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VICTOR KATTAN, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891–1949*. London: Pluto Press, 2009, xl + 416 pp., ISBN 9780745325781, £29.95 (pbk).

[I]mportant experiments in colonization have been made, though on the mistaken principle of a gradual infiltration of Jews ... [which] continues till the inevitable moment when the native population feels itself threatened, and forces the Government to stop a further influx ... Immigration is consequently futile unless we have the sovereign right to continue such immigration [p. 95] ... We should [in Palestine] form a portion of a rampart of Europe against Asia, an outpost of civilization as opposed to barbarism. We should as a neutral State remain in contact with all Europe, which would have to guarantee our existence [p. 96] ... [T]he emigrants will be welcomed ... without foolish exultation, for the Promised Land will not yet have been conquered [p. 116] ... Some ... colonists will ... have built their houses before becoming permanent settlers [p. 125] ... By these means a country can be occupied and a State founded in a manner as yet unknown to history [p. 143] ... Have I ... overlooked important objections? [the native population?] ... [T]he Jews, once settled in their own State, would probably have no more enemies [p. 153].

(Theodor Herzl, *The Jewish State*, 1896/1988)

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Introduction

In 1918, the year Britain ended Ottoman rule, Palestine's estimated Arab or Jewish population of 747,685 was 92.1 per cent Arab (688,957 Muslims, Christians, Druze and Shii) and 7.9 per cent Jewish (58,728) (p. 3,¹ citing McCarthy, 1990: 26). To put these figures in perspective, Palestine in 1918 was as Arab as the United Kingdom in 2001 was 'white' (the UK's ethnic minority population in 2001 was 7.9%),² and the 59,000 Jewish residents of Palestine represented no more than 0.5 per cent of the world's Jewish population at the time. Indeed, Britain had a Jewish population over four times the size of Palestine's (p. 17). How is it possible that the Jewish-majority State of Israel was founded in Palestine only 30 years later, in 1948, and that an Arab-majority State of Palestine still does not exist in 2012? In his excellent book, *From Coexistence to Conquest*, Victor Kattan explains how principles of international law, had they been respected, should have led to self-determination for 1918 Palestine's Arab majority, through the foundation (after British rule ended) of an Arab-majority State of Palestine, in the whole of British Mandate Palestine.

'From Coexistence to Conquest': Kattan's Thesis and Arguments

Kattan's thesis is that in December 1917, when Jerusalem fell to Britain's 'Last Crusade' (Bar-Yosef, 2001), there was no 'Palestine problem' and no serious Arab-Jewish conflict. Instead, there was relatively peaceful coexistence between a large Arab majority and a small Jewish minority, consisting of the indigenous Jewish population and post-1880 Jewish immigrants, mainly from Russia and other European countries (pp. xix, 88, 259). The serious conflict began when Britain gained control of Palestine, with which came the possibility of implementing the contradictory 2 November 1917 Balfour Declaration 'of [British] sympathy with Jewish Zionist aspirations', that is, 'the establishment in Palestine of a national home for the Jewish people ... it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish [Arab] communities in Palestine' (p. 42). Britain then opened the door of Palestine to the immigration of Jewish-Europeans in much larger numbers than had been possible under Ottoman rule. In 1935 alone, the 61,854 legal immigrants exceeded the entire Jewish population of 1918 Palestine (pp. 11, 91).

This immigration took place without the consent of Palestine's Arab majority, and despite their frequent objections, expressed both peacefully and violently. By the end of 1946, it had increased the size of the Jewish minority from 8 per cent to 31 per cent of Palestine's population, including Bedouins (McCarthy, 1990: 36–37). The creation of a substantial Jewish minority, horror at the recently revealed extent of the Holocaust, and sympathy for Holocaust survivors in Europe (for whom Palestine was a possible destination) combined to generate sufficient political support for the United Nations General Assembly's resolution of 29 November 1947 recommending a partition plan. The plan was never implemented (pp. 159, 162–163). Instead, the State of Israel unilaterally declared its independence on 14 May 1948 (describing the Assembly's recommendation as 'irrevocable'), expanded its proposed partition-plan borders through military action,

encouraged the flight of over 700,000 Arab-Palestinians, and refused to allow them to return to their homes (Pappe, 2006). What began with coexistence in an Arab-majority territory in 1918, ended with conquest and the establishment of a Jewish-majority state in 1948.

