

Nation-States and International Law: Israel's War on Gaza and the Illusion of Universal Human Rights

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Abstract

This article explores the frictions between national sovereignty and the universalization of human rights, highlighting the deep colonial roots and persistent coloniality within the nation-state system and international law. It critiques the liberal framework of nation-states that marginalize “non-nationals” while also perpetuating colonial relations and racial hierarchies through unequal integration into the nation-state system. The ongoing assault on Gaza starkly illustrates the violence inherent within the nation-state and points to the limitations of the current human rights framework. Advocating for a decolonial approach, the article argues that the violence in Palestine underscores the need to rethink and debate international law and human rights, expanding on decolonial scholarship to liberate these frameworks from their colonial, modern, and capitalist contexts.

Keywords: Palestinian Liberation; Israel; Gaza; Nationalism; International Law; Human Rights; Decolonization; Nation-states Regime; Postcolonial Cosmopolitanism

Introduction

The pronouncement by the International Court of Justice (ICJ) on January 27, 2024, mandating Israel to halt all genocidal actions brings both hope for universal justice¹ but also bitterness that the reality endured by Palestinians trapped in Gaza—subjected to continuous military assault and starvation—remains unchanged (Akram and Quigley 2024). While the ICJ lacks enforcement authority, the pressing question looms: Will the international

¹ The ICJ did not uphold South Africa's claim of definitional genocide but instead emphasized humanitarian aid, refraining from ordering an immediate ceasefire.

community honor the ICJ's ruling and take measures such as sanctions or boycotts against Israel, thereby bolstering the credibility and efficacy of international law?

In the face of overwhelming proof submitted by South Africa, along with consistent warnings from NGOs and international organizations such as Doctors without Borders, Human Rights Watch, the United Nations itself, the response from the US, the UK, Germany, Canada, and France, has been disappointingly passive. Concurrently, the US and Germany persist in providing military support to Israel and disseminating unverified claims without scrutiny. The US has maintained a hostile stance towards international judicial bodies, evident in its disdain for the International Criminal Court (ICC)² since the George W. Bush administration. Israel's response to the ICJ ruling is perhaps the most brazen and explicit undermining of international law. Israeli Defense Minister, Yoav Gallant, dismissed the decision with a snub phrase "Hague Schmague," while Benjamin Netanyahu has repeatedly rejected the legitimacy of the ICJ's ongoing hearing.

This case, however, stands most starkly when compared to the Western³ countries' reaction to Russia's full scale invasion of Ukraine in 2022. In October 2022, the president of the EU Commission rightfully decried the actions of the Russian military as war crimes, while the Joe Biden administration has ordered the US to share evidence of Russian war crimes to the ICC. By comparison, in the initial stages of Israel's offensive in Gaza, the Israeli defense minister imposed a comprehensive siege, depriving the population of essential resources such as electricity, water, food, and fuel, under the pretext of combating "human animals" (International Court of Justice 2023). Despite these severe conditions and explicit endorsement of war crimes, Western leaders exhibited a striking lack of concern for Palestinian civilians. Their unequivocal support for Israel's "right to self-defense,"⁴ without acknowledgment of the Palestinian plight for securing their right to self-determination as an occupied indigenous people under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (UN General Assembly 2007), reflects a hypocrisy in the

² The US and Israel are not signatories to the Rome Statute, which established the ICC, and therefore do not recognize its authority. Nevertheless, both Republican and Democratic administrations have backed the court in certain instances. The Biden administration in particular has acknowledged the court's crucial role in addressing offenses in Ukraine and Sudan (Human Rights Watch 2024).

³ We acknowledge the imprecision of terms like "the West" and "Western" but use them for analytical clarity. By "Western" attributes, we refer not to specific territorial sovereignties but to "the zone of being" (Fanon 2004) or the colonial powers that have historically established racial hierarchies and continue to exert dominance through neocolonial dependencies (Achiume 2019).

⁴ Antony Anghie (2005) argues that the language and legalization of "self-defense" is in fact a new instrument of imperialism. It is "the most problematic and delicate doctrine of international law, the one doctrine that is inherently connected with unilateral action. It is precisely through the doctrine of self-defense that the entire structure of the 'civilizing mission' is being recreated" (302).

application of international law and makes a mockery of the concept itself. Despite a persistent focus on Israel's right to self-defense in Western media, the attack on southern Israel on October 7, 2023, resulting in civilian casualties, is not an isolated event but a result of 75 years of Israeli occupation and settler colonialism.

The Western media's portrayal of the indiscriminate bombings in Gaza as justifiable actions reflects a deliberate myopia rooted in structural racism, which undervalues Palestinian lives compared to Israeli ones. Furthermore, the frequent portrayal of the Israeli-Palestinian "conflict" as a religious struggle, pitting Judaism against Islam, or as a confrontation between European-looking, democratic Israel and Islamic fundamentalism, reflects a narrative deeply rooted in Orientalist and colonialist perspectives. As Judith Butler (2016) writes, conflict often divides people into those whose lives are deemed "grievable" and those who are not. Such dehumanization becomes a justification for armed conflict, as those with different values or traditions are rendered less-than-human, making their lives expendable.

