

**Annexation and the Political Rights Objection:
Defending Sari Nusseibeh's Heretical Proposal for Israel/Palestine**

Irfan Khawaja
Felician College

Khawajai@felician.edu

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1. Introduction

Sari Nusseibeh, a Palestinian philosopher and political activist, is the President of al-Quds University in Arab East Jerusalem, and the author most recently of the controversial book, *What Is a Palestinian State Worth?*¹ Nusseibeh's book begins with his now-notorious proposal to have Israel annex the West Bank and Gaza, granting the Palestinians living there the status of "second-class citizens" of Israel, and requiring that, for the foreseeable future, these Palestinians give up on the expectation of political rights, settling instead for protection of their civil rights.

Very roughly speaking, as Nusseibeh conceives of it, *civil rights* include a set of negative rights (life, liberty, property, contract, conscience, movement, self-defense) plus a set of positive rights (to due process, health care, social security). Describing them in terms of their function, we might call these the *rights of self-sustenance*. *Political rights* include rights to participate as full citizens in the activities of government at the national level, whether to vote or hold national political office, electoral or otherwise, and presumably the right to engage in military service. Again, described functionally, we might call these the *rights of self-government*. The heretical proposal, then, calls for Israel to end its policy of occupation and settlement, but calls on Palestinians to give up on the idea of full citizenship, whether in a Palestinian state, or in Israel. In other words, it gives moral priority to rights of self-sustenance, and suggests that rights of self-government are, under current conditions, dispensable.

¹ Sari Nusseibeh, *What Is a Palestinian State Worth?* (Cambridge, MA: Harvard University Press, 2011).

Most (indeed, almost all) of the English-language commentary on Nusseibeh's book has been negative. Left-leaning critics have accused Nusseibeh of acquiescence in a form of colonial subjection for the Palestinians; right-leaning critics have accused him of covert designs against the integrity and security of the State of Israel.² To my mind, however, many of Nusseibeh's critics have misunderstood or misrepresented his views, and no one (including Nusseibeh) has put the proposal in its most defensible form. My aim here is not to defend or endorse the proposal as such, but to clarify its structure and rationale, and to defend it against one common criticism of it, which I call *the political rights objection*. The objection asserts that there is something radically defective, on moral and/or political grounds, with any policy proposal that involves the trade of political for civil rights. On this view, the Palestinians are morally obliged to demand both sorts of rights without concession or compromise. I argue in what follows that this objection fails.

2. The logic of the proposal

2.1 *Two-state solutions*

There are many different ways of describing the nature of the Arab/Israeli conflict, and the possible solutions to it. No description is entirely neutral, and any description can be accused of omitting or distorting something. In any case, simplifying a bit—and deliberately avoiding talk

² For criticism from the left, see David Shulman, "Israel and Palestine: Breaking the Silence" *New York Review of Books* (Feb. 24, 2011); Tom H., "What Is a Sari Nusseibeh For?" *Jadaliyya Magazine*, March 2011; and Avner Inbar and Assaf Sharon, "A Too Modest Proposal? A Palestinian Peacemaker Gives Up on Politics," *Boston Review*, July-August 2011.

For criticism from the right, see Peter Berkowitz, "One State?" *Jewish Review of Books*, January 2011; Elliott Abrams, "A Peaceful Palestinian's Perplexing Plan," *Commentary*, January 2011, pp. 41-44; Adam Kirsch, "Cost Analysis," *Tablet Magazine*, February 8, 2011, and Gil Troy, "The Palestinian Gandhi?" *Jerusalem Post Magazine*, February 11, 2011.

See also the symposium on the book in the online journal *Reason Papers* vol. 34, no. 2 (Fall 2012). The present essay borrows from and expands on my essay in that symposium.

of “binationalism”—I think of solutions to the conflict as dividing essentially two ways, between two-state solutions and one-state solutions.

A large, well-informed, well-intentioned, and politically powerful consensus of opinion holds (and since 1988 has held), that the two-state solution is the only feasible resolution to the dispute. Nusseibeh, by contrast, belongs to the small minority of well-informed and presumably well-intentioned observers that rejects the two-state solution.³ A review of the (relatively small) critical literature on Nusseibeh’s book/proposal suggests that many critics have been content to dismiss his proposal as unserious and possibly ill-intentioned simply because it falls so far outside of the mainstream of informed opinion on the subject. Indeed, the proposal has been dismissed as literally insane. Confronted with disagreement this stark, it’s worth stepping back, laying out the structure of Nusseibeh’s proposal, and contrasting it with the alternatives.

Logically speaking, Nusseibeh’s proposal takes the form of a disjunctive syllogism. It identifies the available options, clarifies them, implicitly weighs the pros and cons of each, and then rejects all but one option. An argument by disjunctive syllogism can only be judged sound if the disjuncts identified in its first premise are exclusive and exhaustive, and if the negations of all but the winning option in the second premise are themselves conclusive. Applied to the present context, Nusseibeh’s argument is sound if and only if he starts with an exclusive and exhaustive list of solutions to the Arab/Israeli conflict, and then manages to reject all but his own proposal by arguing that every other proposal suffers from some fatal flaw(s) not applicable to his own (and that his own suffers from no comparable flaw). Put in this way, the standard for the success of Nusseibeh’s proposal is very high, and is not one that the book was intended to

³ For an excellent overview, see Ghada Karmi, “The One-State Solution: An Alternative Vision for Israeli-Palestinian Peace,” *Journal of Palestine Studies* 40, no. 2 (Winter 2011), pp. 62-76.

satisfy. Nor is it one that I can satisfy here. My aim here is merely to bring us *closer* to satisfaction of that standard.

Consider two-state solutions as a type. Two state solutions create two distinct, exclusive, sovereign states in the relevant area, each with an explicitly ethno-nationalist basis, so that each state is essentially a state of ethno-national compatriots, linked together by a deep sense of ethno-nationalist belonging. In fact, this appeal to ethno-national self-determination is both the main selling point of a two-state solution, and its normative justification, so that to understand two-state solutions, we first have to understand that prior concept, *ethno-national self-determination*.

According to a classic formulation, the right of national self-determination is the view that individual identity is constituted by group identity, so that the groups that constitute our identities have the right to determine the character of our social and economic environment, our fortunes, and the course of our development as members of the group. *Ethno-national self-determination* (nearly a redundancy) is thus the view that the bearers of the right of self-determination are ethnicities, that is, groups united in a somewhat vague and overlapping way by culture, language, and/or a common genetic ancestry.⁴

In the context of the Arab/Israeli dispute, both “Jews” and “Palestinians” are supposed to qualify as ethnicities, so that the right of ethno-national self-determination becomes the view that Jewish self-expression requires specifically Jewish self-determination in a Jewish state, whereas Palestinian self-expression requires specifically Palestinian self-government in a Palestinian state. On this view, Jewish well-being is not possible in a state which grants Palestinians equal political rights with Jews, for all bets are off if Palestinians come to outnumber and outvote Jews

⁴ Cf. Avishai Margalit and Joseph Raz, “National Self-Determination,” *The Journal of Philosophy* 87, no. 9 (September 1990). See also Yael Tamir, *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1993). For discussion of Zionist self-determination, see Arthur Hertzberg, *The Zionist Idea: A Historical Analysis and Reader* (Jewish Publication Society, 1997), and Yoram Hazony, *The Jewish State: The Struggle for Israel’s Soul* (Basic, 2000). For Palestinian self-determination, see Edward Said, *The Question of Palestine* (Vintage, 1992).

in their own state. Meanwhile, Palestinian well-being is not possible as long as state power rests in Jewish hands, for all bets are off if Palestinians are deprived of the right or power to exercise self-determination *as* Palestinians. Indeed, on some versions of this view, Palestinian political rights are a threat to Zionist ideals even if Palestinians are merely second-class citizens of a Jewish state, and Palestinians without political rights are merely “colonial subjects” no matter how assiduously their civil rights are protected, and regardless of what those civil rights are.

