

ON THE VIOLENCE OF SELF-DETERMINATION: THE PALESTINIAN REFUGEE AS THE ONTOLOGICAL OTHER

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Abstract: The discourse on migration and refugee studies continues to be framed around two main principles: sovereignty and identity. In contemporary politics, however, the refugee subject is defined and managed from a universal framework where the language of rights elevates the potency of liberalism as both a discourse and an instrument of domination. This article examines refugeehood from a framework that transcends the sovereignty/identity dichotomy. It offers a more nuanced contextual approach through which this mass socio-political phenomenon can be better understood. To validate the article's new methodology, it sets out to examine the Palestinian refugee question, the oldest unresolved refugee problem in the history of the modern Middle East. The article makes visible the performative role of question framing by giving particular attention to historical transfigurations in the conceptualization of the people's right to self-determination. As a discourse-based analysis, the article demonstrates how current discursive formations produce colonial knowledge that can facilitate the development of new social and political tools of population control. The article concludes by showing how conceptual transfiguration of the right to self-determination incited the orientalist scholarship on the Palestinian refugee question in the interest of legitimizing and normalizing Israel as a Western colonial establishment.

Introduction

Refugeehood marks a new development in social and political struggle in human history. The modern phenomenon of refugeehood has ushered in a profusion of scholarship approaching the question from various perspectives (legal, sociological, political). Yet contemporary scholarship on refugeehood is fashioned in a way that lends unequal attention to different refugee cases in different conjunctures of history.¹ In doing so, it risks describing everything and nothing. Some scholars, for example, have argued that the phenomenon can be viewed as an “identity discourse” as opposed to “a type of population dispersal.” Others have suggested that it might be more productive to consider the diaspora as something that “creates

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the homeland” instead of the other way around.² The refugee question, nonetheless, is not only one of identity but also one of political recognition. Political representation, Neil Lazarus informs us, does not come on one’s own terms (in this case, terms defined by refugees themselves) but on the terms and conditions of the powerful.³ By making refugeehood the subject and object of study, a new discipline is produced in which the universal refugee law as stipulated in several UN charters and treaties emerges as the unique authoritative discourse through which various refugee cases continue to be defined and managed. Aside from reifying the category of the “legal,” or positing as problematic the notion of the “legal” in the sense that it assumes a separation of powers, a standardized approach to solving the problem of refugeehood is all but impossible. In this respect, the following analysis will take Michel Foucault’s theory on discourse and the discursive discontinuity of transformations as a mechanism through which the hypothesis will be leveraged.⁴

Anchored in Michel Foucault’s understanding of how knowledge and power are implicated in one another, the article argues that converting United Nations resolutions pertaining to the Palestinian refugees on the onset of the 1948 Arab-Israeli War (the Nakba) and the 1967 War (the Naksa) into qualified authority and law produced colonial knowledge on the Palestinian refugee question. This new knowledge facilitated the reproduction of Palestinian refugee identity as the “other” in both political and discursive categories. Subsequently, the contemporary discourse provided for an alternative framework that obscured the colonial origins of the Palestinian refugee problem in the interests of solidifying the state of Israel as a western colonial establishment. International refugee law, then, is implicated in the liquidation of the internationally sanctioned Palestinian refugees’ right of return. As such, the article suggests that the new discipline can be thought of as a modern mode of biopower, a concealed state mechanism whereby the spatiality and temporality of the neocolonized Palestinian refugee subject is appropriated.

From this premise, the article sets out to trace the United Nations resolutions concerning the Palestinian refugee crisis post-Nakba and Naksa. Positioning the universal right to self-determination at the forefront, it points out contextual ambiguities and contradictions in the way the Palestinian refugee has been defined and managed.⁵ To further solidify the article’s central hypothesis, the contextual ambiguities and contradictions in the legal lexicon in United Nations resolutions, in the aftermath of the Nakba and Naksa, are then correlated with shifts in global power relations demonstrating their structural rather than incidental nature. The contradictions in UN resolutions then linked to shifts in the conceptualization of the people’s right to self-determination. Moving forward, the article sets out to tell the story of Palestinian refugeehood and how it acquired its position in history from

orientalist and universal frameworks on rights. It will progress by demonstrating how relocating the Palestinian refugee question from its colonial materiality to the abstract realm of refugee rights was a necessary precondition for the liquidation of the Palestinian refugees' right to self-determination.

Two main aspects, the theoretical and the structural, underpin the central argument of this study. The first half will broadly trace the ways refugeehood was framed during the de-colonization era, highlighting the historical moments of transformation that set in motion conceptual shifts pertaining to the right to self-determination. The second half will be organized around a series of proposals for a more critical examination of the material ramifications that pertain to conceptual shifts and structural contradiction. As a discourse-based analysis, the article will deconstruct the relationship that binds together the structural formation of the sovereign state, the production of the refugee subject, and liberalism as both a shared founding ideology and a discourse of domination. It will then demonstrate how Israel, through its elevation of liberalism as a rational methodology, was able to produce the Palestinian refugee as the "other" in history of refugeehood, providing Israel with the foundation needed to deny the Palestinian refugees their right to return to their homes.

The article concludes by showing how the production of colonial knowledge on the Palestinian refugee question is a platform for state "reform"—a modern technique of biopower purposely engineered to obscure Israel's settler colonial nature and disarm and direct mass grievances through a legal and orderly discourse that is itself contained in the nation-state paradigm. Ultimately, the analysis demonstrates the performative role of question framing as a mode of biopower.

Mapping the Historical Contours of Refugeehood

This part of the study will broadly trace the origins of refugeehood in national historiography. It seeks to identify the historical moments of transformations when the dominant framing of the refugee question began to shift from its colonial origins and ethnic-based understanding that accompanied fall of empire and nation-state building throughout the 1930s and 1940s to the abstract realm of universal rights and international refugee law where it currently remains.⁶ The historical moments of transformations are then highlighted by juxtaposing United Nations resolutions after the 1967 Naksa with post-1948 Resolutions. To further validate our findings, the contextual and structural contradictions in UN resolutions are then linked to shifts in power relations at the time.

Throughout the 1920s and 1930s, Europe was faced with a significant refugee crisis. The majority of the displaced population was of European descent as Europe itself had been the site of displacement. At that time, refugeehood was viewed as

a latent outcome integral to the fall of the imperial world order and consequently nation-state building. The League of Nations (1921)⁷ was the first formal organization that came to address the refugee crisis on an international level.

Clinging to claims of sovereignty, the participating states resisted any attempts to impose obligations. The states were only willing to consider international agreements concerning refugee rights insofar as they did not conflict with their national sovereignty, prompting the later description of the “coalition of the unwilling.”⁸ The practical distance between the League of Nations and the newly emerging states exposed the theoretical and structural weakness of both. On the one hand, in spite of their attempt to increase insularity under the guise of sovereignty, the state had to reckon with the emergence of contentions brought about by internal ethnic conflicts and the policies of neighboring countries. On the other hand, the fact that the international agency was structurally dependent on the membership and the collective support of individual states meant that any state divestment in participation and commitments had the potential to render the international agency useless. Regrettably, the League failed in fulfilling its mission, as it did not succeed in preventing state aggressions which ultimately led to the Second World War. The number of refugees that were produced during the Second World War was ten times larger (60 million more) than the number of displaced populations following the First World War. Nonetheless, despite its shortcomings and limitations in both capacity and resources, the League of Nations was able to offer some limited help to the European refugee population.⁹

The mounting economic and political challenges brought by the Second World War amplified the gap between the international refugee body and the European states. As ethnic conflicts persisted, the newly established states progressively sought to address internal complexities through expatriation rather than fully acknowledging their role in producing the problem. According to Frank and Reinisch, this disconnect was never wider than it was between 1933–1943. After the Nazi monstrosities of the 1940s, increased public awareness concerning the tragic implications of refugeehood became the center of political and public debates. Reporting on the magnitude of the Jewish crisis, for example, Dorothy Thompson, a well-known American journalist at the time, argued that the refugee problem must be regarded as one of “international politics.”¹⁰ The magnitude of the refugee crisis demanded a response from the international community. Thereafter, the United Nations came to replace the League of Nations.

Following the Second World War, in 1945, the United Nations was established. Its stated objective was to “save succeeding generations from the scourge of war,” and to “reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and nations large and small.”¹¹

At the time of its establishment, although the United Nations acknowledged the principle of self-determination, its Charter did not explicitly declare the principle as a right.¹² It was at the 1955 Bandung conference that the principle of self-determination began to constitute the foundational pillar upon which all human rights were outlined. At the meeting, leaders assembled and announced that the UN charter and its respective declarations have established a common standard of achievement for all peoples and nations, “based on core principles of self-determination, mutual respect for sovereignty, non-aggression, non-interference in internal affairs, and equality.” Itself embedded in the notion of sovereignty, then, the people’s right to self-determination was reaffirmed at the Bandung conference.¹³

The United Nations’ most significant contribution concerning the refugee crisis is the Convention Relating to the Status of Refugees which was convened and ratified in 1951.¹⁴

Organized around the 1948 Universal Declaration of Human Rights (UDHR), itself founded on the principle of self-determination, declaring it to be a universal protected right, the Convention produced the key document that established the legal definition and rights of the refugee population, also outlining the state’s legal responsibilities towards the dispossessed—mainly, its obligation to protect them from harm. According to the Protocol Relating to the Status of Refugees, the “refugee” classification applies to

anyone with a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The 1951 Convention produced a key treaty providing the legal foundation for international refugee law which entered into force on October 4, 1967. The established guidelines continue to inform the way the refugee crisis is defined and managed in contemporary politics. Therefore, although it is possible to argue that the establishment of the League of Nations in 1921 points to the first historical moment when the framing of the refugee question began to shift from its colonial/imperial origins and began to take a global turn, it was not until after 1951 Convention Relating to the Status of Refugees that the contemporary framing on refugeehood began to crystallize, becoming legally binding in 1966.¹⁵

At the time the authority and legitimacy of the universal discourse on refugeehood was being solidified, geopolitical and ideological tensions between the Soviet Union and the United States were developing. The Cold War era (1948–89)

resulted in a metaphorical split between two parallel spheres of politics propelled by conflicting imperial hegemonic interests and international agendas. There are four significant points that should be highlighted here.

First, although both the Soviet Union and the United States participated in the establishment of the United Nations, when the Soviet Union insisted that the principle of self-determination be included in the UN Charter despite considerable opposition, the Soviet Union (alongside its allies) boycotted the 1951 Convention which provided the foundation for the new discipline. It is feasible, then, that the universal discipline on refugeehood was influenced by Cold War politics as reflected in state interests and global power relations. For instance, while the Soviet Union was involved in the establishment of the United Nations Relief and Rehabilitation Administration (UNRRA) and the World Refugee Board in 1944, its refusal to participate in the 1951 Convention due to Cold War tensions meant that the new discourse was largely shaped by a unilateral imperial power, the United States. Having emerged as a global power in the wake of the Second World War, the United States influence on the newly established discourse can be confirmed, not only by the fact that both the United Nations Relief and Rehabilitation Administration (UNRRA) and the War Refugee Board were established in Washington, DC, but also by the fact were supported financially, logistically, and diplomatically by the United States government.

Secondly, while the 1951 Convention laid down the foundations for the new discourse on refugeehood, under the guise of state sovereignty, the interpretations of these guidelines were and remain the prerogative of individual states. As such, the legal lexicon agreed upon in the Convention made it possible for states to exclude from the established legal safety net those deemed undesired, just as it also enabled them to grant refugee status when desired or needed.¹⁶ The Palestinian refugee case provides a clear example of this contradiction.

Thirdly, although the 1951 declaration became legally binding when it was supplemented by two treaties that provided the legal foundation needed for enforcing refugee law, there was and still is no official sanctioning body that is able to impose a particular interpretation of the language of the convention. The important thing to note here is that, in the abstract sense, even though international law is deemed superior to that of the state, in reality, Israel's systematic denial of the internationally sanctioned right of return to Palestinian refugees indicates the supremacy of Israeli law over that of the international refugee law.