Contrary to this prevailing narrative, we assert that the so-called "conflict" is a national liberation movement confronting a settler-colonial regime which can be regarded as a continuation of anti-colonial struggles and decolonial worldmaking rooted in principles of non-domination (Getachew 2019). This perspective challenges the overly simplistic and/or religious interpretation and instead delves into the complex dynamics involving nationalism, colonial history, and the ramifications of the global system of nation-states. Consequently, the article prompts a rigorous analysis of the existing world order, emphasizing that the ongoing friction between the nation-state framework and universal human rights, as seen in the Palestinian struggle, stems from a limited liberal perspective on decolonization. This perspective confines decolonization to a mere transition from empire to nation-state, aligning with European standards and perpetuating unequal integration. We argue from a decolonial perspective that the violence in Palestine underscores the need to rethink and debate international law and human rights, expanding on decolonial scholarship to liberate these frameworks from their colonial, modern, and capitalist contexts.

The Nation-state and Challenges for Stateless Peoples and Unrecognized Nations

The Rise of Nationalism and the Development of Nation-states

Benedict Anderson (2016, 7) suggests that the focal point of modern nation-states is the creation of a shared cultural identity, whereas nationalism is used as a tool to bring people together as an "imagined community" united by common beliefs, values, and traditions.

Ernest Gellner (2006, 35) further argues that nationalism is rooted in the belief that the nation and the state should be interconnected, suggesting that nationalism is “the organization of human groups into large, centrally educated, culturally homogeneous units.” In other words, the unit, which is the nation-state, shall have a common culture, language, and history. To create the perception of the nation-state as timeless and essentialist, nationalists often engage in the selective appropriation of historical events to cultivate the idea that individuals of a specific group, faith, or ideology inherently belong to that nation-state (Balibar and Wallerstein 1991). Karl Marx and Friedrich Engels (2014) recognized the nation-state as a social construct intricately linked to the global capitalist system, hinging upon “a universal interdependence of nations.” Similarly, Anderson (2016) writes that capitalism and the nation-state developed simultaneously. Print capitalism made it possible for people to think of themselves in profoundly new ways and produced new ideas of simultaneity.

The genesis of modern nation-states, as we perceive them today, can be traced back to the French Revolution and the subsequent decline of Western empires. Hannah Arendt (2017) observed a paradox inherent in the French Revolution: the emancipated peasant classes aimed to overthrow the feudal system and fought for equal social and economic rights, but it was the capitalist middle class and bourgeoisie that ultimately shaped the course of the Revolution. The bourgeoisie envisioned the nation as a tool to consolidate political power and create a stable environment for economic capitalist expansion.

As we will argue later in this article, the nation-state did not emerge as a challenging social structure to empire, nor was it a political formation born out of proletariat struggles against capitalist exploitation. Politically, the nation-state was an extension of the previous imperial structures and logic, as well as a stable, cohesive economic structure facilitating the circulation and expansion of capital. The nation, or *la République*, according to the French had a moral responsibility to “spread the benefits of the French civilization,” and its colonies were “providers of possessions for the sake of the nation” and a “*force noire*” protecting the inhabitants of France (Arendt 2017, 167).

The newly formed European nation-states subsequently expanded their long-reaching arms into the rest of the world. They pillaged and dominated so-called “empty lands” and their “backward” inhabitants and used the plundered wealth to build strong states with powerful bureaucracies and democratic politics in Europe. The Berlin Conference of 1884-85 is a notorious example of pillaging under the guise of international law and a “civilizing mission,” where England, France, and Germany reconciled their European tensions by dividing the Congo Basin and making territorial claims in Africa (Anghie 2005).

It is in the context of 18th- and 19th-century European developments of constructing homogeneous national identities without clear sovereign limits (Arendt 2017; Anderson 2016) that Zionism emerged as a political doctrine aiming to secularize Judaism and transform it from a religious into a national identity (Erakat 2019). This movement coincided with the development of Palestinian national sentiments under the influence of a changing Ottoman Empire. In the 19th century, the surge of nationalist ideas reached the Southern Levant and the land of Palestine. For over four centuries, Palestine was part of the vast Ottoman Empire and was characterized by a predominantly rural landscape with not only a thriving agricultural industry but also vibrant urban centers, encompassing Jews, Christians, and Muslims (Pappe 2017; Khalidi 2020). Initially, Palestinians exhibited loyalty to the Ottoman Empire, valuing it as the protector of significant religious sites and regional heritage. However, with the dissipation of secular and liberal Western Enlightenment ideas, particularly the ideology of nationalism, the Ottoman Empire's seeming cosmopolitanism was challenged, exposing and exacerbating existing religious inequalities and transforming them into national conflicts⁵ (Levene 1998).

European nation-states, built on racial hierarchies and colonial exploitation, perceived spreading the nation-state model globally as a moral duty. However, this system was not a new approach to creating egalitarian societies but rather an extension of the imperial system, using bureaucratic means to further imperial ambitions. The perpetuation of European exceptionalism, as Rashid Khalidi (2020) argues, led to the belief that Middle Eastern⁶ societies lagged Western countries as they could not match the European ideal of the nation-state, a continued colonial and oriental form of thinking. Western powers and Zionists portrayed the region as lacking a common national identity, dismissing it as merely religious groups which became even more evident under the British Mandate established in the Southern Levant in 1922. In the context of Palestine, the rise of nationalist ideologies and Enlightenment-era racialized ideas, particularly Zionism, led to significant shifts in identity and the development of new nationalist lexicons (Shohat 2017). Khalidi (2020)

⁵ The Ottoman Empire managed multiethnicity by favoring Muslims, while Christians and Jews were tolerated and guaranteed protection through the *millet* system and the imposition of the *jizya* tax. The 1869 Nationality Law, rather than ensuring equality, exposed and exacerbated inequalities between the *umma* (Muslim community) and the *millets* (other religious communities). Toward the end of the Ottoman period, and continuing into the era of its successor state, Turkey, many demographic reforms aimed at Turkification, particularly in Anatolia, led to displacement, deportations, and massacres amounting to genocide. For more on Ottoman management of ethnic and linguistic diversity, see Benjamin Braude (2014). For more on the impacts of Ottoman policies of demographic transformation, see Taner Akçam (2012) and Mark Levene (1998).