There are, of course, huge political and other obstacles to realizing a two-state solution, but in the eyes of its proponents, if we could somehow surmount those obstacles, the two-state solution would get each side what it needs.⁵ Israelis would get political recognition for a Jewish state from Palestinians, and with it, peace. Palestinians would at last get a state of their own, by implication recognition of its Palestinian character, peace, and control of “their own” resources. On an optimistic version of this scenario, the two states remain distinct but form a kind of federation, perhaps with Jordan as a third partner, and reap the benefits of globalization in roughly the way that Canada, the United States, and Mexico have done under the North American Free Trade Agreement (NAFTA).⁶

The two-state solution certainly has something to be said for it, but there is a *prima facie* case to be made against it. By a “*prima facie*” case in this context, I mean, essentially, a quick laundry list of problems that defenders of the two-state solution would have to solve to make that

⁵ See, e.g., Mark Heller and Sari Nusseibeh, *No Trumpets, No Drums: A Two-State Settlement of the Israeli-Palestinian Conflict* (Hill and Wang, 1991); Dennis Ross, *The Missing Peace: The Inside Story of the Fight for Middle East Peace* (New York: Farrar, Straus, and Giroux, 2004).

⁶ See, e.g., Bernard Avishai, *The Hebrew Republic: How Secular Democracy and Global Enterprise Will Bring Peace to Israel at Last* (New York: Houghton Mifflin Harcourt, 2008). Ironically, Avishai cites the RAND Corporation’s Palestine Initiative in defense of a two-state solution, then subjects it to sarcastic criticisms that make one wonder about the reason for his confidence in it (pp. 244-46). But for a comprehensive critique of one-state solutions, see Hussein Ibish, *What’s Wrong with the One-State Agenda?* (American Task Force on Palestine, 2009). For the RAND study, go to <http://www.rand.org/pubs/monographs/MG146-1.html>.

solution viable.⁷ So I don't mean to be making a knock-down case against the two-state solution. I focus here on the Palestinian side of the problem.

For one thing, a Palestinian state would be obliged to govern two geographically non-contiguous and demographically distinct wings, the West Bank and Gaza, each separated from the other by Israel, and each governed (for the foreseeable future) by different Palestinian coalitions. Geography is part of the problem here, but the deeper problem is that non-contiguity is likely to foster political disunity of a militantly ideological nature, disunity subversive of a nascent state. Fatah and Hamas have so far been unable to achieve real political unity, and it's likely that too much divides them to permit them successfully to govern a single state.⁸ If we combine *this* kind of conflict with geographic non-contiguity, we arguably get a recipe for state failure.

The most prominent twentieth-century example of a geographically divided power-sharing arrangement—East and West Pakistan (1947-1971)—indicates the hazards of the idea, as does a less precise but more regionally proximate example, that of the United Arab Republic (1958-1961). The first led to outright catastrophe, the second to collapse and failure. The analogies between Pakistan and Palestine, and the UAR and Palestine, are not exact. But if the hazards of a divided Palestine are analogous to those of a divided Pakistan or divided UAR, we can infer that analogous failure is on the horizon for a divided Palestinian state. Beyond this, a look at the recent trajectory of the Arab Spring (as well as the very similar “Black Coat” movement in Pakistan)—that is, the contrast between the optimistic prognostications of 2010 (or 2007) and the realities of 2013—suggests that it is a serious mistake to think that political Islam

⁷ A fuller account would have to deal more seriously with the material discussed in note 6 above.

⁸ I acknowledge here the celebrated Fatah-Hamas accord of May 2011, but in my view, the accord cannot supersede the fundamental ideological and moral differences between Fatah and Hamas. I discuss this issue below.

is compatible with secularism, or that Islamist rejectionism is compatible with pragmatic accommodation.⁹

Second, a Palestinian state would have to exercise its sovereignty over substantial parts of the West Bank, but as Nusseibeh has argued, the task of governing these areas has by now been rendered either extremely difficult or impossible by the Israeli settlement enterprise.

SPIEGEL: Mr Nusseibeh, in your new book you claim that it is too late for a Palestinian state. Why?

Nusseibeh: You are sitting in my office in Beit Hanina in a place called East Jerusalem. Now, you look to the west from here and you see parts of this Arab neighborhood that are severed from us. If you look to the east over there, you find Pisgat Zeev, an enormous Israeli settlement which is part of Jerusalem. Further east there is Maale Adumim, an even larger settlement of Israelis in what is called East Jerusalem. There is no East Jerusalem any more. East Jerusalem has already become a misnomer. But a Palestinian state without East Jerusalem as its capital is a no-no.¹⁰

Nusseibeh's point, however, is more general than this. The point is that much of the West Bank has now been fragmented by Israeli settlements. So a would-be Palestinian state would, in effect, face an analogue of the same "divided state" problem I just described, but face it *within* its eastern wing.

Call this the "Swiss-cheese" problem.¹¹ It's been argued that the Swiss-cheese problem is resolvable by some combination of land swaps and evacuation of the settlements. When Israel

⁹ The literature is too large to survey, but see Sadek J. Al Azm, "The Arab Spring: 'Why Exactly at this Time?'" *Reason Papers* 33 (Fall 2011), and Khalil Ahmad, "Letters from Lahore: Osama bin Laden, 'Internal Sovereignty', and the Black Coat Movement," *Reason Papers* 34, vol. 1 (Fall 2012). In retrospect, Al Azm's hopes for a free, secular Syria seem overly sanguine. Meanwhile, Ahmad's depiction of the "black coat" movement vividly conveys secular Pakistanis' disappointment with (and frank alarm at) it.

¹⁰ "A Palestinian Take on the Mideast Conflict: 'A Two-State Solution Is a Fantasy,'" An interview with Sari Nusseibeh, *Der Spiegel* (Feb. 21, 2012). Not having seen or experienced what Nusseibeh is referring to myself, I more or less take his testimony for granted, but would welcome counter-testimony.

¹¹ For further discussion, see Idith Zertal and Akiva Eldar, *Lords of the Land: The War for Israel's Settlements in the Occupied Territories, 1967-2007* (New York: Nation Books, 2007). See also the reports of B'Tselem, *Land Grab: Israel's Settlement Policy in the West Bank* (2002) and *By Hook and by Crook: Israeli Settlement Policy in the West*

evacuated Gaza in 2005, after all, the Gazan version of this problem was solved by uprooting and evacuating the Jewish settlements there. The difference, however, is that a full evacuation was feasible in Gaza because the Gazan settlements were much smaller and less settled than their West Bank counterparts. It is improbable to suppose that the West Bank settlements can be uprooted and evacuated as “cleanly” as were the Gazan settlements (and “clean” is misleading even in that case). The attempt to do so by force might well lead to civil war.¹² So either Palestinian sovereignty over the West Bank is unfeasible, or its feasibility turns on options that may produce war. Meanwhile, Israel has refused to accept a full settlement freeze, and the US is unwilling to support one. The more the Israelis build, the less likely a full evacuation; but the smaller and less thorough the evacuation, the less feasible a Palestinian state.

Third, it simply is not obvious that the existence of a specifically Palestinian state would benefit Palestinians—or, at least, benefit secular, upwardly mobile, socially tolerant, educated, and cosmopolitan Palestinians who want the freedom to live lives of their own, unconstrained by theocratic (or nationalist) authority. Suppose on liberal grounds that the legitimacy of a state is gauged by the degree to which it secures its denizens’ equal liberty.¹³ Now consider that in a Palestinian state, Fatah faces Hamas without further political allies (like the Israeli left or center), and Hamas endorses an ideology incompatible with equal liberty. It is hard, even on the most optimistic picture of Fatah’s political prospects and commitment to liberalism, to see why life in such a state would be desirable to anyone who desires equal liberty. A Palestinian state that

Bank (2010). Though the Zertal-Eldar book has been criticized, I rely on it here less for its specific calculations than for the general point it makes.

