

# The Palestinian Right of Return and the Justice of Zionism

Chaim Gans\*

*Supporters of a Palestinian right of return assume that Israeli Jews bear responsibility for both the past and present suffering of the Palestinian refugees. Accordingly, the Palestinian claim for return is a demand to realize this responsibility (inter alia) by way of the return of the refugees to their places of origin or to uninhabited regions in the Land of Israel/Palestine. The purpose of this article is to examine the responsibility of the Israeli Jews for the Palestinian return of the refugees in light of the question of the justice of Zionism. Part I presents various approaches rejecting or affirming Zionism. The subsequent parts investigate the implications of the disparities between these approaches rejecting/affirming Zionism and Zionism's actual history as it unfolded in terms of Jewish responsibility for the Palestinian plight and the question of Palestinian return. I argue that some of the approaches to Zionism are irrelevant to the dispute over the Palestinian right of return as it is understood within the framework of Israeli internal discourse and the Israeli-Palestinian dialogue. However, my main point is that those approaches rejecting/affirming Zionism that are relevant, though they may vary in their implications for the scope of Jewish responsibility for Palestinian suffering, nevertheless lead to very similar conclusions with respect to discharging that responsibility by way of Palestinian repatriation.*

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## INTRODUCTION

Supporters of a Palestinian right of return assume that Israeli Jews bear responsibility for both the past and present suffering of the Palestinians. Accordingly the Palestinian claim for return is a demand to realize this responsibility (*inter alia*) by way of the return of the Palestinian refugees to their places of origin or to uninhabited regions in the Land of Israel/Palestine.<sup>1</sup> There are several dimensions to this claim and to its underlying presupposition concerning the responsibility of Israeli Jews for the plight of the Palestinian diaspora. One such dimension pertains to the types of damage for which responsibility should be borne (property damages, loss of residence, pain and suffering, loss of livelihood, and so on). Another dimension pertains to the scope of the people to whom responsibility is owed: Only and strictly those exiles who were forcibly expelled by the Jews? All exiles, including those who fled out of fear? Or an intermediate category of displaced people? A third dimension of the Palestinian demand concerns the group of exiles towards whom responsibility will be realized by allowing their return either to their places of origin or to uninhabited areas in the Land of Israel/Palestine and to the possible future political-cultural character of these areas. For example, should all Palestinian refugees be allowed to return to their places of origin or just some of them? And if this right to return is to be restricted to only some refugees, then how will they be defined? Furthermore, should the remainder then be permitted to return to uninhabited areas in the Land of Israel/Palestine currently controlled by the primarily Jewish state but

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1 In this article, the term "the Land of Israel" (which is the English translation of the Hebrew *Eretz Yisrael*) designates both the territory lying west of the Jordan River up to the Mediterranean Sea (which today encompasses the territories of the State of Israel and the Palestinian Authority) and the territory east of the Jordan River, which is part of Jordan today and in the British Mandate period was Transjordan. In the Jewish faith, the Land of Israel is the territory that was promised to Abraham, the forefather of the Jews. "Western Land of Israel" refers to that part of the Land of Israel that lies west of the Jordan River and which is also known as "Palestine." The Palestinian demand for return refers to return within the territory of Israel's recognized borders, that is, the state's borders from the end of the 1948 Israeli War of Independence until the outbreak of the Six-Day War in June 1967. The Palestinian refugees originate from these territories. Any official Jewish willingness today for return of Palestinian refugees relates to return not to these territories, but, rather, to territories in Western Land of Israel/Palestine that were conquered by Israel during the Six-Day War, some of which were transferred to the Palestinian Authority under the Oslo Agreements.

that eventually will constitute part of a primarily Palestinian state? And there are further possibilities: return to uninhabited regions of a bi-national state or return to uninhabited areas in a state that is culturally neutral.

The most ambitious interpretation of the right of return and of the assumption of Jewish responsibility for the Palestinian refugee situation is that Jews in Israel are responsible for *all of the past and present suffering of all members of the Palestinian diaspora resulting from Zionism* and the establishment of the State of Israel. Under this interpretation, responsibility for the Palestinian plight can only be properly discharged (in addition, *inter alia*, to providing monetary compensation for the suffering in all its manifestations) by way of allowing the return of all members of the Palestinian diaspora to their places of origin in a state that is entirely Palestinian and expelling all the Jews living in those places or at least those who live there as a consequence of Zionism. The antithesis to this interpretation of Jewish responsibility for Palestinian suffering is the absolute denial of any such responsibility and the total rejection of any Palestinian right of return, of any scope — and perhaps even beyond this: the exacerbation of the problem by transferring those Palestinians still resident in the Land of Israel, at least the western part. These are the two polar positions of the spectrum, between which numerous intermediate possibilities fall. The central intermediate position supports the return of all or part of the Palestinian diaspora to Israel within its pre-1967 borders. Under this position, Israel is supposed to continue its role as the manifestation of the Jewish right to self-determination. The Israeli consensus rejects this position, but at least refers to it and regards it as worthy of response in its internal discourse and in its dialogue with Palestinians. The focus of this paper is on the right of return as conceived under this intermediate approach.

The array of considerations for assessing the scope of Jewish responsibility for the Palestinian diaspora and whether that responsibility should be realized in some form of Palestinian return is complex. It comprises individualist and collectivist moral considerations, historical and a-historical considerations, and retrospective and prospective moral considerations. I focus primarily, though not exclusively, on the individualist and collectivist moral considerations deriving from historical and present justice concerns. These considerations cannot be properly identified without addressing the different approaches affirming or rejecting Zionism and their respective justifications and underlying assumptions. In Part I below, I present some of these approaches for and against Zionism, and in the subsequent parts, I investigate the implications of the disparities between the different approaches and Zionism's actual history as it unfolded in terms of Jewish responsibility for the Palestinian plight and the question of Palestinian

return. I argue that some of the approaches denying or affirming Zionism are irrelevant to the dispute over the Palestinian right of return as it is understood within the framework of Israeli internal discourse and the Israeli-Palestinian dialogue. Both these discourses presuppose that the dispute revolves around the question of the existence of a Palestinian right of return to Israel as a state that realizes the Jewish right to national self-determination. I argue that, although the approaches affirming or rejecting Zionism that are relevant to this specific point of dispute may vary in their implications for the scope of Jewish responsibility for *Palestinian suffering*, they nevertheless lead to very similar conclusions regarding discharging that responsibility by way of *Palestinian repatriation*.

## I. DIFFERENT FORMS OF ZIONISM AND DIFFERENT APPROACHES REJECTING IT

In the framework of the present discussion, Zionism is understood as a cultural-nationalist ideology. This type of ideology is not necessarily devoid of political aspirations,<sup>2</sup> but its focus is on the interest of members of particular national cultures in adhering to their cultures, sustaining them through the generations, and securing political support to do this. Nationalism of this type first originated in Central and Eastern Europe and should be distinguished from what historians and sociologists refer to as "civic nationalism," which I prefer to call "statist nationalism."<sup>3</sup> The latter originated in Britain and France and is concerned not so much with people's interest in adhering to their cultures as with the interest states have in ensuring the cultural homogeneity of their populations.<sup>4</sup> Zionism is a cultural nationalist movement of Jews, but not the only such movement. The *Bund*, too, was a cultural nationalist ideology that focused on enabling the Jews to adhere to and sustain their culture. However, in contrast to Zionism, it did not aspire to realize these goals in the Land of Israel. This latter aspiration — to establish Jewish self-determination specifically in the Land of Israel — can be regarded as a constitutive component of Zionism.<sup>5</sup>

One possible basis for rejecting Zionism is the rejection in principle of cultural nationalism. This rejection can be grounded in political ideologies

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2 See Chaim Gans, *The Limits of Nationalism* at ch. 1 (2003).

3 *Id.*

4 *Id.*

5 This is so despite the Uganda Plan, which proposed Uganda as the Jewish national homeland, and, *inter alia*, also because of its total rejection.

such as socialism, cosmopolitan liberalism, or neutralist liberalism. Neutralist liberalism does not necessarily dispute cultural nationalism's claim that people have an interest in adhering to and sustaining their cultures, but it does contest the notion that the State should actively promote such an interest.<sup>6</sup> The other two political ideologies noted — socialism and cosmopolitan liberalism — reject the thesis that there is any such real interest.<sup>7</sup> Another possible basis for rejecting Zionism, rather than deriving from the rejection in principle of cultural nationalism, can be the denial of the right of any national group to protect its culture within the boundaries of a territory already inhabited by another group or groups (even if the former has a preceding historical link to that territory).<sup>8</sup>

Zionism can be affirmed on the basis of a principle according to which the aspiration of the Jews for self-determination in the Land of Israel should be realized in a non-territorial form or, alternatively, in a territorial form. Each of these two possible forms has a number of variations. The non-territorial form of Zionism can be understood as prescribing the establishment of either a spiritual center or a bi-national state in Palestine/the Land of Israel, where Jewish and Arab populations would be intermixed. The territorial approach can be conceived of as advocating the creation of a bi-national state that will designate separate territories for each group. Alternatively, it could be interpreted as supporting the establishment of a Jewish state in part of the Land of Israel/Palestine with a Jewish hegemony, populated primarily, but not exclusively, by Jews or even a Jewish state in the entire territory of Palestine with a Jewish hegemony. Yet a third version of the territorial approach would call for the establishment of a Jewish state in part of the Land of Israel exclusively for (all) Jews. Almost all of these approaches, both those advocating Zionism and those rejecting it, had their supporters at various stages of Zionism's history. The dominant form of Zionism, however, the approach that occupied and continues to occupy central stage in the history of the Zionist movement, is the aspiration to establish a Jewish state in part of the Land of Israel, with a Jewish hegemony, that is (or strives to be) a homeland for all Jews.

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6 See, e.g., Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (2001).

