Chaim Gans, *A Political Theory for the Jewish People* (Princeton: Princeton University Press, 2014), pp. 272

by Ian S. Lustick

In 2016 a manslaughter charge against a soldier who was videotaped killing an incapacitated Palestinian attacker in the occupied West Bank provoked public outrage, not against the murder, but against the idea that the soldier was being prosecuted. While the military defended its actions, condemnations of the proceedings were issued by Israel's top political leaders. The episode throws into high relief the effects on Israel of the prolonged occupation of the territories captured in 1967 and reinforces the urgency of Chaim Gans's book—a book based on the palpable sense that Israel teeters on the edge of a moral and political abyss.

Once upon a time Israel was a country that aspired to be a model for struggling peoples all over the world. Now, in many international polls, it finds itself rivaling North Korea, Iran, and Pakistan as the world's most hated state. In December 2016, not one country on the United Nations Security Council, including China and Russia, Japan, the United States, Britain, France, and New Zealand, was willing to accept its policies in the territory it captured in 1967.

As do most observers, Gans links Israel's crisis to the country's sustained oppression of Palestinians, and though he has not given up hope of an escape from quasi-pariah status, the chances for doing so, or the exact route to achieve that end, are not the objects of his book. He is rather engaged in a prior question. Notwithstanding the steep moral and political costs inflicted on others as a result of Israel's creation, and the costs it continues to impose by its policies toward Palestinians, is it nevertheless possible to treat the Zionist movement as just by imagining a plausible outcome of Israel's conflict with the Palestinian Arabs that would be both just and authentically Zionist?

Gans is engaged in a problem of moral and political philosophy. He begins with two main premises: 1) that Zionism, and the crisis of European Jews in the late 19th and early 20th century to which Zionism offered itself as the solution, brought Israel to its current state; and 2) that Zionism and the state it produced wreaked havoc upon the Palestinians—transforming them into an uprooted and stateless nation, oppressed and inspired by an exilic consciousness, and persecuted both in the lands of their diaspora and in Palestine itself. The

question he poses is whether it had to be this way. Gans finds this to be an immensely important question because if it had to be this way, then Zionism must be considered to be, and to have been, immoral. According to Gans, only if there existed an authentic *and* just version of Zionism that had a plausible path toward realization, can Zionism and the State of Israel qualify as a project that was not, and has not been, intrinsically evil.[1] The urgency of Gans's project stems from the implication that depending on how this question is answered, the State of Israel itself might not be deemed be worthy of support by moral beings.

To answer the question of whether Zionism (and Israel) could have been and can be "just," Gans is both constrained and guided by his liberalism. He issues clear warnings to his readers. If they do not share his commitments to liberal metaphysics then they will not be, and should not expect to be, persuaded by his arguments. In light of his liberal principles, the specific challenge he confronts is to assert the existence of plausible counterfactual histories of Zionism that feature the realization of the minimum requirements of Zionism in a manner justified by Rawlsian reasoning, i.e. justified by considering the welfare of all individuals, whether Jews or non-Jews, as equally valid indicators of the justice of a position or a policy or a movement.

I do not believe Gans succeeds in saving Zionism from perdition, though there may be other ways to do so. But the problem he poses is profoundly important and the intellectual machinery he constructs to support his effort is worthy of serious consideration. His most important move is a typology of three types of Zionism—proprietary, hierarchical, and egalitarian--each authentic but distinguished by the ground of justification each uses to infer and defend Zionist prerogatives in and over Palestine.