¹² In fact, this eventuality is made more probable by the sheer fact of the Gaza evacuation. The Gaza evacuation created political uproar in Israel (and even to some extent in certain quarters in the U.S.), it required compensation of the settlers by the Israeli government, and it led to the Hamas takeover of Gaza, which itself included a mini-war with Fatah, and an ongoing war of attrition with Israel. If a sufficient number of Israelis fear a similar outcome of a settlement evacuation on the West Bank, civil war seems a real eventuality.

¹³ See Nusseibeh, *Palestinian State*, ch. 3, citing Rawls on equal liberty.

comes to resemble contemporary Egypt, Algeria, Tunisia, Mali, Pakistan, Afghanistan, Iran, Saudi Arabia, or an Islamicized Syria does not really seem like one worth having. Though I cannot speak with great confidence here, I am inclined to believe that whatever the debilities of life as an Arab citizen of Israel, very few Arab Israelis would be interested in trading life in Israel for life under a Palestinian state simply *because* it's a Palestinian state.¹⁴

This last objection raises questions about the nature of a state worth having. It thereby gets us to the most fundamental normative issue at stake, namely, the legitimacy or attractiveness of ethno-nationalist self-determination as a moral or political ideal. Defenders of ethno-national self-determination insist that the political conception they defend is one safely constrained by a conception of liberal rights and limited government. But in that case, we would expect them to make reference to some clear and determinate account of the function and limits of the state, use this account as a constraint on state power, and explain why its supplementation by ethno-nationalism was necessary. In fact, the (English-language philosophical) literature on national self-determination doesn't take this form. It begins with an essentially self-standing conception of national self-determination and of the ethnicities that are its bearers, offers what appear like relatively *pro forma* assurances about respect for liberal rights and limited government, and then proceeds to work out the details of the self-determinationist project.¹⁵

¹⁴ The point is made by Avishai in *Hebrew Republic*, ch. 5, esp. pp. 203-207.

¹⁵ See, e.g., Margalit and Raz, "National Self-Determination"; Tamir, *Liberal Nationalism*; Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon, 1991), *Multicultural Citizenship* (Oxford, 1995), *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford, 2001), *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford, 2007).

For dissenting views (none of which, in my view, states the relevant issues sharply enough), see Jeremy Waldron, "Minority Cultures and the Cosmopolitan Alternative," *University of Michigan Journal of Law Reform* vol. 25 (1992), pp. 751-93; Nathan Glazer, "Individual Rights Against Group Rights," *Ethnic Dilemmas: 1964-1982* (Harvard, 1983), and Chandran Kukathas, "Are There Any Cultural Rights?" *Political Theory* vol. 20 (1992), pp. 105-39. The latter three pieces are reprinted in abridged form in Will Kymlicka ed., *The Rights of Minority Cultures* (Oxford, 1997).

This approach has particularly problematic implications in the Arab/Israeli case. The Israeli settlement enterprise is arguably a paradigmatic expression of Zionist self-determination, but it systematically violates Palestinian rights.¹⁶ An Islamicized Palestinian state is a probable outcome of Palestinian national self-determination, but it would systematically violate the rights of everyone who lives under it. If the ideal of national self-determination is to be constrained by liberal rights, its defenders need to explain what relation the right of self-determination bears to the rights of self-sustenance with which I opened this paper.

Suppose that I am a Palestinian who prizes rights of self-sustenance *over* rights of self-governance. I don't care *who* governs me. There are simply things in life I would like to *do*, and that I would like my rulers to allow me to do in freedom. Suppose that given this set of preferences, I would rather live as a second-class Israeli citizen than as a full citizen of a Palestinian state. If I think I have a right to do this, then my conception of my rights flatly conflicts with the right of self-determination, and what we have here is a conflict of *rights* that is not resolved by vague assurances that liberal rights are protected by an ethno-nationalist state. *Ex hypothesi*, I don't want to live in such a state. I want to be free to speak, act, move, and trade as an individual without coercive interference *by* such a state (or any state). A state that infringes on these rights is not one I can regard as worth living in. It's not clear what the defenders of the right of self-determination intend to say to such a person. The assumption seems to be that as a

¹⁶ See, e.g., Bernard Avishai, *The Tragedy of Zionism: Revolution and Democracy in the Land of Israel* (New York: Farrar, Straus, and Giroux, 1985). The second part of the book is tellingly called "The Contradictions of Self-Determination."

Palestinian, my identity has been fixed by *being a Palestinian*.¹⁷ But what if I don't see it that way? And why should I?¹⁸

The two-state solution, then, faces both problems of implementation and problems of justification. Without suggesting that the *prima facie* argument against it is conclusive, I think it's fair to say that unless rebutted, it pushes us into consideration of some version of a one-state solution.

2.2 *One-state solutions*

So let's consider one-state solutions. One possibility here is to resurrect the old one-state schemes that were espoused by Palestinian anti-Zionists before the Tunis Declaration of 1988 (and were espoused at one time by Nusseibeh himself).¹⁹ On one version of this view, Israel annexes the West Bank and/or Gaza, granting all of the Palestinians living there both civil and political rights on par with Israel's own citizens. The result is an Israel which is "a state of all of its citizens," Jewish, Palestinian, and otherwise.

Attractive as this may sound in the abstract (to non-Zionist ears, anyway), the full and immediate enfranchisement of the Palestinians is not only unacceptable to Israeli Jews, but

¹⁷ Cf. Nusseibeh, *Palestinian State*, ch. 4, invoking Amin Maalouf's *In the Name of Identity: Violence and the Need to Belong* (Penguin, 2003).

¹⁸ I can't resist some personal anecdotes here: (1) On my last trip to Pakistan (January 2012), I was startled by how many of my peers regretted the partition of India and Pakistan, and regretted the very existence of Pakistan, suggesting that they wished that the India/Pakistan border either didn't exist, or could turn into some equivalent of the Canada/US border. (2) Meanwhile, Pakistani-Canadian relatives of mine who live on the Canada/US border (near Vancouver) tell me that they treat the border essentially as an inconvenience, and cross it every few weeks to do ordinary shopping, or for recreation. (3) At the same time, many of my Pakistani relatives have settled outside of Pakistan—in the UAE, in Kuwait, South Africa, the UK, US, or Canada—so that their supposedly 'Pakistani' identities have hybridized or even withered away. (4) There is a large Palestinian community in Paterson, New Jersey near Felician College, where I teach. Many of the Palestinian students I teach from this community see themselves primarily as Americans (or even more narrowly, as New Jerseyans), not as members of the Palestinian diaspora. I would be curious to know whether there are analogues of these attitudes among Palestinians.

¹⁹ The proposal is described in Sari Nusseibeh (with Anthony David), *Once Upon a Country: A Palestinian Life* (New York: Farrar, Straus, and Giroux, 2007), pp. 239-45.

problematic even from a secular non-Israeli/non-Zionist perspective. The problem becomes clear by reflecting on the place of Islamic fundamentalism in Palestinian politics. A one-state solution gives full political rights to all citizens of an Israeli state, including the Palestinians of the West Bank and Gaza, but one can't expect Israel to give political rights (e.g., the vote, political power, access to military power) to people sworn to destroy the state that awards those rights—and Palestine's Islamists have sworn just that.²⁰ But neither can Palestine's non-Islamists expect their civil rights to be respected by such a state.