In this short review article, it is impossible to do justice to the many questions of international law that Kattan carefully analyses, and the wealth of archival material he cites. However, I can briefly highlight six of his main arguments. First, there was no basis in international law for a collective Jewish 'right of return' to Palestine, after an absence of nearly 1800 years (pp. 2, 50–52, 114, 118). Neither the Jewish-European immigrants' historical and emotional attachment to Palestine, nor their understandable desire to escape worsening persecution by Christian-Europeans, distinguished the Zionist project in Palestine from other European colonial projects (pp. 3–5, 118, 125). Kattan quotes from Theodor Herzl's 1900 draft charter for a proposed Jewish-Ottoman Land Company, modelled on the British and Dutch East India Companies, and notes the deletion from the 1917 Balfour Declaration of a reference, in the Zionist Organisation's draft, to 'a Jewish National Colonizing Corporation' (pp. 24–25, 60–61).

Second, the distinctive feature of the Zionist colonial project was that most colonists would not come from Britain, the project's European sponsor,³ but from Russia, Poland, Germany and other countries where Jewish minorities faced persecution. One of Britain's main motives for supporting the project was thus tainted by anti-Jewish prejudice, because Balfour saw it as 'an opportunity to divert Jewish immigration away from Britain and into Palestine', just as Herzl had proposed in his 1902 speech to the Royal Commission on Alien Immigration (pp. 6–7, 20, 29, 250). The growth of Britain's Jewish population, from around 60,000 in 1880 to 300,000 in 1920, had caused resentment. In 1916, an East London newspaper described Jewish-Russian immigrants as 'uninvited "guests" who have long overstayed their welcome' (pp. 17, 65). Kattan demonstrates the unfortunate agreement of Zionist and anti-Jewish groups that Europe's Jewish minorities should leave for Palestine (pp. 10–12, 15), and the consequent opposition of Edwin Montagu (the Cabinet's only Jewish member) to the 1917 Balfour Declaration (pp. 20, 71–74, 248).

Third, the Arab majority in Palestine saw what was coming, and made their objections clear from the beginning. As early as 1891, a telegram asked 'the Grand Vizier [in Istanbul] to prohibit Russian Jews from entering Palestine and acquiring land there' (p. 79). A British intelligence report (probably on the first Palestinian National Congress in Jerusalem in 1919) described participants as dumbfounded that the World War I Allies could talk about self-determination but

hand over Palestine to an alien people, now in a minority, who would eventually dispossess them of their lands and undoubtedly tyrannise over them ... [M]any ... will forcibly resist any attempt to set up in this land a Jewish State ... (pp. 43–44)

In 1935, five Arab political parties demanded 'the immediate cessation of Jewish immigration' (p. 93). Kattan observes 'that Zionism was to provoke a violent reaction from the Palestinian Arabs, who saw it as an attempt by a group of foreign immigrants to take their

country away from them', before discussing the riots of 1920, 1921 and 1928–29, and the Great Arab Revolt of 1936–39 (pp. 77, 83–97).

Fourth, the 1917 Balfour Declaration and its incorporation into the 1922 British Mandate (e.g. Article 6: 'The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration ... and shall encourage ... close settlement by Jews on the land') contradicted the principle of self-determination in Article 22(4) of the 1919 Covenant of the League of Nations ('Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to ... assistance by a Mandatory until ... they are able to stand alone'), as well as the Article 23(b) obligation of Britain to 'undertake to secure just treatment of the native inhabitants of territories under their control' (pp. 54–56). Except for Palestine, all of the Arab-majority territories subject to a League of Nations mandate became independent nations: Iraq in 1932, Syria and Lebanon in 1944, and Transjordan in 1946.

In Palestine, Kattan argues, self-determination for the Arab majority 'was temporarily *postponed* so as to give the Zionists an opportunity to create their home', and 'so that the Arabs would not be able to ... [pass] legislation restricting Jewish immigration' (pp. 130–131). Balfour acknowledged this exceptional treatment (pp. 121, 123, 129, 250):

we deliberately and rightly decline to accept the principle of self-determination. If the present inhabitants were consulted they would unquestionably give an anti-Jewish [immigration] verdict. Our justification ... is that ... we consider the question of the Jews outside Palestine as one of world importance, and that we conceive the Jews to have a historic claim to a *home* in their ancient land ... Zionism ... is rooted in ... future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land.