"Proprietary" Zionism asserts exclusive and absolute Jewish rights over the Land of Israel by virtue of the land's status as, in effect, the property of the Jewish people. Whether the deed to that property was issued by God or by history, the implication of a trans-historical and essentialist conception of Jewishness combined with the proprietary metaphor is that Jews, qua Jews, have the absolute and perpetual right to exclude non-Jews from using or even living in the land. Proprietary Zionism does not automatically entail expulsion and exclusion

[1] In fact, Gans's formulations vary somewhat. In places he argues as if the moral value of Zionism can be affirmed even if an ethically acceptable counterfactual outcome of Zionism cannot be considered "plausible," but only to be a 'conceptual possibility." (52)

of others, but refuses to consider continuous habitation by non-Jews in the Land of Israel to have any bearing on the prerogative of Jews to exclude them altogether. Gans acknowledges that this simple formula for the justification of Zionist claims over and in the territory of Palestine/the Land of Israel is the prevailing, common sense account for most Israeli Jews, most classical Zionist ideologues, the founders of the state, and, today, for most Israeli Jews. It is the formula used by most political parties in Israel and by government agencies responsible for *hasbara* (propaganda). The basic idea is expressed in the name itself "Land of Israel" (According to the Bible, God gives Jacob the name of "Israel" after a wrestling match between Jacob and an angel of the Lord.) It is also asserted in Israel's Declaration of Independence, which begins by declaring "The Land of Israel was the birthplace of the Jewish people." The text proceeds immediately to refer to the forcible exile of the Jews "from *their* land." (emphasis added)

Given the primordialist, solipsistic, and collectivist nature of proprietary Zionist arguments, it is a simple matter for Gans to reject it as a justification for Zionism incapable of passing any Rawlsian test and therefore inadequate for solving Gans's problem. Gans's treatment of "Hierarchical" Zionism is more complicated. He identifies it as a formula advanced by Israeli political theorists, jurists, and legal scholars, anxious to advertise Zionism as honoring liberal principles while granting privileges to Jews, qua Jews, with respect to rights in and over the country. Hierarchical Zionists forego any essentialist claim of a right that Jews, qua Jews, have over the Land of Israel as a result of an ancient or primordial deed-like attachment.

Gans explains hierarchical Zionism by citing one of its chief exponents—Ruth Gavison. In keeping with hard-edged Hobbesian "liberalism," Gavison imagines any piece of planetary geography as having been available, in principle, for any group of individuals. Having formed themselves into a nation, such a group can appropriate the territory necessary for the state that every similarly constituted nation deserves. On this account, the Land of Israel just happens to be the place, indeed the only place, that Jews, forming themselves into a modern nation in the late 19th and early 20th centuries, were able and could have been able to appropriate for this purpose. Having done so, in a world in which, in principle, any other group of individuals might have done the same, the Jews now have a right to establish a stratification of rights within "their" state so that Jews have more rights than non-Jews.

If the land had not been, and was not, inhabited by non-Jews, Gans might have found this "first come first served" principle as satisfying Rawlsian criteria. But since his liberalism requires him to ground all justifications in the fundamental equality of all individuals, he finds he must reject Hierarchical Zionism as inadequate to the task of offering a morally acceptable basis for establishing and maintaining a state for Jews (if not, strictly speaking, a "Jewish state"). For only if non-Jews living in the country have opportunities for the kind of national self-determination that Jews seek to enjoy via Zionism can the demands of Gans's liberalism be satisfied. Since Hierarchical Zionism refuses to accommodate the national self-determination of Palestinian Arabs living in the State of Israel, i.e. the 20% of Israeli citizens descended from the remnants of the Arab inhabitants who neither fled nor were expelled from the territory that became Israel in 1948, Gans rejects it, and with it the established "liberal" Israeli position, as a basis for considering the Zionist project as morally justifiable.

However, Gans advances an "egalitarian" version of Zionism which he argues does pass Rawlsian tests. According to Gans, Egalitarian Zionism, via a state whose citizens enjoyed equal rights, not only could have been (and could be) an authentic expression of Jewish national self-determination, but it also could have been realized. He also contends that such an outcome is still plausible enough to justify political action on its behalf.