⁶ Following Juan M. Liotta and Amadeo Szpiga (2022, 164), we point out that the “Middle East” is an Anglo-centric term referring to the westernmost region of Asia, including the peoples of the Maghreb, Bilad al-Sham, and Mashriq.

argues that Palestinian national identity has evolved through regional and global changes and, while influenced by Zionism, cannot be reduced to simply its opposition. Instead, it represents a distinct and complex response to broader historical forces.

Stateless people and the creation of “the other”

Sivamohan Valluvan (2019, 35) notes that “the identification of significant others is necessary for a nation to meaningfully acquire a sense of selfhood.” Arendt (2017), drawing from her experience as a stateless Jewish person, emphasized that national emancipation often entails the continuous identification and exclusion of “the other”⁷—a process she personally experienced when she was stripped of her German citizenship in Nazi-controlled Germany. Her reflections on the nation and national destiny, influenced by her historical context and the need to address rampant European anti-Semitism, highlight how the Nazi regime justified the exclusion of “undesirable” groups under the guise of national destiny and security (Arendt 2017, 351). European states similarly used the pretext of “national security” to collaborate with the Gestapo against Jews, Romani people, Slavs, and refugees from Russia, Armenia, Hungary, Germany, and Spain, thereby perpetuating a narrative of exclusion (Arendt 1994; 2017).

The Soviet regime initially viewed the national question as crucial for achieving internationalism and global communism (Brubaker 1996; Bonnell 1996; Plokhy 2017). However, under Joseph Stalin, the Soviet Union perpetuated the anti-Semitic legacy of the Russian Empire, with Stalin arguing that Ashkenazi Jews did not qualify as a “nationality” due to their lack of a distinct land and language⁸. The early Zionists took Stalin’s position seriously when developing their vision for the Jewish nation-state and aimed to create “an

⁷ Arendt’s deliberations on nationalism and the inherent violence of the nation-state are deeply influenced by her experience as a European Jew who was othered and stripped of her European citizenship. Her writings, however, did not extend to the Palestinian context, which she treated as an exceptional case. Despite her criticisms of the concept of a “Jewish state”, Arendt advocated for a Jewish homeland in Palestine to assert Jewish agency, identity, and political consciousness, as reflected in her *Jewish Writings* (Arendt 2009). While her work offers valuable insights into the nation-state’s paradoxes, it also reveals limitations and inherent contradictions, particularly her Eurocentric and myopic perspective on Palestine. See Raz-Krakotzkin (2011), Jacobson (2013), and Robaszkiewicz and Weinman (2023) for more critical analyses of Arendt’s work.

⁸ Stalin expanded the USSR into a federation of “ethnicities”, each with assigned territories based on the perceived maturity of their national consciousness. Jewish people, like elsewhere in Europe, found themselves a minority tied by religion and cultural customs, but with no territory that could fulfill the criteria of a homeland. The Soviet regime sought to resolve the issue of a Jewish Socialist Republic by establishing the Jewish Autonomous Region of Birobidzhan, near the Russia-China border, with Yiddish as its primary language. However, this initiative failed to attract significant Jewish settlement (Pinkus 1988). Notably, before the First World War, the Bundist movement also aimed to combat European hostility towards Jews. Unlike Zionists, Bundists advocated for socialism, believed Jews could be non-religious, and sought cultural autonomy within other states. After the Second World War, the movement was suppressed, with many members imprisoned or killed (Pappe 2017). Returning Jews faced discrimination, as they found their homes and jobs occupied by hostile inhabitants and were denied access to higher education, making them second-class citizens once again (Gitelman 2012).

ancient collective imagery” that would forge new immigrants into one unified people (Sand 2020). To achieve this, secular Ashkenazi Jews in Europe leveraged Judaism in creating a Jewish *national* identity interlinked with the state of Israel. As Zvi Gitelman (2012) claims, Zionists promoted the idea that Jewish people, like other nations, should have a state of their own, ideally in the biblical land of Palestine. David Ben Gurion utilized the Bible “as the proof of its claim to the land of Israel” (Sand 2020, 109), which ultimately strengthened the narrative of Jewish isolationism in European society. To further legitimize the imagined national identity of Israeli people and the use of the Old Testament as a secular national text, the Jewish bourgeois leadership revived the Hebrew language, a language that had not been spoken on a daily basis for centuries and urged Israelis to adopt ancient biblical Hebrew names (Sand 2020).

To conclude, this section has detailed how the contemporary nation-state system, originally rooted in European colonial ambitions and Enlightenment ideas, has transformed into an instrument of nationalization, structured around division, categorization, and territorial boundaries. Its inherent violence is bound to produce new marginalized groups such as minorities, refugees, migrants, and stateless, who live in constant precarity. Through their very movement across imaginary borders, they enter the frame of lawlessness as strangers or aliens, “non-nationals” subjected to state violence through assimilation, eradication of difference and distinct identities, segregation through exile, or even physical elimination (Bauman 1995). The institution of apartheid is the starkest measure of differentiating between “nationals” and “others” (Pappe 2017), categorizing identities through legal means and determining their access to political rights, employment and even one’s right to live.

