

² SELF-DETERMINATION AND THE PALESTINIAN ARABS

by Julius Stone,

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THE IDEA of a "Palestinian Entity" is a creature of the decade just past, and came to articulation concurrently among the Arab States and the Palestinian refugees themselves. Long before this, of course, the establishment of a Palestine Arab State had been proposed in the Partition Resolution of 1947, accepted on behalf of the future State of Israel, but violently thwarted by the invasion of Palestine in 1948 by six Arab States, seeking to destroy the new State of Israel. After the Armistices arrested the ensuing war, which even the Soviet (nominally Ukrainian) delegate at the 306th Meeting of the United Nations Security Council on May 27, 1948 (O.R., p. 7) condemned as an "unlawful invasion", Jordan and Egypt were left in military occupation of substantial parts of the abortive Palestine Arab State on the West Bank of the Jordan, and the Gaza Strip, in addition to East Jerusalem. Had the Palestine Arab State not been thus aborted, the specific "nationhood" of its population, scarcely manifest at that time, would perhaps have grown with the responsibility and experience of statehood. But this did not happen.

So that it was to be two decades more, in the 'sixties, and perhaps not until after the 1967 War, before "Palestinianism" in a specific sense entered the international stage. The fact that this entry was made in an explosive context of political passion and physical violence, should not conceal the long-term issues which it raises. Because of these issues, "Palestinianism" in all its aspects needs to be examined as dispassionately as possible.

The "Palestinian Entity" notion was invoked by Arab States at Arab League meetings in 1959, in the context of struggles not only

against Israel, but also among themselves, looking to a still projected dismemberment of that State. The supposed claims of such an "Entity", putatively associated with claims of "Palestinian peoplehood", have now come, since the 1967 War, to be offered as a central factor to be reckoned with in the current Middle East conflict.¹ And at this level, of course, very substantial preliminary questions arise as to the relevance of such an "entity" to the merits of this conflict. Even as this article went to press, the confusions surrounding these questions were illustrated by the General Assembly Resolution of November 5, 1970. Among the aspects of this Resolution which split the United Nations, and indeed the Arab world itself, and marshalled the support of only 57 out of 127 U.N. members, was its reference to "the Palestinians" as "an indispensable element" of a Middle East settlement.

The first is as to the genuineness of the supposed association of this evoked entity with a Palestinian "people", much less with a Palestinian "nation", in the sense of those symbols which today implies an entitlement to political independence.² Even scholars rather sympathetic to Arab claims have pointed out that when the British White Paper of 1939 had apparently made an independent Arab State inevitable, "most of the country's Arab leaders slipped into lethargy and paralysis of action which was to last nearly thirty years".³ So that, whatever interpretation be given to the sporadic and mostly localised attacks of Arabs on Jews in 1920, 1929 and 1936-1939, it still remains a puzzle how and why a Palestinian Arab nationalism, had it already existed, could have remained inert and passive during the critical years which followed 1939. As late as 1948, the main role of the Palestinians during the attack by the Arab States on the new State of Israel was either to accept life under that new State or to leave their homes to seek shelter with the Arab States and their armies. Pending more persuasive historical studies these facts seem to point to a movement

* Copyright 1970 Julius Stone. This paper was presented to the Australian Society of Legal Philosophy and the Grotian Society (Australian Group) on 3 September, 1970. It was written during the Author's visit to the Hebrew University Truman Research Institute in late Spring, 1970. Later developments, such as the stand of Egypt and Jordan against the "liberation" terrorist groups in relation to the U.S. "peace initiative", the successive crises between Jordan and these groups, and the Jordanian defeat of the Syrian intervention, illustrate the main themes.

merely stirred and manipulated, and then only sporadically, by forces outside Palestine.

If, however, we were to assume that, at any rate in 1960, or 1967 or 1970, the Palestine "entity" demand has acquired a genuine relation to Palestinian Arab "peoplehood", the second question would arise what bearing this fact could have at this stage of history on the military and political facts or on the moral rights and wrongs of the present Arab-Israel conflict. This bearing is not likely to be a simple one. The tensions between the Welsh and the English, and the Scots and the English, still continue after many centuries of English dominance. No serious body of opinion sees the answers for modern Welsh or Scots nationalisms in the establishment of new Sovereign States of Wales and Scotland, or the annihilation or extrusion of immigrant Englishmen.

It is this second hypothetical question that I wish here to explore. For the first question above I merely *hypothesise* that an affirmative answer can be given for the past decade, so as to open the way for exploring the second.

Insofar, then, as we assume that there arose in 1960, or 1967, or 1970 a specific "Palestinian" consciousness associated with the idea of establishing "a Palestinian entity", it is obvious that this must be, in some sense, a factor in the *present* stage of the Middle East conflict. But by the same token of chronology, this factor could not now be a decisive one for judging the rights and wrongs of events *which took place half a century or even a generation before, in 1917 or 1922 or 1948*. A nationalism hypothetically just emergent cannot be treated as if it had emerged decades before, for the purpose of facilely overriding entitlements then fixed and acted upon. To ignore chronology in such a way would be an arbitrary reconstruction of both events and rights of peoples as these latter in historical fact presented themselves after World War I, to claim a share in the distribution of the territories of the defeated Turkish Empire.

IN THE distribution of those vast ex-Turkish territories, embracing the whole of the Near and Middle East, the principal claimants, *in historical fact*, were the Arab and the Jewish peoples. The Arabs were, of course, dispersed over the whole area, with a number of cul-

tural and political centres, but no particular centre *in Palestine*. As Peretz observes of that period, "there was no distinctive Palestine people, nor political entity", and. (he adds) "the land and its inhabitants were considered backwater regions of the less developed Ottoman Syrian provinces".⁴ And James Parkes has done well to recall the fact that, even at the height of the imperium of the Arab and then later the Turkish conquerors of the whole area, Palestine was never exclusively Arab or Moslem any more than it was exclusively Jewish or Christian, either in population, or in cultural or religious concerns.

