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Territorial Rights and the Debate About the Morality of Zionism

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ABSTRACT

This paper explores the view that, beyond particular wrongs committed by Zionism, the Zionist project was itself inherently wrong. I argue that the most plausible basis for this claim is the contention that Zionism disrespected the territorial rights of the local Arab population. By examining leading contemporary theories of territorial rights – specifically those of Miller Moore and Stilz – I demonstrate that none provide a strong foundation for this view. At the onset of Zionist immigration, the Arabs of Palestine did not meet the criteria required to possess territorial rights under these theoretical frameworks.

1 | Introduction

The wrongness of slavery is so fundamental to the modern ethical outlook that if anyone were to deny it we would assume that they inhabit a wholly different moral world from our own. Accordingly, we would probably feel that there is no point in engaging with them on this issue. Margaret Moore believes that the same is true of colonialism, namely, that its injustice is “one of the fixed points of our moral compass, from which we build our normative theories” [1, p. 449]. Similarly, Lea Ypi begins her paper on the wrongness of colonialism by asking readers to grant that colonialism “must be wrong,” and by noting that readers who think otherwise “are unlikely to find [her] arguments attractive” [2, p. 158], presumably because their moral compass is too deeply corrupted.

Yet while everyone (in Western societies) today agrees that slavery must be wrong, not everyone accepts that the same holds for colonialism. Some philosophers have argued that although colonialism involved serious wrongs such as economic exploitation and public humiliation [3], as well as atrocities such as “burning native settlements, torturing innocents, slaughtering children, enslaving entire populations” [2, p. 162], one can imagine cases of “benign colonialism” that avoid such wrongs. On this view,

colonialism is only contingently wrong: its wrongness depends on the objectionable forms it tends to take and the policies it tends to implement [4]. Another way of putting the point would be to say that colonialism is not wrong per se, or not inherently wrong.¹

On reflection, however, there is no contradiction between the claim that colonialism is wrong per se and the claim that it is contingently wrong. The reason has to do with the familiar distinction between actions that are pro tanto wrong and actions that are wrong overall. Knowingly violating a promise is wrong per se, though it may be overall justified if necessary to save someone's life. The point is that the overall justifiability of an act does not eliminate what is morally regrettable about it. Thus, while the pro tanto wrongness of promise-breaking is indeed not contingent on circumstances, its overall moral status does.

The same is true of colonialism. Even if colonialism is wrong per se, “over and above the outrages” associated with it [2, p. 162], it might still be overall justified if it significantly improves the lives of the colonized and provides them with better protection of their human and civil rights. Therefore, the best way to understand the disagreement between philosophers such as Ypi and Moore, who maintain that colonialism is inherently wrong,

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and those like Valentini and Weltman, who deny this, is not as a disagreement over whether colonialism is contingently or non-contingently wrong. Rather, it is a disagreement over whether there is some feature of colonialism that (a) is present in all instances of it, and (b) underlies its moral wrongness, over and above the specific wrongs perpetrated in different colonies and under changing circumstances.²

What might this defining feature be? According to Ferguson and Veneziani [9, p. 426], “the most common view has historically been that colonialism was wrong, *inter alia*, because it violated the territorial rights of indigenous persons.” Colonial powers proceeded under the assumption that the territories they seized and settled were *terra nullius*—land belonging to no one—and therefore available for appropriation. This assumption, however, was false on the view under discussion; these territories were occupied and owned by Indigenous peoples who had inhabited them for a long time.

This potent objection to colonialism has been articulated through the somewhat technical framework of “territorial rights,” the precise meaning of which will be explored in depth below. For now, it is important to acknowledge the fundamental moral intuition underpinning this view: Europeans possessed no right to settle in the Americas, Asia, or elsewhere, because those areas already belonged to the Indigenous peoples living there.³ Of course, as owners, those peoples had the right (the “normative power”) to admit some or all Europeans into their territory. But the colonizers did not seek such permission, which was obviously not granted. On this view, then, although colonizers typically committed many kinds of wrongs, what is common to all colonial projects, including hypothetically benign ones, and underlies their inherent moral wrongness, is their disregard for the territorial rights of the colonized peoples.⁴

Yet even among those who accept that colonialism was inherently wrong in the sense outlined above, not all agree that this wrongness is grounded in its disrespect for the territorial rights of colonized peoples. Lea Ypi [2] is the most prominent representative of this position, though she is not alone (e.g., Renzo [11]). Exploring the alternative accounts offered by these authors for the wrongness of colonialism would take us beyond the scope of the present paper, whose focus is the morality of Zionism, to which I now turn.

The distinction between questions regarding the very initiation of colonialist projects and questions regarding the ways they historically unfolded is helpful in the case of Zionism as well. One should distinguish between questions regarding the Zionist project itself and questions regarding the way its history unfolded during the 20th (and maybe the 21st) centuries. Like with the above debate about colonialism, the question I’d like to raise is whether Zionism itself was wrong regardless of the wrongs carried out by the Zionist movement, by individual Zionists, or later by the State of Israel.