Fourthly, while anti-colonial struggles were gaining momentum after the First World War, according to Khachig Tölölyan, the discourse on self-determination began to take its universal form.¹⁷ As noted, the principle of self-determination came to be understood as the foundational pillar upon which the universal discourse on human rights was established during the 1955 Bandung conference, as

the new universal discourse on refugeehood was began to solidify. By mid-1960s, anti-colonial movements began to invoke the right in support of their struggle.¹⁸ To the extent that the principle of the right to self-determination appears to be of equal age to national anti-colonial struggles, it has been assumed that they are constitutive of one another.¹⁹ This finding, it will be demonstrated later, is imperative for our case study as it allows us to see how the right was equally invoked on colonial fronts (e.g. Israeli vs. Palestinian).

In light of this historical background, the following pages offer a critical reading of the United Nations' response to the Palestinian refugee problem at the onset of the 1948 Nakba and the 1967 Naksa. It identifies contextual ambiguities and contradictions in UN resolutions which are then linked to conceptual shifts in the hegemonic understanding of the right to self-determination and how are shifts reflected in the way the Palestinian refugee has hitherto been defined and managed.

Between the Nakba and the Naksa: Post-Legal Relations of Dominance

There are two watershed moments that mark the history of Palestinian refugeehood: the 1948 Arab-Israeli war, also known as the Nakba (the catastrophe), and the 1967 war, often referred to as the Naksa (the setback). While the 1948 Nakba corresponded to the fall of empire and nation-state building, the 1967 Naksa took place during the Cold War era at the height of tensions between the United States and the Soviet Union. The historical dynamics of each time period played an important role in the ways the international community responded to the Palestinian refugee crisis. To unfold this assumption, next, the article sets out to examine contextual contradictions in United Nations resolutions concerning the Palestinian refugee question post the 1948 Nakba and the 1967 Naksa.

Post-Nakba Resolutions

The first involvement of the international body in the Palestinian refugee crisis dates back to 1947 when the United Nations recommended to the United Kingdom (as the mandatory power over Palestine) and to all of its members the partitioning of the historic land of Palestine. The plan was adopted on November 29, 1947 through the passing of UN General Assembly Resolution 181 (II). Issued at a time when anti-colonial and national liberation movements' quests for self-determination were gaining momentum, the partition plan called for the creation of independent Arab and Jewish states in Palestine with a special international regime governing Jerusalem.²⁰ The delineation of new territorial boundaries was adopted without the participation or consent of the indigenous Palestinians, who,

at the time, constituted the great majority of the population. The Partition Plan was therefore rejected by Palestinian and Arab leaders who rightfully argued that it contradicted the international principle of self-determination as stated in the UN Charter.

At the time the Partition Plan was adopted, anti-colonial national movements' quests for self-determination were gaining momentum, prompting colonial powers to look for new ways to maintain hegemony over the colonized populations. In Palestine's case, Britain gave in to Zionists' claims to Palestine, effectively invoking the 1948 Nakba. Ironically, as Zionist forces like the Haganah militia terrorized and waged war against Palestinians, crushing their aspiration for self-determination, European Jews were fleeing the horrific ramifications of anti-Semitism rampant in Western countries. The Jewish question was manipulated to justify both the partitioning of Palestine and the expulsion of hundreds of thousands of Palestinians.

A pivotal moment in the history of Palestine, the Nakba signaled a radical rupture in both Palestinian lives and Arab national history.²¹ Recent scholarship describes the Nakba as the ongoing specter that relentlessly haunts the imaginary and political discourse in the Arab World. Edward Said, for example, wrote in Arabic after 1948, "The Nakba put forward a monumental enigma, an existential mutation for which Arab history was unprepared."²² Only in the Palestinian case did an oppressed population have to confront as their own problem one of the greatest problems in the history of the Western civilization, that is, the Jewish question.²³ No other people attempting to gain their independence would have been able to confront what the Arabs and Palestinians were faced with, Said confirms.

The immediate detrimental implications of the Nakba were clear from the onset. It led to the loss of Palestine and the expulsion and dispossession of hundreds of thousands of Palestinians. It is estimated that over 750,000 Palestinians became refugees in neighboring Arab countries, while 100,000 Palestinians became refugees within the territorial boundaries of their own homeland. As Palestinians were being ethnically cleansed and exiled from their homes by Zionist forces, on December 11, 1948, the United Nations General Assembly Resolution (UNGAR) 194 (III) was adopted.

Having had declared its commitment to the universality of human rights and the right of nations to self-determination, the newly founded international body was compelled to act upon its professed beliefs and promises. Resolution 194 signaled the first legal initiative issued by the international community concerning the hundreds of thousands of Palestinian refugees generated in the aftermath of the Partition Plan and the onset of the Nakba. Resolution 194 stressed the Palestinian right of return and compensation. It reads:

[T]he refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest date, and that compensation should be paid for the property of those choosing not to return and for the loss of or damage to property which, under principles of international law or in equity should be made good by the Governments or authorities responsible.²⁴

Interestingly, while the legal terminology adopted in Resolution 194 clearly pointed to Israel's responsibility in the production of the Palestinian refugee problem, it did not point to the UN Partition Plan's role in inciting the Nakba events. Rather, the United Nations justified the partitioning of Palestine under the guise of a "Jewish" right to self-determination.

There are two important points that should be highlighted. First, at the time the United Nations issued the Partition Plan, the General Assembly, still at its infancy stage, had neither the legal authority nor the legislative power to impose such resolutions or delineate particular territories. Rather, Articles 10, 11, and 14 in the UN Charter accord the General Assembly the right to merely recommend resolutions.²⁵ Secondly, regardless of their antithetical nature, both United Nations resolutions 181 (II) and 194 (III) were justified based on the people's right to self-determination, which corresponds with the earlier stated presumption that maintains that the right to self-determination was effectively employed on both colonial and anti-colonial fronts.

Post-Naksa Resolutions

The 1967 Naksa is the second watershed moment that generated mass waves of Palestinian refugees. The Naksa marks the Arab defeat in the Six-Day War and Israel's acquisition of ex-mandatory Palestinian territory. With Israel's acquisition of new Palestinian land, another wave of Palestinian refugees was produced. The United Nations responded to the 1967 events of the Naksa by issuing United Nations Resolutions 242 and 338. Issued at a time when Cold War tensions dominated international world politics, Resolution 242 was approved in November 1967 while Resolution 338 was approved during the 1973 October war. Resolution 338 reiterated the importance of resolution 242, calling on "both sides" to begin negotiations with the aim of achieving a "just" and "durable peace," Resolution 242 called for:

[The] withdrawal of Israeli armed forces from territories occupied in the 1967 war, the ending of the Israeli belligerency, and a mutual acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area, and their right to live in peace within secure and recognized boundaries free from threats or acts of force, and achieving a just settlement of the refugee problem.²⁶

In spite of the fact that the above-mentioned post-Nakba and post-Naksa resolutions seemingly invoked the language of rights, an in-depth examination reveals a subtle yet significant contextual disparity that distinguishes United Nations Resolution 194 from those of 242 and 338. The difference between the resolutions adopted post-Nakba and post-Naksa can be immediately detected by the strength/assertiveness of the legal terminology deployed. For example, Unlike UN Resolution 194 which clearly pointed to Israel's responsibility in producing the Palestinian refugee problem and outlined its obligation to grant the 1948 Palestinian refugees the right to return to their homes and compensation, Resolutions 242 and 338 called for the achievement of "a just settlement of the refugee problem" calling on Israel to merely withdraw from the "newly occupied Palestinian land." Hence, post-Naksa resolutions turned a blind eye to the 1948 Palestinian refugees, effectively ignoring the Nakba events and the Israeli acquisition of the historic land of Palestine.

Moreover, since international law acknowledges the state's juridical role and presupposes the sovereignty of states, the adopted language in post-Naksa resolutions is problematic. For in the absence of a Palestinian state, calling on "both sides" to begin negotiations with the aim of achieving a "just" and "durable peace" means that international law holds the oppressed and oppressor on equal standards, further obscuring the colonial nature of the refugee crisis. Certainly, in the history of phenomenon, there is no other example where the United Nations called upon the dispossessed refugees to "negotiate" the terms of their salvation with the very agency responsible for refugee conditions.

Contextual discrepancies in the legal terminology deployed in post-Nakba and Naksa resolutions divided the collective history of Palestinian refugeehood into two: the 1948 and the 1967 refugees. Following the 1967 defeat, post-Naksa resolutions came to encapsulate both the partitioning of Palestine and the 1948 Nakba events. From then on, the international community began to define and manage the Palestinian refugee question from a "political" standpoint to be resolved by means of "diplomacy" as opposed to acknowledging the colonial roots of the problem.

Ultimately based on territorial compromise, post-Naksa resolutions seem to have become the ahistorical standpoint in the contemporary politics of the Middle East and the point of departure for future Israeli-Palestinian "peace negotiations," and consequently post-Naksa resolutions came to encapsulate the Palestinian refugee question. However, if international law is defined and legitimized by a positive form of law, one that assumes systematic standards and measures and equally applies to all nations "large or small," and since the 1967 Palestinian refugees share the same history and reasons of displacement as the 1948 Palestinian refugees, to what purpose are the new resolutions? Certainly, the United Nation could have responded by affirming Resolution 194 which confirmed the right of return

and compensation to all refugees. Comparing and contrasting post-Nakba and Naksa resolutions against global power relations dominating world politics at the time indicates that the preeminence of post-Naksa resolutions was not incidental but by design.

By taking the delineation of the 1967 post-Naksa borders as the point of departure for all future peace negotiations as stipulated by United Nations Resolutions 242 and 338, Resolution 194 was effectively repressed. The contextual contradictions in post-Nakba and Naksa resolutions can also manifest themselves on both abstract and material fronts. Abstractly, by holding both the colonizer and the colonized to equal standards of “mutual respect” and “sovereignty” rights and calling upon “both sides” to begin negotiations to achieve a “just” and “durable peace” solutions, the United Nations effectively conceded to the Israeli conception of the so-called “Jewish right of return” upon which it justified its settler colonial establishment and the dispossession of hundreds of thousands of Palestinians. Conversely, given the fact that after the 1967 Arab defeat, 78 percent of the historic land of Palestine came under direct Israeli control, and given that international law presupposes the sovereignty of states, any solution that is possible within the discursive framework of international law for the 1948 refugees must now be confined to the remaining 22 percent of the historic land of Palestine. The material implications of the contradictions are crystal clear: although United Nations Resolution 194 states that Palestinian refugees are unquestionably entitled to the right of return, with no land to return to post-1967, there is no right of return for the Palestinian refugees of 1948.

For all intents and purposes, then, the 1967 Naksa events/resolutions superseded the catastrophic ramifications of both the 1947 Partition Plan and the 1948 Nakba. In this way, the issuing of UN Resolutions 242 and 338 whitewashed (if not completely erased) the violent colonial history of the Nakba and undermined the severity of the war crimes the Zionist forces committed against the Palestinian people, further concealing the colonial nature of the Israeli establishment, and by implication, indirectly lending it legitimacy and support. International refugee law, then, can and does work in favor of the colonizer rather than the colonized.

Interestingly, Article 7 of the Universal Declaration of Human Rights (UDHR) insists that all people “are equal before the law and are entitled without any discrimination to equal protection of the law. Thus, everyone must be treated equally under the law regardless of race, gender, national origin, color, ethnicity, religion, disability, or other characteristics, without privilege, discrimination or bias.”²⁷ Giving the earlier analysis where this article excavated the material ramifications concerning the contextual contradictions between post-Nakba and Naksa resolutions, and considering the persistence of the Palestinian refugee problem over 70 decades later, it seems as United Nations Resolutions 242 and 338 not only nullify

United Nations Resolution 194 which is a direct violation of international refugee law; rather, by international law's own standards, the violations warrant popular rebellion against its own authority and the rule of law. In this reference, the United Nations Charter states:

Whereas it is essential if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that the rule of law should protect human rights.²⁸

Abstractions in Theory and Practice

The emergence of the liberal discourse on rights at the onset of the French Revolution provoked a new genesis in history that normalized the idea of "citizen rights" and standardized measures of social progress. Subsequently, the nation-state came to define and represent social morality and political ethics. With the emergence of the nation-state discourse the contours of the modern conceptualization of the right to self-determination began to take its universal shape.