The departure or re-entry of Jews and Christians particularly reflected the degrees of tolerance or persecution by successive local rulers. A part of the Jewish people, driven from Palestine by the fire and sword of successive invading Empires, remained as dispersed communities throughout the Middle East, and new ones grew up in Europe and North Africa. A part, varying as indicated, remained in Palestine. But for all the Jewish people, wherever they were, Palestine remained into the modern era the steady focus of its religious and national life, just as it had been the centre also of its political life in the earlier millennium of the Kingdoms of David and Solomon, and later of the Hasmoneans.

In this perspective it is clear that Jewish nationalism and Arab nationalism, each embracing its own cluster of scattered populations, each sharing specific cultural, religious, traditional and historical experiences deeply rooted in the Middle East region, came simultaneously as claimants, the former to a part, the latter to the whole, of the territories liberated by World War I from the Turkish sway. These were the claimants among whom the admittedly unsaintly dispensers of justice after World War I, made the allocations which began the modern period. It is critical for clear thought and fair judgment, in terms of modern ideas of the self-determination of nations, thus to identify these two peoples who were the claimants at the relevant time. For it is fatal to the judgment of justice, and may be a source of grave wrong in any context, to misidentify the claimants among whom the distribution is to be made.

Though this general point is valid for all contexts the issue arising from the assumed

recent emergence of Palestinian peoplehood offers a striking example of it. The facile assertion that Israel came into existence on the basis of injustice *to the Palestinian people* proceeds on a gross error of this kind. In historical fact the Arab claimants after World War I embraced Arabs of the whole area of whom, as already seen, the Arabs in Palestine were merely a peripheral and in no way "distinctive" segment, whose interests as such were taken into account. So that now to present a "Palestinian entity" and people, assumedly emergent in the 'sixties, as an *additional* claimant against Israel is an unwarranted and somewhat dubious game with history as well as justice.

The distribution which emerged after World War I and was implemented in the succeeding decades included the following features.

First, despite all the extraneous Great Power manoeuvrings, Jewish and Arab claims in this vast area came to the forum of justice together, and not (as is usually implied) by way of Jewish encroachment on an already vested and exclusive Arab domain.

Second, the allocation made to the Arabs, as implemented in the now-existing dozen and more Arab sovereignties, was a hundred times greater in area, and hundreds of times richer in resources than the "Palestine" designated for the Jewish National Home.

Third, by successive steps thereafter, this already tiny allocation to Jewish claims was further encroached upon. Part of it was cut away in 1922 (namely, 70,000 out of 96,000 square kilometres, including the more sparsely populated regions) to establish the State of Transjordan (later renamed Jordan). Further parts of it were proposed to be cut away to establish the Palestine Arab State by the partition proposal of 1947. Most of the areas designated for *that* Arab State were in fact seized and thereafter held until 1967 by Egypt and Transjordan, in the course of their first armed attack against the State of Israel in 1948.

The contemporary fashion of short cuts in thought has recently tried to tear the Palestine refugee question from this context of history, into which it is the more important to reset it. The leaders of this fashion, if we leave out Arab spokesmen themselves, have been from the New Left, for whom history is rather a

blank book in which Manichean judgments are written in black-and-white characters which stir indignation with minimal expenditure of thought.

It has been the more urgent to point out that it twists and parodies both history and justice to present the Palestine issue as a struggle between the Jews of the world on the one hand, and the Arabs of *Palestine* on the other, in which the Jews seized the major share. The struggle was rather between the Arabs of the Middle East *region* (including some hundred thousands living in Palestine) and the Jews of the world, in which the Arabs took a lion's share from which in due course a dozen and more Arab States emerged. Neither at the time of distribution, nor for decades later, moreover, was there any identifiable *Palestine* Arab people, much less any centre of Arab cultural or political life in Palestine. There were Arabs *who had lived in Palestine* for centuries as there were Jews *who had lived in Iraq, in Yemen and other parts of the region*, for centuries; and all of these (as I shall show) were to pay a price for the inheritances gained by their respective nations.

The *precise* errors involved in thus tearing the Palestine issue from its historical context are nicely displayed in terms of a supposed distribution of disputed ancestral lands between Clan Smith and Clan Jones, accepted by them in 1920. We may then also suppose that half a century later, one member of Clan Smith, born after that distribution, began to claim a separate additional allocation for himself by forcibly ousting Clan Jones from *its* allotted portion, aided and abetted by the well-endowed Clan Smith as a whole.

Such a claim has, on its face, the following five-fold perversity. First, that the challenge to distribution made in 1920 should be made in terms of claimants and attitudes *which simply did not exist in 1920*, but emerged (if at all) many years later. Second, that the after-born claimant, the sacrifice of whose interests *made possible the distribution to his own Clan* as well as to the Jones Clan, should now stake his claim *not* against his own (the Smith) Clan, nor even against both Clans together in some due proportion, but exclusively against the Clan Jones. Third, that this belated new claim is asserted even so far as to negate the entire entitlement of the Clan Jones. Fourth, that it

is pressed, indeed, to the point of demanding destruction of the whole basis of existence of the Clan Jones. Fifth, and finally, that the Clan Smith now aids and abets this attack against the Clan Jones, while offering little contribution towards satisfying its own dissatisfied claimant member *out of its own ample endowment*.

IN THE aftermath to these allocations, of which the overwhelming part went to Arab peoples, about half-a-million Arabs were led to leave their homes in Palestine, and a no less number of Jews were forced to leave their homes and properties in various Arab countries. It is commonplace, alas, justice being rarely perfect, that some marginal interests among the major claimants usually suffer a degree of wrong in the course of even a just distribution. It is also well accepted that some duty of redress to such wronged marginal interests must rest on all who benefit from the overall distribution, in proportion to their benefits, and according to some rational division of responsibilities. And such wrong in the Middle East flowed from the initial territorial settlement in the area in a process as drawn out as that from which all the Arab States, as well as Israel, emerged. Thus, correctly seen, any injustice to the Arabs of Palestine flowed from the creation of the present Arab States, no less than from the creation of the State of Israel.