By ‘Zionism’, or ‘The Zionist Project’, I’ll be referring to the historical movement that began in Europe in the end the 19th century which sought to settle Jews in the land they referred to as *Eretz Yisrael* (the Land of Israel), later to be officially called Palestine, with the aim of establishing some sort of Jewish self-rule there.⁵ The “first wave” of Zionist immigration (the First

Aliya) started in 1882, followed by a second wave in 1904, and so on. The question I shall focus on is whether this project was morally legitimate regardless of later developments, such as the 1948–1949 events, or, later, the settlement project in the territories occupied in the 1967 war. This definition of Zionism doesn’t beg any important questions regarding the morality of Zionism and therefore seems a good starting point to our normative exploration.⁶

A natural response to this question would be that since Zionism is a form of colonialism, one can simply copy and paste the various views about the wrongness of colonialism to the case of Zionism. But this would be too fast. First, as recently explained by David Heyd, the Zionist project lacked essential properties of colonial projects:

Colonialism has always two loci: the original land and the land settled by the colonists as a kind of expansion or extension of the original land. There is always the metropole and the periphery... The colonists always identified themselves as Brits, Spaniards. Portuguese, etc. They spread the language and culture of their original nation and served in leading roles in the creation of economic ties between the two countries... Colonialist movements have always been supported by the military power of the metropole, the country of origin [13, p. 331].

Yet, as he shows, none of these properties applies to Zionism.⁷

Second, throughout the period I’m talking about, there were political powers in Palestine that *did* satisfy the standard conditions of colonialism, namely, the Ottomans (for the first 3–4 decades of Zionist settlement) and then the British (for the remaining three decades). This means that most of the arguments against colonialism would have applied, in the context of Palestine, to these colonial powers and not to the Jewish immigrants, who were subject to the Ottoman and to the British rule just like their Arab neighbors. For instance, if the wrongness of colonialism has to do with legislating discriminatory laws, then it wasn’t the Zionists who had the power to legislate for the Arab residents of Palestine, but the Ottoman and the British; if it has to do with exploiting the land’s resources for the benefit of the metropole, this could have applied only to the Ottoman and the British, not to the Zionists; and so on.⁸

Third, unlike the paradigmatic instances of colonialism that Ypi and others have in mind—in the Americas, Australia, and most of Africa and Asia—the British mandate on Palestine was approved by the League of Nations in 1922 and was therefore legitimate by existing international law [Correction added on 7 August 2026, after first online publication: The year in this sentence was corrected to 1922.]. This fact doesn’t rule out arguments to the effect that, morally, the British rule over Palestine was illegitimate, but it does raise the onus for those who uphold them. This has to do with the fact that the duties and rights that states and peoples have vis-à-vis each other are so indeterminate that international law is often better seen as *determining* what’s morally the case rather than expressing an independent moral truth.⁹

An interesting, and somewhat surprising implication of these considerations is that while the role of territorial rights in explaining the wrongness of colonialism is contested, it emerges as the most potent line of argument for the inherent wrongness of *Zionism*. As a small minority,¹⁰ itself subject to the colonial powers that ruled Palestine, the Zionists could not have legally restricted the ability of the local Arabs to live as they saw fit; could not have enforced their own (Jewish) cultural or religious norms on them; could not have appropriated Arab land or property against its owners' will; could not have enacted laws that discriminated against them; and so on. Yet—so goes the claim—the very act of their settlement in Palestine manifested a fundamental disrespect for the residents' territorial rights. Palestine *belonged*, as it were, to these residents, and the Zionist movement had no standing to settle there without the permission of the former.

For the argument to get off the ground, one would need to assume that territorial rights are held not only by states but also by non-state agents, especially peoples. Some philosophers, like Miller [19] and Meisels [20], have indeed developed such “non-statist” theories of territorial rights which will be the focus of the inquiry below. Fortunately for the present inquiry, the last two decades have seen extensive philosophical engagement with the topic of territorial rights,¹¹ which provides an opportunity to explore thoroughly the above argument regarding Zionism.

I begin my inquiry with the assumption that people have a strong interest in moving freely both within their countries and across borders, placing the burden of proof on those who seek to restrict this freedom. According to the argument on the table, the local Arabs could have lifted the burden because they bore the territorial rights over Palestine.

What exactly is meant by saying that some group, or some political institution, has territorial rights over some territory? According to David Miller, the notion comprises three elements. The first is “the right of jurisdiction, that is, the right to make and enforce law throughout the territory in question.” The second is “the right to control and use the resources that are available in the territory,” and the third is “the right to control the movement of goods and people across the borders of the territory”, ([19], p. 253).¹² What will concern us here is only the third element, in particular the right to control the immigration of people into the borders of the relevant territory. It is this aspect of territorial rights that, according to the argument on the table, granted the Arabs a moral right to deny entry to the Zionists even though the latter mostly received valid entry permits from the Ottomans and then the British (significant Jewish illegal immigration began only in the 1930s).

When considering territorial rights over Palestine during the period in question, one might also ask whether the *Jews* held such rights. For the sake of the present inquiry, however, I set that question aside. If Palestinian Arabs lacked territorial rights over Palestine, Jewish immigrants were likely justified in relying on the entry permits granted to them, irrespective of whether Jews collectively held such rights. If, however, the Palestinian Arabs *did* bear such rights, further research would be needed to assess the strength of the Jewish claim and to determine whether it could have outweighed the Arab one.

In the next sections, I explore whether the views of Miller, Moore, and Stilz, on territorial rights can support the claim that the Zionist project was inherently wrong as it violated the territorial rights of the Arabs.¹³ My conclusion will be skeptical, in a way that parallels Ypi's conclusion about colonialism; if the Zionist project was wrong per se, its wrongness likely did not stem from a violation of the local Arabs' territorial rights. This, of course, leaves open the possibility that other considerations might ground its inherent wrongness—if, indeed, it was inherently wrong.

Finally, my aim is not so much to persuade the reader of the soundness of my own position as to highlight the complexity of the historical and normative assumptions that bear on this issue, as well as the implications of choosing some argumentative paths rather than others.