7 Regarding the socialist rejection, see Nimni's discussion relating to Marx and Engels in Ephraim Nimni, *Marxism and Nationalism* (1991) (especially Chapters 1 and 3); for the cosmopolitan liberal's rejection, see Jeremy Waldron, *Minority Cultures and the Cosmopolitan Alternative*, 25 U. Mich. J.L. Reform 751 (1991-1992).

8 This matter is discussed in Gans, *supra* note 2, ch. 4

## II. THE RIGHT OF RETURN AND THE ANTI-NATIONALIST REJECTION OF ZIONISM

Those who reject Zionism on the basis of an outright rejection of cultural nationalism (which I will hereafter refer to as "nationalism") will hold Israeli Jews responsible for all the suffering that was and still is the lot of the entire Palestinian diaspora. They can do this because even the most minimalist form of Zionism supports the establishment of a bi-national state in Palestine, an aspiration rejected by anti-nationalists as not legitimate. Accordingly, the argument goes, Zionism is responsible for the creation of the Palestinian diaspora in its entirety and not merely for the exile and hardships suffered by Palestinians forcibly expelled during the 1948 Israeli War of Independence. Consequently, at least from the perspective of retrospective considerations, the entire Palestinian diaspora is entitled to return.

However, those who reject Zionism for anti-nationalist reasons cannot support the removal of all Jews from the Land of Israel. The anti-nationalist stance is grounded in arguments drawn from socialist or liberal political moralities. Proponents of these moralities are necessarily humanists. As such, they will not advocate the banishment from Palestine of all Jews living in Israel today as a result of Zionism, for this would entail the immoral expulsion of people born and/or raised in Israel since the advent of the refugee problem. Since their lives are deeply rooted in Israel, on the one hand, and since they bear no personal responsibility for the emergence of the Palestinian diaspora, on the other, a strong individualistic argument can be made against their displacement and removal from their homes. Because these points, grounded in contemporary realities, act as a bar to any demand by opponents of nationalism to remove all Jews from Israel, they also preclude the return of *all* members of the Palestinian diaspora to their places of origin. The most that anti-nationalists can demand is the return of some of the Palestinian refugees to their places of origin and the return of others to unpopulated areas of Palestine/the Land of Israel.

It should be recalled, however, that an anti-Zionist stance deriving from the rejection of nationalism grounded in socialism, cosmopolitan liberalism, or neutralist liberalism must, for consistency, reject also the establishment of a state that would realize the Palestinian right to self-determination in Palestine. It can only support the establishment of a culturally neutral state in Palestine where Jews and Arabs coexist. Yet I am skeptical as to the defensibility of the various theses upon which this rejection of nationalism is based. I doubt whether the cosmopolitan ideal is universally suited to

all human beings.<sup>9</sup> I am also skeptical as to the feasibility of an ideal of a culturally neutral state in which there is no clear preference of one or a very limited number of national cultures over other cultures to which citizens of the state belong. In the context of the debate between neutralist liberals and nationalist liberals on this matter, it has often been observed that states cannot be neutral vis-à-vis culture in the same way as they conceivably can be neutral with regard to religion, the reason being that there is no way to avoid giving preference to, for example, one or a few of the state's dominant languages over languages that are the first language of many citizens. Such a preference, which results from practical necessity, engenders a partiality that may be prejudicial to the interests of individuals belonging to cultural minorities who wish to adhere to their cultures and live within the framework of those cultures. Needless to say, it can be argued in the Marxist vein that these interests are based on false consciousness and that people should be reeducated so that they no longer identify with these interests. Since this is not the appropriate forum for addressing this claim, I will note only that insofar as the Jewish-Palestinian struggle is concerned, the belief of both sides in the importance of their interests in their respective cultures is so entrenched that any attempt to reshape their consciousnesses in the foreseeable future would be doomed to fail. Since there is an urgent need to resolve the Palestinian refugee problem in the foreseeable future, understandings of the right of return based on a rejection of Zionism that derives from the outright rejection of cultural nationalism must be set aside for the time being. Furthermore, as stated above, both the Israeli internal discourse regarding the Palestinian right of return as well as the discourse between Israeli Jews and those Palestinians willing to discuss the issue presuppose the return of members of the Palestinian diaspora to the borders of a state that is the framework for Jewish national self-determination — namely, to Israel. Denial of the feasibility of such a state is incompatible with the presuppositions of these two discourses. Hence, even if it were tenable to reject Zionism on the basis of anti-nationalism, such a stance would, in practice, be irrelevant to the present Israeli-Palestinian dialogue.

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9 These questions are discussed in Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995); Gans, *supra* note 2, at 160-65.

### III. THE RIGHT OF RETURN AND REJECTING THE REALIZATION OF JEWISH NATIONALISM IN PALESTINE

Zionism can be rejected not only on an anti-nationalist basis. It can also be rejected by nationalists who object to the realization of Jewish self-determination specifically in Palestine/the Land of Israel.<sup>10</sup> Such an objection could be grounded in the denial of any historical connection between the Jewish People and the Land of Israel. Alternatively, an actual historical connection can be admitted, but the normative significance of that connection could either be completely denied or deemed insufficient to justify the politically-motivated return of the Jewish People to a particular territory that, up until their return, had been populated by individuals constituting a cultural group entirely distinct from the Jews.<sup>11</sup> If, indeed, the Jews have a right to national self-determination, proponents of this position would argue, they should have realized it in the territories in which they were residing at the relevant time. Since members of another, non-Jewish culture already inhabited the territory comprising the Land of Israel, Jewish migration to that land for the purpose of establishing a Jewish entity there was inappropriate insofar as it entailed the usurpation of land from its inhabitants. The principled position that this approach presupposes is that the right to territorial self-determination is held only by groups that already constitute a majority in a given territory; it is not the right to create such a majority in a territory already settled by other nations.<sup>12</sup>

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10 The former approach will find no distinction between Zionism and any other colonialist movement. The latter will concede the possibility of a distinction, but of no normative significance for the justification of Zionism. The truth is that the question of whether or not Zionism is a colonialist movement is irrelevant to its *post-facto* justification, since even the colonialist nations were never seriously requested to leave the locations in which they had settled (e.g., the European nations that settled in New Zealand, United States, Australia, etc.). In other words, it can be argued that just as the historical connection did not justify the Jews' return, its absence does not justify their removal. Accordingly, it is of no consequence whether or not Zionism is identified as a form of colonialism.

11 They can in fact reject Zionism and Jewish cultural nationalism through yet a third avenue: that of Palestinian chauvinism, according to which only Palestinian nationalism is of intrinsic value and any other cultural nationalism is a sham. I do not discuss this possibility since it is evidently incoherent (for it ascribes value to one group and denies the value of others, despite admitting the relevant similarities between the groups), as well as patently racist in regarding other groups as inferior.

12 For a detailed discussion of this issue, see Gans, *supra* note 2, chs. 4, 5.



Which particular version of the Palestinian right of return supporters of this position will adopt depends on whether they are liberal nationalists or nationalists to the right of liberalism. The former do not assume normative priority of the national "collective" over its individual members, nor do they assume normative priority of one national group over other such groups. On the contrary, their understanding of the relationship between national groups and their members rests on individualistic assumptions, while their understanding of the relationship among different national groups rests on egalitarian assumptions. Non-liberal nationalists do the opposite: they assume normative priority of national groups over their individual members and normative priority of their own national group over other groups.<sup>13</sup> However both liberal nationalists and more right-leaning nationalists who reject Zionism because they deny either the very fact of the historical connection between the Jews and the Land of Israel or the normative significance of that link will attribute responsibility to Zionism for the Palestinian diaspora in its entirety and for all the various types of suffering borne by its members. Yet they may differ significantly on the matter of Palestinian return.

Non-liberal nationalists who reject Zionism based on their rejection of any factual or normatively significant link between the Jews and the Land of Israel might subscribe to the first version of the right of return, i.e., the return of the entire Palestinian diaspora and the expulsion of the Jews. They will derive this position from their presumption of the normative priority of the national group over its individual members. Under this presumption, they will find it irrelevant that the lives of Jewish individuals are currently rooted in Palestine and that those individuals are not responsible for the fact that their lives are now rooted there. Since their moral ontology is comprised primarily of collectives and not individuals, they will ascribe responsibility to the Jewish collective inhabiting Palestine, regardless of the innocence of the majority of the individuals comprising that collective. The Jewish collective is certainly responsible for the fact that its existence is rooted there, as well as for the fact that this existence began in sin as it were. Under this approach, therefore, it is legitimate to expel the members of that collective. Thus a rejection of Zionism that stems from a

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13 Regarding philosophical characterizations of nationalism that is right of liberalism, see Isaiah Berlin, *Nationalism: Past Neglect and Present Power*, in Isaiah Berlin, *Against the Current: Essays in the History of Ideas* 333-55 (Henry Hardy ed., 1980); Barry, *supra* note 6. For characterizations of historians, see Peter Alter, *Nationalism* at ch. 2 (2d ed. 1994). Philosophers refer to these forms of nationalism as romantic; historians often call them integral.

right-wing rejection of the legitimacy of realizing Jewish self-determination in Palestine inevitably produces the most extreme version of the Palestinian right of return: the return of the entire Palestinian diaspora and the removal of all Jews from the territory of Palestine if their presence is the result of Zionism.<sup>14</sup>