Hamas's Covenant of 1988 makes absolutely explicit its desire for the destruction of Israel by force, the treatment of Palestine as a perpetual Islamic *waqf*, and the imposition on its population of a theocracy. It is tempting to treat the Covenant as "mere propaganda," or mere "public relations," but it seems to me that such gambits fall directly into a fatal and inescapable dilemma. The Covenant begins very solemnly with an invocation of the name of God, and continues throughout by citing the Qur'an and various *ahadith*. Either the Covenant's authors (and those who accept it) sincerely mean this invocation, or they do not. If they sincerely mean it, their endorsement of it is obviously incompatible with citizenship in Israel (or any rights-respecting regime, including a Palestinian one). If they do not mean it, they are lying in the name of God. Neither option is compatible with the requirements of citizenship in a rights-respecting nation. And there is no other option.²¹

²⁰ See "The Covenant of the Islamic Resistance Movement," August 18, 1988.

²¹ A 2009 *New York Times* with Khaled Meshal illustrates the difficulties of downplaying the Covenant: "The most important thing," he says, "is what Hamas is doing and the policies it is adopting today. The world must deal with what Hamas is practicing today. Hamas has accepted the national reconciliation document. It has accepted a Palestinian state on the 1967 borders including East Jerusalem, dismantling settlements, and the right of return based on a long term truce. Hamas has represented a clear political program through a unity government. This is Hamas's program regardless of the historic documents. Hamas has offered a vision. Therefore, it's not logical for the international community to get stuck on sentences written 20 years ago. It's not logical for the international community to judge Hamas based on these sentences and stay silent when Israel destroys and kills our people." I agree that Israeli rights violations should be met with protest, but I cannot accept the rest of Meshal's reasoning. (1)

This brings us to the possibility of what might be called a graduated one-state solution. On this view, as remarked above, Israel annexes the Palestinian territories, giving (those) Palestinians the choice of becoming second-class citizens of Israel with civil but not political rights. Conceived in this way, a graduated one-state solution has to be sufficiently better for Palestinians than the status quo in order to motivate them to take it, and sufficiently more likely to succeed than any other option to motivate Palestinians to forego the others. It also has to be sufficiently respectful of some reasonable conception of Israeli security to re-assure Israelis that their rights will be respected, and (for whatever it's worth) sufficiently respectful of the Jewish character of Israel as not to require its immediate dismantlement. Nor can it require literal allegiance by non-Jews to the idea of a specifically Jewish state.²²

I think of the mechanics of the proposal as follows.²³ Though the informal version of the proposal comes from a book written by a Palestinian academic, the formal version of the proposal would have to come from the State of Israel. Two basic principles underlie the application of the proposal. (1) It presupposes verifiable acceptance by those who accept it of the

If the Covenant is of so little importance, then there should be no difficulty in renouncing it. Meshal asserts its unimportance but is silent on renunciation. (2) It is worth asking whether a covenant sworn in God's name can be regarded as unimportant. Surely the point of invoking God's name was not just to confer importance, but to put the document's binding force in God's hands. In that case, it cannot be unilaterally rescinded without divine permission. But Meshal does not claim to have such permission. (3) If Meshal regards the Covenant as mere words, he gives us reason to regard his statements of Hamas's current position as mere words, to be superseded by the political requirements of the moment. In that case, his claims are literally self-contradictory. (4) What he says in the passage is itself factually disputable. (5) If Hamas regards its own Covenant as so unimportant, it will have difficulty persuading the Israelis of the binding force of any peace agreement it signs. For that very reason, one can legitimately wonder whether Hamas is interested in signing one. For the interview, see "Transcript: Interview with Khaled Meshal of Hamas," *New York Times*, May 5, 2009, <http://www.nytimes.com/2009/05/05/world/middleeast/05Meshal-transcript.html>. In other contexts, I have heard Palestinian-Americans argue that we should endorse Hamas's political vision because it provides Palestinians with essential services. But the Israelis provide their Arab citizens with essential services; if accepting those services is compatible with rejecting Israel's self-conception as a Jewish state, something similar may be said of Hamas.

²² Here I agree almost word for word with Sari Nusseibeh, "Why Israel Can't Be a Jewish State," *Al Jazeera*, Sept. 30, 2011. See also Raef Zreik, "Why a Jewish State Now?" *Journal of Palestine Studies* 40, no. 3 (Spring 2011).

²³ Hence these are *my* views, not necessarily Nusseibeh's.

legitimacy of the State of Israel. (2) It involves no relinquishing of any concession previously granted by the State of Israel.

Those two principles have the following implications.

(a) The proposal has no application to Arab citizens of Israel. It leaves them in the same situation as the one they currently occupy, as full citizens, without prejudice to future improvement of their condition.

(b) The proposal has no application to Palestinians under Hamas government until such time as Hamas verifiably accepts the legitimacy of the State of Israel.

(c) The proposal applies directly and immediately to Palestinians under the Fatah government. We may divide these Palestinians (in principle)²⁴ into two categories: those who wish to vote on the proposal, and those who don't wish to be part of a vote on it. Suppose then that there is a referendum on the proposal. If it is accepted, all those who voted will be governed by the proposal (regardless of how they voted). If it is rejected, matters revert to the status quo ante. In either case, non-voters remain in the situation they were in prior to the referendum. But regardless of the outcome, the Palestinian Authority stays in place (as per [2] above), as do the political rights associated with it.

It's a tall order, but I think Nusseibeh's proposal satisfies each element. It's better than any available option for the Palestinians because it secures their civil rights to a greater degree and with better likelihood than any other available option: that in fact is its *raison d'etre*. It respects Israeli security by leaving the apparatus of the state, including its security and legislative

²⁴ I say "in principle" because I have no special knowledge of whether or not the implementation is or is not feasible. The principles themselves derive from my interpretation of Locke's theory of consent in the *Second Treatise*. See my summary of the Lockean conception in "Variations on a Lockean Theme: Sari Nusseibeh's Heretical Proposal for Israel/Palestine," *Reason Papers* 34, no. 2 (Fall 2012), pp. 15-16. An important discussion worth having is tax policy under the proposal. On Lockean grounds, those accepting it would be candidates for substantial tax exemptions.

apparatus, essentially in Israeli hands. In doing so, it leaves the Jewish character of the state as it currently is. As time passes, however, and as the Jewish character of the state comes (gradually) into conflict with Palestinian civil rights, Nusseibeh's view implies that the imperative to respect those rights will have to trump Zionist claims of belonging. In time, the specifically Jewish character of the Israeli state may well have to wither away to nominal and essentially non-political functions, so that Israel becomes a Jewish state in the way that England is an Anglican state, or Norway a Lutheran one. In particular, its sectarian or quasi-sectarian regime of *property ownership* will have to change, as will its control of Palestinian movement and trade.²⁵

We might think of this process of conflict and state devolution on the model of the American civil rights movement, whose early successes (and some notable later ones) were achieved by judicial rather than legislative means. The basic pattern, transposed to the Israeli context, might be described as follows: A specific, legally adjudicable conflict presents itself, pitting Palestinian rights against the Jewish character of the state. Public-interest legal groups then undertake litigation in defense of Palestinian rights, modeled on (say) the work of the National Association for the Advancement of Colored People in the U.S. civil rights movement. As some of this litigation succeeds, it creates precedents for future litigation, thereby creating its own momentum for change. Some of this change may require legislative action, but if the demands for action come from the judiciary (as some have, both in Israel and in the US) they need not require Palestinian political rights for their realization. The change itself can be modulated, much as it was in the American case, by circumstances on the ground. At some point in the admittedly distant future, both sides will have lived long enough under a transitional process to permit (what I would call) the "full naturalization" of West Bank and Gazan

²⁵ See, e.g., the material discussed in note 11 above, plus Avishai, *Hebrew Republic*, ch. 1; David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (Albany: State University of New York, 2002), part II.

Palestinians into Israel. At that point, Israel would grant them the status that Israeli Arabs currently have (while working simultaneously to improve that). In the meantime, however, Palestinians would have to live as disenfranchised second-class citizens, enjoying civil rights but not political ones.