Israel, in any case, accepted the responsibility to resettle and rehabilitate fully half of the million displaced persons involved, namely, the Jews from Arab lands. She accepted, in addition, a similar responsibility for a significant number of displaced Arabs, and she offered, as a part of a settlement, to receive back an additional 100,000 of the Palestinian refugees. Arab States, with vastly greater areas and resources, have accepted no responsibility for any substantial resettling of displaced Arabs. They have sought rather to keep the "Arab refugee" question alive as a weapon for political use against Israel, sometimes, as with Egypt in Gaza, by confining the refugees in a virtual concentration area on the borders of Israel. (The overtones of artificiality in the recent "entity" notion suggest, in this perspective, that it may be a refurbished form of that older weapon.)

The context in which the burden of making amends to Arabs and Jews displaced in consequence of the post-World War I territorial distribution must be approached, is that very distribution itself. In the upshot, as has been seen, more than a dozen independent Arab States emerged endowed with something like ninety-nine per cent of the area concerned. Only one per cent of the area, and even less of the resources, were designated in 1917 for a National Home for the Jewish People. This distribution overwhelmingly favouring the Arabs still remains the decisive context for considering amends to be made for the incidental wrongs to marginal groups of Arabs and Jews, whether from Palestine, Iraq or elsewhere. The moral principle involved is clear, that marginal wrongs in the course of a distribution fall to be made good by those who benefited by the distribution in proportion to their benefit.

This does not exclude that the international community generally also has a role to play in rehabilitation and resettlement. With these, as with so many other displaced groups, the international community has its own interest in fostering reconciliation and easing tension.

These moral principles are applicable both to Jews and Arabs, whether we assume that the Arab refugees fled from Palestine as a result of intimidation by Israelis during the 1948 Arab invasion, or (as the Israelis assert) because they chose to join invaders in the hope and confidence of thereby both securing their personal safety and possessions, and, in some cases, of sharing in distribution of Israeli land and goods after a victorious Arab dismemberment of Israel. Even, indeed, on the interpretation more charitable to the Arab refugees, their grievances only take their place alongside those of the half million Jewish refugees driven from Arab States where they had lived for centuries, stripped of possessions and compelled to flee to the only refuge open to them in the State of Israel. Any final share of responsibility imputed to Israel to aid the half million Arab refugees, in view of her small share of the resources distributed after World War I, would certainly have to allow for the heavy burdens she assumed towards the half million Jewish refugees from Arab countries.

In summary, then, I am saying that all these displaced persons, Jews and Arabs alike, were

casualties of the same attempt at a just distribution of ex-Turkish territories after World War I. The duties of aiding and rehabilitating all these casualties rest in due proportion on Arab as well as Israeli beneficiary States. Israel unquestioningly assumed full responsibility for half the refugees involved. A certain number of the Arab refugees *have* also been absorbed into *some* Arab States, notably Lebanon and Jordan. But this sets into relief the default of the other Arab States. Egypt, for example, literally confined its displaced kindred in Gaza, left the responsibility for their subsistence to the United Nations agencies, and concerned itself mainly for twenty years with channelling the refugees' resentment against Israel, turning their misfortune into a kind of weapon to be used against that State.

This default in duties of justice and humanity has been gross, even when measured by the standards of older sovereign States. These States have not always themselves, of course, been paragons of the duties of humanity; but the record since World War II has shown a remarkable recognition of these duties, stimulated no doubt by the international concern for stabilisation of frontiers and the reduction of tension. According to Holborn's *World Refugees* (1960) the truncated West Germany, after World War II, absorbed and rehabilitated no less than 9,688,000 displaced persons (5,978,000 from Poland itself, 1,891,00 from Czechoslovakia, and the rest from several other European countries). Small Austria received 178,000 Hungarian refugees in the aftermath of the Hungarian revolution of 1956 (Efan Rees, *Century of the Homeless Man*, International Conciliation, 1957). Italy provided a home for 585,000 Italians displaced from territory ceded to Yugoslavia, and from various parts of Africa (*U.N. World Refugee Year Secretariat*). France gave permanent asylum to 1,372,000 refugees (including Algerian Moslems) displaced by emergence of new sovereign States in North Africa and Indo-China (*N.Y. Times*, Dec. 1961, Nov. 1962). The Netherlands, tiny and crowded, welcomed and settled 230,000 refugees from Indonesia (*Kraak, Repatriation of the Dutch from Indonesia*). Turkey resettled 150,000 Turks expelled from the communist regime in Bulgaria (*Kostarisk, Turkish Resettlement of Bulgarian Turks* (1957)).

The standards of civilised duty are even plainer when circumstances permit exchanges of populations which will ease majority-minority relations, and therefore international tensions across new frontiers, as with the Greco-Turkish exchange of populations after World War I, or the less orderly Hindu-Moslem exchanges on the partition of India in 1948. In such cases (and the Arab-Israel case is such a case *par excellence*) the duties of humanity are reinforced by the concern of the international community to reduce tension and stabilise frontiers. The default of the Arab States has usually been accompanied, significantly by the very opposite motives — of increasing tension with Israel, and undermining the stability of the frontiers.

IT WILL be said, no doubt, by many who support the Arab cause, that the claims of Palestinian Arabs do not rest merely on their displacement but rest on other titles.

It may, for example, be said (and it is usually implied even when it is not said) that, after all, Arab armies did conquer Palestine in the seventh century, whereas (for example) the Jews displaced from Iraq and Yemen were never conquerors of Iraq or Yemen. This raises the rather important question whether a military victory in the course of an imperialist ancestral incursion thirteen centuries before, is entitled to some *real* priority over an Israeli victory in two wars of self-defence, in 1948 or in 1967, and if so, on what grounds?

Anyone, indeed, with an aptitude for moral speculation of this kind, would probably also be interested in the question whether any moral priority attaches to that thirteen-century-old Arab conquest, as against the still older Israelite conquest of the land from the Hittites and Philistines in the 13th century B.C.E., or as against the undoubted governance of the land by a succession of Jewish judges and kings for many centuries thereafter? And, if he thought that there was such a priority, he would no doubt wish to find grounds for this.