By postponing Arab self-determination, and facilitating Jewish immigration, Britain created a situation, by the 1940s, in which there were two competing claims to self-determination (p. 145). The Jewish claim was unusual in that it was by a population consisting mainly of recent (post-1930) immigrants to the territory in which they proposed to exercise their right to self-determination. Kattan argues that:

there is no basis in international law to support the claim of a group of refugees ... to create a state ... in the country where they happen to be residing even if they have a special emotional or historic attachment to it. (pp. 141–42)

Fifth, like the 'Balfourised' British Mandate, the UN General Assembly's 1947 partition resolution was inconsistent with the principle of self-determination for the Arab majority in Palestine. It,

awarded [the Jewish minority] a state even though the vast majority of them were foreign immigrants [not yet holding the citizenship of Palestine] ... who were effectively being given the right to break up the territorial integrity of a territory to which they previously had no physical connection (p. 156)

and did so 'against the wishes of two-thirds of the population' (p. 164). Cuba (pre-Castro) opposed the plan, noting that it 'implied the establishment by the ... Assembly of the principle that any racial or other minority may ask to secede from the political community of which it forms part' (p. 161). Partition had been rejected by Britain's 1939 White Paper, by the 1946 Anglo-American Committee of Inquiry ('Palestine shall be neither a Jewish State nor an Arab State'),⁴ and by the USA, on 19 March 1948, when it proposed to the Security Council a temporary UN trusteeship of Palestine, because 'the [partition] plan cannot now be implemented by peaceful means'⁵ (pp. 165–168; Boling, 2003).

Even if a partition could be justified, the plan's borders were described by British foreign minister Ernest Bevin as 'manifestly unfair to the Arabs' (p. 152). The plan gave 55.5 per cent of Palestine (excluding Jerusalem) to the Jewish State (Khalidi, 1997: 11), even though only 31 per cent of Palestine's population (including Jerusalem and the Bedouins) was Jewish (McCarthy, 1990: 36–37). Of Palestine's 16 sub-districts, only one (Jaffa, which included Tel Aviv) had a Jewish majority (71%). The other 15 all had Arab majorities, with the largest Jewish minorities in Haifa (47%) and Jerusalem (38%) (UNGA, 1947: para. 66; Khalidi, 1997: 14). Most of the southern desert (the Negev) went to the Jewish State, even though its population was 99 per cent Arab (mainly Bedouins) (UNGA, 1947: para. 65). The award of 55.5 per cent assumed the need to provide for future Jewish immigration, but it was not obvious why Holocaust survivors should be resettled in tiny Palestine, as opposed to the USA, Canada or Australia (pp. 147, 256–257). In any case, the majority of the UN Special Committee on Palestine considered their award of 55.5 per cent as final: 'The fact that the solution carries the sanction of the United Nations involves a finality which should allay Arab fears of further expansion of the Jewish state' (UNSCOP, 1947: Chapter VI, Part I, para. 9).

Sixth, Kattan argues persuasively that 'conquest' is the only legally accurate description of the foundation of the State of Israel (pp. 78–79, 255). '[T]he Zionists ... did not have sovereignty in Palestine prior to, or during, the British Mandate' (p. 188), and did not acquire it from the UN: the partition plan was a non-binding recommendation, and was never implemented in accordance with its terms (pp. 155, 241). 'Israel emerged as a state from the throes of battle rather than from any legal entitlement bestowed upon it by the UN ... [Its] birth ... was quite simply one of the twentieth century's last examples of a successful *conquest*' (p. 232). Kattan rejects the characterisation of the conquest as 'defensive' (pp. 175–176), suggests that the Arab armies sought to protect Arab-Palestinians through what we would call today a Kosovo-style 'humanitarian intervention' (pp. 176–177, 187), and describes the ethnic cleansing of around 80 per cent of the Arab population of what became Israel (Pappe, 2006) as 'contrary to established norms of customary international humanitarian law', and as 'the kind of war crimes [other than genocide] condemned at Nuremberg' (pp. 203, 214). Israel's 'original sin' can only be cured if the Palestinians '[acquiesce] to the 1948 conquest' through a 'two-state solution' peace treaty, recognising Israel's sovereignty within the 1949 armistice lines (p. 247). Otherwise, the expansion of the Jewish State from 55.5 per cent to around 78 per cent of Palestine, in 1948–49, 'was an act of unlawful annexation' (pp. 238–240, 244).

Who is to Blame for the Conquest of Palestine?

Kattan has told the insufficiently publicised story of the conquest of Palestine (by Jewish-Europeans, incited and assisted by Christian-Europeans), and the failure of international law to prevent it, in a way that is highly convincing and rigorously documented. In the remainder of this review article, I will develop one constructive criticism of his account, and speculate about how history might have developed differently.

My constructive criticism (I grew up in Calgary, Alberta, Canada, a European settlement near the 'Sarcee Indian Reserve', now the Tsuu T'ina Nation) is that, by comparing Palestine with other European colonial projects in the Americas, parts of Southern Africa, and Australasia (Australia and New Zealand), Kattan could have reduced the unintended impression he gives that 'the Zionists', to whom he frequently refers, are the main 'villains' of the story. I say 'unintended' because Kattan makes it clear that he does not see 'the Zionists' as the sole 'villains'. He stresses that '[i]t was European anti-Semitism and British colonialism which caused the conflict in Palestine', that 'Jews, and not only Arabs, were victims of European colonialism, imperialism and nationalism as well as anti-Semitism', and that 'Great Britain, Germany and Russia are primarily to blame for starting the Arab-Israeli conflict' (pp. xix, 15, 260). Yet he also says that 'British colonialism and Zionism . . . caused the Arab-Israeli conflict' (p. 259).

