# The Wrongs of Zionism

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## I

Although historiography is not likely to end disagreement in law, a historically literate legal scholarship may be able to analyze the question of Palestine more thoughtfully and critically than has hitherto been allowed in mainstream circles.[1] The primary question in this context is whether Zionism can be convincingly reconciled with fundamental human rights, and whether it can be defended through the human rights discourse in a compelling manner.[2] Doubtlessly, historians themselves disagree on a variety of issues. Nevertheless, the more primary sources – including official documentation preserved at Israeli archives – become available to researchers, the clearer the systematic nature of the destruction of the Palestinian people's communal life in 1948 becomes.[3]

An obvious obstacle to historical literacy is selectivity and censorship. To begin with, the selective nature of officially sanctioned Israeli publications is clear. Consider the case of Zvi Inbar's 2005 book in Hebrew on the establishment and evolution of Military Advocate General Corps, which was published by the Israeli Ministry of Defense.[4] In the introduction, the author informs his readers that the Israel Information Security Office had censored sections of the 2-volume book because it considered them "problematic."[5] He then points out that the book has two versions, and that the full version is not available to the public.[6]

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1   *See, e.g.*, Anthony Carty, *Israel's Legal Right to Exist and the Principle of the Self-Determination of the Palestinian People?*, 76 MODERN L. REV. 158 (2013).

2   *See, e.g.*, Ardi Imseis, *Zionism, Racism, and the Palestine People: Fifty Years of Human Rights Violations in Israel and the Occupied Territories*, 8 DALHOUSIE J. LEGAL STUD. 1 (1999).

3   *See, e.g.*, Martin Shaw, *Palestine in an International Historical Perspective on Genocide*, 9 HOLY LAND STUD. 1 (2010).

4   *See* ZVI INBAR, THE SCALES OF JUSTICE AND THE SWORD VOL. I (2005) (in Hebrew).

5   *Id.*, at 8.

6   *See id.*

Despite the passage of over seven decades since the Nakba, Israeli suppression of historical evidence continues to this day, with less than 3 percent of the major governmental Israeli archives accessible to the public.[7] This includes the operation of the "Ministerial Committee on the Matter of Permission to Examine Classified Archival Materials,"[8] and the Israeli Supreme Court's approval in 2010 of that committee's refusal to disclose archives (including pictures) regarding the Deir Yassin massacre, despite acknowledging a procedural defect in the decision-making process.[9] In 2019, Haaretz reported in detail on Israeli suppression of historical evidence and policing access to it:

> Since the start of the last decade, Defense Ministry teams have been scouring Israel's archives and removing historic documents. But it's not just papers relating to Israel's nuclear project or to the country's foreign relations that are being transferred to vaults: Hundreds of documents have been concealed as part of a systematic effort to hide evidence of the Nakba.[10]

This suppression of historical evidence complements the Israeli seizure of Palestinian archives and destruction of Palestinian documentation centers.[11] A third method of suppression, in addition to censorship and physical destruction, is the promulgation of a right-wing definition of antisemitism that seeks not only to prevent free speech and academic freedom (through limiting the boundaries of legitimate debate over Zionism and Israel), but also to maintain Jewish privilege and preserve domination over the Palestinians.[12] The

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7    *See* Akevot Institute, *State of Access to Israeli Government Archives Data Sheet* (May 15, 2023), https://www.akevot.org.il/en/news-item/data-sheet-may-2023.

8    Ofer Aderet, *'Unpleasant' War Crimes: The Secret Docs Israel Insists on Censoring*, Haaretz (Oct. 18, 2021), https://www.haaretz.com/israel-news/2021-10-18/ty-article-magazine/.highlight/war-crimes-and-unpleasantness-israels-censorship-list/0000017f-f757-d460-afff-ff779b600000.

9    *See* HCJ 10343/07 Haaretz et al. v. Ministerial Committee Concerning the Permission to Disclose Archival Material (May 24, 2010).

10   Hagar Shezaf, *Burying the Nakba: How Israel Systematically Hides Evidence of 1948 Expulsion of Arabs*, Haaretz (July 5, 2019), https://www.haaretz.com/israel-news/2019-07-05/ty-article-magazine/.premium/how-israel-systematically-hides-evidence-of-1948-expulsion-of-arabs/0000017f-f303-d487-abff-f3ff69de0000.

11   *See* Nur Masalha, The Palestine Nakba: Decolonising History, Narrating the Subaltern, Reclaiming Memory 135 (2012); Rona Sela, *The Genealogy of Colonial Plunder and Erasure – Israel's Control over Palestinian Archives*, 28 Soc. Semiotics 201 (2018).

12   *See, e.g.*, 122 Palestinian and Arab Academics, Letter to the Editor, *Palestinian Rights and the IHRA Definition of Antisemitism*, The Guardian (Nov. 29, 2020), https://www.the

combined effect of such actions is to undermine scholars' ability to expose and document the wrongs that Zionism inflicted on the Palestinians.

Despite the forgoing, more information is now available to researchers than before. For instance, more massacres than those enumerated in Benny Morris' work are now documented,[13] and the complicity of Zionist leaders is even more pronounced.[14] The occurrence of massacres like the one in Tantura, which Morris and others had questioned because of scholars' reliance on oral history,[15] is now firmly established.[16] Likewise, more testimonies and facts are now available regarding well-known massacres in the Nakba, like the one in Deir Yassin.[17] Moreover, more details confirm the fact that the main Zionist militia, the Haganah, engaged in biological warfare in 1948 by poisoning wells in captured Palestinian villages with bacteria to cause an epidemic to prevent Palestinians' return to villages and pressure those who remained to leave.[18] Finally, more documentation is also available regarding massacres that occurred after the Nakba. Based on this documentation, emerging scholarship has disputed the standard Israeli view of the massacre in Kafr Qassim in October 1956 as an "anomalous" crime that was committed by low-ranking officers and was unrelated to state policy.[19] Instead, the massacre is attributed to the political and military leadership's (namely, David Ben-Gurion and Moshe

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guardian.com/news/2020/nov/29/palestinian-rights-and-the-ihra-definition-of-antisemitism.

