands to their original owners is in some sense a decision about distributive justice in itself.

39   Mamdani uses the term 'survivors' justice' to distinguish it from 'victors' justice' in his early published works. See for this purpose his book, *When Victims Becomes Killers* (Princeton: Princeton University Press, 2001), Conclusion. More recently, Mamdani developed this logic in his paper 'Beyond Nuremberg: The Historical Significance of the Post-Apartheid Transition', *South Africa* 43, no. 1 (2015): 61-88. Mamdani does not mention corrective justice or use the term, for the simple reason that he is interested in criminal aspects of justice, and thus he uses the term criminal justice to juxtapose it with survivors' justice. In his forthcoming book he deploys the terminology of political justice to distinguish it from criminal justice. The move I make here is similar. Corrective justice is similar to criminal justice in the sense that both aim to settle accounts with the past and to judge it. By contrast, survivors' justice as well as distributive and political justice are far more forward looking.

40   See Kant, *Metaphysics of Morals*, 85 (para. 6-306).

41   For a very compelling arguments that wants to focus on past injustices see Robert Meister, *After Evil* (New York: Columbia University Press, 2011). Meister offers a critique of the deal reached in South Africa because it did not deliver, was not transformative enough, did not redistribute wealth, and the bystanders who benefited from the old regime did not pay any price for their complicity.

Decolonisation Palestine: Initial Thoughts for the Future

When we speak about decolonisation in Palestine we must be aware of a very basic fact: the process of colonisation is still continuing here and now. The settlements are expanding, land is still being confiscated, houses are being demolished, and most importantly, there is ongoing violence against Palestinians (three wars on Gaza in the past decade being just one example). The first thing that needs to be done in this regard is to stop the process. As things stand now, neither the Palestinians alone nor the international community is able or willing to force Israel to stop its expansion policy, including the open declaration of the annexation of areas in the West Bank. Recently, with the announcement of the Trump plan, the two-state solution and the possibility of withdrawal from the West Bank seem to have become mere fantasy, and annexation is becoming the openly declared policy of Israel and the us.[42]

But beyond that, one should be able to suggest a certain horizon for decolonisation beyond stopping the ongoing expansion of Israel. In doing that, I suggest, we should be guided by several orienting principles. I base the following ideas first of all on my characterisation of the current reality as I elaborated in my first talk; second, on the normative ideas about justice that I elaborated above; and third, upon certain characteristics related to the nature of Jewish existence in Palestine. Let me say few words about the third one before offering some remarks.[43]

First, while Zionism is a settler colonial project, one cannot ignore the fact that it was—at least in part—a settler colonial project of refugees. Many of them escaped Nazi Europe and were searching for a safe shelter. Not all of those who arrived were refugees, but clearly many were.[44] Second, many of those who arrived in

Palestine were not necessarily Zionist, and Palestine was their only available option, be that during the 1930s (from Central Europe), or the 1990s (from the Soviet Union). Many were Zionised in Palestine after their arrival.

Third, while the fact that the Jews inhabited Palestine two thousand years ago does not grant them any rights to the country whatsoever, there is no need to deny the fact that Palestine (Eretz Israel) plays a major role in the cultural and spiritual identity of many Jews around the world. I do not think that the Palestinians should be afraid of recognising this fact, and I do not see the value in the fight over historical narratives that goes back one thousand or two thousand years. The Palestinians derive their rights in Palestine not from the fact that were historically the *first* to inhabit Palestine, but simply because they inhabited *prior* to Jewish colonisation one hundred years ago. As a living community, they have a legitimate interest to continue to live, grow, develop and thrive without drastic interruption or displacement.[45] I do not see that we have a problem admitting the spiritual and cultural ties of the Jews to Palestine. The question is what the results of this recognition are.

Fourth, there are certain arguments that were valid at a certain point in time, but which have since lost their power. This is a painful thing to argue (for it surrenders to the facts on the ground), but I do not in fact see a clear way to move around it. Consider, for

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42 For the Trump plan within a historical context, see the forthcoming issue of the journal *Arab World Geographer* 23, no 1 (2020), with papers by Ian Lustick, Ilan Pappe, Asad Ghanem, and others.

43 I have already developed some of these ideas in my paper, Raef Zreik, 'When Does the Settler Become Native (With Apologies to Mamdani)', *Constellations* 23, no. 3: 351-364.

44 Again, and in order to avoid treating the case of Israel as exceptional, it is important to note that in many other cases those who immigrated to Australia

or the us or South Africa and other colonies were often persecuted in their own countries or ran away from hunger or starvation. The case of the French Huguenots who fled for their lives to the us and Africa after persecution is a clear example. See Owen Stanwood, 'Between Eden and Empire: Huguenot Refugees and the New World', *American Historical Review* 118, no. 5 (December 2013): 1319-1344. See also Peter Steven Gannon, ed., *Huguenot Refugees in the Settling of Colonial America* (New York: The Huguenot Society of America, 1985).The same holds for South Africa, where small but influential groups of Huguenots immigrated. See Pieter Coertzen, *The Huguenots of South Africa (1688-1988)* (Cape Town: Tafelberg, Le Cap, 1988). The mid-nineteenth-century Great Famine triggered Irish mass emigration to America. See Amira Achori, 'From Ireland to America: Emigration and the Great Famine 1845-1852', *International Journal of Humanities and Cultural Studies* 2, no. 4 (2016): 22-38.

45 This right exists regardless of the more political right of self-determination. Ana Stilzhas recently referred to a right for occupancy. See Ana Stilz, 'Occupancy Rights and Wrong Removal', *Philosophy and Public Affairs* 41, no. 4 (2013): 324.

example, the question as to whether the Jews constitute a nation and regarding the right of Jewish people to self-determination in Palestine. It seems to me that posing this question in the year 1900 (when the Jewish population was barely 5 percent of the population) is one thing, but posing it in 2000 is another (when Jews make up 50 percent of the population). Furthermore, I do not see any real value in discussing the question of whether the Jewish people in Palestine right now constitute a people, as if this were a question of fact that one might answer scientifically. I think the right question is political/moral/practical: how *ought* we treat the Jews who are in Palestine? Shall we treat them as a people or not? In this second formulation one takes responsibility for one's answer and becomes aware that this is a practical political question rather a theoretical one.

Fifth, given all of that, there has always been a national element in Zionism and a colonial element, and there is no reason to think of them in exclusive terms. Zionism in this regard had combined in its rhetoric the language of the coloniser and the colonised, and both national and colonial discourse at the same time.[46] Any process of decolonisation must account for this fact and try to see whether one can salvage a national flesh from the colonial skeleton.

Given all of these remarks, I want to approach the question of decolonisation in Palestine. Any talk about decolonisation must take into account the demands of justice from the past, and the chances or ways of continuing to live together in Palestine in the future. The issue is to navigate from the past into a better future. Corrective historical justice must be addressed, and without it, things will not move forward. The recognition of the harms done to the Palestinians over the last seventy years is a cornerstone of any conversation about the future. This is easy to say but hard to

implement—not because the Palestinians lack the power to impose it, but because even if it had such a power, it is not easy to strike the balance between the demands of the past and the demands of future.

Sometimes a distinction is drawn in the literature between compensation and reparation. The first assumes a *bipolar* relation, where a first party inflicted an intentional harm on another party that placed the former under an obligation to compensate the latter.[47] But in compensation, the question of the intentionality and bi-polarity of the harm is marginal: what is important is rather to compensate the injured party and to bring about a situation in which the loss is recovered. Whether to consider the case of Palestine as one of compensation or reparation will depend on the nature of the injury, damage, or loss. The questions that might arise in this regard here are endless and I have no intention of even beginning to deal with them. The idea here is twofold: corrective justice to compensate for harms in the past is important first as recognition of these harms and as such recognition of the dignity of those who suffered the loss, and is empowering to their agency. Second, it sends a message that we should not overlook past harms and let them simply go unnoticed; rather someone must be held accountable for them.

But no less important is the question of distributive justice in such cases. This is important in order to allow new redistribution of wealth and resources in Palestine-Israel. Given that most Palestinians are in dire need, they will benefit from this redistribution most. But distributive justice is not intended only to suggest a new distribution between Palestinians and Jews, but also in order to make room for distribution among Palestinians and Jews themselves. I do not see any real value in returning tens of thousands of acres that were owned by Palestinian or Lebanese feudal families to those families in particular. Social justice would require fair distribution of wealth. Any corrective justice entails elements of

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46　For more on this nature of Zionism, see Amnon Raz-Karkozkin, 'Exile History and the Nationalization of Jewish Memory', *Journal of Levantine Studies* 3, no. 2 (2005): 37-70. Ilan Pappe, 'Zionism as Colonialism: A Comparative View of Diluted Colonialism', *Asia and Africa South Atlantic Quarterly* 107, no. 4 (2008): 611-633. In many ways, Zionism might suggest a form of nationalism that could be labelled as colonial nationalism.

47　For the history of this distinction, see Haig Khatchadourian, 'Compensation and Reparation as Forms of Compensatory Justice', *Metaphilosophy* 37, no. 3-4 (2006): 429-448.

distributive justice in it as well, and as much as there is an element of recognising the agency of those harmed by past injustices, there is always an element of empowerment to be gained by granting agency to and creating agency within new individuals who lack resources to achieve such agency themselves.

It is a matter of fact that most Palestinians insist on focusing on historical and corrective justice; this is very understandable in the case of Palestine, where there is a clear case of injustice being done. But here I want to suggest to the Palestinians that they reflect on the use and deployment of distributive justice as a fundamental principle and tool in decolonisation. Distributive justice looks forwards, and its point of departure is the basic needs of the relevant parties. By contrast, corrective justice is indifferent to distribution. Now, the Palestinian can always claim something along these lines: let's put history beyond us and bracket the fact that we owned most of the lands in 1948, it is just a matter of fact that we now constitute about half of the inhabitants in Palestine and as such (if we assume personal and collective equality between Jews and Palestinians) we are entitled to half of everything: half the territory, the resources, the water, access to the sea, etc. This might be the basis for another conception of a two-state solution that is not based on the 1967 border. Instead, the Palestinians should be granted far more territory, and in return the Palestinians' right of return can to be limited to the borders of that future Palestinian state.

This leads me to a third kind of justice—political justice in the very specific sense in which Mamdani uses it. Here, political justice means the duty to constitute the frame within which the conversation about corrective and distributive justice is possible. Political justice here assumes that the two peoples will continue to live in the land of Palestine and have something in common, or ought to establish something in common in the future—whatever that might be. It is at this juncture that I want to introduce the category of citizenship as a potential horizon for both people. This point needs lots of elaboration.

As you may have noticed by now, my talk has avoided speaking about 'one-state' or 'two-state' solutions.[48] Part of the reason I have bracketed this debate until now stems from my belief in the existence of two opposing streams or undercurrents—one centripetal, and one centrifugal, one that pushes for oneness and unity between Jews and Palestinians, while the other pushes for separation and duality. The result is that no clear single solution is possible, even in theory. We must think in a way that combines unity and separation, and is at the same time guided by the principle of equality. That is to say, that any 'two-state solution' (separation) must assume and be complemented by a regime that handles the many things in common that must be shared and coordinated. This need for high coordination stems from two facts. The first is the high interdependence of the two parts in issues related to water, electricity, sea, pollution, environment, transportation, drainage, religious sites, etc. Second, given the fact that both people have strong ties to the whole of Palestine and consider it as their homeland, the separation will never be complete.

On the other hand, any talk about a one-state solution will have to take into account the fact that we are speaking of two peoples with two languages and at least two religions (the Palestinians have several), and two cultures. The Palestinians feel—and rightly so—that their national project and culture has been under threat for the last hundred years. All of this means a desire to live separately and experience national self-determination. And this would require some level of separation between the two people at least at a basic level related to culture, language, and religion, for some time to come.

If this is the case, then the difference between 'one-' and 'two-state' is not as one can imagine, though there is clearly some difference. But given that this is the case, I thought that it would be

48 This topic has been debated extensively in the literature. I refer the reader here to a recent book by Ian Lustick, *Paradise Lost* (Philadelphia: Pennsylvania University Press, 2020). See also the collection of papers on the topic in John Ehrenberg and Yoav Peled, eds., *Israel and Palestine: Alternative Perspectives on Statehood* (Lanham: Rowman & Littlefield, 2016).

wiser to speak about guiding principles instead of clear institutional arrangements. Within this frame or approach, I deploy the category of citizenship to reflect a certain conviction that the two people are tied together in such a way that they must take into account the interests of the other, meaning that the possibility of total separation is not an option. Citizenship in this sense imposes a certain constraint on the political imagination of both collectives and insists that there is some layer of commonality that must be addressed. This reflects a certain sense of being trapped, in which one can hardly imagine the future of one's own group without thinking of the future of the other group at the same time.

We all know the weaknesses of the liberal abstract category of citizenship. The allure of citizenship, as with the allure of rights discourse, stems from its abstract nature, which allows everybody to identify with it and to fill it with their conception of justice.[49] This abstract nature of citizenship allows us to postpone our conflicts; it is a concept hovering above and hiding our different conceptions. As such, it might be a mere illusion, or abstraction. In this regard, we must heed the lessons of South Africa, where formal equality was granted, but substantial equality has yet to be achieved.[50]

Within such a mode of thinking, regardless of whether the optimal solution is one state or two states, there will be two levels of membership: one to the immediate community and another to the political frame encompassing both groups. The guiding principle of this structure is to allow freedom and equality both on the individual and the collective level—that is, group rights.

The problem here is that the category of citizenship is usually

conceived as a formal liberal category or concept, and it is rather bizarre to burden it with such historical missions as ending ongoing historical injustices or decolonisation projects. It is the case that we might have to invent new meanings of citizenship and infuse it with new dimensions.[51] While doing so, I believe that we will have to think of decolonisation in new ways as well and re-conceptualise it in a new manner. We might refer to this project as decolonising citizenship, where citizenship is assigned the mission of decolonisation, and decolonisation has to formulate itself in the language of citizenship. This would require a new way of thinking about citizenship and decolonisation at the same time.

In this regard, the aim of decolonisation would be to end Jewish privileges, Jewish domination, and Jewish supremacy. Decolonisation should aim to dismantle those structures that facilitate the domination of one group over other, and to ensure a fair distribution of scare resources. The challenge of this decolonisation requires us to imagine models of Jewish nationalism that are neither colonial nor based on control or domination. This is as much a challenge to the Palestinians as it is a challenge to the Jews themselves. One should be able to separate the national flesh from the colonial bone, but achieving this will involve a long and difficult process. In that sense, decolonisation while ending Jewish supremacy must allow for Jewish equality, ending Jewish privileges but preserving Jewish rights, ending Jewish domination but guaranteeing Jewish security.

Now, there is no way of dealing with the issue of decolonisation without addressing the issue of the Palestinian right of return, the issue of refugees, and an end to their statelessness. There is nothing more natural than the right of people to return to their own private homes from which they were expelled. Even if they were not expelled and had merely left out of fear during a time of

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49 Citizenship in its abstract nature has no colour. As with money itself, it is a mere form. For the analogy between the two see Evgeny Pashukanis, *The General Theory of Law and Marxism* (London: Pluto Press, 1989); Isaac Balbus, 'Commodity Form and Legal Form: An Essay on the Relative Autonomy of Law', *Law and Society Review* 11, no. 3 (1977): 571-88.

50 For critiques of the South African model, see Naomi Klein , 'Democracy Born in Chains: South Africa's Constricted Freedom', in *The Shock Doctrine: The Rise of Disaster Capitalism* (London: Picador, 2008), 194-217; Eyal Gross, 'The Constitution, Reconciliation, and Transitional Justice: Lessons from South Africa and Israel', *Stanford Journal of International Law* 40 (2004): 47-104.

51 The idea of a differentiated citizenship in itself, which takes into account differences between groups, is not new. See Iris Marion Young, 'Reconsidering Segregation and Differentiated Citizenship', *Citizenship Studies* 3 (1999): 237-52. But I think that while one can take inspiration from such attitudes, the mission I am assigning to citizenship here requires further development in order to be able to redress past injustices.

war, there are no valid moral reasons to prevent their return. Even if the Palestinian leadership (a very vague term, given that it was not elected) rejected the partition, or had initiated the war, there is no good moral reason why each individual should be responsible in this case for whatever decisions were made on their behalf.[52] Regardless of whether a UN resolution guarantees this right of return or not, I see valid reasons why it should be recognised. How many Palestinians have an interest in returning, and how many will return, are two different questions.