Liberal nationalists who reject the realization of Jewish self-determination in Palestine cannot adopt this extreme interpretation of the Palestinian right of return. As liberals, they base their nationalism on individualistic interests, and they therefore would be compelled to attribute significant weight to the interests of the Jewish individuals currently living in Palestine/the Land of Israel to continue living there and not to be uprooted even if their presence in Israel is the result of Zionism. These individual interests must merit protection at least with respect to those individuals who are not responsible for the fact that they were born and raised in Israel. Since the interests in question are significant, the liberal nationalist has no choice but to support the right of these individuals to remain in Israel or at least concede that there is no justification for expelling them. In addition, acknowledgement in this way of the right of numerous individual Jews currently residing in Israel to continue to do so will also lead to recognition of the right of those same individuals to self-determination in areas in which they constitute the majority. In other words, despite the liberal nationalist's rejection of the all-embracing claim regarding the Jewish People's right to establish their self-determination in the Land of Israel at the time of the inception of the Zionist movement, she must acknowledge the moral right to national self-determination of Jews born in Israel and/or who immigrated there as infants — and who, therefore, bear no personal responsibility for their lives' being rooted there. That is to say, while liberal nationalism can allow its proponents to reject Zionism, it nonetheless requires their *post-facto* assent to Zionism's normative consequences — consequences that are consistent at least with the most rudimentary, modest form of Zionism. By rejecting this rudimentary form and denying the historical justification for its adoption by the mainstream Zionist movement, liberal nationalists can hold the Jews accountable for all the Palestinian refugees' trials and tribulations. However,

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14 I must stress that this could be their position, but it is not necessarily their position, the reason being that even if they ascribe ultimate value to collectives, they can simultaneously ascribe similar value to individuals. Conceivably, they could ascribe a degree of importance to individuals that would lead them in this case not to favor the interests of the Palestinian collective and its component individuals to inhabit Palestine by themselves, over the interests of individual Jews to continue living there.

since they recognize that Zionism has had certain consequences that, *post facto*, provide a normative basis for Jewish self-determination in the Land of Israel, the responsibility ascribed to the Jews for all the Palestinian exiles and for all their suffering cannot be translated into a correlative right of return for all members of the diaspora to their places of origin.<sup>15</sup>

Liberal nationalists certainly would not resort to individualistic arguments in order to justify the return of Palestinian refugees to areas currently inhabited by Jewish individuals, since the latter are not individually responsible for the expulsion of the Palestinians or for the fact that their lives are rooted in these places.<sup>16</sup> However, with respect to uninhabited areas, individualist considerations could, in the eyes of the liberal, justify allowing

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15 Obviously, liberal nationalists could acknowledge that their liberal stances might be exploited and manipulated by, for example, nationalist movements like Zionism that create on-the-ground facts with normative significance, facts that liberals will have to recognize. If these liberals are consequentialists, they can, in principle, recognize the legitimacy of supposedly non-liberal steps that might, in the long run, maximize the realization of liberalism. Problems of this kind cast a shadow also on such legal institutions as statutes of limitations. Yet I believe that ultimately these institutions are justified and more plausible from a liberal standpoint. For a convincing argument, see Jeremy Waldron, *Settlement, Return, and the Supersession Thesis*, 5 *Theoretical Inquiries L.* 237 (2004).

16 A distinction must be made between a person's lack of responsibility for the fact that his life is conducted in a particular place and his lack of responsibility for the expulsion of the previous residents from the same place. The former entails the latter, but not vice versa. No responsibility for living in a particular place does not imply no responsibility for the expulsion of previous residents. Hence, Jews born on Palestinian property or brought there as infants are not responsible for the fact that their lives are rooted in those places and, thus, are not personally responsible for the Palestinian exile. Jewish adults who were opposed to the Palestinian expulsion or who were even opposed to the actual realization of Zionism are not personally responsible for the Palestinian diaspora, but if, as adults, they purchased property that was once Palestinian, they are most certainly responsible for the fact that their lives are rooted there. The situation becomes more complex when we consider that many Jewish individuals who are not responsible for the fact that part of their lives are rooted in formerly Palestinian property since they have been there since infancy do bear responsibility for other parts of their lives being rooted in such property since this has occurred in adulthood, when they chose to conduct certain aspects of their lives in these places. For example, at the age of three, I was brought to the lands of Sumeil (where a part of North Tel Aviv is located). But it was only in my adulthood that I began spending time in Sheikh Monis (where Tel Aviv University is located). The only way of overcoming this problem is via the claim of necessity. Many adults conduct parts of their lives on formerly Palestinian property, to which they arrived as adults, since the requirements of conducting a normal life, including a career and livelihood, leave them no other option.

the return of the Palestinian refugees to the places from which they were uprooted, regardless of whether they were expelled or left voluntarily. Further on in this article, I deal with the question of whether this argument is decisive with respect to this kind of Palestinian return. As argued above, no member of the Palestinian dispersion, whether he/she was exiled or left willingly, is entitled to return to his or her former home if inhabited by Jews who are not responsible for the fact that they currently reside there. The question is, are such refugees entitled to return to presently uninhabited areas in the Jewish state from which they were not uprooted in the past? There seem to be no individualistic considerations that work in favor of this particular way of realizing Jewish responsibility for the refugee problem. The determination of the appropriate way of realizing responsibility for the Palestinians' exile and suffering is contingent on what form is deemed appropriate for realizing the right to self-determination of both nations that today, as a point of fact, reside in the Land of Israel/Palestine. Those favoring a single bi-national political framework for this self-determination in the territory between the Jordan River and the Mediterranean Sea ("Western Land of Israel"), without any territorial distinction between the two nations, would certainly argue that all Palestinian exiles should be permitted to return to the areas currently within the boundaries of the State of Israel, just as they are entitled to live in areas of Palestine outside those borders, for all of Western Land of Israel constitutes the Palestinians' historical homeland.

However, if, for reasons stemming from the desirable interpretation of the right to self-determination in general or from its desirable realization in the context of the Israeli-Palestinian dispute, liberal nationalists were to contend that Jewish self-determination and Palestinian self-determination should be realized today in mutually distinct territorial frameworks (either in two separate states or in one state with a territorial division between the two cultures, as in Belgium and Switzerland), then under such an arrangement, the place of Palestinian return would be contingent, first and foremost, on how Palestine/Western Land of Israel is divided between the two nations. This question is a thorny one, for Zionism's "birth in sin" casts a shadow not only on its demographic consequences but also on its territorial consequences. From this perspective, Israel's 1948 borders (in force from the establishment of the state until June 4, 1967, the beginning of the Arab-Israeli Six-Day War) would have no legitimacy, nor would the borders set out in the 1947 UN Partition Plan or the borders running along the demographic lines set by the Jewish settlements in the Occupied Territories (Judea and Samaria and the Gaza Strip) since the 1967 war. At this stage of the discussion, I will not examine the relevant criteria for determining the appropriate borders under the territorial-separation solution to the Jewish-Palestinian dispute.

Suffice it to say that if territorial separation is the appropriate resolution, then there are obvious advantages to a solution whereby Jewish responsibility for the Palestinian refugees is fully realized through compensation for their suffering and through their repatriation exclusively within Palestinian territories, at least with regard to those unable to return to their places of origin because they are currently occupied by other individuals. Palestinians' residence in areas designated as Palestinian territories would be considered residence in their homeland at least to the same extent as their residence in territories designated for Jewish self-determination.<sup>17</sup> However, since Palestinian culture would be more fully expressed in exclusively Palestinian territories and since the Palestinian right to self-determination would be realized primarily there, collectivist considerations would favor Palestinian return specifically to those territories. These considerations would be decisive in light of the individualistic considerations against allowing exiles to return to areas now inhabited by Jews who are not responsible for the fact that their lives are rooted there. Admittedly, it could be argued that Palestinian refugees whose places of origin are currently occupied by Jews could conceivably prefer to live in geographic proximity to their former homes, even if located in the territory of Jewish self-determination, to living in a territorial entity controlled by Palestinians where they would enjoy national self-determination. However, I am skeptical as to how compelling such a preference could be. For ultimately, most of the places in close physical proximity to the refugees' original homes have changed beyond recognition in terms of physical appearance and character. Accordingly, even if a certain

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17 It is important to remember that whether or not Jews residing in one or another part of the Land of Israel can be considered residence in their homeland depends on whether one attributes normative significance to the historical connection between the Jews and the Land of Israel. If one denies such normative significance, then it is clear that the borders of the Jewish state cannot diverge from the areas in which Jews actually reside. The reason is that if the historical connection is not a consideration, then the justification for a Jew living in the Land of Israel is identical to the justification for a settler of European origin living in New Zealand. Colonialists should not be expelled from the places where their lives are now rooted. Their right to receive territories that they do not actually occupy is subject to considerations of distributive justice, which take natural reproduction into account. However, if one attributes normative significance to the historical connection between the Jews and the Land of Israel, then vacant areas in that land can be included in the framework of the Jewish state and their claim to these territories will not be based exclusively on considerations of distributive justice between them and the Palestinians that rest on natural reproduction alone, but also upon the exigencies created by the return of members of the Jewish diaspora to the Jewish state.

weight is ascribed to proximity to places of origin, it certainly cannot be of a decisive nature.

The position of liberal nationalists who reject Zionism but accept its *post-facto* consequences can be summed up as follows: They call for Israeli recognition of the Jews' collective responsibility for the emergence of the Palestinian diaspora in its entirety, not just for those expelled, and for all the Palestinians' subsequent suffering. They point to significant individualistic grounds for recognizing a *prima facie* right of return for Palestinians, which would mandate that all Palestinian exiles be given the right to return to their places of origin on the proviso that Jewish individuals do not reside there (or that those who do are personally responsible for the expulsion of Palestinians). Those liberal nationalists who view a bi-national state in all of Western Land of Israel as the appropriate solution to the dispute will demand Palestinian return to any uninhabited place, regardless of whether it falls within the current borders of Israel or not. However, if they deem territorial separation the appropriate solution, their demand will be restricted to a right of return to those areas that are designated to be part of the Palestinian territory.

The question to be asked, then, is whether the Jewish People's historical connection to the Land of Israel is of sufficient normative significance to justify their return to that territory for the purpose of realizing their self-determination. This is a watershed question, separating those who reject Zionism without an accompanying outright rejection of nationalism and those who support Zionism. Those who deny any normative significance to the connection to the Land of Israel or claim that it is insufficient to justify the return of the Jews to territory already inhabited by another nation will reject Zionism. I have just discussed the conclusions such nationalists should arrive at with regard to the Palestinian right of return. However, those who take the position that the Jews' historical connection to the Land of Israel can provide a sufficient ground for their return to that territory, despite its being inhabited by Arabs, would subscribe to one or another form of Zionism. I mentioned two such streams at the beginning of the article, and I will now proceed to discuss their implications for the Palestinian right of return.