2 | Miller: A Nationalist Theory of Territorial Rights

According to David Miller, territorial rights are not an aggregate of individual rights but are borne by collectives; nations and indigenous peoples. For these rights to be reasonably stable, these collectives “must endure across generations”, [19, p. 258], hence:

We need to find a transhistorical agent that can be the bearer of such rights, without relying on the state to perform this role (since we are now treating state claims to territory as derivative). A group that fits this bill must be one whose identity is such that it can be transmitted across time, with newly arriving members being bound to the existing ones through an inherited understanding of the nature of the group... What kind of group could count for this purpose? The most plausible candidates are nations and indigenous peoples, collectives that share certain features such as common identity and a shared set of social rules. (ibid).

On this view, territorial rights are natural in the sense that they do not depend on the existence of political organizations, states in particular. That is not to deny that states too hold such rights, but they hold them only derivatively. The state of Iceland has territorial rights over Iceland only thanks to the fact that the Icelandic *people* have such rights, which the state of Iceland is supposed to protect.

Reflecting on a place like Iceland helps to see the attraction of Miller's view. When a group of people that share the same language and culture live for a long time in a well-defined territory, develop forms of political association, cultivate the land, and construct roads, bridges and villages, the island seems to be *theirs*,¹⁴ namely, they have territorial rights over it. Thus, only if a group has a history of rich and thick social, linguistic, cultural and political ties might it be in a moral position to require others not to move into its territory.

Within this view, the local Arabs of Palestine could have territorial rights only if they were a collective of people sharing “features such as common identity and a shared set of social rules.” However, at least in the first decades of Zionist settlement, from the 1880 until the early 1920s, the local residents of Palestine did not see themselves and were not seen by others as constituting a separate nation or people. Most historians agree that a distinct Palestinian identity started to develop only around the 1920s, in response to the Sykes-Picot Agreement (that severed the connection between Palestine and Syria), the British mandate, and, above all, the growing Zionist immigration.¹⁵ It is therefore doubtful whether, regarding Palestine in the period we’re discussing, its Arab inhabitants constituted what Miller called a “tranhistorical agent,” that might have had territorial rights over it.

In response, one might argue that even if there was no distinct Palestinian identity in the relevant period—and hence Zionism could not have violated specifically *Palestinian* territorial rights—there was a broader Arab nation in the region whose territorial rights Zionism wrongfully ignored. Yet at the end of the nineteenth century, the Arabs were spread across an enormous territory, often possessed salient local or national identities—Egyptian, for example—spoke different Arabic dialects, and, most importantly, could not plausibly be said to share a history of living and acting together through common political and social institutions.

Let’s turn to the second part of Miller’s view, namely, to what nations must do to obtain rights over a specific territory. First, they must reside in it for a long while. Yet longevity is not enough because groups might stay in some place for a long time and then move to another, without establishing any special ties to the land. What is required, says Miller, is for them to transform the territory materially and symbolically:

That is, the land has its material value enhanced, by cultivation, for example, or by the creation of buildings, roads, waterways and so forth. At the same time, particular places, or areas within the territory, acquire symbolic significance for the group... As a result of occupation and transformation, therefore, the territory becomes a repository of value for the people in question [19, p. 258–259].¹⁶

Limiting the right to territory to the areas in which groups have made material and symbolic investments is important also for reasons of distributive justice. If even a weak sense of belonging with meager material and symbolic investment was enough for a group to acquire territorial rights, then a relatively small group could acquire a right to control a very large territory, say the entire Australian continent, just by virtue of living there and moving around it periodically, for economic, military, or other reasons [20, p. 89].

Back, then, to the Middle East. Even if there had been a distinct Palestinian people at the end of the nineteenth century that qualified as a transhistorical agent in Miller’s sense, the longevity condition would not have been satisfied, and neither would the condition of collective material and symbolic investment.

Miller argues that material value is enhanced through the creation of buildings, roads, waterways, and the like. But the local Arabs of Palestine did relatively little in these respects during the decades preceding Zionist settlement.

One might argue that the lack of material investment by the local Arabs was not their fault because those in charge of developing the land since the Ottoman conquest of 1517 were the Ottomans. But if a condition to acquire some right is doing Y, then if a person does not do Y, she does not acquire that right, regardless of why exactly she failed to do so. Hence, if one accepts Miller’s view that material investment is necessary for bearing territorial rights over a particular territory, then if no such investment occurs (or not enough of it, anyway), no such rights can be attributed to the relevant collective agent.

Let us turn to symbolic investment. In Miller’s view, a group symbolically transforms a territory when “particular places, or areas within the territory, acquire symbolic significance for the group.” Yet in this case, it would have been difficult to identify nationally sacred places of the kind Miller describes, or rituals and practices associated with them that had endured over the long period he requires. There was, of course, the *Al-Aqsa* Mosque in Jerusalem, along with a few other holy sites. But these were sacred to Muslims in general, not to Palestinians specifically, and they acquired this symbolic significance centuries before anyone could have thought of the Palestinians as a distinct entity. The absence, or relative weakness, of Palestinian symbolic investment in the territory would have made it difficult to define the borders of the territory over which the local Arabs supposedly held territorial rights, since such borders track the extent of material and symbolic investment. Without a non-arbitrary way of determining those borders, it would have been hard to justify excluding immigrants on the ground that they were intruding on Palestinian territory. To be sure, the exact borders generated either by occupancy (see below) or by full-fledged territorial rights are always fuzzy and involve “a strong conventional element” [34, p. 138]. But the problem becomes especially acute when the group claiming such rights lacks a clearly distinct national identity and has made only minimal material and symbolic investment in the land.