But the Jewish Zionist response, when it is articulated at the national, political, and existential level and at its most sophisticated formulation, does not challenge the basic morality of the demand to return. Rather it introduces a fact, supported by existential mode of argument: 'a return of millions of Palestinians into the borders of Israel means the end of self-determination for the Jews as a collective, and means that the Jews stop [being] a majority within a certain territory (whatever that territory is), and this means annulling 100 years of struggle. We do not plan to be dependent on[the] good will of others again. This is the reason we left Europe at the first place'.[53]

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52 Liberals distance themselves from the idea of collective responsibility given their individualistic approach and their understanding of the separateness of humans. But even communitarians and nationalists are aware of the problem of collective responsibility, and posit conditions for when it can be assigned. See David Miller, 'National Responsibility and Global Justice', *Critical Review of International Social and Political Philosophy* 11, no. 4 (2008): 383-99.

53 This is my formulation of the argument that has been expressed throughout the years by many liberal Zionist intellectuals. See, for example: Roger Cohen, 'Sitting Down With Amos Oz', *New York Times*, 28 January 2013, https://www.nytimes.com/2013/01/29/opinion/global/roger-cohen-sitting-down-with-amos-oz.html. Amos Oz says that the Palestinian right of return is 'a euphemism for the liquidation of Israel'; on the 'right' of return as tantamount to 'making Jews a minority within Israel itself'. See Ruth Gavison, 'The Jews' Right to Statehood: A Defense', *Azure* 15 (2003): 70-108. On the right of return as a 'nonstarter for Israel: too many returnees would end Jews' demographic majority and therefore Israel's status as both a Jewish and democratic state', see Max Fisher, 'The Two State Solution: What It Is and Why It Hasn't Happened', *New York Times*, 29 December 2016, https://www.nytimes.com/2016/12/29/world/middleeast/israel-palestinians-two-state-solution.html. The sentiment that absolute return is the 'call for the end of Israel as a Jewish state', see Luke Akehurst, 'Absolute Return is Incompatible with a Peaceful Solution', *Times of Israel* (blog), 4 May 2019,

I do not intend to overlook this Jewish anxiety and I do believe that it should also be addressed by the Palestinians, but there is a limit as to how far the Palestinians—who are now under occupation, exiled, and subjected to violence—can offer assurances to the Jewish community in Palestine right now. But I will venture a few comments that might allow us to start a conversation. First of all, let us remember that Israel now holds a clear superiority in terms of military and economic strength, including the possession of nuclear weapons. Yet according to many within the state, this does not seem to guarantee security for Israel, and we are continually warned by Israeli officials that the country is under an existential threat. Second, while it is clearly a strong state in many aspects, we should not fool ourselves into thinking that Israel is totally independent. Part of Israel's strength is derived from the support it receives from other western countries. Dependence, though relative, is unavoidable. The real question is: On whom is one dependent? And within what kind of power constellation?

Most importantly, I think that this conversation must be held jointly, not unilaterally. By that I mean that the state of Israel and the Jewish people in Israel must be able to state their conditions and stipulate the circumstances under which they might feel safe and secure; the prior assumption that they will never be safe in this region is simply an invitation for endless enmity. I think they are under an obligation to stipulate the conditions under which a secure collective existence would be guaranteed. This stipulation ought to be made in good faith, and good faith here means a keen desire to end the reality of enmity and the ability to imagine a reality of coexistence without domination. In order to end decolonisation, we need both parties. The Jews in Palestine must be able to envision a reality where they are not hegemonic and superior, and negotiate on that basis. They should be able to imagine a reality of non-domination. This is also a kind of decolonising of the Jewish mindset itself. But the Jews, clearly, will not be able to do that

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https://blogs.timesofisrael.com/absolute-return-is-incompatible-with-a-peaceful-solution.

alone. The Palestinians also have a crucial role to play.[54] The duty of the Palestinians will be to listen carefully, and to offer a vision where colonialism as a structure of domination and subjugation goes but the settlers can stay. In order for them to listen, they must be free and independent. While this conversation is necessary, it cannot take place under circumstances of occupation, subjugation and dispossession. We are at a stage where Palestinians need someone to listen to them first and foremost, given that it is their existence that is under threat and their national project that is being threatened.

All of this leads me to the next point: the regional aspect of the conflict and of the decolonisation project. Any such project will have to face the simple fact that Palestine is not just an island, but rather a country within the sea of the Arab world. The question of the relationship between the new entity, whenever it is established (one state, two states, a federation), with the entire region will eventually emerge and need to be addressed. When we look at things from this perspective it becomes more evident that the question of Israel and the Jews in Palestine is connected to the question of Arab nationalism in these neighbouring countries. That is no reason to delay prospects of reconciliation until all related issues of Arab nationalism have been solved. But this demonstrates that the question of the status of the Jews in Palestine and in the Middle East, and the question of Arab Nationalism are becoming more and more entangled.

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54   I have dealt extensively with the role of the Palestinians in this process. See Zreik, 'When Does the Settler become Native'.

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Decolonizing Palestine: Thinking Through Some Competing Political and Normative Exigencies

Salahadin Ali

Abstract

Maintaining the singularity of the Palestinian question, redressing historical injustice, and the necessity to accommodate legitimate Jewish demands are the three underlying principles Zreik uses to conceptually map out a way forward on Palestinian decolonization. By juxtaposing those principles with his pragmatic pointers toward decolonizing Palestine, I argue that the moral appeal of each notwithstanding, the principles do not reflect certain historical actualities nor are they (taken together) capable of articulating an attainable decolonized future. This paper also points out that while the author demonstrates his erudite cognizance of postcolonial disenchantments witnessed across the colonized world, when it comes to Palestinian decolonisation, he disappointingly sidelined the critical need to radically reimagine the de-colonial project in favour of an argument for urgent action.

Introduction

In the third and final part of his lecture series on the question of Palestine, Raef Zreik discusses the conceptual, normative, and political dimensions of Palestinian decolonisation. Apparently, Zreik's proposal on the way forward is firmly informed by how

he frames the Palestinian question both historically and normatively. The paper, therefore, can also be read as a summation of the first two parts of the series. Three general principles seem to guide Zreik's reflection on the issue of decolonisation: the need to maintain the singularity of the Palestinian question, the need to address/redress historical injustice, and the desire to accommodate legitimate Jewish demands.[1] Inevitably, those three guiding principles overlap and intersect at different levels. In this discussion paper, I attempt to juxtapose those principles with Zreik's pragmatic signposts/questions towards the possible modes and models of decolonising Palestine. Before dealing with those issues, however, the paper discusses other aspects of the lecture that deal with the conceptualisation of decolonisation, the materiality of Palestinian suffering, and the state of Palestinian resistance.

In the lecture under review, Zreik begins his discussion by making an important remark that, in light of the postcolonial disenchantments witnessed across the colonised world, any notion of Palestinian decolonisation should learn from the mistakes and failures of other Third World national movements, and to try to avoid their mistakes. He goes on to argue that while Palestinians deserve to have a nation,

> This does not mean that we can continue the struggle regardless of the disappointing experiences of many Third World countries. There are many lessons to be learned, myths that must be abandoned, and illusions to be shattered. If one wants to avoid certain disappointments, then one should perhaps reflect on whether a state is in fact desirable. What for? For what reasons and what aims? Who stands to benefit from it and who might lose? Why is self-determination a value? And how can a new small new born state—a future Palestine—survive within the new capitalist global order?[2]

These are critical questions and obviously not simple ones. Unfortunately, there is no attempt to deal with these issues in any meaningful detail, except for a general statement that emphasises the need to uphold the notion of emancipation as a 'regulative idea…that should guide the conversation about decolonisation and instruct the project of decolonisation'.[3] Coupling decolonisation and emancipation has a long history both in political theory and political action. The works of Franz Fanon offer an immensely influential example. In fact, as Walter D. Mignolo argues, in the context of Africa and Asia decolonisation always subsumes the concept of emancipation and it 'emerged in the process of de-centring the universal emancipating claims in the projects grounded in the liberal and socialist traditions of the European enlightenment'.[4]

As suggested above, Zreik does not address why, despite this dialectic of emancipation in the process of decolonisation, the latter led to disappointing result; nor does he discuss, as suggested in the above quotation, how the 'new capitalist global order' contributed to such glaring failures. Instead, he seems to choose not to linger in the Gramscian 'pessimism of the intellect' and quickly introduces a strong sense of urgency by maintaining that the materiality of the Israeli occupation and the day to day suffering of Palestinians cannot afford long deliberations on 'decoloniality'. He thus presents a forceful argument by noting:

> The de-colonial project in Palestine in this sense bears a certain materiality of here and now: thousands being killed, tens of thousands injured, ongoing land dispossession, house demolition, thousands of prisoners in Israeli jails, severe restrictions on freedom of movement by Israeli roadblocks, etc. Not only that, but Israel's expansionary project of taking more lands, making more settlements, and

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1 Here and throughout I refer to Raef Zreik, 'Palestine as a Question: Lecture Three: Decolonisation', in the present issue.

2 Zreik, 'Decolonisation'.

3 Zreik, 'Decolonisation'.

4 Walter D. Mignolo, 'Delinking: The Rhetoric of Modernity, the Logic of Coloniality and the Grammar of De-Coloniality', in *Globalization and the Decolonial Option*, eds. Arturo Escobar and Walter D. Mignolo (New York: Routledge, 2010), 308.

slowly transferring populations, is still taking place. Any conversation about de-colonisation in Palestine should take the reversal of this expansion as its immediate mission. In the face of this reality, the question of whether it is possible to decolonise Palestine without decolonising modernity itself (or whether one can criticise Zionism without criticising European colonialism at the same time) must be temporarily bracketed. This is not because these issues are unimportant, but rather because the political materiality of the Israeli expansive settlement project demands a certain urgency. It might be the case that formal self-determination will not be able to solve all the problems for Palestine, but this is not the right question to pose. Rather, what matters is whether it can solve *any* problem or achieve *any* progress at all (whatever that means).[5]

The tension between the need for urgent action and the need to re-think the de-colonial project based on lessons learned elsewhere is indeed difficult to resolve. One can only agree that the materiality of Palestinian suffering can hardly afford the luxury of thinking about epistemic, economic, and political decoloniality. Yet, the Palestinian question, as urgent as it has been, is now indefinitely bracketed by the sheer military power and diplomatic clout of the Zionist state as well as a global order which favours the latter. If this is the case, there seems no reason why Palestinians might not use this long moment of suspension to reflect upon and come up with a vision of decolonisation that accommodates learned lessons. This last point directly speaks to Zreik's project of articulating Palestinian decolonisation and leads to another query in relation to his proposal in this lecture. To what extent are Zreik's proposals for a bi-national state and his insistence on linking the issue of justice with decolonisation born out of a reflection on the postcolonial reality of the global south? Or are they just dictated by the specific historical and contemporary conditions of Palestine as he experiences it?

In the section titled, 'Decolonising Practices in Palestine within Comparative Models', Zreik contrasts settler colonialism in Palestine with a possible mode of decolonisation by drawing upon three historical models in settler colonial settings: the Algerian model, the South African model, and the 'indigenous rights model' of settler colonies like the US, Canada, and Australia. He notes that Palestinians have been oscillating between the three models depending on how they experience colonialism and the horizon of possibility for decolonisation in a particular historical moment.

Although not very direct if one can only deduct it from his proposal to create an overarching citizenship regime, Zreik seems to favour the South African model at least in the limited sense that decolonisation would be realised under the framework of one state. Two arguments are advanced in support of the preference. First, the liberation of Palestinian land following the Algerian model and having an independent Palestinian state is difficult given 'the high interdependence of the two parts in issues related to water, electricity, sea, pollution, environment, transportation, drainage, religious sites, etc'. Second, in light of the strong attachment of both Palestinians and Israelis to the land of Palestine as well as the expansion of Israeli settlement over the occupied territory since Oslo, 'the idea of a Palestinian state seems less feasible, to say the least'.[6]

In allowing the ever-increasing internalisation of the Palestinian question into the politics of Israel to circumscribe the possible modes of decolonisation, Zreik appears to resign himself to the reality created by the settler colonial project of the Israeli state. It may be argued that decolonisation has a potential to be a radical re-imagining and rethinking of the colonial structure. It is then necessary to ask why the process and structure of colonialism, in this case the self-imposition of the State of Israel as a single sovereign on the whole land of Palestine since Oslo, is taken as a starting

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5   Zreik, 'Decolonisation'.

6   Zreik, 'Decolonisation'.

point for thinking about decolonisation. Why should Palestinians not aspire to an Algerian model (in the sense of liberating the land and creating an independent state) and continue believing that the facts Israel is creating on the ground are actually reversible?

The last point above takes us to another related issue. If decolonisation as a concept implies both the process and the end result of being free, the question of resistance has an overriding importance. As Zreik rightly explained, both the degeneration of the Arab Spring into protracted civil wars and the global deployment of the struggle against anti-Semitism to target Palestinian or pro-Palestinian voices of opposition have currently paralysed the resistance. However, his attempt at relationality stops there. Regional and global factors which contributed to the weakening of the resistance are hardly discussed. Since the emergence of the PLO as militant regional actor in the aftermath of the 1967 War (a role that culminated in the 1970-71 Black September armed conflict in Jordan), Palestinian resistance, both violent and non-violent, has been shaped by the regional political landscape. It is safe to argue that conceptualising regional dynamics together with the existing geo-political order that disproportionately favours Israel should form an integral part of the thinking on the yet-to-be decolonisation.

The Islamisation factor is also important for understanding broader regional dynamics and its influence on the Palestinian question, including the involvement of powerful regional actors such as Iran. As Rashid Khalidi noted recently, 'the rise of Hamas was part of a regional trend that represented a response to what many perceived as the bankruptcy of the secular nationalist ideologies that had dominated politics in the Middle East for most of the twentieth century'.[7] However, after a brief mention in the first paper, Zreik completely disregards the role of the increasing Islamisation of the Palestinian question as reflected in the growing influence of Hamas and Islamic Jihad.

As mentioned in the introductory paragraph, three general

principles guide Zreik's reflection on the issue of decolonisation: the singularity of Palestinian question, the need to address/redress historical injustice, and the desire to accommodate legitimate Jewish demands. Now I turn back to those principles and address three questions in relation to each of them. One, to what extent does the increasingly totalising project of settler colonialism alone justify the insistence on the singularity of Palestinian question? Two, what are the implications of the strong demand for redressing injustice in the possible future decolonisation of Palestine? Finally, is it possible to accommodate Jewish demands without fragmenting the Palestinian question and giving up on the demand for corrective justice?

For Zreik, it is of paramount importance to keep Palestine as a single question. The question refers to the self-determination of Palestinian people as a collective entity. Such a statement of principle rules out the possibility of the right to self-determination for one segment of the Palestinian people to the exclusion of others. This is despite the acknowledged fact that the process of colonisation was diverse and differently experienced by different segments of the Palestinian people. As he himself remarks,

> It is important to remember in the case of Palestine that colonisation took many forms and shapes, with different processes producing different results. There are Palestinians in Israel who suffer deep structural discrimination, in the West Bank there is ongoing indirect occupation, Gaza is separated and under siege, and above all there is the question of refugees who still live in camps in Jordan, Lebanon, and Syria. There are many Palestinian experiences, and different modes of victimisation and dispossession.[8]

How can we then insist on the singularity of the Palestine problem in the face of such growing diversity? It appears that Zreik sees hope in keeping 'the question' alive through Israel's increasing tendency to treat the land of Palestine as one geo-political unit.

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[7]   Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917-2017* (New York: Metropolitan Books, Henry Holt and Company, 2020), EPUB, Chapter 6.

[8]   Zreik, 'Decolonisation'.

However, there is also, as he explains in the first paper, an opposite tendency on the part of Israel to fragment the Palestinian question by creating different regimes of control. Those diverse Palestinian experiences under Israeli's separate systems of control would certainly have negative implication for an overarching process of decolonisation. There is little in terms of analysis on how to overcome those problems. Zreik begins the last section of the paper by asking if there is one guiding logic of decolonisation that might equally apply and be acceptable by all Palestinians. The question remains unanswered.