#### IV. A NON-TERRITORIAL VERSION OF ZIONISM AND THE PALESTINIAN RIGHT OF RETURN

According to the first and very modest version of Zionism mentioned above, the version subscribed to by *Ahad Ha'am* and later by the *Brit*

*Shalom* movement, Jews should have been allowed to realize national self-determination in the territory comprising the Land of Israel, but not within the framework of a Jewish nation-state and probably not even within an independent territorial framework. On the one hand, this version of Zionism is based upon the recognition of the normative significance of the historical connection between the Jews and the Land of Israel and perhaps also upon the understanding that national self-determination is viable only within a historical homeland. On the other hand, it recognizes that the territory comprising the Land of Israel is simultaneously the Palestinian homeland, and accordingly, Palestinians have the same entitlement as Jews vis-à-vis that territory — namely, to realize their right to national self-determination there. At the inception of the Zionist movement, the Palestinians were dispersed throughout the entire territory. However, their degree of concentration at the time did not preclude the parallel settlement of a large Jewish population, large enough to warrant the realization of sub-statist and non-territorial Jewish national self-determination. Therefore, in accordance with this version of Zionism at that point in time, the Jews were entitled to aspire to this kind of self-determination in Palestine/the Land of Israel. They were not, however, justified in aspiring to statist self-determination or sub-statist territorial self-determination, because, given the existing demographic circumstances of the land, this would have meant imposing Jewish government on the entire Arab population or at least many of them, thereby turning them into foreigners within their own homeland. The Palestinians, for their part, also would have contented themselves with sub-statist and non-territorial national self-determination. All this pertains to the principle that Zionism *should* have adopted and that, *had* it adopted, the Arabs would have had to come to terms with.<sup>18</sup> History, as

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18 It should be stressed that this claim does not imply that the right of the Jews to return to the Land of Israel is justified by considerations of corrective justice, i.e., that the persecution of Jews primarily in Europe justifies the compensation of the Jewish People by allowing them to establish their self-determination in the Land of Israel. Many hold this view, but its foundations are rather shaky given that the Arabs were not a party to the persecution of the Jews, and there is no reason why they should have to pay the price. The claim is an a-historical distributive justice claim based on the general principle that every nation is entitled to self-determination in its historical homeland, even if this means that the other nations in that homeland must content themselves with less than statehood (*see* Gans, *supra* note 2, ch. 4). It should also be stressed that this principle need not be interpreted as asserting a right to a nation-state. It can also be interpreted as referring to a right to sub-statist self-determination (see the Australian and Canadian decisions regarding indigenous peoples' right to self-determination: *Mabo v. Queensland* (No. 2) (1992) 175 CLR1; *Delgamuukw v. British Columbia* (1997) 153 DLR (4th) 193 (SCC)).

we know, took a different path. On the one hand, mainstream Zionism aspired to establish a Jewish nation-state in the Land of Israel and was not content with sub-statist and non-territorial self-determination. On the other hand, the Arabs gave the impression that they were opposed not only to the establishment of an independent Jewish state, but also to any other form of Jewish national self-determination in the Land of Israel, even sub-statist and non-territorial. If, indeed, these are the facts, then to the extent that the Palestinian exile was voluntary, the Jews and Arabs share equal responsibility for the emergence of the Palestinian diaspora and its accompanying suffering. The Jews bear sole responsibility only towards those Palestinians who were forcibly expelled.<sup>19</sup> This, then, concludes the issue of the allocation of responsibility.

The way in which this responsibility should be realized rests primarily on which framework is the most appropriate today for both nations currently

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This principle can be further qualified: Nations that were uprooted from their homes and persecuted are entitled to return to their places of origin even if not entirely vacant. In the Jewish-Palestinian case, this would mean that the Palestinians are paying the primary price of this principle of distributive justice and that they are doing so not as a result of their own culpability but due to simple bad luck (their homeland is also the homeland of others). This fact lays the basis for international responsibility to solve the Palestinian refugee problem, with particular responsibility borne by the European nations who persecuted the Jews, which led to the applicability of the a-historical distributive justice principle in this context.

- 19 Obviously, this description is a simplistic one. Ultimately, we can assume that amongst both the Jews and Arabs different stances were adopted by different sectors regarding the opinions and actions of the other side and that these actions and reactions had a dynamic reciprocal effect. Accordingly, the opinions of the different groups and the groupings themselves are perpetually in a state of flux. In order to provide comprehensive answers to questions concerning the responsibility of one party for the reactions of the other party, one must provide answers to factual historical questions relating to states of affairs in infinite points in time and to complex theoretical questions relating to the justness of the responses of one side to the other, in light of the weight of the different opinions of the different sectors on both sides regarding the actions of the other. Obviously I am unable to deal here with either these factual historical questions or the theoretical moral ones.

Applying the distinction between those who were forcibly expelled and those who voluntarily left also is problematic. The term "forcibly" also includes explicit threats to use force and implicit threats, for example, those that are the product of rumors regarding threats of force and a general atmosphere of a threat to use force. One must assume that the overwhelming majority of the Palestinian exiles would be able to claim that they left due to direct or indirect threats of force. This notwithstanding, I assume that there may have been those who left not as a result of a direct or indirect threat to their physical existence, but because they did not want to live in Jewish surroundings or in a region in which Jews and Arabs were at war.



living in Palestine/Israel to realize their self-determination. The options will resemble those proposed by liberal nationalists who reject Zionism by dint of their rejection of the Jews' historical connection to the Land of Israel, options that have already been addressed. The relevant approaches to this matter are those proposed by liberal nationalists and not those proposed by right-wing nationalists, since the latter would presumably not endorse the moderate version of Zionism. It is reasonable to assume that Jewish non-liberal nationalists (i.e., nationalists to the right of liberalism) would support more extreme versions of Zionism, whereas their Palestinian counterparts would reject Zionism out-and-out. Liberal nationalists who support the moderate version of Zionism might, under current conditions, support a bi-national state without territorial distinctions, as a possible but not necessary implication of their accepting this version of Zionism. Such liberal nationalists could also accept territorial separation between the two nations (whether within the framework of one state or two) as a solution necessitated by the history of the dispute and its demographic and territorial realities. Liberal nationalists holding this latter position would reject the right of Palestinian exiles to return to their places of origin if populated, but would find powerful grounds for favoring the right of all Palestinian exiles, whether they were forcibly expelled or left voluntarily, to return to their places of origin if unpopulated. This position with regard to those who were expelled follows from the exclusive Jewish responsibility for these exiles. With regard to the return of those who left voluntarily, the argument will be that since Israeli Jews as a collective bear partial responsibility for these exiles and since most are unable to return to their places of origin because they are now populated by others, there are compelling grounds for allowing the return of those whose places of origin are vacant. All of this, however, depends on whether it makes any sense at all to speak of "vacant" places, an issue addressed in Part VI.

In the framework of a bi-national solution in which the Palestinian and Jewish populations would not be distinguished from each other territorially, all Palestinian exiles would, of course, be permitted to return to unpopulated areas of Palestine/Western Land of Israel. In the framework of a bi-national solution with territorial separation or, alternatively, a two-state solution, return would be allowed only to territories designated as Palestinian. I will leave open the question of which territories are Palestinian and which Jewish for the time being, until I discuss it in Part VII.

To sum up, the position of those liberal nationalists who endorse the moderate version of Zionism on Palestinian return will be similar to that of liberals who reject Zionism on the basis of a denial of the historical connection between the Jews and the Land of Israel. Under the latter position,

the Israeli Jews are responsible for *all of the suffering* of *all members* of the Palestinian diaspora. Under the moderate version of Zionism, the Jews and Arabs share *equal* responsibility for all of the suffering caused to those Palestinians who were not expelled, whereas the Jews are *exclusively* responsible only towards those who were forcibly expelled. With respect to the question of how the responsibility for the Palestinians' loss of residence and property should be discharged — compensation or return — the answers are identical to those arrived at in the previous Part. There are strong individualistic grounds for recognizing the right of all members of the Palestinian diaspora, not only of those forcibly expelled, to return to their places of origin if the lives of other individuals are not rooted there. Those Palestinian exiles who cannot meet this condition should be entitled to return to unpopulated areas either in a mixed bi-national state, if that is deemed the appropriate solution to the dispute, or, if territorial separation is deemed the appropriate solution, to unpopulated areas in territories designated for the Palestinian People.

#### V. A TERRITORIAL VERSION OF ZIONISM AND THE PALESTINIAN RIGHT OF RETURN

According to a more ambitious version of Zionism, Jews at the end of the nineteenth century had not only a right to sub-statist, non-territorial self-determination in the Land of Israel, but also the right to realize their self-determination within a distinct territorial framework. The historically dominant stream in Zionism sought to realize that right within the framework of an independent state. The legitimacy of this stream of Zionism from the perspective of liberal nationalism depends primarily on the answers to two types of questions. First, there are factual questions concerning the concentrations of Arab populations at the end of the nineteenth century in Palestine/the Land of Israel, their numbers, and the patterns of their geographical dispersion. Second are questions of principle and empiric assessment regarding the scope of territory and size of population necessary to constitute a viable political entity. If the size and dispersion of the Arab population in Palestine at the time could have enabled the establishment of two viable, separate territorial entities, one primarily Arab and the other primarily Jewish, then liberal nationalists could even have supported the more ambitious version of Zionism. If, however, the establishment of two such entities in Palestine was not possible at the time, then the Jewish attempt to do so was, by definition, an attempt to subjugate at least some

of the Arab population to Jewish rule, making them foreigners in their own land. Liberals could not condone such an attempt.