The current situation in Gaza, driven by the rhetoric of the far-right Netanyahu government, highlights the contradictions in Israel’s founding myth as a “people without a land” building a democracy, juxtaposed with the realities of settler colonialism and the Nakba. This dynamic suggests that Israel’s inherent structure as a settler state, and ethno-national narrative that its survival depends on the expulsion or annihilation of Palestinians, will perpetuate brutal containment and violence following what Patrick Wolfe (2006) referred to as “the logic of the elimination of the native.” This narrative, often overlooked if not tacitly supported by many Western governments, exposes the inherent violence at the core of nation-state formation. It also highlights the inadequacy of the international law system in protecting vulnerable populations and holding aggressors accountable. International law has been co-opted as a tool by global superpowers to serve their interests, applied selectively to

condemn certain actions, such as Russia's war crimes in Ukraine, while conveniently disregarding others, like Israel's actions in Gaza. This leaves Palestinians in a precarious position, underscoring the need to examine the historical roots of international law within the context of the nation-state system and its Eurocentric foundations.

The Global System of Nation-states: Colonial Legacies and the International Legal System

International law, though not entirely absent before the World Wars, was a concept confined by the sovereignty principle⁹ and primarily applicable to interactions among European superpowers. At its core, international law bears the indelible marks of colonial thinking and Eurocentrism, as it was conceived and wielded by colonial powers to regulate trade, secure property rights of European colonizers, dispossess and maintain dominion over indigenous peoples, territories, and resources. Even after the collapse of the last empires and the emergence of new nation-states, international law continues to govern a world order premised on neocolonial imperialism, even if formal imperialism has been outlawed. It continues to advantage the economic and political interests of the Global North, dispossess and exploit people in the Global South, regulate refugee flows, and de-regulate capital flows. In other words, the political organization of the world might have changed, but the logic of exploitation hasn't. Thus, even after political decolonization, international law operates within a geopolitical order of capitalist, racist, and patriarchal power relations that consolidate European coloniality (Liotta and Szpiga 2022).

The international legal system and its colonial legacies

International law is part of the complex of the dominant bourgeois ideology of European "modernity" (Mayblin and Turner 2021), interdependent to slavery and colonialism which allowed European empires to concentrate wealth and through that, fund the Industrial Revolution and global trade expansion (Rodney 2018). Tendayi Achiume (2019) writes that European colonizers employed ambiguous conceptualizations of property and sovereignty to consolidate their rule, dispossess native peoples, and justify their civilizing missions overseas. Since the colonized peoples lacked (or were denied) both, they were

⁹ Anghie (2005) explains that the sovereignty doctrine emerged out of the colonial encounter to create a legal system that would account for the relations between European and non-European worlds in the colonial confrontation. The sovereignty doctrine is understood as "the complex of rules deciding what entities are sovereign, and the powers and limits of sovereignty"(Anghie 2005, 16) It confines international law by establishing which entities are recognized as sovereign and delineating the scope and limitations of their sovereignty.

discarded as uncivilized and unfit to be part of and shape the international legal framework. As Edward Said (2003, 36) put it:

There are Westerners, and there are Orientals. The former dominate; the latter must be dominated, which means having their land occupied, their internal affairs rigidly controlled, their blood and treasure put at the disposal of one or another Western power.

Boaventura de Sousa Santos (2015) refers to these colonial origins of international law as characterized by an abyssal line that divides Europeaness and the respect for the rule of law from the colonial territories characterized by lawlessness and violence. Immanuel Kant's thinking is reflected in this dichotomy and has been crucial to the very foundations of international law (Anghie 2005). Kant posited that the ownership of property and possessions signified progress in societal development. He perceived objects labeled as "unowned" as a tumultuous "state of nature" and a threat to the establishment of stable states. Thus, the process of stabilizing property laws and cultivating a framework of "domestic civilization" became an essential precursor to the formulation of civil laws (Gani 2017). This domestic transformation, premised on the universality of private and public law principles and the belief that property appropriation equated progress, ultimately paved the way for the creation of international laws governing relations between states.

The work of decolonial, critical scholars such as Aníbal Quijano and Michael Ennis (2000), Walter D. Mignolo (2017), and Walter Rodney (2022) has been essential in exposing the historical context within which international law was formulated to justify colonial rule and legitimize European property rights in the colonies. Mignolo (2017), for instance, has distinguished between "colonization" as a historical series of events and "coloniality" which has to do with epistemologies, ways of thinking, and a formal system of political domination. Coloniality, he asserts produced colonialism. And thus, the abolition of colonialism did not abolish coloniality, which continues to govern the relationship between states and international law to this day. From a decolonial Marxist perspective, colonialism and imperialism are derivatives of dominant capitalist class interests. According to Rodney (2022), these "economic command centers" are exploiting the Global South to accumulate wealth while establishing international institutions and treaties that would maintain the status quo through political domination.

The perpetuation of coloniality within international law and the establishment of a human rights regime is most vivid in the political reorganization of the world after the First World War, a topic which we turn to next.