There are other one-state solutions, some decent and some indecent (e.g., Danny Danon's recent one), but on a Nusseibeh-type view, the decent ones require modification by some version of his proposal, and the indecent ones can be rejected out of hand on moral grounds. Yet another possibility, the continuation or intensification of the status quo, can also be rejected on moral grounds. At least *prima facie*, that leaves proposals like Nusseibeh's as the only ones standing. Or so I'll assume from now on.

3. A taxonomy of objections

Critics of Nusseibeh's proposal have made a variety of objections to it, some (to my mind) obviously fallacious, others more substantive. I begin by discussing what I take to be two clearly fallacious objections, partly to make some quasi-logical clarifications about the proposal itself, and partly to clear the ground for better objections.

Left-leaning critics, objecting to Nusseibeh's endorsement of disenfranchisement, have accused Nusseibeh of "a rejection of politics," "a counsel of despair," and in more extreme cases of treason to the Palestinian cause. We might simply note the *ad hominem* character of these criticisms and move on, but they involve an instructive *ignoratio elenchi* as well. Consider four possibilities, applicable to the relatively immediate future. Palestinians can

- (1) have both civil and political rights
- (2) have civil but not political rights

(3) lack civil but have political rights

(4) lack both civil and political rights.

All parties to the dispute agree that option (1) requires either a two-state solution or an immediate one-state solution. Contrary to the implicit suggestions of some of his critics, however, Nusseibeh is not disputing that under ideal conditions (1) would be the best option, and (4) the worst. His point is that since the relevant conditions do not and are not likely to obtain, there is no viable route to (1) now. Hence the relevant issue is the superiority of (2) over (3) and (4), not the indisputable (but irrelevant) merits of (1) over the other options. The dispute between Nusseibeh and his left-wing critics is one about the validity of the two-state solution, and has to be resolved prior to and independently of a discussion of the merits of Nusseibeh's proposal. It can't be stressed strongly enough that the lexical ordering of (1) to (2) to (3) to (4) is a *fixed* feature of the proposal which implies that if (1) is possible, (1) should be attained, and that (2) should only be sought because (1) is currently impossible (and so on).²⁶ If our question is what to do, it makes no sense to bracket questions about the viability of (1) and then reject (2) because (1) is better. That is a textbook version of the *ignoratio* fallacy.

Right-leaning critics, objecting to Nusseibeh's discreet endorsement of the gradualist version of the one-state solution, have accused him of writing in bad faith. For these writers, Nusseibeh's covert aim is the subversion of Israel, an aim he's willing to adopt even if it requires turning Israel into an *apartheid* regime for purposes of subversion. On this view, Nusseibeh is using his academic credentials, his innocuous demeanor, and his apparently modest proposal as the instrument of a kind of Islamo-nationalist irredentism. Precisely because the proposal *is* so

²⁶ The proposal therefore strikes me as invulnerable to "slippery slope" arguments. It's a misconstrual of the argument to suggest that (2) is being ranked over (1) as such, or that (2) is being sought out of sheer arbitrary convenience. Thanks to William Sweet for pressing this issue.

modest, its acceptance would discredit Israel. In discrediting Israel, the proposal delegitimizes Israel. In delegitimizing Israel, it weakens Israel's resistance to those who wish it ill, and opens the gates to Israel's destruction.

Accusations of this type cannot, in my view, be dismissed out of hand. In some cases, accusations of bad faith and a hidden agenda are perfectly legitimate.²⁷ But it is also a basic desideratum on the interpretation of a text that, *ceteris paribus*, we exhaust the morally innocent readings of the text before we read it in light of hypotheses about the author's moral dereliction (or insanity). The morally innocent/sane reading of Nusseibeh's proposal requires supplementation by the *prima facie* case I made against the two-state solution. That case may be wrong, but it cannot reasonably be dismissed as immoral, stupid, or insane. It's worth remembering that on Nusseibeh's view, his right-leaning critics are (whether they intend it or not) either endorsing an indefinite prolongation of Israel's occupation/settlement of the West Bank, or (what is just as bad) endorsing the creation of a Palestinian state that is, with each passing day, being set up for failure via settlement activity. Here, too, I would insist that we exhaust the morally innocent interpretations of their views before we make any morally-loaded accusations. But even the most innocent interpretation of their views is compatible with regarding them as remarkably insensitive to Palestinian rights.

A more focused objection is one that I call the *political rights objection*. In its *consequentialist* form, the objection asserts that trades of political for civil rights are necessarily self-defeating: since civil rights cannot effectively be protected unless their bearers enjoy full political rights, a grant of civil without political rights guarantees the eventual subversion and loss of whatever civil rights were granted—and thereby defeats itself. In its *deontological* form,

²⁷ I myself have made the point of Tariq Ramadan. See my discussion of Paul Berman's *Flight of the Intellectuals* and Tariq Ramadan's *What I Believe in Reason Papers* 33 (Fall 2011), pp. 165-89.

the objection asserts that full political rights have what Kant calls a value or dignity “beyond price,” and are therefore non-negotiable. Palestinians should either demand both or resign themselves to getting neither. They should not dirty their hands by acquiescing in their own inequality. I take each objection in turn.

4. The consequentialist objection: civil rights, political rights, and self-defeat

The consequentialist version of the political rights objection asserts that Nusseibeh’s argument is irrationally self-defeating. Applied to the case at hand, this objection turns on what might be called the *strong asymmetric dependence of civil on political rights*. In other words, civil rights depend for their existence or at least enforcement on possession of political rights. Deprived of political rights, a constituency has no real way either to secure civil rights, or to safeguard them once (somehow) secured. But it doesn’t work the other way around. Granted merely civil rights, a constituency cannot by their exercise come to acquire political rights.

Suppose then that you give a population civil without political rights, and that you grant enforcement power of those civil rights to those who possess political rights. In that case, in any situation in which the possessors of political rights see themselves as being in conflict with those who merely possess civil rights, they can use their monopoly on political power to subvert the second-class citizens’ possession of civil rights. Since in Israel this can practically be counted on to happen, the result of a Nusseibeh-like strategy is self-defeat. The point of the objection is not (merely) that it’s better to have both political and civil rights than merely to have the latter. The point is that there is no *value* to having the latter unless one also has the former. A person who locks into civil-without-political rights is like the improvident person who neglects to plan or

save for the future. Once he takes that route, he not only doesn't get what he wanted, but subverts his future capacity to get it. He ends up worse than he started.

More specifically, we can imagine one of two scenarios.

Scenario 1: The first-class citizens systematically subvert the civil rights of the second-class citizens (whether through active subversion or selectively malign neglect), and simply push them back to where the second-class citizens were in the first place.

Scenario 2: Same as scenario 1, except that the demoralization produced by the process leads to a civil war that might not have happened had the sequence not been initiated.

Nusseibeh's proposal is made attractive by the intuition that it's better to get something than nothing: it's better to have second-class citizenship than occupation without citizenship. But the consequentialist version of the political rights objection suggests that this "something rather than nothing" intuition is an illusion that trades on errors about the "something" and "nothing" at hand. Sometimes it makes better sense to get "nothing" than to get something that is ultimately worse than the nothing you currently have. Second-class citizenship may *look* like an intermediate step to first-class citizenship in the remote future, but it isn't. In fact, it's an intermediate step to *third*-class citizenship or worse.²⁸

It would be foolish to deny that this objection makes a legitimate point. The question is whether it does enough damage to Nusseibeh's proposal to sink it altogether. In fact, without prejudging the results of a drawn-out argument (or conducting one here), I think a hard look at the objection suggests that as stated, it over-estimates what can be inferred from the "self-defeating" nature of Nusseibeh's proposal. A defender of the proposal can grant much of the objection without having to abandon the proposal as such.

²⁸ Indeed, in an early, incautious formulation, Nusseibeh refers to his proposal as one involving "third class citizenship." See "Sari Nusseibeh: A Palestinian State Has Become Impossible," Israeli Occupation Archive (Jan. 20, 2010).