Furthermore, to the extent that what ultimately drives Miller’s view is the value he attributes to nations being able to live in accordance with their values, rituals etc. on the land which forms part of their national and cultural identity, the smaller the nation and larger the territory, the weaker its right to exclude others. In 1880, there were approximately half a million Arabs in the territory that approximately corresponds to modern Israel plus the Palestinian territories [34, p. 10], which today is a home for approximately 15 million people. Given this situation, there was clearly enough room for the Jews to settle with no interference to the practices, rituals, or culture of the Arabs.¹⁷

I should reiterate that, for Miller, mere inconvenience caused by unwelcome changes in one’s society or environment are insufficient to ground a moral protection against them. What territorial rights are supposed to defend from are significant threats to a group’s way of life and identity, threats that are most evident when groups are forced *out* of their territory. Thus, Miller says that when some territory has been shaped to fit the needs

and the cultural values of some, then “if it is now *taken from them*, they will no longer be able to sustain their way of life.” The same with symbolic value; because of the internal relationship between the group’s culture and its territory, “*losing the territory would be to lose much that is of symbolic value to the group, and therefore essential to its continuing identity as a people*” [24, p. 259, italics added in both citations]. To be sure, for Miller territorial rights do not protect only against forced expulsion, but against unwelcome immigration as well. But the threat that such immigrants would need to pose to the local nation to justify their exclusion would have to be on a similar scale. Yet it seems that neither of these threats was posed by Zionism to the local Arabs, or, a fortiori, to the Arabs in general.¹⁸

3 | Moore and the Political Conditions for Being a People

Moore agrees with Miller that peoples are the primary bearers of territorial rights [36, p. 127], but she proposes different conditions for holding them:

- a. There is a shared political commitment to establish rules and practices of self-determination on the part of a wide majority of members,
- b. they have the political capacity to establish and sustain institutions of political self-determination,¹⁹ and
- c. they possess an objective history of political cooperation together through, for example, state or sub-state institutions, or in a resistance movement (ibid., 127–128).

What is created when these conditions are satisfied is a shared life, one that produces institutions and practices that shape the collective circumstances of the people’s existence. The difference between Moore’s account and Miller’s is that for Miller only nations and indigenous peoples enjoy these rights, whereas for Moore groups might bear them even if they are not “cultural groups” [36, p. 121].

I am not sure how far these two accounts differ because, in the real world, groups that satisfy Moore’s conditions tend to be national groups in Miller’s sense; human beings tend to associate politically only when they already see themselves as belonging to the same national or cultural group.²⁰ Be that as it may be, my goal is to explore what follows from Moore’s account with regard to the question of whether Zionism violated the territorial rights of the local Arabs.

Condition (a) quite clearly did not apply to them when the Zionist project began. There was no (or a very weak) interest in self-determination among Palestinian Arabs and no shared political commitment to establish the required rules and practices. Their alliances were far more local, familial (in the large sense) and religious. Even in the early 1920s it is doubtful that “a wide majority” of them had a shared political commitment.

As for condition (b), if some group is successful in establishing and sustaining institutions of political self-determination, that of course proves that it has the *capacity* to do so. But for condition (b) to constitute a separate constraint on the bearing of

territorial rights, it is not limited to such cases, but to cases in which the group has the capacity for establishing and sustaining institutions of political self-determination though it hasn’t yet realized it. But how can one know that? How can one know that, at the turn of the 20th century, the local Arabs of Palestine had “the political capacity to establish and sustain institutions of political self-determination”? One way would be by looking at later attempts to establish such institutions, which might demonstrate, retroactively, the existence of such a capacity. But the Palestinian Arabs formed very few institutions of political self-determination of the kind Moore has in mind. The best way to see that is by comparing the Palestinian situation in this regard to that of the Jews. During the British Mandate, the Jews established and sustained almost all the institutions needed for ruling their lives; they had a kind of a parliament (“Assembly of Electees”), a “national committee” that functioned as the executive branch, and a powerful national trade union. This infrastructure made it relatively easy for them to establish functioning state organs immediately after the British left. In comparison to this developed infrastructure, the Arab population had almost no institutions of self-determination, which seems to undermine the claim that when Zionism started it had the required *capacity* to establish and sustain such institutions.

In response, one might argue that the failure of the local Arabs to establish the required institutions is no proof that they lacked the above capacity because it was a result of external constraints. But it is difficult to see what external conditions in Palestine might have prevented the local Arabs from establishing political institutions of self-determination while enabling the Jews to do so.

I turn to condition (c), according to which a group qualifies as a people in the relevant sense only if it “possesses an objective history of political cooperation together, through, for example, state or sub-state institutions, or in a resistance movement.” This condition, too, was probably not satisfied by the local Arabs of Palestine. Their “political cooperation together” began only in the 1920s, so one could speak of a *history* of such cooperation only in the 1930s and 1940s, at a time when hundreds of thousands of Jews had already settled the land.²¹

It therefore seems that, in the period we’re talking about, the local Arabs of Palestine did not satisfy any of the conditions required by Moore for being a people with territorial rights, and definitely did not satisfy all of them, which is what Moore requires. Hence, on Moore’s view, they did not have territorial rights over Palestine²² and, consequently, had no ground for arguing that such rights were violated by Zionist immigration.

4 | Stilz, Occupancy Rights, and the Right to Exclude Zionists

Like Miller and Moore, Anna Stilz’s account too assumes that rights (of a certain type) over territory do not depend on the existence of political bodies, particularly of states. As explained above, this feature of their theories is important for the debate about Zionism because if rights over territory were determined by the political body controlling the land then, given that the Ottomans and the British who controlled Palestine allowed the

Zionists to settle in the country, that would put a quick end to the debate. Only if rights to territory can be valid independently of states (or of other political bodies that enjoy *de facto* authority over the territory) is there logical space for the possibility that the Zionists violated the territorial rights of the local residents.