From minority rights to human rights

With the collapse of the Ottoman and Habsburg Empires, the victors of the First World War established the League of Nations to maintain global peace and cooperation. Importantly, it established the principle of self-determination concerning the states that emerged in the Middle East and Eastern and Central Europe, and its appendix, the Minorities Treaties, aimed to protect the vast populations that found themselves as minorities in the newly established states.

Many scholars (for example, Erakat 2019, Moses, Duranti, and Burke 2020, Pappe 2017) have pointed out that the League of Nations never intended to establish a new world order where all the newly formed states were equals alongside the descendants of former great empires but rather saw them as autonomous territories that had to be administered and controlled by the “great nations” to mimic the experience of European nation-states. The Mandate system, for instance, established by the British and French, had the task of ensuring that the Western model of law and social organization was followed in the new territories. It did so through the identification of a hierarchy of Mandate classes—A, B, and C—to evaluate the proximity of each society to the European social, economic, and political ideals that would then be shepherded through “administrative advice and assistance... until such time as they are able to stand alone and join the international system” (Erakat 2019, 35). In essence, the League of Nations and its Mandate system aimed to continue colonial penetration and control. As such, Lord Balfour, when responding to Japanese proposals for a racial equality clause at the 1919 Versailles Conference, stated that it was “true that all men of a particular nation are created equal, but not that a man in Central Africa was created equal to a European” (Ibhawoh 2020, 45).

From the beginning, the British Mandate saw Palestine as an exception due to its significance to the three monotheistic religions, but most importantly because of the Zionist imperative of establishing a Jewish homeland. The settler colonial project of Israel is thus interlinked with the historical context of the inter-war years and of the establishment of the state system guided by the League of Nations, which saw homogenous nation-states as prerequisites for global peace and according to which Jewish people were a “problem” in all European states.

In theory, international law and the Minority Treaties should have served as safeguards to address this inherent flaw within the state system. As a first international mechanism recognizing minorities and their vulnerabilities, these treaties were imposed on the newly formed nation-states in Eastern Europe and the Middle East as two major empires,

the Austro-Hungarian and Ottoman, collapsed. The victors of the First World War did not ratify the Minority Treaties themselves. Interestingly, the Minorities Treaties' most significant impact was to institutionalize and consolidate what had been practiced and implied within the nation-state system: it recognized that minorities not only exist within nation-states but that also they need an additional body, outside of the nation-state to guarantee their rights and protection (Arendt 2017).

Dirk A. Moses, Marco Duranti, and Roland Burke (2020) argue that in the inter-war period, there was no contradiction between human rights and the expulsion of minorities because rights were guaranteed by states and only as a last resort by organizations like the United Nations:

The first priority was to establish the modern, democratic, and homogeneous nation-state dedicated to human rights. The expelled minorities' temporary suffering was for the greater good and, besides, they were collectively guilty in this case. (Moses, Duranti and Burke 2020, 167)

Furthermore, homogeneity of populations was seen as a prerequisite for "development" and "reform", and thus the resettlement of minorities was a necessary and acceptable price to pay to achieve long-term stability and ensure that new settlers would contribute to maintaining the bourgeois system of production. The most notorious example of the time was the population exchange between Greeks and Turks, with over a million Greek Orthodox driven out of Western Turkey and around 350,000 Muslims forced to leave Greece for Turkey (Mazower 1997). What is essential in these events, argue Moses, Duranti, and Burke (2020), is the discourse accompanying them, namely that these transfers were packaged in a narrative about human rights, modernity, and the role of settler projects in development. The Greek refugees brought to Macedonia, for instance, were believed to have increased the productivity of the land, and due to the homogeneity achieved through transfers, there was less conflict. Contrary to modern perceptions, human rights language at the time justified practices like population transfers and partition and regarded them as "humane" solutions as opposed to nationality conflicts (Halper 2021). If people would move to their respective homogenous groups, there would be no more warfare and conflict (Moses, Duranti, and Burke 2020). Such discourses, which marked the transition from minority rights to human rights, served as inspiration and justification for violence in the postwar world. Population transfers thus became humanitarian ideals and solutions as opposed to genocide.

This logic was used extensively to justify the movement of Palestinians and the institution of Israel. René Cassin, the French lawyer instrumental in the formulation of the

UN's Universal Declaration of Human Rights (UDHR), has also led the French Alliance *Israélite Universelle* campaign for the UN's partition of Palestine in 1947 and argued for the case of the Jewish settlers:

'The democratic hope in the Near East can only progress under the influence of the Jewish ambition in Palestine,' he wrote. The establishment of Israel, Cassin was suggesting, would at once alleviate the Jewish refugee crisis in Europe and inaugurate a human rights order in a part of the world run by what he called the 'thieving and bloody indigenous masters' of Jewish minorities in the Middle East, namely the Arabs whom he saw as oppressors of Jewish minorities in North Africa. (Moses, Duranti, and Burke 2020, 169)

The genesis of the UN itself traces back to the aftermath of the Second World War, emerging as a response to the League of Nations' inadequacies in preserving global peace. Further, the UDHR, adopted in 1948, under the auspices of the newly formed UN, was created as a direct response to the "barbarous acts" that had "outraged the conscience of mankind" during the tumultuous Second World War (D'Souza 2018). The colonized populations viewed the adoption of the UDHR with skepticism and suspicion, perceiving it as a response to white suffering during the Second World War while colonial atrocities continued to be disregarded.