13   *See* Benny Morris, The Birth of The Palestinian Refugee Problem Revisited (2004); Benny Morris, 1948: A History of the First Arab-Israeli War (2008).

14   *See* Adam Raz, *Classified Docs Reveal Massacres of Palestinians in '48 – and What Israeli Leaders Knew*, Haaretz (Dec. 9, 2021), https://www.haaretz.com/israel-news/2021-12-09/ty-article-magazine/.highlight/classified-docs-reveal-deir-yassin-massacre-wasnt-the-only-one-perpetrated-by-isra/0000017f-e496-d7b2-a77f-e79772340000.

15   *See* Benny Morris, *The Liar as Hero*, New Republic (Mar. 17, 2011), https://newrepublic.com/article/85344/ilan-pappe-sloppy-dishonest-historian.

16   *See* Adam Raz, *There's a Mass Palestinian Grave at a Popular Israeli Beach, Veterans Confess*, Haaretz (Jan 20, 2022), https://www.haaretz.com/israel-news/2022-01-20/ty-article-magazine/theres-a-mass-palestinian-grave-at-a-popular-israeli-beach-veterans-confess/0000017f-f230-d223-a97f-fffdbd5b0000.

17   *See* Ofer Aderet, *Testimonies From the Censored Deir Yassin Massacre: 'They Piled Bodies and Burned Them'*, Haaretz (July 16, 2017), https://www.haaretz.com/israel-news/2017-07-16/ty-article-magazine/testimonies-from-the-censored-massacre-at-deir-yassin/0000017f-e364-d38f-a57f-e77689930000.

18   *See* Benny Morris & Benjamin Z. Kedar, *'Cast Thy Bread': Israeli Biological Warfare During the 1948 War*, 59 Middle East Stud. 752 (2022).

19   *See, e.g.*, Batsheva Sobelman, *Israeli President Calls 1956 Massacre of Arabs a 'Terrible Crime'*, L.A. Times (Oct. 26, 2014), https://www.latimes.com/world/middleeast/la-fg-israel-president-arab-massacre-20141026-story.html.

Dayan's) designs to expel Palestinian citizens in the event of an outbreak of war with Jordan.[20]

This accumulation of evidence invites our judgment regarding the nature of Zionism and the circumstances of Israel's establishment. In many cases, efforts to reconcile Zionism with human rights, or defend Zionism through the discourse of human rights, ignore the circumstances of Israel's establishment and the consequences of this establishment on the native population. These efforts are often framed as a tension between abstract categories like "universalism" or "cosmopolitanism" and "particularism," or between a commitment to human rights and national rights, or reconciling democracy and Jewishness.[21] Historiography may be a good antidote to such empty abstractions because it contextualizes the discussion in actual practices and real-world effects, of course so long as historians and theorists do not minimize the effects of these histories.

This essay takes the example of the documentation of Zionist crimes during the Nakba, such as the looting of Palestinian movable property, to examine how Israeli historians and philosophers assess the justness of Zionism and the legitimacy of Israel's establishment in light of such disclosures of historical evidence. It shows that the attempt to morally salvage Zionism fails. This moral salvaging is selective, inconsistent, and self-justificatory. It displays questionable moral priorities because it condemns practices like looting from a moral or legal perspective and simultaneously justifies a collective project of ethnic cleansing and an institutional design of modes of dispossession. It thus has the effect of whitewashing the primary historical wrong and the more harmful (but officially authorized) practices by condemning the secondary, relatively less harmful practices. Finally, a similar distorting effect is achieved when this moral salvaging of Zionism posits a false distinction between Zionism as a theory and a historical practice, between the justness of Zionism and the assessment of its historical practices. By abstracting Zionism from history this distinction merely immunizes Zionism because it evades the debate about its role and effects as a political movement in light of increasing historical evidence of morally objectionable actions, policies, and practices. Moreover, defenders of Zionism fail to reconcile it with fundamental human rights, such as equality, even at the abstract level. In fact, a liberal ethnocultural moral philosopher like Chaim Gans ends up justifying or excusing ethnic cleansing no

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20      *See* Adam Raz, The Kafr Qassim Massacre: A Political Biography (2018) (in Hebrew).

21      *See, e.g.,* Itamar Mann, *Zionism and Human Rights*, 17 Int'l J. Const. L. 1319 (2019).

less than amoral historians and fails to offer an egalitarian vision for the present or the future.

## II

Zionists denied the Palestinians' political existence and deprived them from realizing their right to self-determination. The Zionists depopulated Palestine through ethnic cleansing, prevented the stateless refugees from returning, destroyed villages and towns, and appropriated Palestinian property. Extensive legal scholarship has analyzed the legal mechanisms by which Israel appropriated Palestinian lands.[22] Less has hitherto been written, however, regarding the lawless looting of movable Palestinian property.[23] This may be surprising given the "large-scale" nature of the looting, plundering, pillaging, and wanton destruction of property.[24] Palestinian jurist Henry Cattan writes that in "the case of movables, there was an orgy of looting which is reminiscent of days before the advent of civilization."[25] Tom Segev writes, "tens of thousands of Israelis, soldiers and civilians, helped themselves to the spoils. One took an armchair, another a rug, a third took a sewing machine and a fourth – a combine; one took an apartment and another took a vineyard."[26]

A more recent and detailed account of the systematic nature of looting the Palestinians' movable property is available in Adam Raz's book, *Looting of Arab Property in the War of Independence*.[27] Descriptively, Raz details the looting of 10 cities (Tiberias, Haifa, Jerusalem, Jaffa, Acre, Safad, Beisan, Ramleh, Lydda, Beir Sabe'a), mosques and churches, as well as some details regarding

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22    *See, e.g.*, Sabri Jiryis, *The Legal Structure for the Expropriation and Absorption of Arab Lands in Israel*, 2 J. PALESTINE STUD. 82 (1973); Sandy Kedar, *The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948–1967*, 33 N.Y.U. J. INT'L L. & POL. 923 (2001); Sandy Kedar, *On the Legal Geography of Ethnocratic Settler States: Notes Toward a Research Agenda*, 5 CURRENT LEGAL ISSUES 401 (2003).