To see this, let's distinguish between logical inconsistency and practical self-defeat. Logical inconsistency is not a matter of degree, probability, or time. If S asserts (p and $\sim p$), his claims are inconsistent, and the inconsistency is immediately, fully, and certainly fatal. But practical self-defeat need not be a matter of logical inconsistency: it can involve a mismatch between means and ends, which can be a matter of degree, probability, and time. Very few political proposals (or serious ones) are 100% likely to bring about full and immediate self-defeat (call this "utter self-defeat"). A proposal may be self-defeating, but its self-defeating character might take time to kick in. Once it kicks in, the self-defeat could be partial rather than full, subverting some values but leaving others in place. Finally, whether or not the self-defeat kicks in, and the extent to which it does so, are both probabilistic. It might kick in, but it might not. It might be expected to involve full self-defeat, but merely involve loss. Further, the probabilities in question are temporally indexed. The probabilities of self-defeat might be low from t_1 to t_n , and increase gradually from t_n onwards. And so on. So even if we grant that a proposal is in some sense self-defeating, unless it is *utterly* self-defeating, more has to be said before we abandon it. In particular, more has to be said if the alternatives to it can also, in their own way, be said to be self-defeating. So a critic has to specify the expected degree and kind of self-defeat. *How* self-defeating is the proposal?

In particular, the critic has to foreclose is the possibility that the proposal is self-defeating, but to lesser degree than the alternatives—possibly to a degree that is compatible with *the defeat of self-defeat*. If self-defeat takes time, maybe there's enough time to defeat self-defeat before it happens. If self-defeat comes in degrees, maybe the degree of self-defeat inherent in the proposal is such that what is undefeated in the proposal can serve as a resource to recover what is defeated. If self-defeat is probabilistic, maybe the probabilities are such that there's enough

causal breathing room to make things work out in the end. What is missing from the political rights objection is attention to the possibility of *change* generated by the “breathing room” provided by the proposal itself. The objection treats a verdict of self-defeat as a prophecy of doom. But maybe it isn’t.

The “verdict of doom” turns on implicit empirical assumptions about the degree to which civil rights are asymmetrically dependent on political rights. The implicit claim is that Nusseibeh-type proposals lead to self-defeat that precludes counterresponse: the expected self-defeat can, with high probability, be predicted to be quick, full, and irreversible. One of the puzzling features about this assumption, however, is where it comes from. There is (to my admittedly limited knowledge) no body of literature in social science that clearly establishes an asymmetric dependency of the kind required for the soundness of the objection.²⁹ The assumptions seem to come, instead, from a selective reading of history. Some criticisms may be inspired by Arendt’s discussion of stateless refugees in *The Origins of Totalitarianism*.³⁰ Some may be inspired by reflection on the Jim Crow period in American history.³¹ Some undoubtedly arise from pessimistic reflection on the current status of Israel’s Arab citizens or of Palestinians currently living in East Jerusalem.³² But whatever the source, its proponents seem to have a very specific history or historiography in mind, which in their eyes establishes a very strong

²⁹ Which is not to say that there is no literature on the subject. For a useful summary, see Jason Sorens, “The Politics and Economics of Official Ethnic Discrimination: A Global Statistical Analysis, 1950-2003,” *International Studies Quarterly* (2010). Thanks to Christopher Baylor, Jason Sorens, and Jacob Levy for helpful discussion of the issue.

³⁰ Inbar and Sharon invoke Arendt in “A Too Modest Proposal?” The reference is to Arendt’s “The Decline of the Nation-State and the End of the Rights of Man,” in *The Origins of Totalitarianism: Imperialism* (New York: Houghton Mifflin Harcourt, 1968).

³¹ Shulman makes reference to Booker T. Washington’s so-called “Atlanta Compromise” (not Washington’s own formulation) in “Israel and Palestine: Breaking the Silence.” The reference is to ch. 14 of Washington’s *Up from Slavery: An Autobiography* (1901).

³² Inbar and Sharon mention the plight of East Jerusalemite Palestinians in “A Too Modest Proposal?”

asymmetric dependence of civil on political rights, and which they take conclusively to refute Nusseibeh's proposal. Given this interpretation, they regard it as obvious that the demand for civil minus political rights leads to *utter* self-defeat. As stated, however, these critics' claims are underdetermined by empirical evidence. I have not yet found a critique of Nusseibeh's proposal that cites any rigorous empirical work to make its case.

This topic deserves much more sustained and rigorous empirical investigation than I can undertake here (or that I'm qualified to undertake in any original way). In lieu of a rigorous empirical discussion based on hard social scientific evidence, I would mention three general considerations to bear in mind in evaluating the proposal—two analogies and one general observation. All three are intended as evidential counter-weight to the idea that disenfranchisement *must* lead to *apartheid* or totalitarianism. Both the analogies and the observation are, I stress, imprecise, and are not intended as analogous to Palestine *today*, but to Palestine *under the proposal*. Cumulatively, however, I think the three considerations block any quick inference from disenfranchisement to disaster.³³

1. *Immigrant aliens*. Nusseibeh's proposal in effect treats Palestinians as *immigrants* to Israel—disenfranchised denizens with rights of movement and trade on a very slow track to full citizenship. Hence the situation of immigrants generally is relevant to evaluation of the proposal. Many immigrants voluntarily choose to relinquish political rights in their home countries in order to accept merely civil rights in their adopted countries. A strong version of the asymmetry thesis implies that such immigrants invariably worsen their condition, ipso facto making an irrationally self-defeating choice. But the implausibility of this claim raises a basic difficulty for the thesis.

³³ Thanks to David Lea for pressing these issues in discussion.

Take the case of the citizen of what is arguably a failed state (e.g., Pakistan) moving to a stable, civil-rights respecting country that denies that person political rights (e.g., an *illegal* immigrant in the United States who is ineligible for citizenship). Suppose, *ex hypothesi*, that life in the failed state fails on virtually all measures of well-being. But suppose that life in the adopted state succeeds on all or most measures of well-being except those promoted by the direct exercise of political rights. A defender of a strong version of the asymmetry thesis would be forced to argue that the person was better off in the failed state than in the advanced nation—that a move from poverty in Pakistan to affluence in America was somehow irrationally self-defeating. That seems extremely implausible, and it's unclear how it would be borne out by empirical evidence.

The example implies that the asymmetry thesis must be weakened. So consider a different example. Imagine the case of a citizen of a failed state (e.g., Pakistan) moving to a stable country that respects some civil rights but denies political rights (e.g., a Pakistani immigrant to the UAE, Kuwait, or even Jordan or Turkey). Suppose that life in the failed state fails on virtually all measures of well-being, as before, but that life in the adopted state succeeds on well-being to a much higher degree than the failed state, but to a lower degree than, say, a fully liberal state. A defender of the asymmetry thesis must decide what application the thesis has to this case. Is the thesis so strong as to imply that the immigrant has worsened his condition? Or is it weak enough to imply that he has bettered his condition?

We might multiply examples, but the point should be clear. Either the asymmetry thesis is to be stated in a very strong form or in a weaker form. In its strongest forms, it makes the very implausible claim that possession of political rights is the basic causal variable that explains how well off people are. In its weaker (and more plausible) forms, however, it is rather indeterminate.

The weaker forms admit that political rights *can* be traded for civil so as to achieve a net gain in one's situation. But to remain committed to asymmetry, the weaker forms of the thesis must imply that there is some threshold such that the relinquishing of political for civil rights at *that* threshold undermines the value of possessing civil rights. The thesis is undoubtedly true. What is unclear is where and when it is true. If we do not know that, we cannot apply the thesis to Nusseibeh's proposal. And the claim has not, to my knowledge, been argued for.