It is particularly the deeply rooted colonial logic and instruments at the core of the human rights system and international law that have eroded trust in international supranational regulating bodies and solidified the belief that only national self-determination can solve the issues of oppression, inequality, statelessness, and injustice. This brings us to our next argument: in our current world order, shaped by the events of the past century, nation-states have emerged as institutions that perpetuate global inequalities and "postcolonial racisms" (Sharma 2022) under the guise of guaranteeing human rights. Moreover, human rights are still advocated from a liberal perspective, confined within the frameworks of state and self-governance, making them realizable only as the rights of citizens.

Revisiting human rights: Decolonial perspectives on sovereignty and justice

The concept of human rights is fraught with ambiguity, as it is deeply intertwined with the political structures of nation-states. While theoretically universal, human rights are applied and enforced in ways heavily influenced by the coloniality of power, where the oppressive structures of capitalism, colonialism, and patriarchy continue to draw the color line (De Genova 2017) and maintain the "colonial matrix of power" (Mignolo 2017). Citizenship, whether seen as a nation-state institution organizing disparities in wealth and power or as a means of making political claims, normalizes what Nandita Sharma (2022) calls

“postcolonial racisms”. By grouping people under citizenship, it brings them under the control of nation-states, creating a form of global apartheid where powerful entities like the US can act with impunity while stateless and occupied peoples lack access to justice. Considering the ongoing genocide of Palestinians and the apparent incapability of international law and human rights discourses to transcend the coloniality of power, we argue for revisiting decolonial accounts of self-determination and human rights to emancipate them from their colonial, modern, and capitalist contexts.

Moses, Duranti, and Burke (2020) contend that national sovereignty poses a significant obstacle to the universalization of human rights, particularly evident in the insistence on non-interference in domestic affairs, which states frequently employ to shield themselves from international scrutiny and intervention. Bonny Ibhawoh (2020) points out that in the instance of Tunisia’s independence proposed by Arab and Asian states based on the principle of self-determination, the UN rejected it as an interference in France’s affairs. Similarly, it was through the defense of sovereignty, that South Africa could maintain its apartheid regime and resist external pressure for so long. Ibhawoh (2020) writes:

The South African statesman Jan Smuts, who introduced the concept of ‘human rights’ into the UN Charter, remained a firm believer in white supremacy and could not countenance extending the human rights principles he so vigorously championed at the UN to the nonwhite populations of his own country. Delegates of the white minority South African government at the UN strongly opposed discussions about racial discrimination in their country, seeing it an undue interference in their internal affairs and a violation of sovereignty. (Ibhawoh 2020, 44)

The idea of national sovereignty remains a powerful rationale for contemporary warfare, perpetuating the marginalization and even annihilation of those labeled as “the other,” including refugees or migrants, and contributing to ongoing human rights violations (for example, Bauman 1995; De Genova 2017; Sharma 2022). As Arendt (2017) argued, political sovereignty is most absolute in dealing with emigration, naturalization, expulsion, and nationality. Human rights thus need to be understood in their historical context and their transformation throughout different historical events. From the French Revolution’s Declaration of the Rights of Man, human rights have been formulated ambiguously as they speak of the rights of “man” and of the rights of the “citizen.” In the former context, they imply a certain universality and belongingness based on one’s humanity. The second meaning, on the other hand, is much more restrictive, limiting rights to people belonging to a state. As Arendt (2017) writes, human rights in theory concern an “abstract” human being existing nowhere, whilst in practice one’s birth, identity, and existence in a specific social

order is paramount in determining how and when these rights are applied and who is the authority enforcing them. These tensions have marked the ambiguity and confusion of human rights ever since, particularly given the absence of any global entity that could govern these rights on a supranational level (Santos 2015, Erakat 2019). The issue of human rights became tightly linked with statehood, as demonstrated during the Holocaust when the Nazi regime revoked the legal status and rights of Jewish people, stripping them of citizenship before challenging their right to live. As Arendt (2017, 387) noted, “a condition of complete rightlessness was created before the right to live was challenged.”

In addressing the tragic events of the Second World War, dominant political narratives have neglected the decolonial viewpoint which uncovers the deep-rooted violence embedded in nation-states and highlights the striking similarities to the colonial atrocities inflicted upon colonized peoples throughout history. Instead, the neo-imperial global order perpetuates colonial relations and racial hierarchies through unequal integration into the nation-state system (Getachew 2019). With the creation and support of Israel, European powers could absolve themselves of guilt for the Second World War (Pappe 2017), while simultaneously consolidating a neocolonial world order where the West shapes other cultures and regions but remains untouched by them (El-Tayeb 2011). The recognition of “the Jewish state” from the Mandate period extended European imperial domination and continued the “civilizing mission” in the region, with the Zionist project initially serving Britain’s foreign objectives (Pappe 2017, Halper 2021) and later advancing US geopolitical interests, as Israel evolved into a “subimperial power deploying anti-Arab and anti-Muslim racism to bolster both national and geopolitical agendas” (Kumar 2022, 27). Ihab Shalbak (2023, 498) further argues that Israel presented itself as the restorer of human rights “through the establishment of national rights” for Jewish people. This narrative justified settlers’ role in “civilizing” the Holy Land, bringing law and order to the region, while Palestinians through their very existence embodied a violation of the law and a transgression on settler sovereignty. In this context, any anticolonial struggle by the Palestinians is delegitimized as an act of “terrorism” (Anghie 2005).

