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Past, Present, and Future: A Reply to Heyd and Benbaji

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Abstract: In this paper I respond to the replies of David Heyd and Yitzhak Benbaji to my paper ‘War and Self-Defense: Reflections on the War on Gaza’. Heyd’s relativizing of narrative overlooks the epistemic hierarchy among narratives and their important role in establishing facts, and his claim that Israel’s history is not colonialist in character fails because it is based on a misunderstanding of colonialism in general and settler colonialism in particular. Historically, I outline how Benbaji’s appeal to the legal status of the Mandate is problematic, because it ignores the illegitimacy of the legal regime behind it, such that accepting his argument would be to legitimize colonialism. Theoretically, I defend the view contrary to Benbaji, that instead of their being a moral tie between two equal sides, the Palestinians have always had fundamental legal and moral rights that the Zionist project violated *ab initio* and continues to violate.

Keywords: Palestine; Israel; rights, law; war; colonialism

In this paper I will respond to the papers published in this journal in reply to my earlier paper ‘War and Self-Defense: Reflections on the War on Gaza’ (Zreik 2024). I opted to answer both papers despite the differences in style and tone. There are two reasons for this. One is that despite the differences there are some common lines between both replies; second because much of my response here is in fact a development of some arguments that remained underdeveloped in my earlier paper, which caused what seem to me to be some misunderstandings. I hope to set the record straight in this paper.

1 The Major Arguments

Benbaji offers an alternative narrative to the one I presented in my paper. Although he does not indicate explicitly where my narrative went wrong, he does so implicitly

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in the opposing narrative that he constructs. Benbaji thinks that the Palestinian narrative should be counter balanced by a Zionist narrative. If the Zionist counter narrative is at least as valid as the Palestinian narrative, then we have equally opposing narratives. In the case of such a tie, where there is doubt as to where justice lies, there is no right to use force to achieve a goal that is not clearly just. He sets the bar low, his aim being only to show that both claims are reasonable. In his own words:

“I will further argue that in such epistemic circumstances, where no narrative is obviously more accurate than competing narratives, traditional just war theory implies a clear and plausible verdict: whatever the just outcome is, it should not be pursued by the use of force. It follows that pre-1967, the Palestinian people had no just cause for war against Israel. Palestinians should have struggled for their national rights by peaceful means like non-violent resistance, diplomatic pressures, boycotts, etc., but not by war.” (Benbaji 2024, 345)

But that is not the whole story. Benbaji has in fact chosen to draw a line somewhere, as he thinks that there was a point at which the Palestinians did have a right to go to war:

“I will concede, however, that since 2009, when Benjamin Netanyahu became the major political leader of Israel, and more so after the 2023 election where most Israelis voted for a racist government, the Palestinian people have a just cause for an independence war against Israel.” (Benbaji 2024, 346)

Then comes the third move: while the Palestinians do have the right in principle to go to war, it is not the case that Hamas has this right. He writes:

“My second aim is to show that the October 7th massacre is not part of this just war because Hamas has no moral right to wage war on behalf of the Palestinian people. While, as a national group, Palestinians have a just cause for war, Hamas’ attack on October 7th is nothing more than mass murder. The analogy to Ukraine’s just war against Russia is false and misleading.” (Benbaji 2024, 346)

I will not be able to address all of the issues raised by Heyd here and will deal mostly with those that overlap somewhat with the issues raised by Benbaji. The first claim Heyd raises is related to the broader question of narratives. He has a problem with the narrative approach, which he considers rather ‘subjective’ compared to rational argumentation, which is unproblematically objective. For him “only those who have lost faith in the possibility of truth claim that there is a gap between narrative truth and historical truth.” (Heyd 2024, 322) The second issue in his paper bears on the characterization of Zionism as a colonial movement; here he argues that “Zionism does not consist of all basic characteristics of colonialism.” He elaborates on this by arguing that “colonialism has always two loci: the original land and the land settled by the colonist as a kind of expansion or extension of the original land.

There is always a metropole and the periphery.” (331) He adds that the Jews had an attachment to the land of Israel, unlike many other colonial projects (331). Furthermore, he argues that Zionism was not “motivated by military strategic, economic or expansionist interests.” (331) Then he adds for some reason and unexpectedly (given that I did not make this analogy), that “analogy with the crusaders is problematic.” (332) Nevertheless, Heyd agrees that when it comes to the territories taken by Israel in 1967, this occupation “does display colonialist characterization.” (332)

The final important point that he raises and that I want to discuss is related to the future pragmatic vision he calls “the value of compromise” where he argues that “‘From the river to the sea’ is a disastrous slogan on both sides of the national conflict,” (340), implicitly calling for the partition of Palestine. He raises many other issues, but I cannot address these here in the limited space available.

2 General Reply: Heyd – Preliminary Issues

Heyd’s paper raises some basic issues that I think it would be wise to deal with first. Most of the rest of the paper will be a direct reply to Benbaji, and an indirect reply to Heyd.

Heyd raises the issue of narrative as representing merely subjective truth, which he juxtaposes – for reasons that are unclear – with objective argumentation. I don’t consider this juxtaposition to be valid, however. The debate regarding the validity of narrative in the philosophy of history is long and I have no intention to rehearse it here. Some philosophers have entirely dismissed the idea that history can be a science.¹ Within the discipline of history, the *Annales* School, while accepting history as a science, still attacked the scientific credentials of narrative history (see in general Braudel 1980). Yet even analytical philosophers – such as Louis Mink – have had to admit that narrative should be regarded as a ‘cognitive instrument’ and thus as having scientific value (quoted in Carrard 2015, 176). One need not go as far as accepting Hayden White’s thesis in *Metahistory* (White 1973) that reads all historical texts as if they were a work of fiction in order to acknowledge the validity of narrative form in the study of history. In *Time and Narrative* (Ricoeur 1984), for example, Paul Ricoeur argues that any form of writing history must take the form of a plot that brings together different elements in order to make sense of them.