As mentioned above, apart from the factual questions pertaining to the size and dispersion of the Arab population in Palestine at the end of the nineteenth century, the justification of this version of Zionism is dependent also on the demographic and territorial criteria for constituting a viable political entity. This dependence makes any attempt to decisively determine whether or not this version of Zionism is justified a hornets' nest.<sup>20</sup> I will avoid making such an attempt, but for argument's sake, I will assume the legitimacy and justifiability of this version of Zionism. This version has two implications for the resolution of the Palestinian refugee problem that distinguish it from the previous versions. First, under this version, while Israeli Jews may bear exclusive responsibility for the suffering of those Palestinians who were forcibly expelled, the primary responsibility for all "self-exiled" Palestinians lies with the Palestinians themselves. Responsibility cannot be equally divided between the sides as it is under the more moderate versions of Zionism, because the actual historical realization of Zionism does not deviate much from Zionism as it should have been in principle realized under the territorial version. For if we assume, in accordance with mainstream territorial Zionism, that the Jewish People were justified in their (subsequently successful) aspiration for self-determination in a territorial manner in a part of the Land of Israel, then the Palestinian opposition to that aspiration was unjustified. Consequently, Palestinians who departed in fear of the war they forced upon the Jews in order to prevent them from realizing that right bear responsibility for their fleeing, along with the Arab states that encouraged them to do so. Israel cannot be held responsible for these actions or their consequences. It should be noted that the ramification of this approach is that Israel is not required to compensate all of the Palestinian exiles for their suffering.<sup>21</sup> Accordingly, Israel would be responsible for compensating

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20 Assessments on this matter are dependent on innumerable variables, such as the economic industriousness of the group wishing to form a state, how pampered its members are and their willingness to suffer, and the technological means available in the particular period, all of which are factored in with, amongst other variables, the topography of the region, the character of the populations in territories neighboring on the territory where the new group seeks to form its state and the relations with them, the international connections of the particular group and those of their neighbors, and the intensity of the international community's commitment to morality and international law.

21 However, if we assume that certain exiles immediately regretted their departure and requested to return but Israel rejected these requests, then Israel is not only responsible for their loss of property but also for all damages they suffered from

only those who were forcibly expelled.<sup>22</sup> However, the denial of Israeli responsibility for the departure of all of the Palestinian exiles, if this version of Zionism is justified, does not entail that the exiles, whether they were expelled or left voluntarily, are not entitled to compensation or to return to their former property. Ultimately, even if they left of their own volition, they are entitled to change their minds, in which case, a very strong argument could be made for allowing them to return to their former homes if unpopulated. For on the individual level, the issue concerns property rights and residence rights, where the act of vacating the concrete objects of those right is not tantamount to a waiver of the rights themselves (at least if the right-holders have continued to demand restitution, as have the Palestinians). And if the original concrete objects of these rights cannot be restored, the right-holders are entitled to alternative compensation in the form of compensation.

A second difference in the implications of the ambitious version of Zionism and the moderate non-territorial version vis-à-vis the Palestinian right of return is that the former provides a clear method for instituting the respective rights of the Jews and Arabs to self-determination in Palestine/the Land of Israel. Under the latter version of Zionism, Zionism should realize its aspiration to self-determination within the framework of a bi-national state without any territorial distinctions. The exigencies of the history and geo-demographic conditions that were created in the area, however, entail a need to reexamine the question of how this form of Jewish self-determination should be realized today. Under the territorial version of Zionism, there is no need to reexamine the question of realizing the right to Jewish self-determination, for if the geo-demographic conditions in Palestine at the end of the nineteenth century justified the Zionist aspiration for territorial self-determination, then it is certainly justified in the geo-demographic conditions that obtain at the beginning of the twenty-first century. What may, in fact, require reexamination is the matter of the just division of the territory of Western Land of Israel between the Jews and the Palestinians. This question remains an open one, as it did in the context of the moderate, non-territorial version of Zionism and in the context of the rejection of Zionism based on the denial of the normative sufficiency of the Jewish historical connection to the Land of Israel to justify the return of the Jews.

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the moment they were refused return. Israel could raise the counterargument that, in the absence of a resolution to the dispute, considerations of security and public order precluded granting permission for their return. This argument might be of real substance, though it is not obviously so. It represents yet another complication in the tangled way towards a moral solution to the problem of the Palestinian diaspora.

22 See *supra* note 19, para. 2.

Consequently, the question of which vacant areas of Western Land of Israel should be designated for the return of Palestinian exiles who cannot, on an individual basis, return to their places of origin also remains open.

At the outset I noted additional forms of Zionism. They revolve around the establishment of a Jewish state in all of the Land of Israel or in parts thereof designated exclusively for Jews. These forms of Zionism do not merit discussion, not only because they cannot be justified under a humanistic interpretation of nationalism, but also because their presuppositions are diametrically opposed to those of any possible Israeli-Palestinian dialogue on the subject of return. Such a dialogue would concern the return of members of the Palestinian diaspora, which emerged as a result of the creation of the State of Israel, to the territory occupied by a state that would continue to manifest the Jewish People's right to self-determination. The ideal of a state only for Jews necessarily entails the outright rejection of any possibility of Palestinian return. This conception of Zionism is the mirror image of those approaches that reject it (and the right to self-determination in the Land of Israel of those Jews living there as a result of Zionism) for reasons stemming from non-humanist forms of Palestinian nationalism. As mentioned above, these forms of nationalism demand the return of all members of the Palestinian diaspora to their places of origin, in conjunction with the removal from the Land of Israel of all those Jews whose lives are rooted there as a consequence of Zionism, even if they bear no personal responsibility for the injustices suffered by the Palestinians. It should be recalled that the rejection of Zionism on the basis of the outright rejection of cultural nationalism, while justifiable on humanistic grounds, cannot serve as the starting point for any dialogue on the Palestinian right of return. In rejecting the very possibility of political support for national cultures, this approach also excludes any possibility of a state serving as the framework for Jewish self-determination. Palestinian return is, of course, possible under this approach, but it could definitely not be to territories located in a state that realizes the Jewish right to self-determination. As noted, the Palestinian return discourse presupposes the possibility of return to a state that realizes that right.

Most of the approaches from the gallery of approaches accepting and rejecting Zionism (whose implications vis-à-vis Jewish responsibility and the right of return are discussed above) were rejected as undesirable for normative reasons, and the approach just discussed was discarded for pragmatic reasons. Thus, three approaches remain that warrant serious consideration: (1) the liberal nationalist rejection of Zionism based upon the denial of the normative significance of the Jews' historical connection to the Land of Israel; (2) the moderate version of liberal Zionism, which

supports Jewish non-territorial self-determination in the Land of Israel; and (3) the ambitious version of liberal Zionism, which advocates territorial self-determination for Jews in parts of Western Land of Israel. Each of these three positions has distinct implications for the question of the scope of Jewish responsibility for the Palestinian plight, both in terms of the categories of suffering and the categories of Palestinian exiles towards whom responsibility is borne. However, all three approaches have almost identical implications vis-à-vis a Palestinian right of return. With respect to the scope of suffering for which Jews are responsible, those rejecting Zionism will assert Jewish responsibility for all of the suffering endured by all Palestinian exiles. Supporters of Zionism in its moderate form will ascribe special responsibility to the Jews for all the suffering of those Palestinians who were forcibly expelled and joint responsibility with the Palestinians and perhaps other entities for all of the suffering of all other Palestinian exiles. Proponents of the territorial version of Zionism will assign special responsibility to the Jews for the suffering of all those forcibly expelled, but will exempt them from any responsibility towards other exiles (except with regard to the suffering entailed by the continued separation from their property and places of origin). All these positions acknowledge weighty grounds for recognizing a Palestinian right of return on an individual basis for all Palestinian exiles to their places of origin in Jewish territories if uninhabited. If territorial separation (in the framework of either one state or two) is the preferred arrangement for establishing Jewish and Palestinian national self-determination, then on collectivist grounds, none of these approaches will recognize a Palestinian right of return to unpopulated Jewish territories if they are not the site of the places of origin of those seeking to return.

As noted, under the ambitious version of Zionism, the appropriate arrangement for setting up Jewish and Palestinian self-determination today is the same as was the case at the inception of Zionism: territorial separation. It seems that today this option should also be accepted by those who claim that Zionism should have been rejected from the outset since they deny any normative significance to the Jews' connection to the Land of Israel, as well as by those who maintain that, from the start, only the moderate version of Zionism should have been accepted, with its aspiration only for non-territorial Jewish self-determination. The reasons that both groups should now embrace territorial separation do not rest, of course, on the view that national self-determination must necessarily and always take a territorial form, but rather on the fact that the constraints of the particular history of the Jewish-Palestinian dispute over the last 120 years make this solution the most likely to succeed. This claim is not only a moral claim; it

is factual prediction. Since we can presume that very few will dispute this claim, I will adopt it as it is.

Thus, all three approaches to Zionism warranting consideration in the context of the debate over a Palestinian right of return have identical implications for this right. First, they all acknowledge powerful reasons for supporting the return of exiles to their places of origin if unpopulated, reasons that stem from people's right to their property and to residence in their places of origin. Second, they support the return of all other exiles (i.e., those whose places of origin are not vacant) to unpopulated areas of Palestine/Western Land of Israel designated to be Palestinian territory. However, this stance leaves open two significant points of contention regarding the right of return. The first pertains to the vagueness of the term "unpopulated" (or "vacant") areas and the conclusiveness of the reasons for supporting the return of Palestinian exiles to unpopulated places of origin. The second point pertains to the appropriate territorial division of Western Land of Israel.