All this is not to suggest that I myself would want to rest judgment on any such arguments, or that I invite the reader to do so. Quite on the contrary. I am rather saying that if we are beguiled by titles based on *ancient* Arab conquest, we cannot consistently dismiss from his-

tory the even *more ancient* Jewish conquest. If, on the other hand, we were beguiled by *more recent* Arab conquest, then we must face the fact that, among other titles, the present State of Israel rests on its military ability in our very own age, to defeat open aggression from the Arab States of the region, more than once and against extremely heavy odds.

It is, of course, absurd to attribute moral value to conquest as such or to mere antiquity or mere modernity of conquest, whether by Jew or Arab. Title from ancient conquest, no longer supported by possession, has an extra measure of absurdity. For it would call for dismemberment of many existing States, whenever we find surviving descendants of their *earliest known conquerors*, so that their erstwhile lands can be restored to these. There would be an intriguing choice of claimants, to be sure, for the rightful title to displace the English in the United Kingdom! The fates of numerous States of the Americas, North, Central and South, would need much pondering. On grounds of *modernity* of conquest, if that test is chosen, the facts also support the Israeli claim. If, as I do, we reject both antiquity and modernity of conquest as indecisive, one must ask what other moral grounds there can be for questioning Israel's possession, based as this is on rightful entry under international law, and twice successfully sustained against external aggression, in a land with which her people has three millennia of continuing national attachments, even if we were to ignore the biblically recounted Covenant of God with Abraham a millennium before.

Indeed, according to some advanced anti-colonialist ideas of our age, it is the Arab claims in Palestine and not those of Israel which would be in need of justification. One might, for instance, apply to the Palestine question the thesis of the notable international law historian, Charles Alexandrowicz, concerning the "reversion to sovereignty" of peoples overrun by foreign dominators centuries ago. It would be easy, under this thesis, to see the sovereignty of Israel in *its land* as but the just restoration of its former independent life and polity, after liberation from colonisers planted in its homeland by former Arab and Turkish imperialist conquerors. For, according to this thesis, the people of an

ancient civilisation which controlled its own internal and external affairs centuries ago, and was then submerged by foreign conquest or other domination, must be regarded as still maintaining its sovereignty throughout. So that even in our own age, centuries later, when its polity is restored in its original land, it must be regarded not as a *new* sovereign State asking for recognition, but as an *old* State reverting as of right to its former sovereignty.⁶

This theory, deeply responsive as it obviously is to the spirit of decolonisation, may be thought to express a principle of morals and justice, rather than of technical international law. On any basis, however, its application to the Arab-Israeli conflict is of deep interest. It is clear that in the territory now in dispute there was for about seven centuries both an advanced Jewish civilisation and statehood, that for six centuries thereafter, there was a predominantly Jewish population and autonomous government, and that despite a succession of cruel centuries marked by repeated imperialist invasions, and conquests, and the accompanying suppressions, decimations and dispersions of the Jewish people, it has remained until today the centre of Jewish religious, cultural and social concern.

It is clear, too, that no identifiable people now survives, which can show any similar special relation to Palestine prior to the centuries of Jewish statehood there. From this standpoint the Palestinian Arabs were but colonists under the wing of imperial conquerors,⁷ colonists, moreover, who never established there any specific *local* civilisation or any independent political life. So far are we, if we try to attend impartially to the historical facts, from self-evident validity of Arab claims to Palestine, even in terms of advanced anti-colonialist ideas.

IF ARAB title from conquest thus fails, what of the rights of majorities? It is commonly urged as decisive, on behalf of the Palestine Arabs, that there were, at any rate, more Arabs than Jews living in the Palestine which was designated in 1917 as a "National Home for the Jewish People".

A majority *which controls* a State often does, of course, assert a right to forbid access by other which might disturb its majority predominance. Conceivably one might extend

some analogous right to a majority living in a country which has built a *distinctive national life fully identified with that country*, even though that country is not an independent State. But of course, as we have seen, the Arabs of Palestine did not show any such specific national distinctiveness at any relevant time. Arabs of Palestine have, until only recently, identified themselves with Haifa or Jerusalem or Nablus, or Jericho rather than with Palestine as a country. And non-Jewish as well as Jewish commentators have well reminded us that the population of Palestine since the Arab conquest has never been exclusively Arab or Moslem. Jews, Christians and others have always remained present in numbers varying with the degree of oppression and hardship visited by the rulers for the time being on non-Moslems.

In terms of moral principle, moreover, the Arab claim to exclude Jews after World War I (and now by the Palestinian National Covenant retrospectively to expel all who thereafter entered) based merely on their own majority numbers, in any case proves far too much. For by it, *present* Jewish majority predominance would give a similar right of exclusive control, and one reinforced by the undoubted existence of the nation and State of Israel, and its capacity to meet external aggression, not to speak of the international instruments and sanctions of two world organisations confirming its basis. Nor does it make much difference to think in terms of power to exclude new entries but not to exclude *re-entries*. A great number, probably now approaching a majority of individuals who remain enrolled as "Palestinian refugees" with UNWRA, have never lived in that part of Palestine which is now Israel. The basis of their claims to "re-enter" could not be any different than the right to "re-enter" of the descendants of Jewish refugees driven from their Palestinian homeland by successive waves of conquerors, including Arab conquerors.

In historical fact, of course, the Arab argument on this head is somewhat weaker than this. They did succeed by pressure on the British Mandatory in limiting re-entry of Jews to the Mandate-declared "Jewish National Home". Tests of "economic absorptive capacity" were then imposed against the Jews, and restrictive estimates were made of this

capacity which history has shown to be quite arbitrary. The State of Israel has already shown that *many* times more than those estimates can live and flourish in any area less than that which was at the Mandatory's disposal. The claim that Jews at the time could only enter by displacing Arabs is shown by the same token to have had little basis.