23    *See, e.g.*, ADEL MANNA, NAKBA AND SURVIVAL: THE STORY OF PALESTINIANS WHO REMAINED IN HAIFA AND THE GALILEE, 1948–1956 152 (2022) ("The plunder of Tarshiha houses was similar to what took place in the neighboring Arab villages [in the Galilee], even those which were partly populated during and after the war. This subject – the organized and unorganized looting of the surviving Arab villages – has not received the attention it deserves from researchers.").

24    *See* SAMI HADAWI, BITTER HARVEST: A MODERN HISTORY OF PALESTINE 126 (1983); TOM SEGEV, 1949: THE FIRST ISRAELIS 75–99 (2008).

25    HENRY CATTAN, THE PALESTINE QUESTION 71 (2000).

26    SEGEV, *supra* note 24, at 86.

27    *See* ADAM RAZ, LOOTING OF ARAB PROPERTY DURING ISRAEL'S WAR OF INDEPENDENCE (2020) (in Hebrew).

the looting of hundreds of villages.[28] Indeed, Nazareth was the only city that was not systematically looted and depopulated.[29] The looting was widespread and committed by a wide range of actors, including Zionist soldiers, military police, and Jewish residents. It encompassed everything imaginable: from books, money, clothes, appliances, and furniture, to doors, windows, door handles, floor tiles, roof tiles, and livestock.[30]

Politically, the book provides an explanation for the widespread nature of this looting and the complicity of the Zionist leadership in it. According to Raz, the significance of collective and systematic looting is threefold: it advanced a policy of emptying the country from its inhabitants; it served a war policy of destruction of Palestinian towns and villages and their economy; and, finally, it created a personal stake for the general Jewish population in preventing the return of refugees to depopulated towns and villages.[31]

Yet, the discussion of Zionist looting of Palestinian movable property requires caution because more heinous and consequential crimes were committed against the Palestinian people than looting in 1948 and after. Thus, the discussion of looting of movable property raises questions concerning how it should be understood within the context of the armed robbery of the Palestinian homeland and the commitment of large-scale crimes. Such an assessment may be different than how some Zionists themselves (whether leaders or historians writing about these leaders) reacted to it.

Consider in this context that some Zionist leaders like Yitzhak Ben-Zvi (Israel's second president) spoke up against looting as morally corrupting.[32] At the same time, they participated in creating the conditions that enabled the very looting they objected to, namely the settler colonial project of taking over another nation's homeland and the ethnic cleansing of the natives. In this absurd, inverted moral yardstick, acts of looting and rape are condemnable, but the systematic depopulation of the country is justifiable.[33] From this perspective, stealing clothes, pianos, furniture, windows, animals, or agricultural machines by individuals is morally corrupting, shameful, and illegal. Yet, a

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28   On the destruction of mosques after the end of the war and throughout the 1950s, *see, e.g.*, Meron Rapoport, *History Erased*, HAARETZ (July 5, 2007), https://www.haaretz.com/2007-07-05/ty-article/history-erased/0000017f-ea01-d639-af7f-ebd71ec60000.

29   This was not only due to the religious significance of the city, but also because the commander on site insisted on a written expulsion order, and Ben-Gurion declined to issue such written orders because of his caution and "historical senses." RAZ, *supra* note 27, at 29, 269–279.

30   *See id.*, at 106.

31   *See id.*, at 304.

32   *See id.*, at 259.

33   *See id.*, at 230 (referring to Palmach commanders' attitudes).

collective project of stealing a homeland, including a systematic and "legally authorized" confiscation of native lands, is justifiable (or morally permissible).

But can the looting and destruction of Palestinian property and villages be separated from the project of ethnic cleansing? Raz does not use phrases like "ethnic cleansing" or "colonialism," but he presents evidence that many Zionist leaders understood that the unfolding destruction and the looting were not accidental, but instrumental. Indeed, they were integral to a policy of expulsion that David Ben-Gurion led,[34] even if his leadership style generally avoided written and explicit orders.[35] As Tom Segev writes in his recent biography of Ben-Gurion, "Like Herzl, Ben-Gurion believed that the transfer of the natives out of the territory of the Jewish state needed to be done quietly; as such, he denied, over and over again, that it was one of Zionism's goals."[36] Segev adds, "Like the expansion of the partition borders, Ben-Gurion viewed the depletion of the Arab population as a historical process that would take place gradually ... In many cases there was no need to issue an explicit order to expel Arabs – the spirit of the message conveyed by the commander in chief was sufficient."[37]

This general policy of expulsion required the destruction of Palestinian property and villages to prevent the return of uprooted refugees.[38] Even if the policy of razing Palestinian communities to the ground and looting property were not an "official and agreed upon policy of the Israeli government" at the time, it nevertheless "strengthened the political program that endeavored to prevent the return of Arab refugees" because there was nothing left to return to.[39] By allowing the looting, "the looters, who committed an individual act" became

> ... passive partners to a political program that endeavored to empty the country from its Arab inhabitants. This passive partnership had long-term impact; it strengthened the political program that promoted the segregation between the nations in the years following the war through (inter alia) the [imposition of a] military government.[40]

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34    *See id.*, at 248–256.

35    *See id.*, at 273–277.

36    Tom Segev, A State At Any Cost: The Life of David Ben-Gurion 268 (2019).

37    *Id.*, at 418.

38    *See* Raz, *supra* note 27, at 267–268.

39    *Id.*, at 292.

40    *Id.*, at 293.