## **VI. RETURN TO UNPOPULATED PLACES OF ORIGIN**

Consider the case of a house that serves as a restaurant or the warehouse of an Israeli institution in an area that has completely transformed in character since the original owners left the house and went into exile: Should this be considered a "vacant" place? Is the answer to this contingent on the use made of the place by the institution and whether alternative sites for such use exist? Can a village that was destroyed and a forest planted on its land and its agricultural lands, once tilled by the exiled villagers, now provide the livelihood of others be considered vacant? And what about a village that was not destroyed, but since its original inhabitants either fled or were driven away, its agricultural lands now provide a livelihood for others? These are places that are not privately owned or possessed by Jewish Israeli individuals in the sense that the majority of their lives are conducted there. Rather, they are places that were previously owned or possessed by Palestinian individuals or entities that are now state-owned by the State of Israel. The State nationalized them and either directly changed their character or indirectly did so by giving them to private or public Israeli entities that changed the character of these places, which are now used by Israelis with varying degrees of intensity. Can these places be regarded as vacant? Is it even at all possible to speak of unoccupied places in Israel after it has changed, to varying extents, the character of almost all of the physical sites left by Palestinian exiles more than fifty years ago and the majority of which Israelis make some use?

It could be claimed that since there are no clear answers to these questions, in those situations in which they arise, the general logic underlying the eventual settlement of the Israeli-Palestinian dispute should be followed to solve the problems. If the arrangement chosen is one of territorial separation, then the members of the Palestinian diaspora ought to relinquish their right to return to territories designated for Jewish self-determination, even if those territories include Palestinian places of origin that are vacant in some sense. However, this claim can only be consistently made if, under the territorial separation arrangement, no Palestinians are to be left in the areas designated for Jewish self-determination. It cannot be consistently made by those who maintain that all or at least some of the Palestinians who have been Israeli citizens since the establishment of the State of Israel ("Israeli Arabs") be allowed to continue to reside in these areas (a position I will later argue in favor of), since, under their view, Jewish-designated areas would, in any event, not be populated exclusively by Jews. The moral vagueness of the term "vacant areas" cannot provide the ground for the absolute and overall exclusion of any Palestinian return. But it can provide a reason for the parties to reach a compromise solution with regard to return to these areas so as to avoid getting entangled in disputes over moral issues lacking clear solutions. Such a compromise would entail recognition of the right of return for a non-negligible number of people, but not the mass return of Palestinian exiles to areas within the borders of the Jewish entity.

Yet another argument can be put forth in support of this type of limited Palestinian return, which derives from Israel's duty to acknowledge its responsibility for at least part of the wrongs suffered by the Palestinians in the wake its establishment. This responsibility arises not only under the position rejecting Zionism that stems from a rejection of the normative significance of the Jews' historical connection to the Land of Israel or under the moderate non-territorial form of Zionism. It arises also under the ambitious version of Zionism, according to which, at the end of the nineteenth century, Jews were entitled to territorial self-determination in Western Land of Israel. Such responsibility certainly follows from the first two positions (i.e., the rejection of Zionism based on a denial of the Jewish connection to Palestine and the affirmation of the non-territorial form of Zionism), since the actual realization of Zionism deviated from its acceptable parameters under these positions: Zionism attempted to form and succeeded in forming a Jewish state in the Land of Israel. However, for a number of reasons, Israel also bears this responsibility under the ambitious version of Zionism. One reason stems from the fact that believing in the justness of this version of Zionism cannot be free of all doubt. As I argued above, its justifiability is contingent not only on factual matters such as the size



and dispersion of the Arab population in the Land of Israel at the end of the nineteenth century, but also on the answers to questions such as the minimum demographic and territorial conditions for establishing a viable state. In many cases, the question of whether these conditions obtain is hard to answer. Since the aspiration to establish a Jewish state in Palestine at the end of the nineteenth century is one such case, the justness of this aspiration must also be subject to doubt. Even if this doubt does not lead to an abandonment of this version of Zionism, it does require a consideration of the price paid by the Palestinians for the realization of this version of Zionism and the acknowledgement of a certain degree of responsibility for it, a responsibility that must be discharged in some substantial form.

The second reason why, under the ambitious version of Zionism, Israel should acknowledge its responsibility for wrongs suffered by the Palestinians stems from the nature of the conceivable justifications of this version. Such justifications could certainly not be based exclusively on corrective justice considerations relating to the persecution of the Jews throughout history. Many have already observed that if the establishment of the Jewish state was based upon the persecution of Jews, then there was no justification for the Palestinians to pay the price, since they played no part in this persecution. As I hinted at above, the justification for establishing a Jewish state in the Land of Israel is based on distributive justice considerations regarding the division of territory among nations for the purpose of realizing their right to self-determination. It derives from the principle that every nation is entitled to a piece of territory in its historical homeland where it can exercise its right to self-determination.<sup>23</sup> Some might argue that this principle is only valid in cases in which the territory designated for the exercise of the right to self-determination is actually settled by members of the nation wishing to exercise that right.<sup>24</sup> Those who reject Zionism based on the claim that the Jews' historical link to the Land of Israel is not sufficient to justify their return to that territory would surely adopt this position. Moreover, even those who accept Zionism based on this link must concede that its realization inflicted a huge sacrifice on the Palestinians, the dominant nation in the Land of Israel at the end of the nineteenth century: they were forced to give up lands they naturally regarded as their own. The sheer magnitude of their sacrifice may provide the basis for appreciating their opposition to Zionism, even if this opposition was not justified. The magnitude of their sacrifice should be

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<sup>23</sup> See Gans, *supra* note 2, ch. 4.

<sup>24</sup> *Id.*

the basis for the requirement to take actual measures to appease them, for example, by returning some of the exiles to their original locations.

The third and most important argument for holding Israel at least partially responsible for the suffering of the Palestinians even if the ambitious version of Zionism is justified pertains to the fact that Zionism in practice was more ambitious than was justified even under this ambitious version. In other words, even if at the end of the nineteenth century there was *ex ante* justification for the Jewish People to strive for territorial self-determination in the Land of Israel, there was certainly no justification for striving to do so within the borders created following the 1948 Israeli War of Independence. Even if the War was forced upon the Jewish state and therefore a just one, there was no justification for expelling Palestinians, nor for seizing the property and places left by those who fled the war.<sup>25</sup> Conceivably, even if some of these actions are excusable due to the particular circumstances of the Jewish People in 1948 and the fears that these circumstances gave rise to (the justified fears of the Jews in the wake of World War II and in the face of the refusal of the Arab states to accept the establishment of a Jewish state under the UN resolution of November 29, 1947), this does not mean they are justified, all or some. Therefore, there is good reason to hold Israel at least partially responsible for the Palestinian suffering even we regard the ambitious version of Zionism as just and the Arab opposition to its realization as unjust.

## VII. RETURN TO ISRAELI TERRITORY AND TERRITORY THAT WILL CEASE TO BE ISRAELI

The discussion thus far has shown that all three of the approaches to Zionism warranting consideration within the framework of the right of return discourse support the return of Palestinian exiles to their places of origin within the territory of the Jewish state only if those places are vacant. However, the discussion has yet to clarify whether the justifiable borders of the Jewish state are the pre-1967 borders or whether they should be an expanded or narrower form of those borders. The reason for this lack of clarity is that if, under the three relevant approaches to Zionism, Zionism as it has actually unfolded is responsible for its demographic consequences,

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25 See Andrei Marmor, *Entitlement to Land and the Right of Return: An Embarrassing Challenge for Liberal Zionism*, in *Justice in Time: Responding to Historical Injustice* 319 (Lukas H. Meyer ed., 2004).

then there is no reason not to hold it similarly responsible for its territorial consequences.

Andrei Marmor illustrates this point in the following manner: If I purchase a piece of land and others trespass on it, conceivably I am entitled to take violent measures to remove them. However, their act of trespass does not entitle me, the landowner, to seize additional territory. If this claim is correct, then the claim that Palestinian refugees who cannot be repatriated to their places of origin should not be repatriated to vacant areas in the Jewish state does not entail the conclusion that they should not be allowed to return to vacant areas that are *currently* within the borders of the State of Israel. Conceivably, they should be allowed to return to the latter vacant areas, and at the same time, these areas should be transferred to a Palestinian state.

But is this, in fact, an appropriate solution? An overwhelming majority of the Israeli left rejects such a solution, for they reject any form of Palestinian return to territory within the borders of the Jewish state set following the 1948 Israeli War of Independence, borders they hold sacred. On the one hand, they oppose withdrawal from these borders to the narrower borders of the Partition Plan under the UN Resolution of November 29, 1947, regarding the establishment of a Jewish state in the Land of Israel. On the other hand, they oppose expanding these borders to include Jewish settlements that are the result of Israeli settlement activities in the territories conquered in the 1967 war. In their view, the Palestinian refugee problem must be resolved within the framework of a Palestinian state to be established in those parts of Western Land of Israel falling outside of Israel's pre-1967 borders.

The central reason for this position regarding the territorial division of Western Land of Israel is the international recognition of Israel's pre-1967 borders and the prospects such a division holds for reaching a peaceful arrangement between a Jewish state and a Palestinian state. Borders wider than the pre-1967 borders will not enjoy these two advantages. First, such expanded borders have never been accorded international recognition, and under current conditions, there is no chance of this ever occurring; second, such borders preclude any possibility of an agreement between the Jews and Palestinians that will provide the Palestinians with a minimal measure of self-respect vis-à-vis what they have endured due to the dispute with the Jews thus far as well as with regard to the possibility of their independent and respectable existence in the future. It could be argued, of course, that while these are valid reasons for preferring the pre-1967 borders to expanded borders, they do not provide the basis for preferring the pre-1967 borders to narrower borders. Obviously, narrower borders would similarly accommodate the possibility of peace between the Jews and Palestinians — it would almost certainly enhance its prospects (the well-known aphorism

"Give them a finger, they'll take a hand" notwithstanding), and there is no reason to assume that such borders would not enjoy international recognition.