In this regard narratives are not completely subjective, and rational argumentation is never completely objective. Narratives are ongoing attempts to weave a story by connecting different events and facts in order to portray a certain overall picture which will allow the unfolding of a series of events to come into

1 Karl Popper and Carl Hempel for example: see Hempel 1962.

focus.² This does not mean that all narratives are as valid as others and does not mean that anything goes in narratives. One narrative is ‘better’ than another other in the case that it is more coherent, and in the case that it takes more facts into account. A narrative that leaves half of the available facts aside, even if it is coherent, is not plausible. In order for a narrative to have a descriptive, explanatory and evaluative power it must try to make sense of as many facts as possible. Narrative is not a substitute for fact finding but supplements it. So, narrative construction is an act of interpretation that aims to dress random chaotic facts in a way that shows the contours of a picture. Seen in this way, narratives are neither subjective, nor absolutely objective. The road to truth proceeds through the competition of narratives, not by eliminating them. When I claim that Tolstoy is a great novelist, I make an argument that has a narrative flavor to it – an interpretive argument. Such an argument is different from the argument that it is raining outside, which could be proved or disproved by a quick factual check and has a clear objective nature, but it is also different from a statement of mere preferences such as: “I like chocolate more than ice cream.”³ Narratives do not dispense with objectivity, but make us aware that objectivity never comes to us unmediated and from the point of view of nowhere. As such, I think that a narrative that is able to make sense of the counter narrative, to absorb its main claims and offer a wider narrative that is able to transcend it, is a better narrative. This is – as I have tried to argue – what my narrative does.

The second crucial point that Heyd raises is related to the issue of Zionism, denying its colonial nature. He puts forward three main arguments: That in the case of Israel-Palestine, there was no metropolitan mother country; that the Jewish people had religious ties to the land; and that they had no intention to make economic gains. In fact, all of these arguments have already been made widely in the literature.⁴ To these a further argument can be added: that many Jews arriving in Palestine were refugees seeking shelter following their persecution in Europe, and that their intention was not to dispossess others as much as to save their own lives. I have acknowledged them in my own earlier writings,⁵ and I don’t see any reason to deny any of them. Indeed, I can even add to them further. All of this is granted. But how can any of it alter the fact that Zionism was a settler colonial project?

2 Clearly there is a risk of flattening the narrative by imposing homogeneity, creating continuity where there are interruptions and discontinuity: see Cohen 2005.

3 On the nature of interpretation – and narratives are by definition acts of interpretation – see Dworkin 1986, ch. 2, 45–86. For more on the relation between law and narrative, see Binder and Weisberg 2000.

4 Lissak 1996; Gavison 2003, 70 (http://azure.org.il/download/magazine/1322AZ1\ignorespaces5_Gavison.pdf); Penslar 2007, 93–4; Aronson 1996, 217; Friling 2016; Gelber 2015.

5 See Zreik 2020a, 11–14 and Zreik 2016. For a detailed reply, see Peled 2017.

One approach might be to point out that Zionism is not that unique, and that many settler projects believed that they were moving to a sacred ancient land; that they were a chosen people, and that many of them were indeed persecuted (see Veracini 2019; Zreik 2020a). But this is not my main line of argument. First, I want to draw an old and familiar distinction between classical colonialism and settler colonialism, whereby the former is geared toward economic gains and does not intend to stay, while the latter is not necessarily interested in economic gains, and is primarily interested in staying; that is, the settler is interested in the land itself. India is an example of the first, while Australia and South Africa are examples of the second. Zionism is a settler colonial project and not a classical colonial one. It is important to stress that the Zionists were settlers, not mere immigrants. The settler comes with his own project, with his own *nomos*, laws, habits, customs and is not prepared to accept the local rules of society. He has his own law, and he wants to build his own society and institutions (see Zreik 2016, 357 and the references there).

Many things come with this kind of political project, regardless of the intentions of the settlers. A certain dynamic of expansion, of settling the land, of confrontation with the indigenous is unavoidable. Thus, a particular legal system will develop based on new legal categories that aim to subjugate the native. In constitutional law, the natives will be denied full recognition as members of the political community, but most importantly will be denied equal status in the field of land law and issues of planning. *Terra Nullius* – the idea of land which may be legitimately occupied and owned if claimed by a state or its settlers – is, for instance, just one of those legal categories that was widespread in settler colonial projects. We will witness a process of taking over the land from the natives and transferring it to the hands of the settlers and settler state. Additionally, a certain historical, political and racial imagination will inevitably emerge from the fact of colonial occupation, one that is necessary in order to justify the act of taking over land from its original owners. Narratives of progress, of civilized versus barbaric nations, of higher and lower races, will also develop, alongside theories of self-defense that can justify aggression by the settler against the savage indigenous population. And under the banner of self-defense the settlers will expand their control.⁶

Thus, we will witness the development of frontier lands, which allows the settler society to continue its process of expansion, a process accompanied by massive use of violence. We will see different waves of settlers arriving at the settler colony developing different socio-economic classes within the settler society. Taken together, all of these developments do justify placing Zionism in the same category

6 For more on this logic of self-defense, see Moses 2017.

as many other settler societies. If one looks at the maps of Palestine in the early twentieth century and compare them with the current maps, it will immediately become apparent that this is a settler project.⁷ Needless to say, the early Zionists viewed themselves as colonialists without apology!⁸

The fact that the Jews were persecuted in Europe and that they were seeking shelter, that they had spiritual ties to the land and thought of themselves as merely returning to an old homeland, cannot alter the fact that the Zionist project is one of many settler colonial projects: in its method, in its attempt to take over the land, in its legal structures, in its attempts to establish its own *nomos*, in its ongoing expansion, in its deployment of violence, and in its ongoing ideology that establishes a hierarchy between settler and natives.⁹ So Zionism and Israel do belong within the paradigm of settler colonialism, which is a productive frame for comparing certain developments and trajectories in Israel with other settler societies that will remain unexplained if we do not adopt such a frame.