The above similarity between Miller and Stilz notwithstanding, there is a crucial difference between them. While for Miller the bearers of natural rights over territory are collectives, for Stilz they are individuals, whose rights over the territory they occupy—their “occupancy rights” – are rather limited. When an individual builds a life somewhere, she relies on that location in her life commitments and has a weighty interest in remaining there. But she has no right to prevent others from moving into that location and obviously doesn’t have the other bundle of rights that Miller mentions as constituting full-fledged territorial rights. For Stilz, an occupancy right amounts to “a claim-right not to be *removed* from the area, to be allowed to return, and not to have one’s use of that space interfered with in ways that undermine the located practices in which one is engaged.”²³

Note, in particular, that, according to Stilz, “current occupants cannot cite damage to their practices as a reason for excluding” would-be settlers [42, p. 361]. Thinking otherwise would lead to implausible results in the domestic level regarding the right to move freely *within* one’s country.²⁴ Consider a group of American Muslims moving into a small town which, up to that point, included only white Protestants. The town’s practices and culture would probably change as a result—would suffer “damage” in the eyes of some of those whites—but this damage does not grant the locals a moral right to exclude the newcomers. Locals might be allowed to deny prospective migrants entry only when two conditions are satisfied: (a) the migration “would severely harm their practices,” and (b) “those migrants have no urgent interest in moving” [42, p. 363]. When newcomers lack a reasonable territorial base elsewhere, or have urgent interests in moving, the locals “are almost always *obliged*” to admit the foreigners,²⁵ “as long as they come without colonizing intent” (*ibid*, italics added). Thus, while Stilz recognizes the special interest of individuals to remain where they reside, she makes it clear that this is compatible with others living there as well; “Occupancy rights are not exclusive” (*ibid.*, 353).

The above features of Stilz’s theory are directly pertinent to the question of Zionism. Let’s start with condition (a). As indicated in my discussion of Miller, given the small size of the Arab population in Palestine in the period under discussion, there was enough room for Jews to settle without causing significant harm to the local Arabs’ way of life.²⁶ Of relevance is the fact that unlike the case of the Muslims moving into a WASP town, most Zionists settled in separate villages or towns which they established, like Tel Aviv, so the damage to the Arab way of life in Arab villages and towns nearby would have been much smaller. American Protestants would surely not be morally entitled to deny Muslims the right to form a separate Muslim town in their (the Protestants’) *county* or *state* because of the assumed harmful influence of these new neighbors on their way of life.

Turning to condition (b), the Jews in Eastern Europe, where most Jewish immigrants came from at the time, were victims of persecution and discrimination, hence “lacked territorial base

elsewhere” and had an “urgent interest in moving.” Stilz explicitly draws this conclusion,²⁷ arguing that “where [prospective settlers] lack a [reasonable] territorial base, current inhabitants cannot refuse them entry. I believe Jews fleeing pogroms and Nazi persecution met this condition; for this reason, Jewish settlers did not count as colonists – instead, they were refugees that Palestine was obliged to accept.”²⁸

If, then, Jewish immigration caused no significant damage to the practices of the local Arabs, why *did* they object to it? In the beginning, up to 1920 or so, the objection was indeed not that significant. But when one looks at much of the Arab anti-Zionist rhetoric from 1920 onward, especially that coming from the Grand Mufti of Jerusalem, Haj Amin Al-Husseini, one cannot miss its hostile and often antisemitic tone.²⁹ The most shocking manifestation of this hostility were the massacres carried out in 1929 on the Jews of Safed and Hebron who had lived in those places for a very long time and were not part of the Zionist project. For many Arabs, then, hostility toward Jews was a central factor motivating their fierce opposition to Zionist immigration. This hostility did not emerge out of nowhere but had roots in a longer history of Muslim antisemitism³⁰ and in centuries during which Jews under Muslim rule were treated as *dhimmis*, legally subordinate subjects.³¹ The rise of Zionism intensified this hostility, in some cases to murderous levels.

Why might this be relevant to evaluating the territorial rights over Palestine? Because, according to Stilz, opposition to newcomers based on hatred of the ethnic or religious group to which they belong carries no moral weight; “a racist who values living in a whites-only environment has no claim not to have his plans set back through migration of Hispanic residents to his neighborhood” [42, p. 361]. Thus, to the extent that Arab opposition to the Zionist newcomers was motivated by antisemitism, that would have further undermined the moral ground of that opposition.

Let’s now look at Stilz’s proviso, according to which the obligation to allow newcomers to settle is conditioned on them doing so “without a colonizing intent.” This expression might mean an intent to remove the locals. But there is no serious evidence that in the first decades of the Zionist project such an intention existed. That in 1948 many Arabs were expelled and many others prevented from returning after having escaped does not show that this had always been the plan³²—just as the fact that British settlement in North America led to the infamous Trail of Tears and to other calamities does not show that the settlers had all along intended these results.

A second and more natural way of understanding the expression “colonizing intent” is as an intent to establish a regime in which the settlers hold superior legal or political status over the local population. But, as shown by Shumsky [53], none of the Zionist main leaders and thinkers—Pinsker, Herzl, Ahad Ha’am, Ben-Gurion and even Jabotinsky—envisioned a nation-state in which the Arabs would be second-class citizens, “colonized,” as it were, by the Jews. Rather, they envisioned a multinational structure in which Jews and Arabs alike would enjoy cultural and political autonomy.³³

Admittedly, this vision of an “egalitarian multinational state” [49, p. 223] was abandoned in the late 1930 in favor of a two-state

solution, which was proposed by the Peel Commission in 1937 and “did not appear beforehand in the political Zionist imagination” (ibid., 230). During the 1940s, and especially after WWII, this solution became the preferred one by both the British and the international community (the UN decision of 1947) and was agreed to by almost all Zionists. If implemented, it would not have led to a political regime in which the Jews “colonize” the Arabs, but to one in which Jews and Arabs belong, by and large, to separate political units.