But this argument overlooks the reason why the international recognition of the pre-1967 borders makes them the appropriate line along which Western Land of Israel should be divided between the Jews and Arabs. It is not that these borders are inherently just, but, rather, that there is no clear answer (from an infinite number of possible reasonable answers) to the question of the just territorial division of Western Land of Israel between the Arabs and Jews, specifically, and of territories between national groups, in general. In drawing the territorial boundaries of national entities for the purpose of self-determination, complex moral considerations of distributive justice must be weighed, relating to the size of the national groups, the nature of their cultures, and the collective and individual needs of their members. These factors must be evaluated relative to other national groups in the world and their comparative needs and in consideration of the limitations of global territorial resources. Clearly, widespread agreement on comprehensive and perfect moral solutions to these questions (even if, in principle, such solutions exist) is well nigh impossible due to the limitations of human intelligence and nature. This is certainly the case regarding the Jewish-Palestinian dispute. When determining the appropriate size of the Palestinian state relative to the size of the Jewish state, the only things that should not be in dispute are a *prima facie* presumption against mass transfers of populations, an unequivocal presumption against forming suburb-size states, and a *prima facie* presumption in favor of the territorial continuity of states. However, even these undisputed points are formulated in language that can open them up to debate. For example, what constitutes "mass" population transfer? What conditions overcome any one of the *prima facie* presumptions? Other considerations to be weighed in deciding upon the territorial division between national groups are even more controversial. For example, should the territorial borders of the Jewish state be based solely on the size of the current Jewish population in Israel or should the fact that Israel perceives itself as the home for all Jews be taken into consideration and the borders set in anticipation of their possible absorption? Should the territorial borders of the Palestinian state be set in light of the possibility of all members of the Palestinian dispersion settling there? Should consideration be given to the significant political and cultural support that would be given to such a state by its neighbors, whose cultures are very similar to the Palestinian culture? How much unpopulated space is necessary to accommodate the recreational needs of each of the states' populations? Even if there are clear and precise answers to these questions, there is still dispute among the members of each party to the Jewish-Palestinian conflict,

as well as between the two parties themselves, as to how to arrive at these answers. In cases where there are moral ambiguities and disagreements of the sort discussed here, the parties bear a moral obligation to reach a compromise. Israel's pre-1967 borders provide a firm foundation for such a compromise by virtue of the international community's recognition of their legitimacy. Any attempt to reach a compromise based on other borders, whether narrower or wider, will open up disputes with no ready resolutions for which consensus can easily be secured. Moreover, since both sides bear a grave moral duty to prevent the further perpetuation of the violence, any attempt to formulate a compromise based on anything but the pre-1967 borders must be rejected as it will only lead to a stalemate between the two sides and further violence. In other words, the pre-1967 borders are the best territorial line along which to separate the Palestinians and Jews, not because they are inherently more just than any other option in the infinite range of reasonable possibilities for just borders, but because it is difficult to point to any relevant reason for preferring any one of these solutions over the rest; the advantage of the pre-1967 borders lies in the international recognition they already enjoy.<sup>26</sup> The fact that international recognition for any other borders will be secured *after* a territorial agreement has been reached between the parties regarding those borders cannot assist the parties in setting the borders *before* this recognition. The existing international recognition of the pre-1967 borders provides moral grounds to favor these borders not only because it is *international* recognition but also, and perhaps primarily, because it is an *already existing* recognition. It can constitute a conventional anchor for the resolution of a moral dispute whose solution is an urgent moral imperative, with only a slim chance of finding any solution other than territorial separation along these borders given the limitations of human intelligence and nature.<sup>27</sup>

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26 It is important to remind supporters of this position (the Israeli left) that this international recognition is accompanied by two additional positions taken by the international community: Israel's duty to absorb at least a certain number of Palestinian refugees (UN Resolution 194) and the refusal to recognize Jerusalem as the capital of Israel. Reliance on the international recognition of the pre-1967 borders as the grounds for adopting them entails taking into consideration the other two stances, which also touch on the very heart of the Israeli-Arab dispute. These international decisions are inextricably interwoven and constitute parts of a whole; rejecting one of them means rejecting them all and reopening the points of dispute.

27 Moral problems for which there are several possible solutions, none of which is considered better than the other, and whose resolution is morally urgent can be regarded as similar to convention problems. Ordinary convention problems are those in which the parties have an interest in cooperating with each other and there are a number of ways of cooperating, but none is necessarily superior to the other from the

The upshot of these last comments is that the preclusion of return for the Palestinian refugees to areas in the Jewish state means no return to areas within Israel's pre-1967 borders. The general conclusion of my discussion on Palestinian return is that the stance rejecting Zionism based on the rejection of any normative significance to the link between the Jews and the Land of Israel, the non-territorial version of Zionism, and the more ambitious territorial version of Zionism can all justify, on individualistic grounds, the return of Palestinians to their places of origin if they are vacant within the pre-1967 borders. They also can justify a collectivist Palestinian demand for the return of at least some of its members, based on the Jewish state's obligation to realize its responsibility for at least some of the suffering caused to the Palestinian People with the establishment of Israel. Since the issue of what constitutes a "vacant" area in the context of the right of return is open to significant interpretative debate and since the question of how many Palestinian returnees will suffice to constitute a manifestation of Israel's responsibility has no precise moral solution, here, too, the parties bear a moral obligation to reach a compromise. This compromise must be guided, on the one hand, by the general logic of the chosen solution to the dispute and, on the other hand, by all the details of its implementation. The fact that the solution is a territorial division of Western Land of Israel between Jews and Arabs is good reason for not allowing mass return of Palestinian refugees. The fact that an important detail of this territorial

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perspectives of the parties (or where the differences among the alternative ways of cooperation do not produce a sufficient ground for the parties to forego cooperation). The problem, therefore, is which mode of cooperation to choose. In our context, the problems are not of a kind that the parties are *necessarily* interested in solving, but *should be* interested in solving them for moral reasons. The problem is that there are an infinite number of reasonable moral solutions to the matter of the territorial division between the Jews and Arabs in Western Land of Israel. There is a moral obligation to choose one of them, for otherwise the violence will continue. Which should be chosen? International recognition of a particular territorial division can determine the choice. Obviously, there can be other ways of reaching the decision. However, even within the scope of reasonable territorial divisions, the possibilities are endless, and the parties could spend the rest of their days trying to decide only on the preliminary questions of which of these possibilities will go into the hat from which the final solution is to be pulled from. For example, let us assume that the parameters of a reasonable solution extend between one of the partition plans from the 1930s and the borders that current Israeli Prime Minister Ariel Sharon intends to propose within the framework of the "Roadmap" process initiated by President Bush. Even within those parameters, there is an infinite number of variations, because one can forever add or remove different variations from the stockpile that differ only fractionally from any option for borders.

division is that the size of the territory to be allocated to the Jews is much larger than the territory to be allocated to the Palestinians serves as good reason for allowing the return of a non-negligible number of Palestinian exiles.<sup>28</sup> Within certain parameters of reasonableness, neither morality nor justice provides any guidance as to what constitutes a "mass" return and what constitutes a "negligible" return. However, this does not strip the principle I have formulated of all content. Vagueness is characteristic of many concepts of natural languages, not only moral concepts. Just as the assertion "He is tall" is not devoid of content, nor is the statement "The Palestinian return should be neither en masse nor negligible" devoid of content.

### VIII. ANDREI MARMOR'S POSITION ON THE RIGHT OF RETURN

In his article *Entitlement to Land and the Right of Return: An Embarrassing Challenge for Liberal Zionism*,<sup>29</sup> Andrei Marmor argues for a more generous right of return than the one I argue for. But as I will immediately show, his arguments, if carried through, imply a right of return even more generous than he himself actually supports. Marmor advocates the return of members of the Palestinian diaspora who were exiled as a result of ethnic purges and who have remained refugees, regardless of whether or not their places of origin are currently vacant. The frequent challenge to this claim, voiced also by Liberal Zionists, is that such a return would endanger the Jewish character of the state. Marmor's response is that if ethnic cleansing can be a legitimate means of securing the cultural character of a state, then why not ensure this character by placing restrictions on the political and civil rights of minorities (or even the majority)? The Zionist "Left," Marmor implies, does not have too many options: it must either abandon its opposition to the Palestinian right of return or else it must admit that it is not truly liberal. Furthermore, in Marmor's view, Israel's borders prior to June 4, 1967, are morally no more defensible than the (expanded) borders that include post-1967 settlements in the Occupied Territories. In both cases, the borders were the result of a war; and war, however justified, is not a legitimate means of acquiring territory. Although not explicit, Marmor's position is that not only must Israel permit the return of Palestinians to unpopulated locations inside its borders, but the

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28 Conceivably, such a return will have to be postponed by a decade from the day that the peace treaty comes into force and will have to be contingent upon compliance with the other parts of the agreement for the duration of that decade in order to assuage Israeli security concerns.

29 Marmor, *supra* note 25.

Israeli borders themselves should be far narrower than the pre-1967 borders. Thus, the Palestinians should be permitted to return to at least some of the unpopulated parts of Israel inside its pre-1967 borders, and their return to those parts should be accompanied by a transfer of those places to a Palestinian state.