With the exception of Palestine, there remain few places in the world where "self-determination" is the main object of popular struggles. The Palestinian refugee question remains part and parcel of the Palestinian collective aspirations for self-determination and national sovereignty. In a world that only acknowledges the jurisdiction of states, the triumph of the anti-colonial movement is increasingly dependent on the movement's ability to generate international support, which, in turn, demands the use of a shared language through which movements can communicate their struggle with the outside world.

Contemplating whether anti-colonial movements should accept or reject dominant Western national thought, Partha Chatterjee demonstrates how national thought becomes a part of a power struggle where one ideology is dominated by the another.²⁹ As such, Chatterjee demonstrates how only the positive form of law is constituted by the modern state and is thus legitimized in the contemporary realm of international law. International law, Chatterjee concludes, is a modern project of normalization that is explicitly tied up with empire/colonial law.

For anti-colonial struggles, Lynn Hunt informs us, there was a perfectly reasonable logic in invoking the liberal language of rights.³⁰ Invoking the same rights gives legitimacy to their struggles, rendering them real. For Hunt, then, liberal notions of representation can transcend time and space and, therefore, have the potential to materialize in all corners of the world. By the end of the 1960s, the majority of anti-colonial movements invoked the right to self-determination as a way to legitimize their struggle and generate international support.

However, understanding the Palestinian refugees' right to self-determination within the modern universal framework is problematic. The complication lies in the fact, while the production of the refugee subject stipulates the state's denial of citizens' rights, it has been assumed that the restoration of citizen rights will solve the Palestinian refugee question. But if that is indeed the case, how are we to understand the internally displaced Palestinian refugees? Moreover, for the refugees whose places of displacement remain outside of the historic land of Palestine and thus external to the juridical and territorial boundaries of Israel, in the absence of a Palestinian state, what constitutes self-determination for these refugees?

Attention to problems in modern notions of representation is not new. Early on, Karl Marx critiqued liberal notions of rights. Marx informs us that the liberal version of rights reduces humanity to trivial members of society where man becomes nothing more than a mere juridical subject of the state.³¹ Because language is instrumental in the construction of perceptions and imageries, Marx argues, it can also project itself materially.³² Language, therefore, can represent the "real" and the "unreal." Marx goes on to explain that only when "man" has reached the capacity to reabsorb in himself the abstract citizen, to come to understand the complex dynamics that constitute his knowledge and understanding of the imaginary nature of state and identity production, is he able to accurately deconstruct the origins of the legal language and what they come to represent. As Marx understood it, only when "man" understands his position in respect to power relations, is he able to organize his power and become a social and political force. But what does this mean exactly for the Palestinian refugees?

For Palestinian refugees, the need to invoke the right to self-determination is bound to their collective history of dispossession and their expulsion from their homeland. In this sense, the need for the right to self-determination is founded in materiality and, as such, the Palestinian conceptualization of the right was based on collective needs traditional to historical anti-colonial movements. Conversely, in contemporary politics, the right to self-determination is firmly rooted in liberalism, confined in a narrowed-down individual positive form of rights in the nation-state paradigm. The hegemony of the nation-state paradigm coupled with the rise of the universal discourse on rights meant that any solution for the Palestinian refugee problem has to be confined in the liberal sphere of politics entrenched in European traditions of democracy. It logically follows that, in order for the Palestinian refugees to communicate their struggle with the outside world and cultivate support, a shared language is needed. Therefore, Palestinians were forced to articulate their struggle in abstract notions of liberal rights which are abstractly attached to refugeehood. In light of Marx's critique of liberal notions of rights, the above contradiction meant that the right to self-determination represented the real

(based on materiality) and the unreal (based on abstract notions of rights). It is in this contradiction that the Palestinian refugee question remains entrapped.

Many continue to argue that the fact that Palestinian refugees are unable to attain their internationally sanctioned right of return does not necessarily point to the failure of the universal discourse on refugee rights. Rather, because every possible solution (and concession on the part of Palestinians) has been blocked by particular state powers with strategic interests in the region. The problem with this argument is that the universal discourse is assumed to be superior to that of the state and thus directed at state violations. And even if we concede to the argument that the failure is that of both the state and the universal discourse, the argument does not stand.

To be sure, Israel's belligerent disregard for international law marked its history from the onset. As a matter of fact, it was not too long ago (on November 10, 1975) when Chaim Herzog, the Israeli Ambassador to the United Nations, claiming to speak on behalf of "all Jews," addressed the issuing of UN General Assembly adoption of Resolution 3379 which classified Zionism as a form of racism and racial discrimination, declaring it a threat to world peace and security. He stated:

For us, the Jewish people, this resolution based on hatred, falsehood and arrogance, is devoid of any moral or legal value. For us, the Jewish people, this is no more than a piece of paper and we shall treat it as such³³

Sixteen years later, in an ironic twist of fate, while Herzog was serving as Israel's sixth president, in 1991, the resolution was revoked. Considering the vast number of resolutions issued against Israel, the fact that to this day UN Resolution 3379 remains the only one of its kind to be revoked throughout the entire history of the United Nations is, indeed, very telling. That the only UN resolution that was revoked throughout its history is one that favors the Israeli standpoint speaks to its powerful ability to influence the international community's judgments and decisions.

Of particular relevance to this study is Franz Fanon's understating of what he terms to be a false notion of self-determination that transpires when the right is granted or conceded by the colonial ruling power. Drawing on Marx's critique of Hegelian philosophy of the state, Fanon grounded his analysis in dialectical materialism, which emphasized a materialist understanding of history. Similar to Marx, who maintained that both civil society and the state were alien to a truly human life, Fanon argued that anti-colonial struggles for self-determination were intertwined with the movement's ability to conceive of a revolutionary vision in which true human liberation could be achieved. For this to happen, Fanon explained, a radical change in material conditions and social relations would have to take place first. He states:

The liberation of the individual does not follow national liberation, national liberation only exists to the precise degree to which the individual has irreversibly begun his own.³⁴

Assuming that the universal discourse on refugee rights is but a new mechanism for states' control, following Fanon's logic, it is possible to argue that even if the United Nations and international refugee law succeeded in compelling Israel to grant the Palestinian refugees their right to self-determination, chances are that what the Palestinian refugees will have succeeded in attaining is but a "false" version of the right—one that has already been emptied of its essence. Following Fanon's footsteps, then, in order for Palestinians to truly attain the right to self-determination, Israel must be forced to recognize their right to return to their homes. To accomplish this task, Palestinian refugees must first change the materiality of their refugee conditions in order to conceive a revolutionary vision through which true liberation can be achieved.

Notwithstanding, while Israel continues to reject the legitimacy of the internationally sanctioned right for Palestinians on one hand and the international community continues to pay lip service for Palestinian refugees on the other, in recent years, the refugees' right of return was upheld in both principle and practice. Following the Dayton Agreement in 1995, with the international refugee agencies' assistance, over half a million displaced Bosnian refugees were able to return to their home despite the unfavorable political outlook held by the country's dominating majority rule.³⁵ Yet, for over 70 years, the United Nations failed to secure the universal protected right to the Palestinian refugees. The inconsistencies in the United Nations' ability to help different refugee cases equally points to the distance between the organization's founding ideology on one hand, and its structural formation on the other, which failed to deliver on its foundational promises.

Therefore, even though international law is deemed superior to that of the state, in reality, Israel's ability to systematically deny the internationally sanctioned right of return to Palestinian refugees indicates the supremacy of Israeli law over that of the international refugee law. Considering that both the nation-state paradigm and the universal discourse on refugee rights take liberalism as their founding ideology, the failure to address the refugee question is also the failure of liberalism. Refugeehood, therefore, is in, and is to, the state that which the state is in and to liberalism.

The question of refugeehood carries with it the seeds of contradictions inherent in liberal democracies. The notion of separation is crucial for two reasons that bear on the purposes of our argument: it helps us understand how the pre-determined presumption of separation allows for a positive conception of international law, all while it legitimizes law as a dominating force with potentially violent implications

directed at state's "enemies" or "threats" within and outside the nation-state boundaries (i.e. internal insurgencies vs. colonized populations). There is no explicit distinction between what is allowed by the law (a lawful act/practice) and the way that the law itself maybe unjust.³⁶

One of the most interesting debates concerning the relationship between the nation-state formation and the people's national right to self-determination took place between Vladimir Lenin and Rosa Luxemburg. In his pamphlet "The Right of Nations to Self-Determination," Lenin argued that, while in an absolute sense socialist politics entailed an opposition to nationalism, the right to self-determination is nonetheless essential to mass movements that were directed against oppression.³⁷ It was therefore imperative for socialists to recognize and "unconditionally support" the "democratic content" of the right. Luxemburg, on the other hand, confined her understanding of the right within a "class-struggle" framework. She argued that advocating for such "rights" without carefully defining them avoided the essence of the problem. For Luxemburg, nationalist discourse is a source of weakness that eventually manifests itself in division and fragmentation.³⁸

Differentiating between the "nation," the "state," and the "nation-state," Hannah Arendt's observations attest to the continued relevance of her work. Arendt was most certainly opposed to national modes of belonging. (Her opposition led her to argue against the establishment of the state of Israel on principles of Jewish sovereignty, alas, as opposed to flagrantly rejecting the establishment of Israel as a Western colonial project.. Even in countries whose constitutions were based upon the supposedly inalienable "rights of man," Arendt contends, the "rights" have proved unenforceable. For Arendt, it was precisely because of the codification of citizenship rights that all outcast others were in need of some law of "exception" and, subsequently, the need for a universal agency that can manage the outcast population and administer such laws. Arendt writes:

No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as "inalienable" those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the right-less themselves.³⁹

The Palestinian refugee example tells us that conditions of refugeehood means that anti-colonial struggles for self-determination can and do stretch beyond the nation-state boundaries. But, insofar as they are genuinely political, the refugees can never be really detached from the nation-state paradigm. It is, indeed, difficult to conceive of any solution to the refugee question outside the nation-state framework. In a world that only acknowledges the jurisdiction of states, it is

imperative that we rethink (and rethink our rethinking) the “legality” of the modern “legal” signifying notions of political representations.

On the Violence of Recognition

In the preface to “A Contribution to the Critique of Political Economy,” Karl Marx summarizes a methodological outlook that led him not only to challenge a well-established common viewpoint but to “turn it upside down” altogether (as goes the phrase regarding the implications of Marx’s dialectic on Hegel’s philosophy). He writes:

My inquiry led me to the conclusion that neither legal relations nor political forms could be comprehended whether by themselves or on the basis of a so-called general development of the human mind, but that on the contrary they originate in the material conditions of life, the totality of which Hegel, following the example of English and French thinkers of the eighteenth century, embraces within the term “civil society”; that the anatomy of this civil society, however, has to be sought in political economy.⁴⁰

Marx’s new outlook radically changed the way legal relations, the state, and identity politics, among many other categories, are perceived, as well as the way social scientists approached them. As it is now understood, legal relations are neither fixed nor absolute categories. The predicament in the liberal discourse on rights is that the state assumes a position where it assumes it is a neutral agency that is able to separate itself and its interests from “morality” and “law.” Hence, it extends to itself the authority to declare itself as the singular power with the legitimacy to define the “moral” and implement the “law” accordingly.

Typically produced by coercive and violent forces of power, where the law often becomes the prerogative of the military, refugee conditions are usually designed to manufacture and maintain a particular conditions of deprivation.⁴¹ Once stateless and disconnected from conditions of modernity, the refugee population becomes subject to social, political, and economic marginalization. The refugee is therefore produced as a docile subjected subject. Hannah Arendt draws a link between refugeehood and what she terms “political spaces” of expression. She argues that refugees are deprived of a “space” where they can freely participate in political life in any meaningful way. As such, they are robbed of “political status in the struggle of [their] time.”⁴² Arendt goes on to explain how the League of Nations’ attempt to address the refugees’ right to self-determination through the codification of rights further confined and disadvantaged minority and refugee communities in an unjust terrain. Arendt’s analysis, then, confirms the supposition that the international community is implicated in the liquidation of the Palestinian right to self-determination.