In broader vista it is also clear that no Arab refugee problem resulted from *Jewish re-entry and settlement*.⁸ Right until the critical years of World War II, the Mandatory Power continued to hold a considerable reserve of public lands, access to which was barred to Jewish settlement. This, in turn, created a seller's market in land in which Palestinian Arabs were able (and very ready) to reap high profits from the urgent aspirations of Jews to restore to cultivation a homeland where they could live as of right. Indeed, it was common knowledge, noted by Royal Commissions, that this reactivation of the land by Jewish re-settlement attracted substantial immigration from surrounding Arab countries, increasing rather than diminishing the local Arab population.

The problem of displaced Arabs now featured as part of the hard core of the Arab-Israel problem, was thus not a product of the Jewish re-entry after World War I, but a by-product of the Arab State resort to military force in 1948, in order to destroy the State of Israel.⁹ I have here treated it not simply on that basis, but (in broader perspective) as an incidental wrong arising from the distribution made between the Arab and Jewish peoples. And I have shown that it was a wrong, along with the parallel displacement of Jews from Arab lands, for which the Arab States and Israel together, in due proportion, have duties to make redress.

That judgment stands regardless of the outcome of the debate as to whether the displacement of Arabs was under Israeli pressure, or a voluntary movement. My own assessment of the evidence as to the major movements, for example of the Arab community from Haifa, is that they were inspired by solidarity with the advancing Arab armies, accompanied no doubt in some cases by general fear of impending hostilities, and in others by hopes of gain after an Arab victory. Such movements must be regarded as voluntary, even though

those who left naturally hoped to return before too long, as adherents and followers, and sometimes as beneficiaries, of the invading enemy armies. It is easy to understand the choice made by these Arab refugees.

But it also is difficult to see how the State of Israel (or any other State similarly placed), having repelled the Arab aggression, could be expected to invite their wholesale return. "Adherence to the enemy" in time of war is mostly a capital offence even in highly civilised countries.¹⁰ In this light the fact that Israel did offer to readmit and resettle 100,000 refugees (about 20 per cent of the total), in addition to actually receiving back 28,000 returnees whose status it legalised, and has maintained a steady willingness to *contribute* to resettlement of the rest, may be regarded as a fair response.¹¹

IT IS in no way inconsistent with what I have said that nostalgic love of their former homes in Haifa, Jaffa or elsewhere must be very strong among many Palestinian refugees, especially where the "host" Arab country has not enabled them to strike new roots in their country of refuge. Nostalgia in itself is an attachment of the *individual* heart and imagination. It may or may not also reflect that kind of shared group consciousness, experience and culture, which manifest a specific *peoplehood*. Whether an Arab from Haifa, in 1948, who deliberately chose to leave his home and also his Jewish fellow-citizens in obedience to the call of Arab armies advancing to destroy them, *now* manifests but a painful individual nostalgia, or a real "national" insurgence, may be very difficult to say. And it is certainly not made easier by the fanatical campaigns of inculcation of hatred against Israel, especially among the refugees, mounted for a score of years by the Arab States.

I have already pointed out that, even if we assume that such a group consciousness did arise in the 'sixties, this would have no *retro-active* virtue to divest the modest entitlement allotted to Israel in the basic territorial distribution of nearly half a century before. And, bearing this point in mind, I must now take account of certain other aspects of the *assumed* recent upsurge of Palestinian consciousness.

In the light of history, the main evidence of a specifically Palestinian peoplehood appears to date from the first "Palestinian Congress" convened in Jordan-occupied Jerusalem in May, 1964, or perhaps (as already noted), from the agitation of the notion of a "Palestinian Entity" at Arab League meetings of 1959, and from about the same time among refugees themselves. If some kind of Palestinian peoplehood is now to be accepted as a *present* fact, it would certainly become relevant to the present prospects of *future* peace both among the Arab States themselves, and between them and Israel, and later sections will deal with the manner of this relevance.

It could not, however, justify the deliberate destruction, by the Arab States' military aggression of 1948, of the Palestinian Arab State proposed under the partition plan of 1947 accepted by Israel, any more than it could justify their then design of destroying the State of Israel. Nor, for that matter, could such late emergence of a Palestinian peoplehood afford ground (even if the enterprise were otherwise plausible) for reversing, at the present expense of the State of Israel, all the consequences of such repeated Arab State aggression. The mills of history no doubt grind slowly; but they also sometimes grind exceedingly sure.

Further, after the full sincerity of the adult exile's nostalgia is accepted, honest moral judgment still has to reject the inculcation in the next generation, who do not share that nostalgia, of a lamentable substitute consisting of hatred and lust for "revenge", which we find a Nashashibi declaring to be dearer even than the "homeland" itself.¹² This would be a lamentable moral corruption and crippling of children even if there were (as I have shown there is not) any valid ground for targeting these passions against Jews and Israel, rather than elsewhere. Hatred and vengefulness are not to be confused with courage and fighting spirit. The Jews, whose courage and fighting spirit few now doubt, have in the past (including an all too recent past) suffered wrongs of humiliation, oppression and barbaric slaughter, and of expulsion from a multitude of lands, including their own ancient homeland of Israel.

Even the proudest "know-nothings" of a younger generation which hungers for universal justice must be aware of this massively cruel, unjust and tragic story. Yet even all

this never led the Jews in any part of their bitter exile to corrupt oncoming generations with such seething hate and vengefulness even for their authentic living oppressors.

IT IS difficult to escape the impression that an important part of the present conflict arises precisely from a desperate search to find scapegoats for mistakes and failures. It should, perhaps, be expected that the refugees as well as the Arab States should seek to project onto Israel the blame for their own failures of judgment and will and frustrated mutual rivalries. Side by side with Israel are a number of more ghostly scapegoats — "Imperialism", an Arab-Soviet *golem* called "Nazi-Zionism", and (at critical moments) some rather more tangible ones, like the United States and United Kingdom. There is also, however, something more complex and interesting than this. The difficulties of the Palestinians in fixing their group identity and defining their homeland are at least in part due to their reluctance to face the fact that it is probably Jordan rather than Israel which deprives them of their claimed rights.