Of the three causes Kattan mentions, 'European anti-Semitism', 'European [or British] colonialism' and 'Zionism', I think it is important to assign to Zionism a secondary, reactive and defensive role, to treat the first two causes as the primary ones, and to recognise what they have in common: the racism of Christian-Europeans both towards Jewish-Europeans, and towards the indigenous peoples of the Americas, Africa, Asia and Australasia. In the ongoing human tragedy that is Israel-Palestine, both sides can point to Christian-Europeans as the common 'villain', at whose door they can lay the primary responsibility for putting two peoples in the same small territory. Given that Israel-Palestine is one of the chief causes of ongoing tension between the Christian and Jewish Worlds and the Muslim and Arab Worlds, the 'villain' should be identified, not as a vague political force like 'colonialism', but by reference to its religious and cultural heritage, that is, as the Christian majority in Europe (and Europe's colonies).

Although the key Christian-European facilitators of the foundation of the State of Israel were members of British Governments from 1917 to 1948, blame can be assigned to Christian-Europeans as a whole for three reasons. First, what could be called 'the first test of multi-culturalism in Europe' was whether or not Jewish minorities would be allowed to live in peace in Christian-majority societies, without discrimination, violence or expulsion. This test was failed, miserably and repeatedly. Centuries of Christian-European persecution of Jewish-Europeans created an understandable desire to seek refuge in a Jewish-majority state, preferably outside of Europe, and preferably in the ancestral homeland of the Jewish people.

Second, Christian-European colonialism created the model for conquering the lands of indigenous peoples, especially in the Americas, parts of Southern Africa, Siberia and Australasia. Kattan notes Balfour's 1927 description of the Zionist colonial project in Palestine as 'a great experiment' and 'entirely novel' (p. 251). Yet this project was not at all new, and was on a very small scale compared with Christian-European colonial

projects. From 1492, Christian-Europeans ruthlessly invaded, conquered, ethnically cleansed, and populated with colonists, the Americas, parts of Southern Africa, Siberia and Australasia. The most successful projects were in the Americas, Siberia and Australasia, where Christian-Europeans reduced most of the indigenous peoples to small minorities (Stannard, 1992: 266–268).

Indeed, because Europe effectively annexed these territories, it would be more honest historically, and an accurate acknowledgment of the source of their main languages, cultures and political values, to refer to ‘North America’ as ‘North New Europe’, to ‘South America’ as ‘South New Europe’, to ‘Australasia’ as ‘Austral New Europe’, to the annexed territories collectively as ‘New Europe’, and to Europe (including Siberia) and ‘New Europe’ together as ‘Greater Europe’. So successful was the annexation, and the foundation of dozens of new countries dominated by ‘white’ persons (persons mainly of Christian- or Jewish-European ancestry), that we generally forget that it happened. In his Inaugural Address of 20 January 2009, President Obama referred to those who ‘traveled across oceans in search of a new life’, and ‘settled the West [of the USA]’, but said nothing about the indigenous peoples, without whose consent they did so.⁶

Third, the Zionist project was supported by governments in Europe and ‘New Europe’. Their support was tainted by Christian racism towards Jewish-Europeans, and the desire to restrict Jewish immigration to such countries as the UK, the USA and Canada. In effect, they sought to dump Europe’s ‘Jewish question’ onto Palestine, thereby creating a new ‘Palestine problem’. The 1917 Balfour Declaration managed to be simultaneously racist both towards Europe’s Jewish minority and towards Palestine’s Arab majority. On the one hand, there would never have been a need for a refuge for Jewish-Europeans in Palestine, if much larger countries, such as the UK, the USA, Canada, Australia and New Zealand had been willing to provide one. On the other hand, in the hierarchy of human value assigned to ethnic groups by Christian-Europeans, the Jewish people ranked above the Arab-Palestinian people. If someone was going to have to absorb Jewish refugees from Russia, Poland and Germany, better Arab-Palestinians than Christian-Europeans (or their descendants in ‘New Europe’). As Kattan puts it (p. 253):

At the turn of the twentieth century, the British would have viewed most Jews . . . as ‘civilised’. Only a handful of Arabs . . . would have satisfied that description during the Mandate years. Consequently, the British Government would have had no difficulty sympathising with Zionist aspirations[,] rooted in the Bible and Christian-Zionism[,] to colonise the Holy Land and bring it civilisation after it had been ‘misgoverned’ by the Turks for four centuries.