The second guiding principle for Zreik's vision of decolonisation is the need to redress historical injustices of deaths, dispossessions, expulsions, imprisonment and the shattering destruction of livelihood directed against Palestinians. The inventiveness of this normative principle, therefore, lies in its attempt to redress colonial wrongs with the process of decolonisation. This is notable because apart from the South African case (where the struggle was against a quasi-colonial regime where national self-determination was not at stake), the issue of material compensation was not part of the classical cases of decolonisation in Africa and Asia. Of course, there is growing interest for this as exemplified by the recent successful court case of Mau Mau era victims.[9]

In insisting on linking a backward-looking corrective justice with the process of decolonisation in Palestine, Zreik imports a liberal legal theory of justice, most useful in a private law context, to redress historical and political wrongs of greater proportion. The problematics associated with this importation are highlighted in the paper without much elaboration. Yet as the author notes, issues from 'assignment problems' to 'intergenerational problems' still demand solutions. While further deliberation on those issues is highly welcome, in this paper I particularly want to single out Zreik's reframed deployment of Mamdani's political justice as an '*a priori* socio-political frame within which the conversation about

corrective justice and distributive justice can take place'.[10]

While we can agree that the political justice proposed by Mamdani has an element of distributive justice insofar as it aims at the transformation of political and economic institutions in a way that encompasses the interests of all parties in the conflict, the same may not be said about corrective justice. Mamdani's concept of political justice grew out of a dissatisfaction with the direct importation of the theory of criminal justice and individual liability to address issues of mass political violence. Among many others, one key aspect of his opposition to such an importation is that in a long history of political violence it is impossible to clearly identify victims and perpetrators. For him, closure is possible through a political process of reform and transformation, and not through prosecution of one party in favour of the other.[11] One may capitalise on this and ask if it is ever possible to open a venue for sustainable peace by insisting on compensation? What if the figure we identify as a perpetrator thinks of himself as a victim? To put it differently, why should we not use Mamdani's political justice as an alternative instead of as a supplementary mechanism to the demand for corrective justice?

Finally, it appears proper to ask if the three guiding principles for decolonising Palestine are mutually accommodative of each other. For example, how does the third principle, which insists that the process of decolonisation should accommodate the concerns, fears and even aspirations of Jewish people living in the land of Palestine[12] sit comfortably with the strong demand for corrective justice? Similarly, there is a potential tension between accommodating Jewish demands and the desire not to fragment the Palestinian question. We can illustrate the tension between the two by citing a single scenario. If, in an unlikely event of negotiation, Israel accepts the right of Palestinian people to self-determi-

9   'UK to Compensate Kenya's Mau Mau Torture Victims', *The Guardian*, 6 June 2013, https://www.theguardian.com/world/2013/jun/06/uk-compensate-kenya-mau-mau-torture.

10 Zreik, 'Decolonisation'.

11 Mahmood Mamdani, 'Beyond Nuremberg: The Historical Significance of the Post-Apartheid Transition in South Africa', *MISR Working Papers* 23 (2015): 28-29, https://misr.mak.ac.ug/publication/misr-working-paper-no-23-beyond-nuremberg-the-historical-significance-of-the-post.

12 Zreik, 'Decolonisation'.

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nation and also agrees upon a binational solution encompassing the whole land of Palestine but refuses to accept the right of refugees to return, what would be the response of the other side? For Palestinians, accepting the compromise means giving up on the unity of the Palestinian question. It also poses the problem of representation while denying refugees their own right to self-determination. From an Israeli perspective, rejecting similar Jewish demands will make the 'accommodation' principle appear as empty rhetoric. This leaves us with the difficult question asked above: is it possible to accommodate Jewish demands without fragmenting the Palestinian question and giving up the insistence on corrective justice?

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The Multiple Centralities of Africa: Geographies of Race, North African Perspectives and the Idea of a Decolonisation of Space

Mohamad Amer-Meziane

Abstract

This essay asks decolonial questions of decolonial thought. It focuses on the way in which our notions of space must be de-racialized by contrasting border thinking and modern dialectics. In so doing it focuses on one crucial aspect of both postcolonial and decolonial critique: the critique of area studies and the making of continents and regions as an aspect of imperial circumnavigation and capitalist globalization. It does so by dwelling at a particular border that is defined as *North* African. Hence, it raises the following questions: How does North Africa belong to Africa and how can we think of the unity of the continent without dismantling the divides between Arabs and sub-Saharan Africans, a so-called White and Black Africa? By rethinking the legacy of the Algerian war of liberation and of Fanon's Panafricanism *via* these questions, the paper deploys a critical reinterpretation of major themes of decoloniality.

Introduction

This essay can be read as a prelude to a philosophy of decolonisation.[1] As such, it engages with conceptual aspects of decolonial and postcolonial theory but also with the inevitable European spectres that haunt them: Hegelianism, Marxism and French theory. This discussion can be seen as programmatic, as a series of questions that open a space for rethinking decolonisation after and beyond Europe's hegemony. Hence, the questions the essay raises are not formulated as a mere criticism of either postcolonialism or decoloniality but as an attempt to continue to think through their common project.

I can only contribute to this conversation as an *exilic* Algerian philosopher. I therefore define the epistemic site from which I think and deploy my perspective as North African for at least two reasons: because I am an African coming from the *northern* part of the continent but also because I am living in the Global *North*. In the West and particularly in France, systemic racism defines North Africans as Muslims and Arabs but *not* as Africans. Hence, my subjective belonging to Africa cannot be taken for granted or deemed evident because the dominant Western geographies of the globe constantly define North Africans as *non*-Africans. My belonging to Africa not only as a continent but also as a space from which another kind of thinking is made possible and is now emerging requires a critique of the way in which North Africa was and still is de-Africanised by colonial racism. In other words, the very question of Africanity, of what makes someone or something African, will be part of the reflections on decolonisation and decoloniality as they determine the very idea of what the unity of Africa actually means. Is North Africa African, Arab or Mediterranean? This question not only requires that we criticise the divide

between multiple Africas—an Arab, a White or a Black Africa—but it inevitably raises the question of Africanity itself, of what Africa is, of what is supposed to make us Africans or not. North Africa is not, or only marginally, thought of as belonging to the African continent or even to the African diaspora to the extent that North Africa is problematically defined as either 'White' Africa or as part of the Arab world. Why do I need to describe this positionality? One answer is that the colonial and Western racial divisions between Arabs and Africans, North Africa and sub-Saharan Africa, are always already at stake in the way in which North Africans are or are not able to be seen or see themselves as Africans. In other words, the division between North Africa and sub-Saharan Africa determines, and to some extent can confine, the very possibility of my discourse. Hence, 'North Africanity' is a way of describing a non-Western epistemic site from which a theoretical perspective can be deployed. Because decolonials assert that this site is the only possible point of departure, any discussion of decoloniality presupposes that one inhabits this space by dwelling at the border, as Walter Mignolo has it.[2]

Hence these positional questions: Where is North Africa? Where are North Africans and can they be located on the racial map that the West has imposed and globalised? North Africa is often thought of as a region *of and in* the world. But North Africa does *not exist* on the colonial and racial map of the world that the West has imposed. North Africa is nowhere, it has no place and is not a place. Neither entirely African or in Africa, nor in the Middle East or the Arab world, a double margin, permanently invisible, constantly becoming a non-being between arbitrarily separated regions. North Africanity is not a racial concept but a shared condition that dissolves the stability of colonial and racial geographical categories. As a 'zone of non-being', to borrow Fanon's famous word, it refers to a condition that requires a permanent questioning of the very divisions between Africa and the Middle East, di-

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1   This paper was written in the context of a research project on public religions in South Asia and Africa at Columbia University in New York. During this time, I benefited from several public and private discussions with Mahmood Mamdani, Mamadou Diouf, Souleymane Bachir Diagne, Talal Asad, Daho Djerbal, Etienne Balibar and Gil Anidjar. I am thankful for their support during the time I was constructing this reflexion. I also want to thank Hannah Archambault for her readings of different versions of the paper manuscript.

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2   Walter Mignolo, 'Geopolitics of Sensing and Knowing: On (De)Coloniality, Border Thinking and Epistemic Disobedience', *Postcolonial Studies* 14 (2011): 273-283.

visions that are part of the double consciousness that a colonial Janus-faced order has created on the continent and elsewhere. Hence my commitment to decolonisation and decoloniality is inseparable from this positionality as a North African philosopher. The *North* in North Africa thus means two things from the point of view of an exilic philosopher: belonging to Africa *via* the Northern part of the continent but also living in the Global North. The North *in Africa* means an unmappable location, a site that eludes any form of colonial territorialisation, but it also means being African in the Global North *without being acknowledged as such* because of Western systemic racism itself.

In what follows, I show that two names are part of the problem I wish to address: Hegel and Fanon. I will address two countries also, France and Algeria. As is well known, Hegel has become the name, and his geography the paradigm, of Europe's exclusion of Africa from both history and humanity. Through the definition of 'Africa proper' as the Black continent and his description of African traditional religions, Hegel deploys a radical dehumanisation of Black African people. In what follows, I want to insist that Hegel is also the name of a double process that leads to the de-Africanisation of North Africa: through the orientalisation of Egypt and the occidentalisation of the Maghreb, notably of Algeria.[3] Hence, Africa as a continent is divided not in two but into *three* continents: Black Africa, Europe and Asia. The parts of Africa that are de-Africanised, the Maghreb and Egypt, are also marginalised by the very gesture that seeks to *associate* them with Europe or identify them with the Orient by integrating them on a so-called 'superior' stage of world civilisation. When the Orient becomes the beginning of a secular history oriented towards the Occident as its telos

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3   The *Maghreb* designates the Western part of North Africa, namely Morocco, Algeria and Tunisia. *Maghreb* means West in Arabic, *Mashriq* meaning the East. These categories are not European or colonial but Islamic and Arabic. Nevertheless, the making of what we *now* call the 'Arab world' has become inseparable from the category of the 'Middle East'. See Abbas Amanat, 'Introduction: Is There a Middle East? Problematizing a Virtual Space' in *Is There a Middle East? The Evolution for a Concept*, ed. Michael Bonine, Abbas Amanat, and Michael Ezekiel Gasper (Stanford, CA: Stanford University Press, 2012), 1-10.

and as the embodiment of freedom, Africa is being internally divided and excluded from world history and civilisation by being defined as the Black continent. I will examine how, during his engagement during the Algerian war of liberation and the writing of the *Wretched of the Earth,* Fanon tried to dismantle this geography whose genealogy is to be found among German geographers such as Karl Ritter and French colonial administrators such as Faibherbe, who were involved in the colonisation of both Algeria and Senegal. By *separating* North Africa and sub-Saharan Africa through *race,* this geography has produced the self-identification of North Africa to anything else than Africa as well as a secular form of Negrophobia.

In what follows, the idea of decolonisation will not be confined to political liberation but will involve two crucial dimensions of decoloniality as it questions European or hegemonic concepts of time and space, namely chronology and geography. This paper is partly structured as a non-exhaustive critical history of the divide between North Africa and the rest of Africa to the extent that this divide has shaped the marginality of North Africa as a region, or rather as the impossibility to actually be a region. I analyse the specific ways in which North Africa has been excluded from Africa by European colonialism. I demonstrate that the colonisation of Algeria and Senegal by the French imperial state has played a major role in the making of this divide. Hence, the division between North Africa and *West* Africa has been a crucial moment in the making of the divide between North Africa and *Black* Africa. I then question the predominant comprehensive narratives of imperialism in Africa by asserting that they are still indebted to the colonial divide between North Africa and Africa as a racial divide. Through the making of North African marginality, Western Africanism still determines and confines the common understanding of European imperialism and of its legacies in contemporary Africa. The European de-Africanisation of North Africa is a colonial gesture that still tends to determine the disciplinary boundaries between African and Middle East studies, two areas in which

North Africa appears as a *margin*. This de-Africanisation is inseparable from two other gestures: the Hegelian racist identification of 'Africa proper' with a dehumanising concept of Blackness and the double process of Westernising or Orientalising North Africans as either White people or Arabs. This being said, I do not argue that the African geography of North Africa should be asserted *against* its legitimate belonging to the Arab world. I formulate this argument against any attempt to actually separate Arabness and Africanity and to dissolve the schizophrenic conflict between African and Arab geographies of North Africa that Euro-American colonialism has imposed upon us.

The Decolonial and the Postcolonial

I take it for granted that 'coloniality' can be seen as the beating heart of a now globalised modernity and that the task of decolonisation extends beyond the foundation of nation-states and the conquest of political independence. The concept of decoloniality refers to the unfinished but nevertheless necessary task of dismantling the hegemonic powers of European colonial modernity and not only of imperialism. Decoloniality is different from decolonisation to the extent that it refers to the project of *epistemic* independence.[4] For this reason, decolonisation is a form of liberation whose history is irreducible to the European narrative of liberation. This essay is therefore written with one idea in mind: that this task is unescapable to the extent that its horizon structures the way in which we criticise our present. Nevertheless, because belonging to a tradition or a movement also authorises and sometimes requires that one question its founding principles so that it can be effectively defined as plural, I will present crucial aspects of decoloniality while formulating some questions about some of its internal tensions in the meantime. Some of these tensions are not specific to decoloniality but are part of the legacy of anti-colonialism among both postcolonial and decolonial theorists. The questions I raise

are based on a presupposition of faithfulness to decolonisation as a task. I therefore write these lines as a philosopher whose life and horizon of thought is determined by the legacies of an unfinished process of decolonisation.

Decolonisation can be defined as the collective act of destroying coloniality through a permanent struggle. Coloniality, so decolonial thinkers argue, is different from colonialism if only because coloniality survives historical decolonisation in the form of what Nkrumah has described as neo-colonialism.[5] But beyond the idea of a new form of colonialism in which economic and cultural domination is deployed through false political sovereignty, the concept of coloniality refers to the logic and the metaphysics that governs colonialism. As such, it remains irreducible to colonialism. Arguably, the concept corresponds to what Edward Said theorises as colonial *culture* even though the idea of a colonial *onto-logy* does radicalise the notion.[6] Decoloniality also asserts the reversibility of modernity and coloniality. It is also a critique of Christian, Eurocentric, and patriarchal hegemonies as intrinsic dimensions of coloniality. Decoloniality therefore refers to the way in which Eurocentric modernity and its universalism must be challenged through what decolonial thinkers call pluriversality. It presupposes points of exteriority from which colonial modernity can be engaged critically. As an act of epistemic resistance that challenges the coloniality of knowledge, decoloniality forces us to dismantle the legacies of postmodern thought and French theory in postcolonialism. The decolonial turn aims at dismantling the theoretical dependency of postcolonial theorists on postmodern thought and the Eurocentric trinity of Foucault, Deleuze, and Derrida. Hence, Frantz Fanon appears as a towering non-Western Caribbean thinker in this movement and references to his work play a key role in the making of this turn.

Decolonial thinkers criticise the 'post' in postmodern and postcolonial to the extent that the suffix itself actually presuppos-

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4   Sabelo Ndlovu-Gatsheni, 'Decolonization/Decoloniality: Converging African/Latin American Thinking', *MISR Review* 3 (May 2020), 112-140. On the difference between decolonisation and decoloniality, see especially 126-128.

5   Kwame Nkrumah, *Neo-Colonialism. The Last Stage of Imperialism*, (London: Thomas Nelson & Sons, 1965).

6   Edward Said, *Orientalism* (London: Penguin Books, 1978).

es a modern temporality of progress. The concept of a decolonial transmodernity, first formulated by Enrique Dussel, is therefore used as an alternative to post-modern temporality.[7] But decoloniality is also a movement that theorises and criticises the coloniality of power, which structures modernity. Decoloniality, so Walter Mignolo argues, emerged during the Bandung Conference with the deployment of decolonisation on the stage of global geopolitics.[8] Ndlovu-Gatsheni proposes a different genealogy by tracing the beginning of decoloniality and of the decolonial turn itself to the Haitian revolution of 1791-1804, as the first successful movement against enslavement, racism and dehumanisation.[9] Decoloniality therefore asserts itself as a tradition of thought that stems from a tradition of anti-colonial struggle while refusing its bourgeois comprador and neo-colonial dimensions.

Some Decolonial Questions to the Decolonial Turn

Another crucial aspect of the conflicts between postcolonialism and decoloniality is premised upon their chronological assumptions. While the former tends to insist on the centrality of British liberal imperialism in India since the eighteenth century, the latter asserts that colonial modernity emerged during the fifteenth century with the European colonisation of the Americas. This explains the South American genealogy of decoloniality and also brings us to a central thesis: that race and colonialism are prior to the birth of capitalism. While formulating this argument, most decolonial thinkers are indebted to Anibal Quijano and Immanuel Wallerstein's theory of the world-economy.[10] I wholeheartedly agree that the birth of capitalism is determined by state violence,

a form of violence from which both race and coloniality stem, as any Marxian theory of the primitive accumulation of capital acknowledges. Nevertheless, what both Marxists and decolonials tend to forget is that the most important aspect of accumulation is not that it explains the origin of the capital but rather the way in which political violence is permanently at stake as capitalism unfolds and mutates. Hence, while postcolonialism and decoloniality help us insist on the modes of power that exceed the mere question of capitalism, race and colonialism also constantly participate in the very making of the capital. Decoloniality as a concept is a double refusal of both capitalism and Marxism, and it requires a non-aligned perspective. It questions liberal Euro-American capitalism while systematically refusing to be subsumed in the project of communism and of the Eurocentric leftist tradition. This theoretical non-alignment extends to postmodernism since one of the main criticisms of postcolonial theory formulated by decolonial thinkers is its dependency upon French theory.