What does Gans mean by Egalitarian Zionism? He means a Zionism that justifies itself with universal principles and does not assert rights for Jews or the Jewish nation that, as a result of their exercise, are denied to another nation. Gans convincingly argues that peoples, including the Jews, have rights to national self-determination, even if they do not fully conform to every aspect of an ideal story of self-determination based on constructing a national state over a territory that is the ground of the nation's culture and the home of most nationals. Having established Jews as eligible for national self-determination, he then must then contend that the Zionist project, including the State of Israel, could have been, and can be, realized without eliminating opportunities for equivalent forms of self-determination to others—specifically to the Palestinian Arabs.

Less persuasive than his argument for why Jews should be considered eligible for national self-determination, is a move he makes to establish equivalence between Jews and Arabs in Palestine. I refer to his distinction between "homeland groups" and "immigrant groups." Homeland groups, according to Gans, have privileges that immigrant groups, living in the same country, do not. In Canada,

he explains "Anglophones, the francophones, and the First Nations enjoy self-government rights." They are each "homeland groups." But "Jewish, Sikh, or Ukranian immigrants who live in Canada" do not have such rights. For his egalitarian principle to work in Palestine/the Land of Israel, so that Jews have the same rights to self-determination as Arabs living there, he must classify them both as "homeland groups." And he does. Gans argues that since Jews did at one time experience the country as their homeland, and have maintained an attachment to it, their migration to the country in the 19th and 20th centuries did not make them "immigrants." Instead, Jews deserve, along with Palestinians, "to be granted the privileges of self-determination within this country because both are homeland groups in it, each in its own way." (87)

The moral solution to the problem that Gans proceeds to imagine under the rubric of Egalitarian Zionism is familiar in most respects. Israel, a state with a majority of Jews, deserved to exist, and can still deserve to exist, within the 1949 armistice lines. Palestine, a state with a majority of Arabs, can and should be located within the West Bank and the Gaza Strip. There are two aspects to Gans's vision, however, that are somewhat unusual. First, although he says nothing about the "Arab" character of Palestine, he does suggest that Israel will not be a "Jewish state," per se, but a state marked by the demographic and therefore political predominance of Jews, but with equal rights and equal access to all resources. In other words, the State of Israel will be a state with a Jewish majority, but not a "Jewish state."[2] Second, Gans emphasizes that the Arab minority in Israel, since it is a part of a homeland people, must be granted the right to exercise national self-determination. In other words, in ways not clearly explained, each of the two national communities in the State of Israel will enjoy the country as their homeland and experience the state as their framework for national self-determination. Though Gans does not call the state "binational"--a term he seems to reserve for a "joint" Jewish-Palestinian Arab state in all the area between the river and the sea (87; 144)--he does not explicitly reject that label for the state within the 1949 lines that he advocates, and it is hard not to view it that way.

From a practical point of view these sorts of positions are very close to those advocated by the version of post-Zionism that imagines the present and future of Israel and its populations to be governed by their current needs and felt

[2] In seeming contradiction to this principle, Gans allows that should the Jewish (super) majority be threatened the state would be empowered to adjust immigration laws so as to bolster it. (217)

imperatives rather than by some combination of 19th or 20th century Zionist ideological shibboleths. But in line with the entire point of the book, Gans insists his vision is a Zionist one. "Unlike the post-Zionist writers, I believe the Zionist baby need not be thrown out along with the bathwater containing the metaphysical, historiographical, moral, constitutional, and legal filth added to it by the mainstream versions of Zionism." (13)

Despite such protestations, Gans's commitment to liberal moral principles makes it impossible to separate himself as categorically as he would like from the post-Zionists. That is because his ability to distinguish himself from the post-Zionists, whose views he takes to be a rejection of Israel's right to exist, rests upon highly problematic *empirical* judgments. The book, as I have said, is presented as an exercise in moral philosophy, and Gans is meticulous in the reasoning he uses to move from the requirements of justice to the judgment that outcomes consistent with Rawlsian liberalism were and are plausible enough that the basic moral foundation of the Zionist movement, and of the State of Israel, can be defended, despite the horrors that have been associated with them. However, a careful reading of the book reveals that he cannot establish this claim without asserting other claims about the world that do not and cannot stem from moral reasoning, or from any deductive logic. These *empirical* claims can only be defended on the basis of data combined with the validity of the theories used to extrapolate the past into the present or the present into the future.

