

Zionism: Between Proprietary Justice and Distributive Justice

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Zionism has invoked two major arguments for why Israel should be a Jewish state. One is the argument claiming historical entitlement. According to this argument, the Land of Israel as a territory and as a political unit belongs to the Jewish people. In ancient times, the Land of Israel was the property of the Jewish people, who were forcibly exiled from there. However, despite their long physical separation from their land and from their polity as a result of this exile, their rights of ownership over it have not lapsed, since they have allegedly been doing what is legally required to overcome statutes of limitations. This is clearly implied in Israel's Declaration of Independence, which states that Jews "...strove in every successive generation to re-establish themselves in their ancient homeland."

A second argument is mainly based on the a-historical universal right to national self-determination. This right emanates from global justice pertaining to the distribution of the world's territories and political jurisdictions among its nations. The fact that the declaration invokes this right makes it possible to interpret the historical link between the Jews and the Land of Israel, which the

declaration stresses at great length, as intended to justify the selection of this particular territory as the site for realizing the Jews' a-historical right to self-determination, rather than as a basis for their proprietary historical entitlement.

The second argument could be interpreted in a variety of ways, depending on the conception of self-determination—namely, whether it should be realized in the form of an exclusivist nation-state, hegemonic nation-state, or by some form of sub-statist self-government.

The mainstream Zionism that has developed since the 1930s conceives of Israel as a Jewish state mainly along the lines of the first argument, namely, that of historical entitlement. However, some mainstream Zionists, especially some public intellectuals and publically prominent academics, have oscillated between this argument and the hegemonic interpretation of the a-historical right to Jewish self-determination.

I would like to make several comments regarding the above interpretations of the Jewish state.

Firstly, the proprietary historical entitlement interpretation is entirely inappropriate for the realm of politics. Moreover, this interpretation is based on false historical claims, namely, that the Jews were forcibly exiled from Palestine, and that they kept striving to reestablish themselves there. However, the main problem with the present interpretation is that it undermines the

legitimacy of the establishment of the Jewish state in the past, and dooms it to being alarmingly oppressive and unjust in the future. This interpretation undermines the legitimacy of the establishment of the Jewish state because it ignores the persecution of the Jews as a necessary component in justifying the establishment of this state in a particular moment in history, in a country which was inhabited by another people. Moreover, it dooms Israel to perpetual oppressiveness and injustice in the future since, according to this interpretation, the status of the Arab collective living in the Land of Israel (which includes not only the territories west of the Jordan River, but also those that are east of this river) is that of a plunderer. The status of the individuals belonging to the Arab collective residing in the Land of Israel, even if they themselves are not considered plunderers, is at best that of holders of stolen property. If this conception of the Jewish polity in the Land of Israel were not implemented on a daily basis by the State of Israel, I would not be emphasizing it as I am now. Unfortunately, it is only the popularity of this conception among members of the public at large and among mainstream Israeli politicians, which can explain Israel's policies. Israel would have pursued policies informed exclusively by this conception if it weren't for pragmatic considerations.

Fortunately, there are other interpretations of Zionism and the Jewish State, at least in principle, even if such interpretations have not yet been implemented in practice. Zionism and the Jewish state are more easily justified if one interprets

the concept of a Jewish state in terms of the ahistorical right to national self-determination, and merely invokes history as a justification for selecting *the site* for self-determination, and for explaining the necessity that has driven the Jews to realize their self-determination in a land occupied by another ethno-cultural group. Such an interpretation could alleviate the pressures on Zionist historiography to pursue falsities such as the ones mentioned above. Also, this interpretation does not doom Israel to perpetuate an alarming injustice and oppression in the future. However, whether the present argument allows Israel and Zionism to be fully just remains an open question. It depends on the interpretation of the institutional (as opposed to territorial) aspects of the Jews' right to self-determination in Palestine. Mainstream Zionists interpret the Jews' right to self-determination as constitutional hegemony of the Jews in the Jewish state. Ruth Gavison, a reputable law professor at the Hebrew University and a prominent public figure, defines the right to self-determination as a right to a nation state, which she in turn defines as "a state whose institutions and official public culture are linked to a particular national group—offers special benefits to the people with whom the state is identified. At the same time, it puts those citizens who are not members of the preferred national community at a disadvantage." This conceptual, or, I should say, stipulation-based argument for Jewish hegemony as the appropriate interpretation of the Jewish state is wrong both conceptually and morally. It is true that an ethnic nation-state (as opposed to a civic nation-state) is a state whose institutions and official public culture

are linked to a particular national group, offers special benefits to the people with whom the state is identified, and "at the same time, it puts those citizens who are not members of the preferred national community at a disadvantage". However, it is not true that the right to self-determination is a right to an ethnic nation-state. Nor is it true that the right of ethnic nationalities to self-determination should justifiably be realized by ethnic nation-states.

As for the concept of self-determination, it has two distinct meanings both in international law and in political philosophy. One sense of the term is the right to self-government, while the other meaning is the right of secession. Neither of these meanings implies the right of ethno-cultural groups to hegemony within a framework of their own nation-state. The right to self-rule can be implemented by granting the members of an ethno-cultural group autonomy (personal-substantive, or territorial). Similarly, a group's right to secede from an existing state and to establish an independent state does not imply that this group necessarily has a right to hegemony in this new state. These considerations indicate that the hegemonic interpretation of the right to self-determination does not necessarily follow from the meaning of this right in either of its senses (namely, the right to secede and the right to self-government).