The looting created groups with vested personal and material interests, beyond a general or abstract political interest, in rejecting the Palestinians' return to their homeland.[41] Unlike the military destruction of Palestinian localities and expelling their inhabitants, the looting was more collective and visible to the Jewish public, and they became "partners in crime."[42]

The chief representative of this political program was Ben-Gurion.[43] The exception of Nazareth illustrates that a different political decision could have changed the picture regarding both the expulsion and the subsequent looting.[44] Indeed, it shows "the manipulative nature of Ben-Gurion's politics."[45] He knew of the looting as it unfolded and turned a blind eye to it.[46] His brief written reference to the looting expressed indignation, but Raz argues that Ben-Gurion merely exploited this issue as a stick to beat his political opponents with, particularly the Palmach, which he wanted to dissolve in order to integrate its members into what became the army.[47] It is hard to believe, Raz writes, that a leader whose leadership style embodied unprecedented centralism, and who intervened in a wide range of details and decisions by his underlings, "could not find the time to deal with the looting of Arab property," and thus did not "officially tolerate" the looting.[48]

Raz shows that it is not only the military attacks that produced mass departures and empty homes, as in the case of Palestinian neighborhoods of Jerusalem or Safad.[49] It is also a political decision that created the fertile ground – indeed the conditions of possibility – for the looting. This was indeed the case in Ben-Gurion and Yitzhak Rabin's expulsion of the residents of Ramleh and Lydda, forcing the civilian population to leave their property behind to save their lives.[50] In Beir Sabe'a too, Ben-Gurion decided that no Arabs would be allowed to stay.[51] In the case of Haifa, Raz writes, Ben-Gurion's order to relocate and concentrate the remaining Palestinian population in ghettos, divided along religious lines: Wadi Nisnas (if they were Christian) and Wadi Salib (if they were Muslim), "certainly facilitated the looting of

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41    *See id.*, at 299–300.

42    *Id.*, at 304.

43    *See id.*

44    *See* MANNA, *supra* note 23, at 49, 52.

45    RAZ, *supra* note 27, at 269.

46    *See id.*, at 231–269.

47    *See id.*, at 286. *See also* SEGEV, *supra* note 24, at 285–293.

48    RAZ, *supra* note 27, at 287.

49    *See id.*, at 63, 123.

50    *See id.*, at 147–149.

51    *See id.*, at 153.

property" from the vacated streets and homes.[52] Ben-Gurion objected to any attempt to convince the Palestinians to remain in Haifa, and even imposed a cap on the number of Palestinians allowed to remain in the city (no more than 15 thousand). The speed by which this was conducted left a lot of property unaccounted for and thus vulnerable for looting.[53] Even in the designated Palestinian areas like Wadi Nisnas, there was no protection for the population from private Jewish seizure of, and squatting in, already populated flats.[54] Similarly, in Jerusalem the looting was not confined to empty homes.[55] In Jaffa and Lydda too, the remaining Palestinians were relocated and concentrated in ghettos surrounded by barb wires.[56]

The cases of Haifa and Jerusalem demonstrate another point. The vandalism and the looting could not be, in many cases, properly called "individual" or "private" or "disorganized" looting. In fact, in many cases they were organized in a collective manner. Trucks and vehicles headed from the kibbutzim to cities like Jerusalem and Safad in looting campaign trips, or emptied the warehouses in which refugee property was stored.[57] Soldiers in the Zionist militias, from left to right wing (including Palmach, Haganah, navy, military police, IZL, LEHI) participated in the looting in the course of their military activity, stealing such items as pianos, carpets, furniture, radios, paper money, and jewelry from Palestinian homes in cities like Jerusalem and Jaffa.[58] Soldiers also looted off duty. In one incident in April 1949 in Haifa, around 200 soldiers (acting in a private capacity but armed and using military vehicles) invaded Abbas Street in an organized and planned manner and sought to violently seize the property of Palestinian citizens, including a flat that belonged to Member of Knesset Tawfiq Tubi. While the soldiers' assault was ultimately contained, it was followed by the private Jewish residents' assault on Palestinian property in the street, for which there was no response from the Zionist military.[59] The effect of these actions by so many individuals and groups over a long period of time and across the country is of a collective nature.

Moreover, much of the individual actions cannot be excused by the fog of war. Don Peretz wrote in 1958 that "during the era of chaos, local military authorities frequently failed to restrain mass looting, destruction and pillage,

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52    *Id.*, at 47.

53    *See id.*, at 49.

54    *See id.*, at 53–54.

55    *See id.*, at 86.

56    *See id.*, at 113–115, 150–151.

57    *See id.*, at 126, 180–181.

58    *See id.*, at 76–82, 95, 102, 110.

59    *See id.*, at 58–60.

in spite of efforts by the central Haganah (Jewish Defense Forces) authorities."[60] However, this "era of chaos" was an extended one. The mass looting did not happen only under the fog war but continued also after the war had ended.[61] Even after the end of military clashes in Jerusalem and Jaffa, for instance, the looting continued many months following the Zionist conquest.[62] Even the "friendly" villages of Abu Ghosh near Jerusalem or Beir Al-Maksour in the Galilee (that did not oppose the Zionists or even served in Zionist militias) were subjected to systematic looting.[63]

Although there were Zionist leaders like Yitzhak Ben Zvi and Bechor-Shalom Shitrit (the Minister of Minority Affairs in Ben-Gurion's cabinet) who opposed the looting and warned against it and its corrupting and reputational damages, their protests were not effective, as illustrated by the continuation of looting in Ramleh and Lydda for several months after the conquest.[64] Although *de jure* the looting was frowned upon, it was *de facto* tolerated and commanders and authorities did not seriously enforce prohibitions or impose significant penalties that would deter.[65] As Raz shows, the authorities' efforts against looting were neither consistent nor sincere because they were effectively a question of policy.[66] Raz quotes Yigal Allon's statements against looting,[67] but earlier in the book he shows that Allon, the Palmach Commander, granted his soldiers permission for four days of looting in Safad.[68] Having destroyed two villages near Safad on May 1, 1948 and committed a massacre – killing tens of prisoners of war in one of them (Ein Zeitun) – Palmach proceeded to bombard and conquer Safad, causing mass flight of the civilian population.[69] Despite initial proclamations that they will not allow looting, upon conquest the militias looted the deserted city and allowed the kibbutzim to loot it as well.[70] They also expelled the 30 remaining elderly Christians and, there too, Ben-Gurion rejected suggestions to allow the return of a tiny number of Christian residents.[71]

Finally, armed with the knowledge of the occurrence of so many atrocities, including massacres, rapes, and looting, Ben-Gurion and the Zionist leadership

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60    DON PERETZ, ISRAEL AND THE PALESTINE ARABS 148 (1958).