I will have to leave the most important aspect of the debate – regarding the unique aspects of Zionism – to the end of this paper, but for now it suffices to say that I do not think that these unique characteristics of Zionism are irrelevant. They are not significant enough to deny that Zionism is a settler colonial project, but they may very much be relevant when we contemplate future political solutions.

3 Benbaji's Narrative

3.1 Palestine Under the Mandate

One major issue I have with the Benbaji's response is that he does not seem to address Palestinians in his mode of argumentation; he does not imagine them in front of him nor does he believe that he can convince them. He instead seems to imagine European philosophers reading him and thus tries to reconcile the commitments of such philosophers to Enlightenment ideals with the practices of the Zionist project. His mission in this regard is easy because his European audience,

⁷ See, e.g. the maps in Yiftachel 2006, 56 but in general 51–84.

⁸ Herzl speaks bluntly in colonial terms when he writes: "We should there form a portion of a rampart of Europe against Asia, an outpost of civilization as opposed to barbarism." Theodore Herzl, *The Jewish State* (1896). Vladimir Jabotinsky speaks openly of the colonization of Palestine in his essay 'The Iron Wall'. See Vladimir Jabotinsky, *The Iron Wall* (1923).

⁹ This supremacy need not be the reason or justification for further occupation and dispossession, and the case might be the reverse: the ongoing fact of occupation and subjugation can create an ideology of supremacy.

with its colonial legacy, will be content to receive a justification for the colonization of Palestine, and for settler colonialism in general. He will thus help them to reconcile themselves to their past, while their approval will help him reconcile himself to his present-day Zionism. Thus, everyone will be happy, except the Palestinians, who remain absent from this conversation despite the fact they are the ones who pay the price for the ongoing settler-colonial project.

This is most evident when he discusses Palestine under the British Mandate. Benbaji – following Benny Morris – distinguishes between maximalist and minimalist Zionists. Weizman and Ben Gurion were minimalists, and they therefore accepted the Balfour Declaration. The Balfour Declaration was minimalist, in his view, because it did not include Transjordan and did not openly speak about a Jewish state but only a Jewish homeland, and because it did not specify that such a homeland would expand all over the region. Jabotinsky, by contrast, was a maximalist who insisted on having both banks of the Jordan river, and founded the revisionist movement within Zionism, which insisted on including Transjordan in the Jewish state. For his part, Weizmann drafted a constitution based on parity between Arabs and Jews. Later on, the minimalists even agreed to the Peel Commission, which suggested partitioning Palestine into two entities.¹⁰

But according to what logic can this be viewed as constituting a minimalist position? Is a parity proposal at a time when Jews were about fifteen percent (just arrived) of the population really a minimalist approach? Why not simply have free democratic elections and majority rule? The demand for parity made by new (and relatively few) immigrants – which by definition meant turning the country into a binational state – does not strike me as minimalist in any sense. Proponents could be viewed as minimalist if compared to Jabotinsky, but why should Jabotinsky be the yardstick? Is the maximalist-minimalist description something internal to Jewish society? Are there no objective criteria to judge these demands? I think that at that point the Palestinians were indeed justified in resisting Zionist colonization in Palestine as long as these immigrants pursued a national plan and a settler project. Did the Jews have a right to settle Palestine and to pursue a national project within a populated country like Palestine? If so, then the Palestinians did not have a right to resist this process of settlement and nation building. But was this the case?

Neither Benbaji nor Heyd make such an argument; instead, they both take the claim for granted. But what could they tell Palestinians in 1918 in order to convince them to accept the Balfour Declaration? Why should Palestinians accept the prospect of another people coming to settle their land, to establish in it a

10 Benbaji 2024, 346–8. Later on, Benbaji shows that there has also been a minimalist Palestinian position, thus further complementing the Benny Morris narrative.

nation-state, condemning them to being simply a religious minority in their own homeland and devoid of any national rights?

3.2 Reconstructing Benbaji's Argument

Now there are others who have argued in support of the settlement of Palestine by the Zionists. Ruth Gavison, for instance, constructed a subtle argument – which bears similarities to that of Benbaji – whereby prior to 1948 the Zionists did not have the ‘right’ to carry out the settlement in order to pursue a national project, but did have the ‘liberty’ to do so (Gavison 2011, 17). Gavison here uses the word ‘liberty’ in the Hohfeldian sense equivalent to mean *privilege* (Hohfeld 1913). The distinction is that ‘right’ in the strict sense would mean a situation where the other side is under a duty – thus, my right to be paid my salary by my employer means that he is under a duty to pay my salary, and my right to private property in my house means that you are under a duty not to enter my house, and I can exclude you from it. But privilege or liberty expresses another, softer, sense of right. If both of us are walking along the seashore and we see an empty seat, then we both have the liberty to sit on that seat, and none of us is under any duty not to sit on it. Thus, we are free to compete to occupy that seat. To be in a situation of having a privilege to do A means that the other party has no right to prevent me from doing A.¹¹