One defining feature of decoloniality is the act of questioning the way in which postcolonialism depends upon European postmodern thought. Postcolonialism, so decolonials argue, is indebted to European critiques of modernity and, more precisely, to the French trinity of Deleuze, Foucault, and Derrida. Nevertheless, if this task is one of the foundational projects of decoloniality, then to what extent is it possible to remain indebted to philosophers such as Levinas and his concept of Otherness, or even to Wallerstein, as some decolonial thinkers do? To what extent is it possible to detach Fanon from his explicit references to Hegel, Marx, Sartre, or Merleau-Ponty, that is to say to European and Eurocentric thinkers?

I agree with the critique of the Anglo-centric dimensions of postcolonialism that it is a mode of scholarship that tends to exclude and marginalise not only the Americas but also North Africa and, in many respects, large parts of sub-Saharan Africa, by mainly focusing on the British colonisation of India.[11] Nevertheless, nothing assures us that the critical examination of coloniality

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7   Enrique Dussel, 'A New Age in the History of Philosophy', *Philosophy and Social Criticism*, 35, no. 5 (2009): 499-516. In this article, Dussel refers to another Arab and North African philosopher whose name is Mohammad Abed Al-Jabiri.

8   Mignolo, 'Geopolitics of Sensing and Knowing'..

9   Ndlovu-Gatsheni, 'Decolonization/Decoloniality', 113.

10 See Quijano and Wallerstein, quoted in Walter Mignolo, *Local Histories/ Global Designs: Coloniality, Subaltern Knowledges and Border Thinking* (Princeton: Princeton University Press, 2012), 53. 'The Americas were not incorporated into an already existing capitalist world-economy. There could not have been a capitalist world-economy without the Americas'.

11 Mignolo, *Local Histories/Global Designs*, 91.

is exhausted by the examination of its beginning or its deployment in 1492, or that an exclusive focus on this date might not marginalise some 'local histories' by positing the experience of the Americas as a paradigm of coloniality in the rest of the global South. Colonial modernity certainly does not begin with the industrial revolution and the nineteenth century. Can the critique of coloniality be reduced to the description of its alleged beginning? Should it not identify the way in which colonial power actually functions not only through European abstract universalism but also as the implementation of apartheid manifests, through its very criticism and the racial organisation of difference?[12] The analysis of its mechanism is not exhausted by the way in which its origin and its chronological beginning are situated; the historicisation of coloniality might have to be pluralised in relation to the multiplicity of non-Western epistemic sites.[13]

The colonisation of Africa, for instance, cannot be reduced to a mere continuation of 1492 or the transatlantic slave trade. One might argue that, from the point of view of Africa's history, European colonialism began in 1481 if not in 1452, as Mudimbe suggests, by formulating the principle that 'new worlds' in the plural actually were defined as *terra nullius* and that their inhabitants could be thus dispossessed and eternally enslaved.

Mudimbe thus writes:

> From the sixteenth century to the eighteenth, missionaries were, through all the 'new worlds', part of the political process of creating and extending the right of European sovereignty over 'newly discovered' lands. In doing so, they obeyed the 'sacred instructions' of Pope Alexander vi in his bull Inter Caetera (1493): to overthrow paganism and establish the Christian faith in all barbarous nations. *The bulls of Nicholas V-Dum Diversas (1452) and Romanus Pontifex (1455) had indeed already given the kings of Portugal the right to dispossess and eternally enslave Mahometans, pagans, and black peoples in general. Dum Diversas* clearly stipulates this right to invade, conquer, expel, and fight (*invadendi, conquirendi, expugnandi, debellandi*) Muslims, pagans, and other enemies of Christ (*saracenos ac paganos, aliosque Christi inimicos*) wherever they may be. Christian kings, following the Pope's decisions, could occupy pagan kingdoms, principalities, lordships, possessions (*regna, principatus, Dominia, possessiones*) and dispossess them of their personal property, land, and whatever they might have (*et mobilia et immobilia bona quaecumque per eos detenta ac possessa*). The king and his successors have the power and right to put these peoples into perpetual slavery (*subjugandi illorumque personas in perpetuam servitutem*).… The Church's involvement in establishing Western sovereignty was important both before and after the Reformation. The mass celebrated on the Guinea Coast in 1481, under a big tree displaying the royal arms of Portugal, symbolized the possession of a new territory. Among a multitude of other similar acts, Vasco Da Gama erected a pillar, engraved with the Portuguese royal arms, on the east coast in the kingdom of Melinda, and Diego Caon constructed another in 1494 at the mouth of the Congo River. These symbols were part of a formal and elaborate ceremony of appropriation of a terra nullius.[14]

I quote Mudimbe at length to show two implications of this analysis. First, the chronology of Western colonialism has multiple beginnings, both spatially and temporally, and therefore cannot be reduced to the conquest of the Americas. Secondly, if one de-

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12 This specific argument is made in response to Sabelo Ndlovu-Gatsheni by Suren Pillay, 'The Limits of Decoloniality', *MISR Review* 3 (May 2020): 141-152.

13 Beginnings are fundamentally unstable decisions and the kind of chronology that we use when we think of 'history', one might argue provocatively, is premised upon a modern/colonial practice of historiography.

14 V. Y. Mudimbe, *The Invention of Africa. Gnosis, Philosophy, and the Order of Knowledge* (Bloomington and Indianapolis: Indiana University Press, 1988), 58-59. My emphasis.

cides to start the history of Africa's colonisation in 1481, there is no reason Vasco de Gama and the Portuguese Empire could not become central from this perspective, as central as Columbus and the Spanish Empire are for South American decolonial scholars. The centralities of colonial histories are and must remain multiple centralities if one wants to avoid replacing the postcolonial focus on the British Empire with the idea that 1492 exhausts coloniality's essence by deploying its undeniably true beginning. Hence, an analysis of the contemporary predicament of Africa requires an understanding of the particular forms of colonialism that have been deployed on the continent. In this context, it is worth noting that the liberal projects of abolishing slavery have been used as a colonial instrument against Africans themselves. Similarly, the mode of colonial rule that proceeds from state racism but also from the codification of customary law and 'tribalisation' of power, a formation of coloniality that defines apartheid and 'indirect' colonial rule in southeast Africa, as Mamdani shows, cannot be reduced to the simple deployment of a logic allegedly unchanged since 1492.[15] On the other hand, the chronology of 'late imperialism' tends to equate the colonisation of the African continent with the Berlin Conference and the Scramble for Africa in a problematic way, thus living aside 1798 and 1830–the Expedition to Egypt and the conquest of Algiers–as crucial moments when North Africa was being both invented and colonised. In both cases, the crucial role of the *French* Empire in Africa is marginalised by *both* postcolonial and decolonial theories. Hence, rethinking global coloniality from a North African *epistemic site* presupposes both another point of departure and an alternative chronology in which 'world religions' play a crucial role. Such a chronology would have to start before 1492, before Western imperial Christianity becomes colonialism, either with the Crusades or, at least, with the *Reconquista* and the destruction of Al-Andalus, a world that connected what we now recognise as 'North Africa' and 'Europe' through an

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15   Interestingly, Sabelo Ndlovu-Gatsheni includes Mahmood Mamdani's theorisation of the bifurcated state in Africa as part of the African legacy behind the turn to decoloniality. Ndlovu-Gatsheni, 'Decolonization/Decoloniality', 113.

alternative geography,[16] and should reflect on the way in which the conquest of Algiers in 1830 participates in the colonisation of the Muslim world and the African continent itself before the Berlin Conference.

Border Thinking and Dialectical Reason

One crucial aspect of decolonial thinking is Walter Mignolo's opposition between border-thinking and the territorial divisions upon which area studies are constructed. Border thinking, Mignolo argues, is not reducible to the examination the border but requires an act of epistemic disobedience which stems from the border itself.[17] Thinking from the point of view of the border in which one dwells does not mean describing the limits of territories from the point of view of a particular discipline or the knowledge of a region. Border thinking is a double critique of both Marxism modernity and indigenous claims of tradition, a gesture that Mignolo distinguishes from Hegelian dialectics. Mignolo borrows the concept of double critique, essential to border thinking, from the Moroccan sociologist and thinker Abdelkebir Khatibi, as a refusal of both 'Eurocentric fundamentalism' and 'third world fundamentalism'.[18] While this act of double critique remains

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16   The relationship between the *Reconquista* and the conquest of the Americas is part of discussions on decoloniality: Mignolo, *Local Histories/Global Designs*, 49; Maureen Quiligan, Walter Mignolo, and Margaret Rich Greer, *Rereading the Black Legend: The Discourses of Religious and Racial Difference in the Renaissance Empires* (Chicago: Chicago University Press, 2007), 1-26, 312-324. See also: Gil Anidjar, 'The Future of Al-Andalus', *Journal of Spanish Cultural Studies* 7, no. 3 (November 2006): 225-239 ; Anidjar, *Blood: A Critique of Christianity* (New York: Columbia University Press, 2014), 53-92; Shaista Patel, 'The "Indian Queen" of the Four Continents: Tracing the "Undifferentiated Indian" Through Europe's Encounters with Muslims, Anti-Blackness, and conquest of the "New World"', *Cultural Studies* 33, no. 3 (2019): 414-436.

17   Mignolo, *Local Histories/Global Designs*, xvii-xviii.

18   Mignolo, 67, 173-174. In these passages, Mignolo quotes two of Abdelkebir Khatibi's books: Abdelkebir Khatibi, *Maghreb pluriel* (Paris: Denoël, 1983), available in translation as *Plural Maghreb: Writings on Postcolonialism*, transl. Burcu Yalim (London: Bloomsbury, 2019), and *Love in Two Languages* (Minneapolis: University of Minnesota Press, 1990). In other words, the very idea of border thinking deployed by Mignolo actually is North African to the extent that it is deployed from the point of view of the Maghreb as a non-region, a site which is neither entirely African, Asian, or Eastern, and thus disturbs the

crucial, one must still maintain that the criticism of third world 'fundamentalists' cannot, for strategic reasons, be deployed in the same way and the same spaces as the critique of Eurocentrism or racism. My argument, in other words, is that double critique must also be a differential critique by considering one crucial aspect of our postcolonial condition: namely, the inequality of power that affects Eurocentric and third world 'fundamentalisms'. The relation between Islamophobia and the criticism of Islamism is paradigmatic. The existence of the border that separates Europe from Africa and the Muslim world is manifested by their unequal relations. My point is that this inequality is materialised by the fact that the criticism of Islamism or third world religious 'fundamentalisms' formulated by intellectuals of the Global South becomes, more often than not, a criticism of Islam and Muslims, which participates in the legitimisation of Islamophobia in the West. Arguably, the conflicts produced by Salman Rushdie's *Satanic Verses* are a paradigmatic example of this phenomenon, as are the more recent caricatures of the Prophet in *Charlie Hebdo*.[19] Globalisation therefore creates conditions under which double critique is made impossible or actually is reversed so that the critique of 'third world fundamentalism' becomes a weapon against the criticism of Eurocentrism and a tool of colonial racism. Critique thus becomes one-sided and everything but 'decolonial'. This, of course, is certainly not how most decolonial thinkers think of double critique. Decolonials, one might object, assert that pluriversality is the *condition* of double critique. Their criticism of what they define as ei-

ther European or Third World 'fundamentalism' is the rejection of the idea according to which decolonisation could be achieved from the point of view of *one single tradition*. Hence, if fundamentalism means monolithism one might ask: does it also, potentially, mean *monotheism*?

This, of course, is not to reject the very idea of a double critique but to redefine by distinguishing it from the binary opposition of fundamentalism and pluriversalism. Indeed, if one reads Khatibi through Mamdani's theorisation of the bifurcated state as leading to the opposition between urban, elite languages of civil rights and 'nativist' claims of traditionalism and authenticity, the gesture of double critique can of course be defined otherwise: as what constantly *disturbs* this Janus-faced postcolonial order.[20] One might then ask: instead of analysing this situation as an *impasse*, as Mamdani does, can the permanent necessity of a *bifurcating critique* be seen as a crucial dimension of the decolonising gesture of double critique itself?

The project of de-Westernising or decolonising the canon and the university is also a crucial demand of decoloniality. It formulates itself through the idea of using non-Western theories of history against the hegemony of Western philosophies of history that Hegel exemplifies.

Mignolo thus explains:

> While Hegel had the right to invent 'absolute knowledge' and to believe that his fiction was universal, he didn't have the right to expect that his fiction would be universal beyond his own (and his followers') belief. Today, there is no more reason to accept the legacy of Hegel than of Confucius, Ibn Khaldun or Guaman Poya de Ayala. Of course, none of these people reflected on the phenomenology of the Spirit.…The five-hundred-years cycle is closing. If we would like to play with Hegel's fictional character, we can say

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very possibility of regional territoriality. Hence, crucial concepts of decoloniality cannot be seen as Latin American in their origins to the extent that one of its foundational aspects is linked to North Africa through Khatibi but also, arguably, through Fanon himself and his commitment to the internationalisation of the Algerian revolution.

19 For a famous and sharp critique of Salman Rushdie's *Satanic Verses* that also addresses these questions, see Talal Asad, *Genealogies of Religion* (Baltimore: Johns Hopkins University Press, 1993), 269-306. Asad analyses the presuppositions of the book and the way in which it nurtured anti-Muslim racism and affected Muslim immigrant communities in the context of postcolonial Britain. Because of its Islamophobic usages, one might add, the very notion of fundamentalism could be debated, especially in Western contexts.

20 Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 2018), 1-18.

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that today *Spirit liberated itself from the cage of Hegel's territoriality*. Now in its fourth stage (remember, the third was Europe of the Holy Roman Empire of the German nation) and its continuation in the United States, *Spirit is emerging in the borders, materializing border thinking and decoloniality*, superseding and liberating itself from the imperial era of Western modernity (that of Hegel).[21]

This quotation is suggestive, and one may ask what is Hegelian territoriality and to what extent is it modern and colonial? If decolonisation is the *Geist* liberating itself from Western modernity, does it mean that the decolonial moment must be seen as a new era of world history, as a new configuration of the *Spirit*? Therefore, should one maintain Hegelian time in order to think of decolonisation as a moment *in* time? Or should we rather think that the structure of modern temporality itself must be disturbed if not dissolved for 'decoloniality' to emerge? I agree with Mignolo that Hegel is one of the greatest philosophers of a Western modernity and thus of its coloniality. But this common claim complicates our vision of the problem and challenges the descriptions of coloniality upon which any act of decolonisation depends. If Hegel does express the hegemony of colonial knowledge that universities deploy as *disciplines*, it means that the question of coloniality in philosophy is not reducible to the Cartesian subject's *cogito*, but rather that the critiques of the subject/object divide and of universalism's abstraction, a typical Hegelian gesture, are already possibilities integral to modernity itself. It also means that a crucial element in the language of decolonisation comes from the heart of the imperial beast itself: namely, *dialectics*, a decisive aspect of what Hegel called 'absolute knowledge' and an organising structure of both Marxism and Fanonism. The claim of a theoretical non-alignment is certainly powerful and can be seen as a faithfulness to the spirit of Bandung as well as to African socialisms. Hence, this dilemma: how can a non-aligned epistemology remain dialectical without

deploying an imperial-Hegelian ontology by trying to refuse both Marxism and capitalism? Indeed, should not one always remember, as Mudimbe reminds us, that actors of non-alignment strategies all were Marxists?[22]

It is therefore impossible to begin a decolonial action with the assumption that we already know what the problem is. If 'absolute knowledge' is an expression of colonial modernity, then one needs to understand what this knowledge actually is before we can try and dismantle its global dissemination today. Absolute knowledge means the consciousness that Christianity has been made real in the modern world, that the essence of the Christian God is immanent to this world, and has been made immanent to it through history.[23] I therefore argue that Hegelianism can be seen as the birth of secularisation, a concept that defines modernity as the realisation of Christianity on Earth through the institutions of the modern state and its law as they emerge in the aftermath of the French Revolution. Hence, Christ's death and self-sacrifice are seen as theological representations of something that Christianity, as a religion, cannot fully understand—that the Kingdom of God is not transcendent but is now made real by the domination of the West and its modern industrial civilisation. God, therefore, is liberty, freedom itself. Hegelian dialectics thus emerge as part of this apparatus, as a language through which the divine is reconceptualised as a subject. This structure is the one Marx deploys when, in his *Introduction to Hegel's Philosophy of Right*, he defines the proletariat as a revolutionary subject, a collective force, and a historical actor entitled to become 'everything' because it has nothing to lose.[24] Its alleged nothingness functions as an election.