Similarly, if there could not be a ‘Crusader’ Christian-European majority in the Holy Land, better a Jewish-European majority than a Muslim-Arab majority.

Putting the conquest of Palestine into the context of Christian-European racism against Jewish-Europeans and indigenous peoples outside Europe, helps to explain (but not excuse) what ‘the Zionists’ did, with the assistance of Britain, the USA and other Christian-majority countries, to the Arab majority in Palestine. In planning a territorially-viable Jewish-majority state in Palestine (ultimately feasible only through

the effective expulsion of most of the Arab majority in most of Palestine), ‘the Zionists’ were merely proposing a much smaller version of conquests by Christian-Europeans around the world, and mistreatment of the Arab majority that would be no worse than what Jewish-Europeans had suffered at the hands of pre-Nazi Christian-Europeans. Moreover, ‘the Zionists’ could see their own small conquest as having a stronger justification (the suffering of Jewish-Europeans, and the Jewish people’s historical connection with Palestine) than the conquests of Christian-Europeans.

How Could the Conquest of Palestine have been Prevented?

Self-determination for Palestine As Soon As Possible After 1918?

The conquest of Palestine would not have occurred if, after the start of British rule in 1918, the Arab majority had been asked whether or not they wished their country to be used to solve the problem of persecution of Jewish-Europeans by Christian-Europeans. An entirely rational and fair response would have been: ‘No. We did not create the problem, and should not be asked to solve it’. As Kattan notes, ‘the problems associated with European anti-Semitism had nothing to do with the peoples of the Arab world’ (p. 6). In 1922, Sir William Johnson-Hicks MP voiced the Arab response (p. 75): ‘... if the Zionists are able to import thousands ... until they get a majority over the Arabs, the Arabs are entitled ... to say, “We represent 90 per cent of the population. We are entitled to self-determination ...”’ If the British Government had treated the Arab majority in Palestine as equal human beings (a concept that did not exist for ‘non-whites’ under British colonialism), it would have made the Balfour Declaration, its incorporation into the British Mandate, and all subsequent Jewish immigration, subject to an express requirement that the Arab majority consent.

In two 1923 essays (Shlaim, 2000: 12–15), Ze’ev Jabotinsky, the founder of ‘Revisionist Zionism’, dealt with the likelihood of Arab consent, and the morality of dispensing with it. In ‘The Iron Wall’,⁷ Jabotinsky argued that ‘it is utterly impossible to obtain the voluntary consent of the Palestine Arabs for converting “Palestine” from an Arab country into a country with a Jewish majority’, because there was no precedent for a ‘colonisation being carried on with the consent of the native population’, which has ‘always stubbornly resisted the colonists’. He saw the similarity between the Zionist colonial project and the projects of Christian-Europeans in the Americas: ‘[[The Arabs] feel at least the same instinctive jealous love of Palestine, as the old Aztecs felt for ancient Mexico, and [the] Sioux for their rolling Prairies’. And he defined the two sides’ positions in 1923: ‘The Zionists want only one thing, Jewish immigration; and this ... is what the Arabs do not want’.

In ‘The Ethics of the Iron Wall’,⁸ Jabotinsky attempted to rationalise the Zionist project through a novel combination of ‘self-redistribution of land’, and ‘non-resident self-enfranchisement’ for 15,000,000 Jewish people living outside Palestine. After asserting that ‘[w]e cannot abandon the effort to achieve a Jewish majority in Palestine[;] [n]or can we permit any Arab control of our immigration ...’, he asks whether it is immoral to ‘[seek] to colonise a country against the wishes of its population, in other words, by force’. He concludes that it is not: if colonisation in Palestine is immoral,

'colonisation in Uganda is also immoral, and colonisation in any other place in the world ... is immoral'. If there are no uninhabited places, '[t]hose who are landless must remain landless to all eternity'. Instead, he reasoned:

It is an act of simple justice to alienate part of their land from those nations who are numbered among the great landowners of the world [the Arabs from Morocco to Iraq], in order to provide a place of refuge for a homeless, wandering people. And if such a big land-owning nation resists ... it must be made to comply by compulsion. Justice that is enforced does not cease to be justice.

Nor was democracy an obstacle, as re-interpreted by Jabotinsky:

... when the whole of the civilised [Christian?] world has recognised that Jews have a right to return to Palestine, which means that the Jews are ... also 'citizens' and 'inhabitants' of Palestine, only they were driven out ... it is wrong to contend that ... the local population has the right to refuse to allow them to come back ... The Democracy of Palestine consists of two national groups, the local group and these who were driven out, and the second group is the larger.