The common thread between Benbaji and Gavison is their insistence on a moral tie – that both sides had equally valid moral arguments to pursue their national projects in Palestine and were like two persons that met each other in the Hobbesian state of nature where there is neither valid law, nor even established morality. Both parties, that is, were in the state of liberty, and in that state, each was entitled to pursue their own interests using their own power.¹²

So the image emanating from both Benbaji and Gavison is of a Hobbesian state of nature where no distribution of entitlement has taken place, and where there is no clear sense of justice, where there is no property, and nothing is yours or mine.¹³ Accordingly, the Palestinians could pursue their national goals and the Zionists theirs in the same manner and there was no measure of justice to adjudicate

11 Hohfeld defines it this way: “the privilege of entering is the negation of a duty to stay off.” (Hohfeld 1913, 16–59, 32)

12 Thomas Hobbes defines this liberty in a similar way to Hohfeld but with clear political implications: “The right of nature, which writers call *Jus Naturale*, is the liberty each man hath to use his own power as he will himself, for the preservation of his own nature.” (Hobbes 1991, 91)

13 “For they say that justice is the constant will of giving to every man his own. And therefore where there is no own, that 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 1991, 101)

between them. This is the picture that I want to contest in the following paragraphs. My argument is that at the time of the Balfour Declaration, the Palestinians had a right – not just a liberty – to oppose Zionist colonization of their homeland.

I will proceed in as follows: I will argue that at least *prima facie* the Palestinian community had the right around the time of the Balfour Declaration to continue to live as community on the land, to pursue cultural and economic development, pursue its national project, and to seek self-determination in the future.¹⁴ The Palestinians were simply making their first steps in that direction. Did they have the right not to be interfered with by the Zionist settler-colonial project? On what legal and moral basis?

3.3 Prima Facie Legal and Moral Rights of the Palestinians

As for the legal basis, I am not sure that I have a clear-cut answer. On the one hand, Article 22 of the Covenant of the League of Nations recognized Palestine to be in ‘Group A’, that is, one of those nations ready for self-determination subject to a period of tutelage, which meant that the population of Palestine at that time was a collective that was on its way to being recognized as a people deserving self-determination.¹⁵ On the other hand, however, the League of Nations had itself adopted and incorporated the Balfour Declaration in the Letter of Mandate, thus assigning the British Mandate with the task of establishing a Jewish homeland in Palestine.¹⁶ The League of Nations thus established an internal tension between the missions of the British Mandate. But let us assume for the sake of argument that the League of Nations intended to stress the commitment to establishing a Jewish homeland.

If that is what Benbaji wants to rely on, he probably should be more careful about what he wishes for: the international legality of that time was nothing more than the will of the dominant imperial colonial powers of Britain and France. Some might have a romantic view of international law as representing some basic natural values, but clearly that was not the case in the late nineteenth and early twentieth centuries. The dominant approach to international law was a positivist one that reflected the agreement between the colonial powers.¹⁷ The whole legal universe

¹⁴ I did not start from the issue of self-determination immediately, for I am aware that Palestinian nationalism was only beginning to emerge in those days; but this was the situation with many other nationalisms in the region, including all Arab countries.

¹⁵ See League of Nations (1919), ‘Article 22 of the Covenant of the League of Nations’. On the relation of this article to the Balfour Declaration and the tensions between them, see Imseis 2018, 34–41.

¹⁶ See the of Mandate for Palestine on 12/8/1922 by the League of Nations C. 529. M. 314. 1922. VI.

¹⁷ On the structure of international law in the nineteenth century, see Lauterpacht 1946; Murphy 1982, 477–98.

was split between citizens and states, and there was no standing whatsoever left to any entities that were less than a state, such as tribes, clans, communities, guilds, ethnic groups, etc. At the same time, the model of sovereignty that was adopted was unitary and absolute, and so if a certain country was not recognized as a state having sovereignty according to the Westphalian order, then settling that country or ‘invading’ it was not even considered an act of aggression.¹⁸

As such it is clear that according to international law prevailing at the time, the Balfour Declaration was not a clear act of invasion on the part of the British or on the part of the Zionists, given the colonialist political imagination. But that version of international law was nothing more than the will of the colonial powers¹⁹ (in that sense it is not clear what was *international* in that law), and I am not sure that Benbaji and the Zionists want to position themselves on the side of the colonial powers; after all they consider Zionism to be a national liberation movement.²⁰

While the Palestinians did not have clear-cut recognizable *legal* right in international law (i.e., as granted by the colonial powers) to resist Zionist settlement at the time, I want to argue that they did have such a *moral* right. This right is not a sort of property right that is based on absolute historical ownership or on the notion that Palestine has belonged to Arab-Palestinians since time immemorial but is rather based on the simple fact that an existing and thriving community was living on that land as a whole and establishing economic and social and cultural relations. If we reject the colonial logic of the time, then there is no reason to think that communities that are less than a state cannot have collective rights, including collective territorial rights based on reliance interest.

Anna Stilts, for example, has developed the idea of what she calls “rights of occupancy” (Stilz 2013, 41). Rights of occupancy could be granted to those groups who have a vested interest in occupying certain territories and have developed a reliance interest in relation to that specific land as a collectivity. This right is not a historical right in the strong sense that is at times deployed by religious Zionists as being the first occupants of the land: it is far less than that. It is rather based on the fact that in the early twentieth century the Palestinians used and lived on this land,

18 On the concept of sovereignty in the post-Westphalian world, see Held 1995. In fact, it is exactly this logic that underlies the doctrine of *terra nullius*, which justifies the acquisition of what the European considered as unsettled land. See Shaw 2017, 414–43.