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21   Mignolo, *Local Histories/Global Designs*, xiv-xv. My emphasis.

22   V. Y. Mudimbe, *The Idea of Africa* (Bloomington and Indianapolis: Indiana University Press, 1994), 42-43.

23   Hegel, *The Phenomenology of Spirit*, trans. Terry Pinkard (Cambridge: Cambridge University Press, 2018), 346-347, 475. On the death of God—'the harsh phrase that God is dead'—as the tragic experience of loss that paves the way to absolute knowledge, see 431, CC, § 752.

24   Karl Marx, 'A Contribution to the Critique of Hegel's Philosophy of Right. Introduction, 1843-4', in *Early Writings* (London and New York: Penguin Books, 1992), 243-258. On the theological and Biblical aspects of this Marxian text, see Étienne Balibar, 'The Messianic Moment in Marx' in *Citizen-Subject: Foundations*

This subject, so Marx argues, is the only real site from which a radical secularisation can emerge in order to pave the way for the practical dissolution of religion as a result of a radical socialist emancipation. Religion is thus defined as an opium for that very reason—in order to refuse a form of political atheism asserting that the criticism of religion would be, as such, an act of liberation. This discursive strategy makes revolutionary communism possible. The spectre of Hegelian dialectics haunts Marxism from the beginning to the end. As the very definition of communism at the end of the first volume of *Capital* testifies, the inevitable revolutionary expropriation of the expropriator is the *negation of the negation*. The Hegelian language of negativity as the essence of the absolute thus becomes the language of the revolutionary subject, leading dialectical reason to express both the historical and logical necessity of this process. The debates surrounding this notion are famous, from Engels' defence of the naturality of dialectics to explain the *necessity* of the negative and to legitimise its scientific value until Sartre's critique of this naturalisation.[25]

This conceptual trajectory from which dialectics emerge as a language is part of the intellectual domination of the West. Accordingly, the situation in which we find ourselves as Africans and non-Western thinkers or activists is much more ambiguous than one might think, to the extent that decolonisation has been historically conceptualised through the lens of Marxism and thus of negativity. The way in which Sartre has been involved in the writing of forewords to several central texts of African writers, including Senghor and poets of the negritude movement, Albert Memmi, and of course Fanon himself, is telling. In *Black Orpheus*,

Sartre famously describes negritude as the 'moment of separation', the negation of the negation enacted by colonial racism, thus describing as a moment within a dialectical movement that ought to be dissolved by its very deployment.[26] While Fanon critiques this *reduction* of the Black experience to a mere moment in a logical apparatus in *Black Skin, White Masks*, the preface to *Wretched of the Earth* repeats a similar gesture.[27] Sartre thus translates the Fanonian idea of violence as a defining feature of all decolonisation into the *Hegelian* concept of *negativity*. The decolonisation of Africa, Asia, and America therefore becomes the non-European negation of a European negation of the Third World. The non-Western subject emerging from anticolonial violence is therefore defined through the theory of the subject deployed by Hegelian Marxism. Sartre's interventions in the theory of decolonisation are nevertheless typical of what I would call a Western self-criticism of Eurocentrism, the way in which French and Western Marxists thought of Africa and the Third World as the sites of a world revolution whose language was Marxism. Hence, by theorising Africa and the Third World as the new centre of world revolution and of humanity's history, Sartre was globalising the language of Hegelian and Marxist dialectic that was then defined as the expression of social reality. The making of Africa and the Third World's own history, a decolonisation which must in principle be irreducible to the continuation of *Europe's* history, was being expressed in a language that owed its own power to the West. While history has a new subject that is non-Western, the structure of historicity itself

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for Philosophical Anthropology, trans. Steven Miller (New York: Fordham University Press, 2017), 143-154.

25 Friedrich Engels, *Dialectics of Nature* (New York: International Publishers, 1963). Sartre argues that Engels deprives dialectics of its rationality by arguing that it is a natural phenomenon. Hegel and Marx, so Sartre argues, conceived of the *reality* of dialectics in the social world, in men's relation to nature and to fellow human beings. Hence, the existence of dialectics in nature can only be the object of belief and not of knowledge or science. See Jean-Paul Sartre, *Critique of Dialectical Reason* (London, Verso, 2004), 1:27-33.

26 Jean-Paul Sartre, 'Black Orpheus', *Massachusetts Review* 6, no. 1 (Autumn, 1964–Winter, 1965): 18. 'The unity which will come eventually, bringing all oppressed people together in the same struggle, must be preceded in the colonies by what I shall call the moment of separation or negativity; this anti-racist racism is the only road that will lead to the abolition of racial differences. How could it be otherwise? Can black men count on a distant white proletariat—involved in its own struggles—before they are united and organized on their own soil?'. On the stakes and the Fanonion critique of this Sartrian text, see Souleymane Bachir Diagne, *African Art as Philosophy: Senghor, Bergson and the Idea of Negritude* (London, New York, and Calcutta: Seagull Books, 2011), 30-31.

27 Jean-Paul Sartre, preface to *The Wretched of the Earth*, by Franz Fanon (New York: Grove Press, 2004), li: 'we only become what we are by radically negating deep down what others have done to us'.

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remains dialectical, Hegelian, and, for this reason, both Christian and Western. As the birth of a new human and a new subject, dialectic remains the midwife of history's next stage.

In other words, it might not be possible to posit Fanon as a theoretical solution to the dilemmas engendered by our colonial past and present by virtue of its place of birth and its non-Western biography. Instead of evaluating authors, ideas, or theories by deciphering their Western or non-Western origins, one might look at their structure. The question of decolonisation is thus inseparable from another: is there something in Fanonian dialectics that exceeds the Hegelian scheme of both teleology and negativity deployed by Sartre?[28] Indeed, if decolonisation is another form of the negation of a negation, as Sartre's reading of Fanon and decolonisation suggests, then its very concept is the effect of the globalisation of a Western ontology, both Christian and secular.

Decolonisation must therefore be more than a simple return to Fanon. Such a return would be inseparable from an unacknowledged return to Hegel and Marx that must be problematised as names of a European language whose globalisation in Third World communism must be understood critically. Accordingly, decoloniality needs to engage critically with if not to dissolve its relation to Hegelian-Marxism for theory to actually be a decolonial practice, and without falling into the 'Eurocentric' trap of postmodern or even postcolonial theory. One possible outcome and pitfall of the legitimate refusal of postmodernism is to enact a simple return to Fanon and Sartre, a return before the Foucauldian moment and the failed gesture of dissolving Hegel and dialectic from which Heidegger's philosophy and French poststructuralism both stem. Therefore, decoloniality cannot be a 'turn' as long as it thinks of itself as a mere *return* to something that was lost by decades of postmodern and postcolonial thinking. And if we, as decolonials, are indebted to a movement of decolonisation which started as soon as colonialism was actively refused, then being decolonial

means nothing else but the continuation of this process by other means. Hence, for decoloniality to be more than a return to *anti*-colonialism after *post*-colonialism, it must be a way of belonging to a tradition of insurrection that requires a critical relation to the possibility of its momification in the present.

Colonial Geographies of Race and Religion

The spectre of Hegel haunts decolonisation in many ways. As we saw, Mignolo defines Hegelian territoriality as the foundation of the colonial imposition of area studies. What is this kind of territoriality and how did it shape the dominant geographies of the world? Is border thinking compatible with fixed chronologies such as 1492? How does the criticism of area studies help us reconceptualise Africa? My argument is that colonial geographies created what Ali Mazrui has described as a multiple marginality of Africans premised upon the divide of Africa into racialised regions which in turn imply that Africa and Asia can be divided along racial lines.[29] Hegel's colonial and violently racist exclusion of Black Africa from world history is inseparable from a gesture by which the north-eastern part of the African continent, namely Egypt, is being Orientalised while the north-western part of Africa, the Maghreb, is being Europeanised. The racial divides between Blackness and Arabness on the continent stem from here and continue to make a continental liberation impossible.

The multiple marginality of the Sudan has been analysed by Ali Mazrui. Both an Arab and African country, Mazrui argues, Sudan does not function as a bridge between the Middle East and Africa but instead stands at the margin of both regions.[30] The making of regions that manifests itself in the case of the Sudan tells the larger story of how Africa and Asia are placed in opposition and how this division prevents a certain kind of pan-African perspective to emerge. Multiple marginalities, a phenomenon of colonial

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28 Among Fanonian interpretations, Sekyi-Otu has formulated the question in its deepest and most illuminating form: Ato Sekyi-Otu, *Fanon's Dialectic of Experience* (Cambridge: Harvard University Press, 1996).

29 Ali Mazrui, 'The Multiple Marginality of the Sudan', in *Sudan in Africa*, ed. Yusuf Fadl Hasan (Khartoum: Khartoum University Press, 1971), 240-256.

30 Mazrui, 241. The marginality of the Sudan in Area Studies, Mazrui asserts, 'has links with the marginality of the Arabs themselves, as between Africa and Asia'.

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geographies, reveals something about the way in which the continent is constantly being divided on the basis of race. The inability to think of North Africa within the territorial spaces of area studies vindicates this crucial aspect of coloniality. Hence, the marginality of North Africans is not reducible to the marginalisation of one racialised minority. North Africans are not racialised as Africans but rather are de-Africanised by the West as either Muslims or Arabs. The global making of racism is thus inseparable from a Westernising tendency to analyse Africa's history through the lenses of the *Western* concept of race and through the opposition between Blacks and Whites. On the African continent, racial divisions between Blacks and Arabs have been implemented by European colonial knowledge as a particular modality of the Black and White hierarchy. This racial geography has played a crucial role in the colonial making of the actual boundaries of Africa. While asserting the racial superiority of Arabs over Blacks in what was to become the Hamitic hypothesis, European colonialism also has invented the roots of an anti-Arab narrative—namely, the idea according to which North Africans and Arabs could be seen as *colonisers*, thus positing Blacks as their alleged *victims* in *both* a Negrophobic and an Arabophobic manner.[31] Consequently, Islam came to be racialised as an Arab religion while 'Black Islam' was either marginalised or celebrated as less violent by virtue of the very act of its colonial isolation from the alleged 'orthodox' Islam of the Arab world.

The separation between North Africa and sub-Saharan Africa is only one aspect of the colonial dimensions of global geography. While conceived as a geographic part of the African continent from the point of view of space, it is commonly and uncritically

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31 Général Faidherbe, *Le Sénégal: La France dans l'Afrique occidentale* (Paris: Librairie Hachette, 1889), 14-16, 165. The racial division of North Africa as White Africa and West Africa as Black deploys both Negrophobia and Negrophilia, both North-Africanophobia and North-Africanophilia, Arabophobia and Arabophilia. Indeed, Blacks are deemed good and less intelligent than North Africans, who are deemed more intelligent but more violent to the extent that they are also potential enslavers of the Blacks. In a gesture typical of his racism, Faidherbe asserts that the Toucouleurs 'have been corrupted by Islamism, which rendered them as dishonest and stealers [of] the Moors'.

assumed as self-evident from the point of view both of history and civilisation that North Africa belongs to the Arab world or to southern Europe and the Mediterranean. As a result, the *Maghreb* appears as a margin both of the Arab world self-defined as the Mashriq, and of Africa once defined as the 'Black continent'. Located on the eastern limit of North Africa, Egypt is posited as a centre by the Western making of the 'Middle East/Arab world' while sub-Saharan Africa is identified as 'Africa proper'. Questioning the divide between North Africa and West Africa requires a critique of how geographical reason produces the 'global'. The divides between Asia and Africa, North Africa and sub-Saharan Africa, Arabs and Blacks are produced by a specific from of rationality. The critique of its effects in Western African and Middle East studies thus requires a sustained attention to the kind of reasoning that makes this divide possible, but of which it is only a particular formation.

The Northern part of the African continent is and has been de-Africanised. As the idea of sub-Saharan Africa testifies, the colonial construction of the Sahara as a desert that allegedly separates the North from the rest of the continent plays a major role in the making of global geographies. To the extent that it traces the boundaries between a European Africa and a 'Black' African continent, the predominant idea of North Africa as 'non-African' is obviously racial. European colonialism constructed the divide between North Africa and sub-Saharan Africa as a racial hierarchy between White and Black Africans but also as a religious opposition between two different forms of Islam.

The French colonial tradition of Africanism has certainly played a crucial role in the making of North Africa's multiple marginality. Faidherbe, the French General who played a major role not only in the colonisation of Senegal but also in the making of European 'scientific' knowledge about Africa, is often described as a founding father of this racial divide.[32] It is less commonly ac-

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32 Jean-Loup Amselle, *Vers un multiculturalisme français. L'empire de la coutume* (Paris: Flammarion, 2001), 118.

knowledged that early-nineteenth-century German comparative geographies and philosophies of history were more than instrumental in the making of this divide. The Western construction of religions and cultures is thus a condition under which the colonial reconstruction of Africa and the Sahara has been made possible. Hence, global geography should be analysed as an effect of secular reason. The divisions between North Africa and Africa are formations of a new form of geographic reason that is commonly defined as 'modern' or 'secular', a discipline which emerges institutionally in nineteenth-century Germany under the influence of Humboldt and Karl Ritter.

Hegel's *Philosophy of History* bears the most widely read trace of its disciplinary deployment. The idea that there is a radical separation between North Africa and the 'Black continent' or 'Africa proper' is a crucial assertion that characterises Hegelian geography.[33] As is well known, Hegel excluded Africa from the 'theatre of History' by reducing the existence of 'Black men' to natural life. Despite the uncountable numbers of pages which have been written on Hegel's obvious racism, critiques seem to have generally failed to analyse a crucial aspect of the *geography* which both conditions and sustains the way in which Africa is conceptualised by European systems of thought. First, the exclusion of Africa from History presupposes the exclusion of North Africa from Africa. Secondly, it presupposes both the Orientalisation and the Occidentalisation of North Africa, of Egypt and the Maghreb. Thirdly, the Orientalisation of Egypt is the condition of its belonging to World History from which the Maghreb, or 'European Africa' in Hegel's words, is excluded. According to Hegel, the Maghreb is a region whose history has always been written elsewhere. Its history is conceptualised by Hegel as a chain of events whose common denominator is colonialism. The concept of North Africa that informs its geographical mar-

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33 See Teshale Tibebu, *Hegel and the Third World: The Making of Eurocentrism on World History* (Syracuse: Syracuse University Press, 2011), 172-175. The original manuscript of 1830/31 has been edited by Klaus Vieweg: Georg Wilhelm Friedrich Hegel, *Philosophie der Geschichte* (München, Wilhem Fink Verlag), 66-70. My comments refer to this manuscript.

ginalisation is sustained by a narrative—that North Africa would have always been colonised. The Phoenicians, the Romans, the Arabs, and the Turks, all these Empires would have been the exterior subjects of North African history. Hence, the history of North Africa is reduced either to a margin of Europe's or Asia's history. Africa can thus be excluded from World History under condition that North Africa is conceived as having no history of *its own*. The Hegelian erasure of Africa is inseparable from the marginalisation of the Maghreb and from the centrality of Egypt as a bridge between East and West in the progressive movement of History. The centrality of Egypt thus comes from the fact that Egypt's history is conceptualised neither as African nor as North African.

Two assumptions are being made by Hegel. Firstly, Hegel's Africa corresponds to a radical and natural spatiality. It refers to a pure geographical entity that is not inhabited by time, which, for Hegel, means both spirit and freedom to the extent that history emerges from the negation and the transformation of nature. Secondly, a colonial continuity is assumed to the extent that, from Rome to France, the colonisation of the Maghreb appears as the permanence of one structural phenomenon. Hence, the *singularity* of European colonialism and the dehumanising horror of transatlantic slavery are denied in a colonial manner which falsely suggests that European slavery or colonialism is a mere continuation of indigenous practices by either Black or Arab Africans. The Hegelian racial geography of Africa and the denial of Black Africa's history results in positing the French colonisation of the Maghreb as a natural continuation of a colonial process that is supposed to be inscribed within the essence of North Africa itself as either Oriental, as Egypt is said to be, or Occidental, as Algeria is supposed to be. In other words, the Maghreb becomes the colony *par excellence*, a space which cannot exist otherwise than by being colonised. The epistemic reduction of North Africa to the status of a permanent colony since Antiquity prepares its further colonisation by modern Europe. Accordingly, North Africa is doomed to become European by the dictates of Hegelian reason. Through the

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Europeanisation of North Africa, the German philosopher affirms his enthusiastic support of the French colonisation of Algeria.