Neither can this interpretation be justified by normative considerations. This is so, firstly, because the justifications for self-government do not necessarily

require its hegemonic interpretation, and secondly, because the arguments against hegemony are conclusive.

As for the justifications for ethno-cultural self-rule, they derive from group members' interests in adhering to their ancestors' culture, in leading their lives within the framework of their culture, and in preserving the multigenerational dimension of their culture. This is a universal right based on the fact that the interests justifying it are interests currently shared by many of the members of all ethno-cultural groups. Most people living today wish to assure the continued existence of their particular culture, and their ability to live their lives within the framework of this culture. It is important for their well-being, since their various choices and endeavors are meaningful only or at least primarily within this culture. Most people living today need to know that their culture will probably continue to exist and thrive. Hopelessness about the continued existence of their culture might easily undermine their faith in the meaningfulness of their own endeavors. The right to national self-government purports to serve the interests that people have in adhering to their culture and in preserving it for generations. However, there is nothing requiring that these interests be protected exclusively within the framework of a nation-state.

Many contemporary writers who argue that the nation-state is the *desirable* means for protecting people's interests in self-determination do not also argue that it is a *necessary* means for achieving this goal. At most, they

consider it to be the optimal means for self-determination. They argue that multinational states provide less protection for the various ethno-cultural groups living within them than would be accorded by separate nation-states for each one of these groups. I am not certain if this latter claim is correct. The determination of the optimal means for protecting people's interests in their nationality and the right to self-determination depends on many different variables, such as the size and the wealth of the group concerned, its ability to adapt itself to ever-changing circumstances, the extent to which members of the group are committed to it and to its culture, and the nature of the other ethno-cultural groups that live in close proximity to the group concerned. There is therefore little point in making generalizations, and each case should preferably be addressed individually. However, even if it were true, either in general or with regard to a particular case, that the hegemonic nation-state is indeed the optimal means for the protection of people's interests in living within the framework of their ethno-cultural group, we need to remember that non-optimal means may nonetheless be sufficient for the attainment of the intended goals. Hence, the arguments in favor of self-government do not necessarily, or even optimally, require constitutional hegemony.

As for the arguments against hegemony, at least one of these arguments seems to me to be conclusive. This argument pertains to the intrastate injustice caused by the realization of hegemony. In the geo-demographic conditions of most

parts of the world, the realization of the hegemonic conception in effect creates two classes of citizens, namely, citizens to whom the state can be said to belong, and citizens who are the state's subtenants, as it were, despite the fact that they are not an immigrant group, but rather a homeland group. This inherent inequality has always figured prominently in the Israeli discourse regarding the Jewishness of the state and also in the discourse about Zionism. The fact that the hegemonic conception of Jewish self-determination implies unequal status for the Arabs has always been acknowledged in this discourse. Inevitably, it renders the Arabs living in the Jewish state outsiders in their own homeland. It is a well-known fact that most of the populations inhabiting territories in which states could possibly be formed do not enjoy national homogeneity. Under these circumstances, the aforementioned criticism applies to many nations which exercise hegemony within the states in which they have realized their right to self-determination.

Some writers believe that given the ethno-cultural composition of populations in most territories of the world, hegemonic self-determination is inevitable. But I don't think this is the case. Ethno-cultural nations could interpret their right to self-government as a sub-statist right. According to this sub-statist interpretation, self-determination should be conceived as a package of privileges granted to ethno-nations within the state that coincides with their homeland. This package should include self-government rights, special

representation rights, as well as rights to cultural preservation. In states coinciding with the homelands of more than one ethno-national group, these groups should enjoy constitutional equality with regard to their rights to self-determination. That is, they should be constitutionally bi- or multinational states. In the particular case of Israel, this entails that Israel should be a Jewish state in the sense that it is the only state in which Jews enjoy self-government, but not in the sense that it grants collective self-government rights only to Jews.

Despite the principled reasons for this sub-statist and non-hegemonic interpretation of the right to self-determination, which entails constitutional binationalism, it seem to me that the history of the Jewish-Palestinian conflict (and perhaps some other reasons, such as the lingering memory of the persecution of the Jews in the not-so-distant past, and the fact that the hegemonic conception of self-government is still sanctioned by many ethno-cultural nation-states) provides circumstantial reasons—as opposed to principled reasons—for creating a political state of affairs in which Jews in Palestine enjoy political hegemony in the very state in which they enjoy self-determination. Given the current demographic situation, this requires a two-state solution for the Jewish-Palestinian conflict. The Jews would have a clear majority and would thus enjoy political hegemony in one of these states, whereas the Palestinians would enjoy such hegemony in the other state. However, this political hegemony could go hand in hand with constitutional

binationalism. In actual practice, such constitutional binationalism is not empty or meaningless. For example, it should be reflected by the symbols of the state. In fact, my own preference would be to have a two-state solution in the Land of Israel in which both states are constitutionally binational. If some of the settlers continue to live in the Palestinian state, its constitutional binationalism will not be meaningless in actual practice. Since a large minority of Palestinians would certainly continue to live in the (politically mainly) Jewish state for practical and moral reasons, its constitutional binationalism would certainly not be devoid of meaning.