61    *See* SEGEV, *supra* note 24, at 75.

62    *See* RAZ, *supra* note 27, at 90, 110, 116–117.

63    *See id.*, at 187–188, 189.

64    *See id.*, at 145–146.

65    *See id.*, at 219–225.

66    *See id.*, at 301.

67    *See id.*, at 228–229.

68    *See id.*, at 125.

69    *See id.*, at 123.

70    *See id.*, at 124–126.

71    *See id.*, at 131–132.

issued legislation that granted general amnesty on February 10, 1949. This amnesty applied to all actions (except murder) that were committed prior to February 10, 1949, and it applied to those who were arrested, charged, or convicted with crimes. It thus created blanket immunities from criminal penalty.[72] The looting became a "non-crime."[73] The law legitimated the looting.

### III

What do such revelations illuminate about Zionism and the establishment of Israel? Israeli historians like Simha Flapan, Benny Morris, and Adam Raz have revealed important information about what transpired in Palestine in 1948. Yet, their own work does not lead them to question the justness of the Zionist project and the legitimacy of the establishment of a Jewish state on the ruins of another people's homeland. As Nur Masalha highlights, many of Israel's "new historians" have failed "to produce a counter-hegemonic decolonising narrative in Israel or to challenge many of the enduring themes of Zionist colonisation of Palestine."[74] Flapan, for example, writes in his 1979 book:

> To dispel misunderstanding, I want to make it clear that my belief in the moral justification and historical necessity of Zionism remains unaffected by my critical reappraisal of the Zionist leadership. The history of Zionism demonstrates the extent to which the urge to create a new society, embodying the universal values of democracy and social justice, was inherent in the Zionist movement and responsible for its progress in adverse conditions. Israel's problem today lies in the disintegration of these values, due largely to the intoxication with military success and the belief that military superiority is a substitute for peace.[75]

Yet, the voluminous literature that has documented Zionist crimes neither allows for this reduction of the problem with Zionism to leadership – as if they were lone actors rather than part of institutions and political parties and acted in a way that is central to the ideological movement – nor to the period after 1967.[76] Still, other Zionist authors endorse Zionism despite its crimes because,

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72    *See id.,* at 295.

73    *Id.,* at 299.

74    Masalha, *supra* note 11, at 158.

75    Simha Flapan, Zionism and the Palestinians 13 (1979).

76    Flapan himself contributed to this literature in his later book: Simha Flapan, The Birth of Israel: Myths and Realities (1987).

without these crimes, the Zionist settler colonial project would not have been possible. Benny Morris maintains,

> Ben-Gurion was a transferist. He understood that there could be no Jewish state with a large and hostile Arab minority in its midst. There would be no such state. It would not be able to exist … Ben-Gurion was right. If he had not done what he did, a state would not have come into being. That has to be clear. It is impossible to evade it. Without the uprooting of the Palestinians, a Jewish state would not have arisen here.[77]

Morris instantiates the dichotomy between condemning the individual or secondary or illegal crimes while reasserting the collective, primary, or permissible crime when he says:

> There is no justification for acts of rape. There is no justification for acts of massacre. Those are war crimes. But in certain conditions, expulsion is not a war crime. I don't think that the expulsions of 1948 were war crimes. You can't make an omelet without breaking eggs. You have to dirty your hands … There are circumstances in history that justify ethnic cleansing … Even the great American democracy could not have been created without the annihilation of the Indians. There are cases in which the overall, final good justifies harsh and cruel acts that are committed in the course of history … The non-completion of the transfer was a mistake.[78]

Echoing Morris' Machiavellian logic of the "end justifies the means," Ari Shavit writes:

> Do I wash my hands of Zionism? Do I turn my back on the Jewish national movement that carried out the destruction of Lydda? No … When one opens the black box, one understands that, whereas the massacre at the mosque could have been triggered by a misunderstanding brought about by a tragic chain of accidental events, the conquest of Lydda and the expulsion of Lydda's population were no accident. Those events were a crucial phase of the Zionist revolution, and they laid the foundation for the Jewish state. Lydda is an integral and essential part of the story. And,

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77    Ari Shavit, *Survival of the Fittest? An Interview With Benny Morris*, HAARETZ (Jan. 9, 2004), https://www.haaretz.com/2004-01-08/ty-article/survival-of-the-fittest/0000017f-e874-dc7e -adff-f8fdc87a0000.

78    *Id.*

> when I try to be honest about it, I see that the choice is stark: either reject Zionism because of Lydda or accept Zionism along with Lydda.[79]

In such cases, the ideological commitment to Zionism reconciles the Israeli historian with the brutal reality. Instead of questioning Zionism because of the exposure of the atrocities and historical wrongs it committed, these are explained away as an existential necessity and a *sine-qua-non* for the fulfillment of the Zionist project. These positions beg the question: why should persons of conscience support an ideology that is predicated on, or entails, the ethnic cleansing of another people and the colonization of their lands?

This ideological function of reconciliation is also evident in the case of historians and theorists who endorse the end but not all the means used to achieve it. At the outset of his book, Raz declares his disagreement with Benny Morris' claim that the war in 1948 was inevitable. He argues instead that it was in fact a war of choice,[80] and that it started as "civil war" between the two communities living under the mandate.[81] Raz, however, frames the looting of the Palestinians as another example of a long-standing phenomenon of looting during war.[82] The obvious difficulty with this framing is that the function of the looting by soldiers in the course of a war, such as in Vietnam, differs from looting that takes place within a settler colonial project whose main objective is to replace the native population. As Raz himself argues, in the case of Palestine, looting by Zionist soldiers and civilians served the purpose of emptying the country of its indigenous population. The framing of the situation as "war" and shying away from the colonial framework[83] obscures the gross asymmetry of power between the warring sides and paves the way to quieting the guilty conscience through notions of shared responsibility;[84] after all, "horrible things happen in war" and both sides commit crimes. No matter how loudly one condemns these "horrible things," they do not lead to condemnation of the Zionist project because they are considered as a tragedy with no clear responsibility or responsible parties. Thus, they are not considered as a

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79    Ari Shavit, *Lydda, 1948*, New Yorker (Oct. 21, 2013), https://www.newyorker.com/maga
       zine/2013/10/21/lydda-1948.