The construction of North Africa's multiple marginality is part of the Hegelian erasure of Africa from the drama of World History. As such, it should be analysed as a conceptual apparatus through which European reason has prepared the birth of a new kind of colonialism in Africa. Far from being the invention of an author, this conceptual geography has informed the Euro-colonial divisions. By separating North Africa from Africa, Hegel participates in the making of two inseparable colonial themes: the idea of Black Africa's isolation from the rest of the world, and the definition of North Africans as White and therefore as non-Africans. Africa is being isolated from the rest of the world, conceived of as lingering in a sort of immediacy in which the continent would lack an effective consciousness. North *Africans* are simply made impossible. The racial definition of North Africans as 'White' and as enslavers or of Black Africans is thus a crucial part of how they are promised to colonisation and doomed to be transformed into what French settler colonialism wanted them to become—namely southern Europeans. But the idea according to which North Africans or Arabs are defined as oppressors and thus defined as White belongs to the longer history of the way in which the African continent itself was colonised.

Hence, the Hegelian gesture divides Africa into three continents: Africa proper or Black Africa, Europe or the Maghreb, and Asia or Egypt. While Africa is excluded from history, North Africa is both Occidentalised and Orientalised by Hegel.

The Orientalisation of North Africa

This trifold partition of the continent, this splitting of Africa into three continents, is not only Hegelian. It goes back to Ritter's geography and finds a decisive echo in Faidherbe's colonial writings but also in the expedition to Egypt, arguably a founding moment of modern orientalism. In Napoleon's *Description de l'Égypte*, Egypt was already *geographically* conceived as a part of the African continent.[34] But Egypt was Orientalised in order to be converted into a History-making subject by being conceived of as a transition from Asia to Europe in the drama of human liberation from nature, a gesture that structures Hegel's *Philosophy of History*. French colonisers in Algeria have always seen its geography as African and the colonial army that had to colonise the country was called 'the African army' (*L'armée d'Afrique*). Instead of asserting the Africanity of North Africa *against* the claims of its Arabness, one has to analyse how this double inscription was transformed into an embodied schizophrenia by colonialism itself. The conflicts between the African and the Arab geographies of North Africa can be seen as two faces of a colonial division that have been deployed on the continent. The history of these conflicts belongs to the way in which Africans and Arabs have been mutually divided and defined as exclusive ethnicities or races by European colonialism. Through the making of these conflicts via the racialisation of geographic boundaries, the contradictions of European imperialism are made manifest. Colonialism was able to divide 'white' Africa from 'black' Africa through race only after having used analogous technologies of domination in order to colonise both as parts of one continent. Racialised geographies are thus ideological to the extent that they tend to conceal the territorial conditions under which they are made enunciable, thus obscuring the ways in which colonialism effectively functions in Africa. Colonialism has historically asserted racial divisions between North Africans and Black Africans to the extent that it has used the colonisation of the latter as a means to colonise the former. Accordingly, one of the stakes of this essay is to show how the *racial* divide between North Africa and 'black' sub-Saharan Africa solidified as colonisers were disseminating imperial techniques of warfare from Algeria to Senegal. While, after Hegel, Faidherbe implemented this divide through the invention

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34 Napoleon Bonaparte, *Campagnes d'Égypte et de Syrie* (Paris: Éditions de l'Imprimerie Nationale, 1998), 49. 'L'Égypte fait partie de l'Afrique. Placée au centre de l'ancien continent, entre la Méditerranée et l'océan Indien, elle est l'entrepôt naturel du commerce des Indes'.

of colonial Africanism,[35] the ways in which the French Empire has been dividing the African continent while colonising territories on both sides of the Sahara must be analysed as a crucial moment in the making of Africa's contemporary predicament. This position, as I will argue, corresponds to Fanon's *Algerian Panafricanism*, an African, North African, and Caribbean strategy that tends to be ignored by postcolonial and decolonial critics alike. This Fanonian strategy, I believe, needs further elaboration for a decolonial perspective to be redeployed.

Pan-Africanism and North-Africanism

The Fanonian idea of Africa as emerging from the dissolution of the Sahara as a border between Black Africa and North Africa is a profound attempt to challenge this geography. This truly continental Panafricanism *has been* Algeria's revolutionary Panafricanism. Hence, the deployment of the Algerian war can be seen as a political and a geo-epistemic act of decolonisation. 'We Algerians', so asserts *El Moudjahid*, 'do not dissociate the combat we are waging from that of the Rhodesians or the Kenyans'; a declaration materialised in concrete assistance and support to African countries and the organisation of guerrilla training camps by the Algerian National Liberation Army.[36] This Panafrican vision emerges in the context of a criticism of colonialism but also, more precisely, of French colonialism in Africa. This idea of Panafricanism reading

of colonialism in Africa is inseparable from a criticism of colonialism, which asserts the centrality of the French Empire in the making of colonial and postcolonial Africa.[37] Theorising this position, Fanon asserts that Algeria is this Africa which must be deployed in the continent by transporting arms and munitions from Bamako, thus stirring up the Saharan population to enact an uprising, thus defining Algiers as the continental city. Hence the idea of dissolving the desert and unify the two parts of the African continent. 'What I should like', Fanon writes, are 'great lines, great navigation channels through the desert to assemble Africa, create the continent'.[38] Beyond any glorification of violence, Fanon's concept of decolonisation implies that the Algerian struggle can be a model for the African continent. Arguably, this kind of Panafricanism, theorised by Fanon, is the first to advocate the inclusion of North Africa in Africa and the deployment of a truly continental perspective.[39]

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35 Général Faidherbe, *Le Sénégal: La France dans l'Afrique occidentale* (Paris, Librairie Hachette, 1889), 14-16. 'There is nothing, for example, most dissimilar in the world than *Berbérie* and the Sudan, although geographers have wanted to bring them together under the name of Africa' writes Faidherbe. What separates these 'two parts of the world' is 'the Sahara' and this 'barrier is more serious than a sea' such as the Meditarranean, which separates Europe from the Maghreb. Hence, the most 'striking contrast', according to Faidherbe, is racial: 'North of the Sahara, the White man, active, industrious, resilient, struggling against nature and often modifying its laws; South of the Sahara, the Black man who, in its apathy, submits to nature as a slave, and regarding whom civilized people have been guilty, the Black man, naturally good, whose intelligence is comparable to that of many white races but who, lacking character, i.e. a force of will, prediction and resilience, will always be subjected to other races'. See also: Faidherbe, 165.

36 *El Moudjahid*, quoted by Jeffrey James Byrne, *Mecca of Revolution. Algeria, Decolonization and the Third World Order* (Oxford: Oxford University Press, 2016), 84.

37 Frantz Fanon, *Toward the African Revolution* (New York: Grove Press, 1967), 115-119 and 129-131. 'Now it so happens that, because the Algerian Revolution exists in Africa, *the claim to nationality* of the other African peoples finds broad inspiration in the very movement of our Revolution.…In 1958, France is incapable, materially and humanly, economically and politically incapable of undertaking a war in Africa south of the Sahara. This is why the African people must go forward, increase their pressure and demand, right now, their independence. The African masses and the African elites must make arrangements at once to pass over to direct action, take arms, sow panic in the colonialist ranks. The FLN and the ALN are ready, for their part, to help the African people in their struggle for liberation. It shall not be said that French imperialism after its departure from Algeria can still maintain itself in Africa. The slogan must be: "Africans, men and women of Africa, to arms! Death to French colonialism!".' This position is the *international* position of the Algerian revolution in the Third World and particularly in Africa. The year 1958 corresponds to the moment when De Gaulle deployed the strategy of the 'French Community', a neo-colonial integration of North-African newly independent states into a larger community governed by France, by proposing a referendum. The explicit aim was to maintain Algeria within this new imperial formation. See Byrne, *Mecca of Revolution*, 79. Indeed, *El Moudjahid*, the FLN's revolutionary journal, has warned that 'every African who votes in the referendum will chain his people and his country a little bit tighter to French colonialism', *El Moudjahid*, quoted by Byrne, *Mecca of Revolution*, 80. See also Fanon's 'Appeal to Africans' and 'Sequels of a Plebiscite in Africa' in *Towards the African Revolution*, 132-143.

38 Fanon, *Towards African Revolution*, 180-181. For the French original, see Fanon, *Œuvres* (Paris: La Découverte, 2011), 829-830, 861-862.

39 Fanon, 'The Algerian War and Man's Liberation', in *Towards African Revolution*, 144-147. Fanon characterises Algeria as a 'guide territory' for the Third World

Fanon thus writes:

> The Franco-Algerian conflict has presented the co-
> lonial problem on the scale of Africa. The other co-
> lonial powers in Africa follow the evolution of the
> Algerian war with anxiety and terror. And now at
> the other end of the Sahara, independent Guinea is
> casting her 'subversive' shadow in the direction of
> the best-held territories. Algeria, the *bridgehead* of
> Western colonialism in Africa, has rapidly become
> the hornet's nest in which French imperialism has
> got itself stuck and in which the insensate hopes of
> the Western oppressors have been swallowed up.[40]

This quotation illustrates the way in which the French Empire in North-Western Africa is, according to Fanon, a central actor of the colonisation of the entire continent and is therefore paradigmatic of the way in which Africa has been colonised. Hence, the uprising against its settler colonial centre in Algeria is, so Fanon constantly argues, a struggle against the entire colonial apparatus in North-Western Africa and virtually implies the liberation and unification of the African continent itself.

North Africa thus appears as a decolonial epistemic site or as a space in which the geography of Africa's partition and of the world's colonisation can be challenged. The global resonance of the Algerian revolution theorised by Fanon thus seems to become the dissolution of a whole colonial geography. Hence, a dialectical relation between North-Africanity and Pan-Africanism lies at the foundation of the Fanonian idea of decolonisation and remains one of the unthoughts of both decoloniality and postcolonialism. Nevertheless, decoloniality forces us to radicalise the geography of anticolonial politics into a geography of liberation. In other words,

what lacks in Fanon and the Algerian war's anticolonial concept of Third World internationalism is an understanding of what I would tend to call North Africanity. Beyond the geo-strategies of political decolonisation, the very concept of North Africa challenges what South American decolonial thinkers call the geopolitics of knowledge. This extension of decolonisation beyond the realm of politics, a gesture typical of decoloniality, would thus mean questioning our very concepts of space. Hence, the existence of a site such as Africa could be reconceptualised through the dissolution of the very structures by which one locates and separate regions in the world, namely the Western and colonial organisation of time and space upon which the very making of world history, continents, and 'areas' depend.

North Africanity could therefore be the name of both a condition and a mediation rather than a mere geographical location, a way of describing a point of view on the African continent and the Global South but also a site from which the very word 'Africa' comes, thus including the 'diasporic' experience of Africans both from North Africa and in the Global North. This perspective that I propose to describe here as North Africanity or North Africanism certainly is presupposed by the Algerian moment of the Fanonian concept of decolonisation and the mediating role that Senghor attributes to North Africans in the context of the unification of African unity.[41] In this geography of unity, North Africa can be conceptualised as a bridge between sub-Saharan Africa and other continents or region such as Europe or the Arab world. But

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and from the decolonising perspective opened by Bandung. 'Whereas Tunisia and Morocco, as protectorates, were able to reach independence without fundamentally challenging the French empire, Algeria, by its status, the length of the occupation, and the extent of the colonialist foothold, raises in broad daylight and in a critical fashion the question of the collapse of the empire.'

40 Fanon, 'The Algerian War and Man's Liberation' in *Towards African Revolution*, 147, my emphasis.

41 In a discourse pronounced in 1967, four years after the foundation of the Organisation of African Unity in Addis Ababa, Leopold Sédar Senghor defined the unity of Africa as the symbiosis of Arabité and Negritude, of the 'Arabo-Berbers' and 'Negro-Africans', a unification he tends to describe as a synthesis of cultural values. Senghor thus writes: 'If we hope to build a united Africa, we must do it solidly and for that we must found it on points of *cultural convergence*, not on our political differences. I have said that there are two cleavages, two obstacles to the realisation of African unity: the gap between Francophones and Anglophones, and the *gap between Arab-Berbers and Negro-Africans*. The second seems to me the more important, because it is older and stems from the ambivalent nature of Africa'. See Leopold Sédar Senghor, 'The Foundations of "Africanité" or "Négritude" and "Arabité" (1967)', *Critical Interventions* 3, no. 1 (2009): 166-169, my emphasis.

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what Mazrui shows in the case of Sudan holds true here: what is *supposed* to be a *bridge* actually is and acts as *multiple margin*. For this reason, North Africa and North Africans are permanently marginalised and made schizophrenic when it comes to choosing their place on this racialised map between Africa, the Arab world or the Mediterranean.

As a North African philosopher living in the Global North, my political commitment to the epistemic, artistic and political continuation of decolonisation is inseparable from the necessity of analysing North-Africanity as a space between nations and continents, an intractable site which is less comparable to a bridge than to what Ibn Arabi calls a *barzakh*: a heterological space between the poles of presence and absence, which is nevertheless real and ontologically consistent.[42] Unlike a bridge, this in-between space that also is the *inter*-national and *inter*-continental site of decolonial struggle and thought does not leave the separated poles as they are. It *unifies* continents to the extent that it questions the modality of their *presence* in the imperial global map and the existence of the globe itself. Hence, the heterological dimension of this space, as a Scene which remains Other, *irreducible* to the modern *territorialisation* of space.

This concept is not merely metaphysical. The positionality that space authorises cannot be detached from the political necessity of struggling against anti-Black racism in the West and the specific forms anti-Blackness take in North African countries but also of struggling against another face of systemic racism: the violent and still vivid Islamophobia that Arabs, North Africans and Blacks are subjected to under the name of 'secularism' in the West. Solidarity with ongoing Black struggles in America and with the African continent's political struggles for justice and democracy in Sudan or Algeria are inseparable, in my view, from a criticism of the way in which North Africans experience de-Africanisation,

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42   I am indebted to Stefania Pandolfo's inspiring parallel between Khatibi's notion of 'différence intraitable' and *fitna* as well as between Ibn Arabi's *barzakh* and Freud's Other Scene. See Stefania Pandolfo, *Impasse of the Angels* (Chicago and London: University of Chicago Press, 1997), 5-9.

either by being de-Africanised or by de-Africanising themselves. Hence, North Africanism does not mean that we must first be united as North Africans before we can unify ourselves with the rest of the continent even though the decolonisation of Algeria always was linked to the requirement of unifying the Maghreb. It means something else: the recognition that our contribution to Africa requires that we make sense of our specific position as Arabs and Africans without choosing one dimension against the other, as we are always pushed to do. This gesture cannot be achieved without a critical understanding of how colonialism has predominantly racialised North Africans as Muslims, as the case of colonial Algeria testifies: a settler colony in which being a Muslim meant being a French non-citizen subject, in which Islam meant race. But as a destruction of this settler colonial order, the Algerian revolution had a multiple centrality for the Global South, a centrality encapsulated in the formula of a 'Mecca of Revolution'. It is from this point of view that the contribution of North Africa to Africa and decoloniality might make sense, as both Fanon and Senghor themselves differently anticipated. The faithfulness to this historical moment of decolonisation means more than a reproduction or the assertion of a nationalistic glorification of the Algerian war. It means the extension of its spatial logic beyond Algeria, the differed continuation of the revolution of space it has made thinkable.

Pan-Africanism and The Question of Sovereignty

However, these questions of space bring us to another tension within the question of decolonisation and decoloniality—namely the question of the modern nation-state and the forms of federations it allows. Arguably, the territoriality that decolonials rightly critique as colonial and modern is inseparable from the emergence of the nation-state's governmentality. This question, as I will now show, is inseparable from the contradiction between a critique of modernity and the idea of its possible indigenisation in the context of postcolonial modern nation-states.

Both postcolonial and decolonial thinkers tend to oscillate

between, on the one hand, a critique of Western modernity that allows for non-Western modernities, and on the other, a critique of modernity *per se*.[43] A tension between decoloniality and decolonisation or, more precisely, about the questions that their differentiation raise, depends upon this first tension. Indeed, non-Western anticolonial projects were indebted to a socialist project of industrialisation, and therefore of modernisation. In terms of politics, decolonisation was actually expressed through Marxist languages, notably among the elites. Is the perspective of a new world centred around emerging world powers such as China, Russia, or India identifiable with the end of modernity and coloniality, as Sabelo Ndlovu-Gatsheni seems to argue?[44] Or should they rather be

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43   Walter Mignolo, *The Darker Side of the Renaissance* (Durham: Duke University Press, 2011), 118-148, 133-134. Mignolo refers to Partha Chatterjee's idea of an Indian modernity—our modernity—that is irreducible to Western modernity— their modernity. This gesture is thought of as decolonial. The texts quoted are: Partha Chatterjee, *A Possible India: Essays in Political Criticism* (Delhi: Oxford University Press, 1997); Partha Chatterjee, *Our Modernity* (Dakar: Sephis- Codesria, 1997).