Correspondingly, in a more recent study, Judith Butler argues that modern social and political institutions operate within a power paradigm that maximizes precariousness for a particular group and minimizes it for others. Butler rightfully articulates that the state binds us and unbinds us in the name of the nation.⁴³

The state's ability to produce a category of "non-belonging" where the state can "legitimately" deny citizens their rights when it deems it necessary, Butler contends, signals an institutional legal structure that both delimits territorial boundaries and extends citizenship. Butler effectively drives this point home. She states:

The juridical power inevitably "produces" what it claims merely to represent; hence, politics must be concerned with the dual function of power; the juridical and the productive. In effect, law produces and then conceals the notion of "a subject before the law" in order to invoke the discursive formation as a naturalized foundational premise that subsequently legitimates the law's own regulatory hegemony.⁴⁴

The significance of Butler's analysis to the Palestinian case lies in her ability to demonstrate that the differential production of refugee conditions points to its "politically induced" nature which can be traced back to the state.⁴⁵ Speaking to the state's role in the production of the differentially distributed vulnerability in place of dispossession, Butler notes:

The processes and ideologies by which persons are disowned and objected by the normative and normalizing powers that define cultural intangibility and that regulate the distribution of vulnerability: loss of land and community; ownership of one's own living body by another person, as in histories of slavery; imperial subjection and economic violence.⁴⁶

Refugeehood, then, is produced by new tactics and technologies of state power that come to collectively dominate and control the very existence of refugee subject. Therefore, it follows that various productions of Palestinian refugee identity and the maintaining of conditions of deprivation in Palestinian places of dispossession inscribed post the 1948 Nakba and the 1967 Naksa are specifically designed to serve Israel's interests, ensuring its security and hegemony. This argument is supported by a significant amount of scholarship.

Building on Michel Foucault's notion of "bio-power,"⁴⁷ Giorgio Agamben argues that in modern-day politics, the inclusion of man's natural life becomes a mechanism of power calculation.⁴⁸ In this way, the refugee classification assumes a "bare life" position typically maintained under what he terms as a "state of

exception.”⁴⁹ Refugee camps, Agamben further contends, can be understood as a “hidden paradigm of the political space of modernity” that resemble a “pure, absolute, impassible bio-political space” for the state to manipulate.⁵⁰ Similarly, Michel Agier defines the refugee camp as a “temporary site of displacement” where the dispossessed population is contained.⁵¹ According to Agier, places of displacements are produced as a “policing measure” for state control which was instituted in response to forced human mobility normally produced through national conflicts.⁵²

As social and political struggles are increasingly turned into legal ones, question framing on refugeehood assumes a performative role on both theoretical and material levels. The act of naming, Judith Butler informs us, is not devoid of power relations.⁵³ In modern-day politics, question framing is increasingly used as a tactic of war engineered to distort the struggles of a targeted population. Thereby, the state’s juridical discourse does not only represent the legitimate standards of inclusion, but, ironically, also comes to represent its antithesis. In this sense, “legal legitimacy” becomes the very condition that warrants the violation of rights.

Domination by Proxy

The modern nation-state draws its legitimacy to govern in the name of law from the presumed contractual social agreement between the state and its citizens (which forms the structural basis of society in which citizens come to uphold the rule of law), according to which the state is supposed to reflect the will of the people. Yet, while the state designates itself as a neutral agency that presides over conflicts and inequalities, the production of refugeehood points to the state’s inability to deliver on its contractual promises. By the same logic, it can be deduced that the production of refugeehood can be understood as the material manifestation that points to the distance between the state’s ideology and organizational structure. It is, therefore, a form of state contestation. The modern state is therefore faced with the following dilemma. On the one hand, any direct involvement on the state’s behalf to manage the grievances refugeehood brings about would implicate the state in its production, which will also point to its failure to deliver on its representational promises. On the other hand, if not addressed, places of displacement can become an incubator for popular insurgencies which may then come to threaten the security of the state. How does the state maintain hegemony?

Italian philosopher Antonio Gramsci informs us that the modern state is securely embedded in a fundamental structure that is produced by the organic relationship between the state and civil society. Its supremacy and resilience are firmly reinforced by the unity of the juridical and the political and maintained and reproduced through diplomacy and military means. The effects of the French

Revolution, which resulted in the immediate collapse of the old regimes, Gramsci goes on to explain, snowballed to the rest of Europe where it triggered a “reformist corrosion” of regimes fearing a similar fate.⁵⁴ Subsequently, the contemporary understanding of notions of rights continue to be intrinsically connected with the structural formation of the nation-state. It is upon this understanding that French philosopher Étienne Balibar argues that popular insurgencies are typically linked to the formation of new law. Since popular insurgencies are bound to emancipatory promises, Balibar concludes, liberalism is fundamentally a reformist ideology that is inherently partial to state interests.⁵⁵ Should we follow in Gramsci’s and Balibar’s footsteps, it can perhaps be argued that the state was able to reconcile the internal contradiction that it carries within through the production of the universal discourse on refugee rights. The new discourse, then, can be understood as an authorized agent of the state aimed at channeling collective grievances through a legal and orderly means, assuring that any emerging forms of contestation be confined within its institutions and contained in the liberal language of rights.

Notwithstanding, the Palestine refugee question continues to be debated from a legal framework where liberal notions of refugee rights obtain additional merit, reinforcing the hegemony of the universal discourse on refugeehood and completely bypassing the colonial origins of the problem. This presents the Palestinian refugees with an additional challenge: to reconcile the contradiction between the actual materiality of refugeehood and the abstract language of universal rights through which they need to relate their materiality. In other words, how to reconcile the notion of self-determination in such a way that correlates rather than corresponds with the Palestinian refugee conditions.

Tracing the genealogy of the human rights discourse, Moyn argues that, in modernity, the teleological fashion in which we conceive rights ignores the organic connection between reformist and universal ideologies.⁵⁶ He goes on to explain that, historically, it was real needs (i.e. conditions of refugeehood) that gave rise to a representational lexicon. Moyn concludes that, in a sharp contrast to the narrowed-down individual positive form of law that marks modernity, historically, notions of rights were understood on collective grounds. Further, Michel Foucault informs us that governmentality, through its repressive and productive apparatus of power, attempts to shape knowledge principles and control human behavior by calculative means. It is, therefore, a mechanism for both security and hegemony.⁵⁷ Nicos Poulantzas combines both of Moyn’s and Foucault’s analysis, proclaiming that the law does not only signal a state’s repressive technique engineered to penalize those who remain outside of its norms, rather, as a disciplinary apparatus, its ability to infiltrate the judicial power points to its productive ability.⁵⁸

Yet the state's role in the production of the discourse is not mainly contingent on the governmentality and the organizing of state's apparatus of power around the legal rationale, rather, the production of the new discourse is also contingent on the state's ability to *distance* itself from the production process and *obscure* the interests and ultimate objective of the state. By seemingly distancing its governing structure and apparatus from the newly produced universal discourse, the discourse on refugeehood becomes a form of biopower through which the state is able to rectify the discrepancies between its ideological and structural formation as manifest in the production of refugeehood. From this perspective, the universal framework on refugeehood becomes a part of a social design specifically engineered to secure the state's hegemony by ensuring that any resistance to its legitimacy and authority is contained. In this sense, the state's ability to maintain hegemony and monopoly over both coercive and violent means of power is not only contingent on governmentality, but also on its ability to produce a new mode of biopower that enables it to dominate by proxy, obscuring both its failure and agency. Understanding the production of the universal discourse on refugeehood through a Foucauldian lens of institutional reform allows us to see that reform does not necessarily mean a "progressive" development where the human rights are better protected.

Through the state's juridical power and its capacity to ascribe new meanings to representational terminology and to produce (and reproduce) identity constructs, then, it was able to infiltrate the universal juridical effectively producing the new discourse on refugeehood as a state effect. This new platform provides the state with the foundation needed to legally conduct illegal violation. It follows that recasting the Palestinian question from its colonial origins to the obscure realm of international law, Israel was able to simultaneously absorb the physical threat of refugeehood while it obscured its violent colonial nature, ultimately evading accountability and moral responsibility. By Foucauldian logic, then, Israel's ability to maintain legitimacy and obscure its colonial structure is accomplished by modern tactics of governmentality and normalizes its racist formation by organizing its apparatus of power in the liberal realm of the "rational legal."

Historian Mark Mazower's work pertaining to the ideological underpinnings of the United Nations tells us that the United Nations adoption of anti-colonialism obscured "the awkward fact that like the League it [the UN] was a product of empire and indeed, at least at its outset, regarded by those with colonies to keep a more than an adequate mechanism of defense."⁵⁹ If this is true then the production of the Palestinian refugee subject and refugee conditions are politically induced to ensure Israel's security. This argument is supported by several scholars.

Illusions of Representations: The Palestinian Refugee as the Ontological Other

Juxtaposing sixteenth- and seventeenth-century debates concerning the legitimacy and morality of liberal thought with those of the eighteenth and nineteenth century, Chatterjee noted that the discursive practices of imperial powers had an acute effect on forming international law and in defining the modern form of the sovereign state.⁶⁰ As such, Chatterjee demonstrates how only the positive form of law is constituted by the modern state and is thus legitimized in the contemporary realm of international law. International law, Chatterjee concludes, is a modern project of normalization that is explicitly tied up with empire/colonial law. It should come as no surprise that Jan Smuts, the South African white supremacist statesman considered to be the architect of the apartheid regime, was an instrumental figure in drafting of the United Nations Charter.⁶¹

Timothy Mitchell points out the role of colonial powers in universalizing the contemporary conception of the peoples' right to self-determination.⁶² Tracing the state's adoption of the lexicon of empire, Mitchell proclaims that, although the right is often attributed to Woodrow Wilson, it was first articulated by Jan Christian Smuts and David Lloyd George, who argued that the right should also apply to white colonial settlers' self-rule.⁶³ According to the British government representatives, the right to self-determination should not only be extended to those who "lived under the rule of chiefs," but also to the "councils who were competent to speak for them."⁶⁴

The Palestinian refugee example, therefore, proves that anti-colonial struggles can, and do, stretch outside the juridical boundaries of the state, but alas can never escape its hegemony. This however (proving that the question of refugeehood is *still* that of the sovereign) does not positively implicate the newly produced discourse on refugeehood in the liquidation of the Palestinian right to self-determination nor does it prove the discourse is a state mechanism of biopower. It is, nonetheless, very hard to trace the ways state tactics were used to manipulate the universal discourse in its interests. We therefore have to take up "an interpretive maneuver," to use Judith Butler's words, to prove this article's hypothesis—to understand the general way biopower operates throughout the discursive matrix and complex networks of institutions in the modern state.

Inter alia, the next section will proceed by telling the story of Palestinian refugeehood and how it acquired its position in history from an orientalist perspective. Unfolding the underpinning complexities of the question, the goal is to make visible the correlation between differential conceptualizations of the right to self-determination with contextual contradictions in United Nations post-Nakba and Naksa resolutions. Afterwards, in order to prove state agency, both differential

conceptualizations of the right and contextual contradictions in UN resolutions are linked to shifts in global power dynamics.

The Ontological Other

Because the refugee category can only exist in opposition to the national subject, abstractly, the refugee classification is an internal constituent of the modern state formation. In reality, the refugee subject is cast outside of the state's juridical and territorial jurisdiction, which means that the refugee classification is external to the state. This leads us to conclude that the production of the refugee category as an external constituent of the state was essential for the state's ability to legitimize its formation and project itself as superior.⁶⁵ Yet how can something that is by definition cast outside the territorial boundaries of the state be also integral to it?

Nicos Poulantzas informs us that there always exists an "outside" to what is established by the state's discourse. Although not in the absolute sense, it is an ontological "otherness" wherein the "other" is cast outside the juridical limits of the nation-state.⁶⁶ However, Poulantzas also states that the production of a new form of governance necessitates the repression of the old.⁶⁷ The problem in this assumption is that, thus far, the analysis points to the fact that the refugee subject can never truly escape the state's juridical power. If the nation-state's juridical discourse was not suppressed, then how can we account for the production of the new universal discourse on rights?