80    *See* Raz, *supra* note 27, at 16. For this argument, *see also* Flapan, *supra* note 75.

81    *See* Raz, *supra* note 27, at 26.

82    *See id.*, at 22.

83    *Compare* Flapan, *supra* note 75, at 194; with Edward W. Said, The Question of
       Palestine (1979); Elia Zureik, Israel's Colonial Project in Palestine: Bru-
       tal pursuit (2016); Gershon Shafir, *Zionism and Colonialism: A Comparative Approach*,
       in The Israel/Palestine Question 72 (Ilan Pappe ed., 1999).

84    *See* Masalha, *supra* note 11, at 170–175.

likely and predictable consequence of the project (namely, imposing an alien population on the majority to establish an ethno-nationalist and exclusionary state despite the wishes of the Palestinian majority).

What is revealing about the way Raz ends his book is that he chooses to focus on the exception – on the defeated camp – and then declares that by merely expressing opposition to the looting, Shitrit "saved Zionism" because "he fought and presented a clear voice against the dominant policy."[85] It is not clear why that should be the conclusion, as it begs the question of what Zionism is and how it was saved. If Shitrit does not represent the general policy or the dominant view, and if his views did not have a significant impact that mitigated or altered the general and objectionable policy, why should he be considered as someone who saved Zionism from itself? Perhaps the existence of this Zionist position shows that looting was not a necessary condition for Zionism, but a contingent occurrence. But our judgment concerning Zionism, especially from the perspective of the victims of Zionism, need to focus on its actual history and institutional practices (of expulsion, destruction, massacres, looting), rather than on its alternative histories (in which none of these things should have happened) and discursive possibilities (whose effects are merely rhetorical, although they may help quiet the guilty conscience).

Moreover, Shitrit eventually changed his views to follow the mainstream line. Morris, for instance, writes that Shitrit's proposals in May 1948 to protect abandoned Arab property presupposed assumptions that were not shared by the mainstream leadership regarding sizable Arab presence in the state and allowing refugees to return.[86] But he was "only marginally effective" and "ultimately, the atmosphere of transfer … prevailed through April–June: Most communities attacked were evacuated and where no spontaneous evacuation occurred, communities more often than not were expelled."[87] This policy "affected behaviour toward abandoned property" including the looting.[88] In any event, "by the end of August [1948], [Shitrit] had more or less come around to Ben-Gurion's and Shertok's view. Allowing any Arabs back might serve as a precedent and might constitute a security problem."[89] In a meeting on 18 August 1948, which Shitrit attended, Morris writes,

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85    RAZ, *supra* note 27, at 306.

86    *See* MORRIS (2004), *supra* note 13, at 170–171.

87    *Id.*, at 171.

88    *Id.*

89    *Id.*, at 332.

> The participants had been united on the need to bar a return and there was general, if not complete, agreement as to the means to be used to attain this end – destruction of villages, settlement in other sites and on abandoned lands, cultivation of Arab fields, purchase and expropriation of Arab lands, and the use of propaganda to persuade the refugees that they would not be allowed back.[90]

Even if Shitrit and others have maintained their view and succeeded in convincing Ben-Gurion to stop the looting, two problems remain. First, excluding the instrument (of looting), which was an unofficial policy, cannot be replicated successfully in the case of the "official" (state-backed) and "legally authorized" instruments (particularly, land grab). The fact that these were official or legal, from a Zionist perspective, does not mean they were justifiable or just. In fact, it can be argued that the legalized land and house theft – as well as the officially sanctioned destruction of communities – is worse because it is more consequential than the theft of perishable, movable property.[91] Preventing or punishing individuals for stealing carpets and windows would not have mitigated the massive theft of land and razing communities to the ground.

It can also be argued that the legitimation of the looting in the February 1949 legislation pales in comparison to the legitimation of massacres committed by military units, like killing 120 civilians in Al-Dawayima on November 4, 1948;[92] or that pardoning individuals, who looted as part of a general frenzy, pales in comparison to pardoning members of the LEHI militia, which Ben-Gurion, the Minister of Defense, had previously designated (on September 20, 1948) as a terrorist organization.[93] Even in the rare case where war criminals like military commander Shmuel Lahis – who committed a massacre killing over 30 captive civilians in Hula, Lebanon on October 31 and November 1, 1948 – were charged and convicted in court with laughable sentences imposed,

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90    *Id.*, at 329.

91    The value of rural and urban refugee land in Israel, as of November 29, 1947, according to a UNCCP individual assessment that was conducted between 1952–1962, is £P204,660,190 (excluding land owned by Palestinians living inside Israel). On the other hand, early rough estimates (in 1952) of abandoned movable refugee property put the figure around £P20 million and, in 1962, the rough estimate was as high as £P42,069,000, when the value of movables is calculated based on the value of rural lands (and excluding Beir Seb'a). *See* Michael R. Fischbach, Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict 128, 272, 274–277 (2003). A 1983 study estimated Palestinian immovable property losses to amount to $169 billion, at 1988 prices. *See* Hadawi, *supra* note 24, at 170.

92    *See* Inbar, *supra* note 4, at 1000–1004.