44   Sabelo Ndlovu-Gatsheni, 'Decoloniality as the Future of Africa', *History Compass* 13, no. 10 (2015): 485-496. At the end of this paper, Ndlovu-Gatsheni writes that decoloniality in Africa corresponds to the agenda of the pan-African Union that he describes as a 'paradigm shift from coloniality to pan-Africanism and African Renaissance'. It 'envisions a new African humanity living in a free, united, peaceful, and prosperous Africa. The decolonial call is for Africans to free themselves from the shackles of coloniality that is pervasive in the domains of power, knowledge, and being. What is envisioned by decoloniality are African people as *active and free makers of their own futures*. Within the broader Global South context, the decoloniality movement has produced such South–South formations as the Brazil, Russia, India, China, and South Africa that is geared at shifting economic power from the West. This has led Mignolo to coin the term "de-westernization" as part of decoloniality'. Drawing on wa Thiong'o's book, *Decolonizing the Mind*, Ndlovu asserts that decoloniality heads toward a new humanity and the unification of a fragmented continent. The new human thus emerges from the construction of a new kind of society structured by post-racial pluriversality and the dissolution of Eurocentric monolithism: 'Ngugi wa Thiong'o has enriched the decoloniality archive with future-oriented concepts such as decolonising the mind, moving the centre, re-membering, and globalectics, which clearly indicate capturing the state of the decolonial movement and its desire to set afoot a new humanity. Decolonising the mind speaks to the urgency of dealing with epistemicides and linguicides. Moving the centre addresses the problem of Euro-North American centrism. Re-membering is about uniting a dismembered and fragmented continent. Globalectics gestures towards *post-racial pluriversality* as the home of new humanity'. The promise of a 'new humanity' therefore refers to a social construction characterised by

seen as de-Westernisations of modernity's propensity to engender violence through the globalisation of the State? Are these newly emerging geopolitical alliances a political translation of decoloniality through the rise of non-Western modernities? Can coloniality actually become non-Western if the non-West becomes more modern than the West itself?

The question of the nation-state, a form of power essential to modernity which is now deployed beyond the West as the expression of sovereignty, crystallises this tension. The tension is a legacy that both postcolonialism and decoloniality inherit from anti-colonialism. It results from opposition between two strategies that one could describe schematically as follows: The first strategy asserts the sovereignty of the state and industrialisation projects as the only possible means of resistance against Western imperialist threats. One of the problems with this solution is that the suppression of religious or ethnic minorities can be justified to the extent that they were and still are instrumentalised by Western powers in many parts of the global South. The second strategy argues that the formation of nation-States is central to coloniality and are part of how the Third World is actually integrated within the neo-colonial order. Then, another problem arises—namely that of the practical efficiency and realisability of a strategy that might lead to a dangerous form of inaction. Hence, a dilemma that seems to structure the bifurcated nature of the neo-colonial state or, one might argue, a dialectics that seems to permeate coloniality as a set of internal contradictions.

If one posits that the modern territorial *state* as we know it is a central element of coloniality/modernity, then decoloniality should be translated politically into a political strategy that challenges the powers of the modern nation-state and of the capital. Can decoloniality and the birth of a new human therefore be deployed *within* the horizon of the state and of its sovereignty? Is decoloniality as a task compatible with the very existence of the

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its pluriversality and oriented towards the redemption of Africa through its institutionalised unity in a federal organisation.

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state? If so, is it really possible to dismantle the colonial formation of the nation-state as it exists now in postcolonial Africa? Is decoloniality the sustained effort to decolonise the postcolonial nation-state as it is now? If so, is a pan-African federation of states the political embodiment of decoloniality at a continental level? Should one argue that the institution of the state, with its legitimate use of violence, can be and must be indigenised, decolonised and de-Westernised? Arguably, the project of decolonising the African academy, of transforming the structures that African universities have inherited from Europe, is not entirely different. While the project of de-Westernising the canon and languages is certainly vital, challenging the hierarchies of a modern institution through modern reforms is part of the dilemma that a decolonial project might face as it attempts to engage with and dismantle the modern colonial hegemony.

These questions are part of what makes decolonisation an unfinished act which, so decolonial thinkers remind us, cannot be reduced to the narrative of European modernity's deployment. There are and there have always been elements in the decolonising struggles that were not *a priori* determined by the *telos* of the modern nation-state's foundation in the Global South. Nevertheless, because modernity and coloniality are now being globalised, as decolonial thinkers rightly assert, finding a space *outside* of its logic might become increasingly difficult. Indeed, a double critique might be necessary here as a criticism of the way in which European modern knowledges have reshaped indigenous traditions, as attested by Mamdani's examination of the making of colonial 'tribal' and ethnic differences and its consequences in many parts of the African continent.[45] The project of separating the deployment of decolonial alternatives from the criticism of coloniality as it structures the different formations of the modern state at a global scale, as if the latter was now finished, might thus be questioned. In other words, the horizon of a decolonial state, a new form of state that would be irreducible to a mere effect of coloni-

ality or to a simple instrumental usage of the master's tool against the master's house, to borrow Audre Lorde's formula, remains a central question for an unfinished task.[46] One of the strengths of decolonial perspectives is certainly to maintain this possibility as a vital necessity for us to imagine a future for our societies within the Global South and to do so despite the probability of a global failure of humanity in the context of a worldwide catastrophe and pandemic provoked by colonial modernity.

Through such a gesture, decolonisation must be maintained as a struggle that remains irreducible to a mere extension of European nationalism or internationalism beyond Europe itself and thus be distinguished from the construction of the nation-state. For its concept to be constructed beyond the Eurocentric narratives of modernity and their teleologies, should decolonisation be seen as an ongoing movement articulated around a demand for radical justice that has been strategically translated in the modern idioms of the West while exceeding the language in which this very movement actually was and still is translated? Is decoloniality the promise of their dissolution and the perspective of an alternative language of justice and dignity, other than European humanism or, I insist, Hegelian and thus Christian dialectic? If so, then should we 'decolonise' the very idea of 'decolonisation', a notion that presupposes that liberation movements and struggles *for* justice are reducible either to mere *reactions* against colonialism or to Hegelian negativity?

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45   Mamdani, *Citizen and Subject*.

46   Audre Lorde, 'The Master's Tools Will Never Dismantle the Master's House', in *Sister Outsider: Essays and Speeches* (Berkeley, CA: Crossing Press, 2007), 110-114.

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The Unconsciousness of Feminist Writing in Okot p'Bitek's *Songs of Lawino, Ocol and Malaya*

Mbasughun Ukpi

Abstract

Women have been represented in literature through a variety of characterisations. In African writings, we see some of these representations sustained from the culture of orality to documentation through writing. Through the ink of scholars, the image of the African woman has morphed through combinations of identities such as mother, wife, friend, nurturer, leader, critical thinker, and activist. Feminist scholars have sought to portray and explain the experiences of African women from female perspectives. This paper examines the possibility of an unconscious feminist writing where the characters seek an agency in Okot p'Bitek's *Song of Lawino, Song of Malaya*, and *Song of Ocol*. It also brings to the centre of our discursive attention the question of autonomy for African women by debating the nature of power relations and oppression as perceived in Okot p'Bitek's works.

Introduction

The monologue texts of Okot p'Bitek have taken a prominent place in the discussion of tradition versus modernity in Africa. Scholars have examined the main characters in *Song of Lawino, Song of Ocol*, and *Song of Malaya* to portray the struggle of transition familiar to most African societies from the colonial era to independence. These attempts at shaping the discourse have run across various approaches of literary influences with thematic and stylistic inter-

pretations of the over-arching debate. The author's use of strong female characters such as Lawino and Malaya positioned as voices in Acholi society brings to the debate the telling of another perspective, a feminist perspective. What place does a male-authored text have in a feminist discourse? Some male thinkers have tried to position themselves in the feminist debate, which bell hooks establishes as fair ground for equal participation in the struggle.[1] In articulating this representation, not all writers have been successful; mainstream culture is uncomfortable with a critical approach that adopts male feminism as a possible ally.[2] William Breeze shares the struggle of being a male teacher in a gender department whose students are unable to locate him in the struggle, since he is not female.[3] In understanding feminism then, is there room for male interaction? This essay does not attempt to advocate for male feminist writing, as the texts in focus are not confirmed as conscious feminist writing. In fact, in the transcript of an interview when asked about the role of women in African society, Okot said, 'Is it different from the role of women anywhere else? Being good mothers, for instance, and good wives? What kind of role do you have in mind?'[4] Yet in the same interview he praises his mother, who 'taught him a lot', as well as the tenacity of Lawino. Why then do we engage with the contradictory background of the author in reading this text? By embracing the 'death of the author',[5] Lawino is extracted from this tangled background and set into her own place where the text speaks of its own free will and she possesses a voice that is heard. This is not to discard the fact that authors very often write their consciousness into their work, but it is in this problematic background that we are able to interrogate the notion

1 See bell hooks, *Feminism is for Everybody: Passionate Politics* (Cambridge, Mass: South End Press, 2000).

2 See William Breeze, 'Constructing a Male Feminist Pedagogy: Authority, Practice, and Authenticity in the Composition Classroom', *Feminist Teacher* 18, no. 1 (2007): 59-73, www.jstor.org/stable/40546053.

3 Breeze, 59-73.

4 Okot p'Bitek, 'Interview with Okot p'Bitek', *Kunapipi* 1, no. 1 (1979),89-93, https://ro.uow.edu.au/kunapipi/vol1/iss1/11.

5 Roland Barthes, 'The Death of the Author', *Image Music Text*, trans. Stephen Heath (New York: Hill & Wang, 1977),) 142-148.

of freedom expressed by female characters in literary texts which may expand beyond the author's intent. I argue that it is from this position that we are able to examine female reality as society sees it, in addition to the female interpretation of how society sees her, which many feminist writings from Buchi Emecheta to Chimamanda Adichie cover. In this essay, I attempt to examine feminist aesthetics in a non-conscious feminist text and in framing this, I create a conversational thread between *Song of Lawino*, *Song of Ocol* and *Song of Malaya* as an added feminist voice. The importance of this synergy is to create a robust understanding of Lawino's argument as a woman whose husband has a newfound interest in a foreign culture and a foreign mistress. Providing Ocol's response is instructive in developing his own perspective beyond Lawino's depiction, and finally, Malaya's song in giving another female narrative to Acholi society opens up our interaction with feminism in its plurality.

Song of Lawino and *Ocol*: A conversation where no one listens

Song of Lawino is a long poem that portrays the lamentations of an uneducated woman who discovers that her husband's disinterest in her is a result of his growing interest in another woman, who is westernised. In reaction to this revelation, she decides to speak out and explain her situation. Very early on in the first song, 'My Husband's Tongue is Bitter', Lawino gives the reader a background on the cause of the conflict. Here, we see that Lawino's husband, Ocol, has been verbally abusive to her and her family.

> My husband abuses me together
> With my parents
> He says terrible things about my mother
> …He says my mother is a witch,
> That my clansmen are fools
> Because they eat rats
> He says we are all Kaffirs.
> We do not know the ways of

God,
We sit in deep darkness
My husband pours scorn on
Black people.[6]

This is how we are introduced to Ocol, as a man who has forgone the familiar ways of his community and has become anti-black and anti-tradition. Across the other songs, Ocol addresses Lawino as a village woman who is *old*, *rubbish* and *no longer his type*, all tied to his new allegiance to modernity. In Ocol's civilisation, he believes there is no room for him to associate with the primitive Lawino, who goes on to describe the activities associated with this new change.

My husband says
He rejects me
Because I do not appreciate
White men's food.[7]

As she narrates activities particular to his newly converted foreign ways, she does not limit the effect to herself alone, but involves the larger community. She makes a public call to society, which was bound to be affected by the ways of her husband and asks them to intervene before the situation degenerates any further. She believes that her husband is on the wrong path, and he can only be steered right by the intervention of the community. As she shares her struggle with the council of elders, there is a nod to the system of gerontocracy and a consciousness of patriarchy made visible by a group of male elders who listen to Lawino's lamentations. This sets the stage in understanding the type of system in which Lawino operates, one where the law/peacekeepers are also the gatekeepers of patriarchy. The concept of polygamy celebrated by patriarchy is a theme well covered among feminist writers. In Mariama Ba's *So Long a Letter*, the main character Ramatoulaye, a Senegalese school teacher, shares her experience of her husband's decision to take a second wife and how this affects her home.[8] In

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6   Okot p'Bitek, *Song of Lawino and Song of Ocol* (London: Heinemann, 1984), 35.
7   p'Bitek, 56.
8   Mariama Bâ, *So Long a Letter* (London: Heinemann, 1981).

the same text, Aissatou, the protagonist's friend, experiences the same thing but chooses to leave her husband and move on to become an interpreter in the US, finding her voice in her new life. Rizwana Latha's critical analysis of Mariama Ba's *So Long a Letter* as a feminist text brings a myriad of interpretations with each school trying to place the work within a specific feminism. All of these perspectives merge into intersecting forms that portray the hybridity of women's identities in the post-colonial context.[9] Yet there is a meeting point of the major female characters. In this approach of staying behind, Lawino and Ramatoulaye represent a group of women who are willing to operate within the provision of marriage. In 'The Woman with Whom I Share My Husband', she reminisces about a past relationship with her husband in which they seemed to be close. She talks about his promises of trust, and almost immediately after painting this picture, switches to reveal the existence of a third party, a mistress in the marriage. Using sarcasm as a tool to express her dislike for her husband's preference, we see a comparison between two women, an African woman and a colonised African woman who is essentially foreign. Lawino, who is still very much in love with her husband, decides to assert herself by discrediting the new woman. As she describes Clementine, she calls out patriarchal standards, which Ocol now represents. She says:

Brother when you see
Clementine!
The beautiful one aspires
To look like a white woman;
Her lips are red-hot
Like glowing charcoal,
She resembles the wild cat
That had dipped its mouth in
Blood.[10]

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9   Rizwana Habib Latha, 'Feminisms in an African Context: Mariama Bâ's so Long a Letter', *Agenda: Empowering Women for Gender Equity* 50 (2001): 23–40, www. jstor.org/stable/4066403.
10   p'Bitek, *Song of Lawino and Song of Ocol*, 37.

Lawino's engagement with Clementine brings two things into focus: the growing emergence of a voice that speaks back, and a pull towards the recurring debate on feminism. Gwendolyn Mikell, whose attempt to situate African feminism meets criticism[11] in its limited view of African feminism as merely 'heterosexual and pro-natal'[12] reminds us of an urgent need for feminism to be defined from within the continent as a fair representation of African cultures and societies.[13] It is here that I question Lawino's objectives. Is she upset because her husband has taken another wife, or is she upset that he has taken a foreign-type wife, one with whom she does not share immediate values? By rejecting Clementine, is it possible that she rejects a foreign interpretation and expectation of womanhood? Lawino's lifestyle is characterised with efficiency, hardworking and bold, she positions herself as a wife who does not have an interest in disagreements with her husband. She claims that her disgruntlement is fuelled by his choice of an anti-African (anti-Lawino) woman and by his resulting verbal abuse, rather than his decision to be with another woman. As an attempt to assert this, she shares:

> I do not block my husband's path
> From his new wife.
> If he likes, let him build for her
> An iron roofed house on the hill!
> I do not complain,
> My grass thatched house is
> Enough for me
> I am not angry
> With the woman with whom
> I share my husband,
> As I do not fear to compete with her.
> All I ask

> Is that my husband should stop?
> The insults,
> My husband should refrain
> From heaping abuses on my head.[14]

Lawino emphasises that Ocol's preference for another woman does not take away the validity of her existence. Polygamy,[15] as asserted earlier in *So Long a Letter*, is characteristic of a patriarchal African society, and women respond in a variety of ways. Although polygamy historically exists in favour of men, through Lawino's song we experience a different take. Lawino is content with being a co-wife as long as due respect is accorded her in the home. In this instance, she does not preach monogamy, rather she preaches strategic inclusion. The question Lawino's actions raise regards the place of polygamy in feminist discourse. Is it housed under Catherine Acholonu's (1995) 'motherism', which focuses on the role of the woman as a complementary part of the family? Or are they located in Molara Ogundipe's (1994) 'stiwanism'? Is there a possibility that polygamy can be understood as beneficial to a woman?