If, contrary to the view of Jabotinsky and the British Government, the consent of the Arab majority had been considered essential, there can be no doubt that it would have been withheld, and reasonably so. Britain would then have had to freeze Jewish immigration in the 1920s, rather than restrict it, belatedly, in 1939, after the Great Arab Revolt (UNSCOP, 1947: Chapter II, paras 86–87, 119). Without the immigration of the 1930s, which was massive in relation to Palestine's population (p. 91), the State of Israel could not have been founded in 1948. Would granting the Arab majority self-determination in the 1920s have meant a death sentence for Jewish-Germans unable to flee to Palestine in the 1930s? Refuge could have been provided elsewhere. If the Arab majority had been allowed to accept no more than Palestine's proportionate share of Jewish refugees, much larger Christian-majority countries in Europe and 'New Europe' would have experienced greater pressure to accept many more refugees than they did (pp. 91–92).

A Jewish-Majority State in 'Greater Europe', not Palestine, After 1945?

After 8 May 1945, there was a theoretical possibility that the Christian-majority countries of Europe and 'New Europe' might come to their senses, and acknowledge their historical responsibility for the persecution of Jewish-Europeans, and its culmination in a staggering crime: the mass murder of around two-thirds of the Jewish population of Nazi-occupied Europe. Until then, no Christian-majority country in 'Greater Europe' had offered any of its own territory for an independent Jewish-majority state. The Soviet Union's unattractive offer, from 1928, of the Jewish Autonomous Oblast in Eastern Siberia (not an independent state), was the closest any country had come (p. 14). Britain's 1903 offer of part of Uganda (now in Kenya) was seriously considered by Herzl, but ultimately declined (pp. 30–35).

In 1947, it was not too late to consider diverting Jewish immigration away from Palestine, where the Jewish population was only about 600,000, and finding another location for a Jewish-majority state. Christian-Europeans horrified by the Holocaust might have accepted that it was their collective responsibility to ensure a permanent end to persecution of Jewish-Europeans, and, as compensation and protection against any future relapse into persecution, to provide a territory within Europe or 'New Europe' in which a Jewish-majority state and refuge could be founded. One can imagine a hypothetical conference at which offers might have been made. Italy, as successor to the Roman Empire, which caused the expulsion of the Jewish people from Palestine, might have offered Sicily or Sardinia (both only slightly smaller than Palestine). Britain, as creator of the 'Palestine problem', could have donated Wales (the same size as 1949–67 Israel). The USA, the most powerful supporter of the 1947 partition plan, could have suggested the southernmost strip of California (San Diego and Imperial counties, similar in size, climate and geography to 1949–67 Israel).

Of course, none of these governments would have been willing to order their own citizens to leave their homes, to make way for a new state, even with financial compensation. At the hypothetical conference, all eyes would have turned to the country that had caused the greatest and most recent suffering to the Jewish people. If any country should have given up some of its territory to create a Jewish-majority state, it should have been Germany, perhaps along with Austria, the country of Hitler's birth. The victorious Allies had decided at the July 1945 Potsdam conference to slice Silesia and East Pomerania from Germany, and expel the German population. Instead of being transferred to Poland, as compensation for a westward shift of the Soviet Union's border, these territories could have become a Jewish-majority state. But this would have required the cooperation of the Soviet Union. Instead, the USA, the UK and France could have used part of their occupation zones in West Germany and Austria. Should 'New Israel' have been founded in Europe, by combining part of Bavaria with part of Austria? Wherever it was located, in Europe or 'New Europe', Holocaust survivors could have been resettled in this new Jewish-majority state, Jewish immigration could have been diverted away from Palestine, and Jewish residents of Palestine could have been offered the choice of moving to the new Jewish-majority state, or remaining in a new Arab-majority State of Palestine, with protections for their minority rights.

I concede that it would have been unrealistic to expect such principled, blank-slate thinking in the smoking rubble of Europe's most destructive war, and in the context of a new division between Western and Eastern Europe. As a result, no soul-searching about Christian-European (as opposed to Muslim or Arab) responsibility for the 'Jewish question' took place. The Zionist colonial project in Palestine was well advanced, the Holocaust gave it an unstoppable political momentum, and guilt-ridden Christian-majority countries had no reason to question the location chosen by 'the Zionists' for a Jewish-majority state. These countries therefore attempted to solve the 'Palestine problem' through the 1947 partition plan.