5 | Nine Concluding Thoughts

- i. Colonialism was responsible for numerous injustices against colonized peoples. Yet philosophers disagree about whether, over and above these injustices, there was something inherently wrong with colonialism. Among those who believe that there was, a prominent view has been that colonialism, by its very nature, violated the territorial rights of local populations. Colonialists were trespassers: they invaded territories that belonged to others without obtaining permission. Following the criticism of Lea Ypi [2], among others, this explanation is less common today than it once was. On her view, the fundamental wrong of colonialism lay in the unilateral imposition of a political association that denied its members equal and reciprocal terms of cooperation.
- ii. This debate about the wrongness of colonialism invites a fresh look at the debate over the morality of Zionism. Since Zionism does not satisfy the standard conditions of colonialism, no one could plausibly claim that Zionism “*must* be wrong” in the way some have claimed colonialism must be. Nonetheless, many believe that Zionism was wrong, or at least that it led to serious wrongs. As with colonialism, this presumed wrongness may be understood in two ways: either as referring to a list of injustices committed by the Zionist movement (perhaps also by the State of Israel) and by individual Zionists, or as referring to some injustice embedded in the very nature of the Zionist project. Without denying many items of the first kind, the focus of the present paper has been on the second reading of the claim about Zionism’s wrongness, namely, that it was wrong *per se*.
- iii. Ypi’s own account, and similar ones, cannot substantiate the alleged wrongness of Zionism because, being themselves subject to the colonial powers that ruled the region, Zionists were in no position to unilaterally impose any political association on the local population. Therefore, in the case of Zionism, the argument from territorial rights re-emerges as the most promising way—if any exists—of grounding its inherent wrongness.
- iv. I have examined the leading philosophical accounts of territorial rights and concluded that none provides convincing support to the claim that Palestinian Arabs had a moral right to prevent Jewish immigration. Within Miller’s framework, they did not qualify as a nation in the required sense since there was no distinct Palestinian identity during the relevant period, and since their material and symbolic investment in the land was limited. Within Moore’s view, they lacked a history of shared political institutions and activities. Finally, within Stilz’s framework, although the local Arabs held occupancy rights, these rights were insufficient to justify the exclusion of Jews. On the contrary, her view suggests that the Arabs had a positive obligation to admit them. As for full-fledged territorial rights, Stilz limits them to states—yet there was no Arab state in Palestine when the Zionist project began.
- v. I have deliberately omitted from my discussion Kantian-inspired accounts of territorial rights, according to which the chief moral purpose of endowing an entity with political power is to achieve justice—securing human rights, due process, and the rule of law. I did so for two reasons. First, such accounts are challenged by “the particularity question”; if territorial rights are grounded solely in the protection of human rights, the rule of law, and due process, then the framework establishes no special connection between any particular group and any particular territory. It therefore cannot ground the entitlement of the Arab residents of Palestine to political authority in that territory rather than elsewhere, hence can’t grant them a moral right to exclude the Jews. Second, if respect for human rights, the rule of law, and related values were a necessary condition for the legitimate exercise of political power, it is doubtful that any of the Arab political structures of the period, anywhere in the Arab world, would have satisfied it.
- vi. As with colonialism, the apparent failure of the territorial-rights argument does not end the debate about the morality of the Zionist project. It may be that Jews should have immigrated to the United States instead. It may be that the Zionist practice of land purchase was fundamentally unjust. Or it may be that Zionism pursued its aims without sufficient regard for the concerns of the other side. I obviously cannot address all these possibilities here. Let me just note that, in light of point iii above, the exploration presented here does make it somewhat harder to show that the Zionist project was *inherently* wrong.
- vii. When philosophers make judgments about dilemmas concerning colonialism, the ethics of war, punishment, taxation, and the like, they do not rely solely on abstract values such as autonomy, equality, justice, or self-defense but also rely heavily on factual assumptions. The same is true of the present study, which has made many such assumptions, inter alia on the late emergence of Palestinian identity, the nature of Palestinian political institutions, and the Zionist vision as articulated by its central leaders. It has also relied on some counterfactuals, for instance, that had the Arabs welcomed the Zionists, there would have been enough space in the region for some form of Jewish self-rule that would not have significantly interfered with the Arab cultural and religious life. I realize that many of these assumptions are contested and that, not being a historian, I have no special expertise in making them. My hope is that the philosophical map drawn here is nonetheless helpful to all sides in clarifying what kinds of factual and counterfactual assumptions are needed to determine who held territorial rights over Palestine in the period under discussion, and whether Zionism violated them.
- viii. To be sure, the normative frameworks on which I have relied may also be contested. One might argue, for example, that

Miller's conditions for holding territorial rights are too restrictive and foreclose in advance some justified grievances of colonized peoples. Similarly, one might claim that Stilz's account of occupancy rights is too modest, and that such rights should be given a more robust interpretation. These are legitimate moves, but they may imply a rather expansive right to exclude newcomers, especially in the domestic sphere—for example, in the above case of Muslims wishing to move to a Protestant region. Some may be willing to accept this implication; others may not. Still others may insist that preventing people from moving within a country is importantly different from preventing them from entering it.