19 On the close relation between international law and colonialism, see e.g. Jan Klabbers, for example, who argues that it “is no exaggeration to state that international law has been closely connected with imperialism and colonialism,” adding that “[m]uch of the globe became the playground of the European powers, and at some point the non-European world (the New World, in a highly Eurocentric term) was literally divided between two of them” (Klabbers 2013, 6–7).

20 I have argued that Zionism is both a settler colonial movement and a national movement: see Zreik 2016, 351.

which was the site upon which they thought that their dreams could be fulfilled and materialized.²¹ As a representative of a subaltern group such as the Jews in the last century, I was expecting Benbaji to side with me on that point, and to be on the side of the colonized and those left out of the world order – and not to side with colonial powers who were persecuting Jews at that time, and not to adopt the colonialist logic that states: either you are a sovereign state or you have no collective rights.

I think that I have managed to establish that at least *prima facie* the Palestinians did have the right to their land as a collective right on the way to implementing their right to self-determination. That right includes not only the land that they were settling and farming but also adjacent land that could be a reservoir for future generations. If that is granted, then *prima facie* they had the right to resist their colonization by Britain, and to resist the Zionist project in establishing a Jewish state (under the name of a Jewish homeland)²² in their midst. But things are not that simple.

I tend to think of rights in a relational manner; one should be always aware that my right to property means that I exclude others from it, and my right to certain territory will influence the rights of others as well. Thus, the rights of Palestinians must be weighed against the claims of others, and in this case against the claims of the Jews in general and Jewish settlers in Palestine in particular.

3.4 Jewish Rights in Palestine

One claim that can be made by the Jews as to their right to the land is based on first occupancy: we were first to rule over that land, which is the place where we established our first kingdom.²³ I think this claim should be rejected, and for reasons that were best articulated by Chaim Gans himself (Gans 2009, 97–123). If each and every people were to claim the right to return to the land of their ancestors after two thousand years, what would the world look like? What instability would such a

²¹ Even according to Israeli resources, the estimates are that around the time of beginning of the mandate in 1922 there were about 650,000 Palestinians and about 80,000 Jews in Palestine. These 80,000 included religious Jews from the old Yishuv who had lived in Palestine for generations and did not consider themselves to be Zionists. See Della Pergola 2001, 5.

²² I take the Balfour Declaration to involve a clear political dimension, and not simply the granting of a ‘homeland’ for the Jews. Consider the caveat it contains whereby “nothing shall be done which may prejudice the civil and political rights of existing non-Jewish communities”. Why speak of the danger of prejudice to civil and religious rights if we are not talking about Jewish state? A mere Jewish homeland cannot in itself prejudice rights. This is not to mention that Herzl spoke openly of a Jewish state.

²³ This argument in fact appears in Israel’s *Declaration of Independence* as one of the major arguments in support of the Jewish right to the land. See link: <https://main.knesset.gov.il/en/about/pages/declaration.aspx>.

claim create? And what would it mean for those who have been living on that land for centuries?

The second argument would be a combination of two general rights: one is based on equality and the other on necessity. The combination of both, while supplemented by the historical right in the background might be the best strategy (see Gans 2008, 2015). The argument develops in the following way. The Jews – like many other nations – have an interest in preserving and developing their own language and culture, and as such they are entitled to the right of self-determination.²⁴ But the right to preserve one's culture does not by definition justify a right to a sovereign nation state.²⁵ If we were to accept this logic, there would be as many states as the number of languages in the world – that is, two thousand states. That is an unreasonable result. Self-determination, however, could be achieved within a unit less than a sovereign state such as through cultural autonomy, a binational state, a federation or other forms that can guarantee the preservation of culture and the flourishing of the members of the group.

The equality argument, which aims to put the Jews on an equal footing with other ethnic-cultural groups has two steps: to establish the right to self-determination, then to extend this right to the Jews themselves as a nation equal to other nations. This general right to self-determination is then supported by argument based on necessity: the Jews were persecuted in late nineteenth century and suffered numerous pogroms in their history (not to mention the Holocaust).²⁶ They needed a safe haven to protect them in the shape of a nation state capable of providing them with shelter and security.²⁷ But why in Palestine in particular? Because the Jews have a special spiritual and religious relationship to Palestine – the Land of Israel. The spiritual-cultural-symbolic infrastructure was ready-made for such a project and could be capitalized on by the Zionist movement.²⁸

But what is the problem with this narrative? This narrative might be appealing to many European intellectuals, but the real question is how far it can be convincing to Palestinians. There are a few things here that I am ready to concede for the

24 This argument could be disputed, given that it was very difficult to speak of a single Jewish culture at the turn of the nineteenth century, and of a common language. Different Jewish groups spoke different languages and belonged to different cultures, though clearly had the same basic religion.

25 See Gans 2008, ch. 3, which deals with national self-determination: 67–96.

26 I did not mention the Holocaust initially here given that Zionism and the Balfour Declaration antedated the Holocaust.

27 But it should be clear that this argument undermines many Zionist positions that claimed that the project only aimed at establishing a homeland, but not a state. If Jews wanted to continue to live as a minority without sovereignty in Europe, they could have stayed there.

28 Despite the well-known fact that Herzl himself entertained many other options, including Argentina and Uganda. See Herzl, *The Jewish State* (1896).

sake of the debate, and I will not insist here on disputing them in full.²⁹ There is a kernel of truth in the three arguments: the argument from need/necessity following persecution, the argument from equality and the interest in preserving culture, and the argument of historical-spiritual ties to the land of Palestine. Nevertheless, I don't see how the arguments can trump Palestinian rights.