The votes for and against the plan are highly revealing. Of the 57 member states eligible to vote, 44 had (non-Arab) Christian majorities, and 40 were in Europe or its former colonies in 'New Europe'.⁹ Because of European colonialism, Asia had only 13 member states, and Africa only four. If all member states voted, 'Greater Europe' on its own, with

40 votes, could provide the required two-thirds majority (38). On 29 November 1947, 46 states voted. The 33 votes in favour (31 were required to pass the resolution) consisted of 30 from 'Greater Europe', plus white-ruled South Africa, Liberia and the Philippines. The 13 against consisted of all 10 states with Muslim or Arab majorities, Hindu-majority but recently-partitioned India, and Christian-majority Greece and Cuba. It is significant that all 10 member states located in the Eastern Mediterranean or the Middle East, who would be closest to the future consequences of partition (i.e. the 13 opponents less Cuba, India and Pakistan) voted against the plan.

Kattan quotes from a letter of January 1947 from US President Harry Truman to the King of Saudi Arabia (pp. 202–203): 'I am convinced . . . that . . . Jewish groups and leaders . . . have no intention of expelling . . . the indigenous inhabitants . . . No people has suffered more than the Jews during recent years . . .'. A reader of Ilan Pappé's *The Ethnic Cleansing of Palestine* (Pappé, 2006) can easily ask, from a 21st-century perspective: 'How could this have happened? How could a people who had just survived the Holocaust do this to another people?' It is hard to imagine that a Jewish population of around 600,000 could effectively expel (by preventing their return) an Arab population of over 700,000, given that the proportions resemble the UK expelling the entire population of France. But the historical circumstances provide the answer. Although discovery of the Holocaust would shock the international community into promising that such a crime would never happen again, developing a body of human rights treaties, and undertaking to ensure that Jewish minorities would be safe in every democratic, human-rights-respecting country, on 8 May 1945 it was still much too early to be sure that the world had definitely changed. 'The Zionists' acted on the basis of the 19th and early 20th-century world they knew, one in which their reality was Darwinian survival of the fittest people, 'kill or be killed', 'expel or be expelled'. For 'the Zionists', the Holocaust was the final confirmation that the Jewish people could never be safe, except in their own state. Because they saw no alternative, and considered it a matter of survival, they did what they felt they had to do to create that state.

The Justice of Founding Israel Outside Europe

When I spoke at a conference in Ramallah, an Arab-Palestinian man in the audience said: 'Britain gave Palestine to the Jews'.¹⁰ Based on my knowledge of history at the time, I replied: 'Guilty as charged'. Reading the detailed evidence assembled by Kattan has made Britain's guilt even clearer to me, especially the double racism of the Balfour Declaration, towards potential Jewish immigrants to Britain, and towards the Arab majority in Palestine. As Kattan puts it (p. 47), Palestine 'was being promised by a third party, the British, to another third party, the Zionists, without any consideration being given to the interests and free choice of the indigenous populations'. In my first-year Personal Property Law class, we called this *nemo dat quod non habet* (no one can give title to something they do not own).

Christian-European persecution of Jewish-Europeans is one of the most shameful chapters of European history (along with the conquest of 'New Europe' and the deportation into slavery of millions of Africans). There was always a strong case for the foundation of a Jewish-majority state in the part of the world that had been persecuting its

Jewish minorities (Europe), or at least that had ‘land to spare’ because of the expulsion of indigenous peoples several hundred years before (‘New Europe’). But it was Christian-Europeans who owed Jewish-Europeans a state, not Muslims or Arabs. There was never a case for the foundation of a Jewish-majority state in Palestine, or any other part of the Muslim and Arab Worlds. A ‘right of return’ for ethnic groups absent for 1800 years is simply not one that can be generalised, without causing severe disruption to settled expectations around the world. Nor is it one that most Jewish-Israelis would accept, if, for example, a hypothetical ethnic group announced in 2011 that they had been expelled from Ancient Israel, before the Jewish people lived there, and now planned to return. As a young Jewish-Israeli woman was recently quoted as saying, with refreshing honesty: ‘We did invade their home. You can’t deny that’.¹¹ In this, she echoed what David Ben-Gurion is claimed to have said in 1956 (Goldmann, 1978: 99):

If I were an Arab leader I would never make terms with Israel. That is natural: we have taken their country. Sure, God promised it to us, but what does that matter to them? Our God is not theirs. We come from Israel, it’s true, but two thousand years ago, and what is that to them? There has been antisemitism, the Nazis, Hitler, Auschwitz, but was that their fault? They only see one thing: we have come here and stolen their country. Why should they accept that?