93    *See id.*, at 517, 534.

the former critic of looting, now President Ben-Zvi, had no qualms pardoning him after the earlier President Chaim Weizmann revoked his punishment of one-year of imprisonment.[94]

Second, the problem is not only the Zionist means deployed to achieve the end, but also the Zionist end itself: territorial removal (the takeover of the Palestinian homeland) and the establishment of an ethnically exclusive state. Consider, for example, the legal philosopher Morris Cohen's argument in 1919 that Zionism is incompatible with basic liberal principles:

> Zionism is not merely a philanthropic movement to help the home-less. It claims to be a solution of the Jewish problem; and its emphasis on Palestine rests on a nationalist philosophy which is a direct challenge to all those who still believe in liberalism ... A national Jewish Palestine must necessarily mean a state founded on a peculiar race, a tribal religion and a mystic belief in a peculiar soil ...[95]

As for the question of territorial removal and the justifications offered for the Zionist case, the philosopher Walter Terence Stace argued in 1947 that "the Arab case" for Palestine "rests squarely on the admitted principles of international justice ... And the logic of the argument appears on the face of it conclusive and unanswerable."[96] The imposition of the Zionist project against the wishes of the native population is an act of "aggression" in violation of the principles of justice, self-determination, and democracy.[97] The Arab population is a large majority that had enjoyed a very long occupancy over the land, and thus have "a far better claim to Palestine than the Americans have to America."[98] Moreover, religious feelings (the religious and spiritual significance of Palestine to Jews) do not give rise to a right to mass migration and settlement.[99] The Balfour Declaration is an unjust and wrong promise that cannot give rise to a moral claim for enforcement, and thus it does not transform the question of Palestine into a "conflict of right with right."[100] Finally, the homelessness of the

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94    *See* Ofer Aderet, *Israeli Who Commanded Massacre of Dozens of Arab Captives in 1948 Dies at 93,* HAARETZ (Mar. 15, 2019), https://www.haaretz.com/israel-news/2019-03-15/israeli-who-commanded-massacre-of-dozens-of-arab-captives-in-1948-dies-at-93/0000017f-e53c-dc7e-adff-f5bd6f8b0000; INBAR, *supra* note 4, at 301–305.

95    Morris R. Cohen, *Zionism: Tribalism or Liberalism?* NEW REPUBLIC (Mar. 8, 1919), at 182.

96    W.T. Stace, *The Zionist Illusion*, THE ATLANTIC (Feb. 1947), at 82, 83.

97    *Id.*, at 83.

98    *Id.*, at 84.

99    *See id.*

100   *Id.*

Jews does not generate "any *special* claim against Palestine," although it generates an equal claim against all civilized nations, particularly those who were responsible for the persecution of the Jews.[101] In light of this, Stace concludes that "in the dispute between Jew and Arab, the Arab claim is correct and the Zionist claim is without any foundation. This is the inevitable conclusion to which an impartial judge would come."[102]

This all to say that, removing one form of atrocity (looting) from the arsenal that Zionists subjected the native population to would not "save Zionism," in the sense of making it – both the territorial removal and the exclusionary and inegalitarian structure of government – potentially justifiable.[103] The difficulty that faces critical Zionist historians like Raz is that Ben-Gurion is a central figure in Zionism who shaped its trajectory for decades. The more these historians subject him (and other major Zionist leaders) to critical scrutiny and expose his unsavory statements and practices, the more they expose Zionism itself to criticism and condemnation. Zionism is not merely a set of abstract ideas, but is embodied in historical and institutional practices.


## IV


Yet, it is precisely this separation between the justness of the Zionist project and the assessment of its historical practices that allows, in some cases, the evasion of a more critical evaluation of Zionism. Raz's position as a historian echoes Chaim Gans's "liberal ethno-culturalist Zionist" philosophical position that separates between theory and history. In this separation, history does not inform theory, except in a very selective manner, and this leads to a political and moral theory that is immune to the accumulation of historical evidence. This begs the question of line-drawing between what historical evidence is included in the purview of the political and moral assessment of Zionism and what moral significance is assigned (or denied) to this evidence.

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101   *Id.*, at 85 (emphasis in original).

102   *Id.*

103   *See, e.g.*, Anna Stiltz, *Occupancy Rights and the Wrong of Removal*, 41 Phil. & Pub. Aff. 324, 349 (2013) (arguing that "the Palestinian case shows that though the *pro tanto* wrong of compulsion often features in territorial removal, and certainly contributes to its wrongness, it does not fully account for it. Removal is wrong not simply because it is compulsive, but also because it dispossesses people of the place that is central to their life-plans. Undermining people's economic pursuits, destroying their homes and meeting places, and dislocating their social ties are harms of a different type than compulsion: these actions deprive people of the use and control of a geographical space that is fundamental to their lives.").

This line-drawing necessarily requires a subjective and political judgment. It is unsurprising then that Zionist theorists who are engaged in a project of defending the morality of Zionism would either marginalize its own history or, alternatively, acknowledge the history but belittle the moral significance of Zionist actions. The alternative would have been to reiterate the Morris-Shavit amoral position and endorse ethnic cleansing because it was necessary for realizing Zionism in the homeland of another people.

An example of the belittlement of the moral significance of the Zionist injustice is Gans' 2008 argument that, despite the fact that the realization of the Zionist program would inflict injustice on the native population in Palestine and lead to bloodshed, Zionists' actions could be defended or excused on the grounds of "necessity" and "a remedial justification" for the exercise of the ethnocultural right to self-determination in light of the persecution and pogroms they endured somewhere else, in Europe.[104] The objections to Zionism are thus "overridden by or ignored because of the Jews' urgent need, both as individuals and as a people, to ensure their physical safety and to retain their dignity by realizing their right to self-determination."[105] He adds that:

> ... the ethnic cleansing of 1948, even if it was deliberately perpetrated by part or all of the Jewish political leadership in the Land of Israel, is attributable to the Jews' heightened fears due to their experiences in World War II and the understandable urgency with which they sought to establish a state that would provide them with protection.[106]

Even if one did not dispute the unsupported factual assertion regarding "attribution,"[107] this position reveals that: the Zionist moral philosopher excuses the ethnic cleansing that the Zionist amoral historian (Morris-Shavit) justifies; that the exposure of more details regarding the ethnic cleansing in 1948 will not affect the justness of Zionism because it is armed with an excuse; and that the interests of the native population, who were not responsible for the persecution of the Jews in Europe, carry little weight in this moral

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104   CHAIM GANS, A JUST ZIONISM: ON THE MORALITY OF THE JEWISH STATE 43–45 (2008).