In her work, *Joys of Motherhood*, Buchi Emecheta captures the plight of a woman who stays in a marriage that disempowers her. After a long period of living for her husband and children, she ends up dead by the roadside in her old age. As the first wife in a polygamous home, her decision is contrasted by Adaku, her younger co-wife who leaves the marriage and goes on to be successful. Amina Mama also speaks on the way patriarchy prevents women from fulfilling roles beyond the household.[16] However, Lawino represents an exception to the corpus literature, which is broadly anti-polygamous. The question becomes, what degree of social conditioning makes her accepting of this, and is this acceptance a step towards reclaiming autonomy? In polygamous homes, the first wife is usually the director of domestic affairs. She is the

11   Desiree Lewis, 'Introduction: African Feminisms', *Agenda: Empowering Women for Gender Equity* 50 (2001): 4–10, www.jstor.org/stable/4066401.

12   Gwendolyn Mikell, *African Feminism: The Politics of Survival in Sub-Saharan Africa* (Philadelphia: University of Pennsylvania Press, 1997).

13   Oluwaseyi Oyekan, 'African Feminism: Some Critical Considerations', *Philosophia* 15, no. 1 (2014): 1-10.

14   p'Bitek, *Song of Lawino and Song of Ocol*, 41.

15   My sole focus here is polygyny, although I use the general term of polygamy.

16   Elaine Salo and Amina Mama, 'Talking about Feminism in Africa', *Agenda: Empowering Women for Gender Equity* 50 (2001): 58–63, www.jstor.org/stable/4066405.

one that determines how resources from the husband are shared amongst other wives and is also in charge of assigning tasks in order to ensure the home runs effectively. The nature of this relationship requires that she carry out this duty and he in turn provides resources for the family. When Lawino fights for respect, is she merely expressing the perspective of a woman who has been taught to live first for her husband, children, relatives, and friends before herself, or is she seeking to reclaim power in polygamy? Again, to what degree is this approach of hers harmless? How do we examine this desire for complementary roles, as autonomy or oppression conditioned by society? If it is the latter, who determines what oppression looks like? She seems to be aware of the attendant issues of polygamy which occur in African societies. Rather, she takes this context and tries to grapple with it in a way that still gives her a voice. More so, she is interested in making sure her husband remains loyal to tradition and thus preaches a reformist stance[17] where she intends to make sure that her husband adheres to society, much like Flora Nwapa's *Efuru* (1966).

Susan Arndt tries to bring an understanding of this reformist view when she groups African feminism under three broad categories: reformist, transformative, and radical. In the reformist approach, there exists a criticism in liberal considerations of men, an acknowledgement of the system of patriarchy, and a desire to see both men and women exist in complementary roles. This approach offers only a muted critique of patriarchy and, rather than addressing it head-on, seeks to find ways around it by dealing with the issues at hand. By contrast, the transformative approach is more radical, demanding an urgent response to the issue of patriarchy. Here, women face criticism for being enablers of patriarchy, either through their active participation or through passivity exemplified in silence. Lawino calls out Ocol for his anti-traditional exploration but fails to address any patriarchal tendencies in her society. She straddles autonomy and traditional expectation.

While the transformative approach is more forgiving of the man, seeing him as a potential ally against patriarchy, the radical approach showcases men as enforcers of emotional, psychological and physical oppression. The man is seen as '*deeply immoral*', '*hopelessly sexist*', and incapable of redemption. Arndt asserts that there are blurred lines between these classifications and that they sometimes overlap in application.[18] But where does Ocol locate himself in this discourse? Is he actually redeemable? Ocol is the symbol of patriarchy. Throughout the course of Lawino's songs, we draw up negative images of Ocol's personality, but no comprehensive conclusion is reached until we meet him in *Song of Ocol*, where he responds to Lawino. He introduces himself with a confirmation of Lawino's imagery.

> Woman
> Shut up!
> Pack your things
> Go![19]

Ocol's foul personality is confirmed as he lets out a stream of invective at the African woman. Nothing Lawino does or says appeals to his newly foreign ways and he goes on to use unflattering terms in addressing a cluster of African women,

> You stagger into the sunlight
> Melting, dripping, wet,
> A pregnant hippo;
> Soft, flabby, weak, bursting buttocks,
> Your breasts are two drums
> …I hear the wild song
> Of the herdsman
> He is singing praises
> To your ugliness.[20]

He does not spare her body, describing its full figure with disgust. Ocol is the mouthpiece of a society that holds women to a standard of beauty. This body shaming is used as a tool of psychological

17 Susan Arndt, 'Perspectives on African Feminism: Defining and Classifying African-Feminist Literatures', *Agenda: Empowering Women for Gender Equity* 54 (2002): 31-44.

18 Arndt, 33.

19 p'Bitek, *Song of Lawino and Song of Ocol*, 121.

20 p'Bitek, 133.

oppression. He condemns the tradition associated with Lawino in favour of modernity. On Africa, he says:

> What is Africa
> To me?
> Blackness,
> Deep, deep fathomless
> Darkness . . .
> Diseased with a chronic illness,
> Choking with black ignorance,
> Chained to the rock
> Of poverty.[21]

This is an insight into how Ocol's mind works. He is highly critical of anything that is African and by extension is highly critical of Lawino. In his response to her, he preoccupies himself with faulting existing systems and hardly addresses Lawino's concerns directly. It seems that both parties are at loggerheads, with each attempting to convert the other. In a battle of ideologies, Lawino feels that Ocol is corrupted by western ideologies and he feels that she is lost in the old ways of tradition. Their battle becomes a question of who should listen to the other and accept change? While Ocol's desire for change is not entirely wrong, his blatant disregard for Lawino's thoughts elevates him to the role of dictator. He is giving her an ultimatum to choose his new standards or be forgotten. This mental war between the sexes is characteristic of realities in patriarchy but it further questions the meeting point for both sides in a non-feminist society. That Okot p'Bitek writes Lawino into this setting, however unconscious it might seem, is an insight into the expectations of a woman by society. Ocol's response is not a mere reaction but a deliberate attempt to silence her voice.

Song of Malaya: Voice of Freedom

What does freedom look like? In our study of Okot's work, there has been room to draw perspectives in order to frame a holistic view of the African woman's situation. Where Lawino is loving

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21 p'Bitek, 125.

and expressive, Ocol is brash and aggressive. Malaya, on the other hand, is free and adventurous. Saba Mahmood draws on the Islamic woman's experience to debate freedom in response to the central question of 'how do women contribute to reproducing their own domination and how do they resist or subvert it'.[22] Her approach to feminism speaks on sex work in Africa. Although a number of African countries have ruled prostitution as illegal, the existence of laws banning sex work begets many questions. Is a man with multiple wives and mistresses not engaging in sex as he would with a prostitute? Is the woman then a scapegoat because she demands money for this service that some women offer freely? Nawal Saadawi takes on these questions in her book, *Woman at Point Zero*, where the lead character Firdaus valleys through experiences and finally becomes a sex worker. As a sex worker, she is judged for her choice and is only superficially accepted when she takes on the role of an office worker. The irony is that as with every legal job she takes, she is asked to exchange sex for favours. The character comes to a realisation that the system is run by patriarchy and decides to make a conscious choice to get paid for sex. To support this decision, the author states that every woman is a prostitute, it is just that some decide to get paid.[23] Similar to Firdaus's plight, the society that judges Malaya is the one that patronises her, and she exposes this when she says;

> Why Baba
> Was it not you?
> Three nights ago?
> Or was it four nights ago?
> But you were drunk
> You could not finish.[24]

In Malaya's quest for assertion, she seeks validation from the same society that has made the rules she rebels against. Her desire for

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22 Saba Mahmood, 'The Subject of Freedom', in *Politics of Piety: The Islamic Revival and the Feminist Subject*, rev. ed. (Princeton and Oxford: Princeton University Press, 2005), 6, www.jstor.org/stable/j.ctvctoocf.7.

23 Nawal Saadawi, *Woman at Point Zero*, (London: Zed Books, 1983).

24 Okot p'Bitek, *Song of Malaya* (Nairobi: East African Publishing House, 1971), 136.

freedom aligns with Priscilla Alexander, who identifies society's role in oppressing women:

> As feminists, we abhor the exploitation of women's sexuality by profiteers, and some of us feel instinctively, that prostitution supports an objectification of women's sexuality and of women that is somehow related to the pervasive violence against us. In addition, we are defined by ourselves and others, by our place in the age-old whore/Madonna dichotomy. However, there is a growing realization among many feminists that the laws against prostitution, and the stigma imposed on sex work, keep all women from determining their own sexuality.[25]

An acceptance of sexuality as sexual pleasure is crucial in the practice of feminism. True liberation might be hidden in freedom rid of the negativity associated with female sexual pleasure. Malaya has chosen her path, which does not necessarily extend to companionship in marriage. While she does not hate the man, she does not express desire to be in a marriage, a contrast with Lawino's search for contentment as a wife and companion. In *Song of Malaya*, the woman is a sex worker who is very aware of her decisions and has chosen to use her position to 'help' society. As a variety of men visit her from a soldier to a sailor, an engineer to a schoolboy, Malaya does not see herself at their mercy because of her profession, rather she claims that by standing up for them in their time of need, she is having a positive effect on society, helping them to chart their energy towards achieving progressive goals for themselves and society. She is a self-proclaimed messiah. With the aim of establishing progress for herself, her character's actions align with Susan Arndt, who sets out to understand feminism as a way of upsetting the cycle of domination and of transforming gender relations in order to improve women's situation.[26] Malaya is vocal and bold in

asserting her place in a society where she is disempowered. Beyond arguing the morality of Malaya's profession, her character is written into a much bigger conundrum. She has a voice and uses it, but her activities are regulated by the people she tries to convince of her legitimacy. Does the possession of a voice guarantee freedom and equality? It is this the same voice that is reflected in Lawino's song, but we do not see change resulting from either approach. Is the goal an awareness that pokes at a system and leads to eventual change? Or an assertion that makes the woman more comfortable in playing the role handed to her by society?

Ahikire argues that sexuality, culture, and religion are all preoccupations for the African woman and that the multiple currents and undercurrents make it difficult to conceptualise a single African feminism.[27] It is clear that humans are generally products of the society they find themselves in and they strive to survive according to the provisions therein. Some critics[28] believe that patriarchy uses culture to control a woman's sexual pleasure as of a means of oppression. McFadden says that patriarchy thrives in its denial of women's control of their bodies, sending a constant message to women that, 'their bodies are dirty, nasty, smelly, disgusting, corrupting, imperfect, ugly and volatile harbingers of disease and immorality'.[29] By expecting the woman to remain silent about their pleasure and tagging it as corrupt, women's expression is closely curtailed. Indeed, any woman who makes choices regarding sex and is vocal about it is tagged a 'bad girl'. Therefore, an individual who deliberately upsets the cart of these expectations quickly becomes a target for society; only extreme courage helps them to outlive societal backlash. In her struggle, Malaya represents those who make choices that they are comfortable with and expresses a desire for society to acknowledge and support those decisions as fellow humans deserving freedom of choice. This

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25 Priscilla Alexander, 'Prostitution: A Difficult Issue for Feminists', in *Feminism and Sexuality: A Reader*, ed. Stevi Jackson & Sue Scott (New York: Columbia University Press, 1996), 342.

26 Arndt, 'Perspectives on African Feminism', 31.

27 Josephine Ahikire, 'African Feminism in Context: Reflections on the Legitimation Battles, Victories and Reversals', *Feminist Africa* 19 (2014): 7-23.

28 Tinashe Mema, 'Trapped in the Closet: Why Sexual Pleasure and the Erotic Remain Locked Away', *Buwa! Sex and Health* 2, no. 2 (2012): 48-50.

29 Patricia McFadden, 'Sexual Pleasure as Feminist Choice', *Feminist Africa: Changing Cultures* 2, no. 2 (2003): 50-60.

group of women that Malaya symbolises make a case of first being individuals before serving as an extension of society. On this path, Malaya acknowledges that she has fellow women with her on the journey, what might be termed a sisterhood, when she says:

> Sister harlots
> Wherever you are,
> Wake up
> Wash up
> Brighten up
> Go gay and clean,
> Lay
> Your tables
> Bring in fresh flowers…[30]

She is also aware of society's reprisals and refuses to remain silent in the face of adversity. Thus, she speaks out:

> Big Chief,
> Why do you look at me?
> As if I were a bunch
> Of hornets?
> Why do you hiss?
> Like a frightened cobra
> And bark at me.[31]

The exposure of her clientele brings to the fore oversimplified assumptions about the immorality of sex workers and a blameless society. If women choose sex work and society is against it, the real question to be asked is, 'who is patronising sex workers?' The answer to this exposes the fact that most times, the gatekeepers of society who attack the activities of such women are actually those who purchase their services. At what point then does morality stand its ground? Is it not an attempt to control the woman? It is in this argument that we see truth in the perceived oppression of Malaya. Just because she is courageous enough to seek validation does not mean society is accommodating enough to grant her freedom

from the judgement of breaking these rules. She receives critiques not just from society but also from her family. She questions her family's open disgust at her lifestyle because she believes that on the contrary, they should support her. She says:

> You no longer speak with me,
> And when our eyes meet
> They are quickly averted,
> It may be with hate
> Or maybe
> With shame.[32]

Malaya also seems to share Lawino's acceptance of polygamy, albeit for different reasons. She believes that by being the other woman, she helps the women in the marriage and thus further protects the longevity of such marriages. In this context, she has named herself the marriage therapist. As Malaya fights for the validity of her choice, the possibility that this choice is a result of circumstances and not intention is acknowledged, but what she makes of the choice thereafter is what counts. It is through her struggle that an active attempt to push pack at society is identified. In using her voice, she also pokes at the morality of this society that lives in the inevitability of prostitution. Is it possible then that we have found a meeting point for Lawino and Malaya? Obioma Nnaemeka poses an interesting meeting point, a feminism of negotiation that acknowledges the diversity of feminisms in Africa, argues in favour of the intersections that have occurred at various points, and acknowledges it as a process where meaning is discovered from the social to the political.[33] It is in this negotiation that we merge two perspectives in one community.

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30   p'Bitek, *Song of Malaya*, 132-33.
31   p'Bitek, 135.

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32   p'Bitek, 75.
33   Obioma Nnameka offers an interesting perspective in 'Nego-Feminism: Theorizing, Practicing, and Pruning Africa's Way', *Signs* 29, no. 2 (2004): 357–385, www.jstor.org/stable/10.1086/378553.

Conclusion

Through the study of Okot's *Song of Lawino*, *Song of Ocol*, and *Song of Malaya*, we are privy to individual commentaries on the reality of the African woman. Lawino shows us through her song that a disadvantaged and disempowered position is not always interpreted as such by its victims. She also shows that in pushing for rights and equality, the individual is just as important as the collective. With Ocol, we have front row seats to the flip side of the argument, where Ocol represents a colonised mind at the table of patriarchy. As he attempts to impose his expectations on Lawino and the society, he reveals oppression as mirrored by his activities. Malaya finally nails the course of conversation with her approach to life. She is at peace with her lifestyle and indeed sees herself as a saviour. While her self-awareness might seem to be somewhere between a coping mechanism and an assertive way of dealing with patriarchy, the focus is on her voice as a tool of resistance. The focus then shifts from the immediate effects of speaking to the way it gradually affects perceptions daily. What this essay shows is the importance of individual reactions to the broad thread of feminism, and the necessity to ask what liberation means for a person who does not actively seek it. This is where we highlight Malaya's activities as a sex worker—as one who may not have had a choice at the beginning, but now has elected to take this job and dares to see herself as an important contributor to society. Lawino, while aware of all the parts of her environment that disempower her, is interested in navigating through them to find her own form of freedom even if it is, ironically, tied to the system that conditions her actions. What we then see is Ocol as an executor of oppression and Malaya and Lawino as mouthpieces pushing back. Lastly, in poking through Okot Bitek's unconsciousness to find an alternative approach to feminism, we are made aware of the way male power is written into texts with strong female characters. Perhaps a true feminist writing is only possible as a conscious effort in which the characters are direct echoes of the author's thoughts.
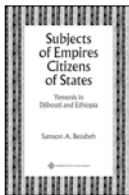
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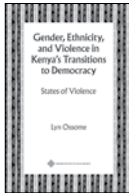
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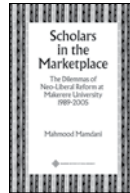East Africa Edition, 2019
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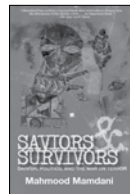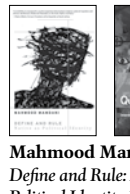MISR BOOK SERIES NO.4

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