In his landmark book *Orientalism*, Edward Said demonstrates how, as a newly emerging discourse, Orientalism is ontologically and epistemologically destined to create distorted representations.⁶⁸ As a structure of knowledge, Said argues, Orientalism organizes disciplines in a linear progressive narrative positing the West as the epitome of democracy, also marked by the separation of powers. Said goes on to demonstrate how Western theories of modernization present an "evolutionary" view of human history in which the non-Westerners conceive their future in the Western present. When applying Western standards of rights to the non-European, Eurocentric epistemological projects demonize the native "other" as it simultaneously creates a polarity that always privileges the European. Under the guise of progress, the "uncivilized" and "primitive" native is continually contrasted with the civilized and progressive European. Said concludes by demonstrating how the invention of the "native" was crucial for Europe to justifying the entire colonial project.⁶⁹ The same logic can be applied to the Palestinian refugee example.

If Europe's identity is constituted by the discourse of the "other," then, at least in the abstract sense, the Palestinian refugee identity is constituted by the "otherized" "other" with the Israeli Jewish refugee turning colonizer when he took the Palestinian refugee's place in his homeland.⁷⁰ And because the refugee identity

can only exist in opposition to the national subject, the Palestinian refugee identity can only exist in opposition to the Israeli national citizen. Likewise, if the production of the European refugee is an internal constituent of the modern state, it means that the production of Palestinian refugee is an internal constituent of the settler colonial establishment. Refugeehood is in, and is to, the state, that which the state is in, and to, liberalism. Realistically, however, the expulsion of Palestinians from their homeland on one hand and Israel's refusal to acknowledge the Palestinian right to self-determination on the other hand, suggests that the Palestinian refugee is an external constituent of the Israeli establishment. How, then, is this contradiction reconciled?

Israel, through its ability to control time and space, was able to avoid the structural question by dividing its world into two: the biblical and the political. To better unfold this argument, the following will demonstrate how differential conceptualizations of the people's right to self-determination can be strategically constructed and deployed for political gains. The goal is twofold: to understand on the discursive level how Israel was able to dominate the historical narrativization of Palestinian dispossession, effectively producing the Palestinian refugee as the "other" in the broader history of the phenomenon; and to identify the mechanisms which not only legitimized the colonial establishment of the state of Israel, but also normalized, by way of legal sanctions, the genocide against a displaced, dispersed, and disregarded Palestinian refugee population.

On the Duality of the Meaning

Since its establishment in 1948, Israel continues to enjoy a remarkable approval amongst the international community. Ironically, while Israel boasts of its claims to "democracy," asserting that it is "the only democratic state in the middle east," its belligerent disregard for international law marked its history from the onset. Yet Israel's defiance of international law, and its refusal to acknowledge the Palestinian right of return as outlined in UN Resolution 194, contradicts its claim to liberal democracy. This is why Israel's first bid to be admitted as a member in the United Nations Assembly in 1948 was denied.

Israel was able to dominate the discourse on the Palestinian refugee narrative by the imposition of liberalism. The process of imposing modern disciplines, Foucault argues, operates as a method of division which then facilitates for a mechanism of power in service of domination and population control.⁷¹ The persistence of Palestinian refugeehood, therefore, points to Israel's ability to frame the narrative in a way that excludes the Palestinian refugees from the universally accepted modes of belonging. Israel's defiance of international law was rationalized on biblical grounds. From the Israeli perspective, the expulsion of Palestinians

from their homeland is justified by alleging that the contemporary European Jews are the ancestors of the ancient biblical Hebrews of Palestine. Therefore, Jews all over the world are entitled to the right to self-determination by “returning” to Palestine, albeit over 2,000 years later.

What makes the Palestinian right of return so problematic, then, is that they are not Jews. What is important to note here is that the Israeli interpretation of the universal right is distinguished from its interpretation of its law of return. Ben Gurion states: “The Jewish people have a priori right [. . .] to settle in the land.”⁷² Per Ben Gurion’s logic, then, the Israeli claim to Palestinian land is beyond international law. According to the Israeli logic, the law of return is intrinsic by the virtue of being a Jew. The irony here is in that international law is presumed secular which means that the Israeli interpretation has to be fundamentally rejected. Yet, not only did the international community accept the Israeli interpretation of their “right of return,” it also leveraged it on the expense of the Palestinians. To be sure, unlike the internationally sanctioned and reaffirmed Palestinian right of return stipulated in UN Resolution 194, nowhere in international law can this Jewish “right” of return to Palestine be found. As a matter of fact, only in what Israel calls its “Declaration of independence” is this right referred to. The Declaration states:

After being forcibly exiled from their land, the people kept faith with it throughout their Dispersion and never ceased to pray and hope for their return to it and for the restoration in it of their political freedom. Impelled by this historic and traditional attachment, Jews strove in every successive generation to re-establish themselves in their ancient homeland.⁷³

There is a very clear reason then as to why Israel continues to reject UN Resolution 194. The imposition of the Israeli conception of the so-called “Jewish right of return” is essential to Israel’s ability to legitimize settler colonial establishment and legitimize the dispossession of millions of Palestinians. Israel understands that UN Resolution 194 and international refugee right, both of which affirm the right of Palestinian refugees to return to their homeland, effectively nullify the Jewish law of return which Israel claims to guarantee to all Jews around the world. And since Israel justifies its settler colonial establishment and the dispossession of Palestinians on the basis of the right of nations to self-determination (although the notion that people can call for the right to self-determination on religious basis is in and of itself problematic), then, by implication, the nullification of the so-called “Jewish right of return” also negates Israel’s right to exist, exposing the violent nature of its settler colonial establishment. Ben Gurion states:

These Arabs should not be living here. Anyone who thinks that the Arabs have the right to citizenship in the Jewish State is saying [in fact] that we should pack our bags and go home . . . We have no need of a law of citizenship [because civil rights for Arabs] undermine our moral right to this country.⁷⁴

In the light of Said's analysis, in order for Israel to be able to justify its colonial establishment, it was crucial for it to reconnect with its liberal roots and project itself as democratic, all while it produces the Palestinian refugee as the "other."

Part of the reason as to why the persistence of the Palestinian refugee question is not problematized from its colonial framework, it can be presumed, is due to them being projected as an "uncivilized" population whose nature was incompatible with their liberal Jewish counterpart. It is no surprise that, in the last few decades, the Palestinian question has begun to be understood as a part of the Muslim question. Consequently, the failure of the Palestinian liberation movement to attain the right is often linked to the Palestinians' inadequate level of "civilization." From this perspective, the persistence of the Palestinian refugee condition is but their own fault. This is interesting considering the fact that, during the highest of Cold War tensions between the United States and Russia, having declared itself the "guardian of liberal democracy and human rights," the US administration had no problem lending support to Muslim fundamentalist factions in their fight against Russia, designating them as "freedom fighters."

By aligning itself with the Western nations, a polarity was introduced privileging the Israeli narrative, allowing it to simultaneously project itself as a democratic nation in search for peace while it depicted the Palestinian subject as the "undemocratic other," casting him out of liberalism. While Israel was able to manipulate the historical narrative of Palestinian refugeehood to advance its interest and distort the legitimacy of the Palestinian struggle, in reality, even if the Palestinian refugee subject was not produced as the uncivilized "other," its very survival depended on the logic of elimination, replacing indigenous populations with settler colonial subjects. State violence, then, dissipates and disguises itself by making rational the universal appeal often to the binaries predicted on stable oppositions such as civilized/uncivilized. Israel's ability to claim superiority is dependent on its ability to externalize the Palestinian refugee category as the "other." In contemporary politics, the Palestinian refugee subject is often viewed to be incompatible with his "more civilized" Israeli counterpart. In a *New York Times* article, for example, Thomas Friedman argued that the Palestinian relative prominence is not due to the legitimacy of their claim, but to the fact that their opponents were Israeli Jews.⁷⁵ Therefore, producing the "refugee" category through the state's juridical power is more than merely ascribing a meaning to a social construct; rather, the classification carries within it a performative function inherent to heterogeneous materialities. The important thing to note

here is that the state-monopolized physical violence underlines both its direct apparatus of power (i.e. military action) and its coercive mechanisms of consent (i.e. state law). This means that, even if physical violence was not directly exercised, it can still shape the materiality of the social body upon which domination is brought to bear.⁷⁶ This is precisely why Partha Chatterjee argues that ideological hegemony (Liberalism) precedes state violence.⁷⁷

As a settler colonial establishment, Israel is guided by genocidal logic. Patrick Wolfe argues that Zionism, as a settler colonial project, is predicated on the logic of elimination.⁷⁸ This is why, Wolfe argues, Zionism vigorously rejects the acknowledgment of the Palestinian right of return.⁷⁹ Upon its establishment the main dilemma that Israel was faced with post-1948 Nakba was the question of demography and the extension of citizenship rights. Israel sought to manipulate the historical narrative by altering conditions on the ground, issuing several laws with the aim of stripping the Palestinians of their citizenship rights while granting citizenship to Jews on a mass scale. The Israeli discourse on citizenship produced the indigenous as illegal and the settler colonial subject as legal—turning history on its head. This is precisely why Ruth Wilson Gilmore argued that racism “is specifically the states’ sanctioned or extra-legal production and exploitation of group differentiated vulnerability to premature death.”⁸⁰ Golda Meir’s statement in the *Sunday Times* on June 15, 1969 and in the *Washington Post* on June 16, 1969, is a clear example. Meir states:

There were no such thing as Palestinians. When was there an independent Palestinian people with a Palestinian state? It was either southern Syria before the First World War, and then it was a Palestine including Jordan. It was not as though there was a Palestinian people in Palestine considering itself as a Palestinian people and we came and threw them out and took their country away from them. They did not exist.⁸¹

Meir’s statement amounts to a historical nullification of Palestine and the Palestinians’ history which is nothing short of a genocidal epistemology.

Subsequently, Israel’s ability to claim superiority is dependent on its ability to externalize the Palestinian refugee category as the “other.” Notwithstanding, the establishment of the Israeli settler colonial regime in the mid-twentieth century coincided with the historical point in time when the human rights discourse came to establish liberal standards and norms of a new world order. By virtue of its establishment, the legal status and protections the indigenous Palestinian population enjoyed under both the Ottoman Empire and the British Mandate were nullified.⁸² Meanwhile, Israel continued to project itself as democratic and liberal, claiming that it was fulfilling its obligations to safeguard equal rights stipulated

under the UN's 1947 Partition Plan. Nonetheless, the history of Palestinian refugeehood is analogous to the history of the Israeli citizenship.

When it comes to the construct of Israeli citizenship rights, despite its claim to Jewish exceptionalism, Israel did not need to reinvent the wheel. New scholarship suggests that, in the early years, Israeli leaders drew on citizenship models previously administered by settler colonial regimes. In a report prepared for the Israeli Ministry of Justice, Zerach Warhaftig states that, historically, citizenship regimes adopted in settler colonial countries like of Australia, Canada, the United States, and South Africa are designed to obscurely discriminate along racial and ethnic lines.⁸³ The Australian model was particularly suitable for the Israeli establishment.

White Australia policy granted immediate naturalization to British migrants but restricted the naturalization of others. Likewise, the Israeli model automatically extends the right of citizenship to Jews while it dispossesses indigenous Palestinians of their citizen rights. The United Nations' acceptance of the Israeli interpretation of "the Jewish law of return," which has no precedence whatsoever in international law, implicitly legitimized the Zionist colonization of Palestine and ironically, the dispossession of Palestinians while it claims to uphold their right of return. Nonetheless, the history of Palestinian refugeehood is analogous to the history of the Israeli citizenship.

Talal Asad, then, was correct when he argued that the historical convergence between liberalism and human rights discourse is not purely accidental.⁸⁴ To further solidify our hypothesis both conceptual shifts in the meaning of the right to self-determination and contextual contradictions in post-Nakba and Naksa resolutions must also correlate with shifts in respective geopolitical and international power relations.

The Impact of Cold War Politics

While the post-1948 Nakba resolutions intersected with the decolonizing era that accompanied nation-state building, and subsequently the rise of the Arab nationalist discourse, the post-1967 Naksa resolutions coincided with Cold War politics, which were marked by political divisions amongst the Arab nations.