The establishment of Israel as a Jewish state did not resolve the issue of minorities or statelessness either. Instead, it gave rise to a new category of refugees and stateless individuals—the Palestinians. This reality is poignantly illustrated in Ghassan Kanafani’s *Men in the Sun*, where three Palestinian men, deemed stateless and stripped of basic human rights, seek a better life in Kuwait. Forced to hide in a water tank of a smuggler’s truck at border posts, their journey ends in tragedy when they suffocate in the tank due to a delay at the

Kuwaiti border. Upon discovering their lifeless bodies, the smuggler discards them in a nearby garbage dump after stripping the men of their valuables. The story ends with the haunting question: “Why didn’t you bang the sides of the tank?” (Kanafani 1998, 74). Bashir Abu-Manneh (2016) writes that this tragic ending captures the plight of Palestinians, left without any hope of returning to their homes as they are pushed out of the liberal nation-state system. As Michael Ignatieff (2011, 15) emphasizes, “nationalism solves the human rights problems of the victorious national groups while producing new victim groups, whose human rights situation is made worse”.

Lynn Hunt (2007) argues that it took two devastating World Wars to shatter the notion that nation-states alone would be able to safeguard the rights of their national people. However, recent examples show ongoing exclusionary practices that limit the scope of rights to those recognized as citizens: the far-right Israeli government has proposed stripping Israeli citizenship from those “supporting terrorism,” defined as showing solidarity with the Palestinian cause (The Times of Israel 2023). Similarly, the German government has debated whether German citizenship should be contingent upon recognizing the state of Israel (Thureau 2023). These positions shed light on the settler colonial context where Israel is a member of the international community that can bear and enforce law, while Palestinians are disqualified from claiming these rights. As Shalbak (2023) stresses, despite Palestinians’ efforts to appeal to the discourse and framework of human rights and international law to resist settler colonial violence, they face a geopolitical reality that either excludes them from the international community or includes them only as objects of governance.

We argue that this ongoing friction between the nation-state framework and the principle of universal human rights, evident in the ongoing genocide of Palestinians, stems from a liberal account of decolonization that limits it to a political transition from empire to nation-state. This perspective frames the global order’s expansion around nation-states, extending from the European core to former colonies in Africa, Asia, and Latin America. As a result, political decolonization is viewed merely as an extension of European standards of international law and political organization. Post-colonial nation-states, shaped and constructed through international orders and treaties, experience unequal integration in the international system (Getachew 2019).

In contrast, thinkers like Frantz Fanon (2004) argue that the antidote to colonialism lies in developing national consciousness and sovereignty. Fanon (2004, 199) posits that:

National consciousness, which is not nationalism, is the only thing that will give us an international dimension... It is at the heart of national consciousness that international

consciousness lives and grows. And this two-fold emerging is ultimately the source of all culture.

He views the nation not as oppressive or nationalist but as a space for class struggle that promotes secular democratic values, ensuring equal rights for all based on their humanity.

Similarly, decolonial thinkers, such as Nnamdi Azikiwe, W.E.B. Du Bois, and Kwame Nkrumah sought to reinvent self-determination beyond its association with the nation-state, advocating for juridical, political, and economic institutions that ensure non-domination. They argued that true decolonization necessitates not only autonomy from alien rule but also a restructuring of international law, economic relations, and political inequities to secure conditions of non-domination (Getachew 2019; Prashad 2016). Writing from a decolonial Marxist perspective, Rodney (2022) highlights that political decolonization has not significantly altered the material and cultural conditions of life, nor the social and political structures sustaining global capitalism. In the case of Palestine, Rodney's (2022) concept of "economic command centers" is particularly evident in the establishment of the Palestinian Authority (PA), where Palestinian sovereignty was compromised to align with the prevailing system of production. The PA's authority was limited by conditions imposed by Israel and its allies, restricting its jurisdiction over the Occupied West Bank and Gaza (Pace and Sen, 2019), thus creating a condition of perpetual dependence and interference from neo-colonial structures. Liotta and Szpiga (2022) further argue that while human rights, as discourse and institutional networks, are useful in resisting various forms of violence, they cannot dismantle the oppressive structures of capitalism, colonialism, and patriarchy. The inclusion and integration of historically marginalized groups into the framework of law and rights, while necessary, does not end structural oppression.

We thus argue from a decolonial position that, as the violence in Palestine shows, international law and rights framework need to be (re)examined and debated to include and expand on decolonial scholarship and emancipate human rights from their colonial, modern, and capitalist contexts. The Palestinian pursuit of self-determination responds to their political and juridical erasure since the British Mandate (Shalbak 2023; Erakat 2019). For Palestinians, self-determination is essential in overcoming their status as humanitarian subjects under international law and affirming their existence as a historical and political entity. Edward Said articulated this anticolonial pursuit of self-determination, stating "we [Palestinians] are in a unique position of being a people whose enemies say that we don't exist. So for us the concept of 'rights' means the right to exist as a people, as a collective

whole body, rather than as a collection of refugees, stateless people, citizens of other countries” (Said 1993, as cited in Shalbak 2023, 508).

Conclusion

Throughout this article, we have argued that there is a complex and often contradictory interplay between national sovereignty and the universalization of human rights. We have exposed the deep colonial roots of the nation-state system and the persistent coloniality that governs international law and the human rights regime. The nation-state, we conclude, is a paradoxical construction that, on the one hand, tends to marginalize and even annihilate “non-nationals,” while, on the other hand, it has become the hegemonic vehicle for securing the rights of minorities through their pursuit of self-determination.