The Palestine within the promise to the Jewish people in 1917 embraced both Cisjordan and Transjordan. This Palestine on both sides of the Jordan was within the Mandate requested by Britain and granted by the League of Nations in 1922. At that time, however, Transjordan was, at Britain's insistence, and over the protests of Jewish organisations, taken out of the Mandate provision for the establishment of a Jewish National Home and allocated to the creation within Palestine of the Emirate of Transjordan. So that when Transjordan in due course became independent in 1946, the new State was in fact, and under the name of Jordan still remains, the *Arab State within Palestine*. What is now called the West Bank as well as Gaza and Jerusalem remained within the provision for a Jewish National Home until, in 1948, the State of Israel was established, and Jordan in attacking that State seized the West Bank and Jerusalem, as Egypt seized Gaza. This further expansion of its territory by Jordan, whatever its international standing, could only reconfirm Jordan's character as an Arab State within Palestine. If it was not called the Palestine Arab State, this was either semantic evasion, or it was only an

idiosyncrasy of the Hashemite monarch, for neither of which Israel could be held responsible.

Transjordan, then, on its creation in 1922, either had the function of a Palestinian Arab State, or it had no function but that of creating another throne for Hashemite to sit on. The latter function certainly ceased to suffice when sixty per cent of its people are (as they have been since 1948) Palestinians, and when Palestinian peoplehood is assumed to be a present reality, clamant for a homeland. The available solution, rationally speaking, is for Jordan, with or without the West Bank and Gaza, to be the Palestinian Arab State. This solution, however, King Hussein's Bedouin-supported regime has obviously rejected, even during its military occupation and attempted annexation of the West Bank before 1967.

The turning of the self-determination demand into a demand for the dismantling of Israel, in which Jordan and other Arab States could be expected to join, thus has the supreme attraction for the Arab side of avoiding, or at least postponing, the day when the Palestinians and the Jordanian Government must settle the real issue between themselves.¹³ It also has the attraction of postponing problems arising from the divisive ambitions of Syria, Iraq and Egypt in the ultimate fate of both the West and East Banks of the Jordan, which a Jordanian-Palestinian Arab settlement would bring to a head. The recurrent crises in Jordan (for instance in September 1970), when the real issue comes close to the surface, put this analysis rather beyond doubt.¹⁴

In this situation, all the parties concerned, and especially the Palestinians in their relative weakness find it easier to join in a common campaign of blame and hate against Israel than to face the rather clear issues between themselves which must precede an Arab-Israel settlement. At the present stage, accusation is focused on the spurious charge (covering over the basic inter-Arab conflicts) that what blocks the emergence of "Palestinian" consciousness and the "Palestinian Entity" into Palestinian statehood is a refusal by Israel to recognise the claims of the Palestinians. The noise of internal Arab conflict can then be muffled by a chorus of denunciation and demands for the destruction of the State of Israel as the first precondition of Palestinian self-fulfilment.

Some thoughtful and sincere Israelis also advocate that Israel should immediately declare its "recognition" of a "Palestinian Arab" right of self-determination though (quite unlike the Arab advocates) they do not conceive this to require the dismantling of Israel. They rather take the ground that Israel's recognition could in some way assist the conditions of Palestinian political emancipation in Jordan and territory of the West Bank. I would myself tend towards a similar view adding, however, that an Israel reaffirmation of this sort would both serve to reassert Israel's constant support for the self-determination principle during the decolonising age just past, and also help to return the attention of Arab States and Palestinians from their spurious charges against Israel, to the real issues which must first be adjusted among themselves. Those who take such views, however, should not delude themselves that such Israel action could be at all decisive for peace.

For, on the basic issue of principle and action, the correct analysis probably is that Israel's further "recognition" of a "Palestinian Arab" right of self-determination is in the already existing situation redundant. As already observed, in terms of self-determination of peoples here at issue, the only legitimate *raison d'être* of the State of Jordan is as a Palestinian Arab State. For Jordan was itself carved out of the territory originally assigned for the Jewish National Home, and the majority of its population even today, after the June War, consists of Palestinian Arabs. This being the substance it seems to be only a matter of titles, which should be decided by the people of Jordan itself, whether they be regarded by Israel (and all other States) as a Palestinian Arab people and their State as "Palestinian Arab State".

Well-intentioned criticisms of Israel policy on this matter should, therefore, stop short of suggesting that any Israel initiative could here be decisive. To exceed this is merely to reinforce the use of the above spurious issue as a pretext for refusing to settle internal Arab differences, and for demanding the destruction of Israel as cover for this refusal.

It seems very clear, indeed, especially after the 1968 revision of the Palestinian National Covenant that the course chosen by the Palestinian groups and the Arab States to avoid facing the real issues among themselves is pre-

cisely to target demands against Israel which destruction. In the 1964 version of what is at on their face are a plain demand for Israel's present Article 6 of the Covenant it was stated that "Jews of Palestinian origin will be considered Palestinians if they are willing to endeavour to live in loyalty and peace in Palestine". This was, at any rate, a theoretically conceivable basis for negotiating a "truly binational" State of which Palestinian group spokesmen make great play. In the 1968 amended version, however, only "Jews living permanently in Palestine until the beginning of the Zionist invasion will be considered Palestinians"; and the Conference made clear that for this and other purposes "the Zionist invasion" was deemed to have begun in 1917. So that the path chosen by the Palestinian groups (endorsed as will shortly be seen by at least some Arab States) is to make any peaceful settlement with Israel impossible by demanding as a *pre-condition* the liquidation of the State of Israel in the form of expulsion of more than two millions of its present citizens. (No reference is made, it may be noted, to the need for any asylum for these prospective refugees.)

It does not much ease the difficulties for peace, raised by this intransigent call for the destruction of Israel, that it is doubtful how far it represents the view of Palestinians generally. There are, certainly, important differences in claims and postures between Palestinians living in the administered territories and those outside. Even those now living side by side with the Israelis would, if publicly questioned, conform, with varying degrees of sincerity, to the above official exercise in spurious targeting of their grievances against Israel.