2. *Puerto Rico*. Nusseibeh's proposal in effect treats Palestine as a territory or protectorate of Israel. So the case of not-fully-incorporated territories is relevant to evaluation of the proposal. Consider just one such case, that of Puerto Rico.

The United States acquired the island of Puerto Rico in 1898 after defeating Spain in the Spanish-American War, just as the Israelis acquired the Palestinian territories after the 1967 war. The Americans regarded the Spanish-American war as a just defensive war against the depredations of a revanchist, reactionary, semi-feudal imperial power—just as the Israelis regard their Arab opponents in the 1967 Arab-Israeli war.³⁴ The Americans regarded the military occupation, development, and governance of Puerto Rico as a kind of regrettable but also potentially beneficial duty that arose as a consequence of their winning the war, much as the Israelis think of their occupation. Having acquired Puerto Rico by war, the U.S. then faced the task of governing its poor, foreign, Spanish-speaking population, just as the Israelis have faced a similar task in Palestine.

Fifty years after the war, Puerto Rico became a commonwealth of the United States. Its inhabitants are currently second-class citizens of the United States who vote in local (that is, Puerto Rican) but not national elections. They have all the civil rights of American citizens, but

³⁴ I rely here heavily on the discussion of T. Alexander Aleinikoff, *Semblances of Sovereignty: The Constitution, the State, and American Citizenship* (Harvard, 2002), ch. 4.

cannot hold national office in the United States. However, they are permitted to move freely between the island and the American mainland.³⁵ A century after the war, in 1998, the Puerto Rican people “went to the polls to indicate their preference on the political status of the island and its relationship to the United States.”³⁶ Of the 1.5 million voters who participated in the 1998 plebiscite, a bare majority (50.4%) voted against *every* option on the ballot, *including* the option of statehood and full American citizenship.³⁷ Hence the denizens of Puerto Rico remain second-class citizens of the U.S. by their own choice. “Decolonization of Puerto Rico,” as one expert writes, “remains a work in progress.”³⁸

The example of Puerto Rico—both the similarities and the differences—demonstrate several things of relevance to Nusseibeh’s proposal. Suppose we focus on the strongest similarities. Take the case of Puerto Ricans in Puerto Rico who are either unable or unwilling to get to the mainland, and who voted against Puerto Rican statehood (and thereby, against full American citizenship). *These* Puerto Ricans most strongly resemble Palestinians under Nusseibeh’s proposal. One lesson to consider here is that before declaring their vote irrational, it makes sense to consider their motivations, and consider whether those motivations might apply to Palestine. A second lesson is that these Puerto Ricans live in suboptimal but still tolerable

³⁵ Some disanalogies are worth noting, one historical, one bearing on the proposal. *Historical point*: unlike Israel, the United States did not try to settle Puerto Rico with outsiders. *Proposal-relevant point*: by contrast with Nusseibeh’s proposal, Puerto Ricans can, if they move to the mainland, relatively easily get full American citizenship while retaining their ties to the island. But the point I make in the text still involves a fairly strong analogy. Not all Puerto Ricans can or do leave the island. My point is that the analogy to Nusseibeh’s proposal is strongest in the case of Puerto Rican natives who *don’t* leave—a sizeable number, and sizeable proportion of the whole.

³⁶ Aleinikoff, *Semblances*, p. 74.

³⁷ Aleinikoff, *Semblances*, p. 74.

³⁸ Aleinikoff, *Semblances*, p. 75. A more recent plebiscite was taken in November 2012, according to which 61% voted for statehood. See David Royston Patterson, “Will Puerto Rico Be America’s Fifty-First State?” *The New York Times*, Nov. 24, 2012.

conditions, certainly much better than Palestinians under occupation. So the sheer fact of disenfranchisement does not necessarily lead a population to dire, disastrous, *apartheid*-like conditions. If the Puerto Rican case is at all applicable, then, it shows us (not the actuality of Palestine today but) the trajectory of Palestine in the future. The trajectory is one that should neither cause joy nor despair, but a sense of optimistic realism.

But now suppose we focus on the differences between Puerto Rico and Palestine. Far from invalidating the analogy, I think they serve to support it. Americans seem to have treated Puerto Ricans (and Puerto Rico) more decently than Israelis have treated Palestinians (and Palestine). They refrained from expropriating them (at least systematically), they made Puerto Rico a Commonwealth, they granted Puerto Ricans citizenship, and they (eventually) allowed them the freedom to move to mainland and get full citizenship rights. These differences between the two cases suggest the direction that Palestinian demands of Israel might take under Nusseibeh's proposal. The basic demand should be that the Israelis, following the Americans *at least give Palestine the status of Puerto Rico*. The Israelis like to stress their special affinity for Western values, and their special bond with America. Despite its flaws, the Puerto Rican example gives us a concrete example of how to hold them to it.³⁹ Indeed, the flaws of the example only highlight the fact that while Puerto Rico is a relatively benign case, its problems have not *fully* been resolved in over a century.⁴⁰

³⁹ Of course, there is a different kind of dissimilarity: by and large, Americans do not fear Puerto Ricans as a security threat in the way or to the degree that Israelis fear Palestinians. What happens in Puerto Rico (e.g., the crime rate there) is of little interest to Americans in the way that the internal affairs of Palestinians are of interest to Israelis. But this dissimilarity highlights the need for strong Palestinian control of terrorism: it would be an improvement if Israelis could start thinking of Palestinians in the way that Americans think of Puerto Ricans. There is, to be sure, racism and stereotyping even there, but not, I assume, as intense as that one encounters under occupation.

⁴⁰ A further lesson here is even more basic: a proper discussion of Nusseibeh's proposal would require a comprehensive discussion of the political status of unincorporated territories beyond this single case.

3. *Judicial activism.* I've previously mentioned this, but *one* way of responding to fears about the asymmetric dependence of political on civil rights is to work on a strategy of judicial rather than legislative protection of civil rights. To some degree, this is already the preferred strategy of Palestinians under occupation, and while it has hardly reversed the occupation, its existence is testimony to the Israelis' commitment to the rule of law, however defective, even under military occupation.⁴¹ Judicial activism was also the strategy employed by African Americans when, though they formally had voting rights under the Fifteenth Amendment, that right was vitiated by Jim Crow discrimination, and didn't receive *federalized* protection until the Voting Rights Act of 1965. At any rate, in some cases, it's unclear what leverage voting would have brought African-Americans anyway, since they were numerically outvoted by any coalition of would-be adversaries.

An instructive example here, with interesting parallels back to Palestine, are the so-called *Mt. Laurel* cases brought before the New Jersey Supreme Court, which decided against exclusionary zoning laws, that is, against the legitimacy of apparently neutral but covertly race-based policies governing land-development and -use. Exclusionary zoning had the overwhelming support of virtually every sector of the New Jersey population except poor, urban blacks who, if they had relied on voting and legislative relief, would overwhelmingly have been defeated. In this case, it was the judicial, not the legislative strategy, that had the only hope of initial success.⁴² Possession of the vote did not necessarily make the relevant difference.

⁴¹ See Kretzmer, *Occupation of Justice*.

⁴² For a good discussion of the *Mt. Laurel* decisions, see David Kirp et al, *Our Town: Race, Housing, and the Soul of Suburbia* (Rutgers, 1997). See also Rebecca Kook, *The Logic of Democratic Exclusion: African Americans in the United States and Palestinian Citizens in Israel* (Lexington, 2003).

At best, then, the consequentialist version of the political rights objection leads to a stalemate whose resolution depends on more rigorous empirical work on the strength of the asymmetric dependence that it asserts. To be sure, Nusseibeh has not shown us that the proposal averts a fatal sort of self-defeat. But to my knowledge, no critic has given an account of the sort of self-defeat that would qualify as fatal, either. The main issues await further research and adjudication.