As the Israeli violence against Palestinians consistently unfolds within a condition of domination that perpetuates neocolonial imperialism, there seems to be an irreconcilable space between Israeli settler sovereignty and Palestinian popular sovereignty and aspirations for self-determination. If the former is recognized and protected by the international community as a bearer and enforcer of law, Palestinians are acknowledged within international law only as humanitarian subjects or refugees (Shalbak 2023). When Palestinians resist their oppression and challenge the settler colonial arrangement, they are labeled as “terrorists,” disruptors of the international order (Roy 2007).

This inequity, we argue, is due to the incomplete process of decolonization advanced by anticolonial nationalists in the last century that sought not only to ensure their right to self-determination and emancipation from alien rule, but also “worldmaking” with the principle of non-domination at its core. The current world order organized as nation-states continues to operate within the logics of colonialism and imperialism, placing the institutions and discourse of human rights within these structures of hierarchical power and thus rendering them incapable of addressing structural oppressions. Thus, achieving statehood does not ensure liberation, but rather creates new forms of domination that can deny citizens their political and economic rights (Farsakh 2021).

As Pappe (2017, 138) asserts, “peace is not a matter of demographic change, nor a redrawing of maps: it is the elimination of the racist ideologies and apartheid policies.” It is precisely from this perspective that we are tempted to question the viability of a two-state solution as the only possibility to stop the cycle of violence in Palestine. A two-state solution is intrinsic to imperial strategies of dividing and conquering. It only solidifies the belief that Palestinians and Jews cannot live side by side, that Muslims and Christians cannot find

common ground, and that these two peoples pertain to different civilizations that demand their own territories and states to feel safe and enjoy political rights. Leila Farsakh's (2021) edited volume brings together Palestinian scholars who envision Palestinian liberation beyond the territorial confines of sovereignty. These decolonial perspectives include viewing the state as a social relation of power within a global capitalist reality, thus rethinking the state to be accountable to the individual and collective rights of both Jews and Palestinians. Other scholars (for example, Ilan Pappé, Yousef Munayyer) emphasize that Palestinian liberation is intertwined with other global intersectional struggles for justice and freedom, including indigenous movements in the Americas and Australia, refugee struggles against European border regimes, and the “Arab Spring” uprisings against oppressive Arab regimes.

Rodney's (2022) assertion that all ideologies in a class society are class ideologies aligns with the Popular Front for the Liberation of Palestine's (PFLP) perspective, as articulated in their *Strategy for the Liberation of Palestine*. The PFLP (2017, 85) emphasizes that national liberation movements exist in a context of class struggle and react to the material conditions and neo-colonial structures of domination:

The Palestine and Arab liberation movement does not move in a vacuum. It lives and fights in the midst of specific world circumstances that affect and react with it, and all this will determine our fate. The international ground on which national liberation movements move has always been, and will remain, a basic factor in determining peoples' destinies.

Although further research is needed to identify the concrete legal and political actions required to create a decolonial entity, every scenario must begin with dismantling settler colonialism and Zionist imperialism, revoking colonial privileges, addressing historical injustices, and fostering reconciliation. As Pappé (2017, 141) has pointed out already a few years back:

The exceptionalism enjoyed by Israel, and before that by the Zionist movement, makes a mockery of any Western critique of human rights abuses in the Arab world. Any discussion of the abuse of the Palestinians' human rights needs to include an understanding of the inevitable outcome of settler colonial projects such as Zionism. The Jewish settlers are now an organic and integral part of the land. They cannot, and will not, be removed. They should be part of the future, but not on the basis of the constant oppression and dispossession of the local Palestinians.

Since October 7, 2023, Palestinians in both Gaza and the Occupied West Bank have been “banging on the walls of the tank” without any immediate action from the international community. Their cry for help should resonate as our collective cry, highlighting the brutal reality of an imperialist system that deems certain lives expendable. We must continuously

return to, revise, and build on ideas of decolonial and internationalist thinkers to imagine a different organization of the world; one that manages to reconcile with and overcome the sins of European colonialism, capitalist imperialism, and militant nationalism. Franz Fanon put it brilliantly:

Let us not pay tribute to Europe by creating states, institutions and societies which draw their inspiration from her. Humanity is waiting for something other from us than such an imitation, which would be almost an obscene caricature. If we want to turn Africa into a new Europe, and America into a new Europe, then let us leave the destiny of our countries to Europeans. They will know how to do it better than the most gifted among us. But if we want humanity to advance a step farther, if we want to bring it up to a different level than that which Europe has shown it, then we must invent and we must make discoveries. If we wish to live up to our peoples' expectations, we must seek the response elsewhere than in Europe. (As cited in Erakat 2019, 21-22).

The case of Palestine starkly illustrates the paradox of the human rights regime, leaving us at a critical juncture: to continue to undermine international law or to envision and work towards a world where all humans are afforded rights by virtue of their humanity. Adom Getachew (2019) proposes that postcolonial cosmopolitanism, centered on the principles of non-domination and the equal moral worth of all individuals rather than nation-states governed by international law, could be more effective in restraining state power. This decolonial vision can start with an immediate and fundamental reform of the international legal and rights system: the active and equitable involvement of formerly colonized nations to ensure that international law is no longer merely an extension of colonial powers but is reshaped collectively by all global stakeholders. In other words, the international legal system needs to do what it claims to be doing.

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