105   *Id.*, at 43–44.

106   *Id.*, at 104.

107   Indeed, Herzl, Ben-Gurion, and other Zionist leaders envisaged and discussed transfer and dispossession decades prior to WWII and continued to discuss expulsion after the establishment of the state. *See, e.g.*, NUR MASALHA, EXPULSION OF THE PALESTINIANS: THE CONCEPT OF "TRANSFER" IN ZIONIST POLITICAL THOUGHT 1882–1948 (1992).

assessment. Gans, thus, is arguing for a Jewish exception to the moral condemnation of ethnic cleansing.

In his 2016 book, Gans further distinguishes between the "descriptive-sociological" question of whether Zionism is colonialist (in its actions before and after 1967) and the moral justness of Zionism. He maintains that the colonial means that Zionism employed do not detract from the justifiability of its national objectives. If these objectives were just, and these colonial means were employed to achieve these objectives, then the injustice of the colonial means does not detract from the justness of the cause: "This is because, given the condition of the Jews in the late nineteenth century, it would not have been possible to realize Zionism's national objectives without creating a Jewish colony in the nineteenth-century Arab Land of Israel."[108] He maintains that the focus should be on the "justification" of "the national objectives" rather than the colonial label.[109] Yet, the identification of certain historical practices as colonial serves to condemn them as morally and politically objectionable precisely because of the unjustifiability of territorial removal and the kind of political association it envisages and imposes; namely, the imposition of political structures of domination against the will of the natives.[110] Effectively, what Gans is asking for is a "Jewish exception" to the moral condemnation and rejection of colonialism.[111]

This treatment of history also begs the question of the role of theory. Gans criticizes anti-Zionists for failing to make the distinction "between Zionism as a political theory for the Jewish people and Zionism as a historical movement," or "between the question of the justice of historical Zionism as a whole and the question of the justice of specific policies pursued by historical Zionism."[112] The problem, however, is not logical (failure to make distinctions), but a struggle between different political projects. Gans advocates for the distinction because he is a Zionist who is engaged in a project of justification, whereas critics of Zionism are not committed to making this distinction because it operates within a Zionist frame, *i.e.* it arises within debates amongst those who are already committed to Zionism. It thus fails to convince neutral observes.

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108   CHAIM GANS, A POLITICAL THEORY FOR THE JEWISH PEOPLE 109 (2016).

109   *Id.*, at 110.

110   *See, e.g.,* Lea Ypi, *What's Wrong with Colonialism*, 41 PHIL. & PUBL. AFF. 158 (2013); Stiltz, *supra* note 103; Anna Stiltz, *Decolonization and Self-Determination*, 32 SOC. PHIL. & POL'Y 1 (2015); Massimo Renzo, *Why Colonialism Is Wrong*, 72 CURRENT LEGAL PROBS. 347 (2019); Margaret Moore, *The Taking of Territory and the Wrongs of Colonialism*, 27 J. POL. PHIL. 87 (2019).

111   MAXIME RODINSON, ISRAEL AND THE ARABS 319–321 (1982).

112   GANS, *supra* note 108, at 135.

The political opposition to Zionism is based on a rejection of its practices and ideals. Gans seeks to present a theory of an "egalitarian Zionism," and then asks Palestinians to accept it.[113] However, there are two problems with this theoretical proposal. First, this idealized version of Zionism is neither theoretically compelling nor morally attractive. This is because Gans' "egalitarian Zionism … is not as egalitarian as he presents it to be."[114] Although it is "more egalitarian" when compared to rival Zionisms, it is still "not egalitarian enough to satisfy the evolving demands of contemporary constitutionalism."[115] Indeed, "its deployment" does not "lead to the minimum necessary individual and collective needs of Israel's Arab citizens to comply with the basic precepts of constitutionalism."[116] This is because Gans "argues for individual equality for Israeli Arabs, but seems to leave no room for Arab group rights within Israel. And that represents a serious depravation of equality in the context of a collective constitutional approach."[117] Moreover, the justifications that this "egalitarian Zionism" shares with rival approaches regarding Jewish national self-determination in Palestine do not, "under any plausible interpretation," proffer "a sufficient constitutional basis for the implantation of Zionism as the core foundation of Israeli national and constitutional identity."[118]

Second, if Zionism as a historical and institutional practice, in its origins and in its effects, was not egalitarian (even in Gans' compromised and misleading sense), such a speculative account of Zionism would not make actual Zionism justifiable. Such an account can perhaps serve as a regulative idea that improves upon actual Zionism by tweaking current structures and refraining from some of the more excessive practices. Yet, such an account remains utopian and disconnected from historical processes if the social and political conditions in which it has been developed were not congenial to approximating it, and if the theory fails to offer an account of how these conditions can be overcome to make this idealized version possible in the real world. Gans is asking critics of Zionism to focus not on politically salient and socially effective versions of Zionism, but on a potential and academic version that neither enjoys this salience nor promises genuine egalitarianism. In fact, the potential for

113    *Id.*, at 95–96.

114    Susanna Mancini & Michel Rosenfeld, *The Dilemmas of Identity in a Jewish and Democratic State: A Comparative Constitutionalist Perspective on Bakshi and Sapir, Gans, and Stopler*, in Israeli Constitutional Law in the Making 517, 519 (Gideon Sapir, Daphne Barak-Erez, & Aharon Barak eds., 2013).

115    *Id.*, at 526.

116    *Id.*, at 528.

117    *Id.*

118    *Id.*, at 527.

realizing this idealized Zionism is continuously weakened by legal and political developments. The promotion of such an account, at a time in which the dominant trajectory of Zionism is lurching even more rapidly toward extreme ethno-nationalistic and far-right directions, becomes a form of utopian theory whose effect is one of legitimation. In other words, it is an apology to the status quo.

But if there is a moral imperative, as Gans maintains, to prevent conflict and reduce injustice, pain, and suffering, then the role of the intellectual is to become anticolonial by siding with the oppressed rather than producing theories that neither convince the oppressor nor empower the oppressed to overthrow the yoke of colonialism.