- ix. Finally, even if the Zionist project, as conceived and pursued in the late nineteenth and early twentieth centuries, was wrong—whether inherently or because of the injustices for which it was responsible—it remains an open question what this implies for the so-called “legitimacy” of Israel in 2026, or for Israel's rights and obligations vis-à-vis the Arab world, and the Palestinians in particular. Few would seriously deny that the United States is a legitimate country despite its colonial history and its long economic reliance on slavery. The same is true of many other countries, perhaps most, whose histories and political genealogies are morally tainted. As Waldron has argued [54], historical injustices are sometimes “superseded.” What exactly that means in relation to the injustices committed by both Jews and Arabs over the long course of their conflict is a question that will have to wait for another day.³⁴

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Conflicts of Interest

The author declares no conflicts of interest.

Endnotes

¹ If the wrongness of colonialism is contingent in this way, then the door is open to the possibility that, in at least some cases, colonialism was overall justified because it offered the colonized a better alternative both in terms of well-being and in terms of the protection of rights. See [5, 6]. This may in turn suggest that, in rare cases, slavery—if sufficiently “benign” to make the lives of the enslaved better and more humane than any realistic alternative—might also be overall justified. Whether slavery is nonetheless relevantly different is a question I cannot pursue here.

² The argument in this paragraph is greatly influenced by Weltman [7, 8].

³ I refer here to European colonial powers only because they are the focus of almost all current public and philosophical discussion on

colonialism. In reality, there have also been many non-European imperial and colonial enterprises that were morally no better.

⁴ For a strong formulation of this connection, see recently Kwan [10, p. 90]: “The wrong of colonialism is often taken to be a fixed judgment from which our theories of territorial rights can be built.”

⁵ “Palestine” had long existed as a geographic designation, but it became the formal official name of the territory in international and administrative terms under the British Mandate, especially with the League of Nations' Mandate for Palestine of 1922. In Mandatory usage, the official name was often given in three languages, English, Arabic, and Hebrew, and in Hebrew it appeared as “Palestina (Eretz-Israel)” on coins and stamps.

⁶ For many Zionist thinkers, Zionism also had a therapeutic function, namely, the creation of a “new Jew” who would be cured of the maladies of exile [12].

⁷ See also Penslar [14, p. 96], who concludes that Zionism “was not, in and of itself, a form of colonial practice.” The camp of those who hold the opposite view is large; see, for instance, [15, 16]. One might concede that Zionism was not a case of “regular” colonialism yet still maintain that it was a form of colonialism—settler colonialism. But the move I discuss in the text seeks to infer from precisely the *regular* cases—from colonialism as it is standardly understood—to the Zionist case. One crucial difference between such cases and settler colonialism is that, whereas it makes sense to speak of benign colonialism and to ask whether it is nonetheless wrongful, settler colonialism is wrongful by its very nature, being “inherently eliminatory” [17, p. 387]. On the inapplicability of this description to Zionism, see the discussion of Shumsky below (end of section 4).

⁸ One could invoke a Marxist line of argument and claim that, insofar as Zionists owned many of the means of production in Palestine, they exploited the Arabs who worked for them. But the claim that colonialism exploited the colonized does not usually rely on Marxist assumptions.

⁹ For more on how social rules, in particular legal ones, determine moral rights and duties in cases of indeterminacy, see [18, ch. 2].

¹⁰ In 1922, about forty years after the onset of Zionist immigration, Jews made up only about 11% of Palestine's population. If one excludes the ultra-Orthodox Jews of the Old *Yishuv*, most of whom opposed the Zionist project, the proportion falls to roughly 8%.

¹¹ See [21] and the long list of references mentioned there.

¹² For a similar understanding, see [22] and [2, p. 159, n. 3].

¹³ Some of these authors explicitly refer to the Israeli-Arab conflict, for example, Moore [23], but usually not to the question at the center of the present paper, namely, whether the very Zionist project disrespected the territorial rights of the Palestinian Arabs.

¹⁴ In the present context, this term does not indicate ownership over property. Miller is very clear on this; “The rights states have over their territories cannot properly be understood as rights of ownership: what states have are rights to govern, that is make enforceable laws applying both to persons and to the objects they may own” [24, p. 93]. See also Nine [25, p. 961] (“Territorial rights are not property rights”).

¹⁵ Here are some references: [26, p. 113], [27], [28, p. 52], [29, p. 12], [30, p. 6]. Some historians point to what they see as the seeds of Palestinian identity in earlier decades or even centuries (for instance [31, 32]), but, whatever the historical merits of this claim, a group with the potential to become a full-fledged nation does not yet enjoy the rights and privileges of such nations, just as a fertilized egg does not enjoy the full bundle of rights and privileges accorded to human beings [33].

¹⁶ Ferguson and Veneziani [9, p. 428], believe that “it is notoriously very difficult to identify a pre-political and historically well-defined unified ‘culture’ belonging to a collective of individuals that somehow permeates or shapes a territory.” If that were the case, then, on

Miller's view, peoples could very rarely be identified as bearing territorial rights. Yet I believe that Ferguson and Veneziani overstate this difficulty.