5. The deontological objection

I'm going to deal in a much more cursory way with what I'm calling the deontological version of the political rights objection. This objection asserts that all political trades that involve the relinquishing of one's political rights, even in exchange for protection of one's civil rights, are immoral. Either the act of trade is (covertly or implicitly) racist, in which case it's condemned on those grounds, or the political rights are themselves of "a value beyond price" in the Kantian sense of that phrase, so that no trade of them can ever be morally justified. In the context of Israel and Palestine, this view implies that either we endorse a single state in which everyone, Israeli or Palestinian, has full and equal political rights as Israeli citizens, or we endorse two states in which everyone, Israeli or Palestinian, has full and equal political rights in Israel or in Palestine.

As I'm understanding it here, then, the deontological argument is a distinct one, not reducible to the consequentialist argument, and not to be understood as working in concert with consequence-based considerations, either. For this reason, it's not open to a defender of the deontological objection to make this version of the objection and then insist that the consequences of adopting it are not as problematic as a critic might regard them as being. One

cannot coherently insist that “justice must be done, though the heavens may fall,” and then defend one’s view with the adamant insistence that they *won’t* fall.⁴³

The deontological objection is not something you’ll find stated in so many words in a given text, but I don’t think it’s a strawman, either.⁴⁴ I think it’s an assumption that lurks behind many outwardly consequentialist-looking arguments, designed to give those arguments normative force they might lack if left in consequentialist form. A historical antecedent is to be found in the abolitionists of nineteenth-century American history, who insisted on a stark moral choice between abolition and slavery, and were willing to risk a civil war to get it.⁴⁵ Though a few revisionist historians have suggested that slavery might have been abolished in the US without warfare, most historians think a civil war was necessary, inevitable, and justified. Another antecedent is to be found in the anti-*apartheid* activists of the 1970s and 1980s, who insisted on a stark choice between full political rights and *apartheid* in South Africa, and were surprisingly willing to risk war for it.⁴⁶ In the end, war came in the American but not the South African case, but the deontologist’s point is that the choice was in both cases a stark one—full political equality versus less-than-full equality. We shouldn’t (the deontologists insists) confuse the moral character of the choice with predictions or prudence about its consequences.

⁴³ I am skeptical, then, of the coherence of so-called “consequence-sensitive” deontologies of the sort associated with W.D. Ross’s pluralism, but can’t do justice to the issue here.

⁴⁴ See, e.g., Andrew Altman, “Civil Rights,” *Stanford Encyclopedia of Philosophy* (2012), section 1.1. It is also, I think, implicit in the large literature criticizing Rawls’s discussion of “decent hierarchical peoples” in *The Law of Peoples* (Harvard, 1999), pp. 59-88 (i.e., his famous “Kazanistan” example). Though there are clear parallels between Rawls’s discussion and Nusseibeh’s, I hesitate to get entangled in a discussion of Rawls in order to discuss Nusseibeh. Thanks to Chung Choe for very helpful discussion.

⁴⁵ See, e.g., Mason Lowance ed., *Against Slavery: An Abolitionist Reader* (Penguin, 2000), section III.

⁴⁶ See Ronald Segal ed., *Sanctions Against South Africa* (Penguin, 1964), especially William F. Gutteridge, “The Strategic Implications of Sanctions Against South Africa,” pp. 107-115. Though we now think of the anti-*apartheid* campaign as one of “divestment,” it was originally conceived as a campaign for sanctions enforced by military means. I thank the late Christopher Hitchens for impressing the point on me (and for recommending Segal’s book).

One way of responding to this argument is just to be clear about the costs it involves. For one thing, the objection entails that all immigrants who give up political rights for merely civil rights in a new country are violating a self-regarding duty of some kind, and that all regimes that fail to give immigrants full rights alongside full citizens are violating a duty to those immigrants. For another, it implies that the Puerto Rican who votes against statehood for Puerto Rico—thereby voting against national political rights for herself—is ipso facto violating a duty to self. I find these claims extremely implausible, and have not encountered an argument for them I find convincing.

To bring the issue back to Israel and Palestine: Suppose one thinks that the attempt to grant full political rights to Palestinians right now, whether in one state or two, would end up empowering Islamic fundamentalism, lead to a dramatic increase in terrorism, and increase the probability of civil war. Must we still proceed with it? A view that insisted that we must would collide headlong with a more consequence-sensitive conception of justice. The deontologist does not necessarily have the moral high ground here. It seems *unjust* to impose deontological norms on a population if that population risks death by imposition.

A second way of responding to the objection involves insisting on the relative value of what I called the rights of self-sustenance to those of self-government. A deontological conception of politics seems incompatible with one thoroughly based on the requirements of a conception of human well-being. If we take the obligation to promote well-being seriously, we're obliged to distinguish between the fundamental and derivative requirements of well-being, where the distinction is to be understood as a difference in the degree to which a requirement, if satisfied, causally contributes to well-being. In case of a conflict between the fundamental and the derivative, it seems justified to choose the fundamental over the derivative.

Now contrast rights of self-sustenance and rights of self-government in respect of their causal contribution to flourishing. At a very basic level, an agent needs to translate the results of her practical deliberations into action, but to do that effectively, she needs to be able directly to control those parts of the world that bear on the deliberations. She can't deliberate, plan, or act effectively if she fears constant crossings of her boundaries or interruptions of her activities. Rights of self-sustenance, especially the negative ones, protect the direct control I exert over the things in my everyday environment while taking the actions to survive and flourish. They protect the boundaries that make the judgment-deliberation-action nexus possible for an agent, and in so doing make an enormously powerful contribution to well-being.

Rights of self-government, by contrast, bear much more indirectly and in a more causally attenuated way on flourishing, doing so by affecting the institutional structure of our social environment. It's now a commonplace of democratic theory that it is vanishingly rare for a single agent's vote to make a significant causal contribution to any given agent's well-being. (Office-holding might be more causally efficacious, but office-holding is also harder to bring about.) From the individual agent's perspective, political activity may be important, but casually speaking, it cannot possibly *do* for the agent what she can do for herself under conditions of civil rights. The exercise of political rights bears no causal relation to the tasks of everyday life—love, work, education, or enjoyment—comparable to self-generated, self-maintaining action under civil freedom.⁴⁷

If we have to dispense with something—and in sections 2 and 3 I argued that we do—then it makes more sense to dispense with political rights than civil. If proponents of the deontological objection disagree, they have to explain what feasible option they are proposing for action. They

⁴⁷ See discussion, see Jason Brennan, *The Ethics of Voting* (Princeton, 2011), and forthcoming symposium on the book in *Reason Papers* (July 2013).

cannot condemn the feasible options and insist moralistically on impossible ones. Nor can they court civil war but insist that justice is obviously on their side.

6. Conclusion

My reflections here really just scratch the surface of the complexities raised by Nusseibeh's proposal. They offer the outlines of a further argument to be had, rather than a conclusive verdict on the proposal as such. To come to such a verdict, we would need a better account of the pros and cons of one- and two-state solutions, a better account of the asymmetric dependence of civil on political rights, and a more thorough discussion of consequentialist versus deontic conceptions of moral norms. But as a first-round proposition, I think the political rights objection to Nusseibeh's proposal fails. It gives us no reason to abandon the proposal, and every reason to explore its possibilities as a proposal. I'm convinced that further exploration yields further confirmation of the merits of the proposal. But that is an argument for another day.⁴⁸

⁴⁸ Thanks to an audience at the Canadian Jacques Maritain Society at the University of Victoria (Victoria, Canada) for very helpful feedback on the paper. Thanks also to Fahmi Abboushi, Christopher Baylor, Carrie-Ann Biondi, Chung Un Choe, David Klassen, David Lea, Aftab Khawaja, Carl Lane, Jacob Levy, Jason Sorens, and William Sweet for helpful conversation and correspondence on the subject of this paper. A very special thanks to Sari Nusseibeh and his wonderful staff at Al Quds University for the opportunity to discuss the paper there.