Having just emerged as the victor from the Second World War, President Truman declared that the United States had the moral obligation to promote liberal democracy and help "develop" the "less fortunate" people of the South, positioning the United States in a context that would legitimize their imperial endeavors under what came to be known as the Point Four Program.⁸⁵ Before it collapsed, the strong presence of the Soviet Union neutralized the international community's support for Israel. A superpower with its own interests in the region, the Soviet Union worked to prevent the formation of any substantial structural alliance that could potentially transcend strategic relations between Israel and the United States. The increased

ideological tensions between the United States and the Soviet Union led to the politicization of the Palestinian refugee question. This was particularly evident during Gamal Abd el-Nasser's regime in Egypt (1954–1970).

Taking the shape of an anti-imperialist project, Nasser's Egypt was ideologically more compatible with the Soviet Union,⁸⁶ threatening the United States' interests in the region. Since the United States did not rely on the Arab world as an anti-communist ally, the establishment of an entity in the region that could help secure its interests was looked upon favorably: Israel would fulfill this task. This, of course, was also the case after the First World War when colonial powers looked for new ways to maintain hegemony over the colonized populations and the reason why, like in the Palestinian case, Britain gave in to the demands of white settlers at the time, granting them autonomy.

The establishment of Israel, nonetheless, necessitated the undermining of the Palestinians' aspirations for self-determination. The United States sought to do so by two means: by breaking up the Arab world, the backbone that provided the Palestinian resistance with the logistical and material support needed to withstand their colonizers and sustain their movement, and by containing threats by channeling grievances through international institutions under the guise of human rights. The progressive weakening of the Soviet Union coupled with the Arab defeat in the 1967 war strengthened the Palestine Liberation Organization (PLO) which was established in 1964. When the PLO was recognized as the sole legitimate representative of the Palestinian people during the 1974 Rabat Arab Summit, the Palestinian question was recast from its broader Arab national framework to the narrowed nation-state context where it remains. Prior to the 1974 Rabat Arab Summit, the Palestinian liberation movement enjoyed the support of most of the Arab nations, particularly in Nasser's Egypt. Progressively thereafter, as the Palestinian question was viewed as independent from the rest of the Arab world, securing Arab support for the liberation movement become increasingly harder. This ultimately led to a weaker movement and made it easier to manipulate. The subordination of the PLO to external pressures was no more evident than when the international community demanded that the PLO publicly recognize "Israel's right to exist" and denounce acts of "terrorism" in exchange for recognition. This can be translated in the following terms: to be deserving of political recognition in the international realm, the PLO must submit to the liberal discourse which (at least theoretical sense) means that they have to relinquish their claim to the historic land of Palestine and by implication, the Palestinian refugees' right of return. In effect, the international community coerced the Palestinian liberation movement into delegitimizing a universally guaranteed right, in favor of legitimizing an illegal settler-colonial establishment. Ironically, from this perspective, the PLO is just as guilty of equating anti-colonial resistance with terrorism, stigmatizing the Palestinian struggle for liberation.⁸⁷

Upon its entry to the international discourse as the sole representative of all Palestinians, the PLO became consumed with organizing and stabilizing its structural base, inaugurating a decline in Palestinian resistance. What I would like to stress here is what Partha Chatterjee terms “the rules of colonial difference,” which, according to Chatterjee’s understanding, point to the awareness that, regardless of who holds power, contradictory differences are discursive and multidimensional. If we apply Chatterjee’s logic, then, once the PLO was produced as the “other representative” replacing Arab nations, the PLO became the “representative of the other,” which also means that they effectively became a part of a system of power, where the PLO itself begins to introduce contradictions to the Palestinian discourse, albeit, as Chatterjee notes, in a way that can be suppressed and/or silenced.⁸⁸ Chatterjee’s inference can be supported by the fact that once the PLO became the official representative of the Palestinian people, the PLO became more useful to those who controlled the resources on which they depend rather than depending on the legitimacy and convictions of their people and the right that they represent.

During the 1970s and 1980s, the PLO adopted a wide range of resistance tactics including armed struggle, moving the Palestinian national struggle from the periphery to the center of international debate. At that time, Palestinian refugees played a central role in the resistance movement, particularly those in Lebanon, where the PLO established its base and provided logistic support for the resistance movement. Acts of resistance prompted a ruthless response from the Israeli end as was evident in 1982 when, during its invasion of Lebanon, Israel turned Sabra and Shatila refugee camps into a bloodbath. Leveraged by the unconditional support of the most powerful country in the world, Israel’s impunity was unshakable. In truth, while the Palestinian refugees were being brutally massacred, in an act that can only be described as disgraceful, the United States vetoed a United Nations resolution that called on Israel to let humanitarian aid into the refugee camps, calling it “unbalanced.”⁸⁹ Giorgio Agamben, then, was right when he argued that refugee camps resemble a “pure, absolute, impassible bio-political space” for the state to manipulate.

In yet another attempt to undermine the Palestinian struggle for liberation, in the late 1970s, the United States backed the “peace negotiations” between Israel and Egypt. The Camp David Agreement signaled a rupture in Arab historiography, marked by intensified divisions between the Arab nations. Not only did Anwar Sadat’s Egypt create a rift between the Arab nations, it ceased to be the ideological and logistical pillar the Palestinian liberation movement rested upon. Sadly, while Anwar Sadat justified his administration’s betrayal through a liberal lexicon, the international community was cheering from the sidelines the further breaking up of the Arab nations.

The Reagan administration further cemented the strategic alliance between Israel and the United States through its advancement of neoliberal policies. The 1980s witnessed the most substantial US foreign aid and military support to Israel hitherto. US foreign aid to Israel rose from \$70 million per year in the late 1960s to over \$5.1 billion per year only 15 years later. The estimated US aid to Israel in 1967–91 was a staggering \$77 billion.⁹⁰

Institutionalizing Resistance

National liberation movements are typically anchored in oppositional ideologies and politics. Notwithstanding, history tells us that the longevity of liberation movements is often hindered by the abandonment of confrontational politics in favor of institutional sustainability. Although Samir Amin does not specifically address the refugee question, his analysis links the PLO's failure to adequately address and meet the needs of the Palestinian refugees to the emergence of the universal discourse on rights and global capitalism, which were carried out by the hegemonic states' adoption of neoliberal policies.⁹¹

According to Amin, the new discourse, represented by the United Nations, brought about qualitative change that was forced on the inter-state capitalist system, effectively producing much of the anti-colonial movements in the Third World as the "uncivilized other."⁹² Consequently, anticolonial movements become subject to neocolonial compromise. The institutionalizing of national liberation movements under the universal discourse of rights meant that they are now subject, and accountable, to other international players. Amin's inference applies perfectly to our case study. Before I move on, it is worth noting here that the contemporary scholarship on refugeehood leaves uncriticized the role of political economy and universal capitalism in the ongoing production of refugeehood.

During the 1990s, the Oslo Agreements ushered a new era in the Palestinian struggle marked by subordination and concessions. The agreement did not address the crux of the Palestinian question represented in the refugees' right of return. The PLO and later the Palestinian Authority (PA) justified its abandonment of the Palestinian refugees under the pretense of shifts in regional power, arguing for "a stage-based" strategy. Decades later, the Palestinian leadership was unable to meet the demands of Palestinian insurgency, nor was it able to confront hegemonic powers. Sadly, instead of acknowledging the utter failure of the Oslo discourse to maintain its position of authority, the PA opted for concessions in exchange for what can be characterized at best as small and insignificant short-term gains.

The absence of any prospect of real solutions has caused many scholars and activists alike to vigorously argue against the Oslo discourse. Central to their critique is the contention that Oslo politics has emptied the Palestinian struggle of its historical meaning, rendering the refugee question a discourse of the past. Some

critics stressed that any real prospect for a solution concerning the Palestine refugees has to be based on United Nations Resolution 194. Proponents of Oslo (at least in the early stages), on the other hand, disputed the critiques launched against the discourse, downplaying the validity of the arguments. Hanan Ashrawi, for instance, proclaimed that the critique launched against the Oslo Agreement resembled “a difference in opinion” between a “liberation movement” and a “Nation-State building” mindset. Salim Tamari’s interjection was even more explicit and thus must be quoted in full. Tamari states:

We have an intelligentsia which is not willing to fight the fight that all Third World intellectuals and political activists are fighting today. They want to go back to the nostalgia of the liberationist struggle because they got addicted to being resistance forces against foreign occupation.⁹³

Although we do not contest the notion that Oslo discourse has failed, what escapes this view is that Oslo politics never genuinely diverged from the universalist discourse on rights that the critique is demanding a return to. The Oslo Agreement, then, is not the main reason why the Palestinians are yet to attain their right of return, rather, the failure of the Palestinian liberation movement was predetermined upon the acceptance of United Nations Resolutions 242 and 338. Oslo, we maintain, is but a by-product of the universal discourse which, from its onset, was designed to fail. What need to be questioned are the costs and benefits of placing the Palestinian struggle in the realm of international law.

Although the myopia of the PA disoriented the Palestinian vision for liberation, fully aware of the challenges they were confronting, some left-leaning factions of the liberation movement argued against confining the struggle to the universal realm. In an interview with Ahmad Sa’adat, the secretary-general of the Popular Front for the Liberation of Palestine (PFLP) and the highest-ranking official of a Palestinian political faction currently imprisoned by the Israeli state (with the help of the PA), Sa’adat states:

I do not think any Palestinian leader, no matter how flexible, can comply with Israeli and American demands to relinquish those basic principles. The most these negotiations can do is prolong crisis management as a cover for Israel to continue its settlement projects on the ground, to stave off international opprobrium, and to impose its vision of a Palestinian entity amounting to little more than a protectorate. The negotiations also allow the United States to defuse tensions and contain the conflict in Palestine, and to devote its full attention to regional issues it considers fundamental, namely Syria and Iran.⁹⁴

Sa'adat's evaluation, as right as it may be, does not mean that the Palestinian left was not tamed by the liberal discourse. For the massive infiltration of Euro-American-funded projects and not-for-profit organizations has effectively neutralized the oppositional left. Unquestionably, the infiltration of the NGOs set in motion a certain power dialectic that tirelessly works to undermine the Palestinian quest for liberation. But what is more detrimental, it produced weak citizens and a dependent economy. By 2000, the Palestinian left was practically tamed. UNRWA is a clear example.

The UNRWA Example

Soon after the devastating events of the Nakba, the United Nations High Commissioner for Refugees (UNHCR) was established as the "guardian" of the protocol.⁹⁵ Amongst other things, its responsibility was to see to it that states are providing the necessary cooperation to ensure that refugee rights, as outlined in the protocol, are protected. Interestingly, while Israel continued to displace Palestinians, locking them in territorial boundaries and keeping them outside other areas within and outside the historic land of Palestine, the UNHCR, at the time rendering protective services to refugees in other countries, never recognized the internally displaced Palestinian refugees who did not receive any help from the newly established refugee agency. It is not surprising therefore that Resolution 194 did not explicitly refer to the role of the United Nations in inciting the Nakba events, and by implication, its role in the creation of the Palestinian refugee problem.

Notwithstanding, at the onset of Nakba and the dispossession and expulsion of hundreds of thousands of Palestinians from their homes, the United Nations General Assembly Resolution 302 (IV) of December 8, 1948 established what came to be known as the Relief and Works Agency for the Palestinian Refugees in the Near East (UNRWA).⁹⁶ Fully operational by 1950, its goal was to

carry out, in collaboration with local governments, the direct relief, and works program as recommended by the Economic Survey Mission and to consult with interested Near East governments concerning measures to be taken in preparation for the cessation of international assistance for relief workers projects.⁹⁷

But if refugee law assumes the equal treatment for all refugees regardless of their ethnic origins or religion, what compelled the United Nations to create yet another agency to specifically deal with the Palestinian refugees?