The arguments presented earlier in the article indicate that these conclusions are invalid. I will first address Marmor's claim supporting the right of return for those members of the Palestinian diaspora whose exile is the product of ethnic purges. At the basis of this claim is the argument that just as Liberals cannot consent to limiting freedom of speech and suffrage rights in order to preserve Israel's Jewish character, they cannot agree to the continued perpetuation of a situation that is the result of ethnic purges towards the same purpose. There are numerous possible responses to Marmor on this count. For example, we can point to the fact that the ethnic cleansing of the Palestinians from certain territories in Palestine is not a planned future policy, but, rather, was an exceptional, one-time occurrence over fifty years ago and preventing the perpetuation of its tragic consequences does not necessitate the repatriation of all its victims, whereas imposing limitations on the political rights of Israeli Arabs in order to preserve the Jewish character of the state constitutes a permanent future arrangement whose consequences cannot be mitigated by anything less than its total abandonment. Furthermore, compensation for the suffering that was and still is the product of the 1948 ethnic cleansing of the Palestinians may, indeed, be imperative, but the choice of the means of righting this wrong must reflect other components of the moral situation. For example, the Jews in Israel harbor well-founded security concerns regarding the presence of a large population that bears resentment against the very establishment of the state, born of bloodshed and injustices suffered, and quite naturally, such seething hostility is not likely to be placated by any Israeli actions intended to atone for those wrongs. We can also point to the fact that not all ethnic purges are the same. The Serbs' ethnic purge of the Moslems in Bosnia in the beginning of the 1990s did not resemble the ethnic purge of the Sudetan Germans by the Czechs in the aftermath of World War II, for example. Although not justifying it, the circumstances of the 1948 ethnic purge of the Palestinians by the Jews may excuse it, provided that the Jews acknowledge the wrongs committed and compensate for them by means other than actual return.

However, my arguments in the preceding parts of this article offer a far more fundamental response to Marmor. For, in essence, his claim has force only because he plays on the vagueness of the term "preserving the Jewish character of the state" and on the moral dangers inherent to the use of this



term because of this ambiguity. In the context of the problem of Palestinian return, the "character of the state" argument can be given an entirely clear and lucid interpretation; in fact, the argument's objective can be reached in complete disregard of the argument itself. Following the lines of my previous arguments, the return of refugees is warranted only when their original locations are vacant, since, on the one hand, there are individualistic reasons to support their return to their former homes and, on the other hand, there are no individualistic reasons to preclude this (i.e., no innocent individuals live on that property whose lives are rooted there). In all other instances, however, the wrongs must be redressed by settling refugees not in their original locations, but in other areas in Western Land of Israel. If the Palestinian-Jewish dispute is to be resolved by establishing separate territorial units of self-determination for the two nations, the internal logic of this solution supports the conclusion that where individualistic reasons preclude the return of Palestinian refugees to their original homes, they ought to be resettled in territories designated to be Palestinian. In other words, if Zionism is justified or, alternatively, the realization of its aspirations is retroactively morally justified in light of current conditions and if there is a similar nationalist justification for the establishment of a Palestinian state, it is not clear why Marmor supports allowing refugees unable to return to their original locations to return to vacant areas in Israel and not to vacant Palestinian areas. For in any event, whether these refugees return to areas in the Jewish state or the Palestinian state, they will be returning to parts of their historical homeland and nearby their original locations. Thus, it is difficult to understand why they should return specifically to areas inside the Jewish state. This objection to the return of Palestinian refugees to vacant areas in the Jewish state does not refer at all to the "Jewish character of the state" argument. Alternatively, it could be understood as giving the argument very clear meaning in the context of the right of return, thereby avoiding the moral pitfalls of its vagueness.

The second implicit aspect to Marmor's argument is that the pre-1967 borders are no more morally justifiable than borders that include settlements created after 1967, since both are the product of wars, which, even if they were just, cannot justify territorial acquisition. Consequently, the argument goes, the return of Palestinian refugees to at least part of the unpopulated areas in Israel must be accompanied by the transfer of these areas to a future Palestinian state. This claim is problematic because it takes for granted that the borders of the 1947 Partition Plan are *the* morally justified borders of the Jewish state. The Partition Plan can be regarded as having established morally legitimate borders for the Jewish state for two alternative reasons. One reason is that it constitutes an international solution to a problem lacking

any clear moral solution, and given its potential to prevent the continuation of violence, there is a moral obligation to adopt this solution. Alternatively, the Plan can be regarded as having enunciated the morally appropriate solution given the relevant parameters at the time: it divided the areas with a Jewish majority on the one side and those with an Arab majority on the other. However, neither of these justifications has force with regard to the period leading up to the Six-Day War in June 1967 or to the period immediately thereafter. Whereas in 1947, the Partition Plan offered a desirable solution because it was then a reasonable solution and an international solution to a problem with no one right solution, this was not the case in 1967 in terms of international recognition. In 1967, Israel, as a state perceiving itself as a Jewish state, enjoyed international recognition within the borders of June 4, 1967, which replaced the international recognition the Partition Plan provided in 1947. If the Plan had offered an appropriate solution for the territorial division of Western Land of Israel because of the moral justification of its substance, namely, the existence of a Jewish majority in the area designated for Jews and the existence of an Arab majority in the areas designated for Arabs — then the demographic reality in Palestine/the Land of Israel in 1967 mandated a different territorial division. Of course, such a division would not have had to necessarily follow the lines of the pre-1967 borders; conceivably narrower borders might have been appropriate. But either way, it would not have been along the Partition Plan lines of 1947. And in 2004, wider borders than the pre-1967 might be required. Indeed, the situation is such that there is no clear moral criterion for determining whether, in 2004, the borders should be narrower or wider than the pre-1967 borders, for there is international consensus only with regard to the pre-1967 borders. Given this background, there is a lot of sense to the claim that the latter should be the borders.

Not only does Marmor ignore and belittle these considerations, he also claims that borders stretching beyond the pre-1967 ones seem more legitimate than those exceeding the territorial lines of the Partition Plan, since the former would be drawn in accordance with settlements on lands not attained by way of ethnic cleansing, whereas the latter were based on borders that were largely the consequence of ethnic cleansing. He therefore argues that any moral divergence between the borders that were set after 1947 and those set after 1967 tilts in favor of the latter. The only reasons for compromising on the post-1967 borders are pragmatic and prospective, not principled. Despite his admission in one place that these reasons also have moral tinge to them in deriving their impetus from the moral imperative to resolve conflicts in general, Marmor underplays the significance of this

moral duty by generally describing the considerations it reflects as of a pragmatic nature.

This presentation of matters must be rejected. Admittedly, seizing lands by way of ethnic cleansing is perhaps graver than attaining land in a manner that does not involve this crime. Yet there are strong reasons for maintaining that the ethnic cleansing of 1948 was less morally reprehensible than the ongoing settlement activity following the 1967 Six-Day War. First, the ethnic cleansing of 1948, even if intended by part or all of the Jewish political leadership in the Land of Israel, is attributable to the Jews' post-World War II fears and the understandable urgency with which they sought a state that would provide them with protection, a state whose establishment the Arabs rejected. Though this claim is, to a certain extent, part of the Zionist narrative, it is not necessarily a fabrication. In contrast, the settlements following the 1967 war were on behalf of, or at least under the aegis of, an existing state; they were established for the purpose of territorial expansion under circumstances that provided no basis for the fears that may have been justified in 1948. Second, and more importantly, the post-1967 settlements were intended to plant almost insurmountable obstacles on the way to peace and the resolution of a violent conflict. The moral duty not to obstruct any possibility for terminating the conflict is, in my eyes, no less principled than the duty not to thwart the Partition Plan of 1947. Taking cold and calculated measures to prevent any possibility of complying with that moral duty, as in the manner and circumstances of the settlements, will prepare the ground for future ethnic cleansings, which will be absolutely unpardonable in the circumstances.

To sum up, Marmor accuses those who identify themselves as "Liberal Zionists" of two inconsistencies. The first relates to their use of the "Jewish character of the state" argument in order to justify their objection to the return of the Palestinians to places that are not their original locations. Marmor maintains that this objection is inconsistent with the Liberal Zionists' opposition to imposing restrictions on the political rights of Israeli Arabs. Second, he takes issue with their objection to borders that exceed the pre-1967 borders. This objection, he argues, is inconsistent with their opposition to returning to the 1947 borders. The above discussion has shown that these charges are unfounded. Indeed, inconsistency in fact seems to be the hallmark of those supporting positions such as Marmor's. For if they oppose any kind of nationalism, whether by dint of their being socialists or neutralist liberals, then they cannot speak of the materialization of Palestinian return within the framework of the State of Israel as a state perceived of as realizing the Jewish right to self-determination. They can speak only of a culturally neutral state in Western Land of Israel, the return to which should not be limited to those

members of the Palestinian diaspora that were the victims of ethnic cleansing, but, rather, should extend to all members of the Palestinian diaspora. This argument, however, is incommensurate with Marmor's presuppositions, for he seems to regard the right of return discourse as revolving around the question of the appropriateness of Palestinian return to a state that realizes the Jewish right to self-determination. The question of whether this possibility merits support will similarly compel the supporters of a position such as Marmor's to address the dispute between liberal nationalists and neutralist liberals and not take for granted that liberalism can be neutralist with respect to national cultures. The question of whether liberalism is compatible with some sort of nationalism will compel them to attribute greater significance to the distinction between Liberal Zionists and Romantic Zionists (those to the right of liberal nationalism), a distinction Marmor ignores (for he refers to Zionism as though it were wholly romantic). Furthermore, Marmor is mistaken in directing his accusations at the so-called "Liberal Zionist" consensus; in 2004, humanistic nationalists, even if they are not Zionists, can also be partners in the consensus regarding the pre-1967 borders and the opposition to Palestinian return. For within the geo-demographic reality that Zionism created in Western Land of Israel, even non-Zionist nationalists can argue that this territory should accommodate both Jewish self-determination and Arab self-determination. Furthermore, they also can support territorial separation between the two entities of self-determination, either because they believe that self-determination ought, in principle, to be territorial or else because they believe that, in the particular context and history of the Jewish-Palestinian dispute, territorial self-determination for the respective parties is the best solution.

My position regarding the right of return therefore lies somewhere between Marmor's position and the position that he ascribes to the Liberal Zionist consensus. It will be recalled that I support a restricted right of return for Palestinians as an expression of the collective Jewish responsibility for the Palestinian refugees' plight and based on the individual rights of some of the members of the Palestinian diaspora to return to their original locations if vacant. My position diverges from the Liberal Zionist consensus not because I maintain that the latter position reflects inconsistent moral stances, but, rather, because I believe that it does not take into account some important considerations.