Probably, however, for most Arabs living under Israel administration their main present concerns are to live their daily lives free from terrorist violence,¹⁵ and from the Israel authorities' countermeasures, to avoid future Arab reprisals for collaboration with the Israelis and (above all) not to be caught within the major violence of renewed general hostilities. They co-operate only to a notably small extent in terrorist violence and the degree of violence which in turn the terrorist groups now find it necessary to use against even the strongly anti-Israel Gaza Arabs, suggests conversely that there may be a real degree of willingness to

co-operate with the Israelis. Yet, of course, on the other hand, their uncertainty as to the future territorial settlement also deters them from such co-operation with the Israelis as might expose them to the malice of a future Arab regime.

In great contrast to this, "Palestinians" *living outside* the administered territories lack, as the above account of Article 6 of the Covenant indicates, these motives of restraint, and their leaders have indeed strong motives driving towards irresponsibility, and thrive on the sharpening and widening of the conflict. They are rabidly opposed, as Article 21 testifies, to what it calls "all plans that aim at the settlement of the Palestine issue" and indeed openly oppose any solution that is at all conceivable.

THE FOREGOING pages have recalled some facts which, except on what might be called a "know-nothing" and "fix-anything" attitude to history (including modern history), bear closely on the present crisis.

They show that in the territorial distribution of ex-Turkish lands after World War I, the rival claimants were the Jews of the world on the one hand, and the Arabs of the Middle East (including the Arabs living in Palestine) on the other. The Arabs in Palestine had then no specific identity as a separate people with an additional claim as such. Both those beneficiaries in the distribution of half a century ago, shared the duty to make good, in proportion to their benefits, any incidental wrongs which may have been done. This duty extended both to Arabs in Palestine and to Jews throughout the Arab countries, who were affected by the consequences of that distribution. We have seen that it was the Arab people which received (in the form of a dozen and more Arab States) the lion's share of the distribution, and yet that it was Israel which (despite that fact) assumed the full burdens of resettling and rehabilitating more than half the displaced persons concerned, including a substantial number of Arabs.

The growth of more specific Palestinian Arab consciousness in the last decade, even if this now represents a peoplehood entitled to self-determination, cannot be projected back into time so as to invalidate a distribution of decades before. And this is the more so since, in all but name, there is an already existing

Arab State in Palestine through which this people can fulfil itself. The territory of present Jordan was cut out of the Palestine in which establishment of a National Home for the Jewish people was originally promised, constituting two thirds of its area. Jordan is a Palestinian Arab State not only in that sense, but because more than sixty per cent of its population are "Palestinian Arabs" in the strictest sense.

The crux, therefore, of the "Palestinian question" lies between the Palestinian Arabs and the Hashemite Kingdom of Jordan, with collateral concerns of some Arab States. Israel's contribution to solving it, whether in relation to frontiers or otherwise, must necessarily await some progress in the settlement of the essentially domestic Arab questions.

For complex reasons, centred on the unwillingness of the Palestinian Arab leaders and Arab States to face these domestic Arab issues, they have attempted to conceal it by presenting the existence of the State of Israel as the obstacle to fulfilment of the Palestinian Arab inspirations. This spurious version of the issues is explicit in the Palestinian National Covenant as amended in 1968. Article 6, as already seen, requires in effect the expulsion of about two million Jews from Israel, and Article 21 rejects every solution that is a substitute for "a complete liberation" of Palestine, as well as "all plans which aim at the settlement of the Palestine issue or its internationalisation".

The Arab States seem thus, for the moment, to have locked themselves in by endorsing the claimed "vanguard" role of the "Palestine liberation" groups, in diversion from their own military setbacks. For this expediency has in turn involved endorsement by these States of the falsification of the issues by which the leaders of these groups have tried to avoid (or at least defer) the real issue, which lies between them and Jordan. The fact remains that it is Jordan which, both historically and demographically, holds the key to the solution of the Palestinian question; while the spurious version presents the issue as a demand for destruction of the State of Israel to which that State cannot be expected to agree. The Arab States are thus committed to military efforts going well beyond their own vital concerns, and all the means and channels of the search for peace are blocked.

This situation represents a fatal circle, not only of Arab defeat and frustration in war, but also of defeat and frustration of their long term interests and those of the Palestinian Arabs, not to speak of the rest of the world, in any genuine movement towards peace in the region. Until some degree of "self-liberation" is achieved by the Arab States from the more impossible demands of the leadership of the "liberation" Palestine groups, no Israel initiative could release West Bank and Gaza Arabs from the pressures of Arab States and

terrorists, or the Arab States from manipulation by the Palestinian leadership, so as to permit fruitful negotiation to begin. If there is hope of this, it must come from self-interested recognition by Jordan or Egypt or both, that the spurious history-reversing "aims" of the present Palestinian leadership cannot succeed in any foreseeable future; and that in the meanwhile the price will be paid mainly by the Arab States, in terms of the welfare of their peoples and the stability of their governments.¹² ●

1. See S. Shamir, "The Attitude of Arab Intellectuals" in *The Anatomy of Peace in the Middle East* (1969, American Academics for Peace in the Middle East, here referred to as Shamir, "Arab Intellectuals") 5, 21. And see on the role of new elites among the Palestinians, Y. Harkabi, *The Position of the Palestinians on the Israel-Arab Conflict and Their National Covenant* (1969, trans. Y. Karmi, Jerusalem, here referred to as "Harkabi, Covenant".)

2. The ideologues and draftsmen of the Palestinian Covenant struggled, not wholly successfully, to appropriate the Arabic term for "nation" to Pan-Arab nationalism (*qawmiyya*) and the term for "peoplehood" in relation to the several Arab independent countries (*Wataniyya*). See, e.g., Articles 1, 5, 8-9, 12-14, and the commentary in Harkabi, *Covenant*, 7, 9-11.