3.5 Rights in Balance?

Still, the question persists: how can these arguments affect or influence the *prima facie* right of the Palestinians living in their homeland? Do we have a symmetrical position where the arguments and claims of both parties are equally valid?

Consider the well-known distinction in legal theory between special rights and general rights, as developed by Hart (1984). Special rights are particular rights against specific persons due to some 'historic' event in the past that establishes the right and justifies it. If your car hits my car, this event of collision creates a duty on you – correlative to a right on my part – to compensate me for the damage. This is the basic logic of corrective justice. But on the other hand, my right to freedom of expression is not addressed to someone specific, and, like my right to a lawyer in criminal proceedings does not arise out of an 'event'; rather it might be justified on the basis of a fundamental need in humans, or on their fragility. Hart's distinction echoes Immanuel Kant's distinction between perfect duties – e.g. the perfect duty to return a loan – and imperfect duties, i.e., duties of solidarity toward others who are in need.³⁰

No one can ignore the fact that at the end of the nineteenth century – and clearly upon the rise of modern anti-Semitism and later the rise of the Nazi regime –

²⁹ Though they certainly can be disputed. Let's start with the necessity argument. The necessity argument regarding the saving of the lives of the Jews can't be translated immediately into the right to a sovereign Jewish state. Saving the lives of the Jews is one thing, and establishing a sovereign Jewish state is completely another. Their lives could have been saved by emigrating to other countries including the US, without the need for an independent state. They could also have emigrated to Palestine, but there is a difference between immigrant and a settler. As to the argument of equality and the right to culture: It is clear that Zionism was only one solution among many others to the Jewish question in Europe, among them solutions that went beyond equal individual rights, but which included the granting of autonomy to Jewish communities in such a way that would allow them to preserve their language and culture. I also accept that there is a religious spiritual relation between many Jews and the land of Israel, but the meaning of that relation and what it can justify is always contested. This relation existed for thousands of years, which proves that it can continue to exist and survive without territorial sovereignty.

³⁰ See Immanuel Kant's distinction in Immanuel Kant, *Groundwork for the Metaphysics of Morals*, ed. James W. Ellington (Hackett Publishing, 1993), 30. See also Immanuel Kant, *The Metaphysics of Morals*, trans. and ed. Mary Gregor (Cambridge University Press, 2013), 23–27 and 145–8. I deployed this distinction in my discussion of Zionism in Zreik 2020b, 81–125, mainly 100–1.

the Jewish people had a need for refuge in order to save them from the horrors they experienced and were still threatened by in Europe – though that assumes that Europe was not able to grant them such protection. But what kinds of duties does that fact impose on the Palestinians? And why should the Palestinians alone bear the burden of saving a people that others were persecuting in Europe? The Palestinians were under the general duty of assistance but nothing more. They were under a duty of hospitality, to welcome Jews as refugees in their home, but they were under no duty to offer them their home, or to give away half of it. It was Europe itself that had a special duty to assist and rescue the Jews, given that the harm done to the Jews was committed first and foremost by Europeans. All Europeans and all Zionists must put themselves in the shoes of a Palestinian at the turn of last century and see if they would accept the prospect of their land being torn apart, their nation split into two states, or of becoming a minority within their homeland, ruled by a majority of another people.³¹

It has never escaped my attention that the Zionist movement included different streams within it, those who wanted a separate state and those, like Martin Buber and members of Brit Shalom, who called for a binational project.³² Buber went out of his way to advocate for a binational state based on equality. I am not interested in analyzing the ‘intentions’ of the first Zionists and in this regard, and I do not have reason to question Buber’s intentions. Some look for quotations in the founding Zionist texts to prove that the whole project since its inception aimed to expel the Palestinians from Palestine and that was the dominant ‘intention’ of the Zionist. Masalha (1992) and Pappe (2007) have done an excellent job in this regard, but I have no interest in relying on such quotations from the mouths of the Zionist leaders. Nor am I interested in the good intentions of Buber or the bad intentions of Ben-Gurion, Herzl or Jabotinsky. What mostly matters is not what the Zionist wanted but what the Zionist project ‘wants’ – that is, what its implementation requires.³³ The Jews were simply ‘thrown’ into Palestine with the help of Britain and specific structural dynamics arose from this fact, regardless of the intentions of the involved parties. It is true that Jews were refugees from Europe; but if Europeans

31 Is it not the case that most Jews in Palestine-Israel oppose the right of return on the basis that the implementation of such a right can shift the demographic balance and turn the Jews into minority?

32 See in general Buber 2005 and see in particular my introduction to the new edition (forthcoming 2024).

33 It might be the case that the Zionists did not intend to establish a nation state – but *they did*; or that they did not intend to expel Palestinians from their homeland, but *they did* in 1948; perhaps they did not intend to occupy the rest of Palestine in 1967 but *they did*; perhaps they did not intend to build settlements in the West Bank – but *they did*; perhaps they did not intend to kill 40,000 thousand in Gaza, but *they did*; and perhaps they did not intend to destroy hospitals and schools – but *they did*. This is a short list that suggests that concern with intentions is not the issue in politics.

saw the backs of a fleeing people, the Palestinians saw the faces of approaching settlers.