Entrenched in liberal ideology, UNRWA came to assume the authority to speak on behalf of Palestinian refugees. For example, in 2014, while Palestinian refugees in Gaza were being subjected to another round of death administered by

Israel, it was the UNRWA officials who emerged in the mass media as the authorized agency to speak on behalf of Palestinians. Although both the Palestinian leadership and civil society seem to support United Nations agencies and officials, assuming that will help cultivate support amongst the international community (confirming the hegemony of the liberal discourse), positioning a foreign agency as the legitimate authority to manage and speak on behalf of the Palestinian refugees has been detrimental to their interests. The emergence of UNRWA as the legitimate agency authorized to speak on behalf of Palestinian refugees was accomplished by repressing the legitimacy of the Palestinian leadership. This, in turn, reinforces the negative perception of the Palestinian struggle already spread amongst the international community. While they set out on their humanitarian endeavors, universalizing UN refugee agencies established Western democracy as the only form of government that is compatible with human rights discourse.⁹⁸ The universalization and institutionalizing of the UN refugee agencies assumes a performative role in shaping various constructs of refugee identities that lend unequal attention to different refugee cases at different junctures of history. In the Palestinian case, the United States' influence on UNRWA is crystal clear.

Although international agencies are supposedly autonomous, UNRWA has been effectively utilized by the United States as coercive tool of political power. Most recently, after the Palestinian Authority announced that it would no longer engage in the proposed US peace process in retaliation for the US decision to move its Embassy to Jerusalem, the Trump administration proposed a detailed plan to end its financial support to UNRWA. A senior White House official stated that "in light of the Palestinians' recent conduct," a proposed cut of up to \$180 million is under serious consideration.⁹⁹ The interesting part came when the office of the Israeli prime minister stated that, although Israel supports President Trump's "critical attitude towards UNRWA and believes practical steps need to be taken in order to change the fact that the organization is being used to entrench the Palestinian refugee problem instead of solving it," the Netanyahu administration prefers a rather "gradual disengagement" approach due to the fact that UNRWA serves Israeli security interests.¹⁰⁰ Israel's stance on the issue confirms this article's proposition that UN refugee agencies serve a state apparatus designed to neutralize emerging contestation and threats against a state's authority and legitimacy.

Conclusion

"The world seems to have become unable to make peace," said the High Commissioner for the United Nations' Refugee Agency, Mr Filippo Grandi, when asked to comment on the record 65.6 million displaced population around the world. He stated that the "daunting numbers exemplify a disheartening failure of international

diplomacy.”¹⁰¹ His statement, however genuine it may be, is inaccurate and misleading. Reducing the most significant mass socio-political phenomenon of our times to a “humanitarian dilemma” that is essentially framed around the “failure of international diplomacy” speaks to the distorted standard of morality where the expulsion and suffering of millions of people around the world is legally rationalized and reduced to a quantitative occurrence that is blamed on particular political conditions.

The Palestinian refugee question carried with it the seeds of contradictions inherent in liberal democracies. The contradiction can be understood in the following terms. For Palestinian refugees, the need for the right to self-determination is founded in materiality and therefore, the Palestinian conceptualization of the of the right was based on collective needs traditional to historical anti-colonial movements. Nonetheless, the hegemony of the universal discourse on rights meant that, in order for the Palestinians to be able to communicate their struggle with the West and cultivate their support, Palestinians were forced to articulate their struggle in abstract notions of rights entrenched in European liberal traditions of democracy, confined to the narrowed-down individual positive form of rights. It is in this contradiction that the Palestinian refugee question remains entrapped.

Israel, a Western colonial project, is ontologically rooted in liberalism. As such, Israel sought to avoid its moral responsibility for production of Palestinian refugeehood by disguising its colonial nature through the discourse of the orientalist discourse of the “other.”

The discursive and complex dynamics that underpin the Palestine refugee question invites us to scrutinize the contemporary notions of rights from an ontological standpoint, while we call in question the nationalist ideology from an epistemological standpoint. The point here is to be aware of the temporal and spatial presuppositions that delimit our understanding of collective struggles by realizing how such presuppositions maybe seeded with structural bias.¹⁰² The argument put forth in these pages provides a tangible example that illustrates how the importation of the orientalist discourse through the universal agency, combined with the infiltration of academia in the West and abroad, provided a perfectly “objective” rationale for imperial practices.

Although the universal discourse on refugee rights presents us with a model of social and political justice that has profoundly shaped our aspirations for the future of our humanity, the persistence of Palestinian refugee conditions provide an empathetically suitable example for us to gage the reaches and limitations of the discourse. Ultimately, the Palestinian refugees’ case points to the fact that any possible solution for the refugee problem must avoid reductionist understanding of the phenomena. Rather, the question must be addressed from a pragmatic framework that allows for multiplicity of causes and effects.

Notes

1. The term is defined in the Protocol Relating to the Status of Refugees, a key treaty in international refugee law, which entered into force on October 4, 1967. The term “refugee” applies to “anyone with a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” See <http://www.unhcr.org/en-us/1951-refugee-convention.html> (accessed December 8, 2019).
2. M. Proudfoot, *European Refugees, 1939–1959: A Study in Forced Population Movements* (Evanston, IL, 1956). Cited in M. Frank and J. Reinisch, “Refugees and the Nation-State in Europe, 1919–59,” *Journal of Contemporary History*, 49:3 (2014), 477–490. Also, Andrea Klimt and Stephen Lubkeman, “Argument across the Portuguese-Speaking World: A Discursive Approach to Diaspora,” *Diaspora*, 11 (2002), 145–62, 150. Cited in Julie Peteet. “Problematizing a Palestinian diaspora.” *International Journal of Middle East Studies*, 39:4 (2007), 627–646.
3. Neil Lazarus, *Nationalism and Cultural Practice in the Post-Colonial World* (Cambridge: Cambridge University Press, 1999), 73–79.
4. Michel Foucault, “Governmentality,” in Graham Burchell, Colin Gordon, and Peter Miller, eds, *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991), 103. Also, Michel Foucault, *Discipline and Punish: The Birth of the Prison*. trans. Robert Hurley (New York: Pantheon, 1997).
5. The study does not intend to tell the whole story of the Palestinian refugee question nor does it intend to imply that international law is the main discourse through which the refugee subject is defined and managed. Rather, the contribution this study makes to the debate on refugeehood lies in contemplating whether international law can be understood as a social and political tool of control of the state.
6. Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), and Judith Butler, “Performative Agency,” *Journal of Cultural Economy*, 3 (July 2010), 147–161. For a deeper analysis as to how iterative performance can be both a compelled and productive effect, see Judith Butler, *Bodies that Matter: On the Discursive Limits of “Sex”* (New York: Routledge, 1993). To highlight the importance of question framing, I deploy Judith Butler’s understanding of the performative. Butler notes that question framing “actively participates in the production and containment techniques” which eventually manifest themselves in real-life conditions. Question framing, then, can include or exclude certain things (i.e. the Palestinian refugee crisis) from discourse. For more on the performative role of the question framing.
7. See Office of the Historian, “The League of Nations, 1920.” <https://history.state.gov/milestones/1914–1920/league> (accessed November 30, 2008). Also, New World Encyclopedia. “Paris Peace Conference, 1919,” last modified March 24, 2015. http://www.newworldencyclopedia.org/entry/Paris_Peace_Conference,_1919 (accessed December 9, 2019). Also, Frank and Reinisch, “Refugees and the Nation-State,” 477–490.
8. Frank and Reinisch, “Refugees and the Nation-State,” 477–490.
9. Peteet, “Problematizing,” 627–646. Also, Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001). Cited in Frank and Reinisch, “Refugees and the Nation-State,” 477–490.

10. Dorothy Thompson, *Refugees: Anarchy or Organization?* (New York: Random House, 1938), 10.
11. <http://www.un.org/en/charter-united-nations/> (accessed December 8, 2019).
12. Joseph Massad, "Against Self-Determination," *Humanity*, 9:2 (September 11, 2018), 172.
13. For more on the Bandung conference, Office of the Historian, "Bandung Conference (Asian-African Conference), 1955," at <https://history.state.gov/milestones/1953-1960/bandung-conf> (accessed November 30, 2018).
14. For more on the UDHR see <http://www.un.org/en/universal-declaration-human-rights/index.html>. For more on the Right to self-determination, the concept of sovereignty, and universalization of rights see Patrick Hayden, *The Philosophy of Human Rights* (St Paul, MN: Paragon House, 2001), 380–390. On the relationship between sovereignty and law, see Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: Chicago University Press, 2006).
15. Cited in Hayden, *Philosophy of Human Rights*, 371.
16. For the Cold War origins of the UNHCR see Loescher, *UNHCR and World Politics*. Cited in Frank and Reinisch, *Refugee and the Nation State in Europe* (Sage, 2014), 477–490. Also, Nicholas Xenos, "Refugees: The Modern Political Condition." *Alternatives*, 18 (1993), 419–430.
17. Khachig Tölölyan, "Rethinking *Diaspora(s)*: Stateless Power in the Transnational Moment." *Diaspora: A Journal of Transnational Studies*, 5:1 (1996), 3–36. Project MUSE, doi:10.1353/dsp.1996.0000.
18. Tölölyan, "Rethinking *Diaspora(s)*."
19. Massad, "Against Self-Determination," 172.
20. Edward Said, *The Politics of Dispossession: The Struggle for Palestinian Self-Determination, 1969–1994* (New York: Vintage Books, 1995), Introduction.
21. The term was first coined by Qustantine Zurayq in *Ma'na al-Nakba* (1948). The term Nakba, however, was not universalized until publications on the questions became available in the mid-1950s. Later, as the term crystallized and became widely used, recent scholarship suggests, it imbricated the Palestinians' failure/role in the catastrophe. See Anaheed Al-Hardan, "Al-Nakbah in Arab Thought: The Transformation of the Concept," *Comparative Studies of South Asia, Africa and the Middle East*, 35:3 (December 2015), 622–638. Also see Qustantine Zurayq's "Ma'na al-Nakba," *Al-A'mal al Fikriyya al Amah Lil-Duktur*, 3:1 (1994).
22. Lana Tatour, *Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel* (2019). <http://dx.doi.org/10.2139/ssrn.3533490>
23. Tatour, *Citizenship as Domination*.
24. For more on UN Resolutions concerning the Palestinian question see <https://www.un.org/unispal/data-collection/general-assembly/> (accessed December 8, 2019). Also, Iris Marion Young. "Self-Determination as Non-Domination: Ideals Applied to Palestine/Israel," *Ethnicities*, 5:2 (June 2005), 139–159. W. Thomas Mallison and Sally V. Mallison., "The Right of Return." *Journal of Palestine Studies*, 9:3 (Spring 1980), 125–136. Also <https://www.unrwa.org/content/resolution-194>.
25. <https://www.un.org/en/sections/un-charter/un-charter-full-text>.
26. <https://www.un.org/en/sections/un-charter/un-charter-full-text>.
27. https://en.wikipedia.org/wiki/Equality_before_the_law.
28. For more on the UDHR see <http://www.un.org/en/universal-declaration-human-rights/index.html>.
29. Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse* (Minneapolis: University of Minnesota Press, 1993), preface.

30. Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Co., 2007), 34, 42, 58, 193–212.
31. Hunt, *Inventing Human Rights*.
32. Marx, “On the Jewish Question,” *Deutsch-Französische Jahrbücher*, 30 (Autumn 1843), 64. Also, “A Contribution to the Critique of Hegel’s Philosophy of Right,” *Deutsch-Französische Jahrbücher* (February 1844), Introduction. Also see Louis Althusser, “Ideology and Ideological State Apparatuses: Notes towards an Investigation,” In *Lenin and Philosophy and Other Essays* (New York: Monthly Review Press, 1971), 127–186.
33. <https://unispal.un.org/UNISPAL.NSF/0/761C1063530766A7052566A2005B74D1>.
34. Frantz Fanon, *The Wretched of the Earth: A Negro Psychoanalyst’s Study of the Problems of Racism and Colonialism in the World Today* (New York: Grove Press, 1961), 35–106, 148–248.
35. For more on the Bosnian refugee case see Elizabeth Anderson, “The Role of Asylum States in Promoting Safe and Peaceful Repatriation under the Dayton Agreement,” *European Journal of International Law*, 7 (1996), 193.
36. Talal Asad. *The Formation of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003). And Indepal Grewal, *Transnational America* (Durham, NC: Duke University Press, 2005), 158
37. Cited in Neil Lazarus, *Nationalism and Cultural Practice in the Postcolonial World* (Cambridge: Cambridge University Press, 1999), 74.
38. Lazarus, *Nationalis*. Also see Rosa Luxemburg, *The National Question: Selected Writings by Rosa Luxemburg*, Introduction (New York: NYU Press, 1976), 12.
39. Luxemburg, *National Question*.
40. Karl Marx, “A Contribution to the Critique of Political Economy,” 1859. <https://www.marxists.org/archive/marx/works/1859/critique-pol-economy/preface.htm>.
41. Judith Butler and Gayatri Spivak, *Who Sings the Nation-State? Language, Politics, and Belonging* (Kolkata: Seagull Books, 2007), 4–5.
42. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace Jovanovich, 1966), 293.
43. Judith Butler, *Frames of War: When is Life Grievable?* (London: Verso, 2009), 25.
44. Butler, *Frames*.
45. Butler, *Frames*.
46. Butler and Spivak. *Who Sings*, 5–7.
47. *The History of Sexuality, an Introduction, volume 1*, trans. Robert Hurley (New York: Random House, 1978).
48. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998).
49. Agamben, *Homo Sacer*.
50. Agamben, *Homo Sacer*.
51. M. Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government*, trans. D. Fernbach (Cambridge; Malden, MA: Polity. 2011). M. Agier, *On the Margins of the World: The Refugee Experience Today*, trans. D. Fernbach (Cambridge; Malden, MA: Polity, 2008).
52. Agier, *Managing the Undesirables* and *On the Margins*.
53. Judith Butler and Athena Athanasiou, *Dispossession: The Performative in the Political* (New York: Polity, 2013) 157.
54. Antonio Gramsci, *Selections from the Prison Notebooks*, ed. Quintin Hoare and Geoffrey Smith (New York: International Publishers, 1989), 52, 117–119.

55. For more details, see Etienne Balibar, *The Idea of Yesterday, Today, and Tomorrow*. <http://blogs.law.columbia.edu/uprising1313/etienne-balibar-the-idea-of-revolution-yesterday-today-and-tomorrow/>
56. Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), 12.
57. Distinguishing between the state political formation and the art of government, Michel Foucault contends that, in late sixteenth-century politics, the government organized around the theory of reason and moral philosophy, upon which the state's principles of law and justice were constituted. The art of government founded itself around the same principles. By contrast, at the beginning of the eighteenth century, compelled to find its principles of reason and rationality within the particular reality of the state, the art of government tried to derive its principles from a renewed vision of the seventeenth-century jurist founded in contract theory. Liberalism, the way Foucault understood it, is an incubator designed for the purpose of introducing the penal system. Therefore, the court, as a government institution and a state apparatus of power, serves as a host for introducing liberalism into popular practice. The state's ability to maintain hegemony, Foucault then concludes, is dependent on the general tactics of governmentality inscribed in a discursive matrix and complex networks of institutions and power relations: "Governmentality," in Graham Burchell, Colin Gordon, and Peter Miller, eds, *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991), 93–104.
58. Foucault, "Governmentality."
59. Mark Mazower, *No Enchanted Place, and Governing the World: History of an Idea* (New York: Penguin, 2012), 17.
60. Chatterjee, *Nationalist Thought*, preface.
61. Mazower, *No Enchanted Place*, 1–27.
62. Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (London: Verso, 2011), 78–85.
63. Mitchell, *Carbon Democracy*. Jan Christian Smuts was a member of the British Imperial War Cabinet under Winston Churchill and an instrumental field marshal in the British Army during both the First and the Second World Wars (a statue of him still stands in London's Parliament Square). David Lloyd George is considered to be one of the great reforming British Prime Ministers. See Mitchell, *Carbon Democracy*, 80. Also see Partha Chatterjee, *The Black Hole of Empire: History of a Global Practice of Power* (Princeton, NJ: Princeton University Press, 2002).
64. Mitchell, *Carbon Democracy*.
65. This, in part, is Joseph Massad's argument in his book, *Islam in Liberalism*. Massad argues that "Islam" was the ruse for the invention of liberal Ideology. Joseph Massad, *Islam in Liberalism* (Chicago and London: University of Chicago Press, 2015), 1, 316–317.
66. Nicos Poulantzas, *State, Power, Socialism* (London: Verso, 2000). 22.
67. Poulantzas, *State, Power, Socialism*.
68. *Orientalism* (New York: Vintage Books, 1978), 2. Also, see Edward W. Said, *Cultural Imperialism* (New York: Vintage Books, 1993), pp. xviii, 175.
69. Said, *Cultural Imperialism*, 175.
70. Insofar that the history of the Palestinian refugee is preceded by that of the European Jew, the Palestinian refugee can be understood as the "double other," who is the "other" in modern history of the refugee phenomena. Alas, that is not all that he is. The Palestinian refugee subject is also the "Jewish refugee's other," with the Israeli Jewish refugee turning colonizer when he took

the Palestinian's place in his land. Therefore, the Palestinian refugee subject does not undergo a single "othering" process, but also a second and a third process of "othering" where Palestinian refugees becomes the "other" "other(ed)" "other," where the Palestinian refugee becomes the Jewish refugee's other's "other." Elsewhere, I demonstrate how the pragmatically fluid process of production and reproduction of refugee subject's identity are politically engineered to produce a hierarchy in conditions of refugeehood where vulnerability is unequally dispersed. Any reasonable attempt to understand the conceptual boundaries of the right to self-determination therefore necessitates that we preserve an awareness of the politically induced reasons behind the materialization of particular refugee conditions, all while we account for historically relevant power dynamics that influence its production process.

71. Foucault explains to us how the process of imposing modern disciplines can operate as a method of division which facilitates power and domination: "Governmentality," 103. Also, Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Robert Hurley (New York: Pantheon, 1997).
72. Nicola Perugini, "Settler Colonial Inversions: Israel's 'Disengagement' and the Gush Katif 'Museum of Expulsion' in Jerusalem," *Settler Colonial Studies*, 9:1 (2018), 41–58.
73. <https://www.jewishvirtuallibrary.org/the-declaration-of-the-establishment-of-the-state-of-israel>.
74. Perugini, "Settler Colonial Inversions," 1.
75. Said, *Politics of Disposition*, p. xvii.
76. Poulantzas, *State, Power, Socialism*, 80–81.
77. Partha Chatterjee, "Empires, Nations, Peoples: The Imperial Prerogative and Colonial Exceptions," *Thesis Eleven*, 139:1 (2017), 84–96.
78. Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research*, 8:4 (2006), 388.
79. Wolfe, "Settler Colonialism."
80. Ruth Wilson Gilmore, "Race and Globalization," in R. J. Johnston, Peter J. Taylor, and Michael J. Watts, eds, *Geographies of Global Change: Remapping the World* (Hoboken, NJ: Wiley-Blackwell, 2002). Also, "Fatal Couplings of Power and Difference," *Professional Geographer*, 54 (n.d.).
81. Said, *Politics of Dispossession*, p. xvii.
82. Lauren Banko, *The Invention of Palestinian Citizenship, 1918–1947* (Edinburgh: Edinburgh University Press, 2016).
83. Cabinet meeting protocols, January 9, 1950, vol. 18, Israel State Archives. Cited in Tatour, *Citizenship as Domination*.
84. Asad, *Formation of the Secular*, 158.
85. Harry S. Truman: Point IV speech (January 20, 1949).
86. For more on the topic, see Jamal 'Abd al-Nasir, *Egypt's Liberation; The Philosophy of the Revolution* (Washington, DC: Public Affairs Press, 1955). Also, Rashid Khalidi and James Jankowski, "Arab Nationalism in Nasserism and in Egyptian State Policy, 1952–1958," in James Jankowski and Israel Gershoni, eds, *Rethinking Nationalism in the Arab Middle East* (New York: Columbia University Press, 1997), 150–168. Also see Reeva Simon and Muhammad Muslih, *The Origins of Arab Nationalism* (New York: Columbia University Press, 1992), 50–69.
87. N. H. Aruri, "Resistance and Repression: Political Prisoners in Israeli Occupied Territories," *Journal of Palestine Studies*, 7:4 (1978), 48–66 (accessed from <http://www.jstor.org/stable/2536296>). The right of resistance against colonial domination and occupation is indicated

and affirmed by international law. As a colonized population, Palestinian inhabitants are considered “protected persons” and the areas in which they live are “occupied” territories. This definition was affirmed per the provisions of Article 42 of the Hague Convention and Article 4 of the Fourth Geneva Convention. Article 42 of the Hague Convention applies to the Palestinians. It states: “A territory considered as occupied when it is placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”

88. Chatterjee, “Empires, Nations, Peoples.” Also, Partha Chatterjee, *The Nation and its Fragments* (Princeton, NJ: Princeton University Press, 1994).
89. Chatterjee, “Empires, Nations, Peoples,” and *The Nation*.
90. Said, *Politics of Dispossession*, p. xvi.
91. Samir Amin, *The Reawakening of the Arab World: Challenge and Change in the Aftermath of the Arab Spring* (New York: Monthly Review Press, 2012, 2016), Introduction.
92. Amin, *Reawakening*.
93. <https://www.merip.org/mer/mer186/interview-salim-tamari> (accessed December 8, 2019).
94. “Interview with Ahmad Saadat: Leading from Prison, Ending Negotiations, and Rebuilding the Resistance,” *Journal of Palestine Studies*, 43:4 (2014), 49–56.
95. Established in 1950, UNHCR is a United Nations programme with the mandate to protect refugees, forcibly displaced communities, and stateless people, and assist in their voluntary repatriation, local integration, or resettlement to a third country. The mission statement according to its website is as follows: “UNHCR, the UN Refugee Agency, is a global organization dedicated to saving lives, protecting rights and building a better future for refugees, forcibly displaced communities and stateless people.” For more details, see <http://www.unhcr.org/en-us/about-us.html>.
96. See Rashid I. Khalidi, “Observations on the Right of Return,” *Journal of Palestine Studies*, 21:2 (1992): 29–40 (www.jstor.org/stable/2537217). Jalal Al Hussein, “UNRWA and the Refugees: A Difficult But Lasting Marriage,” *Journal of Palestine Studies*, 40:1 (2010): 6–19. Jala al-Husseini, “UNRWA and the Palestinian Nation Building Process,” *Journal of Palestine Studies*, 29:2 (2000), 51–64. Julie Petet, *Landscape of Hope and Despair* (Philadelphia: University of Pennsylvania Press, 2005). Also, for or more on the origins of UNRWA and Cold War politics, see Loescher, *UNHCR and World Politics*. Also see Yves Besson. “UNRWA and its Role in Lebanon,” *Journal of Refugee Studies*, 10:3 (1997), 335–348, and Riccardo Bocco, “UNRWA and the Palestinian Refugees: A History within a History,” *Refugee Studies Quarterly*, 28:2 (2009), 229–252. For more, see UNRWA. UNRWA Report on Relief, Recovery and Reconstruction Framework 2008–2011, 2008. Also, UNRWA, United Nations Relief and Work Agency for Palestinian Refugees in the Near East, website reports. 2014–2016.
97. Al Hussein, “UNRWA and the Refugees.”
98. For a discussion on how international agencies on human rights were applied and adopted all over the world and how they translated to “local justice” and “law” despite the fact that they were removed from the indigenous settings where they continue to operate, see Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: Chicago University Press, 2006), 1.
99. Also see <https://www.nytimes.com/2018/08/31/us/politics/trump-unrwa-palestinians.html> and <https://www.meforum.org/articles/2018/trump-administration-implements-mef-plan-to-disman>. Also, <https://www.axios.com/scoop-us-freezes-funds-to-un-relief-agency-diplomats-say-1515262307-5f6b9d74-fb92-46d0-bc8b-a18d4a7b21e8.html>.
100. See <https://www.nytimes.com/2018/08/31/us/politics/trump-unrwa-palestinians.html>.

101. Mr Filippo Grandi is the high commissioner for the United Nations Refugee Agency. In June 2017, he was asked to comment on the record 65.6 million displaced population around the world. His response was that “the world seems to have become unable to make peace.” For full interview, see <http://www.bbc.com/news/world-40321287>.
102. Butler. *Frames*, 103.

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