- ¹⁷ Zionists also settled in cities such as Jerusalem and Safed, thereby strengthening the Jewish presence there. However, these were places in which Jews had lived long before the rise of Zionism, so there could have been no basis for expecting them to remain "Arab," or for regarding the growing Jewish presence there as an unjust interference. Moreover, at least in the case of Jerusalem, the city already had a Jewish majority in the first decades of Zionist settlement. In 1890, for example, it comprised 25,000 Jews, alongside 9000 Muslims and 8000 Christians; 20 years later, the Jewish majority had grown to 45,000, alongside 13,000 Christians and 12,000 Muslims [35, Appendix]. If anyone in Jerusalem during that period had a right to exclude others, then, it would have been the Jews vis-à-vis the Arabs, rather than the other way around.
- ¹⁸ Objections to immigration sometimes rest on the claim that admitting even a small number of immigrants, especially from a particular ethnic or religious group, will inevitably lead to the arrival of many more—their friends and relatives—to the detriment of the host country. A similar fear could have been raised about Jewish immigration. But in many cases, the fear that further, larger-scale immigration will be unstoppable, together with its allegedly harmful consequences, is exaggerated. Had the Arabs accepted the Peel Commission's Partition Plan, for example, and lived peacefully alongside the new State of Israel, it is unlikely that Israel would have sought to seize additional territory by force in order to settle the many Jewish immigrants who would later have sought to join the country. I may, of course, be mistaken about this; such counterfactual judgments are always speculative and difficult to establish.
- ¹⁹ Miller too concedes that when a group claims a right over some territory, "they must be able to demonstrate their capacity to form an independent political unit" [37, p. 333].
- ²⁰ See Gat [38]. Some think that "civic nations" like the US provide a counterexample to this rule. But, as Gat shows, this is not the case; "there exists a very distinct American culture, widely shared by the large majority of Americans, and characterized by a common American-English language and all-pervasive folkways" (ibid., 271).
- ²¹ According to the British Census of 1922, there were 83,790 Jews in Palestine. The number grew to 174,600 in the 1931 census and to 553,400 in 1945 according to the Mandate's report to the Anglo-American Committee of Inquiry.
- ²² I leave open the question of whether Palestinian Arabs acquired such rights later, say in the 1930s or 1940s, as my focus is on the Zionist project itself. Note, however, that, on Moore's view, by the 1930s or 1940s, Palestinian Jews might also have acquired territorial rights over the land.
- ²³ [39, p. 795, italics added]. For how central the right not to be removed is in Stilz's understanding of occupancy rights, see the title of her paper, "Occupancy Rights and the Wrong of Removal" [40]. See also Moore, who says that the attachment of indigenous people to their land grounds only "a right of non-dispossession" [1, p. 455]. She then clarifies that they are entitled to protection from "rapid, unwanted and debilitating change." In Guillery's view [41], this rapidness and the disorientation it tends to lead to is the basis for the right to exclude.
- ²⁴ Indeed, Stilz explicitly limits the above requirement "to significant harms to comprehensive plans that are not unjust" [42, p. 360] (italics added).
- ²⁵ This moral obligation applies to states as well, that may not exclude outsiders "where they lack a territorial base in which to pursue the social, cultural, economic, and political practices that matter to them" [43, p. 185].
- ²⁶ To be more precise, for Stilz, what matters is not the mere availability of physical space, but the fact that, given this ample space, the located

life plans of those residing in the land would not be significantly undermined by those of the newcomers. My contention is that this was precisely the case with respect to the impact of Zionist settlement on the practices and ways of life of the local Arabs.

- ²⁷ Stilz [43, n. 6] notes the difference between her view and Gans's on this. According to Gans [44, pp., 37-47], although Jews were justified in settling in Palestine because of the threats posed by antisemitism, the Arabs were similarly justified in *resisting* that settlement. Stilz's view is stronger; "the inhabitants of other countries, including Palestine, were *obliged* to accept them" (italics added).
- ²⁸ If the Palestinian Arabs were under an obligation to admit the Jews and failed to respect it, this might have led to the loss of their own occupancy rights, because, in Stilz's view, "like other rights, the right to occupancy may be forfeited through wrongdoing" [42, p. 364]. In a paper devoted to the Zionist claim to territory, Stilz accepts what she calls "the expansive necessity argument," according to which, given the long history of the Jews as a persecuted minority in various regions, they had a reasonable fear that without territorial self-governance, their vital interests would never be fully secure" [43, p. 193]. However, she isn't convinced that such governance could be achieved without the mass expulsion of Arabs, which would undermine the justness of the entire Zionist project. Yet in my view there is no reason to think that if the Arabs had accepted the recommendations of the Peel Commission, or the UN partition resolution, they would have been expelled from the Jewish state. All the more so if a federative arrangement had been accepted, in line with the vision of most Zionist leaders and thinkers, as I immediately show.
- ²⁹ On the prevalence of mottoes such as "Palestine is our land and the Jews our dogs" in the large-scale Arab demonstrations of February–March 1920, see [45, p. 62]. On the Mufti's antisemitism and his collaboration with the Nazis, see [46, 47]. Note that Al-Husseini was not a marginal "extremist" figure, but the dominant Palestinian leader in the pre-1948 period, and one who had a significant—for the Palestinians, disastrous—impact on the course of history. See, for instance, [48].
- ³⁰ For its religious origins, see [49, ch. 4].
- ³¹ For a brief summary, see the section on Islam and the Jews in the Introduction to [50].
- ³² There is a long debate on this issue, see, for instance, [51, 52]. For those who believe that Zionism aimed from the outset to expel the local Arabs from Palestine, the movement was indeed wrongful from day one.
- ³³ In a recent paper on the fundamental wrong of colonialism, Agrawal and Buchanan write that "colonial rule reached much more deeply into the lives of colonized people, on the assumption that the superiority of the colonizers was so profound and comprehensive as to make it appropriate for them to control not just political processes, but also economic, cultural, educational, and in some cases religious matters as well", ([3], p. 186). If Shumsky is right, then Zionism did not aspire to this kind of "deeper" control over Palestinian economic, cultural, educational, and religious life.
- ³⁴ Waldron himself has offered an extensive application of his supersession thesis to the case of Israeli Arab relations [55].

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