Jabotinsky, most famously, argued in his essay ‘The Iron Wall’ that the Palestinians, like all other native people, would resist the Zionist colonization and that there would thus be no way to escape the resort to force. But he was not simply an aberration or a contingent development; as Arendt correctly noted, there is a built-in tilt in Zionism to move from left to right, to more revisionist radical violent elements (see Arendt 2007). This ongoing movement to the right springs from the fact that the more time passes, the more the Palestinians will show resistance, which, by definition, will trigger a more radical response on the part of the Zionists. The offensive nature of Zionism as a settler project is very difficult to avoid or hide for long. Bear in mind, for instance, that the Jews constituted only twelve percent of the population at the time of Balfour Declaration in 1917 and owned an insignificant amount of land; and even after thirty years of settlement under the Mandate and with its full support, the Jewish Yishuv owned no more than seven percent of the land of Palestine.³⁴ Does not all of this show that establishing a Jewish state would be at the expense of the native population? Were the Palestinians therefore not justified in resisting the project?

3.6 Settler Colonialism as a Provocation and the Logic of Self-Defense

The more the Zionist project of settling more lands moved forward, the more resistance there was on the Part of the Palestinians, the more this resistance triggered radical groups within the Zionist camp, and the more these groups resolved to use force, framing their actions in terms of self-defense. It might the case that the argument of self-defense was simply manipulated by the Zionists, but I am prepared to concede that many times they *did feel and experience* immediate danger or risk. But that was the whole point of my original paper: my argument was that the Zionists simply overlook the fact that the mere project of settling Palestine with the support of imperial powers and with the clear aim of transferring the land into a Jewish homeland for the Jews was in itself a provocation and an act of aggression against the aspiration of the Palestinian people and a threat to their future. When this fact was established, the whole terms of the debate changed, and the Jewish Yishuv initially, and later on the State of Israel, portrayed itself as always acting in self-defense, as if the first move or act of aggression was made by the Palestinians themselves.

³⁴ For details on land appropriation from Palestinians, see Kedar 2001, Forman 2004. For a more general account of Israel as an expanding settler project, see Yiftachel 2006. For land dispossession under the Mandate, see Sabagh-Khoury 2023.

But the Palestinians were not moving, they were ‘parked’ in their homeland when this historical accident occurred. The Zionists were, so to speak, driving a car that hit Palestine. It may be the case that the Zionists were being chased by a criminal and fleeing for their lives, but the Palestinians did not initiate the collision.

As long as one overlooks or ignores this basic fact – that settler colonialism is a provocation – then it is easy to view the Palestinians as the aggressor. This same logic repeats itself in the occupied territories after 1967. Slowly but surely, the occupation has become a transparent reality, not discerned by the Israelis, as if it constitutes a natural phenomenon. As such, any act of resistance on the part of Palestinians is seen an act that interrupts the normal peaceful life of the Jews in Palestine. But life is not normal for those Palestinians under occupation that see their land stolen on daily basis. So, the logic of self-defense becomes prevalent and occupies the political imagination of Israelis. This logic brackets the ‘original’ issues and supplies the Israelis with an independent argument for striking back: Now we are entitled to hit back against the Palestinians because they hit us. What I have called second-order arguments – fixated exclusively on Israeli security – simply devour the whole conversation, and no place is left to consider the question: What about the Palestinian entitlement to land, self-determination and security?

Returning to Benbaji’s argument regarding the minimalist approach: assume that we accept this approach by Zionists, that such an approach did exist and that such demands were legitimate.³⁵ Yet how can a minimalist approach justify a *de facto* maximalist-expansionist state? In the best-case scenario, the minimalist approach can justify a minimalist Israel – an Israel within the borders according to the 1947 partition plan, while keeping the Palestinians within that state as full equal citizens including those who were to become refugees. But the fact of the matter is that Israel occupied much more land than what was assigned to it according to the partition plan, and expelled hundreds of thousands of Palestinians (some fled), turning them unto refugees.³⁶ In 1967, Israel occupied the rest of Palestine and turned many hundreds of thousands more into refugees. Now, how can the minimalist approach justify a maximalist reality? Be that in 1948, or more clearly, after the 1967 war. The only move that Benbaji can suggest is that since the Palestinians rejected the minimalist Zionist approach, Israel is entitled to all of Palestine or at

35 Note that the minimalist approach is unclear. It could mean a demand for autonomy, a binational state, or a national state along the partition plan. These are not one and the same.

36 See Hillel Cohen’s argument that 1948 in fact witnessed two wars not one. One war, at the end of 1947 and early 1948, was defensive on the part of Zionists, but later on, when it was clear that the Zionists were winning, they continued their offensive, resulting in the creation of hundreds of thousands of refugees: Cohen 2018.

least most of it.³⁷ Why? Because we the Zionists offered to split Palestine in two and the Palestinians rejected this, and their rejection resulted in a war, whose results they thus have to accept. I think that this is the implicit logic in Benbaji's argument and many liberal Zionists including Heyd as well.

But this a problematic logic indeed, for it is an invitation to endless war. Imagine that you have 100 dollars,³⁸ and you drop it. I pick up the money and claim that it is mine, and I suggest that we split the 100 dollars equally between us, an offer that you reject. Not only that, but you push me and try to take the 100 dollars from me by force. Now that you have hit me, I – claiming self-defense – hit you back with brutal force and keep the 100 dollars. Can the fact that you were not willing to compromise justify the conclusion that the 100 dollars should be yours now? Does the fact that you reject an offer that is unjust justify the loss of your homeland?³⁹

One line of argument might be in the affirmative. Yes, the fact that you have rejected the offer and launched a war might establish a right on my part. On what basis? Now that we are enemies, I have no reason to trust you anymore, and I am afraid that whatever compromise I make with you will endanger my security.