A key element in his argument is that the "two state solution" still is feasible. It is the basic framework for the egalitarian Zionism that passes the Rawlsian test. But well-informed and sophisticated analysts of the current state of affairs with respect to the two state solution's prospects disagree as to whether that outcome is still plausible, or even possible. So when Gans rejects the "irreversibility" argument—that Israel can and will never withdraw from enough of the West Bank to allow for the establishment of a real Palestinian state--he can only do so by making a dramatic, problematic, and explicitly empirical claim.

> The concept of irreversibility in this context is not a natural or logical one but is rather a function of social, political, and moral cost. A computation of the political, social, and moral costs of accepting a single state in the current demographic situation, versus those of changing the demographic facts by establishing boundaries that will enable two states to exist, will, I am fairly

> sure, show that it will be a long time before the costs of establishing two states exceed those of a single state.[3] (137)

Just as significant, epistemologically, is Gans's implicit endorsement of a theory of politics whose credibility is unsupported and yet whose validity is crucial to the integrity of his argument. According to Gans, political change can be relied upon to be an "efficient" reflection of changing costs and benefits. (137; 264n) More grandiosely, Gans commits himself to highly problematic functionalist theories of state and national development that imagine the degree of justice present in a political system as determining its likely stability.(163) More generally, Gans's theory of politics imagines "[T]he life span of various social entities (as) determined by the degree of constancy of the values and needs they serve."(126)

Endorsement of this kind of *empirical* theory is important for Gans's argument because it allows him to assert that since a Jewish national state has secured its existence in the Land of Israel it must reflect genuine needs and a constant commitment to fulfilling those needs. The problem is that by relying on such far-reaching and highly disputable empirical claims Gans forces the reader who wishes to be persuaded by his argument, not only to accept Rawlsian moral principles, but also Gans's particular claims about how the social and political world operates.

At one point in his argument, at least, Gans acknowledges the dangerous implications of his reliance on these particular empirical theories. As noted, it is crucial for Gans that Zionism can be imagined to have acted in a way that would have met liberal criteria as "just." This entails a calculation of "harms," including those suffered by Palestinians, against the "benefits" accruing to Jews. Indeed Gans contends that, all things considered, the uprooting of 7/8ths of the pre-existing Arab population in the course of the establishment of the State of Israel, however, inefficient and sloppy it might have been, did result in a net positive because of the benefits to Jews. Such a calculation entails believing one can translate various kinds of psychological, material, physical, and economic trauma into a cardinal utility function. It also entails belief that one can accurately assess the likelihood of various counterfactual outcomes for Jews and Arabs had the war not occurred, or had it not unfolded with as drastic an outcome for the Arabs of Palestine. Such beliefs themselves can only be grounded on strong

[3] Emphasis added. Gans presents no data to support this claim, aside from citing an article by two well-known advocates of the two-state solution who say it is true. (264n)

convictions of the validity of the theories of war, psychology, politics, economics, and sociology that Gans used to make these calculations.

Gans admits that this part of his argument—the "argument from necessity…still requires much elaboration." (228) Admirably, he also notes the risk he takes by making it. For if the justness of Zionism must rely on a calculation of harms vs. goods, that means that by continuing or intensifying unjust policies Israel could come to have committed such a massive accumulation of injustices as to outweigh the all benefits attendant upon them. As Gans recognizes, according to the central logic of his argument, this would not only deprive contemporary Israel of its moral warrant, it would also make it impossible to treat Zionism itself as ever having been morally justified. As Gans puts it: "[S]some decades ago Israel began pursuing a policy that corrupts not only the justice of its present and future but also the justice of its past."(222)

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