When this complexity is added to the emotive indeterminacies of the terms "nation" and "people" such questions become endlessly arguable, and consistency of argument very difficult to achieve. D. Peretz's short recent article ("Arab Palestine, Phoenix or Phantom?" (1970) 48 *Foreign Affairs* 322) contains the following indications:

On the one hand, there was "no distinctive Palestinian people" in 1918 (p. 323); that an elite manifesting "Palestinian consciousness" emerged in the 'sixties, and that the terrorist groups "within the last two years" (since 1967) had created a new identity for the Palestinians, distinguishing "Palestinian refugees" and "Palestinian Arabs" (pp. 325-26); and that 30 years of Palestinian "lethargy and paralysis of action ensued, even after the 1939 White Paper" seemed to make a Palestinian Arab State inevitable. On the other hand, he assumes that Arab riots of as early as 1920 and 1929 manifested "nationalism" (p. 323); and he speaks of the "re-establishment of Arab Palestine in the 'sixties" (p. 326).

On the Covenant, see also Harkabi, "The Palestinian National Covenant" (1970) 5 *N.Y.J. of Int. Law and Politics* 228, and *id.*, *supra* n.1.

3. See very recently *id.*, 323-24.

4. *Id.*, 323.

5. It should be noted that even the half-million figure for "Arab refugees" of the 1948-49 War, is regarded as a gross exaggeration by David Ben-Gurion, who was Israel's Prime Minister at the relevant time: "The refugee issue is one of the biggest lies, even among our own people . . . I have all the figures. From the area of the State of Israel only 180,000 Arabs left in 1948. There were 300,000 Arabs altogether in Israel, and 120,000 remained . . . Forty thousand came back under the family reunion scheme." (Interview in *J.P.W.*, Oct. 5, 1970, p. 9; and *cf.* also for a recent non-Jewish account, J. Douglas Young, President of the American Institute of Holy Land Studies, letter to *J.P.W.*, Oct. 5, 1970, p. 15.)

6. C. H. Alexandrowicz "New and Original States: The Issue of Reversion to Sovereignty" (1969) 45 *International Affairs* 465-480.

7. The common Arab argument according to which the Arabs of Palestine are but the descendants of the original Jewish and Canaanite population scarcely merits serious consideration. It is well known among competent historians that following the Roman destruction of Jerusalem in 70 A.D., and even more after Hadrian's suppression of the Bar Cochba struggle for liberation half a century later, Palestine became virtually depopulated, its inhabitants being either massacred or exiled.

8. It is significant in this regard that Article 5 of the Covenant only admits as Arab citizens of the there proposed Arab Palestine, Arabs living permanently there until 1947, even though "the Zionist invasion" under Article 6 was officially dated from 1917. Even in the Arab version of history, then, it is assumed that no substantial number of Arabs were displaced before 1947.

9. The official Israel view is more dour than this. See, e.g., Foreign Minister Eban, in *G.A.O.R.*, Eighth Session, 449th Plenary Meeting, 29 Sept., 1953, p. 215: "Can Governments really create a vast human problem by their aggression, possess the full capacity to solve it, receive bountiful international aid towards its solution, and then, with all that accumulation of responsibility upon their hands, refuse to join in the acceptance of any permanent responsibility for the fate and future of their own kith and kin?"

10. See recently Y. Harkabi, *et al.* *Time Bomb in the Middle East* (1970) at 20, who quotes Walid al-Qamhawi, *Disaster in the Arab Fatherland*: "These factors, the collective fear, moral disintegration and chaos in every domain were what displaced the Arabs from Tiberias, Haifa, Jaffa and tens of cities and villages". Harkabi claims that the supposed massacre of Arabs at the village of Dir Yassin in April, 1948, later alleged to have triggered the flight, was scarcely mentioned in the contemporary reporting and only began to be offered as an explanation many months later.

11. See the U.N. Conciliation Commission General Progress Report, 11 Dec., 1949, to 23 Oct., 1950, *G.A.O.R.*, 5th Session, Supp. No. 18 (A/1367 Rev. 1); and *cf.* *Israel and the United Nations* (1956) 151. Between 1952 and 1954 all outstanding balances and safe custody articles of refugees in banks in Israel were agreed to be released; and Israel also co-operated with the Conciliation Commission's experts in identifying and assessing refugees' land holdings (*G.A.O.R.*, 7th Session, Agenda Item 67, p. 5, Twelfth Progress report of the Conciliation Commission, Supplementary Report, p. 8. The Arab situation has, of course, insisted from the start that no considerations of Israel's security could be taken into account as regards repatriation of all refugees. See Doc. A/1367 Rev. 1, cited *supra*.

The U. N. Conciliation Commission's proposal circulated to the delegations at the meeting on August 15, 1949, was for "the repatriation of refugees in Israel-controlled territory and in the resettlement of those not repatriated in Arab countries or in the zone of Palestine not under Israel control". (Italics supplied.)

12. Nasir ad-Din an-Nashashibi, *Return Ticket* (Beirut 1962), and quoted at length and discussed in both its positive and negative aspects in Harkabi, *Covenant*, 4-6. *Cf.* the similar point as to teachers and textbooks in UNRWA schools, Peretz, *op. cit.*, 322, 325.

13. It is tempting, but of course inconclusive, to recall in this context the words of the noted poet "Adonis" that "Arab man wants to make history while he is in fact running away from it". (Quoted by S. Shamir, "Arab Intellectuals" in *The Anatomy of Peace in the Middle East* (Annual Conference of the American Academic Association for Peace in the Middle East, 1969) 5, 12.

14. According to the Al Fatah spokesman in Cairo on September 24, 1970, "the only solution to the Jordan crisis is for the King to abdicate and leave the country." (*The Australian*, Sept. 25, 1970; and *cf.* conversely the account of the Bedouin royalist position by the Guardian (London) correspondent, repr. *The Australian*, Sept. 25, 1970.)

15. In March 1970 alone, 103 Gaza inhabitants were wounded and seven killed by Arab terrorist attacks, five killings being deliberate murders. According to reports of August, 1970, there had been 15 political murders by terrorists between mid-July and mid-August, "apparently trying to liquidate Arabs suspected of collaborating with the Israeli authorities". (*The Australian*, August 13, 1970, *J.P.W.*, August 3, 1970.)

16. See also for some additional documentation, the shorter account in Stone, "Peace and the Palestinians", New York Journal of International Law and Politics, Winter, 1970.