The problem with this logic – which has been at the heart of Israel's argument for security throughout the years of its existence – is that it turns the mere fact of the conflict itself into the basis and a source of rights. It feeds on fears and the fear feeds expansion. The state of war becomes the major justification for holding the land but holding the land invites war in itself. Even the regime of Apartheid in the Palestinian Territories could be justified in terms of self-defense, because the best away to guarantee security for the settlers might be a different regime of land, education, transportation etc. Israel is not unique in this regard, and most settler societies developed and expanded their settlements while claiming self-defense.

37 Israel 'proper' (if such an entity exists at all) holds seventy-eight percent of historic Palestine. Now, Israel *de facto* controls all of the West Bank except the enclaves of the Palestinian cities, which are surrounded by roadblocks on all sides. Even these city centers are not immune from military incursion whenever Israel feels necessary to do so.

38 One immediate objection to this example is the argument that no one owns the 100 dollars from the start, and that since day one there were good reasons to think that the 100 dollars (Palestine) belonged equally to both parties, the partition plan was a fair one. This is a valid objection in theory, but I don't think that in 1918 one could say that Palestine 'belonged' equally to both parties – nor that the partition plan was a fair one.

39 I think that the partition plan in 1947 was not fair to the Palestinians, given that it assigned fifty-six percent of the land of Palestine to the Jewish state, and only forty-six to the Palestinian state, at the time where the Palestinians constituted two thirds of the population (about 1.3 million) and the Jewish Yishuv one third (about 0.65 million). Furthermore, within the territory assigned to the Jewish state there would be 650,000 Jews and about 600,000 Palestinians, while in the Arab-Palestinian state there would be only a tiny minority of a few tens of thousands of Jews.

Thus, the second-order argument about security postpones issues of entitlement and historical justice forever.⁴⁰

4 Back to the Future

I think that the rejection of both Benbaji (implicitly) and Heyd (explicitly) of the settler colonial framing of Zionism as a settler colonial project stems in part from their worry about future solutions. If the Zionists were colonialist, then we know how colonialism usually ends. It ends with wars of decolonization. But where can the Jews go? What is the future of their collective national life?

A few remarks are necessary in this regard. First, settler colonial projects take on many different shapes. Australia is not Ireland, and Algeria is not South Africa. So, settler colonialism is an analytical tool to describe, analyze and understand historical developments. As such, it is a necessary tool to tell the story of the emergence and evolution of Israeli society, its internal relation between first settlers and second settlers, its land regime, its relation to the Palestinians, its ongoing fear, the desire to eliminate the native, its massive deployment of violence etc. The settler colonial frame is not the only frame of analysis that exists. It is not able to explain everything, and we still have to use feminist tools, class analysis, and national frames of analysis in order to understand the Israel-Palestine conflict. It cannot replace other frames – but it is necessary.

Most importantly, however, there is no solution that can be deduced from the analytical tool itself. If Zionism is a settler-colonial project, then it does not automatically provide us with a future solution: some might prefer a single secular liberal state, while others may prefer a single binational state, a third party might think that partition is the best solution. Some might advocate the return of Jews to Europe. Whatever the solution offered, it does not emanate as a logical conclusion from any historical analysis or the analytical tool of settler colonialism. Political solutions require responsibility: for we are far freer to design our future than we imagine. We are not slaves to history despite its importance, and even though we cannot ignore it.

The right of the Jews to continue to live in Palestine does not need to emanate from a deep-lying historical right, but simply from the fact that they have been living on the land here and now for several generations, and that they perceive it as their land and that they want to continue to live on it and have developed reliance interests regarding their future expectations. When Heyd writes at the end of his reply that “From the River to the Sea” is a disastrous slogan on both sides”

⁴⁰ See Zreik 2021, 491–529; 507–518.

(Heyd 2024, 340). I take him to mean that it would be a disaster on the part of one group to claim exclusive ownership on the land of Palestine-Israel. I agree with this, and I think that binationalism is the right way to view the future of this land: either in two really independent states, or one binational state, or a combination of both that guarantees justice, freedom and equality to all.

But two caveats are mandated. First, while the solution might require the partition of Palestine one way or another, this does not mean in any way that Palestine as a whole cannot and should not be a single geopolitical unit of analysis. Palestine-Israel is one unit controlled by one sovereign (through multiple regimes of control), and historically has been subject to different waves of a settler project that entailed different modes and practices of dispossession of the native Palestinians through the years.

Second, acknowledging the binational nature of Palestine-Israel now and the need to dismiss ideas of exclusive ownership of one group does not mean that this also applied in 1918, for things change over time. Perhaps some in Hamas think that Palestine belongs only to Palestinians and that the fact that seven million Jews are living in Palestine now can't change anything in terms of the allocation of rights compared to 1918. That is unreasonable. On the other hand, Heyd wants to argue that as of 1918 Palestine was already a binational country and to me that is unreasonable as well.

This is not mere quibble about the past but something that bears on the present. Denying the historical injustice done to the Palestinians by the Zionist project – in 1967 and in 1948 – hinders the possibility of a historical compromise, though the question of how to remedy this injustice is always a matter for political imagination. Without such an acknowledgement, the Jews in Palestine will continue to experience fear and threats, and every war they conduct will be viewed through the lens of self-defense: even the ongoing war on Gaza and Lebanon, a year after 7 October and after the killing of more than 40,000 Palestinians and the complete destruction of all the infrastructure in Gaza, is still perceived by Israel as a war of self-defense. But the truth is that it is only by dealing with this past that Israelis can seek a path to the future. There must be a way to imagine Jewish nationalism in Palestine that is neither colonialist nor aims to maintain Jewish supremacy, whether in the territories occupied in 1967 or inside Israel itself in relation to its Palestinian citizens. There must be a way for Jews in Palestine to achieve a condition in which being and being superior are not one and the same.

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