What is striking about the conquest of Palestine is the enormous hypocrisy of Britain and other Christian-majority countries, who ‘did unto Palestine as they would not have had done unto themselves’. These countries maintained strict immigration laws in the 1920s and do so today, yet supported opening the door of Palestine to large-scale Jewish immigration. Countries such as the USA, Canada, Belgium and France oppose secession of parts of their territory (at least without a referendum establishing the clear support of the majority in a well-defined region), yet voted for the partition of Palestine with no referendum. (Similarly, one would expect most Jewish-Israelis to reject a proposal to carve ‘New Russia’ out of 1949–67 Israel, to create a state for recent immigrants from the former Soviet Union. And if a substantial Jewish majority had been achieved by 1947, ‘the Zionists’ would almost certainly have rejected a partition of Palestine requested by an Arab minority.) If Christian-majority countries wished to salve their consciences by expropriating Palestine in the ‘public interest’ of the Christian World and donating it to the world’s Jewish community, they should have done so transparently, paid compensation to Palestine’s Arab majority, and organised new homes and citizenship. As Gandhi wrote in 1938, despite his great sympathy for Jewish minorities (p. 38):

Palestine belongs to the Arabs in the same sense that England belongs to the English or France to the French ... Surely it would be a crime against humanity to reduce the proud Arabs so that Palestine can be restored to the Jews partly or wholly as their national home.

As Kattan demonstrates, the project to establish a Jewish-majority state in Palestine was planned and implemented from start to finish without the consent of ‘the native population’, the 92 per cent Arab majority. The only substitute for the Arab majority’s consent (to immigration sufficient to create a Jewish majority, or to voluntary departure if a

Jewish majority could not be built quickly enough) was inevitably military force. This means that the foundation of the 'Jewish and democratic' State of Israel in Palestine in 1948 was unjust, and entirely undemocratic. If there had been a referendum on the UN's partition plan in each of Palestine's 16 sub-districts, it would have been rejected in all but Jaffa(-Tel Aviv), and possibly (depending on voter turnout) Haifa (UNGA, 1947: para. 66; Khalidi, 1997: 14).

Does this matter? On the one hand, one can argue that it does not, because the foundations of the countries now known as the USA, Canada, Australia and New Zealand, among others in 'New Europe', were even more unjust. They were founded with utter contempt for the rights of the indigenous majorities, as (mainly Christian) European colonies were founded and expanded. This means that it is not a 'blood libel' against the Jewish people to say that they 'stole Palestine', because several respected democracies in 'New Europe' began as 'stolen countries'. Nor does it mean that the Jewish-Israeli populations of Tel Aviv, West Jerusalem or Haifa must leave, any more than the Christian-European populations of New York, Toronto, Sydney and Auckland.

On the other hand, the conquest of the territory of an indigenous people can only be 'forgotten', or 'swept under the carpet of history', if the surviving indigenous people or their descendants are belatedly being treated by the conquerors as equal citizens, with full voting and other rights. Whether or not this is the case in Israel-Palestine today is the subject of another article; but before examining the legal status quo, it is important to recognise the historical injustice of the foundation of Israel in Palestine. Recognising this injustice rebuts the narrative, popularised in Leon Uris's novel *Exodus* (Uris, 1959: 551–554), that the UN 'blessed' Israel's foundation in 1947, and that Arab-Palestinians have only themselves to blame for all their suffering since then, because they rejected a 'fair' and 'legal' partition plan (Khalidi, 1997). It also helps one to understand the anger of the Muslim and Arab Worlds about the treatment of 1918 Palestine's Arab majority before, during and since the year 1948, and about the Christian World's role in supporting the foundation and growth of the Jewish-majority State of Israel. Greater honesty about history could help to achieve a long-term solution in Israel-Palestine, and eventual reconciliation between the Christian and Jewish Worlds and the Muslim and Arab Worlds.

Notes

1. All unattributed references are to Kattan's book.
2. Office for National Statistics, *Focus on Ethnicity and Identity* (March 2005), available from the Office for National Statistics website.
3. Late acquisition of British sponsorship (in 1917) is what made Jewish Palestine 'Europe's Last Colony'.
4. See Chapter X, para. 4, http://avalon.law.yale.edu/20th_century/angch10.asp
5. See http://avalon.law.yale.edu/20th_century/decad166.asp
6. See <http://www.whitehouse.gov/blog/inaugural-address>
7. See http://www.jabotinsky.org/multimedia/upl_doc/doc_191207_49117.pdf (4 November 1923).
8. See http://www.jabotinsky.org/multimedia/upl_doc/doc_191207_181762.pdf (11 November 1923).

9. See <http://www.yale.edu/lawweb/avalon/un/res181.htm> (Thailand was absent).
10. EU-Musawa-IBA conference on the need for a Constitutional Court of Palestine, Ramallah, 14 December 2009.
11. See http://www.washingtonpost.com/opinions/into-netanyahus-arms/2011/05/24/AFH6CjAH_story.html

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